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March 14, 2017
OSG/128-17

His Excellency
Patrick Andrews
Ambassador, Permanent Representative of Belize
to the Organization of American States
Washington D.C.

Your Excellency:

On May 30, 2016, I submitted my first detailed report outlining the crisis in Venezuela, focusing on the “alteration of the Constitutional order” and the “democratic order” in the country based on Article 20 of the Inter-American Democratic Charter. In order to constructively contribute to the collective assessment by the Member States, the General Secretariat hereby presents an update of the report.

On June 23, 2016, the Permanent Council convened an urgent session under Article 20 of the Inter-American Democratic Charter to discuss the content of the report. The Secretary General’s report was the sole item on the meeting’s agenda.

For two and a half hours, Members States collectively evaluated the situation and what measures to undertake in order to promote the normalization of the situation and restore its democratic institutions. While noting that the presentation was made, the outcome of the discussion was that no decision was reached.

Since that discussion, Members of the Permanent Council, citizens of the Americas and the international community have all witnessed Venezuela spiral further and further into its acute economic, social, political and humanitarian crisis.

The diplomatic efforts undertaken have resulted in no progress. Repeated attempts at dialogue have failed and the citizens of Venezuela further lose faith in their government and the democratic process. The lack of results from a dialogue is the first sign of failure in a political system, because democracy cannot exist if voices are not heard or if they have been silenced.

The facts have become clear. Venezuela is in violation of every article in the Inter-American Democratic Charter. Democracy and Human Rights are values that must be above politics and the task before us is to support Venezuela and restore the rights of the people.

Our efforts must focus on restoring the right to democracy for the people of Venezuela as set forth in Article 1 of the Inter-American Democratic Charter: “The peoples of the Americas have a right to democracy and their governments have an obligation to promote and defend it.”

As Secretary General of the Organization of American States, it is with disappointment that I present this follow-up report detailing the further deterioration of the state of affairs in Venezuela. In drafting this report, there are three certainties:

- the objectivity of the facts that have been written in these pages;
- the importance of the Inter-American principles; and,
- that democracy will, sooner or later, once again become the system of government in Venezuela.

Democracy is a government of the people. Those who are elected to represent them are intended to be an instrument to channel the voice of citizens into the decision making process. Those who are elected must be accountable.

For more than a year, the message to the Venezuelan public has been that it is time for dialogue. However, dialogue has failed. We cannot allow the premise of a false dialogue to continue to be used as a smokescreen to perpetuate and legitimize the authoritarian power of what has become a dictatorial regime in Venezuela.

Various Venezuelan political groups, particularly those more closely aligned with the government, certain opposition groups, as well as parts of the international community have sought to create a dialogue mechanism for the people of Venezuela as the solution to the humanitarian, social, economic, financial and political crisis.

This dialogue mechanism has decidedly reinforced the government’s strategy for holding on to power through repeated, continuous violations of the Constitution. These constitutional violations have had devastating effects on the rights of the people and on the representatives elected by those people.

The people of Venezuela are faced with a government that is no longer accountable. The Constitution no longer has any meaning.

The rule of law no longer exists in Venezuela; it has been eliminated by a judiciary under the complete control of the Executive Branch that has invalidated every law passed by the National Assembly along with its constitutional powers. It has also invalidated the rights of the people, particularly their electoral rights. In Venezuela today, citizens are unable to assert their rights. If the government wishes to imprison them, it does so; if it wishes to torture them, it does so. If the Government chooses, it does not bring them before a judge; if it chooses, it does not bring formal charges. Citizens have been left entirely at the mercy of an authoritarian regime that denies them their most basic rights. Because these abuses were

conceived and executed in parallel to the mediation process, they undermined its credibility.¹

Corruption is rampant and the economy is in a free fall. There is not enough food, health services are extremely scarce and the humanitarian crisis is at a scale unheard of in the Western Hemisphere. Civil and political rights are ignored, all for the sake of preserving the wealth, privilege and impunity of those holding onto power.

The recommendations made in the first report to the Permanent Council sought to contribute to a solution that, as said from the outset, must be of the Venezuelan people and by the Venezuelan people, ensuring the country returns to democracy and the rule of law.

As a multilateral institution, the OAS exists to serve our member states. The 1948 OAS Charter was signed “in the name of their people.” It is the “people” that are the fundamental element of the Organization’s founding document. As an institution we have an obligation to provide a voice to the people who no longer have a voice.

It is time for the Permanent Council to take specific actions that provide tangible results, and to call for a return to democracy in Venezuela that is unambiguous and not be undermined by short-term interests. In these months since our last discussion, the Inter-American system

¹ Mitzy Capriles: Rodríguez Zapatero habla de diálogo e ignora la violación de DD. HH. y torturas a los presos políticos

<http://www.ntn24.com/noticia/mitzy-capriles-rodriguez-zapatero-habla-de-dialogo-e-ignora-la-violacion-de-dd-hh-y-torturas-a-los-133601>

Una activista de derechos humanos ataca furiosa a Zapatero: “¡Indecente!”

<http://www.esdiario.com/504708485/Una-activista-de-derechos-humanos-ataca-furiosa-a-Zapatero-por-indecete.html>

Capriles carga contra Zapatero y lo acusa de no lograr resultados en su mediación en Venezuela

<http://www.elmundo.es/internacional/2017/02/22/58ad01ade2704e29388b459c.html>

Corina Machado a Zapatero: «Su propuesta es inmoral. ¿Quién le da derecho a negociar en Venezuela?»

<http://www.abc.es/internacional/abci-corina-machado-zapatero-propuesta-inmoral-quien-derecho-negociar-venezuela-201702231425-noticia.html>

El Parlamento y la Iglesia venezolana rechazan dialogar con Maduro

<http://www.abc.es/internacional/abci-parlamento-y-iglesia-venezolano-rechazan-dialogar-maduro-201702232217-noticia.html>

VENEZUELA: El juego de Santos es perverso y peligroso

<http://www.entornointeligente.com/articulo/9716444/VENEZUELA-El-juego-de-Santos-es-perverso-y-peligroso-11032017>

Diálogo en Venezuela fue una “mascarada”, dice esposa de Ledezma a Samper

<http://www.elnuevoherald.com/noticias/mundo/america-latina/venezuela-es/article136587808.html>

Capriles: Gobierno de Venezuela quiere diálogo para evadir tema de drogas

<https://www.cubanet.org/venezuela/capriles-gobierno-de-venezuela-quiere-dialogo-para-evadir-tema-de-drogas/>

El padre de Leopoldo López: “Sólo los ingenuos creen que Maduro celebrará elecciones

http://www.elespanol.com/mundo/america/20170217/194481110_0.html

Lilian Tintori: "Zapatero ha empeorado la situación, es un vocero de Maduro"

<http://www.libertaddigital.com/internacional/latinoamerica/2016-11-21/lilian-tintori-zapatero-es-un-vocero-de-maduro-1276587167/>

and the international community have used every instrument available to help restore the constitutional order and democratic institutions of Venezuela.

The Venezuelan government has persisted in the repudiation of its obligations under the Inter-American system. The “necessary diplomatic initiatives, including good offices” undertaken to “foster the restoration of democracy”, as outlined in Article 20 of the Inter-American Democratic Charter, have been rejected.

It is high time to recognize that the results obtained over long months of mediation and good offices have been negative and that it is no longer possible to continue to defend inaction by allowing the evolution of a process that has lost all credibility. To expect solutions from a dialogue that isn't really a dialogue—because it is not reciprocal, has provided no guarantees nor fulfilled any of its promises, has done no more than to exacerbate the situation in the country and legitimize the continued degradation of its institutions—makes us complicit as we conveniently wait for others to act. This leads to responsibility by omission. Our inaction in these circumstances is synonymous with failing to protect democracy and human rights in Venezuela.

In a hemisphere marked by a commitment to democratic solidarity, a commitment codified through the creation of the Inter-American Democratic Charter, there are few moral or political sanctions that exist for the democratically elected leaders of a country other than the confidence of their citizenry and the measure of their peers. The political class has already clearly lost the confidence of its people. As a hemisphere, this now is the moral and ethical obligation we have before us: to recover the principles of the Inter-American System and to return democracy to the country.

Jose Antonio Marina said, “It appears nothing is more dangerous than to take for granted that which it is up to us to do.” The Inter-American Democratic Charter is our tool for action in cases of alteration to the constitutional and democratic order in a country of the hemisphere. Let us use our tools, and assume the collective and individual responsibility that prompted us to establish this Organization and create this instrument. Contrary to what they tried to make us believe, i.e., that applying the Democratic Charter would block the possibility of achieving the necessary solutions; we see that in fact, the reluctance of using the Charter has led to the situation deteriorating significantly further.

As George Bernard Shaw said, “If history repeats itself, and the unexpected always happens, how incapable must Man be of learning from experience.”

I. THE INTER-AMERICAN SYSTEM AND THE DEFENSE OF DEMOCRACY

The concept of democracy must be seen as a necessary, essential and fundamental element of international relations in the hemisphere. Therefore, democracy is essential to the OAS. The preamble of the Charter of the OAS states “that representative democracy is an indispensable condition for the stability, peace, and development of the region.”

Resolution 1080 on Representative Democracy, approved in 1991, is the first measure to empower the Permanent Council to take action in the case of a crisis, or alteration to the democratic or constitutional order.

In 2001, these powers were adopted in the Inter-American Democratic Charter, which defines the concept of democracy and also identifies situations where Member States of the OAS might cooperate and support one of its members, either at the request of the affected country, or the Secretary General. The Democratic Charter was signed unanimously.

Article 1 states that “The peoples of the Americas have a right to democracy and their governments have an obligation to promote and defend it.” At the outset, the Charter establishes democracy as a right for the people of the Americas and the responsibility of the governments of the Americas to promote and defend it. Those elected to lead have a responsibility to protect these rights and values, and if they don’t they lose their legitimacy to lead.

Chapter IV of the Charter outlines the options for recourse. Articles 17, 18 and 19 place the first step in this responsibility for enforcement in the hands of the Permanent Council. Article 20 outlines the range of measures for possible recourse, empowering the Permanent Council to “undertake the necessary diplomatic initiatives, including good offices, to foster the restoration of democracy.” In the case that “diplomatic efforts prove unsuccessful”, Article 20 goes on to call for a Special Session of the General Assembly. Article 21 stipulates the procedure for a possible suspension when “diplomatic initiatives have failed.” Article 22 outlines the process for the vote to lift a possible suspension, once the situation has been resolved.

The Democratic Charter has been invoked seven times by Member States and Article 21 triggered once, in the case of a coup d’état. Regional solidarity cannot come at the cost of human rights abuses and the destruction of democratic institutions. In fact, the exact opposite is true. In each of these cases, all Member States cooperated to support the affected state reinforcing that the Democratic Charter strengthens the principle of regional solidarity.

In turn, democratic clauses have been adopted by various sub-regional organizations, including MERCOSUR with the 1998 *Protocol of Ushuaia*, and UNASUR with the 2014 *Additional Protocol*.

As stated in my previous report, the Western Hemisphere has been a pioneer in adopting international regulations for the defense of democracy, a responsibility shared by all member states.

The obligation to take action is tied to the *pacta sunt servanda*. The international defense of democracy is essential and that obligation is created by individual states signing onto international treaties, whereupon they become accountable to the community of signatory states. This creates the requirement of international scrutiny in their democratic process, and the international community is obliged to observe the conditions, performance and integrity of their democracy.

It is understood that there is an ongoing monitoring and preservation of good practices, just as it is necessary to monitor weakening or bad practices that go against the constitutional order and against international agreements, because these can set a dangerous precedent.

We must avoid double standards and use the mechanisms available, including the Democratic Charter in all cases where the situation is identified in which the essential elements of democracy are deteriorating. Protecting democracy must be more than words; it requires action.

Article 3 of the Charter defines the “essential elements of representative democracy,” a list of processes and institutions that includes: “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.”

Article 4 of the Charter defines the “essential components of the exercise of democracy” as “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,” also requiring the “constituted subordination of all state institutions to the legally constituted civilian authority and respect for the rule of law.”

These fundamental principles must always apply. It is clear that evaluating the quality of democracy of a country and its system for protecting human rights makes is a challenging step to take. However, this is exactly what the OAS must do – draw attention to these issues and ensure that the voice of every citizen of the Americas is heard. Dialogue is a first step and the challenge becomes even greater when we are forced to recognize that dialogue has failed, and that these conversations have not been sufficient.

Here at the OAS, we have created valuable instruments that if used, can produce valuable results. Member States have been ready to defend the system during moments of truth, and to these instruments on a daily basis. Cooperation between all countries is essential. It is through their systematic use that institutions are strengthened, and along with it, so are Member States.

In accordance with the 2009 statement by Inter-American Juridical Committee on *The Essential and Fundamental Elements of Representative Democracy*, democratic order exists when “there is a vital link between the effective exercise of representative democracy and the rule of law which is expressed concretely in the observance of all the essential elements of representative democracy and the fundamental components of the exercise of the same.” It goes on to state “democracy does not consist only in electoral processes, but also in the legitimate exercise of power within the framework of the rule of law, which includes respect for the essential elements, components and attributes defined above”.²

² *Elementos esenciales y fundamentales de la democracia representativa y su vinculación con la acción colectiva en el marco de la Carta Democrática Interamericana*, Comité Jurídico Interamericano, CJI/RES. 159 (LXXV-O/09)

In diplomacy, these agreements are our tools and we have a responsibility to ensure that they are more than simply words on a piece of paper. The words we choose create politics and we must ensure that they translate into action. It is about building solutions, mounting pressure, creating conditions, working principles and values.

II. THE DIALOGUE

Democracy requires dialogue, and again, in order to make this dialogue effective, it must be accompanied by action. Diplomatic efforts were undertaken from May 2016 until February 2017, and proposals for mediation sprung up from many quarters. In the May 5, 2016 meeting of the Permanent Council, the good offices of the Permanent Council of the OAS were offered, and were rudely and disparagingly refused.

During the early months of 2016, as the initial confrontation over the suspension of the three National Assembly members from the state of Amazonas between the newly elected National Assembly and the Executive and the Supreme Court of Justice (TSJ) was unfolding, the Government agreed with the Secretary General of UNASUR, former Colombian President Ernesto Samper, to help promote an institutional dialogue between the Government and the Opposition. Samper turned to three ex-presidents, to facilitate the dialogue, former Prime Minister of Spain, José Luis Rodríguez Zapatero, the former President of the Dominican Republic, Leonel Fernández, the former President of Panama, Martin Torrijos.

The Permanent Council of the OAS gave its full support to this “dialogue process,” empowering it to become the diplomatic initiative that the OAS was prevented from undertaking directly.

According to Zapatero, "Our objective is clear; it is to set in motion, to attempt a process of national dialogue, and I must say that both President Maduro and the representatives of the opposition coalition Mesa de la Unidad Democrática (MUD) have expressed the will to engage in dialogue."³ It should be noted however, that the initiative was never sanctioned by the UNASUR Foreign Ministers, nor did the opposition coalition of the MUD, have a say in the arrangement or on who would be involved in facilitating a possible dialogue.

During the intervening months, the mediators engaged the parties separately. From the perspective of the Opposition, this was because the Government refused to consider its preconditions for a real dialogue. The MUD insisted that “the requirements for dialogue rest on respect for the Constitution, which clearly sets forth the rules for calling a recall referendum” and that “any agenda for genuine, useful dialogue must include the release of political prisoners, the return of exiles and the discontinuation of repression, respect for the National Assembly, and expediting the opening of channels for international aid to come to

³ Zapatero sees "will for dialogue between the Venezuelan government and the opposition, 19 May 2016, <http://www.rtve.es/noticias/20160519/zapatero-ve-voluntad-dialogo-entre-gobierno-oposicion-venezuela/1351863.shtml>

the rescue of Venezuelans who are without medicine or food, victims of the humanitarian crisis caused by the government. Thus far, no clear rules have been established for any dialogue or negotiation.”⁴

Even though the dialogue was not producing results, this past fall, momentum grew pushing the country towards a democratic solution to the crisis. On five key issues, the stars aligned and the opposition held a position of strength to pressure the Government to compromise.

The citizenry had been galvanized and millions of Venezuelan citizens had taken to the streets, including one million in Caracas alone, to demand change. The people had rallied behind the last possible constitutional solution to the political crisis, the recall referendum. The international community had mobilized and had begun to take action. At the OAS, the threat of further measures under the Inter-American Democratic Charter loomed and MERCOSUR suspended Venezuela’s membership from the organization. The threat of possible international sanctions added pressure on the regime in Caracas regime to find a democratic solution. The criminal drug trafficking charges made against the nephews of President Maduro and the corruption charges against PDVSA in Houston further weakened the position of the regime.

With this momentum, the majority of the MUD opposition coalition agreed to a new phase of the dialogue, this time with the Vatican at the table, intended to restore respect for the constitution and the institutions of the State. Exceptions included the Voluntad Popular, and a few small parties, such as Vente.

During the first plenary session, held on October 30, seven key issues were identified:

- A joint commitment to maintaining the peace and understanding among Venezuelans;
- A review of the political prisoners;
- The case of the Members of the National Assembly for the State of Amazonas;
- The electoral schedule and respect for the electoral processes provided for in the Constitution;
- The separation and independence of the branches of government and respect for their respective constitutional powers;
- A joint commitment to improve the conditions of the supply of food and medicine; and
- Options to support the joint action of State institutions to address the most urgent economic issues.⁵

At the conclusion of the plenary, it was agreed to establish the four thematic panels with progress to be evaluated on a regular basis.

⁴ MUD communiqué: There is no dialogue in Venezuela and the government’s actions are exacerbating the crisis, 21 June 2016, <http://www.lapatilla.com/site/2016/06/21/mud-en-venezuela-no-hay-dialogo-y-las-actuaciones-del-gobierno-agravan-la-crisis-comunicado/>

⁵ <http://minci.gob.ve/2016/10/conozca-los-acuerdos-establecidos-en-el-dialogo-entre-gobierno-y-oposicion/>

On October 24, UNASUR issued a communiqué outlining the agreement on a table of dialogue between the government of Venezuela and the opposition according to four themes. Each thematic table would be coordinated by one of the three ex-presidents (Zapatero, Fernandez and Torrijos), and a representative of the Holy See. Both the government and opposition would have one representative that would be supported by a team of technical advisors.

The four themes of dialogue agreed upon were (i) Peace, Respect for the Rule of Law and National Sovereignty (to be coordinated by Zapatero), (ii) Truth, Justice, Human Rights, Reparation of Victims and Reconciliation (the Holy See), (iii) Economic-Social (Fernández), and (iv) Confidence-Building Measures and the Electoral Timeline (Torrijos).

A second plenary session took place on November 11-12, 2016. A statement highlighted a list of five additional issues including:

- The National Government and the MUD would work together to combat all forms of sabotage, boycott or aggression against the Venezuelan economy and prioritize the short-term adoption of measures aimed at the supply of medicines and foods;
- Urge the relevant authorities to act to resolve the situation of the Members of the Legislative Assembly in the Amazonas, as well as, move forward with the appointment of two members of the National Electoral Council (CNE) whose terms ended in December 2016, within the framework of the Constitution;
- To defend the legitimate and inalienable rights of Venezuela over *Guayana Esequiba*,
- Adopt the Joint Declaration “Living in Peace;”⁶ and
- Expand participation in the dialogue to include a State Governor from both parties and invite representatives of the different segments of society.⁷

On December 1, the Vatican sent a letter to the Venezuelan Government and to the opposition in which he stressed, once again, the importance of dialogue between the parties. The letter signed by Secretary of State Cardinal Pietro Parolin expressed concern in the “disturbing delay in adopting the measures necessary for the concrete implementation of the agreements,” further noting that “outside of the work meetings, statements are made or decisions are made that do not favor the understanding between the parties.”

The letter raised a series of issues requiring prompt attention, including:

⁶ The ‘Living in Peace’ declaration is a pledge to the Venezuelan people to resolve the crisis peacefully while operating “our political differences will only have a response in the strict constitutional framework: a democratic, peaceful and electoral path.” <http://vtv.gob.ve/conoce-la-declaracion-conjunta-convivir-en-paz-acordada-por-el-gobierno-y-oposicion/>

⁷ <http://minci.gob.ve/2016/11/gobierno-nacional-y-la-mesa-de-unidad-democratica-celebraron-segunda-reunion-plenaria-del-dialogo-nacional/>

- Before the next meeting that necessary measures be taken for the urgent implementation of measures to alleviate the serious humanitarian crisis, offering the Venezuela Church as a possible vehicle to facilitate the assistance;
- That the parties agree on an electoral calendar that allows Venezuelans to decide without delay their future;
- That the necessary measures to restore the role of the National Assembly, provided for in the Constitution; be taken, and;
- That the legal instruments be followed to accelerate the process of the release of detainees.⁸

The opposition chose not to participate in the next plenary session scheduled for December 6, 2016.

Each of the concerns raised in the letter from the Vatican, highlights a failure on the part of the Venezuelan government to act, suggesting that the Government was not negotiating in good faith. The dialogue has not yielded any results and instead, in each of the four thematic dialogues, the opposition has lost at every turn; the political, economic, social and humanitarian situation has worsened; and the power of the authoritarian regime has been further perpetuated.

The first thematic dialogue, which was intended to return the constitutional powers to the National Assembly made no progress. In the meantime, the TSJ took action that resulted in the de facto termination of these powers. Since the beginning of the dialogue process, the Supreme Court has further stripped powers from the National Assembly including the authority to elect members of the electoral council, budget approval and the authority to conduct a political trial, or to hold the President to account. In addition, Members of the National Assembly have been stripped of their immunity. Two members of parliament, including the President of the Committee on Foreign Relations, have been prevented from leaving the country and their passports cancelled, and alternate Member representing the Voluntad Popular, Gilber Caro, has since been detained and is currently in jail. Each of these measures is in direct violation of Venezuela's own constitution.

Under the second thematic table of dialogue, after an initial gesture releasing a select number of political activists that had been unduly detained, the Government quickly resorted to their longstanding practice of arbitrarily arresting, detaining, and releasing citizens, at will. The total amount of political prisoners, at any given time, has grown since the process of dialogue began.

The third table of dialogue was intended to guide efforts to restart the economy. Instead, the country's economy is getting worse and worse. Inflation continues to rise, reaching unprecedented levels, while the GDP is in free-fall. The dialogue has also failed to achieve any sort of agreement to open a channel for humanitarian assistance. They were not even able to open up a humanitarian channel to address basic issues of food and medicine

⁸ <http://www.infobae.com/america/america-latina/2016/12/07/la-carta-completa-que-el-vaticano-envio-al-regimen-de-nicolas-maduro-y-a-la-oposicion/>

shortages for the people suffering the worst impact of the humanitarian crisis. The pain of the crisis has made itself felt on every social indicator: increased child malnutrition, increased child mortality, the deaths of patients with chronic illness who cannot receive treatment, even the deaths of children because of a lack of vaccines.

The fourth table of dialogue, which was to establish an elections calendar and the last chance for a constitutional solution to the crisis, rejected the recall referendum, producing the gravest violation of the people's electoral rights as granted by the Bolivarian Constitution. The recall referendum did not belong to the government, to the opposition, to the mediators, or to the Vatican; it belonged to each and every individual who provided their signatures, risking their government job, their freedom, any economic or food assistance they might have been receiving, and which, as a result, in many cases they lost. To suspend it was therefore completely wrong, a violation of the Constitution and the rights of the people. As Salvador Allende said, "The people must not let themselves be destroyed or riddled with bullets, but they cannot be humiliated either." The gubernatorial elections have been postponed, with no indication of when or if they will be held in the near term.

Each of the above setbacks has entailed a violation of the Constitution's most precious principle— respect for the will of the people. The Venezuelan people have lost their right to express themselves through their vote. Successive and repeated manipulations of electoral provisions, the imposition of weak, unclear rules, the introduction of new regulatory processes and the failure to adhere to timelines, and the use of subjective legal interpretations to allow the course of events to suit the governing party only perpetuate the situation and postpone indefinitely the expression of the will of the people.

Each of these actions is in violation of the Venezuelan constitution and each of these actions is in violation of articles 3 and 4 of the Democratic Charter.

The Vatican's involvement has become an excuse for the Members States of the OAS not to act and instead wait for progress that was never going to be made. It is time to acknowledge that the dialogue has failed as a process to restore democracy and prosperity to the people. The dialogue was, actually, a tool for reinforcing the regime's worst authoritarian features domestically and, externally, for not engaging in international condemnation and pressure. These unacceptable goals were clearly achieved by the Government.

The disenchantment of the Venezuelan people has only grown, resulting in a greater mistrust of politicians from both the government and the opposition. According to a February poll conducted by Seguias, the PSUV sits at roughly 18-20% support, with the MUD at roughly 33%, a drop of more than 10% in recent months.⁹ Close to half the population has no confidence in the political parties chosen to represent them. Half of Venezuela is look for an independent, outside voice to represent them.

As members of the Permanent Council, you have each supported resolutions favoring the dialogue process. In addition, countries in this Hemisphere have expressed support through statements through different associations including: MERCOSUR, UNASUR, the Group of

⁹ <http://www.elnuevoherald.com/noticias/mundo/america-latina/venezuela-es/articulo135302939.html>

15, and the expanded Group of 15. Support for the dialogue has even come from outside the region. All of these efforts were in support of Venezuela, and the Government has categorically rejected their support through their lack of good faith in the dialogue process.

Venezuela stands out in the region as the only former democracy to have spiraled down into an unrestrained authoritarianism. What should be one of the wealthiest countries in the region is instead one where all aspects of life in the country—humanitarian, social, economic, and political—have totally collapsed. This is a reality that we must be willing to acknowledge, not in hushed voices or behind closed doors, but out loud, in public, on the record.

Continuing to replicate the failed mediation efforts and these rejected diplomatic efforts only prolongs the suffering of the people of Venezuela. It is time to move this process forward and look towards next steps to help Venezuela return to its path of democracy and prosperity.

III. THE RECOMMENDATIONS

The first report to the Permanent Council presented an impartial analysis of the situation in Venezuela, based on the facts and circumstances that were determined to be truthful. In addition, the document outlined a series of eight recommendations that would be necessary to resolve the challenges identified in the text.

The recommendations were intended to bring normalcy to the situation and help restore the constitutional order of Venezuela, placing this country back on the path of democracy and prosperity. It is disheartening to report that, as in the case of dialogue, no progress has been made on any of the recommendations listed in the initial report. The Venezuelan Government has turned its Constitution into a meaningless piece of paper, and the voice of the Venezuelan people has been silenced, imprisoned while corruption and narco-trafficking has spread throughout the country.

RECOMMENDATION 1: THE RECALL REFERENDUM. THIS IS THE POLITICAL SOLUTION FOR VENEZUELA – GIVEN THAT WHEN THE POLITICAL SYSTEM OF A COUNTRY IS EXTREMELY POLARIZED, THE ONLY SOLUTION MAY ARISE FROM A SOVEREIGN DECISION [BY THE PEOPLE.]

RECALL REFERENDUM

Recall Referendum: March 9 – October 20

The presidential recall referendum campaign in Venezuela, launched on March 9, 2016¹⁰ and suspended by the National Electoral Council on October 20 was an initiative

¹⁰ Date on which the MUD submitted the activation request to the Participation and Finance Committee (COPAFI).

undermined by obstacles imposed by an administration facing the pressure of the January 10, 2017 deadline. If the referendum been held before that date, the successor designated by President Chávez might not have finished his term. Given the fears surrounding that possibility, it is not surprising that the initiative to trigger a referendum against President Maduro's term was deliberately blocked by the government, which did not honor its constitutional duty to adhere to the law and facilitate the full political participation of all Venezuelans. Instead, it chose to stand in the way of a referendum, by repeatedly obstructing and postponing the signature verification processes.

Throughout the 225 days, bad practices included the handling of the timeframes stipulated by law, the creation of new procedures not included therein, and the inadequate electoral infrastructure.¹¹ Also of particular note was the highly unusual confluence of nearly simultaneous events that led to the referendum's suspension by the end of the same day. A close look at the events that transpired between March 9 and October 20 helps explain how bad practices and interference by the Executive put a halt to the mechanism, which had only completed its first phase.¹²

It is noteworthy that the process occurred in an environment where the quality of Venezuela's democracy had been questioned internationally. A study of 153 countries and 213 elections, published by Harvard University in September 2016, found the perception of electoral integrity in Venezuela to be "low or very low."¹³ Likewise, in the Freedom in the World 2017 report, published by the non-profit organization Freedom House, Venezuela obtained a score of 6 for political rights, placing the country in the 'not free' category, which includes an analysis of electoral processes.¹⁴

Freedom House contends that President Maduro co-opted the judiciary and blocked the recall referendum, "effectively cutting off the only route to an orderly change of leadership."¹⁵ Other international non-profit organizations support the hypothesis that the administration used manipulation and interference to prevent the recall referendum from being completed. The International Crisis Group (ICG) argues that, "By using its control of the judiciary and the electoral authority to block a presidential recall referendum in 2016, the administration has ensured that there is no constitutional means of removing it from power ahead of presidential elections scheduled for December 2018."¹⁶

¹¹ UCAB (2016), "*Informe de seguimiento sobre la activación del Referendo Revocatorio del Mandato Presidencial*," Electoral Integrity Project Venezuela, <https://politikaucab.files.wordpress.com/2016/10/informe-de-seguimiento-sobre-la-activacioc81n-del-referendo-revocatorio-del-mandato.pdf>

¹² The three phases are: creation of the group calling for the referendum; submission of the recall referendum request; and holding of the recall referendum.

¹³ Electoral Integrity Project (2016), "The Year in Elections, mid-2016", <https://electoralintegrityproject.squarespace.com/the-year-in-elections-mid2016/>

¹⁴ <https://freedomhouse.org/report/fiw-2017-table-country-scores>

¹⁵ Freedom House (2017), *Freedom in the World 2017*, p. 7, https://freedomhouse.org/sites/default/files/FH_FIW_2017_Report_Final.pdf

¹⁶ ICG (2017), "Venezuela: A Regional Solution to the Political Standoff," February 28, 2017, <https://www.crisisgroup.org/latin-america-caribbean/andes/venezuela/venezuela-regional-solution-political-standoff>

Failure to adhere to timelines

One of the bad practices that persisted throughout the process was the mishandling of the timelines stipulated by the law. The unusual length of the process compared to that of similar cases carried out previously raises suspicions as to how the electoral authority managed the timetable.

By October 19, 2016, one day before the recall was suspended, there had been a cumulative delay of 80-days.¹⁷ A study by the Electoral Integrity Project Venezuela concluded that one of the process's failings was the "systematic delays in the different phases of the petitioner verification process and in the call to collect the signatures from 20% of the electorate."¹⁸

The delays occurred from the outset, starting during the collection of signatures from 1% and 20% of the electorate, respectively. The MUD submitted the activation request to the CNE on March 9, but the CNE did not acknowledge receipt until April 7. Due to the lack of response from the electoral authority, the MUD then made two additional requests on March 15 and April 7. On April 25, the CNE responded to the request to collect petition signatures requiring that signatures be obtained from 1% of the voter roll in each state and the Capital District. The CNE issued the Signature Forms on April 26. It is important to note that Resolution 070906-2770 does not stipulate a time frame for the electoral authority to respond to this type of request. The CNE's delayed response violates the right to petition, which requires that all petitions must obtain a timely response within a reasonable time frame.¹⁹

The MUD took seven days- rather than the 30 days allowed- to gather 1.97 million signatures delivering them to the CNE on May 2.²⁰ The next step was the verification of the number of signatures, which also suffered delays. In accordance with Article 10.5 of Resolution 070906-2770, the CNE had five calendar days from May 2 to complete the verification process. However, a total of 39 days passed between the date the signatures of the 1% were gathered (May 2) and the date the CNE approved the "Report on the Results of the Digitizing and Fingerprint Matching of the Manifestations of Intent"²¹ (June 13).

The CNE then validated the signatures by the deadline it had set (June 20 to 24) and subsequently confirmed that the signatures of 1% of the electorate from each state had in

¹⁷ UCAB (2016), "*Informe de seguimiento sobre la activación del Referendo Revocatorio del Mandato Presidencial*," Electoral Integrity Project Venezuela, <https://politikaucab.files.wordpress.com/2016/10/informe-de-seguimiento-sobre-la-activacioc81n-del-referendo-revocatorio-del-mandato.pdf>

¹⁸ UCAB (2016), "*Informe de seguimiento sobre la activación del Referendo Revocatorio del Mandato Presidencial*," Electoral Integrity Project Venezuela, <https://politikaucab.files.wordpress.com/2016/10/informe-de-seguimiento-sobre-la-activacioc81n-del-referendo-revocatorio-del-mandato.pdf>

¹⁹ The Right to Petition in Venezuela is set forth in Articles 28, 31, 51, and 58 of the Constitution of the Bolivarian Republic of Venezuela (1999) and in Articles 7 and 8 of the Organic Law of Public Administration, whereunder public entities have the obligation to address petitions brought by individuals. This is regarded as the right to petition and timely response.

²⁰ Art. 10.4, Res. 070906-2770

²¹ <http://www.cne.gob.ve/web/documentos/pdf/2016/InformeFinal.pdf>

fact been collected. Up to this point in the process, the estimated cumulative delay was 48 days.²²

The next phase began on August 2, when the MUD formally requested the collection of signatures from the 20% of the electorate needed to hold the recall referendum.²³ The CNE confirmed the legitimacy of the MUD's request on August 24, although the deadline for this confirmation was August 19.²⁴ Furthermore, in accordance with CNE guidelines, it had 15 business days to identify the collection centers to be used for the 20% tally, which would have been by September 9. The CNE responded on September 16, seven days behind schedule.²⁵ On October 6, the CNE provided the MUD with the official distribution of the centers to be used for collecting the fingerprints of the 20%.²⁶

Moreover, instead of publishing a definitive timetable for the process for collecting the 20% on September 16, as CNE President Tibisay Lucena²⁷ had publicly announced, the CNE published it on September 21. The timetable included additional delays; scheduling the 20% collection for the end of October meant that the CNE would be one-and-a-half months behind.²⁸

The situation described above supports the argument that, by not adhering to the time frames established in the regulations, the CNE deliberately pushed the recall process past its deadline.²⁹

Creation of procedures

Many of the delays in the process resulted from the creation of new procedures not required in the regulations. The first example occurred during the collection of the 1% petition signatures. The electoral authority required the 1% to apply to the electorate in each of the 23 states and Capital District, and not 1% of the national electorate. The requirement was added even though it was not included in the law and even contradicts it. In accordance with the existing regulations, signatures are to be collected from voters registered in the district associated with the presidential recall referendum, i.e., the President's district, which is national.

²² UCAB (2016), "Informe de seguimiento sobre la activación del Referendo Revocatorio del Mandato Presidencial," Electoral Integrity Project Venezuela, <https://politikaucab.files.wordpress.com/2016/10/informe-de-seguimiento-sobre-la-activaciocc81n-del-referendo-revocatorio-del-mandato.pdf>

²³ <http://ntn24webcanal.site/noticia/mud-solicita-formalmente-realizar-el-referendo-revocatorio-ante-el-poder-electoral-111248>

²⁴ <http://prodavinci.com/blogs/la-encrucijada-como-salvar-el-revocatorio-por-jose-ignacio-hernandez-g/>

²⁵ <http://prodavinci.com/blogs/la-encrucijada-como-salvar-el-revocatorio-por-jose-ignacio-hernandez-g/>

²⁶ <http://sunoticiero.com/cne-entrego-listado-de-centros-para-la-recoleccion-del-20/>

²⁷ <http://prodavinci.com/2016/08/09/actualidad/que-fue-lo-que-dijo-tibisay-lucena-sobre-el-referendo-revocatorio-monitorprodavinci/>

²⁸ <http://prodavinci.com/blogs/la-encrucijada-como-salvar-el-revocatorio-por-jose-ignacio-hernandez-g/>

²⁹ <http://prodavinci.com/blogs/la-encrucijada-como-salvar-el-revocatorio-por-jose-ignacio-hernandez-g/>

A second example of new procedures added to the process for the verification of the 1% of signatures. The board of the CNE, with one member dissenting, established the following new signature verification procedures: “transcription of the signature forms, a second transcription of the forms, verification of the petitioner's information in the Voter Registry, verification of fingerprints, and review of the “sensitive fields,” including the name and title of the official whose recall is being requested.”³⁰

A third example similar to the abovementioned case involves how the district is interpreted. Just as it occurred in the 1% phase, the CNE indicated that there was the possibility of a “regionalized” collection for the 20% collection phase.³¹ Socorro Hernández stated that it would be possible to use the same state-by-state criteria applied in the first phase.³² Lastly, on October 17, 2016 the Electoral Chamber announced³³ that the signatures would need to be collected from 20% of the electorate in each of the 23 states and the Capital District, contradicting the provisions of Article 72 of the Constitution and a CNE precedent from 2004.³⁴ On that occasion, in the recall against then-President Chávez in 2004, the CNE, under the same regulations, established that signatures needed to be gathered from 20% of the national electorate. The bias of this court order notably favors the administration. The position in question was President of the Republic, a national position, and so logic would dictate that the corresponding district should have been national.

Suspension of the process

The 2016 referendum recall process was not only plagued by the mismanagement of timelines, the creation of new procedures, and an inadequate electoral infrastructure, it was also characterized by the judicialization of the process in favor of the Government. The way the process was suspended is a good example. Contrary to suspicions that the judicial measures used to stop the referendum would come from the Venezuelan Supreme Court, the state courts of Aragua, Carabobo, Bolívar, and Apure issued rulings- practically simultaneously- that invalidated the collection of signatures for the recall due to alleged “fraud”³⁵ committed by the MUD.

The unusual coincidence of having nearly simultaneous rulings issued by courts from different states where the governors belong to the same party as the president raises

³⁰ UCAB (2016), “Informe de seguimiento sobre la activación del Referendo Revocatorio del Mandato Presidencial,” Electoral Integrity Project Venezuela, <https://politikaucab.files.wordpress.com/2016/10/informe-de-seguimiento-sobre-la-activacioc81n-del-referendo-revocatorio-del-mandato.pdf>

³¹ <http://runrun.es/nacional/278865/cne-inclinado-a-regionalizar-la-recoleccion-del-20-de-firmas-para-el-revocatorio.html>

³² <http://runrun.es/nacional/278865/cne-inclinado-a-regionalizar-la-recoleccion-del-20-de-firmas-para-el-revocatorio.html>

³³ Ruling 147/2016:

<http://historico.tsj.gob.ve/sr/print.asp?url=http://historico.tsj.gob.ve/decisiones/selec/octubre/190852-147-171016-2016-2016-000074.HTML>

³⁴ <http://prodavinci.com/blogs/sobre-la-inconstitucional-decision-del-cne-en-cuanto-al-20-por-jose-ignacio-hernandez/>

³⁵ http://www.eluniversal.com/noticias/politica/tribunales-dejan-sin-efecto-recoleccion-del-cinco-estados-del-pais_623473

suspicious. Based on the court rulings issued on October 20, the CNE suspended the collection of signatures of the 20% for the recall referendum that very day, alleging fraud in the previous process to gather signatures from 1% of the voter roll. Stopping the recall referendum process against President Maduro was not the result of extraordinary judicial coincidences, but rather a clear coordinated strategy within the government to suspend the initiative.

The Administration's actions with respect to the recall referendum are proof that it—places its interest in remaining in power above the will of the voters.

Recall Referendum: After 20 October

According to the communiqué of the first meeting of the National Dialogue, held on October 31st, the Parties agreed to address a number of issues, including the “electoral calendar and the institutional framework for the electoral processes set forth in the Constitution” (“*Cronograma e institucionalidad electoral y respeto a los procesos electorales previstos en la Constitución*”), which clearly include the recall referendum, as well as the elections for Governors, even if they were not explicitly mentioned.³⁶

However, the communiqué of the second meeting, held on November 12, 2016, only mentioned that the Parties had “In the political arena, [...] agreed to move forward to resolve the issue of the Supreme Court decision to declare the National Assembly in contempt. In this regard, it was agreed to urge the competent public authorities to take immediate action to resolve the Amazonas situation”.³⁷ No further mention was made of the electoral processes stipulated by the Constitution, let alone of the recall referendum.

Following the second meeting, many MUD sympathizers and some opposition figures were furious by the abandonment by the MUD leadership of the recall referendum in the Dialogue, as well as for a number of other concessions granted to the Government. President Maduro reiterated the day after the second meeting that his government would not agree to any electoral solution with the opposition.³⁸ With the prospects of the recall referendum dashed, members of the opposition started to focus on the possibility of moving the normal presidential elections forward.

In the days leading up to what was supposed to have been the third meeting of the National Dialogue, scheduled for December 6, 2016, various opposition figures were warning the Government that unless it made good on its commitments made during the previous meeting, they would not participate in the plenary. On December 5th, Henry Ramos Allup, the President of the National Assembly, tweeted that his party, Acción Democrática, would withdraw from the Dialogue unless the government honored its agreements.

³⁶ *Learn about initial agreements in the dialogue between the government and the opposition* [in Spanish], <http://minci.gob.ve/2016/10/conozca-los-acuerdos-establecidos-en-el-dialogo-entre-gobierno-y-oposicion/>

³⁷ *Read the communiqué on the National Dialogue after the second plenary meeting held this Saturday* [in Spanish], <http://minci.gob.ve/2016/11/gobierno-nacional-y-la-mesa-de-unidad-democratica-celebraron-segunda-reunion-plenaria-del-dialogo-nacional/>

³⁸ *Venezuela: tensions after national dialogue* [in Spanish], <http://www.dw.com/es/venezuela-tensiones-tras-di%C3%A1logo-nacional/a-36379701>

In a letter dated December 1, 2016, addressed to the Government and to the Opposition, the Secretary of State of the Vatican, Cardinal Pietro Parolin, also expressed his concern that “we are seeing a disturbing delay in adopting the measures necessary for the concrete implementation of agreements; [...]. In that context, the Holy See, in its role as guarantor of the seriousness and sincerity of the negotiations to which it has been called, believes that a substantial step forward must be taken if the National Dialogue is to be beneficial and effective. Therefore, respectfully but firmly, the Holy See demands that: [...] b) Given the parties’ pledges in the joint declaration “Living in Peace,” that their «political differences are to be solved solely within the strict constitutional framework of a democratic, peaceful, electoral path» and their conviction that «elections are the normal democratic way for people to express their will», the parties agree to an election calendar that will enable Venezuelans to decide their future without delay.”³⁹

The recall referendum was the last constitutional solution to the political crisis in Venezuela. The referendum was not a bargaining chip that the Government or the Opposition could use as part of the negotiations in the National Dialogue; it was a fundamental right of the people established in the 1999 Constitution of the Bolivarian Republic of Venezuela—and rights can never be negotiated, eroded or taken away, they must always be respected, or else the rule of law and democracy ceases. The decisions of the people to elect or to recall must be indestructible.

GUBERNATORIAL ELECTIONS

Elections for choosing 23 State governors and the 236 members of the state legislatures should have taken place by December 16, 2016, given that the constitutional four-year terms for which these officials were elected on December 16, 2012 would expire that day.

Just two months prior to the expiration of the Governors’ constitutional terms at its 18 October 2016 meeting, the National Electoral Council approved the electoral activities to be carried out in 2017. According to a CNE press release, “the calendar of activities submitted by the National Electoral Board for 2017 has been approved, among them regional, municipal and primary elections and renewal of the rolls of political organizations that do not meet the 1% required to remain registered with the CNE. [...] Regional elections have been set for the end of the first half of 2017 and municipal elections for the second half.”⁴⁰

This announcement constituted a clear violation of the political rights of the citizens of Venezuela; first because the CNE willfully ignored the deadline of December 12, 2016, for the election, thus violating Article 160 of the Constitution⁴¹ regarding the four-year term of governorships; secondly, because it denied citizens the possibility to vote, which is

³⁹ Full version of the letter sent by the Vatican to the regime of Nicolás Maduro and to the opposition, Infobae, <http://www.infobae.com/americas/america-latina/2016/12/07/la-carta-completa-que-el-vaticano-envio-al-regimen-de-nicolas-maduro-y-a-la-oposicion/>

⁴⁰ “CNE aprobó calendario electoral para el año 2017,” National Electoral Council, http://www.cne.gov.ve/web/sala_prensa/noticia_detallada.php?id=3482

⁴¹ Article 160 of the Constitution of the Bolivarian Republic of Venezuela: “Governors shall be elected for four-year terms by a majority vote.”

consecrated as a right under Article 63 of the Constitution;⁴² thirdly because it prevents voters from freely participating in public matters directly or through their elected representatives, another consecrated right under Article 62 of the Constitution;⁴³ and fourthly because no specific date was in fact announced for any elections, just broad timeframes, which prevents citizens and political parties from planning and organizing for the elections.

The Center for Political Studies of the Catholic University of Andres Bello poses the question of whether regional elections can even be held during the first half of 2017. According a recently released report from the Center, “based on the time periods the electoral agency approved when organizing the regional elections in 2012, it would seem virtually impossible that these time frames could be completed during the first half of this year. The CNE took 261 days to organize the last regional elections, from the date of the official announcement up to Election Day itself.”⁴⁴

In addition to this, the National Electoral Council’s publication on February 14, 2017, of the calendar for the renewal of the registration of 59 political parties (*renovación de nóminas de inscritos de las organizaciones con fines políticos nacionales 2017*) explains that the process would initiate on February 18, 2017, and conclude on June 21, 2017, making it impossible to hold elections in the first semester of 2017 as announced by the CNE back in October 2016. If one adds to this the calculus from the Center for Political Studies of the previous length of time it took the CNE to organize the last elections for Governors, there may not be an election in 2017 at all.

ELECTIONS IN AMAZONAS STATE

There is also the case of the three opposition members of the National Assembly from the state of Amazonas. Julio Ygarza, Nirma Guarulla and Romel Guzamana were elected on December 6th, 2015, as part of the wave of support for Venezuela’s opposition. Shortly after their election, the PSUV challenged the results alleging irregularities in the process, and the Supreme Court issued a precautionary measure on December 30, 2015, suspending the election of the three members of the Assembly, pending investigations. This move by the PSUV and the Court was widely seen at the time as an effort by the Government to not only to deny the National Assembly’s supermajority, which it had with the members from Amazonas State, but also to use the judicial branch to block any action by the National Assembly following the Mesa de Unidad Democrática’s December landslide electoral victory.

In a meeting of the Assembly held January 13, 2016, the Legislature agreed to remove the three opposition members elected for Amazonas in response to the Supreme Court’s decision. However, on July 28, 2016, after many months of inaction by the authorities and

⁴² Article 63 of the Constitution of the Bolivarian Republic of Venezuela: “Suffrage is a right. It shall be exercised through free, universal, direct, and secret elections. The law shall guarantee the principle of personalization of suffrage and proportional representation.”

⁴³ Article 62 of the Constitution of the Bolivarian Republic of Venezuela: “All citizens have the right to participate freely in public affairs, either directly or through their elected representatives.”

⁴⁴ *Call for Elections in Venezuela*, Center for Political Studies of the Catholic University of Andres Bello, No. 34, January 2017, <https://politikaucab.files.wordpress.com/2017/01/boletc3adn-34-final.pdf>

the Court to clarify the circumstances of the election of the three members, the Mesa de Unidad Democrática swore in the three members in question. At the time, the President of the National Assembly, Henry Ramos Allup stated that “it is unbelievable that for so long the Supreme Court has neither issued a decision nor lifted the precautionary measure, but instead has left an entire state (Amazonas) without legislative representation.”⁴⁵

Almost concurrently, the Inter-American Commission on Human Rights (IACHR) and its Rapporteur on the Rights of Indigenous Peoples issued a press release on July 29 in which they expressed “their concern regarding the situation faced by the indigenous peoples of the State of Amazonas, and of the country’s Southern Indigenous Region in general, who have not had representation in the National Assembly [...]; the indigenous peoples of these regions are currently afflicted with problems that make them especially vulnerable, while being unable to exercise their right to political participation by means of their representatives to the National Assembly in order to put forward their concerns and propose solutions.”⁴⁶

The move by the National Assembly to seat the Amazonas representatives triggered another swift reaction from the Supreme Court of Justice, when on August 1st the court declared the action a “flagrant violation of the public constitutional order.”⁴⁷ The court further considered the National Assembly to be in contempt of the Court and reaffirmed that all activity by the Legislature would be invalid, so long as the three members from Amazonas remained in their seats.

Directly following the meeting the National Dialogue Process on November 12, 2016, the Government and the Opposition stated that “in the political arena, it was agreed to move forward to resolve the issue of the Supreme Court decision to declare the National Assembly in contempt. In this regard, it was agreed to urge the competent public authorities to take immediate action to resolve the Amazonas situation.”⁴⁸ This was understood by both the Opposition and the Government to mean that the three National Assembly deputies from Amazonas would be removed from the legislature in order to allow it to resume its normal functions and no longer run afoul of the Supreme Court, on the condition that new elections in Amazonas would be held shortly.

The Mesa de Unidad Democrática kept its part of the bargain, when on November 15, Julio Ygarza, Nirma Guarulla and Romel Guzamana all submitted their resignations to the National Assembly. In a statement to the Legislature read by National Assembly Secretary Roberto Marrero, the three lawmakers wrote “we address you with the purpose of requesting the disembodiment from our position as deputies of the National Assembly in representation

⁴⁵ <http://noticialdia.com/2016/07/ramos-allup-sala-constitucional-del-tsj-interpreta-la-constitucion-contra-su-propio-texto/>

⁴⁶ “IACHR Expresses Concern about Lack of Representation of Indigenous Peoples in National Assembly of Venezuela,” July 29, 2016: http://www.oas.org/en/iachr/media_center/PReleases/2016/107.asp

⁴⁷ “Venezuelan Supreme Court Blocks Swearing in of Amazonas Legislators,” August 3, 2016, <https://venezuelanalysis.com/news/12116>

⁴⁸ Official communiqué on the second plenary meeting of the National Dialogue, 12 November 12, 2016, <http://minci.gob.ve/2016/11/gobierno-nacional-y-la-mesa-de-unidad-democratica-celebraron-segunda-reunion-plenaria-del-dialogo-nacional/>

of the electors of the state Amazonas.”⁴⁹ In return, two days later President Nicolás Maduro hinted that the elections could be held on December 20th, but stated that it was the responsibility of the National Electoral Council to establish the date.⁵⁰

However, no date has been selected by the National Electoral Council for holding by-elections, leaving the people of the State of Amazonas unrepresented in the legislature violating their political rights guaranteed under Articles 62 and 63 of the Constitution to vote and to elect their own representatives.

According to the report prepared by the Center for Political Studies of the Catholic University of Andres Bello, the regulatory framework in Venezuela “has created an abnormal situation that has led to electoral malpractice on the part of the National Electoral Council. On the one hand, the constitution makes no mention of dates, neither specific nor approximate, for holding elections to any elected office. Furthermore, the enactment of the Electoral Processes Act, passed by the National Assembly in 2009, increased the uncertainty surrounding the issue of election dates, granting the directors of the National Electoral Council full discretionary power to set the terms in office and dates of elections. In other words, the Electoral Processes Act, which replaced the Suffrage and Political Participation Act, eliminated most of the statutory terms that regulated the organization of elections in Venezuela. Therefore, with no specific time limits for important stages, such as the length of the election campaign or the procedures for auditing the electronic voting platform and for counting the votes, there is no way of knowing ahead of time when an election will be held.” The report continues “the discretionary power left in the hands of the electoral authority to set the dates for elections has become one of the main methods used to manipulate election processes in Venezuela, allowing elections to be called based on the political calculations of the Executive Branch.”⁵¹ This has clearly been the case with respect to the elections for governors, the municipal elections and the by-elections in Amazonas.

RECOMMENDATION 2 - WE CALL FOR THE IMMEDIATE RELEASE OF ALL THOSE WHO ARE STILL IMPRISONED FOR POLITICAL REASONS, AS INDICATED IN THIS REPORT.

POLITICAL PRISONERS

A political prisoner is an individual who has been imprisoned for their political beliefs or actions that have opposed or been critical of the government. Democratic principles simply do not allow for the arrest or detention of a person for their ideas. The criminalization of protests, harassment and imprisonment of opponents are typical practices of an oppressive

⁴⁹ “Suspended Venezuelan lawmakers resign to end standoff,” United Press International, November 16, 2016, http://www.upi.com/Top_News/World-News/2016/11/16/Suspended-Venezuelan-lawmakers-resign-to-end-standoff/5931479314340/

⁵⁰ “Maduro asomó una posible fecha para las elecciones en Amazonas,” November 17, 2016, <http://runrun.es/nacional/venezuela-2/287305/maduro-asomo-una-posible-fecha-para-las-elecciones-en-amazonas.html>

⁵¹ *Call for Elections in Venezuela*, Center for Political Studies of the Catholic University of Andres Bello, No. 34, January 2017, <https://politikaucab.files.wordpress.com/2017/01/boletc3adn-34-final.pdf>

State, and the people who are detained by the Venezuelan government for these reasons are prisoners of conscience.

The Venezuelan government has demonstrated a systematic pattern of abuse against those who dare to express an opinion contrary to that of the government. Political opponents and critics of the government continue to face imprisonment, and the total number of political prisoners at a given time has grown as the government arrests, detains and releases its opponents at will. Arbitrary detention, holding individuals without access to family or legal advice, secret detentions, inadequate prison conditions, unfair trials and torture are all extreme violations to Article 1 of the American Declaration of the Rights and Duties of Man: “Every human being has the right to life, liberty and the security of his person.”

Venezuela is also one of the original signatories to the 1994 Inter-American Convention on the Forced Disappearance of Persons, where Article 2 states “the act of depriving a person or persons of his or their freedom, in whatever way, perpetrated by agents of the state or by persons or groups of persons acting with the authorization, support, or acquiescence of the state, followed by an absence of information or a refusal to acknowledge that deprivation of freedom or to give information on the whereabouts of that person, thereby impeding his or her recourse to the applicable legal remedies and procedural guarantees.”

Article 9 of the International Convention on Civil and Political Rights guarantees the right of the individual to “liberty and security of the person.” No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedures as are established by law.” Sub-sections 3 and 4 guarantee the right to a speedy trial as well as the right to appeal to a tribunal, in order for it to determine, as quickly as possible, the legality of the detention.

“Repression and, specifically, systematic politically-motivated incarceration continue to be State policy in Venezuela. Between January 1 and December 31 of 2016, Foro Penal Venezolano documented 2,732 political arrests on charges ranging from having demonstrated in a political protest such as the ‘Toma de Caracas’ or the ‘Toma de Venezuela’ to having posted something against the national government or a public official on Twitter.”⁵² Thus begins the Report on Repression by the Venezuelan State 2016 published by the nongovernmental organization Foro Penal.

According to this report, 51 political prisoners were detained in 2015, with another 55 cases recorded in 2016. Therefore, “the cumulative number, from 2013 through December 31, 2016, is 429 political prisoners.”⁵³

On October 30, 2016, as part of the National Dialogue, the thematic dialogue on “Truth, Justice, Human Rights, Victim Reparations and Reconciliation” began, coordinated by the Holy See. It was agreed that the status of persons deprived of liberty would be reviewed. The Mesa de Unidad Democrática insisted during the talks that release of opposition political prisoners was a condition for ensuring continuation of the dialogue. On October 31,

⁵² *Reporte sobre la represión del Estado Venezolano, Año 2016*, Foro Penal,

<https://foropenal.com/content/reportesobre-la-represion-del-estado-venezolano-ano-2016>

⁵³ Ibid.

political prisoners Andres León, Coromoto Rodriguez, Andres Moreno, Marco Trejo and Carlos Melo were freed. At the end of 2016, however, 103 political prisoners remained behind bars or under house arrest, and in March 2017, as a result of new arrests, the figure stood at 116 political prisoners.⁵⁴

This is attributable to the “revolving door effect,” where some political prisoners are released and a similar number are incarcerated, keeping the monthly average constant. This also reflects the complete lack of legal guarantees, with the Venezuelan authorities arbitrarily arresting and imprisoning whomever they choose, whenever they choose, and releasing them when and if they choose.

The most emblematic political prisoner continues to be Leopoldo López Mendoza, founder and Director General of the political party Voluntad Popular, who has been held at the Ramo Verde military prison in Los Teques in the state of Miranda, since February 18, 2014, after having been unjustly accused of public incitement, conspiracy, property damage and arson. The Public Prosecutor’s Office based its accusation on López’s political rhetoric, and it’s supposed subliminal messages. He was sentenced to 13 years, 9 months and 12 hours of prison. On February 16, 2017, the Supreme Court upheld that decision as final, thereby blocking any chance of appeal.

López’s prison cell measures 2.60 by 2.70 meters. Since his conviction, he has been confined to this space. He has no contact with other prisoners, is not permitted to walk in the hallways or the courtyard, and is only allowed out for one hour per day when he is not being “punished.” The guards are prohibited from speaking with him, doing nothing more than to slide his food through the slot in his cell door. López hears no one during the day, only the sounds typical of a jail. They have taken away his books and allow him to read just one book per week, which has to be cleared by prison officials, and the Bible.

He has been subject to long periods of isolation, during which he is not taken out for exercise, does not see sunlight, and is prohibited from seeing his family and his attorneys. In his first 15 months of incarceration, if one adds up the various periods of punishment and solitary confinement lasting 15 days or three weeks each, he spent a total of seven months without seeing his children. The IACHR ordered protection measures so that López could see his children regularly, an order that the prison authorities have violated on several occasions.⁵⁵ He has been the target of violent searches, where aside from receiving punches, he has had his few personal effects destroyed or stolen, along with writings he was preparing for his defense, photos of his children, and their drawings. The repeated threats against his life and physical integrity intensify when he is isolated or punished, leading to cruel and degrading treatment that impacts his family.

The United Nations Office of the High Commissioner for Human Rights and its Special Rapporteurs and working groups, the IACHR, the Secretary General of the OAS, the European Union, Amnesty International, Human Rights Watch, current presidents, former

⁵⁴ Ibid.

⁵⁵ Inter-American Human Rights Commission, Precautionary Measure No. 355-15, October 12, 2015, <https://www.oas.org/es/cidh/decisiones/pdf/2015/MC335-14-ES-ampliacion.pdf> y <https://www.oas.org/es/cidh/decisiones/pdf/2016/MC335-14-Es-ampliacion.pdf>

presidents, celebrities, deputies and senators, etc., have called for his release. Amnesty International has declared him a prisoner of conscience.

Hundreds of other political prisoners suffer treatment similar to that endured by Leopoldo Lopez. The Permanent Council must request that all political prisoners in Venezuela be released immediately.

TORTURE

The prohibition against torture is one of the most fundamental principles of international law. Torture, as well as cruel, inhuman or degrading treatment, is banned at all times, in all places, including in times of war. No national emergency, however dire, ever justifies its use. It certainly has absolutely no place in any democratic society.

On September 26, 2016, the Human Rights Observatory of the Centers for Studies and Analysis for Latin America (CASLA) filed a complaint with the International Criminal Court against the government of Venezuela for systematic torture—considered crimes against humanity—along with an annex listing at least 33 high-ranking officials from the current administration headed by Nicolás Maduro as accomplices in said crime due to their positions of leadership and authority, their direct complicity in committing torture, or their failure to act to prevent it.

The list of high-ranking officials includes not only President Maduro himself, but also the vice presidents of the last five years, state governors, ministers, prosecutors, members of the military, and State security agency directors.

The complaint reveals that from 2013 to 2016, more than 300 people were the victims of torture, defined under the Rome Statute as the intentional infliction of severe pain or suffering, whether physical or mental, upon a person in the custody or under the control of those accused in the complaint.

According to the Observatory, the torture was carried out without regard to age, sex, profession, social status, or even physical disability. An important detail that has characterized this repressive period was the enjoyment with which some officials tortured their victims, displaying sexual arousal or the wish to inflict pain on open wounds using objects or their own hands, among other details. Most victims were tortured so that they would make accusations against political leaders of the opposition or reveal links to political parties and protests. They were also used as examples to send a message. There were repeated claims of the use of asphyxiation with plastic bags, electricity, beatings with sticks, bats, helmets, machetes, kicking, attempts or threats to burn the victims, burns with lighters or metallic objects, and inhumane positions such as kneeling or having hands and feet tied together for long periods of time. Some victims were hung in order to be beaten or given electric shocks, while others were beaten and brutalized inside military tanks, others were sprayed with toxic gases directly in the face to asphyxiate them. Many were subjected to sexual torture such as rape, threats of rape, lewd acts, and undressing, and the majority were isolated for the first 48 hours of their detention or even longer, without being given the right to call their lawyer and family.

This past January 9, Nicolás Maduro created a structure of repression that he has called the “Anti-Coup Squad” (*Comando Antigolpe*), comprised of Vice President Tareck el Aissami, former Minister of Defense Carmen Meléndez, Minister of Defense Vladimir Padrino López, General Néstor Reverol, National Assembly Deputy Diosdado Cabello, General Gustavo González López, Iván Rafael Hernández, and Vega González, all named in the lawsuit filed with the Court for being leaders or even directly identified as the masterminds behind the torture of victims. This new structure is now in charge of monitoring “citizen security and social peace,” and a mere 72 hours after its formation it had already detained five political leaders from the Primero Justicia and Voluntad Popular parties, including National Assembly deputy Gilber Caro.

The Observatory also noted the following:

- The repression, detention of demonstrators and subsequent torture has been crueler against demonstrators that clearly belong to the opposition.
- The sophistication of the methods of torture, in order to not leave marks on those detained for political motives, has made white torture and prolonged isolation the preferred methods among the State security agencies falling under the Office of the Vice President of the Republic: SEBIN (Bolivarian Intelligence Service) and DGCIM (Directorate General of Military Counterintelligence).
- The lack of timely medical attention for some tortured persons who are still detained is deemed by the Observatory to be prolonged torture, given that, even today, the victims suffer from acute pain and severe physical consequences, some of which are irreparable.
- From February 12, 2014 to January 31, 2017, more than 200 cases of torture have been recorded, all perpetrated against protestors detained under diverse circumstances. These cases presented in the International Criminal Court are duly substantiated by complaints from the victims themselves and technical reports.
- At least 40% of the victims were tortured to obtain testimony from them that would implicate other people in criminal acts or supposed conspiracies, and the other 60% were intentionally tortured to cause them intense suffering and make examples out of them with such punishments.
- Four of the victims tortured in the 2014-2015 period died.
- An unknown number of people tortured in 2015-2016 did not file complaints out of fear, since the officials had threatened them and their families.

The aforementioned is proof of the use of force to impose the government's power. Imposition by force is proof of the failure to sway the will of the people through constructive and respectful actions based on and for that will. Fear of criticism from social intelligence and a subsequent loss of power is what leads to persecution, censorship, torture, and the systematic violation of human rights. As Hannah Arendt said, “Since authority always demands obedience, it is commonly mistaken for some form of power or violence.

Yet authority precludes the use of external means of coercion; where force is used, authority itself has failed.”

RECOMMENDATION 3: WE CALL ON THE EXECUTIVE BRANCH OF VENEZUELA AND THE LEGISLATURE OF VENEZUELA TO SOLVE, JOINTLY AND IMMEDIATELY, AND IN ACCORDANCE WITH THEIR OBLIGATIONS, THE VULNERABLE SITUATION OF THE POPULATION’S BASIC RIGHTS, SUCH AS ACCESS TO FOOD AND HEALTH SERVICES

As provided in Article 12 of the Inter-American Democratic Charter, “Poverty, illiteracy, and low levels of human development are factors that adversely affect the consolidation of democracy. OAS member states are committed to adopting and implementing all those actions required to generate productive employment, reduce poverty, and eradicate extreme poverty, taking into account the different economic realities and conditions of the countries in the Hemisphere. This shared commitment regarding the problems associated with development and poverty also underscores the importance of maintaining macroeconomic equilibria and the obligation to strengthen social cohesion and democracy.”

The deterioration of the democratic system in Venezuela has directly resulted in the economic and humanitarian crisis. A detachment from the Constitutional order, the rule of law, and democratic order weakens the system of governance and creates the opening for the conditions of crisis and vulnerability. The political crisis has resulted in a structural dysfunctionality. Venezuela should be one of the wealthiest countries in the Hemisphere. Instead, inflation continues to rise to unprecedented levels, the GDP is in a free-fall, unprecedented levels of poverty continue to grow, malnutrition levels have risen to a national scale, previously eradicated diseases such as diphtheria are resurging, and the country suffers from one of the highest violent crime rates in the world.

THE ECONOMIC CRISIS

Venezuela’s business environment ranks as one of the worst in the world, only surpassed by Eritrea, Libya and South Sudan in the World Bank’s Doing Business Report.⁵⁶ Some of the issues the country face are burdensome while others are bottlenecks, outright impediments to investment and economic growth.

In the Institutions category of the Global Competitiveness Report 2016-2017,⁵⁷ Venezuela’s ranking fell from 91/104 in 2005 to 140/140 in 2016. Rule of law, as broadly defined, is the most binding constraint to economic activity in Venezuela. Excessive bureaucracy and complex procedures, especially when relating to permits for imports and exports, were found to be an important constraint on investment, as well as the source of corrupt practices. And as Article 4 of the Inter-American Democratic Charter stipulates, “transparency in

⁵⁶ Doing Business, 2017, The World Bank, <http://www.doingbusiness.org/reports/global-reports/doing-business-2017>

⁵⁷ The Global Competitiveness Report 2016–2017, World Economic Forum, <https://www.weforum.org/reports/the-global-competitiveness-report-2016-2017-1>

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.”

Venezuela’s goods and labor markets rank last in the world in the Global Competitiveness Report. The country’s goods market ranking is negatively affected by weak domestic competition, low demand quality, and low foreign competition. The labor market ranking is affected by the inability to retain skilled workers. Access to inputs (raw materials) is difficult for many sectors of the economy, particularly manufacturing, especially when the input is monopolized by a state-owned enterprise. Price controls, which are not updated regularly and enforced erratically, were also found to be a key constraint.

Venezuela also ranks poorly in the infrastructure category of the Global Competitiveness Report. Insufficient and erratic electricity supply is especially problematic and binding for some economic sectors. They also found deficient roads, ports and communications infrastructure to be generally problematic, especially for small businesses that lack the scale for self-provision of these public goods. The lack of personal security (kidnappings, theft, informal payments to local delinquents) is a general issue for businesses across the economy, particularly binding in the agriculture sector.⁵⁸

Venezuela has one of the most abundant geological endowments in the world. PDVSA represents over 90% of Venezuela’s total exports and 12% of its GDP, so understanding the state of the national oil company is critical to understanding Venezuela. The country’s proven oil reserves are among the largest globally, even when measured with conservative criteria. During the last decade, the country wasted a unique opportunity to increase investment and production. At the high oil prices that prevailed in that period, the country’s massive oil reserves could have been monetized by rapidly increasing production with a large margin of profitability. Instead, production steadily declined due to lack of investment in the new, unconventional oil projects and failure to compensate for the decline of older, conventional fields. It is a tragic story of great potential with dismal performance.

Oil production decreased 253 kbpd (thousands of barrels per day) or 8% between 2010 and 2015. In particular, production fell 24.3% and 15.8% in the traditional East and West regions (light, medium-grade crude), and only rose 12.0% in the Orinoco Oil Belt (heavy, extra-heavy crude). Production in fields solely operated by PDVSA declined 27.5% while fields operated by joint ventures increased 42.3%.⁵⁹

PDVSA’s debt service increased almost tenfold to \$10.2bn in 2010-2015 while total financial debt rose 75% to roughly \$45bn. PDVSA was noted to have an ongoing struggle to raise capital expenditures to halt the decline in production, let alone meet production targets. One should also add the numerous operational challenges facing PDVSA, including input shortages, drilling inefficiencies, inadequate of gas and energy facilities, insufficient

⁵⁸ Microeconomic Binding Constraints on Private Investment and Growth in Venezuela, Richard Obuchi, Bárbara Lira and Daniel Raguá, Center for International Development, Harvard University, October 2016, http://growthlab.cid.harvard.edu/files/growthlab/files/microconstraints_venezuela.pdf

⁵⁹ Weathering Collapse: An Assessment of the Financial and Operational Situation of the Venezuelan Oil Industry, Hernandez, I. & Monaldi, F, Center for International Development at Harvard University, November 2016, http://growthlab.cid.harvard.edu/files/growthlab/files/venezuela_oil_cidwp_327.pdf

downstream infrastructure (refiners, upgraders, etc.), safety, environment and crime related risks, and issues related to corporate governance and industrial policy.⁶⁰

Having exhausted foreign and domestic debt issuance and choosing to forego international assistance, the government has consistently relied on deficit monetization. Between 2013 and 2015 average deficit monetization sat at 13% of GDP. In 2016 the monetary financing of the deficit was associated to an increase in the monetary base of 236%. It should be noted that the total increase in “direct loans” to PDVSA outlined above was 22% larger than the total increase in the monetary base, which speaks to the reliance on monetary financing.⁶¹

Debt service appears unsustainable given lack of access to international finance. Public external debt is at least \$130 billion, which is equivalent to 5.8 years of exports under reasonable assumptions for oil prices in the short term. The Government continues to sustain major regressive implicit subsidies for gasoline, utilities and foreign exchange. Conservative estimates put these subsidies at \$14-\$19 billion. Additionally, the recession and the inflationary pressures are generating a significant collapse in tax revenues.⁶²

At the same time, Venezuela's reserves fell to a new low below \$10.5 billion. Venezuela's Central Bank reports that they closed 2016 with \$7.7 billion in gold reserves, using their pricing methodology of \$1,272.42 an ounce. That level is down \$2.3 billion from the \$10.04 billion in gold reported in Venezuela's 2015 financials, which used a lower gold price of \$1,140.43. Venezuela's gold has now fallen to almost half of what it was in just two years, as Venezuela reported that it started 2015 with \$14.6 billion in gold.⁶³

POVERTY

Even before the oil price crisis of 2014 began, progress toward poverty reduction in Venezuela had ceased, as evidenced by official figures. According to the Venezuelan National Statistics Institute (INE), between 2008 and 2013 the percentage of the population living in poverty had remained nearly constant, rising from 33.1% to 34.2%.

This is the latest official income poverty statistics available, as the corresponding agencies have not released the statistical data needed to determine the percentage of the population living in poverty since the second half of 2013. Since that time, poverty statistics in Venezuela have relied on independent studies carried out by a consortium of several universities in the country that have examined the evolution of poverty between 2014 and 2016 (ENCOVI, 2014, 2015 and 2016),⁶⁴ among others.

⁶⁰ Ibid.

⁶¹ Ibid.

⁶² Ibid.

⁶³ Barron's: 2 Experts Question Venezuela's Gold, Cash Stats,

<http://www.venezuelaopportunityfund.com/tag/russ-dallen/>

⁶⁴ ENCOVI 2014: <http://www.rectorado.usb.ve/vida/sites/default/files/pobreza.pdf>

ENCOVI 2015: http://www.rectorado.usb.ve/vida/sites/default/files/2015_pobreza_misiones.pdf

ENCOVI 2016: <http://www.rectorado.usb.ve/vida/sites/default/files/encovi/2016/UCV-UCAB-USB.%20ENCOVI%202016.%20Pobreza.pdf>

During these years, oil prices plunged to a third of their 2008 highs, hastening the decline of economic performance and household well-being indicators. According to these independent sources, income poverty in Venezuela reached 55% in 2014, 76% in 2015, and 81.8% in 2016.⁶⁵

In 2016, only 28% of the population benefited from some type of social program, whereas 70.8% were excluded. This situation is particularly dire in the country's principal cities, where only 41% of the poor and low-income population benefits from social programs. Furthermore, 59% of social program beneficiaries are neither poor nor low-income.⁶⁶

Also worth noting are the distribution problems caused by price controls, given the way they distort price structure and, therefore, access to essential goods, and the impact this has on the household economy.

The significant reduction in income poverty seen during the first half of the last decade has not been sustained over time. The recent economic crisis has revealed poverty levels greater than those in the late nineties, laying waste to the recent progress made in this indicator.

This situation reflects both the depth of the current crisis and the ineffectiveness of existing social programs. Such programs are not properly targeted and do not provide sufficient coverage. Furthermore, they have not been able to address the structural determinants of poverty or protect households from exogenous shocks to their income.⁶⁷

This is consistent with the finding that 73% of the population reported weight loss averaging 8.7 kg during the past year. This complete collapse of the social safety net is particularly worrisome given the complex fiscal outlook, the absence of timely reforms that could trigger an economic recovery and the decision to prioritize the fulfillment of potentially unsustainable debt service over other policy goals.

Venezuela is plagued by the world's highest inflation. As a result, the Government began to replace the 100-bolivar note in December 2016. Venezuelans waited in long lines to exchange their soon-to-be-obsolete 100-bolivar notes in banks. When the bill went out of circulation the replacement bills had not yet arrived at banks or ATMs and people were forced to rely on credit cards or bank transfers, or to try to make purchases with bundles of hard-to-find smaller bills often worth less than a penny each.⁶⁸

⁶⁵ *Ibid.*

⁶⁶ ENCOVI 2016, <http://observatoriodeviolencia.org.ve/wp-content/uploads/2017/02/UCV-UCAB-USB.-ENCOVI-2016.-Pobreza.pdf>

⁶⁷ *Pobreza, cobertura de las Misiones y necesidades de protección social para la reforma económica de Venezuela*, CID Research Fellow & Graduate Student Working Paper No. 74, Luis Pedro España N., José Ramón Morales A., Douglas Barrios A, June 2016, <https://www.hks.harvard.edu/centers/cid/publications/fellow-graduate-student-working-papers/reforma-economica-venezuela>

⁶⁸ Venezuela: El billete más usado ahora es bueno para el nuevo año, Voice of America, <https://ayrevenezuela.wordpress.com/2016/12/18/venezuela-el-billete-mas-usado-ahora-es-bueno-para-el->

Anger at having to deal with an economy even more paralyzed than usual has exploded in social unrest. As a result, there were protests and looting in several cities. In Maracaibo, where police stopped looting near a bank building, and the eastern state of Bolívar, where mobs looted several businesses, young men waved their 100-bolivar bills in the air and chanted “they’re useless,” then turned and ran as police in full riot gear began firing tear gas canisters.⁶⁹

In Caracas, people banged on pots and cursed the government’s apparent lack of planning. There was no cash to be seen changing hands on the street or inside shops. The government had to put the old currency back in circulation. In addition, the authorities extended the closure of the border with Colombia and Brazil. Arguably, that was a move aimed to thwart “mafias” who hoard bolivars, leading critics to mock the notion that gangsters would choose to keep their wealth in the world’s fastest-devaluing currency. The 100-bolivar bill is worth little more than 2 cents. Venezuela is thus a nation of broke millionaires, a result of misguided fiscal and monetary policy.

THE HUMANITARIAN CRISIS

FOOD SHORTAGES

On July 22, 2016, the Inter-American Human Rights Commission (IACHR) issued a statement in which it regretted the “urgent situation of extreme scarcity and shortages of medicine, medical supplies, and food in Venezuela. This situation has led to a significant deterioration in living conditions in the country and an increase in violence, which results in harm to people’s health, personal integrity, and life, to the detriment of the rights protected by the inter-American and universal human rights instruments.”⁷⁰

Since the publication of the first report from the Secretary General and the IACHR press release, the health and food crisis in Venezuela has significantly worsened and can only be described as alarming and requiring urgent action by the authorities and other national and international stakeholders.

In January 2017, the cost of the Family Food Basket was 621,106.98 bolivars, 14% more than the previous month and 481.8% more than in January 2016. A person would need 15.3 minimum monthly salaries (40,638.15 bolivars) to pay for the basket.⁷¹

According to the Center for Documentation and Social Analysis of the Venezuelan Federation of Teachers, there are shortages of powdered milk, beef, margarine, sugar, corn oil, hard white cheese, yellow cheese, peas, lentils, black beans, rice, wheat flour, oatmeal,

[nuevo-ano/](#) y, “*Es el caos total: la tensa situación de Venezuela sin billetes deriva en protestas, saqueos e interminables filas.*” BBC, December 17, 2016, <http://www.bbc.com/mundo/noticias-america-latina-38349625>

⁶⁹ Ibid.

⁷⁰ “IACHR Calls on Venezuelan State to Adopt Comprehensive Measures in the Face of Scarcity in Venezuela,” July 22, 2016, http://www.oas.org/en/iachr/media_center/PReleases/2016/096.asp

⁷¹ Center for Documentation and Social Analysis of the Venezuelan Federation of Teachers, <https://www.derechos.org.ve/actualidad/cendas-fvm-el-precio-de-la-canasta-alimentaria-supero-los-seiscientos-mil-bolivares>

bread, pasta at a regulated price, corn meal, coffee, mayonnaise, bath soap, detergent, dishwasher soap, jarred baby food, baby cereal, toilet paper, diapers, sanitary napkins, wipes, napkins, condensed milk, liquid milk liters, softener, deodorant, disposable razors, toothpaste, shampoo, soap, and insecticides.⁷²

The latest Venezuela Living Conditions Survey found that 93.3% of households are experiencing food insecurity because incomes do not cover the costs of food. Moreover, approximately 9.6 million people eat two or fewer meals per day. Venezuelans have suffered an abrupt change in their eating habits, with vegetables and tubers replacing proteins of high biological value; this is accentuating inequality in the quality and quantity of food.⁷³

In September 2016, Caritas de Venezuela implemented a health and nutrition monitoring, alert and care system for children under the age of five, initially in the states of Miranda, Vargas, Zulia, and the Capital District. Through this monitoring system, Caritas was able to gather firsthand information and publish a report on the October to December 2016 period, which revealed that 25% of the children evaluated in the parishes being monitored had some type of acute malnutrition and 28% were at risk of malnutrition. The report further concluded “for some specific states such as Zulia and Vargas, the prevalence of overall acute malnutrition exceeded the threshold for moderate severity and met the limits that define an emergency situation or crisis in the international frameworks for classifying humanitarian crises.” Moreover, “children under the age of two are those most affected by acute malnutrition. The prevalence of acute malnutrition in children under six months is twice as high as in children over two years. This greater incidence of malnutrition in the youngest children makes the situation particularly critical, given the irreversible impacts that malnutrition has when it occurs at this age.” Lastly, it concludes that “the severity of the current nutritional crisis and the age group that is most affected require an urgent response. Malnutrition at this level of intensity and among small children irreversibly predisposes them to childhood diseases, educational delays in the short term, and social, productive, and psycho-affective delays in the medium term. It also leads to destitution and family fragmentation and, at the societal level, social tension and violence.”⁷⁴

While many Venezuelans go hungry because they cannot find or pay for basic foodstuffs, an Associated Press investigation concluded that the Venezuelan military is making large amounts of money from trafficking in food, after the Government placed the military in charge of food distribution in July 2016. According to the investigation, “food trafficking has become one of the biggest businesses in Venezuela [...]. And from generals to foot soldiers, the military is at the heart of the graft, according to documents and interviews with more than 60 officials, business owners and workers, including five former generals.” “Lately, food is a better business than drugs,” said retired Gen. Cliver Alcala, who helped

⁷² *Ibid.*

⁷³ Living Conditions Survey Venezuela 2016 Nutrition. <http://observatoriodeviolencia.org.ve/wp-content/uploads/2017/02/UCV-UCAB-USB.-ENCOVI-2016.-Alimentaci%C3%B3n.pdf>

⁷⁴ *Línea Basal del Monitoreo Centinela de la Situación Nutricional en Niñas y Niños Menores de 5 años, Octubre-Diciembre 2016*, Caritas de Venezuela, January 13, 2017.

oversee Venezuela's border security. "The military is in charge of food management now, and they're not going to just take that on without getting their cut."⁷⁵

HEALTH

In an interview with *Venevisión* on December 7, 2016, the president of the *Venezuelan Medical Federation*, Douglas León Natera, said that the public hospital network had very serious structural and financial problems owing to the shortage of supplies, medicines, and financial resources. "The entire public system is bankrupt, which is translating into a health and welfare crisis," said Natera. He explained that clinics have just 3% of the medical supplies they need, and patients and their family members therefore have to buy most of the supplies in order to be treated at a hospital. "Patients have to bring gauze, IV fluids and even food [...]. There has been a veiled privatization of the health system en Venezuela," he added.⁷⁶

At a press conference held on January 4, 2017, Natera contended that the shortage of surgical medical supplies in Venezuelan hospitals lies at about 98%. Doctor Natera explained, "... the health holocaust was brought about by the government. Our patients are dying of neglect in the hospitals because of the lack of supplies. The system is not just in the red, it is deep red with the number of deaths all over the country."⁷⁷

On February 7, 2017, health workers and patients protested in Caracas to denounce the "abandonment" of the sector, hit by a supply shortage and low pay that is driving a growing number of doctors to emigrate. During the demonstration, Pablo Zambrano, Executive Secretary of the Federation of Health Workers, criticized the government's "evident abandonment of the public hospitals." "There is a systematic lack of all types of medical supplies, cleaning supplies, even water. A lot of equipment is damaged to the point that there is no way to get a scan done at a public hospital," said the union leader.⁷⁸

Another source reports a shortage of such medications as Atamel, losartan potassium, amlodipine, aspirin, omeprazol, lansoprazole, Dilantin, Di-Eudrin, Glibenclamide, Glidan, Biofit, the contraceptive Belara, Trental, Tamsulon, Zyloric, tamsulosin, Heprox, Secotex, Urimax, clopidogrel and allergy medications, among others, as well as syringes.⁷⁹

Según la Encuesta Nacional de Hospitales 2017, en 78% de los hospitales públicos hay escasez de medicinas; en 71% no se pueden hacer ecografías, y en 97% hay fallas severas o

⁷⁵ "Venezuelan Military Trafficking Food as Country Goes Hungry," The Associated Press, December 28, 2016, <http://bigstory.ap.org/article/64794f2594de47328b910dc29dd7c996/venezuela-military-trafficking-food-country-goes-hungry>

⁷⁶ http://www.el-nacional.com/noticias/salud/federacion-medica-red-publica-hospitales-esta-bancarrotada_43955

⁷⁷ <http://www.lapatilla.com/site/2017/01/04/fmv-falta-de-insumos-quirurgicos-en-hospitales-esta-entre-97-y-98/>

⁷⁸ <http://www.infobae.com/america/america-latina/2017/02/07/trabajadores-de-la-salud-protestaron-en-venezuela-contra-el-abandono-estatal/>

⁷⁹ Center for Documentation and Social Analysis of the Venezuelan Federation of Teachers, <https://www.derechos.org/ve/actualidad/cendas-fvm-el-precio-de-la-canasta-alimentaria-supero-los-seiscientos-mil-bolivares>

son inoperativos los laboratorios; en 64% el servicio de nutrición hospitalaria no es operativo, y no hay fórmulas lácteas en los servicios pediátricos de 64% de los hospitales públicos.

On December 27, 2016, Doctor Maria Yanes, former president of the Network of Venezuelan Medical Scientific Societies, wrote a column published in the newspaper *El Nacional* in which she said that two diseases illustrated the failure of health policies in Venezuela. “Malaria [...], (for which) expert projections point to this year ending up with approximately 250,000 cases, and diphtheria, a disease that had been eradicated, is making an alarming comeback. The Venezuelan Public Health Society estimates an incidence of 350 to 500 cases across six states in the country. The latter reflects a great failure in vaccine coverage, the key to preventing this type of disease. [...] The government’s inattention to this crisis, together with the ignorance of its health policies, indolence and obsessive refusal to accept humanitarian aid through international cooperation mechanisms, has sadly triggered a health collapse in Venezuela.”⁸⁰

Meanwhile, infant mortality is rising sharply in Venezuela. According to a *Wall Street Journal* article published October 17, 2017, Venezuela’s “overall infant mortality rate is currently 18.6 per 1,000 live births. That is well beyond the upper range of 15.4 UNICEF estimates for war-torn Syria. In the first five months of this year [...], 4,074 babies in Venezuela died before reaching a year, up 18.5% from the same period last year and more than 50% from that period of 2012.”⁸¹

Given the dire political, humanitarian and economic crisis in the county, Venezuelans who have the means are leaving the country in droves,—many of whom are seeking asylum. According to a report from The Associated Press from February 12, 2017, Venezuelans for the first time led asylum requests to the United States. The report points to “data from the U.S. government’s Citizenship and Immigration Services show that 18,155 Venezuelans submitted asylum requests last year, a 150 percent increase over 2015 and six times the level seen in 2014.”

RECOMMENDATION 4: WE URGE VENEZUELA’S EXECUTIVE AND LEGISLATIVE BRANCHES TO WORK TOGETHER TO COMPLY WITH THE STATE’S DUTY TO PROVIDE ADEQUATE SECURITY FOR ITS CITIZENS.

CITIZEN SECURITY

The social contract is the belief that an individual has consented to surrender some of their freedoms in order to live in a community, and in exchange, they are provided security and the fundamental protection of their remaining freedoms or rights. The right to the security of the individual is guaranteed in Article 1 of the American Declaration of the Rights and Duties of Man “Every human being has the right to life, liberty and the security of his person” and reinforced by article 7 of the American Convention on Human Rights where “every person has the right to personal liberty and security.” Rooted in the principle of the

⁸⁰ http://www.el-nacional.com/noticias/columnista/ano-2016-colapso-salud-venezuela_72770

⁸¹ <http://lat.wsj.com/articles/SB12736863293049773839404582380761769452758>

social contract, democratic governments have a responsibility to their citizens to provide access to basic necessities, to protect their human rights, and to provide security. When States fail to protect their population from crime and social violence, citizen security is undermined, signaling a breakdown in the relationship between the government and the people.

The 1991 Declaration of Santiago on Democracy and Public Trust initiated the formal process on hemisphere security stating that “that the existence of multidimensional threats, concerns, and other challenges to peace and security affects the enjoyment of the rights of all individuals and democratic stability.”⁸²

The 2009 report by the IACHR on Citizen Security and Human Rights ties the resolution of crimes and violence to the strengthening of the democratic system by focusing on the protection of the individual over the security of the State or political system. “While the international legal order of human rights does not expressly define the right to be safe from crime or interpersonal or social violence, whose prevention and control are the object of citizen security policies, States are bound by a normative core demanding the protection of rights particularly vulnerable to criminal or violent acts: the right to life; the right to physical integrity; the right to personal liberty; the right to due process and the right to peaceful use of property and possessions.”⁸³

Over the last year, the country’s security situation has continued to deteriorate. In the 2016 Venezuela Living Conditions Survey, 94% of respondents believed that violence had increased; 21% said they had been the victim of a crime in the previous 12 months; 60% were afraid they would be attacked or robbed in their home; 66% feared this would occur on the streets during the daytime and 80% feared it would happen in transportation vehicles.

Insecurity has changed the daily life of citizens. In the above survey, 69% of respondents reported having curtailed their entertainment and recreational activities; 67% had limited the places where they go shopping; and 40% had felt the need to move away from their home for fear of falling victim to an act of violence.⁸⁴

Venezuela closed out last year with more than 28,000 violent deaths in the country and a homicide rate of 91 per 100,000 inhabitants, according to the Venezuelan Observatory on Violence.⁸⁵ By 2014, Caracas had already become the most violent city on the planet, according to a ranking of the 50 most violent cities in the world published by the Mexican NGO Citizens' Council for Public Security and Criminal Justice (CCSPJP). In 2015, according to InSight Crime, the capital city’s homicide rate hit 120 per 100,000.⁸⁶

⁸² Preamble, http://www.oas.org/xxxiiiiga/english/docs/agdoc4224_03rev3.pdf

⁸³ Report on Citizen Security and Human Rights. IACHR. OEA/Ser.L/V/II. Doc. 57, 31 December 2009 <http://www.oas.org/en/iachr/docs/pdf/citizenssec.pdf>

⁸⁴ Venezuela Living Conditions Survey 2016, Personal Safety, <https://www.derechos.org/ve/web/wp-content/uploads/UCV-UCAB-USB.-ENCOVI-2016.-Seguridad-personal.pdf>

⁸⁵ *La Manipulación de la Violencia*, Observatorio Venezolano de Violencia, <https://observatoriodeviolencia.org/ve/la-manipulacion-de-la-violencia/>

⁸⁶ Caracas World’s Most Violent City: Report, InSight Crime, <http://www.insightcrime.org/news-briefs/caracas-most-violent-city-in-the-world-2015-report>

Citizens fear falling victim not only to common criminals, but also to the security forces. After the start, in July 2015, of “Operation Liberation and Protection of the People”—a security forces operation designed by the government to address high crime rates—reports of abuse of power and human rights violations increased.

According to a report by the Venezuelan Human Rights Education-Action Program (PROVEA) and Human Rights Watch published in 2016, there is “considerable evidence [...] that the security forces [...] have committed serious abuses. In interviews with PROVEA and Human Rights Watch, victims, witnesses, and other interlocutors described violations including extrajudicial killings and other violent abuses, arbitrary detentions, forced evictions, the destruction of homes, and the arbitrary deportation of Colombian nationals often accused without evidence of having links to “paramilitaries.”⁸⁷

The Relatives of Victims Committee (Comité de Familiares de Víctimas - COFAVIC) independently recorded 977 cases of alleged extrajudicial killings from January to June 2016, as compared to 590 cases of alleged extrajudicial killings over the same January-to-June period in 2015, representing an increase of 66%.⁸⁸

There have also been complaints of excessive use of force by the security forces in quelling protests over the lack of food and medicine. According to the Venezuelan Observatory on Social Conflict, during 2016 there were approximately 590 demonstrations per month. Most involved demands for economic, social and cultural rights, especially access to food, health care, and housing.⁸⁹

At the same time, 2016 witnessed the highest number of murdered security forces in the past five years with 414 cases, according to a report by the human rights group Foundation for Due Process (Fundación para el Debido Proceso - FUNDEPRO). The report was published in January 2017, and it compiled data from news coverage and interviews with security forces.⁹⁰ The report notes that the main motive behind the killings was the theft of service weapons or vehicles, but also points to increasing outrage against the abuses committed under Operation Liberation and Protection of the People as a cause.

DRUG TRAFFICKING

According to the U.S. Department of State’s 2016 International Narcotics Control Strategy Report, Venezuela “is one of the preferred trafficking routes for illegal drugs, predominately cocaine, from South America to the Caribbean region, Central America, the United States, Western Africa, and Europe, due to its porous western border with Colombia, weak judicial system, sporadic international counter narcotics cooperation, and permissive and corrupt

⁸⁷ Poder sin Límites, Redadas policiales y militares en comunidades populares y de inmigrantes en Venezuela, Human Rights Watch, 4 de abril de 2016, <https://www.hrw.org/es/report/2016/04/04/poder-sin-limites/redadas-policiales-y-militares-en-comunidades-populares-y-de>

⁸⁸ <https://www.derechos.org/ve/actualidad/cofavic-procedimientos-de-seguridad-ciudadana-ejecutados-por-el-estado-venezolano-estan-incurriendo-en-crmenes-de-lesa-humanidad>

⁸⁹ 2016/17 Annual Report: Venezuela chapter, Amnesty International, <https://www.amnesty.org/es/latest/research/2017/02/amnesty-international-annual-report-201617/>

⁹⁰ <http://www.insightcrime.org/news-briefs/venezuela-security-forces-killed-record-numbers-2016>

environment.”⁹¹ Involvement in drug trafficking reaches to the very top echelons of the Venezuelan government as well as the family circle of the President.

On February 13, 2017, the U.S. Department of the Treasury's Office of Foreign Assets Control designated the Vice-President of Venezuela, Tareck Zaidan El Aissami Maddah, as a “Specially Designated Narcotics Trafficker pursuant to the Foreign Narcotics Kingpin Designation Act for playing a significant role in international narcotics trafficking.” According to a Department press release, “El Aissami's primary front-man, Venezuelan national Samark Jose Lopez Bello, was also designated for providing material assistance, financial support, or goods or services in support of the international narcotics trafficking activities of, and acting for or on behalf of, El Aissami.” The Treasury Department further designated or identified as blocked property 13 companies owned or controlled by Lopez Bello or other designated parties that comprise an international network spanning the British Virgin Islands, Panama, the United Kingdom, the United States, and Venezuela.⁹² The freezing of assets blocks the Vice-President from accessing a fortune estimated at \$3 billion.⁹³

According to the Treasury Department, the Vice-President “facilitated shipments of narcotics from Venezuela, to include control over planes that leave from a Venezuelan air base, as well as control of drug routes through the ports in Venezuela. In his previous positions, he oversaw or partially owned narcotics shipments of over 1,000 kilograms from Venezuela on multiple occasions, including those with the final destinations of Mexico and the United States. He also facilitated, coordinated, and protected other narcotics traffickers operating in Venezuela. Specifically, El Aissami received payment for the facilitation of drug shipments belonging to Venezuelan drug kingpin Walid Makled Garcia. El Aissami also is linked to coordinating drug shipments to Los Zetas, a violent Mexican drug cartel, as well as providing protection to Colombian drug lord Daniel Barrera Barrera and Venezuelan drug trafficker Hermagoras Gonzalez Polanco.”⁹⁴

El Aissami is just the latest senior figure in the Venezuelan government to be accused of drug trafficking. On August 1, 2016, U.S. prosecutors announced an indictment against two former top officials at Venezuela's anti-narcotics agency. One of those officials, Nestor Reverol, was the former general director of the anti-narcotics agency and onetime commander of Venezuela's National Guard.⁹⁵ One day after the indictment was made public, Reverol was promoted by President Maduro to be the country's new Interior Minister. In the indictment, Reverol and other co-conspirators were accused of conspiring “to receive payments and did receive payments from narcotics traffickers in exchange for assisting the

⁹¹ 2016 International Narcotics Control Strategy Report, U.S. Department of State, Bureau of International Narcotics and Law Enforcement Affairs, <https://www.state.gov/j/inl/rls/nrcrpt/2016/vol1/253323.htm>

⁹² “Treasury Sanctions Prominent Venezuelan Drug Trafficker Tareck El Aissami and His Primary Frontman Samark Lopez Bello,” United States Department of the Treasury, February 13, 2017, <https://www.treasury.gov/press-center/press-releases/Pages/as0005.aspx>

⁹³ “US sanctions Venezuelan Vice-President and accuses him of being a drug kingpin,” Miami Herald, February 13, 2017, <http://www.miamiherald.com/news/nation-world/world/americas/venezuela/article132494809.html>

⁹⁴ Ibid.

⁹⁵ “U.S. indicts ex-Venezuelan anti-narcotics agency leaders on drug charges,” Reuters, August 1, 2016, <http://www.reuters.com/article/us-venezuela-usa-indictment-idUSKCN10C378>

narcotics traffickers in conducting their illicit drug trafficking business. Specifically, in exchange for payments from narcotics traffickers, the Co-conspirators, among other things a) alerted narcotics traffickers to future drug raids or locations of law enforcement counter-narcotics activities so that the traffickers could change the storage locations of narcotics or alter transportation routes or times and thus avoid detection by law enforcement; b) stopped or hindered ongoing narcotics investigations or counter-narcotics actions so that vehicles loaded with narcotics could depart from Venezuela; c) arranged for the release of individuals detained for narcotics violations or for suspicion of narcotics trafficking activities; d) arranged for the release of seized narcotics or narcotics-related currency; and e) prevented the arrest or deportation of individuals sought for prosecution in foreign countries, including the United States,” among other alleged offenses.⁹⁶

In November 2015, two nephews of Venezuela’s first lady, Efraín Campos and Francisco Flores, were arrested by Drug Enforcement Administration Agents in Haiti for conspiring to smuggle as much as 1,700 pounds of cocaine into the United States. A year later they were found guilty by a Federal District Court in New York. They each face 10 years in prison.⁹⁷ This case also highlighted the Military’s direct involvement in the shipment and transportation of drugs. According to Insight Crime and other news sources, piloting the jet that took the President’s nephews to Haiti were members of the presidential security and transportation unit—the *Casa Militar*—Pedro Miguel Rodriguez, an active lieutenant colonel in the Venezuelan Air Force, and military official Pablo Urbano Perez.⁹⁸

In addition, Vice-President El Aissami is also one of the main contacts in Latin America for extremist organizations, according to Luis Fleischman, senior adviser at the Center for Security Policy (CSP) in Washington, D.C. “He is one of Venezuela’s main contacts with Hezbollah,” according to Fleischman.⁹⁹ On February 10, CNN and CNN en Español published a report uncovering serious irregularities in the issuing of Venezuelan passports and visas, including “allegations that passports were given to people with ties to terrorism.” During the course of its investigation, CNN was able to obtain a confidential intelligence report “from a group of Latin American countries” which “links Venezuela's Vice President El Aissami to 173 Venezuelan passports and ID's that were issued to individuals from the Middle East, including people connected to the terrorist group Hezbollah.”¹⁰⁰

⁹⁶ Indictment CR15-00020, United States District Court, Eastern District of New York, the United States of America against Nestor Luis Reverol Torres and Edylberto Jose Molina Molina.

⁹⁷ “2 Nephews of Venezuela’s First Lady Convicted on Drug Charges in U.S. Court,” New York Times, November 18, 2016, <https://www.nytimes.com/2016/11/19/world/americas/nephews-of-venezuelas-first-lady-convicted-in-us.html>

⁹⁸ “Venezuela Military Officials Piloted Drug Plane,” Insight Crime, November 20, 2015, <http://www.insightcrime.org/news-briefs/venezuela-military-officials-piloted-drug-plane>

⁹⁹ “US sanctions Venezuelan Vice-President and accuses him of being a drug kingpin,” Miami Herald, February 13, 2017, <http://www.miamiherald.com/news/nation-world/world/americas/venezuela/article132494809.html>

¹⁰⁰ <http://www.cnn.com/2017/02/08/world/venezuela-passports-investigation/>

RECOMMENDATION 5: WE URGE THE EXECUTIVE BRANCH OF VENEZUELA TO ELIMINATE ALL FORMS OF VIOLATIONS OF THE CONSTITUTIONAL AND POLITICAL PRECEPTS REGARDING THE BALANCE BETWEEN THE BRANCHES OF GOVERNMENT.

The lack of independence and separation of powers in Venezuela continues to be disconcerting because it undermines and subverts the rule of law, the foundation of any democratic system. According to Article 3 of the Inter-American Democratic Charter, two essential elements of representative democracy are “access to and the exercise of power in accordance with the rule of law” and “the separation of powers and independence of the branches of government.”¹⁰¹

In the period from June 2016 to February 2017, a series of events took place that point to the failure to uphold the democratic principles contained in the Charter. In particular, collusion among the Executive, Electoral, and Judicial branches and the systematic invalidation and disregard of the National Assembly by the Supreme Court of Justice has contributed to a scenario in which the rule of law exists in Venezuela.¹⁰² Instead of the rule of law, guided by principles of accountability, impartiality, justice, equal access and equality before the law, the State’s actions are guided by political interests, with an obvious bias in favor of the ruling party. The result is a regime that does not effectively guarantee the political and civil rights of its citizenry.

As expressed in my Open Letter to Leopoldo López, “...there is no democracy and there is no rule of law in Venezuela.”¹⁰³ Among the factors mentioned is the refusal to acknowledge the separation of powers and, in particular, the Legislative Branch.

A number of international organizations as well as international and Venezuelan nongovernmental organizations have spoken out in regard to this situation, citing the importance of fostering a State based on laws and the effective separation and independence of powers.

For example, in its World Report 2017, Human Rights Watch explains, “the judiciary has ceased to function as an independent branch of government. Members of the Supreme Court have openly rejected the principle of the separation of powers, and publicly pledged their commitment to advancing the government’s political agenda.”¹⁰⁴ The TSJ resolutions to annul National Assembly actions, which undermine the effective separation and independence of powers, are also mentioned in Amnesty International’s annual report. “The powers of the opposition-led National Assembly were severely limited by resolutions from the TSJ, which hindered the ability of MPs to represent Indigenous Peoples,”¹⁰⁵ according to the international nongovernmental human rights organization’s 2016/2017 report.

¹⁰¹ https://www.oas.org/charter/docs_es/resolucion1_es.htm

¹⁰² <https://www.oas.org/fpdb/press/osg-441.pdf>

¹⁰³ <https://www.oas.org/fpdb/press/osg-441.pdf>

¹⁰⁴ Human Rights Watch (2017), *World Report 2017*, Venezuela: Events of 2016, <https://www.hrw.org/es/world-report/country-chapters/298568>

¹⁰⁵ Amnesty International (2017), *Annual Report 2016/2017*, <https://www.amnesty.org/es/countries/americas/venezuela/report-venezuela/>

The Inter-American Commission on Human Rights (IACHR) expressed concern over the politicization of the judiciary and the disregard for the jurisdiction of the National Assembly. In June 2016, following the issue of a second decree declaring a state of exception and economic emergency, the IACHR stated “the Commission notes that the decree in question violates Article 222 of the Venezuelan Constitution by granting the Presidency the power to decide to temporarily suspend the execution of ‘political sanctions against the highest authorities of the government,’ an oversight function that belongs to the National Assembly. In addition to that, the IACHR is concerned about the failure to recognize the decisions of the National Assembly by means of the Supreme Court’s governmental political control.”¹⁰⁶ In another press release issued on October 25, 2016, following the indefinite suspension of the signature gathering process for the presidential recall referendum, the Commission noted that the backdrop in Venezuela demonstrates a “profound weakening of the separation of powers in the country....”¹⁰⁷

In The Global Competitiveness Report 2016-2017, published by the World Economic Forum (WEF), Venezuela ranked 138th among 138 countries on (i) judicial independence and (ii) favoritism in decisions of government officials.¹⁰⁸ Not only did Venezuela come in last for its scores for institutional quality in the judiciary, but the WEF sees a downward trend in the value of both indicators.

Venezuela also ranked last in the Rule of Law Index 2016, published by the international organization World Justice Project (WJP). With a score of 0.28, it ranked 113th among 113 countries.¹⁰⁹ To determine each country’s score, the WJP evaluates 44 indicators across eight areas: Constraints on Government Powers, Absence of Corruption, Open Government, Fundamental Rights, Order and Security, Regulatory Enforcement, Civil Justice, and Criminal Justice.

The lack of independence and separation of powers also largely explains why Venezuela obtained its worst score (4.68) in the ten years that the Democracy Index has been published by The Economist Intelligence Unit. In the latest edition of the index, Venezuela ranked third-to-last in Latin America and is considered a ‘hybrid regime.’ The report indicates that its score decreased as a result of government actions to discredit and chip away at the rights and powers of the National Assembly after the opposition’s victory in the December 2015 elections. Citing the ruling of the Constitutional Chamber of the TSJ to declare all Legislative Branch decisions and laws null and void, and the encroachment on the Assembly’s functions when the budget was approved by decree via the Constitutional

¹⁰⁶ IACHR (2016), “IACHR Expresses its Concern Regarding the Declaration of a ‘State of Exception and Economic Emergency’ in Venezuela,” June 1, 2016:

http://www.oas.org/en/iachr/media_center/PReleases/2016/071.asp

¹⁰⁷ IACHR (2016), “IACHR and Office of the Special Rapporteur for Freedom of Expression Condemn Measures to Shut Down Spaces for Political Participation in Venezuela and Raise Alarm at their Impact on Democracy,” October 25, 2016, http://www.oas.org/en/iachr/media_center/PReleases/2016/154.asp

¹⁰⁸ Variables 1.06 “Judicial Independence” and 1.07 “Favoritism in decisions of government officials.” WEF (2017), The Global Competitiveness Index 2016-2017, page 361. http://www3.weforum.org/docs/GCR2016-2017/05FullReport/TheGlobalCompetitivenessReport2016-2017_FINAL.pdf

¹⁰⁹ WJP (2016), Rule of Law Index 2016, <http://worldjusticeproject.org/rule-law-around-world>

Chamber, The Economist Intelligence Unit explained, “This has in effect invalidated the power of the National Assembly and removed government accountability.”¹¹⁰

Additionally, in a press release issued on October 28, 2016, the Center for Justice and International Law (CEJIL), a regional nongovernmental organization that advocates for human rights in the Americas, reiterated that, “the Venezuelan State has the obligation to guarantee full observance of the rule of law, constitutional principles, and fundamental rights, including the right to democracy.”¹¹¹

Multilateral organizations such as the European Union and the United Nations have spoken out on the subject. Recently, on Monday, February 27, 2017, the head of the South America Division of the European External Action Service (EEAS) of the European Union, Adrianus Koetsenruijter, speaking before the European Parliament’s Committee on Foreign Affairs, stated that since the National Assembly became opposition-dominated, the Executive has sidelined its role.¹¹² Similarly, after meeting in Santo Domingo with the facilitators of the then-active process of national dialogue, the High Representative of the EEAS, Federica Mogherini, affirmed the need for constitutional principles and mechanisms to be respected: “A full respect of the Constitution's principles and mechanisms, separation of powers, rule of law and political freedoms are necessary.”¹¹³

The Office of the United Nations High Commissioner for Human Rights (OHCHR) has also voiced concern over a specific decision by the Constitutional Chamber of the TSJ during the first half of 2016. In response to its April 11, 2016 ruling on the Amnesty and National Reconciliation Law, the spokeswoman for the High Commissioner, Ravina Shamdasani, said “We are very surprised with the ruling... we note with concern that the court declared the entire text unconstitutional.”¹¹⁴ In the same press briefing note, the OHCHR said the High Commissioner had sent a legal analysis of the bill to the government, advising that the text was generally in conformity with international human rights standards.

Months later, during the 33rd session of the United National Human Rights Council held in Geneva in September, 29 countries¹¹⁵ expressed their support for a dialogue process that ensured, among other objectives, respect for due process and the separation of powers. Additionally, in a joint statement issued one month later, 12 OAS Member States reaffirmed the importance of efforts to reach a nationwide dialogue in order to find long-lasting solutions in favor of the separation of powers, among other issues.¹¹⁶

¹¹⁰ The Economist Intelligence Unit (2017), Democracy Index 2016, page 41.

¹¹¹ CEJIL (2016), “Venezuela bajo examen inminente de Naciones Unidas,” Press release, 28 October 2016, <https://www.cejil.org/es/venezuela-bajo-examen-inminente-naciones-unidas>

¹¹² EFE (2017), “SAEE pide al gobierno Venezolano respetar la Constitución”, 27 February 2017, http://www.el-nacional.com/noticias/politica/seae-pide-gobierno-venezolano-respetar-constitucion_82951

¹¹³ Statement by High Representative and Vice President Federica Mogherini on Venezuela, October 25, 2016, https://eeas.europa.eu/headquarters/headquarters-homepage_en/13030/Declaraci%C3%B3n%20de%20Federica%20Mogherini%20sobre%20Venezuela

¹¹⁴ OHCHR (2016), Press briefing note on Venezuela, Geneva, April 12, 2016.

<http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=19808&LangID=E>
¹¹⁵ <https://geneva.usmission.gov/2016/09/29/joint-statement-on-venezuela-at-the-human-rights-council/>

¹¹⁶ <https://spanish.caracas.usembassy.gov/noticias-y-eventos/noticias-embajada/comunicado-oea-venezuela-oct21.html>

Other studies and information produced in Venezuela reinforce the argument that the rule of law is being threatened by the lack of separation and independence of powers, and especially by the bias and illegitimacy of the judiciary.

For example, a constitutional attorney and law professor at the Central University of Venezuela (UCV) said that while the Constitutional Chamber had declared eight National Assembly laws completely null and void between January and October 2016, there had been just one such case in the country's previous history. In an interview with Prodavinci, he explained "If we draw a comparison with the past ... I would say that in the 200 years of history as a republic, only one law was nullified in its entirety, namely the *Ley de Vagos y Maleantes* [Vagrancy Law], in 1998. Other decisions invalidated one, two, or three articles of a given law or regulation; never had an entire law been abrogated from end to end."¹¹⁷ He added "more laws have been nullified in one year than in 200 years,"¹¹⁸ and that one year just happens to coincide with the opposition's majority in the legislature.

The conclusions in the book *El TSJ al servicio de la revolución* point to the existence of a tendency toward collusion between the branches of government prior to the December 2015 elections. Based on an analysis of 45,474 decisions of the TSJ's Constitutional, Political-Administrative and Electoral chambers in the period 2003-2013, a group of jurists concluded "the Supreme Court of Justice did not once rule against the administration."¹¹⁹ In the decade of Constitutional Chamber decisions analyzed, not a single law passed by the National Assembly was nullified (at that time the ruling party enjoyed a majority) nor were cases found in which the Political-Administrative Chamber reversed the public policies of the Chavez administration.¹²⁰ The Electoral Chamber's decisions were such that "eight of every nine decisions benefited the ruling party."¹²¹

This section of the report states that in Venezuela there is no rule of law rooted in the just application of the law, given the collusion among the Executive, Electoral, and Judicial branches; the systematic overruling and disregard of the Legislative Branch; and the documented biased actions favoring the ruling party. What the evidence shows is that the State operates based on partisan interests and makes discretionary use of the law, to the detriment of the principles of justice, impartiality and the separation of powers.

¹¹⁷ Prieto, H. (2016), "Gustavo Linares Benzo: 'Este es un gobierno militar a todo nivel,'" October 23, 2016, <http://prodavinci.com/2016/10/23/actualidad/gustavo-linares-benzo-este-es-un-gobierno-militar-a-todo-nivel-por-hugo-prieto/>

¹¹⁸ Prieto, H. (2016), "Gustavo Linares Benzo: 'Este es un gobierno militar a todo nivel,'" October 23, 2016, <http://prodavinci.com/2016/10/23/actualidad/gustavo-linares-benzo-este-es-un-gobierno-militar-a-todo-nivel-por-hugo-prieto/>

¹¹⁹ Unidad de Investigación Runrunes (2016), "Los 13 récords mundiales del 'comandante galáctico,'" April 3, 2016, <http://runrun.es/nacional/venezuela-2/251454/los-13-records-mundiales-del-comandante-galactico.html> *apud* Canova González, et al. (2014), *El TSJ al servicio de la revolución*, Editorial Galipán.

¹²⁰ Unidad de Investigación Runrunes (2016), "Los 13 récords mundiales del 'comandante galáctico,'" April 3, 2016, <http://runrun.es/nacional/venezuela-2/251454/los-13-records-mundiales-del-comandante-galactico.html> *apud* Canova González, et al (2014), *El TSJ al servicio de la revolución*, Editorial Galipán.

¹²¹ Unidad de Investigación Runrunes (2016), "Los 13 récords mundiales del 'comandante galáctico,'" April 3, 2016, <http://runrun.es/nacional/venezuela-2/251454/los-13-records-mundiales-del-comandante-galactico.html> *apud* Canova González, et al (2014), *El TSJ al servicio de la revolución*, Editorial Galipán.

The current situation is complex because of the intense conflict being waged between the branches since the opposition came to lead the National Assembly. This state of conflict provides sufficient evidence of the use of judicial and legal mechanisms to discredit the Legislative Branch. In the first 10 months of 2016, for instance, the TSJ ruled against the National Assembly at least 30 times,¹²² and as already stated completely nullified at least eight of its laws.

From June 2016 to February 2017, there were at least 32 instances or actions that prove that judicial interpretation systematically favors the interests of the administration, to the detriment of the Legislative Branch, the opposition and/or the general citizenry. Below is a list of major cases that illustrate the violation of the principles of the exercise of power in accordance with the rule of law and the separation of powers and independence of the branches of government, as set forth in the Inter-American Democratic Charter.

The 32 cases between June 2016 and February 2017- amounting to almost one per week- highlight the absence of the Rule of Law and undermine the separation and independence of powers include:

- At least 17 instances in which the Constitutional Chamber of the TSJ ruled against the National Assembly and opposition parliamentarians and in favor of the Executive Branch and the administration; and at least one instance in which the Constitutional Chamber handed down a decision that adversely affected civil rights protections for the general citizenry;
 - At least 2 instances in which the Electoral Chamber of the TSJ ruled against the National Assembly and in favor of the administration;
 - At least 2 instances in which the Political-Administrative Chamber of the TSJ returned decisions against opposition parliamentarians and in favor of the administration; and at least one instance in which the Political-Administrative Chamber ruled against the Office of the Comptroller General, in favor of the Ministry of Defense;
 - At least one decision by the Social Welfare Appeals Chamber of the TSJ that eroded the rights of Venezuelan children and adolescents;
 - At least two cases where courts of first instance issued decisions against the rights of opposition leaders and the general citizenry;
 - At least four instances in which the Electoral Branch (National Electoral Council) made decisions against the general citizenry, certain political parties, and voters in Amazonas and the Southern Indigenous Region, in favor of the administration;
- At least two direct actions by the Executive Branch against the National Assembly and opposition parliamentarians.

Details on each of these cases are provided below.

¹²² Mora, F. (2016), “TSJ ha dictado 30 sentencias contra la Asamblea Nacional,” *El Universal*, October 15, 2016, http://www.eluniversal.com/noticias/politica/tsj-dictado-sentencias-contra-asamblea-nacional_622598; Transparencia Venezuela (2016), “La Asamblea Nacional en Cifras, 9 meses de gestión,” Observatorio Parlamentario, November 2016, <https://transparencia.org.ve/project/lla-asamblea-nacional-en-cifras-9-meses-de-gestion/>

CONSTITUTIONAL CHAMBER

In the period under review, at least 18 instances were found in which the Constitutional Chamber of the TSJ ruled against the National Assembly and opposition parliamentarians and/or the rights of the citizenry. These rulings have favored the administration. The following decisions are evidence of the *de facto* dissolution of the National Assembly.

1. Decision 460/2016 of June 9, 2016: The Constitutional Chamber ruled against the National Assembly by declaring unconstitutional the Special Law for Addressing the National Health Crisis (*Ley Especial para Atender la Crisis Nacional de Salud*), on the grounds that the law usurped the functions of the President of the Republic. This decision is an example of the use of judicial decisions to weaken the role of the Legislative Branch.¹²³
2. Decision 478/2016 of June 14, 2016: The Constitutional Chamber ruled against the National Assembly by suspending the effects of the legislative acts of May 31, 2016, and June 10, 2016, holding—once again—that the Assembly had usurped functions belonging to the Executive. The ruling is another example of the use of judicial decisions to invalidate the work of the Assembly.¹²⁴
3. Decision 611/2016 of July 15, 2016: The Constitutional Chamber declared that parliamentary immunity benefited only principal deputies serving in that capacity. The decision mainly affected alternate deputies of the opposition who were political prisoners: Renzo Prieto, Rosmit Mantilla and Gilberto Sojo. In this instance the ruling went against the release of these deputies.¹²⁵ It also violates parliamentary immunity, the rights of the abovementioned deputies and political prisoners, as well as the collective rights of the Táchira and Aragua voters who elected them.¹²⁶ According to Amnesty International, the TSJ has interpreted Article 200 of the Constitution (on parliamentary immunity) in a “regressive” manner.¹²⁷ The conjecture that parliamentary immunity applies only to deputies who are serving in that capacity “violates the Constitution, which sets forth that immunity is enjoyed from the time the deputy is “*proclamado*” [formally instated] and draws no distinction between principal and alternate deputies.”¹²⁸

¹²³ <http://historico.tsj.gob.ve/decisiones/scon/junio/188165-460-9616-2016-16-0500.HTML>

¹²⁴ <https://transparencia.org.ve/wp-content/uploads/2016/11/9-meses-Observador-parlamentario.pdf>

¹²⁵ According to Amnesty International, political prisoners elected as legislators have been released in the past. Under decisions by the previous Supreme Court (*Corte Suprema de Justicia*), David Nieves and Fortunaro Herrera were released in 1978. <https://www.derechos.org/ve/actualidad/amnistia-internacional-doce-preguntas-y-respuestas-sobre-la-inmunidad>

¹²⁶ http://www.el-nacional.com/noticias/politica/tsj-emitido-sentencias-contra-asamblea-nacional_10854; http://www.el-nacional.com/noticias/politica/tsj-diputados-suplentes-solo-gozaran-inmunidad-cuando-suplan-los-principales_22411

¹²⁷ <https://www.derechos.org/ve/actualidad/amnistia-internacional-doce-preguntas-y-respuestas-sobre-la-inmunidad>

¹²⁸ <https://www.derechos.org/ve/actualidad/amnistia-internacional-doce-preguntas-y-respuestas-sobre-la-inmunidad>

4. Decision 612/2016 of July 15, 2016: The effects of this decision were similar to those of decision 611. The Constitutional Chamber declared inadmissible the seating of the opposition party alternate deputies elected on December 6, 2015 (cited in decision 611), who were political prisoners: Prieto, Mantilla and Sojo. In addition to being detrimental to opposition representation in the National Assembly and favoring the administration, the decision represents a violation of the political rights of the parliamentarians and of the voters of districts 2 and 5 of the state of Táchira and the state of Aragua, from which the three alternate deputies hail.¹²⁹
5. Decision 614/2016 of July 19, 2016: The ruling undermines the National Assembly in that the Constitutional Chamber declared null and void its appointment of a Special Commission to Reclaim the Institution of the Supreme Court of Justice (*Comisión Especial para el Rescate de la Institucionalidad del TSJ*) as well as all acts arising from its July 14, 2016 session. This decision against the Assembly is yet another indication of the use of judicial decisions to negate the functions of the Legislative Branch.¹³⁰
6. Decision 615/2016 of July 19, 2016: This decision declared the constitutionality of Decree 2371, which permitted a 60-day extension of President Nicolás Maduro's second state of exception and economic emergency of 2016. The decree was adopted without approval of the National Assembly. This is one of six decisions (four on the constitutionality of state of exception and economic emergency decrees; one on submission of the government's annual report; and another on submission of the budget) handed down by the Constitutional Chamber from June 2016 to February 2017 that reveal a direct relationship of collusion between the Executive Branch and the TSJ.¹³¹
7. Decision 618/2016 of July 20, 2016: The Constitutional Chamber declared that the Central Reserve Bank could autonomously borrow from the Latin American Reserve Fund (FLAR). This negates the Assembly's role of approving government debt and therefore constitutes a shift in power from the Legislative Branch to the administration.¹³² This is another case that underscores the disregard for the National Assembly and the absence of separation of powers.
8. Decision 797/2016 of August 19, 2016: This judicial decision allowed two actions for annulment brought by the ruling party. The ruling is clearly against the National Assembly, as it suspends the effects of seven parliamentary sessions held in April and May of 2016.¹³³

¹²⁹ <https://transparencia.org.ve/wp-content/uploads/2016/11/9-meses-Observador-parlamentario.pdf>

¹³⁰ <http://historico.tsj.gob.ve/decisiones/scon/julio/189122-614-19716-2016-16-0153.HTML>

¹³¹ <http://historico.tsj.gob.ve/sr/print.asp?url=http://historico.tsj.gob.ve/decisiones/scon/julio/189123-615-19716-2016-16-0470.HTML>

¹³² <http://www.tsj.gob.ve/-/tsj-resuelve-interpretacion-sobre-la-autonomia-del-bcv-para-suscribir-contratos>

¹³³ http://www.el-nacional.com/noticias/politica/tsj-emitido-sentencias-contra-asamblea-nacional_10854;
<http://www.tsj.gob.ve/-/sala-constitucional-ordena-suspender-cauteladamente-efectos-de-sesiones-de-la-asamblea-nacional-realizadas-en-abril-y-mayo>

9. Decision 808/2016 of September 2, 2016: This Constitutional Chamber decision is one of the most troubling, for in it the TSJ declares the National Assembly in contempt. It declares “absolutely null and void the acts of the National Assembly issued or to be issued while the citizens subject to decision 260 of December 30, 2015, and to this decision remain seated.”¹³⁴ Electoral Chamber decision 260 of 2015 is the one that blocked the formal instatement of deputies from Amazonas owing to claims of irregularities filed by the ruling party during the parliamentary elections of December 6, 2015. Decision 808 declared as unconstitutional the Partial Reform of Decree 2,165 - the Organic Law Reserving for the State Gold Exploration and Development Activities (*Ley de Reforma Parcial del Decreto 2165 con Rango y Fuerza de Ley Orgánica que Reserva al Estado las Actividades de Exploración y Explotación de Oro*).¹³⁵ With this decision, the TSJ directly neutralized the Assembly, a branch of government whose mandate and legitimacy derives from the popular vote, laying bare the lack of independence and separation of powers in Venezuela.
10. Decision 810/2016 of September 21, 2016: Decree 2452 is declared constitutional, clearing the way for President Maduro’s third national state of exception and economic emergency in 2016. As in decision 615, mentioned above, the decree was adopted without the Assembly’s approval. This is one of six decisions (four on the constitutionality of state of exception and economic emergency decrees; one on submission of the government’s annual report; and another on submission of the budget) handed down by the Constitutional Chamber from June 2016 to February 2017 that reveal a direct relationship of collusion between the Executive Branch and the TSJ.¹³⁶
11. Decision 814/2016 of October 11, 2016: Another decision that makes plain the lack of independence and separation of powers (particularly between the Executive and Judicial branches) is this ruling in favor of the administration handed down in response to a request from President Maduro. The Constitutional Chamber of the TSJ declared that the Executive Branch was exempt from submitting the budget to the National Assembly. Instead, it would be submitted as a decree to the Constitutional Chamber. The decision signifies an encroachment on the Assembly’s functions, for pursuant to Articles 311 and 313 of the Constitution, the national budget must be submitted as a bill to the Legislative Branch.¹³⁷
12. Decision 948/2016 of November 14, 2016: The Constitutional Chamber of the TSJ issued this decision, which undermines the protection of citizens’ rights. The ruling

¹³⁴ <http://historico.tsj.gob.ve/decisiones/scon/septiembre/190395-808-2916-2016-16-0831.HTML>

¹³⁵ Transparencia Venezuela (2016), “*La Asamblea Nacional en Cifras, 9 meses de gestión*,” Observatorio Parlamentario, November 2016, <https://transparencia.org.ve/project/lla-asamblea-nacional-en-cifras-9-meses-de-gestion/>

¹³⁶ <http://historico.tsj.gob.ve/decisiones/scon/septiembre/190408-810-21916-2016-16-0897.HTML>

¹³⁷ http://www.eluniversal.com/noticias/politica/tsj-dictado-sentencias-contra-asamblea-nacional_622598; <http://historico.tsj.gob.ve/decisiones/scon/octubre/190792-814-111016-2016-2016-897.HTML>

removes the protections provided for exercising one's right to peaceful demonstration, and, specifically, ignores Articles 53 and 68 of the Constitution.¹³⁸

13. Decision 952/2016 of November 21, 2016: Decree 2548, which extended President Maduro's third national state of exception and economic emergency in 2016, is declared constitutional. As in previously cited decisions 615 and 810, the decree was adopted without Assembly approval. Decision 952 is one of the six decisions (four on the constitutionality of the state of exception and economic emergency decrees; one on submission of the government's annual report; and another on submission of the budget) handed down by the Constitutional Chamber from June 2016 to February 2017 that reveal a direct relationship of collusion between the Executive Branch and the TSJ.¹³⁹
14. Decision 1086/2016 of December 13, 2016: The Constitutional Chamber directly appointed two National Electoral Council officials whose mandate expired in December 2016, instead of the appointment process being conducted by the National Assembly, as set forth by law. A recent study by *The Electoral Integrity Project Venezuela* stated "the National Assembly elected on December 6, 2015, was responsible for appointing two members, and their respective alternates, whose mandates expired on December 3, 2016."¹⁴⁰ The replacements for Socorro Hernández and Tania D'Amelio, "both of whom have public, well-known ties to the governing party,"¹⁴¹ should have been appointed by the National Assembly after nomination by the national universities and the Citizens' Power branch, pursuant to current law, but the appointments were decided by the TSJ, with Hernández and D'Amelio re-appointed. This case therefore demonstrates further encroachment on the functions and powers of the Legislative Branch, and constitutes a violation of current law as well as bias on the part of the TSJ.¹⁴²
15. Decision 2/017 of January 11, 2017: This decision is evidence of the administration's systematic invalidation and disregard of the Legislative Branch. By declaring the 2017 National Assembly Executive Board installed on January 5 to be illegitimate, the Constitutional Chamber once again invalidated the Legislative Branch. The ruling also nullified the Assembly's sessions on the grounds it was still in contempt of the Court—as it had done with other sessions in decision 797. The decision declared the "unconstitutionality by omission of the National Legislative Branch because it did not take the steps indispensable to ensuring adherence to the Constitution and the orders issued by this Highest Court."¹⁴³ Thus, the Assembly's acts of January 5 and 9, 2017, were nullified. Despite the fact that the new executive board removed the three deputies from Amazonas,¹⁴⁴ the TSJ ruled that the actions

¹³⁸ <https://www.derechos.org/ve/actualidad/el-tsj-continua-extinguendo-el-estado-de-derecho-en-venezuela>

¹³⁹ <http://historico.tsj.gob.ve/sr/print.asp?url=http://historico.tsj.gob.ve/decisiones/scon/noviembre/192945-952-211116-2016-16-0897.HTML>

¹⁴⁰ <https://politikaucab.files.wordpress.com/2016/12/sugerencias-pmgc-reporte-especial-33vf.pdf>

¹⁴¹ <https://politikaucab.files.wordpress.com/2016/12/sugerencias-pmgc-reporte-especial-33vf.pdf>

¹⁴² <http://historico.tsj.gob.ve/decisiones/scon/diciembre/193866-1086-131216-2016-16-1191.HTML>

¹⁴³ <http://historico.tsj.gob.ve/decisiones/scon/enero/194891-02-11117-2017-17-0001.HTML>

¹⁴⁴ http://www.el-nacional.com/noticias/asamblea-nacional/termino-con-desacato-desincorporo-oficialmente-diputados-amazonas_74448

of the new executive board were null and void, so the parliament continued to be in contempt. It bears noting that another of the actions declared null and void was the opposition deputies' January 9, 2017, statement charging President Maduro with "dereliction of duty."¹⁴⁵

16. Decision 3/2017 of January 11, 2017: Upholding the decision of the Electoral Chamber and the position that the National Assembly was in contempt, the Constitutional Chamber ruled that President Maduro would deliver his annual address to the TSJ and not to the National Assembly, as provided under current law. The ruling demonstrates the coopting of the functions and powers of the Legislative Branch by the Judicial Branch, and the collusion of interests between the latter and the Executive Branch. In response to a request for legal interpretation filed by President Maduro, the Constitutional Chamber declared "[the Court] grants the requested constitutional interpretation and declares the unconstitutional omission of the National Assembly. Consequently, [it] orders that on this occasion the President of the Republic, citizen Nicolás Maduro Moros, shall deliver his Annual Message as set forth in Article 237 of the Constitution to the Supreme Court of Justice."¹⁴⁶
17. Decision 4/2017 of January 19, 2017: The Constitutional Chamber declared the constitutionality of Decree 2667, the fourth national state of exception and economic emergency. As in the case of decisions 615, 810 and 952, the decree was adopted without approval from the National Assembly. Decision 4 is one of the six (four on the constitutionality of state of exception and economic emergency decrees; one on submission of the government's annual report; and another on submission of the budget) handed down by the Constitutional Chamber from June 2016 to February 2017 that reveal a direct relationship of collusion between the Executive Branch and the TSJ.¹⁴⁷
18. Decision 7/2017 of January 26, 2017: According to this ruling, opposition deputies would be investigated by the Republican Moral Council for individual criminal liability for the crimes of conspiracy and usurpation of functions. The Chamber requested that "the bodies that make up the Republican Moral Council be ordered to commence an investigation to determine the individual criminal liability of the National Assembly deputies that make up the so-called Unity Bloc, for commission of the crime of conspiracy to destroy the republican form [of government] of this nation, criminalized in Article 132 of the Criminal Code, as well as for usurpation of functions, misappropriation of power and violation of the Constitution."¹⁴⁸ The decision not only violates the principle of separation and independence of powers, but also undermines parliamentary immunity as provided in Article 200¹⁴⁹ of the Constitution. According to a prominent law professor at the UCV, Catholic

¹⁴⁵ <http://historico.tsj.gob.ve/decisiones/scon/enero/194891-02-11117-2017-17-0001.HTML>;
<http://www.telesurtv.net/news/TSJ-de-Venezuela-declara-nulas-nuevas-acciones-del-Parlamento-20170111-0057.html>; <http://elbilluyo.com/economia-politica/tsj-anula-directiva-sesiones-la-asamblea-nacional/>;

¹⁴⁶ <http://historico.tsj.gob.ve/decisiones/scon/enero/194892-03-11117-2017-17-0002.HTML>

¹⁴⁷ <http://historico.tsj.gob.ve/decisiones/scon/enero/195170-04-19117-2017-2017-0069.HTML>

¹⁴⁸ <http://historico.tsj.gob.ve/decisiones/scon/enero/195578-07-26117-2017-17-0010.HTML>

¹⁴⁹ https://www.oas.org/juridico/mla/sp/ven/sp_ven-int-const.html

University Andrés Bello (UCAB) and Monteávila University (UMA), “In theory, any criminal investigation against the deputies for this crime faces the hurdle of parliamentary immunity, which, to be lifted, requires a decision by the Assembly itself.”¹⁵⁰ He adds, however, “In practice ... that immunity has already been denied, based on a very narrow interpretation of the sphere of protection. Moreover, it is not surprising that the Constitutional Chamber would maintain that parliamentary immunity no longer applies, since the Assembly, being in contempt, cannot validly perform its functions.”¹⁵¹

ELECTORAL CHAMBER

In the period under review, the Electoral Chamber of the TSJ issued decisions against the Legislative Branch in favor of the Executive Branch on at least two occasions. The following decisions are evidence of how the National Assembly has been undermined by means of legal rulings, in this case having to do with the incorporation of deputies from Amazonas and the Southern Indigenous Region into the National Assembly.

1. Decision 108/2016 of August 1, 2016: The Electoral Chamber declared invalid the incorporation of the following deputies from Amazonas and the Southern Indigenous Region: Nirma Guarulla (Amazonas), Julio Ygarza (Amazonas), and Romel Guzamana (Southern Indigenous Region).¹⁵² The Chamber reiterated that the swearing in of the three deputies on July 28, 2016, was “completely null and void”¹⁵³ and declared “contempt”¹⁵⁴ with respect to Electoral Chamber Decision 260 of December 30, 2015 and Decision 1 of January 11, 2016.
2. Decision 126/2016 of August 11, 2016: Via this ruling the Electoral Chamber nullified the incorporation of the deputies from Amazonas.¹⁵⁵ Both Decision 108 and Decision 126 ruled against the National Assembly, specifically against its Executive Board, which swore in the three deputies on July 28, 2016; they also undermine the collective interests and rights of the voters in the Amazonas and Southern Indigenous Region districts. Both rulings decided in favor of the administration and against the Legislative Branch.

POLITICAL-ADMINISTRATIVE CHAMBER

Between June 2016 and February 2017, the TSJ’s Administrative Chamber handed down decisions against opposition members of the National Assembly in favor of the administration at least twice. Additionally, in one case, the Political-Administrative Chamber issued a decision against the Office of the Comptroller General of the Republic, which falls under the “Citizen’s Branch,” in favor of the Ministry of Defense, which falls under the Executive Branch.

¹⁵⁰ <http://prodavinci.com/tipo-blog/blog-de-jose-ignacio-hernandez/>

¹⁵¹ <http://prodavinci.com/tipo-blog/blog-de-jose-ignacio-hernandez/>

¹⁵² <http://historico.tsj.gob.ve/decisiones/selec/agosto/189587-108-1816-2016-X-2016-000007.HTML>

¹⁵³ <http://historico.tsj.gob.ve/decisiones/selec/agosto/189587-108-1816-2016-X-2016-000007.HTML>

¹⁵⁴ <http://historico.tsj.gob.ve/decisiones/selec/agosto/189587-108-1816-2016-X-2016-000007.HTML>

¹⁵⁵ <http://historico.tsj.gob.ve/decisiones/selec/agosto/190168-126-11816-2016-2016-X-000003.HTML>

1. Decision 848/2016 of August 4, 2016: The Political-Administrative Chamber ruled against the opposition deputies and in favor of the administration. The decision dismisses the appeal for annulment filed by the opposition deputies against a resolution from the Ministry of People's Power for Banking and Finance.¹⁵⁶
2. Decision 858/2016 of August 9, 2016: Another decision against opposition deputies who are members of the Standing Committee on Finance and Economic Development. Herewith, the TSJ dismissed their suit regarding the failure to publish the 2015 National Consumer Price Index.¹⁵⁷
3. Decision 1421/2016 of December 15, 2016: In an example of the lack of checks and balances between government branches, the Political-Administrative Chamber hereby ruled against the Office of the Comptroller General of the Republic—part of the “Citizen’s Branch”—and in favor of the Executive Branch, specifically the military. In response to a request for a legal interpretation filed by the Executive Branch’s Office of the Prosecutor General of the Republic, the Chamber’s decision rules that oversight authority over the Ministry of People’s Power for Defense does not lie with the Office of the Comptroller General, but rather with the Office of the Comptroller of the Bolivarian National Armed Forces (COGEFANB). In other words, the ruling enables the Ministry of Defense to exercise oversight over itself, through the COGEFANB, with respect to the management of public resources.¹⁵⁸

SOCIAL WELFARE APPEALS CHAMBER

With regards the Social Welfare Appeals Chamber, at least one TSJ ruling has been identified that undermines the rights of Venezuelan children and adolescents.

1. Decision 1448/2016 of December 16, 2016: The TSJ dismissed the appeal for a legal review filed by CECODAP against the decision of the Third High Court for the Protection of Children and Adolescents, which denied a precautionary measure for the protection of children’s right to health in the context of medicine shortages. In other words, the rights of Venezuelan children and adolescents are not being guaranteed.¹⁵⁹

COURTS OF FIRST INSTANCE

At least two cases have been identified in which courts of first instance have ruled against the rights of opposition leaders and of the general citizenry.

1. On October 20, 2016, a decision handed down by the supervisory court of the city of Valencia, Carabobo, prohibited the following opposition leaders from leaving Venezuelan territory: Henrique Capriles Radonski, Jesús Torrealba, Ramón José

¹⁵⁶ http://www.mp.gob.ve/c/document_library/get_file?uuid=ed7d4346-3715-4f91-8b94-cb46bc17c152&groupId=10136

¹⁵⁷ <http://www.talcualdigital.com/Nota/132518/las-5-sentencias-del-tsj-contras-el-parlamento-en-agosto>

¹⁵⁸ <http://www.accesoaljusticia.org/wp/infojusticia/noticias/la-caja-negra-militar-el-tsj-elimina-el-control-sobre-las-empresas-militares-2/>; <http://historico.tsj.gob.ve/decisiones/spa/diciembre/194202-01421-151216-2016-2011-0044.HTML>

¹⁵⁹ <http://historico.tsj.gob.ve/decisiones/scs/diciembre/194598-1448-161216-2016-16-559.HTML>

Medina, José Luis Cartaya, Oscar Antonio Barreto, Ricardo Francisco Sucre Heredia, Luis Ernesto Aparicio Méndez, and Arnoldo Gabaldón Berti.¹⁶⁰ This would constitute a violation of Article 50 of the Constitution, which has to do with the right to freedom of movement domestically and internationally, as well as a violation of the right to parliamentary immunity as enshrined in Article 200 thereof.¹⁶¹

2. On that same day, October 20th, criminal courts in the states of Aragua, Carabobo, Bolívar, and Apure issued judgments nullifying the collection of signatures for the presidential recall referendum based on an alleged “fraud”¹⁶² perpetrated by the Mesa de la Unidad Democrática (MUD), and in doing so used legal channels to suspend the political rights of Venezuelan citizens. The move was defended by Deputy Diosdado Cabello (PSUV), as well as by ruling party governors Tareck El Aissami (Aragua), Francisco Ameliach (Carabobo), Francisco Rangel Gómez (Bolívar), and Ramón Carrizalez (Apure).¹⁶³

ELECTORAL BRANCH (NATIONAL ELECTORAL COUNCIL)

During the period under review, the Electoral Branch (National Electoral Council) issued decisions on four occasions against certain political parties, against voters in Amazonas and the Southern Indigenous Region, and against the political rights of Venezuelan citizens in general. The following decisions came out in favor of the party in power:

1. On October 18, 2016, Tibisay Lucena, president of the CNE, announced publicly that elections for governors and mayors would be postponed until the first and second half of 2017, respectively. This undermined the political rights of Venezuelan citizens in violation of Article 63 of the Constitution—which enshrines the right to suffrage—and of Article 160, by unconstitutionally extending governors’ terms.¹⁶⁴
2. On October 20, 2016, the National Electoral Council, based on the aforementioned position taken by criminal courts in the states of Aragua, Carabobo, Bolívar, Apure, and Monagas, suspended the gathering of support for the recall referendum because of alleged fraud in the collection of signatures for the 1% of registered voters. This action is evidence of the use of legal channels to suspend the political right to vote.¹⁶⁵
3. On January 20, 2017, CNE member Tania D’Amelio announced via Twitter the introduction of new registration renewal regulations for members of 59 political organizations. Even though the new procedures could equally affect minority parties

¹⁶⁰ http://internacional.elpais.com/internacional/2016/10/21/america/1477021835_993391.html;
https://twitter.com/hcapriles/status/789298001374093312/photo/1?ref_src=twsrc%5Etfw

¹⁶¹ https://www.oas.org/juridico/mla/sp/ven/sp_ven-int-const.html

¹⁶² http://www.eluniversal.com/noticias/politica/tribunales-dejan-sin-efecto-recoleccion-del-cinco-estados-del-pais_623473

¹⁶³ http://www.eluniversal.com/noticias/politica/tribunales-dejan-sin-efecto-recoleccion-del-cinco-estados-del-pais_623473

¹⁶⁴ <http://www.bbc.com/mundo/noticias-america-latina-37699764>;

http://internacional.elpais.com/internacional/2016/10/19/actualidad/1476865711_233797.html

¹⁶⁵ http://www.cne.gov.ve/web/sala_prensa/noticia_detallada.php?id=3483

of the opposition and those aligned with the ruling party, or parties that had not taken part in the 2013 and 2015 elections, it is cause for concern if the process were to violate the right to participation or the pluralism of the system of political organizations and parties—enshrined in Article 3 of the Inter-American Democratic Charter as one of the essential elements of representative democracy.¹⁶⁶

4. Lastly, the CNE was undermining the political rights of indigenous peoples from the Southern Region and Amazonas by failing to call elections for new deputies, thereby leaving some Venezuelans without representation in the National Assembly.¹⁶⁷

EXECUTIVE BRANCH

There have been at least two direct cases of Executive Branch actions against the National Assembly and opposition parliamentarians.

1. On January 15, 2017, President Maduro delivered his Annual Government Address before the TSJ, and not the National Assembly. This act of invalidation and disregard for the Legislative Branch violates the National Assembly’s checks on the Presidency by transferring functions to the TSJ, and contravenes the provisions of Article 237 of the Constitution of the Bolivarian Republic of Venezuela: “Article 237. Annually, within the first ten days following the installation of the National Assembly in regular session, the President of the Republic shall personally deliver a message to the Assembly in which he or she shall render account of the political, economic, social, and administrative aspects of his or her term during the previous year.”¹⁶⁸
2. In annulling their passports over an alleged “complaint of theft”¹⁶⁹ on January 27 and February 7, 2017, the authorities of the Administrative Service for Identification, Migration, and Foreigners (SAIME) violated the rights of MUD parliamentarians Luis Florido and William Dávila, respectively. Such action would constitute a *de facto* violation of parliamentary immunity (Article 200 of the Constitution), as well as of the right to freedom of movement both domestically and internationally (Article 50 of the Constitution) and of the civil right of access to identity documents.¹⁷⁰

¹⁶⁶ <http://actualidadvenezuela.org/2017/01/20/tania-d-amelio-anuncia-renovacion-de-partidos-politicos-y-no-menciona-las-regionales/>; <https://twitter.com/taniadamelio/status/822462599258324994> ;

<http://efectococuyo.com/politica/hasta-los-partidos-mas-antiguos-de-venezuela-tienen-que-renovar-sus-nominas> . On February 14, 2017 the National Assembly approved the document “*Acuerdo sobre el Derecho a la Participación Política y el Proceso de Renovación del Registro de Militancia Impuesto por el Consejo Nacional Electoral*”, in which the Assembly rejected “the conditions for the renewal of the registration of the political parties because they “violate constitutional principles and Rights”.

¹⁶⁷ <https://politikaucab.net/2017/02/10/comunicado-de-organizaciones-de-la-sociedad-civil-ante-la-actuacion-reciente-del-cne/>

¹⁶⁸ https://www.oas.org/juridico/mla/sp/ven/sp_ven-int-const.html

¹⁶⁹ http://www.el-nacional.com/noticias/oposicion/guerra-quitaron-pasaporte-luis-florido-forma-ilegal_77946;

¹⁷⁰ https://www.oas.org/juridico/mla/sp/ven/sp_ven-int-const.html

THE RIGHT TO FREEDOM OF THOUGHT AND EXPRESSION

“The best weapon of a dictatorship is secrecy; the best weapon of a democracy is openness.”
Edward Teller

The Venezuelan government has been consistent in its efforts to restrict the freedom of expression, going so far as to attack the media, and flagrant violations have been identified, ranging from criminal and administrative proceedings against journalists and the press to indirect censorship, harassment and verbal stigmatization, repression and criminalization of social protest, as well as violations to the right to access public information.

The 1966 International Covenant on Civil and Political Rights creates the right “to hold opinions without interference.” Article 19.2 determines that freedom of expression includes “freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.”

In 1969, the Inter-American system enshrined the right to freedom of thought and expression in Article 13 of the American Convention on Human Rights, defining it as the “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.” It goes on to state that this right “shall not be subject to prior censorship.”

Venezuela’s own Constitution echoes these Conventions, protecting the right to free expression in Article 57, which states that “everyone has the right to express freely his or her thoughts, ideas or opinions orally, in writing or by any other form of expression, and to use for such purpose any means of communication an diffusion, and no censorship shall be established.” In the words of Nelson Mandela, “a free press is one of the pillars of democracy.”

However, as I have previously noted, this is aggravated by the Venezuelan government’s denunciation of the American Convention and its withdrawal from the Human Rights system in 2014, and tensions between the independent media and the government continue to grow. The Venezuelan government continues to target private media, claiming it is controlled by the right and imperial interests. The government has continued to expand its authority to regulate the media and continues to take aggressive steps to reduce the available independent media sources that produce critical programming.

The vaguely worded language included sweeping legislation, including the 2004 Law on Social Responsibility in Radio, Television, and Electronic Media (*Resorte Law*¹⁷¹), is regularly used to justify bans on content if it is determined to ‘incite or promote hatred,’ ‘foment citizens’ anxiety or alter public order,’ ‘disrespect authorities,’ ‘encourage assassinations,’ ‘constitute war propaganda,’ or ‘convenient for the interests of the nation.’ These laws empower the National Telecommunications Commission (CONATEL), the

¹⁷¹ Later amended in 2010.

supposed autonomous national telecommunications regulator, to approve, suspend or revoke licenses, impose substantial fines on broadcast, print and digital media.

On February 12, 2017, President Maduro threatened to expel U.S.-based news channel CNN en Español, in reference to a report that included public complaints of a young woman over the conditions of her school and the lack of food for students. In that same vein, CNN had also aired a report concerning the alleged sale of passports by officials in the Venezuelan embassy in Iraq to persons with alleged ties to terrorism. Minister Delcy Rodríguez has also accused the channel of conducting a propaganda campaign against Venezuela.¹⁷²

On February 15, 2017, the channel was suspended and its signal shut off across Venezuela. A statement released by the CONATEL, indicating that a punitive administrative proceeding had been opened, describing the broadcast content as undermining Venezuela's "peace and democratic stability," by "defaming and distorting the truth."

Three additional international channels, Colombia's RCTV and NTN24 and Mexico's TV Azteca, were also removed from air, on accusations from CONATEL of "distorting the truth, without proof, and attacking the sovereignty of Venezuela's people and their institutions."¹⁷³

The continued attacks on the media by public officials, including President Maduro, creates a restrictive environment that undermines free expression and the independence of the media weakening the space for public debate.¹⁷⁴

The Venezuelan government has also extended the decision to the Internet signal for the CNN en Español website, expanding their focus to the digital space. This follows the June 8 ruling by the Supreme Court to prevent news websites *La Patilla* and *Caraota Digital* from disseminating videos of lynchings through its webpage or on social media. The decision was written so that it could be extended to other media in the country¹⁷⁵ and these rights are being targeted both online and offline.

In September, 2016, three Venezuelan papers, *El Diario de Los Llanos*, *La Prensa*, and *La Noticia*, were ordered to cease publishing any reports related to allegations of corruption targeting the brother of late President Hugo Chávez, Governor Adán Chávez.¹⁷⁶

In January, senior government officials and CONATEL criticized the broadcast of the television series "*El Comandante*", a foreign production inspired by the life of former President Hugo Chavez. CONATEL and the National Assembly member Diosdado Cabello led a social media campaign to promote the protection of the memory of the deceased

¹⁷² <http://www.oas.org/es/cidh/expresion/showarticle.asp?artID=1052&IID=2>

¹⁷³ <http://www.conatel.gob.ve/conatel-al-pais-2/>

¹⁷⁴ IACHR. Press Release 13/14. "IACHR expresses deep concern over violent acts in Venezuela and urges the State to guarantee democratic security." February 14, 2014.

¹⁷⁵ <http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=20343&LangID=E#sthash.UO4s5ZkC.dpuf>

¹⁷⁶ <http://www.foxnews.com/world/2016/09/26/venezuelan-papers-barred-from-mentioning-corruption-allegations-against-hugo.html> / <http://www.lanacion.com.ar/1941064-sin-titulo>

president. Although it is not verified whether sanctions would be imposed, the series has not been aired in Venezuela.¹⁷⁷

Article 13.3 of the American Convention stipulates that the right to free expression “may not be restricted by indirect methods or means, such as the abuse of the government or private controls over newsprint, radio broadcasting frequencies, or equipment use in the dissemination of information, or by any other means tending to impede the communication and circulation of ideas and opinions.”

The freedom of expression includes both an individual and a collective dimension, the right to express and receive ideas, respectively. These must be secured simultaneously. According to a 1985 IACHR advisory opinion on the *Compulsory Membership in an Association prescribed by Law for the Practice of Journalism* “that ‘public order’ or ‘general welfare’ may under no circumstances be invoked as a means of denying a right guaranteed by the Convention or to impair or deprive it of its true content.”¹⁷⁸

With the phrase “no censorship shall be established,” Article 57 of the Venezuelan Constitution bluntly declares the prohibition of censorship.

Principle 5 of the Declaration of Principles on Freedom of Expression provides further protections, stating that, “Prior censorship, direct or indirect interference in or pressure exerted upon any expression, opinion or information transmitted through any means of oral, written, artistic, visual or electronic communication must be prohibited by law. Restrictions to the free circulation of ideas and opinions, as well as the arbitrary imposition of information and the imposition of obstacles to the free flow of information violate the right to freedom of expression.” For the media that remains active in Venezuela, fear of government reprisal often results in self-censorship.

These measures directly prohibit the punishment or reward to journalists according to their editorial line. The very premise of an independent media is that they have the right to carry out their work independently without any direct or indirect pressure aimed at influencing their reporting.

In 2005, the criminal code definition of defamation was expanded to criminalize “disrespect” of government officials and if directed at the president, can result in a prison sentence of up to 30 months.

David Natera Febres, the former editor of *Correo del Caroní* was convicted of defamation after his independent newspaper conducted an investigation into corruption at a state-run mining company and is currently serving his four year sentence.

The practice of using indirect mechanisms to force censorship also continues. The outstanding issue concerning the high rate of radio stations operating with expired licenses

¹⁷⁷ <http://www.oas.org/es/cidh/expresion/showarticle.asp?artID=1052&IID=2>

¹⁷⁸ Inter-American Court of Human Rights. Advisory Opinion OC 5-85 of November 13, 1985. *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism* (Arts. 13 and 29 of the American Convention on Human Rights), paragraph 67.

as a result from the government's failure to respond to their renewal applications remains unresolved.¹⁷⁹ On June 10, *La Barinosa* radio station was closed on the grounds of its expired license.¹⁸⁰

Television station Globovisión, whose license expired in March 2015, is still waiting for a response to its application for renewal. The channel remains on air, and has been subject to verbal attacks from President Maduro. In January of 2017, CONATEL announced that it would open a case against the network to determine its compliance with the law on Social Responsibility for Radio and TV.¹⁸¹

In 1949, in the aftermath of World War II and as the international system was being established, Winston Churchill famously said that “a free Press is the unsleeping guardian of every other right that free men prize; it is the most dangerous foe of tyranny. Where men have the habit of liberty, the Press will continue to be the vigilant guardian of the rights of the ordinary citizen.” As an individual, the right to speak one's truth is just as important as the right of the other to speak his truth.

Instead of allowing for truth, the Venezuela government has decided the independent media is the enemy.

Since the May report, the IACHR Special Rapporteur for Freedom of Expression, Edison Lanza, has released three additional statements concerning the situation in Venezuela including a joint statement released with the United Nations Special Rapporteur on the right to freedom of opinion and expression, David Kaye, on media freedoms on Venezuela, on August 4, 2016. The statement highlights reports of “arrest for inquiry of at least seven journalists, media workers and the retention of their work equipment.” In the statement Kaye argued that “the harassment of the media by law enforcement agents obviously hampers journalists' ability to carry out their vital work and propagate a powerful chilling effect affecting the entire society.”¹⁸²

There continues to be a growing number of reports of more aggressive tactics of intimidation, and in some cases physical violence used against journalists, including cases where journalists have been detained, interrogated, and/or had their equipment confiscated.

Espacio Público, a local NGO that focuses on free speech in Venezuela, identified 366 cases where the freedom of expression has been violated in 2016. The number of cases spiked in October 2016, with 119 violations reported during the October protests, whereas common complaints included eviction of reporters from protest zones and illegitimate demands for permits to cover public events which sometimes escalate into violence. Emmanuel Rivas of

¹⁷⁹ IACHR. 2015 Annual Report. Report of the Special Rapporteur for Freedom of Expression. Chapter II (Evaluation of the state of Freedom of Expression in the Hemisphere). OEA/Ser.L/V/II. Doc. 48/15. December 31, 2015. Paragraph 1131.

¹⁸⁰ <http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=20343&LangID=E#sthash.UO4s5ZkC.dpuf>

¹⁸¹ <http://globovision.com/article/conatel-anuncia-oficialmente-procedimiento-administrativo-a-globovision>

¹⁸² <http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=20343&LangID=E#sthash.UO4s5ZkC.dpuf>

El Pitazo was hit multiple times by birdshot fired by riot police. Nairoby Rodríguez, also of *El Pitazo*, was hit in the head with a rock as police and government supporters responded violently to protests. Rubenis González of *Version Final* was also hit with a rock and had his press vehicle damaged. Security forces assaulted and briefly detained radio reporter Rosa Reyes as she interviewed protesters. Police also detained Anderson Herrera, a photographer for the newspaper *El Oriental de Monagas* in Maturín state, and forced him to erase photographs.

Attacks have not been limited to Venezuelan journalists, and aggressive tactics have been increasingly used against foreign journalists.

On September 3, 2016, Braulio Jatar, a Chilean-born Venezuelan journalist who directs *Reporte Confidencial*, an independent digital news outlet in Nueva Esparta State, was detained after covering a spontaneous pot-banging protest against President Maduro, in Villa Rosa on Margarita Island. With his whereabouts unknown for more than 36 hours, Jatar's disappearance has received widespread attention in Venezuela and internationally.

Although the SEBIN report shared with Jatar's defense team accused Jatar of allegedly organizing "destabilization" activities with opposition groups, he has formally been charged with money laundering, which carries a prison sentence of up to 15 years in prison. Reportedly, two eye-witnesses claim to have seen the approximately \$25,000 USD cash that was allegedly found in Jatar's vehicle. The eye-witnesses have not been found to corroborate their initial testimony and Jatar claims the evidence was planted. Jatar is still in pretrial detention in a high security prison.

In October, 2016, American journalist Matthew Gutman was detained by SEBIN officials while investigating news report on the hospital conditions in Valencia, in the state of Carabobo. Gutman and the two physicians were held in government headquarters in Valencia for 72 hours, whereupon Gutman was put on a plane back to the United States. The two doctors have been released.¹⁸³

On February 11, 2017, Brazilian journalists Leandro Stoliar and Gilzon Souza de Oliveira and members of the anti-corruption organization *Transparencia Venezuela*, Jesus Urbine and Maria Jose Tua, were detained by agents from the SEBIN while taking photographs and videos of the Nigale Bridge in the city of Maracaibo, as part of an investigation into the scandal involving the Brazilian company Odebrecht. The journalists' computers, cameras and cell phones were confiscated by authorities. Reportedly in custody for nearly 36 hours, the Brazilian journalists claim that they were interrogated and intimidated by SEBIN while in detention.

Numerous independent media offices including El Nacional, Diario de los Andes, Correo del Caroni, and the digital news outlet Crónica Uno were also vandalized or violently attacked.

¹⁸³ <http://www.foxnews.com/world/2016/10/27/abc-news-matt-gutman-detained-in-venezuela-for-72-hours-for-reporting-on-health.html>

By rejecting the right to free expression and by using criminalization to quiet political criticism, the Venezuelan Government is in direct violation of its own Constitution, as well as its international commitments. A society without dialogue is simply unjust and undemocratic.

RECOMMENDATION 6: WE REQUEST A NEW COMPOSITION OF THE SUPREME COURT OF JUSTICE, FOR WHICH THE EXECUTIVE AND THE LEGISLATURE MUST WORK TOGETHER, IN ACCORDANCE WITH THEIR OBLIGATIONS, GIVEN THAT THE CURRENT COMPOSITION IS COMPLETELY FLAWED BOTH IN THE APPOINTMENT PROCESS AS WELL AS IN THE POLITICAL BIAS OF VIRTUALLY ALL ITS MEMBERS

There is serious concern about the legitimacy of the Judiciary, given that 50% of the sitting justices of the TSJ, the highest court in the land, do not meet the requirements set forth by the Constitution and the Organic Law of the TSJ.

According to *Acceso a la Justicia*, a non-governmental organization, of the total number of sitting justices, 16 fail to meet all of the stipulated requirements.¹⁸⁴ One of the constitutional requirements for becoming a TSJ justice is, for example, to be a citizen of good repute. According to this Venezuelan organization, in the case of nine of the justices “there is reasonable doubt about their honor and reputation.”¹⁸⁵ One of them was criminally prosecuted for murder twice and also had disciplinary sanctions imposed against him. Four other justices were suspended or removed from their positions at some point in their professional careers, while the four remaining justices were called out for ethically questionable actions in the discharge of their functions within the Judiciary. The published list of those nine justices includes the recently appointed Chief Justice of the TSJ, Maikel Moreno Pérez, since he has “twice been linked to murder cases.”¹⁸⁶

The report further concluded, “at least 9 of the 32 justices were political party members, by reason of which they could not hold office without first having quit their party. It is not known whether they in fact submitted their resignation, but their political connections and their actions with regard to the TSJ lead one to suspect that their ties with their respective political camps remain intact. Of the 23 justices not belonging to a political party, at least six have offered visible support for the regime through their decisions and use of political

¹⁸⁴ Acceso a la Justicia (2016), Report on compliance with the requirements for justices of the TSJ, July 2016. Available in Spanish at: <http://www.accesoalajusticia.org/wp/wp-content/uploads/2016/07/Perfil-de-magistrados-del-TSJ-julio-2016.pdf>

¹⁸⁵ Acceso a la Justicia (2016), Report on compliance with requirements for justices of the TSJ, July 2016, p. 7. Available in Spanish at: <http://www.accesoalajusticia.org/wp/wp-content/uploads/2016/07/Perfil-de-magistrados-del-TSJ-julio-2016.pdf>

¹⁸⁶ Acceso a la Justicia (2016), Report on compliance with requirements for justices of the TSJ, July 2016, p. 8. Available in Spanish at: <http://www.accesoalajusticia.org/wp/wp-content/uploads/2016/07/Perfil-de-magistrados-del-TSJ-julio-2016.pdf>

rhetoric, casting doubt on whether they are truly acting autonomously and independently, conditions indispensable to performing the duties of highest judge of the Republic.”¹⁸⁷

Given the doubts surrounding the legitimacy of the TSJ, not only in connection with the justices’ qualifications but also regarding the procedures followed, the National Assembly established the *Special Commission to Reclaim the Institution of the Supreme Court of Justice* on June 7, 2016, to review and examine the process for selecting TSJ justices and alternates, under the premise that “The National Assembly, by virtue of its power of self-protection (*autotutela*), is entitled to review its own acts at any time, provided that it determines via its investigation, review, examination and analysis functions that those acts were issued in contravention of the procedural formalities and requirements set forth in the Constitution, in the National Assembly’s Internal Debate Rules and in such other rules and regulations issued relative to each topic; accordingly, once violations or errors affecting their validity have been established, it may decide to revoke them or render them null and void and consequently declare said acts no longer in effect.”¹⁸⁸

The Commission’s final report recommended that the Assembly declare null and void “the procedural acts associated with the invalid process for selection of the principal and alternate justices of the Supreme Court of Justice that concluded in December 2015.” The commission also recommended proceeding as soon as possible to appoint the members of the judicial nominating committee that would be charged with the process of selecting the new members of the TSJ.¹⁸⁹ The National Assembly approved the commission’s recommendations at its plenary session of 14 July.

The TSJ responded with decision 614/2016 of July 19, 2016, which invalidated the Assembly’s decision. The country’s highest court reasoned, *inter alia*:

- That the parliamentary act by means of which the deputies of the National Assembly approved the report submitted by the annulled Special Commission to Reclaim the Institution of the Supreme Court of Justice, during the National Assembly regular session held July 14, 2016, is null and void.
- That any commission or other invention or action whose purpose it is to undo the appointment of Justices subverts the Constitutional procedure for removal of Supreme Court Justices and, therefore, is entirely null and void and devoid of any validity, existence and legal effect; and those who take part therein shall be subject to criminal, civil, and administrative liability as applicable.

¹⁸⁷ Acceso a la Justicia (2016), Report on compliance with requirements for justices of the TSJ,” July 2016, p. 41. Available in Spanish at: <http://www.accesoalajusticia.org/wp/wp-content/uploads/2016/07/Perfil-de-magistrados-del-TSJ-julio-2016.pdf>

¹⁸⁸ “Asamblea Nacional designó una Comisión Especial para el rescate de la institucionalidad del TSJ,” June 8, 2016, <http://monitorlegislativo.net/asamblea-nacional-designo-una-comision-especial-para-el-rescate-de-la-institucionalidad-del-tsj/>

¹⁸⁹ Final report, Special Commission to Reclaim the Institution of the Supreme Court of Justice, July 7, 2016, http://www.asambleanacional.gob.ve/uploads/botones/bot_4c4923abf6878796d3058018b1166ddbdc9dfa6e.pdf

- That all acts issued during the National Assembly regular session held July 14, 2016, are devoid of any validity, existence and legal effect, their absolute invalidity owing to unconstitutionality having been declared in the preceding point.
- That the parliamentary act issued in the special session of December 23, 2015, whereby 34 Justices were appointed and sworn in to fill the vacancies in the Supreme Court of Justice, retains full validity; consequently, they shall remain in their posts in the Supreme Court of Justice for the corresponding Constitutional term.

Given the systematic neutering of the National Assembly by the Supreme Court described in the previous section, it is hardly surprising that no progress has been made on renewing the legitimacy of the members of the Supreme Court chosen by the previous government-controlled legislature in late December 2015.

RECOMMENDATION 7: WE ENCOURAGE THE CREATION OF AN INDEPENDENT MECHANISM TO COMBAT CORRUPTION, COMPOSED OF INDEPENDENT INTERNATIONAL EXPERTS SUPPORTED BY THE UNITED NATIONS SYSTEM (CHARACTERISTICS OF CICIG) AND / OR OAS (MACCIH)

Corruption is a challenge central to our region’s stability and growth because it not only undermines citizens’ trust in their government; it directly impacts the people economically. Where corruption is high trade, investment and economic growth decrease. The Americas has one of the highest levels of disproportion between wealth and poverty and with as many as 168 million people living in poverty, remain one of the most unequal regions in the world.¹⁹⁰

The fight against corruption is a key aspect of the democratic exercise of power enshrined in the OAS, and as such, is a priority for all Member States. Article 4 of the Inter-American Democratic Charter characterizes “probity” as an “essential component[s] of the exercise of democracy.” Probity, ethics and republican decorum are not merely ideology; they are essential democratic values whose implementation brings hope to new generations. It is how we push back against the collusion of politics and money in the public arena that simply drives the people away from political activity and participation in the decision-making that shapes their future.

Recognizing corruption as a serious threat to democracy, Member States made this issue a priority at the first Summit of the Americas held in Miami in December 1994. Venezuela is one of the original signatories of the 1996 Inter-American Convention against Corruption. Article VI of the Convention lists “the solicitation or acceptance, directly or indirectly,”¹⁹¹ the “offering or granting, directly or indirectly,”¹⁹² “any act or omission in the discharge of

¹⁹⁰ ECLAC – According to UNDP statistics this is 18% more than Sub Saharan Africa and 36% more the East Asia.

¹⁹¹ Article VI.1(a) Inter-American Convention Against Corruption. 1996

http://www.oas.org/en/sla/dil/inter_american_treaties_B-58_against_Corruption.asp

¹⁹² Article VI.1(b) Ibid

his duties,”¹⁹³ of a “government official or a person who performs public functions, of any article of monetary value, or other benefit, such as a gift, favor, promise or advantage for himself or for another person or entity, in exchange for any act or omission in the performance of his public functions.”¹⁹⁴

Venezuela is one of the most corrupt countries on earth, and its vast oil wealth is being plundered mercilessly and systematically by the government and the armed forces while people go hungry. A glimpse of the scale of graft in the country was provided in October of 2016 by the National Assembly’s Committee of the Comptroller, which at that time estimated the theft of national assets to be worth \$70 billion. At the time, the Vice-President of the Committee, Ismael García, said that the Committee’s corruption investigations would continue because it suspected that even larger sums, on the order of \$300 billion, had probably been stolen through various corruption schemes.¹⁹⁵

In the Secretary General’s first report on Venezuela, the country held the 158th place on the list of 168 countries in Transparency International’s 2015 Corruption Perceptions Index. In Transparency International’s 2016 Corruption Perceptions Index, Venezuela is ranked 166th out of 176 countries.¹⁹⁶ Perhaps more notable than the fact that the Corruption Perceptions Index continues to list Venezuela as one of the more corrupt countries on the planet is that the Venezuelan National Intelligence Service (SEBIN) arrested two members of Transparency International’s Venezuelan chapter and two Brazilian journalists in Maracaibo, Zulia State on February 11th, as mentioned earlier in this report. The group was researching Venezuelan connections to the Odebrecht corruption scandal.¹⁹⁷ *Transparencia Venezuela* had previously asked the government to publish all public works contracts signed with Brazilian companies and to conduct an exhaustive investigation into possible Venezuelan aspects of the scandal.¹⁹⁸

Meanwhile, the U.S. Department of Justice has been conducting a wide-ranging investigation into a large corruption and bribery scheme involving energy companies in the United States seeking to secure contracts from Venezuela’s state-owned and state-controlled energy company, *Petroleos de Venezuela S.A.* According to a press release from the United States Department of Justice, on June 16, 2016, Roberto Enrique Rincon Fernandez, “the owner of multiple U.S.-based energy companies pleaded guilty [...] to foreign bribery and tax charges for his role in a scheme to corruptly secure energy contracts from Venezuela’s state-owned and state-controlled energy company, *Petroleos de Venezuela S.A. (PDVSA).*”

¹⁹³ Article VI.1(c) Ibid

¹⁹⁴ Article VI.1(a),(b) Ibid

¹⁹⁵ “70 mil millones de dólares fueron desviados por corrupción: Contraloría de la AN,” Runrun.es, October 16, 2016, <http://runrun.es/uncategorized/282939/70-mil-millones-de-dolares-desviados-por-corrupcion-contraloria-de-la-an.html>

¹⁹⁶ Transparency International 2016 Corruption Perceptions Index, Venezuela, <https://www.transparency.org/country/VEN>

¹⁹⁷ “Transparency International Calls for the Immediate Release of Two Members of Its Venezuelan Chapter,” Transparency International, February 11, 2017, https://www.transparency.org/news/pressrelease/transparency_international_calls_for_the_immediate_release_of_two_members_o

¹⁹⁸ <https://transparencia.org.ve/project/transparencia-venezuela-investigara-a-constructoras-brasileras-en-el-pais/>

Rincon “admitted to making bribe payments to [...] PDVSA officials in order to ensure that his companies were placed on PDVSA-approved vendor lists and given payment priority so that they would get paid ahead of other PDVSA vendors with outstanding invoices”.¹⁹⁹ Two other energy industry businessmen, Juan Jose Hernandez Comerma and Charles Quintard Beech III, also pleaded guilty in a U.S. federal court in Houston on January 10, 2017.²⁰⁰

Two glimpses of government corruption in the food importation sector are emblematic of broader and systematic corruption inside the State. The Associated Press investigation mentioned earlier described how one South American businessman “said he paid millions in kickbacks to Venezuelan officials as the hunger crisis worsened, including \$8 million to people who work for the current food minister, Gen. Rodolfo Marco Torres. [...] Bank documents from the businessman's country show that he was a big supplier, receiving at least \$131 million in contracts from Venezuelan food ministers between 2012 and 2015. He explained that vendors like him can afford to pay off military officials because they build huge profit margins into what they bill the State. For example, a \$52 million contract for yellow corn was drawn up to be charged at more than double the market rate at the time, suggesting a potential overpayment of more than \$20 million for that deal alone. Internal budgets from the ministry obtained by AP show the overpayment continues. For example, the government budgeted for \$118 million of yellow corn in July at \$357 a ton, which would amount to an overpayment of more than \$50 million relative to prices that month.”²⁰¹

The other example in the same sector is alleged to have been organized by Venezuelan businessman Samark José López Bello who apparently made millions from importing food at artificially inflated prices for the "Local Storage and Production Committees" (*Comités Locales de Abastecimiento y Producción - CLAP*) a government program to deliver food house to house. A company under López' control “allegedly bought 4,509,157 cases of food in Mexico worth \$8 each, while the Venezuelan government paid the company over three times more at \$35 per case, the news outlet reported. This would mean that for an investment of just over \$36 million, López's business was paid nearly \$158 million by the state.”²⁰² Samark Lopez was named as a “Specially Designated Narcotics Trafficker” along with the Vice-President of Venezuela, Tareck El Aissami, on February 13, 2017 by the U.S. Department of the Treasury.

¹⁹⁹ Businessman Pleads Guilty to Foreign Bribery and Tax Charges in Connection with Venezuela Bribery Scheme, U.S. Department of Justice, June 16, 2016, <https://www.justice.gov/opa/pr/businessman-pleads-guilty-foreign-bribery-and-tax-charges-connection-venezuela-bribery-scheme>

²⁰⁰ “2 energy-industry businessmen plead guilty in Houston to foreign bribery charges in connection with Venezuelan contract scheme,” U.S. Immigration and Customs Enforcement, January 10, 2017, <https://www.ice.gov/news/releases/2-energy-industry-businessmen-plead-guilty-houston-foreign-bribery-charges-connection>

²⁰¹ “Venezuela Military Trafficking Food as Country Goes Hungry,” The Associated Press, January 1, 2017, <http://bigstory.ap.org/article/69e87948759d4f0ab81326718bf89032/venezuela-military-trafficking-food-country-goes-hungry>

²⁰² “Negocio de Samark López con los CLAP ascendería a 121 millones de dólares,” February 21, 2017, Runrun.es, <http://runrun.es/nacional/298399/negocio-de-samark-lopez-con-los-clap-ascenderia-a-121-millones-de-dolares.html> and “Venezuela Kingpin' Skimmed Millions from State Food Program: Report,” InSight Crime, February 22, 2017, <http://www.insightcrime.org/news-briefs/venezuela-kingpin-skimmed-millions-state-food-program-report>

Government is a service to the public. Those who are elected to represent the people are there as an instrument to channel the voice of the citizens into the decision-making process of the State. A government's legitimacy is bestowed by its citizens. It is a vocation for serving the common good. It is not where individuals seek profit, or power. It requires consistency between our words and our actions. To be able to honor leadership, without abusing the power that comes along with it. Our moral principles mean nothing if we do not fight every day against corruption, and do not address the enormous inequalities facing our citizens.

Therefore we continue to call for the establishment of an independent mechanism to combat corruption composed of independent international experts supported by the United Nations or the OAS.

RECOMMENDATION 8: WE CALL FOR THE INCORPORATION OF THE TECHNICAL SUPPORT OF THE UNITED NATIONS HIGH COMMISSIONER FOR HUMAN RIGHTS AND HIS REPRESENTATION ON THE TRUTH COMMISSION.

On February 24th, 2014, President Maduro asked the National Assembly to establish a Truth Commission to “investigate all the fascist crimes”²⁰³ which were allegedly committed by opposition forces during the protests earlier that month which shook the country and resulted in 43 people losing their lives. The following month, the Government-controlled National Assembly complied, and created a Commission without the presence of legislators from the opposition.²⁰⁴ The format of the Commission would have left the MUD seriously underrepresented, and so it presented its own version of a Commission in April of the same year.

It wasn't until two years later, on April 12, 2016, that the Venezuelan government launched the *Truth, Justice, and Victims Reparation Commission* with the described purpose of focusing on human rights violations and preventing coups and other attempts to undermine democracy, during the period 1999 to the 2014 protests. At that time, the Commission was widely seen as the Government's response to the *Amnesty Law* passed by the National Assembly that was intended to ensure the release of approximately 115 political prisoners for actions dating back to 1999. The law was ultimately rejected by the Supreme Court.²⁰⁵

²⁰³ “Maduro pide a la AN creación de una Comisión de la Verdad,” El Universal, February 24, 2014, <http://www.eluniversal.com/nacional-y-politica/protestas-en-venezuela/140224/maduro-pidio-a-la-an-creacion-de-una-comision-de-la-verdad>

²⁰⁴ “El parlamento de Venezuela constituye una “comisión de la verdad” sin presencia de la oposición,” RTVE, March 19, 2014, <http://www.rtve.es/noticias/20140319/parlamento-venezuela-constituye-comision-verdad-sin-participacion-oposicion/899760.shtml>

²⁰⁵ The UN High Commissioner for Human Rights (UNHCHR) released a statement on April 12, 2016 noting surprise at the Supreme Court ruling against the Amnesty and National Reconciliation Bill. At the request of the Venezuelan Government, the UNHCHR had sent a legal analysis of the bill to the Government indicating that the text of the legislation was in line with international human rights standards. <http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=19808&LangID=E>

The Commission was to be led by then Vice-President of Venezuela, Aristóbulo Istúriz, who President Maduro described as “having first-hand experience ‘living the circumstances of the last 28 years.’”²⁰⁶ Istúriz characterized the Commission’s mandate as “visualizing and hearing [the testimony of] people affected by the violent acts that occurred in the country [in 2014].”²⁰⁷

Then Secretary General of UNASUR Ernesto Samper was asked to participate in the Commission, along with the former Prime Minister of Spain, José Luis Rodríguez Zapatero, and the former President of the Dominican Republic, Leonel Fernández, and the former President of Panama, Martín Torrijos. The latter three members would also subsequently be coordinators in the failed 2016 dialogue supported by the Vatican. Although the opposition coalition was publicly invited to participate in the Commission, the MUD rejected the invitation citing the lack of impartiality of the initiative. The MUD was particularly critical of Samper’s participation.

After the initial announcements, there is no indication that any sincere action has been taken on the Truth Commission, nor has Venezuela made any efforts to seek technical assistance from the Office of the UN High Commissioner for Human Rights.

VENEZUELA AND THE UNITED NATIONS HIGH COMMISSION FOR HUMAN RIGHTS

Despite currently having a seat on the UN Human Rights Council for a term that will expire in 2018, Venezuela has not demonstrated significant cooperation with the UN body.

In October 2016, Venezuela presented the second cycle of its Universal Periodic Review to the Human Rights Council. During his opening statement, UN High Commissioner on Human Rights Zeid Ra’ad Al Hussein (UNHCHR) stated that Venezuela had refused visas to the Human Rights Commission Regional Representative noting that,

“Its comprehensive denial of access to my staff is particularly shocking in the light of our acute concerns regarding allegations of repression of opposition voices and civil society groups; arbitrary arrests; excessive use of force against peaceful protests; the erosion of independence of rule of law institutions; and a dramatic decline in enjoyment of economic and social rights, with increasingly widespread hunger and sharply deteriorating health-care. My Office will continue to follow the situation in the country very closely, and we will state our concerns for the human rights of Venezuela’s people at every opportunity. Respect for international human rights norms can create a narrow path upon which the Government and the opposition can both tread, to address and resolve peacefully the country’s current challenges

²⁰⁶ <http://www.telesurtv.net/english/news/Venezuela-Launches-Truth-and-Justice-Commission-Against-Coups-20160412-0021.html>

²⁰⁷ <https://venezuelanalysis.com/news/11932>

– particularly through meaningful dialogue, respecting the rule of law and the Constitution.”²⁰⁸

The UNHCHR has thanked the Secretary General of the OAS for recommending that Venezuela work with his office on the Truth Commission and notes that his office stands ready to assistance in addressing the human rights challenges in Venezuela.

In October 2014, the UNHCHR had previously released a statement urging Venezuela to release “arbitrarily detained protestors and politicians.”²⁰⁹ The statement specifically references the cases of prominent opposition politicians López and Ceballos who, as described earlier in this document, remain in detention today.

Venezuela also continues to have a number of outstanding requests for visits under UN special procedures²¹⁰ to which it has not responded, including;

- UN *Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context* (requested 2017);
- UN *Special Rapporteur on the independence of judges and lawyers* (last reminder send November 2015);
- UN *Special Rapporteur on the promotion and protection of the right to freedom of expression* (last reminder send April 2105);
- UN *Working Group on Arbitrary Detention* (last reminder send March 2015);
- UN *Special Rapporteur on violence against women, its causes and consequences* (last reminder send February 2014);
- UN *Special Rapporteur on the rights to freedom of peaceful assembly and association* (last reminder send October 2013); and
- UN *Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment* (last reminder send February 2013).

IV. CONCLUSIONS AND NEXT STEPS

As expressed in the first report, these documents are an impartial analysis of facts and circumstances that have been determined to be truthful as the situation has evolved in Venezuela. The agenda set out at that time remains the same. It is time to seek solutions to the problems outlined and to produce concrete results.

The recommendations from the first report have been updated to reflect the latest state of affairs. These recommendations seek to contribute to a solution that, as said from the outset, must be made for the future of Venezuela, by the Venezuelan people.

²⁰⁸ <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=20474#sthash.mgvJLu7I.dpuf>

²⁰⁹ <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=15187>

²¹⁰ <http://spinternet.ohchr.org/Layouts/SpecialProceduresInternet/ViewCountryVisits.aspx?Lang=en&country=VEN>

The constitutional order of Venezuela must urgently be restored in a manner consistent with the essential elements and fundamental components of representative democracy outlined in Articles 3 and 4 of the Inter-American Democratic Charter.

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

The absence of basic protections in Venezuela means that one cannot expect a gubernatorial election to fix these structural problems, just as they were not resolved by the election of the National Assembly in December 2015. Any elected position won by a member of the opposition can be retaken by the Executive without any regard for electoral procedure, as was the case of the five mayors from the political party *Voluntad Popular*. In the absence of the basic protections of a democratic system, where electoral processes have been manipulated, the violation of the principle of the separation of powers resulting from the alteration of the political system by an authoritarian Executive means that the expression of the will of the people is not and cannot be respected. Just as the popularly elected National Assembly sees its efforts censured and is declared in permanent contempt by the Judiciary, one can see similar measures to prevent the will of the people from being expressed in the form of other elected public positions. Political parties have been especially hurt from the adoption of a particularly restrictive set of regulations that are being applied from the standpoint of promoting exclusion rather than inclusion. It is completely absurd that those who have violated the Constitution in all its possible forms, even in its most basic principles, should impose such a restrictive set of rules, in such a strict manner, sharply reducing the opportunities for political representation. Democracy requires protected space for political participation; the registration of parties and candidates should be done to ensure the greatest range of options for the electorate. These options are required by the people and by the Democratic Charter which stipulates that States must strengthen their political parties, rather than weaken them (Article 5).

Recommendations:

- Full General Elections without delay that satisfy all international electoral observation standards, including international election observation. The time for the recall referendum—the last Constitutional solution—has passed. There has been a complete break in the democratic order and the only democratic solution is to place the power back into the hands of the people to decide their fate.

General elections are essential to enabling Venezuela to return to democracy and the rule of law and thereby implement the social, financial, economic and political solutions it needs. The existence of authorities vetted by a free, fair and transparent

democratic process will provide the country the necessary legitimacy to secure the financial assistance it needs to revive its productive sectors, especially the oil sector.

- Holding new general elections will make it possible to implement an effective system for combating corruption modeled after the CICIG or the MACCIH. A full scale, international campaign to investigate the misuse of government resources and widespread corruption must be undertaken. The money stolen from the Venezuelan people must be returned, once the constitutional order has been reestablished.
- Until that happens, it is essential for any of the States to continue imposing bilateral sanctions against persons linked to the government or government authorities involved in corruption or drug trafficking. The Vice President of the country was the subject of measures imposed by the U.S. Treasury Department, with more than three billion dollars in assets that have been frozen, the equivalent of half the value of Venezuela's food imports in 2012, properly highlighting the magnitude of the tragedy in Venezuela and the painful price being paid by the Venezuelan people. This reflects some of the numerous factors contributing to political, economic, and social destabilization in the country, caused by having authorities such as these.
- The immediate release of all political prisoners.
- The immediate establishment of a channel to provide humanitarian assistance (with emphasis on food and medical assistance) to the people of Venezuela.
- A return to the Constitutional order with full respect for the separation of powers for each of the branches of government, according the rules outlined by the Constitution of Venezuela. These measures must include:
 - a. The restoration of authorities to the Legislative Assembly;
 - b. The democratic selection of the National Electoral Council; and
 - c. The democratic selection of the Supreme Court of Venezuela.

The General Secretariat of the Organization of American States will continue to cooperate with authorities, political actors and civil society in Venezuela to support this urgent need. It also reiterates its willingness to collaborate directly with, and to be actively involved in all ways possible to help achieve these objectives.

The General Secretariat still considers that the institutional crisis in Venezuela demands immediate changes in the actions of the Executive Branch as was previously indicated. The continued violations of the Constitution, particularly with regards to the balance of power between the branches of government, the independence and impartiality of the judicial branch, violations of human rights, the failure to implement the recall referendum and the lack of responsiveness to the humanitarian crisis in a country that undermines the full enjoyment of the social rights of the population. All of this demonstrates that the hemispheric community must assume its responsibility for moving forward with next steps, in accordance with the procedures outlined in Article 20.

Since the last discussion of the situation at Venezuela in the Permanent Council, extensive diplomatic efforts to promote the normalization of the situation and restore democratic institutions have been undertaken.

Continued efforts at dialogue have failed as the Government of Venezuela has repeatedly demonstrated that they have not participated in these processes in good faith. Instead of progress, the rights of the Venezuela have been further undermined and the economic, social, political, and humanitarian crisis has worsened.

Cosmetic fixes to democracy, such as offering gubernatorial elections or releasing political prisoners one by one, do not change the nature of the regime. A parody of democracy is not democracy. In the words of former political prisoner, and now political leader Aung San Suu Kyi, “sometimes I think that a parody of a democracy could be more dangerous than an obvious dictatorship, because it gives people the opportunity to avoid doing at least something about it.”

As we have said at the beginning of this report, Venezuela stands out in the region as the only former democracy to have spiraled down into an unrestrained authoritarianism which completely violates the principles established in Articles 3 and 4 of the Democratic Charter. This is a reality that we must be willing to acknowledge, not in hushed voices or behind closed doors, but out loud, on the record, in public. We must look forward and identify tangible steps that can be taken to support Venezuela in its return to the Constitutional order and back on the path of democracy and prosperity.

Jose Antonio Marina once said “It also needs to be acknowledged that while ethical standards are indispensable, in order to work harmoniously they must be adhered to by all, and it is a sign of social intelligence to show little tolerance toward offenders.” Our ethical standards are enshrined in the Inter-American Democratic Charter and in the OAS Charter—our tools for protecting democracy across the Americas from any government infractions. Let us use our hemispheric solidarity, our intelligence and our ethical standards to help Venezuela.

It is impossible to imagine a future for Venezuela without returning sovereignty to the people, because political solutions that are not supported by the people are degradable and degrading. They are especially degradable because they lack legitimacy; they are especially degrading because they delegitimize those who impose them.

THE ONLY POSSIBLE PATH TOWARD A DEMOCRATIC VENEZUELA:

As Secretary General of the Organization of American States, I must express my regret that the report I have written is brimming with abuses, rights violations, curtailment of civil, political and electoral freedoms, poverty, hunger, deprivation of liberty, torture, censorship, and the whole catalog of violations of political, social and personal dignity.

As head of the Organization’s central and permanent organ, I must acknowledge my frustration with the fact that the world’s oldest international organization has been unable to

act in time to halt this downward spiral of political, economic and social deterioration and collapse in such an important country of our region.

In writing this report I was guided by three certainties: the impartial analysis of the objective, accurate, facts contained in these pages; the importance of our inter-American principles; and that democracy shall once again, sooner rather than later, be the system of government in Venezuela.

As a friend to Venezuela and its people, I must recognize the limitations of multilateralism and foreign action in attempting to restrain the excesses and the senselessness of an administration and system of government that have driven their country to an extreme—not seen in the Hemisphere’s recent history. A complete and utter upending of democracy, the elite seeks to preserve their wealth and privileges and to escape justice.

The preceding pages have provided a review of the actions of the sub-region, the region, and the inter-American and international communities to restore institutional normalcy in Venezuela.

Since May 2016, the inter-American and international communities have in practice made use of the entire panoply and array of mechanisms provided for in Article 20 of the Inter-American Democratic Charter to stop institutional overreach in the Bolivarian Republic of Venezuela and to restore the constitutional order and democratic normalcy.

We have seen diplomatic initiatives and good offices undertaken, including by the Permanent Council itself, and categorically rejected by the Foreign Minister of Venezuela; we have seen the MERCOSUR countries find themselves forced to suspend Venezuela’s membership; UNASUR deemed it necessary to step in as a mediator, but made no progress; we have witnessed diplomatic intervention by the Holy See and the frustration voiced by its Secretary of State Pietro Parolín regarding the administration’s systematic, intentional failure to keep its word; even the previous U.S. administration took part in joint efforts, to no avail.

The Venezuelan government’s persistent refusal and absolute failure to honor its agreements have, in practice, caused the approach of diplomatic initiatives and good offices provided in Article 20 of the Democratic Charter to fail systematically. The prospects of any diplomatic course of action has been effectively shut down and exhausted.

The Venezuelan government has rejected the diplomacy and good offices not only of multiple countries in the region, but also of one the world’s oldest diplomatic bodies.

This failure does not only, or mainly, shut the door on the ability of the inter-American community to intercede, but above all condemns the people of Venezuela to a complete dismantling of democracy and of the system of rights and the total collapse of humanitarian, economic, and social conditions.

Despite the lack of results to date, I am nevertheless convinced that the OAS, as the bastion

of the Inter-American System and its democratic values, can still influence the situation in Venezuela.

Few moral and political sanctions carry more weight for a country's leaders than the scrutiny and measure of its peers. In a Hemisphere marked by democratic solidarity, which all our countries accepted as a positive right when we signed the Inter-American Democratic Charter, peer condemnation is the strongest tool we have. This is not only because of its international nature, but because a rights-violating government can lose its internal legitimacy in the face of collective censure by its hemispheric peers.

Nowhere in the recent history of the Western Hemisphere has a tyrant triumphed over the collective will of his peers. Ours is the region that, in its recent history, has proudly become a standard-bearer of democracy and has—since the adoption of the Democratic Charter, but even before that—stood in the way of every dictator who has attempted to cling to power and control the destiny of his people.

No example exists in the recent history of the countries of the Inter-American System where a dictator has triumphed over the collective will of the democratic States. We are the continent which in its recent history has proudly lifted the banner of democracy and stopped dictators - since the adoption of the Democratic Charter - who tried to perpetuate themselves in power and rule over the destiny of their people.

It has been the hallmark of this Hemisphere to hold high the liberating banner of solidarity: When the shadows of dictatorship descended upon the Southern Cone, it was Mexico, Venezuela (how important to recall this now!), the U.S. under President Carter, the IACHR and many others who helped us to bury the darkness of despotism.

When institutional subjugation and fratricide invaded Central America, it was the people of Latin America who, through national efforts and the Contadora Group initiative, came to their aid.

When Peru saw the rule of law trampled, when in Venezuela President Chávez suffered a coup d'état, when so many other countries neared the abyss of autocratic terror, the Hemisphere showed its solidarity and drew them back toward democracy.

Today, this is the moral and ethical obligation—the categorical imperative—we face as nations and as an organization: To bring Venezuela back to the principles of the Inter-American System and return democracy to the country.

I am absolutely convinced that the Heads of State and Government in the Americas share my conviction that this is the continent that believes that Videla, Gregorio Alvarez, Pinochet, Fujimori, Perez Jimenez, Noriega, Trujillo, the Duvaliers, Stroessner, Somoza, and so many others, are not only footnotes but instead, represent a tragic dimension in the history of our countries. This is the destiny of Nicolas Maduro and Diosdado Cabello. Our task is to free any of our countries from these unfortunates, based on Inter-American solidarity.

It was Albert Einstein who said that the world is a dangerous place to live; not because of the people who are evil, but because of the people who won't do anything about it. The very creation of the OAS, the signing of its Democratic Charter and our history show that this is not a region that won't do anything about it. We are committed to our values, to democracy, to human rights, to security, to development.

As a Hemisphere, we reject authoritarianism, are repulsed by torture, fight drug trafficking and organized crime, reject censorship, and consider poverty a disgrace to be overcome. In reading a report such as this, all our Heads of State and Government and Foreign Ministers will feel the same sadness I felt when writing it.

We advocate for effective, helpful dialogue in all its forms. In the case of Venezuela, we exhausted all options for dialogue, good offices, fact-finding missions, diplomatic initiatives, and rapprochement.

We have done the above in nearly every possible way:

- In the Permanent Council, in 2016, with resolutions proposing that the countries of the region support the dialogue with a good offices approach;
- With different configurations of countries, such as:
 - MERCOSUR
 - UNASUR
 - The Group of 15
 - The expanded Group of 15; and
- In formats involving States from within and without the region.

The Venezuelan government categorically rejected all of it, either by saying no directly or by bogging down dialogue initiatives in a quagmire of a perpetual failure.

An attempt to replicate exercises in mediation, diplomatic initiatives, good offices, field missions with new configurations, mediators, or other personalities would only give the administration another opportunity to buy time to maintain its privileges, while prolonging the misery of the people and the trampling of their rights. I am convinced that this would be the wrong move and would result in nothing but another failure. The Venezuelan people have no time left for that. This would be a return to 2014, and would mean taking the Venezuelan people hostage and extending their suffering.

ARTICLE 21 OF THE INTER-AMERICAN DEMOCRATIC CHARTER

Our predecessors, however, when drafting the Democratic Charter, were wise in presenting the array of possibilities and measures included in Chapter IV. As we know, the exhaustion of all channels of diplomacy and good offices under Article 20 triggers the possibility of suspension under Article 21.

Suspension should not be seen as a sanction against the people of Venezuela. To the contrary, the Venezuelan people, the large majority of whom do not feel represented by the current administration and are victims of its injustices, have been demanding this for some time.

Those who govern Venezuela have always had the opportunity and the power to restore the Constitution, and consequently, democracy in the country. They have the power to ensure the separation of powers, guarantee the independence of the judiciary and the National Electoral Council, give the people their electoral rights back, open a humanitarian channel, return the constitutional powers to the National Assembly and free all the political prisoners. They have not done these things because their logic is authoritarian and repressive. We believe these things should have been done within the framework of the Dialogue, and that would have helped to legitimize the process and its coordinator, former Spanish Prime Minister Zapatero. The list of solutions is obvious, these are the recommendations that we are presenting here; without addressing these solutions, democracy will not return to Venezuela.

The Venezuelan regime has the power to make these corrections and must try to address these institutional excesses and return to the constitutional and democratic order. Although the institutional deterioration of civil and political rights has been very severe over the past year, and in particular over the past three months, it is possible to quickly reverse these violations based on the responsibilities that Venezuela has under the Democratic Charter. The first thing Member States must do is recognize that there has been an alteration of the constitutional order and then call for its immediate return, in accordance with the Bolivarian Constitution as well as Articles 3 to 16 of the Democratic Charter. The General Secretariat offers its support in order for this to be done in accordance with the unavoidable commitments that Venezuela has with the Inter-American System. If the political system is not capable of responding positively to the recommendations within a 30 day time frame, then the provisions under Article 21 should be applied, especially given the amount of time that has elapsed since May of 2016. The unequivocal signal of resuming the constitutional order of the country is; a call for general elections in the next 30 days, the release of all political prisoners, recognition of the laws that have been annulled and the selection of a new CNE and a new TSJ, in accordance with the procedures outlined in the Constitution.

The ideal scenario is a democratic solution: A full general election in Venezuela without delay that is free, fair and transparent; an election that meets all international standards and therefore includes international observation that satisfies the accepted requirements for international election observations standards.

Consequently and in view of the above, I believe that if general elections are not held in accordance with the stipulated conditions, it would be necessary to suspend Venezuela from the activities of the Organization, pursuant to Article 21 of the Inter-American Democratic Charter.

Article 20 clearly stipulates the procedure in this regard: "If such diplomatic initiatives

prove unsuccessful, or if the urgency of the situation so warrants, the Permanent Council shall immediately convene a special session of the General Assembly. The General Assembly will adopt the decisions it deems appropriate ...”

Article 21 provides the measure that I consider necessary: “When the special session of the General Assembly determines that there has been an unconstitutional interruption of the democratic order of a member state, and that diplomatic initiatives have failed, the special session shall take the decision to suspend said member state from the exercise of its right to participate in the OAS by an affirmative vote of two thirds of the member states in accordance with the Charter of the OAS. The suspension shall take effect immediately. The suspended member state shall continue to fulfill its obligations to the Organization, in particular its human rights obligations.”

This step, which I unfortunately believe is necessary, does not preclude the continuation of OAS activities focused on restoring social peace and democracy in the country: “Notwithstanding the suspension of the member state, the Organization will maintain diplomatic initiatives to restore democracy in that state.”

The values of this Organization and of our countries plainly do not permit us to share a table within the Permanent Council or in other organs of the OAS with a government that disrupts the democratic order, that violates the rights of its citizens with impunity, that keeps political prisoners guilty only of dissent, that tortures, that steals, that corrupts, that traffics in drugs and subjects its people to shortages of the food, medicine and money they need to survive.

I propose the suspension of the Government of Venezuela from the Organization’s activities with the conviction that it will be for a short period of time. Venezuela will always be part of the OAS, and its presence is vital for all countries and for the General Secretariat.

All that is needed is for its next Administration to share the common values that are an essential precondition to belonging to the Organization.

In proposing to the Permanent Council that it consider suspension, I am placing principles and the best interests of the victims—the Venezuelan people—first. This is one of those times when we, as countries and as individuals, must place our values above national or personal interests.

Approving suspension of a Venezuelan government whose nature has changed is the clearest effort and gesture we can offer at this time for the people of that country, for democracy in the Hemisphere, for its future and for justice.

SOLIDARITY WITH THE PEOPLE OF VENEZUELA

The people of Venezuela can continue to count on the OAS and its General Secretariat. In my capacity as Secretary General, I reiterate my offer to engage in joint efforts to repair the fabric of democracy in the country and to establish humanitarian, social, anti-corruption

cooperation efforts, along with whatever other assistance programs prove urgent and necessary.

The people are the priority. The welfare of the people is the mirror that we must look into when we make policy; everything we do must reflect the rights of the people and their happiness. How much strength must a person have to assert their rights? Where does that strength come from? Where are the leaders when they are needed most? When strength resides solely in the hands of the people, it is because the political system as such has failed, or because their leaders are forced to work outside that system - in this case, because they are often imprisoned or neutralized by threats.

What can we do? What is the real solution? When people speak of a real solution they mean ousting the government; instead, we must speak of elections. That is the only real solution that exists. A solution without elections is an unreal solution; it extends the country's suffering in a time without democracy, the Constitution, or its institutions.

This report of the General Secretariat of the OAS in no way constitutes an exercise of anti-Venezuelan criticism; quite the opposite, it is intended as a constructive contribution to the defense of the rights of all Venezuelans, particularly the persecuted and prisoners of conscience, the hungry, the sick, those who struggle every day to survive, and especially, to those who are afraid to speak out, who fear repression, torture, and even death. Once again we are acting pursuant to our right and obligation to protect democracy and human rights throughout the Americas.

I would be grateful if this communication could be distributed among the Member States.

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

A handwritten signature in black ink, appearing to be 'Luis Almagro', written in a cursive style.

Luis Almagro
Secretary General