

# Situation of Human Rights in Venezuela



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INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

# Democratic Institutions, the Rule of Law and Human Rights in Venezuela

## COUNTRY REPORT

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## **ANNEX – LIST OF ACRONYMS**

<b>UNHCHR</b>	United Nations High Commissioner for Human Rights
<b>UNHCR</b>	United Nations High Commissioner for Refugees
<b>AN</b>	National Assembly [parliament]
<b>ANC</b>	National Constitutional Convention
<b>AVESA</b>	Venezuelan Association for Alternative Sexual Education
<b>AVN</b>	Venezuelan News Agency
<b>OAS Charter</b>	Charter of the Organization of American States
<b>CASLA</b>	Latin American Studies Center
<b>CDH-UCAB</b>	Human Rights Center of the Andrés Bello Catholic University
<b>CDJA</b>	Amazonas Judicial Detention Center
<b>CEAM</b>	Alfredo Manerio Editorial Complex
<b>CECODAP</b>	Community Learning Center
<b>CENAPROMIL</b>	National Center for Military Convicts
<b>CEP-UCAB</b>	Public Studies Center of the Andrés Bello Catholic University
<b>CEPAZ</b>	Justice and Peace Center
<b>CESPPA</b>	Strategic Center for Homeland Security and Protection
<b>CFRSJ</b>	Judicial System Functioning and Restructuring Commission
<b>CICPC</b>	Scientific, Criminal, and Criminological Investigation Corps
<b>IACHR</b>	Inter-American Commission on Human Rights
<b>CLAP</b>	Local Supply and Production Committees
<b>CLP</b>	Grassroots Struggle Circle
<b>CDN</b>	National Defense Council
<b>CNE</b>	National Electoral Council
<b>CNP</b>	National Journalists Association
<b>CODEHCIU</b>	Commission for Human Rights and Citizenship
<b>CODEVIDA</b>	Coalition of Organizations for the Right to Health and Life
<b>CODHEZ</b>	Human Rights Commission of the State of Zulia
<b>COFAVIC</b>	Committee for the Next of Kin of Victims
<b>Venice Commission</b>	European Commission for Democracy through Law
<b>Conatel</b>	National Telecommunications Commission

<b>American Convention</b>	American Convention on Human Rights
<b>Belém do Pará Convention</b>	Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women
<b>CORPOELEC</b>	National Electric Power Corporation
<b>I/A Court H.R.</b>	Inter-American Court of Human Rights
<b>CPJ</b>	Committee to Protect Journalists
<b>DDoS attack</b>	Distributed denial of service attack
<b>American Declaration</b>	American Declaration of the Rights and Duties of Man
<b>ESCR</b>	Economic, social, and cultural rights
<b>ESCER</b>	Economic, social, cultural, and environmental rights
<b>DGCIM</b>	Directorate General for Military Counter-Intelligence
<b>Dibise</b>	Bicentennial Public Security Arrangement
<b>Diepeb</b>	Police Intelligence and Strategy Division of the State of Bolívar
<b>DP</b>	Office of the Human Rights Ombudsperson
<b>DPLF</b>	Due Process of Law Foundation
<b>DW</b>	Deutsche Welle
<b>ENCOVI</b>	Survey on Living Conditions in Venezuela
<b>UPR</b>	Universal Periodic Review
<b>FAES</b>	Special Actions Force of the National Bolivarian Police
<b>FANB</b>	National Bolivarian Armed Forces
<b>FFAA</b>	Armed Forces
<b>FPV</b>	Venezuelan Criminal Forum
<b>FREYA</b>	Hispano-American Women's Center
<b>FUNDEPRO</b>	Foundation for Due Process
<b>Funsaz 171</b>	Care Services Foundation of Zulia
<b>GANHRI</b>	Global Alliance of National Institutions to Promote and Protect Human Rights
<b>GNB</b>	Bolivarian National Guard
<b>HRW</b>	Human Rights Watch
<b>IAPA</b>	Inter American Press Association
<b>IIHR</b>	Inter-American Institute of Human Rights
<b>INE</b>	National Statistics Institute
<b>CPI</b>	Corruption Perceptions Index

<b>LACSO</b>	Social Sciences Laboratory
<b>LGBTI</b>	Lesbian, gay, bisexual, transgender, and intersex
<b>MERCOSUR</b>	Southern Common Market
<b>MINSI</b>	Ministry of People's Power for Communication and Information
<b>MP</b>	Office of the Attorney General
<b>MPPRIJP</b>	Ministry of People's Power for Domestic Relations, Justice, and Peace
<b>MPPRE</b>	Ministry of People's Power for Foreign Affairs
<b>MUD</b>	Democratic Unity Roundtable
<b>NNA</b>	Children and adolescents
<b>OAS</b>	Organization of American States
<b>OEV</b>	Venezuelan Electoral Observatory
<b>IOM</b>	International Organization for Migration
<b>OLP</b>	People's Liberation Operation
<b>OLHP</b>	People's Liberation Humanitarian Operation
<b>UN</b>	United Nations
<b>OVP</b>	Venezuelan Prisons Observatory
<b>OVS</b>	Venezuelan Health Observatory
<b>OVV</b>	Venezuelan Violence Observatory
<b>PNB</b>	National Bolivarian Police
<b>PSUV</b>	United Socialist Party of Venezuela
<b>PROVEA</b>	Venezuelan Program for Education-Action in Human Rights
<b>PZ</b>	Zamora Plan
<b>REC</b>	Citizen Electoral Network
<b>REDHNNA</b>	Network for the Human Rights of Children and Adolescents
<b>RNV</b>	National Radio of Venezuela
<b>SEBIN</b>	Bolivarian National Intelligence Service
<b>IAPA</b>	Inter American Press Association
<b>TSJ</b>	Supreme Court of Justice
<b>UBCH</b>	Bolívar Chávez Battle Units
<b>UCAB</b>	Andrés Bello Catholic University
<b>UCV</b>	Central University of Venezuela
<b>Unasur</b>	Union of South American Nations
<b>UNICEF</b>	United Nations Children's Fund
<b>USB</b>	Simón Bolívar University



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# EXECUTIVE SUMMARY



## EXECUTIVE SUMMARY

1. The Inter-American Commission on Human Rights (IACHR) hereby presents its Country Report entitled *Democratic Institutions, the Rule of Law, and Human Rights in Venezuela*, its third report on the human rights situation in the Bolivarian Republic of Venezuela (Venezuela). The decision to produce this report stems from the marked deterioration in the country with respect to the exercise of human rights, and the grave political, economic, and social crisis in Venezuela over the past two years and, especially, in 2017.
2. In this report, the Inter-American Commission addresses the human rights situation in Venezuela by analyzing the impact on them of the dismantling of much of democratic institutional system and the alarming increase in repression, violence, and citizen insecurity. Against that backdrop, it examines the situation with respect to political rights, freedom of expression, social protest, and economic, social, cultural, and environmental rights. The IACHR analyzes, across the board, the specific harm done to individuals, groups, and communities that are at greater risk and/or are victims of historical discrimination and exclusion, such as women; children and adolescents; older persons; human rights defenders; persons deprived of liberty; migrants, refugees, and persons in a similar situation; and others. Based on that analysis, it makes recommendation to the State on how to improve protection and safeguards for human rights.
3. The Commission's analysis of the situation of human rights in Venezuela is based on information received through its various protection mechanisms over the past two years, particularly in 2017. In addition, while preparing its report, the IACHR requested information from both civil society organizations and the State, which are fundamental sources for this report. That information was basic for this report. It afforded insight into the human rights situation, which was then analyzed in light of international obligations applicable to Venezuela.<sup>1</sup> This report has four main focuses,

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<sup>1</sup> Specifically, the Commission bases its analysis on the obligations contained in the American Declaration of the Rights and Duties of Man and the Charter of the Organization of American States. Where relevant, it likewise takes into account other inter-American human rights treaties, such as the Inter-American Convention to Prevent and Punish Torture, the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women or Belém Do Pará Convention; the Inter-American Convention on Forced Disappearance of Persons; and the Inter-American Convention on the Elimination of All Forms of

which correspond to the Commission's core concerns with regard to Venezuela: (i) democratic institutions (both individually and as a system); (ii) social protest and freedom of expression; (iii) violence and citizen security and (iv) economic, social, cultural, and environmental rights (ESCER).

4. This report reflects the interdependence and indivisibility that exists between the infringements in Venezuela of civil, political, economic, social, cultural, and environmental rights. Together those rights constitute an indissoluble whole, which is why -- even though the ESCER are addressed separately in this report, -- the IACHR stresses that the effective exercise of democracy in any State necessarily presupposes the full exercise of all its inhabitants' rights and fundamental freedoms.
5. This year, the IACHR decided to include Venezuela in Chapter IVB of its 2017 Annual Report, pursuant to Article 59 of its Rules of Procedure. In accordance with the foregoing, the Commission finds that the situation in Venezuela falls within paragraphs 6.ai; 6.a.ii; 6.b; and 6.d.i of that article, which establishes the following criteria:

- a. a serious breach of the core requirements and institutions of representative democracy mentioned in the Inter-American Democratic Charter, which are essential means of achieving human rights, including:

- i. there is discriminatory access to or abusive exercise of power that undermines or denies the rule of law, such as systematic infringement of the independence of the judiciary or lack of subordination of State institutions to the legally constituted civilian authority;

- ii. there has been an unconstitutional alteration of the constitutional regime that seriously impairs the democratic order; [...]

- b. The free exercise of the rights guaranteed in the American Declaration or the American Convention has been unlawfully suspended, totally or partially, by virtue of the imposition of exceptional measures such as a declaration of a state of emergency, state of siege, suspension of constitutional guarantees, or exceptional security measures. [...] The presence of other structural situations that seriously affect the use and enjoyment of fundamental rights recognized in

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Discrimination against Persons with Disabilities. Consideration is also given to the Inter-American Democratic Charter.

the American Declaration, the American Convention or other applicable instruments. This criterion includes, for example: serious situations of violence that hinder the proper functioning of the Rule of Law; serious institutional crises; processes of institutional reform with serious negative consequences for human rights; or serious omissions in the adoption of necessary provisions to give effect to fundamental rights.

d. The presence of other structural situations that seriously affect the use and enjoyment of fundamental rights recognized in the American Declaration, the American Convention or other applicable instruments. Factors to be considered shall include the following, among others:

i. serious institutional crises that infringe the enjoyment of human rights; [...]

6. On November 21, 2017, the IACHR sent the State a draft copy of this report pursuant to Article 60 section (a) of its Rules of Procedure and asked it to submit comments by the non-extendable deadline of one month. The IACHR also informed the State of its inclusion in the executive summary of the report in Chapter IV.B of the 2017 Annual Report, approved by the IACHR pursuant to articles 59.7 and 59.10 of its Rules of Procedure.
7. The State submitted its response on December 21, 2017,<sup>2</sup> saying that “the draft Country Report presents a selective and highly biased view of the true human rights situation of the Bolivarian Republic of Venezuela, violating the principles that should apply to the treatment of human rights matters.”<sup>3</sup> In the State’s view, “to a large extent, this distorted view of the draft Report is the result of significant weaknesses in the methodology used to prepare it,” and “the draft report gives excessive weight to nonobjective sources while the official information provided by the State is excluded almost entirely, despite all the documentation and elements the State provided to the Commission in 2017 through the different mechanisms available.”<sup>4</sup>
8. For its part, the State considers that “the conditions set forth in inter-American law for including Venezuela in Chapter IV.B of the Annual Report

<sup>2</sup> Bolivarian Republic of Venezuela, Ministry of the People’s Power for Foreign Relations, Note AGEV/2017-000300, comments on the draft country report December 21, 2017.

<sup>3</sup> Bolivarian Republic of Venezuela, Ministry of the People’s Power for Foreign Relations, Note AGEV/2017-000300, comments on the draft country report December 21, 2017, para. 4.

<sup>4</sup> Bolivarian Republic of Venezuela, Ministry of the People’s Power for Foreign Relations, Note AGEV/2017-000300, comments on the draft country report December 21, 2017, para. 5.



of the IACHR have not been met. The Venezuelan Government therefore rejects its inclusion in this chapter and takes note of the Commission's offer [to conduct a country visit], but emphasizes that it is not possible to accept any mechanism that would involve the Venezuelan State's acceptance of its arbitrary inclusion in Chapter IV.B of the 2017 Annual Report."<sup>5</sup> Moreover, the State indicated its "willingness to have a constructive dialogue with the IACHR toward moving forward in compliance with its international obligations, based on the strict respect for the principles that must govern treatment of human rights matters, including principles of universality, objectivity, impartiality, and non-selectivity."<sup>6</sup>

9. The State concludes by highlighting that:

The Bolivarian Republic of Venezuela is a democratic and social constitutional State based on the rule of law and justice, with participatory and protagonist democracy that takes respect for and guarantee of human rights as a fundamental value. Like the other countries in the region, on issues of human rights, Venezuela has strengths as well as weaknesses. However, no objective and nondiscriminatory analysis would lead to the conclusion that the human rights situation in the Bolivarian Republic of Venezuela deserves treatment by the Organization of American States different from what it gives to other States.<sup>7</sup>

10. The State's comments have been included in this chapter where pertinent. The Commission approved this report on December 31, 2017.

### ***Democratic Institutions***

11. For several years now, the IACHR has been observing a gradual deterioration in the democratic institutional system and the human rights situation in Venezuela that has become significantly more intense and widespread since 2015. As the IACHR discusses in this report, there is complex set of issues rooted in interference by the Executive in the other branches of government. This breach of the principle of the separation of powers is most seriously manifested in the alarming behavior of the Judiciary, especially in the past two years. Indeed, the exacerbation of the recent crisis in Venezuela is closely linked to a series of decisions taken by

<sup>5</sup> Bolivarian Republic of Venezuela, Ministry of the People's Power for Foreign Relations, Note AGEV/2017-000300, comments on the draft country report December 21, 2017, para. 6.

<sup>6</sup> Bolivarian Republic of Venezuela, Ministry of the People's Power for Foreign Relations, Note AGEV/2017-000300, comments on the draft country report December 21, 2017, para. 7.

<sup>7</sup> Bolivarian Republic of Venezuela, Ministry of the People's Power for Foreign Relations, Note AGEV/2017-000300, comments on the draft country report December 21, 2017, para. 103.

the Supreme Court of Justice (TSJ) that amounted to interference with the National Assembly (AN) and violated the principle of the separation of powers. This situation worsened in 2017 to a point at which Judgments No. 155 and 156 handed down by the TSJ on March 28 and 29, respectively, produced an alteration of the constitutional order. In those judgments, the TSJ did away with the parliamentary immunity of deputies to the AN, established that their acts constituted "treason", granted the Executive broad discretionary authority, and arrogated to itself powers rightfully pertaining to the Legislature. As the IACHR pointed out at the time, those measures represented usurpation by the Judiciary and the Executive of powers constitutionally granted to parliament, as well as a de facto annulment of the popular vote, via which those deputies had been elected.<sup>8</sup>

12. The alteration of the constitutional order in Venezuela was possible due to a series of factors that mean that, in general, the country's democratic institutional system is seriously flawed. In the Commission's opinion, the lack of independence of the Judiciary has a decisive impact on both the Executive's interference in the Judiciary and on the Judiciary's interference in the Legislature. A key factor in that lack of independence is, in turn, as we observe in this report, the inappropriate nature of the process for electing TSJ judges and the lack of guarantees of their permanence in that position (tenure). That is why the Commission considers it necessary that measures be adopted to avoid risks to judicial independence in the election, appointment, and tenure of members of the highest court in Venezuela. In particular, care needs to be taken to ensure that in appointment processes notices of vacancy are disseminated in advance along with the deadlines and procedures to be followed; equal and inclusive access of candidates must be guaranteed, as well as ample civil society participation. Candidates must be assessed on their merits and professional abilities, not their political leanings or connections.
13. Another reason that, in the Commission's view, generally explains the lack of judicial independence in Venezuela is the highly provisional nature of judges' terms. There, the State needs to adopt urgent and decisive measures to significantly increase the number of regular, accredited judges and ensure that, even when they are provisional, judges are only removed via a disciplinary process or administrative act that rigorously respects guarantees of due process and, in particular, the requirement to substantiate the grounds for removal from office and access to a judicial review of the decision. Furthermore, given complaints of acts of harassments and threats against judges designed to exert improper pressure on them and influence their decisions, the Commission calls upon

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IACHR, Press Release No.041/17, *IACHR Condemns Supreme Court Rulings and the Alteration of the Constitutional and Democratic Order in Venezuela*, March 31, 2017

the State to refrain from any act of harassment or intimidation, or any action that might imply a threat or direct or indirect pressure on a judge's exercise of his or her judicial function. The IACHR further reiterates the duty of the State to investigate, try, and punish those responsible for such acts.

14. As for the AN, the Commission notes that, even though some of the aforementioned measures adopted by the TSJ were subsequently revoked, there are still serious instances of interference with the Legislature and obstacles to the exercise of its constitutional functions, such as the ongoing claim that members of the AN are in contempt of court and the labeling of their actions as "treason", as well as the ongoing authority of the President of the Republic to amend laws and to constitute mixed (public-private) enterprises without the authorization of Parliament. Accordingly, the Commission calls upon the State to adopt immediate and resolute measures to restore the constitutional order, and guarantee the separation of powers and appropriate exercise of the constitutionally established functions of the AN, including the lifting of the measures referred to above.
15. In that context, President Nicolás Maduro convened a Constituent National Assembly (ANC), which was criticized in respect of its origin and composition as well as for the measures it adopted once it was installed, which exceeded the nature of such an assembly and violated the principle of the separation of powers. Here the Commission considers it important to recall that, as this report points out, Venezuela's own Constitution and applicable law establish that the way said Assembly functions is governed by certain limits set in accordance with the values and principles enshrined in the history of Venezuela as a republic and by compliance with international treaties, agreements, and commitments duly underwritten by the Republic. In light of that and the fundamental principles set forth in the Inter-American Democratic Charter, the Commission calls for a revocation of the measures that exceed the powers of a constituent body and impair the separation of powers and representative democracy and for a commitment to refrain from adopting decisions that exceed those powers.
16. The interferences of the Judiciary and the Executive in the Legislature have been accompanied by a lack of independence and inadequate exercise of the functions of constitutional bodies that are vital for democracy, such as the National Electoral Council (CNE), the Public Prosecutors' Office (Ministerio Público -MP), and the Ombudsperson's Office (Defensoría del Pueblo - DP). That being so, the Commission considers it essential to take decisive steps to ensure that these bodies function without interference or improper political pressures and comply fully with their constitutional mandate, which is vital for the democratic rule of law in Venezuela.

17. The IACHR points out that the complaints about high levels of corruption in the country further undermine already weak government institutions. Given that impunity encourages and perpetuates acts of corruption, steps need to be taken to ensure that acts reported are investigated independently, impartially, and promptly, without pressures or discrimination based on membership of certain political parties or on the positions held by those under investigation. Preventive measures are also needed. They include governance imbued with the principles of openness, transparency, and effective public accountability.
18. The problems associated with the weakness of democratic institutions referred to earlier have resulted in widespread impunity and have had a profound impact on the exercise of rights that are fundamental for democracy, such as political rights. The IACHR is particularly concerned about the situation of these rights in Venezuela. Their exercise has been severely curtailed by a series of obstacles. Among the most recent are: the suspension of the Presidential recall referendum process; the putting off for a long time of municipal and regional elections; and serious recent allegations of unfair advantages and fraud in the regional election of October 15, 2017.
19. In Venezuela those who dissent from the Government are victims of serious reprisals, as seen in the frequent detention and destitution of mayors, governors, members of parliament, and opposition figures in general. As emblematic cases, the IACHR points to the worrying acts committed against Henrique Capriles, Antonio Ledezma, and Leopoldo López. In light of the above, the Commission reiterates the need to guarantee, as a matter of priority, full exercise of the political rights of every authority and inhabitant of Venezuela, irrespective of their political sympathies; and the need to refrain from any act of harassment, intimidation, or criminalization of political dissent.

### ***Social protest and Freedom of Expression***

20. As a consequence of the political, economic, and social crisis in Venezuela, thousands of people took to the streets, especially between April 1 and July 31, 2017, in several cities to repudiate the Government of President Maduro and the rulings of the TSJ, as well as to demand better living conditions, given the alarming shortages of food, medicine, and other essentials. In that context, the Commission identified major restrictions and state acts that severely constrained exercise of the right to social protest and freedom of expression, which led it to assert that the effective exercise of those rights had been seriously impaired.

21. With regard to social protest, the IACHR notes the persistence of a regulatory framework that is incompatible with inter-American standards in that it still requires prior authorization for demonstrations and establishes outright bans on the exercise of that right. Also noted is excessive direct use of firearms against demonstrators, along with indiscriminate use of tear gas. Those repression tactics disproportionately impacted children and adolescents, women, and older adults. Furthermore, members of the armed forces were also engaged in demonstration control, even though, as the IACHR has already pointed out to Venezuela, in a democratic system it is vital to establish a clear and precise distinction between domestic security as a police function and national defense as a function assigned to the armed forces, given that they are two, very different institutions in respect of the purposes for which they were created and in terms of their training and preparation. That being so, the State must stop obstructing the legitimate exercise of the right to protest and curtail the use of force against demonstrators; train security officers in the proper use of force; refrain from involving security forces other than the police in said activities; and adopt regulations precluding the use of firearms at demonstrations.
22. The IACHR finds the number of persons killed or detained in connection with arbitrary operations to suppress them unacceptable. Thousands have been detained for taking part in public demonstrations. Most such detentions were made without a warrant, without flagrante delicto, when those detained were on their way to, or at, or after a demonstration, or even when they did not take part in the demonstration because they were deemed to be opposition supporters. The Commission finds it alarming that detainees have been tortured, maltreated, and in some cases sexually abused. The State must with all due diligence and guarantees of due process conduct serious investigations to determine responsibilities within a reasonable period of time and, where applicable, impose the corresponding punishments.
23. Also worrisome is the adoption of measures designed to discourage participation in protests and to punish those that do participate. Even at the highest levels of government statements have been made stigmatizing and harassing those who take part in demonstrations, opposition leaders, and even human rights defenders. Those who legitimately get together and take part in social protests have also been treated like criminals and have seen investigations and/or judicial proceedings initiated against them for poorly defined offenses, a practice incompatible with a democratic society in which people have the right to voice their opinion peacefully, without fear of any kind of reprisal.

24. The IACHR is particularly concerned that dozens of civilians detained in connection with demonstrations are reportedly being tried and/or sentenced by military courts that do not meet the requirement for independence and impartiality. Contravening the principle of no crime or punishment without prior law (*principio de legalidad*), people are allegedly being randomly charged with "treason," "insurrection," (*rebelión*) and "assaulting guards" (*ataque al centinela*). As a matter of priority, necessary (including legislative) measures must be adopted to ensure that civilians are not investigated, tried and/or sentenced by military courts and to bring any such cases already under way back to ordinary law courts.
25. As regards freedom of expression, severe curtailments to that right have been documented, including censorship and the closing down of media, attacks on journalists, and, in general, harassment and criminalization of those who express political views or dissemination that the State does not approve of. Such measures are not part of any regulatory framework compatible with Venezuela's international obligations in this regard and, in practice, they are geared to silencing critics of the current Government. The harm they are doing to Venezuelan democracy is obvious and requires priority attention.

### ***Violence and Citizen Insecurity***

26. Violence and crime have increased in recent years, thereby impairing the day-to-day life of the population as a whole, but especially that of individuals, groups, and communities that have traditionally have been victims of discrimination or at greater risk of rights violations, such as women, children and adolescents, and older adults. It worries the IACHR that the State's response has largely been to militarize citizen security and to co-opt civilians for security force tasks, especially through the Liberation of the People Operation (OLP) and the Zamora Plan (PZ). According to the information received, this has resulted in a steady increase in the number of extrajudicial executions, with 2015 seeing 37% more cases than 2014; and 2016 seeing 70% more cases than the previous year.<sup>9</sup> Another source estimated that in 2017 Venezuela registered 89 violent deaths per 100,000 inhabitants and a total of 26,616 death persons in the whole national territory.<sup>10</sup> On the other hand, according to official statistics, in 2016 there were 21,752 intentional homicides, or a rate of 70.1 violent deaths per 100,000 residents.<sup>11</sup>

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<sup>9</sup> COFAVIC, *Ejecuciones extrajudiciales, 40 historias de 6385 vidas ignoradas 2012-2017*, 2017, pp. 39-40.

<sup>10</sup> OVV, *Informe OVV de violencia 2017*, December 28, 2017.

<sup>11</sup> Ministerio Público, *Informe de gestión correspondiente a 2016*, March 31, 2017.

27. The Commission considers it essential to give priority to eliminating the participation of the armed forces in citizen security activities for which the police are responsible. Likewise, steps need to be taken to ensure that lethal force is use in rigorous compliance with the principles of exceptional circumstances, legality, necessity, proportionality, nondiscrimination, and accountability. It is also vital, in the IACHR's opinion, to incorporate a gender perspective in citizen security, based on the premise that citizens are to be protected, not treated as enemies to combat.
28. Contrary to what the Venezuelan State has done, the Commission reiterates that citizens must not be used for any kind of domestic security strategy. Nor should the role of society vis-à-vis national security be distorted. The State needs to comply with the above, bearing in mind its duty to act with due diligence to prevent human rights violations. Likewise, it must investigate and, where applicable punish and make reparation for any violent acts they may have committed.

### ***Poverty and Economic, Social, Cultural, and Environmental Rights***

29. Venezuela is currently in the grip not just of a political crisis, but of a profound economic and social crisis as well, characterized by widespread shortages of food; medicine; and medical treatment, materials and inputs, to name but a few. In 2015 prices rose by 180.9 percent and by April 2016, 80 percent of the population was suffering food shortages.<sup>12</sup> This situation has triggered alarming poverty and extreme poverty indices, along with serious impediments to the enjoyment of the population's economic, social, cultural and environmental rights, such as the rights to food, health, education, and housing. Hardest hit are groups that are traditionally marginalized and discriminated against, such as children and adolescents, women, older adults, and indigenous peoples.
30. To deal with this situation, the State has issued a series of decrees declaring a "state of exception"(estado de excepción) and economic emergency." These states of emergency have successively been extended, meaning that in practice the measures they provide for are indefinite. The decrees have also contained measures broadening the powers of the Executive. One of the more worrying measures of this kind has been the militarization of such activities as food distribution, In this area, the Commission urges the State to step up measures designed to reduce poverty and extreme poverty and to take all necessary steps to ensure that available resources are used, as a matter of priority, to avoid deterioration of the population's enjoyment of ESCER and to ensure the entire population's access to those rights, without discrimination.

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<sup>12</sup> Analítica, [Escasez de alimentos básicos en el país supera el 80%, según Datanálisis](#), May 27, 2016.



31. As a consequence of the grave economic and social crisis, disease outbreaks and other impacts on health have taken place, in the context of which the scarcity of medications, materials, inputs, and medical treatment is concerning, particularly due to their impact on pregnant women, children and adolescents, the elderly, and people living with severe illnesses, chronic conditions, or the human immunodeficiency virus (HIV) and/or Acquired Immune Deficiency Syndrome (AIDS). Infant and maternal mortality rates have increased, as has the number of epidemics. By and large, in this scenario, the State has failed to provide the necessary access to health care. The Commission reiterates the need for the State to guarantee the availability and quality of health care by ensuring the provision of qualified medical personnel, medicines, and appropriate hospital equipment. In particular, steps need to be taken to combat the high maternal mortality rates.
32. As regards the right to food, shortages and, in some cases, a complete lack of supply has reached critical levels. For many, this situation has led to excessive weight loss and malnutrition issues and even death, not just the lack of adequate access to food. To deal with this situation, the State has taken some steps such as setting up Local Supply and Production Committee, which the Commission welcomes. However, according to the information received by the Commission, these programs do not accord priority to groups that have traditionally been excluded and discriminated against and there have also been complaints of the application of politically motivate discrimination criteria. The State must guarantee exercise of the right to food based on objective criteria and with a particular emphasis on persons and communities traditionally excluded or discriminated against, such as children and adolescents, persons with disabilities, and older adults.
33. Exercise of the right to education has also been impaired by the crisis in the country, especially in the case of children and adolescents. Dropout rates have increased due to problems with access to food, transportation, and citizen security. Other issues that have impacted the enjoyment of this right have had to do with water and electricity supply problems. Here, the IACHR stresses that the State must allocate the resources needed to ensure high quality, universal, cost-free, and accessible education, tailored to needs, and ensure that it be imparted in safe settings, free from violence and discrimination.
34. Finally, the Commission observes that, while the establishment of social programs may have had a positive impact for some segments of the population on their exercise of the right to housing, there have been serious complaints that mitigate that progress, such as failure to formalize title deeds and numerous complaints of homes being raided, destroyed and



even burnt down in connection with the OLP movement. In light of the above, the State needs to adopt resolute measures to guarantee legal certainty for home tenure and to refrain from interfering, in any way, with the right to housing in connection with OLP or other operations.

35. Overall, the IACHR calls upon the State to step up measures to mitigate the situation of poverty and extreme poverty and avoid impairment of the exercise of ESCER, and to ensure that such measures focus on guaranteeing the full enjoyment of those rights without discrimination, thereby generating the conditions required for genuine equality. In particular, the State must refrain from any act involving differential treatment based on political view in respect of the exercise of those rights and it must conduct serious investigations into the allegations that have been made in that regard. It is likewise essential that the resources available be used, as a top priority, in favor of persons, groups, and communities that suffer discrimination or are excluded from society.

### ***Historically Excluded Persons, Groups, and Communities at Greatest Risk***

36. Bearing in mind the economic and social crisis that the country is undergoing, the Commission conducts, across the board and throughout the report, an analysis of its particular impact on the human rights of persons, groups, and communities at greatest risk and traditionally subject to discrimination and exclusion. With regard to women, the IACHR voices its concern at the high levels of gender violence and trafficking in persons (Chapter IV.A); the specific impact on women of the Government's citizen security plans (Chapter IV.B.1) and the putting down (repression) of social protest (Chapter III.A.2 and 4); and the different and more serious impact on women of the economic crisis, particularly as regards food shortages, access to health care, and sexual and reproductive rights (Chapter V.B and C).
37. With regard to children and adolescents, the IACHR addresses the particular impact on them of violence and citizen insecurity (Chapter IV.A), as well as impairments to the right to life and integrity stemming from security plans (Chapter IV.B.) and the putting down of social protest (Chapter III.A.2). The IACHR likewise expresses its concern at regulations regarding children and adolescents at odds with (criminal) law (Chapter IV.C) and the impact of the economic crisis on enjoyment of the rights to food, health, and education (Chapter V.B, C and D). The IACHR also refers to the impact on older adults of citizen insecurity (Chapter IV.A), of the use of force to put down social protest (Chapter III.A.2), and of the food shortages the country is experiencing (Chapter V.B). The Commission also looks at

the impact of the crisis on indigenous peoples, especially in terms of malnutrition and access to food indices (Chapter V.B).

38. As regards persons deprived of liberty, the Commission voices its alarm at complaints of arbitrary detentions in connection with citizen security strategies (Chapter IV.B.1 and 2); at complaints of arbitrary arrests of demonstrators and their subsequent subjection to torture and cruel, inhuman, and degrading treatment, including rape (Chapter III.A.4); and, in particular, at the violence occurring in detention centers and the deterioration of prison conditions, which are characterized by overcrowding, lack of food, and lack of medical care e (Chapter IV.C, V.B and C).
39. With respect to the situation of human rights defenders, the IACHR repudiates the numerous threats and acts of harassment and criminalization to which they are subjected for denouncing the human rights situation in Venezuela, and for defending or representing persons detained on account of their political views or for having taken part in demonstrations (Chapter III.A.3 and 4). Likewise, the Commission voices its concern at the harassment and persecution of political opposition figures in Venezuela (Chapter II.B.2).
40. Regarding migrants, refugees, and others in a similar situation to refugees, the IACHR reiterates its concern at the large number of Venezuelans who have been forced to migrate to other countries in the region in recent years for numerous reasons, especially forced migration as a survival mechanism given the grave crisis in Venezuela and the effects of its sequel of shortages of food, medicines, and medical treatment (Chapter V), violence and lack of security (Chapter IV.A). The IACHR also recognizes the efforts by some countries in the region to provide protection for Venezuelan migrants.
41. The Inter-American Commission reiterates its offer to work with the State, and with Venezuelan society as a whole, to ensure effective compliance with the recommendations put forward in this report, thereby contributing to more robust defense and protection of human rights in a democratic context in Venezuela. The IACHR in turn reiterates its interest and willingness to visit the country.



# CHAPTER 1

## INTRODUCTION



## INTRODUCTION

### ***A. Background, Scope, and Purpose of the Report***

42. The Commission's decision to produce this report stems from the marked deterioration in the country with respect to the exercise of human rights, and the grave political, economic, and social crisis in Venezuela over the past two years and, especially, in 2017.
43. For several years now, the Inter-American Commission has been observing the weakness of democratic institutions and the progressive deterioration of the human rights situation in Venezuela, both of which became more widespread and much more marked as of 2015 and, especially, in 2017. While the issues are complex and multiple factors are involved, the IACHR considers that a key determinant has been the interference of the Executive in other branches of government, in violation of the principle of the separation of, and balance between, powers. Indeed, the exacerbation of the recent crisis in Venezuela is closely, albeit not exclusively, related to rulings of the TSJ since 2015, which amounted to serious meddling with the powers of the AN and flaunted the principle of the separation of powers.
44. In 2017, the deterioration of the rule of law even led to alteration of the Constitutional order, through Judgments No. 155 and 156, handed down by the TSJ on March 28 and 29, respectively. In those rulings, the TSJ revoked the parliamentary immunity of AN deputies, maintained that their acts constituted "treason," granted the Executive broad discretionary powers and arrogated for itself the powers constitutionally assigned to the Legislative Branch. As the IACHR pointed out when those judgments were handed down, those measures represented usurpation by the Judiciary and the Executive of powers constitutionally granted to parliament, as well as a de facto annulment of the popular vote, through which those deputies had been elected.<sup>13</sup> The Commission reiterates its utter repudiation of those measures inasmuch as they contravene the separation of powers, the principle of popular representation, and the powers vested in each organ

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<sup>13</sup> IACHR, Press Release No. 041/17, [IACHR Condemns Supreme Court Rulings and the Alteration of the Constitutional and Democratic Order in Venezuela](#), March 31, 2017.

by the Constitution: guarantees that are essential for a democratic system and the rule of law.<sup>14</sup>

45. Add to the above the serious deterioration of the socioeconomic situation and hence of the living conditions of the inhabitants of Venezuela, which have been falling since 2014 with the collapse of international oil prices, among other factors.<sup>15</sup> The exacerbation of the economic crisis led to hyperinflation; widespread food shortages; supply failures in respect of medicines and medical inputs and materials, and precarious provision of services, such as electricity. This economic and social crisis had and continues to have real consequences for the day-to-day life of millions of persons living in Venezuela, who are having serious difficulty satisfying their most basic needs for food, housing, health, and education. The figures available show that the percentage of the population living in poverty has drastically increased, above all since 2015 when the households living in poverty index leaped from 48 percent to 73 percent. In 2016, more than three-quarters (81.8 percent) of households in Venezuela were living in poverty, over half of them (51.51 percent) in extreme poverty. The Commission finds these figures absolutely alarming.<sup>16</sup>
46. The grave socioeconomic situation and alteration of the Constitutional stirred thousands of people to action and prompted them to demonstrate publicly, exercising their rights to social protest and freedom of expression. Between April 1 and July 31, 2017, thousands of protest demonstrations took place all over the country. The Commission notes with deep concern that many of the human rights violations identified in this report occurred as a result of the State's arbitrary and repressive response, contrary to human rights, to the economic, political, and social crisis. Starting in January 2016, a "state of exception and economic emergency" was declared throughout the national territory that has been successively renewed.<sup>17</sup> Although its stated objective was to address the economic plight of the country, it never managed to solve this crisis. In addition, it assigned greater powers to the Executive branch, thereby further weakening an already bruised democratic institutional system.

<sup>14</sup> IACHR, Press Release No. 041/17, IACHR Condemns Supreme Court Rulings and the Alteration of the Constitutional and Democratic Order in Venezuela, March 31, 2017.

<sup>15</sup> As the report of the United Nations High Commissioner for Human Rights (OHCHR) explains, the other factors have to do with "[...] currency and price controls, lack of investment in infrastructure and in the production system, and the heavy dependency on oil revenues to import basic goods. [...]" OHCHR, Human rights violations and abuses in the context of protests in the Bolivarian Republic of Venezuela from 1 April to 31 July 2017, August 31, 2017, p. 10.

<sup>16</sup> UCAB-LACSO, Encuesta sobre Condiciones de Vida – Venezuela 2016 (Evolución de la pobreza).

<sup>17</sup> The six decrees so far issued to declare a state of economic emergency are Decrees Nº 2184, 2323, 2452, 2667, 2849, and 3074. They were extended by Decrees 2270, 2371, 2548, 2742, 2897, and 3157.

47. As a result of the State's response to the social protests, hundreds of people died; thousand were arbitrarily detained; a number of them denounced acts of torture and other maltreatment; some people were raped, while others were unjustly referred to military courts. Worse still, those acts occurred in a context of high levels of violence and crime, which were addressed using citizen security plans and operations that were incompatible with human rights standards and -- far from reducing the widespread lack of security -- triggered serious human rights violations.
48. The IACHR recognizes and profoundly regrets the impact that these occurrences have had on the exercise of human rights for millions of Venezuelan men and women. At the same time, it warns that certain persons, groups, and communities have fared even worse due to their traditional exposure to greater risk, exclusion, and discrimination. Social and political leaders; human rights defenders; persons deprived of liberty, women, children and adolescents; older adults; migrants, refugees and people in a similar situation frequently face additional obstacles to the exercise of their rights.
49. The seriousness of the situation outlined above induced the Inter-American Commission to take the decision to prepare this report on the general situation of human rights in Venezuela, with four main focuses corresponding to the Commission's core concerns with respect to Venezuela: (i) democratic institutions (both individually and as a system); (ii) social protest and freedom of expression; (iii) violence and citizen security; and (iv) poverty and ESCER.<sup>18</sup> The objective of this report is to document and highlight the serious human rights violations that have occurred in recent years, especially in 2017. In so doing, the idea is to point to the core issues that allowed those violations to take place and to analyze them from the perspective of the State's obligations within the framework of the inter-American human rights system. Based on that analysis, the Commission identifies in this report the actions that Venezuela needs to take to overcome those issues. In some cases, those actions figure in recommendations that the Commission has already made to the Venezuelan State.

## ***B. The State's Position vis-à-vis the Inter-American System***

50. Since 2002, the Commission has been closely monitoring the deterioration in the human rights situation in the country through its various mechanisms, which include petitions and individual cases, precautionary

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<sup>18</sup> IACHR, Press Release No. 134/17, [IACHR to Draft Country Report on Human Rights Situation in Venezuela](#), September 5, 2017.



measures, public hearings, requests for information from the State, press releases, country reports,<sup>19</sup> and analysis of the human rights situation in Chapter IV of its annual reports.<sup>20</sup>

51. Many of the regulatory, institutional, and practical shortcomings underlying the recent crisis are related to matters that have been the subject of IACHR analyses, comments, and specific recommendations, in some cases for over a decade. Indeed, talking about Venezuela, the IACHR referred several years ago to weaknesses in the democratic institutional system and separation of powers,<sup>21</sup> and to obstacles obstructing the exercise of political rights and participation in public life.<sup>22</sup> Other matters of constant concern and monitoring on the part of the IACHR have been the lack of independence and impartiality in the administration of justice;<sup>23</sup> the situation with regard to violence and citizen security;<sup>24</sup> enjoyment of

<sup>19</sup> IACHR, Report on the Situation of Human Rights in Venezuela, OEA/Ser.L/V/II.118, Doc. 4 rev. 1, October 24, 2003; and Democracy and Human Rights in Venezuela, OEA/Ser.L/V/II, Doc. 54, December 30, 2009.

<sup>20</sup> Venezuela first appeared in Chapter IV of the 2002 Annual Report and continued to figure in it until 2016, with the exception of the year 2004, when it was included in Chapter 5 on follow-up to the recommendations made in the country report of the preceding year. In recent years, its inclusion was pursuant to Article 59.6.a.i of the Commission's Rules of Procedure, due to the existence of a "serious breach of the core requirements and institutions of representative democracy mentioned in the Inter-American Democratic Charter" and given "abusive exercise of power that undermines or denies the rule of law, such as systematic infringement of the independence of the judiciary or lack of subordination of State institutions to the legally constituted civilian authority [...]" (2013-2016). In addition, it was considered that its situation was covered by Article 6.d. of the aforementioned Article, given the identified persistence of "other structural situations that seriously affect the use and enjoyment of fundamental rights recognized in the American Declaration [...]" (2016).

<sup>21</sup> IACHR, 2016 Annual Report, Chapter IV.B, Venezuela, para. 70-87; and 2010 Annual Report, Chapter IV, Venezuela, paras. 615-649.

<sup>22</sup> IACHR, 2016 Annual Report, Chapter IV.B, Venezuela, para. 88-119; 2015 Annual Report, Chapter IV.B, Venezuela, para. 71-113; 2014 Annual Report, Chapter IV.B, Venezuela, para. 360-397; 2013 Annual Report, Chapter IV.B, Venezuela, para. 476-518; 2012 Annual Report, Chapter IV, Venezuela, para. 383-388; 2011 Annual Report, Chapter IV, Venezuela, para. 412-420; 2010 Annual Report, Chapter IV, Venezuela, para. 677-684; 2009 Annual Report, Chapter IV, Venezuela, para. 473-477; 2008 Annual Report, Chapter IV, Venezuela, para. 335-345; and 2007 Annual Report, Chapter IV, Venezuela, para. 269-276.

<sup>23</sup> IACHR, 2016 Annual Report, Chapter IV.B, Venezuela, para. 54-56; 2015 Annual Report, Chapter IV.B, Venezuela, para. 257-281; 2014 Annual Report, Chapter IV.B, Venezuela, para. 536-566; 2013 Annual Report, Chapter IV.B, Venezuela, para. 476-518; 2012 Annual Report, Chapter IV, Venezuela, para. 464-509; 2011 Annual Report, Chapter IV, Venezuela, para. 447-477; 2010 Annual Report, Chapter IV, Venezuela, para. 615-649; 2009 Annual Report, Chapter IV, Venezuela, para. 478-483; 2008 Annual Report, Chapter IV, Venezuela, para. 391-403; 2007 Annual Report, Chapter IV, Venezuela, para. 277-289; 2006 Annual Report, Chapter IV, Venezuela, para. 159-167; and 2004 Annual Report, Chapter IV, Venezuela, para. 167-192.

<sup>24</sup> IACHR, 2016 Annual Report, Chapter IV.B, Venezuela, para. 27-25; 2015 Annual Report, Chapter IV.B, Venezuela, para. 28-53; 2014 Annual Report, Chapter IV.B, Venezuela, para. 337-359; 2013 Annual Report, Chapter IV.B, Venezuela, para. 448-475; 2012 Annual Report, Chapter IV, Venezuela, para. 374-382; 2011 Annual Report, Chapter IV, Venezuela, para. 400-411; 2010 Annual Report, Chapter IV, Venezuela, para. 686-699; 2009 Annual Report, Chapter IV, Venezuela, para. 500-509; 2008 Annual Report, Chapter IV, Venezuela, para. 411-423; 2007 Annual Report, Chapter IV, Venezuela, para. 290-302; and 2004 Annual Report, Chapter IV, Venezuela, para. 229-236 and 250/-257.

ESCER;<sup>25</sup> and the serious obstacles faced by human rights defenders in the performance of their functions.<sup>26</sup>

52. More recently, in 2017, the Commission and its Special Rapporteurship for Freedom of Expression published numerous press releases<sup>27</sup> indications of its consistent concern over the deterioration of human rights in Venezuela. This year, the Commission requested information from the State on two occasions, pursuant to Article 18 of its Statute<sup>28</sup>; and it held eleven public hearings in which State authorities and representatives of organized civil

<sup>25</sup> IACHR, 2016 Annual Report, Chapter IV.B, Venezuela, para. 176-192; 2015 Annual Report, Chapter IV.B, Venezuela, para.368-385; 2014 Annual Report, Chapter IV.B, Venezuela, para. 567-587; 2013 Annual Report, Chapter IV.B, Venezuela, para. 476-518; 2012 Annual Report, Chapter IV, Venezuela, para. 510-518; 2011 Annual Report, Chapter IV, Venezuela, para. 478-491; 2010 Annual Report, Chapter IV, Venezuela, para. 829-835; 2009 Annual Report, Chapter IV, Venezuela, para. 515-520; 2008 Annual Report, Chapter IV, Venezuela, para. 330-334; and 2005 Annual Report, Chapter IV, Venezuela, para. 234-237.

<sup>26</sup> IACHR, 2016 Annual Report, Chapter IV.B, Venezuela, para. 193-201; 2015 Annual Report, Chapter IV.B, Venezuela, para. 234-256; 2014 Annual Report, Chapter IV.B, Venezuela, para. 670-698; 2013 Annual Report, Chapter IV.B, Venezuela, para. 476-518; 2012 Annual Report, Chapter IV, Venezuela, para. 565-577; 2011 Annual Report, Chapter IV, Venezuela, para. 494-503; 2010 Annual Report, Chapter IV, Venezuela, para. 650-676; 2009 Annual Report, Chapter IV, Venezuela, para. 495-499; 2008 Annual Report, Chapter IV, Venezuela, para. 346-361; 2007 Annual Report, Chapter IV, Venezuela, para. 232-247; 2005 Annual Report, Chapter IV, Venezuela, para. 337-351; and 2004 Annual Report, Chapter IV, Venezuela, para. 219-255.

<sup>27</sup> IACHR, Press Release No. 184/17, IACHR Expresses Concern over Suspension of Parliamentary Immunity for Vice President of Venezuela's National Assembly, November 17, 2017; Press Release No. R179/17, Office Of The Special Rapporteur For Freedom Of Expression Expresses Serious Concern Over The Enactment Of The "Anti-Hate Law" In Venezuela and Its Effects On Freedom Of Expression And Freedom Of The Press, November 10; Press Release No. R135/17, The Office of the Special Rapporteur condemns the closure of more than 50 media outlets in Venezuela without legal guarantees and for reasons related to their editorial line, September 6; No. 126/17, IACHR Condemns the 37 Violent Deaths in a Venezuelan Detention Facility, August 25; No. 115/17, IACHR Grants Protection Measure in favor of the Attorney General of the Republic of Venezuela, Luisa Ortega Díaz, August 4; No. 112/17, IACHR Condemns New Imprisonment of Leopoldo López and Antonio Ledezma in Venezuela, August 1; No. 111/17, IACHR Condemns the Deaths and Acts of Violence on Election Day in Venezuela, August 1; No. 109/17, The Office of the Special Rapporteur for Freedom of Expression of the IACHR condemns arbitrary restrictions on freedom of expression and assembly in Venezuela, July 29; No.108/17, IACHR Grants Precautionary Measure for Three Deputies of Venezuela's National Assembly, July 28; No. 93/17, IACHR Condemns Serious Acts of Violence at National Assembly in Venezuela, July 10; No. 84/17, IACHR Strongly Condemns Indiscriminately Repressive Military Operations in Venezuela, June 27; No. 68/17, IACHR Deeply Concerned about the Worsening Violence in Venezuela and the Use of Military Courts to Prosecute Civilians, May 26; No. 58/17 IACHR Deplores Repressive Measures Taken by Venezuela against Protests and Condemns Resulting Deaths and Injuries, May 9; No. R51/17 Joint press release: Venezuela / Protests: UN and IACHR Rapporteurs condemn censorship, arrests and attacks on journalists, April 26; No. 048/17, IACHR Urges Venezuela to Guarantee the Right to Protest and to Demilitarize Streets, April 29; No. 044/17, IACHR Urges the Protection of the Right to Protest in Venezuela and Respect for Freedom of Expression, April 11; No. 041/17, IACHR Condemns Supreme Court Rulings and the Alteration of the Constitutional and Democratic Order in Venezuela, March 31; No. R16/17, Office of the Special Rapporteur Condemns Censorship and Intimidation of International Media and Journalists in Venezuela, February 17.

<sup>28</sup> In a note dated April 19, 2017, the IACHR asked the State for information regarding the judgments handed down by the TSJ regarding the powers of the Legislature and the protests that took place after March 31 and the use of force to dissuade protesters. The Venezuelan State's reply was remitted via Note AGEV/2017-000174 of June 27, 2017. Likewise, on June 28, the IACHR asked the State for information about the convocation of elections for the National Constituent Assembly, the procedures for putting forward candidates, selection of candidates, and election of the members of the Constituent Assembly; and on compliance with the guarantee regarding consultation of the new text in the Constitution. The State replied in Note AGEV/2017-000182, dated July 7, 2017.

society participated.<sup>29</sup> Moreover, just in 2017, the IACHR granted ten precautionary measures,<sup>30</sup> while continuing to monitor precautionary measures granted in previous years. As this report was being approved, the Commission was evaluating at least 40 requests for precautionary measures related to the serious crisis in Venezuela.

53. The IACHR stresses that, since its last on-site visit in 2002, it has repeatedly asked the State to consent to its visiting the country. As of now, Venezuela has not granted its consent. Indeed, on April 10, 2017, the Commission remitted a message to the State asking it to assent to an on-site visit. In the communique issued by the IACHR announcing its decision to prepare this report, it again urged the State to assent to an on-site visit. No reply was forthcoming. The Commission reiterated that request in a note dated August 16, 2017, in which it reported its decision to write this report. Likewise, the IACHR sent a letter to the State of Venezuela dated October 18, 2017, conveying the interest shown by the IACHR rapporteurs on Women, Children and Economic, Social, Cultural and Environmental Rights in conducting a visit to gather information on the humanitarian situation of women and girls in Venezuela. As of the date of publication of this report, the IACHR had not received a reply to that request from the State. Also, at hearings where the State was present, the Commissioners have repeatedly requested consent to conduct visits on a variety of subjects—such as for example regarding individuals deprived of liberty—but received no response.
54. In addition to the above, Venezuela significantly weakened the international protection system available in its jurisdiction, as a

<sup>29</sup> IACHR.Hearing on The Right to Truth and Report of Venezuela's Commission for Justice and Truth, 161st Period of Sessions; Hearing on Reports of Political Persecution in Venezuela, 161st Period of Sessions; Hearing on Access to Justice in Venezuela, 161st Period of Sessions; Hearing on Impact of the Political and Economic Crisis on Children in Venezuela, 163rd Period of Sessions; Hearing on Right to Free Legal Aid as Part of the Right to a Fair Trial in Venezuela, 163rd Period of Sessions; Hearing on Right to Freedom of Expression and Democracy in Venezuela, 63rd Period of Sessions; Hearing on Reports of Human Rights Violations in Venezuela (Private Hearing), 63rd Period of Sessions; Hearing on Situation of Human Rights of Venezuelan Migrants, Asylum Seekers and Refugees in countries of the Americas, 63rd Period of Sessions. Hearing on the right to education, 165th period of sessions; hearing on the situation of democratic institutions in Venezuela, 165th period of sessions; and hearing on violence, citizen security, and freedom of expression in Venezuela, 165th period of sessions.

<sup>30</sup> IACHR, Resolution No. 50/17, Precautionary Measure No. 383-17, Santiago Jose Guevara, December 1, 2017; Resolution No. 45/17, Precautionary Measure No. 600-15, Angel Omar Vivas Perdomo, October 27, 2017; Resolution No. 37/17, Precautionary Measure No. 309-17, Johonnys Armando Hernández, September 8, 2017; Resolution No. 35/2017, Precautionary Measure No. 533-17, Williams Dávila, September 6, 2017; Resolution No. 27/17, Precautionary Measure No. 449-17, Luisa Ortega Díaz and family with respect to Venezuela, August 3, 2017; Resolution No. 24/17, Precautionary Measure No. 403-17, Julio Borges et al, July 28, 2017; Resolution No. 15/17, Precautionary Measure No. 248-17, Henrique Capriles Radonski with respect to Venezuela, June 2, 2017; Resolution No. 12/17, Precautionary measure No. 616-16. Luis Florido. April 7, 2017; Resolution No. 2/17, Precautionary Measure No. 994-16, Lorenzo Mendoza and family, January 20, 2017; and Resolution No. 1/17, Precautionary Measure No. 475-15, Members of the Voluntad Popular party, January 14, 2017.

consequence of its denouncing the American Convention on Human Rights. That denunciation took effect on September 10, 2013. It was a serious setback to the shared objective of OAS member states to progress toward universalization of the inter-American human rights system. It was also a step backwards for the inhabitants of Venezuela, who have lost a source of protection of their human rights, namely the Inter-American Court of Human Rights (I/A Court H.R.) in respect of matters occurring since the denunciation entered into force.<sup>31</sup> Here, the IACHR would like to point out that the aforementioned denunciation does not preclude the organs of the inter-American human rights system from continuing to analyze petitions alleging violations of the American Convention on account of acts occurring before the entry into force of the denunciation, and that the Commission has competence under the American Declaration.<sup>32</sup>

55. As a member state of the OAS, Venezuela continues to be subject to the jurisdiction of the Commission and to the obligations imposed on it by the OAS Charter and the American Declaration, signed by the State in 1948. Nevertheless, the Commission notes with deep concern that on April 28, 2017 Venezuela presented its denunciation of the OAS Charter, an unprecedented decision in the inter-American system which the IACHR deplored.<sup>33</sup> The denunciation process takes two years to take effect, so that the Venezuelan State is currently still obliged to abide by its international human rights obligations under the American Declaration and the competence of the Commission. The IACHR calls upon the State to retract the aforementioned denunciation and to resume its commitments under the American Convention and the contentious jurisdiction of the I/A Court H.R.
56. Venezuela has set a serious precedent by failing to comply substantively with judgments handed down by the I/A Court H.R. and its judicial organs have even declared certain decisions of that Court to be unenforceable given that they consider them unconstitutional.<sup>34</sup> The Commission reiterates that the position adopted by Venezuela of not accepting or complying with the decisions and recommendations of international

<sup>31</sup> IACHR, Press Release No. 117/12, IACHR Regrets Decision of Venezuela to Denounce the American Convention on Human Rights, September 12, 2012; and IACHR, Press Release No. 64/2013, IACHR Deeply Concerned over Result of Venezuela's Denunciation of the American Convention, September 10, 2013.

<sup>32</sup> IACHR, Universalization of the Inter-American System of Human Rights, OEA/Ser.L/V/II.152, Doc. 21, August 14, 2014, para. 20.

<sup>33</sup> IACHR, Press Release No. 58/17, IACHR Deplores Repressive Measures Taken by Venezuela against Protests and Condemns Resulting Deaths and Injuries, May 9, 2017.

<sup>34</sup> In 2011, the TSJ declared the judgment of the I/A Court H.R. in the case of Leopoldo López v. *Venezuela* [TSJ, Judgment No. 1547 of October 17, 2011] to be "unenforceable." It did so again in 2008 with regard to the judgment in the case of Apitz Barbera et al ("First Court of Administrative Disputes) v. *Venezuela* [TSJ, Judgment No. 1939, December 18, 2008]; More recently, in 2015, the TSJ made a similar decision regarding the judgment handed down in the case of Granieret al (Radio Caracas Televisión) v. *Venezuela* [TSJ, Judgment No. 1175 of September 10, 2015].

human rights organizations, especially the organs of the inter-American system, arguing that they contravene national sovereignty, is seriously at odds with applicable principles of international law.<sup>35</sup> One notable exception in this regard was the State's acknowledgment of its international responsibility during the hearing before the I/A Court H.R. in the case of Johan Alexis Ortiz Hernández.<sup>36</sup> However, the Commission observes that, in general, the State has maintained its stance of not abiding by decisions taken by the organs of the inter-American system.

57. Thus far in 2017, the IACHR has granted ten precautionary measures<sup>37</sup>. They included, along with others, several that were granted in order to protect the life and personal integrity of political leaders and justice operators deemed to be at risk, to guarantee access to medical treatment, and to improve the detention conditions of persons deprived of their liberty.
58. Generally speaking, it is important to point out that the State has participated in the processing of precautionary measures by providing the IACHR with information as to its position with regard to requests for precautionary measures. It also took part in the four working meetings convened by the IACHR during 2017. With regard to matters involving previously granted precautionary measures, the IACHR has received information to the effect that, as of early August 2017, beneficiary Leopoldo López was placed under house arrest in substitution for deprivation of liberty in a detention center. There was also information to the effect that beneficiary Vasco Da Costa had received notification of his upcoming release from prison (boleta de excarcelación) Without prejudice to the above, the Commission has voiced its concern to the State about the lack of access of beneficiaries of precautionary measures being held in State prisons to medical care or treatment, or about persisting risks to them due to deficient conditions of detention. In addition, in some cases, especially cases involving members of opposition parties, the IACHR has no information indicating effective implementation of security measures or of measures designed to diminish the risk that triggered the granting of the precautionary measures. In some cases, new risk factors or harassment

<sup>35</sup> IACHR, 2016 Annual Report, Chapter IV.B, Venezuela, para. 17; and IACHR Democracy and Human Rights in Venezuela, OEA/Ser.L/V/II, Doc. 54, December 30, 2009, para. 1161.

<sup>36</sup> The Venezuelan State acknowledged before the Court that depriving Johan Alexis Ortiz Hernández of his life had been arbitrary and asked the victims for forgiveness for what had happened. The representative of the State also paid homage to the memory of the victim and asked for a minute of silence. In its statement, the State made express mention of the contents of the Report on the Merits adopted by the Inter-American Commission in that case and assumed its responsibility for the violations described in the report with respect to the right to life, personal integrity, and judicial guarantees and protection. (IACHR, Press Release No. 13/17, IACHR Values Venezuela's Recognition of Responsibility in Case Involving Johan Alexis Ortiz Hernández, February 15, 2017).

<sup>37</sup> See footnote 35. Summaries of each precautionary measure can be found at: <http://www.oas.org/en/iachr/decisions/precautionary.asp>.

have occurred, attributed by the beneficiaries' representatives to both State agents and third parties.

59. At the same time, the IACHR has received worrying reports suggesting the existence of reprisals, threats and stigmatizing statements against individuals and organizations for having participated in activities related to IACHR periods of sessions.<sup>38</sup> The Commission reiterates emphatically that "it is absolutely unacceptable for a State to take any type of action motivated by the participation or activities of individuals or organizations that engage the bodies of the inter-American human rights system."<sup>39</sup> It would also like to recall that, pursuant to Article 63 of its Rules of Procedure, States have the obligation to "grant the necessary guarantees to all the persons who attend a hearing or who in the course of a hearing provide information, testimony or evidence of any type to the Commission" and "may not prosecute the witnesses or experts, or carry out reprisals against them or their family members because of their statements or expert opinions given before the Commission."<sup>40</sup>

## C. *Methodology*

60. The IACHR bases its analysis in this report on monitoring of the human rights situation, especially the monitoring conducted throughout 2017. The extensive information on Venezuela received by the IACHR comes from public hearings held with the participation of both civil society and the State; the petitions and cases system; the precautionary measures mechanism; Chapter IV in its annual reports, and, in general, the Commission's constant monitoring of the country. Also taken into account is information remitted by the State in response to ICHR requests for information under Article 18 of its Statute; information remitted by civil society organizations; and information in the public domain.
61. Regarding the sources used by the IACHR, the State, in its comments, highlighted that "the draft Country Report is fundamentally comprised of information collected from private media outlets, and therefore lacks the most basic trustworthiness and objectivity required by the IACHR's own Rules of Procedure and the principles governing the treatment of human rights matters. "It is especially concerning that the State's official

<sup>38</sup> In particular, the IACHR received information about the cyber attack on the website of the Venezuelan human rights organization COFAVIC, in connection with its participation, alongside other organizations, in the 161st period of sessions of the IACHR. Between March 7 and 17, 2017, several organizations in Venezuela reported cyber attacks on their websites. Front Line Defenders, Llamamiento Urgente, [Cyber-ataque contra COFAVIC](#), March 29, 2017.

<sup>39</sup> IACHR, Press Release No. 35A/17, [Report on the 161st Session of the IACHR](#), March 22, 2017.

<sup>40</sup> IACHR, Press Release No. 35A/17, [Report on the 161st Session of the IACHR](#), March 22, 2017.



information is practically ignored by the Commission in its preparation of its Country Report.”<sup>41</sup> Specifically, the State observes that “the Country Report contains 1854 references, translating to 1005 documents considered by the Commission in the evaluation of the human rights situation Venezuela. Twenty-seven percent of the references used correspond to public information disseminated in the media. Twenty-four percent correspond to IACHR annual reports, information from the Organization of American States, thematic reports by the Commission or the special rapporteurs on Venezuela, or the human rights situation on the continent, among other sources. Twenty percent of the sources correspond to reports from civil society organizations and private parties. Only 9% of the citations reference information sourced from official State documents.”<sup>42</sup> The State also highlights that “89% of the media sources used in the draft Report correspond to news articles, webpages, and social network accounts of private media companies, who are clearly biased on the human rights situation in Venezuela.”<sup>43</sup>

62. The State in general rejects the “methodology used to prepare the draft Country Report, especially with regard to its sourcing. Countless inaccuracies, errors, decontextualizations, and false statements are repeated by the Commission in its draft Report as a result of improper use of the available sources.”<sup>44</sup> It notes that the IACHR “relies on multiple occasions on the so-called ‘hearings’ held by the Secretary General of the OAS, in clear violation of the rules governing the operation of that regional body.”<sup>45</sup> On this point, the State reminds the IACHR that “there is no provision of the OAS Charter or inter-American law that empowers the Secretary General to hold hearings on the human rights situation of member States. Nor have the organization’s political bodies granted the Secretary General a mandate to perform that role. Consequently, this is an arbitrary act lacking all validity, meaning it cannot be used as a basis for the actions of the Commission toward compliance with its mandate.”<sup>46</sup> The State also holds that “an analysis that foregrounds extreme negative statements while ignoring or minimizing the progress made on human rights and measures taken is neither objective nor impartial. An evaluation

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<sup>41</sup> Bolivarian Republic of Venezuela, Ministry of the People’s Power for Foreign Relations, Note AGEV/2017-000300, comments on the draft country report, December 21, 2017, para. 14.

<sup>42</sup> Bolivarian Republic of Venezuela, Ministry of the People’s Power for Foreign Relations, Note AGEV/2017-000300, comments on the draft country report, December 21, 2017, paras. 12-13.

<sup>43</sup> Bolivarian Republic of Venezuela, Ministry of the People’s Power for Foreign Relations, Note AGEV/2017-000300, comments on the draft country report, December 21, 2017, para. 15.

<sup>44</sup> Bolivarian Republic of Venezuela, Ministry of the People’s Power for Foreign Relations, Note AGEV/2017-000300, comments on the draft country report, December 21, 2017, para. 18.

<sup>45</sup> Bolivarian Republic of Venezuela, Ministry of the People’s Power for Foreign Relations, Note AGEV/2017-000300, comments on the draft country report, December 21, 2017, para. 19.

<sup>46</sup> Bolivarian Republic of Venezuela, Ministry of the People’s Power for Foreign Relations, Note AGEV/2017-000300, comments on the draft country report, December 21, 2017, para. 20.

that relies on references from critics and omits official information contributed by the State or the positive mentions made by competent international organizations is not objective.<sup>47</sup>

63. In that regard, the Commission takes note that, in a note dated August 16, 2017, the Commission informed the Venezuelan State of its decision to prepare a report on the human rights situation in 2017. With a view to having State information reflected in the report, the Commission asked the State to remit information for 2017 regarding the main topics of the report. The Venezuelan State has not replied to that request.
64. In addition, on August 16, 2017, the Commission told civil society organizations that it was preparing this third report on the human rights situation in Venezuela and asked them to send any information they deemed pertinent. Several civil society organizations submitted information in response to that request by the IACHR.
65. Pursuant to Article 60.a of its Rules of Procedure, on 21 November, 2017, the Commission transmitted the draft report to the State for it to make any observations it deems pertinent. The State presented its comments on December 21, 2017. They have been incorporated at different points throughout this report<sup>48</sup>.
66. The Commission regrets the ongoing lack of access to official sources and information, which should be public, on the actions of State bodies, and to statistics compiled by the State which would allow a better assessment of the effective exercise of human rights. The lack of access to official information, in general, has been an obstacle during preparation of the report and has hampered efforts to throw light on the human rights situation in Venezuela.<sup>49</sup> In light of the above, the IACHR calls upon the Venezuela State to provide the sources and official statistics available so as to permit effective monitoring of any measures adopted by the State to implement the recommendations put forward in this report.
67. Despite those obstacles, by coordinating the findings of its various tools for monitoring, promoting, and defending human rights, the Commission has been able to put together recent, reliable and credible information elicited from the sources authorized under Article 58.5 of its Rules of Procedure. In this way, the IACHR takes a variety of sources into account, which enables it to compare to the information received through its various mechanisms;

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<sup>47</sup> Bolivarian Republic of Venezuela, Ministry of the People's Power for Foreign Relations, Note AGEV/2017-000300, comments on the draft country report, December 21, 2017, para. 42.

<sup>48</sup> Bolivarian Republic of Venezuela, Ministry of the People's Power for Foreign Relations, Note AGEV/2017-000300, comments on the draft country report, December 21, 2017.

<sup>49</sup> IACHR, 2016 Annual Report, Chapter IV.B, Venezuela, para. 29.



the information provided by the State; the information from civil society and academic institutions; and public information, which includes domestic law, judicial or administrative rulings, statements of State authorities, or public actions known to the public through a variety of media outlets. This information affords the IACHR insight into the human rights situation, which is analyzed in light of international obligations applicable to Venezuela.

68. Specifically, the Commission bases its analysis on the obligations contained in the American Declaration, the OAS Charter,<sup>50</sup> and the Inter-American Democratic Charter. Where relevant, it likewise takes into account other inter-American human rights treaties to which Venezuela is party, such as the Inter-American Convention to Prevent and Punish Torture,<sup>51</sup> the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women or Belém Do Pará Convention;<sup>52</sup> the Inter-American Convention on Forced Disappearance of Persons;<sup>53</sup> and the Inter-American Convention on the Elimination of All Forms of Discrimination against Persons with Disabilities.<sup>54</sup>

## ***D. Structure of the Report***

69. This report has four main focuses corresponding to the Commission's core concerns with respect to the human rights situation in Venezuela, namely: (i) democratic institutions (both individually and as a system); (ii) social protest and freedom of expression; (iii) violence and citizen security; and (iv) poverty and economic, social, cultural, and environmental rights (ESCER).<sup>55</sup> In each of these chapters, the IACHR highlights the matters of most concern; summarizes its observations during the period covered by the report, indicating, where applicable, any concrete cases with which it is familiar; and it analyzes that situation based on the applicable legal framework. Recommendations regarding specific measures that hopefully the State will adopt to overcome the problems identified are presented in a section at the end of the report. A cross-cutting analysis is performed of impairments to the rights of persons, communities, and groups at greatest risk and those who have historically been subject to discrimination and exclusion. The IACHR points out that, while the report is structured

<sup>50</sup> Venezuela ratified the [OAS Charter](#) on December 21, 1951.

<sup>51</sup> Venezuela ratified the [Inter-American Convention to Prevent and Punish Torture](#) on June 25, 1991.

<sup>52</sup> Venezuela ratified the [Belém Do Pará Convention](#) on January 16, 1995.

<sup>53</sup> Venezuela ratified the [Inter-American Convention on Forced Disappearance of Persons](#) on July 6, 1997.

<sup>54</sup> Venezuela ratified the [Inter-American Convention on the Elimination of All Forms of Discrimination against Persons with Disabilities](#) on June 6, 2006.

<sup>55</sup> IACHR, Press Release No. 134/17, [IACHR to Draft Country Report on Human Rights Situation in Venezuela](#), September 5, 2017.

according to different topics and rights in separate sections, no hierarchy or priority is established among them; on the contrary, the idea is to convey a sense of the risks and serious plight of all the human rights of the people of Venezuela.

70. The IACHT trusts that resolute, serious, and committed actions to implement the recommendations made in this report will help improve the human rights situation in Venezuela and thereby achieve the restoration of constitutional order and the effective exercise of Venezuelans' human rights. Furthermore, the Inter-American Commission considers it essential, for the protection of human rights in that country, that Venezuela withdraw its denunciation of the OAS Charter and ratify the American Convention on Human Rights, the inter-American system's flagship treaty. The Commission underscores that those are fundamental formal steps that form part of the general obligation of the Venezuelan State to organize its entire state structure with due diligence, in such a way as prevent, investigate, punish, and make reparation for every violation of human rights.
71. The situation of human rights in Venezuela is included in Chapter IV. B of the IACHR's 2017 Annual Report, pursuant to Article 59.6.1.i; 6.a.ii; 6.b; and 6.d.i of its Rules of Procedure. The Commission takes this decision in light of not just the persistence but also the exacerbation of structural factors impairing the human rights of the population, that have led to a political, social, and economic crisis that is unprecedented in the history of the country.
72. The Commission reiterates its readiness to support the process of implementing the recommendations contained in this report; to provide any counseling needed to that end; and to move forward together with protecting the human rights of the inhabitants of Venezuela. With that objective in mind, the Commission reiterates its desire to pay an on-site visit to the country, particularly the visit mentioned in the recent request for the State's assent to a mission to study the particular situation of women and girls in the context of this crisis. The Inter-American Commission expresses its total openness to dialogue with the State and to acknowledge and encourage any progress made with respect to the human rights situation in Venezuela.



CHAPTER 2

THE DEMOCRATIC  
INSTITUTIONAL SYSTEM



## THE DEMOCRATIC INSTITUTIONAL SYSTEM

73. Democracy is construed as "[...] a universal value based on the freely expressed will of people to determine their own political, economic, social, and cultural systems and their full participation in all aspects of their lives."<sup>56</sup> It has proven to be indispensable for the effective exercise of human rights and fundamental freedoms.<sup>57</sup> For democracy to be consolidated there has to be an institutional system rooted in the separation, independence, and balance of powers, along with the effective exercise of political rights through free and fair elections, and a commitment to respect and promote pluralism in society.<sup>58</sup> As the IACHR has repeatedly shown, these elements have not been present in Venezuela for several years and that has seriously impaired the effective exercise of substantive democracy.<sup>59</sup> In 2017, the Commission observes with deep concern that this state of affairs has not only continued, but has worsened to a point at which it triggered an alteration of the Constitutional order, as this Chapter points out.

### ***A. Separation and Balance between the Branches of Government***

74. The democratic rule of law, as a way of organizing political power, is governed by a number of fundamental principles, one of which is the separation of powers. It assumes that the various functions of government correspond to separate, independent, and mutually balanced bodies in such a way that the necessary limits are set to the exercise of power and arbitrariness is avoided. According to the Venezuelan Constitution of 1999, National Public Power is divided into Legislative, Executive, Judicial, Citizen

<sup>56</sup> United Nations, General Assembly, 2005 World Summit Outcome, A/60/L.1, September 15, 2005, para. 135.

<sup>57</sup> Article 7 of the Inter-American Democratic Charter.

<sup>58</sup> Article 3 of the Inter-American Democratic Charter; and United Nations, Commission on Human Rights resolution 2000/47, Promoting and consolidating democracy, April 25, 2000.

<sup>59</sup> IACHR, 2016 Annual Report, Chapter IV.B, Venezuela, para. 70-87 and 88-119; 2015 Annual Report, Chapter IV.B, Venezuela, para. 71-113; 2014 Annual Report, Chapter IV.B, Venezuela, para. 360-397; 2013 Annual Report, Chapter IV.B, Venezuela, para. 476-518; 2012 Annual Report, Chapter IV, Venezuela, para. 383-388; 2011 Annual Report, Chapter IV, Venezuela, para. 412-420; 2010 Annual Report, Chapter IV, Venezuela, para. 615-649 and 677-684; 2009 Annual Report, Chapter IV.B, Venezuela, para. 473-477; 2008 Annual Report, Chapter IV, Venezuela, para. 335-345; and 2007 Annual Report, Chapter IV, Venezuela, para. 269-276.

and Electoral [branches].<sup>60</sup> Nevertheless, as the Commission notes in this section, the Executive Branch in Venezuela has, in practice, ignored the separation and balance that is supposed to exist among those branches of government and has undermined them to a point at which today they appear to be non-existent.

## 1. Relations between the Executive and the Judiciary

75. The interferences by the Supreme Court of Justice (TSJ) in the National Assembly (AN), which were seriously exacerbated over the past year with the above-mentioned Judgments No. 155 and No. 156, are explained in part by the structural problem of a lack of judicial independence in Venezuela. The Commission considers that this is a determinant that has permitted interference by the Executive in the Judiciary and, in turn, by the Judiciary in the Legislature. Although the State has asserted that the Judiciary is independent and autonomous in exercising its Constitutional functions, the IACHR receives information that consistently indicates the opposite.<sup>61</sup>
76. Indeed, the Judiciary in Venezuela has a serious problem of lack of independence, as the IACHR has repeatedly pointed out through its various mechanisms, so much so that for the past 10 years the IACHR has included Venezuela in Chapter IV of its annual reports.<sup>62</sup> United Nations mechanisms have also been monitoring the problem, as evidenced by the fact that 21 of the recommendations made in the second cycle of the Universal Periodic Review (UPR) of Venezuela in December 2016 revolve around access to justice and the majority is specifically related to the independence of the judiciary.<sup>63</sup> Similarly, the World Justice Project (WJP) 2016 Rule of Law Index ranks Venezuela in last place in a ranking of 113 countries in which

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<sup>60</sup> Article 136 of the [Constitution of Venezuela](#). [Tr. [https://www.constituteproject.org/constitution/Venezuela\\_2009.pdf?lang=en](https://www.constituteproject.org/constitution/Venezuela_2009.pdf?lang=en)] That was also pointed out by the Venezuelan State delegation at the hearing on the situation of the democratic institutional system in Venezuela, convened ex officio and held on October 24, 2017, in connection with the 165th period of sessions of the IACHR. [IACHR, [Situation of Democratic Institutions in Venezuela](#), October 24, 2017].

<sup>61</sup> [IACHR, [Situation of Democratic Institutions in Venezuela](#), October 24, 2017].

<sup>62</sup> IACHR, [2016 Annual Report](#), Chapter IV.B, Venezuela, para. 57-69; [2012 Annual Report](#), Chapter IV, Venezuela, para. 464-509; [2008 Annual Report](#), Chapter IV, Venezuela, para. 39-403; and [2004 Annual Report](#), Chapter IV, Venezuela, para. 167-192.

<sup>63</sup> The Commission notes that the Venezuela State acknowledged 15 of those recommendations [United Nations, [Report of the Working Group on the Universal Periodic Review, Bolivarian Republic of Venezuela](#), December 27, 2016, Recommendations 154-174; and [Report of the Working Group on the Universal Periodic Review, Bolivarian Republic of Venezuela, Addendum, Views on conclusions and/or recommendations, voluntary commitments and replies presented by the State under review](#), March 13, 2017].

one of the factors consider is the extent to which the Judiciary is free from improper Government influence.<sup>64</sup>

77. Civil society organizations have also consistently informed the IACHR about the lack of judicial independence, caused by the Executive Branch interference.<sup>65</sup> They have stressed, in particular, that the TSJ has ceased to function as the guarantor of the Venezuelan Constitution, in that it has, inter alia, granted supra constitutional status to infra constitutional norms, such as regulations and decrees; acts that undermined the autonomy of the Legislature.<sup>66</sup> According to the civil society organizations, the TSJ's has ruled in accordance with political interests, undermining the very foundations of the rule of law.<sup>67</sup> The IACHR has also received information indicating that one clear example of the lack of judicial independence in the country is the TSJ's failure to examine the constitutionality of the Executive's denunciation of the OAS Charter.<sup>68</sup>
78. The Commission considers that the principal factors that permit this to happen are the flaws in the processes by which TSJ judges are appointed and removed; the highly provisional tenure of judges in the judicial system; and very serious acts of harassment and intimidation against members of the Judiciary.

### ***Appointment and Removal of TSJ judges***

79. The lack of independence of judges of the TSJ, the highest judicial organ in Venezuela<sup>69</sup>, has to do with the use of inappropriate election processes and the absence of guarantees of tenure. Regarding the first of these, it is to be noted that the procedure for appointing TSJ judges is governed by the 1999

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<sup>64</sup> The rating assigned was 0.05 out of 1. [World Justice Project, Rule of Law Index 2016, pág. 156.

<sup>65</sup> IACHR, Situation of Democratic Institutions in Venezuela, October 24, 2017; Access to Justice in Venezuela, March 22, 2017; International Commission of Jurists, Achieving Justice for Gross Human Rights Violations in Venezuela, Baseline Study, July 2017, p.. 20; and The Supreme Court of Justice: an instrument of executive power.

<sup>66</sup> An example would be Judgment No. 618 on parliamentary oversight of public interest contracts, in which the TSJ is said to have granted supra constitutional status to the *Decreto con Rango, Valor y Fuerza de Ley Orgánica de la Administración Financiera del Sector Público* (Decree with the Status, Importance, and Force of an Organic Public Sector Financial Administration Law) so that the Central Bank of Venezuela's application for a loan from the Latin American Reserve Fund (FLAR) would not qualify as a public interest contract and thus be exonerated from AN approval [TSJ, Judgment of July 20, 2016]; International Commission of Jurists The Supreme Court of Justice: an instrument of executive power, pp. 21-22 and IACHR, Situation of Democratic Institutions in Venezuela, October 24, 2017].

<sup>67</sup> [IACHR, Situation of Democratic Institutions in Venezuela, October 24, 2017].

<sup>68</sup> See, for example, Carlos Ayala Corao, professor and head of the chair of constitutional law (UCAB), *"Inconstitucionalidades de la Denuncia de la Carta de la OEA por Venezuela y sus Consecuencias de Derecho Internacional"* (2017).

<sup>69</sup> Article 3 of the Organic Law of the TSJ.



Constitution,<sup>70</sup> which established it and the TSJ Charter (Ley Orgánica del TSJ)<sup>71</sup>. The Constitution does not establish the number of members of the Supreme Court, but it does state that their appointment shall be for a 12-year term. According to the Constitution, the election process comprises a pre-selection of candidates by a Judicial Nominations Committee, in which civil society must be represented, followed by a second pre-selection by the Citizen Power Committee to Evaluate Candidacies. The final selection is to be carried out by the AN, which must elect by a qualified majority of two-thirds of the votes cast, although its Charter establishes that if no consensus is reached in three plenary sessions, an appointment may be made by a simple majority (50 percent plus one).

80. In its annual reports, the Commission has drawn attention to a series of problems that, in practice, have arisen in relation to the highly politicized election of members of the TSJ by the AN. Thus, in its 2002 Annual Report, the IACHR pointed out that the appointment was made without complying with the Constitutional requirement to have the candidates evaluated by a Judicial Nominations Committee and a Citizen Power Committee to Evaluate Candidacies<sup>72</sup>. The Commission had also raised questions about the TSJ Charter of 2004 allowing election of its members with just a simple majority, thereby failing to meet the requirement for ample political consensus. The Commission also criticized the establishment, in a section of that law, of new grounds for suspending and removing judges.<sup>73</sup> The Commission further pointed out that, because the Constitution does not set a fixed number of members of the TSJ, the NA has been able to modify the number at will.<sup>74</sup>

<sup>70</sup> Articles 262, 263, and 264 of the Constitution of Venezuela.

<sup>71</sup> In various articles, the TSJ Charter (Ley Orgánica) describes the election process, namely: i) the appointment period and election by the AN (Article 38); ii) the acts of the Nomination Committee (Articles 64-73; and iii) Steps taken by Citizen Power (Article 74).

<sup>72</sup> Indeed, the IACHR noted in its 2002 Annual Report that the election of TSJ judges at that time was based on the *Special Law for the Ratification or Appointment of Citizen Power Officials and Judges of the Supreme Court of Justice*, without complying with the mechanism stipulated in the Constitution, which provided for an evaluation of candidates by a Judicial Nominations Committee and a Citizen Power Committee to Evaluate Candidacies [IACHR, 2002 Annual Report, Chapter IV, Venezuela, para. 26].

<sup>73</sup> IACHR, 2004 Annual Report, Chapter V, Venezuela, para. 174-175.

<sup>74</sup> That was precisely what happened with the TSJ Charter of 2004, which increased the number of TSJ judges from 20 to 32. That was a matter of concern to the IACHR because of the danger posed to judicial independence if, at any time, the AN could alter the number of members of the TSJ. [CIDH, Report on the situation of human rights in Venezuela (2003), para. 158]. That was also pointed out by the United Nations Special Rapporteur on the independence of judges and lawyers, Leandro Despouy, who warned that this allowed “[...] the coalition dominating the National Assembly to appoint 12 judges, giving it an ample majority of judges in the Supreme Court [...]”, thereby creating a politicized judiciary [ONU, Report of the Special Rapporteur on the independence of judges and lawyers, E/CN/4/2005/60/Add.1, 18 March 2005, para. 167]. On this point, it is worth noting that Article 262 of the Constitution of Venezuela does not establish the number of judges that the TSJ should have.

81. The problems relating to the appointment of members of the TSJ surfaced again almost immediately after the opposition won the legislative elections of December 6, 2015, when the AN, which at the time mainly towed the government line (oficialista) promptly appointed 13 new judges to the TSJ on December 23, 2015.<sup>75</sup> The main objections to those appointments were that legally established election deadlines and schedules were not respected and challenges to some of the candidates were ignored. In addition, there were queries about the profiles of several of the judges appointed.<sup>76</sup> It was precisely that composition of the TSJ that led to the serious interferences in the AN that the IACHR will refer to in the next section (Chapter II.A.2)<sup>77</sup>. The same set of judges was also responsible for the worrying decisions dismissing or disqualifying mayors and governors, which the Commission will also address below (Chapter II.B.2).
82. The Commission has previously warned of the risks for judicial independence of having a political body, such as the AN, appoint members of a high court, such as the TSJ, without more substantial guarantees.<sup>78</sup> To avoid such risks, the IACHR reiterates that it is essential to ensure prior dissemination of calls for candidacies, deadlines, and procedures, which must be clearly defined in the Constitution and other applicable provisions; along with guarantees for equal and inclusive access for candidates; civil society participation, and grading of candidates based on merit and professional abilities.<sup>79</sup> To that end, it is also important to construct a clear profile in advance of the personal qualities and skills a candidate should match; to investigate and evaluate his/her background; to conduct a transparent, public election process; and to insist that entities responsible for making the appointment substantiate their decision.<sup>80</sup> To that extent

<sup>75</sup> CNN, [Polémica en Venezuela por designación de magistrados del Tribunal Supremo de Justicia](#), December 23, 2015; BBC, [Por qué importan tanto los magistrados que designó el chavismo en Venezuela](#), December 23, 2015; and Telesur, [Designan nuevos magistrados del TSJ de Venezuela](#), December 23, 2015.

<sup>76</sup> Concrete cases highlighted by civil society during the hearing on Access to Justice in Venezuela were: (i) Calixto Ortega, who reportedly did not satisfy the requirement (for election) of having practiced as a lawyer for 15 years; (ii) Maikel Moreno, the current President of the TSJ, about whom serious questions have allegedly been raised regarding his behavior, having reportedly been associated with two homicide cases; and (iii) Cristian Cerpa, said to have been a party militant/activist [CIDH, [Access to Justice in Venezuela](#), March 22, 2017].

<sup>77</sup> In this regard, the International Commission of Jurists complained that the TSJ had turned into an appendix of the Judiciary, particularly since, through legal mechanisms such as prior oversight of constitutionality, it had enabled President Nicolás Maduro to, almost systematically, reject laws passed by the AN [International Commission of Jurists, [Achieving Justice for Gross Human Rights Violations in Venezuela, Baseline Study, July 2017](#), p. 25].

<sup>78</sup> IACHR, [Guarantees for the independence of justice operators.. Toward Strengthening Access to Justice and the Rule of Law in the Americas](#), OEA/SER.L/V/II, Doc. 44, December 5, 2013, para. 103.

<sup>79</sup> IACHR, [Guarantees for the independence of justice operators.. Toward Strengthening Access to Justice and the Rule of Law in the Americas](#), OEA/SER.L/V/II, Doc. 44, December 5, 2013, para. 106.

<sup>80</sup> According to the Due Process of Law Foundation (DPLF) guarantees for the appointment of high court justices should include establishing "transparent procedures" that make it possible to discern candidates' merits and ensure equal access opportunities for all candidates. [DPLF, [El proceso de selección de la Corte Suprema de El Salvador: Recomendaciones para una reforma necesaria](#)].

the IACHR criticizes the fact that, despite its observations in previous annual reports, the processes for electing TSJ members continue to eschew such guarantees, even when some of them are provided for in Venezuela's own legal system. In light of the above, the Commission urges the State to provide those guarantees in future election processes; establish mechanisms for penalizing non-compliance; and to amend its regulations based on these guidelines, so as to provide better safeguards for the independence of the country's highest judicial authority.

83. The independence of members of the TSJ has also been impaired by their lack of "job security" (tenure).<sup>81</sup> According to information received by the Commission, of the 84 TSJ judges appointed since it was established, only 7 reportedly serve the 12-year term established in the Constitution.<sup>82</sup> Almost two-thirds (60 percent) of those who did not complete the term took early retirement.<sup>83</sup> However, the information available suggests that retirement was by no means always voluntary. Notably 13 of the justices who retired in 2015 did so in order for the AN to appoint new members that year. On February 17, 2016, two of the retired judges complained to the Special Commission formed by the AN to investigate the fast-track election in 2015 that they had been forced to retire prematurely.<sup>84</sup> The Commission rejects any cases such as those complained of because they contravene a judge's guaranteed tenure (inamovilidad en el cargo). In that connection, the IACHR has pointed out that under the guaranteed tenure principle, judges may only be removed when their appointment term or condition expires, they reach mandatory retirement age, or following disciplinary proceedings. None of those eventualities applied in the scenario described above.<sup>85</sup>

### ***Temporary Positions***

84. Another reason that, in the Commission's view, generally explains the lack of judicial independence in Venezuela is the highly provisional nature of judges' terms. The Commission has kept track of this situation and deeply

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<sup>81</sup> This is worrisome because the Constitution establishes that TSJ judges may only be removed for gross negligence and by a vote of two-thirds of the AN [Article 265 of the [Constitution of Venezuela](#)]. The TSJ Charter regulates their dismissal in Articles 62 and 63. Article 44 of the same norm provides for judges being able to retire in accordance with the TSJ charter [[Ley Orgánica del TSJ](#)].

<sup>82</sup> Access to Justice, [El TSJ: La joya que pocos han podido retener](#), March 30, 2017, p. 1.

<sup>83</sup> Access to Justice, [El TSJ: La joya que pocos han podido retener](#), March 30, 2017, p. 2.

<sup>84</sup> Access to Justice, [El TSJ: La joya que pocos han podido retener](#), March 30, 2017, pp. 11-14; and International Commission of Jurists, [Achieving Justice for Gross Human Rights Violations in Venezuela, Baseline Study, July 2017](#), p. 25.

<sup>85</sup> IACHR, [Guarantees for the independence of justice operators.. Toward Strengthening Access to Justice and the Rule of Law in the Americas](#), OEA/SER.L/V/II, Doc. 44, December 5, 2013, para. 186.

laments that, despite its reiterated observations, there are still an unacceptably large number of temporary judges.<sup>86</sup>

85. According to information received for March 2017, 73 percent of judges were temporary. That information was provided by civil society organizations during a public hearing before the IACHR and was not contested by the State representatives present.<sup>87</sup> Similarly, according to the International Commission of Jurists, in 2007, only 700 of Venezuela's 2,000 judges have tenure (the rest being temporary).<sup>88</sup> According to the same source, the proportion of temporary judges has ranged between 66 percent and 88 percent.<sup>89</sup> Given that there is no comparison between the situation of a regular judge -- appointed in a public, competitive process and enjoying full stability -- and that of a temporary judge, the IACHR reiterates that temporary appointments should be the exception, not the rule, because their extensive and prolonged use eventually creates impediments to judicial independence.<sup>90</sup>
86. The IACHR draws attention to the fact that the extensive use of temporary judges in Venezuela has to do with the restructuring of the Judiciary in 1999.<sup>91</sup> As part of that process, the following commissions were established: (i) the Committee for Judicial System Restructuring and Operations,<sup>92</sup> which performed the functions of disciplinary tribunals until they were established in 2011;<sup>93</sup> and lii) the Judicial Commission, established by the TSJ, which was assigned, among other functions, the job of nominating and removing judges appointed on a provisional or

<sup>86</sup> IACHR, 2016 Annual Report, Chapter IV.B, Venezuela, para. 57-62; 2007 Annual Report, Chapter IV, Venezuela, para. 278; and 2002 Annual Report, Chapter IV, Venezuela, para. 30.

<sup>87</sup> IACHR, Hearing on Access to Justice in Venezuela, March 22, 2017.

<sup>88</sup> International Commission of Jurists, Achieving Justice for Gross Human Rights Violations in Venezuela, Baseline Study, July 2017, p. 24.

<sup>89</sup> International Commission of Jurists, Achieving Justice for Gross Human Rights Violations in Venezuela, Baseline Study, July 2017, p. 23.

<sup>90</sup> I/A Court HR. *Case of Chocrón v. Venezuela*. Preliminary Objection, Merits, Reparations and Costs. Judgment of July 1, 2011, Series C No. 227, para. 107.

<sup>91</sup> Decreto de Reorganización del Poder Judicial y el Sistema Penitenciario [Decree Restructuring the Judiciary and the Prison System], published in the Official Gazette No. 36.805 of October 11, 1999.

<sup>92</sup> Article 27 of the Decreto de Régimen de Transición del Poder Público [Decree establishing the Regime for the Transition of Public Power] created the CFRSJ, while Article. 23 assigned it the functions of disciplinary tribunals until the AN “adopts legislation establishing disciplinary procedures and tribunals.” This was also established by subparagraph e) single, derogatory, transitional, and final provision of the 2004 TSJ charter (Ley Orgánica del TSJ).

<sup>93</sup> The delay was due to the fact that the Ethics Code for Venezuelan Judges (*Código de Ética*), which created the Judicial Tribunal and Disciplinary Court (Articles 40 and 42), was not promulgated until August 2009. However, those disciplinary bodies were not actually constituted until 2011, when, following an amendment to the Ethics Code, the AN appointed the disciplinary judges [June 10, 2011]. That competence was ratified by the Constitutional Division of the TSJ, which subsequently ruled that the judicial disciplinary bodies may not try temporary judges who have committed some irregularity, [TSJ, Judgment N° 1082 of August 11, 2015; and PROVEA, Annual Report 2015, “Provisionalidad de jueces sigue erosionando independencia del Poder Judicial,” July 19, 2016.]

temporary basis: a function it performs to this day.<sup>94</sup> These Commissions have been responsible, as the I/A Court H.R. has pointed out on three occasions,<sup>95</sup> for the arbitrary dismissal of temporary judges, seriously undermining the guarantee of irremovability and judicial independence. Currently, even though the CFRSJ no longer exists, this problem persists due to the existence of a body, like the Judicial Commission, which can appoint and remove provisional judges at will, denying them any kind of guaranteed stability. Moreover, this situation continues due to the fact that the disciplinary jurisdiction cannot allegedly be applied to temporary judges and because of the insufficient number of competitive processes for appointing regular judges.

87. Accordingly, both the Commission and the I/A Court of Human Rights have underscored that the temporary nature of the judges' tenure does not mean that they can be dismissed at will. <sup>96</sup> On the contrary, they should be guaranteed a degree of irremovability in the form of the right to hold their position until a condition terminating it has been met (*condición resolutoria*), such as the completion of a pre-established term or the holding of a competitive process resulting in the appointment of a permanent replacement for the post.<sup>97</sup> Unless those conditions are met, dismissal should be admissible only in connection with disciplinary proceedings or a properly substantiated administrative action with all due guarantees.
88. The Commission reiterates that indefinitely temporary tenure and the nonexistence of stability guarantees entail a risk that judges may take

<sup>94</sup> The TSJ established the Judicial Commission, comprised of six justices of the TSJ, and charged it with performing such functions as the Executive Directorate of the Judicial Council [Dirección Ejecutiva de la Magistratura] should delegate to it [TSJ, Articles 2 and 26 of the Normativa sobre la dirección, gobierno y administración judicial [Rules governing the Judicial Management, Governance, and Administration], August 15, 2000]. The Executive Directorate of the Judicial Council is the body charged with the management, governance, and administration of the Judiciary [Article 267 of the Constitution of Venezuela]. The Criminal Division of the TSJ freely appoints and dismisses the Executive Director of the Judicial Council by a simple majority. The position may not be held by a currently serving magistrate [Article 76 of the Organic Law of the TSJ].

<sup>95</sup> I/A Court HR. *Case of Apitz Barbera et al ("First Administrative Law Court") v. Venezuela*. Preliminary Objection, Merits, Reparations and Costs. Judgment of August 5 2008. Series C No. 182; *Case of Reverón Trujillo v. Venezuela*. Preliminary Objection, Merits, Reparations and Costs. Judgment of June 30 2009. Series C No. 197; and *Case of Chocrón Chocrón v. Venezuela*. Preliminary Objection, Merits, Reparations and Costs. Judgment of July 1, 2011, Series C No. 227.

<sup>96</sup> I/A Court HR. *Case of Apitz-Barbera et al. ("First Court of Administrative Disputes") v. Venezuela*. Preliminary Objection, Merits, Reparations and Costs. Judgment of August 5, 2008. Series C No. 182, para. 43; and *Case of Chocrón Chocrón v. Venezuela*. Preliminary Objection, Merits, Reparations and Costs. Judgment of July 1, 2011, Series C No. 227, para. 117; and IACHR, Guarantees for the independence of justice operators. Toward Strengthening Access to Justice and the Rule of Law in the Americas, OEA/SER.L/V/II, Doc. 44. December 5, 2013, para. 94.

<sup>97</sup> I/A Court HR. *Case of Reverón Trujillo v. Venezuela*. Preliminary Objection, Merits, Reparations and Costs. Judgment of June 30, 2009. Series C No. 197, para. 116; and *Case of Chocrón Chocrón v. Venezuela*. Preliminary Objection, Merits, Reparations and Costs. Judgment of July 1, 2011, Series C No. 227, 105.

decisions to please the authority responsible for their appointment or removal, a state of affairs that seriously impairs their independence.<sup>98</sup> The IACHR notes that the State has included holding public competitions for entry into the permanent judicial career service in its 2016-2019 Human Rights Plan.<sup>99</sup> However, the Commission observes that the Plan sets neither the number nor dates of such competition. According to information provided by the State, a public competitive process of this nature began on January 12, 2016 but only its first stage had been completed to date.<sup>100</sup> Given the seriousness and persistence of this problem over time, the IACHR calls upon the State to take urgent and resolute steps to significantly reduce the number of temporary judges and increase the number of regular judges. Such steps include more expeditious and more extensive use of competitive processes. The Commission further urges that measures be adopted promptly to preclude even temporary judges being removed other than through disciplinary proceedings or an administrative action that abides strictly by due process, especially the duty to properly substantiate the grounds for removal. In addition, a judicial remedy must be guaranteed for reviewing and challenging the removal.

89. It is important to recall that the IACHR has taken the view that, in order to guarantee the principle of judicial independence, transparent and appropriate selection and appointment processes are required, such as the conducting of competitive processes like those referred to above; respecting the independence of judges in their deliberative, decision-making and other functions; and providing for disciplinary procedures with all due guarantees.<sup>101</sup> Along those same lines, the I/A Court of H.R. has pointed out in Venezuela-related cases that guarantees of judicial independence include an appropriate appointment process, security of tenure (*inamovilidad en el cargo*), and safeguards against external pressure.<sup>102</sup> The IACHR vehemently protests the total failure in Venezuela to provide such guarantees for the Judiciary, despite the Commission's frequently repeated recommendation in that regard.

<sup>98</sup> I/A Court HR. *Case of Reverón Trujillo v. Venezuela*. Preliminary Objection, Merits, Reparations and Costs. Judgment of June 30, 2009. Series C No. 197, para. 78; and IACHR, Guarantees for the independence of justice operators. Toward Strengthening Access to Justice and the Rule of Law in the Americas, OEA/SER.L/V/II, Doc. 44, December 5, 2013, para. 90.

<sup>99</sup> National Human Rights Council, Human Rights Plan (2016-2019). The inclusion of public competitions to enter the judicial career service in the 2016-2019 Human Rights Plan was accepted by the representatives of the State during the hearings at the 161st regular period of sessions [IACHR, Access to Justice in Venezuela, March 22, 2017].

<sup>100</sup> IACHR, Situation of Democratic Institutions in Venezuela, October 24, 2017.

<sup>101</sup> IACHR, Guarantees for the independence of justice operators. Toward Strengthening Access to Justice and the Rule of Law in the Americas, OEA/SER.L/V/II, Doc. 44. December 5, 2013, para. 34.

<sup>102</sup> I/A Court HR. *Case of Chocrón Chocrón v. Venezuela*. Preliminary Objection, Merits, Reparations and Costs. Judgment of July 1, 2011, Series C No. 227, para. 98; and *Case of Reverón Trujillo v. Venezuela*. Preliminary Objection, Merits, Reparations and Costs. Judgment of June 30, 2009. Series C No. 197, para. 70.

### ***Acts of Harassment and Intimidation***

90. The Commission observes that for years now numerous and consistent complaints have been filed regarding acts of harassment of judges aimed at intimidating them in the exercise of their judicial independence when handing down rulings. The IACHR notes that, on the one hand, such acts are having, to this day, a significant chilling impact and, on the other, that worrying acts of this nature are still being perpetrated.
91. As for the former, the IACHR regards as emblematic the case of judge María Lourdes Afiuni, who was arrested in December 2009, on the same day that she released a person accused of corrupt handling of regulated dollars on the grounds of excessive pre-trial detention. The next day, then President Hugo Chávez called the judge a “bandit” and asked that she be given 30 years imprisonment. Judge Afiuni was accused of the crimes of corruption, misuse of authority, collusion with tax evasion, and conspiracy to commit crime. During her detention she was allegedly raped and is currently under house arrest.<sup>103</sup> The case was cited with concern by the IACHR and other international organizations.<sup>104</sup> Indeed, the Commission and the Inter-American Court issued precautionary and provisional measures, respectively, on her behalf, bearing in mind the threats to her life and integrity to which she was subjected in the National Women’s Correction Institute (Instituto Nacional de Orientación Femenina). The I/A Court of H.R. also took into consideration the fact that she was denied appropriate medical care to the detriment of her health.
92. The Commission considers that acts like those described above have a significant intimidating impact on judges who may fear being treated in the same way, even today.<sup>105</sup> This was the case with former judge Ralenis

<sup>103</sup> Youtube video, [Public hearings before OAS regarding Venezuela](#), OAS, September 14, 2017; and El Universal, [Cronología del caso de la jueza María Lourdes Afiuni](#), June 14, 2013.

<sup>104</sup> IACHR, [Democracy and Human Rights in Venezuela](#), OEA/SER.L/V/II, Doc. 54, December 30, 2009, para. 297-300; [Precautionary Measure No. 380-09](#), María Lourdes Afiuni, Venezuela, January 11, 2010; I/A Court H.R., [Matter of María Lourdes Afiuni with respect to Venezuela](#), Provisional Measures. Resolution of the President of the I/A Court H.R., December 10, 2010; [Matter of María Lourdes Afiuni with respect to Venezuela](#), Provisional Measures. Resolution of the I/A Court H.R., March 2, 2011; and United Nations, [UN human rights experts voice alarm at extended detention of Venezuelan Judge Afiuni](#), December 27, 2011.

<sup>105</sup> In this regard, former public prosecutor Franklin Nieves, who handled the case of Leopoldo López and later admitted that the process included irregularities, said regarding the Afiuni case that “With this fact and the threats issued by the President of the Republic, many judges and prosecutors were intimidated. That’s where the ‘law of fear’ began against judges and prosecutors, who could no longer make decisions that would have adverse consequences for the regime because they knew what the consequences would be. At the present time, no judge or prosecutor can make a decision based on their authorities to release someone or perform any activity with the case file without the approval of the Venezuelan Executive Branch” [Livestream, [Public Hearings before the OAS regarding Venezuela](#), OAS, November 16, 2017].



Tovar,<sup>106</sup> who had allegedly ordered the arrest of Leopoldo López. According to her own account, she received a call from the then President of the TSJ, Gladys Gutiérrez, asking her to go to the courtroom to sign some arrest warrants, including that for Leopoldo López. When she asked for time to analyze that case and evaluate whether the warrant was appropriate, a functionary from the Military Intelligence Directorate had told her: “So you want to be a second Judge Afiuni.” It is worrisome to note that that Directorate was a dependency of the Ministry of the People’s Power for Defense,<sup>107</sup> in other words, of the Executive. For fear of reprisals, former judge Tovar said that she had ended up signing the warrant.<sup>108</sup>

93. The information at the disposal of the IACHR indicates that judges continue to be subjected to serious reprisals and harassment. Worth highlighting, in this regard, is the case of the 33 judges chosen by the AN on July 21, 2017 to replace judges appointed by the previous Parliament just days before the end of their term in office.<sup>109</sup> Allegedly, the latter had been prevented from taking up office as members of the highest judicial body (TSJ). Moreover, they had been threatened by President Maduro, who stated that “all of them were going to be detained [...] and all of them would have their assets, accounts, and everything frozen.”<sup>110</sup> Based on the information available in August 2017, for fear of persecution, 10 of them are now in the United States, six in Colombia, one in Chile, and another 10 have taken refuge in a number of embassies in Caracas, while two are said to have resigned.<sup>111</sup> Moreover, three judges were allegedly detained in July, accused of “usurping power” (usurpadores).<sup>112</sup> For its part, the Venezuelan State pointed to “the grave violations of internal juridical order derived from the

<sup>106</sup> According to the information available, she allegedly resigned on July 2, 2015 due to her disagreement with the lack of independence of the Judiciary [Youtube video, [Public hearings before OAS regarding Venezuela](#), OAS, October 16, 2017].

<sup>107</sup> The Commission notes that, according to the information available, the Military Intelligence Directorate now goes by the name of Office of the Director General of Military Counterintelligence (DGCIM) [DGCIM, [Misión y Visión](#)]. In her complaint, former Judge Tovar emphasized that this body was dependent on the Executive [Youtube video, [Public hearings before OAS regarding Venezuela](#), OAS, October 16, 2017].

<sup>108</sup> Specifically, Judge Tovar stated: “I felt terrified at what those people could do, knowing about precedents [...]” Youtube video, [Public hearings before OAS regarding Venezuela](#), October 16, 2017; and El Nacional, [“No quería que me sucediera lo que le pasó a Afiuni”](#), October 17, 2017.

<sup>109</sup> BBC, [Asamblea Nacional de Venezuela designa nuevos magistrados pese a advertencia del Tribunal Supremo](#), July 21, 2017.

<sup>110</sup> Youtube video, [Maduro sobre magistrados nombrados por la AN: “Todos van a ir presos”](#), Diario Panorama, July 23, 2017.

<sup>111</sup> El Universal, [Almagro: Ortega Díaz y magistrados venezolanos investigarán corrupción](#), August 24, 2017; and [Magistrados exiliados denunciarán a Maduro ante tribunales internacionales](#), August 23, 2017.

<sup>112</sup> República de las Ideas, [Detienen a otros dos jueces elegidos por la oposición](#), Equipo Nizkor, July 26, 2017.



irregular appointment of Supreme Tribunal of Justice magistrates by the National Assembly on July 21, 2017."<sup>113</sup>

94. For several years now, the Commission has noticed a series of dismissals of judges almost immediately after they have handed down rulings with political connotations, which is suggestive of reprisals.<sup>114</sup> In that regard, the IACHR reiterates that such acts send "[...] a strong signal – to society and to other judges – that the judiciary does not enjoy the freedom to adopt rulings that go against government interests and, if they do so, that they face the risk of being removed from office."<sup>115</sup> Accordingly, the IACHR reiterates that, based on the United Nations Basic Principles on the Independence of the Judiciary, judges shall decide matters before them "[...] without improper influences, inducements, pressures, threats or interferences, direct or indirect, from any quarter or for any reason."<sup>116</sup> Likewise, the Commission considers it essential that the State not only refrain from any act that directly or indirectly impairs the independence of judges in their deliberations, rulings, and other functions, but also that it investigate such acts with due diligence, punish those responsible for them, and make reparations to those affected.

<sup>113</sup> Bolivarian Republic of Venezuela, Ministry of the People's Power for Foreign Relations, Note AGEV/2017-000300, comments on the draft country report, December 21, 2017, para. 46.

<sup>114</sup> In its Democracy and Human Rights report, the IACHR indicated that this had been the case of: (i) Judge Mercedes Chocrón Chocrón, one week after she had conducted a judicial inspection of the home of Gen. Carlos Alfonso Martínez, a dissident member of the armed forces, to determine whether the State was complying with the precautionary measures extended by the IACHR; (ii) judges Miguel Luna, Petra Jiménez, and María Trastoy, after releasing a number of citizens arrested for allegedly participating in the anti-government demonstrations of February 27, 2004; (iii) Justice Franklin Arrieche, after he acquitted four members of the Armed Forces accused of insurrection in the events of April 11 to 13, 2002; (iv) Judge Juan Carlos Márquez Barroso, after he overturned a resolution of the National Telecommunications Commission imposing a large fine on Globovisión; (v) Judge Mónica Fernández, because she had exercised judicial oversight of the warrant to search the home of Ramón Rodríguez Chacín, a former Minister of the Interior and Justice; (vi) Alicia Torres, after she claimed she had been harassed to order an injunction against the President of Globovisión and his son; and (vii) Judge Elías Álvarez, after granting bail to the former Chairman of the Industrial Bank of Venezuela [IACHR, *Democracy and Human Rights in Venezuela*, OEA/Ser.L/V/II, Doc. 54, December 30, 2009, para. 286-296]. The IACHR takes note of the acts of hostility against judges Ali Paredes and Nelson Moncada. [El Universal, *Tribunal liberta al destituido juez Alí Fabricio Paredes*, June 2, 2015; and La Patilla, *Fiscalía procesará al juez Alí Paredes, de los casos Makled y Afuni, por "favorecimiento de procesados"*, February 10, 2015]. [Youtube video, *Public hearings before OAS regarding Venezuela*, OAS, October 16 2017]. [Livestream, *Public hearings before OAS regarding Venezuela*, OAS, November 16, 2017]. Nelson Moncada, on the other hand, was allegedly murdered on May 31, 2017, reportedly for reasons relating to his participation in the Leopoldo López case [Youtube video, *Public hearings before OAS regarding Venezuela*, OAS, October 16, 2017]. Prosecutors had also been victims of harassments. Along those lines, ex-prosecutor Nieves described the case of prosecutors Manuel Medina and Javier Gutiérrez, from February 14, 2017. These prosecutors had requested the release of Alejandro Cedeño, manager of Petrocedeño, and his driver, José Pérez. The judge who heard the case ordered their unconditional release. Later, SEBIN officials surrounded the judicial offices. According to the ex-prosecutor Nieves, a negotiation had to be conducted to ensure the prosecutors were not arrested. [Livestream, *Public hearings before the OAS regarding Venezuela*, OAS, November 16, 2017; El Pitazo, *Sebin intenta intervenir en decisiones judiciales sobre Pedro León en Barcelona*, February 14, 2017, and Caraota Digital, *Juez "reculó" en una decisión tras visita del Sebin al Palacio de Justicia de Barcelona*, February 14, 2017].

<sup>115</sup> IACHR, *Democracy and Human Rights in Venezuela*, OEA/Ser.L/V/II Doc. 54, December 30, 2009, para. 301.

<sup>116</sup> Principle 2 of the *Basic Principles on the Independence of the Judiciary*.

95. In short, the cases described above illustrate the grave crisis faced by the Judiciary in Venezuela with respect to its independence. The impact it has is just as grave. Given that judicial independence is a prerequisite for exercise of the right to due process,<sup>117</sup> the lack of it impairs access to justice and perpetuates impunity in cases involving human rights violations. Moreover, the Judiciary plays an indispensable part in monitoring the constitutionality of the acts of the other branches of government and in the administration of justice.<sup>118</sup> Judicial independence is, therefore, a prerequisite for the rule of law and democracy.<sup>119</sup> For that reason, the Commission condemns and laments the fact that, despite its repeated pronouncements, the State has not adopted the measures needed to address this situation.
96. At the same time, the Commission notes that another problem facing the justice system in Venezuela has to do with the Autonomous Public Defense System,<sup>120</sup> responsible for providing free legal counseling to users. Currently, this organ is said to comprise 1500 public [i.e. court-appointed] defense attorneys, who reportedly have served 2,900,000 users.<sup>121</sup> Nevertheless, the IACHR is worried about complaints that it is being used for purposes that have nothing to do with justice.
97. Indeed, civil society has alleged that public defense counsel are being used to obstruct complaints by victims of human rights violations. According to the information available, there are allegedly cases, like that of Judge Afiuni, in which private attorneys for victims have to contend with obstacles designed to prevent them from reaching hearings, so that public defense attorneys are appointed to replace them. Users are also allegedly advised to use public defense counsel if they want to avoid complications during the proceedings. Complaints like these surfaced apparently during the wave of arrests following protests in 2017.<sup>122</sup> In that connection, the Commission issues a reminder that everyone is entitled to be assisted by an attorney of her or his choice and, when the interests of justice so require, by cost-free counsel. Such guarantees are inseparable from everyone's

<sup>117</sup> IACHR, Guarantees for the independence of justice operators. Toward Strengthening Access to Justice and the Rule of Law in the Americas, OEA/SER.L/V/II, Doc. 44, December 5, 2013, para. 30.

<sup>118</sup> IACHR, Democracy and Human Rights in Venezuela, OEA/Ser.L/V/II Doc. 54, December 30, 2009, para. 183.

<sup>119</sup> On this, Article 3 of the Inter-American Democratic Charter establishes as one of the essential elements of democracy the separation of powers and independence of the branches of government, one of which is the judiciary.

<sup>120</sup> The Autonomous Public Defense System is an organ of the justice system [Article 253 of the Constitution of Venezuela]. According to its Organic Law, this body reports to the PD and enjoys functional, administrative, and organizational autonomy. The TSJ is responsible for its inspection and supervision [Article 3 of the Organic Law of Public Defense, January 2, 2007].

<sup>121</sup> IACHR, The Right to Free Legal Aid as Part of the Judicial Guarantees in Venezuela, July 5 2017.

<sup>122</sup> IACHR, The Right to Free Legal Aid as Part of the Judicial Guarantees in Venezuela, July 5 2017.

right to defense.<sup>123</sup> For that reason, the Commission voices its total condemnation of any acts that may have been committed such as those described, undermining fundamental guarantees of the right to due process.

## 2. Effects of the Establishment of the National Constituent Assembly on the Separation of Powers

### *Interference in the National Assembly*

98. The Commission has noted that, for several years now, there has been a sense that the AN lacks independence vis-à-vis the Executive. That would appear to stem from the fact that, from the establishment of the AN in 1999 until the 2105 elections, most seats in the Assembly were assigned to government parties.<sup>124</sup> According to the information at the Commission's disposal, the fact that most AN members are from parties that support the Government has led the AN to cede many of its functions to the Executive. As a result, it is perceived to be a branch of the Executive<sup>125</sup> rather than as a body governed by a balance between the different branches of government. The panorama changed in the legislative elections of December 2015, when the opposition --which had merged into the Mesa de Unidad Democrática coalition (MUD) -- obtained a majority in the AN. It was from then on that one can observe marked interferences by the Executive with the autonomy of the AN, a trend that has been of constant concern to the IACHR.
99. The IACHR notes that tensions are related to the decision of the AN, with an opposition majority, to form a Commission to investigate the above-mentioned election of TSJ justices in December 2015 by the previous Assembly without respecting the rules established by the Organic Law of

<sup>123</sup> IACHR, Report on Terrorism and Human Rights, OEA/SER.L/V/II.116, Doc. 5 rev. 1 corr., October 22, 2002; para. 236-237.

<sup>124</sup> Between 2000 and 2005, the AN comprised 86 "pro-Chavismo" representatives (52.1%) and 79 opposition party members (47.9%) Then, the opposition did not take part in the 2005 elections, because of lack of trust in the National Electoral Commission. As a result, 165 seats were taken by "Chavistas" (98.8%) and only 2 (1.2%) were occupied by deputies from the Amansa and FUNDACIDI parties. In the 2010 elections, government supporters united in the Partido Socialista Unido de Venezuela obtained 98 seats (59.4%), while the opposition, through the Mesa de Unidad Democrática, obtained 64 seats (39.4%) and the two remaining seats went to the Patria para Todos party. Thus, the outcomes to the 2015 elections brought about a significant change in the composition of the AN, since the MUD obtained 112 seats (67.1%), whereas government parties obtained 55 seats (32.9%) [Notimérica, Así ha evolucionado la Asamblea Nacional venezolana, January 5, 2017; Inter-American Institute of Human Rights (IIGHR), Study mission of the Inter-American Institute of Human Rights. National Assembly Elections 2015 in Venezuela, 2016, pp. 15-17 and 91-92; CNN, Informe final del CNE: la MUD obtuvo 112 curules; PSUV 55, December 8 2015; Alba Ciudad, Desde 2000 prevalece el rojo en la AN, September 29, 2010].

<sup>125</sup> El Espectador, Los retos de la nueva Asamblea Nacional en Venezuela, December 6, 2015.

the TSJ and by the Constitution (Chapter II.A.1).<sup>126</sup> The substantiation of the legislative body's powers of oversight, investigation, and audit are set forth in Articles 187.3, 222, 223, and 224 of the Constitution<sup>127</sup>. In March 2016, the Constitutional Division of the TSJ handed down Judgment No. 9, which prohibited the AN from revising or annulling the procedures used to appoint the justices. Moreover, based on a literal interpretation of Article 187.3 of the Constitution, it pointed out that the AN could not conduct political oversight of bodies other than the Executive Branch and that the oversight it could exercise over the appointment of TSJ justices was solely prior to their appointment.<sup>128</sup>

100. The AN was declared "in contempt" by the Electoral Division of the TSJ the January 11, 2016, decision, later withdrawn pursuant to judgments of August 1, 2016, and September 2, 2016.<sup>129</sup> The first decision cited occurred after it had sworn in three opposition deputies elected for the state of Amazonas, thereby allegedly failing to comply with a precautionary measure of the TSJ, which had ordered their suspension from office due to alleged electoral fraud.<sup>130</sup> Arguing that the AN was thus "in contempt", the TSJ trimmed its powers and declared its acts null and void and inapplicable for as long as it remained "in contempt."<sup>131</sup> Here, it is worth noting that the

<sup>126</sup> Tal Cual Digital, [AN aprueba comisión para investigar designación de magistrados del TSJ](#), January 26, 2016; and 2001, [AN aprueba comisión para investigar designación de magistrados del TSJ](#), January 26, 2016.

<sup>127</sup> Article 187.3 of the [Venezuelan Constitution](#) establishes that it is incumbent upon the AN: "To exercise control functions over the government and the National Public Administrative, on the terms established in this Constitution and by law. Evidence obtained during the exercise of this function shall have probative value on such terms as may be established by law." This function is developed in Articles 222, 223, and 224 respectively, of the [Constitution of Venezuela](#).

<sup>128</sup> TSJ, [Judgment of March 1, 2016](#) [Red Justicia, [Memorial de agravios](#), 2016, p. 40].

<sup>129</sup> TSJ, [Judgment of January 11, 2016](#); [Judgment of August 1, 2016](#) and [Judgment of September 2, 2016](#).

<sup>130</sup> TSJ, [Judgment of December 30, 2015](#).

<sup>131</sup> IACHR, Press Release 132/16, [IACHR Expresses Concern Regarding Restrictions in the Exercise of Fundamental Rights in Venezuela](#), September 14, 2016 and [Annual Report 2016](#), Chapter IV.B, Venezuela, para. 83-86. Some of the judgments through which the TSJ has curtailed the powers of the AN or annulled its acts because of its "in contempt" status are: (i) Judgment Nº 814 which, under the states of "exception" and economic emergency, exempted the President from having to submit the budget to the AN and instead stipulated to present it to the TSJ [[Judgment of October 11, 2016](#)]; (ii) the [Judgments Nº 1.012, 1.013, and 1.014](#) which declare the following null and void: the Law to protect the remuneration and wages of teachers in educational establishments dependent on the national, state, and municipal Executive, the indigenous Bilingual Intercultural Education Act, and the Amendment to the Organic Law of the Police and PNB Corps [[Judgments of November 25, 2015](#)]; (iii) Judgment Nº 1086, which appoints members of the National Electoral Council due to legislative omission on the part of the AN and its "contempt" [[Judgment of December 13, 2016](#)]; (iv) Judgment Nº 01 annulling the Organic Law of the Environment [[Judgment of January 6, 2017](#)]; (v) Judgment Nº 2, annulling the acts of the AN on January 5 and 9, [[Judgment of January 11, 2017](#)]; (vi) Judgment Nº 3 which stipulates that President deliver his Annual Message to the TSJ and not to the AN [[Judgment of January 11, 2017](#)]; and (vii) Judgment Nº 5, which establishes that it shall be the Executive Branch that pays the wages of workers in the AN [[Judgment of January 19, 2017](#)]; and (viii) Judgment Nº 6, which grants to President Maduro the AN's powers to award National Pantheon honors [[Judgment of January 20, 2017](#)]; [PROVEA, [Situación de institucionalidad democrática en Venezuela](#), Período 2016-2017, p. 5; Acceso a la Justicia, [TSJ vs. AN](#), April 12, 2017; and Red Justicia, [Memorial de agravios](#), 2016, pp. 34-62].

"contempt" charge, as used by the TSJ, would not appear to be regulated under Venezuelan law, which provides only for fines in cases in which judicial rulings are not complied with.<sup>132</sup> While it is important for the rule of law that judicial rulings be complied with, the use of the concept of "contempt" in this case is incompatible with democratic principles because it is disproportionate and violates the principles of the separation and independence of powers, inasmuch as it prevents one branch of government from legitimately performing its functions. Moreover, it should be pointed out that elections were not called to replace the deputies from the state of Amazonas, which could have altered the effect that the TSJ's ruling had in terms of reducing the qualified majority of two-thirds of Parliament that the opposition had enjoyed until then.

101. In the State's opinion, "the draft project changes the order of the events related to the contempt of the National Assembly in order to confuse the international community."<sup>133</sup> It says that the Supreme Tribunal of Justice's declaration of contempt took place "when the assembly decided to form a Committee to investigate the aforementioned appointment of the TSJ magistrates, which took place in December 2015."<sup>134</sup> The State for its part recalls that "the National Assembly was declared in contempt by the Electoral Chamber of the TSJ on January 11, 2016, and the establishment of the aforementioned committee to investigate the selection of magistrates was approved on January 26, 2016, that is, 15 days after the declaration of contempt."<sup>135</sup> On this point, the State insists that the IACHR's position on the contempt of the National Assembly "disregards a basic principle of the rule of law, which is the requirement that all institutions adhere to court rulings, as well as, obviously, its own standards on the subject."<sup>136</sup>
102. On the other hand, the situation became even tenser when the Legislature challenged the scope and legality of the states of exception and economic emergency decrees issued by the Executive. One of those worth highlighting is Decree No. 2.323 of May 13, 2016, which assigned to the Office of the President of the Republic, among other extensive powers, that of temporarily suspending execution of political sanctions imposed by the

<sup>132</sup> International Commission of Jurists, The Supreme Court of Justice of Venezuela: an instrument of executive power, p. 9.

<sup>133</sup> Bolivarian Republic of Venezuela, Ministry of the People's Power for Foreign Relations, Note AGEV/2017-000300, comments on the draft country report, December 21, 2017, para. 48.

<sup>134</sup> Bolivarian Republic of Venezuela, Ministry of the People's Power for Foreign Relations, Note AGEV/2017-000300, comments on the draft country report, December 21, 2017, para. 48.

<sup>135</sup> Bolivarian Republic of Venezuela, Ministry of the People's Power for Foreign Relations, Note AGEV/2017-000300, comments on the draft country report, December 21, 2017, para. 49.

<sup>136</sup> Bolivarian Republic of Venezuela, Ministry of the People's Power for Foreign Relations, Note AGEV/2017-000300, comments on the draft country report, December 21, 2017, para. 50.

AN on the highest authorities in the Executive Branch.<sup>137</sup> The AN objected to that decree, as it did in respect of the other "exception" and economic emergency decrees. Through Judgment N° 411, the TSJ confirmed the constitutionality of the aforementioned provision, even though the Constitution requires that it also be passed by the AN<sup>138</sup>.

103. In 2017, the TSJ continued to obstruct the work of the AN, a matter of considerable concern to the Commission.<sup>139</sup> Tensions were seriously exacerbated when the TSJ issued judgments N° 155 and 156 on March 27 and 29, 2017. The first settled the appeal filed by government party deputy Héctor Rodríguez Castro for annulment of the allegedly "unconstitutional" agreement passed by the AN that sought to reactivate the process of applying the Inter-American Democratic Charter of the OAS. That agreement had been an initiative of Deputy Luis Florido who argued that the Democratic Charter protected Venezuelans as well as democracy. In its ruling, the TSJ not only annulled said agreement; it also called the AN's behavior "treason," because, in its view, by invoking foreign participation in internal affairs, the AN agreement allegedly showed disregard for higher values in Venezuela's legal system, such as peace, independence, sovereignty, and territorial integrity. Furthermore, the TSJ lifted parliamentary immunity for deputies for as long as they remained "in contempt", arguing that such immunity only applied to acts by deputies in the performance of their constitutional functions, not for "constitutionally illicit and criminal" acts, such as those committed by the AN deputies.<sup>140</sup>
104. For its part, Judgment N° 156 ruled on the action for interpretation of Article 33 of the Organic Law for Hydrocarbons, brought by Corporación Venezolana del Petróleo. The ruling granted the Executive broad powers in respect of oil and gas and concluded that "for as long as the National Assembly remains in contempt and its actions invalid, this Constitutional Division shall guarantee that parliamentary functions are directly

<sup>137</sup> Decree No. 2323, Article 2.7 The IACHR voiced its concern at this interference with the powers of the AN [IACHR, Press Release No. 71/2016, [IACHR Expresses its Concern Regarding the Declaration of a "State of Exception and Economic Emergency" in Venezuela](#), June 2, 2016].

<sup>138</sup> According to [Article 339 of the Constitution of Venezuela](#), decrees declaring a state of exception shall be submitted within eight days of promulgation to the AN for approval and to the TSJ for it to rule on its constitutionality. Moreover, Article 27 of the Organic Law on States of Exception establishes that that decree must be approved by an absolute majority of the AN meeting in a special session called within 48 hours of the publication of the decree. The AN could issue a pronouncement on the decree, otherwise it shall be deemed approved. It was precisely based on this Article that the TSJ dismissed the AN's objections to the state of exception decrees. Indeed, it pointed out that, for the AN to be able to pronounce within eight days, it would necessarily have had to convene the special session, the sole purpose of which should be to discuss approval of the decree. According to the TSJ, the AN had not abided by the provisions of said Article 27 and had thereby validated the Decree. [TSJ, [Judgment of May 19, 2016](#)]. [Civilis, [Sentencias sobre Decretos de Estado de Excepción e Inhabilitación de Poderes Públicos](#), January 17, 2017].

<sup>139</sup> IACHR, [Hearing on Access to Justice in Venezuela](#), March 22, 2017.

<sup>140</sup> TSJ, [Judgment of March 27, 2017](#).

performed by this Division or by the body it designates in order to safeguard the rule of law."<sup>141</sup>

105. The IACHR reiterates its condemnation of these rulings, which constitute usurpation by the Judicial and Executive branches of government of functions that pertain to the Legislative branch as well as a de facto annulment of the people's vote through which the AN deputies were elected, and hence an alteration of the constitutional and democratic order in Venezuela.<sup>142</sup> Both judgments were likewise rejected by demonstrators in a series of protest marches between April 1 and July 31, 2017 in different parts of the country. A number of national and international actors also repudiated the judgments, including the OAS Permanent Council.<sup>143</sup> It should be noted that on October 24, 2017, in the framework of an ex officio hearing called by the IACHR, a variety of domestic and international organizations reiterated their concern over matters related to the separation of powers and their independence in Venezuela. For example, they described how the TSJ had ceased to operate as a guarantor of the Constitution, granting supra-constitutional rank to infra-constitutional laws, regulations, and decrees, and has ruled consistently based on political interests, undermining the foundations of the rule of law.<sup>144</sup>
106. Given the seriousness of these developments, the Commission requested information from the State regarding the effects of the judgments, under the powers conferred on it by Article 18.d of its Statute. The State replied in a note dated July 7, 2017. Regarding the relationship between the AN and the TSJ, the State pointed out, in reference to the effects of Judgments 155 and 156 of the TSJ, that "the [AN] maintains all the powers established in the Constitution" and therefore "it is not true that the [AN] has had its powers curtailed or restricted."<sup>145</sup> At the same time, the State reported that the AN "is in reiterated contempt of numerous [TSJ] judgments,"<sup>146</sup> and presented a list of 39 rulings by the TSJ "related to acts or omissions of the

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<sup>141</sup> TSJ, Judgment of March 29, 2017.

<sup>142</sup> IACHR, Press Release No. 041/17, IACHR Condemns Supreme Court Rulings and the Alteration of the Constitutional and Democratic Order in Venezuela, March 31, 2017.

<sup>143</sup> The OAS Permanent Council described those judicial rulings as "incompatible with democratic practice" and a "violation of the constitutional order of the Bolivarian Republic of Venezuela." OAS, Press Release C-022/17, Resolution on Recent Events in Venezuela, April 3, 2017]. These judgments were also commented on in reports by PROVEA and Civilis [PROVEA, Situación de institucionalidad democrática en Venezuela, Período 2016-2017, pp. 5-6; and Civilis, Amenazas y Restricciones a los Derechos Humanos y la Democracia en Venezuela, Informe Comprehensivo de Seguimiento 2016-2017, para. 18-20].

<sup>144</sup> IACHR, Institucionalidad democrática en Venezuela, October 24, 2017.

<sup>145</sup> Ministry of the People's Power for Foreign Affairs (MPPRE) Note AGEV/2017-000174, June 27, 2017, pp.10-11.

<sup>146</sup> MPPRE, Note AGEV/2017-000174, June 27, 2017, p. 11.



[AN]," handed down between December 30, 2015 and March 29, 2017.<sup>147</sup> The State further pointed out that President Maduro had convened the National Defense Council based on Article 37 of the Organic Law of the Nation, and that the Council had agreed to urge the TSJ to "expand and clarify the contents of Judgments [N] ° 155 and 156 [...]."<sup>148</sup>

107. In its comments, the State says that "the draft country report approved by the IACHR indicates on multiple occasions that actions need to be taken in Venezuela to 'reestablish constitutional order.'"<sup>149</sup> Regarding this, the State indicates that "it has explained to the Commission that a constitutional conflict has been ongoing in Venezuela since 2016 between the branches of government as a result of a decision by the National Assembly to ignore and fail to comply with decisions of the Supreme Tribunal of Justice. This deliberate behavior by a majority of the deputies of the National Assembly has created an exceptional situation in our country, as it is the first time since 1961 that the National Parliament has decided publicly, notoriously, and arbitrarily to fail to fail to comply (continuously and repeatedly) with the judgments issued by the judicial branch. This deliberate act of unconstitutional failure to recognize the decisions of the High Court is without precedent in the Democratic history of Venezuela."<sup>150</sup>
108. The State also asserts that the "National Assembly decided formally to inaugurate its session with a group of deputies whose swearing-in had been suspended by the judicial branch due to the existence of illegalities and electoral crimes. By failing to comply with these decisions and swearing in these deputies, the formation of the National Assembly as a deliberative body became unconstitutional and illegal, for which reasons its decisions and acts are completely null as long as this violation of democratic order persists. This situation could easily be resolved should the National Assembly adhere to the decisions of the judicial branch, formally expel those deputies through a decision in a plenary session, and comply with the decisions that have been handed down by the Constitutional Chamber of the Supreme Tribunal of Justice. However, the National Assembly has instead decided to disregard the Supreme Tribunal of Justice and its constitutional authorities, and, with a series of its actions, promoted an environment conducive to carrying out a coup d'état against the democratically elected government of President Nicholas Maduro

<sup>147</sup> MPPRE, Note AGEV/2017-000174, June 27, 2017, pp.13-17.

<sup>148</sup> MPPRE, Note AGEV/2017-000174, June 27, 2017, pp.6-8.

<sup>149</sup> Bolivarian Republic of Venezuela, Ministry of the People's Power for Foreign Relations, Note AGEV/2017-000300, comments on the draft country report, December 21, 2017, para. 31.

<sup>150</sup> Bolivarian Republic of Venezuela, Ministry of the People's Power for Foreign Relations, Note AGEV/2017-000300, comments on the draft country report, December 21, 2017, para. 36.



Moros.”<sup>151</sup> Therefore, and by virtue of the foregoing, the State considers it disproportionate “for the Commission to call for the restoration of democratic order in the country.”<sup>152</sup> In the State’s view, Venezuela’s “democratic institutions are fully functioning, including the National Assembly,” and “during 2017, three elections were held that included the participation of all sectors of the national political life.”<sup>153</sup>

109. The IACHR observes that, in response to the exhortation made by the National Defense Council, on April 1, 2017, the TSJ issued two clarification rulings in which it revoked the precautionary measures adopted: (i) in relation to Judgment N° 155, it revoked the measure lifting deputies’ parliamentary immunity; and (ii) as for Judgment N° 156, it revoked the powers of the President of the Republic to interpret and amend the Organic Law of Hydrocarbons and the parliamentary powers that the Constitutional Division of the TSJ had assigned to itself.
110. The Commission takes note of the fact that some of the measures adopted in Judgments N° 155 and N° 156 have thus been revoked. Nevertheless, it condemns the fact that the TSJ is still holding the AN in a state of “contempt”, as a result of which the AN cannot perform its constitutional functions, such as legislating, making internal organizational changes, exercising oversight of other branches of government, and so on. The Commission further notes that the description of the acts of members of parliament as “treason” has not been revoked.<sup>154</sup> It also observes that the TSJ has maintained the authority granted to the President of the Republic to constitute mixed (public-private) enterprises without authorization from Parliament and to amend laws.
111. The Commission likewise notes that there are extremely worrisome interferences with the AN’s functions, many of them based on its “in contempt” status imposed by the TSJ, as shown below:<sup>155</sup>

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<sup>151</sup> Bolivarian Republic of Venezuela, Ministry of the People’s Power for Foreign Relations, Note AGEV/2017-000300, comments on the draft country report, December 21, 2017, paras. 37-38.

<sup>152</sup> Bolivarian Republic of Venezuela, Ministry of the People’s Power for Foreign Relations, Note AGEV/2017-000300, comments on the draft country report, December 21, 2017, para. 39.

<sup>153</sup> Bolivarian Republic of Venezuela, Ministry of the People’s Power for Foreign Relations, Note AGEV/2017-000300, comments on the draft country report, December 21, 2017, para. 39.

<sup>154</sup> CEPAZ also pointed this out in its report on the democratic institutional system [(CEPAZ, *Ruptura de la Institucionalidad Democrática en Venezuela 2017 - “Estocada a la Democracia”*, Contributions to the IACHR country report, pp. 12 and 13.)]

<sup>155</sup> Along these same lines, the Commission notes that civil society organizations have complained that the TSJ has issued 51 judgments against the AN in the past 15 months, thereby weakening the separation of powers and unduly increasing the Government’s power [CIDH, *Hearing on Access to Justice in Venezuela*, March 22, 2017]. Henrique Capriles also pointed to the existence of 50 TSJ rulings that prevent the AN from performing its functions [Capriles, Henrique, *Segundo informe del Gobernador Henrique Capriles Radonski sobre violaciones derechos humanos en Venezuela (ocurridas entre el 1 de abril de 2017 y el 19 de agosto de 2017,*

Curtailment of functions	Judgment(s) of the TSJ
with respect to legislation	<ul style="list-style-type: none"> <li>• <a href="#">Judgments N° 1.012, 1.013, and 1.014</a>: declare the following laws to be null and void, respectively: the Law to protect the remuneration and wages of teachers in educational establishments dependent on the national, state, and municipal Executive, the Law on Indigenous Bilingual Intercultural Education; and the Amendment to the Organic Law on Police Service and the National Bolivarian Police Corps (CPNB) [Judgments of November 25, 2015]*.</li> <li>• Judgment N° 01 declares the Organic Law of the Environment to be null and void [<a href="#">Judgment of January 6, 2017</a>]*.</li> <li>• Judgments N° 259, 327, 341, 343, and 808, exercising preventive oversight of constitutionality, declare the following laws unconstitutional, respectively: the law amending the Central Bank of Venezuela Act; the Food and Medicine Coupon Act; the Law partially amending the Organic Law of the TSJ; the Granting of Title Deeds Act; and the Gold Exploration and Mining Act [Judgments of March 31, 2016, April 28, 2016, <a href="#">May 5, 2016</a>, May 6, 2016, and September 2, 2016].</li> <li>• Judgment N° 264: declares the Amnesty and National Reconciliation Act unconstitutional [Judgment of April 11, 2016].</li> </ul>
With respect to internal organization of the AN	<ul style="list-style-type: none"> <li>• Judgment N° 2 annuls official decisions of the AN taken on January 5 and 9, including the appointment of a new Governing Board [<a href="#">Judgment of January 11, 2017</a>]*.</li> <li>• Judgment N° 5, which establishes that it will be incumbent upon the Executive to pay the wages and other remuneration of AN workers [<a href="#">Judgment of January 19, 2017</a>]*.</li> </ul>
With respect to oversight functions	<ul style="list-style-type: none"> <li>• Judgment N° 3, which establishes that President Maduro shall deliver his Annual Message to the TSJ, not the AN [<a href="#">Judgment of January 11, 2017</a>]*.</li> <li>• Judgment N° 90: establishes that the Vice President of the Republic and Ministers shall present their annual reports and accounts to the TSJ, instead of to the AN [<a href="#">Judgment of February 24, 2017</a>]*.</li> <li>• Judgment N° 814: under states of exception and economic emergency, exempted the President from presenting the budget to the AN and ruling that he should present it to the TSJ instead [<a href="#">Judgment of October 11, 2016</a>]*.</li> <li>• Judgment N° 9: curtails the AN's oversight function [<a href="#">Judgment of March 1, 2016</a>].</li> <li>• Judgment N° 797: curtails powers to summon officials in the Executive for questioning and to investigate Government</li> </ul>

p. 30]. More recently, deputy Williams Dávila stated that as of November 16, 2017, 80 judgments had been handed down against the National Assembly [Livestream, [Public hearings before the OAS regarding Venezuela](#), OAS, November 16, 2017].

	organs and representatives [Judgment of August 19, 2016].
Other functions	<ul style="list-style-type: none"> <li>Judgment N° 1086: appoints members of the National Electoral Council due to legislative omission of the AN and its "in contempt" status [<a href="#">Judgment of December 13, 2016</a>]*.</li> <li>Judgment N° 6, which hands over to President Maduro the AN's powers to confer National Pantheon honors [<a href="#">Judgment of January 20, 2017</a>]*.</li> <li>Judgments N° 4, 7, 184, 411, 615, 810, and 952 of 2016, and Judgments N° 4 and 113: declare the decrees establishing states of exception and economic emergency, and their respective extensions, to be constitutional, even though the AN disallowed them [<a href="#">Judgments of January 20, 2016</a>, <a href="#">February 11, 2016</a>, <a href="#">March 17, 2016</a>, <a href="#">May 19, 2016</a>, <a href="#">July 19, 2016</a>, <a href="#">September 21, 2016</a>, <a href="#">November 21, 2016</a>, <a href="#">January 19, 2017</a> and <a href="#">March 20, 2017</a>].</li> </ul>

112. According to the information at the disposal of the IACHR, since it was installed in January 2016, the AN has been subject to violent attacks on multiple occasions and there have been reports of dozens of physical assaults of opposition deputies.<sup>156</sup> There have also been reports that the AN has been operating with a severe shortage of resources. The lack of a budgetary allocation has meant that deputies receive no wages and there are no water, light and other electric power services, which reportedly forces the AN to cease its activities at midday. Nor are even basic materials available, such as paper for printers.<sup>157</sup> The Commission also notes with concern that, through Judgment No. 5 in January 2017 the TSJ established that it would be the Executive that pays AN workers' wages and other remuneration.<sup>158</sup> Given its status of being "in contempt," the Governing Board could not make those payments, so that, based on Article 236.11 of the Constitution, which grants the President power to "administer the

<sup>156</sup> Deputy Armando Daniel Armas reported 215 violent attacks against the National Assembly and at least 90 assaults against opposition deputies. These include the attacks on the National Assembly on July 5, 2017, of which he was a victim, which allegedly took place with the acquiescence of members of the GNB. [Youtube video, [Public hearings before the OAS regarding Venezuela](#), OAS, October 16, 2017; and La Razón, "[La Guardia Nacional dejó actuar a los paramilitares](#)", July 6, 2017]. Deputy Williams Dávila reported 67 attacks against the National Assembly by the GNB and the PNB. He underscored that deputies Renzo Prieto, Gilbert Caro, Yanet Fermín, and Daniel Antequera were arbitrarily arrested. In addition, he reported that several members of the National Assembly had been physically attacked and that a series of attacks against the National Assembly were carried out on October 23, 2016, as the National Assembly was discussing an agreement to declare a break in the constitutional order. He also indicated that on May 2, 2017, armed groups tried to enter the legislative palace. They had been set to discuss the deaths that took place during the protests and issues related to the Inter-American Democratic charter. Mr. Dávila also noted that there had been attacks on the staff of some deputies and even against their relatives. He likewise reported the canceling the passports of a number of deputies and accusing them of betraying the homeland for requesting application of the Inter-American Democratic Charter [Livestream [Public hearings before the OAS regarding Venezuela](#)OAS, November 16, 2017].

<sup>157</sup> Youtube video, [Public hearings before OAS regarding Venezuela](#), OAS, October 16, 2017; and Infobae, [Parlamentarios venezolanos se quedarán sin sueldo por falta de presupuesto](#), April 27, 2016.

<sup>158</sup> TSJ, [Judgment of January 19, 2017](#).

National Public Treasury," the TSJ granted him that power.<sup>159</sup> The Commission rejects that ruling inasmuch as it further restricts the autonomy of the AN.

113. In light of the above, the IACHR considers that there is substantial evidence of interference by the Judiciary and the Executive with the AN. It therefore recalls that Article 3 of the Inter-American Democratic Charter provides that "Essential elements of representative democracy include, inter alia, respect for human rights and fundamental freedoms; access to and the exercise of power in accordance with the rule of law; [...] and the separation of powers and independence of the branches of government." The Commission also reiterates that the separation of powers is not just closely linked to consolidation of the democratic regime, but also seeks to preserve the freedoms and human rights of the Venezuelan population.

### ***Establishment of the National Constituent Assembly***

114. It was in this context of constant friction between the AN and the TSJ that, on May 1, 2017 in the mass meeting held to commemorate workers' day and in the midst of social protests, President Maduro announced that he was convening a National Constituent Assembly (ANC) to draft a new Constitution and achieve "peace in the country."<sup>160</sup> The State informed the IACHR that the basis for convening elections to the ANC was to be found in Articles 347, 348, and 349 of the Constitution,<sup>161</sup> and that the idea was to "achieve peace and harmony" in the country.<sup>162</sup> The State reported that "based on these provisions in the Constitution, the President of the Republic adopted Decrees 2,878, 2,830, 2,831, and 2,889, in which he presented his proposals for regulating the [ANC] process."<sup>163</sup>
115. Nevertheless, the IACHR received consistent information that seriously undermined the legitimacy of this convocation. Numerous national and international civil society organization and academics questioned the failure to call a referendum prior to convening the ANC, even though Article 347 of the 1999 Constitution establishes that "[t]he original constituent power rests with the people of Venezuela."<sup>164</sup> Along similar lines, the

<sup>159</sup> TSJ, *Judgment of January 19, 2017*.

<sup>160</sup> Office of the President, *Pueblo venezolano ejecutará nueva Asamblea Nacional Constituyente*, May 1, 2017; *Constituyente es el único camino para la paz: Así lo aseguró el presidente de la República Bolivariana de Venezuela*, May 8, 2017; and YouTube video, *COMPLETO: Presidente Maduro convoca a Asamblea Nacional Constituyente*, Luigino Braccia Roa, May 1, 2017.

<sup>161</sup> MPPRE, Note AGEV/2017-000182, July 7, 2017, p. 2.

<sup>162</sup> IACHR, *Situation of Democratic Institutions in Venezuela*, October 24, 2017.

<sup>163</sup> MPPRE, Note AGEV/2017-000182, July 7, 2017, no page number cited.

<sup>164</sup> Those who supported that criticism noted that, while Article 348 of the Constitution does grant the President power to initiate the convening of an ANC, Article 347 establishes that the original constituent power rests

European Commission for Democracy through Law (Venice Commission) pointed out in its Opinion No. 894/2017 on the situation in Venezuela that the procedure for selecting the members of the ANC did not meet the requirement for the people's participation established in Article 347 of the Constitution.<sup>165</sup>

116. In this regard, the Commission notes the informal recall referendum organized by the opposition on July 16, 2017 in response to the initiative aimed at establishing the ANC.<sup>166</sup> Participating that day were 7,186,170 million Venezuelans (equivalent to about 37% of registered voters), 98.4% of whom voted against establishing the ANC.<sup>167</sup> Nevertheless, that recall initiative had no effect and on July 30, 2017, the ANC members were elected. In those ANC elections, in contrast to the informal recall initiative, 1.5 million allegedly voted (about 7 percent of the registered electorate).<sup>168</sup> It should be noted that at the hearing held in October several organizations reiterated their concerns over the functions taken over by the ANC and the rejection of the ANC expressed by 7,186,000 Venezuelans in an informal referendum held on July 16, 2017.<sup>169</sup>
117. Regarding this point, the State indicates in its comments that the IACHR "fully trusts the figures on alleged participants in the 'informal recall referendum' held by the opposition, omitting serious reports of irregularities in this process and lack of minimum controls and transparency guarantees" adding that the Commission "deliberately omits reference to the official participation figures from the process to elect the

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with the people, so that a referendum is required. [WOLA, A Constituent Assembly in Venezuela is No Substitute for Elections: WOLA Calls on Venezuela to Announce Electoral Timetable, May 5, 2017; and Vivanco, José Miguel and Tamara Taraciuk Broner, Human Rights Watch (HRW), Why We Oppose Maduro's Constituent Assembly, July 26, 2017]. The TSJ commented on its Judgment Nº 378, maintaining that, since it was not expressly established in the Constitution, a referendum was not obligatory [TSJ, Judgment 378 of May 31, 2017]. That pronouncement was queried by, among others, the then Attorney General, Luisa Ortega, who asked for clarification of the Judgment [El Universal, Fiscal: Sentencia del TSJ sobre constituyente es un retroceso en DDHH, June 1, 2017; and ProDavinci, ¿Qué dijo la Fiscal Luisa Ortega sobre la convocatoria del constituyente?, June 1, 2017]. A similar stance was taken by the organizations attending the public hearing on the situation of democratic institutions in Venezuela, held during the 165th period of sessions of the IACHR, Situation of Democratic Institutions in Venezuela, October 24, 2017].

<sup>165</sup> Venice Commission, Opinion Nº 894/2017, CDL-AD (2017)024, October 9, 2017, p. 10.

<sup>166</sup> La Vanguardia, Un muerto y varios heridos por disparos en el plebiscito contra el Gobierno de Maduro, July 16, 2017.

<sup>167</sup> CNN, Más de 7 millones de venezolanos participaron en la consulta de oposición, July 17, 2017; and El País, La oposición venezolana asegura que logró casi 7,2 millones de votos en la consulta contra Maduro, July 17, 2017. According to information received, a 61 year-old nurse, Xiomara Scott, was allegedly murdered by government supporters and three more people wounded in an incident involving roaming bands of progovernment militants [Runrunes, Muere mujer por ataque de colectivos durante consulta popular en Catia, July 16, 2017; and OHCHR, OHCHR, Human rights violations and abuses in the context of protests in the Bolivarian Republic of Venezuela from 1 April to 31 July 2017, Geneva, August 2017. p. 32].

<sup>168</sup> Telesur, Informa CNE que votaron ANC más de 8 millones de venezolanos, July 31, 2017; and El Nacional, Borges: Votación de la ANC no llega a 2 millones de personas, July 30, 2017.

<sup>169</sup> IACHR, Institucionalidad democrática en Venezuela, October 24, 2017.

members of the National Constituent Assembly, issued by the National Electoral Council, limiting itself to repeating the statements of an opposition spokesperson issued through social media." Specifically, it indicated that "according to official figures released by the CNE, 8,089,320 individuals—equivalent to 41.53% of voters—voted to select the members of the National Constituent Assembly.<sup>170</sup> The State also noted that the IACHR "omits all reference to the serious acts of violence executed by groups aligned with the opposition to block the exercise of the right to suffrage by the Venezuelan people on July 30, 2017."<sup>171</sup>

118. In addition to the questions raised as to the legitimacy of the convocation, there have also been serious objections to the ANC electoral process and to the Assembly's composition. According to President Maduro, it would comprise some 500 members from grassroots organizations, workers, communes, missions, rural workers (campesinos), feminists, the indigenous, youth and students, but "not members of parties and elites."<sup>172</sup> The body charged with preparing the ground rules for ANC elections was the Presidential Commission for Activating the ANC,<sup>173</sup> which came up with Decree N° 2878.<sup>174</sup> Based on that decree, the National Electoral Council (CNE) determined that 545 members of the constituent assembly would be elected, 173 of them based on sectoral criteria and 364 based on geographical representation.<sup>175</sup> The same Council determined that the period for presenting candidacies would run from June 6 to June 10, and that the election would take place on July 30, 2017.<sup>176</sup>
119. The IACHR notes with deep concern that the process in which members of the Constituent Assembly were elected was accompanied by constant and serious objections and pronouncements against it by a series of different sectors.<sup>177</sup> Specifically, they questioned the fact that: (i) the geographical

<sup>170</sup> Bolivarian Republic of Venezuela, Ministry of the People's Power for Foreign Relations, Note AGEV/2017-000300, comments on the draft country report December 21, 2017, para. 52, and footnote 29.

<sup>171</sup> Bolivarian Republic of Venezuela, Ministry of the People's Power for Foreign Relations, Note AGEV/2017-000300, comments on the draft country report, December 21, 2017, para. 52.

<sup>172</sup> Office of the President, Pueblo venezolano ejecutará nueva Asamblea Nacional Constituyente, May 1, 2017; Constituyente es el único camino para la paz: Así lo aseguró el presidente de la República Bolivariana de Venezuela, May 8, 2017; and YouTube video, COMPLETO: Presidente Maduro convoca a Asamblea Nacional Constituyente, Luigino Braccia Roa, May 1, 2017.

<sup>173</sup> Office of the President of the Republic, Article 1 of Decree N° 2.831, May 1, 2017.

<sup>174</sup> Office of the President of the Republic, Decree N°2878, May 23, 2017.

<sup>175</sup> MPPRE, Note AGEV/2017-000182, July 7, 2017, no page number cited.

<sup>176</sup> El Nacional, CNE confirmó fecha para la elección de Asamblea Constituyente, June 7, 2017.

<sup>177</sup> Worth noting, in particular, are the opinions issued by some of Venezuela's bar associations, the Citizen Electoral Network (REC), the Office of the Chair of Venezuelan Episcopal Conference, and the 27 Venezuelan members of the 1999 Constituent Assembly, who expressed their opposition to the convocation of an ANC [Dossier33, Colegios de abogados de Venezuela se pronuncian sobre la Constituyente, May 2, 2017; PROVEA, REC | La Recuperación de la Democracia exige el respeto de la Constitución, May 5, 2017; Globovisión, CEV emite comunicado en rechazo a la Constituyente, May 5, 2017; and Tal Cual, Constituyentistas de 1999

election system imposed could result in some more highly populated states having fewer representatives than less densely populated states;<sup>178</sup> (ii) the sectoral election process violated the principle of universal suffrage;<sup>179</sup> (iii) that the sectors chosen in the electoral ground rules could have a bias toward electing persons with close ties to the government;<sup>180</sup> and (iv) the text of Decree No. 2.830 was ambiguous and could allow the ANC to interfere in the other branches of government.<sup>181</sup>

120. Some of these observations were also made by the Venice Commission in its Opinion 894/2017 on the situation in Venezuela.<sup>182</sup> Specifically, it reached the conclusion that the ground rules for the election should have been set by the AN and that the geographical and sectoral election mechanisms undermined the principle of equal suffrage.<sup>183</sup> The Venezuelan Electoral Observatory (OEV) likewise pointed out that the Electoral Authority had shortened the pre-election timetable for the ANC, and had eliminated 14 audits, test runs, dates for submitting challenges and other activities, "thereby weakening technological platform safeguards and rendering the automated voting system less secure."<sup>184</sup> Along those same lines, it warned that the CNE had skipped about 70 of the 100 electoral activities envisaged.<sup>185</sup> As a result, after the elections had taken place, Smartmatic -the company providing the electronic voting system to the CNE- denounced possible manipulation during the election, because there was a difference of at least one million votes between the results

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señalan que convocar a Constituyente sin Referendo Consultivo viola la Carta Magna, May 9, 2017]. Also worth mentioning are the pronouncements of civil society organizations, such as PROVEA, the OEV, and Asociación Civil Paz Activa [PROVEA, Provea: Cualquier salida a la crisis venezolana debe fortalecer, y no debilitar, la Constitución de 1999, April 30, 2017; OEV - Cambiando la Constitución no saldremos la crisis, May 4, 2017; and Paz Activa | Llamamos al respeto y defensa de los principios de la Constitución de la República Bolivariana de Venezuela Vigente, May 4, 2017]. Civil society also underscored the "unconstitutionality" and "illegality" of the convening of the ANC during hearings held in connection with the 165th regular period of sessions of the IACHR [CIDH, The Situation of Democratic Institutions in Venezuela, October 24, 2017].

<sup>178</sup> In this regard, Acceso a la Justicia pointed out, for instance, that under this system, the state of Zulia, with an electoral roll of 2,398,460 would elect 22 members of the Constituent Assembly; while Falcón, with 661,8885 voters would elect 26 members [Acceso a la Justicia, 8 claves para entender el sistema electoral de las Bases Comiciales, June 16, 2017].

<sup>179</sup> On this matter, Acceso a la Justicia pointed out that, based on the election ground rules, one member of the Constituent Assembly would be elected for every 83,000 voters. Thus, if 173 members were to be elected, they would represent 14,359,000 voters. However, since the electoral roll totaled 20 million, approximately 5,000,000 voters would not be represented [Acceso a la Justicia, 8 claves para entender el sistema electoral de las Bases Comiciales, June 16, 2017].

<sup>180</sup> Acceso a la justicia, ¿Por qué la Constituyente es un fraude?, video, June 5, 2017.

<sup>181</sup> Acceso a la justicia, ¿Por qué la Constituyente es un fraude?, video, June 5, 2017; and Vivanco, José Miguel and Tamara Taraciuk Broner, HRW, Why We Oppose Maduro's Constituent Assembly, July 26, 2017.

<sup>182</sup> Venice Commission, Opinion N° 894/2017, CDL-AD(2017)024, October 9, 2017.

<sup>183</sup> Venice Commission, Opinion N° 894/2017, CDL-AD(2017)024, October 9, 2017, pp. 12, 14, and 17.

<sup>184</sup> OEV, CNE elimina 14 auditorías y debilita sistema electoral, June 16, 2017.

<sup>185</sup> OEV, CNE elimina 14 auditorías y debilita sistema electoral, June 16, 2017.



announced by the electoral authorities and its own estimates<sup>186</sup> (Chapter II.B.1). It is worth noting that that company has been organizing elections in Venezuela since 2004. Between then and 2015, it organized 14 elections and processed over 377 million votes in Venezuela. In its 13 years of service to Venezuela, this was the first time that it made an accusation of this kind.<sup>187</sup>

121. In contrast to previous elections, this time the CNE did not provide a detailed breakdown of the results.<sup>188</sup> In addition, objections to them were raised by a number actors/institutions, such as the Office of the OAS Secretary General, the European Union, and several foreign ministers in Latin America, all of who denied the legitimacy of the ANC.<sup>189</sup> Despite that, on August 4, 2017, the ANC -- comprising only Government supporters -- was installed.<sup>190</sup> Shortly afterwards, the ANC decided to extend its own term from six months to two years.<sup>191</sup>

### ***Acts undertaken by the Constituent National Assembly***

122. According to Article 347 of the Constitution, the mandate of the ANC is to transform the State, create a new juridical order and draw up a new Constitution. Some of the decisions taken so far by the ANC appear to have little to do with that constitutional mandate and trigger serious concerns. These include: (i) the dismissal of Attorney General Luisa Ortega; (ii) the establishment of the "Truth, Justice, Peace, and Public Tranquility Commission" to investigate political violence between 1999 and the

<sup>186</sup> BBC, [Smartmatic, la empresa a cargo del sistema de votación en Venezuela, denuncia "manipulación" en la elección de la Constituyente y el CNE lo niega](#), August 2, 2017; and El Pitazo, [La historia detrás de la denuncia de fraude hecha por Smartmatic](#), August 2, 2017.

<sup>187</sup> Smartmatic Statement on the recent Constituent Assembly Election in Venezuela, August 2, 2017; and BBC, [De dónde surgió y qué hace Smartmatic, la empresa de votación electrónica que denunció la "manipulación" de la elección de la Constituyente en Venezuela](#), August 2, 2017.

<sup>188</sup> Efecto Cocuyo, [A 15 días de la elección, CNE sigue sin publicar resultados electorales de la ANC](#), August 14, 2017; and Crónica Uno, [CNE publicó resultados incompletos de la Constitución días después de la elección](#), August 3, 2017. The Commission has noted that on the CNE website the latest results published are those of the 2015 election. [CNE, [Resultados Electorales](#), 2017].

<sup>189</sup> OAS, [Mensaje del Secretario General sobre Venezuela](#), video, July 31, 2017; El País, [La UE anuncia que no reconoce a la Asamblea Constituyente de Venezuela](#), August 2, 2017; and Ministerio de Relaciones Exteriores Perú, [Declaración Conjunta 007-2017](#), August 8, 2017.

<sup>190</sup> The opposition did not take part in the elections to the the ANC because it regarded the process as fraudulent. [El Nacional, [Oposición no participará en Constituyente convocada por Maduro](#), May 7, 2017]. Civilis confirms this in its 2016-2017 follow-up report [Civilis, [Amenazas y Restricciones a los Derechos Humanos y la Democracia en Venezuela](#), Informe Comprehensivo de Seguimiento 2016-2017, para. 36].

<sup>191</sup> CEPAZ, [Ruptura de la Institucionalidad Democrática en Venezuela 2017 - "Estocada a la Democracia"](#), Contributions to the IACHR country report, p. 25; and Capriles, Henrique, [Segundo informe del Gobernador Henrique Capriles Radonski sobre violaciones derechos humanos en Venezuela \(ocurridas entre el 1 de abril de 2017 y el 19 de agosto de 2017\)](#), p. 37. On this, Civilis noted that, as of the date of its report that decision had not appeared in any edition of the Official Gazette [Civilis, [Amenazas y Restricciones a los Derechos Humanos y la Democracia en Venezuela](#), Informe Comprehensivo de Seguimiento 2016-2017, para. 36].



present and hate crimes committed in connection with it; and (iii) the issuance of the decree of August 8, 2017 allowing the ANC to regulate "the powers, operations, and organization of public authorities (poderes públicos) with immediate effect, in order to ensure that institutions function properly and to safeguard stability."<sup>192</sup>

123. The decision to dismiss Attorney General Luisa Ortega (Chapter II.A.4) was the result of Judgment N° 65 of the Criminal Division of the TSJ, handed down on August 4, 2017,<sup>193</sup> approving preliminary proceedings against her for allegedly grave misconduct in office and ordering her suspension and disqualification from any public office. As a result of that, then Ombudsman Tarek William Saab was appointed to replace her.<sup>194</sup> The IACHR reiterates its deep concern regarding the decision to dismiss the Attorney General, which disregarded the stability required in her office.<sup>195</sup> It is worth recalling that the Commission had granted precautionary measures on behalf of Mrs. Ortega and her immediate family due to the constant threats to which she was subjected in connection with the disruption of the constitutional and democratic order in Venezuela.<sup>196</sup>
124. As regards the second matter, the Commission notes that on August 19, 2017, the ANC announced the establishment of the "Truth, Justice, Peace, and Public Tranquility Commission." According to its Chair, Delcy Rodríguez, the Commission's goal is to "determine responsibilities and the corresponding punishments" for acts of violence committed in Venezuela since 1999, especially the deaths in connection with protests since early 2017. Said Commission would have "broad plenipotentiary powers" and its recommendations "will be binding for decisions taken in the different branches of government."<sup>197</sup> The IACHR finds it questionable that this Commission was established through a "constitutional law,"<sup>198</sup> even though, according to Article 187 of the Constitution, passing laws is a

<sup>192</sup> Civil society also listed these measures during hearings held in connection with the 165th regular period of sessions of the IACHR [CIDH, The Situation of Democratic Institutions in Venezuela, October 24, 2017].

<sup>193</sup> TSJ, Judgment of August 4, 2017.

<sup>194</sup> Civilis, Amenazas y Restricciones a los Derechos Humanos y la Democracia en Venezuela, Informe Comprehensivo de Seguimiento 2016-2017, para. 38-39; CEPAZ, Ruptura de la Institucionalidad Democrática en Venezuela 2017 - "Estocada a la Democracia", Contributions to the IACHR country report, pp. 24-25; and PROVEA, Situación de institucionalidad democrática en Venezuela, Período 2016-2017, p. 7.

<sup>195</sup> IACHR, Press Release No. 131/2017, IACHR Deeply Concerned about Further Weakening of Separation and Independence of Powers and Undermining of Democratic Institutions in Venezuela, August 31, 2017.

<sup>196</sup> IACHR. Press Release No. 115/17, IACHR Grants Protection Measure in favor of the Attorney General of the Republic of Venezuela, Luisa Ortega Díaz, August 4, 2017.

<sup>197</sup> Infobae, La Asamblea Constituyente chavista instalará una "Comisión de la Verdad" para investigar la violencia en las calles, August 7, 2017.

<sup>198</sup> ANC, Ley Constitucional de la Comisión para la Verdad, la Justicia, la Paz y la Tranquilidad Pública, August 8, 2017.

power assigned to the AN.<sup>199</sup> The establishment of this Commission has been rejected by civil society organizations, which point out that "basically, the idea is to introduce and sharpen mechanisms for persecuting dissidents, not to attend to real and concrete needs of the population."<sup>200</sup> A further complaint has been that in resorting to this Commission, the Government would be setting up a judicial system outside the Constitution, because in practice the Commission would have the powers of a tribunal.<sup>201</sup> The Inter-American Commission reiterates its concern at this development and stresses that this measure could exacerbate the persecution of dissidents. (Chapter III.A.5)<sup>202</sup>.

125. As regards the last measure, the Commission notes that it was adopted one day after the AN approved an agreement disavowing acts undertaken by the ANC as it considered them contrary to the Constitution.<sup>203</sup> Approval of the Decree was allegedly based on the goal of preserving peace and tranquility for the Venezuelan people, which would necessitate "securing the harmonious, Constitutional, and efficient institutionality of all the branches of government [todas las ramas de los Poderes Públicos]."<sup>204</sup> That Decree could have the pernicious effect of subordinating all branches of government to the ANC,<sup>205</sup> by allowing the ANC both to decree measures determining their powers, *modus operandi*, and organizational structure and to restrict or dismiss public authorities. Even worse: all government organs would be obliged to comply with and enforce ANC rulings.<sup>206</sup> The Inter-American Commission responded, as it had to the other above-mentioned measures, urging the Government to guarantee the independence of the branches of government.<sup>207</sup>

<sup>199</sup> Capriles, Henrique, Segundo informe del Gobernador Henrique Capriles Radonski sobre violaciones derechos humanos en Venezuela (ocurridas entre el 1 de abril de 2017 y el 19 de agosto de 2017), p. 38.

<sup>200</sup> IACHR, Press Release 131/17. IACHR Deeply Concerned about Further Weakening of Separation and Independence of Powers and Undermining of Democratic Institutions in Venezuela, August 31, 2017.

<sup>201</sup> FPV, Reporte sobre la represión del Estado en Venezuela - Agosto de 2017, p. 9.

<sup>202</sup> IACHR, Press Release No. 131/2017, IACHR Deeply Concerned about Further Weakening of Separation and Independence of Powers and Undermining of Democratic Institutions in Venezuela, August 31, 2017.

<sup>203</sup> AN, Acuerdo de reafirmación de la vigencia de la Constitución de la República Bolivariana de Venezuela y de desconocimiento de los actos contrarios al orden constitucional y democrático, August 7, 2017.

<sup>204</sup> Telesur, ¿Pueden coexistir la ANC y la Asamblea Nacional en Venezuela?, August 9, 2017; and Agencia Venezolana de Noticias (AVN), ANC aprobó decreto para el funcionamiento armónico con Poderes Público, August 8, 2017.

<sup>205</sup> El Nacional, Todos los poderes públicos quedan subordinados a la ANC, 9 de agosto de 2017; and AVN, ANC aprobó decreto para el funcionamiento armónico con Poderes Público, August 8, 2017.

<sup>206</sup> These measures were contained in the third and fifth provisions of the Decree [ANC, Decreto Constituyente mediante el cual se dictan las Normas para garantizar el pleno funcionamiento institucional de la Asamblea Nacional Constituyente en armonía con los Poderes públicos constituidos, August 8, 2017].

<sup>207</sup> IACHR, Press Release No. 131/2017, IACHR Deeply Concerned about Further Weakening of Separation and Independence of Powers and Undermining of Democratic Institutions in Venezuela, August 31, 2017.

126. It is worth recalling that the ANC was installed on the basis of provisions in the Venezuelan Constitution of 1999, especially aforementioned Article 347. The ANC itself has invoked that provision as the basis for its decisions.<sup>208</sup> The Constitution currently in force determines its functions, so that it cannot be claimed that the ANC is a body not subject to any restrictions. Along those same lines, Decree No. 2878, which established the electoral ground rules for the ANC, provided that its operations would be "governed by certain limits set in accordance with the values and principles enshrined in the history of Venezuela as a republic and by compliance with international treaties, agreements, and commitments duly underwritten by the Republic."<sup>209</sup> Those commitments include respect for the separation of powers and democratic principles, values upheld in Article 3 of the Inter-American Democratic Charter. In light of the above, the Commission reiterates its categorical rejection of measures of this kind, because they go beyond the powers of a constituent body and impair the principle of the separation of powers and representative democracy.<sup>210</sup>

### 3. Independence of the Electoral Authority

127. As regards the Electoral Authority, the information at the IACHR's disposal suggests a lack of independence of the CNE, due, among other factors, to repeated failures to comply with the procedure laid down in the Constitution for the election of its members.<sup>211</sup> According to the Constitution, candidacies are to be put forward by the Electoral Candidacies Committee, comprised of civil society representatives, and candidates are to be elected with the votes of two-thirds of the AN.<sup>212</sup> However, since 1999, CNE members have allegedly not been elected in this manner.
128. In fact, the first members of the CNE were appointed by the Constituent Assembly of 1999. In 2000, they were elected by the National Legislative Commission. On three occasions (in 2003, 2005, and 2014) they were appointed by the Constitutional Division of the TSJ, which had arrogated that function unto itself because it considered that the AN had committed a legislative omission by not appointing them on time. On two occasions (in 2006 and 2010), they were elected by an AN comprised of government supporters, which refused to allow the participation of an Electoral

<sup>208</sup> El País, [La Constituyente se declara la máxima autoridad de Venezuela](#), August 10, 2017.

<sup>209</sup> Office of the President of the Republic, Article 11 of [Decree N° 2878](#), May 23, 2017.

<sup>210</sup> IACHR, Press Release No. 131/2017, [IACHR Deeply Concerned about Further Weakening of Separation and Independence of Powers and Undermining of Democratic Institutions in Venezuela](#), August 31, 2017.

<sup>211</sup> IACHR, [Situation of Political Rights in Venezuela](#), October 19, 2015.

<sup>212</sup> Articles 295 and 296 of the [Constitution of Venezuela](#).

Candidacies Committee genuinely comprised of civil society.<sup>213</sup> More recently, in 2016, the Constitutional Division of the TSJ again appointed the board members of the CNE, arguing, this time round, that that was due to the fact that the AN was "in contempt."<sup>214</sup>

129. Another reason for this body's lack of independence is that its members allegedly do not comply with the Constitutional requirement that they be free of ties to organizations with political purposes.<sup>215</sup> In fact, as has been pointed out, many board members of the CNE are or have been trusted Government operatives and its technical staff is allegedly government party militants.<sup>216</sup> In addition, according to the information available, there is apparently no institutional or juridical oversight of the Electoral Authority's actions. Thus, at least since 2005, there has allegedly been no way of challenging any CNE decision before the TSJ.<sup>217</sup>
130. In that scenario, the CNE has taken decisions that impair Venezuelans' political rights and undermine the democratic institutional system. For instance, it obstructed activation of the recall process and ultimately suspended it. Likewise, it twice postponed regional elections and suspended municipal elections. It has also implemented a political party renewal mechanism that would make it more difficult for some of them to participate and it has shortened the registration period for regional elections. Likewise, during those votes, voting centers were relocated at the last minute, candidate substitutes were blocked, and the electoral observation organizations were not accredited (Chapter III.B.1).
131. In this context, the Commission underscores the importance of electoral bodies for the exercise of political rights and recalls that for such rights to be guaranteed those bodies need to be able to perform their functions impartially and independently.<sup>218</sup> For that reason, the Commission expresses deep concern at the various measures pursued by the CNE that obstruct the Venezuelan people's effective exercise of their political rights. It also condemns the fact that the State does provide sufficient guarantees for the independence of the Electoral Authority. That, in turn, has a negative impact on the protection of human and, in particular, political rights.

<sup>213</sup> IACHR, Situation of Political Rights in Venezuela, October 19, 2015.

<sup>214</sup> El Nacional, Sala Constitucional del TSJ designó a rectores del CNE, December 13, 2016; and Globovisión, TSJ designa rectores del Consejo Nacional Electoral por desacato de la AN, December 13, 2016.

<sup>215</sup> Article 296 of the Constitution of Venezuela. [Tr. [https://www.constituteproject.org/constitution/Venezuela\\_2009.pdf?lang=en](https://www.constituteproject.org/constitution/Venezuela_2009.pdf?lang=en)]

<sup>216</sup> IACHR, Situation of Political Rights in Venezuela, October 19, 2015.

<sup>217</sup> IACHR, Situation of Political Rights in Venezuela, October 19, 2015.

<sup>218</sup> IACHR, Report No. 14/93, Case 10.956, Luis Felipe Bravo Mena, Mexico; and Report No. 8/91, Case 10.180, Eduardo Arias Aparicio et al, Mexico.

#### 4. **Citizen Power: Actions undertaken by the Public Prosecutors' Office [Ministerio Público] and the Ombudsperson's Office.**

132. The Public Prosecutors' Office (MP), chaired by the Office of the Attorney General, and the Ombudsperson's Office (DP) are two of the organs making up Citizen Power under the Venezuelan Constitution.<sup>219</sup> Citizen Power's functions include, inter alia, overseeing public ethics and morality in the administration, application of the principle of legality in public administration, and the promotion of citizenship, liberty and democracy.<sup>220</sup> However, in recent years, in terms of the performance of their functions, both institutions have been questioned by national and international actors whose concerns the Commission shares.

##### ***Public Prosecutors' Office (Ministerio Público- MP)***

133. The MP, the body responsible for bringing criminal suits and directing criminal investigations,<sup>221</sup> has also been severely criticized for the way it has performed its functions. A 2014 report by the International Commission of Jurists pointed out that most of the denunciations filed with the MP had been stayed, dismissed, or shelved, adding to the general state of impunity in respect of 90% of common crimes, and an even larger percentage of human rights violations.<sup>222</sup>
134. The situation does not appear to have improved in 2017. The capacity or willingness of public prosecutors to initiate criminal proceedings is allegedly limited due to the lack of transparency in their appointments, instability of tenure, and the absence of technical criteria to govern the assignment of criminal investigations.<sup>223</sup> In addition, there have been complaints of the MP being used as a tool to persecute the opposition.<sup>224</sup> Notable in this context is the case of Leopoldo López, in which the public prosecutor, Franklin Nieves, admitted having used false evidence against him due to Government pressure.<sup>225</sup> Along these lines, it is also alarming

<sup>219</sup> Article 273 of the [Constitution of Venezuela](#).

<sup>220</sup> Article 274 of the [Constitution of Venezuela](#).

<sup>221</sup> Article 285 of the [Constitution of Venezuela](#).

<sup>222</sup> International Commission of Jurists, [Strengthening the Rule of Law in Venezuela](#), 2014, p. 27.

<sup>223</sup> International Commission of Jurists, [Achieving Justice for Gross Human Rights Violations in Venezuela, Baseline Study, July 2017](#), p. 27.

<sup>224</sup> International Commission of Jurists, [Achieving Justice for Gross Human Rights Violations in Venezuela, Baseline Study, July 2017](#), p. 27.

<sup>225</sup> International Commission of Jurists, [Achieving Justice for Gross Human Rights Violations in Venezuela, Baseline Study, July 2017](#), p. 27; and Youtube video, [Primeras declaraciones del fiscal Franklin Nieves -CASO LEOPOLDO LOPEZ- a su salida de Venezuela](#), La Patilla, October 23, 2015. In more detail, during the hearings on November 16, 2017, before the OAS, ex-prosecutor Nieves said that in the case of Leopoldo López, Public

that the same prosecutor reported that on the day in which the arrest of Leopoldo López was requested, Manuel Bernal—at the time the director of SEBIN—told him they needed an arrest warrant on “orders from the number one, Nicolás Maduro.” He said he was forced to follow orders in the case of Leopoldo López due to threats of disciplinary and criminal procedures against him, made by Nelson Mejía, the Public Ministry’s director of criminal enforcement.<sup>226</sup>

135. It is a matter of concern that, according to the information available, almost all public prosecutors in Venezuela are temporary appointees.<sup>227</sup> In that connection, it is worth recalling that it was pointed out during 2016 that there were no regular public prosecutors with nationwide competence.<sup>228</sup> Here, it is also worrisome that public prosecutors are appointed either directly by the Attorney General (Fiscal General) or without following legally established procedures. Likewise, they are subject to dismissal without any established procedure being followed, because the disciplinary system established in the Organic Law of the Public Prosecutors’ Office (MP) is still not operational.<sup>229</sup>
136. In addition, the institutional weakness of the MP has been exacerbated by the fact that the ANC has given itself discretionary powers to dismiss and appoint its highest-ranking authority. In that connection, the IACHR reiterates its condemnation of the decision to dismiss the now former

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Ministry officials were forced to claim there had been a fire in the Office of the Public Prosecutor’s archives, although there had not been. He also indicated that the forensic examination ordered found that the bottle thrown at the prosecutor offices was never on fire. Officials of the office of the Public prosecutor never used an extinguisher to put out the alleged fire, and as evidence of this, those who conducted the forensic examination of the office of the Public prosecutor’s archives did not find the white powder that an extinguisher gives off. Also, nobody saw any burned books. He also described other irregularities: for example, the case of Leopoldo López was asked to be combined with that of 39 students. In addition, he was also asked to deny requests for interviews made by López’s defense team. The ex-prosecutor Nieves also said Nelson Mejía, director of criminal enforcement of the Public Ministry, had been present while an affidavit had been given proving Leopoldo López instigated hate with his speech. There, Mr. Mejía had added considerations linking Leopoldo López to the facts for which he was accused [Livestream, [Public hearings before the OAS regarding Venezuela](#), OAS, November 16, 2017].

<sup>226</sup> Livestream, [Public hearings before the OAS regarding Venezuela](#), OAS, November 16, 2017.

<sup>227</sup> International Commission of Jurists, [Achieving Justice for Gross Human Rights Violations in Venezuela, Baseline Study, July 2017](#), p. 27. Ex-prosecutor Nieves also stated this during the OAS hearings on November 16, 2017, indicating that more than 99% of prosecutors face the same situation. He also recalled that in 2015, there were only four permanent prosecutors, out of the 4,000 total prosecutors in Venezuela [Livestream, [Public hearings before the OAS regarding Venezuela](#), OAS, November 16, 2017].

<sup>228</sup> International Commission of Jurists, [Achieving Justice for Gross Human Rights Violations in Venezuela, Baseline Study, July 2017](#), p. 27. The IACHR also pointed this out in its 2016 Annual Report [IACHR, [Annual Report 2016](#), Chapter IV.B, para. 63-66].

<sup>229</sup> International Commission of Jurists, [Achieving Justice for Gross Human Rights Violations in Venezuela, Baseline Study, July 2017](#), p. 27. It should be noted that according to ex-prosecutor Nieves, current Attorney General Tarek William Saab fired more than 70% of prosecutors. On November 16, 2017, 20 of the lead prosecutors in Mérida were fired. The same happened in Lara, Yaracuy, Táchira, and Zulia. The reason for this was to clear a path for appointment of prosecutors that supported the government [Livestream, [Public hearings before the OAS regarding Venezuela](#), OAS, November 16, 2017].

Attorney General, Luisa Ortega Díaz, in an act that contravened minimum guarantees of due process.<sup>230</sup> The ANC took that decision on August 5, 2017, alleging misconduct and crimes committed in the performance of her functions. At the time she was dismissed, Mrs. Ortega had been investigating alleged fraud in the ANC elections and excessive use of force by Government agents. Just days before the decision, President Maduro had made statements suggesting that the Office of the Attorney General be reorganized.<sup>231</sup>

137. The IACHR granted Mrs. Ortega and members of her immediate family precautionary measures on August 3, given the threats posed to their life and integrity by stigmatizing pronouncements, finger-pointing, and harassment by high-level government officials and members of the Partido Socialista Unido de Venezuela (PSUV).<sup>232</sup> The information available to the IACHR suggests that the harassment against Mrs. Ortega continues, despite the precautionary measures.<sup>233</sup> It is to be noted that, reportedly as a result, Mrs. Ortega was obliged to leave the country.<sup>234</sup> Likewise, it is to be noted that, since her dismissal, the MP has stopped publishing official data on its website (Chapter IV.C), which has hampered access to information in connection with the 2017 protests.
138. The IACHR recalls that the functions performed by public prosecutors -- such as investigating crimes, overseeing the legality of investigations and the enforcement of judicial rulings -- are essential for eradicating impunity in cases of human rights violations.<sup>235</sup> Although the ANC has decreed the Public Prosecutors' Office (MP) "in a state of emergency and restructuring,

<sup>230</sup> IACHR, Press Release No. 131/17. [IACHR Deeply Concerned about Further Weakening of Separation and Independence of Powers and Undermining of Democratic Institutions in Venezuela](#), August 31, 2017.

<sup>231</sup> In a speech, President Nicolás Maduro had said: "What do you think it (the Constituent Assembly) should do with the Attorney General's Office? Restructure it at once, declare it in a state of emergency, and take control to see that justice is done" [HispanTV, [Maduro tomará el mando de Fiscalía y quitará inmunidad a diputados](#), July 31, 2017].

<sup>232</sup> IACHR, [Resolution No. 27/17](#), Precautionary Measure No. 449-17, Luisa Ortega Díaz and family, Venezuela, August 3, 2017.

<sup>233</sup> In this connection, on August 16, 2017, the current Attorney General, Tarek William Saab, reportedly began an investigation into Mrs. Ortega and her husband, AN deputy Germán Ferrer, for allegedly heading a network to extort money from victims with the help of corrupt public prosecutors and depositing the money in foreign bank accounts [The New York Times, [Venezuela accuses 2 political dissidents of extortion](#), August 16, 2017; and Efecto Cucuyo, [Saab solicitó al TSJ orden de captura contra diputado Ferrer por "liderar" red de extorsión](#), August 16, 2017].

<sup>234</sup> El Nacional, [Luisa Ortega Díaz y Germán Ferrer salieron de Venezuela en lancha](#), August 18, 2017; and Infobae, [La fiscal general Luisa Ortega dejó Venezuela por la persecución del régimen de Maduro](#), August 17, 2017. This was also highlighted by Henrique Capriles in his report on the human rights situation in Venezuela Capriles, Henrique, Segundo informe del Gobernador Henrique Capriles Radonski sobre violaciones derechos humanos en Venezuela (ocurridas entre el 1 de abril de 2017 y el 19 de agosto de 2017, p. 29].

<sup>235</sup> IACHR, [Guarantees for the independence of justice operators.. Toward Strengthening Access to Justice and the Rule of Law in the Americas](#), OEA/SER.L/V/II, Doc. 44, December 5, 2013, para. 17.



due to its manifest lack of activity judging by the minimal indices of crimes and indictments,<sup>236</sup> it is worrying that that measure was adopted to prosecute offenses relating to opposition protests.<sup>237</sup>

### ***Office of the Ombudsman (DP)***

139. As regards the DP, which is responsible for promoting, defending, and monitoring observance of human rights, various civil society organizations have complained that it supports "policies, judgments, and discourse that contravene human right and [...] has turned a blind eye to events in the country in the past few years."<sup>238</sup> This is due, inter alia, to the DP's support of TSJ Judgment No, 155; its refusal to acknowledge or hear cases of human rights violations (in cases such as that of Judge Afiuni, the conditions under which detained political leaders Leopoldo López and Daniel Ceballos have been held, denunciations of torture and cruelty); its failure to protest the participation of members of the Armed Forces in putting down demonstrations or arbitrary arrests within the OLP; to name just a few grounds for complaint.<sup>239</sup>
140. In the international sphere, the Global Alliance for National Human Rights Institutions (GANHRI), through its subcommittee on accreditation,<sup>240</sup> has been observing the Venezuelan DP's position with some concern since 2014.<sup>241</sup> In October 2016, the Subcommittee decided to downgrade the DP's accreditation status to category B, given that it was not properly

<sup>236</sup> Panorama, En Gaceta primeras órdenes de la ANC: Destitución a Fiscal General y reestructuración del MP, August 11, 2017.

<sup>237</sup> The same decree states that the sluggishness of the MP had rendered the State "vulnerable in its efforts to combat criminal and political violence [...]" [Panorama, En Gaceta primeras órdenes de la ANC: Destitución a Fiscal General y reestructuración del MP, August 11, 2017]. The Attorney General, Tarek William Saab, also announced the restructuring of the MP. In that context, he pointed out that cases that had been ignored by the MP, such as cases involving damage to the environment and the use of minors in protest marches, would be reopened [El Nacional, Fiscal general anunció reestructuración del Ministerio Público, August 11, 2017].

<sup>238</sup> Transparency Venezuela, Report on the Situation of Human Rights in Venezuela, prepared by the IACHR, September 5, 2017, p. 10.

<sup>239</sup> Transparency Venezuela, Report on the Situation of Human Rights in Venezuela, prepared by the IACHR, September 5, 2017, p. 10; Runrun, Organizaciones de DDHH exigen renuncia a Defensor del Pueblo por falta de independencia y apoyo fraudulento al TSJ, April 4, 2017; and Acción Solidaria, CDH-UCAB, Civilis, Espacio Público, and PROVEA, Y a ti ¿quién te defiende?, Segundo informe de balance de gestión de la Defensoría del Pueblo, August 2016.

<sup>240</sup> The GANHRI Sub-Committee on Accreditation evaluates national institutions for the promotion and protection of human rights, such as Ombudsperson's Offices and their compliance with the Paris Principles. The GANHRI Sub-Committee on Accreditation classifies them as A, B, and C (full, partial, or non-compliance with the Paris Principles) [GANHRI, GANHRI Sub-Committee on Accreditation (SCA)].

<sup>241</sup> GANHRI, Report and Recommendations of the Sessions of the Sub-Committee on Accreditation, Geneva, March 16-20, 2015, pp. 25-29.



fulfilling its functions.<sup>242</sup> Some of the grounds cited were that the DP: (i) had refused to receive complaints of human rights violations in the border area with Colombia, despite pronouncements by international actors expressing their concern regarding the deportation of Colombians in that area; (ii) had not reacted appropriately to denunciations of torture and cruel treatment; (iii) had not cooperated to any meaningful extent with civil society; and (iv) had not adopted measures needed to protect human rights defenders.<sup>243</sup>

141. The Commission observes with concern that the DP's performance may be shaped, inter alia, by a lack of guarantees of independence and pluralism in the procedures for appointing and removing the Ombudsperson. Here, the IACHR notes that the Constitution does not establish mechanisms for electing or removing someone from this office. Rather, it states in Article 280, that she or he shall be appointed for a seven-year term, be selected from a group of persons with "manifest and proven confidence in human rights," and meet the standards of good repute, ethics, and morality required by law." According to the Organic Law of the Office of the Ombudsperson, the appointment to the position is made by a qualified majority of the AN, which may also remove the incumbent when, among other grounds, he or she becomes no longer eligible for the position or has been convicted in a final judgment.<sup>244</sup> Nevertheless, no measures are established to ensure the pluralist participation of civil society organizations interested in promoting and protecting human rights that might, where applicable, report on compliance or non-compliance with the constitutional requirements for exercising the position. Regarding this, the State pointed to "Article 279 of the Constitution of the Bolivarian Republic of Venezuela to demonstrate that the mechanism for appointing and removing the Ombudsperson and other members of the Citizens Branch is provided for in the text of the Constitution, ensuring protagonist participation by social actors."<sup>245</sup>
142. Mindful of the "Principles relating to the status of national institutions for the promotion and protection of human rights," the IACHR emphasizes the absolute necessity of guaranteeing the independence of the DP in order to effectively protect the human rights of the population whose rights have

<sup>242</sup> GANHRI, Chart of the Status of National Institutions, Accredited by the Global Alliance of National Human Rights Institutions, Accreditation Status as of 14 October 2014, p. 7; and PROVEA, Oficialmente ONU degrada Defensoría del Pueblo a Categoría B, October 27, 2016.

<sup>243</sup> GANHRI, Report and Recommendations of the Sessions of the Sub-Committee on Accreditation, Geneva, May 9-13, 2016, pp. 60.

<sup>244</sup> Articles 17 and 25 of the Organic Law of the Office of the Ombudsperson.

<sup>245</sup> Bolivarian Republic of Venezuela, Ministry of the People's Power for Foreign Relations, Note AGEV/2017-000300, comments on the draft country report December 21, 2017, paras. 53-54.

been violated.<sup>246</sup> The Commission expresses its concern regarding the questions that have been raised about the DP's performance of its functions and reiterates the importance of it complying with its role of protecting human rights. The IACHR recalls that the establishment of the DP constitutes an advance toward the consolidation of democratic institutions, but notes the need to boost its capacity and independence.<sup>247</sup> Regarding both institutions, the IACHR notes that, through Judgment N° 469, the TSJ broadened the functions of the DP by according it parallel functions that pertain to the Public Prosecutors' Office (Ministerio Público - MP).<sup>248</sup> That judgment grants the DP power to call for proof and to request auxiliary bodies to conduct inquiries.<sup>249</sup> The Attorney General at the time, Luisa Ortega, refused to recognize that judgment and pointed out that requesting and directing criminal investigations was a power assigned by the Constitution to the MP.<sup>250</sup> The IACHR regards the judicial ruling as inconsistent with basic judicial principles that require the MP to act independently and as contradicting the principle of the separation of powers upheld in Article 3 of the Inter-American Democratic Charter. Regarding this point, the State notes in its comments that "with this criterion, the Report seeks to restrict the role of the National Human Rights Institute and, in particular, the Office of the Ombudsperson in the investigation of human rights violations. In this regard, it should be noted that pursuant to Article 281.1 of the Constitution and articles 15 and 66 of the Organic Law on the Office of the Ombudsman, the Office of the Ombudsman has the authority to conduct investigations into the human rights violations brought to its attention. In addition, according to the provisions of Article 121 of the Organic Criminal Procedural Code, the Office of the Ombudsman has the authority to "present criminal complaints against officials, public employees, or agents of the police forces who are accused of violating human rights in the course of their duties."<sup>251</sup>

143. Based on the information it received and the above analysis, the Commission observes that, generally speaking, public authority is being used as a tool to serve the purposes and interests of the Executive and, specifically, the National Government. This has drastically impacted the separation and balance of powers, gravely undermining the democratic

<sup>246</sup> Principle B, Composition and guarantees of independence and pluralism, of the *Paris Principles* (Principles relating to the status of national institutions for the promotion and protection of human rights).

<sup>247</sup> IACHR, Press Release No. 131A/14, *Report on the 153rd session of the IACHR*, December 219, 2014.

<sup>248</sup> CEPAZ, *Ruptura de la Institucionalidad Democrática en Venezuela 2017 - "Estocada a la Democracia"*, Contributions to the IACHR country report, p.20.

<sup>249</sup> PROVEA, *El desmantelamiento del Ministerio Público*, July 3, 2017; and Prodavinci, *El TSJ avanza en su intento de anular y remover a la Fiscal*, June 27, 2017.

<sup>250</sup> El Nacional, *Ortega Díaz desconoce las sentencias 469 y 470 del TSJ*, June 28, 2017.

<sup>251</sup> Bolivarian Republic of Venezuela, Ministry of the People's Power for Foreign Relations, Note AGEV/2017-000300, comments on the draft country report December 21, 2017, paras. 55-56.

institutional system in Venezuela. Furthermore, it has impaired the exercise of human rights, by denying or curtailing them in some cases and fostering impunity in others.

144. At the same time, the Commission notes with the utmost concern that, based on the information at its disposal, corruption is rampant in Venezuela, further permeating its already weak state institutions. The Venezuelan State has itself admitted to the IACHR that one of the several challenges it faces is combating corruption.<sup>252</sup> In this respect, the IACHR notes that, according to Transparency International's 2016 Corruption Perceptions Index (CPI), Venezuela ranked No. 166 out of 176 countries, with a score of 17 out of 100,<sup>253</sup> [[Tr. 0 = highly corrupt, 100 = very clean]. It is worth noting that since 2008 Venezuela has ranked between country No. 158 and 172.<sup>254</sup> The IACHR likewise notes with concern a number of complaints that corruption is ripe at the very highest echelons of the Government. Specifically, in August 2017, former Attorney general Ortega denounced alleged ties of corruption between the Odebrecht construction company and high levels in the Government, said to include President Maduro and Diosdado Cabello<sup>255</sup>; later on, in October 2017, the former head of Odebrecht in Venezuela stated that the company had donated US\$35 million to President Maduro's presidential campaign.<sup>256</sup> In that context, it is worrisome to note the denunciation in February 2017 of the detention of journalists investigating the Odebrecht case.<sup>257</sup> Also disturbing is the denunciation by the former Attorney General that President Maduro had allegedly helped himself to public funds.<sup>258</sup> Furthermore, the Commission has received information alleging that, this year (thus far),

<sup>252</sup> IACHR, Situation of Democratic Institutions in Venezuela, October 24, 2017. In the same regard, it should be noted that President Maduro said during an interview in response to the question of whether there was "too much" corruption in Venezuela, that "all throughout these years of economic war [...] there has been a loosening of the ethical and moral standards of many people who have had and now have responsibilities in positions of power, everyone from Ministers [...] who at one point had my trust to others who I've never even met" [Youtube video, Interview with Maduro by Jordi Evole/Salvados: Full audio, J. Dobbs, November 13, 2017; and Transparencia Venezuela, Maduro admite corrupción en "posiciones de poder" pero no ha habido ningún ministropreso, November 13, 2017].

<sup>253</sup> Transparency International, Corruption Perceptions Index 2016.

<sup>254</sup> Transparency International, Changes in the Corruption Perceptions Index (2008-2016).

<sup>255</sup> Transparency Venezuela, Report on the Situation of Human Rights in Venezuela, prepared by the IACHR, p. 19; and El Tiempo, Revelaciones de Luis Ortega, un golpe a la dupla Maduro-Diosdado, August 24, 2017.

<sup>256</sup> BBC, El exjefe de Odebrecht en Venezuela dice que entregó US\$35 millones para la campaña presidencial de Nicolás Maduro, October 13, 2017; and El País, El representante de Odebrecht en Venezuela afirma que entregó 35 millones de dólares a Maduro, October 13, 2017.

<sup>257</sup> La Nación, Venezuela: detuvieron a periodistas que investigan el caso Odebrecht, February 12, 2017.

<sup>258</sup> Transparency Venezuela, Report on the Situation of Human Rights in Venezuela, prepared by the IACHR, p. 19; and El Nacional, Ortega Díaz acusó a Maduro de sustraer dinero del fisco nacional, August 28, 2017.

more than 50 cases of corruption have been denounced in over 30 State organs.<sup>259</sup>

145. The State says in its comments that "the draft Country Report selectively addresses the issue of corruption by including baseless accusations against senior public authorities and their extended families, yet omitting references to cases that have been effectively proven by the competent authorities."<sup>260</sup> The IACHR takes note that the State provided information on "the investigations conducted by the Public Ministry into the former deputy and husband of former Attorney General Luisa Ortega Díaz, Germán Ferrer, including the alleged existence of a network of corruption within the aforementioned institution" and that in its opinion, "the statements disseminated in the media demonstrating the falseness of the complaints made against senior national authorities are omitted."<sup>261</sup>
146. As the IACHR has pointed out, fighting corruption is intrinsically linked to the exercise and enjoyment of human rights.<sup>262</sup> Likewise, the treaty bodies and special procedures of the United Nations have observed that when corruption is widespread States cannot comply with their human rights obligations.<sup>263</sup> Corruption may also be an indirect cause of human rights violations, when an effort is made to elude denunciations of acts of corruption by denying such rights as access to justice and freedom of expression, among others.<sup>264</sup> In addition, in an OAS context, combating corruption plays an important part in the implementation of basic commitments undertaken by its member states.<sup>265</sup> As the Inter-American Democratic Charter asserts: "transparency in government activities, probity, responsible public administration on the part of governments," inter alia, are "essential components of the exercise of democracy."<sup>266</sup>

<sup>259</sup> Transparency Venezuela, Report on the Situation of Human Rights in Venezuela, prepared by the IACHR, p. 17.

<sup>260</sup> Bolivarian Republic of Venezuela, Ministry of the People's Power for Foreign Relations, Note AGEV/2017-000300, comments on the draft country report, December 21, 2017, para. 57.

<sup>261</sup> Bolivarian Republic of Venezuela, Ministry of the People's Power for Foreign Relations, Note AGEV/2017-000300, comments on the draft country report, December 21, 2017, para. 58.

<sup>262</sup> IACHR, Resolution 1/17, Human Rights and the Fight against Impunity and Corruption, September 12, 2017.

<sup>263</sup> Committee on Economic, Social and Cultural Rights, Consideration of reports submitted by States Parties under Articles 16 and 17 of the Covenant, Concluding Observations, The Republic of Moldova, E/C.12/1/ADD.91, December 12, 2003, para. 12; Committee on the Rights of the Child, Consideration of reports submitted by States Parties under Article 44 of the Convention, Concluding Observations, The Republic of the Congo, CRC/C/COG/CO/1, October 20, 2006, para. 14; and Special Rapporteur on the Independence of Judges and Lawyers, E/CN. 4/2005/52/Add.4, para. 96.

<sup>264</sup> International Council on Human Rights Policy and the Graduate School of Public Administration and Public Policy of the Monterrey Institute of Technology and Higher Education, Corruption and Human Rights: making the connection, 2009, p. 33.

<sup>265</sup> IACHR, Resolution 1/17, Human Rights and the Fight against Impunity and Corruption, September 12, 2017.

<sup>266</sup> Article 3 of the Inter-American Democratic Charter.

147. Impunity encourages and perpetuates acts of corruption. Establishing effective mechanisms for eradicating it is therefore an absolute imperative for guaranteeing human rights and effective access to justice.<sup>267</sup> It is therefore of the utmost importance that the State take steps to ensure that acts reported are investigated independently, impartially, and promptly, without pressures or discrimination based on membership of certain political parties or on the positions held by those under investigation. Likewise the State is duty-bound to avoid a repetition of these acts of corruption, which means that it is essential to adopt preventive measures. Among the most basic are measures that make it possible to govern in accordance with the principles of openness, transparency, and effective public liability, without which no democratic society can function. They are vital for the observance and fully guaranteed exercise of all civil, political, economic, social, cultural, and environmental rights in Venezuela.

## ***B. Political Rights and Participation in Public Life***

148. Political rights, upheld in Article XX of the American Declaration,<sup>268</sup> are construed to mean those that recognize and protect the right and duty of all citizens to participate in the political life of their country. Quintessentially, they are rights conducive to the strengthening of democracy and political pluralism.<sup>269</sup> As the IACHR has emphasized, there exists “a direct relationship between the exercise of political rights and the concept of democracy as a way of organizing the state.”<sup>270</sup> The Commission has also referred to the necessity of guaranteeing citizens and organized political groups the right to gather publicly, and of permitting and fomenting a broad debate about the nature of the political decisions adopted by their representatives.<sup>271</sup>

149. In its 2009 report on Democracy and Human Rights in Venezuela and its subsequent annual reports, the IACHR has kept track of a series of reprisals against persons who publicly state or adopt a position of dissent vis-à-vis the Government's policies. Likewise, the Commission has observed actions

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<sup>267</sup> IACHR, [Resolution 1/17](#), Human Rights and the Fight against Impunity and Corruption, September 12, 2017.

<sup>268</sup> Article XX of the [American Declaration](#) establishes that “every person having legal capacity is entitled to participate in the government of his country, directly or through his representatives, and to take part in popular elections, which shall be by secret ballot, and shall be honest, periodic and free.”

<sup>269</sup> IACHR, [Democracy and Human Rights in Venezuela](#), OEA/Ser.L/V/II Doc. 54, December 30, 2009, para. 18.

<sup>270</sup> IACHR, [Democracy and Human Rights in Venezuela](#), OEA/Ser.L/V/II Doc. 54, December 30, 2009, para. 21; and [Second Report on the Situation of Human Rights in Peru](#), OEA/Ser.L/V/II.106, doc. 59 rev., June 2, 2000, Chapter IV, para.1.

<sup>271</sup> IACHR, [Democracy and Human Rights in Venezuela](#), OEA/Ser.L/V/II Doc. 54, December 30, 2009, para. 21; and [Second Report on the Situation of Human Rights in Peru](#), OEA/Ser.L/V/II.106, doc. 59 rev., June 2, 2000, Chapter IV, para.1.

taken against leaders of opposition parties, as well as against citizens exercising their right to voice disagreement with Government policies.<sup>272</sup> The Commission notes that such reprisals have increased alarmingly in the past year, as shown below.

## 1. Exercise of the Right to Vote

150. The right to vote implies, on the one hand, that citizens can decide directly and freely elect, on an equal footing, those who will represent them in decisions taken with regard to public affairs. For its part, the right to be elected presupposes that people can stand on an equal footing as candidates for elective office and can hold and perform elective public positions if they manage to win enough votes to do so.<sup>273</sup> The Commission notes with concern that in Venezuela today the population's right to exercise its political rights has, de facto, been suspended. This transpires from the obstacles that have been placed in the way of several mechanisms for exercising those rights, as the following paragraphs illustrate.
151. Indeed, in 2016, the Commission drew attention to the decision by the CNE to suspend the recall referendum process initiated by the opposition in March of that year based on Article 72 of the Venezuelan Constitution.<sup>274</sup> The referendum was suspended indefinitely by the Electoral Authority, as a result of the precautionary measures ordered by regional criminal courts in five states, in connection with actions brought on account of alleged offenses relating to the collection of the 1% of signatures needed to activate the referendum process.<sup>275</sup>
152. As the IACHR noted at the time, the CNE immediately went along with the judgments that had been handed down simultaneously, suggesting, as some sources reported, a possibly coordinated decision to prevent citizens from evaluating the President of the Republic's performance through the referendum mechanism.<sup>276</sup> It is worth recalling here that the CNE had previously already placed hurdles in the way of the recall process initiated by the opposition by demanding that the 20% of signatures required by

<sup>272</sup> IACHR, 2014 Annual Report, Chapter IV.B, Venezuela, para. 361.

<sup>273</sup> IACHR, Democracy and Human Rights in Venezuela, OEA/Ser.L/V/II Doc. 54, December 30, 2009, para. 92; and I/A Court H.R., Case of Castañeda Gutman v. Mexico. Preliminary Objections, Merits, Reparations, and Costs. Judgment of August 6, 2008. Series C No. 184, para. 148.

<sup>274</sup> IACHR, Press Release No. 154/2016, 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.

<sup>275</sup> CNE, Poder Electoral acata medidas cautelares ordenadas por tribunales de la República, October 20, 2016.

<sup>276</sup> Globovisión, Tribunales penales anularon recolección del 1% de firmas en cinco estados del país, October 20, 2016.

achieved in each electoral district, not just 20% of the electoral roll.<sup>277</sup> That decision was later upheld by the TSJ.<sup>278</sup> Against that backdrop, the IACHR also condemned the threats, arrests, police raids, and lawsuits leveled against members of opposition parties, demonstrators, and journalists in connection with a series of restrictions imposed by the Government on those who voiced their support for the presidential recall referendum.<sup>279</sup>

153. The IACHR likewise notes with concern the postponement of regional and municipal elections.<sup>280</sup> As regards the former, the CNE twice postponed regional elections.<sup>281</sup> On the second occasion, it did so in compliance with a judgment by the TSJ, which required political parties to be duly legitimated to participate in elections.<sup>282</sup> That measure triggered the "process of renewal of organizations for political purposes" for the political parties that had not taken part in the last two electoral processes or that had not received 1% of the votes in those elections.<sup>283</sup> To achieve renewal parties had, under the rules set by the CNE, to show that they had achieved "the equivalent of 0.5% of the electoral roll in effect for the 2015 parliamentary election, in at least 12 federal entities in the country."<sup>284</sup>
154. While this measure would apply to both opposition and government parties, it would affect the former more, as they would be at a disadvantage for not having participated individually in the 2015 elections.<sup>285</sup> In that context, according to information received by the Commission, only 22 of Venezuela's 64 parties, are authorized to take part in the regional elections,

<sup>277</sup> Articles 15 and 29 of the *Normas para Regular el Procedimiento de Promoción y Solicitud de Referendos Revocatorios de Mandatos de Cargos de Elección Popular* [Recall Rules] state that the signatures of 20% of all the voters registered in each electoral district shall be required. According to critics of this requirement, since the district for the election of the President is the nation as a whole, what should be required for revocation of his mandate is 20% of the national electorate. [Univisión, *CNE aprueba condiciones que hacen casi imposible realizar revocatorio contra Maduro este año*, September 21, 2016].

<sup>278</sup> El Mundo, *Nuevo golpe del Tribunal Supremo al revocatorio contra Nicolás Maduro*, October 18, 2016; and Globovisión, *TSJ ratifica que recolección del 20% de firmas debe realizarse por estados*, October 17, 2016.

<sup>279</sup> IACHR, *2016 Annual Report*, Chapter IV.B, Venezuela, para. 109.

<sup>280</sup> The regional authorities had been elected in December 2012 for a four-year term. Municipal authorities were elected in 2013 for a four-year term, so that those elections would need to be carried out by end-2017 at the latest [BBC, *El CNE aplaza por seis meses las elecciones regionales en Venezuela*, October 18, 2016; El Nacional, *Tibisay Lucena confirmó que no se realizarán elecciones municipales en 2017*, May 25, 2017; and El Mundo, *Venezuela aplaza las elecciones regionales y Nicolás Maduro insinúa que podría adelantar las generales*, October 19, 2016].

<sup>281</sup> Panorama, *CNE: Elecciones regionales quedan "interrumpidas"*, February 11, 2017; BBC, *El CNE aplazo por seis meses las elecciones regionales en Venezuela*, October 18, 2016; and CNE, *CNE aprobó calendario electoral para el año 2017*, October 18, 2016. CEPAZ also pointed this out in its report on the democratic institutional system [CEPAZ, *Ruptura de la Institucionalidad Democrática en Venezuela 2017 - "Estocada a la Democracia"*, p. 8].

<sup>282</sup> Panorama, *CNE: Elecciones regionales quedan "interrumpidas"*, February 11, 2017.

<sup>283</sup> CNE, *Proceso de renovación de organizaciones con fines políticos se iniciará el 18 de febrero*, February 7, 2017.

<sup>284</sup> CNE, *CNE entregó a las organizaciones con fines políticos cronograma para renovación de nóminas de militante*, February 9, 2017.

<sup>285</sup> La Nación, *El Chavismo suspende las elecciones regionales en el primer semestre*, February 11, 2011; and El Nacional, *Todo lo que debe saber sobre la renovación de partidos políticos*, February 10, 2017.



due to the restrictions imposed by the CNE.<sup>286</sup> For those elections, candidates would only have two days to get registered (compared to the 73 days allowed for that previously).<sup>287</sup>

155. In May 2017, the CNE announced that there would only be two elections in 2017: the election of the ANC in July and the election of governors and state legislative councils in December, which meant a lengthy postponement of municipal elections.<sup>288</sup> In August 2017, the ANC rescheduled the electoral process to have governors selected on October 15, 2017.<sup>289</sup> The IACHR notes that it was only after these regional elections, the results of which favored the government party, that the ANC decided to convene, by decree, the municipal elections -- which had been "indefinitely" postponed by the CNE in May -- for December 2017.<sup>290</sup> In this regard, the State in its comments indicates that in 2017, "three electoral processes have been conducted in the Bolivarian Republic of Venezuela, with average participation of 50% of the electorate and the participation of a variety of political organizations and voting groups who live in the country. No other country in the region has held so many elections in such a short period of time."<sup>291</sup>
156. The participation of opposition parties in the last regional elections was hampered by the fact that, due to a CNE resolution, it could not field candidates in seven states in which electoral disputes were still pending.<sup>292</sup> In this regard, the State indicates in its comments "that the Venezuelan opposition put forward a number of candidates in all the states during regional elections, including in the states of Zulia, Apure, Monagas, Bolívar, Trujillo, Aragua, and Carabobo"<sup>293</sup>. In addition, candidates for the PSUV filed complaints of favoritism toward government supporters.<sup>294</sup> One of

<sup>286</sup> Transparency Venezuela, Report on the Situation of Human Rights in Venezuela, prepared by the IACHR, September 5, 2017, p. 12.

<sup>287</sup> Transparency Venezuela, Report on the Situation of Human Rights in Venezuela, prepared by the IACHR, September 5, 2017, p. 12.

<sup>288</sup> El Nacional, Tibisay Lucena confirmó que no se realizarán elecciones municipales en 2017, May 25, 2017.

<sup>289</sup> RT, Venezuela: el Consejo Nacional Electoral adelanta las elecciones regionales, September 12, 2017; and El Nuevo Herald, Constituyente adelanta para octubre elecciones regionales en Venezuela, August 12, 2017.

<sup>290</sup> ANC, Decreto Constituyente de convocatoria y programación de las elecciones de alcaldes y alcaldes para el mes de diciembre de 2017, October 26, 2017.

<sup>291</sup> Bolivarian Republic of Venezuela, Ministry of the People's Power for Foreign Relations, Note AGEV/2017-000300, comments on the draft country report, December 21, 2017, para. 59.

<sup>292</sup> CNE, Aprobado informe de renovación de organizaciones políticas, August 7, 2017; and El País, La oposición a Maduro se inscribirá en las elecciones regionales, August 9, 2017.

<sup>293</sup> República Bolivariana de Venezuela, Ministerio de Poder Popular para Relaciones Exteriores, Nota AGEV/2017-000300, Observaciones proyecto informe de país, 21 de diciembre de 2017, párr. 60.

<sup>294</sup> Asamblea de Educación, Informe final de observación de las elecciones de gobernaciones del 15 de octubre de 2017, pp. 8 and 9; Crónica Uno, Ministerios, gobernaciones y alcaldías dan "ayudita" a candidatos del PSUV, September 10, 2017; and El Nacional, Candidatos del PSUV a las regionales usurpan funciones de gobernadores, October 2, 2017. As regards this matter, Transparency Venezuela has reported several



those complaints concerned Rafael Lacava, the candidate chosen for the governorship of the state of Carabobo, who is alleged to have used government works, such as the asphaltting of roads or the allocation of funds by the Executive to overhaul some Comprehensive Diagnosis Centers, to boost his election campaign.<sup>295</sup> Here, it should be pointed out that Mr. Lacava had been appointed in September of this year to head the Special Economic Zone of Puerto Cabello.<sup>296</sup> During the election campaign, he boasted of the connections he had, thanks to holding that position, even before he was elected governor.<sup>297</sup> In so doing, he allegedly contravened Article 57 of the Organic Law of Electoral Processes, which establishes that Public Administration officials competing in an electoral process must be suspended from the exercise of their office from day one of their campaign, as well as the principle of equality among participants in the election process set forth in Article 72 of that law. Also worrisome are the statements by the Vice President of the PSUV, Diosdado Cabello, to the effect that persons going to vote in the October elections would be "checked" for patriotism ("con el carnet de la patria") in order to "get a sense of the direction they were taking."<sup>298</sup>

157. The Commission likewise expresses its concern regarding the following measures adopted by the CNE in connection with the regional elections of October 15: i) the relocating of voting centers just days before the elections; ii) blocking of replacement nominations (bloqueo para sustituir postulaciones); and iii) non-accreditation of electoral observation

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occasions on which PSUV candidates took advantage of State funds and property for their campaigns. [Transparencia Venezuela, La Lupa #01 – Un recuento de los abusos en la campaña por las gobernaciones; and La Lupa #03 – Campaña por Gobernaciones se caracterizó por el uso de los recursos públicos]. In the same vein, President Maduro is reported to have stated that PSUV candidates in regional elections "already enjoyed" the Executive's support. [Noticiero Digital, Candidatos del PSUV cuentan con "todo el poder del Palacio de Miraflores", dijo Maduro, September 25, 2017; and Punto de Corte, En clara violación a la Constitución Maduro expresa ventajismo político de sus candidatos, September 26, 2017]. In addition, according to Transparencia Venezuela, President Maduro had begun the "Monday devoted to regions," in order to approve resources for governors seeking reelection. [Transparencia Venezuela, La Lupa #02- Se acentúa el ventajismo en la campaña por las gobernaciones].

<sup>295</sup> El Nacional, Denuncian que Lacava utiliza obras del gobierno para beneficiar su campaña, October 2, 2017; and Ministry of People's Power for Communication and Informations Lacava: Rehabilitación de CDI y abastecimiento de Gas Comunal serán prioridad en Guacara, September 27, 2017. It was likewise reported that Mr. Lacava had distributed CLAP bags and was arranging meetings with security service bodies in Carabobo [El Nacional, Candidatos del PSUV a las regionales usurpan funciones de gobernadores, October 2, 2017].

<sup>296</sup> It is to be noted that the then candidate for the position of Governor of Falcon, Víctor Clark, was also appointed to head the Special Economic Zone of Paraguaná [Radio Mundial, Designado Víctor Clark nueva autoridad de Zona Económica Especial de Paraguaná, September 28, 2017].

<sup>297</sup> Thus it was pointed out that "already the Special Economic Zone and its sole authority are beginning to yield results, even before becoming Governor." NTN24, Candidato Rafael Lacava alardea de sus influencias para obtener recursos sin ser gobernador de Carabobo, October 2, 2017; and VTV, Zona Económica Especial en Carabobo será liderada por Rafael Lacava, September 28, 2017.

<sup>298</sup> Noticiero Digital, Cabello: cada persona que vaya a votar debe tener el carnet de la patria, October 9, 2017; and La Patilla, Cabello: Cada persona que vaya a votar, debe ser chequeada con el carnet de la Patria, October 9, 2017.

organizations. As regards the first measure, on October 13, two days before the elections, the CNE announced that it was relocating 201 voting centers to place that were, on average, two kilometers away from the original centers, due to acts of violence that had occurred in them in the elections to the ANC.<sup>299</sup> The measure would affect more than 715,000 voters and hamper their participation in the elections due to confusion.<sup>300</sup> It is also worrying that the relocated voting centers were those in which most voters had voted for the opposition in the 2015 parliamentary elections.<sup>301</sup>

158. As regards the second matter, the Commission takes note of the complaints concerning the ban on nomination replacements for the regional elections. The effect of that was allegedly a larger number of invalid ballots.<sup>302</sup> Here it should be pointed out that the CNE stated that it processed 217 requests for replacement and modification of candidacies in its system, which was operative until August 18.<sup>303</sup> Nevertheless, Article 63 of the Organic Law of Electoral Processes allows participating organizations to replace candidates up to 10 days prior to the elections, which in this case would have been October 5. Finally, the Commission points out that the CHE reportedly had not granted credentials to well-established national electoral observation organizations and had dispensed with those sent by the Union of South American Nations (UNASUR).<sup>304</sup> That allegedly impacted oversight of the electoral process.<sup>305</sup> According to the CNE, regional election turnout was 61.14%<sup>306</sup> The PSUV won 18 governorships, the MUD five. The announcement of the results was greeted with the opposition's complaints alleging electoral fraud.<sup>307</sup>

<sup>299</sup> CNE, CNE procesó 217 sustituciones y modificaciones de candidaturas para elecciones, October 13, 2017.

<sup>300</sup> Centro de Estudios Políticos (CEP) – UCAB, El Centro de Estudios Políticos ante las elecciones del 15 de octubre de 2017, October 13, 2017; and El Universal, Liliana Hernández: Reubicaciones son para confundir al elector, October 11, 2017. In a press release following the elections, the MUD pointed out that 700,000 Venezuelans had their voting centers changed 48 hours before the polls [MUD, Mesa de la Unidad Democrática ante el proceso fraudulento consumado el día de ayer, October 15, 2017].

<sup>301</sup> CEP – UCAB, El Centro de Estudios Políticos ante las elecciones del 15 de octubre de 2017, October 13, 2017.

<sup>302</sup> CEP – UCAB, El Centro de Estudios Políticos ante las elecciones del 15 de octubre de 2017, October 13, 2017; 2001, TSJ avaló omisión de sustitución de candidatos por parte del CNE, según Caldera, October 5, 2017; Analítica, Rector Rondón criticó que CNE bloquee sustitución de candidatos regionales, October 3, 2017; and Crónica Uno, MUD: El CNE decidió cometer el delito electoral de no permitir las sustituciones, October 3, 2017. According to the MUD, at least 90,537 invalid votes must have been assigned to opposition candidates due to the ban on candidate substitution [MUD, Mesa de la Unidad Democrática ante el proceso fraudulento consumado el día de ayer, October 15, 2017].

<sup>303</sup> CNE, CNE procesó 217 sustituciones y modificaciones de candidaturas para elecciones, October 13, 2017.

<sup>304</sup> CEP – UCAB, El Centro de Estudios Políticos ante las elecciones del 15 de octubre de 2017, October 13, 2017; and Aristegui Noticias, 363 mil venezolanos intentarán evitar irregularidades en comicios, October 10, 2017.

<sup>305</sup> CEP – UCAB, El Centro de Estudios Políticos ante las elecciones del 15 de octubre de 2017, October 13, 2017.

<sup>306</sup> CNE, CNE emitió boletín oficial con 95,8% de actas escrutadas, October 15, 2017.

<sup>307</sup> Infobae, Elecciones regionales en Venezuela: los resultados oficiales le dieron una victoria al chavismo y la oposición denunció fraude, October 16, 2017; El Nacional, CNE: MUD obtuvo 5 gobernaciones frente a 17 del PSUV, October 15, 2017; and , October 15, 2017.

159. In that connection, the Commission observes with concern that the ANC announced that the governors elect would have to swear in before it, the Constituent Assembly.<sup>308</sup> The five opposition governors-elect rejected that measure and argued that they should only swear in before the Legislative Councils of their respective states.<sup>309</sup> For that reason, they did not attend the ANC on October 18, the date on which the 18 pro-Government governors-elect were sworn in.<sup>310</sup> That same day, the ANC issued a decree establishing that "Legislative Councils may not swear in governors-elect who had not first sworn in before this National Assembly."<sup>311</sup> On top of that, President Maduro made statements, saying that governors who did not swear in before the ANC would be disqualified and repeat elections would be held in their states.<sup>312</sup>
160. Even though, in the end, four of the pro-opposition governors-elect ended up swearing in before the ANC on October 23,<sup>313</sup> the Commission expresses its profound concern at these events, which would imply an impairment of the right to be elected of the pro-opposition governors-elect. In this respect, it notes that, under the Oath Act (Ley de Juramento), no public servant may take up office without first swearing in.<sup>314</sup> However, the Law on the Election and Dismissal of State Governors merely provides that state governors must swear in before the Legislative Councils or, if that is not possible, before a Higher Court Judge of the corresponding judicial district,<sup>315</sup> so that the ANC would be adding an additional unwarranted restriction to the exercise of that right. That being so, the Commission condemns the situation in which the governor of the state of Zulia, Juan Pablo Guanipa, finds himself after deciding not to swear in before the ANC. As a consequence of that decision, on October 26, 2017, the Legislative Council of Zulia declared Governor Guanipa blatantly at fault (en falta

<sup>308</sup> Youtube video, Delcy Rodríguez anuncia que juramentación de gobernadores será el martes ante ANC, Luigino Bracci Roa, October 16, 2017.

<sup>309</sup> MUD, Comunicado: Meda de la Unidad Democrática reitera que sus gobernadores solo se subordinarán a la Constitución y al pueblo, October 18, 2017.

<sup>310</sup> El Nacional, Gobernadores chavistas se juramentaron ante la ANC, October 18, 2017.

<sup>311</sup> ANC, Decreto Constituyente mediante el cual se juramenta las gobernadoras proclamados y gobernadores proclamados, October 18 2017.

<sup>312</sup> Youtube video, Maduro: Gobernador que no juramente ante ANC será inhabilitado en próxima elección, Diario Panorama, October 20, 2017.

<sup>313</sup> El Tiempo, Cuatro de los cinco gobernadores opositores juran ante la Constituyente, October 23, 2017; and BBC, Las divisiones de la oposición en Venezuela: 4 de sus 5 gobernadores electos se juramenta ante la controvertida Asamblea Constituyente, October 24, 2017. Here, it is worth pointing out that during the hearings at the 165th period of sessions of the IACHR, the State representative stressed that this fact implied recognition of the legitimacy of the ANC [CIDH, Situatio regarding democratic institutions in Venezuela, October 24, 2017].

<sup>314</sup> Article 1 of the Ley de Juramento [Oath Act], August 30, 1945.

<sup>315</sup> Article 12 of the Ley sobre elección y remoción de gobernadores de estado, April 14, 1989.

absoluta) and his office "vacant."<sup>316</sup> That same day, the ANC issued a decree ordering elections to be repeated in December for the governorship of Zulia.<sup>317</sup>

161. It should be noted that municipal elections were held in Venezuela on December 10, 2017. In its official bulletin, the CNE announced that 9,139,564 people voted, totaling 47.32% of eligible voters.<sup>318</sup> Several media reports indicated that participation by the opposition parties was low because they saw the process as lacking transparency.<sup>319</sup>
162. The IACHR points out that the various obstacles created to hamper the exercise by the Venezuela population of its political rights, in their various manifestations, constitute failure to comply with the State's obligation to "generate optimal conditions and mechanisms for the effective exercise of political rights (the right to vote and to be elected in authentic periodic elections], observing the principle of equality and non-discrimination."<sup>320</sup> In particular with regard to the suspended presidential recall referendum, the Commission recalls that this is a mechanism that allows the exercise of political rights and constitutes an express of political opinion, protected by the right to freedom of expression and the principle of non-discrimination.<sup>321</sup> Accordingly, the IACHR urges the State to facilitate participation mechanisms and condemns actions by the State that hamper or prevent the exercise of these kinds of rights.

<sup>316</sup> Venezuela al día, [Gobernación de Juan Pablo Guanipa "sin efecto" por decisión de Clez](#), October 26, 2017; and Noticias TCN, [Venezuela: Consejo Legislativo declara "vacante" la Gobernación de Zulia](#), October 30, 2017; Guanipa, Juan Pablo, [Asalto a la voluntad del pueblo: Decisión CLEZ viola CRBV y desconoce al pueblo zuliano ¡Seguiremos de piel #GolpeDeEstadoEnZulia](#), tweet, October 26, 2017.

<sup>317</sup> ANC, [Decreto Constituyente de convocatoria y reprogramación de la elección de la gobernadora o gobernador del estado de Zulia, para diciembre de 2017](#), October 26, 2017; VTV, [ANC aprobó para diciembre elecciones en el estado Zulia ante la decisión del gobernador electo de no reconocer al Poder Constituyente](#), October 26, 2017; and El Universal, [ANC convocó elección de gobernador en Zulia por incumplimiento de Guanipa](#), October 26, 2017.

<sup>318</sup> Electoral National Council, Official Bulletin, [CNE emite primer boletín con resultados de elecciones municipales y de gobernador del Zulia](#), December 10, 2017.

<sup>319</sup> BBC Mundo, [Venezuela: el chavismo arrasa en elecciones municipales boicoteadas por la oposición y Maduro amenaza con impedir la participación de los principales partidos opositores en las presidenciales](#), December 11, 2017; El Tiempo, [Chavismo ganó 'más de 300 de 335 alcaldías', dice Nicolás Maduro](#), 11 de diciembre de 2017; CNN, [Elecciones municipales de Venezuela: 9,3 millones votaron, dice el CNE](#), December 10, 2017.

<sup>320</sup> IACHR, [2016 Annual Report](#), Chapter IV.B, Venezuela, para. 119; Press Release No. 154/16, [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; and [Democracy and Human Rights in Venezuela](#), OEA/SER.L/V/II, Doc. 54, December 30, 2009, Chapter II Recommendation No. 2.

<sup>321</sup> IACHR, [2016 Annual Report](#), Chapter IV.B, Venezuela, para. 117; Press Release No. 154/16, [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; and [Report No. 75/15](#), Case 12.923, Merits, Rocio San Miguel Sosa et al, Venezuela, para. 146.

## 2. Political Dissidence

163. The Commission notes with concern the existence of a pattern of very serious violations of the human rights of persons who demonstrate or publicly espouse positions at variance with those of the Executive, which are backed by actions taken in other branches of government, for instance by the TSJ and the ANC. The Commission observes that such acts are not isolated and that they are directed against numerous dissidents at different levels in the power structure. As the IACHR spells out in detail in the following paragraphs, acts of this kind have been registered against authorities in the Executive itself, against mayors and councilors, members of other branches of government, AN deputies, and leaders of opposition parties.
164. The information provided to the IACHR paints a pattern of multiple acts of harassment, persecution through the media, the destitution of political dissidents from public office, disqualification from political activity, violation of immunity, interference in public functions, unlawful raids on private property, and acquiescence in the face of violent acts against members of the opposition and, in general, against anyone voicing dissent.<sup>322</sup> Harassment also takes the form of numerous stigmatizing pronouncements against senior officials and opposition leaders.
165. It also takes the form of unwarranted criminal suits, arbitrary arrests, and even impairment of the rights to life and personal safety. In 2016, the Commission had already voiced its concern at the wave of arrests and opening of trials against opposition party members.<sup>323</sup> In 2017, however, this situation has further deteriorated to levels never before seen in Venezuela.<sup>324</sup> According to information provided by Foro Penal Venezolano (FPV), in June 2017, 403 people were registered as "political prisoners,"<sup>325</sup> a figure that rose to 620 at July 31<sup>326</sup> and then fell to 317 as of November 19, 2017.<sup>327</sup> Likewise, there were reportedly 5,341 arbitrary arrests

<sup>322</sup> IACHR, Reports of Political Persecution in Venezuela, March 22, 2017; and CEPAZ, Report to the Human Rights Committee of the United Nations during the consideration of the 4th periodic report of the Venezuelan State in the 114th session of June 2015, on the International Covenant on Civil and Political Rights, Geneva, June 2015.

<sup>323</sup> IACHR, 2016 Annual Report, Chapter IV.B, Venezuela, para. 91.

<sup>324</sup> FPV, Reporte sobre la represión del Estado en Venezuela - Agosto de 2017, p. 6.

<sup>325</sup> The FPV definition of political prisoner covers three categories: (i) persons detained or convicted for individually posing a political threat to the Government, because they are political or social leaders; (ii) persons detained or convicted for pertaining to a social group that the Government needs to intimidate; and (iii) persons used by the Government for political campaign purposes or to sustain a political power narrative vis-a-vis certain nationally key situations [FPV, Presos Políticos].

<sup>326</sup> FPV, Reporte sobre la represión del Estado en Venezuela - Agosto de 2017, p. 6.

<sup>327</sup> IACHR, Violence, Citizen Security and Freedom of Expression in Venezuela, October 24, 2017.

between April 1 and August 31.<sup>328</sup> (Chapter III.A.4). In addition, according to the data available, between 124 and 157 people were killed in connection with demonstrations held between April and July 2017.<sup>329</sup> (Chapter III.A.2). The IACHR expresses its utmost condemnation of the marked exacerbation of the persecution and criminalization of political dissent, illustrated in the following paragraphs:

### ***Mayors and Governors***

166. In connection with the public demonstrations in 2017, numerous pro-opposition mayors were persecuted, fired, and deprived of their liberty by court rulings handed down with no regard to the right to due process, and thereby prevented from performing their functions. According to the information available, as of August 11, 2017, 39 of the 77 pro-opposition mayors had suffered acts of political persecution by the Government.<sup>330</sup> Of the 39, four had been dismissed from office and are allegedly imprisoned;<sup>331</sup> five more were allegedly dismissed and warrants for their arrest were issued;<sup>332</sup> one was reportedly just dismissed,<sup>333</sup> one allegedly

<sup>328</sup> FPV, [Reporte sobre la represión del Estado en Venezuela - Agosto de 2017](#), p. 2.

<sup>329</sup> OHCHR, Human rights violations and abuses in the context of protests in the Bolivarian Republic of Venezuela from 1 April to 31 July 2017, Geneva August 2017, p. 11.

<sup>330</sup> Transparencia Venezuela, [Aumenta a 51% las alcaldías que han sido atacadas por el Gobierno](#), August 11, 2017. 25; and Capriles, Henrique, Second Report of Governor Henrique Capriles Radonski on violations of human rights in Venezuela (occurred between April 1<sup>st</sup>, 2017 and August 19, 2017), p. 22]. Likewise, it was pointed out that, of the 77 pro-opposition mayors, 14 had been removed from office; arrest warrants had been issued against another 6, 4 were in prison, and investigative proceedings had been opened against almost half of them. [Youtube video, [Public hearings before the OAS regarding Venezuela](#), OAS, September 14, 2017]. In addition, dismissed Mayor David Smolanski that 12 mayors had been fired. That information was confirmed by Mayor Omar Lares, who pointed out that he was not one of them and would continue in office. [Youtube video, [Public hearings before the OAS regarding Venezuela](#), OAS, October 17, 2017].

<sup>331</sup> Involved were, reportedly: (i) Daniel Ceballos (San Cristóbal, Táchira); (ii) Antonio Ledezma (Metropolitan District); (iii) Alfredo A. Ramos Acosta (Iribarren, Lara); and (iv) Delson Guárate (Mario Briceño Iragorry, Aragua). Enzo Scarano (San Diego, Carabobo) had also allegedly been dismissed and jailed, but had been released on February 4, 2016 [Transparencia Venezuela, [Aumenta a 51% las alcaldías que han sido atacadas por el Gobierno](#), August 11, 2017]. David Smolanski also pointed this out during the October 17 hearings before the OAS [Youtube video, [Public hearings before the OAS regarding Venezuela](#), OAS, October 17, 2017].

<sup>332</sup> Involved were, reportedly: (i) Warner Jiménez (Maturín, Monagas); (ii) Gustavo Marcano (Diego Bautista Urbaneja, Anzoátegui); (iii) Ramón Muchacho (Chacao, Miranda); (iv) David Smolansky (Hatillo, Miranda); y and (v) Carlos García (Libertador, Mérida) [Transparencia Venezuela, [Aumenta a 51% las alcaldías que han sido atacadas por el Gobierno](#), August 11, 2017]. Here it is worth noting that the number of dismissed mayors for whom arrest warrants had been issued increased from 2 to 5, according to Transparencia Venezuela reports between July 31 and August 11, 2017 [Runrun, [Gobierno ha arremetido contra 34 de los 77 alcaldes de oposición](#), August 1, 2017].

<sup>333</sup> This was reportedly the case of Lumay Barreto (Páez, Apure) [Transparencia Venezuela, [Aumenta a 51% las alcaldías que han sido atacadas por el Gobierno](#), August 11, 2017]. With respect to Mayoress Barreto, David Smolansky explained that she had been dismissed for being absent from work for three days because her son had undergone an operation. The dismissal was carried out despite the fact that the Organic Law governing Municipal Authorities provides for them taking leave of absence for up to 15 days without

faced an arrest warrant only;<sup>334</sup> two had had their spheres of competence withdrawn;<sup>335</sup> three were allegedly disqualified from office by the Office of the Comptroller General of the Republic;<sup>336</sup> two were allegedly banned from leaving the country;<sup>337</sup> and one was reportedly detained for 72 hours.<sup>338</sup> Six more are reportedly out of the country.<sup>339</sup>

167. The IACHR's attention was caught in particular by the 40 judgments allegedly handed down by the Constitutional Division of the TSJ against 16 mayors.<sup>340</sup> Particularly worrisome are those that order the pro-opposition mayors to prevent "street meetings that obstruct traffic or passage and to put up street barricades."<sup>341</sup> The judgments order the mayor to avoid the placement of obstacles on the street that impede traffic/passage; to withdraw such obstacles, to comply with traffic regulations, prevent meetings on the streets; protect children and adolescents so that they can exercise their rights; ensure protection of the environment and urban and household garbage collection; and issue instructions to municipal police officers pursuant to Articles 44 and 46 of the Organic Law of the Police Service and the Bolivarian National Police Corps.<sup>342</sup>

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authorization from the Municipal Council [Youtube video, [Public hearings before the OAS regarding Venezuela](#), OAS, October 17, 2017].

<sup>334</sup> This was reportedly the case of Omar Lares (Campo Elías, Mérida) [Transparencia Venezuela, [Aumenta a 51% las alcaldías que han sido atacadas por el Gobierno](#), August 11, 2017].

<sup>335</sup> Involved were, reportedly: (i) Antonio Ledezma (Metropolitan District); and (ii) Eveling Trejo (Maracaibo, Zulia) [Transparencia Venezuela, [Aumenta a 51% las alcaldías que han sido atacadas por el Gobierno](#), August 11, 2017].

<sup>336</sup> Involved were, reportedly: (i) Enzo Scarno (San Diego, Carabobo); (ii) Daniel Ceballos (San Cristóbal, Táchira); and (iii) Alirio Guerrero (Jauregui, Táchira) [Transparencia Venezuela, [Aumenta a 51% las alcaldías que han sido atacadas por el Gobierno](#), August 11, 2017].

<sup>337</sup> Involved were, reportedly: (i) Moisés Carvallo (Chacao, Miranda); and José Barreras (Palavecino, Lara) [Transparencia Venezuela, [Aumenta a 51% las alcaldías que han sido atacadas por el Gobierno](#), August 11, 2017].

<sup>338</sup> This was reportedly the case of Pedro Loreto (Leonardo Infante, Guarico) [Transparencia Venezuela, [Aumenta a 51% las alcaldías que han sido atacadas por el Gobierno](#), August 11, 2017].

<sup>339</sup> David Smolansky also singled this out during the hearings before the OAS on October 17 [Youtube video, [Public hearings before the OAS regarding Venezuela](#), OAS, October 17, 2017].

<sup>340</sup> Civilis, *Amenazas y Restricciones a los Derechos Humanos y la Democracia en Venezuela*, Informe Comprehensivo de Seguimiento 2016-2017, para. 42.

<sup>341</sup> OHCHR, [Human rights violations and abuses in the context of protests in the Bolivarian Republic of Venezuela from 1 April to 31 July 2017](#), August 31, 2017, pp 30-31. According to former mayor Gustavo Marcano, the TSJ has asked 20 opposition mayors to stop the citizen protests. Twelve mayors have been convicted and sentenced between 2013 and 2017, and 9 are being threatened with pretrial detention or bans should they allow protests [Livestream, [Public hearings before the OAS regarding Venezuela](#), OAS, November 16, 2017].

<sup>342</sup> This Table was compiled using information provided by Civilis in Appendix 6 of its report [Civilis, *Amenazas y Restricciones a los Derechos Humanos y la Democracia en Venezuela*, Informe Comprehensivo de Seguimiento 2016-2017].



Judgment No.	Date	Mayor and Mayoress	Municipality
365	5/24/2017	Gerardo Blyde	Baruta, Miranda
366	5/24/2017	José Luis Rodríguez Fernández	Carrizal, Miranda
367	5/24/2017	José Fernández	Los Salías, Miranda
368	5/24/2017	David Smolansky	El Hatillo, Miranda
369	5/24/2017	Ramón Muchacho	Chacao, Miranda
370	5/24/2017	Juan José Peña Chacín	Alberto Adriani, Mérida
371	5/24/2017	Carlos García Odón	Libertador, Mérida
372	5/24/2017	Omar Lares	Campo Elías, Mérida
373	5/25/2017	Carlos Ocariz	Sucre, Miranda
376	5/31/2017	José Luis Machín	Barinas, Barinas
377	5/31/2017	Gustavo Eduardo Marcano Antúnez	Diego Bautista Urbaneja, Anzoátegui
400	6/1/2017	Alfredo Ramos	Irribaren, Lara
401	6/1/2017	José Antonio Barrera Blanco	Palavecino, Lara
440	6/7/2017	Jesús Aguilar Pérez	Antonio José de Sucre, Barinas
534	7/11/2017	Eveling Trejo	Maracaibo, Zulia
536	7/11/2017	Patricia Gutiérrez Fernández	San Cristóbal, Táchira

168. The IACHR deplores the fact that, for refusing to comply with these judgments that curtail freedom of express and social protest, the following mayors were declared in contempt of court and subsequently disqualified from office and dismissed, with warrants issued for their arrest: Smolansky, Muchacho, García, Marcano, and Ramos.<sup>343</sup> The procedure and their destitution gravely impair their political rights as well as those of the persons who voted for them.
169. Also worth special mention is the case of Antonio Ledezma, , the former Mayor of Caracas, who was arrested in February 2015,<sup>344</sup> accused of participating in an alleged plot to overthrow the Government, and then confined to the National Center for Military Awaiting Trial (CENAPROMIL), known as "Ramo Verde" (Green Branch). As of April 24, 2015, Mr. Ledezma had been under house arrest. However, a few days later, in a violent

<sup>343</sup> Civilis, *Amenazas y Restricciones a los Derechos Humanos y la Democracia en Venezuela*, Informe Comprehensivo de Seguimiento 2016-2017, para. 43. This was also noted by the OHCHR and a number of media [OHCHR, *Human rights violations and abuses in the context of protests in the Bolivarian Republic of Venezuela from 1 April to 31 July 2017*, August 31, 2017, p. 31; BBC, *Los alcaldes de oposición condenados (y escondidos) por permitir las protestas contra el gobierno de Venezuela*, August 10, 2017; and El Tiempo. *TSJ emite orden de captura contra Gustavo Marcano y es destituido de su cargo*, July 25, 2017.] During the hearings before the OAS on November 16, 2017, Gustavo Marcano alleged he had been convicted and given the same sentence as Carlos García, Alfredo Ramos, Ramón Muchacho, and David Smolansky. He said the only thing that changed between those judgments and sentences was the personal information of each mayor. Mr. Marcano also alleged irregularities in his processing—for example, that he was not able to see his case file, present evidence, or appeal to a higher court. Mr. Muchacho also described similar irregularities in his process. He noted that the judgment to convict him, dismiss him, suspend his authorities, and ban him from running for office also forwarded his casefile to the Truth, Justice, Peace, and Public Tranquility Commission [Livestream, *Public hearings before the OAS regarding Venezuela*, OAS, November 16, 2017].

<sup>344</sup> The IACHR noted this detention in its 2015 Annual Report [IACHR, *Annual Report 2015*, Chapter IV.B, para. 79].



operation, armed and hooded agents of the Bolivarian National Intelligence Service (SEBIN) seized him from his home and imprisoned him again. The day before, the Sixth Court overseeing the Metropolitan Area of Caracas had revoked the measures agreed upon in his favor due to alleged noncompliance with the conditions imposed for him to be able to stay under house arrest, because he had made public statements rejecting the ANC and due to an alleged plot to escape.<sup>345</sup> On August 4, Mr. Ledezma was again taken to his home to be under house arrest.<sup>346</sup> On November 17, Antonio Ledezma left the country via the Colombian border bound for Spain, where he arrived on November 18.<sup>347</sup>

170. The IACHR also draws attention to the arrest of Councilor Carlos García of the Municipality of Guasdalupe, in the state of Apure, and a member of the Primero Justicia party.<sup>348</sup> He died on September 17, due to an alleged failure to provide medical care (Chapter V.C)<sup>349</sup>. According to the information available, Mr. García had been under arrest in the cells of SEBIN since December 2016, after being hauled from his home, accused of alleged aggravated larceny, public incitement, and arson. There were allegations that evidence had been planted on him to justify those accusations.<sup>350</sup> As regards his death, the IACHR urges that the State allow the competent authorities carry out an investigation ex officio, with due diligence, and in accordance with guarantees of due process. The IACHR also notes its concern over the decision of the ANC on December 20 to

<sup>345</sup> In the case of Antonio Ledezma, the Court hearing his case had imposed, as a condition for granting house arrest, that he refrain from making statements to any medium, otherwise the house arrest measure would be revoked immediately.

<sup>346</sup> UNIVISIÓN, El opositor Antonio Ledezma vuelve a su casa para continuar el régimen de arresto domiciliario, según su esposa, August 4, 2017.

<sup>347</sup> El Nacional, Antonio Ledezma se escapó de Venezuela con destino a España, November 17, 2017; Antonio Ledezma llegó a Venezuela luego de su salida de Venezuela, November 18, 2017; and BBC, Opositor Antonio Ledezma escapa de Venezuela, cruza Colombia y llega a España tras “una travesía peliculosa”, November 18, 2017.

<sup>348</sup> The Commission notes that, under Venezuelan law, councilors are members of the Municipal Council, which performs the “deliberative function” assigned to the municipal authority. [Ley Orgánica del Poder Público Municipal, Article 75].

<sup>349</sup> El Nacional, PJ denunciará al gobierno ante la ONU por muerte de Carlos García, September 18, 2017; El Horizonte; Opositores acusan al gobierno de Nicolás Maduro por muerte de concejal, September 18, 2017; and Efecto Cocuyo, OEA y Foro Penal responsabilizan al gobierno por muerte de Carlos Andrés García, September 18, 2017.

<sup>350</sup> TSJ, Comunicado, Facebook, September 18, 2017; El Nacional, TSJ informó que concejal Carlos García recibió atención médica en agosto, September 18, 2017; El Universal, TSJ: Muerte de Carlos García fue por presunta enfermedad inmunodeficiente, September 18, 2017; and CNN, Muere concejal opositor en Calabozo: acusan al gobierno, September 18, 2017.

dissolve the Caracas Metropolitan and Alto Apure mayoral districts, seen to be in opposition to the current government.<sup>351</sup>

171. Governors, that is to say, those charged under the Venezuela Constitution with exercising public authority at the state level, have also been persecuted, removed from office, and imprisoned.<sup>352</sup> The IACHR is particularly concerned at the plight of Henrique Capriles, Governor of Miranda and a former presidential candidate. On April 7, 2017, Mr. Capriles was notified of a decision by the Office of the Comptroller General of the Republic disqualifying him from political office for 15 years for alleged administrative misconduct. The disqualification was allegedly based on his "committing alleged illicit acts defined as offenses, such as not submitting the local budget to the state Legislative Council; entering into international agreements without authorization to do so; and on signing contracts with firms on behalf of the Governorship of Miranda without abiding by the rules"<sup>353</sup>. This punishment would take effect once he completes his term as Governor of the state of Miranda. The punishment is being questioned inside Venezuela. On June 2, 2017, the IACHR granted precautionary measures on his behalf, since it considers that he is in serious and urgent circumstances, in which his life, personal integrity, and political rights are at risk of irreparable harm.<sup>354</sup> Regarding these removals, the State emphasized in its comments "that the prohibition measure issued by the Comptroller General of the Republic does not take immediate effect for elected officials. However, the prohibition begins to take effect once the official has completed the term for which he or she was elected, pursuant to the case law of the Supreme Tribunal of Justice."<sup>355</sup>
172. The IACHR stresses that while political disqualification has been applied before as a punishment to prevent the submission of a candidacy and election to public office,<sup>356</sup> its application to Mr. Capriles involved the

<sup>351</sup> BBC Mundo, [La Asamblea Nacional Constituyente de Venezuela elimina la opositora Alcaldía Metropolitana de Caracas](#), 21 de diciembre de 2017; EFE, [La Constituyente suprime la Alcaldía Metropolitana de Caracas y el Alto Apure](#), 20 de diciembre de 2017.

<sup>352</sup> Articles 159 and 160 of the [Constitution of Venezuela](#).

<sup>353</sup> [TeleSur, [Henrique Capriles es inhabilitado por ilícitos administrativos](#), April 7, 2017; El País, [Capriles: "Maduro no me va a sacar de la política"](#), April 8, 2017; and Infobae, [Inhabilitaciones masivas, el método chavista para proscribir a la oposición](#), April 15, 2017.]

<sup>354</sup> IACHR, [Resolution No. 15/17](#), Precautionary Measure No. 248-17, Henrique Capriles Radonski, Venezuela, June 2, 2017, para. 3.

<sup>355</sup> Bolivarian Republic of Venezuela, Ministry of the People's Power for Foreign Relations, Note AGEV/2017-000300, comments on the draft country report, December 21, 2017, para. 62.

<sup>356</sup> The IACHR has kept track of this situation since its report on Democracy and Human Rights in Venezuela. On that occasion, it pointed out that "on February 25, 2008, the Comptroller General of the Republic of Venezuela had presented to the CNE a list of 398 persons disqualified from exercising public office" [CIDH, [Democracy and Human Rights in Venezuela](#), OEA/SER.L/V/II, Doc. 54, December 5, 2013, para. 49]. Likewise, in its 2010 Annual Report, the IACHR pointed out that "the Office of the Comptroller General of the Republic (CGR) disqualified eight candidates for political office, six from the opposition and two from the PSUV, from

destitution of an elected authority during performance of the office. The IACHR notes that Mr. Capriles is not the only governor to have been removed from office by a decision of the Office of the Comptroller General of the Republic, because on May 8 it also disqualified the Governor of Amazonas, Liborio Guarulla, from holding public office for 15 years due to his alleged responsibility for the embezzlement of public funds.<sup>357</sup>

### ***Members of the National Assembly***

173. Several AN deputies for opposition parties have suffered threats and harassment. In 2017, that induced the IACHR to grant precautionary measures on behalf of the following deputies: Freddy Guevara, First Vice President of the AN, and Ismael León, on January 14<sup>358</sup>; Luis Florido, President of the Foreign Affairs, Integration, and Sovereignty Committee, on April 7<sup>359</sup>; Julio Borges, President of the AN, Tomás Guanipa, and José Ángel Guerra, on July 28<sup>360</sup>; and Williams Dávila, on September 6<sup>361</sup>. They were in addition to the precautionary measures granted in 2016 on behalf of Deputy Américo de Grazia, on July 21<sup>362</sup>, and Lester Toledo, on June 4<sup>363</sup>.
174. Specifically. Deputy Luis Florido, a founder and leader of the "Voluntad Popular" political party, told the IACHR that he had been threatened and followed by individuals connected with State agents, in addition to being the victim of stigmatizing comments in the media by senior government officials. He informed the IACHR that those acts had begun in May 2016 (when he received intimidating messages and one of his bodyguards was murdered) and continued in 2017, especially toward the beginning of the

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participating in the parliamentary elections of September 26, 2010" [IACHR, 2010 Annual Report, Chapter IV, Venezuela, para. 680]. Subsequently, the IACHR became aware that in July 2015, "the Comptroller General of the Republic issued a series of administrative orders of disqualification to exercise public office, against coalition leaders from the opposition Democratic Unity Roundtable (Mesa de la Unidad Democrática (MUD))" and added that.... These disqualifications are added to that against Manuel Rosales<sup>155</sup>, for 7 years and 6 months, issued in August" of 2014. [IACHR, 2015 Annual Report, Chapter IV.B, Venezuela, para. 93]. A similar case was that of Leopoldo López, who was unable to submit his candidacy for the Greater Caracas Mayor's Office due to two disqualifications imposed by the CGR [ I/A Court H.R. *Case of López Mendoza v. Venezuela*. Merits, Reparations, and Costs. Judgment of September 1, 2011. Series C No. 233, para. 107].

<sup>357</sup> OHCHR, Human rights violations and abuses in the context of protests in the Bolivarian Republic of Venezuela from 1 April to 31 July 2017, August 31, 2017, p. 31.

<sup>358</sup> IACHR, Resolution No. 1/17, Precautionary Measure No. 475-15, Members of the Voluntad Popular party, Venezuela, January 14, 2017.

<sup>359</sup> IACHR, Resolution No. 12/17, Precautionary Measure No. 616-16, Luis Florido, Venezuela, April 7, 2017.

<sup>360</sup> IACHR, Resolution No. 24/17, Precautionary Measure No. 403-17, Julio Borges et al, Venezuela, July 28, 2017.

<sup>361</sup> IACHR, Resolution No. 35/2017, Precautionary Measure No. 533-17, Williams Dávila, Venezuela, September 6, 2017.

<sup>362</sup> IACHR, Resolution No. 41/16, Precautionary Measure No. 359/16, Américo de Grazia, Venezuela, July 21, 2016.

<sup>363</sup> IACHR, Resolution No. 35/16, Precautionary Measure No. 413-16, Matter concerning Lester Toledo et al, Venezuela, June 4, 2016.

year due to his speeches in the AN, including those relating to the "Agreement on Reactivating the Process of Implementing the Inter-American Democratic Charter of the OAS."<sup>364</sup>

175. Similar reports were received from the President of the AN, Julio Borges, and Deputies Tomás Guanipa and José Guerra, members of the Primero Justicia party. Concretely, they reported having been the object of continuous threats, harassment, and acts of intimidation by senior Government and PSUV officials, who had repeatedly accused them of being responsible for several recent acts of violence, as well as fostering alleged coups, and being "terrorists" and "hired assassins."<sup>365</sup>
176. Likewise, Deputy Williams Dávila -a member of the MUD- complained to the IACHR that he had received explicit death threats and had been followed by alleged assailants who occasionally tossed heavy objects at his car. He also said that unidentified individuals had fired shots against his home in August 2007. In addition to the above, since mid-2016, Mr. Dávila said he had had to contend with obstacles designed to prevent him from performing his functions as well as with stigmatizing statements by the authorities.<sup>366</sup>
177. The IACHR is likewise seriously worried by the situation of Deputy Gilber Caro, who is reportedly imprisoned in Carabobo in poor health and deprived of medical care. On January 11, members of the Voluntad Popular party denounced that Deputy Caro had been captured by individuals claiming to be SEBIN intelligence agents on a motorway outside Valencia, the capital of the state of Carabobo.<sup>367</sup> It is to be noted that Mr. Caro was deprived of liberty despite enjoying parliamentary immunity. That same day, Vice President Tareck El Aissami alleged that, at the time of his arrest, Mr. Caro was carrying a rifle and documents allegedly listing members of the opposition who would be murdered.<sup>368</sup> On June 1, four months after his arrest, Mr. Caro was reportedly brought for the first time before military courts, where he was accused of treason and of stealing property of the Bolivarian Armed Forces.<sup>369</sup> The IACHR expressed concern at the reasons

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<sup>364</sup> IACHR, [Resolution No. 12/17](#), Precautionary Measure No. 616-16, Luis Florido, Venezuela, April 7, 2017.

<sup>365</sup> IACHR, [Resolution No. 24/17](#), Precautionary Measure No. 403-17, Julio Borges et al, Venezuela, July 28, 2017, para. 33.

<sup>366</sup> Those obstacles allegedly consisted of restrictions on purchasing air tickets to travel abroad in connectin with his official functions, the withholding of his passport for "technical reasons," and a ban on leaving the country. [IACHR, [Resolution No. 35/2017](#), Precautionary Measure No. 533-17, Williams Dávila, Venezuela, September 6, 2017].

<sup>367</sup> El País, [Detenido un diputado opositor en Venezuela](#), January 12, 2017.

<sup>368</sup> BBC, [Venezuela: detienen al diputado opositor Gilbert Caro acusado por el gobierno de posesión de "material de guerra"](#), January 12, 2017.

<sup>369</sup> Efecto Cucuyo, [Imputan a diputado Gilber Caro luego de cuatro meses detenido](#), June 1, 2017.

that induced Mr. Caro to go on a hunger strike from September 11 to 18.<sup>370</sup> The purpose of that strike was to request his transfer from the 28 de Julio prison, where his life was at risk due to solitary confinement measures,<sup>371</sup> to the Ramo Verde prison, which housed most of the majority of the individuals considered deprived of liberty for political reasons.<sup>372</sup> Regarding the situation of Gilbert Caro, the State indicates that "pursuant to Article 200 of the Constitution of the Republic, it only covers sitting deputies and cannot be extended to acting deputies who have not been inducted, as is the case with Mr. Gilbert Caro"<sup>373</sup>.

178. In that connection, the IACHR has already pointed to the incompatibility of decisions taken by the TSJ on March 28 and 29 with fundamental principles of the democratic order, such as the separation of powers. Through decisions such as those, they deprived AN deputies of their parliamentary immunity and established that their acts constituted "treason." The Commission condemns the use of criminal law as a means of silencing, intimidating, and criminalizing political dissent and reiterates the need to guarantee the right of the population and of organized political groups to take part in politics without fear of reprisals, by permitting and encouraging pluralist, broad, and robust public debate.<sup>374</sup>
179. The Commission reiterates its concern over the suspension of the parliamentary immunity of deputy and National Assembly Vice President Freddy Guevara.<sup>375</sup> On November 3, 2017, through Judgment No. 69, the Plenary Chamber of the TSJ sent a request to the ANC to lift his immunity for allegedly having committed the crimes of conspiracy, ongoing public instigation, and use of a minor for criminal acts. According to the TSJ, Deputy Guevara is not subject to a preliminary impeachment proceeding because the allegations deal with flagrante offenses. Instead, he would be

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<sup>370</sup> El Nacional, [Gilber Caro levantó huelga de hambre tras desmayarse](#), September 19, 2017.

<sup>371</sup> In a letter published in one of the social networks, Gilbert [Tr. sic] Caro complained that: "In my particular case, given that I am a special political prisoner for this Government, they discriminate against me vis-à-vis the rest of the [Tr. prison] population, as if I had no right at all to be treated with respect; I am being kept in isolation [...] in order to induce such mental torture, by systematically destroying my personality through permanent punishment and unwarranted and inhuman solitary confinement, that my will as a free human being will be broken and even my thoughts enslaved. That at least is what they appear to be attempting." [Caro, Gilbert, [URGENTE DipGilber Caro inicia huelga de hambre. Su integridad física está en peligro por ello exige traslado mientras sigue su proceso penal](#), Tweet, September 11, 2017].

<sup>372</sup> Panampost, [Gilber Caro, preso político y diputado venezolano, inicia huelga de hambre: coserá sus labios si no hay respuestas](#), September 11, 2017.

<sup>373</sup> Bolivarian Republic of Venezuela, Ministry of the People's Power for Foreign Relations, Note AGEV/2017-000300, comments on the draft country report, December 21, 2017, para. 64.

<sup>374</sup> IACHR, Press Release N° 041/17. [IACHR Condemns Supreme Court Rulings and the Alteration of the Constitutional and Democratic Order in Venezuela](#), March 31, 2017.

<sup>375</sup> IACHR Press Release No. 184/17, [IACHR Expresses Concern over Suspension of Parliamentary Immunity for Vice President of Venezuela's National Assembly](#), November 17, 2017.

tried through the ordinary courts.<sup>376</sup> The crimes allegedly committed involve "acts of violence and plans for insurrection committed between April and July 2017, to encourage foreign intervention."<sup>377</sup> On November 6, the ANC granted the Supreme Court's request and lifted the parliamentary immunity of Freddy Guevara.<sup>378</sup> He is currently taking "refuge" in the Embassy of Chile in Caracas, due to the "imminent threats to his security and personal integrity."<sup>379</sup>

180. Also worrisome are reports of persecution of family members of political and opposition party leaders. Particularly noteworthy is the case of Juan Pedro Lares, the son of Omar Lares, Mayor of El Hattillo, who was allegedly captured in an operation aimed at arresting his father. A similar case was the alleged persecution of Lilián Tintori, for being the wife of Leopoldo López, the brother of Deputy Olivares, and a sister of Deputy Caro.<sup>380</sup>
181. For the IACHR, the aforementioned cases are proof that the use of mechanisms -- be they legal, under color of law, or illegal -- to crush dissidence at different levels of public authority itself constitutes a pattern in Venezuela. The IACHR reiterates that the inter-American system has established that the exercise of political rights must be regulated by law and, that being the case, only a judicial body may, through criminal proceedings, curtail those rights, while observing the judicial guarantees proper to proceedings of a punitive nature.<sup>381</sup> Likewise, as the Commission has established, disqualification from the exercise of public office, when imposed through administrative channels in contravention of the standards of due process, constitutes an unlawful restriction of the political right to stand for public office.<sup>382</sup>

<sup>376</sup> VTV, [TSJ ordenó levantar inmunidad parlamentaria de Freddy Guevara](#), November 3, 2017; Panorama, [TSJ: Freddy Guevara deberá ser juzgado por tribunales penales ordinarios](#), November 3, 2017; CNN, [Ordenan retirar inmunidad al líder opositor venezolano Freddy Guevara](#), November 3, 2017; and Acceso a la Justicia, [¿Qué dice la sentencia 69 de la Sala Plena del TSJ?](#), November 3, 2017.

<sup>377</sup> Telesur, [Ordenan quitar inmunidad al diputado venezolano Freddy Guevara](#), November 3, 2017.

<sup>378</sup> HispanTV, [ANC venezolana aprueba retirar inmunidad política a Guevara](#), November 6, 2017.

<sup>379</sup> Ministry of Foreign Affairs of Chile, [Government reports that a Venezuelan official has entered the residence of the Ambassador of Chile in Caracas](#), November 4, 2017; and El Nacional, [Freddy Gevara se refugia en embajada de Chile](#), November 4, 2017.

<sup>380</sup> Information provided by Omar Lares during the hearings before the OAS on October 17 [Youtube video, [Public hearings before the OAS regarding Venezuela](#), OAS, October 17, 2017]. The Commission notes that by November 20, 2017, after four months in detention, Juan Pablo Lares still has not been brought before a judge [Crisis in Venezuela, [Issue No. 14, November 13-20, 2017](#), pg. 2].

<sup>381</sup> IACHR, [2015 Annual Report](#), Chapter IV.B, Venezuela, para. 94; Application before the I/A Court H.R., Leopoldo López Mendoza (Case 12.668) against the Bolivarian Republic of Venezuela, para. 65; and I/A Court H.R., *Case of López Mendoza v. Venezuela*. Merits, Reparations, and Costs. Judgment of September 1, 2011. Series C No. 233, para. 107.

<sup>382</sup> I/A Court HR. *Case of López Mendoza v. Venezuela*. Merits, Reparations, and Costs. Judgment of September 01, 2011. Series C No. 233, para. 147-149; and IACHR, [Democracy and Human Rights in Venezuela](#), OEA/SER.L/V/II, Doc. 54, December 30, 2009, para. 71.

## ***Political Leaders***

182. A number of political opposition leaders are allegedly being persecuted, according to information received by the OACHR. Of particular note is the case of Leopoldo López, a leader of the Voluntad Popular party, who was imprisoned in February 2014. Mr. López was confined in the “Ramo Verde” center, in which his prison conditions were allegedly “precarious” and he was continually placed in solitary confinement for long periods at a time, and subject to security and surveillance measures by military personnel. Given those circumstances, on April 20, 2015, the IACHR granted precautionary measures on his behalf, in which it asked the Venezuelan State to preserve his life and personal integrity.<sup>383</sup>
183. The Commission has continued to track Leopoldo López's situation. It notes that in September 2015 he was condemned to serve a sentence of nearly 14 years in prison on charges of conspiracy to commit crime, incitement, and destruction of public property. In July 2017, he was granted a house arrest measure. However, a few days later, he was hauled from his home by SEBIN agents and once again imprisoned. This operation, which the IACHR condemned at the time, was allegedly due to failure to comply with the house arrest conditions.<sup>384</sup> According to the information available, on August 6, Mr. López was taken back home to complete his sentence under house arrest.<sup>385</sup> The IACHR reiterates its call to the Venezuelan authorities to guarantee his rights to life and personal integrity and to provide him with judicial guarantees for his defense. The Commission will continue to track Leopoldo López's situation.
184. On January 14, 2017, the Commission likewise granted precautionary measures on behalf of four members of the Voluntad Popular party, given the constant acts of aggression, attacks and death threats against them.<sup>386</sup>

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<sup>383</sup> IACHR, [Resolution No. 12/2015](#), Precautionary Measure No. 335-14, Matter of Leopoldo López and Daniel Ceballos, Venezuela, April 20, 2015.

<sup>384</sup> IACHR, Press Release No. 112/17, [IACHR Condemns New Imprisonment of Leopoldo López and Antonio Ledezma in Venezuela](#), August 1, 2017.

<sup>385</sup> BBC, [Venezuela: trasladan al líder opositor Leopoldo López de nuevo a su residencia bajo arresto domiciliario](#), August 6, 2017.

<sup>386</sup> The beneficiaries of the precautionary measures, all of whom were members of that party, are: David Smolansky, Freddy Guevara, Ismael León, and Juan Pablo López Gross [IACHR, [Resolution No. 1/17](#), Precautionary Measure No. 475-15, Members of the Voluntad Popular party, Venezuela, January 14, 2017]. According to Carlos Vecchio, political coordinator of Voluntad Popular, the party had: 28 leaders in prison, 159 activists for whom beneficiary measures had been granted (i.e., they had first been arrested and were then released), 30 members detained arbitrarily, 150 members detained and then released, 17 members in exile—seven of whom were members of the Party's National Directorate, 129 instances of threats, 21 people injured, and five mayors who had been removed from office. [Youtube video, [Public hearings before OAS regarding Venezuela](#), OAS, October 17, 2017].



185. The Commission draws attention to that fact that, generally speaking, acts against those who disagree with the Government are accompanied by stigmatizing and intimidating remarks by Government authorities, as the Commission has been observing for years.<sup>387</sup> Those remarks are made by Venezuela's highest-ranking authorities, including the President, Nicolás Maduro.<sup>388</sup> Vice President Tareck El Aissami and the Minister of Foreign Affairs, Justice, and Peace have also issued statements labeling opposition figures as being responsible for terrorist acts.<sup>389</sup> Pro-Government members of the ANC and AN have likewise issued stigmatizing statements regarding deputies and opposition figures.<sup>390</sup>
186. Here, the Commission issues a reminder that expressions of political intolerance by State authorities not only obstruct the full exercise of human rights; they may also place a particular segment of the population at greater risk of attacks.<sup>391</sup> Thus State agents must refrain from making pronouncements that may endanger political opponents, human rights defenders, or journalists, and anyone else identified as opposition.<sup>392</sup>
187. Likewise, it is public knowledge that on November 8, the ANC approved the Constitutional Law for the Promotion and Guarantee of Peaceful

<sup>387</sup> IACHR, 2016 Annual Report, Chapter IV.B, Venezuela, para. 88; IACHR, 2015 Annual Report, Chapter IV.B, Venezuela, para. 95; and 2014 Annual Report, Chapter IV.B, Venezuela, para. 162.

<sup>388</sup> Among other statements, President Maduro called Henrique Capriles "a terrorist, thief, and murderer; Julio Borges a "devil," and persons who denounced what is going on in Venezuela abroad "traitors." [Youtube video, Maduro insulta a líderes de oposición en Cadena Nacional del 21 de junio de 2017, Monitoreo Ciudadano, June 28, 2017]. In addition, President Maduro reportedly called Mr. Borges a "hypocrite, pharisee, clown, and coward" and accused him of sponsoring a coup. He also referred to Deputy Richard Blanco as a "terrorist and head of a criminal gang" [Tal Cual, Maduro no tiene escasez de insultos #Crónica, April 19, 2017]. In reference to the Voluntad Popular party, President Maduro reportedly said "I insist that I will not be afraid and will not hesitate to enforce justice. I hereby call on all powers of state to take action against the terrorist group that goes by the name of Voluntad Popular." [Youtube video, Public hearings before OAS regarding Venezuela, OAS, October 17, 2017].

<sup>389</sup> Panorama, Tareck El Aissami: Grupos violentos trataron de forzar un paro armado este lunes, May 22, 2017; Néstor Luis Reverol, Twitter, April 25, 2017; and VTV, Ministro Reverol: Violencia de la derecha fascista dejó 4 muertos y varios heridos este lunes, 2017. Carlos Vecchio denounced at least two slurs by senior Government officials against the Voluntad Popular party, one was when Vice President Tareck El Aissami allegedly said that "all militants and members of Voluntad Popular are fascists, they are not democrats. Nor can they call themselves human beings; far from it. One day justice will ensure that they get what they deserve." For his part, President Maduro reportedly said "I insist that I will not be afraid and will not hesitate to enforce justice. I hereby call on all powers of state to take action against the terrorist group that goes by the name of Voluntad Popular." [Youtube video, Public hearings before OAS regarding Venezuela, OAS, October 17, 2017].

<sup>390</sup> El Universal, Solicitarán retirar inmunidad parlamentaria al vicepresidente de la AN, Augut 23, 2017; NTN24, Diosdado Cabello acusa a la oposición de generar caos en el país a través del "terrorismo", 1April 11, 2017; 24noticias, Cabello afirmó que la oposición está en la calle con el objetivo de desatar el miedo en los venezolanos, April 12, 2017; and 800noticias, Cabello elogió a coronel que agredió a Julio Borges "Así reacciona el pueblo", June 28, 2017.

<sup>391</sup> IACHR, 2015 Annual Report, Chapter IV.B, Venezuela, para. 95.

<sup>392</sup> IACHR, 2015 Annual Report, Chapter IV.B, Venezuela, para. 95.



Coexistence,<sup>393</sup> proposed by President Maduro to “counteract the campaign of hate, terror, and violence waged by extremists among the opposition.”<sup>394</sup> The IACHR reiterates its concern over that law, expressed previously through its Office of the Special Rapporteur for Freedom of Expression,<sup>395</sup> as it prohibits “national, racial, religious, political or other hatred” under a definition of “hate crime” that is extremely broad.<sup>396</sup> Guilty of this crime would be those “who publicly or through any means suitable for public dissemination foment, promote, or incite hatred, discrimination, or violence against an individual or group of people, based on their real or presumed membership of a certain social, ethnic, religious, or political group; their sexual orientation, gender identity, or gender expression; or for any other discriminatory reason.” The crime is punishable by imprisonment of 10 to 20 years.<sup>397</sup> This law also includes a provision that prohibits, in any media outlet, “all propaganda and messages in support of war and any defense of hatred based on nationality, race, ethnicity, religion, politics, social group, ideology, gender, sexual orientation, gender identity, gender expression, and of any other nature that constitutes an invitation to discrimination, hostility, intolerance, or violence.”<sup>398</sup> (Chapter III.B.1). In that context, the IACHR is also worried by the use of the Truth, Justice, Peace, and Public Tranquility Commission as a mechanism to persecute members of the opposition. The Commission has received information to the effect that said Commission has initiated investigations into opposition deputies Julio Borges and Fredy Guevara for alleged participation in the generation of political violence in the country.<sup>399</sup>

188. The IACHR observes a pattern of violation of the human rights of political opponents. In that respect, it reiterates that opposition views are vital for a

<sup>393</sup> ANC, Constitutional law against hate, for peaceful coexistence and tolerance, published in Official Gazette No. 41274, November 8, 2017.

<sup>394</sup> Telesur, ANC recibirá a víctimas del odio y la violencia en Venezuela, 22 de agosto de 2017. El Presidente de la República, al presentar el proyecto de Ley, indicó que “todo aquel que salga a las calles a expresar intolerancia y odio será capturado, juzgado y castigado con severas penas de 15 a 25 años de cárcel. Así lo propongo aquí en esta ley” [Aporrea, La ANC recibió el proyecto de ley contra el Odio, la Intolerancia y la Violencia, 11 de agosto de 2017; y EFE y El Nuevo Herald, Maduro propone ley que da cárcel a quien ‘salga a la calle a expresar odio’, August 11, 2017]

<sup>395</sup> IACHR, Office of the Special Rapporteur for Freedom of Expression, Press Release No. R179/17, Office Of The Special Rapporteur For Freedom Of Expression Expresses Serious Concern Over The Enactment Of The "Anti-Hate Law" In Venezuela And Its Effects On Freedom Of Expression And Freedom Of The Press, November 10, 2017.

<sup>396</sup> El Nacional, Qué contiene la ley contra el "odio y la intolerancia" que discute la ANC?, 29 de agosto de 2017; y El Tiempo, Regularán uso de redes en Venezuela para sancionar 'delitos', 22 de agosto de 2017. See additional analysis in the *New York Times*, La Ley contra el Odio busca Acabar con los Vestigios de la Democracia en Venezuela, November 20, 2017; Human Rights Watch, El Declive de Venezuela Hacia Una Dictadura, December 7, 2017.

<sup>397</sup> Art. 20 of the Constitutional law against hate, for peaceful coexistence and tolerance.

<sup>398</sup> Art. 13 of the Constitutional law against hate, for peaceful coexistence and tolerance.

<sup>399</sup> Telesur, Inician investigación sobre violencia con política en Venezuela, August 16, 2017; and La Vanguardia, Comisión de la Verdad venezolano abre investigación de violencia en protestas, August 16, 2017.

democratic society.<sup>400</sup> That being so, not only must the opposition be guaranteed effective access to opportunities or forums for deliberation; the measures needed to guarantee the full exercise of their participation must be adopted, particularly when members of the opposition are at greater risk, which is the case in Venezuela.<sup>401</sup>

189. In light of the above, the Commission concludes, with profound concern, that there are serious restrictions on the exercise of political rights in Venezuela, in the form of various types of harassment and persecution of the opposition. Under such circumstances, it considers it essential to recall that the consolidation of democracies requires stepped up and effective participation by all social sectors in the political, social, economic, and cultural life of the Nation. Effective implementation of the values of pluralism and participation is key to overcoming the atmosphere of political polarization in the country.<sup>402</sup>

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<sup>400</sup> IACHR, Press Release No. 015/15, IACHR Expresses Deep Concern over the Situation regarding the Rule of Law in Venezuela, February 24, 2015; and I/A Court H.R. *Case of Manuel Cepeda Vargas v. Colombia*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of May 26, 2010. Series C No. 213, para. 173.

<sup>401</sup> I/A Court HR. *Case of Manuel Cepeda Vargas v. Colombia*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of May 26, 2010. Series C No. 213, para. 173.

<sup>402</sup> IACHR, 2016 Annual Report, Chapter IV.B, Venezuela, para. 100; and IACHR, Democracy and Human Rights in Venezuela, OEA/SER.L/V/II, Doc. 54, December 30, 2009, para. 1,158.



# CHAPTER 3

## SOCIAL PROTEST AND FREEDOM OF EXPRESSION



## SOCIAL PROTEST AND FREEDOM OF EXPRESSION

190. In the preceding chapters the IACHR has noted that the effectiveness of democratic institutions in Venezuela has been seriously impaired by a lack of respect for the principle of separation and balance of powers, resulting in an interruption of the constitutional order. In that connection, it has also observed major obstacles to the exercise of political rights and that serious acts of persecution, intimidation, stigmatization, and criminalization of dissenters are common features of the country's political landscape. Coupled with that is a critical situation of violence and public insecurity ([Chapter IV](#)) as well as levels of poverty and an inability to exercise economic, social, and cultural rights, which is unacceptable ([Chapter V](#)).
191. The IACHR considers that in such contexts the relationship between political rights, freedom of expression, and the right of peaceful assembly is plain, especially when they are exercised jointly to demand effective democracy. Given that freedom of expression and social protest are essential for safeguarding both democracy and effective political participation, the IACHR analyzes both rights in this chapter. As the following lines show, not only are there currently major obstacles to their effective exercise, but also those who demonstrate and publicly express their opinions suffer severe repercussions that violate other human rights. They include stigmatization, physical assault and aggression, arbitrary detention, criminalization in military courts, torture and other mistreatment, rape, and even death.

### A. Social Protest

192. On March 30, 2017, a new wave of public demonstrations broke out in Venezuela when thousands of people mobilized in different cities to protest the decisions of the Supreme Court of Justice (TSJ) in which it repudiated the National Assembly (AN) (Chapter II.A.2). The protests intensified in May after the President issued Decree No. 2830 convening the National Constituent Assembly (ANC); the protests continued until the end of July. It is thought that between April 1 and July 31, there were 6,729 demonstrations throughout the country (equivalent to 56 per day)<sup>403</sup> to make political and social demands and targeting specific institutions, such

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<sup>403</sup> Observatorio Venezolano de la Conflictividad Social, *6.729 manifestaciones en 4 meses en todo el país*, August 3, 2017.

as the TSJ or the National Electoral Council (CNE).<sup>404</sup> According to available information, the Democratic Unity Roundtable (MUD) called for the protests at the national level,<sup>405</sup> while many others broke out spontaneously in residential areas and low-income districts.<sup>406</sup> In that regard, the State has said that during that period there were 9,435 “street actions,” 62.30 percent of which were purportedly violent.<sup>407</sup>

193. The Commission has monitored with grave concern the situation of violence against demonstrators and stigmatization of social leaders and human rights defenders in Venezuela in 2017<sup>408</sup>. It is estimated that during the protests in these four months alone 133 people were killed, 4,000 were injured, and more than 5,000 were arbitrarily detained<sup>409</sup> (Chapter III.A.4). The commission has received reports about excessive and indiscriminate use of force by the Bolivarian National Guard (GNB) and the Bolivarian National Police (PNB).<sup>410</sup> Furthermore, as this section mentions, the Commission has received extremely troubling information about human rights violations against demonstrators during their detention and prosecution, including torture and other cruel, inhuman and degrading treatment, rape, and the trial of civilians in military criminal tribunals.

## 1. Regulatory Framework

194. Any restrictions on freedom of assembly and the right to take part in public demonstrations should be regarded as exceptional and comply strictly with certain requirements, in accordance with Articles IV, XXI, and XXII of the Declaration.<sup>411</sup> For any restriction of such rights to be legitimate, it must be expressly set down in a clear and precise way in a law in the formal and material sense, be justified by an imperative social interest, as well as being

<sup>404</sup> OHCHR, Human rights violations and abuses in the context of protests in the Bolivarian Republic of Venezuela from 1 April to 31 July 2017, 31 August 2017, p. 6.

<sup>405</sup> Runrunes, MUD convocó nueva marcha para este 1 de julio, June 30, 2017; Tal Cual, MUD publicó la agenda de protestas para el 1, 2 y 3 de julio, June 29, 2017; El Nacional, Oposición convoca al “Trancazo contra la dictadura” este martes 4 de julio, July 3, 2017; El Universal, MUD convoca tres días de calle contra la Constituyente, July 27, 2017; y El Universal, MUD convoca protesta a nivel nacional este lunes a partir del mediodía, July 30, 2017.

<sup>406</sup> OHCHR, Human rights violations and abuses in the context of protests in the Bolivarian Republic of Venezuela from 1 April to 31 July 2017, August 31, 2017, p. 6.

<sup>407</sup> IACHR, Violence, Citizen Security, and Freedom of Expression in Venezuela, October 24, 2017.

<sup>408</sup> IACHR, Press Release No. 58/17, IACHR Deplores Repressive Measures Taken by Venezuela against Protests and Condemns Resulting Deaths and Injuries, May 9, 2017.

<sup>409</sup> FPV, Report on State repression in Venezuela July 2017, August 8, 2017, p. 1.

<sup>410</sup> FUNDEPRO, Report on the current status of Venezuela, 2017, p. 9.

<sup>411</sup> IACHR, Second Report on the Situation of Human Rights Defenders in the Americas, OEA/SER.L/V/II. Doc. 66, December 31, 2011, para. 107; IACHR, 2007 Annual Report, Chapter IV, Venezuela, para. 260-261; UN, Human Rights Council, Report of the Special Rapporteur on the rights of freedom of peaceful assembly and of association, Maina Kiai, A/HRC/23/39, 24 April 2013, para. 47.

genuinely necessary in a democratic society and proportionate to achieving that aim.<sup>412</sup> It is incumbent on States to demonstrate that restrictions imposed on public demonstrations and protests meet those requirements.<sup>413</sup>

195. In that regard, the IACHR recalls that “in democracies, states should act based on the legality of protests or public demonstrations and under the assumption that they do not constitute a threat to public order.”<sup>414</sup> That assumption should be clearly and expressly established in the laws of states and apply to all without discrimination.<sup>415</sup> If legal provisions are not clear, they should be clarified or, as appropriate, interpreted in favor of those exercising their right to freedom of peaceful assembly and freedom of expression.<sup>416</sup> Broad prohibitions and the establishment of authorization requirements for people to exercise the right to participate in peaceful protests are inherently unnecessary and disproportionate. Furthermore, the purpose of regulating them cannot be to establish grounds for prohibiting the meeting or demonstration.<sup>417</sup> To be sure, the actions of the

<sup>412</sup> IACHR, 2002 Annual Report, Annual Report of the Office of the Special Rapporteur for Freedom of Expression, Chapter IV, “Freedom of Expression and Poverty,” para. 31; 2005 Annual Report, Vol. III, Report of the Office of the Special Rapporteur for Freedom of Expression, Chapter V, “Public Demonstrations as an Exercise of Freedom of Expression and Freedom of Assembly,” para. IACHR, Report on the Situation of Human Rights Defenders in the Americas, OEA/Ser.L/V/II.124, Doc. 5 rev. 1, March 7, 2006, para. 55; UN, Human Rights Council, Report of the Special Rapporteur on the rights of freedom of peaceful assembly and of association, Maina Kiai, A/HRC/20/27, 21 May 2012, para. 15; Report of the Special Rapporteur on the rights of freedom of peaceful assembly and of association, Maina Kiai, A/HRC/23/39, 24 April 2013, para. 47; and Effective measures and best practices to ensure the promotion and protection of human rights in the context of peaceful protests, Report of the United Nations High Commissioner for Human Rights, A/HRC/22/28, 21 January 2013, para. 5.

<sup>413</sup> IACHR, Office of the Special Rapporteur for Freedom of Expression, The Inter-American Legal Framework regarding the Right to Freedom of Expression, 2010, para. 83; I/A Court H.R., *Case of Herrera Ulloa v. Costa Rica*, Preliminary Objections, Merits, Reparations, and Costs, Judgment of July 2, 2004. Series C No. 107, pars. 120-123; and *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism (Arts. 13 and 29 American Convention on Human Rights)*. Advisory Opinion OC-5/85 of November 13, 1985. Series A No. 5, para. 46.

<sup>414</sup> IACHR, 2016 Annual Report, Chapter IV.B, Venezuela, para. 160; and Press Release No. R109/17, The Office of the Special Rapporteur for Freedom of Expression of the IACHR Condemns Arbitrary Restrictions on Freedom of Expression and Assembly in Venezuela, July 29, 2017.

<sup>415</sup> IACHR, 2015 Annual Report, Chapter IV.A, “Use of Force,” para. 65; UN, Human Rights Council, Report of the Special Rapporteur on the rights of freedom of peaceful assembly and of association, Maina Kiai, A/HRC/23/39, 24 April 2013, para. 50; and Report of the Special Rapporteur on the rights of freedom of peaceful assembly and of association, Maina Kiai, A/HRC/20/27, 21 May 2012, para. 26.

<sup>416</sup> UN, Human Rights Council, Report of the Special Rapporteur on the rights of freedom of peaceful assembly and of association, Maina Kiai, A/HRC/23/39, 24 April 2013, para. 50.

<sup>417</sup> IACHR, 2005 Annual Report, Vol. III, Report of the Office of the Special Rapporteur for Freedom of Expression, Chapter V, “Public Demonstrations as an Exercise of Freedom of Expression and Freedom of Assembly,” para. 91-92.



security forces should protect and facilitate, rather than discourage, the right to assembly and participation in social protests<sup>418</sup>.

196. In spite of the fact that the Venezuelan Constitution recognizes the right of individuals to demonstrate publicly, as well as the right of assembly without permission in advance,<sup>419</sup> the IACHR notes with concern that in recent years reforms have been made to the Venezuelan regulatory framework that place illegitimate restrictions on the exercise of that right. The country's courts, for their part, have extended the content and scope of those restrictions in a manner incompatible with international standards in that regard.<sup>420</sup> Such restrictions have been established as a response to a climate of protest against the Government. As is described later in this chapter, legal restrictions have resulted in a pattern of gross violations of demonstrators' human rights.
197. Law on Political Parties, Public Meetings, and Demonstrations (2010).<sup>421</sup> Article 43 of this law provides that organizers of demonstrations "must give notice, at least twenty-four hours in advance, in writing with a duplicate copy, during business hours, to the first civil authority of the jurisdiction, indicating the planned place or itinerary, day, time, and general objective pursued." The authorities must "stamp on the copy that they give the organizers their acceptance of the location or itinerary and time." That law also provides that if the first civil authority finds justified reasons to "fear" that staging public demonstrations in the same location might "cause disturbances of public order," it may order the demonstrations or public meetings to be held at a different places and times (Art. 44). Likewise, the law authorizes governors' and mayors' offices periodically to establish "places where public meetings or demonstrations may not be held, having first heard the opinions of the parties."
198. In a decision of April 24, 2014, the Constitutional Division of the TSJ ruled on an application for an interpretation of the constitutionality of this law. The court held that it was mandatory for all citizens, parties and organizations to "exhaust the administrative procedure of authorization

<sup>418</sup> IACHR, 2007 Annual Report, Chapter IV, Venezuela, para. 260-261; and 2015 Annual Report, Chapter IV.A, "Use of Force," para. 67.

<sup>419</sup> Article 53 of the Constitution of Venezuela provides: "Everyone has the right to meet publicly or privately, without obtaining permission in advance, for lawful purposes and without weapons. Meetings in public places may be regulated by law." Furthermore, Article 68 recognizes that "[c]itizens have the right to demonstrate, peacefully and without weapons, subject only to such requirements as may be established by law. The use of firearms and toxic substances to control peaceful demonstrations is prohibited. The activity of police and security corps in maintaining public order shall be regulated by law."

<sup>420</sup> TSJ, Decision No. 276, April 24, 2014; and Decision No. 944, November 15, 2016.

<sup>421</sup> Article 43 of the Law on Political Parties, Public Meetings, and Demonstrations, published in Official Gazette No. 27,725 of April 30, 1965, as amended by the Law Partially Reforming the Law on Political Parties, Public Meetings, and Demonstrations, published in Official Gazette No. 6,013 of December 23, 2010.

before the first civil authority of the appropriate jurisdiction” and failure to meet that requirement “absolutely limits the right to peaceful demonstration, thus impeding the holding of any kind of meeting or demonstration.”<sup>422</sup> In that decision, the Constitutional Division ruled that a lack of authorization to exercise the right to peaceful demonstration could give rise to the police and security forces immediately dispersing the demonstration. Moreover, it ruled that if demonstrations are held when authorization had been denied or changing the pre-authorized conditions of time, manner and location, that may be grounds for liability to criminal prosecution for the crime of “disobedience of authority” envisaged at Article 483 of the Criminal Code.<sup>423</sup>

199. Based on the Division's decision, demonstrations in public thoroughfares organized by political parties or social sectors linked to the opposition are not authorized and have been immediately dispersed; furthermore, mayors belonging to opposition parties who do not comply with the order to prevent such gatherings may be liable to imprisonment and removal from office for disobedience of authority<sup>424</sup> (Chapter II.B.2).
200. Decree with the Rank, Value, and Force of an Organic Law on Security of the Nation.<sup>425</sup> This decree-law provides that demonstrations and public meetings are prohibited in areas considered “security zones” by the authorities. According to Article 47 of the Decree, “security zones are considered to be those areas of the country that, because of their strategic importance, characteristics, and component elements, are subject to special rules as to the persons, property, and activities found in them in order to ensure the protection of such zones against internal or external hazards or threats.” Article 48, for its part, states that the following may be decreed security zones: areas that surround military and public facilities and essential services, areas adjacent to land communication routes, and “[a]ny other security zone considered necessary for the security and defense of the nation.” The Law establishes penalties of 5 to 10 years of imprisonment for anyone who engages in activities “that are intended to disrupt or impair

<sup>422</sup> TSJ, Judgment No. 276 of April 24, 2014; and IACHR, 2014 Annual Report, Chapter IV, Venezuela, para. 695.

<sup>423</sup> IACHR, 2014 Annual Report, Chapter IV, Venezuela, para. 696.

<sup>424</sup> OHCHR, Human rights violations and abuses in the context of protests in the Bolivarian Republic of Venezuela from 1 April to 31 July 2017, 31 August 2017, pp. 30-31; El Tiempo, TSJ emite orden de captura contra Gustavo Marcano y es destituido de su cargo, July 25, 2017; and BBC, Los alcaldes de oposición condenados (y escondidos) por permitir las protestas contra el gobierno de Venezuela, August 10, 2017;

<sup>425</sup> Article 47 of the Decree with the Rank, Value, and Force of an Organic Law on Security of the Nation, published in Official Gazette No. 37,594 of December 18, 2002, as amended by Decree No. 1,473, published in Official Gazette No. 6,156 of November 19, 2014.

the organization and functioning of military installations, utilities, essential industries and businesses, or the socioeconomic life of the country.”<sup>426</sup>

201. According to the Ombudsperson's Office (Defensoría del Pueblo - DP), there are 103 zones in the country with that classification,<sup>427</sup> covering some 30 percent of Venezuelan territory,<sup>428</sup> where staging demonstrations is absolutely forbidden.<sup>429</sup> They include government offices and state entities.<sup>430</sup> For example, in 2016, the Second Administrative Court banned all unauthorized demonstrations outside offices of the National Electoral Council (CNE). In that regard, it urged the “executive branch to evaluate, pursuant to articles 47 and 48 of the Organic Law on National Security, declaring areas adjacent to the offices of the electoral authority as security zones.” It also instructed the GNB to “adopt the security measures necessary to permanently protect the offices of the National Electoral Council and their surroundings areas nationwide, in order to prevent unauthorized events, marches, protests, prohibited gatherings, and violent demonstrations.”<sup>431</sup>
202. Decree 281 issued by the Office of the Mayor of Caracas. This decree, issued in 2014 by the mayor of Caracas, a member of the ruling party, bans public demonstrations on the basis of their political nature in extremely vague terms. In his decree, the mayor considered that “the practices in which some violent groups have been engaging are considered fascist demonstrations because they give rise to actions deliberately intended to damage the infrastructure of government institutions, intimidate workers in the service of the state, and, in general, cause anxiety in the citizenry, thus providing a space for anarchy.” Therefore, he declared the Municipality of Caracas to be a “zone of peace, free from fascism ... and a

<sup>426</sup> Article 56 of the Organic National Security Law, published in official Gazette No. 37,594 of December 18, 2002.

<sup>427</sup> “To date [July 2017], there are 97 registered security zones in the country (1 in Amazonas, 2 in Anzoátegui, 9 in Apure, 4 in Aragua, 2 in Barinas, 5 in Bolívar, 4 in Carabobo, 1 in Delta Amacuro, 8 in the Capital District, 1 in Falcón, 4 in Guárico, 6 in Lara, 5 in Miranda, 2 in Sucre, 30 in Táchira, 6 in Vargas, 6 in Yaracuy, and 1 in Zulia), where there are located border control points, command bases, forts, barracks, military cadet schools and colleges, military hospitals, essential businesses, hydroelectric plants, and two state-owned communications enterprises (Venezolana de Televisión and Radio Nacional de Venezuela); 12 of those zones were created after 2002. There are also six border security zones (Amazonas, Apure, Barinas, Bolívar, Táchira, and Zulia), all of which were created between 1994 and 1998.” [DP, En defensa de la paz y por la verdad: Informe sobre sucesos Abril-Julio 2017, July 27, 2017].

<sup>428</sup> OHCHR, Human rights violations and abuses in the context of protests in the Bolivarian Republic of Venezuela from 1 April to 31 July 2017, 31 August 2017, p. 27.

<sup>429</sup> DP, En defensa de la paz y por la verdad: Informe sobre sucesos Abril-Julio 2017, July 27, 2017; and OHCHR, Human rights violations and abuses in the context of protests in the Bolivarian Republic of Venezuela from 1 April to 31 July 2017, 31 August 2017, p. 27.

<sup>430</sup> IACHR, 2016 Annual Report, Chapter IV.B, Venezuela, para. 58; and TSJ, Case No. AP42-O-2016-000021, Decision of May 18, 2016.

<sup>431</sup> Panorama, Esta es la sentencia del TSJ que prohíbe las manifestaciones frente a sedes del CNE, May 23, 2016, and Informe 21, Publican sentencia del TSJ que prohíbe manifestaciones cerca del CNE, May 23, 2016.

space for building consensus on ideas in a framework of respect for rights, in the struggle to attain Bolivarian socialism.” He also ordered the municipal authorities “to adopt the appropriate measures ... to fully enforce the contents of this decree.”<sup>432</sup> In this municipality, for example, State authorities regularly setup military and police barriers and order public transport to be closed down so as to prevent demonstrators reaching that area.<sup>433</sup>

203. States of emergency and other legal restrictions of a temporary nature. As this report analyzes, the declarations of states of emergency issued since January 2016 authorize in vague and very broad terms the suspension of the rights of assembly and freedom of expression<sup>434</sup> (Chapter IV.B.2). For the ANC elections the executive branch published Decree No. 2,992, banning all demonstrations and public gatherings throughout the country for five days, from July 28 to August 1.<sup>435</sup>
204. The IACHR notes with concern that the restrictions imposed by this law are founded on vague and imprecise concepts that originate from presidential decrees, regulations, or judicial decisions, not from laws in any formal sense. Indeed, the case law of the inter-American system considers that domestic provisions that States introduce to restrict the rights involved in social protest should have the rank of law, in both the material and the formal sense; in other words, they should emanate from the democratically legislature branch and be promulgated by the executive branch. Only formal law can restrict the enjoyment and exercise of such rights.<sup>436</sup>

<sup>432</sup> Office of the Mayor of Caracas, Decree No. 281, February 17, 2014; and DP, En defensa de la paz y por la verdad: Informe sobre sucesos Abril-Julio 2017, July 27, 2017. In its report, the DP said: “The ordinance on harmonious social coexistence and punishment of minor infractions in the Metropolitan District of Caracas (2006) prohibits taking advantage of marches or demonstrations to damage, stain, soil, or scratch publicly or privately owned walls, or put up posters or advertising without proper authorization, and imposes a fine on violators that varies according to whether they are natural or legal persons (Art. 35). It also punishes unauthorized public demonstrations, as well as those that are authorized that disturb public order or cause damage or injury to property or persons (Art. 22).” [DP, En defensa de la paz y por la verdad: Informe sobre sucesos Abril-Julio 2017, July 27, 2017].

<sup>433</sup> EFE, Impiden nuevamente a los opositores venezolanos marchar hacia la Defensoría, April 8, 2017; and Metro de Caracas, El @metro caracas suspende operaciones comerciales debido a ataques terroristas sufridos en los últimos días, May 12, 2017.

<sup>434</sup> IACHR, Press Release No. 071/17, IACHR Expresses its Concern Regarding the Declaration of a “State of Exception and Economic Emergency” in Venezuela, June 1, 2016.

<sup>435</sup> Art. 1 of Decree No. 2,992, published in Official Gazette No. 6.317 of July 19, 2017; AVN, Centros de votación son zonas de seguridad y quienes los violenten serán sancionados, July 24, 2017; and Contrapunto, Centros de votación para la constituyente fueron declarados “zonas de seguridad”, July 24, 2017.

<sup>436</sup> I/A Court H.R., *The Word “Laws” in Article 30 of the American Convention on Human Rights*, Advisory Opinion OC-6/86 of May 9, 1986, Series A No. 6.

205. It is not sufficient for the law to be formal but, rather, they must be established in advance, expressly, restrictively and clearly.<sup>437</sup> A set of provisions that authorizes state agents to ban demonstrations classed as "fascist" or "violent"; when "they fear" that they could "cause disturbances of public order"; in "zones surrounding public facilities" or in "any other security zone considered necessary for the security and defense of the nation" grants the authorities very broad discretionary powers that could be used to justify potentially arbitrary acts that might amount to prior censorship or impose disproportionate liability for the legitimate exercise of a right.<sup>438</sup> It is also troubling that in many cases such restrictions may result in the imposition of criminal penalties, as well as the fact that they do not satisfy the requirements of the principle of strict legality in that regard.
206. Furthermore, as this report has already analyzed (Chapter IV.B.2), the IACHR notes that the restrictions invoke concepts of "national security," "public security," and "public order" that are not defined or interpreted from a democratic perspective and liken protest to a threat to that public interest. The Commission reiterates that such concepts cannot be invoked to suppress a human right, distort it, or deprive it of its real content. They must be interpreted in a manner that adheres strictly to the fair demands of a democratic society.<sup>439</sup>
207. The State has also neglected to demonstrate the necessity and proportionality of such restrictions. On one hand, based on its monitoring of the situation of human rights in Venezuela, it is clear to the IACHR that the legal restrictions are imposed in a discriminatory way based on the nature or political content of the message to be disseminated, enabling the arbitrary restriction of protest by a sector of the population because of their political views. Indeed, the imposition (in a manner incompatible with inter-American standards on protection of human rights and best

<sup>437</sup> IACHR, Office of the Special Rapporteur for Freedom of Expression, The Inter-American Legal Framework regarding the Right to Freedom of Expression, 2010, para. 69; and I/A Court H.R., *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism* (Arts. 13 and 29 American Convention on Human Rights). Advisory Opinion OC-5/85 of November 13, 1985. Series A No. 5, pars. 39-40; *Case of Palamara Iribarne v. Chile*, Merits, Reparations and Costs, Judgment of November 22, 2005, Series C No. 135, para. 79; *Case of Herrera Ulloa v. Costa Rica*. Preliminary Objections, Merits, Reparations, and Costs, Judgment of July 2, 2004. Series C No. 107, para. 120; I/A Court H.R., *Case of Tristán Donoso v. Panama*, Preliminary Objection, Merits, Reparations, and Costs. Judgment of January 27, 2009. Series C No. 193, para. 117; IACHR, 1994 Annual Report, Chapter V: Report on the Compability of "Desacato" Laws with the American Convention on Human Rights, Title IV; Report No. 11/96, Case No. 11.230, Francisco Martorell, Chile, para. 55; and Arguments before the Inter-American Court of Human Rights in the Case of Ricardo Canese v. Paraguay [Transcripts available at I/A Court H.R., *Case of Ricardo Canese v. Paraguay*, Merits, Reparations and Costs, Judgment of August 31, 2004, Series C No. 111, para. 72. a)].

<sup>438</sup> IACHR, Office of the Special Rapporteur for Freedom of Expression, The Inter-American Legal Framework regarding the Right to Freedom of Expression, 2010, para. 70.

<sup>439</sup> I/A Court H.R., *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism* (Arts. 13 and 29 American Convention on Human Rights). Advisory Opinion OC-5/85 of November 13, 1985. Series A No. 5, para. 64.

practices) of a system of authorizations for public demonstrations has allowed the authorities to deny permission for legitimate public demonstrations convened by those sectors, as well as authorizing the security forces to break them up.

208. On the other hand, the restrictions regarding the "venue" of demonstrations seem to be designed to prevent the message of march and protest's organizers and participants with which the government disagrees from reaching public eyes and ears.<sup>440</sup> The IACHR has repeatedly stated that social protests are indispensable for strengthening democracy, hence the State's obligation to ensure the processing of the demands and the underlying social and political conflicts so as to channel the claims. Sweeping bans against demonstrating outside government offices not only have a negative impact on the transmission of the message, which may end up being silenced, but are an assault on the right of everyone to express political opinions, petition the State, and exercise societal oversight of their rulers. In short, they are disproportionate and unjustified because they undermine the very purpose of protest in a democratic society.
209. The presence of a few individuals who commit acts of violence in and around a protest—including agents provocateurs—is not grounds for the authorities to brand entire demonstration as violent or illegal or to prohibit it in broad and sweeping terms. Nor is it license for the security forces to use force and indiscriminately detain demonstrators. The State has as a positive obligation to isolate those who commit violent acts and to protect demonstrators. Furthermore, as the IACHR has repeatedly stated, when a demonstration or protest leads to situations of violence it should be understood that the State was not capable of guaranteeing the exercise of this right.<sup>441</sup>

## 2. Excessive Use of Force

210. Between April 1 and July 31, 2017, the Public Prosecutors' Office (Ministerio Público - MP), registered 124 deaths linked to social protests, 46 of which corresponded to demonstrators who lost their lives as a result of the actions of the security forces, and 27 due to the actions of armed pro-government militia groups known as colectivos.<sup>442</sup> According to the same

<sup>440</sup> UN, Human Rights Council, Report of the United Nations Special Rapporteur on the rights of freedom of peaceful assembly and of association, Maina Kiai, A/HRC/23/39, 24 April 2013, para. 60.

<sup>441</sup> IACHR, 2015 Annual Report, Chapter IV.A, "Use of Force," para. 68.

<sup>442</sup> OHCHR, Human rights violations and abuses in the context of protests in the Bolivarian Republic of Venezuela from 1 April to 31 July 2017, 31 August 2017, p. 11. Prior to then, as of July 27, the DP had recorded a total of 98 people killed in the demonstrations and at least 16 individuals who died as a result of

source, 15 children and 7 women were among those killed.<sup>443</sup> This official figure was announced while Attorney General Ortega was still in office; however, since her departure on August 5, 2017, there has been a lack of official information about the number of people killed in the protests. In that connection, the State has said that the deaths were the results of acts of violence and has even referred to them as hate crimes. In addition, it has highlighted that the deaths include 9 members of the security forces.<sup>444</sup>

211. For its parts, the FPV recorded 136 killed in protests between April and August 2017.<sup>445</sup> In that regard, it said that 102 deaths were the consequence of acts of repression involving state officials or armed civilians acting with its acquiescence. None of these cases has apparently been condemned.<sup>446</sup> As of July 31, 2017, that organization said that 101 people were murdered as a direct result of the repression of the demonstrations. At least 83 percent of those killed in these cases died from gunshot wounds. At the same time, 32 people were said to have been killed in indirectly connected incidents.<sup>447</sup> The IACHR expresses its most vigorous rejection of the fact that in just four months dozens of people were murdered while exercising their right to protest to have their rights upheld in Venezuela.
212. Another 4,000 people were reportedly injured.<sup>448</sup> By contrast, the State has reported that in this context, 1,455 people were wounded, 71 percent whom were said to have been members of State security agencies.<sup>449</sup> The situation is all the more serious when one considers the crisis affecting the health-care system, including a shortage of medicine and medical supplies. State medical assistance groups, such as Protección Civil or Grupo de Rescate Venezuela, are reportedly unable to provide care in any situation unless given instructions to do so and, according to available information, such instructions apparently do not include providing assistance to wounded opposition supporters.<sup>450</sup> Civil society, in particular medical students, has had to organize and create the “Cruz Verde” (Green Cross).<sup>451</sup> The Commission condemns the fact that this organization’s volunteers have

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acts of vandalism, such as looting of businesses [DP, *En defensa de la paz y por la verdad: Informe sobre sucesos Abril-Julio 2017*, July 27, 2017, pp. 68-69].

<sup>443</sup> OHCHR, *Human rights violations and abuses in the context of protests in the Bolivarian Republic of Venezuela from 1 April to 31 July 2017*, 31 August 2017, p. 11.

<sup>444</sup> IACHR, *Violence, Citizen Security, and Freedom of Expression in Venezuela*, October 24, 2017.

<sup>445</sup> FPV, *Reporte sobre la represión del Estado en Venezuela - Agosto 2017*, September 2017, p. 1.

<sup>446</sup> IACHR, *Violence, Citizen Security, and Freedom of Expression in Venezuela*, October 24, 2017.

<sup>447</sup> FPV, *Reporte sobre la represión del Estado en Venezuela, Julio 2017*, August 8, 2017, p. 1.

<sup>448</sup> FPV, *Reporte sobre la represión del Estado en Venezuela, Julio 2017*, August 8, 2017, p. 1.

<sup>449</sup> IACHR, *Violence, Citizen Security, and Freedom of Expression in Venezuela*, October 24, 2017.

<sup>450</sup> El Tiempo, *Cruz Verde, la brigada que rescata a los manifestantes en Venezuela*, May 21, 2017.

<sup>451</sup> El Nacional, *Cruz verde, la brigada de primeros auxilios en las protestas*, May 26, 2017.



been attacked in variety of ways by State officials, making it difficult for them to do their work.<sup>452</sup>

213. According to available information, the high numbers of dead and injured are the result of use of firearms and excessive deployment of less lethal weapons, such as teargas and bird shot.<sup>453</sup> Available information suggests that the MP has received at least 1,958 complaints of injuries sustained in such contexts, 60 percent of which were allegedly inflicted by members of the security forces.<sup>454</sup>
214. The security forces are alleged to have misused less lethal weapons. In particular, teargas was purportedly used directly against homes and buildings in residential areas, launched against civilians at close range, or fired directly at demonstrators.<sup>455</sup> For example, on April 8, during the protest staged at Henrique Capriles' headquarters prompted by his disqualification, teargas was reportedly used that is said to have caused a fire in those offices.<sup>456</sup>
215. The IACHR expresses concern at the particular harm that excessive use of force has caused to the rights of children and adolescents, due largely to the significant involvement of the student movement in the demonstrations. According to the MP, 13 adolescents between the ages of 14 and 17 years old were killed during the recent protests. Cecodap recorded the deaths of six other minors, making 19 in all.<sup>457</sup> It is worth mentioning that at least 10

<sup>452</sup> According to the information provided by George Simon and Federica Dávila, members of the Cruz Verde, during the OAS hearings on November 16, 2017, Bolivarian National Guardsmen arrested Cruz Verde volunteers who were caring for injured protesters. In addition, in May 2017, tear gas bombs were fired at one of the Cruz Verde's SUVs that was there to offer aid. Also, a guardsman fired pellets at a Cruz Verde volunteer at pointblank range [Livestream, [Public hearings before the OAS regarding Venezuela](#), OAS, November 16, 2017; and Youtube video, [Venezuela #31May GNB disparó contra un rescatista de la Cruz Verde UCV](#), El Acertijo Cretino, June 1, 2017].

<sup>453</sup> According to information from the FPV, at least 83% of the 133 deaths recorded between April 1 and July 31 were from gunshot wounds [FPV, [Reporte sobre la represión del Estado en Venezuela - Julio 2017](#) August 8, 2017, pg. 1]. According to members of the Cruz Verde, initially, the injuries they attended to during the 2017 protests were suffocation from the use of tear gas. However, over time, the injuries they dealt with predominately changed to gunshot wounds [Livestream, [Public hearings before the OAS regarding Venezuela](#), OAS, November 16, 2017].

<sup>454</sup> OHCHR, [Human rights violations and abuses in the context of protests in the Bolivarian Republic of Venezuela from 1 April to 31 July 2017](#), 31 August 2017, p. 15.

<sup>455</sup> El Universal, [Observatorio Venezolano de la Salud alerta sobre uso de gases lacrimógenos](#), May 29, 2017; Huffington Post, [La policía venezolana dispersa con gases lacrimógenos una nueva marcha de la oposición a Maduro](#), May 3, 2017; and Runrun, [El uso del gas pimienta en protestas es inconstitucional](#), April 4, 2017.

<sup>456</sup> Deutsche Welle (DW), [Incendio en el comando de campaña de Capriles](#), April 8, 2017; and NTN24, [Comando Capriles se incendió tras ser atacado con bombas lacrimógenas: El Cicpc se presentó en la madrugada para "investigar"](#), April 8, 2017.

<sup>457</sup> Entorno Inteligente, [VENEZUELA: Cecodap registra 19 adolescentes muertos durante cuatro meses de protestas en Venezuela](#), July 29, 2017. Previously, Cedocap had recorded 14 deaths of adolescent in the context of the protests as at July 5 [Cecodap, Communication to the IACHR, September 2017, para. 18].



of those killed reportedly died from gunshot wounds.<sup>458</sup> For example, the killing was reported of Carlos José Moreno, a 17-year-old adolescent who was standing in a public place in the vicinity of an opposition demonstration in Caracas when he was struck in the head by a bullet. The MP is investigating the incident.<sup>459</sup> The case was also heard of Fabián Urbina Barrios, 17 years old, who died during the “takeover of Caracas” from a gunshot wound to the chest.<sup>460</sup> Furthermore, the MP received 53 complaints of injuries sustained by children and adolescents during the protests.<sup>461</sup> In addition at least 356 children and adolescents reportedly lost their parents as a result of the repression of protests between May and July 2017 in Caracas.<sup>462</sup>

216. The attack was also reported on a maternal and child hospital in El Valle, Caracas, on April 20, 2017, which forced the evacuation from it of 54 newborns for safety reasons.<sup>463</sup> That led various civil society organizations to call for an inquiry into the indiscriminate and excessive use of teargas by State security personnel during that operation.<sup>464</sup> In light of the situation, the Commission recalls that States have the obligation to avoid excessive use of force by public law enforcement in protest marches and demonstrations, an obligation that must be taken into account especially in the case of children and adolescents.<sup>465</sup>

217. There were also complaints of unlawful raids on homes in the context of the State’s response to the protests. The information received by the IACHR

<sup>458</sup> Sinergia, Asociación Venezolana de Organizaciones de la Sociedad Civil, *Sociedad Civil en la Mira: Informe sobre las garantías y ejercicio de los derechos de participación y asociación en Venezuela 2016-2017*, p. 22; Diario Las Américas, [Confirman muerte del joven herido de bala en manifestación opositora de Caracas](#), April 19, 2017; REDHNNNA, [Respeto y protección a los niños, niñas y adolescentes en el control del orden público y situaciones de conflictividad social](#), April 29, 2017; and Cecodap, Communication to the IACHR, September 2017, para. 17-19.

<sup>459</sup> Diario Las Américas, [Confirman muerte del joven herido de bala en manifestación opositora de Caracas](#), April 19, 2017; and REDHNNNA, [Respeto y protección a los niños, niñas y adolescentes en el control del orden público y situaciones de conflictividad social](#), April 29, 2017.

<sup>460</sup> According to his father, Ivan Urbina, as the demonstrators were in the Altamira highway interchange, the guardsmen began shooting with firearms at the people who were at the front of the march. As a result, five people were injured, including Fabián Urbina, who died minutes later due to the severity of his wounds. As of November 16, 2017, three national guardsmen were being held in connection with this case. However, no one has been convicted [Livestream, [Public hearings before the OAS regarding Venezuela](#), OAS, for 16, 2017; and El Nacional, [El último adiós a Fabián Urbina](#), June 21, 2017].

<sup>461</sup> OHCHR, [Human rights violations and abuses in the context of protests in the Bolivarian Republic of Venezuela from 1 April to 31 July 2017](#), 31 August 2017, p. 15.

<sup>462</sup> Cecodap, Communication to the IACHR, September 2017, para. 13.

<sup>463</sup> REDHNNNA, [Respeto y protección a los niños, niñas y adolescentes en el control del orden público y situaciones de conflictividad social](#), April 29, 2017; Noticias24, [Bandas armadas contratadas por la oposición atacaron hospital materno-infantil de El Valle](#), April 20, 2017; and Resumen Latinoamericano, [Venezuela: Extremista atacan Hospital Materno-Infantil en Caracas](#), April 21, 2017.

<sup>464</sup> REDHNNNA, [Respeto y protección a los niños, niñas y adolescentes en el control del orden público y situaciones de conflictividad social](#), April 29, 2017.

<sup>465</sup> IACHR, [2015 Annual Report](#), Chapter IV.B, Venezuela, para. 134.

mentions operations conducted in residential areas involving the GNB, SEBIN, and PNB. Such operations were recorded in June in the states of Mérida, Lara, Táchira, Carabobo, Zulia, and Miranda, as well as in various parts of Caracas.<sup>466</sup> Residential buildings were directly attacked with teargas projectiles and live fire, while security personnel reportedly violently raided dozens of homes, causing property damage and robbing residents.

218. Likewise, a report recently published by the OHCHR mentioned that the demonstrations were accompanied by violent raids in housing compounds by security forces with the alleged objective of detaining protesters. The report also said that security forces carried out arbitrary, violent, illegal raids, breaking into homes by force, which particularly affected women—many of them heads of household and in charge of the domestic work—who were at home during the operations.<sup>467</sup>
219. There were also reports of acts of gender-based violence committed as part of the repression against demonstrators, in violation of women's fundamental rights.<sup>468</sup> The Commission was also troubled by reports of excessive force used against older persons in peaceful protests. According to the information received, the PNB has sometimes sprayed older persons with pepper gas.<sup>469</sup>
220. Apart from excessive use of force, the fatalities caused have to do in general with the adoption of a position whereby the exercise of the right to protest is regarded as a citizen security problem. That much is clear from that fact that the social protests that took place between April and July 2017 were apparently grounds for activating the so-called “green phase” of the Zamora Plan (PZ). That led strategies for tackling domestic security problems and crime being used to deal with demonstrations. Thus, the problems noted in the area of citizen security, such as militarization of security activities and civilian participation in such activities, also manifest themselves in specific actions taken by the State to repress social protests (Chapter IV.B.).

<sup>466</sup> IACHR, Press Release No. 084/17, IACHR Strongly Condemns Indiscriminately Repressive Military Operations in Venezuela, June 27.

<sup>467</sup> A victim reported to the OHCHR that she was subjected to sexual assault in front of her two children, when a national guard touched her breasts during a raid. OHCHR, Human rights violations and abuses in the context of protests in the Bolivarian Republic of Venezuela from 1 April to 31 July 2017, 31 August 2017, p. 18.

<sup>468</sup> Red Naranja, 100 Organizaciones rechazan la Violencia Sexual en el contexto de alta violencia e intolerancia política en Venezuela, July 28, 2017.

<sup>469</sup> El Nacional Web, PNB Rocío gas pimienta a los abuelos en la avenida Libertador, May 12, 2017.

221. As a result, there was a visible militarization of the control of demonstrations in several states.<sup>470</sup> In addition to increases in personnel, including soldiers, the aim of the PZ was to train security forces to pursue demonstrators or dissidents as if there were internal enemies, an approach befitting the national security doctrine.<sup>471</sup> That coincides with information that dozens of people were detained while exercising their right to protest and then charged with committing military offenses that are reportedly being prosecuted as crimes in the military courts<sup>472</sup> (Chapter III.A.3 and 4). Groups of armed civilians are said to have taken part in the repression of the recent protests. According to available information, such groups are responsible for violent acts that have resulted in serious injuries and death to demonstrators and passersby, including children and adolescents.<sup>473</sup> They also said to have detained and physically assaulted people, and even of firing on demonstrators.<sup>474</sup> The extremely serious consequences of the foregoing have been confirmed by the IACHR: dozens of people killed; thousands arbitrarily detained; acts of torture and other cruel, inhuman and degrading treatment committed; men and women raped; and attempts to prosecute civilians for criminal offenses in military courts (Capítulo III.A.4 and 5).
222. In that regard, the IACHR recalls that the criminalization of legitimate social mobilization and protest through the direct repression of demonstrators is incompatible with a democratic society,<sup>475</sup> since the legitimate exercise of the right peacefully to express one's opinion is not a matter of public security. The IACHR emphatically reiterates that the State should publicly recognize and protect the right to peaceful assembly and freedom of expression without discrimination on the grounds of public

<sup>470</sup> In that regard, Amnesty International has said that the militarization was clearly evident “in the states of Carabobo, Lara, Barinas and the border state of Táchira where more than 600 soldiers have been deployed to respond to peaceful demonstrations.” Amnesty International, Venezuela: Authorities’ militarization of crisis escalates violence and promotes fear, June 2, 2017.

<sup>471</sup> PROVEA, Más de 70 ONG exigimos desactivación inmediata del Plan Zamora y el fin de la actuación de “Colectivos” armados contra manifestantes, April 23, 2017; Youtube video, Public hearings before the OAS regarding Venezuela, OAS, September 14, 2017.

<sup>472</sup> The IACHR notes that on May 9, the AN passed a “resolution repudiating the implementation of the so-called Zamora Plan and the unconstitutional practice of installing military tribunals that usurp the jurisdiction of the regular courts, violating human rights” [Al momento, VENEZUELA: Parlamento rechaza tribunales militares procesen a civiles, May 9, 2017].

<sup>473</sup> IACHR, Press Release No. 093/17, IACHR Condemns Serious Acts of Violence at National Assembly in Venezuela, July 10, 2017.

<sup>474</sup> IACHR, Press Release No. 044/17, IACHR Urges the Protection of the Right to Protest in Venezuela and Respect for Freedom of Expression, April 11, 2017; UN, Press Release, Venezuela must allow peaceful protests and investigate killing of demonstrators, say UN experts, April 28, 2017; Amnesty International, Venezuela: Lethal violence, a state policy to strangle dissent, July 10, 2014.

<sup>475</sup> IACHR, Press Release No. 048/17, IACHR Urges Venezuela to Guarantee the Right to Protest and to Demilitarize Streets, April 19, 2017.

opinion and exclude the participation of soldiers and civilian groups in controlling public demonstrations, among other operations.<sup>476</sup>

223. In view of the above, the Commission considers that one of the aspects of greatest concern with respect to Venezuela is the situation of the right to peaceful demonstration. Social protest is one manifestation of the right to freedom of expression and freedom of assembly, recognized in Articles XXI and IV of the American Declaration. Social protest is a fundamental tool in the defense of human rights and is essential for engaging in political and social criticism of authorities' activities as well as for establishing positions and plans of action with regard to human rights.<sup>477</sup> In particular, the IACHR reiterates that participation in demonstrations has an imperative social interest and forms part of the well-ordered functioning of the democratic system inclusive of all sections of society.<sup>478</sup> It also underscores that the relationship between political rights, freedom of expression, and the right of peaceful assembly is plain, especially when they are exercised jointly to demand effective democracy.<sup>479</sup>
224. With reference to the use of force during demonstrations, the IACHR has stated that "it is possible to impose reasonable limits on demonstrators to preserve the peace as well as to disperse demonstrations that are turning violent."<sup>480</sup> However, such measures must not discourage the right of assembly, but rather protect it; therefore, the dispersal of a demonstration must be justified by the duty to protect persons.<sup>481</sup> The Commission reiterates that the use of force at public demonstrations must be an exception, used only under strictly necessary circumstances consistent with internationally recognized principles."<sup>482</sup> The IACHR notes with concern that the actions of the security forces during the protests have not been consistent with the principles of necessity and proportionality that should govern the use of force.<sup>483</sup>

<sup>476</sup> IACHR, Press Release No. 048/17, IACHR Urges Venezuela to Guarantee the Right to Protest and to Demilitarize Streets, April 19, 2017.

<sup>477</sup> IACHR, 2015 Annual Report, Chapter IV.B, Venezuela, para. 127.

<sup>478</sup> IACHR, Democracy and Human Rights in Venezuela, OEA/SER.L/V/II, Doc. 54, December 30, 2009, para. 118.

<sup>479</sup> IACHR, Press Release No. 044/17, IACHR Urges the Protection of the Right to Protest in Venezuela and Respect for Freedom of Expression, April 11, 2017.

<sup>480</sup> IACHR, Democracy and Human Rights in Venezuela, OEA/SER.L/V/II, Doc. 54, December 30, 2009, para. 134.

<sup>481</sup> IACHR, Democracy and Human Rights in Venezuela, OEA/SER.L/V/II, Doc. 54, December 30, 2009, para. 134.

<sup>482</sup> IACHR, 2015 Annual Report, Chapter IV.B, Venezuela, para. 131.

<sup>483</sup> The former refers to the fact that, to be considered within international parameters, the degree of force exercised by state agents must not exceed what is "absolutely necessary," while the latter assumes that force must be used with moderation and in proportion to the legitimate ends pursued, as well as attempting to reduce to a minimum personal injury and loss of human life. [IACHR, Democracy and Human Rights in Venezuela, OEA/SER.L/V/II, Doc. 54, December 30, 2009, para. 133].

225. The IACHR recalls that when using less lethal weapons, one should bear in mind not only the design or characteristics of the weapon, but also other factors related to their use and control.<sup>484</sup> Less lethal weapons can have indiscriminate effects and, in some instances, fatal consequences.<sup>485</sup> In that regard, the IACHR considers that launching teargas at demonstrators from close range and from helicopters, as well as using it directly in health care facilities, homes, and residential buildings, are not only not absolutely necessary (given the existence of other less harmful means), but would have a disproportionate impact on the public owing to their possible indiscriminate effects.<sup>486</sup> There were also reports of the use of expired teargas canisters against demonstrators, which reportedly resulted in a person being killed.<sup>487</sup>
226. As was noted, agents of the security forces used firearms extensively as a means to suppress down demonstrations. The Commission is deeply concerned by multiple serious complaints that GNB personnel used firearms directly against demonstrators at close range.<sup>488</sup>
227. The IACHR reiterates its concern about Resolution No. 008610, *Rules on the Actions of the Bolivarian National Armed Forces in Functions of Public Order, Social Peace, and Citizen Co-existence in Public Assemblies and Demonstrations*, issued by the Ministry of People's Power for Defense and in force since January 23, 2015.<sup>489</sup> The resolution, which governs the functions of the Venezuelan armed forces in controlling public gatherings, in and of itself constitutes an interference by the armed forces in the regular management of public order and allows security forces personnel to use firearms.<sup>490</sup> The Resolution also gives the FANB excessively broad leeway to use lethal weapons during social protests, including firearms. According to Article 15.9 of the law, "firearms shall not be carried or used to control public demonstrations, *unless carrying and using them is*

<sup>484</sup> IACHR, 2015 Annual Report, Chapter IV.B, Venezuela, para. 133.

<sup>485</sup> The IACHR has mentioned the following instances in which less lethal weapons may have such effects: rubber munitions shot from a short distance at the upper part of the body, teargas fired at persons' bodies, irritant gases used against children and older persons, and pistols that fire an electric charge used against persons with a heart condition [IACHR, 2015 Annual Report, Chapter IV.B, Venezuela, para. 133]. The OHCHR has offered similar observations [OHCHR, Human rights violations and abuses in the context of protests in the Bolivarian Republic of Venezuela from 1 April to 31 July 2017, 31 August 2017, p. 8].

<sup>486</sup> In the long-term, prolonged and repeated exposure to teargas can lead to the onset of chronic bronchitis, respiratory distress, and, in extreme cases, pulmonary fibrosis [El Universal, Observatorio Venezolano de la Salud alerta sobre uso de gases lacrimógenos, May 29, 2017].

<sup>487</sup> Youtube video, Public hearings before the OAS regarding Venezuela, OAS, September 14, 2017.

<sup>488</sup> IACHR, Press Release No. 084/17, IACHR Strongly Condemns Indiscriminately Repressive Military Operations in Venezuela, June 27, 2017.

<sup>489</sup> IACHR, 2016 Annual Report, Chapter IV.B, Venezuela, para. 162; and 2015 Annual Report, Chapter IV.B, Venezuela, para. 123-128.

<sup>490</sup> Article 1 of Resolution No. 008610, published in Official Gazette No. 40.589 of January 27, 2015. COFAVIC. *Ejecuciones extrajudiciales, 40 historias de 6385 vidas ignoradas 2012-2017*. 2017, p. 70.

*necessary to respond to the demonstrations.*"<sup>491</sup> This is despite the fact that the Constitution of Venezuela establishes that the use of firearms and toxic substances such as tear gas to control demonstrations is prohibited.<sup>492</sup> The Commission deeply regrets that, despite contravening international law, on July 27, 2016, the Political and Administrative Division of the TSJ rejected an application for *amparo* (constitutional relief) presented on February 3, 2015 against that resolution by deputies of the AN.<sup>493</sup>

228. The Commission has repeatedly recommended to the Venezuelan state that firearms should be excluded from the devices used to control social protests.<sup>494</sup> The prohibition on officials who might have contact with demonstrators carrying firearms and lead munitions has proven to be the best measure for preventing lethal violence and deaths in contexts of social protest.<sup>495</sup> Furthermore, considering the gravity of the current situation in Venezuela, it is crucial that complaints concerning disproportionate use of force not remain in impunity and that the necessary measures are urgently taken more rigorously to prevent such practice by agents of the security forces.<sup>496</sup>
229. The Commission urges the Venezuelan State to stop all repression of peaceful demonstrations and immediately to adopt appropriate measures to protect the public, including women, children, and older persons, from all forms of violence. It also underscores that the American Declaration states in its Article VII that "[a]ll children have the right to special protection, care and aid." Therefore, in operations concerning public security, States must adopt all necessary and appropriate measures to protect the rights to life and well-being of children.<sup>497</sup>

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<sup>491</sup> IACHR, Annual Report 2016, Chapter IV(B), Venezuela; and 2015 Annual Report, Chapter IV.B, Venezuela paras. 123-128.

<sup>492</sup> Article 68 of the Constitution of Venezuela states that: "[...] The use of firearms and toxic substances for controlling peaceful demonstrations is prohibited. The law will apply to the actions taken by police and security agencies to control the public order."

<sup>493</sup> The TSJ ruled: "What the Constitution prohibits is the use of firearms and toxic substances to control peaceful demonstrations, not those that are violent or that turn violent." The TSJ also considered that even in non-peaceful demonstrations, the law "governs such situations by providing an array of special precautions to protect the lives and other human rights of demonstrators and, in general, of all the citizenry" [TSJ, Case No. 2015-0086, Judgment of July 27, 2016].

<sup>494</sup> IACHR, 2016 Annual Report, Chapter IV.B, para. 163; and 2015 Annual Report, Chapter IV.B, Venezuela, para. 131.

<sup>495</sup> IACHR, 2015 Annual Report, Chapter IV.B, Venezuela, para. 131; and UN, Human Rights Council, Joint report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on extrajudicial, summary or arbitrary executions on the proper management of assemblies, A/HRC/31/66, 4 February 2016, paras. 50-67.

<sup>496</sup> IACHR, Press Release No. 084/17, IACHR Strongly Condemns Indiscriminately Repressive Military Operations in Venezuela, June 27, 2017.

<sup>497</sup> IACHR, Violence, Children and Organized Crime, OEA/Ser.L/V/II. 40/15, November 11, 2015, para. 308.

230. In light of the foregoing, the Commission urges the State to take the necessary steps to fulfill its duty to facilitate demonstrations and protests, including refraining from requiring prior authorization for staging public demonstrations, or any other excessive requirements that might obstruct them; exclude the participation of military personnel in operations for managing public demonstrations; exclude firearms from the devices used to control social protests; and adopt and rigorously implement specific protocols on the gradual and proportional use of less lethal weapons and punish their indiscriminate use.

### 3. Stigmatization and Criminalization of social Protest

231. The Commission has observed that senior government officials use the media to stigmatize and criminalize those who organize and participate in public demonstrations, referring to them as "terrorists" or "armed insurgents."<sup>498</sup> Dozens of instances have been documented of individuals being singled out by name and stigmatized by the most high-ranking officials, such as the Minister for Interior Relations, Justice and Peace, Néstor Reverol, and National Assembly Deputy Diosdado Cabello, who have accused demonstrators and opposition leaders who organize protests of carrying out a "terrorist plan."<sup>499</sup>
232. Human rights organizations denounced that the forensic police used social media (Twitter) to single out individuals who have demonstrated against the TSJ and President Maduro's government. According to reports, the Scientific, Criminal and Forensic Investigations Corps (CICPC) used a Twitter account with the username "*Prensa CIPC*" to disseminate the likenesses of seven people that they consider "provokers of violence" and invited people to expose them,<sup>500</sup> with the post "Wanted. If you see this terrorist, inform the authorities, who will come after him," along with the hashtags *#SeBuscaTerroristas* (*#TerroristsWanted*), *#TerroristasVanPresos* (*#TerroristsGoToPrison*) and *#DenunciaTuZona* (*#ReportYourArea*).

<sup>498</sup> IACHR, Press Release No. 058/17, *IACHR Deplores Repressive Measures Taken by Venezuela against Protests and Condemns Resulting Deaths and Injuries*, May 9, 2017.

<sup>499</sup> NTN24, Diosdado Cabello acusa a la oposición de generar caos en el país a través del "terrorismo," April 11, 2017; VTV, Ministro Reverol: Actos terroristas ejecutados este lunes por la derecha causaron muerte de tres personas y varios heridos, April 25, 2017; Efecto Cocuyo, Ministro Reverol acusó a Julio Borges por muertes de manifestantes en protestas, May 10, 2017; Con el Mazo Dando, Cabello: La derecha necesita un muerto con periodicidad para mantener la violencia en la calle, May 12, 2017; and Con el Mazo Dando, "Responsable de los muertos y fracaso como político" Lo que piensan de Julio Borges, May 11, 2017.

<sup>500</sup> Noticiero Venevisión, *Provea denuncia que CICPC intimida a manifestantes a través de Twitter*, April 8, 2017; IPYS Vzla, *Se impone discurso de odio contra manifestantes y activistas de DDHH en redes sociales*, April 11, 2017.



233. The Commission reiterates its rejection of any kind of intimidating expressions or discourse from high State officials against citizens and opposition leaders as a way of deterring the right to protest.<sup>501</sup> Furthermore, the Commission underscores that stigmatizing statements made by public officials publicly incriminating people for alleged crimes not declared as such by the courts may violate the right to be presumed innocent. That right may also be tacitly violated when actions suggest an indisputable attitude of harassment and intimidation that prejudices the responsibility of the individual.<sup>502</sup>
234. The IACHR has also received troubling reports of acts of harassment involving both government officials<sup>503</sup> and private citizens<sup>504</sup> breaking into the homes of human rights defenders. It is worth mentioning that the Commission has granted precautionary measures in favor of Theresly Malavé, a human rights defender. Mrs. Malavé has been the target of threats and intimidation as a result of representing various Voluntad Popular activists who are deprived of their liberty, including a purported attempt to kidnap her in December 2014, as well as being the subject of verbal remarks made by Diosdado Cabello.<sup>505</sup> In that regard, the IACHR reiterates that threats and harassment aimed at belittling the physical and mental capacity of human rights defenders amount to a violation of the right to humane treatment.<sup>506</sup>
235. The Commission has also received disturbing information about Adriana Flores Márquez, a member of the Barinas Justice First Party who works with civil society organizations to keep a record of human rights violations committed during the protests in 2017. She claims to have been the victim of political persecution since 2014, when she first expressed her dissent with the Government. There is reported to be an outstanding warrant for

<sup>501</sup> IACHR, Press Release No. 048/17, IACHR Urges Venezuela to Guarantee the Right to Protest and to Demilitarize Streets, April 19, 2017.

<sup>502</sup> IACHR, Criminalization of the Work of Human Rights Defenders, OEA/Ser.L/V/II. Doc. 49/15, December 31, 2015, para. 86.

<sup>503</sup> It was also reported that officials raided the home of human rights defender Ehisler Velásquez and accused him of causing damage at a prosecutor's office [Amnesty International, Venezuela: Human Rights Defender Harassed: Ehisler Vásquez, May 16, 2017].

<sup>504</sup> On May 8, 2017, the home of human rights defenders Yonaide Sánchez and Nelsón Freitez, faculty members of the Human Rights Program at Lisandro Alvarado University, was raided for the third time and their belongings ransacked by unidentified persons. According to the information received, the invaders left a pickaxe and two knives in the dining area, apparently as a form of intimidation [Front Line Defenders, Urgent Appeal, Venezuela: Intimidation against human rights defenders Yonaide Sánchez and Nelsón Freitez, May 11, 2017]. In spite of lodging the necessary complaints, they have received no response from the authorities and no investigations appear to be underway [Amnesty International, Venezuela: Defenders home invaded, safety at risk, May 22, 2017].

<sup>505</sup> IACHR, Resolution No. 1/17, Precautionary Measure No. 475-15, Members of the Voluntad Popular party regarding Venezuela.

<sup>506</sup> IACHR, Second Report on the Situation of Human Rights Defenders in the Americas, OEA/Ser.L/V/II., Doc. 66, December 31, 2011, para. 41.



her arrest issued by a military court, which accuses her, among other things, of the crime of “assaulting a guard” in the context of an alleged attack on the Zone No. 33 Command Center on May 22, 2017. Adriana Flores has said that she was documenting a protest that day and that her rights to liberty, to personal safety, and even to life, are at risk.<sup>507</sup>

236. The Commission is deeply troubled by the criminalization of human rights defenders. In that regard, as the next section addresses, there have been reports of arrests made by the SEBIN without a court order, activists being prosecuted for military offenses, and the imposition of pretrial detention without justification, among other measures.<sup>508</sup> The commission reiterates that the criminalization of legitimate social mobilization and protest, whether through direct repression of demonstrators, or through investigation, arbitrary detention of demonstrators and criminal prosecution, is incompatible with a democratic society where people have the right to express their opinion peacefully.<sup>509</sup> The IACHR also recalls that the misuse of vaguely and ambiguously worded criminal offenses, such as “disobedience of authority,” has a chilling effect on the exercise of the right to protest and is contrary to democratic principles.<sup>510</sup> The Commission further reiterates that in Venezuela lack of independence and impartiality in the judiciary has enabled the punitive power of the State to be used to repress peaceful protest.<sup>511</sup>

#### 4. Arbitrary Detentions, Torture, and Sexual Violence during the Social Protests

##### *Arbitrary Detentions*

237. The Commission notes that unlawful and arbitrary detentions have continued in Venezuela, reaching alarmingly high figures over the past

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<sup>507</sup> Communication from Adriana Flores Márquez, October 5, 2017.

<sup>508</sup> Amnesty International, *Silenced by force: Politically motivated arbitrary detentions in Venezuela*, April 26, 2017, p. 4; Espacio Público, [Foro por la Vida rechaza criminalización de PROVEA por promover la defensa de los derechos constitucionales](#), July 19, 2017; Un Mundo Sin Mordaza, *Defiende Venezuela*, Llamamiento Urgente Víctima: Carlos Graffe, defensor de derechos humanos Estado: Venezuela, July 15, 2017. Civilis Derechos Humanos y otros, [Alertamos ante la creciente criminalización de las organizaciones sociales y sus actores fundamentales en Venezuela](#), August 20, 2017.

<sup>509</sup> IACHR, Press Release No. 048/17, [IACHR Urges Venezuela to Guarantee the Right to Protest and to Demilitarize Streets](#), April 19, 2017.

<sup>510</sup> IACHR, Press Release No. 107/15, *IACHR Voices Concern over Ruling against Leopoldo López in Venezuela*, September 25, 2015.

<sup>511</sup> IACHR, 2015 Annual Report, December 31, 2015, para. 258.

year.<sup>512</sup> According to the information, between January 1, 2014, and October 31, 2017, 11,993 individuals were arbitrarily detained, of which 7,040 have been released conditionally.<sup>513</sup> Likewise, as of November 19, the FPV had identified 317 individuals deprived of liberty for political reasons.<sup>514</sup> It is worth noting that that figure fluctuates constantly as a result of what has been termed the “revolving-door effect.” That effect explains why the number of persons deprived of liberty in Venezuela remains roughly constant from month to month, since while new prisoners are detained, others are released.<sup>515</sup> Thus, as at July 31 there were 620 persons deprived of liberty due to political reasons in Venezuela,<sup>516</sup> whereas at August 31 that figure had dropped to 590.<sup>517</sup> The IACHR also notes with concern that several human rights defenders have been arrested and harassed for defending detainees or reporting on the situation in the country.<sup>518</sup> The Commission has also received information that 19 people have not been set free by the authorities in spite of having release orders.<sup>519</sup>

238. Just in the protests that took place between April 1 and August 31, 2017, 5,341 people were reportedly arrested arbitrarily.<sup>520</sup> In July alone, 1414 people were arrested, 391 of whom were detained on July 20 during the 24-hour national civic strike.<sup>521</sup> The Commission is concerned by this high

<sup>512</sup> IACHR, Press Releases Nos. 058/17, [IACHR Deplores Repressive Measures Taken by Venezuela against Protests and Condemns Resulting Deaths and Injuries](#), May 9, 2017; and 048/17, [IACHR Urges Venezuela to Guarantee the Right to Protest and to Demilitarize Streets](#), April 19, 2017.

<sup>513</sup> FPV, [Reporte sobre la represión en Venezuela – Octubre 2017](#), pg. 2. The FPV stated before the IACHR on October 24 2017, that as of that date, 11,989 people had been arbitrarily detained. This means that in one week, four more people were arbitrarily detained. At that time, the FPV also stated that 7,030 individuals had been granted conditional release [IACHR [Violence, citizen security, and freedom of expression in Venezuela](#), October 24, 2017].

<sup>514</sup> FPV, [Presos políticos](#), November 19, 2017.

<sup>515</sup> FPV, [Reporte sobre la represión del Estado en Venezuela - Julio de 2017](#), p. 6, note 5.

<sup>516</sup> FPV, [Reporte sobre la represión del Estado en Venezuela - Julio de 2017](#), p. 6.

<sup>517</sup> FPV, [Reporte sobre la represión del Estado en Venezuela - Agosto 2017](#), p. 5. In that same regard, it should be noted that according to FPV figures, as of October 24, 2017, there were 391 political prisoners [IACHR, [Violence, citizen security, and freedom of expression in Venezuela](#), October 24, 2017]. While as of October 31, the figure had dropped to 380 [FPV, [Reporte sobre la represión en Venezuela – Octubre de 2017](#), pg. 4].

<sup>518</sup> For example, the lawyer Abraham Cantillo, FPV Deputy Coordinator for the State of Lara, was robbed by armed civilians and threatened on July 20, 2017 outside the air force base where the Seventh Military Oversight Tribunal for the State of Lara is located. On July 27 he received death threats and was brutally beaten by men who referred to him as the “damned lawyer for the *guarimberos*” [FPV, [Reporte sobre la represión del Estado en Venezuela - Julio de 2017](#), p. 9]. In addition, as mentioned, the IACHR granted precautionary measures in favor of the human rights defender Theresly Malavé, who has been harassed for her work representing detained leaders [IACHR, [Resolution No. 1/17](#), Precautionary Measure No. 475-15, Members of the Voluntad Popular party regarding Venezuela]. The IACHR also requested Venezuela to provide protection to the FPV [FPV, [CIDH solicitó al Estado venezolano garantizar protección a Foro Penal y demás ONG de DDHH](#), March 23, 2017].

<sup>519</sup> IACHR, [Violence, Citizen Security, and Freedom of Expression in Venezuela](#), October 24, 2017.

<sup>520</sup> FPV, [Reporte sobre la represión del Estado en Venezuela - Agosto 2017](#), p. 2.

<sup>521</sup> FPV, [Reporte sobre la represión del Estado en Venezuela - Julio de 2017](#), p. 4.

number of people detained while exercising their right to social protest, and by information that suggests that the detentions were politically motivated and aimed at repressing demonstrators.<sup>522</sup> In that connection, the Commission would remind the State of Venezuela that blanket bans on exercising the right to participate in peaceful protests cannot serve as justification for surveillance, detention, and prosecution of demonstrators or social leaders who are simply expressing their opinions about a government policy or measure.<sup>523</sup> By the same token, an individual must only be deprived of their liberty for a specific deed that warrants their arrest, which must be a crime and envisaged in law as such; the risk that an individual might commit a crime cannot, therefore, be grounds for arresting them.<sup>524</sup>

239. The Commission also notes that 90 percent of those detentions were allegedly made without a court order.<sup>525</sup> In that regard, the OHCHR found that security forces have often claimed after people were detained without an arrest warrant that they were caught *in flagrante delicto*.<sup>526</sup> However, they were apparently arrested on their way to, during, or after demonstrations; others were arrested even though they were not demonstrating, but simply perceived to support the opposition.<sup>527</sup> Similarly, Amnesty International has alerted about the discretionary and arbitrary use of the concept of *in flagrante delicto* in which the person detained was very often going about their daily activities, which were not of a criminal nature.<sup>528</sup> The IACHR is profoundly concerned by these reports and recalls that an arrest can only be made on the basis of a court order or while a crime is being committed, otherwise it is unlawful.
240. The IACHR has been informed of circumstances that would appear to violate the rights of detainees. In the majority of cases they were allegedly not informed of the reasons for their detention until they were brought

<sup>522</sup> FPV, Reporte sobre la represión del Estado en Venezuela - Agosto 2017, p. 1.

<sup>523</sup> IACHR, Press Release No. R109/17, The Office of the Special Rapporteur for Freedom of Expression of the IACHR Condemns Arbitrary Restrictions on Freedom of Expression and Assembly in Venezuela, July 29, 2017.

<sup>524</sup> IACHR, Criminalization of the Work of Human Rights Defenders, OEA/Ser.L/V/II. Doc. 49/15, December 31, 2015, para. 188.

<sup>525</sup> FPV, Reporte sobre la represión del Estado en Venezuela - Agosto 2017, p. 2. That problem was also mentioned by FPV during the hearings on September 14 at OAS headquarters. At those hearings, it was remarked that not all incarcerations were ordered by judges or requested by prosecutors, but that very often they stemmed from political decisions [Youtube video, Public hearings before OAS regarding Venezuela, September 14, 2017].

<sup>526</sup> OHCHR, Human rights violations and abuses in the context of protests in the Bolivarian Republic of Venezuela from 1 April to 31 July 2017, 31 August 2017, p. 22.

<sup>527</sup> The OHCHR says that this information was obtained from interviews held by its office [OHCHR, Human rights violations and abuses in the context of protests in the Bolivarian Republic of Venezuela from 1 April to 31 July 2017, 31 August 2017, p. 22].

<sup>528</sup> Amnesty International, Silenced by force: Politically motivated arbitrary detentions in Venezuela, April 26, 2017, pp. 7-8.

before a judge.<sup>529</sup> They were also not permitted to contact relatives or lawyers until that moment.<sup>530</sup> Cases have also been reported of incommunicado detention<sup>531</sup> and arbitrary transfers between detention centers during pre-dawn hours and without notice.<sup>532</sup> The Commission has also learned of cases in which people have not been set at liberty, despite the existence of a release order.<sup>533</sup> There have also been complaints of judges requiring that bail be guaranteed by one or more guarantors as a condition for release, needlessly prolonging the detention.<sup>534</sup>

241. Regarding individuals deprived of liberty in the context of demonstrations, the Commission takes note that on November 14, 2017, a preparatory meeting began in Santa Domingo, Dominican Republic, toward restarting the process of "Peace Dialogue." It was attended by the President of the Bolivarian Republic of Venezuela, Nicolás Maduro, and representatives of the opposition. This meeting was attended by the Vice President of Communication and Culture, Jorge Rodríguez, who also led the delegation of the Venezuelan government, and the president of the ANC, Delcy Rodríguez; the opposition was represented by former CNE rector Vicente

<sup>529</sup> OHCHR, Human rights violations and abuses in the context of protests in the Bolivarian Republic of Venezuela from 1 April to 31 July 2017, 31 August 2017, pp. 22-23.

<sup>530</sup> OHCHR, Human rights violations and abuses in the context of protests in the Bolivarian Republic of Venezuela from 1 April to 31 July 2017, 31 August 2017, p. 23.

<sup>531</sup> The OHCHR reported that a man it interviewed was told by a SEBIN official: "You are kidnapped by the Government of Venezuela and no one will know anything about you." It also documented the case of Ángel Zerpa, who was arrested by the SEBIN on July 22 and only allowed to have contact with his family on August 19. In that context, it also reported the possibility of cases of forced disappearance. One woman interviewed by the OHCHR said that the authorities initially denied having any information about her son. The authorities only allowed her to see him after 40 days in detention [OHCHR, Human rights violations and abuses in the context of protests in the Bolivarian Republic of Venezuela from 1 April to 31 July 2017, 31 August 2017, p. 21]. Amnesty International also drew attention to this problem and pointed to the case of Yon Goicoechea, who was arrested on August 29, 2016, and held incommunicado until September 1, 2016 [Amnesty International, Silenced by force: Politically motivated arbitrary detentions in Venezuela, April 26, 2017, pp. 14-15]. FPV has also alerted about the situation [FPV, Reporte sobre la represión del Estado en Venezuela - Agosto 2017, p. 2].

<sup>532</sup> According to information received by the Commission, former defense minister Raúl Isaías Baduel, who has reportedly been in detention since January 2017, was irregularly transferred from Ramo Verde Military Prison by the General Directorate for Military Counterintelligence in the early hours. According to information provided to the IACHR, the director of that facility approved the transfer, despite the absence of a court order or any prior notice. As a result, for a time the relatives did not know Mr. Baduel's whereabouts and the authorities allegedly refused to give them any information in that regard [IACHR, Request for precautionary measures presented on the half of Raúl Isaías Baduel, MC-629-17].

<sup>533</sup> FPV highlighted the case of 14 Chacao municipal police officials who, despite the existence of a release order since August 8, 2016, at the date of this report (July 2017) had yet to be released. Víctor Ugas, Yon Goicoechea, José Vicente García, Rafael Liendo, and Javier Elías Briceño Scott are reputedly in the same situation [FPV, Reporte sobre la represión del Estado en Venezuela - Julio de 2017, p. 7]. The FPV also provided evidence of failure to set free people with a release order at the hearing at the OAS on September 14 [Youtube video, Public hearings before OAS regarding Venezuela, OAS, September 14, 2017].

<sup>534</sup> OHCHR, Human rights violations and abuses in the context of protests in the Bolivarian Republic of Venezuela from 1 April to 31 July 2017, 31 August 2017, p. 24. In that regard, the FPV said in its August 2017 report that at present, 30 percent of detainees were waiting for guarantors to be presented to secure their release [FPV, Reporte sobre la represión del Estado en Venezuela - Agosto 2017, p. 3].

Díaz, Gustavo Velázquez, and José Luis Cartaya.<sup>535</sup> In December 2017, a recommendation was received from the Truth, Justice, Peace, and Public Tranquility Commission, created by the ANC (the all-powerful body comprised solely of supporters of the government) recommending evaluation of measures in lieu of deprivation of liberty for approximately 80 individuals detained or sentenced to prison. According to public sources, starting on the morning of December 23, the Venezuelan government freed several dozen individuals deprived of liberty during the protests that took place between 2014 and 2017. At the time of approval of this report the IACHR had no information on the legal situation of the individuals released.<sup>536</sup>

242. The Commission expresses its strongest possible rejection of such situations, which are contrary to both the right to personal liberty and the right to a fair trial. In that regard, the IACHR recalls that the American Declaration enshrines the right of protection against arbitrary arrest at Article XXV, which provides: “No person may be deprived of his liberty except in the cases and according to the procedures established by pre-existing law.” That article also provides: “Every individual who has been deprived of his liberty has the right to have the legality of his detention ascertained without delay by a court, and the right to be tried without undue delay or, otherwise, to be released.” In that connection, the IACHR reiterates that a detention is arbitrary and illegal when not carried out for the reasons, and according to the formalities, established by law; when carried out without adherence to the standards established by law; and when it involves misuse of the authority to arrest--in other words, when carried out for purposes other than those envisaged and stipulated by law. Furthermore, detention for improper purposes is in itself a sort of sentence without trial, or an unlawful penalty that violates the guarantee against imposition of punishment without benefit of trial and encourages the term “arbitrary” to be considered synonymous with “irregular,” “abusive,” or “contrary to law.”<sup>537</sup>
243. Accordingly, the Commission urges the State to refrain from practices involving massive, collective, or indiscriminate arrests and to comply with all requirements imposed by domestic laws and international standards with regard to the arrests that security forces make in contexts of social protests, particularly to ensure that those detained and their families

<sup>535</sup> [República Dominicana | Celebrada reunión de Diálogo de Paz entre Gobierno de Venezuela y oposición \(Video\) – VTV](#)

<sup>536</sup> [Mundo, Maduro libera a 80 presos políticos pero mantiene a 227](#), December 26, 2017; [El País, Maduro libera a la primera treintena presos políticos en la víspera de Navidad](#), December 25, 2017; [El Nacional, Presos políticos que podrían ser liberados fueron trasladados a la ANC](#), December 23, 2017.

<sup>537</sup> IACHR, *Criminalization of the Work of Human Rights Defenders*, OEA/Ser.L/V/II. Doc. 49/15, December 31, 2015, para. 187.

receive accurate information regarding the reasons for their arrest and the place where the person is being held.

### ***Torture and Other Cruel, Inhuman, or Degrading Treatment***

244. The Commission has been monitoring extremely troubling reports about alleged torture and cruel, inhuman and degrading treatment committed by agents of the state against persons deprived of their liberty in Venezuela. Prior to 2017 there were already complaints of such highly reprehensible acts. Specifically, in 2015, the IACHR received information about 51 cases of alleged acts of torture and cruel, inhuman and degrading treatment committed between January and June alone, marking a 28 percent rise relative to the year before.<sup>538</sup> In July 2016, it was alleged that since May the SEBIN and the GNB had detained 21 people, most of whom said they were tortured or suffered other ill treatment while in custody.<sup>539</sup> The IACHR also received information about the individual identification of 18 torture victims, which would represent an increase of 300 percent compared with 2015.<sup>540</sup> In 2016, 473 victims were identified of cruel, inhuman, or degrading treatment or punishment (320 less than in 2015) as well as "cases involving groups of more than 10 victims that occurred in incarceration facilities."<sup>541</sup>
245. According to information provided to the Commission, in the demonstrations since April 2017 the number of complaints of torture and other mistreatment rose markedly, which suggests the use of that practice as a tool to deter or punish social protest. The alleged torture is purportedly used for a number of purposes, including obtaining confessions, bringing charges against another person, or to send a repressive message. Thus, CASLA says that it recorded at least 120 cases of people tortured between April 1 and June 12, 2017.<sup>542</sup> For its part, the FPV said in June that "[o]f the 3,880 people arrested since April, at least 15 percent have been subjected to torture or cruel and inhuman treatment."<sup>543</sup> By contrast, the DP informed the OHCHR that between April 1, and July 10, 2017, it received 2

<sup>538</sup> IACHR, Press Release No. 120A/15, [Report on the 156th Session of the IACHR](#), December 24, 2015; [2015 Annual Report](#), Chapter IV.B, Venezuela, para. 33.

<sup>539</sup> HRW, [Venezuela: Dissidents Allege Torture, Coerced Confessions](#), July 27, 2016.

<sup>540</sup> PROVEA, Situación de los Derechos Humanos en Venezuela: Informe Anual Enero/Diciembre 2016, [Derecho a la integridad personal](#), pp. 3, 6-8.

<sup>541</sup> PROVEA, Situación de los Derechos Humanos en Venezuela: Informe Anual Enero/Diciembre 2016, [Derecho a la integridad personal](#), p. 3.

<sup>542</sup> Information provided by CASLA [Youtube video, [Public hearings before OAS regarding Venezuela](#), OAS, September 14, 2017]. The same information was reported by the media [Infobae, [Víctimas y defensores de DDHH denunciaron ante la OEA 289 casos de tortura en Venezuela](#), September 14, 2017]. El Universal, [Presentaron en La Haya nuevas denuncias de torturas en Venezuela](#), June 16, 2017; OAS Secretary General of the OAS, Third Report on the Continuing Crisis in Venezuela, OSG/ 285-17, July 19, 2017, p. 36.

<sup>543</sup> El Comercio, ["En Venezuela están abusando sexualmente de algunos detenidos"](#), July 16, 2017.

complaints of torture and 122 complaints of cruel, inhuman and degrading treatment.<sup>544</sup>

246. The alleged torture is reputedly carried out at government facilities by different security agencies, such as the SEBIN, the GNB, and the PNB, as well as regional or municipal police agents. In the case of the SEBIN, instances of torture were recorded at the Helicoide and Plaza Venezuela (known as *La Tumba* [The Tomb]) facilities.<sup>545</sup> As regards the GNB, alleged acts of torture were reported at the command center known as “Ciudad Chavez,”<sup>546</sup> Command Center 433,<sup>547</sup> and La Ciega detention center.<sup>548</sup> Cases of torture have also been documented at the CICPC offices in Villa del Rosario,<sup>549</sup> and at the PNB headquarters in Aragua State.<sup>550</sup> The IACHR has also received information about alleged torture at different prisons, including La Pica,<sup>551</sup> DESUR detention center,<sup>552</sup> CENAPROMIL (Ramo Verde) Military Prison,<sup>553</sup> Uribana prison, and 26 de Julio Remand

<sup>544</sup> OHCHR, Human rights violations and abuses in the context of protests in the Bolivarian Republic of Venezuela from 1 April to 31 July 2017, 31 August 2017, p. 21.

<sup>545</sup> UVAL, Informe sobre la situación de los derechos humanos de las personas privadas de libertad en las sedes del SEBIN del Helicoide y Plaza Venezuela, p. 4. The IACHR has also granted precautionary measures for detainees at SEBIN facilities [IACHR, Resolution 6/15, Precautionary Measure No. 223-13, Lorent Saleh and Gerardo Carrero regarding Venezuela, March 2, 2015].

<sup>546</sup> The FPV documented the case of E.M.G., who was apprehended on June 12, 2017, by GNB personnel outside his school and taken to the command center known as “Ciudad Chávez,” where he was physically assaulted and threatened with a firearm, in addition to which two tear gas grenades were deployed [FPV, Reporte sobre la represión del Estado en Venezuela - Junio de 2017, p. 7].

<sup>547</sup> Wuilly Arteaga, who is known for demonstrating peacefully by playing his violin, alleged that he was tortured while detained at GNB Command Center 433 in the urbanization known as El Paraíso in Caracas [FPV, Reporte sobre la represión del Estado en Venezuela - Julio 2017, p. 5].

<sup>548</sup> Hely Huerta denounced that he was physically assaulted and psychologically mistreated when he was transferred to the GNB detention center known as La Ciega. Brandon Becerra denounced that he was physically assaulted and verbally abused by the GNB during his detention at La Ciega [CODHEZ and Aula Abierta, Informe preliminar sobre la situación de los derechos humanos en el estado Zulia en el marco de la protesta: Julio-Agosto 2017, September 2017, pp. 17-18].

<sup>549</sup> The case was recorded of 16 people detained by the GNB during a demonstration on May 5, 2017, who were held at the CICPC facility in Villa del Rosario, where they had a powder known as *piroca*, which has the same effect as teargas, thrown in their faces [FPV, Reporte sobre la represión del Estado en Venezuela - Mayo de 2017, p. 1].

<sup>550</sup> A group of 10 young people, detained on May 15, 2017, reported that they had been victims of torture and sexual violence at the PNB facility in Aragua State [BBC, “Gritaba y lloraba... tenía tanto miedo que me oriné”: detenidos en protestas opositoras en Venezuela denuncian violaciones, golpizas y torturas, June 29, 2017]. CODHEZ and Aula Abierta reported complaints of cruel, inhuman, and degrading treatment being inflicted on people at military facilities, such as La Ciega and Desur in Maracaibo [CODHEZ y Aula Abierta, Informe preliminar sobre la situación de los derechos humanos en el estado Zulia en el marco de la protesta: Julio-Agosto 2017, September 2017, p. 16].

<sup>551</sup> The case was recorded of Orlando Moreno, who was detained during a protest on June 27, 2017, and taken to La Pica Prison, where he was suspended by handcuffs around his hands for 24 hours and beaten repeatedly to coerce him into accusing the political leader Maria Corina Machado [FPV, Reporte sobre la represión del Estado en Venezuela - Junio de 2017, pág. 8].

<sup>552</sup> CODHEZ y Aula Abierta, Informe preliminar sobre la situación de los derechos humanos en el estado Zulia en el marco de la protesta: Julio-Agosto 2017, September 2017, pp. 11-14.

<sup>553</sup> The opposition leaders Leopoldo López and Daniel Ceballos denounced that they were tortured at CENAPROMIL Military Prison (Ramo Verde) [PROVEA, Amnistía Internacional | Venezuela: Preso de



Center.<sup>554</sup> Torture is also said to have been inflicted at improvised places of detention for holding demonstrators detained for hours, such as the Corporación Eléctrica Nacional (CORPOELEC) building in the Amparo sector and Fundación Servicio de Atención del Zulia (Funsaz 171) on Av. La Limpia, both in the city of Maracaibo, Zulia State.<sup>555</sup> The IACHR also received information of detained demonstrators being physically and psychologically mistreated at other moments, including in the course of their arrest and transfer to detention centers.<sup>556</sup>

247. The Commission notes with deep concern that the SEBIN allegedly has a facility known as “The Tomb” (*La Tumba*) located in a basement five floors underground at its Plaza Venezuela headquarters. Acts of torture are allegedly committed at that facility, where detainees are placed in very small cells with the lights never turned off, they are unable to see sunlight or breathe fresh air, the temperatures are below 8°C, and they are held incommunicado and even in isolation for long periods.<sup>557</sup>
248. The torture allegedly includes physical blows to all parts of the body using such instruments as sticks, metal bars, helmets, and firearms.<sup>558</sup> Other alleged forms of torture are the application of electric shocks,<sup>559</sup> forcing

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conciencia Leopoldo López denuncia tortura, June 28, 2017; IACHR, Resolution 12/15, Precautionary Measure No. 335-14, Leopoldo López and Daniel Ceballos regarding Venezuela, April 20, 2015].

<sup>554</sup> Alexander Tirado and Raúl Emilio Baduel denounced that they were victims of torture at Uribana Prison, in the State of Lara. Baduel and Tirado also said that they were held in inhuman conditions at 26 de julio Remand Center [IACHR, Resolution No. 1/17, Precautionary Measure No. 475-15, Members of the Voluntad Popular party regarding Venezuela, January 14, 2017].

<sup>555</sup> CODHEZ y Aula Abierta, Informe preliminar sobre la situación de los derechos humanos en el estado Zulia en el marco de la protesta: Julio-Agosto 2017, September 2017, p. 15].

<sup>556</sup> CODHEZ y Aula Abierta, Informe preliminar sobre la situación de los derechos humanos en el estado Zulia en el marco de la protesta: Julio-Agosto 2017, September 2017, p. 10].

<sup>557</sup> UVAL provides a detailed description of the place [UVAL, Informe sobre la situación de los derechos humanos de las personas privadas de libertad en las sedes del SEBIN del Helicoide y Plaza Venezuela, pp. 27-29]. The Commission took note of the conditions at that detention center when it granted precautionary measures to Gerardo Carrero and Lorent Saleh in 2015 [CIDH, Resolution No. 6/2015, Precautionary Measure No. 223-12, Lorent Saleh and Gerardo Carrero regarding Venezuela]. CASLA provided a detailed description during the hearings at the OAS on September 14, 2017 Youtube video, Public hearings before OAS regarding Venezuela, OAS, September 14, 2017]. The descriptions made coincide with those given by Mariana Serano, wife of Gerardo Carrero; and Yamileh Saleh, mother of Lorent Saleh. Both men were detained at *La Tumba*. [Youtube video, *Estar en “La Tumba” es una muerte lenta*, February 11, 2015, Yamileh Saleh: “La fiscal le dijo a mi hijo se iba a pudrir en la cárcel”, RunrunEstudio, February 23, 2015].

<sup>558</sup> With respect to this form of torture, the FPV said that 36 people were detained on July 20. Of those, 16 were released. 2 of those detained said that they were beaten on the back with a cable (*guaya*) and the others all said that they were struck on different parts of the body. A prominent case was that of Willy Moisés Artega, a demonstrator who protested peacefully by playing his violin. He was arrested on July 27, 2017. According to his testimony, he was beaten so hard with CNB helmets that he lost the hearing in his right ear [FPV, Reporte sobre la represión del Estado en Venezuela - Julio de 2017, pp. 4-5]. UVAL also provided information in that regard [UVAL, Informe sobre la situación de los derechos humanos de las personas privadas de libertad en las sedes del SEBIN del Helicoide y Plaza Venezuela, p. 20].

<sup>559</sup> It is worth mentioning the testimony of a former detainee interviewed by OHCHR, who said that he was given electric shocks while he was interrogated. He said, “I was completely naked. They drenched me in water. One guard kept saying, ‘Wet him well otherwise you are going to fry him’” [OHCHR, Human rights



victims to assume inhuman positions (such as kneeling and being tied up for long periods, squatting, and being manacled by the hands and feet).<sup>560</sup> There were also reports of teargas grenades being deployed in cells,<sup>561</sup> in transport vehicles,<sup>562</sup> and even directly into detainees' faces<sup>563</sup>. There were reports of alleged smothering with bags impregnated with chemical substances, such as ammonia or insecticide,<sup>564</sup> and the use of *piroca* gas (which has effects similar to those of teargas) on the face and anus.<sup>565</sup> The OHCHR also documented testimony of that nature.<sup>566</sup> It was also reported that the lack of water and food at detention facilities meant that relatives of detainees had to take them food and drink on a regular basis;<sup>567</sup> that the

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violations and abuses in the context of protests in the Bolivarian Republic of Venezuela from 1 April to 31 July 2017, 31 August 2017, p. 20]. UVAL reported similar information [UVAL, Informe sobre la situación de los derechos humanos de las personas privadas de libertad en las sedes del SEBIN del Helicoide y Plaza Venezuela, p. 21].

<sup>560</sup> For Example, Deputy Wilmer Azuaje has denounced that sort of torture. He said: “[t]hey had me in handcuffs, unable to move, with my feet tied. So I am asking for an international response” [*El Carabobeño, Disputado Wilmer Azuaje denunció torturas físicas y psicológicas*, August 24, 2017]. UVAL reported similar information [UVAL, Informe sobre la situación de los derechos humanos de las personas privadas de libertad en las sedes del SEBIN del Helicoide y Plaza Venezuela, p. 19].

<sup>561</sup> Amnesty International, *Silenced by force: Politically motivated arbitrary detentions in Venezuela*, April 26, 2017, p. 11.

<sup>562</sup> According to a report, when the minor E.M.G. was transferred from “Ciudad Chávez” to the CICPC, two teargas grenades were thrown into the vehicle as he was put in it and the doors were then closed, causing him to pass out [FPV, *Reporte sobre la represión del Estado en Venezuela - Junio de 2017*, p. 7].

<sup>563</sup> CODHEZ and Aula Abierta, Informe preliminar sobre la situación de los derechos humanos en el estado Zulia en el marco de la protesta: Julio-Agosto 2017, September 2017, p. 14]. Another detainee is also recorded as saying “they sprayed me with pepper gas and put a hood over my head” [BBC, *“Gritaba y lloraba... tenía tanto miedo que me oriné”: detenidos en protestas opositoras en Venezuela denuncian violaciones, golpizas y torturas*, 29 de junio de 2017].

<sup>564</sup> UVAL, Informe sobre la situación de los derechos humanos de las personas privadas de libertad en las sedes del SEBIN del Helicoide y Plaza Venezuela, p. 21.

<sup>565</sup> In May 2017, the FPV recorded the case of 16 detainees who had a powder known as *piroca* thrown in their faces [FPV, *Reporte sobre la represión del Estado en Venezuela - Mayo de 2017*, p. 11]. According to CODHEZ and Aula Abierta, “[t]he people detained in Villa del Rosario in Zulia State [...] reported that they were locked in a room and had a white powder (*piroca*) thrown at them which caused a powerful burning and stinging sensation, as well as making it hard for them to speak, and that they were later given water with the same powder that caused a much worse stinging sensation.” In addition, some detainees “said that they were taken to a toilet, where their trousers were pulled down and *piroca* (pepper gas) was sprayed on their anuses” [CODHEZ and Aula Abierta, Informe preliminar sobre la situación de los derechos humanos en el estado Zulia en el marco de la protesta: Julio-Agosto 2017, September 2017, p. 13].

<sup>566</sup> One person interviewed by the OHCHR reportedly said: “They threw chlorine and salt in my mouth, they beat me with sticks and they fired tear gas grenades close to my face. I lost consciousness.” Another victim said: “The guards would regularly throw tear gas grenades inside the cell and blocked the doors’ bars with a mattress to prevent the gas from dispersing.” Two women recounted how guards put a hood on their head with tear gas powder for two hours [OHCHR, *Human rights violations and abuses in the context of protests in the Bolivarian Republic of Venezuela from 1 April to 31 July 2017*, 31 August 2017, p. 20].

<sup>567</sup> UVAL, Informe sobre la situación de los derechos humanos de las personas privadas de libertad en las sedes del SEBIN del Helicoide y Plaza Venezuela, p. 17.

food provided was not fit for human consumption;<sup>568</sup> and that, in some cases, detainees were forced to eat food off the floor.<sup>569</sup>

249. The IACHR has also received reports of acts of torture and other cruel, inhuman and degrading treatment through its precautionary measures mechanism. It received allegations of torture and cruel treatment, both physical and psychological, suffered by three members of the Voluntad Popular party, who were reportedly physically assaulted and forced to assume inhuman positions and had teargas grenades thrown into their cells. In addition, one of them was held in an unventilated cell measuring 2 m<sup>2</sup> in which there was human excrement, where he was subjected to psychological torture and not even allowed to go to the toilet.<sup>570</sup> The Commission granted precautionary measures to Leopoldo López and Daniel Ceballos, both of whom were detained at the Ramo Verde facility in 2014, where there were locked in their cells for 23 hours a day and reportedly held in solitary confinement without natural light on more than one occasion.<sup>571</sup> Precautionary measures were also granted to Lorent Saleh and Gerardo Guerrero, who were held in solitary confinement at the SEBIN in cold cells without access to sunlight or fresh air, and with scant opportunity to exercise.<sup>572</sup>
250. The Commission was also informed about 10 youths who were reportedly detained by the PNB during the demonstrations on May 15, 2017, in El Limón, Aragua State. According to information provided to the Commission, the youths were “subjected to appalling torture at the police station [and] sustained multiple blows and kicks to sensitive areas, such as the ribs and face.” According to reports, “toxic gases and powders were sprayed directly into their eyes while they were kneeling, in addition to which they were suspended by the arms” and forced to “engage in indecent

<sup>568</sup> Alexander Tirado and Raúl Emilio Baduel alleged that at 26 de Julio remand center there was a lack of water and the food was unfit for human consumption. Delson Guárate, who is detained at El Helicoide, says that there is a lack of water there and the food is not fit for human consumption. Yon Goicoechea, who was detained on August 29, 2016, said that he is given decomposing food [IACHR, [Resolution No. 1/17](#), Precautionary Measure No. 475-15, Members of the Voluntad Popular party regarding Venezuela, January 14, 2017].

<sup>569</sup> It is alleged that while Raúl Baduel Alexander Tirado were being held in Uribana prison they had hot food delivered straight into their hands so that they were forced to drop it on the floor alongside the raw sewage that seeped into their cell [Amnesty International, *Silenced by force: Politically motivated arbitrary detentions in Venezuela*, April 26, 2017, p. 11]. A former detainee at La Tumba said that “the food they provided their was sometimes spoiled and I had to eat it off the floor with my hands” [UVAL, *Informe sobre la situación de los derechos humanos de las personas privadas de libertad en las sedes del SEBIN del Helicoide y Plaza Venezuela*, p. 28].

<sup>570</sup> IACHR, Resolution No. [1/17](#), Precautionary Measure No. 475-15, Members of the Voluntad Popular party regarding Venezuela.

<sup>571</sup> IACHR, Resolution No. [12/15](#), Precautionary Measure No. 335-14, Leopoldo López and Daniel Ceballos regarding Venezuela.

<sup>572</sup> IACHR, Resolution No. [6/15](#), Precautionary Measure No. 223-13, Asunto Lorent Saleh and Gerardo Carrero regarding Venezuela.

acts with each other.” Allegedly, the youths “were also threatened with death, rape, and intimidation.”<sup>573</sup>

251. The Commission reiterates its utmost rejection of any act of torture or cruel, inhuman and degrading treatment, especially when it appears to have become commonplace, as in this instance. It would remind the State, that the prohibition of torture and cruel, inhuman and degrading treatment is a *ius cogens* norm of international law.<sup>574</sup> That prohibition is enshrined in Articles XXV and XXVI of the American Declaration as well as in Article 5 of the Inter-American Convention to Prevent and Punish Torture.<sup>575</sup> Furthermore, the Commission reiterates that this peremptory prohibition of any form of torture is the corollary of the State's duty to treat everyone deprived of their liberty humanely and with respect for their dignity.<sup>576</sup> The Commission emphasizes that the investigation of cases of torture and cruel, inhuman and degrading treatment “must be conducted *ex officio* and be governed by the principles of independence, impartiality, competence, diligence, and promptness,”<sup>577</sup> and that “in cases involving persons deprived of liberty, the State's duty to investigate has to meet a higher standard,”<sup>578</sup> since they are in its custody.

### ***Sexual Violence***

252. The IACHR has received extremely troubling information about allegations of sexual violence during detentions in the context of the recent social protests. It regrets deeply that sexual violence against people arrested in social demonstrations is not a new problem in Venezuela.<sup>579</sup>

<sup>573</sup> One of them was allegedly beaten on the knees until a fluid came out of them, while another had “motorcycles ridden over his body while he was being threatened and restrained with handcuffs.” IACHR, Request for precautionary measures submitted on behalf of detained students in El Limón, MC-428-17.

<sup>574</sup> IACHR, 2014 Annual Report, Chapter IV.B, Venezuela, para. 23; Report No. 84/13, Case 12.482, Merits, Valdemir Quispialaya Vilcapoma, Peru, para. 95; and Report on the Human Rights of Persons Deprived of Liberty in the Americas, OEA/Ser.L/V/II. Doc. 64, December 31, 2011, para. 332.

<sup>575</sup> That provision states: “The existence of circumstances such as a state of war, threat of war, state of siege or of emergency, domestic disturbance or strife, suspension of constitutional guarantees, domestic political instability, or other public emergencies or disasters shall not be invoked or admitted as justification for the crime of torture. Neither the dangerous character of the detainee or prisoner, nor the lack of security of the prison establishment or penitentiary shall justify torture.”

<sup>576</sup> IACHR, 2014 Annual Report, Chapter IV.B, Venezuela, para. 23.

<sup>577</sup> IACHR, Report on Measures Aimed at Reducing the Use of Pretrial Detention in the Americas, OEA/Ser.L/V/II.163, Doc. 105, July 3, 2017, para. 193; and Report on the Human Rights of Persons Deprived of Liberty in the Americas, OEA/Ser.L/V/II. Doc. 64, December 31, 2011, para. 345.

<sup>578</sup> IACHR, Report on Measures Aimed at Reducing the Use of Pretrial Detention in the Americas, OEA/Ser.L/V/II.163, Doc. 105, July 3, 2017, para. 193; and Report on the Human Rights of Persons Deprived of Liberty in the Americas, OEA/Ser.L/V/II. Doc. 64, December 31, 2011, para. 347.

<sup>579</sup> Indeed, in the context of the demonstrations and arrests that occurred between February and May 2014, COFAVIC recorded 54 complaints of torture and cruel, inhuman and degrading treatment, 26 percent of which alleged the use of sexual torture, including rape, stripping naked, humiliation, and taunting at

253. In relation to the recent events, women's organizations informed the IACHR of at least six cases in which PNB and GNB personnel had groped or sexually violated women and men deprived of their liberty.<sup>580</sup> AVESA denounced 25 cases of sexual violence in the context of the repression of the demonstrations, in which 56 percent of the victims were women. According to the same source, the violence took different forms, including exposure to sexual violence (60 percent), groping (20 percent) and rape (16 percent). The assailants reportedly belonged to the PNB (68 percent), the Aragua Police (20 percent), and the GNB (12 percent).<sup>581</sup> Other sources also report different forms of violence inflicted by agents of the State.<sup>582</sup> At the same time, it is worth noting that there is a high level of underreporting of cases due to "victim shame or intimidation, non-recognition of offenses, and/or lack of human rights defenders and public officials trained in identifying them."<sup>583</sup>
254. The IACHR has also received reports of acts of this nature through its precautionary measures mechanism. For instance, in relation to the group of 27 students of Universidad Experimental Pedagógica Libertador (UPEL) who were detained in July 2017 as they spent the night at the university during demonstrations, the IACHR was informed that the women alleged to have been sexually assaulted with pipes inserted through their trouser pants as well as being groped.<sup>584</sup> The Commission also heard how youths

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detention centers [Venezuela Awareness, La violencia que calla a los detenidos, June 25, 2017]. The Commission learned of the case of Érika Moncada, a Colombian citizen detained in August that year, who was allegedly suffocated with plastic bags to obtain "confessions;" she was also raped and tortured with a beating that dislodged a breast implant, causing her unbearable pain; and had electric shocks applied to her breasts [IACHR, 2016 Annual Report, Chapter IV.B, Venezuela, para. 38].

<sup>580</sup> CEPAZ, Asociación Civil Mujeres en Línea, FREYA and AVESA, Informe sobre situación de los derechos de las mujeres en Venezuela, September 2017, pp. 29-31.

<sup>581</sup> AVESA, Violencia sexual en el contexto de represión política – Algunos datos de la prensa nacional, July 13, 2017; Corresponsales clave, Violencia sexual en medio de la represión política en Venezuela, July 18, 2017; Runrunes, 100 ONGs rechazaron violencia sexual en marco de represión, July 25, 2017.

<sup>582</sup> According to CASLA, 192 people alleged to have been victims of some type of sexual violence, while another 140 were allegedly threatened with it. According to the same source, seven people denounced attempted rape with pipes or other objects, while at least five people (four men and one woman) were reportedly raped. In addition, 77 people reputedly alleged to have been stripped naked while others said that they were partially stripped so as to force them to adopt stress positions. Youtube video, Public hearings before OAS regarding Venezuela, OAS, September 14, 2017. BBC, "Gritaba y lloraba... tenía tanto miedo que me oriné": detenidos en protestas opositoras en Venezuela denuncian violaciones, golpizas y torturas, June 29, 2017. 2001.com.ve, 70% de denuncias en La Haya por torturas en Venezuela incluyen abusos sexuales, July 1, 2017.

<sup>583</sup> CEPAZ, Asociación Civil Mujeres en Línea, FREYA and AVESA, Informe sobre situación de los derechos de las mujeres en Venezuela, September 2017, p. 29.

<sup>584</sup> IACHR, Request for a precautionary measures MC-486-17. Similarly, the FPV reported that they had "cylinders [inserted] in their genitals and anuses." Youtube video, Public hearings before OAS regarding Venezuela, OAS, September 14, 2017.

detained by the PNB on May 15, 2017, in El Limón, Aragua State, were reportedly sexually assaulted with pipes.<sup>585</sup>

255. Another case that was brought to the attention of the IACHR involved two UCAB students in Guayana, who were arrested on June 1 during the demonstrations and alleged to have been the victims of indecent acts inside the personnel carrier that took them away.<sup>586</sup> There was also reports of sexual violence against 10 youths who were arrested on May 15 near an area where protests were being staged.<sup>587</sup> Another recorded case was that of D.E., a woman who was detained on May 17, 2017, by GNB personnel and claimed to have been sexually abused. Specifically she alleged that after being put in a pickup truck, was physically assaulted and subjected to indecent acts, before being given a powder that made her lose consciousness.<sup>588</sup> A man detained in Villa del Rosario, Zulia State, alleged that he was raped with a broom handle.<sup>589</sup> There were also allegations concerning the frequent use of threats of a sexual nature.<sup>590</sup>
256. The IACHR expresses its utter repudiation of such alleged abuses and calls on the State to implement the recommendations made by the IACHR in that regard in this report at the earliest opportunity. In particular, the IACHR reiterates that States have a special duty to act with due diligence to prevent and eradicate all forms of violence and discrimination against women.<sup>591</sup> It also underscores that the risks of being subjected to physical, sexual, and psychological violence, as well as other forms of abuse, are accentuated when women are deprived of their liberty and in the custody

<sup>585</sup> IACHR, Request for precautionary measures submitted on behalf of detained students in El Limón, MC-428-17.

<sup>586</sup> In particular, one woman was groped and made to sit with her legs spread apart, in spite of the fact that she was wearing a dress, while another woman was also groped and was the victim of a member of the GNB inserting his fingers in her mouth and shouting at her, “Suck, bitch!” [CODEHCU, Informe sobre la situación de Venezuela, September 5, 2017, p. 9].

<sup>587</sup> According to Martín Ríos, a defense attorney for the victims, “[t]hey were made to line up and forced to touch each other’s private parts and handle one another’s members”; one of them “had his shorts pulled down and a pipe inserted in his rectum.” [BBC, “Gritaba y lloraba... tenía tanto miedo que me oriné”: detenidos en protestas opositoras en Venezuela denuncian violaciones, golpizas y torturas, June 29, 2017].

<sup>588</sup> FPV, *Reporte sobre la represión del Estado en Venezuela - Junio de 2017*, p. 7.

<sup>589</sup> CODHEZ y Aula Abierta, Informe preliminar sobre la situación de los derechos humanos en el estado Zulia en el marco de la protesta: Julio-Agosto 2017, September 2017, p. 13].

<sup>590</sup> CODHEZ and Aula Abierta recorded their constant use against detainees in the State of Zulia, in particular, at the detention center known as “La Ciega”. [CODHEZ y Aula Abierta, Informe preliminar sobre la situación de los derechos humanos en el estado Zulia en el marco de la protesta: Julio-Agosto 2017, September 2017, p. 23].

<sup>591</sup> IACHR, *Report on Measures Aimed at Reducing the Use of Pretrial Detention in the Americas*, OEA/Ser.L/V/II.163, Doc. 105, July 3, 2017, para. 195; *Access to Justice for Women Victims of Sexual Violence: Education and Health*, OEA/Ser.L/V/II. Doc. 65, December 28, 2011, para. 31-39; *Legal Standards related to Gender Equality and Women’s Rights in the Inter-American Human Rights System: Development and Application*, OEA/Ser.L/V/II.143, Doc. 60, November 3, 2011, pars. 22-24, and *Access to Justice for Women Victims of Sexual Violence in Mesoamerica*, OEA/Ser.L/V/II. Doc. 63, December 9, 2011, pars. 37-43.

of State authorities.<sup>592</sup> In that connection, the obligation of the State to prevent and eradicate violence against women is more acute in such contexts. Therefore, States should adopt all necessary comprehensive measures to ensure that their rights are effectively observed and guaranteed, so that they are not the object of discrimination and are protected from all forms of violence or exploitation.<sup>593</sup>

## 5. Access to Justice and Due Process

257. The Commission notes with deep disquiet that civilians are reportedly being prosecuted and tried in military criminal courts. It received information that as of May 2017 there were at least 52 such cases, including those of Santiago Guevara, a professor from the University of Carabobo (prosecuted in February 2017), and Stayci Escalona (a young woman arrested with Deputy Caro and prosecuted in January 2017 in the Sixth Military Oversight Tribunal).<sup>594</sup> The IACHR was also informed that between April 1 and October 23, 2017, 757 civilians were prosecuted in military tribunals and that 207 of them are still in custody. The Commission was also made aware that between April 1 and October 31, 2017, 757 civilians were tried before military tribunals, 198 of which are still imprisoned.<sup>595</sup>
258. According to publicly available information, the prosecution of civilians in military courts increased from March 2017 onward, when Attorney General Ortega announced that she did not support the Government's "directives for violating human rights." That apparently had to do with the decision to prosecute a number of cases in the military jurisdiction, rather than in the regular courts.<sup>596</sup> This alarming increase is apparently connected with the implementation of the Zamora Plan, under which

<sup>592</sup> IACHR, *Report on Measures Aimed at Reducing the Use of Pretrial Detention in the Americas*, OEA/Ser.L/V/II.163, Doc. 105, July 3, 2017, para. 195; *Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women (Convention of Belém do Pará)*, adopted on June 9, 1994, Article 9; and I/A Court H.R., *Case of the Miguel Castro-Castro Prison v. Peru*. Merits, Reparations and Costs, Judgment of November 25, 2006. Series C No. 160, para. 303.

<sup>593</sup> IACHR, *Report on Measures Aimed at Reducing the Use of Pretrial Detention in the Americas*, OEA/Ser.L/V/II.163, Doc. 105, July 3, 2017, para. 198; and I/A Court H.R., *Case of the Miguel Castro Castro Prison v. Peru*. Merits, Reparations and Costs, Judgment of November 25, 2006. Series C No. 160, para. 303.

<sup>594</sup> Proiruris, *Exigimos que cese inmediatamente el procesamiento de civiles en la jurisdicción penal militar*, May 7, 2017.

<sup>595</sup> FPV, *Report on Repression in Venezuela – October 2017*, pg. 3.

<sup>596</sup> In similar fashion, the OHCHR said: "The number of civilians tried before the military courts has dramatically increased since the beginning of the protests, in what sources regard as an effort to bypass the Attorney-General's constitutional role in criminal proceedings" [OHCHR, *Human rights violations and abuses in the context of protests in the Bolivarian Republic of Venezuela from 1 April to 31 July 2017*, 31 August 2017, p. 25]. That information was echoed by Captain Igor Eduardo Nieto Buitrago during the hearings at the OAS on September 15, 2017 [Youtube video, *Public hearings before OAS regarding Venezuela*, September 15, 2017].

detained civilians have reportedly been turned over to the military courts. In that regard, the AN passed a resolution repudiating the implementation of the Zamora Plan and the unconstitutional practice of installing military tribunals that usurp the jurisdiction of the regular courts, violating human rights.<sup>597</sup> The Attorney General also disputed the competence of military tribunals to prosecute civilians.<sup>598</sup>

259. The information available indicates that in a high proportion of cases civilians are charged with the offenses of "treason," "rebellion," and "assaulting a guard" classified at Articles 464, 476-487, and 501-502, respectively, of the Organic Code of Military Justice.<sup>599</sup> The State, for its part, has justified the use of the military criminal courts by the fact that there have reportedly been at least 12 attacks on military facilities, which apparently qualifies as the offense of "assaulting a guard."<sup>600</sup> However, the IACHR is surprised that people unconnected with the armed forces are being charged with offenses of a clearly military nature. Furthermore, in breach of the principle of legality, the definition of the offense of "assaulting a guard" is extremely broad and vague, allowing its application to such conduct as striking or verbally insulting an official.<sup>601</sup> In addition, the IACHR recalls that military judges and prosecutors do not satisfy the requirement of independence for the reason that they are active members of the armed forces, part of the military hierarchy, and subject to the authority of the Minister of the People's Power for Defense and the President.<sup>602</sup>
260. <sup>603</sup>The Commission notes that the above also violates the Constitution of Venezuela, Article 49(4) of which recognizes the right to a competent

<sup>597</sup> Al momento, Venezuela: Parlamento rechaza tribunales militares procesen a civiles, May 9, 2017.

<sup>598</sup> She questioned the authority of the military criminal jurisdiction to request the regular criminal courts of the State of Zulia to transfer the case of 14 young people arrested for allegedly taking part in the toppling of a statue of former president Hugo Chávez in Villa del Rosario [Ministerio Público venezolano, Fiscal 41 del Zulia solicitó que 14 detenidos por hechos ocurridos en Villa del Rosario sean juzgados por tribunal civil y no militar Fiscal 41 del Zulia solicitó que 14 detenidos por hechos ocurridos en Villa del Rosario sean juzgados por tribunal civil y no militar Fiscal 41 del Zulia solicitó que 14 detenidos por hechos ocurridos en Villa del Rosario sean juzgados por tribunal civil y no militar Fiscal 41 del Zulia solicitó que 14 detenidos por hechos ocurridos en Villa del Rosario sean juzgados por tribunal civil y no militar, May 9, 2017].

<sup>599</sup> Organic Code of Military Justice, Special Official Gazette No. 5263 of September 17, 1998.

<sup>600</sup> IACHR, Violence, Citizen Security, and Freedom of Expression in Venezuela, October 24, 2017.

<sup>601</sup> Article 502 of the Organic Code of Military Justice provides: "Anyone who uses threatening or offensive language or gestures toward a guard shall be punished with six months to one year of arrest. If the deed is committed while on campaign, the punishment shall be one to two years of imprisonment" [Organic Code of Military Justice, Special Official Gazette No. 5263 of September 17, 1998].

<sup>602</sup> IACHR, Press Release No. 68/17, IACHR Deeply Concerned about the Worsening Violence in Venezuela and the Use of Military Courts to Prosecute Civilians, May 26, 2017; OHCHR, Human rights violations and abuses in the context of protests in the Bolivarian Republic of Venezuela from 1 April to 31 July 2017, 31 August 2017, p. 25.

<sup>603</sup> Article 49 (4) provides: " Every person has the right to be judged by his or her natural judges of ordinary or special competence, with the guarantees established in this Constitution and by law. No person shall be put



tribunal, while Article 261 expressly provides that “common crimes, human rights violations, and crimes against humanity shall be tried by the courts of the ordinary jurisdiction.”<sup>604</sup> In addition, the Inter-American Court has referred to the use of the military criminal jurisdiction in Venezuela and has ordered the State to “establish ... through its legislation, limits on the competence of military tribunals, in such a way that the military jurisdiction will be used only with respect to those crimes relating to military functions. Likewise, the State must repeal all domestic legislation that is not in conformance with said ... jurisprudence ... within a reasonable time.”<sup>605</sup>

261. The Commission strenuously repudiates such acts and stresses that the use of the military criminal jurisdiction to prosecute civilians entails a violation of a series of rights, such as the right to an independent and impartial natural judge. It also vitiates judicial guarantees across the entire process, which has serious consequences for the effectiveness of the rule of law.<sup>606</sup> The Commission emphatically reiterates that military justice should be used only to judge active-duty military officers for the alleged commission of strictly service-related offenses, and that military courts do not satisfy the requirements of independence and impartiality that judges are expected to meet.<sup>607</sup> In the opinion of the IACHR, that is clearly not the case in the above instances where civilians are alleged to have committed offenses of a military nature.
262. The IACHR notes with concern inaction and lack of diligence on the part of justice operators where human rights violations committed in Venezuela are concerned. The Commission acknowledges the work of the former Attorney-General, Luisa Ortega, under whose stewardship the MP published statistics on people killed in social protests. Investigations opened into those deaths identified 41 members of the security services as alleged perpetrators and ordered their arrest.<sup>608</sup> However, it regrets the alleged lack of cooperation on the part of the security forces in those investigations,<sup>609</sup> as well as the lack of disclosure of the number of fatalities during protests, which coincided with the assumption of the position of the

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on trial without knowing the identity of the party judging him or her, nor be adjudged by exceptional courts or commissions created for such purpose” [Art. 49 (4) of the Constitution of Venezuela].

<sup>604</sup> Art. 261 of the Constitution of Venezuela.

<sup>605</sup> I/A Court H.R., *Case of Usón Ramírez v. Venezuela*, Preliminary Objection, Merits, Reparations, and Costs, Judgment of November 20, 2009, Series C No. 207, para. 199.8.

<sup>606</sup> IACHR, Press Release No. 68/17, IACHR Deeply Concerned about the Worsening Violence in Venezuela and the Use of Military Courts to Prosecute Civilians, May 26, 2017.

<sup>607</sup> IACHR, Report No. 84/13, Case 12.428, Merits, Valdemir Quispealaya Vilcampoma, Peru, para. 131.

<sup>608</sup> OHCHR, Human rights violations and abuses in the context of protests in the Bolivarian Republic of Venezuela from 1 April to 31 July 2017, 31 August 2017, p. 16.

<sup>609</sup> OHCHR, Human rights violations and abuses in the context of protests in the Bolivarian Republic of Venezuela from 1 April to 31 July 2017, 31 August 2017, p. 16.



Attorney General by Tarek William Saab. The Commission notes that the State has said that of the 124 deaths that, according to the MP, occurred during the protests in 2017, the State was presumed responsible in 16 cases, a very low figure considering the facts described above and the circumstances in which they took place. The State also reported that 78 percent of cases were still under investigation.<sup>610</sup> Therefore, the IACHR calls upon the State rigorously to fulfill its duty to investigate those allegations with due diligence and within a reasonable time, in order to prevent their impunity.<sup>611</sup> Regarding the recognition of the work done by the Attorney General, the State indicates in its comments that "it is surprising that the Commission would recognize the 'performance' of the former Attorney General when its own draft Country Report states that the Public Ministry and its head at the time—Ms. Luisa Ortega Díaz—has, as the body in charge of criminal investigations, 'also been seriously deficient in the performance of its functions.'"<sup>612</sup>

263. The IACHR is also disturbed by allegations that in cases where rape has been used as torture, the MP has only brought charges of cruel treatment. There is no open investigation in the majority of complaints alleging torture.<sup>613</sup> The Commission also laments the failure of the DP to speak up about such situations, which has prompted civil society to call for the resignation of the erstwhile ombudsperson and current Attorney General, Tarik William Saab.<sup>614</sup> As a result, impunity extends to 98 percent of human rights violations in Venezuela.<sup>615</sup>
264. In this context, the Commission laments profoundly that the judiciary and the MP are not fulfilling their constitutionally ordained role of administering justice in the country<sup>616</sup> ([Chapter II.A.1](#) and [4](#)), which should be insulated from all political interests.<sup>617</sup> It also reiterates that in the context of the serious situation in Venezuela it is crucial that excesses committed by personnel of the security forces not go unpunished.<sup>618</sup>

<sup>610</sup> IACHR, [Violence, Citizen Security, and Freedom of Expression in Venezuela](#), October 24, 2017.

<sup>611</sup> IACHR, Press Release No. 084/17, [IACHR Strongly Condemns Indiscriminately Repressive Military Operations in Venezuela](#), June 27, 2017.

<sup>612</sup> Bolivarian Republic of Venezuela, Ministry of the People's Power for Foreign Relations, Note AGEV/2017-000300, comments on the draft country report December 21, 2017, para. 86.

<sup>613</sup> Those allegations were made by CASLA during the hearings at the OAS on September 14 [Youtube video, [Public hearings before OAS regarding Venezuela](#), OAS, September 14, 2017].

<sup>614</sup> El Nacional, [Defensor del pueblo, renuncie](#), April 7, 2017.

<sup>615</sup> OVV, [Impunidad alcanza a 98% de crímenes contra DDHH en Venezuela, según Cofavic](#), October 28, 2016.

<sup>616</sup> Arts. 253 and 285 of the [Constitution of Venezuela](#).

<sup>617</sup> IACHR, [2016 Annual Report](#), Chapter IV.B, Venezuela, para. 164.

<sup>618</sup> IACHR, Press Release No. 111/17, [IACHR Condemns the Deaths and Acts of Violence on Election Day in Venezuela](#), August 1, 2017.

265. The Commission notes that on March 24, 2017, the Commission for Justice and Truth submitted its report with a view to the investigation and punishment of politically motivated crimes, disappearances, torture, and other human rights violations committed between 1958 and 1998. A total of 10,071 victims of human rights violations, including torture, murder, and forced disappearance, were identified.<sup>619</sup> The Commission for Justice and Truth was brought into being by presidential decree on February 27, 2012, to investigate politically motivated crimes, disappearances, torture, and other human rights violations committed during the period from 1958 to 1998.<sup>620</sup> It was installed in April 2016.<sup>621</sup> Although the State's efforts to recover the truth and historical memory are laudable, the IACHR reiterates that truth commissions are not a substitute for judicial process, and that the obligations of the State to combat impunity and provide reparation to victims of gross human rights violations remain.<sup>622</sup>
266. The IACHR also observes that the State has recognized that it faces a challenge on the matter of impunity and has said that one step it has taken to combat this problem was the creation of the ANC, whose objectives include a top-to-bottom review of the justice system.<sup>623</sup> The IACHR observes that the foregoing is related to the establishment by the ANC of the Commission for Truth, Justice, Peace, and Public Tranquility in August 2017. Nonetheless, as the IACHR has already noted, the initiative raises questions about a possible overreach by the ANC of its functions and would increase persecution of dissent ([Chapter II.A.2](#)). Furthermore, on this point the IACHR underscores that truth commissions are extrajudicial bodies whose purpose is to advance the right of the victims and society to know the truth but are "not an adequate substitute for the judicial process."<sup>624</sup> In that connection, it reiterates that it is particularly important for the State to take steps to ensure a judicial investigation of abusive use of force, whether by agents of the state, or by third parties, in order to impose criminal penalties on those responsible and provide adequate redress to the victims.<sup>625</sup>

<sup>619</sup> IACHR, "The Right to Truth and Report of Venezuela's Commission for Justice and Truth," 161st Period of Sessions, March 22, 2017.

<sup>620</sup> Alba Ciudad, Miembros de la Comisión por la Justicia y la Verdad 1958-1998 rechazan posiciones de la Fiscal General, June 9, 2017.

<sup>621</sup> Telesur, Instalan Comisión por la Verdad y Justicia en Venezuela, April 12, 2016.

<sup>622</sup> IACHR, *The Right to the Truth in the Americas*, OEA/Ser.L/V/II.152, Doc.2, August 13, 2014, pars. 34 and 133-135.

<sup>623</sup> IACHR, Violence, Citizen Security, and Freedom of Expression in Venezuela, October 24, 2017.

<sup>624</sup> IACHR, Report No. 136/99, Case 10.488, Ignacio Ellacuría, S.J.; Segundo Montes, S.J.; Armando López, S.J.; Ignacio Martín Baró, S.J.; Joaquín López y López, S.J.; Juan Ramón Moreno, S.J.; Julia Elba Ramos; and Celina Mariceth Ramos, El Salvador, December 22, 1999, para. 229.

<sup>625</sup> IACHR, Second Report on the Situation of Human Rights Defenders in the Americas, OEA/Ser.L/V/II., Doc. 66, December 31, 2011, para. 149.

## **B. Freedom of Thought and Expression**

267. The right to freedom of expression established in Article IV of the American Declaration provides that "[e]very person has the right to freedom of investigation, of opinion, and of the expression and dissemination of ideas, by any medium whatsoever." The organs of the inter-American system have recognized that this right constitutes a key element on which the existence of democratic societies is based, due to its indispensable structural relationship with democracy<sup>626</sup>.
268. The Human Rights Committee of the United Nations<sup>627</sup>, the European Court of Human Rights<sup>628</sup>, and the African Commission and Court on Human and Peoples' Rights<sup>629</sup> have also recognized, in the same terms, the transcendental importance of freedom of expression in a democratic society. Article 4 of the Inter-American Democratic Charter characterizes freedom of expression and the press as "essential components of the exercise of democracy."<sup>630</sup> In the same way, the Declaration of Principles on Freedom of Expression adopted by the IACHR in 2000 recalls that "freedom of expression in all its forms and manifestations is a fundamental and inalienable right of all individuals. Additionally, it is an indispensable requirement for the very existence of a democratic society." For the same reasons, it's been affirmed that States must promote, and not inhibit, a vigorous, plural, and uninhibited deliberation on all public matters.

<sup>626</sup> IACHR. *Compulsory membership in an association prescribed by law for the practice of journalism (Arts. 13 and 29, American Convention on Human Rights)*. Advisory Opinion OC-5/85 of November 13, 1985. Series A, No. 5, para. 70; *Case of Claude Reyes et al. vs. Chile*. Merit, Reparations and Costs. Judgment of September 19, 2006. Series C, No. 151, para. 85; *Case of Herrera Ulloa vs. Costa Rica*. Preliminary Objections, Merit, Reparations and Costs. Judgment of July 2, 2004. Series C, No. 107, para. 116; *Case of Ricardo Canese vs. Paraguay*. Merit, Reparations and Costs. Judgment of August 31, 2004. Series C, No. 111, para. 86; IACHR, Report No. 20/99, Merit, Case 11,317, Rodolfo Robles Espinoza and Sons, Peru, para. 148; Declaration of Principles on Freedom of Expression, 2000; IACHR, Office of the Special Rapporteur for Freedom of Expression, The Inter-American Legal Framework Regarding the Right to Freedom of Expression, 2009, para. 8.

<sup>627</sup> UN, Human Rights Committee, Communications 422/1990, 423/1990 and 424/1990, Aduayom et al. vs. Togo, Decision of July 12, 1996, para. 7.4, and General Comment No. 34, Article 19: Freedoms of Opinion and Expression, CCPR/C/GC/34, September 12, 2011.

<sup>628</sup> ECHR. *Case of Castells v. Spain*. Judgment of April 23, 1992, Series A. No. 236, para. 42; *Case of Lingens v. Austria*. Judgment of July 8, 1986. Series A, No. 103, para. 41; *Case of Barthold v. Germany*. Judgment of March 25, 1985, Series A, No. 90, para. 58; *Case of The Sunday Times v. United Kingdom*. Judgment of March 29, 1979, Series A, No. 30, para. 65; and *Case of Handyside v. United Kingdom*. Judgment of December 7, 1976, Series A, No. 24, para. 49.

<sup>629</sup> African Commission on Human and Peoples' Rights, Media Rights Agenda and Constitutional Rights Project v. Nigeria, Communications Nos. 105/93, 128/94, 130/94 and 152/96, Decision of October 31, 1998, para. 54; Declaration of Principles on Freedom of Expression in Africa, 17 - 23 October, 2002; and African Court on Human Rights and Peoples' Rights. *In the Matter of Lohé Issa Konaté v. Burkina Faso*. Application No. 004/2013. Judgment of December 5, 2014.

<sup>630</sup> Article 4 of the Inter-American Democratic Charter.

269. For more than a decade, the IACHR and the Office of the Special Rapporteur for Freedom of Expression have followed with special attention the situation of freedom of expression in Venezuela and have documented the progressive deterioration of the exercise of this right in the country<sup>631</sup>.
270. Throughout 2017, the IACHR and its Office of the Special Rapporteur continued to document severe restrictions on the right to freedom of expression in the country, including censorship, closure of media, attacks on journalists, and in general patterns of harassment and criminalization of those who issue political opinions or disseminate information that does not have state approval. As will be analyzed in this chapter, these measures do not respond to a legal framework compatible with international obligations subscribed by the Venezuelan State in this matter. On the contrary, these measures are applied outside the law or based on ambiguous and excessively broad legal provisions. According to the information obtained, the authorities tend to justify restrictions on the right to freedom of expression under the protection of assets linked to national security, sovereignty, and peace, but in practice, these measures have been aimed at silencing critical voices of the current Government. The impact of these measures on Venezuelan democracy is evident and deserves priority attention.

### **1. The Compatibility of the Current legal Framework with the State's International Obligations regarding the Right to Freedom of Expression**

271. Restrictions on the right to freedom of expression must be defined in a precise and clear manner through a formal and material law, aimed at achieving legitimate ends and be necessary and proportionate in a democratic society for the achievement of those compelling purposes it pursues. In addition, the subsequent liabilities arising from the exercise of freedom of expression must always be ordered by an independent and impartial judicial or jurisdictional authority, respecting the due process guarantees. In all cases, these measures must not be discriminatory or produce discriminatory effects, nor can they constitute censorship through direct or indirect means. The IACHR considers that the Venezuelan legal framework, described below, imposes restrictions on the freedom of expression and access to information in a way that is incompatible with

<sup>631</sup>

IACHR, *Report on the Situation of Human Rights in Venezuela*, OAS/Ser.L/V/II.118, Doc. 4 rev. 1, October 24, 2003; IACHR, *Annual Report 2004*, Chapter V, Venezuela, para. 305; IACHR, *Democracy and Human Rights in Venezuela*, OAS/SER.L/V/II, Doc. 54, December 30, 2009, para. 347; IACHR, *Annual Report 2010*, Chapter IV, Venezuela; *Annual Report 2011*, Chapter IV, Venezuela; *Annual Report 2012*, Chapter IV, Venezuela; *Annual Report 2013*, Chapter IV, Venezuela; *Annual Report 2014*, Chapter IV, Venezuela; *Annual Report 2015*, Chapter IV.B, Venezuela, and *Annual Report 2016*, Chapter IV.B, Venezuela.

these requirements, and have been used to initiate judicial or administrative proceedings against those who disseminate information contrary to the government's interests, and inhibit criticism and political debate.

272. *Law on Social Responsibility in Radio, Television, and Electronic Media* [*Ley de Responsabilidad Social en Radio, Televisión y Medios Electrónicos*]: The IACHR has repeatedly indicated the need to review the legal framework in which the media operates in Venezuela<sup>632</sup> and, in particular, the need to amend the Law on Social Responsibility in Radio, Television, and Electronic Media<sup>633</sup>. In recent years, this regulation has served as a basis for closing or threatening the closure of audiovisual media and the blocking of online media (*infra*). For example, article 29 of said law establishes that the providers of radio, television, and electronic media services will be sanctioned with high fines, suspension of their transmissions and even the revocation of the concession, when they broadcast messages that "promote, advocate, or incite disturbances of public order," or "promote, advocate, or incite crime," or "foster distress in the public or disturb public order," "ignore the legitimately constituted authorities," or "are contrary to the safety of the Nation"<sup>634</sup>. In addition, this law authorizes the State to restrict access to Internet content or websites that, in its judgment, disseminate this type of prohibited content<sup>635</sup>. In particular, the law authorizes the National Telecommunications Commission [*Comisión Nacional de Telecomunicaciones*] (Conatel), a body directly dependent on the executive power, to order electronic media "to refrain from broadcasting messages that violate the circumstances established" in the law<sup>636</sup>, forces Internet service providers to create mechanisms "that allow restricting [...] the dissemination"<sup>637</sup> of such messages, and establishes the liability of those companies for expressions of third parties when they do not take measures to restrict those speeches at the request of Conatel<sup>638</sup>.
273. *Desacato offenses and other offenses against honor*: the Criminal Code<sup>639</sup> and the Code of Military Criminal Justice<sup>640</sup> uphold the norms of protection

<sup>632</sup> IACHR, Annual Report 2010, Report of the Office of the Special Rapporteur for Freedom of Expression, Chapter II (Evaluation of the Status of Freedom of Expression in the Hemisphere), para. 412-524; and Annual Report 2012, Report of the Office of the Special Rapporteur for Freedom of Expression, Chapter II (Evaluation of the Status of Freedom of Expression in the Hemisphere), para. 510-514.

<sup>633</sup> IACHR, Democracy and Human Rights in Venezuela, OEA/SER.L/V/II, Doc. 54, December 30, 2009, para. 350-380; and Annual Report 2012, Report of the Office of the Special Rapporteur for Freedom of Expression, Chapter II (Evaluation of the Status of Freedom of Expression in the Hemisphere), para. 510-514.

<sup>634</sup> Article 29 of the Law on Social Responsibility in Radio, Television and Electronic Media.

<sup>635</sup> Articles 27 and 29 of the Law on Social Responsibility in Radio, Television and Electronic Media.

<sup>636</sup> Article 33 of the Law on Social Responsibility in Radio, Television and Electronic Media.

<sup>637</sup> Article 27 of the Law on Social Responsibility in Radio, Television and Electronic Media.

<sup>638</sup> Article 27 of the Law on Social Responsibility in Radio, Television and Electronic Media.

<sup>639</sup> Arts. 147, 148 and 149 of the Venezuelan Criminal Code.

<sup>640</sup> Arts 505 and 505 of the Organic Code of Military Criminal Justice.

of honor and reputation of state officials against the issuance of critical expressions that may be considered offensive, such as vilification and offense to the authority. The Criminal Code also maintains the crime of defamation<sup>641</sup>. The IACHR has already established in the study of individual cases regarding Venezuela<sup>642</sup>, according to its doctrine and established case law<sup>643</sup>, that these provisions are incompatible with the principle strict legality in criminal law and the right to freedom of expression, for which it has recommended to the Venezuelan State its repeal.

274. *Crimes against national security*: all through 2017, the IACHR documented the arrest and start of criminal proceedings for crimes against national security, including of a military nature, such as treason, rebellion, and espionage, against social referents, journalists, politicians, and protesters (*infra*). These are provisions that typify behaviors in a broad, vague, and ambiguous way that lend themselves to abuse in order to suppress political and critical expressions that have nothing to do with national security, from a democratic perspective. For example, the crime of treason, prescribed in articles 128 and 129 of the Organic Criminal Code, and in article 464 of the Code of Military Criminal Justice, establishes prison up to 30 years for those who "conspire" against the republican institutions of the homeland or "antagonize them by any means", or "threat in any way national sovereignty". Likewise, the crime of military rebellion establishes that "rebellion is a military crime even for non-military", when "they

<sup>641</sup> Article 444 of the Criminal Code.

<sup>642</sup> For instance, in the Merit Report of the case of Néstor José and Luís Uzcátegui et al. (Venezuela), the IACHR determined that Article 444 of the Criminal Code, which establishes the crime of defamation, "does not establish clear parameters that allow circumscribing the prohibited conduct and its elements [...]; it is not capable of guiding the conduct of individuals regarding the serious consequences of the deprivation of personal freedom and the abrogation of political rights. Its text does not define a clear and unequivocal threshold between cases in which it is lawful or not to publicly denounce criminal deeds or to issue critical opinions about State authorities. On the contrary, the vagueness of this legal text opens the door to the use of criminal law to produce an intimidating environment that inhibits a discourse of public interest" [IACHR, Report No. 88/10, Case 12,661, Merit, Néstor José and Luís Uzcátegui et al., Venezuela, para. 279]. The IACHR issued a similar conclusion in the Merit Report of the case of Tulio Álvarez [IACHR, Case No. 12.663, Tulio Alberto Álvarez, Venezuela, July 5, 2017]. Also in the case of Francisco Usón Ramírez, the IACHR pointed that Art. 505 of the Organic Code of Military Criminal Justice establishes a crime of *desacato*, since it punishes criticism of the Armed Forces and establishes a penalty of deprivation of freedom for a period of up to eight years. The IACHR determined that "this is quite clearly incompatible with the standards recognized by the Inter-American System in the area of freedom of expression, and for this reason the domestic courts should have refrained from enforcing it" [IACHR, Application to the Inter-American Court of Human Rights in the Case of Francisco Usón Ramírez (Case 12,554) versus the Bolivarian Republic of Venezuela, July 25, 2008]

<sup>643</sup> IACHR, Office of the Special Rapporteur for Freedom of Expression, The Inter-American Legal Framework Regarding the Right to Freedom of Expression, 2009; IACHR, Annual Report 1994, Chapter V, Report on the Compatibility of "Desacato" Laws with the American Convention on Human Rights; Report N° 90/05, Case 12,142, Merit, Alejandra Marcela Matus, Chile, para. 40-42, Annual Report 1998, Volume III, Report of the Special Rapporteur for Freedom of Expression, Chapter IV, Laws of Contempt, Compulsory Membership in a Professional Association, and Murders of Journalists; Annual Report 2000, Report of the Office of the Special Rapporteur for Freedom of Expression, Chapter III, Legislation and Freedom of Expression: an Overview of the Internal Legislation of the Member States, 2. Desacato, or Contempt, Laws; and Annual Report 2002, Report of the Office of the Special Rapporteur for Freedom of Expression.

antagonize in any way the national forces." <sup>644</sup> Likewise, any person who "reveals documents, news, or information of a military nature that in the interest of national defense must remain secret" <sup>645</sup>, commits the crime of espionage. For its part, the Decree-Organic Law on Security of the Nation [*Decreto-Ley Orgánica de Seguridad de la Nación*] <sup>646</sup> provides prison for those who refuse, within the framework of the law, to provide information to the authorities on national security, or to those who disclose data or provide information to "any particular or to another State compromising the security and defense of the Nation."

275. *Hate Speech*: On November 8, 2017, the Constituent National Assembly (ANC for its acronym in Spanish) of Venezuela approved the bill of *Constitutional Law against Hatred, for Pacific Coexistence and Tolerance* presented by President Maduro. The approved law sets restrictions to the exercise of the right to freedom of expression in Venezuela that are incompatible with the Inter-American Legal Framework on this matter. First, the law establishes broad, vague and ambiguous criminal figures to punish persons who "foster, promote or incite hatred" or promote "fascism", attributing an unacceptable measure of discretion to triers at the moment of establishing what type of violence and hate was promoted, thus placing freedom of expression at risk and compromising the principle of legality. The terms mentioned by this law, such as "promotion and encouragement" of all types of "discrimination" and "fascism" are too broad and imprecise, and exceed the provisions of international human rights law in this matter. This law does not seem to have a legitimate aim. In its general provisions, it evokes the objectives of promoting diversity and tolerance, while eradicating hate, discrimination and violence by discriminatory reasons. However, the declarations issued by authorities of the government and ANC members indicate that it will be used to persecute the political opposition, legitimize censorship and criminalize expressions against the political ideas of the government <sup>647</sup>. As the President of the Republic presented the bill of the new law, he pointed that "anyone who should go into the streets and express intolerance and hate will be captured, judged and punished with severe penalties ranging from 15 to 25 years of prison" <sup>648</sup>. During the debates on the bill, ANC President and

<sup>644</sup> Art. 486 of the Organic Code of Military Criminal Justice.

<sup>645</sup> Art. 471 of the Organic Code of Military Criminal Justice.

<sup>646</sup> Office of the President, Decree No. 1.473, Reform of the Organic Law on National Security, November 19, 2014.

<sup>647</sup> Ministry of Popular Power for Communication and Information, Ley de Convivencia Pacífica garantizará que nadie sea víctima del odio, August 22, 2017; ANC debate Ley para la Convivencia Pacífica and contra la Intolerancia, August 22, 2017; and Deutsche Welle, La Constituyente regulará las redes sociales para evitar "delitos de odio", August 22, 2017.

<sup>648</sup> Aporrea, La ANC recibió el proyecto de ley contra el Odio, la Intolerancia and la Violencia, August 11, 2017; EFE / El Nuevo Herald, Maduro propone ley que da cárcel a quien 'salga a la calle a expresar odio', August 11, 2017.



former Venezuelan Chancellor Delcy Rodríguez pointed that the State should take action against the use of social networks as “psychological war laboratories”. Mrs. Rodríguez affirmed that “there is an imported hate, which is part of a plan to attack the people’s integrity. Such imported hate is bringing the most racist and classist expressions of the Venezuelan right-wing”.<sup>649</sup> For instance, she stated that “the mayor of Caracas was threatened by a twitter message from an opposition-party. Such death threats and hate expressions must end in Venezuela, and for this reason, this law will provide for the punishment of hate crimes, with sanctions and regulations for media outlets”<sup>650</sup>. Also ANC Vice-President Earle Herrera pointed that “extremist sectors of the opposition [...] have harassed Chavist workers and representatives, and Venezuelan citizens were burned exclusively on account of their political ideology”<sup>651</sup>. The law sets severe penalties, but their necessity and proportionality were not demonstrated. Its Article 20 establishes from “10 to 20 years” of prison, as well as the imprescriptibility of the crimes defined by it. Art. 22 provides for the revocation of official licenses to radio and television services that “disseminate messages propagandizing in favor of war or advocating for national, racial, religious or political hate, or any other form of hatred”. This section also considers a fine of 50,000 to 100,000 tax units for legal persons held responsible for social networks and electronic media outlets that do not suspend messages with such features within six hours after they are published, in addition to the applicable criminal and civil penalties. Article 23 sets financial sanctions of three to four per cent of the raw income of radio or TV providers who “do not fulfill their obligation to reserve free broadcast spaces for messages that promote diversity, tolerance and mutual respect, and for the prevention and eradication of all forms of political violence, hate and intolerance”.

276. *States of exception*: as already explained, Presidential Decree No. 2849<sup>652</sup> of May 13, 2017 established a new state of exception and economic emergency in the entire territory of Venezuela that grants wide discretionary powers to the Executive to repeal human rights through “special and forceful” measures ([Chapter III.B.2](#)). It has been a matter of serious concern that such powers are invoked to arbitrarily restrict the right to freedom of expression. The decree aims to combat the “hostile and destabilizing attitude against the Republic” promoted by “opposition political sectors, with the support of foreign spokespersons and

<sup>649</sup> Ministry of Popular Power for Communication and Information, [Ley de Convivencia Pacífica garantizará que nadie sea víctima del odio](#), August 22, 2017; ANC debate [Ley para la Convivencia Pacífica and contra la Intolerancia](#), August 22, 2017.

<sup>650</sup> EFE, [Regularán el uso de redes sociales en Venezuela para sancionar “delitos de odio”](#), August 23, 2017.

<sup>651</sup> Ministerio del Poder Popular para la Comunicación and la Información, [Ley de Convivencia Pacífica garantizará que nadie sea víctima del odio](#), August 22, 2017.

<sup>652</sup> Office of the President, [Decreto No. 2.849](#), May 2017.



institutions." In particular, the decree considers that sectors of the opposition "maintain a siege against the recovery of the Venezuelan economy" and execute "new and perverse forms of attacks", such as "the use of the information technology systems and the use of the cyberspace to foment hatred and create a distortion of our economy [...] and the dissemination of false news about the ability or disposition of payment of the Republic or of PDVSA, regarding the financial instruments issued." The decree of state of exception gives the authority to the executive power to: 1) "design and execute special public security plans that face destabilizing actions that conspire against the peace of the Nation", and 2) "dictate forceful, transitory, and exceptional regulations that prevent campaigns of destabilization and distortion of the economy, driven by national and foreign factors through computer technology and cyberspace". As reported, the decree has authorized the filtering, blocking, and monitoring of content on the Internet and the people have not had mechanisms of transparency or independent judicial control over these measures<sup>653</sup>.

277. *Financial crimes*: in 2015 the President of the Republic issued the Decree Law on the Exchange Regime and its Illicit [*Decreto Ley del Régimen Cambiario y sus Ilícitos*], which establishes sanctions of ten to fifteen years in prison for those who broadcast "via electronic means, television, radio, or communication of any kind, writings, signals, images or sounds," false or fraudulent "information" about the exchange rate of the Venezuelan currency with respect to the dollar. The information will be understood as "false" or "fraudulent" when it contradicts or distorts the values applicable to the exchange rate set by the Executive and the Central Bank of Venezuela."<sup>654</sup> The extent of this type of crime can unduly limit access to information of public interest in economic matters, at a time when Venezuela is going through an economic and financial crisis that has led to the devaluation of the bolivar against the dollar at historic lows, and at a time when serious obstacles to access timely and reliable state information exist (*infra*).

278. *Law for the Defense of Political Sovereignty and National Self-Determination* [*Ley de Defensa de la Soberanía Política y la Autodeterminación Nacional*]<sup>655</sup>: this law establishes in its Article 8 sanctions of high fines to any Venezuelan national who invites to the country a foreign person or organization to issue opinions that may offend "the institutions of the State, its high officials, or affect the exercise of sovereignty."<sup>656</sup> The same rule

<sup>653</sup> IPYS, [Internet Society se pronuncia por bloqueos de Internet en Venezuela](#), May 24, 2017.

<sup>654</sup> [Decreto No. 2.167](#), by means of which the Decree with rank, value and force of Law of the Exchange Regime and its Illicit is issued. December 30, 2015.

<sup>655</sup> National Assembly, [Ley de Defensa de la Soberanía Política and la Autodeterminación Nacional](#), December 23, 2010.

<sup>656</sup> Art. 8 of the [Ley de Defensa de la Soberanía Política and la Autodeterminación Nacional](#).

provides that foreigners who participate in these activities will be expelled from the territory of the Republic, it also provides sanctions to impose on the nationals who have invited them.

279. The IACHR notes with concern the proliferation of legal provisions in the Venezuelan legal system that restrict the right to freedom of expression under ambiguous and overly broad definitions of concepts such as national security, public order, or hate speech. In most cases, these are laws adopted by the executive branch without a legislative process with a broad consultation and public debate. This type of norms gives the administrative authorities in charge of applying them a discretion incompatible with the full validity of the right to freedom of expression<sup>657</sup>. Indeed, the provisions examined do not limit the discretion of the executive authorities to determine the meaning of these concepts, which is a synonym of Government or official political power interest<sup>658</sup>.
280. While it is true that the protection of national security, the safeguarding of public order, and the protection of the rights of individuals are legitimate objectives for establishing subsequent liabilities for the exercise of freedom of expression, they must be invoked and interpreted in accordance to "the just demands of the general welfare and the advancement of democracy"<sup>659</sup>. The need for these new laws to protect legitimate interests in a democratic society and to address specific and objectively verifiable threats is not clear<sup>660</sup>. Particularly, the IACHR recalls that national security cannot be used "as a pretext for imposing vague or arbitrary limitations and may only be invoked when there exists adequate safeguards and effective remedies against abuse."<sup>661</sup> It is also worrying that the regulations contemplate sanctions of the greatest severity: long prison sentences, suspension of transmissions, revocation of a concession, as well as blocking and removal of content on the Internet<sup>662</sup>. This type of measures must be subject to a strict judgment of necessity and proportionality in order to ensure that they are not used to pressure and punish or reward and

<sup>657</sup> IACHR, Office of the Special Rapporteur for Freedom of Expression, The Inter-American Legal Framework Regarding the Right to Freedom of Expression, 2009.

<sup>658</sup> United Nations, The Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights, 1985. According to the Global Principles on National Security and the Right to Information ("Tshwane Principles"), of June 12, 2013, "It is good practice for national security, where used to limit the right to information, to be defined precisely in a country's legal framework in a manner consistent with a democratic society". The Johannesburg Principles on National Security, Freedom of Expression and Access to Information, adopted in November 1996, expresses itself in similar terms.

<sup>659</sup> Article XXVIII of the American Declaration.

<sup>660</sup> IACHR, Annual Report 2009, Report of the Office of the Special Rapporteur for Freedom of Expression, Chapter III (Inter-American Legal Framework of the Right to Freedom of Expression), para. 82.

<sup>661</sup> UN, The Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights, 1985, para. 31.

<sup>662</sup> IACHR, Office of the Special Rapporteur for Freedom of Expression, The Inter-American Legal Framework Regarding the Right to Freedom of Expression, 2009, para. 58 and ss; and Freedom of Expression and the Internet, OEA/Ser.L/V/II, IACHR/RELE/INF.1/13, December 31, 2013, para. 84-90.

privilege the media according to their editorial lines or to prevent people from searching, receiving, and disseminating, information of public interest<sup>663</sup>.

281. Therefore, and as it did in previous reports, the IACHR concludes once again that Venezuela's legal system contains regulations that are incompatible with its international obligations regarding freedom of expression. Consequently, the IACHR urges the Venezuelan State to urgently adapt its legislation in accordance with the standards described herein.

## 2. Assaults, Attacks, Detentions, and other Acts of Harassment against Journalists

282. Violence against journalists and social media workers continues to be a pressing problem in Venezuela. In recent years, the IACHR continued to receive information on numerous acts of physical aggression, threats, detentions, robberies, or dispossessions of media workers' work equipment in Venezuela, perpetrated by security forces and groups of armed civilians, with the intention of silencing them and limiting their coverage in different contexts<sup>664</sup>.
283. For example, the IACHR learned of several cases in which public officials threatened journalists and stripped them of their work equipment<sup>665</sup>. In other cases, security forces would not have only stripped journalists of their work equipment, but also assaulted them<sup>666</sup>. The assaults for recording sections of a film during its launch<sup>667</sup>, the withholdings to

<sup>663</sup> Principle 13 of the [Declaration of Principles on Freedom of Expression](#); and IACHR, Office of the Special Rapporteur for Freedom of Expression, [Freedom of Expression and the Internet](#), OEA/Ser.L/V/II, IACHR/RELE/INF.1/13, December 31, 2013, para. 84-90.

<sup>664</sup> IPYS, [Colectivos agredieron a reporteros gráficos durante elecciones estudiantiles de la UCV](#), February 17, 2017; Diario Contraste, [Colectivos armados agredieron a reportero gráfico Felipe Romero en la UCV #17Feb](#), February 17, 2017; IPYS, [Funcionarios de seguridad agredieron and amenazaron de muerte a periodista en el Consejo Legislativo de Sucre](#), February 17, 2017; and El Pitazo, [Golpearon a opositores durante Memoria y Cuenta de un diputado en Cumaná](#), February 17, 2017.

<sup>665</sup> El Cooperante, [Presunto trabajador de la Alcaldía de Coro intentó robar a fotógrafo en rueda de prensa](#), February 23, 2017; and IPYS, [Amenazaron con un arma a reportero gráfico del diario La Mañana](#), February 24, 2017; 2001, [Amenazaron a periodistas del Diario 2001 durante cobertura en el Materno de Caricuao](#), February 9, 2017; and IPYS, [Reporteros fueron amenazados por supuesto colectivo en el Hospital Materno Infantil de Caricuao](#), February 11, 2017.

<sup>666</sup> IPYS, [Policía de Yaracuy empujó and intentó despojar de su celular a periodista durante manifestación de la oposición](#), April 1<sup>st</sup>, 2017; and El Pitazo, [Periodista denuncia agresión por parte de cuerpos de seguridad en Yaracuy](#), April 10, 2017.

<sup>667</sup> Caraota Digital, [Actor Laureano Olivarez agredió and amenazó a equipo de Caraota Digital](#), February 23, 2017; and IPYS, [Atacaron a camarógrafo durante el preestreno de una película venezolana](#), February 25, 2017.

prevent the transmission of a session of the AN<sup>668</sup>, the attacks by public officials for supposedly being "yellow press,"<sup>669</sup> are other examples of the different situations where physical violence was used in against journalists and media workers.

284. The IACHR has also registered cases of journalists who were victims of assault, threats, and harassment after publishing investigations and reports on corruption and transgressions related to the activity of public officials<sup>670</sup>.
285. Likewise, the IACHR noted with concern the withdrawal and cancellation of passports to journalists by migration authorities, after they had made comments contrary to the interests of the Government. On May 17, state officials canceled the passport of journalist César Miguel Rondón and media worker Floralicia Anzola and prevented them from leaving the country at Simón Bolívar airport in Maiquetía, Caracas. The day before, President Nicolás Maduro had publicly declared that Miguel Rondón and *El Nacional* columnist Tulio Hernández should be detained<sup>671</sup>.
286. The IACHR recorded several attempts and cases of robbery and assault against journalists exercising their work. Criminals would have violently deprived them of various types of work material such as cameras, cellphones, and even cars<sup>672</sup>. Likewise, multiple episodes of theft of

<sup>668</sup> Globovisión, Liberan a trabajadores de Capitolio TV tras supuesto "secuestro", January 10, 2017; and IPYS, Secuestraron por más de una hora a técnicos de Capitolio TV, January 10, 2017.

<sup>669</sup> IPYS, Funcionaria de la alcaldía de San Francisco agredió a reporteras en jornada del Carné de la Patria, January 30, 2017.

<sup>670</sup> IPYS, Amenazaron a camarógrafo de Venevisión, February 3, 2017; Runrun, Recrudescen ataques contra representantes de medios de comunicación en 2017, January 17, 2017; Tal Cual, GN amenaza a periodista Algimiro Montiel por trabajo sobre corrupción en la frontera, January 16, 2017; and Tal Cual, GN amenaza a periodista Algimiro Montiel por trabajo sobre corrupción en la frontera, January 16, 2017. IPYS, Sebin interrogó a locutor por presuntas declaraciones sobre caída de puente, February 3, 2017; El Pitazo, Sebin interroga a locutor Rafael Hernández por sus comentarios sobre puente Guanape, January 26, 2017; Caraota Digital, Reportero de Caraota Digital fue amenazado por GNB durante colas por gasolina, March 23, 2017; El Carabobeño, Policia de Chacao impidió reporte de colas en gasolineras a periodistas, March 23, 2017; El Nacional, SNTP: Polichacao impidió a periodistas reportar colas en gasolineras, March 23, 2017; El Carabobeño, Periodista de Dolar Today reveló que estuvo secuestrado en un cuarto oscuro, November 7, 2017; El Nacional, Periodistas denuncian desaparición del reportero gráfico Jesús Medina, November 4, 2017.

<sup>671</sup> El Nacional, El Saime anuló el pasaporte de César Miguel Rondón, May 18, 2017; and Espacio Público, Anulan pasaporte a César Miguel Rondón tras amenazas de Maduro, May 17, 2017.

<sup>672</sup> El Carabobeño, Robaron a periodista and reportero gráfico de Últimas Noticias durante pauta, January 6, 2017; IPYS, Robaron equipo reporteril de Últimas Noticias, January 9, 2017; Sumarium, Atracan al equipo de Globovisión que cubría actos de la Divina Pastora, January 13, 2017; Panorama, Reportan robo a equipo de Globovisión que cubría actos de la Divina Pastora, January 13, 2017; IPYS, Robaron cámara fotográfica a reportero de Versión Final, February 7, 2017; Caraota Digital, Funcionarios policiales recuperaron un vehículo robado a Globovisión, March 13, 2017; El Cooperante, Recuperan vehículo robado a empleados de Globovisión en Plaza Venezuela, March 13, 2017; La Nación, Equipo de Últimas Noticias fue víctima de robo en Petare, March 14, 2017; Analítica, Robaron a reporteros de Últimas Noticias en Petare, March 15, 2017; Caraota Digital, Radio Trujillo quedó fuera del aire tras robo de su sistema de cableado, March 19, 2017; IPYS, Radio Trujillo 1280 AM se encuentra fuera del aire por hurto de cableado eléctrico, March 20, 2017;

journalistic equipment have been recorded through invasions of media headquarters, especially in radio broadcasting<sup>673</sup>.

287. During the days of protest that began in April, there was also a pattern of acts of harassment, theft, and destruction of equipment and journalistic records - in many cases with physical aggression<sup>674</sup>. The IACHR received information about dozens of assaults<sup>675</sup> and theft of equipment that were perpetrated by public officials<sup>676</sup>. Civilians and armed groups or "collectives"<sup>677</sup> would also have been responsible for these events. Similarly, there have been multiple cases of theft of journalistic equipment by criminals in the context of protests<sup>678</sup>. A high number of detentions of reporters has been registered during the social protests initiated in April 2017<sup>679</sup>. For the most part, the detentions last for a few hours and appear to be aimed at intimidating journalists and media workers<sup>680</sup>. In some situations, detentions have lasted longer, as was the case of the journalist Yonathan Guédez, who the GNB arrested on April 24 while covering a protest in the State of Lara and released 16 days later under the regime of presentation before courts<sup>681</sup>.

IPYS, Hurtaron equipos de Diario de Guayana en cobertura, March 28, 2017; NTN24, Robaron el equipo de trabajo de los periodistas del Diario Guayana mientras cubrían el desfile de los niños con Síndrome, March 21, 2017; Sumarium, Atracan al equipo de Globovisión que cubría actos de la Divina Pastora, January 13, 2017; and Panorama, Reportan robo a equipo de Globovisión que cubría actos de la Divina Pastora, January 13, 2017.

<sup>673</sup> SNTP, Informe Mensual, 26 agresiones a la libertad de expresión en los primeros 30 días del 2017 documentó el SNTP, undated.

<sup>674</sup> Runrunes, SNTP exige investigación penal contra coronel Vladimir Lugo por agresiones a periodistas, March 31, 2017; 2001, Sntp exige investigación penal contra el coronel Vladimir Lugo por agresiones a periodistas, March 31, 2017; and *Diario Contraste*, Detienen a camarógrafo de Vivoplaynet en protesta del TSJ #31Mar, March 31, 2017.

<sup>675</sup> Sindicato Nacional de Trabajadores de Prensa, 14 trabajadores de la prensa han sido detenidos and 106 agredidos en el marco de las protestas, April 24, 2017; La Nación, Agredieron a tres periodistas durante cobertura a manifestación en Caracas, April 22, 2017; and El Español, Las manifestaciones en Caracas se vuelven contra la prensa: agreden a un periodista de Efe, May 2, 2017.

<sup>676</sup> El Carabobeño, GNB amedrentó a dos periodistas en Aragua, January 17, 2017; 800 Noticias, GNB le quitó la cámara a periodistas del diario El Clarín de Aragua, January 17, 2017; La Patilla, La "gloriosa" GNB robó a tres periodistas en pleno ejercicio de su labor este #3May en Altamira, May 3, 2017; and *Diario Contraste*, GNB robó cascos, chalecos and teléfonos a periodistas durante protesta en Altamira #3May, May 3, 2017.

<sup>677</sup> SNTP, Informe Mensual, 26 agresiones a la libertad de expresión en los primeros 30 días del 2017 documentó el SNTP, undated.

<sup>678</sup> IPYS, Reporteros denunciaron hurto durante cobertura de manifestaciones, January 23, 2017; El Pitazo, Hurtaron teléfono de periodista de El Pitazo durante marcha de la salud en San Martín, February 7, 2017; and IPYS, Despojaron de su celular a reportero de El Pitazo durante marcha por la salud, February 7, 2017.

<sup>679</sup> El Diario de Los Andes, En 25 días 14 trabajadores de la prensa han sido detenidos, May 3, 2017; Sindicato Nacional de Trabajadores de Prensa, 14 trabajadores de la prensa han sido detenidos and 106 agredidos en el marco de las protestas, April 24, 2017.

<sup>680</sup> La Patilla, Liberan a periodista que fue retenido and brutalmente agredido por la GNB en Cumaná, April 13, 2017; El Nacional, Liberaron al camarógrafo Elvis Flores tras ocho horas detenido en el Sebin, April 6, 2017; and El Nacional, Liberaron a periodista Rhobinson Rojas tras cuatro horas detenido, April 22, 2017.

<sup>681</sup> *Diario de Lara La Prensa*, Yonnathan Guédez fue puesto en libertad bajo régimen de presentación, April 26, 2017.

288. Venezuelan civil society organizations have reported that most cases of violence against journalists and media workers remain unpunished. These processes are characterized by the lack of due diligence in the investigations, the sluggishness of the processes initiated, and political pressures against the judiciary<sup>682</sup>.
289. The IACHR recalls that "[t]he murder, kidnapping, intimidation of and/or threats to social communicators, as well as the material destruction of communications media violate the fundamental rights of individuals and strongly restrict freedom of expression. It is the duty of the state to prevent and investigate such occurrences, to punish their perpetrators and to ensure that victims receive due compensation."<sup>683</sup> States should ensure that crimes against freedom of expression are subject to independent, prompt, and effective investigations and judicial proceedings. In addition to criminal investigations, disciplinary procedures should be put in place when there is evidence that public officials have committed violations of freedom of expression during their professional work. As has been pointed out on other occasions, the lack of sanctions against material and intellectual perpetrators of homicides, assaults, threats, and attacks related to the exercise of journalistic activity leads to new crimes and generates a notorious effect of self-censorship that seriously undermines the possibilities of a true open, free, and democratic debate.
290. In the context of demonstrations and situations of social unrest, the work of journalists and media workers, as well as the free flow of information through alternative media such as the social networks, is essential to keeping the public informed of the events. At the same time, it plays an important role in reporting on the conduct of the State and of law enforcement authorities toward the protesters, preventing the disproportionate use of force and the abuse of authority. Attacks against journalists who cover these events violate both the individual aspect of freedom of expression—insofar as they prevent journalists from exercising their right to seek and disseminate information, and creates a chilling effect—as well as its collective aspect—in that they deprive society of the right to know the information that journalists obtain. The State has the duty to ensure that journalists and media workers reporting on public

<sup>682</sup> For instance, in March 2017, the 3<sup>rd</sup> Chamber of the Court of Appeals of Caracas confirmed the dismissal of an investigation of cruel treatment and injuries perpetrated against photo-journalist Gabriel Osorio. Osorio was hit by pellet shots and bodily blows allegedly by unidentified GNB employees. The Public Prosecutor's Office requested the dismissal of this process "since it was not possible to identify the responsible persons". Similarly, journalist María Beatriz Lara was held, hit and sexually attacked by members of the police in the state of Aragua in June 2015. The Prosecutor's accusation against the alleged responsible individuals was presented in December 2016, but since then no substantive action has taken place in regard to the criminal proceeding. After being threatened, María Beatriz Lara left the country. See: Espacio Público. *Libertad de Expresión e Impunidad en Venezuela*. 2017.

<sup>683</sup> Principle 9 of the Declaration of Principles on Freedom of Expression.

demonstrations are not arrested, threatened, assaulted, or limited in any manner in their rights as a result of practicing their profession. Their work materials and tools must not be destroyed or confiscated by the authorities<sup>684</sup>.

### 3. Detention and Expulsion of Foreign Journalists

291. The IACHR expressed alarm over what has become a pattern of detention, harassment, and expulsion of foreign journalists who investigate events of public interest in Venezuelan soil or disseminate information on the management of government. According to Venezuelan civil society records, as of 2016, at least 30 foreign journalists were either expelled or prevented from entering the country<sup>685</sup>. Highlights were the cases of *Deutsche Welle* correspondent Aitor Sáez<sup>686</sup>; Brazilian journalists Leandro Stoliar and Gilson Fred Oliveira, from *Record TV*<sup>687</sup>; Chilean journalist Patricio Nunes, from *Canal 13*<sup>688</sup>; British journalists Ian O'Reilly and Stephen Sackur, from *BBC*<sup>689</sup>; French journalists Sebastián Pérez and Didier Barral, from *Agencia CAPA*<sup>690</sup>; Argentine journalist Jorge Lanata<sup>691</sup>; Chilean journalist Gabriela Donoso, from *Reuters*<sup>692</sup>; and Dutch journalist Bram Ebus<sup>693</sup>.

<sup>684</sup> United Nations (UN) Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression, and Special Rapporteur for Freedom of Expression of the Inter-American Court of Human Rights, OAS, Joint declaration on violence against journalists and media workers in the context of protests, September 13, 2013.

<sup>685</sup> Espacio Público. Situación General del derecho a la libertad de expresión en Venezuela. Enero-Septiembre de 2017.

<sup>686</sup> IPYS Venezuela, Gobierno prohibió a corresponsal español ingresar al país, January 25, 2017; and El Confidencial, Venezuela me impidió la entrada y aún no sé el motivo, January 24, 2017.

<sup>687</sup> Committee to Protect Journalists (CPJ), El CPJ insta a Venezuela a dejar de obstruir el trabajo de la prensa extranjera, February 13, 2017; O Globo, Jornalistas detidos na Venezuela chegam a São Paulo, February 13, 2017; R7.com, Jornalistas da Record TV chegam ao Brasil após detenção na Venezuela, February 13, 2017.

<sup>688</sup> Tele13, Periodista de Canal 13 es expulsado de Venezuela en medio de ofensiva contra prensa internacional, March 23, 2017; and El Mostrador, Expulsan de Venezuela a periodista de Canal 13 por grabar filas en un supermercado, March 23, 2017.

<sup>689</sup> RNV, Expulsados! Vea lo que pretendían hacer estos 2 espías en Venezuela, undated; and FM Center, Detenidos and expulsados del país dos periodistas de la BBC, March 23, 2017.

<sup>690</sup> El Nuevo Herald and Agence France Presse, Liberados 2 periodistas franceses que fueron detenidos sin explicación en Venezuela, April 21, 2017; and Deutsche Welle, París intercedió para liberar a 2 periodistas franceses detenidos en Caracas, April 21, 2017; and Telemundo, Sebastián Pérez Pezzani: "Venezuela es como Corea del Norte", April 27, 2017.

<sup>691</sup> Inter-American Press Association (IAPA), Venezuela prohibió ingreso al país de periodista argentino, July 27, 2017; and El País, Venezuela expulsa al periodista argentino Jorge Lanata, July 28, 2017.

<sup>692</sup> Colegio Nacional de Periodistas (CNP), Niegan entrada al país a reportera chilena de Reuters, September 1<sup>st</sup>, 2017; and Caraota Digital, En Maiquetía prohibieron ingreso de Gabriela Donoso periodista chilena de Reuters, September 1<sup>st</sup>, 2017.

<sup>693</sup> El Universal, Liberado periodista holandés detenido por investigar sobre el Arco Minero, September 22, 2017; Runrun, Guardia Nacional detuvo a periodista holandés en Puerto Ayacucho cuando investigaba el Arco Minero, September 22, 2017.



292. In all the above-mentioned cases, the journalists who were victims of harassment would have been carrying out investigations into corruption or the political and economic crisis in the country. According to the information available, the government has maintained that the expulsions and prohibitions of entry to the Venezuelan territory are due to the lack of accreditation of foreign journalists<sup>694</sup>.
293. The IACHR strongly rejects this practice and reminds the Venezuelan State that the right to freedom of expression protects the right of every person to seek, receive, and impart information and ideas of all kinds, regardless of frontiers. In view of the important role of control exercised by journalists and the media in the democratic system, the IACHR and its Office of the Special Rapporteur have been emphatic in stating that journalists should not be required to hold a license or registration to carry out their work. The registration and accreditation schemes of journalists are only appropriate if they are necessary to provide them with privileged access to places or events, such schemes must be supervised by independent bodies and by decisions on this accreditation, having a fair procedure, based on clear, reasonable transparent, and previously published criteria. In addition, decisions on accreditation should be neutral against the content and cannot discriminate on the basis of the editorial line or type of coverage.

#### 4. Criminalization of Criticism and Journalistic Work

294. The IACHR has continued to register the start of criminal proceedings against journalists and the media, university professors, and citizens in general, aimed at punishing and inhibiting critical expressions of state authorities' actions or issues of public interest. As described below, on the one hand, the criminalization of criticism and journalistic work has been the result of the application of criminal offenses that, due to their vagueness or ambiguity, violate the principle of legality and inter-American standards, such as the offenses of criminal defamation<sup>695</sup>, treason, and

<sup>694</sup> Espacio Público. Situación General del derecho a la libertad de expresión en Venezuela. Enero-Septiembre de 2017.

<sup>695</sup> Thus, for instance, on March 11, 2016, the Sixth Criminal Trial Court of the State of Bolívar imposed on the director of the *Correo del Caroní*, David Natera Febres, a penalty of four years of prison and the payment of a fine of 1,137 tax units for defamation, on account of the periodical's coverage of an alleged case of corruption at state company Ferrominera del Orinoco. The court also prohibited Febres to leave the country and ordered his attendance at every 30 days until his sentence could be confirmed and executed; it also prohibited the selling and registering of the periodical's rights, and prohibited the *Correo del Caroní* to continue publicizing information about the case [*Correo del Caroní*, "El Tiburón" que extorsionaba en la ciudad del hierro, July 15, 2013; *Correo del Caroní*, Pioneros de FMO repudian saqueo de su empresa por la corrupción, July 16, 2013; *Correo del Caroní*, Fiscalía solicita enjuiciamiento de empresario por el Case FMO, September 6, 2013; *Correo del Caroní*, La investigación periodística detrás de la sentencia contra Correo del Caroní. 18 marzo de 2016, March 18, 2016; *Correo del Caroní*, Tribunal condena a Correo del Caroní por investigar y publicar notas sobre la corrupción en Ferrominera; March 11, 2016; IPYS Venezuela, La censura



instigation to violence. In other cases, criminalization has been the product of criminal proceedings based on events on which there is no evidence, or the evidence is directly false. These criminal proceedings are generally protracted and within their framework, afflictive measures are authorized against individuals and the media, such as pretrial detention, measures of censorship, bans on leaving the country, and high bails. In several of these cases, investigations and legal proceedings were initiated after the highest authorities of the State called on public entities to "act" against the persons prosecuted.

295. The criminal proceedings and convictions described below have a systemic effect on the general conditions for the free exercise of freedom of expression in Venezuela. In addition to the individual dimension of the impact of these measures on the individuals accused, criminalization exerts an intimidating effect (*chilling effect*) on society as a whole, which may lead to preventing or hindering public debate and criticizing public officials<sup>696</sup>.

### ***Case El Nacional, La Patilla and Tal Cual***

296. On April 21, 2015, the president of the AN, Diosdado Cabello, criminally and civilly sued the media *El Nacional*, *La Patilla* and *Tal Cual*, and their directors, Henrique Miguel Otero, Alfredo Ravell, and Teodoro Petkoff for defamation, after the media broadcasted a story of the Spanish newspaper *ABC* in which a former trusted official of Cabello linked him to drug trafficking, an accusation that the official denied<sup>697</sup>. In May, the judiciary ordered a ban to leave the country for the 22 directors involved and their periodic presentation before the courts. According to Cabello's lawsuit, this measure was requested under "reasonable presumptions" of flight risk and obstruction of justice. Diosdado Cabello also filed a civil suit for moral damages against the three newspapers and the court in charge ordered a measure banning the sale or bonding of their assets<sup>698</sup>. On its website, the TSJ expressed its solidarity with the then president of the AN, and without a hearing before the court in charge of the case nor respect for due process guarantees, the TSJ advanced its opinion stating that the disclosure of

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tiene un aval judicial en la sentencia contra el Correo del Caroní, March 11, 2016; Espacio Público, Espacio Público rechaza sentencia contra el Correo del Caroní por informar sobre corrupción, March 11, 2016; El País, Condenado a cuatro años el director de un diario en Venezuela, March 11, 2016; and IACHR, Office of the Special Rapporteur for Freedom of Expression, Press Release R34/16, Office of the Special Rapporteur expresses concern over defamation conviction in Venezuela, March 14, de 2016.

<sup>696</sup> IACHR, "Fernando Alciblaides Villavicencio Valencia et al., Ecuador". Precautionary Measure No. 30-14. March 24, 2014, Para. 34-36.

<sup>697</sup> IACHR, Annual Report 2015, Report of the Office of the Special Rapporteur for Freedom of Expression, Chapter II (Evaluation of the Status of Freedom of Expression in the Hemisphere), para. 1237.

<sup>698</sup> IACHR, Resolution 43/15, Precautionary Measure No. 179-15, Miguel Henrique Otero et al., Venezuela, November 9, 2015.

information made by the three media "lacking veracity carry the sanctions provided in the national legal system."

297. On August 24, 2015, the IACHR and the Office of the Special Rapporteur for Freedom of Expression issued a statement in which they expressed their deep concern at the stigmatization and judicial harassment against the three media outlets<sup>699</sup>.
298. On November 9, 2015, the IACHR adopted precautionary measures in favor of Miguel Henrique Otero, president-editor of *El Nacional*; Alberto Federico Ravell, director of *La Patilla*, and his daughter Isabel Cristina Ravell; and Teodoro Petkoff, director of *Tal Cual*<sup>700</sup>. In adopting this decision, the IACHR assessed the existence of repeated stigmatizing statements made by high-level officials, acts of monitoring and surveillance, expedited criminal and civil proceedings for defamation initiated by Cabello, banning them from leaving the country, prejudgment by the TSJ, and seizure of property<sup>701</sup>. The IACHR understood that in the Venezuelan context, the media that belonged to the beneficiaries of the measure were the only print media with national distribution that still maintained an editorial line independent of the Government.
299. The criminal trial, which could lead to convictions of up to four years in prison and high fines, has lasted until the date of this report. According to the information available, in September 2017, the case against journalist Teodoro Petkoff, director of *Tal Cual*, was dismissed. The renowned politician and journalist of 85 years of age was declared civilly incompetent, for health reasons. This decision has been qualified by Petkoff's lawyers as arbitrary and illegal.<sup>702</sup>
300. The IACHR and its Office of the Special Rapporteur have indicated that the use of these criminal offenses, such as defamation as a mechanism for assigning subsequent liabilities when dealing with specially protected speeches, contravenes the freedom of expression protected by Article IV of the American Declaration. In this regard, the Commission and the Inter-

<sup>699</sup> IACHR, [Press Release No. 93/15](#), IACHR and the Special Rapporteur express deep concern over the stigmatization and judicial harassment against three media outlets in Venezuela. August 24, 2015.

<sup>700</sup> IACHR, [Resolution 43/15](#), Precautionary Measure No. 179-15, Miguel Henrique Otero et al., Venezuela, November 9, 2015.

<sup>701</sup> IACHR, [Resolution 43/15](#), Precautionary Measure No. 179-15, Miguel Henrique Otero et al. Venezuela, November 9, 2015.

<sup>702</sup> Before the Court ordered the measure, Diosdado Cabello assured in his television program. "When I found out (...) that he was sick; I asked for a doctor to see him, because I do not care about hurting anyone, much less someone who is sick, I just want justice done (...) this weak man here asked to be left out of the suit." Efecto Cocuyo. [Sobreseído proceso contra Teodoro Petkoff por "motivos de salud"](#), September 13, 2017; Tal Cual. [Cabello: fue aprobado el sobreseimiento de Petkoff porque se lo pedí al tribunal](#), September 13, 2017; El País. [Un juez cierra la causa contra el periodista venezolano Teodoro Petkoff por difamar a un dirigente chavista](#), September 14, 2017.

American Court have been emphatic in holding that this type of expression enjoys greater protection within the framework of the inter-American system for the protection of human rights<sup>703</sup>. Such protection has been justified, among other reasons, by the importance of maintaining a legal framework that encourages public deliberation based on the fact that officials have voluntarily exposed themselves to greater social scrutiny, and have greater and better conditions to respond to public debate<sup>704</sup>.

### ***The case of Braulio Jatar***

301. On September 3, 2016, SEBIN agents arrested journalist Braulio Jatar<sup>705</sup>. Jatar is a journalist and director of the digital media *Reporte Confidencial*, a columnist for the medio *Reporte Economía*, and a radio programs host in Isla de Margarita, in the state of Nueva Esparta. The arrest occurred the day after the visit that President Nicolás Maduro made to the municipality of Villa Rosa on the island, and during which there was a demonstration of protest (*cacerolazo*) that would have led the president to confront some of the protesters directly. According to the information known, the protest left some 30 people arrested who were later released. The videos that documented the mobilization were published on the night of September 2 in the digital media run by Jatar. Hours after the publication of the videos, at 8:45 the next morning, SEBIN members arrested him in Porlamar, Nueva Esparta state, while he was on his way to his radio program, without a court order<sup>706</sup>.

<sup>703</sup> IACHR, *Annual Report 1994*, Chapter V: Report on the Compatibility of “Desacato” Laws with the American Convention on Human Rights; *Annual Report 2004*, Report of the Office of the Special Rapporteur for Freedom of Expression; Chapter VI (“Desacato” Laws and Criminal Defamation), para. 155 and ss.; *Annual Report 2009*, Report of the Office of the Special Rapporteur for Freedom of Expression, Chapter III (Inter-American Legal Framework of the Right to Freedom of Expression), p. 245ff.; IACHR. *Case of Ivcher Bronstein vs. Peru*. Merit, Reparations and Costs. Judgment of February 6, 2001. Series C, No. 74; *Case of Herrera Ulloa vs. Costa Rica*. Preliminary Objections, Merit, Reparations and Costs. Judgment of July 2, 2004. Series C, No. 107; *Case of Ricardo Canese vs. Paraguay*. Merit, Reparations and Costs. Judgment of August 31, 2004. Series C, No. 111; *Case of Palamara Iribarne vs. Chile*. Merit, Reparations and Costs. Judgment of November 22, 2005. Series C, No. 135; *Case of Kimel vs. Argentina*. Merit, Reparations and Costs. Judgment of May 2, 2008. Series C, No. 177; and Technical Note to the State regarding the international parameter for “freedom of expression and crimes against honor” and the “modification of the mechanisms regarding crimes against honor present in the Brazilian Criminal Code reform bill”, November 4, 2013 [IACHR, *Annual Report 2013*, Report of the Office of the Special Rapporteur for Freedom of Expression, Chapter II (Evaluation of the Status of Freedom of Expression in the Hemisphere), para. 125].

<sup>704</sup> IACHR. *Case of Tristán Donoso vs. Panamá*. Preliminary Objections, Merit, Reparations and Costs, Judgment of January 27, 2009. Series C, No. 193, para. 122.

<sup>705</sup> IACHR, *Annual Report 2016*, Report of the Office of the Special Rapporteur for Freedom of Expression, Chapter II (Evaluation of the Status of Freedom of Expression in the Hemisphere), para. 1104.

<sup>706</sup> IACHR, *Resolution 67/2016*, Precautionary Measure No. 750-16, Braulio Jatar, Venezuela, December 22, 2016; United Nations (UN) Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression, and Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights, OAS, *Joint Press Release No. R51/17*, Venezuela/Protests: UN and IACHR Rapporteurs condemn censorship, arrests and attacks on journalists. April 26, 2017.

302. The information available indicates that in addition to arresting the journalist on September 3, SEBIN officers hooded and armed with long weapons would have presented themselves at Jatar's home in order to carry out a search, allegedly without a warrant. On September 4, 2016, Silvia Martínez - wife of Braulio Jatar - was able to visit him for the first time at the SEBIN facilities and reported that he had suffered assaults. On September 5, 2016, the journalist was able to contact his lawyers and was presented before a judge, where he was accused of being a "CIA agent" and of "organizing terrorist activities," and would have been formally charged with a crime typified in the Organic Law against Organized Crime and Terrorist Financing [*Ley Orgánica contra la Delincuencia Organizada y Financiamiento al Terrorismo*] known as "legitimation of capital", the penalty for this crime is estimated between 10 and 15 years, as reported to the IACHR<sup>707</sup>.
303. During his detention he was transferred to prisons in different regions of Venezuela, was prevented from contacting his relatives and lawyers for long periods, and his health deteriorated. Therefore, on December 22, 2016, the Commission granted precautionary measures in favor of the journalist, after considering that Braulio Jatar was in a situation of seriousness and urgency since his life and personal integrity were at risk as a result of the deterioration of his health and the lack of access to medical treatment in addition to the situation of isolation in which he would be<sup>708</sup>. The petitioners of the precautionary measures also indicated several irregularities in the process followed against the journalist, as well as the situation of keeping him incommunicado and transferring him from prison on two occasions without giving notice to his family and defenders<sup>709</sup>.
304. On April 27, 2017, in a joint press release, the Special Rapporteur of the UN on the right to freedom of opinion and expression, David Kaye, and the Special Rapporteur for freedom of expression of the IACHR, Edison Lanza, rejected censorship, arrests, and attacks against journalists in Venezuela, and noted that, in an unprecedented event, the journalist Braulio Jatar remained in detention since September 2016, after having broadcasted a video that showed people protesting against President Maduro. The IACHR

<sup>707</sup> IACHR, [Resolution 67/2016](#), Precautionary Measure No. 750-16, Braulio Jatar, Venezuela, December 22, 2016.

<sup>708</sup> The IACHR asked Venezuela to: a) Adopt the necessary measures to protect Braulio Jatar's life and personal integrity, in particular, observing the adequate medical assistance to his health needs; b) Ensure that the conditions of Mr. Braulio Jatar's detention agree with the applicable international standards, considering his current health conditions; and c) Come to an agreement with the beneficiary and his representatives on the measures to be adopted [IACHR, [Resolution 67/2016](#), Precautionary Measure No. 750-16, Braulio Jatar, Venezuela, December 22, 2016].

recognizes that in May 2017 the journalist was released and put under house arrest<sup>710</sup>. The process against him would remain open.

305. In June 2017, the United Nations Working Group on Arbitrary Detention established that the deprivation of liberty of the journalist is arbitrary and although the journalist had been transferred to house arrest "a preventive measure of deprivation of liberty remains in force under said modality"<sup>711</sup>. In this regard, the group considered that the arrest under the supposed figure of flagrante delicto and its subsequent incrimination for the crime of money laundering, had as its motive the exercise of his right to freedom of expression, particularly for his work as a journalist and for the electronic portal *Reporte Confidencial*, which produces information and critical reflections about the Government. Also, indicated that the Working Group identifies a systematic practice in recent years, by the Government of the Bolivarian Republic of Venezuela, of depriving political opponents of physical freedom, in contravention of fundamental norms of international law, such as the Universal Declaration of Human Rights, and the Covenant<sup>712</sup>.
306. The Working Group indicated that the State should "put Braulio Jatar immediately at liberty and grant him the effective right to obtain compensation and other types of reparation, in accordance with international law." The Venezuelan State has not complied with this measure.
307. In its response to this report, the Venezuelan State stated that "it is not the practice or policy of the State to arrest or assault journalists or limit their professional practice. In Venezuela there are no communicators arrested or subjected to judicial proceedings because of their professional activity"<sup>713</sup>.
308. The IACHR and its Office of the Special Rapporteur recall that the use of criminal law by public officials as a tool for intimidating journalists and criminalizing criticism is a practice that is openly contrary to the principles and standards of freedom of expression, in particular, when criminalization is the product of manipulation of the punitive power of the State by state and non-state actors with the objective of controlling, punishing, or preventing the exercise of the right to freedom of expression. On many

<sup>710</sup> Inter-American Press Association (IAPA) – Inter American Press Association (IAPA), Venezuela: Braulio Jatar liberado and puesto en arresto domiciliario, May 26, 2017; and El Nacional, Braulio Jatar recibe medida de casa por cárcel, May 24, 2017.

<sup>711</sup> United Nations. Working Group on Arbitrary Detention. Opinion 37/2017 on Braulio Jatar (Bolivarian Republic of Venezuela). A/HRC/WGAD/2017/37. June 21, 2017.

<sup>712</sup> United Nations. Working Group on Arbitrary Detention. Opinion 37/2017 on Braulio Jatar (Bolivarian Republic of Venezuela). A/HRC/WGAD/2017/37. June 21, 2017.

<sup>713</sup> Bolivarian Republic of Venezuela. Observations to the draft of country report "Institucional democracy, Rule of Law and Human Rights in Venezuela". December 21, 2017. Para. 92.

occasions, stigmatizing statements by public officials precede the initiation of these criminal proceedings.<sup>714</sup>

### ***The case of Professor Santiago Guevara***

309. The case of the professor of the University of Carabobo, Santiago Guevara, is also of particular concern. On February 23, the Prosecutors Office charged him with the crime of "treason" after being tried in a military court in Caracas. The General Directorate of Military Counterintelligence [*Dirección General de Contrainteligencia Militar*] (DGCIM) executed the arrest after the publication of a series of opinion articles on the economic crisis in the country<sup>715</sup>.
310. According to the information received, the detention and trial of Professor Santiago Guevara would be framed in a context of threats, intimidating or discrediting attacks, or acts of criminalization or aggression, to professors for their activities or academic work, or because of their condition of member of the academic community, and because of their professional opinions on the critical situation of services such as health, electricity, or infrastructure<sup>716</sup>.
311. Since Professor Guevara was deprived of his freedom at the headquarters of the General Direction of Military Counterinsurgency on February 21, 2017, his health condition seriously worsened. For this reason, the IACHR ordered the State of Venezuela to "adopt the necessary measures to guarantee the life and personal integrity of Mr. Guevara García, particularly, by providing him with adequate medical attention, in conformity with his illnesses and according to the applicable international standards"<sup>717</sup>. The IACHR notes that on December 23, the court in charge of the case granted Mr. Guevara conditional liberty. On that day, he was release from the General Directorate of Military Counterintelligence. According to the State's communication, Mr. Guevara must report periodically to the military court<sup>718</sup>.

<sup>714</sup> IACHR, Criminalization of the work of human rights defenders, OEA/Ser.L/V/II., Doc. 49/15, December 31, 2015.

<sup>715</sup> El Carabobeño, Profesor de la UC Santiago Guevara imputado por el delito de "Traición a la Patria", February 23, 2017; and El Nacional, El profesor Santiago Guevara fue acusado de traición a la patria, February 25, 2017.

<sup>716</sup> Coalición de Cátedras and Centros Universitarios de Derechos Humanos. El pensamiento bajo amenaza: Situación de la libertad académica and la autonomía universitaria en Venezuela. October 2017.

<sup>717</sup> IACHR, Resolution 50/2017, Precautionary Measure No. 383-17, Santiago José Guevara García, Venezuela, December 1<sup>st</sup>, 2017.

<sup>718</sup> Communication of the State within the MC 283/17 proceedings, December 26, 2017.

## 5. Indirect Censorship and Mass Closure of Media

312. The IACHR and its Office of the Special Rapporteur have also condemned the closure of more than 50 media outlets throughout 2017 in Venezuela under procedures that depart from the principles that guarantee freedom of expression.
313. According to the information received, on August 24, subscription television providers in Venezuela removed the Colombian channels *Caracol TV* and *RCN* from the programming grid, on the orders of Conatel<sup>719</sup>. William Castillo, Deputy Minister for International Communication of the Ministry of Popular Power for Foreign Affairs [*Ministerio del Poder Popular para Relaciones Exteriores*], declared in an interview to the official media that "*RCN and Canal Caracol are instruments of a media war that, in Venezuela, have behaved as machines of aggression to the Venezuelan identity and to the legitimate authorities.*" The minister accused *Caracol TV* of committing "a series of extremely serious crimes, of offenses against Venezuela, its authorities and our laws." A similar criterion would have previously been used to order the suppression of *CNN* and *NTN 24* signals.
314. In addition, the use of state power to assign frequencies continues to be used by the Government as a mechanism to reward or punish media in accordance to its editorial line. During 2016, the processes of renewal and granting of radio and television concessions continued to be deferred by the authorities, a situation that is a matter of concern for the IACHR and its Office of the Special Rapporteur, as the uncertainty generated by the absence of a government response to requests for endorsement of concessions can induce media workers to self-censor and become an indirect means of undue restriction on freedom of expression<sup>720</sup>. In this regard, on April 21 various civil organizations, as well as university students, gave the Conatel management a letter in which they demanded that the agency speed up said processes. The signatories expressed their concern that "there is no plurality and diversity in the granting of concessions for radioelectric media, as the processes are not governed by clear criteria but by political criteria, given that there are about 200 media outlets with expired concessions, many of which have delivered the

<sup>719</sup> BBC, [El gobierno de Venezuela prohíbe la señal de las colombianas Caracol Televisión and RCN "por llamados al magnicidio" de Nicolás Maduro](#), August 25, 2017; and El Universal, [Conatel ordena a cableras sacar canales colombianos](#), August 23, 2017.

<sup>720</sup> In reply to the present report, the State affirmed that "the private sector controls 67% of the radio spectrum in Venezuela, and is overwhelmingly predominant in the sector of subscription radio and TV services. Similarly, the process of democratization of the radio spectrum in the past 18 years allowed strengthening the public media services and legalizing over 300 small radio and television stations in the hands of local communities. Bolivarian Republic of Venezuela. Observations to the draft of country report "Institutional democracy, Rule of Law and Human Rights in Venezuela". December 21, 2017. Para. 91.



required documentation, and yet they are kept in a limbo that induces them to self-censor to avoid not having their license renewed."<sup>721</sup>

315. The IACHR received information indicating that on the night of Friday August 25, representatives of Conatel entered the stations *92.9 FM* and *Mágica 99.1 FM* in the city of Caracas and ordered the definitive cessation of their transmissions. As reported, minutes after both media went of air the frequencies were taken by two new stations linked to the official party. The radio signal from the *92.9 FM* radio station, which had a large-audience journalistic program, was replaced that same night by *Radio Corazón Llanero*, which would be operated by a foundation under the control of an Army captain, former Venezuelan president Hugo Chávez's aide, and current member of the National Constituent Assembly. The signal of the *Mágica 99.1 FM* station was replaced by the station *Vinotinto FM*, whose owner is yet unknown. On September 5, Conatel would have ordered the cessation of broadcasts of station *88.1 FM* of the emblematic educational radio *Fe y Alegría* in the city of Maracaibo, and hours later, it would have revoked the order without providing any explanations. Previously, on July 16, Conatel, invoking lack of documents, also closed ULA TV, the television channel of the *Universidad de los Andes* in Mérida. In Santa Cruz de Mora and Tovar, towns located in the state of Merida, Conatel closed the local television stations *ZeaTv* and *Televisora Cultural de Tovar*, and the radio stations *Sky 95.5 Fm*, *Campesina Stereo 93.3 Fm*, and *Candela 98.3 Fm*, supposedly for not being enabled to transmit, requiring them to go to Caracas to carry out the procedures<sup>722</sup>.
316. According to the information provided by several organizations, during 2017 there would be at least 49 closed national radio stations (among them, *Hit 90.7*, *Estudio 92.1*, *Radio Punto Fijo Stereo* y *Jet 95.3*<sup>723</sup>, *Yara104.3*, *Kndela90.3*, *Más Network98.9*, *Rumbera106.5*, *Shaddai101.9*, *Mix98.3*, *Criollísima104.9*<sup>724</sup>, *Suena 101.7 FM*, *Sonora 99.3 FM*, *Cunaviche 106.3 FM*, *Top Stereo 90.3 FM*, and *Latín Top 101.1 FM*<sup>725</sup>), television channels

<sup>721</sup> Espacio Público, [Exigen a Conatel respuesta inmediata sobre concesiones de frecuencias radioeléctricas](#), April 21, 2016; Notiminuto, [CNP exige a Conatel rapidez en concesiones para radio and televisión](#), April 21, 2016; Colegio Nacional de Periodistas (CNP), [Exigen a Conatel respuesta inmediata sobre concesiones de frecuencias radioeléctricas](#), April 21, 2016.

<sup>722</sup> Espacio Público, [Conatel cerró medios de comunicación en Tovar](#), August 18, 2017; and El Pitazo, [Cinco medios de comunicación han sido cerrados por Conatel en menos de 24 horas en Tovar, Mérida](#), August 17, 2017.

<sup>723</sup> El Nacional, [Funcionarios de Conatel acompañados de la policía, decomisaron los equipos de la emisora Estudio 92.1 en Paraguaná](#), 11 de abril de 2017; and La Voz, [Conatel apagó cuatro emisoras en Paraguaná](#), April 11, 2017.

<sup>724</sup> Runrun, [Conatel suspende transmisiones de siete emisoras en Yaracuy](#), March 8, 2017; and NTN24, [Denuncian que Conatel suspendió transmisiones de siete emisoras en Yaracuy](#), March 8, 2017.

<sup>725</sup> Analítica, [SNTN denuncia que Conatel cerró nueve emisoras en Maturín](#), March 22, 2017.



(*CNN*<sup>726</sup>, *El Tiempo Televisión*<sup>727</sup>, *Todo Noticias*<sup>728</sup>, *Antena 3*<sup>729</sup>) and five international television channels removed from national television programming by subscription during the year 2017, on the orders of the Government. As stated by the Office of the Special Rapporteur in previous press releases, most of the media operates in Venezuela with expired licenses and the regulatory body does not have procedures with guarantees for the awarding and/or renewal of these frequencies.

317. In addition, Conatel started an administrative proceeding against the television network *Globovisión*. The entity considered the statements of congressman Freddy Guevara during the program '*Vladimir a la 1*' held on January 11, in which he urged Venezuelans to initiate "a process of peaceful resistance" to pressure the government and achieve the celebration of elections, violated the legislation<sup>730</sup>. On August 11, 2017, Conatel officials went to the offices of the *Televen* and *Venevisión* channels, notifying the start of an administrative proceeding for having violated the law<sup>731</sup>, after receiving threats of investigations by President Maduro.
318. Regarding the start of administrative investigations, the IACHR reaffirms that States have the power to regulate radio waves and to carry out sanctioning administrative procedures to ensure compliance with the legal provisions. Nonetheless, the IACHR reminds the Venezuelan State that, in the exercise of said power, it must guarantee that the use of State power in this matter is not intended to pressure and punish or reward and privilege social media workers and the media according to their editorial line.
319. The IACHR reminds the Venezuelan State that any restriction on the right to freedom of expression must be based on a law and be proportionate and strictly necessary to protect legitimate ends in a democratic society. The closure of media as punishment for maintaining a critical editorial line of a government arbitrarily suppresses the right that assists all Venezuelans to express themselves without fear of reprisals, and to receive plural and diverse information, and is also a form of censorship indirect under

<sup>726</sup> Reporteros Sin Fronteras, [Los periodistas extranjeros, persona non grata en Venezuela](#), March 22, 2017; El País, [Almagro dijo que bloqueo de Maduro a CNN es un "ataque a la democracia"](#), February 17, 2017; and Noticiero Digital, [Andrés Eloy Méndez: CNN en Español no ha sido ni será jamás censurado](#), February 16, 2017.

<sup>727</sup> El Universal, [Bloquean en Venezuela señal de TV de El Tiempo de Colombia](#), April 19, 2017; and El País, [El Tiempo Televisión fue sacado del aire en Venezuela](#), April 19, 2017.

<sup>728</sup> Runrun, [Dos nuevos canales de televisión se sumaron a la censura en Venezuela](#), April 19, 2017; and Todo Noticias, [Venezuela levantó del aire a TN en medio de las protestas contra Maduro](#), April 19, 2017.

<sup>729</sup> La Vanguardia, [Maduro corta la señal de Antena 3 en Venezuela](#), April 21, 2017; and Antena 3, [El Gobierno de Maduro cierra la señal de Antena 3 en Venezuela](#), April 20, 2017.

<sup>730</sup> La Nación, [Conatel investigará a Globovisión por declaraciones de Freddy Guevara](#), January 20, 2017; and El Universal, [Diputado Freddy Guevara ante sanción de Conatel contra Globovisión](#), January 20, 2017.

<sup>731</sup> El Nacional, [Conatel abrió un proceso sancionatorio contra Venevisión and Televen](#), August 11, 2017; and El Carabobeño, [Conatel abrió proceso a Televen and Venevisión por no cubrir elecciones de la ANC](#), August 12, 2017.

international law. Although the State has the regulated attribution to administer the radio spectrum, this must be done in accordance with the basic principles of international human rights law that prohibit the restriction of the right to freedom of expression through the abuse of the power to regulate and manage the radio frequencies. According to these principles, the processes of adjudication, revocation, and renewal of licenses must be strictly regulated by a law and be guided by objective, clear, impartial, and public criteria compatible with a democratic society; the process must be transparent; the decision that grants or denies the request must be duly motivated; and be subject to adequate judicial control. Furthermore, the administration of the radio spectrum must be guided by the principles of equality and non-discrimination, and must never be used to pressure, reward, or punish a media based on its editorial line or position with respect to the current government.

320. Venezuela had already been condemned by the Inter-American Court in June 2015 for violating these principles when it decided not to renew the *RCTV* television channel concession on May 27, 2007<sup>732</sup>. In the Inter-American Court opinion's, *RCTV's* closure involved "a misuse of power, since a State faculty was used with the objective of editorially aligning the media outlet with the government." The Court also pointed out that the misuse of power in that case "had an impact on the exercise of freedom of expression, not only in the workers and managers of *RCTV*, but also in the social dimension of that right." In effect, the Court stated "the real purpose was to silence critical voices against the government, which together with pluralism, tolerance, and the spirit of openness, constitute the demand of a democratic debate which, rightly, freedom of expression seeks to protect."
321. The IACHR notes that censorship has also been carried out against web portals *VPI*<sup>733</sup>, *VivoPlay*<sup>734</sup>, *Maduradas.com*<sup>735</sup>, *Dólar Today*<sup>736</sup> and television programs, such as '*La Voz del Pregón*'<sup>737</sup>, *A Media Mañana*<sup>738</sup> and '*El*

<sup>732</sup> IACHR. *Case of Granier et al. (RCTV) vs. Venezuela*. Preliminary Objections, Merit, Reparations and Costs. Judgment of June 22, 2015. Series C, No. 293.

<sup>733</sup> Rurunes, [Conatel ordena bloquear a VivoPlay and VPI TV, únicos medios que transmitieron en vivo protesta del 6Abr](#), April 7, 2017; Aporrea, [Bloqueo de sus páginas web por CONATEL, denuncian los canales online de noticias VivoPlay and VPI TV](#), April 7, 2017; and El Estímulo, [VivoPlay, VPI and Capitolio TV no se pueden ver en Venezuela](#), April 7, 2017.

<sup>734</sup> Rurunes, [Conatel ordena bloquear a VivoPlay and VPI TV, únicos medios que transmitieron en vivo protesta del 6Abr](#), April 7, 2017; and Analítica, [VIVOplay abre su señal ante el bloqueo de su página web](#), April 10, 2017.

<sup>735</sup> Maduradas, [¡ARRECIA LA CENSURA! Operadoras en Venezuela bloquean el acceso a Maduradas.com](#), February 8, 2017; and IPYS, [Bloquearon Maduradas.com en varios estados del país](#), February 9, 2017.

<sup>736</sup> Sumarium, ["Se solicitó a un tribunal que se bloqueara la página Dólar Today"](#); January 26, 2017, and Telesur, [Fiscalía venezolana solicita bloquear página web Dólar Today](#), January 26, 2017.

<sup>737</sup> IPYS, [Cierran programa radial por prohibición de la directiva de la emisora de realizar entrevistas](#), February 15, 2017.

*Comandante'*, a series produced by Sony Pictures Entertainment and broadcasted by the Colombian channel *RCN*, inspired by the life of former Venezuelan President Hugo Chávez<sup>739</sup>. The Office of the Special Rapporteur for Freedom of Expression of the IACHR issued a press release together with the Office of the Special Rapporteur on the promotion of the right to freedom of opinion and expression of the United Nations on April 26, in which it expressed its concern regarding the blockade of news programs that offered information of general interest in the country through the Internet under orders issued to service providers by Conatel<sup>740</sup>.

322. Likewise, the lack of supply and government control of newsprint continues to affect the free functioning of the written press. According to the information available, dozens of media outlets suffered from a lack of supply (such as *El Impulso*<sup>741</sup>, *La Nación*<sup>742</sup>) and some of them ended up canceling its printed version (such as *El Nuevo País*<sup>743</sup>, *Diario Católico*<sup>744</sup>, *La Verdad Impresa de El Carabobeño*<sup>745</sup>, *Diario Los Andes*<sup>746</sup>) due to lack of supplies by the Editorial Alfredo Manerio Complex [*Complejo Editorial Alfredo Manerio*] (CEAM), the state company that has the legal monopoly on the importation of newsprint and is responsible for distributing it to the media.

<sup>738</sup> NTN24, El programa de radio A Media Mañana fue sacado del aire por órdenes del Sebin, March 7, 2017; and Caraota Digital, ¿Libertad de expresión? Sebin sacó del aire programa radial tras entrevista a diputado, March 7, 2017.

<sup>739</sup> El Nacional, Conatel ordenó quitar la señal de RCN durante transmisión de El Comandante, January 31, 2017; and La Patilla, Conatel ordenó quitar la señal de RCN durante transmisión de "El Comandante", January 31, 2017.

<sup>740</sup> United Nations (UN) Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression, and Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights, OAS, Joint Press Release No. R51/17, Venezuela/Protests: UN and IACHR Rapporteurs condemn censorship, arrests and attacks on journalists. April 26, 2017.

<sup>741</sup> DW, Venezuela: diario El Impulso dejará de salir por falta de papel, December 30, 2016; Infobar, Por falta de papel, dejará de circular El Impulso, el diario más antiguo de Venezuela, December 30, 2016.

<sup>742</sup> IPYS, Se agota el papel del diario La Nación, January 30, 2017.

<sup>743</sup> Espacio Público, El Nuevo País: primer diario víctima de la crisis de papel en 2017, January 23, 2017; and Infobae, Asedio del chavismo a la prensa: el diario El Nuevo País recortará su circulación por falta de papel, January 24, 2017.

<sup>744</sup> La Nación, Al decano de la prensa Diario Católico le pudo la crisis y cierra indefinidamente, January 29, 2017; and IPYS, Cierra Diario Católico, el más longevo del estado Táchira, January 28, 2017.

<sup>745</sup> Tal Cual, El semanario La Verdad Impresa de El Carabobeño circulará hasta el 10 de febrero por falta de papel, February 9, 2017; and El Carabobeño, El Carabobeño: víctima del CLAP del papel en Venezuela, February 15, 2017.

<sup>746</sup> Colegio Nacional de Periodistas (CNP), El Diario Los Andes no seguirá circulando en Mérida, August 31, 2017; and Caraota Digital, Diario de Los Andes cerró su edición impresa en El Vigía por falta de papel, August 29, 2017.

## 6. Stigmatizing Statements against Journalists and the Media Based on the Editorial Line

323. The censorship actions and practices described above have usually been preceded by a highly stigmatizing and intimidating speech promoted by State authorities against journalists and the media. President Nicolás Maduro, former congressman and member of the ANC, Diosdado Cabello and former Foreign Minister Delcy Rodríguez, repeatedly point to media outlets such as *El Nacional*, *Globovisión*, *CNN en español*, *NTN24*, of being "coup plotters", "conspirators", "Fascists", "spies", "squalid", and accuse them of "attacking the peace and democratic stability" of Venezuela, "defaming and distorting the truth", "manipulate information" or spread "war propaganda"<sup>747</sup>.
324. When not carried out directly by government authorities, stigmatization occurs through state media or those openly aligned with the government, who distribute and replicate offensive and stigmatizing speech towards journalists and the media<sup>748</sup>. The IACHR has reiterated concern about how these expressions of intolerance on the part of the authorities echo among civil groups sympathetic to the government or government clashing groups to intimidate those journalists who they consider enemies of the Government's political project<sup>749</sup>.
325. In two judgments issued by the Inter-American Court with respect to Venezuela, the court warned that public officials "Public servants must also bear in mind that they have a position as guarantors of the fundamental rights of individuals; as such, their statements cannot deny those rights or constitute forms of direct or indirect interference or harmful pressure on the rights of those who seek to contribute [to] public deliberation through the expression and dissemination of their thoughts. This special duty of care is heightened particularly in situations involving social conflict, breaches of the peace, or social or political polarization, precisely because

<sup>747</sup> EFE, [Maduro ordena demandar a periódico por difundir información falsa de PDVSA](#), October 8, 2016; Analítica, [Maduro ordenó demandar medios de comunicación que difundan información falsa de PDVSA](#), October 9, 2016; NTN24, [Maduro ordena demandar a diario venezolano El Nuevo País, por redifundir trabajo sobre crítica situación de Pdvsa](#), October 9, 2016; Siente América; [Bloomberg: Venezuela pretende empeñar a la icónica marca americana Citgo para sobrevivir](#), October 9, 2016; YouTube video, [Con el Mazo Dando, miércoles 16 de marzo de 2016](#), Noticias 24, March 16, 2016; Notitotal, [Las amenazas de Cabello a la oposición venezolana de cara al 1-S \(Video\)](#), August 30, 2016; Noticias Al Día and Ahora, [La advertencia de Diosdado Cabello a los medios de comunicación](#), August 30, 2016; and La Voz, [Diosdado Cabello: "Atrévanse a entrar en Caracas"](#), August 31, 2016.

<sup>748</sup> Radio Nacional de Venezuela (RNV), [¡Expulsados! Vea lo que pretendían hacer estos 2 espías en Venezuela](#), March 23, 2017. For instance the BBC journalists detained by SEBIN on March 20 as they intended to carry out an investigation. A press communication circulated by *El Mazo Dando* and reproduced by many State media outlets, such as *Radio Nacional de Venezuela*, qualifies the BBC journalists as "spies" and suggests that one of them, Ian O'Reilly, "is an expert in the obscure art of secret filming".

<sup>749</sup> IACHR, [Annual Report 2015](#), Chapter IV.B, Venezuela, para. 68.

of the risks such situations might pose for specific individuals or groups at a given time"<sup>750</sup>.

326. As the IACHR has already stated, the stigmatizing discourse against the press promoted by high State authorities is unacceptable within a democratic system, as it encourages violence against journalists, favors the legitimization of censorship of the media, and it erodes the public's confidence in journalism as the guardian of democracy. The IACHR reiterates once again that the authorities of the State can provide the simplest and most effective protection: the public and categorical recognition of the legitimacy of criticism and dissidence in a democracy. Accordingly, it urges the authorities to refrain from making stigmatizing statements that can lead to acts of violence or arbitrary decisions by public officials against journalists and social media.

## 7. Internet and Freedom of Expression

327. Violations to freedom of expression in the context of the internet in Venezuela are mainly due to censorship or cyber-attacks. In the context of cyber-attacks, they generally consist of Distributed Denial of Service (DDoS) attacks, although other vulnerabilities are also eventually exploited, targeting news portals or civil society organizations. The organization *Provea*<sup>751</sup> and the news portals *El Pitazo*<sup>752</sup> and *Aporrea*<sup>753</sup> have reported being victims of DDoS attacks while *Contrapunto*<sup>754</sup>, *Caraota Digital*<sup>755</sup>, *Correo del Caroní*<sup>756</sup>, *El Camubur*<sup>757</sup>, the organization Acción Solidaria<sup>758</sup>, and the Venezuelan Episcopal Conference<sup>759</sup> reported having suffered

<sup>750</sup> IACHR. *Case of Perozo et al. vs. Venezuela*. Preliminary Objections, Merit, Reparations and Costs. Judgment of January 28, 2009. Series C, No. 195, para. 151; *Case of Ríos et al. vs. Venezuela*. Preliminary Objections, Merit, Reparations and Costs. Judgment of January 28, 2009. Series C, No. 194, para. 139.

<sup>751</sup> IPYS, *Provea sufre intento de ataque cibernético*, March 9, 2017; and Runrun, *Páginas web de El Pitazo and Provea fueron víctimas de ataques cibernéticos*, March 9, 2017.

<sup>752</sup> IPYS Venezuela, *El Pitazo Informativo sufrió un ataque DDoS*, March 9, 2017; Runrun, *Páginas web de El Pitazo and Provea fueron víctimas de ataques cibernéticos*, March 9, 2017.

<sup>753</sup> Contrapunto, *Aporrea denuncia nuevo ataque informático: está caída desde el viernes 17 de febrero*, February 18, 2017; and Lalgua TV, *¿Qué pasa en el portal web Aporrea? Denuncian ataque informático (+tuits)*, February 21, 2017.

<sup>754</sup> 2001, *Medio digital Contrapunto denuncia ataque informático a su sitio web*, April 10, 2017; and Espacio Público, *Situación del derecho a libertad de expresión en Venezuela*, May 3, 2017.

<sup>755</sup> IPYS, *Portal Caraota Digital estuvo 12 horas fuera del aire*, March 8, 2017; and Caraota Digital, *Ataque con virus informático fue la causa del colapso de Caraota Digital*, March 9, 2017.

<sup>756</sup> IPYS, *Medios de comunicación social and ONG sufren ataques masivos en sus plataformas web*, March 10, 2017; and El Nacional, *Correo del Caroní denunció "ataques cibernéticos"*, March 10, 2017.

<sup>757</sup> IPYS, *Medio digital El Camubur sufrió ataque cibernético*, February 25, 2017.

<sup>758</sup> IPYS, *Medios de comunicación social and ONG sufren ataques masivos en sus plataformas web*, March 10, 2017; NTN24, *Segundo día de ciberataques a medios en Venezuela: El Pitazo, ONG Provea y Acción Solidaria presentaron fallas en sus portales*, March 9, 2017.

<sup>759</sup> IPYS, *Medios de comunicación social y ONG sufren ataques masivos en sus plataformas web*, March 10,

attacks based on other types of vulnerabilities. The attacks, for the most part intend to prevent the availability of the websites of organizations and the media, making them inaccessible to the public for periods that can last several days. According to the information received, the blockades to web portals in Venezuela are also perpetrated for short periods in an arbitrary and discretionary manner without having public scrutiny to restrict access to information sources at key moments, such as electoral periods or during protests<sup>760</sup>. Similarly, the IACHR noted with concern reports of digital attacks of kidnapping social network accounts against some journalists in Venezuela. The attacks make the owner of the account lose control and not be able to recover it through the standard mechanisms<sup>761</sup>.

## 8. Access to Public Information

328. For several years, the IACHR and its Office of the Special Rapporteur have followed with concern the situation of the right to access to information in Venezuela<sup>762</sup>. Unlike the vast majority of countries in the region, Venezuela does not have a law on access to public information, and in the last decade, the AN and the Executive have issued dozens of regulations that establish generic and ambiguous exceptions to access public information<sup>763</sup>.
329. For example, *Presidential Decree No. 458* grants very broad powers to the Strategic Center for Security and Protection of the homeland [*Centro Estratégico de Seguridad y Protección de la Patria*] (CESPPA) <sup>764</sup>, which is a decentralized body of the Office of the Presidency in charge of "unifying the flow of information" on "Security, Defense, Intelligence, Internal Order, and

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2017; CEV, *Lamentamos informar que la pagina web de la Conferencia Episcopal Venezolana ha sido hackeada. Trabajamos por su recuperación*, March 10, 2017.

<sup>760</sup> IPYS, *Principales hallazgos de la navegación en Venezuela*, 2016.

<sup>761</sup> Access Now, *El ataque "Doubleswitch" en redes sociales: una amenaza para activistas y periodistas en Venezuela y el resto del mundo*, June 9, 2017.

<sup>762</sup> IACHR, Annual Report 2010, Report of the Office of the Special Rapporteur for Freedom of Expression, Chapter II (Evaluation of the Status of Freedom of Expression in the Hemisphere), para. 489-499; Annual Report 2011, Report of the Office of the Special Rapporteur for Freedom of Expression, Chapter II (Evaluation of the Status of Freedom of Expression in the Hemisphere), para. 520-522; Annual Report 2012, Report of the Office of the Special Rapporteur for Freedom of Expression, Chapter II (Evaluation of the Status of Freedom of Expression in the Hemisphere), para. 521-528; Annual Report 2013, Report of the Office of the Special Rapporteur for Freedom of Expression, Chapter II (Evaluation of the Status of Freedom of Expression in the Hemisphere), para. 912-915; Annual Report 2014, Report of the Office of the Special Rapporteur for Freedom of Expression, Chapter II (Evaluation of the Status of Freedom of Expression in the Hemisphere), para. 1100-1102; Annual Report 2015, Report of the Office of the Special Rapporteur for Freedom of Expression, Chapter II (Evaluation of the Status of Freedom of Expression in the Hemisphere), para. 1205-1210.

<sup>763</sup> Information provided by civil society organizations at a public hearing held during the IACHR 156<sup>th</sup> Session. Available at the Office of the Special Rapporteur for Freedom of Expression, IACHR, and at Transparencia Venezuela [Transparencia Venezuela, *Es Legal pero Injusto*, 2014].

<sup>764</sup> Office of the Presidente, *Decreto N. 458, mediante el cual se ordena la creación del Centro Estratégico de Seguridad and Protección de la Patria*, October 7, 2013.

External Relations", to assign the nature of "reserved, classified, or limited disclosure to any information, fact, or circumstance, that is processed in [that entity], and *that are of strategic interest for the Security of the Nation* [...]." Likewise, the decree law of the Central Bank of Venezuela [*Banco Central de Venezuela*] (BCV), issued by the President of the Republic on December 30, 2015, authorizes the board of the BCV, "when required by the Executive, [to] temporarily suspend the publication of information for the period during which internal or external situations that represent a threat to National Security and the economic stability of the Nation are maintained"<sup>765</sup>. It also establishes that "during internal or external circumstances that threaten the National Security and the economic stability of the nation", the BCV may agree with the Executive "an information provision scheme" on the behavior of the national economy, international reserves level, and economic measures adopted.

330. In this regard, the IACHR and its Office of the Special Rapporteur have indicated that in order to invoke the reservation of information for reasons of national security, "the laws that regulate secrecy must accurately define the concept of national security and clearly specify the criteria that must be used to determine if certain information may or may not be declared secret, in order to prevent abuse of the 'secret' classification to avoid the disclosure of information of public interest. " In this regard, the IACHR emphasizes that a restriction on access to public information that seeks to justify itself in the defense of national security must not be based on an idea of national security incompatible with a democratic society<sup>766</sup>. Likewise, any restriction on access to information for reasons of national security must be established in the law and be truly necessary in a democratic society. The mere assertion by the government that there is a risk to national security is not enough. This risk must be proven: the exception must pass a three-part test: a) it must be related to one of the legitimate objectives that justify it; b) it must be demonstrated that the disclosure of the information effectively threatens to cause substantial harm to that legitimate objective; and c) it must be demonstrated that the damage to the objective is greater than the public interest in having the information<sup>767</sup>.

<sup>765</sup> Article 40, Decree with Rank, Value and Strength of the Law of the Central Bank of Venezuela [Presidencia de la República, Decreto No. 2.179, mediante el cual se dicta el Decreto con Rango, Valor and Fuerza de la Ley del Banco Central de Venezuela, December 30, 2015].

<sup>766</sup> IACHR. Annual Report 2010. Annual Report of the Office of the Special Rapporteur for Freedom of Expression. Chapter III (Access to information on human rights violations). OEA/Ser.L/V/II. Doc. 5. March 7, 2011.

<sup>767</sup> IACHR. Annual Report 2010. Annual Report of the Office of the Special Rapporteur for Freedom of Expression. Chapter III (Access to information on human rights violations). OEA/Ser.L/V/II. Doc. 5. March 7, 2011; Open Society Foundations. The Global Principles on National Security and the Right to Information (The Tshwane Principles). June 12, 2013.



331. On the other hand, the IACHR observes that not only is there no adequate legal framework for the protection and guarantee of the right to access to public information, but also the judicial and administrative remedies that could be used to access the information have repeatedly proved ineffective for that purpose<sup>768</sup>. Indeed, the IACHR and its Office of the Special Rapporteur received information regarding the issuance of judgments in which, contrary to the provisions of the inter-American standards, the courts ruled inadmissible the appeals filed by citizens against the authorities' refusal to provide them with public information, based on a criterion adopted by the Constitutional Chamber of the TSJ, in June 2010, according to which, "even though the constitutional text recognizes the citizen's right to be informed, it establishes external limits to the exercise of such right, in the understanding of that there are no absolute rights." Based on this criterion, national courts systematically deny access to information held by the State.
332. For example, the Political-Administrative Chamber of the TSJ declared inadmissible a claim filed by the civil organization Espacio Público, against the Minister of People's Power for Prison Services [*Ministra del Poder Popular para los Servicios Penitenciarios*], Iris Varela, through which it was intended to obtain statistical information regarding the cases of death and the state of health of the inmates that are in the detention centers that the aforementioned unit administers<sup>769</sup>. This is because, in the opinion of said Court, the request did not comply with the requirement "that the magnitude of the information requested be proportional to the use and intended use of the requested information"<sup>770</sup>. The organization Espacio Público has reported that of the 26 lawsuits that it has filed over the course of eight years, in no case have the courts ruled in favor of the publication of the information requested<sup>771</sup>.
333. The foregoing evidences, as noted throughout this report, that there is a policy of secrecy and control of information on public affairs, which has serious consequences for the demand and promotion of other human rights in many different areas. The essential information on the operation of the State and public policies that must be published proactively by the authorities, such as data on annual food production, maternal and infant

<sup>768</sup> Information provided by civil society organizations at the public hearing on the "Situation of the right to freedom of information in Venezuela", held during the 156<sup>th</sup> Session of the IACHR.

<sup>769</sup> Ipys Venezuela, Esapacio Público demandó a ministra Iris Varela por negar cifras de muertes en centros penitenciarios, August 18, 2015; Espacio Público, TSJ declara inadmisibile demanda contra Iris Varela, March 7, 2016; and TSJ, Magistrada ponente: María Carolina Ameliach Villarroel. Exp. Nº 2015-0877, February 10, 2016.

<sup>770</sup> TSJ, Magistrada ponente: María Carolina Ameliach Villarroel. Exp. Nº 2015-0877, February 10, 2016.

<sup>771</sup> Espacio Público. Situación sobre el derecho de acceso a la información pública (AIP) en Venezuela. Enero-Septiembre 2017.



mortality rates, homicide rates, among others, is subject to reserve without legal basis or effective claim mechanisms.

334. In view of this, the IACHR and its Office of the Special Rapporteur reiterate their recommendation to the State to adopt legislation on access to public information, in accordance with inter-American standards, with the purpose of granting all persons the tools to perform an effective monitoring of the state functioning, public management, and control of corruption, essential in the democratic process. Likewise, the IACHR and its Office of the Special Rapporteur call on the judicial authorities to guarantee this right and, at all times, to direct their judgments in accordance with international standards that govern the matter.

# CHAPTER 4

## VIOLENCE AND CITIZEN SECURITY



## VIOLENCE AND CITIZEN SECURITY

### A. Overall Situation

335. For several years now, Venezuela has suffered a serious crisis of violence and citizen insecurity. The information available points to an alarming deterioration of this state of affairs, especially between 2015 and 2017.<sup>772</sup> According to Public Prosecutors' Office (MP) figures, there were 21,752 murders or intentional homicides in 2016, taking the violent deaths rate to new heights of 70.1 violent deaths for every one hundred thousand inhabitants.<sup>773</sup> For its part, the Venezuelan Violence Observatory (OVV)<sup>774</sup> reported an estimated 28,479 violent deaths, a sharp increase over the 27,875 homicides reported by the OVV for 2015.<sup>775</sup> According to the same source, the homicide rate is 91.8 for every 100,000 inhabitants, making Venezuela "the second most violent country in the world."<sup>776</sup> Likewise, in 2016, the Citizen Council for Security and Criminal Justice, an organization that conducts an annual survey of homicide figures in cities worldwide, classified Caracas as the most insecure and violent city in the world, while mentioning seven other Venezuelan cities as well.<sup>777</sup> In contrast to these findings, the State has claimed a reduction in the homicide rate in the past few years. According to the Venezuelan State, homicides fell from 55 per 100,000 inhabitants in 2012 to 51 in 2016 and 39 in 2017.<sup>778</sup> For its part, the OVV estimated that in 2017 Venezuela registered 89 violent deaths per 100,000 inhabitants and a total of 26,616 death persons in the whole national territory.<sup>779</sup>

<sup>772</sup> IACHR, 2016 Annual Report, Chapter IV.B, Venezuela, para. 27 and 52; and 2015 Annual Report, Chapter IV.B, Venezuela, para. 28-66.

<sup>773</sup> Public Prosecutors' Office (*Ministerio Público*), Informe de gestión correspondiente a 2016, March 31, 2017.

<sup>774</sup> The estimate was made by the OVV based on official sources and on-the-ground information collected by six regional violence observatories (San Cristóbal with the UCAT, Cumaná with the UDO, Barquisimeto with the UCLA, Ciudad Guyana with the UCAB, Mérida with the ULA, and Caracas with the UCV). The OVV has been advised by the Human Rights Data Analysis Group to certify its procedures for estimating violent deaths [OVV, 2016: OVV estima 28.479 muertes violentas en Venezuela, December 28, 2016].

<sup>775</sup> OVV, 2016: OVV estima 28.479 muertes violentas en Venezuela, December 28, 2016.

<sup>776</sup> OVV, 2016: OVV estima 28.479 muertes violentas en Venezuela, December 28, 2016.

<sup>777</sup> Consejo Ciudadano para la Seguridad Pública y la Justicia Penal, A. C., Las 50 ciudades más violentas del mundo en 2015, January 26, 2016.

<sup>778</sup> IACHR, Violence, Citizen Security and Freedom of Expression in Venezuela, October 24, 2017.

<sup>779</sup> OVV, Informe OVV de violencia 2017, December 28, 2017.

336. Particularly worrisome is the constant increase in extrajudicial executions. The Family Members of Victims Committee (COFAVIC) documented 1,396 cases of alleged extrajudicial executions in 2015 (37% more than in 2014) and 2,379 in 2016 (70% more than in the year before).<sup>780</sup> According to that Committee, in first quarter 2017 there was an 11% increase over the figure for first quarter 2016, thereby confirming the upward trend for violent deaths.<sup>781</sup> Regarding those allegedly responsible, in a large majority of the extrajudicial executions registered by COFAVIC those allegedly responsible were officials in the Scientific, Penal, and Criminal Investigative Corps (CICPC) (70%), followed by PNB or municipal police officers (33%), members of the Bolivarian National Guard (GNB) (3%), and members of security corps together with armed groups of civilians (8%).<sup>782</sup>
337. Given this state of affairs, the Commission reiterates the need for the State to take effective steps to prevent, get a hold on, and reduce crime and violence.<sup>783</sup> In particular, the Commission reiterates that states have the ineluctable duty to adopt, in keeping with their international human rights obligations, all necessary measures to protect the life and personal integrity of all those under their jurisdiction. It likewise stresses that the existence of high rates of violence and crime undermines the rule of law.<sup>784</sup> In that sense, the duty to prevent is particularly important. It "involves all legal, political, administrative and cultural measures for the promotion of the protection of human rights that ensure that their violation be considered and treated as a punishable offense for the perpetrators."<sup>785</sup> It also requires the establishment of "effective provisions. [Tr. to deter] the commission of offenses against persons, supported by enforcement machinery for prevention, suppression and punishment for non-compliance with such provisions."<sup>786</sup>
338. The IACHR notes that this increase in violence has had a special impact on individuals, groups, and communities at greater risk or that have historically suffered exclusion and discrimination. In particular, the IACHR has voiced its concern at the impact of such a violent and insecure environment on the country's children and adolescents.<sup>787</sup> Homicides are

<sup>780</sup> COFAVIC, *Ejecuciones extrajudiciales, 40 historias de 6385 vidas ignoradas 2012-2017*. [Extrajudicial executions, 40 accounts of lives done away with, 2012-2017] 2017, pp. 39-40.

<sup>781</sup> COFAVIC, *Ejecuciones extrajudiciales, 40 historias de 6385 vidas ignoradas 2012-2017*. [Extrajudicial executions, 40 accounts of lives done away with, 2012-2017] 2017, p. 59.

<sup>782</sup> COFAVIC, *Ejecuciones extrajudiciales, 40 historias de 6385 vidas ignoradas 2012-2017*. [Extrajudicial executions, 40 accounts of lives done away with, 2012-2017] 2017, p. 68.

<sup>783</sup> IACHR, *2015 Annual Report*, Chapter IV.B, Venezuela, para. 38.

<sup>784</sup> IACHR, *2016 Annual Report*, Chapter IV.B, Venezuela, para. 43.

<sup>785</sup> IACHR, *Report on Citizen Security and Human Rights*, OEA/Ser.L/V/II, Doc. 57, December 30, 2009, para. 41.

<sup>786</sup> IACHR, *Report on Citizen Security and Human Rights*, OEA/Ser.L/V/II, Doc. 57, December 30, 2009, para. 44.

<sup>787</sup> IACHR, *Violence, Children and Organized Crime*, OEA/Ser.L/V/II.Doc. 40/15, 2015, para. 41, 45, 56, 57, 59, 150, and 195, and others.

the leading cause of death among adolescents and young people, particularly among the least advantaged segments of the population (*sectores populares*). The Plan of Action in the Country Programme signed by the United Nations Children's Fund (UNICEF) and the State for 2015-2019 states that the homicide rate among adolescents is one of the highest in Latin America and mainly affects male adolescents. According to UNICEF, Venezuela is one of the three countries in Latin America with the highest homicide rate for children and adolescents.<sup>788</sup>

339. In this regard, the Commission reiterates the need to establish supplementary protection for this group of persons when it comes to citizen security.<sup>789</sup> This obligation derives from Article VII of the American Declaration which establishes that all children have the right to special protection, care and aid. Concretely, it is vital that States strive to correct the structural and institutional conditions, as well as social norms and cultural patterns that serve to legitimize and reproduce forms of violence against children and adolescents, and to guarantee effective enforcement of the laws in force in this regard.<sup>790</sup> Furthermore, as far as police action is concerned, an appropriate legal framework is needed that follows international standards and provides for specially trained units to operate in situations involving children and adolescents, as both victims and perpetrators of violent or criminal acts.<sup>791</sup>
340. Another extremely worrying matter is the violence against and murders of women in Venezuela, where, in the past two years the number of femicides has increased.<sup>792</sup> According to MP data, in 2015, 121 femicides were committed and another 132 attempted, while the figures for 2016 were 122 and 57, respectively.<sup>793</sup> These figures differ from information compiled by the media and civil society organizations. Thus, a CICPC report in 2015

<sup>788</sup> UNICEF and the Venezuelan State, Plan of Action of the Country Programme (2015-2019), p. 6; and UNICEF, Hidden in Plain Sight, p. 2.

<sup>789</sup> IACHR, Report on Violence, Children and Organized Crime, OEA/Ser.L/V/II., Doc. 40/15, November 11, 2015, para. 276 and 288; Report on Citizen Security and Human Rights, OEA/Ser.L/V/II, Doc. 57, December 30, 2009, para. 87.

<sup>790</sup> IACHR, Report on Violence, Children and Organized Crime, OEA/Ser.L/V/II., Doc. 40/15, November 11, 2015, para. 293.

<sup>791</sup> IACHR, Report on Citizen Security and Human Rights, OEA/Ser.L/V/II, Doc. 57, December 30, 2009, para. 89.

<sup>792</sup> CEPAZ, Asociación Civil Mujeres en Línea, FREYA and AVESA, Informe sobre situación de los derechos de las mujeres en Venezuela [Report on the Situation of Women's Rights in Venezuela], September 2017, p. 22. In that report, femicides are defined as "violent deaths of women for gender-related reasons." Likewise, "their denunciation, punishment, and recording under that name began thanks to the amendment of the Organic Law on Women's Right to a Life Free from Violence (LODMVLV) of 2914, Article 57 of which included the crime of femicide," (p. 21).

<sup>793</sup> Public Prosecutors' Office (*Ministerio Público*), Informe Anual de Gestión 2016, November 2016. Just in the five months from January to May 2017, the Metropolitan Women's Institute counted 48 femicides in the country, with the states of Miranda and Carabobo showing the highest rates. El Nacional, La violencia contra la mujer ocurre por la impunidad y la desprotección, July 3, 2017.

stated that 516 women were murdered in the first 166 days of that year,<sup>794</sup> while COFAVIC registered 353 women murdered, 15% of whom were minors.<sup>795</sup> Another investigation into murders of women in 2016 pointed to 336 murders of women and girls and, in particular, 169 femicides that year.<sup>796</sup>

341. The IACHR underscores the dearth of official, up-to-date, and consolidated data and the existence of huge discrepancies among the few official statistics available and data provided by the media and by civil society organizations. That may be associated with the variety of different terms and criteria used to classify a given deed as a homicide in which the victim is a women ("homicidios de mujeres") or as a "femicide."<sup>797</sup> However that may be, the Commission notes that the situation is extremely worrying, considering that, according to statements made by the Director of the Economic Commission for Latin American and the Caribbean (ECLAC), femicide is the second cause of violent death in the country and that 96% of reported cases go unpunished.<sup>798</sup>
342. With respect to gender-based violence against women, between 2001 and 2014, between 70,000 and 80,000 cases were reported each year. Charges were brought in only 10% to 16.35% of those cases, with only 0.48% and 0.79% of all reported cases reaching the trial stage.<sup>799</sup> In this field, too, there is a dearth of official, up-to-date, and consolidated data.<sup>800</sup> The Commission reiterates its concern at the low percentage of indictments by Public Prosecutors and the failure to implement sufficient protection measures, despite the rise in cases of violence and very high number of complaints filed.<sup>801</sup>
343. The IACHR points out once again that the prevention and eradication of violence against women are fundamental obligations built into the duty to eliminate all forms of discrimination pursuant to Article II of the American Declaration.<sup>802</sup> Likewise, Article 7.b of the Convention of Belém do Pará establishes the obligation of States Parties, including Venezuela, to prevent,

<sup>794</sup> Canal de Noticias, Venezuela: 516 mujeres han sido asesinadas en cinco meses y medio, June 17, 2015.

<sup>795</sup> El Nacional, 253 venezolanas fueron víctimas de femicidio en 2015, July 19, 2016.

<sup>796</sup> El Nacional, La violencia de género mata a más venezolanas que el hampa, March 5, 2017.

<sup>797</sup> CEPAZ, Asociación Civil Mujeres en Línea, FREYA and AVESA, Informe sobre situación de los derechos de las mujeres en Venezuela [Report on the Situation of Women's Rights in Venezuela], September 2017, p. 23.

<sup>798</sup> El Nacional, Venezuela supera promedio mundial de violencia de género, November 26, 2016.

<sup>799</sup> CEPAZ, Asociación Civil Mujeres en Línea, FREYA and AVESA, Informe sobre situación de los derechos de las mujeres en Venezuela [Report on the Situation of Women's Rights in Venezuela], September 2017, p. 26.

<sup>800</sup> Thus, all this is known for 2015 and 2016 is that the number of indictments for violence against women was 19,816 and 4,286, respectively [(CEPAZ, Asociación Civil Mujeres en Línea, FREYA and AVESA, Informe sobre situación de los derechos de las mujeres en Venezuela, September 2017, p. 27].

<sup>801</sup> IACHR, 2015 Annual Report, Chapter IV.B, Venezuela, para. 357.

<sup>802</sup> IACHR, Report No. 80/11, Case 12.626, Merits, Jessica Lenahan (Gonzales) et al, United States, para. 115-121.

punish, and eradicate said violence. It forms part of the general obligation of the State of Venezuela to organize its state apparatus with due diligence in such a way as to prevent, investigate, punish, and make reparation for all human rights violations. The IACHR reiterates that the obligation to act with due diligence applies to the whole of the State apparatus and encompasses the legislative framework, public policies, and the bodies responsible for public order, such as the police and the judiciary, with a view to preventing and responding appropriately to human rights violations, such as violence against women, and it includes the obligation to ensure access to appropriate and effective judicial remedies for victims and their next of kin.<sup>803</sup>

344. These obligations must be taken into account by the authorities when adopting measures from a gender perspective to combat violence against women. The IACHR has established that a gender perspective means taking account of the special situation of the risk of violence in all its expressions, including physical, psychological, sexual, economic, obstetric, and spiritual, among others, as well as the fact that most such incidents end in impunity. That perspective also entails considering the specific risks faced by persons with diverse sexual orientations and gender identities and expressions that differ from the norm or whose bodies do not match standard notions of what is feminine or masculine.<sup>804</sup>
345. The duty of States to conduct effective investigation acquires additional dimensions when a woman's right to life, physical integrity, or personal liberty is impaired, because when such crimes go unpunished the message conveyed is that violence against women is tolerated.<sup>805</sup> As regards the dearth of information, it needs to be emphasized that "access to information is a prerequisite for demanding and exercising other human rights, and therefore, the failure to respect and guarantee this right for women may lead to the infringement of their rights to live free from violence and discrimination."<sup>806</sup>
346. The Commission also notes with concern the high number of deaths of elderly persons as a consequence of citizen insecurity. Thus, between January 2016 and March 2017, 448 older adults were killed (276 cases of

<sup>803</sup> IACHE, *Indigenous Women and Their Human Rights in the Americas*, OEA/Ser.L/V/II, Doc. 44/17, April 17, 2017, para. 70; *Access to Justice for Women Victims of Sexual Violence in Mesoamerica*, OEA Ser.L/V/II Doc. 63, December 9, 2011, para. 41 and 43.

<sup>804</sup> IACHR, *Report on Measures Aimed at Reducing the Use of Pretrial Detention in the Americas*, OEA/Ser.L/V/II.163, Doc. 105, July 3, 2017, para. 199.

<sup>805</sup> IACHR, *Report on Citizen Security and Human Rights*, OEA/Ser.L/V/II, Doc. 57, December 30, 2009, para. 48.

<sup>806</sup> CIDH, *Access to Information, Violence against Women, and Administration of Justice in the Americas*, OAS/Ser.L/V/II.154, Doc. 19, March 27, 2015, para. 38.



homicide and 172 cases of culpable homicide.<sup>807</sup> Moreover, in the 15 months through June 2017, 168 older adults were murdered during theft/robbery.<sup>808</sup> The IACHR has pointed out that "older people often face abuse, abandonment, neglect, mistreatment, and violence, and many obstacles prevent them from exercising their human rights" and that member states must take all legislative and other measures to guarantee older people's rights.<sup>809</sup>

347. With respect to victims and survivors of trafficking in persons, the Commission observes that the crime of trafficking is addressed in the Organic Law on the Right of Women to a Life Free from Violence (2007)<sup>810</sup> and in the Organic Law against Organized Crime (2005),<sup>811</sup> which only defines trafficking in persons as an organized crime offense. The IACHR observes that those provisions do not completely satisfy international rules and standards in this matter. It is of the utmost concern that the definition of trafficking in person in the 2007 Organic Law on the Right of Women to a Life Free from Violence<sup>812</sup> only prohibits trafficking in women, girls, and female adolescents, neglecting to cover other possible victims of this crime, namely men and boys. In addition, the law states that there must be the use of force, fraud, or coercion for all forms of trafficking for sexual purposes, even in the case of girls, a provision that runs counter to Article 3.c of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, which complements the United Nations Convention against Transnational Organized Crime. That provision [Article 3.c] specifies that the recruitment, transportation, transfer, harboring or receipt of a child for the purpose of exploitation shall be considered "trafficking in persons" even if this does not involve any of the means set forth in subparagraph (a) of said article.
348. In short, the IACHR urged the State to adopt the measures needed to prevent, control, and reduce crime in accordance with international human rights standards and, in particular, abiding by specific obligations in respect of persons, groups, and communities at special risk or historically subjected to exclusion and discrimination. To that end, the Commission stresses that the State must have trained personnel and specialized infrastructure to provide quality service tailored to the needs of those

<sup>807</sup> Crónica Uno, 168 ancianos fueron asesinados por robo en 15 meses, June 6, 2017; and Convide A.C., Informe sobre muertes violentas en personas adultas mayores en Venezuela 2016-2017, 2017.

<sup>808</sup> Crónica Uno, 168 ancianos fueron asesinados por robo en 15 meses, June 6, 2017.

<sup>809</sup> IACHR, Press Release 111/15, "IACHR Urges States to Guarantee the Human Rights of Older Persons," October 1, 2015.

<sup>810</sup> Venezuela, Organic Law on the Right of Women to a Life Free from Violence, 2007.

<sup>811</sup> Venezuela, Organic Law against Organized Crime, September 27, 2005.

<sup>812</sup> Venezuela, Organic Law on the Right of Women to a Life Free from Violence, 2007, Article 56.

segments of the population facing greater risks of violence and crime, such as, in this case, women, children and adolescents, and older adults.<sup>813</sup>

## ***B. The State's Response to the Situation of Citizen Insecurity and Violence***

349. The State's response to the violence and insecurity in Venezuela has been a matter of particular concern to the IACHR and for that reason it has carefully monitored actions by the security forces that have posed risks to citizens' rights. One of the structural problems observed by the Commission is the militarization of citizen security, civilians' participation in security tasks, and reports of arbitrary detentions, torture, and extrajudicial executions.<sup>814</sup>
350. The IACHR notes that these structural issues persist and that, during the recent political, social, and economic crisis, there has been a marked increase in reports of the misuse of force by the security forces in armed operations to keep tight control over citizens, as well as human rights violations in the form of arbitrary arrests, extra judicial executions, and the raiding of premises during security operations. The IACHR addresses citizen security issues in this chapter, and, in the next, complaints of human rights violations in connection with public demonstrations. It does so inasmuch as the right to social protest and freedom of expression should not be approached as a public order or internal security problem, but rather as examples of human rights that the State must protect and promote ([Chapter III.A](#)).
351. The Commission further reiterates that the implementation of comprehensive public policies to protect citizen security, rooted in respect for human rights, is essential for a properly performing democratic system.<sup>815</sup> As the IACHR has pointed out, citizen security policies need to be assessed from a human rights perspective,<sup>816</sup> and it is from that perspective that the IACHR describes, below, actions undertaken by the State in that regard.

<sup>813</sup> IACHR, *Report on Citizen Security and Human Rights*, OEA/Ser.L/V/II, Doc. 57, December 30, 2009, para. 83.

<sup>814</sup> The IACHR has mentioned violence and citizen security issues in Venezuela in its Annual Report for the years 2016 (para. 27-25), 2015 (para. 28-53), 2014 (para. 337-359), 2013 (para. 448-475), 2012 (para. 374-382), 2011 (para. 400-411), 2010 (para. 686-699), 2009 (para. 500-509), 2008 (para. 411-423), 2007 (para. 290-302), 2004 (para. 229-236 and 250-257).

<sup>815</sup> IACHR, *2015 Annual Report*, Chapter IV.B, Venezuela, December 31, para. 52.

<sup>816</sup> IACHR, *Report on Citizen Security and Human Rights*, OEA/Ser.L/V/II, Doc. 57, December 30, 2009, para. 35.

## 1. General Concerns: Militarization of Citizen Security and Involvement of Civilians in Security Tasks

352. The Commission has continued to keep track of the programs to combat violence implemented by the State.<sup>817</sup> In that regard, it notes that on January 17, 2017, the President of the Republic gave a presentation on national media of Plan Carabobo 2021 on citizen security covering, as he pointed out, the following security policies:<sup>818</sup>

- (i) *Movimiento por la Paz y la Vida* [Movement for Peace and Life], establishing "peace zones," which, according to the information received by the IACHR, would have been converted into "territories freed from crime."<sup>819</sup>
- (ii) *Patria Segura y Patrullaje Inteligente* [Safe Fatherland and Smart Patrols], implemented as of the second half of 2013, which, according to President Maduro, involved deployment of the Bolivarian National Armed Forces (FANB);<sup>820</sup>
- (iii) *Cuadrantes de la Paz* [Peace Quadrants], a type of division of the territory created by the Ministry of the People's Power for Interior, Justice and Peace (MPPRIJP) in 2013 and implemented around February 2014.<sup>821</sup>
- (iv) *Sistema de Inteligencia de Protección Popular para la Paz (SP3)* [People's Protection for Peace Intelligence System], a citizen oversight "strategy," coordinated by the SEBIN, the origins of which reportedly date back to 2008.<sup>822</sup> This system has been reported to be one that promotes "cooperative patriots" used to persecute human rights defenders, political leaders, journalists, and others;<sup>823</sup>

<sup>817</sup> IACHR, *Democracy and Human Rights in Venezuela*, OEA/Ser.L/V/II Doc. 54, December 30, 2009, Title VI, The rights to life, personal integrity, nd personal liberty and security ; El Universo, *Cifras de la violencia en Venezuela rompen récords cada año que pasa*, August 14, 2016; and PROVEA, *HRW y Provea presentaron informe conjunto sobre abusos de OLP*, April 4, 2016.

<sup>818</sup> Cadena completa. *Nicolás Maduro activa seis líneas para combatir la inseguridad*. January 17, 2017.

<sup>819</sup> COFAVIC. *Ejecuciones extrajudiciales, 40 historias de 6385 vidas ignoradas 2012-2017*. [Extrajudicial executions, 40 accounts of lives done away with, 2012-2017] 2017, p. 30.

<sup>820</sup> Correo del Orinoco. *El objetivo del Plan Patria Segura es establecer un sistema de protección para el pueblo*. June 13, 2013.

<sup>821</sup> COFAVIC. *Ejecuciones extrajudiciales, 40 historias de 6385 vidas ignoradas 2012-2017*. [Extrajudicial executions, 40 accounts of lives done away with, 2012-2017] 2017, p. 31.

<sup>822</sup> This strategy is reportedly similar to one that former President Hugo Chávez attempted to use in 2008 [Emol, *Hugo Chávez deroga polémica "ley sapo" en Venezuela*, June 10, 2008] and in 2012 to get anyone to perform intelligence duties at the request of the authorities. In 2012, the then President of the Republic once again attempted to introduce the basics of what was nicknamed the "informant's law" through the passing of the Organic Law against Crime. [Tal Cual Digital, *Regreso de la Ley Sapo*, February 2, 2012; El Pitazo, *Gobierno reedita la 'ley sapo' tras últimas protestas*, December 30, 2016].

<sup>823</sup> Police reports allegedly also refer to "cooperating patriots" to refer to informants or persons denouncing common crimes. This practice reportedly led to assaults and murders of neighborhood leaders accused by members of criminal gangs of betraying them to the authorities. COFAVIC. *Ejecuciones extrajudiciales, 40 historias de 6385 vidas ignoradas 2012-2017*. [Extrajudicial executions, 40 accounts of lives done away with,

- (v) *Operación de Liberación Humanista del Pueblo (OLHP)* [Humanist Liberation of the People Operation]: a security plan introduced in 2017 which, according to the President, constitutes a moderate and "humanist" version of the OLP, an operation launched in 2015 accused of serious human rights violations<sup>824</sup> ([Chapter IV.B.2](#)); and
  - (vi) *Plan Zamora*, which consists of a "civilian-military" plan activated in 2017 to handle the demonstrations that began in April and led to numerous complaints of disproportionate use of force, arbitrary arrests, and other very serious human rights violations ([Chapter IV.B.2](#)).
353. The IACHR notes that this is a set of pre-existing policies that pose serious challenges with respect to human rights that the IACHR has already commented on. In general, the IACHR points out that these measures exacerbate the militarization of citizen security and explicitly provide for civilian participation in citizen security tasks, despite reiterated IACHR recommendations to the contrary. The Commission further notes that these policies are heavily geared toward repression and responses to de facto situations rather than toward prevention and control over the factors that generate violence and insecurity. Following is a description of the aspects that the IACHR finds most worrisome:

### ***Militarization***

354. One of the most serious patterns identified concerns the use of military units for citizen security tasks. Although the Constitution establishes the civilian nature of the bodies responsible for citizen security,<sup>825</sup> various plans ignore that by involving the armed forces in citizen security tasks. Already back in 2009 the IACHR voiced its concern at provisions allowing for armed forces participation in the maintenance of domestic law and order in Venezuela, especially Articles 328<sup>826</sup> and 329<sup>827</sup> of the

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2012-2017] 2017, p. 31; La Nación, "[Patriotas cooperantes](#)": otra arma del chavismo contra los opositores, January 30, 2016.

<sup>824</sup> Noticias 24, [Nicolas Maduro Mensaje anual a la Nacion](#), January 15, 2017; Correo del Orinoco, [Incorporarán 10 mil funcionarios a la PNB](#) | Presidente Maduro ordena reforzar las OLP durante 2017 con un nuevo carácter humanista, January 15, 2017; and Venezuelanalysis, [Venezuela's Maduro Highlights Social Achievements in Annual Address to the Nation](#), January 16, 2017.

<sup>825</sup> Article 332 of the Constitution of the Bolivarian Republic of Venezuela provides that: [...] Organs of civilian security are of civil nature and shall respect human dignity and human rights, without discrimination of any kind."

<sup>826</sup> This Article provides that the FANB is an institution "organized by the State to guarantee the independence and sovereignty of the Nation and ensure the integrity of its geographical space, through military defense, cooperation for the purpose of maintaining internal order and active participation in national development"

<sup>827</sup> According to this Article, "The Army, Navy and Air Force have as their essential responsibility the planning, execution and control of military operations as required to ensure the defense of the Nation. The National Guard shall cooperate in the carrying out of these operations, and shall have as its basic responsibility that of conducting operations as required to maintain internal order within the country." The National Armed

Constitution, which leave open the possibility of the FANB participating in maintenance of domestic law and order in the country.<sup>828</sup>

355. The Commission has likewise been monitoring the various legal and institutional reforms that endow the FANP and specialized bodies created within it with authority to intervene in citizen security oversight tasks and the maintenance of domestic law and order.<sup>829</sup> Along similar lines, for years civil society organizations have complained of a process of "militarization of citizen security policies."<sup>830</sup> As regards the legal measures authorizing intervention by the Armed Forces in security tasks, the Commission has pronounced on Article 20 of the Organic Law of National Security,<sup>831</sup> which provides for Armed Forces cooperation in the maintenance of domestic law and order.<sup>832</sup> Similarly, the IACHR has noted the existence of several security plans proposing Armed Forces participation. Thus, in 2010, the Bicentennial Citizen Security Mechanism (Dibise) was implemented, with FANB support.<sup>833</sup> The Commission also pronounced on the "Safe Fatherland Plan" (*Plan Patria Segura*), adopted in 2013, which contemplates FANB intervention<sup>834</sup> and was re-launched in 2017.<sup>835</sup> In this connection, the OLP and PZ stand out as emblematic examples of the process by which citizen security has become militarized, due to the

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Forces shall carry out activities of administrative policing and criminal investigation activities as provided for by law.

<sup>828</sup> IACHR, *Democracy and Human Rights in Venezuela*, OEA/Ser.L/V/II Doc. 54, December 30, 2009, para. 677.

<sup>829</sup> IACHR, *2015 Annual Report*, Chapter IV.B, Venezuela, para. 41; *2013 Annual Report*, Chapter IV.B, Venezuela, para. 474-475; *2012 Annual Report*, Chapter IV.B, Venezuela, para. 382-62; *2011 Annual Report*, Chapter IV, Venezuela, para. 11. It has also pronounced on the participation of the Armed Forces in security tasks in the two previous country reports. [IACHR, *Report on the Situation of Human Rights in Venezuela*, OEA/Ser.L/V/II.118, Doc. 4 rev. 1. October 24, 2003, para. 269-279; IACHR, *Report on Democracy and Human Rights in Venezuela*, OEA/SER.L/V/II, Doc. 54, December 30, 2009, para. 677-683].

<sup>830</sup> IACHR, *2015 Annual Report*, Chapter IV.B, Venezuela, para. 41; *2013 Annual Report*, Chapter IV.B, Venezuela, para. 453; PROVEA, *ONG's venezolanas entregarán informe ante el Comité contra la Tortura de la ONU*, November 4, 2014; COFAVIC, *Ejecuciones extrajudiciales, 40 historias de 6385 vidas ignoradas 2012-2017*, [Extrajudicial executions, 40 accounts of lives done away with, 2012-2017] 2017, p. 31.

<sup>831</sup> That provision establishes that: The National Armed Forces constitute one of the fundamental elements needed for integral defense of the Nation, organized by the State to conduct its military defense in shared responsibility with society. In their various components and respective spheres of action, they are responsible for planning, executing, and overseeing military operations, in order to guarantee the independence and sovereignty of the Nation and safeguard the integrity of the national territory and other geographical spaces of the Republic, and for cooperating in maintaining domestic law and order. Laws shall determine the participation of the National Armed Forces in the integral development of the Nation."

<sup>832</sup> [IACHR, *Report on the Situation of Human Rights in Venezuela*, OEA/Ser.L/V/II.118, Doc. 4 rev. 1. October 24, 2003, para. 271; IACHR, *Report on Democracy and Human Rights in Venezuela*, OEA/SER.L/V/II, Doc. 54, December 30, 2009, para. 679.

<sup>833</sup> IACHR, *2012 Annual Report*, Chapter IV, Venezuela, para. 380; *2011 Annual Report*, Chapter IV, Venezuela, para. 410.

<sup>834</sup> IACHR, *2015 Annual Report*, Chapter IV.B, Venezuela, para. 44; *2013 Annual Report*, Chapter IV.B, Venezuela, para. 451.

<sup>835</sup> Últimas Noticias, *Gobierno relanzó Plan Patria Segura para combatir la criminalidad*, January 17, 2017; OVV, *Las 6 claves del relanzamiento del Plan Patria Segura*, January 19, 2017.

marked participation of the Armed Forces in their implementation. ([Chapter IV.B.2](#)).

356. With respect to this matter, the Commission urges the State to eliminate the participation of the armed forces in citizen security activities for which the police are responsible. It likewise reiterates that the lethal use of force must be exception and that personnel taking part in security operations must be duly trained in that regard. Further, the IACHR issues a reminder that "conflicts must be resolved from a clear standpoint of citizen security, in which differences arise between citizens who must be protected and not enemies who must be fought."<sup>836</sup>

***Participation by Civilians and Armed (Tr. pro-government militia) Groups or "colectivos"***

357. The IACHR also reiterates its concern at the provisions and plans that have reportedly been implemented for several years now with a view to establishing a civic-military union for security activities. One such measure that the Commission has commented on is the establishment of the Bolivarian National Militia and the Workers' Militia comprised of civilians and whose actions to maintain law and order are envisaged as part of the Armed Forces.<sup>837</sup> On this point, the State indicates in its comments "that the Bolivarian Militia does not have nor does it exercise the functions or authorities to ensure public order, social peace, or citizen coexistence during public gatherings and demonstrations, nor does it have its own police force, as derived literally from the concept and functions established in the Organic Law on the National Bolivarian Armed Forces Law. Rather, the organization is analogous to a military reserve, which exists in all countries on the American and European continents."<sup>838</sup>
358. The information received by the IACHR differs from this. In this regards, the Commission is concerned at the possibility of the PSUV turning into a militia, as one authority announced. Indeed, in May 2017, the deputy for the PSUV and former officer in the Armed Forces, Pedro Carreño, publicly stated that PSUV militants would start military training pursuant to the "PSUV's recruitment plan" which orders their incorporation as combatants.

<sup>836</sup> IACHR, Press Release No. 49A/16, [Report on the 157th Session of the IACHR](#), June 13, 2016.

<sup>837</sup> IACHR, [2015 Annual Report](#), Chapter IV.B, Venezuela, para. 41-43; [2014 Annual Report](#), Chapter IV.B, Venezuela, para. 349, 352 and 358; [2013 Annual Report](#), Chapter IV.B, Venezuela, para. 474-475; [2012 Annual Report](#), Chapter IV.B, Venezuela, para. 380 and 382; [2011 Annual Report](#), Chapter IV.B, Venezuela, para. 409; [2010 Annual Report](#), Chapter IV, Venezuela, para. 693-699; *Democracy and Human Rights in Venezuela*, OEA/SER.L/V/II, Doc. 54, December 30, 2009, para. 695-700; [2008 Annual Report](#), Chapter IV.B, Venezuela, para. 407-409; and [2007 Annual Report](#), Chapter IV, Venezuela, para. 297-298.

<sup>838</sup> Bolivarian Republic of Venezuela, Ministry of the People's Power for Foreign Relations, Note AGEV/2017-000300, comments on the draft country report, December 21, 2017, para. 69.

According to the Deputy, the Plan would involve the registering, organization, training and use of members of that party.<sup>839</sup>

359. The IACHR emphatically reiterates that the "imminent deployment of military forces and armed civilian militias ordered by the Executive Branch represents a serious threat to the standards regarding citizen security and the protection of human rights."<sup>840</sup> Once again, the IACHR points out that military training is not appropriate for controlling domestic security, so that fighting violence domestically must be the exclusive task of a properly trained police force that acts in strict compliance with human rights. Likewise, citizens must not be incorporated into any kind of domestic security strategy. Nor should the role of society vis-à-vis national security be distorted.<sup>841</sup> The Commission further notes that it is not sufficient for the authorities to condemn violent acts committed by the "colectivos." Those authorities have an obligation to adopt all necessary measures to prevent them, as well as to investigate, try, and punish those responsible, when such acts do occur.<sup>842</sup>

## 2. Operations, Plans, and Measures of Particular Concern

360. Following are comments on the security plans implemented by the State between 2015 and 2017 that are of most concern to the IACHR, namely the OLP and Plan Zamora. This is because those plans have served as the basis for the increased militarization of security and civilians' participation in security tasks, and have at the same time led to increased complaints of human rights violations committed by security agents. The IACHR also takes into consideration the fact that, based on the information available, 49% of the alleged extrajudicial executions registered by COFAVIC in 2016 occurred in connection with either special operations or operations carried out while implementing the special security plan.<sup>843</sup>

<sup>839</sup> According to statements made by him, some 10,176 Bolívar Chávez Battle Units (UBCH) would be formed, each one of which would be a squad. Four UBCH's would in turn constitute a company, called a CLP (People's Struggle Circle), thereby creating 3,680 CLPs. All in all, 920 battalions would be formed nationwide and placed at President Nicolás Maduro's disposal. [Aporrea, Pedro Carreño: Militantes del PSUV recibirán entrenamiento militar y antimotín, May 8, 2017].

<sup>840</sup> IACHR, Press Release No. 048/17, IACHR Urges Venezuela to Guarantee the Right to Protest and to Demilitarize Streets, April 19, 2017.

<sup>841</sup> IACHR, Democracy and Human Rights in Venezuela, OEA/Ser.L/V/II Doc. 54, December 30, 2009, para. 699.

<sup>842</sup> IACHR, Press Release No. 093/17, IACHR Condemns Serious Acts of Violence at National Assembly in Venezuela, July 10, 2017.

<sup>843</sup> As for the other alleged extrajudicial executions, 18% are alleged to have occurred in flagrante delicto cases, 23% during regular surveillance operations or patrols, and 4% in an operation allegedly carried out because of the death of a government official. No contextual information was available for the remaining 6%. COFAVIC. *Ejecuciones extrajudiciales, 40 historias de 6385 vidas ignoradas 2012-2017*. [Extrajudicial executions, 40 accounts of lives done away with, 2012-2017] 2017, p. 58.



### ***Liberation of the People Operation (OLP) and the Humanist Liberation of the People Operation***

361. In July 2015 the so-called OLP began, with the objective of offering protection from "the crime and paramilitarism directed by the Venezuelan and international fascist ultra-right, which seeks to alter the peace and security of all Venezuelans, especially children and adolescents."<sup>844</sup> Nevertheless, there have been complaints, since its inception, that the OLP is guided more by a political strategy than by a program to combat insecurity. That is because it lacks principles, clear concepts, spatial demarcation, and approaches aimed at resolving the problem.<sup>845</sup>
362. The IACHR observes that the state agents implementing it include the Bolivarian National Guard (GNB), which is part of the Armed Forces.<sup>846</sup> Since the OLP started, consistent information has been received regarding serious human rights violations by military and police personnel, including arbitrary killings, illegal arrests and cruelty, illegal raids on people's homes, and destruction of household goods.<sup>847</sup>
363. The Commission reiterates its concern at the large number of people reported to have been killed and detained since the OLP was launched,<sup>848</sup> and at arbitrary raids carried out by State security forces. According to civil society organizations, 445 people died in connection with the OLP between July 2015 and January 2016.<sup>849</sup> In contrast, according to official figures, through end-2016, 292 people died allegedly due to actions undertaken by State officials executing the OLP,<sup>850</sup> and 505 through March 2017, including

<sup>844</sup> Official Gazette of the state of Carabobo. Supporting Agreement No. 0045-2015 dated 07/21/2015 issued by the Legislative Council of the state of Carabobo/Special Edition No. 5372, published on July 29, 2015 [IACHR, 2015 Annual Report, Chapter IV.B, Venezuela, para. 45].

<sup>845</sup> Transparencia Venezuela, A 3 meses y medio de la OLP, October 27, 2015, p. 1.

<sup>846</sup> COFAVIC. *Ejecuciones extrajudiciales, 40 historias de 6385 vidas ignoradas 2012-2017*. [Extrajudicial executions, 40 accounts of lives done away with, 2012-2017] 2017, p. 25. In *Sight Crime*, Colectivos: la cara oculta de la OLP en Venezuela, August 5, 2016.

<sup>847</sup> IACHR, 2016 Annual Report, Chapter IV.B, Venezuela, para. 30-41; IACHR, Derechos humanos y "Operación Liberación del Pueblo" en Venezuela, April 4, 2016; El Universo, Cifras de la violencia en Venezuela rompen récords cada año que pasa, August 14, 2016; HRW and PROVEA, Poder sin límites, Redadas policiales y militares en comunidades populares y de inmigrantes en Venezuela, April 4, 2016. COFAVIC. *Ejecuciones extrajudiciales, 40 historias de 6385 vidas ignoradas 2012-2017*. [Extrajudicial executions, 40 accounts of lives done away with, 2012-2017] 2017, p. 25.

<sup>848</sup> IACHR, 2015 Annual Report, Chapter IV.B, Venezuela, para. 47.

<sup>849</sup> According to Keymer Ávila,, a researcher at the Central University of Venezuela's (UCV) Criminal Sciences Institute, "the Public Prosecutors' Office reported some 245 killed in Liberation of the People operations (OLP) in 2015 and, at the beginning of February this year, a national circulation daily loudly proclaimed that they had "taken out" more than 200 people in January alone. That gives us a total of 445 people killed in connection the the OLP in six months" [Contrapunto, Keymer Ávila: La OLP ha servido para mermar derechos y posicionar la lógica del enemigo, March 13, 2016].

<sup>850</sup> According to official figures, 247 people died ini 2015 and 45 in 2016 [Permanent Mission of the Bolivarian Republic of Venezuela to the OAS, Note II.2. E8. D-OEA. 16-242 of April 21, 2016; and IACHR 2016 Annual Report, Chapter IV.B, Venezuela, para. 37].



27 minors.<sup>851</sup> Likewise, civil society organizations have indicated that at least 20 people were executed after having been neutralized.<sup>852</sup> Cecodap recorded 33 homicides of children and adolescents in the course of the OLP during 2016.<sup>853</sup>

364. The Commission notes with concern that reports of extrajudicial executions have continued, despite the State having announced adjustments to the OLP in May 2016,<sup>854</sup> aimed at "eradicating cells whose political objectives are to de-stabilize the peace of Venezuelans" and correcting "problems, errors, and weaknesses encountered during the first phase."<sup>855</sup> In fact, in this second phase of the OLP, complaints of extrajudicial executions and killings by security agents increased.<sup>856</sup> For example, in October 2016, 80 people were reported killed during the incursion of security organs in the states of Miranda, Bolívar, Lara, Mérida, Distrito Capital, Táchira and Monagas: a 57% increase over the number for the same period in 2015.<sup>857</sup>
365. That same month, the disappearance of 20 young people was reported, after allegedly being arrested in connection with the OLP of October 15, 2016. Later it transpired that two mass graves had been discovered: one containing two corpses, in the Maturetera district in the municipality of Brion, and another, containing 10 corpses, in the Aragüita district in the municipality of Acevedo.<sup>858</sup> In this connection, the MP reported that 11 soldiers had been charged in the death of these 12 persons,<sup>859</sup> while the State indicated that 18 members of the Bolivarian National Army were in detention in connection with these events.<sup>860</sup>

<sup>851</sup> Public Prosecutors' Office (MP, Actuaciones del Ministerio Público relacionadas con la OLP en Venezuela (Julio 2015 - Marzo 2017), July 22, 2017; El Universal, Fiscalía: Las OLP han dejado más de 500 muertes desde 2015, July 23, 2017; Efecto Cocuyo, Cifras de muertos en OLP desde el 2015 son solo "la punta del iceberg", July 24, 2017; and La Región, Fiscalía: Las OLP han dejado más de 500 muertes desde 2015, July 25, 2017.

<sup>852</sup> IACHR, Derechos humanos y "Operación Liberación del Pueblo" en Venezuela, April 4, 2016; and 2016 Annual Report, Chapter IV.B, Venezuela, para. 32.

<sup>853</sup> Cecodap, Communication sent to the IACHR, September 2017, para. 16.

<sup>854</sup> VTV, Nueva fase de las Operaciones de Liberación del Pueblo (OLP) para continuar protegiendo a los venezolanos, May 30, 2016.

<sup>855</sup> VTV, Maduro anuncia nueva fase de las OLP para proteger permanentemente al pueblo, May 10, 2016.

<sup>856</sup> 800 Noticias, El balance que dejaron las OLP en los índices de criminalidad, January 1, 2017.

<sup>857</sup> 800 Noticias, El balance que dejaron las OLP en los índices de criminalidad, January 1, 2017.

<sup>858</sup> The victims were: Elizer Ramírez, Antony Vargas, Antonio Aladejo, Luis Sanz, Dennys Acevedo, Oscar Rodríguez, Yorman Mejías, Freddy Hernández, Víctor Manuel Martínez, Jairo Rivas, Kenry González, and Carlos Marchena [Actualidad, Cronología: Los muertos de Barlovento o cómo una OLP terminó en masacre, December 2, 2016].

<sup>859</sup> COFAVIC, Comunicado: medidas de seguridad basadas en violaciones de derechos humanos, miedo y deshumanización profundizan la exclusión social y atentan contra la democracia en Venezuela, November 29, 2016; and El Nuevo Herald, Cadáveres de 12 detenidos en operativos policiales revive polémica en Venezuela, November 28, 2016.

<sup>860</sup> IACHR, 2016 Annual Report, Chapter IV.B, Venezuela, para. 39.

366. In addition, in early 2017, during his annual speech to the Nation, President Maduro announced the reform of the OLP, from a humanitarian perspective.<sup>861</sup> Subsequently, the Executive Vice President, Tareck El Aissami, stated that the OLP would henceforth be called the "Humanitarian Operation to Liberate the People" (OLHP) and would act with total respect for human rights.<sup>862</sup> Nonetheless, the Commission observes with profound concern that the OLHP still has major issues from a human rights perspective. According to COFAVIC, in the first half of 2017, 856 cases of extrajudicial executions were registered, the highest figure since COFAVIC began keeping records in 1989.<sup>863</sup> Referring to this, it underscored that "this could have to do with the impact of the OLP and with the fact that advantage was taken of all the attention directed to political repression and a drop in the attention paid to acts of violence perpetrated in the name of citizen security."<sup>864</sup>
367. Concretely, it points out that during the operation carried out, in March 2017, in El Valle, in the Libertador municipality of Distrito Capital, nine people were killed and more than 50 arrested. According to the journalist who reported on the events those who died were allegedly criminals who died in the clashes, while the detainees had allegedly been caught in flagrante delicto or else were wanted by the judicial authorities.<sup>865</sup> However, this version was denied by next of kin of the persons killed.<sup>866</sup> There was the case, for instance, of Ángel Carrasquero, allegedly intercepted as he left his house and taken to a side street, where he was executed by being shot in the neck and mouth.<sup>867</sup> According to family members, the motive had been revenge for refusal to pay extortion money to a policeman.<sup>868</sup> Similarly, Alex Yorman Vegas, the father of a 16-year-old

<sup>861</sup> Noticias 24, [Nicolas Maduro Mensaje anual a la Nacion](#), January 15, 2017; Correo del Orinoco, [Incorporarán 10 mil funcionarios a la PNB | Presidente Maduro ordena reforzar las OLP durante 2017 con un nuevo carácter humanista](#), January 15, 2017; and [Venezuelanalysis, Venezuela's Maduro Highlights Social Achievements in Annual Address to the Nation](#), January 16, 2017.

<sup>862</sup> El Nuevo Herald, [Gobierno venezolano asegura que nuevo plan de seguridad no es 'represivo'](#), January 18, 2017.

<sup>863</sup> Runrunes, [OLP: La máscara del terror oficial en Venezuela](#), 2017; COFAVIC, *Ejecuciones extrajudiciales, 40 historias de 6385 vidas ignoradas 2012-2017*. [Extrajudicial executions, 40 accounts of lives done away with, 2012-2017] 2017, p. 59.

<sup>864</sup> Runrunes, [OLP: La máscara del terror oficial en Venezuela](#), 2017; COFAVIC.

<sup>865</sup> El Universal, [Toma policial de El Valle deja nueve delincuentes muertos y 60 detenidos](#), 1 March 10, 2017; and Runrunes, [9 muertos y 50 detenidos tras despliegue de OLHP en Los Jardines de El Valle](#), March 10, 2017.

<sup>866</sup> Control Ciudadano, [Violaciones de Derechos Humanos 2017. Caso Violaciones de DDHH de la OLP en el Valle](#), February 28, 2017.

<sup>867</sup> According to his father, Luis Ángel Carrasquero: "They grabbed my son at about 7:30 a.m. when he left the house to go to work. They took him to a side-street and there they killed him. I tried to go up there but the police would not let me. After a while, four or five shots were heard, and I was worried and attempt to get through again but the police still would not let me." [Runrunes, [OLP: La máscara del terror oficial en Venezuela](#), 2017].

<sup>868</sup> Runrunes, [OLP: La máscara del terror oficial en Venezuela](#), 2017; COFAVIC.

boy, complained that police burst violently into his home and "forced him to set on a sofa in the living room, then suddenly started shouting "clash, clash" and began shooting, killing my boy with a shot to the chest." He also reported that the police invented a police record against his son.<sup>869</sup> Also noted was the use of masks to completely cover security agents' faces,<sup>870</sup> to prevent them from being identified and later investigated and tried.

368. In addition, according to information in the public domain, every week for almost two months in 2017, there were OLP or similar operations in Cota 905, in the municipality of Libertador. During those operations, security agents wore black and were masked; they came to kill and destroy.<sup>871</sup> In particular, there was a report of four people killed by the Special Actions Squad (FAES) of the PNB, on March 9. According to witnesses, security agents used silencers when shooting the victims. One of them had run to a relative's home, where a policeman had shut the door saying "you have seen nothing" after which he made the victim kneel and then shot him.<sup>872</sup>
369. There have also been denunciations of arbitrary arrests carried out in connection with the OLP. In at least 24 of these operations, there were allegedly mass arbitrary arrests of 14,000 people, of whom only 100 were charged with criminal offenses.<sup>873</sup> According to the MPPRIJP, on February 1, 2016 also, 2,310 people were arrested in connection with the OLP.<sup>874</sup> Furthermore, according to reports following the disappearance of 20 young people in the state of Miranda, eight of them were released after being tortured and after having signed documents against their will, without having read them.<sup>875</sup>
370. Surprise, mass, illegal raids were allegedly carried out by police and by soldiers, especially of low-income households.<sup>876</sup> Regarding this, the State denied that they were raids and stated that they involved 1% of homes provided under the Gran Misión Vivienda (housing) Program, which were

<sup>869</sup> Control Ciudadano, Violaciones de Derechos Humanos 2017. Caso Violaciones de DDHH de la OLP en el Valle, February 28, 2017.

<sup>870</sup> El Nacional, La aterradora nueva máscara de las OLP, 1 March 11, 2017.

<sup>871</sup> Runrunes, OLP: La máscara del terror oficial en Venezuela, 2017; COFAVIC.

<sup>872</sup> Runrunes, OLP: La máscara del terror oficial en Venezuela, 2017; COFAVIC.

<sup>873</sup> IACHR, 2016 Annual Report, Chapter IV.B, Venezuela, para. 31.

<sup>874</sup> Últimas Noticias, OLP ha desmantelado 144 bandas en 135 operaciones, February 1, 2016.

<sup>875</sup> Actualidad, Cronología. Los muertos de Barlovento o cómo una OLP terminó en masacre, December 2, 2016.

<sup>876</sup> According to information received by the IACHR, the raids were conducted under cover of night, with the theft of household goods, destruction of property, and homes burnt down; and that no reasons were given for the arrests. [IACHR, Derechos humanos y "Operación Liberación del Pueblo" en Venezuela, April 4, 2016].

evicted following demands for the State to return peace and security to those areas that had been taken over by criminals.<sup>877</sup>

371. Sudden, massive, and illegal raids were carried out by police and military forces, mainly in low-income homes.<sup>878</sup> Regarding this, the State denied that these were raids and indicated that the evictions accounted for 1% of the homes delivered by the program Gran Misión Vivienda, noting that citizens have been clamoring for the State to take action to return peace and security to these areas, which are controlled by criminals.<sup>879</sup>
372. There have been complaints of security agents helping themselves, during the raids, to money and personal belongings. Thus, Mr. Alex Yorman Vegas said that among other things "they took away his daughter's tablet, the Nintendo DS console, the computer speakers, the mouse, some flours I had and sugars... my eau de cologne, and my wife's and my daughters' perfumes," in connection with the OLP in El Valle, on March 10, 2017.<sup>880</sup> In June 2017, members of the Intelligence and Strategy Division of the police in the state of Bolívar (Diepeb) are also alleged to have made off with a number of goods from a house that was also used as a shop, such as television sets, cellphones, and videogame consoles, as well as food items on sale and the cash in the till.<sup>881</sup> It needs to be pointed out that these kinds of complaints have been filed ever since the OLP began. For instance, the residents of Cota 905 said that the agents taking part in the OLP of July 13, 2015 had stolen cellphones, cash, and food, as well as other items.<sup>882</sup>
373. The IACHR is deeply concerned at reports indicating that operations have been used for revenge purposes, to seize land that was then given to pro-Government "colectivos", and to provide protection for military personnel and persons close to the Government.<sup>883</sup> Furthermore, the Commission observes that the Pan to Liberate the People has disproportionately

<sup>877</sup> IACHR, Human Rights and the "Operation to Liberate the People" in Venezuela, April 4, 2016; 2016 Annual Report, Chapter IV.B, Venezuela, para. 33; and IACHR, Press Release No. 49A/16, Report on the 157th Session of the IACHR, June 13, 2016.

<sup>878</sup> Según la información recibida, los allanamientos se llevan a cabo durante la noche, con robo de enseres, destrucción de propiedad, incendio de viviendas y que en las detenciones no se les comunica las causas de las mismas [CIDH, Derechos humanos y "Operación Liberación del Pueblo" en Venezuela, 4 de abril de 2016].

<sup>879</sup> CIDH, Derechos humanos y "Operación Liberación del Pueblo" en Venezuela, 4 de abril de 2016; Informe Anual 2016, Capítulo IV.B, Venezuela, párr. 33; y Comunicado de Prensa No. 049A/16, Informe sobre el 157º Período de Sesiones de la CIDH, 13 de junio de 2016.

<sup>880</sup> Runrunes, OLP: La máscara del terror oficial en Venezuela, 2017; COFAVIC.

<sup>881</sup> Runrunes, OLP: La máscara del terror oficial en Venezuela, 2017; COFAVIC.

<sup>882</sup> HRW and PROVEA, Poder sin límites, Redadas policiales y militares en comunidades populares y de inmigrantes en Venezuela, April 4, 2016, p. 25.

<sup>883</sup> Runrunes, OLP: La máscara del terror oficial en Venezuela, 2017; COFAVIC.

impacted persons living in poverty in Venezuela.<sup>884</sup> The figures on alleged extrajudicial executions, most of them committed in special operations, show that most of the victims are youths under 25 years of age living in poverty, many of them victims of police abuse and of "parapolice" groups.<sup>885</sup> Likewise, the Commission has previously pointed out, interventions by State security forces in the Hemisphere have frequently violated the right to inviolability of the home, especially among the socially and economically most disadvantaged segments of the population or segments that historically have suffered discrimination on ethnic or racial grounds.<sup>886</sup>

374. The Commission has also received information to the effect that those human rights violations were committed without state agents accounting for their actions,<sup>887</sup> even though the authorities themselves admitted that a large number of people were killed in connection with this operation. Thus, the Public Prosecutors' Office (MP) pointed out that there were a high percentage of members of the OLP, pertaining to the Bolivarian National Guard, undergoing criminal justice proceedings on account of complaints of destruction of homes, theft, and improper conduct.<sup>888</sup> According to the MP, in March 2017, 77 investigations were under way for human rights violations, other than violations of the right to life, such as violation of the sanctity of the home, unlawful deprivation of liberty, cruelty, misuse of authority, and destruction of homes. Investigations were under way involving 1,074 police officers or military personnel, only 112 of whom had been charged.<sup>889</sup>
375. Given the denunciations of these heinous acts, the Commission points out once again that the State has an ineluctable obligation to take all necessary steps to protect the life and personal integrity of everyone under its jurisdiction. Furthermore, the Commission reiterates that OLP operations pose major challenges from a human rights perspective, which the State

<sup>884</sup> PROVEA has maintained that "[the] OLP is a 'razzia' [hostile raid] designed to plunder, criminalize, and stigmatize the poor." [El Universal, Provea pide al Gobierno detener la OLP por ser una "razzia" contra pobres, August 13, 2015].

<sup>885</sup> COFAVIC, *Ejecuciones extrajudiciales, 40 historias de 6385 vidas ignoradas 2012-2017*. [Extrajudicial executions, 40 accounts of lives done away with, 2012-2017] 2017, p. 41.

<sup>886</sup> IACHR, Report on Citizen Security and Human Rights, OEA/Ser.L/V/II, Doc. 57, December 31, 2009, para. 176.

<sup>887</sup> Civil society organizations have complained about an insufficient response by the MP and the Ombudsperson's Office (DP) and about the flouting of the Venezuelan Constitution's requirement that citizen security bodies be civilian. [IACHR, Human Rights and the "Operation to Liberate the People" in Venezuela, April 4, 2016]. At this hearing HRW and PROVEA presented their report entitled *Poder sin límites* [Unfettered power], concerning these operations [HRW and PROVEA, Poder sin límites, Redadas policiales y militares en comunidades populares y de inmigrantes en Venezuela, April 4, 2016].

<sup>888</sup> Public Prosecutors' Office (MP), *Actuaciones del Ministerio Público relacionadas con la OLP en Venezuela* (Julio 2015 - Marzo 2017), July 22, 2017.

<sup>889</sup> Public Prosecutors' Office (MP), *Actuaciones del Ministerio Público relacionadas con la OLP en Venezuela* (Julio 2015 - Marzo 2017), July 22, 2017.

must guarantee when implementing citizen security policies. Given the participation of members of the Armed Forces in the OLP, the IACHR reiterates that "issues that have to do with citizen security are the exclusive purview of the duly organized and trained civilian police force."<sup>890</sup> The Commission deplores the extrajudicial execution of people in connection with these operations and again points out that the use of lethal forces must be extremely exceptional and proportionate with limits set by the authorities. As the Venezuelan State has repeatedly been advised, the use of force shall only proceed when all other means of control have been exhausted and have failed; a circumstance that is to be interpreted restrictively, with only minimal use being made of force under any circumstances, with every precaution taken to ensure that only absolutely necessary use is made of it.<sup>891</sup>

376. The Commission likewise emphasizes that citizen security policies and the use of force by state agents must abide by accountability and nondiscrimination principles.<sup>892</sup> With regard to the former, the IACHR underscores the importance of having "administrative and disciplinary mechanisms of accountability in those cases that may involve a responsibility of police forces for abuse of authority, violence, or the disproportionate use of force."<sup>893</sup> To guarantee accountability, (i) the proceedings must be handled by independent authorities; (ii) any state agents or state agencies directly or indirectly involved in the facts under investigation should abstain from intervening; and (iii) victims must have the opportunity to participate in the proceedings whenever these proceedings involve abuse of force, arbitrary detentions or other human rights violations.<sup>894</sup> With regard to the latter (nondiscrimination), the Commission reiterates that in a case on patterns of discrimination and violence by the Police against youths belonging to an especially vulnerable social group due to their social condition, the State must adopt positive measures in their favor and refrain from making distinctions based on discriminatory grounds, especially socioeconomic status or political views.<sup>895</sup>

<sup>890</sup> IACHR, *Report on Citizen Security and Human Rights*, OEA/Ser.L/V/II, Doc. 57, December 31, 2009, para. 105.

<sup>891</sup> IACHR, *2016 Annual Report*, Chapter IV.B, Venezuela, para. 41; and *2015 Annual Report*, Chapter IV.B, Venezuela, para. 51.

<sup>892</sup> IACHR, *Report on Citizen Security and Human Rights*, OEA/Ser.L/V/II, Doc. 57, December 31, 2009, para. 51.

<sup>893</sup> IACHR, *Report on Citizen Security and Human Rights*, OEA/Ser.L/V/II, Doc. 57, December 31, 2009, para. 163.

<sup>894</sup> IACHR, *Report on Citizen Security and Human Rights*, OEA/Ser.L/V/II, Doc. 57, December 31, 2009, para. 163.

<sup>895</sup> IACHR, *Report on Citizen Security and Human Rights*, OEA/Ser.L/V/II, Doc. 57, December 31, 2009, para. 68.

## ***Plan Zamora***

377. The Commission considers that violence and repression in Venezuela were seriously exacerbated in 2017 by the activation of Plan Zamora (PZ). As of the time this report was written, there is no public and official information regarding the scope of this Plan.<sup>896</sup> The scant information that is available indicates that although the PZ was activated in 2017, it was really a preexisting plan related in some respects to the "2014 Zamora Productive Plan," published in March 2014.<sup>897</sup> More recently, in January 2017, military corps reportedly carried out drill exercises together with militias within the PZ framework.<sup>898</sup>
378. On April 18, 2017, President Maduro announced the activation of the green phase of the PZ, which, in his words, was a "civic-military plan" signed by him "as Commander in Chief of the Bolivarian Armed Forces to be activated at every level of the military, police, and civilian apparatus of the State."<sup>899</sup> According to the radio station run by the Ministry of People's Power for Culture, it is a "strategic and operational plan that activate the security and defense of the nation in the vent of threats to internal order that could entail social and political commotion or a rupture of the institutional order." The same source calls it "the highest Security and Defense Plan of the Nation."<sup>900</sup>
379. According to the information available, the green phase of the PZ represents a "general alert or [Tr. response to a] threatening circumstance in a period of crisis; it is also activated to deal with natural disasters or calamities."<sup>901</sup> The IACHR notes with profound concern that the green phase was activated to respond to the recent social protests and expresses its total rejection of the activation of this plan to deal with the population's exercise of its right to protest against the disruption of the Constitutional

<sup>896</sup> CNN, *¿Cuáles son los alcances del Plan Zamora en Venezuela?*, May 19, 2017; El Nacional, *Qué es el Plan Zamora y por qué detenidos responden ante tribunal militar*, May 9, 2017; and Efecto Cocuyo, *Provea explica en qué consiste el Plan Zamora*, April 20, 2017.

<sup>897</sup> Said plan was reportedly published on March 11 via Decree 821, implementing a "security and food sovereignty" plan [Office of the President of the Republic, *Decreto No. 821*, March 11, 2014; COFAVIC, *Ejecuciones extrajudiciales, 40 historias de 6385 vidas ignoradas 2012-2017*. [Extrajudicial executions, 40 accounts of lives done away with, 2012-2017] 2017, p. 32].

<sup>898</sup> Those drills were reportedly announced in response to social protests following the announcement of the withdrawal of the 100 bolivares bill [Albaciudad, *Maduro a las FANB: En 2017 haremos una liberación territorial de las lacras del para militarismo*, December 28, 2016; Telesur, *Cuerpos militares y organizaciones sociales participan desde este viernes el Ejercicio de Acción Integral Antiimperialista Zamora 200*, January 13, 2017; and Globovisión, *¿En qué consiste el Plan Zamora que activó el Gobierno?*, April 19, 2017].

<sup>899</sup> Youtube video, *Public hearings before OAS regarding Venezuela*, OAS, September 14, 2017.

<sup>900</sup> Alba Ciudad, *Presidente Maduro ordena activación del Plan Zamora tras denunciar inicio de un golpe de Estado*, April 18, 2017.

<sup>901</sup> Alba Ciudad, *Presidente Maduro ordena activación del Plan Zamora tras denunciar inicio de un golpe de Estado*, April 18, 2017.



order and the economic crisis, a situation that ought not to be equated with the circumstances for which the PZ was conceived. That activation, moreover, had very serious consequences for the right to demonstrate in public and well as other rights, as can be seen in the deaths, arbitrary detentions, alleged cases of torture and of trials by military courts, all of which constitute grave violations of human rights, to which the IACHR refers in this report ([Chapter III.A](#)).

380. The IACHR is at the same time concerned because, as Venezuelan authorities have stated, the PZ provides for the deployment of police and military forces alongside militias and grass-roots civilian forces (*fuerzas populares*) to guarantee, through their joint actions, the running of the country, its security, internal law and order, and social integration.<sup>902</sup> Thus, the Commission observes that one of the pillars of the PZ is "civic-military union." The IACHR further notes that the participation of civilians in security tasks would be conducted in coordination with State security forces,<sup>903</sup> and would be reinforced by measures designed for states of emergency ([Chapter IV.B.2](#))<sup>904</sup>. The Commission also totally condemns the calling up of 500,000 civilian militias: an alarming increase in civilian participation in State security.<sup>905</sup> The IACHR has already expressed its utmost rejection of measures that entail involving civilians in security tasks ([Chapter IV.B.1](#)).
381. The Commission observes with concern that this Plan would entail stepping up surveillance, control, and patrol measures through a significant increase in the Police and GNB, which forms part of the Armed Forces. Thus, when the second phase of the PZ was activated in May, the Ministry of Defense announced the transfer of 2,000 members of the GNB and 600

<sup>902</sup> Office of the Vice President of the Bolivarian Republic of Venezuela, [Activado Plan Zamora para garantizar orden interno del país](#), April 18, 2017. According to President Maduro, this is a "civic-military plan". Youtube video, [Public hearings before OAS regarding Venezuela](#), OAS, September 14, 2017. Similarly, according to statements by the Commander in Chief of the GNB, the purpose of the exercises carried out in January 2017, was to "include the people in the tasks needed to transition from normal social activity to a State undergoing internal or external turmoil" [El Universal, [Ejercicio cívico político Zamora 200 continúa este sábado](#), January 14, 2017]. Likewise, the National Secretary of the Local Supplies and Production Committees (CLAP) defined Plan Zamora 200 as a plan that: "organizes all military and popular might into a single concept, to combat every possible attack[...]" [Correo del Orinoco, [Bernal: Pueblo debe asumir primera línea de defensa y sostén de la revolución](#), January 13, 2017].

<sup>903</sup> Youtube video, [Public hearings before OAS regarding Venezuela](#), September 15, 2017; FPV, [Reporte sobre la represión del Estado en Venezuela - Julio 2017](#), pp. 1-3; IACHR, Press Release No. 111/17, [IACHR Condemns the Deaths and Acts of Violence on Election Day in Venezuela](#), August 1, 2017; and Press Release No. 68/17, [IACHR Deeply Concerned about the Worsening Violence in Venezuela and the Use of Military Courts to Prosecute Civilians](#), May 26, 2017.

<sup>904</sup> Art. 2.9) of Decree No. 2.323, published in the Official Gazette No. 6.227 of May 13, 2016.

<sup>905</sup> IACHR, Press Release No. 48/17, [IACHR Urges Venezuela to Guarantee the Right to Protest and to Demilitarize Streets](#), April 29, 2017.



combat troops to the state of Táchira.<sup>906</sup> It should be noted, moreover, that the PZ not only involves the participation of the Armed Forces in security tasks; it also provides for all police bodies in the states and municipalities being made subject to orders from the GNB, which amounts to militarization of the activities of all security organs.<sup>907</sup> The IACHR reiterates that the militarization of security oversight functions in Venezuela and, especially the PZ, based on the information available, are contrary to human rights standards. Accordingly, the Commission reiterates that, because the Armed Forces lack appropriate training to perform the tasks needed to monitor citizen security, it is incumbent upon a civilian police force that is properly trained and mindful of human rights to guarantee security and maintain law and order internally.<sup>908</sup>

### ***Excessive and arbitrary use of declarations of states of emergency (estados de excepción)***

382. One of the measures that have affected the citizen security situation in Venezuela is the declaration of lengthy states of emergency. The Commission notes that, since January 2016, six such decrees and their respective extensions have been issued,<sup>909</sup> declaring the entire national territory to be in a "state of exception and economic emergency." The "state of emergency" was initially established in response to the social context of protests and increased violence triggered, in part, by an exacerbation of the shortage of food and medicines and deterioration of infrastructure, as well as by polarization and political conflict.<sup>910</sup> Nevertheless, the IACHR notes that, although these decrees establish measures to counter the economic crisis, they also grant broad citizen-security-related powers to the

<sup>906</sup> COFAVIC, *Ejecuciones extrajudiciales, 40 historias de 6385 vidas ignoradas 2012-2017*. [Extrajudicial executions, 40 accounts of lives done away with, 2012-2017] 2017, pp. 33-34; El Nacional, Padrino López activó "segunda fase" del Plan Zamora en Táchira, May 17, 2017.

<sup>907</sup> CDH-UCAB, *10 pistas para entender el Plan Zamora 200*, 2017, p. 1; Tal Cual Digital, Guardia Nacional asumirá el control de las policías regionales, April 18, 2017.

<sup>908</sup> IACHR, 2016 Annual Report, Chapter IV.B, Venezuela, para. 42; and Press Release No. 071/17, IACHR Expresses its Concern Regarding the Declaration of a "State of Exception and Economic Emergency", June 1, 2016.

<sup>909</sup> The five decrees so far issued to declare a state of economic emergency are Decrees Nº 2184, 2323, 2452, 2667, and 2849. They were extended by Decrees 2270, 2371, 2548, 2742, and 2897, respectively. Worth noting is the fact that only Decree Nº 2184 and its extension declared just a state of economic emergency; all the other decrees declare both a "state of exception and economic emergency."

<sup>910</sup> In connection with its second cycle of the Human Rights Council's Universal Periodic Review (UPR), the Venezuelan State states that, faced with economic crisis, it had decreed "States of Economic Emergency" and "States of Exception and Economic Emergency" in order to safeguard economic, social, cultural, and environmental rights (ESCHER). It went on to say that, with them, its intention was to "underpin the continuity of social policy by means of investment in productive agricultural and industrial infrastructure, ensuring the supply of medicines, food and other vital products, and special measures to curb tax evasion." This was commented on by the IACHR in its 2016 Annual Report and in its Press Release No. 71/17 [IACHR, 2016 Annual Report, Chapter IV.B, Venezuela, para. 186; and Press Release No. 071/17, IACHR Expresses its Concern Regarding the Declaration of a State of Exception and Economic Emergency, June 1, 2016.

Executive that go beyond that particular justification, as the following Table shows <sup>911</sup>:

Decree	Publication in the Official Gazette	Purpose	Measures that give the IACHR cause for concern
<a href="#">Decree No. 2323</a>	May 13, 2016	Declares a State of Exception and Economic Emergency throughout the national territory for 60 days.	<ul style="list-style-type: none"> <li>• Intervention by the Armed Forces and citizen security organs in the distribution and marketing of food and other vital necessities.</li> <li>• Temporary and exceptional suspension of the enforcement of political sanctions against the highest government authorities.</li> <li>• Monitoring and organization of the Local Supply and Production Committees by Community Councils and other grass-roots organizations, with Armed Forces and Police support.</li> <li>• To issue measures and implement public security plans that guarantee maintenance of law and order</li> <li>• Adoption of special measures to guarantee the exercise of sovereignty and prevent foreign interferences.</li> <li>• To order the suspension of funding associated with agreements entered into with foreign entities when they are thought to be used for political purposes or to de-stabilize the Republic.</li> </ul>
<a href="#">Decree No. 2371</a>	July 12, 2016	Extends for 60 days the State of Economic Emergency established by Decree No. 2371.	
<a href="#">Decree No. 2452</a>	September 13, 2016	Declares a State of Exception and Economic Emergency throughout the national territory for 60 days.	<ul style="list-style-type: none"> <li>• Temporary and exceptional suspension of the enforcement of political sanctions against the highest government authorities.</li> <li>• To issue measures and implement public security plans that guarantee maintenance of law and order</li> <li>• Adoption of special measures to guarantee the exercise of sovereignty and prevent foreign interferences.</li> </ul>
<a href="#">Decree No. 2548</a>	November 13, 2016	Extends for 60 days the State of Economic Emergency established by Decree No. 2452.	
<a href="#">Decree No. 2667</a>	January 13, 2017	Declares a State of Exception and Economic Emergency throughout the national territory for 60 days.	<ul style="list-style-type: none"> <li>• Temporary and exceptional suspension of the enforcement of political sanctions against the highest government authorities.</li> </ul>
<a href="#">Decree No. 2667</a>	March 13, 2017	Extends for 60 days the State of Economic	

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Decree Nº 2184 and its extension, Decree Nº 2270, have not been included in this Table, because the measures included therein are those most closely related to addressing the economic crisis.

<a href="#">2742</a>		Emergency established by Decree No. 2667.	
<a href="#">Decree No. 2849</a>	May 13, 2017	Declares a State of Exception and Economic Emergency throughout the national territory for 60 days.	<ul style="list-style-type: none"> <li>• To issue measures and implement public security plans that guarantee maintenance of law and order</li> <li>• Temporary and exceptional suspension of the enforcement of political sanctions against the highest government authorities.</li> </ul>
Decree No. 2897	July 13, 2017	Extends for 60 days the State of Economic Emergency established by Decree No. 2897.	
<a href="#">Decree N° 3074</a>	September 11, 2017.	Declares Nationwide State of Exception and Economic Emergency for 60 days.	<ul style="list-style-type: none"> <li>• Orders and executes special public security plans to address destabilizing actions.</li> <li>• Temporarily and exceptionally suspends execution of impeachment of senior government authorities.</li> </ul>
<a href="#">Decree N° 3157</a>	November 10, 2017.	Extends the State of Exception and Economic Emergency established by Decree No. 3,074	

383. The IACHR is particularly concerned that such decrees grant the Executive discretionary powers to adopt measures to guarantee law and order and, in general, any measures it deems fit. At the same time, through the use of broad and ambiguous language, it establishes concepts such as "destabilizing actions that undermine security and national sovereignty" in order to make it possible the adoption of public security measures and "special plans."<sup>912</sup> Several of these measures likewise foster the militarization of citizen security and the involvement of civilians in those tasks. The Commission draws attention to the consequences of endowing the participation of civilians in citizen security tasks with an aura of legality.<sup>913</sup>

384. The Commission emphasizes once again that the adoption of "states of exception" must be tailored to the needs of a situation being dealt with in a reasonable manner, without going beyond what is strictly necessary, so as to avoid extensions, disproportionate responses, or the misuse or abuse of power, because the arbitrary use of such states leads to the impairment of democracy and the curtailment of rights established in the American Declaration.<sup>914</sup> The Commission points out again how important it is to

<sup>912</sup> IACHR, [2016 Annual Report](#), Chapter IV.B, Venezuela, para. 54-56; and Press Release No. 71/17, [IACHR Expresses its Concern Regarding the Declaration of a State of Exception and Economic Emergency](#), June 1, 2016.

<sup>913</sup> It is worth pointing out that in 2017, President Maduro announced that civilians would have a part to play in security and intelligence tasks via a "community police" and a "people's intelligence system" and would be given rifles and secret weapons [El Nuevo Herald, [Maduro asigna a civiles tareas de seguridad ciudadana e inteligencia en Venezuela](#), January 17, 2017].

<sup>914</sup> IACHR, Press Release No. 071/17, [IACHR Expresses its Concern Regarding the Declaration of a "State of Exception and Economic Emergency](#), June 1, 2016.

maintain the rule of law and abide by constitutional provisions when states of emergency are invoked.<sup>915</sup> The IACHR likewise points to the consequences of using broad and ambiguous concepts in regulatory instruments, including emergency decrees, because they can lead to limitations on human rights.<sup>916</sup>

385. As regards duration, the IACHR points out that an economic state of emergency is provided for in Article 338 of the Constitution, which establishes that "the duration of this state of emergency shall be 60 days, with the possibility of extension for the same period."<sup>917</sup> While the Venezuelan legal system does not expressly preclude the successive issuance of these decrees,<sup>918</sup> the Commission observes that they have gone on for almost two years and could continue indefinitely. The Commission considers that that contravenes the nature of states of exception, which are exceptional measures that should be restricted to precisely the length of time needed to achieve their purpose.<sup>919</sup>
386. The IACHR notes with concern that the emergency decrees issued apparently seek to provide some kind of legal basis for the implementation of measures like the PZ. Here, the Commission again points out that the use of states of exception is only compatible with a form of government based on representative democracy if its implementation does not entail curtailment of the exercise of the rule of law and constitutional provisions and does not tamper with the spheres of competence of the different branches of government or the workings of the instruments proper to an Office of the Comptroller General (*los medios de contralor*).<sup>920</sup> In a constitutional state governed by the rule of law no act exercising public power is exempt from democratic oversight mechanisms.

<sup>915</sup> IACHR, Resolution concerning the Protection of Human Rights following Suspension of Constitutional Guarantees or Declaration of a State of Siege [IACHR, Report on Activities during the Eighteenth Period of Sessions, July 1968, p. 47]. The IACHR has stated the same thing on previous occasions [IAVHR, Report No. 48/00, Case 11.166, Walter Humberto Vásquez, Peru, para. 30; and 2016 Annual Report, Chapter IV.B, Venezuela, para. 55].

<sup>916</sup> IACHR, Press Release No. 71/17, IACHR Expresses its Concern Regarding the Declaration of a State of Exception and Economic Emergency, June 1, 2016.

<sup>917</sup> Article 338 of the Constitution of Venezuela establishes the different types of states of exception envisaged under Venezuelan law, including the state of economic emergency.

<sup>918</sup> Andrés Bello Catholic University (UCAB), Consideraciones acerca del nuevo decreto de Emergencia Económica sobre su legalidad y repercusiones para el Estado democrático, May 16, 2016.

<sup>919</sup> IACHR, Press Release No. 71/16, IACHR Expresses its Concern Regarding the Declaration of a State of Exception and Economic Emergency, 1<sup>o</sup> June, 2016. The Commission already drew attention to the constant extensions issued in 2016 in its Annual Report for that year [IACHR, 2016 Annual Report, Chapter IV.B, Venezuela, para. 54].

<sup>920</sup> IACHR, Resolution concerning the Protection of Human Rights following Suspension of Constitutional Guarantees or Declaration of a State of Siege [IACHR, Report on Activities during the Eighteenth Period of Sessions, July 1968, p. 47]; Report No. 48/00, Case 11.166, Walter Humberto Vásquez, Peru, para. 30; and 2016 Annual Report, Chapter IV.B, Venezuela, para. 55.

387. Finally, the Commission reiterates the need for the State to adopt immediate measures to exclude the participation of the Armed Forces and of civilians in citizen security tasks. In particular, it needs to align the security plans currently being implemented, such as the OLP and the PZ, with international citizen security standards. As the IACHR has already pointed out, it is vital to establish a clear and precise distinction between domestic security as a police function and national defense as a function assigned to the armed forces, given that they are two, very different institutions in respect of the purposes for which they were created and in terms of their training and preparation.<sup>921</sup> The Commission likewise points out once again that the use of force in connection with citizen security must adhere strictly to the principles of legality, necessity, and proportionality, whereby the use of lethal force must be exceptional. Furthermore, in the event of human rights violations committed by security agents, the State has a duty to immediately initiate the corresponding investigations in a diligent, effective, and independent manner, so that they lead to the trial and punishment of those responsible and to the reparation measures to which the victims and their next of kin are entitled.<sup>922</sup>

### ***C. Situation of Persons Deprived of Liberty***

388. The IACHR has been monitoring the situation of persons deprived of liberty in Venezuela and has pointed to structural issues relating to violence inside detention centers, the increase in the detainee population, and prison conditions.<sup>923</sup>

389. The Commission has pronounced on the critical situation in which people deprived of liberty in Venezuela find themselves: one of the worst in the Hemisphere.<sup>924</sup> It is characterized by overcrowding, excessive use of pre-trial detention; lamentable conditions in the detention centers; generalized violence; lack of effective oversight by the State; and corruption in the form of extortion in return for "vaccinations" (the quotas detainees have to pay to stay safe in detention centers).<sup>925</sup> These conditions generate and exacerbate violence. As noted below, these patterns appear to have

<sup>921</sup> IACHR, 2015 Annual Report, Chapter IV.B, Venezuela, para. 53; [IACHR, Report on the Situation of Human Rights in Venezuela, OEA/Ser.L/V/II.118, Doc. 4 rev. 1. October 24, 2003, para. 272.

<sup>922</sup> IACHR, Report on Citizen Security and Human Rights, OEA/Ser.L/V/II, Doc. 57, December 30, 2009, para. 108.

<sup>923</sup> The IACHR has mentioned the situation of persons deprived of their liberty in its Annual Report for the years 2016 (para. 202-212), 2015 (para. 319-328), 2014 (para. 606-614), 2013 (para. 697-705), 2012 (para. 535-549), 2011 (para. 510-521), 2010 (para. 700-707), 2009 (para. 510-512), 2008 (para. 424-436), 2007 (para. 303-3011), 2006 (para. 190-204), 2005 (para. 316-322), and 2004 (para. 258-260).

<sup>924</sup> IACHR, 2016 Annual Report, Chapter IV.B, Venezuela, para. 202.

<sup>925</sup> IACHR, 2016 Annual Report, Chapter IV.B, Venezuela, para. 203, and Democracy and Human Rights in Venezuela, OEA/SER.L/V/II, Doc. 54, December 30, 2009, para. 44.

deteriorated in the context of political, economic, and social crisis, as well as a result of the citizen security strategies. Also worth underscoring is the fact that, here too, the dearth of official data makes it difficult to assess the situation of persons deprived of liberty.

390. The IACHR has observed that detention centers are riddled with violence triggered by riots, clashes among members of rival criminal gangs, assaults using firearms, and other disturbances.<sup>926</sup> Specifically, between 2011 and 2015 there are records of 1,622 persons killed and 2,328 injured<sup>927</sup>; in 2016 173 people deprived of liberty died and 268 were injured<sup>928</sup>; and in first-half 2017 (January 1 - June 30), 17 detainees were allegedly murdered.<sup>929</sup> In these cases, the State could be responsible inasmuch as in most cases firearms, or knives, or blunt weapons were used that been brought into the detention centers without the police either detecting their entry or taking robust measures to prevent it.<sup>930</sup>
391. In April reports came in of what came to be known as the "Massacre of Puente Ayala," in which 14 inmates died and another 14 were injured in the José Antonio Anzoátegui penitentiary (known as the Puente Ayala prison), in Barcelona. These casualties were the outcome of a clash between a group of inmates that had attempted to take control over an area and the inmates that controlled that turf, so that most of the 5,500 inmates in that penitentiary were involved. It should be pointed out that the José Antonio Anzoátegui penitentiary was designed to hold 750 inmates, so that the overcrowding rate was 733% at the time of the

<sup>926</sup> In April 2017, at least 14 inmates died in the Puente Ayala prison, in Barcelona, in the state of Anzoátegui [Oveprisiones, Un total de 14 muertos dejó masacre en Puente Ayala, April 2017; Tal Cual, Masacre en cárcel de Puente Ayala: 13 reclusos muertos, April 26, 2017]. In 2016, the IACHR kept records of several violent deaths in penitentiaries [IACHR, Press Release 41/16, IACHR Condemns Violent Deaths in Three Detention Centers in Venezuela, March 22, 2016]. In September 2016, grenades exploding in the Penitenciaría General de Venezuela (PGV), in the state of Guárico, reportedly left 11 people dead and 22 inmates wounded [Efecto, Granada explotó en la PGV en preparativos para fiesta de cumpleaños del pran, September 16, 2016; El Nacional, Fiesta de "pran" en la PGV terminó con muertos y heridos, September 14, 2016; Caraoa Digital, Suben a seis los fallecidos por explosión de granada en la PGV, September 15, 2016, and El Estímulo, QVP reporta 8 muertos y más de 32 heridos por explosión en la PGV, September 15, 2016. The IACHR was informed of these events by the OVP, September 15, 2016].

<sup>927</sup> Runrun, Observatorio Venezolano de Prisiones solicita investigar hechos de violencia en El Dorado, July 29, 2016.

<sup>928</sup> Efecto Cocuyo, OVP: 173 muertos y 286 heridos fue el saldo que dejó 2016 en las cárceles venezolanas, March 9, 2017.

<sup>929</sup> Runrun, 27 personas murieron en calabozos durante primer semestre de 2017, July 18, 2017.

<sup>930</sup> Runrun, 27 personas murieron en calabozos durante primer semestre de 2017, July 18, 2017.

"massacre."<sup>931</sup> The IACHR has previously pointed to overcrowding as one of the causes of increased violence among inmates.<sup>932</sup>

392. Subsequently, on August 16, 2017, there were clashes at the Amazonas Judicial Detention Center (CDJA), in Puerto Ayacucho, when members of the PNB and GNB went in to search and take control of the facility. As a result, 15 security agents were injured, most of them slightly, and 39 inmates lost their lives, approximately 40% of that detention center's total population.<sup>933</sup> According to statements by the Minister of the Interior, Néstor Reverol, the operation had been undertaken to quell the violence triggered by the leaders of 103 inmates. He pointed out that the [surviving] inmates would be transferred to other prisons, including the convicts who were not supposed to have been held in what was meant to be a provisional detention center.<sup>934</sup> According to the OVP's investigation, the police-military operation used excessive force and acted to cause as many victims as possible. The State's failure to ensure that firearms and bladed weapons do not enter the detention center was also noted.<sup>935</sup> The IACHR emphatically condemned of these facts and recalled that detention center staff "must use force in cases of seriousness, urgency and need, and as a last resource after having previously exhausted all other available avenues." It also said the Venezuelan State should "promptly initiate ex-officio a serious, impartial, effective investigation, open to public scrutiny."<sup>936</sup>
393. At the same time, as regards prison/detention conditions, the IACHR has received information regarding the risk to their lives and integrity to which persons deprived of liberty are exposed, due to the lack of hygiene, negligent medical care, absence of personal hygiene materials, inadequate food, and lack of potable water.<sup>937</sup> This lack of medical care and food is occurring in a context of widespread crisis and lack of supplies, as described below ([Chapter V](#)). Here, the IACHR reiterates its particular concern at the use of police stations as long-term detention centers, despite the fact that the stations were designed to hold detainees on a temporary

<sup>931</sup> Observatorio Venezolano de Prisiones [Venezuelan Prison Observatory] [(OVP), [Un total de 14 muertos dejó masacre en Puente Ayala](#), April 2017.

<sup>932</sup> IACHR, [Report on the Use of Pretrial Detention in the Americas](#), OEA/Ser.L/V/II, Doc. 46/13, December 30, 2013, para. 288.

<sup>933</sup> OVP, [Ni olvido, ni impunidad. Masacre con premeditación y alevosía en el Centro de Detención Judicial de Amazonas](#), 2017.

<sup>934</sup> OVP, Additional Information, August 17, 2017.

<sup>935</sup> OVP, [Ni olvido, ni impunidad. Masacre con premeditación y alevosía en el Centro de Detención Judicial de Amazonas](#), 2017.

<sup>936</sup> IACHR, Press Release No. 126/17, [IACHR Condemns the 37 Violent Deaths in a Venezuelan Detention Facility](#), August 25, 2017.

<sup>937</sup> IACHR, [2016 Annual Report](#), Chapter IV.B, Venezuela, para. 207; OVP, Comunicación a la CIDH en el marco de la convocatoria a la audiencia pública sobre medidas para reducir la prisión preventiva en América, celebrada el 4 de abril de 2016; and OVP, [Privados de libertad no reciben medicamentos ni de sus familiares](#), July 5, 2016.



basis. They are overcrowded and lack both the infrastructure and basic services needed to ensure detention conditions compatible with human dignity.<sup>938</sup>

394. Similarly, Una Ventana a la Libertad (UVAL) has pointed out that infrastructural facilities are precarious in most of the 89 monitored pre-trial detention centers. These are facilities designed to accommodate detainees for at most 48 hours, before they are presented before the courts. However, currently, inmates are being held in these centers indefinitely.<sup>939</sup> Many of them have no canteen or recreational facilities, areas for visits, rooms where women can be with their young children or breast-feed their babies, medical care services, drinking water, adequate toilet facilities, or garbage collection services. Nor do they have separate units for women detainees, minors, or members of the LGTBI community. This means that human rights are impaired, such as the right to health, food, and visits by relatives and attorneys.<sup>940</sup>
395. The Commission voices its concern at the lack of medical care for persons deprived of liberty. Through various applications for precautionary measures, the IACHR has received allegations of bans on access to family or otherwise trusted doctors, restrictions on obtaining appropriate medicines or having medical check-ups needed to keep track of detainees' current health status,<sup>941</sup> obstacles to attending health centers on terms ordered by a judge,<sup>942</sup> as well as situations in which the next of kin themselves have had to bring the medicines needed by inmates.<sup>943</sup> The IACHR has likewise been informed of 10 inmates who died between January 1 and June 30, due to malnutrition or infectious diseases caught in the cells to which they are confined, for which they had not received appropriate medical care.<sup>944</sup>

<sup>938</sup> IACHR, 2016 Annual Report, Chapter IV.B, Venezuela, para. 207; OVP, Comunicación a la CIDH en el marco de la convocatoria a la audiencia pública sobre medidas para reducir la prisión preventiva en América, celebrada el 4 de abril de 2016, durante el 157º periodo ordinario de sesiones [Communication to the OAS in connection with the convocation to a public hearing on measures to reduce pre-trial detention in the Americas, held on April 4, 2016, during the 157th period of sessions]; and PROVEA, Comunicación a la CIDH mediante correo electrónico, October 4, 2016.

<sup>939</sup> UVAL, Falta de alimentos pone en riesgo la vida de privados de libertad en centros de detención preventiva. Diagnóstico de la situación de los centros de detención preventiva de Venezuela, September 22, 2017, p. 2.

<sup>940</sup> Runrun, 27 personas murieron en calabozos durante primer semestre de 2017, July 18, 2017.

<sup>941</sup> IACHR, Resolution No. 67/2016, Precautionary Measure No. 750-16, Matter of Braulio Jatar, Venezuela.

<sup>942</sup> IACHR, Resolution No. 50/2016, Precautionary Measure No. 701-16, Matter of Vladimir Aranque Hainal, Venezuela.

<sup>943</sup> IACHR, Resolution No. 48/2016, Precautionary Measure No. 498-16, Matter of Vasco da Costa, Venezuela.

<sup>944</sup> Of the 10, four inmates had died of tuberculosis, 3 from malnutrition, 1 because of tuberculosis and malnutrition, 1 due to pneumonia, and 1 from dehydration. [UVAL, La violencia y las enfermedades arropan a los centros de detención preventiva: Situación de los centros de detención preventiva en Venezuela enero-junio 2017, p. 23].



396. As this Commission has pointed out that the overcrowding in Venezuelan prisons is one of the main problems faced by persons deprived of their liberty in that country.<sup>945</sup> The State has recognized the situation of its pre-trial election centers as one of the challenges it faces. Nevertheless, it has maintained that existing penitentiaries could accommodate up to 83,000 persons and are only currently occupied by 53,000 people. These data have been questioned by civil society, which has pointed out that in the past six years, six prisons were closed and only three new ones opened, which suggests a conflict between its and the State's figures.<sup>946</sup> In the case of the pre-trial detention centers monitored by the UVAL, they can accommodate 1,910 persons deprived of liberty. However, in actual fact, in June 2017, they housed 8,248 detainees: an overcrowding ration of 432% (6,339 detainees). In addition, at least 2,765 detainees in those pre-trial detention centers have been convicted, but have not been transferred to their definitive prisons.<sup>947</sup> Excessive use is, furthermore being made of pre-trial detention mainly due to the violations of due process in respect of the accused and the lack of coordination among justice administration bodies and the Ministry for Penitentiaries.<sup>948</sup>
397. On this matter, the IACHR once again points out that, under international human rights law, overcrowding of persons deprived of liberty in itself could constitute a form of cruel, inhuman or degrading treatment, violating the right to personal integrity and other human rights. Therefore, when the collapse of a prison system or of a particular detention center makes it materially impossible to provide inmates with dignified living conditions, the State can no longer continue to place individuals in those facilities, because in so doing, it is deliberately subjecting them to a situation that violates their fundamental rights.<sup>949</sup> The Commission reiterates that the State must take resolute and immediate steps to reduce overcrowding and the use of pre-trial detention by selecting and implementing alternative measures.<sup>950</sup>
398. Another matter of special concern to the IACHR is the situation of adolescents at odds with the law. In July 2015, an amendment was made to

<sup>945</sup> IACHR, 2016 Annual Report, Chapter IV.B, Venezuela, para. 203, and Democracy and Human Rights in Venezuela, OEA/SER.L/V/II, Doc. 54, December 30, 2009, para. 44.

<sup>946</sup> IACHR, Violence, Citizen Security and Freedom of Expression in Venezuela, October 24, 2017.

<sup>947</sup> Runrun, 27 personas murieron en calabozos durante primer semestre de 2017, July 18, 2017.

<sup>948</sup> OVP, Request for a thematic hearing on the human rights situation of persons deprived of liberty in Venezuela, 159th regular session, October 3, 2016, and OVP, Communication to the IACHR in connection with the convocation to a public hearing on measure to reduce pre-trial detention in the Americas, held on April 4, 2016, during the 157th period of sessions.

<sup>949</sup> IACHR, Report on the Use of Pretrial Detention in the Americas, OEA/Ser.L/V/II, Doc. 46/13, December 30, 2013, para. 290.

<sup>950</sup> IACHR, Press Release No. 126/17, IACHR Condemns the 37 Violent Deaths in a Venezuelan Detention Facility, August 25, 2017.

the Organic Law for the Protection of Children and Adolescents that, among other measures, it raised the age of criminal responsibility at 14 and increased sentences and the types of offenses punishable with imprisonment, by, for instance, including the offense of terrorism.<sup>951</sup> Even when this was an improvement, the IACHR reiterates its concern at the age of criminal responsibility of adolescents and the increase in sentences, because they are mistakenly assigned responsibility for the atmosphere of insecurity and violence.<sup>952</sup> Thus, the Commission points out once again that measures geared to holding adolescents responsible for their acts need, in each case, to address the particular circumstances of the adolescent concerned and to take social and educational measures into consideration within the framework of a restorative justice model. The generalized use of deprivation of liberty for adolescents at odds with the law runs counter to human rights standards and is not only ineffective, but also counterproductive, when it comes to dealing with violence and insecurity.<sup>953</sup>

399. In its comments, the State indicated that "one of the areas where the diagnostic made by the IACHR in its draft Country Report is furthest from reality is in regard to the rights of people deprived of liberty in Venezuela."<sup>954</sup> The State believes that the IACHR "maximizes and gives full credit to information obtained from unofficial sources while ignoring official information provided to the IACHR by the government and all other information showing the progress that the State has made on this issue."<sup>955</sup> The State indicates that "in December 2016, during a public hearing held by the IACHR, the State provided abundant information on the situation of those deprived of liberty in Venezuela. It even demonstrated the progress made by the State on this issue using the information provided by the petitioners."<sup>956</sup> It also pointed to information contributed since 2011 in the framework of provisional measures on the construction of "more than 38 infrastructure works throughout the country that increased the nation's installed inmate capacity to 82,376. This has enabled it to address overcrowding, as the current penitentiary population is approximately 53,344 people deprived of liberty."<sup>957</sup>

<sup>951</sup> Cecodap, Communication sent to the IACHR, September 2017, para. 14 and 15.

<sup>952</sup> IACHR, *Violence, Children and Organized Crime*, OEA/Ser.L/V/II.Doc. 40/15. 2015), para. 436.

<sup>953</sup> IACHR, *Violence, Children and Organized Crime*, OEA/Ser.L/V/II.Doc. 40/15. 2015), para. 438.

<sup>954</sup> Bolivarian Republic of Venezuela, Ministry of the People's Power for Foreign Relations, Note AGEV/2017-000300, comments on the draft country report, December 21, 2017, para. 71.

<sup>955</sup> Bolivarian Republic of Venezuela, Ministry of the People's Power for Foreign Relations, Note AGEV/2017-000300, comments on the draft country report, December 21, 2017, para. 71.

<sup>956</sup> Bolivarian Republic of Venezuela, Ministry of the People's Power for Foreign Relations, Note AGEV/2017-000300, comments on the draft country report, December 21, 2017, para. 72.

<sup>957</sup> Bolivarian Republic of Venezuela, Ministry of the People's Power for Foreign Relations, Note AGEV/2017-000300, comments on the draft country report, December 21, 2017, para. 73.

### ***The Absence of Democratic Institutions, Impunity, and the Lack of Public Information***

400. The Commission considers that the increase in violence is significantly exacerbated by the deficiencies in Venezuela's democratic institutional system and by the widespread impunity described in this report ([Chapter II](#)). With regard to complaints of alleged abuses by State agents in particular, the IACHR has been informed of serious shortcomings in investigations, victims' fears of subsequent reprisals, and judges' temporary tenure, all of which are factors that make it difficult to throw light on abuses and identify and punish those responsible.<sup>958</sup> As the victims are in most cases persons living in precarious economic conditions, they have a harder time playing an active and effective part in the administration of justice.<sup>959</sup>
401. The specific shortcomings in investigations are deficient and incomplete autopsies; failure to initiate investigations ex officio, despite the fact that alleged human rights violations are involved; failure to consider lines of investigation other than clashes *with the authorities* (*enfrentamiento*), the police version of what happened; unwarranted delays because so much time is spent in the preparatory or preliminary inquiry phase without on-the-spot investigations; constant changes of public prosecutor; lack of access to the file by family members and human rights defender; among other defects.<sup>960</sup> It is especially worrisome to note that the police corps allegedly more involved in extrajudicial executions - the CIPCC- is also the body charged with assisting criminal investigations.<sup>961</sup>
402. Together, these factors lead to most denunciations of human rights violations going unpunished in Venezuela. According to the information available, in 2013, 8,196 cases were filed with the Directorate for the Protection of Fundamental Rights, 98% of which never reached the trial stage. Likewise, in 2014, only 105 out of 8,049 cases reached the judicial proceedings stage. However, in 2015, such figures were simply not published.<sup>962</sup> Impunity is also rampant in human rights violations of persons deprived of liberty, despite the large number of cases of people dying or being injured in violent circumstances while under State custody.

<sup>958</sup> COFAVIC, Ejecuciones extrajudiciales, 40 historias de 6385 vidas ignoradas 2012-2017.[Extrajudicial executions, 40 accounts of lives done away with, 2012-2017], p. 35.

<sup>959</sup> COFAVIC, Ejecuciones extrajudiciales, 40 historias de 6385 vidas ignoradas 2012-2017.[Extrajudicial executions, 40 accounts of lives done away with, 2012-2017], p. 49.

<sup>960</sup> COFAVIC, Ejecuciones extrajudiciales, 40 historias de 6385 vidas ignoradas 2012-2017.[Extrajudicial executions, 40 accounts of lives done away with, 2012-2017], p. 49, 65-72.

<sup>961</sup> COFAVIC, Ejecuciones extrajudiciales, 40 historias de 6385 vidas ignoradas 2012-2017.[Extrajudicial executions, 40 accounts of lives done away with, 2012-2017], pp. 51-52.

<sup>962</sup> OVV, [Impunidad alcanza a 98% de crímenes contra los DDHH en Venezuela, según Cofavic](#), October 28, 2016.

The Commission reiterates its concern at the ongoing impunity of most unlawful acts committed in prisons and at the lack of effective oversight by the State inside penitentiaries.<sup>963</sup>

403. The Commission wishes to point out again that States have an obligation to implement all measures needed to prevent violence in detention centers and to conduct immediate, exhaustive, and impartial investigations into the various acts of violence that have occurred in penitentiaries, in order to identify the individuals responsible and apply the corresponding sanctions, including administrative and disciplinary sanctions.<sup>964</sup> Concretely, inter-American standards for cases of violent deaths occurring while a person is in the custody of State agents require the State to be guided by certain specific standards, namely: (i) an investigation *ex officio*, that is complete, impartial and independent, taking into account the level of participation of all the State agents; (ii) the investigation must be given a certain degree of public scrutiny owing to the possible public interest because of the rank of the agents presumed to be involved; (iii) prompt intervention at the scene of the incident and appropriate handling of the scene of the crime, as well as preserving this in order to protect all the evidence,...; and (iv) determination of whether the body has been touched or moved and of the sequence of events that could have led to the death, as well as a preliminary examination of the corpse to protect any evidence that could be lost in its manipulation and transport.<sup>965</sup> As the I/A Court H.R. has said of Venezuela, a lack of exhaustiveness in the treatment of the crime scene and the autopsy, failure to preserve the scene of the crime, as well as the absence of other important procedures or deficient performance of some of them demonstrate a lack of diligence on the part of the State to recover and preserve evidence. These specific obligations form part of the State's duty to prevent, investigate, and punish actions that may involve violation of the right to life, including some committed by State agents.<sup>966</sup>
404. Against this backdrop, the IACHR also notes a lack of public information, because there are no up-to-date official figures or individualized records on the commission of forced disappearances, extrajudicial executions, acts of torture, and other cruel, inhuman, and degrading treatment, that the public can access. The available information indicates, moreover, that in 2009, the MP, CICPC, and DP changed, with no explanation, the presentation of most

<sup>963</sup> IACHR, 2016 Annual Report, Chapter IV.B, Venezuela, para. 206. For example, it has received information regarding the failure to investigate the aforementioned events of August 16, 2017 in the CDJA, as well as complaints of harassment and intimidation of family members of the victims and survivors. [PROVEA, QVP | A dos meses de la masacre en Centro de Detención Judicial Preventiva de Amazonas, October 13, 2017].

<sup>964</sup> IACHR, 2016 Annual Report, Chapter IV.B, Venezuela, p. 711.

<sup>965</sup> I/A Court HR. *Case of Landaeta Mejías Brothers et al v. Venezuela*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of August 27, 2014. Series C No. 281, paragraphs 228 and 254.

<sup>966</sup> IACHR, Report on Citizen Security and Human Rights, OEA/Ser.L/V/II, Doc. 57, December 31, 2009, para. 108.

of their reports, omitting specific data on types of human rights violations and individualized cases.<sup>967</sup> The Commission notes, furthermore, that the lack of public and official information regarding security plans is not a new or isolated problem in Venezuela. Rather, it has been commented on repeatedly.<sup>968</sup> As regards persons deprived of liberty, there is also a dearth of public, up-to-date, and disaggregated information providing comprehensive insight into the situation of persons in State custody whose liberty has been curtailed. Later on, the Commission will present its specific observations concerning the issue of access to public information in Venezuela ([Chapter IV.B.8](#)).

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<sup>967</sup> Ejecuciones extrajudiciales, 40 historias de 6385 vidas ignoradas 2012-2017.[Extrajudicial executions, 40 accounts of lives done away with, 2012-2017], p. 38.

<sup>968</sup> In its annual and country reports, the IACHR has addressed the obstacles encountered in exercising the right of access to public information in Venezuela. [IACHR, [2016 Annual Report](#), Chapter IV.B, Venezuela, para. 173-175; [2015 Annual Report](#), Chapter IV.B, Venezuela, para. 191-196; [2014 Annual Report](#), Chapter IV.B, Venezuela, para. 465-467; [2013 Annual Report](#), Chapter IV.B, Venezuela, para. 615-618; [2012 Annual Report](#), Chapter IV.B, Venezuela, para. 454-461; [2011 Annual Report](#), Chapter IV.B, Venezuela, para. 444-446; [2010 Annual Report](#), Chapter IV, Venezuela, para. 693-699; *Democracy and Human Rights in Venezuela*, OEA/SER.L/V/II, Doc. 54, December 5, 2013, para. 674-664; [2008 Annual Report](#), Chapter IV.B, Venezuela, para. 385-387 and 438-439; [2007 Annual Report](#), Chapter IV.B, Venezuela, para. 246-247; [2004 Annual Report](#), Chapter IV.B, Venezuela, para. 302-303; and [2002 Annual Report](#), Chapter IV, Venezuela, para. 38-39].

CHAPTER 4

POVERTY AND ECONOMIC,  
SOCIAL, CULTURAL AND  
ENVIRONMENTAL RIGHTS  
(ESCER)



## POVERTY AND ECONOMIC, SOCIAL, CULTURAL AND ENVIRONMENTAL RIGHTS (ESCER)<sup>969</sup>

405. The deterioration in the situation of human rights and the disruptions to the rule of law and democratic system in Venezuela come in the context of increasingly enfeebled institutions lacking the capacity to ensure adequate living standards for the population. The IACHR is disturbed to note the existence of a profound economic and social crisis in Venezuela,<sup>970</sup> characterized by a marked increase in poverty and extreme poverty as well as enormous problems with access to food, medicine, health care, and adequate housing for large segments of the population.
406. By the end of 2015 prices had risen by 180.9 percent and in April 2016, it was reported that 80 percent of the population was suffering food shortages.<sup>971</sup> Reports also mention a lack of minimum adequate conditions in public health centers, loss of personnel, precarious infrastructure and medical equipment, shortages of medicines, inputs, and medical supplies, and the closure or suspension of medical services.<sup>972</sup> In 2017, chronic, widespread shortages worsened to unprecedented levels, affecting the population as a whole but especially traditionally excluded and discriminated-against persons, groups, and communities.<sup>973</sup>
407. In this troubling context, the IACHR recalls that ESCER are protected by different provisions in Article 34(k) of the OAS Charter, as well as by

<sup>969</sup> Although the scope of this report does not extend to matters relating to the right to a healthy environment, the IACHR adopts here the broad denomination that it uses to refer to this set of rights and recalls the recent establishment of the office of a special rapporteur by the same name to advance standards and actions in that regard.

<sup>970</sup> The AN recognizes that a humanitarian crisis exists with respect to food and healthcare [La Vanguardia, El Parlamento declara “una crisis humanitaria alimentaria”, March 15, 2017; El País, El Parlamento declara una crisis humanitaria en el país, March 15, 2017; AN, Acuerdo sobre la grave crisis que enfrentan los pacientes con patologías renales en Venezuela, February 9, 2017].

<sup>971</sup> Analítica, Escasez de alimentos básicos en el país supera el 80%, según Datanálisis, May 27, 2016.

<sup>972</sup> IACHR, Hearing on the right to health in Venezuela, April 4, 2016; Hearing on the right to health and access to medications in Venezuela, June 7, 2016; and 2016 Annual Report, Chapter IV.B, Venezuela, para. 179.

<sup>973</sup> Civil society groups warned of the particular impact of the crisis in Venezuela on historically excluded and discriminated-against persons, communities, and groups, such as children and adolescents, at the 163rd special session of the IACHR [IACHR, Impact of the Political and Economic Crisis on Children in Venezuela, July 5, 2017].



various articles in the American Declaration,<sup>974</sup> which is in full legal effect and its observance mandatory for all OAS member states,<sup>975</sup> including the provisions on ESCER.

408. As the IACHR has previously stated, states have a duty of progressive realization with respect these rights;<sup>976</sup> however, they also have immediate obligations, such as the duty to take steps,<sup>977</sup> as well as to ensure ESCER without discrimination.<sup>978</sup> Discrimination occurs when there is different treatment for a prohibited reason that undermines or nullifies the recognition, enjoyment, or exercise of rights.<sup>979</sup> The Commission has underscored that the duty of progressive realization does not mean that states can put off indefinitely efforts toward the realization of rights; to the contrary, they must immediately initiate the process for achieving their realization.<sup>980</sup> The IACHR has also said that that duty entails the obligation not to adopt regressive measures with respect to those rights,<sup>981</sup> unless there is a lack of available resources and it has been demonstrated that every effort has been made to satisfy the obligation.<sup>982</sup> On that score, bearing in mind the serious economic and social crisis in Venezuela, it is troubling that the State is not taking every available step to protect those rights, as is reflected, for example, in its apparent refusal to accept humanitarian assistance from abroad.<sup>983</sup>

<sup>974</sup> Among other things, the American Declaration recognizes the right to protection for mothers and children (Article VII); the right to the preservation of health and to well-being (Article XI); the right to education (Article XII); the right to the benefits of culture (Article XIII); the right to work and to fair remuneration (Article XIV); the right to leisure time and to the use thereof (Article XV); and the right to social security (Article XVI).

<sup>975</sup> I/A Court H.R., *Interpretation of the American Declaration of the Rights and Duties of Man within the Framework of Article 64 of the American Convention on Human Rights*, Advisory Opinion OC-10/89 of July 14, 1989. Series A No. 10, pars. 42 and 45.

<sup>976</sup> CESCR, General comment No. 3, The nature of States parties' obligations (art. 2, para. 1 of the Covenant), 14 December 1990, para. 9.

<sup>977</sup> CESCR, General comment No. 3, The nature of States parties' obligations (art. 2, para. 1 of the Covenant), 14 December 1990, para. 2.

<sup>978</sup> CESCR, General comment No. 20, Non-discrimination in economic, social and cultural rights (art. 2, para. 2, of the International Covenant on Economic, Social and Cultural Rights), 2 July 2009, E/C.12/GC/20, para. 7.

<sup>979</sup> I/A Court H.R., *Case of Gonzales Lluy et al. v. Ecuador*. Preliminary Objections, Merits, Reparations, and Costs, Judgment of September 1, 2015, Series C No. 298, para. 253; *Case of Atala Riffo and Girls. v. Chile*, Merits, Reparations and Costs, Judgment of February 24, 2012, Series C No. 239, para. 81.

<sup>980</sup> IACHR, *Third Report on the Situation of Human Rights in Colombia*, OEA/Ser.L/V.II.102 Doc. 9 rev. 1, February 26, 1999, Economic, Social and Cultural Rights, para. 6.

<sup>981</sup> IACHR, Report No. 27/09, Case 12.249, Merits, Jorge Odir Miranda Cortez et al., El Salvador, pars. 105-106.

<sup>982</sup> CESCR, General comment No. 3, The nature of States parties' obligations (art. 2, para. 1 of the Covenant), 14 December 1990, para. 10.

<sup>983</sup> Isaías Medina, former Minister Counselor of the Permanent Mission of Venezuela to the United Nations, reportedly requested assistance from the Sovereign Military Hospitaller Order of Saint John of Jerusalem of Rhodes and of Malta to address the food shortage. According to Mr. Medina, the order of Malta was willing to buy, import, and make donations. Accordingly, Mr. Medina requested a meeting with the Office of the Permanent Mission of Venezuela to finalize the details. However, after postponing the meeting several times, the Permanent Mission ultimately canceled it on the grounds that it was not a matter of national

409. According to the State, in order to tackle the economic crisis, since January 2016, six decrees have been issued—and subsequently extended—declaring a nationwide state of economic emergency.<sup>984</sup> As the IACHR noted previously, although the decrees introduced a number of measures to counter the economic crisis, they also gave the executive broad powers in areas that exceeded the reasons for declaring the state of emergency ([Chapter IV.B.2](#)). In spite of that, in practice, the declarations of a state of emergency have proven to be an inadequate response since the situation has remained the same and even worsened. Indeed, the state of emergency declarations were followed by an escalation in violence and chaos, as well as increased looting and attempted looting throughout the country.
410. The Commission commends the efforts of the State to deal with the impact of the economic situation, such as allocating 74 percent<sup>985</sup> and 72.5 percent<sup>986</sup> of its annual budget for 2016 and 2018, respectively, to social spending. However, as this chapter observes, there remain significant challenges with respect to ESCER that the steps taken in the context of the economic state of emergency have not managed to resolve.<sup>987</sup> The IACHR is especially disturbed by information that in this context of economic and social crisis, access to certain health care services and food is apparently conditioned to membership of or support for the ruling party.<sup>988</sup> In the opinion of the IACHR, that is utterly incompatible with the principle of equality and nondiscrimination recognized in Article II of the American Declaration,<sup>989</sup> which, as mentioned, is an immediate obligation where economic, social, cultural, and environmental rights are concerned.
411. The Commission is also extremely disturbed by allegations of corruption affecting access to ESCER. Some of those allegations are as follows: (i) the purported diversion of 1,040 crates of beef from MERCAL, a company attached to the Ministry of Food; (ii) the alleged illegal demand for payment by public officials in return for processing bills of lading for

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interest and there was no humanitarian crisis in Venezuela. Venezuela is also said to have turned down assistance from Brazil and Colombia, which reputedly offered to open a humanitarian corridor [Youtube video, [Public hearings before OAS regarding Venezuela](#), OAS, October 16, 2017; El Nacional, [Denuncian que gobierno niega ayuda humanitaria de Mercosur](#), June 15, 2017.]

<sup>984</sup> IACHR, [2016 Annual Report](#), Chapter IV.B, Venezuela, para. 186.

<sup>985</sup> IACHR, [Impact of the Political and Economic Crisis on Children in Venezuela](#), July 5, 2017.

<sup>986</sup> IACHR, [Right to Education in Venezuela](#), October 24, 2017.

<sup>987</sup> In its 2016 Annual Report, the IACHR observed that the extensions of the state of economic emergency had not successfully dealt with the emergencies for which they were declared [IACHR, [2016 Annual Report](#), Chapter IV.B, Venezuela, para. 54].

<sup>988</sup> The IACHR has received information on this. *Inter alia*, Letter from the Child and Pediatric Service of Venezuela, addressed to the Vice President and the Ombudsman of the Bolivarian Republic of Venezuela, dated September 7, 2017.

<sup>989</sup> Article 2 of the American Declaration provides: “All persons are equal before the law and have the rights and duties established in this Declaration, without distinction as to race, sex, language, creed or any other factor.”

agricultural producers; (iii) the apparent theft of money intended for the purchase of goods distributed by Local Supply and Production Committees (CLAPs); (iv) the suspected misappropriation of medical supplies at the University Hospital in Falcón State; (v) the alleged diversion of more than 18 tons of rice; (vi) the refusal to sell CLAP food bags to anyone who did not vote in the ANC elections; (vii) the failure of a company to build 161 homes in Carora, Lara State, as part of the *Gran Misión Vivienda Venezuela* housing program; (viii) the alleged collection of fees for processing the allocation of units under that same program;<sup>990</sup> and (ix) the purchase at overstated prices (by 55 percent) of food from Mexico for the CLAP.<sup>991</sup> It is also troubling that a 2016 study by Transparency International found that the bribery index for hospital admissions between 31 percent and 40 percent, while the index for accessing public services is between 41 percent and 50 percent.<sup>992</sup>

412. The Commission is deeply concerned by the possibility that such incidents may have occurred. In that context, it reiterates that states are unable to meet their human rights obligations when corruption is widespread.<sup>993</sup> On the contrary, the denial of rights such as the rights to health, food, education and housing are some of the terrible consequences that corruption in Latin American countries causes.<sup>994</sup> Corruption also encourages discrimination and deprives historically excluded and discriminated-against persons of income, which also prevents them from exercising their rights, whether civil and political rights, or ESCER.<sup>995</sup> Therefore, the Commission exhorts the State immediately to investigate the above allegations and, as appropriate, punish those responsible. It also urges it to adopt prevention and oversight measures to avert such cases and thus ensure the exercise of such rights.
413. As this section shows, there have been grave setbacks in terms of access to and enjoyment of ESCER, so much so that basic components of such

<sup>990</sup> Transparency Venezuela, Report on the situation of human rights in Venezuela, prepared for the IACHR, pp. 17-19.

<sup>991</sup> Reuters, [Parlamento de Venezuela denuncia corrupción en compra de alimentos con pérdidas de 200 mln dlr](#), June 15, 2017.

<sup>992</sup> Transparency International, [People and Corruption: Latin America and the Caribbean](#), Global Corruption Report, p. 19.

<sup>993</sup> CESCR, [Consideration of reports submitted by States Parties under Articles 16 and 17 of the Covenant, Concluding observations, Republic of Moldova](#), E/C.12/1/ADD.91, 12 December 2003, para. 12; Committee on the Rights of the Child, Consideration of reports submitted by States Parties under Article 44 of the Convention, Concluding observations, the Republic of the Congo, CRC/C/COG/CO/1, 20 October 2006, para. 14; and United Nations Special Rapporteur on the independence of judges and lawyers, E/CN.4/2005/52/Add.4, para. 96.

<sup>994</sup> OHCHR, [Human Rights Council 36th Session: Opening Statement by UNHCHR](#), September 11, 2017.

<sup>995</sup> International Council on Human Rights Policy and Graduate School of Public Administration and Public Policy of the Monterrey Institute of Technology and Higher Education, [Corruption and Human Rights: Making the Connection](#), 2009, p. 27.

essential rights as food or health are not being ensured. In that regard, the Commission notes that a State in which much of the population is deprived of essential foodstuffs, of essential primary health care, or of basic shelter and housing is failing to discharge its obligations in relation to ESCR.<sup>996</sup> It also reiterates that an economic crisis is not, *per se*, justification for the State's inaction in relation to such rights,<sup>997</sup> and that even in such situations "the vulnerable members of society can and ... must be protected by the adoption of ... low cost targeted programs."<sup>998</sup>

414. The Commission also finds that the deterioration in the situation of the rights addressed in this section has been such that it has significantly impaired other rights, clearly evincing their interdependence and indivisibility.<sup>999</sup> The IACHR reiterates that human rights constitute an indissoluble whole, which is why—even though ESCR are addressed separately based on their specificities—the effective exercise of democracy in any State necessarily presupposes the full exercise of rights and fundamental freedoms for the entire population.<sup>1000</sup> In that regard, the IACHR recalls that "[f]reedom from fear and want necessarily entails the guarantee of civil and political rights. Through popular participation those who are affected by the neglect of their economic and social rights are able to participate in the decisions that concern the allocation of national resources and the establishment of social, educational, and health care programs."<sup>1001</sup>

## A. Poverty

415. The IACHR has stated that poverty is a human rights problem that translates into obstacles to the enjoyment and exercise of human rights on an equal footing by individuals, groups, and communities that live in that situation.<sup>1002</sup> In addition, the IACHR has defined extreme poverty as a serious human rights problem distinguished by the intensity with which it

<sup>996</sup> CESCR, General comment No. 3, The nature of States parties' obligations (art. 2, para. 1 of the Covenant), 14 December 1990, para. 10.

<sup>997</sup> CESCR, General comment No. 3, The nature of States parties' obligations (art. 2, para. 1 of the Covenant), 14 December 1990, para. 11.

<sup>998</sup> CESCR, General comment No. 3, The nature of States parties' obligations (art. 2, para. 1 of the Covenant), 14 December 1990, para. 12.

<sup>999</sup> IACHR, Report on Poverty, Extreme Poverty, and Human Rights in the Americas, 2016, para. 71.

<sup>1000</sup> The IACHR recognized several years ago the link between violation of the right to physical security, on one hand, and the denial of economic and social rights and suppression of political participation, on the other. The IACHR has also said that "[a]ny distinctions drawn between civil and political rights and economic, social and cultural rights are categorical formulations that detract from the promotion and guarantees of human rights." [IACHR, *Ten Years of Activities 1971-1981*, p. 321. Cited in IACHR, *1993 Annual Report*, Chapter V.]

<sup>1001</sup> IACHR, *1993 Annual Report*, Chapter V.

<sup>1002</sup> IACHR, Report on Poverty, Extreme Poverty, and Human Rights in the Americas, 2016, para. 242.

impairs the enjoyment and exercise of human rights by individuals, groups, and communities that live in that situation.<sup>1003</sup>

416. In recent years, poverty and extreme poverty have grown worse in Venezuela. According to the most recent official figures from the National Statistics Institute (INE), in the first half of 2015, 33.1 percent of Venezuelan households were poor, of which 9.3 percent were in extreme poverty.<sup>1004</sup> According to the same source, that marked an increase of 5.8 percent compared with 2013.<sup>1005</sup>
417. The statistics offered by civil society organizations paint a far more alarming picture. The Survey on Living Standards in Venezuela (ENCOVI) for 2016,<sup>1006</sup> which measured the evolution of poverty, found that in 2014, 48 percent of households were living in poverty; that figure climbed to 73 percent in 2015, and in 2016 reached 81.8 percent. Of that total, 51.51 percent were in extreme poverty.<sup>1007</sup> The study also found that from 2014 to 2016, the percentage of recently poor fell, while that of chronically poor went up.<sup>1008</sup> This worrying rise is attributed to the crisis with which Venezuela has been grappling since 2015.<sup>1009</sup> Factors such as high unemployment and high inflation only make the situation worse.<sup>1010</sup>
418. The survey also covered Venezuela's *misiones sociales*, one of the objectives of which is to eradicate poverty.<sup>1011</sup> The study showed that the percentage of people enrolled in those programs went up in 2016 to 28 percent. The research warned that 4.2 million people living in poverty were not

<sup>1003</sup> IACHR, Report on Poverty, Extreme Poverty, and Human Rights in the Americas, 2016, para. 243.

<sup>1004</sup> INE, *Pobreza por línea de ingreso, 1er semestre 1997-1er semestre 2015*.

<sup>1005</sup> INE, *Pobreza por línea de ingreso, 1er semestre 1997-1er semestre 2015*. The statistics provided by the INE suggest that in the second half of 2013, 27.3 percent of households were poor. PROVEA noted this rise in its report on the situation of social rights in Venezuela for the 2016-2017 period [PROVEA, *Situación de los derechos sociales en Venezuela, Periodo 2016-2017*, p. 4].

<sup>1006</sup> The Survey on Living Standards in Venezuela (ENCOVI) is prepared by experts at UCAB, Universidad Central de Venezuela (UCV), Universidad Simón Bolívar (USB), Fundación Bengoa and Laboratorio de Ciencias Sociales (LACSO). The survey looks at the issues of food and nutrition, education, poverty, health, personal security, and labor.

<sup>1007</sup> *Encuesta sobre Condiciones de Vida – Venezuela 2016 (Evolución de la pobreza)*.

<sup>1008</sup> According to the poll, in 2014 the percentage of recently poor was 68.4 percent. In 2016 that proportion dropped to 60.4 percent. Chronic poverty, on the other hand, rose from 33.3 percent in 2014 to 38 percent in 2016 [Encuesta sobre Condiciones de Vida – Venezuela 2016 (Evolución de la pobreza)].

<sup>1009</sup> PROVEA, *Situación de los derechos sociales en Venezuela, Periodo 2016-2017*, p. 5.

<sup>1010</sup> PROVEA said that according to the INE, there were 1,035,238 unemployed in 2016. It also mentioned that according to the Central Bank of Venezuela, the inflation rate in 2015 was 180.9 percent. According to unofficial figures, in 2016 the inflation rate reached 550 percent and was expected to rise to 800 percent in 2017 [PROVEA, *Situación de los derechos sociales en Venezuela, Periodo 2016-2017*, p. 5].

<sup>1011</sup> Ministry of People's Power for Communication and Information, *Misiones Sociales Venezuela, agosto de 2014*, p. 6. The *misiones sociales* are State social assistance programs). They include the *Misión Alimentación* (food and nutrition), *Misión Barrio Adentro* (education), *Misiones Robinson, Ribas and Sucre* (education), *Misión Cultural* (culture), *Misión Barrio Adentro Deportivo* (sport), and *Gran Misión Vivienda Venezuela* (housing).

benefiting from the programs, while 4.4 million who were not poor were doing so. According to the poll, only 2 in 10 people said that they did not need *misiones sociales*. It was also highlighted that 46.6 percent of people were not beneficiaries of the Government's social programs because "they excluded them," while 16.9 percent were not because they "did not agree/opposed" them.<sup>1012</sup>

419. The Commission expresses its concern at the worsening situation of poverty and extreme poverty in Venezuela. In that regard, it reiterates that poverty is a multidimensional phenomenon that involves not just material shortages, but also "circumstances characterized by multiple and interrelated violations of civil, political, economic, social, and cultural rights."<sup>1013</sup> In that regard, it should be noted that failure to adopt the measures necessary to enable people in poverty and extreme poverty to have access to the minimum conditions that would enable them to live with dignity could entail a violation of the right to life.<sup>1014</sup> The Commission also emphasizes that by Article 12 of the Inter-American Democratic Charter, OAS member states undertook to reduce poverty and eradicate extreme poverty.
420. At the same time, the available information indicates that there are approximately 350,000 more women who are poor than men.<sup>1015</sup> In that regard, the IACHR has already noted that although poverty affects everyone, its impact is decidedly different for women because of the gender-based discrimination they have historically faced. Women disproportionately shoulder the burden for care and child-rearing in their families. That workload and the constraints that it imposes on women's time lower their chances of finding decent, quality, formal employment and securing the financial resources they need to support themselves and their families.<sup>1016</sup> The situation requires the adoption of public policies to do away with discriminatory and exclusionary stereotypes associated with poverty in society. The gender perspective is a core criterion in evaluating

<sup>1012</sup> [Encuesta sobre Condiciones de Vida – Venezuela 2016 \(Evolución de la pobreza\)](#). In that context, the allegations made by Major General García Plaza during the hearings at the OAS on September 15, 2017 were troubling. During the hearings he said that as part of the "campaign to eradicate poverty," Héctor Rodríguez, Vice President of the Social Area of the Ministry of Education said: "We are not going to bring people out of poverty and into the middle class so that they can then aspire to being an *escudido* (derogatory term used to refer to people who oppose the Venezuelan Government)." The Major General's interpretation of these remarks was that the government official was saying that those who made it out of poverty thanks to the Government's policy could not change their ideology and should remain loyal to the Government [Youtube video, [Public hearings before OAS regarding Venezuela](#), September 15, 2017].

<sup>1013</sup> IACHR, *Report on Poverty, Extreme Poverty, and Human Rights in the Americas*, 2016, para. 70.

<sup>1014</sup> IACHR, *Report on Poverty, Extreme Poverty, and Human Rights in the Americas*, 2016, para. 136.

<sup>1015</sup> Prodavinci, [Las mujeres en el mapa de la pobreza en Venezuela](#), March 13, 2017.

<sup>1016</sup> IACHR, *Poverty and Human Rights*, 2017, para. 285.

the implementation of poverty alleviation measures for the realization of economic, social, and cultural rights.<sup>1017</sup>

## ***B. Food and Nutrition***

421. According to information received by the IACHR, food shortages in Venezuela have risen alarmingly over the last two years.<sup>1018</sup> The State has recognized that the economic situation is serious and attributes it to the fall in oil prices and certain measures designed to undermine the country's economy.<sup>1019</sup> Production of food has fallen, food prices have increased, and access to it is problematic.<sup>1020</sup> According to information received by the IACHR, as of October 2016, much of the Venezuelan population was only able to buy goods subject to government price controls, such as rice, pasta noodles, and flour, and even they were in very short supply. Goods such as sugar and toilet paper are absent from supermarket shelves for months at a time.<sup>1021</sup>
422. The IACHR laments the lack of official data on the food and nutrition situation, which makes it hard to know the extent of the problem in quantitative terms.<sup>1022</sup> Information provided by civil society organizations suggests that in 2016, the shortage of goods in the basic food basket reached 82.8 percent.<sup>1023</sup> Additionally, the ENCOVI from that year on food reported that approximately 9.6 million people eat two or fewer meals per day, and that those meals frequently lack protein. It said that 9 out of 10 Venezuelan homes are food insecure. More than 70 percent of those polled said that they had lost an average of 8.7 kg in weight, a figure that increase

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<sup>1017</sup> IACHR, *Poverty and Human Rights*, 2017, para. 471, Recommendation 10.

<sup>1018</sup> IACHR, *Impact of the Political and Economic Crisis on Children in Venezuela*, July 5, 2017. The Commission noted the food shortage in Venezuela and its associated problems in its 2015 and 2016 annual reports [IACHR, *2016 Annual Report*, Chapter IV.B, Venezuela, pars. 232 and 233; *2015 Annual Report*, Chapter IV.B, Venezuela, pars. 372-376].

<sup>1019</sup> IACHR, *Impact of the Political and Economic Crisis on Children in Venezuela*, July 5, 2017.

<sup>1020</sup> Transparency Venezuela, 2017 Report on the situation of human rights in Venezuela, prepared for the IACHR, pp. 29 and 31; CEPAZ, Asociación Civil Mujeres en Línea, Freya and Avesa, Informe sobre situación de los derechos de las mujeres en Venezuela, September 2017, p. 15; Cecodap, Communication to the IACHR, September 2017, para. 20.

<sup>1021</sup> HRW, *Venezuela's Humanitarian Crisis – Severe Medical and Food Shortages, Inadequate and Repressive Government Response*, October 2016, pp. 14-17.

<sup>1022</sup> Cecodap specifically pointed out that there was no official information available from the National Nutrition Institute or the Food and Nutrition Surveillance System [IACHR, *Impact of the Political and Economic Crisis on Children Venezuela*, July 5, 2017]. UNICEF Venezuela has also alerted about this situation and mentioned the “need for timely, disaggregated, up-to-date data, using robust methodologies” [UNICEF, *statement on social media* as part of the Universal Periodic Review in Venezuela, 16 March 2017].

<sup>1023</sup> CEPAZ, Asociación Civil Mujeres en Línea, FREYA and AVESA, Informe sobre situación de los derechos de las mujeres en Venezuela, September 2017, p. 17.



to 9 kg in the case of people living in extreme poverty. In all, 93.3 percent of people in the survey considered their income insufficient to buy food.<sup>1024</sup>

423. Although the critical food situation affects the Venezuelan population as a whole, the impact has been more acute on those who traditionally suffer exclusion and discrimination, such as older persons, children and adolescents, women, and indigenous peoples. Indeed, a study that monitored 40 older persons' facilities in the State of Miranda found that on average they were losing 2 kg a month in weight because they were not eating enough.<sup>1025</sup>
424. As for children and adolescents, information available to the IACHR indicates that by April 2017, 54 percent of children under five years old in 4 states in Venezuela were undernourished or on the verge of being so; 45 percent were under two years old and 14 percent were under 6 months old.<sup>1026</sup> The percentage increase to 68% in August, and it is concerning that 14.5% of the children affected showed signs of acute malnutrition.<sup>1027</sup> The IACHR is deeply troubled by information that in the early months of 2017, 10 children under two years old died from undernutrition<sup>1028</sup> and that recent information indicates that the number has continued to increase exponentially, while no official data exists on this issue.<sup>1029</sup> Among the factors that lead the youngest children in particular to suffer the consequences of the shortages are the scarcity and high cost of essential goods for their proper nutrition, such as milk and other dairy products, foodstuffs with a high biological value, cereals, vitamin supplements, and food supplements.<sup>1030</sup> That is compounded by the apparent ban on selling food to children.<sup>1031</sup>

<sup>1024</sup> Encuesta sobre Condiciones de Vida – Venezuela 2016 (Alimentación).

<sup>1025</sup> Transparency Venezuela, 2017 Report on the situation of human rights in Venezuela, prepared for the IACHR, p. 31.

<sup>1026</sup> Caritas de Venezuela, Monitoreo de la Situación Nutricional en Niños Menores de 5 años: Venezuela, Distrito Capital, Vargas, Miranda y Zulia, marzo-abril 2017, pp. 6-8.

<sup>1027</sup> These figures are even more alarming taking into account that the rate of acute malnutrition is almost 15%, which classifies as a food emergency [Panorama, Cáritas reporta aumento de la desnutrición en niños pobres de Venezuela, September 21, 2017; and La Verdad, Cáritas: Zonas vulnerables de Vargas y el país están en emergencia alimentaria, November 23, 2017].

<sup>1028</sup> The allegation was made by Observatorio Venezolano de la Salud and opposition lawmakers oposición [ABC, Mueren diez bebés por desnutrición en Venezuela, February 7, 2017].

<sup>1029</sup> Over the course of five months, the *New York Times* monitored 21 public hospitals where doctors reported record numbers of children with severe malnutrition, hundreds of which have died. The New York Times. La malnutrición que mata en Venezuela. December 17, 2017.

<sup>1030</sup> Cecodap, Communication to the IACHR, September 2017, para. 25; CDH-UCAB, Venezuelan civil society contributions. 2do ciclo EPU Venezuela 2016, p. 58.

<sup>1031</sup> Cecodap, Communication to the IACHR, September 2017, para. 25; CDH-UCAB, Venezuelan civil society contributions. UPR 2nd cycle – Venezuela, 2016, p. 58.



425. Also troubling are reports that the school meals system implemented by the education ministry functions poorly. Information available to the IACHR suggests that very few institutions supplied by that program receive the appropriate amount and variety food.<sup>1032</sup> As is observed below, food and nutrition problems have had a significant impact on the right to education of children and adolescents ([Chapter V.D](#)).
426. Women have been especially affected by the food crisis. According to women's rights associations, they have to spend between 8 and 14 hours a week standing in line to buy State-regulated goods, during which time they are exposed to unsafe conditions violence.<sup>1033</sup> Malnutrition also particularly affects women while pregnant and nursing, which are critical times for the health and lives of mother and fetus.<sup>1034</sup> Under these circumstances, many women have opted for sterilization.<sup>1035</sup>
427. With respect to indigenous peoples, the Commission was informed that Zulia, a region known for its very poor indigenous peoples and population displaced by armed conflict,<sup>1036</sup> was identified by Caritas Venezuela as the state with the highest prevalence of chronic undernutrition in children under five years old, as well as the least dietary diversity.<sup>1037</sup> It was also reported that the Wayúu, Yukpa and Añú peoples have been very badly affected by the food shortages.<sup>1038</sup> Furthermore, according to available information, in 2016, members of different communities of the Warao people were forced to live off nothing but mangoes for two months because they had no access to any other food and were unable to travel elsewhere to obtain it.<sup>1039</sup> The Commission is also concerned by reports that that year

<sup>1032</sup> Cecodap, Communication to the IACHR, September 2017, para. 22. In this regard, it is also worth mentioning that in its report, Transparency Venezuela mentioned that it had been 20 days since the school meals program in the State of Zulia had made a food delivery to Ángel Puchi Fonseca School [Transparency Venezuela, 2017 Report on the situation of human rights in Venezuela, prepared for the IACHR, p. 30].

<sup>1033</sup> CEPAZ, Asociación Civil Mujeres en Línea, FREYA and AVESA, Informe sobre situación de los derechos de las mujeres en Venezuela, September 2017, p. 18.

<sup>1034</sup> CEPAZ, Asociación Civil Mujeres en Línea, FREYA and AVESA, Informe sobre situación de los derechos de las mujeres en Venezuela, September 2017, p. 20.

<sup>1035</sup> Over the course of five months, the New York Times monitored 21 public hospitals where doctors reported record numbers of children with severe malnutrition, hundreds of which have died. The New York Times. [La malnutrición que mata en Venezuela](#). December 17, 2017.

<sup>1036</sup> Caritas Venezuela, [Línea Basal del Monitoreo Centinela de la Situación Nutricional en Niñas y Niños Menores de 5 años: Venezuela, Distrito Capital, Vargas, Miranda y Zulia](#), January 13, 2017, p. 12.

<sup>1037</sup> Diario Las Américas, [La desnutrición infantil en Venezuela avanza y causa alarma](#) | Venezuela, February 6, 2017; Crónica Uno, [Caritas: desnutrición en Venezuela está en situación de crisis humanitaria](#), February 3, 2017; Caritas Venezuela, [Línea Basal del Monitoreo Centinela de la Situación Nutricional en Niñas y Niños Menores de 5 años: Venezuela, Distrito Capital, Vargas, Miranda y Zulia](#), January 13, 2017, p. 19.

<sup>1038</sup> El Nacional, [“Las precariedades que padecen los habitantes de Zulia se recrudecieron”](#), March 21, 2017; Comisión para los Derechos Humanos del Estado Zulia, [Informe Anual 2016 | CODHEZ](#), pp. 85-86. In that regard, Cecodap said that the food and nutrition situation in children and adolescents was particularly troubling in “entities of care, medical facilities, rural areas, and indigenous communities, particularly the Yukpa community in Sierra de Perijá” [Cecodap, Communication to the IACHR, September 2017, para. 21].

<sup>1039</sup> Kapé-Kapé, Boletín #5 – Alimentación Indígena, April 2017, p. 2.

32 members of the Jivi people were seriously undernourished, and that 7 of them allegedly died, making them the people worst affected by this situation in the State of Amazonas.<sup>1040</sup> In addition, it was reported that in 2016 there were 28 cases of undernutrition in children under 10 years old in that state,<sup>1041</sup> as well as 4 deaths among children over 10 years old and adults.<sup>1042</sup>

428. Faced with this situation, the State took steps that included the creation of CLAPs in 2016.<sup>1043</sup> According to the National Nutrition Institute, CLAPs are “community-based organizations whose main objective, together with the Ministry of Food and Nutrition, is to engage in house-to-house distribution of regulated basic food products.”<sup>1044</sup> In that regard, the State informed the IACHR that CLAPs distributed 13 kg of food on average, giving priority to those most at risk<sup>1045</sup>. However, the IACHR has received information that these organizations do not have clear criteria on allocation, periodicity, and products to deliver, nor are they managed according to nutritional criteria. According to information available to the Commission, the system does not give priority to institutions such as schools, entities of care for children and adolescents, public health care facilities, and other contexts in which children and adolescents are found.<sup>1046</sup>
429. There are also claims that the creation of CLAPs has not improved access to food for the Warao people and that, in fact, as a result of a demonstration owing to sporadic deliveries and shortages, food bags reportedly stopped being distributed to the Yakariyene community.<sup>1047</sup> In addition, CLAP bags are apparently only distributed once a month in the Mata Tapaquire community, despite not being enough to feed a family for more than one or two weeks.<sup>1048</sup> The IACHR also notes with concern allegations that CLAPs do not distribute food bags to people who belong to parties that oppose the Government,<sup>1049</sup> and that in some instances, they did not sell bags to people

<sup>1040</sup> Kapé-Kapé, Boletín #5 – Alimentación Indígena, April 2017, p. 7.

<sup>1041</sup> 20 reportedly correspond to the Jivi people; 3 to the Wuotoja people; 2 to the Sanema people; 1 to the Piapoco people; 1 to the Baniva people; and 1 to the Curripaco people [Kapé-Kapé, Boletín #5 – Alimentación Indígena, April 2017, p. 7].

<sup>1042</sup> The Yanomami, Yekuana, Bare and Jivi peoples there was apparently one death each [Kapé-Kapé, Boletín #5 – Alimentación Indígena, April 2017, p. 7].

<sup>1043</sup> The State's representative held that CLAPs were set up as one of the measures adopted for dealing with food shortages [IACHR, *Impact of the Political and Economic Crisis on Children in Venezuela*, July 5, 2017].

<sup>1044</sup> Instituto Nacional de Nutrición, *¿Qué son los CLAP?*, August 6, 2016.

<sup>1045</sup> IACHR, *Impact of the Political and Economic Crisis on Children in Venezuela*, July 5, 2017.

<sup>1046</sup> IACHR, *Impact of the Political and Economic Crisis on Children in Venezuela*, July 5, 2017.

<sup>1047</sup> Kapé-Kapé, Boletín #5 – Alimentación Indígena, April 2017, p. 3.

<sup>1048</sup> Kapé-Kapé, Boletín #5 – Alimentación Indígena, April 2017, p. 4.

<sup>1049</sup> CDH-UCAB, *Venezuelan civil society contributions. 2do ciclo EPU Venezuela 2016*, p. 6. In that same regard, the IACHR was concerned by information it received that, on October 8, 2016, the Minister of Transport and Public Works, Ricardo Molina, said, in relation to people involved in the collection of signatures for the recall process: “Any *escuálido* who signs can forget about the CLAP; we do not want them in line; they can forget

who did not vote in the ANC elections.<sup>1050</sup> In that regard, the Commission reiterates that it is prohibited for political opinions to be used as grounds for discrimination and that “[a]ccess to food assistance schemes ... must not be made conditional on an expression of allegiance to a particular political party.”<sup>1051</sup>

430. With regard to the aforementioned situation, the Commission believes it appropriate to reiterate that guaranteeing that right requires: (i) The availability of food in a sufficient quantity and quality; and (ii) the accessibility of such food in ways that are sustainable and that do not interfere with the enjoyment of other human rights.<sup>1052</sup> Accordingly, it observes with concern the impacts that the food crisis has had on people living in Venezuela. They do not have a sufficient quantity of food available to them and access to food is difficult; therefore, both aspects of that right have been adversely affected. While the IACHR welcomes the fact that the State has taken steps to ensure that its people have access to food, such as the creation of CLAPs, it is greatly disquieted by the allegations of a lack of technical criteria in this program as well as by politically motivated discriminatory measures.
431. One area to which the Commission would draw the State's attention is the food and nutrition situation of persons deprived of their liberty. According to information available to the IACHR, in 2017, 86.52 percent of 89 pretrial detention centers situated in 9 states lacked a meals service, which directly impacts the exercise of the right to food.<sup>1053</sup> The Commission was also informed that at the pretrial detention facilities in the states of Gran Caracas, Monagas, Táchira, and Zulia, families have to take food and water to inmates, who depend on the ability of their relatives to pay for it.<sup>1054</sup> As

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about Misión Vivienda, Barrio Tricolor” [Request to the IACHR for a hearing on “Absence of guarantees and obstacles to the enjoyment of the right food in Venezuela ”; Noticiero Digital, Ricardo Molina: Escualido que firme que se olvide los Clap, Misión Vivienda y Barrio Tricolor, October 9, 2006].

<sup>1050</sup> Transparency Venezuela, 2017 Report on the situation of human rights in Venezuela, prepared for the IACHR, p. 18. That situation was denounced in the municipalities of Bejuma, Carabobo State, and Biruaca, Apure State. In the first case, it was said that the program coordinator in Chirgua 4, Luisa Isabel Rojas, reputedly stated: “We are distributing boxes to everyone and we told the people that we would not sell to anyone who did not vote,” and that “[t]he reason we said that is because we believe that to demand one's rights, one must do one's duty” [Aporrea, Carabobo: Denuncian negativa de venta de cajas CLAP a personas que no votaron para elegir la ANC, August 1, 2017; El Nacional, Negaron bolsas de CLAP a apureños que no votaron en constituyente, August 11, 2017].

<sup>1051</sup> CESCR, General comment No. 20, Non-discrimination in economic, social and cultural rights (art. 2, para. 2, of the International Covenant on Economic, Social and Cultural Rights), 2 July 2009, E/C.12/GC/20, para. 23.

<sup>1052</sup> CESCR, General comment No. 12, The right to adequate food (Article 11), E/C.12/1999/5, 12 May 1999, para. 8.

<sup>1053</sup> UVAL, Informe sobre la situación de los derechos humanos de las personas privadas de libertad en los Centros de Detención Preventiva en Venezuela en el primer semestre de 2017 (Enero-Junio 2017), p. 12.

<sup>1054</sup> UVAL, Informe sobre la situación de los derechos humanos de las personas privadas de libertad en los Centros de Detención Preventiva en Venezuela en el primer semestre de 2017 (Enero-Junio 2017), pp. 50, 53, 84, 91, and 100.

for SEBIN's Helicoide and Plaza Venezuela facilities, the IACHR was told that, due to the increase in detainees, SEBIN was no longer able to feed them all and that, as a result, relatives provide their food and drink.<sup>1055</sup>

432. According to information provided to the IACHR, the country's generalized shortage of food in the country and the high cost of inputs makes it hard for friends and relatives of people deprived of liberty to take them food every day.<sup>1056</sup> That situation is compounded by additional difficulties, such as the alleged collection of money by officials to allow relatives to take in food,<sup>1057</sup> as well as the incarceration of people in areas far from their towns of origin.<sup>1058</sup> The food and nutrition problems of persons deprived of liberty are so serious that, as a result, as of September 2017, at least eight people had died of undernutrition at pretrial detention centers this year alone.<sup>1059</sup>
433. The Commission emphasizes that persons deprived of their liberty are in a position of subordination to the State, which acts as the guarantor of their rights.<sup>1060</sup> In that context, the IACHR is most disturbed by information it has received concerning the problems with prisoners' food. The Commission has previously called the attention of States to situations similar to those described.<sup>1061</sup> In that regard, it reiterates that people

<sup>1055</sup> UVAL, Informe sobre la situación de los derechos humanos de las personas privadas de libertad en las sedes del SEBIN del Helicoide y Plaza Venezuela, p. 17; UVAL, Presos de Falcón solo piden dinero y comida, May 26, 2017; En Maturín sortean caminos para entregar comida a reclusos, May 26, 2017; Manifestaciones dificultan visitas y generan retardo procesal en Zulia, May 26, 2017; Protestas poco han impactado situación de centros de detención preventiva en Táchira, May 26, 2017; Protestas, represión saqueos afectan rutina en comisarías de la Gran Caracas, May 26, 2017; En Antonio José de Sucre se acostumbraron a los gritos de hambre de los presos en Polimaturín, August 23, 2017.

<sup>1056</sup> UVAL, Falta de alimentos pone en riesgo la vida de privados de libertad en centros de detención preventiva. Diagnóstico de la situación de los centros de detención preventiva de Venezuela, September 22, 2017, p. 2.

<sup>1057</sup> UVAL, Falta de alimentos pone en riesgo la vida de privados de libertad en centros de detención preventiva. Diagnóstico de la situación de los centros de detención preventiva de Venezuela, September 22, 2017, p. 2.

<sup>1058</sup> UVAL, Falta de alimentos pone en riesgo la vida de privados de libertad en centros de detención preventiva. Diagnóstico de la situación de los centros de detención preventiva de Venezuela, September 22, 2017.

<sup>1059</sup> This information was provided by UVAL in its report on pretrial detention centers of September 22, 2017. The IACHR has information that some of the people who died from undernutrition were (i) José Abraham Delgado Soto, 35 years old, at the police jail in the Municipality of Sucre, Caracas, on January 11; (ii) Pedro Pablo Leal Fernández, a 40-year-old tuberculosis sufferer, at the Polifalcón jail in Punto Fijo, on February 8; (iii) Carlos Javiera Aguirre, 22 years old, at the police jail in the Municipality of Sucre, Caracas, on April 23; (iv) Elena de Los Barrios Jiménez, a 43-year-old Colombian national, at the police jail in the Municipality of Ambrosio Plaza, Guarenas, Miranda State, on September 10; (v) Adolfo Iván Martínez Canino, 25 years old, at the police jail in the municipality of Guacaipuro, in Teques, Miranda State, on September 20 [UVAL, Falta de alimentos pone en riesgo la vida de privados de libertad en centros de detención preventiva. Diagnóstico de la situación de los centros de detención preventiva de Venezuela, September 22, 2017, pp. 2 and 5; Informe sobre la situación de los derechos humanos de las personas privadas de libertad en los Centros de Detención Preventiva en Venezuela en el primer semestre de 2017 (Enero-Junio 2017), pp. 23-5].

<sup>1060</sup> IACHR, Report on the Human Rights of Persons Deprived of Liberty in the Americas, OEA/Ser.L/V/II., Doc. 64, December 31, 2011, para. 49.

<sup>1061</sup> IACHR, Report on the Human Rights of Persons Deprived of Liberty in the Americas, OEA/Ser.L/V/II., Doc. 64, December 31, 2011, para. 476.

deprived of their liberty are entitled to receive adequate and sufficient food at regular intervals.<sup>1062</sup>

### **C. Health**

434. Shortages of medicines, medical supplies, and treatments in Venezuela have been growing increasingly worse since 2014.<sup>1063</sup> According to figures provided by PROVEA and CodeVida, at present, there is a 90 percent shortage of medicines and supplies nationwide.<sup>1064</sup> According to the National Hospitals Survey, hospital infrastructure has collapsed across the country, with 50 percent of operating theaters inactive and 80 percent of diagnostic services unable to function.<sup>1065</sup>
435. Faced with this situation, many patients are forced to buy their own medicines and supplies in order to receive treatment.<sup>1066</sup> At the same time, three million people with chronic illnesses have reportedly gone at least one year without treatment.<sup>1067</sup> The Commission has also received information about difficulties that people with hemophilia have obtaining medicines such as prophylactics or factor VII.<sup>1068</sup> In this context, in September 2017 the IACHR granted precautionary measures on behalf of Johannys Armando Hernández, who has hemophilia and has not received the treatment prescribed for that disease.<sup>1069</sup> The Commission has also been alerted to the lack of treatments such as chemotherapy for women with breast cancer; dialysis; immunosuppressive medicines to prevent rejection of transplanted organs; pacemakers; medicines for people with multiple sclerosis, Parkinson's disease, and Alzheimer's; antiretroviral

<sup>1062</sup> Principle XI.1 of the Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas.

<sup>1063</sup> HRW, Venezuela's Humanitarian Crisis – Severe Medical and Food Shortages, Inadequate and Repressive Government Response, October 2016, p. 8

<sup>1064</sup> Provea and CodeVida, Venezuela: Informe sobre el derecho a la salud, 2014-2017, en un contexto humanitario de privación prolongada de medicinas y servicios sanitarios, p. 2.

<sup>1065</sup> Sociedad Venezolana de Puericultura y Pediatría, Letter to the OAS Secretary General, June 20, 2017.

<sup>1066</sup> HRW, Venezuela's Humanitarian Crisis – Severe Medical and Food Shortages, Inadequate and Repressive Government Response, October 2016, p. 11 Transparency Venezuela has reported the same situation [Transparency Venezuela, 2017 Report on the situation of human rights in Venezuela, prepared for the IACHR, p. 25].

<sup>1067</sup> Provea and CodeVida, Venezuela: Informe sobre el derecho a la salud, 2014-2017, en un contexto humanitario de privación prolongada de medicinas y servicios sanitarios, p. 2.

<sup>1068</sup> Avhemofilia, Imagina tener hemofilia y no tener medicamentos, #FaltaFactorenVzla.

<sup>1069</sup> IACHR, Resolution No. 37/2017, Precautionary Measure No. 309-17, Johannys Armando Hernández regarding Venezuela.

drugs for people with HIV; milk formula for babies born to mothers with HIV who cannot breastfeed, and others.<sup>1070</sup>

436. This information is corroborated by other civil society actors. Thus, different women's rights organizations denounced that only 27 percent of HIV-positive pregnant women received antiretroviral drugs to reduce the risk of mother-to-child transmission.<sup>1071</sup> In addition, they said that there was a scarcity of milk formula for babies of mothers with HIV as well as of treatments against breast cancer.<sup>1072</sup> They also warned of a shortage of contraceptive methods, which adversely impacts the exercise of women's sexual and reproductive rights.<sup>1073</sup>
437. The situation of children and adolescents in pregnant women is especially troubling. This year the Ministry of People's Power for Health published the epidemiological bulletins for 2016, having stopped publishing them in July 2015.<sup>1074</sup> They recorded 11,466 child deaths, marking a rise of 30.12 percent compared with 2015.<sup>1075</sup> They also reported that 756 women died during childbirth, meaning that maternal mortality went up 65.79 percent compared with the previous year.<sup>1076</sup> Following the publication of that information, the then-Minister of People's Power for Health, Antonieta Caporale, was dismissed.<sup>1077</sup>
438. In relation to child mortality, the situation of neonates is especially troubling. According to reports, in the first quarter of 2016, 82 newborns

<sup>1070</sup> Provea and CodeVida, Venezuela: Informe sobre el derecho a la salud, 2014-2017, en un contexto humanitario de privación prolongada de medicinas y servicios sanitarios, pp. 2-3.

<sup>1071</sup> CEPAZ, Asociación Civil Mujeres en Línea, FREYA and AVESA, Informe sobre situación de los derechos de las mujeres en Venezuela, September 2017, pp. 13-14; MUSAS, Personas con VIH desesperadas por recibir sus antirretrovirales, August 28, 2017.

<sup>1072</sup> CEPAZ, Asociación Civil Mujeres en Línea, FREYA and AVESA, Informe sobre situación de los derechos de las mujeres en Venezuela, September 2017, pp. 13-14.

<sup>1073</sup> CEPAZ, Asociación Civil Mujeres en Línea, FREYA and AVESA, Informe sobre situación de los derechos de las mujeres en Venezuela, September 2017, p. 6. That was also reported by Amnesty International [Amnesty International Report 2016/17: The State of the World's Human Rights, 2017].

<sup>1074</sup> Observatorio Venezolano de la Salud (OVS), El Boletín Epidemiológico Venezolano: ¿Por qué ahora y no antes?

<sup>1075</sup> According to other figures provided by the Ministry of People's Power for Health, child mortality increased from 14.8 percent to 18.6 percent between 2014 and 2016, with 80 percent of deaths corresponding to infants fewer than 28 days old. Although those data differ from the ones contained in the epidemiological bulletins, both mark an upward trend in child mortality [In the framework of the UPR process, CDH-UCAB, Venezuelan civil society contributions. 2do ciclo EPU Venezuela 2016, p. 59; El Nacional, A la semana mueren 194 niños en el país, June 24, 2016]. Likewise, the United Nations country group expressed its concern at the neonatal deaths in the contributions to the Universal Periodic Review [Human Right Council, collected by the UNHCR, A/HRC/WG.6/26/VEN/2, August 25, 2016, paragraph 47. paras. 47-77].

<sup>1076</sup> El Nacional, Ministerio admite que 11.466 niños y 756 parturientas murieron en 2016, May 9, 2017.

<sup>1077</sup> El Nacional, Maduro Removió a Antonieta Caporale del Ministerio de Salud, May 11, 2017; BBC, El gobierno de Venezuela destituye a la ministra de Salud, Antonieta Caporale, luego de que difundieran cifras sobre el aumento de mortalidad materna e infantil, May 12, 2017.

died in the State of Zulia,<sup>1078</sup> and 71 in the State of Táchira, marking an upturn of 25 percent relative to the same period in 2015.<sup>1079</sup> That state of affairs continued in 2017. According to the information received by the IACHR, in August alone, 19 premature neonates died at Central Hospital in Maturín, and in the period from January to July 2017, 100 neonates died at Hospital Universitario de los Andes from nosocomial infections.<sup>1080</sup>

439. In this panorama, civil society organizations have taken legal steps in a bid to secure access to medicines for children and adolescents. On January 25, 2016, Cecodap filed an application for preventive measures with the Juvenile Court of Caracas to address the shortage of essential medicines for children and adolescents. The application was denied, *inter alia*, on the grounds that "families have the main responsibility for ensuring access to medicines." An appeal before the TSJ has been pending since January 27, 2017.<sup>1081</sup> A similar proceeding with the same aim was instituted on behalf of children and adolescents in order to obtain care for them at JM de los Ríos Hospital. However, it has been plagued by delays and a failure on the part of the authorities to provide a timely response.<sup>1082</sup>
440. With respect to pregnant women, it is worth mentioning that the food crisis and poverty in Venezuela have forced several women to migrate to give birth.<sup>1083</sup> For example, Erasmo Meoz University Hospital in Cúcuta, Colombia, attended more than 1,400 pregnant women from Venezuela between January and July 2017,<sup>1084</sup> most of whom were at an advanced stage of pregnancy and in critical medical condition<sup>1085</sup>.
441. Older persons have also been especially badly affected by the crisis in the health care system. According to Convite A.C., in October 2016, there was a shortage of medicines to treat peripheral artery disease (caused by diabetes) and insulin-dependent hypertension, the main causes of morbidity in older persons, estimated at 90.13 percent and 95.98 percent, respectively.<sup>1086</sup> Furthermore, according to information received by the IACHR, between January 2016 and March 2017, two older persons died because they did not receive their medication; five died due to medical

<sup>1078</sup> El Nacional, Más de 80 neonatos han muerto en el Zulia durante 2016, April 10, 2016.

<sup>1079</sup> El Periódico Venezolano, ¡Cifras de exterminio! 71 bebés recién nacidos han muerto en Hospital de Táchira, May 3, 2016.

<sup>1080</sup> Cecodap, Communication to the IACHR, September 2017, para. 33.

<sup>1081</sup> Cecodap, Communication to the IACHR, September 2017, para. 26.

<sup>1082</sup> Cecodap, Communication to the IACHR, September 2017, para. 26.

<sup>1083</sup> El Nacional, Venezolanas emigran para dar a luz en Colombia, March 13, 2017.

<sup>1084</sup> El País (Uruguay), Vida o muerte, las venezolanas que viajan a parir a Colombia, July 29, 2017.

<sup>1085</sup> El País, La odisea de las venezolanas que llegan a Colombia para dar a luz, March 13, 2017.

<sup>1086</sup> PROVEA, Adultos mayores son altamente vulnerables en medio de la crisis, October 12, 2016. This was also reported by civil society organizations during the hearings at the Commission's 158th special session [IACHR, Hearing on the Right to Health and Access to Medicine in Venezuela, June 7, 2016].



negligence, and three were murdered in incidents connected with the food crisis.<sup>1087</sup>

442. At the same time, the increase in epidemics, such as those of malaria, zika, and diphtheria, has been extremely troubling. According to the above-mentioned epidemiological bulletins, the number of malaria cases spiked by 76 percent from 2015 to 2016.<sup>1088</sup> According to the information received by the Commission, that trend continued in 2017, with the number of cases in July 2017 up 63.1 percent compared with the same month in 2016.<sup>1089</sup> According to the National Assembly, in Bolivar state alone, 206,000 cases have been recorded between January and October 2017. The national figure could be double this, and the outbreak is aggravated by difficulties in obtaining proper treatment. This led the National Assembly to declare a health emergency in Bolivar on November 21, 2017.<sup>1090</sup> In that context, it should be noted that the IACHR has been told of an increase in the number of Venezuelans migrating to Guyana (up to 200 per day) in search of treatment for malaria and other diseases.<sup>1091</sup>
443. According to the epidemiological bulletins, 59,348 people were affected by zika virus. However, civil society actors say that this figure falls short of the estimated number of cases.<sup>1092</sup> On this issue, they warned that there are no policies or programs in place to provide assistance to families with children with microcephaly as a result of the virus and that the State has taken no concrete steps to combat zika.<sup>1093</sup> There were also warnings of a reemergence of diphtheria, a disease that causes serious harm to the heart and brain and which had been eradicated from the country. The IACHR was informed of 17 cases in 2016 and has continued to hear reports of cases in 2017. It has received no information from official sources in that regard.<sup>1094</sup>
444. The IACHR has also heard troubling information that possession of a document showing that the holder agrees with the ruling party is a condition for gaining access to health services. Indeed, according to public

<sup>1087</sup> Crónica Uno, 168 ancianos fueron asesinados por robo en 15 meses, June 6, 2017.

<sup>1088</sup> El Nacional, Ministerio admite que 11.466 niños y 756 parturientas murieron en 2016, May 9, 2017.

<sup>1089</sup> Provea and CodeVida, Venezuela: Informe sobre el derecho a la salud, 2014-2017, en un contexto humanitario de privación prolongada de medicinas y servicios sanitarios, p. 4.

<sup>1090</sup> National Assembly, Agreement on the country's grave health situation with the reappearance of diseases like malaria, diphtheria, and scabies November 21, 2017; and El Nacional, Parlamento aprueba declarar en emergencia sanitaria en Venezuela, November 21, 2017.

<sup>1091</sup> Diario el Vistazo, Hasta 200 venezolanos cruzan frontera con Guyana buscando medicinas gratuitas, September 4, 2017.

<sup>1092</sup> CEPAZ, Asociación Civil Mujeres en Línea, FREYA and AVESA, Informe sobre situación de los derechos de las mujeres en Venezuela, septiembre de 2017, pp.11-12.

<sup>1093</sup> CEPAZ, Asociación Civil Mujeres en Línea, FREYA and AVESA, Informe sobre situación de los derechos de las mujeres en Venezuela, September 2017, p. 12.

<sup>1094</sup> Provea and CodeVida, Venezuela: Informe sobre el derecho a la salud, 2014-2017, en un contexto humanitario de privación prolongada de medicinas y servicios sanitarios, p. 5.



statements by the Vice President, Tareck El Aissami, on September 7, 2017, free access to the National Vaccination Plan— which has 15,319 vaccination points in all the country's states—requires the presentation of *acarnet de la patria* (an ID card).<sup>1095</sup> Information available to the IACHR indicates that holders of this document are people who are close to or agree with the ruling party.<sup>1096</sup> In response to this allegation, the State indicated that more than 16 million people have obtained their Carnet de la Patria, equivalent to 83.49% of the Venezuelan population older than 15.<sup>1097</sup> In that regard, the IACHR notes that Articles 83 and 84 of the Venezuelan Constitution recognize free and unfettered access to health care. The IACHR also condemns the use of citizenship control mechanisms that discriminate on the basis of political opinion to restrict access to healthcare and food services.

445. The Commission reiterates its concern at the shortage of medical drugs, supplies, material, and treatments.<sup>1098</sup> In that connection, it recalls that the American declaration provides that every person has the right to the preservation of his health “through sanitary and social measures relating to food, clothing, housing and medical aid to the extent permitted by public and community resources.” Furthermore, availability, accessibility, acceptability, and quality are essential elements of that right.<sup>1099</sup> The dire shortage of medical drugs, inputs, and materials in Venezuela impairs the availability dimension of that right. At the same time, the collapse of hospital infrastructure and the precarious conditions in which hospitals reportedly operate affect the quality dimension of that right. Finally, allegations such as those concerning the CLAP requirement to access health care affect the dimension of accessibility without discrimination.
446. The Commission has also received information on and expressed particular concern over the situation of people who live with HIV or AIDS in

<sup>1095</sup> Vice President Tareck El Aissami stated: “[...] If you have not yet been vaccinated, you can take your sons, daughters, or any family member to any of these vaccination points, where we will provide you with the necessary vaccination free of charge with a *carnet de la patria* [...]” [Youtube Video, Gobierno suministrará vacunas gratuitas con el carnet de la patria, Diario 2001, September 6, 2017].

<sup>1096</sup> This allegation was made by General García Plaza during the hearings at the OAS on September 15, 2017 [Youtube video, Public hearings before OAS regarding Venezuela, September 15, 2017]. In addition, it was reported that on the first day of registration to obtain a *carnet de la patria*, people were asked which party they supported [Diario Las Americas, El chavismo recurre al “Carnet de la Patria” para someter a venezolanos], January 27, 2017]. It was also said that preference was given to members of community councils, CLAPs, and government workers in issuing the document [Tal Cual, Carnet de la Patria: Otra forma de discriminación, February 11, 2017].

<sup>1097</sup> Bolivarian Republic of Venezuela, Ministry of the People’s Power for Foreign Relations, Note AGEV/2017-000300, comments on the draft country report, December 21, 2017, para. 95.

<sup>1098</sup> IACHR, Press Release No. 096/16, IACHR Calls on Venezuelan State to Adopt Comprehensive Measures in the Face of Scarcity in Venezuela, July 22, 2016.

<sup>1099</sup> CESCR, General Comment No. 14, The right to the highest attainable standard of health, E/C.12/2000/4, 11 August 2000, para. 12.

Venezuela. Their quality of life is being especially affected by failure to regularly or periodically receive antiretroviral medications to treat their illnesses. Also, they are not receiving the necessary regular medical exams or coverage of the expenses for them. This problem is estimated to affect the health of 77,000 people registered to receive treatment through the public health system.<sup>1100</sup> Consequently, the IACHR recalls judgment 487 of April 6, 2001, casefile 00-1343, admitting a motion of constitutional protection seeking provision of the medications necessary to treat HIV/AIDS and ordering the State to guarantee the right to health and life of people with HIV and to mobilize the resources necessary and available for this, including international aid.

447. Finally, it learned with profound concern of the recent alleged failure to provide medical attention to Carlos García, an opposition councilor detained at the SEBIN since December 2016, following an accident in which he sustained a head trauma.<sup>1101</sup> The TSJ responded to the allegations with a communiqué in which it said that García had died from complications caused by a presumed immunodeficient infectious disease.<sup>1102</sup> The allegation is not an isolated case, given that in 2016 the IACHR granted four applications for precautionary measures to persons deprived of their liberty in Venezuela who claimed a lack of proper medical care,<sup>1103</sup> and it has continued to receive requests for precautionary measures on similar grounds.<sup>1104</sup>
448. In that regard, the Commission recalls that persons deprived of liberty should have access to appropriate treatment and medicines free of charge.<sup>1105</sup> Therefore, it urges the State to investigate the facts surrounding

<sup>1100</sup> ICASO & Acción Ciudadana contra el SIDA (ACCSI). *Triple threat: Resurging epidemics, a broken health system, and global indifference to Venezuela's crisis*. November 16, 2017.

<sup>1101</sup> El Nacional, *PJ denunciará al gobierno ante la ONU por muerte de Carlos García*, September 18, 2017; El Horizonte; El Horizonte, *Opositores acusan al gobierno de Nicolás Maduro por muerte de concejal*, September 18, 2017; Efecto Cocuyo, *OEA y Foro Penal responsabilizan al gobierno por muerte de Carlos Andrés García*, September 18, 2017.

<sup>1102</sup> TSJ, *COMUNIQUE*, Facebook, September 18, 2017; El Nacional, *TSJ informó que concejal Carlos García recibió atención médica en agosto*, September 18, 2017; El Universal, *TSJ: Muerte de Carlos García fue por presunta enfermedad inmunodeficiente*, September 18, 2017. In that regard, Un mundo Sin Mordaza and Defiende Venezuela denounced that on August 4, 2017, Councilor García reportedly had an accident but was not taken to hospital or given medical attention because the security staff said that he was simulating the medical condition afflicting him. He was only taken to hospital on August 18, 2017 [Un Mundo Sin Mordaza y Defiende Venezuela, Communication to the IACHR, Llamamiento urgente – muerte, Víctima: Carlos Andrés García, Estado: Venezuela, September 2017, p. 2].

<sup>1103</sup> IACHR, *Resolution 67/2016*, Precautionary Measure No. 750-16, Braulio Jatar regarding Venezuela, December 22, 2016; *Resolution 50/2016*, Precautionary Measure No. 701-16, Vladimir Aranque Hainal regarding Venezuela, October 21, 2016; *Resolution 48/2016*, Precautionary Measure No. 498-16, Vasco da Costa regarding Venezuela, September 30, 2016; *Resolution 25/2016*, Precautionary Measure No. 58-16, Kamel Salame Ajami regarding Venezuela, April 15, 2016.

<sup>1104</sup> Application presented on behalf of dismissed mayor Alfredo Ramos, who suffered a hypertensive crisis while deprived of liberty at the SEBIN.

<sup>1105</sup> Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas, Principle X.

the death of Carlos Garcia and to take steps to ensure the right to health of persons deprived of their liberty under its jurisdiction.

## **D. Education**

449. The food crisis in Venezuela has had a negative impact on the right to education, affecting children and adolescents in particular.<sup>1106</sup> In that regard, the State has said that the Ministry of People's Power for Education's school meals system benefits 15,329 educational establishments and reaches 3,745,773 students, in addition to being bolstered by the bags that CLAPs distribute. However, civil society organizations have said that, in spite of those figures, the food does not reach schools, especially those in rural areas, and it warns of a possible problem of corruption in the distribution program.<sup>1107</sup> They have also mentioned that school absenteeism has reportedly increased because of a decline in the quantity, variety, and quality of the food distributed by the program.<sup>1108</sup>
450. According to a 2016 study on public schools in the State of Miranda, 48.1 percent of students "missed [class] for reasons related to food (there was no food, they were weak, they were saving to buy food, they went to stand in line to buy food)."<sup>1109</sup> That situation was also reported at indigenous schools in the State of Bolivar, where teachers said that when there was no food student absenteeism went up.<sup>1110</sup> The education of children and adolescents is also affected when schoolteachers have to absent themselves in order to stand in line so that they can buy their own food and basic goods.<sup>1111</sup>
451. Other factors of the crisis in Venezuela have undermined the exercise of the right to education. According to the ENCOVI 2016 education survey, 65 percent of children and adolescents sometimes miss school because of problems relating to the water service (30 percent), power outages (22 percent), strikes (15 percent), transport (9 percent), lack of food at home (10 percent), or illness (4 percent). According to that poll, difficulties with the water service, electricity, and transport affect regular school attendance for children and adolescents, regardless of their social

<sup>1106</sup> That was noted by the IACHR in its 2016 Annual Report [IACHR, [2016 Annual Report](#), Chapter IV.B, Venezuela, para. 233].

<sup>1107</sup> IACHR, [Right to Education in Venezuela](#), October 24, 2017.

<sup>1108</sup> CDH-UCAB, [Venezuelan civil society contributions. UPR 2nd cycle – Venezuela, 2016](#), p. 58.

<sup>1109</sup> CDH-UCAB, [Venezuelan civil society contributions. 2ndo ciclo EPU Venezuela 2016](#), p. 13.

<sup>1110</sup> Kapé-Kapé, *Boletín #5 – Alimentación Indígena*, April 2017, p. 5.

<sup>1111</sup> *Associated Press, No food, no teachers, violence in failing Venezuela schools*, June 17, 2016.

background. Lack of food, on the other hand, has a greater impact on children and adolescents living in poverty.<sup>1112</sup>

452. The protests have also impeded regular school attendance by students.<sup>1113</sup> Some of the most prominent actors in the protests have been university students belonging to the Venezuela Student Movement (*Movimiento Estudiantil de Venezuela*), who have constantly called for improvements in the political situation in Venezuela.<sup>1114</sup> In that regard, the Commission has received information that during the protests in 2017, at least 339 students have been detained and 21 murdered. In addition, 17 university lecturers are said to have been detained, either for criticizing the Government, or for taking part in protests; 8 of them have reputedly been turned over to the military courts. In that context, 92 demonstrations called by the university community have reportedly been repressed.<sup>1115</sup>
453. The IACHR also notes that the school year was shortened, in contravention of the 200-day duration required by the *Organic Law on Education*.<sup>1116</sup> Some of the apparent reasons for the reduction were the energy-saving policy<sup>1117</sup> and the ANC elections.<sup>1118</sup> With regard to the latter, Observatorio Educativo de Venezuela said that schools were taken over for election purposes two weeks before the elections, a decision reportedly without a sound basis. It also said that the short notice with which the announcement was made precluded the necessary adjustments to ensure education quality.<sup>1119</sup>

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<sup>1112</sup> [Encuesta sobre Condiciones de Vida – Venezuela 2016 \(Educación\)](#).

<sup>1113</sup> BBC, [Cómo las protestas están afectando a la educación en Venezuela \(y otras actividades del día a día\)](#), April 28, 2017. In that connection, during the hearings at the 165th regular session of the IACHR, a representative of the State referred to acts that occurred in the context of the protests between April and July 2017 as a threat to the right to education, including destruction of buildings at educational institutions and a fire started at a preschool facility of the Ministry for Habitat and Housing in Chacao on June 13, 2017 [ IACHR, [Right to Education in Venezuela](#), October 24, 2017 2017].

<sup>1114</sup> El Nacional, [Movimiento estudiantil anunció protestas para julio](#), June 28, 2017; La Patilla, [Movimiento Estudiantil convoca una gran asamblea ciudadana este #10Ago](#), August 7, 2017.

<sup>1115</sup> These figures were provided by civil society organizations during the hearings at the 165th regular session of the IACHR. With respect to the detained students, the representative of the State remarked that they were detained not for the student status, but for their involvement in violent acts [IACHR, [Right to Education in Venezuela](#), October 24, 2017].

<sup>1116</sup> Article 49 of the *Organic Law on Education*, August 15, 2009. The shortened school year was also mentioned by civil society organizations during the second cycle of the UPR before the United Nations Human Rights Council [CDH-UCAB, [Venezuelan civil society contribution. UPR 2nd cycle – Venezuela, 2016](#), p. 13].

<sup>1117</sup> El Universal, [Suspenden actividades escolares los dos próximos viernes](#), April 26, 2016; Correo del Caroní, [Tampoco habrá clases los días viernes 20 y 27 de mayo por racionamiento eléctrico](#), May 29, 2017.

<sup>1118</sup> In a [circular](#) issued on June 27, 2017, the Ministry of People's Power for Education announced that classes would end on July 14, 2017, in observance of the electoral calendar established by the CNE for the ANC elections on July 30. Media outlets also reported this [El Nacional, [Recortan dos semanas del calendario escolar por la constituyente](#), June 29, 2017].

<sup>1119</sup> Observatorio Educativo de Venezuela, [Año escolar 2016-2017= sólo 133 días de clase...con suerte](#), June 27, 2017.

454. The Commission notes this information with concern and recalls that availability, accessibility, acceptability, and adaptability are essential elements of the right to education.<sup>1120</sup> In that respect, it finds that the numerous factors that prevent students in Venezuela from attending class impair their access to education. At the same time, measures such as abruptly shortening the school year can undermine the acceptability of education, which includes its quality.
455. The Commission notes that, according to civil society organizations, the State seeks, through its Socialist Plans 2007-2013 and 2013-2019, to mold the education system to the socialist production model and socialist values. On that basis, it has reportedly sought to implement a new school curriculum. They also denounce the mass distribution since 2011 of books from the Colección Bicentenario that contain “examples of politically motivated discrimination and stigmatization.”<sup>1121</sup>
456. Although the inter-American human rights system does not impose a particular social, political, or economic model on OAS member states, it does, nevertheless, demand respect for democratic values and human rights, which should also be reflected in education. That is why the Inter-American Democratic Charter underscores the importance of education in strengthening democratic institutions.<sup>1122</sup> In that connection, the American declaration provides that every person has the right to an education, which should be based on the principles of liberty, morality and human solidarity.<sup>1123</sup> Finally, the Commission notes the lack of up-to-date, official, public information, given that the latest available figures issued by the Ministry of People's Power for Education are those contained in its 2015 annual report. In its comments on the draft of this report, the State indicated that during several public hearings before the Commission, the State reported that Venezuela has accomplished enrollment of 75.6% in early education, 91.3% in elementary school, and 80.6% in secondary school. Likewise, it noted that 83% of the country's educational institutions are public and that 77% of children and adolescents study in free public institutions. It likewise indicated that between 2009 in 2017, more than 6

<sup>1120</sup> United Nations, CESCR, General Comment No. 13, The right to education, E/C.12/1999/10, 1999, para. 6.

<sup>1121</sup> CDH-UCAB, [Venezuelan civil society contributions, UPR 2nd cycle – Venezuela, 2016](#), p. 13. The representative of the State said during the hearings at the 165th regular session of the IACHR that, so far, nearly 100 million texts from that collection had been distributed. During those hearings, civil society organizations noted that although a new school curriculum was necessary it should not be politicized [IACHR, [Right to Education in Venezuela](#), October 24, 2017].

<sup>1122</sup> Inter-American Democratic Charter, Article 16.

<sup>1123</sup> American Declaration of the Rights and Duties of Man, article XII.

million computers have been delivered to children and adolescents free of charge.<sup>1124</sup>

457. The situation of university education is also cause for concern. Although the State has rejected claims that universities lack of autonomy,<sup>1125</sup> according to information received by the Commission, there are laws, decrees, and judgments that would seem to affect that aspect of university education.<sup>1126</sup> Furthermore, according to civil society, at "parallel universities," created by, and subordinate to, the executive branch, students were expelled simply for watching a television station that was not the State-owned channel. It was also claimed that in 2016, 896 students were temporarily ejected from the State of Zulia's Jesús Enrique Lossada scholarship program, as a reprisal for taking part in the collection of signatures for the referendum to recall President Maduro. The outcry prompted by that measure led the students to be reinstated. It was also reported that in September 2017, in the context of the regional elections, the Office of the Governor of the State of Zulia ordered students receiving scholarships to sign forms supporting the candidate Francisco Arias Cárdenas. Similar cases of discrimination against students were reported at other universities, either for having an opinion critical of the Government or belonging to opposition groups.<sup>1127</sup>
458. The Commission expresses its concern at the allegations of interference in university autonomy. Though not expressly mentioned in the American Declaration, the IACHR emphasizes that university autonomy is an essential prerequisite for academic freedom, which, in turn, is necessary

<sup>1124</sup> Bolivarian Republic of Venezuela, Ministry of the People's Power for Foreign Relations, Note AGEV/2017-000300, comments on the draft country report, December 21, 2017, para. 97.

<sup>1125</sup> IACHR, [Right to Education in Venezuela](#), October 24, 2017.

<sup>1126</sup> According to civil society organizations, some of the measures that undermine university independence are as follows: (i) the Organic Law on Education, which gives the executive branch powers to control the rules of governance, admissions policy, and teacher education programs; (ii) the Organic Law on Science, Technology, and Innovation, which centralizes funding for scientific research; (iii) the Consolidated Collective Agreement for the University Sector which is imposed without its representatives having a say; (iv) a judgment by the Administrative Tribunal that "imposed" a postgraduate program director on Universidad de los Andes on January 25, 2017; (v) traditional associative structures are not recognized, and parallel associative structures are imposed; (vi) 40 judgments by the Electoral Division of the TSJ between 2012 and 2015 that suspended elections for university officials and student representatives; (vii) a judgment by the administrative tribunal that banned competitions from being held at Universidad Central de Venezuela on October 2, 2017, and deemed its authorities illegitimate; (viii) executive branch interference in university admissions policies, with the result that it can assign as much as to 100 percent of places at public universities; (ix) severe budget constraints caused by the fact that 90 percent of the budget for universities is spent on faculty pay and less than 5 percent is invested in operational expenditure, such as research and faculty participation; (x) the university reform decree recently passed by the ANC. Civil society organizations also said that an ideological bias is being imposed on universities by ordering them to follow the Fatherland Plan (*Plan de la Patria*) and other instruments of that nature [ IACHR, [Right to Education in Venezuela](#), October 24, 2017].

<sup>1127</sup> IACHR, [Right to Education in Venezuela](#), October 24, 2017.

for full enjoyment of the right to education<sup>1128</sup> recognized at Article XII of the American Declaration. Therefore, the Commission urges the State to review and modify, as appropriate, any measures that undermine the independence of universities. The Commission also expresses its repudiation of the allegations of politically motivated arbitrary expulsion and reprisals against students. The IACHR urges the State to refrain from such acts and to investigate and, as applicable, punish them.

## ***E. Housing***

459. The situation with respect to the right to adequate housing is troubling. During the 159th regular session of the IACHR, although the State mentioned progress achieved in that regard, the allegations made by civil society were, nevertheless, alarming. The State said that to ensure that right it had created the Gran Misión Vivienda and Barrio Nuevo-Barrio Tricolor programs with the intention of building homes and transforming marginalized areas, respectively. Under the former program, it said that a total of 1,828,596 homes were built between 1999 and 2016, and that the target was to construct 3 million homes by 2019. The State's representative also said that to ensure that right, it had created mortgage loan programs for home buyers with repayment terms of up to 30 years.<sup>1129</sup>
460. In that regard, civil society made three charges: (i) contradictions in official figures on home building in 2015; (ii) violation of legal security of tenure of those homes; and (iii) and infringements of that right in the framework of the OLP. In relation to the first point, the civil society representative noted that, according to the Government, 326,323 homes were built in 2015, whereas statements made by the Minister of Housing in October 2015 suggest that as of then 79,470 homes had been built. That means that 200,000 homes would have had to have been built in the remaining months, which would have been difficult given the scarcity of building supplies and that the sector did not experience growth<sup>1130</sup>.
461. In relation to the second point, the civil society representative claimed that several beneficiaries of the Gran Misión Vivienda program had said that they did not have a title of ownership to protect them against arbitrary eviction. In that regard, the civil society representative said that according to the Performance Report of the Ministry of People's Power for Habitat

<sup>1128</sup> United Nations, CESCR, General Comment No. 13, The right to education, E/C.12/1999/10, 1999, paras. 38-40.

<sup>1129</sup> IACHR, [The Human Right to Housing in Venezuela](#), December 2, 2016.

<sup>1130</sup> IACHR, [The Human Right to Housing in Venezuela](#), December 2, 2016.



and Housing, in 2015, ownership was only formalized of 14,280 of the 326,323 homes built that year.<sup>1131</sup>

462. Regarding the third point, civil society claimed that as part of the OLP 18,000 homes had been raided without a court order or MP supervision. It was also alleged that there had been arbitrary evictions, demolitions, and torching of homes, as well as theft and acts of destruction during those operations.<sup>1132</sup> According to them, in that context, President Maduro said that “if anyone uses their Misión Vivienda home for robbery, profiteering, or drug trafficking, I will take it away from them.”<sup>1133</sup> The Commission condemns such statements, as well as the possibility that the alleged acts might have occurred. In that regard, it recalls that to protect that right, States should refrain from forced eviction.<sup>1134</sup> Forced eviction and house demolition as a punitive measure are utterly incompatible with the right to adequate housing.<sup>1135</sup>
463. Additionally, the Commission received information on the disproportionate rise of the waters of Valencia Lake, one of the country's main water reservoirs. Over the years, the lake's water level has risen faster than expected and has reached a critical point where the water has almost reached the top of the wall built to contain it, which is now at risk of collapse. This would affect hundreds of families living in this area in Aragua state. This is an environmental challenge that endangers the right to housing and other economic, social, and cultural rights.<sup>1136</sup> The IACHR therefore urges the State to take all the measures necessary to address this situation, with a priority on the human rights of the individuals and communities affected, as well as emphasis on prevention and on access to public information as a constitutional and internationally protected right.<sup>1137</sup>

<sup>1131</sup> IACHR, The Human Right to Housing in Venezuela, December 2, 2016.

<sup>1132</sup> IACHR, The Human Right to Housing in Venezuela, December 2, 2016; 2016 Annual Report, Chapter IV.B, Venezuela, pars. 188 and 189; HRW and PROVEA, Unchecked Power: Police and Military Raids in Low-Income and Immigrant Communities in Venezuela, April 4, 2016.

<sup>1133</sup> IACHR, The Human Right to Housing in Venezuela, December 2, 2016; PROVEA, OLP y derecho a la vivienda, pp. 4-5; Panorama, Maduro: Quien use su casa de la Misión Vivienda para bachaquear y atracar se la quito, July 27, 2015.

<sup>1134</sup> Committee ESCR, General Comment No. 7: The right to adequate housing (art. 11 (1) of the Covenant): Forced evictions, 20 May 1997, para. 8.

<sup>1135</sup> Committee ESCR, General Comment No. 7: The right to adequate housing (art. 11 (1) of the Covenant): Forced evictions, 20 May 1997, para. 12.

<sup>1136</sup> El Universal, “Desplazados del Lago de Valencia huyen de una tragedia inminente,” September 7, 2017.

Crónica Uno, “Lago de Valencia amenaza 17 comunidades al sur de Maracay,” August 27, 2017.

<sup>1137</sup> The IACHR has been informed that those affected by this situation have requested public information from 10 public institutions (government of Aragua State, Legislative Council of Aragua State, Mayor of the Girardot Municipality of Aragua State, the Lake Valencia Sanitation Authority, Hidrocentro, the Civil Protection Corps of Aragua State, Corposalud Aragua, the Office of the Ombudsman, the Ministry of the Peoples' Power for Ecosocialism and Water, and the Ministry of the People's Power for Housing and



464. The IACHR acknowledges the efforts made by the State and welcomes the creation of programs to ensure the right to adequate housing. However, it is concerned by the deterioration of the situation and the allegations that have been made. In that connection, it recalls that the right to adequate housing derives from Article 34 (k) of the Charter of the OAS,<sup>1138</sup> and that Article XI of the American Declaration recognizes its connection with the right to health.<sup>1139</sup> On this point, the Committee on Economic, Social and Cultural Rights determined in its General Comment No. 4 that one of the components of this right is legal security of tenure.<sup>1140</sup> This implies that “all persons should possess a degree of security of tenure which guarantees legal protection against forced eviction, harassment and other threats.”<sup>1141</sup> The insufficient formalization of ownership titles, denunciations of raids without a court order, forced evictions, and statements by the President of the Republic himself violate that dimension of the right. The Commission wholly rejects this situation.

## ***F. Impact on Human Mobility***

465. As a result of the serious circumstances described, several people have found it necessary to emigrate<sup>1142</sup>. A study prepared by the International Organization for Migration (IOM) and the Ministry of Foreign Affairs of Colombia found that 52 percent of those surveyed crossed the Colombia-Venezuela border to buy basic family basket goods (81 percent), personal hygiene products (19 percent), medicines (16 percent), and other items (8 percent).<sup>1143</sup> Of those polled, 69 percent said they would return to

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Habitat). The requests were made between August 23 and September 19. No response appeared to have been received by the deadline established by law.

<sup>1138</sup> Article 34 (k) of the Charter of the OAS provides: “The Member States agree that equality of opportunity, the elimination of extreme poverty, equitable distribution of wealth and income and the full participation of their peoples in decisions relating to their own development are, among others, basic objectives of integral development. To achieve them, they likewise agree to devote their utmost efforts to accomplishing the following basic goals: [...] k) Adequate housing for all sectors of the population.”

<sup>1139</sup> Article XI of the American declaration says: “Every person has the right to the preservation of his health through sanitary and social measures relating to food, clothing, housing and medical care, to the extent permitted by public and community resources.”

<sup>1140</sup> I/A Court H.R., *Concurring opinion of Judge Ferrer Mac-Gregor Poisot, Case of Yarce et al. v. Colombia*, Preliminary Objection, Merits, Reparations, and Costs, Judgment of November 22, 2016, Series C No. 325.

<sup>1141</sup> CESCR, General Comment No. 4, The right to adequate housing (art. 11 (1) of the Covenant), 13 December 1991, para. 8 (a). This general comment establishes mandatory standards for all states parties, such as Venezuela, to the International Covenant on Economic, Social and Cultural Rights, Article 11 of which recognizes that right.

<sup>1142</sup> IACHR, Press Release No. 006/17, [IACHR Concerned about Situation of Venezuelan Migrants and Calls on States in the Region to Implement Measures to Protect Them](#), January 25, 2017.

<sup>1143</sup> The study was conducted by more than 20 IOM pollsters, who monitored 47 of the busiest zones in Cúcuta, Villa del Rosario, and Arauca [Ministry of Foreign Affairs of Colombia and IOM, [Monitoreo de desplazamiento en la frontera colombo venezolana](#), July 5, 2017].

Venezuela that day, 23 percent said they wanted to return within the following months, 5 percent said they wanted to stay in Colombia, and 3 percent expressed their intention to travel to another country.<sup>1144</sup>

466. A study made by the National Immigration Council of Brazil revealed that 77 percent of Venezuelans in Roraima had migrated because of the economic and political crisis, and that only 25 percent wanted to return to Venezuela. The study highlighted the migration of members of the Warao indigenous people due to hunger and lack of public services such as education and health care. The research also found that 82 percent of non indigenous migrants had filed an asylum application.<sup>1145</sup> According to the Head of the Legal Unit of the UNHCR Americas Bureau, Venezuelan migration is no longer exclusively economic in nature, but that refugees make up an increasingly large component. As a result, the UNHCR has said that the economic and social crisis in Venezuela demands greater solidarity and has urged States not to send Venezuelan migrants back to their country while the situation remains unchanged.<sup>1146</sup> Furthermore, according to figures from the Office of the United Nations High Commissioner for Refugees (UNHCR), an alarming surge (8,828 percent) has been recorded in asylum requests from Venezuelans in the last five years, while the number of people who have been recognized as refugees has fallen by 8 percent;<sup>1147</sup> the main countries of destination have been United States (18,300), Brazil (12,960), Peru 4,453), Spain (4,300), and Mexico (1,044).<sup>1148</sup>
467. The Commission also notes that on many occasions, migrants have encountered a series of obstacles as a result of the lack of legal, regular, and safe migration channels. They thus have to take clandestine routes to emigrate illegally, via land and sea.<sup>1149</sup> In this regard, the IACHR has monitored the situation resulting from Venezuela closing its border with

<sup>1144</sup> Ministry of Foreign Affairs of Colombia and IOM, Monitoreo de desplazamiento en la frontera colombo venezolana, July 5, 2017].

<sup>1145</sup> UNHCR, Brazil: La mayoría de los venezolanos en Roraima es joven, tiene buena educación y está trabajando, September 15, 2017.

<sup>1146</sup> IACHR, Situation of Human Rights of Venezuelan Migrants, Asylum Seekers and Refugees in Countries of the Americas, July 7, 2017; El Espectador, Los refugiados, la otra crisis venezolana, July 11, 2017.

<sup>1147</sup> IACHR, Press Release No. 080/17, Joint Statement of the IACHR and UNCHR on World Refugee Day: 10 Steps the States of the Americas Can Take to Respond to the Refugee Crisis, June 20, 2017.

<sup>1148</sup> UNHCR, Asylum applications by Venezuelans soar, UNHCR steps up response, July 14, 2017.

<sup>1149</sup> IACHR Press Release No. 006/17, IACHR Concerned about Situation of Venezuelan Migrants and Calls on States in the Region to Implement Measures to Protect Them, January 2, 2017. To that extent, it is worth noting the testimony of former Mayor Marcano, who pointed out that many of those experiencing political persecution had to leave the country using non-traditional routes. In his case, he had to leave Venezuela via the Caribbean Sea, risking his life. [Livestream, Public hearings before the OAS regarding Venezuela, OAS, November 16, 2017].

Colombia in August 2015<sup>1150</sup> with Brazil in December 2016<sup>1151</sup> under the declaration of a state of emergency the border area. The Commission is concerned that this situation could lead to the violation of the right to seek and receive asylum, as it obstructs the right of all individuals wishing to leave Venezuelan territory and wishing to seek and receive asylum, complementary protection, or other protection.<sup>1152</sup>

468. It should also be noted that the countries to which Venezuelans are migrating present challenges, including international protection, physical security, lack of documentation, sexual and gender violence, abuses and exploitation, and a lack of access to basic rights and services.<sup>1153</sup> Also, according to information from UNHCR, in some areas, armed groups and criminal gangs exploit newly arrived Venezuelans. The indigenous communities have also been affected, as they have been forced to flee their territories of origin. They need special care, as well as a humanitarian response and differentiated and specific protection.<sup>1154</sup>
469. Apart from the specific troubling aspects mentioned above, the Commission observes an overall lack of participation and accountability mechanisms in relation to public policies on economic, social and cultural rights that hamper the exercise of those rights in Venezuela. On this subject, the IACHR recalls that popular participation, which is the aim of a representative democracy, guarantees that all sectors of society have an input during the formulation, application and review of national policies. On one hand, political participation enforces the protection of economic, social and cultural rights, and on the other, the implementation of these rights creates the conditions in which the general population is able to participate actively and productively in the political decision-making processes.<sup>1155</sup>

<sup>1150</sup> Official Gazette of the Bolivarian Republic of Venezuela, Decree No. 1950, declaring a state of emergency in the Bolívar, Pedro María Ureña, Junín, Capacho Nuevo, Capacho Viejo, and Rafael Urdaneta municipalities in the state of Táchira, August 21, 2015.

<sup>1151</sup> Official Gazette of the Bolivarian Republic of Venezuela, Decree No. 41,053, December 15, 2016.

<sup>1152</sup> IACHR Press Release No. 006/17, IACHR Concerned about Situation of Venezuelan Migrants and Calls on States in the Region to Implement Measures to Protect Them, January 2, 2017.

<sup>1153</sup> UNHCR, El aumento de las solicitudes de asilo de venezolanos lleva a ACNUR a reforzar su respuesta, July 14, 2017.

<sup>1154</sup> UNHCR, El aumento de las solicitudes de asilo de venezolanos lleva a ACNUR a reforzar su respuesta, July 14, 2017.

<sup>1155</sup> IACHR, 1993 Annual Report, Chapter V.

# CHAPTER 6

## CONCLUSIONS AND RECOMMENDATIONS



## CONCLUSIONS AND RECOMMENDATIONS

### A. *Conclusions*

470. For the past several years the Commission has watched democratic institutions grow steadily weaker in Venezuela, while the progressive deterioration of the human rights situation has intensified alarmingly over the last two years, especially in 2017. The crisis that enveloped Venezuela this year stemmed from a number of factors, notably the serious interferences by the executive and judicial branches in the legislative branch. Indeed, the Commission finds that the situation is closely, albeit not exclusively, related to rulings by the TSJ since 2015 that substantially impaired the powers of the AN, and undermined the principle of separation of powers. The interferences in the legislative branch led to alteration of the constitutional order, through Judgments Nos. 155 and 156, handed down by the TSJ on March 28 and 29, respectively, which contravened the separation of powers, the principle of popular representation, and the powers vested in each organ by the Constitution: guarantees that are essential for a democratic system and the rule of law.
471. As the IACHR notes in this report, those decisions were made against a backdrop of a lack of independence in the judiciary in Venezuela. That led to the recent decisions of the TSJ that, openly flouting the constitutional order, disregard the body that exercises legislative power in Venezuela. Indeed, the National Assembly, a democratically elected body, has been severely impeded in the exercise of its constitutional functions by the TSJ. In parallel, a National Constituent Assembly composed almost entirely of ruling party delegates was established through a much questioned electoral process. Electoral authority, for its parts, is wielded by the National Electoral Council, an institution that lacks the basic guarantees of independence and impartiality. Likewise, the civic power represented by the DP and the Office of the Attorney General has declined its constitutional mandate to serve the citizenry, liberty, and democracy.
472. Weak democratic institutions and disregard, from an institutional standpoint, of the principle of separation of powers has real consequences for Venezuela's inhabitants, who face serious obstacles to exercising their political rights and participating in the public affairs of the nation. The lack of independence of the institutions that are supposed to safeguard that

possibility has led to the public power that was accorded to them being used for purposes alien to the ones for which it was intended. In the opinion of the IACHR, that much is clear from the multiple acts mentioned in this report, such as the dismissal, disqualification, deprivation of liberty, and even violation of the rights to physical integrity and life of governors, mayors, council members, and deputies. The use of punitive power to take peaceful protesters to court and prosecute political dissidents on criminal charges is another example of that deviation of power.

473. Compounding the dire state of democracy and political rights is a socioeconomic crisis that has worsened alarmingly in recent years. The country has seen hyperinflation, widespread food shortages, a scarcity of medicines and medical supplies, and the dilapidation of public utility services, such as electricity. The crisis has meant that people living in Venezuela face unacceptable hardships in meeting their most basic needs in terms of food, housing, healthcare, and education.
474. Those who have attempted to act to change the critical situation in Venezuela have been met with a State response of severe repression of public demonstrations and social protests with a complete lack of tolerance or respect for human rights. The Commission was led to this conclusion by the harsh measures adopted to deal with the recent social protests where, as in the past, hundreds of soldiers dominated the streets, firearms were used directly against members of the public, and civilians were allowed and even encouraged to take part in the repression. The Commission can only reiterate its strongest possible repudiation of the outcome of the State's reaction: hundreds of people dead; thousands arbitrarily detained; allegations of torture and cruel, inhuman, and degrading treatment by state agents; people raped, and others unjustly tried on criminal charges in military courts. The IACHR appeals for these acts not to remain in impunity but to allow those who suffered them to obtain justice.
475. Severe restrictions on the right to freedom of expression were also documented in the country, including censorship and closure of media organizations, attacks on journalists, and, in general, patterns of harassment and criminalization of those who express political opinions or disseminate information the State does not approve of. As this report analyzes, such measures have no place in any legal framework compatible with the Venezuelan State's international obligations in this regard; rather, in practice, they are geared to silencing critics of the current government. Their impact on Venezuelan democracy is obvious and requires priority attention.
476. The Commission finds that, overall, such acts demonstrate disdain for the democratic rule of law and the values inherent therein, such as political

plurality, respect for the dignity of the human person, and the principle of legality in the State's actions recognized by its Constitution. Ensuring rights and freedoms in a democratic society requires a legal and institutional order in which the law prevails over the will of the rulers, and in which there are judicial controls on the constitutionality and legality of the exercise of public power. The Inter-American Commission considers that however noble the mission that a government sets itself, it must respect those limits, and it trusts that Venezuela will find the path to becoming a State in which its inhabitants can live in the greatest liberty and full democracy. The recommendations that the Commission sets out below aim to serve as a guide along that path.

## ***B. Recommendations***

477. Based on the foregoing analysis and conclusions, the Commission offers the following recommendations:

### **1. General recommendations**

1. Ratify the American Convention on Human Rights and recognize the contentious jurisdiction of the Inter-American Court.
2. Reverse the decision to withdraw from the OAS, which would leave the Venezuelan people without the protection for their human rights afforded by the Charter of the Organization, the American Declaration on the Rights and Duties of Man, and the jurisdiction of the Commission.
3. Comply with and implement in full the recommendations, decisions, and judgments of the inter-American human rights bodies.
4. Agree to and on-site visit to Venezuela by the Commission in order to monitor the overall situation of human rights in the country.
5. Document human rights violations in the country and ensure that they are appropriately investigated, prosecuted, and punished and that due reparation is provided to the victims.
6. Adopt laws on access to public information and official data, in keeping with inter-American standards, so as to give all persons the tools to effectively monitor government operations, public



administration, and the control of corruption, which are essential to the democratic process.

7. Abrogate any measures that obstruct the rights of all persons to leave Venezuelan territory, to seek and receive asylum, and to seek and receive complementary protection or other forms of protection.

## **2. Democratic institutions**

### ***Separation and balance of powers***

8. Restore constitutional order, ensuring: (i) the independence and balance of powers, (ii) the right to political participation without discrimination for the entire population, (iii) citizen oversight of the activities of the different branches of government.
9. As regards the independence of the judiciary, adopt urgent and decisive measures to: (i) significantly reduce the number of provisional judges and increase that of tenured judges; (ii) only remove judges, even those with provisional status, by means of a disciplinary proceeding or an administrative decision that strictly observes the guarantees of due process, in particular the obligation to provide due cause; and (iii) provide guarantees of stability in the position. The procedures for selecting and appointing TSJ magistrates should include publication in advance of announcements of selection process, as well as their deadlines and procedures; there just be equal opportunity guarantees for all candidates; civil society must be involved and eligibility must be based on merit and professional qualifications.
10. Refrain from any act of harassment or intimidation, or any action that might imply a threat or direct or indirect pressure on a judge's exercise of his or her judicial function.
11. Take resolute steps to ensure the separation of powers and the proper exercise by the National Assembly of its constitutionally recognized functions, including the removal of the status of contempt and the classification of treason for the actions of deputies, and respect for due process in the event of the need to lift parliamentary immunity.
12. With respect to the National Constituent Assembly, revoke the measures that exceed the powers of a constituent body and harm the

separation of powers and representative democracy, and refrain from adopting decisions that exceed those powers.

13. With respect to the National Electoral Council, adopt measures to ensure its independence by enforcing the election mechanism and requirements established in the Constitution, as well as ensuring against improper interference in its decisions on the political rights of Venezuelans.
14. As regards the Ombudsperson's Office, adopt the necessary measures to enable it to carry out its constitutionally assigned functions properly and to contribute to effective protection of human rights in Venezuela, including the adoption of laws to incorporate guarantees of independence and plurality in the appointment and removal of the Ombudsperson.
15. In relation to the Public Prosecutors' Office, implement the necessary measures so that it performs its investigative role efficiently and effectively, including, as applicable, bringing the appropriate criminal actions and giving particular attention to cases involving human rights violations.

### ***Political rights and right to participate in public life***

16. Guarantee the full exercise of political rights to all individuals, irrespective of their positions on government policies, and cease all actions that prevent persons from exercising their right freely to elect their representatives and conduct oversight of their performance.
17. Promote permanent citizen oversight mechanisms in all electoral processes. In particular, this could be achieved through electoral audits with the presence of representatives of political parties and members of civil society without discrimination.
18. Take the necessary steps to ensure the political rights of mayors, governors, deputies, and any other authority, as well as of political leaders, so that they can carry out their activities without being targets of harassment, threats, and violence. Such steps should include getting rid of mechanisms for declaring such authorities in contempt or their removal from office, disqualification, or conviction, as well as refraining from introducing new mechanisms without due-process and fair-trial guarantees.
19. Refrain from taking reprisals or using the punitive power of the State to intimidate or sanction individuals based on their political opinions.

20. Promote a climate of tolerance conducive to the active participation of, and an exchange of ideas among, the various sectors of society, and design institutions that promote rather than inhibit or thwart public discourse, including developing protection and security protocols to reduce the risk of persecution for political dissent.
21. Refrain from making statements that stigmatize leaders and members of the opposition, or that suggest that they are acting improperly or illegally, merely for expressing their political opinions.

### **3. Freedom of expression and social protest**

#### ***Freedom of expression***

22. Bring its domestic legislation into agreement with the parameters established in the American Convention on Human Rights, the American Declaration of the Rights and Duties of Man, and the Declaration of Principles on Freedom of Expression. In particular, promote the amendment of ambiguous or imprecise criminal laws that curtail freedom of expression in a disproportionate manner, such as those designed to protect the honor of ideas or institutions, or those designed to protect national security or the peace, so as to eliminate the use of criminal proceedings to inhibit free democratic debate on matters of public interest and the full exercise of political rights. Also, repeal “contempt” (desacato) laws, whatever their form, since such laws are contrary to inter-American standards and restrict public debate, an essential element of a functioning democracy.
23. Revoke the Constitutional Law for the Promotion and Guarantee of Peaceful Coexistence for being against the principles of international human rights law.
24. Adopt the measures necessary to protect the lives and physical integrity of broadcasters and to protect the infrastructure of media outlets. In particular, grant journalists the highest level of protection to ensure they are not detained, threatened, or attacked for practicing their profession, especially during a public demonstration. Their material and tools of trade should be neither destroyed nor confiscated. The State has the obligation to carry out meaningful, impartial, and effective investigations of acts of violence and harassment against journalists and media organizations, in order to identify, prosecute, and punish those responsible.

25. From the highest levels of government, publicly condemn acts of violence against broadcasters and media outlets, in order to preventing acts that encourage such crimes and to avoid the continued cultivation of a climate of stigmatization of those who maintain a stance critical of government actions.
26. Refrain from exerting direct or indirect pressure to silence the reporting work of broadcasters, in keeping with Principle 13 of the Declaration of Principles on Freedom of Expression. In particular, remove all disproportionate or discriminatory restrictions that prevent media outlets of all formats, from effectively completing their commercial, social, or public missions. In addition, the State must guarantee absolute impartiality and due process in all the administrative and judicial proceedings to enforce the legislation on broadcasting.
27. Shelve all unfounded judicial proceedings against journalists and media outlets that have been instituted in order to repress or punish freedom of expression. Lift all precautionary measures ordered against such persons that lack any genuine legal basis.
28. Ensure that public officials refrain from making declarations that generate an atmosphere of intimidation that limits the right to freedom of expression. In particular, the State must create a climate in which all persons can express their ideas and opinions without fear of being persecuted, attacked, or sanctioned for it.
29. Adopt laws on access to public information in keeping with inter-American standards, so as to give all persons the tools to effectively monitor government operations, public administration, and the control of corruption, which are essential to the democratic process.

### ***Social protest***

30. Remove all obstacles to the legitimate exercise of the right to protest, in particular by: (i) eliminating prior authorization as a legal requirement for holding demonstrations; (ii) expressly establishing the general presumption in favor of the exercise of the right of assembly and freedom of expression; (iii) reforming and abolishing the framework of laws in force that criminalizes the exercise of the right to peaceful demonstration; and (iv) enacting more favorable legislation.
31. Guarantee in social protests held in accordance with the right of assembly and to peaceful demonstration, that the rights to life,

physical integrity, and personal liberty of all demonstrators are protected.

32. Take immediate, decisive steps to exclude soldiers and the armed forces from operations for managing public demonstrations, which constitute the legitimate exercise of a right.
33. Adopt different measures, including regulatory ones to ensure that firearms are excluded from the devices used to control social protests, and introduce guidelines for ensuring the use of less-lethal weapons compatible with human rights.
34. Immediately conduct the appropriate diligent, effective, and independent investigations into the deaths that occurred during the demonstrations, so as to prosecute and punish those responsible and provide appropriate reparation to the victims and their relatives.
35. Stop all repression of peaceful demonstrations and immediately adopt appropriate measures to protect the public, particularly women, children and adolescents, and older persons, from all forms of violence.
36. Adopt all measures to guarantee the right of children and adolescents to take part in demonstrations with due protection for their right to freedom of expression and assembly.
37. Adopt all necessary and appropriate measures to protect the rights to life and physical integrity of children and adolescents in social protests. That includes introducing protocols on the actions of security forces and on the use of force, as well as stipulations on the treatment that must be accorded to children and adolescents in order to ensure their rights.
38. Adopt measures to ensure that authorities do not use the State's punitive power to punish or social protest, and refrain from making statements that stigmatize protests and those who take part in them.
39. Release everyone detained and/or prosecuted simply for having exercised the right to social protest.
40. Ensure conditions so that human rights defenders can work freely without fear of intimidation or reprisal; refrain from making statements that stigmatize rights defenders simply for doing their work of promoting and protecting human rights; and protect them

when they are the target of threats to prevent attacks on their lives and integrity.

### ***Arbitrary detentions, Prison conditions, torture and sexual violence***

41. Refrain from making illegal or arbitrary detentions and, where someone is deprived of their liberty, ensure that it is an exceptional measure and complies with the guarantees to be observed when restricting that right, including being brought immediately before a judge.
42. Take urgent and necessary measures to stop using police jails as permanent prisons, and increase State control over penitentiaries.
43. Take concrete steps to guarantee the rights to life and physical integrity of persons deprived of their liberty and, in particular, adopt measures to prevent and control outbreaks of violence at prisons.
44. Refrain from any act of torture, cruel, inhuman, or degrading treatment or punishment, or any type of sexual violence against detainees; and investigate any allegations of such acts with appropriate diligence, punish those responsible, and provide reparation to the victims.
45. Adopt the necessary measures, including legislative measures, to ensure that civilians are not investigated, tried and/or sentenced by military courts and to bring any such cases already under way back to regular law courts.

## **4. Violence and citizen security**

### ***State response to the situation of citizen insecurity and violence***

46. Adopt comprehensive measures to reduce the levels of violence and insecurity, bearing in mind the impact that this situation has on individuals, groups, and communities in situations of greatest risk and that traditionally suffer exclusion and discrimination.
47. Reformulate the policies and practices of the security forces in relation to citizen security, so as to ensure they are carried out in a framework of respect for human rights.

48. Provide training in protection and observance of human rights for public servants charged with public order duties, in particular with regard to rules governing the use of force.
49. Ensure that force is used in strict compliance with the rules of exceptionality, legality, necessity, proportionality, nondiscrimination, and accountability, and initiate *ex officio* and without delay meaningful, impartial, and effective investigations open to public scrutiny into any events involving possible excessive use of force.
50. Take immediate, decisive steps to exclude soldiers and the armed forces from citizen security duties. In exceptional instances where members of the armed forces take part in public-order activities that are the responsibility of the police, they must be subordinate to civilian authority.
51. Reserve the use, and limit the duration, of states of emergency for situations of extreme gravity that are truly exceptional.
52. End the involvement of civilians in security functions and, in particular, prohibit the inclusion of civilians with military training in internal defense strategies.
53. Refrain from providing any kind of assistance to civilian militia groups (*colectivos*), and prevent them from acting in collaboration with the State or with its acquiescence; and when the State is aware—or should be aware—of acts of violence between private parties, it should take reasonable measures to prevent, investigate, and punish such acts.
54. Prevent and condemn all forms of violence and discrimination against women, including refraining from any gender-based violent or discriminatory act or practice, and ensure that the authorities, officials, personnel, agents, and institutions act in accordance with that obligation.
55. Adequately classify the crime of trafficking in persons in accordance with regional and international norms and standards on human rights, and provide a coordinated and integrated response to prevention, care and reparation for victims, and investigation, prosecution, and punishment of the offense.
56. The Public Prosecutor's Office should have an up-to-date record of reported cases of forced disappearance, extrajudicial executions, and

torture and cruel, inhuman and degrading treatment, which should be publicly accessible.

57. Adopt and implement comprehensive public policies aimed at ensuring that detainees in any prison are held in decent conditions that are congruent with the principle of humane treatment. In that regard, adopt measures to: (a) avoid situations of violence; (b) reduce overcrowding; (c) significantly improve conditions of detention; (d) prevent, diagnose, and treat illnesses in a timely manner; (e) provide adequate and sufficient food—in particular, the State should ensure (i) the availability of food in a sufficient quantity and quality, and (ii) the accessibility of such food in ways that are sustainable and do not interfere with the enjoyment of other human rights; and (f) attend to groups of inmates who are particularly at risk.

## **5. Economic, Social, Cultural and Environmental Rights**

### ***Poverty***

58. Step up measures to mitigate the situation of poverty and extreme poverty, and avoid impairment of the exercise of economic, social, cultural, and environmental rights, and ensure that such measures focus on guaranteeing the full enjoyment of those rights without discrimination, with a gender perspective, while generating the conditions required for genuine equality.
59. Refrain from any act involving differential treatment based on political view in respect of the exercise of economic, social, cultural, and environmental rights, and conduct meaningful investigations into complaints alleging politically motivated discrimination in relation to access to those rights.
60. Adopt all necessary measures to ensure priority is given to using available resources to prevent a regression in the enjoyment of economic, social, cultural, and environmental rights, and ensure access to the essential components of those rights for everyone without discrimination, especially individuals, groups, and communities at greatest risk. In particular, allocate sufficient resources in the State budget to ensure those rights.
61. Adopt measures to address economic and social crisis and prevent situations of deprivation or denial of rights—in particular the right to health, the right to food, the right to work, the right to decent



housing, and other economic, social, and cultural rights—that may be factors behind the forced migration of people from Venezuela.

### ***Food***

62. Adopt measures to improve the functioning of Local Supply and Production Committees in order more effectively to guarantee the right to food according to objective criteria and prioritizing access for individuals and communities at greatest risk and that traditionally suffer exclusion and discrimination, such as children and adolescents, persons with disabilities, or older persons.
63. Take urgent steps adequately to ensure the right to food and water for persons deprived of liberty. That includes only keeping in detention the number of people for whom the capacity exists to provide food and water of sufficient quantity and quality, as well as refraining from collecting fees for the provision of food to prisoners.
64. Regularly monitor the nutritional state of the population and investigate testimonies of specific cases of food deprivation, food-related corruption, and failure to receive assistance due to lack of inputs.
65. Regularly publish information on the food situation in the country, including the state of the nutrition surveillance system and food fortification processes.

### ***Health***

66. Take measures to ensure the availability and quality of health care services, ensuring that facilities and care centers have trained medical staff, medicines, and adequate hospital equipment.
67. Give priority to adopting such measures as are necessary to ensure the enjoyment of sexual and reproductive rights to women and girls, focusing efforts on combating the high rates of maternal mortality, prevention of unwanted pregnancies, and care for victims of sexual violence.
68. Monitor availability of and access to medicines and health care services, and outcomes thereof, and gather information in that regard with a view to publishing regular and detailed epidemiological bulletins, statistics on mortality, stocks and procurement of

medicines, inputs, and equipment, in addition to other public documents on the situation of health services nationwide.

69. Guarantee the right to health and life of people with HIV and mobilize the resources necessary and available for this, including international aid.

## ***Education***

70. Adopt the necessary measures to effectively ensure the right of access access to quality education, and promote democratic values through education, including plurality of ideas and tolerance of different opinions.
71. Increase investment in basic education and ensure quality, universal, free, accessible, and suitable education imparted in safe environments free from violence and discrimination.
72. Regularly collect and publish information on enrollment levels, absenteeism, and the dropout rate, as well as the results of educational quality assessments to enable realization of the right to education to be adequately monitored.
73. Refrain from any act or conduct that may limit the autonomy of universities; investigate and, as appropriate, punish any attacks on that autonomy; and revise and amend any laws or practices that may undermine it.

## ***Housing***

74. Adopt the necessary measures to ensure legal security of tenure of homes and expedite the ownership formalization process as much as possible; and take the necessary steps to avoid harming the right to housing in operations.
75. Address the situation of the communities affected by the rising waters of Valencia Lake and the risk they pose to the retention wall, with a priority on human rights and an emphasis on prevention and the right to access to public information.
76. Promote mechanisms of participation and accountability in public policy related to economic, social, and cultural rights, guaranteeing that all social sectors participate in the drafting, application, and

review of national public policies and programs at all levels of the decision-making process.