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**REPORT ON THE SITUATION OF HUMAN RIGHTS  
IN VENEZUELA**

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## **EXECUTIVE SUMMARY**

### **REPORT ON THE HUMAN RIGHTS SITUATION IN VENEZUELA**

1. The Inter-American Commission on Human Rights has been closely following the human rights situation in Venezuela, and has taken steps within its mandates to guarantee respect for human rights in that country. To this end, the Commission has used various mechanisms provided in inter-American human rights instruments, such as the case system, the adoption of precautionary measures, the request for provisional measures from the Inter-American Court on Human Rights, in situ visits to the country, and press releases.

2. In response to an invitation from the Venezuelan government, the Commission made an in situ visit from May 6 to May 10, 2002. The Commission had planned to conduct a series of follow-up visits, but has been prevented from doing so to date because the Venezuelan State has been unable to establish the corresponding dates.

3. This report, which consists of seven chapters, examines the situation in Venezuela, with a particular focus on various aspects relating to the rule of law in the country. The report was prepared on the basis of information collected before, during, and after its in situ visit to Venezuela in May 2002, and covers subsequent events up to October 2003.

4. The report was prepared during political and institutional upheaval. The political climate in Venezuela has shown a marked tendency to radicalization, which became accentuated in the early months of 2002 and culminated in a breakdown of the constitutional order on April 11, with its subsequent restoration on April 14 of that year.

5. The primary purpose of this report is to engage the Venezuelan State to analyze the human rights situation and to formulate recommendations that will assist the State in meeting its international obligations in the area of human rights.

6. In the first place, the IACHR welcomes the inclusion in the Venezuelan Constitution of a provision that gives constitutional rank to human rights treaties ratified by the State. It also notes that the new constitution has strengthened and expanded legal protection for personal safety and integrity, and for preventing practices that undermine those values.

7. The new Constitution also contains special provisions relating to human rights, as in Chapter VIII on the rights of indigenous peoples, Chapter IX on environmental rights, and Chapters VI and VII on social, economic and cultural rights; the prohibition in Article 45 with respect to the

forced disappearance of persons; and the creation of new institutions for protecting human rights, such as the Ombudsman's Office (*Defensoría del Pueblo*) and the Constitutional Chamber of the Supreme Court of Justice.

8. Notwithstanding these positive constitutional developments, however, the situations identified in the various chapters of this report demonstrate a clear weakness in the fundamental pillars that must support the rule of law in a democratic system, consistent with the American Convention on Human Rights and other international instruments.

9. The Commission noted that during the period between March 2002 and the first quarter of 2003 more than 40 people were killed and some 750 were injured as the result of street protests. The extreme political polarization and resulting acts of violence that have erupted periodically between different demonstrators to growing political intolerance in the country. The IACHR has noted worrisome signs of institutional weakness, including the failure to give full application to the new Constitution, the perception that the branches of government lack independence, the growing concentration of power in the national executive, the impunity in which certain armed civilian groups and para-police units operate, the government's tendency to confrontation and disparagement of the political opposition, the constant attacks on journalists and the media, the tendency to militarize the public administration through the increasingly prominent role of the armed forces, the growing radicalization of political postures in the context of popular discontent over unmet social demands, and disputes relating to the exercise of trade union rights.

10. Chapter I, on the administration of justice and human rights, focuses on aspects affecting the administration of justice in Venezuela. The Commission analyzes the autonomy and independence of the judiciary, the provisional status of most of the country's judges, and the makeup of certain institutions.

11. With respect to the provisional judges, the Commission notes that this is a problem which long predates the current government. Nevertheless, the problem has worsened since the government began the process of judicial restructuring. The Commission was informed that only 250 judges have been appointed through competition, as the Constitution requires. Of the total of 1,772 judges in Venezuela, the Supreme Court of Justice reports that only 183 have tenure, 1,331 are provisional, and 258 are temporary. This means that 84% of magistrates continue to have provisional or temporary status, and lack tenure in their positions.

12. Another aspect of concern to the Commission with respect to guaranteeing the independence and impartiality of the Venezuelan judiciary

relates to the failure to enforce the mechanisms provided by the new Constitution for the election of its Supreme Court authorities. The Commission reiterates the conclusion from its in situ visit, to the effect that the failure to respect the Constitution fully creates legal insecurity that impedes the consolidation of the rule of law. For this reason, the Commission believes that it is urgent to adopt organic laws as the appropriate means of establishing the mechanisms stipulated in the Constitution for the selection of judges of the Supreme Court of Justice, as well as the Public Ombudsman, the National Attorney General, and the National Comptroller General.

13. The Commission has also received information pointing to a significant increase in impunity with respect to acts of violence. According to that information, 90% of investigations related to human rights violations never advance beyond the preliminary stage. The Commission was told specifically that in the first quarter of 2003 the Judicial Police had referred 3,892 cases to the Courts, but the Courts had resolved only 772, or 19% of these cases. These figures are on a par with those for the year 2002, when only 667 of 9,529 homicide cases resulted in definitive judgments. The Commission finds these figures particularly alarming, because impunity constitutes a grave violation of the obligations of states, and implies a kind of vicious circle that tends to repeat and perpetuate itself, thereby increasing the crime rate, particularly for violent offenses.

14. Chapter II, on civil society, examines the situation of human rights defenders in Venezuela.

15. The IACHR has received a considerable number of complaints about various kinds of attacks and acts of intimidation against persons devoted to protecting and promoting respect for the fundamental rights of Venezuela's inhabitants. Acts of harassment against human rights defenders and human rights organizations at times go as far as attacks on the life and physical integrity of those defenders. A series of cases have been verified in which defenders were the targets of various mechanisms of intimidation. In at least one case, the IACHR had to request provisional measures from the Inter-American Court of Human Rights in order to protect members of a human rights organization.

16. Chapter III, on State security, examines the role of the armed forces and security police.

17. The Commission notes that the Constitution extends the scope of the concept of security not only to the military sphere but also to the cultural, social, economic and political spheres, among others. The IACHR wishes to stress that in a democratic society this broad and

progressive concept of national security must be suitably interpreted in ways that do not presuppose increased powers for the armed forces in fields beyond their competence.

18. The IACHR was greatly concerned at the many reports received of an excessively deliberative role for the armed forces, and the undue influence they exert on the country's political life. The Commission believes it is essential for the Venezuelan State to take urgent measures to ensure that the armed forces do not adopt a deliberative role, and that they do not involve themselves in the country's political life.

19. The Commission also observed problems in the conduct of the various police forces, as evident in a series of events, in particular: the proliferation in several states of death squads linked to the police, a situation that undermines the rule of law and poses a particular threat to the right to life; the lack of coordination among the various security bodies, and in particular between the National Guard and the Metropolitan Police, the Metropolitan Police strike that began in October 2002, the police strikes in several states of the country; the disproportionate use of force in certain circumstances, assassinations attributed to the Metropolitan Police at the time of the constitutional breakdown, and the political struggle for control of that institution between the national executive and the office of the mayor of Caracas.

20. In Chapter IV, on the right to life, the Commission finds that the situation has worsened considerably, due to the increase in impunity and violence. This problem is particularly severe in certain states, notably in Portuguesa, Anzoategui, Falcon, Yaracuy, Caracas, Bolivar, Aragua and Miranda. More than 30 cases have come to light in seven different states where persons were summarily executed by para-police groups. The escalating violence has resulted in 55 assassinations in the course of street violence, and more than 500 people have died in presumed confrontations that have not been sufficiently clarified.

21. The Commission believes that a system that does not guarantee immediate and effective investigation, prosecution and punishment is incapable of enforcing respect and protection for the rights of the victims nor of the alleged perpetrators. In examining this issue, the Commission must reiterate what it has maintained on several occasions, to the effect that a State is not only responsible for human rights violations committed by its agents or through the conduct of para-police groups operating with its acquiescence or consent, but it also incurs international responsibility when it fails to take adequate measures to prevent, investigate and punish criminal acts by individuals or particular groups. As noted throughout this report,

priority must be given to fulfilling the State's commitment to strengthen the administration of justice and to stamp out impunity.

22. In Chapter V, on the right to humane treatment and personal integrity, the Commission notes that the sharpening institutional conflict in Venezuela has made itself felt in acts of violence that have involved attempts against people's lives, and numerous attacks on personal integrity. The Commission has received many complaints from nongovernmental agencies and from individuals, claiming that torture continues to be practiced by the police, even in the course of judicial investigations, as a means of intimidating prisoners and extracting confessions from them. As well, the Commission finds that the competent State bodies have failed to fulfill their duty to investigate complaints in these cases and to punish those responsible, who generally enjoy impunity, a situation that encourages the repetition of such conduct. It also notes a lack of effective surveillance over the physical integrity of prisoners in civilian and military detention centers alike. According to the information received, it is the police who are primarily responsible for cases of torture, since these take place primarily in police stations. Torture is commonly applied to persons under detention or investigation.

23. In Chapter VI, on the right to freedom of expression and thought, the IACHR has identified two areas of particular concern relating to freedom of expression: the first involves threats, attacks and acts of harassment against social communicators, particularly those working in the streets, and the failure to investigate those threats and attacks; the second refers to judicial decisions and draft legislation that, if enforced, would severely constrain the full exercise of freedom of expression for the inhabitants of Venezuela. The third has to do with the initiation of administrative proceedings by CONATEL and the Ministry of Infrastructure against the communications media, relating to the content of their programming, and applying legislation that may be inconsistent with the inter-American system.

24. The IACHR with has noted many instances of verbal or physical assaults in recent years. There have been threats and attacks against social communicators, especially those covering public events, political rallies and activities relating to the security forces. Before, during and after the in situ visit, the IACHR was informed that social communicators working in the streets were being targeted for attack and harassment. The overall situation in Venezuela has generated a climate of aggressiveness and continuous threats against the freedom of expression, and in particular against the personal integrity of journalists, cameramen, photographers and other social communication workers.

25. Given the vulnerability in which communication workers find themselves, the IACHR asked the Venezuelan State to adopt precautionary measures on eight occasions during 2002, and in many cases these were extended in order to protect the life, personal integrity and freedom of expression of journalists, cameramen and photographers. The Inter-American Court of Human Rights was also asked to order provisional measures. In a decision of March 21, 2003, the Court declared that the State had failed to comply with those measures. The Commission expressed its concern over the failure to comply with the provisional measures granted by the Court, and with the Commission's own precautionary measures. In July 2003 the IACHR decided to request further provisional measures from the Court in order to protect two journalists.

26. The IACHR received expressions of concern over the possibility that the communications media in Venezuela may not always act responsibly or ethically. As the IACHR reported upon completion of its in situ visit, it took note of media activities obstructing access to information that was vital for Venezuelan society during the tragic events of April 2002, which saw the coup d'état and the restoration of democracy in Venezuela. The IACHR notes that, while there may be many reasons to explain this lack of information, to the extent that the suppression of information has resulted from politically motivated editorial decisions, there is room for a good deal of soul-searching on the part of the Venezuelan media about their role at that time.

27. In Chapter VII the IACHR examines the situation of trade union freedoms in light of the current political and institutional setting.

28. With respect to the situation of trade union freedoms in Venezuela, the IACHR notes that the political crisis and the atmosphere of intolerance that marks the current political setting has sparked an increase in labor conflicts over this issue. The IACHR is particularly concerned over the mass dismissal of workers at Petroleos de Venezuela (PDVSA). Information provided shows that a total of 12,383 workers were dismissed from this State enterprise on grounds of having abandoned their workplace in the context of the so-called national civic strike that lasted from December 2002 until February 2003.

29. The Commission confirmed a situation of forceful intervention by the State in union affairs, despite repeated recommendations from the ILO (International Labour Organisation) that it should refrain from such behavior. As well, the Commission believes it is urgent to resolve the problem of recognizing the leadership of the CTV, the main Venezuelan labor confederation, out of regard for the needs and rights of its members.

30. The IACHR notes that there has been a significant step forward in the area of trade union freedom. On July 23, 2002, the Electoral Chamber of the Supreme Court of Justice ruled that action by the Supreme Electoral Council was of a subsidiary nature, and that therefore that body could only intervene when there was a dispute that the labor organization itself could not resolve.

31. Finally, the IACHR wishes to highlight the important progress that has been made toward settling the institutional crisis by peaceful and electoral means, in clear demonstration of the solid democratic commitment of the Venezuelan people. The IACHR again notes the pact signed by representatives of the government and the opposition on May 29, 2003, in context of the Roundtable for Negotiation and Accord. This is a fundamental document that marks a turning point in the current situation, whereby the parties have agreed that the application of constitutional mechanisms is the institutional route to be followed in resolving the crisis. The Commission hails this achievement and calls on all parties to continue on the road of tolerance and democratic dialogue, and to work together to implement that pact in all situations that so require.

32. The Commission hopes that the Government of Venezuela, and the other political players in the country, including the members of the legislature and the judiciary, will continue to demonstrate the political will to seek solutions to the serious human rights problems that affect the country's inhabitants. The Inter-American Commission offers the Venezuelan State and society as a whole its full cooperation in the efforts at promotion, protection and consultation that are needed to move towards a solution of the country's human rights problems.

# REPORT ON THE SITUATION OF HUMAN RIGHTS IN VENEZUELA

## INTRODUCTION

1. The Inter-American Commission on Human Rights (IACHR) is a principal organ of the Organization of American States (OAS) whose mandate is to promote the observance and defense of human rights and to act as the consultative organ of the Organization in this regard. The powers of the IACHR derive from the American Convention on Human Rights and the Charter of the OAS, both of which have been ratified by the Bolivarian Republic of Venezuela.

2. The Commission, whose headquarters are located in Washington, D.C., U.S.A., is composed of seven members nominated by member states of the OAS and individually elected by the General Assembly of the Organization. Members serve four-year terms which can be renewed once. On a yearly basis, the Commission selects from among its members a board of officers consisting of a President and two Vice-Presidents. Also part of the Commission is its Executive Secretariat, which comprises an Executive Secretary and the legal and administrative staff necessary for the performance of its functions. The Executive Secretariat is permanently housed at the headquarters of the IACHR.

3. In fulfilling its mandate to promote and protect human rights, the IACHR performs several functions within the framework of the American Convention on Human Rights ("American Convention" or "Convention"), the American Declaration on the Rights and Duties of Man, other international treaties, and its Statute and Rules of Procedure. Among these functions are the hearing of petitions and individual cases of human rights violations; precautionary measures aimed at preventing irreparable damage to persons; on-site visits to member countries of the OAS made with respect to a specific case under review by the Commission,<sup>1</sup> to conduct a general observation of the human rights situation in the country or to look at a specific issue or particular situation<sup>2</sup>; production of various types of reports, be they general or specific; and work through "Special Rapporteurs" on specific issues related to human rights.

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<sup>1</sup> See Article 44 of the Commission's Rules of Procedure.

<sup>2</sup> See Articles 55 ff. of the Commission's Rules of Procedure.

## I. BACKGROUND OF THE REPORT

4. In the context of the functions noted above, the IACHR regularly monitors THE human rights situation in OAS member states. From 2000 to the present, the Inter-American Commission has been closely following events in the Bolivarian Republic of Venezuela and has acted within the bounds of its mandate to ensure the observance of human rights in that country. In this respect, the Commission has employed the various mechanisms envisaged by the American Convention for the protection of human rights, namely the case system, adoption of precautionary measures, request for provisional measures from the Inter-American Court of Human Rights, on-site visits to the country and press releases. The following is a brief outline of these undertakings.

5. In 2000, the Commission, through its Office of the Special Rapporteur for Freedom of Expression, observed the development of an atmosphere of hostility at the highest levels of government as a mechanism of direct and indirect pressure on the media and social activists.<sup>3</sup>

6. Following this, the Executive Secretary of the IACHR and then Rapporteur for Freedom of Expression, Dr. Santiago A. Canton, at the invitation of the Government of Venezuela, visited the Bolivarian Republic of Venezuela on February 5 to 8, 2002. The objective of this visit was to collect information on freedom of expression in Venezuela and to perform a preliminary evaluation in aid of an IACHR on-site visit scheduled for May 2002.<sup>4</sup> In addition, Dr. Canton's visit represented a response to concerns expressed by several sectors of civil society regarding recent developments related to freedom of expression in the country.

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<sup>3</sup> IACHR, 2000 Annual Report, Vol. 3, Report of the Office of the Special Rapporteur for Freedom of Expression, April 16, 2001, paragraph 112.

<sup>4</sup> During its visit, the delegation held meetings with Minister of External Relations, Mr. Luis Alfonso Dávila, Attorney General, Dr. Isafas Rodríguez, Ombudsman, Dr. Germán Mundaraín, and President of the National Assembly, Mr. William Lara. Meetings were also held with the NGOs that comprise the Foro por la Vida organization, *Bloque de Prensa Venezolano*, the National College of Journalists, the Confederation of Venezuelan Workers, the Bolivarian Circle, Andean Parliament Representatives from the Bolivarian Republic of Venezuela, media representatives from *La Razón*, *El Universal*, *El Nacional*, *Radio Caracas Televisión*, *Globovisión*, *Vale TV*, *Circulo Mundial*, *Cadenas Capriles*, investigative journalists, cameramen and photographers, petitioners before the Inter-American System and other representatives of national civil society.

7. During the serious events of April 11, 2002, the Commission condemned the coup d'état against the constitutional order<sup>5</sup>. The Commission issued a press release to this effect on April 13, 2002 in which it expressed, *inter alia*, its strong condemnation of the acts of violence and its regret that the most senior authorities were removed from public office, and cautioned that these acts represented a breach of constitutional order. Moreover, the Commission noted that, from April 12 to 13, arbitrary arrests and other violations of human rights claimed the lives of more than 40 persons and caused injury to one hundred others.

8. The Commission later conducted an on-site visit to the Bolivarian Republic of Venezuela from May 6 to 10, 2002. Held within the framework of the American Convention to which Venezuela is a signatory, and the governing Statute and Rules of Procedure of the IACHR, the visiting party comprised the President of the Commission and Rapporteur for Venezuela, Dr. Juan E. Méndez; First Vice-President, Dr. Marta Altoguirre, and Commissioners Professor Robert K. Goldman, Dr. Julio Prado Vallejo and Ms. Susana Villarán. Also participating were the Executive Secretary of the IACHR, Dr. Santiago A. Canton, Special Rapporteur for Freedom of Expression, Eduardo Bertoni, and staff from the Executive Secretariat.<sup>6</sup>

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<sup>5</sup> On April 13, 2002 the IACHR requested information about the incomunicado detention of President Hugo Chavez Frias and precautionary measures to the protection of personal integrity and juridical guarantees of Mr. Tarik William Saab, President of the Foreign Affairs Commission of the National Assembly. In its meeting with the IACHR, President Chavez manifested his appreciation for the action of the Commission.

<sup>6</sup> During its visit the IACHR held meetings with State officials, including President of the Republic, Mr. Hugo Chávez Frías. The IACHR also meet with the following officials, Vice-President of the Republic, Mr. José Vicente Rangel; Minister of External Relations, Mr. Luis Alfonso Dávila; Minister of Defense, General Lucas Rincón Romero; Interior and Justice Minister, Captain Ramón Rodríguez Chacín; Ex-Minister of Lands and Agriculture, Dr. Efrén de Jesús Andrade; Attorney General of the Republic, Dr. Julián Isaías Rodríguez; President of the National Assembly, President William Lara; President of the Commission on Human Rights and Justice, Mr. Carlos Tablante; President of the Supreme Court of Justice, Dr. Iván Rincón; Director Henry Vives of the Metropolitan Police; Commander General Francisco Belisario Landis of the National Guard; and the National Human Rights Ombudsman, Dr. Germán Mundaraín.

Also interviewed were human rights non-governmental organizations, representatives of the Venezuelan Episcopal Conference, political leaders, journalists and representatives of media groups, union representatives, victims and relatives of victims, as well as other national and local representatives of civil society. The IACHR maintained contact with international organizations including the Office of the United Nations High Commissioner for Refugees (UNHCR). It also received information and accounts on the situation in all regions of the country, particularly in the state of Portuguesa, which an IACHR delegation visited. In addition, interviews were carried out with the Governor, Superior Prosecutor and Secretary of Citizen Security of the State of Portuguesa, with the members of the Technical Taskforce for Criminal Investigation, Commander of the 41<sup>st</sup> Division, Commander General of the Police, the Ombudsman and the Coordinator of the Office of the Human Rights Ombudsman. Finally, an

(Continued...)

9. Upon completion of this on-site visit, the Commission issued a press release presenting preliminary comments based on its observation of the general human rights situation in the country and offering certain recommendations that in its opinion would serve to mitigate some of the serious problems identified.<sup>7</sup>

10. On December 12, 2002, the Commission issued a press release in which it expressed serious concern over the deepening crisis in Venezuela and urged member states of the OAS to take immediate steps to “work with Venezuelans in seeking an urgent solution that will prevent further loss of human life and ensure Venezuelans that the rule of law will remain fully in force.”<sup>8</sup>

11. During the 117th Regular Session of the Commission, held between February 20 and March 7, 2003, the IACHR continued inquiries into the status of the rule of law in Venezuela. On March 10, 2003, the IACHR issued a press release reiterating its concern about the continuing deterioration of the rule of law in Venezuela.

12. In response to wishes expressed by the Government of Venezuela during the on-site visit, the Commission had planned to carry out a series of follow-up visits. To date, these visits have not been conducted due to the failure on the part of the Venezuelan State to establish the dates. It is the view of the IACHR that the presence of the Commission in the country will help significantly to bolster the defense and protection of human rights in a context of democracy and institutional legality. In this light, the Commission requests that a date be set for an on-site visit.

13. In relation to this matter, the General Assembly of the Organization of the American States (OAS) in Resolution AG/1917 (XXXIII-O/03), with respect to the Annual Report of the IACHR, resolved the following:

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(...Continued)

IACHR delegation headed by the Special Rapporteur for Venezuela, Commissioner Juan Méndez, conducted a visit to the facilities of the Yare I and II detention centers.

<sup>7</sup> IACHR, Press Release N° 23/02, May 10, 2002. This press release is published in the IACHR 2002 Annual Report and can be viewed on the Inter-American Commission’s website: [www.cidh.oas.org](http://www.cidh.oas.org).

<sup>8</sup>IACHR, Press Release N° 47/02, December 12, 2002. This release can be published in the IACHR 2002 Annual Report and can be viewed on the Inter-American Commission’s website: [www.cidh.oas.org](http://www.cidh.oas.org).

To note with satisfaction the decisions taken by governments of member states to invite the Inter-American Commission on Human Rights to visit their respective countries and to encourage all member states to continue this practice.<sup>9</sup>

## **II. SCOPE OF THE PRESENT REPORT, ITS APPROVAL AND FOLLOW-UP**

14. This report will analyze the present situation in Venezuela, with specific reference to the various aspects of the current status of the rule of law in the country.

15. As noted above, by virtue of its competence as a key organ of the Organization of the American States charged with the protection and promotion of human rights in the Americas and in accordance with its mandate, as stipulated in the American Convention on Human Rights and more specifically defined in its Statute and Rules of Procedure, the Inter-American Commission monitors human rights developments in each member state of the OAS.

16. The present report was prepared on the basis of a diverse array of information and materials compiled and analyzed by the Commission, including those collected during its on-site visit to Venezuela in May, 2002. In addition to reflecting insights gathered on that occasion, the report refers to information compiled prior to and in preparation for the visit. Material referred to in the report also includes updated information provided by governmental, intergovernmental, non-governmental, academic and media sources through the Commission's normal monitoring procedures, as well as through the processing of individual petitions. The report was prepared on the basis of this information with a closing date of November 4, 2003.

17. The draft "Report on the Situation of Human Rights in Venezuela" was approved by the Commission during its 118<sup>th</sup> Regular Session.

18. The report was transmitted to the State by the Executive Secretary on November 13, 2003, with the request that the former present any observations it deemed pertinent within the fix dead line of a month. On December 12, 2003 the Government requested an extension of the due date to present its observations. On December 16, 2003 the IACHR informed the

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<sup>9</sup> Organization of American States (OAS), Twenty-Third Regular Session, Resolution AG/1917 (XXXIII-O/03), operative point no.4.

Government that an extension could not be granted while indicating that the Commission would await a reasonable time before publishing the report approved by the IACHR, so as to allow the Government to submit its observations which would be published in the IACHR web page. On December 29, 2003 the IACHR ultimately approved the report and the publication without having received the observation of the Government.

19. Finally, it should be reiterated that the present report was prepared in a context of political and institutional instability. In so doing, the IACHR takes note of the efforts made in negotiations between the Government of President Chávez and representatives of *Coordinadora Democrática* [Democratic Focal Point], the conduct of which was supported and facilitated by the Secretary General of the OAS, César Gaviria, with technical support of the United Nations Development Programme and the Carter Center, and also benefiting from the support of the Group of Friends of Venezuela. Among its activities, the Commission takes note of the first formal agreement reached between the Government and the Opposition in approving a seven-point document entitled "Declaration against Violence, and in support of Peace and Democracy" signed by the parties on Monday, February 17, 2003, one hundred days after its establishment. The IACHR also considers a significant advance the Agreement recently signed by representatives of the Government and the Opposition, on May 29, 2003, in which negotiations were brought to a close and both parties indicated that the electoral resolution of the country's crisis would be achieved through the application of Venezuela's constitutional provisions.

### **III. RELEVANT BACKGROUND**

20. The Commission considers it appropriate to present certain normative and factual antecedents as a context for the analysis of the human rights situation in the country. As follows, the IACHR will present a brief outline of the legal system created by the Constitution of the Bolivarian Republic of Venezuela, placing special emphasis on the constitutional structure of government and to the regulatory framework for the protection of the human rights in Venezuela. In addition, certain historical and factual aspects of the present political situation will be briefly discussed.

#### **A. The Judicial System and the Protection of Human Rights**

##### **1. The new Constitution of the Bolivarian Republic of Venezuela**

21. The constitutional process in Venezuela had its origin in the manifesto of current President, Hugo Chávez Frías, for the elections of December 1998. Chávez, the candidate of the *Polo Patriótico* party at the

time, undertook to convene a National Constituent Assembly in the event of his victory in the presidential elections. His proposal, entitled "the Hugo Chávez Proposal for the Transformation of Venezuela" articulated the concept of a new social pact to bolster the country's democratic foundations.

22. Following the election of Hugo Chávez to office, the focus of national politics became the realization of the constitutional process. With respect to the institutional mechanisms for convening a National Constituent Assembly, the option of calling a consultative referendum was proposed, however some political sectors considered it necessary to reform the Constitution to include a standard for convening the Assembly and indicating the mechanism for so doing. As a result of these differences of opinion, an appeal was made to the Supreme Court—the supreme judicial organ at that time—to rule on the feasibility of convening the Constituent Assembly via consultative referendum without prior reform of the Constitution. With respect to this issue, the Court resolved that:

...it is indeed permissible to convene a referendum, in the form envisaged in Article 181 of the Suffrage and Political Participation Act, to consult the opinion of the majority regarding the possible convening of a Constituent Assembly, in the terms expressed in this ruling.<sup>10</sup>

23. Consequently, on April 25, 1999, a consultative referendum was held through which the decision to call a Constitutional Process was submitted to the will of the majority. The consultation produced a positive response: 85% of the participating electorate expressed their consent to hold elections for the purpose of forming a Constituent Assembly.<sup>11</sup> In light of this, the election of members that would comprise the National Constituent Assembly was conducted in Venezuela on July 25 of that year; 104 regional candidates, 24 national and 3 indigenous representatives were elected. This Assembly was responsible for the drafting of the new Constitution. Constitutional representatives met from August 3 to November 15, 1999 and, in the course of their deliberations, established and drafted a new Constitution that changed Venezuela's institutional structure.

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<sup>10</sup> Supreme Court of Justice, Administrative Policy Court, ruling of 18/01/99, dossier no. 15.169.

<sup>11</sup> *Human Rights Watch*, "Human Rights Watch World Report 2000, Venezuela."

24. On December 15 of the same year, the referendum on the approval of the Constitution of the Bolivarian Republic of Venezuela drafted by the National Constituent Assembly was conducted.<sup>12</sup>

25. Article 2 of the new constitution reaffirms democratic Government, stipulating that:

Venezuela is constituted as a democratic and social state subject to the rule of law and justice, and holds up as supreme guiding principles of its legal system and its actions the values of life, liberty, justice, equality, solidarity, democracy, social responsibility and, in general, the preeminence of human rights, ethics and political pluralism.

26. The standards introduced into the new National Constitution required the restructuring of the branches of government in Venezuela. Once the basic text was approved, it became necessary to re-legitimize some branches and to elect others, for which new elections were held on July 30, 2000. Elections to the national, state and local executive authorities (President, governors, and mayors) were held on that day. In these polls, President Hugo Chávez was returned to office by a majority of 58 percent of the voters. In the case of those branches to which re-legitimization did not apply, such as the Supreme Court, electoral branch and citizens' branch [*poder ciudadano*], a special regime was used to elect their members, as will be described in the section on the judicial branch.<sup>13</sup>

## **2. The Constitutional Structure of the Bolivarian Republic of Venezuela**

27. The constitutional text of the Bolivarian Republic of Venezuela regulates the organization of the State by means of systems of distribution and division of public power. In accordance with constitutional standards, government in Venezuela is structured vertically in terms of National, State and Municipal Authorities, and horizontally, in terms of Legislative, Executive, Judicial, Citizens' and Electoral Branches. The Constitution incorporated to the institutional life of the State two new

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<sup>12</sup> Political Database of the Americas. (1999), Venezuela: Results of the Constitutional Referendum. See also "El Mundo", Breaking News, International Section, Venezuela Referendum, December 16, 1999.

<sup>13</sup> In a note dated March 23, 2000, the Secretary General of the OAS, Dr. César Gaviria was invited to form and deploy a mission for the observation of general elections (so-called "Megaelecciones 2000") in the country. See: General Elections, Bolivarian Republic of Venezuela, July 30, 2000, Electoral Observations in the Americas Series No. 30, OAS.

independent branches of government: the Electoral Branch and the Citizens' Branch, with ample authority in the exercise of their powers, as outlined below.

**a. The National Legislative Branch**

28. The Venezuelan Constitution envisages unicameral legislative power exercised by the National Assembly comprising deputies chosen in each federal entity by universal, direct, individual suffrage by secret ballot with proportional representation for a period of five years. In addition, indigenous peoples are represented by three elected deputies. Article 200 of the aforementioned constitution stipulates that:

Deputies of the National Assembly shall enjoy immunity in the exercise of their functions from the date of their proclamation until the completion or termination of their mandate. Alleged crimes committed by members of the National Assembly will be heard privately by the Supreme Court of Justice, the sole authority capable of ordering, with the authorization of the National Assembly, their arrest and the continuation of legal proceedings. In case of flagrant violations of the law committed by a parliamentarian, the competent authority shall put him or her under house arrest and immediately inform the Supreme Court of Justice of this fact.

Government officials who violate the immunity of members of the National Assembly, will be held criminally responsible and be punished in accordance with the law.

29. The National Assembly has broad powers, including the power to legislate on matters of national competence, as well as the operation of the different branches of the national government, to propose amendments to and reforms of the Constitution, to exert some measure of control over the Government and the National Public Administration, within the bounds established by the Constitution itself, to debate and to approve the national budget. Without diminishing any of these standard functions, the new constitutional text confers other powers such as that of the promotion of citizen participation and veto powers to the Vice-President and the Ministers.<sup>14</sup>

**b. The Executive Branch**

30. National executive power is exercised by the President of the Republic, whose mandate is for a period of six (6) years. According to the

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<sup>14</sup> See Constitution of the Bolivarian Republic of Venezuela, Art. 187.

standards introduced in the new Constitution, the President runs for re-election for only one successive term.<sup>15</sup> The Executive Branch also comprises the Vice-President, Ministers and other officials as determined by the respective Constitutional standards and the law.

31. Among the duties and powers to be exercised by the presidency of the Republic under the constitution, is that of complying and enforcing compliance with the law and the Constitution itself, directing Government activity, directing the external relations of the Republic, signing and ratifying international treaties, directing and acting as commander in chief of the National Armed Forces and promoting and appointing officials starting from the rank of Colonel or Ship's Captain, and issuing legally-binding decrees after authorization by means of an implementing law, convening special sessions of the National Assembly, regulating laws, managing the treasury, negotiating national loans, decreeing additional budget appropriations, signing contracts of national interest, appointing, with the prior authorization of the National Assembly, the Attorney General and heads of permanent diplomatic missions, and leading the National Assembly.<sup>16</sup>

32. Other functions of the President of the Republic are to declare states of emergency and the restriction of constitutional guarantees in the cases envisaged in the Constitution, to formulate development plans, to grant pardons, to establish the number, organization and competence of ministers and other national government bodies, to dissolve the National Assembly and to call referenda in cases envisaged by the Constitution, and to convene and preside over the National Defense Council as well as the other functions that may be attributed by the Constitution or law.<sup>17</sup>

### **c. The Judicial Branch**

33. Article 253 of the Venezuelan Constitution stipulates that "the power to administer justice emanates from the citizens and is exercised in the name of the Republic by authority of law...." The Judicial Branch consists of the Supreme Court of Justice and such other courts as may be determined by law, the public Ministry, Office of the Human Rights Ombudsman, criminal investigation agencies, justice system officials and auxiliary staff, citizens participating in the administration of justice, the

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<sup>15</sup> *Ibid.*, Art. 230.

<sup>16</sup> *Ibid.*, Art. 236.

<sup>17</sup> *Ibid.*

penitentiary system, alternative means for the administration of justice and the lawyers authorized for its exercise. Justice is administered in the communities by justices of the peace, who are elected by universal, direct suffrage by secret ballot.

34. The Constitution also stipulates that "the Judicial Branch is autonomous" and establishes the "operating, financial and administrative autonomy of the Supreme Court of Justice."<sup>18</sup> "In order to guarantee impartiality and independence in the exercise of their official functions, magistrates, judges, prosecutors in the Public Ministry and ombudsmen, from the date of their appointment and until they leave office, shall not be permitted, otherwise than by exercising their right to vote, to engage in partisan political, professional association, trade union, or similar activism; nor to engage in private activities for profit, which are incompatible with their official functions, either directly or through any interposed person; nor to perform any other public functions, with the exception of educational activities."<sup>19</sup>

35. In accordance with Article 255, appointment to a judicial position and the promotion of judges shall be carried out by means of public competitions to ensure the capability and excellence of the participants, with selection by the juries of the judicial circuits, in such manner and on such terms as may be established by law.

36. The duties and powers of the Supreme Court of Justice enshrined in Article 266 of the Constitution include the exercise of constitutional jurisdiction, ruling as to whether or not there are grounds for impeachment of the President, Vice-President, members of the National Assembly or the Supreme Court itself, Ministers, the Public Prosecutor, Attorney General, Comptroller General, Human Rights Ombudsman, Governors, officers, generals and admirals of the National Armed Forces and heads of the Republic's diplomatic missions. The Supreme Court is also charged with resolving administrative disputes arising between the Republic, any state, municipality or other public entity where the other party is one of these entities; declaring the invalidity of regulations, hearing appeals regarding interpretation of the content and scope of the laws; resolving conflicts of jurisdiction between the courts and hearing final appeals in law. Moreover, Article 267 stipulates that it is the responsibility of the Supreme Court to direct, govern and administer judicial power, as well as to inspect

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<sup>18</sup> See Constitution of the Bolivarian Republic of Venezuela, Art. 254.

<sup>19</sup> *Ibid.*, Art. 256.

and oversee the country's courts and ombudsman's offices, in addition to presenting and administering its own budget and the budget of the Judicial Branch.

**d. The Citizen Power branch [*Poder Ciudadano*]**

37. The Citizen Power branch comprises the Office of the Attorney General, the Office of the Ombudsman and the Office of the Comptroller General, whose holders together comprise the Republican Morals Council, the direct action arm of the Citizen Power branch.<sup>20</sup>

38. The fundamental characteristic of this Branch is its independence from the other branches of government, and its organs enjoy functional and administrative autonomy. Under the Constitution, it is assigned powers to prevent, punish and investigate acts which contravene public ethics and the administrative morals. In addition, it is empowered to ensure the proper management and legitimate use of public assets, as well as compliance with and the application of the principle of legality in all administrative activities of the State.<sup>21</sup>

39. Another of the specific powers of this authority involves the formulation of warnings regarding the failure of relevant authorities to fulfill their obligations.<sup>22</sup> To this end, all organizations are expected to co-operate with the Republican Morals Council in carrying out their functions and investigations.<sup>23</sup>

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<sup>20</sup> *Ibid.*, Art. 273.

<sup>21</sup> Article 274 of the Venezuelan Constitution stipulates that: "The organs exercising Citizen Power are charged, in accordance with this Constitution and with the law, with preventing, investigating and punishing actions that undermine public ethics and administrative morals; to ensure sound management and legality in the use of public property, and fulfillment and application of the principle of legality in all of the State's administrative activities, as well as to promote education as a process that helps create citizenship, together with solidarity, freedom, democracy, social responsibility and work."

<sup>22</sup> Article 275 of the Venezuelan Constitution stipulates that: "The representatives of the Republican Morals Council shall issue to government administrative authorities or officials warnings regarding breaches in the fulfillment of their legal duties. If these warnings are not heeded, the Republican Morals Council shall have the power to impose the penalties established by law. In the event of contempt, the Chairman of the Republican Morals Council shall submit a report to the agency or department to which the public official or employee concerned is attached, in order for said agency or department to take proper corrective action suited to the case, without prejudice to such penalties as may be applicable in accordance with law."

<sup>23</sup> Article 277 of the Venezuelan Constitution stipulates that: All government officials are required, subject to such penalties as may be established by law, to cooperate on an urgent priority basis with representatives of the Republican Morals Council in connection with the

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**i. Office of the Ombudsman**

40. This organ of the State is directed by the Human Rights Ombudsman. The Ombudsman is responsible for the defense and oversight of the rights and guarantees established in the Constitution and international treaties on human rights, in addition to the legitimate, joint and several interests of the citizens.<sup>24</sup>

41. The Office of the Human Rights Ombudsman is an official unit that addresses demands and complaints by the public regarding the actions of the administration and government officials. In performing this role, the Office has the following functions: the protection of human rights, control of the government bureaucracy, contribution to the correction or redress of administrative injustices, informing the Government of inconsistencies in its administration.<sup>25</sup>

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latter's investigations. The Council shall have the power to ask them for such statements and documents as it may deem necessary in order to perform its functions; this includes any documents that may have been classified or filed as confidential or secret in accordance with law. In all cases, the Citizen Power branch shall release information contained in confidential or secret documents only through such procedures as may be established by law."

<sup>24</sup> See Constitution of the Bolivarian Republic of Venezuela, Art. 280.

<sup>25</sup> Article 281 of the Venezuelan Constitution stipulates the following as the mandates of the Human Rights Ombudsman:

1. To ensure that the human rights provided for in this Constitution and in the international treaties, agreements and conventions on human rights ratified by the Republic are effectively respected and guaranteed, investigating either on his own initiative or at the request of any denunciation of which he or she becomes aware.
2. To ensure the proper functioning of public services; protect and defend the legitimate, joint and several rights and interests of persons against arbitrary acts, abuse of authority and errors committed in the providing of such public services, filing, when appropriate, any actions to demand that the State compensate parties subject to its administrative actions for any damages that may have been caused them in connection with the functioning of such public services.
3. To file unconstitutionality actions, summary constitutional remedies, *habeas corpus*, *habeas data* and any other actions or motions necessary in order to exercise the powers indicated above, where legal grounds exist.
4. To urge the Public Prosecutor of the Republic to pursue any appropriate actions or motions against public Officials responsible for violating or undermining human rights.

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**ii. The Public Ministry [*Ministerio Público*]**

42. The Public Ministry is under the direction and responsibility of the Attorney General of the Republic. Its principal responsibilities include ensuring the observance of constitutional rights and guarantees in judicial process, and of treaties signed by the Republic, safeguarding due process and the right to trial in a timely manner; ordering and directing criminal investigations, a power exclusive to the Public Ministry, and carrying out the legal actions required to establish any liability incurred by government officials in the exercise of their functions.<sup>26</sup>

**iii. The Office of the Comptroller General of the Republic**

43. The Office of the Comptroller General of the Republic is under the direction of the Comptroller General. It is the agency responsible for controlling, monitoring, and auditing revenue, expenditure, public property and national assets, and any related operations. It enjoys functional, administrative and organizational autonomy.<sup>27</sup>

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5. To ask the Republican Morals Council to take the appropriate measures with regard to public officials responsible for violating or undermining human rights.

6. To ask the competent authority to apply appropriate corrective and punitive measures in cases involving violations of the rights of consumers and users, in accordance with the law.

7. To submit to legislative bodies at the municipal, state or national levels, bills or other initiatives for the incremental protection of human rights.

8. To protect the rights of indigenous peoples and take such action as may be necessary to guarantee and protect such rights effectively.

9. To visit and inspect the branches and establishments of State agencies, as a preventive or protective measure with respect to human rights.

10. To make the necessary recommendations and observations to the relevant agencies in the interest of providing optimum protection for human rights, and to develop for this purpose mechanisms for remaining in constant communication with national and international public and private agencies for the protection and defense of human rights.

11. To promote and implement policies for the dissemination and effective protection of human rights.

12. Such other functions as may be established by the Constitution and by law. "

<sup>26</sup> See Constitution of the Bolivarian Republic of Venezuela, Art. 285.

<sup>27</sup> *Ibid.*, Art. 287.

44. Its functions involve controlling, monitoring and auditing government revenue, expenditure, and assets and any related transactions, overseeing the national debt, instructing the Attorney General of the Republic to take pertinent legal action in the case of infractions and crimes against the public interest, exercising effective management control over the public policies of the public sector agencies, institutions, and legal entities subject to its oversight.<sup>28</sup>

**e. The Electoral Branch**

45. Electoral power is exercised by the National Electoral Council. The agencies that are constitutionally subordinate to the Council are the National Electoral Board, the Vital Statistics and Voter Registration Commission and the Commission on Political Participation and Financing.<sup>29</sup>

46. The main functions of electoral branch are the regulation of electoral laws and the clarification of any doubts and loopholes these may contain; total or partial invalidation of elections; organization, administration and monitoring of all acts related to elected government office representing the people, and referendums.<sup>30</sup> Furthermore, the agencies of the electoral

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<sup>28</sup> *Ibid.*, Art. 289.

<sup>29</sup> The Venezuelan Constitution establishes the following in Article 292: " Electoral Power is exercised by the National Electoral Council as governing body, and by the latter's subordinate organs, the National Elections Board, the Vital Statistics and Voter Registration Commission and the Commission on Political Participation and Financing, whose organization and functioning are established in the pertinent act."

<sup>30</sup> The Venezuelan Constitution establishes in Article 293: "The following are functions of Electoral Branch:

1. To regulate election laws and clarify any doubts and unregulated areas raised by or contained in such laws.
2. To prepare its budget, which it shall negotiate directly with the National Assembly, and which it shall manage autonomously.
3. To issue binding directives for political and electoral campaign advertisements and financing, and impose penalties when such directives are not abided by.
4. To fully or partially invalidate elections.
5. To organize, manage, direct, and supervise of all acts relating to elections to public office by popular vote, as well as referendums.
6. To organize elections to labor unions, professional associations and organizations pursuing political purposes, in accordance with the law. The Electoral Branch shall also have the power to organize elections for other civil society organizations, either at their request or by order of the Electoral

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branch are obliged to guarantee the equality, reliability, impartiality, transparency and efficiency of the electoral processes. Moreover, these agencies are governed by the principles of organizational transparency, functional and budgetary autonomy, non-partisanship regarding electoral organizations, impartiality and citizen participation.

47. In relation to the composition of the Board of Directors of this agency, the failure to appoint the fifth and final member produced a vacancy that prevented the Board from performing its tasks normally for several months. In light of the delay by the National Assembly in proceeding to appoint electoral directors in accordance with its constitutional mandate, the Supreme Court of Justice established a deadline for completion of this exercise.

48. In response to the failure of the legislature to reach an agreement, the judges of the Constitutional Division of the Supreme Court proceeded to appoint the members of the Board of Directors of the electoral entity and its subordinate agencies by a ruling dated August 25, 2003. The pertinent part of that ruling provides that:

6) In accordance with the foregoing, the Court appoints as First Principal Director Oscar Battaglini González, whose alternates 1 and 2 shall be Germán Yépez and Orietta Caponi, respectively; as Second Principal Director Jorge Rodríguez Gómez, with Estefanía de Talavera and Esther Gauthier Torres as alternates 3 and 4,

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Division of the Supreme Court of Justice. The entities, organs and organizations concerned shall cover the costs of their elections.

7. To maintain, organize, direct and supervise the Vital Statistics and Voter Registry.

8. To organize the registration and enrollment of organizations pursuing a political purposes, and ensure that such organizations comply with the provisions governing their status, as set forth in the Constitution and the law. In particular, the Electoral Branch shall decide on applications for the establishment, continuation, or termination of political organizations, determining their legitimate authorities and provisional names, colors and symbols.

9. To control, regulate and investigate the funds raised to finance organizations for political purposes.

10. Such other functions as may be determined by law.

The organs of the Electoral Branch shall guarantee the equality, reliability, impartiality, transparency, and efficiency of the electoral process, as well as the application of individual suffrage and proportional representation.

respectively; as Third Principal Director Francisco Carrasquero López, whose alternates 5 and 6 shall be Tibusay Lucena and Manuel Rachadell, respectively..

All these appointments are made in accordance with Article 13 of the Electoral Branch Act.

Sobella Mejías and Ezequiel Zamora are appointed as Fourth and Fifth Principal Directors, respectively; with their alternates being Carlos Aguilar and Carlos Castillo in the first instance; and Miriam Kornblith Sonnenschein and Carolina Jaimes in the second.

Dr. Francisco Carrasquero López is named President of the National Electoral Council, and Ezequiel Zamora Vice-President.

Dr. William Pacheco is appointed Secretary of the National Electoral Council.

Dr. Andrés Brito is appointed Legal Counsel to the National Electoral Council.

7) Members of the subordinate agencies are appointed as follows: to the National Electoral Board, Jorge Rodríguez, Tibusay Lucena and Ezequiel Zamora; to the Vital Statistics and Voter Registration Commission, Sobella Mejías, Carlos Aguilar and Oscar Battaglini G; to the Commission on Political Participation and Financing, Francisco Carrasquero López, Carlos Castillo and Oscar Battaglini.

8) Carlos Delgado Chapellín, Teodoro Petkof Malek, Hernando Grisanti Aveledo and Guillermo García Ponce are appointed members of the Council for Political Participation.<sup>31</sup>

49. The Commission took note of these appointments that permitted the resolution of the vacancy which had arisen.

### **3. The new Constitution and Human Rights**

#### **a. Rights directly established in the Constitution**

50. The new Constitution of the Bolivarian Republic of Venezuela establishes the principle of Constitutional Supremacy in Article 7, which states that the Constitution is the foundation of the legal system and the

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<sup>31</sup> Supreme Court of Justice, Constitutional Division, Judgment of August 25, 2003 – 193 and 144, Caracas.

highest legal standard of the Republic. In addition, Article 19 of the Constitution provides that the State must guarantee to all persons, in accordance with the principle of progressivity and without discrimination, the enjoyment and exercise of inalienable, indivisible and interdependent human rights. Title III also presents a detailed series of civil, political, economic, social and cultural rights, notably the right to life, personal freedom, due process, property, freedom of expression, freedom of assembly and association, equality, protection of children, indigenous rights, health, education, freedom of religion and conscience, environmental rights and the right to the work. The Constitution also establishes a series of guarantees, such as *habeas corpus*, constitutional protection [*amparo*], and *habeas data*.

51. The entry into force of the new Constitution involved the introduction into the national legal system of a number of institutions that are of great value in terms of the defense and protection of human rights in a democratic society. Very important rules were introduced to more soundly shape the Venezuelan State as a democratic state centered on the dignity of human beings. However, some of the changes are in fact a regression.

52. Among the most innovative aspects are the inclusion in the Constitution of treaties on human rights,<sup>32</sup> the obligation of the State to legally investigate and punish crimes against human rights,<sup>33</sup> the limitation of military justice, the imprescriptibility of crimes against human rights, the exclusion of serious human rights violations from acts of pardon and amnesty,<sup>34</sup> the right to address petitions or complaints to international agencies created for such purposes,<sup>35</sup> the obligation to indemnify victims of

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<sup>32</sup> Article 28 of the Venezuelan Constitution states that: "Treaties, pacts and conventions relating to human rights, signed and ratified by Venezuela have constitutional rank and prevail over domestic legislation, insofar as they contain provisions for the enjoyment and exercise of such rights that are more favorable than those established by this Constitution and the laws of the Republic, and shall be immediately and directly applied by courts and the organs of public power. "

<sup>33</sup> Article 29 of the Venezuelan Constitution states that: "The Venezuelan State is obliged to investigate and legally punish crimes against human rights committed by its authorities. Measures to punish crimes against humanity, serious violations of human rights and war crimes shall not be subject to a statute of limitations. Violations of human rights and crimes against humanity shall be investigated and judged by the ordinary courts. Such crimes are precluded from the benefit of measures that might render offenders immune from punishment, including pardon and amnesty."

<sup>34</sup> *Ibidem*.

<sup>35</sup> Article 31 of the Venezuelan Constitution stipulates that: "All persons have the right, under the terms established by human rights treaties, pacts and conventions ratified by the Republic, to submit petitions or complaints to international agencies created for such purposes, with the objective of requesting protection of their human rights. The Venezuelan (Continued...)"

human rights violations,<sup>36</sup> the requirement that the Venezuelan State adopt, in accordance with the procedures established in the Constitution and laws, the measures necessary to comply with decisions handed down by the international organizations.<sup>37</sup>

53. The new Constitution also establishes important special rules on human rights, such as Chapter VIII on the rights of the Indigenous Peoples, Chapter IX on Environmental Rights and Chapters VI and VII on Social, Economic and Cultural rights, the prohibition stated in Article 45 in relation to the forced disappearance of persons,<sup>38</sup> as well as the creation of new institutions dedicated to the protection of human rights such as the Human Rights Ombudsman and the Constitutional Division of the Supreme Court of Justice.

54. In the normative sense, the Commission views as positive the above-mentioned constitutional reforms and considers them an important advance in the protection of the human rights in the country.

55. However, it is the view of the Commission that the new constitutional text also includes some loss of ground in the area of human rights, which may pose problems for the rule of law. One such step backward is the required pre-trial of the merits prior to the investigation of crime involving senior officials of the Armed Forces, which could represent a weakening of the standards of due process regarding the guarantee of equal treatment.

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State is committed to adopting, in accordance with the procedures stipulated in this Constitution and the law, the measures necessary for enforcing decisions emanating from international agencies, as provided in this Article."

<sup>36</sup> Article 30 of the Venezuelan Constitution states that: "The State has the obligation to make full reparations to the victims of any human rights violations for which it is responsible, including the payment of damages. The State shall adopt the necessary legal and other measures to provide the reparations and compensation provided for in this article. The State shall also protect victims of ordinary crimes and shall ensure that those responsible provide compensation for the damages caused."

<sup>37</sup> See above- note no.30.

<sup>38</sup> Article 45 of the Venezuelan Constitution states that: Any public authority, be it civil, military or otherwise, even in cases of a state of emergency, exceptions to or restrictions on guarantees, shall be prohibited from practicing, permitting, or tolerating the forced disappearance of persons. Public servants that receive orders or instructions to engage in such practices are obliged to disobey and report said orders or instructions to the relevant authorities. Intellectual and material authors of the crime of forced disappearance or any attempt to commit such a crime, as well as those who aid and abet them, shall be punished in accordance with the law".

56. The creation of the Office of the Comptroller General of the National Armed Forces without proper clarification of its relationship with the Office of the Comptroller General of the Republic is a constitutional regulation that does not ensure the required independence and autonomy of such organizations and, in addition, may make the monitoring of the military by civilian authorities more difficult (Article 291). Also, the participation of the National Electoral Council in union elections is a clear violation of the right to union freedom. One can also point to the establishment of the right to timely, truthful and impartial information (Article 58) which has been the object of criticism, including from this Commission, as will be discussed later on with reference to issues of freedom of expression.

57. Article 203 of the Constitution includes the concept of enabling laws and provides for the delegation of legislative powers to the President of the Republic, without establishing clear and defined limits on the nature of this delegation.<sup>39</sup> Such regulation tacitly allows for the creation of criminal law by rulings from the Executive and not the National Assembly, in contradiction with the requirements of the American Convention on Human Rights. Such action represents an erosion of the guaranteed "requirement of law" [*reserva legal*] developed by the Inter-American system.<sup>40</sup>

58. Furthermore, the new text of the Constitution does provide, in certain specific cases, checks and balances to control the exercise of public power that ensure balanced power sharing to guarantee the observance of human rights. For example, there is a notable lack of control and limits on the exercise of the legislative power by the Executive.

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<sup>39</sup> Article 203 of the Venezuelan Constitution provides that "Organic Laws are those designated as such by this Constitution, those enacted to organize the branches of government or develop constitutional rights, and those that serve as a normative framework for other laws. All draft organic laws, except those designated as such in the Constitution itself, shall be previously approved by the National Assembly, by a vote of two-thirds of the members present at the start of debate of the respective bill. This qualified vote also applies to the amendment of organic laws. Laws qualified as organic by the National Assembly shall be submitted, after promulgation, to the Constitutional Division of the Supreme Court of Justice, so that the latter may rule on the constitutionality of their organic status. The Constitutional Division shall render a decision within ten days of receipt of the communication. If the Constitutional Division declares that the law is not organic, it shall no longer be qualified as such. Enabling laws are those passed by the National Assembly by a three-fifths majority of its membership, with the aim of establishing the guidelines, purposes and a framework for the matters delegated to the President of the Republic, with the rank and force of law. The basic laws must establish the term during which they will be exercised."

<sup>40</sup> Inter-American Court on Human Rights, "The Expression "Laws" in Article 30 of the American Convention on Human Rights", Advisory Opinion N° 6/86.

**b. The Incorporation of International Protection in Domestic Law**

59. An aspect of singular importance in the new Venezuelan Constitution is the attribution of constitutional ranking to international treaties on human rights. The Constitution establishes in Article 23 that "Treaties, pacts and conventions relating to human rights, signed and ratified by Venezuela have constitutional rank and prevail over domestic legislation, insofar as they contain provisions for the enjoyment and exercise of such rights that are more favorable than those established by this Constitution and the laws of the Republic, and shall be immediately and directly applied by courts and the organs of public power. ". The Commission considers it pertinent to indicate that this standard establishes the precedence of treaties, pacts and conventions on human rights and their immediate and direct application by the organs that exercise public power.

60. According to Article 22 of the Constitution, "The articulation of the rights enshrined in this Constitution and in human rights instruments shall not be taken to negate ant rights inherent to individuals, which are expressly stated in such texts. The absence of a law regulating these rights shall not impinge on their exercise". Article 25 of this instrument also indicates that any act taken in the exercise of public authority that violates or impinges on the rights guaranteed by the Constitution and the law is null and void, and that the government officials who order or carry out such acts shall incur criminal, civil and administrative liability.

61. Article 31 of the Constitution states that "All persons have the right, under the terms established by human rights treaties, pacts and conventions ratified by the Republic, to submit petitions or complaints to international agencies created for such purposes, with the objective of requesting protection of their human rights. The Venezuelan State is committed to adopting, in accordance with the procedures stipulated in this Constitution and the law, the measures necessary for enforcing decisions emanating from international agencies, as provided in this Article."

**4. Venezuela and international treaties on human rights**

**a. Regional System (OAS) Treaties**

62. The Venezuelan State has ratified the large majority of treaties on human rights and both additional protocols that have been signed within the framework of the OAS. Venezuela is a party to: the American Convention on Human Rights; the Additional Protocol to the American Convention on Human Rights in Relation to Economic, Social and Cultural

Rights, "Protocol of San Salvador"; the Protocol to the American Convention on Human Rights in Relation to the Abolition of Capital Punishment; the Inter-American Convention to Prevent and Punish Torture; the Inter-American Convention on the Forced Disappearance of Persons and the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women "Convention of Belém do Pará." It is important to emphasize that Venezuela accepted the contentious jurisdiction of the Inter-American Court of Human Rights on June 24, 1998.<sup>41</sup>

63. Although Venezuela signed the Inter-American Convention for the Elimination of all Forms of Discrimination against Persons with Disabilities on June 8, 1999, the State has to date not ratified this Convention. The Commission calls on the State of Venezuela to ratify this instrument at the earliest opportunity.

#### **b. Universal System (UN) Treaties**

64. Within the framework of the UN, the Venezuelan State is party, among other treaties related to human rights, to the International Covenant on Economic, Social and Cultural Rights; International Covenant on Civil and Political Rights; Convention on the Elimination of All Forms of Discrimination Against Women; Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment, and Convention on the Rights of the Child.

### **B. Political Background**

65. In this section the Commission will refer to a number of facts that had an impact on the political-institutional situation of Venezuela and will outline the present democratic institutional situation.

#### **1. Brief Historical Overview**

66. The development of contemporary democratic politics in Venezuela began in 1958 with the signing of a pact by the maximum leaders of some of the political parties that had contributed to the overthrow of the dictatorship of General Marcos Pérez Jiménez.

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<sup>41</sup> See Basic Documents on Human Rights in the Inter-American System, OAS/Ser.L/V/i.4 rev.9, January 31, 2003, pg. 51.

67. This pact was a political agreement signed by three political parties, namely Democratic Action (AD), the Independent Electoral Political Committee (COPEI), and the Democratic Republican Union (URD), by which these parties took the decision to share power and support the government in office from any threat to democracy.<sup>42</sup> To safeguard the political truce and the unity among the democratic organizations, an "Inter-party Commission of Unity" was created to monitor compliance with this agreement. This Commission was charged with coordinating the coexistence of the different parties, to hear complaints against deviations by public figures or sectarian interests in the election campaigns and to approach any of the signatories, and on behalf of all, moderate and control actions which could jeopardize democratic coexistence.<sup>43</sup> Nevertheless, the URD was excluded during the application of this pact, and the political history of Venezuela has since been characterized by bipartisan political dynamics that saw power change hands between AD and COPEI for more than two decades.

68. This agreement, signed in Caracas on October 31, 1958, was widely known as the "Punto Fijo", and its most significant political product was the Constitution of 1961. This Constitution, born out of the fervor of establishing democracy, would remain in force until 1999 when the new legal and constitutional body was approved.

69. This first fissure in this long period of democratic stability would begin to appear at the end of the 80s and the beginning of the 90s. On February 16, 1989, then President Carlos Andrés Pérez, announced a series of economic adjustment measures to refinance the external debt, which were put in practice from February 27. These measures caused widespread social discontent that was expressed in a series of disturbances in the city of Guarenas, in the State of Miranda. These disturbances then spread to other metropolitan areas such as Caricuao, La Guaira, Maracay, Valencia, Barquisimeto, Guayana, Mérida and Maracaibo. The disturbances consisted mainly of the burning of urban transport vehicles and the looting and destruction of businesses, acts which inflicted substantial damage to public and private property.

70. The Executive assigned responsibility for the control of the situation to the military forces and on February 28, 1989 issued decree No.49 declaring the suspension of constitutional guarantees. During the 23

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<sup>42</sup> Office of the National Human Rights Ombudsman, Human Rights in Venezuela, 2001 Yearbook, pg. 17.

<sup>43</sup> The *Punto Fijo* Pact, Caracas, October 31, 1958.

days that this suspension of guarantees lasted and, in particular from March 1, 1989, the Armed Forces were in control of the territory and the population of Venezuela. During this exceptional period, the security organs of the State, in conjunction with the Metropolitan Police, deployed a number of operations to suppress acts of violence. The results of the events of February and March of 1989, according to official figures, were 276 fatalities, numerous injuries, several disappearances and substantial material losses. This massive protest and its violent repression are known as the "Caracazo".<sup>44</sup>

71. Also of note is the case of the town of El Amparo which occurred in October 1988, when 16 resident fishermen set out on a fishing expedition, heading towards the La Colorada channel through the Araucan river located in the Páez District of the State of Apure. At approximately noon, they stopped and some fishermen disembarked, when military and police personnel from the José Antonio Páez Special Commando Unit, who at that time were engaged in a military operation called "Anguila III", killed 14 of the 16 fishermen. This case was submitted to the Inter-American Court, which, in a ruling dated January 18, 1995, declared the end of deliberations on the facts of the case and the international liability of the Venezuelan State, given the State's recognition of its responsibility for the acts committed.<sup>45</sup>

72. Years later two attempts at a coup d'état took place. The first of them took place on February 4, 1992. In the early morning on this day, the military group MBR 200--Movimiento Bolivariano Revolucionario (Bolivarian Revolutionary Movement), headed by Commanders Hugo Chávez Frías, Francisco Javier Arias Cárdenas, Jesús Urdaneta and Noé Acosta, unsuccessfully attempted a coup d'état against President Carlos Andrés Pérez. By mid-morning, the Government had managed to bring the situation under control.

73. Some months later, on November 27, another unsuccessful coup attempt took place, and officials of the Venezuelan Army were forced to flee to Peru. The tragic events at the Catia Judicial Detention and Internment Center occurred within the context of the second military coup attempt. According to the information received, shortly after hearing by radio of the attempted coup the prison guards opened the jail doors

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<sup>44</sup> Inter-American Court of Human Rights, Caracazo Case, Judgment of November 11, 1999, paragraph 2.

<sup>45</sup> Inter-American Court of Human Rights, El Amparo Case, Judgment of January 18, 1995.

announcing that the prisoners were free. The event caused much chaos and confusion in the detention center. In order to restore order and to handle the situation the National Guard and the Metropolitan Police intervened, firing shots and throwing tear gas bombs at the inmates. Some 63 inmates died in the incident and their deaths have not yet been explained by the national authorities nor have criminal and administrative responsibility for these acts been established.

74. Notwithstanding the seriousness of the violence and human rights violations previously described, the democratic experience in Venezuela continued uninterrupted until the events of April 12, 2002, when another coup d'état was attempted.

## **2. Political Context: Progressive Polarization**

75. The political atmosphere in Venezuela was characterized by a notable trend towards political polarization that began in the early months of 2002. This has led to a current atmosphere of tension and polarization of political positions in Venezuela, and is also manifested in the politicization of the different state institutions and sectors of the society.

76. In the interest of providing a contextual framework for the political situation, certain circumstances must be considered. On November 7, 2002, the National Assembly, by means of an enabling act, granted special powers to President Chávez to legislate on economic and social matters as well as public administration. Opposition to the Government began to establish itself at the end of 2001 in response to the promulgation, by means of presidential decree under the enabling act, of 49 economic decrees with measures such as agrarian reform and the tightening of official controls on the oil industry, that were not well received by some sectors.<sup>46</sup> The disapproval of these sectors was expressed socially in the form of a national protest held on December 10, 2001.

77. There was also intense mobilization around multiple social and political demands. More specifically, labor disputes that emerged in three key sectors—health, education and the oil industry—played a decisive role in later events.

78. The labor dispute in the oil sector was the most notorious given the importance of that sector in Venezuela and its subsequent

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<sup>46</sup> *Human Rights Watch*, 2003 Annual Report on Human Rights in Venezuela.

repercussions. The appointment by President Hugo Chávez of a new president of the state oil company, *Petróleos de Venezuela* (PDVSA) and a new board of directors triggered a series of protests by employees of the company, who expressed their disagreement by continually holding demonstrations outside PDVSA's administrative offices.

79. These protest actions increased in the month of March, initiating intermittent shut-downs of the different refineries and oil plants.<sup>47</sup> On April 9, during the fifth week of the dispute, the Confederation of Workers of Venezuela and Fedecámaras called for a 24-hour strike in solidarity with the oil sector protest, an objective that was tied to demands for the President to resign.<sup>48</sup> On the following day the strike was extended for a further 24 hours and on April 11, when the situation appeared to be returning to normalcy as businesses began to open to their doors to the public and some services, such as transportation and banking, began to operate, an indefinite strike was declared.<sup>49</sup>

80. On April 11, a mass march called by an umbrella organization of the opposition forces, which would later come to be known as the Democratic Coordination, traveled from the Parque del Este towards Chuao. The demonstrators soon proceeded to Miraflores to demand the President's resignation.<sup>50</sup> There they encountered pro-government groups that had been camped near the Palace for the three consecutive days.

81. The result of that encounter was a confrontation that occurred in the city center and involved clashes of the Metropolitan Police, the National Guard, and demonstrators in favor of and in opposition to the Government.<sup>51</sup> The Commission has graphic evidence and the eyewitnesses reports indicating the existence of suspected snipers located on the terraces of buildings adjacent to the avenues where the events took place. It should be noted that some of the buildings indicated belong to the state agencies.<sup>52</sup>

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<sup>47</sup> Office of the Human Rights Ombudsman, "Preliminary Report, Events of April", Caracas Venezuela, May 2002, pg. 4.

<sup>48</sup> PROVEA, Context, Annual Report No. 14, Caracas Venezuela, January 2003, pg. 8.

<sup>49</sup> El Universal, "CTV acude a la huelga indefinida", Caracas, Venezuela, April 11, 2002.

<sup>50</sup> National Assembly, Report of Special Parliamentary Commission for the Investigation of the Events of April 2002, pg. 55.

<sup>51</sup> El Universal, "Batalla Campal en Miraflores", Caracas, Venezuela, April 12, 2002.

<sup>52</sup> Office of the Human Rights Ombudsman, "Preliminary Report- Events of April", Caracas Venezuela, May 2002, pg. 6.

There is also graphic evidence of the participation of armed individuals shooting indiscriminately at demonstrators, especially from the Llaguno bridge.

82. The preliminary findings of the IACHR, based on the various testimonies and information received, indicate that armed civilians participated in the opposition march and the pro-government demonstration organized in downtown Caracas on April 11, and that there were serious problems of coordination between the National Guard, the Metropolitan Police and the state police that took part in the event, as will be described in a subsequent section.

83. The day produced tragic results. Information received on this matter indicates almost 19 deaths and a large number of wounded. The Commission observes that up to the moment of the preparation of the present report there are no official data with respect to the exact number of victims, nor with respect to the circumstances in which each death occurred. According to the preliminary report of special delegates of the Attorney General of the Republic, there were 19 victims.<sup>53</sup> On the other hand, data obtained by the Committee of Relatives of Victims of the Events of February-March 1989 (COFAVIC), indicate 17 deaths.<sup>54</sup> In the Preliminary Report on the events of April 2002, prepared by the Office of the Human Rights Ombudsman, 19 cases are documented.<sup>55</sup>

84. In that connection, the Commission reiterates that although it is not responsible for establishing facts and the responsibilities to which they gave rise, it does note with concern that responsibility for the deaths and injuries of April 11 has not yet been established and that more than a year later, the investigations have not advanced significantly. It is especially worrisome that the large majority of the victims expressed great distrust of the authorities entrusted with carrying out the judicial investigations, feeling that there would be a lack of serious investigative action and transparency. With that in mind, the IACHR stresses to the State its international obligation to investigate and punish those responsible for the events.

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<sup>53</sup> First Document of the Special Delegates of the Attorney General of the Bolivarian Republic of Venezuela assigned to examine criminal investigations into the events of the April 11-14: "11 de Abril, Un Enfrentamiento entre Hermanos".

<sup>54</sup> COFAVIC, Press Release from Relatives and Victims of the April 11-14.

<sup>55</sup> Office of the Human Rights Ombudsman, "Preliminary Report, Events of April", Parts I and II, Caracas Venezuela, May 2002, Pg. 7.

**a. The coup d'état**

85. Following the violence of April 11, military officials blamed the Government for the acts of violence that took place. At dawn on Friday April 12, President Hugo Chávez Frías was detained by a group of military personnel. The mass media communicated a message from Inspector General of the National Armed Forces (FAN), General-in-Chief Lucas Rincón which stated: "the President's resignation was requested and he acceded."<sup>56</sup> The president was transferred to Fort Tiuna, a military detachment of the General Command of the Venezuelan Army.

86. The military sector that spoke out against the President of the Republic, along with a group of civilians, constituted the self-appointed "Government of Democratic Transition and National Unity,"<sup>57</sup> and in the face of the claimed vacancy of presidential authority, they proclaimed the principal representative of the Confederation of Chambers and Associations of Commerce (Fedecámaras), Mr. Pedro Carmona Estanga, Acting President of the Republic.<sup>58</sup> Attorney General of the Republic, Dr Isaiás Rodríguez, announced to the media<sup>59</sup> that there was no proof of the President's resignation. He thus characterized the events as a constitutional coup d'état.

87. In the afternoon of April 12, in an act signed at Miraflores, a decree was read to the Nation appointing the new Government, the branches of government were dissolved and control granted to the Acting President over all legally constituted institutions and authorities. In effect the National Assembly and the Supreme Court of Justice were dissolved and the Constitution of 1999 repealed. In a press release, the Commission described this situation as a breach of constitutional order and urged Venezuela to a

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<sup>56</sup> Office of the Human Rights Ombudsman, "Preliminary Report, Events of April", Caracas Venezuela, May 2002, pg. 7. See also El Universal, "Comisión Militar pide Renuncia de Chávez", Caracas, Venezuela, April 12, 2002 and La Nación, "Cayó Chávez tras un Golpe Cívico Militar", Buenos Aires, Argentina, April 12, 2002.

<sup>57</sup> Office of the Human Rights Ombudsman, "Preliminary Report, Events of April", Caracas Venezuela, May 2002, pg.7.

<sup>58</sup> El Universal, "Designan siete miembros del Gobierno de Transición", Caracas, Venezuela, April 13, 2002.

<sup>59</sup> La Nación, "El Fiscal General de Venezuela dijo que Chávez no Renunció", Buenos Aires, Argentina, April 12, 2002.

return to the rule of law and a democratic system of government that would ensure the full observance of human rights and fundamental freedoms.<sup>60</sup>

88. The citizens began to demonstrate their condemnation of the institutional breakdown. A large mass of people gradually began to gather in the streets of Caracas, as well as in various cities of the interior. In the demonstrations, that began to grow in strength from April 13, protestors called for adherence to the Constitution and release of the President.<sup>61</sup> These gatherings ended in alarming circumstances; various acts of violence were witnessed in which Venezuelan citizens were killed. This renewed outbreak of violence claimed more than 40 lives.<sup>62</sup>

89. Some of the military units that did not support the Coup d'état began to proclaim their support for President Chávez. In the face of growing popular and military pressure, on the night of the April 13, Mr. Pedro Carmona Estanga resigned from the presidency. The President of the National Assembly, William Lara, accompanied by the representatives of the Citizen Power branch, the Attorney General of the Republic, the Comptroller General of the Republic and the Ombudsman, swore in Vice-President Diosdado Cabello as Interim President to cover the legal void until President Chávez, who had been released, returned to the power. At dawn on Sunday April 14, President Hugo Chávez Farías returned to the Miraflores Palace, transported by personnel of the army belonging to the airborne division, and resumed office.

90. Acts of vandalism continued throughout the day on April 14 in various areas of the capital, and it was only during the hours of the night that law and order were restored. The Commission has received information indicating that during April 12, 13 and 14, when institutional rupture occurred, there were a heightened number of raids of homes and irregular arrests of people and officials linked to the "Chavista movement". Such is the case of Minister Rodríguez Chacín, who was arrested on the April 12 by the Municipal Police of Chacao and Baruta. Upon his arrest he was struck

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<sup>60</sup> IACHR, Press Release N° 14/02 on the events in Venezuela. On April 13, 2002 the IACHR requested information about the incomunicado detention of President Hugo Chavez Frias and precautionary measures to the protection of personal integrity and juridical guarantees of Mr. Tarik William Saab, President of the Foreign Affair Commission of the National Assembly. In its meeting with the IACHR, President Chavez manifested his appreciation for the action of the Commission.

<sup>61</sup> El Nacional, Caracas, Venezuela, April 21, 2002. See also: Office of the Human Rights Ombudsman, "Preliminary Report, Events of April", Caracas, Venezuela, May 2002.

<sup>62</sup> *Human Rights Watch*, 2003 Annual Report on Human Rights in Venezuela.

and insulted by residents of the area. Also notable is the case of Tarek Wiliam Saab, a National Assemblyman of the Fifth Republic Movement Party, who was arrested by the political police (DISIP) without a warrant and was rescued by the Municipal Police of Hatillo after a group of people, presumably from the opposition, surrounded his residence threatening his personal safety.

91. The Preliminary Report of the Office of the Human Rights Ombudsman indicates that at this time various security groups carried out raids and arrests of officials of the overthrown government, citizens loyal to the government and community mass media. In addition, in the states of Anzoátegui, Miranda, Portuguesa, Nueva Esparta, Vargas, Táchira, Mérida and Barinas, groups presumably in opposition to the deposed government conducted demonstrations demanding the resignation of governors and mayors associated with that government, also causing acts of violence.<sup>63</sup>

92. Specifically, during this period the NGO Provea recorded 82 complaints from groups and individuals of violations of the right to personal integrity (206 victims). It also reported that of the total number of reports 35% were of cases of cruel or degrading treatment or punishment (72 victims), 22% (46 victims) of physical injury and 2% cases of torture (5). In addition, 19 cases of raids affecting 34 persons (17%) and 18 complaints of threats or harassment affecting 49 people (24%) were recorded.

93. In addition, the preliminary report of the Office of the Human Rights Ombudsman on the events of April reports 24 complaints of violations of personal integrity, including 10 cases of torture and 9 illegal raids. The Report indicates that at least 398 people were injured by firearms, pellets, etc. on April 11, 12, 13, and 14.<sup>64</sup>

94. The Commission notes that in the brief period in which a *de facto* government was in place not only were the branches of government dissolved but was of repression against military personnel loyal to the government of President Chávez were witnessed, as was the persecution of its ministers and close allies.

95. Once law and order were restored, President Chávez expressed that the events which had occurred required in-depth analysis and

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<sup>63</sup> Office of the Human Rights Ombudsman, "Preliminary Report, Events of April", Caracas, Venezuela, May 2002, pg.7.

<sup>64</sup> Office of the Human Rights Ombudsman. Preliminary Report- Events of April. Caracas, 2002. Pp. 16-31.

called for a national dialogue via the establishment of forums for dialogue. In addition, the National Assembly took the decision to form a Truth Commission, which would be charged with the investigation of the facts.

96. Thus the National Assembly approved the draft bill on the Truth Commission on May 14, 2002, during the first discussion, and conducted a budgetary study and appointed a Special Commission responsible for preparing a report for a second and final discussion. This Commission comprised three members of the pro-government parliamentary block, three members of the opposition and three members of the Liaison Commission. This Commission presented to the Secretariat of the National Assembly a report on the submission of a Truth Commission bill to a second debate in plenary session by the National Assembly.<sup>65</sup>

97. The IACHR has always supported Truth Commissions in the different countries of the hemisphere in which they have been created, insofar as they represent a suitable mechanism for assuring the right to the truth. As indicated previously, the Truth Commission can make a very important contribution to Venezuelan democracy in terms of guaranteeing that the investigation on the April events is conducted in such a manner that its conclusions be accepted by all, and that those responsible are punished accordingly.

98. Despite this, the IACHR reiterates that this or other Truth Commissions or investigations do not relieve the State of its obligation to investigate and prosecute the persons responsible for human rights violations. More than a year after the events, the Truth Commission is yet to become operational. In that connection, the IACHR has been informed that the parliamentary debates to establish the commission have been suspended after two proposals were hotly debated between May and September 2002 without arrival at definitive consensus.

99. With respect to the progress of investigations within the domestic legal jurisdiction, the Commission notes that at the time of the preparation of the present report, with exception of the cases of the deaths of Ruddy Alfonso Urbano and Erasmo Sánchez for which 8 officers of the Metropolitan Police were accused and charged, those responsible have not been condemned and investigations have had few results. More specifically, the Commission has been informed that up to April 12, 2003, 31 people had

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<sup>65</sup> National Assembly, Report on the submission of the Truth and Reconciliation Commission Bill to a second debate in plenary session by the National Assembly, Caracas, 2002

been held responsible for the acts that occurred from April 11 to 14, 2002 and 11 had been charged. Among those specifically accused in relation to events of April 11 are Henry Atencio and Rafael Cabrices, both leaders of the Fifth Republic Movement; Richard Peñalver, Councilman of the Fifth Republic Movement; Nicolás Creek, a Radio Perola host and journalist were, among others, accused of firing shots from the Llaguno Bridge. Hearings against these individuals began on June 25, 2003 in the Maracay courts. Since the Office of the Attorney General first took the case to the courts, eight judges have heard the case until the trial was eventually moved to the Fourth Magistrates Court of Maracay in the State of Aragua by order of the Criminal Division of the Court of Justice. Initially, the charge against these individuals was homicide by complicity, but that charge was opposed on grounds that there was no evidence linking the defendants' weapons with the projectiles that caused the injuries and deaths on the April 11. On this basis, the four accused were charged by the Public Ministry with the commission of crimes of public intimidation and the illegal use of firearms. Richard Peñalver was also charged with the illegal use of military weapons. At the time of the preparation of the report, the Commission was informed that the Fourth Magistrates Court of Maracay had acquitted the defendants of the charges made against them in the Llaguno Bridge case I a judgment published on September 30, 2003. The Commission has not received information on other trials, investigations or progress related to the events of April 2002.

100. Finally, the IACHR stresses the necessity and urgency of an in-depth, unbiased, and independent investigation of the crimes committed and the establishment of responsibility and punishment for the events of April 2002. In particular, it is necessary to investigate the identities of those responsible for ordering, encouraging or allowing armed persons or civilian groups to join mass mobilizations, and of those who tried to cover up and cast a veil of silence on those acts of violence. In addition, all the victims of violence must be able to seek justice using the current procedural mechanisms. The pursuit of justice in these cases is an obligation of the holders of public office in Venezuela, not only to honor those victims, but also to demonstrate their commitment to continued institutional building and consolidation of the rule of law.

#### **b. Subsequent Events**

101. The Commission has been informed of acts involving situations of violence and confrontation between different sectors since April

2002, which include murders, permanent injury, and acts of harassment and intimidation.<sup>66</sup>

102. On April 14, 2002, constitutional order having been restored, Vice-Admiral Héctor Ramírez Pérez, Rear-Admirals Carlos Molina Tamayo and Daniel Comisso, Brigadier General Pedro Pereira, Colonel Isidro Pérez Villalobos and Pedro Carmona Estango were called to testify before the Public Ministry. Pursuant to this, the Office of the Attorney General of the Republic asked the Supreme Court of Justice to initiate the pre-trial of the merits regarding senior officials who participated in the April coup.<sup>67</sup>

103. From July 31, 2002 a series of demonstrations were launched with the aim of influencing the judges with regard to the request by the Office of the Attorney General of the Republic for pre-trial of the merits for the senior officials that participated in the April events. During these demonstrations, in which several sectors of society participated, violent confrontations again took place, resulting in injury of at least 19 people.<sup>68</sup> In view of the fact that no judgment was handed down, the disturbances continued on to August 1 and 2. The number of demonstrators swelled to fill the area surrounding the Supreme Court.

104. On August 8 violence again broke out in the areas adjacent to the Supreme Court, as well as in downtown Caracas. During that day, the Defense Commission confirmed injuries to 18 people at nearby first aid centers. Fourteen persons were wounded, 12 of which had gunshot wounds.<sup>69</sup>

105. Finally, on August 14, 2002 the Supreme Court of Justice dismissed the charges against four senior army officials accused of conspiring to overthrow President Chávez in April, declaring that there were no grounds for a trial. On the matter, the Commission considers that the

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<sup>66</sup> Indeed, in addition to ordinary crimes, violence has been evident during the marches and mobilizations now frequent in Venezuela. According to information from the public, more than 140 persons were injured and 13 killed during the marches that took place over the last four months of 2002 in Caracas. These figures do not account for the victims of April 2002. *El Espectador: El Espectador: Mañana nuevo paro contra el gobierno de Chávez*. Bogotá, Colombia, December 3, 2002. It is also public information that three persons died in similar circumstances in January of 2003.

<sup>67</sup> Office of the Human Rights Ombudsman, *Events of April*, part 2, Venezuela, Caracas, April 2003. pg.98.

<sup>68</sup> *Ibid.*, pg. 101.

<sup>69</sup> *Ibid.*, pg. 102.

pre-trial of the merits, as an institution incorporated by the new Constitution facilitates impunity, as has become evident in the aforementioned decision.

106. In reaction to the dismissal of these charges, several groups gathered in the vicinity of the Supreme Court, in particular on Avenida Baralt, and began to stone and physically attack personnel of the National Guard that were protecting the court, who dispersed the protestors using teargas bombs.<sup>70</sup> Twelve persons were wounded in the confrontation, and the Radio Caracas Televisión cameraman Antonio José Monroy was shot in the left leg. Two members of the National Guard were reported wounded by gunfire.<sup>71</sup>

107. Following this event, on September 19, 2002, the National Executive established 8 security zones by decrees 1968, 1969, 1970, 1971, 1972, 1973 and 1974,<sup>72</sup> which restricted freedom of movement and the right to demonstrate in the environs of six major military facilities, a state radio station and the main office of a state-owned television. The opposition and human rights groups questioned the constitutionality of the measures based on a law from 1976, which although repealed by the National Security Act passed on December 18, 2002, left in place the earlier legislation governing security zones. In this regard, the Commission considers that the establishment of these security zones for an unduly prolonged period of time infringes the principles of proportionality and reasonableness, since this measure, which is exceptional by definition, runs the risk of weakening of fundamental rights in certain specific circumstances. The IACHR notes that at the time of writing of this report these measures remain in place.

108. On November 4, opposition and Government supporters once again clashed between Plaza Francia and the National Electoral Council. Pro-government demonstrators attempted to prevent the representatives of the opposition from submitting to Electoral Council a signed petition for a consultative referendum on the resignation of President Hugo Chávez. In this instance several people were injured, among them an Ecuadorian camera operator who survived gunshots by using a bulletproof vest. On the basis of this request, the Steering Committee of the National Electoral Council ordered the conduct of a consultative referendum on February 2, 2003.

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<sup>70</sup> El Universal, "Decisión Polémica, Adeptos al Oficialismo Rechazaron la Sentencia del Tribunal Supremo", Caracas, Venezuela, August 15, 2002.

<sup>71</sup> El Universal, "Heridos Civiles y Militares en Protesta del Oficialismo", Caracas, Venezuela, August 15, 2002.

<sup>72</sup> Official Gazette No. 37530 of Wednesday, September 18, 2002.

109. Under these circumstances, the Commission condemns the acts of December 6, 2002 in the Plaza Francia which claimed the lives of three persons. In that regard, the Commission acknowledges the efforts of the State to hear and investigate the present case. On April 14, 2003, the 45<sup>th</sup> Criminal Court sentenced one Mr. De Gouveia to 29 years and 11 months of imprisonment for these killings.

110. The Commission also finds reprehensible the events of the demonstration of January 4, 2003. In this instance a large number of demonstrators called upon by the opposition converged from various points of the city on the Próceres, a National Monument, with the intent of continuing protests against the Government. This demonstration led to a confrontation between opposition and pro-government groups. The Military Police, the Metropolitan Police and the National Guard intervened to reestablish order. This confrontation left two dead and eight wounded, all by gunfire. Information was also received with respect to the death of Carlos Abel García Arrieta, which occurred on January 20, 2003, during a similar confrontation in the state of Miranda.

111. The dangerous escalation of violence was also reflected in bomb attacks against the diplomatic offices of Colombia and Spain in Caracas, and against oil facilities in the state of Zulia, all of which occurred in March 2003. In addition, in the dawn hours of Saturday April 12, 2003, the Caracas Teleport Tower, the site of the Working Forum for Negotiation, was the object of an attack using explosives. The materials that caused the explosion were placed in an external column of the building. Two persons, a watchman from the López H.H. company and a maintenance technician, were rescued from the building by firemen and survived the incident. The basement where negotiating table meetings were held was considerably damaged and the access elevator totally destroyed. These attacks did not involve the loss of human lives but they represent a serious demonstration of deepening violence in Venezuela.

112. Another recent manifestation of violence was the murder of the political leader of the pro-government party *Patria para Todos*, Jorge Nieves, who was assassinated at midday in the town of Guasualito, Apure. Mr. Nieves was shot four times while parking the vehicle he was using upon his return from a pro-Government rally.

113. On Thursday May 1, 2003, at the end of a march in celebration of Labor Day called by the Democratic Coordination and the Confederation of Venezuelan Workers (CTV) in the area of Plaza O'Leary in Caracas a clash occurred between different political sectors of the opposition and the Government that resulted in the wounding of six people and the

death of Ricardo Herrera by two gunshots. The police and military cordons posted to prevent the march from reaching Miraflores were unable to prevent the verbal confrontation that ended in an exchange of blows, stones, pellets and gunfire with the aforementioned consequences.

114. Recently, on May 24, 2003, at around 11 a.m., while persons participating in the so-called "Reconquista del Oeste", a demonstration called by the opposition, were gathering in calle Perú de Catia in Caracas, shooting erupted among the demonstrators that left one person dead and 20 wounded. According to reports from different mass media outlets, a group of people were firing arms of various calibers from adjacent buildings. In response, the Vice-Minister of Justice and the Interior, Mr. Alcides Rondón, announced that the Penal, Criminal and Scientific Investigations taskforce would initiate the necessary investigations in Catia to determine the persons responsible for these acts.

**c. The National Strike**

115. On December 2, 2002 a national strike was called by the Democratic Coordination, a political movement that comprises various sectors of the opposition, the CTV and Fedecámaras. The stated purpose of the strike was to pressure the Government into seeking a resolution to the Venezuelan crisis at the polls, by holding a referendum on the continuation of President Hugo Chávez's term of office in February 2003, and to hold elections subsequently, if necessary. The strike was also called to express objection to the intervention of the Metropolitan Police and the militarization of the major cities of the country.

116. Numerous sectors of the Venezuelan economy took part in the strike; notable among them was the fuel transport sector, the Venezuelan oil company and the gas supply company. These kept production and service provision to a minimum, resulting in the total unavailability of the commodity in some states. In the case of the PDVSA, significant losses were publicly reported. The shut-down of the industrial sector was widespread; on the other hand, the commercial sector's response to the strike was mixed; activity varied from day to day and from one area of the country to another. Urban transit operated normally and rural transit functioned to the extent that access to fuel permitted.

117. It is important to mention that the national strike generated a series of effects that had direct repercussions on the Venezuelan population. According to public reports, prices increased by 90%, especially in the case of basic goods, some of which experienced shortages. Education was also seriously affected. As a result of the strike, both private and public schools

and training centers remained closed. In addition, some health centers faced shortages of medical supplies.

118. Over the two-month period in which the national strike continued, demonstrations and rallies were held on a daily basis by various sectors to present their claims and make demands.

119. The national civic strike remained in effect until February 3, 2003, when the nature of the action taken was changed from a general protest to a partial stoppage by decision of each sector of the economy. In that connection, the Secretary of the Confederation of Venezuelan Workers, Manuel Cova, declared that all sectors that had participated in the strike had received instructions to gradually resume their activities as of Monday, February 3 on restricted schedules to relax the national strike until it was finally ended. The measure was approved by the Democratic Coordination in response to a request from the delegates of the Group of Friends of Venezuela.

#### **d. The Search for Solutions**

120. In this atmosphere of political polarization, the Working Forum for Dialogue and Negotiation (*Mesa de Negociación y Acuerdos*) was established on November 8, 2002, between the Government of the Bolivarian Republic of Venezuela and *Coordinadora Democrática* as a mechanism for arriving at conciliation. This forum began to discuss questions such as the entrenchment of violence in the country and solutions to the Venezuelan crisis.

121. The Working Forum for Dialogue and Negotiation, that continued to function until May 29, 2003, comprised six representatives of the Government, Executive Vice-President, José Vicente Rangel, Foreign Minister Roy Chaderton Matos, Minister of Labor, Maria Cristina Iglesias, Minister of Education, Aristóbulo Istúriz, Governor of Táchira, Ronald Blanco La Cruz, Deputy Nicolás Maduro and Omar Meza Ramírez as legal counsel. It also comprised six representatives of *Coordinadora Democrática*, which represented various sectors of the opposition (civil society, CTV, Fedecámaras, political parties and governors). The Secretary General of the OAS, Dr. César Gaviria, played the role of International Facilitator in this initiative and was responsible for publication of the official report on the development and progress of the *working forum*. The committee also received technical support from the OAS, the Carter Center and the United Nations Development Programme (UNDP).

122. The objective of this undertaking was primarily to establish channels of permanent dialogue between the different sectors to produce agreements that allow for the resolution of the country's crisis by electoral means, and also to reach a consensus on strengthening the electoral system, disarming the civilian population and installing and activating the Truth Commission.<sup>73</sup> The work accomplished and results produced while it was in operation demonstrated that the Working Forum for Negotiation was indeed the mechanism best suited to dialogue between the parties, which was very significant in a context of sharp political polarization in Venezuela.

123. The OAS indicated that the political crisis in Venezuela should be resolved by "constitutional, peaceful, democratic and electoral means within the context of the Working Forum for Dialogue and Negotiation."<sup>74</sup>

124. Based on these guidelines, the alternatives for an electoral resolution to the crisis that the opposition had initially proposed included the following:

- a. a consultative referendum at the people's initiative, to consult the voters on a request for the President to resign voluntarily, so that new presidential elections can be called in the following thirty days;
- b. a constitutional amendment by popular initiative to shorten the presidential term to four years and to hold elections immediately;
- c. holding the referendum to recall the President by popular demand starting August 19, 2003; and
- d. convening a National Constituent Assembly at the initiative of the people.

125. In reference to the consultative referendum proposed by the National Electoral Council for February 2, 2003, the Constitutional Division of the Supreme Court on January 22, 2003 declared inadmissible a constitutional injunction against the legality of the referendum. The Court indicated that this mechanism was in accordance with the Constitution but

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<sup>73</sup> OAS, Working Forum for Dialogue and Negotiation, November 7, 2002.

<sup>74</sup> See Resolution 833, CP/OAS –December 16, 2002.

that its effects were not legally binding as regards the resignation of the President. On the same day, the Electoral Division of the Supreme Court of Justice issued another judgment granting a constitutional injunction suspending any such electoral process.

126. This decision by the Court on January 22, 2003, suspended the referendum and ordered the present Board of Directors of the National Electoral Council to:

abstain from performing acts which are not essential for guaranteeing the normal administrative functioning of that body, and in particular, to abstain from initiating organized electoral processes, referenda, or other mechanisms of citizen participation in public affairs, and to suspend any such processes already initiated, until the present dispute has been resolved.<sup>75</sup>

127. The decision of the Electoral Division was not the result of the requests presented before the Constitutional Court questioning the legality of the execution of the referendum *per se*. The request to which it responded in the judgment outlined above was related to the existing contention with respect to the reinstatement of a member of the Board of Directors of the National Electoral Council who had resigned from his position. The judgment established that until such time as a specific case on the subject in dispute is heard, the board of the Electoral Council would be suspended and unable to perform any acts other than administrative functions.

128. Reacting to the ruling of the Supreme Court, some groups called a twenty-four hour protest in opposition to the judgment.<sup>76</sup> On Saturday, January 25, 2003 sectors of the opposition congregated in a mass demonstration on the Francisco Fajardo Freeway in response to this call.

129. With the possibility of a consultative referendum quashed on February 2 by the ruling cited above, participants of the Working Forum for Negotiation continued discussions on the viability of the remaining alternatives for resolving the institutional crisis, but in the absence of specific work proposals, certain difficulties were encountered in the dialogue between the parties, which delayed the results.

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<sup>75</sup> Supreme Court of Justice, Electoral Division, ruling of January 22, 2003, Venezuela.

<sup>76</sup> El Nacional, "Oposición Espera Reunir a Dos Millones de Personas", Caracas, Venezuela, January 25, 2003.

130. On January 21, 2003, ex-President of the United States, James Carter, presented two proposals to the Working Forum for Negotiation for resolving the institutional crisis. The proposals included a constitutional amendment that would shorten the term served by the president and members of the National Assembly, or, if need be, provide for a referendum to revoke the president's mandate. The proposals required as a necessary condition for both measures, ending the ongoing national civic strike. Subsequent to this, the Working Forum began work on the proposals presented, concentrating its efforts there.

131. In accordance with the proposal presented and in the face of the suspension of the consultative referendum by the Supreme Court, *Coordinadora Democrática* called for the holding, on February 2, 2003, of an event called "El Firmazo".<sup>77</sup> Its main purpose was the collection of signatures from citizens interested in requesting an electoral amendment to shorten the term of President Hugo Chávez and holding a recall referendum in accordance with the requirements of constitutional standards.

132. The Venezuelan firm SUMATE undertook the technical organization of the event, the processing of signatures and the training of volunteers. The Commission was informed that certain disturbances and altercations took place on that day.<sup>78</sup>

133. The results of "El Firmazo" were presented on February 19 during an event organized by *Coordinadora Democrática* and the SUMATE firm. The results of this event remained unaudited and have not been checked against the database of voters in the Permanent Electoral Registry.<sup>79</sup>

134. On February 17, 2003, one hundred days after its installation and after completing 42 sessions, the Working Forum for Dialogue and Negotiation produced its first formal agreement between the Government and the opposition in the form of the approval of an eight-point text entitled "Declaration against Violence and for Peace and Democracy". In the

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<sup>77</sup> Under the Constitution, all these options require popular initiative and consultation via the National Electoral Council, as the organ of the electoral branch. Popular initiative in the case of each option was obtained through the collection of the signatures of Venezuelan citizens during the event known publicly as "el Firmazo."

<sup>78</sup> Concretely, information received indicates the areas affected were the states of Aragua and Portuguesa and certain symbolic sites in Caracas. For example, an explosion in the Parque del Este resulted in one youth's loss of an eye.

<sup>79</sup> El Universal, "Resultados de El Firmazo superan los requisitos legales para la consulta", Caracas, Venezuela, February 20, 2003.

agreement the parties called for "an end to all aggression, threats, harassment or violence that in any form disturbs or prevents the free exercise of the rights enshrined in the Constitution and the law, as well as in international treaties". The Inter-American Commission applauded the signing of this important agreement that represented a first significant step towards the democratic resolution of the Venezuelan conflict.

135. On March 11, 2003, the Government delegation to the Forum for Negotiation stated its opposition to a possible constitutional amendment or recall referendum as per the proposal of the former US President, affirming that it did not support amendment of the *magna carta* for electoral purposes and declared its position in favor of waiting for the right time, according to the Constitution, to hold a recall referendum.

136. Finally, both parties to the deliberations of the Forum for Negotiation began to discuss questions related to the holding of a recall referendum, an institution provided for in Article 72 of the Venezuelan Constitution. In effect, by means of a referendum, which according to the Constitution can be carried out at the midpoint of the presidential mandate, citizens would vote to keep President Hugo Chávez in office.

137. Article 72 of the Venezuelan Constitution states:

The terms of office of all popularly-elected officials and magistrates are subject to revocation. After the midpoint of the official's term has passed, a number of voters representing no less than twenty percent of the electorate registered in the corresponding constituency can request a referendum to revoke of his/her mandate. When an equal or greater number of voters than those who elected the official vote in favor of revocation, and where a number of voters equal to or greater than twenty-five percent of the registered electorate have participated in the referendum, the mandate of said official will be considered revoked and immediate steps taken to fill the vacancy as prescribed in this Constitution and the law. During the term to which officials are elected, no more than one request for the revocation of their mandate can be made.

138. On March 25, 2003, at the request of the Government and the Opposition, the OAS, through its Secretary General, Dr César Gaviria, presented a summary of possible points for negotiation in preparation for said referendum, including questions of procedure related to the elections timetable, financing and the collection of signatures. On this basis, representatives of the Government of Venezuela and *Coordinadora Democrática* to the Forum for Negotiation announced in Caracas on April 11 their intentions to sign a 22-point agreement "in the interest of finding a path

to agreement for the development of the country". The preliminary agreement drafted in the Forum for Negotiation for signature by the parties emphasizes their willingness to have "the problems of Venezuela solved by Venezuelans and their conviction about the need to find a constitutional, peaceful, democratic and electoral solution". On April 24, 2003, the Government, after reviewing the text of the preliminary agreement issued by the Forum, submitted a new version with some amendments.

139. At this point, both parties focused their efforts on drafting a document that pleased both sides, based on the pre-agreement of April 11<sup>th</sup> and the document submitted by the Government. Difficulty was encountered mainly in the fact that the new agreement included points on which major differences existed such as, *inter alia*, that of electoral assistance from international observers.

140. One of the major electoral issues under discussion was that of the possibility of using the signatures obtained in "El Firmazo" in a recall referendum, on the understanding that it would be the responsibility of the National Electoral Council to verify the validity of these signatures and to determine whether these could be legally collected prior to the half-way point of the President's term, in light of the stipulations of Article 72 of the Venezuelan Constitution. The Supreme Court of Justice ruled on this question indicating that the signatures collected, if their legitimacy could be verified, were indeed valid for the calling the referendum, but it did not discuss the timing of their collection.

141. The parties successfully drafted and signed the "Agreement" on May 29, 2003. In this 19-point document, representatives of the Government and *Coordinadora Democrática* reiterate their commitment to renounce the use of violence and to follow the principles of the Venezuelan Constitution, and those of the OAS Charter, the Inter-American Democratic Charter and the American Convention on Human Rights. Affirming their commitment to Freedom of expression, they undertake to work with the private and public mass media to promote the objectives established in the new agreement and to help to create a climate conducive to the electoral process.

142. Of singular importance is the fact that both parties agree that the way to resolve the country's crisis by the electoral route should be through application of the provisions of the Venezuelan Constitution that provide for holding referendums to revoke the mandate of elected officials who have served half their terms. Such referendums will have to be requested formally by an established number of voters and approved by the

National Electoral Council (CNE), whose members are being decided by the National Assembly.

143. The Agreement establishes, furthermore, a permanent liaison of Government and opposition representatives, "with the aim of opening channels of communication and taking action to enforce the provisions of the Declaration against Violence and for Peace and Democracy, maintaining contact with international facilitators where deemed necessary."

144. On the other hand, it is important to point out that the signature of the Agreement formally ended the work of Working Forum for Dialogue and Negotiation, installed at the beginning of November, with the support of OAS, the Carter Center and the UNDP. The document expressly states that:

We recognize the importance of the support that these institutions can offer in the future for the fulfillment of this Agreement and express our wish to continue international collaboration.

145. The Commission notes the advances that have been made in the process of dialogue between the parties and thus calls on them to proceed in the spirit of tolerance and good faith toward actual compliance with what has been jointly determined as the constitutional solution to the crisis..

146. In addition, on August 20, 2003, the names collected during "El Firmazo" held on February 2 were presented at the headquarters of the National Electoral Council. *Coordinadora Democrática* officially delivered 3,236,320 signatures requesting that the National Electoral Council hold a recall referendum in accordance with the provisions of Article 72 of the Constitution of the Republic.<sup>80</sup> The National Electoral Council will now be required to analyze the validity of the signatures, and, in the event of their validity, establish the pertinent regulations for the holding the recall referendum, as provided in Article 72 of the Constitution.

147. At the time of the preparation of this report, after appointment of the National Electoral Council by the Supreme Court of Justice, the Board of Directors of this electoral body, on September 12, 2003, declared inadmissible the signatures that had been submitted to it requesting a referendum to recall President Hugo Chávez.

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<sup>80</sup> COFAVIC, Report, Facts outlined in the Press, Venezuela, Wednesday August 20, 2003.

148. The decision under reference states the following in its operative paragraphs:

1. To declare **INADMISSIBLE** the requests for a recall referendum submitted on August 20, 2003, inasmuch as the signatures that, in the opinion of the presenting parties, support those requests were signed to far in advance, before the right to a recall referendum arises under Article 72 of the Constitution of the Bolivarian Republic of Venezuela.

2. To declare **INADMISSIBLE** requests presented on August 20, 2003, inasmuch as the lists accompanying the request for a referendum to revoke the mandate of President Hugo Rafael Chávez Frías, do not constitute a formal request directed to the Electoral Body but rather a kind of proclamation that is not consistent with legal requirements, thereby violating point 12 of in the aforementioned Agreement between the Government and Opposition and failing to meet the requirements of Article 72 of the Constitution of the Bolivarian Republic of Venezuela, whose scope and limits are explained in the ruling of the Constitutional Division of the Supreme Court of Justice on June 5, 2002, by virtue of which the lists are null and void on the grounds of this resolution.<sup>81</sup>

149. Following this, on September 25, 2003, the National Electoral Council issued Resolution 030925-465 establishing the rules of procedure for referendums to revoke the mandates of popularly elected officials. On October 7 of the same year, it established regulations for the membership and registration of those organizations likely to participate in referendums to revoke the mandates of popularly elected officials. Finally, the Commission was informed that on October 1, 2003 the National Electoral Council declared valid the request made by *Coordinadora Democrática* for conducting a referendum to recall President Hugo Chávez from office. Furthermore, the CNE declared valid other requests for recall referendums regarding lawmakers, governors and mayors of the opposition as well as of the ruling party.

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<sup>81</sup> National Electoral Council, Resolution no. 030912-461, September 12, 2003.

## CHAPTER I

### THE ADMINISTRATION OF JUSTICE AND HUMAN RIGHTS

#### A. Introduction

150. The observance of rights and freedoms in a democracy requires a legal and institutional order in which the laws prevail over the will of the rulers, and in which there is judicial review of the constitutionality and legality of the acts of public power, i.e., it presupposes respect for the rule of law.<sup>82</sup>

151. Judiciaries are established to ensure compliance with laws; they are clearly the fundamental organs for protecting human rights. In the inter-American human rights system, designed for a hemisphere of democratic countries, the adequate operation of the judiciary is essential for preventing the abuse of power by another State organ, and, consequently, for protecting human rights. Thus, the fundamental corollary of human rights is the possibility of access to judicial organs to see that rights are upheld.

152. This section focuses on certain issues that impact the administration of justice in Venezuela. In light of the autonomy and independence that the judiciary should enjoy, the Commission will analyze the temporary status of most of Venezuela's judges and the composition of several institutions. It will also analyze the problem of impunity in Venezuela as a determining factor behind the public's dwindling trust in its institutions and as a motive for increasing crime and violence. Finally, the IACHR will analyze a number of issues related to the inter-American system and the administration of justice in the country.

#### B. The Right to an Independent and Impartial Judiciary

153. To enable the judicial branch of government to serve as an effective body for overseeing, guaranteeing, and protecting human rights, it is not enough for it to formally exist; the judiciary must also be independent and impartial.

154. Thus, Article 8 of the American Convention provides that:

Every person has the right to a hearing, with due guarantees and within a reasonable time, by a competent, independent, and impartial tribunal, previously established by law, in the

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<sup>82</sup> IACHR, *Second Report on the Situation of Human Rights in Peru*, Chapter II, paragraph 1, June 2, 2000.

substantiation of any accusation of a criminal nature made against him or for the determination of his rights and obligations of (...) any other nature.

155. In order to define the meaning and scope of the twin concepts of independence and impartiality, the United Nations (UN) has drawn up a series of “basic principles” on the independence of the judiciary. Of these, the Commission believes the following to be of particular importance:



The judiciary shall decide matters before them impartially, on the basis of facts and in accordance with the law (...)

10. Persons selected for judicial office shall be individuals of integrity and ability with appropriate training or qualifications in law. Any method of judicial selection shall safeguard against judicial appointments for improper motives. (...)

11. The term of office of judges, their independence, security, adequate remuneration, conditions of service, pensions and the age of retirement shall be adequately secured by law.

12. Judges, whether appointed or elected, shall have guaranteed tenure until a mandatory retirement age or the conclusion of their term of office, where such exists.<sup>83</sup>

156. The Commission has received a series of communications relating to the Supreme Court of Justice’s exercise of its jurisdictional powers without due independence and impartiality, alleging that on different occasions, it has adopted decisions intended to favor the interests of the executive branch. Specific mention was made of its decisions regarding the Special Law on the Ratification or Designation of Officials of the Citizens’ Branch and the Magistrates of the Supreme Court of Justice, and its decision on the duration of the presidential mandate. In this regard, the Commission believes that it cannot determine whether the Supreme Court of Justice did in fact act without independence and impartiality. This is because, first of all, some rulings that are contrary to the presumed interests of the executive do exist, such as the ruling that held there were no grounds for prosecuting the

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<sup>83</sup> UN, *Basic Principles on the Independence of the Judiciary*, Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held in Milan on August 26 to September 6, 1985, Doc. A/CONF.121/22/Rev.1 p. 59 (1985). Although this UN document is not binding, the IACHR sees it as an authorized interpretation for determining the scope of binding provisions contained in other treaties, such as – with specific reference to the case at hand – the terms of Article 8 of the American Convention.

officers suspected of being behind the coup d'état; secondly, such a determination would require not only a statistical review of the jurisprudence, but also an analysis of the judgments, with criteria that would be very difficult to define juridically and that could give rise to ambiguous interpretations.

157. In accordance with the foregoing considerations, this section will address two issues of great importance with respect to the independence of the judiciary: the temporary status of judges, and the failure to abide by the constitutional provisions that uphold impartiality and independence in the appointment of judges. This final section will also include details regarding the composition of other institutions, which serves as a factor in weakening their independence and autonomy to the detriment of the rule of law.

158. Prior to this analysis, the Commission would like to note its concern regarding certain provisions set forth in the draft Organic Law of the Supreme Court of Justice; these, were they to become positive law, could have a negative impact on the independence of the Venezuelan judiciary. These provisions entail several innovations: the increase in the number of Supreme Court justices; the granting of powers to the National Assembly whereby it can increase or decrease, by an absolute majority vote, the number of judges in the different chambers of the Supreme Court; and the empowerment of the Assembly to decree, by a simple majority vote, the revocation of Supreme Court justices' appointments.

### **1. Provisional Judges**

159. "Provisional" judges are those who do not enjoy security of tenure in their positions and can be freely removed or suspended; this implies that their actions are subject to conditions, and that they cannot feel legally protected from undue interference or pressure from other parts of judiciary or from external sources.

160. The Commission has previously ruled on this matter,<sup>84</sup> stating that having a high percentage of provisional judges has a serious detrimental impact on citizens' right to proper justice and on the judges' right to stability in their positions as a guarantee of judicial independence and autonomy.

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<sup>84</sup> IACHR, *Report on the Situation of Human Rights in Peru*, 2000.

161. Consequently, as indicated above, one issue with an impact on the autonomy and independence of the judiciary is the provisional nature of judges within the Venezuelan legal system. Information from different sources indicates that at present, more than 80% of Venezuela's judges are "provisional."<sup>85</sup> The Commission has also received information claiming that the appointments of certain judges – specifically, those who have issued rulings unfavorable to government interests – have been revoked. Reference was made to the cases of Doménico Di Gregorio, David Manrique, and Mercedes Chocrón.<sup>86</sup> The first of these judges had refused to admit the prosecution service's charges against officials of the Metropolitan Police; the second ordered the release of Gen. Carlos Alfonso Martínez, a dissident army officer; and the third had ordered a search at that same general's home.<sup>87</sup> In addition, the Commission was told about a search carried out by members of the DISIP on September 23, 2003, at the premises of the First Administrative Court. The search lasted more than six hours and, subsequently, the Judicial Commission of the Supreme Court issued an order for its dissolution and replacement by two new bodies: the First and Second Administrative Courts. Although this decision was based on "the significant increase" in the need for administrative justice, "the result of the more than 20 years that have passed since the Court was established," the measure was questioned because of suspicions that it arose from the Court's having issued a number of rulings that went against government interests.<sup>88</sup> The IACHR was also told about the dismissal of the president and two magistrates attached to the former First Administrative Court, Juan Carlos Apitz, Perkins Rocha, and Ana María Ruggieri.

162. This situation has also been a source of concern for the Human Rights Committee of the International Covenant on Civil and Political Rights. On April 26, 2001, the Committee stated it was particularly worried

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<sup>85</sup> The Commission received different figures for the percentage of provisional judges. Most of them fell in a range of between 70% and 90%. The most exact data, however, came from information furnished by the President of the Restructuring Commission, who indicated that of the total of 1,772 judges in the country, 1,331 were provisional, which would give a proportion of 75.11%. In addition, notice should be taken of those judges who were hired on a temporary basis (i.e., for a specific period of time).

<sup>86</sup> *El Universal*, "Los Jueces no son Adecos," February 23, 2003, by Irma Álvarez.

<sup>87</sup> General hearing before the IACHR: Situation of Human Rights in Venezuela, document submitted by national human rights organizations, *El Desdibujamiento Institucional del Estado de Derecho y de la Democracia*, February 27, 2003.

<sup>88</sup> Among the Court's most controversial decisions, the Commission was told, were those that favored dissident members of the armed forces and the oil workers who had supported the general strike, and the ruling that banned Cuban physicians from practicing without revalidating their credentials.

about the situation of the judiciary in Venezuela, which is still undergoing reorganization. It added that it was also concerned about the lack of information on the consequences this process has had and the failure to set a date for its conclusion.

163. The Commission is not unaware that the problem of provisional status for judges dates back many years prior to the current administration. However, the IACHR notes that these problems have deepened and expanded since the present government embarked on a process of judicial restructuring.

164. The process of restructuring the judicial branch began on August 12, 1999, when the National Constitutional Assembly issued a decree for the reorganization of all government agencies.<sup>89</sup> Later, on August 19, the Constitutional Assembly declared the judiciary to be in a state of emergency and reorganization; it created a body styled the Judicial Emergency Commission, to which it gave a series of powers that previously belonged to the Judicature Council.<sup>90</sup> This Commission's mandate was to be

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<sup>89</sup> National Constitutional Assembly, *Decree Reorganizing all Organs of Government*, August 12, 1999.

<sup>90</sup> National Constitutional Assembly, *Decree Reorganizing the Judicial Branch*, August 19, 1999. Article 3 of this decree provides that: "The Judicial Emergency Commission shall be responsible for:

1. Proposing to the National Constitutional Assembly the steps necessary for reorganizing the judiciary, and carrying out those steps approved thereby in compliance with its Operating Statute.
2. Preparing the budget for the Judicial Emergency using funding sources from the Interior Ministry, the Ministry of Justice, the Supreme Court of Justice, and the Judicature Council, and submitting it to the National Constitutional Assembly for consideration.
3. Monitoring and assessing the operations and performance of the Judicature Council, and reporting regularly to the steering committee of the National Constitutional Assembly.
4. Giving instructions to the Judicature Council for the implementation of its decisions.
5. In compliance with the decisions of the National Constitutional Assembly, the Committee for the Judicial Emergency shall be responsible for:
  - (a) Devising the National Plan for Evaluating and Selecting Judges; organizing the selection process for judges through public professional competitions for all courts and circuits; and selecting the corresponding juries of examiners.

(Continued...)

for a limited time. Under the decree that created it, it was to cease operations once the new Constitution was enacted; however, it continued to operate for a year after its adoption. Subsequently, in the decree on "urgent precautionary measures to protect the judicial system,"<sup>91</sup> the Commission was empowered to suspend the duties of any judge facing seven or more complaints or any type of criminal investigation and, in a later decree, it was authorized to regulate the evaluation plan for judges and to rule on their continued employment or removal and on the competitive selection system.

165. In December 1999, following the adoption of the new Constitution, the National Constitutional Assembly decreed the "Transitional Government Regime."<sup>92</sup> The transitional regime established rules for the restructuring of the government in order to achieve full implementation of the new Constitution. This process entailed the implementation of the Transitory Provisions contained in the Constitution, which were to remain in force until the institutions described in the new Constitution could be organized and brought on line.

166. Although all constitutional drafting processes involve such transitional regimes, the IACHR notes with concern that Venezuela's regime went beyond the normal and due temporal limits and included provisions with a legislative content that went beyond the scope of a transitory regime. Indeed, at the time of writing this report, the regime has exceeded its

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(...Continued)

- (b) Reorganizing the country's judicial jurisdictions, districts, circuits, and courts.
- (c) Creating the Voluntary Public Defense Service.
- (d) Monitoring, assessing, and overseeing the introduction of the Organic Criminal Procedural Code, the transitional regime, and the preparation of proposals for improving the Code.
- (e) Designing and implementing a campaign of education and information regarding progress with the Organic Criminal Procedural Code.
- (f) Exhaustively reviewing the multilateral agreements for the modernization of the judiciary executed or under execution by the Judicature Council.
- (g) All other activities assigned to it by the National Constitutional Assembly."

<sup>91</sup> National Constitutional Assembly, *Decree Adopting the Measures Necessary to Reorganize the Judiciary and the Prison System*. G.O. No. 36,805 of 11/Oct/99.

<sup>92</sup> See: National Constitutional Assembly, *Decree Ordering the Transitional Government Regime*, December 22, 1999, Official Gazette No. 36,859.

transitory nature, after remaining in effect for more than three years and establishing a set of rules that regulate several aspects of Venezuela's institutional life.

167. Under the terms of the transitional regime, a "Commission for Restructuring the Judiciary" was established. This body was to perform functions previously carried out by the Judicial Emergency Commission, the principal task of which was to straighten out the situation of tenured and provisional judges by organizing a competitive examination for the awarding of positions. Thus, the Commission for the Functioning and Restructuring of the Judicial System was ordered to direct, carry out, and supervise all activities related to evaluations of judges and judicial officials and to the competitive examinations for entry into and promotion within the judiciary; this was to be the case until such time as the Supreme Court of Justice could organize the Executive Directorate of the Magistrature, the body provided for in the Constitution for the governance and administration of the judiciary.<sup>93</sup>

168. A number of questions have been asked regarding the actions of the Judicial Emergency Commission and, later, of the Commission for the Restructuring and Functioning of the Judicial System. Essentially, the criticisms focus on whether or not guarantees of due process were maintained in the appointment and dismissal of magistrates. Specifically, the claims maintain that on several occasions, provisional judges were appointed even though they did not meet the requirements set for those positions; moreover, irrespective of the possible grounds for suspending or dismissing certain judges, the allegations claim that the Commissions acted in haste and were guided by inadequate criteria – such as the net worth of judges or the number of complaints they had accumulated – in deciding whether they should be removed or suspended.<sup>94</sup>

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<sup>93</sup> Article 21 of the Transitional Government Decree reads as follows:

The Judicature Council, its chambers, and administrative offices shall become the Executive Directorate of the Magistrature, attached to the Supreme Court of Justice, in compliance with Article 267 of the Constitution adopted by the people of Venezuela. Until such time as the Supreme Court of Justice establishes the Executive Directorate of the Magistrature, its powers of governance and administration, of inspection and oversight of the courts and public defense offices, and the powers granted by current law to the full and administrative chambers of the Judicature Council shall be exercised by the Commission for the Functioning and Restructuring of the Judicial System.

<sup>94</sup> Stated by the Coordinator of the Evaluation and Competition Commission, Ms. Nancy Rodríguez, on April 6, 2002.

169. With respect to the appointments, the mechanism set forth in the Constitution – that is, competitive public examinations – was not followed. Article 255 of the Constitution of Venezuela states that:

Appointment to a judicial position and the promotion of judges shall be carried out by means of public competitions, to ensure the capability and excellence of the participants and those selected by the juries of the judicial circuits, in such manner and on such terms as may be established by law. The appointment and swearing in of judges shall be the responsibility of the Supreme Court of Justice. Citizen participation in the process of selecting and designating judges shall be guaranteed by law. Judges may only be removed or suspended from office through the procedures expressly provided for by law. Measures shall be taken by law to promote the professionalization of judges, and the universities shall cooperate to this end by organizing their law schools' curricula toward the corresponding legal specializations. Judges are personally liable, on such terms as may be determined by law, for errors, delays, and unjustified omissions, for substantial failures to observe the rules of procedure, for denial of justice, for partiality and for the criminal offenses of bribery and prevarication in office.

170. In this connection, the IACHR has received information indicating that the Functioning and Restructuring Commission appointed 995 provisional judges by means of a credentials-based process, which basically means that they were selected and appointed without undergoing the competitive exams. This procedure failed to abide by the terms of the new Constitution as set forth in the article transcribed above.

171. It was not until November 2000 that the competitive examinations began to be held, beginning in the states of Vargas and Miranda. However, a March 2001 report by the Network of Juridical Overseers of Venezuela indicates that the failure of some jury members to attend, together with the discretionary decisions taken in applying the evaluation guidelines, undermined the transparency of the competitions.

172. Faced with this situation, on August 14, 2001, the Supreme Court of Justice declared the competitions to be in a state of emergency in light of the extremely high levels of provisional appointments then found within the judiciary.

173. At present, the judicial branch is under the supervision of the Executive Directorate of the Magistrature (DEM). This body, established in August 2000, took over the tasks of judicial administration from the earlier Judicature Council and the Commission for Restructuring the Judiciary. One

of its main achievements was to conclude the criticized process of judicial appointments described above. However, it was also the target of considerable criticism. Firstly, questions have been asked about its composition, in that it is made up of officials who were appointed without any procedures to ensure their impartiality. In addition, the Evaluation and Competition Commission of the Executive Directorate of the Magistrature, a body comprising six magistrates and charged with running the competitive exams and overseeing the reform of the judiciary, has been criticized in that both the competitions and the appointments and dismissals of judges that it has carried out do not observe the precepts of the Venezuelan Constitution and the American Convention for guaranteeing due process. While the competitive examinations have to be repeated because of the high failure rate, no information has been released about the mechanisms followed by the Commission's magistrates in assessing credentials and selecting the lawyers who are to serve as provisional judges. It has also been claimed that those judges who have issued judgments contrary to the interests of the government have had their appointments revoked, without any explanation being provided.

174. The Commission has to date been informed that only 250 judges have been appointed through competitive professional examinations as provided for in the Constitution. Of a total of 1,772 judges in Venezuela, the Supreme Court of Justice reports that only 183 are tenured, 1,331 are provisional, and 258 are temporary. This means that 84% of magistrates are still provisional or temporary and thus lack any stability in their appointments.<sup>95</sup>

175. The Commission also believes that the legislative delay in issuing the legal instruments necessary to resolve their provisional status has worsened the situation. This legislative delay applies both to the Judiciary Law and to the Supreme Court Law; both laws are waiting to be amended in order to bring them into line with the Constitution. The Commission notes that several years have gone by since the new Constitution was enacted and these laws have still not come into effect; that indicates a desire to govern in a provisional state and not in full compliance with the Constitution. The Commission therefore holds that the enactment of those laws is a priority in order to regulate the provisions and procedures necessary to appoint, dismiss, and discipline the magistrates of the judicial branch.

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<sup>95</sup> As stated previously, in July 2002 the President of the Restructuring Commission reported that of 1,772 judges, a total of 1,331 were provisional; that would equate to 75.11% of all the country's judges, not including temporary appointments.

176. The Commission has also been told that the plenary chamber of the Supreme Court ordered the suspension of all competitive exams for judges until the list of examiners responsible for evaluating the participants could be expanded. The President of the Supreme Court, Dr. Iván Rincón, reported that a process of invitations to serve as examiners would commence, with notice being sent to all the country's public and private universities, bar associations, nongovernmental agencies, and professional, business, and trade-union organizations, inviting them to submit lists of candidates. Applicants must be lawyers with an established reputation, having graduated at least 10 years earlier and possessing postgraduate qualifications. Lists of candidates' names are to be published in the press to enable the citizenry to lodge objections within a period of one week. The Commission was also told of a special plan that would optimize the competitive exams in order to improve the process in qualitative terms and increase in quantitative terms the productivity of the selection mechanism, thereby maximizing the results obtained with the resources available.

177. The Commission values the Supreme Court's interest in dedicating its efforts to improving the organization of these professional examinations; however, it notes its concern regarding their suspension, because that measure would indicate a further delay in the process of resolving the provisional status of Venezuela's judges.

## **2. The Composition of the Supreme Court of Justice and the Citizen's Branch**

178. Another issue of concern to the Commission with respect to the guarantees of judicial independence and impartiality in Venezuela is the failure to follow the mechanisms set forth in the new Constitution for the election of its top authorities. The Commission believes that this failure to apply the procedures established by the Constitution as the guarantees of domestic law for ensuring the independence of the members of the judiciary means that the institutional legitimacy of that branch of government is undermined and the rule of law is weakened. Also in this section, the IACHR will analyze the controversial composition of the "citizens' branch of government," which was determined in a similar fashion and under the same legislation.

179. The Constitution establishes mechanisms and guidelines for the appointment of the top authorities of the judiciary<sup>96</sup> and the citizens'

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<sup>96</sup> Constitution of the Bolivarian Republic of Venezuela, Article 264 and transitory provision 4(5).

branch, involving a process of nominations that are to be submitted to the National Assembly with the participation of civil society. The new Constitution created a "Committee of Judicial Candidacies" and a "Committee for Evaluating Citizens' Branch Candidacies," both comprising different sectors of society. These provisions were aimed at restricting undue interference, ensuring greater independence and impartiality, and allowing voices from society to be heard in the election of those officials. The National Assembly, however, did not abide by the constitutionally approved mechanism for the appointment of the authorities of the judicial branch and the citizens' branch (which covers the Office of the People's Defender, the Public Prosecution Service, and the Office of the Comptroller General of the Republic.

180. In particular, as regards the appointment of Supreme Court justices, Article 264 of the Constitution states that "the law shall determine the procedure for their election." However, the Constitution also sets down a series of guidelines that should be incorporated into those rules. It states that: "candidates may be presented to the Committee of Judicial Candidacies at their own initiative or through organizations related to legal functions. The Committee, after hearing the community's views, will carry out a preliminary selection for presentation to the citizens' branch, which shall then conduct a second preselection for submission to the National Assembly, which shall then make the final selection."

181. For electing the members of the citizens' branch, the Constitution provides two procedures: one involving direct actions by the Moral Council and civil society, and an electoral procedure governed by the National Assembly. The main procedure for the election of the members of the citizens' branch entails convening the Committee for Citizens' Branch Candidacies, which is to comprise representatives of different sectors of society, and which will then carry out a public consultation process in order to arrive at a three-name list of candidates for each available position. The three-name list is then to be submitted to the National Assembly for approval: with the favorable vote of two-thirds of its members, and within a period of no more than 30 days, the Assembly then elects the heads of the different agencies that make up the citizens' branch. If the Assembly has not reached an agreement by the end of that timeframe, the electoral authorities are to submit the three-name list to a popular vote.

182. Should the Candidacies Committee not be convened, within a period of 60 days following the end of the period for which they were elected, the National Assembly shall proceed to appoint, within no more than the following 30 days, the representatives of the agencies of the citizens' branch.

183. The current justices of the Supreme Court, the People's Defender, the Prosecutor General of the Nation, and the Comptroller General of the Republic were not proposed by the committees in the fashion described in the Constitution. Specifically, the Commission was told that after the enactment of the Constitution, the authorities of the Supreme Court and the citizens' branch were appointed, on a provisional basis, by the National Constitutional Assembly in a decree dated March 28, 2000, whereby the Transitional Government Regime was established. Later, on November 14 of that year, the National Assembly established the procedures for the definitive appointment of those officials in a piece of legislation styled the Special Law on the Ratification or Appointment of Officials of the Citizens' Branch and Justices of the Supreme Court of Justice for the first Constitutional Period.

184. These provisions rule that the National Assembly will appoint, by an absolute majority, a commission comprising 15 deputies, to serve as the candidacy assessment commission. Once the Commission is established, its members are to select a list of 12 representatives from different sectors of society, for presentation to the National Assembly's plenary so it can select those who are to be voting members of the Commission. The Commission is also to establish dialogue panels, on which the different sectors of society are to be represented. With respect to the procedure for selecting the authorities, the rules state that the candidacies received must be publicly processed and published, so members of society can submit comments on any candidate to the Evaluation Commission. Based on the results of this process, a list is drawn up and presented to the National Assembly for consideration. Then, within a period of no more than 30 calendar days, the Assembly selects the officers of the citizens' branch and the justices of the Supreme Court.

185. The Commission notes that under these rules, the Candidacy Evaluation Commission was responsible for the selection processes for both branches, whereas the Venezuelan Constitution states that the committee that is to assess the candidacies for the citizens' branch is to be a separate body from the Committee of Judicial Candidacies. Neither did the composition of the Evaluation Commission – 15 deputies from the National Assembly – abide by the provisions of the Constitution, which states that the Candidacies Committee is to be made up from different sectors of society.

186. The IACHR thus notes that the constitutional amendments introduced for the election of these authorities as guarantees of their independence and impartiality were not put into practice in this instance.

187. The Commission also notes with concern that the Supreme Court of Justice itself justified the mechanism imposed by this law, by upholding the legality of the transition process. Specifically, the Supreme Court's Constitutional Chamber, in response to an annulment motion on grounds of unconstitutionality lodged against the special law, dated November 20, 2000, offered the following comments:

To avoid an institutional vacuum while laws were being enacted, the National Constitutional Assembly decreed the Transitional Government Regime so that the institutions described in the 1999 Constitution, although not yet developed by law, could operate, thereby preventing the constitutional provisions from being void of effect. This transitional regime, supplemented with other provisions enacted by the constitutional assembly, is necessarily constitutional in nature, in that it serves as the Constitution in force while the country's institutions are established; consequently, its current powers cannot be judged illegitimate or unconstitutional if they are based on the Transitional Government Regime (...) The Transitional Government Regime, decreed by the National Constitutional Assembly (...) stipulated, in Article 21, that the National Assembly would effect the definitive appointments or confirmations, in compliance with the Constitution, of the justices of the Supreme Court of Justice and their substitutes, since the justices appointed under Articles 19 and 20 of the Transitional Government Regime were to hold those positions on a provisional basis.

The mechanism of confirmation is not provided for in the current Constitution, but rather in the Transitional Government Regime; and it was taken into account only with relation to the magistrates of the government, with no provisions for the confirmation of those persons provisionally serving in the positions of the citizens' branch (...) Consequently, the ratification regime must be special, directed at the performance of the magistrates who are to be confirmed and the quality of their arguments, since these are the parameters that indicate the quality of those who, as judges, have already imparted justice from the highest benches and who, as a result, have or have not earned confirmation.

To demand of those magistrates other requirements that neither the Constitution (which did not provide for the mechanism) nor any other law contemplates is to create discrimination against those who can be ratified with respect to those who have not served as magistrates and aspire to serve within the chambers of the Supreme Court of Justice.

188. In connection with the above considerations, the Commission reiterates its concern regarding what has been called the "Transitional

Regime,” which, in its opinion, undermines the full currency of the Constitution. The aforesaid Transitional Government Regime was enacted by the National Assembly as a mechanism intended to ensure the survival of provisions that would have been tacitly repealed under the new Constitution until such time as the corresponding legislation could be enacted. The implementation of this regime, as explained above, led to the failure to implement the mechanisms enshrined in the Constitution for the appointment of Supreme Court justices, the People’s Defender, the Prosecutor General, and Comptroller General of the Republic. This is all because the Supreme Court of Justice has maintained that the full currency of the Constitution requires the adoption of a set of specific laws that, to date, have not yet been enacted.

189. In this regard, although all constitution-drafting processes involve such transitional regimes, the Commission believes that in the Venezuelan case the regime lasted for longer than is normal and appropriate; in addition, from the point of view of substantive law, it included legislative guidelines that went further than the constraints of a transitional regime. The IACHR notes with concern that as of the date of this report, the laws to regulate the constitutional bodies have not yet been enacted.

190. The Commission repeats what it said at the conclusion of its on-site visit: the failure of the Constitution to come fully into force creates a situation of juridical insecurity that makes it difficult to fully consolidate the rule of law. Accordingly, the Commission believes it is urgent that organic laws be enacted, as the best way to establish the mechanisms enshrined in the Constitution of the Bolivarian Republic of Venezuela for the selection of its Supreme Court justices, the People’s Defender, the Prosecutor General, and the Comptroller General.

### C. Impunity

191. The rule of law is largely upheld by ensuring that the justice system has no tolerance for impunity. As the Inter-American Commission has said: “...impunity is one of the serious problems in the administration of justice in the hemisphere.”<sup>97</sup> The Inter-American Court has defined impunity as “...total lack of investigation, prosecution, capture, trial and conviction of those

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<sup>97</sup> IACHR, *Second Report on the Situation of Human Rights in Peru*, Annual Report 1999, Chapter II, paragraph 255.

responsible for violations of the rights protected by the American Convention."<sup>98</sup>

192. Most of the human rights violations described in this report involve the Venezuelan State's failure to observe its obligation of preventing and investigating crimes and punishing the guilty, which gives rise to impunity. The impunity that exists in a large number of cases involving human rights violations undermines Venezuelan society's confidence in the justice system and leads to an intensification of violence, fueling a vicious circle of impunity and violence.

193. In this regard, the Commission notes that no significant progress has been made with the exhaustive investigation into the coup d'état, killings, and other human rights violations that took place between April 11 and 14, 2002. Although eight officers of the Metropolitan Police were charged with the deaths of Ruddy Alfonso Urban and Erasmo Sánchez, the investigations carried out by the Public Prosecution Service into most of these cases are still in the preliminary stages. Once exception is the Puente Llaguno case, in which the accused were acquitted on September 30, 2003, in a judgment handed down by the Fourth Court of Maracay in Aragua State. More than a year and a half after the incidents took place, nobody has been sentenced for the deaths and injuries inflicted. With particular reference to the cases of Alexis Bordones, Jesús Mohammad Capote, Jorge Tortoza, and Jesús Arellano, who were killed by individuals firing at them from Avenida Baralt, no effective steps have been taken toward identifying and arresting the perpetrators, even though the suspected perpetrators were filmed and photographed while discharging their weapons.

194. In addition, it has been pointed out that there are mechanisms in place that ensure impunity in the cases arising from the events of April; it is thus noted that the prosecutors who began the investigation were removed and replaced by officials with less experience in criminal prosecutions and in the realm of human rights. Specific mention is made of the Special Commission established by the Public Prosecution Service to investigate the April 11 killings, which was dismantled with the exclusion of prosecutors Alfonso López, César Mirabal, Héctor Villalobos, and José Ernesto Graterol. Also, more than a year after the incidents, the case files for most of the incidents still only contain the victims' autopsy reports and statements taken from their relatives. With specific reference to

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<sup>98</sup> Inter-Am.Ct.H.R., Paniagua Morales *et al.* Case, Judgment of March 8, 1998, paragraph 173. See also: Loayza Tamayo Case, Judgment of November 27, 1998, paragraph 170.

the cases that took place on April 12, 13, and 14, not even the most basic criminal investigation formalities have been pursued, such as mapping, calculating ballistic trajectories, conducting on-site inspections, etc.<sup>99</sup>

195. The State has therefore tarried in its duty of investigating those crimes and punishing the guilty. The IACHR is concerned that more than a year and a half after the incidents, the investigation of the killings and injuries that took place between April 11 and 14, 2002, have not progressed further than the very first stages; the only exception to this being the case of the shots fired from atop Llaguno Bridge, the result of which was the acquittal of the accused. It is also a source for concern that the prosecutors who began the investigation were removed and replaced by officials with less experience in criminal prosecutions and in the realm of human rights.

196. In connection with this, the Commission has received information indicating that in recent years Venezuela has seen a significant increase in the impunity surrounding acts of violence. According to this information, 90% of investigations into human rights violations go no further than the preliminary stages of the process.<sup>100</sup> Specifically, the Commission was told that during the first quarter of 2003, the Judicial Police referred 3,892 cases to the courts; nevertheless, the judges had only resolved 19% of these submissions: in other words, they handed down rulings in 772 cases. These figures are similar to those gathered during 2002, when, of 9,529 homicide cases, final judgments were given in only 667. The Commission believes that these figures are a source for particular concern: impunity represents a serious violation of a State's obligations and entails a kind of vicious circle, repeating and perpetuating itself, and thereby increasing the numbers of crimes that are committed, particularly violent ones.<sup>101</sup> Impunity generates a situation of injustice wherein many people decide to take justice into their own hands, giving rise to incidents that constitute further violations of basic human rights, such as killings.

197. An illustrative case is provided by executions carried out by death squads, an aspect of the phenomenon known as social cleansing. These are particularly common in the states of the interior, such as

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<sup>99</sup> COFAVIC, Public Communiqué: *COFAVIC repudiates the impunity surrounding the events of April*, April 10, 2003.

<sup>100</sup> COFAVIC/Venezuela: *Democracy and Human Rights*, six-monthly report (September 2002 to February 2003).

<sup>101</sup> See, in this connection: Considerations offered by the Commission in its Third Report on the Situation of Human Rights in Colombia, *op. cit.*, Chapter V, paragraph 16.

Anzóategui, Falcón, Portuguesa, Yaracuy, and others, and will be dealt with in full in the chapter on the Right to Life. The information received indicates that impunity still prevails in the cases that were reported; specifically, the investigations begun by the Public Prosecution Service have not advanced beyond the preliminary stages<sup>102</sup> and the victims or their relatives are continually harassed after reporting the incidents. In addition, the investigations carried out into these groups' crimes reveal that factors such as informal attitudes to internal regulations, the discretionary use of uniforms and credentials during security operations, and the use of unregistered private citizens for police operations all combine to consolidate impunity.

198. At the same time, the Commission has been watching with concern the Venezuelan State's failure to comply with the international commitments it assumed in cases brought before the inter-American system. In several of these – such as the case of Ramón Eleazar Mavares or the El Amparo killings – the State complied partially by compensating the victims, but it failed to meet its obligation of establishing due responsibility for the incidents by punishing the perpetrators. The State has also failed to abide by the Inter-American Court's reparations judgment of August 29, 2002, in the El Caracazo case. Mention could also be made of the Catia Checkpoint case, where the State has still not punished those responsible for the deaths of 63 prison inmates on February 27, 1992. The Commission has also received information about other serious human rights violations in Venezuelan prisons, incidents that remain unpunished. In January 1994 a massacre at Sabaneta Prison in Maracaibo led to the deaths of about a hundred inmates; in October 1996, 25 inmates burned to death at the El Paraíso Reeducation and Artisan Work Center. In August 1997, 29 inmates died inside the El Dorado Judicial Jail. In addition, as stated above, the Commission has been able to note failures to investigate in cases covered by precautionary and provisional measures, as was noted by the Inter-American Court in the aforesaid Resolution of November 27, 2002.

199. The Commission believes that several factors exist that are encouraging increased levels of impunity in Venezuela. A report by COFAVIC into the state of democracy in Venezuela identifies the following as the chief causes of this impunity: the politicization of agencies in the justice system; legal insecurity because of uncertainty surrounding the State's rules and laws; legislative delays; the provisional status of most judges; and the

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<sup>102</sup> COFAVIC/Venezuela, *Report on Para-police Executions and other Human Rights Violations*.

restricted access available to excluded and marginalized groups lacking the economic resources to hire legal counsel.<sup>103</sup>

200. One aspect that the Commission believes it should emphasize on account of its negative impact is the existence of certain constitutional and legal provisions that in some way encourage impunity. One illustration of this is the establishment of Preliminary Merit Trials for Generals and Admirals of the National Armed Forces, set forth in Article 266(3) of the Constitution; one example of the precept's implementation was the preliminary merit trial held at the request of the Prosecutor General of the Republic, Mr. Julián Isaías Rodríguez Días, to determine whether there were indications of responsibility on the part of four officers – Rear Admirals Héctor Ramírez Pérez and Daniel Comisso Urdaneta, and Generals Efraín Velasco and Pedro Antonio Pereira – in connection with the events of April 11, 12, and 13, 2002. Those proceedings ruled that sufficient merits to prosecute those officers did not exist.

201. Similarly, the IACHR has received a series of comments with respect to the actions of the state bodies charged with the administration of justice. In connection with the Criminal, Scientific, and Criminalistic Investigations Corps, the Commission has received claims indicating that this agency's hierarchical and administrative dependence on the Ministry of the Interior and Justice – an eminently political executive office that also oversees the General Sectoral Directorate of the Intelligence and Prevention Services – does little to help ensure the minimal standards of impartiality and respect for judicial guarantees.

202. The Commission notes that the actions of this agency, responsible for carrying out important expert examinations, could compromise the guarantee of independence, impartiality, and competence set forth in the Convention and fuel impunity. Vital expert testing in the investigations of major crimes such as those committed during the events of April 2002 and the deaths attributable to the death squads was carried out by this agency that is administratively dependent on the executive branch of government, a body that has in both cases made public statements regarding the alleged facts. The Commission believes that in light of the powers and authorities vested in the Criminal, Scientific, and Criminalistic Investigations Corps, and to guarantee the independence of its actions, the agency should either be attached to the Public Prosecution Service or be set up as an autonomous body.

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<sup>103</sup> COFAVIC, *La democracia en Venezuela está seriamente amenazada*, September 2002 to February 2003, p. 11.

203. The agency also acts with a high level of discretionary powers, even in cases in which its own officials could be involved. In addition, prosecutors have been replaced in high-profile cases, such as those dealing with the events of April, without reasonable explanations being offered. This has fueled fears about the level of institutional commitment within the Public Prosecution Service, and about that agency's effective independence. The Commission believes that this situation could foster impunity and constitute an affront to the guarantees of independence and impartiality.

204. The Commission understands that impunity is upheld on both a *de jure* basis (through amnesty laws, for example) and a *de facto* basis, through the failure to investigate and punish the perpetrators of human rights violations. *De facto* impunity can also arise for structural reasons, such as excessive formalism on the part of judges or a shortage of resources for tackling the number of crimes reported, or it can be caused by factual situations, such as interference in investigations or proceedings driven by political imperatives. In all these cases, be they *de jure* or *de facto*, the State fails to comply with its obligations set by the Convention in Articles 8, 25, and 1(1), whereby it is required to prosecute and punish the perpetrators of human rights violations.

205. Impunity gives rise to international responsibility on the part of the State; this applies even to crimes committed by common criminals who are not state agents when the State does not meet its international obligation of pursuing a serious, impartial, and effective investigation into the incident with the aim of punishing the guilty. This omission also places the State under the obligation of indemnifying the victims or their next-of-kin for the violation of their human rights implied by the State's failure to provide a proper investigation of the incident, irrespective of whether or not the perpetrators were state agents.

206. Article 1(1) of the American Convention provides that: "The States Parties to this Convention undertake to respect the rights and freedoms recognized herein and to ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms, without any discrimination for reasons of race, color, sex, language, religion, political or other opinion, national or social origin, economic status, birth, or any other social condition." The Inter-American Court has ruled that the obligation of guaranteeing the free and full exercise of the human rights enshrined in that article:

Implies  the duty of States Parties to organize the governmental apparatus and, in general, all the structures through which public

power is exercised, so that they are capable of juridically ensuring the free and full enjoyment of human rights. As a consequence of this obligation, the States must prevent, investigate and punish any violation of the rights recognized by the Convention and, moreover, if possible attempt to restore the right violated and provide compensation as warranted for damages resulting from the violation. (...)

If the State apparatus acts in such a way that the violation goes unpunished and the victim's full enjoyment of such rights is not restored as soon as possible, the State has failed to comply with its duty to ensure the free and full exercise of those rights to the persons within its jurisdiction. The same is true when the State allows private persons or groups to act freely and with impunity to the detriment of the rights recognized by the Convention.

In certain circumstances, it may be difficult to investigate acts that violate an individual's rights. The duty to investigate, like the duty to prevent, is not breached merely because the investigation does not produce a satisfactory result. Nevertheless, it must be undertaken in a serious manner and not as a mere formality preordained to be ineffective. An investigation must have an objective and be assumed by the State as its own legal duty, not as a step taken by private interests that depends upon the initiative of the victim or his family or upon their offer of proof, without an effective search for the truth by the government. This is true regardless of what agent is eventually found responsible for the violation. Where the acts of private parties that violate the Convention are not seriously investigated, those parties are aided in a sense by the government, thereby making the State responsible on the international plane.<sup>104</sup>

207. In light of the above comments, the Commission believes that the State serves as the guarantor of the human rights of all individuals; as a result, its duty is to prevent illegal acts and, when appropriate, to respond thereto by condemning them by investigating and prosecuting the guilty and compensating the victims, thereby working to prevent situations of impunity. Thus, to create within society a perception of credibility and trust toward the state agencies charged with administering justice as regards that guarantee, the State must dedicate all its efforts to preventing and eliminating impunity, which acts as a breeding ground for future human rights violations.

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<sup>104</sup> Inter-Am.Ct.H.R., Velásquez Rodríguez Case, Judgment of July 29, 1988, Series C No. 4, paragraphs 166, 172, 176, and 177.

208. The above analysis leads to the conclusion that the alarming levels of impunity in Venezuela arise chiefly from factors that affect the human rights of the Venezuelan people, thereby seriously endangering democratic institutionalism in the country. The Commission exhorts the State to devote priority attention and political will to overcoming the impunity that still persists, and it reminds the State of its obligation of taking the steps necessary to ensure that justice is administered independently, impartially, and effectively.

#### **D. The Administration of Justice and the Inter-American System**

209. The Commission must note its concern regarding Judgment No. 1,942, issued by Venezuela's Supreme Court of Justice on July 15, 2003.<sup>105</sup> The Commission believes that this judgment, issued by the country's highest court of law, could represent a step backward with respect to human rights in Venezuela. This is because the opinions it contains seriously restrict the State's compliance with the recommendations and precautionary measures issued by the Inter-American Commission and other international agencies.<sup>106</sup>

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<sup>105</sup> The full text of the judgment can be seen in the official records of the Venezuelan Supreme Court's webpage: <[www.tsj.gov.ve](http://www.tsj.gov.ve)> .

<sup>106</sup> In the relevant part of the judgment, the Court rules as follows:

Should an international organization, accepted legally by the Republic, protect a person and thereby violate the human rights of groups or individuals within the country, that decision will have to be rejected, regardless of its origin with an international agency for the protection of human rights. It is possible that acting in that fashion, the Republic will receive international sanctions; but not for that reason will orders and rulings issued by such agencies be executed in the country if they violate the Constitution of the Republic and the rights it guarantees.

Ultimately, Article 19 of the Constitution guarantees all individuals the enjoyment and exercise of human rights, and respecting them is an obligation for all government agencies, in compliance with the 1999 Constitution, the human rights conventions that the country has signed, and Venezuelan legislation, provided that those bodies of law do not conflict with the Constitution's human rights principles or undermine the basic principles of the Constitution.

The Chamber believes that there is no jurisdictional organ above the Supreme Court of Justice and the effects of Article 7 of the Constitution, unless so indicated by the Constitution and by law; and, even in such an instance, a decision that contradicts Venezuela's constitutional provisions shall not be applicable in the country.

210. The IACHR believes that this line of legal reasoning by Venezuela's highest court could have a negative impact on the inter-American system for the protection of human rights. The decision is tantamount to ignoring the international obligations assumed by Venezuela as a state party to the American Convention and its duty of acting in good faith regarding the recommendations and decisions of international agencies, particularly those involving human rights.

211. A comprehensive analysis of the judgment reveals that it ignores the obligatory nature of the decisions handed down by international human rights bodies, requiring for those rulings to be executed in Venezuela that they not contradict the Constitution – a decision to be taken, in the final instance, by the Constitutional Chamber of the Supreme Court of Justice itself. The IACHR therefore believes that this judgment is incompatible with the intrinsic goals of the inter-American human rights system, in that it enthrones the State itself as the final guarantor of human rights and their currency, thereby clearly eliminating any possibility of controlling state actions in this field.

212. The statements made by the Inter-American Court in its jurisprudence are of relevance here:



Moreover, accepting the said declaration in the manner proposed by the State would lead to a situation in which the Court would have the State's Constitution as its first point of reference, and the American Convention only as a subsidiary parameter, a situation which would cause a fragmentation of the international legal order for the protection of human rights, and which would render illusory the object and purpose of the Convention.

213. With specific reference to the recommendations issued by the IACHR, the Court has ruled as follows:



Moreover, in accordance with the principle of good faith, embodied in the aforesaid Article 31(1) of the Vienna Convention, if a State signs and ratifies an international treaty, especially one concerning human rights, such as the American Convention, it has the obligation to make every effort to apply with the recommendations of a protection organ such as the Inter-American Commission, which is, indeed, one of the principal organs of the Organization of American States, whose function is *to promote the observance and defense of human rights* in the hemisphere (OAS Charter, Articles 52 and 111).



Otherwise, Article 33 of the American Convention states that the Inter-American Commission is, as the Court, competent *with respect to matters relating to the fulfillment of the commitments made by the State Parties*, which means that by ratifying said Convention, States Parties engage themselves to apply the recommendations made by the Commission in its reports.<sup>107</sup>

214. Accordingly, the Commission holds that this judgment by Venezuela's Supreme Court of Justice ignores the provisions of the Constitution and constitutes a flouting by the State of the commitments it assumed by ratifying the American Convention in pursuit of proper protection for the human rights of the inhabitants of Venezuela.

215. Secondly, the Commission notes the Venezuelan State's repeated failure to observe the precautionary measures extended by the IACHR and the provisional measures ordered by the Inter-American Court. During 2002, the IACHR asked the Venezuelan State to adopt precautionary measures to protect various individuals' personal and physical integrity on 13 occasions. The IACHR registers its concern at the failure to comply in full with the protective measures that were requested. The IACHR has received information indicating that most people covered by the protective measures established by these precautionary measures have continued subsequently to suffer harassment, threats, and physical violence. Since the aggression against them continued, the IACHR duly extended the duration of many of the precautionary measures it had asked for and, in some particularly serious cases, it petitioned the Inter-American Court to grant provisional measures, as described below.

216. The IACHR notes that although in most cases months have gone by – or, in some instances, more than a year – since the original request, the Public Prosecution Service has formally complied with the Commission's requests but has not proceeded, in any of these cases, to carry out the investigations necessary to identify responsibilities and punish the perpetrators of the acts of violence and aggression in question.

217. Given the ineffectiveness of precautionary measures in three specific cases in which the threats and attacks continued and increased, the Commission decided to send the Inter-American Court of Human Rights a request for provisional measures to protect the life and personal integrity of Luisiana Ríos, Luis Augusto Contreras Alvarado, Armando Amaya, and

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<sup>107</sup> See: Inter-Am.Ct.H.R., Loayza Tamayo Case, Judgment of September 17, 1997, paragraphs 79, 80, and 81.

Eduardo Sapene Granier of *Radio Caracas Televisión*, Liliana Ortega, Yris Medina Cova, Hilda Páez, Maritza Romero, Aura Liscano, Alicia de González, and Carmen Alicia Mendoza, all members of the nongovernmental human rights organization called the Committee of Relatives of the Victims of the Events of February-March 1989 (COFAVIC), and of Mr. Luis Enrique Uzcátegui Jiménez. The three sets of provisional measures sought were granted by the Court on November 27, 2002, ruling that the necessary conditions of gravity and urgency had been met. Later, the Commission asked the Court for provisional measures to protect the life, personal integrity, and freedom of expression of the journalists Marta Colomina and Liliana Velásquez, who endured an attack on their lives in the early hours of June 27, 2003, while on their way to the premises of the *Televen* television station. The Court granted these provisional measures by means of a Resolution dated July 30, 2003.<sup>108</sup>

218. In connection with this, the Commission notes that the State has not replied to any of the precautionary measures requested by the Commission and that this failure was later repeated with respect to the provisional measures ordered by the Inter-American Court. Thus, in resolutions dated February 20, 2003, the Court reported that the State had not complied. Specifically, in the three resolutions issued on that date, the Inter-American Court resolved as follows:

1. To declare that the State has not effectively implemented the provisional measures ordered by the Inter-American Court of Human Rights in its [Resolutions] of November 27, 2002.<sup>109</sup>

219. In light of these considerations, the Commission expresses its concern at the failure to comply with the Court's provisional measures and the Commission's precautionary measures. Complying with the decisions of the Commission and the Court is essential in guaranteeing protection for the human rights of the inhabitants of Venezuela.

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<sup>108</sup> Inter-Am.Ct.H.R., Resolution by the President of the Inter-American Court, Provisional Measures, Case of Marta Colomina and Liliana Velásquez regarding Venezuela, July 30, 2003. This measure was ratified by the Inter-American Court in a Resolution dated September 8, 2003.

<sup>109</sup> Inter-Am.Ct.H.R., Resolution of the Inter-American Court of Human Rights of February 20, 2003, Luisiana Ríos *et al.*, v. Venezuela; Resolution of the Inter-American Court of Human Rights of February 20, 2003, Luis Uzcátegui v. Venezuela; and Resolution of the Inter-American Court of Human Rights of February 20, 2003, Liliana Ortega *et al.* v. Venezuela.

## E. Recommendations

220. The Commission extends the following recommendations to the Venezuelan State:

1. Immediately, and in compliance with its domestic law and its international obligations under the American Convention, further and hasten the process aimed at terminating the provisional status of most of its judges, thus guaranteeing their tenure in their positions, which is a necessary condition for ensuring judicial independence.

2. Take the steps necessary to guarantee the autonomy and independence of the different branches of government. In particular, the Commission recommends appointing the top authorities of the judicial and citizens' branches, closely following the procedure set forth in the Constitution and adapting to that end the provisions of domestic law to the precepts contained in the new Constitution.

3. Adopt planned policies in the short, medium, and long terms in order to eliminate or minimize situations of impunity, which constitute violations of various human rights and can trigger the international responsibility of the State. In connection with this, the Inter-American Commission reiterates its concern regarding the impunity that exists in Venezuela. The IACHR again states that leaving numerous individual crimes unpunished has an impact on the nation and its culture, affecting not only the victims of human rights violations or other crimes, but also society in general.<sup>110</sup>

4. With reference to the events of April 2002, and also with regard to the actions of the death squads, the Inter-American Commission emphatically reminds the State that it is obliged to conduct a serious investigation of those incidents, to punish the guilty in firm and final judgments, to indemnify the victims of those violations, and in so doing to provide the witnesses and the victims relatives with all due protection.

5. Organize and immediately grant sufficient resources to the Public Prosecution Service, in order to implement, at the national level, a program for the protection of victims, witnesses, and prosecutors of the Public Prosecution Service. Modify the

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<sup>110</sup> IACHR, *Third Report on the Situation of Human Rights in Colombia*, 1999, Chapter V, paragraph 16.

institutional structure of the Criminal, Scientific, and Criminalistic Investigations Corps in order to guarantee the independence of its actions.

6. As regards the cases on which the inter-American system has ruled, the IACHR urges the Venezuelan State to implement, clearly, seriously, and effectively, the recommendations served by the Inter-American Commission on Human Rights in the cases decided and to comply immediately with the judgments of the Inter-American Court of Human Rights in the Caracazo and El Amparo cases. With specific reference to the Caracazo case, the Venezuelan State must comply with the provisions of the finalized reparations judgment issued by the Court on August 29, 2002, as regards the monetary and nonmonetary indemnification of the victims and bringing its law-and-order plans into line with international human rights law.<sup>111</sup> The IACHR also reiterates that the Venezuelan State must comply with its precautionary measures and with the provisional measures granted by the Inter-American Court.

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<sup>111</sup> After the elaboration of this report, the IACHR was informed that in the case of the Caracazo, the Government approved a special budget aimed at the paying of the monetary indemnification established in the Inter-American Court Sentence.

## CHAPTER II

### CIVIL SOCIETY

#### A. Introduction

221. This section will deal with the situation faced by human rights defenders in Venezuela and the actions of the “Bolivarian Circles.”

222. The Commission has seen how different groups involved with defending and promoting human rights in Venezuela have been growing in strength. These civil society groups have been monitoring and tracking the Venezuelan crisis and all its repercussions on the basic rights of the inhabitants of Venezuela. The active participation of civil society helps consolidate democracies. The Commission understands that the process of democratic strengthening in the hemisphere must incorporate full respect for the work of human rights defenders.

223. Prior to its analysis, the Commission would like to note the importance of understanding the concept of civil society in democratic terms, without unreasonable exclusions or unacceptable discrimination. In this connection, the IACHR has been able to study several Supreme Court decisions ruling that nongovernmental organizations that receive subsidies from abroad or that have foreigners or agents of organized religions on their boards are not part of civil society and are thus ineligible to participate on the Candidacy Committees established by the Constitution for electing the members of the citizens’ branch, the electoral authorities, and the Supreme Court of Justice. Specifically, the Supreme Court of Justice has ruled that:

Civil society, as considered by the Constituent Assembly, is Venezuelan civil society, wherefrom arises the principle of its general joint responsibility with the State, and its particular responsibility toward the economic, social, political, cultural, geographical, environment, and military arenas. The consequence of this national character is that its representatives may not be foreigners or bodies affiliated with, or led, subsidized, financed, or sustained, either directly or indirectly, by states or by movements or groups influenced by states; nor by crossborder or global associations, groups, or movements that pursue political or economic goals to their own benefit.

Granting collective rights to groups or bodies of foreign origin or with foreign influence, for them to act on behalf of national civil society, would allow ethnic or foreign minorities to intervene in the State’s life in defense of their own interests and not in those of national security, and their interests could be harmful to the country and could evolve into separatist movements, aggressive or

conflictive minorities, etc., which could even develop into collective rights such as the right of peoples to self-determination.

The creation of internal, uncontrollable struggles (even surreptitiously) between globalized foreign-influenced society and national society does not appear among the constitutional duties of the Nation set forth in Article 1 of the current Constitution (independence, sovereignty, territorial integrity, and self-determination); hence the reaffirmation of the idea that the civil society referred to in the 1999 Constitution is Venezuelan civil society.

The Chamber is not unaware that in the country there are organizations that receive economic assistance from international agencies, that are the result of collections made in the interests of human solidarity, or that enter into contracts with foreigners for conducting studies. Receiving such assistance or conducting such studies does not mean that those organizations, incorporated in Venezuela, cease to be national; and as long as their national representatives have autonomy over the bodies' control and direction, this Chamber shall consider them legitimate representatives of civil society under the terms of this ruling.<sup>112</sup>

224. The Venezuelan Supreme Court also ruled that the representative authority of these organizations is dependent on the number of their members, requiring that they meet the same prerequisites as political parties.<sup>113</sup>

225. A state's power to issue reasonable regulations for the right of association within a democratic society notwithstanding, the Commission must draw attention to this legal position which, if applied on discriminatory basis against independent organizations, is exclusive in its impact and could create unacceptable situations for the open participation of civil society in Venezuela. One of the salient points is that of the exclusion from civil society of those organizations that receive foreign subsidies. The Constitutional Chamber's judgment disqualifies a good number of human rights organizations from participating on the Candidacy Committees that elect high-ranking authorities within the government. This could mean the

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<sup>112</sup> Supreme Court of Justice of Venezuela, Constitutional Chamber, Justice Jesús Eduardo Cabrera Romero, "Overseers' Network v. National Electoral Council," judgment of November 21, 2000.

<sup>113</sup> In this regard, see also: Supreme Court of Justice, Constitutional Chamber, "Office of the People's Defender v. National Legislative Commission," judgment of June 30, 2000; and "Governors v. Minister of Finance," judgment of November 21, 2000.

denying one of the social movements with the greatest impact, permanence, and professionalism in Venezuela the right to contribute to the independence and selection of those public authorities.

## **B. The Situation of Human Rights Defenders**

226. The OAS member states have acknowledged the important role that human rights defenders play in fostering greater awareness and observance of basic rights and, consequently, in safeguarding democracy and the values of the inter-American system.

227. Recognizing the importance of their work, the OAS General Assembly has on several occasions made statements regarding the importance of respecting and protecting human rights defenders. For example, in resolution AG/RES. 1910 of June 10, 2003, the General Assembly "recognized the important work carried out, at the national and regional levels, by human rights defenders, and their valuable contribution to the promotion and protection of fundamental rights and freedoms in the Hemisphere," and resolved to reiterate its recommendation to the governments of the member states to "step up their efforts to adopt the measures necessary to safeguard their lives, personal integrity, and freedom of expression."

228. Similarly, the United Nations Commission on Human Rights has recognized the importance of human rights defenders and has reaffirmed the right and responsibility of individuals and of society's groups and organs in promoting and protecting universally recognized human rights and fundamental freedoms.<sup>114</sup>

229. The United Nations Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms also establishes certain principles that offer a useful guide for analyzing the rights enjoyed by human rights defenders. The document states that "everyone has the right, individually and in association with others, to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels."<sup>115</sup> For the purpose of promoting and protecting human rights, everyone has the right to

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<sup>114</sup> *Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms*, adopted on December 9, 1998.

<sup>115</sup> *Declaration*, Article 1.

assemble peacefully, to form or join nongovernmental organizations, associations or groups, to participate therein, and to communicate with such organizations.<sup>116</sup> It also provides that everyone is entitled to present complaints about the policies and actions of government officials and bodies with regard to human rights violations.<sup>117</sup>

230. The Commission must note that human rights defenders play a key role in the process of ensuring the rule of law. The actions of defenders – in protecting individuals and groups who fall victim to human rights violations, in publicly denouncing injustices that affect large sectors of society, in the necessary civic control they exert over public officials and democratic institutions, and in other activities – make them irreplaceable players in constructing a solid and lasting democratic society.

231. Attacks on human rights defenders come from a number of different directions. The legitimate work of defenders in reporting abuses encourages some agents to attempt to silence them in different ways. Extreme polarization means that different political sectors attempt to discredit the actions of human rights groups or of individuals who defend justice and truth. Consequently, some human rights workers have been the target of smear campaigns led by public officials.

232. The IACHR has been receiving a considerable volume of complaints about different kinds of attacks and intimidatory acts against individuals working among the inhabitants of Venezuela to protect basic rights and promote their observance.

233. Incidents in which human rights workers or human rights organizations are harassed occasionally escalate into attacks on defenders themselves; however, there has also been a series of cases in which human rights defenders have been targeted by vague forms of intimidation, by means of veiled threats perceivable in seemingly insignificant incidents that upset day-to-day routines and, seen as unusual or strange by the persons involved, convince them that they are being watched. One form of such intimidation is to have unidentified individuals make threats against places where human rights defenders work or to loiter in the vicinity. A specific example of this occurred in the human rights vicariate of the Archdiocese of Caracas, with the presence of people who did not explain their reasons for

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<sup>116</sup> See: *Ibid.*, Article 5.

<sup>117</sup> See: *Ibid.*, Article 9(3).

approaching the premises. Curiously, the incident occurred after this NGO had been working with refugees.

234. The Commission believes that this violence, pressure, and harassment aimed at human rights workers reflects the deepening of the institutional crisis affecting the country, and that the situation has worsened over the past year. The Commission notes that this situation does not reflect a generalized practice; the existence of specific cases is, however, symptomatic of something seriously awry in the field of human rights, in that previously, human rights defenders in Venezuela were able to pursue their functions without any such problems.

235. One nongovernmental organization, the  Committee of Relatives of the Victims of the Events of February-March 1986 (COFAVIC), received a constant string of death threats during 2002, directed at different members of the organization; they have also suffered intimidation, in an attempt to force them to abandon their efforts, particularly as regards what the organization has done vis-à-vis the death squads and the events of April 2002. The harassment of human rights defenders has also been followed by incidents in which they are accosted in the street by strangers who complain about their dealings with the inter-American system, or in which they are followed and physically attacked. This has been the case of Luis Uzcátegui, who has been working to gather together the relatives of alleged death-squad victims in Falcón State; he is also the brother of Néstor Uzcátegui, who was killed by a suspected para-police group in that state. On November 27, 2002, the Inter-American Court of Human Rights granted provisional measures on behalf of the members of COFAVIC and Mr. Uzcátegui, with the aim of protecting their lives and persons.

236. Another source of grave concern is the murder of Mr. Jorge Nieves, a human rights activist, on April 26, 2003, in Guascadito, Apure State. Mr. Nieves was the founder of the Human Rights Defense Committee in that state's Paéz municipality. The Forum For Life national organization states that this murder took place against a backdrop of violence that has broken out in the region and in which more than 50 people have died since December 2002.<sup>118</sup> The IACHR condemns this death and reminds the State of its obligation of conducting an exhaustive investigation of the incident, as well as of the deaths described above and the circumstances surrounding them.

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<sup>118</sup> Forum For Life, press bulletin: *Forum For Life Condemns Killing of Human Rights Defender*, May 2, 2003.

237. The Commission notes its concern regarding the situation of the aforesaid human rights defenders who are covered by either precautionary measures or provisional measures ordered by the Inter-American Court of Human Rights and who continue to be targeted by threats and harassment even though those measures remain in force.

238. Other cases reported to the IACHR include the killings of Armando Douglas García and Carlos Román Parra, agrarian leaders within the Fifth Republic Movement (MVR), that took place in Maracaibo, Zulia State, on September 20, 2002; the attack on Estrella Castellanos, leader of the Women For Liberty civil association, who was abducted on September 30 of that year and later abandoned; and the death of Luis Alberto Alcalá, media and publicity coordinator for the People's Defenders of the New Republic civil association, on September 25, 2002. The information received by the IACHR indicates that most of these attacks remain unpunished.

239. Finally, the Commission condemns the murder of attorney Joe Luis Castillo Gonzáles, a former coordinator of the Human Rights Office of the Maquiques Vicariate, who was working as a human rights activist with the Yukpa and Bari indigenous communities in the  á Sierra as well as with refugees along the country's border. Mr. Castillo  nzales was killed on August 27, 2003, in the town of Tinaquillo de Machiques in Zulia State, close to the border, in circumstances that have not yet been clarified. According to the information received, he was in his car with his wife and son when two individuals rode by on a motorcycle and shot at him 13 times. Mr. Castillo was shot nine times, and died; his wife and son were wounded.<sup>119</sup>

240. In connection with this, the Commission calls for effective guarantees for the personal integrity of human rights defenders, particularly those who work along the country's borders, and for a serious and exhaustive investigation of the threats, injuries, and deaths that have occurred among them.

### **C. Bolivarian Circles**

241. According to the Venezuelan government, the Bolivarian Circles are organized groups of between seven to 11 people that meet to discuss their community's problems and channel them to the competent

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<sup>119</sup> Forum For Life, press bulletin: *Forum For Life Condemns Murder of Human Rights Defender: Weakness of the State along the Border Causes Insecurity*, Caracas, August 28, 2003.

authorities for resolution. They are based on the provisions of Article 52 of the National Constitution of the Bolivarian Republic of Venezuela.

242. Bolivarian Circles comprise a first coordinator, a second coordinator, and their followers, who make up the rest of the unit. The organization also has coordinators at the municipal and state levels. All these representatives are to be elected by the Bolivarian Circles, gathered together at a plenary meeting. According to the available public information, the supreme leader of the Bolivarian Circles is the President of the Bolivarian Republic of Venezuela, and the national and international headquarters where records related to the Bolivarian Circles are to be kept is the Miraflores Palace.<sup>120</sup>

243. Bolivarian Circles may be set up in function of their missions. Thus, Bolivarian Circles would exist, comprising individuals ready to attack problems in different areas: health, law and order, education, transportation, street maintenance, street sweeping, abandoned children, environment, justice, until all the problems affecting communities are covered. When a problem arises in a sector, block, neighborhood, or parish, the Bolivarian Circles meet, in plenary session, at the location selected for dealing with the issue. They select the Bolivarian Circle that is to be responsible for conducting the necessary formalities with the authorities (town hall, municipal councilors, legislative councils, ministry of the interior, National Assembly, office of the President of the Bolivarian Republic of Venezuela, public prosecutor's office, the office of the People's Defender, or any other authority with competence in the matter.<sup>121</sup>

244. Since its visit to Venezuela the IACHR has received many expressions of concern about the creation, training, organization, and public funding of these "Bolivarian Circles," the main purpose of which appears to be to provide political support for President Chávez's regime.

245. Some Circles are accused of being chiefly intended to act as shock troops to verbally and physically attack people identified as enemies of the political process – in particular, opposition political leaders, including members of the National Assembly and municipal authorities, journalists and media workers, and social leaders, especially those involved in trade unionism or with universities. It is also claimed that some of the Circles

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<sup>120</sup> Office of the President of the Bolivarian Republic of Venezuela, On-line registration of Bolivarian Circles, general guidelines, <[www.venezuela.gov.ve](http://www.venezuela.gov.ve)>, last visit: July 18, 2003.

<sup>121</sup> *Ibid.*

possess weapons. Specifically, these groups are accused of being involved in the events of April 11 and later political demonstrations, and they are blamed for the violence that took place on those occasions. It is also claimed that physical violence and verbal attacks on journalists are the work of the Bolivarian Circles, and that such behavior is encouraged by President Hugo Chávez himself, who publicly questions the actions of journalists.<sup>122</sup>

246. The government rejects these allegations and maintains that the Bolivarian Circles are simply instruments for social action and solidarity. In March 2003, the Commission met with Bolivarian Circle representatives at the headquarters of Venezuela's mission to the OAS. These representatives provided detailed information on their structure, functioning, and purpose. The National Director of Bolivarian Circles, Mr. Rodrigo Chávez, stressed that the circles receive no funding from the public coffers and have no political affiliation; sharing in the ideals of Bolívar is the only requirement for joining a Bolivarian Circle. The Circles are structured as social organizations that have no ties to the Fifth Republic Movement.

247. The Commission was told that the Bolivarian Circles are organized groups that meet to discuss problems in their communities and to direct them to the competent bodies for resolution. They are based on provisions contained in the Constitution of the Bolivarian Republic of Venezuela.

248. They also reported that the organization was structured horizontally. Specifically, commissions had been set up in ten areas, covering all the activities of interest to a community: for example, health, education, employment, etc. Through the Bolivarian Circles a community can also promote, foster, encourage, and celebrate culture, science, and sport, and undertake other activities in pursuit of development. The Circles' philosophy has been defined as that of the Bolivarian Revolution, centered on education and productive work, with a fair distribution of wealth and social justice. The representatives also said that Circle members can establish cooperatives and submit projects covering these ten areas to the organization's general coordinator. The project will then be assessed and channeled through different sources of public funding. Thus, they stressed, the goal of this form of organization is the full exercise of true participatory democracy, in order to encourage the decentralization of public funds.

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<sup>122</sup> IPI/IAPA, Press Release, *Mission of the Inter American Press Association and the International Press Institute expresses concern about the serious decline in press freedom prevailing in Venezuela*, September 25, 2002.

249. The Commission would like to offer a series of comments in connection with this. First of all, the IACHR notes that all the information dealing with the functioning, features, and purposes of Bolivarian Circles can be found on the webpage of the Venezuelan President's office; not only does this give the impression that it is affiliated with the national government, it also formalizes that affiliation. The point is driven home by the fact that the President of the Republic is the Circles' supreme leader.<sup>123</sup> Secondly, as regards the acts of violence with which the Bolivarian Circles are accused, the Commission holds that the impunity that has characterized all the cases in which they have allegedly been involved, and as a result of which the relevant responsibilities have not to date been identified, is a factor that must awaken suspicion or sow latent doubts with respect to their actions. Thirdly, the IACHR understands that political participation, the right of association., and freedom of expression are rights guaranteed by the American Convention; thus, the Bolivarian Circles, as free groups of citizens or grassroots organizations, can, in certain circumstances, serve as suitable channels for exercising those rights. Irrespective of this, the Commission understands that the expression of certain party-political ideas cannot serve as the justification for acts of violence or restrictions placed on the rights of others who have different political views or professional roles; as the American Convention stipulates, the rights of each person are limited by the rights of others, by the security of all, and by the just demands of the general welfare, in a democratic society.<sup>124</sup>

250. In addition, the existence of other armed groups – supporters of either the government or the opposition – cannot be discarded. The IACHR thus acknowledges the existence of certain opposition groups that could also be armed, as was evidenced by the weapons and explosives found on some of the arrested participants in the coup d'état of April 11-14, 2002. It is therefore essential to investigate the existence of such groups and to proceed to dismantle them as swiftly and as completely as possible since, according to the reports, in addition to being armed, these groups have been the driving force behind violence and direct threats made against human rights defenders, media workers, social leaders, and members of the political opposition. In particular, a monopoly on force must be maintained solely by the agencies of law enforcement, under the legitimate rule of law; the most complete disarmament possible of all civilian groups must be undertaken immediately.

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<sup>123</sup> *Ibid.*

<sup>124</sup> American Convention on Human Rights, Article 32(2).

251. To conclude, the Commission would like to note one legislative step forward of particular importance in addressing these problems. Thus, the IACHR applauds the National Assembly's enacting of the Civil Population Disarmament Law, which was published on August 20, 2002.<sup>125</sup> This legislation's stated purpose is to "disarm those persons who carry, use, or conceal firearms, illegally, in order to safeguard peace, coexistence, civic security, our institutions, and the physical integrity of individuals and their property."

252. The most important aspect of the law is that it rounds out Article 68 of the Venezuelan Constitution, which prohibits the bearing of firearms at public demonstrations of any kind. Thus, Article 10 of the new law provides as follows:

The bearing of firearms shall be prohibited in the following instances:

1. At public demonstrations or meetings, marches, strikes, rallies, and at elections.
2. In public places where alcoholic beverages are consumed.
3. While inebriated or under the effects of narcotics or psychotropic substances.

The provisions of paragraphs (1) and (2) of this article shall not apply to members of the National Armed Forces, civic security bodies, or state or municipal police forces, while in pursuit of their duties.

253. Article 11 goes on to stipulate:

Should the terms of the preceding article be disregarded, the competent authorities shall proceed to confiscate the weapons and to prepare a deed recording the circumstances of the confiscation and the bearer's details.

The weapon shall be forwarded to the Armaments Directorate of the National Armed Forces, from where it may be reclaimed by the bearer, if proof is furnished of its legality and a fine equal to twenty tributary units is paid.

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<sup>125</sup> Disarmament Law, Official Gazette No. 37,509, August 20, 2002.

#### **D. Recommendations**

254. As noted above, human rights defenders play a valid and productive role within society, at times of both conflict and peace. The Commission has directly observed the dedicated, objective, and highly positive work carried out by human rights organizations in Venezuela. Accordingly, the Commission maintains that organizations dedicated to the defense and promotion of human rights play a crucial role within democratic states.

255. The Commission notes its concern regarding the attacks on human rights defenders that, both directly and indirectly, prevent them from carrying out their tasks or hinder them in their duties. It therefore recommends that the Venezuelan government:

1. Adopt the measures necessary to prevent the weakening of the guarantees enjoyed by human rights defenders in their work and to ensure effective protection for their lives and personal integrity, in compliance with the terms of the American Convention and of the different resolutions adopted by the OAS General Assembly.
2. Design training activities for the members of law enforcement agencies, in order to ensure proper and effective protection for human rights defenders, particularly in the country's border regions.
3. Draft unequivocal statements to be given by high-level officials, in which they confirm the legitimacy and importance of the work of human rights defenders and of their organizations.
4. Act with redoubled resolve to ensure the investigation, prosecution, and punishment of threats, attacks, and other acts of intimidation against human rights defenders.

256. With reference to the activities of armed groups in Venezuela, the Commission reminds the Venezuelan State that it is its responsibility to guarantee the effective exercise of their rights by all Venezuela's inhabitants. The State's international responsibility is triggered if civilian groups act freely, violating human rights with the support, tolerance, or approval of the government. In this connection, the Commission recommends that the State:

1. Step up its efforts aimed at investigating the acts of violence committed by armed groups, and some of the incidents of violence

and aggression with which certain members of the Bolivarian Circles have been accused.

2. Adopt urgent and necessary measures to dismantle the armed civilian groups that operate outside the law, by strengthening the capacity for criminal investigations and punishing illegal acts committed by such groups in order to prevent their repetition in the future.

## CHAPTER III

### STATE SECURITY: THE ARMED FORCES AND THE POLICE

#### A. The Armed Forces

257. The 1999 Constitution included Title VII on “National Security”, which contains two chapters entitled “Principles of National Security” and “General Provisions”, which contain the rules and regulations governing National Security and the National Armed Forces, respectively.<sup>126</sup> In the statement of intent of the Constitution it says that to better accomplish the aims assigned to them under the Constitution, the National Armed Forces were unified into a single military corps composed of the Army, Navy, Air Force and the National Guard, which would function in an integrated manner in the scope of its competence to complete its mission; however, each of the four components that comprise the institution retains its characteristics and particular functions.<sup>127</sup>

258. Based on its analysis of these new Constitutional rules, the Commission considers that certain provisions and institutions have been included that are questionable when viewed in the light of a democratic conception of the defense and security of the state.

259. First, with regard to attribution of responsibility and jurisdiction over national security, the Commission notes that the terminology used in the constitutional provisions contains areas of imprecision or ambiguity that could lead to erroneous interpretations regarding the scope of the state’s responsibility in this area, as are reflected also in the recently adopted Organic Law on National Security [*Ley Orgánica de Seguridad de la Nación*].

260. Article 322 of the Constitution of the Bolivarian Republic of Venezuela provides that:

National security is an essential purview and responsibility of the State, based on the overall development of the latter, and its defense is the responsibility of all Venezuelans, as well as of all public- and private-law natural and legal persons within the geographical limits of Venezuela.

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<sup>126</sup> See Constitution of the Bolivarian Republic of Venezuela, Title VII, Chapters II and III.

<sup>127</sup> See statement of intent of the Constitution of the Bolivarian Republic of Venezuela, Title VII.

261. For its part, Article 326 provides that:

National security is based on joint responsibility between the State and civil society to implement the principles of independence, democracy, equality, peace, freedom, justice, solidarity, promotion and conservation of the environment and affirmation of human rights, as well as on that of progressively meeting the individual and collective needs of Venezuelans, based on a sustainable and productive development policy providing full coverage for the national community. The principle of joint responsibility applies to the economic, social, political, cultural, geographical, environmental and military spheres.

262. From its reading of the above-transcribed provisions, the Commission notes that that first establishes that national security, as distinct from national defense, is essentially the purview of the state and that responsibility for it is attributed to all natural and legal persons within the territory of the country. The second provision, meanwhile, introduces the principle of joint responsibility between the state and society. The Commission believes it necessary to be precise on certain aspects in that regard. It should be mentioned that national security as the function of the defense of the state against foreign aggression is a duty of the state, which has the monopoly on the use of public force and, therefore, this duty cannot be extended to civil society; indeed, it is not even feasible to place the latter on an equal plane with respect to this duty of the state. The state may receive cooperation from civil society on certain security matters, but that is not say that possession and responsibility for such a duty may reside also with institutions alien to the state.

263. In that connection, the Commission is concerned at the provisions contained in Article 5 of the Organic Law on National Security, which says:

The State and society share responsibility for the security and overall defense of the nation, and the various activities which they undertake in the economic, social, political, cultural, geographic, environmental, and military spheres, shall seek to ensure that the national interests and objectives set down in the Constitution and Laws are met.<sup>128</sup>

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<sup>128</sup> Organic Law on National Security, published in Official Gazette N° 37594 of December 18, 2002.

264. The Commission takes the view that the security of a democratic state is founded, *inter alia*, on values such as peace, liberty, justice, equality, protection of human rights and democratic coexistence; however, the foregoing does not mean that civil society can be placed on the same tier of responsibility as the state, which has the lawful monopoly over the use of public force, and is bound by a system of domestic and international responsibility distinct from that applicable to private persons.

265. Regarding a second point on this issue, the Commission notes that the Constitution extends the scope of the concept of security beyond purely the military sphere to encompass, *inter alia*, the cultural, social, economic, and political spheres. In this respect, the IACHR considers it important to mention that in the framework of a democratic society this broad and progressive notion of national security calls for appropriate interpretations that do not extend competencies of the armed forces to other spheres separate from the armed services. The foregoing acquires greater significance when these matters concern security operations and the National Executive, under Article 325 of the Constitution, reserves the right “to classify and control disclosure of matters directly relating to the planning and execution of operations concerning national security”.

266. Furthermore, a new national security agency called the National Defense Council was created as the “highest consultative organ for planning and advising Government on matters relating to the overall defense of the Nation”. Article 323 of the Constitution provides that:

The National Defense Council is the highest consultative organ for planning and advising Government on matters relating to the overall defense of the Nation, its sovereignty and the integrity of its geographical area. To this end, it is also charged with determining the strategic concept of nationhood. Presided over by the President of the Republic, it also includes the Executive Vice-President, the Speaker of the National Assembly, the Chief Justice of the Supreme Court of Justice, the Chairman of the Republican Ethics Council and the Ministers of Defense, Internal Security, Foreign Affairs, and Planning, and any others whose participation may be deemed appropriate. The pertinent organic law shall determine the organization and powers of the National Defense Council.

267. A number of misgivings have been brought to the attention of the IACHR regarding this agency, to the effect that it is an agency with insufficiently clearly defined powers in the area of national defense, whose composition includes, by constitutional mandate, branches of government that are independent from the Executive and the President of the Republic - who presides over it, such as the Speaker of the National Assembly, the

Chief Justice of the Supreme Court, and the President of the Republican Ethics Council [*Consejo Moral Republicano*].

268. The Commission notes that at this writing, the law containing the regulations governing this agency had not been enacted, and therefore, it considers it essential for legislators immediately to adopt a law that sets out the competencies and powers of this new organ, as well as the conditions determining the actions of the authorities that comprise it, and that strictly delimits the powers and mechanisms for such actions. Finally, bearing in mind the importance of the competencies assigned, particularly as regards determination of the strategic concept of nationhood for the purposes of national defense, the Commission points out that the regulations governing this new agency should be in strict accord with the principles of the rule of law regarding the independence and separation of powers.

269. A third aspect that causes particular concern to the IACHR has to do with the constitutional provisions on the competencies and powers with respect to the internal security of the country of the National Guard as a security body that is part of the structure of the Venezuelan armed forces. Indeed, one of the Commission's preoccupations with respect to citizen security in Venezuela has to do with the participation of the armed forces in activities that should be the exclusive responsibility of the police.

270. In respect of the foregoing, the IACHR notes with disquiet that the Constitution provides for the participation of parts of the armed forces in internal security matters; indeed, Article 329 of the Venezuelan Constitution provides that:

The Army, Navy and Air Force have as their essential responsibility the planning, execution and control of military operations required to ensure the defense of the Nation. The National Guard shall cooperate in carrying out these operations, and shall have as its basic responsibility that of conducting operations needed to maintain internal order within the country. The National Armed Forces may carry out the administrative policing and criminal investigation activities provided for by law.

271. In similar fashion, Article 20 of the Organic Law on National Security provides the following:

The National Armed Forces constitute one of the fundamental pillars for the overall defense of the Nation, and are organized by the state to lead its military defense in joint responsibility with society. Their component parts, in their respective fields of action, have responsibility for the planning, execution and control of military

operations, in order to ensure the independence and sovereignty of the Nation; safeguard the integrity of the territory and other geographical areas of the Republic; and cooperate in the preservation of internal order. The participation of the National Armed Forces in the overall development of the National shall be determined by law.<sup>129</sup>

272. The Commission points out that in a democratic system it is essential to make a clear and precise distinction between internal security as a function for the police and national defense as a function for the armed forces, since they are two substantively different institutions, insofar as the purposes for which they were created and their training and preparation are concerned. The history of the hemisphere shows that, broadly speaking, the intervention of the armed forces in internal security matters is accompanied by violations of human rights in violent circumstances. Therefore, practice teaches us that it is advisable to avoid the intervention of the armed forces in matters of internal security since it carries a risk of human rights violations.

273. In this connection, the IACHR has received information about the participation of the National Guard in citizen security matters and even in other areas of government, which is incompatible with democratic requirements in matters of internal security, particularly when in the course of such interventions serious acts of violence are regularly verified in the framework of allegations of excessive use of force by the National Guard.

274. At the international level, this issue has also brought concern to other international agencies that have questioned the excessive use of force by the National Guard.

275. On this issue, the IACHR is concerned that the functions of the different state security services are intertwined in the area of internal security, since there is no delimitation between the competencies of the National Guard and those of the police. This lack of coordination among the different forces in charge of internal public security has been made glaringly apparent, particularly given the events of April 2002, as is described in the following section on the police.

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<sup>129</sup> *Ibidem.*

<sup>130</sup> Amnesty International has been denouncing excessive use of force by the National Guard, as it did in "Venezuela: A Human Rights Agenda for the Current Crisis", January 21, 2003. Human Rights Watch expressed itself in a similar vein in its 2003 annual report on Venezuela.

276. This situation has worsened due to the failure of the Metropolitan Police to patrol the streets of Caracas after they declared themselves on strike, and later also when the Ministry of the Interior ordered their intervention. This difficult situation has led to a noticeably greater military deployment. At the time of this writing, the Metropolitan Police had not been restored all of its powers, although its intervention was ended by a Supreme Court ruling on a petition for annulment and amparo interposed by the Mayor of Caracas.

277. The Commission has also been informed of a series of reports of disproportionate use of force by the National Guard in the exercise of functions in the area of citizen security. By way of illustration, the Commission can cite the events of January 17, 2003 in the City of Valencia, State of Carabobo. In a procedure directed and carried out by the *Core No. 2* of the National Guard to raid the warehouses at two facilities -PANAMCO – Coca Cola and Empresas Polar-, there were allegations that military personnel of the National Guard were responsible for disproportionate use of force when they allegedly misused and injured company employees and opposition demonstrators, who were at the gates of those warehouses. Indeed, violence was used against several women, in particular 47-year-old Ms. Elba de Diamante, coordinator of the association *Mujeres por Venezuela* [Women for Venezuela] and Ms. Marianela Zafrané, age 70, and Ana Stefanelli, who were also injured. It is also alleged that some employees and attorneys of PANAMCO – Coca Cola and Empresas Polar were subjected to arbitrary arrest and violation of their right to human treatment. The IACHR was informed that among the following, serious harm was caused to Messrs. Wilmer Pérez (audit manager), Adolfo Jarrín (general manager), and José Dionisio Morales (attorney), who work for Empresas Polar and were at the Guacamaya warehouses in the State of Carabobo.<sup>131</sup>

278. Other examples can also be mentioned of the implications of involving the National Guard in the preservation of internal security. On December 3 and 4, 2002, there were incidents of violence and repression perpetrated by the National Guard in the exercise of their functions to maintain public order at demonstrations held in the environs of La Carlota “Generalísimo Francisco Miranda” Air Force Base. The Commission was told that tear gas, weapons and blunt objects were used, that individuals were seen carrying military weapons, and that there were snipers on buildings adjoining the aforesaid military facility. The IACHR has also been informed that a demonstration in the vicinity of the Commander General of the

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<sup>131</sup> IPS, *Inter Press Service*, Latin America, Venezuela, Humberto Márquez.

National Guard was violently broken up. In this respect, the IACHR was told that the Ombudsman and the Attorney General [*Ministerio Público*] issued statements in which they said that such incidents were evidence of excessive use of force by National Guard personnel in public order functions.

279. The Commission considers it necessary to mention in connection with the actions of the National Guard in the area of citizen security, that the latter should not only respect human rights, but also be properly trained so as to be able to perform an effective task whenever it engages in functions in cooperation with civilian agencies. Without prejudice to foregoing, the Commission reiterates the need for an amendment of the laws governing the operational structure of the security services, in order to avoid the use of the armed forces in tasks connected with the preservation of internal public order, bearing in mind the requirements of a democratic society and as a necessary precondition to restore their credibility as an institution and to ensure the rights of citizens.

280. The IACHR received with extreme concern reports of undue influence of the armed forces in the country's political affairs, as well as excessive involvement by the armed forces in political decision-making. The Commission notes that this issue has a normative dimension, given the deletion from the Constitution of the express provision regarding the "non deliberative" nature of the armed forces, and, furthermore, a *de facto* dimension as a result of the events that occurred following the break with the constitutional order in April 2002.

281. With respect to the constitutional dimension, the IACHR observes that the new Constitution omits a precept traditionally included in the Constitutions of Venezuela, which provided that the armed forces were an "apolitical and non deliberative" body. In this connection, it is worth citing Article 132 of the 1961 Constitution:

The National Armed Forces comprise an apolitical and non deliberative institution organized by the state to safeguard national defense, the stability of democratic institutions, and respect for the Constitution and laws, abidance with which shall always be above any other duty. The National Armed Forces shall be at the service of the Republic, and in no case at the service of any person or a political partisanship.

282. The new constitutional text replaces it as follows:

The National Armed Forces constitute an essentially professional institution, with no political orientation, organized by the State to guarantee the independence and sovereignty of the Nation and ensure

the integrity of its geographical area, through military defense, cooperation for the purpose of maintaining internal order and active participation in national development, in accordance with this Constitution and the law. In performing their functions, they are at the exclusive service of the Nation, and in no case at the service of any person or political partisanship. The pillars on which they are founded are discipline, obedience and subordination. The National Armed Forces consist of the Army, the Navy, the Air Force and the National Guard, which function in an integrated manner within the scope of their competence to fulfill their mission, with their own overall Social Security system, as established under the pertinent organic law.

283. Accordingly, the reference to their non deliberative nature “has been completely” omitted. The Commission considers that such an omission signifies a negative setback for democratic institutions because, when considered in the light of the military’s newly granted right to vote, it sends an implicit or tacit message that encourages the armed forces to choose sides in the political arena and to intervene in favor of the government or the opposition, creating situations of insubordination that are unacceptable in a democratic context.

284. As regards the de facto dimension of this issue, of particular concern to the Commission is the fact that the aforementioned participation of the armed forces in the political affairs of Venezuela has included a series of acts that are alien to the normal activities of institutions under the rule of law. Indeed, the Commission notes that both the Government and some sectors of society rely on the National Armed Forces or on groups of officers to take their side; this even led to the break with the constitutional order, as seen, concretely, in the measures adopted following April 11, 2002, by a dissident sector of the Armed Forces, which was involved in the planning and execution of the coup d’état. The politicization and division of the military was made clear on that occasion by the fact that events showed that military personnel planned the coup, and that the President Chávez was also restored to the presidency with military backing.

285. Without prejudice to the foregoing, despite the rebellious conduct of some officers, it should be mentioned that, overall, the armed services defended the constitutional order. It should also be recognized that the Armed Forces refused to carry out repressive plans against the civilian population during the events of April, particularly April 11. This contrasts favorably with the tragic examples in the history of region.

286. The Commission notes that the abortive coup highlighted a split in the armed forces. Indeed this division was exteriorized when, on

October 22, a group of 14 military chiefs declared themselves in “legitimate disobedience” of the Government and called on other members of the armed forces to join them. The generals said that they considered the Plaza Francia, the place where they read out their declaration of disobedience, to be “liberated territory”. The Commission has received information to the effect that, to date, those military officers remain in the aforesaid plaza in a state of disobedience.

287. The IACHR emphatically underscores that, pursuant to Article 4 of the Inter-American Democratic Charter, the constitutional subordination of all state institutions to the civilian authority is essential to democracy.

288. For that reason, the Commission points out that the armed forces cannot engage in political decision making. The Commission considers it essential for the Venezuelan state urgently to implement the measures necessary to ensure that the armed forces do not engage in political decision making and to prevent the participation of these institutions in the political affairs of the country. In that connection, it is necessary to punish any involvement in political decision making by the armed forces, in order to avoid further acts of insubordination of sectors of the armed forces against the democratically elected civilian authority. Finally, to restore the credibility of the armed forces and protect the rights of citizens, it is essential to ensure that the armed forces and the security services refrain from involvement in political decision making, are subordinate to civilian authority, and act with impartiality. In that regard it is also essential to avoid their use for tasks connected with preservation of public order.

289. Furthermore, it is essential to take resolute steps to enforce military and criminal codes that punish such conduct, in order to avert acts of insubordination by sectors of the armed forces against the democratically elected civilian authority. As mentioned, the reality in the region shows is that the involvement of the armed forces in political decision-making tends to precede departures from the constitution, which almost always lead to serious violations of human rights. It is the responsibility of all sectors, but particularly that of the Government, to ensure that the armed forces play exclusively the roles of defending the national sovereignty for which they have been established and trained.

290. In this context, the IACHR expresses its profound concern at the murder in the small hours of February 16, 2003 of three dissident soldiers: Darwin Arguello, Corporal 2<sup>nd</sup> class (Army); Ángel Salas, Leading Seaman 2<sup>nd</sup> class (Navy); Félix Pinto, Corporal 2<sup>nd</sup> class (Air Force); and of an adolescent girl, Gabriela Peroza. The corpses were found on an area of waste ground in the Parque Caiza sector, near the road to Guarenas (on the

outskirts of Caracas). The Commission has been informed of significant progress in the investigation in that respect. Indeed, a minor girl of 14 survived the incident when the shot she received that night only grazed her head and she was apparently left for dead by the attackers. She recognized two men who allegedly fired the shots that killed the aforementioned victims. The surviving minor remained in Domingo Luciani Hospital until she recovered and then taken on April 15, 2003 to the Palace of Justice to make her statement. The Commission reiterates to the state its duty to continue to investigate seriously and to punish those responsible for the incident.

291. Finally, another aspect of concern to the Commission is the establishment of a procedural privilege in favor of generals and admirals of the armed forces, given that, under the Constitution, in order to impeach them, the Supreme Court of Justice must first rule whether or not there are grounds to do so. Article 266 (3) of the new Constitution expressly provides:

The powers of the Supreme Court of Justice are to:

[...]

3. To rule whether or not there are grounds to impeach the Vice President of the Republic; members of the National Assembly or the Supreme Court of Justice itself, Ministers; the Attorney General; Prosecutor General; Comptroller General of the Republic; the Ombudsman; Governors; general officers and navy admirals of the National Armed Forces; or the heads of Venezuelan diplomatic missions; and, if so, to refer the record to the Prosecutor General of the Republic or whomever is acting in his capacity, as appropriate, and if the offense charged is a common crime, the Supreme Court of Justice shall retain jurisdiction over the matter until a final judgment is rendered.

[...]

292. In respect of the foregoing, the Commission considers that this prerequisite is not compatible with the requirements of the rule of law in relation to proper administration of justice, in the sense that it can constitute a privilege that affords impunity to members of the armed forces. A case in point is the preliminary hearing on merits held at the request of the Prosecutor General of the Republic, Mr. Julián Isaías Rodríguez Días, to determine if there was probable cause to assume that four officers, Rear Admirals Héctor Ramírez Pérez and Daniel Comisso Urdaneta, and Generals Efraín Velasco and Pedro Antonio Pereira, bore responsibility in connection with the events of April, 11, 12 and 13, 2002.

293. In a judgment of August 14, 2002, the Supreme Court of Justice acquitted the aforementioned officers, finding insufficient grounds to prosecute them on the charge of military insurrection. The proposed decision of Justice Franklin Arriachi, which rejects the existence of grounds to impeach the officers for “military insurrection”, was approved by Venezuela’s topmost judicial organ by 11 votes in favor and eight against.<sup>132</sup>

## **B. The Police**

294. The police force is a fundamental institution to uphold the rule of law and to guarantee the security of the population. Given its nationwide coverage and the variety of its functions, it is one of the State institutions that most often has relations with the public.

295. The new Venezuelan Constitution provides at Article 332 that:

The National Executive, in accordance to law, shall, to maintain and restore public order; protect citizens, homes and families; support the decisions of the competent authorities, and ensure the peaceful enjoyment of constitutional guarantees and rights, organize:

1. A uniformed national police force.
2. A scientific, criminal, and criminalistic investigations force.
3. A civilian fire department and emergency management corps.

The citizen security organs are civilian in nature and shall respect the dignity of the person and human rights, without discrimination of any kind.

The functions of the citizen security organs constitute a concurrent jurisdiction with those of the States and Municipalities under the terms prescribed in this Constitution and the law.

296. In this respect, the Commission notes a substantial shortcoming in the scope of police activity: the National Assembly has not passed the National Police Force Law pursuant to the fourth transitory provision and in accordance with Article 332 of the Constitution. According

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<sup>132</sup> Supreme Court of Justice, Full Interim Chamber, Judgment of August 14, 2002, Venezuela.

to the information supplied by the Ministry of the Interior and Justice, there are currently 95 police forces in existence in the country, 71 of which are municipal police forces and 24 are state police forces. In addition there are the Scientific, Criminal, and Criminalistic Investigations Force (CICPC) and the DISIP (political police), which function at the national level.<sup>133</sup> The States of Amazonas, Apure, Falcón and Portuguesa are the only ones without municipal police forces; only the state police forces operate in those States.

297. In effect, citizen security in the country deteriorated in proportion to the scale of violence that erupted with the events of April. Thus, in the current climate citizen security in Venezuela is particularly compromised. First, there was an obvious failure to design and implement a public policy on citizen security. Second, the increasing independence of the police forces, their open participation in day-to-day political affairs, the recurrent use of force to contain crime and violence, and their connection with criminal acts, impair the ability of this institution to carry out its functions.

298. Indeed, the Commission notes the existence of a problem in the conduct of the various police forces as evinced by a series of events, the most important ones being: the strike of the Metropolitan Police starting in October 2002; police strikes in several states around the country; proliferation in various states of death squads [*grupos de exterminio*] with ties to police organizations, a situation that infringes the rule of law and, in particular, that violates the right to life; disproportionate use of force in certain circumstances, the murders that were attributed to the Metropolitan Police at the time of the break with the constitutional order and the political struggle between the National Executive and Caracas City Hall to control that institution.

299. The Commission finds from its analysis of the current state of the rule of law, the most significant events, given their impact on institutions, are: the activities of death squads that would appear to operated with the acquiescence of state police forces, as will be examined in connection with violations of the right to life; the measures used by the police in events of April; and the intervention of the Metropolitan Police, which has been widely rejected in society because it is regarded as a

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<sup>133</sup> The State of Miranda is the federal entity with the largest number of municipal police forces (17). It is followed by the State de Anzoátegui (10), while in third and fourth place are Carabobo and Zulia, with seven and five municipal police forces, respectively. Despite the high number of police forces in these states (55% of the total), 47% of all recorded crime occurred there in 2001, as well as 51% of all known homicides.

manifestation of political polarization in Venezuela, to the extent that the Metropolitan Mayor is connected with the opposition sectors.

300. With respect to the actions of police forces, the events that occurred from April 11 to 14, 2002, in first place conspicuously highlighted the lack of security policies. In that connection, the events of those days, which resulted in serious injuries and many deaths, show that the Venezuelan state continues to have serious difficulties in controlling confrontational mass public demonstrations of the citizenry in the framework of the Constitution, and that the operations planned by the various security forces either were not carried out or failed, which, furthermore, drew attention to the lack of effective internal control mechanisms.

301. In second place, the events of April 11 plainly revealed the politicization of this police body. Indeed, there are accusations and counter-accusations regarding the actions of the police forces on April 11, 2002. Some sectors accuse the National Guard of protecting pro-government groups, and say that for that reason they deal violently with opposition groups; likewise, the former say that the Metropolitan Police accompany opposition groups on demonstrations and, therefore, shoot at pro-government demonstrators. In this connection, the Commission emphatically points out that the lawful function of the security forces is to protect peaceful demonstrators and to ensure public security, acting with complete impartiality towards all the Venezuelan citizens, regardless of their political affiliation or the content of their demonstrations.

302. In this case, the Commission considers from its review of the situation that it is necessary separate the behavior of the political activists on both sides from that of the police forces. Under international law and the Venezuelan Constitution, the actions of the security forces in democratic systems should exclusively serve the interests of society at large, not given political factions. In other words, in exercising their public functions, the police should not side with political parties or movements, however large they may be, against other similar groups that confront or threaten them. The Commission notes that one of the causes of the crisis of public order was the neglect by the police forces of their fundamental mission to protect the free exercise of rights by citizens, instead of which they became directly embroiled in the political clash, with highly negative consequences for the current situation in Venezuela.

303. As to the intervention of the Metropolitan Police, it was brought to the attention of the IACHR that the Ministry of the Interior and Justice ordered that intervention on November 16, 2002. Accordingly, personnel of the National Guard, the Army, and the DISIP (political police)

proceeded to seize control of the majority of Metropolitan Police stations, while Army armored vehicles stationed themselves at the entrances to the seized police stations. According to the information supplied, the police dispute that triggered this measure was a symptom of the polarization of the political situation in Venezuela. Indeed, the Commission was informed that on October 1 a group of 80 pro-government agents took over the communications center at the Metropolitan Police headquarters to demand the back pay owed to them. Subsequently, on November 12th, those same officers, armed with weapons, forced their way into City Hall where for five hours they held captive the Metropolitan Mayor, who publicly supports the opposition groups. This incident led to the violent confrontation between police sympathetic to the different political groups. This confrontation brought about the death of two people and the injury of 20 others, as a result of which the President ordered the intervention of the Metropolitan Police. The aforementioned events lead the Commission to presume that the circumstances underlying the order to intervene the Metropolitan Police were political in nature.

304. By Resolutions 567, 568, and 569 of November 16, 2002, published two days later in Official Gazette No. 37. 572, the Ministry of the Interior and Justice proceeded to remove from office the High Command of the Metropolitan and appointed a new Director, who, in turn, would appoint a new Executive Board. This decision had a major impact internally. Indeed, different sectors of civil society rejected the decision of the National Executive to intervene the Metropolitan Police because they considered the measure unconstitutional.<sup>134</sup>

305. According to publicly available information, the Office of the Mayor went to the Office of the Prosecutor General of the Republic and the Supreme Court of Justice on 25 November, 2002 to present a complaint against the military takeover of the Metropolitan Police and to lodge with the Supreme Court a petition for annulment and *amparo* against the administrative measure ordered by the Ministry of the Interior and Justice.

306. As a result of those measures, on December 19, 2002, the Supreme Court of Justice issued its decision on the petition for annulment and *amparo* interposed by the Metropolitan Mayor of Caracas. The Court ordered the annulment of the aforementioned Resolution N° 569 of the Ministry of the Interior and Justice which appointed Mr. González Sánchez Delgado as the Director General in Charge of the Metropolitan Police of

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<sup>134</sup> COFAVIC, Public Communiqué, *COFAVIC Rechaza Uso Desproporcionado de la Fuerza Pública* [COFAVIC Rejects Disproportionate Use of Public Force], December 4, 2002.

Caracas. The Court ruled that the officials appointed by the Mayor to the leadership of the Police should resume their regular activities in the framework of their powers and of the guidelines and plans determined by the Citizen Security Council.<sup>135</sup> The powers of the Metropolitan Police were thus restored in the above-described manner. The Court also ordered the Armed Forces to leave all police stations within 15 working days, unless the Security Council were to decide otherwise; during that period the Armed Forces and the Police would be required to coexist.<sup>136</sup>

307. On January 8, 2003 the Security Council decided “to extend the temporary special situation provided in Decree N° 567 (appointment of a temporary Director of the Metropolitan Police) and also the presence of military units in police stations, until responsibility for the acts of violence attributed to the Metropolitan Police has been clearly determined and the demands of the Citizen Security Council are met”.

308. Following the aforementioned judgment of the Constitutional Chamber, the Government, for its part, proceeded to retain possession of the arms and communications equipment of the Metropolitan Police. Finally, the Commission was informed that on October 9, 2003, the intervention of the Metropolitan Police was lifted, thus finalizing its removal from military control. That measure was the result of a resolution issued by the Constitutional Chamber of the Supreme Court of Justice, which ordered the enforcement of the judgment ordering the intervention to be lifted.

309. Based on the foregoing, the Commission notes that the police forces are plagued by a series of problems. First, the IACHR reiterates its concern at the politicization of the security forces, and also at the current predicament of the Metropolitan Police. It further notes that the judgment of the Supreme Court has not yet led to the full normalization of its lawful powers and functions, in particular, since at the time of this writing it had

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<sup>135</sup> The Citizen Security Council was created by Law N° 1453 of September 20, 2001, and published in the Official Gazette of November 6 of that year. Article 18 provides, “The purpose of the Citizen Security Council is to study, formulate and evaluate national policies on citizen security”. With respect to its composition, Article 19 provides, “The Citizen Security Council shall be composed of the Minister of the Interior and Justice, who presides over it; the Vice Minister of Citizen Security of the Ministry of the Interior and Justice; a representative of the State Governors; a representative of the Mayors; the National Coordinator of the Police; the National Coordinator of the Scientific, Criminal, and Criminalistic Investigations Force; the National Coordinator of the Fire Department; and the National Coordinator of the Civil Defense and Disaster Management Organization”.

<sup>136</sup> Supreme Court of Justice of Venezuela, Constitutional Chamber, Judgment of December 19, 2002.

not recovered its arms and certain operational equipment. As a result, this police force is weaponless and for that reason has operational problems. In this respect, the Commission considers it especially important to mention that it is highly dangerous for the powers of the forces of public order, in this case the Metropolitan Police, to be politicized, either by government sectors that regard it as an enemy police force, or by opposition groups that consider the Metropolitan Police to be their force. In that connection, the Commission notes that the aforementioned intervention ordered by the government gave the impression, while the measure remained in effect, that it was prompted by partisan motives and was not by a desire to provide a better security service.

310. Finally, with respect to the police in general, no national police force has yet been set up, nor has a plan of action been coordinated among the police forces of different states, which hampers effective policing and creates conflicts of jurisdiction.

### **C. Recommendations**

311. In keeping with its previous recommendations the Inter-American Commission recommends that the State of Venezuela:

1. Amend the provisions contained in Article 326 of the Constitution and Article 5 of the Organic Law on National Security with respect to making national security a matter of joint responsibility for the State and Civil Society, so that, in keeping with the aforementioned, they are fully compatible with democratic requirements as regards duties and responsibilities in the area of State security.
2. Create immediately the regulations of the National Security Council. These regulations should set out the powers and competencies of the Council and the conditions governing the actions of the branches of government that comprise it, as well as the necessary guarantees to ensure their impartiality and independence.
3. Adopt the measures necessary to avoid the intervention of the Armed Forces in non-exceptional public security operations and to curb the disproportionate use of public force.
4. Enact public security policies designed to ensure effective coordination among the various forces charged with maintaining

public security, and to coordinate security measures with the Mayor of the Metropolitan Area as head of the Metropolitan Police.

5. Intensify training efforts in the area of human rights for members of the State security bodies and implement mechanisms for punishment and removal of members involved in human rights violations in the performance of their duties.

6. Take resolute steps to enforce military criminal codes that punish insubordination by members of the armed forces against the democratically elected civilian authority.

7. Adopt, as ordered by the Supreme Tribunal of Justice, the measures necessary to restore the Metropolitan Police of Caracas to its regular duties and to ensure that the Armed Forces do not exceed their jurisdiction and functions. The IACHR also reminds the State of its duty to investigate in order to determine the responsibilities of members of the State security bodies with respect to the events of April.

8. Accord priority to the adoption of a professional policy on citizen security that meets the requirements of the Convention and of the rule of law.



## CHAPTER IV

### RIGHT TO LIFE

312. One of the fundamental problems considered by the IACHR on its last on-site visit to Venezuela concerned violations of the right to life. The right to life is essential for the exercise of all other human rights. Therefore, in light of its importance and of the exceptional circumstances affecting the rule of law in Venezuela, the IACHR has reason and justification to conduct a separate analysis of observance of this right in that country.

#### A. Legal framework

313. In the Venezuelan legal system the right to life is recognized in the following domestic and international legal provisions:

314. The American Convention on Human Rights guarantees the right to life at Article 4, in the following terms:



Every person has the right to have his life respected. This right shall be protected by law and, in general, from the moment of conception. No one shall be arbitrarily deprived of his life.

315. At the domestic level Article 43 of the Venezuelan Constitution enshrines the right to life in terms transcribed below:

The right to life is inviolable. No law shall provide for the death penalty and no authority shall apply it. The State shall protect the life of persons who are deprived of liberty, serving in the armed forces or civilian services, or otherwise subject to its authority.

316. The 1999 Constitution also recognizes for the first time the prohibition of forced disappearance. On that basis, the Venezuelan Criminal Code was reformed to include this category of crime. The Commission considers the introduction of this prohibition to be a crucial step in the protection of the right to life in Venezuela.<sup>137</sup>

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<sup>137</sup> Article 45 of the Constitution of the Bolivarian Republic of Venezuela provides that: "All public authorities, whether military or civilian, are prohibited, even during a state of emergency, exception or restriction or guarantees, from effecting, permitting or tolerating the forced disappearance of persons. An official receiving an order or instruction to carry it out, has the obligation not to obey, and to report the order or instruction to the competent authorities. Any person that plans, commits, is complicit in, or conceals the crime of forced disappearance of a person shall be punished in accordance to law".

## **B. Situation of the right to life in Venezuela**

317. These legal guarantees notwithstanding, the Commission had occasion to observe that in practice the situation of the right to life has worsened considerably due to an increase in impunity and in violence. Reiterates complaints to that effect have alerted the IACHR to the need for the competent authorities to adopt appropriate and effective measures to combat this problem. The problem is especially prevalent in certain states in Venezuela, in particular, the States of Portuguesa, Anzoátegui, Falcón, Yaracuy, Caracas, Bolívar, Aragua, and Miranda, among others. In its visit to Venezuela in May 2002, the IACHR received copious amounts of information regarding the activities of these groups in different regions of the country, particularly in the State of Portuguesa.<sup>138</sup> Furthermore, at its 117<sup>th</sup> regular session in October 2002, the IACHR held a hearing on the activities of paramilitary groups in Venezuela, during which it was brought to the attention of the Commission that these organizations continued to operate with impunity in several States and that the families of victims and witnesses were constantly threatened.

318. More than 300 cases have been publicly reviewed of persons extrajudicially executed by paramilitary groups in more than seven states in the country; approximately 14 of the persons murdered were witnesses to such executions.<sup>139</sup> Furthermore, the escalation of violence has resulted in the murders of 55 persons in incidents of street violence and more than 500 people have been killed in alleged confrontations; however, none of these events has been sufficiently clarified.

319. Based on the foregoing, one of the issues that has most troubled the Commission in connection with the right to life in the framework of a progressive deterioration of the country's democratic institutions, are murders in the context of political unrest, which activates the duty of the State to prevent such incidents, conduct an investigation, and punish those responsible; as well as problem of so-called death squads or paramilitary groups.

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<sup>138</sup> IACHR, Press Release N° 23/02, Inter-American Commission Concludes its Visit to the Bolivarian Republic of Venezuela, May 2002.

<sup>139</sup> In this connection, it is important first to mention that in Venezuela the organizations known as paramilitary groups are death squads implicated in the phenomenon of social cleansing.

320. The following analysis concerns the activities of paramilitary groups as a particularly reproachable violation of the right to life in Venezuela.

### **C. Death squads and the phenomenon of social cleansing**

321. One of the most serious situations to have affected the right to life in recent years is the phenomenon of social cleansing. In a country where the cities are experiencing an upsurge in crime<sup>140</sup> and impunity for crimes, part of society is beginning to tolerate crime and to accept the activities of self-defense or "social cleansing" groups as they are inaptly named.<sup>141</sup> There is a significant correlation between this form of violence and aggression and the harsh living conditions found in the most impoverished areas, given that such incidents occur with greater frequency in deprived areas. Furthermore, the failure of the justice system to provide an effective response has the effect of transmitting the message to the public that "popular justice" is an acceptable alternative to the rule of law and due process. This issue is a most serious concern for the entire population because the characteristics and persistence of these attacks constitute a challenge to the rule of law.

322. Furthermore citizen security continues to be one of the most pressing issues for the population. There is deep popular dissatisfaction with the vulnerability that most Venezuelans feel, and this is coupled with the perception that the institutions responsible for the administration of justice are not equal to their tasks. The upshot of the shortcomings in the administration of justice is that the legitimate demands of the people in terms of protection and accountability are not met. The Commission considers that in a system that does not ensure that investigations, prosecutions, and punishment are carried out immediately and in an effective manner, there can be no proper respect and protection for the rights either of victims or of suspects. Therefore, as the Commission has reiterated in this report, priority must be given to ensuring that the state meets its undertaking to strengthen the administration of justice and eradicate impunity.

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<sup>140</sup> The Ministry of the Interior and Justice of Venezuela announced publicly that in 2000 alone there were 7,000 violent deaths in the country; of those 2,000 resulted from presumed confrontations between criminals and state security agencies. COFAVIC/Venezuela, *Democracia y Derechos Humanos, Informe Semestral: enero-agosto 2002* [Democracy and Human Rights, Semi-Annual Report, January-August 2002].

According to the Scientific, Criminal, and Criminalistic Investigations Force of Venezuela, on average 100 persons have been violently murdered every weekend since 2002.

<sup>141</sup> *Ibid.*

323. In its analysis of this problem, the Commission feels that it is important to reiterate what it has mentioned on other occasions, to the effect that a state is not only responsible for human rights violations committed by its agents and for similar conduct by paramilitary groups acting with its acquiescence or consent, but also that failure to adopt sufficient measures to prevent, investigate, and punish the criminal acts of private individuals or groups gives rise to its international responsibility.

324. On this matter, the Inter-American Court has ruled:

 The duty of the States Parties to organize the governmental apparatus and, in general, all the structures through which public power is exercised, so that they are capable of juridically ensuring the free and full enjoyment of human rights. As a consequence of this obligation, the States must *prevent, investigate and punish* any violation of the rights recognized by the Convention and, moreover, if possible attempt to *restore* the right violated and provide *compensation* as warranted *for damages* resulting from the violation.<sup>142</sup>

325. For the Inter-American Court, the duty of States under the Convention to prevent violations includes all those means of a legal, political, administrative and cultural nature that promote the protection of human rights and ensure that any violations are considered and treated as illegal acts.

326. For its part, the IACHR held:

 Notwithstanding the above, and although the Mexican State cannot be held responsible for all the problems affecting its citizens, it is responsible for human rights violations committed by State agents in the performance of their duties, even when they are acting outside the limits of their authority. This is also true when violations are committed by individuals, and the State has tolerated or consented to those acts. According to what has been said in earlier chapters of this report, the Commission reiterates that the State may also incur international responsibility in the event that it fails to adopt the measures required to prevent violative acts. It may also incur responsibility for failure to comply with its obligation to investigate and provide for adequate punishment of the persons responsible for

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<sup>142</sup> Inter-Am. Ct. H.R., Velásquez Rodríguez Case, Judgment of July 29, 1988, para. 166.

those violations, and for its failure to comply with its duty to provide for compensation or reparations to the victims.<sup>143</sup>

327. In that connection, the Commission finds that prevention of human rights violations or, as appropriate, their effective investigation and resulting punishment of those responsible is the state's duty, and failure to fulfill it engages its international responsibility. Furthermore, performance of this duty is a necessary condition for eradicating situations of impunity that lead to an escalation of violence, to the obvious detriment of the rule of law.

### 1. Nature of the phenomenon

328. The Venezuelan Ombudsman has acknowledged the existence of so-called paramilitary groups in seven states in the country.<sup>144</sup> In Portuguesa, some 400 kilometers from Caracas, the murders have been reported of more than 100 people by a so-called "*grupo de exterminio*". This group is reportedly composed of off-duty members of the State Police and the National Guard.<sup>145</sup> The situation is similar in the States of Falcón, Aragua, Yaracuy, Miranda, Anzoátegui, Bolívar and Caracas, among others, where almost 100 people have also been murdered by these groups, which apparently act with the acquiescence of the state police forces.<sup>146</sup>

329. It is important to mention that these groups have been in existence for a considerable time. Similar incidents have occurred in the past in different states in the country. One can mention, for instance, the case of the killings by "*Los Pantaneros*" of the Metropolitan Police in the Parish of Vega in Caracas in 1993, or the "*Escuadrones de la Muerte*" and "*Vengador Anónimo*", which operated in the State of Zulia between 1995 and 1996. While the existence of these groups in Venezuela is neither new nor recent, their number and activities have risen alarmingly in recent years.

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<sup>143</sup> IACHR, Report on the Situation of Human Rights in Mexico, 1998, para. 675.

<sup>144</sup> According to the Preliminary Report of the Ombudsman on Executions [*Informe Preliminar sobre ajusticiamientos de la Defensoría del Pueblo*] of October 2001, paramilitary groups operate in the States of Anzoátegui, Aragua, Bolívar, Caracas, Miranda, Portuguesa and Yaracuy. It is thought that the right to life of 392 people has been violated as a result of execution by the police, together with 10 forced disappearances. The above-mentioned states have more than 20 complaints.

<sup>145</sup> *Human Rights Watch*, 2003 Annual Report, "Social cleansing-type killings by police forces continued to be a grave problem".

<sup>146</sup> Amnesty International, 2003 Annual Report, Extrajudicial killings, Country/Section: Venezuela.

330. On examining this phenomenon, the Commission considers it important to make a preliminary clarification prior to analyzing the persons involved in and the peculiarities of this issue. It is necessary to make a distinction between two phenomena: on one hand, extrajudicial executions carried out by the police and, on the other, the activities of paramilitary groups, regardless of whether or not members of the police may be involved in both.

331. According to the information received, murders are perpetrated by paramilitary groups in which members of different state police forces and of the National Guard are involved. Also, there are certain patterns to these murders determined by the nature of the victim and the *modus operandi* of the execution. As regards the first point, as a rule the murder victims are young people with a criminal record and of very limited means, who are blackmailed and ordered to pay large sums of money and are killed when they are unable to make the payments demanded from them.<sup>147</sup> The Commission observes with grave concern that the death squads are not only an illegal means of social control, but that they are part of a criminal organization that operates for monetary gain within the state police force.

332. It is also common for victims to be attributed bogus criminal records in advance to justify the attack. Furthermore, relatives and witnesses are also often harassed and intimidated so as not to report the attackers. The same is true of judges and public prosecutors.<sup>148</sup>

333. The patterns of the killings vary depending on the region where they take place; however, in broad terms two *modus operandi* have been identified:

- Execution by persons wearing civilian clothing, usually with their faces covered, who go at night to the home of the victim to perpetrate the killing. This modality, which is typical of death squads, has predominated in the State of Portuguesa.<sup>149</sup> By way of an example one can mention what happened to Carlos Núñez Jiménez,

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<sup>147</sup> COFAVIC, Press Release, October 4, 2002.

<sup>148</sup> Ombudsman of the Bolivarian Republic of Venezuela, *Derechos Humanos en Venezuela, Anuario 2001* [Human Rights in Venezuela, 2001 Yearbook], pp. 355-371.

<sup>149</sup> See also the newspaper *El Nacional*, *Sucesos: Encapuchados en Portuguesa extorsionaban a los Delincuentes antes de Ejecutarlos* [Events: Hooded Men in Portuguesa Extorted Money from Criminals before Executing Them], May 24, 2001.

who, according to the complaint filed by his brother, Mr. Javier Jiménez, was arrested by four operatives in civilian clothes on Saturday, September 21, 2002, and appeared dead early on Sunday morning. Mr. Jiménez says that his brother's body was covered with beating marks; there were also swellings on his head and five bullet wounds that he allegedly sustained in a confrontation with the Falcón State Police that morning.<sup>150</sup>

- Execution in feigned confrontations, which is the most common modality. In these cases the killing is carried out by alleged police officers in the course of routine procedures, such as arrests or raids. In such instances, the victim is murdered at the scene of the procedure under the allegation by the police of a confrontation with the criminal. In other circumstances the victim is arrested, taken to the police jail, and several days later, during which time his whereabouts are unknown, he appears dead without any plausible explanation.<sup>151</sup>

334. One can cite the example of the youth Robert Johan Brito Primera, who was allegedly killed by the *Grupo Lince*, a death squad linked to the Falcón State Police, which says that the incident was the result of a confrontation. The relatives say that the youth was murdered at his home during a violent raid carried out by the police. A similar situation occurred in the case of Pedro Rafael Silveira Campos, who, according to his family, was arrested in the street by Anzóategui State police officers, who allegedly shot him in the region of his ear. According to witnesses to the incident, after killing him the police officers put him in the patrol car and drove him around the area, shouting out, "*Enfrentamiento* [Confrontation]".

335. Based on the foregoing, the Commission considers that there are four aspects worth highlighting that characterize the activities of these death squads in the country:

- Specific sectors of the community, such as suspected criminals, are the target of these groups.
- Involvement of police officers in alleged confrontations

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<sup>150</sup> Newspaper *La Mañana*, *Muerte en Jubilana el Fin de Semana, Familiar Denuncia que su Hermano fue Ajusticiado por la Policía* [Death in Jubiana at the Weekend, Brother Executed by Police Claims Relative], September 24, 2002, p.23.

<sup>151</sup> COFAVIC, COFAVIC/Venezuela, *Democracia y Derechos Humanos, Informe Semestral: enero-agosto 2002*. See also, Provea, Annual Report N° 14, Caracas, Venezuela.

- A crime-fighting campaign;
- Impunity.

336. The Commission also considers it relevant to mention that the persecution and extermination of individuals who belong to specific groups, such as alleged criminals, is a particularly reproachable violation of the right to life and of the right to humane treatment, which has repeatedly been condemned by this Commission. The fact that security officers belong to such groups also represents a radical departure from due process and the rule of law.

## 2. Impunity

337. A core aspect in the analysis of this issue is the impunity that typically surrounds these killings, since it allows these groups to operate. There is a clear connection between the impunity of these cases and the progressive increase in these acts of criminal violence.

338. The Commission has received information indicating that in spite of solid evidence against senior police officials in these cases, the persons responsible have not been convicted. In the majority of cases, law enforcement neither arrested nor brought charges against those responsible for murders attributed to the police, and in the cases where criminal proceedings were instituted, the trials were unreasonably delayed, which gives the impression of a blatant denial of justice.<sup>152</sup> The human rights organization, COFAVIC, has reported that 64% of the complaints received in the first half of 2002 concern cases of human rights violations by these groups linked to the state police forces, or to unidentified armed groups. COFAVIC also mentioned in its last report that this percentage was maintained in the second half of that year, inasmuch as 54% of the complaints received in that period concerned killings carried out by these groups. The Venezuelan state, for its part, said, in connection with the incidents reported in the State of Portuguesa, that for the period from March 2000 until January 2003, 119 cases were at the investigation stage, 127 were under examination, and only in eight had a judicial decision been reached.<sup>153</sup>

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<sup>152</sup> *Human Rights Watch*, 2003 Annual Report, "Social cleansing-type killings by police forces continued to be a grave problem".

<sup>153</sup> Ministry of Foreign Affairs of the Bolivarian Republic of Venezuela, State Representative on Human Rights to the Inter-American System and the International Community, January 21, 2002.

339. Amnesty International has said the following on this matter:



There were continued reports of scores of extrajudicial executions of perceived criminal suspects by police, or groups linked to the police, in a number of states including Portuguesa, Falcón, Aragua, Anzoátegui and Bolívar. Witnesses or relatives who reported these crimes were often themselves threatened or attacked. Despite the existence of clear evidence in many cases, police forces routinely presented these killings as acts of self-defence or suspects resisting arrest. No officials were prosecuted.<sup>154</sup>

340. In its latest report, the human rights organization, COFAVIC, systematizes the mechanisms of impunity as follows:

- Stigmatization: the victim is presented as an unsalvageable being despised by his community; his record is made public; the death is made to appear to have occurred during a confrontation as something expected by the community, for which reason, any complaint about the matter is unacceptable. Given that some of the victims of these groups come from the most underprivileged sectors of society and, very often, from dysfunctional family groups (with criminal records and a history of drug use, family strife, and domestic violence,) the stigma also extends to the relatives and close associates of the victim, who are presented by the police to the regional media as people completely lacking in moral fiber and credibility.
- Lack of diligence in investigation efforts: even though modern criminalistics make it possible to determine the circumstances in which a person died (distance from which he was shot, number of shots fired at the scene), technical tests are not carried out and since there is no evidence as a result, cases do not progress beyond the preliminary investigation stage. In perpetration of the crime there is little evidence that makes it possible to single out the killer; that is, it is easy to know which state security body he belongs to, but not the actual identity of the agent involved. This normally happens due to lack of cooperation between forces when it comes to the identification of the alleged culprits.
- Threats and coercion: in many cases witnesses and relatives, and even judges and public prosecutors, are threatened to dissuade them, as appropriate, from testifying or from carrying out the pertinent procedures, which guarantees the silence necessary to ensure impunity. With respect to the activities of these groups, the Inter-American Commission granted precautionary measures in favor of Mr. Luis Uzcátegui on October 18, 2002. Mr. Uzcátegui, the brother of Néstor Uzcátegui, who was allegedly murdered

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<sup>154</sup> Amnesty International, 2003 Annual Report, Extrajudicial killings, Country/Section: Venezuela.

at his home on New Year's Day 2001 by a Falcón State police squad, reported these facts to the regional press and has organized the relatives of other victims killed in similar circumstances. As a result he has been the object of ongoing intimidation and threats since he started to denounce the circumstances in which his brother and other persons were killed during alleged confrontations with Falcón State police forces. The Commission subsequently requested the Inter-American Court to order provisional measures, which were granted on November 22, 2002. Uzcátegui has also had to contest a complaint of aggravated defamation lodged against him with the Criminal Court of the State of Falcón. In this case, the Venezuelan state did not provide any protection to Mr. Uzcátegui and the criminal investigation into the murder of his brother has made no significant headway. Furthermore, the Commission has received complaints that relatives of victims have not had access to court records and that they are constantly threatened and intimidated.

341. Also worth mentioning is the situation of Mr. Luis Aguilera, Secretary General of the Human Rights and Peace Commission of Aragua, who has received many death threats and has been the target of intimidation and harassment as a result of the follow-up that the Commission carries out on the cases of extrajudicial killings that have occurred in the State of Aragua since 1999.<sup>155</sup>

342. In respect of this issue *Human Rights Watch* has said:



In most cases the judiciary either failed to detain and charge those responsible for killings attributed to the police, or trials were subject to excessive delays. Victims' family members and lawyers suffered death threats. Miguel Ángel Zambrano, a former inspector of the Portuguesa police who had carried out investigations into the activities of the death squads, kept receiving anonymous death threats by telephone, and was beaten and threatened by police officers who confronted him in person. Unidentified individuals he believed to be linked to the police shot at him twice, leading him to go into hiding. In Falcón, the state police commander lodged criminal complaints against people who denounced killings for "insulting the police."<sup>156</sup>

- The link between the Scientific, Criminal, and Criminalistic Investigations Force (CICPC) and the executive branch (Ministry of

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<sup>155</sup> Commission on Human Rights of Justice and Peace of Aragua, Public Communiqué, July 27, 2003, Venezuela.

<sup>156</sup> *Human Rights Watch*, Annual Report 2003, Social cleansing-type killings, Venezuela.

the Interior and Justice) has been a structural impunity mechanism that has undermined the independence and impartiality with which it operates. Therefore, it is difficult to guarantee their independence and impartiality when officials of the state or of other police forces are involved because, in practice, this agency functions as an auxiliary body of the judiciary. Under the Code of Criminal Procedures, the Attorney General's Office investigates crimes with the support of the Criminal Investigations Police. However, the CICPC continues to be under the administrative supervision of the executive branch, which compromises the integrity and transparency of the process.

343. Therefore, the Commission notes that the impunity that typically envelopes the activities of these groups magnifies the risks and fear of victims, relatives and witnesses, and is a cause of the constant repetition of these murders by paramilitary groups, which violate the rule of law and weaken the institutional framework of the justice system.

### 3. Conclusions

344. Based on the foregoing, the Commission concludes that as an extreme crime-fighting practice, the violent activities of these groups can only result in greater citizen insecurity. The lack of due diligence in terms of investigating, prosecuting, and punishing the members of the so-called death squads is fundamental in allowing them to operate.

345. In sum, the Commission considers that this serious issue reveals a police force lacking in professionalism, growing impunity, and mounting corruption as underlying causes of the phenomenon, which impacts directly on human rights. Furthermore, the acts highlight the absence of government policies aimed at resolving this reality, and, therefore, a spiral of impunity is generated whose correlation is the periodic outbreak of violent incidents.

346. Finally, the Commission recalls what it said in its press release t the conclusion of its on-site visit in, 2002, in which it mentioned that e lack of due diligence in terms of investigating, prosecuting, and punishing the members of the so-called *grupos de exterminio* is fundamental in allowing them to operate". Therefore, the Commission reiterates to the State its obligation to adopt urgent measures to dismantle these groups and to investigate and punish those responsible, and draws attention to the responsibility of the states of the Venezuelan interior in these cases pursuant to Article 28 of the American Convention in conjunction with 1(1) of the aforesaid international instrument.

**D. Recommendations**

347. In light of the seriousness of the situation entailed by the existence and activities of death squads, the Commission recommends that the Venezuelan State:

1. In accordance with seriousness of these cases, take immediate, urgent and effective steps to dismantle and eliminate the death squads that are active in the States mentioned in this report.
2. Conduct meaningful, thorough, conclusive and impartial investigations into all cases of extrajudicial execution.
3. Provide adequate reparations to relatives of victims of violations of the right to life attributable to agents of the State or to groups that have acted with its consent.
4. Provide effective protection measures for witnesses and relatives of victims.
5. Increase the human, technical and logistical resources allocated to the investigation of these "death squads" and to discharge immediately any security services personnel who may be involved.
6. Impart to members of the police and military training courses on observance of human rights in the exercise of public security duties.

## CHAPTER V

### THE RIGHT TO HUMANE TREATMENT

#### A. Introduction

348. Article 5 of the American Convention on Human Rights recognizes the right of all persons “to have his physical, mental, and moral integrity respected”; it also expressly prohibits the use of torture or “cruel, inhuman, or degrading punishment or treatment” against persons.

349. With respect to the right to humane treatment, the Commission observes that the worsening of the institutional conflict in Venezuela has spilled over into acts of violence that have led to violations both of the right to life, as described, and of the right to humane treatment. As regards the latter right, the Commission notes a series of aspects of particular concern. First, the high number of cases of torture and of cruel, inhuman and degrading treatment practiced by the state security forces. Second, the failure of the competent state organs to do their duty to investigate complaints on these cases and to punish those responsible, who usually remain unpunished. The latter encourages the reiteration of such conduct and the absence of effective procedures to monitor respect for the physical integrity of persons detained at civilian and military detention centers.

350. Furthermore, civil society organizations reported that the National Guard and local police forces frequently used excessive force to break up demonstrations or when detaining criminal suspects, in particular during the events of April 2002 and in later political rallies.<sup>157</sup> During the events of April the organization Provea counted 82 complaints of cases of violation of the right to humane treatment.<sup>158</sup> For its part, the Preliminary Report of the Ombudsman on the events of April mentions 24 complaints of violation of the right to humane treatment, 10 of which involved torture and nine illegal entry. The report mentions that at least 398 people were wounded by firearms, buckshot and other objects on April 11, 12, 13, and 14.<sup>159</sup> Although there were complaints of excessive use of force by security forces personnel in these instances, none of the complaints made by civil society organizations or by victims had been resolved at the time of this writing. As a result, they remain unpunished and neither judicial nor

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<sup>157</sup> Amnesty International, Annual Report 2003, Crisis in Venezuela, “Torture, ill-treatment and excessive use of force”.

<sup>158</sup> Provea, Annual Report N° 14, *Derecho a la Integridad Personal Durante los Sucesos de Abril* [Right to Humane Treatment during the Events of April], Caracas.

<sup>159</sup> Ombudsman of Venezuela, *Informe Preliminar: Sucesos de Abril* [Preliminary Report. The Events of April], Caracas 2002, pp. 6-31.

administrative responsibility has been apportioned to the state officials concerned.

## B. Torture and Cruel, Inhuman and Degrading Treatment

351. Venezuela has ratified the Inter-American Convention to Prevent and Punish Torture and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Under these instruments, Venezuela adopted the international duty, *inter alia*, to prevent and punish torture and to take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction. The Inter-American Convention to Prevent and Punish Torture defines torture in the following terms:

Any act intentionally performed whereby physical or mental pain or suffering is inflicted on a person for purposes of criminal investigation, as a means of intimidation, as personal punishment, as a preventive measure, as a penalty, or for any other purpose. Torture shall also be understood to be the use of methods upon a person intended to obliterate the personality of the victim or to diminish his physical or mental capacities, even if they do not cause physical pain or mental anguish.

The concept of torture shall not include physical or mental pain or suffering that is inherent in or solely the consequence of lawful measures, provided that they do not include the performance of the acts or use of the methods referred to in this article.<sup>160</sup>

352. The Commission had occasion to analyze information from numerous sources on the practice of torture in Venezuela. In light of the gravity of such acts, the IACHR deems it appropriate in this report to examine the situation of the right to humane treatment in Venezuela in relation to the practice of torture.

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<sup>160</sup> In this connection, the IACHR has said that for torture to exist three elements have to be combined:

1. it must be an intentional act through which physical and mental pain and suffering is inflicted on a person;
2. it must be committed with a purpose;
3. it must be committed by a public official or by a private person acting at the instigation of the former.

See 1995 Annual Report Inter-American Commission on Human Rights, Report N° 5/96, Raquel Martín de Mejía Case, Peru, p.198.

353. First, the Commission notes that one aspect of this issue of particular concern has to do with the fact that to date there is still no law that punishes torture in Venezuela, something that the IACHR regards as a legislative tardiness with serious consequences in this area. On the question of domestic legislation on torture, the fourth transitory provision of the Constitution of the Bolivarian Republic of Venezuela provides that the National Assembly should have passed within a year of its installation legislation punishing torture, either through the adoption of a law or through the reform of the Criminal Code. The Commission has informed that, while such a law was on the legislative agenda for 2002, no progress has been made in its drafting or discussion.

354. The Commission considers it urgent to draft and enact the aforementioned legislation. Without prejudice to the foregoing, the IACHR values as positive the inclusion in the Constitution of a provision that accords constitutional rank to the human rights treaties ratified by the state, and also that the new Constitution has strengthened and widened the legal provisions on protection of the right to personal security and humane treatment, and prevention of practices that violate that rights.

355. In this respect, Article 46 of the new Constitution provides:

Everyone is entitled to respect for his or her physical, mental and moral integrity, therefore:

1. No person shall be subjected to cruel, inhuman or degrading punishment, torture or treatment. Any victim of torture or cruel, inhumane or degrading treatment practiced or tolerated by agents of the State has the right to rehabilitation.
2. Any person deprived of liberty shall be treated with the respect due to the inherent dignity of the human being.
3. No person shall be subjected without his or her freely given consent to scientific experiments or medical or laboratory examinations, except when such person's life is in danger, or in other circumstances determined by the law.
4. Any public official who, on the basis of his official position, mistreats or inflicts physical or mental suffering on any person or instigates or tolerates such treatment, shall be punished in accordance to law.

356. Numerous complaints have been submitted by nongovernmental organizations and private individuals to the effect that torture continues to be practiced at police agencies and even in the

framework of judicial investigations, in order to intimidate detainees and extract confessions from them.<sup>161</sup> This situation has also been noted by other international organizations.<sup>162</sup> All the information collected indicates that acts of torture and mistreatment occur in the framework of operations to curb “crime” or to maintain order at demonstrations, protests, and, in particular, during periods of preventive detention at police and military facilities, in order extract confessions from people.

357. The national NGO, *Red de Apoyo por la Justicia y la Paz* [Peace and Justice Support Network] documented 145 cases of torture and cruel, inhuman or degrading treatment, perpetrated by officials of the state security services between 1999 and the first half of 2003.<sup>163</sup> According to the General Coordinator of the organization, Mr. Alfredo Ruiz, the figures given in the report show that during the period documented there was a large number of violations of the right to humane treatment, the vast majority of which remain unpunished.<sup>164</sup>

358. According to a report by the same organization, the methods of torture and other inhuman and degrading treatment used in all of these cases are both physical and psychological. The most common are to threaten to kill both the victim and his or her relatives; verbal aggression; blows and kicks; to throw them down stairs or against the floor and walls; to move them blindfolded and with hands and feet bound; isolation without food; and to leave them naked. Other methods employed are immersion of the head in clean or dirty water, burns and sexual torture. Furthermore, mistreated people are normally held incommunicado for almost a week and denied access to medical and legal services during that time. The report mentions

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<sup>161</sup> Many of the cases were reported to the Ombudsman and human rights organizations, such as Provea, Committee for Victims of the Events of February and March 1989 (COFAVIC), and the Peace and Justice Support Network.

<sup>162</sup> For example, see Amnesty International, Annual Report 2003, Crisis in Venezuela, “Torture, ill-treatment and excessive use of force”.

<sup>163</sup> Peace and Justice Support Network, *Informe de Casos de Tortura y Maltratos 2002* [2002 Report on Cases of Torture and Mistreatment]; *Informe de Casos de Tortura Atendidos por la Red de Apoyo en el Período de Enero a Junio, 2003* [Report on Cases of Torture Seen by the Support Network between January and June 2003]; *Informe sobre la Situación de Derechos Civiles Durante la Presidencia de Hugo Chávez Frías (período 1999-2002)* [Report on the Situation of Civil Rights During the Presidency of Hugo Chávez Frías (1999-2002)].

<sup>164</sup> El Universal, *Derechos Humanos: Informe de la red de Apoyo por la Justicia y la Paz* [Human Rights: Report of the Peace and Justice Support Network], May 18, 2003.

that, according to the statistics analyzed, the populations worst affected are males aged 14 to 24 and 25 to 34.<sup>165</sup>

359. This report also questions the procedures used by medical examiners to determine and verify the sequelae of torture. It mentions that these forensic professionals conduct very superficial examinations to check for physical signs of torture (bruises, abrasions, etc.), which do not allow them properly to diagnose the gravity and extent of injuries. Furthermore, on occasion, the examination is carried out after the sequelae have disappeared, which makes it impossible to use them as evidence, with the resulting impunity for the perpetrators. It is also reported that the Office of the Medical Examiner [*Medicatura Forense*] is under the supervision of the Scientific, Criminal, and Criminalistic Investigations Force (CICPC), attached, in turn, to the Ministry of the Interior and Justice. This compromises its impartiality and autonomy in the sense that when the persons implicated in acts of torture are officials of the Scientific, Criminal, and Criminalistic Investigations Force, they are unlikely to be harmed by the reports issued, since the doctors that issue them belong to the same agency.<sup>166</sup> Furthermore, certain deficiencies are reported in prosecutorial procedures, in that officials of the Attorney General's Office do not act with the appropriate dispatch in torture cases by failing to request medical examinations immediately; in other words, before the sequelae can disappear.

360. In sum, according to the information collected, police agents are the main perpetrators of torture, and that torture is usually inflicted in police stations. Torture is basically used on persons who are detained or under investigation. Among the torture cases that have been reported in the Venezuelan press is that of the youth Jesús Soriano, who was arbitrarily detained on January 16, 2003 during a march at the Universidad Central de Venezuela by officials who reportedly belong to the Directorate of Intelligence and Prevention Services (DISIP), attached to the Ministry of the Interior and Justice of the Bolivarian Republic of Venezuela. The Soriano youth publicly denounced that he had been the victim of extremely serious torture at that police agency. Carlos Roa Roa, the young man's attorney, reported that his client had had his fingernails torn out and that he was not permitted to receive medical attention or to have contact with his lawyers.<sup>167</sup>

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<sup>165</sup> Peace and Justice Support Network, *Informe de Casos de Tortura y Maltratos 2002* [2002 Report on Cases of Torture and Mistreatment], Caracas.

<sup>166</sup> *Ibid.*.

<sup>167</sup> El Universal, *Denuncia Torturas contra Estudiante Detenido en la UCV* [Torture Reported of Student Arrested at UCV], January 17, 2003, Caracas. See also, (Continued...)

361. One can also cite the case that occurred on August 17, 2002 in Ciudad Bolívar, involving Mr. Ángel Aurelio Da Silva, who reported that he was tortured by officials attached to Raúl Leoni Police Station, in order to force him to confess to the crime of theft.<sup>168</sup> There is also the case of Mr. Franklin Soto, one of those accused in the events of December 6, 2002, at Plaza Francia in Altamira. Mr. Soto reported that he was arrested along with a group of other people at Torre Británica also in Altamira. He says that non uniformed police officers took them in civilian cars to the Chacao Police Station, where they were threatened, stripped naked, handcuffed, and made to kneel on the wet floor while they were beaten about the head. He said that they were later taken to headquarters of the Scientific, Criminal, and Criminalistic Investigations Force, where they were processed by prosecutors with the Attorney General's Office.

362. With regard to all of these cases, the IACHR was informed that no investigation whatever was carried out that resulted in the adoption of disciplinary measures for those responsible or their prosecution. In this connection, the Commission notes a clear link between the impunity of these cases and their constant repetition at police facilities. The Peace and Justice Support Network said that officials implicated in torture and ill-treatment have enjoyed impunity and in none of the cases recorded have the persons responsible been convicted or punished.<sup>169</sup> It was also mentioned that the Office of the Medical Examiner is part of the CICPC and therefore its impartiality is in doubt, to the extent that there is scant probability that its doctors were impartial in the examination of cases that involved torture by members of the CICPC.

363. The Commission wishes to note in this respect that the effective observance of human rights requires a system in which all members are trained in the principles of a participatory and well-informed democracy. In this regard, a thoroughgoing reform is needed of the police in Venezuela that includes instruction in the principles related to democracy and the observance of human rights.

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COFAVIC/Venezuela, Public Communiqué: COFAVIC Rejects Disproportionate Use of Public Force by the National Guard in the State of Carabobo.

<sup>168</sup> Provea, Annual Report N° 14, Right to humane treatment.

<sup>169</sup> Peace and Justice Support Network, *Informe sobre la Situación de Derechos Civiles Durante la Presidencia de Hugo Chávez Frías (período 1999-2002)* [Report on the Situation of Civil Rights During the Presidency of Hugo Chávez Frías (1999-2002)].

**C. Recommendations**

364. Given the seriousness of the situation, the Inter-American Commission recommends that the State:

1. Take the necessary steps to ensure that acts of torture are categorized and punished as such by the courts.
2. Conduct meaningful, thorough and impartial investigations into acts of torture and other cruel, inhuman or degrading treatment.
3. Initiate, through the Office of the Prosecutor General of the Republic, a thorough investigation of all complaints of abuses of physical integrity, in particular concerning persons deprived of liberty by members of the National Guard, and guards attached to the Prisons Directorate of the Ministry of the Interior and Justice.
4. Adopt the measures necessary to exercise effective judicial oversight of detention and the organs charged with its enforcement.
5. Set up training campaigns for officials of security bodies, in order to instruct in matters concerning human rights and strict compliance with the law in cases of detention and maintenance of public order.
6. Adopt the measures necessary to rehabilitate and provide fair and adequate compensation to victims of torture.
7. To prepare and promulgate at the earliest convenience the necessary laws to punish torture in accordance with the Fourth Transitory Provision of the new Constitution, either through the enactment of a law or reform of the Criminal Code.
8. To include in the domestic law, either through legislation or jurisprudence, the exclusion of any evidence obtained under torture or other cruel, inhuman or degrading treatment, in accordance with the Inter-American Convention to Prevent and Punish Torture. Furthermore, this exclusion rule should be extended to apply to any evidence arising from procedures that are irregular or in violation of due process guarantees, in keeping with the "fruit of the poison tree" doctrine.



## CHAPTER VI

### RIGHT TO FREEDOM OF EXPRESSION AND THOUGHT

#### A. Introduction: The right of free expression and the rule of law

365. The right of free expression is essential for the development and strengthening of democracy and for the full enjoyment of human rights. Full recognition of freedom of expression offers a fundamental guarantee for ensuring the rule of law and democratic institutions. This has been acknowledged on many occasions by different sectors of civil society, international organizations, and most nations.<sup>170</sup>

366. The American Convention on Human Rights, Article 13, enshrines the right of free expression in the following terms:

1. Everyone has the right to freedom of thought and expression. This right includes freedom to seek, receive, and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing, in print, in the form of art, or through any other medium of one's choice.

2. The exercise of the right provided for in the foregoing paragraph shall not be subject to prior censorship but shall be subject to subsequent imposition of liability, which shall be expressly established by law to the extent necessary to ensure:

- a. respect for the rights or reputations of others;  
or,
- b. the protection of national security, public order, or public health or morals.

3. The right of expression may not be restricted by indirect methods or means, such as the abuse of government or private controls over newsprint, radio broadcasting frequencies, or equipment used in the dissemination of information, or by any other means tending to impede the communication and circulation of ideas and opinions.

4. Notwithstanding the provisions of paragraph 2 above, public entertainments may be subject by law to prior censorship for

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<sup>170</sup> As an example of this, at the conclusion of the General Assembly of the Organization of American States held in Santiago, Chile, in June 2003, the hemisphere's foreign ministers adopted by acclamation the *Declaration of Santiago on Democracy and Public Trust: A New Commitment to Good Governance for the Americas*, which recognizes that democracy is strengthened by full respect for freedom of expression.

the sole purpose of regulating access to them for the moral protection of childhood and adolescence.

5. Any propaganda for war and any advocacy of national, racial, or religious hatred that constitute incitements to lawless violence or to any other similar action against any person or group of persons on any grounds including those of race, color, religion, language, or national origin shall be considered as offenses punishable by law.

367. Protecting the right to freely express ideas is fundamental in ensuring full currency for the other rights: without freedom of expression and information, full democracy cannot exist; and when democracy is absent, the history of the hemisphere has shown that rights ranging from the right to life to that of property are seriously endangered. Clearly, there is a direct relationship between the exercise of free expression and opinion and democratic existence.

368. The Inter-American Court has consistently emphasized the importance of this right, ruling that:

Freedom of expression is a cornerstone upon which the very existence of a democratic society rests. It is indispensable for the formation of public opinion. It is also a *conditio sine qua non* for the development of political parties, trade unions, scientific and cultural societies and, in general, those who wish to influence the public. It represents, in short, the means that enable the community, when exercising its options, to be sufficiently informed. Consequently, it can be said that a society that is not well informed is not a society that is truly free.<sup>171</sup>

369. Freedom of expression covers the right of all individuals to seek, receive, and impart information and ideas of all kinds. Thus, this right has a dual dimension: it is both individual and social. In this regard, the Court has said that this dual aspect:

requires, on the one hand, that no one be arbitrarily limited or impeded in expressing his own thoughts. In that sense, it is a right that belongs to each individual. Its second aspect, on the other hand, implies a collective right to receive any information

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<sup>171</sup> Inter-Am.Ct.H.R., *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism (Articles 13 and 29 of the American Convention on Human Rights)*, Advisory Opinion OC-5/85, November 13, 1985, paragraph 70.

whatsoever and to have access to the thoughts expressed by others.<sup>172</sup>

370. The Inter-American Commission on Human Rights asked the office of the Special Rapporteur for Freedom of Expression (“the Rapporteur’s office”)<sup>173</sup> to prepare this chapter. The Rapporteur’s office did so, chiefly on the basis of the information gathered during the on-site visit, together with other information and complaints received subsequently. The Commission approved the text that was submitted and decided to incorporate it into this Report.

371. The IACHR has paid particular attention to the state of Venezuela’s freedom of expression in the annual reports submitted by the Rapporteur’s office and approved by the Commission, and in the press releases that it has from time to time issued in connection with this matter.<sup>174</sup> The IACHR is concerned because the information gathered during the May 2002 visit indicates that many of the comments made by the Special Rapporteur for Freedom of Expression remain valid as of the drafting of this report.

372. The IACHR and the Rapporteur’s office have noted that much of the Venezuelan media is critical of the government. However, for journalists, the consequences of expressing such opinions include acts of intimidation, some serious. The uninterrupted continuation of those actions could restrict free speech by fostering a climate unfavorable to the pursuit of journalistic endeavors. The IACHR understands that since criticisms of the

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<sup>172</sup> Inter-Am.Ct.H.R., *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism*, Advisory Opinion OC-5/85, November 13, 1985, paragraph 30.

<sup>173</sup> The office of the Special Rapporteur for Freedom of Expression is a permanent office, with functional autonomy and its own budget. The Inter-American Commission on Human Rights created the office in exercise of its authority and competence, and the office operates within the Commission’s legal framework. The Rapporteur’s office has received institutional support from the Heads of State and Government at the Summits held both in Santiago, Chile, in April 1998, and in Québec City, Canada, in April 2001.

<sup>174</sup> Several international organizations have also been observing the freedom of expression situation in Venezuela. The Iberoamerican Journalists Organization (OPI) stated that a common front of journalists had to be formed to defend their human rights (see: *Así es la Noticia*, March 26, 2002, p. 6). In April 2002, the International Federation of Journalists (IFJ) condemned the president’s campaign against the media in Venezuela. On May 6, 2002, a delegation from the World Association of Newspapers (WAN) traveled to Venezuela and met with President Chávez in order to discuss the country’s freedom of expression situation. The Committee to Protect Journalists (CPJ), Reporters Without Borders (RSF), the Press and Society Institute (IPYS), Human Rights Watch (HRW), and many other organizations have, on different occasions, expressed concerns regarding the exercise of free speech in Venezuela.

government are in fact made, it is difficult to speak of widespread self-censorship within the mass media; however, the emergence of potential self-censorship on the part of reporters can, in some cases, be seen, with journalists required to change the tasks they undertake<sup>175</sup>. The protection of free speech cannot be measured solely by the absence of censorship, newspaper shutdowns, or arbitrary arrests of those who freely express their ideas; it also entails the existence of a climate of security and guarantees for communication workers as they discharge their function of informing the public.

373. In addition, the Commission notes the bias found in some Venezuelan media outlets, which reflects the extreme polarization that characterizes the country. As one example of this, at the end of its visit the Commission stated that:

The IACHR has been concerned by the scant information, or at times total lack of information, available to Venezuelan society during the days of the institutional crisis of April. Although there may be any number of justifications to explain this lack of information, to the extent that the suppression of information resulted from politically-motivated editorial decisions, this should be the subject of an essential process of reflection by the Venezuelan media about their role at that moment.<sup>176</sup>

374. In this regard, the IACHR defends the right to follow any editorial line; this does not imply, however, that it shares the position chosen or that it does not regret the loss of objectivity.

375. In Venezuela, the IACHR and the Rapporteur's office have identified three areas related to freedom of expression that warrant particular attention: The first has to do with harassment, attacks, and threats made against media workers, particularly those that work in public spaces, and the failure to investigate those incidents. The second involves the existence of court decisions and draft legislation that, if enacted, could adversely affect the Venezuelan people's full enjoyment of freedom of expression. The third relates to the administrative proceedings initiated by CONATEL and the Ministry of Infrastructure against media outlets in connection with the

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<sup>175</sup> For example, at the open hearing of the Inter-American Court of Human Rights on February 17, 2003, Liliana Rios informed being in a state of insecurity which impedes her from conducting her job as a journalist, career for which she was formed at the university for 5 years. Additionally she informed that because of security reasons she had to move three times.

<sup>176</sup> IACHR, Press Release No. 23/02, *The Inter-American Commission on Human Rights concludes its visit to the Bolivarian Republic of Venezuela*, paragraphs 10 and 39.

programming content, applying legal provisions that are in breach of the inter-American system.

376. The following sections will deal with those areas which, for the purposes of this report, are of particular relevance with respect to freedom of expression in Venezuela. Attention is also paid to other important issues, such as media ethics, access to information, and the requirements of truthful reporting.

**B. Threats, harassment, and attacks against journalists and the media**

377. The uninterrupted continuation of acts of aggression and intimidation directed at media workers in Venezuela reflects the deepening of the institutional and political conflict that has affected the country over the past two years. The legitimate endeavors of media workers in reporting on different situations that affect the country's social, cultural, and economic life and, in particular, the political situation and human rights, have encouraged certain sectors to attempt, in different ways, to silence them.

378. The IACHR and the Rapporteur's office have noted the repeated occurrence of verbal and physical attacks in recent years. There has been no end to the attacks and threats made against media workers, particularly those covering events, political gatherings, and activities relating to the security forces. Before, during, and after its on-site visit, the IACHR was told that reporters working in public spaces were the targets of attacks and harassment. The prevailing general situation in Venezuela has fueled a climate of constant aggression and threats against freedom of expression and, in particular, against the physical integrity of reporters, camera operators, photographers, and other media workers. The recorded incidents range from threats and personal injuries to violations of the right to life, such as the murder of Mr. Jorge Tortosa, a press photographer with *Diario 2001*, during the events of April 11, 2002.

379. A large number of cases dealing with threats and other forms of harassment against journalists have been lodged with the IACHR. On several occasions since late 2001, therefore, the IACHR has requested the adoption of precautionary measures to protect different media workers and media outlets. These include workers and/or executives with the following media companies: *El Nacional*, *El Universal*, *RCTV*, *Globovisión*, *Así es la Noticia*, and *La Razón*. As an example, the IACHR offers the following extracts from the information it has received regarding attacks on reporters: On April 11, Hugo Rafael Sánchez Uzcátegui, an *RCTV* correspondent in

Zulia State, received numerous intimidating telephone calls, some threatening him with death, while he was covering the public gathering in front of the PDVSA building in Maracaibo. In the early morning of Friday 12, after attending a press conference called by the military high command in Zulia State at the headquarters of the 1st Infantry Division, he was persistently followed by an unidentified automobile. On April 11, members and/or supporters of the government party, the MVR, threw stones at reporter Edward Rodríguez and cameraman Hernán Terán, who were in the metropolitan area of Puerto La Cruz – Barcelona, Anzoátegui State, covering a march by the Workers' Federation of Anzoátegui State. On April 13 they were again attacked while attempting to report on protests and looting, and violent threats were made against them.

380. In late 2002 and early 2003, the Commission received information about attacks on the following media workers: José Rodríguez of the daily *El Impulso*; Martín Urteaga of the daily *El Informador*; Miguel López of *Telecentro*; Clara Reverol and Gusravo Escalona of *Televen*; Cristián Rodríguez of *Promar TV*; Yleana Brett of *Diario Hoy*; and Julio Torres of *Venevisión*. All these incidents occurred while they were covering a demonstration of government supporters and opponents in the city of Barquisimeto, Lara State. In Caracas, Fernando Malavé of *Diario 2001* and José Antonio Dávila of *CMT*. In the same city, reports indicate that the journalists Luis Alfonso Fernández of *Venevisión* and Aymar Lorenzo de *Globovisión* were beaten by police officers. Mauricio Cabal, cameraman Rubén Brito, and assistant Marcos Martínez of *Venevisión* were threatened at the entrance to the state-owned oil company *Petróleos de Venezuela (PDVSA)* in the city of Anaco, Anzoátegui State, and their vehicle was damaged. Verioska Velasco, cameraman Luis Mata, and assistant Alfonso Vásquez of *Promar Televisión*, and cameraman Samuel Sotomayor of *RCTV* were attacked in the city of Barquisimeto. On January 12, Héctor Castillo, a photographer with the Caracas evening paper *El Mundo*, was injured by a baton round while he was covering clashes between members of the armed forces and participants in an opposition march that was attempting to reach the Los Próceres monument, near the military base known as Tiuna Fort.

381. Mention could also be made of a number of examples that serve to indicate the continued perpetration of attacks against media workers: On January 7, 2003, a van belonging to *Puerto Visión* from Puerto Cabello, Carabobo State, was stoned and beaten with iron bars while it was carrying a team of reporters led by Humberto Ambrosino. On January 9, a vehicle carrying reporters from *El Correo del Canoní* was attacked in Puerto Ordaz, Bolívar State. On January 14, hooded individuals on motorcycles attempted to set fire to a vehicle belonging to the *Televen* network. In light of this, the IACHR has, on several occasions since late 2001, requested the

adoption of precautionary measures to protect different media workers and media outlets. These include workers and/or executives with the following media concerns: *El Nacional*, *El Universal*, *RCTV*, *Globovisión*, *Así es la Noticia*, and *La Razón*.<sup>177</sup>

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<sup>177</sup> Other illustrative cases include the following: On February 2, a vehicle belonging to the television company *CMT* was set on fire while it was transporting a team of on-duty reporters. This incident occurred in the vicinity of the Ministry of Education, in downtown Caracas, when a group of hooded demonstrators began to throw stones, blunt instruments, and firebombs at an opposition group. On February 21, a vehicle transporting a press photographer and a correspondent for *Agence France Press* (AFP) was attacked by a group of some 60 people, who beat it and damaged the bodywork; the passengers were unharmed. In the afternoon of April 11 a vehicle carrying reporters from the state channel *Venezolana de Televisión* was attacked. On May 30 an unidentified person fired on a vehicle belonging to the journalist Gustavo Azócar while it was parked in front of his home; the bullet went through the windshield and lodged in the dashboard. Press and Society Institute (IPYS), January 8, 24, and 15, February 3 and 25, April 16, and June 4, 2003, respectively. On January 8, 2003, Javier Gutiérrez, a journalist with *El Regional del Zulia*, was covering a peaceful demonstration by employees of the state-owned oil company when individuals suspected of being members of the National Guard deployed riot gas, intercepted him as he was trying to take photographs, beat him, and relieved him of his camera; the newspaper's editors were later able to get the camera back. On January 10, journalists Daniel Delgado of *El Nacional* and Félix Moya of the daily *El Caribe* were attacked, presumably by Nueva Esparta State police officers, while the police were tackling an opposition march in downtown Porlamar; Delgado was kept in police custody for more than an hour and a half, because of attempts to lynch him by a group of protestors. On January 12, Héctor Castillo, a journalist with *El Mundo*, received gunshot wounds to his right leg while covering an opposition march on Av. Los Próceres. During that same march, *Telegen* journalist Johan Merchán was intercepted by soldiers and his cameraman was forced to hand over his tapes. On January 18, reporters from the Aragua State regional channel *TVS* were attacked while they were covering a march organized by the Democratic Coordinator in the city of Maracay. Cameraman Carlos Lathosesky and journalist Alfredo Morales were physically and verbally assaulted and threatened with lynching. Morales was surrounded, his microphone taken from him, and his audio cable broken. The assailants allegedly used the broken cable to flog the journalist. On February 4, press photographer Ángel Véliz of the daily *Impacto* was attacked while covering clashes between oil workers and government supporters. Véliz was allegedly beaten; while a member of the armed forces held him down, he was struck with a baseball bat, which caused injuries and bruising to his right arm, lacerations to his right armpit, and a wound on his back. The entire incident was witnessed by members of the National Guard. On February 5, Gabriela Díaz and José Ramón Chico, a journalist and a photographer with the daily *El Tiempo*, respectively, were abducted for more than an hour by students from Oriente University; the reporters were covering a meeting at which the teaching staff were to decide whether or not to recommence academic activities. On May 2, *Radio Caracas* journalist Roberto Giusti was attacked while preparing to present his morning show. According to the journalist, about ten individuals were waiting for him "with violent and aggressive attitudes, shouting insults." On May 13, the journalist filed a complaint with the public prosecution service. On May 1, Juan Carlos Amado, a cameraman with the nongovernmental organization *Comunidad de Trabajos de Investigación* (COTRAIN) was attacked while doing his job. Amado told the Press and Society Institute that he was attacked on Plaza O'Leary, in downtown Caracas, while filming a May Day march organized by the Workers' Confederation of Venezuela and other opposition organizations. In June, a team of reporters from *Globovisión* was attacked while covering a news story. The incident took place in Petare, one day after riots caused property damage and left dozens of people injured in that populous location. The team, led by Wilmer Solano, was

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382. Another case worthy of note is that of the Ecuadorian journalist Mauricio Muñoz Amaya, who was hit by gunfire on November 4, 2002, in the vicinity of the National Electoral Council (CNE) during a Democratic Coordinator march carrying more than two million citizens' signatures calling for a referendum to recall President Hugo Chávez. That same day, November 4, Héctor Castillo, a journalist-cum-photographer attached to the daily *El Mundo*, was beaten up by government supporters during the same event. On September 22, unidentified individuals shot firearms at the home of Carlos Barrios, the director of radio station *Astro 97.7*.

383. During 2002, four bomb attacks were carried out in the vicinity of the premises of the broadcaster *Globovisión*. The last incident took place on November 17, 2002. Earlier, on January 31, 2002, a bomb was thrown in front of the offices of *Así es la Noticia*; and, on October 19, an explosive device detonated at the premises of *Unión Radio* in Chacao municipality, Caracas.

384. The IACHR has also noted that sectors of the government are following a line of discourse tending toward the professional discrediting of

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verbally attacked and pushed about while they were trying to collect information and take photographs, and they were ultimately forced to leave. Press and Society Institute, January 16, 24, and 13, 2003, respectively, and February 5, 2003; *Globovisión*, May 13 and June 14, 2003; and Press and Society Institute, May 7, 2003. Finally, at 5:00 a.m. on Friday, June 27, eight individuals with long-barreled guns tried to set fire to a vehicle transporting reporter Marta Colomina through the streets of Caracas. According to her report, her car was surrounded and "four men, three of whom had their faces covered with ski-masks, armed with Steyr rifles, approached my car and pointed their weapons at me and at my driver; the one whose face was visible went back to the rear of their vehicle, from which he removed an "enormous molotov-cocktail style device." The other four men, who were also wearing ski-masks and were armed with Glock pistols, got out of the car in which they had followed me and pointed their guns in every possible direction. When my driver/escort saw that they were about to attack us with a molotov cocktail, he shouted for us to hit the ground and take cover; from the floor of the car I heard a big explosion and could smell vehicle fuel – I thought they had started shooting and had hit the fuel tank, which meant that in a matter of seconds the car would explode and we would be blown into the air. However, the noise had been caused by a heavy 19-liter glass bottle, the kind generally used to sell purified water, that had been transformed into a giant molotov cocktail and that, upon breaking, spilled the gasoline it contained. Since it was impossible to activate the molotov, my assailant merely smashed it against the car's windscreen; this, since it was protected with an anti-riot security covering, resisted the impact – it collapsed inwards and shattered, but kept the incendiary device outside the vehicle." In light of this attack on the journalist Ms. Colomina, on July 21, 2003, the IACHR asked the Inter-American Court of Human Rights to order provisional measures whereunder the Venezuelan State would protect the life, person, and freedom of expression of the journalist Marta Colomina and of her assistant Liliana Velásquez, who was in an adjacent vehicle during the attack.

journalists and the filing of administrative procedures that could lead to the suspension or cancellation of broadcasting licenses and/or permits.

385. To summarize, the situation described above has the effect of intimidating media workers: many are afraid to identify themselves as reporters out of fear of possible reprisals.

386. According to the ninth principle of the IACHR's Declaration of Principles on Freedom of Expression,<sup>178</sup> threats and attacks against social communicators violate the fundamental rights of individuals and strongly restrict freedom of expression. Consequently, irrespective of the actions of the media that the government has repeatedly denounced, attacks on media workers and facilities are inadmissible and unjustified. The IACHR again points out that under Article 1.1 of the American Convention, not only do the states parties agree to respect the rights and freedoms it recognizes, they also undertake to guarantee their free and full enjoyment by all individuals subject to their jurisdiction. With respect to "ensuring" the free and full exercise of the Convention's rights, the Court has ruled that this obligation implies:



duty of the States Parties to organize the governmental apparatus and, in general, all the structures through which public power is exercised, so that they are capable of juridically ensuring the free and full enjoyment of human rights. As a consequence of this obligation, the States must prevent, investigate and punish any violation of the rights recognized by the Convention and, moreover, if possible attempt to restore the right violated and provide compensation as warranted for damages resulting from the violation.<sup>179</sup>

387. It is not only the protection bodies of the inter-American system have ruled that the pursuit of journalistic endeavors must be free of dangerous consequences; in the Plan of Action issued by the Third Summit of the Americas, the Heads of State and Government said that:

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<sup>178</sup> The Inter-American Commission on Human Rights adopted this Declaration at its 108th regular session, in October 2000. The document is an important tool in interpreting Article 13 of the American Convention on Human Rights. Its adoption was not merely a recognition of the importance of protecting free expression in the Americas; it also enabled the inter-American system to incorporate international standards for a more effective defense of this right.

<sup>179</sup> See: Inter-American Court of Human Rights, *Velásquez Rodríguez Case*, Judgment of July 29, 1988, Series C No. 4, paragraph 166.



sure that national legislation relating to freedom of expression is applied equitably to all, respecting freedom of expression and access to information of all citizens, and that journalists and opinion leaders are free to investigate and publish without fear of reprisals, harassment or retaliatory actions, including the misuse of anti-defamation laws.

388. In light of the vulnerable situation faced by media workers during 2002, the IACHR asked the Venezuelan State to adopt precautionary measures on eight occasions, many of which were extended in order to protect the lives, persons, and freedom of expression of journalists, camera operators, and photographers who had been attacked. The Inter-American Court of Human Rights was also asked to issue provisional measures. The Court, in a resolution issued last February 21, reported that the State had not complied. The Commission noted its concern at this failure to comply with the provisional measures granted by the Court and the precautionary measures requested by the Commission. In July 2003 the IACHR once again decided to ask the Court to extend provisional measures to protect two journalists. The IACHR again states that complying with its decisions and those of the Court is essential if the human rights of journalists in Venezuela are to be guaranteed and protected.

389. In addition to this, the IACHR and the Rapporteur's office have been informed that these attacks on media workers and facilities have not been the subject of complete, exhaustive investigations.<sup>180</sup> Impunity in investigations helps create a climate of intimidation and harassment for full enjoyment of free speech in Venezuela.

390. In this regard, the Inter-American Court of Human Rights has ruled that:



The State is obligated to investigate every situation involving a violation of the rights protected by the Convention. If the State apparatus acts in such a way that the violation goes unpunished and the victim's full enjoyment of such rights is not restored as soon as possible, the State has failed to comply with its duty to ensure the free and full exercise of those rights to the persons within its jurisdiction. The same is true when the State allows private persons or groups to act freely and with impunity to the detriment of the rights recognized by the Convention.

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<sup>180</sup> See: Report by Human Rights Watch: Venezuela, *Caught in the Crossfire: Freedom of Expression in Venezuela*, Vol. 15, No. 1 (B), May 2003.

391. The IACHR maintains that the Venezuelan State's failure to carry out an effective and complete investigation of these attacks on social communicators and its failure to impose criminal punishments on the planners and perpetrators thereof is particularly grave on account of its impact on society. Crimes of this nature frighten not only other media workers; they also intimidate the citizenry in general by making them afraid to report abuses, violations, and crimes of all kinds. The effect can only be avoided through the decisive action of states in publicly condemning such acts of aggression against media workers and punishing the perpetrators. In this way the State can send society a strong and direct message indicating that there will be no tolerance for those who engage in such serious violations of the right of free expression.<sup>181</sup>

392. The IACHR and the Rapporteur's office have on several occasions asked the highest authorities to condemn these acts.<sup>182</sup> This occurred after President Hugo Chávez Frías made certain speeches against the media, which could have been interpreted by his followers as calling for aggression against the press. The IACHR, in requesting the first precautionary measures to protect journalists, was able to note that on occasions, President Chávez's speeches were followed by acts of physical violence. President Chávez, like all the inhabitants of Venezuela, has the right to express himself freely and to offer his opinions about those he believes to be his opponents. Nevertheless, his speeches should take care to avoid being interpreted as incitations to violence. Consequently, the IACHR and the Rapporteur's office are pleased to note the statement made by President Hugo Chávez Frías in April 2003, in which he called for "journalists to be respected and to be given the treatment they deserve."<sup>183</sup> Given the mood described in this report, the IACHR believes that statements of this kind must be neither isolated nor sporadic; on the contrary, they should be offered by the highest echelons of the government on a repeated basis.

393. Finally, the IACHR and the Rapporteur's office reaffirm that it is the responsibility of the State, as a function of its duty of ensuring the human rights as described above, to extend protection to media workers through energetic actions aimed at disarming those sectors of the civil

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<sup>181</sup> IACHR., Report No. 50/90, Case No. 11.739, Mexico, OAS/Ser/L/V/II. Doc. 57, April 13, 1999.

<sup>182</sup> IACHR, press release No. 23/02, issued at the conclusion of its May 2002 visit. Office of the Special Rapporteur for Freedom of Expression, letter sent to Foreign Minister Chaderton in January 2003.

<sup>183</sup> See: *El Nacional*, "Chávez pide creación de un frente nacional," April 28, 2003.

population that operate outside the law and that might be involved in these incidents.

**C. Comments on the legislative bill and the decisions of the Supreme Court of Justice that could violate freedom of expression**

**1. Draft legislation on social responsibility in radio and television**

394. Since at least November 2002,<sup>184</sup> the IACHR and the Rapporteur's office<sup>185</sup> have been aware of the existence of a draft Law on Social Responsibility in Radio and Television, intended to regulate the activities of those media in Venezuela.<sup>186</sup> It should be noted that this draft is still being debated by the National Assembly and expressions of concern in connection with it have been made by both the IACHR and the Rapporteur's office.<sup>187</sup>

395. The IACHR and the Rapporteur's office note that the draft was approved on first discussion by the Legislative Assembly. Later, on May 7, 2003, they were informed that the Legislative Assembly's science, technology, and media committee had approved a new version of the draft Law on Social Responsibility in Radio and Television that would be the subject of the second discussion. The amended bill contains 36 articles, which means that its extent was substantially reduced.

396. The articles deleted included No. 115.11<sup>188</sup> which, in the original draft, established punishments for *desacato* contempt and for

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<sup>184</sup> During its on-site visit in May 2002, the IACHR was told of the government's plans to enact a "content law"; it was informed by the President of the National Assembly, however, that no such bill was currently being processed by the legislature.

<sup>185</sup> The Rapporteur for Freedom of Expression, Eduardo Bertoni, contacted the Minister of Foreign Affairs, Roy Chaderton, in November 2002 asking for information on the background to these plans. As of the publication of this report, no official information has been received.

<sup>186</sup> The bill was formally placed before the National Assembly on January 23, 2003.

<sup>187</sup> Several international organizations have come out against the proposal, including the Committee to Protect Journalists (CPJ), the Inter-American Press Association (SIP-IAPA), the Press and Society Institute (IPYS), and Human Rights Watch (HRW).

<sup>188</sup> Article 115. ADMINISTRATIVE FINES FOR VERY SERIOUS INFRACTIONS BY PROVIDERS OF BROADCAST SERVICES.

The National Radio and Television Institute shall punish, with a fine of up to thirty thousand (30,000) tributary units, any broadcast service provider that:

(Continued...)

contents that promoted disrespect toward the authorities. Also omitted<sup>189</sup> is the creation of the “National Radio and Television Institute,” under state control and with heavy influence from the executive branch in its conformation; in light of its powers, it could have been used to control information unfavorable to the government.<sup>190</sup> For example, the President of

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(...Continued)

11. Disseminates contents that promote, justify, or encourage disrespect toward legitimate institutions and authorities, such as: National Assembly Deputies, the President of the Republic, the Vice-President of the Republic, Ministers, Justices of the Supreme Court of Justice, the Attorney General of the Republic, the People’s Defender, the Comptroller General of the Republic, the officers of the National Electoral Council, and the nation’s Armed Forces, without detriment to the legitimate exercise of the right of freedom of expression and opinion with the constraints set in the Constitution, in the international treaties ratified by the Republic, and in law.

<sup>189</sup> The IACHR notes that the new draft established a Social Responsibility Bureau and a Responsibility Council. The composition of the Bureau is not clear, but its powers remain quite broad; used abusively, they could undermine free expression.

<sup>190</sup> ARTICLE 76. FUNCTIONS OF THE BOARD OF THE NATIONAL RADIO AND TELEVISION INSTITUTE

The Board of the National Radio and Television Institute shall be responsible for the following functions:

1. Approving the operational plan and budget of the National Radio and Television Institute, in compliance with the proposals submitted by the President of the National Radio and Television Institute.
2. Issuing final decisions in the administrative procedures for punishment provided for in this Law, and repealing, either on an *ex officio* basis or at the request of the parties involved, precautionary measures ordered by the President of the National Radio and Television Institute.
3. Proposing that the Minister of Infrastructure revoke the corresponding administrative licenses and permits, in the cases provided for in this Law.
4. Adopting technical standards on national production, independent national production, and special programs intended for children and adolescents.
5. Approving plans submitted for the funding of national production, independent national production, special programs intended for children and adolescents, and for critical education for the media, in compliance with the Regulations to this Law.
6. Drafting and approving the internal regulations of the National Radio and Television Institute.

(Continued...)

the Board, who would have been appointed by the President of the Republic, could order precautionary measures in the same administrative procedures as he had initiated.<sup>191</sup>

397. These modifications are positive but inadequate: as the IACHR and the Rapporteur's office understand, the draft under discussion

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Article 77. COMPOSITION OF THE BOARD

The Board of the National Radio and Television Institute shall comprise eleven (11) members, of whom one (1) shall be appointed by the President of the Bolivarian Republic of Venezuela, as provided for in this Article, for a period of three (3) years, and shall serve as the President of the National Radio and Television Institute. The remaining ten (10) members shall comprise:

1. Three (3) representatives from the National Assembly, of whom one (1) shall be from the committee responsible for radio and television issues, one (1) shall be from the committee in charge of education, and one (1) shall be from the committee charged with citizen participation.
2. One (1) representative from the Ministry responsible for education issues.
3. One (1) representative from the Ministry responsible for health issues.
4. One (1) representative from the National Telecommunications Commission.
5. One (1) representative from the Ministry responsible for state communications and information.
6. Two (2) representatives from the Radio and Television Users' Committees.
7. One (1) representative of the National Independent Producers.

<sup>191</sup> ARTICLE 82. FUNCTIONS OF THE PRESIDENT

The President of the National Radio and Television Institute shall be responsible for: (...)

3. Ordering the initiation and substantiation of, and issuing precautionary measures within, punitive administrative procedures that the National Radio and Television Institute is responsible for hearing in compliance with this Law.

still contains provisions that could undermine the freedom of expression of the Venezuelan people.<sup>192</sup>

398. The IACHR points out that although regulating radio and television programs is compatible with the American Convention when carried out in accordance with the strict parameters of Article 13, the new bill being discussed still contains a series of restrictions, definitions, and regulations applicable to the content of radio and television programs that, if enforced, could violate the Convention's precepts. Moreover, the sanctions provided for are so stiff that, in certain cases, they could lead to self-censorship on the part of the media, which would seriously undermine enjoyment of the right in question.

399. The restrictions in terms of truthfulness, impartiality, and timeliness<sup>193</sup> that the bill would impose on information run contrary to the jurisprudence of the inter-American system for the protection of human rights. The Inter-American Court has ruled that: "One cannot legitimately rely on the right of a society to be honestly informed in order to put in place a regime of prior censorship for the alleged purpose of eliminating information deemed to be untrue in the eyes of the censor."<sup>194</sup> The IACHR offers a similar interpretation in the seventh principle of its Declaration of Principles on Freedom of Expression.

400. Breaches of the concepts set forth above (truthfulness, impartiality, and timeliness) can lead to repercussions. Consequently, in light of the international standards that exist for protecting freedom of expression,

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<sup>192</sup> See: Letter from the IACHR to Foreign Minister Chaderton of June 4, 2003; and letter from the Rapporteur's office to Foreign Minister Chaderton of May 27, 2003. As of the drafting of this report, no replies – which would have been of use in its preparation – have been received.

<sup>193</sup> Article 1 stipulates that the law's provisions shall apply to all images and sounds received in Venezuelan territory by means of radio and television services. Article 4 further provides that:

For the purposes of this Law, the following types of programs are established: (...)

2. Informational program: when information about local, national, or international events or personalities is transmitted in an impartial, truthful, and timely fashion.

Other provisions in the law require the broadcasting of "informational programs," thereby imposing obligations on certain programs with respect to their content.

<sup>194</sup> Inter-Am.Ct.H.R., Advisory Opinion OC-5/85, paragraph 33.

it is a source of concern that laws such as this could encourage self-censorship, the result of journalists fearing punishments for breaches of conditions that have been ruled inadmissible by the inter-American system's bodies. The IACHR also believes that a breach of the truthfulness requirement cannot be a reason for imposing subsequent punishment; this is because of the need to distinguish information from opinion, and public from private figures, as will be explained below.

401. The bill still imposes restrictions on the content of radio and television programs, and this, in conjunction with the vague phrasing used in several of its provisions, could also lead to self-censorship by the media in a fashion similar to that described above. For example, the bill would prohibit the transmission, during a protected timeslot, of "commonly used images and sounds that, while not obscene... are crude in nature" (Article 5.1).<sup>195</sup> The extreme subjectivity of this classification, together with the fact that the bill offers no parameters for interpreting these labels and, most particularly, the severity of the punishments potentially applicable to those who commit infractions, forces the IACHR and the Rapporteur's office to conclude that media self-censorship would be the certain outcome if the initiative currently before the National Assembly were enacted.<sup>196</sup>

402. Equally worrisome is the requirement placed on the media to reveal their sources, even in the situations set forth in Article 4 of the bill,<sup>197</sup> given the poor clarity of the phrasing and the fact that revealing sources is the rule and not the exception. The selection of information sources is part of the ethics and responsibilities of journalism, which can in no circumstance be subjected to state scrutiny. The Commission holds that the right to protect confidential sources is an ethical duty inherent to journalistic

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<sup>195</sup> Article 5. For the purposes of this Law, the following classified elements are defined: language, health, sexual, and violence.

1. The following elements of language are defined:

(a) Type "B": commonly used images and sounds that, while not obscene or classified as type "C," are crude in nature.

<sup>196</sup> As an example, the provisions of the final section of Article 6 could lead to the same consequences:

In no instance shall it be permissible to disseminate messages using audiovisual or audio techniques that have the intent, aim, or effect of hindering or impeding their conscious perception by the audience.

<sup>197</sup> Article 4 (final section): Educational, informational, opinion, and informational-cum-opinion programs shall identify their documentary sources and their informational sources, with the exception of those journalistic sources of a secret nature whose identity must be protected, in compliance with the Constitution and law.

responsibility. Furthermore, the IACHR states that this issue also involves the interests of the sources, in the sense of being able to rely on confidentiality – when, for example, information is given to the journalist on such conditions. The IACHR holds that revealing sources of information has a negative and intimidating effect on journalistic investigations: seeing that journalists are obliged to reveal the identities of sources who provide them with information in confidence or during the course of an investigation, future sources of information will be less willing to assist reporters. The basic principle on which the right of confidentiality stands is that in their work to provide the public with information, journalists perform an important public service by gathering together and disseminating information that would otherwise not be known. Professional confidentiality has to do with the granting of legal guarantees to ensure anonymity and to avoid potential reprisals that could arise from the dissemination of certain information. Confidentiality is therefore an essential element in journalism and in the task of reporting on matters of public interest with which society has entrusted its journalists.<sup>198</sup>

403. The European Court of Human Rights has recognized the importance of the protection of journalistic sources as “one of the basic conditions for press freedom.”<sup>199</sup> The European Court ruled that:



Without such protection, sources may be deterred from assisting the press in informing the public in matters of public interest. As a result the vital public-watchdog role of the press may be undermined and the ability of the press to provide accurate and reliable information may be adversely affected. Having regard to the importance of the protection of sources for press freedom in a democratic society and the potentially chilling effect an order of source disclosure has on the exercise of that freedom, such a measure cannot be compatible with Article 10 of the Convention unless it is justified by an overriding requirement in the public interest.<sup>200</sup>

404. The Inter-American Commission on Human Rights also indicated, in adopting the Declaration of Principles on Freedom of Expression, that protecting sources is a part of the general guarantee of press

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<sup>198</sup> IACHR, *Annual Report 2000, Vol. III, Report of the Rapporteur for Freedom of Expression*, OEA/Ser.L/V/II.114, Doc. 20 rev., p. 24. See also: Felipe Fierro Alvídez, *El derecho y la libertad de expresión en México, debates y reflexiones*, Revista Latina de Comunicación Social, December 2000, at <<http://www.ull.es/publicaciones/latina/04fierro.htm>>.

<sup>199</sup> European Court of Human Rights, *Goodwin v. United Kingdom*, Judgment of March 27, 1996, *Reports of Judgments and Decisions*, No. 7, 1966-II, p. 483, paragraph 39.

<sup>200</sup> *Ibid.*, *Goodwin v. United Kingdom*.

freedoms.<sup>201</sup> It should be emphasized that this right does not constitute a duty, as social communicators are not obliged to protect the confidentiality of their sources, except for reasons of professional conduct and ethics.<sup>202</sup>

405. These are some of the bill's provisions that could undermine free expression in Venezuela. Given that the bill is still being discussed, however, the IACHR and the Rapporteur's office hope that the debate in the Legislative Assembly will pay attention to the proposed legislation's compatibility with the State's international obligations with respect to freedom of expression.

## **2. Decision of the Supreme Court of Justice of June 12, 2001 ("Judgment 1,013")**

406. At its 118th regular session, in its Report No. 92/03, the Commission declared petition 0453/01, Elías Santana *et al.*, to be inadmissible. In that report, the Commission instructed the IACHR's Special Rapporteur for Freedom of Expression to prepare a special report on Judgment 1,013 and the inter-American system's human rights protection standards applicable to freedom of expression under the American Convention and the Declaration of Principles on Freedom of Expression. Article 41 of the American Convention empowers the Commission to prepare such studies or reports as it considers advisable and to serve recommendations on OAS member states with respect to the adoption of measures in favor of human rights within the framework of their domestic laws and constitutional provisions. This instruction was a partial reflection of the importance of the debate surrounding the content of the judgment and of the legitimate interest shown by society in general and the international community about the possible impact on freedom of expression that would follow if the Court's interpretations were applied by other judicial bodies.

407. Judgment 1,013 was analyzed by the IACHR in an individual petition<sup>203</sup> lodged with it by Elías Santana, Cecilia Sosa, the Venezuelan Press Bloc, and others. The petitioners claimed that the State had violated the right to a fair trial, freedom of expression, right of reply, right to effective remedies, right to participate in government and to equal access to public

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<sup>201</sup> OAS, *Basic Documents Pertaining to Human Rights in the Inter-American System* (updated January 2003), Declaration of Principles on Freedom of Expression: Eighth Principle, p. 189.

<sup>202</sup> See: *2000 Annual Report of the Rapporteur for Freedom of Expression*, (*supra*).

<sup>203</sup> P 0454/02, Venezuela.

office, right to equality before the law, right of equal protection, right to property, the scope of restrictions, standards of interpretation, all in conjunction with the State's obligation of ensuring those rights and implementing domestic legal effects enshrined in Articles 8, 13, 14, 25, 23(a)(c), 24, 21.1, 30, 29(a)(b), 1, and 2 of the American Convention on Human Rights.

408. The IACHR and the Rapporteur's office note the controversy that this judgment created<sup>204</sup> since the opinions on which the sentence was based were to be, in the Chamber's view, "binding doctrine for the interpretation of Articles 57 and 58 of the Constitution." This claim is not merely theoretical, since it has already been used in that way by the Court, as can be seen in the sentence described in the following paragraph.<sup>205</sup> Irrespective of the inadmissibility decision issued by the IACHR, and in compliance with the instruction served on the Rapporteur's office, the following paragraphs offer a series of thoughts on this matter.

409. First of all, the inter-American system's international instruments for safeguarding freedom of expression clearly protect the right of all individuals to seek and receive information.<sup>206</sup>

410. In turn, Article 14.1 of the Convention, dealing with the right of reply, provides that:

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<sup>204</sup> This controversy was reported in the Venezuelan media and in the press releases of a number of international organizations (for example, the Inter American Press Association, Reporters Without Borders, etc.). Indeed, the Constitutional Chamber of the Supreme Court itself, on July 25, 2001, issued an ex-officio "Institutional Clarification" in light of the fact that "several persons have made statements in the media, attributing to judgment No. 1,013 (Case: Elías Santana, Exp. 00-2760), issued by this Court's Constitutional Chamber, references that it does not contain, or referring to extracts thereof removed from their context, or stating that unspecified international treaties have been violated; as a result, the Supreme Court of Justice deems it necessary to offer a summary of that judgment, which, in addition, is based on decisions of the Constitutional Court of Spain, the Constitutional Court of Germany, and the Supreme Court of the United States of America."

<sup>205</sup> In a Supreme Court decision of July 15, 2003, the Constitutional Chamber said that: "The Chamber notes that this interpretation guideline is binding, deriving from the freedom of expression set forth in Article 57 of the Constitution and the responsibilities imposed by that precept and referred to in this Chamber's Judgment No. 1,013 of June 12, 2001 (Case: Elías Santana)."

<sup>206</sup> See: Article 13.1 of the Convention; the second principle of the Declaration of Principles on Freedom of Expression; and Article IV of the American Declaration of the Rights and Duties of Man. These texts invariably state that "everyone" is to enjoy the right in question.

Anyone injured by inaccurate or offensive statements or ideas disseminated to the public in general by a legally regulated medium of communication has the right to reply or to make a correction using the same communications outlet, under such conditions as the law may establish.

411. One of the basic notions behind these instruments and the rights they enshrine is the full enjoyment, on a nondiscriminatory basis, of the right of free expression and the right of reply. In this respect, provisions that discriminate against individuals and keep them from fully participating in their countries' political, economic, public, and social undertakings are inadmissible. The American Convention on Human Rights protects the right of nondiscrimination as a basic pillar in strengthening and upholding the hemisphere's democratic systems.<sup>207</sup>

412. The exclusion of any sector of society from exercising the rights guaranteed by the Convention hinders the broad development of democratic, pluralistic societies and exacerbates intolerance and discrimination. In the case of María Eugenia Morales de Sierra from Guatemala, the Commission said that "a norm that deprives a portion of the population of some of its rights – for example, because of race – automatically injures all the members of that race."<sup>208</sup> Thus, for example, denying media workers the right to reply would constitute a limitation of a right enshrined in the American Convention with respect to a part of the population – in this case, journalists and similar professions.<sup>209</sup>

413. Secondly, with respect to the conditions placed on information – such as requiring its truthfulness or prior verification – the IACHR refers to the comments given above. The IACHR and the Rapporteur's office again state that such prior conditioning undermines the exercise of free expression.

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<sup>207</sup> See: American Convention on Human Rights, Chapter I, General Obligations, Article 1: Obligation to Respect Rights; and Chapter II, Civil and Political Rights, Article 13: Freedom of Expression.

<sup>208</sup> See: IACHR, Case 11.625, María Eugenia Morales de Sierra, Guatemala, January 19, 2001.

<sup>209</sup> With respect to the right of reply, the Judgment stated that: "That right does not lie with the media, nor with those who express themselves therein; the Chamber again states that the right of reply and rectification is granted solely to those who receive the information, and not to those who supply it."

414. The demand for reasonable verification of all information broadcast<sup>210</sup> lies beyond the bounds set by the Convention and does not comply with the legitimate goals set down in Article 13.2 thereof: protecting the rights and reputations of others, or protecting national security, public order, or public health and morals. With respect to the proportionality of the restriction imposed, the Inter-American Court has said that “if there are various options to achieve” one of the legitimate objectives, “that which least restricts the right protected must be selected.”<sup>211</sup> In addition, the restriction must be “closely tailored to the accomplishment of the legitimate governmental objective necessitating it.”<sup>212</sup>

415. The “reasonable verification” requirement creates the possibility of any member of society requesting that a journalist be legally punished. Such a possibility contravenes the spirit of Article 13.2, because it is not necessary in ensuring a legitimate objective. The stated aim of this requirement is to protect the right to receive truthful information. But the standards state that all individuals have the right to receive information of all kinds, and it is the debating and exchanging of ideas that offers the best way to seek out the truth. The IACHR and the Special Rapporteur note that imposing, *ante facto*, the requirement of solely reporting truthful information serves only to deny the possibility of pursuing the debate necessary to reveal the truth.

416. In addition, the ideological leaning of the person making a given statement is an inadequate element for issuing a verdict on whether that statement is true or false. The IACHR understands that any ideological tendency can contribute to public debate, and so restricting that debate to those who publish in media outlets with a given ideological composition, even a balanced one, is inappropriate under the terms of Article 13 of the Convention.<sup>213</sup> This type of demand is supposedly justified by the fact that by providing society with information on the ideologies supported by media workers, the citizenry can more effectively assess the kind of information they receive. On the contrary, the IACHR and the Special Rapporteur believe

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<sup>210</sup> The Venezuelan Supreme Court has ruled that one of the consequences of requiring truthful information is the doctrine whereby the reasonable verification of truthfulness is obligatory.

<sup>211</sup> Inter-American, *Obligatory Membership*, paragraph 46.

<sup>212</sup> *Ibid.*

<sup>213</sup> The Supreme Court stated that: “It is also an affront to true and impartial information for a majority of columnists to reflect a single ideological tendency, unless the media outlet in its editorials or through its spokespersons, maintains and identifies itself with a line of opinion that is consistent with that of the columnists and contributors.”

that such justifications underestimate the capacity of democratic societies to identify information that responds to a given ideological leaning without the imposition of government controls. The right of freedom of expression and the right of access to information are indivisible; hence, the best way to ensure that society receives the information it needs to decide on matters of public interest is by guaranteeing a plurality of information and media voices, with a minimum of restrictions. We also note that requiring media outlets to identify themselves in ideological terms can lead to abuses by the government in controlling voices critical of it.

417. Thirdly, the IACHR points out that any precept that favors public officials by enabling them to impose criminal sanctions on criticisms made of them or their offices is incompatible with the provisions regarding the subsequent imposition of liability set forth in the Convention.<sup>214</sup> A number of comments on this matter are offered in section 2.III of this chapter.

418. In fourth place, and with particular reference to right of reply, the Rapporteur's office repeats and elaborates on some of the ideas that were offered in the inadmissibility ruling in the case of Santana *et al.*

419. The Commission cannot ignore the controversy arising from the scope of the right of reply in connection with the right of free expression. Among the conflicting arguments, on the one hand are those who believe that the right of reply limits freedom of expression by forcing the media to transmit, free of charge, information that does not necessarily agree with the media outlet's editorial line; on the other side stand those who hold that right of reply strengthens freedom of expression by encouraging and facilitating a more intense exchange of information. Consequently, the scope of the right of reply must be closely watched to ensure it does not undermine the right of free expression.

420. Article 14 of the American Convention provides that:

1. Anyone injured by inaccurate or offensive statements or ideas disseminated to the public in general by a legally regulated medium of communication has the right to reply or to make a correction using the same communications outlet, under such conditions as the law may establish.

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<sup>214</sup> One paragraph in Judgment 1,013 reads as follows: "With the vehicle of dissemination, above all when it is used for communications terrorism aimed at securing public scorn for individuals or institutions, particularly when the content broadcast consists solely of slurs, insults, and attacks that are incompatible with the discussion of ideas and opinions."

2. The correction or reply shall not in any case remit other legal liabilities that may have been incurred.
3. For the effective protection of honor and reputation, every publisher, and every newspaper, motion picture, radio, and television company, shall have a person responsible who is not protected by immunities or special privileges.

421. The Commission understands that Article 14.1 of the American Convention guarantees the right of reply through the media outlet involved and under the conditions set by law. The Inter-American Court has already provided an analysis of this in its Advisory Opinion on the Enforceability of the Right to Reply or Correction, OC-7/86. On that occasion it determined that Article 14.1 did not indicate whether the victims were entitled to an equal or greater amount of space in which to reply; when the reply, once received, had to be published; within what time frame the right could be exercised; what language was admissible; etc. Under Article 14.1, these conditions are such “as the law may establish.”<sup>215</sup> The phrasing “as the law may establish” refers to a number of conditions related to the enjoyment of this right. The phrase refers to the effectiveness of the right in the domestic sphere, and not to its creation, existence or enforceability on the international plane. Consequently, the Court ruled that:



fact that the States Parties may fix the manner in which the right of reply or correction is to be exercised does not impair the enforceability, on the international plane, of the obligations they have assumed under Article 1(1). That Article contains an undertaking by the States Parties “to respect the rights and freedoms” the Convention recognizes and “to ensure to all persons subject to their jurisdiction the free and full exercise of these rights and freedoms.” If for any reason, therefore, the right of reply or correction could not be exercised by “ anyone ” who is subject to the jurisdiction of a State Party, a violation of the Convention would result which could be denounced to the organs of protection provided by the Convention.<sup>216</sup>

422. The Commission notes that under Article 14 of the Convention, an alleged victim can invoke the right of reply to obtain immediate rectification through the publication or transmission, in the same

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<sup>215</sup> Inter-Am.Ct.H.R., *Enforceability of the Right to Reply or Correction (Arts. 14.1, 1.1, and 2 of the American Convention on Human Rights)*, Advisory Opinion OC-7/86, August 29, 1987. Series A No. 8, paragraph 27.

<sup>216</sup> *Ibid.*, paragraph 28.

media outlet, of the verifiable truth regarding the incident that was distorted by the reporter in question. Such actions can be taken only with factual information, and not in connection with commentaries or opinions. With reference to the expressing of opinions, the European Court of Human Rights has ruled that there are circumstances in which a value judgment must be backed by facts that are sufficiently solid so as to lead to that opinion. This position consequently allows the rectification of factual information in statements of opinion that are based on verifiable facts. In such circumstances, it would be necessary to demonstrate a relationship between a value judgment and the facts supporting it on a case-by-case basis.<sup>217</sup>

423. In the inter-American system, with respect to the question of what kind of expressions (statements of fact or opinions) can replies or rectification be requested for, the IACHR would like to point out that there is a substantial discrepancy between the wording of the English-language version of Article 14(1) on the one hand and that of the Spanish, Portuguese, and French versions on the other.

424. Article 14(1) of the Spanish version says:

1. Toda persona afectada por **informaciones** inexactas o agraviantes emitidas en su perjuicio a través de medios de difusión legalmente reglamentados y que se dirijan al público en general, tiene derecho a efectuar por el mismo órgano de difusión su rectificación o respuesta en las condiciones que establezca la ley.

425. Article 14(1) in the English version reads:

1. Anyone injured by inaccurate or offensive **statements or ideas** disseminated to the public in general by a legally regulated medium of communication has the right to reply or to make a correction using the same communications outlet, under such conditions as the law may establish.

426. The French version of Article 14(1) provides:

1. Toute personne offensée par des données inexactes ou des imputations diffamatoires émises à son égard dans un organe de diffusion légalement réglementé et qui s'adresse au public en général, a le droit de faire publier sa rectification ou sa réponse, par le même organe, dans les conditions prévues par la loi.

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<sup>217</sup> See: Eur.Ct.H.R., *Feldek v. Slovakia*, Judgment of July 12, 2001, paragraph 75.

427. In the Portuguese-language version, Article 14(1) states:

1. Toda pessoa atingida por informações inexatas ou ofensivas emitidas em seu prejuízo por meios de difusão legalmente regulamentados e que se dirijam ao público em geral, tem direito a fazer, pelo mesmo órgão de difusão, sua retificação ou resposta, nas condições que estabeleça a lei.

428. In its Advisory Opinion on the Enforceability of the Right to Reply or Correction, the Inter-American Court noted the difference between the original texts – all of which are certified as being equally authentic – but made no statement regarding how the discrepancy might affect the scope of the right protected by Article 14(1).

429. Article 13 of the American Convention protects the expression of both information and ideas. The broad concept of protection enshrined in Article 13 was not followed by the final language of Article 14 of the American Convention in its Spanish, Portuguese, and French versions. Those versions expressly exclude all reference to ideas from their wording, protecting the right of reply solely with respect to inaccurate or offensive information. Omitting from the text the broad treatment given to different types of expression in Article 13 would seem to indicate that the Convention expressly excludes statements of opinion from those expressions to which the right of reply can apply.<sup>218</sup>

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<sup>218</sup> The courts of several member states have interpreted it that way. See, for example, a judgment by the Supreme Court of Argentina, which ruled that: “Rectification is admissible only when required to refute statements of fact. With respect to Art. 14 of the American Convention on Human Rights, the clear terminology of the precept limits the right to the factual sphere, to facts that can be judicially proven to exist or not. The broad field in which the decisive element is not the facts, but rather their interpretation, is thus excluded: this is the realm of ideas or beliefs, of conjecture, opinion, and value judgment. While it is true that the last field also includes elements of fact, the essence is the acceptance or rejection that the factual basis provokes in the author of the statement. This applies to both inaccurate and offensive information. Also, in the latter case, the offensive element must come from the reported facts themselves, to which the person affected may ultimately choose to respond, and not from the formulation of condemnatory value judgments... Excluding from rectification or reply what can generally be termed opinions is a characteristic that is not exclusive to the Convention.” Case of *Petric v. Diario* Página 12 of 22/6/99 (LL, 1996-A-689) in: Gregori Badeni, *Tratado de Libertad de Expresión*, LexisNexis, Editorial Abeledo-Perrot, Buenos Aires 2002, p. 332. Similarly, in Judgment 1,013, the Constitutional Chamber of the Supreme Court of Justice of the Bolivarian Republic of Venezuela ruled that: “When what is challenged is an opinion not based on supporting facts, in the Chamber’s view there is no information to disprove, other than the channels of ordinary actions that exist or may be created in the future by law.” Constitutional Chamber of the Supreme Court of Justice, June 12, 2001.

430. The IACHR elaborates: the jurisprudence developed by the inter-American system maintains that the falsehood of an idea is clearly impossible to verify. Similarly, within the European system, a judgment issued by the European Court ruled that: "While the existence of facts can be demonstrated, the truth of value judgments is not susceptible of proof. The requirement to prove the truth of a value judgment is impossible to fulfill and infringes freedom of opinion itself, which is a fundamental part of the right secured by Article 10."<sup>220</sup> Demanding "truthfulness" in cases involving value judgments can lead to the almost automatic censorship of all information that cannot be proven; this would smother practically all political debate based chiefly on ideas and opinions of an essentially subjective nature. The possibility of correcting or responding to an opinion would pose the risk of an endless succession of interventions that would stifle the media's own expression, thereby fueling the threat of self-censorship. Admitting the right to reply with respect to an opinion with which readers are not in agreement or which they believe to be offensive to the right of privacy or reputation would create an interminable chain of rectifications and replies.<sup>221</sup> In light of the above, if the purpose of the right of reply is to correct inaccurate or false information, then opinions not subject to such verification must be excluded from it.

431. With reference to the textual discrepancy in the different versions of Article 14 of the Convention, the IACHR believes that this issue must be resolved through the different methods of interpretation offered by

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<sup>219</sup> IACHR, *Annual Report 1994, Report on the Compatibility of Desacato Laws with the American Convention on Human Rights*, OEA/Ser.L/V/II.88, Doc. 9 rev. (1995), Section IV. B. paragraph 5, which states that:

Even those laws which allow truth as a defense inevitably inhibit the free flow of ideas and opinions by shifting the burden of proof onto the speaker. This is particularly the case in the political arena where political criticism is often based on value judgements, rather than purely fact-based statements. Proving the veracity of these statements may be impossible, since value judgements are not susceptible of proof.

See also: Inter-Am.Ct.H.R., *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism (Arts. 13 and 29, American Convention on Human Rights)*, Advisory Opinion OC-5/85, November 13, 1985, Series A No. 5, paragraph. 77:

A system that controls the right of expression in the name of a supposed guarantee of the correctness and truthfulness of the information that society receives can be the source of great abuse and, ultimately, violates the right to information that this same society has.

<sup>220</sup> Eur.Ct.H.R., *Feldek v. Slovakia*, Judgment of July 12, 2001, paragraph 75.

<sup>221</sup> See: Gregori Badeni, *Tratado de Libertad de Expresión*, LexisNexis, Editorial Abeledo-Perrot, Buenos Aires 2002, p. 301.

international law. In interpreting the Convention, the Court has used traditional international law methods, relying both on general rules of interpretation and on supplementary means, as dealt with in Articles 31 and 32 of the Vienna Convention on the Law of Treaties.

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<sup>222</sup> Inter-Am.Ct.H.R., *Other Treaties Subject to the Consultative Jurisdiction of the Court (Art. 64 of the American Convention on Human Rights)*, Advisory Opinion OC-1/82 of September 24, 1982, Series A No. 1, paragraph 33.

Article 31 of the Vienna Convention provides as follows:

31. General rule of interpretation I. A treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose.

2. The context for the purpose of the interpretation of a treaty shall comprise, in addition to the text, including its preamble and annexes:

(a) any agreement relating to the treaty which was made between all the parties in connexion with the conclusion of the treaty;

(b) any instrument which was made by one or more parties in connexion with the conclusion of the treaty and accepted by the other parties as an instrument related to the treaty.

3. There shall be taken into account, together with the context:

(a) any subsequent agreement between the parties regarding the interpretation of the treaty or the application of its provisions;

(b) any subsequent practice in the application of the treaty which establishes the agreement of the parties regarding its interpretation;

(c) any relevant rules of international law applicable in the relations between the parties.

4. A special meaning shall be given to a term if it is established that the parties so intended.

Article 39 of the Vienna Convention provides as follows:

39. General rule regarding the amendment of treaties A treaty may be amended by agreement between the parties. The rules laid down in Part II apply to such an agreement except in so far as the treaty may otherwise provide.

432. Article 32 of the Convention de Vienna stipulates that: “course may be had to supplementary means of interpretation, including the preparatory work of the treaty and the circumstances of its conclusion, in order to confirm the meaning resulting from the application of article 31, or to determine the meaning when the interpretation according to article 31: (a) leaves the meaning ambiguous or obscure; or (b) leads to a result which is manifestly absurd or unreasonable.” Article 33.4 of the Vienna Convention on the Law of Treaties provides that: “when a comparison of the authentic texts discloses a difference of meaning which the application of articles 31 and 32 does not remove, the meaning which best reconciles the texts, having regard to the object and purpose of the treaty, shall be adopted.”<sup>223</sup>

433. To achieve this, the IACHR believes a complementary means of interpretation should be used, to analyze the right granted by Article 14 in terms of the right of reply to ideas and, in so doing, reference should be made to the preliminary work that took place in drafting the Pact of San José.

434. In the preliminary documents and proceedings of the Inter-American Specialized Conference on Human Rights, the meaning and

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<sup>223</sup> Vienna Convention on the Law of Treaties, U.N. Doc A/Conf. 39/27 (1969), 1155 U.N.T.S. 331, May 23, 1969, Part III: Observance, Application and Interpretation of Treaties, Section 3, Articles 31 to 33. See also: Inter-Am.Ct.H.R. Advisory Opinion OC-3/83 of September 8, 1983, *Restrictions to the Death Penalty (Arts. 4.2 and 4.4 of the American Convention on Human Rights)*, paragraphs 49-50, in which the Court uses and glosses the interpretation criteria of the Vienna Convention and rules that:

49. These rules specify that treaties must be interpreted “in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose” (Vienna Convention, Article 31.1). Supplementary means of interpretation, especially the preparatory work of the treaty, may be used to confirm the meaning resulting from the application of the foregoing provisions, or when it leaves the meaning ambiguous or obscure or leads to a result which is manifestly absurd or unreasonable (*ibid.*, Art. 32).

50. This method of interpretation respects the principle of the primacy of the text, that is, the application of objective criteria of interpretation. In the case of human rights treaties, moreover, objective criteria of interpretation that look to the texts themselves are more appropriate than subjective criteria that seek to ascertain only the intent of the Parties. This is so because human rights treaties, as the Court has already noted, “are not multilateral treaties of the traditional type concluded to accomplish the reciprocal exchange of rights for the mutual benefit of the contracting States”; rather “their object and purpose is the protection of the basic rights of individual human beings.”

wording of Article 14 of the Convention was debated intensely and modified extensively.

435. In its earliest version in Spanish, the article read as follows: “toda persona afectada por informaciones o conceptos inexactos y agravante emitidos en su perjuicio o a través de medios de difusión que se dirijan al público en general, tienen derecho a efectuar por el mismo órgano de difusión, en la misma forma y gratuitamente su rectificación o su respuesta.” The term *conceptos* in the original Spanish documents could be interpreted as equating to the “ideas” used in the current English-language text of Article 14.1.

436. Because of the heated debate unleashed by this article’s contents, a Working Group was set up during the discussions. The group was composed of the delegates of Argentina, Nicaragua, Panama, Mexico, Ecuador, Colombia, and the United States; and Prof. Justino Jiménez de Aréchaga, a member of the IACHR at the time, was invited to serve as an advisor. The Working Group, under instructions to draft the text of the article, discussed and voted on the new text as agreed upon, which is the current wording of the Spanish version of Article 14.1. However, the text of the English version retained the term “ideas,” and incorporated the other amendments agreed on by the Working Group.

437. Finally, the IACHR understands that were access to the media allowed for the purpose of rectifying or replying to the different ideas or opinions expressed by journalists, interviewees, and other speakers, the result would be to dissuade the transmission or publication of controversial issues. Moreover, media outlets would lose editorial control over their publications and would choose to cover only superficial stories.<sup>224</sup>

### 3. Supreme Court Decision of July 15, 2003

438. On July 15, 2003, the Constitutional Chamber of the Supreme Court of Justice ruled on a motion seeking the annulment, on grounds of unconstitutionality, of Articles 141, 148, 149, 150, 151, 152, 223, 224, 225, 226, 227, 444, 445, 446, 447, and 450 of the Criminal Code. Some of these articles define the crime of *desacato* contempt; others

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<sup>224</sup> Rafael Chavero Gazdik, *Un buen Comienzo, la Sentencia 1.013 de la Sala Constitucional y el Derecho de Réplica y Rectificación*, p. 197, in: Allan R. Brewé-Carías *et al.*, “La Libertad de Expresión amenazada (La sentencia 1013),” Inter-American Institute of Human Rights, Editorial Jurídica Venezolana, 2001.

allow the use of common criminal law provisions to the same end. The Supreme Court upheld most of these precepts.

439. The IACHR and the Special Rapporteur offer an analysis of these articles of Venezuela's law in the section dealing with those precepts that, if enforced, would undermine the right protected by Article 13 of the Convention. Irrespective of that effort, in this section the IACHR notes its concern regarding the Supreme Court's decision, which upholds laws that the IACHR believes to be incompatible with that article of the Convention.

440. With respect to this issue, in a 1995 report the Inter-American Commission studied whether *desacato* laws were compatible with the American Convention on Human Rights.<sup>225</sup> In summary, the arguments were the following: (a) *desacato* laws provide public officials with a higher level of protection than private citizens, in direct contravention of the basic principle of democratic systems whereby checks such as public oversight are placed on the government to prevent and control abuses of its coercive powers; and (b) *desacato* laws dissuade criticism through the fear of legal action or fines that they instill in people. In addition, *desacato* laws do not allow the mechanism of *exceptio veratitit*, since, in general, they rule that affronts to public officials are consummated with the making of the statement itself. Moreover, *desacato* laws cannot be justified by stating that their goal is to defend "law and order" (a permissible reason for regulating free speech under Article 13), since that would be in breach of the principle that a properly functioning democracy is the best way to uphold the public order. In contrast to the special protection granted to public officials by *desacato* laws, the Commission notes that the doctrine established by the Supreme Court of Justice in Judgment 1,013 denies journalists and media workers the right to reply, even following alleged affronts to their persons.

441. The Constitutional Chamber's ruling also provides that:

with respect to communications and in application of other constitutional precepts, the law can prevent the dissemination of information that leave other provisions or principles of the Constitution void of content.

442. Irrespective of the specific cases referred to in the decision, this general claim is a source of concern to the IACHR in that it contradicts the ruling made by the Inter-American Court of Human Rights in its Advisory Opinion OC-5 of November 13, 1985. On that occasion, the Court said that

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<sup>225</sup> See: OEA/Ser. L/V/II.88, doc. 9 rev., February 17, 1995.

prior censorship was an extreme violation of the right of free expression in that “governmental power is used for the express purpose of impeding the free circulation of information, ideas, opinions or news... The violation is extreme not only in that it violates the right of each individual to express himself, but also because it impairs the right of each person to be well informed, and thus affects one of the fundamental prerequisites of a democratic society.” In OC-5 the Court also ruled that prior censorship “is always incompatible with the full enjoyment of the rights listed in Article 13, but for the exception provided for in subparagraph 4 dealing with public entertainments, even if the alleged purpose of such prior censorship is to prevent abuses of freedom of expression. In this area any preventive measure inevitably amounts to an infringement of the freedom guaranteed by the Convention.” This aspect of the Court’s jurisprudence was reaffirmed in its ruling in  “Last Temptation of Christ” case.<sup>226</sup> In turn, the IACHR has ruled that: “Article 13 of the American Convention expressly prohibits prior censorship except for the regulation of access to public entertainments for the moral protection of childhood and adolescence.”<sup>227</sup>

443. Consequently, and over and above the other reasons for concern regarding issues set forth in the judgment, it is clear that upholding *desacato* crimes, as the Supreme Court’s decision does, is in breach of the jurisprudence of the inter-American system.

#### **D. Administrative proceedings toward television stations**

444. The IACHR and the Rapporteur’s office have been informed of administrative proceedings begun by the Ministry of Infrastructure against a number of Venezuelan television stations. These proceedings are based on legislation that runs contrary to full enjoyment of freedom of expression and could lead to the cancellation of the telecommunications service licenses or permits granted to those companies.<sup>228</sup>

445. According to the information received, on Wednesday, February 5, 2003, officials from the Ministry of Infrastructure visited the

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<sup>226</sup> Olmedo Bustos *et al.* v. Chile, Judgment of February 5, 2001.

<sup>227</sup> See: *Report on Terrorism and Human Rights*, OEA/Ser.L/V/II.116, Doc. 5 rev. 1 corr., October 22, 2002.

<sup>228</sup> The Special Rapporteur sent a letter to Foreign Minister Chaderton expressing his concern regarding the commencement of these proceedings in January 2003. His office had already made a public statement on the matter in its press release No. 45/01 of October 29, 2001.

headquarters of *Venevisión* to serve notice of administrative proceedings for the investigation of alleged violations of Article 171 of the Telecommunications Law<sup>229</sup> and Article 53 of the Radiocommunications Regulations.<sup>230</sup> These proceedings were added to others initiated against

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<sup>229</sup> Article 171. Irrespective of the fines applicable under the terms of this Law, the following shall be punishable by the cancellation of the corresponding license or permit, as appropriate:

1. A person with a Universal Service obligation who fails to perform the activities, duties, and functions deriving therefrom;
2. Any person who fails to meet the quality, coverage, and efficiency parameters set by the National Telecommunications Commission;
3. Any person who does not make effective use of the portion of the radio spectrum assigned to him or her under the terms and conditions established for the purpose;
4. Any person who fails to abide by a provisional or precautionary measure issued by the National Telecommunications Commission in accordance with the terms of this Law;
5. Any person who maliciously causes interference to telecommunications services;
6. Any person who uses, or allows to be used, the telecommunications services for which he or she is authorized as means to assist the commission of crimes;
7. Any person who maliciously furnishes information to the National Telecommunications Commission based on documents that are ruled false by an irrevocable judicial decision;
8. Any person who fails to meet the obligation of securing the approval of the National Telecommunications Commission in the operations described in Article 195 of this Law;
9. Any person who avoids paying the levies set forth in this Law;
10. Repetition of any of the offenses listed in this Section within a period of one year following the irrevocable issuing of the previous punishment.

Cancellation of the radio-frequency concession shall imply the cancellation of the corresponding administrative license, and vice-versa.

<sup>230</sup> The Radiocommunications Regulations read as follows:

Article 53. Broadcast stations are absolutely forbidden to transmit:

- (a) Correspondence of a private nature. However, for as long as the normal channels for official telecommunications are interrupted or congested, this restriction shall not apply to messages broadcast free of charge by stations during and relating to tropical storms, floods, earthquakes, and other public disasters, or to those with places with which

(Continued...)

*Globovisión, RCTV, and Televen* under the same laws. According to the information received, officials from the Ministry of Infrastructure, who declined to give their names, paid a brief visit to *Globovisión* to serve notice

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(...Continued)

there is no other means of communication, in urgent instances and after the prior authorization of the responsible Ministry has been secured.

(b) Ideas that could compromise good and friendly relations among countries.

(c) Messages, speeches, exhortations, or lectures that call for rebellion or disrespect toward legitimate authorities and institutions; and showing disrespect toward those same institutions and authorities.

(d) Propaganda aimed at subverting public or social order.

(e) Political propaganda, when it entails debates or discussions among competing persons or parties.

(f) Improvisations on any topic, except those that must necessarily be given because an entertainment is being reviewed.

(g) News stories, messages, or exhortations aimed at hindering the course of justice.

(h) Immoderate or insistent incitements to consume alcoholic beverages. In any case, advertisements for such beverages shall require the prior authorization of the Ministry of Health and Social Assistance.

(i) Ideas that in some way affect the reputation and good name of persons or institutions.

(j) False, deceitful, and biased news or reports.

(k) Information encouraging speculation or containing deceitful statements or dubious warnings.

(l) Advice related to health, hygiene, therapy, and protection against disease; consultations regarding the treatment of disease; recommendations on cure methods or regimes; formulas for medicinal preparations; and diagnoses of a medical nature.

Transmissions of this nature will only be allowed when run or authorized by the Ministry of Health and Social Assistance or sponsored by any other official medical, health, or public assistance institution.

(m) Manifestations of darkness or pathos; sensationalist stories; and narratives of unedifying events.

(n) Programs that present people who appear to possess supernatural powers, such as seers, wizards, and personality analysts; and programs that could induce the public into holding incorrect beliefs.

(o) In general, anything that entails the commission of a crime punishable under Venezuelan criminal law.

Sole Paragraph. – The use of codes in transmissions is also prohibited.

of the commencement of administrative proceedings on January 20, 2003. That same day, *RCTV* was also notified of the initiation of administrative proceedings. Carmen Carillo, a legal advisor with the Ministry of Infrastructure, paid a visit to *RCTV*'s headquarters to serve the notice. On January 30, the Ministry of Infrastructure began administrative proceedings against *Telegen*. Ministry of Infrastructure legal advisor Carmen Carillo was again responsible for serving the notice. On May 20, the Ministry of Infrastructure requested an extension of the deadline in the proceedings against *Globovisión* and *RCTV*. On May 31, the Ministry made the same request with respect to the *Telegen* proceedings.

446. Administrative proceedings of this kind are conducted under the aegis of CONATEL (the National Telecommunications Commission), an entity that operates within the framework of the Ministry of Infrastructure, and the Director General and Board members of which are selected by the President of the Republic. Final judgment in these proceedings lies with the Minister of Infrastructure. The close ties between this institution and the executive branch of government means that the punishments available to it could be used to silence criticisms of the government.

447. The factual grounds on which the proceedings are based include statements by opposition leaders that were transmitted by the television stations in question. The comments identified as possible breaches of the law included the following: "With the coup d'état, he failed; with the homeless children, he failed; with corruption, he failed; with law enforcement, he failed; with the unity of Venezuela, he failed"<sup>231</sup> (breach of Article 53.i); "we were told: eight taxi-drivers were murdered last night (...) almost double-figures (...) eight taxi-drivers were murdered last night, coming up next on *Globovisión* news"<sup>232</sup> (breach of Article 53.j); "A government that through its president has sown hatred among Venezuelans in a planned and

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<sup>231</sup> Ministry of Infrastructure. Deed commencing administrative proceedings, February 3, 2003, against the company Corporación Venezolana de Television, C.A. (*Venevisión*). In the proceedings the entity noted "announcements in breach of the absolute ban on transmitting ideas that in any way affect the reputation and good name of individuals or institutions contained in Article 53.i of the Radiocommunications Regulations."

<sup>232</sup> CONATEL No. CJ/005457, summary administrative proceedings begun by the National Telecommunications Commission to determine the existence of a breach of Articles 53 and 59 of the Radiocommunications Regulations by the company Corpomedios GV Inversiones, C.A. (*Globovisión*). Administrative Deed No. 080, October 18, 2001. In these proceedings CONATEL stated that: "the Commission can assume that *Globovisión* broadcast information relating to the death of taxi-drivers without being certain about it, and that the information in question was transmitted without previously verifying that it was truthful or had originated with trustworthy sources."

persistent fashion, and has attempted to sow racial differences in a country that is a nation of racial mixing and equality, through a dismissive, high-handed, offensive, and authoritarian line of discourse; a government that extols and justifies violence and seeks fratricidal strife through the government's constant mockery, manipulation, and disdain toward massive demonstrations of civic protests made by Venezuelan society and toward the mediation of national and international agencies"<sup>233</sup> (breach of Article 53.c).

448. The IACHR and the Rapporteur's office observe with concern that these proceedings were initiated under legislation contrary to the international standards that govern freedom of expression. Article 53 of Venezuela's Radiocommunications Regulations provides, *inter alia*, that: "Broadcast stations are absolutely forbidden to transmit: (...) (j) False, deceitful, and biased news or reports." In this report the IACHR has repeatedly said that the right to information covers all information, including that which, in contrast to truthful, can be "erroneous," "not timely," or "incomplete"; this is because it is nothing other than broad debate and exchanges of ideas that provides the best method for seeking out truth in information. If a need to report solely the truth is imposed beforehand – a categorization that, in many cases, is highly subjective – then the possibility of pursuing the debate necessary to reach the truth is denied.

449. Additionally, in these cases the television companies are also being accused of other violations of the Regulations, including the transmission of statements that encourage "disrespect toward legitimate authorities and institutions" (Article 53.c of the aforesaid Regulations). Imposing punishments for statements of this kind contravenes the American Convention on Human Rights; and this is a position maintained by the jurisprudence of the Inter-American Commission on Human Rights since the publication of its report on the incompatibility of *desacato* laws with the Convention, an issue that the IACHR has reiterated in the present report in connection with the different topics addressed.

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<sup>233</sup> Ministry of Infrastructure No. DM/0046. Deed commencing administrative proceedings, January 17, 2003, against the company Corpomedios GV Inversiones, C.A. (*Globovisión*). In the proceedings the entity noted that "such messages and statements sponsored by the aforesaid television station are suspected of violating the absolute ban placed on the transmission of messages, speeches, exhortations, or lectures that call for rebellion or disrespect toward legitimate authorities and institutions; and the disrespect toward those same institutions and authorities set forth in Article 53.c of the Radiocommunications Regulations. The provision from the Regulations cited in the last instance is identical to the rules governing *desacato*."

450. Finally, the IACHR and the Rapporteur's office note that in July 2003, at the decision of the management of the Dr. Jesús Verena General Hospital and the Caracas Health Secretariat, the broadcaster *CATIA TV* was, without prior notice, shut down.<sup>234</sup> Since this was a community television station broadcasting with due authorization from the hospital, the IACHR notes this incident with concern. Community broadcasters of this kind can, while operating within the boundaries of legality, facilitate the free circulation of information, thereby fostering freedom of expression and dialogue within communities in order to encourage participation. Information received indicates that the station was reopened later that same July.

#### **E. Other areas of concern**

##### **1. Desacato laws (insults to authority)**

451. As was stated in the section dealing with the Supreme Court's judgment of July 15, 2003, Venezuela's criminal laws contain provisions that are incompatible with Article 13 of the Convention. An example of this are those laws that criminalize offensive statements made against public officials, known as *desacato* laws (insults to authority).

452. Venezuela's Criminal Code contains a series of provisions that, if enforced, would restrict full enjoyment of freedom of expression by criminalizing offensive statements made about public officials. These precepts are the following:

**Article 148.** Any person who offends, verbally or in writing or in any other fashion, the President of the Republic or the person serving in that capacity shall be punished with a prison term of between six and thirty months, if the offense was serious, and of half that duration, if it was slight.

The punishment shall be increased by one-third if the offense was made publicly.

If the offense was made against the President of either Chamber of the Legislature or the Chief Justice of the Supreme Court, the punishment shall be from four months to two years, if the offense was serious, and half that duration, if it was slight.

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<sup>234</sup> Following the same procedure as in the above cases against television companies (*Globovisión, Venevisión, RCTV, and Televen*), on July 15, 2003, the Rapporteur's office sent Foreign Minister Chaderton a letter expressing its concern over the incident.

**Article 149.** When the actions described in the Article above are made against the Governor of one of the nation's States, or against Cabinet Ministers, the General Secretary of the President's Office, the Governor of the Federal District or Federal Territories, Supreme Court Justices, the Presidents of the State Legislatures, and Superior Judges, or against persons serving in those capacities, the punishment indicated in that Article shall be reduced to one-half; and, with respect to Presidents of Municipal Councils, Federal District Department Prefects, or District Civil Chiefs, it shall be reduced to one-third.

**Article 150.** Any person who publicly insults the Congress, the Chambers of the National Legislature, the Supreme Court of Justice, the Cabinet or Council of Ministers, any of the Legislatures or Legislative Assemblies of the nation's states, or any of the Superior Courts, shall be punished by a prison term of between fifteen days and ten months.

Those who carry out the same acts against Municipal Councilors shall receive half that punishment.

The punishments shall be increased by one-half if the offense was made during performance of official functions by the institutions in question.

**Article 151.** The courts shall be responsible for distinguishing the serious and slight offenses referred to in Articles 148, 149, and 150.

**Article 152.** Prosecution for the actions referred to in the articles above shall not commence except at the request of the offended person or institution, lodged with the competent judge through the offices of the Public Prosecution Service.

[...]

**Article 223.** Any person who, by word or deed, offends in any way the honor, reputation, or dignity of a member of Congress or any public official shall be punished as indicated below, if the offense was made in the presence thereof and in connection with their functions:

1. If the offense was directed against a law-enforcement officer, with a prison term of one to three months.
2. If the offense was directed against a member of Congress or a public official, with a prison term of one month to one year, according to the rank of the person in question.

**Article 224.** If the action described in the Article above is accompanied by violence or threats, it shall be punishable by a prison term of between three and eighteen months.

Any person who, in another way not provided for in the cases listed in the previous chapter, makes use of violence against or threatens a member of Congress or other public official, should that act take place as a result of the victim's functions, shall be punishable with the same punishments.

**Article 225.** When any of the actions described in the above articles is committed against a public official not as a result of his functions but at a moment in which he is performing them, the same punishments shall apply, with a reduction of between one-third and one-half.

**Article 226.** Any person who, by word or by deed, offends in any way the honor, reputation, or dignity of a judicial, political, or administrative body, if the crime is committed at a time when it is established, or any magistrate in a hearing, shall be punished with a prison term of between three months and two years.

If the perpetrator used violence or threats, the prison term shall be from six months to three years.

Prosecution shall take place only by means of a request lodged by the offended party. If the crime is committed against bodies not meeting at the time, the prosecution shall only proceed following a request made by its presiding members.

Said request shall be lodged with the Public Prosecution Service in order for the applicable steps to be taken.

**Article 227.** In the cases provided for in the Articles above, the guilty party shall not be allowed to admit any evidence regarding the truthfulness or notoriety of the allegations or defects with which the offended party is accused.<sup>235</sup>

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<sup>235</sup> Although it does not change the above analysis, the IACHR notes that the judgment of the Supreme Court of Justice resolved to "partially admit" the unconstitutionality suit filed against Articles 223, 224, 225, and 226 of the Criminal Code. Consequently, they were restricted as indicated below:

Article 223. Any person who, by deed, offends in any way the honor, reputation, or dignity of a member of the National Assembly or any public official shall be punished as indicated below, if the offense was made in the presence thereof and in connection with their functions:

1. If the offense was directed against a law-enforcement officer, with a prison term of one to three months.

(Continued...)

453. The IACHR conducted an analysis of the compatibility of *desacato* laws with the American Convention on Human Rights in a report published in 1995. The IACHR concluded that such laws were not compatible with the Convention. However, the IACHR believes it should point out that the threatening behavior described in Article 224 does constitute a legitimate subject for legislative regulation and even for criminal law.

454. The IACHR and the Rapporteur's office hold that there are other methods – less restrictive than *desacato* laws – whereby governments can defend their reputations from baseless attacks: these include publishing replies in the media and initiating civil action for defamation or libel.

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(...Continued)

2. If the offense was directed against a member of the National Assembly or a public official, with a prison term of one month to one year, according to the rank of the person in question.

Article 224. If the action described in the Article above is accompanied by violence or threats, it shall be punishable by a prison term of between three and eighteen months.

Any person who, in another way not provided for in the cases listed in the previous chapter, makes use of violence against or threatens a member of the National Assembly or other public official, if that act takes place as a result of the victim's functions, shall be punishable with the same punishments.

Article 225. When any of the actions described in the above articles is committed against a public official not as a result of his functions but at a moment in which he is performing them, the same punishments shall apply, with a reduction of between one-third and one-half.

Article 226. Any person who, by word or by deed, offends in any way the reputation of a judicial, political, or administrative body, if the crime is committed at a time when it is established, or any magistrate in a hearing, shall be punished with a prison term of between three months and two years.

If the perpetrator used violence or threats, the prison term shall be from six months to three years.

Prosecution shall take place only by means of a request lodged by the offended party. If the crime is committed against bodies not meeting at the time, the prosecution shall only proceed following a request made by its presiding members.

Said request shall be lodged with the Public Prosecution Service in order for the applicable steps to be taken.

455. In addition, like most of Latin America's Criminal Codes, Venezuela's establishes laws applicable to defamation, libel, and slander that are intended to protect the right to honor, reputation, and privacy. These rights are protected by Article 11 of the American Convention. The protection of these rights is accepted as a legitimate restriction on freedom of expression. Nevertheless, certain clarifications need to be made on account of the importance of providing equal protection for the free exercise of freedom of expression. Limitations should be imposed restrictively. It is thus necessary to point out that as the Commission has said, the subsequent imposition of liability described in the American Convention must be pursued in harmony with the democratic principles that ensure free and fluid communications between individuals and the authorities.

456. The Commission and the Court have ruled that the possible conflict that could arise from enforcing Articles 11 and 13 of the Convention can be resolved through recourse to the terms used in Article 13.2.

457. Thus, the Inter-American Court of Human Rights has ruled that:



Article 13(2) of the Convention defines the means by which permissible limitations to freedom of expression may be established. It stipulates, in the first place, that prior censorship is always incompatible with the full enjoyment of the rights listed in Article 13, but for the exception provided for in subparagraph 4 dealing with public entertainments, even if the alleged purpose of such prior censorship is to prevent abuses of freedom of expression. In this area any preventive measure inevitably amounts to an infringement of the freedom guaranteed by the Convention.<sup>236</sup>

458. It has also said that:



Use of freedom of information thus cannot be controlled by preventive measures but only through the subsequent imposition of sanctions on those who are guilty of the abuses. But even here, in order for the imposition of such liability to be valid under the Convention, the following requirements must be met:

- a) the existence of previously established grounds for liability;
- b) the express and precise definition of these grounds by law;

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<sup>236</sup> *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism*, (*supra*), paragraph 38.

- c) the legitimacy of the ends sought to be achieved;
- d) a showing that these grounds of liability are “necessary to ensure” the aforementioned ends.

459. All of these requirements must be complied with in order to give effect to Article 13.2.<sup>237</sup>

460. A proper interpretation of the subsequent imposition of liability that is to proceed when the honor or reputation of others is undermined must pay due attention to the legitimacy of the goals sought and ensure that such steps are necessary to secure them.

461. In this connection, the Inter-American Commission has ruled that:



Law that targets speech that is considered critical of the public administration by virtue of the individual who is the object of the expression, strikes at the very essence and content of freedom of expression.<sup>238</sup>

The Commission adds:



Democratic societies political and public figures must be more, not less, open to public scrutiny and criticism... Since these persons are at the center of public debate, they knowingly expose themselves to public scrutiny and thus must display a greater degree of tolerance for criticism.<sup>239</sup>

462. Consequently, a penalty that obstructs or restricts the dialogue necessary between a country’s inhabitants and those in public office cannot be legitimately imposed. Disproportionate penalties may silence criticism that is necessary to the public administration. By restricting freedom of expression to this degree, democracy is transformed into a system where authoritarianism will thrive, forcing its own will over society’s.

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<sup>237</sup> *Ibid.*, paragraph 39.

<sup>238</sup> *Report on the Compatibility of Desacato Laws with the American Convention on Human Rights, (supra)*, 218-19.

<sup>239</sup> *Ibid.*, p. 222.

463. For those reasons, the Commission has stated that:



The State's obligation to protect the rights of others is served by providing statutory protection against intentional infringement on honor and reputation through civil actions and by implementing laws that guarantee the right of reply. In this sense, the State guarantees protection of all individual's privacy without abusing its coercive powers to repress individual freedom to form opinions and express them.<sup>240</sup>

464. The tenth principle of the Declaration of Principles on Freedom of Expression contains the Commission's interpretation of privacy laws:



Privacy laws should not inhibit or restrict investigation and dissemination of information of public interest. The protection of a person's reputation should only be guaranteed through civil sanctions in those cases in which the person offended is a public official, a public person or a private person who has voluntarily become involved in matters of public interest. In addition, in these cases, it must be proven that in disseminating the news, the social communicator had the specific intent to inflict harm, was fully aware that false news was disseminated, or acted with gross negligence in efforts to determine the truth or falsity of such news.

465. Therefore, to ensure adequate protection of the right to freedom of expression, states should amend their laws on defamation, libel, and slander so that only civil sanctions can be applied in cases where the aggrieved person is a public official or a person acting in a public capacity. Additionally, liability for offenses to public officials or individuals acting in a public capacity should only be incurred in cases involving "actual malice." The principle of "actual malice" is what the tenth principle of the Declaration (*supra*) is aimed at: the author of the information in question was fully aware that false news was disseminated, or acted with negligent disregard to the veracity or falsehood of that information.

466. The Bolivarian Republic of Venezuela has still not brought its laws on privacy and the protection of honor and reputation into line with the distinction between public and private persons and actual malice. The following are the provisions of the Criminal Code that require review:

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<sup>240</sup> *Ibid.*, p. 223.

**Article 444.** A person who, in communication with several others, either together or separately, accuses an individual of a given act that could expose him to public scorn or hatred, or that is offensive to his honor or reputation, shall receive a punishment of between three and eighteen months in prison.

Should the crime be committed in a public document or in writings or drawings displayed or exposed to the public, or through other public means, the punishment shall be a prison term of between six and thirty months.

**Article 445.** A person charged with the crime of defamation shall not be allowed to argue in his defense the truthfulness or notoriety of the defamatory action, except in the following instances:

1. When the offended person is a public official and provided that the accusation is related to the performance of his official duties; with the exception, however, of the provisions set in Articles 223 and 227.
2. When legal proceedings are begun or stand pending against the defamed person in connection with the allegations.
3. When the plaintiff formally requests that the judgment also rule on the truthfulness or falsehood of the defamatory accusation.

If the truth of the allegation is proven, or if the defamed person is convicted for the content of the defamatory charge, then the person who defamed him shall be exempt from the punishment, except in those instances in which the channels used in and of themselves constitute the crime described in the following Article.

**Article 446.** A person who, in communication with several others, either together or separately, offends the honor, reputation, or dignity of another individual shall receive a punishment of between three and eight days' arrest or a fine of between VEB 25 and 150.

If the action is carried out in the presence of the offended person, even if he is alone, or in writing and addressed to him, or in a public place, the punishment may rise to 30 days in prison or a fine of VEB 500; and if the presence of the offended person is combined with public disclosure, the punishment may rise to 45 days in prison or a fine of VEB 600.

If the action takes place through the means indicated in the second paragraph of Article 444, the prison term shall be for between 15 days and three months, or a fine of between VEB 150 to 1500.

**Article 447.** When the crime set forth in the preceding Article is committed against a person legitimately charged with any public service, in the presence of that person and on account of that service, the guilty party shall be punished with a period of arrest of between 15 and 45 days. If made publicly, a prison term of between one and two months may be imposed.

[...]

**Article 450.** If a conviction is issued for any of the crimes specified in the Chapter, the judge shall order the confiscation and elimination of the printed materials, drawings, and other objects used to commit the crime; in the case of written materials that cannot be eliminated, the judge shall order the inclusion in the margin thereof of a reference to the judgment handed down in the case.

At the plaintiff's request, the judgment of conviction shall be published, at the convict's cost, on one or two occasions, in the newspapers indicated by the judge.

## **2. Requiring impartial, timely, and truthful information**

467. Article 58 of the Constitution of the Bolivarian Republic of Venezuela provides: "All persons shall have the right to timely, truthful, and impartial information." In different parts of this report, the IACHR and the Rapporteur's office have made statements regarding those conditions. At the risk of incurring in repetitions, the IACHR and the Rapporteur's office believe that above and beyond journalists' duty to use all means available to them to verify the information that they give to society, for the State to require that all that information be truthful could lead to the censorship of any information that cannot be proven; an example of this is political debate, which is chiefly based on ideas and opinions of a clearly subjective nature.

468. The doctrine of truthful information represents a step backward for freedom of expression and information in the hemisphere; this is because the free flow of information would be limited by its prior classification into "true" and "false," which goes against the broad concept of this right that the inter-American system observes.

469. There can be no doubt that debating and exchanging ideas is the best way to seek out truth in information and to strengthen democratic systems based on a plurality of ideas, opinions, and information. If a state imposes *a priori* a requirement to disseminate solely "the truth," that would deny the possibility of pursuing the debate that serves to construct or reveal it. Imposing punishments for reporting on an issue that is subsequently and through free debate shown to be incorrect raises the threat of self-

editorial censorship on the part of reporters wishing to avoid such punishment and harms all those citizens now unable to benefit from exchanges of ideas.<sup>241</sup>

470. The right of free expression also protects all that information termed “incorrect.” Ultimately, under international standards and the most advanced jurisprudence, only that information shown to be produced with “actual malice” could give rise to liability. Even in such a case, however, the ruling on that liability must be given by later proceedings; in no instance can conditions be placed on it beforehand.

### 3. Professional Ethics

471. The IACHR and the Rapporteur’s office heard expressions of concern regarding the possibility that the Venezuelan media did not always act responsibly or ethically.<sup>242</sup> Upon concluding its on-site visit, the IACHR noted the actions by the media that had hindered Venezuelan society’s access to vital information during the tragic events of April 2002 that led to a coup d’état and subsequent restoration of democracy in Venezuela. In its press release the IACHR said that “Although there may be any number of justifications to explain this lack of information, to the extent that the suppression of information resulted from politically-motivated editorial decisions, this should be the subject of an essential process of reflection by the Venezuelan media about their role at that moment.”<sup>243</sup>

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<sup>241</sup> The Inter-American Court of Human Rights, in Advisory Opinion OC-5/85 of November 13, 1985, Series A No. 5, paragraph 33, *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism (Articles 13 and 19 of the American Convention on Human Rights)*, stated that:

The two dimensions mentioned [individual and collective] of the right to freedom of expression must be guaranteed simultaneously. One cannot legitimately rely on the right of a society to be honestly informed in order to put in place a regime of prior censorship for the alleged purpose of eliminating information deemed to be untrue in the eyes of the censor.

<sup>242</sup> *The Washington Post: A Split Screen In Strike-Torn Venezuela*, January 12, 2003; *New York Times: Venezuelan News Outlets Line Up with the Foes of Chávez*, December 21, 2002. Committee to Protect Journalists: Venezuela, *Special Report: Cannon Fodder, In the current battle between the Venezuelan media and President Hugo Chávez Frías, journalists are being used as ammunition*. Press and Society Institute (IPYS), weekly bulletin: *Contrapunto entre corresponsales extranjeros y medios venezolanos*, January 29, 2003. Venezuelan Education Program, Action on Human Rights (PROVEA): Annual Report October 2001 – September 2002, *Sesgo político de los medios públicos y privados*, p. 449, Caracas, Venezuela, November 2002.

<sup>243</sup> IACHR, Press Release No. 23/02: *The Inter-American Commission on Human Rights concludes its visit to the Bolivarian Republic of Venezuela*.

472. At the time of drafting this report, the IACHR and the Rapporteur's office note that media coverage of the Venezuelan crisis is guided by politically motivated editorial decisions. This attitude does not undermine any of the rights granted by the Convention; neither does it justify attacks on journalists, other media workers, and media companies' property.

473. However, the best way to foster a broader debate on ideas in Venezuela, in light of the political crisis conditions it is currently facing, is through those actions that guarantee the editorial independence of the media and enable journalists to perform, with the utmost care, their task of informing the public. This is the challenge facing the media in Venezuela, because their chief responsibility lies with the public and not with the government. The process of reflection that the IACHR called for at the end of its visit to Venezuela is still necessary.

474. In this process, Venezuela's journalists and media owners must bear in mind both the need to maintain credibility with the public – an essential factor in their continued existence – and the key role the press plays in a democratic society. In the Plan of Action of the Third Summit of the Americas, held in Québec City, Canada, in April 2001, the Heads of State and Government said that their governments would promote the self-regulation of the mass media. Self-regulation is a challenge that the Venezuelan press has to face. It can be achieved through different mechanisms and instruments: codes of conduct, style manuals, editing statutes, public defenders, information councils, etc.

475. Also in connection with this issue, the IACHR has received a series of communications regarding offensive or racist statements made by certain commentators and journalists. In this regard, the Commission points out the provisions of Article 13.5 of the American Convention:

Any propaganda for war and any advocacy of national, racial, or religious hatred that constitute incitements to lawless violence or to any other similar action against any person or group of persons on any grounds including those of race, color, religion, language, or national origin shall be considered as offenses punishable by law.

476. Even though the Commission has no authority to establish individual responsibilities, it cannot refrain from condemning comments that imply racial hatred or contain extreme racial prejudice; this is particularly true when they are made by journalists or media workers, given that such individuals are the shapers of public opinion.

477. In Venezuela, in light of the political crisis prevailing there, journalistic ethics are essential for the enjoyment of freedom of expression. But it must be made clear that it does not fall to the State to set the standards for ethical conduct that are essential in the work of social communicators. Codes of ethics are an important instrument in guiding journalists in the pursuit of their profession, and they should be adopted voluntarily by the media themselves.<sup>244</sup>

#### **4. The right to information**

478. Article 28 of the Venezuelan Constitution establishes the right to habeas data action in the following circumstances:

All persons shall have the right of access to information and data concerning them or their property that is contained in official or private records, with such exceptions as may be established by law, the right to know what use is being made thereof and for what purpose, and the right to petition the competent court for the updating, correction, or destruction of any records that are erroneous or unlawfully affect the petitioner's rights. They may also access documents of any nature containing information of interest to communities or group of persons.

479. In turn, Article 51 of the Venezuelan Constitution establishes the right to petition the authorities:

All persons shall have the right to petition or make representations before any authority or public official concerning matters within their competence, and to obtain a timely and adequate response. Whoever violates this right shall be punished in accordance with law, including the possibility of dismissal from office.

480. In turn, Article 59 of the Organic Law of Administrative Procedures of July 1981 orders access to official sources of information of a public nature to interested persons or their representatives, with the exception of documents classified as confidential.

481. During its on-site visit to the country, the IACHR was informed that although constitutional guarantees exist, in practice there is no real access to information held by the State.

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<sup>244</sup> The sixth principle of the Declaration of Principles on Freedom of Expression provides that: Journalistic activities must be guided by ethical conduct, which should in no case be imposed by the State.

482. The IACHR points out that in light of the need to promote greater transparency in government undertakings as the basis for strengthening democratic institutions, access limitations placed on files kept by the State must be exceptional and interpreted in restrictively. They must be clearly established in law and only applied when there is a real and imminent danger that threatens the national security of a democratic society.

483. The Inter-American Court has determined that restrictions on freedom of expression and information “must be judged by reference to the legitimate needs of democratic societies and institutions.”<sup>245</sup> Within this context, the State must ensure that when a national emergency arises, the refusal to share the information it holds will only remain in force for the period of time strictly necessary in accordance with the circumstances and will be modified once the emergency is over.<sup>246</sup> In addition, steps must be taken to ensure that classified information is reviewed by an independent judicial body capable of balancing the protection of citizens’ rights and freedoms with the interests of national security.

484. The problem of access to public information still remains unanswered in Venezuela, and so any initiative from the government intended to facilitate free access to information would help ensure a better informed citizenry.

## 5. Mandatory National Broadcasts (“*Cadenas Nacionales*”)

485. Another example of how freedom of expression is being affected is the abuse of blanket broadcasts (*cadenas nacionales*). Blanket broadcasts force media stations to cancel their regular programming and transmit information as ordered by the government.

486. Article 192 of the Organic Telecommunications Law, published in the Official Gazette in March 2002, provides that:

Article 192. Without prejudice to the legal provisions applicable to matters of security and defense, the President of the Republic may, either directly or through the National Telecommunications Commission, order operators of subscription television services, using their customer information channel, and the operators of

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<sup>245</sup> Inter-Am.Ct.H.R., Advisory Opinion OC-5/85, paragraph 42.

<sup>246</sup> See: Chapter IV, Article 27, of the American Convention, which sets forth the obligations of States during emergency situations.

sound broadcasting and open-to-air television, to carry, free of charge, messages and official addresses made by the President or Vice-President of the Republic or cabinet ministers. Regulations shall be established to determine the mechanisms, limitations, and other features of these transmissions and broadcasts.

487. The IACHR was able to note the large number of blanket government broadcasts in the media. Blanket broadcasts force media stations to cancel their regular programming and transmit information as ordered by the government. Many of them were of a duration and frequency that could be considered abusive in light of the information they conveyed, not always intended to serve the public interest. At the time the IACHR issued a press release noting the abusive and unnecessary use of this mechanism which, if used on a discretionary basis and to serve ends other than the public interest, could constitute a form of censorship.

488. During the on-site visit the Commission was pleased to receive information indicating that there had been a considerable reduction in the use of this mechanism. The IACHR and the Rapporteur's office urge the executive branch of government to adopt clear guidelines in the use of such broadcasts, paying attention to public interest and to situations of genuine national need or emergency.

#### **F. Recommendations**

489. In light of the above considerations, the following recommendations are extended to the State of Venezuela:

1. Urgently take specific steps to put a halt to attacks on journalists, camera operators, and photographers, opposition politicians and human rights defenders, and all citizens who wish to exercise their right of free expression.
2. Conduct serious, impartial, and effective investigations into murders of, attacks on, threats against, and intimidation of journalists and other media workers.
3. Publicly condemn, from the highest levels of government, attacks on media workers, in order to prevent actions that might encourage such crimes.
4. Scrupulously respect the standards of the inter-American system for the protection of freedom of expression in both the

enactment of new laws and in the administrative and judicial proceedings in which it issues judgment.

5. Work for the repeal of laws that contain *desacato* provisions; such precepts curtail public debate, which is an essential element in a functioning democracy, and are also in breach of the American Convention on Human Rights.

6. Guarantee the effective right of access to information held by the State in order to promote transparency in the public administration and consolidate democracy.

7. Adapt its national laws in accordance with the parameters set in the American Convention on Human Rights and fully comply with the terms of Article IV of the American Declaration of the Rights and Duties of Man and the IACHR's Declaration of Principles on Freedom of Expression, particularly as regards the demand for truthful, impartial and objective information contained in Article 58 of the Venezuelan Constitution.

## CHAPTER VII

### TRADE UNION FREEDOMS

#### A. Applicable juridical rules

490. The American Convention on Human Rights does not expressly establish the right to form and join trade unions. However, article 16 establishes the right of association in the following terms:

1. Everyone has the right to associate freely for ideological, religious, political, economic, labor, social, cultural, sports, or other purposes.
2. The exercise of this right shall be subject only to such restrictions established by law as may be necessary in a democratic society, in the interest of national security, public safety or public order, or to protect public health or morals or the rights and freedoms of others.
3. The provisions of this article do not bar the imposition of legal restrictions, including even deprivation of the exercise of the right of association, on members of the armed forces and the police.

491. For its part, Article 8 of the Additional Protocol of San Salvador<sup>247</sup> to the Convention provides as follows:

#### Trade Union Rights

1. The States Parties shall ensure:
  - a. The right of workers to organize trade unions and to join the union of their choice for the purpose of protecting and promoting their interests. As an extension of that right, the States Parties shall permit trade unions to establish national federations or confederations, or to affiliate with those that already exist, as well as to form international trade union organizations and to affiliate with that of their choice. The States Parties shall also permit trade unions, federations and confederations to function freely;
  - b. The right to strike.
2. The exercise of the rights set forth above may be subject only to restrictions established by law, provided that such

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<sup>247</sup> Venezuela signed the Protocol of San Salvador on November 17, 1989, at the OAS General Secretariat.

restrictions are characteristic of a democratic society and necessary for safeguarding public order or for protecting public health or morals or the rights and freedoms of others. Members of the armed forces and the police and of other essential public services shall be subject to limitations and restrictions established by law.

3. No one may be compelled to belong to a trade union.

492. Trade union freedoms are also regulated internationally by the instruments of the International Labor Organization (hereafter the ILO), which, once they are ratified, constitute fully and directly enforceable domestic law in the state party. Venezuela has ratified 56 Conventions of the International Labor Organization. With respect to the question addressed in this chapter, the State ratified the Convention on Freedom of Association and Protection of the Right to Organize on September 2, 1982, and the Convention concerning the Right to Organize and to Bargain Collectively on December 19, 1968.

493. Those two Conventions, taken together, include the following provisions:

- a) Workers shall have the right to establish and, subject only to the rules of the organization concerned, to join organizations of their own choosing without previous authorization.
- b) Workers' organizations shall have the right to draw up their constitutions and rules, to elect their representatives in full freedom, to organize their administration and activities and to formulate their programs.
- c) Workers' organizations shall not be liable to be dissolved or suspended by administrative authority.
- d) Workers' organizations shall have the right to establish and join federations and confederations and to affiliate with international organizations of workers.
- e) The acquisition of legal personality by workers' organizations, federations and confederations shall not be made subject to conditions of such a character as to restrict organizational freedoms.
- f) The law of the land shall not be such as to limit or impair the guarantees provided for in international conventions.

- g) Workers shall enjoy adequate protection against acts of anti-union discrimination, and in particular against the dismissal of a worker by reason of union activities.
- h) The authorities of States Parties shall not interfere in union activities.
- i) Machinery appropriate to national conditions shall be established, where necessary, for the purpose of ensuring respect for the right to organize, and for the full development of voluntary negotiation with a view to the regulation of terms and conditions of employment by means of collective agreements.
- j) Workers' organizations shall obey the law of the land, but that law must not be incompatible with the principles of trade union freedom.
- k) Workers, and in particular union leaders, shall enjoy adequate protection against discrimination or acts that would infringe their organizational activity with respect to employment.

494. The Commission will analyze the situation of trade union freedom in Venezuela in the current political and institutional context of the country, in light of the international rules cited above, and the provisions introduced by the new Constitution and the Organic Labor Act.

**B. The new Constitution, the Organic Labor Act, and trade union freedom**

495. Articles 87 to 97 of Title III of the new Magna Carta, "Human Rights and Guarantees and Duties", deal comprehensively with the rights of workers. Specifically, with respect to trade union freedoms, Article 95 provides as follows:

Workers, both male and female, without distinction and without any requirement for prior authorization, have the right freely to form such trade union organizations as they consider appropriate for the better protection of their rights and interests, and to join such organizations or not, in accordance with law. These organizations are not subject to intervention, suspension or administrative dissolution. Workers are protected against all acts of discrimination or interference in the exercise of this right. Organizers and leaders of trade unions may not be removed from their positions during the period of time and under the conditions required for the exercise of their functions.

For the exercise of trade union democracy, the statutes and rules of trade union organizations shall require the alternation of executive officers and representatives by means of universal, direct and secret suffrage. Trade union leaders who abuse the benefits of union activity for their personal profit or interest shall be punished according to law. Trade union office holders shall be required to make a sworn declaration of their assets.

496. According to the above provisions, trade unions are not subject to intervention, suspension or administrative dissolution and workers are protected against any discrimination or any measure that would infringe their rights. As well, union leaders cannot be removed from their positions during the time and under the conditions necessary for the exercise of their leadership functions. Nevertheless, the Commission considers the provisions of this article to conflict, in part, with the provisions of article 293 and the Eighth Transitional Provision, which give the National Electoral Council the power to organize elections for unions and occupational associations, and which require that, pending the promulgation of new electoral legislation as called for in the Constitution, elections must be convened, organized, directed and supervised by that electoral body.

497. In this respect, Article 293 of the Constitution provides:

The electoral authorities shall have the functions of:

{...}

6. Organizing the elections of trade unions, occupational associations and political organizations under the terms set out in the law. In addition, there may organize elections for other organizations of civil society, at their request, or at the order of the Electoral Chamber of the Supreme Court of Justice. Corporations, entities and organizations referred to herein shall cover the costs of their election processes.

{...}

498. The Eighth Transitional Provision stipulates:

While awaiting the enactment of the new electoral laws envisaged in this Constitution of the, electoral processes shall be convoked, organized, directed and supervised by the National Electoral Council.

499. The Inter-American Commission considers that the powers assigned to the electoral authorities, and the National Electoral Council imply

administrative intervention in the union activities of workers, in violation of the right to trade union freedom recognized in article 95 of the Constitution.

500. Similarly, the ILO Committee of Experts on Application of Conventions and Recommendations has considered that the Government “should amend article 293 of the Constitution of the Republic to remove the power entrusted to the Electoral Authority, through the National Electoral Council, to organize the elections of trade unions.”<sup>248</sup> That ILO committee has also noted the Organic Act respecting the Electoral Authority, approved on October 30, 2002, which contains provisions that are not in conformity with Convention 87, for example article 33, which makes the National Electoral Council competent for organizing trade union elections, proclaiming the elected candidates, monitoring elections and declaring them null and void, hearing and resolving appeals and investigating complaints.<sup>249</sup> On this point, the Committee of Experts declared:

The Committee once again reminds the Government that the regulation of trade union election procedures and arrangements must be done by trade union statutes and not by a body outside the workers' organizations. In these conditions, the Committee requests the Government to take measures to amend article 293 of the Constitution of the Republic and the Organic Act respecting the Electoral Authority, which provides for its intervention in the elections of workers' organizations, and to provide information in its next report on any measures adopted in this respect.<sup>250</sup>

501. The ILO Committee of Experts has also repeatedly questioned certain provisions of the Organic Labor Act. Specifically, it has noted that this legislation could pose problems of incompatibility for application of Convention 87 on trade union rights, specifically in the case of the following provisions:

the requirement of an excessively long period of residence (more than 10 years) before foreign workers can become members of the executive bodies of a trade union, reducing this period from ten to five years (Article 404).

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<sup>248</sup> Committee of Experts on Application of Conventions and Recommendations: Individual Observation on Convention 87, on Freedom of Association and Protection of the Right to Organize, Venezuela, Publication: 2003.

<sup>249</sup> Ibid.

<sup>250</sup> Ibid.

the over-detailed and extensive enumeration of the mandatory functions and purposes of workers' and employers' organizations (Articles 408 and 409);

the excessively high number of workers (100) required to establish trade unions of independent workers (Article 418);

the excessively high number of employers (10) required to establish an employers' organization (Article 419)<sup>251</sup>

502. The IACHR was informed that a draft Bill to reform the Organic Labor Act was submitted to the National Assembly on June 7, 2002. According to the ILO, that draft Bill contains a number of provisions which are in line with the comments of the Committee of Experts indicated above for adapting domestic legislation. In particular, the Bill calls for the elimination from articles 408 and 409 of the over-detailed enumeration of the mandatory functions and purposes of workers' organizations; the amendment of article 419 respecting the excessively high number of employers required to establish an employers' organization, reducing this number from 10 to 4; the amendment of article 418 respecting the excessively high number of workers required to establish trade unions of independent workers, reducing this number from 100 to 40; and the amendment of article 404 respecting the requirement of an excessively long period of residence before foreign workers can become members of the executive bodies of a trade union, reducing this period by half.<sup>252</sup>

503. By virtue of the foregoing, the Commission considers that Venezuela's labor legislation contains certain regulations that should be modified or amended in order to bring them fully in line with international standards relating to trade union freedom, in accordance with the American Convention and its Additional Protocol, and the requests made by the ILO.

### **C. The situation of trade union freedoms in Venezuela**

504. The IACHR notes, with respect to the situation of trade union freedoms in Venezuela, that the political crisis and the climate of intolerance

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<sup>251</sup> Committee of Experts on Application of Conventions and Recommendations: Individual Observation on Convention 87, on Freedom of Association and Protection of the Right to Organize, Venezuela, Publications: 1994, 1995, 1996, 1997, 1998, 1999, 2000, 2001, 2002 and 2003.

<sup>252</sup> Committee of Experts on Application of Conventions and Recommendations: Individual Observation on Convention 87, on Freedom of Association and Protection of the Right to Organize, Venezuela, Publication: 2003.

that characterizes the current political situation has led to a rising number of labor disputes. The IACHR is especially concerning at the mass dismissal of workers of the PDVSA. Information provided shows that a total of 12,383 workers were dismissed from this State enterprise on grounds of having abandoned their workplace in the context of the so-called national civic strike that lasted from December 2002 until February 2003, and that those dismissals were ordered without any administrative procedures to guarantee due process.

505. On this point, it important to note the jurisprudence of Inter-American Court on application of article 8 of the Convention to administrative procedures:<sup>253</sup>

The Court has established that, although this article does not stipulate minimum guarantees in matters which concern the determination of the rights and obligations of a civil, labor, fiscal or any other nature, the minimum guarantees established in paragraph 2 of the article should also apply to those categories and, therefore, in that respect, a person has the right to due process in the terms recognized for criminal matters, to the extent that it is applicable to the respective procedure.<sup>254</sup>

Based on the foregoing, the Court believes that both the jurisdictional organs and those of any other nature that exercise functions of a substantially jurisdictional nature have the obligation to adopt just decisions based on full respect for the guarantee of due process established in Article 8 of the American Convention.<sup>255</sup>

In this respect, although Article 8(1) of the Convention alludes to the right of every person to a hearing by a "competent tribunal" for the "determination of his rights", this article is also applicable in situations in which a public rather than a judicial authority issues resolutions that affect the determination of such rights.<sup>256</sup>

506. In this respect, the IACHR considers essential that judicial procedures employed in the review of such dismissals should adhere strictly to the requirements of due process, as established in article 8 of the Convention.

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<sup>253</sup> I-A Court, *Ivcher Bronstein* case, Judgment of February 6, 2001, paras 103-105.

<sup>254</sup> *Ibid*

<sup>255</sup> *Ibid.*

<sup>256</sup> *Ibid.*

507. Human rights organizations claim that the situation in Venezuela is characterized by constant intervention in labor union affairs, through Government actions that are obstructing the activity of union leaders and attempting to exert political control over the organized labor movement.<sup>257</sup> The Committee on Freedom of Association has drawn attention to "the extremely serious and urgent situation in Venezuela marked by numerous complaints of repeated violations of freedom of association for both workers' and employers' organizations."<sup>258</sup>

508. The Commission was informed of an especially alarming situation with respect to labor union elections, and the executive power's policy of confrontation with certain unions, and in particular with the leaders of the Venezuelan Confederation of Workers (CTV).<sup>259</sup>

509. The Commission believes it useful to offer some preliminary considerations and to indicate that the government's attitude towards certain unions can in no way justify the tendency among some leaders to favor a political coup, recognizing that a coup d'état is an attack against democracy and the rule of law.

510. On December 3, 2000, the government called a referendum in which it asked voters if they were in agreement with reforming the trade union leadership through elections to be held within six months. During that period, the directors of Venezuela's trade union federations (*centrales*, *federaciones*, and *confederaciones*) were suspended from their functions.

511. The referendum resulted in a significant victory for the position in favor of reforming union leadership, although there was widespread abstention.<sup>260</sup> In accordance with the prevailing vote in favor of the reforms, the above-mentioned directors were effectively suspended from

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<sup>257</sup> Provea, Annual Report N° 14, "*Derechos Laborales: Derecho a la Libertad Sindical*", Caracas, Venezuela. See also "*Las Libertades Sindicales en la Región Andina: Integración, Transición y Conflicto*", Presentation: *Libertad Sindical y Derechos Humanos en Venezuela*, Marino Alvarado, Santa Fé de Bogotá, Colombia, April 28, 2000.

<sup>258</sup> ILO, Press Release, "Latest Report of ILO Committee on Freedom of Association Cites Belarus, China, Colombia, Venezuela and Others ", March 28, 2003

<sup>259</sup> CNE, Comisión Sindical Gremial, Estructura Sindical Venezolana, Caracas, September 21, 2001.

<sup>260</sup> National Electoral Council Sectoral Directorate General of Electoral Information, Directorate of Political Analysis, results of the labor union referendum of December 3, 2000; participation: 23.5% of voters, abstention: 75.5%; "yes" votes: 62.5%, "no" votes: 27.34%; blank ballots: 10.54%.

their trade union functions, and new elections were held, in keeping with the Elections Statute issued by the National Electoral Council (CNE) to regulate new elections for union leaders.

512. The IACHR is of the view that allowing the population at large to participate in that referendum, i.e., including persons other than union members, entailed a violation of the right to form and join trade unions, and the right of workers to elect their leaders. The above-mentioned actions were severely criticized by the Committee on Freedom of Association of the International Labor Organization (ILO)<sup>261</sup>, as well as by other international human rights organizations that declared their concern over the matter.<sup>262</sup>

513. Subsequently, elections to the leadership body of the CTV were held on October 25, 2001, in an atmosphere of mutual complaints among candidates over procedural irregularities and accusations of fraud.<sup>263</sup>

514. Once the results of the elections were known, the National Electoral Council refused to confirm the Governing Board of the Confederation as the legitimate leadership of that organization, alleging a series of irregularities. According to the Council's arguments, all the federations and unions that took part in the labor union reform process complied with the requirement to submit records reflecting the counting of

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<sup>261</sup> Committee on Freedom of Association. See also Complaint against the Government of Venezuela submitted by the International Confederation of Free Trade Unions (ICFTU), the Confederación de Trabajadores de Venezuela (CTV), the Central Latinoamericana de Trabajadores (CLAT), the Federación Sindical de Trabajadores de Comunicaciones de Venezuela (FETRACOMUNICACIONES), the Sindicato de Obreros Legislativos de la Asamblea Nacional (SINOLAN) and other organizations. Report No. 324, Case No. 2067.

<sup>262</sup> For example, in a letter addressed to President Hugo Chavez, the organization Human Rights Watch declared:

We are concerned that a popular consultation conducted for purposes that violate international treaties ratified by Venezuela was upheld by the Supreme Court of Justice on November 29, in rejecting the motion for constitutional protection brought by several labor unions and human rights organization.

Measures such as those proposed in the consultation represent a threat to freedom of association in the region. I would respectfully urge Your Excellency to desist from this policy, which threatens to severely erode the civil liberties of Venezuelans, and to refrain in particular from using force to compel union leaders to abandon their positions.

Washington DC, December 4, 2000.

<sup>263</sup> PROVEA, Annual Report 14, *Derechos Laborales: Derecho a la Libertad Sindical*. Caracas.

votes to elect their leaders, a requirement that the Governing Board of CTV did not respect. Consequently, the elected leaders of that Confederation were not recognized by the national authorities.<sup>264</sup> Although the High Court ordered the Council to take a final decision on the legitimacy of the electoral process, at the time this report was prepared, no definitive report had been issued.

515. In fact, the National Executive refused to recognize the leaders of the CTV (the country's largest labor organization according to data from the National Electoral Council) as legitimate representatives of the labor organization, on the grounds that the Electoral Council has not formally designated them following the election.

516. As a result of this controversy, the elected leaders of the Confederation were excluded from serving as representatives on the National Tripartite Commission, which presents recommendations to the President of the Republic every three years on salary increases. Consequently, the salary increase decreed in April 2002 was decided without prior consultation of that labor organization. All the foregoing tended to generate an atmosphere of permanent confrontation with that organization.

517. The ILO Committee on Freedom of Association urged the government to take measures to ensure that the authorities refrained from "making intimidating statements to the Venezuelan Workers' Confederation (CTV)" and asked the government to recognize its executive committee.<sup>265</sup>

518. By virtue of the foregoing, the Commission concludes that there has been heavy-handed State interference in the affairs of labor organizations, despite the repeated recommendations of the ILO not to proceed in that way. As well, the Commission considers it important and urgent to resolve the problem of recognizing the leadership of the CTV, the principal Venezuelan labor confederation, in a manner consistent with the needs and rights of its members.

519. Without prejudice to the foregoing, the IACHR recognizes that there has been a significant step forward in the area of trade union freedoms. On July 23, 2002, the Electoral Chamber of the Supreme Court of Justice ruled that action by the Supreme Electoral Council was of a

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<sup>264</sup> *Ibid.*

<sup>265</sup> ILO, Press Release, "Latest Report of ILO Committee on Freedom of Association Cites Belarus, China, Colombia, Venezuela and Others ", March 28, 2003.

subsidiary nature, and that therefore that body could only intervene when there was a dispute that the labor organization itself could not resolve.<sup>266</sup>

520. That judgment establishes the following:

It is thus because the special rule governing this matter establishes, in accordance with the principle of labor union autonomy, that the revision of acts, actions, abstentions or omissions of an electoral nature that occur in the process of renewing the union leadership will be decided by the labor organization itself, through its Electoral Committee, through the interposition of an appeal or demand by those voters or candidates who consider that their subjective rights and legitimate interests have been infringed (solely with respect to the electoral nature of the acts) and it is only under the extraordinary assumption that the Electoral Commission fails to decide within the required period of time, or that it decides in a sense contrary to that requested, that the interested party may turn to the Supreme Electoral Council as a higher instance of appeal.<sup>267</sup>

#### **D. Recommendations**

521. The Commission notes that the right to elect and to be elected, and the right of workers to organize, are rights recognized in the American Convention and in the Inter-American Democratic Charter. The freedom to form and to join a labor organization, without undue interference by the State, constitutes in the IACHR's judgment an important element of any democratic system.

522. The Commission therefore recommends to the State:

1. That it move as promptly as possible to find a satisfactory solution, in accordance with the international obligations assumed by Venezuela, to the dispute arising from the refusal to recognize the leadership of the Venezuelan Confederation of Workers.
2. That in amend article 293 of the national Constitution, to bring it into conformity with international standards on trade union

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<sup>266</sup> Supreme Court of Justice, Electoral Chamber, Judgment of July 23, 2002..

<sup>267</sup> *Ibid.*

freedoms, and that it modify the relevant provisions of the Organic Labor Act.

3. That it take the necessary steps to guarantee trade union freedoms, so that situations of State intervention in this area will not be repeated in the future.

## **CONCLUSIONS**

### **THE STATUS OF THE RULE OF LAW IN VENEZUELA**

523. Since 1999 the IACHR has expressed itself through various mechanisms on the situation relating to the rule of law in Venezuela. The Commission has used various mechanisms provided in the American Convention for the protection of human rights, and in fulfillment of its mandate to stimulate the conscience of the peoples of the Americas it has alerted the international community to the progressive worsening of the human rights situation in Venezuela.

524. This report has identified weaknesses in the rule of law in Venezuela, and has focused primarily on examining the factors and causes behind the institutional crisis that has gripped the country, causing deterioration in the rule of law. On this point, the Commission has offered in each chapter a series of recommendations that it considers indispensable for restoring social peace in a democratic state and society. The intent of this report is to help the Venezuelan State in its analysis of the human rights situation in that country, as a State party to the American Convention on Human Rights, and to make recommendations for improving its compliance with its international obligations in the field of human rights. Consolidating and strengthening the rule of law represents an indispensable condition for the more effective protection of individual rights in Venezuela.

525. The Commission stresses that democracy and the rule of law are necessary conditions for the enjoyment and respect of human rights in any society. In this respect, the Commission notes that the collapse of the rule of law in a State party has repercussions that go beyond democratic governance: indeed the historical experience of Latin America has shown that institutional collapse undermines fundamental rights and creates fertile ground for subsequent violations of human rights. Therefore, it must be noted, in the first place, that there is a close triangular relationship between the rule of law, a democratic society, and the enjoyment of human rights.

526. The definition of the rule of law is based on three essential principles. First, the principle of the limitation of power, which is reflected in the constitutional distribution of power. In the second place, the principle of legality, which establishes that the State organs must exist and act under subjection to the law. The Constitution is the supreme law of the land, to which all State organs must submit themselves, including obviously the holders of the executive power, who may not exceed the stipulations of the Constitution. Finally, the third principle is that of the declaration of fundamental rights.

527. The fundamental corollary of constitutional rights is the possibility of recourse to the judicial organs, which must guarantee that

rights are upheld. In fact, the judiciary has been established for the protection of rights and guarantees, and is undeniably the fundamental body for protecting human rights. Consequently, if the courts are subordinated or if their rulings are ignored, this represents an attack against the rule of law. In this context, the functioning of an independent and impartial judiciary as the guarantee of protection for human rights is fundamental for the rule of law.

528. As a form of political organization for a constitutional State, democracy is based on the principle that political sovereignty is vested in the people and that, in exercise of that sovereignty, the citizens elect their representatives, who wield political power, while respecting the rights of those whose views are in the minority. These representatives receive a mandate from the voters, who aspire to a decent life, to freedom and to democracy, objectives that can only be achieved through effective control over public institutions and through the existence of checks and balances between all the branches of government. While the citizens elect their representatives, they also participate in the process of taking decisions through a multitude of means of expression and peaceful assembly. The effective observance of human rights requires a juridical and institutional order in which the law takes precedence over the will of those who govern, and in which there is a proper balance between all branches of government, in order to preserve the expression of the popular will through the rule of law.

529. The organs of the inter-American system have on numerous occasions declared the importance of the democratic system and the rule of law for the enjoyment and protection of human rights. The Inter-American Court of Human Rights has said:

The concept of rights and freedoms as well as that of their guarantees cannot be divorced from the system of values and principles that inspire it. In a democratic society, the rights and freedoms inherent in the human person, the guarantees applicable to them and the rule of law form a triad. Each component thereof defines itself, complements and depends on the others for its meaning.<sup>268</sup>

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<sup>268</sup> I-A Court, *Habeas Corpus* in Emergency Situations (Arts. 27(2) and 7(6) of the American Convention on Human Rights), Advisory Opinion OC-8/87, January 30, 1987, para. 26.

530. The Commission has declared:

Democracy and the rule of law are necessary prerequisites for achieving observance of and respect for human rights within a society. This involves exercising rights of political participation, respecting the principles of the judiciary's legality, autonomy, and independence, and ensuring effective protection against actions by State agents.<sup>269</sup>

531. According to the Inter-American Democratic Charter,<sup>270</sup> 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. As well, 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.<sup>271</sup>

532. Finally, the IACHR wishes to stress the fact that the effective protection of human rights requires not only progress towards full and authentic democracy, but also the assurance that such a system of political organization provides every person with the possibility of achieving respect and enjoyment for all human rights, both civil and political, as well as economic, social and cultural. It also constitutes the best guarantee for preserving democracy as a system, recognizing that as the people become convinced through their own personal experience that this is the best model of political organization, they themselves will provide the strongest guarantee against traditional dictatorships and other authoritarian forms of government.

533. With respect to the coup d'état in April 2002, the Commission reiterates that nothing can justify the breach of the Constitution or any attempt to prevent the functioning of key institutions such as the branches of government. The breakdown in the constitutional order constituted a violation of the basic principles of international law in force in the Americas, as reflected primarily in the Inter-American Democratic

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<sup>269</sup> IACHR, Press Release 20/98, Lima, Peru, November 13, 1998, paragraph 19

<sup>270</sup> Inter-American Democratic Charter, approved by the General Assembly of the Organization of American States on September 11, 2001.

<sup>271</sup> Inter-American Democratic Charter, Articles 3 and 4

Charter, and the rights enshrined in the American Convention. At that time the Commission deplored the dismissal by decree of the highest officers of the judiciary and of independent officials within the executive branch, and the suspension of the mandate of the members of the legislature.<sup>272</sup> On April 13, 2002, the Commission also requested information on the incommunicado detention of President Hugo Chavez and precautionary measures relating to the personal liberty and integrity and judicial guarantees of Mr. Tarek William Saab, President of the Foreign Relations Committee of the National Assembly.

534. In a similar vein, the OAS Permanent Council on April 13, 2002, issued a declaration to the effect that:

an alteration of the constitutional regime has occurred in Venezuela, which seriously impairs the democratic order (...).<sup>273</sup>

535. The IACHR again condemns in the strongest terms the violent events that cost dozens of lives and left more than 100 people injured. It is not the role of the IACHR to determine individual criminal responsibility for those events, but it is within its purview to insist upon the international obligation of the State to investigate and prosecute those responsible for the deeds committed between April 11 and 14, in accordance with the rules of due process, and to ensure that those deeds do not go unpunished.

536. The Commission recalls that, in investigating and in identifying and punishing those responsible for this attack against democratic institutions, the Venezuelan State must set an example of impartiality and respect for human rights, which implies, among other things, full respect for judicial guarantees and other rights and guarantees of the persons investigated for such deeds. The IACHR will continue to monitor these proceedings closely to ensure that they comply with the judicial guarantees enshrined in the American Convention on Human Rights.

537. The Commission has observed, as noted throughout this report, that between March 2002 and first quarter of this year more than 40 people were killed and some 750 injured as the result of street protests. The extreme political polarization and the resulting acts of violence that erupt periodically between demonstrators of different persuasions illustrate the growing political intolerance in the country. Among the signs of institutional

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<sup>272</sup> IACHR, Press Release 14/02, April 13, 2002.

<sup>273</sup> Organization of American States, CP/Resolution 811 (1315/02).

weakness are the failure to enforce the new constitution, the perceived lack of independence of the branches of government, the growing concentration of power in the national executive, the impunity with which armed civilian groups and death squads conduct their activities, the tendency to confrontation and to denigrate the traditional political opposition on the part of the government, the constant attacks on journalists and the news media, the tendency to militarization of public administration through the increasingly prominent role of the armed forces, the growing radicalization of political stances in the context of widespread public discontent with the failure to meet social demands, controversies over the exercise of trade union rights, and the climate of harsh political intolerance and, in relation to the inter-American system, the repeated and persistent failure of the State to comply with precautionary measures granted by the IACHR and the provisional measures ordered by the Inter-American Court, all of which has been documented in this report and will be presented in summary fashion below.

- **Administration of Justice and Human Rights**

538. In this section, the IACHR identifies two issues of great importance relating to the independence of the judiciary, the provisional status of judges, and the failure to comply with constitutional rules in appointing judges, as a mechanism for guaranteeing their impartiality and independence. As well, this section addresses certain aspects relating to composition of the Supreme Court and the Citizen Power, as a factor undermining their independence and autonomy to the detriment of the rule of law.

539. With respect to the provisional status of judges, the Commission was informed that only 250 judges have been appointed by competition, in accordance with constitutional rules. Of the total of 772 judges in Venezuela, the Supreme Court of Justice reports that only 183 are permanent, 1331 are provisional, and 258 are temporary. This means that 84% of the judges continue to be provisional or temporary, and lack tenure in their position. The Supreme Court ordered suspension of competitions for the appointment of judges until the list of jurors responsible for examining candidates is increased.

540. The IACHR considers that the provisional tenure of most of the judges in Venezuela affects their stability in office, which is a necessary condition for the independence of the judiciary.

541. Another aspect of concern to the Commission with respect to guaranteeing the independence and impartiality of the Venezuelan judiciary is

the failure to apply the mechanisms established by the new Constitution for the election of their supreme authorities. On this point, the Commission considers that the failure to apply constitutional procedures as guarantees established in domestic law to ensure the independence of members of the judiciary calls into question the institutional legitimacy of the judiciary and undermines the rule of law. It is essential to proceed with appointment of the supreme authorities of the judiciary, in conformity with the Constitution, and to make the necessary amendments to internal rules.

542. Consolidating the rule of law demands a judiciary that is, and is seen to be, independent and impartial, and it is therefore essential to reverse the tenuous situation of most of the Venezuelan judges and apply constitutional mechanisms for appointing senior magistrates and authorities of the Citizen Power as guarantees established by the constitution. On this point, the Commission reiterates what it said at the end of its *in situ* visit, to the effect that the failure to apply the constitution fully creates legal insecurity that impedes full consolidation of the rule of law. The Commission therefore considers it urgent to adopt organic laws as the best means of establishing the mechanisms called for in the Venezuelan Constitution for the selection of magistrates of the Supreme Court of Justice, as well as the Public Defender, the Prosecutor General, and the Comptroller General.

543. Finally, with respect to the administration of justice, the Commission considers that the alarming levels of impunity are a critical factor in undermining the rule of law in Venezuela, and in the chronic repetition of violence. The impunity that prevails in a great number of cases of human rights violations, where an estimated 90% of cases never move beyond initial proceedings, is causing Venezuelan society to lose confidence in the justice system and is sparking a resurgence of violence, producing a vicious circle of impunity and violence. The impunity that surrounds human rights violations, in disregard of the State's obligation to investigate and punish those responsible, is a problem that must be addressed as a priority in the context of Venezuelan justice.

- **Civil society**

544. Attacks against human rights defenders have taken place from various perspectives. The legitimate work of these defenders, in denouncing the outrages committed by parties to the social conflict, has prompted certain players to try to silence them through various means. The extreme polarization that exists has led various political groups to seek to discredit the actions of some human rights groups or individuals who are calling for justice and truth.

545. The IACHR has been receiving numerous complaints of attacks and acts of intimidation against persons devoted to protecting and promoting respect for the fundamental rights of Venezuelans. These acts of harassment against human rights defenders and human rights organizations sometimes include attempts on the life and physical integrity of defenders, and there is a series of documented cases in which defenders have been the target of many forms of intimidation.

546. On this point, the Commission considers it essential that the State take the steps necessary to prevent the collapse of guarantees for the work of human rights defenders and to provide effective protection of their life and personal integrity.

547. With respect to the "*círculos bolivarianos*", the IACHR notes that there is full information available on them at the web page of the Presidency of Venezuela, where it is apparent that they not only have ties to the national government but that those ties are institutionalized. In the second place, the Commission considers, with respect to the acts of violence attributed to these circles, that all the reported cases involving them have been characterized by impunity, and to this date responsibility for those deeds has not been clearly established, a factor that generates suspicion about their activities. In the third place, the IACHR considers that political participation, the right of association and freedom of expression are rights guaranteed in the American Convention and in this respect the "Bolivarian Circles", as citizen groups or grassroots organizations, may in some circumstances be a suitable channel for the exercise of those rights. Nevertheless, the Commission believes that the expression of certain partisan political ideas cannot justify acts of violence or restrictions on the rights of other persons with different political views, or with specific professional roles, since, as the American Convention establishes, an individual's rights are limited by the rights of others, by the security of all, and by the just demands of the common welfare, in a democratic society.

548. The IACHR cannot discount the existence of other armed groups that are partisans of the government or the opposition. In fact, the IACHR knows of the existence of certain opposition groups that may also be armed, and considers that it is essential to investigate the existence of these groups, to disarm them completely and as quickly as possible, and to investigate and punish those responsible for the violent acts attributed to these groups.

- **State Security: the Armed Forces and Police Forces**

**The Armed Forces**

549. The Commission believes that the security of a democratic state lies fundamentally in values such as those of peace, liberty, justice, equality, protection of human rights and democratic coexistence. Therefore, civil society cannot be placed at the same level of responsibility as the State itself, which has a legitimate monopoly over the use of public force and is subject to domestic and international responsibilities that are different from those applicable to individuals.

550. In the second place, and with respect to the Security Council, the Commission considers it a priority to establish immediately, through legislation, the powers and attributes of this new body, as conditions for action by its members, setting strict limits on the scope and mechanisms of such action. Finally, the Commission observes that this new institution must be governed in strict observance of the principles of the rule of law as they relate to the independence and separation of powers, considering the importance of the responsibilities assigned to it, especially that of establishing the strategic concept of national defense.

551. A third aspect that is of special concern to the IACHR is the constitutional provision governing the powers and attributes of the National Guard, as a part of the Venezuelan Armed Forces responsible for internal security. Indeed, one of the Commission's concerns with respect to public safety is over the involvement of the Armed Forces in activities that should fall exclusively to the police. The Commission notes that in a democratic system there must be clear and precise separation between internal security, as the function of the police, and national defense, as the function of the Armed Forces, since these are substantially different institutions in terms of the purposes for which they were created, and their training and preparation.

552. The IACHR was also greatly concerned at the many statements it received about the excessive amount of political deliberation within the Armed Forces, and their undue influence on the country's political life. The Commission notes that this problem has a normative dimension, by virtue of the new Constitution's suppression of the "non deliberative" character established expressly for the Armed Forces, as well as a factual dimension, in light of the constitutional rupture of April 2002. If the credibility of the Armed Forces is to be restored and if the rights of the citizenry are to be guaranteed, it is essential that the Armed Forces and the security forces should not have a deliberative role, but that may remain

subordinate to the civil power and act impartially, and that they not be used for tasks relating to the maintenance of public order.

553. Finally, another aspect of concern to the Commission is the establishment of a procedural privilege in favor of generals and admirals of the Armed Forces whereby, in accordance with the Constitution, in order to bring them to trial the Supreme Court of Justice must first rule on whether there are grounds for doing so. On this point, the Commission considers that this requirement is not compatible with the rule of law as it relates to the proper administration of justice, because it could constitute a privilege that would facilitate impunity for members of the Armed Forces.

554. Consequently, it is essential that the Armed Forces not intervene in public security matters, unless they are subordinated to the civilian authorities. The State must demonstrate the political will to achieve these objectives.

### **The police forces**

555. According to information provided by the Ministry of the Interior and Justice, there are currently 95 police forces in Venezuela, 71 of which are municipal forces and 24 are state forces, in addition to the Criminal Scientific Investigation Corps (CICPC) and the DISIP (political police), which operate nationwide.<sup>274</sup> The States of Amazonas, Apure, Falcon and Portuguesa are the only ones that do not have municipal police forces and that rely exclusively on the state police.

556. On this point, the Commission notes a substantial shortcoming in the area of police activity: the National Assembly has not passed the National Police Corps Act, as called for in the fourth transitional provision pursuant to article 332 of the Constitution. It is essential to improve security and the public's sense of security by approving this law and establishing a National Civil Police Force, with the resources to train it properly as a democratic institution for purposes of public safety, similar to the police forces of the various states.

557. In examining the current status of the rule of law, the Commission considers that the events of greatest importance for their

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<sup>274</sup> The State of Miranda has the greatest number of municipal police forces (17), followed by the States of Anzoategui (10), Carabobo (7) and Zulia (5). Despite the large number of police forces in these states (55% of the total), the states cited accounted for 47% of all crimes recorded in 2001, and 51% of reported homicides.

impact on institutional life are the activities of the death squads (*grupos de exterminio*), which apparently operate with the acquiescence of the state police, as will be discussed in the section on violations of the right to life; the police response to the events of April and the intervention of the Metropolitan Police, which has been denounced by a broad segment of the public as an example of the political polarization of Venezuela, in the sense that the Metropolitan Government is part of the opposition.

- **The right to life**

558. The Public Defender of Venezuela has recognized the existence of groups known as *parapoliciales* ["para-police"] in seven States of Venezuela.<sup>275</sup> In Portuguesa, some 400 km from Caracas, more than 100 people are reported to have been killed by a self-styled "extermination group", allegedly consisting of off-duty members of the state police and the National Guard.<sup>276</sup> A similar situation prevails in the States of Falcón, Yaracuy, Anzoátegui, Bolívar, Miranda, Aragua, and Caracas, where death squads are reported to have killed nearly a hundred people, with the acquiescence of the state police. It is important to note that these groups have been in existence for some time. In the past, similar events have occurred in other states of the country.

559. A supremely important question in analyzing this issue is the impunity that surrounds these executions and that allows these groups to operate. Indeed, there is a clear connection between impunity and the steadily rising number of these violent crimes.

560. The Commission considers that this serious problem, which has a direct impact on human rights, can be explained by the lack of police professionalism, widespread impunity, and rampant corruption. Moreover, these acts point to the absence of government policies for dealing with this situation, generating a spiral of impunity that is reflected in the periodic occurrence of violent acts.

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<sup>275</sup> According to the preliminary report by the Public Defender on executions, October 2001, para-police groups are operating in the States of Anzoategui, Aragua, Bolivar, Caracas, Miranda, Portuguesa and Yaracuy. Police executions are blamed for violating the right to life of 392 persons, and 10 forced disappearances. There are more than 20 complaints in the States indicated.

<sup>276</sup> Human Rights Watch, World Report 2003, "Social cleansing-type killings by police forces continued to be a grave problem"

561. The Commission concludes by recalling the press release issued at the end of its *in situ* visit in May 2002, in which it noted that the failure of the authorities to apply due diligence in investigating, prosecuting and punishing the members of the so-called death squads is a fundamental factor in their continued operation. The Commission reminds the State of its obligation to take urgent steps to dismantle these groups and to investigate and punish those responsible, highlighting the responsibility that falls to the various states of Venezuela in these cases, in accordance with article 28 of the American Convention taken in relation with article 1 (1) of that instrument.

- **The right to personal integrity**

562. With respect to the right to personal integrity, the Commission notes that the sharpening of the institutional conflict in Venezuela has led to acts of violence extending to attempts on people's lives, with numerous attacks against personal integrity. With respect to this right, the Commission has observed a number of particularly alarming aspects. In the first place, the high number of cases of torture and cruel, inhuman and degrading treatment at the hands of the State security forces; and in the second place, the failure of the competent State bodies to fulfill their duty to investigate reported cases and to punish those responsible, who generally enjoy impunity, thereby encouraging the repetition of such conduct; and the absence of effective oversight procedures to ensure the physical integrity of prisoners, both civilian and military. On this point, the IACHR stresses the need for urgent measures to prevent such outrages, and to investigate and punish those responsible in all cases.

- **The right to freedom of expression and thought**

563. Freedom of expression in Venezuela remains a matter of particular concern. The Commission notes an alarming and generalized increase in attacks on the media and journalists, particularly those covering political events and demonstrations. The State of Venezuela must take the necessary steps to guarantee free exercise of freedom of expression, which is essential to consolidating democracy. The IACHR also expresses its concern over the State's failure to comply with the precautionary measures granted by the Commission and with the provisional measures granted by the Inter-American Court on behalf of journalists and social communicators.

564. The Commission considers that there are also other forms of obstructing the full exercise of the freedom of expression. One example can be found in the laws that criminalize offensive speech aimed at public officials, known as contempt laws (*leyes de desacato*), which are

incompatible with Article 13 of the Convention. Another example is the abusive use of emergency broadcast systems. The IACHR issued an appropriate press release condemning the abusive and unnecessary use of this mechanism, which, used in a highly discretionary manner, and for purposes alien to the public interest, may constitute a form of censorship. The various kinds of pressure brought to bear on the broadcast media by initiating administrative proceedings which, while abusive, also constitute an indirect restriction on the freedom of expression, are a third example.

565. The difficulty of public access to information continues to go unanswered; accordingly, any initiative by the government to facilitate free access to information will contribute to ensuring that the citizenry is better informed.

566. The IACHR has been concerned that there was little and at times no information available to Venezuelan society during the days of the institutional crisis of April. Although there may be any number of justifications to explain this lack of information, to the extent that the suppression of information resulted from politically motivated editorial decisions, this should be the subject of some serious thinking by the Venezuelan media about their role at that moment.

567. Finally, the IACHR wishes to pay tribute to the valor of journalists who have continued to pursue their activities, even at risk to their physical integrity. As noted above, the IACHR considers that the intimidation of journalists has a devastating effect on democracy, and it therefore calls on Venezuelan society to embark upon a period of profound soul-searching, and highlights the need for the various sectors of society and of the government to refrain from identifying journalists and other social communicators as their opponents' allies.

- **Trade union freedoms**

568. The IACHR notes, with respect to the situation of trade union freedoms in Venezuela, that the political crisis and the climate of intolerance prevailing today have led to an increase in labor conflicts. The IACHR is particularly concerned over the mass dismissals of workers of PDVSA. The information available shows that 12,383 workers were dismissed from that State enterprise on grounds of having abandoned their workplace in the context of the so-called national civic strike that lasted from December 2002 until February 2003, and that those dismissals were ordered without any administrative procedures to guarantee due process.

569. Human rights organizations claim that the situation in Venezuela is characterized by constant interference in union affairs through government efforts to obstruct the activity of union leaders and to exert political control over the organized labor movement.<sup>277</sup> The Committee on Freedom of Association has pointed to "the extremely serious and urgent situation in Venezuela marked by numerous complaints of repeated violations of freedom of association for both workers' and employers' organizations".

570. On December 3, 2000, the government called a referendum in which it asked voters if they were in agreement with reforming the trade union leadership through elections. The referendum resulted in a significant victory for the position in favor of reforming union leadership. On this point, the IACHR is of the view that allowing the population at large to participate in that referendum, i.e., including persons other than union members, entailed a violation of the right to form and join trade unions, and the right of workers to elect their leaders.

571. Once the results of the elections were known, the National Electoral Council refused to confirm the Governing Board of the Confederation as the legitimate leadership of that organization, alleging a series of irregularities. Consequently, the elected leaders of that Confederation were not recognized by the national authorities.

572. By virtue of the foregoing, the Commission concludes that there has been heavy-handed State interference in the affairs of labor organizations. As well, the Commission considers it important and urgent to resolve the problem of recognizing the leadership of the CTV, the principal Venezuelan labor confederation, in a manner consistent with the needs and rights of its members.

573. The IACHR recognizes that there has been a significant step forward in the area of trade union freedoms. On July 23, 2002, the Electoral Chamber of the Supreme Court of Justice ruled that action by the Supreme Electoral Council was of a subsidiary nature, and that therefore that body could only intervene when there was a dispute that the labor organization itself could not resolve. The Commission therefore recommends that the State adopt the necessary measures to give full trade union guarantees

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<sup>277</sup> Provea, Annual Report N° 14, "Derechos Laborales: Derecho a la Libertad Sindical", Caracas, Venezuela. See also "Las Libertades Sindicales en la Región Andina: Integración, Transición y Conflicto", Presentation: Libertad Sindical y Derechos Humanos en Venezuela, Marino Alvarado, Santa Fé de Bogotá, Colombia, April 28, 2000.

- **General conclusions**

574. In conclusion, the Commission regards all the situations identified in the various chapters of this report, and summarized above, as indicating a clear weakness in the fundamental pillars of the rule of law within a democratic society, under the terms of the American Convention on Human Rights and other international instruments.

575. The Commission reiterates its concern over the crucial problems that must be resolved on an urgent basis in order to reverse the decline in the rule of law in Venezuela, and to strengthen and preserve the constitutional State. It notes that civil society and international agencies agree that there has been a gradual deterioration in the human rights situation in the country.

576. The IACHR also wishes to highlight the significant progress that has been made in finding a peaceful solution to the institutional crisis, through the election route, a fact that clearly demonstrates the solid democratic commitment of the Venezuelan people. The Commission refers once again to the agreement signed by representatives of the government and the opposition on May 29, 2003, as part of the Negotiation and Agreement Roundtable. That agreement constitutes a fundamental document that marks a milestone in the current situation, whereby the parties have agreed that applying constitutional mechanisms is the proper institutional way of resolving the crisis. The Commission hails this achievement and call on all parties to continue to foster tolerance and democratic dialogue, and to apply the agreed principles jointly wherever they are needed.

577. Finally, on the basis of more than 40 years of experience in promoting and protecting human rights in the hemisphere, the IACHR considers it essential that all sectors of society avail themselves of mechanisms or agreements that make respect for the human rights recognized in the American Convention and the Constitution a frame of reference for all players in Venezuelan public life. Polarization and intolerance not only impede the working of democratic institutions but actively and dangerously undermine those institutions. A weak democracy, in the Commission's judgment, cannot mount a vigorous defense of human rights.

578. The Commission hopes that the Government of Venezuela and the other political players in the country, including members of the legislature and the judiciary, will continue to demonstrate the political will to seek solutions to the serious human rights problems affecting the country's inhabitants. Several of these problems have been identified in this report, which also contains the IACHR's considered recommendations.

579. The IACHR will continue to monitor the situation in Venezuela closely, paying particular attention to the measures adopted to apply the recommendations set forth in this report. The Inter-American Commission therefore offers the Venezuelan State and society as a whole its full cooperation in efforts to promote and protect human rights and to build consensus towards resolving problems in a democratic and institutionally legitimate context.