

# THREATS TO DEMOCRACY, THE RULE OF LAW AND HUMAN RIGHTS IN VENEZUELA

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## Introduction

For decades, Venezuela has been experiencing severe conflicts in different circles of national life. Furthermore, in recent years the country has been witnessing a disturbing pattern of events, which has led to the rapid deterioration of the rule of law, acute weakening of domestic economic capabilities, and uncontrollable expansion of violence, all of which constitute a threat to the fundamental rights of Venezuelans, and the democratic system as a whole.

The Constitution of the Bolivarian Republic of Venezuela (CBRV) was adopted in 1999, in the context of presidential elections that were seen as a potential solution to a long economic crisis and as a tool to regain the people's trust in the political institutions. All of the former followed a sequence of events that impacted widely on the social mind<sup>1</sup>. This effort resulted from initiatives submitted by the country's political, civil and financial sectors, advocating for the expansion of democratic rule, and a call for government accountability in the areas of finance and welfare, as related to human rights and the aspiration to attain greater social justice.

In this sense, substantial constitutional progress was achieved in the expansion of civil and political rights, and the recognition of economic, social and cultural rights. On the subject of civil and political rights, the political model was established as one republican, federal and decentralized. Civilian role in the electoral system, and in elections for public office, was strengthened. New forms of public participation in the decision-making process were created. Regarding economic, social and cultural rights, the government established systems supporting the right to universal health and education, access to food, and equitable education and employment. Similarly, cultural rights were confirmed within a diverse, social, democratic, and multi-ethnic society.

Nevertheless, strong political and economic tensions came to be, after the adoption of the new Constitution. Sparse legal and institutional progress was made in the area of social, economic and cultural rights; in violation of the Constitution, the President chose representatives for the judiciary, the electoral system and the people's power. The government scarcely provided the space for dialogue and discussion on laws and procedures; all of these factors, combined with an upset of polarizing tensions, led to a spiral of violence between 2002-2004, that included the April 11<sup>th</sup> 2002 protests, the April 12<sup>th</sup> coup d'etat, the subsequent two-month oil strike, and the withdrawal of sectors of the opposition from the 2004 regional and the 2005 National Assembly elections.

In 2005, on the eve of new presidential elections, the government launched a policy known as "**XXI Century's Socialism**", aimed at eradicating Capitalism, and establishing a Popular, Centralized, power system, contrary to the Republican, Federal and Decentralized system, set forth in the Constitution of 1999. The decision for the implementation of this project was appended by the government to the 2006 election results, where President Chavez won by a wide margin, a second 6-year term.

In 2007, the government sought to constitutionally enforce the socialist project, proposing changes to the Constitution of 1999, by means of a reform, in lieu of a constituent assembly.

The reform proposal was rejected on December 2, 2007 in a national popular referendum. However, before and after the referendum, the President approved 66 laws for the transition to socialism, through an Enabling Act. The National Assembly, with a parliamentary majority in favor of the government, also adopted the First Socialist Plan for 2007-2013, stemming from a constitutional reform proposal, formerly rejected by popular vote.

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<sup>1</sup> 1983: "Black Friday; 1989: El Caracazo; 1992: Two coup d'Etat attempts; 1994: Political parties and financial crisis.

In January 2009, the President proposed a Constitutional Amendment to enable his own re-election in 2012. The National Assembly also broadened this amendment proposal, to the re-election of all elected officials. It was approved by referendum on February 15 of the same year.

Such government actions have had an enormous social, political and economic impact on different sectors of the country. During the past two years, it has adopted a pattern of radicalization, threatening the protection of fundamental freedoms and human rights as a whole, and the guarantees set forth in the Constitution of 1999, and in international treaties and agreements where Venezuela is a signatory member. This brings to light great disregard of the Constitution of 1999, as well as an attempt to impose the XXI Century's Socialism ideology as a system of government, the use of restrictions and harassment practices to limit the freedoms of association and expression, and finally, the criminalization of the right to dissent and protest, aligned with a situation of growing social discontent.

Institutional violence and impunity, lack of sustainable social policies and programs, and populist use of resources, are some of the consequences of these behaviors that seriously weaken democracy, the rule of law and the protection of human rights in Venezuela. This is evidenced by the high levels of non-compliance of constitutional guarantees vis-à-vis the right to health, housing, employment, education and food; and also by the critical levels of social violence permeating through all sectors of Venezuelan society, affecting particularly youth, grassroots communities, persons deprived of liberty, scholars, and public health services.

#### **1. Disregard for the 1999 Constitution**

Mandates and constitutional regulations no longer impact government decisions. Most of the bills drafted between 1999 and 2004 were never passed. Nine years later, the country continues having legislation and institutions dating back to prior times. Instead of honoring the State's obligations as set forth in the Constitution, the most recent laws subscribe to the rules of the socialist project, some of them in violation of the Constitution. These laws, intended as a "transition to socialism", are tied to constitutional changes already rejected in the December 2<sup>nd</sup>, 2007 referendum.

Ever since the February 15<sup>th</sup>, 2009, approval of the constitutional amendment for indefinite reelection of elected officials, the government has been violating the current Constitution, and the people's will as expressed through their vote. These violations include the banning —with no legal contest— of candidates running for office; the unlawful and forceful appropriation of constitutional powers conferred to state and municipal authorities; and the imposition of Presidential nominees with greater authority than the one granted to elected officials, such as governors and mayors.

##### **a. Political ineligibility**

A total of 272 claims of ineligibility for elected office, mostly of opposition candidates, were imposed before the November 2008 election. These claims of ineligibility were processed by the National Comptroller's Office, confirmed by the Supreme Court and enforced by the National Electoral Council, devoid of the right to contest or appeal. Their execution is a serious violation to the political rights of voters and underscores the lack of independence of civil servants (See Annex for IACHR report). No remedies have been awarded for these cases, despite the fact that the Ombudsman has yet to react to the former. After having exhausted all domestic jurisdictions, and in light of the situation, the claims for ineligibility were brought before the Inter-American Court of Human Rights during its 134th Period of Sessions held in March 2009.

**b. Unlawful appropriation of federal-level competencies**

On March 17th, 2009, the National Assembly approved the reform of the Organic Law on Decentralization, Delimitation and Transfer of Competencies of the Public Sector. This led to the National Power's takeover of the management of roads, bridges, ports and airports. This was carried out by the National Guard in all those states with opposition rule. The former are constitutional violations in matters of competencies of governors and mayors. These have resulted in severe cuts in the resources allotted to those states and municipalities.

The Special Law for the Organization and Rules of the Capital District<sup>2</sup> was passed 4 months after the victory of an opposition leader as Mayor of the Metropolitan District, in the November 2008 elections. This led to the creation of a political-territorial entity called the "Capital District", entrusted with most of the powers, formerly held by the Mayor. Additional decrees took the following competencies away from the Metropolitan District: 93 schools, fire and civil protection brigades, the Institute of Metropolitan Services, the Metropolitan Institute of Youth, and 14 hospitals along with all health services, including the departments of Health Planning and Management. Furthermore, groups loyal to the government forcefully took possession of City Hall. An ensuing Special Law enabled the Government to refrain from returning the facilities to the lawfully-elected authorities.

**c. Executive imposition of local authorities**

As set forth by the Special Law, a Head of Government for the new Capital District was appointed by the President<sup>3</sup>. The new Head of Government, Jacqueline Farias, was asked at her Inaugural Ceremony about her presidential appointment, circumventing a popular election. She replied: *"Chavez's fingers are the people's fingers; his fingers want the best for Caracas,"* furthermore, she added that *"It would be 'uncomfortable' for the President to be surrounded by opposition leaders"*.

Currently, the National Assembly is considering a new law that would change the status of the "Metropolitan District" to "Metropolitan Area". This law will downgrade the Metropolitan Council from an independent Parliamentary Council, to a simple Legislative Committee; it will also do away with the Governing Council, currently entrusted with the coordination of the five municipalities in the city of Caracas.

**d. Electoral system allowing for an unconstitutional majority**

Meanwhile, the National Assembly is also analyzing the draft of the Organic Law of Electoral Processes. Should this law be approved on its second review, it will eliminate the constitutional principle of a Representative Minority, furthermore, it would also allow for "the formation of constituencies responsive to new *geohuman* realities", which in turn "may become communities" (art. 16, paragraph 2). This would amend —at will— the existing Districts, to suit all options submitted by the Government's party. Justifying this change, the Chairman of the Civic Participation Committee of the National Assembly said:

*"Democracy is the majority's, and that majority should be represented in all of the deliberating bodies. The minority will hold seats, as long as it has enough votes (...). The Constitution does not state that I have to give opportunities to others. Article 63 allows for a proportional representation. We therefore propose a method that ensures personalization and proportionality. Personalization occurs in electoral constituencies. Five deputies are elected in a constituency, then, I vote for five*

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<sup>2</sup> CRBV, Art 18: "A special law will establish the political and territorial unity of the Capital City of Caracas... In any case, this law will guarantee the democratic and participative character of its government"

<sup>3</sup> LEORDC, Art 7: "The Capital District's Head of Government will be named or removed by the President of The Bolivarian Republic of Venezuela"

*constituencies and I also vote for a list. That's the vote. My vote is for both. When voting for a constituency, I chose the candidate by first and last name, and when I vote for the list, that is my other vote. So, where in the Constitution does it say that I have to put a value on your vote? In an electoral circuit we are competing against one another, but so does my political party through the list"<sup>4</sup>.*

Regarding this law proposal, the former Minister of Science and Technology, and member of the "Electoral Eye" organization, said: "Article 7 of that law was passed on its first review ... this indicates that there is a constitutional violation given the non-compliance with the proportionality requirement as set forth in the Constitution ..."<sup>5</sup>

After having organized 12 national elections under the current Law on Suffrage, yet to be amended after the approval of the Constitution of 1999, the National Electoral Council (NEC) decided to suspend 6 elections while waiting the approval of the Organic Law of Electoral Processes. These Mayoral and Municipal elections, to be carried out within the constitutional timeframe, were precisely those where the government's candidates were at a disadvantage. In a press release, the NEC authorities argued that "calling an election could generate uncertainty as to the laws governing the process, thus leading to an act of injustice that would require *the parties to act within a former legal framework.*"

## **2. Imposition of the XXI Century's Socialism as the sole system of government**

### **a. The Republic's "ethical and moral revival"**

Since his December 2006 reelection, President Chávez considered he had enough popular support to try to impose his proposal for "XXI Century's Socialism". The first Socialist Plan for the Nation's Economic and Social Development is part of the Simón Bolívar National Project, and it includes:

*"The completion of the XXI Century's Socialism that we are creating and that will only be attainable in the mid-term historical timeframe, is essentially part of Venezuela's ethical and moral revival. This revival implies an ethical and moral project that deepens its roots in the fusion of values and principles of the most advanced humanistic currents of socialism and of the historical heritage of Simón Bolívar's thinking (...). The need for a new Bolivarian Socialist Ethical Project, starts with the establishment of a reality with the following characteristics (and quotes among others): "The confrontation between an old, yet to perish, system (Capitalism), based on selfish individualism, personal greed and the unbridled pursuit of profit, and a new, nascent system (Socialism), whose ethical values, human solidarity, collective accomplishment of individuality, and balanced fulfillment of the basic needs of men and women, leads the way unto the heart of our society".*

This "ethical and moral revival" of the Republic, has become a process that denies political plurality, and excludes all those who openly question, disagree or do not share the Government's tenets and measures taken on their behalf; they are treated as "enemies," "morally wrong", "counterrevolutionaries" and "stateless", whether they be opposition parties, civil society organizations, citizens who do not support the government proposals, or even supporters of the president, holding important positions. Consequently, there is small or no space for dialogues amongst a great deal of sectors of society and government, or between the latter and state and municipal governmental authorities, because the joint-decision bodies, as set forth in the Constitution, such as the "Federal Council of Government", were

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<sup>4</sup> Representative Darío Vivas (president of the Citizen's Participation Committee of the National Assembly), in relation to the Organic Law on Electoral Processes, approved in a first debate by the National Assembly. Page 18 El País, June 17, 2009

<sup>5</sup> Carlos Genatios, El Universal Journal, June 15 2009, Pag. 1-2

never created<sup>6</sup>.

Following the results of the November 2008 regional elections<sup>7</sup>, and after some government supporters proposed a dialogue with opposition, President Chavez said on February 20 2009:

*"We have no prescribed pact with the oligarchy (...) I didn't come here to betray the People, I didn't come here to reach a pact with the oligarchy." On June 7, 2009 he said once again: "... there is no pact with the oligarchy. No, there is no possible agreement. Let them go insane. They are frothing at the mouth, their jugular veins pumping up. Every now and then I watch them on TV, as I do not spend much time doing so, and they insult me and say this or that. Let the law be enforced, nothing more".*

#### **b. Loss of Separation of Powers**

The imposition of the XXI Century's Socialism, also entails the surrendering national powers to the President: Supreme Court Justices, during the 2006 Judicial Year inaugural ceremony, sang "Uh, Ah, Chavez will not go ..."; the appointment of the heads of all public powers --with the exception of Electoral Power-- to integrate the Commission in charge of drafting the Constitutional Reform proposal; recently, the Supreme Court's Chief Justice and the Prosecutor General have been vigorously requested to apply sanctions to, and close, Globovision (TV news channel). The following statements underscore the actions carried out by the President to attain control of all national powers, while stripping them from their independence, resulting in the total loss of the system of checks and balances:

*"Madam Prosecutor, I publicly demand that you, along with your prosecutors, comply with your duty to the people; that's what you're here for. Madam Chairman of the Supreme Court, with all your judges and courts, fulfill your obligation, otherwise resign, so people with courage can take upon your role,"* Special edition of "Alo Presidente", broadcast from La Cañada de Urdaneta, Zulia State, May 29, 2009.

*"The President is the Head of State, and as such, he leads government action. The Constitution mandates the President to guarantee the rights of citizens. Therefore, and in order to fulfill that duty, he may well request the intervention of all public authorities",* stated Prosecutor Luisa Ortega Díaz before the media on May 30<sup>th</sup>.

*"We, the public authorities, do not lose or see our autonomy undermined if, at times, we encourage each other to deal with a special problem."* Luisa Estela Morales, President of the Supreme Court, June 5.

Finally, according to the IACHR Report on human rights in Venezuela (See Appendix), during 2008 the Venezuelan Justice System has weakened, given the presence of provisional judges and prosecutors, who do not guarantee an independent Judiciary. In March 2009, 14 judges —10 with tenure, and 4 temporary— were dismissed without due process, i.e. without any accusation from the Court's General Inspectorate.

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<sup>6</sup> Constitution of Venezuela. Chap V, Art 185: The Government Federal Council is responsible for planning and coordinating policies and actions to support the decentralization process and to transfer national power to states and municipalities.

<sup>7</sup> José Vicente Rangel, former Vice-President of Venezuela, on February 17, 2009 said: "I think it is important that these two groups (government and opposition) of Venezuelans reconciled, not to abandon each political position (...), but to talk and dialogue, which is the proper scene for politics anywhere in the world, "and concluded:" We can not live eternally divided and hunting the opportunity to harm each other".

### 3. Limitations on the exercise of the freedoms of Association and Expression

#### a. Freedom of Association

There are several areas of concern in terms of the exercise of Freedom of Association and the right of Participation of social development and human rights organizations. On one hand, the Bill on International Cooperation, approved on a first review in 2006, is back on the legislative agenda of the National Assembly. Until now there have been no changes to the approved bill. Deputy Roy Daza, Chair of the Foreign Policy Committee, said that "*Any international cooperation will pass through State control*" and the criteria for resource allocation will be set in the National Development Plan 2007-2013. This refers to the Socialist Plan that is being imposed in various ways, legislative and *de facto*, despite the fact that some of its contents were rejected in the Constitutional Reform Referendum.

Organizations with a public role defending civil and political rights, are subjected to practices that restrict their acting capacity. The National Electoral Council (NEC) opened an investigation on Sinergia, a National Network of Civil Society Organizations, and banned the distribution of informative videos, immediately after Sinergia launched information on the process of Constitutional Reform, arguing that Sinergia was not a registered political party.

After CEDICE Libertad organized the Forum "Private Property Threatened", the National Assembly Commission on Domestic Policy, Justice, Human Rights and Constitutional Guarantees, offered to open an inquiry at the request of the President of the Legislative Council of the Anzoátegui state, where the Forum took place. He stated that "*representatives of CEDICE are trying to hoist a new subversive attempt, to overthrow the revolutionary government.*"

Furthermore, the Venezuelan Ambassador to the Organization of American States objected to the participation of 3 organizations: Transparencia Venezuela (Transparency Venezuela), Espacio Civil (Civil Space) and Ciudadanía Activa (Active Citizenship, created three years ago) at the 39th OAS Assembly, accusing them of having been involved in the 2002 coup, and calling for civil disobedience.

In the case of NGOs and the unions, it has become evident that they have been restricted in their participation as free associations, not only through discredit, and by ignoring them as interlocutors, but particularly through the discriminatory recognition and interaction with other social organizations and unions, aligned with the "construction of socialism", as expressed in Article 70 of the rejected Constitutional Reform<sup>8</sup>. Employees of many State organizations denounce their exclusion and discrimination when discussing collective agreements, policies on wage increases, or even when developing actions protected under the Venezuelan Constitution and Human Rights treaties, where Venezuela is a signatory member, such as the right to strike.

On June 2, 2009, a forum was held with more than 30 union leaders from various sectors, convened by the Program of Education and Action on Human Rights, PROVEA. Among the main complaints were the lack of government recognition of trade unions, the refusal to hold a dialogue on labor issues with their representatives, and the creation of parallel employers' unions, who have a space for dialogue with, and receive privileges from the government.

On the subject of the refusal by the Board of *Metro de Caracas* to discuss the collective bargaining agreement, the workers of the subway spoke of stopping the service. In this regard, the President of Venezuela replied:

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<sup>8</sup> "The means for people's participation and leadership, in direct exercise of their sovereignty and for the construction of socialism..."

*"... Make it work or I'll send you the Army. They said they were Bolivarian, and I told them... then indeed, why are you behaving like AD and Copei? (traditional political parties) How can you stop the service when people are waiting? Furthermore, that is a crime. I told them not to be irresponsible and demanded an investigation by the Prosecutor's Office... I will not govern this country while being blackmailed by anything or anyone. I do not accept extortion. I rather die than let anybody blackmail me"<sup>9</sup>.*

According to some union leaders, the creation of parallel unions and, granting privileges to those who identify with government ideology, has been the cause of the 87 killings, up to March 2009, of union members, most of them from the construction sector.

As regards to cooperatives, the case of Coopercentro is emblematic. It was established in 1995 and in 2008, was expelled from a large facility occupied as a *commodatum*, owned by the Mayor of the Libertador municipality. *"Assaulting and causing damages to the cooperative, the Mayor Freddy Bernal demolished structures and removed some members of the cooperative, incorporating others by force"*<sup>10</sup>.

Finally, in very different areas, there is evidence of the creation of state-owned parallel organizations, with limited power of decision, and restricted autonomous participation. These are subject to the rules of the central government, where some of the functions have been transferred, without consultation. Among others are workers' councils, trade unions, "revolutionary" or "Bolivarian" student committees, women's committees, and "electoral battle units", as alternative forms of associations aligned with the President, his political party or the Bolivarian project.

#### **b. Freedom of Expression**

On the topic of restrictions and threats to freedom of expression, in its 2008 report the IACHR highlights in its 2008 report, its concern for the murder of a newspaper's vice president, and the attacks on journalists, with no progress being made in the investigations.

The organization Espacio Público (Public Space) reported 120 assault cases in its Report on Freedom of Expression 2008 ([www.espaciopublico.info](http://www.espaciopublico.info)).

The case of the news channel Globovision, stands out given the many actions that State and local groups who call themselves "officials" have carried out. In a media report published in the press<sup>11</sup>, the summary through mid-May 2009 is as follows: 457 harassment cases, 12 administrative investigations, 22 criminal complaints, 268 public pronouncements against the channel by the President and other government officials, 88 physical and verbal attacks on their workers —awarded precautionary measures in 2002 by the Inter American Court of Human Rights—, 49 denied access to information sources, 11 applications for extension of denied or non responsive news coverage, and 4 criminal proceedings against the channel's Director.

On May 22, 2002, UN and OAS Freedom of Expression Rapporteurs, produced a joint communiqué expressing their concern *"about statements made by high authorities of the Venezuelan Government against private television channels"* and made *"(...) an appeal to the State of Venezuela to fully enforce the right to freedom of expression, provided for by international instruments signed by the country, and to adequately protect the international guarantees in the processes being carried out against private media ..."*<sup>12</sup>

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<sup>9</sup> <http://www.vtv.gov.ve/noticias-nacionales/18669>

<sup>10</sup> Marino Alvarado, Provea –Tal Cual journal

<sup>11</sup> El Nacional journey, May 17, 2009

<sup>12</sup> Press release <http://www.cidh.org/relatoria>

State entities such as the National Commission of Telecommunications (CONATEL), the Integrated Tax Administration Service (SENIAT), the Ministry of Communication and Information and the Ministry of Public Works and Housing —through the Communication Act— carry out systematic actions restricting and threatening freedom of expression.

It is essential to underscore that even though government officials talk about a “media war”, and unbalanced information coming from the privately-held media, the State has its own media outlets, following government guidelines. Some examples of the latter are: 5 television networks —Venezolana de Televisión (VTV), Ávila TV, Vive TV, TVES, ANTV and Telesur (this last one as an international channel but under Venezuelan control)—, 35 Community TV in UHF, YVKE Mundial Network, 231 community radio stations, 73 community newspapers and 110 websites.

So far, the President has broadcasted a total of 1,877 hours, nationwide, the equivalent to almost 80 days, forcing each time, upon all radio and television broadcasting stations, the transmission of the state-owned signal.

#### **4. Condemnation, harassment and criminalization of the right to dissent and protest**

There is increasing evidence of criminal prosecution and even judicialization for those who publicly disagree with the policies of the Venezuelan state vis-à-vis human rights, and for all those who exercise their legitimate right to protest. Furthermore, there are several cases of foreigners who have been harassed for voicing out their opinions on the situation of human rights in Venezuela or the legitimacy of democracy and human rights.

In case of those who politically disagree with the government or those who express disapproval due to the lack of response to social demands, the government applies legal instruments such as the Criminal Code or the National Security Organic Act; also *"the Public Prosecutor's Office and judges are used as instruments to suppress social struggle"*<sup>13</sup>. The Penal Code criminalizes the closure of roads as a way of protesting and applies the Organic Law on National Security to criminalize protest made in "safety areas" —determined in a discretionary manner—, and to forbid the right to strike in the so-called "basic industries".

According to the NGO, Espacio Público, 2009 showed an increase in protests, with 759 during the year's first quarter. This represents 47.37% of the street actions in 2008, when 1.600 events were recorded over 12 months. During social protests in the current year, three people have been killed by state security forces: two employees of Anzoátegui state and a resident of a neighborhood in the same State who was protesting against eviction. Furthermore, *"only by monitoring the Prosecutor's Office website we have found 50 cases of students, workers and residents of neighborhoods who are being prosecuted for protesting. These days, protest involves the risk of loss of freedom"*<sup>14</sup>.

It is estimated that over the past 4 years nearly 1,200 people have been summoned to Court after being charged with participating in demonstrations; this includes more than 90 workers from different areas of the country, more than 300 students, 50 Cumanagoto natives from the State of Anzoátegui, 1,600 farmers (according to the peasant movement Jirahara), and an undetermined number of demonstrators from low-income neighborhoods. Additionally, 5 human rights activists and Yukpa natives were detained and mistreated by the National Guard during demonstrations for land rights. The Code of Military Justice has been applied to several students and three workers, because of the so-called "attack to the sentinel".

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<sup>13</sup> Marino Alvarado, Provea

<sup>14</sup> Espacio Público and Provea report about the Right of Protest, June 4, 2009

Even though peaceful demonstration is a constitutional right, during a public ceremony on Labor Day on May 1, 2009, the Venezuelan President referred to the demonstration suppressed by the Metropolitan Police as follows:

*"Unfortunately, as it often happens, the counterrevolution... facing despair and almost zero convening power, ends up lashing out violently and wildly against law enforcement personnel ... Moreover, this was not a worker's demonstration, it was one of conspirators, one of resentment. Theirs was full of hatred, ours is full of love, overflowing with love ... The National Guard was forced to disperse them with a little bit of tear gas here and there. We will not allow acts of violence; people own the streets, not the oligarchy. "*

He said something similar at a public event, on the subject of student protests, opposing the Constitutional Amendment:

*"To the Ministry of Internal Affairs: gas them and dissolve any existing 'guarimba'<sup>15</sup>; we as government cannot show any weakness. I make the Vice President, the Minister of Internal Affairs and the Commander General of the National Guard responsible for this... What do they want me to do? Lead a platoon and dissolve the demonstration? We cannot allow anyone to block an avenue, or street, or expressway; so I tell these small groups, led by the Empire, and I order it once for all, no need to ask for permission, I gave an order, and there is no need to ask for permission, each one has to be accountable ... From now on, anyone burning a car, burning some trees or blocking a street, gas them with good-quality tear gas and throw them in jail. If this is not carried out, I will dismiss those responsible, I will fire them all; I already said it, and I will repeat it again: Chavez, the stupid one, was left behind in 2002. I will not tolerate any weakness to allow for four 'escuálidos'<sup>16</sup> to agitate the country, after having worked so hard in moving forward. They cannot beat us, they will be unable to burn the Ávila mountain, they will not be stronger than the People, or this revolution ... this is not solely my problem, but the whole Executive's and the People's as well; blocking the streets and assaulting citizens is a crime; anyone assaulting a soldier is committing a crime and must be imprisoned, and nothing more. Man, we cannot allow ourselves to be shaken up, nor be feeble-minded; either you govern or not "<sup>17</sup>.*

Venezuelan human rights organizations bringing information and cases before international human rights systems or, furthermore, international organizations issuing public reports on the human rights situation in Venezuela, are subject to actions discouraging the debate and discussion of proposals for the improvement of the state's performance on human rights. They systematically expose them to condemnation, intimidation and harassment by state officials. The expulsion of Jose Miguel Vivanco and Daniel Wilkinson of Human Rights Watch (HRW) from Venezuelan territory is an emblematic case.

On September 19, 2009, on the same day of the launching of the HRW Report on Venezuela, HRW members were expelled from Venezuelan territory. This happened several hours after the report's presentation, not allowing for full a discussion on the report. The expulsion was executed in violation of the due process (Law on Foreign Nationals and Migration, Articles 39 to 44).

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15 Translator Note (T.N.): *Guarimba*: a Venezuelan colloquial for street barricade

16 T.N.: *Escuálido*: derogatory term used by the government referred to opposition people, meaning spindly, few, limited.

17 Interamerican Platform for Human Rights, Democracy and Development,

[www.pidhdd.org/index.php?option=com\\_content&task=view&id=226&Itemid=79](http://www.pidhdd.org/index.php?option=com_content&task=view&id=226&Itemid=79)

President Hugo Chávez:

*"Yesterday, one of those characters who walk through the world doing the dirty work ordered by the Empire arrived in Venezuela; coming from an institution created by the Empire to manipulate the sacrosanct topic of human rights... This is not the first time; in the evening hours I called the Minister of Foreign Affairs and I said: throw him out of here, because we are not going to allow foreigners to come and show disrespect for the people of Venezuela".<sup>18</sup>*

Minister of Foreign Affairs Nicolas Maduro:

*"Individuals who try to come into our territory conspiring, stirring internal subversive actions, must know that this government will reciprocate in full compliance to our laws and Constitution ... The destabilizing activities of Vivanco and his delegation in Caracas, were part of a United States scheme, with the connivance of far right 'pitiyanquis'<sup>19</sup> (opponents) here to help them ... Our actions are within the framework of constitutional and national rules ".<sup>20</sup>*

Minister of Communication and Information Andrés Izarra:

*It was a "sovereign decision, a measure to defend the dignity of the people of Venezuela, as part of the dismantling of the conspiracy plans against President Hugo Chávez ... two months before the April 2002 coup, he alerted on the absence of separation of powers in Venezuela, requesting an intervention by the OAS, and appealing for the application of the Inter-American Democratic Charter ... HRW is a US-backed front organization, entrusted with generating interference in Venezuela and furthering the basest interests of the Venezuelan oligarchy, at the service of imperial objectives ... ".<sup>21</sup>*

National Assembly public pronouncement:

*The National Assembly alerts the people nationwide, that the onslaught brought on by this guy, contrary to our democracy, is part of the smear campaign promoted by the U.S. Department of State, with the complicity of domestic agents involved in destabilization schemes, and promoting, nationally and internationally, a matrix of opinion conducive to generating volatility, distress, and anxiety in the population, so as to justify a coup d'état".*

President of the National Assembly, Cilia Flores:

*"Those who claim that there is no freedom of expression in Venezuela, do so while exercising that same freedom of expression, and even abusing it oftentimes, without any respect for government authorities. Furthermore, foreign spokespersons in Venezuela abuse their freedom of expression... lying blatantly ".*

Vice President of the National Assembly, Saul Ortega:

*"Here, where we have a vigorous democracy, where institutions are entrenched because they respect people's interests, comes in this moron talking about human rights violations, with a poor report, made by a contemptible man as Vivanco is ... paid by the U.S. government... belonging to a scroungers' club, a pimps' club ... And I think that Vivanco hurts human rights fighters ... Not even the State Department's annual report, contains such garbage...."*

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<sup>18</sup> EFE agency, September 20, 2008

<sup>19</sup> T.N.: Pitiyanqui: Yanquee lover

<sup>20</sup> Europa Press, September 19, 2008

<sup>21</sup> www.aporrea.org, September 19, 2008

Deputy Carlos Escarra:

*"... The National Government's decision to expel the Country Director for the Americas of Human Rights Watch, Jose Miguel Vivanco, was made according to the Constitution... The document read by the representative of Human Rights Watch is an instrument of the United States Government to destabilize the country and to defer the regional elections scheduled for November 23<sup>rd</sup>".*

State agent before the Inter-American System of Human Rights, German Saltron:

*"Since 1999 our country has had a government that has dealt specifically with social policies. They are not human rights organizations, because they didn't denounce the April 200 coup d'état, and never condemned the media and opposition parties involved in the coup".<sup>22</sup>*

Ambassador of Venezuela to the Organization of American States, Roy Chaderton:

*"They are Human Rights mercenaries. We must begin to qualify them that way, so that the myth about alleged neutrality disappears ... We must begin to denounce this...Should they only were to receive limited support from private companies, that already would be sinful, but they also receive funding from NED, which supports subversive activities and is the recipient of government funding.... ".<sup>23</sup>*

President of the Supreme Court, Luisa Estela Morales:

*"... The report contains a number of inaccuracies that fall in the realm of falsehood ... It has so many inaccuracies that it leads us to believe that this report does not result from reliable and deep research, thus being inconsequential .... Human Rights Watch is shifting away from its main objective of contributing to the respect of the fundamental rights respect, while distorting reality." <sup>24</sup>*

Venezuelan General Attorney, Luisa Ortega Díaz:

*"The Venezuelan Government is fully empowered to expel any citizen under the provisions of the Law on Foreign Nationals and Migration ... Articles 38 and 39 authorize the Executive to expel any citizen disturbing the public order, threatening the country's security and defense, or involvement in crimes against human rights....".<sup>25</sup>*

Regarding Venezuelan organizations, one of the most representative cases is the Venezuelan Prison Observatory, whose coordinator, Humberto Prado, has been threatened with prosecution by various state authorities, after the organization submitted the Venezuelan Human Rights Report on persons deprived of freedom, or after his appearance at the IACHR hearings.

This has happened despite the fact that the IACHR had already stated *"... it is the duty of the State to protect and respect the roles that non-governmental organizations and other groups or individuals perform defending human rights and fundamental freedoms of persons deprived of liberty, as they constitute a positive and complementary addition to the efforts of the State as the guarantor of the rights of persons under its custody"*.

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<sup>22</sup> Agencia Bolivariana de Noticias, September 19, 2008

<sup>23</sup> Agencia Bolivariana de Noticias, September 19, 2008

<sup>24</sup> Agencia Bolivariana de Noticias, September 24, 2008

<sup>25</sup> Agencia Bolivariana de Noticias, June 24, 2008

Following the submission of Provea's Annual Report on Human Rights in Venezuelan in December 2008, the Minister of Internal Affairs and Justice, Tareck El-Aissami said: *"In the People's eyes, this is ridiculous ... That is why they deserve to have shoes thrown at them (referring to President Bush's incident in Iraq), because they are liars"*.

According to the IACHR report, *"These actions carried out by the State have generated adverse conditions and have had an intimidating effect, restraining public expressions that criticize government policies because of fear of potential reprisal actions... discredit actions have generated adverse conditions for the defense and promotion of human rights ..."* (See attached report of the IACHR).

## **5. Situation of Human Rights Defenders**

### **a. NGO Human Rights Defenders and Victims Committees**

According to the report published by the Vicariate of Human Rights, between June 2007 and May 2008, human rights defenders have carried out their work in an environment characterized by growing government hostility, and indifference by state organizations responsible for ensuring the validity and guarantee of human rights. During 2008, political polarization has arisen again in the national scene, confirming the diagnosis of the IACHR: *"The political atmosphere in Venezuela is characterized by a noticeable tendency to radicalization of political positions, which began (...) in the early months of 2002. (...) The Commission finds that the acts of violence, pressure and harassment against human rights defenders are due to the deepening of the institutional conflict affecting the whole country"*.<sup>26</sup>

In this period there were 17 cases of violations of the human rights of defenders, and Human Rights NGOs<sup>27</sup>; the highest record since 2002; 13 occurred in June 2006-May 2007, meaning an increase of 31%. These situations have affected 12 human rights activists, 4 NGOs, and a network of NGOs, as a result from defending victims of human rights violations, or taking a public stance on human rights violations.

Of the 17 cases, 29% involve discrediting actions carried out by individual national government supporters; 12% involve representatives of the National Executive Power and Criminal Judges for acts affecting human rights defenders; the same percentage (12%) are non-identified subjects, and the remaining accountability is shared between the National Assembly, regional police forces and the National Electoral Council.

### **b. Labor rights defenders**

It's important to remember that in the Report on the Situation of the Defenders of Human Rights in Venezuela 1997-2007 the Vicariate concluded that: *"... during this period, the obstacles and physical attacks, particularly to workers from the construction and oil sectors, have increased so much that being a defender of labor rights in these sectors has become, in many regions of the country, an activity where the right to life is permanently threatened, making this activity increasingly difficult for those who fulfill it"*.<sup>28</sup>

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<sup>26</sup> IACHR Report on Human Rights in Venezuela [on line] <http://www.cidh.oas.org/countryrep/Venezuela2003sp/indice.htm>

<sup>27</sup> Human Rights defenders and victims includes: NGOs, victims and victim's families committees

<sup>28</sup> CARACAS HUMAN RIGHTS VICARIATE: Report on Defenders, 1997-2007. Caracas, 2007. Pag. 61.

This situation is still going on, up to the point that in April 2008, the IACHR in Chapter IV of its Annual Report, expressed *"concern about the increased number of union leaders that have been attacked, with threats to their lives and personal integrity, and asks the Venezuelan State to make an investigation on these facts in order to determine the causes that are creating this situation and to design appropriate and effective measures of prevention, investigation and punishment of people responsible"*.<sup>29</sup>

During this period, at least 31 cases of attacks or obstruction to labor rights defender's work occurred, affecting the human rights of 33 people. In the same period of 2006-2007, 64 cases were known to affect the rights of 89 individuals<sup>30</sup>, representing a decrease of 48% and 63% respectively.

The perpetrators of the attacks on labor rights defenders are, in 30% of the cases, state authorities and the remaining 70% are non-state actors. During the previous period, the accountability for State agents was 58%, and 42% for non-state actors.

The Caracas Human Rights Vicariate concluded in the Report on the situation of Human Rights Defenders in Venezuela 1997-2007 that: "... of the 52 cases of union leaders and labor rights activists who have been killed along the past ten years, only in 3 cases, i.e. 5.77%, the perpetrators have been punished by criminal courts and are currently imprisoned".<sup>31</sup>

Between March 2007 and June 2008, the situation on impunity remains unchanged, in comparison with the decade of 1997-2007. Until the closure of the current report<sup>32</sup>, the outcome of the investigations and the result of the accusation of the murderers of union 14 leaders, are not yet known, despite the fact that investigations were automatically opened as they were qualified as homicides.

In its report, the Vicariate regrets that to date, the Ombudsman has taken no action regarding impunity and violence within the unions, as proposed: "3.1. The Ombudsman must investigate without delay the issue of union violence, releasing a report with recommendations for the public authorities in order to contribute to the restoration of peace in the sector".<sup>33</sup>

### **c. Land rights defenders**

Insecurity and impunity for human rights violations of land rights defenders remain unchanged. According to the report of the Vicariate, 5 land rights defenders were killed in border areas during June 2007-May 2008. This is the highest number of homicides of land rights defenders since the Agricultural Law came into force in 2001.

The agricultural reform process is under way in Venezuela and, specifically, the "recovery of idle and unproductive land" continues generating conflict and violence in the country, by sectors opposing the tenets contained in the Constitution and the Law on Land and Agricultural Development against large land estates.

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<sup>29</sup> IACHR: 2007 Annual Report . Chapter IV. Venezuela [238]. [on line] <<http://www.cidh.org/annualrep/2007sp/cap4Venezuela.sp.htm>>

<sup>30</sup> Report on Defenders 1997-2007. Caracas, 2007. Annex IV. Pg. 144, 145, 146, 147, 148,149, 150, 151 and 152.

<sup>31</sup> Idem

<sup>32</sup> It was closed on May 31st, 2008.

<sup>33</sup> Report on Defenders 1997-2007. Caracas, 2007, Pg. 92

Regarding the issue of impunity in this area, the Public Ministry announced that as a result of investigations ... *"11 arrest warrants have been issued for alleged perpetrators of the killings of farmers. Additionally, 56 people have been indicted, of which 28 are on trial and 11 serving sentences imposed by courts. Arrest warrants have been issued against 17 alleged perpetrators, 15 of these cases are in preparation with 31 defendants properly identified"*.<sup>34</sup>

However, representatives of farmers affected by violence, have a critical opinion vis-à-vis the performance of the justice system. Lesbia Solorzano, leader of the Coordinadora Agraria Nacional Ezequiel Zamora, and Roosevelt Franquis, farm adviser, denounced on February 7, 2008 in the program "Contragolpe" of the official television network Venezolana de Television that *"So far there is not a single prisoner"* accused of the 186 murder cases. *"The state is indebted to us,"* said the complainants.<sup>35</sup>

## 6. Institutional violence and impunity

The Universal Declaration of Human Rights<sup>36</sup>, as well as various international covenants and conventions on human rights protection, such as the International Covenant on Civil and Political Rights<sup>37</sup>, the American Convention on Human Rights<sup>38</sup> and the Venezuelan Constitution<sup>39</sup>, clearly express the prohibition of any apology of national hatred which would constitute an incitement to violence, or lead to discrimination against persons, or groups of individuals.

Although they are not expressions exclusive to the Venezuelan President or members of the Venezuelan government, many messages they convey in public events —most of them in front of massive audiences—, or through the mass media, are a matter of deep concern. The messages have been targeted, systematically, and for several years, against the most diverse sectors and individuals, without any action taken by a State institution to stop this practice.

The following are some quotes from President Chávez's public speeches, although, as stated in the preceding paragraph, the messages of disqualification, and incitement to discrimination and violence, are not exclusive to him:

Referring to the hierarchy of the Catholic Church:

*"The Cardinal and the bishops are up shit creek... Mister Cardinal, keep on screwing up, all the bishops, keep on screwing up..."*

*"All bishops are rogues, including the Cardinal; he's a big rogue..."*

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<sup>34</sup> PROVEA: Annual Report 2006-2007. Pg. 214

<sup>35</sup> RADIO MUNDIAL [on line] <<http://www.radiomundial.com.ve/yvke/noticia.php?2739>>

<sup>36</sup> Art. 7: T All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.

<sup>37</sup> Art 20.2: Any apology of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law

<sup>38</sup> Art 13.5: It shall be prohibited by law, any propaganda for war and any advocacy of hatred that constitutes incitement national ... to violence or any other similar illegal action against any person or group ...

<sup>39</sup> Art 57: It is not allowed ... any war propaganda, discriminatory messages or ...

With regards to a political opponent:

*"... What he is..., is an imbecile, a moron ... he is the thief, murderer, owner of estates; he has accounts in U.S. dollars ... now you'll see what is good, you bastard ..."*

In the occasion of the expulsion of the Ambassador of the United States of America:

*"Go fuck yourself, fucking Yankees, here we are decent people, fucking Yankees, go to hell a hundred times..."*

Regarding the Inter-American Commission on Human Rights following the launching of one of their annual reports:

*"The least I can say to that 'Immoral-American' Commission of Human Rights is go to wash your suit (a term that implies, as in the previous text, "go to hell")."*

The impunity surrounding the utterance of such insults and threats, the unfounded, unlawful, and unconstitutional accusations of people, seems to have repercussions in other areas where the institutional violence has increased, as in the case of extrajudicial executions.

Information from the Prosecutor's Office published in the media, reveals that 6,885 persons from the State security forces, were reported for alleged responsibility in the killing and execution of 7,243 people, between January 2000 and November 2007. However, only 412 (5.98%) of these officials are in prison. The Attorney General said that during 2008 there were 600 cases of execution, for which 74 soldiers were arrested, and only 22 (0.32%) have been sentenced by the courts.

The Attorney General also stated in the radio program "In line with the Public Ministry," broadcasted every Friday on Radio Nacional de Venezuela, that during the past 15 months they have opened 10,103 investigations against police officers for crimes such as injury, abuse of authority, unlawful entry, unlawful deprivation of liberty, torture or forced disappearances. Of those, 5,641 were resolved, although only 22 police officers were preventively arrested. 2,032 cases were dismissed and 2,655 were filed away. She also indicated that 155 people lost their lives by the hands of police officers during the first 90 days of 2009. The city of Caracas, with 168 cases between January 2008 and March 2009, is the entity with the largest number of executions by the military and state security forces.

## **7. Social violence**

### **a. Within Venezuelan society as a whole**

Violence has become one of the most serious problems faced by the country, threatening Venezuelans of all social strata and sectors. Most studies and surveys point out personal lack of security as the major social problem in Venezuela. In recent years, violent deaths rose to unprecedented levels, mainly the increase in homicides, which went up from 4<sup>th</sup> to 3<sup>rd</sup> place among the main causes of death. When adding other forms of death from external causes, "...deaths by accidents and violence" become the 1<sup>st</sup> leading cause of death in Venezuela"<sup>40</sup>. According to CICPC figures<sup>41</sup>, until the late 90's Venezuela had a

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40 Alejandro Rísquez: Epidemiology of deaths from violence as a public health problem in Venezuela. National Conference of Demographers and Population students. Demographic Change and Social Inequality in Venezuela at the beginning of the Third Millennium. November 24-26, 2004

yearly average of 4,000 homicides. However, this range of homicides increased to over 10,000 cases, annually, in the last 9 years. The Minister of Internal Affairs and Justice acknowledged 87,000 deaths during this same period of 9 years as a result of interpersonal violence.

The violence upturn in Venezuela is in contradiction with the official figures of poverty reduction. Even if poverty were equal to precedent years, or increased during the latter year, high levels of violence cannot be explained only on those grounds. Violence has been on the increase, hand in hand with a high degree of institutional weakening, which, among other consequences, leads to the population's use of self-defense, as a means to dealing with hostility, the paralysis of public authorities, and the sense of impunity.

Among the conditions maintaining the current levels of violence, are the absence of public security policies, an increasing breakdown of the police forces, the indifference of government authorities vis-à-vis the problem, the constant "praise to violence and violent people" as part of the official language, and the failure to implement preventive measures aimed to curb the increasing presence of weapons in people's hands: "... the increase of violence and feelings of helplessness, have led to an arming process of the population looking for self-defense. Wealthy people hire private security companies; middle class and poor individuals buy weapons and organize themselves with their neighbors; also the youth of the suburbs do it, forming bands with which they intend to defend from the aggression of other bands..."<sup>42</sup>

#### **b. In schools**

Violence is present in different spheres of civic life. A 2008 study by Centro Gumilla, on school violence, carried out in two of the most violent municipalities of Caracas, showed that over 70% of students had witnessed violence within the school, 79% were physical attacks and 88% verbal attacks. About 20% of students claimed to have seen students carrying weapons inside the school. The study concludes: "*The results indicate that conflict resolution mechanisms within the schools are violent (...) there is an institutional vacuum to enforce rules of coexistence. (...) Generally, the violence is motivated by trivial things, nothing important (...). There is a clear identification of who are the victims and the victimizers (as it happens in Caracas' neighborhoods) but there is an accomplice silence, by act or omission, originated by fear, as a way of avoiding consequences that can have a fatal balance*".<sup>43</sup>

#### **c. In the Labor Sector**

Within unions, violence has also begun to be expressed in a way that calls for serious concern. Only between 2007 and 2008, PROVEA recorded 42 cases of people physically affected by labor disputes. Of these 42, 29 cases were homicides (19 of trade unionists and 10 workers). "*While in the past (...) violence was expressed with a showing of fists, and the use of sticks during union meetings, nowadays the use of firearms and more violent means, are showing up as unprecedented aspects of the Venezuelan union history*"<sup>44</sup>. Between 1997 and 2007, the Vicariate of Human Rights in Caracas reported a total of 87 union leaders —most of them belonging to the construction and oil sectors— killed in job-related conflicts.<sup>45</sup>

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<sup>41</sup> Body of Criminal and Scientific Research, Ministry of People's Power for Internal Affairs and Justice

<sup>42</sup> LACSO (2007): Insecurity and violence in Venezuela – 2008 Report -, Briceño-León, Roberto, Ávila, Olga and Camardiel, Alberto. pg. 35

<sup>43</sup> Centro Gumilla. SIC Magazine, School violence. June 2009, N° 715

<sup>44</sup> Provea Annual Report, October 2007-September 2008, pg 150

<sup>45</sup> Report on the Situation of Defenders of Human Rights in Venezuela. 2007. Caracas Human Rights Vicariate

**d. Among people deprived of liberty**

Rates of violence in Venezuelan prisons show alarming figures. The official annual homicide rate in the general population is of 4.8 individuals murdered per 10,000 people, whereas in Venezuelan prisons, over 200 people per 10,000 inmates have been killed annually, from 2003 to 2008. This means that in the last 6 years more than 2% of the prison population has died annually from violence-related causes: *"... 2,744 inmates suffered a violent death, and 9,024 were wounded in Venezuelan prisons until last July". In Brazil, Mexico, Colombia and Argentina, with a total population of 834,000 inmates in these four countries, less than 100 inmates die each year, while in Venezuela, with a prison population of 24,000 prisoners, more than 400 inmates die each year*".<sup>46</sup>

The State has failed to meet the terms of the guarantees for the right to life and physical integrity within the prisons. The IACHR has already issued 6 precautionary measures requiring the Venezuelan State to take urgent action towards: a) substantially reduce overcrowding of prisons, b) confiscate weapons in possession of inmates, c) separate inmates on trial, from convicted ones, d) comply with international standards on conditions of criminal detention, and e) provide medical care to inmates, so as to guarantee their right to personal integrity. In this regard, the State must conduct regular monitoring of detention conditions and physical and emotional health of detainees, with the participation of representatives of the beneficiaries of the precautionary measures. To date, the State has not complied with any of these measures and *"Until 2005, (...) 71% of all deaths and 49% of the injuries were done with a firearm (...). The presence of firearms and weapons of war, remains an unresolved problem for prison management, while crimes in which national guards are involved, as well as employees and people not subject to search when entering the prison, continue increasing. The price for a gun may reach up to BSF 8,000 (US\$ 1,500) and BSF 4,000 (US\$ 750) for a hand grenade"*.<sup>47</sup>

**e. Kidnappings and paid assassinations**

Furthermore, an expression of violence has been the increase in the numbers of kidnappings and paid assassinations. Between 2004 and 2008, there were 1,135 kidnappings registered in Venezuela, equivalent to an average of 280 kidnappings per year. This figure is five times greater than the kidnappings registered before 1999, which came to be about 50 abductions per year. In this same period, from 2004 to 2008, there were 400 people killed by paid assassination. According to the Ombudsman and the organizations monitoring violence, kidnapping and paid assassination have had a great impact in the country. Between January and May 2008, the National Federation of Livestock reported 113 cases of abduction; 53% were farmers, sons of farmers, or their wives<sup>48</sup>. Likewise, between 1997 and 2007, the Episcopal Vicariate of Human Rights in Caracas had 33 cases of peasants killed<sup>49</sup>, allegedly by paid assassins hired by individuals. During 2008, Provea registered about 12 more cases in similar circumstances<sup>50</sup>.

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<sup>46</sup> Venezuelan Observatory of Prisons. <http://www.ovprisiones.org>

<sup>47</sup> Provea Annual Report, October 2007-September 2008, pp. 344-345

<sup>48</sup> Research Institute of Coexistence and Public Safety, Incosec -[www.incosec.org](http://www.incosec.org)

<sup>49</sup> Report on the Situation of Human Right Defenders in Venezuela. 2007. Caracas Human Rights Vicariate

<sup>50</sup> Provea Annual Report, October 2007-September 2008

## 8. Social rights and governance outcomes

### a. Right to health

There is still no law to implement the right to health and to guarantee it through an integrated, universal, decentralized and participatory public health system, as the 1999 Constitution dictates. The government carried out over 5 years, some programs in primary care (Misión Barrio Adentro I and II, Misión Milagro), parallel to, and independent from, the current health system, and as special and temporary activities. The programs have been carried out with Cuban doctors and providing Cuban medicines to 60% of the low-income urban sectors. Beginning in 2005, these missions reduced its operational capacity and coverage. This made necessary to close and re-program the original goal of 1 doctor per 1,250 people to 1 doctor per 3,000 people.

All along these years, the problems encountered by the public health care system, were neglected and worsened. Governmental authorities described the situation as one of "serious imbalances"<sup>51</sup> and "functional collapse"<sup>52</sup>. Starting with the lack of medical supplies and equipment, problems increased to an infrastructure crisis, a shortage of medical staff, unsanitary conditions and lack of personal security for medical staff, patients and their families. 700 public beds were to provide intensive therapy, but only 120 beds were operational. According to the Medical Federation, the shortage of medical staff in the public health system ranges between 43% and 50%. This situation caused the closure of therapy services in 3 of the biggest public hospitals in Caracas (José María Vargas, Periférico de Catia and the Concepción Palacios Maternity Hospital). At an assembly on April 3, 2009, intern and resident doctors of metropolitan hospitals said: "*We do not have to close hospitals because all hospitals are closing by themselves. We must open doors for people to see the conditions they are in.*" They also agreed "*not to go on filling the needs of personnel because there are not enough residents in different services*"<sup>53</sup>.

Since 1998, 88% of hospitals and 75% of outpatient departments legally belong to the federal states, by provision of the 1999 Constitution and the Law on Decentralization, Delimitation and Transfer of Competencies of 1999 and its reform in 2003. In 2008, the government issued a measure of centralization for all health services, which so far, has only been applied to the Metropolitan District and the state of Miranda. This measure takes no notice of the powers of the states as independent political entities, to manage public health services within their jurisdiction, stripping citizens of their own services and lowering the possibility of demanding from the regional and local authorities the right to have an accessible, timely and suitable health care.

### b. Right to housing

The housing deficit increased from 1.8 million to 3 million between 2001 and 2008, affecting 13 million people, 60% on which lived in low-income areas. Although the budget for public housing projects increased in recent years, the government barely managed to cover 20% of the needs of new housing, reaching 241,219 houses built. Their small size has been questioned (24, 40. and 60 square meters), as well as the quality of the materials used for their construction. 60% of the available public budget has been allocated for this project, even though 80% of the deficit is for the improvement of existing homes.

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<sup>51</sup> El Universal Journal, February 2, 2008, pag. A-9. "Government recognizes that there are large disparities in health"

<sup>52</sup> Ultimas Noticias Journal, February 21, 2008, pag. 3. "Health has a functional collapse".

<sup>53</sup> Ultimas Noticias Journal, April 3, 2009. "Patients will be invited to observe hospital conditions".

This deficit is covered by the people. According to the National Statistics Institute (INE), 53% of Venezuelan dwellings are self-built houses with precarious services and household equipment, located in high risk areas. About 12 million people, representing 52% of the population, live in those areas. The government allocated resources for self-building, which has been a motivation for community organization, but this measure has only benefited about 40,000 families from low-income sectors, and severe restrictions were created to ensure implementation and transparency of resources: *"The recipients and beneficiaries have started to point out to the community associations, as co-responsible in irregularities in the allocation and construction of houses. Complaints about alleged acts of corruption, the use of poor-quality materials, inadequate construction and finishes of homes, as well as partial or total stoppage of construction work, involve community councils and cooperatives (...) Of 44 complaints, 31 cases pointed at grass-roots organizations"*(PROVEA, 2007).

Also, 40% of households nationwide do not receive water on a regular basis, and 60% of those in rural areas, do not have sewer systems. The electrification system has had issues with low investment and fast technological obsolescence, in addition to difficulties with marketing and billing. 2008 saw constant power cuts in several states of the country, and there were 109 protests stemming from power shortages<sup>54</sup>. Similarly, the garbage collecting system is archaic and irregular in almost all urban areas of the country, and 14% of the population has no service at all.

### **c. Right to Work**

Jobs in the private sector have been substantially reduced, while the public sector has increased the number of employees, hiring them on an outsourcing basis. These state employees are hired as "contractors", a sort of simulated labor relationship, in which workers rights are not recognized, they do not have stability, nor receive the benefits provided by law and earn less than permanent employees. Those public workers include those from oil and mining concerns, and from recent nationalized companies. The health sector has more than 20,000 workers<sup>55</sup> hired as "contractors", and in the educational sector, more than 180,000 teachers do not have a steady job.<sup>56</sup>

The outsourcing of public employment and the successive implementation of job security decrees, have reduced unemployment. However, until 2007 an average of 30,000 annual claims had been reported before the Labor Inspectorate for non-compliance of the job tenure<sup>57</sup>, and between 2008 and 2009, the State has carried out massive unjustified layoffs in the public sector: *"The most serious issue is that companies and government agencies do not comply with the orders of reenlistment provided by the Labor Inspectorate. The situation is such, that we will be forced to draft a special law instead of waiting for the new Labor Law"*<sup>58</sup>. Another factor that has reduced unemployment is the contraction of the labor force; participation in the labor market is decreasing, due to the increase in the time people remain unemployed.

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<sup>54</sup> Provea Annual Report, October 2007- September 2008, pag. 224.

<sup>55</sup> Statement by former union leader and President of Labor Foundation, Tello Benitez, quoted at the Provea Annual Report October 2007- September 2008, pag. 136.

<sup>56</sup> Diario 2001 statements, September 23, 2008.

<sup>57</sup> Ministry of Labor and Social Security.

<sup>58</sup> Statements by Deputy Oscar Figuera, Chairman of the Standing Committee on Integrated Social Development of the National Assembly, on May 8, 2009 at ANTV, National Assembly's television network.

In addition, each year the government has decreed increases of the minimum wage, but it has only reached 30% of the cost of the minimum basket of goods and services. These pay increases do not benefit all workers. 52% of formal and 78% of informal workers have an income lower than the minimum wage. In addition, financial assistance has been increased through the social missions. Half of the income received by poor people comes from transfers or other sources, and not from salary or wages. But despite this aid, the poorest have witnessed a reduction of their income level, from 3% to 1.4%.<sup>59</sup>

A Social Security System has yet to be implemented, by provision of the Organic Law of the Social Security System (LOSSS) enacted in 2002. At present, 67.8% of the Venezuelan population has no private or public health insurance. During 2006-2007, the government carried out a recruitment campaign for workers, and a temporary program addressed to grant pensions for those who did not have the required number of contributions to the Social Security System; however, the percentage of people insured increased from 10% to 15% and pensioners from 20% to 28%.

#### **d. Right to education**

Until 2002 the government implemented a regulation policy on free education; an increase of the enrollment fee was ordered at all levels of the public education system. Alongside this policy, there were neither institutional efforts nor financial resources to improve the quality of the system, and expand its operational capacity. Consequently, enrollment in public schools which covers 80% of students (mostly from low-income households), dropped its growth rate to less than 1%, while in recent years private education grew by 3% annually.

One of the most critical problems in education is the lack of investment in the maintenance and renovation of most public schools. In fact, 60% of the complaints received by the Ombudsman, are related to problems of school infrastructure. Other problems which worsened in recent years, are the gaps in availability and qualifications of teachers. Until 2008, we had a steady national average of 22% of teachers with no degree, reaching percentages of over 30% in 8 of the 24 states of the country; the shortage of teachers in the basic sciences, particularly in mathematics, physics and chemistry has increased. According to the Teachers Federation, *"... as a result of the shortfall of teachers, and by order of the Ministry of Education, teachers are required to promote all students to a higher degree. The lack of teachers in subjects like mathematics, chemistry and physics precludes education for young people. In order to be able to pass to an immediately higher level, marks for each subject are prorated, although this is an odd and unethical practice. This is another reason why many teachers have decided to resign, before giving away their dignity as the only way to preserve their salary"*.

On the other hand, the proposed changes to the Law of Education have been made by the government with no space of dialogue being allocated for the educational community, PTA groups, unions, teachers or the students themselves. All of the former have repeatedly expressed their rejection to such proposals, as their contents do not comply with the principles of a free and democratic education as provided by the Constitution, and given the direct incidence of Cuban advisers in the drafting of the law, as well as in the decisions on the internal operation of the education system. These proposals have been oriented towards ideological changes rather than contributing to the improvement of teaching and learning processes.

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<sup>59</sup> Central Bank of Venezuela

#### e. Right to access to Food

The government's policy of supply and distribution of low-cost foods through the Mercal Mission has improved its accessibility in low-income sectors. However, its implementation responds to the increase of up to 70% of the country's dependence on food imports. Moreover, official data show an increase of chronic nutritional deficiency, resulting from "hidden hunger" or insufficient food intake during long periods of time; and of the percentage of children with low birth weight, and deaths from malnutrition. It is estimated that the level of calories consumed has declined from 2,460 to 2,196, notwithstanding an increase in access to food.

### 9. Condemnation of the International System of Human Rights Protection

Within a context of rapid deterioration of the rule of law, and the decreasing independence of the public powers, a systematic condemnation of international Human Rights systems by government officials, non-enforcement of sentences and provisional measures issued by the Inter-American Court of Human Rights, disregard for precautionary measures issued by the Inter-American Commission on Human Rights (IACHR), and a refusal to heed to the repeated request for an *in-situ* visit of the by IACHR, are all matters of serious concern, particularly to civil society organizations,

Just like in the case of human rights reports drafted by civil society organizations, the reports of the IACHR, are systematically brought into disrepute by officials of the Venezuelan State, and the possibilities for debating their contents, or discussing their proposals, are systematically rejected; therefore, it has been impossible to restore affected human rights, or creating or improving the conditions to guarantee them.

In a dialogue session on the operation of the Inter-American Human Rights System, held on March 20, 2009, Ambassador Roy Chaderton, Permanent Venezuelan Representative to the OAS said:

*"... Venezuela was included in Chapter IV, the famous chapter IV, which I do not understand very much, even from a legal point of view, but I think it is about something like identifying the OAS member states, whose human rights practices deserve special attention and should therefore be included in Chapter IV; I believe that the institution deserving special attention is the Inter-American Commission on Human Rights, particularly its super-powered, unchallengeable, and everlasting Executive Secretariat, which also lays the foundations, defines and drafts (the report)".*

*"Last year, I received in my office... the visit of members of the IACHR. ... The Commission's visit to Venezuela was mentioned. The Commission still does not believe we have enough reasons to welcome them, because there is a sense of distrust..."*

Following the launching of the Commission Report for 2008 and, also through Ambassador Roy Chaderton, Venezuela "categorically" rejected the report, which included Venezuela among the countries that need to improve the defense and compliance of human rights. The delegation, led by Venezuelan Ambassador Roy Chaderton, rejected the "insistence" of the Commission in warning the country from being included for the sixth time in Chapter IV of the IACHR report. Venezuela protested, considering that the report "does not support the facts on accurate, reliable and verifiable methods".

On May 9, 2009, the Venezuelan Foreign Ministry, referring to the publication of the report, made a statement, part of which is transcribed below:

*"The Government of the Bolivarian Republic of Venezuela categorically rejects the contents of the Annual Report of the Inter-American Commission on Human Rights 2008, due to incorrect, malicious and false information in its assertions".*

*The IACHR has abandoned its status as an international organization for human rights protection, entrusted of ensuring human rights respect in the region, to become a political instrument of national and international sectors, attacking progressive governments of the region for ideological reasons.*

*In the case of Venezuela, the Commission lost its credibility during the coup d'état on April 11, 2002, when it implicitly recognized the 'de facto' government, and denied an injunction in favor of President Hugo Chávez to preserve his life, called by the NGO MINGA.*

*Venezuela has declared to the Commission and to the Inter-American Court, that international and regional systems for human rights protection, are complementary and subsidiary to the role of the States. Its oversight should be limited to the promotion of cooperative actions, and human rights protection, without attempting to control the functions and powers of the States' institutions.*

*"The Government of the Bolivarian Republic of Venezuela reiterates that the Venezuelan State will continue its best efforts to ensure full respect of Human Rights on its territory, according to Constitutional mandate, the people's will and revolutionary principles guiding their actions, regardless of the manipulations and lies of the organs of the Inter-American System of Human Rights".*

During the OAS General Assembly held in Honduras in June 2009, the member countries adopted a resolution on strengthening the Inter-American System of Human Rights, on the occasion of the 50th anniversary of the Inter-American Commission on Human Rights, the 40th anniversary of the adoption of the American Convention on Human Rights and the 30th anniversary of the creation of the Inter-American Court of Human Rights. Only the governments of Venezuelan and Nicaraguan objected to the resolution.

*"The Government of the Bolivarian Republic of Venezuela abstains from adopting this resolution because it believes that the Inter-American System of Human Rights, especially the Inter-American Commission on Human Rights (IACHR), has abandoned its status of human rights protector to become a political instrument of national and international sectors, attacking the progressive governments of the region for ideological reasons. Likewise, we consider that the system, in particular the Commission, has lost credibility regarding human rights, after having recognized the de facto government set in Venezuela after the events of April 2002.*

*The Bolivarian Government believes that inaccurate, false and malicious statements, recommendations and decisions of the IACHR, are causing great damage affecting the stability of democratic states. The comments made by the CIDH lack a methodology based on objectivity and transparency, making general references to undetermined sources, giving excessive importance to newspaper sources which are not always in the service of truth. Some press, radio and television media are politicized and biased against the legitimate government of Venezuela, as well as some Venezuelan and foreign NGOs which participated in the coup of April 2002, and in the business and oil strike in December 2003. Venezuela has sufficient reasons to assert that the Commission has*

*abandoned its status as an impartial international body responsible for ensuring the respect for human rights in the region, to become a political instrument of national and international sectors interested in questioning the legitimacy of the Bolivarian Socialist Revolution led by President Hugo Chávez Frías. The Venezuelan State has lost its hope for the Commission to return to good judgment and demonstrate its commitment to human rights, and stop taking actions that undermine their competences and objectives.*

*In this regard it is important to remember how the former United Nations Human Rights Commission lost all credibility once it was established as a forum for discussion of political differences between states, turning their back on individuals and communities who put their hopes on them. The Venezuelan government reiterates its appeal to the IACHR, for the sake of transparency and objectivity of their proceedings, to establish a balance between their aspirations and their real competences. For the foregoing reasons, due to the violation of the system rules, both substantive and procedural, violations of credibility, effectiveness and efficiency of the system, and to the negligent conduct held by the Commission, the Bolivarian Government of Venezuela abstains and disapproves the entire contents of this resolution".*

In public statement issued on May 13, 2009, the NGOs Foro por la Vida and Sinergia, as Venezuelan networks of human rights and social development organizations, denounced this attempt to discredit the Inter-American Human Rights Protection System (IHRP) and, at the same time, the disqualifications aimed at the organizations that bring cases before the IHRP. Among other considerations, the organizations expressed that they *"...deeply regret that the current Chair of the Inter-American Commission (Venezuelan national, Luz Patricia Mejía) joins the policy of the Venezuelan State and openly disqualifies the work of the Commission, questioning the transparency of the decision-making mechanisms within the Commission. She also noted, that the use of the media as a primary and direct source to raise a general diagnosis of the human rights situation in Venezuela, forces a clear tilt towards the result of the diagnosis and the assessment and recommendations made"*.

Ms. Mejía also stated that this report has a *"political vision that far from protecting and ensuring the rights of the Venezuelan people, it ensures the political exploitation of its content. The Commission's practice is to mostly use, in the case of Venezuela, information from NGOs with clear political tendencies, and information from the media, with a direct participation, as I said earlier, in the Venezuelan political situation"*. These statements, unequivocally support the severe attacks systematically made on Venezuelan human rights defenders, who have made use of the mechanisms available under the American Convention, which leave them at a greater risk and vulnerability.

The Chair of the Inter-American Commission on Human Rights, insisted that *"the information about Venezuela that is spread overseas, goes through mass media which have made some kind of homogenized analysis of Venezuela, and those are the figures and sources mostly used. There is no real contact with other sources; there is no plurality and no debate within the Commission about the opportunity or the mechanisms to open the Commission to different sources"*. In her statements, the IACHR representative never mentioned that the Venezuelan government has repeatedly refused the requests for public information made by the Commission itself, and for an *in-situ* visit to Venezuela so as to substantiate the complaints, and allowing for a dialogue with government officials and representatives from the country's different sectors.

Another source of concern, given the fact that she is a Venezuelan national, is the open involvement of Ms. Luz Patricia Mejía, as Chair of the Inter-American Commission on Human Rights, in matters pertaining to Venezuela, that are subject to analysis by this body. Article 17 of the Regulations of the Inter-American Commission of Human Rights states that members of the Commission may not participate in the analysis, discussion, investigation, deliberation or decision of cases concerning their own countries. This situation creates an unfortunate precedent that weakens the power of the Commission, since the traditional practice has been for the Commissioners to refrain from taking public stances on matters that relate to the country from which they are nationals, as a minimal expression of independence and impartiality.

According to Ms. Mejía, *"the approach taken by the President of Venezuela, representatives from Cuba as well as the representatives from Bolivia, Ecuador, Colombia, and including Guatemala, on the subject of transparency, necessarily requires, at this moment in time, in this next General Assembly that is going to take place in Honduras in June, that a thorough analysis be made on the relevance of the system. I think it's a good time for addressing the issue. We will propose, as Chair of the Commission, the need to thoroughly revise, not only the relevance of the system but the dynamics of the system"*.

Similarly, the NGOs expressed their concern over the agreement rejecting the IACHR Annual Report 2008 on the Bolivarian Republic of Venezuela, which stated in its preamble, in line with the statements made by the National Executive and the Chair of the Commission, that the Commission *"has become a political instrument for national and international sectors"*, and on its first resolution, agrees to reject the report on Venezuela, arguing that the allegations against the Bolivarian Republic of Venezuela contained therein *"are intrusive, false and intended to encourage campaigns to discredit our Government and our democratic institutions"*.

NGOs believe that this agreement of the National Assembly *"is an open expression of contempt for international law and international obligations of the Venezuelan State, freely undertaken under the American Convention, thus seeking to erode the Inter - American Human Rights Protection System "*.

Lastly, it is important to remember decision 1939 of the Constitutional Chamber of the Supreme Court of Venezuela, issued on December 18, 2008, which declared unenforceable the ruling by the Inter-American Court of Human Rights in the Apitz Barbera and Others case ( First Court of Administrative Litigation) vs. Venezuela, in which it is noted, as part of the decision, that *"in accordance with Article 78 of the American Convention on Human Rights, the National Executive is requested to denounce this Treaty or Convention, due to the obvious usurpation of functions in which the Human Rights Court has engaged, with the judgment object of this decision"*. So far, the Venezuelan Presidency has disregarded this request from the Constitutional Court.

## **10. Consequences for the Venezuelan society**

The difficulty, if not the impossibility, of establishing a dialogue with the different bodies of the National Power, is a matter of grave concern, as this has profound implications for the legitimacy of democracy and the rule of law in Venezuela, and the exercise and fulfillment of human rights. Absence of dialogue prevents citizens from participating in State affairs, and from bringing to light the most serious social problems affecting them, and hence, becomes an obstacle for the cooperative development of solutions necessary for achieving a life of dignity.

At the same time, there is a feeling of oppression progressively affecting more and more sectors of the Venezuelan society. The former stems from the obliteration of institutional processes, by means of constitutionally-sound laws and regulations, with the ability to restrict the exercise of power or prevent its abuse. A low-scale and so far selective restriction on human rights and freedoms has resulted, on the one hand, in reserve, self-censorship and even self-subjugation to power, with a subsequent loss of dignity; and, on the other hand, in the quest for personal "solutions", deteriorating into the critical internal situation of violence currently experienced by Venezuelan society.

Civil society organizations are very concerned about an increasingly critical situation that progressively tends to get out of hand, surpassing the contention capabilities of the Venezuelan society, and leading the way to serious social conflicts and repressive measures from the Venezuelan government. There are threats of closure of certain media outlets, and restrictions on public information; threats against development and human rights organizations who work for peace, civic culture, democratic coexistence and care for people affected by the arbitrary criteria imposed by the government. The threats against the most economically disadvantaged, through poverty and institutionalized social violence, set the stage for a scenario requiring the utmost attention and monitoring by those who, individually and institutionally, advocate and work for the dignity of human life.

## SUMMARY

### IACHR ANNUAL REPORT 2008

#### CHAPTER IV - HUMAN RIGHTS DEVELOPMENTS IN THE REGION

##### VENEZUELA

###### I. INTRODUCTION

320. In this chapter, the Commission will pay particular attention to the situations mentioned in paragraph 2 and also address issues related to the administration of justice, freedom of expression, and the situation of persons deprived of liberty.

322. Also, in its reply, the Venezuelan State questioned the Commission's impartiality in dealing with the various topics highlighted in this chapter and reaffirmed that it would not allow the IACHR to visit Venezuela "until it has rectified its biased position [...]".

###### II. PRELIMINARY MATTER

323. The Commission expresses its concern over decision 1939 of the Constitutional Chamber of the Supreme Tribunal of Justice, issued on December 18, 2008, which declares unenforceable 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 and, "in accordance with the provisions of Article 78 of the American Convention on Human Rights, requests the National Executive to denounce this treaty or convention, since in this judgment the Inter-American Court of Human Rights clearly has overstepped its authority." In its judgment, the Constitutional Chamber states:

*The Chamber finds, in this case, 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...*

324. The Commission finds that this jurisprudence disregards the international obligations undertaken by Venezuela as a State Party to the American Convention.

326. In addition, Article 27 of the Vienna Convention on the Law of Treaties (1969), the principles of which are reflected in the American Convention, codifies a basic principle of international customary law. The Honorable Court has stated on numerous occasions that:

*A party may not invoke the provisions of its internal law as justification for its failure to perform a treaty [...] since every treaty in force is binding upon the parties to it and must be performed by them in good faith (pacta sunt servanda).*

327. The OAS General Assembly has stated that “the denouncement of inter-American legal instruments on human rights and withdrawal of recognition of the Court’s obligatory jurisdiction affects the regional system as a whole” and resolved, *inter alia*, “to reiterate that the judgments of the Court are final and may not be appealed and that the states parties to the Convention undertake to comply with the rulings of the Court in all cases to which they are party”.

328. On the basis of the foregoing considerations, the Commission appeals to the Venezuelan State to abide by the international obligations it assumed upon ratifying the American Convention.

### **III. ECONOMIC, SOCIAL AND CULTURAL RIGHTS**

330. In 2008, the Commission received information from the State concerning social programs aimed at eliminating the structural problems of inequity and discrimination in Venezuela. At public hearings held at the IACHR in 2008, the State pointed to the work accomplished through a number of missions in the areas of education, health, food and social services.

334. Doubtless, the social and economic programs instituted by the Venezuelan Government warrant more in-depth study from the human rights perspective. The Commission recognizes the importance of this subject and hopes to have the opportunity to compile empirical data in order to be able to eventually address it. Therefore, the Commission reiterates its interest in conducting a visit to Venezuela which would allow the gathering of information with regard to the social, cultural and economic programs developed by the State. Finally, the Commission notes that although Venezuela signed the Additional Protocol to the American Convention on Human Rights in the area of Economic, Social and Cultural Rights on January 27, 1989, it has not yet ratified that instrument. The Commission urges the Venezuelan State to complete ratification of all regional human rights treaties.

### **IV. PARTICIPATION IN DEMOCRATIC LIFE: POLITICAL RIGHTS**

340. The jurisprudence of the Court makes clear that the American Convention recognizes and protects political participation through the right of active suffrage (the right to vote), through the right to be a candidate for elective office, and through adequate election rules that provide for the political process and the conditions under which that process unfolds, to ensure effective exercise of that right without arbitrary and discriminatory exclusions. In this connection the State, in its reply, said that “in the interest of political tolerance the legitimate President, Hugo Chávez Frías, in December 2007, issued a decree pardoning all persons on trial for the coup-related events. Over the past 10 years, international organizations have supervised 12 electoral events and found them to have met all international standards”.

341. That notwithstanding, in 2008, the Commission received worrisome information about acts of intimidation against sectors of society that are openly critical of or express their disagreement with the policies of the government. According to the reports received, this situation was particularly in evidence in the November 23, 2008 election. In its reply to this section, the Venezuelan State indicated that the elections of November 23, 2008, were conducted in a transparent fashion and monitored by various observers. It said in this connection that “nearly 17 million Venezuelans were empowered to elect [...] 22 governors, 328 mayors, and 233 local legislators in 22 of the country’s 23 states, as well as in the Federal District of Caracas. A total of 134 foreign observers, from 52 countries, monitored the transparency of the polling in 10 states and in the Federal District. The CNE distributed 11,500 voting centers and 35,000 tables in Venezuelan territory for the elections.

342. During the 2008 hearings the IACHR was informed about the debate taken place in the Venezuelan society and in the international sphere with regard to the declarations of disqualification for the exercise of the public office of people who post their candidacy for the elections of November 23. In accordance with information of public knowledge, in February, 2008 the General Comptroller of the Republic sent to the National Electoral Advice a list of persons that were disqualified for achieving post in popular election. Various actors of the political life of Venezuela adduced that a large percentage of those preceded from post of public election were candidates of the opposition. At present, there are current before the Commission several cases related to the compatibility of the norm by means of which the General Comptroller of the Republic disqualified applicants to be postulated to charges of popular election with the American Convention. The CIDH reserves any pronouncement related to the compatibility of this norm and its application with the American Convention.

343. In the said context, the Commission received information about public statements made from the highest levels of government which might have had an effect of producing an atmosphere of intimidation and threat of voters and candidates for election or re-election to public office.

344. The Commission learned that during the November 2008 election, the President of the Republic had allegedly made statements that did nothing to contribute to democratic dialogue and that could have instigated the use of violence. Among those statements were the following: "If you let the oligarchy (...) return to power, I may have to call up the armored tanks to defend the revolutionary government and the people of Carabobo"; "On Tuesday, the Venezuelan president reminded the opposition parties with candidates running in the regional elections slated for next November 23 that his "is an armed revolution" and that "the people are ready to defend the revolutionary process"; "Ramón Martínez is not just going to lose the governor's office; he's going to end up in jail; he'll see, we're going to sweep you out of office, you dirty traitor; on November 23 the people of Sucre will throw you out of office".

345. The Commission considers that the said expressions favors an environment of intimidation which has an adverse effect on the free and full exercise of freedom of expression and ultimately undermine the rule of law. Given the above considerations, the Commission is urging the Venezuelan State to ensure that its electoral procedures and elections foster an atmosphere of respect for a plurality of ideas and opinions and thus guarantee the participation of Venezuela's various political parties and movements.

## **V. SITUATION OF HUMAN RIGHTS DEFENDERS**

346. The IACHR reiterates its concern over the situation of human rights defenders in Venezuela, especially given the statements made by various authorities to discredit and disparage their work and the reports received alleging the use of lawsuits against them. As pointed out in its report on human rights defenders, the IACHR has observed that these actions taken by the State have created adverse conditions and have had a chilling effect on the work of human rights defenders, often silencing public opinion critical of government policy for fear of reprisals.

### **A. Life and personal integrity**

348. The Commission has learned that a number of threats and attempts have been made against the lives and physical well-being of human defenders in Venezuela.

349. The Commission also received information about the situation of Mr. José Luis Urbano, President of the *Asociación Civil Pro-Defensa del Derecho a la Educación* [Civil Association for the Right to Education]. In defending and promoting the right to education, Mr. Urbano filed a number of complaints in May 2008 to protest the unlawful fees being required of children attending public schools in the state of Anzoátegui. His complaints allegedly elicited death threats and threats to his physical well-being purportedly made by state officials. Mr. Urbano was also allegedly followed and kept under surveillance by unknown persons, presumably because of his work of defending and promoting human rights.

350. The IACHR also learned that no progress has been made in the investigations instituted into the acts of harassment committed against human rights defenders. Specifically, it was informed that the criminal inquiries instituted to investigate the telephone and e-mail threats against the Committee of Relatives of Victims of Events between February 27 and early March 1989 (COFAVIC) was closed after multiple summonses were issued to the victims in September 2008.

351. The IACHR must remind the Venezuelan State that the best way to prevent attacks and threats against human rights defenders is to conduct investigations, judicial proceedings and punish those responsible. Additionally, the investigation process ought not to become a procedural burden for those who have been threatened or attacked because of their work to defend and promote human rights.

352. The Commission has previously expressed concern stating that “the attacks on the lives and personal safety of human rights defenders is intended to ‘make an ‘example’ of the victims, bring a halt to reporting of violations, getting the human rights organizations to leave certain areas, and/or bringing about a drop in the number of complaints presented.”

#### **A. Statements discrediting the work of human rights defenders**

353. In 2008, the IACHR received information alleging that high-ranking Venezuelan government officials continue to make disparaging statements about the work of those dedicated to defending and promoting human rights in Venezuela. The Commission observes that, in keeping with the pattern of recent years, State officials continue to publicly belittle human rights defenders in order to discredit the complaints that the defenders lodge alleging human rights violations. In some cases, public officials accuse human rights defenders of being part of a plan to destabilize the government and to defy “the revolution” because they were receiving funding from organizations and countries abroad.

354. Specifically, the IACHR received information about the situation of Mr. Humberto Prado, a member of the Observatorio Venezolano de Prisiones [Venezuelan Prisons Observatory] (OVP), an organization dedicated to protecting persons deprived of liberty in Venezuela. According to the information received, Mr. Prado was the target of a number of verbal attacks allegedly coming from government officials. Specifically the Minister of the People’s Power for Interior Affairs and Justice, Ramón Rodríguez Chacín, was alleged to have referred to the OVP as “suspected human rights defenders in Venezuela, [who] have taken it upon themselves to decide whether or not human rights are being observed in Venezuela; we know these people are of doubtful moral fiber and are making a living off of the problems in prisons.” Similarly, the Vice Chairwoman of the Congressional Interior Policy Committee, Iris Varela, stated that Mr. Prado “is a profiteer of the prison situation.” As for the situation of Mr. Humberto Prado, in May 2007 the Commission petitioned the Inter-American Court to order provisional measures so that the State would take the necessary measures to guarantee the life and physical well-being of Mr. Prado and enable him, as director of the Venezuelan Prisons Observatory, to

continue his work of promoting and defending human rights in Venezuela. In response to Mr. Prado's situation, the State indicated that "the fact that a criminal investigation has been instituted by the government does not constitute an act of intimidation."

355. The Commission also expresses concern over the accusations that state officials made against Mr. Carlos Ayala Corao<sup>[419]</sup> during an international proceeding with the inter-American system where Mr. Ayala Corao was serving as the victims' representative in the case *Gabriela Perozo et al. v. Venezuela*. The Commission recalls the Venezuelan Government that under Article 61 of the IACHR's Rules of Procedure the "State may not prosecute the witnesses or experts, or carry out reprisals against them or their family members because of their statements or expert opinions given before the Commission".

356. The Commission also condemned Venezuela's expulsion of José Miguel Vivanco and Daniel Wilkinson, Executive Director and Deputy Director of the Americas Division of Human Rights Watch, a nongovernmental international organization dedicated to the protection of human rights. The government ordered the two men's expulsion the night of September 18, 2008, after Human Rights Watch released a report on the situation of human rights in Venezuela. The Commission observed that this measure "affects the right to freedom of expression of the representatives of that organization and constitutes an act of intolerance of criticism which is an essential component of democracy."<sup>[420]</sup>

357. The Commission is calling upon the Venezuelan State to create an environment in which criticism is protected within its territory, not just for those who, as members of international human rights organizations, express their concern over the observance of and respect for human rights, but also for those who are within Venezuelan territory. The Commission believes that the measures taken by state authorities to discredit human rights defenders help to cultivate conditions inimical to the protection and promotion of human rights and are profoundly harmful to the democracies of the Hemisphere."<sup>[421]</sup>

## **B. Initiation of legal actions**

358. In 2008, the Commission learned that human rights defender Humberto Prado, like other members of the OVP, were allegedly being investigated by the Ministry of Interior Affairs and Justice for treason and sedition, presumably because of the various protests that inmates staged inside Venezuelan prisons.<sup>[422]</sup>

359. The Commission has previously observed that "States sometimes use criminal laws that restrict or limit the means used by human rights defenders to carry out their activities. [...] In other cases criminal proceedings are instituted without any evidence, for the purpose of harassing the members of the organizations, who must assume the psychological and economic burden of facing a criminal indictment. [...] These proceedings generally involve charges of rebellion, attacks on public order or state security, and the formation of illegal groups."<sup>[423]</sup> It also noted that "A person whose liberty is unlawfully restricted or who lives in fear of being subject to imprisonment or held against his will imprisoned because of his actions to defend the rights of other persons is directly limited in his ability to do his work."<sup>[424]</sup>

360. The Commission has also learned that on November 30, 2007, three United Nations Special Rapporteurs<sup>[425]</sup> expressed concern over constitutional reform in Venezuela, especially the reform that would prohibit associations with a political aim from receiving funding from foreign sources. Their concern was that the definition might be selectively applied to human rights organizations to prevent them from accessing international funding.

361. In conclusion, the Commission is of the view that the above-described situations constitute obstacles for the work of defending and promoting human rights in Venezuelan territory.

## **VI. FREEDOM OF CONSCIENCE AND RELIGION**

364. As reported, the Commission received reports of anti-Semitic statements and incidents of various broadcasting media. There were also cases of graffiti appearing on the walls of institutions and residences run by the Jewish faith with messages like “child killers,” “out with the Jews,” “Jewish dogs,” and swastikas.<sup>[426]</sup> The Commission was also told that on December 2, 2007, police officers allegedly raided the headquarters of the Hebraica Social, Cultural and Recreational Center [the “*Centro Social Cultural y Deportivo Hebraica*”] (hereinafter the “Hebraic Center”) of Caracas. As reported, approximately 30 members of the Bureau of Intelligence and Prevention Services [*Dirección de los Servicios de Inteligencia y Prevención*] (DISIP) broke through the entry gate to the center, and were then met by the guards at the facility who allegedly let them into the Hebraic Center. According to reports, although no attorney from the Public Prosecutor’s Office was present, the police had allegedly brandished a warrant issued by the Third Control Court of the Caracas Metropolitan Area’s Criminal Court Circuit and from Prosecutor 41 of the Public Prosecutor’s Office for the Caracas Metropolitan Area. While the warrant was undoubtedly unfounded, the DISIP personnel proceeded to conduct a thorough search in various parts of the institution. According to reports, when the intelligence officers completed their search, they wrote out a report, in the presence of the President of the Hebraic Center, to the effect that nothing irregular had been found. Various quarters of the Venezuelan and international Jewish community have voiced concern, as they believe that the search was highly irregular and an attempt to create tension between the Venezuelan Jewish community and the national Government.

365. In response to this situation, and by the authority conferred upon it in Article 41(d) of the American Convention on Human Rights, the Commission requested the State to supply it with information on the events described and the motives for the search conducted at the Hebraic Center in Caracas on December 2, 2007. On January 7, 2008, the State informed the Commission that “the purpose of the search in question was to inspect every room of the facility for evidence in an investigation into the alleged commission of a crime against the Public Order, the Collectivity or the Security of the Nation, such as guns and rifles, ammunition, explosives and materials needed to put together explosive devices.” The Commission considers that the information provided by the State with regard to the proceedings taken place in Hebraica headquarters, are insufficient in explaining the denounce circumstances take place in such institution.

367. Given the information reported here, the Commission hopes that the Venezuelan Government will adopt the necessary measures to ensure full respect for freedom of conscience and religion within its territory and that it will continue investigating the incidents mentioned in this section.

## **VII. FREEDOM OF EXPRESSION**

369. Among the development of particular concern to the Commission in the area of freedom of expression is the assassination of the Vice President of the newspaper *Reporte Diario de la Economía*, Pierre Fould Gerges, on June 2, 2008. According to the information supplied, two unidentified persons on a motorcycle shot the victim at least twelve times when he was at a service station in Caracas.<sup>[427]</sup> According to the information reported to the Commission, a various of newspaper executives and editors were allegedly threatened because of the newspaper’s editorial position, which had been critical with

regard to supposed cases of corruption. Following the murder, the attorney representing the *Reporte Diario de la Economía* also complained of having received threats from private criminal groups, for making statements about the case. Through its Office of the Special Rapporteur for Freedom of Expression, the Commission deplored the murder and urged Venezuelan authorities to investigate the crime promptly and effectively, and to duly prosecute those responsible.<sup>[428]</sup> However, no progress in this investigation has been reported thus far.

370. 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.<sup>[429]</sup> Despite the provisional measures ordered, the severe aggression by private groups against this media outlet has not stopped. On September 23, 2008, the *Globovisión* television channel was the target of an attack. The group calling itself the “La Piedrita Working Group,” which later claimed responsibility for the attack, threw two teargas bombs against the façade of the television station’s building and then issued a communication in which it declared “War to the death” on the channel and declared them to be “military objectives” should their plans for assassination and a coup d’état materialize.<sup>[430]</sup> Later, on January 1, 2009, a teargas bomb was thrown onto the roof of *Globovisión* headquarters, forcing security staff to empty the building. According to reports, pamphlets with the initials of the *La Piedrita* group, which claimed responsibility for the attack, were found on the site; this group reaffirmed that both the television channel and the newspaper *El Nacional* were considered “military targets.”<sup>[431]</sup>

371. On October 16, 2008 two new teargas attacks occurred. One was on the home of Leopoldo Castillo, moderator of the *Globovisión* editorial program; the other attack was on the newspaper *El Nuevo País*, where Rafael Poleo is director. According to the information received, the “La Piedrita” group, which describes itself as sharing an affinity with the government of Venezuela, claimed responsibility for the attack on the newspaper. Members of this group allegedly distributed a communiqué in which they declared Poleo to be a “military objective” because of the statements he had made about Hugo Chávez.<sup>[432]</sup> The statements made by La Piedrita do not appear to have been followed by a clear disavowal or disclaimer or any investigation on the part of Venezuelan authorities. It is worth noting that, using this same plan of attack, a serious attempt was made against journalist Marta Colomina on December 1, 2008; allegedly she was seriously injured in the attack, which was perpetrated despite having provisional measures ordered on her behalf by the Inter-American Court. A teargas bomb was launched against her home, along with some pamphlets declaring her a “battle objective” and accusing her of promoting the plan to assassinate President Hugo Chávez. According to the information obtained, the “La Piedrita” group allegedly claimed responsibility for this incident.

372. The Commission received reports of attacks by private groups against the headquarters of other media outlets in various parts of the country. The weekly *Dicho y Hecho* in Bejuma, state of Carabobo, was reportedly the target of a gunfire attack on May 11, 2008.<sup>[433]</sup> On June 29, 2008, the facades of the *Radio Pueblo*, *Rumbera Network*, *Plata*, *Pachanga*, *Guarachera*, *Sonido*, *Favorita* and *Radio San Carlos* stations, all in the state of Cojedes, were painted with graffiti the night before accusing them of lies and threatening them with attack.<sup>[434]</sup> On July 15, 2008, two unidentified persons fired on the headquarters of *Radio Marabina 1420 AM*, in the state of Zulia.<sup>[435]</sup> In late July, a group of unidentified persons threw rocks and metal objects against the booth of *Radio Color 99.5*. In August 2008, the premises of *Radio Auténtica 107.5* in Maracay, state of Aragua, was also the target of gunfire; its journalists had complained of receiving threats.<sup>[436]</sup> Another similar incident of intimidation was allegedly reported in October 2008, with the newspaper *Panorama* in the city of Maracaibo.<sup>[437]</sup>

373. The Commission, through the Office of the Rapporteur for Freedom of Expression, also received a report of numerous acts of aggression, threats and attacks on journalists, either by representatives of the State or private persons. On July 23, 2008, for example, a journalist with the newspaper *La Verdad*, Dayana Fernández, and photographer Luis Torres allegedly were the target of hostile acts by municipal agents in Maracaibo while the two were investigating issues of environmental contamination.<sup>[438]</sup> In another case, Guillermo Torín, sound engineer at channel ANTV, was reported to have been beaten by a group of supporters of the mayor of Chacao when Torín was there to cover the mayor's registration for the regional elections on August 22, 2008.<sup>[439]</sup>

374. In some of the cases reported, the assault or attack was intended to prevent the journalist from gathering or reporting information. This was what happened on July 25, 2008, when the Police at Barinas Airport detained Dimas Medinas from the newspaper *El Nacional* and confiscated an official document about a robbery that happened to someone close to the President of Venezuela, Hugo Chávez.<sup>[440]</sup> Complaints and alerts have also come in from reporters and media outlets that received threats about articles published or news stories carried on radio and television. In July 2008, the attorney for and President of the newspaper *Reporte de la Economía* received death threats after they announced that they would disclose the names of those alleged to be responsible for the death of that newspaper's vice president.<sup>[441]</sup> As it did in earlier reports, the Commission must express its concern over attacks of this kind, which obstruct the unfettered exercise of the right to freedom of expression both by independent journalists and by media outlets that support the government's policies.

376. The Commission observes 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. On October 13, 2008, Rafael Poleo, invited to an opinion program on the *Globovisión* channel, broadcast live, said that the President of Venezuela "is going to end up like Mussolini: hanging head-down."<sup>[442]</sup> Immediately, the program director asked him to moderate his remarks. In application of Article 29, item 1, of the Law on Social Responsibility in Radio and Television, the National Telecommunications Commission (Conatel) opened an administrative action against the channel for alleged incitement to assassination and issued a precautionary measure ordering the channel to refrain from broadcasting unlawful messages at any hour. As of the date of this report, December 1, 2008, a final decision in this action remains still pending.

378. In addition to the investigations mentioned in previous paragraphs, there have been reports of an additional action against independent communicators or those critical of the government. On November 27, 2008, deputy Mario Isea presented to the plenary National Assembly a final report on an alleged plan to assassinate President Chávez. Among those accused as masterminds of the plan are nine persons, five of whom are media outlet directors, including: Alberto Federico Ravell, director general of *Globovisión*; Nelson Mezerhane, director of *Globovisión*; Rafael Poleo, director of the newspaper *El Nuevo País*; Marcel Granier, director general of *RCTV*; and Miguel Henrique Otero, managing editor of *El Nacional*.<sup>[445]</sup>

379. The Commission recognizes the legitimate right of the State to investigate situations that threaten State security. However, in matters of such gravity, investigations and public accusations by high-ranking officials should be supported by sufficient and convincing evidence, not by the issuance of opinions that are critical of or even offensive to government officials, as seems to be the case in this instance, according to public information available on the official page<sup>[446]</sup>. This takes on greater weight if one considers that death threats and violent attacks on communicators and media outlets critical of the

government have been conducted with the excuse of private justice against those who allegedly perpetrated the crimes mentioned in the previous paragraph.

381. Some provisions of the Law on Social Responsibility in Radio and Television are of special concern for the Commission.<sup>[447]</sup> For example, provisions like Article 29(1) set very punitive sanctions for violating restrictions that are defined in vague or generic language.<sup>[448]</sup> The Commission is also concerned that its application 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.

383. As for the placement of official advertising, the Commission has received information that allegedly shows a tendency to place advertising with media outlets that support the Government. According to the research findings provided by the organization “Espacio Público,” 89% of the advertising in print media appears in newspapers and magazines sympathetic to the government. In this connection the State indicates that “sovereign States like Venezuela have the authority to place their advertising in the outlets most advantageous to the national interest.”

384. Here, the Commission should point out that Principle 13 of the Inter-American Declaration of Principles on Freedom of Expression provides that “the arbitrary and discriminatory placement of official advertising and government loans (...) ; 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.”

386. The Commission has also been informed that serious limitations hinder access by private parties to public information. According to a research study presented by the organization “Espacio Público” at the Commission’s 133<sup>rd</sup> session, authorities did not reply to 70.7% of the information requests that the organization tracked, all of which were submitted in writing to State institutions.<sup>[451]</sup> The same study found that less public information is being reported at government agency Web sites. For example, in the case of persons with dengue or infected with HIV, the report found that fewer figures are available and that most of the information disclosed concerns the guidelines for advertising and reporting the government’s achievements.

387. In the decisions delivered by the Venezuelan courts, the Commission finds jurisprudence that could establish regressive standards vis-à-vis freedom of information. For example, in a September 12, 2008 ruling, the Supreme Court declared inadmissible a petition seeking *amparo* relief that a cooperative had filed against the mayor’s office of the capital district to get information on certain relocations. The Court held that because officials at the mayor’s office had met with individuals from the cooperative on a number of occasions and there discussed the matter at issue in the petition of *amparo*, the administration could be said to have responded appropriately. The Commission should point out that the Inter-American Court has written that “the State must guarantee that there is a simple, prompt and effective recourse that makes it possible to determine whether there has been a violation of the right of the person requesting information and, where appropriate, to order the corresponding body to disclose the information.”<sup>[452]</sup>

388. It is the Commission's view that the conduct and behavior described in this section do not foster the climate of tolerance that is conducive to active participation and the free flow of ideas among the various sectors of Venezuelan society. 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.

## **VIII. INSTITUTIONALITY AND ADMINISTRATION OF JUSTICE**

389. The Commission has paid particular attention to the administration of justice in Venezuela and has expressed concern over certain factors that could adversely affect the independence and impartiality of the Judicial Branch. One such factor is the high percentage of judges and prosecutors who are serving provisionally and the failure to comply with legal and constitutional procedures that must be followed in appointing judges to the bench and removing them. Another concern is the impunity that attends human rights violations.

### **A. The guarantees of the independence and impartiality of the Judicial Branch and the Public Prosecutor's Office**

391. In 2008, the IACHR continued to receive information about the situation of tenure of the so-called temporary or provisional judges. That persistence of this endemic problem is obvious from the high numbers of judges who received either provisional or temporary appointments in 2008. According to the information received, between January 1, 2008 and September 30, 2008, approximately 1407 judges were named; of these, 919 are temporary, 322 are *ad hoc*, 159 are provisional, 4 are alternates and 3 are tenured.<sup>[453]</sup> From the 919 temporary judges, approximately 854 were named to fill seats on the bench vacated because of vacation, leave, disqualifications and recusals of other judges; of the 159 provisional judges appointed, 22 were named to fill seats on the bench vacated by judges who retired. According to the information received, these appointments do not follow the procedures established by the constitution.

392. The Commission has also observed that the decisions on appointments of provisional and temporary judges were taken on the basis of articles 255 and 267 of the Constitution, and the final clause of Article 20 of the Organic Law of the Supreme Court which takes into account "[...] the urgency of filling vacancies that occur on the benches of the Nation's courts, to avoid a paralysis of judicial proceedings, and upon examination of the credentials of the candidates for the bench [...]"<sup>[454]</sup> Article 255 of the Venezuelan Constitution provides that "[a]ppointment to a judicial position and the promotion of judges shall be by public competition to ensure the qualifications 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." Despite this provision of the Constitution and even though Standards to Govern Evaluation of and Competition among Candidates for the Bench do exist, the mechanism that these provisions establish for the selection of judges is apparently not being used; instead, appointments are being made on the premise the "urgency" is a permanent condition.

393. As the Commission previously observed, the failure to follow the procedures prescribed in the Constitution and the law for judicial appointments and the vacuum in the law as regards the categories of judges mentioned above exposes these officials to possible undue pressure in the exercise of the important function they perform and thus pose a serious threat to the independence of Venezuela's judiciary.<sup>[455]</sup>

395. Venezuela's National Judiciary School has recognized the problem posed by the provisional status of judges. It observed that "the provisional status of judges and the weaknesses in the training and education that judicial officers receive have been singled out as the most significant problems in Venezuela's administration of justice in recent decades."<sup>[458]</sup> Having come to this realization, the National Judiciary School has set in motion a series of initial and continuing education programs for judges. In its 2007 report, the Commission took a favorable view of the creation of an Initial Training Program that would evaluate 3,916 candidates for the bench, who would then compete for judgeships.<sup>[459]</sup> From the information reported on the National Judiciary School's Web site, the Commission has learned that the Initial Training Program (2007-2008) was conducted. However, the Commission has no information about the concrete results of the program, such as the competition, the program's impact on the appointment of judges, and whether the National Judiciary School proposes to continue the program.

398. The Commission was also informed that the practice of appointing provisional prosecutors continued in 2008. According to the information received, between January 1, 2008 and October 23, 2008 approximately 371 prosecutors were appointed: of these, 201 are interim assistant prosecutors, 145 are provisional prosecutors, 10 are alternate prosecutors, 6 are provisional superior court prosecutors, 6 are superior court prosecutors, and 3 are superior court chief prosecutors. The Commission is concerned by the absence of tenure in the prosecutorial appointments and repeats the observation it made in its last Annual Report underscoring the importance of proper implementation of the prosecutorial career service, given the central role that the Public Prosecutor's Office plays in moving criminal investigations forward. The Commission also reiterates how important it is that prosecutors have the tenure needed to ensure their independence, impartiality and qualifications and thus guarantee effective inquiries and eliminate the factors contributing to impunity, especially in cases involving human rights violations.<sup>[464]</sup>

400. The Commission is following closely the development of the National Prosecutors School and hopes that with this initiative, the number of provisional prosecutors decreases and that officials attached to the Public Prosecutor's Office achieve a higher professional standard, to better ensure independence and impartiality in the performance of their functions.

## **B. The 26 Laws Decreed Under the Enabling Act**

404. On January 31, 2007, the National Assembly handed over legislative authority to the President of the Republic for a period of 18 months authorizing the President to issue decrees with the stature, value and force of Law on the different subject matters. Accordingly, on July 31, 2008, the day on which the authority granted under the law giving the president legislative authority expired, the Chief Executive issued 26 laws in a number of areas: i) military; ii) geography, territory and tourism; iii) agriculture, livestock, foods and services; iv) housing; v) social security; vi) national public administration, and vii) the economy.<sup>[471]</sup>

405. During 2008 the Commission received expression of concern<sup>[472]</sup> regarding the sudden approval by the President of the 26 decrees with the stature, value and force of law on July 31, 2008 without debate and lacking the consultation required under Articles 136<sup>[473]</sup> and 137<sup>[474]</sup> of the 2001 Organic Law of the National Public Administration<sup>[475]</sup>. Additionally, in doing so, the President also did not confer with the states as required under Article 206 of the Constitution.<sup>[476]</sup> According to the information received, “the absence of consultation [...] violates the right to the political participation, which is a fundamental right and constitutes one of the fundamental principles that inform the juridical Venezuelan system”<sup>[477]</sup>. In view of the information received, the Commission considers of special importance that, in use of the faculties granted by Enabling Law, the State respect the requirements established by law, in such a manner as to guarantee the suitable participation of the diverse sectors which the law establishes.

406. The Commission is concerned by the fact that Article 140<sup>[478]</sup> of the new Organic Law on Public Administration no longer requires prior consultation in the case of extraordinary legislation “[...] when an emergency arises, when dictated by the State’s obligations vis-à-vis the public’s safety, security and protection, or in cases involving the special legislation provided for in the Constitution of the Bolivarian Republic of Venezuela.”<sup>[479]</sup> The Commission is uneasy about the fact that the amendment might open up the possibility that special laws affecting the states can be enacted without their being consulted beforehand.

407. The Commission has also learned of the concerns expressed by some civil society organizations over the Organic Law on the Bolivarian National Armed Forces, decreed under the Enabling Act.<sup>[480]</sup> The purpose of the law is to “set out the principles and provisions that will govern the organization, operation and administration of the Bolivarian National Armed Forces, under the principle of the shared responsibility of the State and society as the basis of national security, to serve the ultimate purpose of preserving the Constitution of the Bolivarian Republic of Venezuela and the Republic.”<sup>[481]</sup>

408. Some of the concerns of the organizations are over the fact that the law in question creates the Bolivarian National Militia as a “special corps organized by the Venezuelan State, composed of the Military Reserve and the Territorial Militia, and to be used to augment the Bolivarian National Armed Forces in the Integral Defense of the Nation and in so doing help to guarantee its sovereignty and independence.”<sup>[482]</sup> The law states that the Bolivarian National Militia is under the direct command of the President of the Republic. Its mission is to “train, prepare and organize the people for the Integral Defense of the Nation, and thus complement the operational readiness of the Bolivarian National Armed Forces, help maintain the Nation’s domestic order, security, defense and integral development, all in order to help preserve the independence, sovereignty and integrity of the national territory.”<sup>[483]</sup> The Commission has no detailed information about the mission of these militias, the recruitment process, who trains them and their specific functions.

409. The government publication titled “*Decálogo de las Leyes Habilitantes*” [The Principles of the Enabling Laws] states that these laws “transcend the traditional classification that divides society into ‘the military’ (the armed forces) and ‘the people,’ by instilling in the citizenry a sense of shared responsibility for the nation’s defense.”<sup>[484]</sup> The publication states that it is a “revolutionary truth” that “militias have always been demonized, when in fact they are composed of the reserve forces shoulder-to-shoulder with the people, ready to defend their revolution [...] [and that] some despotic governments refuse to make their people part of their defense strategy, for fear that they will be toppled by the might of their own people.”<sup>[485]</sup> This ambiguity in the definition of the structure, functions and control of the militias is of concern considering the possibility that the same ones could make use of the weapon without set limitations.

## IX. CITIZEN INSECURITY AND IMPUNITY FOR HUMAN RIGHTS VIOLATIONS

411. In 2008, the Commission received information on the violence and the lack of citizen security in Venezuela, especially in the form of homicides and extrajudicial executions, and the lack of an effective response from the organs charged with investigating, prosecuting and punishing crimes of this type, which means that the perpetrators do not answer for their crimes. During this period, the IACHR received information from human rights organizations<sup>[487]</sup> reporting that a number of leaders of organized labor had been killed<sup>[488]</sup>. The Commission does not have detailed information concerning the circumstances surrounding the union leaders' deaths. However, the Commission is concerned by the reported numbers of union leaders who fall victim to attempts and threats on their lives and physical well-being, and therefore requests, the Venezuelan State to explore and analyze this problem and devise adequate and effective measures to prevent it and to investigate and punish those responsible.

412. The Commission has learned of a survey conducted by the *Instituto Venezolano de Análisis de Datos* [Venezuelan Data Analysis Institute] which found that 77% of the Venezuelan public believes that the main problem facing the country is insecurity.<sup>[489]</sup> It has also received reports to the effect that between 2000 and 2007, complaints were filed alleging over 6,000 extrajudicial executions committed by police.<sup>[490]</sup> According to those reports, of the 2,000 police agents implicated, fewer than 400 had been provisionally detained.<sup>[491]</sup>

414. The Commission received information indicating that there have been no consolidated figures on the number of homicides since 2005. The Commission is troubled by the absence of official figures on violence and crime. A report done recently by the Venezuelan Observatory of Violence contains figures on the alarming increase in the number of homicides. According to that report, there were 5,974 murders in 1999; 9,244 in 2002 and over 13,000 in 2003. The study points out, however, that the murder figures for 2004 and 2005 have not been made public.<sup>[495]</sup> On those figures, the Venezuelan State said it regrets "that the Commission not only distorts figures on homicides and property crimes but also [...] this violation of the right to life is dated quite some time ago." The Commission regrets that in response to this complaint the State has not provided information that might clarify the figures and information received by the Commission so that the latter might evaluate such new information and include it in this section.

416. The figures that the Venezuelan Observatory on Violence compiled on homicides in various cities and states nationwide indicate that Caracas' murder rate is over 100 for every 100,000 inhabitants.<sup>[497]</sup> The Commission also noted the uptick in violence in other parts of the country. In the state of Carabobo, various operations offices of the CICPC, the Forensic Pathology Department at the "Dr. Adolfo Prince Lara" Hospital in Puerto Cabello and the "Dr. Enrique Tejera" Hospital Complex (CHET) in Valencia have reported 1,642 murders as of October 2008. In 2007, the CICPC reported 1,423 murders in Carabobo, which would mean that even though the year is not yet over, the murder rate is already up by 15% in that state.<sup>[498]</sup>

419. In its 2007 report, the Commission applauded the creation of CONAREPOL.<sup>[501]</sup> The latter issued its diagnostic study in 2007 underscoring the need for police reform. In its conclusions, the CONREPOL report stated the following:

*The high incidence of police violence, the inability of the uniformed police forces to fight crime and the fact that police officers are often participating in criminal activities: these factors alone dictate the need for immediate reforms. In 2005, the reported crime rate nationwide was 877 per*

*100,000 inhabitants, with 37 homicides for every 100,000 inhabitants, one of the highest rates in Latin America (Provea, 2006). According to the figures supplied by the Attorney General's Office, between 2000 and 2006 police agents killed over 5,600 people. In the months just prior to the launch of the reform process, police agents were involved in at least three cases that drew heavy public protest: the deaths of three juveniles in Barrio Kennedy in Caracas in June 2005, who were killed by investigative police officers who mistakenly believed them to be responsible for the death of a police officer with that same outfit; the abduction and murder of three children and their driver, and the abduction and murder of an Italian businessman. The last two cases both occurred in March 2006. This combination of factors led to the decision to undertake reforms long overdue.*<sup>[502]</sup>

421. The Commission has made note of the concerns expressed by some organizations in Venezuelan civil society over the failure to implement the CONREPOL recommendations and over the fact that institutions that had long been members of the General Police Council no longer serve on it, making it impossible for those former member institutions to follow developments.<sup>[504]</sup> Here, the IACHR is compelled to repeat the observation it made in its 2007 Annual Report to the effect that the Venezuelan State's duty to prevent, investigate and punish violations of the right to life and to humane treatment is not confined to violations committed by State agents; instead, the State must also prevent, investigate and punish crimes in which private persons are involved, such as contract killings. Apart from diligence in the investigations and enforcement of administrative, disciplinary and criminal sanctions, persons belonging to the State security forces –whether police or military– should have clearly defined authorities that conform to the aforementioned standards and must be properly trained in the area of human rights.<sup>[505]</sup>

## **IX. SITUATION OF PERSONS DEPRIVED OF LIBERTY**

425. The foregoing notwithstanding, in 2008 the Commission continued to receive information on the alarming number of incidents of violence in Venezuelan prisons and jails. Prison violence in Venezuela continues to exact a heavy toll in the life and personal integrity of persons deprived of liberty. According to the information provided, in the period from January to September 2008, 609 inmates were injured and 357 died in Venezuela's prisons.<sup>[511]</sup> The Commission observes that out of these totals, 112 fatalities and 233 of the injured occurred in the four prison facilities for which the Inter-American Court of Human Rights ordered provisional measures (the Monagas Judicial Confinement Center, the Yare I and Yare II Capital Region Penitentiary Center, the Uribana Penitentiary Center of the Central Occidental Region, and the Capital El Rodeo I and El Rodeo II Judicial Confinement Center).

426. Of these establishments, in 2007 and 2008 the percentage of deaths and injuries resulting from internal fighting and ineffective control by prison guards was very high at the Capital El Rodeo I and El Rodeo II Judicial Confinement Center (hereinafter the "Rodeo Prison"). In response to the situation, on December 17, 2007 the Commission requested that the Inter-American Court order provisional measures to protect the life and physical well-being of the persons incarcerated in Rodeo Prison, and that of the people entering that facility, including relatives and other visitors. On February 8, 2008, the Inter-American Court decided to order the State "to adopt the provisional measures necessary to protect the life and physical integrity of all the people confined in Capital Judicial Confinement Center Rodeo I and Rodeo II, especially in order to prevent injuries and violent deaths." To this day, the Commission continues to keep the Court informed of the continuing acts of violence within that prison, which have resulted in loss of life and injury.

428. Throughout the year, the Commission watched with concern as protests were staged at 11 prisons in Venezuela. The protests were in the form of hunger strikes and self-sequestrations in which 3,000 relatives of inmates remained behind at the prisons after visiting hours were over.<sup>[512]</sup> According to the information compiled, the striking inmates' demands included swifter action on judicial proceedings, access to alternative ways of serving one's sentence, improvements in infrastructure tailored to the prison population, a stop to physical mistreatment by members of the National Guard, permission for children to visit the prisons and respect for family members, who have been humiliated by the security forces."<sup>[513]</sup>

430. The Commission believes that the urgency of the situation in Venezuelan prisons is so immediate that the Venezuelan State must take immediate measures to lower the threat to persons deprived of liberty and thus in the custody of the State. The *jurisprudence constante* of the inter-American system is that when a State deprives a person of his or her freedom, it has a special role to play as guarantor of that person's rights. The obligation that comes with the role of guarantor means that agents of the State must not only refrain from doing anything that could be harmful to the inmate's life and physical well-being, but must also do everything in their power to enable the inmate to continue to enjoy and exercise his or her fundamental rights, especially the right to life and the right to humane treatment.

## **X. CONCLUSIONS AND RECOMMENDATIONS**

437. The Commission is still concerned by the State's failure to set dates for a Commission visit to Venezuela which has made it difficult for the Commission to discharge the mandate that the States entrusted to it within the framework of the authorities and functions it is given both by the American Convention and its Statutes, especially those of promoting the observance and defense of human rights by firsthand, *in situ* knowledge of the various problems and programs related to human rights in Venezuela. Since its *in loco* visit to Venezuela in 2002, the Commission has requested in various opportunities the consent of the State to allow the IACHR to visit the country; however, there have been no concrete responses with set dates from the Venezuelan State. Not having been afforded the opportunity to visit the country, it will be that much more difficult for the Commission to develop a close dialogue with State authorities and Venezuelan society. According to Articles 56 and 58 of its Rules of Procedure, the Commission will prepare a report on the Situation of Human Rights in Venezuela, and hopes to be able to rely on input from the State and from the various sectors of Venezuelan civil society and international institutions.

438. The following are among the principal concerns that the Commission believes affect the enjoyment of human rights by all inhabitants of Venezuela in general: the hostile environment toward political dissent; accusations against and harassment of nongovernmental organizations and human rights defenders; the questions surrounding the transparency of the administration of justice; the existence of direct and indirect obstacles to freedom of expression, the existence of laws, which in their application, might adversely affect the respect of rights and the terrible conditions that those incarcerated must endure. It is especially troubled by the uptick in barometers of citizen insecurity, and by the fact that the State is not taking the steps necessary to investigate the causes and to stop them from continuing. Finally, various sectors of civil society have complained about a lack of information and access to official sources, which the Commission discovered for itself in its own efforts to find official statistics on various issues addressed in this chapter. The Commission would urge the State to take the points raised in this chapter into account in order to correct the situations described here.

439. The Inter-American Commission is therefore recommending to the Venezuelan State:
1. That it adopt the measures necessary to guarantee full access to official sources of information.
  2. That it take every measure possible to refrain from making statements that stigmatize human rights defenders or that suggest that human rights organizations are acting improperly or illegally, merely because they perform their work of promoting and protecting human rights.
  3. That it take the measures necessary to promote tolerance and pluralism in the exercise of political rights, and refrain from encouraging any form of retaliation for ideological dissent.
  4. That it take the measures necessary to ensure that all its judges enjoy the guarantees of independence and impartiality; specifically that it strictly comply with the provisions regulating elevation to the bench and promotion of judges within the judicial branch, and that clear regulations be established regarding the categories of judges and the guarantees of tenure that attend each category.
  5. That it implement appropriate mechanisms to prevent violations of the rights to life and to humane treatment and to guarantee citizen security for Venezuela's inhabitants. Such measures must be aimed at achieving due diligence in investigations and at the imposition of the corresponding sanctions on the perpetrators.
  6. That it adopt the measures necessary to ensure the right to life and the right to humane treatment to persons deprived of liberty, and to specifically adopt those measures necessary to: a) confiscate weapons and illicit substances in the inmates' possession; b) separate inmates standing trial from those already convicted, and c) adjust the conditions of incarceration to conform to international standards on the subject.