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DEMOCRACY AND HUMAN RIGHTS IN VENEZUELA

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EXECUTIVE SUMMARY

1. The report *Democracy and Human Rights in Venezuela* is produced in compliance with the mandate of the Inter-American Commission on Human Rights (hereinafter “the Inter-American Commission”, “the Commission”, or the “IACHR”) to promote the observance and defense of human rights in the Member States of the Organization of American States (OAS). The Commission believes that the refusal of the Bolivarian Republic of Venezuela (hereinafter “Venezuela” or “the State”) to allow the Commission to conduct an on-site visit to the country does not preclude the IACHR from analyzing the situation of human rights in Venezuela.

2. The Commission’s last visit to Venezuela took place in May 2002, following the institutional breakdown that occurred in April of that year. Following that visit, in December 2003 the Commission published the *Report on the Situation of Human Rights in Venezuela*, in which it set out a series of recommendations. Since then, in order to follow up on those recommendations and to gather first-hand information on the current human rights situation in Venezuela, the Commission has pursued various formalities in order to secure the State’s permission to conduct an observation visit. To date, the State has refused to allow the IACHR to visit Venezuela, not only undermining the powers assigned to the Commission as the OAS’s principal body for the promotion and protection of human rights, but also seriously weakening the protection system created by the Organization’s Member States.

3. In the report *Democracy and Human Rights in Venezuela*, the Commission analyzes the evolution of human rights in the State based on the information it has received over recent years from its various protection mechanisms, such as processing petitions through the case system, holding hearings, adopting precautionary measures, asking the Court to issue provisional measures, including the country in Chapter IV of its annual reports, and issuing press releases. The Commission also bases its analysis on information submitted by the State of Venezuela in response to requests made by the Commission, on the State’s reply to the questionnaire about the human rights situation in Venezuela received in August 2009, on information given to the Commission by the State at hearings, and on the available public information.

4. In this report, the Commission identifies issues that restrict full enjoyment of the human rights enshrined in the American Convention on Human Rights. Among other issues, the IACHR analyzes a series of conditions that indicate the absence of due separation and independence between the branches of government in Venezuela. The Commission also finds that in Venezuela, not all persons are ensured full enjoyment of their rights irrespective of the positions they hold vis-à-vis the government’s policies. The Commission also finds that the State’s punitive power is being used to intimidate or punish people on account of their political opinions. The Commission’s report establishes that Venezuela lacks the conditions necessary for human rights defenders and journalists to carry out their work freely. The IACHR also detects the existence of a pattern of impunity in cases of violence, which particularly affects media workers, human rights defenders, trade unionists, participants in public demonstrations, people held in custody, *campesinos* (small-scale and subsistence farmers), indigenous peoples, and women.

5. The Commission begins by analyzing how the effective enjoyment of political rights in Venezuela – rights that by their very nature promote strengthened democracy and political pluralism – has been hampered. The IACHR’s report indicates that mechanisms have been created in Venezuela that restrict the possibilities of candidates opposed to the government for securing access to power. That has taken place through administrative resolutions of the Office of the Comptroller General of the Republic, whereby 260 individuals, mostly opposed to the government, were disqualified from standing for election. The Commission notes that these disqualifications from holding public office were not the result of criminal convictions and were ordered in the absence of prior proceedings, in contravention of the American Convention’s standards.

6. In its report, the Commission also notes how the State has taken action to limit some powers of popularly-elected authorities in order to reduce the scope of public functions in the hands of members of the opposition. In its observations to the present report, the State indicated that the modifications made to the instruments governing the powers and scope of authority of governors and mayors would have been made regardless of who was elected in 2008 and that they also apply to authorities of the government's party. Nevertheless, the IACHR has noticed that a series of legal reforms have left opposition authorities with limited powers, preventing them from legitimately exercising the mandates for which they were elected.

7. In this report, the IACHR also notes a troubling trend of punishments, intimidation, and attacks on individuals in reprisal for expressing their dissent with official policy. This trend affects both opposition authorities and citizens exercising their right to express their disagreement with the policies pursued by the government. These reprisals are carried out through both state actions, including harassment, and acts of violence perpetrated by civilians acting outside the law as violent groups. The Commission notes with concern that, in some extreme cases, criminal proceedings have been brought against dissidents, accusing them of common crimes in order to deny them their freedom on account of their political positions.

8. Similarly, the Commission notes a trend toward the use of criminal charges to punish people exercising their right to demonstrate or protest against government policies. Information received by the Commission indicates that over the past five years, criminal charges have been brought against more than 2,200 people in connection with their involvement in public demonstrations. Thus, the IACHR considers that the right to demonstrate in Venezuela is being restricted through the imposition of sanctions contained in provisions enacted by President Chávez's government, whereby demonstrators are accused of crimes such as blocking public highways, resisting the authorities, damage to public property, active obstruction of legally-established institutions, offenses to public officials, criminal instigation and criminal association, public incitement to lawbreaking, conspiracy, restricting freedom of employment, and breaches of the special secure zones regime, among others. In its report, the Commission describes cases of people facing criminal charges for which they could be sentenced to prison terms of over twenty years in connection with their participation in antigovernment demonstrations. In its observations on the present report, the State affirms that any time opposition sectors attempt to alter the public order in violation of the laws of the Republic, they will be subject to prosecution, without this being considered a restriction of the exercise of the right to peaceful demonstration, nor a criminalization of legitimate mobilization and social protest. In the Commission's view, this practice constitutes a restriction of the rights of assembly and freedom of expression guaranteed in the American Convention, the free exercise of which is necessary for the correct functioning of a democratic system that includes all sectors of society.

9. At the same time, the IACHR notes that exercising the right of peaceful demonstration in Venezuela frequently leads to violations of the rights to life and humane treatment, which in many cases are the consequence of excessive use of state force or the actions of violent groups. According to information received by the Commission, between January and August 2009 alone, six people were killed during public demonstrations, four of them through the actions of the State's security forces. This situation is of particular concern to the IACHR in that repression and the excessive use of criminal sanctions to criminalize protest has the effect of dissuading those wishing to use that form of participation in public life to assert their rights. In its observations on the present report, the State expressed that the increase in the number of demonstrations suppressed was due to a higher number of illegal demonstrations.

10. The Commission's report also refers to issues that affect the independence and impartiality of the judiciary in Venezuela. The IACHR reiterates what it has said on previous occasions:

that the rules for the appointment, removal, and suspension of justices set out in the Organic Law of the Supreme Court of Justice lack the safeguards necessary to prevent other branches of government from undermining the Supreme Court's independence and to keep narrow or temporary majorities from determining its composition.

11. The Commission also notes with concern the failure to organize public competitions for selecting judges and prosecutors, and so those judicial officials are still appointed in a discretionary fashion without being subject to competition. Since they are not appointed through public competitions, judges and prosecutors are freely appointed and removable, which seriously affects their independence in making decisions. The IACHR also observes that through the Special Program for the Regularization of Tenured Status, judges originally appointed on a provisional basis have been given tenured status, all without participating in a public competitive process.

12. In addition to the shortcomings in the appointments process, the Commission observes that in Venezuela judges and prosecutors do not enjoy the guaranteed tenure necessary to ensure their independence following changes in policies or government. Also, in addition to being freely appointed and removable, a series of provisions have been enacted that allow a high level of subjectivity in judging judicial officials' actions during disciplinary proceedings. Even the Code of Ethics of Venezuelan Judges, adopted in August 2009, contains provisions that, by reason of their breadth or vagueness, allow disciplinary agencies broad discretion in judging the actions of judges.

13. Furthermore, even though the 1999 Constitution states that legislation governing the judicial system is to be enacted within the first year following the installation of the National Assembly, a decade later the Transitional Government Regime, created to allow the Constitution to come into immediate effect, remains in force. Under that transitional regime, the Commission for the Functioning and Restructuring of the Judicial System was created, and this body has ever since had the disciplinary authority to remove members of the judiciary. This Commission, in addition to being a special, temporary entity, does not afford due guarantees for ensuring the independence of its decisions, since its members may also be appointed or removed at the sole discretion of the Constitutional Chamber of the Supreme Court of Justice, without previously establishing either the grounds or the procedure for such formalities.

14. Another issue of concern to the Commission regarding the autonomy and independence of the judiciary is the provisional status of most of Venezuela's judges. According to information provided to the Commission by the Venezuelan State, in August 2009 there were a total of 1,896 judges, of whom only 936 were regular judges. That means that more than 50% of judges in Venezuela do not enjoy tenure in their positions and can be easily removed when they make decisions that could affect government interests. A similar problem with provisional status also affects the prosecutors of the Attorney General's Office, since all prosecutors in Venezuela are freely appointed and removable.

15. In its report, the Commission also describes how large numbers of judges have been removed or their appointments voided without the applicable administrative proceedings. After examining the resolutions that voided the appointments of various judges, the IACHR notes that they contain no reference to the reasons why the appointments were canceled, and it cannot be inferred that they were adopted through administrative proceedings in which the judges were given the possibility of presenting a defense. The Commission notes with concern that in some cases, judges were removed almost immediately after adopting judicial decisions in cases with a major political impact. The lack of judicial independence and autonomy vis-à-vis political power is, in the IACHR's opinion, one of the weakest points in Venezuelan democracy.

16. In its report, the Commission analyzes with concern the situation of freedom of thought and expression in Venezuela. In the IACHR's opinion, the numerous violent acts of

intimidation carried out by private groups against journalists and media outlets, together with the discrediting declarations made by high-ranking public officials against the media and journalists on account of their editorial lines and the systematic opening of administrative proceedings based on legal provisions that allow a high level of discretion in their application and enable drastic sanctions to be imposed, along with other elements, make for a climate of restriction that hampers the free exercise of freedom of expression as a prerequisite for a vigorous democracy based on pluralism and public debate.

17. The Commission observes with particular concern that there have been very serious violations of the rights to life and humane treatment in Venezuela as a result of the victims' exercise of free expression. In this report, the IACHR describes two murders of journalists in 2008 and 2009, carried out by persons unknown, together with serious physical attacks and threats against reporters and owners of media outlets. In the Commission's view, these incidents demonstrate the serious climate of polarization and intimidation within which journalists must work in Venezuela.

18. The IACHR notes that recent months have seen an increase in administrative proceedings sanctioning media that criticize the government. It is of particular concern to the Commission that in several of these cases, the investigations and administrative procedures began after the highest authorities of the State called on public agencies to take action against *Globovisión* and other media outlets that are independent and critical of the government.

19. The Commission has also verified the existence of cases of prior censorship as a prototype of extreme and radical violations of freedom of expression in Venezuela. As an example of this, this report analyzes the ban placed on the advertising produced by Cedice and Asoesfuerzo against a proposed law of interest to the government.

20. The report also analyzes the impact on the right of free expression of the proceedings initiated in July 2009 toward the possible cancellation of 240 radio stations' broadcasting concessions, and of the decision to order 32 stations to cease transmissions. The IACHR finds it notable that after several years of total inaction, and at a time of tension between the private media and the government, the authorities announced massive closures of radio stations, using language that made constant reference to the editorial lines followed by the private media outlets that stood to be affected by the measure. Similarly, the Commission observes with concern the statements made by the Minister of Popular Power for Public Works and Housing suggesting that these media outlets' editorial lines could be one of the reasons for deciding to suspend their licenses or ordering their closure, irrespective of the technical reasons cited in the corresponding administrative resolutions.

21. The Commission calls the attention of the Venezuelan State to the incompatibility between the current legal framework governing freedom of expression and its obligations under the American Convention. The IACHR again states that because of their extreme vagueness, the severity of the associated punishments, and the fact that their enforcement is the responsibility of a body that depends directly on the executive branch, the provisions of the Law on Social Responsibility in Radio and Television dealing with accusations of incitement may lead to arbitrary decisions that censor or impose a subsequent disproportionate penalty on citizens or the media for simply expressing criticisms or dissent that may be disturbing to public officials temporarily holding office in the enforcement agency.

22. The Commission also stresses that the offenses of *desacato* (disrespect) and *vilipendio* (contempt) contained in the amendments to the Penal Code in force since 2005 are incompatible with the American Convention in that they restrict the possibilities of free, open, plural, and uninhibited discussion on matters of public importance. In its report, the Commission again states that bringing criminal charges against individuals who criticize public officials constitutes the

subsequent imposition of liability for the exercise of freedom of expression that is unnecessary in a democratic society and is disproportionate in its serious impact on the person making such criticisms and on the free flow of information in society.

23. Similarly, the Commission states that the criminal sanction provided for in the Organic Code of Military Justice for anyone who insults, offends, or denigrates the National Armed Forces is in breach of the international standards that govern freedom of expression, since it is not a restriction that is necessary in a democratic society and, in addition, it is drafted in such vague terms that it is impossible to identify the actions that could lead to criminal sanctions. The Commission views with concern that both the Penal Code and the Organic Code of Military Justice contain provisions that constitute a way to silence unpopular ideas and opinions and that have the effect of dissuading criticism through the fear of prosecution, criminal sanctions, and fines.

24. The present report also examines the use of presidential blanket broadcasts. In its observations on the present report, the State asserted that the use of informative blanket radio and television broadcasts by the national government is part of the constitutional obligation of the State to keep its citizens informed. For its part, the IACHR finds that the lack of clarity in the terms of the Law on Social Responsibility and the Organic Telecommunications Law that place limits on the use of presidential blanket broadcasts could undermine the informational balance that the highest authorities of the State are obliged to uphold. As described in this report, the President of the Republic has made use of the powers granted by those laws to broadcast his speeches simultaneously across the media, with no time constraints. In addition, the duration and frequency of these presidential blanket broadcasts could be considered abusive on account of the information they contain, which might not always be serving the public interest.

25. The IACHR's report also studies the recently enacted Organic Education Law and calls the State's attention to several of its provisions. Among others, the IACHR points out that the provisions establishing that the media, including private media outlets, are public services, could be used to restrict the right of free expression. The Commission also finds that some of this law's provisions contain grounds for restricting free expression that differ from those set out in Article 13 of the American Convention, such as the one that prohibits the transmission of information that promotes "the deformation of the language" or that affronts "values."

26. The Commission notes with concern that the Organic Education Law defers for subsequent legislation the regulation and implementation of several of its precepts, which have been set down in that law in terms that are exceedingly broad, imprecise, and vague. Moreover, the IACHR believes that this law gives state agencies a broad margin for control over the implementation of the principles and values that should guide education. Thus, the Organic Education Law allows, through subsequent laws or their enforcement by the competent authorities, for restrictions to be placed on several of the rights guaranteed by the Convention, such as the right to education, freedom of expression, teachers' and students' freedom of conscience, and others. Moreover, the Commission notes with extreme concern that until laws regulating the terms of the Organic Education Law are enacted, its transitory provisions give the authorities the power to close down private educational institutions. Similarly, the IACHR is also concerned that the law empowers the educational authorities to disqualify owners, principals, or teachers found guilty of such offenses from holding teaching or administrative positions for up to ten years.

27. In this report, the Commission also deals with the major obstacles faced by human rights defenders in their work in Venezuela. The IACHR observes that in Venezuela, human rights defenders suffer attacks, threats, harassment, and even killings. Information received by the Commission refers to six cases of violations of the right to life of human rights defenders between 1997 and 2007. It also notes with concern that witnesses and relatives of the victims of human rights violations are frequently targeted by threats, harassment, and intimidation for denouncing violations,

organizing committees for victims' families, and investigating abuses by state authorities. In addition, in recent years, the Commission has seen an escalation in attacks on defenders who take cases to the inter-American system for the protection of human rights.

28. The report also describes a series of state actions and statements by high-ranking public officials aimed at undermining the legitimacy of defenders and of the domestic and international human rights nongovernmental organizations (NGOs) working in Venezuela. In addition, the Commission identifies a trend of opening unfounded judicial investigations or criminal proceedings against human rights defenders in order to intimidate them, particularly when they have been critical of the government. The report describes cases in which judicial proceedings have been brought against NGOs and human rights defenders for the alleged commission of offenses such as conspiracy to destroy the republican form of government, criminal association, and defamation, among others.

29. According to the State's observations on the present report, the IACHR is attempting to establish a cloak of immunity around human rights defenders. It added that if it confirms that there is cooperation between coup-seeking Venezuelan human rights organizations or that such organizations receive funding from agencies of the United States Department of State, it has an obligation to denounce this. In the Commission's view, the violence, discrediting, and criminalization faced by human rights defenders in Venezuela have a cumulative impact that affects the currency of human rights in general, since only when defenders enjoy due protection for their rights can they seek to protect the rights of other people.

30. Also in connection with human rights defenders, the IACHR reiterates its concern about the provisions of the International Cooperation Bill. The Commission points out in its report that the vague language used for some of this draft law's provisions and the broad margin of discretion it gives to the authorities responsible for regulating it pose the danger of its being interpreted restrictively to limit rights including freedom of association, freedom of expression, political participation, and equality, and that it could therefore seriously affect the functioning of nongovernmental organizations. The Commission also notes that the bill places limits on NGO funding that could hamper freedom of association in a way that is incompatible with the American Convention's standards.

31. The IACHR also finds that inadequate access to public information has hindered the work of defending human rights in Venezuela. According to information received by the Commission, one human rights organization has been denied public information on account of the authorities' view of its political position, which, in the Commission's opinion, constitutes an undue restriction of its right of access to information and an impediment to the effective pursuit of its work in defending human rights. Furthermore, the lack of access to information in Venezuela hinders the emergence of informed democratic debate on matters of public interest between the government and civil society. In its observations on the present report, the State asserted that it is doing the impossible to overcome the problem of the lack of information from public entities, particularly statistical information.

32. One of the issues relating to human rights in Venezuela of gravest concern to the Inter-American Commission is that of public insecurity. In the report, the Commission analyzes and applauds the State's efforts to implement policies to ensure the safety of the Venezuelan people from common crime and the actions of organized criminal groups, as well as from possible abuses of force by state agencies. Nevertheless, the Commission notes that in many cases, the State's response to public insecurity has been inadequate and, on occasions, incompatible with respect for human rights, and this has seriously affected the rights to life and humane treatment of Venezuela's citizens.

33. The IACHR's report identifies certain provisions in the Venezuelan legal framework that are incompatible with a democratic approach to the defense and security of the State. Among other provisions, the Commission calls the State's attention to those that allow the military to participate in upholding law and order in Venezuela. In its observations on the present report, the State indicated that the public safety entities are civil in nature and that the participation of the Armed Forces in public order is limited to situations of national emergency or national security. It added that all the components of the Armed Forces have special training and courses on human rights so that they know how to treat citizens. The IACHR again states that a democratic society demands a clear and precise separation between domestic security, as a function of the police, and national defense, as a function of the armed forces, since the two agencies have substantial differences in the purposes for which they were created and in their training and skills.

34. In connection with this, the Commission has taken note of the creation of the Bolivarian National Militia as a special force, established by the Venezuelan State to help ensure its independence and sovereignty. According to information provided by the State, citizens receive military training through the Bolivarian National Militia and then may assist in upholding domestic law and order. In the Commission's view, citizens who receive military training should not be involved in domestic defense. In addition, the IACHR notes with concern the vague language used to define the structure, functions, and oversight of these militias.

35. In connection with making excessive use of state force, the Commission received with concern the figures collected by the Office of the Human Rights Ombudsman of Venezuela. During 2008, the Ombudsman's Office recorded a total of 134 complaints involving arbitrary killings arising from the alleged actions of officers from different state security agencies. It also recorded a total of 2,197 complaints related to violations of humane treatment by state security officials. In addition, it reports receiving 87 allegations of torture and claims it is following up on 33 cases of alleged forced disappearances reported during 2008 and 34 reported during 2007.

36. Homicides, kidnappings, contract killings, and rural violence are the phenomena that most frequently affect the security of Venezuela's citizens. In its observations on the present report, the State rejected the statistics produced by nongovernmental organizations, but recognized that kidnappings and contract killings had increased. According to the State, these crimes have had as their victims not only *campesinos*, but also human rights defenders, and it affirmed that it has redoubled its efforts to investigate and punish these crimes as a result.

37. In spite of the difficulties faced by the Commission in obtaining official figures on violence in Venezuela and the State's refusal to provide it with statistics, information made available to the Commission indicates that in 2008, there were a total of 13,780 homicides in Venezuela, which averages out to 1,148 murders a month and 38 every day. The victims of these killings include an alarming number of children and adolescents. According to figures from the United Nations Children's Fund (UNICEF), homicides are the main cause of death of male adolescents aged between 15 and 19 in Venezuela. In 2007 alone, 5,379 children and adolescents met violent deaths, and a third of those were murder victims. As for kidnappings, various organizations agree that between 2005 and 2007 there were more than 200 abductions per year in Venezuela, whereas in 2008, more than 300 cases were reported.

38. Also of concern is the persistence of contract killings in Venezuela, a phenomenon that particularly affects trade unionists and *campesinos*. The IACHR notes with concern the continued increase in the number of union leaders who are victims of attacks and threats to their lives and persons. Between 1997 and 2009, information received by the Commission indicates that 86 union leaders and 87 workers were killed in the context of trade union violence, with contract killings being the most common method for attacking union leaders. In its report, the IACHR describes some of these cases and indicates with concern that most of them remain unpunished.

39. At the same time, the IACHR was informed that the struggle for the right to land and to benefit from the national government's agrarian reform process has posed risks to the lives and persons of *campesinos*, particularly agrarian leaders. *Campesino* organizations have reported the deaths of more than 200 people in the context of land-related conflicts since the enactment of the Land and Agrarian Development Law.

40. Conflicts related to land ownership have also claimed victims among indigenous peoples, as a consequence of the State's failure to demarcate ancestral indigenous lands. Delays with the State's obligation of demarcating ancestral lands are such that, according to information received by the IACHR, between 2005 and the end of 2008, only 34 ownership deeds were issued; in other words, 1.6% of the total number of communities had benefited from the land demarcation process in Venezuela. As a result, indigenous peoples have faced constant harassment at the hands of people seeking to expel them from the ancestral lands over which they have been regaining control, and on some occasions their assailants act with the support of state agents.

41. The Commission's report also notes with extreme concern that in Venezuela, violent groups such as the Movimiento Tupamaro, Colectivo La Piedrita, Colectivo Alexis Vive, Unidad Popular Venezolana, and Grupo Carapaica are perpetrating acts of violence with the involvement or acquiescence of state agents. These groups have similar training to that of the police or the military, and they have taken control of underprivileged urban areas. The IACHR has received alarming information indicating that these violent groups maintain close relations with police forces and, on occasion, make use of police resources. The State has informed the Commission that irregular groups do exist on both sides in Venezuela. In the Commission's view, the fact that the agencies responsible for preventing, investigating, and punishing such acts have failed to respond appropriately has created a situation of impunity surrounding violations of rights protected by the American Convention.

42. In this report, the Commission also continues with its observations on the alarmingly violent conditions within Venezuelan prisons. The Commission approves of certain legislative amendments made by the State to tackle overcrowding through provisions that promise to speed up criminal proceedings. In addition, the IACHR applauds the implementation of specific actions and policies that have had an immediate impact on the risks facing people deprived of their liberty in Venezuela, in particular since the implementation of the Prison System Humanization Plan in 2005.

43. These rules and polices, however, have been insufficient to prevent continued acts of violence in Venezuelan prisons, which in recent years have claimed the lives of thousands of people and left thousands of others with injuries. According to information received by the Commission, between 1999 and 2008, a total of 3,664 people were killed and 11,401 were injured at detention facilities in Venezuela. In November 2009 alone, the Commission requested provisional measures from the Inter-American Court in relation to two cases of alleged forced disappearances of persons who were held in state custody, deprived of their liberty. In spite of the provisional measures issued by the Court, as of the date of this report, their whereabouts are unknown. Also at the request of the IACHR, the Inter-American Court has adopted provisional measures in favor of four penitentiaries in Venezuela, calling on the State to implement measures to avoid irreparable damages to persons deprived of liberty in those centers after violent incidents occurred in which hundreds of persons lost their lives and hundreds more were injured. The Commission notes with extreme concern that in spite of the provisional measures ordered by the Inter-American Court with respect to several Venezuelan prisons, those facilities continue to report acts of violence in which human lives are lost and personal injuries are suffered.

44. In addition to violations of the rights to life and humane treatment of people held in state custody, the Commission notes that the main problems affecting the more than 22,000 prison inmates in Venezuela include delays at trial, overcrowding, the lack of basic services in prisons, the failure to separate convicts from remand prisoners, and the presence of weapons within detention centers. In addition, since preventive custody is the most severe measure that can be taken against a person charged with a crime, the Commission observes with concern that more than 65% of Venezuela's prison inmates have not yet been convicted.

45. The report also indicates that although Venezuela has made progress with the legal recognition of equal rights between men and women and with women's political participation in public affairs, the laws and policies pursued by the State have not been effective in guaranteeing the rights of women, particularly their right to a life free of violence. The Commission notes that the Penal Code still contains provisions that affect the equal rights of women and that allow violent crimes committed against them to remain unpunished as long as the assailant contracts marriage with the victim. Additionally, information received by the Commission indicates that some 100 cases of gender violence take place every day in Venezuela. The IACHR was also told that almost 70% of women who try to combat impunity are met with harassment and threats. Official information on the problem is not available, and the figures submitted by the State in 2009 in response to the Commission's request dated from 2002.

46. The Commission notes in its report that impunity is a common characteristic that equally affects cases of reprisals against dissent, attacks on human rights defenders and on journalists, excessive use of force in response to peaceful protests, abuses of state force, common and organized crime, violence in prisons, violence against women, and other serious human rights violations.

47. On the other hand, in this report the Commission highlights the Venezuelan State's major achievements in the fields of economic, social, and cultural rights, through legally recognizing the enforceability of the rights to education, to health, to housing, to universal social security, and other rights, as well as by implementing policies and measures aimed at remedying the shortcomings that affect vast sectors of the Venezuelan population. The Commission emphasizes that the State has succeeded in ensuring the majority of its population is literate, reducing poverty and extreme poverty, expanding health coverage among the most vulnerable sectors, reducing unemployment, reducing the infant mortality rate, and increasing the Venezuelan people's access to basic public services.

48. The IACHR also congratulates Venezuela on being one of the countries that has made most progress toward attaining the Millennium Development Goals. It has also brought about a major reduction in the disparity between the groups at the extremes of income distribution, to the point that the country now reports the lowest Gini coefficient in Latin America, according to the Economic Commission for Latin America and the Caribbean (ECLAC). In addition, according to the United Nations Development Programme (UNDP), Venezuela moved from having a medium level of human development in 2008 to join the group of countries with a high level of human development in 2009. In the IACHR's opinion, the priority the State has given to economic, social, and cultural rights is fundamental in ensuring the decent existence of the population and is an important foundation for the maintenance of democratic stability.

49. The IACHR notes that the Missions have succeeded in improving the poverty situation and access to education and health among the traditionally-excluded sectors of Venezuela's population. Nevertheless, the Commission expresses concern at certain issues relating to the Missions as an axis of the government's social policies. For example, the Commission notes that clear information is lacking on the guidelines used to determine how the Missions' benefits are allocated. The absence of public information on those guidelines gives the impression that benefits are awarded

at the executive branch's discretion, which could lead to a situation in which certain individuals are denied benefits on account of their political position vis-à-vis the government. The Commission also believes it is vitally important that corrective measures be taken so that economic, social, and cultural rights are guaranteed through public policies that will continue over the long term instead of depending on the will of one government or another. In addition, the Commission notes that the Missions, as a social policy, appear to be welfare-oriented in nature, which does not necessarily imply the recognition of rights.

50. One issue relating to economic, social, and cultural rights is that of free association within trade unions. In this regard, the Commission notes that Venezuela is still characterized by constant intervention in the functioning of its trade unions, through actions of the State that hinder the activities of union leaders and that point to political control over the organized labor movement, as well as through rules that allow government agencies to interfere in the election of union leaders. The Commission observes with concern that in Venezuela, trade-union membership is subject to pressure related to the political position or ideology of the particular union. In fact, the government recently announced that it will not discuss the collective contract of the oil sector with any trade union that is opposed to the ideology of President Chávez.

51. Another situation affecting the right of free labor association is the growing criminalization of union activities through the bringing of criminal charges against individuals who defend labor rights. This is due to the use of provisions that restrict peaceful demonstration and the right to strike in connection with employment demands, particularly through the enforcement of provisions contained in the Criminal Code, in the Organic National Security Law, and in the Special Law of Popular Defense against Stockpiling, Speculation, and Boycotts. Information received by the Commission indicates that some 120 workers are affected by measures requiring them to report regularly to the courts for having exercised their right of protest. In addition, the Commission notes that the State of Venezuela has enforced the legislation for protecting minimum services in such a general fashion that the effect has been to curtail the right to strike when an essential public service would be affected. The Commission again states that strikes and boycotts are peaceful forms of labor protest, and so punishing them with custodial sentences or exorbitant fines constitutes a restriction of the rights enshrined in the American Convention.

52. In order to better guarantee those rights, the Commission once again urges the State to complete its ratification of the Additional Protocol to the American Convention on Human Rights in the area of Economic, Social, and Cultural Rights (Protocol of San Salvador), through which the States Parties undertake to adopt the measures necessary, to the extent allowed by their available resources and taking into account their degree of development, for the purpose of progressively achieving the full observance of economic, social, and cultural rights, pursuant to their domestic laws.

53. The Commission emphasizes that human rights are an indivisible whole and so the realization of economic, social, and cultural rights in Venezuela does not justify sacrificing the currency of other basic rights. In that the effective exercise of democracy demands full enjoyment of citizens' fundamental rights and freedoms, the IACHR again points out to the State its duty of meeting the international human rights obligations it freely assumed under the American Convention and other applicable legal instruments.

54. The Inter-American Commission repeats its offer to work with the government, and with Venezuelan society as a whole, to effectively comply with the recommendations contained in this report and thereby to contribute to strengthening the defense and protection of human rights within a democratic context in Venezuela.

DEMOCRACY AND HUMAN RIGHTS IN VENEZUELA¹

I. INTRODUCTION

1. The Inter-American Commission on Human Rights (hereinafter “the Inter-American Commission”, “the Commission”, or “IACHR”) is a principal organ of the Organization of American States (“OAS”) whose primary function is to promote compliance and defense of human rights in the region. In furtherance of this principle, for more than fifty years, the Commission has used its resources to issue reports analyzing the advances and challenges of the member states of the Organization regarding human rights by reference to the American Convention on Human Rights (hereinafter “the American Convention”) and other instruments of the Inter-American system.

2. In order to observe the human rights situation in the Bolivarian Republic of Venezuela² (hereinafter “Venezuela”, or “the State”), the IACHR undertook its last on-site visit in May 2002. This visit took place at the request of President Hugo Chavez Frías, who in 1999 visited the offices of the IACHR, at the headquarters of the Organization of American States in Washington, D.C., being the first head of state to undertake a visit to the IACHR.

3. The Commission’s visit was scheduled immediately after the institutional rupture of April of 2002 when there was an attempt to overthrow the Constitutional President of Venezuela. It is noteworthy that the reaction of the Commission to the attempted coup d’état was immediate and decisive, even though other international instances had not yet made any pronouncements about these serious events. In its press release of April 13 in relation to the occurrences of April 11 and the subsequent alteration of the constitutional order, the Commission issued a press release in which it expressed, among other things, its strong condemnation of the acts of violence that took the lives of at least 15 persons and caused injuries to more than one hundred. Additionally, the Commission lamented the fact that during the days of April 12 and 13, arbitrary detentions and other violations of human rights were committed; deplored the removal from office of the highest authorities from all of the branches of government; and warned that these acts constituted an interruption of the constitutional order as defined in the Democratic Charter. The Commission also affirmed that:

[...] the Commission is closely monitoring the unfolding of events arising from the removal or resignation of President Hugo Chávez Frías. The Commission deplores the dismissal, by a decree issued by the government that took office on April 12, of the highest officers of the judiciary and of independent officials within the executive branch, and the suspension of the mandate of the members of the legislature. These developments, in the IACHR’s opinion, could constitute an interruption of the constitutional order as defined in the Democratic Charter. The IACHR urges Venezuela to promptly restore the rule of law and the democratic

¹ In accordance with the provisions of Article 17.2 of the Rules of Procedure of the Commission, Commissioner Luz Patricia Mejía Guerreo, of Venezuelan nationality, did not participate in the debate or decision of the present report.

² Venezuela is a member of the Organization of American States and recognized the jurisdiction of the Inter-American Commission on Human Rights on August 9, 1977 on ratification of the American Convention on Human Rights. Later, on June 26, 1981, Venezuela recognized as binding, *ipso facto*, and not requiring special agreement, the jurisdiction of the Inter-American Court of Human Rights.

system of government by guaranteeing full observance of human rights and basic freedoms.³

4. During the on-site visit to Venezuela carried out in May of the same year, President Chávez thanked the Commission for these actions and extended an invitation to the Commission to visit Venezuela when it considered it necessary to give continuity to the observance of the human rights situation in the country.⁴

5. On the basis of the observations gathered during its on-site visit to Venezuela, on the December 29, 2003, the Inter-American Commission on Human Rights decided to publish *The Report on the Situation of Human Rights in Venezuela*⁵ approved on October 24, 2003. In this report, the IACHR “identified weaknesses in the rule of law in Venezuela, and [...] offered in each chapter a series of recommendations that it considers indispensable for restoring social peace in a democratic state and society.”⁶ As has been reported to the Commission, a large part of the recommendations issued by the IACHR have not yet been implemented fully by the State.

6. In order to follow up on its recommendations, as well as to receive information first hand on the current situation of human rights in Venezuela, since the publication of the *Report on the Situation of Human Rights in Venezuela* in 2003, the Commission has requested unsuccessfully from the State, both verbally and in writing, its consent to visit the country once again. Up until now, it has not obtained the requested consent for and the State has confirmed that it will not permit an IACHR visit to Venezuela “until all [of the Commission] rectifies its biased position towards it [Venezuela]”.⁷

7. Recently, the State declared to the IACHR that “the only way the government of president Chávez would accept another on-site visit would be if the following requests were complied with: (1) that the Commission publicly acknowledge its error in recognizing the coup d’état of April 11, 2002; (2) the substitution of the executive secretary [and] the naming of a new Rapporteur for Venezuela; [and] (3) the reformation of the rules of procedure of the Commission to guarantee transparency, independence, and plurality of thought in the heart of the system for the protection of human rights.”⁸

³ IACHR. Press Release 14/02: *On Events in Venezuela*. April 13, 2002.

⁴ See: IACHR. Press Release 23/02 of May 10, 2002. *The Inter-American Commission on Human Rights concludes its visit to the Bolivarian Republic of Venezuela*, para. 2 and Annex to Press Release 23/02. *Preliminary Observations of the Inter-American Commission on Human Rights upon the conclusion of its visit to the Bolivarian Republic of Venezuela*, para. 3. In its observations on the present report, the State indicated that “None of this is true and there is no evidence of what the Commission states.” Bolivarian Republic of Venezuela. Ministry of Popular Power for Foreign Affairs. State Agent for Human Rights. Observations on the Draft Report *Democracy and Human Rights in Venezuela*. Note AGEV/000598 of December 19, 2009, p. 13.

⁵ IACHR. *Report on the Situation of Human Rights in Venezuela*. October 24, 2003. OEA/Ser.L/V/II.118. Doc. 4 rev. 1. (Original in Spanish). Available in English at: <http://www.cidh.oas.org/countryrep/Venezuela2003eng/toc.htm>.

⁶ IACHR. *Report on the Situation of Human Rights in Venezuela*. October 24, 2003, paragraph 524.

⁷ Venezuela’s response to draft Chapter IV on Venezuela, received by the IACHR on February 6, 2009.

⁸ Information provided by the State to the IACHR. *Hearing on the Situation of Human Rights in Venezuela*. 137th Period of Sessions, November 2, 2009. In its observations on the present report, the State reiterated that these are “essential conditions for the Venezuelan State to approve another visit by the Commission to the Bolivarian Republic of Venezuela.” Bolivarian Republic of Venezuela. Ministry of Popular Power for Foreign Affairs. State Agent for Human Rights. Observations on the Draft Report *Democracy and Human Rights in Venezuela*. Note AGEV/000598 of December 19, 2009, p. 17.

8. The impossibility of conducting a visit to Venezuela makes more difficult the fulfillment of the mandate which the States of the OAS granted to the IACHR, especially that of promoting the observance and defense of human rights with both direct knowledge and on-site observation of the situation of human rights in the countries of the region. The powers of the Commission derive from the American Convention on Human Rights⁹ and the Charter of the OAS¹⁰, instruments ratified by the Bolivarian Republic of Venezuela. More specifically, the Statute of the Inter-American Commission contains, in Article 18, a list of the Commission's powers and subsection "g" of this Article establishes that of "conduct[ing] on-site observations in a state, with the consent or at the invitation of the government in question." Similarly, the Rules of the IACHR contain a chapter devoted to on-site visits.

9. Given that the visits of the IACHR are one of the protection mechanisms of the human rights system created by the OAS Member States, by setting obstacles for the fulfillment of this faculty granted to the IACHR by the States, the State of Venezuela is endangering this collective mechanism for human rights protection and for the Commission's supervision of the compliance with human rights. Thus, beyond jeopardizing the IACHR's faculties, by impeding the Commission's visit, the State of Venezuela is contributing to the weakening of the inter-American system for the protection of human rights created by the States of the Hemisphere.

10. During its 50 years of operation, the Inter-American Commission has undertaken 89 on-site visits in the course of which it has received information for the drafting of reports and recommendations on the situation of human rights in the countries in the region. The evolution of the situation of human rights in the Hemisphere has clearly demonstrated the importance of the functions of general supervision assigned to the Inter-American Commission, which find their highest expression in the observation visits in order to appreciate the reality of a specific country. On-site visits allow the members of the Commission to interview directly various sectors of society as well as to engage with the principle authorities of the branches of the State, thereby immersing themselves in the reality of the country and drawing ever closer the relationship of cooperation with the government. This allows the principal organ of the OAS in this area to gather relevant evidence to recommend protective measures and the promotion of fundamental rights.

11. Despite the impossibility of conducting an on-site visit, the Inter-American Commission, pursuant to its protective functions, has employed various mechanisms laid down in the American Convention and in its Rules of Procedure to monitor the situation of human rights in Venezuela. Thus, through the system of cases, the holding of hearings, the adoption of precautionary measures, the request of provisional measures from the Court, the inclusion in chapter IV of its annual report, and the release of communiqués to the press, the IACHR has responded to the Venezuelan citizens who have requested protection from the Inter-American system, and has made the international community aware of the progressive deterioration of the situation of human rights in Venezuela.

12. In point of fact, beginning with the publication of its last *Report on the Situation of Human Rights in Venezuela*, the Commission has held 44 hearings, both at the request of the State as well as from civil society organizations, with the purpose of receiving information on the progress and challenges of Venezuela in the area of human rights. The Commission has convened eleven hearings on the general situation of human rights in Venezuela; two hearings on the situation of institutions and guarantees of human rights in Venezuela; three hearings on the situation of the

⁹ American Convention on Human Rights: Article 41.

¹⁰ Charter of the Organization of American States: Article 106.

judiciary in Venezuela; four hearings on the situation of human rights defenders in Venezuela; nine hearings on the situation of freedom of expression in Venezuela; one hearing on the prosecution of social protest in Venezuela; two hearings on economic, social and cultural rights in Venezuela; one hearing on the situation of persons deprived of their liberty in Venezuela; two hearings regarding the situation of those seeking refugee status in Venezuela; one hearing on the Government Program for the Protection of Victims, Witnesses, and other Subjects of the Judicial Process; one hearing on the situation of the indigenous peoples of the mining area South of Venezuela; one hearing on the right to land of the indigenous peoples of Venezuela; one hearing on public safety in Venezuela; two hearings on parapolice groups in Venezuela; one hearing on democratic institutionalism, parapolice groups, and prisons in Venezuela; one hearing on impunity in cases of extrajudicial executions of *campesinos* (small-scale and subsistence farmers) in Venezuela; and one hearing on the situation of impunity in Venezuela.

13. In view of the troubling information received by the Commission on the state of human rights in Venezuela during the past few years, the Commission agreed, during its 133rd Ordinary Period of Sessions held in October, 2008, to prepare this report on the situation of human rights in Venezuela. Unlike other reports issued by the IACHR in which the Commission presents an evaluation of the situation of human rights in the country as witnessed on site, this report is based on the information which both the State as well as civil society provided to the IACHR during the hearings, on the basis of specific requests for information issued by the IACHR, and on the constant monitoring of the situation of human rights in Venezuela through public information sources.

14. Also, in order to devise means to fulfill its mandate of assessing the achievements and challenges in the area of human rights, the IACHR prepared a questionnaire which was sent to the State at the beginning of July 2009. Through the questionnaire information was requested of both a quantitative and qualitative nature, including reports, specific evaluations, and statistical and budgetary information, *inter alia*, relevant to the enjoyment of the rights protected in the American Convention on Human Rights and other instruments of the Inter-American system. On August 3, 2009, the State requested an extension of ten days to respond to the questionnaire sent by the IACHR, an extension granted by the Commission. The reply of the State to the questionnaire was received by the IACHR on August 13, 2009.

15. The draft report *Democracy and Human Rights in Venezuela* was approved by the Commission on November 7th, 2009 during its 137th ordinary period of sessions, which took place from October 28th to November 13th, 2009. This draft was transmitted to the State on November 9, 2009, with the request that it present the observations it considers pertinent within a period of one month. Through a communication dated November 2, 2009, the State requested an extension from the IACHR in order to present its observations. On December 7, 2009, the Commission informed the State of its decision to grant an extension of ten additional days after the original deadline to present its observations on the report. On December 19, 2009, the State presented its observations, the pertinent parts of which were incorporated in this report. On December 30, 2009, the Commission considered the final approval and publication of this report.

16. Throughout this report the Commission analyzes the state of human rights in Venezuela in light of the rules of the American Convention as well as other instruments of the inter-American system of human rights. Taking into account that, under Article 23 of the Constitution of the Bolivarian Republic of Venezuela (hereinafter "the Constitution"), enacted by the Constituent Assembly on December 20, 1999, treaties, agreements, and conventions relating to human rights duly signed and ratified have constitutional hierarchy and prevail over the domestic order, in areas containing provisions concerning their enjoyment and exercise more favorable than those set out in

the Constitution and laws of the Republic, and are of immediate and direct application by the courts and other organs of the Public Authority.¹¹

17. The present report, *Democracy and Human Rights in Venezuela*, seeks to identify the main human rights issues affecting the country and includes the recommendations which the IACHR considers relevant, with the object of assisting the State in the fulfillment of its international obligations in the area of human rights. In this sense, the IACHR reiterates its offer to work with the Government of Venezuela as well as with Venezuelan society as a whole, in order to contribute to the strengthening of the defense and protection of human rights in a context of democracy and institutional legality. Similarly, the Commission will continue following closely the situation of human rights in Venezuela and will pay special attention to the measures which the State may adopt to implement the recommendations contained in this report.

II. POLITICAL RIGHTS AND PARTICIPATION IN PUBLIC LIFE

18. Political rights, understood as being those that recognize and protect the right and the duty of every citizen to participate in his or her country's political life, are by nature rights that serve to strengthen democracy and political pluralism.

19. With respect to political rights, the American Convention establishes in its Article 23 that all citizens have the right to participate in the conduct of public affairs, directly or through representatives freely elected; the right to vote and be elected in genuine periodic elections, carried out with universal and equal suffrage and by secret ballot that guarantees the free expression of the will of the voters; and the right to access, under general conditions of equality, to the public service of their country.

20. Article 23 of the American Convention refers to political rights not simply as rights but also as opportunities, which means that States must create the optimal conditions and mechanisms to enable any person who is the holder of political rights to have the opportunity to exercise those rights effectively, while respecting the principles of equality and nondiscrimination.¹² The Convention is also clear in declaring that the State may only regulate the exercise of these rights for reasons of age, nationality, residence, language, education, civil or mental capacity, or conviction, by a competent judge, in criminal proceedings.

21. The Inter-American Commission has emphasized that there exists a "direct relationship between the exercise of political rights and the concept of democracy as a way of organizing the state" and it went on to refer to the necessity of guaranteeing citizens and organized political groups the right to gather publicly, permitting and fomenting a broad debate about the nature of the political decisions required for the measures adopted by the representatives elected by the citizens.¹³

22. The Commission has also observed that representative democracy—one of whose key elements is the popular election of those who hold political power—is the form of organization of the state explicitly adopted by the Member States of the Organization of American States.¹⁴

¹¹ In Venezuela, the Public Power is distributed between the Municipal Power, State Power, and National Power. The National Public Power is divided into the Legislative, Executive, Judicial, Citizen and Electoral branches (Article 132 of the Constitution of the Bolivarian Republic of Venezuela).

¹² I/A Court H.R., *Case of Yatama v. Nicaragua*. Judgment of June 23, 2005. Series C No. 127, para. 195.

¹³ IACHR. *Report on the Situation of Human Rights in Peru (2000)*. Chapter IV, para. 1.

¹⁴ IACHR. *Report No. 137/99, Case 11,863 (Andrés Aylwin Azócar et al.)*. December 27, 1999, para. 31.

23. For its part, the Inter-American Court has held that “it is essential that the State generates the optimum conditions and mechanisms to ensure that these political rights can be exercised effectively, respecting the principles of equality and non-discrimination.”¹⁵ It also has recognized¹⁶ that in the inter-American system, the relationship between human rights, representative democracy, and political rights is expressly set forth in the Inter-American Democratic Charter, which states the following:

Essential elements of representative democracy include, *inter alia*, respect for human rights and fundamental freedoms, access to and the exercise of power in accordance with the rule of law, the holding of periodic, free, and fair elections based on secret balloting and universal suffrage as an expression of the sovereignty of the people, the pluralistic system of political parties and organizations, and the separation of powers and independence of the branches of government.¹⁷

24. The Inter-American Court has also held that the effective exercise of political rights constitutes an end in itself and also a fundamental means that democratic societies possess to guarantee the other human rights established in the Convention.¹⁸

25. In light of these standards, the IACHR will analyze some issues that affect the enjoyment of political rights in Venezuela, such as the use of state structures for political campaigns; the political disqualification of candidates through administrative means; the appropriation of powers of elected authorities; retaliation for political dissent; and limitations on peaceful demonstrations.

A. The right to participate in the conduct of public affairs and to vote and be elected in genuine periodic elections

26. With respect to the right to participate in the conduct of public affairs, directly or through freely elected representatives, the State asserts that in Venezuela each and every political right recognized in the Constitution is exercised without limitations of any kind but for those that the law prescribes and that

... [t]housands of political and social organizations go about their daily business without engaging in any type of unlawful or lawless activity; [...] similarly, at the individual level, thousands of citizens in public and private circles engage in activities of all types, many of whom receive direct support from the State to enable those activities to materialize.¹⁹

27. The right to associate for political purposes is protected under Article 67 of the Constitution of Venezuela. That article recognizes that the right to participate in elections by

¹⁵ I/A Court H.R., *Case of Yatama v. Nicaragua*. Judgment of June 23, 2005. Series C No. 127, para. 192.

¹⁶ I/A Court H.R., *Case of Castañeda Gutman v. Mexico*. Judgment of August 6, 2008. Series C No. 184, para. 142.

¹⁷ Inter-American Democratic Charter, Article 3.

¹⁸ I/A Court H.R., *Case of Castañeda Gutman v. Mexico*. Judgment of August 6, 2008. Series C No. 184, para. 143.

¹⁹ The Venezuelan State’s response to the draft of Chapter IV on Venezuela, which the Commission received on December 21, 2007, p. 52.

nominating candidates can be exercised not just by political parties, but also by associations having political ends, and even by individual citizens.

28. Article 67 of the Venezuelan Constitution does not expressly use the term political party, so that the field of citizen participation is opened up to include other forms of organizing for political purposes. Under Article 70 of the Constitution, these forms of political participation include voting to fill public offices; referendums; recall referendums; legislative, constitutional, and constituent initiatives; the open town hall; and the citizens' assembly, whose decisions are binding. In social and economic matters, the forms of citizen participation include citizen services; self-management; joint management; cooperatives in all their forms, including financial cooperatives; savings and loan associations; and community enterprise and other forms of partnership, guided by the values of mutual cooperation and solidarity. Article 62 of the Constitution makes reference to the people's participation in public affairs, and underscores the State's duty to ensure the public's involvement in establishing, executing, and overseeing public affairs as a necessary means to engage them and thereby guarantee their full development, both individually and collectively.

29. The Commission has followed attentively some of the measures taken by the State to promote participation in political life and exercise of political rights and, among these initiatives, the Commission has taken a positive view of the public consultations in the framework of the National Assembly's legislative business. The IACHR also takes a favorable view of the fact that state agencies are exploring ways to get Venezuelans more involved, either directly or through representatives.

30. With respect to the right to vote and be elected in genuine periodic elections, carried out with universal and equal suffrage and by secret ballot that guarantees the free expression of the will of the voters, the State has made the point that over the last ten years, twelve elections have been held in Venezuela, all under the supervision of international organizations which found that all international standards had been observed.²⁰

31. Indeed, the Commission observes that since the presidential elections held in Venezuela on December 6, 1998, Venezuelans have gone to the polls on a number of occasions. In April 1999, a referendum was held to vote on the holding of a National Constituent Assembly to draft a new constitution; in that referendum the "yes" vote won. In July of that same year, an election was held to choose the members of the National Constituent Assembly. Once the new Constitution was drafted, a referendum was held in December 1999 in which the new Constitution was approved. In July 2000, general elections were held yet again to re-legitimize all the branches of government. In October 2004, elections were held to elect governors, mayors, and regional deputies. In December 2004, a recall referendum was held to determine whether President Chávez should be recalled from office; the "no" votes won.

32. New parliamentary elections were held in December 2005. The principal opposition parties decided to withdraw and called upon voters to boycott the polls, alleging a lack of confidence in the National Electoral Council. In December 2006, new presidential elections were held and Hugo Chávez Frías was re-elected. In December 2007, a referendum was held to approve a constitutional amendment supported by the executive branch that, among other things, would have done away with term limits on the presidency. The referendum was voted down. In November 2008, regional and municipal elections were held for a total of 603 popularly elected offices. On February

²⁰ The Venezuelan State's response to the draft of Chapter IV on Venezuela, which the Commission received on February 6, 2009.

15, 2009, a new referendum was held in which the majority of voters supported elimination of term limits on the office of the president and other popularly elected offices in Venezuela.

33. According to the State, “nowhere in the world is the electoral process more trustworthy and more closely scrutinized than here in Venezuela, where all participating candidates are able to enjoy all the political and civil rights.”²¹

34. For a number of years, opposition organizations had argued that Venezuela’s elections were fraudulent. However, after December 2007, when the constitutional amendments proposed by President Chávez were voted down by a narrow margin of votes, the allegations of fraud diminished considerably. The State officials’ acceptance of the referendum defeat in built confidence in the National Electoral Council and weakened the impact of the repeated claims of election fraud in previous elections.²²

35. Even the State cited the following to illustrate that the exercise of democracy is guaranteed in Venezuela:

On December 2, 2007, the twelfth set of elections held during the nine-year administration of President and Commander-in-Chief Hugo Rafael Chávez Frías was held, and the first in which his administration met defeat. By a slim margin, the “no” vote ended up winning. President Chávez acknowledged the victory within hours of the National Electoral Council submitting the first tally.²³

36. Although this development did not put an end to election-related complaints in Venezuela,²⁴ the Commission has observed renewed confidence in the election results announced by the National Electoral Council. The public’s confidence in election results lends legitimacy to the authority that elected officials exercise.

37. However, as the Commission has observed, political participation and political rights are not guaranteed simply by the observance of the right to vote or the possibility of exercising the right to vote or to stand for election;²⁵ instead, they necessarily involve a series of other rights and guarantees to ensure that the democratic process is fully functional. Thus, certain conditions must be present if elections are to be fair and equitable.

²¹ The Venezuelan State’s response to the draft of Chapter IV on Venezuela, which the Commission received on February 6, 2009.

²² PROVEA. *Situación de los Derechos Humanos en Venezuela Informe Anual Octubre 2007/Septiembre 2008* (Situation of Human Rights in Venezuela, Annual Report October 2007/September 2008), December 10, 2008, p. 26.

²³ The Venezuelan State’s response to the draft of Chapter IV on Venezuela, which the Commission received on December 21, 2007, p. 46.

²⁴ One complaint, for example, was that on the occasion of the February 15, 2009 elections, voter registration was not opened for potential new voters who had reached their majority since the registrations taken for the previous elections, thereby preventing them from exercising their right to vote.

²⁵ IACHR. *Annual Report 2006*. Chapter IV: Human Rights Developments in the Region. Venezuela, para. 220.

38. The information that the Commission has received during its hearings²⁶ suggests that the most recent elections in Venezuela were not fair and balanced processes, inasmuch as the machinery of the State has been used improperly to favor electoral campaigns. Particularly, in the case of the elections held on November 23, 2008 and on February 15, 2009, the information the Commission received alleges lack of electoral oversight on the part of the National Electoral Council, not in terms of the tabulation of the vote, but of the electoral process itself.

39. The Commission was told that the President of the Republic had used presidential power to create radio and television broadcasts to promote candidates who supported him and also to push for the government option in the referendum process. The National Electoral Council never raised any objection. The Commission also learned that during the campaigns, both the President and other public officials launched verbal attacks that were transmitted during blanket radio and television broadcasts.

40. In its observations on the present report, the State declared that this is “highly subjective, and is a way in which opposition candidates justify their electoral defeats.”²⁷ It also emphasized that “some Venezuelan NGOs and opposition parties have stated that the use of informative blanket broadcasts on radio and television by the national government is something illegal, but we have demonstrated that it is a constitutional obligation of the State, according to Articles 57 and 58 of the Constitution, to keep the citizens informed; the Law on Social Responsibility in Radio and Television also establishes this.”²⁸ With respect to the verbal attacks, it clarified that “these come from the opposition parties, and the government responds to them, forming part of the electoral debate in democratic countries.”²⁹

41. The Commission also received information regarding alleged restrictions placed on opposition campaign advertising. The information received indicates that in November 2007, prior to the referendum to approve the constitutional amendment, the National Electoral Council ordered SINERGIA, a national association of civil society organizations, to immediately suspend the distribution of audiovisual materials intended to inform the public about the proposed constitutional amendment. It also launched an administrative inquiry into the matter.³⁰

²⁶ Information provided by the petitioners to the IACHR: *Hearing on the Institutional Structure and Human Rights in Venezuela*. 134th Period of Sessions, March 24, 2009.

²⁷ Bolivarian Republic of Venezuela. Ministry of Popular Power for Foreign Affairs. State Agent for Human Rights. Observations on the Draft Report *Democracy and Human Rights in Venezuela*. Note AGEV/000598 of December 19, 2009, p. 23.

²⁸ Bolivarian Republic of Venezuela. Ministry of Popular Power for Foreign Affairs. State Agent for Human Rights. Observations on the Draft Report *Democracy and Human Rights in Venezuela*. Note AGEV/000598 of December 19, 2009, p. 22.

²⁹ Bolivarian Republic of Venezuela. Ministry of Popular Power for Foreign Affairs. State Agent for Human Rights. Observations on the Draft Report *Democracy and Human Rights in Venezuela*. Note AGEV/000598 of December 19, 2009, p. 23.

³⁰ SINERGIA was advised that the administrative inquiry was launched pursuant to Articles 293(3) of the Constitution of the Bolivarian Republic of Venezuela and 33(20) of the Organic Law of the Electoral Authority. The purpose of the inquiry was to determine whether election-related offenses provided for in Article 55, paragraph 12, of the Rules to Regulate the Constitutional Referendum had been committed. According to the most recent information received by the Commission, SINERGIA had not yet been notified of the findings of the inquiry (Information provided by the petitioners to the IACHR: *Hearing on the Institutional Structure and Constitutional Guarantees in Venezuela*. 133rd Period of Sessions, October 28, 2008).

42. The Commission has also received reports to the effect that public officials are allegedly subjected to undue pressure when the time comes to vote. One of the most notable examples of this kind of pressure occurred in the period leading up to the 2006 presidential elections when a speech delivered by the Minister of Energy and President of *Petróleos de Venezuela, S.A.* (PDVSA) was made public, in which he warned employees that if they failed to vote for President Chávez they should leave the company.

43. The Minister said the following:

The new PDVSA is with President Chávez [...] the new PDVSA is red from the top down [...] Stop thinking that we can be punished or that someone can criticize us if we tell our people that this company is 100% behind President Chávez [...] It would be a crime, a counterrevolutionary act for any manager here to attempt to put a stop to our workers' political support for President Chávez [...] We will do our utmost to support our president. And anyone who's uncomfortable with this arrangement needs to step aside and make way for a Bolivarian [...] ³¹.

44. In its observations to the present report, the State explained that this "has its explanation, if one thinks of the sabotage of the oil industry carried out by the opposition parties in December of 2002, which caused the country fifteen billion dollars in economic damages." ³²

45. The Commission is troubled by the fact that State employees are threatened with losing their jobs if they fail to support the official government option. The Commission has also received information to the effect that civil servants have also been the protagonists of official campaigns, openly participating in political proselytism and devoting long hours of their official workdays to these activities.

46. In light of the foregoing, the Commission notes that there are serious obstacles to the full exercise of political rights in Venezuela, although it values the State's efforts to foment and guarantee these rights through various mechanisms of political participation. In particular, the Commission observes that equal access to the communications media by the various political forces is not guaranteed. In the framework of political campaigns, the excessive use of State media, as well as the use by the State of private media through "blanket broadcasts," causes a disequilibrium among the various candidates or political options, which necessarily affects the enjoyment of political rights.

47. In this sense, with the aim of guaranteeing the right to elect and be elected in conditions of equality, the Commission urges the State to regulate the use of state media in the framework of electoral campaigns in order to ensure equity; to guarantee that opposition political campaigns can be carried out without undue restrictions; and to refrain from exerting illegitimate pressures on public functionaries at voting time and from promoting their mandatory participation in acts of official propaganda.

³¹ Rafael Ramírez's speech to PDVSA employees. Video of the speech available at: <http://www.youtube.com/watch?v=dmXpbT7Fhiw>.

³² Bolivarian Republic of Venezuela. Ministry of Popular Power for Foreign Affairs. State Agent for Human Rights. Observations on the Draft Report *Democracy and Human Rights in Venezuela*. Note AGEV/000598 of December 19, 2009, p. 24.

B. The right to access, under general conditions of equality, the service of one's country

48. The Commission has received allegations stating that mechanisms have been created in Venezuela to limit the chances that opposition candidates have to win office. Specifically, in the most recent regional elections held in Venezuela in November 2008, the Commission received reports, through both its hearings and in the individual cases presented to it,³³ indicating that around 400 persons had their political rights restricted through administrative resolutions taken by the Office of the Comptroller General of the Republic based on Article 105 of the Organic Law of the Office of the Comptroller General of the Republic and the National Fiscal Oversight System.³⁴ The information reported was that the Comptroller of the Republic had decided to disqualify these persons from running for public office on the grounds that they had engaged in irregularities in the exercise of their public functions. The information received by the Commission shows that a great majority of the disqualified persons belonged to the political opposition.

49. Here the Commission notes that on February 25, 2008, the Comptroller General of the Republic sent the National Electoral Council a list of 398 persons who had been sanctioned by declaring them ineligible for public service, which meant that the persons on that list would be unable to run as candidates in the elections slated for November 2008.

50. According to information received by the IACHR, when the Comptroller General turned over the list, he received the backing of the Venezuelan United Socialist Party, through its spokesperson William Lara, as well as the support of the Ombudsperson Gabriela Ramírez, various justices on the Supreme Court of Justice, members of the National Assembly, and four of the five directors of the National Electoral Council.

51. With respect to the latter, it should be taken into account that it is the National Electoral Council that decides whether to agree to the disqualifications. However, according to press clippings sent to the Commission, before a final decision was made on the disqualifications, a number of the directors on the National Electoral Council expressed their opinions as to what the Council's Board of Directors should decide. Its chair, for example, stated the following publicly: "We have these people who were disqualified by the Office of the Comptroller, and the Council has to follow the strict letter of the law." Another director on the board of the National Electoral Council stated publicly that "the decision is binding upon the CNE [National Electoral Council, by its Spanish acronym]" and that "persons who have been politically disqualified cannot stand for election to public office" and finally that "once the CNE implements that decision, the names of those declared ineligible for office will be entered into a database so that they will not be able to stand for election. If the Council fails to abide

³³ See, IACHR. *Report No. 67/08, Petition 275-08 Leopoldo López Mendoza*. Venezuela, July 25, 2008.

³⁴ Article 105 of the Organic Law of the Office of the Comptroller General of the Republic and of the National System of Fiscal Control, published in the Official Gazette of the Bolivarian Republic of Venezuela No. 37.347 of December 17, 2001, reads as follows: "Article 105. Under the provisions of Articles 91 and 92 of this law, the finding of administrative responsibility will be sanctioned with the fine established in Article 94 depending on the seriousness of the offense and the amount of damages caused. It will be the exclusive responsibility of the Comptroller General of the Republic, and only of the Comptroller General, without any other proceeding required, and depending on the seriousness of the crime committed, to suspend the responsible individual from his position without pay for a period no longer than twenty-four (24) months or to remove that individual from office, with the highest authority being responsible for executing the action; and, depending on the gravity of the offence, to bar the individual from occupying any public office or position for up to a maximum of fifteen (15) years, in which case the Comptroller General must forward all pertinent information to the human resources office of the entity or agency where the events took place in order that it may follow the appropriate course of action [...]."

by the decision, then CGR [Office of the Comptroller General of the Republic, by its Spanish acronym] would serve no purpose.”

52. On June 18, 2008, the Board of the National Electoral Council ordered the incorporation, as grounds for ineligibility, in the table of objections of the Electoral Registry, of the category of those disqualified from public service, and all the persons disqualified by the Comptroller General of the Republic were incorporated into this category in the system. Being thus classified, the persons whose names appeared on the list were automatically rejected by the electoral body’s nomination system when they tried to file as candidates for elected office. According to the information received, the decision was announced in the media without being formalized in an administrative act, which made it difficult to challenge.

53. Then, on July 11, 2008, the Comptroller General of the Republic went to the National Electoral Council to deliver a purged and final list of those persons who, as an added penalty, had been declared ineligible for public office because of the seriousness of the offenses they had committed. Of the original list of 398, the Comptroller General decided that 260 citizens were unfit to serve in any public function for the duration of the period of their disqualification³⁵.

54. On July 21, 2008, the National Electoral Council approved the Rules to Govern the Nomination of Persons for the elections to be held in November 2008. Article 9 of those rules provides that any citizen who has been politically disqualified may not run for public office.

55. The Commission appreciates the Venezuelan State’s efforts to establish control mechanisms to ensure good administration and the legality of the acts of civil servants when using public funds, for the sake of ensuring that democracy functions properly. Indeed, all states have a duty to organize their legal and administrative apparatus to ensure that when the time comes to exercise their political rights, citizens are able to know how their representatives have conducted themselves and thus make an informed choice.

56. However, the Commission observes that Article 23 of the American Convention recognizes and protects political participation both through the right to vote and the right to be elected, with the latter understood as the right to run for popularly-elected office, and through the establishment of adequate electoral regulations that consider the political process and the conditions in which this process is developed, in order to ensure the effective exercise of these rights without arbitrary or discriminatory exclusions. Thus, as political rights are fundamental rights of the human person,³⁶ they may only be subject to the limits expressly set forth in Article 23(2) of the Convention.

57. Article 23(2) of the American Convention provides that the law may regulate or limit the exercise of political rights “only on the basis of [...] sentencing by a competent court in

³⁵ In its observations on the present report, the State explained that “the motive for which the Comptroller General of the Republic handed over the first list of citizens disqualified from holding public office, which included 398 functionaries, to the National Electoral Council, and later rectified it, and provided another list of only 260, was due to the fact that the disqualifications are for a limited time, and reviewing the previous list, it was clear that some functionaries had completed their period of disqualification.” Bolivarian Republic of Venezuela. Ministry of Popular Power for Foreign Affairs. State Agent for Human Rights. Observations on the Draft Report *Democracy and Human Rights in Venezuela*. Note AGEV/000598 of December 19, 2009, p. 25.

³⁶ As for the importance of political rights, it is important to note that Article 27 of the American Convention prohibits the suspension of political rights and the judicial guarantees necessary to protect them (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, para. 34; and *Case of Yatama v. Nicaragua*. Judgment of June 23, 2005. Series C No. 127, para. 191).

criminal proceedings.” As the Court has written, subparagraph 2 of Article 23 has only one purpose—in light of the Convention as a whole and of its essential principles—to avoid the possibility of discrimination against individuals in the exercise of their political rights.”³⁷

58. However, the political disqualifications in Venezuela were not the result of a sentence by a criminal court; instead, they were the result of an administrative decision taken by the Office of the Comptroller General of the Republic. It goes without saying that neither the Comptroller General nor the offices under him are judges or courts in the strict sense, and their decisions fall within the administrative sphere.

59. The information that the Commission received underscores the fact that the sanctions ordered by the Office of the Comptroller General that disqualified individuals from running for public office were imposed without a prior proceeding, and were thus in violation of the basic right to due process of law recognized in Article 8 of the Convention, a guarantee that judicial and administrative proceedings must ensure.³⁸ In effect, Venezuelan law provides that “it will be the exclusive responsibility of the Comptroller General of the Republic, and only of the Comptroller General, without any other proceeding required, [...] to suspend the responsible individual from his position [...] or to remove that individual from office [...] and [...] to bar the individual from occupying any public office or position [...]”³⁹

60. Under Article 105 of the Organic Law of the Office of the Comptroller General, the Comptroller General is authorized to order an accessory penalty involving disqualification from public office or government service. The Comptroller may do so without any additional proceeding or on any grounds other than those he gave when issuing the finding of administrative responsibility. Thus, the accessory penalty of disqualification for public office is left to the discretion of the Comptroller, based on his or her estimation of the amount of damage done to the public coffers, the type of offence, and the seriousness of that offense. There are no criteria for matching the penalty to the seriousness of the offense, which is a violation of the principle of proportionality.

61. This is contrary to the case law of the Inter-American Court, which holds that decisions adopted by domestic bodies that could affect human rights must be duly justified because, if not, they would be arbitrary decisions.⁴⁰ The Commission is also disturbed by the fact that the Comptroller has the discretion to impose a harsh penalty, when the affected parties have not been given the opportunity to defend themselves.

62. Appeals have been filed with the Supreme Court of Justice seeking nullification of Article 105 of the Organic Law of the Office of the Comptroller General on the grounds that it is unconstitutional. Appeals seeking protective relief against that article have also been filed. In general, the complaints argued that Article 105 violated two articles of the Venezuelan Constitution: Article

³⁷ I/A Court H.R., *Case of Castañeda Gutman v. Mexico*. Judgment of August 6, 2008. Series C No. 184, para. 155.

³⁸ I/A Court H.R., *Case of Baena Ricardo et al. v. Panama*. Judgment of February 2, 2001. Series C No. 72, para. 106.

³⁹ Article 105 of the Organic Law on the Office of the Comptroller General and the National System of Fiscal Control, published in the Official Gazette of the Bolivarian Republic of Venezuela, No. 37.347, December 17, 2001.

⁴⁰ I/A Court H.R., *Case of Apitz Barbera et al. (“First Court of Administrative Disputes”) v. Venezuela*. Judgment of August 5, 2008. Series C No. 182, para. 78; *Case of Yatama v. Nicaragua*. Judgment of June 23, 2005. Series C No. 127, paras. 152 and 153; and I/A Court H.R., *Case of Chaparro Alvarez and Lapo Iñiguez. v. Ecuador*. Judgment of November 21, 2007. Series C No. 170, para. 107.

42, which provides that “exercise of citizenship or of any political rights shall only be suspended by a final judicial decision;” and Article 65, which provides that “Persons who have been convicted of crimes committed while in office or of other offenses against public property shall, after serving their sentence, be ineligible to run for any popularly elected office for the period prescribed by law, which shall depend on the seriousness of the offense.”

63. On August 5, 2008, three months before the regional elections, the Constitutional Chamber of the Supreme Court of Justice dismissed the appeal challenging the constitutionality of Article 105 of the Organic Law of the Office of the Comptroller General.⁴¹ The next day, August 6, 2008, the Constitutional Chamber of the Supreme Court declared the provision of Article 105 of the Organic Law of the Office of the Comptroller General to be constitutional and ruled that it did not have competence to hear the appeals seeking nullification of the administrative decisions issued by the Comptroller General of the Republic. It held that because Article 105 was declared constitutional, the legal argument alleging that those decisions had no basis in law had collapsed.⁴²

64. In the judgment of the Constitutional Chamber of the Supreme Court, a distinction must be drawn between two types of disqualification; whereas “criminal conviction [...] suspends exercise of political rights, an administrative disqualification ordered by the Comptroller General disqualifies one from holding public office or public service.”⁴³ In a press release, the Supreme Court of Justice explained that the penalty of disqualification that the Office of the Comptroller General imposes on public officials that it finds guilty of administrative offences “is not a political disenfranchisement but a restriction of the opportunity to hold public office, irrespective of how the individual came to have that office, whether on a competitive basis, by appointment, or by popular election, and irrespective of the type of public office, be it administrative or governmental.”⁴⁴

65. The Commission is of the view that the accessory penalty of disqualification from holding public office, a penalty imposed by the Comptroller General of the Republic, is essentially a judicial function. The accessory penalty was intended as a means to enable the administration to exercise the State’s punitive power, when that authority belongs exclusively to the criminal justice system. The effect of the penalty is punitive in nature, as it disqualifies a person from exercising his or her political right to run for popularly-elected office according to the terms of Article 23(2) of the American Convention. As the Inter-American Court has written, administrative sanctions that are similar in nature to penal sanctions “imply reduction, deprivation or alteration of the rights of individuals, as a consequence of unlawful conduct. Therefore, in a democratic system it is necessary to intensify precautions in order for such measures to be adopted with absolute respect for the basic rights of individuals [...]”⁴⁵ Accordingly, given the obligations that Venezuela undertook when it

⁴¹ Constitutional Chamber of the Supreme Court of Venezuela. Judgment of August 5, 2008. Case file: 05-1853. Justice writing for the Court: Arcadio Delgado Rosales.

⁴² Constitutional Chamber of the Supreme Court of Venezuela. Judgment of August 6, 2008. Case files 06-945, 06-1616, 06-1799, 06-1802, 07-901, 07-1257, 08-422 and 08-518, all combined in Case No. 06-0494. Justice writing for the Court: Carmen Zuleta de Merchán.

⁴³ Constitutional Chamber of the Supreme Court of Venezuela. Judgment of August 6, 2008. Case files No. 06-945, 06-1616, 06-1799, 06-1802, 07-901, 07-1257, 08-422 and 08-518, all combined in Case No. 06-0494. Justice writing for the Court: Carmen Zuleta de Merchán.

⁴⁴ Press release from the Supreme Court of Justice: *Confirman la constitucionalidad de las inhabilitaciones administrativas* (Constitutionality of administrative disqualifications upheld). August 6, 2008. Available in Spanish at: <http://www.tsi.gov.ve/informacion/notasdeprensa/notasdeprensa.asp?codigo=6304>.

⁴⁵ I/A Court H.R., *Case of Baena Ricardo et al. v. Panama*. Judgment of February 2, 2001. Series C No. 72, para. 106.

ratified the American Convention on August 9, 1977, the IACHR considers that Article 105 of the Organic Law of the Office of the Comptroller General of the Republic is incompatible with the Convention in that it expressly provides that the administrative avenue is the proper one for imposing a penalty of disqualification from political rights.

66. The Commission is particularly troubled by the reading of the American Convention that appeared in the decision handed down by the Constitutional Chamber of the Supreme Court of Justice on August 5, 2008. That decision makes reference to Article 23(2) of the Convention and states that the article provides that the right to political participation can be regulated. The Constitutional Chamber's analysis of this article is that regulation of the right to political participation means that political rights can be restricted provided the restrictions are prescribed by law and are based on reasons of general public interest, public safety, and the just demands of the general welfare. The Constitutional Chamber wrote that:

[...] on the subject of political rights, Article 23(2) [of the American Convention] states that the law may "regulate" the exercise of political rights on the basis of age, nationality, residence, language, education, civil or mental capacity, or sentencing by a competent court in criminal proceedings.

This provision makes no reference to any restriction on the exercise of these rights; instead, it speaks of their regulation. In any event, Article 30 *ejusdem* allows for the possibility of restriction provided it is "in accordance with laws enacted for reasons of general interest and in accordance with the purpose for which such restrictions have been established."

Furthermore, Article 32(2) provides that "[t]he rights of each person are limited by the rights of others, by the security of all, and by the just demands of the general welfare, in a democratic society."

Based on the foregoing, this Chamber deems that under the American Convention on Human Rights, rights and freedoms can be restricted, provided the restriction is done by law and for the sake of the general interest, the security of all, and the just demands of the general welfare.

These provisions, which appear in Articles 30 and 32(2) of the Convention, become especially relevant in cases such as Venezuela's, where the constitutional system unquestionably favors collective interests over individual or private interests, as it has shifted from the liberal State model to the model of a social State of law and justice.

Assuming *arguendo* that there was some conflict between Article 23(2) and the Constitution of the Bolivarian Republic of Venezuela, the precedence of the international treaty is neither absolute nor automatic. In effect, under Article 23 of the Constitution, in order for a human rights treaty or convention to take precedence, its human rights provisions must be more favorable than those in the Constitution.

[...]

Based on these considerations and the jurisprudence cited, this Chamber concludes that human rights can be restricted by laws enacted for the sake of the general interest, the security of all, and the just demands of the general welfare,

all in accordance with Articles 30 and 32(2) of the American Convention on Human Rights.

[...]

[It] is inadmissible to assert that a provision of an international convention should take absolute precedence over the prevention, investigation, and punishment of acts that violate public ethics and administrative morals (Article 271 of the Constitution), and the attributions that the Constitution expressly confers upon the Office of the Comptroller General of the Republic to monitor and audit public revenues, expenditures, and property (Article 289(1) *eiusdem*), and to inspect and audit public-sector organs, order investigations into irregularities committed against public holdings, and order repayments and enforce any administrative sanctions that may be required under the law (Article 289(3) *eiusdem*). Thus, the provisions of the Constitution that favor the general interest and the common good must prevail; the provisions that favor the collective interests involved in the struggle against corruption must take precedence over the private interests of those involved in administrative offences; it is so decided.

67. The IACHR reiterates that the only admissible restrictions to regulate the exercise and enjoyment of political rights are those expressly established in Article 23(2) of the American Convention. The States shall refrain from issuing laws that establish restrictions beyond those authorized in that article. As such, restrictions on political rights that are not authorized under Article 23(2) are inadmissible even when, in the judgment of the domestic courts, those restrictions serve the general interest, the security of all, and the just demands of the common good.

68. In its own interpretation of Convention Article 30 referenced in the ruling of the Constitutional Chamber, the Inter-American Court has written that only those restrictions expressly allowed under the Convention are authorized. Thus,

[i]n reading Article 30 in conjunction with other articles in which the Convention authorizes the application of limitations or restrictions to specific rights or freedoms, it is evident that the following conditions must be concurrently met if such limitations or restrictions are to be implemented: that the restriction in question be expressly authorized by the Convention and meet the special conditions for such authorization [...].⁴⁶

69. The Court has also understood that Article 32.2

is [not] automatically and equally applicable to all the rights which the Convention protects, including especially those rights in which the restrictions or limitations that may be legitimately imposed on the exercise of a certain right are specified in the provision itself. [The Court adds that] Article 32(2) contains a general statement that is designed for those cases in particular in which the Convention, in proclaiming a right, makes no special reference to possible legitimate restrictions.⁴⁷

⁴⁶ 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, para. 18.

⁴⁷ 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. 65.

70. As to the power to pass laws on the requirements necessary to exercise political rights, the Inter-American Court has held that instituting and applying requirements for exercising political rights is not, *per se*, an undue restriction of political rights.⁴⁸ However, the power of the states to regulate or restrict rights is not discretionary, but is limited by international law, which requires compliance with certain obligations that, if they are not respected, make the restriction unlawful and contrary to the American Convention.⁴⁹

71. Based on the foregoing, the Commission considers that a penalty of disqualification from public office or public service, being imposed through administrative procedures in contravention of the standards of due process, constitutes an undue restriction of the political right to run for public office, protected under Article 23 of the American Convention on Human Rights. The Commission observes with concern that these undue restrictions have been used to deny 260 individuals their opportunity to run for public office in the lead-up to the regional elections held in Venezuela on November 28, 2008 and recommends that the State adopt the necessary corrective measures to reverse this situation.

72. On December 14, 2009, the Inter-American Commission submitted an application against Venezuela to the Inter-American Court in the case of Leopoldo López Mendoza, due to the disqualification of Mr. López Mendoza from public service in violation of the standards established by the Convention, and the prohibition of his candidacy in the regional elections in 2008. The case also relates to the lack of judicial guarantees and appropriate judicial protection and adequate reparations. On August 8, 2009, the Commission adopted Merits Report No. 92/09 and recommended that the State: (1) adopt the measures necessary to reestablish the political rights of Mr. Leopoldo López Mendoza; (2) bring the domestic legal order, in particular Article 105 of the Organic Law on the Office of the Comptroller General and the National System of Fiscal Control that imposes disqualification from running for public office, into compliance with the provisions of Article 23 of the American Convention; and (3) strengthen the due process guarantees in the administrative proceedings of the Office of the Comptroller General of the Republic in accordance with the standards of Article 8 of the American Convention. In its observations on the Merits Report, the State asserted that “the Commission erroneously concluded that the State of Venezuela had incurred international responsibility.” As a result of the lack of compliance with the recommendations of the Commission, the Commission decided to submit the case to the Court, asking it to declare that the State had incurred international responsibility for violation of political rights (Article 23), and the right to judicial guarantees and judicial protection (Articles 8.1 and 25), in conjunction with the obligations of respect and guarantee and the duty to adopt domestic legal provisions established in the American Convention (Articles 1.1 and 2, respectively). The submission of the case to the Court raises the need for justice and reparations in cases of political disqualifications through administrative acts, contrary to the international standards.

73. Taking into account that, according to the information received, this measure might have been directed to politically disqualify candidates that for the greater part opposed the government, the IACHR deems appropriate to remember that the just demands of a pluralistic and democratic society require that political rights be guaranteed not just in the case of those persons advocating positions favorable to the policy line of the government in power or that are considered

⁴⁸ I/A Court H.R., *Case of Yatama v. Nicaragua*. Judgment of June 23, 2005. Series C No. 127, para. 206.

⁴⁹ I/A Court H.R., *Case of Castañeda Gutman v. Mexico*. Judgment of August 6, 2008. Series C No. 184, para. 174.

inoffensive or indifferent, but also with regard to those who maintain a critical stance that is unwelcome to that government or to some other sector of the population.⁵⁰

C. The exercise of political rights without discrimination

1. The modification of the powers of elected authorities

74. The Commission has received information indicating that the State was taking actions to take powers away from authorities elected by popular vote, particularly when they belong to the opposition. Although it is not for the Commission to decide, in the abstract, the distribution of powers among the regional organisms in the interior of a state, the Commission will analyze this information in relation to the allegations that the modification of powers is being carried out in Venezuela with the aim of reducing the scope of the public functions of members of the opposition.⁵¹

75. By way of example, the Commission has been told of the situation of the Mayor of Metropolitan Caracas, whose main function is to coordinate the city's five municipalities⁵² so that they function harmoniously. The Commission was told that since the Caracas Metropolitan District was created back in January 2000 and the Law on the Special Regime of the Caracas Capital District was issued, all the metropolitan mayors had belonged to the government party. However, in the elections held on November 23, 2008, members of the opposition were elected to govern four of the five municipalities in the Metropolitan Caracas area. Antonio Ledezma was elected Metropolitan Mayor, the first person elected to that office who was not the government-backed candidate.

76. Once the Metropolitan Mayor took office, having been elected to exercise the authorities given under the Law on the Special Regime of the Caracas Capital District which the National Constituent Assembly enacted in 2000, the Special Law on the Organization and Regime of the Capital District⁵³ was issued on April 13, 2009. The new law created the Office of Head of

⁵⁰ IACHR, *Annual Report 2006*, Chapter IV: Human Rights Developments in the Region, Venezuela, para. 222, citing: IA Court H.R., *Case of Herrera Ulloa v. Costa Rica*, Judgment of July 2, 2004, Series C. No. 107, para. 113; *Case of Ivcher Bronstein v. Peru*, Judgment of February 6, 2001, Series C No. 74, para. 152; *Case of "The Last Temptation of Christ" (Olmedo Bustos et al.) v. Chile*, Judgment of February 5, 2001, Series C No. 73, para. 69; *Scharsach and News Verlagsgesellschaft v. Austria*, no. 39394/98, § 29, ECHR 2003-XI; *Perna v. Italy [GC]*, no.48898/98, § 39, ECHR 2003-V; *Dichand and others v. Austria*, no. 29271/95, § 37, ECHR 26 February 2002; *Eur. Court H.R., Case of Lehideux and Isorni v. France*, Judgment of 23 September, 1998, para. 55; *Eur. Court H.R., Case of Otto-Preminger Institut v. Austria*, Judgment of 20 September 1994, Series A no. 295-A, para. 49; *Eur. Court H.R., Case of Castells v. Spain*, Judgment of 23 April 1992, Series A. No. 236, para. 42; *Eur. Court H.R., Case of Oberschlick v. Austria*, Judgment of 25 April 1991, para. 57; *Eur. Court H.R., Case of Müller and Others v. Switzerland*, Judgment of 24 May 1988, Series A no. 133, para. 33; *Eur. Court H.R., Case of Lingens v. Austria*, Judgment of 8 July 1986, Series A no. 103, para. 41; *Eur. Court H.R., Case of Barthold v. Germany*, Judgment of 25 March 1985, Series A no. 90, para. 58; *Eur. Court H.R., Case of The Sunday Times v. United Kingdom*, Judgment of 29 March 1979, Series A no. 30, para. 65; and *Eur. Court H.R., Case of Handyside v. United Kingdom*, Judgment of 7 December 1976, Series A No. 24, para. 49.

⁵¹ Information provided by the petitioners to the IACHR. *Hearing on Institutional and Guarantees of Human Rights in Venezuela*. March 24, 2009.

⁵² The city of Caracas, the capital of the Republic, has five municipalities: Libertador, Baruta, Hatillo, Sucre and Chacao, all of which are in the state of Miranda.

⁵³ Special Law on the Organization and Regime of the Capital District. Published in the Official Gazette No. 39,156 of April 13, 2009.

Government of the Capital District.⁵⁴ Under the new law, important powers, buildings, and resources were removed from under the Mayor's control and transferred to the new Office of the Head of Government of the Capital District.⁵⁵ The Head of Government is not elected by the people; instead, the President of the Republic has the authority to appoint the Head of Government to perform executive government functions in a territorial political unit of the Republic, and can remove that Head of Government at will. On April 14, 2009, through Decree No. 6.666,⁵⁶ the President of the Republic named Jaqueline Faría as the Capital District's Head of Government.

77. According to the information the Commission has received, the new Capital District Law directly affects the authorities of the Metropolitan Mayor of Caracas, by naming, by free designation of the President of the Republic, a higher authority like the Head of Government of Caracas, upon whom the Metropolitan Mayor must depend. The Metropolitan Mayor has been stripped of virtually all his authorities, such as administration of the public coffers, preparation and execution of development plans, and supervision of the decentralized government entities of the capital district.

78. The Special Law on the Transfer of Resources and Properties Temporarily Administered by the Caracas Metropolitan District to the Capital District was issued on May 4, 2009.⁵⁷ This law created the machinery for transferring the properties and financial assets of the Office of the Metropolitan Mayor to the Office of the Head of Government of the Capital District. Its Article 2:

declares the organic and administrative transfer and the dependencies, entities, autonomous services, other forms of functional administration, and the resources and property of the Metropolitan District of Caracas are assigned to the Capital District [...]. All of the resources and goods acquired by reason of the provisional and transitory execution of these powers by the Metropolitan District of Caracas will be transferred to the Capital District, except for those that have been transferred to the National Executive [...].

79. Similarly, it has come to the attention of the IACHR that on August 25, 2009 the Law of the Metropolitan Two Tier Municipal System was enacted.⁵⁸ Through this law, the Special Law on the System for the Metropolitan District of Caracas (published in the Official Gazette 36906 of March 2000) has been repealed. According to information of the National Assembly, with the publication of this law "the misleading denomination Metropolitan District of Caracas has ceased. Even when it served a transitory purpose it did not satisfy the spirit, purpose, and reason of the above Article 18. The denomination Metropolitan Area has emerged by virtue of its special characteristics."⁵⁹

⁵⁴ It is also worth noting that the creation of an office of head of the capital city government, appointed at the discretion of the President of the Republic, was part of the proposed constitutional amendment that was rejected in the December 2, 2007 referendum.

⁵⁵ The Mayor of Metropolitan Caracas, Antonio Ledezma, filed an action seeking protective relief from this law; the Supreme Court declared the action inadmissible on the grounds that the Mayor did not have the authority to argue that he was defending the collective rights of the people of Caracas.

⁵⁶ Decree No. 6.666 published in Official Gazette No. 39.157.

⁵⁷ Special law on Transfer of the Funds and Property Temporarily Administered by the Caracas Metropolitan District to the Capital District, published in the Official Gazette No. 39.170 of May 4, 2009.

⁵⁸ Published in the Official Gazette No. 39,276 of October 1, 2009.

⁵⁹ National Assembly of the Bolivarian Republic of Venezuela. Press clipping: *Sancionan Ley Especial Régimen Municipal a Dos Niveles del Área Metropolitana* (Law on the Special Municipal Regime of a Two-Tier

80. The two tiers of government referred to in this Law are: the metropolitan level, formed by an executive body and a legislative body, whose jurisdiction comprises the entire metropolitan district; and the municipal level, formed by an executive body and a legislative body of each participating municipality of the metropolitan area, with municipal jurisdiction. With respect to the control of the Metropolitan Area Government, it is provided that the Metropolitan Mayor must submit accounts to the legislative organ and his investment budget must be approved by the Metropolitan Legislative Commission, replacing the Metropolitan Council, which shall be composed of the presidents of the respective legislative councils.

81. It is provided that the metropolitan level should not have executive competence; rather, its powers are those of planning and coordination. The Metropolitan Mayor shall have the following powers: to present to the metropolitan council the plans for budgetary income and expenditures, to administer the Metropolitan Public Revenue, to publish bylaws, to undertake the representation of the metropolitan area, to lay down the decrees provided for in the legal system and the regulations which amplify the bylaws, and to enter into contracts and agreements for the supply of public services with the municipalities in the metropolitan area.

82. With respect to the Special Law on the Organization and Management of the Capital District, in its observations on the present report the State indicated that this legislation was motivated by strategic reasons of governability. It stated that this law made it possible to comply with a constitutional mandate according to which the Metropolitan District of the City of Caracas is a municipal administrative entity, and cannot be confused with an autonomous federal territory. It clarified that the Capital District was not eliminated by the creation of the Metropolitan District and that the organization of this autonomous federal entity would overcome the absence of the definition of the powers among the various levels of government that until now have confused their conduct with other entities of the municipal government.⁶⁰

83. With reference to the Special Law on the Transfer of Resources and Properties Temporarily Administered by the Caracas Metropolitan District to the Capital District, the State reported, in its observations to the present report, that this law completes the transition of the Federal District to the Metropolitan District of Caracas, in a manner that defines the proceedings for the transfer of all the administrative, fiscal, and governmental functions temporarily held by the Metropolitan District of Caracas to the Capital District. The State emphasizes that the special transitory powers of the Metropolitan District of Caracas were only granted for a period of one year, and that the Special Law on the Organization and Management of the Capital District was created eight years ago.⁶¹

84. In its observations to the present report the State also referred to the Law of the Metropolitan Two Tier Municipal System. It stated that this law is intended to develop the constitutional precept of elaborating a law that would allow for the integration of a Metropolitan

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System for the Metropolitan Area is Approved). Wednesday, August 26, 2009. Available in Spanish at: http://www.asambleanacional.gob.ve/index.php?option=com_content&task=view&id=22922&Itemid=63.

⁶⁰ Bolivarian Republic of Venezuela. Ministry of Popular Power for Foreign Affairs. State Agent for Human Rights. Observations on the Draft Report *Democracy and Human Rights in Venezuela*. Note AGEV/000598 of December 19, 2009, pp. 26-28.

⁶¹ Bolivarian Republic of Venezuela. Ministry of Popular Power for Foreign Affairs. State Agent for Human Rights. Observations on the Draft Report *Democracy and Human Rights in Venezuela*. Note AGEV/000598 of December 19, 2009, pp. 27-28.

Area in the Bolivarian municipality of Libertador of the Capital District and the municipalities of Baruta, Chacao, El Hatillo, and Sucre, preserving the territorial integrity of the Bolivarian state of Miranda. It added that with this instrument “the equivocal denomination of the Metropolitan District of Caracas will end, since it has fulfilled its transitory purpose and does not respond to the spirit, purpose, and reason of the cited Article 18 [of the Constitution], thus giving rise to the denomination of Metropolitan Area by virtue of its special characteristics, through which it is established that the metropolitan governmental regime is a municipal entity for coordination of the administration of public policies related to the powers assigned to it under this law.”⁶²

85. The Commission was also told that the governors of Miranda and the Metropolitan Mayor would no longer have authority over hospitals and clinics within their jurisdictions. It was also reported that rulings of the Supreme Court of Justice had foreclosed the possibility of establishing plans to regulate vehicular traffic, such as the “*pico y placa*” system. Additionally, the Metropolitan Mayor was allegedly impeded from administering five buildings assigned to the Office of the Metropolitan Mayor, while the governor of Táchira was prevented from taking office for almost two months.

86. To protest everything that had happened, the Mayor of Metropolitan Caracas went on a hunger strike from July 3 to 8, 2009. One of the purposes of the hunger strike was to demand that the Ministry of Finance and the Head of Government of the Capital District comply with the obligation to transfer the funds needed to pay the wages and salaries of the employees of the Office of the Metropolitan Mayor.

87. The governors of the states of Miranda, Zulia, Nueva Esparta, Carabobo, and Táchira find themselves in a similar predicament. They told the Commission that shortly after taking office, the “organs of the National Government began to carry out a state policy of arbitrarily stripping them of their authorities through measures and actions that ignored the will of the people.”⁶³

88. In December 2008, the newly-elected regional officials began their terms of office. On March 17, 2009, a partial amendment of the Organic Law on Decentralization, Delimitation and Transfer of Government Powers was enacted.⁶⁴ Under the amendment, powers that had once been vested in governors were transferred to the President of the Republic. These included upkeep, administration, and use of national roads and highways, as well as ports and airports used for commercial transportation and shipping.⁶⁵ This was despite the fact that Article 164 of the Venezuelan Constitution, which spells out the functions and powers of the states, specifies that these

⁶² Bolivarian Republic of Venezuela. Ministry of Popular Power for Foreign Affairs. State Agent for Human Rights. Observations on the Draft Report *Democracy and Human Rights in Venezuela*. Note AGEV/000598 of December 19, 2009, p. 31.

⁶³ Letter from the governors of the states of Miranda, Zulia, Nueva Esparta, Carabobo and Táchira and from the Mayor of the Caracas Metropolitan District to the Secretary General of the Organization of American States, July 15, 2009.

⁶⁴ Law on Partial Amendment of the Organic Law on Decentralization, Delimitation and Transfer of Government Authorities, published in Official Gazette No. 39.140 of March 17, 2009.

⁶⁵ The amendments were in response to a Supreme Court of Justice ruling that ordered the Decentralization Law revised.

powers are in the exclusive purview of the states.⁶⁶ It also failed to take into account that the administration of highways, ports, and airports was a major source of the states' revenues.

89. Between March and April of 2009, a military occupation of numerous ports and airports took place, mainly in regions whose governors are members of the opposition. The assets making up the infrastructure for preserving, administering, and using the national highways and roads, bridges, tunnels, farm roads, and toll booths reverted to the president.

90. The information the Commission received indicates that with the amendments to the Organic Law on Decentralization and the Organic Law on the Public Administration, among others, regional authorities of the opposition have been stripped of their substantive powers, and those that they were elected to discharge have been abridged. The IACHR was also told that the objective of this measure is to economically choke off political adversaries and to reduce their revenue stream. Both the governors and the Metropolitan Mayor told the Commission that they are being denied the means to legitimately perform the functions and duties of their offices.

91. In its observations on the present report, the State indicated that the modifications to the various legal instruments referring to the powers and the scope of the responsibility of the Metropolitan District and its mayor is a situation that had to occur after the elections of 2008, regardless of who was elected.⁶⁷ It emphasized that the modifications of the responsibilities were not carried out as a means of neutralizing the powers of opposition authorities because the same responsibilities apply to the governors and mayors belonging to the government's party; therefore, it cannot be alleged that these are measures that violate the principle of equality and non-discrimination.⁶⁸

92. The right to vote means that citizens are able to decide for themselves and freely elect, under general conditions of equality, those who will represent them in taking decisions on public affairs; political participation by exercising the right to be elected means that citizens can nominate themselves as candidates under conditions of equality, and that they can occupy and exercise elective office if they are able to win the necessary number of votes.⁶⁹

93. In light of the foregoing, if the modifications of powers are carried out with the aim of neutralizing the powers of authorities from the opposition, this modification could constitute a restriction of the exercise of political rights. Accordingly, the Commission urges the State to create adequate conditions and mechanisms to ensure that these political rights can be exercised effectively, while respecting the principles of equality and non-discrimination⁷⁰ and recommends that it adopt the measures necessary to guarantee due respect for the powers of political adversaries who have been elected and invested with the people's mandate.

⁶⁶ It is worth recalling that the draft amendment to the Constitution which the public voted down in the December 2, 2007 referendum, proposed that the adjective "exclusive" be dropped from the list of authorities provided there.

⁶⁷ Bolivarian Republic of Venezuela. Ministry of Popular Power for Foreign Affairs. State Agent for Human Rights. Observations on the Draft Report *Democracy and Human Rights in Venezuela*. Note AGEV/000598 of December 19, 2009, p. 26.

⁶⁸ Bolivarian Republic of Venezuela. Ministry of Popular Power for Foreign Affairs. State Agent for Human Rights. Observations on the Draft Report *Democracy and Human Rights in Venezuela*. Note AGEV/000598 of December 19, 2009, p. 33.

⁶⁹ I/A Court H.R., *Case of Castañeda Gutman v. Mexico*. Judgment of August 6, 2008. Series C No. 184, para. 148.

⁷⁰ I/A Court H.R., *Case of Yatama v. Nicaragua*. Judgment of June 23, 2005. Series C No. 127, para. 195.

2. Reprisals for political dissent

94. The State highlights that the climate in Venezuela is one of political tolerance. According to the State, the political-social tensions created by the polarization have eased considerably with the ratification of President Chávez in the referendum held on August 15, 2004 and the elections that have been held in Venezuela.⁷¹ As an illustration of political tolerance in Venezuela, the State observes the following: “Not content to rest on the laurels of his seven years of political tolerance, in December 2007 the lawful President, Hugo Chávez Frías, issued a decree⁷² in which he pardoned all those charged with supporting the failed coup attempt.”⁷³

95. Nevertheless, the information by the IACHR continues to show a troubling tendency towards retaliatory actions against persons who make public their disagreement with government policies. This tendency affects both the opposition authorities and the citizens who have exercised their right to express their disagreement with the policies put forth by the government. On some occasions, the reprisals are carried out through state acts, and on others the persecution comes from civil groups that operate at the margin of the law. According to information provided to the Commission, it has gone to the extreme of initiating criminal proceedings against members of the opposition, accusing them of common crimes with the aim of depriving them of their liberty because of their political position.

96. For example, the Commission continues to receive reports indicating that the “Tascón list” is still being used to deny certain persons access to basic services and social welfare programs and to dismiss them or not employ them in private businesses and State agencies.⁷⁴

97. The “Tascón list” came to light when Deputy Luís Tascón, with the Movimiento Quinta República, published on the Web a list of persons who, making use of a constitutional power, filed the petition seeking a referendum to recall President Hugo Chávez Frías in 2004. Publication of this list initially triggered the dismissal of many civil servants, who were fired without receiving their employment benefits.

98. Later, the “Tascón list” became a tool of political discrimination, used to decide the citizen’s relationship to the State in all spheres, and determined whether he or she would participate in economic affairs or in the job market and have access to services. The “Tascón list” was used in different ways in order to deny certain citizens their fundamental rights for having expressed their political preference.

99. The Commission recognizes the fact that on April 15, 2005, the President of the Republic acknowledged that the list was used for political discrimination, to dismiss employees, or

⁷¹ Note from the Venezuelan State to the Commission, dated December 7, 2004.

⁷² Special Decree with the Hierarchy, Value and Force of Law on Amnesty No. 5 No. 5.790. Published in the Extraordinary Official Gazette No. 5.870, December 31, 2007.

⁷³ Speech by Germán Saltron, Human Rights Agent for the Venezuelan State before the Inter-American and International systems, during the hearing held on March 24, 2009, with the Inter-American Commission on Human Rights, during its 134th Period of Sessions.

⁷⁴ See IACHR. *Annual Report 2005*. Chapter IV: Human Rights Developments in the Region, Venezuela, para. 327, which cites various examples of how this list continues to affect broad sectors of society.

block applications for employment, among other things, and he called upon the regional authorities and their supporters to do away with and bury the so-called "Tascón list."⁷⁵

100. However, the Commission notes that the President's call did not come until one year later. It also notes that despite what President Chávez had asked, the list is still being used at the public and private level, as a tool to discriminate against hundreds of persons on political grounds.⁷⁶

101. More disturbing still are the reports that an even more sophisticated tool was created during the 2005 legislative elections, known as the "Maisanta list," which includes not just the names of the persons who signed the presidential recall referendum petition, but also detailed information on the more than 12 million registered voters and their political preferences. The Commission not only views with concern the way in which this list could be used to discriminate against certain persons based on their political opinions, but also considers that its creation affects the guarantee of vote by secret ballot contained in Article 23 of the American Convention on Human Rights.

102. As was stated previously, the Commission has received allegations that the opening of criminal proceedings is being used to intimidate political opponents. As an example of this, the IACHR learned of the case of Manuel Rosales, former governor of the western state of Zulia, who was President Chávez's main rival in the 2006 elections and who went on to become mayor of Maracaibo. According to public reports, in 2008, Manuel Rosales became the subject of an investigation into alleged acts of corruption while in the governor's seat. The allegations included the charge that Rosales had embezzled several million dollars to acquire farmland and properties in his native region and in Miami. Rosales was charged on December 11, 2008, based on a July 19, 2007 report by the Office of the Comptroller General, which investigated his sworn statements of net worth since 2004 and found funds that he allegedly could not account for.

103. While the Commission recognizes the State's efforts to combat acts of corruption, it observes that the opening of a case against Manuel Rosales could be linked to pressures from the executive branch. According to reports in the press, just weeks before the regional elections, on October 20, 2008, the President of the Republic had said that he was "determined to put Manuel Rosales behind bars. Persons of that ilk ought to be in prison, not governing a state. He ought not to be on the loose."⁷⁷ Manuel Rosales, for his part, alleged that the central government had contrived a

⁷⁵ In the words of President Chávez: "This episode is behind us now. If anyone resorts to the list in order to make a personnel decision about someone, he or she is carrying the past into the present and perpetuating situations that we have moved beyond. [...] The famous list certainly played an important role at a given point in time, but that's over now. We call upon all our citizens to build bridges. I say this because some letters have been sent to me that lead me to believe that in some quarters the Tascón list is still being used to determine whether a person will or will not work. Let's bury the Tascón list." (Statement by Venezuelan President Hugo Chávez at the V Mobile Cabinet Meeting, April 15, 2005, in the city of Puerto Ordaz).

⁷⁶ On the Web site <http://www.firmantes.com/index.php> there are complaints from Venezuelan citizens claiming that they have been denied jobs or been dismissed because they signed the petition for a referendum to recall President Chávez and their name appears on the "Tascón list". The media, too, have reported that the Venezuelan petroleum company PDVSA continues to use the Tascón list to dismiss employees who signed the petition for the referendum to recall President Hugo Chávez in 2004. See: *Noticiero Digital.com. Denuncian que bajan sueldos a obreros de contratistas petroleras expropiadas* (Complaints of reduced salaries for workers of expropriated petroleum company-contractors). May 21, 2009, available in Spanish at: <http://www.noticierodigital.com/?p=32188>.

⁷⁷ BBC: *Venezuela/gobierno: "Rosales huyó"* (Venezuela/government: "Rosales fled"). April 7, 2009. Available in Spanish at: http://www.bbc.co.uk/mundo/america_latina/2009/03/090406_0029_venezuela_rosales_huida_mf.shtml; El

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scandal as a means to oust him from the political scene in Venezuela. Manuel Rosales fled to Peru, where he was granted political asylum in April 2009.

104. The case of Francisco Usón Ramírez, who held various public offices⁷⁸, including Minister of Finance, is also illustrative.⁷⁹ Mr. Usón Ramírez is a person who is critical of the State's performance, who expressed both in his capacity as an active member of the military and as a retired military member the disagreements he had with the exercise of the public administration by the government and the performance of the armed forces. Mr. Usón presented his resignation as Minister of Finance on April 11, 2002 because of his disagreements with the President and with members of the high military command.

105. As a result of certain declarations made by Mr. Usón during a television interview about facts that were the subject of controversy and public debate at that time, criminal proceedings were initiated against him in the military jurisdiction for the crime of insult to the National Armed Forces. On May 22, 2004, Mr. Usón Ramírez was deprived of his liberty and, almost six months after this order was issued, on November 8, 2004, the First Tribunal of Judgment of Caracas (Tribunal Primero de Juicio de Caracas) sentenced him to a prison term of 5 years and 6 months, along with the accessory penalties of political disqualification for the duration of the sentence and loss of the right to reward. Mr. Usón Ramírez was deprived of his liberty during the entire military criminal proceedings and remained imprisoned for three years and seven months, until he was granted conditional liberty.

106. On July 28, 2008, the Inter-American Commission submitted an application to the Inter-American Court of Human Rights in the case of Francisco Usón Ramírez, against Venezuela, alleging its international responsibility in relation to the rights to freedom of thought and expression, personal liberty, and judicial guarantees and protection. In the framework of a public hearing before the Inter-American Court in the city of Santo Domingo, Dominican Republic, on April 1, 2009, the representative of the State declared that:

it is not possible to accept that the Commission presents the expressions and political analysis of General Usón as a democratic and innocuous exposition, when in reality it is subversive discourse with value judgments that constitute insult or offense to, or contempt for, the National Armed Forces [...]. Pardon what could be seen at a glance as intemperance, but the Inter-American Commission is

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Espectador. *Alcaldes de Maracaibo y Caracas, en problemas para ejercer* (Mayors of Maracaibo and Caracas have problems carry out their duties). April 8, 2009. Available in Spanish at: <http://www.elespectador.com/impreso/internacional/articuloimpreso135104-alcaldes-de-maracaibo-y-caracas-problemas-ejercer>; *Semana. Piden arresto de alcalde opositor a Chávez* (Arrest of mayor opposed to Chávez requested). March 20, 2009. Available in Spanish at: <http://www.semana.com/noticias-mundo/piden-arresto-alcalde-opositor-chavez/121943.aspx>.

⁷⁸ Presidential Decree No. 1731, published in the Official Gazette of the Bolivarian Republic of Venezuela No. 3.7414 of April 2, 2002, available in Spanish at: <http://www.tsi.gov.ve/gaceta/abril/020402/020402-37414-01.html>; Presidential Decree No. 1732, published in the Official Gazette of the Bolivarian Republic of Venezuela No. 3.7414 of April 2, 2002, available in Spanish at: <http://www.tsi.gov.ve/gaceta/abril/020402/020402-37414-01.html>; Presidential Decree No. 1733, published in the Official Gazette of the Bolivarian Republic of Venezuela No. 3.7414 of April 2, 2002, available in Spanish at: <http://www.tsi.gov.ve/gaceta/abril/020402/020402-37414-01.html>.

⁷⁹ Presidential Decree No. 1690 published in the Official Gazette of the Bolivarian Republic of Venezuela No. 37.392 of February 26, 2002, available in Spanish at: <http://www.tsi.gov.ve/gaceta/febrero/260202/260202-37392-01.html>.

once again trying to hide the seriousness and the delicacy of subversive actions by the Venezuelan opposition for the National Security of Venezuela since president Chávez came to power in 1999. [...] The Commission does not evaluate the declarations of General Usón in context, which goes beyond the spirit and purpose of what can or cannot be crimes of disrespect (*desacato*). The Commission does not consider these facts, and wants to keep the Court from considering them as well. It is necessary, citizen Judges, to find out how these facts occurred, how and where they were expressed, in what historical moment they were produced, to what end and to whom were the expressions of General Francisco Usón and the discourse of the moderator of the program directed.⁸⁰

107. It is clear that Mr. Usón was prosecuted for his expressions and the State considers that these expressions must necessarily be analyzed in the political context in which they were made. According to the State, in this context Mr. Usón is a member of the opposition to the current government. In the judgment of the Commission, the State's position confirms that ambiguous norms and standards were used with the objective of detaining and prosecuting Mr. Usón for his political opposition.

108. On November 20, 2009, the Inter-American Court issued its judgment in the case of *Usón Ramírez v. Venezuela*, and declared that the State violated, with prejudice to Mr. Usón: the principle of legality and the right to freedom of thought and expression; the right to judicial guarantees and the right to judicial protection; and the right to personal liberty. These rights are recognized in Articles 9 and 13, 8 and 25, and 7 of the American Convention, respectively, all in relation to Articles 1.1 and 2 of the Convention. Additionally, it decided that the State had not complied with its duty to adopt domestic legal dispositions, as stipulated in Article 2 of the American Convention, in relation to its Articles 9, 13.1, 13.2, and 8.1.⁸¹ In its observations on the present report, the State indicated that "in reference to the case of the coup-seeking General Francisco Usón Ramírez, [...] we must only say that the Inter-American Court lost the small amount of credibility it had in the State of Venezuela when it agreed with General Usón for political, rather than legal, reasons."⁸²

109. The Commission has received complaints by persons who assert that they have been subjected to criminal proceedings because of their political opinions. Additionally, the IACHR has received information from various organizations that present lists of persons who, they allege, are or have been under arrest because their ideas supposedly threaten the established political system. Various organizations coincide in affirming that political reasons have determined the initiation of criminal proceedings against certain persons and that they were detained under very deficient conditions, without access to the same rights as other persons deprived of their liberty and without the guarantees to ensure due process in their trials. Included among persons considered by different organizations to be political prisoners are journalists, persons detained in the context of

⁸⁰ Declarations of the Representative of the State of Venezuela before the Inter-American Court of Human Rights. Public Hearing in the case of *Usón Ramírez v. Venezuela*, held on Wednesday, April 1, 2009 in Santo Domingo, Dominican Republic. Also in the final pleadings of the State submitted to the Court in a communication by the State on May 11, 2009 and sent by the Court to the IACHR on May 26, 2009 (REF: CDH-12.554/107), pp. 31-33.

⁸¹ I/A Court H.R., *Case of Usón Ramírez v. Venezuela*. Judgment of November 20, 2009. Series C No. 207.

⁸² Bolivarian Republic of Venezuela. Ministry of Popular Power for Foreign Affairs. State Agent for Human Rights. Observations on the Draft Report *Democracy and Human Rights in Venezuela*. Note AGEV/000598 of December 19, 2009, p. 36.

social demonstrations, persons allegedly linked to the events of April 2002, representatives of political parties, business leaders, and dissidents in general⁸³.

110. During the hearing on the situation of human rights in Venezuela, the State indicated that the list of supposed political prisoners was made up of “Venezuelans, some of whom are accused of acts of corruption, others of acts of terrorism, as well as repressive police chiefs, all of them prosecuted by competent tribunals. None of the persons mentioned is being prosecuted or imprisoned by order of President Chávez, as occurred during the times that the Acción Democrática and COPEI parties were governing.”⁸⁴

111. The Commission also observed with concern how, in September, October, and November 2009, students from all over the country went on a hunger strike to demand the release of those considered to be political prisoners, as well as to demand an on-site visit of the IACHR to Venezuela. In particular, the students considered that in the last few years, but especially in the last few months, an escalation in judicial, prosecutorial, and police repression has broken out against those identified as dissidents or opponents for the simple fact of validly exercising their constitutional rights to think differently and to manifest disagreement against any expression or arbitrary act of power and for lawful exercise of their right to free expression of their opinions and ideas. As a consequence, this has resulted in hundreds of citizens being persecuted and subjected to unjust criminal trials; many of them have been deprived of their liberty on no legitimate grounds whatsoever.⁸⁵

112. Finally, it concerns the Commission that expressions of political intolerance by the public authorities have sometimes been echoed among civil groups, some of which take them to the extreme and act at the margin of the law as violent groups to intimidate those who are considered enemies of the government’s political program. As an example of the foregoing, the Commission has learned that the Metropolitan Mayor of Caracas was not only stripped of virtually all his authority, but is also the target of an aggressive campaign of harassment, threats, insults, and intimidation. The Commission also received allegations that indicated the existence of a series of attacks on staff of the

⁸³ According to PROVEA, there were 16 victims in detention for political reasons in the period of 2008-2009 covered by its Annual Report. (PROVEA. Annual Report 2009, pp. 283 and 288). The organization FUNDEPRO sent the Commission a document that identified 14 cases of persons deprived of their liberty allegedly for political reasons; these cases involved over 30 persons. (the document is available at <http://www.fundepro.com.ve/fundepro/PDF/encarte%202009.pdf>). On September 11, 2009, the organization Venezuela Awareness Foundation sent the Commission a list detailing 32 cases of persons deprived of liberty allegedly for political reasons. (The list is available at: <http://www.venezuelaawareness.com/Presos/indexpresos.asp>). The students who held hunger strikes outside the OAS offices in Venezuela have sent letters to the IACHR detailing 27 cases of persons deprived of liberty in Venezuela, supposedly for political reasons (Notes of September 27, 2009 and November 27, 2009). On September 24, 2009, Mrs. Nubia Castillo Sarmiento, mother of student Julio César Rivas, sent the IACHR a communication that included a list of 39 cases of persons allegedly detained for political reasons, including her son, who was in detention at that time. Through a note dated October 26, 2009, Mr. Emilio Berrizbeitia, representative of Mr. Eligio Cedeño, sent the Commission information about the proceedings against and the detention of Mr. Cedeño, expressly requesting that his case be included as part of the analysis of the “the situation of political prisoners in Venezuela” in the present report.

⁸⁴ Information presented by the State to the IACHR. *Hearing on the Situation of Human Rights in Venezuela*. 137th Period of Sessions, November 2, 2009.

⁸⁵ Public communiqué of the students, dated September 29, 2009.

Metropolitan Mayor's Office and violent take-overs of installations of the Metropolitan Mayor's Office carried out by violent groups.⁸⁶

113. Among other things, the Commission was informed that staff members of the Secretariat for Citizen Security of the Office of the Metropolitan Mayor of Caracas were violently attacked and forced from the premises on December 22, 2008, by violent groups calling themselves the *Mancomunidad* (a multi-community structure) of Western Caracas Social Organizations, *Codes La India*, and the *Asociación Nacional de Motorizados Bolivarianos Socialista de Venezuela* (National Association of Socialist Bolivarian Motorbike Taxis of Venezuela). According with the information received, on December 18, 2008 the Director of Citizen Security was notified of the decision to force them from the premises through a statement in which these groups justified their action by citing the need to lend "continuity to the transformation toward socialism now underway in the Bolivarian Republic of Venezuela and thereby strengthen all the effort being made by our supreme leader, President and Commander-in-Chief Hugo Rafael Chávez Frías."⁸⁷ These groups allegedly forced the staff to leave, and took possession of the documents and furnishings of that office. According to reports received, the assistance of a prosecutor had been requested to prevent the take-over of the Secretariat, but the request went unanswered. The State reported to the IACHR that it lacks any information regarding any acts of violence that occurred on the premises of the Secretariat for Citizen Security of the Office of the Metropolitan Mayor of Caracas.⁸⁸

114. The Commission was also informed that on January 17, 2009, a group of armed persons who identified themselves as supporters of the President of the Republic allegedly invaded the government house of the Office of the Metropolitan Mayor of Caracas, causing damage and removing documents from the Office of the Director for Citizen Services. It was also reported that on January 23, 2009, certain facilities of the Office of the Metropolitan Mayor came under armed attack and were taken over by the violent groups "La Piedrita" Collective and the "Tupamaro." The State reported that the Office of the Attorney General had launched an investigation into these events.⁸⁹

115. According to the information received, on February 5, 2009 a group of employees from the Ministry of Popular Power for Culture, the Ministry of Popular Power for Housing and Habitat, and the government-run media *Vive TV* and *Ávila TV* had invaded the office of the staff of city hall and the security corps of the Office of the Metropolitan Mayor of Caracas, using violence to force staff to leave their workplace. The information the Commission received makes reference to the violent takeover of the headquarters of the *Guardianes Metropolitanos* (peace officers) on June 11, 2009, at around 11:00 p.m. Information compiled by the Commission indicates that the property remains in the possession of groups allied to the national government.

116. Then, on June 17, 2009, groups dressed in red and identified as supporters of the government allegedly attempted to seize the headquarters of the Foundation for the Care of the Disabled. A number of employees of the Office of the Metropolitan Mayor and of the Capital District were injured in the fray. The Commission was told that all these events had been duly reported to the Office of the Attorney General, but no response has yet been received. The IACHR is therefore calling

⁸⁶ In relation to the acts of aggression against the staff of the Metropolitan Mayor's Office, the IACHR received a request for precautionary measures and the Commission decided to request information from the State regarding the situation.

⁸⁷ Annex "A1" to the request for precautionary measures 65-09 filed before the Commission on March 18, 2009.

⁸⁸ The State's May 18, 2009 response to the Commission's request for information.

⁸⁹ The State's May 18, 2009 response to the Commission's request for information.

for an effective investigation into the acts of violence denounced and for punishment of the guilty parties. It is also urging that all measures necessary to avoid a recurrence of incidents like this be taken.

117. The Commission views with the utmost concern the ways in which, through the application of the law or at its margin, retaliatory measures have been taken to punish, intimidate, and attack those who have expressed their disagreement with the government and urges the State to respect the participation of all sectors in the political life of Venezuela as well as to guarantee the human rights of those who identify with the opposition to the government.

D. The right to peaceful protest

118. The IACHR has emphasized that political and social participation in public demonstrations is essential in the democratic life of societies. The exchange of ideas and social demands as a form of expression presupposes the exercise of interrelated rights, such as the right of citizens to gather and demonstrate, and the right to the unimpeded flow of opinions and information. In this sense, participation in demonstrations, as an exercise of freedom of expression and the right to assembly, has an imperative social interest and forms part of the well-ordered functioning of the democratic system inclusive of all sections of society. Thus, the State must not only refrain from interference with the exercise of the right to peaceful demonstration, but should adopt measures to ensure its effective exercise.⁹⁰

119. One of the aspects of major concern to the IACHR with respect to Venezuela is the situation of the right to peaceful demonstration, and particularly the excessive use of force in the context of demonstrations and the invocation of criminal offences to detain persons in the context of demonstrations against official policies.

120. In this sense, the Commission notes that in the exercise of the right to peaceful demonstration, violations of the right to life and personal integrity often occur as a result of the excessive use of state force, as well as due to the actions of violent groups. Also, the Commission observes with concern how, in Venezuela, the official response to peaceful demonstrations has been characterized by the criminalization of social protest through the criminal prosecution of the persons involved, thereby distorting the application of the criminal laws of the State. This situation leads to a particular concern, since repression and sentences of detention for those participating in protests has the effect of dissuading social actors from participating in peaceful demonstrations.

121. The Commission has received information indicating the existence of “a State policy oriented at repressing social protest in Venezuela through various means.” The information received by the Commission refers to an increase in the number of demonstrations suppressed, in the number of criminal proceedings initiated against persons for exercising their right to peaceful protest, and in the number of fatalities from violence in the context of demonstrations, both at the hands of the state security forces and of violent groups like the Colectivo La Piedrita, Alexis Vive, and Lina Ron and her followers.⁹¹

122. On the other hand, the State declared that in Venezuela the right to peaceful protest is guaranteed, but that a demonstration ceases to be peaceful “when it impedes the exercise

⁹⁰ In this regard, see: IACHR. *Report on the Situation of Human Rights Defenders in the Americas*. March 7, 2006, para. 55. See also IACHR. *Preliminary Observations of the Visit to Honduras*. August 21, 2009.

⁹¹ Information provided by the petitioners to the IACHR. *Hearing on the Judicialization of Social Protest*. 137th Period of Sessions, November 2, 2009.

of other rights of citizens.” As examples, the State cited to the Commission the closure of streets or that the protesters are armed or cause damage to public or private property. “In the case of this conflict of interests, and the illegal actions of these groups as well as the violation of constitutional rights by the protesters, the State must act to guarantee peace and security; it is in this framework that the implicated persons are detained and submitted to criminal proceedings in all the states.”⁹² The State emphasized to the IACHR that the protests are not the objects of criminal proceedings, but rather the violations that go beyond the limits of the peaceful and the collective.

123. The State also rejected allegations that the repression of peaceful protest is a policy of the State and in that respect declared that never before have there been so many demonstrations and so much political participation in Venezuela. In this regard, the information provided by civil society to the IACHR coincides in highlighting a substantial increase in the number of demonstrations. According to the information received, there were 1,521 demonstrations in the period of 2006-2007, 1,763 in the period of 2007-2008, and 2,893 in the period of 2008-2009. Nevertheless, the information received also shows an increase in the number of demonstrations suppressed.⁹³

124. Although the Commission has been unable to obtain officially published figures regarding the number of demonstrators subject to criminal prosecution for facts occurring during demonstrations, the information received points out that in the past five years, around 2,240 people have been subjected to criminal proceedings and some were subjected to a reporting regime after being accused of participation in demonstrations.⁹⁴ In declarations to the press, the Executive Director of the Venezuelan Program for Human Rights Education-Action (PROVEA by its Spanish acronym) explained that the *campesinos'* movement Jirahara, whose members are Government supporters, reports that there are 1,507 *campesinos* subject to reporting regimes. For its part, the Attorney General's Office, in its information newsletters, reports that some 300 students are in the same situation, and that solely in the context of the protests at the closure of *Radio Caracas Television* (RCTV) in 2007, 120 students were prosecuted. With regard to the trade unions, the government supporter Unete and the Confederation of Venezuelan Workers (CTV, by its Spanish acronym) report that around 150 workers have been prosecuted for demonstrations. To these figures can be added an unknown number of defendants among community leaders prosecuted for demonstrations seeking improvements in their quality of life or public safety. In this sense, he expressed that “the Attorney General's Office and the control judges (*jueces de control*) have been turned into instruments of repression of the social struggle.”⁹⁵

125. In the same sense, figures released by union, *campesino*, and student leaders underline that on July 12, 2009, there were 2,200 persons in Venezuela subject to reporting regimes before the courts for exercising their right to demonstrate. According to this source, a large majority of those subjected to these procedures belong to workers', *campesinos'*, students', and popular

⁹² Information provided by the State to the IACHR. *Hearing on the Situation of Human Rights in Venezuela*. 137th Period of Sessions, November 2, 2009.

⁹³ Information provided by the petitioners to the IACHR. *Hearing on the Judicialization of Social Protest*. 137th Period of Sessions, November 2, 2009.

⁹⁴ Information provided by the petitioners to the IACHR. *Hearing on the Judicialization of Social Protest*. 137th Period of Sessions, November 2, 2009.

⁹⁵ El Universal. *Protestar es un Crimen* (Protesting is a Crime). Sunday, May 17, 2009. Available in Spanish at http://politica.eluniversal.com/2009/05/17/pol_art_protestar-es-un-crim_1389114.shtml. Also: El Universal. *Contabilizan más de dos mil procesados por protestar* (More than two thousand charged for protesting). September 1, 2009. Available in Spanish at: http://www.eluniversal.com/2009/09/01/pol_art_contabilizan-mas-de_1546954.shtml.

community associations. For this reason “a group of social and human rights organizations and student and academic groups, as well as diverse individuals, promote[d] a campaign to defend the right to protest, [...] as well as to condemn the initiation of prosecutions, the use of hit men, and other mechanisms to criminalize the exercise of this right, such as judicial orders that prohibit the ability to assemble and to strike in state-owned companies.”⁹⁶

126. A recent report published by the organizations *Espacio Público* and PROVEA⁹⁷ points out that during the whole of 2008, 1,602 public demonstrations took place, while between January and August 2009, the total figure was 2,079 public demonstrations, which is around double the total demonstrations in 2008. The report also emphasizes that between January and August 2009 a total of 130 suppressed demonstrations were recorded resulting in 461 injuries and 440 people arrested. It adds that the most common demands are those related to employment rights as well as those pertaining to the quality of life, such as basic services, water, roads, and security. On the other hand, political demands, which include protests both from the opposition as well as in support of the government, ranks in sixth place among the reasons for demonstrations, notwithstanding the fact that this type of protest receives more publicity and circulation.

127. In accordance with the report cited, only 7% of the 2,079 protests involved violent conduct resulting from clashes involving demonstrators and the State security forces, as well as with other private groups. Thus, in the eight months of the study 139 repressed demonstrations were reported, in sixty of which there were injuries and in 52 there were arrests. It was clear that demonstrations for political demands were those most likely to be suppressed. The organizations that issued the report confirm that the ineffective conduct of the security bodies often causes protests carried out peacefully to turn violent, either because of acts of provocation by the security forces or for not exhausting the chance to employ dialogue to control provocations.

128. In its observations on the present report, the State expressed that “it is logical that if there are more illegal demonstrations, there are bound to be more demonstrations repressed.” It also indicated that it is possible that the number of *campesinos* subject to presentation regimes has increased “because they have carried out invasions of rural lands.” Additionally, it added that “it is possible that that the number of students subject to presentation regimes has increased, because they have been manipulated by some leaders of some universities and political parties in order to use them in illegal demonstrations without any justification.”⁹⁸

129. *Espacio Público* and PROVEA emphasize in their report that between January and August 2009, 6 people were killed in public demonstration incidents, four of them due to the

⁹⁶ Press Release of the organizations: *Programa Venezolano de Educación-Acción en Derechos Humanos* (PROVEA); *Unidad Socialista de Izquierda* (USI); *Corriente Clasista Unitaria Revolucionaria y Autónoma* (CCURA); *Acción Solidaria*; *Convite*, *Periódico El Libertario*; *Espacio Público*; COFAVIC; *Colectivo Socialismo Revolucionario* (CSR); *Liga de Trabajadores por el Socialismo* (LTS); *Movimiento Solidaridad Laboral*; *Sinergia*; *Comité de Víctimas contra la Impunidad Lara*; *Indubio Pro Reo*; and *Domingo Alberto Rangel. Campaña por la defensa del derecho a la protesta social (Campaign for the defense of the right to social protest)*. July 12, 2009. Available in Spanish at: <http://www.derechos.org/ve/videos/campana-por-la-defensa-de-la-protesta-social-71>.

⁹⁷ *Espacio Público* and PROVEA. *Manifestaciones públicas. Enero – Agosto 2009* (Public Demonstrations. January – August, 2009). Second Quarterly Report on protests in Venezuela. Available at: <http://www.derechos.org/ve/proveaweb/wp-content/uploads/Manifestaciones-2do-cuatrimestre-20092.pdf>.

⁹⁸ Bolivarian Republic of Venezuela. Ministry of Popular Power for Foreign Affairs. State Agent for Human Rights. Observations on the Draft Report *Democracy and Human Rights in Venezuela*. Note AGVE/000598 of December 19, 2009, p. 38.

behavior of state security bodies⁹⁹ and two more for which responsibility could not be attributed directly to State agents.¹⁰⁰

130. Among those most affected by acts of repression and violence connected with demonstrations are students. The Commission notes that students led various demonstrations during the final months of 2007 against the proposed reform of the Venezuelan Constitution, and these protests resulted in the deaths of, and injuries to, some students. The Commission also took account of students that died during protests in 2008. One example is the case of Douglas Rojas Jiménez, a student at the University of the Andes, in the state of Mérida, who was fatally injured in the head during a demonstration, presumably by a state police officer, on July 10, 2008. Another example is the case of Marvin Cepeda, a sixteen-year-old student who died on November 3, 2008, during a student demonstration in Bolívar state, which was repressed by officials of the state police and the National Guard.

131. In 2009, too, there were various injuries and deaths among Venezuelan students, during events not yet clarified by judicial authorities. In particular, the breaches of the rights to life and personal integrity occurred during the suppression of protests in the first months of 2009, in which students were demanding the reopening of the Permanent Electoral Register in order that around 1,500 new voters could participate in the referendum for constitutional change, as well as in the protests of July, August, and September 2009, linked to the enactment of the new Organic Law on Education.

132. One of the most emblematic cases occurred on April 28, 2009, when Yuban Antonio Ortega Urquiola, president of the Center for Students of the University Technical Institute of Ejido, in the state of Mérida, died during a demonstration in the area around that Institute, in which the student was seriously injured in the head by a firearm. In relation to these facts, in September 2009, criminal proceedings were initiated against three agents of the Merida state police force for the alleged commission of complicit intentional homicide with malice, unwarranted use of a firearm, and breaches of international principles.¹⁰¹

133. In relation to cases of death and injury during demonstrations, the Commission reiterated to the State that the use of force is a last resort that should only be used to prevent a situation of more gravity than that which prompted the State's reaction. Thus, the legitimate use of public force requires, *inter alia*, that this is both necessary and proportionate to the situation, in other words, that it should 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.

⁹⁹ Alexander García and Pedro Suárez, Mitsubishi Motors' workers, involved in a demonstration because of the firms' refusal to renew their collective contract; Yuban Antonio Ortega, a university student of the state of Mérida; and José Gregorio Fernández, neighbor of the state of Anzoátegui, who demanded proper housing.

¹⁰⁰ Jonathan Rivas Rivas in a political demonstration in El Tigre, state of Anzoátegui and Maite Mendible, neighbor of the Brión municipality in the state of Miranda, who demanded better safety in the community during the closure of the public highway.

¹⁰¹ Office of the Attorney General. Press note: *A juicio tres policías de Mérida presuntamente implicados en muerte de estudiante universitario* (Three police officers from Mérida charged in death of university student). September 2, 2009, available in Spanish at: <http://www.fiscalia.gov.ve/Prensa/A2009/prensa0209III.htm>.

Therefore, in order to be considered acceptable according to international parameters, the level of force used by State agents should not be greater than that which is absolutely necessary.¹⁰²

134. With particular reference to the use of force during demonstrations, the Commission points out that it is possible to impose reasonable limits on demonstrators to preserve the peace as well as to disperse demonstrations that are turning violent. Nevertheless, the action of the security forces must not discourage the right of assembly, but rather protect it, so that the dispersal of a demonstration must be justified by the duty to protect persons.¹⁰³

135. On the other hand, as has been highlighted above, sometimes deaths and injuries during demonstrations are not attributable to the use of public force, but to clashes between demonstrators and to the use of violence by violent groups. An example of the former occurred on June 13, 2009 in the village of El Tigre, in the state of Anzoátegui, when, in the course of a campaign convoy called "Globopotazo," aimed at raising money to pay the fines imposed on *Globovisión*, the political militant Jhonathan José Rivas Rivas, aged 31, died, while another person suffered gunshot wounds and a third received blows to the head. The demonstrators noted having been attacked by a group of armed civilians, supposedly identified as government supporters. In relation to these facts and upon request of the Office of the Attorney General, this resulted in the arrest order of nine individuals for the alleged commission of the crimes of complicit public intimidation and criminal association as provided for and prohibited by the Penal Code and the Law against Organized Criminality, respectively.¹⁰⁴

136. In this respect, the Commission considers it relevant to recall that the protection of the right to assembly entails not only the obligation of the State not to interfere with its exercise, but also the duty to adopt, in certain circumstances, positive measures to ensure its exercise, for example, by effectively protecting the participants in a demonstration from physical violence by persons holding divergent views.¹⁰⁵ In addition, the State shall be under an obligation to properly investigate the incidents of violence between individuals during protests or demonstrations, in order to avoid the recurrence of such incidents.

137. According to what has been reported to the Commission, the disproportionate use of force and detention measures in the context of peaceful protests has reached the extreme that on October 31, 2009, ninety workers in the education sector were detained and mistreated by the Bolivarian National Guard during a hunger strike.¹⁰⁶

138. In addition to the excessive use of force during protests, the right to peaceful demonstration in Venezuela is restricted by the requirement of prior authorization. On this point, the

¹⁰² IACHR. *Report on the Situation of Human Rights Defenders in the Americas*, March 7, 2006, para. 50 and IACHR. *Report on Terrorism and Human Rights*, October 22, 2002, para. 65.

¹⁰³ IACHR *Report on the Situation of Human Rights Defenders in the Americas*, March 7, 2006, para. 63.

¹⁰⁴ Office of the Attorney General. Press Release. *A solicitud del Ministerio Público Privado de libertad otro presunto implicado en hecho donde resultó muerto Jhonathan Rivas en El Tigre* (At request of Attorney General's Office, another suspect detained in relation to events leading to death of Jhonathan Rivas). June 25, 2009. Available in Spanish at: <http://www.fiscalia.gov.ve/Prensa/A2009/prensa250611.htm>.

¹⁰⁵ IACHR. *Report on the Situation of Human Rights Defenders in the Americas*, March 7, 2006, para. 50 and IACHR. *Report on Terrorism and Human Rights*, October 22, 2002, para. 359.

¹⁰⁶ Information provided by the petitioners to the IACHR. *Hearing on the Judicialization of Social Protest*. 137th Period of Sessions, November 2, 2009.

State told the IACHR¹⁰⁷ that according to the Law on Political Parties, Public Assemblies, and Demonstrations,¹⁰⁸ it is necessary to request a permit or authorization from the authorities in order to demonstrate, providing information about the location where the demonstration will take place, those responsible for organizing it, etc. The State indicated that this permits it to take the measures necessary to protect the lives of the demonstrators themselves and that it is perfectly compatible with that which is established by Articles 15 and 22 of the American Convention on Human Rights.

139. In this respect, the IACHR notes that Article 38 of the cited Law on Political Parties expressly states that “[t]he organizers of public meetings or 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, with indication of the planned place or itinerary, day, time, and general objective pursued. The authorities, in the same act of receiving the notice, must stamp on the copy that they give to the organizers the acceptance of the location or itinerary and time.” Thus, from the reading of this provision, the IACHR notes that there is a legal requirement to notify the authorities, but not to request their authorization or clearance.

140. Nevertheless, the obligation of prior clearance to hold demonstrations has become a settled practice by the Venezuelan authorities. In fact, the State has pointed out to the IACHR that “all activity of political or social demonstrations fulfilling the legal requirements, i.e., the relevant authorization issued by the appropriate authority, which is an indispensable requirement to hold any demonstration in the national territory, is protected by the authorities.”¹⁰⁹ In its observations on the present report, the State emphasized that “due to the need for prior permits from the State of Venezuela to carry out demonstrations, it has been possible to avoid more deaths and injuries during demonstrations.”¹¹⁰ The Commission observes that there is a contradiction between what the legislation establishes and what has become a practice or policy of the State with respect to the necessary requisites for holding a peaceful demonstration.

141. Furthermore, the IACHR has been informed of the existence of discrimination at the moment of granting permits, in that groups that demonstrate in favor of government policies receive authorization to demonstrate in locations in which groups that protest against the government are not authorized to demonstrate. In this respect, the Commission was informed that those who are against the government are not allowed at the Miraflores Palace, the seat of the Venezuelan government.¹¹¹ In the same sense, the Commission was informed that there is discrimination at the moment of controlling public protests, to the point that police control and use

¹⁰⁷ Information provided by the petitioners to the IACHR. *Hearing on the Judicialization of Social Protest*. 137th Period of Sessions, November 2, 2009.

¹⁰⁸ Official Gazette No. 27.725 of April 30, 1965.

¹⁰⁹ Response of the Venezuelan State to draft Chapter IV on Venezuela, received by the IACHR on December 21, 2007, p. 47.

¹¹⁰ Bolivarian Republic of Venezuela. Ministry of Popular Power for Foreign Affairs. State Agent for Human Rights. Observations on the Draft Report *Democracy and Human Rights in Venezuela*. Note AGVE/000598 of December 19, 2009, p. 40.

¹¹¹ In its observations on the present report, the State clarified that this was due to the fact that its laws establish security zones where public gatherings are not permitted. Bolivarian Republic of Venezuela. Ministry of Popular Power for Foreign Affairs. State Agent for Human Rights. Observations on the Draft Report *Democracy and Human Rights in Venezuela*. Note AGVE/000598 of December 19, 2009, p. 41.

excessive force against those who protest against the government but do not limit those who demonstrate in favor of official policies in the same way.¹¹²

142. On this point, the Commission considers that the State may regulate the use of public space by setting, for example, the requirements of prior notice, but the regulations must have the goal of adequately protecting those participating in demonstrations as well as the adoption of relevant measures to ease the exercise of the right to demonstrate without obstructing in a significant way the day-to-day operation of the activities of the rest of the community. Thus, the regulation of the use of public space should not involve requirements that excessively restrict the exercise of the right to peaceful demonstration and its purpose must not be to create a basis for prohibiting assembly or demonstration.¹¹³ Furthermore, the requirement of prior notification must not be confused with the requirement of prior authorization granted as a matter of discretion. It should be remembered that Article 15 of the American Convention protects the right of peaceful assembly, without arms, and establishes that the exercise of this right may only be subject to the restrictions laid down by law that are necessary in a democratic society in the interest of security, or to protect public health or morals or the rights or freedoms of others.

143. On the other hand, beyond the excessive use of force exercised on occasion to suppress protests, and the requirement of prior authorization to hold demonstrations, the Commission observes that frequently the State applies criminal laws to punish, for various reasons, those who exercise their right to peaceful demonstration. In this respect, the organizations *Espacio Público* and PROVEA organizations have observed a progressive increase in the suppression of demonstrators and in criminal trials for exercising the right to protest, including instances of demonstrations of a peaceful nature¹¹⁴. These organizations affirm that this is a tendency that has strengthened during 2009 and that “the Attorney General’s Office, the criminal courts, and the security bodies have established a triangle of power to prosecute those persons who exercise the right to peaceful protest.”¹¹⁵

144. Although the Constitution of Venezuela establishes, in Article 68, the right of citizens to demonstrate, peacefully and without arms, with no other requirements but those laid down by law, the IACHR observes that this right has in practice been restricted by means of the application of sanctions contained in laws issued during the government of President Chávez, such as the Penal Code,¹¹⁶ the National Security Law,¹¹⁷ the Law for the Defense of Persons regarding Access

¹¹² Information provided to the Commission by student leaders who met with the Rapporteur for Venezuela on October 30, 2009 at the Commission’s headquarters in Washington, D.C.

¹¹³ In this regard, see: IACHR. *Report on the Situation of Human Rights Defenders in the Americas*, March 7, 2006, paras. 55-63.

¹¹⁴ In its observations on the present report, the State indicated that the statistics presented to the Commission by the organizations *Espacio Público* and PROVEA are not reliable since they were obtained from press reports. Bolivarian Republic of Venezuela. Ministry of Popular Power for Foreign Affairs. State Agent for Human Rights. Observations on the Draft Report *Democracy and Human Rights in Venezuela*. Note AGVE/000598 of December 19, 2009, p. 38.

¹¹⁵ *Espacio Público* and Provea. *Manifestaciones públicas. Enero – Agosto 2009* Public demonstrations. (January-August 2009). Second Quarterly Report on Protests in Venezuela. Available in Spanish at: <http://www.derechos.org/ve/proveaweb/wp-content/uploads/Manifestaciones-2do-cuatrimestre-20092.pdf>.

¹¹⁶ Published in the Official Gazette No. 5.768 Extraordinary Issue, of April 13, 2005.

¹¹⁷ Published in the Official Gazette No. 37.594 of December 18, 2002.

to Goods and Services,¹¹⁸ and the Special Law of Popular Defense against Stockpiling and Boycotting and any other conduct affecting the consumption of food or products subject to price controls.¹¹⁹

145. In spite of the State not providing any information in response to the Commission's request with respect to the scope of interpretation of the rules criminalizing protesting, established by the reforms introduced in 2005 into the Penal Code,¹²⁰ it has pointed out that "the illegitimate exercise of the right to demonstration and assembly, pertaining to violent or unauthorized demonstrations, implies the practice of actions contrary to the rights of the majority of the population. These transgressions to the social order are, in general, incorporated as unlawful criminal conducts in the Venezuelan Penal Code."¹²¹

146. The norms of the Penal Code used to initiate criminal proceedings against protestors are those contained in Article 218, which punishes with a prison term of from one month to two years those who use violence or threats to oppose any public official who is carrying out his or her official duties, or those who have been called upon to support him or her; Article 296, which punishes with prison terms of from three to six years any person who, against the law, imports, manufactures, carries, wields, supplies, or hides explosive or flaming substances or artifacts; Article 357, which punishes with prison terms of from four to eight years those who set any obstacles on the circulation routes of any means of transportation, who open or close communications on such routes, who make any false signals or carry out any other action in order to create a danger of an accident; Article 473, which punishes with prison terms of from one to three months those who in any way destroy, annihilate, damage, or deteriorate things, furniture, or property that belongs to another person; and Article 474, which punishes with prison terms of up to four years those who commit the acts set forth in Article 473 using violence or resistance to authority, or in a group of ten or more persons.

147. Also, among the provisions of the Penal Code most frequently applied to punish those participating in demonstrations are those contained in Article 284, which prohibits the incitement to commit a crime; Article 286, which prohibits anyone from publicly stirring up unlawful disobedience or hatred of some inhabitants by others or encouraging the commission of an act that the law considers a crime, in that it endangers public order; Article 297, which prohibits the firing of weapons or the throwing of explosive or incendiary substances against persons or property with the sole object of creating terror in the public; and Article 358, which characterizes as a crime the blocking of a highway and increases the penalties if several persons take part in such a crime. The form in which the last norm is applied is of particular concern considering that street closures represent the most common method of protesting in Venezuela.

148. With regard to the Organic Law on National Security, the norms applied to participants in protests are those contained in Article 53, which requires every person to comply with all requirements made by the organs of the State in all matters relating to the security and defense of the Nation; and in Article 56, which sanctions with a prison term of 5 to 10 years anyone who

¹¹⁸ Decree No. 6.092 of May 27, 2008.

¹¹⁹ Decree No. 5.197 of February 16, 2007.

¹²⁰ Questionnaire for the analysis of the situation of human rights in Venezuela. August 13, 2009, question 49: What has been the scope of the interpretation of the norms on *desacato* (disrespect), defamation, *injuria* (insult), instigation, outrage, *calumnia* (slander), and criminalization of protest, established by the 2005 reforms to the Penal Code?

¹²¹ Note from the State AGEV/(no number) dated October 14, 2009. Ref.: Julio Rivas, Richard Blanco, and Workers from the Metropolitan Mayor's Office.

organizes, supports, or incites activities within the security zones with the aim of disrupting or affecting the organization or functioning of military installations, public services, basic industries or businesses, or the economic life of the country. This law also contemplates the designation of certain spaces as security zones and spaces of public utility. In this way the right to strike in a basic industry may be criminally sanctioned as a non-compliance with the special regime for zones of security.

149. Furthermore, Articles 138, 139, and 141 of the Law for the defense of persons in accessing goods and services are applied, which prohibit with a prison term of 2 to 10 years the stockpiling, boycott, and withdrawal of goods declared as of prime importance and whose marketing has been confined to the national territory, as well as Articles 20, 24, and 25 of the Special Law for public defense against stockpiling, boycotting, and any other conduct affecting the consumer of food or products subject to price controls, in which stockpiling and boycotting are punishable with prison terms of 2 to 6 years. These provisions establish that the penalties shall be doubled when the offenses are aimed at affecting the collective security of the Nation, destabilizing democratic institutions, or producing panic that threatens the social peace.

150. Thus as a result of applying these measures in Venezuela, whosoever exercises the right to protest is subject to criminal prosecution. Some of these norms, although they have not been applied in concrete cases, inhibit some persons from participating in social protests for fear of possible criminal repercussions. In that line, the State has expressed that “the duty to safeguard order and public security of goods and persons obliges the State to intervene in cases of violent demonstrations that affect social coexistence. [...] For that reason, when, during a violent protest, acts are committed that affect social order and that have been established as crimes under Venezuelan laws, the authorities in charge of public order and security are obliged to apprehend the authors of these acts and hand them in to the authorities of the Office of the Attorney General.”¹²²

151. The IACHR recognizes the power and obligation of the State to sanction those who commit unlawful acts provided for in its criminal laws and understands that the Venezuelan criminal laws do not sanction peaceful protests *per se*. Nevertheless, the Commission observes that the excessive use of criminal sanctions applied to those who legitimately exercise their right to protest could have as an effect the criminalization of protests and, as a consequence, intimidate those who want to exercise this means of participating in Venezuela’s public life in order to demand their rights.

152. In this regard the IACHR’s Rapporteurship on Freedom of Expression has pointed out that:

the question is whether the application of criminal sanctions is justified under the Inter-American Court’s stance whereby such a restriction (i.e. criminalization) must be shown to satisfy an imperative public interest that is necessary for the functioning of a democratic society. Another question is whether the imposition of criminal sanctions is the least harmful way of restricting the freedom of expression and right of assembly exercised through a demonstration in the streets or other public space. It should be recalled that in such cases, criminalization could have an intimidating effect on this form of participatory expression among those sectors of society that lack access to other channels of complaint or petition, such as the traditional press or the right of petition within the state body from with the object of the claim arose. Curtailing free speech by

¹²² Note from the State AGEV/(no number) dated October 14, 2009. Ref.: Julio Rivas, Richard Blanco, and Workers from the Metropolitan Mayor’s Office.

imprisoning those who make use of this means of expression would have a dissuading effect on those sectors of society that express their points of view or criticism of the authorities as a way of influencing the processes whereby state decisions and policies that directly affect them are made.¹²³

153. The Commission has taken note of numerous cases in which demonstrators have been subjected to criminal trials by virtue of their participation in protests. A landmark case which clearly illustrates the situation occurred during the demonstrations which took place for four days before the closure of the media outlet *Radio Caracas Television* (RCTV) in May 2007, in consequence of which, in accordance with official figures of the Office of the Attorney General, 251 people were arrested, among them 30 children and adolescents. Of these, 130 were taken before the criminal courts for guarantees (*tribunales penales de control*). These courts granted precautionary measures substituting liberty with periodic reporting in favor of 88 persons and ordered preventive detention in the cases of 9 persons.¹²⁴

154. Another example of the criminalization of social protesting occurred in March 2008 when a group of workers of the *Siderúrgica del Orinoco* (SIDOR) Company carried out a peaceful demonstration seeking better working conditions and were held back by the National Guard and State Police using tear gas, firearms, and rubber bullets, causing various injuries. On that occasion, 53 workers were arrested and the Office of the Attorney General charged them with the alleged commission of the offence of blocking a public highway laid down in Article 357 of the Penal Code, inasmuch as the demonstration led to the closure of the street connecting the Municipalities of Heres and Caroní of the state of Bolívar. In addition, the Attorney General's Office requested that the court grant provisional measures of periodic reporting and prohibiting an unauthorized absence from their place of residence or from the territorial jurisdiction determined by the court, according to provisions established by Article 256 of the Organic Code of Criminal Procedure. Control Judge No.3 agreed to the commission of the crime and to continuation of the investigation, but granted those accused unconditional bail as they had not been individually charged. The Attorney General's Office appealed the decision, alleging that it was contradictory, groundless, and inconsistent.¹²⁵

155. Likewise, in the course of its hearings, the Commission received information according to which, in 2008, three students were arrested for photographing a rally in support of the Government and were brought before a military tribunal and charged with spying.¹²⁶

156. The IACHR was also informed that on June 3, 2008, 17 teachers¹²⁷ were detained in the General Police Headquarters of Miranda, and were accused of disturbing public order by blocking highways. These teachers had participated in a meeting arranged by the Director of

¹²³ IACHR. *Annual Report 2008*. Chapter IV: Human Rights Developments in the Region. Cuba, para. 223.

¹²⁴ PROVEA. *Annual Report October 2006/September 2007: Situation of Human Rights in Venezuela*, p. 310.

¹²⁵ Office of the Attorney General. Press Release: *Ministerio Público imputó a 53 ciudadanos aprehendidos durante manifestación en Puerto Ordaz* (Attorney General's Office charges 53 citizens apprehended during demonstration in Puerto Ordaz). Caracas, March 16, 2008. Available in Spanish at <http://www.fiscalia.gov.ve/Prensa/A2008/prensamarzo2008.asp>

¹²⁶ Information supplied to the IACHR by petitioners. *Hearing on the Situation of Institutions and the Guarantee of Human Rights in Venezuela*. 133rd Period of Sessions, October 28, 2008.

¹²⁷ Ricardo Martínez, Zoraida Mijares, Coromoto Zapata, Nairín Zapata, Cora Caro, Jackeline González, Ramón Suárez, René Zapata, Carmen del Zucco, Jorge Rondón, Marbella Jiménez, Nairis Escalona, Róger Jeampier, Carmen Gómez, Freddy Urbina, Ricardo Álvarez.

Education of Miranda, in the Emma Soler Complex.¹²⁸ The teachers were demonstrating well away from public areas after being present at a meeting aimed at discussing the educators' collective contracts. Police officers of the State of Miranda proceeded to clear the street using force and tear gas and then arrested them. The teachers were charged with the crime of blocking a public highway, laid down and sanctioned in Article 357 of the Penal Code and they were released under provisional measures requiring them to present themselves to the judicial authorities every 30 days. At the same time they were prohibited from taking part in any further public demonstrations.¹²⁹

157. In addition, the Commission was informed that on August 23 2008, Tomás Becerra, a member of the Orinoco audiovisual cooperative; Kelys Amundaray, from the organization *Homo et Natura*; María de los Ángeles Peña, a member of the group *Mujer Quilombo*; and Mariluz Guillén, a member of the Support Network for Justice and Peace, were arrested by officers of Squad No. 36 of the National Guard as they were participating in a humanitarian convoy called "A Hymn to Peace" which was taking food and medicine to the indigenous community of Yukpa, in the state of Zulia. As it was reported, the first person to be arrested was Tomás Becerra, who was injured by the officers. Thereafter, the other three people tried to intervene to stop Becerra from being beaten and were themselves immediately arrested also. The available information shows that Becerra, Guillén, Mundaarain, and Peña were granted a provisional measure in substitution of detention and were later charged with intentional wounding, resisting the police, and damaging State property.¹³⁰

158. Also, during a hearing the IACHR was informed of the prosecution in January 2009¹³¹ of four human rights defenders who were arrested and criminally charged after attempting to participate in a symbolic action in support of indigenous communities in the sierras of Perijá. These communities are at present in the process of reclaiming their lands. As the IACHR was informed, the National Guard not only blocked the way of people participating in the meeting but attacked one of them and then detained and brought before the national courts those who intervened to prevent the violence.

159. In February 2009, three university students were detained for leading an unauthorized demonstration in the area surrounding the seat of the Government of the State of Aragua. Two of them were prosecuted for the alleged offence of resisting the police, laid down and prohibited in Article 218 of the Penal Code, while a third was prosecuted for the same offence, in addition to inciting public unrest, set out in Article 285 of the same code. The students were released under provisional conditions obliging them to report to the judicial authorities every 30 days.¹³²

¹²⁸ Response of COFAVIC to the questionnaire sent by the IACHR on November 10, 2008 to gather information on compliance with the recommendations in the *Report on Human Rights Defenders in the Americas* of 2006.

¹²⁹ Office of the Attorney General. Press Release: *Por el delito de obstrucción de las vías públicas Ministerio Público imputó a 17 ciudadanos aprehendidos durante manifestación en Los Teques* (Attorney General's Office charges 17 citizens apprehended during demonstration in Los Teques with crime of obstructing public roads). June 5, 2008. Available in Spanish at: <http://www.fiscalia.gov.ve/Prensa/A2008/prensa0506IX.htm>.

¹³⁰ Response of COFAVIC to the questionnaire sent by the IACHR on November 10, 2008 to gather information on compliance with the recommendations in the *Report on Human Rights Defenders in the Americas* of 2006.

¹³¹ Information supplied to the IACHR by petitioners. *Hearing on the Situation of Institutions and the Guarantee of Human Rights in Venezuela*. 134th Period of Sessions, March 24, 2009.

¹³² Office of the Attorney General. Press Release: *Tras protestar sin el debido permiso a las puertas de la Gobernación Ministerio Público imputó a tres estudiantes en Aragua por resistencia a la autoridad y instigación pública* (Attorney General's Office charges three students with resistance of authority and public instigation after

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160. In May of 2009, eleven workers of a company contracted by the state-owned company *Petróleos de Venezuela* were deprived of their liberty as a result of the peaceful taking of the headquarters of the Ministry of Popular Power for Labor. The Office of the Attorney General charged them with the crimes of aggravated damages to public property, illegitimate deprivation of liberty, aggravated resistance of authority, active obstruction of the functions of legally constituted institutions, insult to public functionaries, instigation of crime, aggravated intentional personal injuries, use of children to commit crimes, unlawful association, and conspiracy to commit crimes.¹³³

161. In addition, on August 26, 2009, eleven workers of the Office of the Metropolitan Mayor were detained. With other work colleagues, they were in a demonstration to demand employment security and tried to join with those attempting to submit a constitutional motion before the Supreme Court of Justice challenging the Law of the Metropolitan Two Tier Municipal System, which, they believed, would leave eight thousand unemployed due to economic cuts. The Mayor's Office workers were arrested in the vicinity of the National Pantheon while protesting, which, according to the Attorney General's Office, caused breaches of the public order and injury to an officer of the Metropolitan Police. On the other hand, the Mayor's Office workers reported that they had been attacked by police officers. The eleven workers remained in detention until October 29, 2009 and have been charged with offences of aggravated wounding, obstruction of public highways, resisting arrest, and using electronic devices to interfere with signals from security equipment.¹³⁴

162. On September 24, 2009, the Secretary General of the Syndicate of the company *Ferrominera del Orinoco* and mid-level leader of the PSUV (United Socialist Party of Venezuela, by its Spanish acronym) was deprived of liberty and later the First Tribunal of Control of Criminal Jurisdiction of Puerto Ordaz, state of Bolívar, ordered house arrest against him for having led a strike. The Attorney General's Office charged him with the crimes of unlawful association, instigation of crime, restriction of the freedom to work, and lack of compliance with the special regime of security zones established in the Organic Law of the Nation.¹³⁵

163. From information in newspapers, the Commission took note that on September 29, 2009, a group of workers had gathered in the Las Morochas zone in the Costa Oriental del Lago, state of Zulia, to protest that none of them had been included in the payroll of Venezuela Petroleum (PDVSA, by its Spanish acronym). Around midnight, a convoy had arrived with approximately 40 officers of the National Guard who violently removed the petroleum workers. On that night, no arrests were reported, but at 7 o'clock in the morning of September 30, members of the Army arrested the 17 workers at their homes. According to the information available, the workers were

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protesting without permit outside the doors of the Office of the Governor of Aragua). February 6, 2009. Available in Spanish at: <http://www.fiscalia.gov.ve/Prensa/A2009/prensa0602VI.htm>.

¹³³ Information provided by the petitioners to the IACHR. *Hearing on Judicialization of Social Protest*. 137th Period of Sessions, November 2, 2009.

¹³⁴ Office of the Attorney General. Press Release: *Privados de libertad 11 hombres por alteración de orden público en las inmediaciones del Panteón Nacional* (11 men detained for alteration of public order in are of the National Pantheon). August 28, 2009. Available in Spanish at: <http://www.fiscalia.gov.ve/Prensa/A2009/prensa2808IX.htm>. The Commission was also informed of these events through Note from the State AGEV/(no number) dated October 14, 2009, received October 19, 2009. Ref.: Julio Rivas, Richard Blanco, and Workers from the Metropolitan Mayor's Office.

¹³⁵ Information provided by the petitioners to the IACHR. *Hearing on the Judicialization of Social Protest*. 137th Period of Sessions, November 2, 2009.

released when representatives of the Attorney General's Office realized that they had been beaten by members of the National Guard.¹³⁶

164. The Commission has also followed closely the wave of detention orders issued relating to involvement in a march against the Organic Law on Education, which took place on August 22, 2009. On that day, massive demonstrations were held with significant participation of the student movement in which people both for and against the above law were marching at the same time. The authorities had established that the opposition marchers would start their demonstration at the intersection of Francisco de Miranda Avenue and Centro Lido, and finish in Libertador Avenue, in the building serving as the Headquarters of Venezuelan National Telephone Company, LLC (Cantv, by its Spanish acronym). However, at the end of the march certain persons apparently overturned the barriers erected by the security forces causing violent clashes between the demonstrators and the authorities in charge of public order.

165. That day, while the Ministry of Popular Power for Interior Relations and Justice made statements on the events that took place at the end of the demonstration, demonstrator Pablo Emilio Palacios was arrested and charged with the offense of resisting the police and incitement to commit crimes. Also in relation to this demonstration, on August 27, an arrest warrant was issued against the leader of the *Alianza al Bravo Pueblo* party, Oscar Pérez, who requested asylum in Peru¹³⁷ on the grounds that the accusation against him is grounded on political persecution. Oscar Pérez had called for a demonstration on August 22, 2009 against the Education Law and was charged with the alleged participation in the offenses of instigation and association to commit crimes.

166. Richard Blanco, Prefect of Caracas, was also detained for the alleged commission of the same crimes. The Prefect was arrested on August 26 in the afternoon, by members of the Corps for Scientific and Criminal Investigations, pursuant to an arrest order relating to his alleged responsibility for the injuries caused to a member of the Metropolitan Police during the opposition demonstration on August 22. According to what was reported to the IACHR, the police officer was dressed in civilian clothing and infiltrated the march and a group of protestors demanded that he leave, which led Richard Blanco to intercede to prevent the crowd from injuring the police officer. On August 29, Prefect Richard Blanco was charged with grievous bodily harm and instigation to commit crimes. The Attorney General indicated that the Prefect of Caracas had been detained for allegedly having injured a citizen and not for participating in the protest called by political sectors. She explained that, because of the demonstration, the commissioned prosecutors initiated an investigation on the grounds that during the march "violent acts, injuries to persons, attacks against private and state property, subversion of public order, and blocking of public highways" occurred and, pursuant to the investigation, the participation of the Prefect of Caracas in these acts is presumed.¹³⁸

¹³⁶ El Universal. *Alertan que la GN golpeó y detuvo a 17 petroleros en Zulia* (GN [National Guard] allegedly beat and detained 17 oil workers in Zulia). October 1, 2009. Available in Spanish at: http://www.eluniversal.com/2009/10/01/eco_art_alertan-que-la-gn-go_1592857.shtml.

¹³⁷ The former governors of Zulia, Aragua and Yaracuy, Manuel Rosales, Didalco Bolívar, and Eduardo Lapi, respectively, as well as the former president of the Confederation of Venezuelan Workers (CTV, by its Spanish acronym), Carlos Ortega, are also in that country.

¹³⁸ Office of the Attorney General. Press Release: *Ministerio Público sólo persigue los hechos delictivos. Fiscal General afirmó que todos los venezolanos tienen derecho a manifestar de manera pacífica* (Attorney General's Office only prosecutes criminal acts. Attorney General affirms that all Venezuelans have the right to demonstrate peacefully). September 1, 2009. Available in Spanish at: <http://www.fiscalia.gov.ve/Prensa/A2009/prensa0109.htm>. Also: FGR: *Detención de Prefecto de Caracas se efectuó tras orden de aprehensión solicitada por el Ministerio Público* (FGR [Attorney General of the Republic]:

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167. Due to the demonstration of August 22 against the Organic Law on Education, on Monday, September 5, Julio César Rivas Castillo, a student of the University Alejandro Humboldt of Carabobo, was arrested at his home in the housing complex El Trigal, in Valencia. Rivas Castillo, 22 years of age, has denounced various irregularities in relation to his detention, such as: an excessive number of police officers at the time of his detention; his transfer to Caracas without his family being informed; interrogation without the presence of his lawyers; lack of contact with his lawyers for at least fifteen hours after his detention; being held for twelve hours inside a cell; lack of contact with his family for fifteen days after his detention; being held in a high security facility; and being held in a cell with convicts.¹³⁹ According to information provided by the State, in several opportunities Julio César Rivas had “challenged the police authority, hindering their work, unlawfully opposing the police commission, even to the point of launching tear gas against them.” Therefore, the State emphasizes that his detention is not due to his participation in the mentioned public protest, but due to his violent attitude, by putting social peace and public order at risk, violating citizens’ guarantees. Rivas was accused of leading clashes during the reported march and was charged for allegedly committing the crimes of resisting authority by using generic weapons, referred to in Article 218 paragraph 2 of the Criminal Code in relation to Articles 428 and 273 *ejusdem*; public incitement to disobey laws, provided for in Articles 283 paragraph 1 and 285, both of that substantive text; and incitement to civil war, laid down in Article 293 of the same Code.¹⁴⁰

168. Even though Julio César Rivas and the others detained because of their participation in the demonstrations of August 22 have been released, their arrests set off a number of protests and hunger strikes in various cities of the country, demanding the liberation of those considered political prisoners, as well as an on-site visit of the IACHR to Venezuela. Those who joined the hunger strike requested that the Commission visit the country to verify, among other situations, the alleged police and judicial repression of those who exercise the right to demonstrate peacefully.¹⁴¹

169. In light of the information received, on September 29, 2009, the Commission, pursuant to the powers and obligations established in Articles 41 and 43 of the American Convention, requested information from the State on this situation and in particular on the legal framework applicable to the detention of persons in the context of demonstrations or public protests against official policies and on the state of investigations initiated against persons detained in application of that legal framework.¹⁴²

170. The Commission considers that the manner in which participation in demonstrations is being penalized may have a chilling effect on a form of participative expression of society. The IACHR has already indicated that the imposition of prison sentences on those who utilize

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Detention of Prefect of Caracas carried out after order for apprehension requested by Attorney General’s Office). August 27, 2009. Available in Spanish at: <http://www.fiscalia.gov.ve/Prensa/A2009/prensa2708.htm>.

¹³⁹ Information provided personally by Julio César Castillo Rivas during a meeting with the Rapporteur for Venezuela held on October 30, 2009 at the headquarters of the Commission in Washington, D.C..

¹⁴⁰ Note from the State AGEV/(no number) dated October 14, 2009. Ref.: Julio Rivas, Richard Blanco, and Workers from the Metropolitan Mayor’s Office.

¹⁴¹ Public Communiqué of the students, dated September 29, 2009.

¹⁴² The pertinent parts of the State’s response to this request have been incorporated in several paragraphs of this section in reference to the Note from the State AGEV/(no number) dated October 14, 2009. Ref.: Julio Rivas, Richard Blanco and Workers from the Metropolitan Mayor’s Office.

this form of expression has a deterrent effect on those sectors of society that express their points of view or their criticism of the government as a way of affecting the decision-making process and the state policies that affect them directly.¹⁴³ In this sense, the Commission calls upon the State to abstain from using criminal provisions with the purpose of restricting the exercise of the right to peaceful demonstration.

171. Finally, the Commission observes that through their expressions and statements, high-ranking authorities have also pronounced against those who exercise their right to peaceful demonstration, causing the population to abstain from participating in protests to defend their rights due to fear of reprisals. An example of speech directed at questioning demonstrations was delivered by President Chávez in Campo, Carabobo on January 17, 2009. The President stated the following:

[...] Minister of the Interior, throw gas at them and dissolve any *guarimba*, we cannot start showing weakness as a government, we cannot. I make responsible the Vice President, the Ministry of the Interior, and the Commander of the National Guard [...]. We cannot let anyone interrupt an avenue or a street or a highway, these small groups guided by the empire, I tell you and give the order once and for all [...] From now on, to whoever burns a car, burns trees, blocks a street, just throw good gas at them and put them in jail. If they do not do it, I shall remove the responsible chiefs, I shall remove them all [...]¹⁴⁴.

In its observations on the present report, the State indicated that this speech “was justified by the situations of violence and instability provoked in the country during the years 2002, 2003, and 2004, by the same political sectors that have manipulating the students during 2009.”¹⁴⁵

172. In the same line, on August 28, 2009, by reason of the demonstrations called to protest against the Organic Law on Education, the Attorney General of the Republic announced that she would seek the prosecution of all those persons who undermine the tranquility and public peace in the country. She affirmed that certain persons look for “any reason to demonstrate, any reason to create chaos, what they want is to destabilize,” and in this sense she considered that their conduct fits perfectly with the offence of civil rebellion, which, in accordance with Article 143 of the Penal Code, establishes a prison sentence of between 12 and 24 years for those who behave in public in a hostile manner against the legally constituted or elected government in order to oust it or to prevent the exercise of its mandate. She stated that these would be the consequences for “those persons who react in a hostile manner against a legally-constituted government.”¹⁴⁶

173. In the light of the information contained in the previous paragraphs, the Commission reiterates to the State of Venezuela that it is its duty to guarantee in social protests taking place pursuant to the right to assembly and peaceful protest, that the rights to life, personal

¹⁴³ IACHR. *Annual Report 2005*. Office of the Special Rapporteur for Freedom of Expression. Chapter V, para. 97.

¹⁴⁴ El Universal, *Presidente instruye a autoridades para disolver protestas estudiantiles* (President instructs authorities to break up student protests). January 17, 2008. Available in Spanish at: http://www.eluniversal.com/2009/01/17/pol_ava_presidente-instruye_17A2196347.shtml.

¹⁴⁵ Bolivarian Republic of Venezuela. Ministry of Popular Power for Foreign Affairs. State Agent for Human Rights. Observations on the Draft Report *Democracy and Human Rights in Venezuela*. Note AGVE/000598 of December 19, 2009, p. 43.

¹⁴⁶ Bolivarian News Agency. *FGR anunció que se solicitará el enjuiciamiento de quienes alteren la paz pública* (FGR [Attorney General] announced that she will seek prosecution of those who alter public peace). August 28, 2009. Available in Spanish at: <http://www.abn.info.ve/noticia.php?articulo=196611&lee=1>.

integrity, and personal liberty of all demonstrators is protected. According to what the Commission has established in prior opportunities, the State has the right to impose reasonable limitations on demonstrations, in order to ensure that these are of a peaceful nature or to contain those persons who are demonstrating in a violent manner. However, in exercising this power, the acts of its agents should be limited to employing the measures that are the safest and least harmful to persons, in view of the fact that the dispersal of a demonstration must be justified by the duty to protect them. Congruently, the legitimate use of public force in the above situations, presupposes, necessarily, that it is proportional to the legitimate aim to be pursued, reducing to a minimum the possibility of causing personal injury and loss of human life.¹⁴⁷

174. Additionally, the right to assemble and demonstrate peacefully implies that the state authorities should refrain from impeding the exercise of this right, as well as anticipate measures to prevent third parties from impeding it. This means that the State must adopt the necessary measures in order that demonstrations can take place in an effective and peaceful manner, including measures of rerouting traffic and police protection of demonstrations and gatherings, should this prove necessary.

175. Also, taking into account the high level of protection merited by the right to assembly and freedom of expression as rights that materialize civic participation and the control of the actions of the State in public matters, the State must refrain from applying criminal law provisions that have as their object the restriction of the exercise of the right to peaceful demonstration. In its observations on the present report, the State expressed “that each time the sectors aligned with the opposition to the government attempt to alter the public order in violation of the laws of the Republic, they shall be subjected to judgment, and this cannot be interpreted as a restriction of the right to peaceful demonstration, nor as a criminalization of legitimate mobilization and social protest.”¹⁴⁸

176. The Commission considers it opportune to recall that the effective exercise of democracy demands as a precondition the full exercise of the rights and fundamental freedoms of the citizens. Thus, the criminalization of legitimate social mobilization and protest, be it through the direct repression of the demonstrators, or through the initiation of judicial proceedings, is incompatible with a democratic society where people have the right to express their opinions.¹⁴⁹

177. In light of what the Commission has analyzed in the present chapter with respect to political rights and participation in public life in Venezuela, particularly in relation to the restrictions on access to and exercise of political rights under conditions of equality, the reprisals against members of the opposition, and the criminalization of peaceful demonstrations, the IACHR urges the State of Venezuela to adopt the measures necessary to guarantee unconditional respect for the political rights of citizens and authorities of all political leanings, as well as to ensure the full exercise of rights that are closely linked to political participation, such as freedom of association and expression, according to the norms of the American Convention.

¹⁴⁷ IACHR. *Preliminary Observations on the Visit to Honduras*. August 21, 2009 and IACHR. *Access to Justice and Social Inclusion: The Road to the Strengthening of Democracy in Bolivia*. June 28, 2007, para. 415.

¹⁴⁸ Bolivarian Republic of Venezuela. Ministry of Popular Power for Foreign Affairs. State Agent for Human Rights. Observations on the Draft Report *Democracy and Human Rights in Venezuela*. Note AGVE/000598 of December 19, 2009, p. 44.

¹⁴⁹ IACHR. *Report on the Situation of Human Rights Defenders in the Americas*. March 7, 2006, para. 217.

E. Recommendations

178. To guarantee the conditions necessary for the full exercise of political rights, the Commission recommends:

1. To adopt the necessary measures to promote tolerance and diversity in the exercise of political rights, abstaining from fomenting all types of reprisals against ideological dissent.
2. To generate the optimal conditions and mechanisms in order that political rights may be exercised in a meaningful way, respecting the principle of equality and non-discrimination.
3. To adopt the necessary measures to guarantee equal opportunity for access to power for candidates of the opposition.
4. To refrain from requiring the participation of civil servants in government's propaganda campaigns, as well as from applying unwarranted pressure on civil servants at the moment of voting.
5. To adapt domestic law, in particular Article 105 of the Organic Law of the Office of the Comptroller General of the Republic and the National Fiscal Oversight System declaring ineligibility to become a candidate for election, to the provisions of Article 23 of the American Convention.
6. To strengthen due process guarantees in the administrative proceedings of the Office of the Comptroller General of the Republic pursuant to the standards of Article 8 of the American Convention.

179. In order to guarantee the right to peaceful demonstration as a means of social participation and the exercise of the right to assembly and freedom of expression, the IACHR recommends:

1. To adopt the necessary measures to guarantee the protection of the right to life and physical integrity of all demonstrators during social mobilizations.
2. To abstain from all arbitrary and/or excessive use of force during protests.
3. To ensure that measures used to control demonstrations that turn violent are the safest and least injurious to persons and that they are always limited by the principles of legal necessity and proportionality.
4. To investigate and punish any excessive use of force as a method of repression of peaceful protests, as well as any violation to the right to life and physical integrity by individuals in these events, to the effect of ensuring that any excesses do not recur.
5. To abstain from applying criminal provisions having as their object the restriction of the exercise of the right to peaceful demonstration.
6. To adopt measures so that civil servants will refrain from making statements that intimidate those wishing to exercise their right to peaceful protest, threatening to

use severe force or to prosecute them pursuant to criminal provisions establishing prison sentences.

7. To implement all necessary measures to ensure equal treatment for those protesting in favor of or against the government.
8. To comply effectively with the recommendations of the Inter-American Court in its decision in the case of "El Caracazo,"¹⁵⁰ including: a) to take all necessary steps to educate and train all members of its armed forces and its security agencies regarding principles and provisions on protection of human rights and the limits to which the use of weapons by law enforcement officials is subject, even under a state of emergency; b) to adjust operational plans regarding public disturbances to the requirements of respect for and protection of said rights, and to this end to take, among other steps, those required to control actions by all members of security forces in the field of operations to avoid excess; and c) to ensure that, if it is necessary to resort to physical means to face public disturbances, members of the armed forces and security agencies will use only those strictly necessary to control such situations in a rational and proportional manner, respecting the right to life and to humane treatment.

III. INDEPENDENCE AND SEPARATION OF PUBLIC POWERS

180. The observance of rights and freedoms in a democracy requires a legal and institutional order in which laws prevail over the will of the rulers, and in which there is judicial review of the constitutionality and legality of the acts of public power, i.e., it presupposes respect for the rule of law.¹⁵¹ In addition, one of the principles that define the rule of law is the separation of powers and the independence of the branches of government as an essential element in democracy.¹⁵²

181. The State of Venezuela has said that the Constitution of the Bolivarian Republic of Venezuela provides the mechanisms necessary to ensure the independence of the branches of government. Specifically, Title IV, "Public Power," establishes the independence of the country's branches of government and, in the rationale section, sets forth the principle of restrictive competence, whereby those agencies that wield public power may only perform those functions expressly assigned to them by the Constitution and by law.¹⁵³

182. In consideration of that constitutional framework, the Commission will examine whether there are sufficient guarantees in place to ensure the independence of the judiciary from other public powers in Venezuela. In addition, the Commission will assess whether the concentration of executive and legislative authority in a single branch of government, as a result of the legislative

¹⁵⁰ I/A Court H.R., *Case of the Caracazo v. Venezuela*. Judgment of August 29, 2002. Series C No. 95.

¹⁵¹ This position has been stated by the IACHR on repeated occasions. IACHR, *Second Report on the Situation of Human Rights in Peru*, June 2, 2000, Chapter II, para. 1; IACHR, *Report on the Situation of Human Rights in Venezuela*, December 23, 2003, para. 150.

¹⁵² Organization of American States. Inter-American Democratic Charter. Adopted at the first plenary session of the OAS General Assembly, held on September 11, 2001, during the Twenty-eighth Special Period of Sessions, Article 3.

¹⁵³ State's response to the questionnaire analyzing the situation of human rights in Venezuela, August 13, 2009, p. 9.

power granted to the executive branch by the National Assembly, satisfies the guarantees and constraints necessary to prevent abuses of power that could endanger the rights protected by the Convention.

A. The right to an independent judiciary

183. The Inter-American Court has emphasized that one of the main objectives of the separation of powers is to guarantee the independence of judges.¹⁵⁴ Clearly, one essential element in preventing abuses of power by other agencies of the state is a correctly functioning judiciary. An independent judicial branch is vital in overseeing the constitutionality of actions by other branches of government, as well as serving as the agency responsible for administering justice.

184. In recent years the IACHR has paid particular attention to the situation of the administration of justice in Venezuela, particularly through the follow-up report on its 2003 *Report on Venezuela*, the reports contained in Chapter IV of its Annual Reports, the hearings held during its periods of sessions, and the cases it has taken to the Inter-American Court.¹⁵⁵ Through these mechanisms, the Commission has expressed its concern over factors affecting the independence and impartiality of the judiciary, in particular the elevated percentages of judges and prosecutors with provisional tenure and the failure to observe certain procedures set by law and by the Constitution for their appointment and removal. The Commission has also received information on the executive branch's alleged interference in decisions of the judiciary.

185. The Inter-American Commission has established that the guarantees necessary to ensure the correct and independent operation of the judicial branch include the mechanisms whereby judges are appointed, the stability they enjoy in their appointments, and their proper professional training. In addition, the courts must also be independent of the other branches of government—that is, free of all influence, threats, or interference, irrespective of their origin.¹⁵⁶

186. Similarly, according to the jurisprudence of the Inter-American Court and of the European Court, and pursuant to the United Nations Basic Principles on the Independence of the Judiciary,¹⁵⁷ the following guarantees are derived from judicial independence: an adequate

¹⁵⁴ I/A Court H.R., *Case of the Constitutional Court v. Peru*, Merits, Reparations, and Costs, Judgment of January 31, 2001, Series C No. 71, paragraph 73; and *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, paragraph 55.

¹⁵⁵ I/A Court H.R., *Case of Apitz Barbera et al. ("First Court of Administrative Disputes") v. Venezuela*, Judgment of August 5, 2008, Series C No. 182; and I/A Court H.R., *Case of Reverón Trujillo v. Venezuela*, Judgment of June 30, 2009, Series C No. 197.

¹⁵⁶ IACHR. *Report on Terrorism and Human Rights*, October 22, 2002, para. 229.

¹⁵⁷ Adopted by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held in Milan, Italy, August 26 to September 6, 1985, and confirmed by the General Assembly in resolutions 40/32 of November 29, 1985 and 40/146 of December 13, 1985.

appointments process,¹⁵⁸ stability of judges in their positions,¹⁵⁹ and freedom from external pressure.¹⁶⁰ In this chapter, the Commission will deal with those three guarantees in the framework of the right to an independent judiciary.

1. Appointment process of judges and prosecutors

187. An appropriate procedure for appointing members of the judiciary, one that is transparent and that guarantees the equality of candidates, is a fundamental guarantee for judicial independence.

188. Although states can devise a range of procedures for appointing judges, the Inter-American Court has ruled that not all procedures satisfy the conditions that the Convention demands for the correct implementation of a truly independent regime.¹⁶¹ In appointing members of the judiciary, the procedure must not only ensure that candidates meet professional standards and requirements, it must also guarantee equality of opportunities in access to judicial service.

189. The Commission has received information about irregularities in the appointments of judges and prosecutors, the effects of which continue to undermine the guarantees of judicial independence in Venezuela. In the following paragraphs, the Commission will analyze the provisions in force, the failure to hold open public competitions for entry into the judicial career, and the mechanisms used to regularize the situations of judges appointed on a discretionary basis, and it will examine the impact this has had on the independence of the judiciary in Venezuela.

a. Provisions for the appointment of judges

190. The Venezuelan Constitution establishes the independence of the judiciary in Article 254 and, immediately after, in Article 255, establishes that:

Appointments to judicial positions and promotions of judges shall be carried out by means of public competitions to ensure the suitability and excellence of the participants, with selection by the juries of the judicial circuits, in such a manner and on such terms as may be established by law. The appointment and swearing

¹⁵⁸ I/A Court H.R., *Case of the Constitutional Court v. Peru*. Judgment of January 31, 2001. Series C No. 71, para. 75; *Case of Palamara Iribarne v. Chile*. Judgment of November 22, 2005. Series C No. 135, para. 156; and *Case of Apitz Barbera et al. ("First Court of Administrative Disputes") v. Venezuela*. Judgment of August 5, 2008. Series C No. 182, para. 138. European Court of Human Rights. *Case of Campbell and Fell v. the United Kingdom*. Judgment of June 28, 1984. Series A No. 80, paragraph 78; *Case of Langborger v. Sweden*. Judgment of January 22, 1989. Series A No. 155, para. 32. Principle 10 of the United Nations Basic Principles on the Independence of the Judiciary.

¹⁵⁹ I/A Court H.R., *Case of the Constitutional Court v. Peru*. Judgment of January 31, 2001. Series C No. 71, para. 75; *Case of Palamara Iribarne v. Chile*. Judgment of November 22, 2005. Series C No. 135, para. 156; and *Case of Apitz Barbera et al. ("First Court of Administrative Disputes") v. Venezuela*. Judgment of August 5, 2008. Series C No. 182, para. 138. Principle 12 of the United Nations Basic Principles on the Independence of the Judiciary.

¹⁶⁰ I/A Court H.R., *Case of the Constitutional Court v. Peru*. Judgment of January 31, 2001. Series C No. 71, para. 75; and *Case of Palamara Iribarne v. Chile*, Note, paragraph 156. European Court of Human Rights, *Case of Campbell and Fell v. the United Kingdom*. Judgment of June 28, 1984. Series A No. 80, para. 78; *Case of Langborger v. Sweden*. Judgment of January 22, 1989. Series A No. 155, para. 32. Principles 2, 3, and 4 of the United Nations Basic Principles on the Independence of the Judiciary.

¹⁶¹ I/A Court H.R., *Case of Reverón Trujillo v. Venezuela*. Judgment of June 30, 2009. Series C No. 197, para. 74.

in of judges shall be the responsibility of the Supreme Court of Justice. Citizen participation in the process of selecting and designating judges shall be guaranteed by law. Judges shall be removed or suspended from office only through the procedures expressly provided for by law.

191. Regarding the appointment of the justices of the Supreme Court of Justice, Article 264 of the Constitution provides that:

The justices of the Supreme Court of Justice shall be elected for a single term of twelve years. The election procedure shall be determined by law. In all cases, candidates may be proposed to the Judicial Nominations Committee either on their own initiative or by organizations involved in the field of law. The Committee, after hearing the community's views, will carry out a preliminary selection for presentation to the citizens' branch, which shall then carry out a second pre-selection for submission to the National Assembly, which shall then make the final selection. Citizens may file objections to any of the candidates, for cause, with the Judicial Nominations Committee or the National Assembly.

192. These constitutional provisions are intended to restrict undue interference, ensure greater independence and impartiality, and allow different voices from within society to be heard in the selection of judicial authorities. However, as far back as the year 2002, the Commission expressed concern¹⁶² about the failure to abide by those constitutional provisions. Although the Constitution provides for the existence of a "Judicial Nominations Committee" and a "Committee of the Citizens' Branch for Evaluating Candidacies"¹⁶³ made up of, according to Article 270 of the Constitution, representatives from different sectors of society, the Supreme Court justices¹⁶⁴ were not nominated by those committees but by a law enacted by the National Assembly following the promulgation of the Constitution: the Special Law for the Ratification or Appointment of Officials of the Citizens' Branch and Justices of the Supreme Court of Justice for the First Constitutional Period."¹⁶⁵

193. That Special Law ordered that the Assembly would appoint the Supreme Court justices and other authorities of the citizens' branch, not through the Committee of the Citizens' Branch for Evaluating Candidacies composed solely of representatives of different sectors of society as required by the Constitution, but through a "commission made up of 15 members of the National Assembly, which will serve as the Commission for Evaluating Candidacies" (Article 3), which was established by the same Special Law.

194. In this respect, in its 2003 *Report on the Situation of Human Rights in Venezuela*, the Commission pointed out that the constitutional mechanisms established as guarantees of

¹⁶² IACHR. *Preliminary Observations of the Inter-American Commission on Human Rights upon Concluding its Visit to the Bolivarian Republic of Venezuela*. Appendix to Press Release No. 23/02, May 10, 2002.

¹⁶³ Under Article 273 of the Constitution, the Citizens' Branch comprises the Office of the Human Rights Ombudsman, the Office of the Attorney General, and the Office of the Comptroller General of the Republic.

¹⁶⁴ The same mechanism was used to appoint the Human Rights Ombudsman, the Attorney General of the Nation, and the Comptroller General of the Republic.

¹⁶⁵ Published in Official Gazette No. 37.077, November 14, 2000.

independence and impartiality had not been used to appoint the ranking authorities of the judicial and citizens' branches of government.¹⁶⁶

195. Later, in 2004, the National Assembly enacted the Organic Law of the Supreme Court of Justice¹⁶⁷ in order to "establish the regime, organization, and functioning of the Supreme Court of Justice."¹⁶⁸ According to information received by the Commission,¹⁶⁹ it was decided that for the passage and enactment of this piece of legislation, even though it was an organic law, the qualified majority required by Article 203 of the Constitution to sanction such laws was not necessary. Thus, the Organic Law was approved by a simple majority of the National Assembly's deputies.

196. Article 8 of this Organic Law empowers the National Assembly to appoint Supreme Court justices by a simple majority, should four previous plenary sessions convened for the purpose have failed to attain a two-thirds majority. In addition, the text of the Law increases the size of the plenary of the Supreme Court from twenty (20) to thirty-two (32) justices, which would have enabled a change in the correlation that previously existed between those justices believed to support the government and those believed to favor the opposition.

197. The increase in the number of justices was justified by arguing a need for greater dispatch with the Supreme Court's docket, which is paradoxical given that in his final report, the outgoing President of the Supreme Court of Justice had said that the court was completely up to date with the matters before it.¹⁷⁰ In any event, the increase in the number of justices does not appear to have had an effect on the speed with which the Supreme Court deals with the matters placed before it, as shown by the delays that currently affect its docket, with its chambers failing to attain an efficiency rate of 80% in the resolution of cases.¹⁷¹

¹⁶⁶ IACHR. *Report on the Situation of Human Rights in Venezuela*. December 23, 2003, paras. 178 to 190.

¹⁶⁷ Organic Law of the Supreme Court of Justice, published in Official Gazette No. 37.942, May 20, 2004.

¹⁶⁸ It should be noted that prior to the enactment of the Organic Law of the Supreme Court of Justice, the Commission had expressed its "concern regarding certain provisions set forth in the draft Organic Law of the Supreme Court of Justice; these, were they to become positive law, could have a negative impact on the independence of the Venezuelan judiciary. These provisions deal with the increase in the number of Supreme Court justices; with the granting of powers to the National Assembly whereby it can increase or decrease, by an absolute majority vote, the number of judges in the different chambers of the Supreme Court; and with the empowerment of the Assembly to decree, by a simple majority vote, the revocation of Supreme Court justices' appointments." IACHR, *Report on the Situation of Human Rights in Venezuela*. December 23, 2003, para. 158.

¹⁶⁹ DPLF (Due Process of Law Foundation), International Commission of Jurists, and REVAPAZ (Venezuelan Network of Peace Activists), *Situation of the Judiciary in Venezuela*, document presented to the IACHR at the hearing of the same name held during its 134th Period of Sessions, March 24, 2009. Similarly: Civil Association for Citizen Oversight for Security, Defense, and the National Armed Forces, *Informe sobre la Discriminación Política en Venezuela (2003-2007) Estudio de casos, 2007* (Report on Political Discrimination in Venezuela (2003-2007): Case Study, 2007), pp. 400-401.

¹⁷⁰ Venezuelan Criminal Forum (NGO), *Informe que presenta la Asociación Civil Foro Penal Venezolano a tres años de su Fundación* (Report presented by the Venezuelan Criminal Forum three years after its establishment), June 6, 2008, p. 42.

¹⁷¹ Reported by the President of the Supreme Court of Justice, cited in: PROVEA. *Situación de los Derechos Humanos en Venezuela Informe Anual Octubre 2007/Septiembre 2008* (Situation of Human Rights in Venezuela: Annual Report October 2007/September 2008). December 10, 2008, p. 271.

198. Although it is not up to the Commission to affirm which institutions should intervene in the process of appointing judges, a matter that should be defined by each state in its constitution, the Commission has observed that in Venezuela the provisions for the appointment, removal, and suspension of justices set out in the Organic Law of the Supreme Court of Justice lacked appropriate mechanisms to keep other branches of government from undermining the court's independence or to prevent slight circumstantial majorities from deciding on its composition without prior consultation with society through a broad, transparent debate. The IACHR warned that enabling the justices to be chosen by a simple majority of the National Assembly did away with the requirement of broad political consensus for their election.¹⁷²

199. In accordance with the terms of the Organic Law of the Supreme Court of Justice, in December 2004, a simple majority of the National Assembly, supportive of the government's interests, appointed 49 new justices: 17 regular members of the court, and 32 alternates. The vacancies for regular justices were due in part to the increase in their numbers from 20 to 32 ordered by the Organic Law, combined with the resignation of four justices and the retirement of another. As a result, the 49 newly-elected justices were reported to be politically sympathetic to the government.¹⁷³ *Inter alia*, the justice who had resolved not to prosecute the members of the Armed Forces who participated in the events of April 2002 was replaced, as were the members of the Electoral Chamber who had found in favor of the referendum to repeal the President's mandate. The newly-appointed justices included former legislators who had belonged to the ruling party and the former president of the National Electoral Council.¹⁷⁴

200. Based on the foregoing, the Commission has received information that "the changes made within the judiciary have sought the protection or support of a specific political project, not the consolidation of a transparent and independent judicial system to afford justice and due process to the Venezuelan population in general, without discrimination on social or political grounds."¹⁷⁵ The Commission duly warned that the provisions of the Organic Law of the Supreme Court of Justice enabled the executive branch to manipulate the 2004 election of justices.¹⁷⁶

¹⁷² IACHR, *Follow-up Report on Compliance by the State of Venezuela with the Recommendations made by the IACHR in its Report on the Situation of Human Rights in Venezuela (2003)*. Annual Report 2004, Chapter V, paras. 174 and 175.

¹⁷³ IACHR, *Follow-up Report on Compliance by the State of Venezuela with the Recommendations made by the IACHR in its Report on the Situation of Human Rights in Venezuela (2003)*. Annual Report 2004, Chapter V, para. 180.

¹⁷⁴ Among other submissions, the Commission received information noting concern at the appointment, on December 14, 2004, of Luis Velázquez Alvaray as head of the Supreme Court's Constitutional Chamber. The concern was because Velázquez Alvaray had been an active member of the ruling party and was elected to the National Assembly for the period of 2000-2005. One of his main activities in the Assembly was to draft and promote the Organic Law of the Supreme Court of Justice. In June 2004, while still a National Assembly deputy, he stated that, "among the reforms of the Venezuelan judicial system, the official sector plans a general purge of judicial positions across the entire country, which could involve the removal of 90% of current judges" (Venpress news agency, June 21, 2004. Cited in: Canova González, Antonio: *La Realidad del Contencioso Administrativo Venezolano* (The Reality of the Contentious Administrative Jurisdiction in Venezuela). Caracas 2009, p. 105). A few months after his appointment to the Supreme Court, he was selected to chair its Judicial Commission, which has used its powers to appoint and overturn the appointments of a number of judicial officials.

¹⁷⁵ DPLF (Due Process of Law Foundation), International Commission of Jurists, and REVAPAZ (Venezuelan Network of Peace Activists). *Situation of the Judiciary in Venezuela*, document presented to the IACHR at the hearing of the same name held during its 134th Period of Sessions, March 24, 2009.

¹⁷⁶ IACHR. *Follow-up Report on Compliance by the State of Venezuela with the Recommendations made by the IACHR in its Report on the Situation of Human Rights in Venezuela (2003)*. Annual Report 2004, Chapter V, para. 180.

201. The Commission notes with concern that although it urged the State to amend those clauses of the Organic Law of the Supreme Court of Justice that compromised its independence and impartiality,¹⁷⁷ the Law remains in force and continues to have an impact on the independence of the judiciary up to the present, in that the Supreme Court of Justice, made up of a pro-government majority, has subsequently appointed and removed hundreds of judges in the rest of the judicial system, without holding open public competitions for their selection.

b. Failure to hold open public competitions for judicial posts

202. On September 28, 2005, following the enactment of its Organic Law, the Supreme Court of Justice adopted the Rules for Evaluations and Public Competitions for Entry into and Promotion within the Judicial Career.¹⁷⁸ Those rules provided that such public competitions would entail two phases: completion of an initial training program, and an examination. The National School for Judges¹⁷⁹ is responsible for planning, overseeing, and conducting all activities relating to public competitions for entry into, promotions within, and continued service on the Supreme Court, as well as for other activities for the evaluation of judges.

203. The State has informed the Commission that the National School for Judges uses notices published in the print media to call on all parties interested in preregistration for the initial training program. Candidates must pass an admissions examination and a medical and psychological evaluation. If admitted, they study the initial training program for one year. They must later pass a final examination. Based on the results of the different phases in the competitive process, a jury draws up a merit-based list of the participants, and vacant positions are covered by the candidates who secured the top places in the competition. The other participants who were successful in the competition are placed on the list of alternate judges and are called upon in order as vacancies arise or courts are created. The State explained that this procedure was established for the selection of judges for the criminal and administrative courts as well as for the other jurisdictions: in other words, for all those aspiring to enter the judicial career.¹⁸⁰

204. The Commission notes that the National School for Judges has launched a series of initial and ongoing training programs for judges. In that context, in its 2007 Annual Report, the Commission applauded the creation of an initial training program through which 3,916 applicants for judicial positions were to be assessed prior to undergoing an open public competition.¹⁸¹ The Commission understands, through information published on the Web site of the National School for Judges, that the 2007-08 initial training program was carried out; however, the IACHR has no information on its specific results or on the holding of the open public competition, on the program's impact on judicial appointments, or on whether the National School for Judges plans to continue with

¹⁷⁷ IACHR. *Follow-up Report on Compliance by the State of Venezuela with the Recommendations made by the IACHR in its Report on the Situation of Human Rights in Venezuela (2003)*. Annual Report 2004, Chapter V, paras. 168 and 169.

¹⁷⁸ Published in Official Gazette No. 38.282, September 28, 2005.

¹⁷⁹ The Organic Law of the Supreme Court of Justice, published on May 20, 2004, in Official Gazette No.37.942, created the National School for Judges (ENM, by its Spanish acronym) as "the training center for judges and other officers of the judiciary".

¹⁸⁰ State's response to the questionnaire analyzing the situation of human rights in Venezuela. August 13, 2009, p. 78 *et seq.*

¹⁸¹ IACHR. *Annual Report 2007*. Chapter IV: Human Rights Developments in the Region. Venezuela, para. 286.

the program.¹⁸² The information received by the IACHR indicates that the Rules for Evaluations and Public Competitions for Entry into and Promotion within the Judicial Career have fallen into disuse, since no competitions have been organized and all appointments since 2002 have been made without any sort of oversight or procedure.¹⁸³

205. Indeed, reading the resolutions appointing provisional and temporary judges indicates that judicial appointments have been covered by the establishment of a permanent state of emergency. Although they cite as their grounds Articles 255 and 267 of the Constitution of the Bolivarian Republic of Venezuela and the final part of Article 20 of the Organic Law of the Supreme Court of Justice, these appointments are made in consideration of “the urgent need to cover vacancies arising in the nation’s various courts, in order to prevent the paralysis of judicial proceedings, and prior to an examination of the candidates’ relevant credentials.”¹⁸⁴

206. At the same time, the resolutions appointing certain judges with the status of regular judges are generally based on Articles 267 and 269 of the Constitution, which state that the Supreme Court of Justice shall be responsible for the management, governance, and administration of the judiciary, and on Article 255 thereof, which establishes the procedures and processes for selecting and appointing the country’s judges. Thus, the resolutions solely consider “the result of the institutional evaluations conducted [and] the decision signed by the Magistrates [...], members of the Sole Jury Chamber for assessing the admission of Category “A” Judges at the national level, for [...]” and succinctly resolve “to appoint the legal professional [...] as Regular Judge of [...].” From these resolutions, however, it cannot be inferred that any public competitions were held, only institutional evaluations.

207. In turn, regarding the alleged lack of transparency in competitions for the judicial career and the violation of the rules governing them, the State has said that:

All evaluations of judges are based on three elements of appraisal: (a) academic record, postgraduate studies, diplomas, and courses during service in the judicial career; (b) performance evaluations of judges; (c) oral and written open examinations with judges of the same category, in accordance with the competition rules and public agenda. All such competitions have been held

¹⁸² IACHR. *Annual Report 2008*. Chapter IV: Human Rights Developments in the Region. Venezuela, para. 395.

¹⁸³ Venezuelan Criminal Forum (NGO). *Informe que presenta la Asociación Civil Foro Penal Venezolano a tres años de su Fundación* (Report presented by the Venezuelan Criminal Forum three years after its establishment). June 6, 2008, pp. 4-5.

¹⁸⁴ See, *inter alia*: Resolution No. 2008-0010 of the Supreme Court of Justice of the Bolivarian Republic of Venezuela. Document submitted by the petitioners at the *Hearing on the Situation of Institutionality and Human Rights Guarantees in Venezuela*. 133rd Period of Sessions, October 28, 2008, *Resoluciones del Tribunal Supremo de Justicia Venezolano, Donde se Nombran, Remueven y Suspenden Jueces: De Enero 2008 hasta Septiembre 2008* (Resolutions of the Venezuelan Supreme Court of Justice appointing, removing, and suspending judges: January 2008 to September 2008), October 28, 2008.

publicly, and have been announced in the press and on the Web site of the Supreme Court of Justice.¹⁸⁵

The State also reported that judges were being trained in preparing for competitions, in order to demonstrate their academic and professional merit therein.¹⁸⁶

208. Nevertheless, according to information received by the Commission, in 2008 and 2009 judges continued to be appointed without public competitions by the Judicial Commission, composed of the presidents or vice presidents of each of the Supreme Court's chambers.¹⁸⁷ It was reported that in 2008, the Supreme Court's Judicial Committee appointed 920 temporary judges, 350 interim judges, 172 provisional judges, and nine judges of other categories.

209. This information indicates that in 2008 alone, a total of 1,451 judges other than regular judges were appointed. Of those, 12% were provisional, 63% were temporary, and 24% were interim. Thus, not one of the 1,451 non-regular judges appointed in 2008 was appointed through the open public competition required by Article 255 of the Venezuelan Constitution. Consequently, all of those judges are freely appointed and removable.

210. Additionally, information received by the Commission emphasizes that between January and September 2009 alone, a total of 359 judges were appointed without an open public competition, including 136 temporary judges, 138 interim judges, 59 provisional judges, 2 tenured judges and 24 judges from other categories. All of these judges are freely appointed and removable.¹⁸⁸

c. Regularization of the situation of judges appointed without an open public competition

211. Regarding the regularization of the status of provisional judges, the transitory and final provisions of the Rules for Evaluations and Public Competitions for Entry into and Promotion within the Judicial Career ordered the organization of a Special Program for the Regularization of Status, which also entails an academic training program, medical and psychological assessments, performance evaluations, and examinations of knowledge.

212. According to those provisions, the competitions covered by this special program would be open solely to non-regular judges who had been serving for at least three months prior to the commencement of the Academic Training Program. Hence, through this program, all non-regular

¹⁸⁵ Response of the Venezuelan State to the draft of Chapter IV, dealing with Venezuela, received by the IACHR on February 27, 2007, p. 6.

¹⁸⁶ Information provided by the State to the IACHR. *Hearing on the Situation of the Judiciary in Venezuela*. 134th Period of Sessions. March 24, 2009.

¹⁸⁷ DPLF (Due Process of Law Foundation), International Commission of Jurists, and REVAPAZ (Venezuelan Network of Peace Activists). *Situation of the Judiciary in Venezuela*. Document presented to the IACHR at the hearing of the same name held during its 134th Period of Sessions. March 24, 2009.

¹⁸⁸ Information provided by the petitioners to the IACHR. *Hearing on democratic institutionalism, parapolice groups, and prisons in Venezuela*. 137th Period of Sessions, November 2, 2009. Also available on the Web page of the Supreme Court of Justice: www.tsi.gov.ve.

judges – such as interim, temporary,¹⁸⁹ or provisional judges¹⁹⁰ – may acquire regular status without participating in the open public competitions established for the general population.

213. Although civil society organizations have acknowledged that the number of provisional judges has fallen, which would appear to support the right of judges to stability in their positions, they explain that the reduction in the numbers was not caused by their going to the National School for Judges and participating in a competitive process. Instead, the provisional judges appointed without undergoing the competition process were given the option of being evaluated and acquiring regular status without participating in an open public competition.¹⁹¹

214. At the hearing on the situation of the Venezuelan judiciary held during its 134th period of sessions, the Commission was told that between January 2, 2008, and December 31, 2008, a total of 73 judges had acquired regular status through the Special Program for the Regularization of Status.¹⁹² The Inter-American Court noted that under this Special Program, vacancies have been filled without affording individuals not already part of the judiciary the opportunity to compete for positions against the provisional judges already serving. Although the program does involve an assessment of suitability, the procedure grants the stability of tenure to judges who were initially appointed on a totally discretionary basis.¹⁹³

215. Thus, regardless of the terms of the Constitution and although the competitions are regulated by the Rules for Evaluations and Public Competitions for Entry into and Promotion within the Judicial Career, as of the date of this report those provisional judges who were appointed by means of a mere review of their credentials and not through a competitive process continue to acquire the status of regular judges without participating in open public competitions.

216. Currently, the judges appointed in a discretionary fashion are the only ones to which the mechanism for acquiring regular status is being applied, and the Judicial Committee is making those appointments through resolutions that lack procedure, grounds, and justification. In addition, according to information received by the Commission, some provisional judges who took the examination were denied regular status, and were told simply that they had failed the evaluation but were not shown the results, on the grounds that they were confidential.¹⁹⁴ The Commission has also been told that the processes whereby provisional judges were regularized or acquired regular

¹⁸⁹ Temporary judges are those called upon to cover the absences of judges, which may be absolute, temporary, or interim absences. (State's response to the questionnaire analyzing the situation of human rights in Venezuela. August 13, 2009, p. 80.)

¹⁹⁰ Provisional judges are "officers who serve while waiting to be called to compete to regularize their status; they must in addition pass a comprehensive training process administered by the National School for Judges, an agency attached to the Supreme Court of Justice that is responsible for training candidates who aspire to enter the judicial career." (State's response to the questionnaire analyzing the situation of human rights in Venezuela. August 13, 2009, p. 80.)

¹⁹¹ Information provided by the petitioners to the IACHR. *Hearing on the situation of institutionality and human rights guarantees in Venezuela*. 133rd Period of Sessions, October 28, 2008.

¹⁹² Information provided by the petitioners to the IACHR. *Hearing on the Situation of the Judiciary in Venezuela*, 134th Period of Sessions, March 24, 2009.

¹⁹³ I/A Court H.R., *Case of Reverón Trujillo v. Venezuela*. Judgment of June 30, 2009. Series C No. 197, para. 122.

¹⁹⁴ Such claims were made by the individuals who requested the *Hearing on the General Situation of Institutionality and Guarantees in Venezuela*, held by the IACHR during its 126th Period of Sessions on October 19, 2006.

status were not transparent and were not carried out in strict compliance with Article 255 of the Constitution or with the Rules for Evaluations and Public Competitions for Entry into and Promotion within the Judicial Career.¹⁹⁵

217. The Commission states again that calling on provisional judges to undergo individual examinations or competitions alongside other judges of the same category is not the same as holding public competitions open to all qualified individuals interested in entering the judicial career. In this regard, the Inter-American Court has ruled that:

Appointments procedures must not involve unreasonable privileges or advantages. Equality of opportunities is guaranteed through free competition, whereby all citizens who meet the requirements set in law must be able to participate in the selection processes without suffering arbitrary or unequal treatment [and all] candidates must compete in equal conditions, even against those holding positions on a provisional basis, who may not, for that reason, be afforded privileges or advantages, or disadvantages, with respect to the position that they occupy or to which they aspire. [...] Therefore, restrictions that hinder or obstruct the merit-based access to service by those who do not belong to the administration or to any public agency – in other words, private citizens not in the public employ – are inadmissible.¹⁹⁶

218. Finally, the IACHR has also been made aware of the Special Training Program for Regularizing the Status of Judges offered by the National School for Judges,¹⁹⁷ which has the following stated objectives: “(1) to strengthen ethical attitudes, moral values, and social sensitivity, through the interpretation and discussion of the meaning of legal provisions and the impact of their decisions, [and] (2) to consolidate the legal knowledge of judges without regular status, in consideration of their experience in the administration of justice.”¹⁹⁸ As the Commission has already said in its 2008 Annual Report, it hopes that this program will help ensure the independence and impartiality that all systems for the administration of justice must enjoy.¹⁹⁹

d. Failure to hold open public competitions for appointing public prosecutors

219. In addition to the importance of appropriate mechanisms for appointing judges, the right to an independent judiciary requires that the same principles also apply to the appointment of public prosecutors. Thus, the Commission has underscored the importance of a correctly implemented prosecutorial career path on account of the essential role played by the Office of the Attorney General in criminal investigations, which implies the need to ensure the independence,

¹⁹⁵ IACHR, *Annual Report 2006*. Chapter IV: Human Rights Developments in the Region. Venezuela, para. 162.

¹⁹⁶ I/A Court H.R., *Case of Reverón Trujillo v. Venezuela*. Judgment of June 30, 2009. Series C No. 197, para. 73.

¹⁹⁷ Supreme Court of Justice of Venezuela, National School for Judges. Available in Spanish at: <http://enm.tsj.gov.ve/formacion/formacionPET.asp>.

¹⁹⁸ Supreme Court of Justice of Venezuela, National School for Judges. Available in Spanish at: <http://enm.tsj.gov.ve/formacion/formacionPETobjetivos.asp>.

¹⁹⁹ IACHR, *Annual Report 2008*. Chapter IV: Human Rights Developments in the Region. Venezuela, para. 396.

impartiality, and suitability of prosecutors in order to guarantee that investigations are effective and that the risk of impunity is eliminated, particularly in cases of human rights violations.²⁰⁰

220. On this point, the State informed the Commission that:

In Venezuela, the status of prosecutors has traditionally been provisional, in that up until the 1999 Constitution, there was no provision for competitive entry into the prosecutorial career, which was instead directly dependent on the Attorney General of the Republic during each constitutional period. However, the new Organic Law of the Office of the Attorney General, which came into effect on March 13, 2007, in its Title VI and Sole Transitory Provision, regulates the general guidelines of the public competitive processes required for entry into a career with the Office of the Attorney General, in addition to setting rules governing the promotions, reclassifications, and transfers of personnel belonging to that agency.²⁰¹

221. In addition to the Organic Law of the Office of the Attorney General, it should also be noted that the Venezuelan Constitution itself establishes, in Article 146, that posts in the public administration are career positions and that as a result, access to those positions by public officials shall be on the basis of public competitions. The Constitution also establishes that promotions will depend on scientific methods based on merit, and that transfers, suspensions, and removals will depend on performance.

222. Thus, in its 2008 Annual Report, the Commission applauded the creation of the National Prosecutors School, instituted by means of Resolution No. 263, published in the Official Gazette on April 8, 2008, which states that the school will be responsible for “providing the officers of the Attorney General’s Office with a solid academic background, ethical and moral values, competence in scientific and technological investigation and humanistic research, skills in the use of the existing body of laws, and a sense of humanity.”²⁰²

223. According to information sent to the Commission by the State, taken from the Annual Report of the Attorney General of the Republic for the year 2008, the National Prosecutors’ School was inaugurated in October 2008 and classes began for 117 lawyers, selected from among 1,650 legal professionals. The National School for Judges itself has acknowledged the problems of provisional judges, stating that “the provisional status of judges and the weaknesses in the education and training of judicial officers have been identified as the greatest problem facing the administration of justice over recent decades.”²⁰³ The creation of the National Prosecutors’ School is clearly an important step forward in guaranteeing the independence and impartiality of the criminal justice system in that it ensures the suitability and integrity of its functionaries.

²⁰⁰ IACHR, *Access to Justice and Social Inclusion: The Road toward Strengthening Democracy in Bolivia*. June 28, 2007, para. 96.

²⁰¹ Response of the Venezuelan State to the draft of Chapter IV, on Venezuela, received by the IACHR on December 21, 2007, p. 63.

²⁰² Press report from Radio Nacional de Venezuela, *Creada Escuela Nacional de Fiscales del Ministerio Público* (National Prosecutors’ School of the Attorney General’s Office Service Created), April 10, 2008. Available in Spanish at: <http://www.rnv.gov.ve/noticias/index.php?act=ST&f=27&t=64989>.

²⁰³ Supreme Court of Justice of Venezuela, National School for Judges. Available in Spanish at: <http://enm.tsj.gov.ve/miscelaneas/MiscelaneasSumario.asp>.

224. The Commission was also informed by the State that it has created a Growth Plan for the Attorney General's Office, which identified over the period 2007-08 the existence of 669 prosecutors' offices, of which thirty-four (34) were created during 2007, with an approximate total of 1,300 regular and assistant prosecutors.²⁰⁴

225. However, information received by the Commission indicates that not one of the 2,644 prosecutors appointed between 2004 and September 2009 was selected by means of a public competitive process and, consequently, not one held the position of a regular prosecutor.²⁰⁵ In the year 2008 alone, 411 assistant interim prosecutors, 183 provisional prosecutors, 9 alternate prosecutors, 6 senior provisional prosecutors, and 22 prosecutors of other non-regular categories were appointed. It can therefore be concluded that not one of the 631 prosecutors appointed in 2008 was selected through an open competitive process or has the status of a regular prosecutor; instead, they are freely appointed and removable, which compromises their independence.

226. The situation was repeated in 2009, a year in which, according to the information received by the Commission, as of September of 2009 a total of 302 prosecutors were appointed without a public competitive process, including 209 interim prosecutors, 86 provisional prosecutors, 3 alternate prosecutors, and 4 senior prosecutors. All of these prosecutors are freely appointed and removable.²⁰⁶

227. The Commission will be attentive to the results of the operation of the National Prosecutors' School, and in particular to the efforts made by the State to reverse the situation of all of the prosecutors in Venezuela, who have not been appointed through a public competition, as required by the Venezuelan Constitution and the international norms relating to the independence of judicial functions.

228. As the Commission has previously stated, the failure to follow the procedures prescribed in the Constitution and the law for appointing judges and prosecutors exposes these officials to possible undue pressure in the exercise of the important function they perform and thus poses a serious threat to the independence of Venezuela's judiciary.²⁰⁷ The Commission therefore hopes that the Venezuelan State strictly observes the provisions governing the appointment and promotion of judges and prosecutors, and that clear rules are set regarding their guarantees of tenure.

²⁰⁴ State's response to the questionnaire analyzing the situation of human rights in Venezuela. August 13, 2009, p. 81.

²⁰⁵ Information provided by the petitioners to the IACHR. *Hearing on the Situation of the Judiciary in Venezuela*. 134th Period of Sessions, March 24, 2009. Also, information provided by the petitioners to the IACHR. *Hearing on Democratic Institutionalality, Parapolice Groups, and Prisons in Venezuela*. 137th Period of Sessions, November 2, 2009. Also available in Spanish on the Web page of the Supreme Court of Justice: www.tsj.gov.ve.

²⁰⁶ Information provided by the petitioners to the IACHR. *Hearing on Democratic Institutionalality, Parapolice Groups, and Prisons in Venezuela*. 137th Period of Sessions, November 2, 2009. Also available in Spanish on the Web page of the Supreme Court of Justice: www.tsj.gov.ve.

²⁰⁷ IACHR, *Annual Report 2007*. Chapter IV: Human Rights Developments in the Region. Venezuela, para. 281. IACHR, *Annual Report 2008*. Chapter IV: Human Rights Developments in the Region. Venezuela, para. 393.

2. Stability of judges and prosecutors in their positions

229. In addition to an appropriate appointment procedure, the tenure of judges in their positions is an essential element in judicial independence.²⁰⁸ The stability of judges and prosecutors in their positions is indispensable to guarantee their independence from political changes or changes in the government.

230. The United Nations Basic Principles on the Independence of the Judiciary stipulate that “the term of office of judges [...] shall be adequately secured by law” (Principle 11) and that “judges, whether appointed or elected, shall have guaranteed tenure until a mandatory retirement age or the expiry of their term of office, where such exists” (Principle 12).

231. In the following paragraphs, the Commission will analyze the enactment of various rules that allow a high degree of subjectivity in assessing the performance of judicial officers, the establishment of disciplinary bodies lacking guarantees of impartiality, the high number of provisional judicial appointments, and the removal of judges without due process, and whether these factors have restricted the right of judges and prosecutors to enjoy stability in their positions or have made them vulnerable to political pressure and interference.

a. Provisions that allow for broad subjectivity in the removal and indefinite suspension of judicial officers

232. Articles 264 and 265 of the Venezuelan Constitution seek to ensure the independence of Supreme Court justices by setting terms of 12 years, together with a removal procedure that requires a two-thirds vote of the National Assembly following a ruling from the citizens’ branch that a “serious offense” has been committed.

233. However, those provisions were partially amended with the enactment of the Organic Law of the Supreme Court of Justice in 2004.²⁰⁹ The Organic Law upholds the constitutional requirement of a two-thirds vote of the National Assembly to remove members of the Supreme Court of Justice. At the same time, however, it creates mechanisms for removing justices that are not provided for in the Constitution and that do not require such a majority. Those mechanisms are the suspension of a member of the court pending the vote on his or her removal, and the cancellation of his or her appointment.

234. Article 23.3 of the Organic Law states that once the citizens’ branch has unanimously determined a justice’s actions to constitute a serious offense, that member of the court is to be suspended from office until the final judgment is adopted by the National Assembly.²¹⁰ The

²⁰⁸ The Inter-American Court has also ruled on this point. In this regard, see: I/A Court H.R., *Case of the Constitutional Court v. Peru*. Judgment of January 31, 2001. Series C No. 71, para. 75; *Case of Apitz Barbera et al. (“First Court of Administrative Disputes”) v. Venezuela*. Judgment of August 5, 2008. Series C No. 182, para. 138.

²⁰⁹ Organic Law of the Supreme Court of Justice, published in Official Gazette No. 37.942, May 20, 2004.

²¹⁰ Article 23.3 provides: “Justices of the Supreme Court of Justice may be punished or removed from their positions, if serious offenses are committed, by the National Assembly, following a request and assessment of the offenses made by the Citizens’ Branch. Removals must be decided on by a qualified majority of two thirds (2/3) of the members of the National Assembly, after hearing the justice in question. After the Citizens’ Branch has determined that the offense is serious and has unanimously requested removal, the justice shall be suspended from his or her office until the final judgment of the National Assembly. Suspension shall also apply if the Supreme Court of Justice determines that there are grounds for prosecution; in such cases, this measure is different from the sanction of suspension provided for in the Organic Law of the Citizens’ Branch.”

Law stipulates that the President of the National Assembly shall convene a session and submit the removal to a vote with a period of ten days. However, there are no effective mechanisms for enforcing that deadline, and the Commission has heard that justices may be suspended indefinitely if the President of the Assembly decides not to call a vote.

235. In its observations on the present report, the State clarified that this interpretation of the Organic Law of the Supreme Court of Justice is erroneous given that “the term dismissal refers to the definitive characteristic of separation from one’s position, while suspension implies a temporary and transitory element. The nullification [of the designation] is a different situation, meaning that the challenged act is the designation itself, resulting in the return of the subject to his or her status when called. As such, the only dismissal is carried out solely by a decision of two-thirds of the National Assembly.”²¹¹

236. In addition, the enactment of the Organic Law of the Supreme Court of Justice established grounds for the removal and suspension of justices that compromise the court’s independence.²¹² In particular, the Organic Law provides for highly subjective circumstances in which justices’ appointments can be canceled, such as when a justice’s public attitude offends the majesty or prestige of the Supreme Court of Justice, of any of its chambers, or of any magistrate of the judiciary, or when a justice undermines the functioning of the Supreme Court of Justice, any of its chambers, or the judiciary.²¹³

237. Similarly, the Organic Law of the Citizens’ Branch uses generic terms to define the concept of “serious offenses” whereby, pursuant to Article 265 of the Constitution, justices of the Supreme Court can be removed. These cover such categories as undermining, threatening, or harming public ethics and administrative morals; acting with grave and inexcusable ignorance of the Constitution, of statutes, and of the law; or adopting decisions that undermine or harm the interests of the nation.²¹⁴

238. In the Commission’s view, the high level of subjectivity with which the Organic Laws of the Supreme Court of Justice and of the Citizens’ Branch allow the actions of justices to be judged undermine their right of stability in their positions and therefore affect the independence that officers of the judiciary should enjoy in their functions.

b. Disciplinary bodies’ lack of independence and impartiality

239. Along with the guarantees of stability, a regime for determining the responsibility of judges and prosecutors must be established for cases in which, by means of fair and correct proceedings, their poor performance can be determined. In that regard, in addition to the stability provisions applicable to justices of the Supreme Court, the 1999 Constitution introduced rules to guarantee the tenure of other members of the judiciary through a disciplinary regime that maintains

²¹¹ Bolivarian Republic of Venezuela. Ministry of Popular Power for Foreign Affairs. State Agent for Human Rights. Observations on the Draft Report *Democracy and Human Rights in Venezuela*. Note AGVE/000598 of December 19, 2009, pp. 48 and 49.

²¹² IACHR, *Follow-up Report on Compliance by the State of Venezuela with the Recommendations made by the IACHR in its Report on the Situation of Human Rights in Venezuela (2003)*. Annual Report 2004, Chapter V, para. 175.

²¹³ Article 23.4 of the Organic Law of the Supreme Court of Justice.

²¹⁴ Organic Law of the Citizens’ Branch, published in Official Gazette No. 37.310 of October 25, 2001. Article 11.

that judges shall not be removed except for the reasons and through the procedures determined by law.

240. Article 267 of the Constitution stipulates that the Supreme Court of Justice is to create an Executive Directorate of the Magistrature for the management, governance, and administration of the judiciary and for the oversight and inspection of the nation's courts and public defense services. The same article of the Constitution states that discipline within the judiciary shall be the responsibility of the disciplinary tribunals determined by law and that the disciplinary regime shall be organized on the basis of the Code of Ethics of Venezuelan Judges, to be enacted by the National Assembly.

241. However, the Commission observes that although the Constitution of 1999 established that the legislation referring to the Judicial System would be approved during the first year after the installation of the National Assembly, as of this time the judicial disciplinary tribunals have not been set up and the Code of Ethics of Venezuelan Judges,²¹⁵ establishing the disciplinary regime for the conduct of judges as referenced in the Constitution, was only recently passed in June of 2009.²¹⁶

242. The Commission appreciates that the Code of Ethics has finally been approved. This Code establishes the following organs with disciplinary competence over judges: the Judicial Disciplinary Tribunal and the Judicial Disciplinary Court, which will hear and apply in the first and second instances, respectively, disciplinary proceedings for infractions of the principles and duties contained in the Code (Article 39). The Judicial Disciplinary Tribunal will be made up of three principal judges and their respective alternates (Article 41) and the Judicial Disciplinary Court will be made up of three principal judges and their respective alternates (Article 43). Candidates for judgeships both in the Judicial Disciplinary Tribunal and the Judicial Disciplinary Court shall be elected by the Judicial Electoral Colleges (Article 46); these colleges will be made up in each state and the Capital District by a representative of the judicial branch, a representative of the Attorney General's Office, a representative of the Public Defense, a representative of the attorneys authorized to practice, as well as ten delegates of the Communal Councils legally organized by each of the federal entities in the exercise of popular sovereignty and participative and proactive democracy (Article 47).

243. The IACHR views positively that in the dispositions of the Code of Ethics due process is consecrated, as well as the principles of legality, orality, publicity, equality, impartiality, the adversarial process, judicial economy, efficiency, speed, proportionality, suitability, concentration, contiguity, aptitude, excellence, and integrity for the proceedings before the organs with disciplinary competence (Articles 3 and 37). The IACHR also considers positively that the recently-approved Code is applicable to all judges regardless of their character as permanent, temporary, occasional, interim, or provisional (Article 2).

244. At the same time, the Commission is concerned about some norms that, due to their broadness or vagueness, allow for ample discretion by the disciplinary organs that judge the conduct of judges. Among others, the Commission notes that Article 33 contemplates as causes for dismissal "lack of integrity" and "serious or repeated improper or inadequate conduct in the exercise of functions." In the Commission's opinion, the broadness of these concepts allows for a high degree of subjectivity in judging the conduct of judges, which could generate such uncertainty that it could compromise the necessary judicial independence.

²¹⁵ Published in Official Gazette No. 39.326 of August 6, 2009.

²¹⁶ This legislative omission on the part of the National Assembly was even condemned by the Constitutional Chamber of the Supreme Court of Justice in Judgment No. 1048 of May 18, 2006.

245. Furthermore, the Commission notes that, in spite of the entry into force of the mentioned Code of Ethics, while the Judicial Disciplinary Tribunal and the Judicial Disciplinary Court have not been constituted, the Commission on Functioning and Restructuring of the Judicial System continues to exercise its powers, according to what is established in the first transitory disposition. As of the date this report was approved, the Judicial Electoral Colleges had not been formed for the election of judges for the Judicial Disciplinary Competency, nor had the National Assembly designated the respective judges and respective alternates of the Judicial Disciplinary Tribunal and the Judicial Disciplinary Court, in accordance with the first transitory disposition.

246. As a consequence, a decade later, what remains in force²¹⁷ is the Transitional Government Regime created by the Constitutional Assembly on December 29, 1999, to regulate the restructuring of the branches of government in order to allow the immediate implementation of the Constitution.

247. The decree establishing the Transitional Government Regime²¹⁸ created the Commission for the Functioning and Restructuring of the Judicial System, which has continued to exercise disciplinary authority over members of the judiciary. On September 29, 2000, the Commission for the Functioning and Restructuring of the Judicial System adopted its Rules of Procedure, whereby it is empowered to hear and decide on disciplinary proceedings against judges and to enact disciplinary regulations.²¹⁹

248. The members of the Committee for the Functioning and Restructuring of the Judicial System were appointed by the Constitutional Assembly, and under the decree, were to remain in office until the effective functioning of the Executive Directorate of the Magistrature, the disciplinary tribunals, and the Autonomous Public Defense System, agencies established by the Constitution for the governance and administration of the judiciary. Since the decree did not stipulate grounds or a procedure for the removal of its members, the Supreme Court of Justice interpreted that their removal and appointment fell to the Constitutional Chamber and, accordingly, it has carried out removals and made new appointments without following a procedure previously established for that purpose.

249. The effect of the legislature's failure to enact a law covering the judicial system has been that, over the past nine years, various judges and justices have been tried by the Commission for the Functioning and Restructuring of the Judicial System, which is an exceptional body without defined stability and whose members may be appointed or removed at the sole discretion of the Supreme Court of Justice. Since the members of the Commission for the Functioning and Restructuring of the Judicial System can also be freely removed,²²⁰ there are no due guarantees to ensure the independence of that disciplinary agency's decisions.

²¹⁷ According to the decree that established this transitional regime, the provisions of the regime elaborated on and complemented the transitory provisions contained in the Constitution and would remain in force until the agencies provided for in the Constitution had been effectively organized and put into operation.

²¹⁸ Published in Official Gazette No. 36.857 of December 27, 1999.

²¹⁹ Regulations of the Commission for the Functioning and Restructuring of the Judicial System, published in Official Gazette No. 37.080 of November 17, 2000. Article 3.

²²⁰ As ruled on by the Inter-American Court of Human Rights. I/A Court H.R., *Case of Apitz Barbera et al. ("First Court of Administrative Disputes") v. Venezuela*. Judgment of August 5, 2008. Series C No. 182, paragraph 147.

250. It should be recalled that on November 29, 2006, the Inter-American Commission sent the Inter-American Court an emblematic case dealing with a resolution of the Commission for the Functioning and Restructuring of the Judicial System whereby the former judges of the First Court of Administrative Disputes were dismissed on the grounds that they had committed an inexcusable miscarriage of justice by granting precautionary relief that suspended the effects of an administrative decision denying registration of a sales operation. In its judgment of August 5, 2008, the Court decided, *inter alia*, that the State had failed to guarantee the judges' right to be heard by an impartial court and violated their right to be judged by an independent tribunal and therefore ordered that they be reinstated in the judiciary.²²¹

251. Moreover, the Inter-American Commission is concerned that although the Inter-American Court of Human Rights has already ruled that the Commission for the Functioning and Restructuring of the Judicial System does not guarantee the right of a proceeding before an independent and impartial tribunal, and although it was created as a temporary body, it continues to operate nine years later and continues to adopt decisions regarding the removal of judges, to the extent that, according to information received by the IACHR, at present there is not one single judge who entered the judicature prior to 1999.²²²

252. In the Commission's view, the regime of judicial tenure enshrined in the Constitution and required by the principles of international law is not upheld when the institutional mechanism regulating it is provisional and temporary, as is the case with the Commission for the Functioning and Restructuring of the Judicial System. The Inter-American Commission therefore again urges the Venezuelan State to take the steps necessary to enact the legislation governing the judicial system referred to in the Constitution.

c. Provisional status of judges

253. Another issue related to the autonomy and independence of the judiciary in Venezuela is that of the provisional status of judges. The fact that they are provisional and not regular judges means they can be easily removed when they adopt decisions that could affect government interests, which compromises the independence of the Venezuelan judicial branch. Although this was a problem in Venezuela for many years prior to the current administration, the information available to the Commission indicates that the problem of provisional judicial appointments has increased and worsened since the judicial restructuring process began with the enactment of the 1999 Constitution.

254. As noted in the section dealing with the appointment of judges and prosecutors, the Judicial Commission of the Supreme Court of Justice has been appointing provisional judges by means of special mechanisms and without holding the corresponding public competitions. Those provisional judges, as has been confirmed by the Venezuelan domestic courts themselves, can be freely appointed and removed. The possibility of their free removal affects their ability to decide on cases without fear of reprisals, particularly when the lack of tenure for provisional judges has already allowed a high number of judges to be dismissed.

255. In this regard, the Political-Administrative Chamber of the Supreme Court of Justice of Venezuela ruled in 2000 that:

²²¹ I/A Court H.R., *Case of Apitz Barbera et al. ("First Court of Administrative Disputes") v. Venezuela*. Judgment of August 5, 2008. Series C No. 182.

²²² Canova González, Antonio. *La Realidad del Contencioso Administrativo Venezolano* (The Reality of the Contentious Administrative Jurisdiction in Venezuela). Caracas, 2009, p. 98.

Those holding a position for which they did not compete do not enjoy the right [of judicial stability] and, consequently, may be removed from the position in question under the same conditions in which they were appointed – in other words, without the competent administration being obliged to justify such dismissal under the provisions of the disciplinary regime, which is applicable, again, only to career judges, those who hold their posts by reason of a public competitive process.²²³

This position has been restated on other occasions by the Political-Administrative Chamber as well as by the Constitutional Chamber.²²⁴

256. Although the Commission understands that, in exceptional circumstances, it may be necessary to appoint judges on a temporary basis; such judges must not only be selected by means of an appropriate procedure, they must also enjoy a certain guarantee of tenure in their positions. The Inter-American Court has explained that “the guarantee of tenure translates, as regards provisional judges, into the requirement that they be afforded all the inherent benefits of permanence until adoption of the resolution bringing a legal end to their time of service.”²²⁵

257. In the same vein, the United Nations Special Rapporteur on the independence of judges and lawyers “considers that temporary or provisional judges [...] must have the same guarantees as those with a life or fixed-term tenure, given that they perform judicial tasks.” The Rapporteur emphasized that the discretionary dismissal of judges appointed temporarily endangers the independence of the judiciary. For this reason, he stated that these judges should only be removed through disciplinary proceedings that respect guarantees of impartiality and are carried out by an independent body.²²⁶

258. As regards the provisional status of these judges, the Commission wishes to cite the ruling of the Inter-American Court of Human Rights establishing that:

States are bound to ensure that provisional judges be independent and therefore must grant them some sort of stability and permanence in office, for to be provisional is not equivalent to being discretionally removable from office. [...] Along the same lines, the Court considers that the fact that appointments are provisional should not modify in any manner the safeguards instituted to guarantee the good performance of the judges and to ultimately benefit the parties to a case. Also, such provisional appointments must not extend indefinitely in time, and must be subject to a condition subsequent, such as a predetermined deadline or the holding and completion of a public competitive selection process based on ability and qualifications, or of a public competitive examination, whereby a permanent replacement for the provisional judge is

²²³ Political-Administrative Chamber of the Supreme Court of Justice of Venezuela. Judgment No. 02221 of November 28, 2000.

²²⁴ Political-Administrative Chamber of the Supreme Court of Justice of Venezuela. Judgment No. 1798 of October 19, 2004. Constitutional Chamber of the Supreme Court of Justice. Judgments Nos. 1413, 5111, and 5116.

²²⁵ I/A Court H.R., *Case of Reverón Trujillo v. Venezuela*. Judgment of June 30, 2009. Series C No. 197, para. 117.

²²⁶ Report of the Special Rapporteur on the independence of judges and lawyers, Leandro Despouy, to the Human Rights Council of the United Nations. A/HRC/11/41, 11th period of sessions. March 24, 2009, para. 62.

appointed. Provisional appointments must be an exceptional situation, rather than the rule. Thus, when provisional judges act for a long time, or the fact is that most judges are provisional, material hindrances to the independence of the judiciary are generated. This vulnerable situation of the Judiciary is compounded if no removal from office procedures respectful of the international duties of the States are in place either.²²⁷

259. The State has told the Commission that for the year 2009, the planned total number of positions for judges is 1,904. It also reported that in August 2009, there were 936 regular judges, 597 provisional judges, 94 alternate judges, and 269 temporary judges (appointed to cover medical leave, vacations, leaves of absence, etc). Above and beyond the Commission's comments on the awarding of regular status to judges in Venezuela set out in the previous section, the figures provided by the State indicate that in August 2009 there were a total of 1,896 judges,²²⁸ of whom only 936 were regular judges. That means that more than 50% of Venezuela's judges do not enjoy tenure in their positions.

260. The Commission notes that in previous years, the proportion of provisional judges in Venezuela was as high as around 80%, and it is pleased that the percentage has fallen. However, the fact that more than half of Venezuela's judges can be freely removed or suspended poses an obvious obstacle to the independence of the Venezuelan judiciary in that "this implies that their actions are subject to conditions, and that they cannot feel legally protected from undue interference or pressure from other parts of judiciary or from external sources."²²⁹

261. At the October 2008 Hearing on the Situation of Institutionality and Human Rights Guarantees in Venezuela, the Commission was additionally told that some judges were working on a contract basis, under renewable three-month contracts.

262. In addition to its impact on the independence of judges, their provisional status has a specific effect on the Venezuelan people's access to justice. As an example of this, the Inter-American Commission recently admitted a case involving Venezuela in which, as stated in the petitioner's claims, the court proceedings in question had been heard by at least 50 judges over a period of four years, because of disqualifications, rotations, or removals of judges, creating a procedural delay for which the victim, who was being held in custody, could not be blamed.²³⁰

263. The IACHR notes with concern that the State has not yet complied with the recommendation served on it in the year 2003, in which it was urged to "immediately, and in compliance with its domestic law and its obligations under the American Convention, further and hasten the process aimed at terminating the provisional status of most of its judges, thus guaranteeing their tenure in their positions, which is a necessary conditions for ensuring judicial independence."²³¹

²²⁷ I/A Court H.R., *Case of Apitz Barbera et al. ("First Court of Administrative Disputes")*. Judgment of August 5, 2008. Series C No. 182, para. 43.

²²⁸ State's response to the questionnaire analyzing the situation of human rights in Venezuela. August 13, 2009, p. 80.

²²⁹ IACHR. *Report on the Situation of Human Rights in Venezuela*. December 23, 2003, para. 159.

²³⁰ IACHR. *Report on Admissibility 23/09*. Petition 1133-05, Raúl José Díaz Peña. Venezuela. March 20, 2009.

²³¹ IACHR. *Report on the Situation of Human Rights in Venezuela*. December 23, 2003, para. 220, recommendation 1.

d. Provisional status of prosecutors

264. The problem of temporary status also affects prosecutors in Venezuela, in that all the prosecutors of the Attorney General's Office are freely appointed and removable. As noted in the section on the appointment of judges and prosecutors, in 2008, alone 638 prosecutors were appointed without a public competition being held and without their being given regular status, consequently making them freely appointed and removable.²³²

265. The IACHR has already expressed its concern about the situation of Venezuela's prosecutors, recalling that in addition to the possible undermining of their independence and impartiality that could arise from the constant removals and new appointments, the provisional status and resultant lack of tenure of the civil servants responsible for initiating and pursuing criminal investigations could also necessarily lead to difficulties in identifying, pursuing, and concluding specific lines of investigation as well as in meeting the procedural deadlines set for the investigation phase. Changes in investigating prosecutors have a negative impact on the pursuit of the corresponding investigations in terms of, for instance, the collection and ongoing assessment of evidence. This situation could therefore have negative repercussions on the rights of victims in criminal proceedings involving human rights violations.²³³

266. Similarly, during the inaugural ceremony of the National Prosecutors' School on October 6, 2008, the Attorney General of the Republic, Luisa Ortega Díaz, acknowledged that:

Prosecutors whose appointments are provisional are at a disadvantage; their provisional status exposes them to the influence of pressure groups, which would undermine the constitutionality and legality of the justice system. Provisional status in the exercise of public office is contrary to Article 146 of the Constitution of the Bolivarian Republic of Venezuela, which provides that positions in government are career service posts and are won by public competition.²³⁴

267. The IACHR expresses its concern regarding the failure to award regular status in appointments of prosecutors and it reiterates the importance of the correct implementation of the prosecutorial career in light of the fundamental role that the Attorney General's Office plays in conducting criminal investigations. The Commission also reiterates the importance of prosecutors enjoying the stability necessary to guarantee their independence, impartiality, and suitability, and to ensure the effectiveness of investigations conducted to eliminate impunity, particularly in cases of human rights violations.²³⁵

268. At the same time, the Commission will remain alert to developments in the operations of the National Prosecutors' School and it hopes that this initiative will help address the

²³² Information provided by the petitioners to the IACHR. *Hearing on the Situation of Institutional and Human Rights in Venezuela*. 134th Period of Sessions, March 24, 2009.

²³³ IACHR. *Annual Report 2006*. Chapter IV: Human Rights Developments in the Region. Venezuela, para. 167.

²³⁴ Report by the Television Foundation of the National Assembly. *Inaugurada Escuela Nacional de Fiscales* (National Prosecutors' School Inaugurated). Article dated October 6, 2008. Available in Spanish at: <http://www.antv.gob.ve/m8/noticiam8.asp?id=14946>.

²³⁵ IACHR. *Access to Justice and Social Inclusion: The Road toward Strengthening Democracy in Bolivia*. June 28, 2007, para. 96.

provisional status of prosecutors and increase the professionalization of the officers of the Attorney General's Office with a view to ensuring independence and impartiality in the performance of their duties.

e. Voided judicial appointments

269. Another issue that undermines judicial independence is the mechanism whereby judges' appointments can be revoked, through which a significant number of them have been removed without following the terms of the Constitution and without the corresponding administrative proceedings.

270. Information received by the Commission at the October 2008 Hearing on the Situation of Institutionality and Human Rights Guarantees in Venezuela indicates that in the year 2008, the Judicial Commission of the Venezuelan Supreme Court of Justice carried out 64 removals and suspensions of judges, broken down as follows:

Category	Suspended	Appointment Voided	Total
Regular Judges	9	0	9
Interim Judges	0	13	13
Provisional Judges	0	5	5
Temporary Judges	1	5	6
Special Alternate Judges	0	5	5
Category Undetermined	10	16	26
Total	20	44	64

271. In a more recent hearing,²³⁶ the Commission was informed that between January and September of 2009, 72 judges had been removed or had their appointments nullified:

Category	Total
Regular Judges	5
Interim Judges	5
Provisional Judges	13
Temporary Judges	8
Category Undetermined	41
Total	72

272. In connection with this, the State of Venezuela maintained that:

All removals of serving judges have respected due process and the right of defense and, consequently, the need for administrative dismissal proceedings, which have been enjoyed as a constitutional right in all cases involving removal; thus, far from being an arbitrary act [...] it is an action in which the rule of law is fully exercised and the ethical and moral principles enshrined in the Constitution are observed; in which there are also a series of guarantees provided for in law that have been fully observed by the agencies of the State with competence in the matter.²³⁷

The State added that judgments have been handed down in cases in which judges appealed against the decision to remove them from their position and in which the appeals courts upheld their claims. In the State's view, this shows that proper procedures and remedies exist for cases involving the removal of judges.

273. Nevertheless, as the Commission was told at the October 2008 Hearing on Institutional Integrity and Human Rights Guarantees in Venezuela, the appointments of various judges are being "voided" by means of resolutions that have been described as telegraphic, without grounds, rationale, procedure, or appeal.²³⁸

274. The Commission has seen the resolutions whereby it was decided to void the appointments of certain judges. After examining those resolutions, the Commission notes that several of them merely state something along the lines of the following:

²³⁶ Information provided by the petitioners to the IACHR. *Hearing on Democratic Institutional Integrity, Parapolice Groups, and Prisons in Venezuela*. 137th Period of Sessions, November 2, 2009. Also available in Spanish on the Web page of the Supreme Court of Justice: www.tsj.gov.ve.

²³⁷ Response of the Venezuelan State to the draft of Chapter IV, on Venezuela, of the 2007 Annual Report. Document received by the IACHR on December 21, 2007, p. 57.

²³⁸ Information provided by the petitioners to the IACHR. *Hearing on the Situation of Institutional Integrity and Human Rights Guarantees in Venezuela*. 133rd Period of Sessions, October 28, 2008.

[...] In exercise of the powers granted by Article 267 of the Constitution of the Bolivarian Republic of Venezuela, this Supreme Court of Justice, through its Judicial Commission, created by the Regulations on the Management, Governance, and Administration of the Judiciary adopted by its Plenary Chamber on August 2, 2000, and published in Official Gazette of the Republic No. 37.014 on the 15th of that same month and year, applying the provisions contained in the final part of Article 20 of the Organic Law of the Supreme Court of Justice, resolves: To void the appointment of [...] to the position of [...] Judge of the [...] Court. For communication and publication.

275. In general, these resolutions do not set out the grounds for voiding the appointments, nor do they indicate that the decisions were taken through administrative proceedings in which the judges were given the possibility of defending themselves.

276. The IACHR observes that the United Nations Special Rapporteur on the independence of judges and lawyers has also expressed concern “with regard to the Judicial Committee [sic] of the Supreme Court of Venezuela which can remove judges at its discretion without neither [sic] a justified cause nor disciplinary proceedings guaranteeing the fairness of the dismissal.” In this respect, he stated that the Human Rights Committee highlighted the importance of the existence of an independent body or mechanism charged with the imposition of disciplinary measures against judges. He also pointed out that the proceedings before this body must observe due process guarantees and the principle of impartiality. He added that, independently of the type of disciplinary body, it is of crucial importance that the decision of this body be subject to independent review and that, in the cases of removal by political bodies, it is even more important that this decision be subject to judicial review.²³⁹

277. In the same line, taking into account that more than half of Venezuela’s judges do not enjoy tenure in their positions, the Commission is concerned at this voiding of the appointments of non-regular judges without a clear procedure and without the resolutions specifying the reasons why the appointments are being canceled. Additionally, the IACHR considers extremely troublesome information received indicating that the Judicial Commission of the Supreme Court of Justice is also dismissing tenured judges.²⁴⁰ This is the case of Judge Fanny Yasmina Becerra Casanova, who, since February 8, 2009, served as Tenured Judge of the First Tribunal of First Instance in Functions of Judgment in Táchira²⁴¹ and, among others, was in charge of the proceedings against journalist Gustavo Azócar Alcalá, which the Commission will make reference to in the section on freedom of expression. In spite of being a tenured judge, Judge Becerra, according to what was reported to the IACHR, was dismissed on September 1, 2009 by the Judicial Commission, a week before the end of the public trial. The first decision made by the judge who replaced her was to nullify the entire proceeding.

278. As the IACHR has stated on previous occasions, the consolidation of a transparent judicial career and the resultant stability of appointments, in strict compliance with legal and constitutional procedure, are essential in guaranteeing the independence and impartiality of the

²³⁹ Report of the Special Rapporteur on the independence of judges and lawyers, Leandro Despouy, to the Human Rights Council of the United Nations. A/HRC/11/41, 11th period of sessions. March 24, 2009, para. 60.

²⁴⁰ Information provided by the petitioners to the IACHR. *Hearing on Freedom of Expression in Venezuela*. 137th Period of Sessions, November 2, 2009.

²⁴¹ This follows from the information of the Supreme Court of Justice: <http://cfr.tsj.gov.ve/jueces.asp?juez=1548&id=020&id2=>.

judiciary and have a direct effect on strengthening access to justice.²⁴² The Commission repeats that all judges, including those appointed on a provisional basis, must only be removed on grounds established by law and with access to effective judicial remedies for appealing against their removal.

f. New judicial restructuring process

279. On March 18, 2009, the Plenary of the Supreme Court of Justice decided to embark on a new and comprehensive restructuring of the Venezuelan judiciary.²⁴³ Article 6 of that resolution states that the restructuring process will last for one year, but may be extended for one additional year. The resolution is grounded on the need to “take urgent measures, without unnecessary formalism, to guarantee the thorough combating of corruption, insecurity, and impunity.”

280. The resolution states that judges and administrative personnel will be submitted to an obligatory process of “institutional evaluation” (Article 2); it authorizes the Supreme Court’s Judicial Commission to “suspend,” either with or without pay, those judges and administrative personnel who do not pass the institutional evaluation (Article 3); and it states that the resultant vacancies will be filled by the Judicial Commission (Article 4).

281. As the IACHR has been informed, this is the third restructuring of the judiciary in the past ten years: the first began with the enactment of the new Constitution; and the second, upon passage of the Organic Law of the Supreme Court of Justice. The information received by the Commission indicates that uncertainty exists regarding the contents and operation of this institutional evaluation, together with concern about how this new intervention will allow the Judicial Commission to fill the resultant vacancies without any competitive processes.²⁴⁴ Additionally, the IACHR was informed that by virtue of this resolution, the Judicial Commission can dismiss even tenured judges that do not pass the evaluation, as well as appoint the judges that will replace them.²⁴⁵

282. The IACHR hopes that with this new judicial restructuring process, the Judicial Commission will work toward the consolidation of a transparent judicial career and that the right of judges to tenure in their positions will be respected, in strict compliance with the procedures established for appointing and removing judges, thereby ensuring the independence and impartiality of the work they perform.

3. Guarantees for the judiciary against external pressure

283. Interference in the administration of justice by the executive and legislative branches, parties involved in a trial, social stakeholders, or other agencies with ties to the judiciary also affects the independence of judges.

²⁴² IACHR. *Annual Report 2006*. Chapter IV: Human Rights Developments in the Region. Venezuela, para. 164. IACHR. *Annual Report 2007*. Chapter IV: Human Rights Developments in the Region. Venezuela, para. 284.

²⁴³ Supreme Court of Justice, Resolution No. 2009-0008, March 18, 2009. Available in Spanish at: http://www.tsj.gov.ve/informacion/resoluciones/sp/resolucionSP_0000888.html

²⁴⁴ Information provided by the petitioners to the IACHR. *Hearing on the Situation of Institutional and Human Rights in Venezuela*, 134th Period of Sessions, March 24, 2009.

²⁴⁵ Information provided by the petitioners to the IACHR. *Hearing on Democratic Institutional, Parapolice Groups, and Prisons in Venezuela*. 137th Period of Sessions, November 2, 2009.

284. Since the State also has the duty of guaranteeing the image of an independent judiciary, inspiring a sense of legitimacy and confidence not only in the accused, but also among the citizens of a democratic society,²⁴⁶ the Commission will address some examples of actions and statements by both judges and high-ranking public authorities that could indicate undue interference in judicial decisions by other branches of government

a. Politically-motivated removals of judges

285. The information received by the Commission in recent years yields a long list of judges who have been removed after handing down decisions that affected government interests. Although it is not the task of this report to determine whether in each specific case the removal was arbitrary and whether the judge in question should be reincorporated into the judiciary, the Commission will refer to certain cases in which, in light of the available public information, there is evidence of political interference in the decision to remove a judge.

286. Among others, there is the case of Judge Mercedes Chocrón Chocrón, who was removed from her position as judge of the Fortieth Control Court of Caracas by an administrative decision of the Supreme Court's Judicial Commission. Her removal took place on February 3, 2003, 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.²⁴⁷ In relation to these facts, the Commission adopted a merits report in accordance with Article 50 of the American Convention, in which it concluded that the State was responsible for the violation of rights consecrated in the Convention. Considering that the State had not adopted measures to comply with the recommendations contained in the merits report, on November 25, 2009, the IACHR presented an application to the Inter-American Court stating that Judge Mercedes Chocrón Chocrón was arbitrarily dismissed from her position, without the minimum guarantees of due process, without an adequate reason, without the possibility to be heard and to exercise her right to defense, and without having had an effective judicial remedy.

287. There is also the case of judges Miguel Luna, Petra Jiménez, and María Trastoy, three members of a court of criminal appeals who were removed one day after releasing a number of citizens arrested for allegedly participating in the antigovernment demonstrations of February 27, 2004. During those demonstrations, which involved violent clashes with government forces, hundreds of people were detained. The judges Miguel Luna, Petra Jiménez, and María Trastoy received requests for court orders to prolong their pretrial arrest; however, they resolved that the Attorney General's Office had not presented sufficient evidence to justify their continued custody, and so ordered their immediate and unconditional release. Immediately afterwards, on March 2, 2004, the three judges were dismissed by a resolution of the Supreme Court's Judicial Commission that failed to cite the reasons for their removal.²⁴⁸

288. Also noteworthy is the case of Justice Franklin Arrieche, who was dismissed by the National Assembly on June 15, 2004. Public statements made by members of the National

²⁴⁶ I/A Court H.R., *Case of Herrera Ulloa v. Costa Rica*. Judgment of July 2, 2004. Series C No. 107, para. 171; *Case of Reverón Trujillo v. Venezuela*. Judgment of June 30, 2009. Series C No. 197, para. 67.

²⁴⁷ IACHR. *Report on Admissibility No. 38/06*. Petition 549-05. Mercedes Chocrón Chocrón, Venezuela. March 15, 2006.

²⁴⁸ Human Rights Watch. *Rigging the Rule of Law: Judicial Independence under Siege in Venezuela*. June 16, 2004. Available at: <http://www.hrw.org/es/reports/2004/06/16/manipulando-el-estado-de-derecho>

Assembly indicate that Justice Arrieche was removed was because he had drafted the judgment of August 14, 2002, that acquitted four members of the Armed Forces accused of insurrection in the events of April 11 to 13, 2002.²⁴⁹

289. Also of relevance are the statements made by the President of the Republic of Venezuela regarding the First Court of Administrative Disputes prior to the removal of that court's judges.²⁵⁰ The First Court had handed down a judgment²⁵¹ in a case related to the Barrio Adentro Mission, ordering that foreign doctors working on the Mission without having revalidated their qualifications be replaced by Venezuelan physicians or by foreigners who met the terms of the Law on the Practice of Medicine.

290. Immediately, during his weekly *Aló Presidente* broadcast, the President criticized the Court's decision and called for it to be disregarded, saying:

Do you believe that the Venezuelan people are going to follow an unconstitutional decision? Well, they are not. What kind of court could order the death of the poor, [...] the court of injustice, [...] and, even so, I repeat, there is a lot of excess fabric to be trimmed in the judicial branch, from the Supreme Court of Justice on down, down as far as the parish courts, and municipal courts; not much has been done there to transform the State, because we are still waiting the passage of the Law on the Supreme Court of Justice [...] Look, I am not telling you what feelings this Court arouses in me, the three of them, because there are two dissenting votes, the three judges who should not be judges, I am not telling you about those feelings because we are talking to a nation. [...] But the people are telling them: you know where you can go with your decision. [...] You can comply with it in your homes, if you wish. [...] Yesterday another 140 doctors arrived, and they are going to Sucre [...].²⁵²

Other public authorities, including the Minister of Health and several mayors, stated they would ignore or disregard the decision of the First Court of Administrative Disputes.

291. Another case is that of Judge Juan Carlos Márquez Barroso of the Ninth Superior Court of Fiscal Disputes, who was informed of his removal in a telephone call from the President of the Political-Administrative Chamber on June 3, 2005, after he overturned a resolution of the National Telecommunications Commission imposing a large fine on *Globovisión*, a television channel

²⁴⁹ Speech by Deputy Francisco Ameliach during the oath-taking ceremony of 49 justices of the Supreme Court on December 15, 2004. *El Universal*. *Listo TSJ con 32 magistrados* (TSJ [Supreme Court] ready with 32 justices). December 16, 2004. See also: IACHR. *Annual Report 2004*. Chapter IV: Human Rights Developments in the Region. Venezuela, para. 179.

²⁵⁰ Regarding the removal of the judges of the First Court of Administrative Disputes of Venezuela, see: I/A Court H.R., *Case of Apitz Barbera et al. ("First Court of Administrative Disputes") v. Venezuela*. Judgment of August 5, 2008. Series C No. 182.

²⁵¹ Supreme Court of Justice, First Court of Administrative Disputes of Venezuela, Judgment No. 2727, August 21, 2003.

²⁵² Statement by President of the Republic Hugo Chávez Frías of August 24, 2003, on Government Online, *Aló Presidente* No. 161.

that the government has referred to as its enemy.²⁵³ Later, the Constitutional Chamber ordered his reincorporation on a precautionary basis in a ruling dated June 10, 2005.²⁵⁴

292. In another case, the Supreme Court's Judicial Commission voided the appointment of María Mercedes Prado as the Twenty-second Trial Judge as she was about to order the conditional release of one of the persons accused of the attacks on the Spanish and Colombian embassies on the grounds that the detainees had been held in custody for more than two years.²⁵⁵

293. In February 2005, Mónica Fernández, judge of the Second Trial Court of the Caracas Metropolitan Area Judicial District Criminal Circuit, was also suspended. She was responsible for judicial oversight of the warrant to search the home of Ramón Rodríguez Chacín, a former Minister of the Interior and Justice, and his subsequent imprisonment, during the events of April 2002. Because of that, she was charged with criminal offenses by the Attorney General's Office and later suspended without pay.²⁵⁶

294. One of the most recent cases took place in July 2009, with the removal of Alicia Torres, a provisional judge with the Thirteenth Criminal Control Court of the Caracas Metropolitan Area. Judge Torres's removal occurred two days after she claimed she had been harassed by the presiding judge of the Criminal Circuit of Caracas, urging her to order an injunction against *Globovisión* President Guillermo Zuloaga Núñez and his son.

295. The Commission has been given access to a recording of the telephone call that Judge Alicia Torres received from the head of the Metropolitan Area Judicial Circuit, Venicce Blanco.²⁵⁷ The recording appears to indicate that the head of the Metropolitan Area Judicial Circuit asked Judge Torres to resign if she would not sign the order. In response, Judge Torres stated that she could not sign an order that she did not have. Judge Alicia Torres also publicly alleged that she was forced to sign the injunction papers without previously having issued any judgment on which to base them. Judge Torres was dismissed by the Supreme Court's Judicial Commission, without following any procedure or being given any justification. Her removal from office was even criticized by the then-United Nations Rapporteur on the independence of judges and lawyers, Leandro Despouy.²⁵⁸

296. Also, on August 11 2009, the Judicial Commission agreed to suspend Judge Elías Álvarez without pay. Álvarez was a tenured judge in charge of the First Instance Court of the Criminal Circuit belonging to the Caracas' Metropolitan Jurisdiction and he presided over the Súmate case and more recently granted bail to the former Chairman of the Industrial Bank of Venezuela, who is currently being investigated for alleged acts of corruption.

²⁵³ IACHR. *Annual Report 2005*. Chapter IV: Human Rights Developments in the Region. Venezuela, para. 296.

²⁵⁴ Canova González, Antonio. *La Realidad del Contencioso Administrativo Venezolano* (The Reality of the Contentious Administrative Jurisdiction in Venezuela). Caracas, 2009, p. 102.

²⁵⁵ IACHR. *Annual Report 2005*. Chapter IV: Human Rights Developments in the Region. Venezuela, para. 297.

²⁵⁶ Judicial Commission of the Supreme Court of Justice. Resolution No. 2005-0027, February 15, 2005. Available in Spanish at: http://www.tsj.gov.ve/informacion/resoluciones/cj/resolucionCJ_58.htm.

²⁵⁷ The recording of the conversation can be found at: http://www.eluniversal.com/2009/07/28/pol_ava_podemos-presenta-evi_28A2551763.shtml.

²⁵⁸ UN Rapporteur for the independence of judges and lawyers. Press Release dated July 30, 2009.

297. The situation of the 31st Control Judge of the Caracas Metropolitan Area, María Lourdes Afiuni Mora, also caught the attention of the Commission. According to what was reported to the IACHR, on Thursday, December 10, 2009, Judge Afiuni held a preliminary hearing in the case against the citizen Eligio Cedeño, who at that time had been deprived of his liberty for more than two years, the maximum period of preventive detention allowed by the Organic Code of Criminal Procedure. The detention of Eligio Cedeño was declared arbitrary by the UN Working Group on Arbitrary Detention on September 1, 2009, citing violations of the right to a fair trial. In the aforementioned hearing, the judge decided to substitute the detention measure against Cedeño with judgment in liberty, with the following requirements: (a) prohibition on leaving the country; (b) presentation before the court every 15 days; and (c) retention of his passport. Hours later, officials from the National Office for Intelligence and Prevention Services (DISIP, by its Spanish acronym) raided the headquarters of the 31st Court of Control, arresting Judge María Lourdes Afiuni Mora and the marshals Rafael Rondón and Carlos Lotuffo.

298. The next day, during a national blanket radio and television broadcast, the President of the Republic, Hugo Chávez, characterized Judge Afiuni as an “outlaw” and stated:

I call for toughness against this judge, I even told the president of the Supreme Court [of Justice, Luisa Estela Morales], and I tell the National Assembly: a law must be passed because a judge who frees an outlaw is much worse than the outlaw himself. It is infinitely more serious for a Republic, for a country, than an assassin, because he pays, is freed by a judge. It is more serious than an assassination; therefore, we must apply the maximum penalty against this judge and against others who do this. I call for thirty years in prison in the name of the dignity of the country.²⁵⁹

Various authorities participated in the official act transmitted in a national blanket broadcast by radio and television, including the Attorney General of the Republic.

299. A day later, according to information from the Office of the Attorney General of the Republic, “the former official was charged, by the Attorney General’s Office, on December 12, with the alleged commission of the crimes of corruption, abuse of authority, assisting evasion, and association to commit crime, as provided in the Law against Corruption, the Penal Code, and the Organic Law against Organized Crime.” The detention order was carried out based on that which is established in the Organic Code of Criminal Procedure, which prohibits judges from having direct or indirect contact with any of the parties without the presence of all. It is alleged that the hearing held on December 10 in the case against Eligio Cedeño was carried out without the presence of the Attorney General’s Office although the 50th and 73rd national prosecutors had justified their failure to appear before the judge.²⁶⁰

²⁵⁹ Audio recording of this speech available in Spanish at: Prensa Web of the National Radio of Venezuela. Bolivarian Government of Venezuela. Ministry of Popular Power for Communication and Information. Office of the Attorney General. “*Pido 30 años de prisión para la Jueza Afiuni*” (“I call for 30 years in prison for Judge Afiuni”). December 11, 2009. Available in Spanish at: <http://www.rnv.gov.ve/noticias/index.php?s=b7b1132fb9cab29db08cf8c237df69da&act=ST&f=2&t=115304>.

²⁶⁰ Office of the Attorney General. Press Release: *Ministerio Público Investiga Presuntas Amenazas contra Jueza Afiuni* (Attorney General’s Office investigates alleged threats against Judge Afiuni). December 20, 2009. Available in Spanish at: <http://www.fiscalia.gov.ve/Prensa/A2009/prensadiciembre2009.asp>.

300. In relation to these facts, on December 17, 2009, the IACHR sent a request for information to the State. For their part, three United Nations Rapporteurs²⁶¹ expressed their profound concern over the arrest of Judge Afiuni, which they described as “a blow by President Hugo Chávez to the independence of judges and lawyers in the country.” The UN Rapporteurs expressed their concern about the fact that President Chávez had publicly instructed the Attorney General and the President of the Supreme Court of Justice to castigate Judge Afiuni with the maximum penalty. In this sense, they stated that “the reprisals for exercising constitutionally-guaranteed functions and the creation of a climate of fear in the judiciary and in the attorneys serves no other purpose than to undermine the rule of law and to obstruct justice.”²⁶²

301. Beyond the question of whether the dismissals such as the ones described in the above paragraphs could or could not have been based on legally established grounds and procedures, the fact that they occurred almost immediately after the judges in question handed down judicial decisions in cases with a major political impact, combined with the fact that the resolutions establishing the destitution do not state with clarity the causes that motivate the decision, nor do they refer to the procedure through which the decision was adopted, sends 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.

b. Statements and decisions of the judiciary that indicate an absence of independence from the executive branch

302. In recent years, the Commission has learned of cases in which members of the judiciary have expressly stated their support for the executive, indicating the absence of independence within their branch of government. Similarly, the Commission has seen how certain shortcomings caused by the lack of judicial independence are heightened in politically-charged cases and how society’s confidence in the justice system is affected as a result.

303. One of the most eloquent indicators of this situation occurred during the opening session of the 2006 judicial period, when the robed justices and judges, in the hearings chamber of the Supreme Court of Justice, rose to their feet in the presence of the President of the Republic and began to chant one of the slogans used in political campaigns by supporters of the President of the Republic.²⁶³

304. Regarding this incident, the State maintains that:

Of course the entry of the President of the Republic into the hall where the judicial period was to be opened was accompanied by manifestations of praise and support for the President of the Republic, but they were proffered by the guests and the general public, and at no time by the judges and justices attending

²⁶¹ The signing rapporteurs are the specialists in arbitrary detention, El Hadji Malick Sow; in the independence of judges and lawyers, Gabriela Carina Knaul de Albuquerque e Silva; and in the situation of human rights defenders, Margaret Sekaggya.

²⁶² United Nations. News Centre. *Venezuelan leader violates independence of judiciary—UN rights experts*. December 16, 2009. Available at: <http://www.un.org/apps/news/story.asp?NewsID=33273&Cr=judges&Cr1=>.

²⁶³ DPLF (Due Process of Law Foundation), International Commission of Jurists, and REVAPAZ (Venezuelan Network of Peace Activists). *Situation of the Judiciary in Venezuela*. Video submitted to the IACHR at the hearing of the same name held during the 134th Period of Sessions on March 24, 2009. The slogan that can be heard on the video goes: “uh, ah, Chávez no se va” (“uh, ah, Chávez won’t go”).

the event who, in compliance with Article 256 of the Constitution [...] may not, other than by exercising their right to vote, engage in partisan political, professional association, trade union, or similar activism [...].²⁶⁴

305. Similarly, the Commission has received information indicating that the President of the Supreme Court of Justice has publicly expressed her support for the executive's revolutionary project and, in her judicial work, she has noted her pleasure at proposals made by the President of the Republic.²⁶⁵ Of particular concern to the Commission is the fact that the President of the Supreme Court was a member of the Presidential Council for Constitutional Reform and subsequently heard and dismissed the appeals lodged against the proposed constitutional amendment, in spite of having formed part of that Council.

306. At the same time, a study by the PROVEA organization indicates that:

96% of the cases studied in which cases were brought directly against the actions of agencies of the State – such as the President of the Republic, the National Assembly (AN, by its Spanish acronym), the Office of the Comptroller General of the Republic (CGR, by its Spanish acronym), the National Electoral Council (CNE, by its Spanish acronym), the Attorney General of the Republic, or the Supreme Court of Justice (TSJ, by its Spanish acronym) – were declared ungrounded or received no rulings on the merits on the grounds of inadmissibility, incompetence, inapplicability, or inappropriate cause; this does not help strengthen public oversight over the exercise of power and subjectively separates the institutions from the population.²⁶⁶

Thus, by not ruling on the merits, the judiciary has neglected its role of guaranteeing the rights of the citizens vis-à-vis the actions of the other branches of government.

307. According to information received by the Commission at its hearings,²⁶⁷ Venezuelan justice is marked by a pattern of procedural delays that affects, in particular, cases in which the executive branch has no special interest. In contrast, cases involving executive interests or persons allied with the government are resolved with the utmost dispatch. According to the information received, this situation affects the judiciary at all levels, including the Supreme Court and the Attorney General's Office. On this point, the State acknowledged at the hearing that delays existed, but stressed that the reason behind them was not political.²⁶⁸

²⁶⁴ State's response to the draft of Chapter IV of the Commission's 2006 Annual Report regarding Venezuela. Note II.2.E8.D-OEA.10-142 received by the IACHR on February 26, 2007, p. 5.

²⁶⁵ DPLF (Due Process of Law Foundation), International Commission of Jurists, and REVAPAZ (Venezuelan Network of Peace Activists). *Situation of the Judiciary in Venezuela*, document presented to the IACHR at the hearing of the same name held during its 134th Period of Sessions, March 24, 2009.

²⁶⁶ PROVEA. *Situación de los Derechos Humanos en Venezuela Informe Anual Octubre 2007/Septiembre 2008* (Situation of Human Rights in Venezuela: Annual Report October 2007/September 2008), December 10, 2008, p. 263.

²⁶⁷ Information provided by the petitioners to the IACHR. *Hearing on the Situation of the Judiciary in Venezuela*, 134th Period of Sessions, March 24, 2009.

²⁶⁸ Information provided by the State to the IACHR. *Hearing on the Situation of the Judiciary in Venezuela*, 134th Period of Sessions, March 24, 2009.

308. Another area where the lack of independence among the branches of government can be seen is in the allocation of cases within the Attorney General's Office. The Commission has been told that the Attorney General's Office does not have an objective system for assigning cases, and that matters are cherry-picked. As proof of this it is claimed that in spite of there being more than 1,000 prosecutors at the national level, all investigations related to the interests of the ruling party and the executive branch are handled by a small group of prosecutors. It is further claimed that several of these prosecutors have been challenged by the accused in various cases, but that the Attorney General has not upheld any of those challenges.²⁶⁹

c. Restrictions on the scope of international human rights judgments

309. The State has maintained²⁷⁰ that one example of the separation of powers and of the independence of the judiciary in Venezuela is the judgment handed down by the Supreme Court's Constitutional Chamber requesting the State to denounce the American Convention on Human Rights. In connection with this, the State indicated that the executive was still studying the reply sought from it by the judiciary, and that this evidenced the total independence existing between the two branches of government.

310. The judgment referred to by the State is Decision 1939 of the Constitutional Chamber of the Supreme Court of Justice,²⁷¹ handed down on December 18, 2008, in which it ruled on the inexecutability of the judgment of the Inter-American Court of Human Rights in the case of *Apitz Barbera et al. (First Court of Administrative Disputes) v. Venezuela*²⁷² and, "in accordance with the terms of Article 78 of the American Convention on Human Rights, [...] it asks the executive branch to proceed to denounce this Treaty or Convention, given the apparent usurpation of powers by the Inter-American Court of Human Rights in the judgment in question."

311. In the decision, the Constitutional Chamber held that:

The execution of the August 5, 2008, judgment of the Inter-American Court of Human Rights would be prejudicial to essential constitutional principles and values of the Bolivarian Republic of Venezuela and could lead to institutional chaos within the justice system, in that it would modify the autonomy of the constitutionally-established judiciary and the legislatively-instituted disciplinary system, and in that it aims to reinstate the former judges of the First Court of Administrative Disputes on the grounds of bias on the part of the Commission for the Functioning and Restructuring of the Judicial System, when the latter has acted for many years, in thousands of cases, seeking to purge the judiciary through disciplinary activities. Additionally, the ruling of the Inter-American Court of Human Rights also disregards the finality of the decisions to remove the former judges of the First Court of Administrative Disputes, stemming from a failure to

²⁶⁹ Venezuelan Criminal Forum (NGO). *Informe que presenta la Asociación Civil Foro Penal Venezolano a tres años de su Fundación* (Report presented by the Venezuelan Criminal Forum three years after its establishment). June 6, 2008, pp. 58-59.

²⁷⁰ Information provided by the State to the IACHR. *Hearing on the Situation of the Judiciary in Venezuela*. 134th Period of Sessions, March 24, 2009.

²⁷¹ Supreme Court of Justice, Constitutional Chamber. Judgment of December 18, 2008, File No. 08-1572, establishing the inexecutability of the judgment of the Inter-American Court of Human Rights of August 5, 2008. Available in Spanish at <http://www.tsj.gov.ve/decisiones/scon/Diciembre/1939-181208-2008-08-1572.html>.

²⁷² I/A Court H.R., *Case of Apitz Barbera et al. ("First Court of Administrative Disputes")*. Judgment of August 5, 2008. Series C No. 182.

exercise administrative or judicial remedies or from the inadmissibility of those remedies as established by the competent administrative and judicial authorities.

312. In its ruling of December 18, 2008, the Supreme Court applied the “constitutional green light” principle referred to in another of its judgments in 2003. On that occasion, the Supreme Court resolved to establish a mechanism for the constitutional control of international judgments, in the following terms:

Since international society as a system of sovereign states lacks a central, omnicompetent jurisdictional body, the decisions of the existing international judicial agencies, be they institutional or of an *ad hoc* (arbitrational) or sectoral nature, cannot, in their execution in the respondent state, ignore the national sovereignty thereof with impunity. That means that prior to their execution, such judgments must pass through the domestic judicial system so that, only if they violate no constitutional principles or provisions, they may be given a green light and their execution may proceed. Should the Constitution be undermined, it may be held that, even in this hypothetical situation, no international responsibility shall arise from the failure to execute the judgment, on the grounds that it affronts one of the existential principles of the international order, that of due respect for state sovereignty. [...] Seen in those terms, no judgment, ruling, decision, or other act of a similar agency may be executed in criminal or civil law in the country if it is in breach of the Constitution; thus, provisions enshrined in human rights treaties, conventions, or pacts that contravene the Constitution or its guiding principles may not be applied in the country. [...] The Chamber believes that there is no jurisdictional body above the Supreme Court of Justice and the effects of Article 7 of the Constitution, unless so indicated by the Constitution and by law; and, even in such an instance, a decision that contradicts Venezuela’s constitutional provisions shall not be applicable in the country.²⁷³

313. The Commission has already noted its concern regarding Judgment No. 1942, adopted by Venezuela’s Supreme Court of Justice on July 15, 2003, in that it disregards the obligatory nature of the decisions handed down by international human rights agencies, making their execution dependent on whether or not they violate the Constitution, in a determination to be made by the Constitutional Chamber of the Supreme Court of Justice itself. The Commission has stated that this judgment represents a step backward for ensuring and respecting human rights in Venezuela, noting that it deviates from the intrinsic goal of the inter-American system of human rights protection and enthrones the State itself as the final guarantor of human rights and their effective enjoyment, thereby clearly eliminating any possibility of controlling state actions in this field.²⁷⁴

314. As for Judgment No. 1939 of the Supreme Court, dated December 18, 2008, the Commission has stated that it “disregards the international obligations undertaken by Venezuela as a State Party to the American Convention.”²⁷⁵

²⁷³ Supreme Court of Justice, Judgment No. 1.942, July 15, 2003. Available in Spanish at <http://www.tsj.gov.ve/decisiones/scon/Julio/1942-150703-01-0415.htm>.

²⁷⁴ IACHR. *Report on the Situation of Human Rights in Venezuela*. December 23, 2003, paras. 209 to 211.

²⁷⁵ IACHR. *Annual Report 2008*. Chapter IV: Human Rights Developments in the Region, para. 324.

315. The Inter-American Court has clearly ruled that states cannot invoke domestic law to avoid their international obligations,²⁷⁶ explaining that this “would lead to a situation in which the Court would have the State’s Constitution as its first point of reference, and the American Convention only as a subsidiary parameter, a situation which would cause a fragmentation of the international legal order for the protection of human rights, and which would render illusory the object and purpose of the Convention.”²⁷⁷ Moreover, this constitutes a principle of International Law enshrined in the Vienna Convention on the Law of Treaties. In this case, the Commission notes that the 1999 Constitution enshrines the constitutional nature of treaties and, in addition, their supra-constitutional status when their provisions are more favorable to people. However, the scope of those treaties has been limited through the judicial decisions described in the above paragraphs.

316. The Inter-American Court has said that:

The Court, like every international organ with jurisdictional functions, has the inherent authority to determine the scope of its resolutions and decisions, and compliance with them cannot be left to the mere discretion of the parties because it would render inoperative the Court’s jurisdictional role, and consequently, the human rights protection system established in the Convention.²⁷⁸

317. The ultimate purpose of the American Convention is the effective protection of human rights, and, pursuant to the obligations contracted under it, States must endow its provisions with useful effect (*effet utile*), which implies implementation of and compliance with the resolutions issued by its supervisory organs, either the Commission or the Court.²⁷⁹ This principle is enshrined in the Venezuelan Constitution itself, Article 31 of which provides that the State shall adopt, in accordance with the procedures established under the Constitution and by law, such measures as may be necessary to enforce decisions emanating from international organs created to receive petitions or complaints involving human rights.

318. In spite of this, the Supreme Court of Justice has maintained that all international judgments and rulings may be subject to constitutional control if their execution in Venezuela is sought. The Commission notes that each state has autonomy to decide or interpret, through its competent bodies, what is the rank of international treaties in its domestic legislation. Nevertheless, the position of domestic tribunals with respect to the place occupied by international treaties in the domestic constitutional order does not free the state of its international obligation to comply fully with international human rights treaties, an obligation that was assumed freely, nor does it exempt it from complying with the decisions of human rights bodies of the system to which it has submitted itself voluntarily. In this respect, the IACHR highlights that the ratification of an international treaty is

²⁷⁶ I/A Court H.R., *Case of Hilaire*. Preliminary Objections, Judgment of September 1, 2001. Series C No. 80, para. 82.

²⁷⁷ I/A Court H.R., *Case of Benjamin et al. v. Trinidad and Tobago*. Preliminary Objections. Judgment of September 1, 2001. Series C No. 81, para. 84.

²⁷⁸ I/A Court H.R., *Decision, Provisional Measures*, Luis Uzcategui with respect to Venezuela, February 20, 2003, para. 13. Also: I/A Court H.R., *Case of Hilaire, Constantine, Benjamin et al.* Judgment of June 21, 2002. Series C No. 94, para. 19; *Case of Hilaire*. Preliminary Objections. Judgment of September 1, 2001. Series C No. 80, paras. 82 and 84; *Case of Benjamin et al.* Preliminary Objections. Judgment of September 1, 2001. Series C No. 81, paras. 73 and 75; *Case of Constantine et al.* Preliminary Objections. Judgment of September 1, 2001. Series C No. 82, paras. 73 and 75; *Constitutional Court Case*. Competence. Judgment of September 24, 1999, Series C No. 55, para. 35; *Ivcher Bronstein Case*. Competence. Judgment of September 24, 1999. Series C No. 54, para. 36.

²⁷⁹ I/A Court H.R., *Case of the Prisons in Mendoza*. Order of November 22, 2004, operative para. 16.

a self-limitation on the sovereignty of the states, and thus sovereignty cannot be invoked to avoid international obligations on human rights matters.

319. Taking into account the Commission's analyzes regarding the judiciary in Venezuela, in particular with respect to the appointment of judges and prosecutors, their stability in those positions, and the absence of guarantees to protect the judiciary against pressure from other branches of government, the Commission calls upon the State of Venezuela to adopt all necessary measures to meet its obligation of ensuring the right to an independent judiciary, as established in Article 8.1 of the American Convention on Human Rights.

B. The delegation of legislative powers to the executive branch

320. In addition to the right of access to independent and impartial judicial authorities to ensure respect for basic rights, the separation of powers as a guarantee of the rule of law also demands an effective and not merely formal separation between the executive and legislative branches. In the information it has received, the Inter-American Commission has been called upon to monitor the Venezuelan National Assembly's delegation of legislative power to the President of the Republic.

321. It should be noted that the possibility that bodies democratically-elected to create laws delegate this power to the executive branch is not in and of itself a violation of the separation of powers or the democratic state, so long as it does not generate unreasonable restrictions or deprive human rights of their meaning.

322. With certainty, in a democratic society, the principle of legality is inseparably linked to that of legitimacy as it relates to the effective exercise of representative democracy, which results, *inter alia*, in the popular election of law-making bodies, respect for minority participation, and the furtherance of the general good. The foregoing does not necessarily negate the possibility of legislative authority being delegated, "provided that such delegations are authorized by the Constitution, are exercised within the limits imposed by the Constitution and the delegating law, and that the exercise of the power delegated is subject to effective controls, so that it does not impair nor can it be used to impair the fundamental nature of the rights and freedoms protected by the Convention."²⁸⁰

323. Although the State has said that "it does not accept the Commission interfering in and making statements about the inherent powers of the executive branch, represented by the President of the Republic, and of the legislative branch, represented by the National Assembly in full exercise of its power to enact enabling laws, pursuant to the Constitution of the Bolivarian Republic of Venezuela,"²⁸¹ the Commission will analyze the information it has received about the delegation of legislative power under the terms of the American Convention, bearing in mind the importance of the rule of law for the effective protection of human rights and taking into account the limits that the Inter-American Court has set for the exercise of legislative authority by the executive branch set out in the previous paragraph.

324. Regarding the need for the delegation of legislative power to be authorized by the Constitution and to be exercised within the constraints set by both the Constitution and the

²⁸⁰ 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, paras. 32 and 36.

²⁸¹ Response of the Venezuelan State to the draft of Chapter IV, dealing with Venezuela, received by the IACHR on February 6, 2009, p. 21.

delegating law, the Commission notes that the possibility of delegating legislative authority to the executive is provided for by Article 203 of the Venezuelan Constitution in the following terms: “Enabling laws are those enacted by a three-fifths vote of the members of the National Assembly to establish the guidelines, purposes, and framework for matters that are being delegated to the President of the Republic, with the rank and force of a law. Enabling laws must stipulate the duration of their exercise.”

325. The current government of Venezuela has exercised legislative powers on three occasions. President Chávez asked the now-extinct Congress of the Republic of Venezuela for the first enabling law in 1999, and he was given the authority to legislate on economic and sectoral matters for a period of six months. Under that enabling legislation, the President enacted 54 decree-laws. In the year 2000, following the promulgation of the new Constitution, the executive branch was empowered to legislate in the following areas: financial, economic, and social matters; infrastructure, transportation, and services; public and legal security; science and technology; and the organization and functioning of the State. Under this authority, the executive branch enacted 49 laws in 12 months.

326. More recently, on January 31, 2007, the National Assembly granted the President of the Republic, for a period of 18 months, the authority to issue decrees with the scope, effect, and force of law in eleven areas: transformation of state institutions; popular participation; essential values in the performance of public duties; economic and social affairs; finance and taxation; public and legal security; science and technology; territorial organization; security and defense; infrastructure, transportation, and services; and energy.²⁸² On the last day the enabling law was in force, the President of the Republic issued 26 decree-laws.²⁸³

327. According to a report by the Parliamentary Observatory linked to the Citizen Identity Movement and published in September 2009, President Hugo Chávez Frías in his ten years of government has issued 167 decree-laws, with the widest scope of application in the history of Venezuela. By way of contrast, between 1961 and 1998, 172 decree-laws were adopted in Venezuela. Pursuant to that report, between 2007 and 2008 the President adopted 67 decree-laws while the legislative power, in the same period, only approved a total of 25 laws. Additionally, the report indicates that 73% of the laws passed between 2007 and 2008 were drafted by the executive branch

²⁸² Law Authorizing the President of the Republic to Enact Decrees with the Scope, Effect, and Force of Law in the Areas Indicated. Published in Official Gazette No. 38.617 of February 1, 2007.

²⁸³ The 26 legal instruments decreed by President Hugo Chávez, under the enabling law, with the scope, effect, and force of law, published in Official Gazette No. 38.984, were: 1. Organic Law of the Bolivarian National Armed Forces; 2. Organic Tourism Law; 3. Organic Law of Aquatic Spaces; 4. National Railroad Transportation Law; 5. Law on the Channeling and Maintenance of Navigation Routes; 6. Organic Law of Agro-alimentary Security and Sovereignty; 7. Comprehensive Agricultural Health Law; 8. Agrarian Sector Credit Law; 9. Agricultural Bank Law; 10. Law on Benefits and Facilities for Paying Agricultural Debts and Strategic Items for Food Security and Sovereignty; 11. Law for the Defense of People in Access to Goods and Services; 12. Law Amending the Law of the National Housing Institute (Inavi); 13. Law Restructuring the National Housing Institute (Inavi); 14. Law of the Benefits Regime for Housing and Habitat; 15. Partial Amendment of the Social Security Law; 16. Law Partially Amending the Organic Law of the Social Security System; 17. Organic Law of the Public Administration; 18. Organic Law for the Simplification of Administrative Procedures; 19. Law Creating the Social Fund for Securing and Allocating Surplus Resources from Agencies of the National Public Administration; 20. Law Amending the Organic Law of the Financial Administration of the Public Sector; 21. Partial Amendment of the Organic Law of Office of the Attorney General of the Republic; 22. Law Terminating and Liquidating the Industrial Credit Fund (Foncrei); 23. Law on the Economic and Social Development Bank of Venezuela (Bandes); 24. Partial Amendment of the General Law of Banks and Other Institutions; 25. Law for the Promotion and Development of Small and Medium-sized Industry and Other Social Production Units; 26. Law for the Promotion and Development of the Popular Economy.

and 27% by the legislative branch. According to this organization, these figures reveal that the National Assembly seems to have put aside its legislative function.²⁸⁴

328. The Commission also received information claiming that the National Assembly granted the President of the Republic legislative power in terms that were too broad or imprecise, for an excessive period of time, and on general topics.²⁸⁵ This information states that Article 203 of the Constitution requires the legislature to indicate, in the Enabling Law, the guidelines, purpose, and framework of the provisions to be decreed by the executive branch, whereby the Enabling Law must not only specify the topics over which authority to legislate is given, but also provide guidance for the decree-laws.

329. In analyzing Article 203 of the Constitution in its 2003 *Report on the Situation of Human Rights in Venezuela*, the IACHR noted with concern that it allows legislative powers to be delegated to the President of the Republic without establishing clear and defined limits on the nature of that delegation. According to the Commission's analysis, by tacitly allowing for the definition of, for example, criminal offenses by rulings from the executive and not by acts of the National Assembly, it contradicts the requirements of the American Convention on Human Rights in that it erodes the guaranteed "requirement of law" developed by the Inter-American system.²⁸⁶

330. On this point the Commission observes that in Venezuela certain criminal offenses have been created through delegated legislation. For example, the Decree with Rank, Value and Status of Special Law for Popular Defense Against Stockpiling, Speculation, Boycott and any other Conduct that Affects the Consumer of Foods and Products Subject to Price Control²⁸⁷ contemplates the offenses of stockpiling, speculation, wrongful price changing, smuggling, and boycott and establishes penalties that go from fines to six years' imprisonment, as well as the inability to run a business for a period of up to ten years. The Commission considers that the establishment of criminal sanctions via a decree-law contradicts the guarantee of legality and, therefore, it is contrary to the American Convention on Human Rights.

331. In that regard, the Commission notes that in principle, the decree-laws issued by the President of the Republic do not contradict the terms of the Venezuelan Constitution or the corresponding Enabling Law. However, both the constitutional provision and the delegating law fail to set the limits necessary for the existence of true control over the executive branch's legislative power or for a mechanism to allow a balanced correlation of government power as a guarantee for the currency of human rights. By permitting legislative delegations in terms that are overly broad, and that could also refer to criminal matters, the principle of legality, necessary to impose restrictions on human rights, is affected.

²⁸⁴ Report of the Parliamentary Observatory of the Citizen Identity Movement. Gathered by the press. El Universal. *Señalan al Legislativo de propiciar el abuso de poder* (Legislature accused of facilitating abuse of power). September 16, 2009. Available in Spanish at: http://www.eluniversal.com/2009/09/16/pol_art_senalan-al-legislati_1573078.shtml. El Nacional. *Denuncian que la AN permite abusos de poder del Presidente* (AN [National Assembly] accused of permitting abuse of power by the President). September 16, 2009. Available in Spanish at: http://www.el-nacional.com/www/site/p_contenido.php?q=nodo/99417/Nacional/Denuncian-que-la-AN-permite-abusos-de-poder-del-Presidente.

²⁸⁵ Information provided by the petitioners. IACHR. *Hearing on the Situation of Institutional, Guarantees, and Defense of Human Rights in Venezuela*, held on March 7, 2007, during its 127th Period of Sessions.

²⁸⁶ IACHR. *Report on the Situation of Human Rights in Venezuela*. December 23, 2003, para. 57.

²⁸⁷ Decree No. 5.197 of February 16, 2007, published in Official Gazette No. 38.628.

332. On the other hand, the Commission has also heard statements of concern²⁸⁸ noting that the 26 decrees with the scope and force of law issued by the President of the Republic on July 31, 2008, were enacted by means of a summary procedure, without any debate or prior consultation with the citizenry or other interested parties, as required by Articles 136²⁸⁹ and 137²⁹⁰ of the 2001 Organic Law of the National Public Administration.²⁹¹ It was also claimed that the nation's states were not consulted on regional matters, as required by Article 206 of the Constitution.²⁹² Although prior consultation on these matters is not required by the Convention, it constitutes a normative advance by the Venezuelan legal system and, therefore, the Commission regrets that it has not been applied.

333. As the Inter-American Court has ruled, the protection of human rights requires that state actions affecting them in a fundamental way not be left to the discretion of the government but, rather, that they be surrounded by a set of guarantees to ensure that the inviolable attributes of the individual are not impaired. When laws are enacted by the legislature, they are invested with the assent of popular representation, and minority groups are able to express their disagreement, propose different initiatives, participate in the shaping of the political will, and

²⁸⁸ Press release by Forum for Life, available in Spanish at: http://www.ucab.edu.ve/tl_files/CDH/recursos/decretos_leyes.pdf. The communiqué is signed by the following Venezuelan nongovernmental organizations: Venezuelan Prisons Observatory; Cofavic; Provea; Secorve; Human Rights Foundation of Anzoátegui; Vicariate of Human Rights of Caracas; Jesuit Refugee Service; Espacio Público; Caritas Los Teques; Caritas Venezuela; Human Rights Center of Andrés Bello Catholic University.

²⁸⁹ Article 136: "When a public organ or entity, acting in its regulatory role, proposes the adoption of a law, regulation, or other legal provision, it shall forward the preliminary draft text to the organized communities and non-state public organizations listed in the register named in the preceding article for consultation. The memorandum transmitting the preliminary draft shall specify the period of time within which observations must be received in writing; that time period will not begin until ten working days after the delivery of the corresponding preliminary draft. At the same time, the corresponding public organ or entity shall announce in the national press that the consultation process is underway and shall indicate its duration. It shall also enter this announcement on its Internet page, where it will publish the document(s) under discussion. During the consultation process, any person may submit his or her written observations and comments on the corresponding preliminary draft, without requiring their inclusion in the register to which the preceding article refers. Once the observations have been received, the public organ or entity shall set a date on which its staff specialists will meet with the organized communities and non-state public organizations to exchange opinions, ask questions, make observations, and propose that the preliminary draft be adopted, rejected, or amended, or that a new preliminary draft be considered. The outcome of the consultation process shall not be binding. Annulment as a result of the passage of provisions not referred to consultation and the exceptions thereto."

²⁹⁰ Article 137: "A public organ or entity may not approve laws that are within its competence or forward draft regulations to any other body, unless the draft has first been referred for consultation pursuant to the preceding article. Provisions that are approved by a public organ or entity or proposed by it to some other body shall be null and void if the consultation process prescribed in this Title has not been carried out. When an emergency arises, when dictated by the State's obligation toward public safety, security, and protection, the President of the Republic, governor, or mayor, as the case may be, may authorize passage of laws or regulations without prior consultation. In such a circumstance, the laws or provisions so approved shall be immediately referred for consultation with the organized communities and non-state public organizations; and the outcome of the consultation shall be considered by the body that approved the provision, which may ratify it, amend it, or eliminate it altogether. Obligation of informing the population about the activities, services, procedures, and organization of the public administration."

²⁹¹ Organic Law of the Public Administration, published in Official Gazette No. 37.305 of October 17, 2001.

²⁹² Article 206: "Through the Legislative Council, the National Assembly shall consult with the states when legislation in matters relating to them is being considered. The law shall establish the mechanisms through which the Council is to consult with civil society and other agencies of the states in such matters."

influence public opinion to keep the majority from acting arbitrarily.²⁹³ When the executive acts under powers delegated by the legislative branch, it lacks the guarantees enshrined in the legislative and displaces it from its constitutional powers, hence, it becomes necessary to establish certain limits in order to avoid an arbitrary use of power. Therefore, the Commission laments that in issuing the 26 executive decrees under the enabling legislation on July 31, 2008, the executive has failed to guarantee the necessary participation of various sectors that Venezuelan law itself demands.

334. The Commission has also been told that organic laws were enacted under the 2007 Enabling Law, while, in the opinion of certain sectors of Venezuelan society, Article 236 of the Constitution allows only the delegation of the ability to issue provisions with scope and force of law.²⁹⁴ Above and beyond the interpretation given to Article 236 of the Constitution, the Commission notes that under Venezuelan law, organic laws are to be adopted by a qualified majority of the members of the National Assembly, not merely by a simple majority, to provide additional protection for pluralistic debate and to allow for minority voices to be heard. In that regard, the IACHR notes that the delegation of legislative power for ordinary laws offers the population fewer guarantees than legislative debate.

335. Finally, it is incumbent on the Commission to determine whether the delegated power is subject to effective controls, or whether it can be used to undermine the fundamental nature of the rights and freedoms protected by the Convention. In this connection, the State has explained that constitutional control over decree-laws is different for those that are organic in nature and those that are classified as ordinary laws. According to the State, organic decree-laws issued by the President of the Republic must first have their constitutionality checked by the prior control of the Supreme Court's Constitutional Chamber, as must organic laws passed by the National Assembly, in compliance with Article 203 of the Constitution. The constitutional control of ordinary decree-laws is carried out following their publication in the Official Gazette, pursuant to Article 5.8 of the Organic Law of the Supreme Court of Justice.²⁹⁵

336. The Commission applauds the existence of constitutional control over legislative power delegated to the executive branch, and particularly the fact that organic decree-laws issued under enabling legislation must face the same constitutional control as organic laws passed by the National Assembly.

337. Nevertheless, the frequent concentration of executive and legislative functions in a single branch of government, in the absence of appropriate controls and constraints set by the Constitution and the Enabling Law, allows interference in the realm of rights and freedoms. In this sense, the IACHR reiterates what it recommended in its *Report on the Situation of Human Rights in Venezuela* in 2003, with respect to the need to modify Article 203 of the Constitution, in that it permits the delegation of legislative powers to the President of the Republic without establishing clear and defined limits on the content of the delegation.

338. In light of the considerations expressed in this section, the IACHR calls the State to adopt the necessary measures to adapt its legislation to the standards described here, ensuring

²⁹³ 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, para. 22.

²⁹⁴ Article 236 of the Venezuelan Constitution: "The following are attributions and duties of the President of the Republic: [...] 8. To issue decrees having the force of law, subject to authorization in advance by an enabling act."

²⁹⁵ State's response to the questionnaire analyzing the situation of human rights in Venezuela. August 13, 2009, pp. 10 - 11.

that the Venezuelan constitutional framework, as well as the Enabling Laws issued, establish the limits and guarantees necessary to prevent the legislative delegations from permitting abuse of power by the executive.

C. Recommendations

339. To achieve an effective separation and independence of public powers, the Commission recommends:

1. To adapt the domestic law to the parameters of the Convention and adopt all necessary measures to guarantee the autonomy and independence of the different State powers, and especially to ensure that all judges enjoy the guarantees of independence and impartiality.
2. To respect constitutional mechanisms established as guarantees for independence and impartiality for the appointment of judges and prosecutors.
3. To ensure that the appointment of all judges and prosecutors is carried out through public competitions, as provided for in the Rules for Evaluations and Public Competitions for Entry into and Promotion within the Judicial Career.
4. To give strict compliance to the norms regulating the entrance and promotion of judges and prosecutors, and to guarantee their stability in the position in order to ensure their independence towards political or governmental changes.
5. To adapt, in a reasonable time frame, the domestic legislation to the contents of the American Convention, by modifying the norms and practices which consider that provisional judges can be freely removed and by adopting immediate measures to eliminate the provisional situation of the majority of judges and prosecutors in Venezuela, granting provisional judicial workers all the stability guarantees until the condition that originated their provisional status has ceased.
6. To implement an effective professional career system for judges and prosecutors, such that the entry into and promotion in those careers takes place through public competitions and the selection is based exclusively on technical criteria.
7. To adopt immediate measures to finalize the exceptional functioning of the disciplinary jurisdiction with respect to judges, ensuring that such jurisdiction complies with the American Convention and allows for the guarantee of the independence and impartiality of the judiciary.
8. To adopt the necessary measures to implement evaluations and other legal internal and external control mechanisms for the conduct and the fitness of the judicial and Attorney General's Office authorities.
9. To eliminate from the dispositions of the Code of Ethics of the Venezuelan Judge the norms that contain causes for dismissal or suspension that are overly broad or that allow for a high degree of subjectivity and to adopt, as soon as possible, measures to constitute the disciplinary bodies referred to in this Code.
10. Modify the norms of the Organic Law of the Supreme Court of Justice in which the independence and impartiality of the judicial power is compromised.

11. Modify the norms of the Organic Law of the Supreme Court of Justice which contain highly subjective criteria for the removal and suspension of judges.
12. Modify the definition of “serious offenses” provided for in the Organic Law of the Citizen’s Branch in order to exclude from such definition those categories that are too generic or that allow for a high level of subjectivity.
13. Modify Article 203 of the Constitution, which permits the delegation of legislative faculties to the President of the Republic without establishing clear and defined limits to the content of such delegation.
14. Increase the budget assigned to the judicial power as necessary to eliminate procedural delay.

IV. FREEDOM OF THOUGHT AND EXPRESSION²⁹⁶

340. The present chapter describes some of the most recent issues related to the situation of the right to freedom of expression in Venezuela and formulates viable and feasible recommendations based on the American Convention, the American Declaration of the Rights and Duties of Man, and the Declaration of Principles on Freedom of Expression (hereinafter, “Declaration of Principles”).²⁹⁷

341. Freedom of expression is essential for the development and strengthening of democracy and for the full exercise of human rights. The recognition of freedom of expression is a fundamental guarantee to ensure the rule of law and democratic institutions. The Inter-American Court has repeatedly emphasized the importance of this right by affirming that:

Freedom of expression is a cornerstone upon which the very existence of a democratic society rests. It is indispensable for the formation of public opinion. It is also a *conditio sine qua non* for the development of political parties, trade unions, scientific and cultural societies and, in general, those who wish to influence the public. It represents, in short, the means that enable the community, when exercising its options, to be sufficiently informed. Consequently, it can be said that a society that is not well informed is not a society that is truly free.²⁹⁸

342. Freedom of expression includes the right of every person to seek, receive, and disseminate information and ideas of any kind. In this respect, this right has a two dimensions, individual as well as social. This dual nature:

requires, on the one hand, that no one be arbitrarily limited or impeded in expressing his own thoughts. In that sense, it is a right that belongs to each

²⁹⁶ The IACHR requested the Office of the Special Rapporteur for Freedom of Expression to prepare this chapter of the report.

²⁹⁷ The IACHR approved the Declaration of Principles on Freedom of Expression during its 108th Ordinary Period of Sessions in October of 2000. IACHR. Declaration of Principles on Freedom of Expression, available at: <http://www.cidh.oas.org/relatoria/showarticle.asp?artID=26&IID=1>.

²⁹⁸ 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. 70.

individual. Its second aspect, on the other hand, implies a collective right to receive any information whatsoever and to have access to the thoughts expressed by others.²⁹⁹

343. The Venezuelan State has recognized its obligation to protect, guarantee, and promote the right to freedom of expression in Article 57 of its Constitution and, in a paradigmatic example, has decided to honor its international obligations indicating in Article 23 of its constitutional text that: "Treaties, pacts and conventions relating to human rights, signed and ratified by Venezuela have constitutional rank and prevail over domestic legislation, insofar as they contain provisions for the enjoyment and exercise of such rights that are more favorable than those established by this Constitution and the laws of the Republic, and shall be immediately and directly applied by courts and the organs of public power." Additionally, the protection of freedom of information is recognized and protected in the Constitution at the highest level, by establishing it in its Article 337 as one of the untouchable rights that cannot be restricted even under exceptional circumstances. Additionally, as the State indicated in its observations on the present report, Article 58 of the Constitution establishes that "Communication is free and plural, and carries with it the duties and responsibilities provided by law. Every person has the right to timely, truthful, and impartial information, without censorship, in accordance with the principles of this Constitution, as well as the right to reply and rectification when s/he is directly affected by inexact or offensive information. Children and adolescents have the right to receive information adequate for their comprehensive development."³⁰⁰

344. In recent years, the IACHR and the Office of the Special Rapporteur for Freedom of Expression (hereinafter, "Special Rapporteurship") have followed the situation of freedom of expression in Venezuela closely.³⁰¹ In the *Report on the Situation of Human Rights in Venezuela* (2003), prepared based on information received during the last on-site visit to that country, the IACHR issued the following recommendations to the State in relation to the right to freedom of expression:

²⁹⁹ 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. 30.

³⁰⁰ Bolivarian Republic of Venezuela. Ministry of Popular Power for Foreign Affairs. Observations on the Draft Report *Democracy and Human Rights in Venezuela*. Note AGEV/000598 of December 19, 2009, p. 55.

³⁰¹ The Annual Reports of the IACHR corresponding to the period of 2002-2008 have addressed the situation of freedom of expression in Venezuela in detail. IACHR. *Annual Report 2002*. Chapter IV: Human Rights Developments in the Region. OEA/Ser.L/V/II.117. Doc. 1 rev. 1. March 7, 2003. Available at: <http://www.cidh.oas.org/annualrep/2002eng/toc.htm>; IACHR. *Annual Report 2003*. Chapter IV: Human Rights Developments in the Region. OEA/Ser.L/V/II.118. Doc. 5 rev. 2. December 29, 2003. Available at: <http://www.cidh.oas.org/annualrep/2003eng/toc.htm>; IACHR. *Annual Report 2004*. Chapter V: Follow-up of the Recommendations Formulated by the Inter-American Commission on Human Rights in its Reports on the Situation of Human Rights in Member States. OEA/Ser.L/V/II.122. Doc. 5 rev. 1. February 23, 2005. Available at: <http://www.cidh.oas.org/annualrep/2004eng/toc.htm>; IACHR. *Annual Report 2005*. Chapter IV: Human Rights Developments in the Region. OEA/Ser.L/V/II.124. Doc. 5. February 27, 2006. Available at: <http://www.cidh.oas.org/annualrep/2005eng/toc.htm>; IACHR. *Annual Report 2006*. Chapter IV: Human Rights Developments in the Region. OEA/Ser.L/V/II.127. Doc. 4 rev. 1. March 3, 2007. Available at: <http://www.cidh.oas.org/annualrep/2006eng/TOC.htm>; IACHR. *Annual Report 2007*. Chapter IV: Human Rights Developments in the Region. OEA/Ser.L/V/II.130. Doc. 22 rev. 1. December 29, 2007. Available at: <http://www.cidh.oas.org/annualrep/2007eng/TOC.htm>; IACHR. *Annual Report 2008*. Chapter IV: Human Rights Developments in the Region. OEA/Ser.L/V/II.134. Doc. 5 rev. 1. February 25, 2009. Available at: <http://www.cidh.oas.org/annualrep/2008eng/TOC.htm>.

1. Urgently take specific steps to put a halt to attacks on journalists, camera operators, and photographers, opposition politicians and human rights defenders, and all citizens who wish to exercise their right of free expression.
2. Conduct serious, impartial, and effective investigations into murders of, attacks on, threats against, and intimidation of journalists and other media workers.
3. Publicly condemn, from the highest levels of government, attacks on media workers, in order to prevent actions that might encourage such crimes.
4. Scrupulously respect the standards of the inter-American system for the protection of freedom of expression in both the enactment of new laws and in the administrative and judicial proceedings in which it issues judgments.
5. Work for the repeal of laws that contain *desacato* provisions, since such precepts curtail public debate, which is an essential element in a functioning democracy, and are also in breach of the American Convention on Human Rights.
6. Effectively guarantee the right of access to information held by the State in order to promote transparency in the public administration and consolidate democracy.
7. Adapt its domestic laws to comply with the parameters established in the American Convention on Human Rights and fully comply with the terms of Article IV of the American Declaration of the Rights and Duties of Man and the IACHR's Declaration of Principles on Freedom of Expression, particularly as regards the demand for truthful, impartial and objective information contained in Article 58 of the Venezuelan Constitution.³⁰²

345. In the chapter on Follow-up of the Recommendations Formulated by the IACHR in its Reports on the Situation of Human Rights in Member States in its 2004 Annual Report, the IACHR concluded "that the recommendations contained in its report on Venezuela [...] ha[d] not been fulfilled and it therefore call[ed] upon the State to take the necessary actions to comply with them."³⁰³

³⁰² In the same report, the IACHR concluded that "much of the Venezuelan media is critical of the government. However, for journalists, the consequences of expressing such opinions include acts of intimidation, some serious. The uninterrupted continuation of those actions could restrict free speech by fostering a climate unfavorable to the pursuit of journalistic endeavors. The IACHR understands that since criticisms of the government are in fact made, it is difficult to speak of widespread self-censorship within the mass media; however, the emergence of potential self-censorship on the part of reporters can, in some cases, be seen, with journalists required to change the tasks they undertake. The protection of free speech cannot be measured solely by the absence of censorship, newspaper shutdowns, or arbitrary arrests of those who freely express their ideas; it also entails the existence of a climate of security and guarantees for communication workers as they discharge their function of informing the public." IACHR, *Report on the Situation of Human Rights in Venezuela*, para. 372. OEA/Ser.L/V/II.118. Doc. 4 rev. 2. December 29, 2003. Available at: <http://www.cidh.oas.org/countryrep/Venezuela2003eng/toc.htm>.

³⁰³ IACHR. *Annual Report 2004*. Chapter V: Follow-up of the Recommendations Formulated by the Inter-American Commission on Human Rights in its Reports on the Situation of Human Rights in Member States. OEA/Ser.L/V/II.122. Doc. 5 rev. 1. February 23, 2005. Available at: <http://www.cidh.oas.org/annualrep/2004eng/toc.htm>.

346. Recently, in its 2008 Annual Report, the IACHR affirmed that in Venezuela:

[a] climate of tolerance that is conducive to active participation and the free flow of ideas among the various sectors of [...] society [is not being fostered]. The numerous violent acts of intimidation by private groups against journalists and media outlets, in addition to the discrediting statements of high officials, and the systematic institution of administrative actions based on legal provisions the application of which is highly discretionary and that allow for drastic penalties, together with other facts, create a restrictive climate that dampens the exercise of freedom of expression that is one of the essential preconditions for a vigorous democracy built upon pluralism and public discourse.³⁰⁴

347. Additionally, in its pronouncement on August 3, 2009, the IACHR stated that since 2000 it “has observed a gradual deterioration and restriction on the exercise of [the right to freedom of expression] in Venezuela, as well as a rising intolerance of critical expression.”³⁰⁵

348. In this chapter, the IACHR analyzes the following areas of special interest in relation to freedom of expression in Venezuela: the compatibility of the current legal framework on the subject of freedom of expression with the obligations of the State under the American Convention; the use of blanket presidential broadcasts (*cadena presidenciales*); the statements by high-ranking authorities of the State against communications media and journalists based on their editorial line; the disciplinary, administrative, and criminal proceedings against communications media and journalists; the regulation of the radio broadcasting spectrum and the application of the provisions on broadcasting; and the violations of the rights to life and personal integrity. Finally, it formulates recommendations to the State regarding freedom of expression. It should be noted that the issue of restrictions on the right to freedom of expression in the context of social protest in Venezuela was addressed by the IACHR in Chapter II of the present report. Chapter V of the present report will address the issue of access to information in Venezuela.

349. On this chapter, in its observations on the present report, the State indicated that “[t]he Commission with its Special Rapporteurship has an obsession against Venezuela and wants the Venezuelan State to refrain from taking any legal measures against the media owners and some journalists who do not respect their Code of Ethics. According to the Commission, the communications media cannot be contradicted, nor touched with a rose petal, because it is immediately considered a violation of the sacred right to freedom of expression [...]”³⁰⁶ (Emphasis in original). It concluded by affirming that “[f]or the previously expressed reasons, and because it considers that these have been sufficiently addressed and debated during the last nine years by the Venezuelan State, the occurrences indicated by the Commission, we will not respond to the Commission’s allegations contained in paragraphs three hundred thirty-two through five hundred

³⁰⁴ IACHR. *Annual Report 2008*. Chapter IV: Human Rights Developments in the Region, para 388. OEA/Ser.L/V/II.134. Doc. 5 rev. 1. February 25, 2009. Available at: <http://www.cidh.oas.org/annualrep/2008eng/TOC.htm>.

³⁰⁵ IACHR. August 3, 2009. *Press Release No. 55/09*. Available at: <http://www.cidh.oas.org/Comunicados/English/2009/55-09eng.htm>.

³⁰⁶ Bolivarian Republic of Venezuela. Ministry of Popular Power for Foreign Affairs. State Agent for Human Rights. Observations on the Draft Report *Democracy and Human Rights in Venezuela*. Note AGEV/000598 of December 19, 2009, p. 56.

forty-two.”³⁰⁷ (corresponding to the chapter on Freedom of Thought and Expression in the Draft Report)

A. The compatibility of the current legal framework in relation to freedom of expression with the obligations of the State under the American Convention

1. The Law on Social Responsibility in Radio and Television

350. In December 2004, the Law on Social Responsibility in Radio and Television (hereinafter, “Law on Social Responsibility”), also known as the “*Ley Resorte*,”³⁰⁸ entered into force. In a communication of August 13, 2009, the State declared that the objective of this norm is:

to confer upon the national production, and especially the independent national production, a leadership role in [the] new communications order, [which] previously [...] was concentrated in the large communications media, limiting the development of a participative and proactive democracy. [...] The *Ley Resorte* democratizes the radio spectrum [...] [and] has permitted citizen participation in the production of the content of communications media, democratizing and breaking down the barriers to freedom of expression that are established by the communications media themselves by concentrating the production of the content they transmit and that in some circumstances are subject to obscure economic and power interests that do not correspond to the common interest. Currently, there is a plurality of content in radio and television that guarantees and promotes freedom of expression in Venezuela. Far from seeking to be an exclusionary law, it is a necessary legal instrument to guarantee social inclusion and promote the development of radio and television content by Venezuelans for Venezuelans.³⁰⁹

351. The IACHR and its Special Rapporteurship have constantly promoted the principles of pluralism and diversity in the communicative process, especially with respect to the implementation of policies of inclusion of groups traditionally excluded from public debate. On this point, it is important to recall that whatever policy is adopted to promote inclusion and diversity, it must respect the international standards on freedom of expression. For this reason, since November 2002, when the presentation of the then-draft Law on Social Responsibility to the National Assembly was announced, the IACHR and the Special Rapporteurship expressed their serious concern about the vague and imprecise drafting of various provisions, especially those that establish the types of conduct that are prohibited and the corresponding sanctions. The IACHR and the Special Rapporteurship expressed their concern about the provisions referring to offenses of incitement, the severity of the penalties prescribed for these offenses, and that their application is the responsibility

³⁰⁷ Bolivarian Republic of Venezuela. Ministry of Popular Power for Foreign Affairs. State Agent for Human Rights. Observations on the Draft Report *Democracy and Human Rights in Venezuela*. Note AGEV/000598 of December 19, 2009, pp. 56 and 57.

³⁰⁸ Updated text of the Law on Social Responsibility in Radio and Television. Official Gazette No. 38.333 of December 12, 2005. Available in Spanish at: http://www.conatel.gob.ve/download/marco_legal/Ley%20Responsabilidad%20Reforma.pdf.

³⁰⁹ Bolivarian Republic of Venezuela. August 13, 2009. Questionnaire on human rights presented at the request of the Inter-American Commission on Human Rights. Office of the State Agent for Human Rights before the Inter-American and International Systems, pp. 118-120.

of the National Telecommunications Commission (hereinafter “Conatel”), an agency that directly depends on the Executive Branch.³¹⁰

352. The above-mentioned provisions of the Law on Social Responsibility remain in force and the interpretation of them by Conatel has expanded the scope of these norms, instead of limiting them. This issue will be explained in detail in the following paragraphs.

a. Article 29 of the Law on Social Responsibility in Radio and Television

353. According to Article 29 of the Law on Social Responsibility, providers of television and radio services that “promote, advocate, or incite to war; promote, advocate, or incite alterations of the public order; promote, advocate, or incite crime; are discriminatory; promote religious intolerance; [or] are contrary to the security of the Nation” can be sanctioned with the suspension of their qualifications for 72 hours or their revocation for a period of up to five years in the case of recidivism.³¹¹

354. In previous opportunities, the IACHR had already pronounced on the risks of “provisions like Article 29(1) [which] set very punitive sanctions for violating restrictions that are defined in vague or generic language.”³¹² In particular, in its 2008 Annual Report, the Special Rapporteurship recalled that vague or imprecise penal norms which, by their ambiguity, result in granting broad discretionary powers to administrative authorities are incompatible with the American Convention. Such provisions, due to their extreme vagueness, could support arbitrary decisions that censor or impose disproportionate subsequent liability upon persons or media for the simple expression of critical or dissenting discourse that could be disturbing to the public functionaries that transitorily exercise the authority to apply them.

355. On the other hand, in the area of freedom of expression, vague, ambiguous, broad, or imprecise punitive norms, by their mere existence, discourage the dissemination of information and opinions that could be bothersome or disturbing. Therefore, the State should clarify

³¹⁰ IACHR. *Report on the Situation of Human Rights in Venezuela*, paras. 394-405. OEA/Ser.L/V/II.118. Doc. 4 rev. 2. December 29, 2003. Available at: <http://www.cidh.oas.org/countryrep/Venezuela2003eng/toc.htm>. Office of the Special Rapporteur for Freedom of Expression—IACHR. October 26, 2004. Press Release No. 111/04. Available in Spanish at: <http://www.cidh.org/relatoria/showarticle.asp?artID=287&IID=2>; IACHR. November 30, 2004. Press Release 25/04. Available at: <http://www.cidh.oas.org/Comunicados/English/2004/25.04.htm>.

³¹¹ Article 29 of the Law on Social Responsibility in Radio and Television establishes: “Article 29. Television and radio service providers will be sanctioned with: (1) Suspension for up to 72 continuous hours when the messages broadcast: promote, advocate for, or incite to war; promote, advocate for, or incite to alterations of the public order; promote, advocate for, or incite to crime; are discriminatory; promote religious intolerance; are contrary to national security; are anonymous; or when the providers of radio, television, or subscription services have been sanctioned twice, within the three years following the date of the imposition of the first sanctions. (2) Revocation of the permit, for up to five years, and revocation of the concession, when there is a recurrence of the sanction in clause 1 of this article, within the five years following the occurrence of the first sanction. The sanction provided for in clause 2, when it deals with the revocation of permit or concession, will be applied by the governing organ in the area of telecommunications, in both cases the decision shall be issued within thirty business days of the reception of the file by the competent organ. In any case, it will correspond to the Legal Consultancy of the National Telecommunications Commission to substantiate the administrative file and to apply, supplementally, the procedural norms set forth in the Organic Law on Telecommunications.”

³¹² IACHR. *Annual Report 2008*. Chapter IV: Human Rights Developments in the Region, para. 381. OEA/Ser.L/V/II.134. Doc. 5 rev. 1. February 25, 2009. Available at: <http://www.cidh.oas.org/annualrep/2008eng/TOC.htm>.

which types of conduct can be the object of subsequent liability, to avoid affecting free expression especially when it could affect the authorities themselves.³¹³

356. The IACHR considers that Article 29 of the Law on Social Responsibility contains vague and imprecise language that increases the possibility that the norm will be applied in an arbitrary manner by the competent authorities. With respect to this, it is important to note that the State affirmed before the IACHR that the “[Venezuelan] legal order does not define [these terms], being [...] indeterminate juridical concept[s].”³¹⁴ On this point, the IACHR observes with concern that the ambiguity of the legal standards compromises the principle of legality, which obliges the states to define in express, precise, and clear terms each type of conduct that could be the object of sanctions.

357. The broadness of these dispositions is a special concern to the IACHR, given the constant declarations by high-ranking governmental authorities who characterize those who dissent, criticize, or offend the authorities or generate political opposition of “journalistic terrorism,” “coup mentality,” “incitement to violence,” or “instigation of crime.” On this point, on August 13, 2009, the State affirmed that in the country,

no information media is subject to prior censorship (either direct or indirect); but there are subject matters in which certain prohibitions are applied and it is precisely such propaganda, ideas, and concepts that can lead to the creation of destabilizing atmosphere[s] in the country. [...] In our country, the participation of the communications media in the events surrounding the Coup d’État of April of 2002 and the National Strike that occurred between December of 2002 and January of 2003 evidenced the free transmission of constant and permanent messages inciting the population to disobedience of authority and the government, tax evasion, as well as messages which incited authorities to alter the peace and public order; it must be noted that these messages advocated in their content the barring or blockage of streets and other passageways; in good measure, they incited disregard for authority and other public powers, messages of hate that many times stimulated violence or social unrest. [...] [T]he dissemination of messages that foment hate, racism, and discrimination is evident from the continuous and systematic attacks that are expressed against the public authorities, with epithets that go beyond or exceed that which can be criticism of the exercise of public functions, and contain suggestions aimed at affecting the image and personal life of persons who hold or exercise some public function, degrading their personal and family morale, honor, and reputation.³¹⁵

358. In the same document, the State recalled the lamentable facts related to the 2002 *coup d’état* to justify some possible restrictions on communications media. In this respect, in its observations on the present report, the State indicated: “In light of this reality [referring to the events of the coup d’état], the communications media opted to violate the Venezuelans’ right to

³¹³ IACHR. *Annual Report 2008*. Volume II. Chapter III, paras. 65-66. Available at: <http://www.cidh.oas.org/annualrep/2008eng/Annual%20Report%202008-%20RELE%20-%20version%20final.pdf>.

³¹⁴ The State referred specifically to the definition “hate speech” and “incitement to violence.” Bolivarian Republic of Venezuela. August 13, 2009. Questionnaire on human rights presented at the request of the Inter-American Commission on Human Rights. Office of the State Agent for Human Rights before the Inter-American and International Systems, p. 116.

³¹⁵ Bolivarian Republic of Venezuela. August 13, 2009. Questionnaire on human rights presented at the request of the Inter-American Commission on Human Rights. Office of the State Agent for Human Rights before the Inter-American and International Systems, p. 117.

freedom of expression, by not reporting information relating to these events and limiting themselves to broadcasting films and cartoons. As stated in its report ‘the Commission learned during this period of the actions of some private communications media that impeded access to information that was vital to Venezuelan society during these tragic events.’ As the journalist Andrés Izarra stated, the order from the directors of RCTV was clear: ‘Zero *chavismo* (support for Chávez) on the screen’.³¹⁶ With respect to these occurrences, it is important to remember that the IACHR condemned the rupture of the institutional order and the tendentious attitude of the communications media in the following terms:

In addition, the Commission notes the bias found in some Venezuelan media outlets, which reflects the extreme polarization that characterizes the country. As one example of this, at the end of its visit, the Commission stated that: “The IACHR has been concerned by the scant information, or at times total lack of information, available to Venezuelan society during the days of the institutional crisis of April. Although there may be any number of justifications to explain this lack of information, to the extent that the suppression of information resulted from politically-motivated editorial decisions, this should be the subject of an essential process of reflection by the Venezuelan media about their role at that moment.” In this regard, the IACHR defends the right to follow any editorial line; this does not imply, however, that it shares the position chosen or that it does not regret the loss of objectivity.³¹⁷

359. Currently, Venezuela enjoys a political regime that successfully overcame the lamentable acts related to the coup d’état of 2002. As a result, having overcome this condemnable episode, the Venezuelan state, as well as the rest of the states of the Americas, must respect the totality of the rights and freedoms consecrated in the inter-American juridical framework. In this regard, and taking into account the argumentation of the State transcribed above as the interpretation that the competent authorities have made of the norms of the Law on Social Responsibility, it is essential to recall that in no case may freedom of expression be limited by invoking mere conjectures about eventual effects on order, nor hypothetical circumstances derived from subjective interpretations by authorities of facts that do not clearly demonstrate an actual, certain, objective, and imminent threat of serious disturbances or anarchic violence.³¹⁸

360. The IACHR indicates, following the reiterated international doctrine and jurisprudence in the subject area, that the imposition of sanctions for the abuse of freedom of expression under the charge of incitement to violence (understood as the incitation to the commission of crimes, the rupture of public order, or of national security) must have as a prerequisite actual, certain, objective, and convincing proof that the person was not simply expressing an opinion (however harsh, unjust, or disturbing it may be), but rather that he or she had the clear intention to

³¹⁶ Bolivarian Republic of Venezuela. Ministry of Popular Power for Foreign Affairs. State Agent for Human Rights. Observations on the Draft Report *Democracy and Human Rights in Venezuela*. Note AGEV/000598 of December 19, 2009, pp. 5 and 6.

³¹⁷ IACHR. *Report on the Situation of Human Rights in Venezuela*, para. 373. OEA/Ser.L/V/II.118. Doc. 4 rev. 2. December 29, 2003. Available at: <http://www.cidh.oas.org/countryrep/Venezuela2003eng/toc.htm>.

³¹⁸ I/A Court H.R., *Case of Kimel v. Argentina*. Merits, Reparations and Costs. Judgment of May 2, 2008. Series C No. 177, para. 63; 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, paras. 63-69.

commit a crime and the actual, real, and effective possibility of achieving that objective.³¹⁹ If this were not the case, it would allow the possibility of sanctioning opinions and all the states would be able to suppress any thought or expression critical of the authorities that, like anarchism or radical opinions contrary to the established order, question even the very existence of current institutions. In a democracy, the legitimacy and strength of institutions take root and strengthen due to the vigor of public debate about their functioning and not by its suppression.

361. Additionally, the inter-American jurisprudence has clearly indicated that, in order to impose any sanction based on public order (understood as security, health, and public morals), it is necessary to show that the concept of “order” that is being defended is not an authoritarian or autocratic one, but rather a democratic order, understood as the existence of structural conditions that would allow all persons, without discrimination, to exercise their rights in freedom, with vigor and without fear of being sanctioned for this. In effect, for the Inter-American Court, in general terms, the “public order” cannot be invoked to suppress a right guaranteed by the American Convention, to adulterate it, or to deprive it of real content. If this concept is invoked as a basis for limitations on human rights, it must be interpreted in a manner that is strictly tailored to the just demands of a democratic society, which takes into account the equilibrium between the different interests in play, and the necessity of preserving the object and end of the American Convention.³²⁰

362. The forgoing considerations must be taken into account by the Venezuelan state when interpreting any norm that restricts the human right to think and express oneself freely, in particular, the above-cited provisions of the Law on Social Responsibility.

b. The authorities applying the Law on Social Responsibility: Conatel and the Social Responsibility Board

363. In relation to this point, the State indicated that,

The law provides for different organs to be responsible for [the] application [of the Law on Social Responsibility], one of these being the National Telecommunications Commission (Conatel), regulatory body for the telecommunications sector in Venezuela, with legal capacity, its own budget independent of the National Treasury, and technical, financial, organizational, regulatory, and administrative autonomy. [...] The Social Responsibility Board is the second organ charged with overseeing the correct application of the “*Ley Resorte*,” in its composition it reflects the democratic and participative character of the various sectors of society, as well as the political power, and has among its functions the establishment of sanctions in accordance with this Law, as well as

³¹⁹ In this respect, see the following cases of the European Court of Human Rights: *Karatas v. Turkey* [GC], no. 23168/94. ECHR 1999-IV; *Gerger v. Turkey* [GC], no. 24919/94, July 8, 1999; *Okçuoglu v. Turkey* [GC], no. 24246/94, July 8, 1999; *Arslan v. Turkey* [GC], no. 23462/94, July 8, 1999; *Erdogdu v. Turkey*, no. 25723/94, § 69, ECHR 2000 – VI. Additionally, 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. 77.

³²⁰ 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. 67.

the issuance of recommendations regarding the revocation of permits or the non-renewal of concessions.³²¹

364. Conatel, the governing body on telecommunications in Venezuela, is defined in Article 35 of the Organic Law on Telecommunications as “an autonomous institute, endowed with legal capacity and its own budget independent of the National Treasury, with technical, financial, organizational, and administrative autonomy in conformity with this Law and other applicable provisions.”³²²

365. Currently, by virtue of Decree 6.707 of the Presidency of the Republic (Official Gazette No. 39.178 of May 14, 2009), Conatel is assigned to the Ministry of Popular Power for Public Works and Housing.³²³

366. According to Article 40 of the Organic Law on Telecommunications, the directorship of Conatel is made up of a director general and four members, all designated by the President of the Republic, who can also dismiss them at will.³²⁴

367. Conatel is an organ empowered to initiate administrative proceedings for violations of the provisions of the Law on Social Responsibility. It is also charged with applying the sanctions decided upon by the Social Responsibility Board. Article 19.11 of the Law on Social Responsibility provides therefore that Conatel may “[o]pen on its own motion or at the request of a

³²¹ Bolivarian Republic of Venezuela. August 13, 2009. Questionnaire on human rights presented at the request of the Inter-American Commission on Human Rights. Office of the State Agent for Human Rights before the Inter-American and International Systems, pp. 120-121.

³²² Conatel was created on September 5, 1991 through Decree 1.828 (Official Gazette No. 34.801 of September 18, 1991) and was originally assigned to the then-Ministry of Transportation and Communication. Available in Spanish at: <http://www.conatel.gob.ve/conatel.asp>; Organic Law on Telecommunications. Official Gazette No. 36.970 of June 12, 2000. Available in Spanish at: http://www.tsi.gov.ve/legislacion/LT_lev.htm.

³²³ Article 3.24 of Decree 6.707 establishes as a new competency of the Ministry of Popular Power for Public Works and Housing, “[t]o authorize, revoke, renew, and suspend the administrative permits and concessions in relation to radio and television broadcasting and not-for-profit public service community radio and television broadcasting, according to the regulations governing this issue.” Article 6 formally assigns Conatel to the Ministry of Popular Power for Public Works and Housing. National Assembly of the Bolivarian Republic of Venezuela. Decree 6.707 of the Presidency of the Republic (Official Gazette No. 39.178 of May 14, 2009). Available in Spanish at: http://www.asambleanacional.gob.ve/index.php?option=com_docman&task=cat_view&gid=121&dir=DESC&order=date&Itemid=190&limit=10&limitstart=100.

³²⁴ Article 40 of the Organic Law on Telecommunications establishes the following: “The Board of Directors will be made up of the Director General of the National Telecommunications Commission who will preside and four Directors, who will be freely appointed and removed by the President of the Republic, each of these will have an alternate, designated in the same way, who will fill in during temporary absences. The temporary absences of the President shall be covered by the Principal Director s/he designates. The Director General or whoever is acting on his or her behalf and two Directors shall constitute a quorum. Decisions will be made by majority vote of the directors present. In case of a tie, the Director General will have the deciding vote. The Director General of the National Telecommunications Commission, as well as the members of the Board of Directors and their substitutes, may be removed at the will of the President of the Republic. The members of the Board of Directors, unlike the Director General, shall not have the status of officials of the National Telecommunications Commission.” Organic Law on Telecommunications. Official Gazette No. 36.970 of June 12, 2000. Available in Spanish at: http://www.tsi.gov.ve/legislacion/LT_lev.htm.

party, administrative proceedings derived from this Law, as well as apply sanctions and prescribe other actions that are in conformity with that provided in this Law.”³²⁵

368. On the other hand, Article 20 of the Law on Social Responsibility created the Social Responsibility Board, which has the competence to “establish and impose sanctions that are in conformity with this Law.” Article 35 of the same law provides that the Social Responsibility Board will “carry out the actions that will bring to a conclusion the punitive administrative proceedings” initiated by Conatel. The Social Responsibility Board is headed by the director general of Conatel and includes six functionaries elected by the ministers and state institutions, two representatives of groups of users organized by Conatel, a representative of the university, and *one representative of the church*.³²⁶

369. In the 2005 Annual Report, the IACHR expressed its concern “over the establishment of the Social Responsibility Board [...] (Directorio [...] de Responsabilidad Social), which ha[s] broad powers to issue sanctions, without the limits that any organization of this type needs. It is worrisome, among other things, that the Board can meet with the presence of only those members who represent the State, and that they can adopt decisions by simple majority. [...] The Commission and the Office of the Special Rapporteur are of the view that the operation of [this agency], as provided for in the Law, facilitates the practice of prior and subsequent censorship by the State.”³²⁷

370. In the present report, the IACHR reiterates its concern over this matter. The IACHR recalls that the search for a significant degree of impartiality, autonomy, and independence for the organs charged with regulating telecommunications in a country arises from the duty of the states to guarantee the highest degree of pluralism and diversity of communications media in the public debate. The necessary safeguards for avoiding the cooptation of the communications media by the political and economic powers are nothing other than a functional and institutional guarantee to promote the formation of free public opinion, fluidity and depth in social communication processes, and the exchange and publication of information and ideas of all kinds.³²⁸ The guarantees of impartiality and independence of the enforcement entity ensure the right of all inhabitants that the communications media will not be, by indirect means, controlled by political or economic groups.

371. The IACHR observes that the members of the board of Conatel can be freely appointed and dismissed by the President of the Republic without the existence of any safeguards aimed at ensuring their independence and impartiality. Additionally, is important to note that seven of the eleven members of the Social Responsibility Board are selected by the Executive Power, and that the Law on Social Responsibility does not establish any criteria for the designation of the members of the Social Responsibility Board, nor does it define a fixed term for the exercise of their

³²⁵ Updated text of the Law on Social Responsibility in Radio and Television. Official Gazette No. 38.333 of December 12, 2005. Available in Spanish at: http://www.conatel.gob.ve/download/marco_legal/Lev%20Responsabilidad%20Reforma.pdf.

³²⁶ Updated text of the Law on Social Responsibility in Radio and Television. Official Gazette No. 38.333 of December 12, 2005. Available in Spanish at: http://www.conatel.gob.ve/download/marco_legal/Lev%20Responsabilidad%20Reforma.pdf. Emphasis added.

³²⁷ IACHR. *Annual Report 2005*. Chapter IV: Human Rights Developments in the Region, para. 356. Available at: <http://www.cidh.oas.org/annualrep/2005eng/toc.htm>.

³²⁸ IACHR. *Annual Report 2008*. Volume II: 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. 200. OEA/Ser.L/V/II.134. Doc. 5 rev. 1. February 25, 2009. Available at: <http://www.cidh.oas.org/annualrep/2008eng/Annual%20Report%202008-%20RELE%20-%20version%20final.pdf>.

duties or establish precise reasons for their removal. Therefore, there are no institutional, organic, or functional guarantees of the independence of these organs.

372. In the context of the problems that have been outlined, the IACHR and its Special Rapporteurship take note of the various pronouncements by the highest authorities of the State making reference to the possible sanctions that could be adopted against those who have followed an editorial line that is opposed to or critical of the policies of the government. As will be seen subsequently, the initiations of various administrative proceedings described in this chapter were preceded by declarations by the highest public authorities which exhorted Conatel and the Social Responsibility Board to impose exemplary sanctions against communications media labeled as “*golpistas*” (favoring the overthrow of the government). For example, in the program *Aló Presidente* on May 10, 2009, in which the transfer of Conatel to the Ministry of Public Works and Housing was announced, President Hugo Chavez, in referring to a communications media, stated:

We all know who I am talking about. [...] In a dictatorship it would already have been shut down, but in Venezuela there is democracy because of which the corresponding organs will act on this case. [...] We will do what is necessary, and here we will wait for them. Impunity must end in Venezuela. [...] They are playing with fire, manipulating, inciting to hatred, every day [...]. I only say to them, and to the Venezuelan people, that this will not continue like this. [...] There is your responsibility, Diosdado, to carry on the battle with dignity [...], [we cannot] tolerate more journalistic terrorism from the private channels.³²⁹

373. Therefore, taking into account the standards described in this section, the IACHR exhorts the State to modify the text of Article 29 of the Law on Social Responsibility, to subject the interpretation of the provisions on sanctions to the mentioned regional standards, and to establish institutional, organic, and functional guarantees to ensure the independence of the authorities applying the laws on radio broadcasting with the aim of ensuring that the opening of administrative proceedings and the eventual imposition of sanctions in the framework of this instrument are the responsibility of impartial organs that are independent of the Executive Branch.

2. The Organic Law on Education and the limitations on freedom of expression

374. On August 13, 2009, the National Assembly approved the Organic Law on Education (Official Gazette No. 5.929 of August 15, 2009). The IACHR calls the State’s attention to the provisions contained in Articles 9, 10, and 11 of this law.³³⁰

³²⁹ *Aló Presidente*. May 10, 2009. “*Se acabará en Venezuela transmisión de mensajes de odio y conspiración*” (The transmission of messages of hate and conspiracy in Venezuela will end). Available in Spanish at: <http://alopresidente.gob.ve/noticia/se-acabara-en-venezuela-transmision-de-mensajes-de-odio-y-conspiracion.html>.

³³⁰ Article 9 provides the following: “Education and communications media. Social communications media, as public services, are essential instruments of the development of the educational process and, as such, they must carry out informative, educational, and recreational functions that contribute to the values and principles established in the Constitution of the Republic and the present Law, with knowledge, development of critical thought and attitudes to strengthen the collective life of the citizenry, territoriality, and nationality. [...] In the subsystems of the Educational System educational units have been created to contribute to the knowledge, understanding, use, and critical analysis of the content of social communications media. Additionally, the law and the regulations will regulate propaganda in defense of the mental and physical health of the population.”

For its part, Article 10 states: “Prohibition of incitement to hatred. It is prohibited in all the educational institutions and centers in the country to publish and divulge programs, messages, publicity, propaganda, and promotions of any type, through print, audiovisual, or other media, that incite hatred, violence, insecurity,

Continued...

375. The IACHR observes that the cited provisions establish that communications media (including private media) are “public services.” Additionally, they consecrate a series of limitations that not only exceed the legitimate limitations derived from Article 13 of the American Convention, but also are described with enormous broadness, imprecision, and vagueness. Finally, the norms in question provide for the future establishment of regulations to implement the system of sanctions for the violation of the above-mentioned precepts.

376. In light of these dispositions, the IACHR is concerned that the classification or use of the category of “public services” for private communications media in Venezuela could be used to restrict the right to freedom of expression in a manner incompatible with Article 13 of the American Convention. The IACHR reminds the State that any restriction on freedom of expression must necessarily arise from causes clearly and expressly defined by the law and not from regulatory or administrative decisions; and that in all cases, the restrictions imposed on freedom of expression must be necessary to preserve the conditions that characterize a democratic society, consecrated in the American Convention. In this regard, it is essential to modify the above-mentioned provisions in those aspects that threaten the inter-American standards.

377. The IACHR takes into account that Article 13.5 of the American Convention expressly provides that: “Any propaganda for war and any advocacy of national, racial, or religious hatred that constitute incitements to lawless violence or to any other similar action against any person or group of persons on any grounds including those of race, color, religion, language, or national origin shall be considered as offenses punishable by law.”

378. The norms cited from the Organic Law on Education establish grounds for the restriction of freedom of expression that are different from those established in Article 13 of the American Convention, such as that which prohibits, for example, revealing information that promotes the “deformation of the language” or that commits outrage against “values.” Additionally, these dispositions contain ambiguous and imprecise descriptions that make it difficult to distinguish between prohibited conduct and conduct that is not prohibited. To summarize, these constitute norms that, on the one hand, go against the principle of strict legality applicable to restrictions on freedom of expression and, on the other hand, establish restrictions that hypothetically are not authorized by the American Convention.

379. Additionally, with respect to the norms that prohibit incitement to violence, as previously explained, these must have as a prerequisite strong, objective evidence that the person was not simply expressing an opinion, but also had the clear intention to commit an unlawful act and the real, present, and effective possibility of achieving his or her objectives. As a result, any regulation must not consider it sufficient to invoke as a reason to limit freedom of expression mere conjectures about eventual effects on the public order, or hypothetical circumstances derived from subjective interpretations by authorities of facts that do not clearly present a present, certain, objective, and imminent risk of violence.

...continuation

intolerance, deformation of the language; that attack values, peace, morals, ethics, customs, health, human coexistence, human rights, and respect for the rights of indigenous and afro-descendent peoples and communities; and that promote terror, discrimination of any type, the deterioration of the environment, and harm to democratic principles, national sovereignty, and national, regional, and local identity.”

Finally, Article 11 establishes the following: “Prohibition of messages contrary to the national sovereignty. It is prohibited for educational institutions and centers to disseminate ideas and doctrines that are contrary to the national sovereignty and the principles and values consecrated in the Constitution of the Republic.”

380. For the forgoing reasons, the IACHR exhorts the State to adapt its legislation to the standards described herein.

3. The classification of crimes against honor

a. The Penal Code

381. In March of 2005, the Penal Code was reformed to broaden the scope of the norms protecting the honor and reputation of state officials from the broadcasting of critical expressions that may be considered offensive.³³¹ Before the 2005 reform, the President of the Republic, the Executive Vice President, the ministers of the government, the governors, the Mayor of the Metropolitan District of Caracas, the judges of the Supreme Court, the presidents of the Legislative Councils, and the superior judges could initiate penal proceedings for the crime of *desacato* (disrespect). The modification added to this list members of the National Assembly, functionaries of the National Electoral Council, the Attorney General, the Solicitor General, the Human Rights Ombudsman, the Comptroller General, and members of the High Military Command.

382. The text of Articles 147 and 148 of the Penal Code currently in force establishes the following:

Article 147. One who offends by word or in writing, or in any other manner disrespects the President of the Republic or whoever is taking his or her place, shall be punished with imprisonment of six to thirty months if the offense was grave, and with half of that if it was minor.

The penalty will be increased by one-third if the offense was committed publicly.

Article 148. When the acts specified in the previous article are carried out against the person of the Executive Vice President of the Nation, one of the Judges of the Supreme Court of Justice, a Cabinet Minister, a Governor of a state, a deputy of the National Assembly, the Metropolitan Mayor, a rector of the National Electoral Council, the Human Rights Ombudsman, the Solicitor General, the Attorney General, the Comptroller General of the Republic, or some members [sic] of the

³³¹ In the 2005 Annual Report, the IACHR stated: "The Commission and the Office of the Special Rapporteur also express their concern over the March 2005 amendment to the Criminal Code. The Office of the Special Rapporteur believes that this amendment strengthens and expands a legal framework that criminalizes forms of expression protected by the American Convention, by both journalists and private citizens. The Office of the Special Rapporteur observes that the amendment expands the reach of *desacato* laws in terms of the number of public officials protected, and in terms of content. It also observes that the new provisions increase the penalties for *desacato* and other forms of defamation, libel, instigation, outrage, and slander, among other criminal offenses. In [sic] also criminalizes new types of protest against the government, in both the public and private spheres, and increases the penalties for violating these laws." IACHR. *Annual Report 2005*. Chapter IV: Human Rights Developments in the Region, para. 353. Available at: <http://www.cidh.oas.org/annualrep/2005eng/toc.htm>. See also IACHR. *Annual Report 2005*. Volume III: Report of the Office of the Special Rapporteur for Freedom of Expression. Chapter II, para. 227. Available at: <http://www.cidh.oas.org/relatoria/showarticle.asp?artID=662&IID=1>; Office of the Special Rapporteur—IACHR. March 28, 2005. *Press Release 118/05*. Available at: <http://www.cidh.oas.org/relatoria/showarticle.asp?artID=402&IID=1>; IACHR. *Report on the Situation of Human Rights in Venezuela*, para. 451-467. OEA/Ser.L/V/II.118. Doc. 4 rev. 2. December 29, 2003. Available at: <http://www.cidh.oas.org/countryrep/Venezuela2003eng/toc.htm>.

High Military Command, the penalty indicated in that article will be reduced to one half, and to one third when it related to mayors of municipalities.³³²

383. It should be noted that the reform of March of 2005 maintained the article related to the penal offense known as “*vilipendio*” (contempt), which consecrates a kind of *desacato* against the institutions of the State. The text of Article 149 of the Penal Code currently in force states:

Article 149. Whoever publicly denigrates the National Assembly, the Supreme Court of Justice, or the Cabinet, or the Council of Ministers, as well as one of the legislative councils of the states or one of the superior courts, shall be punished with imprisonment of fifteen days to ten months.

Half of this penalty will be applied against those who commit the acts referred to in this article with respect to municipal councils.

The penalty will be increased by half if the offense was committed while one of the enumerated bodies was exercising its official functions.”³³³

384. In a communication of August 13, 2009, the State indicated that these norms, “seek to require personal responsibility on the part of those who incite illegal actions against the subjects of these norms, who affect the respect that they deserve as persons (human beings), which in turn agrees with respect for institutions, to avoid affecting public morale; because some institutions are headed by individuals against whom hate is encouraged, without factual basis to sustain it, which socially impedes the work of the institutions they direct or to which they belong. For example, Articles [147] and [148] of the Penal Code deal with a double protection, of the human being and of the position, with the aim of not weakening the State.” It added that “publicly denigrating institutions (*vilipendio*) can seek to weaken them by discrediting them, to arrive at a collective contempt of that which they –according to the law– must carry out or accomplish.” Finally, it indicated that this type of speech, “as part of a plan or movement towards public disobedience, chaos, disturbing the public order or morale, cannot be tolerated by the State, since, with such tolerance it could be playing with its subsistence.”³³⁴

385. In this respect, the justifications expressed by the State not only contribute to justify the existence and legitimacy of such provisions in a democratic order, but also, on the contrary, they provide reasons to impugn their compatibility with the American Convention. In effect, in contrast to what the State asserts, the organs of the inter-American system for the protection of human rights have been emphatic in maintaining that the vigor of a democracy is strengthened, among other things, due to the intensity of its debates over public issues and not due to the suppression of such debates. As a result, the States must commit themselves to a regulatory framework that promotes free, open, pluralistic, and uninhibited debate about all issues of public relevance, which requires designing institutions that permit discussion, rather than inhibiting it or making it difficult. As maintained by the Inter-American Court, this defense of freedom of expression includes the protection of affirmations that could be offensive, disturbing, or unpleasant for the

³³² Penal Code of Venezuela. Official Gazette No. 5768E of August 13, 2005. Available in Spanish at: <http://www.fiscalia.gov.ve/leyes/6-CODIGOPENAL.pdf>.

³³³ Penal Code of Venezuela. Official Gazette No. 5768E of August 13, 2005. Available in Spanish at: <http://www.fiscalia.gov.ve/leyes/6-CODIGOPENAL.pdf>.

³³⁴ Bolivarian Republic of Venezuela. August 13, 2009. Questionnaire on human rights presented at the request of the Inter-American Commission on Human Rights. Office of the State Agent for Human Rights before the Inter-American and International Systems, pp. 114-115.

State, since this is the requirement of a democratic order founded on diversity and pluralism. Additionally, the doctrine and jurisprudence have been coherent, consistent, and repetitive in indicating that critical expressions that question public authorities or institutions deserve a greater – not lesser—protection in the inter-American system. This has been affirmed by the Inter-American Court in each and every case resolved in the area of freedom of expression. The arguments presented by the State for applying the norms of the criminal law to criticism or dissidence clearly deviate from the considerations expressed here.

386. The application to the institutions themselves of the criminal law to limit or inhibit public discussions of great relevance is of particular concern. This is the case with the figures of *desacato* and *vilipendio* as they are consecrated in the above-cited norms of the Venezuelan Penal Code.

387. The IACHR and its Special Rapporteurship have repeatedly expressed their objections to the existence of criminal *desacato* laws like those that have just been discussed. In their estimation, *desacato* laws “conflict with the belief that freedom of expression and opinion is the ‘touchstone of all the freedoms to which the United Nations is consecrated’ and ‘one of the soundest guarantees of modern democracy.’”³³⁵ In this respect, *desacato* laws are an illegitimate restriction on freedom of expression, because: (a) they do not respond to a legitimate objective under the American Convention, and (b) they are not necessary in a democratic society. The IACHR has established that:

The use of *desacato* laws to protect the honor of public functionaries acting in their official capacities unjustifiably grants a right to protection to public officials that is not available to other members of society. This distinction inverts the fundamental principle in a democratic system that holds the Government subject to controls, such as public scrutiny, in order to preclude or control abuse of its coercive powers. If we consider that public functionaries acting in their official capacity are the Government for all intents and purposes, then it must be the individual and the public's right to criticize and scrutinize the officials' actions and attitudes in so far as they relate to the public office.³³⁶

388. For the IACHR, the application of the criminal standards on *desacato* against those who divulge expressions that are critical of public functionaries is *per se* contrary to the American Convention, given that it constitutes the application of subsequent penalties for the exercise of freedom of expression that are not necessary in a democratic society, and are disproportionate because of the serious effects on the broadcaster and on the free flow of information in society. *Desacato* laws are a means of silencing unpopular ideas and opinions, and they dissuade criticism by generating fear of judicial actions, criminal sanctions, and monetary sanctions. The legislation on *desacato* is disproportionate because of the sanctions it establishes for criticism of state institutions and their members, by which it suppresses the debate that is essential for the functioning of a democratic society, restricting freedom of expression unnecessarily.

³³⁵ IACHR. *Annual Report 1994*. Chapter V: Report on the Compatibility of “*Desacato*” Laws with the American Convention on Human Rights. Title I: Introduction. OEA/Ser.L/V/II.88. Doc. 9 rev. 1. February, 17, 1995. Available at: <http://www.cidh.oas.org/annualrep/94eng/TOC.htm>.

³³⁶ IACHR. *Annual Report 1994*. Chapter V: Report on the Compatibility of “*Desacato*” Laws with the American Convention on Human Rights. Title IV: *Desacato* Laws are incompatible with Article 13 of the American Convention on Human Rights because they suppress the freedom of expression necessary for the proper functioning of a democratic society. Section B. OEA/Ser.L/V/II.88. Doc. 9 rev. 1. February 17, 1995. Available at: <http://www.cidh.oas.org/annualrep/94eng/TOC.htm>.

389. On the other hand, the IACHR has explained its objections to the norms of defamation, insult, and slander particularly when these are used to prosecute those who have made critical statements about issues of public interest, about public persons, or about the functioning of institutions.

390. Additionally, the IACHR and its Special Rapporteurship have questioned the use of criminal law to protect the “honor” or “reputation” of ideas or institutions. In their opinion, public institutions do not have a right to honor; rather, they have the duty to maintain their legitimacy. This is achieved not through the suppression of public debate, but through the triumph of arguments in favor of institutions that respect the rule of law.

391. Contrary to what the State has asserted, critical expressions, information, and opinions about issues of public interest, about the functioning of the state and its institutions, or about public functionaries enjoy a greater level of protection under the American Convention, which means that the state must abstain more strictly from establishing limitations to these forms of expression.³³⁷ In effect, as has already been indicated, the legitimacy and strength of institutions is built as a result of public debate and not as a result of its suppression.

392. As the IACHR has repeatedly stated, the free circulation of ideas or expressions that are critical of public functionaries merits a special protection for the reasons that are summarized here: in the first place, because expressions or information that could offend public authorities are subject to a higher risk of censorship; in the second place, because deliberation about public issues or public functionaries is one of the essential conditions for society to be able to obtain information or hear points of view that are relevant to make collective decisions that are conscientious and well-informed; thirdly, because the functionaries that act in the name of the State, by virtue of the public nature of the functions they carry out and the resources they employ, must be subject to a greater degree of scrutiny and, for this reason, to a higher threshold of tolerance for criticism; and finally, because public functionaries have more and better possibilities to defend themselves in a public debate than persons who do not have official positions or functions.

393. On the other hand, the cited norms on *desacato* and *vilipendio* seriously compromise the principle of strict legality. In effect, the wording of these norms is so vague that it is simply impossible to distinguish between protected criticism and sanctionable conduct.

394. On this point, it is not superfluous to recall that there currently exists a valuable process in the entire region, through which the legislative powers and, in their case, the highest tribunals of justice, have been repealing or ordering the non-application of *desacato* laws, norms on *vilipendio*, and dispositions on insult and slander when they have been applied to sanction those who have referred to the behavior of public functionaries.³³⁸

395. In the *Report on the Situation of Human Rights in Venezuela (2003)*, the IACHR has already stated that “a penalty that obstructs or restricts the dialogue necessary between a country’s inhabitants and those in public office cannot be legitimately imposed. Disproportionate penalties may silence criticism that is necessary to the public administration. By restricting freedom

³³⁷ I/A Court H.R., *Case of Palamara-Iribarne v. Chile*. Judgment of November 22, 2005. Series C No. 135, paras. 83-84; I/A Court H.R., *Case of Herrera-Ulloa v. Costa Rica*. Judgment of July 2, 2004. Series C No. 107, paras. 125 and 128.

³³⁸ Office of the Special Rapporteur—IACHR. June 22, 2009. *Press Release R38/09*. Available at: <http://www.cidh.oas.org/relatoria/showarticle.asp?artID=750&IID=1>.

of expression to this degree, democracy is transformed into a system where authoritarianism will thrive, forcing its own will over society's."³³⁹

396. During recent years, the IACHR has received information that indicates that various journalists that worked for opposition communications media in Venezuela were subjected to criminal proceedings under the provisions on *desacato* and defamation. The IACHR recognizes that in Venezuela there is no systematic application of these provisions, however, it expresses its concern because in many of these cases, the proceedings remain open in the courts for many years, which produces an effect of intimidation and self-censorship among journalists and communications media.³⁴⁰ On the other hand, for reasons that have already been explained, the mere existence of these norms produces an intimidating effect that disproportionately affects the right to freedom of expression.

397. Therefore, as it did in the *Report on the Situation of Human Rights in Venezuela* (2003), the IACHR again concludes that the criminal legislation in Venezuela contains norms that are incompatible with Article 13 of the American Convention.³⁴¹ In consequence, the IACHR exhorts the Venezuelan State to act urgently to bring its criminal legislation into conformity with the standards described here with reference to the norms that regulate *desacato* and *vilipendio*.

b. The Organic Code of Military Justice

398. Article 505 of the Organic Code of Military Justice establishes that: "One who in some way injures, offends, or shows contempt for the National Armed Forces or one of its units will incur a sentence of three to eight years in prison."³⁴²

399. As has already been explained, criminal sanctions against someone who expresses opinions that could "offend" or "show contempt for" institutions is contrary to the international standards on freedom of expression, given that it does not constitute a necessary restriction in a democratic society.

400. On the other hand, as in the cases of the criminal norms on *desacato*, *vilipendio*, defamation, insult, and slander, the wording of 505 is so imprecise that it is impossible to foresee with certainty what conduct could give rise to criminal sanctions. In the opinion of the IACHR, the text

³³⁹ IACHR. *Report on the Situation of Human Rights in Venezuela*, para. 462. OEA/Ser.L/V/II.118. Doc. 4 rev. 2. December 29, 2003. Available at: <http://www.cidh.oas.org/countryrep/Venezuela2003eng/toc.htm>.

³⁴⁰ IACHR. *Annual Report 2007*. Chapter IV: Human Rights Developments in the Region, para. 252. Available at: <http://www.cidh.oas.org/annualrep/2007eng/TOC.htm>; IACHR. *Annual Report 2006*. Volume II: Report of the Office of the Special Rapporteur for Freedom of Expression. Chapter II, paras. 211-213. Available at: <http://www.cidh.oas.org/annualrep/2006eng/Rapporteurship%20for%20Freedom%20of%20Expression.pdf>; IACHR. *Annual Report 2005*. Chapter IV: Human Rights Developments in the Region, para. 363. Available at: <http://www.cidh.oas.org/annualrep/2005eng/toc.htm>; IACHR. *Annual Report 2005*. Volume III: Report of the Office of the Special Rapporteur for Freedom of Expression. Chapter II, paras. 228-232. Available at: <http://www.cidh.oas.org/relatoria/showarticle.asp?artID=662&IID=1>.

³⁴¹ IACHR. *Report on the Situation of Human Rights in Venezuela*, para. 452. OEA/Ser.L/V/II.118. Doc. 4 rev. 2. December 29, 2003. Available at: <http://www.cidh.oas.org/countryrep/Venezuela2003eng/toc.htm>.

³⁴² It should be recalled that this is the norm under which Francisco Usón Ramírez was sentenced to six years and five months in prison. 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*. Available at: <http://www.cidh.org/demandas/12.554%20Francisco%20Uson%20Ramirez%20Venezuela%2025%20julio%202008%20ENG.pdf>.

of the norm blurs the line between the permissible exercise of freedom of expression with respect to the military institution and the realm of application of the legal prohibition. Given that there is no certainty about which behavior is considered illicit, any expression that could be interpreted by any person as a criticism of the Armed Forces could be subsumed in the description of the offense in the article in question.

401. On this point, the Inter-American Court has stated clearly that any limitation consecrated in the criminal legal order must respond to the principle of strict legality or precision. In other words, any penal restriction must be expressly, precisely, and previously formulated, so that all persons know clearly what are the precise types of conduct that, if committed, would give rise to a penal sanction. Therefore,

crimes must be classified and described in precise and unambiguous language that narrowly defines the criminalized conduct, establishing its elements, and the factors that distinguish it from behaviors that are either not punishable or punishable but not with imprisonment. Ambiguity in describing crimes creates doubts and the opportunity for abuse of power, which is particularly undesirable when it comes to ascertaining the criminal liability of individuals and punishing their criminal behavior with penalties that exact their toll on fundamental rights such as life or liberty.³⁴³

402. The IACHR considers that this criminal law norm, as well as the referenced articles of the Penal Code, due to their vague and imprecise structure, go against the principle of strict legality (*nullum crimen sine lege*) that has been required by the Inter-American Court as a condition to accept a restriction on freedom of expression, and therefore, they are incompatible with Article 13 of the American Convention. As a result, the IACHR exhorts the State to bring its ordinary and military criminal legislation into conformity with the standards described here.

B. The use of blanket presidential broadcasts (*cadena presidenciales*)

403. Article 192 of the Organic Law on Telecommunications provides the following:

Without prejudice to the legal provisions applicable to matters of security and defense, the President of the Republic may, either directly or through the National Telecommunications Commission, order operators of subscription television services, using their customer information channel, and the operators of open-to-air radio television broadcasters, to carry, free of charge, messages and official addresses made by the President or Vice-President of the Republic or cabinet ministers. Regulations shall be established to determine the mechanisms, limitations, and other features of these transmissions and broadcasts. Publicity by public entities is not subject to the obligation established in this article.³⁴⁴

³⁴³ I/A Court H.R., *Case of Lori Berenson-Mejía v. Peru*. Judgment of November 25, 2004. Series C No. 119, para. 125. Additionally, the Inter-American Court emphasized that the laws that provide for restrictions “must utilize precise criteria and not confer unlimited discretion upon the authorities responsible for their application.” See also: 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. 116-117; I/A Court H.R., *Case of Kimel v. Argentina*. Merits, Reparations and Costs. Judgment of May 2, 2008. Series C No. 177, para. 63; I/A Court H.R., *Case of Ricardo Canese v. Paraguay*. Judgment of August 31, 2004. Series C No. 111, para. 124.

³⁴⁴ Organic Law on Telecommunications. Official Gazette No. 36.970 of June 12, 2000. Available in Spanish at: http://www.tsj.gov.ve/legislacion/LT_lev.htm.

404. For its part, Article 10 of the Law on Social Responsibility provides that the State:

[...] may broadcast its messages through radio and television services. To this end it may order providers of such services to provide free transmission of: [...] Messages contemplated in the Organic Law on Telecommunications. The order for free and obligatory transmission of official messages or addresses may be validly issued, among other ways, through the broadcasting of the message or address through the radio and television services administrated by the National Executive. [...] The providers of radio and television services and broadcasting by subscription may not interfere, in any manner, with the messages and addresses of the State that are broadcast within the terms of this article, and must conserve the same quality and aspect of the image and sound of the original format or broadcast.³⁴⁵

405. In virtue of the interpretation that the authorities have made of these dispositions, the President of the Republic is authorized to transmit all his speeches and presentations simultaneously, through all the communications media mentioned in the preceding norms, without any time limit. In this phenomenon, known as “blanket presidential broadcasts” (*cadena presidenciales*), public and private broadcast media in Venezuela are obligated to connect to the frequency of the principal state channel, *Venezolana de Televisión* (VTV), and transmit the declarations of the President whenever he deems it necessary or expedient.

406. In its *Report on the Situation of Human Rights in Venezuela* (2003), the IACHR stated:

the large number of blanket government broadcasts in the media. Blanket broadcasts force media stations to cancel their regular programming and transmit information as ordered by the government. Many of them were of a duration and frequency that could be considered abusive in light of the information they conveyed, not always intended to serve the public interest.³⁴⁶

407. The IACHR received information from civil society organizations and the academic sector that indicates that between February 1999 and July 2009, the Venezuelan communications media transmitted a total of 1,923 blanket presidential broadcasts, equivalent to 1,252 hours and 41 minutes, or in other words 52 days of uninterrupted broadcasting of presidential messages. Additionally, the information received indicates that in 2008, communications media had transmitted 186 blanket broadcasts (172 hours and 55 minutes), while in July of 2009, there were 75 messages broadcast (88 hours and 19 minutes). The information also shows that on January 13, 2009, the longest blanket broadcast of the period of 1999-2009 was aired, equivalent to 7 hours and 34 minutes. Such figures do not include the transmission of the program *Aló Presidente*, the ten minutes daily for governmental messages imposed by the Law on Social Responsibility in Radio and Television, or the official publicity that is typical in television or radio.³⁴⁷

³⁴⁵ Updated text of the Law on Social Responsibility in Radio and Television. Official Gazette No. 38.333 of December 12, 2005. Available in Spanish at: http://www.conatel.gob.ve/download/marco_legal/Lev%20Responsabilidad%20Reforma.pdf.

³⁴⁶ IACHR. *Report on the Situation of Human Rights in Venezuela*, para. 487. OEA/Ser.L/V/II.118. Doc. 4 rev. 2. December 29, 2003. Available at: <http://www.cidh.oas.org/countryrep/Venezuela2003eng/toc.htm>.

³⁴⁷ Communication of August 14, 2009 from the Center for Communications Studies of the Andrés Bello Catholic University to the Special Rapporteurship on Freedom of Expression. It also indicated, in relation to the referendum that took place in February of 2009, that: “The ‘blanket presidential broadcasts,’ sometimes dedicated to commemorations, with greater frequency to propaganda, and almost always to invective against...

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408. Currently, international satellite and cable television are not linked to the obligation to transmit blanket broadcasts. However, on July 9, 2009, the Minister of Popular Power for Public Works, Diosdado Cabello, announced that a new administrative provision would be issued with the result that any cable broadcast that is more than 30 per cent “Venezuelan programming” (understood as any program that includes professional, financial, or technical participation of Venezuelan origin, including publicity) must have the same obligations that the laws impose on broadcast television. In this manner, some cable channels that are currently classified as foreign channels (given the narrowest interpretation possible of “Venezuelan programming”), must adapt to the new framework and comply not only with the obligation to transmit blanket broadcasts but also with the totality of the dispositions of the Law on Social Responsibility in Radio and Television.³⁴⁸

409. The IACHR recognizes the power of the President of the Republic and the high authorities of the State to use the communications media with the aim of informing the population about economic, social, or political issues of national relevance, that is to say, about those questions of preponderant public interest that they must be urgently informed of through independent communications media. In effect, as the Inter-American Court has stated, “making a statement on public-interest matters is not only legitimate but, at times, it is also a duty of the state authorities.”³⁴⁹

410. The exercise of this power, however, is not absolute. The fact that the President of the Republic can, by virtue of the powers conferred by Venezuelan laws, interrupt the regular

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enemies of the Bolivarian Revolution were produced, on the average, every two days at the end of 2008. During this period the campaign was started by the Head of State for popular ratification of unlimited reelection. And it was also in this quarter that Hugo Chávez responded to the criticisms of the ‘blanket broadcasts.’ ‘Whoever wants to make ‘blanket broadcasts,’ let him become president! Why am I to blame for the fact that the presidents of the Fourth Republic did not make ‘blanket broadcasts?’’ he said in a speech at the Teatro Teresa Carreño in Caracas. Between February 2, 1999, the date of his inauguration, and December 19, 2008, the Venezuelan Head of State spoke on the air 1,816 times with a total duration of 1,179 hours; that is to say, the equivalent of 49 days without interruption. Evidently, the extremely personal nature of the challenge posed by the referendum explains the great disequilibrium of the treatment he has given to communications media, public or private. As shown by the results of the study, presented on February 6, 2009 in the National Journalists’ Association (CNP, by its Spanish acronym) of Caracas, by the Media Monitoring Group (GMM, by its Spanish acronym), which includes investigators from the Andrés Bello Catholic University (UCAB, by its Spanish acronym) and the University of Gothenburg (Sweden). The analysis by GMM was based on 803 pieces of information from seven television channels and 477 from four radio stations in the period between January 22 and February 4, 2009. The part of the study referring to television is particularly enlightening.” Reporters without Borders. February 13, 2009. *Constitutional vote held in climate of polarised media and surfeit of presidential speeches*. Available at: <http://www.rsrf.org/Constitutional-vote-held-in.html>.

³⁴⁸ National Assembly of the Bolivarian Republic of Venezuela. July 9, 2009. *Punto de información del ciudadano Ministro del Poder Popular para las Obras Públicas y Vivienda Diosdado Cabello para referirse a la situación actual de los servicios de radiodifusión sonora, televisión abierta y difusión por suscripción* (Point of information from citizen Minister of Popular Power for Public Works and Housing Diosdado Cabello to refer to the current situation of radio, broadcast television, and subscription services), pp. 12-15. Available in Spanish at: http://www.asambleanacional.gob.ve/index.php?option=com_docman&task=cat_view&gid=41&&Itemid=124; Conatel. Draft Administrative Provision. Technical Norm on National Audiovisual Production Services. Available in Spanish at: <http://www.conatel.gob.ve/download/consulta/Proyecto%20PNA%20Cp.pdf>.

³⁴⁹ I/A Court H.R., *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. 131; IACHR. *Annual Report 2008*. Volume II: 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. 202. OEA/Ser.L/V/II.134. Doc. 5 rev. 1. February 25, 2009. Available at: <http://www.cidh.oas.org/annualrep/2008eng/Annual%20Report%202008-%20RELE%20-%20version%20final.pdf>.

programming of the public and private communications media in the country does not authorize him to exercise this power without limits: the information that the president transmits to the public through blanket broadcasts should be that which is strictly necessary to serve urgent informational needs on subjects of clear and genuine public interest and during the time that is strictly necessary to transmit such information. In effect, as previously mentioned, freedom of expression protects not only the right of the media to disseminate information and their own and others' opinions freely, but also the right to be free from having content imposed upon them. Principle 5 of the Declaration of Principles on Freedom of Expression explicitly establishes that: "[r]estrictions to the free circulation of ideas and opinions, as well as the arbitrary imposition of information and the imposition of obstacles to the free flow of information violate the right to freedom of expression."

411. In this sense, both the IACHR and its Special Rapporteurship,³⁵⁰ and some national organs of States party to the American Convention, applying international standards, have indicated that "it is not just any information that legitimizes the President of the Republic to interrupt regular programming; rather, it is that which deals with a collective interest in the knowledge of facts of importance to the public that are truly necessary for the real participation of citizens in the collective life. [...] [A]n intervention, even by the President of the Republic, without any type of limitation, restricts the right of citizens to inform themselves about other issues that interest them."³⁵¹

412. On the other hand, the IACHR considers that the lack of precision with respect to the establishment of limits for the use of blanket broadcasts in the Law on Social Responsibility and the Organic Law on Telecommunications could affect the informational equilibrium that the high-ranking state authorities are obligated to preserve, precisely by their position as guarantors of the fundamental rights of those under their jurisdiction.

413. The lack of control in the exercise of this power could degrade the legitimate purpose of this mechanism, converting it into a tool for propaganda. Already in the Joint Declaration of 2003 of the Special Rapporteurs for Freedom of Expression, it was clearly established that "[m]edia outlets should not be required by law to carry messages from specified political figures, such as the president."³⁵²

414. In summary, any intervention by the president using this mechanism must be strictly necessary to satisfy urgent requirements in matters of evident public interest. Permitting governments the unlimited use of independent communications media, under the justification of informing citizens about every issue related to the functioning of the state or about different issues that are not urgent or necessary and that the citizenry can obtain information about from other sources, leads to, in practice, the acceptance of the right of governments to impose upon the communications media the content that they must broadcast. Any obligation to broadcast content not chosen by the media itself must conform strictly to the requirements imposed by Article 13 of the American Convention to be considered as an acceptable limitation on the right to freedom of expression.

³⁵⁰ IACHR. *Report on the Situation of Human Rights in Venezuela*. OEA/Ser.L/V/II.118. Doc. 4 rev. 2. December 29, 2003. Available at: <http://www.cidh.oas.org/countryrep/Venezuela2003eng/toc.htm>.

³⁵¹ Constitutional Court of Colombia. November 8, 2001. Judgment C-1172/01. Presiding Judge: Alfredo Beltrán Sierra. See also Constitutional Court of Colombia. November 11, 2005. Judgment C-1153/05. Presiding Judge: Marco Gerardo Monroy Cabra.

³⁵² Joint Declaration of 2003 by the Special Rapporteur on Freedom of Opinion and Expression of the UN, the Representative on the Freedom of the Press of the OSCE, and the Special Rapporteur for Freedom of Expression of the OAS. Available at: <http://www.cidh.oas.org/relatoria/showarticle.asp?artID=88&IID=1>.

415. As has been indicated by the Inter-American Court, “in a democratic society [it is necessary to] guarantee [...] the widest possible circulation of news, ideas and opinions as well as the widest access to information by society as a whole. Freedom of expression constitutes the primary and basic element of the public order of a democratic society, which is not conceivable without free debate and the possibility that dissenting voices be fully heard.”³⁵³ The Venezuelan State itself, in a communication of August 13, 2009, emphasized that it “has an interest in the development of pluralistic, diverse, and independent communications media.”³⁵⁴

416. Due to the foregoing considerations, the IACHR exhorts the State to bring its legislation regarding blanket presidential broadcasts into agreement with the standards described.

C. Statements by high-ranking state authorities against communications media and journalists based on their editorial line

417. In its *Report on the Situation of Human Rights in Venezuela* (2003), the IACHR warned that “President Hugo Chávez Frías made certain speeches against the media, which could have been interpreted by his followers as calling for aggression against the press. The IACHR, [...] was able to note that on occasions, President Chávez’s speeches were followed by acts of physical violence. President Chávez, like all the inhabitants of Venezuela, has the right to express himself freely and to offer his opinions about those he believes to be his opponents. Nevertheless, his speeches should take care to avoid being interpreted as incitements to violence.”³⁵⁵

418. In a particular manner, during 2008 and 2009 high-ranking authorities of the State discredited the work of journalists and the role of some independent communications media, accusing them of practicing “journalistic terrorism” and of fomenting a “discourse of hate” that affects the “mental health” of the Venezuelan population.³⁵⁶ As will be analyzed below, in some cases, these declarations have been followed by the opening of punitive administrative proceedings by Conatel, an entity that is dependent on the Executive Branch.

419. This type of statements led the Rapporteur of the United Nations for Freedom of Opinion and Expression and the Special Rapporteur for Freedom of Expression of the IACHR to issue a joint press release on May 22, 2009, in which they stated that the declarations of high-ranking state authorities against *Globovisión* and other private communications media in Venezuela contributed to generating “an atmosphere of intimidation” that seriously limited the right to freedom of expression in Venezuela. The special rapporteurs emphasized that “in a democracy, criticism, opposition, and contradiction must be tolerated as a condition of the principle of pluralism protected by the right to freedom of expression” and that, as a result, “[t]he job of authorities is to create a climate in which

³⁵³ 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. 69.

³⁵⁴ Bolivarian Republic of Venezuela. August 13, 2009. Questionnaire on human rights presented at the request of the Inter-American Commission on Human Rights. Office of the State Agent for Human Rights before the Inter-American and International Systems, p. 107.

³⁵⁵ IACHR. *Report on the Situation of Human Rights in Venezuela*, para. 392. OEA/Ser.L/V/II.118. Doc. 4 rev. 2. December 29, 2003. Available at: <http://www.cidh.oas.org/countryrep/Venezuela2003eng/toc.htm>.

³⁵⁶ As will be seen later, after some of these declarations, there were increases in acts of violence against several of these communications media by groups of private individuals aligned with the government.

anyone can express his or her ideas without fear of being persecuted, punished, or stigmatized.”³⁵⁷ Below, there will be a summary of some of these pronouncements, with a brief reference to the facts that gave rise to them.

420. On October 13, 2008, the journalist Rafael Poleo, editor of the newspaper *El Nuevo País*, was invited to the program *Aló Ciudadano*, directed by Leopoldo Castillo and transmitted live on *Globovisión*. During the program Rafael Poleo stated the following: “One follows the trajectory of Benito Mussolini and the trajectory of Chávez and they are the same, and therefore I say with concern that Hugo is going to end up like Mussolini, hanging with his head down.” Immediately, Leopoldo Castillo warned the interviewee that “this cannot be said,” since his words could be interpreted as “advocacy of crime” or as “instigation,” and urged him to be prudent.³⁵⁸

421. On October 15, 2008, Andres Izarra, then-Minister of Popular Power for Communication and Information, declared that Rafael Poleo had carried out “a call to assassination,” “advocacy of crime” that aimed to continue “driving the matrix of fear” in the Venezuelan population. Minister Izarra also stated the following: “We will make a call to the Social Responsibility Board on Radio and Television: please, do something, take a hand in this affair. This is a body of professional colleagues; there are various agents that must be able to pronounce against this type of attacks on freedom of expression.”³⁵⁹

422. On October 16, 2008, Conatel ordered on its own motion the opening of punitive administrative proceedings against a channel for the supposed violation of Article 29.1 of the Law on Social Responsibility for “broadcasting messages in its programming that [...] could promote, advocate for, or incite the commission of crimes, promote, advocate for, or incite alterations of the public order, [...] contrary to the security of the nation.”³⁶⁰

³⁵⁷ Office of the Special Rapporteur—IACHR. May 22, 2009. *Press Release R33/09*. Available at: <http://www.cidh.oas.org/relatoria/showarticle.asp?artID=747&IID=1>; Ministry of Popular Power for Communication and Information of the Bolivarian Republic of Venezuela. May 22, 2009. *Venezuela considera inadmisibile uso de instancias de ONU y OEA para atacar a Estados miembros* (Venezuela considers it inadmissible to use the OAS and UN entities to attack Member States). Available in Spanish at: http://www.minci.gob.ve/noticias/1/189268/venezuela_considera_inadmisibile.html; Venezolana de Televisión. May 22, 2009. *Venezuela considera inadmisibile uso de instancias de ONU y OEA para atacar a Estados miembros* (Venezuela considers it inadmissible to use the OAS and UN entities to attack Member States). Available in Spanish at: <http://www.vtv.gob.ve/noticias-internacionales/18411>; *Globovisión*. May 22, 2009. *Jorge Valero: Es inadmisibile uso de instancias de la ONU y OEA para atacar a Venezuela* (Jorge Valero: It is inadmissible to use the OAS and UN entities to attack Member States). Available in Spanish at: <http://globovision.com/news.php?nid=117513>; Venezolana de Televisión. May 23, 2009. *Comunicado de OEA y ONU responde a los intereses de los medios privados* (Press Release by the OAS and UN responds to the interests of private media). Available in Spanish at: <http://www.vtv.gob.ve/noticias-nacionales/18430>.

³⁵⁸ Communication of December 18, 2009 from the State of Venezuela to the Office of the Special Rapporteur for Freedom of Expression.

³⁵⁹ *El Universal*. October 15, 2009. *Solicitan a CONATEL y Fiscalía actuar en caso de Rafael Poleo* (Conatel and the Attorney General’s Office requested to act in the case of Rafael Poleo). Available in Spanish at: http://www.eluniversal.com/2008/10/15/pol_art_solicitan-a-conatel_1093233.shtml.

³⁶⁰ As will be explained in detail later, on the morning of this same day, unidentified individuals threw a teargas bomb at the building where Leopoldo Castillo, host of *Aló Ciudadano*, resides. Communication of December 18, 2008 by the State of Venezuela to the Office of the Special Rapporteur for Freedom of Expression, p.4. Additionally, in its 2008 Annual Report, the IACHR stated that “the present environment of hostility and polarization has been prompted by the institution of administrative actions seeking to attach responsibility to media outlets independent of the government for views expressed on live programs by persons not belonging to the channel.” IACHR. *Annual Report 2008*. Chapter IV: Human Rights Developments in the Region, para. 376.

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423. On October 20, 2008, Minister Andrés Izarra declared during an interview that in Venezuela there was an “excess of freedom of expression.” Minister Izarra stated that opposition communications media were “active factors in [a] conspiracy [against the government that] belong[ed] to a political class that dominate[d] and continue[d] dominating [the] country.” He added that they were “tools for destabilization” and that therefore “he did not have sympathy for them.”³⁶¹

424. Another of the events that motivated declarations by high-ranking public authorities against private independent channels took place after the broadcasting, on May, 4, 2009, of news about an earthquake that had affected some Venezuelan localities. That morning, the producers of the television channel *Globovisión* tried without success to communicate with Francisco Garcés, president of the Venezuelan Foundation for Seismic Investigations (Funvisis), so he could explain the range of the seismic activity. Around 5:20 am, the general director of *Globovisión*, Alberto Federico Ravell, went on the air to inform about what had happened and stated that according to the United States Geological Survey, the earthquake had registered 5.4 on the Richter scale. He also indicated that the population should remain calm since no serious damages had been reported. Around 5:45 am, the Minister of Popular Power for Internal Relations and Justice, Tarek El Aissami, called Ravell’s presentation “inadequate” and “irresponsible” and stated that information of this type should only be broadcast following “a pronouncement by official authorities.”³⁶²

425. On May 5, 2009, the deputy Cilia Flores, President of the National Assembly, asserted that Alberto Federico Ravell sought to “create anxiety to accuse the government.” At the conclusion of her presentation, the National Assembly voted to solicit Conatel to “[apply] the Law on

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OEA/Ser.L/V/II.134. Doc. 5 rev. 1. February 25, 2009. Available at: <http://www.cidh.oas.org/annualrep/2008eng/TOC.htm>.

³⁶¹ Hoy. October 20, 2008. *En Venezuela hay “exceso de libertad de expresión” según gobierno* (In Venezuela there is “an excess of freedom of expression” according to the government). Available in Spanish at: <http://www.hoy.com.ec/noticias-ecuador/en-venezuela-hay-exceso-de-libertad-de-expresion-segun-gobierno-313168.html>; Espacio Público. *Situación del derecho a la libertad de expresión e información en Venezuela 2008* (Situation of the right to freedom of expression and information in Venezuela), pp. 165-166. Available in Spanish at: <http://www.espaciopublico.info/images/documentos/informe%202008.pdf>.

³⁶² Communication of May 12, 2009, sent by *Globovisión* to the Office of the Special Rapporteur for Freedom of Expression, pp. 6-11; YVKE Mundial. *Fuerte temblor sacudió región central del país esta madrugada sin causar daños* (Strong earthquake shook the central region of the country early this morning without causing damages). Available in Spanish at: <http://www.radiomundial.com.ve/yvke/noticia.php?23910>; Agencia Bolivariana de Noticias. May 4, 2009. *Venezolanos retoman sus actividades con normalidad* (Venezuelans return to their normal activities). Available in Spanish at: <http://www.abn.info.ve/noticia.php?articulo=180371&lee=10>; Tal cual. May 4, 2009. *El sismo de Globovisión* (The earthquake of Globovisión). Available in Spanish at: <http://www.talcaldigital.com/Avances/Viewer.aspx?id=20106&secid=29>; Agencia Bolivariana de Noticias. May 7, 2009. *Conatel abre procedimiento administrativo contra Globovisión* (Conatel opens administrative proceedings against Globovisión). Available in Spanish at: <http://www.abn.info.ve/noticia.php?articulo=180950&lee=1>; Globovisión. May 7, 2009. *Conatel abre procedimiento sancionatorio contra Globovisión por divulgación del sismo* (Conatel opens punitive proceeding against Globovisión for reporting on the earthquake). Available in Spanish at: <http://www.globovision.com/news.php?nid=116427>; CONATEL. May 7, 2009. *La Comisión Nacional de Telecomunicaciones inicia procedimiento administrativo sancionatorio al prestador de servicio de televisión abierta Corpomedios GV Inversiones, C.A., “GLOBOVISIÓN”* (The National Telecommunications Commission initiates punitive administrative against broadcast television provider Corpomedios GV Inversiones, C.A., “GLOBOVISIÓN”). Available in Spanish at: http://www.conatel.gov.ve/noticia_comp.asp?numn=2625.

Social Responsibility in Radio and Television to the channel *Globovisión* for the irresponsible declarations made by its owner [...], for having usurped functions inherent to national bodies.”³⁶³

426. On May 7, 2009, Conatel notified *Globovisión* of the opening, on its own motion, of punitive administrative proceedings “for the transmission, since the early morning [...] in a continuous and repetitious manner, [...], of messages alluding to the earthquake registered in Venezuela [...], given that those messages could have generated a sensation of anxiety and fear in the population, in an unjustifiable manner, unleashing a possible incitation to alterations of the public order.”³⁶⁴

427. Later, during the transmission of *Aló Presidente* on May 10, 2009, President Hugo Chavez announced that “the transmission of messages of hate and conspiracy by private communications media in Venezuela” would come to an end. In the program the Venezuelan President addressed “the enemies of the Fatherland” and warned them of the following:

Bourgeois and *pitiyanquis*, make yourselves believe the road stories, believe that I wouldn't dare: You could soon get a surprise, you are playing with fire, you are manipulating, inciting to hatred [...], and much more, every day; do not be mistaken, I am only telling you that things will not continue in this way. [...] First, I have confidence in the organs of the State responsible for initiating all the steps. I have confidence that the other corresponding powers will carry out all measures that they can. [...] I only want to remind you that those who are transmitting messages of hate, inciting the military to speak out, stating that the President must die—in a direct or subliminal manner--, that criticism is one thing and that conspiracy is another. [...] This country requires responsibility and transparency, these airwaves that the private companies use are public property, they are social property, do not believe you are the owners of the radio broadcasting spectrum, nobody is. [...] Not long ago there was a strong earthquake. I immediately called the Vice President, he was awake; I called Funvisis, they informed me and I gave instructions; I called the mayor of Los Teques, the governor of Aragua; and then comes one of those crazies with a gun, he is a crazy with a gun, this is going to stop, [...] or I will no longer call myself Hugo Rafael Chávez Frías. If a strike comes, we will be waiting for it, but this is a country that must respect itself, here we all have to respect each other.”³⁶⁵

³⁶³ El Universal. May 6, 2009. *AN solicita castigar a Globovisión por palabras de Ravell* (AN [National Assembly] requests sanctions against Globovisión for Ravell's words). Available in Spanish at: http://www.eluniversal.com/2009/05/06/pol_art_an-solicita-castigar_1375632.shtml; Venezolana Televisión. May 6, 2009. *AN exhorta a Conatel para que sancione a Globovisión* (AN [National Assembly] exhorts Conatel to sanction Globovisión). Available in Spanish at: <http://www.vtv.gov.ve/noticias-nacionales/17707>; National Assembly of the Bolivarian Republic of Venezuela. May 5, 2009. *Exhortan a Conatel a aplicar la Ley Resorte a Globovisión* (Conatel urged to apply the *Ley Resorte* to Globovisión). Available in Spanish at: http://www.asambleanacional.gob.ve/index.php?option=com_content&task=view&id=21859&Itemid=63.

³⁶⁴ Communication of May 20, 2009 by the State of Venezuela to the Office of the Special Rapporteur for Freedom of Expression, pp. 2-3.

³⁶⁵ *Aló Presidente*. May 10, 2009. “*Se acabará en Venezuela transmisión de mensajes de odio y conspiración*” (“The transmission of messages of hate and conspiracy will end in Venezuela”). Available in Spanish at: <http://alopresidente.gob.ve/noticia/se-acabara-en-venezuela-transmision-de-mensajes-de-odio-y-conspiracion.html>; Noticiero Digital. May 10, 2009. *Ese loco con un cañón se va a acabar o me dejo de llamar Hugo Chávez* (This crazy with a gun will stop or I will stop calling myself Hugo Chávez). Available in Spanish at: <http://www.noticierodigital.com/?p=30397>. Venezolana de Televisión. May 10, 2009. *Presidente advierte a televisoras y emisoras radiales que violan las leyes y retan al Estado* (President warns television and radio stations

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428. On May 11, 2009, the Minister of Popular Power for Foreign Affairs, Nicolás Maduro, accused *Globovisión* of “terrorism,” and its director Alberto Ravell of practicing “journalistic terrorism” and generating “anxiety and terror” in the Venezuelan population through the transmission of information about the earthquake. Minister Maduro maintained that the “radio broadcasting spectrum must not be used to generate terrorism,” and that one “thing [was] to inform about the seismic activity or about the rains and another thing [was] to use a natural occurrence to try to generate anxiety or terror in the population in order to try to gain political advantage for purposes inconsistent with the Constitution and public peace.”³⁶⁶

429. In the blanket presidential broadcast of May 14, 2009, the President Hugo Chávez affirmed:

We are in the presence of a terrorist attack from within: we must tell them, the white-collar terrorists, bourgeois terrorists wearing ties that do not wear hoods nor are they in the mountains. They have radio stations, television stations, and newspapers. [...] We cannot allow four bourgeois going crazy with hate to continue to fire the shrapnel that they fire every day against the public morale. This cannot be permitted. [...] Daily terrorism, daily violation of the Constitution, daily violation of the laws, aggression against persons, the national collective, in many cases with name and surname. [...] We all know who I am talking about. [...] In a dictatorship they would already have been shut down, but there is democracy in Venezuela so the corresponding organs will act on this case. [...] We will do what we have to do, and here we will wait for them. Impunity must end in Venezuela. [...] They are playing with fire, manipulating, inciting to hatred, every day [...]. I only tell them, and the Venezuelan people, that this will not continue.³⁶⁷

430. In the same broadcast, President Hugo Chávez announced the transfer of Conatel to the Ministry of Popular Power for Public Works and Housing and, as previously stated, ordered the head of this department, Diosdado Cabello, to be in charge of investigations in the case of the complaints against *Globovisión*. “Here is your responsibility Diosdado, to continue the battle with

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that violate the laws and challenge the State). Available in Spanish at: <http://www.vtv.gov.ve/noticias-nacionales/17883>.

³⁶⁶ La Verdad. May 11, 2009. *PSUV acusa a Globovisión y Ravell de “terrorismo mediático”* (PSUV accuses *Globovisión* and Ravell of “media terrorism”). Available in Spanish at: <http://www.laverdad.com/detnotic.php?CodNotic=12412>; ADN. May 11, 2009. *Nicolás Maduro acusa de “terrorismo” al canal privado Globovisión* (Nicolás Ravell accuses the private channel *Globovisión* of “terrorism”). Available in Spanish at: <http://www.adn.es/sociedad/20090511/NWS-3054-Globovision-Nicolas-Maduro-terrorismo-privado.html>.

³⁶⁷ Venezolana de Televisión. May 15, 2009. *En Venezuela no hay dictadura, y no se tolerará la impunidad* (In Venezuela there is no dictatorship and impunity is not tolerated). Available in Spanish at: <http://www.vtv.gov.ve/noticias-nacionales/18097>; Communication of May 15, 2009 from *Globovisión* to the Office of the Special Rapporteur for Freedom of Expression, pp. 6-11; Telesur. May 14, 2009. *Chávez: Globovisión está jugando con fuego* (Chávez: *Globovisión* is playing with fire). Available in Spanish at: <http://www.telesurtv.net/noticias/secciones/nota/49925-NN/chavez-globovision-esta-jugando-con-fuego/>; *Globovisión*. May 14, 2009. *Presidente Chávez: “No me sigan retando”* (President Chávez: Do not continue to challenge me). Available in Spanish at: <http://www.globovision.com/news.php?nid=116922>.

dignity,” to tolerate no more “journalistic terrorism by private channels,” added the Venezuelan president.³⁶⁸

431. On May 15, 2009, while making a protocolary visit to Argentina, President Hugo Chávez stated in a press conference that no one should be surprised when the State makes “decisions about some communications media” that “practice terrorism.” The leader added that in Venezuela, “some communications media, [...] continue[d] to practice terrorism, not criticism, [but] terrorism.”³⁶⁹

432. On May 17, 2009, the Minister of Popular Power for Public Works and Housing, Diosdado Cabello, assured that he would not allow himself to be “blackmailed” by the communications media, and that “at the moment of making decisions they would make them conscientiously” and it would not “affect their pulse.” Additionally, the Minister emphasized that in Venezuela there “existe[d] social communications media that represent a public health problem,” and that “they were going to work to put an end to the broadcasting oligopoly.”³⁷⁰

³⁶⁸ Venezolana de Televisión. May 15, 2009. *En Venezuela no hay dictadura, y no se tolerará la impunidad* (In Venezuela there is no dictatorship and impunity is not tolerated). Available in Spanish at: <http://www.vtv.gov.ve/noticias-nacionales/18097>; Noticias 24. May 15, 2009. *Diosdado Cabello será el encargado de investigar a Globovisión* (Diosdado Cabello will be in charge of investigating Globovisión). Available in Spanish at: <http://www.noticias24.com/actualidad/noticia/46944/diosdado-cabello-sera-el-encargado-de-investigar-a-globovision/comment-page-6/>; National Assembly of the Bolivarian Republic of Venezuela. Decree 6.707 of the Presidency of the Republic (Official Gazette No. 39.178 de 14 de mayo de 2009). Available in Spanish at: http://www.asambleanacional.gob.ve/index.php?option=com_docman&Itemid=190.

³⁶⁹ Globovisión. May 15, 2009. *Presidente Chávez: “No se extraña nadie” cuando se tomen decisiones sobre algunos medios de comunicación* (President Chávez: “No one is surprised” when decisions are made about some communications media). Available in Spanish at: <http://www.globovision.com/news.php?nid=116931>.

³⁷⁰ Globovisión. May 18, 2009. *Diosdado Cabello: Nosotros no vamos a caer en chantajes* (Diosdado Cabello: We will not be blackmailed). Available in Spanish at: <http://www.globovision.com/news.php?nid=117074>; Diario La Verdad. May 17, 2009. *Cabello asegura que “no le temblará el pulso” para actuar contra los medios* (Cabello assures that “his pulse will not waver” in acting against the media). Available in Spanish at: <http://laverdad.com/detnotic.php?CodNotic=12673>; Globovisión. May 17, 2009. *Diosdado Cabello: “Nosotros no vamos a caer en chantaje”* (Diosdado Cabello: “We will not be blackmailed”). Available in Spanish at: <http://www.globovision.com/news.php?nid=117074>. El Universal. May 18, 2009. *Cabello actuará contra medios sin “chantaje” por las denuncias* (Cabello will act against the media without “blackmail” for the denunciations). Available in Spanish at: http://politica.eluniversal.com/2009/05/18/pol_art_cabello-actuara-cont_1392627.shtml. On the same day, the deputy Cilia Flores assured that the closure of *Globovisión* “was due to public clamoring because they were continuing their policy of journalistic terrorism, they do not reflect and here there are laws and institutions that have to carry out procedures and, in accordance with the law, apply sanctions.” The parliamentarian added the following: “The fish dies by its mouth. They continue acting with this terrorism, with these calls to destabilization, to overthrow of the government, to violence. This is why we have denounced *Globovisión*, which maintains this conduct of disrespect, of violation of the Constitution, of abuse of the people and this is good that the people see it, what they are and that they do not reflect and do not rectify their conduct.” El Universal. May 17, 2009. *Cilia Flores aseguró que cierre de Globovisión es un clamor del Pueblo* (Cilia Flores assures that the closure of *Globovisión* is a cry from the People). Available in Spanish at: http://www.eluniversal.com/2009/05/17/pol_ava_cilia-flores-aseguro_17A2333325.shtml; Globovisión. May 17, 2009. *Cilia Flores: “Instancias internacionales” de oposición no tienen credibilidad* (Cilia Flores: “International instances” of opposition do not have credibility). Available in Spanish at: <http://www.globovision.com/news.php?nid=117081>; El Universal. May 18, 2009. *Cabello actuará contra medios sin “chantaje” por las denuncias* (Cabello will act against the media without “blackmail” for the denunciations). Available in Spanish at: http://politica.eluniversal.com/2009/05/18/pol_art_cabello-actuara-cont_1392627.shtml.

433. On May 19, 2009, the Agent of the State for cases before the IACHR, Germán Saltrón, stated that if *Globovisión's* concession were revoked “they themselves [would be] to blame for the situation.” Germán Saltrón emphasized that:

Media owners [had to] understand that freedom of expression [had] [...] limitations and [that] if *Globovisión* continue[d] with this attitude that threaten[ed] human rights it would simply be necessary to revoke its concession for violating the law. [...] We will wait to see what will be the sanction. Wait until Conatel indicates what is the sanction and based on that they can go to the Court and we will defend ourselves and demonstrate that they are the ones who have violated freedom of expression. [...] *Globovisión* alone has this attitude and it is necessary to apply the Law to it.³⁷¹

434. In the June 25, 2009 edition of *Aló Presidente*, the Venezuelan Head of State indicated the following:

[T]he conspiracy continues, and above all, they are playing at something that has to do with a communications media and the possibility that exists, because it exists, it is in the laws and it is part of the daily evaluation, the possibility that exists that the concession they have will end, this is a possibility and I will say that it could be ended early, because this [concession] has an end, it has a term. But it is possible that it could be earlier, that it could be before the stipulated time period ends, this is possible for violation of laws, challenging the government, spreading rumors, inciting to assassination, civil war, hatred, etc. Therefore, they are preparing themselves for this, they believe that if this occurs the government will fall and they are going to try to do it. Fine, we will prepare ourselves because it is probable that this will happen, and if this happens and the opposition takes to the streets [and] calls for a coup [d'état], [...], fine, we will also go into the streets and we will sweep them away. We will be disciplined in this, we will do what they want, what they order, if they go into the streets, we will be in the streets waiting, the street belongs to the people, not to the bourgeoisie, therefore it is necessary to be always in the streets, mobilized, if they take their guns we will [fight] with our guns too, they will see.³⁷²

435. On July 9, 2009, Minister Diosdado Cabello stated, in a presentation to the National Assembly, the following:

And we sought and received the Commander's instruction: Democratize the use of the radio broadcasting spectrum, and we are going to do that, to end the broadcasting oligopoly, media oligopoly, and we are going to do that. We are not going to succumb to blackmail, they are not going to provoke us, we are not going

³⁷¹ *Globovisión*. May 19, 2009. *German Saltrón: “Los dueños de medios deben comprender que la libertad de expresión tiene sus limitaciones”* (German Saltrón: “Media owners must understand that freedom of expression has its limitations”). Available in Spanish at: <http://globovision.com/news.php?nid=117241>. Agencia Bolivariana de Noticias. May 19, 2009. *La CIDH está parcializada en contra del Gobierno venezolano* (The IACHR is biased against the Venezuelan Government). Available in Spanish at: <http://www.abn.info.ve/noticia.php?articulo=182539&lee=16>; Agencia Bolivariana de Noticias. May 19, 2009. *En Venezuela existe un monopolio del espectro radioléctrico* (In Venezuela there is a monopoly of the radio broadcasting spectrum). Available in Spanish at: <http://www.abn.info.ve/noticia.php?articulo=182550&lee=16>.

³⁷² The speech is part of the series called *Aló Presidente Teórico*. Communication of July 3, 2009 from *Globovisión* to the Office of the Special Rapporteur for Freedom of Expression.

to give in on anything because we owe absolutely nothing to the oligarchy in this country. [...] And as the father Camilo Torres said: If the dominant class, the oligarchy, does not give up its privileges willingly, the people will obligate them by force. And in this case in Venezuela, the people are the Government and we are going to do it. [...] What we cannot permit to occur in Venezuela is that which is occurring in Honduras, in spite of and 7 years after what happened here in 2002, to follow the same format as in Honduras and have success. How sad that is, how sad! Are we going to wait for this to happen? We must not, colleagues, I believe we must make a reflection, we will truly give the power to the people so they will be able to communicate, to broadcast what they are doing, and one who is not guilty does not have to fear it. The truth will set us free. The truth that is in the streets, not *Globovisión's* truth, not the insurrectionist media's truth.³⁷³

436. The IACHR considers that pronouncements like those made by the Venezuelan president and other high-ranking state officials could have the effect of polarizing society and influencing through arbitrary pressures the content that journalists and communications media transmit, which according to Article 13.2 of the American Convention, can only be the object, when necessary, of subsequent penalties imposed following a due legal process.

437. In this context, the IACHR reminds the State that, in the framework of the American Convention, the right to freedom of expression must be guaranteed not only with respect to the ideas and information received favorably or considered inoffensive or indifferent, but also with respect to those that offend, shock, worry, or are unwelcome to public functionaries or some sector of the population. These are precisely the exigencies of the pluralism, tolerance, and spirit of openness without which there is no truly democratic society.³⁷⁴ As the Special Rapporteurship stated in its pronouncement of May 22, 2009, "public officials, especially those in the highest positions of the State, have a duty to respect the circulation of information and opinions, even when these are contrary to its interests and positions."³⁷⁵

438. Additionally, as the Inter-American Court stated, the Venezuelan authorities must take into account that "the people who work for a specific social communication firm can see the situations of risk they would normally face exacerbated if that firm is the object of an official discourse that may cause, suggest actions, or be interpreted by public officials or sectors of the society as instructions, instigations, or any form of authorization or support for the commission of acts that may put at risk or violate the life, personal safety, or other rights of people who exercise journalistic tasks or whoever exercises that freedom of expression."³⁷⁶

³⁷³ National Assembly of the Bolivarian Republic of Venezuela. July 9, 2009. *Punto de información del ciudadano Ministro del Poder Popular para las Obras Públicas y Vivienda Diosdado Cabello para referirse a la situación actual de los servicios de radiodifusión sonora, televisión abierta y difusión por suscripción* (Point of information from citizen Minister of Popular Power for Public Works and Housing Diosdado Cabello to refer to the current situation of the radio, broadcast television, and subscription services), pp. 9 and 17. Available in Spanish at: http://www.asambleanacional.gob.ve/index.php?option=com_docman&task=cat_view&gid=41&Itemid=124.

³⁷⁴ I/A Court H.R., *Case of Herrera-Ulloa v. Costa Rica*. Judgment of July 2, 2004. Series C No. 107, para. 113; I/A Court H.R., *Case of "The Last Temptation of Christ" (Olmedo-Bustos et al.) v. Chile*. Judgment of February 5, 2001. Series C No. 73, para. 69.

³⁷⁵ Office of the Special Rapporteur—IACHR. May 22, 2009. *Press Release R33/09*. Available at: <http://www.cidh.oas.org/relatoria/showarticle.asp?artID=747&IID=1>.

³⁷⁶ I/A Court H.R., *Case of Ríos et al. v. Venezuela*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of January 28, 2009. Series C No. 194, para. 143. Available at: http://www.corteidh.or.cr/docs/casos/articulos/seriec_194_ing.pdf; I/A Court H.R., *Case of Perozo et al. v.*

Continued...

439. It is fundamental to remind the State that public functionaries who exercise their right to freedom of expression are also “submitted to certain limitations since they must verify in a reasonable, but not necessarily exhaustive, manner the facts on which they base their opinions, and they should do so with a diligence even greater to the one employed by individuals due to their high investiture, the ample scope and possible effects their expressions may have on certain sectors of the population, and in order to avoid that citizens and other interested people receive a manipulated version of specific facts.”³⁷⁷

440. The IACHR recognizes that the Venezuelan authorities have the duty to enforce the law and the right to respond to criticism they consider unjust or misleading. However, it is essential to take into account, as the Inter-American Court has indicated, with respect to public functionaries, that “they are in a position of guarantors of the fundamental rights of the individual and, therefore, their statements cannot be such that they disregard said rights.”³⁷⁸ Additionally, the Inter-American Court has indicated that “public officials, particularly the top Government authorities, need to be especially careful so that their public statements do not [...] induce or invite other authorities to engage in activities that may abridge the independence or affect the judge’s freedom of action.”³⁷⁹

441. In light of the declarations cited above, the IACHR urges the authorities of the State to provide the most simple and effective of protections: the public and categorical recognition of the legitimacy of criticism and dissidence in a constitutional democracy like the Venezuelan democracy. As a result, it exhorts the authorities to abstain from formulating stigmatizing declarations that could lead to acts of violence or arbitrary decisions by public officials.

D. Disciplinary, administrative, and criminal proceedings against communications media and journalists

442. The IACHR observes that in recent months, there has been an increase in punitive administrative proceedings against communications media critical of the government. In particular, it concerns the IACHR that in a number of these cases, investigations and administrative proceedings

...continuation

Venezuela. Preliminary Objections, Merits, Reparations, and Costs. Judgment of January 28, 2009. Series C No. 195, para. 155. Available at: http://www.corteidh.or.cr/docs/casos/articulos/seriec_195_ing.pdf.

³⁷⁷ I/A Court H.R., *Case of Ríos et al. v. Venezuela*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of January 28, 2009. Series C No. 194, para. 139. Available at: http://www.corteidh.or.cr/docs/casos/articulos/seriec_194_ing.pdf; I/A Court H.R., *Case of Perozo et al. v. Venezuela*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of January 28, 2009. Series C No. 195, para. 151. Available at: http://www.corteidh.or.cr/docs/casos/articulos/seriec_195_ing.pdf.

³⁷⁸ I/A Court H.R., *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. 131; IACHR. *Annual Report 2008*. Volume II: 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, paras. 202-205. OEA/Ser.L/V/II.134. Doc. 5 rev. 1. February 25, 2009. Available at: <http://www.cidh.oas.org/annualrep/2008eng/Annual%20Report%202008-%20RELE%20-%20version%20final.pdf>.

³⁷⁹ I/A Court H.R., *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. 131; IACHR. *Annual Report 2008*. Volume II: 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, paras. 202-205. OEA/Ser.L/V/II.134. Doc. 5 rev. 1. February 25, 2009. Available at: <http://www.cidh.oas.org/annualrep/2008eng/Annual%20Report%202008-%20RELE%20-%20version%20final.pdf>.

were initiated after the highest-ranking state authorities called upon public entities, especially Conatel, “to act” against *Globovisión* and other independent media that are critical of the government.

443. Previously, in its 2008 Annual Report, the IACHR warned that “the present environment of hostility and polarization has been prompted by the institution of administrative actions seeking to attach responsibility to media outlets independent of the government for views expressed on live programs by persons not belonging to the channel.”³⁸⁰

1. The case of *Globovisión*

444. In the past twelve months, the IACHR has become aware of the opening by Conatel, on its own motion, of at least six administrative proceedings against *Globovisión* for the presumed violation of Article 29.1 of the Law on Social Responsibility in Radio and Television, and Articles 171.6 and 172 of the Organic Law on Telecommunications.³⁸¹

445. As has already been mentioned, the first administrative proceeding was opened on October 16, 2008. On October 13, 2008, Rafael Poleo, a guest on a television program that the channel transmits live, stated the following: “One follows the trajectory of Benito Mussolini and the trajectory of Chávez and they are the same, and for this reason I say with concern that Hugo is going to end up like Mussolini, hanging with his head down.” The journalist who was interviewing him immediately called on him to be prudent.

446. According to the State, Conatel ordered the opening of an administrative file against the channel “considering that this television company disseminated in its programming messages that, presumably, could promote, advocate for, or incite the commission of crimes, promote, advocate for, or incite alterations of the public order, and could be contrary to national security.”³⁸² According to the State, “[i]n the analysis of the facts that gave rise to the initiation of these punitive administrative proceedings, it impossible not to recall that Benito Mussolini was an

³⁸⁰ IACHR. *Annual Report 2008*. Chapter IV: Human Rights Developments in the Region, para. 376. OEA/Ser.L/V/II.134. Doc. 5 rev. 1. February 25, 2009. Available at: <http://www.cidh.oas.org/annualrep/2008eng/TOC.htm>.

³⁸¹ Article 171.6 of the Organic Law on Telecommunications provides: “Article 171. Without prejudice to the fines that are to be applied in accordance with the provisions in this Law, [one] will be sanctioned with revocation of the administrative permit or the concession, according to the case: [...] (6) One who utilizes or allows the use of telecommunications services for those who are qualified, as a means of assisting in the commission of crimes.”

Article 172 of the Organic Law on Telecommunications states: “Article 172. The revocation of the administrative permit or concession of natural or legal persons will cause them to be unable to obtain another one, either directly or indirectly, for a period of five years. This period will be counted starting at the moment the administrative decision becomes final. In the case of legal persons, the disqualification will extend to administrators or other organs responsible for the management and direction of the sanctioned operator that were carrying out these functions during the time of the infraction, if they had knowledge of the situation that led to the revocation and did not notify the National Telecommunications Commission in writing before the opening of the punitive proceedings. The violation of the disqualifications and incompatibilities established in this Law will cause natural persons responsible for such a transgression to receive a special disqualification from participating in the financing, or being administrators or managers, of telecommunications companies, either directly or indirectly, for a period of five years.

³⁸² Communication of December 18, 2008 by the State of Venezuela to the Office of the Special Rapporteur for Freedom of Expression, pp. 2-5.

Italian dictator, who, after he was overthrown, was executed by partisan militants and later his body was exhibited, in humiliating conditions, hanging by the feet in an Italian gas station.”³⁸³

447. In relation to this occurrence, the representatives of *Globovisión* have also stated that the Attorney General’s Office has initiated two criminal investigations “identified by the codes ‘01-F20-0678-08’ and ‘01-F20-0362-09.’” The representatives of the communications media emphasized that they were “now getting into criminal territory with this issue in which there is already an open administrative investigation, aiming with this at criminalizing journalistic work and making press workers responsible for the political opinions of a guest who, in addition, expressed himself live and was interrupted by the moderator of the program.”³⁸⁴

448. The second administrative proceeding was initiated on November 27, 2008. On November 24, 2008, after the close of an electoral event, the channel transmitted live the declarations of the then-candidate for the governorship of the state of Carabobo, Henrique Salas Feo, in which he stated that “From here in Carabobo we want to demand immediate results from the National Electoral Council, but as they continue delaying the process, I want to ask all the people of Carabobo to accompany me, we will go to the Electoral Council to reclaim the triumph of Carabobo.”

449. Conatel considered that the transmission of the transcribed declarations could “promote, make apology for, or incite alterations of the public order.” In this respect, the State indicated: “the referenced citizen issued a call in front of a concentration of persons—transmitted by *Globovisión*—to accompany him to the Regional Electoral Council, with the aim of ‘reclaiming the triumph of Carabobo.’ It should be emphasized that the declarations referred to were disseminated while the state of Carabobo was experiencing a moment of great political and social tension, because the small difference in the number of votes for the two principal candidates for the governorship of the state prevented the National Electoral Council from issuing official results about the development of the electoral process in this region. In this context, the declarations made by the citizen Henrique Salas Feo could unleash highly conflictive acts in this entity.”³⁸⁵

450. It is important to remember that in its 2008 Annual Report, the IACHR stated that it viewed with concern that the application of Article 29 of the Law on Social Responsibility “could result in the attachment of responsibility to a media outlet for an activity of a third party, not employed by the channel, in a program broadcast live, or for the broadcast of the speech of a politician.”³⁸⁶

451. The third administrative proceeding was initiated on May 7, 2009. As was already stated, in the early morning of May 4, 2009, the channel reported on the occurrence of an earthquake in the state of Miranda. At 5:20 am, the channel broadcast live a telephone call from its general director Alberto Federico Ravell, which informed about the earthquake and called for calm and tranquility. As of that moment, the state media had not reported on the tellurian movement. Messages about the earthquake were transmitted all that day. Conatel considered that the news

³⁸³ Communication of December 18, 2008 by the State of Venezuela to the Office of the Special Rapporteur for Freedom of Expression, pp. 2-5.

³⁸⁴ Communication of July 3, 2009 by *Globovisión* to the Office of the Special Rapporteur for Freedom of Expression.

³⁸⁵ Communication of December 18, 2008 by the State of Venezuela to the Office of the Special Rapporteur for Freedom of Expression, pp. 6-7.

³⁸⁶ IACHR. *Annual Report 2008*. Chapter IV: Human Rights Developments in the Region, para. 381. Available at: <http://www.cidh.oas.org/annualrep/2008eng/TOC.htm>.

coverage of the earthquake could “generate a sensation of anxiety and fear in the population, in an unjustified manner, unleashing a possible incitation to alterations of the public order.”³⁸⁷

452. On December 2, 2008 and May 15, 2009, the Special Rapporteurship sent communications to the State requesting information about the three punitive administrative proceedings mentioned. The State responded to the requests for information in communications dated December 18, 2008 and May 20, 2009. In the letters, the State explained the reasons for which the proceedings had been opened and indicated that the first two administrative proceedings were almost complete and that the files were “in the hands of the Social Responsibility Board, which is the professional body in charge, in accordance with the Law on Social Responsibility in Radio and Television, of pronouncing the judgment that would put an end to the punitive administrative proceedings.” With respect to the third proceeding, the State specified that this was “in the Phase of Substantiation by the Juridical Consultancy of the National Telecommunications Commission, and [that] once the Phase of Substantiation is complete, it would be remitted to the Social Responsibility Board so that they can decide what is appropriate.” It is important to note that as of the date of this report, the IACHR has not received additional information indicating that these proceedings have been concluded.

453. On June 16, 2009, Conatel initiated a fourth punitive administrative proceeding against *Globovisión*, this time for the presumed violation of Article 171.6 of the Organic Law on Telecommunications. Conatel considered that *Globovisión* had “transmitted messages that could have been linked to acts which could be classified in the Venezuelan Penal Code as crimes, among them those transmitted on these dates: (i) October 13, 2008, on the program *Aló Ciudadano*; (ii) March 22, 2009, on *Globovisión* programs and segments such as: *Noticias Globovisión* and *Aló Ciudadano*, among others; (iii) April 3 to April 6, 2009, in programs and segments such as: *Usted Lo Vio*, *Tres para las Nueve*, *Entretelones del Jucio*, *Noticias Globovisión*, among others; (iv) May 19, 2009, during the program *Buenas Noches*; and (v) May 10, 2009, on the program *Aló Venezuela*.” According to Conatel, “*Globovisión*, as a provider of broadcast television services, could have contributed to the commission of crimes, making or permitting use of its service for this [...], [which] [could] lead to the determination of criminal responsibility for *Globovisión*.”³⁸⁸

454. The Special Rapporteurship received information that indicates that the fourth administrative proceeding has been suspended until the Attorney General’s Office can determine the criminal responsibility *Globovisión* could have incurred. According to Conatel: “for the sake of guaranteeing the constitutional rights that may correspond to [...] *Globovisión*, [it is] necessary to suspend the present proceeding until the corresponding criminal responsibilities can be determined within the framework of the investigations being carried out by the Attorney General’s Office. In this manner, once the existence or non-existence of criminal responsibilities has been determined, and in consequence, the commission or non-commission of crimes, the present proceeding will be restarted, initiating its substantiation in order to determine the propriety of the cause of action for

³⁸⁷ Communication of May 20, 2009 by the State of Venezuela to the Office of the Special Rapporteur for Freedom of Expression, pp. 2-3.

³⁸⁸ Communication of July 3, 2009 by *Globovisión* to the Office of the Special Rapporteur for Freedom of Expression. In the opinion of the representatives of the communications media, the actions of the Attorney General’s Office “show the coordination of actions by the Venezuelan state through the penal system with the object of now supporting the ‘revocation’ of the license that *Globovisión* uses to transmit information to the public every day, creating an additional risk of penalties including the deprivation of liberty for the managers, journalists, and other workers of *Globovisión*.”

revocation invoked, for which the corresponding notification will be made to the presumed transgressor.”³⁸⁹

455. On July 3, 2009, Conatel initiated, upon its own motion, a fifth punitive administrative proceeding against *Globovisión*. The proceeding, which also involves three other television channels and two radio stations, was started because of a publicity campaign prepared by two civil society organizations that criticized the “Proposed law on social property.” Through a precautionary measure, Conatel also ordered the immediate cancellation of the publicity notices arguing that they contained “messages that presumably cause[d] distress, fear, and anxiety in the population that could foment collective conduct having a tendency to alter the public order and that could be contrary to national security,” and also prohibited the dissemination of similar messages. (see below)

456. It should be noted that on July 3, 2009, the Attorney General’s Office also placed a precautionary measure before a criminal court against one of the organizations that prepared the campaign and against the newspaper *Últimas Noticias*, after it published two graphic notices showing nude women, covering their breasts, with the message: “The law on social property will take away what it is yours; no to the Cuban law.” The public prosecutors requested the suspension of the publication of these notices, arguing that it dealt with a case of violence against women. According to the information received, the request by the Attorney General’s Office was granted and the publicity notices were removed, by judicial order, from the pages of the newspaper.

457. Lastly, on September 7, 2008, Conatel initiated a sixth punitive administrative proceeding against *Globovisión* and an independent producer, with the aim of determining “if the conduct carried out by the same incurred in the actions described in Articles [sic] 28 number 4 literal ‘x’ and in number 1 of Article 29 of the Law on Social Responsibility.”³⁹⁰

458. According to Conatel, without stating precisely the content of the messages, “on September 3, 2009, in the program called *Buenas Noches* produced by KIKO COMUNICACIONES AL REVES, C.A. [...], which is transmitted by *Globovisión* [...], in its character as a provider of broadcast television services, disseminated messages that appeared through a character generator as messages supposedly sent by users via text message. [...] [By] disseminating messages like those referred to [...], one can observe that they could violate that which is provided under the Law on Social Responsibility [...], given that the mentioned messages could be inciting to disregard for institutions, to the realization of a coup d’état, and to the generation of alterations of the public order, presumably attacking the national security. It should be emphasized that the messages were transmitted in a context in which they promoted public demonstrations, with which a climate of tension and anxiety could be generated in the population, through implicit and explicit messages that presumably allude to acts of violence and the realization of a *coup d’état* in the country.”³⁹¹

³⁸⁹ Communication of October 5, 2009 by *Globovisión* to the Office of the Special Rapporteur for Freedom of Expression.

³⁹⁰ Article 28 of the Law on Social Responsibility provides: “Article 28. Sanctions. Without prejudice to the civil and criminal penalties, it is possible to impose sanctions of cession of airtime for the dissemination of cultural and educational messages, fines, suspension of the administrative permit, and revocation of the administrative permit or of the concession. [...] 4. A provider of radio, television, or subscription services will be sanctioned, in cases in which it is applicable, with a fine of one per cent to two percent of the gross income earned in the fiscal year immediately prior to the one in which the infraction was committed, as well as the cession of airtime for the dissemination of cultural and educational messages when: [...] x) S/he disseminates messages that incite to noncompliance with the current legal norms.”

³⁹¹ Communication of October 5, 2009 from *Globovisión* to the Office of the Special Rapporteur for Freedom of Expression.

459. On the same day, Minister Diosdado Cabello affirmed that he had also requested the Office of the Attorney General of the Republic to open a criminal investigation against *Globovisión* for the transmission of this content. According to the state official, the messages incited to “coup d’état and assassination.”³⁹² However, the content of each of these messages was not concretely clarified or specified.

460. In relation to the opening of these investigations, the IACHR reaffirms, as does the Special Rapporteurship in its pronouncement of June 26, 2009, that the states have the authority to regulate the radio broadcasting spectrum and carry out punitive administrative proceedings to ensure compliance with the legal dispositions.³⁹³ Nevertheless, the IACHR reminds the Venezuelan state that in the exercise of that power, it must promote pluralism and diversity, as well as guarantee access to the radio broadcasting spectrum under conditions of equality and non-discrimination.³⁹⁴

461. The forgoing implies that any administrative investigation that could lead to the application of sanctions against communications media must comply with, at a minimum, the following requirements: (1) it must be completely subject to the most favorable law in force; (2) the applicable law must not contain vague and imprecise terms that could lead to the arbitrary application of sanctions that limit freedom of expression; (3) any legal restriction on freedom of expression must pursue ends that are compatible with the American Convention; (4) any sanction must be proportionate and strictly necessary for the satisfaction of the legitimate goals that the law establishes; (5) in any case due process of the law must be fully guaranteed; and (6) the organ of application of the law must offer guarantees of autonomy, independence, and impartiality.

462. In summary, the decision to sanction a communications media, and especially to revoke its license or permit, must be strictly legal, reasonable, and proportionate to the offense committed and be governed by the universal principal of good faith. Therefore, it will not be acceptable and it will corrupt the entire proceeding if the functionaries responsible for applying the law had in consideration discriminatory reasons, such as the editorial line of a communications media, to adopt the mentioned decisions.

463. The affirmations of the highest-ranking authorities against the investigated media, the facts which gave rise to the opening of the administrative proceedings, the broadness with which the Law on Social Responsibility seems to be interpreted by the competent authorities in the cited cases, the lack of autonomy that Conatel appears to have with respect to the interests of

³⁹² Conatel. September 7, 2009. *Diosdado Cabello: Procedimiento administrativo sancionatorio contra Globovisión no intenta regular la libertad de expresión sino hacer cumplir la ley* (Diosdado Cabello: Punitive administrative proceedings against Globovisión do not seek to regulate freedom of expression but rather to enforce the law). Available in Spanish at: http://www.conatel.gob.ve/noticia_comp.asp?numn=2678; Globovisión. September 9, 2009. *Fiscalía investiga denuncia de Diosdado Cabello contra Globovisión* (Attorney General’s Office investigates denunciation by Diosdado Cabello against Globovisión). Available in Spanish at: <http://www.globovision.com/news.php?nid=126903>; Globovisión. September 7, 2009. *Conatel notifica nuevo procedimiento sancionatorio a Globovisión* (Conatel announces new punitive proceedings against Globovisión). Available in Spanish at: <http://www.globovision.com/news.php?nid=126696>; Globovisión. September 5, 2009. *Ministro Cabello anuncia apertura de procedimiento sancionatorio contra Globovisión* (Minister Cabello announces the opening of punitive proceedings against Globovisión). Available in Spanish at: <http://www.globovision.com/news.php?nid=126535>.

³⁹³ Office of the Special Rapporteur—IACHR. June 26, 2009. *Press Release R41/09*. Available at: <http://www.cidh.oas.org/relatoria/showarticle.asp?artID=751&IID=1>.

³⁹⁴ IACHR. *Annual Report 2002*. Volume III, Chapter IV: Freedom of Expression and Poverty. Available at: <http://www.cidh.oas.org/relatoria/docListCat.asp?catID=32&IID=1>.

the Executive Branch, among other factors, suggests that the editorial line of the investigated media was the motivation to initiate the punitive proceedings that have just been described.

464. For the reasons that have been expressed, the IACHR expresses its profound concern about these acts and urges the State, as it did in the *Report on the Situation of Human Rights in Venezuela* (2003), to respect scrupulously the standards of the inter-American system for the protection of human rights in the administrative or judicial proceedings that they decide.

2. Prohibition of broadcasting publicity contrary to a proposed law of interest to the government: The case of Cedice and Asoesfuerzo

465. As was stated in the previous section, on July 3, 2009 Conatel initiated a punitive administrative proceeding against *Venevisión, Meridiano TV, Televen, Globovisión, Onda 107.9 FM, and Fiesta 106.5 FM*, for the transmission of notices of a publicity campaign of the Centro de Divulgación del Conocimiento Económico para la Libertad (hereinafter, “Cedice”) and the Asociación Civil para el Fomento y Promoción del Esfuerzo (hereinafter, “Asoesfuerzo”) called “In Defense of the Right to Property.” In the same resolution, Conatel issued a precautionary measure against *Venevisión, Meridiano TV, Televen, Globovisión, Onda 107.9 FM, and Fiesta 106.5 FM*, so that they would abstain “immediately from disseminating any propaganda that is part of the campaign ‘In Defense of Property’ offered by the advertisers CEDICE and ASOESFUERZO, in their various versions, both on radio and on television.”³⁹⁵

466. The pieces that that were prohibited from dissemination were advertisements contracted by Cedice and Asoesfuerzo as part of a campaign against the so-called “Proposed law on social property” under consideration by the National Assembly. In these pieces, various characters (such as one representing the granddaughter of a baker, the son of a driver, a farmer, a housewife, among others) affirmed that they and their parents “had worked very hard for what they had” and closed saying: “If they try to take it from me, I will defend it.” At the end of the ads the off-camera announcer indicated: “Property is your pride, defend private property. [...]. For a country of property owners.”³⁹⁶

³⁹⁵ It should be noted that the opening of the administrative proceedings also affects Cedice and Asoesfuerzo. Conatel. July 3, 2009. Administrative Provision No. PADSR-1.427 of July 2, 2009.

³⁹⁶ Specifically, Conatel indicated that the publicity spots suspended that were part of the mentioned campaign are the following: Asoesfuerzo: (1) What does private property mean to you?; (2) Why is it important to defend private property?; (3) Do you feel that your private property is threatened in today’s Venezuela? Available in Spanish at: <http://www.asoesfuerzo.com>; Cedice: (4) Don’t mess with my parents. Shop version; (5) Don’t mess with my parents. Bakery version; and (6) Don’t mess with my parents. Driver version. Available in Spanish at: <http://www.cedice.org.ve>. Conatel also affirmed the creation of “versions of ‘the propaganda’ to be transmitted by radio, including the version ‘No to the Cuban law’ [...] announced by CEDICE.” Conatel. July 3, 2009. Administrative Provision No. PADSR-1.427 of July 2, 2009. See also: Conatel. July 3, 2009. *Por presuntas infracciones a la Ley RSRTV Conatel inicia procedimiento administrativo sancionatorio a medios radioeléctricos que difundieron propagandas de CEDICE y ASOESFUERZO que presuntamente podrían alterar el orden público* (For presumed infractions of the Law RSRTV [Law on Social Responsibility in Radio and Television] Conatel initiates punitive administrative proceedings against broadcast media that distributed advertisements of CEDICE and ASOESFUERZO that could presumably alter public order). Available in Spanish at: http://www.conatel.gob.ve/noticia_comp.asp?numn=2653; Globovisión. July 6, 2009. *Gobierno venezolano dicta medida de censura previa, prohibiendo la difusión en radio y TV de una campaña a favor de la propiedad privada y abre un nuevo procedimiento contra Globovisión* (Venezuelan government issues a measure of prior censorship, prohibiting the transmission by radio and television of a campaign in favor of private property and opens a new proceeding against Globovisión). Communication of July 5, 2009 from *Globovisión* to the Office of the Special Rapporteur for Freedom of Expression. Available in Spanish at: <http://www.globovision.com/news.php?nid=121136&clave=a%3A1%3A%7Bi%3A0%3Bs%3A7%3A%22cedice+%22%3B%7D>; Globovisión. July 3, 2009. *Conatel abrió quinto procedimiento contra Globovisión en seis meses* (Conatel Continued...

467. According to Conatel, “these advertisements contained messages that presumably cause anguish, fear, and anxiety in the population that could foment conduct by the collective that tends to alter the public order and could be contrary to the national security [...]. [G]iven that the advertisements urge the defense of private property, the intended receivers of the message could adopt various types of conduct, including aggressive ones, with the aim of defending themselves from a supposed threat, which could lead to alterations of the public order, especially taking into consideration that it does not appear in ‘the advertisements’ that they express the idea of resorting to legal means to exercise that defense.”³⁹⁷

468. On the other hand, on the same date, the Attorney General’s Office presented a request for precautionary measures before the Second Tribunal on Violence against Women in the Metropolitan Area of Caracas to ask that the newspaper *Últimas Noticias* suspend the publication of two notices by Cedice that showed the image of a nude pregnant woman, and a nude woman in a defenseless state, covering their breasts, with the message: “The law on social property will take away what is yours; no to the Cuban law.”

469. The Attorney General’s Office requested the suspension of the publications because it considered that they could go against Articles 15.15 and 53 of the Organic Law on the Right of Women to a Life Free of Violence. According to Article 15.15 of that law, “media violence” is “the exposition, through any communications media, of a woman, girl, or adolescent that, directly or indirectly exploits, discriminates, dishonors, humiliates, or attacks her dignity for economic, social, or power reasons. It is also understood as media violence the use and abuse by communications media of women’s, girls’, or adolescents’ bodies.” For its part, Article 53 of this instrument defines “public offense for reason of gender” with the following text: “The communications professional, or a non-professional who carries out work related to this discipline, and in the exercise of this occupation offends, injures, or denigrates a woman for reasons of gender through a media of communication, must indemnify the woman who is the victim of violence with the payment of a sum not less than two hundred (200 U.T.) nor greater than five hundred tributary units (500 U.T.) and make a public apology by the same media used to commit the offense and with same extension of time and space.” On July 6, 2009, the Second Tribunal on Violence against Women of the Metropolitan Area of Caracas rejected the request from the Attorney General’s Office.³⁹⁸

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opens fifth proceeding against Globovisión in six months). Available in Spanish at: <http://www.globovision.com/news.php?nid=120854&clave=a%3A1%3A%7Bi%3A0%3Bs%3A7%3A%22cedice+%22%3B%7D>; CEDICE. August 6, 2009. *Video censurado por procedimiento administrativo de Conatel* (Video censored by administrative proceedings of Conatel). Available in Spanish at: <http://www.cedice.org.ve/detalle.asp?id=2993>.

³⁹⁷ Conatel. July 3, 2009. *Por presuntas infracciones a la Ley RSRTV Conatel inicia procedimiento administrativo sancionatorio a medios radioeléctricos que difundieron propagandas de CEDICE y ASOESFUERZO que presuntamente podrían alterar el orden público* (For presumed infractions of the Law RSRTV [Law on Social Responsibility in Radio and Television] Conatel initiates punitive administrative proceedings against broadcast media that distributed advertisements of CEDICE and ASOESFUERZO that could presumably alter public order). Available in Spanish at: http://www.conatel.gob.ve/noticia_comp.asp?numn=2653.

³⁹⁸ Second Tribunal on Violence against Women in function of Control, Hearing, and Measures of the Criminal Judicial Circuit of the Judicial District of the Metropolitan Area of Caracas. Judicial resolution of July 6, 2009. Issue AP01-S-2009-013642; Globovisión. July 6, 2009. *Ministerio Público solicitó a Tribunal suspender dos avisos publicitarios de Cedice* (Attorney General’s Office requests Tribunal to suspend two publicity notices by Cedice). Available in Spanish at: <http://www.globovision.com/news.php?nid=121142&clave=a%3A1%3A%7Bi%3A0%3Bs%3A7%3A%22cedice+%22%3B%7D>; Globovisión. July 12, 2009. *Ministerio Público apeló decisión de tribunal que negó suspensión de avisos publicitarios de Cedice* (Attorney General’s Office appealed decision of tribunal that denied suspension of Cedice publicity notices). Available in Spanish at:

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470. On July 10, 2009, the Attorney General's Office appealed the measure and on August 14, 2009, the Court of Appeals on Violence Against Women of the Metropolitan Area of Caracas resolved to order the newspaper *Últimas Noticias* and Cedice to suspend publication of the publicity notices, with the aim of preventing "new acts of violence, allowing for the safeguarding of the physical and psychological integrity and the environment of women expeditiously and effectively." The decision of the Court of Appeals also established the prohibition of the mentioned advertisement "in all the social communications media in the country."³⁹⁹

471. It should be stated that on July 9, 2009, the Minister Diosdado Cabello made a presentation before the National Assembly in which he suggested that these decisions had been adopted to protect the "mental health" of the Venezuelan population, and that investigations would be launched into the source of the funding for these campaigns.⁴⁰⁰

472. Subsequently, the IACHR received information indicating that on October 6, 2009, the National Office for Intelligence and Prevention Services (DISIP, by its Spanish acronym) of the Ministry of Popular Power for Interior Relations and Justice cited directors and personnel of Cedice as witnesses in the framework of the penal investigation FN20NN-038-2009, which is being carried out by the 20th Public Prosecutor of the Attorney General's Office of the Metropolitan Area of Caracas.

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<http://www.globovision.com/news.php?nid=121641&clave=a%3A1%3A%7Bi%3A0%3Bs%3A7%3A%22cedice+%22%3B%7D>.

³⁹⁹ Court of Appeals of the Criminal Judicial Circuit of the Judicial District of the Metropolitan Area of Caracas on Violence against Women. Judicial Resolution No. 135-09 of August 14, 2009. Issue No. CA-803-09-VCM; Office of the Attorney General of the Bolivarian Republic of Venezuela. August 15, 2009. *Prohíben difusión en medios de comunicación de publicidad de Cedice que denigra a la mujer* (Dissemination by communications media of Cedice publicity denigrating women prohibited). Available in Spanish at: <http://www.fiscalia.gov.ve/Prensa/A2009/prensa1508.htm>; El Universal. August 15, 2009. *Tribunal vuelve a prohibir la difusión de los avisos de Cedice* (Tribunal prohibits dissemination of Cedice notices). Available in Spanish at: http://deportes.eluniversal.com/2009/08/16/pol_art_tribunal-vuelve-a-pr_1526642.shtml; El Nacional. August 15, 2009. *Prohíben difusión de publicidad de Cedice* (Dissemination of Cedice publicity prohibited). Available in Spanish at: http://www.el-nacional.com/www/site/p_contenido.php?q=nodo/94573/Honduras/Proh%C3%ADben-difusi%C3%B3n-de-publicidad-de-Cedice; Globovisión. August 15, 2009. *Prohíben difusión de publicidad de Cedice por considerar que "denigra" a la mujer* (Dissemination of Cedice publicity considered to "denigrate" women prohibited). Available in Spanish at: <http://www.globovision.com/news.php?nid=124518>.

⁴⁰⁰ In the speech, Minister Diosdado Cabello stated: "Last week we made the decision to suspend the publicity notices of Asoesfuerzo and Cedice, on television and radio. And I want to say it here, in the National Assembly. I said something there that is the root of the issue, where do the resources to finance this campaign come from? They made themselves crazy; they spoke about freedom of expression. No, I am speaking about the legitimization of capital, I am speaking of money laundering, and we have asked the Attorney General's Office to investigate the facts to determine how an association that was created in May by a gentleman who had never paid one bolívar in taxes to the country could contract with a television station for 3 million strong bolívares in the month of June. Where did these riches come from? I am talking about a television station. No, no. I am taking the case of a television station and I have the contract. Of a television station! This is occurring all over the country. And they went for the side of freedom of expression. No, it is not freedom of expression, it deals with the mental health of the Venezuelans." National Assembly of the Republic of Venezuela. July 9, 2009. *Punto de información del ciudadano Ministro del Poder Popular para las Obras Públicas y Vivienda Diosdado Cabello para referirse a la situación actual de los servicios de radiodifusión sonora, televisión abierta y difusión por suscripción* (Point of information from citizen Minister of Popular Power for Public Works and Housing Diosdado Cabello to refer to the current situation of the radio, broadcast television, and subscription services), p. 17. Available in Spanish at: http://www.asambleanacional.gob.ve/index.php?option=com_docman&task=cat_view&gid=41&&Itemid=124.

473. The IACHR also learned that on September 17, 2009, the DISIP, through the Superintendency of Banks and Other Financial Institutions, requested all the banks and financial institutions in the country to inform it, in the context of case No. F66-NN-0027-09 assigned to the Sixty-Sixth Public Prosecutor of the Attorney General's Office of the Metropolitan Area of Caracas, if Cedice had accounts in those entities. Additionally, on September 29, 2009, the Office for Investigations against Terrorism of the Corps on Scientific Penal and Criminal Investigations, through the Superintendency of Banks and Other Financial Institutions, requested information, in the framework of case No. G-137.026, from all the banks and financial institutions in the country about the accounts and other financial instruments in the name of Cedice and Asoesfuerzo. Finally, on September 30, 2009, the Division of Investigations and Protection in the Matter of Children, Adolescents, Women, and Families of the Corps on Scientific Penal and Criminal Investigations of the Ministry of Popular Power for Interior Relations and Justice, through the Superintendency of Banks and Other Financial Institutions, requested information, in the framework of case No. G-137.036, from all the banks and financial institutions about the accounts, movements, and operations carried out by Cedice in the last six months.

474. On July 13, 2009, the Special Rapporteurship requested information from the State in relation to these facts. This request was reiterated in a communication of October 8, 2009. As of the date of this report, however, no response to these requests for information has been received.

475. The IACHR expresses its deep concern to the State about these measures and reminds it that Article 13.2 of the American Convention provides explicitly that the exercise of freedom of expression cannot be subject to prior censorship. The Constitution of the Bolivarian Republic of Venezuela itself establishes the same principle in its Article 57, which states that "every person has the right to express his or her thoughts, ideas, or opinions freely [...] and to make use of any medium of communication for this purpose [...] without the establishment of prior censorship."⁴⁰¹ In the same sense, Article 2 of the Law on Social Responsibility indicates that "the interpretation and application of [this norm] shall be subject, without prejudice to all of the other constitutional provisions" to the principle of "prohibition of prior censorship."⁴⁰²

476. The IACHR has repeatedly stated that prior censorship is the prototypical extreme and radical violation of freedom of expression, precisely because "through the public power, means are established to impede the free circulation of information, ideas, opinions, or news prior [to their dissemination] by any type of proceeding that subjects the expression or dissemination of information to the control of State."⁴⁰³

477. On the other hand, it should be reiterated that which has already been expressed to the State, in that freedom of expression must be guaranteed not only with respect to the dissemination of ideas and information that are received favorably or are considered inoffensive or

⁴⁰¹ Constitution of the Bolivarian Republic of Venezuela. Official Gazette No. 36.860 of December 30, 1999. Available in Spanish at: <http://www.constitucion.ve/constitucion.pdf>.

⁴⁰² Updated text of the Law on Social Responsibility in Radio and Television. Official Gazette No. 38.333 of December 12, 2005. Available in Spanish at: http://www.conatel.gob.ve/download/marco_legal/Ley%20Responsabilidad%20Reforma.pdf.

⁴⁰³ IACHR. *Annual Report 2008*. Volume II: 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. 123. OEA/Ser.L/V/II.134. Doc. 5 rev. 1. February 25, 2009. Available at: <http://www.cidh.oas.org/annualrep/2008eng/Annual%20Report%202008-%20RELE%20-%20version%20final.pdf>.

indifferent, but also with respect to those that offend, shock, worry, or are unwelcome to public functionaries or to a sector of the population.⁴⁰⁴

478. Additionally, the IACHR considers it important to remind the State that the application of extreme measures that limit the exercise of freedom of expression based on that which is provided in Article 13.4 of the American Convention, especially in the context of elections or the consideration of legislative reforms, as in the present case, cannot be imposed based on mere conjectures about eventual, hypothetical effects on the public order. In each case, it is necessary to show that there is a certain, real, and objective risk of a severe effect on public order that can only be addressed through proportionate and reasonable restrictions on the exercise of freedom of expression in the terms established by Article 13 of the American Convention.

479. The IACHR considers that the measures of control that the State has been adopting could constitute acts of censorship incompatible with the parameters provided in the American Convention. In this sense, it urges the State to ensure that the competent authorities take into account the standards described here and adopt the measures necessary to guarantee the exercise the right to freedom of expression in relation to the facts summarized in this section.

480. Finally, the IACHR exhorts the State to take into account that, in accordance with Principle 5 of the Declaration of Principles: “[p]rior censorship, direct or indirect interference in or pressure exerted upon any expression, opinion or information transmitted through any means of oral, written, artistic, visual or electronic communication must be prohibited by law. Restrictions to the free circulation of ideas and opinions, as well as the arbitrary imposition of information and the imposition of obstacles to the free flow of information, violate the right to freedom of expression.”

3. The case of theatrical associations

481. The IACHR received information that indicates that in Venezuela there is no legal framework ensuring that the assignation of subsidies for the arts and culture is carried out in an objective manner, respecting the State’s obligation of neutrality. In this context, it was informed that the *Asociación Cultural Skena*, the *Asociación Civil Teatro del Duende*, which received subsidies from the Ministry of Popular Power for Culture, were excluded from the Agreements on Cultural Cooperation through which they were assigned resources for carrying out their activities in the state of Miranda. According to information provided to the IACHR, the Ministry of Popular Power for Culture had justified its decision based on the criteria applicable in so-called “exceptional cases,” according to which they “do not finance groups and individuals whose pernicious public conduct affects the collective psychological and emotional stability of the population, making use of offensive language, discrediting, lying, and manipulating through media campaigns with these aims.”⁴⁰⁵

482. The *Asociación Teatral Grupo Actoral 80* found itself in a similar situation. According to the information received by the IACHR, in August of 2009 the entity that studies the assignation of subsidies (*Mesa Técnica de Teatro y Circo de los Convenios de Cooperación Cultural para la Plataforma del Instituto de las Artes Escénicas y Musicales*, PIAEM) proposed to exclude the

⁴⁰⁴ I/A Court H.R., *Case of Herrera Ulloa v. Costa Rica*. Judgment of July 2, 2004. Series C No. 107, para. 113; I/A Court H.R., *Case of “The Last Temptation of Christ” (Olmedo Bustos et al.) v. Chile*. Judgment of February 5, 2001. Series C No. 73, para. 69.

⁴⁰⁵ Ministry of Popular Power for Culture. State Office of Miranda. Document No. 24-08. In the document, “Criteria for the execution of the Agreements on Cultural Cooperation in Performing Arts and Musicals 2009” are also detailed. Information provided on November 2, 2009 by Sinergia to the Office of the Special Rapporteur for Freedom of Expression in the framework of the 137th Ordinary Period of Sessions of the IACHR.

Asociación Teatral Grupo Actoral 80 from the list of groups that received economic assistance from the State in the Capital District. According to the information reported, the cancellation of the subsidy was a consequence of the critical opinions of the director of the *Asociación Teatral Grupo Actoral 80* with respect to some decisions of the government about cultural policies. For the cancellation of the subsidy, the clause of the Agreements on Cultural Cooperation was applied that prohibits financing of “groups and individuals whose pernicious public conduct affects the collective psychological and emotional stability of the population, making use of offensive language, discrediting, lying, and manipulating through media campaigns with these aims.” It should be noted that due to the lack of agreement among the members of the *Mesa Técnica* to determine the exclusion of the *Asociación Teatral Grupo Actoral 80*, it was requested that the case be “elevated to higher instances of the Ministry of Popular Power for Culture for its resolution.”⁴⁰⁶

483. Additionally, on January 21, 2009, the *Fundación El Ateneo de Caracas* was notified with an eviction order by the Ministry of Popular Power for Economics and Finance. According to the information received, the measure was justified based on the upcoming expiration of the contract for a loan on the building, owned by the State, and on the necessity of using these installations for the University of the Arts. The day before, a group of armed individuals, led by Lina Ron, had entered the building to attack leaders of the *Bandera Roja* political party who were meeting there. During this incident, Lina Ron stated that “the installations of Ateneo [were] being taken by the extreme right” and that “by her instructions, they would be taken for the revolution.” After learning of the decision by the Ministry of Popular Power for Economics and Finance, the general director of *Ateneo de Caracas*, Carmen Ramia, indicated that the eviction order was based on the organization’s pluralism. In her opinion, this was a consequence of the fact that *El Ateneo de Caracas* accepted “what comes from the opposition as well as that which comes from the government” and emphasized that this was “an institution that [had] its doors open to everyone.”⁴⁰⁷ The IACHR

⁴⁰⁶ Minutes of the Results of the Technical Committees of the Agreements on Cultural Cooperation 2009. Program for Performing Arts and Musicals. Technical Committee for Theater and Circus. Agreement 7. September 1, 2009. Information provided by Sinergia to the Office of the Special Rapporteur for Freedom of Expression on November 2, 2009, in the context of the 137th Ordinary Period of Sessions of the IACHR. See also: Sinergia. *Amenazas a los derechos humanos y a la democracia en Venezuela. Informe comprensivo de seguimiento. Octubre 2009* (Threats to human rights and democracy in Venezuela. Comprehensive follow-up report. October 2009), p. 18; El Universal. March 2, 2009. *No debe permitirse la censura. Entrevista a Héctor Manrique* (Censorship must not be permitted. Interview with Héctor Manrique). Available in Spanish at: http://www.eluniversal.com/2009/03/02/til_art_no-debe-permitirse_1286893.shtml; El Nacional. October 6, 2009. *Las conciencias de los teatreros no están en venta* (The consciences of theater workers are not for sale). Available in Spanish at: http://el-nacional.com/www/site/p_contenido.php?q=nodo/102601/Entretenimiento/Las-conciencias-de-los-teatreros-no-est%C3%A1n-en-venta.

⁴⁰⁷ El Nacional. January 21, 2009. *Ordenan desalojo del Ateneo de Caracas* (Eviction of *Ateneo de Caracas* ordered). Available in Spanish at: http://el-nacional.com/www/site/p_contenido.php?q=nodo/64766/Pol%C3%ADtica/Ordenan-desalojo-del-Ateneo-de-Caracas; Noticias 24. January 21, 2009. *Ordenan desalojar El Ateneo de Caracas el 6 de mayo* (Eviction of *Ateneo de Caracas* ordered on May 6). Available in Spanish at: <http://www.noticias24.com/actualidad/noticia/23174/presidente-%C2%BFque-le-pasa-con-el-ateneo-de-caracas/comment-page-1/>; El Nacional. May 20, 2009. *Chavistas arremeten contra instalaciones del Ateneo* (Chávez supporters attack installations of *Ateneo*). Available in Spanish at: http://www.el-nacional.com/www/site/p_contenido.php?q=nodo/64506/Pol%C3%ADtica/Chavistas-arremeten-contra-instalaciones-del-Ateneo; El Universal. January 20, 2009. *Cuarenta personas estuvieron a resguardo de la PM por hechas violentos en El Ateneo* (Forty people protected by PM [Metropolitan Police] from violent acts in *El Ateneo*). Available in Spanish at: http://politica.eluniversal.com/2009/01/20/pol_ava_cuarenta-personas-es_20A2199399.shtml; El Universal. May 6, 2009. *Ministro Soto: Desalojo del Ateneo responde a culminación del comodato* (Minister Soto: Eviction of *Ateneo* is result of expiration of loan contract). Available in Spanish at: http://www.eluniversal.com/2009/05/06/cul_ava_ministro-soto:-desal_06A2318385.shtml; Sinergia. *Amenazas a* Continued...

expressed its concern about this occurrence, since other theater groups have indicated that the eviction of *Ateneo de Caracas* is one more manifestation of the intentions of governmental officials to stifle “free cultural creation” in Venezuela.⁴⁰⁸

4. Restrictions of the right to personal liberty: The case of Gustavo Azócar

484. On December 28, 2000, journalist Gustavo Azócar, known for having made important denunciations of corruption in the state of Táchira, was denounced before the Attorney General’s Office under the argument that the station that he worked for had neglected to broadcast some publicity notices about the state lottery. The oral phase of these penal proceedings began on May 11, 2009.

485. According to the information received, the trial was postponed for more than nine years, during which the journalist was prohibited from leaving the country, giving statements, or referring to the proceedings in any way. This has prevented him, in practice, from carrying out his profession freely. Various journalistic guilds and organizations have requested that this trial be resolved soon given that, in their understanding, it has fundamentally political motives since it constitutes retaliation for the denunciations of corruption made by the journalist. These organizations indicate that there is sufficient evidence to disprove the accusation and for that reason, they request a prompt decision. Nevertheless, the process has been postponed indefinitely with the aggravating factor that the journalist has recently been deprived of his liberty for having divulged on his Web public information related to the penal proceedings that was already in the public domain.

486. Actually, on July 29, 2009, Azócar was taken by members of the National Guard to the Penitentiary of Western Santa Ana in the state of Táchira, because the communicator “obstructed justice” by publishing information about the penal proceedings against him. According to the information received, the information published by the journalist was the faithful reproduction of two reports published in two newspapers of broad circulation several days before.⁴⁰⁹

487. Recently, the Special Rapporteurship was informed that on September 1, 2009, the judge in charge of the penal proceedings was dismissed, “a week before the trial was to end,” and that on October 5, 2009, the new judge in charge resolved to “nullify the entire previous trial,” except

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los derechos humanos y a la democracia en Venezuela. Informe comprehensivo de seguimiento. Octubre 2009 (Threats to human rights and democracy in Venezuela. Comprehensive follow-up report. October 2009), pp. 19-20. Information provided by Sinergia to the Office of the Special Rapporteur for Freedom of Expression on November 2, 2009 in the context of the 137th Ordinary Period of Sessions of the IACHR.

⁴⁰⁸ Frente Cultural José Ignacio Cabrujas. July 1, 2009. *Manifiesto contra el cierre del Ateneo de Caracas* (Declaration against the closing of *Ateneo de Caracas*). Available in Spanish at: <http://www.youtube.com/watch?v=JLeibNHGkg>.

⁴⁰⁹ Information provided on November 2, 2009 by Espacio Público to the Office of the Special Rapporteur for Freedom of Expression in the framework of the 137th Ordinary Period of Sessions of the IACHR; El Universal. July 29, 2009. *Periodista Gustavo Azocar es enviado al Centro Penitenciario de Santa Ana* (Journalist Gustavo Azocar sent to Santa Ana Penitentiary). Available in Spanish at: http://internacional.eluniversal.com/2009/07/29/pol_ava_periodista-gustavo-a_29A2560563.shtml; El Nacional. July 29, 2009. *Privado de libertad en audiencia periodista Gustavo Azocar* (Journalist Gustavo Azocar deprived of liberty at hearing). Available in Spanish at: http://el-nacional.com/www/site/p_contenido.php?q=nodo/92138/Regiones/Privado-de-libertad-en-audiencia-periodista-Gustavo-Az%C3%B3car.

the decision to imprison the journalist in a public prison for the faithful reproduction of information published in two newspapers.⁴¹⁰

E. Regulation of the radio broadcasting spectrum and the application of dispositions on broadcasting

1. The announcement of the revocation or cancellation of 240 broadcasting concessions and the decision to order the suspension of the transmission of 32 radio stations

488. On July 3, 2009, the Minister of Popular Power for Public Works and Housing, Diosdado Cabello, after indicating that they were in a process of democratization of the radio broadcasting spectrum, announced that Conatel would open a process to establish the possible revocation of the concessions granted to 240 radio stations. This surprising announcement was followed by the decision to order the suspension of the transmission of 32 radio stations. In the present section, some of the most important antecedents of this process and some of the effects of these decisions on the right to freedom of expression are explained.

489. Article 73 of the Organic Law on Telecommunications provides that: "The rights of use and exploitation of the radio broadcasting spectrum derived from a concession cannot be transferred or given away, nevertheless, the concession holder may request [Conatel] his or her substitution as owner with the person s/he indicates for this purpose, as long as s/he complies with the conditions and principles established in this Law."⁴¹¹

490. On the other hand, Article 210 of the Organic Law on Telecommunications confers upon Conatel the obligation to establish "through resolution, special transformation schedules for [...] concessions and permits granted in conformity with the foregoing legislation."⁴¹² The process of transformation of the legal titles granted under the previous regulatory framework must be carried out in the two years following the publication of the Organic Law on Telecommunications in the Official Gazette, that is to say, it expired on June 12, 2002.

491. Article 210 of the Organic Law on Telecommunications adds that the transformation of titles must be solicited by the interested party within the time period established by Conatel, which cannot be less than 60 business days. When this time period is expired, Conatel is to publish a list of those who have not responded to the request for transformation, authorizing them an additional period of five business days to address the situation. If this is not done, "the omission [would be] understood as a renunciation of the concessions or permits [...] obtained prior to the publication of the [Organic] Law [on Telecommunications] in the Official Gazette."

492. Under this framework, on December 4, 2001, Conatel issued Resolution No. 93 (Official Gazette No. 37.342 of December 10, 2001), which established a schedule so that "the persons who unlawfully retain[ed] titles" authorized prior to the Organic Law on Telecommunications

⁴¹⁰ Information provided on November 2, 2009 by Espacio Público to the Office of the Special Rapporteur for Freedom of Expression in the framework of the 137th Ordinary Period of Sessions of the IACHR; Reporters without Borders. October 8, 2009. *Journalist still held in custody despite quashing of suspect case against him*. Available at: <http://www.rsf.org/Journalist-still-held-in-custody.html>.

⁴¹¹ Organic Law on Telecommunications. Official Gazette No. 36.970 of June 12, 2000. Available in Spanish at: http://www.tsj.gov.ve/legislacion/LT_lev.htm.

⁴¹² Article 210 makes reference to the Law on Telecommunications of July 29, 1940 (Published in Official Gazette No. 20.248 of August 1, 1940), now repealed.

could present their requests for transformation. Resolution No. 93 established a period of 60 business days for the presentation of the requests, starting from March 11, 2002.

493. On January 26, 2004, Conatel issued Resolution 357 (Official Gazette No. 37.894 of March 9, 2004), that granted an extension of five working days “starting with and including March 22, 2004,” for the presentation of requests for transformation. Previously, on March 19, 2004, Conatel had published in a newspaper of national circulation the list of natural and legal persons that had not presented their requests for transformation within the time period established in Resolution No. 93.

494. Five years later, on May 29, 2009, Conatel issued Administrative Provision No. 1.419 (Official Gazette No. 39.189 of May 29, 2009), which resolved, “to require natural or legal persons who provide radio or television broadcasting services, as well as not-for-profit community public service radio and television broadcasting, in the entire national territory, to submit to [that body] the information contained in the schedule called ‘Update of Information’ that is available on the official Internet portal of Conatel.” Administrative Provision No. 1.419 granted “a maximum period of fifteen (15) business days to fill out the Update of Information schedule [...] and to submit it with its respective annexes, to [that body], counting from the publication in the press [of that provision], under penalty of the application of the sanctions established in the Organic Law on Telecommunications.”⁴¹³ The information must be personally submitted to Conatel by the title holder of the license.

495. As previously mentioned, on July 3, 2009, the Minister of Popular Power for Public Works and Housing, Diosdado Cabello, announced that Conatel would open a process for establishing the possible closure of 240 concessions granted to radio broadcasters that had not updated their information before that organ in conformity with that provided by Administrative Provision No. 1.419. In his speech, Minister Diosdado Cabello declared the following: “Of the private concessionaries of AM radio, [...] 86 have not responded, while in the FM signals, 154 stations have not complied with the stipulated procedure. [...] for those who have not passed through Conatel, administrative proceedings will immediately be opened against them for the restitution of all of their concessions to the State. They were not, are not interested, they want to keep themselves at the margin of the Law. We are acting in this case in strict accordance with the Law. Whoever is not updated and has not passed through Conatel must now assume responsibility.” The official added that the Venezuelan government was “pledged to democratizing the radio broadcasting spectrum” and to eliminating the “media oligopoly.”⁴¹⁴

⁴¹³ Conatel. May 25, 2009. Administrative Provision No. 1.419. Available in Spanish at: <http://www.conatel.gob.ve/download/providencias/PROVIDENCIA%20ACTUALIZACION%20DATOS2.pdf>.

⁴¹⁴ The State has indicated that, currently, the radio broadcasting spectrum is occupied by 794 FM radio stations, 210 AM radio stations, and 108 television stations. Embassy of the Bolivarian Republic of Venezuela in the United States. August 4, 2009. *The facts about recent media events in Venezuela*. Available at <http://www.embavenez-us.org/factsheet/Recent-Media-Events-FS-US.pdf>. Conatel. July 3, 2009. *Ministro Diosdado Cabello anuncia apertura de procedimiento administrativo de CONATEL a 86 emisoras AM y 154 FM, luego que no hicieran la actualización de datos ante el organismo* (Minister Diosdado Cabello announces opening of administrative proceedings by Conatel against 86 AM and 154 FM radio stations, after they failed to update information before the institution). Available in Spanish at: http://www.conatel.gob.ve/noticia_comp.asp?numn=2654; Reporters without Borders. July 21, 2009. *Government steps up hounding of private media through new laws and regulations*. Available at: <http://www.rsf.org/Government-steps-up-hounding-of-33926.html>; El Mundo. July 3, 2009. *Conatel prohíbe propagandas opositoras y revoca 284 permisos de transmisión* (Conatel prohibits opposition propaganda and revokes 284 transmission permits). Available in Spanish at: <http://www.elmundo.es/elmundo/2009/07/03/comunicacion/1246645749.html>; El Tiempo. July 4, 2009. *Cabello*
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496. On July 9, 2009, the Minister Diosdado Cabello ratified the adoption of these measures before the National Assembly. According to the Minister, the process of updating information showed that in various cases: (a) the original concessionaries had died and the concessions were being utilized by their relatives, or (b) the original concessionaries had given their concessions to third parties who were utilizing them without authorization. In his presentation to the National Assembly, Minister Diosdado Cabello emphasized the following:

The radio broadcasting space has been one of the few areas in which the [Bolivarian] Revolution has not been felt. [...] Here in Venezuela 27 families have more than 32% of the radio broadcasting spectrum for themselves, and still the brazen ones of the Venezuelan Chamber of the Broadcasting Industry claim that this is not oligopoly [...]. They attack us and they will attack us, alleging that this is an abuse against freedom of expression. Here there is no abuse against freedom of expression [...]. And as the father Camilo Torres said: If the dominant class, the oligarchy does not willingly cede its privileges, the people must oblige them to do so by force. And in this case in Venezuela the people means the Government and we are going to do it. We are going to do it because, on the contrary, here they are preparing for us a coup similar to that of Honduras and they are going to start transmitting cartoon television stations and extinguish the radio stations. [...] If the issue of the business of radio and television stations is so painful, fine, do not exploit it, do not make use of it, return it to the State; if it causes you losses, return it to the State, the State will receive it with no problem. We are not going to sit down to negotiate to see what they are going to do to earn more or how they are going to have more stations. We are not going to do it, we have reasons of principle and, moreover, ethical reasons not to do it: they are the same from the year 2002, they are the same who would have been happy if many of us had committed treason against the President, we will almost surely have a program on *Globovisión*, almost surely we will have a program on one of those stations that play at the destabilization of Venezuela.⁴¹⁵

497. The IACHR expresses its concern about the declarations of Minister Cabello, which could lead to the conclusion that, in spite of the technical reasons set forth to justify the massive closures, the measures could have been motivated by the editorial lines of the affected stations and by the aim of creating a state communications monopoly.

498. On July 14, 2009, the National Assembly agreed to back the government's measures for the regulation of radio and television concessions. The president of the Permanent Commission on Science, Technology, and Social Communication of the National Assembly, Deputy Manuel Villalba, stated that the measures announced by Minister Cabello had received criticism and questions "only from those broadcasting sectors that are at the margin of the law and that did not respond to the National Telecommunications Commission when it convoked them." The deputy

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anunció revocatoria de concesión a 240 radioemisoras (Cabello announced the revocation of the concessions of 240 radio stations). Available in Spanish at: <http://www.eltiempo.com.ve/noticias/imprimir.asp?id=195283>.

⁴¹⁵ National Assembly of the Bolivarian Republic of Venezuela. July 9, 2009. *Punto de información del ciudadano Ministro del Poder Popular para las Obras Públicas y Vivienda Diosdado Cabello para referirse a la situación actual de los servicios de radiodifusión sonora, televisión abierta y difusión por suscripción* (Point of information from citizen Minister of Popular Power for Public Works and Housing Diosdado Cabello to refer to the current situation of radio, broadcast television, and subscription services), pp. 2, 8-11. Available in Spanish at: http://www.asambleanacional.gob.ve/index.php?option=com_docman&task=cat_view&gid=41&Itemid=124.

added the following: “Minister Cabello, what he is doing is complying with the law. Article 73 of the Organic Law on Telecommunications supports every one of his announcements.”⁴¹⁶

499. On July 31, 2009, Minister Diosdado Cabello announced the names of 34 communications media, including 32 of the 240 radio stations previously referred to, that Conatel had ordered to cease their transmissions immediately. The Minister stated that in some of these cases, the closure was due to the fact that family members or associates of the deceased original concessionaries were the ones who contacted Conatel for the transformation of the titles authorized under the prior legislation, and that, in accordance with Article 73 of the Organic Law on Telecommunications and Resolution No. 93, only the title holder of the concession is legitimately authorized to make such a request. According to the Minister, in circumstances like those outlined, it is appropriate that the concession be returned to the State and not that the relatives and associates of the deceased title holder continue operating “illegally.”⁴¹⁷

⁴¹⁶ National Assembly of Venezuela. July 14, 2009. *Medidas para acabar con el latifundio mediático están contempladas en las leyes venezolanas* (Measures to end the media oligopoly are contemplated in the Venezuelan laws). Available in Spanish at: http://www.asambleanacional.gob.ve/index.php?option=com_content&task=view&id=22562&Itemid=27.

⁴¹⁷ However, the State clarified that the closure affected only the transmissions through the radio broadcasting spectrum, meaning that the affected communications media could continue transmitting over the Internet. Embassy of the Bolivarian Republic of Venezuela in the United States. August 4, 2009. *The facts about recent media events in Venezuela*. Available at http://www.embavenez-us.org/factsheet/Recent-Media-Events_FS-US.pdf. See also: Agencia Bolivariana de Noticias. July 31, 2009. *Conatel anula concesiones a 34 estaciones radioeléctricas del país* (Conatel nullifies concessions of 34 broadcasting stations in the country). Available in Spanish at: <http://www.abn.info.ve/noticia.php?articulo=193093&lee=4>; Reporters without Borders. August 2, 2009. *34 broadcast media shut down at government's behest*. Available at: <http://www.rsf.org/34-broadcast-media-shut-down-at.html>; Agencia Bolivariana de Noticias. August 7, 2009. *Operadores que salieron del aire sabían de su situación ilegal desde 2002* (Operators that went off the air knew about their illegal situation since 2002). Available in Spanish at: http://www.abn.info.ve/go_news5.php?articulo=193895&lee=15; Conatel. August 2, 2009. *Apoyo popular a las decisiones del Gobierno Nacional para democratizar el espectro radioeléctrico* (Popular support for the decisions of the National Government to democratize the radio broadcasting spectrum). Available in Spanish at: http://www.conatel.gob.ve/noticia_comp.asp?numn=2661; Globovisión. August 1, 2009. *Líderes políticos y sociedad civil protestaron por cierre de emisoras* (Political leaders and civil society protest closure of broadcasting stations). Available in Spanish at: <http://www.globovision.com/news.php?nid=123404>; Globovisión. August 1, 2009. *Presidente Chávez pidió un aplauso para Diosdado Cabello por el cierre de las emisoras* (President Chávez requested applause for Diosdado Cabello for the closure of broadcasting stations). Available in Spanish at: <http://www.globovision.com/news.php?nid=123427>; Conatel. August 1, 2009. *Notificadas estaciones de radiodifusión* (Broadcasting stations notified). Available in Spanish at: http://www.conatel.gob.ve/noticia_comp.asp?numn=2660; Globovisión. August 1, 2009. *Salieron del aire 34 emisoras de radio por orden del Gobierno Nacional* (34 radio stations went off the air by order of the National Government). Available in Spanish at: <http://www.globovision.com/news.php?nid=123401>; Globovisión. July 31, 2009. *Cabello anuncia salida del aire de 34 emisoras* (Cabello announces that 34 broadcasting stations are going off the air). Available in Spanish at: <http://www.globovision.com/news.php?nid=123396>; Agencia Bolivariana de Noticias. August 15, 2009. *Democratización del espectro radioeléctrico permitirá diversificar contenidos* (Democratization of the radio broadcasting spectrum permits the diversification of content). Available in Spanish at: http://www.abn.info.ve/go_news5.php?articulo=195071&lee=4. In the same sense, on September 15, 2009, the deputy Manuel Villalba affirmed that it was “necessary to clarify that [these] broadcasting stations were outside the law as it is expressed in the Organic Law on Telecommunications,” and that what they “[were] currently trying to set up [was] a matrix of national and international opinion to make believe that the stations were closed by the Government.” The parliamentarian added that “[these] media do not say that the concessions were revoked because the stations were operating outside the current legal framework.” Agencia Bolivariana de Noticias. September 15, 2009. *Emisoras a las que se les revocó la concesión estaban fuera de la legalidad* (Broadcasting stations with revoked concessions were outside the law). Available in Spanish at: http://www.abn.info.ve/go_news5.php?articulo=198854&lee=1.

500. On the other hand, on September 5, 2009, the Minister Diosdado Cabello announced the closure of another 29 radio stations. The measures, however, have not been carried out. It is worth mentioning that as of the date of this report, the State has not made public the names of the 208 remaining radio stations that, according to Minister Diosdado Cabello,⁴¹⁸ could find themselves affected with closure resolutions.⁴¹⁹ The IACHR expresses its concern about the intimidating effect that these general declarations about the closure of stations may produce, given the way in which such proceedings have been moving forward.

501. In relation to this point, the IACHR recognizes, as the Special Rapporteurship indicated in its pronouncement of June 26, 2009, that the states have the power to regulate the radio waves and to establish procedures to ensure compliance with the legal dispositions. In any case, this state power must be exercised with strict adherence to the laws and to due process, good faith, and respect for the inter-American standards that guarantee every person's right to freedom of expression.⁴²⁰ In an issue of such sensitivity for freedom of expression as regulation, assignment, or oversight of the use of radio broadcasting frequencies, the State must ensure that none of its actions is motivated or aimed at rewarding media that agree with the government's policies or at punishing those who are critical or independent.

502. According to information received, some of the radio stations affected by the decision to revoke the licenses had opportunely informed the State about relevant developments (such as the death of one of the title holders of the concession), had opportunely requested the transformation of the titles, had operated publicly, and had maintained relations with the State through the payment of taxes, the certification of technical requirements or adequations, etc. In some cases, the death of one of the partners of one the concessionary stations had given rise to the corresponding transformation of the title; however, in other cases, the State had not opportunely replied to the corresponding request for transformation. According to the data, the way in which the State had been relating to these stations generated in their administrators the confidence that their requests would be resolved following the legal norms in force according to established practice and without relevance being attached to the media's editorial line. Article 210 of the Organic Law on Telecommunications provides that any transformation of titles must be carried out based on principles of "transparency, good faith, equality, and promptness."⁴²¹ Nevertheless, as has been explained, the decisions were adopted without considering any of these conditions, without permitting prior challenges to the decision, and alleging reasons that have a close relationship with the independence and the editorial line of the private communications media.

⁴¹⁸ Conatel. July 3, 2009. *Ministro Diosdado Cabello anuncia apertura de procedimiento administrativo de CONATEL a 86 emisoras AM y 154 FM, luego que no hicieran la actualización de datos ante el organismo* (Minister Diosdado Cabello announces opening of administrative proceedings by CONATEL against 86 AM and 154 FM stations, after they did not update their information with that body). Available in Spanish at: http://www.conatel.gob.ve/noticia_comp.asp?numn=2654.

⁴¹⁹ El Universal. September 7, 2009. *Gobierno está dando la espalda al país al silenciar más medios*. (Government is turning its back on the country by silencing more media). Available in Spanish at: http://politica.eluniversal.com/2009/09/07/pol_art_gobierno-esta-dando_1559313.shtml; Miami Herald. September 7, 2009. *Gobierno prepara el cierre de otras 29 emisoras de radio* (Government prepares the closure of another 29 radio stations). Available in Spanish at: <http://www.miamiherald.com/news/americas/venezuela/story/1222213.html>.

⁴²⁰ Office of the Special Rapporteur—IACHR. June 26, 2009. *Press Release R41/09*. Available at: <http://www.cidh.oas.org/relatoria/showarticle.asp?artID=751&lID=1>.

⁴²¹ Organic Law on Telecommunications. Official Gazette No. 36.970 of June 12, 2000. Available in Spanish at: http://www.tsj.gov.ve/legislacion/LT_lev.htm.

503. On this point, the IACHR reminds the State that decisions that are so sensitive for freedom of expression such as those dealing with the closure, revocation, or extinction of broadcasting concessions and permits, must be the result of a specific, open administrative proceeding, in which due process and legitimate defense are fully guaranteed as prior conditions for the adoption of a decision, and in which it is demonstrated that whoever is utilizing the spectrum neither has nor has the possibility of having the right to such use or has incurred in one of the legal causes that give rise to the decision. Additionally, the assignment of new frequencies must be subject to transparent, pre-established, and non-discriminatory rules that allow for a fair competition under conditions of equality.

504. In no case is it acceptable in light of the American Convention, and it would corrupt any proceeding, for the public functionaries in charge of applying the legal norms in this subject area to take into consideration discriminatory criteria, such as the editorial line, to adopt their decisions.⁴²²

505. The Inter-American Court has established that “[i]t is the mass media that make the exercise of freedom of expression a reality. This means that the conditions of its use must conform to the requirements of this freedom, with the result that there must be, *inter alia*, a plurality of means of communication, the barring of all monopolies thereof, in whatever form, and guarantees for the protection of the freedom and independence of journalists.”⁴²³

506. In the present case, it concerns the IACHR that, after several years of complete inaction, the authorities announced, in a context of tension between private media and the government, mass media closures, in a speech in which made constant reference to the editorial content of the private media that could be affected. In effect, as has already been indicated, the affirmations of the Minister of Popular Power for Public Works and Housing suggest that the editorial line of these media would be one of the motivations for the adoption of the revocation or closure measures, independently of the technical reasons that are being used in the corresponding administrative actions.

507. The IACHR expresses its deep concern over these declarations and exhorts the State to respect the standards described above when adopting decisions of this nature.⁴²⁴ The

⁴²² In the same sense, in Press Release No. 55/09, the IACHR stated that: “By a July 31, 2009 decision of the National Council of Telecommunications (CONATEL), 34 radio stations operating in AM and FM were forced to cease broadcasting immediately. The decisions that revoked the permits or licenses were allegedly based on technical reasons related to the massive lack of compliance with some of the regulations of the telecommunications law. According to the information received, the competent authorities announced that one of their reasons to proceed with these closures of radio and television stations was that these stations “play at destabilizing Venezuela.” The IACHR is concerned by the existence of elements that suggest that the editorial stance of these media outlets have been one of the reasons for their closure. The Commission recognizes the Government’s competency to regulate radio frequencies, but emphasizes that this competency has to be used with strict observance of due process and with respect to the Inter-American standards that guarantee freedom of expression of all persons. In particular, the limitations imposed to freedom of expression must not incite intolerance, nor be discriminatory or have discriminatory effects or be based on the editorial line of the media.” IACHR. August 3, 2009. *Press Release No. 55/09*. Available at: <http://www.cidh.oas.org/Comunicados/English/2009/55-09eng.htm>.

⁴²³ 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. 34.

⁴²⁴ On the relevance of the context for the study of this type of cases, the Inter-American Court has stated that: “When evaluating an alleged restriction or limitation to freedom of expression, the Court should not restrict itself to examining the act in question, but should also examine this act in the light of the facts of the case

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forgoing becomes more important if it is taken into account that on August 3, 2009, the IACHR stated clearly that since 2000 “the IACHR has observed a gradual deterioration [...] [of] the exercise of [the right to freedom of expression] in Venezuela, as well as a rising intolerance of critical expression.”⁴²⁵

508. Article 13.3 of the American Convention establishes that: “The right of expression may not be restricted by indirect methods or means, such as the abuse of government or private controls over newsprint, radio broadcasting frequencies, or equipment used in the dissemination of information, or by any other means tending to impede the communication and circulation of ideas and opinions.” In the same sense, Principle 13 of the Declaration of Principles establishes that “the concession of radio and television broadcast frequencies, among others, with the intent to put pressure on and punish or reward and provide privileges to social communicators and communications media because of the opinions they express threaten freedom of expression, and must be explicitly prohibited by law. The means of communication have the right to carry out their role in an independent manner. Direct or indirect pressures exerted upon journalists or other social communicators to stifle the dissemination of information are incompatible with freedom of expression.”

509. Finally, the IACHR reiterates that the power to assign concessions, licenses, or permits for the use of the radio broadcasting spectrum must not be turned into a mechanism for indirect censorship or discrimination based on the editorial line, nor a disproportionate obstacle to the exercise of freedom of expression protected by Article 13 of the American Convention. Additionally, all assignments or restrictions must be made according to rules that are clear, pre-established, and non-discriminatory, that ensure the existence of broadcasting that is independent of the government, free of illegitimate pressures, plural, and diverse. The IACHR emphasizes that the creation of public or private monopolies or oligopolies, open or veiled, compromises the right to freedom of expression. As previously stated, “the states, in administering the frequencies of the radio spectrum, must assign them in accordance with democratic guidelines that guarantee equal opportunity of access to all individuals.”⁴²⁶ This is the sense of Principle 12 of the Declaration of Principles, which provides that “[t]he concession of radio and television broadcast frequencies should take into account democratic criteria that provide equal opportunity of access for all individuals.”

2. The possible intervention in broadcasting content through the regulation of the legal concept of “Independent National Producers”

510. Article 14 of the Law on Social Responsibility in Radio and Television establishes the obligation of the communications media to broadcast daily a total of five hours and 30 minutes of audiovisual material from Independent National Producers. In this regard, the cited norm indicates that: “[t]he providers of radio and television services must broadcast daily, during the hours of general viewership, a minimum of seven hours of programs of national production, of which a minimum of four hours must be of independent national production. Also, they must disseminate

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as a whole, including the circumstances and context in which they occurred. Taking this into consideration, the Court will examine whether, in the context of the instant case, there was a violation of Mr. Ivcher Bronstein’s right to freedom of expression.” I/A Court H.R., *Case of Ivcher-Bronstein v. Peru*. Judgment of February 6, 2001. Series C No. 74, para.154.

⁴²⁵ IACHR. August 3, 2009. *Press Release No. 55/09*. Available at: <http://www.cidh.oas.org/Comunicados/English/2009/55-09eng.htm>.

⁴²⁶ IACHR. *Annual Report 2002*. Volume III: Report of the Office of the Special Rapporteur for Freedom of Expression. Chapter IV: Freedom of Expression and Poverty, para. 45. Available at: <http://www.cidh.oas.org/relatoria/docListCat.asp?catID=32&IID=1>.

daily, during the hours of supervised viewership, a minimum of three hours of programs of national production, of which a minimum of an hour and a half must be of independent national production. [...] In the hours reserved for the broadcasting of programs of independent national production, the providers of radio services will give priority to cultural, educational, and informative programs.”

511. Article 13 of the Law on Social Responsibility in Radio and Television considers that a national audiovisual or audio production is independent “when [it is] made by independent national producers that are included in the registry maintained by the regulating entity in the area of communication and information of the National Executive.”⁴²⁷ The so-called “Register of Independent National Producers” is under the authority of the Ministry of Popular Power for Communication and Information, which also issues and revokes the certifications that accredit this condition.⁴²⁸

512. On the other hand, Article 15 of the Law on Social Responsibility in Radio and Television creates the National Commission on Television Programming and the Commission on Radio Programming, which have as their function “to establish the mechanisms and conditions of the assignation of airtime to independent national producers.” Both commissions are made up of “one representative of the regulating body in the area of communication and information of the National Executive, who will preside over it, a representative of providers of radio services, a representative of the independent national producers, and a representative of the organizations of users. The decisions of this commission are binding and must be made by majority vote, in the case of a tie, the President of the commission will have a double vote.”

513. According to the information received, in support of the legal framework described in the previous paragraphs, each communications media negotiated separately with the

⁴²⁷ Ministry of Popular Power for Communication and Information. Independent National Production. Available in Spanish at: http://www.leyresorte.gob.ve/pni/99/191474/produccion_nacional_independiente.html.

On the other hand, Article 13 of the Law on Social Responsibility in Radio and Television adds the following:

A natural or legal person who meets the following requirements shall be considered an independent national producer:

1. For a natural person: (a) Resides and is domiciled in the territory of the Bolivarian Republic of Venezuela, in conformity with the law; (b) Is not a shareholder, either personally or through a third party, of any provider of radio or television services; (c) Does not occupy a management position or position of confidence, in accordance with the Organic Law on Employment, in any provider of radio or television services; (d) Declares whether s/he maintains a subordinate position with any provider of radio or television services; (f) Is not a functionary of one of the organs and public entities that regulate the activities that are the object of the present Law, in accordance with the respective Regulations.

2. For a legal person: (a) Is not a State company, autonomous institute, or other national, state, or municipal public entity; (b) Is domiciled in the Bolivarian Republic of Venezuela, in conformity with the law; (c) Is under the control and management of natural persons of Venezuelan nationality or residency who comply with the requisites set forth in the previous numbered section; (d) Does not have shareholder participation in any provider of radio or television services; and (e) Declares whether it has contractual links separate from the independent national production or a subordinate relationship with any provider of radio or television services.

In any case, whether dealing with a natural person or a legal person, it is required that they possess the experience to or demonstrate capability of making quality national productions.”

⁴²⁸ Ministry of Popular Power for Communication and Information. Resolution No. 037 of August 18, 2009 (Official Gazette No. 39.259 of September 8, 2009). Available in Spanish at: http://www.leyresorte.gob.ve/pni/99/191474/produccion_nacional_independiente.html.

Independent National Producers, without state intervention, in order to decide which programs to transmit during the schedule established in the Law on Social Responsibility in Radio and Television for this purpose.⁴²⁹

514. Nevertheless, the IACHR learned that on September 16, 2009, the Commission on Radio Programming of the Ministry of Popular Power for Communication and Information approved Resolution No. 047, Norms Regarding the Mechanisms and Conditions of Assignment of Airtime to Independent National Producers in Providers of Radio Services (Official Gazette No. 36.269 of September 22, 2009).⁴³⁰

515. The IACHR observes that Resolution No. 047 proposes the creation of a “Catalogue of Independent National Production” which contains the “ordered list of pilot programs of Independent National Production that comply with the dispositions of the Law on Social Responsibility in Radio and Television and other norms that regulate the subject matter of this law, developed by the Ministry of Popular Power for Communication and Information, which constitute the offerings of programs that will be the objects of assignment.”

516. In the same sense, the IACHR observes with concern that Articles 8 and 9 of that resolution confer upon the Ministry of Popular Power for Communication and Information a mechanism for direct assignment for the transmission of programs that form part of the Catalogue of Independent National Production. By virtue of this power, the Ministry for Communication and Information can impose “upon the providers of radio services,” for three and a half hours a day, the programs that it considers necessary to “guarantee the democratization of the radio broadcasting spectrum, plurality, and creative freedom.” Therefore, in practice, this resolution confers upon the Executive Branch the power to impose content directly for three and a half hours of programming daily on all the broadcasters in the country.

517. In relation to the two remaining hours of obligatory transmission of programs of Independent National Producers, Article 10 of Resolution No. 47 provides that “once the Mechanism for Assignment of Airtime by Direct Assignment is established, the Ministry of Popular Power for Communication and Information, with the aim of covering the two remaining hours of Independent National Production during general viewership hours, will hold the Table of Agreements where independent national producers will offer their priority programs from the Catalogue that have not been assigned through the Direct Assignment to the different providers of radio services, setting conditions for negotiation in the framework established in the Law on Social Responsibility in Radio and Television, and the present Norms.”

518. It should also be stated that Article 22 of Resolution No. 047 establishes that failure to comply with these dispositions on the part of providers of radio services “will give rise to the sanctions established in [Article 28 of] the Law on Social Responsibility in Radio and Television.” Under this scheme, the communications media can be sanctioned with “a fine of from one percent to two percent of the gross income earned in the fiscal year immediately preceding that in which the

⁴²⁹ Reporters without Borders. Information received in the e-mailbox of the Office of the Special Rapporteur for Freedom of Expression on September 24, 2009.

⁴³⁰ Ministry of Popular Power for Communication and Information. September 24, 2009. *Normas sobre los Mecanismos y las Condiciones de Asignación de los Espacios a los Productores Nacionales Independientes en los Prestadores de Servicios de Radio* (Norms on the Mechanisms and the Conditions of Assignment of Airtime to National Independent Producers in Providers of Radio Services). Available in Spanish at: http://www.leyresorte.gob.ve/notas_de_prensa/104/192253/normas_sobre_los.html. http://www.minci.gob.ve/doc/normasmecanismos_y_condicionesradio.pdf.

offense was committed, as well as the cession of airtime for the broadcasting of cultural and educational messages.”

519. All of these measures must be applied by the Ministry of Popular Power for Communication and Information “in a period of no more than four months, counting from their publication in the Official Gazette,” that is to say, by January 22, 2010.

520. The mentioned norms have a double effect on the right to freedom of expression. In the first place, the right to certify what type of material can be included within the category of independent national production taking into account the content of such material is clearly a mechanism that can lead to prior censorship of national production. In effect, it will be the State that previously defines which independent national producers can broadcast their productions in the schedules established for this and which will not have this privilege. This mechanism compromises the State’s duty of neutrality with respect to content, affects the right of all independent national producers not to be censored for the content of their works and the right of the public to obtain plural and diverse information, distinct from that which state functionaries consider must be disseminated.

521. Secondly, these dispositions authorize the State to impose on communications media the specific content of the programming that must be broadcast. In relation to this point, the IACHR reminds the State that any obligation to transmit content that is not decided upon by a communications media must meet the strict conditions described in Article 13 of the American Convention to constitute an acceptable limitation on the right to freedom of expression. Additionally, the exercise of this power must be strictly necessary to satisfy urgent requirements in matters of evident public interest.

522. Article 13.2 of the American Convention expressly provides that the exercise of freedom of expression “shall not be subject to prior censorship but shall be subject to subsequent imposition of liability, which shall be expressly established by law to the extent necessary to ensure: (a) respect for the rights or reputations of others; or (b) the protection of national security, public order, or public health or morals.” This prohibition of censorship has its only exception in that provided under Article 13.4 of the American Convention, according to which, “[n]otwithstanding the provisions of paragraph 2 [...], public entertainments may be subject by law to prior censorship for the sole purpose of regulating access to them for the moral protection of childhood and adolescence.”

523. Interpreting the norms of the Convention, the Declaration of Principles provides in Principle 5 that “[p]rior censorship, direct or indirect interference in or pressure exerted upon any expression, opinion or information transmitted through any means of oral, written, artistic, visual or electronic communication must be prohibited by law. Restrictions to the free circulation of ideas and opinions, as well as the arbitrary imposition of information and the imposition of obstacles to the free flow of information violate the right to freedom of expression;” and in Principle 7 that “[p]rior conditioning of expressions, such as truthfulness, timeliness or impartiality, is incompatible with the right to freedom of expression recognized in international instruments.”

524. Bearing in mind these considerations, the IACHR exhorts the State to bring its legislation relating to independent national production into conformity with the described standards.

F. Grave violations of the rights to life and personal integrity based on the victims’ exercise of freedom of expression

525. During 2008 and 2009, there were two reported homicides of journalists carried out by unidentified individuals as well as serious acts of physical aggression and threats against

journalists and media owners of all different editorial lines in Venezuela. The foregoing is particularly troubling given that, in some of these cases, as will be subsequently explained in detail, the parties affected by the acts of violence were the beneficiaries of active provisional measures granted by the Inter-American Court.

526. The IACHR considers it important to note that the majority of the acts referred to in this section involved action by third parties who were not public functionaries. In some cases, the attacks were carried out by supposed supporters of President Hugo Chávez; in others, the episodes of violence involved journalists and communications media linked to the government who were attacked by supposed members of the opposition. What these facts show, nevertheless, is the serious atmosphere of polarization and intimidation in which media and journalists must carry out their work.

1. Murders presumably linked with the exercise of journalistic activity

527. During 2008, the vice president of the newspaper *Reporte Diario de la Economía*, Pierre Fould Gerges, was murdered. According to the information obtained by the IACHR and its Special Rapporteurship, on June 2, 2008, two unidentified persons riding on a motorcycle fired at least ten shots at the executive, who was at a gas station. Prior to the crime, various editors of the newspaper had been threatened in relation to the editorial line of the newspaper, which denounced acts of corruption. After the crime, the attorney who represents the *Reporte Diario de la Economía* also reported receiving threats from private criminal groups. As it did in its 2008 Annual Report, the IACHR again exhorts the State to investigate this crime so that those responsible will be duly identified, judged, and sanctioned.⁴³¹

528. The IACHR and its Special Rapporteurship also reiterate their condemnation of the murder of Orel Sambrano, editor of the weekly *ABC Semana* and of *Radio América*, which occurred on January 16, 2009 in the city of Valencia in the state of Carabobo. The information received indicated that two unidentified persons traveling on a motorcycle shot him in the nape of the neck. Sambrano was known for denouncing acts related to drug trafficking and local corruption, for which reason some local journalists have stated that he was murdered in retaliation for his work. The IACHR was informed that on February 17 and July 23, 2009, two of the presumed perpetrators and masterminds of the crime were detained.⁴³² The IACHR values positively this

⁴³¹ Office of the Special Rapporteur—IACHR. *Press Release No. R24/08*. June 5, 2008. Available at: <http://www.cidh.oas.org/relatoria/showarticle.asp?artID=731&IID=1>; Committee to Protect Journalists. June 3, 2008. *Newspaper executive slain in Caracas*. Available at: <http://cpj.org/2008/06/newspaper-executive-slain-in-caracas.php>; Reporters without Borders. June 4, 2008. *Asesinado a disparos en Caracas el vicepresidente de un diario económico, su hermano está amenazado de muerte* (Vice president of an economic newspaper shot and killed in Caracas, his brother is receiving death threats). Available in Spanish at: http://www.rsf.org/article.php3?id_article=27306.

⁴³² Office of the Special Rapporteur—IACHR. *Press Release No. R01/09*. January 22, 2009. Available at: <http://www.cidh.oas.org/relatoria/showarticle.asp?artID=737&IID=1>; Espacio Público. *Situación del derecho a la libertad de expresión e información en Venezuela 2008. Narcotráfico: censura a sangre y balas. El asesinato de Orel Sambrano* (Situation of the right to freedom of expression and information in Venezuela 2008. Drug trafficking: censorship with blood and bullets. The murder of Orel Sambrano), pp. 47-58. Available in Spanish at: <http://www.espaciopublico.info/images/documentos/informe%202008.pdf>; Committee to Protect Journalists. January 20, 2009. *Reporter who covered drugs, corruption is slain*. Available at: <http://cpj.org/2009/01/reporter-who-covered-drug-trade-corruption-is-slain.php>; Inter-American Press Association. January 9, 2009. *Condena la SIP asesinato de periodista venezolano* (IAPA condemns murder of Venezuelan journalist). Available in Spanish at: http://www.sipiapa.org/v4/index.php?page=cont_comunicados&seccion=detalles&id=4120&idioma=sp; Reporters without Borders. February 20, 2009. *Former policeman arrested on suspicion of participating in journalist's murder*. Available at: <http://www.rsf.org/Former-policeman-arrested-on.html>; Instituto Prensa y

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advance in the clarification of the facts and urges the State to adopt all the measures at its disposal to guarantee the life and personal integrity of social communicators in Venezuela. On the other hand, it exhorts the State to continue investigating this act, and to try and punish all those responsible for this crime.

2. Acts of physical aggression and threats presumably linked with the exercise of journalistic activity

529. With respect to acts of aggression by state authorities, on July 23, 2008, the journalist Dayana Fernández of the newspaper *La Verdad* and the photographer Luis Torres were attacked by municipal agents in the state of Zulia while they were working on a piece about environmental contamination in the area.⁴³³

530. On February 4, 2009, members of the Municipal Police of Valencia and the National Army snatched the camera of Wilmer Escalona, a photographer for the newspaper *NotiTarde*, while he was covering a story at a hospital. According to the information received, the officials erased the photographs and obliged the photojournalist to leave the hospital.⁴³⁴

531. On July 22, 2009, members of Detachment 88 of the National Guard seized audiovisual material from journalistic teams from *RCTV* and *Globovisión* in Puerto Ordaz in the state of Bolívar. The communicators were covering the assembly of workers of the company Siderúrgica del Orinoco (Sidor). According to the information received, the measure was taken because the journalists were in the company headquarters without authorization, although they had been invited by the workers. The seized material was handed over to the Office of the Military Prosecutor, which was in charge of evaluating whether the recorded images compromised the security of the State.

532. The IACHR received information indicating that on the same July 22, 2009, members of the National Guard in San Cristóbal in the state of Táchira, had detained, for a period of one hour, Zulma López, a correspondent for *RCTV Internacional* and the newspaper *El Universal*, and Thaís Jaimes, a journalist with the newspaper *El Panorama*, while they were taking photographs of a construction zone guarded by military personnel. During the incident, members of the National Guard destroyed the viewfinder of the camera belonging to photojournalist Jesús Molina. On July 28, 2009, the Special Rapporteurship sent a communication to the State requesting specific information

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Sociedad. February 25, 2009. *Detienen a ex policía por crimen de periodista, buscan a otros dos sospechosos* (Former policeman detained for crime against journalist, two other suspects sought). Available in Spanish at: <http://www.ipys.org/alertas/atentado.php?id=1775>; Committee to Protect Journalists. February 13, 2009. *Former police officer arrested in Venezuelan murder*. Available at: <http://cpj.org/2009/03/former-police-officer-arrested-in-venezuelan-journ.php>; Office of the Attorney General of the Bolivarian Republic of Venezuela. July 23, 2009. *Privado de libertad presunto implicado en muerte del periodista Orel Sambrano* (Suspect in murder of journalist Orel Sambrano jailed). Available in Spanish at: <http://www.fiscalia.gov.ve/Prensa/A2009/prensa2307V.htm>.

⁴³³ Instituto Prensa y Sociedad. July 30, 2008. *Funcionarios municipales agreden a periodistas en Zulia* (Municipal functionaries attack journalists in Zulia). Available in Spanish at: <http://www.ipys.org/alertas/atentado.php?id=1549>; Reporters without Borders. July 29, 2008. *Authorities order judicial investigation into newspaper reporter's detention*. Available at: <http://www.rsf.org/Authorities-order-judicial.html>.

⁴³⁴ Instituto Prensa y Sociedad. February 10, 2009. *Policías y militares arrebatan cámara a reportero y borran fotos* (Police and military seize reporter's camera and erase photos). Available in Spanish at: <http://www.ipys.org/alertas/atentado.php?id=1733>; Inter-American Press Association. *Report on Venezuela. Midyear Meeting of March 13-16, 2006. Asunción, Paraguay*. Available at: http://www.sipiapa.com/v4/index.php?page=det_informe&asamblea=22&inforid=362&idioma=us.

about these occurrences. As of the date of this report, no response to this request has been received.⁴³⁵

533. On August 5, 2009, *Globovisión* cameraman Robmar Narváez, and his assistant Jesús Hernández, were detained by members of the 13th Infantry Brigade of the Army of the city of Barquisimeto in the state of Lara, while they were filming a mural in which the images were painted over with red spots and gag symbols. The information received indicates that the military personnel impeded the filming and approached Narváez to ask for his press credentials. The cameraman, however, showed only an identification card. Narváez and his assistant were then taken to a military base where they were detained for about three hours.⁴³⁶

534. With regard to acts of violence committed by private persons, on August 22, 2008 Guillermo Torín, audio operator for the *Fundación Televisora de la Asamblea Nacional* (ANTV), was hit by a group of supporters of the mayor of Chacao when he was going to register his candidacy at the headquarters of the National Electoral Council in Caracas. Torín, who suffered several broken ribs, the perforation of a lung, and the fracture of his right elbow, wore a vest that identified him as part of the journalistic team of a state media.⁴³⁷

535. On October 16, 2008, unidentified individuals threw a teargas bomb into the building where Leopoldo Castillo, host of the program *Aló Ciudadano*, a program that is broadcast by the television channel *Globovisión*, lives.⁴³⁸

⁴³⁵ El Universal. July 23, 2009. *Denuncian ante OEA y ONU agresiones contra periodistas* (Acts of aggression against journalists denounced before the UN and the OAS). Available in Spanish at: http://www.eluniversal.com/2009/07/23/pol_art_denuncian-ante-oea-y_1483547.shtml; *Globovisión*. July 22, 2009. *CNP denunció agresiones de la GN a periodistas en Táchira y Bolívar* (CNP [National Journalists' Association] denounced acts of aggression against journalists by the GN [National Guard] in Táchira and Bolívar). Available in Spanish at: <http://www.globovision.com/news.php?nid=122524>; El Universal. July 22, 2009. *GN retuvo por una hora a tres periodistas en Táchira* (GN [National Guard] detained three journalists for one hour in Táchira). Available in Spanish at: http://www.eluniversal.com/2009/07/22/pol_art_gn-retuvo-por-una-ho_1482807.shtml; Colegio Nacional de Periodistas de Venezuela. July 22, 2009. *CNP condena agresiones de la GN contra periodistas en Bolívar y Táchira* (CNP [National Journalists' Association] condemns acts of aggression by GN [National Guard] against journalists in Bolívar and Táchira). Available at: <http://www.cnpven.org/data.php?link=2&expediente=236>.

⁴³⁶ Instituto Prensa y Sociedad. August 6, 2009. *Camarógrafo y asistente de Globovisión retenidos por más de tres horas en base militar* (*Globovisión* cameraman and assistant detained for more than three hours on military base). Available in Spanish at: <http://www.ipys.org/alertas/atentado.php?id=1941>; *Globovisión*. August 5, 2009. *Efectivos militares retuvieron a camarógrafo de Globovisión en Lara* (Military personnel detained *Globovisión* cameraman in Lara). Available in Spanish at: <http://www.globovision.com/news.php?nid=123663>.

⁴³⁷ Office of the Attorney General of the Bolivarian Republic of Venezuela. August 22, 2008. *Ministerio Público investiga agresiones contra trabajador de ANTV por presuntos seguidores del alcalde de Chacao* (Office of the Attorney General investigates acts of aggression against ANTV worker by presumed supporters of the mayor of Chacao). Available in Spanish at: <http://www.fiscalia.gov.ve/Prensa/A2008/prensa2208V.htm>; Instituto Prensa y Sociedad. August 20, 2008. *Agreden a empleado de canal ANTV* (Employee of ANTV channel attacked). Available in Spanish at: <http://www.ipys.org/alertas/atentado.php?id=1578>; National Assembly of the Bolivarian Republic of Venezuela. August 22, 2008. *Trabajadores de ANTV solicitaron ante la Fiscalía investigar agresión contra técnico de sonido* (ANTV workers request the Attorney General's Office to investigate aggression against sound technician). Available in Spanish at: http://www.asambleanacional.gob.ve/index.php?option=com_content&task=view&id=19955&Itemid=27; El Universal. August 20, 2008. *Condenan agresión a trabajador de ANTV* (Aggression against ANTV worker condemned). Available in Spanish at: http://buscador.eluniversal.com/2008/08/20/pol_art_condenan-agresion-a_1000986.shtml.

⁴³⁸ It is worth noting that on October 16, 2008, Conatel notified *Globovisión* of the opening of a punitive administrative proceeding because of the declarations made live by Poleo. National Assembly of the Bolivarian Republic of Venezuela. October 15, 2008. *Fiscalía abrirá averiguación a Poleo y a Globovisión* (Attorney

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536. On August 13, 2009, unidentified persons shot and wounded journalist Rafael Finol, of the newspaper *El Regional* of Acarigua, in the head. According to the information received, the newspaper's editorial line is pro-government.⁴³⁹

537. On January 20, 2009, Cecilia Rodríguez, a photojournalist with the newspaper *El Nuevo País* denounced that she had been hit by a group of demonstrators of the Unión Popular Venezolana (UPV) political party, aligned with the government. According to the information received, a police officer approached the photographer and escorted her to prevent her from being attacked further.⁴⁴⁰

538. On August 3, 2009, the headquarters of *Globovisión* were attacked by a group of individuals identifying themselves as members of the UPV, led by Lina Ron, a person allied with the current government. The armed attackers entered the channel's headquarters, threw tear gas bombs inside, and intimidated the workers. A member of the Metropolitan Police and a worker with the security company guarding the location were injured.⁴⁴¹ The attack was immediately condemned by

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General's Office will open investigation of Poleo and Globovisión). Available in Spanish at: http://www.asambleanacional.gob.ve/index.php?option=com_content&task=view&id=20314&Itemid=27; Globovisión. October 16, 2008. *AN investigará a Leopoldo Castillo y a Globovisión por comentario de Rafael Poleo en Aló Ciudadano* (AN [National Assembly] will investigate Leopoldo Castillo and Globovisión for commentary of Rafael Poleo on Aló Ciudadano). Available in Spanish at: <http://www.globovision.com/news.php?nid=101688>; Globovisión. October 16, 2008. *Periodista Rafael Poleo rechazó implicaciones en presunto magnicidio* (Journalist Rafael Poleo rejected implications of presumed assassination). Available in Spanish at: <http://www.globovision.com/news.php?nid=101737&clave=a%3A1%3A%7Bi%3A0%3Bs%3A17%3A%22leopoldo+castillo%22%3B%7D>; Instituto Prensa y Sociedad. October 24, 2008. *Lanzan bomba lacrimógena a edificio donde vive periodista de Globovisión* (Teargas bomb thrown at building where Globovisión journalist lives). Available in Spanish at: <http://www.ipys.org/alertas/atentado.php?id=1631>; Globovisión. October 16, 2008. *Lanzan bomba lacrimógena contra la casa del periodista Leopoldo Castillo* (Teargas bomb thrown at house of journalist Leopoldo Castillo). Available in Spanish at: <http://www.globovision.com/news.php?nid=101699>; Inter-American Press Association. *Report on Venezuela. Midyear Meeting of March 13-16, 2006. Asunción, Paraguay*. Available at: http://www.sipiapa.com/v4/index.php?page=det_informe&asamblea=22&inforid=362&idioma=us.

⁴³⁹ Committee to Protect Journalists. January 16, 2009. *Journalist shot and injured*. Available at: <http://cpi.org/americas/venezuela/2009/?page=2>; Inter-American Press Association. January 15, 2009. *Condena la SIP atentado contra periodista en Venezuela* (IAPA condemns attack against journalist in Venezuela). Available in Spanish at: http://www.sipiapa.org/v4/index.php?page=cont_comunicados&seccion=detalles&idioma=sp&id=4119; Reporters without Borders. January 15, 2009. *Murder attempt against pro-Chávez journalist in Portuguese state*. Available at: <http://www.rsf.org/Murder-attempt-against-pro-Chavez.html>.

⁴⁴⁰ The information also indicates that among the aggressors were members of the group known as La Piedrita. Instituto Prensa y Sociedad. January 21, 2009. *Simpatizantes oficialistas agreden a reportera* (Official sympathizers attack reporter). Available in Spanish at: <http://www.ipys.org/alertas/atentado.php?id=1709>; Inter-American Press Association. *Report on Venezuela. Midyear Meeting of March 13-16, 2006. Asunción, Paraguay*. Available at: http://www.sipiapa.com/v4/index.php?page=det_informe&asamblea=22&inforid=362&idioma=us.

⁴⁴¹ Globovisión. August 3, 2009. *Motorizados armados y comandados por Lina Ron asaltaron sede de Globovisión* (Armed motorists commanded by Lina Ron attack Globovisión headquarters). Available in Spanish at: <http://www.globovision.com/news.php?nid=123531>; Globovisión. August 3, 2009. *Dos heridos y varios afectados por el ataque a Globovisión de grupos armados* (Two injured and several affected by attack on Globovisión by armed groups). Available in Spanish at: <http://www.globovision.com/news.php?nid=123540>; El Universal. August 4, 2009. *Grupo oficialista irrumpió en la sede de Globovisión* (Group of official supporters interrupt in Globovisión headquarters). Available in Spanish at: http://www.eluniversal.com/2009/08/04/pol_art_grupo-oficialista-ir-1504338.shtml; Instituto Prensa y Sociedad. August 3, 2009. *Simpatizantes del gobierno nacional atacan sede de canal privado* (National government sympathizers attack headquarters of private channel). Available in Spanish at: <http://www.ipys.org/alertas/atentado.php?id=1936>; Colegio Nacional de Periodistas. August 3, 2009. *CNP*
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the President of the Republic Hugo Chávez and the Minister of Popular Power for the Interior and Justice, Tarek El Aissami, who also announced a prompt investigation. On August 4, 2009, information was received indicating that the Attorney General's Office had ordered the detention of Lina Ron, and that on that same day, she turned herself over to authorities.⁴⁴² Subsequently, information was received indicating that on October 14, 2009, the 18th Tribunal of Control of the Metropolitan Area of Caracas ordered the release of Lina Ron and that on October 16, 2009, criminal proceedings were initiated against her with respect to these facts for the crime of "agavillamiento" (illegal association).⁴⁴³

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exhorta al gobierno a acabar con la impunidad y deplora ataques contra Globovisión (CNP [National Journalists' Association] exhorts the government to end impunity and deplores attacks against Globovisión). Available in Spanish at: <http://www.cnpven.org/data.php?link=2&expediente=268>; Globovisión. July 3, 2009. *Ministerio Público designó fiscales para investigar el hecho ocurrido en los alrededores de Globovisión* (Attorney General designated prosecutors to investigate the incident that occurred near Globovisión). Available in Spanish at: <http://www.globovision.com/news.php?nid=123539>; IACHR. *Press Release No. 55/09*. August 3, 2009. Available at: <http://www.cidh.org/Comunicados/English/2009/55-09eng.htm>; Communication of August 12, 2009 by Globovisión to the Office of the Special Rapporteur for Freedom of Expression.

⁴⁴² IACHR. *Press Release no. R57/09*. August 5, 2009. Available at: <http://www.cidh.oas.org/relatoria/showarticle.asp?artID=759&IID=1>; Office of the Attorney General of the Bolivarian Republic of Venezuela. August 4, 2009. *Dictan orden de detención contra Lina Ron* (Order of detention issued against Lina Ron). Available in Spanish at: <http://www.fiscalia.gov.ve/Prensa/A2009/prensa0408.htm>; Office of the Attorney General of the Bolivarian Republic of Venezuela. August 4, 2009. *Ministerio Público presentará en las próximas horas ante Tribunal de Control a Lina Ron* (Attorney General's Office will present Lina Ron before the Tribunal of Control in the next few hours). Available in Spanish at: <http://www.fiscalia.gov.ve/Prensa/A2009/prensa0408V.htm>; Agencia Bolivariana de Noticias. August 4, 2009. *Presidente Chávez informó detención de Lina Ron* (President Chávez reported the detention of Lina Ron). Available in Spanish at: <http://www.abn.info.ve/noticia.php?articulo=193434&lee=4>; Venezolana de Televisión. August 9, 2009. *Presidente Chávez: Grupos anárquicos le hacen daño a la revolución* (President Chávez: Anarchic groups damage the revolution). Available in Spanish at: <http://www.vtv.gov.ve/noticias-nacionales/22020>; Instituto Prensa y Sociedad. August 4, 2009. *Detienen a dirigente de partido político por agresión a sede de Globovisión* (Leader of political party detained for aggression against headquarters of Globovisión). Available in Spanish at: <http://www.ipys.org/alertas/atentado.php?id=1940>; El Universal. August 4, 2009. *El Aissami condenó "acción delictiva"* (El Aissami condemned "criminal action"). Available in Spanish at: http://www.eluniversal.com/2009/08/04/pol_art_el-aissami-condeno_1504339.shtml; El Universal. August 5, 2009. *Chávez exige "todo el peso de la santa ley" para Ron y sus seguidores* (Chávez calls for "all the weight of the sainted law" for Ron and her followers). Available in Spanish at: http://www.eluniversal.com/2009/08/05/pol_art_chavez-exige-todo-e_1507451.shtml; Globovisión. August 4, 2008. *Tribunal 18º de Control dicta privativa de libertad contra Lina Ron* (18th Control Tribunal issues order for deprivation of liberty against Lina Ron). Available in Spanish at: <http://www.globovision.com/news.php?nid=123595>; Globovisión. August 4, 2009. *Chávez dice que Lina Ron se presentó a la justicia y que se prestó para un juego "a favor del enemigo"* (Chávez says that Lina Ron presented herself to the court and that she submitted herself for a game "in favor of the enemy"). Available in Spanish at: <http://www.globovision.com/news.php?nid=123610>.

⁴⁴³ Article 286 of the Penal Code states that "[w]hen two or more persons associate with the goal of committing crimes, each one will be punished, for the sole act of association, with imprisonment of two to five years." For its part, Article 286 provides that "[i]f the associates travel through the countryside or the roads and if at least two of them are carrying guns or have them in a determined place, the penalty will be prison for a period of eighteen months to five years." Penal Code of Venezuela. Official Gazette No. 5768E of August 13, 2005. Available in Spanish at: <http://www.fiscalia.gov.ve/leyes/6-CODIGOPENAL.pdf>. See also: Globovisión. September 19, 2009. *Ministerio Público acusó a Lina Ron por los sucesos ocurridos en Globovisión* (Attorney General's Office accused Lina Ron for the events that occurred at Globovisión). Available in Spanish at: <http://www.globovision.com/news.php?nid=127860&clave=a%3A1%3A%7Bi%3A0%3Bs%3A8%3A%22lina+ron%22%3B%7D>; Globovisión. October 14, 2009. *Liberada dirigente Lina Ron* (Leader Lina Ron freed). Available in Spanish at: <http://www.globovision.com/news.php?nid=130114&clave=a%3A1%3A%7Bi%3A0%3Bs%3A8%3A%22lina+ron%22>

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539. On August 4, 2009, Roberto Tobar and Emiro Carrasquel, members of the press team of the state channel *Venezolana de Televisión (VTV)*, and Renzo García, a journalist with *Color TV*, were attacked in the state of Aragua by a group of demonstrators presumably allied with the opposition. According to the information received, the aggressors were part of a group of persons that protested during the execution of the judicial measure of raiding the home of the *Globovisión* correspondent Carmen Elisa Pecorelli.⁴⁴⁴

540. On August 13, 2009, twelve journalists from the *Capriles* chain of publications were seriously attacked on the streets of Caracas by presumed government sympathizers who labeled them “defenders of the oligarchy.” According to the information received, Octavio Hernández, Manuel Alejandro Álvarez, Gabriela Iribarren, Jesús Hurtado, Marco Ruíz, Usbaldo Arrieta, Fernando Peñalver, Marie Rondón, Greasi Bolaños, Glexis Pastran, César Batiz, and Sergio Moreno González were handing out flyers in the streets that questioned various articles of the then-draft Organic Law on Education, when they were brutally attacked with sticks and rocks by a crowd that called themselves “defenders of the people.” On the same day, the Minister of Popular Power for Communication and Information, Blanca Eekhout, categorically condemned this act of violence.⁴⁴⁵

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2%3B%7D; El Nacional. October 15, 2009. *Tribunal libera a Lina Ron* (Tribunal liberates Lina Ron). Available in Spanish at: http://el-nacional.com/www/site/p_contenido.php?q=nodo/103957/Nacional/Tribunal-libera-a-Lina-Ron-tras-m%C3%A1s-de-dos-meses-de-arresto-en-la-DIM; Globovisión. October 16, 2009. *Ordenan enjuiciamiento de Lina Ron por ataque contra sede de Globovisión* (Trial of Lina Ron ordered for attack against headquarters of Globovisión). Available in Spanish at: <http://www.globovision.com/news.php?nid=130247&clave=a%3A1%3A%7Bi%3A0%3Bs%3A8%3A%22lina+ron%22%3B%7D>.

⁴⁴⁴ Instituto Prensa y Sociedad. August 7, 2009. *Agreden a periodistas de medios estatales durante cobertura* (Journalists of state media attacked during coverage). Available in Spanish at: <http://www.ipys.org/alertas/atentado.php?id=1949>; Agencia Bolivariana de Noticias. August 5, 2009. *Ministerio Público practicó allanamiento en Maracay ajustado a derecho* (Attorney General’s Office carried out raid in Maracay in compliance with law). Available in Spanish at: <http://www.abn.info.ve/noticia.php?articulo=193532&lee=2>; Globovisión. August 4, 2009. *Allanaron residencia de corresponsal de Globovisión en Aragua* (Residence of Globovisión correspondent in Aragua raided). Available in Spanish at: <http://www.globovision.com/news.php?nid=123647>.

⁴⁴⁵ The Organic Law on Education was approved by the National Assembly at midnight on August 13, 2009. Ministry of Communication and Information. August 13, 2009. *Minci rechaza actos de violencia contra periodistas* (Minci [Ministry of Communication and Information] rejects acts of violence against journalists). Available in Spanish at: http://www.minci.gob.ve/noticias/1/191070/minci_rechaza_actos.html; Agencia Bolivariana de Noticias. August 13, 2009. *Minci rechaza actos de violencia contra periodistas* (Minci [Ministry of Communication and Information] rejects acts of violence against journalists). Available in Spanish at: <http://www.abn.info.ve/noticia.php?articulo=194842&lee=4>; Colegio Nacional de Periodistas. August 13, 2009. *El CNP y el SNTP se declaran en emergencia ante las agresiones a los periodistas de la cadena Capriles* (The CNP [National Journalists’ Association] and the SNTP [National Press Workers’ Union] declare an emergency due to the acts of aggression against journalists of the Capriles chain). Available in Spanish at: <http://www.cnpven.org/data.php?link=5&expediente=288>; Globovisión. August 13, 2009. *Doce periodistas de la cadena Capriles heridos tras emboscada oficialista a protesta contra Ley de Educación* (Twelve journalists of the Capriles chain injured after official supporters ambush protest against the Law on Education). Available in Spanish at: <http://www.globovision.com/news.php?nid=124366>; El Nacional. August 13, 2009. *Chavistas agredieron brutalmente a doce periodistas de la cadena Capriles* (Chávez supporters brutally attacked twelve journalists of the Capriles chain). Available in Spanish at: http://www.el-nacional.com/www/site/p_contenido.php?q=nodo/94225/Nacional/Chavistas-agredieron-brutalmente-12-periodistas-de-la-Cadena-Capriles; Globovisión. August 13, 2009. *Director de Últimas Noticias exigió celeridad en investigación sobre investigaciones sobre la cadena Capriles* (Editor of Últimas Noticias urged swiftness in the investigation of investigations about the Capriles chain). Available in Spanish at: <http://www.globovision.com/news.php?nid=124371>; Espacio Público. August 13, 2009. *Oficialistas agreden a 12 periodistas de Cadena Capriles* (Official supporters attack 12 journalists of the Cadena Capriles). Available in Continued...

541. On August 14, 2009, the Attorney General of the Republic, Luisa Ortega Díaz, also condemned these acts and announced the official opening of an investigation by the Attorney General's Office. On the same date, the Human Rights Ombudswoman, Gabriela del Mar Ramírez exhorted "the competent investigative bodies to take necessary and adequate measures to clarify the facts and determine the responsibilities, in accordance with the law." On October 15, 2009, the Attorney General's Office announced the capture of one of the presumed aggressors.⁴⁴⁶ Subsequently, the IACHR was informed that the person was set free.⁴⁴⁷

542. The IACHR observes that on August 18, 2009, President Hugo Chávez affirmed in an interview that proof existed that would demonstrate that the journalists that had been attacked had, in reality, propitiated the attack by some of their presumed supporters. The leader stated:

They were not carrying out journalistic duties; they were in a protest, with banners, passing out flyers, proselytizing against the Law on Education. [...] And according to what I understand, and there is proof, they were provoking the people who were over here and over there.⁴⁴⁸

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Spanish at: http://www.espaciopublico.info/index.php?option=com_content&task=view&id=517&Itemid=1; Globovisión. August 17, 2009. *Privan de libertad a presunto implicado en agresión a periodistas de la Cadena Capriles* (Suspect in attack against Cadena Capriles jailed). Available in Spanish at: <http://www.globovision.com/news.php?nid=124682>

⁴⁴⁶ Reporters without Borders. August 17, 2009. *Activist arrested for attack on 12 journalists but polarization persists*. Available at: <http://www.rsf.org/Activist-arrested-for-attack-on-12.html>; Office of the Attorney General of the Bolivarian Republic of Venezuela. August 17, 2009. *Dictan órdenes de aprehensión contra dos presuntos implicados en agresiones a periodistas en el centro de Caracas* (Orders issued to apprehend two suspects in acts of aggression against journalists in the center of Caracas). Available in Spanish at: <http://www.fiscalia.gov.ve/Prensa/A2009/prensa1708.htm>; Ministry of Communication and Information. August 14, 2009. *Defensoría del Pueblo hace un llamado a la tolerancia* (Office of the Human Rights Ombudsman calls for tolerance). Available in Spanish at: http://minci.gob.ve/noticias/1/191081/defensoria_del_pueblo.html; Office of the Attorney General of the Bolivarian Republic of Venezuela. August 14, 2009. *Fiscal General de la República rechazó ataque contra periodistas* (Attorney General of the Republic rejected attack on journalists). Available in Spanish at: <http://www.fiscalia.gov.ve/Prensa/A2009/prensa1408.htm>; Globovisión. August 14, 2009. *Luisa Ortega Díaz repudió agresiones a periodistas de la Cadena Capriles* (Luisa Ortega Díaz repudiated acts of aggression against journalists of Cadena Capriles). Available in Spanish at: <http://www.globovision.com/news.php?nid=124416>.

⁴⁴⁷ El Universal. August 25, 2009. *Único detenido por agresión a periodistas queda en libertad* (Only detainee for aggression against journalists set free). Available in Spanish at: http://www.eluniversal.com/2009/08/25/pol_art_unico-detenido-por-a_1538816.shtml; El Nacional. August 26, 2009. *Único detenido por agresión a periodistas fue liberado* (Only detainee for aggression against journalists set free). Available in Spanish at: http://www.el-nacional.com/www/site/p_contenido.php?q=nodo/96082/Medios%20bajo%20ataque/Gabriel-Uzc%C3%A1tegui-ha-sido-liberado; Information provided on November 2, 2009 by Espacio Público to the Office of the Special Rapporteur for Freedom of Expression in the framework of the 137th Ordinary Period of Sessions of the IACHR.

⁴⁴⁸ El Nacional. August 20, 2009. *Periodistas de la Cadena Capriles niegan haber provocado a chavistas agresores* (Journalists of Cadena Capriles deny having provoked aggression by Chávez supporters). Available in Spanish at: http://www.el-nacional.com/www/site/p_contenido.php?q=nodo/95358/Medios%20bajo%20ataque/Periodistas-de-la-Cadena-Capriles-niegan-haber-provocado-a-chavistas-agresores; Espacio Público. August 20, 2009. *Periodistas rechazan acusaciones de sector oficial* (Journalists reject accusations of the official sector). Available in Spanish at: http://www.espaciopublico.info/index.php?option=com_content&task=view&id=542&Itemid=1; Venezolana de Televisión. August 19, 2009. *Últimas Noticias criminalizó a periodistas de Ávila TV* (Últimas Noticias characterizes as criminal the journalists of Ávila TV). Available in Spanish at: <http://www.vtv.gov.ve/noticias-nacionales/22527>;

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543. The IACHR expresses its concern about this type of declarations by the President of the Republic, which could be interpreted by his followers as governmental approval of commission of crimes of the same nature. In this respect, it is important to recall that public protest is one of the usual ways in which the right to freedom of expression is exercised and that expressions against the government's proposed laws or policies, far from being an incitement to violence, are an integral part of any pluralistic democracy. Additionally, it is important to recall that, as previously stated in this report, when public functionaries exercise their freedom of expression whether in carrying out a legal duty or as a simple exercise of their fundamental right to express themselves, "[they] are subject to certain restrictions such as having to verify in a reasonable manner, although not necessarily exhaustively, the truth of the facts on which their opinions are based, and this verification should be performed subject to a higher standard than that used by private parties, given the high level of credibility the authorities enjoy and with a view to keeping citizens from receiving a distorted version of the facts."⁴⁴⁹

544. On the other hand, the IACHR observes with concern the attacks that were later attributed to the criminal group known as La Piedrita. On September 23, 2008, members of La Piedrita threw teargas bombs at the outside of the *Globovisión* headquarters in Caracas. The attackers left signed pamphlets declaring *Globovisión* and its director Alberto Federico Ravell to be "military objectives." The pamphlets also blamed the television channel for any attack that could be suffered by President Hugo Chávez.⁴⁵⁰ On October 10, 2008, members of La Piedrita attacked and

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El Universal. August 19, 2009. *Chávez asegura que periodistas agredidos provocaron lo que les pasó* (Chávez assures that attacked journalists provoked what happened to them). Available in Spanish at: http://www.eluniversal.com/2009/08/19/pol_ava_chavez-asegura-que-p_19A2632685.shtml; El Nacional. August 19, 2009. *CNP considera "risibles" maniobras para descalificar a periodistas agredidos* (CNP [National Journalists' Association] considers "laughable" attempts to discredit attacked journalists). Available in Spanish at: http://www.el-nacional.com/www/site/p_contenido.php?q=nodo/95240/Nacional/CNP-considera-risibles-maniobras-para-descalificar-a-periodistas-agredidos; El Universal. August 20, 2009. *Periodistas temen que palabras de Chávez generen más ataques* (Journalists fear that Chávez's words generate more attacks). Available in Spanish at: http://politica.eluniversal.com/2009/08/20/pol_art_periodistas-temen-qu_1531697.shtml; El Nacional. August 19, 2009. *Chávez dijo que periodistas provocaron el ataque* (Chávez said that journalists provoked the attack). Available in Spanish at: http://el-nacional.com/www/site/p_contenido.php?q=nodo/95095/Nacional/Ch%C3%A1vez-dijo-que-periodistas-provocaron-el-ataque; Noticias24. August 19, 2009. *Dice que periodistas de la Cadena Capriles agredidos "provocaron" lo que les pasó* (Attacked journalists of Cadena Capriles said to have "provoked" what happened to them). Available in Spanish at: <http://www.noticias24.com/actualidad/noticia/76376/dice-que-periodistas-de-la-cadena-capriles-agredidos-provocaron-lo-que-les-paso/>.

⁴⁴⁹ I/A Court H.R., *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. 131.

⁴⁵⁰ The allusion to an attack is referring to the possibility of an assassination. Committee to Protect Journalists. October 6, 2008. *Intimidation, accusations should stop*. Available at: <http://cpi.org/2008/10/intimidation-accusations-should-stop.php>; Instituto Prensa y Sociedad. September 26, 2008. *Lanzan panfletos y bombas lacrimógenas a sede de Globovisión* (Pamphlets and teargas bombs thrown at Globovisión headquarters). Available in Spanish at: <http://www.ipys.org/alertas/atentado.php?id=1619>; Reporters without Borders. September 25, 2008. *Interior minister justifies attack against Globovisión claimed by pro-government militants*. Available at: <http://www.rsf.org/Interior-minister-justifies-attack.html>; Globovisión. September 23, 2008. *Director de Globovisión señaló que ataque al canal se veía venir por el lenguaje de violencia de algunos funcionarios* (Director of Globovisión states that attack on channel was predictable due to the violent language of some officials). Available in Spanish at: <http://www.globovision.com/news.php?nid=99438>; Globovisión. September 23, 2008. *Lina Ron reivindicó al grupo "La Piedrita" y ratificó declaratoria de Ravell y Globovisión como objetivos militares* (Lina Ron defended the "La Piedrita" group and ratified the declaration of Ravell and Globovisión as military objectives). Available in Spanish at: <http://www.globovision.com/news.php?nid=99439>; El Nacional. September 23, 2008. *Presunto grupo oficialista*

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seized the equipment of the team of *Globovisión* journalists who were covering a protest of transit workers in the 23 de Enero neighborhood.⁴⁵¹ It should be noted that days later, the then-Minister of Popular Power for Communication and Information, Andrés Izarra, condemned this action, accusing La Piedrita of carrying out acts of “political infantilism.”⁴⁵² The IACHR expresses its particular concern about these attacks, precisely because given their special vulnerability in the current atmosphere, the journalists, editors, and workers of *Globovisión* have been under the protection of provisional measures ordered by the Inter-American Court since 2004⁴⁵³ and because there is still no information about the results of investigations and sanctions to prevent this type of attacks.

545. On October 14, 2008, members of La Piedrita threw teargas bombs in the interior of the headquarters of the newspaper *El Nuevo País*. The aggressors also left pamphlets signed by the criminal group that declared the editor of the newspaper, Rafael Poleo, to be a “military objective.”⁴⁵⁴ As has already been stated, the declarations made by Poleo on the live program *Aló Ciudadano* of October 13, 2008 were characterized by the Venezuelan authorities as “incitation to assassination.”

546. On December 1, 2008, members of La Piedrita threw teargas bombs and signed brochures in front of the building inhabited by the journalist Marta Colomina, who, since 2003, has been under the protection of provisional measures ordered by the Inter-American Court.⁴⁵⁵

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ataca fachada de Globovisión (Group of presumed official supporters attack outside Globovisión). Available in Spanish at: http://www.el-nacional.com/www/site/p_contenido.php?q=nodo/46191.

⁴⁵¹ The information indicates that the team of journalists was made up by Mayela León, Luis Reaño, and Frank Díaz. Inter-American Press Association. *Report on Venezuela. Midyear Meeting of March 13-16, 2006. Asunción, Paraguay.* Available at: http://www.sipiapa.com/v4/index.php?page=det_informe&asamblea=22&inford=362&idioma=us.

⁴⁵² El Universal. October 14, 2008. *RSF celebra condena de Izarra a agresión contra Globovisión* (RSF applauds condemnation by Izarra of aggression against Globovisión). Available in Spanish at: http://www.eluniversal.com/2008/10/14/pol_art_rsf-celebra-condena_1091410.shtml.

⁴⁵³ I/A Court H.R., Order of the Inter-American Court of Human Rights of January 29, 2008. Provisional Measures with regard to the Bolivarian Republic of Venezuela. Matter of “Globovisión” Television Station. Available at: http://www.corteidh.or.cr/docs/medidas/globovision_se_04_ing.pdf. Additionally, in the 2008 Annual Report, the IACHR stated that: “As observed in previous years, in 2008 the Commission continues to be troubled by the intimidation targeted at private media outlets, particularly the *Globovisión* television channel, whose executives and staff continued to be protected by provisional measures first ordered by the Inter-American Court in 2004 and confirmed on January 29, 2008.” IACHR. *Annual Report 2008*. Chapter IV: Human Rights Developments in the Region, para. 370. OEA/Ser.L/V/II.134. Doc. 5 rev. 1. February 25, 2009. Available at: <http://www.cidh.oas.org/annualrep/2008eng/TOC.htm>.

⁴⁵⁴ Instituto Prensa y Sociedad. October 24, 2008. *Amenazan a director de diario y lanzan bombas lacrimógenas a sede* (Editor of newspaper threatened and teargas bombs thrown at headquarters). Available in Spanish at: <http://www.ipys.org/alertas/atentado.php?id=1632>; Inter-American Press Association. October 15, 2008. *Condena la SIP agresión contra diario El Nuevo País en Venezuela* (IAPA condemns the acts of aggression against *El Nuevo País* newspaper in Venezuela). Available in Spanish at: http://www.sipiapa.org/v4/index.php?page=cont_comunicados&seccion=detalles&id=4075&idioma=sp; Inter-American Press Association. *Report on Venezuela. Midyear Meeting of March 13-16, 2006. Asunción, Paraguay.* Available at: http://www.sipiapa.com/v4/index.php?page=det_informe&asamblea=22&inford=362&idioma=us.

⁴⁵⁵ I/A Court H.R., Order of the Inter-American Court of Human Rights of July 4, 2006. Provisional Measures regarding Venezuela. Matter of Marta Colomina and Liliana Velásquez. Available at: http://www.corteidh.or.cr/docs/medidas/colomina_se_05_ing.pdf.

According to the information received, the brochures also declared Colomina to be a military objective.⁴⁵⁶

547. On January 1, 2009, members of La Piedrita once again attacked the headquarters of *Globovisión* with teargas bombs and threw pamphlets in which they reiterated that the media and the newspaper *El Nacional* were “military objectives.”⁴⁵⁷ The IACHR applauds the fact that days later, the then-Minister of Popular Power for Communication and Information, Jesse Chacón, had condemned the act, stating that “the government rejecte[d] any action that goes beyond frank discussion about the way a social communications media manages its editorial line.”⁴⁵⁸

548. On January 19, 2009, members of La Piedrita threw teargas bombs at the residence of the director of RCTV, Marcel Granier. In later declarations, the leader of La Piedrita, Valentín Santana, declared that they proposed to “pass the arms by [Marcel] Granier.”⁴⁵⁹ The leader of the La Piedrita group also recognized its responsibility for the attacks against headquarters of *Globovisión* and *El Nuevo País*, as well as the residences of Martha Colomina and Marcel Granier, in an interview published in a weekly on February 6, 2009.⁴⁶⁰

⁴⁵⁶ Instituto Prensa y Sociedad. December 3, 2008. *Lanzan bombas lacrimógenas en edificio de periodista y la declaran “objetivo de guerra”* (Teargas bombs thrown in journalist’s building and she is declared an “objective of war”). Available in Spanish at: <http://www.ipys.org/alertas/atentado.php?id=1669>; *El Nacional*. December 1, 2008. *Colectivo La Piedrita lanza artefacto explosivo contra residencia de Martha Colomina* (La Piedrita group throws explosive device at residence of Martha Colomina). Available in Spanish at: http://www.el-nacional.com/www/site/p_contenido.php?q=nodo/57300.

⁴⁵⁷ Committee to Protect Journalists. February 9, 2009. *Pro-government group threatens Venezuelan media outlets*. Available at: <http://cpi.org/2009/02/pro-government-group-threatens-venezuelan-media-ou.php>; Reporters without Borders. January 2, 2009. *New Year’s Day Attack on TV station by radical pro-Chávez group*. Available at: http://www.rsf.org/spip.php?page=article&id_article=29875; *El Universal*. January 2, 2009. *Grupo La Piedrita lanzó bomba lacrimógena en Globovisión* (La Piedrita group throws teargas bomb in Globovisión). Available in Spanish at: http://www.eluniversal.com/2009/01/01/pol_ava_grupo-la-piedrita_01A2180231.shtml.

⁴⁵⁸ Espacio Público. January 5, 2009. *Jesse Chacón condena agresión a medios de comunicación* (Jesse Chacón condemns aggression against communications media). Available in Spanish at: http://www.espaciopublico.info/index.php?option=com_content&task=view&id=269&Itemid=2.

⁴⁵⁹ Granier also stated that his residence had been the object of a similar attack during the same month. Instituto Prensa y Sociedad. January 21, 2009. *Lanzan bombas lacrimógenas a casa de director de RCTV Internacional* (Teargas bombs thrown at home of director of RCTV International). Available in Spanish at: <http://www.ipys.org/alertas/atentado.php?id=1706>; Colegio Nacional de Periodistas. January 19, 2009. *Grupo “La Piedrita” amenaza nuevamente* (“La Piedrita” group threatens again). Available in Spanish at: <http://cncparacas.org/?p=6324>; *Globovisión*. January 19, 2009. *Residencia de Marcel Granier también fue atacada con bombas* (Residence of Marcel Granier was also attacked with bombs). Available in Spanish at: <http://www.globovision.com/news.php?nid=108308&clave=a%3A1%3A%7Bi%3A0%3Bs%3A17%3A%22leopoldo+castillo%22%3B%7D>; Inter-American Press Association. *Report on Venezuela. Midyear Meeting of March 13-16, 2006. Asunción, Paraguay*. Available at: http://www.sipiapa.com/v4/index.php?page=det_informe&asamblea=22&inforid=362&idioma=us.

⁴⁶⁰ Communication of May 5, 2009 by *Globovisión* to the Office of the Special Rapporteur for Freedom of Expression; Noticias 24. February 6, 2009. *La Piedrita pasará por las armas a enemigos de la revolución* (La Piedrita will take up arms against enemies of the Revolution). Available in Spanish at: <http://www.noticias24.com/actualidad/noticia/24132/habla-valentin-santana-jeffe-del-colectivo-la-piedrita/>; Committee to Protect Journalists. February 9, 2009. *Pro-government group threatens Venezuelan media outlets*. Available at: <http://cpi.org/2009/02/pro-government-group-threatens-venezuelan-media-ou.php>; Inter-American Press Association. *Report on Venezuela. Midyear Meeting of March 13-16, 2006. Asunción, Paraguay*. Available at: http://www.sipiapa.com/v4/index.php?page=det_informe&asamblea=22&inforid=362&idioma=us.

549. The IACHR applauds the fact that after this series of events and the publication of the interview mentioned previously, President Hugo Chávez condemned the actions of La Piedrita.⁴⁶¹ Nevertheless, as of the date of this report, the IACHR has not received information about his capture or about the investigations or sanctions that would prevent this type of attacks. It is important to note that on May 22, 2009, the Special Rapporteurship sent a communication to the State in which it expressed its concern about the acts of violence carried out by La Piedrita up to this date. However, no advances in the investigation, prosecution, or sanctioning of those responsible for these acts has been reported.

550. In relation to these acts of violence, the IACHR exhorts the State to investigate the existence of these violent groups and proceed to disarm and dismantle them as completely and as quickly as possible, given that, as the IACHR has indicated, “these groups have been the driving force behind violence and direct threats made against [diverse sectors of the Venezuelan population].”⁴⁶²

551. As indicated by the IACHR in its *Report on the Situation of Human Rights in Venezuela* (2003), “a monopoly on force must be maintained solely by the agencies of law enforcement, under the legitimate rule of law; the most complete disarmament possible of all civilian groups must be undertaken immediately.”⁴⁶³

552. With respect to the existing mechanisms to protect communications media and journalists who have been threatened in relation to their editorial line, the State, in a communication of August 13, 2009, stated that: “The victim who has made a denunciation [before the Attorney General’s Office] may obtain some measure of protection in accordance with the Law on Protection of Victims, Witnesses, and Others Subject to Proceedings, which stipulates that this may be ‘informal, administrative, judicial, or of any other character in order to guarantee the rights of protected persons.’ [...] The protection of the law does not distinguish whether or not the aggrieved person is a journalist, since the law provides equal protection for all citizens. In the cases of the communications media, because they are legal persons in a strict sense they cannot enjoy the measures of protection, because they are abstract entities. In this sense the protection falls upon the personnel of the communications media or the journalists who work there, since according to the law they are the only ones that can be considered victims.”⁴⁶⁴

⁴⁶¹ Agencia Bolivariana de Noticias. February 7, 2009. *Chávez rechaza violencia de grupo La Piedrita y pide captura de su líder* (Chávez rejects violence of La Piedrita group and calls for the capture of its leader). Available in Spanish at: <http://www.abn.info.ve/noticia.php?articulo=168871&lee=4>; El Nacional. February 8, 2009. *Chávez ordena detener a líder de “La Piedrita”* (Chávez orders detention of leader of “La Piedrita”). Available in Spanish at: http://el-nacional.com/www/site/p_contenido.php?q=nodo/67463/Pol%C3%ADtica/Ch%C3%A1vez-ordena-detener-a-l%C3%ADder-de-La-Piedrita; El Universal. February 9, 2009. *Chávez califica de terrorista y fascista a Colectivo La Piedrita* (Chávez characterizes the Colectivo la Piedrita as terrorist and fascist). Available in Spanish at: http://www.eluniversal.com/2009/02/09/pol_art_chavez-califica-de-t_1261095.shtml; Committee to Protect Journalists, February 9, 2009. *Pro-government group threatens Venezuelan media outlets*. Available at: <http://cpj.org/2009/02/pro-government-group-threatens-venezuelan-media-ou.php>.

⁴⁶² IACHR. *Report on the Situation of Human Rights in Venezuela*, para. 250. OEA/Ser.L/V/II.118. Doc. 4 rev. 2. December 29, 2003. Available at: <http://www.cidh.oas.org/countryrep/Venezuela2003eng/toc.htm>.

⁴⁶³ IACHR. *Report on the Situation of Human Rights in Venezuela*, para. 250. OEA/Ser.L/V/II.118. Doc. 4 rev. 2. December 29, 2003. Available at: <http://www.cidh.oas.org/countryrep/Venezuela2003eng/toc.htm>.

⁴⁶⁴ Bolivarian Republic of Venezuela. August 13, 2009. Questionnaire on human rights presented at the request of the Inter-American Commission on Human Rights. Office of the State Agent for Human Rights before the Inter-American and International Systems, pp. 111-112.

553. In this vein, the IACHR recommends that the State intensify the efforts aimed at investigating the acts of violence attributed to these violent groups, and that it continue adopting the urgent and necessary measures to dismantle them, energetically and publicly condemning their actions, strengthening criminal investigative capacities, and sanctioning the illegal actions of these groups to prevent the repetition of these acts in the future.

554. Finally, the IACHR urges the State to investigate promptly all the cases summarized in this section, to make its strongest effort to avoid the repetition of these crimes, and to ensure that they do not remain in impunity. As has been stated in other opportunities, the lack of sanctions for the perpetrators and the masterminds of the murders, acts of aggression, threats, and attacks related to the practice of journalism propitiates the occurrence of new crimes and generates a notorious effect of self-censorship that seriously undermines the possibility of a truly open, uninhibited, and democratic debate. Principle 9 of the Declaration of Principles states 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.”

G. Recommendations

555. In light of the forgoing considerations, the IACHR recommends that the Venezuelan State:

1. 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, it should repeal the provisions on *desacato*, *vilipendio*, and insult to the National Armed Forces. Additionally, it should modify the text of Article 29.1 of the Law on Social Responsibility in Radio and Television, Articles 9, 10, and 11 of the Organic Law on Education, and Resolution No. 047 of the Ministry of Popular Power for Communication and Information, Norms on the Mechanisms and Conditions of Assignment of Airtime to Independent National Producers on Providers of Radio Services.
2. Ensure that the use of the power to use the communications media to disseminate state messages is in accordance with inter-American standards, especially with respect to satisfying the requirement of strict necessity. In particular, it is necessary to revise Article 192 of the Organic Law on Telecommunications and Article 10 of the Law on Social Responsibility in Radio and Television.
3. Guarantee the most absolute impartiality and due process in all the administrative and judicial proceedings to enforce the legislation on broadcasting. In particular, the opening of such proceedings and the imposition of sanctions must be the duty of impartial and independent organs, regulated by legal norms that are precise and delimited, and governed by that which is provided in Article 13 of the American Convention. In no case may the media’s editorial line be a relevant factor for the adoption of any decision relating to this subject matter.
4. Make all decisions relating to broadcasting subject to the laws, the Constitution, and the international treaties in force and strictly respect all the guarantees of due process, the principle of good faith, and the inter-American standards that

guarantee the right to freedom of expression of all persons without discrimination. Ensure that none of its actions is motivated by or aimed at rewarding media that agree with government policies or at punishing those that are critical or independent.

5. Maintain from the highest levels of the state the public condemnation of acts of violence against journalists and communications media, with the aim of preventing actions that foment these crimes, and avoiding the continued development of a climate of stigmatization of those who hold a stance critical of government actions.
6. 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.
7. Adopt the measures that are necessary to protect the life and personal integrity of social communicators and the infrastructure of the communications media. In particular, the State has the obligation to carry out serious, impartial, and effective investigations of the acts of violence and harassment against journalists and communications media, identifying, judging, and sanctioning those responsible.
8. Promote the incorporation of international standards on freedom of expression through the judicial system, which constitutes an effective tool for the protection and guarantee of the current normative framework for freedom of expression.

V. THE DEFENSE OF HUMAN RIGHTS AND THE FREEDOM OF ASSOCIATION

556. The IACHR has indicated that the work of human rights defenders in protecting individuals and groups of individuals who are victims of human rights violations, publicly denouncing the injustices that affect large sectors of society, and pointing to the need for citizen oversight of public officials and democratic institutions, among other activities, means they play an irreplaceable role in building a solid and lasting democratic society.⁴⁶⁵

557. Thus, the process of democratic strengthening in the hemisphere must incorporate full respect for the work of human rights defenders,⁴⁶⁶ and the States must guarantee the conditions necessary for them to be able to freely conduct their activities, refraining from taking any action that would limit or obstruct their work.⁴⁶⁷

558. In this chapter, the Commission will analyze the State of Venezuela's compliance with the right to freedom of association for the promotion and defense of human rights, as well as the obstacles that human rights defenders encounter in their work, including violations of the right to life, humane treatment, and personal liberty.

⁴⁶⁵ IACHR. *Report on the Situation of Human Rights Defenders in the Americas*. March 7, 2006, para. 23.

⁴⁶⁶ IACHR. *Report on the Situation of Human Rights in Venezuela*. December 23, 2003, para. 222.

⁴⁶⁷ I/A Court H.R., *Case of Lysias Fleury*. Order of June 7, 2003, "considering" para. 5; *Case of Nieto Palma*. Order of July 9, 2004, "considering" para. 8.

A. Association for the promotion and defense of human rights

559. The IACHR has stressed that the States have the authority to regulate the registration, oversight, and control of organizations within their jurisdictions, including human rights organizations. Nonetheless, the right to associate freely requires that the States ensure that those legal requirements do not impede, delay, or limit the creation or functioning of these organizations.⁴⁶⁸ Below, the Commission will analyze whether the State of Venezuela's existing legal framework and policies allow human rights organizations to freely exercise their right of association.

1. Registration and establishment of human rights organizations

560. With respect to registrations required under national law to set up an organization whose purpose is the promotion and defense of human rights, and to finance its activities, the State has said that Venezuela's legal system does not have laws or rules regulating nongovernmental organizations' financing or use of funds; thus their establishment and legal and administrative operation should be in line with what the civil code⁴⁶⁹ has established for nonprofit foundations or associations.⁴⁷⁰

⁴⁶⁸ IACHR. *Report on the Situation of Human Rights Defenders in the Americas*. March 7, 2006, para. 77.

⁴⁶⁹ Civil Code of Venezuela, published in the Gazette, Special Edition No. 2.990 of July 26, 1982.

Article 19

The following are legal persons and therefore capable of obligations and rights:

[...] 3. Associations, corporations, and foundations that are lawful and of a private nature.

They shall acquire legal personality with the formal registration of their founding charter with the Auxiliary Registry Office of the Department or District in which they were created, where a genuine copy of their Statutes shall be filed.

The founding charter shall include: name, address, purpose of the association, corporation, and foundation, and the form in which it will be managed and directed.

Any change in Statutes must also be formally registered within a period of fifteen (15) days.

Foundations may also be established through a testament, in which case they shall be considered to have legal existence from the time of its execution, as long as the requirement is met for the respective formal registration following the opening of the succession.

Civil and commercial societies are governed by the legal provisions that pertain to them.

Article 20

Foundations may be created with only one general purpose: artistic, scientific, literary, charitable, or social.

Article 21

Foundations shall be subject to the supervision of the State, which shall exercise such supervision by means of the respective Judges of the First Instance, to whom the administrators shall render an accounting.

Article 23

The respective Judge of the First Instance, after having heard the administrators of the foundation where possible, could order its dissolution and transfer its assets to another foundation or institution, provided that its purpose had become impossible or unlawful.

⁴⁷⁰ Response by the State of Venezuela to the questionnaire for the analysis of the human rights situation in Venezuela. August 13, 2009, pp. 98-99.

561. Nonetheless, the Commission has received information indicating that some civil society organizations have seen their rights to free association and participation restricted due to the obstacles and difficulties involved in registering such organizations with the competent authorities. It was indicated that some organizations have been forced to change their purpose in order to have access to registration.⁴⁷¹

562. The Commission notes with concern that, according to the information it has received, even though civil society organizations may be established by foreigners and external financing is allowed, participation by certain organizations in public affairs continues to be restricted by virtue of their financing, their members' national origin, the type of organization, or the absence of laws governing their activity.⁴⁷² These restrictions are based on judgments handed down by the Supreme Court of Justice of the Bolivarian Republic of Venezuela on June 30, 2000; August 21, 2000; and November 21, 2000.

563. In these judgments, the Venezuelan Supreme Court stated that the representative authority of these organizations depends on the size of their membership, and they must meet the same prerequisites as political parties.⁴⁷³ The Supreme Court established the following:

[...] that civil society, as considered by the Constituent Assembly, is Venezuelan civil society, wherefrom arises the principle of its general joint responsibility with the State, and its particular responsibility toward the economic, social, political, cultural, geographical, environment, and military arenas. The consequence of this national character is that its representatives may not be foreigners or bodies affiliated with, or led, subsidized, financed, or sustained, either directly or indirectly, by states or by movements or groups influenced by states; nor by cross-border or global associations, groups, or movements that pursue political or economic goals to their own benefit [...].⁴⁷⁴

564. With regard to these judgments, in its 2003 *Report on the Situation of Human Rights in Venezuela*, the Commission already noted the importance of understanding the concept of civil society in democratic terms, without unreasonable exclusions or unacceptable discrimination, such as establishing that nongovernmental organizations that receive subsidies from abroad or that have foreigners or agents of organized religions on their boards are not part of civil society and are thus ineligible to participate on the Candidacy Committees established by the Constitution for electing the members of the Citizens' Branch, the electoral authorities, and the Supreme Court of Justice.⁴⁷⁵

565. Nevertheless, the Commission has been informed that the criteria established in these judgments continue to be applied by the Executive Branch in specific cases. By way of example,

⁴⁷¹ Information provided to the IACHR by petitioners. *Hearing on the Situation of Human Rights Defenders in Venezuela*. 134th Period of Sessions, March 24, 2009.

⁴⁷² COFAVIC. *Venezuela: Human Rights Defenders in the Line of Fire*. March 2009, p. 34.

⁴⁷³ Supreme Court of Justice of Venezuela, Constitutional Chamber, "Office of the Human Rights Ombudsman v. the National Legislative Commission," Judgment of June 30, 2002. "Governors v. Minister of Finance," Judgment of November 21, 2000.

⁴⁷⁴ Supreme Court of Justice of Venezuela, Constitutional Chamber, Presiding Justice: Jesús Eduardo Cabrera Romero, Judgment of November 21, 2000.

⁴⁷⁵ IACHR. *Report on the Situation of Human Rights in Venezuela*. December 23, 2003, para. 223.

it was indicated that the Department of Multilateral Affairs of the Ministry of Foreign Affairs communicated verbally with the directors of the organization *Acción Solidaria contra el Sida* (Solidarity and Action against AIDS) to say that "nongovernmental organizations that receive funding from foreign governments may not be included as part of the official delegation that will attend the special period of sessions of the General Assembly on issues related to HIV/AIDS. That observation is based on the decision of our Supreme Court of Justice (TSJ, by its Spanish acronym) dated November 21, 2000."⁴⁷⁶

566. The IACHR recognizes the State's authority to issue reasonable regulations for the right of association in the context of a democratic society, but reiterates that the application of the restrictions established in the decisions of the Constitutional Court, if done on a discriminatory basis against independent organizations, could be exclusive in its impact, which is unacceptable for the open participation of civil society in Venezuela.⁴⁷⁷

567. As the IACHR has indicated, "The freedom of association, in the specific case of human rights defenders, is a fundamental tool that makes it possible to fully carry out the work of human rights defenders, who, acting collectively, can achieve a greater impact. Because of this, when a state impedes this right, it not only restricts the freedom of association, but also obstructs the work of promoting and defending human rights."⁴⁷⁸ Thus, any action that tends to impede the association of human rights defenders, or in any way impedes the purposes for which they have formally associated, is a direct attack on the defense of human rights.⁴⁷⁹

2. Administrative and financial controls on human rights organizations

568. In the judgment of the Commission, the States should refrain from restricting human rights organizations' means of funding. In addition, they should allow and facilitate human rights organizations' access to foreign funds within the context of international cooperation, under conditions of transparency.

569. Nonetheless, during the Hearing on the Situation of Human Rights Defenders in Venezuela, held on March 24, 2009, the petitioning organizations expressed their concern to the IACHR over the fact that Venezuela's Central Bank has appeared at several nongovernmental organizations in Venezuela to conduct a voluntary and random study of each NGO's financial aspects.

570. On this point, the Commission was told that it would be hard to consider the study to be random since when NGOs met at the Forum for Life (a coalition that brings together the principal human rights organizations in Venezuela), they noticed that coincidentally all of them were included in the supposedly random study. In addition, the purpose of the survey, which included approximately 500 questions, is not at all clear to the NGOs. The questions include information about where the organizations' funds come from, how many employees they have, where the employees are from, what activities are carried out, and the purpose for which each of the funds is earmarked.

⁴⁷⁶ COFAVIC. *Venezuela: Los defensores y defensoras de derechos humanos bajo la línea de fuego* (Venezuela: Human Rights Defenders in the Line of Fire). March 2009, p. 34.

⁴⁷⁷ IACHR. *Report on the Situation of Human Rights in Venezuela*. December 23, 2003, para. 225.

⁴⁷⁸ IACHR. *Report on the Situation of Human Rights Defenders in the Americas*. March 7, 2006, para. 69.

⁴⁷⁹ IACHR. *Report on the Situation of Human Rights Defenders in the Americas*. March 7, 2006, para. 76.

The IACHR was informed that those organizations that did not cooperate with the survey were told that the information could be turned over to the tax administration service.⁴⁸⁰

571. Subsequent to the hearing, at the Commission's request, the Committee of Relatives of Victims of the Events of February-March 1989 (COFAVIC, by its Spanish acronym) forwarded to the IACHR the form that had been sent to that organization by the Central Bank of Venezuela, requesting financial, accounting, labor, and operational management information from NGOs in Venezuela. The same request for information, it was reported, was made to the following human rights organizations: PROVEA, the Venezuelan Prisons Observatory, the Jesuit Refugee Service, the Support Network for Justice and Peace, Citizens' Action against AIDS (ACCSI, by its Spanish acronym), and Solidarity and Action against AIDS (ACSOL, by its Spanish acronym). As the Commission was able to observe, the request for information sent from the Central Bank is 49 pages long and asks for a detailed accounting for 2006 and 2007 of financial status, personnel employed and all their compensation, the source and target of funds received, and the organization's fixed assets, among other aspects.⁴⁸¹

572. It is worth noting that, according to the letter sent by the Central Bank of Venezuela to COFAVIC and forwarded by that organization to the IACHR, the request for information is part of a "Survey of Nonprofit Organizations that Provide Service to Homes," and its purpose is to "estimate the accounts for production and generation of primary income, the overall creation of capital, and the gross domestic product represented by that segment of economic activity." In addition, the letter from the Central Bank underscores that "the information provided will be used exclusively for general statistical calculations, whose confidentiality is guaranteed." The Commission considers that while it is perfectly legitimate to request information from nongovernmental organizations to update the country's macroeconomic figures, the information requested would seem to exceed the limits of confidentiality that human rights organizations require to be able to operate.

573. It should also be highlighted that the IACHR continues to be concerned⁴⁸² about the possible adoption of the International Cooperation Bill that was approved at its first debate by the National Assembly in June 2006. It also notes that various civil society organizations have expressed their concern to the State over this draft legislation. Thus, organizations such as the Forum for Life (the Venezuelan coalition of 14 human rights NGOs⁴⁸³) and the social development network SINERGIA submitted their observations on the draft legislation to the National Assembly's Foreign Policy Commission in August 2006.

574. The IACHR has been informed that this bill has been included in the basic legislative schedule for 2009, which means it would be taken up again for discussion. In fact, the State

⁴⁸⁰ Information provided to the IACHR by petitioners. *Hearing on the Situation of Human Rights Defenders in Venezuela*. 134th Period of Sessions, March 24, 2009.

⁴⁸¹ Communication from COFAVIC to the IACHR, March 24, 2009.

⁴⁸² The Commission already expressed its concern regarding this draft legislation. See IACHR. *Press Release 26/2006* and IACHR. *2006 Annual Report*. Chapter IV: Human Rights Developments in the Region, Venezuela, paragraphs 224 to 235.

⁴⁸³ Members of the Forum for Life: Citizens' Action against AIDS (ACCSI); Caritas Venezuela; Caritas Los Teques; Center for Human Rights, Andrés Bello Catholic University; Center for Peace, Central University of Venezuela; Defense Committee of the state of Guárico; Committee of Relatives and Victims of the Events of February-March 1989 (COFAVIC); Espacio Público; Human Rights Foundation of Anzoátegui; Venezuelan Prisons Observatory; Network of Monitors of Táchira; Jesuit Refugee Service; Vicariate of Human Rights of Caracas and Vicariate of Puerto Ayacucho.

informed the IACHR that the National Assembly, in the exercise of its constitutional functions, is in the process of debating the International Cooperation Bill. The State has emphasized that this draft legislation was submitted to public consultation, and that the National Assembly's Foreign Policy Commission established a technical committee made up of representatives of the Vice Presidency of the Republic; the Ministries of Foreign Affairs, Finance, Planning and Social Development, Education, Infrastructure, Integration and Foreign Trade, and Labor; the Office of the Prosecutor General of the Republic; and the Venezuelan Economic and Social Development Bank (Bandes). Further, according to what was indicated by the State, the bill was submitted to an open and pluralistic process and all sectors of the community were consulted through a frank, authentically participatory, and truly democratic debate among all segments of society.⁴⁸⁴

575. The State has emphasized that the referenced draft does not in any way impinge on the rights of nongovernmental organizations and their development,⁴⁸⁵ and that the law "seeks to ensure the transparency and sound use of resources from international cooperation, based on a clear accounting that would make it possible to see how these funds and resources are channeled and to what activities they are directed."⁴⁸⁶

576. Nevertheless, the IACHR reiterates its concern regarding this draft legislation, as stated in its press release of July 19, 2006, and in Chapter IV of its 2006 Annual Report, as well as in the letter it sent to the State in April 2009, making use of the authority established in Article 41 of the American Convention.

577. Among the IACHR's main points of concern regarding the International Cooperation Bill are the vagueness of the language of some of its provisions and the broad discretion granted to the authorities in charge of regulating the law. In the judgment of the Commission, this creates the risk that this law could be interpreted in a restrictive manner to limit, among other things, the exercise of the rights of association, freedom of expression, political participation, and equality, and could seriously affect the functioning of nongovernmental organizations.

578. Likewise, the IACHR has expressed its concern over the fact that the draft legislation under discussion establishes, among other things, that the registration of nongovernmental organizations in the "Integrated Registration System" is "mandatory and constitutes an essential condition in order to be recognized by the Venezuelan State as entities capable of carrying out cooperation activities with their counterparts in other countries." The Commission believes that this law could be interpreted to mean that only organizations accepted as part of the Integrated Registration System can conduct their activities, thus limiting the activities and funding sources of nongovernmental organizations, whose independent role is essential for the strengthening of democracy in Venezuela.

579. The Commission emphasizes that a registration system that seeks to promote transparency does not necessarily contravene international standards. However, laws that go against

⁴⁸⁴ Response by the State of Venezuela to the questionnaire for the analysis of the human rights situation in Venezuela. August 13, 2009, p. 100.

⁴⁸⁵ Response by the State of Venezuela to the submission of draft Chapter IV with regard to Venezuela, received by the IACHR on December 21, 2007, p. 14.

⁴⁸⁶ Response by the State of Venezuela to the request for information sent by the IACHR, in accordance with Article 41 of the American Convention, with regard to the International Cooperation Bill. Communication No. 000778 of June 20, 2006, signed by María Auxiliadora Monagas, State Agent for Human Rights before the Inter-American and International Systems.

those standards are those that give authorities discretionary power to authorize the establishment and operation of organizations through registration records.

580. Taking into account that the provisions of Article 16 of the American Convention require that any restrictions to the right of association be strictly established under the law and necessary in a democratic society, the Commission reiterates to Venezuela the recommendation it made to the States in its *Report on the Situation of Human Rights Defenders in the Americas*, to the effect that they should "refrain from promoting laws and policies regarding the registration of human rights organizations that use vague, imprecise, and broad definitions of the legitimate motives for restricting their establishment and operation."

581. The Commission notes that the draft legislation also contains limits on the financing of nongovernmental organizations. In this regard, in informing about the referenced draft legislation, the State of Venezuela indicated that it "will not accept international financing of nongovernmental organizations for the purpose of using those resources to destabilize the nation and to constantly and continuously discredit Venezuela's democratic institutions."⁴⁸⁷ According to what has been indicated by the State, one of the objectives of the International Cooperation Bill is to bring about transparency in nongovernmental organizations' management of the resources they are given by foreign organizations, based on a clear accounting that makes it possible to see how those funds and resources are channeled and to what activities they are directed. To that end, it proposes to create a decentralized international cooperation entity that would be answerable to the relevant Ministry and that would have administrative and financial autonomy. Such an entity would be in charge of raising, registering, and regulating any resources that come from abroad and the organizations that receive them.⁴⁸⁸

582. It is worth recalling that among the proposals for modifying the Constitution rejected by popular vote in December 2007 was a reform of Article 67 that sought to prohibit "the financing of associations with political goals or of those who would participate in electoral processes of their own accord with funding or resources from governments or public or private entities abroad."

583. As the Commission has stated, the intention of the State to limit funding sources for NGOs with political goals is of particular concern considering that the State has insisted on designating human rights organizations in Venezuela as political organizations (and even coup-mongers). Thus, the provisions in the International Cooperation Bill could come to be interpreted to the effect that no human rights organization in Venezuela would be authorized to receive public funds.⁴⁸⁹

584. On this point, the Commission stresses that "human rights defenders have the right to seek and obtain economic resources to finance their work. The states must guarantee the exercise of this right in the broadest possible manner, and promote it, for example, through tax

⁴⁸⁷ Response by the State of Venezuela to the submission of the draft of Chapter IV with regard to Venezuela, received by the IACHR on December 21, 2007, p. 17.

⁴⁸⁸ Communication No. 000778 of June 20, 2006, sent to the IACHR by María Auxiliadora Monagas, the Venezuelan Ministry of Foreign Affairs' State Agent for Human Rights before the Inter-American and International Systems.

⁴⁸⁹ NGOs' concerns about this obstacle were brought to the Commission's attention during the *Hearing on the Situation of Human Rights in Venezuela*, held before the IACHR during its 130th period of sessions, on October 12, 2007.

exemptions to organizations dedicated to protecting human rights."⁴⁹⁰ For its part, the Inter-American Court has established that the freedom of association consists not only of the authority to constitute organizations, but also "to set into motion their internal structure, activities and action programme, without any intervention by the public authorities that could limit or impair the exercise of the respective right."⁴⁹¹

585. In this regard, the IACHR considers that civil society organizations may legitimately receive funds from foreign or international NGOs, or from foreign governments, to promote human rights. The State is obligated to guarantee their establishment and operation without imposing restrictions beyond those allowed under the right to freedom of association enshrined in Article 16 of the American Convention on Human Rights.

586. Finally, the IACHR notes that Article 10 of the mentioned bill contemplates the creation, by the President of the Republic, of a decentralized body of a special technical character responsible for executing and supporting the policies, plans, programs, projects, and activities for international cooperation that are promoted by the State and for exercising functions of organization, direction, control, coordination, follow-up, and evaluation of international cooperation activities in which the Venezuelan State participates. Although from the drafting of Article 10 it appears that the powers of this body would limit the government's participation in international cooperation, in the first transitory disposition of the Bill under analysis a six-month period is established from the time of the publication of the Law during which organisms that carry out international cooperation activities can adjust to the provisions and to the guidelines issued by the decentralized body responsible for international cooperation. In this sense, the IACHR considers that this disposition could be understood to mean that nongovernmental organizations that receive international cooperation funds must subject themselves to the guidelines of this body, which depends on the ministry with competence in the matter of international cooperation, and, in the final instance, on the President. In this respect, the Commission considers it opportune to limit the scope of the decentralized body so that its powers are limited to executing and supporting the government's international cooperation policies, but not those of civil society organizations.

587. In light of the abovementioned concerns, the Commission appreciates the information provided by the State indicating that, in taking up the debate again on the International Cooperation Bill in 2009, the National Assembly's Foreign Policy Commission has apparently decided to completely revise the draft legislation based on input obtained through public consultation.⁴⁹² The Commission hopes that the State will take into account the concerns noted by the Commission with regard to this draft legislation, and reiterates its offer to the State to advise it in the preparation of the law, within the scope of its powers.

B. Obstacles to the work of defending human rights

588. The Commission has been informed that a climate of hostility and threats continues against the life and physical integrity of human rights defenders in Venezuela. Information received by the IACHR makes reference to State actions aimed at delegitimizing and criminalizing the activity of human rights defenders and Venezuelan and international human rights NGOs that work in Venezuela. The information received by the Commission also indicates that high-level public officials,

⁴⁹⁰ IACHR. *Report on the Situation of Human Rights Defenders in the Americas*. March 7, 2006, para. 40.

⁴⁹¹ I/A Court H.R., *Case of Baena Ricardo et al. v. Panama*. Judgment of February 2, 2001. Series C No. 72, para. 156.

⁴⁹² Response by the State of Venezuela to the questionnaire for the analysis of the human rights situation in Venezuela. August 13, 2009, p. 100.

including the President of the Republic, have publicly accused several human rights organizations, as well as their members, of being part of a coup-mongering strategy or of having improper ties to foreign countries that are supposedly planning to destabilize the government. Moreover, statements have been made to discredit the professionalism of individuals who have appeared before the human rights protection bodies of the inter-American system.

589. Below, the Commission will analyze how the work of defending human rights in Venezuela has been hindered through smear campaigns and criminalization efforts, as well as through attacks and threats directed at those who devote themselves to defending Venezuelans' human rights. The IACHR will also consider how the lack of access to public information has impeded the work of defending human rights in Venezuela.

1. Smear campaigns and criminalization campaigns

590. Even though during the first years of the government of President Hugo Chávez Frías priority was given to a constructive dialogue with human rights organizations—as reflected in the process before the Constituent National Assembly, which incorporated several of the proposals made by the Forum for Life into the 1999 Constitution—the situation has undergone significant changes. Since 2003, in particular, the IACHR and Venezuelan human rights organizations⁴⁹³ have concurred in observing a deterioration of the situation of human rights defenders; this is manifested, among other ways, in a policy to confront and publicly discredit defenders and their organizations, which has had consequences on their work.

591. As has been indicated, the majority of attacks by the State on human rights defenders are currently done through smear campaigns.⁴⁹⁴ According to information received by the IACHR, from May 2007 to May 2008, there were six cases of discrediting defenders and four cases of discrediting human rights organizations reported to the appropriate authorities in Venezuela.⁴⁹⁵

592. In that regard, the Commission has observed how in recent years,⁴⁹⁶ State officials have persisted in publicly discrediting human rights defenders so as to delegitimize any complaint they may present regarding violations to human rights, in some cases accusing them of being part of a destabilization plan and of acting "against the revolution" for having received funds from foreign organizations and countries for their financing.

593. One example of how State bodies seek to disparage certain human rights organizations is the *Final Report of the Special Commission to Investigate the Conspiracy and Organization of the Coup d'État and Assassination against the Commander and President of the Bolivarian Republic of Venezuela, Hugo Chávez*, issued by the National Assembly of Venezuela in

⁴⁹³ IACHR. *Report on the Situation of Human Rights in Venezuela*. December 23, 2003, para. 75. Vicariate of Human Rights of Caracas. *Informe sobre la Situación de los Defensores y Defensoras de Derechos Humanos en Venezuela 2007* (2007 Report on the Situation of Human Rights Defenders in Venezuela), pp. 15, 17, 32, and 45.

⁴⁹⁴ PROVEA. *Situación de los Derechos Humanos en Venezuela Informe Anual Octubre 2007/Septiembre 2008* (Situation of Human Rights in Venezuela, Annual Report, October 2007 /September 2008). December 10, 2008, p. 410.

⁴⁹⁵ Response by the Episcopal Vicariate of Human Rights of the Archdiocese of Caracas to the questionnaire sent by the IACHR on November 10, 2008, to request information on compliance with recommendations from the 2006 *Report on the Situation of Human Rights Defenders in the Americas*.

⁴⁹⁶ IACHR. *2008 Annual Report*. Chapter IV: Human Rights Developments in the Region, Venezuela, par. 353. IACHR. *2007 Annual Report*. Chapter IV: Human Rights Developments in the Region, Venezuela, para. 272.

November 2008. This report describes the following as "international organizations that cooperate with the objectives of the empire":

Inter-American Press Association (IAPA), Human Rights Watch (HRW), right-wing parties in the European Parliament and the Mercosur Parliament, the U.S. Treasury Department, the Christian Democrat International and Christian Democratic Organization of America (ODCA), the so-called Anti-Drug Czar of the United States, the FBI, CIA, MOSAD and their agents in various intelligence organizations around the world, The Rendon Group, the television networks *CNN*, *ABC News*, *Televisa*, *Univisión*, *FOX*, *CBS*, *TV Azteca*, *TV Globo*, the Prisa group and print media controlled by the elite in countries subordinate to U.S. interests, the Inter-American Commission on Human Rights (IACHR), the International Republican Institute (IRI).⁴⁹⁷

594. Another recent example took place in February 2009, in the context of the commemoration of the anniversary of the events of February 27, 1989, when the human rights organization COFAVIC sought to propose the creation of a coalition to investigate the most serious cases of human rights violations in Venezuela. The State's response was to disparage the organization that made the proposal; it indicated, via the Human Rights Ombudswoman, that COFAVIC has no legitimacy to offer proposals regarding the investigation of facts because it has been hijacked and its actions have been denaturalized.⁴⁹⁸

595. The PROVEA human rights organization, in turn, was discredited numerous times by State officials when it published its *Annual Report on the Situation of Human Rights in Venezuela*, in December 2008. Among other things, on December 16, 2008, the Minister of Popular Power for the Interior and Justice, Tarek El-Aissami, stated: "In the eyes of the people, the PROVEA report is ludicrous...they deserve to have a pile of shoes thrown at them for being liars."⁴⁹⁹

596. During the Hearing on the Situation of Institutions and Constitutional Guarantees in Venezuela, held during its 133rd period of sessions,⁵⁰⁰ the Commission also received information about a smear campaign carried out against the director of the Venezuelan Prisons Observatory, Humberto Prado. According to the information received, Prado has been the target of disparaging remarks by high-level State officials, who have labeled him "a profiteer of the prison situation," both for his work in defending the rights of persons deprived of liberty in Venezuela as well as for his participation in hearings before this Commission. It was also reported that authorities of the executive and legislative branches have accused him repeatedly of being responsible for "organizing prison strikes," of "benefiting economically from internal problems," of "receiving financing from the

⁴⁹⁷ National Assembly. *Report of the Special Commission to Investigate the Conspiracy and Organization of the Coup d'État and Assassination against the Commander and President of the Bolivarian Republic of Venezuela, Hugo Chávez*, pp. 61-62. November 2008. Available in Spanish at: http://www.asambleanacional.gob.ve/index2.php?option=com_docman&task=doc_view&gid=1268&Itemid=124

⁴⁹⁸ Information provided to the IACHR by petitioners. *Hearing on the Situation of Human Rights Defenders in Venezuela*. 134th Period of Sessions, March 24, 2009.

⁴⁹⁹ COFAVIC. *Venezuela: Los defensores y defensoras de derechos humanos bajo la línea de fuego* (Venezuela: Human Rights Defenders in the Line of Fire). March 2009, p. 25. Taken from the Office of Communication and Institutional Relations of the Ministry of Popular Power for Interior Relations and Justice, Summary of National and International Media, December 16, 2008. The Commission was also informed about this in the context of the *Hearing on the Situation of Human Rights Defenders* held during its 134th Period of Sessions.

⁵⁰⁰ Information provided to the IACHR by petitioners. *Hearing on the Situation of Institutions and Constitutional Guarantees in Venezuela*. 133rd period of sessions, October 18, 2008.

opposition," and of "obeying the interests of the United States." Those statements have coincided with Humberto Prado's participation in hearings before the Inter-American Commission in which he has reported on the prison situation in Venezuela.⁵⁰¹ In addition, it was indicated to the IACHR that Humberto Prado has been submitted to an investigation of his personal bank accounts by the Office of the Superintendent of Banks, with no apparent motive.⁵⁰² The Commission was likewise informed that, in response to a chain of protests in the country's main prisons, on April 15, 2008, spokespersons for the National Assembly's Domestic Policy Commission made comments to discredit Humberto Prado.⁵⁰³

597. During its hearings, the Commission was also told about the existence of a poster hung on the walls of the Mayor's Office of the municipality of Libertador with a photograph and a list of 100 individuals, including Liliana Ortega, Executive Director of the COFAVIC human rights organization. It reads, "Recognize Them, People – Traitors of the Fatherland."⁵⁰⁴

598. One display of intolerance toward observations and criticisms by international human rights bodies or organizations took place on the night of September 18, 2008, when the Venezuelan government ordered the expulsion of José Miguel Vivanco and Daniel Wilkinson, Executive Director and Deputy Director of the Americas Division of Human Rights Watch, a nongovernmental organization with a recognized track record in the protection of human rights. The expulsion was ordered hours after this organization presented a report on the human rights situation in Venezuela. The IACHR condemned these events, indicating that they affected the right of freedom of expression of representatives of that organization and moreover constituted an act of intolerance to criticism, which is an essential component of democracy.⁵⁰⁵

599. The day after José Miguel Vivanco was expelled, the Venezuelan Minister of Foreign Affairs, Nicolás Maduro, commented that "the destabilizing actions of Vivanco and his delegation in Caracas constituted part of a plan designed in the United States with the complicity of right-wing *pitiyanquis* ["little Yankees"] who help them here." The IACHR views with concern the fact that in addition to expelling the executives of the international organization Human Rights Watch, State authorities took advantage of the occasion to delegitimize Venezuelan organizations that collaborated on the report prepared by Human Rights Watch.

600. The Commission has also learned of other cases of smear campaigns carried out against human rights defenders. According to the information it has received, in September 2006 a smear campaign targeted Mrs. María del Rosario Gallucci, director and spokeswoman for the Committee of Victims of Guárico, and in 2006 and 2007, a smear campaign was carried out against members of the organization SINERGIA due to comments it had made on the International Cooperation Bill, as well as its creation of an informational brochure with comments on the draft

⁵⁰¹ COFAVIC. *Venezuela: Los defensores y defensoras de derechos humanos bajo la línea de fuego* (Venezuela: Human Rights Defenders in the Line of Fire). March 2009, p. 24.

⁵⁰² Information provided to the IACHR by petitioners. *Hearing on the Situation of Human Rights Defenders in Venezuela*. 134th Period of Sessions, March 24, 2009.

⁵⁰³ Response by COFAVIC to the questionnaire sent by the IACHR on November 10, 2008, to request information on compliance with recommendations from the 2006 *Report on the Situation of Human Rights Defenders in the Americas*.

⁵⁰⁴ Information provided to the IACHR by petitioners. *Hearing on the Situation of Human Rights Defenders in Venezuela*. 124th Period of Sessions, March 10, 2006.

⁵⁰⁵ IACHR. *Press Release 42/08: IACHR Condemns the Expelling of Human Rights Defenders by the Government of Venezuela*. September 22, 2008.

constitutional reform. In 2007 Mrs. Alicia Ana González, whose work involved promoting and protecting civil and political rights through the organization COFAVIC, was the target of public disparagement, and the National Assembly also opened a political investigation against her because she was a beneficiary, along with other journalists, of an exchange program funded by the United States Embassy. In May 2007, the Director of the organization Espacio Público and members of the organization Reporters without Borders were victims of a smear campaign.⁵⁰⁶

601. For its part, the State has said that "telling the truth about the behavior of some human rights defenders in Venezuela and abroad is no reason for them and the Commission to reach the conclusion that they are intimidated or frightened, inasmuch as they continue their work of discrediting Venezuelan institutions without any difficulty."⁵⁰⁷

602. The State has also indicated that "some human rights defenders in Venezuelan do not tell the truth, and they consider that it is an act of intimidation to remind them that they did not condemn the coup d'état against President Chávez and they did not seek protection measures as they now do for themselves, with no grounds whatsoever. They did not speak out against the employers' and oil-company strikes, the *guarimbas* [street clashes], or the suspension of public services, nor did they denounce Venezuela before international bodies for the protection of human rights."⁵⁰⁸ On this point, the State maintains that criticizing some human rights defenders with sufficient proof does not mean that all of them are discredited.

603. In the judgment of the Commission, the discrediting remarks made by authorities of the State, or tolerated by them, have not only assaulted the right to honor and dignity of those who have been attacked, but they have also helped to create adverse conditions and to produce a chilling effect on the work of human rights defenders. Disparaging human rights defenders and their organizations could cause them, out of fear of possible reprisals, to hold back from making public statements critical of government policies, which in turn hampers debate and the ability to reach basic agreements regarding the problems that afflict the Venezuelan people.

604. If they are to do their work freely, human rights defenders need adequate protection from the State authorities to guarantee they will not be victims of arbitrary meddling in their private lives, or of attacks to their honor and dignity.⁵⁰⁹ In this respect, the IACHR emphasizes that the Venezuelan State, as well as the other States in the region, must "refrain from making statements that stigmatize human rights defenders or that suggest that human rights organizations act improperly or illegally, merely because of engaging in their work to promote and protect human rights."⁵¹⁰

⁵⁰⁶ Response by COFAVIC to the questionnaire sent by the IACHR on November 10, 2008, to request information on compliance with recommendations from the 2006 *Report on the Situation of Human Rights Defenders in the Americas*.

⁵⁰⁷ Speech delivered by Germán Saltrón, Venezuelan State Agent for Human Rights before the Inter-American and International Systems, during the hearing held on March 24, 2009, before the Inter-American Commission on Human Rights, during its 134th Period of Sessions.

⁵⁰⁸ Response by the State of Venezuela to the submission of the draft of Chapter IV with regard to Venezuela, received by the IACHR on February 6, 2009, p. 13.

⁵⁰⁹ IACHR. *Report on the Situation of Human Rights Defenders in the Americas*. March 7, 2006, para. 94.

⁵¹⁰ IACHR. *Report on the Situation of Human Rights Defenders in the Americas*. March 7, 2006, p. 90. Recommendation 10.

605. On another matter, according to information received by the IACHR, as part of a strategy designed to intimidate human rights defenders and organizations, particularly when they are critical of the government, the State of Venezuela continues the practice of opening groundless judicial investigations or criminal complaints against them.

606. The IACHR has been following the issue of the criminalization of human rights defenders in Venezuela and expressed its concern in Press Release No. 23/04, dated October 28, 2004, regarding the opening of judicial investigations into certain nongovernmental organizations for "conspiracy to destroy the Republican political form," a crime set forth in Article 132 of the Penal Code of Venezuela.

607. In October 2004, the Office of the Attorney General accused leaders of the organization Súmate of committing that crime by virtue of their having received funding from the National Endowment for Democracy (NED), a U.S. institution that supports nongovernmental organizations in the promotion of democracy. It was alleged by the Attorney General's Office that to transact with and request money from a foreign organization to carry out domestic political activities, particularly given this organization's role in the recall referendum put forth against President Chávez in 2004, constitutes a crime. As the IACHR has been told, it appears that other human rights defenders and nongovernmental organizations were also accused of the crime of "treason against the fatherland" for receiving international cooperation funding, particularly from the United States.

608. Similarly, in April 2005 the Attorney General's Office opened an investigation against Carlos Ayala Corao, former President of the IACHR and human rights defender, for the alleged crime of conspiracy, linking him to the events of April 2002. In 2008, and without being previously consulted, the Attorney General's Office requested the closure of the investigation in application of a Presidential Amnesty decreed in December of 2007. Although Carlos Ayala expressed his disagreement with the manner of ending the investigation, the amnesty was imposed upon him and although he appealed the decision to apply it to him, he did not receive justice.

609. The Attorney General's Office has also attempted to open judicial actions, including defamation complaints, against beneficiaries of provisional measures issued by the Inter-American Court, in an attempt to have the victims prove the acts of aggression they have suffered.

610. For example, on July 22, 2005—the same day the human rights organization COFAVIC gave a press conference regarding a hearing held before the Inter-American Court of Human Rights on the case of the forced disappearances that occurred after the landslides in Vargas state in 1999—the 24th Deputy National Prosecutor phoned the director of COFAVIC to tell her that "following higher orders from the Director of Fundamental Rights of the Office of the Attorney General of the Republic, she should appear at a hearing at 8:30 a.m. on Monday, July 25, 2005, to give a statement on whether or not there was a legal basis for her provisional measures [granted by the Inter-American Court of Human Rights], given that her case was going to be presented to a supervisory court."⁵¹¹

611. According to the information received, when she received this call the COFAVIC director asked for the information in writing. After waiting for an hour, she was informed by the higher-level prosecutor in the Attorney General's Office that "it was no longer necessary for her to appear, as they had decided to send the case directly to the supervisory court, since even though the

⁵¹¹ Vicariate of Human Rights of Caracas. *Informe sobre la Situación de los Defensores y Defensoras de Derechos Humanos en Venezuela 2007* (2007 Report on the Situation of Human Rights Defenders in Venezuela), pp. 48-49.

provisional measure had been handed down by the Inter-American Court, it had to be processed by the national jurisdictional body to review whether or not the measure would proceed.⁵¹² The beneficiaries of these measures informed the Commission that they had been summoned to the Attorney General's Office on more than four occasions and to the criminal jurisdiction seven times. Furthermore, they affirm that on September 29, 2008, the 33rd Supervisory Court of Caracas decided to reject the complaints they had filed with respect to the acts that led to the adoption of the provisional measures and to close the file, thus failing to comply with its obligation to investigate the facts and punish those responsible for the attacks against them.⁵¹³

612. In its observations on the present report, the State indicated that the citations carried out by the Attorney General's Office and the 33rd Court of Control were based on the Law for the Protection of Procedural Subjects, which aims to have a court designate police officials to protect persons who have been issued measures of protection by the Inter-American Court of Human Rights. It affirmed that the judicial proceeding is to guarantee the rights of persons protected by the system for the protection of human rights and not to intimidate them.⁵¹⁴

613. The Commission has also been informed that defamation lawsuits have been filed against defenders who go to the media to denounce human rights violations and to identify the State agents who are responsible. For example, in April 2006, a prosecutor of the Attorney General's Office introduced a defamation suit against Elizabet Cordero, Ninoska Pifano, Ronmer Hernández, Luis Principal, Miriam Núñez, Zuleika Pérez, and Carlos Mellizo, members of the Committee of Victims against Impunity in the state of Lara. The aforementioned Victims Committee had publicly accused the prosecutor of "distorting" the investigation of a victim of a human rights violation in the course of his work at the Attorney General's Office.⁵¹⁵

614. Similarly, in July 2008, the Police Commander of the state of Anzoátegui filed suit against Mr. Ysober Duarte for allegedly committing crimes of continued aggravated defamation and aggravated insult, after Mr. Duarte had denounced to COFAVIC the death of his son Alí Duarte Urquiola, who reportedly was killed on March 22, 2008, at the Puente Ayala Prison, presumably by fellow inmates. According to what Mr. Duarte reported, his son had allegedly suffered abuse of power at the hands of the Anzoátegui state police before his death, had been detained illegally, and was subject to a tainted criminal process that ended in his murder.⁵¹⁶

615. Recently, in June 2009, the 66th National Prosecutor's Office, along with the 128th Prosecutor's Office of the Caracas Metropolitan Area, opened an investigation into the

⁵¹² Vicariate of Human Rights of Caracas. *Informe sobre la Situación de los Defensores y Defensoras de Derechos Humanos en Venezuela 2007* (2007 Report on the Situation of Human Rights Defenders in Venezuela), pp. 48-49.

⁵¹³ COFAVIC. *Venezuela: Los defensores y defensoras de derechos humanos bajo la línea de fuego* (Venezuela: Human Rights Defenders in the Line of Fire). March 2009, p. 30.

⁵¹⁴ Bolivarian Republic of Venezuela. Ministry of Popular Power for Foreign Affairs. State Agent for Human Rights. Observations on the Draft Report *Democracy and Human Rights in Venezuela*. Note AGEV/000598 of December 19, 2009, p. 70.

⁵¹⁵ Vicariate of Human Rights of Caracas. *Informe sobre la Situación de los Defensores y Defensoras de Derechos Humanos en Venezuela 2007* (2007 Report on the Situation of Human Rights Defenders in Venezuela), p. 49.

⁵¹⁶ Response by COFAVIC to the questionnaire sent by the IACHR on November 10, 2008, to request information on compliance with recommendations from the 2006 *Report on the Situation of Human Rights Defenders in the Americas*.

nonprofit civil organization CEDICE, due to a campaign entitled "CEDICE for a Country of Owners," which the organization had launched to publicize the importance of the right to private property in Venezuela. The actions were initiated by the Attorney General's Office after a group of congressmen from the United Socialist Party of Venezuela (PSUV, by its Spanish acronym) had gone to the Office of the Attorney General of the Republic to complain that the campaign supposedly discredited the Law of Social Property and distorted its underpinnings by sending a message to the public that private property was being violated.⁵¹⁷

616. At times, criminal actions initiated against human rights defenders in Venezuela are used to limit or disparage their efforts. One such example that could be cited is the case of the director of the Venezuelan Prisons Observatory, Humberto Prado. The Interior and Justice Minister has said it would be impossible for Prado to be called on by the national government to discuss policies for humanizing the prison system by virtue of the fact that in 1997 two proceedings were begun against him for alleged violations of the human rights of prisoners in the Yare I penitentiary.⁵¹⁸ In this regard, the Commission reiterates that cases in which state authorities make statements or issue communiqués publicly incriminating a human rights defender of acts that have not been legally proven constitute a violation of the human rights defender's right to honor.⁵¹⁹

617. The Commission even learned about the arrest by police officers of Mr. José Antonio Paéz Solís, Assistant to the Ombudsman assigned to the Office of the Human Rights Ombudsman representing the Caracas Metropolitan Area. According to information from the Office of the Human Rights Ombudsman, his arrest occurred in the course of carrying out his duties as an ombudsman in the city of Caracas. In view of the situation, the Office of the Human Rights Ombudsman asked the Constitutional Chamber of the Supreme Court of Justice to hear the case. Although the Constitutional Chamber ruled that it lacked jurisdiction, it noted the infringement of the human rights of "an official who was acting in the defense of a citizen's human rights and who identified himself as a representative of the Office of the Human Rights Ombudsman, an institution with constitutional standing whose principal purpose is the defense of human rights." It therefore ordered the case to be sent to the Office of the Attorney General's Department of Fundamental Rights with a view to begin an investigation into the police officers who acted in the incident.⁵²⁰

618. In its observations on the present report, the State emphasized that the IACHR could not attempt to "establish a mantle of immunity for human rights defenders as it has done with Venezuelan journalists. If the Venezuelan State considers that there is coordination between human rights organizations and Venezuelan groups advocating the overthrow of the government, as occurred during the *coup d'état* of April 11, 2002, it has the obligation to denounce this. Additionally, we will do this when there is financing by organs of the United States Department of State, such as USAID and the NED, which finance nongovernmental human rights organizations. It is the duty of the Venezuelan State to safeguard the national security of the Bolivarian Republic of Venezuela."⁵²¹

⁵¹⁷ Information available in Spanish on the Web page of the United Socialist Party of Venezuela (PSUV, by its Spanish acronym): <http://www.psuve.org.ve/?q=node/5803>.

⁵¹⁸ National Radio of Venezuela. *MIJ: Dos expedientes por violación de derechos humanos tiene Humberto Prado* (MIJ [Minister of the Interior and Justice]: Two Proceedings against Humberto Prado for Human Rights Violations). Available in Spanish at <http://www.rnv.gov.ve/noticias/?act=ST&f=27&t=25542>.

⁵¹⁹ IACHR. *Report No. 43/96*, Case 11.430 (Mexico), October 15, 1996, para. 76.

⁵²⁰ Bolivarian Republic of Venezuela. Citizens' Branch. Office of the Human Rights Ombudsman. *Annual Report 2008*. Caracas, August 2009, p. 213.

⁵²¹ Bolivarian Republic of Venezuela. Ministry of Popular Power for Foreign Affairs. State Agent for Human Rights. Observations on the Draft Report *Democracy and Human Rights in Venezuela*. Note AGEV/000598 of December 19, 2009, p. 69.

619. Certainly the State has the duty to investigate and punish those who break the law within its territory, but it also has the obligation to take all necessary measures to avoid having State investigations lead to unjust or groundless trials for individuals who legitimately claim the respect and protection of human rights. In this regard, the Commission underscores that opening groundless criminal investigations or judicial actions against human rights defenders not only has a chilling effect on their work but it can also paralyze their efforts to defend human rights, since their time, resources, and energy must be dedicated to their own defense.

620. By virtue of the foregoing, as the IACHR has indicated that "no effort on the part of the state authorities to cast doubt on the legitimacy of the work of human rights defenders and their organizations should be tolerated. [...] [P]ublic officials should refrain from making declarations that stigmatize human rights defenders or that suggest that human rights organizations act improperly or unlawfully, merely because they work to promote or protect human rights."⁵²²

2. Attacks, threats, and harassment

621. According to the information received by the IACHR, human rights defenders in Venezuela are not only affected by smear campaigns and criminalization campaigns, but they are also victims of attacks, threats, and harassment, and even murders. This leads to a chain effect that affects the state of human rights in general because only when human rights defenders have appropriate protection for their rights can they seek to protect the rights of others.⁵²³

622. It is worth noting that acts of violence and harassment directed against human rights defenders intensified with the institutional crisis that affected Venezuela in 2002, but had not been a problem that affected the country before that. In fact, in its last *Report on the Situation of Human Rights in Venezuela*, issued in 2003, the Commission noted that this situation did not reflect a generalized practice and that previously human rights defenders in Venezuela had been able to pursue their functions without any such problems.⁵²⁴

623. Along these same lines, Venezuelan human rights organizations have noted with concern that murders and executions of human rights defenders have been recorded for the first time in Venezuela's democratic history. The Vicariate of Human Rights of Caracas has documented six cases of violations of the right to life of human rights defenders in Venezuela between 1997 and 2007.⁵²⁵

624. One of the six murders was a landmark case that demonstrated the change in conditions under which human rights defenders in Venezuela began to work from the time of the 2002 institutional crisis. The victim of the murder of August 27, 2003 was Joe Luis Castillo González, former coordinator of the Office of Human Rights of the Vicariate of Maquiquies. Joe Castillo, who had previously received threats related to his work, was shot nine times when he was heading home with his wife and young son. This act was allegedly perpetrated by two men on a motorcycle, who

⁵²² IACHR. *Report on the Situation of Human Rights Defenders in the Americas*. March 7, 2006, para. 99.

⁵²³ IACHR. *Report on the Situation of Human Rights Defenders in the Americas*. March 7, 2006, para. 41.

⁵²⁴ IACHR. *Report on the Situation of Human Rights in Venezuela*. December 23, 2003, para. 234.

⁵²⁵ Vicariate of Human Rights of Caracas. *Informe sobre la Situación de los Defensores y Defensoras de Derechos Humanos en Venezuela 2007* (2007 Report on the Situation of Human Rights Defenders in Venezuela), p. 38.

opened fire on the human rights defender's vehicle, killing him, wounding his wife, and leaving his 1½-year-old son in critical condition.

625. The murder was condemned by the IACHR, which urged the State of Venezuela to guarantee the conditions necessary for human rights defenders to be able to carry out their work and to undertake an exhaustive investigation to establish the identity of those responsible.⁵²⁶ Further, on August 29, 2003, the Inter-American Commission on Human Rights requested the adoption of precautionary measures for the wife and son of Joe Castillo. Even though the facts of the case were reported to the Attorney General's Office and even though on August 29, 2003, the Human Rights Ombudsman requested that the Office of the Attorney General of the Republic designate a special prosecutor to investigate the facts, the Commission was informed that in June 2007, the Attorney General's Office closed the case file that had been opened in the murder of Joe Castillo and the injury of his wife,⁵²⁷ leaving these acts in a state of impunity.

626. The remaining five murders of human rights defenders referred to in the report of the Vicariate of Human Rights of Caracas are connected to the activities of relatives of victims of extrajudicial executions in Venezuela. These include José Ramón Rodríguez, allegedly executed by regional police officers in Portuguesa on October 28, 2000, and Enmari Dahiana Cava Orozco, allegedly murdered by Cagua municipal police officers on March 10, 2003.

627. The Commission recently received information about an attempted assassination of José Luis Urbano, president of the NGO Prodefensa del Derecho a la Educación (In Defense of the Right to Education), which occurred on August 27, 2009. According to the information received, Mr. Urbano was traveling by motorcycle at night, on a highway in the city of Barcelona, in Anzoátegui state, when he was intercepted by two unknown individuals who were also traveling by motorcycle on the same highway. According to the victim's account, one of the men shouted, "That's the guy. Kill him." Mr. Urbano then flung himself off his vehicle and hid behind some bushes, dodging several gunshots. Mr. José Luis Urbano had suffered a similar attempt on his life in 2007, after making a series of charges about irregularities in the Anzoátegui state schools.⁵²⁸

628. In addition, the report of the Vicariate of Human Rights of Caracas documents 71 cases of attacks or obstructions to the work of human rights defenders from 1997 to 2007. Most of the attacks (26.73% of the documented cases) consist of threats.⁵²⁹ These are followed by smear campaigns, with 18.81% of cases; acts of aggression, 14.85%; following and surveillance, 8.91%; and extrajudicial executions, 5.94% of the registered cases. The rest refer to the filing of judicial actions; trespass into an activist's residence or office; and arbitrary detentions, with 4.95% for each of those types of cases. Less frequent types of attacks are the application of arbitrary financial and

⁵²⁶ IACHR. *Press Release 26/03*, August 28, 2003.

⁵²⁷ Response by COFAVIC to the questionnaire sent by the IACHR on November 10, 2008, to request information on compliance with recommendations from the 2006 *Report on the Situation of Human Rights Defenders in the Americas*.

⁵²⁸ Forum for Life. *Comunicado de prensa: Foro por la Vida denuncia falta de garantías para el trabajo de las organizaciones de DDHH* (Press Release: Forum for Life Denounces Lack of Guarantees for the Work of Human Rights Organizations). September 9, 2009. Received by the IACHR on September 9, 2009. Available in Spanish at: http://www.espaciopublico.info/index.php?option=com_content&task=view&id=582&Itemid=1.

⁵²⁹ It is worth noting that the figures referred to in the report of the Vicariate of Human Rights of Caracas correspond to cases in which the defenders who were affected denounced the act before the Attorney General's Office, before the inter-American human rights system, or before other nongovernmental human rights organizations, such as Amnesty International.

administrative controls on NGOs, in 3.96% of cases, and failed murder attempts and restrictions to public information in the hands of the State, with 2.97% each.⁵³⁰

629. In the period from May 2007 to May 2008, the Episcopal Vicariate of Rights of the Archdiocese of Caracas studied a total of 27 cases of attacks on human rights defenders and the organizations to which they belong. In 19 of these cases, the human rights defenders themselves were victims, and in 8, the attacks were directed at organizations they represent. According to information provided to the Commission by the Vicariate, the 19 cases of attacks on defenders break down as follows: disparagement (6 cases); threats (3 cases); death threats (2 cases); physical aggression (1 case); surveillance and tailing (1 case); arbitrary detention (which obstructed the lodging of an international complaint, 1 case); failed attempt on someone's life (1 case); murder (which must be investigated to see whether it was related to the victim's work as a defender, 1 case); subjecting to criminal jurisdiction (1 case); subjecting to parliamentary investigation (1 case); and obstacles to the exercise of the right of participation (1 case). The 8 reported cases of attacks against human rights organizations were as follows: disparagement (4 cases); denial or omission of information (2 cases); obstacles to participation (1 case, which affected all organizations, as it involved discussion of draft legislation); and establishment of arbitrary controls (1 case).⁵³¹

630. For its part, the organization COFAVIC has documented before the Commission a total of 32 cases of attacks, threats, and harassment directed against human rights activists in Venezuela from 2006 to 2008. Of the 32 cases, the Commission notes with concern that witnesses and relatives of victims of human rights violations who push for investigations are frequently victims of threats, harassment, and acts of intimidation because of their actions to file complaints, organize relatives of victims, and investigate abuses on the part of State authorities.

631. For example, according to the information received, Sara Mier y Terán, coordinator of the Life Peace and Liberty Association, and members of the committee of relatives of victims of police abuse in the state of Aragua were victims of acts of aggression and were watched and followed in June 2006 and January 2007; Melquiades Moreno, a relative of a victim of extrajudicial execution and founder of the committee of victims against police and military abuse in the state of Anzoátegui, received threats in February 2006; Lisbeth Sira, a relative of Victoria Samaria, who disappeared on March 11, 2007, in the state of Portuguesa, allegedly at the hands of the Scientific, Criminal, and Criminalistic Investigations Corps (CICPC, by its Spanish acronym) officers, has been the victim of threats since March 2007; Mirla Quiñones, a member of the committee of victims against impunity in the state of Lara, received threats in May 2007; and Samira Montilla, a relative of Adriana Galindo, who disappeared on March 11, 2007, in the state of Portuguesa, allegedly at the hands of CICPC officers, has also received threats since March 2007; Mr. Carlos Mora, father of Carlos Eduardo Mora, who was allegedly murdered by police officers in 2006, was the victim of an attack in December 2007; in January and February 2008, the wives of officials charged in the events of April 2002, Mmes. Castro, Simonovics, and Vivas, reported having been victims of harassment due to their actions in defense of their husbands; the relatives of victims of executions and arbitrary detentions allegedly carried out by police officers in the state of Lara reported having been victims of harassment since February 2008; and the relatives of Maicol Caripa Andrade, who was killed on May 16, 2008, allegedly by officers of the Directorate of Intelligence and Prevention Services (DISIP, by its

⁵³⁰ Vicariate of Human Rights of Caracas. *Informe sobre la Situación de los Defensores y Defensoras de Derechos Humanos en Venezuela 2007* (2007 Report on the Situation of Human Rights Defenders in Venezuela), p. 31.

⁵³¹ Response by the Episcopal Vicariate of Human Rights of the Archdiocese of Caracas to the questionnaire sent by the IACHR on November 10, 2008, to request information on compliance with recommendations from the 2006 *Report on the Situation of Human Rights Defenders in the Americas*.

Spanish acronym), report having received serious threats since June 2008. In July 2008 Mrs. Nancy Marcano said she had received threats and told to desist in her complaint related to the death of her son Carlos Joel Marcano Rojas, who was killed in May 2007—allegedly by others in custody—in full view of Anzoátegui state police officers while he was being detained at that entity's police headquarters.⁵³²

632. In addition, COFAVIC has informed the Commission that over the last two years there has been a worsening of acts of aggression against activists who turn to the inter-American system for the protection of human rights. The IACHR was informed that in the majority of the cases, no judicial investigations have been opened, and in the few cases in which they have been opened, the jurisdictional bodies have ordered the files to be closed.⁵³³

633. One of the organizations that frequently turns to the inter-American human rights system to report on the situation in Venezuela or to present specific cases is the COFAVIC. According to what the IACHR has been told, members of COFAVIC have been victims of threats and acts of intimidation from 2002 to the present. Liliana Ortega, a founding member of the organization, reported having received a large number of personal e-mail messages in which members of the organization are called fascists or coup-mongers or are threatened with death. Pamphlets with death threats have also been left at the COFAVIC headquarters; an explosive device has been tossed in the immediate vicinity of Liliana Ortega's residence; and individuals have tried to block her passage on public thoroughfares, directing death threats and acts of harassment against COFAVIC and against her personally. She has also stated that she has received numerous telephone calls with insults and threats. As COFAVIC has indicated, the acts of aggression have intensified every time the organization has taken a case to the inter-American human rights system or has offered a press conference or statement to the media.⁵³⁴ Something similar has occurred with Humberto Prado, director of the Venezuelan Prisons Observatory, who has received death threats that have intensified as a result of his participation in hearings before the Inter-American Commission and the Inter-American Court of Human Rights.⁵³⁵

634. The Commission notes with particular concern that individuals and organizations that turn to the inter-American human rights system to present cases or participate in hearings are targets of aggression in Venezuela. In fact, 8.45% of the attacks documented in the report of the Vicariate of Human Rights of Caracas took place following decisions by the Commission or the Court in favor of the victims or after a defender provided information to the bodies of the inter-American system on the situation of fundamental freedoms in Venezuela.⁵³⁶

⁵³² Response by COFAVIC to the questionnaire sent by the IACHR on November 10, 2008, to request information on compliance with recommendations from the 2006 *Report on the Situation of Human Rights Defenders in the Americas*.

⁵³³ Response by COFAVIC to the questionnaire sent by the IACHR on November 10, 2008, to request information on compliance with recommendations from the 2006 *Report on the Situation of Human Rights Defenders in the Americas*.

⁵³⁴ COFAVIC. *Venezuela: Los defensores y defensoras de derechos humanos bajo la línea de fuego* (Venezuela: Human Rights Defenders in the Line of Fire). March 2009, p. 18.

⁵³⁵ Response by COFAVIC to the questionnaire sent by the IACHR on November 10, 2008, to request information on compliance with recommendations from the 2006 *Report on the Situation of Human Rights Defenders in the Americas*.

⁵³⁶ Vicariate of Human Rights of Caracas. *Informe sobre la Situación de los Defensores y Defensoras de Derechos Humanos en Venezuela 2007* (2007 Report on the Situation of Human Rights Defenders in Venezuela), p. 34.

635. The IACHR has also followed the situation of human rights defenders in Venezuela through the precautionary and provisional measures handed down by the Inter-American Commission and the Court, respectively. Thus, from November 27, 2002, through July 9, 2009, provisional measures issued by the Inter-American Court were in place for Liliana Ortega and other members of COFAVIC, by virtue of the *prima facie* assessment of threats to their rights to life and humane treatment, taking into account the threatening calls and e-mails and the tossing of an object that caused an explosion and fire in the vicinity of Liliana Ortega's residence.

636. From November 27, 2002 to the present, measures adopted by the Inter-American Court have continued to be in place, at the Commission's request, for human rights defender Luis Uzcátegui. This is due to the *prima facie* assessment of threats to his right to life and physical integrity, taking into account that from 2001 to 2002 he had apparently been the target of at least seven death threats allegedly made by undetermined private individuals or by some members of the military group "Lince" and the Police Armed Forces of the state of Falcón. These functionaries allegedly were tied to the extrajudicial execution of his brother Néstor Uzcátegui, which took place in January 2001. In this context, Mr. Uzcátegui has been subject to acts of harassment, searches, arbitrary detentions, and threats to his life and physical integrity, due to his activities in making charges, organizing victims' relatives, and investigating extrajudicial executions of individuals, including that of his brother.⁵³⁷

637. From July 9, 2004 through January 26, 2009, provisional measures were in place for Carlos Nieto Palma and his mother, Ivonne Palma Sánchez, due to the *prima facie* assessment of a threat to the rights to life, humane treatment, and freedom of expression of Mr. Nieto Palma, as well as his mother's right to life and humane treatment. This stemmed from a visit Mr. Nieto Palma received on June 6, 2003, from three political police agents of Directorate of Intelligence and Prevention Services (DISIP, by its Spanish acronym), a dependency of the Ministry of the Interior and Justice, who informed him that they had an order to conduct a residential visit and that they wanted to talk to him. Mr. Nieto Palma was interrogated about, among other things, his work as a human rights defender, the work he does in Venezuelan prisons, and the funding of his nongovernmental organization "Una Ventana a la Libertad" (A Window onto Freedom), which is devoted to the defense and promotion of human rights in Venezuelan prisons. He had also received a threat on June 20, 2004, when some neighbors from the building in which he lives handed him a pamphlet that read, "[...] You'll never live to tell the tale [...]." The Commission observed, in addition, that in May 2008, Mr. Nieto Palma reported having received verbal threats from the Metropolitan Police officers in charge of protecting him, and he also reported irregularities in the official records sent by the State with regard to his protection. More recently, it was reported that three Metropolitan Police officers visited Mr. Nieto's residence on August 19, 2009, and asked him, "Why don't you just shut your mouth and not get involved in more complications? You should stop bringing out these things about the Minister"—a reference to complaints the defender had made with respect to irregularities in the country's prisons.⁵³⁸

638. Since September 24, 2004, provisional measures have been in place to protect the life and personal integrity of Mmes. Eloisa Barrios, Inés Barrios, Beatriz Barrios, and Carolina

⁵³⁷ See I/A Court H.R., Provisional Measures. *Matter of Luis Uzcátegui regarding Venezuela*. Resolution of January 27, 2009, consideration 5.

⁵³⁸ Forum for Life. *Comunicado de prensa: Foro por la Vida denuncia falta de garantías para el trabajo de las organizaciones de DDHH* (Press Release: Forum for Life Denounces Lack of Guarantees for the Work of Human Rights Organizations). September 9, 2009. Received by the IACHR on September 9, 2009. Available in Spanish at: http://www.espaciopublico.info/index.php?option=com_content&task=view&id=582&Itemid=1.

García, and of Messrs. Jorge Barrios, Oscar Barrios, Pablo Solórzano, Caudy Barrios, and Juan Barrios. The IACHR had requested that the State adopt precautionary measures for Mrs. Eloisa Barrios and her family on June 22, 2004, due to the constant threats and acts of intimidation because of her complaints related to the murder of her relative, Narciso Barrios, allegedly committed by agents of the State. The IACHR sought provisional measures from the Court after learning of the violent death of one of the beneficiaries of precautionary measures, Rigoberto Barrios, who was shot nine times. On November 28, 2009, Oscar Barrios, who was the beneficiary of provisional measures ordered by the Court, was assassinated. Oscar Barrios was the fifth member of this family to be assassinated, according to the information received, by police in the state of Aragua. The Inter-American Commission considers it to be of the utmost seriousness that the State of Venezuela had not adopted the measures necessary to protect the lives and integrity of the members of the Barrios family effectively. The family affirms that it continues to be the object of detentions, raids, threats, and harassment. On December 4, 2009, the IACHR condemned the assassination of Oscar Barrios.⁵³⁹

639. From July 4, 2006 to the present, provisional measures adopted by the Inter-American Court at the Commission's request have been in place for Mrs. María del Rosario Guerrero Gallucci, a member of a human rights group called Soldiers for Justice, Peace, and Liberty on a Crusade against Impunity. She was a victim of threats and even an attack with firearms after having publicly denounced the police and state authorities of the state of Guárico for their alleged participation in executions carried out by police in that state, as well as for having been a witness in a criminal case filed against the editor of a weekly by the governor of that state.

640. With respect to the provisional measures issued to protect the life and integrity of human rights defenders in Venezuela, the Commission observes with concern that, according to information received, the implementation of these protection measures has "become, in the majority of cases, a new form of aggression for their beneficiaries, and a direct path toward criminalizing the work of human rights organizations and delegitimizing their members. In addition, the Attorney General's Office has decided in some cases to turn to domestic criminal courts so the provisional measures can be ratified by a domestic judge."⁵⁴⁰ For example, with regard to the provisional measures issued by the Inter-American Court for COFAVIC members, the beneficiaries stated that since 2005, they have been summoned to the Attorney General's Office more than four times and before the criminal jurisdiction seven times. In their judgment, this has "distorted the purpose of provisional measures in the inter-American system, [since] it is no longer the State that responds to the Inter-American Court on compliance with the measures, but the beneficiaries who must respond to the State, in a criminal jurisdiction, regarding compliance."⁵⁴¹

641. In this regard, the Commission reiterates that persons have the right to seek effective protection under national and international law to protect human rights, and to oppose any type of activity or action that could lead to violations of these rights. This right involves the possibility of turning to international human rights protection bodies without any type of obstacle or reprisal.⁵⁴²

⁵³⁹ IACHR. Press Release 81/09. *IACHR condemns killing in Venezuela*. December 4, 2009.

⁵⁴⁰ Response by COFAVIC to the questionnaire sent by the IACHR on November 10, 2008, to request information on compliance with recommendations from the 2006 *Report on the Situation of Human Rights Defenders in the Americas*.

⁵⁴¹ Beneficiaries' testimony to the IACHR. *Hearing on the Situation of Human Rights in Venezuela*. 130th Period of Sessions, October 12, 2007. This information was also included in the response by COFAVIC to the questionnaire sent by the IACHR on November 10, 2008, to request information on compliance with recommendations from the 2006 *Report on the Situation of Human Rights Defenders in the Americas*.

⁵⁴² IACHR. *Report on the Situation of Human Rights Defenders in the Americas*. March 7, 2006, para. 38.

642. The Commission takes note that in 2006, the State adopted the Law on the Protection of Victims, Witnesses, and Other Parties to Court Proceedings⁵⁴³ with a view to establishing the principles that govern the protection of and assistance regarding the rights and interests of victims, witnesses, and other parties to proceedings, and to regulate the protection measures in terms of their sphere of application, modalities, and procedures (Article 1). According to the State, this legislation likewise applies for the protection of human rights defenders. However, the State has said that no qualitative or quantitative information is available on whether or not the law has been effective in cases involving human rights defenders.⁵⁴⁴

643. The Commission considers it troubling that, according to the information received, in the past year attacks against human rights defenders in Venezuela have worsened, particularly when it comes to those who turn to the inter-American system.⁵⁴⁵ As this Commission has stated, in attacking the life or personal integrity of human rights defenders, what is sought is to make an "example" of the victims, bring to a halt the process of reporting violations, get human rights organizations to leave certain areas, and/or bring about a drop in the number of complaints presented.⁵⁴⁶

644. This situation is more serious still if one takes into account the impunity that is seen in investigations into attacks in which the victims are human rights defenders in Venezuela. In the majority of cases, no judicial investigations have been opened, and in several of the cases that have been opened, the jurisdictional bodies have ordered the case files closed. According to information received by the IACHR, "to date there are no known firm judgments or judgments of the first instance with regard to these cases. Nobody has been convicted and punished for being responsible for attacks suffered by human rights defenders."⁵⁴⁷

645. As the Commission has stressed, the lack of a serious investigation into complaints involving human rights defenders in some cases and the slow pace of the administration of justice in others, added to the failure by the states to recognize that defenders require special protection, are all factors that lead to the impunity of those who violate human rights. This impunity, in turn, fosters the vulnerability of human rights defenders, since it creates a perception that it is possible to violate their human rights without being punished.⁵⁴⁸

646. As the Commission noted in its *Report on the Situation of Human Rights Defenders in the Americas*, when human rights defenders are attacked, everyone they work for is left unprotected. In light of the foregoing, the Commission urges the State of Venezuela to take any measures necessary to prevent continued attacks against human rights defenders and to carry out

⁵⁴³ Published in Official Gazette No. 38.536 of October 4, 2006.

⁵⁴⁴ Response by the State of Venezuela to the questionnaire for the analysis of the human rights situation in Venezuela. August 13, 2009, pp. 103-104.

⁵⁴⁵ Information provided by the petitioners to the IACHR. *Hearing on the Situation of Human Rights Defenders in Venezuela*. 134th Period of Sessions, March 24, 2009.

⁵⁴⁶ IACHR. *Report on the Situation of Human Rights Defenders in the Americas*. March 7, 2006, para. 152.

⁵⁴⁷ Vicariate of Human Rights of Caracas. *Informe sobre la Situación de los Defensores y Defensoras de Derechos Humanos en Venezuela 2007* (2007 Report on the Situation of Human Rights Defenders in Venezuela), p. 55.

⁵⁴⁸ IACHR. *Report on the Situation of Human Rights Defenders in the Americas*. March 7, 2006, para. 335.

serious and impartial investigations with regard to cases that may involve possible violations of the rights to life and physical integrity of human rights defenders.

3. Lack of access to public information

647. The State has noted that under Venezuelan law, information about public administration is universal; consequently it does not discriminate between nongovernmental organizations and other private individuals.⁵⁴⁹ The State mentions that "in Venezuela there is complete access to information by citizens, and in the case that an official should arbitrarily refuse to provide it, the citizen has legal avenues with which to challenge the official's decision, save for the exceptions established in Venezuelan law."⁵⁵⁰

648. Nevertheless, as the Commission has been informed, "the lack of systematic access to public information is one of the principal problems faced by human rights defenders in Venezuela, and a practice of State silence has developed that keeps nongovernmental organizations and human rights activists from finding out public information available on issues [such as] operational plans to control public order, data on homicides and injuries inflicted by State functionaries, and on prison conditions, among other things."⁵⁵¹

649. The IACHR has indicated that creating a system of access to information that meets the requirements of the American Convention on Human Rights is a task that is more complicated than simply declaring that the public can have access to information that is in the hands of the State.⁵⁵² Any system for access to information must recognize the principle of maximum disclosure, the presumption of the public nature of meetings and basic documents, broad definitions of the type of information to which access is available, reasonable fees and timeframes, an independent examination of denials of access, and sanctions for noncompliance.⁵⁵³

650. In its observations on the present report, the State asserted that the lack of information from public entities, particularly statistical reports, is one of the principal problems for the presentation of reports on human rights in the majority of the states. It added that "Venezuela also recognizes that it is in this situation and we are doing the impossible to overcome it, and for this reason we must eliminate part of the bureaucracy of the public administration."⁵⁵⁴

651. With regard to laws and mechanisms designed to promote and guarantee, without undue restrictions, the work of human rights defenders and their contributions to the investigation of cases having to do with alleged human rights violations, the State notes that according to Article 304 of the Organic Code of Criminal Procedures, the Office of the Human Rights Ombudsman can participate in the review of a case file when it is presumed that there has been a violation of human rights.

⁵⁴⁹ Response by the State of Venezuela to the questionnaire for the analysis of the human rights situation in Venezuela. August 13, 2009, p. 102.

⁵⁵⁰ Response by the State of Venezuela to the draft of Chapter IV relating to Venezuela received by the IACHR on December 21, 2007, pp. 17-18.

⁵⁵¹ COFAVIC. *Venezuela: Los defensores y defensoras de derechos humanos bajo la línea de fuego* (Venezuela: Human Rights Defenders in the Line of Fire). March 2009, pp. 26-27.

⁵⁵² IACHR. *Report on the Situation of Human Rights Defenders in the Americas*. March 7, 2006, para. 85.

⁵⁵³ In regard to the matter, see: IACHR. *2003 Annual Report*. Report of the Office of the Special Rapporteur for Freedom of Expression, Chapter IV, paras. 32 and following.

⁵⁵⁴ Bolivarian Republic of Venezuela. Ministry of Popular Power for Foreign Affairs. State Agent for Human Rights. Observations on the Draft Report *Democracy and Human Rights in Venezuela*. Note AGEV/000598 of December 19, 2009, p. 73.

652. In addition, the State stresses that nongovernmental organizations for the protection and defense of human rights, as well as natural persons, have at their disposal a very specific law to be able to actively participate in criminal investigations and to collaborate in the development of investigations. The law to which the State makes reference is Article 121 of the Venezuelan Organic Code of Criminal Procedures, which establishes that "[t]he Office of the Human Rights Ombudsman and any natural person or association for the defense of human rights may present a complaint against public officials or employees, or agents of police forces, who have violated human rights in the exercise of their functions or on the basis of these functions." The State has emphasized that this article promotes the participation of NGOs in the development of human rights and especially in the accompaniment of the victim in the recovery of his or her rights that have been injured.⁵⁵⁵

653. The State of Venezuela also indicates that access to information regarding matters having to do with State administration is guaranteed as a citizen right in the Constitution. In that regard, the State cited the constitutional norms contained in Article 28, under which "all persons have the right to access information, facts about their property contained in public or private records"; Article 51, which establishes that "all persons have the right to represent or direct petitions before any authority or public official on matters that are under these individuals' competence"; Article 58, which guarantees "the right of all citizens to receive timely, truthful, and impartial information"; Article 108, under which the State is committed to allow universal access to information; Articles 141 and 143, which determine the conditions of operation and the obligation to inform the public regarding public administration; Article 311, under which public administration is marked by the principle of transparency, among other things; and Article 315, which establishes the obligation of accountability on the part of public officials regarding whether or not there has been compliance with the objectives laid out in the annual budget.⁵⁵⁶

654. Moreover, the State mentions that the right to public information is also enshrined in three organic laws. The Organic Law on Public Administration contemplates the obligation of State agencies to duly and completely inform citizens not only on specific matters but also in terms of its structure, norms, and procedures; the Organic Law on Planning determines public entities' commitment to inform citizens; and the Organic Law on Municipal Public Power prescribes a series of mechanisms to guarantee adequate information for citizens.⁵⁵⁷

655. Finally, the State reports that in Venezuela, Article 66 of the Constitution refers to the implementation of the social comptrollership as a tool of the popular power for the control and efficient use of State resources. This norm grants voters the right to have their representatives offer a transparent and regular accounting of their management. According to the State, this provision translates into citizen supervision of public administration, in a context of participatory, active democracy.⁵⁵⁸

⁵⁵⁵ Response by the State of Venezuela to the questionnaire for the analysis of the human rights situation in Venezuela. August 13, 2009, p. 102.

⁵⁵⁶ Response by the State of Venezuela to the questionnaire for the analysis of the human rights situation in Venezuela. August 13, 2009, p. 102.

⁵⁵⁷ Response by the State of Venezuela to the questionnaire for the analysis of the human rights situation in Venezuela. August 13, 2009, p. 103.

⁵⁵⁸ Response by the State of Venezuela to the questionnaire for the analysis of the human rights situation in Venezuela. August 13, 2009, p. 12.

656. The Commission values the abundant laws, indicated by the State, to allow the public and human rights defenders to have access to information and participation in public affairs. As the IACHR has noted, the defense of human rights and the strengthening of democracy require, among other things, that citizens have broad knowledge about the workings of the various State bodies, including budgetary aspects, the degree of progress toward accomplishing the goals laid out, and the State's plans and policies to improve the living conditions of society.⁵⁵⁹

657. In this regard, the Commission is concerned about information received indicating that, despite the constitutional and organic provisions summarized by the State, human rights defenders continue to face obstacles in practice to gain access to information that would allow them to carry out their functions. A study done by PROVEA, based on a follow-up to 157 requests for information presented to 50 public institutions in February and March of 2008, found that more than 70% of the bodies did not provide responses, either through denial of the request or through administrative silence, and only 10% of the responses obtained were adequate.⁵⁶⁰

658. As an example of the foregoing, on July 17, 2009, the human rights organization PROVEA stated that, in contradiction to the provisions of Articles 51 and 143 of the Constitution, executives of the Mental Health Program of the Ministry of Popular Power for Health refused to provide information on statistics, incidences of cases, and the mental illnesses most common in 2008, as well as on budgetary performance. According to the information the IACHR received, the officials alleged that such information was confidential; they also allegedly said that they had orders not to give any information to PROVEA.⁵⁶¹ PROVEA's intention was to use such information as input to the annual report it prepares on the Situation of Human Rights in Venezuela, particularly the chapter on the Right to Health—a report that, in the judgment of the Commission, constitutes a valuable exercise of social oversight in the area of human rights.

659. In its 2007 Annual Report, the IACHR already called attention to a similar case, which took place in March 2007, when the Health Director of the Ministry of Popular Power for Health refused to provide PROVEA staff with public information about the country's mental health service and facilities, alleging that the general coordinator of that human rights organization had, in an interview, compared the government of President Hugo Chávez with that of Rafael Caldera. According to the available information, before he would give PROVEA access to the information, the Health Director demanded that PROVEA rectify that opinion, also arguing that he could not provide the information because he did not know how PROVEA would use it.⁵⁶²

660. The IACHR recalls that the Inter-American Court has stated that in a democratic society, it is essential for State authorities to be governed by the principle of maximum disclosure, which establishes the presumption that all information is accessible, subject to a limited system of exceptions. Thus, it corresponds to the State to show that it has complied with the requirements of legality, necessity, and proportionality when establishing access restrictions to the information it

⁵⁵⁹ IACHR. *2001 Annual Report*. Vol. II, Chapter III.

⁵⁶⁰ PROVEA. *Situación de los Derechos Humanos en Venezuela Informe Anual Octubre 2007/Septiembre 2008* (Situation of Human Rights in Venezuela, Annual Report, October 2007 /September 2008). December 10, 2008, p. 53.

⁵⁶¹ PROVEA, *Comunicado de prensa: Provea denuncia violación del derecho de acceso a la información pública* (Press Release: PROVEA Denounces Violation of the Right of Access to Public Information). July 17, 2009. Available in Spanish at: <http://www.derechos.org.ve/detalle.php?id=832>.

⁵⁶² IACHR. *2007 Annual Report*. Chapter IV: Human Rights Developments in the Region, Venezuela, para. 246.

holds.⁵⁶³ In the judgment of the Commission, to deny public information to human rights organizations based on the authorities' perception of that organization's political position constitutes an undue restriction to the right of access to information and an impediment to the effective exercise of its functions in defense of human rights.

661. Another example of how the lack of information affects the work of human rights organizations was brought to the attention of the IACHR during the Hearing on Citizen Security in Venezuela, which the Commission held on October 28, 2008. On that occasion, the director of the Venezuelan Observatory on Violence informed the IACHR that beginning in 2005, the Ministry of Popular Power for the Interior and Justice had stopped publishing statistics on deaths caused by violence, and the NGOs have been unable to access the data. This has led to misinformation about the subject and forced nongovernmental organizations to use and produce unofficial information.

662. The Inter-American Court has emphasized that access to information in the hands of the state constitutes a fundamental right of individuals and that the states are obligated to guarantee that right.⁵⁶⁴ The OAS States, in turn, have recognized the importance of access to information as a requisite for the very exercise of democracy, and have urged Member States to implement laws or other provisions that would give citizens ample access to public information.⁵⁶⁵

663. The Commission understands that the State may have in its power information of a sensitive nature, and in this regard it underscores that Article 13.2 of the American Convention on Human Rights establishes the only circumstances in which the states may legitimately deny access to information. According to this standard under the convention, restrictions must be strictly defined by law and must be necessary to ensure: a) respect for the rights or reputations of others, or b) the protection of national security, public order, or public health or morals.

664. Regarding information not shielded by one of the exceptional circumstances noted in the preceding paragraph, the Commission urges the State of Venezuela to create those mechanisms that would allow all individuals and all human rights organizations, without discrimination based on their stance toward the government, to have timely access to public information, as well as to any information that exists about them.

665. Finally, taking into account the information described in this chapter regarding the situation of human rights defenders in Venezuela, the IACHR calls upon the State to adopt appropriate measures to guarantee the right to association for the promotion and protection of human rights, especially by limiting administrative and financial controls on human rights organizations. The IACHR also calls upon the State to guarantee the fundamental rights of those who dedicate themselves to this important task, including their rights to life and personal integrity. The Commission exhorts the State to cease the smear and criminalization campaigns, as well as the acts of aggression that make the defense of human rights a risky activity in Venezuela.

⁵⁶³ I/A Court H.R., *Case of Claude Reyes*. Judgment of September 19, 2006. Series C No. 15, paras. 92 and 93.

⁵⁶⁴ I/A Court H.R., Advisory Opinion OC-5/85. *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism (Arts. 13 and 29 American Convention on Human Rights)*. November 13, 1985. Series A. No. 5, para. 70.

⁵⁶⁵ OAS. General Assembly. Resolutions corresponding to 2003 through 2009: AG/RES. 1932 (XXXIII-O/03); AG/RES. 2057 (XXXIV-o/04); AG/RES.2121 (XXXV-o/05); AG/RES. 2252 (XXVI-o/06); AG/RES. 2288 (XXXV-O/07), AG/RES. 2418 (XXXVIII-O/08) and AF/RES 2514 (XXXIX-O/09).

C. Recommendations

666. In order to allow human rights defenders to freely carry out their important work, the Commission recommends that the State:

1. Guarantee conditions so that human rights defenders can freely carry out their activities and refrain from taking any action that could limit or impede their work.
2. Adopt all measures necessary to prevent violations of human rights defenders' right to life and humane treatment, as well as to investigate all acts of violence against them, independent of whether State agents or private individuals may be involved.
3. Grant effective measures for the protection of witnesses and relatives of victims of human rights violations.
4. Have available the necessary human, budgetary, and logistical resources to guarantee the implementation of adequate, effective protection measures when the personal security and life of a human rights defender may be at risk. In addition, ensure that the security measures are in fact put in place during the period in which the conditions of risk so demand.
5. Adopt the necessary measures so that public officials refrain from making statements that stigmatize human rights defenders or that suggest that human rights organizations are acting improperly or illegally merely for the fact of carrying out their efforts to promote or protect human rights.
6. Implement the laws and mechanisms necessary to enable citizens to easily and effectively gain access to public information and to facilitate their broad knowledge about the workings of the various State bodies.
7. Refrain from promoting laws and policies for the registration of human rights organizations that use vague, imprecise, or broad definitions regarding legitimate grounds for restricting the possibility of their establishment and operation.
8. Refrain from imposing illegitimate restrictions on financing, including foreign financing, of human rights organizations.
9. Take into account the Commission's recommendations and the concerns of Venezuelan human rights organizations regarding the International Cooperation Bill.

VI. THE RIGHT TO LIFE, TO HUMANE TREATMENT, AND TO PERSONAL LIBERTY AND SECURITY

667. The rights to life and to humane treatment are basic rights, essential for the exercise of all other rights, and they are essential minimums for the exercise of any activity.

668. Violence affects all Venezuela's citizens, who face acts of common and organized crime and also the excessive use of force on the part of the law enforcement authorities. In particular, violence affects people who are in the State's custody, held in prisons and detention centers, where thousands of people have been wounded or killed in recent years. The IACHR has also

received information indicating that violence in Venezuela affects specific groups, such as *campesinos* (small-scale or subsistence farmers), trade unionists, and women.

669. In light of the State's obligation to ensure individual security, the IACHR will analyze the information received and assess whether the provisions and policies adopted by the State are appropriate and sufficient for protecting, respecting, and ensuring the rights to life and to humane treatment of the Venezuelan population, particularly those sectors that are most vulnerable to violence.

A. Violence and citizen security

670. Security has always been one of the main functions of states, and citizen security is the situation that allows persons to live free from the threat of violence and crime, and where the state has the necessary capacities to guarantee and protect human rights that are directly affected by them. Therefore, citizen security is closely linked with the rights that need to be protected in view of their special vulnerability to violent or criminal acts, such as the rights to life, to physical integrity, and to personal freedom, among others.

671. In light of the above, although the State has noted that "citizen security in general terms cannot be a concern of the Commission, if it is not related to cases of human rights violations committed by state agents,"⁵⁶⁶ in the IACHR's view, a close relationship exists between citizen security and human rights. The Commission appreciates that in its observations on the present report, the State has recognized that citizen security is a concern and a duty of the Venezuelan State.⁵⁶⁷

672. The Commission has indicated on multiple occasions that states must take steps not only to protect their citizens from human rights violations committed by state agents, but also to prevent and punish acts of violence among private citizens. The Commission has also spoken about states' obligations in connection with the actions of non-state agents involved in organized crime, corruption, drug trafficking, etc. Since a lack of security directly affects the full enjoyment of people's basic rights, the IACHR has underscored the importance of addressing citizen security and respect for human rights, and of taking effective steps to prevent, control, and reduce crime and violence.⁵⁶⁸

673. The Commission has also stated that crime and violence seriously undermine the rule of law, and for that reason, states are obliged to prevent and prosecute crimes, provided that it is done within a framework of respect for human rights.⁵⁶⁹ In this regard, the Inter-American Court has highlighted "the duty the States have to protect everybody, avoiding crimes, punishing the parties responsible for them, and maintaining public order [...] However, the States' fight against crime must take place within the limits and pursuant to the procedures that permit the preservation

⁵⁶⁶ Response of the Venezuelan State to the draft of Chapter IV on Venezuela, received by the IACHR on February 6, 2009, p. 21.

⁵⁶⁷ Bolivarian Republic of Venezuela. Ministry of Popular Power for Foreign Affairs. State Agent for Human Rights. Observations on the Draft Report *Democracy and Human Rights in Venezuela*. Note AGEV/000598 of December 19, 2009, p. 75.

⁵⁶⁸ IACHR. *Press Release 16/07. IACHR calls upon States to reflect on the importance of public security*. March 15, 2007. IACHR. *Annual Report 2008*. Chapter I: Introduction.

⁵⁶⁹ IACHR. *Justice and Social Inclusion: The Challenges Facing Democracy in Guatemala*. December 29, 2003, para. 89.

of both public security and a complete respect of the human rights of those submitted to their jurisdiction.”⁵⁷⁰

674. In light of these principles, in this chapter the IACHR will analyze Venezuela’s current legal framework for ensuring citizen security, the State’s initiatives to improve the violence situation, and the results of those efforts, and it will offer the recommendations it deems appropriate in order to help fight public insecurity in the country.

1. Protection and promotion of public security

a. Regulatory framework for security forces

675. In any democratic state, the military and the police, along with other security forces, play a crucial role in protecting citizens and their rights; it is therefore vital that their actions strictly comply with the rules of the democratic constitutional order, international human rights treaties, and international humanitarian law.⁵⁷¹ In this section, the IACHR will therefore analyze whether Venezuela’s current regulatory framework governing the actions of its security agencies is appropriate and sufficient for ensuring the security of its citizens and whether it is in line with the applicable international provisions.

676. The right to the State’s protection from threats to public security within a framework of respect for human rights is enshrined in Article 55 of the Venezuelan Constitution in the following terms:

Every person has the right to protection by the State, through the citizen safety organs regulated by law, from situations that constitute a threat, vulnerability, or risk to the physical integrity of individuals, their property, the enjoyment of rights, and the fulfillment of their duties. Participation by citizens in programs for purposes of prevention, citizen safety, and emergency management shall be regulated by a special law. The State’s security forces shall respect the human dignity and rights of all persons. The use of weapons or toxic substances by police and security officers shall be limited by the principles of necessity, suitability, opportunity, and proportionality, in accordance with law.

677. Other constitutional provisions, however, are a cause for concern in terms of the democratic concept of state defense and security. Among others, the Commission has already expressed its concern regarding those that allow the military to participate in maintaining law and order in Venezuela.⁵⁷² Thus, Article 328 of the Constitution refers to the nation’s armed forces as an institution “organized by the State to guarantee the independence and sovereignty of the nation and to ensure the integrity of its geographical space, through military defense, cooperation for the purpose of maintaining domestic order, and active participation in national development.” Similarly, Article 329 of the Constitution of Venezuela states that:

⁵⁷⁰ I/A Court H.R., *Case of Fermín Ramírez v. Guatemala*. Judgment of June 20, 2005. Series C No. 126, para. 63; *Case of Hilaire, Constantine, Benjamin, et al. v. Trinidad and Tobago*. Judgment of June 21, 2002. Series C No. 94, para. 101; *Case of Bámaca Velásquez v. Guatemala*. Judgment of November 25, 2000. Series C No. 70, para. 174; *Case of Durand and Ugarte v. Peru*. Judgment of August 16, 2000. Series C No. 68, para. 69; and *Case of Castillo Petruzzi et al. v. Peru*. Judgment of May 30, 1999. Series C No. 52, paras. 89 and 204.

⁵⁷¹ I/A Court H.R., *Case of Myrna Mack Chang v. Guatemala*. Judgment of November 25, 2003. Series C No. 101, para. 284.

⁵⁷² IACHR, *Report on the Situation of Human Rights in Venezuela*. October 24, 2003, paras. 270 and 271.

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 carrying out these operations, and it shall have as its basic responsibility that of conducting operations as required to maintain domestic order within the country. The National Armed Forces may carry out activities of administrative policing and criminal investigation activities as provided for by law.

678. Thus, the Constitution allows components of the Armed Forces to participate in matters of domestic security. In turn, the Organic Law of the National Armed Forces⁵⁷³ provides, in Article 3, that:

The basic mission of the Bolivarian National Armed Forces is 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.

679. Similarly, Article 20 of the Organic National Security Law⁵⁷⁴ governs cooperation by the Armed Forces in the maintenance of domestic order in the following terms:

The National Armed Forces are one of basic elements for the comprehensive defense of the nation, organized by the State to conduct its military defense in joint responsibility with society. Its components, within the corresponding fields of action, are responsible for planning, executing, and controlling military operations for guaranteeing the independence and sovereignty of the Nation, ensuring the integrity of the territory and other geographical spaces of the Republic, and cooperating in maintaining domestic order. Laws shall determine the participation of the National Armed Forces in the comprehensive development of the nation.

680. The Commission sees with concern that the National Guard, attached to the Ministry of Defense, has been given responsibilities in citizen security and law and order.⁵⁷⁵ Thus, according to information provided by the State, “the National Guard, even though it is a part of the National Armed Forces, has been performing tasks in the areas of law and order and urban security, in different areas of the country, and its involvement is justified when the municipal or state police are overwhelmed by the security situation.”⁵⁷⁶

681. In its observations on the present report, the State considered it opportune to clarify that according to Article 332 of the Constitution, the citizen security agencies are civilian in

⁵⁷³ Decree No. 6.239, with the Scope, Effect, and Force of Organic Law on the Bolivarian National Armed Forces, published in Special Official Gazette No. 5.891 of July 31, 2008.

⁵⁷⁴ Published in Official Gazette No. 37.594 of December 18, 2002.

⁵⁷⁵ On June 2, 2003, Resolution No. DG-21146 created the National Guard’s Urban Security Command, which was given responsibility for conducting public security operations in the geographical areas of the country with the highest crime rates, in order to assist in the pursuit of the national government’s social and security objectives.

⁵⁷⁶ Response of the Venezuelan State to the questionnaire on citizen security and human rights. February 1, 2008, p. 7.

nature. Additionally, it reported that “the participation of the National Armed Force in public order can only be used in situations of national emergency or security of the nation.” It also stated that “all the components of the Venezuelan armed force have special training and courses on human rights so that they know how to treat citizens.”⁵⁷⁷

682. The Commission has said that in a democratic system, a clear and precise separation is needed between domestic security, as a function of the police, and national defense, as a function of the armed forces,⁵⁷⁸ since they are two agencies with substantial differences in the purposes for which they were created and in their training and skills. In the IACHR’s opinion, the history of the Hemisphere shows that the involvement of the armed forces in matters of domestic security is generally accompanied by human rights violations amid acts of violence, which means that the participation of the armed forces in matters of domestic security should be avoided.⁵⁷⁹

683. Since the armed forces lack appropriate training for the control of internal security, the task of combating domestic insecurity, crime, and violence should be assigned to an efficient civilian police force that respects human rights.⁵⁸⁰ It is vital that the armed forces do not participate in citizen security activities and that when they do so, in exceptional circumstances, they remain subordinate to civilian authorities. The IACHR therefore calls again on the Venezuelan State to amend its laws that allow the armed forces to participate in matters of domestic security and to take all steps necessary to ensure an effective separation between its domestic and external security agencies.

684. The Commission has also noticed the provisions that establish the joint responsibility of the State and society in the comprehensive security and defense of the nation. Under Article 326 of the Constitution:

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

685. Similarly, Article 5 of the Organic National Security Law provides that:

The State and society are jointly responsible for the comprehensive security and defense of the nation, and the various activities they carry out in the economic, social, political, cultural, geographical, environmental, and military arenas shall be aimed satisfying the national interests and objectives set out in the Constitution and in law.

⁵⁷⁷ Bolivarian Republic of Venezuela. Ministry of Popular Power for Foreign Affairs. State Agent for Human Rights. Observations on the Draft Report *Democracy and Human Rights in Venezuela*. Note AGEV/000598 of December 19, 2009, pp. 79 and 80.

⁵⁷⁸ IACHR. *Justice and Social Inclusion: The Challenges of Democracy in Guatemala*. (Available in Spanish only). December 29, 2003, para. 118.

⁵⁷⁹ IACHR. *Report on the Situation of Human Rights in Venezuela*. October 24, 2003, para. 272.

⁵⁸⁰ IACHR. *Justice and Social Inclusion: The Challenges of Democracy in Guatemala*. (Available in Spanish only). December 29, 2003, para. 113.

686. As the Commission has noted, national security as a function of the state's defense against external aggression is a duty of the state, which has a monopoly on the use of public force. Therefore, this duty cannot be extended to civil society; indeed, it is not even feasible to place the latter on an equal plane with respect to this duty of the state. The state may receive cooperation from civil society on certain security matters, but that is not to say that possession of and responsibility for such a duty may reside also with institutions alien to the state.⁵⁸¹

687. In the IACHR's opinion, the involvement of civil society organizations should be limited to the formulation, implementation, monitoring, and evaluation of security programs and policies. In light of these considerations, the Commission recommended in 2005 that Venezuela amend Article 326 of the Constitution and Article 5 of the Organic National Security Law⁵⁸² as regards the joint responsibility of society and the State for security matters. Since that recommendation has not yet been met, the IACHR reiterates it in this report.

688. In its observations on the present report, the State once again emphasized that "coresponsibility between the State and Venezuelan society is one of the fundamental principles underlying our Constitution, according to which the State has its specific duties and responsibilities and the citizens have some rights and obligations to fulfill in public affairs. Giving society an opportunity to consolidate a social state of law and justice aids in the consolidation of the fundamental social rights, such as nutrition, education, health, employment, and even the defense and security of the nation."⁵⁸³

689. More recently, the Executive Branch of government, using its power to legislate by decree, has enacted decree-laws with provisions that apply to citizen security – such as the Decree with the Scope, Effect, and Force of Organic Law on the Police Service and the National Police Force⁵⁸⁴ and the Decree with the Scope, Effect, and Force of Organic Law on the Bolivarian National Armed Forces⁵⁸⁵ – and the Commission will study the main effects of these in the following paragraphs.

690. In the drafting of the Organic Law on the Police Service and the National Police Force, it should be noted that several of the recommendations set out in the final report of the National Police Reform Commission (CONAREPOL, by its Spanish acronym) were taken into account, and that the Reform Commission involved a large degree of civil society participation. The Commission has been informed that civil society organizations enjoyed extensive participation in the discussions within that Commission, but that they were not allowed the same level of participation when the Organic Law on the Police Service and the National Police Force was debated and that not all the CONAREPOL recommendations were included. Although the Commission believes that it would have been good for the civil society organizations involved in the CONAREPOL process to have

⁵⁸¹ IACHR. *Report on the Situation of Human Rights in Venezuela*, October 24, 2003, paras. 262 and 264.

⁵⁸² IACHR. *Report on the Situation of Human Rights in Venezuela*, October 24, 2003, para. 311, recommendation 1.

⁵⁸³ Bolivarian Republic of Venezuela. Ministry of Popular Power for Foreign Affairs. State Agent for Human Rights. Observations on the Draft Report *Democracy and Human Rights in Venezuela*. Note AGEV/000598 of December 19, 2009, p. 76.

⁵⁸⁴ Decree No. 5.895 with the Scope, Effect, and Force of Organic Law on the Police Service and the National Police Force, published in Special Official Gazette No. 5.880 of April 9, 2008.

⁵⁸⁵ Decree No. 6.239, with the Scope, Effect, and Force of Organic Law on the Bolivarian National Armed Forces, published in Special Official Gazette No. 5.891 of July 31, 2008.

participated in the discussion on the law that was adopted following the Commission's recommendation, it believes that their contribution in drawing up the National Commission's recommendations ensured the inclusion of a series of regulatory advances in the Organic Law on the Police Service and the National Police Force.

691. The Commission notes that this organic law aims to renovate the police system, with a complete redesign of the organization, structure, and functioning of the national, state, and municipal police forces. The Commission applauds this law's unification of police education, training, and technical assistance at the different territorial levels and its setting the groundwork for the design of a national policy governing the use of force. It is also positive that the law establishes the civilian nature of the police service,⁵⁸⁶ thus breaking the trend towards the militarization of social control⁵⁸⁷ and complying with the transitory provision of the Constitution requiring the executive branch to organize the creation of a national civilian police force.

692. The State has pointed out that this law regulates the appropriate use of force and the registration of firearms, and that it creates two ministerial councils for the formulation and implementation of public policies for policing, prevention, and citizen security: the Police System Council and the Prevention and Council for Prevention and Citizen Security.⁵⁸⁸ The Commission also applauds other provisions of this law including: the creation, within the Ministry of the Interior and Justice, of an office for permanently evaluating the performance of all police departments, including their compliance with human rights standards (Article 18); the assignment of an important role in police supervision to the citizenry (Article 77); and the creation of internal affairs units within all police forces, along with independent disciplinary units (Article 80).

693. Finally, the Commission calls for the implementation of the transitory provisions of the Organic Law on the Police Service and the National Police Force whereby the regulations and resolutions necessary for the enforcement of this Law should already have been enacted, and a Police Function Statute should also have been drawn up and enacted.

694. As regards the Organic Law of the Bolivarian National Armed Forces, the Commission notes that according to Article 1, the law is intended to "establish the principles and provisions governing the organization, functioning, and administration of the Bolivarian National Armed Forces, within the framework of joint responsibility between the State and society, as a foundation for the security of the Nation, in line with the supreme goals of preserving the Constitution of the Bolivarian Republic of Venezuela and the Republic." The IACHR reiterates its comments in earlier paragraphs regarding the fact that national security is the responsibility of the State, in which the use of public force is invested, and that placing society on an equal footing with the State in its duty of guaranteeing national security is not compatible with human rights standards.

695. The Commission has received expressions of concern from various civil society organizations regarding this law,⁵⁸⁹ particularly the creation, under Article 43, of the National

⁵⁸⁶ Organic Law on the Police Service and the National Police Force, Article 6: "The police service is civilian and professional in nature, which can be seen in functional terms in its command structure, personnel, leadership, structure, culture, strategies, tactics, equipment, and provisions."

⁵⁸⁷ Prior to these reforms, Venezuela's police forces had a significant military component, and leadership within the command structure was in the hands of active or retired military officers.

⁵⁸⁸ Information submitted to the IACHR by the State. *Hearing on Citizen Security and Violence in Venezuela*, 133rd Period of Sessions, October 28, 2008.

⁵⁸⁹ Document presented at the 133rd Period of Sessions of the IACHR, during the *Hearing on the Situation of Institutional and Human Rights Guarantees in Venezuela*.

Bolivarian Militia as a “special body organized by the Venezuelan State, comprising the Military Reserve and the Territorial Militia, separate from the Bolivarian National Armed Forces in the comprehensive defense of the Nation, to assist in guaranteeing its independence and sovereignty.”

696. The law states that the Bolivarian National Militia is under the direct command of the President of the Republic and, according to Article 44, its mission is to “train, prepare, and organize the people for comprehensive defense in order to complement the level of operational readiness of the Bolivarian National Armed Forces and to contribute to the maintenance of the domestic order, security, defense, and comprehensive development of the Nation, with the purpose of assisting the independence, sovereignty, and integrity of the Nation’s geographical space.”

697. In connection with this, the State has pointed out that the Organic Law of the National Bolivarian Armed Forces provides for the creation of the General Command of the Bolivarian National Militia, with the purpose of “complementing the Bolivarian National Armed Forces in the comprehensive defense of the Nation, to assist in guaranteeing its independence and sovereignty.” As reported by the State, the Bolivarian National Militia was created as a symbol of fusion between the military and the civilian spheres to enable citizens to enlist in the military for a period of time and then, upon return to civilian life, to contribute their knowledge, organizational abilities, and discipline to the development of the Nation. The State also explains that the Bolivarian National Militia is intended to complement the active forces of the Bolivarian National Armed Forces in discharging its duties, to provide replacements for its units and other activities assigned to it, and to participate in national development and in cooperation for maintaining domestic order. The Bolivarian National Militia also participates actively in economic, social, political, cultural, geographical, environmental, and military development, and in any activity that helps exalt our beloved homeland.⁵⁹⁰

698. In addition, in a document published to inform the populace about the contents of this and other enabling laws, the State said that these provisions “transcend the idea that separates ‘the military’ (the armed forces) and ‘the people,’ by promoting the joint responsibility of citizens in the defense of the nation.”⁵⁹¹ It also explained that “efforts have been made to demonize militias, which actually comprise the current reserves plus the people willing to defend their revolution [... and that] some despotic governments refrain from incorporating their peoples into their defense strategies, out of fear of losing power through the strength of those people.”⁵⁹²

699. The Commission notes with extreme concern that, as the State has reported, citizens receive military training through the Bolivarian National Militia and then return to civilian life to cooperate with the maintenance of domestic order. The IACHR emphatically points out that military training is not appropriate for controlling domestic security, and that fighting violence domestically must solely be the task of a properly trained civilian police force that acts in strict compliance with human rights. In the Commission’s view, citizens who receive military training must not be used for internal defense, and neither should the role of society vis-à-vis national security be distorted.

⁵⁹⁰ State’s response to the questionnaire analyzing the situation of human rights in Venezuela, August 13, 2009, p. 73.

⁵⁹¹ Ministry of Popular Power for Communication and Information: *Decálogo de las Leyes Habilitantes* (Decalogue of Enabling Laws). September 2008, p. 22. Available in Spanish at: <http://www.gobiernoenlinea.ve/noticias-view/shareFile/DECALOGOLEYES.pdf>.

⁵⁹² Ministry of Popular Power for Communication and Information: *Decálogo de las Leyes Habilitantes* (Decalogue of Enabling Laws). September 2008, pp. 22-23. Available in Spanish at: <http://www.gobiernoenlinea.ve/noticias-view/shareFile/DECALOGOLEYES.pdf>.

700. The IACHR also notes with concern the vague language used in defining the structure, functions, and control of these militias which, in accordance with the Law and as explained by the State, are to participate in any activity that helps exalt the homeland and are called on to defend the Bolivarian Revolution, which means that members of the Bolivarian National Militia may make use of force without clearly defined constraints. In consideration of the foregoing, the Commission recommends amending all those provisions that allow the Bolivarian National Militia to be involved in matters of domestic security.

701. Regarding the other piece of security legislation enacted by means of an enabling law, the Decree Law on the National Intelligence and Counterintelligence System,⁵⁹³ the Commission applauds the repeal of this legislation on June 10, 2008,⁵⁹⁴ one month after its enactment. This law, which required all people to assist the intelligence services, provided in Article 16 for the creation of a nationwide system of informers and, in Article 20, allowed the obtaining of information, documents, and objects inherent to the security, defense, and comprehensive development of the nation without the requirement of a court order. As it stated in its 2008 Annual Report,⁵⁹⁵ the Commission was happy to receive the news that the law had been repealed and that it was the President's intention never again to include provisions of that kind in Venezuela's laws.⁵⁹⁶

702. In spite of recognizing that one of this law's main problems was that it allowed intelligence gathered without a court order to be used as evidence at trial, in September 2009 the National Assembly of Venezuela approved a partial amendment of the Organic Criminal Procedural Code that expands the authorities' powers to record and use private conversations in legal proceedings without requiring a court order. The amendment includes a provision that requires any public or private company or body that provides telecommunications, banking, or financial services to create "24/7 units" to process and submit to the Office of the Attorney General such information as it may require, in real time if so requested, and without requiring authorization from a judge.⁵⁹⁷ Some

⁵⁹³ Decree 6.067 with the Scope, Effect, and Force of Law on the National Intelligence and Counterintelligence System, published on May 28, 2008, in Official Gazette No. 38.940 (Repealed).

⁵⁹⁴ The Office of the President of the Republic issued Decree 6.156 with the Scope, Effect, and Force of Law Repealing the Decree with the Scope, Effect, and Force of Law on the National Intelligence and Counterintelligence System. The repeal came into effect on June 10, with its publication in the Official Gazette.

⁵⁹⁵ IACHR. *Annual Report 2008*. Chapter IV: Human Rights Developments in the Region, Venezuela, para. 423.

⁵⁹⁶ "The President of the Bolivarian Republic of Venezuela, Hugo Chávez Frías, announced this Tuesday that the National Intelligence and Counterintelligence Law had been repealed. 'I recognize that mistakes were made in this law. Accordingly, that law is repealed so that another can take its place' [...] Chávez said that Article 16 'was the worst. It is a disaster! I guarantee you that so long as I'm here, an article like this can never be enforced. Hence, my decision is to repeal the entire law and let the National Assembly draft a law that organizes the various intelligence services and the relations among them.' The President also complained about Article 20, which concerns the legality of the evidence. 'This article is unacceptable; it does not suit our purposes and is contrary to the Constitution, there's no doubt about that.' That article was the target of heavy criticism because it allowed proceedings without a court order 'when national security was at stake,' and allowed evidence to be collected during those proceedings, which would then be introduced into legal cases." Ministry of the Popular Power for Communications and Information, news report on YVKE. *Presidente Chávez anunció la derogación de la Ley de Inteligencia y Contrainteligencia* (President Chávez announces the repeal of the Intelligence and Counterintelligence Law). June 10, 2008. Available in Spanish at: <http://www.radiomundial.com.ve/yvke/noticia.php?6592>.

⁵⁹⁷ Law Partially Amending the Organic Criminal Procedural Code, published in Official Gazette 5.930 on September 4, 2009. Article 13: "Article 219 is amended as follows: 'Article 219: In accordance with the law, the intercepting or recording of private communications may be ordered, be they conducted in person, over the

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human rights organizations have said that the ultimate goal of this legislation is to monitor political dissidents.

703. In connection with this amendment, the IACHR believes it should remind the State that intelligence and investigation activities must at all times respect people's fundamental rights, including their right to privacy and to due legal process; the law must therefore ensure that limits are placed on the ability to intercept private communications, and it must require judicial control over such measures.

704. At the same time, the Commission applauds the criminalization of the offense of contract killing under Article 12 of the Law against Organized Crime.⁵⁹⁸ The State explains that this legislation is intended to prevent, investigate, prosecute, criminalize, and punish offenses related to organized crime, as provided for in the Constitution and in the applicable international treaties.⁵⁹⁹

705. It is also important to note that, with the aim of controlling the performance of public officials charged with law enforcement, the Ministry of Popular Power for the Interior and Justice adopted the Code of Conduct for Civilian and Military Officials Performing Police Functions at the National, State, and Municipal Levels.⁶⁰⁰ According to the State, this code of conduct is based on constitutional principles and international human rights protection instruments, and it reaffirms that policing is a public, civilian service.⁶⁰¹

706. At the same time, the Commission notes that although Venezuela has made some regulatory progress with prohibiting torture, particularly in the 1999 Constitution⁶⁰² and the Organic Criminal Procedural Code,⁶⁰³ and although it has ratified the most important international torture

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telephone, or in any other way, the contents of which shall be transcribed and added to the proceedings. The original sources of the recording shall be preserved, ensuring their inalterability and subsequent identification. [...]

Any public or private company or body that provides telecommunications, banking, or financial services shall be obliged to furnish the information requested by the Attorney General's Office or, in cases of need or urgency, by the authorities charged with pursuing crimes, and this information shall be furnished within the deadlines set or in real time. Public or private bodies that provides telecommunications shall establish telecommunications units, operating 24 hours a day, seven days a week, to process and submit in real time the information requested by the Attorney General's Office or the competent authorities."

⁵⁹⁸ Published in Official Gazette No. 38.281 of September 27, 2005. Article 12 reads as follows: "A person who kills another on the orders or instructions of an organized crime group shall receive a prison term of between twenty-five and thirty years. The same punishment shall apply to those who give instructions for such killings, and to the members of the organization that issued and processed the order."

⁵⁹⁹ State's response to the questionnaire analyzing the situation of human rights in Venezuela, August 13, 2009, pp. 69 - 70.

⁶⁰⁰ Ministry of Popular Power for the Interior and Justice. Resolution No. 364, published in Official Gazette 38.527 on September 21, 2006.

⁶⁰¹ State's response to the questionnaire analyzing the situation of human rights in Venezuela. August 13, 2009, p. 64.

⁶⁰² Article 46.4 of the Constitution of the Bolivarian Republic of Venezuela provides that "any public official who, by reason of his official position, inflicts mistreatment or physical or mental suffering on any person, or instigates or tolerates such treatment, shall be punished in accordance with the law." In addition, Article 49.5 states that "a confession shall be valid only if given without coercion of any kind."

⁶⁰³ Venezuela's Organic Criminal Procedural Code prohibits torture, but only in connection with the actions of investigating police authorities (Article 117.3); it recognizes the right of people facing charges not to be subjected to torture or other cruel, inhuman, or degrading treatment in violation of their personal dignity (Article

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conventions, the crime of torture is not adequately covered by the Venezuelan Penal Code, which only refers to cases in which the victims have been formally arrested and are in the custody and under the responsibility of the State,⁶⁰⁴ which poses problems in punishing those guilty of the practice. Moreover, the State has not met the obligation set down in the fourth transitory provision of the Constitution,⁶⁰⁵ whereby during the first year after its installation (which occurred in August 2000), the National Assembly had to enact legislation on punishing torture, either through a special law or by reforming the Penal Code. In its observations on the present report, the State recognized that there is a legislative delay in relation to compliance with this transitory disposition and stated that this has been an “involuntary oversight” by the National Assembly.⁶⁰⁶

707. As of the date of this report, Venezuela has not yet enacted legislation to punish and prevent torture. The IACHR, in its *Report on the Situation of Human Rights in Venezuela* of 2003, noted with particular concern the legislature’s delay in addressing torture⁶⁰⁷ and it recommended that the State incorporate in its domestic law the exclusion of any evidence obtained under torture or other cruel, inhuman, or degrading treatment, in accordance with the Inter-American Convention to Prevent and Punish Torture.⁶⁰⁸ In this report, the Inter-American Commission again recommends that the State of Venezuela enact appropriate legislation on the crime of torture, in light of the international legal doctrine that absolutely prohibits all forms of torture, both physical and psychological, a principle that now belongs to the realm of the *ius cogens*⁶⁰⁹ and that forms part of the international treaties against torture of the OAS and the UN that the State of Venezuela has ratified.

708. The Commission is aware of the tension that exists between, on the one hand, the State’s obligation of maintaining order and security and, on the other, people’s rights. As a result,

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125), which means that only persons who have been formally charged with a crime are protected; and it prohibits the use of evidence based on information obtained through torture, mistreatment, coercion, threats, or any other means “that undermines people’s will or violates their basic rights” (Article 197).

⁶⁰⁴ Penal Code of Venezuela, Article 182: “Any public official responsible for the custody or transfer of any arrested or convicted person who commits arbitrary acts against that person or subjects them to actions not authorized by the applicable regulations shall be punished by a prison term of between fifteen days and twenty months. The same punishment shall apply to any public official with authority over such a person, by reason of his functions, who commits with that person any of the actions described.

A prison term of between three and six years shall apply to suffering, offences to individual dignity, humiliation, torture, or physical or moral abuses committed against a detained person by his guards or jailers, or to persons giving the order for such actions, in breach of the individual rights enshrined in Article 60.3 of the Constitution.”

⁶⁰⁵ Constitution of the Bolivarian Republic of Venezuela, Fourth Transitory Provision: “Within one year of its installation, the National Assembly shall approve: 1. Legislation on penalties for torture, either in the form of a special law or by reforming the Criminal Code.”

⁶⁰⁶ Bolivarian Republic of Venezuela. Ministry of Popular Power for Foreign Affairs. State Agent for Human Rights. Observations on the Draft Report *Democracy and Human Rights in Venezuela*. Note AGEV/000598 of December 19, 2009, p. 82.

⁶⁰⁷ IACHR. *Report on the Situation of Human Rights in Venezuela*. December 23, 2003, para. 353.

⁶⁰⁸ IACHR. *Report on the Situation of Human Rights in Venezuela*. December 23, 2003, para. 364, Recommendation 8.

⁶⁰⁹ I/A Court H.R., *Case of the Gómez Paquiyauri Brothers v. Peru*. Judgment of July 8, 2004. Series C No. 110, para. 112; and *Case of Maritza Urrutia v. Guatemala*. Judgment of November 27, 2003. Series C No. 103, para. 92.

international human rights law, and the agencies tasked with enforcing it, have striven to define provisions and criteria that strike the necessary balance. In light of those provisions and criteria, and of the comments offered in this section, the IACHR believes that the current regulatory framework in Venezuela is not conducive to guaranteeing its inhabitants citizen security within a framework of respect for their basic rights, and it recommends that the State pursue the necessary reforms to ensure that its laws governing the actions of security agencies respect its internationally-acquired human rights commitments.

b. State policies and programs to guarantee citizen security

709. In addition to an adequate regulatory framework, the prevention and reduction of crime and other acts of violence demands the implementation of actions, policies, and programs that are both effective and respectful of human rights.

710. The State has told the Commission that “the public policies that will enable us to comprehensively tackle crime are those being enforced by the revolutionary Bolivarian government of President Hugo Chávez Frías.”⁶¹⁰ In this regard, at the hearing held at the Inter-American Commission on October 28, 2008,⁶¹¹ the State argued that crime was an epidemic that affected, without exception, all the nations of the Americas, and that it was due to structural factors such as poverty, inadequate education, and the breakdown of the family.

711. With specific reference to Venezuela, the State indicated that public insecurity had been a national problem since the early 1980s, and that since the triumph of the Bolivarian Revolution in late 1998, citizen security is seen in its broadest dimensions in order to counter the consequences of exclusion. Thus, the State reported that it has carried out “actions that strengthen and guarantee security in health, in education, in employment, in peaceful coexistence, and in other areas.” In particular, it explained that “with the establishment of the Social Missions, essentially intended to resolve various key problems of Venezuelan society that have accrued over more than thirty years, very successful and prioritized work began on the historical causes that create and drive such conflicts.” The State highlighted its achievements in poverty reduction, the human development index, and investments in education and health. In the State’s view, offering work, education, health, and social protection leads to an increase in the population’s quality of life, the effects of which can be seen in the gradual reduction of such economically-motivated crimes as robberies and theft.⁶¹²

712. The Commission concurs with the State on the relationship that exists between higher living standards and lower rates of crime and violence. At the same time, the Commission applauds the specific steps taken by the State in connection with citizen security. As noted in the previous section, one important initiative by the State was the creation, in April 2006, of the National Police Reform Commission (CONAREPOL, by its Spanish acronym). The IACHR duly recorded its pleasure at the CONAREPOL’s creation,⁶¹³ the aim of which was to construct, through a process of broad consultation with the community in general and the social and institutional stakeholders

⁶¹⁰ Response of the Venezuelan State to the draft of Chapter IV on Venezuela, received by the IACHR on December 21, 2007, p. 66.

⁶¹¹ Information furnished by the State to the IACHR during the *Hearing on Citizen Security and Violence in Venezuela*. 133rd Period of Sessions, October 28, 2008.

⁶¹² State’s remarks at the *Hearing on Citizen Security and Violence in Venezuela*, held on October 28, 2008, during the 133rd Period of Sessions of the Inter-American Commission on Human Rights.

⁶¹³ IACHR. *Annual Report 2007*. Chapter IV: Human Rights Developments in the Region. Venezuela, para. 293.

involved, and through a rigorous analysis of the existing police forces, a new policing model to address the challenges to be met by the police in the process of democratization and social inclusion.

713. CONAREPOL issued its report in 2007, noting the need for police reform in the following terms:

[...] the high levels of police violence, the inability of the forces to tackle crime, and the frequent participation of police officers in crimes imposed an unavoidable need for reforms. In 2005, the national crime rate was reported as 877 per 100,000 inhabitants, with 37 murders per 100,000 people, one of the highest figures in Latin America (Provea, 2006). Between 2000 and 2006, according to figures provided by the Attorney General's office, the number of deaths at police hands exceeded 5,600 cases. In the months immediately prior to the start of the reform process, police officers were involved in at least three cases that outraged public opinion: the June 2005 deaths of three young men in Barrio Kennedy, Caracas, killed by judicial police officers who confused them with the killers of one of their colleagues; and the kidnapping and murder of three children and their driver, and the abduction and death of a businessman of Italian origin, both of which took place in March 2006. That series of factors underscores the need for a reform process that has been postponed on too many occasions.⁶¹⁴

714. CONAREPOL issued its recommendations in May 2007, the first of which addressed the need to enact legislation to regulate the police system as a whole, along with other laws covering the police forces in line with the model proposed by the National Commission in its recommendations. As a result of this reform initiative, on February 28, 2008, under enabling legislation, the President enacted the Decree of the Organic Law of the National Police Service and the National Police Force, which was already analyzed by the IACHR in the previous section. However, according to information received by the Commission, other recommendations made by CONAREPOL have not been duly implemented.⁶¹⁵

715. At the same time, with the aim of enforcing the provisions of the Decree with the Scope, Effect, and Force of Organic Law of the National Police Service and the National Police Force, the Police System Commission (COMISIPOL, by its Spanish acronym) was created on November 10, 2008, with the task of carrying out the transformation process and establishing a new policing system in Venezuela. According to the State's reports,⁶¹⁶ the COMISIPOL has been operating since 2009 under the guidance of the Ministry of the Interior and Justice and it has been tasked with advising and implementing public policies related to the police service, on a temporary, interinstitutional, technical assistance, consultative, and participatory basis.

716. The State also reported that the Ministry of Popular Power for the Interior and Justice created a strategic security plan, called the Citizen Security Plan, to prevent and control insecurity. According to the information furnished by the State, this plan initially operated in the

⁶¹⁴ National Police Reform Commission. *La Policía Venezolana, Desarrollo Institucional y Perspectivas de Reforma al Inicio del Tercer Milenio* (The Venezuelan Police, Institutional Development, and Prospects for Reform at the Start of the Third Millennium). Vol. II. Luis Gerardo Galbaldón and Andrés Antillano (eds.), Caracas, 2007, p. 252.

⁶¹⁵ Information received from the petitioners at the *Hearing on Citizen Security and Violence in Venezuela*. 133rd Period of Sessions, October 28, 2008.

⁶¹⁶ State's response to the questionnaire analyzing the situation of human rights in Venezuela, August 13, 2009, p. 66.

Caracas Metropolitan District, the area with the highest numbers of reported crimes, and it has gradually been extended nationwide. It began in January 2008 in the Caracas Metropolitan Area with the participation of several agencies, including the Office of the Human Rights Ombudsman, which implemented mechanisms to oversee its deployment and to ensure that the police officers deployed acted in accordance with human rights. Among these mechanisms, guidelines for action were designed and inspection forms were drawn up for preventive custody centers and police checkpoints, which served to guide the actions of all the Deputy Ombudsmen's Offices in the nation's states.⁶¹⁷

717. The State reported that a series of inspection operations were carried out in the early morning hours, in order to monitor police actions at checkpoints in the various municipalities and to examine the functioning of preventive custody centers. At those centers, information was gathered about the general infrastructure conditions, daily incident books, lists of detainees, the contents of arrest and seizure records, the physical conditions of detainees, their legal status, and the number of individuals held in each cell. The operation included interviewing the detainees. At the police checkpoints, information was gathered about the officers deployed, checking such details as their ID, uniforms, equipment, weapons, vehicles, and the time spent at the checkpoint.⁶¹⁸

718. The result of these inspections was a report containing a general diagnosis of the findings, which led to the preparation of observations and recommendations based on respect for human rights, subsequently sent to authorities at the ministries of the Interior and Justice, Health and Social Development, and Participation and Social Protection, and to the municipal authorities of Sucre, Baruta, and Libertador.⁶¹⁹

719. Based on this Pilot Plan in Caracas, the State indicated that it would be implementing the Citizen Security Plan at the national level, in order to ensure citizen security through policies aimed at upholding social peace, balanced territorial development, and the stability of the nation, and to preserve and strengthen democracy. The goal of the plan, according to the information the State submitted to the IACHR, is to reduce insecurity by resolving two problems: the generalized perception of insecurity among the population, and the high prevailing crime rates.⁶²⁰

720. The Commission looks favorably on this effort by the State to control insecurity and, in particular, to analyze the situation and implement recommendations based on respect for human rights. Nevertheless, the IACHR has also received troubling reports about the implementation of the pilot security plan in Caracas. First of all, the information received by the IACHR indicates that the plan was launched with 2,800 participants: 1,450 officers of the Metropolitan Police; 800 members of the National Guard; 200 officers from PoliMiranda; 80 from the Scientific, Criminal, and Criminalistic Investigations Corps; and 100 Land Transportation Police, all under the leadership of Regional Commander No. 5 of the National Guard.⁶²¹

⁶¹⁷ Bolivarian Republic of Venezuela. Citizens' Branch of Government. Office of the Human Rights Ombudsman. *Annual Report 2008*, Caracas, August 2009, p. 205.

⁶¹⁸ Bolivarian Republic of Venezuela. Citizens' Branch of Government. Office of the Human Rights Ombudsman. *Annual Report 2008*, Caracas, August 2009, p. 205.

⁶¹⁹ Bolivarian Republic of Venezuela. Citizens' Branch of Government. Office of the Human Rights Ombudsman. *Annual Report 2008*, Caracas, August 2009, p. 205.

⁶²⁰ State's response to the questionnaire analyzing the situation of human rights in Venezuela. August 13, 2009, p. 59.

⁶²¹ COFAVIC, *Venezuela: Citizen Security and Human Rights*, p. 12. Document presented to the IACHR at the Hearing on the Situation of Institutionality and Human Rights Guarantees in Venezuela. 131st Period of Sessions, March 7, 2008.

721. In connection with this, the Commission reiterates its comments in earlier paragraphs stating that the National Guard, because of its military training and dependency on the Armed Forces, should not participate in domestic security operations or direct such efforts. The training given to the forces responsible for external security often emphasizes fighting and defeating an enemy and, consequently, it is inappropriate for ensuring citizen security at the domestic level. The approach to security of the members of the National Guard was made apparent in the installation of additional checkpoints to control insecurity in Plaza Miranda and Plaza Venezuela in the city of Caracas. During the operation, the Chief of the General Staff of National Guard Regional Command No. 5 addressed the participating police officers and soldiers and said: "We cannot trust anyone. Any criminal who dares to confront us will suffer the strength of the institution. I want, if possible, to eliminate them. We have to ensure we are respected."⁶²²

722. The IACHR has also received information about abuses committed by members of the National Guard during the implementation of the Caracas Security Plan. For example, the Commission learned of the alleged murder of Carlos Eduardo Leal Hernández, aged 34, at the hands of National Guard officers participating in this plan, which occurred only a few weeks after its launch in January 2008. According to the victim's mother, her son went out to buy cigarettes and, as he was on his way back, ten members of the National Guard involved in the Caracas Security Plan ordered him to stop; as he failed to respond, they shot him in the back.⁶²³ Cases like these underscore the Commission's concern about the National Guard's participation in activities that should be the sole responsibility of the police. The IACHR reiterates that States must not confuse the concepts of public security and national security, when there can be no doubt that common crime – regardless of how serious it is – does not pose a military threat to state sovereignty.⁶²⁴

723. In relation to these facts, in its observations on the present report, the State reported that it had "made advances in the training and preparation of the new National Guard." In this sense, it emphasized that the curriculum of the School for the Training of Officials of the National Guard contains a mandatory course on human rights and international humanitarian law and in this way it has ensured that the members of the National Armed Forces guarantee, in all their professional acts, compliance with human rights.⁶²⁵

724. In addition, the State has also told the Commission about other initiatives intended to tackle public security, such as the National Strategy for Coexistence and Citizen Security, which is a security system intended to minimize the occurrence of crime in the country. According to the State, this strategy involves measures to reform the police institutions and to reincorporate offenders and outlaws into society. The State also noted that it has drawn up an inventory of the

⁶²² El Universal. *Delincuente que nos enfrente va a sufrir nuestro rigor* (Criminals who confront us will suffer our strength). Available in Spanish at: http://www.eluniversal.com/2008/01/18/imp_sucgc_art_delincuente-que-nos_676559.shtml.

⁶²³ COFAVIC, *Venezuela: Citizen Security and Human Rights*, p. 13. Document presented to the IACHR at the Hearing on the Situation of Institutional and Human Rights Guarantees in Venezuela. 131st Period of Sessions, March 7, 2008. See also: El Universal. *En menos de una semana mataron a dos de mis hijos* (In less than one week they killed two of my children). January 28, 2008. Available in Spanish at: http://noticias.eluniversal.com/2008/01/28/sucgc_art_en-menos-de-una-sem_690317.shtml.

⁶²⁴ *Report on the Situation of Human Rights in Mexico*. OEA/Ser.L/V/II. 100, Doc. 7 rev. 1, September 24, 1998, para. 403.

⁶²⁵ Bolivarian Republic of Venezuela. Ministry of Popular Power for Foreign Affairs. State Agent for Human Rights. Observations on the Draft Report *Democracy and Human Rights in Venezuela*. Note AGEV/000598 of December 19, 2009, pp. 83 and 84.

weapons held by the security forces, which also included digital ballistics testing. It also described a plan to create a deposit for holding weapons that have been seized or are being used as evidence in court proceedings, accessible only to judges and prosecutors. The final phase of this project includes a plan to disarm the population, and to extend gun controls over the population in general.⁶²⁶

725. The State also informed the IACHR of the existence of the “National Community Prevention Plan,” the program “The Police Go to School,” the “Sowing Values for Life: Comprehensive National Prevention Plan,” the “Disarmament Plan,” as well as other preventive strategies. The State also reported that it has placed high priority on the preparation of the “Manual of Provisions and Procedures for the Progressive and Differentiated Use of Police Force,” the “Manual of Rules for Detainees’ Guarantees,” the “Manual on the Structure and Functioning of the Community Police Service,” and the Statute of Police Functions, all with the aim of further pursuing its fight against crime.⁶²⁷

726. In addition, the State reported it had conducted an awareness campaign to reject violence and reinforce the values of life, peace, solidarity, and coexistence. Among other activities, it described days on which programs to exchange war toys for educational toys and other educational and sporting supplies were organized, thereby educating Venezuelan families and raising their levels of awareness and joint responsibility in violence prevention.⁶²⁸ The Commission was also told about the introduction of telephone hotlines for complaints, and about various human rights information and education campaigns using pamphlets and informational leaflets.⁶²⁹

727. The State also reported the creation, pursuant to the Organic Law on the Police Service and the National Police Force, of the Community Police Service, intended to work hand-in-hand with local communities. The same law also regulates oversight of police management and of citizen participation in policing functions, establishing the mechanisms available to community councils and other grassroots organizations for creating, along with local police, plans and projects for citizen security, and for assessing and monitoring how the police perform their duties. The State also noted that it has promoted the development of facilities to encourage the creation of community organizations, such as the Comprehensive Prevention Committees, and to promote their participation on community councils as stakeholders with joint responsibility for public security matters.⁶³⁰

728. In connection with this, the IACHR has heard concerned comments stating that the aim of this is to transfer responsibilities of the State, such as citizen security, to the community councils. As the Commission was told, the interpretation has been that these councils are to be given policing functions, in that paragraphs 6 and 9 of Article 21 of the Community Council Law make them responsible for setting up Community Information Systems and for promoting the defense of the nation’s sovereignty and territorial integrity. In response, the State has argued that under the

⁶²⁶ State’s response to the questionnaire analyzing the situation of human rights in Venezuela. August 13, 2009, p. 60.

⁶²⁷ Information submitted to the IACHR by the State. *Hearing on Citizen Security and Violence in Venezuela*. 133rd Period of Sessions, October 28, 2008.

⁶²⁸ Information submitted to the IACHR by the State. *Hearing on Citizen Security and Violence in Venezuela*. 133rd Period of Sessions, October 28, 2008.

⁶²⁹ Information submitted to the IACHR by the State. *Hearing on Citizen Security and Violence in Venezuela*. 133rd Period of Sessions, October 28, 2008.

⁶³⁰ Information submitted to the IACHR by the State. *Hearing on Citizen Security and Violence in Venezuela*. 133rd Period of Sessions, October 28, 2008.

principle of joint responsibility enshrined in the Constitution, the Community Councils are to assist in tasks related to national security and defense.

729. The Commission again states that civil society can play an important collaborative role in certain security-related matters, as was shown with its participation in the CONAREPOL process. Certainly, it is useful to involve civil society organizations and community organizations in assessing police performance and in designing plans and projects for citizen security, since members of society have first-hand knowledge of the main issues affecting their security. However, the importance of this collaboration must not be confused with a joint responsibility for national security, the protection of which is the duty of those state agencies that society has entrusted with the use of force.

730. Finally, as regards organized crime, the State indicated that “it has been found that the increase in crime of contract killing is the result of the entry into the country of Colombian paramilitary gangs, which are carrying out targeted killings, particularly in the borderlands and in the center of the country. Similarly, there has been an increase in the number of abductions (express kidnappings) and in offences related to drug trafficking.”⁶³¹ According to the information received, to respond to the alert caused in Venezuela by Colombia’s plans to demobilize its irregular fighters, the executive branch has taken actions to minimize the incidence of crime in the borderlands and to effectively address the phenomena of abductions, contract killings, and drug trafficking. According to the information furnished by the State, great emphasis has been placed on strengthening the presence of the State in border regions, enhancing intelligence activities, and improving the operational capacity of all officials deployed in those areas.⁶³²

731. With regard to the information furnished by the State regarding the citizen security plans and projects undertaken in Venezuela, the State told the IACHR that “they indicate a clear resolve to reduce crime levels.”⁶³³

732. The Commission appreciates all the information received about the State’s efforts to implement policies for ensuring the security of its citizens from the effects of common and organized crime and dealing with possible abuses of force by state agents; the Commission notes, however, that in many cases, the State’s response to public insecurity has been inadequate and, on occasions, even incompatible with respect for human rights, particularly as regards matters involving participation by the Armed Forces in maintaining domestic order and the joint responsibility of society for security-related issues. Moreover, the IACHR has received no information about the specific results of these plans and projects and notes with concern that, as will be seen in the following section, violence statistics in Venezuela remain a cause for alarm.

2. Situation of violence and public insecurity

733. The Commission regrets that the State gave no response to the IACHR’s request for statistics on acts of violence affecting the citizenry contained in the questionnaire for analyzing the situation of human rights in Venezuela.⁶³⁴ In response to the IACHR’s request that the State

⁶³¹ State’s response to the questionnaire analyzing the situation of human rights in Venezuela. August 13, 2009, pp. 69 - 70.

⁶³² State’s response to the questionnaire analyzing the situation of human rights in Venezuela. August 13, 2009, pp. 69 - 70.

⁶³³ Response of the Venezuelan State to the draft of Chapter IV: Human Rights Developments in the Region on Venezuela, received by the IACHR on December 21, 2007, p. 67.

⁶³⁴ Questionnaire analyzing the situation of human rights in Venezuela. August 13, 2009, question 22.

submit its annual figures for violent crimes committed against citizens over the past five years, broken down by gender and socioeconomic level,⁶³⁵ the State merely returned the figures contained in the research conducted by the National Police Reform Commission, and so the most recent statistics submitted by the State cover the year 2005 and do not allow the information to be analyzed in accordance with the victims' gender and socioeconomic level.

734. The State's attitude underscores the comments made to the IACHR by civil society organizations, indicating how difficult it was to obtain official figures about levels of violence in Venezuela,⁶³⁶ as a result of which they have had to collect unofficial figures. The information made available to the Commission, at its hearings, from public information sources, and from the reports of state agencies such as the Office of the Human Rights Ombudsman, indicates a grave situation evidenced by the levels of common crime and of violence committed by state agents. Thus, 77% of the Venezuelan population believes that the main problem facing the country is insecurity.⁶³⁷

735. As for the official figures, the most recent data made available to Venezuelan human rights organizations by the Attorney General's Office are taken from that service's records for the period January to November 2007. Those figures report 17 cases of torture, 3,097 cases of criminal injury, 104 cases of harassment, 1,156 housebreakings, 449 threats, and 1,357 abuses of authority. The Commission also received statistical data from the State at the Hearing on Citizen Security and Violence in Venezuela held in October 2008. According to those figures, between January and September 2008 alone, there were 1,350 attempted robberies, 1,317 cases of attempted criminal injury, 690 attempted thefts, and 375 attempted murders, along with other crimes. For the same period, the government reported 13,257 individuals arrested, of whom 2,715 were caught *in flagrante delicto*.⁶³⁸ The IACHR has also received information emphasizing that, according to CICPC, in 2008 there were a total of 13,780 homicides, which is equivalent to an average of 1,148 homicides per month and 38 per day.⁶³⁹

736. According to information published by the Institute for Coexistence and Citizen Security Research (INCOSEC, by its Spanish acronym),⁶⁴⁰ "crime during the first quarter of 2009 shows a substantial increase that is particularly reflected in the factors associated with murders, violence against women and the family, vehicle robbery and theft, and kidnappings." Using statistics from the Attorney General's Office, the Institute states that in 2009, compared to the previous year, the homicide rate rose by 29% in Caracas and 31% in the country as a whole; in Caracas vehicle robbery and theft increased by 20%, and reported abductions rose by 68%. It also reports that in the capital, while the first quarter of 2008 closed with 654 homicides – in other words, an average of 218 killings

⁶³⁵ Questionnaire analyzing the situation of human rights in Venezuela. August 13, 2009, question 23.

⁶³⁶ For example, the most recent statistics on citizen security published by the National Statistics Institute (INE, by its Spanish acronym) are from the year 2003. Prior to that year, the INE web page contained data on crimes reported, cases heard, arrests made, and cases concluded, at both the state and national levels.

⁶³⁷ Venezuelan Data Analysis Institute. *Political Management and Situation Indicators, from August 27 to September 11, 2008*. Sample size: 1200 interviews; response to the question: What are the three main problems currently facing the country? The study can be downloaded in Spanish at: <http://www.vtv.gob.ve/detalle.php?id=4446&s=1>.

⁶³⁸ Information submitted to the IACHR by the State. *Hearing on Citizen Security and Violence in Venezuela*. 133rd Period of Sessions, October 28, 2008.

⁶³⁹ Information submitted by the petitioners to the IACHR. *Hearing on Democratic Institutionalism, Parapolice Groups, and Prisons in Venezuela*. 137th Period of Sessions, November 2, 2009.

⁶⁴⁰ INCOSEC. *Crime Situation, First Quarter 2009*. Available in Spanish at: <http://www.incosec.org/>.

a month and seven a day – the first quarter of 2009 reported a total of 844 homicides, for an average of 281 killings per month or nine every day.

737. The figures contained in the most recent reports on citizen security published by Venezuelan organizations are not based on official statistics, due to the difficulty of obtaining them. The 2008 annual report of PROVEA, which uses figures from the Peace Center of the Central University of Venezuela, notes a serious decline in civic coexistence in the country. As evidence for this, it reports that from January to September 2008 there were 23,169 robberies, 8.06% more than in the previous year. Abductions also increased, but at a faster rate: during the first nine months of 2008, 101.10% more cases were recorded than in the same period in 2007. Similarly, the national murder rate continues to rise, with an increase from 45 per 100,000 inhabitants in the year 2006 to 48 per 100,000 in 2007, when a national total of 13,236 homicides were recorded.⁶⁴¹

738. In examining acts of violence that affect the citizenry, an important distinction must be made between common crime and violent acts attributable to agents of the State, including police officers, militia members, the Armed Forces, and other security agencies. With respect to incidents directly attributable to the security forces, although the State did not respond to the IACHR's request information on the proportion of violent crimes committed by State agents,⁶⁴² it did report that, according to figures from the Ministry of Popular Power for the Interior and Justice, "20% of the crimes in Venezuela are committed by the police themselves."⁶⁴³

739. Neither did the State answer the request for information on the annual figures for deaths occurring in confrontations with the police over the past five years,⁶⁴⁴ although it did report that figures from the Attorney General's Office indicate that during 2008, a total of 509 killings occurred during confrontations or *ajusticiamientos*.⁶⁴⁵ (In Venezuela, arbitrary denials of the right to life through extrajudicial killings are generally known as "*ajusticiamientos*").⁶⁴⁶ In its observations on the present report, the State indicated that it does not attempt to deny that extrajudicial executions occur in Venezuela, but clarified that it did not recognize the statistics provided by human rights organizations, because of their unreliability.⁶⁴⁷

740. The State acknowledges that a preponderance of the reported extrajudicial killings and forced disappearances involve the police, chiefly state and municipal police forces, and it explains that these phenomena are the result of the structural problems that the Venezuelan State,

⁶⁴¹ PROVEA. *Situación de los Derechos Humanos en Venezuela Informe Anual Octubre 2007/Septiembre 2008* (Situation of Human Rights in Venezuela: Annual Report, October 2007/September 2008). December 10, 2008, p. 359.

⁶⁴² Questionnaire analyzing the situation of human rights in Venezuela. August 13, 2009, question 24.

⁶⁴³ State's response to the questionnaire analyzing the situation of human rights in Venezuela. August 13, 2009, p. 62.

⁶⁴⁴ Questionnaire analyzing the situation of human rights in Venezuela. August 13, 2009, question 25.

⁶⁴⁵ State's response to the questionnaire analyzing the situation of human rights in Venezuela, August 13, 2009, p. 62. The State submitted a chart showing the number of killings in each state; the total figure was calculated by the IACHR by adding up each state's numbers.

⁶⁴⁶ Response of the Venezuelan State to the draft of Chapter IV: Human Rights Developments in the Region on Venezuela, received by the IACHR on December 21, 2007, p. 68.

⁶⁴⁷ Bolivarian Republic of Venezuela. Ministry of Popular Power for Foreign Affairs. State Agent for Human Rights. Observations on the Draft Report *Democracy and Human Rights in Venezuela*. Note AGEV/000598 of December 19, 2009, pp. 85 and 86.

along with other sister countries in the Latin American region, have faced for years. According to the State, in spite of its resolve to continue improving mechanisms and actions to uphold the right to life and physical integrity, certain practices that violate or undermine human rights still remain common in certain state agencies, including the police.⁶⁴⁸

741. In the view of the Minister of Popular Power for the Interior and Justice, one of the reasons behind this situation is the poor academic preparation of police officers, since only 3.6% have received training and 70% do not have procedural manuals.⁶⁴⁹ The State has also informed the Commission about the low levels of education prevailing among police officers, of whom 70.46% only finished secondary school, 6.96% only finished primary education, 12.40% did not finish their secondary education, and a mere 3.63% completed university studies.⁶⁵⁰

742. In light of the absence of official figures on acts of violence directly attributable to State agents, the Commission believes that the statistics contained in the annual report of the Office of the Human Rights Ombudsman go some way toward reflecting the situation of insecurity prevailing in the country and so the following paragraphs will refer to those figures. The Commission notes, however, that these can in no way be considered complete figures, since the report of the Ombudsman's Office deals solely with cases that were reported to it; thus, it does not include cases reported directly to the Attorney General's Office or cases that, for whatever reason, are not brought to the attention of the authorities.

743. During 2008, the Office of the Human Rights Ombudsman recorded a total of 134 complaints involving arbitrary killings arising from the alleged actions of officers from different state security agencies. According to the report, 100% of the arbitrary killing complaints involved extrajudicial executions, and there were no complaints alleging deaths caused through the excessive use of force. The total figure is down from that reported in 2007, when 155 complaints were received, made up of 148 executions, three deaths through excessive use of force, and four as a result of torture or cruel, inhuman, or degrading treatment.⁶⁵¹

744. The report of the Human Rights Ombudsman indicates that most victims of extrajudicial killings were aged between 18 and 28 years (42.54%), followed by victims aged between 12 and 17 (19.40%). The agencies most frequently identified as the perpetrators of arbitrary executions were the state police forces of various regions, with a total of 65 complaints (48.51%); the Scientific, Criminal, and Criminalistic Investigations Corps, with 32 complaints (23.88%); and municipal police forces, with 17 complaints (12.69%).⁶⁵²

⁶⁴⁸ Response of the Venezuelan State to the draft of Chapter IV: Human Rights Developments in the Region on Venezuela, received by the IACHR on December 21, 2007, pp. 68-69.

⁶⁴⁹ Bolivarian News Agency. *Policía Nacional comenzará a funcionar en diciembre en el centro del país* (National Police to Begin Operations in December in the Center of the Country). August 17, 2009. Available in Spanish at: <http://www.abn.info.ve/noticia.php?articulo=195192&lee=4>. Also: El Nacional. *Policía Nacional comenzará a funcionar en Diciembre* (National Police to Begin Operations in December). August 18, 2009. Available in Spanish at: http://el-nacional.com/www/site/p_contenido.php?q=nodo/94840/Nacional/Polic%C3%ADa-Nacional-comenzará-a-funcionar-en-diciembre.

⁶⁵⁰ Response of the Venezuelan State to the questionnaire on citizen security and human rights. February 1, 2008, p. 29.

⁶⁵¹ Bolivarian Republic of Venezuela. Citizens' Branch of Government. Office of the Human Rights Ombudsman. *Annual Report 2008*. Caracas, August 2009, p. 206.

⁶⁵² Bolivarian Republic of Venezuela. Citizens' Branch of Government. Office of the Human Rights Ombudsman. *Annual Report 2008*. Caracas, August 2009, p. 206.

745. The report from the Office of the Human Rights Ombudsman describes a number of notorious cases involving police violations of the right to life. One of these cases occurred on April 29, 2009, when four officers of the Intelligence and Coordination Division of the Lara State Police Force informed the Attorney General's Office about the deaths of two citizens, who were killed on the old El Tostado road in the Jalaito sector of Pavia, allegedly during a confrontation with the police. Subsequent investigations nevertheless revealed that the victims were two brothers – one a law student, and the other a farmer – and that their bodies were found with several gunshot wounds, scraped knees, and signs of torture.⁶⁵³ According to statements made by the victims' father, his children were executed by the police, and "they were not criminals, and they were not armed." They had gone to a bank to deposit 22,000 bolivars and were later found dead.⁶⁵⁴ In connection with the incident, four police officers were tried for the crime of aggravated homicide, with premeditation and for futile and ignoble reasons, and for improper use of firearms.⁶⁵⁵

746. Another case in the report narrates the actions of the police in the early morning hours of October 23, 2008, at Agua Clara stream, located at a resort in Chabasquén in the state of Portuguesa, where the bodies of six people were found, after presumably having been taken there from Sanare, in the state of Lara. The corpses belonged to four children, aged between 15 and 17, and two adults aged 18 and 39. In the same incident, another three adolescents of between 17 and 18 years of age were injured but managed to escape. In connection with this incident, in November 2008, the Attorney General's Office Service accused 10 officers of the Lara State Armed Police Force of forced disappearance and aggravated homicide, with premeditation and for futile and ignoble reasons; attempted aggravated homicide, with premeditation and for futile and ignoble reasons; housebreaking by public officials; and the crimes of torture and immoral physical abuse, sexual abuse of minors, and breaches of international pacts and treaties, as provided for in the Organic Criminal Procedural Code and the Organic Law for the Protection of Children and Adolescents.⁶⁵⁶

747. In May 2008, police officers from the state of Táchira were involved in the death of eight citizens and the criminal injuring of another two in San Cristóbal, Táchira. The incident took place during the night of May 30, at the El Pedregal Pool Center, when ten heavily armed individuals, including police officers, arrived in cars and motorcycles and opened fire on the owners of the business and some of their customers. In November 2008, two officers were charged with the crimes of complicity in aggravated intentional homicide, criminal conspiracy, and violation of international pacts and covenants signed by the Republic.⁶⁵⁷

748. Another case that could be cited as an example of state violence involved three police officers from the state of Mérida and a chief inspector from the Directorate of Intelligence Services, who were implicated in the deaths of eight citizens and the criminal injuring of another in an incident that took place in Brisas de Onia district, in El Vigía, Mérida, on January 24, 2009. Four of the

⁶⁵³ Bolivarian Republic of Venezuela. Citizens' Branch of Government. Office of the Human Rights Ombudsman. *Annual Report 2008*. Caracas, August 2009, p. 207.

⁶⁵⁴ Bolivarian Republic of Venezuela. Citizens' Branch of Government. Office of the Human Rights Ombudsman. *Annual Report 2008*. Caracas, August 2009, pp. 207 - 208.

⁶⁵⁵ Bolivarian Republic of Venezuela. Citizens' Branch of Government. Office of the Human Rights Ombudsman. *Annual Report 2008*. Caracas, August 2009, p. 208.

⁶⁵⁶ Bolivarian Republic of Venezuela. Citizens' Branch of Government. Office of the Human Rights Ombudsman. *Annual Report 2008*. Caracas, August 2009, p. 209.

⁶⁵⁷ Bolivarian Republic of Venezuela. Citizens' Branch of Government. Office of the Human Rights Ombudsman. *Annual Report 2008*. Caracas, August 2009, p. 209.

victims were adolescents and the other four were aged between 19 and 21. According to information from the Attorney General's Office, they were on the main street in the district when a van drove past from which they were fired upon several times, killing them. The state officials were accused of the crimes of aggravated homicide with premeditation, making use of a stolen vehicle, illegally changing registration plates, concealment of a military weapon, and criminal conspiracy.⁶⁵⁸

749. The report of the Office of the Human Rights Ombudsman for 2008 indicates that during that year, it recorded a total of 2,197 complaints involving violations of physical integrity committed by the State's security forces. The report notes that this figure represents a fall of 11.9% over the 2007 level, when 2,494 complaints were made. According to the report, violations of physical integrity in Venezuela follow one of four patterns: abuses of authority; cruel, inhuman, or degrading treatment; death threats; and torture. More than half the victims of violations of physical integrity at the hands of Venezuelan security officials were aged between 20 and 39.⁶⁵⁹

750. Of these patterns, the most frequent were abuses of authority, regarding which the Human Rights Ombudsman reported receiving 1,081 complaints during 2008. That year, the Human Rights Ombudsman received 874 complaints of cruel, inhuman, or degrading treatment, compared to 934 in 2007. Most of the victims were aged between 20 and 34 (43.48%) and the agencies most frequently accused were the state police forces with 400 complaints, followed by the municipal police forces with 230.⁶⁶⁰ The Human Rights Ombudsman received 155 complaints of situations in which public officials allegedly threatened the lives of victims or their family members in 2008, compared to 179 in 2007. Most of the people who received death threats were aged between 20 and 34 (50.97%).⁶⁶¹

751. Regarding cases of torture, the report of the Office of the Human Rights Ombudsman⁶⁶² indicates that there was an increase in the number of complaints compared to the previous year, a matter of great concern, as the report itself notes, because torture can also inherently entail the other three forms of violations of physical integrity (abuses of authority, cruel treatment, and death threats).⁶⁶³ During 2008, the Human Rights Ombudsman received 87 allegations of torture, broken down into 66 cases of physical torture and 21 cases of psychological

⁶⁵⁸ Office of the Attorney General. Press release: *Tras la acusación presentada por el Ministerio Público ordenan enjuiciar a cuatro policías y a un civil por muertes de ocho jóvenes en El Vigía* (Attorney General's Office files charges, four police and one civilian to face trial for the deaths of eight young people in El Vigía). Available in Spanish at: <http://www.fiscalia.gov.ve/Prensa/A2009/prensaseptiembre2009.asp>.

⁶⁵⁹ Bolivarian Republic of Venezuela. Citizens' Branch of Government. Office of the Human Rights Ombudsman. *Annual Report 2008*. Caracas, August 2009, p. 210.

⁶⁶⁰ Bolivarian Republic of Venezuela. Citizens' Branch of Government. Office of the Human Rights Ombudsman. *Annual Report 2008*. Caracas, August 2009, p. 211.

⁶⁶¹ Bolivarian Republic of Venezuela. Citizens' Branch of Government. Office of the Human Rights Ombudsman. *Annual Report 2008*. Caracas, August 2009, p. 212.

⁶⁶² In this report the Ombudsman's Office states that "[m]any police mistreatments of citizens occur in the context of police operations that threaten guarantees of personal liberty and freedom of movement. Torture occurs in situations of detention and confinement, and can be the tragic precursor to the loss of life by its victims." Bolivarian Republic of Venezuela. Citizens' Branch of Government. Office of the Human Rights Ombudsman. *Annual Report 2008*. Caracas, August 2009, p. 203.

⁶⁶³ Bolivarian Republic of Venezuela. Citizens' Branch of Government. Office of the Human Rights Ombudsman. *Annual Report 2008*. Caracas, August 2009, p. 210.

torture. In 2007, a total of 78 complaints were received. Most of the victims were aged between 20 and 34.⁶⁶⁴

752. The report of the Office of the Human Rights Ombudsman states that in contrast to complaints alleging abuses of authority or cruel, inhuman, or degrading treatment, among the torture cases it received the most frequently cited agency was, both in 2008 and in previous years, the Scientific, Criminal, and Criminalistic Investigations Corps (CICPC, by its Spanish acronym), the security force responsible for investigating criminal cases. Thus, the report said that, “torture remains one of the techniques used by some of the officers of this police agency to obtain testimony, confessions, or any other information helpful in casting light on an investigation. The CICPC is also at the forefront in allegations of violations of the right to life and death threats.”⁶⁶⁵

753. Although the figures for torture in Venezuela cited by the various state agencies and nongovernmental organizations do not concur, the annual report of PROVEA agrees with the annual report of the Office of the Human Rights Ombudsman in indicating that 2008 saw an increase in the number of torture cases. Significantly, the same organization had reported a fall in the number of incidents involving torture for more than three consecutive years. According to PROVEA, “torture remains a common practice in some police forces.”⁶⁶⁶

754. Similarly, the Support Network for Justice and Peace, an organization with more than 20 years’ experience working with torture victims in Venezuela, states that “torture is an ingrained practice in the State’s security forces, has spread to all police and military agencies, and has not been effectively banned or punished.”⁶⁶⁷ According to this organization, the Scientific, Criminal, and Criminalistic Investigations Corps, the Metropolitan Police, the National Guard, the state and municipal police forces, and the army, as well as other bodies, have been involved in acts of torture. It adds that different methods of torture are used in Venezuela, with physical and psychological torture generally being combined. The most frequent forms of torture are beating and kicking; death threats and/or torture of an individual or relative; verbal assaults; handcuffing; isolation and denial of sustenance; asphyxiation with plastic bags; throwing victims against walls, on to the floor, or down stairs; tying their hands and feet; stripping off clothes; blindfolding; and electric shocks. These incidents of torture and mistreatment occur during detention at police and military facilities, as a form of discipline, to maintain control in the country’s prisons and jails, to secure confessions during investigations, or to maintain order during demonstrations and protests, as well as in other contexts.⁶⁶⁸

⁶⁶⁴ Bolivarian Republic of Venezuela. Citizens’ Branch of Government. Office of the Human Rights Ombudsman. *Annual Report 2008*. Caracas, August 2009, p. 211.

⁶⁶⁵ Bolivarian Republic of Venezuela. Citizens’ Branch of Government. Office of the Human Rights Ombudsman. *Annual Report 2008*. Caracas, August 2009, p. 212.

⁶⁶⁶ PROVEA. *Situación de los Derechos Humanos en Venezuela Informe Anual Octubre 2007/Septiembre 2008* (Situation of Human Rights in Venezuela: Annual Report, October 2007/September 2008). December 10, 2008, p. 251.

⁶⁶⁷ Support Network for Justice and Peace. *Informe sobre la Práctica de la Tortura en Venezuela en el año 2006* (Report on the Practice of Torture in Venezuela in 2006). Published March 2007, p. 5.

⁶⁶⁸ Support Network for Justice and Peace. *Informe sobre la Práctica de la Tortura en Venezuela en el año 2006* (Report on the Practice of Torture in Venezuela in 2006). Published March 2007, p. 7.

755. The report of the Human Rights Ombudsman also contains alarming figures about cases of forced disappearance in Venezuela.⁶⁶⁹ During 2008, the Human Rights Ombudsman recorded 33 forced disappearances that are being investigated and monitored by the office. The figure is only one lower than the number for year 2007.⁶⁷⁰

756. The IACHR is alarmed by the number of cases alleging or indicating the commission of extrajudicial killings, torture, forced disappearances, death threats, abuses of authority, and cruel, inhuman, or degrading treatment in recent years in Venezuela. Of course, the State has the right and duty to ensure its own security. However, regardless of how serious certain actions may be, power may not be exercised without constraints, nor may the State use indiscriminate means to attain its objectives in violation of human rights. On the contrary, "the use of force by law enforcement officials must be defined by exceptionality and must be planned and proportionally limited by the authorities."⁶⁷¹ The Commission urges the State to take all the measures necessary to eradicate from its security forces all practices that undermine the basic rights of those people whom the State has a duty to protect.

757. Now, as has been stated more than once above, the State must not only protect people from the arbitrary use of force by its security forces, it also has the obligation of adopting the measures necessary to ensure its citizens' security from acts of violence and crime, through methods that uphold human rights standards within a democratic society.

758. According to the information received by the Commission, murders, abductions, contract killings, and rural violence are the phenomena that most frequently affect the security of Venezuela's citizens. Concern therefore exists about the information received indicating that since February 2005, no official figures on homicides, abductions, or other crimes in Venezuela have been published and, moreover, that the Web pages where the figures could be previously found have since been taken down. The State has criticized the figures quoted in the IACHR's annual reports, but it has furnished no information that might clarify those numbers and enable the Commission to assess the situation.

759. At the October 2008 Hearing on Citizen Security and Violence in Venezuela, the Commission formally asked the State for official figures on the murder rate in Venezuela but, to date, the State has not responded to that request.⁶⁷² Neither has the Commission been able to access official figures through the Web pages of the Attorney General's Office, the Ministry of Popular Power for Interior Relations and Justice, or the Scientific, Criminal, and Criminalistic Investigations Corps.

⁶⁶⁹ According to the Report of the Office of the Human Rights Ombudsman, the 33 complaints about forced disappearance are attributed to different State bodies. Although the Report does not specify which of these bodies has been accused in each one of the alleged forced disappearances, from table 239 (p. 343) it can be inferred that the 33 cases are part of the 430 cases attended to by the Office of the Human Rights Ombudsman for alleged threats to the right to personal liberty in 2008, and from table 24 (p. 343) it can be inferred that all of these 430 cases are attributed to State bodies. (Bolivarian Republic of Venezuela. Citizens' Branch of Government. Office of the Human Rights Ombudsman. *Annual Report 2008*. Caracas, August 2009, p. 343.

⁶⁷⁰ Bolivarian Republic of Venezuela. Citizens' Branch of Government. Office of the Human Rights Ombudsman. *Annual Report 2008*. Caracas, August 2009, p. 214.

⁶⁷¹ I/A Court H.R., *Case of Zambrano Vélez et al. v. Ecuador*. Judgment of July 4, 2007. Series C No. 166, para. 83.

⁶⁷² IACHR. Hearing on Citizen Security and Violence in Venezuela. 133rd Period of Sessions, October 28, 2008.

760. At that hearing, the petitioners provided the Commission with statistics according to which in 2006 there were 12,257 homicides, giving a rate of 45 homicides per 100,000 inhabitants. In the year 2007, 13,156 murders were recorded, increasing the rate to 49 per 100,000. For 2008, public information sources indicate that 14,589 homicides were committed. It should be noted that these figures do not include people killed by the police, incidents that are recorded as resisting authority, nor do they include investigations of suspicious deaths.

761. Therefore, although no public statistics about the topic are available or accessible, all the sources of information cited lead to the conclusion that violence levels are increasing. Even the State has acknowledged that the national murder rate has been on the increase.⁶⁷³

762. One source of particular concern is the number of children and adolescents who are victims of murder in Venezuela. The United Nations Children's Fund (UNICEF) states that the country's murder rate has risen, and that homicide represents the main cause of death among male adolescents aged between 15 and 19 years. According to UNICEF's figures, 5,379 children and adolescents suffered violent deaths in 2007, and a third of that total were murders. UNICEF also notes that although there are insufficient official figures on other forms of violence against children and women, there are other indicators of high levels of domestic violence.⁶⁷⁴ The latest figures from NGOs that work to protect the rights of children and adolescents date back to 2005, when the Scientific, Criminal, and Criminalistic Investigations Corps stopped publishing figures on homicides in Venezuela.

763. As for abductions, while official figures are again not available, PROVEA's annual report indicates that in 2005 there were 206 kidnappings, 232 in 2006, 182 in 2007, and 366 in 2008, giving an increase between 2007 and 2008 of more than 100%.⁶⁷⁵

764. The National Federation of Cattlemen reports similar figures. According to that organization, in 2008 there were 308 kidnappings, and between January and July 2009, there were 231 reported in the whole country. Specifically, the state with the highest number of abductions was Zulia with 40; it is followed by Barinas with 36, Táchira with 26, Aragua with 25, Miranda and the Capital District with 25, Lara with 24, and Yaracuy, Carabobo, and Anzoátegui with 12 each. The records of the cattlemen's organization indicates that in 2009, 71 merchants, 69 students, 22 cattlemen, 15 business owners, 12 housewives, and 25 other people have been abducted. The figures indicate that as of July 28, 2009, 55 of those victims remained in captivity, 112 had been released, 48 had been rescued, four had been freed through police pressure, seven escaped from their captors, and five had been killed. They also indicate that from January to July 15, 2009, there had been some 470 cases of "express" kidnappings in Caracas.⁶⁷⁶

⁶⁷³ State's response to the questionnaire analyzing the situation of human rights in Venezuela. August 13, 2009, p. 61.

⁶⁷⁴ UNICEF. *Venezuela: Información del País: Situación de los Derechos de la Niñez* (Venezuela: Country Information: Situation of the Rights of Children). Available in Spanish at: http://www.unicef.org/venezuela/spanish/overview_4200.htm.

⁶⁷⁵ PROVEA. *Situación de los Derechos Humanos en Venezuela Informe Anual Octubre 2007/Septiembre 2008* (Situation of Human Rights in Venezuela: Annual Report, October 2007/September 2008). December 10, 2008, p. 359.

⁶⁷⁶ El Nacional. *En lo que va de año se han producido 231 secuestros en la frontera* (231 Kidnappings on the Border in the Year to Date). Published on August 12, 2009. Available in Spanish at: http://el-nacional.com/www/site/p_contenido.php?q=nodo/94139/Nacional/En-lo-que-va-de-año-se-han-producido-231-secuestros-en-la-frontera.

765. In its observations on the present report, the State asserted that it does not recognize the statistics of PROVEA and the National Federation of Cattlemen with respect to kidnappings in Venezuela, while at the same time it does not deny that kidnappings have increased. In the State's opinion, this situation is due to the "invasion of Colombian paramilitaries that has occurred in the country, committing crimes, especially kidnappings and contract killings [...], murdering Venezuelan *campesinos* by orders of large landowners in Venezuela." The State adds that it "has redoubled efforts to investigate and punish these crimes, which are difficult to prove, because the contract killers in the majority of cases flee to Colombia, and the witnesses are intimidated from testifying. The victims are not only *campesinos*, but also in some cases, human rights defenders."⁶⁷⁷

766. In connection with the right to life, another cause for concern is the persistence of contract killings in Venezuela, which chiefly affect *campesino* and trade-union⁶⁷⁸ leaders, but have also claimed the lives of officials of the judiciary,⁶⁷⁹ business owners,⁶⁸⁰ students,⁶⁸¹ and prison wardens,⁶⁸² as well as others.

767. According to reports reaching the IACHR,

the struggle for land rights and being the beneficiary of the government's agrarian reform process have, on occasions, endangered the lives and physical integrity of *campesinos* (small-scale and subsistence farmers). In some cases, simply identifying a landowner as an individual who should be affected by agrarian reform has been enough for attempts to be made against that person's life. In others, receiving a land grant or daring to occupy a tract of doubtful ownership has motivated attacks.⁶⁸³

⁶⁷⁷ Bolivarian Republic of Venezuela. Ministry of Popular Power for Foreign Affairs. State Agent for Human Rights. Observations on the Draft Report *Democracy and Human Rights in Venezuela*. Note AGEV/000598 of December 19, 2009, pp. 86 and 87.

⁶⁷⁸ The situation of trade-union leaders in Venezuela, including cases of contract killings, will be analyzed by the IACHR on Chapter VII (E) of this report.

⁶⁷⁹ On May 20, 2008, 27-year-old Carlos Enrique Lugo, who was serving as the seventh state prosecutor for drugs and safeguards, was shot multiple times and killed while in his vehicle in the state of Falcón.

⁶⁸⁰ On June 2, 2008, Pierre Fould Gerges, a business owner and vice president of the newspaper *Reporte Diario de la Economía*, was murdered by a contract killer while traveling in his car.

⁶⁸¹ In 2008, two university students were killed by hit men. On October 1, Julio Soto, president of the Federation of University Centers of Zulia University, received multiple gunshot wounds while in his car. The other victim was a young woman, aged 20, identified as Margaret Vallejo, who was killed the same month on the campus of the University of Eastern Cumaná.

⁶⁸² On September 17, 2008, two hit men shot and killed Ender José Herrera as he was leaving the Cumaná Judicial Prison, in the state of Sucre, where he was employed as the facility's director; he was hit by 18 bullets.

⁶⁸³ Human Rights Vicariate of Caracas. *Informe sobre la Situación de los Defensores y Defensoras de Derechos Humanos en Venezuela 2007* (Report on the Situation of Human Rights Defenders in Venezuela 2007), p. 77.

768. In connection with this, the Commission takes note of the report produced by the Office of the Human Rights Ombudsman entitled *Rural Violence*.⁶⁸⁴ According to that report, with the enactment of the Land and Agrarian Development Law,⁶⁸⁵ conflicts of interest have arisen that have, in some cases, claimed human lives. An outbreak of violence, pressure, deaths, and criminal injuries at the hand of contract killers has emerged, intended to intimidate *campesinos* and the officials responsible in this area and to prevent enforcement of the law.

769. In the report, the Office of the Human Rights Ombudsman conducted an investigation into *campesinos* who have been killed, injured, or harassed as a result of the enforcement of the Land and Agrarian Development Law, or for reasons that predate that law but are related to land ownership issues under the framework of the new legal and constitutional regime. The report indicates that as a result of the State's policies to democratize land with agricultural potential, there has been an increase in the targeted killing of *campesino* leaders, carried out by contract killers.

770. According to the investigation by the Office of the Human Rights Ombudsman, the victims represent a clearly identified segment of the population: *campesinos*, particularly agrarian leaders, who support the national project pursued by the national government. The figures obtained by the Ombudsman's Office indicate that:

In spite of the existence of the national government's resolved initiative to tackle large-scale land ownership and ensure food security by emphasizing the democratization of land, it is true that there are structural weaknesses that undermine citizen security and state protection in this vulnerable sector. It can be seen that most of these killings remain unpunished, occurring in a context of conflict between landowners, the State, and *campesinos*.⁶⁸⁶

771. According to the report, the Ombudsman's Office's investigation revealed that the State's presence and action in ensuring citizen security and safeguarding *campesinos'* lives and physical integrity was inadequate. At the same time, the most recent annual report from PROVEA also indicates that the phenomenon of violence and social conflict in rural areas has worsened since the enactment of the Land Law in 2001, and it states that the recovery of "idle and unproductive land" has cost the lives of landless *campesinos*, of those who have occupied or rescued plots, and of large- and medium-scale landowners.⁶⁸⁷

772. In September 2009, the Simón Bolívar National Socialist Front of *Campesinos* and Fishers, the Jirajara *Campesino* Socialist Front, and representatives of the Mission Boves publicly claimed that since 2001, when the new Land and Agrarian Development Law was enacted, 220 people, including two children, had been killed by agents of landholders with ties to paramilitaries

⁶⁸⁴ Bolivarian Republic of Venezuela. Citizens' Branch of Government. Office of the Human Rights Ombudsman. Directorate of Citizen Attention. *Informe Defensorial "Violencia en el Campo"* (Ombudsman's Report on Rural Violence), May 2006.

⁶⁸⁵ This law deals with tracts of idle rural land, which are awarded free of charge to *campesinos* and farmers, under a regime whereby ownership thereof is indivisible and unencumberable.

⁶⁸⁶ Bolivarian Republic of Venezuela. Citizens' Branch of Government. Office of the Human Rights Ombudsman. Directorate of Citizen Attention. *Informe Defensorial "Violencia en el Campo"* (*Defense Office Report on Rural Violence*), May 2006, pp. 201-202.

⁶⁸⁷ PROVEA. *Situación de los Derechos Humanos en Venezuela Informe Anual Octubre 2007/Septiembre 2008* (Situation of Human Rights in Venezuela: Annual Report, October 2007/September 2008). December 10, 2008, pp. 204 - 207.

and other organized mafias.⁶⁸⁸ This violence has mostly affected the rural population, along with indigenous peoples.

773. With reference to contract killings in Venezuela, “although the State does not deny that there have been regrettable cases involving *campesinos* who have lost their lives or suffered criminal injuries, [it notes] that the deaths do not add up to the totals given and that not all have been contract killings: that is, a person who kills another for money or at the request of someone else who pays the killer.”⁶⁸⁹ The State also informed the Commission that it has ordered the commencement of all investigations in those cases in which a publicly actionable crime is suspected.

774. While these murders, abductions, and contract killings do not necessarily involve agents of the Venezuelan State, the State’s failure to prevent such outbreaks of violence, to investigate their causes, and to punish the guilty triggers its international responsibility, even though the State maintains that “the fact that murders and extrajudicial killings and institutional reforms take place in a country – everyday occurrences in all the countries of the world – cannot lead the Commission to conclude that the State is violating human rights.”⁶⁹⁰

775. Also of extreme concern is information received⁶⁹¹ with respect to the activities of violent groups. The information received by the Commission indicates that violent groups known as Movimiento Tupamaro, Colectivo La Piedrita, Colectivo Alexis Vive, Unidad Popular Venezolana, and Grupo Carapaica have been acting with the encouragement and acquiescence of the Venezuelan State. According to what has been reported to this Commission, these groups are urban in nature, have training similar to the police or military, some of their members belong to State entities, and they control popular urban areas, primarily in the city of Caracas. Therefore, it is necessary to have the permission of these violent groups to enter certain zones in the city.

776. According to what was reported to the Commission, these groups have a close relationship with the police forces and occasionally use their resources. In fact, the IACHR received alarming information according to which, despite not being professional police, the leaders of the Movimiento Tupamaro had been named directors of the metropolitan police for six months. Moreover, the Commission was informed that its leaders were clearly identified and even appeared publicly alongside leaders linked to the government.

777. According to the information received by the IACHR, the group Colectivo La Piedrita was involved in attacks against the television channel *Globovisión*, against political actors in *Ateneo de Caracas*, against the newspaper *El Nuevo País*, against the headquarters of the COPEI party, against the apostolic nunciature, and against the journalist Marta Colomina. An arrest warrant was issued against its principal leader, Valentín Santana, but he is still free. Additionally, the group

⁶⁸⁸ Bolivarian News Agency. *Campesinos solicitaron reunión con MIJ y PSUV para discutir sobre vicariatos* (Campesinos Request Meeting with MIJ [Minister of the Interior and Justice] and PSUV [United Socialist Party of Venezuela] to Discuss Targeted Killings). September 17, 2009. Available in Spanish at: <http://www.abn.info.ve/noticia.php?articulo=199081&lee=1>.

⁶⁸⁹ Report No. 001205 of October 24, 2005, sent to the IACHR by note from the Government of the Bolivarian Republic of Venezuela No. 10-0521 of December 13, 2005, addressed to the President of the Inter-American Commission on Human Rights.

⁶⁹⁰ Speech given by Germán Saltrón, Agent of the Venezuelan State for Human Rights before the Inter-American and International Systems, at the hearing held by the Inter-American Commission on Human Rights on March 24, 2009, during its 134th Period of Sessions.

⁶⁹¹ Information provided by the petitioners to the IACHR. *Hearing on Democratic Institutionalality, Parapolice Groups, and Prisons in Venezuela*. 137th Period of Sessions, November 2, 2009.

Unidad Popular Venezolana is a Venezuelan political party, directed by Lina Ron, and it was involved in the forceful takeover of the Palace of the Archbishop of Caracas, as well as attacks against the television stations *RCTV* and *Globovisión*. For the last attack on this television station, an arrest warrant was issued against Lina Ron, which was lifted last October 14.

778. Upon receiving this information during its hearings, the IACHR asked the State for an official pronouncement on the existence or non-existence of these groups as well as on the legality or illegality of their actions. In his response, the representative of the State indicated:

Irregular groups exist, on both sides. In Venezuela, the conflict has become so generalized that there are radical people on the opposition side. So radical that military personnel participated in the coup of April 11, more than 50 generals and officials went to protest in the Plaza Altamira and they were protesting and calling for subversion by their comrades-at-arms for four months. These situations, then, have occurred in Venezuela. In our situation, we have the case of Lina Ron, who is a compatriot who supports President Chávez but does not understand that she must respect the law, the case of La Piedrita, these cases are discussed but when something happens there has been punishment. The cases of our *campesinos*, but they make sense, why? Because who starts killing *campesino* leaders, since the law on agrarian reform was passed? That is to say, since the moment when they started to combat the landed estates, from that moment, the landowners brought hired assassins from Colombia and sent them to kill *campesino* leaders. Of course, some of these *campesino* leaders, already tired of this situation, sometimes commit acts of violence as well. But all of this is a problem of the conflict, a conflict that President Chávez did not create, that has been aimed at overthrowing and ousting the government of President Chávez.⁶⁹²

779. The Commission observes with concern the existence of violent groups that act with the participation or tolerance of state agents.

780. Finally, the Commission is concerned by reports claiming that the Jewish community in Venezuela is being especially affected by violent incidents. The information received by the IACHR refers to anti-Semitic statements and incidents in various media outlets, together with graffiti painted on the walls of various Jewish institutions and homes.⁶⁹³

781. In addition, the Commission was informed that on December 2, 2007, police officers raided the headquarters of the Hebrew Social, Cultural, and Sports Center (“La Hebraica”) in Caracas. According to the reports, some 30 officers of the Intelligence and Prevention Services Directorate (DISIP, by its Spanish acronym) forced their way into the Center, where they were received by the establishment’s watchmen, who afforded them direct access. The information claims that, absent a prosecutor from the Attorney General’s Office, the police officers presented an order from the Third Control Court of the Criminal Judicial Circuit of the Caracas Metropolitan Area and the 41st Prosecutor of the Caracas Metropolitan Area Public Prosecution Service that allegedly gave no grounds for the operation, and that they then proceeded to conduct an exhaustive examination of

⁶⁹² Information provided by the State to the IACHR. *Hearing on Judicialization of Social Protest in Venezuela*. 137th Period of Sessions, November 2, 2009.

⁶⁹³ Testimony of the Center for Human Rights and Public Policy of B’nai B’rith International before the OAS, November 20, 2008. Special meeting of the working group to prepare a Draft Inter-American Convention against Racism and All Forms of Discrimination and Intolerance. The graffiti include slogans such as “Child Killer,” “Jews Out,” “Jewish Dogs,” and swastikas.

various areas of the center. At the end of the procedure, it is claimed that the officers prepared, in the presence of the Hebrew Center's president, a report stating that no irregularities had been found. Various sectors of the Jewish community in Venezuela and abroad noted their concern, deeming the raid to be irregular and describing it as an act intended to create tension between Venezuela's Jewish community and the national government.

782. In response to the situation, in exercise of the powers conferred by Article 41(d) of the American Convention on Human Rights, the IACHR asked the State to submit information on the incident and on the reasons for the operation carried out at La Hebraica in Caracas on December 2, 2007. On January 7, 2008, the State told the IACHR that "the operation in question was intended to conduct a detailed search of all the facility's rooms in order to locate evidence of criminalistic interest related to the alleged commission of a crime against public order, the community, or national security, such as side arms and rifles, ammunition, explosives, and components for making explosive devices." The Commission believes that the information furnished by the State regarding the operation at the Hebrew Center is inadequate to explain the incident that occurred at the institution's headquarters.

783. In addition, the State reported that during 2009, the media campaign that seeks to depict President Chávez as an anti-Semite continued, and that on January 31, 2009, the synagogue located in the Maripérez district of Caracas was vandalized by persons as yet unidentified. The State indicated that the Attorney General's Office appointed the 41st National Prosecutor, to begin an investigation to identify the perpetrators. Shortly after the vandalism took place, President Hugo Chávez Frías, Foreign Minister Nicolás Maduro Moros, and other officials of the Venezuelan State emphatically condemned the incident. Similarly, on February 6, 2009, the Attorney General of the Republic reported that charges had been brought against the watchmen on duty in the early morning hours of January 31, when a group of 10 or 12 individuals entered the synagogue belonging to Venezuela's Jewish community.⁶⁹⁴

784. The IACHR takes note of a speech made by President Chávez on Christmas Eve in 2005, in which he stated:

[...] the world has enough for everyone, indeed, but it happens that some minorities, the descendants of those who crucified Christ, the descendants of the same who threw Bolívar out of here and they also crucified him in their way in Santa Marta, there in Colombia. A minority that seized the world's riches, a minority that seized the planet's gold, silver, minerals, water, good land, petroleum, riches, and they have concentrated the riches in a few hands: less than ten percent of the population of the world owns more than half of the riches of the whole world and to the ... [sic] more than half the people of the world are poor and each day there are more poor people in the entire world. We here have decided, decided to change history and every day more heads of state, presidents, and leaders accompany us, will accompany us [...].⁶⁹⁵

785. The Commission has also learned that after declarations by governmental authorities that were anti-Semitic in tone, there were expressions with anti-Semitic content in

⁶⁹⁴ Response of the Venezuelan State to the draft of Chapter IV: Human Rights Developments in the Region on Venezuela, received by the IACHR on February 6, 2009, p. 17.

⁶⁹⁵ Available in Spanish at: http://www.gobiernoenlinea.gob.ve/docMgr/sharedfiles/Chavez_visita_Centro_Manantial_de_los_suenos241220_05.pdf.

opinion programs and articles, including in government-controlled media or media aligned with the government such as *Cadena Venezolana de Televisión* (VTV).⁶⁹⁶ In turn, these declarations contributed to creating an atmosphere of intimidation and violence against the Jewish community in Venezuela. The foregoing, added to the lack of investigation and sanctioning of those responsible for these acts, including those in which state forces participated, constitutes a threat to the life and physical integrity of the Jewish community in Venezuela.

786. The Commission views these violent acts with concern, aware that they could also affect the right of freedom of worship in Venezuela, and it will therefore remain alert to the information it receives about the steps taken by the State to keep such violent acts against the Jewish community in Venezuela from reoccurring, to establish the truth about the incidents, and to punish the guilty.

787. In consideration of the overview of citizen security in Venezuela given in this section, the IACHR believes that the actions taken by the State to combat the causes of violence, reduce crime levels, and eradicate organized crime have been insufficient. The figures made available to the IACHR also show that the State has not succeeded in bringing the actions of its public security forces into line with human rights standards, which has led to violations of the right to life enshrined in Article 4 of the American Convention, and of the right to humane treatment, protected by Article 5 of that same Inter-American instrument.

3. Impunity in cases of violence

788. As indicated in the preceding paragraphs, the State has a duty to prevent, investigate, and punish violations of the right to life and humane treatment; moreover, that duty is not limited to violations committed by state agents but also includes incidents in which private citizens are involved. If the authorities charged with investigating and punishing such incidents fail to act, a situation of impunity arises with respect to violations of rights protected by the American Convention.

789. The Commission has already noted its concern at the high levels of impunity surrounding the numerous extrajudicial killings committed by state agents as *ajusticiamientos* of suspected criminals or of marginalized members of society as part of its claimed protection of citizen security. The IACHR has also expressed concern at the slow progress with the investigations into the troubling number of contract killings, which are having a particular impact on *campesinos* and on people involved with land reclaim processes.⁶⁹⁷

790. Although Article 29 of the Venezuelan Constitution establishes the State's obligation of investigating and punishing human rights crimes committed by its authorities, there are allegations of challenges to the prosecution of those responsible for crimes committed in Venezuela. As stated above, the specific criminalization of torture is a challenge the Venezuelan State still has to

⁶⁹⁶ For example, Mario Silva, of the television program *La Hojilla*, declared in November of 2007, in a moment in which an anti-Chávez student movement was consolidated, that the Cohen family, owner of the Sambil chain of shopping centers, "is the financiers of all that is happening. I repeat, they are not going to accuse me of anti-Semitism. I have said for a long time that those Jewish business owners who are not involved in the conspiracy say it. And much of the student movement that is currently activated is involved with this group." These declarations can be seen in Spanish at the following link: <http://www.youtube.com/watch?v=eKWGA510zbE>.

⁶⁹⁷ IACHR. *Annual Report 2006*. Chapter IV. Venezuela, paras. 168 and 178.

meet but, in addition, the vast legislative dispersion of criminal law is an obstacle for the proper investigation of crimes, as well as for their punishment.

791. In connection with this, the Attorney General of the Republic herself has noted the need for a new code to be enacted, covering all the offenses dealt with in the Organic Law Against Organized Crime, the Law Against Corruption, the Organic Law Against Illicit Trafficking and Consumption of Narcotics and Psychotropic Substances, the Law Against Money Exchange Offenses, the Law on People's Access to Goods and Services, and others. According to the Attorney General, "on occasions, prosecutors, in determining the nature of a punishable action detected *in flagrante*, begin to study the facts and they have with them the Criminal Code, the Law on Women's Right to a Life Free of Violence, and the Drugs Law, but that day they didn't bring the Law Against Computer Crime with them, and it's not available, and so when crimes are detected *in flagrante*, prosecutors have to carry with them a whole series of laws." In addition, the Attorney General noted that on account of the various different pieces of criminal legislation in existence, opinions varied about the applicability of the Penal Code versus the Organic Law against Organized Crime.⁶⁹⁸

792. Another factor that contributes to impunity in Venezuela, particularly when crimes are committed by officials of the State, is the fact that the Scientific, Criminal, and Criminalistic Investigations Corps is attached to the Ministry of Popular Power for the Interior and Justice, along with the fact that the Medical Examiner's Office is a dependent agency of the Corps. In the Commission's view, this dependent relationship hinders the impartiality and autonomy of these agencies' investigations, in that when those involved in acts of torture or other human rights violations belong to the Investigations Corps, it is difficult for the agencies to adopt reports incriminating them, given that they belong to the same body.

793. The Commission has also received expressions of concern noting that 20% of the bodies presumably involved in homicide cases are held by the Scientific, Criminal, and Criminalistic Investigations Corps, a body that, in the opinion of certain Venezuelan civil society organizations, seriously compromises independence at the start of an investigation.⁶⁹⁹ The IACHR regrets that the Venezuelan State has not adopted the Commission's recommendations in this regard,⁷⁰⁰ and it again states that to ensure the independence of its actions, the Scientific, Criminal, and Criminalistic Investigations Corps should be located within the Attorney General's Office or given its autonomy.

794. Even the Attorney General of the Republic has admitted encountering the "obstacle posed by technical and scientific evidence of key importance in clarifying events." As she said, investigations sometimes require certain very specific and technical formalities, which can only be carried out by experts. Since the Scientific, Criminal, and Criminalistic Investigations Corps has the

⁶⁹⁸ Office of the Attorney General of the Bolivarian Republic of Venezuela. Press release from the Attorney General's Office. *FGR: Ministerio Público conoce 10 mil 858 casos de funcionarios por presunta violación de los derechos humanos* (FGR [Attorney General]: Attorney General's Office Hearing 10,858 Cases of Alleged Human Rights Violations by Officials). Caracas, May 22, 2009. Available in Spanish at: <http://www.fiscalia.gov.ve/Prensa/A2009/prensa2205VI.htm>.

⁶⁹⁹ Information given to the IACHR by the petitioners. *Hearing on Citizen Security and Violence in Venezuela*. 133rd Period of Sessions, October 28, 2008.

⁷⁰⁰ IACHR. *Report on the Situation of Human Rights in Venezuela*. December 23, 2003, paras. 201 - 203 and 359.

most specialized equipment, when a member of the Corps commits a crime, the technical testing is carried out by one of his colleagues or friends.⁷⁰¹

795. Meanwhile, until those recommendations are implemented, the Commission views positively the creation, in 2008, of the Criminalistics Unit against Violation of Basic Rights within the Attorney General's Office.⁷⁰² The Unit's sole function is to search for evidence and other elements to prove that criminal acts have been committed in investigations involving violations of basic rights and to identify the responsibilities of the participants therein.⁷⁰³ Although the Commission has not been informed of the Criminalistics Unit's start of operations, on April 29, 2009, according to a press release put out by the Attorney General's Office, the process of selecting those officers who are to be the Unit's members had begun. The significance of the creation of the Criminalistics Unit within the Attorney General's Office is that those offices will not be attached to any police agency, which will increase the autonomy and independence of the tests they carry out.

796. The IACHR has learned of other actions taken by the State to assist the effective investigation of crimes that affect the security of the Venezuelan people and to eradicate impunity. The State reported that the Attorney General's Office has developed a system to oversee and monitor the actions of its prosecutors with jurisdiction over the protection of basic rights and the execution of judgments, through a "Monthly Summary of Actions and Cases," together with oversight of the tasks entrusted to them and updating the internal case files that have been opened.⁷⁰⁴

797. The Attorney General's Office has also implemented a "Monitoring Plan for Cases Involving Violations of Basic Rights," which enables follow-up of the numbers of cases opened at the different prosecutors' offices for the crimes of homicide, forced disappearances, torture, criminal injuries, illegal detentions, housebreaking, etc.

798. Another important step in resolving the crimes that most affect the Venezuelan population is the implementation, in the year 2008, of Municipal Prosecutors' Offices with jurisdiction to deal with offenses punishable by prison terms of three years or less.⁷⁰⁵ Based on their knowledge of their communities' needs, these Prosecutors' Offices would be able to assist in establishing strategies to attack the most common crimes in the areas where they were created.

799. Also significant is the creation, inside the Office of the Human Rights Ombudsman, of the Special Ombudsman's Office for Police Matters, which is intended to pursue independent investigations into complaints of police abuses and into cases involving the actions of the State's security agents. This Special Ombudsman's Office was created by the Organic Law on the Police Service and the National Police Force to strengthen the work of the Office of the Human Rights Ombudsman in promoting, defending, and monitoring human rights.

⁷⁰¹ Press release the Office of the Attorney General. *Fiscal General: "Debemos garantizar la pulcritud de las investigaciones"* (Attorney General: "We Must Ensure Pristine Investigations"). Caracas, April 29, 2009. Available in Spanish at: <http://www.mp.gob.ve/Prensa/A2009/prensa2904III.htm>.

⁷⁰² By means of a resolution published in the Official Gazette on December 23, 2008, the Attorney General's Office created two Criminalistics Units, one in the Caracas Metropolitan Area and one in the state of Lara.

⁷⁰³ State's response to the questionnaire analyzing the situation of human rights in Venezuela. August 13, 2009, p. 63.

⁷⁰⁴ State's response to the questionnaire analyzing the situation of human rights in Venezuela. August 13, 2009, p. 63.

⁷⁰⁵ Attorney General of the Bolivarian Republic of Venezuela, *2008 Annual Report*.

800. The Special Ombudsman's Office for Police Matters is empowered to open and pursue investigations into human rights violations committed by state officials, either on its own initiative or after a complaint is filed. It is also authorized to urge the competent criminal investigation agencies to secure the evidence needed to clarify incidents in which human rights may have been violated and to monitor, on a permanent basis, cases opened against police officers that are being processed directly by the Attorney General's Office through its investigation auxiliaries or that are before the courts.

801. The Commission also applauds the Office of the Human Rights Ombudsman's production of monthly reports with qualitative and quantitative data on allegations of arbitrary executions and forced disappearances, broken down by the victims' age and sex and indicating the agencies accused of the violations, on statistical charts, enabling the involvement of the State's security forces in such crimes to be identified. In this context, the Commission for Updating Case Files dealing with civil rights was created, with the aim of compiling the cases nationwide dealing with violations of the right to life and liberty currently before the Office of the Human Rights Ombudsman.⁷⁰⁶

802. The Inter-American Commission has also learned of the existence, within the National Assembly, of a Special Commission for Investigating Attacks against and Killings of *Campesinos* and Indigenous People by Landowners. It does not, however, have any information on the specific work of this Commission or the results of its undertakings.

803. In spite of the actions taken, particularly those of the Attorney General's Office, to ensure that violations of the Venezuelan people's rights to life and humane treatment are properly investigated, the information received by the IACHR indicates that high levels of impunity surround those incidents. For example, according to information given to the IACHR by the State, between January and September 2008, the different prosecutors' offices opened a total of 6,422 cases related to human rights violations, which led to the production of only 3,688 final decisions. The State also reported that in connection with those incidents, 584 public officials had been identified as suspects, with formal charges brought against 463.⁷⁰⁷ The State did not, however, provide information on how many were in fact convicted of those charges.

804. According to information furnished by the State on the criminal proceedings initiated for the alleged commission of the crime of homicide by state agents while on duty or as a result of their official functions, between 2000 and July 2006 a total of 1,766 were identified as suspects, 858 were formally charged, and 178 were convicted.⁷⁰⁸ According to figures from the Attorney General's Office collated by the Venezuelan press, 6,885 members of the Venezuelan State's security forces were identified as possible suspects in the killings and *ajusticiamientos* of 7,243 people between January 2000 and November 2007. Of these, only 412 are in prison,⁷⁰⁹ representing 5.98% of the total.

⁷⁰⁶ Bolivarian Republic of Venezuela. Citizens' Branch of Government. Office of the Human Rights Ombudsman. *Annual Report 2008*. Caracas, August 2009, p. 215.

⁷⁰⁷ State's response to the questionnaire analyzing the situation of human rights in Venezuela. August 13, 2009, p. 64.

⁷⁰⁸ State's response to the questionnaire analyzing the situation of human rights in Venezuela. August 13, 2009, p. 66.

⁷⁰⁹ The figures fail to indicate whether they are in prison as convicts under final judgments or are awaiting trial.

805. According to the 2008 Report of the Attorney General of the Republic, between January and September 2008 a total of 6,422 cases related to alleged violations of human rights were recorded: i.e., for the commission of the crimes of homicide, forced disappearance, torture, criminal injury, illegal detentions, and housebreaking. Those 6,422 proceedings led to only 3,688 final decisions and the identification as suspects of 584 public officials, of whom 463 were formally charged.⁷¹⁰ Nor does the Attorney General's report contain statistics on the total number of state agents convicted of those crimes.

806. As for more recent figures, the Attorney General of the Republic reported that the Attorney General's Office admitted 10,858 cases against police officers allegedly involved in human rights crimes between 2008 and March 2009. Of these 10,858 cases, 755 involved homicides in which police involvement was suspected. For that crime, between 2008 and the first quarter of 2009, prosecutors produced a total of 253 final decisions, as a result of which 134 state agents were detained.⁷¹¹

807. With reference to other crimes, such as criminal injury, abuses of authority, housebreaking, illegal detentions, torture, forced disappearance, and harassment, the Attorney General's Office reported that it processed 10,103 cases between 2008 and March 2009. Prosecutors had succeeded in resolving 5,641 of these, which means that only 55% had been resolved and were covered by final decisions. Regarding killings during alleged shootouts and *ajusticiamientos*, between 2008 and the first quarter of 2009, 367 state agents were identified as suspects and 384 were charged, but only 12 convictions were obtained.⁷¹² Over the same period, for violations of human rights other than those already identified, 558 state agents were identified as suspects, 374 were charged, 22 were imprisoned, and 10 were convicted. Thus, in the total number of cases of human rights violations dealt with by the prosecutors of the Attorney General's Office between January 2008 and the first quarter of 2009, 942 state agents were identified as suspects, 741 were formally charged, 146 were imprisoned, and only 22 were convicted.⁷¹³

808. With respect to contract killings, the analysis of the cases of rural killings by the Human Rights Ombudsman indicated a tendency on the part of the police to conceal information of value to investigations, material weaknesses within the police agencies, and a lack of independence among those charged with investigating such crimes, particularly those affecting the vulnerable sector of the *campesino* population. According to the report, those factors have a direct impact on

⁷¹⁰ Attorney General of the Bolivarian Republic of Venezuela, *2008 Annual Report*.

⁷¹¹ Office of the Attorney General of the Bolivarian Republic of Venezuela. Press release from the Attorney General's Office. *FGR: Ministerio Público conoce 10 mil 858 casos de funcionarios por presunta violación de los derechos humanos* (FGR [Attorney General]: Attorney General's Office Hearing 10,858 Cases of Alleged Human Rights Violations by Officials). Caracas, May 22, 2009. Available in Spanish at: <http://www.fiscalia.gov.ve/Prensa/A2009/prensa2205VI.htm>.

⁷¹² Office of the Attorney General of the Bolivarian Republic of Venezuela. Press release from the Attorney General's Office. *FGR: Ministerio Público conoce 10 mil 858 casos de funcionarios por presunta violación de los derechos humanos* (FGR [Attorney General]: Attorney General's Office Hearing 10,858 Cases of Alleged Human Rights Violations by Officials). Caracas, May 22, 2009. Available in Spanish at: <http://www.fiscalia.gov.ve/Prensa/A2009/prensa2205VI.htm>.

⁷¹³ Office of the Attorney General of the Bolivarian Republic of Venezuela. Press release from the Attorney General's Office. *FGR: Ministerio Público conoce 10 mil 858 casos de funcionarios por presunta violación de los derechos humanos* (FGR [Attorney General]: Attorney General's Office Hearing 10,858 Cases of Alleged Human Rights Violations by Officials). Caracas, May 22, 2009. Available in Spanish at: <http://www.fiscalia.gov.ve/Prensa/A2009/prensa2205VI.htm>.

the investigation of cases. Another reason for impunity detected by the Ombudsman's Office's investigation are the delays and lack of proactivity in processing cases involving *campesinos* killed as result of the struggle for land and its democratization under the Land and Agrarian Development Law, and the failure of prosecutors to investigate cases of attacks and harassment.⁷¹⁴

809. Bearing in mind the above, at the Hearing on Citizen Security and Violence in Venezuela,⁷¹⁵ the petitioning organizations⁷¹⁶ noted that one of the problems with the greatest impact on public insecurity in Venezuela was impunity. The IACHR therefore calls on the State to take all the steps necessary to ensure due diligence and effectiveness in both its investigations and its imposition of the corresponding administrative, disciplinary, and criminal sanctions, with respect to both individuals accused of committing common crimes that affect citizens' security and people belonging to the State's security forces proven to have abused their authority to the detriment of the population.

810. In light of the Commission's analysis contained in the present chapter regarding citizen security in Venezuela, the Commission exhorts the State to assume the fulfillment of its international obligations to protect and ensure human rights in their relation with citizen security by adapting the internal norms and the State's machinery to the aforementioned standards.

B. Violence in prisons

811. The situation of insecurity and violence prevailing in Venezuela's prisons has been a source of particular concern to the IACHR, which has held hearings, has issued press releases and reports on specific cases, and has asked the Inter-American Court of Human Rights for provisional measures to protect the lives and persons of detainees held in Venezuelan prisons and penitentiaries.

812. Deprivation of liberty does not strip people of all their human rights.⁷¹⁷ Since the State has a special guarantor's duty with respect to people held in its custody, it has a particular responsibility to ensure that detainees enjoy the conditions necessary to lead a decent existence and to contribute to their effective enjoyment of those rights that may under no circumstances be restricted.

813. In light of this, the Commission will examine Venezuela's current regulatory framework along with the information available on the policies adopted by the State to uphold the rights of people held in custody, making reference to figures on violence inside prisons, in order to determine whether the State has met its protection obligation with respect to those people whose liberty it has suspended.

⁷¹⁴ Bolivarian Republic of Venezuela. Citizens' Branch of Government. Office of the Human Rights Ombudsman. Directorate of Citizen Attention. *Informe Defensorial "Violencia en el Campo" (Defense Office Report on Rural Violence)*, May 2006, pp. 202-204.

⁷¹⁵ Information given to the IACHR by the petitioners. *Hearing on Citizen Security and Violence in Venezuela*. 133rd Period of Sessions, October 28, 2008.

⁷¹⁶ Andrés Bello Catholic University (UCAB), Committee of Victims' Relatives of the Events of February and March 1989 (COFAVIC), and the Center for Justice and International Law (CEJIL).

⁷¹⁷ I/A Court H.R. *Case of the "Juvenile Reeducation Institute."* Judgment of September 2, 2004, Series C No. 112, para. 153.

1. Protection of detainees' rights

a. Regulatory framework for the protection of detainees

814. International human rights law requires that states guarantee the rights of people held in their custody. Thus, in this section the IACHR will analyze whether the regulatory framework in force in Venezuela is adequate and appropriate for guaranteeing the security of detainees and whether it is in line with the applicable international provisions.

815. Article 44 of the Constitution of the Bolivarian Republic of Venezuela states that personal liberty is inviolable and that consequently "no person may be arrested or detained except under a court order, unless he is caught *in flagrante delicto*." In such cases, the authorities are obliged to bring the detainee before a judicial authority within no more than 48 hours following the arrest.

816. Article 44 of the Constitution also establishes other guarantees, such as the right of all detainees to communicate immediately with their family, attorney, or other trusted person, and the right of those persons to be informed of where the detainee is being held; the right to immediate notification of the reasons for the arrest; and the requirement to leave a written record in the case file on the physical and mental state of the arrested person.

817. With reference to the prison system, Article 272 of the Venezuelan Constitution states that:

The State shall guarantee a penitentiary system such as to ensure the rehabilitation of inmates and respect for their human rights. To this end, penitentiary establishments shall have areas for work, study, sports, and recreation; they shall operate under the direction of professional penologists with academic credentials; and they shall be governed under the decentralized administration of state or municipal governments; they may also be subject to privatization arrangements. In such establishments, an open regimen shall be preferred, as well as the model of custodial agricultural colonies. In all cases punishment formulas without restriction of freedom shall be applied in preference over measures that restrict freedom. The State shall create the necessary institutions to provide post-penitentiary assistance for the reincorporation of the inmate into society and shall encourage the creation of an autonomous penitentiary institution with personnel of an exclusively technical nature.

818. In spite of the constitutional provisions that enshrine adequate guarantees for the protection of people held in the State's custody, the Commission has received information indicating that certain provisions in the Criminal Code, the Organic Criminal Procedural Code, and the Prison Regime Law undermine the basic rights of detainees.

819. In the area of criminal procedure, the Commission notes the key importance of the recent passage of the Law Partially Amending the Organic Criminal Procedural Code, in light of the fact that one of the main problems affecting Venezuela's prison inmates is overcrowding.⁷¹⁸ This law contains amendments to various articles covering the actions of both judges and parties during criminal trials. As indicated in the rationale, the amendments are a contribution to the actions that must be taken to counteract procedural delays.

⁷¹⁸ Published in Official Gazette No. 5.894 of August 26, 2008.

820. Thus, Articles 183 to 189 were amended, to require that summonses and notifications be served promptly. Amendments were also made to: Article 327, establishing a maximum of 20 days for the scheduling of a preliminary hearing, in the event that it is deferred; Article 301, to expand the deadline given to the Attorney General's Office to formulate a dismissal of a complaint; and Article 323, requiring that the parties must be present when a dismissal is ordered.

821. Article 244 was also amended, which now provides that a request for an extension of a detention order may be filed with any court that is hearing the case, as was Article 392, to expand the scope of active extradition, so that now extradition may be requested when a court order for arrest exists against the person sought. The Commission believes that these reforms, in that they will have an impact on dispatch in criminal proceedings, represent a step forward in ensuring detainees better protection.

822. In the area of criminal law, the Commission has been closely monitoring calls to repeal an amendment of the Penal Code⁷¹⁹ made in 2005. In April 2008, inmates at 11 prisons began a hunger strike demanding the repeal of this reform, which had amended articles of the Penal Code to deny convicts imprisoned for armed robbery, attacks, or other violent offences the possibility of working outside the prison or of obtaining parole benefits and periods of supervised freedom. The hunger strike lasted for five weeks, and members of the inmates' families supported the protest through a series of demonstrations.

823. The strike ended when the Supreme Court of Justice⁷²⁰ admitted a remedy for annulment and ordered precautionary measures to suspend the enforcement of Articles 374, 375, 406, 456, 457, 458, 459, 460.4, and 470, final part, of the Venezuelan Penal Code, together with the final section of Articles 31 and 32 of the Organic Law Against Illicit Trafficking and Consumption of Narcotics and Psychotropic Substances. As of the date of this report's adoption, the Supreme Court of Justice has not issued final judgment on this remedy, which seeks the repeal of the articles of the Penal Code that restrict the right to parole benefits and alternative ways of serving sentences.

824. In addition, the Commission has learned of the existence of a draft Organic Prison System Code, which seeks to update and gather together all the legal instruments governing prison matters in Venezuela. The draft was prepared by the National Assembly's Subcommittee on Human Rights and involved participation by representatives of the different agencies with jurisdiction over the matter.⁷²¹ The IACHR regrets that the bill was not put on the legislative agenda for 2008 and it urges the State to discuss the draft with the urgency demanded by the conditions prevailing in Venezuela's prisons.

825. In taking away a person's freedom, the State assumes a special status as guarantor and it consequently has the obligation of ensuring, through all means available to it, that detainees can enjoy their basic rights and, in particular, the right to life and humane treatment. In the Commission's view, the urgent situation within Venezuela's prisons requires the Venezuelan State to adopt measures to allow the implementation of the rights guaranteed by the Constitution and by the international obligations acquired by the State. The IACHR will therefore continue to monitor the

⁷¹⁹ Published in Special Official Gazette of the Bolivarian Republic of Venezuela No. 5.768 of April 13, 2005.

⁷²⁰ Supreme Court of Justice, Constitutional Chamber, Decision No. 635 of April 21, 2008.

⁷²¹ Bolivarian Republic of Venezuela. Citizens' Branch of Government. Office of the Human Rights Ombudsman. *Annual Report 2008*, Caracas, August 2009, p. 232.

legislative reforms and new laws adopted by the State to guarantee the rights of people held in its custody.

b. State policies and programs to prevent prison violence

826. The Commission is aware that in addition to an adequate regulatory framework for prisons, there is an urgent need to implement specific actions and policies with an immediate impact on the situation of risk faced by detainees. The State's obligation toward prison inmates is not limited to merely enacting provisions to protect them, nor is it enough for state agents to refrain from actions that could injure the lives and persons of detainees; instead, international human rights law requires states to adopt all measures available to them to guarantee the lives and personal integrity of people held in their custody. In this section, the IACHR will therefore analyze the plans and actions adopted with respect to Venezuela's prisons, their effectiveness in ensuring the security of people held in state custody, and their observance of the applicable international provisions.

827. The State has said that it is not unaware of the problem of violence in its prisons, but it stresses that it has been swift to adopt corrective measures. It points to actions including personnel training, the introduction of Human Rights Offices with specialized personnel, and the actions of the Office of the Human Rights Ombudsman, the agency that successfully sought the precautionary measure suspending implementation of those articles of the Penal Code that restricted the right to parole benefits.⁷²²

828. The IACHR notes that, with a view to improving the situation of detainees, on November 23, 2004, the President of the Republic decreed a Prison Emergency,⁷²³ assuming a firm commitment to tackling and resolving problems in the country's prisons. Under the decree, a Presidential Commission for the Prison Emergency was appointed and given two tasks: immediately addressing the situation of inmates awaiting trial in prisons, in order to reach a degree of judicial normalcy; and conducting an analysis of the nation's prisons and proposing short-, medium-, and long-term solutions toward a major reform of the system.

829. The Presidential Commission for the Prison Emergency spent 2005 and 2006 analyzing the prison system and designing policies for it. Although the Presidential Commission has not been formally dissolved, during 2007, 2008, and 2009, it issued no new calls for working meetings. According to information from the Office of the Human Rights Ombudsman, in June 2008 the Minister of Popular Power for the Interior and Justice called together the top authorities of the Attorney General's Office, the Supreme Court of Justice, and the Office of the Human Rights Ombudsman to create the Commission for Establishing Prison Policies and announced the creation of the Vice Ministry of Prison Affairs. This commission was to replace the Presidential Commission for the Prison Emergency, but the plans never crystallized.⁷²⁴ However, the State has reported that the Ministry of Popular Power for the Interior and Justice, as the agency responsible for the prison system, continued to implement and execute the public policies designed by that interinstitutional commission.⁷²⁵

⁷²² Response of the Venezuelan State to the draft of Chapter IV: Human Rights Developments in the Region on Venezuela, received by the IACHR on February 6, 2009, p. 55.

⁷²³ Decree No. 3.265, published in Official Gazette No. 38.072 of November 24, 2004.

⁷²⁴ Bolivarian Republic of Venezuela. Citizens' Branch of Government. Office of the Human Rights Ombudsman. *Annual Report 2008*. Caracas, August 2009, p. 228.

⁷²⁵ Bolivarian Republic of Venezuela. Citizens' Branch of Government. Office of the Human Rights Ombudsman. *Annual Report 2008*. Caracas, August 2009, p. 228.

830. During the emergency, the Interior and Justice Ministry adopted the Venezuelan Prison System Humanization Plan. According to information published by the National Prison Service Directorate, the Prison Humanization project emerged as the Venezuelan State's response to the extreme deterioration of a system dominated by anarchy, apathy, and corruption. The Prison System Humanization Plan seeks to address the prison problem by means of: (1) a new institutional structure, with an efficient organizational framework, rules, and procedures; (2) appropriate prison infrastructure, in line with the size of the prison population, with all the basic services needed for a decent existence; and (3) comprehensive attention, providing inmates awaiting trial and convicts alike with the conditions and tools needed to develop their potential and capacity.⁷²⁶

831. The plan involves all the country's prisons and is intended to reduce violence within them, improve health conditions, and encourage the social reincorporation of inmates. According to the State, under this plan, since November 2005 new prison facilities have been built and the infrastructure of existing prisons has been improved. The plan has also introduced structural changes in prison staff training, and it will implement a high-technology solution to strengthen prison security and custody. The plan also provides for comprehensive programs for inmates, providing assistance in the areas of health, nutrition, education, recreation, and job training and skill acquisition; it has also provided vehicles for prisoner transfers and other services to foster the human dimension inside Venezuela's prisons.⁷²⁷

832. In addition, the Commission acknowledged and welcomed⁷²⁸ the State's initiative whereby the Ministry of Popular Power for the Interior and Justice, through its General Directorate for Human Rights, has appointed human rights delegates at all prisons nationwide, together with the detention centers located in some police stations, to provide a swift response to outbreaks of violence and other complaints lodged by inmates.

833. Similarly, on August 7, 2008, the Attorney General's Office created prosecutors' offices at the national level with jurisdiction over the prison system,⁷²⁹ which are tasked with overseeing compliance with the prisons regime and the provisions of the Constitution, the Organic Criminal Procedural Code, the Prison Regime Law, and the UN's international instruments governing the treatment of prisoners. According to information submitted to the IACHR by the State, there are 26 prosecutors' offices dealing with and monitoring the execution of judgments and overseeing the applicable prison regime, and in August 2008⁷³⁰ the creation of an additional ten prosecutors' offices at the national level with jurisdiction over the prisons regime was ordered.⁷³¹ However, according to information from the Attorney General's Office, at the close of 2008, only two of these prosecutors'

⁷²⁶ Available at the following Web page: <http://www.dnsp.gob.ve/?q=node/32>.

⁷²⁷ Response of the Venezuelan State to the draft of Chapter IV: Human Rights Developments in the Region on Venezuela, received by the IACHR on February 6, 2009, p. 54.

⁷²⁸ IACHR, *Annual Report 2008*, Chapter IV: Human Rights Developments in the Region, Venezuela, paragraph 424.

⁷²⁹ Official Gazette No. 38,989, August 7, 2008.

⁷³⁰ Resolution 789 of the Attorney General of the Bolivarian Republic of Venezuela of August 7, 2008, published in Official Gazette No. 38.989.

⁷³¹ Response of the Venezuelan State to the draft of Chapter IV on Venezuela, received by the IACHR on February 6, 2009, p. 60.

offices were fully operational.⁷³² The Commission also shares the concern of the Office of the Human Rights Ombudsman that, in spite of these efforts, the number of detainees being held while awaiting trial is far greater than the number of convicts in prison under final judgments.⁷³³

834. The State also informed the Commission that in September 2008, the Ministry of Popular Power for the Interior and Justice created a National Pardons Commission.⁷³⁴ The chief purpose of this commission is to propose detainees suitable for receiving presidential pardons in accordance with the following criteria: humanitarian considerations, the seriousness of their crimes, having completed half their sentences, good behavior while in prison, a favorable assessment from the multidisciplinary technical team, and no recidivism.⁷³⁵ Under the terms of this decree, by the end of 2008 the President of the Republic had granted 71 pardons.

835. In October 2008, the State informed the Commission about the “relaunch of the plan to reduce prison violence,” and noted that four teams of itinerant judges had been attached to the prisons at Urbana, San Juan de los Morros, PGV, and Sabaneta, and that efficiency in confiscating weapons had been enhanced, with the plan producing total seizures of 2,213 bladed weapons, 113 pistols, 107 revolvers, 445 improvised firearms, 43 shotguns, two submachine guns, 60 grenades, and 5,432 rounds of ammunition.⁷³⁶

836. The State also informed the IACHR about the creation, on December 15, 2008, under Decree No. 6,553, of the Superior Prisons Council to serve as the national governing body for the design and formulation of structural policies to deal comprehensively with the prison system. This Council comprises representatives of the Legislature (National Assembly), of the Judiciary (Supreme Court of Justice), of the Citizens’ Branch of government (Public Prosecution Service and the Office of the Human Rights Ombudsman), and representatives of the Executive Branch (Ministries of Popular Power for Education, for Sport, for Culture, for Community Economies, for Health, for Higher Education, for Defense and the Ministry of the Interior and Justice, which chairs it).

837. According to the information received, the Superior Prisons Council’s powers include overseeing the right to life and humane treatment of the prison population; issuing policies to guarantee compliance with all the security and custody protocols needed to provide an appropriate regime of treatment and attention for prison inmates; designing and executing policies to guarantee the prison population comprehensive attention in the areas of education, health, culture, sport, work, technical and job training, and nutrition; guaranteeing the implementation of judicial policies; proposing regulatory plans to regulate prison affairs to the competent bodies, along with all other legal measures necessary to transform the Venezuelan prison system; and encouraging the

⁷³² These prosecutors’ offices were the 71st Prosecutor’s Office in the state of Falcón and the 72nd Prosecutor’s Office in the state of Guárico. Attorney General of the Bolivarian Republic of Venezuela, *Annual Report 2008*.

⁷³³ Bolivarian Republic of Venezuela. Citizens’ Branch of Government. Office of the Human Rights Ombudsman. *Annual Report 2008*. Caracas, August 2009, p. 237.

⁷³⁴ See: Decree No. 6.398 of September 9, 2008, published in the Official Gazette of the Bolivarian Republic of Venezuela of September 9, 2008.

⁷³⁵ Response of the Venezuelan State to the draft of Chapter IV on Venezuela, received by the IACHR on February 6, 2009, pp. 63-64.

⁷³⁶ Ministry of Popular Power for the Interior and Justice. *Revisión, Reactivación y Reimpulso Penitenciario. Política Pública Revolucionaria* (Prison Review, Reactivation, and Relaunch. Revolutionary Public Policy). Caracas, September 2008.

participation of relatives on community councils, in nongovernmental organizations, and in other bodies whose work is germane to prison affairs.⁷³⁷

838. Under the aegis of the Superior Prisons Council, Regional Prisons Councils were established, bringing together prison directors, presiding judges of judicial criminal districts, the state delegates of the Office of the Human Rights Ombudsman, the senior prosecutors of the Attorney General's Office, and the regional commanders of the Bolivarian National Guard. These regional councils function as decentralized and operational state units, responsible for oversight and direct control of the plans and programs established by the Superior Prisons Council.⁷³⁸

839. According to the State, since the creation of the Superior Prisons Council there has been a 30% fall in violence levels in the various prisons of the Capital Region; this, in the State's view, indicates that the project and its comprehensive approach are working.⁷³⁹

840. The State also reported the creation of the National Prison Service Directorate, to replace the Directorate of Inmate Custody and Rehabilitation, as part of its new approach to dealing with its prison population.⁷⁴⁰

841. With regard to the procedural delays that affect the trials of detainees in Venezuela, the IACHR applauds the creation of the Prisons Commissions set up at several detention centers in order to undertake case reviews; it also appreciates the creation of the itinerant judges program, which was established to ensure effective judicial oversight during the control and trial phases of cases against people who remain detained while facing trial and who require swift justice. According to information from the Office of the Human Rights Ombudsman, however, in practice those judges' courts are only effectively functioning in the states of Zulia, Guárico, Falcón, Miranda, and Carabobo.⁷⁴¹ The IACHR places great weight on the information furnished by the State indicating that it plans to strengthen the efforts of itinerant judges and prosecutors at certain prisons.⁷⁴²

842. With reference to the prison visits regime, the State reported that it planned to abolish the traditional practice of allowing prisoners visitors on weekends only, and to establish a system whereby relatives may visit inmates any day of the week. The State added that it was going to install a system of controlled access to prisoners for inspection and vigilance tasks, noting that work was underway to implement a less invasive and more respectful inspection system for the visiting relatives of inmates, reducing physical contact between prison officials and visitors.⁷⁴³ According to

⁷³⁷ Response of the Venezuelan State to the draft of Chapter IV on Venezuela, received by the IACHR on February 6, 2009, pp. 55-58.

⁷³⁸ Bolivarian Republic of Venezuela. Citizens' Branch of Government. Office of the Human Rights Ombudsman. *Annual Report 2008*. Caracas, August 2009, p. 229.

⁷³⁹ State's response to the questionnaire analyzing the situation of human rights in Venezuela. August 13, 2009, p. 191.

⁷⁴⁰ State's response to the questionnaire analyzing the situation of human rights in Venezuela. August 13, 2009, pp. 187 *et seq.*

⁷⁴¹ Bolivarian Republic of Venezuela. Citizens' Branch of Government. Office of the Human Rights Ombudsman. *Annual Report 2008*. Caracas, August 2009, p. 236.

⁷⁴² State's response to the questionnaire analyzing the situation of human rights in Venezuela. August 13, 2009, pp. 187 *et seq.*

⁷⁴³ State's response to the questionnaire analyzing the situation of human rights in Venezuela. August 13, 2009, p. 188.

the State, the general objective of this access control system is to install control systems to prevent the entry of weapons, drugs, explosives, and other prohibited items into 27 of the country's prisons. It will entail the installation of X-ray machines, 40 weapons detectors, and 37 digital closed-circuit TV systems for the exclusive monitoring of prison entryways.⁷⁴⁴

843. In the area of polices to reduce violence inside prisons, the State underscored the implementation of the Prison Symphonic Orchestra Project, which was launched on February 6, 2007, to prevent idleness among inmates which, in the State's opinion, leads to violence. According to the State's report, between 2007 and August 2009, 1,086 inmates had come into contact with the Prison Symphonic Orchestra and 486 were considered orchestra alumni.⁷⁴⁵

844. In addition, the State identified the elements that have helped reduce violence, including educational, cultural, and sporting endeavors in the country's different prisons. According to the State, the missions have also played a key role within the prison system, by providing inmates with academic and job training in order to facilitate their reincorporation into society upon completing their sentences.⁷⁴⁶ The Director General of Inmate Custody and Rehabilitation indicated that 39.59% of the prison population (8,915 inmates) was participating in the education and training missions promoted by the national government.⁷⁴⁷

845. To tackle the problem of overcrowding, which remains a structural feature of the Venezuelan penal system, the Prison Humanization Plan aims to build 15 Prison Communities which, according to the Office of the Human Rights Ombudsman, will follow a model that seeks to ensure inmates their rights and social services.⁷⁴⁸ The idea of these new centers is to provide the spaces necessary to implement personalized prison treatment, to encourage the rehabilitation and effective reincorporation of inmates, through sport, work, culture, and recreation. A pilot test of the model was put in place at the Carabobo Penitentiary Center and, according to the competent authorities, it has yielded very significant results.⁷⁴⁹ Six new Prison Communities were planned to be opened during 2008: Yare Terraza A, with a capacity for 432 inmates; Yare II, for 300 inmates; Rodeo III, for 432; Anzoátegui Judicial Prison, for 324; Santa Ana, for 648; and the Coro Prison Community, for 850. Regrettably, the last of these was only one that was actually finished; it was inaugurated on July 12, 2008.⁷⁵⁰

⁷⁴⁴ State's response to the questionnaire analyzing the situation of human rights in Venezuela. August 13, 2009, pp. 187 *et seq.*

⁷⁴⁵ State's response to the questionnaire analyzing the situation of human rights in Venezuela. August 13, 2009, p. 189.

⁷⁴⁶ State's response to the questionnaire analyzing the situation of human rights in Venezuela. August 13, 2009, p. 190.

⁷⁴⁷ Ministry of Popular Power for Communication and Information. Press release: *Más de 8 mil reclusos están incorporados en las misiones socialistas* (More than 8000 Prisoners Involved in Socialist Missions). Available in Spanish at: <http://www.vtv.gov.ve/noticias-nacionales/13150>.

⁷⁴⁸ Bolivarian Republic of Venezuela. Citizens' Branch of Government. Office of the Human Rights Ombudsman. *Annual Report 2008*. Caracas, August 2009, p. 230.

⁷⁴⁹ Bolivarian Republic of Venezuela. Citizens' Branch of Government. Office of the Human Rights Ombudsman. *Annual Report 2008*. Caracas, August 2009, p. 230.

⁷⁵⁰ Bolivarian Republic of Venezuela. Citizens' Branch of Government. Office of the Human Rights Ombudsman. *Annual Report 2008*. Caracas, August 2009, p. 231.

846. At the same time, the Office of the Human Rights Ombudsman created a Special Ombudsman's Office with national jurisdiction over the prison regime; this agency provides technical support to the different units of the Office of the Human Rights Ombudsman, specifically in the design of guidelines, programs, and activities for the promotion, defense, and monitoring of detainees' human rights.⁷⁵¹

847. The Office of the Human Rights Ombudsman, under its Building a Community for Human Rights program, has also implemented a project targeting prison matters. Through this program, the Human Rights Ombudsman has set up Human Rights Defense Councils within prisons, to design plans and projects for resolving community problems, such as the lack of quality public services and issues related to the rights to health, education, nutrition, humane treatment, housing, etc.⁷⁵²

848. According to the State, these Councils organize and represent all the inmates of different prison blocks, who can present to them their recommendations. Thus, the Councils offer a direct communications channel between representatives of the institutions and the prison community and they provide a forum for dialogue, agreements, and commitments for resolving prison conflicts.

849. According to information from the Office of the Human Rights Ombudsman, this program was launched in February 2008 at six of the country's prisons, benefiting an estimated total inmate population of 7,752. Seven Human Rights Defense Councils were set up at those prisons, to carry out analyses of the main problems affecting each of them, and to prepare work plans for promoting interinstitutional actions aimed at the adoption of measures. This initiative involved 30% of the inmates at each center acting as spokesmen, along with 60 family members. Among other achievements, the Ombudsman's Office claims that previously denied parole benefits were obtained, and improvements were made to various aspects of internal prison services.⁷⁵³ The State also claims that these Human Rights Councils have brought about a significant reduction in prison violence.⁷⁵⁴

850. In consideration of the plans, projects, and programs described in this section, the State maintains it has taken all the appropriate steps to eliminate prison violence.⁷⁵⁵ The IACHR believes the information received is positive and demonstrates a serious willingness on the part of the State to adopt policies to protect the rights of people held in its custody; nevertheless, the information received by the IACHR regarding conditions at Venezuela's prisons that will be dealt with in the following section indicates that these policies have not been sufficient to prevent the continued occurrence of violent incidents at Venezuelan prisons that have caused alarming numbers of deaths and injuries among inmates. That stance is shared by the Office of the Human Rights Ombudsman, which has said that:

⁷⁵¹ State's response to the questionnaire analyzing the situation of human rights in Venezuela. August 13, 2009, pp. 170 *et seq.*

⁷⁵² State's response to the questionnaire analyzing the situation of human rights in Venezuela. August 13, 2009, pp. 187 *et seq.*

⁷⁵³ Bolivarian Republic of Venezuela. Citizens' Branch of Government. Office of the Human Rights Ombudsman. *Annual Report 2008*. Caracas, August 2009, p. 237.

⁷⁵⁴ State's response to the questionnaire analyzing the situation of human rights in Venezuela. August 13, 2009, pp. 187 *et seq.*

⁷⁵⁵ Response of the Venezuelan State to the draft of Chapter IV on Venezuela, received by the IACHR on December 21, 2007, p. 70.

In spite of the actions and efforts of the competent agencies, [...] the prison situation has not changed significantly, and there is still much to be done to bring it into line with the model of a prison system that upholds human rights described in Article 272 of the Constitution and with the provisions set out in the international human rights protection instruments signed and ratified by the Venezuelan State.⁷⁵⁶

2. Prison violence and conditions

851. As the Inter-American Court has established, the essence of the right to personal liberty is the protection of the liberty of the individual from arbitrary or unlawful interference by the State and the guarantee of a detained individual's right of defense.⁷⁵⁷ Moreover, deprivation of freedom frequently affects, as a necessary result, the enjoyment of other human rights in addition to the right to personal liberty.⁷⁵⁸ Although such restrictions must be subject to strict limitations, other rights – such as the right to life, to humane treatment, and to due process – cannot be restricted under any circumstances during internment, and any restriction of those is prohibited by international human rights law. Persons deprived of their liberty are entitled to have those rights respected and ensured just as those who are not so deprived.⁷⁵⁹

852. The Commission has received information indicating violations of Venezuelan prisoners' rights to personal liberty, to life, and to humane treatment. Similarly, the Office of the Human Rights Ombudsman has summarized the factors leading to the burgeoning of violence at Venezuelan prisons in the following terms: "delays at trial, overcrowding, dilapidated prison facilities, the failure to classify inmates, the lack of vital basic services, [and] the presence of weapons and drugs."⁷⁶⁰

853. Regarding the right to personal liberty, the Office of the Human Rights Ombudsman states that it has frequently identified practices in which one or several individuals are taken to detention centers or other formal or informal detention facilities without good reason. The office has also recorded situations involving denials of freedom using mechanisms such as checkpoints, which occur in the context of either selective or general control operations or raids. According to the Ombudsman's Office, these procedures often lead to violations of humane treatment or, in the worst cases, to disappearances or executions.⁷⁶¹

⁷⁵⁶ Bolivarian Republic of Venezuela. Citizens' Branch of Government. Office of the Human Rights Ombudsman. *Annual Report 2008*. Caracas, August 2009, p. 232.

⁷⁵⁷ I/A Court H.R., *Case of the "Juvenile Reeducation Institute" v. Paraguay*. Judgment of September 2, 2004. Series C No. 112, para. 223; similarly, *Case of Maritza Urrutia v. Guatemala*. Judgment of November 27, 2003. Series C No. 103, para. 66.

⁷⁵⁸ I/A Court H.R., *Case of the "Juvenile Reeducation Institute" v. Paraguay*. Judgment of September 2, 2004. Series C No. 112, para. 154; similarly, *Case of Maritza Urrutia v. Guatemala*. Judgment of November 27, 2003. Series C No. 103, para. 87.

⁷⁵⁹ I/A Court H.R., *Case of the "Juvenile Reeducation Institute" v. Paraguay*. Judgment of September 2, 2004. Series C No. 112, para. 155.

⁷⁶⁰ Bolivarian Republic of Venezuela. Citizens' Branch of Government. Office of the Human Rights Ombudsman. *Annual Report 2008*. Caracas, August 2009, p. 234.

⁷⁶¹ Bolivarian Republic of Venezuela. Citizens' Branch of Government. Office of the Human Rights Ombudsman. *Annual Report 2008*. Caracas, August 2009, pp. 204-205.

854. The Office of the Human Rights Ombudsman reports that violations of the right to personal liberty are generally accompanied by abuses of authority and, frequently, by cruel, inhuman, or degrading treatment.⁷⁶² The Ombudsman's Office has noted that many arbitrary denials of liberty in Venezuela entail physical or psychological abuse and, on occasions, can lead to disappearances or executions. It also reports that many cases of police brutality take place as a result of police actions that undermine guarantees of personal liberty and of transit.⁷⁶³

855. The Annual Report of the Office of the Human Rights Ombudsman indicates that in Venezuela it is common for detainees to be kept incommunicado, for their merchandise or personal effects to be confiscated, for victims' ID papers to be taken from them, or for them to be transferred to different detention centers, along with other irregular situations. Moreover, it further states that in numerous cases, illegal denials of liberty are a part of the investigation procedures of the CICPC, and that arbitrary transfers by this investigation corps presage the torturing of the victim or other physical attacks with the aim of obtaining information.⁷⁶⁴

856. Information from the Ombudsman's Office indicates that during 2008, it recorded a total of 430 complaints involving illegal denials of liberty, incommunicado detention, and forced disappearances, compared to 410 during 2007, which represents an increase of 4.87%.⁷⁶⁵

857. In connection with this information, the IACHR points out that sections 2 and 3 of Article 7 of the American Convention place limits on public power and expressly prohibit both illegal and arbitrary arrests; it therefore calls on the State to take the steps necessary to put an end to arrests carried out in breach of law, and to the holding of detainees in incommunicado conditions, to mistreatment, and to other violations of due process that may arise during an arrest. The Commission also calls for the appropriate investigation of allegations of arbitrary arrests occurring in Venezuela and for the punishment of the perpetrators.

858. The State has informed the IACHR that Venezuela is one of the countries with the fewest persons deprived of liberty in the world, since less than 10% of the total population is confined.⁷⁶⁶ The Commission notes that the official figures for the total number of detainees in Venezuela given to it by the State in August 2009⁷⁶⁷ are not entirely clear. The information refers to a total of 22,223 people imprisoned in Venezuela. According to those figures, 14,144 of these were awaiting trial and 7,333 had been sentenced, which would give a total of 21,477. On the other hand, adding the numbers given for each region yields the following result: in the capital region, 5,149 detainees (3,888 awaiting trial and 1,261 convicted); in the central region, 4,828 (3,014 awaiting trial and 1,814 convicted); in the Andean region, 3,736 (2,350 awaiting trial and 1,386 convicted); in the center-west region, 4,255 (2,261 awaiting trial and 1,944 convicted); and in the center-west region,

⁷⁶² Bolivarian Republic of Venezuela. Citizens' Branch of Government. Office of the Human Rights Ombudsman. *Annual Report 2008*. Caracas, August 2009, p. 213.

⁷⁶³ Bolivarian Republic of Venezuela. Citizens' Branch of Government. Office of the Human Rights Ombudsman. *Annual Report 2008*. Caracas, August 2009, p. 203.

⁷⁶⁴ Bolivarian Republic of Venezuela. Citizens' Branch of Government. Office of the Human Rights Ombudsman. *Annual Report 2008*. Caracas, August 2009, p. 213.

⁷⁶⁵ Bolivarian Republic of Venezuela. Citizens' Branch of Government. Office of the Human Rights Ombudsman. *Annual Report 2008*. Caracas, August 2009, p. 213.

⁷⁶⁶ Information provided by the State to the IACHR. *Hearing on the Situation of Human Rights in Venezuela*. 137th Period of Sessions, November 2, 2009.

⁷⁶⁷ State's response to the questionnaire analyzing the situation of human rights in Venezuela. August 13, 2009, pp. 185 - 187.

2,979 (2,631 awaiting trial and 982 convicted). These figures give a grand total of 20,947 persons deprived of liberty.

859. Notwithstanding the inconsistencies in the official figures for the country's total prison population, it is clear that the number of people held without a conviction is a cause for concern. If 14,144 inmates are awaiting trial and 7,733 have been convicted, more than 65% of the country's prison inmates have not received convictions. Also concerning are the figures given to the press by the Director of Inmate Custody and Rehabilitation in January 2009, according to which the prison population totaled 24,360, of whom 69% were awaiting trial and 31% had been convicted.⁷⁶⁸

860. Similarly, in its 2008 annual report, PROVEA claimed that 60% of Venezuela's prison population was being held in preventive custody.⁷⁶⁹ Additionally, in March 2009 the Venezuelan Prisons Observatory informed the Inter-American Commission on Human Rights that Venezuela's total prison population numbered 23,457 individuals, of whom 14,461 (60%) were being detained pending trial.⁷⁷⁰ In a later hearing, held in November of 2009, the Venezuelan Prisons Observatory informed the Commission that the prison population had increased to 32,820 persons, of which 22,328 (68%) were detained pending trial.⁷⁷¹

861. According to figures given by the Ministry of Popular Power for the Interior and Justice to the Office of the Human Rights Ombudsman in early 2009, during 2008 there were a total of 24,360 persons held in prisons, representing an increase of almost 15% over the 2007 figure of 21,201.⁷⁷² According to these figures, 15,332 of these inmates were awaiting trial, representing 62.93% of the total. As noted by the Ombudsman's Office, this figure indicates that the problem has grown worse since the previous period, when there were 10,972 inmates awaiting trial, giving an increase of 39.73%. In addition, the Office of the Human Rights Ombudsman states that the effort to update the country's prison statistics could yield a higher percentage of inmates awaiting trial.⁷⁷³

862. Since preventive custody is the harshest measure that can be imposed on a person accused of a crime, the Commission stresses that it must be applied on an exceptional basis and must be constrained by the principles of legality, presumption of innocence, need, and proportion that are indispensable in a democratic society.⁷⁷⁴ The arbitrary prolonging of preventive custody becomes a punishment when it is imposed without demonstrating the criminal responsibility

⁷⁶⁸ Ministry of Popular Power for Communication and Information. Press release: *Más de 8 mil reclusos están incorporados en las misiones socialistas* (More than 8000 Prisoners Involved in Socialist Missions). January 9, 2009. Available in Spanish at: <http://www.vtv.gov.ve/noticias-nacionales/13150>.

⁷⁶⁹ PROVEA. *Situación de los Derechos Humanos en Venezuela Informe Anual Octubre 2007/Septiembre 2008* (Situation of Human Rights in Venezuela: Annual Report, October 2007/September 2008). December 10, 2008, p. 337.

⁷⁷⁰ Information provided by the petitioners to the IACHR. *Hearing on Institutional and Human Rights in Venezuela*. 134th Period of Sessions, March 24, 2009.

⁷⁷¹ Information provided by the petitioners to the IACHR. *Hearing on Democratic Institutional, Parapolice Groups, and Prisons in Venezuela*. 137th Period of Sessions, November 2, 2009.

⁷⁷² Bolivarian Republic of Venezuela. Citizens' Branch of Government. Office of the Human Rights Ombudsman. *Annual Report 2008*. Caracas, August 2009, pp. 229 - 230.

⁷⁷³ Bolivarian Republic of Venezuela. Citizens' Branch of Government. Office of the Human Rights Ombudsman. *Annual Report 2008*. Caracas, August 2009, p. 230.

⁷⁷⁴ See, in this regard: I/A Court H.R., *Case of the "Juvenile Reeducation Institute" v. Paraguay*. Judgment of September 2, 2004. Series C No. 112, para. 228. See also: *Case of Suárez Rosero v. Ecuador*. Judgment of November 12, 1997. Series C No. 35, para. 77.

of the individual to whom it is applied.⁷⁷⁵ In consideration of the foregoing, the Commission requests that the State urgently adopt all the necessary measures to address procedural delays and thus correct this serious situation that affects thousands of people in Venezuela.

863. With reference to delays in trials, the Director of Inmate Custody and Rehabilitation has reported an improvement of the situation from the ratio of 9 to 1 that existed during the 1990s (nine inmates awaiting trial for every single convict), and he claimed that efforts were still being invested in the adoption of measures to tackle this problem, such as increased numbers of itinerant prosecutors and judges at detention centers.⁷⁷⁶ Nevertheless, delays in court proceedings remain one of the main problems of the Venezuelan prison system and they have been the reason behind the main protests, including hunger strikes and *autosequestros* (self-kidnappings), over recent years.

864. In addition to delays in court proceedings, the information received by the Commission indicates that one of the main factors affecting the rights of Venezuelan detainees is the conditions in which they are held, most particularly overcrowding, a circumstance affecting both prisons and police jails.

865. Although this problem has affected Venezuela's prisons for several years, there can be little doubt that the 2005 amendment of the Penal Code whereby those convicted of certain crimes were denied access to alternative ways to serve their sentences led to an increase in the prison population. The Commission therefore applauded the Supreme Court's decision to suspend those articles as a precautionary measure until final judgment is issued in the remedy for annulment lodged against the amendment. The Commission eagerly awaits the Supreme Court's final decision on this matter.

866. In addition to the relevant legislative reforms, the situation of Venezuela's detainees demands specific, urgent measures to improve prison conditions. Although the state has made some progress with prison infrastructure, according to information from PROVEA, in spite of the Strategic Plan for Prison System Humanization being carried out by the Ministry of Popular Power for the Interior and Justice – which provides for the creation of living space for an additional 15,000 inmates, 2,500 places for residents of Community Treatment Centers, and the refitting of 30 prisons – detention conditions are still characterized by overcrowding and collapsed sanitary infrastructure.⁷⁷⁷

867. In connection with this, the Commission regrets that the State did not respond to its specific request for information on its prison capacity.⁷⁷⁸ Unofficial figures, given to the IACHR by the Latin American Prisons Observatory, indicate that Venezuela's total population is some 28 million and that prison inmates total around 22,000. There are estimated to be 79 prison inmates for every 100,000 inhabitants. The official capacity of the country's prisons is 16,909, giving an overpopulation

⁷⁷⁵ I/A Court H.R., *Case of Acosta Calderón v. Ecuador*. Judgment of June 24, 2005. Series C No. 129, para. 75.

⁷⁷⁶ Ministry of Popular Power for Communication and Information. Press release: *Más de 8 mil reclusos están incorporados en las misiones socialistas* (More than 8000 Prisoners Involved in Socialist Missions). January 9, 2009. Available in Spanish at: <http://www.vtv.gov.ve/noticias-nacionales/13150>.

⁷⁷⁷ PROVEA. *Situación de los Derechos Humanos en Venezuela Informe Anual Octubre 2007/Septiembre 2008* (Situation of Human Rights in Venezuela: Annual Report, October 2007/September 2008). December 10, 2008, p. 56.

⁷⁷⁸ Questionnaire analyzing the situation of human rights in Venezuela. August 13, 2009, question 77: What is the capacity of the country's prisons?

or overcrowding rate of 117.4%.⁷⁷⁹ During a more recent hearing, the Venezuelan Prisons Observatory informed the Commission that the prison population had increased to 32,820 people, and that the established capacity was 12,000 people, which represents a 166.9% overcrowding rate.⁷⁸⁰ If these statistics are certain, the IACHR considers the increase in the prison population of 10,000 people in approximately 7 months alarming, as well as the resulting deterioration in the overcrowding situation.

868. As stated by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, an overcrowded prison is characterized by unhygienic and restricted accommodation, with a lack of privacy for basic activities such as washroom use; a reduction in activities outside of the cell since inmate numbers surpass the services available; overloaded health services; and increased internal tensions. Consequently, there is more violence between prisoners and prison staff, as well as other problems.⁷⁸¹

869. According to information provided by the representatives of the beneficiaries of provisional measures ordered by the Inter-American Court in cases involving Venezuelan prisons, in spite of the State's efforts in building 15 prison communities in an attempt to resolve its serious overcrowding and infrastructure problems, Venezuela has still not taken adequate steps to attack the root problems at its prisons, such as inmate reeducation and rehabilitation, which in turn compromises the security of the prison population. They also reported that Venezuela's prisons lack bathroom facilities, the water supply is generally restricted, and the prisoners are required to bathe in shared spaces without privacy, which affects their dignity. Similarly, they spoke of inadequate systems for waste collection, which provoke an accumulation of excrement and a permanent state of unhealthiness.⁷⁸²

870. Indeed, the IACHR notes with concern that 2008 and 2009 have seen several hunger strikes and *autosequestros* (self-kidnappings) of thousands of visiting family members of inmates. The Venezuelan Prisons Observatory has informed the Commission that in 2008 alone, Venezuela's prisons reported 22 *autosequestros*, 48 hunger strikes, one blood strike (self-mutilation), and 61 inmates who sewed their mouths shut.⁷⁸³ These protests were in support of, *inter alia*, greater dispatch in court proceedings, alternative ways of serving sentences, improved infrastructure and living conditions, improvements to the prisoners' basic services, an end to mistreatment by members of the Bolivarian National Guard, visitor access for children, and respect for inmates' relatives, who on occasions have been humiliated by security personnel.⁷⁸⁴

⁷⁷⁹ Information provided by the petitioners to the IACHR. Hearing on Institutionalality and Human Rights in Venezuela. 134th Period of Sessions, March 24, 2009.

⁷⁸⁰ Information provided by the petitioners to the IACHR. *Hearing on Democratic Institutionalality, Parapolice Groups, and Prisons in Venezuela*. 137th Period of Sessions, November 2, 2009.

⁷⁸¹ European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment. CPT/Inf (92) 3 [EN], 2nd General Report, April 13, 1992, para. 43.

⁷⁸² I/A Court H.R., Order of the President of the Inter-American Court of Human Rights: *Convocation of Public Hearing on Provisional Measures Regarding the Bolivarian Republic of Venezuela in the Matter of the Monagas Judicial Confinement Center ("La Pica"), Yare I and Yare II Capital Region Penitentiary Center (Yare Prison), Center-West Region Prison Center (Uribana Prison), and El Rodeo I and El Rodeo II Judicial Confinement Center*. August 12, 2009, para. 9 (c).

⁷⁸³ Information provided by the petitioners to the IACHR. *Hearing on Institutionalality and Human Rights in Venezuela*. 134th Period of Sessions, March 24, 2009.

⁷⁸⁴ In this regard, see: IACHR. *Annual Report 2008*. Chapter IV: Human Rights Developments in the Region, Venezuela, para. 428. See also: Bolivarian Republic of Venezuela. Citizens' Branch of Government. Office of the Human Rights Ombudsman. *Annual Report 2008*. Caracas, August 2009, p. 232.

871. Regarding detention conditions, the Inter-American Court has specified that under paragraphs 1 and 2 of Article 5 of the American Convention, everybody who is imprisoned has the right to live in a situation of detention compatible with their personal dignity, which must be guaranteed by the State since it is in a special position of guarantor with regard to such persons, because the penitentiary authorities exercise total control over them.⁷⁸⁵ Detention in conditions of overcrowding, without adequate conditions of hygiene, and with unjustified restrictions to the regime of visits, is a violation of personal integrity.⁷⁸⁶ Moreover, injuries, suffering, and harm to health endured by a person while in prison can constitute a form of cruel treatment when, by reason of the detention conditions, there is a decline in his or her physical, mental, and moral integrity, which is expressly prohibited under Article 5 paragraph 2 of the Convention.⁷⁸⁷

872. States are also obliged to ensure the economic, social, and cultural rights of prison inmates. In this regard, PROVEA has noted that some 30% of the prison population is involved in the educational system through the Robinson I and II and Ribas Missions. This organization also reports an effort among the prison authorities to enhance job training, with a view to facilitating social reincorporation. It is concerned, however, that violations of inmates' labor rights continue, along with violations of their right to health.⁷⁸⁸

873. The IACHR is particularly concerned by the information it has received about violence inside Venezuelan prisons, which has claimed the lives of thousands of people in recent years and injured thousands more. In imprisoning a person, the State's obligation is not limited to refraining from actions that could harm the detainee's life and person; on the contrary, the State must work to ensure, through every means available to it, that detainees enjoy their basic rights and, in particular, the right to life and to humane treatment. The Commission rejects the State's refusal, on the grounds that the investigations are confidential, to respond to the IACHR's request for official figures on the number of people who have lost their lives at the country's prisons over the past five years.⁷⁸⁹

874. In any event, according to the figures given to the press by the Ministry of Popular Power for the Interior and Justice in January 2009, the murder rate in Venezuelan prisons fell by 22% in 2008 compared to the 2007 figure, and, in general, acts of violence decreased by 25% in comparison with the previous year. According to this source, the number of injured inmates fell from 1,091 in 2007 to 854 in 2008, while the number of deaths decreased from 447 in 2007 to 368 in

⁷⁸⁵ I/A Court H.R., *Case of Fermín Ramírez v. Guatemala*. Judgment of June 20, 2005. Series C No. 126, para. 108.

⁷⁸⁶ I/A Court H.R., *Case of Fermín Ramírez v. Guatemala*. Judgment of June 20, 2005. Series C No. 126, para. 118; *Case of the "Juvenile Reeducation Institute" v. Paraguay*. Judgment of September 2, 2004. Series C No. 112, para. 151; I/A Court H.R., *Case of Lori Berenson Mejía v. Peru*. Judgment of November 25, 2004. Series C No. 119, para. 102.

⁷⁸⁷ I/A Court H.R., *Case of Lori Berenson Mejía v. Peru*. Judgment of November 25, 2004. Series C No. 119, para. 106.

⁷⁸⁸ PROVEA. *Situación de los Derechos Humanos en Venezuela Informe Anual Octubre 2007/Septiembre 2008* (Situation of Human Rights in Venezuela: Annual Report, October 2007/September 2008). December 10, 2008, p. 56.

⁷⁸⁹ Questionnaire analyzing the situation of human rights in Venezuela. August 13, 2009, question 78. How many prison inmates have lost their lives in violent incidents over the past five years? How many of these cases have been cleared up by the courts?

2008.⁷⁹⁰ The same figures were cited in the annual report of the Office of the Human Rights Ombudsman, which also states that in 2008 alone, a total of 1,224 acts of violence were committed in Venezuelan prisons.⁷⁹¹

875. The Commission also takes note of the statistics submitted by the State to the Inter-American Court in January 2009.⁷⁹² The State emphasizes that upon analyzing the different violent acts that occurred between 1999 and 2008 in the Venezuelan penitentiaries one can observe a significant reduction in the number of deaths and injuries between 2008 and 2007. The official statistics presented by the State are the following:

Year	Injuries	Difference in injuries compared to previous year	Percentage difference in injuries compared to previous year	Deaths	Difference in deaths compared to previous year	Percentage difference in deaths compared to previous year
1999	1,861			524		
2000	1,285	-576	44.82%	313	-212	67.41%
2001	1,352	67	4.96%	298	-15	5.03%
2002	1,588	236	14.86%	378	80	21.16%
2003	1,428	-160	11.20%	469	91	19.40%
2004	1,118	-310	27.73%	368	-101	27.45%
2005	1,090	-28	2.57%	408	40	9.80%
2006	982	-108	11.00%	412	4	0.97%
2007	1,091	109	9.99%	447	35	7.83%
2008	856	-235	27.45%	368	-79	21.47%

876. In turn, the Venezuelan Prisons Observatory⁷⁹³ has informed the Commission that 412 people died at Venezuelan prisons in 2006, 498 in 2007, and 422 in 2008. At the same time, those same facilities recorded 982 cases of injured inmates in 2006, compared to 1,023 in 2007 and 854 in 2008.

877. The total number of deaths and injuries at Venezuela's detention centers over the past ten years, as indicated by figures from PROVEA (for 1999 to 2003) and from the Venezuelan Prisons Observatory (for 2003 to 2008) is, in the Commission's view, alarming. As detailed below,

⁷⁹⁰ Ministry of Popular Power for Communication and Information. Press release of January 9, 2009. *Más de 8 mil reclusos están incorporados en las misiones socialistas* (More than 8000 Prisoners Involved in Socialist Missions). Available in Spanish at: <http://www.vtv.gov.ve/noticias-nacionales/13150>.

⁷⁹¹ Bolivarian Republic of Venezuela. Citizens' Branch of Government. Office of the Human Rights Ombudsman. *Annual Report 2008*. Caracas, August 2009, p. 233.

⁷⁹² Bolivarian Republic of Venezuela. Ministry of Popular Power for Foreign Affairs. State Agent for Human Rights. *Consolidated Report. Provisional Measures Monagas Judicial Prison (La Pica); Uribana Center-West Prison; Rodeo I and II Capital Penitentiary Centers; Yare I and II Capital Penitentiary Centers*. Note AGEV/00039 dated January 30, 2009, sent by the Court to the Commission on February 11, 2009 (REF CDH-S/337), page 32, table iii: deaths and injuries at a national level 1999-2008.

⁷⁹³ Information provided by the petitioners to the IACHR. Hearing on Institutionality and Human Rights in Venezuela. 134th Period of Sessions, March 24, 2009.

between 1999 and 2008, a total of 3,664 people were killed and 11,401 were injured at Venezuelan prisons:

Year	Deaths	Injuries	Total
1999	390	1.695	2.085
2000	338	1.255	1.593
2001	300	1.285	1.585
2002	244	1.249	1.493
2003	250	903	1.153
2004	402	1.428	1.83
2005	408	727	1.135
2006	412	982	1.394
2007	498	1.023	1.521
2008	422	854	1.276
Total	3.664	11.401	15.065

878. According to the Office of the Human Rights Ombudsman and figures gathered between January and September 2008, the most violent prison facilities were the following: the Capital Region's Rodeo I Judicial Prison, with 18 inmates killed and 46 injured; Rodeo II, with 14 inmates killed and 28 injured; Maracaibo National Prison, with 35 killed and 69 injured; Aragua Prison Center, with 27 killed and 8 injured; the Capital Region's Yare Prison, with 36 killed and 20 injured; the Carabobo Judicial Prison, with 21 killed and 73 injured; the Center-West Region Prison, with 19 killed and 33 injured; and the Monagas Judicial Prison, with 11 killed and 17 injured.⁷⁹⁴ Most of these acts of violence were committed with firearms or bladed weapons, which presumably come into inmates' possession through the internal and external complicity of prison officers and visiting family members. In this regard, information from the Ombudsman's Office states that in 2008, 102 search operations were conducted, leading to the confiscation of 2,191 bladed weapons, 704 firearms, and 60 fragmentation grenades; 15,150 doses of narcotics and psychotropic substances were also seized.⁷⁹⁵

879. Regarding the country's most dangerous prison facilities, the Venezuelan Prisons Observatory informed the Commission that in 2008, more than half the total number of violent acts – that is, 72.5% of the deaths and 52% of the injuries – occurred in the following prisons: Yare I and II (44 deaths and 40 injuries); Sabaneta (44 deaths and 55 injuries); Rodeo I and II (41 deaths and 87 injuries); Uribana (29 deaths and 53 injuries); Barinas (23 deaths and 42 injuries); Apure (19 deaths and 27 injuries); Tocuyito (33 deaths and 85 injuries); La Pica (13 deaths and 25 injuries); Tocoron (28 deaths and 2 injuries); P.G.V. (16 deaths and 20 injuries); and various police stations (16 deaths and 8 injuries).⁷⁹⁶

⁷⁹⁴ Bolivarian Republic of Venezuela. Citizens' Branch of Government. Office of the Human Rights Ombudsman. *Annual Report 2008*. Caracas, August 2009, p. 233.

⁷⁹⁵ Bolivarian Republic of Venezuela. Citizens' Branch of Government. Office of the Human Rights Ombudsman. *Annual Report 2008*. Caracas, August 2009, p. 233.

⁷⁹⁶ Information provided by the petitioners to the IACHR. *Hearing on Institutional and Human Rights in Venezuela*. 134th Period of Sessions, March 24, 2009.

880. In connection with this, the State has noted that if the 2008 increase of 12% in the prison population is taken into account, the result is a fall of 25.65% in the number violent incidents compared to the previous year, which is due to the steps that have been taken. The State also claims that observing the different violent acts, and the differential from one year to the next between 1999 and 2008, there was a significant reduction of 27.45% in injuries and of 21.47% in deaths in comparison to 2007.⁷⁹⁷ The State therefore believes that significant progress has been made with addressing violence in Venezuelan prisons.

881. The Commission notes that the State has made efforts to implement measures for reducing violence in Venezuela's prisons. However, the State has failed to adopt an effective policy to prevent violence within its detention centers, and as a result, the figures for inmates killed and injured at Venezuelan prisons are still disturbing. In comparative terms, Venezuelan prisons are the most violent in the region.

882. Thus, according to figures from the Latin American Prisons Observatory, some 2,200 violent deaths per 100,000 inmates take place each year in Venezuelan prisons, which means that 2.2% of all prison inmates are killed by acts of violence. The Observatory has also pointed out that, bearing in mind that in Venezuela approximately 50 out of 100,000 citizens die violent deaths, the fatality rate in the country's prisons is 44 times higher than among the general population. The data given to the Commission by the Latin American Prisons Observatory also indicates that in comparison with the rest of the region, in 2008 Venezuela's prisons reported five times more violent deaths (422 people) than those of Mexico (24), Brazil (59), Colombia (7), and Argentina (10).⁷⁹⁸

883. It should be noted that the right to life of prison detainees in Venezuela has been affected not only by violence among inmates, with or without the acquiescence of state authorities, but that Venezuelan prisoners have also lost their lives during irregular transfers carried out by state agents. For example, on July 29, 2008, one inmate was killed and another three were injured during the transfer of nine prisoners from the Rodeo I and Rodeo II Judicial Prisons in the Capital Region. The driver of the public transport vehicle used for the irregular transfer – for which prison system vehicles should have been used – was also injured. The Commission notes with extreme concern that, according to the version of events given by the members of the Bolivarian National Guard involved, the incident arose from an escape attempt. After expert testing was conducted, however, the Attorney General's Office determined that the members of the National Guard were responsible, and so three of them were accused of the crimes of homicide, simulation of punishable action, and undue firearm use.⁷⁹⁹

884. The Commission also received with grave concern information about the case of Mr. Francisco Dionel Guerrero Larez, who was being held in the General Penitentiary of Venezuela.⁸⁰⁰ According to what was reported to the IACHR in the context of its hearings, Mr. Francisco Dionel Guerrero Larez has been missing since September 7, 2009, and the Director of that establishment had not given his family members information about his whereabouts. The victim's father informed the Venezuelan Prisons Observatory that the Major of the National Guard had communicated with him

⁷⁹⁷ See: IACHR. *Annual Report 2007*. December 29, 2007, para. 310.

⁷⁹⁸ Information provided by the petitioners to the IACHR. *Hearing on Institutional and Human Rights in Venezuela*. 134th Period of Sessions, March 24, 2009.

⁷⁹⁹ In this regard, see: Bolivarian Republic of Venezuela. Citizens' Branch of Government. Office of the Human Rights Ombudsman. *Annual Report 2008*. Caracas, August 2009, p. 233.

⁸⁰⁰ Information provided by the petitioners to the IACHR. *Hearing on Democratic Institutional, Parapolice Groups, and Prisons in Venezuela*. 137th Period of Sessions, November 2, 2009.

by telephone on the night of September 8, 2009 that his son's body would be given to him in the next several days. Additionally, he received anonymous calls from persons held in the same center informing him that his son was buried in the penitentiary. According to what the Commission was informed, in spite of the actions and denunciations before the Ministry of Popular Power for the Interior and Justice, the Attorney General of the Republic, the Sixth Criminal Tribunal in the first instance for Functions of Execution of the Metropolitan Area of Caracas, the Office of the Deputy Human Rights Ombudsman of the state of Guarico, and the Regional Command No. 2 Detachment 28 Second Company San Juan de los Morros, the whereabouts of Mr. Francisco Dionel Guerrero remain unknown.

885. On November 4, 2009, in accordance with the foregoing and with the provisions of Article XIV of the Inter-American Convention on Forced Disappearance of Persons, the Commission sent an urgent request for information to the State asking that it provide, within a period of 48 hours, information about the whereabouts of Mr. Guerrero Larez and his physical state, indicating the reasons that it has not been possible for his relatives to contact or visit him, and any other information related to his whereabouts and situation. On November 6, 2009, the State requested a "reasonable extension" to present the requested information. Through a communication dated November 9, 2009, the Commission granted the State an extension of 72 hours. Due to the lack of a response from the State, on November 13, 2009, the IACHR submitted a request for provisional measures to the Inter-American Court with the objective that the State protect the life and personal integrity of Francisco Dionel Guerrero Larez. On November 17, 2009, the Court decided to grant provisional measures⁸⁰¹ and require the State to adopt immediately the measures necessary to determine the situation and whereabouts of Francisco Dionel Guerrero Larez and to protect his life and personal integrity. In its observations on the present report, the State emphasized that the Attorney General's Office had initiated the relevant investigation.⁸⁰² As of the time this report was approved, the whereabouts of Mr. Guerrero Larez, who was in the custody of the State, remain unknown.

886. Weeks later, on November 28, 2009, the Inter-American Commission submitted a new request for provisional measures to the Court, this time for the State to protect the life and personal integrity of Eduardo José Natera Balboa. According to the information received by the Commission, Mr. Natera Balboa was incarcerated in the "El Dorado" Penitentiary Center of the Eastern Region, in the state of Bolívar, and his whereabouts had been unknown since November 8, 2009, when several members of the National Guard had forced him violently into a black Ford car. Since that date, his family members have tried unsuccessfully to contact him and have carried out various actions, without being able to obtain information about his situation or whereabouts.

887. On November 20, 2009, in light of the foregoing and of that established in Article XIV of the Inter-American Convention on Forced Disappearance of Persons, the Commission sent an urgent request for information to the State asking it to provide, within a period of 48 hours, information about the whereabouts of Mr. Eduardo Natera and his physical state, indicating the reasons why it has not been possible for his relatives to contact or visit him, and any other information related to his whereabouts and situation. On the same day, the State requested a "reasonable extension" to present the requested information. Through a communication of November 23, 2009, the Commission granted an extension of 24 hours. On November 23, 2009, the State reported on some internal investigations with respect to the situation of Mr. Natera, but did

⁸⁰¹ I/A Court H.R., *Matter of Guerrero Larez regarding Venezuela*. Resolution of November 17, 2009.

⁸⁰² Bolivarian Republic of Venezuela. Ministry of Popular Power for Foreign Affairs. State Agent for Human Rights. Observations on the Draft Report *Democracy and Human Rights in Venezuela*. Note AGEV/000598 of December 19, 2009, p. 90.

not provide documentation of the measures taken. The IACHR decided to request provisional measures taking into account that Mr. Natera Balboa was in State custody the last time there was any news about him and that the investigations carried out by the State did not produce the immediate results required in this type of situation. On December 1, 2009, the Court granted provisional measures⁸⁰³ and ordered the State to adopt immediately the measures necessary to determine the situation and whereabouts of Mr. Eduardo José Natera Balboa and to protect his life and personal integrity. As of the date of this report, the whereabouts of Mr. Natera Balboa, who was in State custody, remained unknown.

888. The IACHR has been closely monitoring the prison situation in Venezuela and it has made use of the measures available to it to protect the detainees affected thereby. The Commission has adopted precautionary measures, asked the Court to order provisional measures, referred cases to the Court, and asked the State for information under the authority given by Article 41 of the American Convention on Human Rights.

889. Among other steps, in 2008, the IACHR asked the State for information, pursuant to Article 41(d) of the Convention, regarding the occurrence of violent incidents at Sabaneta Prison in the state of Zulia.⁸⁰⁴ According to the information received by the Commission, on August 29, 2008, at least ten inmates died and 16 were injured when a fragmentation grenade belonging to a group of detainees at that prison exploded. Later, some prisoners opened up holes in the walls and entered other cells, and an exchange of gunfire took place. The Commission asked the State of Venezuela to furnish information on the outbreak of violence. The State, under an extension granted by the Commission, returned that information on October 7, 2008.⁸⁰⁵

890. The State reported that on August 29, 2008, “an incident occurred at Maracaibo National Prison, also known as Sabaneta Prison, when a group of inmates were handling a fragmentation grenade in an area known as the ‘Procemil Yard,’ where members of the military awaiting trial are housed. The grenade exploded and caused the instant death of several inmates [who] were immediately taken to the Southern General Hospital in the municipality of San Francisco of the aforementioned state.” The State added that the Attorney General’s Office proceeded to verify the situation and began the pertinent investigations to cast light on the incident and identify the guilty.

891. The IACHR’s actions to ensure the rights of Venezuelan prison inmates have also included the adoption of precautionary measures. For example, on October 31, 2005, the Commission granted precautionary measures on behalf of Raúl José Díaz Peña, regarding whom the information available indicated that he was being held at the Investigations Division of the headquarters of the Intelligence and Prevention Services Directorate (DISIP, by its Spanish acronym), El Helicóde facility, in Caracas, since February 25, 2004, in cells with no natural ventilation and no natural air or light.

892. Given the situation of the beneficiary, the IACHR asked the Venezuelan State to instruct the competent authorities to carry out medical examinations in order to assess Mr. Díaz’s health and provide him with the specialized treatment he required; to transfer Mr. Díaz to a preventive detention center, where he would be guaranteed access to decent living conditions,

⁸⁰³ I/A Court H.R., *Matter of Natera Balboa regarding Venezuela*. Resolution of December 1, 2009.

⁸⁰⁴ IACHR. *Annual Report 2008*. Chapter IV: Human Rights Developments in the Region, Venezuela, para. 427.

⁸⁰⁵ Note from the State No. AGEV 000641 of October 7, 2008.

natural light, fresh air, and exercise; until Mr. Díaz was effectively transferred from the DISIP to a preventive custody facility, to ensure him the guarantees necessary to preserve his physical, mental, and moral integrity; and to guarantee that Mr. Díaz would face no reprisals whatsoever in connection with the remedies pursued before the inter-American human rights system.

893. In 2008, a conviction was handed down against him. The most recent information was received on September 15, 2009, indicating that Mr. Díaz Peña remained in custody at the DISIP and, for strictly political reasons, he had been denied the prerelease benefits due to him. The information received by the IACHR also indicates that he continues to suffer from the same health conditions for which the precautionary measures were granted in October 2005. Since his arrest, Mr. Díaz Peña has lost hearing in one ear and is losing it in the other, in addition to other health problems. Consequently, as of the date of this report's adoption, the precautionary measures extended on his behalf remain in effect. Additionally, on March 20, 2009, the Commission issued its Report No. 23/09, declaring the admissibility of the petition related to the alleged violation of Articles 5, 7, 8, and 25 of the Convention with prejudice to Mr. Díaz Peña.⁸⁰⁶ In its observations on the present report, the State considered it opportune to note that Mr. Díaz Peña has been convicted of placing bombs in the Colombian and Spanish consulates during the events of the coup d'état of 2002.⁸⁰⁷

894. In connection with prison conditions in Venezuela, on February 24, 2005, the IACHR presented the Court with an application against the Bolivarian Republic of Venezuela on behalf of the victims of the 1992 events at the "Los Flores de Catia" Judicial Prison and Detention Center,⁸⁰⁸ when 37 prisoners were extrajudicially executed. The Commission's claims also dealt with the detention conditions in which the victims were held and the lack of assistance from the police, military, and prison authorities that characterized the investigation of the incident. In April 2006, the State acknowledged its international responsibility in the matter and accepted the claims put forward by the Inter-American Commission in its application and by the victims' representatives in their requests and arguments brief. In addition, the State extended a public apology to families of the victims, a gesture that the IACHR applauded.

895. In its judgment, the Court underscored, *inter alia*, the State's obligation of preventing the recurrence of such human rights violations and, consequently, of adopting all the legal, administrative, and other measures necessary to keep similar events from occurring in the future, in compliance with its duty of prevention and of upholding the basic rights enshrined in the American Convention. The Court also ruled that the State was to adopt, within a reasonable time, the measures necessary to bring prison conditions into line with the applicable international standards.

896. The Court also repeated to the State of Venezuela what it had ordered in a previous case:

The State must take all necessary steps [...] to educate and train all members of its armed forces and its security agencies regarding principles and provisions on protection of human rights and the limits to which the use of weapons by law enforcement officials is subject, even under a state of emergency. Right to life

⁸⁰⁶ IACHR. Report on Admissibility 23/09. Raúl José Díaz Peña. Venezuela. March 20, 2009.

⁸⁰⁷ Bolivarian Republic of Venezuela. Ministry of Popular Power for Foreign Affairs. State Agent for Human Rights. Observations on the Draft Report *Democracy and Human Rights in Venezuela*. Note AGEV/000598 of December 19, 2009, p. 90.

⁸⁰⁸ I/A Court H.R., *Case of Montero Aranguren et al. (Detention Center of Catia) v. Venezuela*. Judgment of July 5, 2006. Series C No. 150.

cannot be violated to support maintenance of public order. Furthermore, the State must adjust operational plans regarding public disturbances to requirements of respect for and protection of said rights, and to this end take among other steps those required to control actions by all members of security forces in the field of operations to avoid excess. And, the State must ensure that, if it is necessary to resort to physical means to face public disturbances, members of the armed forces and security agencies will use only those strictly required to control such situations in a rational and proportional manner, respecting the right to life and to humane treatment.

897. In August 2009, the Court noted that more than three years after it had issued judgment, it had to discover what steps had been taken by the State to comply with it, in order to assess its actual implementation, and resolved to convene a hearing.⁸⁰⁹

898. In addition to its judgment in this case, at the request of the IACHR the Inter-American Court has adopted a series of provisional measures on behalf of four detention centers in Venezuela, requesting that the State take steps to avoid irreparable harm to inmates held at those facilities. All those measures were in response to violent incidents in which hundreds of people lost their lives and hundreds of others were injured.

899. Thus, on December 29, 2005, the Commission asked the Court to adopt provisional measures to protect the lives and persons of detainees at the Monagas Judicial Prison, known as “La Pica.” The request was based on information indicating that in 2005, La Pica accounted for more than 10% of the deaths recorded in Venezuela arising from gunshot wounds, stabbings, hangings, decapitations, and dismemberments in a series of incidents that, according to the information received, involved prison personnel as well as outbreaks of violence between prisoners. On February 9, 2006, the Court resolved to order the State to adopt provisional measures to protect the lives and persons of the detainees at the Monagas Judicial Prison, “La Pica.” In subsequent orders related to these provisional measures, the Court has said that although it appreciates the actions taken by the State under the measures ordered, a situation of extreme gravity and urgency continues to exist, together with the possibility of irreparable harm to the lives and persons of inmates at the Monagas Judicial Prison.

900. On March 28, 2006, the IACHR asked the Court to adopt provisional measures to protect the lives and persons of detainees at the Capital Region’s Yare I and Yare II Prisons. The request was based on information indicating that between January 2005 and the date of the request, a series of violent incidents had occurred at Yare Prison, with a total of 59 violent deaths from gunshot wounds, injuries caused by bladed weapons, hangings, and decapitations, along with at least 67 cases of serious injuries. The request also spoke of the failure to separate inmates awaiting trial from convicts, the lack of security and control measures, and the unacceptable conditions, which create or aggravate tension among prisoners. On March 30, 2006, the Court resolved to require the State to adopt provisional measures to protect the lives and persons of the detainees at Yare I and II. In subsequent orders related to these provisional measures, the Court has said that although it appreciates the actions taken by the State, a situation of extreme gravity and urgency continues to exist, together with the possibility of irreparable harm to the lives and persons of inmates at the Capital Region’s Yare I and Yare II Prisons.

⁸⁰⁹ I/A Court H.R., *Case of Montero Aranguren et al. (Detention Center of Catia) v. Venezuela*. Order of August 4, 2009. Supervision of Compliance with Judgment.

901. In addition, on February 1, 2007, the Commission sent the Court a request for provisional measures in order for Venezuela to protect the lives and persons of detainees at the Center-West Region Prison, known as "Uribana," and of people entering that facility, including inmates' families and other visitors. The request was on account of information according to which between January 2006 and January 2007, outbreaks of violence at Uribana Prison led to a total of 80 violent deaths and 213 injuries, mostly caused by bladed weapons and firearms. The IACHR also noted that it was clear that the establishment lacked a proper security control system and that an atmosphere of violence prevailed, since the prison population was being watched by eight officers, giving a ratio of 181 inmates per guard. It also stressed the unacceptable conditions in which the prisoners were living. On February 2, 2007, the Court resolved to order the State to adopt provisional measures to protect the lives and persons of the detainees at the Center-West Region Prison, of any future inmates upon admission to that facility, of the people who work there, and of those afforded entry as visitors. It additionally ordered the State to adopt the relevant measures to bring conditions at Uribana Prison into line with the international provisions governing the treatment of prison inmates.

902. Similarly, on December 17, 2007, the IACHR asked the Court to adopt provisional measures to protect the lives and persons of the detainees being held at the El Rodeo I and El Rodeo II Judicial Prisons in the Capital Region. The request arose from observations of the IACHR indicating that during 2006, 86 inmates had been killed and 198 had been injured in various outbreaks of violence, together with 51 inmates killed and 101 injured in 2007, indicating to the Commission the existence of a most serious situation of insecurity and violence inside the facility. On February 8, 2008, the Inter-American Court resolved to order the Venezuelan State to adopt provisional measures on behalf of all the inmates being held at the Capital Region's El Rodeo I and El Rodeo II Judicial Prison, along with other people entering that facility, including inmates' families and other visitors, to protect their lives and persons and, in particular, to prevent injuries and violent deaths. Since the provisional measures were ordered, the Commission has been keeping the Court apprised of continued outbreaks of violence at the facility that have led to additional deaths and injuries.⁸¹⁰

903. The Inter-American Commission and the Inter-American Court will continue to conduct regular monitoring of the situation at these four prisons. The Commission notes with alarm that in spite of the provisional measures ordered by the Court, the prisons continue to report outbreaks of violence leading to losses of life and violations of physical integrity.⁸¹¹ Thus, according to the Venezuelan Prisons Observatory, figures for violent deaths and injuries at those facilities remain high even after the Inter-American Court's adoption of provisional measures:⁸¹²

⁸¹⁰ IACHR. *Annual Report 2008*. Chapter IV: Human Rights Developments in the Region, Venezuela, para. 426.

⁸¹¹ IACHR. *Annual Report 2008*. Chapter IV: Human Rights Developments in the Region, Venezuela, para. 427.

⁸¹² Information provided the petitioners to the IACHR. *Hearing on Institutional Integrity and Human Rights in Venezuela*. 134th Period of Sessions, March 24, 2009.

Detention Center	Deaths	Injuries	Total
Monagas Judicial Prison	13	25	38
Yare I Capital Penitentiary Center	24	29	53
Yare II Capital Penitentiary Center	20	11	31
Uribana Center-West Prison	29	53	82
Rodeo I Capital Penitentiary Center	22	47	69
Rodeo II Capital Penitentiary Center	17	36	53
TOTAL	125	201	326

904. In the IACHR's opinion, the continuing acts of violence, together with the ongoing absence of security and control mechanisms, indicate that the Venezuelan State has not fully complied with its obligation of preventing attacks on the lives and persons of prison inmates and that it has failed to adopt the security measures needed to prevent new outbreaks of violence from affecting prisoners. In addition, the Commission notes that prison inmates in Venezuela are often forced to live in conditions that constitute cruel, inhuman, or degrading treatment, affecting their physical and mental integrity. Moreover, the alarming figures for deaths and injuries affecting hundreds of inmates indicate the State's negligence in meeting its obligations as the guarantor of the rights of people held in its custody.

905. The Commission believes that the urgency and imminence of the situation at Venezuela's prisons requires the Venezuelan State to take actions with an immediate impact on the dangers faced by detainees held in state custody. In consideration of this, the IACHR urges the State to immediately adopt the measures necessary to bring detention conditions at Venezuelan prison facilities into line with international standards, and to take immediate actions, in addition to its plans for the medium or long term, to ensure the lives and persons of prison inmates in Venezuela.

906. The Commission records its concern over the situation of insecurity and violence in Venezuelan prisons and at the failure to ensure the rights of persons held at those facilities, and it will therefore continue to closely monitor the situation and the actions taken by the State to resolve it.

3. Impunity in Cases of Prison Violence

907. In addition to the violence itself, the IACHR is concerned about the impunity that surrounds outbreaks of violence in Venezuela's prisons. The Commission disapproves of the State's refusal, arguing the confidential nature of the investigations,⁸¹³ to respond to the Commission's

⁸¹³ State's response to the questionnaire analyzing the situation of human rights in Venezuela. August 13, 2009, pp. 187 *et seq.*

inquiry regarding how many cases of prison violence involving losses of inmates' lives it has resolved through the courts.⁸¹⁴

908. The Office of the Human Rights Ombudsman has also expressed its concern about this impunity and about the absence of information on investigations conducted into outbreaks of violence within prisons. As an example of this, the Ombudsman's Office reported that during 2008, two videos were published on the Internet, showing how one inmate was mistreated and sexually abused, and how another had one of his arms chopped off; the incidents allegedly took place at the Vista Hermosa Judicial Prison in Bolívar, and there is no information about any investigations having been opened to examine them.⁸¹⁵

909. In fact, the Commission has received no information indicating that any of the thousands of deaths and injuries that have taken place inside Venezuela's prisons have been cleared up by the courts, which indicates that the actions of the authorities charged with investigating such incidents have been inadequate in properly clarifying the historical truth, identifying responsibilities, and convicting the guilty.

910. As the Inter-American Court has said, states must adopt all necessary measures to establish an effective legal system to investigate, punish, and redress deprivation of life by state officials or private individuals.⁸¹⁶ Similarly, upon learning that members of the security forces have used firearms with lethal consequences, the State must immediately initiate a rigorous, impartial, and effective investigation on an *ex officio* basis.⁸¹⁷

911. In the Commission's view, when the State fails to combat such situations with all means at its disposal, it is encouraging the chronic repetition of human rights violations. In all those cases in which the authorities' failure to conduct investigations has meant that the causes of a prison inmate's death have not been clearly established and the perpetrators or masterminds have not been identified, the State has failed in its obligation of protecting the right to life of the people affected.

912. The Commission therefore emphatically calls on the State to take all the steps available to it to conduct a serious and effective investigation of the violent incidents that have taken place within Venezuelan prisons, as part of its obligation of preventing similar incidents from continuing to occur and violating the rights of prisoners.

913. Finally, the IACHR reiterates that the State is obliged to guarantee the unrestricted respect for the human rights of all persons deprived of liberty in detention centers throughout the country. In order to orient the public policies on this matter, the Commission

⁸¹⁴ Questionnaire analyzing the situation of human rights in Venezuela. August 13, 2009, question 78: How many prison inmates have lost their lives in violent incidents over the past five years? How many of those cases have been resolved by the courts?

⁸¹⁵ Bolivarian Republic of Venezuela. Citizens' Branch of Government. Office of the Human Rights Ombudsman. *Annual Report 2008*. Caracas, August 2009, p. 233.

⁸¹⁶ I/A Court H.R., *Case of Baldeón García v. Peru*. Judgment of April 6, 2006. Series C No. 147, para. 85; *Case of the Sawhoyamaya Indigenous Community v. Paraguay*. Judgment of March 29, 2006. Series C No. 146, para. 153; and *Case of the Massacre of Pueblo Bello v. Colombia*. Judgment of January 31, 2006. Series C No. 140, para. 120.

⁸¹⁷ I/A Court H.R., *Case of Montero Aranguren et al. (Detention Center of Catia) v. Venezuela*. Judgment of July 5, 2006. Series C No. 150, para. 92; *Case of the Massacre of Pueblo Bello v. Colombia*. Judgment of January 31, 2006. Series C No. 140, para. 143; and *Case of the "Mapiripán Massacre" v. Colombia*. Judgment of September 15, 2005. Series C No. 134, para. 219.

recommends the State to take particularly into account the “Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas,” adopted by the IACHR in March 2008.⁸¹⁸

C. Violence against women

914. Regarding the situation of women in general, the State has stressed that the Venezuelan Constitution enshrines the equal rights of men and women in all walks of life: within the family; at work; in political, social, community, and economic participation; and other areas. The State also maintains that the Constitution sees women as social subjects using gender-aware language from its preamble to its final provisions and that it recognizes both the economic and social worth of work in the home and women’s sexual and reproductive rights.⁸¹⁹ Likewise, the Commission has received information indicating significant progress in promoting political participation by women in public affairs in Venezuela.

915. Based on the information received, however, the IACHR sees that women are still victims of violence in Venezuela and that the laws and policies introduced by the State in this area have not been effective in ensuring the rights of women, particularly their right to a life free from violence.

1. Legal Framework for the Protection of Women from Violence

916. The State has told the Commission that in Venezuela, both the Constitution and the nation’s laws “have adopted a view of equality between men and women, in which women are made visible through non-sexist language and by guaranteeing their rights.” The State also maintains that the Venezuelan legal framework recognizes, promotes, and protects women’s human rights through different legal instruments.⁸²⁰

917. The State told the IACHR that as part of a resolved policy to include women in roles of leadership and joint responsibility in the country’s economic, cultural, political, and social development, over the period 2004 to 2008 it enacted a series of legal instruments with provisions that strengthen the full development and progress of women, and that also ensure their access to justice when at risk of discrimination at work, within society, and in all areas in which they are active, in accordance with the terms of the Constitution and the applicable international conventions.⁸²¹

918. The State pointed to the passage of the Organic Law on Prevention and Working Conditions and Environment, which protects maternity, health, and security at work, together with leaves of absence to protect the health of workers of both sexes in situations that could affect their physical integrity.

919. The State also reported on the amendments to the Organic Law for the Protection of Children and Adolescents. According to the information received, these amendments included the enshrining of decent treatment as a human right, which covers a violence-free upbringing and

⁸¹⁸ IACHR. Resolution 01/08. *Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas*. March 13, 2008.

⁸¹⁹ State’s response to the questionnaire analyzing the situation of human rights in Venezuela. August 13, 2009, p. 56.

⁸²⁰ Attorney General of the Republic. *Annual Report 2008*, p. 195.

⁸²¹ State’s response to the questionnaire analyzing the situation of human rights in Venezuela. August 13, 2009, pp. 151 *et seq.*

education; principles of gender equality were also incorporated, in addition to reforms intended to balance the rights and duties of fathers and mothers vis-à-vis their children.⁸²²

920. With particular reference to violence against women, the State spoke of the enactment of the Organic Law on the Right of Women to a Life Free from Violence.⁸²³ The State believes that this law is the most advanced legislation on the topic in Latin America, and that it breaks with the view whereby violence against women is seen as a private matter to make it a matter of public concern (*res publica*). According to the State, the law criminalizes all forms of gender-based violence, regardless of where they take place, including: psychological violence, harassment, threats, physical violence, domestic violence, sexual violence, violent sexual access, forced prostitution, sexual slavery, sexual harassment, violence in the workplace, violence against property, economic violence, obstetric violence, forced sterilization, media violence, institutional violence, symbolic violence, the smuggling of women, girls, and adolescents, and trafficking in women, girls, and adolescents.

921. According to the State, the Organic Law on the Right of Women to a Life Free from Violence ensures women access to justice and it enshrines comprehensive protection for women who are victims of violence in the public and private arenas, equal rights between men and women, the protection of women who are particularly vulnerable to gender-based violence, and the right of women victims of violence to receive full information and counseling appropriate to their personal situations through the services, agencies, or offices that the federal, state, and municipal administrations are obliged to set up. The State also reports that this law establishes joint social responsibility in reporting and eradicating violence against women.⁸²⁴ It also establishes specific functions for the National Women's Institute and for the National Ombudsman's Office for Women's Rights.

922. The Commission values the fact that the Venezuelan legislation contains a prohibition on corporal punishment of children, included in the Law on Partial Reform of the Organic Law on the Protection of Children and Adolescents,⁸²⁵ making it one of the three OAS Member States that have adopted laws that specifically prohibit corporal punishment of children and adolescents.

923. At the same time, the Commission notes with concern that the Penal Code of Venezuela still contains some norms that affect women's right to equality and, even worse, that permit violent crimes committed against women to remain in impunity when the offender marries the woman. For example, Article 395 of the Venezuelan Penal Code establishes that "[o]ne who is guilty of one of the crimes defined in Articles 375, 376, 377, 379, 388, 389 and 390 will be exempt from punishment if before the conviction he marries the offended person, and the trial will cease in relation to everything related to the corresponding penalty for these punishable acts. If the marriage takes place after the conviction, the execution of the penalties and their criminal law consequences will cease. Those guilty of seduction, rape, or abduction shall be sentenced, by civil indemnization, if they do not get married, to endow the offended party if she was single or widowed and, in any event, honest. [...]."

⁸²² State's response to the questionnaire analyzing the situation of human rights in Venezuela. August 13, 2009, p. 154.

⁸²³ Official Gazette No. 38.647 of Monday, March 19, 2007; reprinted on account of a material error by the issuing agency in Official Gazette No. 38.668 on Monday, April 23, 2007.

⁸²⁴ State's response to the questionnaire analyzing the situation of human rights in Venezuela. August 13, 2009, p. 154.

⁸²⁵ Special Official Gazette No. 5.859 of December 10, 2007.

924. Among the crimes referred to in Article 395 of the Penal Code are rape; seduction; prostitution or corruption of minors; offenses against modesty; committing a sexual act with a person over twelve and under sixteen years of age; and inducing, facilitating, or assisting prostitution or corruption of a minor. The Commission considers norms such as this one severely prejudice the enjoyment of women's human rights and permits acts of violence against them to remain in impunity. For this reason, the IACHR recommends that these regulations be eliminated from the Penal Code and that the legislation be adapted to the international human rights standards on the rights of women.

2. State policies and programs to prevent violence against women

925. Asked about its plans and programs adopted to prevent and punish violence against women, the State informed the Commission that women have several mechanisms available for asserting their rights in Venezuela. One of those mechanisms, in the State's view, is the National Women's Institute, which is a permanent body tasked with determining, overseeing, and evaluating policies and other matters related to the situation and condition of women.⁸²⁶

926. Another mechanism is the National Ombudsman's Office for Women, the creation of which was ordered by the Law on Equal Opportunities for Women. This agency's functions include representing women before judicial and nonjudicial bodies, researching and drafting legislative bills to ensure full exercise of their capacities and full enjoyment of their citizenship, drafting legislation to ensure the full democratic exercise of rights and duties within the family, proposing amendments to laws in force that discriminate against women, proposing positive measures to enable authentic and effective social conduct without discrimination, supporting women in filing reports of violence, and guiding women in asserting their rights before the competent bodies.⁸²⁷

927. One additional mechanism, according to the State, is the Women's Development Bank, the aims of which include strengthening the social economy with a gender perspective and incorporating women into economic development and its benefits in order to improve their quality of life by providing them with tools for developing their productive capacities. According to the information submitted to the IACHR by the State, this institution has promoted women's empowerment, has encouraged and strengthened grassroots organizations and networks for women, and has also bolstered their participation in the development of public policies at the local level.⁸²⁸

928. Similarly, among its mechanisms for enforcing the rights of women, the State noted that the National Women's Institute has worked for the creation of 16 State Women's Institutes, 29 Municipal Institutes, and 63 Women's Homes, the functions of which are similar to those of the National Women's Institute. The State also added that nationwide, it has created 29 courts – 20 control courts and nine trial courts – in addition to 52 Special Prosecutors' Offices for

⁸²⁶ State's response to the questionnaire analyzing the situation of human rights in Venezuela. August 13, 2009, pp. 149 *et seq.*

⁸²⁷ State's response to the questionnaire analyzing the situation of human rights in Venezuela. August 13, 2009, pp. 149 *et seq.*

⁸²⁸ State's response to the questionnaire analyzing the situation of human rights in Venezuela. August 13, 2009, pp. 149 *et seq.*

matters affecting women. In addition, the State spoke of the creation of the Permanent Commission on the Family, Women, and Youth, attached to the National Assembly.⁸²⁹

929. According to the State's information, the Office of the Human Rights Ombudsman also created the Special Ombudsman's Office for Women,⁸³⁰ which is responsible for designing, promoting, programming, coordinating, and executing actions and policies to assist in eradicating all forms of discrimination and violence against women and in protecting and defending women's human rights⁸³¹

930. Another mechanism for protecting the rights of women, according to the information furnished by the State, was the March 2008 creation of the Office of the Minister of State for Women's Affairs. The creation of this office was a decision of the President of the Republic "in response to the demands of women who, for a long time, had been requesting the existence of a ministry of women's affairs."⁸³² According to the information received, this office was restyled the Ministry of Popular Power for Women and Gender Equality on April 2, 2009.⁸³³

931. At the same, regarding the mechanisms that exist to ensure at-risk women access to justice, the State reported that the Supreme Court of Justice has created first-instance courts that are responsible for dealing with cases of violence against women. In addition, 52 prosecutors' offices with jurisdiction over gender violence at the national level were created. According to the State, the National Ombudsman's Office for Women's Rights, attached to the National Women's Institute, provides free legal assistance to women who are victims of violence, assisting them in the process from the filing of their complaints up to the conclusion of legal proceedings.⁸³⁴

932. The State also reported that the Organic Law on the Right of Women to a Life Free from Violence expands the mechanisms whereby complaints can be filed, to include family members, health system personnel, community councils, and any person or agency that learns that punishable acts of violence against women have been committed.⁸³⁵

933. The State also reported the implementation of a toll-free, confidential telephone service for women (0800Mujeres). Using that telephone line, the State attends to women, men, children, adolescents, the elderly, and members of any family group or socioeconomic level who become victims of violence; it provides them with psychological assistance and answers their queries about their rights and the laws that protect them.⁸³⁶ *The Report on the Administration of the National*

⁸²⁹ State's response to the questionnaire analyzing the situation of human rights in Venezuela. August 13, 2009, pp. 149 *et seq.*

⁸³⁰ Resolution No. 2004-049 of April 7, 2004.

⁸³¹ State's response to the questionnaire analyzing the situation of human rights in Venezuela. August 13, 2009, pp. 149 *et seq.*

⁸³² State's response to the questionnaire analyzing the situation of human rights in Venezuela. August 13, 2009, pp. 149 *et seq.*

⁸³³ Decree No. 6.663, published in Official Gazette 39.156 on April 13, 2009.

⁸³⁴ State's response to the questionnaire analyzing the situation of human rights in Venezuela. August 13, 2009, p. 155.

⁸³⁵ State's response to the questionnaire analyzing the situation of human rights in Venezuela. August 13, 2009, p. 155.

⁸³⁶ State's response to the questionnaire analyzing the situation of human rights in Venezuela. August 13, 2009, p. 155.

Women's Institute states that between January and October 2008, this telephone hotline attended to 22,500 people.

934. In addition, the State also said that at the national level, it has two Shelter Homes, intended to provide refuge to women who cannot remain in their homes on account of imminent threats to their persons. The *Report on the Administration of the National Women's Institute* indicates that between January and October 2008, the lives of 77 at-risk women and children of both sexes were saved by affording them protection at these Shelter Homes.

935. The State also reported that a project prepared by the United Nations Population Fund (UNFPA) is training officials from the agencies responsible for receiving complaints, to strengthen their understanding of the legal and institutional framework governing women's rights. The Supreme Court of Justice, the Office of the Solicitor General, the Office of the Human Rights Ombudsman, and the prefectures are collaborating on this project. The Community Councils are also involved, as correspondents for the reporting of cases of violence.⁸³⁷

936. It also reported that the Scientific, Criminal, and Criminalistic Investigations Corps has a Division of Investigations and Protection for Children, Adolescents, Women, and the Family, which receives, plans, and coordinates allegations of crimes against the physical, mental, and moral integrity of children, adolescents, women, and families in order to uphold their rights set out in the Constitution and in the Organic Law for the Protection of Children and Adolescents.⁸³⁸

937. Finally, the State reported that through a social program called the "*Misión Madres del Barrio*" ("Neighborhood Mothers Mission"), it has recognized the worth of work done in the home and has provided comprehensive attention to women and families living in conditions of extreme poverty by providing them with economic benefits equal to the minimum national wage and by giving them training. It explained that the financial benefits are turned off once the beneficiaries have been duly trained.

3. Situation of Violence against Women and Domestic Violence

938. In response to the request that the IACHR sent to the State in July 2009, asking it to return statistical data covering violence against women and domestic violence over the past five years,⁸³⁹ the State submitted statistics covering the year 2002. In reply to a later question, the State briefly noted that the courts for violence against women had received 66,000 complaints, although it did not specify over what period of time.⁸⁴⁰ In connection with this, the IACHR notes that the figures provided by the State clearly do not reflect the current situation in Venezuela, and they cannot be used to assess the effectiveness of its laws and the programs it has implemented for preventing violence against women.

⁸³⁷ State's response to the questionnaire analyzing the situation of human rights in Venezuela. August 13, 2009, p. 155.

⁸³⁸ State's response to the questionnaire analyzing the situation of human rights in Venezuela. August 13, 2009, p. 155.

⁸³⁹ Questionnaire analyzing the situation of human rights in Venezuela. August 13, 2009, question 65: "What are the statistics for violence against women and domestic violence, over the past five years?"

⁸⁴⁰ State's response to the questionnaire analyzing the situation of human rights in Venezuela. August 13, 2009, pp. 159 - 160.

939. Thus, the information submitted by the State to the IACHR merely indicates that in 2002, the Scientific, Criminal, and Criminalistic Investigations Corps processed 8,411 cases of violence against women, and the 0800Mujeres hotline received 3,119 calls reporting various manifestations of violence. Since this service was launched, most of the complaints it has received deal with acts of physical violence against women. The State's information also indicates that 38% of the women attended to by the National Ombudsman's Office for Women's Rights were seeking consultations related to acts of violence. Similarly, the Capital District's Civic Bureaus dealt with 30,671 consultations involving different forms of domestic violence.⁸⁴¹

940. The only more recent statistics provided by the State indicate that from 1999 to December 2007, the 0800Mujeres telephone service received a total of 29,168 calls involving cases of violence, of which 4,484 were made during 2007. Of these cases, 42.34% involved allegations of physical violence, 14.41% involved legal inquiries, 5.92% were seeking primary psychological attention, and 7.75% received general information. The State also reported that 87.51% of these cases involved domestic violence and 12.49% involved violence originating outside the family.⁸⁴²

941. At the same time, the IACHR was also informed that during 2007, the Shelter Houses attended to 100 women and their dependents who had received death threats.⁸⁴³ The Report on the Administration of the National Women's Institute also indicates that between January and October 2008, the National Ombudsman's Office dealt with 4,172 cases involving the different forms of violence provided for in the Organic Law on the Right of Women to a Life Free from Violence. Similarly, during 2008, the Office of the Human Rights Ombudsman attended to a total of 752 cases related to the right of women to a life free from violence; of these, 509 involved domestic violence, 115 dealt with the right to psychological integrity, and 60 dealt with the right to physical integrity, among other issues.⁸⁴⁴

942. In contrast, according to information from the Venezuelan Observatory on the Rights of Women, around 100 cases involving gender violence take place in Venezuela every day.⁸⁴⁵ According to this organization, although Venezuelan women have attained moderate and high levels of education, those achievements are not reflected in their participation in the work force, since they either remain outside it or are engaged in the poorest paying jobs. It also claims that the low coverage of child-care services for children under four years of age, violence outside the family, and the burgeoning levels of violence on the streets of the country's main cities keep women at home, where they do unskilled work and jobs traditionally seen as "feminine." According to the Venezuelan Observatory on the Rights of Women, in spite of the government's equality discourse, there are large numbers of women at the lower levels of the public administration, and this percentage decreases upwards into high-level decision-making positions and candidacies for popularly-elected office. All these factors contribute to the situation of insecurity and violence that affects women.

⁸⁴¹ State's response to the questionnaire analyzing the situation of human rights in Venezuela. August 13, 2009, pp. 159 - 160.

⁸⁴² State's response to the questionnaire analyzing the situation of human rights in Venezuela. August 13, 2009, pp. 159 - 160.

⁸⁴³ State's response to the questionnaire analyzing the situation of human rights in Venezuela. August 13, 2009, p. 155.

⁸⁴⁴ Bolivarian Republic of Venezuela. Citizens' Branch of Government. Office of the Human Rights Ombudsman. *Annual Report 2008*. Caracas, August 2009, p. 355.

⁸⁴⁵ Venezuelan Observatory on the Human Rights of Women. *Informe sobre Ciudadanía y Derechos Políticos de las Mujeres* (Report on Citizenship and Political Rights of Women). July 2007. Available in Spanish at: [http://www.observatoriomujeres.org.ve/Portales/Cisfem/data/Informe%20sobre%20Ciudadan%C3%ADa%20y%20DD\[1\].%20Pol%C3%ADticos%20de%20las%20mujeres%20en%20Venezuela%202007%20\(Versi%C3%B3n%20digital\).pdf](http://www.observatoriomujeres.org.ve/Portales/Cisfem/data/Informe%20sobre%20Ciudadan%C3%ADa%20y%20DD[1].%20Pol%C3%ADticos%20de%20las%20mujeres%20en%20Venezuela%202007%20(Versi%C3%B3n%20digital).pdf).

943. It should be noted that violence against women is not limited to the domestic arena. According to information received by the IACHR at its hearings, murders of women in Venezuela are on the increase. Thus, during the first quarter of 2008, 37 women were murdered in the city of Caracas. Less than half of those were a result of domestic violence.⁸⁴⁶

944. Nongovernmental organizations working with gender violence in Venezuela report that in 2005 there were 36,777 cases of violence against women, but they underscore the lack of available official figures on this problem.⁸⁴⁷ According to these organizations, in addition to the problems in obtaining figures on violence against women, those statistics are ultimately worthless, not because they are wrong, but because they are not reliable, in that they change from agency to agency and repeat figures from previous years. Moreover, the organizations claim that in some states, such as Lara, publishing information with qualitative or quantitative data on violence against women is expressly prohibited. These organizations agree on the need to facilitate access to centralized figures that enable the dimensions of the problem to be perceived.

945. The IACHR notes that the State has taken action to establish a legal framework that respects and guarantees the equality of women and their right to a life free from violence, and it acknowledges that the State has created plans and programs to prevent violence against women in Venezuela. However, the absence of official information prevents the Commission from analyzing whether the laws are being effectively enforced by the authorities or whether the programs in place are having a real impact on the right of women to a life free from violence, and so the IACHR is unable to assess the steps taken by the State to address this topic.

4. Impunity in cases of violence against women

946. From the information on investigations into cases of violence against women and on the punishments imposed on the perpetrators, the IACHR notes that according to information furnished by the State, judgments have been handed down in only a third of such cases brought before the courts: the State informed the Commission that of the 66,000 complaints of violence against women received by the courts, sentences have been imposed in only 22,000.⁸⁴⁸

947. At the same time, information from the Venezuelan Attorney General's Office indicates that its prosecutors' offices have admitted a total of 58,421 cases of violence against women, of which they have concluded only 2,165.⁸⁴⁹ This information agrees with the claims made by the nongovernmental organizations attached to the Venezuelan Observatory on the Human Rights

⁸⁴⁶ Information provided by the petitioners to the IACHR. Hearing on Citizen Security and Violence in Venezuela, 133rd Period of Sessions, October 28, 2008.

⁸⁴⁷ See, in this regard: Venezuelan Observatory on the Human Rights of Women. *Primer Documento – Informe Sombra CEDAW 2009 (Violencia contra las Mujeres)* (First Document – CEDAW Shadow Report 2009 (Violence against Women)). Evaluation of the Situation of Violence against Women in light of the Final Comments of the Committee on the Elimination of Discrimination against Women, Republic of Venezuela, (34th Period of Sessions, January-February 2006, UN, cedaw/c/ven/co/6). See also: Venezuelan Association for an Alternative Sexual Education (AVESA), Center for Women's Studies of the Central University of Venezuela, and FUNDAMUJER. *Boletín en Cifras: Violencia contra las Mujeres 2005* (Statistical Bulletin: Violence against Women 2005). November 25, 2006. Available in Spanish at: <http://www.fundamujer.org.ve/Portales/fundamujer/data/Boletin2005.pdf>.

⁸⁴⁸ State's response to the questionnaire analyzing the situation of human rights in Venezuela. August 13, 2009, pp. 159 - 160.

⁸⁴⁹ Information available on the Web page of the Office of the Attorney General of the Bolivarian Republic of Venezuela. July 19, 2009. Available in Spanish at: <http://www.fiscalia.gov.ve/avances-desafios.asp>.

of Women, whereby only a small fraction of the cases reported to the Attorney General's Office make it to the courts and, of that number, only a minority are punished.

948. Even more troubling is the information received by the Commission at its hearings, stating that trials have not begun in more than 98% of cases involving violence against women, and that almost 70% of the women who attempt to fight this impunity encounter harassment and threats.⁸⁵⁰ Finally, the information from the Office of the Human Rights Ombudsman regarding the agencies responsible for receiving complaints is also discouraging. According to information from that agency, "there are numerous complaints from victims alleging a reluctance to receive them, and even cases of mistreatment, because of insensitivity or apathy in the attention given, which is often the result of particular considerations. This takes place both in the administrative agencies and in the prosecutors' offices of the Attorney General's Office."⁸⁵¹ This violates the victims' right to have their complaints heard and investigated but, in addition, it has the effect of discouraging or even intimidating other victims from reporting acts of violence to the authorities.

949. In consideration of the foregoing, the IACHR calls upon the State to adopt the legal and institutional mechanisms suitable for preventing, investigating, punishing, and making amends for complaints of violence against women in Venezuela. The IACHR also urges the State to publish statistical data to enable a serious assessment of the situation of violence against women in Venezuela to be carried out.

D. Recommendations

950. To effectively enforce the State's duty of guaranteeing the rights to life and to humane treatment, the Commission recommends that Venezuela:

1. Implement appropriate mechanisms to prevent crime and violations of the right to life and humane treatment, thereby ensuring citizen security for all the inhabitants of Venezuela.
2. Establish coherent and preventive state public policies that study the structural causes of violence and high crime rates and that aim at combating them.
3. Provide the police agencies charged with law enforcement with the resources and capacities necessary for maintaining public order within the constraints of full respect for human rights.
4. Ensure that the use of force by state security forces is determined by considerations of exceptionality and proportionality.
5. Take urgent and necessary steps to dismantle the violent groups operating beyond the law, and punish the illegal actions of those groups to prevent the reoccurrence of similar incidents in the future.

⁸⁵⁰ Information provided by the petitioners to the IACHR. Hearing on Citizen Security and Violence in Venezuela. 133rd Period of Sessions, October 28, 2008.

⁸⁵¹ Bolivarian Republic of Venezuela. Citizens' Branch. Office of the Human Rights Ombudsman. Annual Report 2008. Caracas, August 2009, p. 78.

6. Introduce the legislative amendments necessary to ensure that the Armed Forces do not participate in public security activities and that when they do so, in exceptional circumstances, they are subordinated to civilian authorities. In particular, amend Articles 328 and 329 of the Constitution, Article 3 of the Organic Law of the National Armed Forces, and Article 20 of the Organic National Security Law.
 7. Also, amend all those provisions that enable the Bolivarian National Militia to participate in matters of domestic security.
 8. Properly criminalize the offense of torture in its domestic law in accordance with the terms of the Fourth Transitory Provision of the Constitution, through either a specific law or an amendment of the Penal Code.
 9. Adopt all the measures necessary to ensure due diligence and effectiveness in investigations as well as in imposing the corresponding administrative, disciplinary, and criminal sanctions, both against persons accused of committing common crimes that affect the safety of citizens and against members of state security forces who abuse their authority to the detriment of the population.
 10. Step up efforts to investigate and punish human rights violations committed by state agents, and, consequently, dismiss those who participate in such incidents and prohibit them from rejoining the public security forces or from assuming any other public position.
 11. Step up efforts to train the members of state security forces in human rights issues, and implement mechanisms for punishing and dismissing any members thereof involved in human rights violations during the performance of their duties.
 12. Implement the corrective measures necessary to separate the Scientific, Criminal, and Criminalistic Investigations Corps from the hierarchy and administrative structure of the Ministry of Popular Power for the Interior and Justice.
 13. Take the steps necessary to combat the structural impunity that affects the Venezuelan justice system, using all available methods to overcome the obstacles that have previously kept it from establishing the truth and identifying the physical perpetrators and the masterminds, to impose the applicable sanctions, and to provide reparations for the victims and/or their families, as appropriate.
951. To ensure the rights to life and humane treatment of people deprived of their liberty in Venezuela, the Commission recommends that the State:
1. Take the steps necessary to halt illegal arrests, together with the mistreatment of detainees, holding them incommunicado, and other violations of due process that may arise during detention.
 2. Properly investigate complaints of arbitrary arrests in Venezuela, and punish the guilty.
 3. Adopt the judicial, legislative, and other measures needed to correct the excessive use of preventive custody, thereby ensuring that this measure is used

only on an exceptional basis and is constrained by the principles of legality, presumption of innocence, need, and proportionality.

4. Adopt, on an urgent basis, the measures necessary to correct delays at trial and address the high percentage of people without convictions held in prisons. Among other measures that the State deems relevant, rules should be introduced whereby all detainees not sentenced within a reasonable time must be released, without prejudice to the continuation of the prosecution.
5. Take steps to reduce overcrowding in prisons and to bring detention conditions into line with the applicable international standards.
6. Ensure that detention conditions are effectively controlled by criminal execution judges or by trial judges, as appropriate.
7. Implement suitable and effective judicial remedies of an individual and collective nature for judicial oversight of overcrowding and violence at prisons, and facilitate access to those remedies by inmates, their families, their private or court-appointed attorneys, nongovernmental organizations, and other state agencies with competence in the area.
8. Establish effective systems to ensure that inmates awaiting trial are separated from convicts, and create mechanisms to classify inmates by sex, age, reason for imprisonment, special needs, and the treatment they are to receive.
9. Take the steps necessary to prevent attacks on the lives and persons of people held in prisons, including confiscating weapons and illicit substances in the possession of inmates and separating remand prisoners from convicts.
10. Adopt the measures necessary to guarantee that personnel in detention facilities do not use force and other coercive measures except under exceptional circumstances and in a proportional manner in serious cases of urgency and necessity, as a last resort after having exhausted other available means and for the time and to the extent necessary to guarantee safety, internal order, and the protection of the fundamental rights of the prison population, the personnel, and the visitors.
11. Conduct serious and effective investigations into outbreaks of violence occurring within Venezuelan prisons and punish the guilty, to break the cycle of impunity. In addition, study the structural causes of violence inside prisons and adopt the measures necessary to address them.
12. Establish specialized recruitment and training programs for all personnel responsible for the administration, supervision, operation, and security of prisons and other detention centers, including instruction in the international human rights provisions applicable to maintaining security and to ensuring the proportionate use of force and the humane treatment of people deprived of their freedom.
13. Ensure, through all means available to it, the enjoyment of all basic rights by people held in detention.

14. Guide its public policies on this matter in light of the “Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas”.

952. To guarantee the rights to life and humane treatment of women and, in particular, their right to a life without violence, the Commission recommends that the State:

1. Effectively enforce the current national laws and the public policies in existence for protecting women against acts of violence and discrimination.
2. Implement the measures necessary to ensure women victims of violence full access to adequate judicial protection, and adopt the legal, judicial, and other mechanisms necessary to investigate, punish, and provide redress for reports of violence against women in Venezuela.
3. Strengthen the institutional capacity of its judicial agencies in addressing the cycle of impunity surrounding cases of violence against women, through effective criminal investigations with due judicial follow-up and guarantees of appropriate punishments and redress.
4. Step up efforts to train all public officials, particularly those responsible for receiving complaints, on the rights of women and on the causes and consequences of domestic and gender-based violence, to ensure that they apply national and international provisions in duly prosecuting those offenses and that they respect the integrity and dignity of the victims and their families in reporting such incidents and during their participation in the legal proceedings.
5. Implement publicity campaigns, targeting the general population, on the duty of respecting the rights of women in the civil, political, economic, social, cultural, sexual, and reproductive fields; on the services and judicial remedies available to women whose rights have been violated; and on the legal consequences applicable to the perpetrators.
6. Create and improve systems for recording statistical and qualitative data on incidents involving violence against women within its systems for the administration of justice, ensuring their uniformity, reliability, and transparency.
7. Bring Article 395 of the Penal Code into compliance with the standards of the inter-American human rights system with respect to women’s rights.

VII. ECONOMIC, SOCIAL, AND CULTURAL RIGHTS

953. The American Convention states in its preamble that “the ideal of free men enjoying freedom from fear and want can be achieved only if conditions are created whereby everyone may enjoy his economic, social, and cultural rights, as well as his civil and political rights.”

954. Additionally, the preamble of the Protocol of San Salvador points to the close link that exists between the observance of economic, social, and cultural rights and of civil and political rights in that different categories of rights constitute an indivisible whole rooted in recognition of the dignity of the human person. It is for that reason that such rights require ongoing protection and promotion aimed at achieving their full observance wherein the violation of some rights can never be justified for the sake of attaining the others.

955. The Inter-American Democratic Charter also emphasizes in its preamble the importance of the reaffirmation, development, improvement, and protection of economic, social, and cultural rights in order to consolidate the system of representative democratic government. The Charter goes on to state in Article 12 that poverty, illiteracy, and low levels of human development are factors that adversely affect the consolidation of democracy.

956. In the light of these principles, this report of the IACHR will analyze the legal framework of protection of economic, social, and cultural rights in Venezuela as well as the status of some such rights taking particular account of poverty, education, and health indicators. Within that legal framework of protection, the Commission will likewise consider the protection of the rights of indigenous peoples along with trade unions rights.

A. Normative framework for the protection of economic, social, and cultural rights

957. The Commission notes with satisfaction that upon adoption of the 1999 Constitution, Venezuela incorporated within its legal framework a vast array of human rights, including many aspects of economic, social, and cultural rights. Indeed, the Venezuelan Constitution posits the progressive development of economic, social, and cultural rights, and establishes the State as guarantor thereof.

958. Chief among these norms is recognition of the right to health, enshrined in Article 83 as follows:

Health is a fundamental social right and the responsibility of the State, which shall guarantee it as part of the right to life. The State shall promote and develop policies oriented toward improving the quality of life, common welfare, and access to services. All persons have the right to protection of health, as well as the duty to participate actively in the furtherance and protection of the same, and to comply with such health and hygiene measures as may be established by law, in accordance with international conventions and treaties signed and ratified by the Republic.

959. Articles 84 and 85 of the Constitution speak to the public health system and the State's obligation to finance it. In turn, Articles 87 and 94 of the Constitution address the right to work and trade union rights. These provisions establish the inalienability of labor rights. Article 87 of the Constitution outlines the right to work as follows:

All persons have the right and duty to work. The State guarantees the adoption of the necessary measures so that every person shall be able to obtain productive work providing him or her with a dignified and decorous living and guarantee him or her the full exercise of this right. It is an objective of the State to promote employment. Measures tending to guarantee the exercise of the labor rights of self-employed persons shall be adopted by law. Freedom to work shall be subject only to such restrictions as may be established by law.

960. Cultural and educational rights are enshrined in the norms of Articles 98 to 111 of the Constitution. With respect to the right to education, Article 102 stipulates that:

Education is a human right and a fundamental social duty; it is democratic, free of charge and obligatory. The State assumes responsibility for it as an irrevocable function of the greatest interest, at all levels and in all modes, as an instrument of scientific, humanistic, and technical knowledge in the service of society. Education is a public service, and is grounded on the respect for all currents of

thought, to the end of developing the creative potential of every human being and the full exercise of his or her personality in a democratic society based on the work ethic value and on active, conscious and joint participation in the processes of social transformation embodied in the values which are part of the national identity, and with a Latin American and universal vision. The State, with the participation of families and society, promotes the process of civic education in accordance with the principles contained in this Constitution and in the laws.

961. The State informed that education is understood to offer comprehensive and ongoing quality, based on equal opportunity and a level playing field constrained only by the aptitudes, vocations, and aspirations of individuals themselves. Education is mandatory from kindergarten through various streams of middle school, and is free up to graduation from high school, or the equivalent level immediately preceding college entrance. To that end, the State guarantees in its Constitution access to the system and ongoing study through completion of the course (Article 103), teacher tenure (Article 104), and the autonomy of the university, as well as the inviolability of its campus (Article 109).

962. Articles 112 to 118 of the Constitution address economic rights and guarantee an individual's freedom to opt for the economic activity of his choice, the right to property, and the right to enjoy quality goods and services, among others.

963. The State has also informed the Commission that in its efforts to protect economic, social, and cultural rights, it has sought to "enact legislation geared to providing such protection, to wit: the Organic Law on the Social Security System; the Procurement of Housing and Habitat Law; the Organic Law on Preservation of Conditions Conducive to a Viable Working Environment; and the Law on Demarcation and Guarantee of Indigenous Peoples' Lands and Habitat, among other instruments that emphasize the social rights of the population at large as a means to attain improved quality of life."⁸⁵²

964. Beyond promoting programs and standards to foster economic, social, and cultural rights, appropriate mechanisms must be devised to bring to justice cases arising from such rights. As to claims brought under color of economic, social, and cultural rights in Venezuela, the State points out the existence of established constitutional remedies such as the right of *amparo* and of *habeas data*, among others, which provide the necessary mechanisms whereby Venezuelan citizens can enforce these rights. In that respect, the State underscores the importance ascribed by the 1999 Constitution to social rights conceived as essential human rights, independent of an individual's social or economic status.

965. Thus, the State noted, the Constitution enshrines the rights to education, health, housing, and universal social security. It was pointed out that constitutional guarantees are likewise provided to ensure their observance can be claimed effectively. It lists the following, among others: state guaranteed access to social and credit policies governing housing (Article 82); a guaranteed free health system coupled with the budgetary appropriations necessary to meet established health goals (Articles 84 and 85); the guarantee that social security funds will not be allocated to other ends (Article 86); guaranteed adequate funding of educational institutions and services (Article 103); and guaranteed nullity of managerial action deemed unconstitutional (Article 89).⁸⁵³

⁸⁵² State response to the questionnaire for the analysis of the situation of human rights in Venezuela. August 13, 2009, p. 3.

⁸⁵³ State response to the questionnaire for the analysis of the situation of human rights in Venezuela. August 13, 2009, p. 56.

966. The IACHR recognizes the normative progress achieved with regard to the promotion and protection of economic, social, and cultural rights. But it also observes that Venezuela has yet to ratify the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social, and Cultural Rights (“Protocol of San Salvador”), under which instrument States Parties undertake to adopt the necessary measures, especially economic and technical, to the extent allowed by their available resources, and taking into account their degree of development, for the purpose of achieving progressively and pursuant to their domestic legislation, the full observance of economic, social, and cultural rights. The Protocol of San Salvador was signed by Venezuela on January 27, 1989. It was subsequently debated and approved by the National Assembly in March 2005, and published on May 23, 2005 in the Official Gazette of the Bolivarian Republic of Venezuela under number 38.192. Nonetheless, as of the date of adoption of the report, the State has not yet ratified that instrument before the Organization of American States. The IACHR appeals to Venezuela to complete the process of ratification of the Protocol of San Salvador.

B. Economic, social, and cultural rights indicators in Venezuela

967. The State has addressed the IACHR on several occasions to communicate the achievements of the present government, particularly in relation to the exercise of economic, social, and cultural rights.⁸⁵⁴ In light of information received, the Commission recognizes and values progress made in the ambit of economic, social, and cultural rights as a result of policies and measures aimed at correcting the weaknesses burdening vast sectors of the population. The priority accorded by the State to such measures is essential to promote a decent life among all Venezuelans, and constitutes a fundamental basis for the maintenance of democratic stability.

968. The State has highlighted the literacy of the majority of Venezuelan society, the reduction of poverty, health coverage for the most vulnerable, the reduction of unemployment, the improvement in student nutrition programs, the drop in infant and child mortality rates, and the rise in citizens’ access to basic public services.

969. The State has also informed the IACHR that food consumption has increased in Venezuela and that the right to food is now being guaranteed. Among other improvements, the purchasing power of the minimum wage has been restored with respect to basic foodstuffs; the pension and retirement system has been strengthened; steps are being taken to attend to the needs of a public that demands decent housing; and unemployment continues its downward trend.⁸⁵⁵

970. Based on the above, the State has underscored the fact that Venezuela is one of the countries that has done most to meet the Millennium Development Goals⁸⁵⁶ by the 2015 target date, and affirms that Venezuelan reality has improved significantly over the past 10 years when measured against the Human Development Index⁸⁵⁷ used by the United Nations Development

⁸⁵⁴ Information provided by the State to the IACHR. *Hearing on the General Situation of Human Rights in Venezuela*. 131st Period of Sessions, March 7, 2008.

⁸⁵⁵ As expressed by the State to the IACHR. *Hearing on the General Situation of Human Rights in Venezuela*. 126th Period of Sessions. October 19, 2006.

⁸⁵⁶ The eight Millennium Development Goals are: (1) Eradication of extreme poverty and hunger; (2) Universal access to primary education; (3) Promotion of gender equality; (4) Reduction of infant mortality; (5) Improvement of maternal health; (6) Fighting HIV/AIDS and other diseases; (7) Ensuring environmental stability; (8) Developing global networks.

⁸⁵⁷ The Human Development Index varies on a scale of 0 to 1, where 0 signifies minimum development and 1 indicates the maximum.

Program (UNDP), predicated on a composite of diverse rates including literacy, school matriculation, health, and life expectancy at birth. The State points to the latest UNDP figures for 2006 that give Venezuela a Human Development Index of 0.826, compared to 0.810 for 2004, and 0.776 for 2000.⁸⁵⁸

971. Information provided by the State of Venezuela on indicators reflecting economic, social, and cultural rights, among others, show that:

- The National Human Development Index increased by 27.7% from 1998 to 2007;
- The Gini⁸⁵⁹ Coefficient dropped by 13.7% from 1998 to 2007;
- Social expenditure rose from 47.9% of overall expenditure in 1998 to 59.5% in 2006;
- Health expenditure rose from 8% of overall expenditure in 1998 to 12.4% in 2007;
- Social security expenditure rose from 7.2% in 1998 to 14% in 2007;
- Social development and participation expenditure rose from 4.7% in 1998 to 7.2% in 2007;
- The average inflation rate over the period President Chavez has been in power has been 19.5%;
- The unemployment rate has fallen from 14.7% in 1999 to 7.2% in 2008.

972. The State affirms that its policies have fostered social inclusion, respect for human dignity, and equality among the various sectors of society. In addition, the State presented the Commission with a set of quantitative and progress indicators regarding economic, social, and cultural rights in Venezuela. In the following sections of this report, the IACHR will analyze the information provided with respect to poverty reduction, access to quality education, and the extent to which optimum levels of health have been attained.

1. Poverty reduction and eradication of extreme poverty

973. The Inter-American Democratic Charter observes that democracy and economic and social development are interdependent and mutually reinforcing. In addition, the Charter also asserts the obligation of Member States of the OAS to adopt and implement all measures necessary for the generation of productive employment, poverty reduction, and the eradication of extreme poverty.⁸⁶⁰

974. In that regard, the State underscores that decreased extreme poverty represents its greatest achievement. It points out, per research carried out by the National Statistics Institute, that in 2003, 29.8% of the Venezuelan population lived in conditions of extreme poverty, and that while the goal was to bring that figure down to 12.5% by the year 2015, Venezuela had managed to meet the target by the first semester of 2006. The State likewise affirms that mid-way through 2009 Venezuela lowered that indicator⁸⁶¹ to 7%. As a result, the number of extremely poor households fell from 985,270 in 1998 to 453,458 in 2009, a drop of 54%.⁸⁶²

⁸⁵⁸ State's response to the questionnaire for the analysis of the situation of human rights in Venezuela. August 13, 2009, p. 14.

⁸⁵⁹ As the Gini coefficient approaches zero, disparity in household income distribution decreases.

⁸⁶⁰ Inter-American Democratic Charter, Articles 11 and 12.

⁸⁶¹ State answer to the questionnaire used to analyze the state of human rights in Venezuela, given 13 August 2009, p. 22.

⁸⁶² State answer to the questionnaire used to analyze the state of human rights in Venezuela, given 13 August 2009, p. 15.

975. Beyond slashing extreme poverty, the State notes that the present administration is known for maintaining a downward trend in the level of poverty, as evidenced by the fact that poverty in Venezuela moved from 49% in the first half of 1998 to 26.4% during the same period in 2009.⁸⁶³

976. The State affirms that reduced disparities in income distribution are what account for the drop in poverty. It maintains that the income disparity index reflected in the Gini coefficient, which tracks differences in household income distribution, was 0.4865 in 1998 while 0.4068 in 2009. This makes Venezuela the country in Latin America today with the lowest Gini coefficient. Among the principal causes of this lowered coefficient, the State notes increases to the minimum wage from \$185 in 1998 to \$409 in 2009; rising numbers of pensioners, as well as adjustments to the minimum wage they received; direct monetary transfers to the population flowing from such social policies as scholarships; the equating of rural and urban minimum wages; and increased numbers of workers engaged in the formal sector of the economy.⁸⁶⁴

977. In addition, the State observes that increased job opportunities were generated by a dynamic economic sector between 2004 and 2007 and the economic growth that ensued, which explains why the unemployment rate slipped to 7.1%, a factor the State deems to have had a positive impact on Venezuelan household income.⁸⁶⁵

978. The IACHR notes that according to the United Nations Development Programme (UNDP) Venezuela went from the group of countries with medium human development in 2008 to the group of countries with high human development in 2009; also, Venezuela went from occupying position number 74 to position 58 in accordance with the classification of the human development index.⁸⁶⁶ The IACHR also notes that ECLAC (the Economic Commission for Latin America and the Caribbean) placed Venezuela among the nine countries of Latin America⁸⁶⁷ which present a significant closing of the gap separating income disparity extremes, due both to the increased share of income of the poorest groups and to the loss of the share of income of households situated at the high end of the distribution scale. Moreover, according to that institution, among those nine countries, the most marked decrease in both indicators was observed in Venezuela, calculated at 36% and 42% respectively.⁸⁶⁸

979. The statistics of ECLAC confirm that Venezuela currently has the lowest Gini coefficient in Latin America.⁸⁶⁹ According to ECLAC, the Gini coefficient in Venezuela was 0.498 in

⁸⁶³ State answer to the questionnaire used to analyze the state of human rights in Venezuela, given 13 August 2009, p. 15.

⁸⁶⁴ State answer to the questionnaire used to analyze the state of human rights in Venezuela, given 13 August 2009, pp. 15 *et seq.*

⁸⁶⁵ Information conveyed by the State to the IACHR. *Hearing on the General State of Human Rights in Venezuela*. 131st Period of Sessions, March 7, 2008.

⁸⁶⁶ UNDP. *Human Development Report 2009. Overcoming barriers: Human mobility and development*. Available at: <http://hdr.undp.org/en/reports/global/hdr2009/chapters/>.

⁸⁶⁷ Argentina, Bolivia, Brazil, Chile, El Salvador, Nicaragua, Panama, Paraguay, and Venezuela.

⁸⁶⁸ ECLAC. *The Social Panorama in Latin America, 2008*. March 2009, p. 21, available at: http://www.eclac.org/publicaciones/xml/2/34732/PSE2008_Versioncompleta.PDF

⁸⁶⁹ ECLAC. *Statistical Yearbook for Latin America and the Caribbean, 2008*, p. 79. Available at: http://websie.eclac.cl/anuario_estadistico/anuario_2008/docs/ANUARIO2008.pdf

1999 and dropped to 0.427 in 2007. The same organization analyzes the poverty and indigence gap,⁸⁷⁰ indicating that this coefficient was 22.6 in 1999 and fell to 10.2 in 2007. According to the statistics of this organization, the total percentage of persons in a situation of poverty or indigence was 49.4% in 1999 and dropped to 28.5% in 2007.⁸⁷¹

980. One right closely linked to State efforts to eradicate poverty is the right to decent housing. Data from the National Statistics Institute (INE, by its Spanish acronym) puts Venezuela's housing deficit at 1.8 million homes, while 60% of existing stock must be refurbished or improved. If the calculation includes high-risk housing or housing with inadequate services located in less desirable neighborhoods, the deficit then climbs to 2.5 million.⁸⁷² To redress this situation, the State implemented Mission Habitat, which aims to build homes and offer the means by which families—especially those in the low-income bracket—can benefit from social policies and tap credit available for home construction, acquisition, and improvement.

981. In that regard, at a March 2009 hearing of the IACHR,⁸⁷³ civil society organizations expressed recognition for State action geared toward regularizing property ownership in urban low-income housing conglomerates, drafting standards to protect mortgage-holders, and reducing the minimum amount required to obtain housing loans. They stressed nonetheless that the current housing deficit approaches 3 million, which means that approximately 13 million Venezuelan men and women are unable to exercise the right to decent housing. They also regretted how hard it is to access information on the subject, since neither the Ministry for Housing nor the National Statistics Institute post reports subsequent to 2006 on their Web sites.⁸⁷⁴

982. The Commission observes in that connection that within the framework of the Enabling Act three decree-laws were passed regarding this right: reforms to the Law on Housing and Habitat Loans; the National Housing Institute Law; and the Law on Reorganization of the National Housing Institute. Article 3 of the recently adopted Law on Housing and Habitat Loans establishes that “all goods and services apt to be involved in the planning, production, and consumption of housing and habitat” are matters of public utility and social interest. While the State affirms that the measure is meant to ensure the social orientation of activities within the sector and to promote the availability and affordability of housing, the IACHR considers that the provision is couched in overly broad and generic terms that might be construed as inimical to right to private property. The Commission would urge the State to remember that rights are interdependent and that no single right can be promoted at the expense of another.

⁸⁷⁰ This indicator measures the relative deficit of the income of the poor (or indigent) with respect to the value of the poverty (or indigence) line. The coefficient of the poverty gap takes into account not only the proportion of poor persons, but also the difference between their incomes and the poverty line; that is to say, it adds information about the depth of the poverty.

⁸⁷¹ ECLAC. *Statistical Yearbook for Latin America and the Caribbean*, 2008. Available at: http://websie.eclac.cl/anuario_estadistico/anuario_2008/docs/ANUARIO2008.pdf.

⁸⁷² Government on line: *Misión Hábitat. Ambiente y vivienda digna para todos. (Mission Habitat. Decent Environment and Housing for All)*. Available in Spanish at: http://www.gobiernoenlinea.gob.ve/miscelaneas/mision_habitat.html#.

⁸⁷³ Information conveyed by petitioners to the IACHR. *Hearing on Economic, Social, and Cultural Rights*. 134th Period of Sessions, March 24, 2009.

⁸⁷⁴ Information conveyed by petitioners to the IACHR. *Hearing on Economic, Social, and Cultural Rights*. 134th Period of Sessions, March 24, 2009.

983. Information presented to the Commission notes, on the other hand, that “lesser degrees of poverty have not translated ostensibly into improved quality of life for Venezuelan families, particularly at lower income levels, since inefficiencies and ineffectiveness of public administration continue to be the object of debate, challenge, and protest.”⁸⁷⁵

984. The Commission values positively the information shared by the State about social programs aimed at resolving the structural problems of inequity and discrimination that exist in Venezuela. It recognizes that the State has undertaken huge efforts to redress the structural imbalances that affect the population, as evidenced by significantly improved indicators tracking progress in the eradication of poverty. With this in mind, the Commission exhorts the State to adopt policies that will sustain such efforts in the long run and may contribute to overcoming the obstacles that stand in the way of people’s enjoyment of a better quality of life in Venezuela.

2. The right to education

985. The Inter-American Democratic Charter recognizes in its preamble that education is an effective means to promote citizens’ awareness of their own countries, thereby fostering meaningful participation in their respective decision-making processes. The instrument also reaffirms the importance of human resource development in the construction of a solid democratic system.

986. In Article 16, moreover, the Democratic Charter establishes that education is key to strengthening democratic institutions, promoting the development of human potential, fighting poverty, and generating greater understanding among peoples. To attain these goals, it is essential that quality education be within the reach of all, including girls and women, rural dwellers, and minorities.

987. The State emphasizes in that regard that one of its chief achievements in respect of the right to education is the significant increase in the school enrollment rate in Venezuela. We are informed that in 1998, pre-school enrollment was estimated at 43.38% and reached 66.18% in 2008. As to primary school matriculation, the figure was 86.24% in 1998, climbing to 93.12% in 2008. The State notes in addition that similar increases were tracked in secondary schools where the enrollment rate rose from 46.8% in 1998 to 68.1% in 2008.⁸⁷⁶ If Venezuela maintains this trend, the State observes, the country will reach the goal of universal basic education before 2015, thereby meeting another Millennium Development Goal.⁸⁷⁷

988. The State points out that between the 1998-1999 and 2005-2006 school years, an increase in the net enrollment rate was noted at all levels of education. Data provided by the State shows pre-school net enrollment up by 14.3 percentage points; basic education saw net enrollment rise by 9.1 percentage points; while the net enrollment rate at middle, diversified, and professional/vocational schools increased by 11.7 percentage points.

989. As to public investment in education, the State reports it used to be less than 3% of the Gross Domestic Product (GDP), whereas the figure from 2004 to 2006 including allocations to

⁸⁷⁵ PROVEA. *Situación de los Derechos Humanos en Venezuela Informe Anual Octubre 2007/Septiembre 2008* (The State of Human Rights in Venezuela, Annual Report October 2007/September 2008). December 10, 2008, p. 30.

⁸⁷⁶ State answer to the questionnaire used to analyze the state of human rights in Venezuela. August 13, 2009, p. 35.

⁸⁷⁷ State answer to the questionnaire used to analyze the state of human rights in Venezuela. August 13, 2009, p. 18.

the Ministries of Education and Higher Education surpasses 6.1% of GDP. The actual percentage has varied from year to year, it is explained, but the average has remained at 4.6%.⁸⁷⁸

990. On a separate note, the State affirms that attention to the physical infrastructure of schools is essential to any educational system. During 2001-2005, over 500 facilities were constructed and 6,903 were attended to, not counting investments made by national bodies and state and municipal authorities. Over that period of time, the State was attended to more than 7,500 school buildings.⁸⁷⁹

991. The State declares it has implemented programs to assert the right to education in all sectors, mainly by promoting the notion that education should be cost-free, accessible, and of quality. Among the State's principal achievements, the following were noted: elimination of any matriculation fee at all official educational centers; establishment of the School Food Program; increased public resources earmarked for education; lowered levels of school exclusion and drop-out rates from pre-school through sixth grade; refurbishment of school buildings to optimize teaching; comprehensive student care to enhance the learning experience afforded through daily 8-hour sessions, medical assistance, and nutrition guidance services which provide breakfast, lunch, and an afternoon snack; and, finally, higher matriculation at the Robinsonian Technical Schools between 1999 and 2006.

992. The State reports that its commitment to guaranteeing education for all is evident not only in strides made towards that end regarding primary education, but also in respect to eradicating illiteracy in the country. The government's literacy policy focused on the launch in 2002 of the National Literacy Plan through which 19,621 persons learned to read in two years. Given these results and the fact that illiteracy rate in the country was 1.5 million people in 2003, the Ministry of Education and Sports was tasked in 2003 with implementing the Cuban method "Yes I Can" within the framework of Mission Robinson I.

993. The development of educational missions is one of its stellar achievements, the State points out, in that such missions function as inclusion mechanisms that make the right to education real for the population that, year after year, had stayed away from school. Information provided by the State indicates that access to these programs hinges only on "having the will to learn, to continue the education that was interrupted, at educational centers that offer the help of the mission closest at hand."⁸⁸⁰ Armed with the "Yes I Can" program as implemented by Mission Robinson I, the State helped 1,484,543 Venezuelans learn to read, thereby pushing the illiteracy rate below 1%--a milestone heralded by UNESCO, which on October 28, 2005 declared Venezuela "a land free of illiteracy."

994. The State explains, in addition, that its efforts have gone beyond eradicating illiteracy in Venezuela. To benefit the graduates of Mission Robinson I, as well as those who were unable to complete their elementary education, the State launched Mission Robinson II on October 28, 2003 aimed at ensuring that all students graduate from sixth grade and consolidate their grasp of concepts acquired while achieving literacy. The program also aims to offer new training opportunities such as the study of agricultural practices in which, State data shows that by 2006 a total of 1.215,427

⁸⁷⁸ State answer to the questionnaire used to analyze the state of human rights in Venezuela. August 13, 2009, pp. 32 and 35.

⁸⁷⁹ State answer to the questionnaire used to analyze the state of human rights in Venezuela. August 13, 2009, p. 35.

⁸⁸⁰ State answer to the questionnaire used to analyze the state of human rights in Venezuela. August 13, 2009, p. 33.

persons had enrolled in 106,861 schools offering the course. In addition, 98,760 individuals were awarded scholarships.⁸⁸¹

995. The State set up another program for adults wishing to complete their baccalaureate studies. Known as the Ribas Mission, the program was launched in November of 2003 under the slogan "Must Win." The State affirms that approximately 536,802 "winners" have been recruited into the Mission ranks thus far to tackle their unfinished baccalaureate on the basis of "a specially designed format tailored to meet adult needs, taking into account the constraint of obligations, independence, the pace of individual development, and the desire for personal achievement." Available data describe a program involving more than 32,314 facilitators and 5,640 coordinators operating out of 33,046 classrooms and 7,483 establishments. The State expects that by end of 2007 the Mission will have awarded 339,418 baccalaureate degrees.⁸⁸²

996. The State advises too that it has deployed efforts to offer all baccalaureate degree-holders who wish to enter university the chance to do so. It explains that "Mission Sucre was born to slice through circles of exclusion by means of an advanced educational degree." It concludes that Mission Sucre is likely the most transcendental project ever undertaken in Venezuela in the context of higher education. As of January 2007, approximately 307,916 "winners" were enrolled in training courses. The number of new enrollees for academic year 2007-2008 was 110,863 involving 2,393 trainers and 20,781 professors working out of 1,405 classrooms.⁸⁸³

997. The State confirms that its programs have also benefited women, indigenous people, persons deprived of liberty, and persons suffering from visual impairment. As to women's education, the State notes that women outnumber men at the university level. From 1990 to 1998, the number of female students matriculated in traditional coursework increased by 31.25%, while the percentage of women enrollees from 1999 to 2006 reached 47.56%.⁸⁸⁴

998. As to the indigenous population, we are informed that Mission Robinson has launched literacy campaigns among indigenous people in the states of Amazonas, Anzoátegui, Apure, Bolivar, Delta Amacuro, Monagas, Sucre, and Zulia, thereby channeling assistance to some among the most underprivileged sectors in the country. In the State's own words, "teaching indigenous peoples how to read and write represents one of the greatest challenges the Mission has faced, since doing so necessitated the translation of texts into such indigenous languages as Jivi, Ye'kwana, Kariña, and Warao."⁸⁸⁵ The State stresses that of 1,482,453 persons who have benefited from the Robinson Mission Literacy Campaign, 70,000 are indigenous.

999. Another factor the state points out is that, from the outset, Mission Robinson "has served as a spearhead for inclusion of the penitentiary population in Venezuela's Educational System, thereby fostering literacy, completion of elementary education through sixth grade and

⁸⁸¹ State answer to the questionnaire used to analyze the state of human rights in Venezuela. August 13, 2009, p. 34.

⁸⁸² State answer to the questionnaire used to analyze the state of human rights in Venezuela. August 13, 2009, p. 34.

⁸⁸³ State answer to the questionnaire used to analyze the state of human rights in Venezuela. August 13, 2009, p. 35.

⁸⁸⁴ State answer to the questionnaire used to analyze the state of human rights in Venezuela. August 13, 2009, p. 17.

⁸⁸⁵ State answer to the questionnaire used to analyze the state of human rights in Venezuela. August 13, 2009, p. 46.

beyond, through the Ribas and Sucre Missions, for all the men and women behind bars who might wish to avail themselves of the opportunity.” The literacy mission reached out to 1,554 inmates, i.e., 100% of the jailed illiterate population.⁸⁸⁶

1000. Finally, regarding the population suffering from impaired vision, the State maintains that the “Yes I Can” enrollment card was printed in Braille, along with teaching manuals specifically designed for the visually challenged.⁸⁸⁷ The State informs that of the 1,482,453 individuals who have participated in the Robinson Mission Literacy Campaign, 7,500 are persons with diverse disabilities.

1001. The Office of the Human Rights Ombudsman also observes that there has been movement towards, and a gradual recognition of, the right to education among persons with disabilities, stressing the fact that enrollment in special education courses for academic year 2001-2002 was 178,730 in the public sector, as against 5,050 in the private. Meanwhile, in academic year 2006-2007, those numbers climbed to 516,593 and 13,610 in the public and private sectors, respectively. The organization goes on to note that such figures mirror not only the scope of education being offered on the basis of varying modalities, but also the trend toward growing recognition of the human rights of persons with disabilities, the search for novel systems of education, and the reassessment of education within the Venezuelan population at large.⁸⁸⁸

1002. For their part, petitioner organizations⁸⁸⁹ present at the Hearing on the State of Economic, Social, and Cultural Rights in Venezuela, held before the IACHR on March 24, 2009 within the framework of the 134th Period of Sessions, recognized in connection with the right to education that since 1999 the State has made great efforts to improve the availability and accessibility of education, both through mainstream programs and through work of missions.

1003. On the subject of availability it was mentioned that new public education establishments were built and that existing infrastructure has been refurbished in a sustainable manner. As to accessibility, there was agreement that enrollment rates at all levels have risen significantly⁸⁹⁰ and that the Robinson, Ribas, and Sucre Missions have done much to facilitate improved access to education by a population that historically had been excluded from basic elementary schooling.

1004. Petitioners also affirmed that Venezuelans today enjoy higher levels of education than ten years ago, and that Venezuela boasts one of the top places in the hemispheric ranking of university and graduate enrollment. The provision of education free of charge confirmed as a matter of public policy was also praised. The State’s efforts to offer bilingual cultural education were likewise lauded, as was the move to bring higher education to the townships as a means of making it available to those who live far from great urban centers.

⁸⁸⁶ State answer to the questionnaire used to analyze the state of human rights in Venezuela. August 13, 2009, p. 46.

⁸⁸⁷ State answer to the questionnaire used to analyze the state of human rights in Venezuela. August 13, 2009, p. 46.

⁸⁸⁸ Bolivarian Republic of Venezuela. Citizens’ Branch. Office of the Human Rights Ombudsman. *2008 Annual Report*. Caracas, August 2009, p. 124.

⁸⁸⁹ The petitioner organizations present at the hearing were: Acción Solidaria, Convite, Provea, and CEJIL.

⁸⁹⁰ According to information provided by the petitioners, the rate of pre-school enrollment rose by 12.5% and that of middle school by 14.1% over the past decade.

1005. Nonetheless, petitioners observed that there are still insufficient pre-school classrooms, and that space availability beyond sixth grade continues to pose a problem since nearly 60% of existing establishments offer education through that grade only. At the same time, despite progress, the Commission learned at the hearing that considerable exclusion persists among a significant number of children: 37.6% of those between the ages of 3 and 5 (roughly 640,000); 4.7% aged between 6 and 11 (200,000); 10.4% aged between 12 and 14 (170,000); and 57.1% youngsters between 15 and 17 years of age (948,000).

1006. It was also pointed out that certain discriminatory practices had been noted for political reasons, chiefly during the course of educational missions where campaigns have been orchestrated to serve the purposes of parties supporting the government. Petitioner organizations attending the hearing likewise expressed concern for the quality of education, remarking that Venezuela has not carried out any national assessment of its teaching standards since 1988, and that 22.6% of teachers have no academic credentials.⁸⁹¹

1007. In the same vein, the Office of the Human Rights Ombudsman observed in its last Annual Report that enrollment data show positive results as to a broadening and consolidation of matriculation across the country and at all levels. The gross enrollment rate rose at every level, with the greatest increase registered at 60.6% in academic year 2006-2007 among children of 3 to 6 years of age, as against 52.2% during 2001-2002. The Ombudsman's Office also underscored a hike in the gross rate of elementary school enrollment estimated at 99.5% among children of 7 to 12 years over academic year 2005-2006.

1008. The Office of the Human Rights Ombudsman stressed, however, the importance of continuing efforts with respect to middle school, as well as diverse and professional education, given that over academic year 2006-2007, only 35.9% coverage was attained nationally. It also observed that much greater effort must be put into cutting the dropout rate, calculated to be 10.5% at that level for the year 2004-2005. The main reasons for dropping out of school are loss of interest in learning; the need to find a job; and pregnancy, among others.⁸⁹²

1009. The Commission places great store by State progress achieved in making the right to education universal, and exhorts the State to continue such efforts with due regard for the quality of education and bearing in mind the challenges that have been remarked upon by civil society organizations as well as by the Office of the Human Rights Ombudsman regarding the state of education in Venezuela.

1010. Equally, the Commission has followed attentively the expressions of concern regarding the new Organic Law of Education enacted in August 2009.⁸⁹³ In the chapter on freedom of expression, the Commission already expressed some considerations on how this piece of legislation could affect that right. Next, the Commission will consider the new Organic Law on Education and its relation with the right to education.

1011. From a reading of the new Organic Law on Education, the IACHR notes that this legislation has a clear orientation towards certain principles and values that, according to what it

⁸⁹¹ Information conveyed by petitioners to the IACHR. *Hearing on Economic, Social, and Cultural Rights*. 134th Period of Sessions, March 24, 2009.

⁸⁹² Bolivarian Republic of Venezuela. Citizens' Branch. Office of the Human Rights Ombudsman. *2008 Annual Report*. Caracas, August 2009, p. 123.

⁸⁹³ Official Gazette Number 5929, Special Edition of August 15, 2009.

establishes, must regulate everything related to education in Venezuela. For example, this law provides that education “is based on the doctrine of our Liberator, Simón Bolívar, on the doctrine of Simón Rodríguez, on social humanism and is open to all schools of thought” (Article 14). It adds that environmental education, the teaching of the Spanish language, the history and geography of Venezuela, as well as the principles of bolivarian ideology are obligatory, in public and private educational institutions and centers (Article 14).

1012. The Commission also observes that the law under analysis grants state bodies a broad margin of control with respect to the implementation of the principles and values that must guide education. This is achieved through the establishment of “The Decent State”, which means that, through national organs competent in the field, the State plays the role of rector of the educational system (Article 6) and, therefore, exercises full regulation, supervision, and control of the system, among other functions, stipulating oversight in such matters as: “the mandatory provision of education in the doctrine of our Liberator Simón Bolívar; the Castilian tongue; Venezuelan history and geography; an enabling environment within public and private institutions and centers of learning, including general and technical secondary-level education;” “the establishment and running of public and private institutions and centers of learning; the appropriateness of natural or legal persons to fulfill requirements regarding ethics, economics, academic and scientific issues, questions of probity, efficiency, legitimacy, and the sources of private institutional funding and maintenance;” “procedures governing public and private sector teacher recruitment, tenure, promotion, staff development and performance in consonance with comprehensive evaluation criteria and methods and the oversight of society;” “the academic fitness of teaching staff recruited by institutions, centers, or any public or private educational establishment affiliated with the subsystem of elementary education, the aim of which is to promote teaching and learning methods in the Educational System that are socially relevant as prescribed by the special law enacted to regulate the field;” “matriculation, fees, raises, administrative taxes and services, payable by students or by their representatives or guardians, applicable in all private educational institutions.”

1013. The Commission also notes that the law is characterized by the ambiguity and broadness with which some of its dispositions are drafted, as well as the reference to subsequent norms that will be issued to regulate and implement various precepts. For example, in Article 10, all educational institutions and centers in the country are prohibited from publishing and divulging messages that commit an outrage against values, morals, ethics, good manners, or that promote harm to democratic principles, national sovereignty, and national, regional, and local identity. And in Article 11, all educational institutions and centers, public and private, are prohibited from disseminating ideas and doctrines contrary to national sovereignty and to the principles and values consecrated in the Constitution of the Republic.

1014. The Commission considers that there are different ways to understand the content of concepts like morals, good manners, or national sovereignty and therefore there is a broad margin within which these subsequent laws can establish restrictions to various rights under the Convention, such as the right to education, to freedom of expression, and to the freedom of conscience of educators and students, among others. Additionally, the Commission notes that even though Article 36 establishes academic freedom, it makes it subject to the principles established in the Constitution and in the law. Thus, it is perfectly possible that, through a subsequent law, academic freedom will be unduly limited. Furthermore, the Commission considers that academic freedom must include the possibility of discussing the principles contained in a norm like the Constitution with the full freedom to support them or refute them. In this sense, the IACHR will remain attentive to the legislation passed to develop the norms contained in the Organic Law on Education and urges the State to respect the fundamental rights contained in the Convention in this.

1015. Finally, the Commission notes that until laws regulating the precepts contained in the Organic Law on Education are passed, the interim provisions give authorities overly broad powers

over schools and educational authorities. Of special concern for the IACHR is the first interim disposition, which allows the Ministry of Popular Power for Education to close or demand the reorganization of private educational institutions in which principles established in the Constitution and this Law are attacked. This disposition adds that proprietors, directors, or educators that are found responsible of such acts will be disqualified for up to ten years from holding teaching or administrative positions in any school, during which time they cannot found or direct by themselves or through intermediaries any educational establishment.

1016. Taking into account the large quantity of dispositions in this law that are drafted in an ambiguous or broad manner, this interim disposition could permit the respective Ministry to close private educational institutions that, in its judgment, attack the principles of “bolivarian ideology” or “social humanism” or promote ideas contrary to those which, in its judgment, form part of the sovereignty of the nation.

1017. In this form, the Commission considers that the Organic Law on Education does not contain sufficient provisions with respect to possible abuses of authority and recommends that the State eliminate or reform those provisions in this law that, due to their ambiguity or broadness, could result in a lack of recognition of other human rights. The Commission also recommends that the State adopt the necessary measures to guarantee that private educational institutions have the freedom to teach concepts from all schools of thought, including religious thought. At the same time, the Commission urges the State to limit the interim powers granted to the Ministry of Education with the aim of preventing the implementation of this legislation from threatening the fundamental rights of individuals. Finally, the Commission reiterates its concerns set forth in the chapter on freedom of expression with respect to the Organic Law on Education.

3. The right to health

1018. The right to health is construed as people’s right to enjoy the highest level of physical, mental, and social wellbeing. Health must be recognized as a public good, and states should put essential medical assistance within everyone’s reach as well as extend the benefits of health care to all individuals under their jurisdiction.

1019. With regard to the right to health in Venezuela, the State indicates that its policy strategy is geared towards prevention; reducing mortality and morbidity arising from common illness; the timely and effective fight against endemic diseases; and promotion of a health care system that is effective, inclusive, and participatory, along with a drug policy aimed at bringing down costs and ensuring access to medication by all segments of the population.⁸⁹⁴

1020. The main achievements attained by the State, it reports, include, among others, the reduction of infant mortality from 25% in 1990 to 13.7% in 2007;⁸⁹⁵ the increase from 80% to 92% in the number of persons with access to potable drinking water; and the increase in the number of children benefiting from the School Food Program, up from 252,284 in 1999 to 3,996,427 in 2007. Statistics provided by the State show, moreover, that free medical assistance in 1998 was estimated at 21%, with 20 doctors per 100,000 inhabitants; by the year 2007, medical coverage extended free

⁸⁹⁴ State answer to the questionnaire used to analyze the state of human rights in Venezuela. August 13, 2009, p. 18.

⁸⁹⁵ State answer to the questionnaire used to analyze the state of human rights in Venezuela. August 13, 2009, p. 18.

of charge had climbed to 95%, with a rate of 59.3 doctors attending that same segment of the population.⁸⁹⁶

1021. As to infant mortality in Venezuela, the State informs that it has adopted policies to reduce it. An example of such policies is Project Mother, promoting a healthy life style from adolescence onwards; its focus on the right to sexual and reproductive health seeks to improve family planning and to provide appropriate guidance and care to pregnant women. The project serves also to ascribe fundamental priority to the promotion of child health in such respects as breastfeeding, adequate complementary nutrition, and inoculation to prevent disease.

1022. According to the State, it is these actions which made it possible to bring the infant mortality rate down to 13.7 per 1,000 live births registered in 2007,⁸⁹⁷ a figure that highlights a remarkable drop of 7.7 percentage points compared with available data for 1998.⁸⁹⁸ As to post-natal mortality rates, the State observes here too that there has been a decrease reflected in the move from a rate of 6.2 in 2000 to 4.7 in 2005. It points out in addition that maternal mortality has had virtually constant pattern: 57.8 maternal deaths per 100,000 registered live births in 2003, compared to 59.9 in 2005. The State confirms that Project Mother was conceived specifically to address that situation.⁸⁹⁹ Likewise, the State indicates that life expectancy in Venezuela has progressed gradually and was estimated at 73.5 years in 2007.⁹⁰⁰

1023. The State notes that in 1998 social expenditure on health was 1.36%, and that the figure rose by 2007 to 2.25%. It explains that the health system is predicated on principles ensuring that services are free of charge; universally available; comprehensive; fair and inclusive; and geared towards social inclusion and solidarity.⁹⁰¹ As to infrastructure, the State indicates that by 2007 11,373 primary health care units were operational showing progress compared to the level of care available in 1999, estimated then at 4,804 units.⁹⁰²

1024. In like manner, the State underscores the fact that community health programs such as Barrio Adentro I, II, and III seek to provide free and ongoing medical attention to the most vulnerable sectors of the population. It says measures taken within the scope of Barrio Adentro Missions I and II have resulted in saving 347,789 lives from April 2003 through 2008. It also notes that 3,499 community clinics were built and handed to municipalities, as were 406 comprehensive

⁸⁹⁶ Information provided by the State during 131st and 133rd Periods of Sessions of the IACHR. *Hearings on the Human Rights Situation in Venezuela*, March 7, and on *Citizen Security and Violence*, October 28, 2008, respectively.

⁸⁹⁷ State answer to the questionnaire used to analyze the state of human rights in Venezuela. August 13, 2009, pp. 23-24.

⁸⁹⁸ Bolivarian Republic of Venezuela. Citizens' Branch. Office of the Human Rights Ombudsman. *2008 Annual Report*. Caracas, August 2009, p. 112.

⁸⁹⁹ State answer to the questionnaire used to analyze the state of human rights in Venezuela. August 13, 2009, p. 25.

⁹⁰⁰ State answer to the questionnaire used to analyze the state of human rights in Venezuela. August 13, 2009, p. 27.

⁹⁰¹ Information provided by the State during 131st and 133rd Periods of Sessions of the IACHR. *Hearings on the Human Rights Situation in Venezuela*, March 7, and on *Citizen Security and Violence*, October 28, 2008, respectively.

⁹⁰² Information provided by the State during 131st and 133rd Periods of Sessions of the IACHR. *Hearings on the Human Rights Situation in Venezuela*, March 7, and on *Citizen Security and Violence*, October 28, 2008, respectively.

diagnostic centers, 493 comprehensive rehabilitation rooms, and 18 centers offering advanced technology for highly complex and expensive testing available free of charge.⁹⁰³

1025. The State also emphasizes the fact that over its 5 years in operation, the Barrio Adentro Mission has carried out 284 million medical consultations. It affirms that while previous governments in Venezuela had provided a scarce 20 physicians per 100,000 inhabitants, currently that number has risen to 60 per 100,000 practicing throughout the country.⁹⁰⁴

1026. In addition, the State indicates that Mission Barrio Adentro III, whose purpose has been to rehabilitate, equip, and fund hospital centers, has already benefited a considerable number of hospitals by strengthening their capacity to offer emergency services. In 2006, hospital capacity covered 7 million emergency patients; 6 million attended on an outpatient basis; and over 300,000 surgical interventions.⁹⁰⁵

1027. Regarding the free distribution of medication, the State points to an increase from 335 patients under care in 1999 to 21,779 patients seen throughout 2007. It also states that yellow fever outbursts have been met with massive vaccination campaigns during which over 10 million people have been inoculated in the past three years. Lives that would otherwise be lost to yellow fever have been saved in the process.⁹⁰⁶

1028. One of the principle achievements highlighted by the State in the field of collective health is the adoption since 1999 of a policy framework fostering access to anti-retroviral drug regimens available to all cost-free. Data provided by the State show that by end 2007, 21,262 persons living with HIV/AIDS in Venezuela had been administered highly effective triple therapy. According to this information, Venezuela promotes “universal access to quality antiretroviral treatment to all patients who request it, regulating distribution based on principles that ensure it is provided cost-free, tamper-free, in a manner that is fair, inclusive, mindful of social integration, and non-discriminatory.” Beyond the administration of antiretroviral therapy, the State confirms that its policy also covers the provision of medication needed to fight opportunistic diseases that often afflict persons living with HIV/AIDS, as well as medications for sexually transmitted diseases, at the national level. It also informs that pregnant women receive specialized care throughout gestation and at labor, including surgical equipment made available as safeguards when Caesarean sections or substitution of breastfeeding is indicated.⁹⁰⁷

1029. The State refers to another factor that it considers a positive influence on the right to health: the launching of Mission Nutrition that is paving the way towards reaching the “Zero Hunger” development goal by 2015 through programs providing 100% of the foodstuffs required by

⁹⁰³ State answer to the questionnaire used to analyze the state of human rights in Venezuela. August 13, 2009, p. 47.

⁹⁰⁴ State answer to the questionnaire used to analyze the state of human rights in Venezuela. August 13, 2009, p. 47.

⁹⁰⁵ State answer to the questionnaire used to analyze the state of human rights in Venezuela. August 13, 2009, p. 47.

⁹⁰⁶ State answer to the questionnaire used to analyze the state of human rights in Venezuela. August 13, 2009, p. 18.

⁹⁰⁷ State answer to the questionnaire used to analyze the state of human rights in Venezuela. August 13, 2009, p. 20.

the most vulnerable sectors of the population.⁹⁰⁸ According to the State, Mission Nutrition and MERCAL⁹⁰⁹ make food available to Venezuelans at affordable prices, thereby meeting the most pressing needs of the poor.

1030. The right to water is closely linked to the right to health. In that regard, the State says that over 7 million Venezuelan citizens have obtained access to potable water over the past 8 years as a result of expenditure intended in the medium term to provide 100% coverage of this utility. The State recalls that United Nations Member States have committed to Millennium Development Goals requiring them to reduce by half the number of persons in the world deprived of access to drinking water and basic sanitation by 2015.

1031. To that end, the State has hired over 7 million sanitation workers and connected over 6 million inhabitants to drinking water networks, thereby providing 95% coverage in urban centers and 79% in the rural area. The goal is to achieve 100% capacity coverage by 2010.⁹¹⁰ Another noteworthy step forward in this regard, according to data presented, is the provision of 82% of the amount of water needed for sanitation, while the collection of used water rose from 62% in 1999 to 82% in 2008 and used water treatment jumped from 9% to 27% in 2009.⁹¹¹

1032. Regarding the right to health, information provided to the Commission⁹¹² by Venezuelan human rights organizations recognizes that progress has been made under a number of rubrics such as coverage, but that deficiencies requiring correction continue to exist.

1033. In addition, the IACHR has heard expressions of concern related to the legislative lag that stems from the lack of any legislation introduced on the subject of health since enactment of the 1999 Constitution. On that point, according to data presented to the Commission, despite constitutional recognition accorded to the right to health, a number of obstacles curtail its exercise since the National Assembly has yet to adopt a Healthcare Law setting forth the premises of universality, quality, equity, and equal opportunity, nor has it legislated on the obligations assumed by a National Public Health System that is cross-cutting as to sectors, decentralized, participatory, and duly integrated into the social security system as stipulated in the Constitution.⁹¹³ This concern over the failure to introduce a draft Healthcare Law is shared by Office of the Human Rights Ombudsman that considers such legislation “necessary to the appropriate articulation of guidelines to underpin a National Public Health System.”⁹¹⁴

⁹⁰⁸ State answer to the questionnaire used to analyze the state of human rights in Venezuela. August 13, 2009, p. 22.

⁹⁰⁹ According to State information, the MERCAL Program acquires quality food at a discount of up to 40%.

⁹¹⁰ State answer to the questionnaire used to analyze the state of human rights in Venezuela. August 13, 2009, p. 21.

⁹¹¹ State answer to the questionnaire used to analyze the state of human rights in Venezuela. August 13, 2009, p. 26.

⁹¹² Information conveyed by petitioners to the IACHR. *Hearing on the State of Institutionalization and Promotion of Human Rights in Venezuela*. 133rd Period of Sessions, October 28, 2008.

⁹¹³ Information conveyed by petitioners to the IACHR. *Hearing on Economic, Social, and Cultural Rights*. 134th Period of Sessions, March 24, 2009.

⁹¹⁴ Bolivarian Republic of Venezuela. Citizens’ Branch. Office of the Human Rights Ombudsman. *2008 Annual Report*. Caracas, August 2009, p. 114.

1034. The Commission was also informed that the public health system is divided into three parts: on one hand, public care provided through a system decentralized across 17 states and incorporated into the Ministry of Health in 7 of these; on the other, public care provided by the Venezuelan Social Security System; and, finally, care provided by the Barrio Adentro System I and II through medical clinics offering comprehensive community services, diagnostic centers, operating theaters, and rehabilitation rooms designed to support such clinics.

1035. It thus appears, per information received, that services provided by the different stages of Barrio Adentro involvement do not replace services rendered by ambulatory health clinics and regional and national hospital centers but operate instead in parallel to them, sometimes at a deficit. This causes duplication of efforts and public expenditure in the health sector. The Commission has noted concern that such fragmentation proves an obstacle to effective health care delivery and makes it difficult to compile a comprehensive analysis of its overall performance.⁹¹⁵

1036. Information conveyed to the Commission also shows Venezuela has witnessed a sustained decrease in its rate of infant mortality. Clarification is nonetheless given to the effect that neonatal deaths arising from care during pregnancy and medical attention remain steady; moreover, maternal death is on the rise. News of outbreaks of preventable disease was noted, as well as significant increases over recent years in cases of malaria, dengue, respiratory infections, tuberculosis, and parotiditis.⁹¹⁶

1037. In addition, although civil society organizations have recognized the contribution of Mission Barrio Adentro to expansion of the medical ranks in the poorest sectors, the IACHR was informed that such efforts have not sufficed to offset deficiencies in the public health system. It was mentioned, likewise, that since 2005, a number of establishments have closed due to insufficient numbers of medical staff, inadequate refurbishment of infrastructure, and deterioration of the physical and operational capacity of these health centers.⁹¹⁷

1038. In its most recent Annual Report, the Office of the Human Rights Ombudsman also emphasizes the urgent need to tackle the deficit in health care professionals registered nationally throughout the public health system; to carry out structural repairs still required in some health centers and to wrap up those underway in others, including an overhaul of damaged medical equipment; and to take the necessary measures to ensure coordination between Mission Barrio Adentro and the other stakeholders of the National Public Health System.⁹¹⁸

1039. In fact, even the President of the Republic has recognized some of the deficiencies undermining the health sector in Venezuela. In recent statements, he concurred that no doctors as yet staff 2,000 of the modules under Barrio Adentro's purview, adding, "We have a social emergency on our hands: that is health. So let's declare an emergency!"⁹¹⁹

⁹¹⁵ Information conveyed by petitioners to the IACHR. *Hearing on Economic, Social, and Cultural Rights*. 134th Period of Sessions, March 24, 2009.

⁹¹⁶ Information conveyed by petitioners to the IACHR. *Hearing on Economic, Social, and Cultural Rights*. 134th Period of Sessions, March 24, 2009.

⁹¹⁷ Information conveyed by petitioners to the IACHR. *Hearing on Economic, Social, and Cultural Rights*. 134th Period of Sessions, March 24, 2009.

⁹¹⁸ Bolivarian Republic of Venezuela. Citizens' Branch. Office of the Human Rights Ombudsman. *2008 Annual Report*. Caracas, August 2009, p. 113.

⁹¹⁹ Statements of President Hugo Chavez compiled by the Bolivarian News Agency (ABN). *Chávez pide acelerar la creación de un solo fondo para las misiones sociales* (Chavez asks for speedy approval of a single fund

1040. The Commission views positively the efforts deployed by the State to promote universal access to the health system, while appreciating recognition by the executive branch that significant challenges exist that require attention urgently in order that the right to health in Venezuela be fully satisfied. The Commission will be attentive to immediate measures that the State may take to correct the current deficiencies in the health system and reiterates the importance of adopting public policies to guarantee the right to health in the long run.

C. The role of the missions as an axis of social policy

1041. As indicated in previous paragraphs, the principal State programs tasked with promoting economic, social, and cultural rights in Venezuela have been conceived in the guise of Missions. Different types of Missions exist. Some have an educational purpose seeking to eradicate illiteracy (Mission Robinson); some impart elementary education (Mission Ribas); some provide access to university studies (Mission Sucre). Others are entrusted with the provision of basic services such as affording efficient ambulatory care units and related medical assistance to poor segments of the population (Mission Barrio Adentro). Still others grapple with housing (Mission Habitat) or the distribution of basic commodities at the lowest possible prices (Mission Nutrition). In addition, there are Missions whose objective it is to improve the lot of minority or marginalized ethnic groups (Mission Guaicaipuro); to see to the needs of street children (Mission Boys and Girls of the Barrio); to provide personal identification documents (Mission I.D.); to promote agricultural activities (Mission Return to the Farm); to foster environmental sustainability (Mission Tree); to distribute dental prostheses (Mission Smile); and to extend basic care to persons with disabilities (Mission Gregorio Hernandez), among other objectives. Information presented by the State indicates that approximately 48.3% of the population has benefited from such governmental Missions.

1042. The State has sought by this means to meet the most pressing needs of the poor in Venezuela. The deployment of Missions functions as a system to implement basic strategic methods of social inclusion, on a massive scale and a fast track, aimed at overcoming social inequality and poverty in the country. The State notes the fundamental role played by Missions in promoting a better quality of life and full-fledged integration for all.

1043. The IACHR values the considerable expenditure the State has made in such programs that target inclusion of the most vulnerable sectors. In the Commission's judgment, the positive results obtained by such State policies are evident in the indicators on effectiveness and progress made in asserting economic, social, and cultural rights in Venezuela, some of which were emphasized in preceding paragraphs. The IACHR notes in particular that by means of Missions, it has proved possible to alleviate poverty, and provide access to education and health to sectors of the population traditionally excluded in Venezuela.⁹²⁰

1044. Notwithstanding such consideration, the Commission is concerned by some aspects entailed in use of Missions as an instrument or axis of governmental social policy. There is insufficiently clear information, for instance, regarding the criteria that serve to determine the allocation of benefits made available by the Missions. The IACHR stresses the importance of ensuring that such massive outlays of financial, material, and human resources be governed by transparent

...continuation

for social missions). September 19, 2009. Available in Spanish at: <http://www.abn.info.ve/noticia.php?articulo=199489&lee=4>.

⁹²⁰ For further details on quantitative results obtained by Missions, see: Ministry of Popular Power for Planning and Development, Foundation School for Social Management: http://www.gerenciasocial.org.ve/bases_datos/gerenciasocial/Index.htm#.

and publicly announced guidelines that make clear the terms and conditions required to for the public to avail itself of the products or services Missions offer. Likewise, the public must have easy access to information governing the allocation of resources handled by the Missions.

1045. The lack of public information regarding what criteria are applicable to the allocation of benefits channeled through such public assistance policies gives the impression that some such policies are determined at the discretion of the executive branch. This might lead to the conclusion that some persons are not eligible for these benefits as a result of their political position vis-à-vis the government, among other reasons. The Commission emphasizes that it is critical for the State to make all relevant information available to the public in order to ensure oversight of state policies and to enable the participation of individuals or groups with regard to state action that affects individual rights. The Commission urges the State to improve transparency and to establish a clear system of accountability to the public in relation to the Missions.

1046. The Commission also believes it is misguided to leave the Missions outside the State's official policy framework as information received indicates this might be causing a lack of coordination between the Missions, on one hand, and regional and national public services on the other. This appears chiefly evident in the health sector. The Commission advises the State to take all necessary steps to avoid activity overlaps and parallelism among entities tasked with offering basic services to the population as these might occasion duplication of efforts and the unnecessary expenditure of State resources.

1047. In addition, the Commission ascribes fundamental importance to corrective action that must be taken to ensure that economic, social, and cultural rights are promoted through long-term public policies that will not hinge on the good will of one government or another. The State's obligation to adopt necessary measures, to the maximum of its available resources, for the promotion of economic, social, and cultural rights should not be met by means of circumstantial mechanisms established to solve partial or specific problems, but rather by the adoption of long-term public policies that will contribute to the progressive effectiveness of such rights and will prevail independently, regardless of the will of future governments.

1048. Finally, while the State has indicated that the Constitution "moves beyond conceiving the satisfaction of social needs as a matter of charity or public assistance to assuming that obligation as the inalienable right of all Venezuelans,"⁹²¹ the Commission notes that the Missions as a social policy appear to constitute public assistance policies that do not necessarily imply a recognition of rights. The Commission deems appropriate to remind the State that access to education, to health, and to other basic needs does not constitute a benefit to be dispensed at the discretion of the State, at will, but represents rather a commitment which the State is obliged to meet progressively. Proof thereof is the fact that economic, social, and cultural rights are cognizable before judicial authorities and can be claimed immediately.

1049. Given the foregoing, and bearing in mind that the promotion and protection of economic, social, and cultural rights is integral to the consolidation of democracy,⁹²² the Commission calls upon the State to sustain its efforts to consolidate such rights in Venezuela by adopting the measures necessary to ensure transparency of information as to criteria governing the allocation of social benefits, thereby avoiding duplication and lack of coordination between the Missions and other

⁹²¹ State answer to the questionnaire used to analyze the state of human rights in Venezuela. August 13, 2009, p. 56.

⁹²² Article 13 of the Inter-American Democratic Charter.

public service providers, as well as to safeguard the long-term continuity of policies designed to meet the needs of the Venezuelan people.

D. Cultural rights and rights of the indigenous peoples

1050. Among the economic, social, and cultural rights to be promoted, there exists the right to cultural identity. That is to say that culture must be protected as a way of life. States must consequently adopt such measures as are necessary to protect the identity of minorities, including the rights of indigenous peoples to speak their own language, the right to free determination, the right to be consulted regarding decisions which may affect them, the right to respect for their traditions and customs, and the right to property and possession of their ancestral lands, among others.

1051. The State has informed the Commission that, according to the last population and housing census taken in 2001, Venezuela is home to 543,348 indigenous persons representing 2.3% of the general population. The census also shows indigenous peoples to be grouped into 613 communities. By contrast, the Ministry of Popular Power for Indigenous Peoples has identified 2,856 communities located across the nation, and more than 800,000 indigenous individuals of different ethnic backgrounds. The State affirms such figures result from a process aimed at identifying and ascribing dignity to indigenous peoples, and are due to be made official during the next official census.⁹²³ The Organic Law on Indigenous Peoples and Communities, enacted in 2005, registers the presence of 40 indigenous groups in the land.⁹²⁴

1052. As to the legal framework affording protection of the rights of indigenous peoples, the Constitution of Venezuela contains a chapter with provisions which recognize the existence of indigenous peoples and communities, their social, political, and economic organization, their cultures, their customs, their languages and religions, and their habitats and primordial rights over ancestral lands they have traditionally occupied, which are necessary to their development and the protection of their ways of life (Article 119); the right of indigenous peoples to maintain and develop their ethnic and cultural identity, world vision, values, spirituality, and sacred sites and rites (Article 122); the right of indigenous peoples to maintain and promote their own economic practices along with traditional techniques of production, to participate in the national economy, and to set their own priorities (Article 123); and the right of indigenous peoples to participate in politics, to be represented within the National Assembly and in deliberating bodies of federal and local entities involving the indigenous population (Article 125).

1053. The State also points out that, in conformity with Article 3 of the Organic Law on Indigenous Peoples and Communities,⁹²⁵ indigenous peoples in Venezuela are ensured the possibility of establishing their own legitimate authorities following their own social and political structures, as well as the right of participation and political activism. Beyond this norm, the Commission notes that the State has enacted several laws aimed at protecting the rights of indigenous peoples and communities in Venezuela, such as: the Law on Demarcation and the Protection of Indigenous

⁹²³ State answer to the questionnaire used to analyze the state of human rights in Venezuela. August 13, 2009, pp. 145 *et seq.*

⁹²⁴ These peoples are the baniva, baré, cubeo, jivi (guajibo), hoti (hodi), kurripaco, piapoco, puinave, sáliva, sanemá, wotjuja (piaroa), yanomami, warekena, yabarana, yekuana, mako, ñengatú (yeral), kariña, cumanagoto, pumé (yaruro), kuiba, uruak (arutani), akawayo, arawako, eñepá (panare), pemón, sape, wanai (mapoyo), warao, chaima, wayuu, añú (paraujano), barí, yukpa, japréria, ayaman, inga, amorua, timoto-cuicas (timotes), and guanono.

⁹²⁵ Official Gazette No. 38.344 of December 27, 2005.

Habitat and Lands;⁹²⁶ the Law on Indigenous Languages;⁹²⁷ and the Law on the Preservation, Rescue, and Dissemination of Indigenous Cultural Heritage.⁹²⁸

1. The right to ancestral land and to cultural resources

1054. As this Commission has pointed out, one aspect of fundamental importance to indigenous peoples and to the exercise of their rights is their attachment to the land and to natural resources. Expressing the same thought, the Inter-American Court has written that

the culture of members of indigenous communities relates to a particular way of life, of being, seeing, and interacting with the world predicated on the close relationship that links them to their traditional lands and the resources therein, not simply because these constitute the mainstay of their subsistence, but also because they form an integral part of their cosmic vision, their religiosity, and therefore, their very cultural identity.⁹²⁹

1055. Regarding the right of indigenous peoples to their ancestral lands, the Venezuelan Constitution establishes in Article 119 the obligation of the State, with participation from indigenous peoples, to demarcate and respect the right to the collective property of their lands, adding that such lands shall be deemed indefeasible, inalienable, and unassignable.

1056. As to natural resources, Article 120 of the Constitution stipulates that State exploitation of natural resources located within indigenous habitats shall refrain from damaging the cultural, social, and economic integrity of the same and, moreover, must be subject to prior advice to and consultation with the respective indigenous communities so affected. The text goes on to state that any benefits derived from such use by indigenous peoples will be subject to this Constitution and to the law.

1057. The State confirmed for the Commission that it implements Article 120 of the Constitution of the Bolivarian Republic of Venezuela, as well as Articles 11 and 19 of the Organic Law of Indigenous Peoples and Communities in order to show respect for the cultural, social, and economic integrity of the indigenous peoples and communities by means of consultations and the prior approval of development projects to be carried out on indigenous lands and habitat.

1058. On this issue, motivated by concern over the exploitation of natural resources drawn from areas inhabited by indigenous peoples in Venezuela, the Commission held a hearing to elicit information as to how legal as well as illegal mining activities affect indigenous groups in southern Venezuela. The concern was particularly linked to the effects of mining on rivers and subsoils, both chief sources of subsistence for indigenous peoples.⁹³⁰ At that hearing, the Commission learned that far to the Venezuelan south, the states of Bolivar and Amazonas are mineral-rich areas of which several locations have been taken over as concessions by mining companies without prior consultation with the indigenous communities that inhabit them, notwithstanding the environmental impact such activities wrought on their land. Beyond the extension of legal concessions, the

⁹²⁶ Official Gazette No. 37.118 of January 12, 2001.

⁹²⁷ Official Gazette No. 38.981 on July 28, 2008.

⁹²⁸ Official Gazette No. 39.115 of February 6, 2009.

⁹²⁹ I/A Court H.R., *Case of the Yakye Axa Indigenous Community v. Paraguay*. Judgment of June 17, 2005. Series C No. 125, para. 135.

⁹³⁰ IACHR. Hearing on the effects of Mining in Venezuela. 119th Period of Sessions, March 4, 2004.

Commission was also told how illegal mining continues to jeopardize the survival of indigenous peoples. The Commission took the opportunity to remind the State of its obligation to ensure consultation with and the participation of indigenous peoples when considering any measure that affects their territories.

1059. Despite this, according to the Office of the Human Rights Ombudsman, a significant number of indigenous communities face ongoing attempted and actual violations of their exclusive collective rights, constitutionally enshrined in particular with regard to recognition of their ethno-cultural existence and their right to collective ownership of ancestral lands, necessary for the development and preservation of their way of life. Indeed, this body has observed that in Venezuela, throughout 2008, "one of the least respected rights was the right to prior information, to consultation and to the benefits flowing from the use of natural resources situated on indigenous lands and habitats."⁹³¹ Office of the Human Rights Ombudsman addresses the subject with reference to several cases of prospecting and exploitation for mining and logging purposes in the states of Bolívar and Zulia.

1060. Another issue of deep concern to the Inter-American Commission is the delay in demarcation of ancestral indigenous lands, as well as conflicts between indigenous peoples and cattle ranchers that have arisen in the absence of clearly marked boundaries. The Commission observes that, despite the language of Article 119 of the Constitution and the Twelfth Interim Provision of the Constitution,⁹³² the goal of completing the process of demarcation of indigenous habitats had not been met by March of 2002.

1061. In addition to constitutional norms, the State's obligation to see to the demarcation of land is enshrined in several Venezuelan laws. Thus, the Organic Law on Indigenous Peoples and Communities enacted on December 27, 2005 recognizes that indigenous peoples and communities possess "their habit and original rights over the ancestral land they have traditionally occupied, and exercise collective rights over the same." Through the offices of the National Demarcation Commission as well as regional demarcation commissions, the State has the obligation to finance and oversee the demarcation of their habitats and lands. Article 7 of the Law on Demarcation and the Preservation of Indigenous Peoples' Habitat and Land, adopted January 12, 2001, clearly stipulates that the State shall act as guarantor for the design, administration, implementation, and financing of the demarcation process.

1062. Despite this, according to information provided by PROVEA on behalf of the Executive Secretary of the National Demarcation Commission, from 2005 through the end of 2008, a mere 34 deeds of property had been awarded, 1.6% of the total number of properties that might have been subject to demarcation. It can be fairly stated, then, that the State's obligation to oversee the demarcation process to make effective the claim to collective property on the part of indigenous peoples is as yet a pending matter in Venezuela. Accordingly, the Commission calls on the State to take the necessary measures to give immediate effect to settled constitutional and international norms recognizing this right of indigenous peoples.

1063. The Commission notes with grave concern that in the absence of established boundaries provided by demarcation, Venezuela has continued to experience outbursts of serious

⁹³¹ Bolivarian Republic of Venezuela. Citizens' Branch. Office of the Human Rights Ombudsman. *2008 Annual Report*. Caracas, August 2009, p. 21.

⁹³² According to this transitory disposition, "the demarcation of the indigenous habitat referred to in Article 119 of this Constitution shall be carried out within 2 years counting from the entry into force of this Constitution."

conflict arising from land ownership rights. Among other such conflicts, the Commission has followed with keen attention the situation that has arisen in the Yukpa Chaktapa community, located in the Machiques de Perijá Township in the state of Zulia. Since 2004, the community has been engaged in an organized movement to claim its ancestral lands; since then, its leaders and members "have been the victims of ongoing harassment perpetrated by cattle ranchers of the area, aimed at running them off the lands they have been reclaiming."⁹³³ Especially worrisome is the news that in their effort to intimidate this indigenous community, landholding ranchers may have received the support of the Army and members of the National Guard.

1064. According to information presented by Civil Association Homo Natura, such hostilities forced some members of the Yukpa community of the Yaza River to flee to Caracas and to other cities in the center of the country where they were forced to live on the streets selling handicrafts. At the start of 2004, by order of the Offices of the Mayors of all these cities, each member of the community may have received Bs. 200,000 in exchange for their return to the Perijá Range.⁹³⁴ This is an alarming situation given its implications for the rights of such indigenous peoples, particularly this community's right to equal treatment under the law and to freedom of movement.

1065. Available information indicates that the precarious status of the Yukpa indigenous community remains unchanged. In 2008, members of the Chaktapa and Guamo communities complained that during the months of April, May, June, and July, they were again subject to verbal and physical abuse, including acts of repression and intimidation perpetrated with the support of members of the National Guard who fired shots into the ground, used tear gas against them, and threatened their lives. Despite this, competent State authorities have failed to take the necessary steps to protect the community, to investigate the incidents, or to proceed with the demarcation of their lands.⁹³⁵

1066. The Office of the Human Rights Ombudsman also points to the property issue and the impact of coal prospecting and exploitation on indigenous communities living in the Perijá Range, and the fact that over the past year the situation has worsened as a result of unfinished demarcation and titling of indigenous lands and habitats. According to the organization, this has led the Yukpa communities of Koropo, Yushubrire, Chaktapa, Koruval, and Shapta to confront the owners and employees of haciendas in Campo Alegre, Tizina, Medellín, Brasil, Paja Chiquita, Gran Chaima, and Maracay, all located in Libertad Parrish (Machiques de Perijá, State of Zulia). The indigenous leaders, it is explained, demand the return of lands they claim have been usurped by plantation owners, that coal mining in the area cease, and that the demarcation of their lands be undertaken without further delay.⁹³⁶

1067. In its observations on the present report, the State of Venezuela reported that the situation of violence generated in August of 2008 between the landowners and members of the

⁹³³ PROVEA. *Situación de los Derechos Humanos en Venezuela Informe Anual Octubre 2007/Septiembre 2008* (Situation of Human Rights in Venezuela Annual Report October 2007/September 2008). December 10, 2008, pp. 158-160.

⁹³⁴ Information provided to Provea by Asociación Civil Homo Natura cited in PROVEA, *Situación de los Derechos Humanos en Venezuela Informe Anual Octubre 2007/Septiembre 2008* (The State of Human Rights in Venezuela, Annual Report October 2007/September 2008) December 10, 2008, pp. 158-159.

⁹³⁵ PROVEA. *Situación de los Derechos Humanos en Venezuela Informe Anual Octubre 2007/Septiembre 2008* (Situation of Human Rights in Venezuela Annual Report October 2007/September 2008). December 10, 2008, p. 159.

⁹³⁶ Bolivarian Republic of Venezuela. Citizens' Branch. Office of the Human Rights Ombudsman. *2008 Annual Report*. Caracas, August 2009, p. 59.

Yukpa indigenous group, in the Sierra de Perijá, in the state of Zulia, gave rise to a series of actions by various entities of the national government to guarantee the rights of this community. The State explained that “as a result of the needs present in the zone and the request for demarcation of indigenous lands, violence erupted between some indigenous representatives, *campesinos*, other ethnic groups (Wayuu), and ranchers, who claim rights within the polygon of the Self-Demarcation Proposal submitted by the Yukpa community, a situation that is causing delays and inconveniences in the recognition of the rights of the population in general and especially of the indigenous peoples.” The State affirmed that the corresponding investigations have been opened in relation to the presumed presence of contract killers in the zone, as well as with respect to the circumstances that gave rise to the death of the elderly indigenous man José Manuel Romero at age 109. According to the State, “the National Assembly heard the case, to seek solutions through the subcommission on Participation, Guarantees, Duties, and Rights of Indigenous Peoples, as well as through representatives of the Office of the Human Rights Ombudsman, the Ministry of Popular Power for Indigenous Peoples, and the Ministry of Popular Power for the Environment, who held various meetings, with representatives of the Yukpa community and with owners of farms located in the zone, in order to address the problems in this territory.”⁹³⁷

1068. The State also reported that the “National Executive advanced the process of the demarcation of lands, principally in the Sierra de Perijá, by carrying out censuses, investigations by hectares, and working groups. The Commission on Demarcation held informational workshops with the objective of ensuring that indigenous inhabitants know about the demarcation process. Additionally, various entities of the national executive sought points of reference to resolve the conflict in the zone.” It added that “the State of Venezuela, through the Ministry of Popular Power for the Interior and Justice, since November of 2008, has been executing the Comprehensive Plan for the Defense, Development, and Consolidation of the border Municipalities Machiques de Perijá, Rosario de Perijá and Jesús María Semprúm del Edo. Zulia according to Official Gazette No. 39.046, of October 28, 2008, under which Decree No. 6.469 applies directly to the Yukpa, Barí, and Japreria peoples, which constitute the Venezuelan historical-cultural patrimony and which have been vigilant defenders of the region of the southern border with the Republic of Colombia.” It reported that eight ministries of the national executive are involved in this plan, with an estimated budget for its execution of \$109,510,453.48.⁹³⁸

1069. With respect to the demarcation of lands, the State reported that this process was formally initiated in November of 2008, and is currently in the stage of presentation of technical reports (socioanthropological, physical, natural, and legal), according to the provisions of the Organic Law on Indigenous Communities and Peoples, with an advance of sixty percent for May 2009. According to the State, this process has been carried out in consultation with the indigenous communities.⁹³⁹

1070. The State also reported that the Attorney General’s Office initiated investigations into the “alleged death threats, property damages, and injuries suffered by the Yukpa community in

⁹³⁷ Bolivarian Republic of Venezuela. Ministry of Popular Power for Foreign Affairs. State Agent for Human Rights. Observations on the Draft Report *Democracy and Human Rights in Venezuela*. Note AGEV/000598 of December 19, 2009, pp. 99 and 100.

⁹³⁸ Bolivarian Republic of Venezuela. Ministry of Popular Power for Foreign Affairs. State Agent for Human Rights. Observations on the Draft Report *Democracy and Human Rights in Venezuela*. Note AGEV/000598 of December 19, 2009, pp. 100 and 101.

⁹³⁹ Bolivarian Republic of Venezuela. Ministry of Popular Power for Foreign Affairs. State Agent for Human Rights. Observations on the Draft Report *Democracy and Human Rights in Venezuela*. Note AGEV/000598 of December 19, 2009, p. 101.

the Sierra de Perijá in the state of Zulia, on July 21, 2008 [...] causing clashes between indigenous groups and ranchers in the zone.” The State detailed for the IACHR the advances in the investigations and emphasized that, in conformity with the Law on Protection of Victims, Witnesses, and Other Procedural Subjects, it had requested protection measures for two chiefs of the Yukpa community, measures that are being carried out by the State’s security bodies.⁹⁴⁰

1071. Given the foregoing, the Commission reiterates that the State has an obligation to protect the indigenous peoples’ right to be consulted regarding all matters that affect them, taking into account their special relationship with the land and its natural resources. The Commission also underscores the need for the State to adopt immediate measures to fulfill its obligation to oversee the demarcation and delineation of property boundaries within the ancestral lands of Venezuelan indigenous peoples to be carried out through the establishment of adequate and effective procedures to that end. Likewise, deeds of ownership should be awarded to the corresponding indigenous groups. The Commission also urges the State to launch an effective investigation of the acts of violence committed resulting from the lack of demarcation of indigenous ancestral lands in Venezuela, to punish those responsible, and to take the measures necessary to protect the population against any recurrence of such acts.

2. Cultural adaptation of rights

1072. States must ensure that indigenous peoples enjoy the same rights as the rest of the population. In addition, they must adopt specific measures aimed at promoting and improving access by indigenous peoples to such services as education and health, and at guaranteeing that these services are adequate from a cultural perspective.⁹⁴¹

1073. In that regard, the Venezuelan Constitution recognizes the right of indigenous peoples to their own education as well as to an intercultural and bilingual educational system that is reflective of their specific socio-cultural reality and their values and traditions (Article 120). The Constitution also recognizes the right of indigenous peoples to comprehensive healthcare that considers their customs and cultures and that is respectful of traditional medicine and alternative therapies, subject to bioethical principles (Article 122).

1074. Beyond formally recognizing these rights, the State informs that it has adopted specific measures to make them effective. The Commission is thus apprised of the fact that through Mission Barrio Adentro III, health services are being adapted to serve indigenous patients and offices of indigenous health have been set up offering the services of bilingual intercultural facilitators to reduce the impact of linguistic and cultural barriers. The Commission values the State’s initiative in opening Indigenous Health Offices as a part of the national hospital network in an attempt to tailor public health services to the specific needs of the indigenous population.

1075. In the same vein, the Commission recognizes State efforts implement bilingual intercultural education. The Commission takes a positive view of the 2008 adoption of the Law on Indigenous Languages⁹⁴² whose objective is to regulate, promote, and strengthen the use, revitalization, preservation, defense, and development of indigenous languages based on the original

⁹⁴⁰ Bolivarian Republic of Venezuela. Ministry of Popular Power for Foreign Affairs. State Agent for Human Rights. Observations on the Draft Report *Democracy and Human Rights in Venezuela*. Note AGEV/000598 of December 19, 2009, pp. 101 to 105.

⁹⁴¹ In that regard, see: IACHR. *Report on the State of Human Rights in Mexico*. September 24, 1998, para. 774.

⁹⁴² Law on Indigenous Languages, published by Official Gazette No. 38.981 of July 28, 2008.

rights of indigenous peoples and communities to use their own languages as a means of communication and cultural expression. That legislation provides that, within indigenous lands and habitats and anywhere indigenous people live, the use of indigenous languages is mandatory for educational, labor, institutional, administrative, and judicial services, as well as for local community media. Moreover, the Law mandates the use of indigenous languages in all educational establishments, public and private, operating within the indigenous habitat.

1076. However, the Office of the Human Rights Ombudsman has noted that despite efforts undertaken by the Venezuelan State to improve the quality of life of indigenous peoples and communities in the country, there has been no significant progress registered in many aspects related to the development of their human rights, whether individual or collective. In its latest Annual Report, the Office of the Human Rights Ombudsman declares that indigenous peoples nationwide, and a good number of their respective communities with traditional settlements in the states of Amazonas, Anzoátegui, Apure, Bolívar, Delta Amacuro, Monagas, Sucre, and Zulia, have suffered from a lack of progress or a deterioration of the basic parameters of their quality of life, especially regarding the right to collective property.⁹⁴³

1077. The Commission expresses its gravest concern regarding information contained in the Ombudsman's Office 2008 Annual Report according to which, from July 11, 2007 to January 18, 2008, the deaths of nine Warao children between the ages of 6 to 11 years were registered in the communities of Mokoboina, Sacoinoco and Oribujo of the Manuel Renault Parrish (Antonio Diaz Township, state of Delta Amacuro). Examinations carried out among the area's indigenous people showed malnutrition and the lack of access to potable water to be the cause of death in each of these cases.⁹⁴⁴

1078. In the Commission's view, the precarious state of health and nutrition that afflicted this community is not necessarily unrelated to the failure to demarcate indigenous ancestral lands, as discusses earlier. In that regard, the Inter-American Court has recognized that

particular impairment of the right to health and, closely related thereto, the right to nutrition and access to clean water, all strongly affect the right to a decent life and the basic conditions necessary to exercise other human rights, such as the right to education, or the right to cultural identity. In the case of indigenous peoples, access to ancestral lands and the use and enjoyment of natural resources located there are aspects directly linked to the ability to procure food and access clean water.⁹⁴⁵

1079. The Commission observes in this respect that the fact that indigenous peoples' right to their ancestral lands has not been effectively enforced in Venezuela, indigenous peoples have been left utterly without protection, a circumstance already responsible for the deaths of various

⁹⁴³ Bolivarian Republic of Venezuela. Citizens' Branch. Office of the Human Rights Ombudsman. *Informe Annual 2008*. Caracas, August 2009, p. 67. As reported, the following indigenous peoples are those most affected, proportionately and as a whole, by the violation or impairment of their above referenced constitutional rights: the Bari, Yukpa, Añú and Wayúú (Zulia), the Warao (Delta Amacuro, Monagas, Sucre), the Pumé and Kluva (Apure), the Jivi (Amazonas), the Yekuana and Aanema (Bolívar), the Kariña and Cumanogoto (Bolívar, Anzoátegui), and the Pemón, Hoti, Eñepa, Mapoyo and Piaroa (Bolívar).

⁹⁴⁴ Bolivarian Republic of Venezuela. Citizens' Branch. Office of the Human Rights Ombudsman. *2008 Annual Report*. Caracas, August 2009, p. 62.

⁹⁴⁵ I/A Court H.R., *Indigenous Community Yakye Axa v. Paraguay*. Judgment of June 17, 2005. Series C Number 125, para. 167.

community members and which might have been avoided given proper nutrition and timely medical intervention.

1080. For the foregoing reasons, the Commission considers that the State must not only persevere in its efforts to promote the economic, social, and cultural rights of indigenous peoples in Venezuela through culturally sensitive assistance programs, but it must also take immediate steps to ensure their access to the lands and natural resources on which they depend, thereby preventing an erosion of their other rights, such as the right to health and the right to life.

E. Trade union rights

1081. The Inter-American Democratic Charter recognizes that the right of workers to associate freely to protect and promote their interests is essential for the full realization of democratic ideals. The American Convention on Human Rights recognizes this right in Article 16, as does Article 8 of the Protocol of San Salvador. The latter international instrument establishes that states must guarantee the right of workers to organize trade unions and to affiliate with the one of their choice, and that no one may be compelled to belong to a trade union. The Protocol also provides that states must allow trade unions to function freely, and that the exercise of trade union rights may be subject only to such limitations and restrictions that are established by law and necessary in a democratic society for safeguarding public order or for protecting public health or morals or the rights and freedoms of others.

1082. The IACHR has followed the situation regarding the right to freely associate for labor purposes in Venezuela, and has warned that this right is critically affected by the existing degree of political polarization and lack of social coordination among trade unions, management organizations, and the Government.⁹⁴⁶ In its 2003 *Report on the Situation of Human Rights in Venezuela*, the Commission expressed special concern over the massive firing of workers, over State intervention in the organization and election of trade union officers, and over legal barriers erected against the exercise of trade union rights. These issues continue to be of concern for the Commission, as are the frequent outbursts of violence and criminalization to which trade unionists are currently subjected.

1083. According to information provided by the State, trade unions in Venezuela are democratic organizations set up to operate on a permanent and ongoing basis, established voluntarily by workers for their own protection in the labor market, the improvement of working conditions, the search for better living conditions, the exercise of their natural rights, and as an efficient means of communication for the expression of workers' opinions on social and political issues—all of which is obtained through collective bargaining. All individuals employed in manufacturing, in professional careers or trades, or in public service, without discrimination for reasons of age, gender, race, religion, or ideology, are eligible and free to join a trade union.⁹⁴⁷

1084. As to recognition of the right to freely associate within trade unions, the State observes that the Bolivarian Republic of Venezuela makes that right effective through Article 95 of the Constitution, which enshrines the right of workers, without distinction, to freely establish such trade unions as they deem appropriate to best protect their rights and their interests, as well as the

⁹⁴⁶ IACHR. *Follow-Up Report on Compliance by the Bolivarian Republic of Venezuela of Recommendations Made by the IACHR in its Report on The State of Human Rights in Venezuela (2003)*. Annual Report 2004, Chapter V, para. 306.

⁹⁴⁷ State answer to the questionnaire used to analyze the state of human rights in Venezuela. August 13, 2009, p. 131.

right to become affiliated with such organizations, or not. The State notes, likewise, that on September 20, 1982, it ratified Covenant Number 87 on the right to trade unions and the right to organize⁹⁴⁸ as a legal guarantee for workers exercising those rights.⁹⁴⁹

1085. The State also points to the Organic Labor Law as legislative backing for the right of free trade union association in Venezuela.⁹⁵⁰ Article 401, in particular, provides that “[n]o one shall be obliged or constrained directly or indirectly to join a labor organization, or not. Trade unions have the right to draft their own statutes and bylaws, and to elect freely the officers of their executive boards; as well as to program and organize their administration and to set guidelines for union action. A union’s statutes determine the local, regional, or national scope of its activities.” In addition, Article 402 provides that “[t]he State shall ensure that trade unions, federations, and confederations shall be free from constraints, operational pressure, or discrimination of any kind that might undermine democratic pluralism as enshrined in the Constitution.”⁹⁵¹

1. Interference with free trade union affiliation

1086. Despite the norms discussed earlier, the Commission observes that Venezuela can still be described as a country of constant interference in the running of trade unions by means of State action that impedes the work of trade union officers and shows signs of government control of organized labor, and by norms established to allow the involvement of administrative entities in the election of trade union leaders.

1087. In this regard, the Commission has noted for some years that Venezuela has certain norms, including some of a constitutional and organic nature, that constitute barriers to the free exercise of trade union rights. In its 2003 *Report on the State of Human Rights in Venezuela*, the IACHR, like such other international agencies as the International Labor Organization,⁹⁵² recommended the repeal of such norms for the sake of compliance with international standards established in this area.⁹⁵³

1088. The Commission is particularly concerned by the fact that the State has not yet taken steps to reform Articles 95 and 293 of the Venezuelan Constitution. As to Article 95, the Commission notes its provision that trade union statutes and bylaws should establish term limits to ensure the rotation of union representatives and leaders. This article violates the right of trade unions to establish the conditions for reelection of their delegates without arbitrary interference from the State. Whether elected trade union officials may seek reelection or whether they must alternate positions with others is a matter for decision exclusively by the members of the

⁹⁴⁸ International Labor Organization (ILO). *Covenant on Trade Union Rights and Protection of the Right to Organize*, 1948.

⁹⁴⁹ State answer to the questionnaire used to analyze the state of human rights in Venezuela, given 13 August 2009, pages 128-130.

⁹⁵⁰ Official Gazette, Special Edition No. 5.152 of June 19, 1997.

⁹⁵¹ State answer to the questionnaire used to analyze the state of human rights in Venezuela. August 13, 2009, page 131.

⁹⁵² Committee of Experts on the Implementation of Covenants and Recommendations: Single Observation on Covenant No. 87: Trade Union Rights and the Protection of the Right to Organize. Venezuela. Published: 2003.

⁹⁵³ IACHR. *Report on the State of Human Rights in Venezuela*. December 23, 2003, paras. 496 to 503 and para. 522, Recommendation 2.

organization in the exercise of the freedom to choose whomsoever they wish as representatives, without state interference⁹⁵⁴.

1089. The Commission observes, as to Article 293 of the Venezuelan Constitution, that it violates the right to establish trade unions without State intervention of any kind, in that it enables electoral authorities, through the National Electoral Council, to organize elections for trade unions and professional guilds.

1090. The State has apprised the Commission, the Organic Law on the Electoral Branch regulates trade union electoral regimes as contemplated by Article 293 of the Constitution in accordance with international treaty law. In the State's view, Article 33 of the Law constrains the activity of the National Electoral Council inasmuch as it can no longer participate in convening, directing, supervising, or monitoring trade union elections. Moreover, its intervention is subject to prior consent voluntarily given by the unions. Thus, the State concludes, the legislative provisions of the Organic Law on Electoral Branch sufficed to limit possible administrative interference in the internal affairs of trade union organizations.⁹⁵⁵

1091. Numeral 2 of the cited Article 33 of the Organic Law on the Electoral Power gives the National Electoral Council competence to:

Organize union elections, respecting their autonomy and independence, in observance of the International Treaties ratified by Venezuela in this area, providing them with the corresponding technical and logistical support. Also, the elections of professional guilds and political and civil society organizations, in the latter case, when they request it or when it is ordered by a final judgment of the Electoral Chamber of the Supreme Court of Justice.

1092. The Commission applauds the fact that this article recognizes the autonomy and independence of labor unions, as well as the application of international treaties in this area. Moreover, the Commission views positively the State's interpretation of this article, according to which the participation of the National Electoral Council is limited to cases in which the labor unions request its assistance. The IACHR notes that, in practice, this electoral power has understood that it does not have the authority to organize union elections when there has not been a request for it to do so. The Commission further notes that in December of 2004, the National Electoral Council issued

⁹⁵⁴ In this respect, the Committee of Experts on the Application of Conventions and Recommendations (CEACR) of the International Labour Organization (ILO) stated: "The Commission recalls that, according to the provisions of Article 3 of the Convention, the workers' and employers' organizations have the right to draft their statutes and administrative rules and to freely elect their representatives. In this sense, the imposition of the alternation of the members of labor union boards through legislative means is an important obstacle to the guarantees consecrated in the Convention." See CEACR. *Individual observation on Convention No. 87, Freedom to unionize and protection of the right to unionize, 1948 Venezuela* (ratified: 1982) Publication 2001. Available in Spanish at: <http://bravo.ilo.org/ilolex/cgi-lex/singles.pl?query=062001VEN087@ref&chspec=06>. For its part, the Committee on Labor Union Freedom of the ILO has stated that "The prohibition of the reelection of labor union leaders is not compatible with Convention No. 87. This prohibition could also have serious consequences for the normal development of a union movement in which there is an insufficient number of persons capable of adequately carrying out the functions of union leadership." See. ILO. Committee on Labour Union Freedom. *Labour union freedom: Compilation of Decisions and Principles of the Committee on Labour Union Freedom of the Administrative Council of the ILO (1996)*, para. 388.

⁹⁵⁵ State observations to the 2003 IACHR *Report on the State of Human Rights in Venezuela*. Submitted April 15, 2004.

a resolution⁹⁵⁶ that contains norms for the election of labor union authorities, and that these norms provide that the electoral body will act when it receives a request to convoke elections, submitted by the authorities of the labor union or a group of affiliates, upon the expiration of the term for which the authorities were elected or according to that which is established in its statutes or internal regulations.

1093. Nevertheless, the Commission observes that Article 33 of the Organic Law on the Electoral Power gives the National Electoral Council the authority to organize union elections, and that the drafting of this norm does not clearly limit this authority to cases in which there is an express request from the union. As such, although the interpretation of this norm by the electoral authorities has been correct, the IACHR considers that both Article 33 of the Organic Law on the Electoral Power and Article 293 of the Constitution permit administrative interference in the elections of workers' organizations and must be modified to guarantee that the freedom to organize labor unions is free of all types of state intervention.

1094. The State remarks in addition that the draft Organic Labor Law takes up IACHR and ILO recommendations on interference in the right to organize.⁹⁵⁷ The IACHR observes, however, that while the draft legislation was presented to the National Assembly on June 7, 2002, it has not yet been adopted as of the date of this report. This is all the more surprising given the ruling of the Supreme Court of Justice on a motion charging the National Assembly with an unconstitutional failure to act, brought by the National Federation of Autonomous Institution and State Enterprise Workers, and its ordering the legislative body to reform the Organic Labor Law to comply with the Fourth Transitional Provision and with Article 92 of the Constitution within six months. The deadline was reached on December 15, 2004, but the Law has yet to be enacted.

1095. The requirement that trade union elections be organized and recognized by the National Electoral Council resulted in the loss of ability to engage in collective bargaining in the case of organizations which had not held elections recognized by that state body or of those awaiting its response, granting elections or recognition. This, in turn, led members to join other trade unions aligned with the government in order to have a voice in negotiating their contracts.⁹⁵⁸

1096. As the Commission has observed, the exercise of trade union rights includes the freedom of workers to choose that trade union which, in their opinion, will best defend their interests, and to do so without any involvement by the authorities. The fact that affiliation to or defection from any particular labor organization is fostered constitutes a clear act of interference in the private affairs of the members of such organizations and, as such, an attempted violation of their trade union rights.⁹⁵⁹

1097. The Commission observes that interference by the State in trade union activities has also been fostered by means of certain actions that have weakened the trade union movement.

⁹⁵⁶ National Electoral Council. Resolution No. 041220-1710. Norms for the Election of Labor Union Authorities. December 20, 2004. Available in Spanish at: http://www.cne.gov.ve/documentos/REGLAMENTO_ELECCIONES_SINDICALES.pdf.

⁹⁵⁷ State observations to the 2003 IACHR *Report on the State of Human Rights in Venezuela*. Submitted April 15, 2004.

⁹⁵⁸ See, in that regard, Human Rights Watch: *A Decade of Chávez. Political Intolerance and Lost Opportunities for the Advancement of Human Rights in Venezuela*. September 2008, pp. 155-229.

⁹⁵⁹ IACHR. *Follow-Up Report on Compliance by the Bolivarian Republic of Venezuela of Recommendations Made by the IACHR in its Report on The State of Human Rights in Venezuela (2003)*. Annual Report 2004, Chapter V, para. 327.

For instance, the State backed the creation in April 2003 of the National Union of Workers (UNT, by its Spanish acronym), a labor conglomerate established in Venezuela by followers of President Hugo Chávez to offset the influence of the Venezuelan Workers Confederation (CTV, by its Spanish acronym).

1098. Information received by the Commission also alludes to difficulties experienced in exercising collective bargaining rights. As expressed at the Hearing on the State of Economic, Social, and Cultural Rights in Venezuela, held on March 24, 2009, within the context of its 134th Period of Sessions, the absence of dialogue between the public sector and workers translated into delays in the scheduling of collective bargaining sessions such that, by March 2009, approximately 2,000 requests for collective bargaining negotiations within different governmental entities were paralyzed while the public services framework agreement expired four years ago. On this point, Office of the Human Rights Ombudsman reports that 33,460 public administration employees were covered by collective bargaining agreements in 2008, an increase as compared with the 13,195 so covered in 2007.⁹⁶⁰

1099. The IACHR was also informed that in the State television stations, TVES, Vive, and ANTV, the workers have been denied the rights to collective bargaining and unionization. Additionally, in the national public bodies, some 800,000 employees and workers have had their contracts expired for four years. In the electrical sector, negotiations with the board of directors to sign a collective contract were stalled, after which the discussion was abandoned. The board of directors of the Caracas Metro System refused to discuss a collective contract with the workers.⁹⁶¹ According to information from the presidential press office, when the metro workers raised the possibility of stopping service, the President of the Republic responded in the following manner:

[...] either they drive or I will send the Military after them. They said they are bolivarians and I said to them, more rightly, why were they behaving like *adecos* and *copeyanos*, how they are going to stop the Metro, with people inside, moreover, is a crime. I told them that they were not irresponsible people and I ordered the prosecutor's office to open an investigation. They can be whoever they are, it does not matter to me what party they are from. They cannot be permitted to stop the Metro, it is a public service. I will not govern here being blackmailed by anything or anyone. I will not accept blackmail. I do not and will not allow myself to be blackmailed by anyone, I would rather die.⁹⁶²

1100. As previously set forth, difficulties experienced in the negotiation of collective bargaining agreements stem in part from the requirement that the National Electoral Council organize and recognize labor elections. According to a Human Rights Watch report, in the public sector alone, more than 250 collective contracts expired while trade unions awaited CNE approval of their requests to hold elections or its recognition of electoral results. The number of collective contracts decreased from 854 in 2004 to 538 in 2006, partly due to the Ministry of Labor's blocking of draft collective contracts proposed by existing trade unions unable to hold elections recognized by

⁹⁶⁰ Bolivarian Republic of Venezuela. Citizens' Branch. Office of the Human Rights Ombudsman. *2008 Annual Report*. Caracas, August 2009, p. 213.

⁹⁶¹ Sinergia. *Amenazas a los Derechos Humanos y la Democracia en Venezuela: Informe comprensivo de seguimiento* (Threats to Human Rights and Democracy in Venezuela: Comprehensive Follow-up Report). October 2009, pp. 23-24.

⁹⁶² Ministry of Popular Power for Communication and Information. Press Release: *Presidente Chávez no aceptará el chantaje de sindicatos que paralicen los servicios públicos* (President Chávez will not accept blackmail by unions that paralyze public services). October 3, 2004. Available in Spanish at: http://www.minci.gob.ve/noticias_-_prensa/28/6879/presidente_chavez_no.html.

the National Electoral Council. Reportedly, the State has ignored established trade unions alleging they have failed to hold State-recognized elections, while at the same time promoting negotiations with new labor groups that are supportive of government and exempted from electoral restrictions from the start.⁹⁶³

1101. According to the ILO Commission of Experts on Conventions and Recommendations, one instance of the impact the National Electoral Council has had on union autonomy, by exercising the power to organize internal trade union elections, is the National Pipefitters Institute's (INC, by its Spanish acronym) refusal to recognize the representatives of the Single Trade Union of INC Workers and Seamen (Sutomin), alleging that the National Electoral Council had yet to organize elections.⁹⁶⁴

1102. The Commission observes that the right to collective bargaining has also been violated by the government's attitude toward public sector labor unions identified with the opposition. The Government's announcement that it will not entertain collective bargaining for the oil sector with any trade union opposed to President Chávez's ideology offers a recent example to that effect. This was declared by the Minister for Energy and Oil and President of PDVSA, at the occasion of the First National Meeting of Socialist Committees of Oil Sector Workers, in referring to elections to be held in August 2009 to renew the slate of representatives of oil workers accredited by the Government. The Minister also ordered oil sector employees to set up socialist committees, warning that "anyone not participating in a socialist committee will be considered suspect of conspiring against the revolution."⁹⁶⁵

1103. The Commission views with concern that union affiliation is subject to political or ideological pressure. The Inter-American Court has stressed that

freedom of association in trade union matters consists fundamentally in the ability to establish labor organizations and to set up their internal structures, activities, and programs of action without interference from public authorities which constrains or burdens the exercise of the respective right. Similarly, such freedom also presupposes that every individual can decide without duress of any kind whether or not to become affiliated to a particular trade union. This, then, is fundamental freedom of association in pursuit of a lawful objective to be exercised without pressure or interference that may alter or adulterate its purpose.⁹⁶⁶

1104. The Commission has also indicated that "the right to choose and to be chosen and to organize trade unions are rights recognized by the American Convention and the Inter-American Democratic Charter. In the judgment of the IACHR, the free establishment of trade unions

⁹⁶³ See, in this regard: Human Rights Watch. *A Decade of Chávez. Political Intolerance and Lost Opportunities for the Advancement of Human Rights in Venezuela*. September 2008, pp. 155-229.

⁹⁶⁴ International Trade Union Confederation. *Annual Survey of violations of trade union rights 2009*. Venezuela Chapter. Available at: <http://survey09.ituc-csi.org/survey.php?IDContinent=2&IDCountry=VEN&Lang=EN>.

⁹⁶⁵ El Nacional. *Pdvsá no discutirá contrato con "enemigos de Chávez"* (PDVSA will not discuss contract with "enemies of Chávez"). July 15, 2009. Available in Spanish at: http://el-nacional.com/www/site/p_contenido.php?q=nodo/89653/Economía/Pdvsá-no-discutirá-contrato-con-enemigos-de-Chávez.

⁹⁶⁶ I/A Court H.R., *Case of Baena Ricardo et al. v. Panama*. Judgment of February 2, 2001. Series C No. 72, para. 156.

operating without undue interference by the State constitutes an important element of any democratic system.”⁹⁶⁷ For that reason, the Commission reiterates the need for the State to reform its legislation in this area and abstain from intervening in any way in the process of free affiliation with labor unions.

2. Criminalization of the right to strike

1105. Another situation that affects the right to associate freely for labor purposes is the growing criminalization of trade union activities by means of the start of judicial action against labor right defenders by invoking Articles 357 and 360 of the Penal Code,⁹⁶⁸ which limit peaceful demonstration and constrain the right to strike in connection with labor demands.

1106. Likewise, Article 56 of the Organic Law on National Security provides for a prison sentence of five to ten years for those deemed to promote conflict in the workplace of basic state industries. According to information received by the Commission, this article was invoked a minimum of 70 times during 2008.⁹⁶⁹

1107. Another form of labor protest, the boycott, is also subject to criminalization through application of Article 24 of the new “Special Law for the People’s Defense against Hoarding, Speculation, and Boycotting.”⁹⁷⁰ The article provides that “[w]homsoever carries out action, jointly or severally, that directly or indirectly impedes the production, manufacture, import, stocking, transport, distribution, or trading of foodstuffs or commodities subject to price control shall be punished with a prison sentence of two (2) to six (6) years, and with a fine of one-hundred thirty (130 UT) to twenty thousand tax units (20,000 UT).”

1108. The Commission believes, in that regard, that boycotts can represent a peaceful form of labor protest, which is why its criminalization through the imposition of prison sentences or exorbitant fines is tantamount to a new threat against the right to strike. Such action seeks to constrain the negotiation capacity of labor organizations at the very time they are fighting to improve working conditions.

1109. PROVEA figures show more than 2,200 workers, farmers, students, and community members could be affected if they are periodically compelled to appear in court for having exercised their right to protest. Of the 2,200 individuals who had charges laid against them for

⁹⁶⁷ IACHR. *Report on the Situation of Human Rights in Venezuela*. December 23, 2003, para. 521.

⁹⁶⁸ Penal Code. Article 357: “Whomsoever has acted with imprudence, negligence, professional malpractice, or with lack of skill in his or her profession, art, or industry, or has failed to comply with regulations, orders, or disciplinary provisions and thereby caused a fire, explosion, flood, listing, foundering, shipwreck, sinking, or disaster of any sort that constitutes a common threat, shall be punished by a jail sentence of 3 to 15 months. If the disaster proves a threat to life, the prison term shall run from 3 to 30 months; if it results in loss of life, from 1 to 10 years.”

Article 360: “Whomsoever has acted with negligence or lack of skill in his or her profession or art, or has failed to comply with regulations, orders, or disciplinary provisions and has thereby created the risk of a railway disaster, shall be sentence to a term of 3 to 15 months; if the disaster occurred, the sentence shall run from 1 to 5 years.”

⁹⁶⁹ Information provided by petitioners to the IACHR. *Hearing on the State of Economic, Social, and Cultural Rights*. 134th Period of Sessions, March 24, 2009.

⁹⁷⁰ Special Law for the People’s Defense against Hoarding, Speculation, Boycotting, and any other conduct affecting the consumption of food and commodities subject to price controls. Decree 5.197 with the full rank, value, and force of law. Published in Official Gazette Number 38.628 of February 16, 2008.

protesting as of July 2009, 120 are workers: of these, 30 work in the oil sector and another 25 work in the steel industry.⁹⁷¹

1110. Among others, in May 2007, at least ten labor leaders of the Sanitary Workers of Maracay Trade Union were intercepted and detained by members of the National Guard and Police of Aragua while on their way to Caracas to address the National Assembly on the state of workers as set forth in a sheaf of petitions. Although they were freed, the Attorney General's Office charged them with violation of Penal Code Article 357, which proscribes obstruction of public roadways, and they were ordered to appear in the prosecutor's office every two weeks.⁹⁷²

1111. Similarly, in March 2008, members affiliated with the Single Trade Union of Steel Sector and Related Industry Workers (Sutiss) called a strike of 48 hours to protest against delayed collective bargaining at Siderúgica del Orinoco (Sidor) following the interruption of the High Level Commission's negotiations with management. Confrontations with the police led to the detention of 53 trade unionists,⁹⁷³ subsequently charged with allegedly having committed the crime of roadway obstruction.

1112. Recently, on July 13, 2009, five labor leaders of the El Palito Refinery in the state of Carabobo were served with a citation issued by the Criminal Control Tribunal of the state of Carabobo, Puerto Cabello extension, signed by the First Permanent Judge, which "orders the prohibition of instigating or promoting within the same institution (PDVSA), any meeting and/or demonstration that puts the normal functioning of this Basic Enterprise at risk." According to the information presented to the IACHR, this legal action brought to ten the total number of oil sector workers threatened for having launched protests within the complex; another five are covered by a precautionary measure adopted last year and are still awaiting the findings of the Attorney General's Office.⁹⁷⁴

1113. The Commission also notes that, according to the State, "any strike is considered illegal if it involves the stopping or disruption of essential public services, which causes irreparable harm to the public or institutions due to the failure to provide the minimum indispensable services."⁹⁷⁵ Nevertheless, Article 181 of the Regulations of the Organic Labor Law⁹⁷⁶ indicates that "it is considered that the failure to provide minimal indispensable services in the case of strikes that involve the cessation or disruption of essential public services causes irreparable harm to the population or to institutions, causing it to be illegal." In this sense, the legislation seeks to safeguard a

⁹⁷¹ PROVEA. *Trabajadores petroleros denuncian hostigamiento a su libertad sindical y al derecho a la protesta* (Oil workers decry harassment targeting their trade union rights and the right to protest). July 15, 2009. Information available in Spanish at: <http://www.derechos.org.ve/detalle.php?id=828>.

⁹⁷² Human Rights Vicarage of Caracas. *Informe sobre la Situación de los Defensores y Defensoras de Derechos Humanos en Venezuela 2007* (Report on the State of Human Rights Defenders in Venezuela 2007), p. 70.

⁹⁷³ International Trade Union Confederation. *Annual Survey of violations of trade union rights 2009*. Venezuela Chapter. Available at: <http://survey09.ituc-csi.org/survey.php?IDContinent=2&IDCountry=VEN&Lang=EN>.

⁹⁷⁴ PROVEA. *Trabajadores petroleros denuncian hostigamiento a su libertad sindical y al derecho a la protesta* (Oil workers decry harassment targeting their trade union rights and the right to protest). July 15, 2009. Information available in Spanish at: <http://www.derechos.org.ve/detalle.php?id=828>.

⁹⁷⁵ State's response to the questionnaire for the analysis of the situation of human rights in Venezuela. August 13, 2009, p. 139.

⁹⁷⁶ Published in Official Gazette Nº 38.426 of April 28, 2006, Decree Nº 4.447 of April 25, 2006.

minimum level of services, but the State has applied this norm in the most general way, which has had the effect of restricting the right to any strike that disturbs an essential public service.

1114. This is even more troublesome given that the cited Regulations in their Article 182 provide that in Venezuela almost all public services are considered essential public services, including: health; public health and hygiene; the production and distribution of potable water; the production and distribution of hydrocarbons and their derivatives; the production and distribution of gas and other combustibles; the production and distribution of foods of primary necessity; civil defense; the removal and treatment of urban refuse; customs; the administration of justice; environmental protection and the protection of cultural goods; public transport; air traffic control; social security; education; mail and telecommunications services; and the informational services of public radio and television.

1115. The Commission considers it timely to recall that trade union organizations play a very important role in protecting the human rights of workers faced with precarious labor conditions in the workplace, and that they have become key protagonists of organized political expression aimed at furthering the presentation of labor and social demands of many sectors in society.⁹⁷⁷ One of the mechanisms available to trade unions to press for an answer to such demands is the right to strike. That is why the IACHR calls upon the State to refrain from subjecting labor leaders to judicial processes who are exercising that right legitimately and peacefully.

3. Assassination of trade union leaders

1116. The Inter-American Court has recognized that trade union rights suffer when violations to the right to personal integrity or to life aim to constrain the exercise of such rights and freedoms. It follows, therefore, that trade union rights cannot be exercised in a context of impunity in the face of violence leveled against labor. In that sense, states must ensure that individuals can freely exercise their labor rights without fearing any violence.⁹⁷⁸

1117. The IACHR has expressed its concern over the sustained increase in the number of trade union leaders who have been victims of attacks and threats to their personal integrity and lives. It has asked the Venezuelan State to investigate such acts in order to determine the cause of this situation and to fashion appropriate and effective measures that will assist in prevention, investigation, and sanctioning of responsible parties.⁹⁷⁹

1118. Nonetheless, the number of victims of assassination among the ranks of labor leaders in Venezuela keeps that country among those where trade union activism proves dangerous.⁹⁸⁰ Information received by the IACHR shows that the frequency of attempts against the personal security of trade union members, particularly in the construction and oil sectors, turns the defense of labor rights in various regions across the nation into an activity that systematically imperils

⁹⁷⁷ IACHR. *Report on the Situation of Human Rights Defenders in the Americas*. March 7, 2006, para. 209.

⁹⁷⁸ I/A Court H.R., *Case of Cantoral Huamani and García Santa Cruz*. Judgment of July 10, 2007. Series C No. 167, paras. 145-149.

⁹⁷⁹ IACHR. *Annual Report 2007*. Chapter IV: Human Rights Developments in the Region, Venezuela, para. 238.

⁹⁸⁰ PROVEA. *Situación de los Derechos Humanos en Venezuela Informe Anual Octubre 2007/Septiembre 2008* (The State of Human Rights in Venezuela, Annual Report October 2007/September 2008). December 10, 2008, p. 44.

the right to life.⁹⁸¹ Moreover, the Commission has heard reports concerning violent incidents being perpetrated among rival labor unions.⁹⁸²

1119. Labor conflicts related to the right to work have cost the lives of numerous trade union leaders, workers, and citizens.⁹⁸³ According to the Human Rights Vicarage of Caracas, between 1997 and 2007, Venezuela saw the execution of 52 labor leaders and 87 workers resulting from the violent union struggle to control employment quotas. The most standard means of attacking labor leaders is by means of hired gunmen.⁹⁸⁴ According to the report of the same organization corresponding to the period of 2008-2009, another 34 labor leaders have been assassinated. Similarly, information received by the Commission during its 134th Period of Sessions indicates that between 2007 and 2008, 67 trade union leaders were assassinated, and by March 2009 another 18 were as well.⁹⁸⁵

1120. A case in point is the assassination on January 29, 2007 of Héctor Francisco Jaramillo, secretary of professional and technical staff at Sutrabolivar. In the same incident, Alexis García was killed and Oscar José Marcano was injured; both were members of the disciplinary tribunal at the Incorporated Trade Union for the Workers of the Bolívar state (Sutrabolivar by its Spanish acronym). The acts occurred as the trade unionists were heading toward the construction site at Cachamay Sports Stadium where they were to address the issue of worker transportation. On the way, three individuals stopped them and fired against their vehicle. Harassment against this labor group continued during the victims' wake as eight persons opened fire against those present and killed two delegates of Sutrabolivar, Neomar Rodríguez and Robert Rivero. A woman of 50 years of age died after being shot in the head and several others were injured. The motive was never established.⁹⁸⁶

1121. On November 28, 2008, in Villa De Cura, in the state of Aragua the union leaders of the Unionist Union of the Left and of the National Workers' Union (UNT, by its Spanish acronym), Richard Gallardo, Luis Hernández, and Carlos Requena, were murdered as they were returning to their homes after participating in a day of solidarity with the workers in conflict of the Alpina company. According to the information received, they were intercepted by two armed subjects who were riding on a motorcycle and shot them.⁹⁸⁷

⁹⁸¹ Human Rights Vicarage of Caracas. *Informe sobre la Situación de los Defensores y Defensoras de Derechos Humanos en Venezuela 2007* (Report on the State of Human Rights Defenders in Venezuela 2007), pp. 60-61.

⁹⁸² Information provided by the petitioners to the IACHR. *Hearing on the Situation of Human Rights Defenders in Venezuela*. 134th Period of Sessions, March 24, 2009.

⁹⁸³ PROVEA. *Situación de los Derechos Humanos en Venezuela Informe Anual Octubre 2007/Septiembre 2008* (Situation of Human Rights in Venezuela Annual Report October 2007/September 2008). December 10, 2008, pp. 140-141.

⁹⁸⁴ Human Rights Vicarage of Caracas. *Informe sobre la Situación de los Defensores y Defensoras de Derechos Humanos en Venezuela 2007* (Report on the State of Human Rights Defenders in Venezuela 2007), p. 67.

⁹⁸⁵ Information provided by petitioners (CEJIL, PROVEA, Acción Solidaria (ACSOL), Convite A. C.) to the IACHR. *Hearing on the State of Economic, Social, and Cultural Rights*. 134th Period of Sessions, March 24, 2009.

⁹⁸⁶ Human Rights Vicarage of Caracas. *Informe sobre la Situación de los Defensores y Defensoras de Derechos Humanos en Venezuela 2007* (Report on the State of Human Rights Defenders in Venezuela 2007), pp. 67-68.

⁹⁸⁷ Human Rights Vicarage of Caracas. *Informe sobre la Situación de los Defensores y Defensoras de Derechos Humanos en Venezuela 2007* (Report on the State of Human Rights Defenders in Venezuela 2008-2009). October 2009.

1122. On January 6, 2009, Jean Carlos Miguens, 25 years of age, leader of the Union of Industrial and Construction Workers of Aragua (Sinasoica), was assassinated. According to what was reported to the IACHR, after having received repeated death threats by telephone and being followed into an alley by unknown individuals, he was shot several times, causing his death.⁹⁸⁸

1123. On February 26, 2009, Ramón Suárez was assassinated in the town of El Tigre, Anzoátegui state. Suárez was a member of the board of directors of the Single Union of Workers in the Industries of Construction, Woodworking, and Related and Similar Industries of the State of Anzoátegui and, according to the information received by the IACHR, he was shot eight times while he was driving a motorcycle in the company of his ex-wife Katusca González, who was injured by two shots.⁹⁸⁹

1124. On February 7, 2009, the vehicle in which Darwin José Nuñez Fernández, former leader of the Union of Construction Workers of the State of Bolívar, was traveling in the company of two of his former colleagues from the syndicate, Alexander David Zambrano Sánchez and Ronny José González Coraspe, was attacked with gunfire. Zambrano, González, and Nuñez were intercepted by a vehicle from which emerged three armed subjects who fired upon the former union members. According to what was reported to the IACHR, the three former union members had decided to withdraw from Suত্রাবলি after receiving death threats and having various problems in their places of work. The shots caused the death of Alexander David Zambrano Sánchez.⁹⁹⁰

1125. On February 27, 2009, Ilian Antonio González González, 21 years of age, who was linked to the Muralla Roja Construction Union, was assassinated. According to the information received by this Commission, an unknown subject traveling on a motorcycle shot him 13 times and nothing was taken from the victim.⁹⁹¹

1126. On May 5, 2009, Argenis Vásquez Marcano, Secretary General of the Automobile Industry, worker in the Toyota factory in Cumaná in the state of Sucre, and leader of the United Socialist Party of Venezuela (PSUV, by its Spanish acronym), was assassinated. The IACHR received information indicating that the union leader had made denunciations about the existence of a black market in vehicles, and was riddled with gunshots by two individuals.⁹⁹²

1127. On August 16, 2009, the body of trade union leader Jorge de Jesús Aguirre appeared partially burned and dismembered on the banks of Vilchez Dam, near the sector of

⁹⁸⁸ Human Rights Vicarage of Caracas. *Informe sobre la Situación de los Defensores y Defensoras de Derechos Humanos en Venezuela 2007* (Report on the State of Human Rights Defenders in Venezuela 2008-2009). October 2009.

⁹⁸⁹ Human Rights Vicarage of Caracas. *Informe sobre la Situación de los Defensores y Defensoras de Derechos Humanos en Venezuela 2007* (Report on the State of Human Rights Defenders in Venezuela 2008-2009). October 2009.

⁹⁹⁰ Human Rights Vicarage of Caracas. *Informe sobre la Situación de los Defensores y Defensoras de Derechos Humanos en Venezuela 2007* (Report on the State of Human Rights Defenders in Venezuela 2008-2009). October 2009.

⁹⁹¹ Human Rights Vicarage of Caracas. *Informe sobre la Situación de los Defensores y Defensoras de Derechos Humanos en Venezuela 2007* (Report on the State of Human Rights Defenders in Venezuela 2008-2009). October 2009.

⁹⁹² Human Rights Vicarage of Caracas. *Informe sobre la Situación de los Defensores y Defensoras de Derechos Humanos en Venezuela 2007* (Report on the State of Human Rights Defenders in Venezuela 2008-2009). October 2009.

Parapara in Guárico. The investigation reveals that the leader had been stopped by some hooded men on the national highway San Juan de los Moros-Los Dos Caminos, near his property. After being intercepted, the victim appears to have been driven to the edge of Vilchez Dam. There it seems the perpetrators first set fire to the vehicle, then to him.⁹⁹³ That same month, on August 31, 2009, trade unionists Alberto José Mejías Sotomayor and Alexander Machado Díaz were shot to death in the Paz Castillo Township, state of Miranda. The victims were members of the Bolivarian Workers Union (UBT, by its Spanish acronym).⁹⁹⁴

1128. The death of trade unionists happens not only at the hands of hired assassins, but also as a result of excessive force being used by public servants entrusted with keeping the peace. Recently, for instance, a member of the police force of the state of Aragua, Victor Salazar, was indicted for intentional homicide allegedly committed against labor leader Manuel Felipe Araujo Fuenmayor on February 17, 2009 at the wholesale market La Morita on interstate Turmero-Maracay in the state of Aragua. Two other citizens died in the same incident. The public prosecutor's office investigation shows that confrontations arose between builders of the state of Aragua's Bolivarian Workers Union (UBT, by its Spanish acronym) and other UBT members from Caracas over adjudication of a construction bid. The police officer allegedly struck Mr. Fuenmayor's head with an iron bar and caused his death.⁹⁹⁵

1129. Additionally, the IACHR was informed that in the context of an action to take over an industrial plant, workers José Javier Marcano Hurtado and Pedro Jesús Suárez Polito were killed by shots fired by members of the Police of the State of Anzoátegui on January 29, 2009 during the execution of a judicial measure ordering the dispossession of the MMC Automotriz C.A. plant, located in the industrial zone of Los Montones, in the city of Barcelona. The governor of the state of Anzoátegui energetically condemned the acts, ordering the suspension from their duties of the two superintendents and two sub-inspectors who commanded the group of 50 police officers who participated in the ejection from the plant and requested that the president of the Supreme Court of Justice investigate and sanction the judges who ordered the judicial measure.⁹⁹⁶

1130. The Commission is not only concerned about the figures of assassinations of trade union leaders, but also about the information according to which of the 52 labor leaders or labor rights defenders assassinated between 1997 and 2007, the perpetrators of just 3 have been brought to justice and sanctioned by the courts,⁹⁹⁷ which is to say that most have met with impunity.

⁹⁹³ Office of the Attorney General of Venezuela. Press Release of September, 2009. *Ministerio Público coordina búsqueda de restos del cuerpo de sindicalista de Guárico* (Attorney General's Office coordinates search for remains of Guárico labor leader). Available in Spanish at: <http://www.fiscalia.gov.ve/Prensa/A2009/prensaseptiembre2009.asp>.

⁹⁹⁴ PROVEA. *Asesinan a dos sindicalistas en el Tuy* (Two trade union leaders killed in Tuy). August 31, 2009. Available in Spanish at: <http://www.derechos.org.ve/detalle.php?id=906>.

⁹⁹⁵ Office of the Attorney General of Venezuela. Press release of September 9, 2009. *A juicio funcionario de la Policía de Aragua implicado presuntamente en muerte de sindicalista* (Member of Aragua police force allegedly implicated in death of labor leader). Available in Spanish at: <http://www.fiscalia.gov.ve/Prensa/A2009/prensaseptiembre2009.asp>.

⁹⁹⁶ Human Rights Vicarage of Caracas. *Informe sobre la Situación de los Defensores y Defensoras de Derechos Humanos en Venezuela 2008-2009*. (Report on the State of Human Rights Defenders in Venezuela 2008-2009). October 2009.

⁹⁹⁷ Human Rights Vicarage of Caracas. *Informe sobre la Situación de los Defensores y Defensoras de Derechos Humanos en Venezuela 2008-2009*. (Report on the State of Human Rights Defenders in Venezuela 2008-2009). October 2009, p. 71.

1131. The Inter-American Court has established that the right to associate freely enshrined by Article 16 of the American Convention protects two dimensions. The first dimension encompasses the right and freedom to associate freely with other persons, without the intervention of public authorities that might constrain or burden the exercise of the respective right, representing, then, a right of each individual. The second dimension recognizes and protects the right and freedom to seek the common realization of a legal pursuit, without pressure or interference that might alter or adulterate that goal.⁹⁹⁸

1132. Accordingly, in the Court's opinion, "The execution of a trade union leader [...] restricts not only an individual's freedom of association, but also the right and freedom of a given group to associate freely, without fear or apprehension, which confers special scope and character on the right protected by Article 16. The dual dimension of the right to associate freely thus becomes evident."⁹⁹⁹

1133. With respect to the assassinations of union leaders, in its observations on this report, the State affirmed that "there are cases of murders of union leaders carried out by contract killers, motivated by conflicts between some unions due to improper fees charged to members for employment in companies. [...] The Venezuelan State deplores this mafia attitude of supposed 'union leaders' and the Attorney General's Office has investigated each one of these cases to determine the responsibilities."¹⁰⁰⁰

1134. Bearing in mind that the rights of worker organizations can only be exercised in a climate free from violence, pressure, or threats of any sort, the Inter-American Commission urges the State to adopt the necessary measures to end the situation of insecurity described above, and therefore allow worker and management organizations to exercise their trade union rights fully.

1135. The Commission is concerned by the number of trade unionists who have fallen victim to attempts and threats upon their lives and personal security, and reiterates its request that the Venezuelan State assess these incidents to identify their causes, as well as to fashion appropriate and effective measures to assist prevention, investigation, and sanctioning of responsible parties, taking due account of the chilling effect that failure to investigate these acts will have on the free exercise of trade union rights.

F. Recommendations

1136. In order to strengthen State action aimed at promoting economic, social, and cultural rights, the Commission recommends that the State:

1. Intensify efforts to achieve progressively the full observance of economic, social, and cultural rights, and guarantee that such efforts will not imply undermining the population's other fundamental rights.

⁹⁹⁸ I/A Court H.R., *Case of Huila Tecse v. Peru Case*. Judgment of March 3, 2005. Series C No.121, paras. 69-72.

⁹⁹⁹ I/A Court H.R., *Case of Huila Tecse v. Peru Case*. Judgment of March 3, 2005. Series C No.121, para. 69.

¹⁰⁰⁰ Bolivarian Republic of Venezuela. Ministry of Popular Power for Foreign Affairs. State Agent for Human Rights. Observations on the Draft Report *Democracy and Human Rights in Venezuela*. Note AGEV/000598 of December 19, 2009, p. 22.

2. Adopt public policies that will foster long-term continuity of the efforts to guarantee economic, social, and cultural rights, ensuring that the full exercise of such rights will not depend on the will of one government or another.
3. Complete the process of ratification of the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social, and Cultural Rights.
4. Adapt the dispositions of the Organic Law on Education to the standards of the American Convention on Human Rights.
5. Adopt measures needed to obtain legislative approval of the Draft Law on Health with a view to establishing guidelines for the creation of a National Public Health System.
6. Give immediate attention to current weaknesses in the health system and efforts to guarantee full observance of the right to health in Venezuela.
7. Guarantee transparency of information with respect to the criteria serving to allocate the benefits extended by Missions, and establish a clear system of accountability to the people regarding Mission programs.
8. Adopt necessary mechanisms to ensure that Missions operate in full coordination with state and national public services.

1137. In order to protect more effectively the cultural rights of indigenous peoples, the Commission recommends that the State:

1. Adopt urgent measures to meet the State's obligation to demarcate and delimit the ancestral lands of Venezuelan indigenous peoples, based on appropriate and effective procedures to that end, as well as to grant property title to the respective peoples.
2. Adopt measures to prevent conflicts generated by the lack of land demarcation and protect the population from such occurrences.
3. Establish special fast and effective mechanisms to resolve existing disputes over land possession with a view to affording guarantees and legal certainty in respect of indigenous peoples' titles over their own property.
4. Fully investigate acts of violence arising from the absence of demarcation of ancestral indigenous lands in Venezuela, and duly sanction the responsible parties.
5. Promote, consistent with their relevant international obligations, participation by indigenous peoples and communities affected by projects for the exploration and exploitation of natural resources by means of prior and informed consultation aimed at garnering their voluntary consent to the design, implementation, and evaluation of such projects, as well as to the determination of benefits and indemnization for damages according to their own development priorities.
6. In the context of ongoing natural resource prospecting and exploitation projects, implement participatory mechanisms to assess the extent of environmental damage caused and the impact on basic subsistence activities among indigenous

peoples and agricultural communities living where such projects unfold. This aims to ensure immediate project suspension when the lives and/or personal security of such individuals are at risk, and to level administrative and criminal sanctions as appropriate. If projects proceed, the State must guarantee that those affected will share in the benefits derived, and that damages will be assessed and compensation will be made.

7. Guarantee access to an adequate and effective judicial remedy to address environmental damage collectively, such that, aside from criminal action, mechanisms of a legal nature are available for immediate attention to be focused on circumstances that may cause irreparable damage to groups of individuals.
8. Continue efforts so that the rights to education and to health of indigenous peoples are compatible with their mores and world view; foster continuity and strengthening of their cultural identity; and in no way imply a form of assimilation of indigenous peoples into non-indigenous society.

1138. In order to accord effective protection to trade union rights, the Commission recommends that the State:

1. Repeal norms that permit State intervention in the organization and election of trade unions and their leaders; and remove legal barriers to the exercise of trade union rights. Particularly, reform Articles 95 and 293 of the Venezuelan Constitution as they respectively violate the right of the unions to establish the conditions for the reelection of their delegates in their statutes without arbitrary interference from the State and the right to organize trade unions without any State interference. Modify also Article 33 of the Organic Electoral Law since it vests authority in the National Electoral Council to organize union elections without making it clear that this authority is limited to cases in which the union requests it.
2. Adopt measures to approve the Organic Labor Law, which incorporates IACHR recommendations regarding interference in trade union rights.
3. Cease efforts to promote affiliation or non-affiliation with a given trade union.
4. Cease the imposition of judicial proceedings on trade union leaders engaged in the legitimate and peaceful pursuit of the right to strike.
5. Investigate and sanction the perpetrators of violations of the rights to personal security and to life related to the exercise of trade union rights.

VIII. CONCLUSIONS

1139. Based on the information received, the Commission has identified in this report various aspects that contribute to the weakening of the rule of law and democracy in Venezuela and that have caused as a consequence serious restrictions to the full enjoyment of the human rights recognized in the American Convention.

1140. The Commission has identified that, while Venezuela continues to hold elections with great frequency, there are certain obstacles that impair opposition candidates' equal opportunity to be elected, as well as some limitations that check the exercise of power by popularly elected authorities, when they are not members of officialdom. The IACHR considers it a matter of

concern that, through mechanisms such as the disqualification of candidates or a shift in the competencies of certain authorities to the point of ridding them of meaning, the political rights of those critical of the government have been curtailed.

1141. Moreover, the IACHR notes that obstacles are thrown in the path of those identifying with the opposition not only in the context of political contests, but also that citizens and organizations that make their disagreement with governmental policies public often become victims of retaliation, intimidation, disqualification, exclusion, discrimination in the workplace, and in some instances are even subject to legal attack and deprived of their liberty. Thus, reprisals levied against dissenters have left certain sectors of society stripped of the means to protect their interests, to protest, to criticize, to propose, and to exercise their role as overseers of the democratic system.

1142. Human rights defenders have been especially affected by the climate of hostility and intolerance prevailing in Venezuela today. Faced with enormous obstacles in the performance of their work whose legitimacy is questioned and criminalized, they suffer threats and attempts upon their own lives and personal security. The lack of access to public information has also complicated the task of defending human rights in Venezuela. The IACHR views such adverse conditions for the protection of human rights with concern as they produce a chilling effect on the defenders who, fearing retaliation, may cease acting as watchmen of government policy. This, in turn, renders even more difficult the generation of basic agreement with respect to problems affecting the citizens of Venezuela. Moreover, if defenders do not have adequate protection of these rights, it is difficult for them to carry out their work of protecting the rights of other persons.

1143. As to freedom of expression, the IACHR reiterates the conclusions reached in previous reports regarding the absence of a climate of national tolerance to foster active participation and the exchange of ideas among diverse sectors of society. In particular, the IACHR anxiously observes how, in recent years, major overhauls of the legal framework have tended to shut down rather than to promote public debate. The protection of values such as pluralism and diversity, integral parts of democratic models, requires shaping institutions that develop public deliberation, not inhibit or muzzle it. Yet numerous acts of violence and intimidation perpetrated by private violent groups against journalists and the media; disqualifying statements by highly placed civil servants; the systematic filing of administrative proceedings predicated on vague legal norms that allow for great margins of discretion when implemented, coupled with disproportional sanctions, all serve to create a restrictive scenario that also dampens the full observance of freedom of expression as a condition of democracy rooted in pluralism and public debate.

1144. The Commission has also identified the challenge to the very exercise of democracy in Venezuela constituted by the lack of mechanisms to access public information on the management of State organs as well as regarding figures that can serve to assess how human rights are being observed. The scant official data available represents a barrier to the necessary control ordinary citizens should exert over civil servants and democratic institutions. The paucity of information has also made more difficult the Inter-American Commission's work in promoting and protecting the observance of human rights, especially so given the impossibility of visiting Venezuela.

1145. Violence and crime in Venezuela affect the observance of human rights in Venezuela. The Commission considers alarming the number of cases of extrajudicial executions; torture; forced disappearances; death threats; abuse of authority; and cruel, inhumane, or degrading treatment meted out by agents of the Venezuelan State. Likewise, the homicides, kidnappings, use of hired gunmen, and rural area violence are all phenomena that frequently affect the security of citizens across the country.

1146. While the State has deployed efforts to guarantee citizens' security in the face of ordinary and organized crime as well as potential abuse by governmental organs, the State's

response to public insecurity has been insufficient, and at times even incompatible with the observance of human rights, owing particularly to the absence of norms clearly defining the role of the armed forces in keeping the peace domestically, and to the high degree of impunity seen in the investigation of such violent acts.

1147. The Commission considers that the State has failed also in fulfilling its role as guarantor of the safety of persons it holds in custody, deprived of liberty. Although some steps have been taken to tackle procedural delays as the principal cause of overcrowding in penitentiaries, over half of the inmates in Venezuela are deprived of liberty without having received a final sentence. The Commission recognizes the significant resources the State has invested in improving prison infrastructure and conditions, but they have proved insufficient to avoid the occurrence acts of violence within Venezuelan jails that have left thousands of inmates dead or injured. Most of these acts continue to be committed with impunity, which suggests the State has also failed in its obligation to prevent new ones from occurring.

1148. A similar observation can be made about the situation of women in Venezuela. While the State has adopted a legal framework to promote and protect the equality of women before the law and their right to live free from violence, and, likewise, has implemented programs and plans to prevent such violence, women in Venezuela continue to be victims of violence perpetrated against them. The vast majority of cases brought before the justice system for violence against women never reach judicial sentencing and so they continue to be met with impunity. Moreover, judicial bodies are reluctant to take on complaints alleging violence against women; in some instances, victims that turn to the justice system consider themselves mistreated, which in turn has a chilling effect on other women with claims of violence against them.

1149. Thus, acts of retaliation to quash dissent; attacks against human rights defenders and against journalists; repression of peaceful protest; abuse by State agents and common and organized crime; violence in the prison system; violence against women; and other grave violations of human rights are all characterized in Venezuela by the high levels of impunity associated with them. Such impunity stems from “the overall lack of investigation, pursuit, capture, indictment, and sentencing of those responsible for violating rights protected by the American Convention”¹⁰⁰¹ and, pursuant to guarantees established in Article 8 and 25 of that instrument, it stands in and of itself as one of the gravest violations of human rights in Venezuela.

1150. In that regard, the State of Venezuela “has the obligation to combat that situation by all legal means available as impunity breeds the chronic recurrence of human rights violations that leaves victims and their families utterly defenseless.”¹⁰⁰² Such an obligation implies the duty to organize the entire government apparatus and, in general, all structures through which public power is exercised, in a manner as to offer legal assurance of the free and unabridged exercise of human rights.¹⁰⁰³

¹⁰⁰¹ I/A Court H.R., *Case of “Panel Blanca” (Paniagua Morales et al.) v. Guatemala*. Judgment of March 8, 1998. Series C No. 37, para.173; *Case Vargas Areco v. Paraguay*. Judgment of September 26, 2006. Series C No. 155, para. 153; and *Case Tiu Tojin v. Guatemala*. Judgment of November 26, 2008. Series C No. 190, para. 69.

¹⁰⁰² I/A Court H.R., *Case of the Massacres of Ituango v. Colombia*. Judgment of July 1, 2006. Series C No. 148, para. 299; *Case of Montero Aranguren et al (Checkpoint at Catia) v. Venezuela Case*. Judgment of July 5, 2006. Series C No. 150, para. 137; and *Case of Vargas Areco v. Paraguay*. Judgment of September 26, 2006. Series C No. 155, para.81.

¹⁰⁰³ I/A Court H.R., *Case of Velásquez Rodríguez v. Honduras*. Judgment of July 29, 1988. Series C No. 4, para. 166; *Case of Almonacid Arellano et al v. Chile*. Judgment of September 26, 2006. Series C No. 154, para. 110; and *Case of Tiu Tojin v. Guatemala*. Judgment of November 26, 2008. Series C No. 190, para. 69.

1151. The Commission observes that impunity has undermined trust in the judiciary and, hence, in the rule of law. Such mistrust is worsened by the Venezuelan judiciary's lack of independence, which is generated by the breach of observance of certain guarantees related to the appointment and removal of judges and prosecutors, as well as to the high percentage of judges and prosecutors appointed on a provisional basis.

1152. The IAHCR is gravely concerned by the number of judges appointed without benefit of a public competitive examination. This fact makes it possible to remove those judges from office and to subject them to undue pressure in the holdings they issue. As established in the present report, over half of the judges of Venezuela enjoy no stability of employment; they are therefore subject to removal when they make decisions that affect the government's interests. It is also worrisome that, without a public examination open to candidates outside the judiciary, tenure is being extended to several judges who were initially appointed on a discretionary basis.

1153. In addition, the IACHR has discovered the existence of norms that allow a high degree of subjectivity in evaluating the performance of judges. On that basis, and sometimes without any legal foundation whatsoever, special disciplinary organs that offer no guarantee of impartiality such as the Commission on the Operation and Reorganization of the Judicial System have ruled to revoke the appointment of hundreds of judges, without recourse to an appropriate procedure. All of the foregoing constitutes a constant threat to the independence of the Venezuelan judiciary, which has resulted in weakening one of the pillars of the rule of law. The Commission warns that it will not be possible to consolidate the rule of law and democracy in Venezuela so long as an independent judiciary capable of duly investigating human rights violations fails to exist.

1154. The Commission considers that the lack of independence and autonomy of the judiciary with respect to the political branches constitutes one of the weakest points of democracy in Venezuela, a situation that seriously hinders the free exercise of human rights in Venezuela. In the Commission's judgment, it is this lack of independence that has allowed the use of the State's punitive power in Venezuela to criminalize human rights defenders, judicialize peaceful social protest, and persecute political dissidents through the criminal system.

1155. At the same time, the Commission is aware that the promotion and protection of economic, social, and cultural rights is indispensable to the consolidation of democracy, and in that respect recognizes the State's strides in achieving the progressive observance of these rights, chief among which stand the eradication of illiteracy; poverty reduction; and increasing access to such basic services as health by the most vulnerable sectors of society. In addition, the Commission values efforts the State has deployed to implement programs aimed at overcoming structural problems of inequity and discrimination that exist in Venezuela.

1156. Additionally, the Commission notes that there are serious shortcomings with respect to union rights as well as in relation to the right of indigenous peoples to their lands.

1157. The Commission emphasizes that observance of other fundamental rights cannot be sacrificed for the sake of realizing economic, social, and cultural rights. Human rights constitute an indissoluble whole, and, as the American Convention sets forth in its preamble, "the ideal of free men enjoying freedom from fear and want can be achieved only if conditions are created whereby everyone may enjoy his economic, social, and cultural rights, as well as his civil and political rights."

1158. The Commission notes that in Venezuela one of the basic pillars of democracy, the right to equality and non-discrimination before the law, has been attacked. The Commission warns that political intolerance does not just impair the effectiveness of democratic institutions: it also contributes dangerously to their fragility. The Commission considers it necessary to reiterate to

the State of Venezuela that the consolidation of democracy requires the intensification of the participation of all sectors of society in the political, social, economic, and cultural life of each nation.¹⁰⁰⁴

1159. The Venezuelan State must be mindful that the American Convention on Human Rights, the American Declaration of the Rights and Duties of Man, and the Inter-American Democratic Charter constitute the normative framework the OAS has built to strengthen a community of free nations whose governments are not only democratically elected but also govern in full compliance with the Rule of Law and strict observance of the human rights of all their citizens.

1160. In that respect, the IACHR regards with grave concern the State's refusal to allow a visit by this Commission, and deeply regrets the position taken by Venezuela on decisions and recommendations adopted by organs of the inter-American system of human rights. Venezuela has not complied fully with the judgments of the Inter-American Court. Its judicial organs have even gone so far as to declare one such judgment impossible to execute since it is contrary to the Venezuelan Constitution, asking that the executive branch denounce the American Convention on Human Rights. On several occasions, the Venezuelan State has also opined that it considers precautionary measures granted by the IACHR, as well as recommendations issued in reports on the situation of human rights in any state, to be non-binding on internal structures of the agencies of government. Indeed, the Commission notes with concern that the State has yet to meet the vast majority of recommendations issued in its *Report on the State of Human Rights in Venezuela* published in 2003.

1161. The State of Venezuela has generally opted for an attitude of rejection regarding the recommendations of international human rights organizations, alleging they contravene national sovereignty. On that point, the Commission stresses that, pursuant to the good faith principle enshrined in Article 31.1 of the Vienna Convention, if a state subscribes to and ratifies an international treaty, particularly a human rights treaty such as the American Convention, it is bound to exert its best efforts to implement the recommendations and decisions of the bodies entrusted with protecting such rights, such as the Commission¹⁰⁰⁵ and the Inter-American Court of Human Rights. In addition, a state "undertakes to adopt such necessary measures as to give domestic legal effect to the provisions of the Convention, as established in Article 2 thereof."¹⁰⁰⁶

1162. Pursuant to the above, the IACHR reiterates its view that the State must comply with the international human rights obligations it freely assumed under the American Convention and other relevant legal instruments, and exhorts Venezuela to give effective compliance to the recommendations contained in the present report so as to contribute to strengthen the promotion and protection of human rights in a democratic context.

1163. In the present report, the Commission has identified that political intolerance; the lack of independence of the branches of the State in dealing with the executive; constraints on freedom of expression and the right to protest peaceably; the existence of a climate hostile to the free exercise of dissenting political participation and to monitoring activities on the part of human

¹⁰⁰⁴ IACHR. Office of the Special Rapporteur for Freedom of Expression. *Background and Interpretation of the Declaration of Principles on Freedom of Expression*, para. 10. Available at: <http://www.cidh.org/RELATORIA/showarticle.asp?artID=132&IID=1>.

¹⁰⁰⁵ The Inter-American Court has made the same point: I/A Court H.R., *Case of Baena Ricardo et al. v. Panama*. Judgment of February 2, 2001. Series C No. 72, paras. 192 and 193.

¹⁰⁰⁶ I/A Court H.R., *Case of "The Last Temptation of Christ" (Olmedo Bustos et al.) v. Chile*. Judgment of February 5, 2001. Series C No. 73, para. 78; *Case of La Cantuta v. Peru*. Judgment of November 29, 2006. Series C No. 162, para. 171; *Case of Zambrano Vélez et al.* Judgment of July 4, 2007. Series C No. 166, para. 79.

rights organizations; citizen insecurity; violent acts perpetrated against persons deprived of their liberty, trade union members, women, and farmers; and, above all, the prevailing impunity affecting cases of human rights violations are factors that seriously limit the enjoyment of human rights in Venezuela. With the aim of consolidating the democratic system, the State must increase its efforts to combat these challenges and achieve better and more effective protection of the rights guaranteed in the American Convention on Human Rights.

IX. RECOMMENDATIONS

1164. In accordance with the preceding analysis and conclusions, and considering that observance of democracy and the rule of law is a condition for the effective protection of human rights, the Commission reiterates the specific recommendations contained in each of the chapters of the present report and additionally makes the following recommendations to the State of Venezuela:

1. Guarantee the full exercise of political rights for all individuals, independently of their position on government policies, and adopt the measures necessary to promote tolerance and pluralism in the exercise of political rights.
2. Refrain from carrying out reprisals or using the punitive power of the State to intimidate or sanction individuals based on their political opinions and guarantee the plurality of spaces for democratic activity, including respect for mobilizations and protests that are carried out in exercise of the right of assembly and peaceful demonstration.
3. Guarantee in an effective manner the separation and independence of the public branches of power and in particular, adopt urgent measures to ensure the independence of the judicial branch, strengthening procedures for appointing and removing judges and prosecutors, affirming their job stability, and eliminating the situation of provisionality in which the large majority of judges and prosecutors find themselves.
4. Adopt the measures that are necessary to protect the life and personal integrity of all persons, as well as the specific measures that are necessary to protect social communicators, human rights defenders, unionists, individuals who participate in public demonstrations, and individuals who have been deprived of their liberty. Additionally, strengthen the institutional capacity of the judicial instances to combat the pattern of impunity in cases of violence and to guarantee due diligence and effectiveness in the investigations relative to these acts.
5. Adopt urgent measures aimed at dismantling the armed civilian groups that operate outside of the law and sanction the illicit acts of these groups to prevent them from being repeated in the future.
6. Maintain from the highest levels of the government the public condemnation of acts of violence against social communicators, communications media, human rights defenders, unionists, and political dissidents, with the aim of preventing actions that foment these crimes, and avoiding the continued development of a climate of stigmatization towards those who maintain a critical stance against government actions.
7. Promote a climate of tolerance that favors the active participation and exchange of ideas among the various sectors of society, as well as design institutions that promote and do not inhibit or hinder public deliberation.

8. Guarantee the conditions for defenders of human rights and union rights to be able to carry out their activities freely, refraining from taking any action and adopting legislation that would limit or impede their work.
9. Take all the measures necessary so that women who are victims of violence will have full access to adequate judicial protection and adopt the legal, judicial, and other mechanisms necessary to investigate, sanction, and provide reparations for accusations of violence against women in Venezuela.
10. Adopt urgent measures to comply with the State's obligation to demarcate and delimit the ancestral lands of the Venezuelan indigenous communities, establishing adequate and effective procedures for such acts, as well as to entitle the lands effectively in favor of the corresponding communities.
11. Adopt, urgently, the measures necessary to correct procedural delays and reverse the high percentage of persons deprived of their liberty without a firm conviction, avoiding the excessive, unnecessary, and disproportionate use of preventive detention. Additionally, implement measures tending to reduce prison overpopulation and adjust the conditions of detention to international standards in this area, in particular ensuring internal security in prisons, effective control of weapons inside prisons, adequate separation of persons deprived of liberty according to the categories and criteria established in the Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas, and prohibiting the occupation of detention facilities in excess of their capacities.
12. Intensify efforts to achieve progressively the full enjoyment of economic, social, and cultural rights and to guarantee that this does not imply diminishing other fundamental rights of the population. Additionally, adopt public policies that permit long-term continuity of efforts aimed at guaranteeing economic, social, and cultural rights, ensuring that the full enjoyment of these rights does not depend on the will of one government or another.
13. Implement the laws and mechanisms necessary so that the citizenry can easily and effectively access public information and facilitate its broad knowledge of the administration of the various State bodies.
14. Bring the domestic legislation into conformity with the parameters established by the inter-American human rights system, taking into account the recommendations relating to the specific norms that have been analyzed by the Commission in the present Report.

1165. In concluding the report *Democracy and Human Rights in Venezuela*, the Inter-American Commission on Human Rights urges the State to comply fully with the international obligations it assumed upon ratification of the American Convention, reiterates its interest in making a visit to Venezuela, and extends, within the framework of its competencies, its offer of collaboration and advice to the Venezuelan State to facilitate adoption of the measures necessary to give effect to its recommendations.

ANNEX

QUESTIONNAIRE FOR THE ANALYSIS OF THE SITUATION OF HUMAN RIGHTS IN VENEZUELA¹⁰⁰⁷

For the past several years, the Inter-American Commission on Human Rights (IACHR) has requested the consent of the Government of the Bolivarian Republic of Venezuela to carry out an on site visit in its territory with the objective of directly gathering information about the situation of human rights in that country. As of this time, the requested consent has not been granted. In light of this and with the aim of bringing together the means to carry out its mandate of evaluating achievements and challenges in the area of human rights, the IACHR has prepared a questionnaire to remit to the Government of Venezuela and solicit its cooperation. Through the questionnaire, qualitative and quantitative information is requested, including reports, specific evaluations, statistical information, and budgetary information, among other things, relevant to the enjoyment of the rights protected in the American Convention on Human Rights and other instruments of the inter-American system.

The information provided in response to the present questionnaire will be used in the analysis of the situation of human rights in Venezuela. The considerations, conclusions, and recommendations that arise from this analysis will be reflected in a report on the human rights situation in that country, which will assist the State in complying with its international obligations.

A. The protection of human rights in the legal and political system

1. What are the mechanisms established in the Constitution and the laws for the exercise and protection of the human rights of the inhabitants?
2. What are the mechanisms established in the Constitution and the laws to guarantee the independence of the branches of the State?
3. By what means is constitutional control exercised over decrees with the force of law?
4. What are the mechanisms aimed at encouraging transparency and the rendering of accounts in public administration?
5. What norms and practices govern the use of states of exception?

B. Economic, social, and cultural rights

6. What is the state of compliance with the Millennium Development Goals? Detail the measures adopted and the plans for compliance that are in place.
7. What are the achievements and challenges in the area of eradication of extreme poverty and hunger?

¹⁰⁰⁷ Sent by the IACHR to the State of Venezuela on July 6, 2009. The State's response to this questionnaire was received by the IACHR on August 13, 2009.

8. Please provide the available indicators on:
 - a) rates of infant mortality (in addition to the national rate, please indicate the rate by sex, by urban and rural zones, and also, if possible, by socioeconomic group, ethnicity, and geographic zone);
 - b) access by the population to potable water (please distinguish between the urban and rural population);
 - c) life expectancy (with breakdown by urban and rural zones, socioeconomic groups, and gender);
 - d) proportion of the population with access to personnel trained for the treatment of common illnesses and injuries and appropriate treatment for pregnancy and childhood.

9. What are the measures adopted with the aim of complying with the obligation to provide obligatory and free primary education for all?

10. What is the objective of the literacy missions and who can enter this program?

11. What is the percentage of the budget (or of the regional budgets) allotted for education? Please describe your educational system, your activity in the construction of new schools, the proximity of the schools, particularly in rural areas, as well as about the scholastic lists.

12. What are the perspectives and achievements with respect to access to free secondary education?

13. What are the challenges in relation to literacy? What is the scope of current programs (target population, financing) and what are the results in terms of enrollment and graduation statistics by age and gender?

14. What measures have been adopted to ensure access to primary medical care?

15. What are the guidelines of the national healthcare policy?

16. What are the perspectives for long-term continuity of educational, nutritional, health, and cultural programs?

17. What are the supervision mechanisms for these social programs?

18. What are the rights established in the Constitution and the laws that are being implemented through current social programs?

19. What are the mechanisms established in the Constitution and the laws to make economic, social, and cultural rights effective in Venezuela?

- C. Public safety**

20. What are the principle challenges in the area of public safety and the reduction of violent crimes?

21. What are the official sources of updated information about acts of violence that affect the public?

22. What are the statistics on acts of violence that affect the public?
23. What is the number of violent crimes committed annually against members of the public during the last five years? What are the statistics by gender and socioeconomic level?
24. What proportion of violent crimes has been attributed directly or indirectly to agents of the State (members of the police agents, the militias, the Armed Forces, or other security bodies) and how many have been cleared up judicially?
25. What is the annual number of deaths in confrontations with police agents during the last five years?
26. What are the mechanisms aimed at guaranteeing the transparency of investigative proceedings involving state agents?
27. Are there statistics of the Attorney General's Office on the investigations initiated into homicides imputed to police agents?
28. What is the number of convictions against police agents for criminal conduct committed in exercise of their functions by year, in the past five years?
29. Are statistics available about the proportion of crimes that have affected socially marginalized persons?
30. What measures have been adopted to prevent killings-for-hire?
31. What are the competency, structure, functioning, training, and mechanism of supervision of the national militia designated by Decree Law No. 6239 (Organic Law on the Bolivarian National Armed Force) for the maintenance of domestic order?
- D. Administration of justice**
32. What is the percentage of the national and state budgets dedicated to the Judicial Branch?
33. What percentage of the national and state budgets is allotted to the Attorney General's Office or the prosecutor's offices?
34. What are the norms and practices that govern the selection of criminal law judges and judges in the contentious administrative jurisdiction?
35. What is the prevision in terms of the total number of positions for prosecutors and for judges?
36. What is the number of provisional and temporary prosecutors and judges in the framework of the process of filling positions?
37. What are the norms and practices aimed at making the right to access to justice effective?
38. What is the average duration of criminal and contentious administrative proceedings and its compatibility with the right to due process of the law with full guarantees within a reasonable time period? What are the statistics by jurisdiction?

39. What is the number of contentious administrative proceedings initiated and how many have final judgments, in the last five years?

E. Work in defense of human rights

40. What requirements does the national legislation have for forming an organization with the objective of promoting and defending human rights and for the financing of its activities?

41. How do the regulations on international cooperation function?

42. What are the norms and/or mechanisms aimed at promoting and guaranteeing the ability of human rights defenders and their supporters to carry out their work to investigate cases related to presumed human rights violations without undue restrictions?

43. Indicate in what way the State has facilitated access to information by nongovernmental organizations in matters related to the administration of the State and its dependencies.

44. What has been the impact of the “Law on the protection of victims, witnesses and other procedural subjects” on the protection of human rights defenders?

F. Freedom to receive and disseminate information

45. What are the norms and mechanisms that govern the right of access to public information?

46. What are the mechanisms established to guarantee the plurality, diversity, and independence of communications media (including community communications media)?

47. What are the existing mechanisms to protect communications media and journalists that have been threatened as a result of their editorial line?

48. What are the legitimate limits on freedom of expression according to the legal order?

49. What has been the scope of the interpretation of the norms on *desacato* (disrespect), defamation, *injuria* (insult), instigation, outrage, *calumnia* (slander), and criminalization of protest, established by the 2005 reforms to the Penal Code?

50. What is the definition of “hate speech” or “incitation to violence” according to the legal order?

51. What has been the impact of the Law on Social Responsibility in Radio and Television on the effective exercise of the right to freedom of expression?

52. What are the mechanisms aimed at ensuring the independence and impartiality of the authority applying this norm?

53. How is access to official publicity by communications media regulated?

54. What are the available mechanisms for obtaining the rectification of expressions disseminated by communications media or to repair their consequences?

G. Right to association for labor purposes

55. What guarantees do workers have to enable them to affiliate with the union of their choice?
56. What are the norms and mechanisms that govern the formation of an association for union purposes?
57. Please indicate whether special legal dispositions exist in relation to the exercise of the right to strike for certain categories of workers.

H. Situation of indigenous peoples

58. What is the indigenous population of Venezuela?
59. Through what norms and mechanisms is the recognition of the rights of indigenous peoples guaranteed?
60. What are the measures that have been adopted with the aim of making the exploration for and exploitation of natural resources compatible with the right of indigenous peoples to their ancestral lands?

I. Women's rights

61. What mechanisms do women have to make their right to equality and non-discrimination effective?
62. What are the laws and policies that have been adopted in the last five years to promote the inclusion of women in places of public power, for example, through affirmative action?
63. What are the current mechanisms to ensure access to justice by women in a situation of risk with respect to acts of discrimination?
64. What national and/or local plans, policies, and programs is the State implementing to prevent, sanction, and/or eradicate discrimination against women?
65. What are the statistics in the area of violence against women and intra-family violence in the past five years?
66. How many complaints of violence against women and intra-family violence reach the stage of judgment and conviction?
67. What is the special protection available to girls and women of marginalized ethnic and racial groups, women in unfavorable socioeconomic situations, and women who inhabit rural areas, among others?

J. Children's rights

68. What are the norms and mechanisms that guarantee the protection of the rights of children?

69. What are the programs aimed at addressing the problem of children who are abandoned or that live in the streets?

70. What are the norms aimed at preventing corporal punishment and other forms of violence against children?

71. What are the statistics regarding violence against children in the last five years?

72. What are the norms and mechanisms that govern the juvenile criminal justice system?

K. Situation of persons deprived of liberty

73. What are the norms and mechanisms that govern the regime applicable to persons deprived of liberty?

74. What are the roles of the Office of the Human Rights Ombudsman, the Attorney General's Office, and the judges for execution of sentences in relation to persons deprived of liberty?

75. What are the mechanisms of judicial control over the conditions of detention in Venezuela?

76. How many detention facilities exist in Venezuela and how are they divided in terms of levels of security, procedural status of the cases, and age and gender of the persons deprived of liberty?

77. What is the capacity of the detention facilities? What is the number of persons deprived of liberty in Venezuela and specifically, how many of them are convicted, charged, adults, women, and children?

78. How many persons deprived of liberty have lost their lives due to violence in the past five years? How many of these cases were resolved judicially?

79. What short-term measures have been adopted with the aim of addressing prison violence?