UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
IMMIGRATION COURT
[CITY, STATE]

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In the Matter of:          )
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INDEX TO DOCUMENTARY EVIDENCE OF COUNTRY CONDITIONS REGARDING
PERSECUTION OF LGBTQ INDIVIDUALS IN VENEZUELA

<table>
<thead>
<tr>
<th>TAB</th>
<th>GOVERNMENTAL SOURCES</th>
<th>SUMMARY</th>
</tr>
</thead>
</table>
| 1.  | Bureau of Democracy, Human Rights, and Labor, U.S. Dep’t of State, 2019 Country Reports on Human Rights Practices: Venezuela (Mar. 11, 2020), available at: https://www.state.gov/wp-content/uploads/2020/03/VENEZUELA-2019-HUMAN-RIGHTS-REPORT.pdf | • “Credible NGOs reported incidents of bias-motivated violence against lesbian, gay, bisexual, transgender, and intersex (LGBTI) persons. Reported incidents were most prevalent against transgender individuals. Leading advocates noted that law enforcement authorities often did not properly investigate to determine whether crimes were bias motivated.” (p. 32)  
• “Local police and private security forces allegedly prevented LGBTI persons from entering malls, public parks, and recreational areas. NGOs reported the former Maduro regime systematically denied legal recognition to transgender and intersex persons by preventing them from obtaining identity documents required for accessing education, employment, housing, and health care. This vulnerability often |
Tab #1
EXECUTIVE SUMMARY

Venezuela is legally a multiparty, constitutional republic, but for more than a decade, political power has been concentrated in a single party with an authoritarian executive exercising significant control over the judicial, citizens’ power (which includes the prosecutor general and ombudsman), and electoral branches of government, and standing up a parallel, illegitimate legislative body alongside the existing elected one. On January 10, the term of former president Nicolas Maduro ended. He sought to remain in power based on his claimed “victory” in the 2018 presidential elections widely condemned as neither free nor fair, a claim not accepted by the democratically elected National Assembly (AN). On January 23, Juan Guaido, as president of the National Assembly, assumed the role of interim president pursuant to the provisions of the constitution related to vacancies. Former president Maduro, with the backing of hundreds of Cuban security force members, refused to cede control over the instruments of state power, preventing interim president Guaido from exercising authority within the country. In the 2015 legislative elections, opposition political parties gained supermajority (two-thirds) control of the AN. The former Maduro regime, however, used its control over the Supreme Court (TSJ) to create the illegitimate Constituent National Assembly (ANC) that placed the AN in contempt, usurped its constitutional role to legislate, and weakened the constitution’s separation of powers principle.

Civilian authorities’ control over the security forces declined and was deeply politicized. The National Guard (GNB)--a branch of the military that reports to both the Ministry of Defense and the Ministry of Interior, Justice, and Peace--is responsible for maintaining public order, guarding the exterior of key government installations and prisons, conducting counternarcotics operations, monitoring borders, and providing law enforcement in remote areas. The Ministry of Interior, Justice, and Peace controls the National Scientific Criminal and Investigative Corps (CICPC), which conducts most criminal investigations, and the Bolivarian National Intelligence Service (SEBIN), which collects intelligence within the country and abroad and is responsible for investigating cases of corruption, subversion, and arms trafficking. Police include municipal, state, and national police forces. Mayors and governors oversee municipal and state police forces. The Venezuelan National Police (PNB) reports to the Ministry of Interior, Justice, and Peace. According to its website, the PNB largely focused on policing Caracas’s Libertador municipality; patrolling Caracas-area highways, railways, and
metro system; and protecting diplomatic missions. The PNB maintained a minimal presence in seven of the country’s 23 states.

Significant human rights issues included: unlawful or arbitrary killings, including extrajudicial killings by security forces of the former Maduro regime, including colectivos (regime-sponsored armed groups); forced disappearances; torture by security forces; arbitrary detention by security forces; harsh and life-threatening prison conditions; political prisoners; unlawful interference with privacy; and lack of judicial independence. The former Maduro regime restricted free expression and the press by routinely blocking signals and interfering with the operations of, or shutting down, privately owned television, radio, and other media outlets. Libel, incitement, and inaccurate reporting were subject to criminal charges. The former Maduro regime used violence to repress peaceful demonstrations and repressed freedom of assembly. Other issues included: intimidation, harassment, and abuse of AN members, including denial of due process and parliamentary immunity; pervasive corruption and impunity among all Maduro-aligned security forces and in other national and state regime offices, including at the highest levels; trafficking in persons; violence against indigenous persons; and the worst forms of child labor, which the former regime made minimal efforts to eliminate.

There were continued reports of police abuse and involvement in crime, particularly in the activities of illegally armed groups, including illegal and arbitrary detentions, extrajudicial killings, kidnappings, and the excessive use of force, but the former regime at the national, state, and local levels took no effective action to investigate officials who committed human rights abuses, and there was impunity for such abuses. The Office of the Human Rights Ombudsman did not provide information regarding alleged human rights violations committed by police and military personnel. Nongovernmental organizations (NGOs) noted that many victims did not report violent crimes to police or other regime authorities due to fear of retribution or lack of confidence in police. The former Maduro regime backed by Cuban security force members refused to cede power, preventing the interim government from taking action.

Section 1. Respect for the Integrity of the Person, Including Freedom from:

a. Arbitrary Deprivation of Life and Other Unlawful or Politically Motivated Killings

Although the former Maduro regime did not release statistics on extrajudicial killings, NGOs reported national, state, and municipal police entities, as well as the
armed forces and regime-supported colectivos, carried out such killings during the year.

There was also no official information available on the number of public officials prosecuted or sentenced to prison for involvement in extrajudicial killings, which, in the case of killings committed by police, were often classified as “resistance to authority.”

The UN’s Office of the High Commissioner for Human Rights (OHCHR) reported in July that security forces committed 1,569 killings between January and May and an additional 5,287 killings in 2018, many of which “may constitute extrajudicial killings.” The OHCHR called for the dissolution of one of the deadliest regime security units, the Special Actions Force (FAES), a specialized PNB unit created by former president Maduro in 2017 to quash large-scale countrywide protests. Between January and June, FAES committed 70 percent of homicides by Maduro-aligned security forces, according to NGO Monitor of Victims. FAES tactics implemented the former regime’s nationwide anticrime strategy begun in 2015, called the Operation for the Liberation and Protection of the People, which was characterized by large-scale neighborhood raids conducted by hundreds of security agents.

NGO Venezuelan Observatory of Social Conflict reported at least six extrajudicial killings during arrests of protesters in the first six months of the year. Jhonny Godoy was killed on January 25 when approximately 20 armed members of the PNB and FAES raided his home in Caracas to arrest him. Godoy had published a video that went viral on social media in which he denounced Maduro amid the large-scale protests that took place on January 23. According to statements from witnesses, upon entering Godoy’s home, regime security forces threatened and locked his family in a room before beating Godoy. Security agents subsequently brought him outside and shot and killed him. NGOs and human rights groups called Godoy’s death a targeted killing by FAES.

The former Maduro regime reported that 388 members of FAES were under investigation for murder and other crimes committed since 2017. An OHCHR investigation, however, found that investigations were hampered by a refusal to cooperate, tampering with evidence, judicial delays, and harassment of relatives of victims. According to NGOs, prosecutors occasionally brought cases against perpetrators of extrajudicial killings, but prosecutions often resulted in light sentences, and convictions were often overturned on appeal. In many cases the regime appeared to be scapegoating low-level functionaries while allowing the
high-level officials who issued the illegal orders to continue in their positions.

b. Disappearance

An investigation published by the OHCHR in July found that, of 135 persons determined to have been arbitrarily deprived of their liberty since 2014, some cases constituted enforced disappearances. An October 2018 study by NGO Espacio Publico and Andres Bello Catholic University documented 19 alleged cases of disappearances for days or weeks until the former Maduro regime revealed the whereabouts of detainees.

On April 26, SEBIN agents detained AN deputy Gilber Caro. Caro was not brought before a judge within 48 hours of his detention, as required by law, making his arrest an enforced disappearance, according to the United Nations. On May 31, the regime disclosed that Caro was detained at SEBIN headquarters in Caracas, although his lawyers were prevented from seeing him. Caro was released on June 17 without a public explanation of the basis for his detention.

c. Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment

Although the constitution and law prohibit such practices, there were credible reports that Maduro-aligned security forces tortured and abused detainees. There were no reports of any regime officials being charged under the law.

The regime-aligned Office of the Human Rights Ombudsman did not publish statistics regarding allegations of torture by police during the year. Several NGOs detailed cases of widespread torture and “cruel, inhuman, and degrading treatment.” Human rights groups reported the former regime continued to influence the attorney general and public defenders to conduct investigations selectively and subjectively. No official data was available on investigations, prosecutions, or convictions in cases of alleged torture. The NGO Foro Penal maintained that hundreds of cases were not reported to government institutions because victims feared reprisal.

Press and NGO reports of beatings and humiliating treatment of suspects during arrests were common and involved various law enforcement agencies and the military of the former Maduro regime. Torture and other cruel, inhuman, or degrading treatment or punishment of prisoners were reported during the year. Regime-aligned authorities reportedly subjected detainees to asphyxiation, electric
shock, broken bones, being hung by their limbs, and being forced to spend hours on their knees. Detainees reported regime-aligned security forces moved them from detention centers to houses and other clandestine locations where abuse took place. Cruel treatment frequently involved former regime authorities denying prisoners medical care and holding them for long periods in solitary confinement. The latter practice was most prevalent with political prisoners. NGOs detailed reports from detainees whom regime-aligned authorities allegedly sexually abused.

Foro Penal reported multiple instances of political prisoners denied adequate medical treatment while in regime custody. Foro Penal noted instances in which regime authorities transferred detainees to a medical facility, where instead of receiving treatment, detainees were interrogated by security officials. The executive director of the Casla Institute for the Study of Latin America, Tamara Suju, noted an increase in the use of torture during the year, with 72 new cases of torture and the detention of five relatives of military deserters as of July.

On June 21, the Directorate General of Military Counterintelligence (DGCIM) arrested retired naval captain Rafael Acosta Arevalo for allegedly plotting to overthrow Maduro. The former Maduro regime withheld his whereabouts for a week before bringing Acosta before a military tribunal. At a June 28 hearing, Acosta appeared in a wheelchair, unable to speak or stand, and showed clear signs of having been tortured, according to his lawyer. Authorities transferred Acosta to a military hospital, where he died shortly thereafter. An autopsy showed Acosta suffered multiple broken bones, burns, and other wounds. On September 24, two low-ranking GNB officers were sentenced to imprisonment of six years and eight months for intentional homicide, although the law against torture calls for 15 to 25 years’ imprisonment. On October 1, the Inter-American Commission on Human Rights (IACHR) granted precautionary measures of protection to Acosta’s family, due to alleged intimidation and harassment by the former Maduro regime.

Prison and Detention Center Conditions

Most prison conditions were harsh and life threatening due to gross overcrowding, food shortages, inadequate sanitary conditions and medical care, systemic violence, and poor infrastructure. Armed gangs de facto controlled some prisons in which they were incarcerated. Conditions were most acute in pretrial detention facilities such as police station jails.

Physical Conditions: According to the NGO A Window to Liberty (UVL), the capacity was approximately 19,000 inmates for penitentiaries and 5,000 for police
station jails. Overcrowding was 172 percent for penitentiaries and 415 percent for police station jails on average, although the NGO Venezuelan Observatory for Prisons (OVP) noted that in some jails the overcrowding ranged from 800 to 1,200 percent.

There were two women’s prisons, one each in Miranda and Zulia States. The law stipulates women in mixed prisons must be held in annexes or separate women’s blocks. A local NGO reported that male and female prisoners intermingled. Former Maduro regime security forces and law enforcement authorities often held minors together with adults, although separate facilities existed. Because institutions were filled beyond capacity, hundreds of children accused of infractions were confined in juvenile detention centers, where they were reportedly crowded into small, unsanitary cells.

The CICPC detention facility, police station jails, and detention centers also were overcrowded, causing many police station offices to be converted into makeshift prison cells. Prisoners reportedly took turns sleeping on floors and in office chairs, and sanitation facilities were inadequate or nonexistent. A 2019 UVL study of 203 facilities holding pretrial detainees revealed 509 percent overcrowding. A 2017 UVL study found that more than 80 percent of facilities provided no medical services, recreational areas, designated visiting areas, or laundry facilities; more than 60 percent did not have potable water; and more than 50 percent did not have regular trash collection or proper restrooms.

The GNB and the Ministry of Interior, Justice, and Peace have responsibility for prisons’ exterior and interior security, respectively. The former Maduro regime failed to provide adequate prison security. The OVP estimated a staffing gap of 90 percent for prison security personnel, with only one guard for every 100 inmates, instead of one for every 10 as recommended by international standards. UVL reported 305 prisoner deaths in 2018, of which more than one-half were the result of violence, including riots, fights, and attempted escapes. UVL also reported inmate deaths due to generally unsanitary and unsafe conditions prevalent in prisons, with 38 percent the result of tuberculosis. The OVP reported that due to inadequate nutrition plans and lack of potable water, stomach illnesses were common among inmates.

During the year prison and detention center riots resulted in inmate deaths and injuries. For example, on May 24, a confrontation between prisoners and FAES at a police station in Portuguesa State left 30 prisoners dead and 19 police officers injured. Media reported detainees petitioned for improved conditions and visiting
privileges at the jail, which held more than 500 prisoners in a space designed for 60. Regime-aligned officials described the event as an attempted escape and fight between rival gangs, while NGOs called it a massacre.

A 2016 law limiting cell phone and internet availability inside prisons to prevent inmates from using the technology to engage in criminal activity remained unimplemented.

A UVL study found that nearly one-half the detention centers required family members to provide food, water, and medicine for prisoners due to inadequate provisioning of food by the prison administration, and in 21 percent of the centers, guards charged for family visits.

NGOs reported records for detainees were not properly maintained and often contained incomplete information. The former regime restricted information regarding deaths in prisons from tuberculosis, HIV/AIDS, and other diseases, or from lack of medical care. A study by the NGO Solidarity Action found prison rules resulted in the isolation of those with HIV/AIDS in “inadequate spaces without food and medical attention.” The OVP reported a generalized lack of medical care, drugs, equipment, and physicians for prisoners. Inmates often received the same pills regardless of their symptoms, and pregnant women lacked adequate facilities for their medical attention.

Administration: The Ministry of Penitentiary Services did not respond to requests from the OVP, UVL, other human rights organizations, inmates, or families regarding inmates or investigations of the harsh conditions that led to hunger strikes, violent uprisings, and massacres.

Prisoners and detainees generally had access to visitors, including some with overnight privileges, but in some cases prison officials harassed or abused visitors. For political prisoners, prison officials imposed significant restrictions on visits by family and legal representation. When allowed access, visitors were at times subjected to strip searches.

Independent Monitoring: Human rights observers continued to experience lengthy delays and restrictions in gaining access to prisons and detention centers. More than 300 lay members from the Venezuelan Episcopal Conference of the Roman Catholic Church volunteered in 40 prisons. Although prohibited from formally entering prisons, Catholic laity visited prisoners on family visitation days. In March the International Committee of the Red Cross visited two civilian and
military prisons in Caracas, the organization’s first visit since 2012. Between March and September, the OHCHR conducted six visits of detention centers.

d. Arbitrary Arrest or Detention

The constitution prohibits the arrest or detention of an individual without a judicial order and provides for the accused to remain free while being tried, but judges and prosecutors often disregarded these provisions. The law provides for the right of persons to challenge the lawfulness of their arrest or detention in court, but the former Maduro regime generally did not observe this requirement. While NGOs such as Foro Penal, the Committee for the Families of Victims of February-March 1989, the Institute for Press and Society, Espacio Publico, and the Venezuelan Program for Education and Action on Human Rights (PROVEA) noted at least 2,000 open cases of arbitrary detentions, former Maduro regime authorities rarely granted them formal means to present their petitions. Regime authorities arbitrarily detained individuals, including foreign citizens, for extended periods without criminal charges.

Arrest Procedures and Treatment of Detainees

While a warrant is required for an arrest, detention is permitted without an arrest warrant when an individual is apprehended in the act of committing a crime or to secure a suspect or witness during an investigation. Police often detained individuals without a warrant. The law mandates that detainees be brought before a prosecutor within 12 hours and before a judge within 48 hours to determine the legality of the detention; the law also requires that detainees be informed promptly of the charges against them. The former regime routinely ignored these requirements.

Although the law provides for bail, it is not available for certain crimes. Bail also may be denied if a person is apprehended in the act of committing a crime or if a judge determines the accused may flee or impede the investigation. The law allows detainees access to counsel and family members, but that requirement was often not met, particularly for political prisoners. The constitution also provides any detained individual the right to immediate communication with family members and lawyers who, in turn, have the right to know a detainee’s whereabouts. A person accused of a crime may not be detained for longer than the possible minimum sentence for that crime or for longer than two years, whichever is shorter, except in certain circumstances, such as when the defendant is responsible for the delay in the proceedings. The former regime routinely ignored
these requirements.

**Arbitrary Arrest:** Foro Penal reported 2,169 cases of arbitrary detention between January 1 and August 31, the majority of whom were detained during protests.

On March 21, SEBIN agents arrested Interim President Juan Guaido’s chief of staff, Roberto Marrero; his bodyguard, Luis Alberto Paez; and his driver, Luis Aguilar. Media reported contradictory and conflicting evidence submitted by prosecutors, who charged Marrero with conspiracy, treason, and weapons smuggling. If convicted, Marrero faced up to 30 years in prison. The case remained pending at year’s end. Many international entities, including the Lima Group and the EU, condemned Marrero’s arbitrary arrest as politically motivated.

**Pretrial Detention:** Pretrial detention remained an egregious problem. According to UVL, approximately 70 percent of the prison population was in pretrial detention. The NGO Citizen Observatory of the Penal Justice System attributed trial delays to the shortage of prosecutors and penal judges.

Despite constitutional protections that provide for timely trials, judges reportedly scheduled initial hearings months after the events that led to the detention. Proceedings were often deferred or suspended when an officer of the court, such as the prosecutor, public defender, or judge, failed to attend. Prisoners reported to NGOs that a lack of transportation and disorganization in the prison system reduced their access to the courts and contributed to trial delays.

**Detainee’s Ability to Challenge Lawfulness of Detention before a Court:** Detained individuals may challenge the grounds for their detention, but proceedings were often delayed and hearings postponed, stretching trials for years. Courts frequently disregarded defendants’ presumption of innocence. Authorities often failed to allow detainees to consult with counsel or access their case records when filing challenges. Some detainees remained on probation or under house arrest indefinitely.

**e. Denial of Fair Public Trial**

The constitution provides for an independent judiciary, but the former Maduro regime judiciary lacked independence and generally judged in favor of the former regime at all levels. There were credible allegations of corruption and political influence throughout the judiciary. According to reports from the International Commission of Jurists, as many as 85 percent of all judges had provisional
appointments and were subject to removal at will by the TSJ Judicial Committee. Provisional and temporary judges, who legally have the same rights and authorities as permanent judges, allegedly were subjected to political influence to make proregime determinations. In January Ediluh Guedez Ochoa, a juvenile court judge in the state of Yaracuy, filed a complaint stating she had been pressured to sentence 11 adolescents for participating in a protest. When she moved to dismiss the charges, the president of the circuit court pressured her to proceed with the sentencing, and she later received death threats. Authorities subsequently removed her from her position.

There was a general lack of transparency and stability in the assignments of district attorneys to cases and a lack of technical criteria for assigning district attorneys to criminal investigations. These deficiencies hindered the possibility of bringing offenders to justice and resulted in a 90 percent rate of impunity for common crimes and a higher percentage of impunity for cases of alleged human rights violations.

**Trial Procedures**

The law provides for the right to a fair and public trial with oral proceedings for all individuals. By law defendants are considered innocent until proven guilty. The law requires that detainees be informed promptly of the charges against them, but the requirement was often ignored and, even when respected, involved dubious allegations, according to human rights organizations. Defendants have the right to consult with an attorney. According to the Office of the Human Rights Ombudsman, there were approximately 1,300 public defenders, but indigent defendants’ right to free counsel was often not respected because of attorney shortages. Free interpretation was often not available to defendants. Some NGOs provided pro bono counsel to defendants.

Defendants may request no fewer than 30 days and no more than 45 days to prepare their defense. Defendants have the right to question adverse witnesses and present their own witnesses. By law defendants may not be compelled to testify or confess guilt. Defendants and plaintiffs have the right of appeal.

Trial delays were common. Trials in absentia are permitted in certain circumstances, although opponents of the procedure claimed the constitution prohibits such trials. The law also states that, in the absence of the defense attorney, a trial may proceed with a public defender that the court designates. The law gives judges the discretion to hold trials behind closed doors if a public trial
could “disturb the normal development of the trial.”

On July 4, the former Maduro regime stated Judge Maria Lourdes Afiuni was to receive a full unconditional release, although her release was pending at year’s end. In 2009 authorities arrested Afiuni on charges of corruption and abuse of authority for her decision to release a businessman who had been held in pretrial detention beyond the maximum time prescribed by law. Following her release to house arrest in 2011, regime-aligned authorities limited her movements and ability to speak to the press. On March 26, a court sentenced Afiuni to another five years in jail, which the UN special rapporteur on independence of judges and lawyers said was “an act of reprisal against her.”

The law mandates that municipal courts handle “less serious” crimes, i.e., those carrying maximum penalties of imprisonment of less than eight years. Municipal courts may levy penalties that include three to eight months of community service. Besides diverting some “less serious” crimes to the municipal courts, this diversion also permits individuals accused of “lesser crimes” to ask the courts to suspend their trials conditionally in exchange for their admission of responsibility, commitment to provide restitution “in a material or symbolic form,” community service, or any other condition imposed by the court.

The law provides that trials for military personnel charged with human rights abuses after 1999 be held in civilian rather than military courts. In addition, under the Organic Code of Military Justice, an individual may be tried in the military justice system for “insulting, offending, or disparaging the national armed forces or any related entities.” NGOs and the IACHR expressed concern with the former regime’s practice of trying civilians under the military justice system for protests and other actions not under military jurisdiction. According to Foro Penal, since 2014 military courts processed 848 civilians.

**Political Prisoners and Detainees**

The former Maduro regime used the judiciary to intimidate and prosecute individuals critical of regime policies or actions. Foro Penal reported 399 political prisoners in regime custody as of November 11, up from 286 political prisoners at the end of 2018. The regime routinely held political prisoners in SEBIN installations or the Ramo Verde military prison without an explanation of why they were not being held in civilian detention facilities.

On February 23, the GNB detained Elwin Mendoza, an opposition party activist in
Zulia State, for protesting in favor of the entry of humanitarian aid into the country. According to media reports, the military tribunal handling Mendoza’s case refused requests by his family and lawyers for medical examinations due to his deteriorating health. On March 25, Mendoza died of respiratory failure stemming from tuberculosis and pneumonia.

As of December 18, National Assembly (AN) deputy Juan Requesens remained in prison. After two postponements, his trial began on December 12. International observers criticized irregularities in Requesens’s trial, including a lack of transparency and due legal process. In August 2018 authorities had arrested Requesens for his alleged involvement in an attempted assassination of Maduro. Videos released shortly after his arrest showed a visibly weak Requesens in unsanitary conditions.

Following two years of house arrest, jailed opposition party leader Leopoldo Lopez escaped during mass demonstrations on April 30 and sought refuge at the Spanish embassy, where he remained. On May 2, the former Maduro regime issued a warrant for his arrest.

Politically Motivated Reprisal Against Individuals Located Outside the Country

There were credible reports that the former Maduro regime attempted to misuse international law enforcement tools for politically motivated purposes as a reprisal against specific individuals located outside the country.

Civil Judicial Procedures and Remedies

While there are separate civil courts that permit citizens to bring lawsuits seeking damages, there are no procedures for individuals or organizations to seek civil remedies for human rights.

f. Arbitrary or Unlawful Interference with Privacy, Family, Home, or Correspondence

The constitution provides for the inviolability of the home and personal privacy, but the former regime generally did not respect these prohibitions. In many cases, particularly regarding the political opposition, regime-aligned authorities searched homes without judicial or other appropriate authorization, seized property without due process, or interfered in personal communications. FAES and other security
forces regularly conducted indiscriminate household raids. Media reports
documented raids by security forces on the homes of at least 10 opposition party
politicians during the year.

Section 2. Respect for Civil Liberties, Including:

a. Freedom of Expression, Including for the Press

The law provides for freedom of expression, including for the press, but the
combination of laws and regulations governing libel and media content as well as
legal harassment, physical intimidation of individuals and media, and executive
influence on the judiciary resulted in significant repression of these freedoms.
National and international groups, such as the IACHR, Human Rights Watch,
Freedom House, Inter American Press Association, Reporters without Borders, and
Committee to Protect Journalists, condemned former regime efforts throughout the
year to restrict press freedom and create a climate of fear and self-censorship.

Freedom of Expression: The law makes insulting the president punishable by six
to 30 months in prison without bail, with lesser penalties for insulting lower-rank-
ing officials. In 2017 the illegitimate ANC gave final approval to the
Constitutional Law against Hate, for Political Coexistence and Tolerance, which
stipulates prison sentences of up to 20 years. While the former regime stated the
purpose of the law was to “promote peace and tolerance,” NGOs observed the
vaguely written law could be used to silence political parties, activists, and civil
society leaders as well as media outlets and journalists. Comments exposing
another person to public contempt or hatred are punishable by prison sentences of
one to three years and fines. In April Espacio Publico reported 24 persons were
arrested in 2018 for online criticism of the regime.

On June 1, members of the DGCIM arrested Karen Palacios Perez, a clarinetist, for
“instigating hate.” Palacios posted tweets critical of the regime after losing her
position with the National Philharmonic Orchestra for signing a petition in
opposition to Maduro. On July 16, Palacios was released from prison, one month
after a judge ordered her immediate release.

Press and Media, Including Online Media: The law provides that inaccurate
reporting that disturbs the public peace is punishable by prison terms of two to five
years. The requirement that media disseminate only “true” information was
undefined and open to politically motivated interpretation.
The law prohibits all media from disseminating messages that incite or promote hate or intolerance for religious, political, gender-related, racial, or xenophobic reasons; incite, promote, or condone criminal acts; constitute war propaganda; foment anxiety in the population or affect public order; do not recognize legitimate government authorities; incite homicide; or incite or promote disobedience of the established legal order. Penalties range from fines to the revocation of licenses. The threat of nonrenewal of operating licenses systematically led to self-censorship on the part of several media outlets.

Despite such laws, Maduro and the regime-aligned United Socialist Party (PSUV) used the nearly 600 former regime-owned or -controlled media outlets to insult and intimidate the political opposition throughout the year. ANC president Diosdado Cabello continued to use his weekly television program to denounce individual journalists and media outlets.

The law declares telecommunications a “public interest service,” thereby giving the government authority to regulate the content and structure of radio, television, and audiovisual production sectors. The law provides that the government may suspend or revoke licenses when it judges such actions necessary in the interests of the nation, public order, or security. The law empowers the government to impose heavy fines and cancel broadcasts for violations of its norms; the National Telecommunications Commission (CONATEL) oversees the law’s application.

The former Maduro regime continued legal actions against high-profile independent media outlets Tal Cual, El Nacional, El Nuevo Pais, La Patilla, El Pitazo, and Globovision. In June the TSJ ordered La Patilla to pay 30 billion bolivares ($1.4 million) to ANC president Cabello for “moral damage and injury” for reprinting an article by the Spanish newspaper ABC that indicated Cabello was under investigation in the United States for drug trafficking.

Espacio Publico reported 522 violations of freedom of expression between January and April, a 314 percent increase compared with the same period in 2018 and the second highest figure since the organization began tracking cases in 2002. The most common violations were aggressions against journalists and censorship. The former Maduro regime-owned and -influenced media provided almost continuous preregime programming. In addition, private and public radio and television stations were required to transmit mandatory nationwide broadcasts (cadenas) throughout the year, including a daily 15-minute news broadcast that provided reports and summaries of former regime activities. Media reported the GNB regularly barred journalists from accessing the AN to cover the legislative body’s
debates and activities. NGOs noted that state regime-owned internet service provider CANTV also routinely blocked commercial streaming and web searches during Interim President Guaido’s speeches and during weekly AN sessions.

The former regime detained 39 journalists in the first three months of the year, up from 22 detentions during all of 2018, according to NGO Institute for Press and Society (IPYS). On March 11, SEBIN agents detained journalist Luis Carlos Diaz and confiscated equipment, following his reporting on nationwide blackouts that struck the country in early March, according to media reports. On his weekly television program, ANC president Cabello accused Diaz of being involved in a conspiracy to sabotage the country’s electrical system. After being charged with “instigating crimes,” Diaz was released, although he was prohibited from leaving the country or making public statements.

The law requires practicing journalists to have journalism degrees and be members of the National College of Journalists, and it prescribes jail terms of three to six months for those practicing the profession illegally. These requirements are waived for foreigners and opinion columnists.

Violence and Harassment: Senior national and state leaders of the former Maduro regime continued to harass and intimidate privately owned and opposition-oriented television stations, media outlets, and journalists by using threats, property seizures, administrative and criminal investigations, and prosecutions. The national journalists’ union reported 244 attacks on journalists from January to June. Former president Maduro and regime-aligned officials used regime-controlled media outlets to accuse private media owners, directors, and reporters of fomenting antiregime destabilization campaigns and coup attempts. Former Maduro regime officials also harassed foreign journalists working in the country.

Censorship or Content Restrictions: NGOs noted the former Maduro regime’s preference for using legal proceedings, financial sanctions, and administrative actions against unfavorable news outlets instead of shutting them down outright. Members of the independent media stated they regularly engaged in self-censorship due to fear of regime reprisals. This resulted in many journalists posting articles to their personal blogs and websites instead of publishing them in traditional media.

The former regime also exercised control over content through licensing and broadcasting requirements. CONATEL acted selectively on applications from private radio and television broadcasters for renewal of their broadcast frequencies.
According to Nelson Belfort, former president of the Venezuelan Radio Chamber, and NGO reports, approximately 80 percent of radio stations were in “illegal” status throughout the country due to CONATEL’s not having renewed licenses for most radio stations since 2007.

According to the local journalists’ union (SNTP), print news outlets closed due to the former Maduro regime’s economic policies, which made it difficult for independent newspapers to access foreign currency, preventing many from purchasing critical supplies and equipment necessary for day-to-day business operations. National and regional newspapers went out of print for lack of supplies, especially newsprint, including national newspaper El Nacional, El Regional of Zulia, El Aragüeno of Aragua, El Luchador of Bolivar, and Panorama of Zulia.

The former Maduro regime controlled a large portion of the country’s businesses and paid for advertising only with regime-owned or regime-friendly media.

**Libel/Slander Laws:** Regime-aligned officials engaged in reprisals against individuals who publicly expressed criticism of Maduro or regime policy. Maduro did not act on his 2017 announcement that he would use slander law to “defend his honor” in court against opposition leaders’ allegations that he was responsible for protest-related deaths.

**National Security:** The law allows the government to suspend or revoke licenses when it determines such actions necessary in the interests of public order or security. The former Maduro regime exercised control over the press through a public entity, the Strategic Center for Security and Protection of the Homeland (CESPPA), established in 2013, which is similar to the governmental entity Center for National Situational Studies (CESNA) established in 2010. CESNA and CESPPA have similar mandates and are responsible for “compiling, processing, analyzing, and classifying” both regime-released and other public information with the objective of “protecting the interests and objectives of the state.”

During the year former President Maduro renewed four times the “state of exception” he first invoked in 2016, citing a continuing economic emergency, and granted himself the power to restrict rights otherwise provided for in the constitution. The 60-day emergency decree, which by law is renewable only once and requires AN endorsement to be effective, allows the president to block any action he deems could “undermine national security” or could “obstruct the continuity of the implementation of economic measures for the urgent reactivation
of the national economy.” The AN continued systematically to refuse to ratify each renewal, and the Supreme Court annulled each refusal, reasoning that the assembly’s “contempt” status made its failure to endorse the renewal “unconstitutional.” According to Human Rights Watch, the “state of exception” negatively affected the rights to freedom of association and expression.

**Nongovernmental Impact:** Widespread violence in the country made it difficult to determine whether attacks on journalists resulted from common criminal activity or whether criminals or others targeted media members.

**Internet Freedom**

The former Maduro regime restricted or disrupted access to the internet and censored online content. The former regime exercised broad control over the internet through the state-run CONATEL. Free Access, an NGO focused on freedom of expression and social justice, reported that CONATEL supported monitoring of private communications and repression of internet users who expressed dissenting opinions online. According to media reports, users of social networks accused CONATEL of monitoring their online activity and passing identifying information to regime intelligence agencies, such as SEBIN. According to Free Access, CONATEL provided information to SEBIN, including internet protocol addresses, which assisted former Maduro regime authorities in locating users.

The law puts the burden of filtering prohibited electronic messages on service providers, and it allows CONATEL to order service providers to block access to websites that violate these norms and sanctions service providers with fines for distributing prohibited messages. IPYS reported that in the first six months of the year, private and regime-controlled internet providers following CONATEL orders blocked access to 48 webpages. Seventy percent of the censored domains during this period belonged to social media platforms and news outlets, including NTN24, VIVOplay, El Pitazo, VPITv, El Nacional, Aporrea, and Noticia al dia.

CONATEL’s director, Jorge Elieser Marquez Monsalve, reiterated the claims of his predecessors that CONATEL’s role is to enforce the law and prevent dissemination of illegal information or material unsuitable for children and adolescents. Nevertheless, the former Maduro regime continued to block internet sites that posted dollar- and euro-to-bolivar currency exchange rates differing from the former regime’s official rate. The former regime-owned internet service provider CANTV facilitated blockages. According to IPYS, the regime blocked
websites during events of public interest. According to Reporters Without Borders, on January 21, shortly after an attempted uprising by a military unit in Zulia State that was widely covered on social networks and by online media outlets, there were several internet cuts in the region, affecting YouTube and Google Search users in particular, combined with restrictions on access to Twitter and Instagram. Facebook, Instagram, YouTube, and Periscope services were all temporarily blocked, according to NetBlocks.

Regime-aligned intelligence agencies, which lacked independent oversight, conducted surveillance for political purposes. Courts relied on evidence obtained from anonymous patriotas cooperantes (cooperating patriots) to harass perceived opponents of the former regime, and senior former Maduro regime-aligned officials used personal information gathered by patriotas cooperantes to intimidate regime critics and human rights defenders. Users were arrested and criminally accused for actions such as tweeting information publicly available on webpages.

In February proregime Twitter accounts published a database of opposition sympathizers’ personal data, which was the result of a former regime-linked phishing operation.

**Academic Freedom and Cultural Events**

There were no substantiated reports of former Maduro regime restrictions on cultural events, but the former regime imposed restrictions on academic freedom. Aula Abierta (Open Classroom), a local human rights NGO focused on academic freedom, reported the former regime retaliated against opposition-oriented autonomous universities by providing insufficient funding and failing to adjust budgetary allocations to inflation. According to media reports, universities ran deep deficits, receiving less than 10 percent of the funds they budgeted to cover operating costs. In 2017 the National University Council, the government’s regulating body for university education, relinquished its functions to the ANC, disregarding the law requiring university autonomy.

The former Maduro regime continued to increase its control over local universities, including the admissions process.

In August the TSJ ordered the Central University of Venezuela to hold university elections in six months. The ruling, which applied to eight other public and private universities as well, stipulates that the elected candidate must win in at least three of the five electoral sectors (teachers, students, graduates, administrative staff, and
laborers) and must receive an absolute majority of votes. Students and university leaders called the ruling an attack on university autonomy, in violation of the constitution, and said it would lead to the installation of regime-aligned sympathizers at the heads of universities.

The former regime continued its practice, announced in 2018, of educational financial incentives for holders of the *carnet de la patria* (homeland card), a regime-issued social benefits card provided primarily to regime supporters (see section 3, Political Parties and Political Participation).

**b. Freedoms of Peaceful Assembly and Association**

**Freedom of Peaceful Assembly**

The constitution provides for this right, but the former Maduro regime generally repressed or suspended it. The law regulates the right to assembly. Human rights groups continued to criticize the law as enabling the former regime to charge protesters with serious crimes for participating in peaceful demonstrations. Ambiguous language in the law also allowed the former regime to criminalize organizations that were critical of it. Protests and marches require authorization from the former regime in advance and are forbidden within designated “security zones.” Citizens organized sporadic and often spontaneous small-scale protests throughout the year to demand basic goods and services such as water, gasoline, and electricity. The political opposition and civil society organized marches to support Interim President Juan Guaido and demand a transitional government and new presidential elections. The Venezuelan Observatory of Social Conflict documented 10,477 protests in the first six months of the year, more than double the number in the same period of 2018. According to the OHCHR, between January and May, a total of 66 persons died during protests; some of these incidents were marked by an alleged excessive use of force by FAES, the GNB, PNB, and armed colectivos. Security forces detained more than 1,300 persons during protests between January and May, according to Foro Penal.

During a July 2 protest in Tachira State, 16-year-old Rufo Chacon was blinded after police forces fired 52 rubber pellets at his face. According to media reports, a police investigation found that security forces moved to repress the protest without warning when they fired rubber bullets into the crowd. Former Maduro regime attorney general Tarek William Saab announced that authorities charged two police officers with cruel treatment in the case.
Freedom of Association

The constitution provides for freedom of association and freedom from political discrimination, but the former Maduro regime did not respect these rights. Although professional and academic associations generally operated without interference, a number of associations complained that the TSJ and the National Electoral Council (CNE), which is responsible for convoking all elections and establishing electoral dates and procedures, repeatedly interfered with their attempts to hold internal elections.

A 2016 presidential decree called on the Foreign Ministry to suspend international funding to NGOs when “it is presumed” that the funding is used with “political purposes or for destabilization.”

c. Freedom of Religion

See the Department of State’s International Religious Freedom Report at https://www.state.gov/international-religious-freedom-reports/.

d. Freedom of Movement

The constitution provides for freedom of internal movement, foreign travel, emigration, and repatriation; however, the former Maduro regime did not respect these rights.

On February 22, the former regime closed its borders with Aruba, Brazil, and Colombia to prevent the entry of international aid. Media reported the borders with Aruba and Brazil were reopened on May 10 and partially reopened with Colombia one month later.

In July the former Maduro regime announced the deployment of a special migration police unit in Tachira State, on the border with Colombia. Although some NGOs expressed concern the former regime would use the unit to restrict international travel of select individuals, the former regime asserted the force would essentially be customs and border patrol units. The former regime declared the migration police would provide citizen security at migration points and established 72 points of control to monitor the border situation and dispel what it called myths regarding a supposed in-country migration crisis.

Security forces often used excessive force to control residents in states along the
border with Colombia, with particular violence perpetrated by colectivos against Tachira State citizens in late February.

While no official statistics were available, a women’s shelter reported recurring problems with gender-based violence and trafficking of refugee women. NGOs reported Venezuelans crossing through informal border crossings controlled by armed groups faced significant protection risks, including gender-based violence. Individuals were often forced to pay a form of taxation at the informal border crossing or be indebted to those controlling them, exposing them to risks of exploitation, harassment, and sexual violence, as well as recruitment into drug trafficking and other armed groups.

See the Department of State’s annual Trafficking in Persons Report at https://www.state.gov/trafficking-in-persons-report/.

In-country Movement: The former regime restricted the movement of certain opposition leaders, preventing them from traveling on former regime-controlled airlines and refusing to allow them to board some domestic flights.

Foreign Travel: Obtaining a passport became increasingly difficult during the year. Prospective applicants waited overnight in lines and often did not receive passports after years of delays. Some applicants reportedly paid several thousands of U.S. dollars to obtain a passport. The former regime repeatedly seized passports from journalists, members of the opposition, and AN deputies at ports of entry without explanation as they attempted to depart the country.

Exile: In contrast with 2018, there were no cases of citizens denied the right to return.

e. Internally Displaced Persons

Not applicable.

f. Protection of Refugees

Abuse of Migrants, Refugees, and Stateless Persons: With the refugee status determination process centralized at the National Refugee Commission (CONARE) headquarters in Caracas, asylum seekers often waited for years to obtain a final decision. During this period they had to continue renewing their documentation every three months to stay in the country and avoid arrest and
deportation. While traveling to the commission, particularly vulnerable groups, such as women with young children, the elderly, and persons with disabilities, faced increased personal risks, such as arrest and deportation, extortion, exploitation, and sexual abuse by authorities at checkpoints and other locations.

The former regime did not cooperate with the Office of the UN High Commissioner for Refugees (UNHCR) and other humanitarian organizations in providing protection and assistance to refugees, asylum seekers, and other persons of concern.

**Access to Asylum:** The law provides for the granting of asylum or refugee status, and the government has a system for providing protection to refugees. According to UNHCR, the vast majority of asylum seekers came from Colombia. The majority of such persons remained without any protection. Most of the Colombians had not accessed procedures for refugee status determination due to the inefficiency of the process. UNHCR reported that few persons in need of international protection were legally recognized as refugees.

**Access to Basic Services:** Colombian asylum seekers without legal residency permits had limited access to the job market, education, and health systems. The lack of documentation created significant difficulties to achieving sufficient protection and long-term integration. Former regime authorities permitted Colombian children to attend school but inconsistently granted them diplomas or certificates of completion without residency documentation, resulting in high dropout rates for Colombian children. In June CONARE announced the creation of a new border migration control card for refugees present in the country, similar to the carnet de la patria.

**g. Stateless Persons**

Not applicable.

**Section 3. Freedom to Participate in the Political Process**

The 1999 constitution, the country’s 26th since independence in 1811, provides citizens the ability to change their government through free and fair elections, but regime interference, electoral irregularities, and manipulation of voters and candidates restricted the exercise of this right in the 2018 presidential and municipal elections.
Elections and Political Participation

Recent Elections: In May 2018 the CNE oversaw deeply flawed presidential elections condemned by the political opposition and international observers as fraudulent and constitutionally invalid. In December 2018 the CNE oversaw deeply flawed municipal elections, which featured very low turnout due to voter apathy.

Nicolas Maduro’s illegitimate second term as president began on January 10, in what the opposition called a “usurpation of power.” On January 23, National Assembly (AN) president Juan Guaido invoked Article 233 of the constitution, which calls on the AN president to assume the role of interim president in the event of presidential vacancy. Opposition parties backed Guaido throughout the year, and in September they endorsed him to remain as AN head in 2020 and as interim president until the former regime’s usurpation of power ends.

Political Parties and Political Participation: Opposition political parties and PSUV dissidents operated in an increasingly restrictive atmosphere characterized by intimidation, the threat of prosecution or administrative sanction on questionable charges, and very limited mainstream media access.

The former Maduro regime regularly targeted the AN and other opposition politicians through violence or threats of violence, arbitrary arrest, politically motivated prosecution, violation of privacy, and restrictions on movement. On October 17, the body of opposition councilman Edmundo Rada was found shot in the neck and partially burned, recalling a similar killing of opposition former Cojedes governor Jhonny Yanez Rangel, whom the CICPC found shot in the face in his burned-out car on September 24. Throughout the year GNB forces denied or limited access by AN members to the federal legislative palace during regularly scheduled parliamentary sessions. As of September the regime-controlled TSJ had removed the parliamentary immunity of 24 deputies, prompting many to go into hiding or exile to avoid arbitrary arrest.

On May 8, SEBIN agents detained AN first vice president Edgar Zambrano, towing the lawmaker’s car with him inside to SEBIN headquarters. During his detention Zambrano engaged in a 10-day hunger strike to protest for humane conditions, visitation rights, and the release of four detained staff members. Following months of judicial delays, the former regime released Zambrano on September 18, although his support staff remain imprisoned. Zambrano remained subject to unspecified “precautionary measures,” including the requirement that he
appear before a judge every 30 days and not leave the country.

During the year the former Maduro regime expanded the carnet de la patria program, introduced in 2017 as a multipurpose identification card, as a requirement to access former regime-funded social services. Cardholders were reportedly granted financial bonuses and exclusive access to educational scholarships, subsidized food and gasoline, and other government support. According to the former Maduro regime, as of September more than 18.5 million of an estimated 28.5 million residents had registered for the card. To qualify for the card, applicants must provide proof of political affiliation and respond to questions regarding the social service benefits they receive. Opponents of Maduro asserted the card amounted to social control, a tool to leverage access to scarce subsidized consumer products in return for political loyalty.

Participation of Women and Minorities: No law limits participation of women or members of minorities in the political process, and they did participate. The former regime had high-level female politicians and ministers, while the opposition lacked high-level female and minority representation.

Section 4. Corruption and Lack of Transparency in Government

The law provides criminal penalties for corruption by officials, but the former Maduro regime did not implement the law effectively. Some officials explicitly acknowledged corruption as a major problem. The former regime frequently investigated, prosecuted, and detained political opponents on corruption charges to harass, intimidate, or imprison them. According to Transparency International, among the main reasons for the country’s widespread corruption were impunity, weak institutions, and a lack of transparency in the management of government resources.

Corruption: According to former Maduro regime attorney general Tarek William Saab, 915 persons had been convicted of corruption-related charges since 2018. The regime, however, did not provide information regarding the alleged cases or persons convicted.

Corruption was a major problem in all security and armed forces, whose members were generally poorly paid and minimally trained. There was no information publicly available about the number of cases involving police and military officials during the year, although the Public Ministry publicized several individual cases against police officers for soliciting bribes and other corrupt activities.
Financial Disclosure: The law requires public officials, as well as all directors and members of the boards of private companies, to submit sworn financial disclosure statements. By law the Public Ministry and competent criminal courts may require such statements from any other persons when circumstantial evidence arises during an investigation.

Section 5. Governmental Attitude Regarding International and Nongovernmental Investigation of Alleged Abuses of Human Rights

A variety of independent domestic and international human rights groups generally operated with restrictions from the former Maduro regime. Major domestic human rights NGOs conducted investigations and published their findings on human rights cases. Former regime officials were rarely cooperative or responsive to their requests. Domestic NGOs reported fear that the former regime would use the 2017 Law against Hate to justify widespread repression of their activities, jailing of the participants and organizers, and threats against family members. Some domestic NGOs reported threats against and harassment of their leaders, staff, and organizations, in addition to raids and detentions, but they were able to publish dozens of reports during the year. Some human rights activists reported former regime authorities barred them from traveling abroad or that they feared not being able to return to the country if they traveled. NGOs played a significant role in informing citizens and the international community about alleged violations and key human rights cases.

NGOs noted the former Maduro regime created a dangerous atmosphere for them to operate. The PSUV first vice president and ANC president, Diosdado Cabello, used his weekly talk show to intimidate NGO staff from Espacio Publico, PROVEA, and Foro Penal. Several organizations, such as the OVP, PROVEA, Foro Penal, and Citizen Control, reported their staffs received both electronic and in-person threats. Human rights organizations claimed they were subject to frequent internet hacking attacks and attempts to violate their email privacy.

The law prohibits domestic NGOs from receiving funds from abroad if they have a “political intent,” defined as the intent to “promote, disseminate, inform, or defend the full exercise of the political rights of citizens” or to “defend political rights.” The former Maduro regime threatened NGOs with criminal investigations for allegedly illegally accepting foreign funds. Various former regime officials accused human rights organizations on national television and other media of breaking the law by receiving funding from international donors. NGOs also
reported the former regime refused to grant them legal registration, preventing NGOs from receiving international funding.

For violations the law stipulates monetary penalties, a potential five- to eight-year disqualification from running for political office, or both. The law defines political organizations as those involved in promoting citizen participation, exercising control over public offices, or promoting candidates for public office. Although there was no formal application or enforcement of the law, it created a climate of fear among human rights NGOs and a hesitancy to seek international assistance.

In addition to the restrictions placed on fund raising, domestic NGOs also faced regulatory limitations on their ability to perform their missions. The law includes provisions eliminating the right of human rights NGOs to represent victims of human rights abuses in legal proceedings. The law provides that only the public defender and private individuals may file complaints in court or represent victims of alleged human rights abuses committed by public employees or members of security forces.

**The United Nations or Other International Bodies:** The former Maduro regime was generally hostile toward international human rights bodies and continued to refuse to permit a visit by the IACHR, which last visited the country in 2002. The OHCHR conducted a visit in June to investigate the human rights situation, presided by High Commissioner Michelle Bachelet, who met with members of both the opposition and the former regime. In September the regime and the OHCHR signed a memorandum of understanding that provides for the presence of two UN human rights officers for one year. On September 27, the UN Human Rights Council adopted a resolution to establish immediately a one-year fact-finding mission to investigate “extrajudicial executions, enforced disappearances, arbitrary arrests, torture, and other cruel, inhumane, or degrading treatment committed in Venezuela since 2014.” According to media reports, the regime-aligned envoy to the United Nations in Geneva rejected the resolution and stated the former regime had no intention of cooperating.

**Government Human Rights Bodies:** Throughout the year the former regime gave its 2016-19 human rights plan minimal attention, with no announcements to renew or update the plan.

The TSJ continued to hold the AN in “contempt” status, which diminished the purview and operational effectiveness of the assembly’s subcommission on human rights.
Section 6. Discrimination, Societal Abuses, and Trafficking in Persons

Women

**Rape and Domestic Violence:** The law criminalizes rape of men or women, including spousal rape, making it punishable by a prison term of eight to 14 years. A man may legally avoid punishment by marrying (before he is sentenced) the person he raped. The law allows authorities to consider alternative forms of punishment, including work release, for those convicted of various crimes, including rape, if they have completed three-quarters of their sentence.

The law criminalizes physical, sexual, and psychological violence in the home or community and at work. The law punishes perpetrators of domestic violence with penalties ranging from six to 27 months in prison. The law requires police to report domestic violence to judicial authorities and obligates hospital personnel to notify authorities when admitting patients who are victims of domestic abuse. Police generally were reluctant to intervene to prevent domestic violence and were not properly trained to handle such cases. The law also establishes women’s bureaus at local police headquarters and tribunals specializing in gender-based violence, and two-thirds of states had specialized courts. The Public Ministry’s Women’s Defense Department employed a team of lawyers, psychiatrists, and other experts who dealt exclusively with cases of femicide, gender-related violence, and other crimes against women.

Many advocates observed there was a lack of public awareness among women regarding resources and support available to prevent and combat domestic violence. The former regime offered some shelter and services for victims of domestic and other violence, but NGOs provided the majority of domestic abuse support services.

**Sexual Harassment:** Sexual harassment is illegal and punishable by fines and a prison sentence of one to three years. Although allegedly common in the workplace, sexual harassment cases were rarely reported.

**Coercion in Population Control:** There were no reports of coerced abortion or involuntary sterilization.

**Discrimination:** Women enjoy the same legal status and rights as men under the constitution. Women and men are legally equal in marriage, and the law provides
for gender equality in exercising the right to work. The law specifies that employers must not discriminate against women with regard to pay or working conditions. According to the Ministry of Labor and the Confederation of Workers, regulations protecting women’s labor rights were enforced in the formal sector, although according to the World Economic Forum, women earned 36 percent less on average than men doing comparable jobs.

The law provides women with property rights equal to those of men.

**Children**

**Birth Registration:** Citizenship is derived by birth within the country’s territory. According to UNICEF, 81 percent of children younger than five were registered at birth, based on 2011 statistics provided by the government.

**Child Abuse:** According to UNICEF and NGOs working with children and women, child abuse, including incest, occurred but was rarely reported. The former regime made efforts to detain and prosecute some perpetrators of child abuse. Although the judicial system acted to remove children from abusive households, the press reported public facilities for such children were inadequate. According to NGOs, in many cases children were returned to their homes without proper reintegration measures or follow-up.

**Early and Forced Marriage:** The legal minimum age for marriage is 18 for women and men, but with parental consent the minimum age is 16.

**Sexual Exploitation of Children:** By law sexual relations with a minor younger than 13, with an “especially vulnerable” person, or with a minor younger than 16 when the perpetrator is a relative or guardian, are punishable with a mandatory sentence of 15 to 20 years’ imprisonment. The law prohibits the forced prostitution and corruption of minors. Penalties range from 15 to 20 years’ imprisonment in cases of forced labor and some forms of sex trafficking of women and girls. The law requires a demonstration of force, fraud, or coercion to constitute child sex trafficking. The law prohibits the production and sale of child pornography and establishes penalties of 16 to 20 years’ imprisonment.

**Displaced Children:** Children’s rights advocates and media reported an increase in the number of abandoned children living on the street. Children’s rights NGO Cecodap estimated that as many as 800,000 minors had been left behind with family members as their parents fled the country’s economic crisis, many of whom
also struggled with the country’s economic downturn. These children resided in limbo, since their parents who left were unable legally to transfer guardianship to a third party.

State-run facilities, already filled to capacity, were unable to support the influx of children in need. Private institutions denounced the former regime’s refusal to provide subsidized food benefits to support their population. NGOs noted young girls made up close to one-half of the children living on the streets. The significant shift posed particular challenges for shelters, which historically managed predominantly male populations. With institutions filled to capacity, hundreds of children accused of infractions, such as curfew violations, were confined in inadequate juvenile detention centers.


**Anti-Semitism**

There were reports of societal abuses or discrimination based on religious affiliation, belief, or practice, including anti-Semitism.

The Confederation of Israeliite Associations in Venezuela estimated there were 9,000 Jews in the country. Jewish community leaders expressed concern about anti-Semitic statements made by high-level regime-aligned officials and anti-Semitic pieces in proregime media outlets. They said regime-owned or -associated media and supporters of the former regime promoted Zionist conspiracy theories and denied or trivialized the Holocaust. The community leaders noted many other anti-Semitic incidents occurred during the year.

**Trafficking in Persons**

See the Department of State’s *Trafficking in Persons Report* at [https://www.state.gov/trafficking-in-persons-report/](https://www.state.gov/trafficking-in-persons-report/).

**Persons with Disabilities**

The law prohibits discrimination against persons with physical and mental
disabilities, but the regime did not make a significant effort to implement the law, inform the public of it, or combat societal prejudice against persons with disabilities. The law requires that all newly constructed or renovated public parks and buildings provide access, but persons with disabilities had minimal access to public transportation, and ramps were almost nonexistent. Many persons with disabilities expressed concerns that public transportation workers often were unwilling to transport them and forced them to find taxis, which were often out of their financial reach and frequently not equipped to support patrons with disabilities. Parents of children with disabilities also complained they were forced to wait in long lines for services rather than provided preference in line as is afforded by law. Online resources and access to information were generally available to persons with disabilities, although access to closed-captioned or audio-described online videos for persons with sight and hearing disabilities was limited. Separately, leading advocates for persons with hearing disabilities lamented difficult access to public services due to a lack of regime-funded interpreters in public courts, health-care facilities, and legal services, as well as a lack of other public accommodations.

The National Commission for Persons with Disabilities, an independent agency affiliated with the Ministry for Participation and Social Development, advocated for the rights of persons with disabilities and provided medical, legal, occupational, and cultural programs. According to the commission, fewer than 20 percent of persons with disabilities who registered with regime health programs were fully employed.

**National/Racial/Ethnic Minorities**

The constitution prohibits discrimination based on race. The law prohibits all forms of racial discrimination and provides for a maximum of three years’ imprisonment for acts of racial discrimination. As mandated by law, signage existed outside commercial and recreational establishments announcing the prohibition against acts of racial discrimination. Beyond signage the regime did little to enforce the laws against discrimination or prosecute cases of discrimination.

**Indigenous People**

The law prohibits discrimination based on ethnic origin. The constitution provides for three seats in the AN for deputies of indigenous origin to “protect indigenous communities and their progressive incorporation into the life of the nation,” but
some indigenous communities have been without representation in the national legislature since the TSJ annulled the 2015 election of Amazonas State’s indigenous representatives.

NGOs and the press reported local political authorities seldom took account of indigenous interests when making decisions affecting indigenous lands, cultures, traditions, or allocation of natural resources. Indigenous groups continued to call for faster implementation of the demarcation process.

Indigenous groups and NGOs expressed concern regarding mining in the expanding “Arco Minero,” an area that extends between the states of Bolivar and Amazonas. Indigenous communities reported the former Maduro regime developed and expanded mining zones without consulting those native to the region, resulting in a rise in environmental degradation, water contamination, and malaria. Armed groups, including Colombian guerrillas and former rebels, had a considerable presence in the area, increasing the level of violence and insecurity in the communities. There was also an unprecedented influx of disease, drugs, prostitution, forced labor, and other illegal activities in the mining areas, putting indigenous communities at risk.

Indigenous groups alleged violent encounters with security forces during the year. On February 22-23, seven persons were killed in Bolivar State in a confrontation between members of the Pemon community and soldiers during an attempt to deliver international aid at the border with Brazil. The OHCHR documented excessive use of force, indiscriminate shooting at close range by GNB soldiers, and attacks on a hospital, as well as the detention and mistreatment of 63 persons. Indigenous leaders reported the displacement of more than 1,300 members of the community as a result of this incident.

In December the OHCHR raised concern over continued high levels of violence in Bolivar State, including the presence of irregular armed groups involved in illegal exploitation of natural resources. The OHCHR provided the example of a November 22-23 massacre of eight individuals in the indigenous community of Ikaburu and noted some members of the community had fled, fearing more violence.

Indigenous groups regularly reported violent conflicts with miners and cattle ranchers over land rights. There were reports of harassment, attacks, and forced evictions against indigenous persons living in areas included as part of former regime mining concessions.
Border disputes with Colombia affected indigenous groups living in border regions. There were many reported cases in which movements of indigenous groups were restricted, including from border closures in February.

**Acts of Violence, Discrimination, and Other Abuses Based on Sexual Orientation and Gender Identity**

The constitution provides for equality before the law of all persons and prohibits discrimination based on “sex or social condition,” but it does not explicitly prohibit discrimination based on sexual orientation or gender identity. According to a TSJ ruling, no individual may be subjected to discrimination because of sexual orientation, but the ruling was rarely enforced.

Credible NGOs reported incidents of bias-motivated violence against lesbian, gay, bisexual, transgender, and intersex (LGBTI) persons. Reported incidents were most prevalent against transgender individuals. Leading advocates noted that law enforcement authorities often did not properly investigate to determine whether crimes were bias motivated.

Local police and private security forces allegedly prevented LGBTI persons from entering malls, public parks, and recreational areas. NGOs reported the former Maduro regime systematically denied legal recognition to transgender and intersex persons by preventing them from obtaining identity documents required for accessing education, employment, housing, and health care. This vulnerability often led transgender and intersex persons to become victims of human trafficking or prostitution.

**HIV and AIDS Social Stigma**

The law provides for the equal rights of persons with HIV/AIDS and their families. Nevertheless, leading advocates alleged discrimination against such persons. Local NGO Solidarity Action reported five cases during the year of denied employment or forced resignation due to HIV status.

**Section 7. Worker Rights**

**a. Freedom of Association and the Right to Collective Bargaining**

The law provides that all private- and public-sector workers (except members of
the armed forces) have the right to form and join unions of their choice, and it provides for collective bargaining and the right to strike. The law, however, places several restrictions on these rights, and the former Maduro regime deployed a variety of mechanisms to undercut the rights of independent workers and unions. Minimum membership requirements for unions differ based on the type of union. Forming a company union requires a minimum of 20 workers; forming a professional, industrial, or sectoral union in one jurisdiction requires 40 workers in the same field; and forming a regional or national union requires 150 workers. Ten persons may form an employee association, a parallel type of representation the former regime endorsed and openly supported.

The law prohibits “any act of discrimination or interference contrary to the exercise” of workers’ right to unionize. The law requires all unions to provide the Ministry of Labor a membership roster that includes the full name, home address, telephone number, and national identification number for each union member. The ministry reviews the registration and determines whether the union fulfilled all requirements. Unions must submit their registration application by December 31 of the year the union forms; if not received by the ministry or if the ministry considers the registration unsatisfactory, the union is denied the ability to exist legally. The law also requires the presence of labor inspectors to witness and legitimize unions’ decisions before the Ministry of Labor. The International Labor Organization (ILO) raised concerns about the ministry’s refusal to register trade union organizations.

By law employers may negotiate a collective contract only with the union that represents the majority of its workers. Minority organizations may not jointly negotiate in cases where no union represents an absolute majority. The law also restricts unions’ ability to administer their activities. For example, the CNE has the authority to administer internal elections of labor unions, federations, and confederations. By law elections must be held at least every three years. If CNE-administered and -certified elections are not held within this period, the law prohibits union leaders from representing workers in negotiations or engaging in anything beyond administrative tasks. The ILO repeatedly found cases of interference by the CNE in trade union elections, and since 1999 it has called for delinking the CNE from the union election process.

The law recognizes the right of all public- and private-sector workers to strike, subject to conditions established by law. By law workers participating in legal strikes receive immunity from prosecution, and their time in service may not be reduced by the time engaged in a strike. The law requires that employers
reincorporate striking workers and provides for prison terms sufficient to deter violations for employers who fail to do so. Replacement workers are not permitted during legal strikes. The law prohibits striking workers from paralyzing the production or provision of essential public goods and services, but it defines “essential services” more broadly than ILO standards. The ILO called on the government to amend the law to exclude from the definition of “essential services” activities “that are not essential in the strict sense of the term…so that in no event may criminal sanctions be imposed in cases of peaceful strikes.”

The minister of labor may order public- or private-sector strikers back to work and submit their disputes to arbitration if a strike “puts in immediate danger the lives or security of all or part of the population.” Other legal provisions establish criminal penalties for exercising the right to strike in certain circumstances. For example, the law prohibits specified actions and makes punishable with five to 10 years in prison anyone who “organizes, supports, or instigates the realization of activities within security zones that are intended to disturb or affect the organization and functioning of military installations, public services, industries and basic [i.e., mining] enterprises, or the socioeconomic life of the country.” The law also provides for prison terms sufficient to deter violations for those who restrict the distribution of goods and for “those…who develop or carry out actions or omissions that impede, either directly or indirectly, the production, manufacture, import, storing, transport, distribution, and commercialization of goods.” There was no information on whether penalties were sufficient to deter violations.

The former Maduro regime restricted the freedom of association and the right to collective bargaining through administrative and legal mechanisms. The former regime did not effectively enforce the law.

The ILO raised concerns about violence against trade union members and intimidation by the former regime of the Associations of Commerce and Production of Venezuela. In 2018 ILO member countries voted to establish an ILO Commission of Inquiry against Venezuela to investigate longstanding complaints first lodged in 2015 of labor rights violations of ILO Conventions No. 26, 87, and 144, which pertain to minimum-wage fixing, freedom of association and protection of the right to organize, and tripartite consultation, respectively. In October the commission issued its report to the director general, noting that the former regime had repeatedly committed violations of international conventions on minimum wage, freedom of association and the right to organize, and labor standards. It also called for “the immediate release of any employer or trade unionist who may be in prison as a result of carrying out the legitimate activities of
their workers’ or employers’ organization.”

Organized labor activists continued to report that the annual requirement to provide the Ministry of Labor a membership roster was onerous and infringed on freedom of association. They alleged the ministry removed member names from the rosters for political purposes, particularly if members were not registered to vote with the CNE. Labor leaders also criticized the laborious and costly administrative process of requesting CNE approval for elections and subsequent delays in the CNE’s recognition of such union processes. In addition, there reportedly was a high turnover of Ministry of Labor contractors, resulting in a lack of timely follow-through on union processes. Labor unions in both the private and public sectors noted long delays in obtaining CNE concurrence to hold elections and in receiving certification of the election results, which hindered unions’ ability to bargain collectively.

The former Maduro regime continued to support many “parallel” unions, which sought to dilute the membership and effectiveness of traditional independent unions. The former regime excluded from consideration other, independent union federations, including the Confederation of Venezuelan Workers, General Confederation of Venezuelan Workers, Confederation of Autonomous Unions of Venezuela, and National Union of Workers.

The former regime continued to refuse to adjudicate or otherwise resolve the cases of 19,000 employees of the state oil company (PDVSA) who were fired during and after the 2002-03 strike. The Ministry of Labor continued to deny registration to the National Union of Oil, Gas, Petrochemical, and Refinery Workers.

The concept of striking, demonized since the 2002 national security law, was used periodically as a political tool to accuse regime opponents of coup plotting or other destabilizing activities. Some companies, especially in the public sector, had multiple unions with varying degrees of allegiance to the ruling party’s version of the “socialist revolution,” which could trigger interunion conflict and strife.

NGOs reported the former regime continued harassment of unions by prosecuting union members in military courts. Ruben Gonzalez, secretary general of miners’ union Sintraferrominera, was arrested in November 2018 after participating in a protest for collective bargaining rights and salary increases. In August a military tribunal sentenced Gonzalez to five years and nine months in prison for “outrage” to the armed forces and the GNB. Union leaders described Gonzalez’s arrest as part of the former regime’s efforts to eliminate the union and install a more pliant,
parallel union while a new collective agreement is negotiated.

b. Prohibition of Forced or Compulsory Labor

The law prohibits some forms of forced or compulsory labor but does not provide criminal penalties for certain forms of forced labor. The law prohibits human trafficking by organized crime groups through its law on organized crime, which prescribes penalties sufficient to deter violations for the human trafficking of adults carried out by a member of an organized-crime group of three or more individuals. The organized-crime law, however, fails to prohibit trafficking by any individual not affiliated with such a group. Prosecutors may employ other statutes to prosecute such individuals. The law increases penalties for child trafficking with the purpose of forced labor. There was no comprehensive information available regarding the former regime’s enforcement of the law. The labor group Autonomous Front in Defense of Employment, Wages, and Unions (FADESS) reported that public-sector worker agreements included provisions requiring service in the armed forces’ reserves.

There were reports of children and adults subjected to human trafficking with the purpose of forced labor, particularly in the informal economic sector and in domestic servitude (see section 7.c.). According to FADESS, more than 60,000 Cubans worked in the former Maduro regime social programs (such as the Mission Inside the Barrio) in exchange for the regime’s provision of oil resources to the Cuban government. FADESS noted Cubans worked in the Ministries of Education, Registrar, Notary, Telecommunications, and Security. FADESS also cited that the G-2 Cuban security unit was present in the armed forces and in state enterprises. Some Cuban medical personnel who participated in the social program Mission Inside the Barrio described indicators of forced labor, including underpayment of wages, mandatory long hours, limitations on movement, forced political indoctrination, and threats of retaliatory actions against workers and their families if they left the program. The Cuban government acknowledged that it withheld the passports of Cuban medical personnel in the country.

The law does not sufficiently prohibit the trafficking of boys and requires proof of the use of deception, coercion, force, violence, threats, abduction, or other fraudulent means to carry out the offense of trafficking of girls, including for commercial sexual exploitation.

Also see the Department of State’s Trafficking in Persons Report at https://www.state.gov/trafficking-in-persons-report/.
c. Prohibition of Child Labor and Minimum Age for Employment

The law prohibits all the worst forms of child labor. The law sets the minimum employment age at 14. Children younger than 14 may work only if granted special permission by the National Institute for Minors or the Ministry of Labor. Such permission may not be granted to minors who are younger than the legal age for work in hazardous occupations that risk their life or health or could damage their intellectual or moral development. According to the ILO, the former Maduro regime had not made publicly available the list of specific types of work considered hazardous. Children ages 14 to 18 may not work without permission of their legal guardians or in occupations expressly prohibited by law, and they may work no more than six hours per day or 30 hours per week. Minors younger than 18 may not work outside the normal workday.

Anyone employing children younger than eight is subject to a prison term that is sufficient to deter violations. Employers must notify authorities if they hire a minor as a domestic worker. The former regime did not effectively enforce the law.

No information was available on whether or how many employers were sanctioned for violations. The former regime continued to provide services to vulnerable children, including street children, working children, and children at risk of working. There was no independent accounting of the effectiveness of these and other former regime-supported programs.

Most child laborers worked in the agricultural sector, street vending, domestic service, or in small and medium-size businesses, most frequently in family-run operations. There continued to be isolated reports of children exploited in domestic servitude, mining, forced begging, and commercial sexual exploitation (see section 6), many of whom could be victims of trafficking. A study by Cecodap found that child laborers composed up to 45 percent of those working in mines.

Some doctors participating in Cuba’s overseas medical program showed indicators of forced labor. These indicators included withholding of doctors’ travel documents and pay; restricting participants’ movement; using “minders” to conduct surveillance of participants outside of work; threatening to revoke medical licenses; and retaliating against family members by imposing criminal penalties, exile, and family separation if participants left the program or did not return to
Cuba as directed by government supervisors. Authorities did not investigate allegations of forced labor in the program. Additionally, doctors who deserted the program reported Cuban “minders” coerced them to indoctrinate the population into supporting the former Maduro regime and falsify records to bolster the number of individuals assisted.

d. Discrimination with Respect to Employment and Occupation

The constitution prohibits employment discrimination of every citizen. The law prohibits discrimination based on age, race, sex, social condition, creed, marital status, union affiliation, political views, nationality, disability, or any condition that could be used to lessen the principle of equality before the law. No law specifically prohibits employment discrimination based on sexual orientation, gender identity, or HIV/AIDS status. Media and NGOs, such as PROVEA and the Human Rights Center at the Andres Bello Catholic University, reported the regime had a very limited capacity to address complaints and enforce the law in some cases and lacked political will in some cases of active discrimination based on political motivations.

NGOs reported public employees faced discrimination for their political beliefs or activities. According to Aula Abierta, 4,876 public servants were dismissed from their jobs for political reasons in 2018. In April SEBIN detained two employees of the Central Bank of Venezuela for participating in a meeting of public workers with Interim President Guaido, according to PROVEA.

e. Acceptable Conditions of Work

The former Maduro regime raised the national minimum wage, but it remained below the poverty line. Labor experts noted the unilateral nature of the decision contravened ILO Convention No. 26 requiring the government to consult with employers and workers prior to enacting wage increases. Legislators noted the decree violated the law, since it supplanted collective bargaining agreements. Union leaders from the petroleum, health, telecommunications, and electricity sectors highlighted that the wage-raise decree did not include wage adjustments to keep up with hyperinflation and thus remained insufficient to afford the basic food basket. It also violated the law by nullifying previously signed collective bargaining agreements, including wage tables that scaled salaries to account for seniority and merit pay.

The trade union of the industrial sector (CONINDUSTRIA) stated that only 2,500
of the 15,000 industries existing in 2000 remained as of June.

The law sets the workweek at 40 hours (35 hours for a night shift). The law establishes separate limits for “shift workers,” who may not work more than an average of 42 hours per week during an eight-week period, with overtime capped at 100 hours annually. Managers are prohibited from obligating employees to work additional time, and workers have the right to two consecutive days off each week. Overtime is paid at a 50 percent surcharge if a labor inspector approves the overtime in advance and at a 100 percent surcharge if an inspector does not give advance permission. The law establishes that, after completing one year with an employer, a worker has a right to 15 days of paid vacation annually. A worker has the right to an additional day for every additional year of service, for a maximum of 15 additional days annually.

The law provides for secure, hygienic, and adequate working conditions. Workplaces must maintain “protection for the health and life of the workers against all dangerous working conditions.” The law obligates employers to pay workers specified amounts for workplace injuries or occupational illnesses, ranging from two times the daily salary for missed workdays to several years’ salary for permanent injuries. Workers may remove themselves from situations that endanger health or safety without jeopardy to their employment. Penalties for violations of wage and hour and occupational safety and health laws were not sufficient to deter violations.

The law covers all workers, including temporary, occasional, and domestic workers. There was reportedly some enforcement by the Ministry of Labor of minimum wage rates and hours of work provisions in the formal sector, but 40 percent of the population worked in the informal sector, where labor law and protections generally were not enforced. The former regime did not enforce legal protections on safety in the public sector. According to PROVEA, while the National Institute for Prevention, Health, and Labor Security required many private businesses to correct dangerous labor conditions, the former regime did not enforce such standards in a similar manner in state enterprises and entities. There was no publicly available information regarding the number of inspectors or the frequency of inspections to implement health and safety, minimum wage, or hours of work provisions. Ministry inspectors seldom closed unsafe job sites. There was no information on whether penalties were sufficient to deter violations.

Official statistics regarding workplace deaths and injuries were not publicly available.
Tab #2
EXECUTIVE SUMMARY

Venezuela is formally a multiparty, constitutional republic, but for more than a decade, political power has been concentrated in a single party with an increasingly authoritarian executive exercising significant control over the legislative, judicial, citizens’ power (which includes the prosecutor general and ombudsman), and electoral branches of government. On May 20, the government organized snap presidential elections that were neither free nor fair for the 2019-25 presidential term. Nicolas Maduro was re-elected through this deeply flawed political process, which much of the opposition boycotted and the international community condemned. His illegitimate next term was scheduled to begin on January 10, 2019. The opposition gained supermajority (two-thirds) control of the National Assembly in the 2015 legislative elections. The executive branch, however, used its control over the Supreme Court (TSJ) to weaken the National Assembly’s constitutional role to legislate, ignore the separation of powers, and enable the president to govern through a series of emergency decrees.

Civilian authorities maintained effective, although politicized, control over the security forces.

Human rights issues included extrajudicial killings by security forces, including colectivos (government-sponsored armed groups); torture by security forces; harsh and life-threatening prison conditions; and political prisoners. The government restricted free expression and the press by routinely blocking signals, and interfering with the operations of, or shutting down, privately owned television, radio, and other media outlets. Libel, incitement, and inaccurate reporting were subject to criminal sanctions. The government used violence to repress peaceful demonstrations. Other issues included restrictions on political participation in the form of presidential elections in May that were not free or fair; pervasive corruption and impunity among all security forces and in other national and state government offices, including at the highest levels; trafficking in persons; and the worst forms of child labor, which the government made minimal efforts to eliminate.

The government took no effective action to investigate officials who committed human rights abuses, and there was impunity for such abuses.

Section 1. Respect for the Integrity of the Person, Including Freedom from:
VENEZUELA

a. Arbitrary Deprivation of Life and Other Unlawful or Politically Motivated Killings

Although the government did not release statistics on extrajudicial killings, nongovernmental organizations (NGOs) reported national, state, and municipal police entities, as well as the armed forces and government-supported colectivos, carried out such killings during the year.

There was also no official information available on the number of public officials prosecuted or sentenced to prison for involvement in extrajudicial killings, which, in the case of killings committed by police, were often classified as “resistance to authority.” The NGO Committee for the Families of Victims of February-March 1989 (COFAVIC) continued to report there was no publicly accessible national registry of reported cases of extrajudicial killings.

On January 15, approximately 400 government security forces, including the National Guard (GNB), Special Actions Force (FAES), Venezuelan National Police (PNB), National Antiextortion and Kidnapping Command, and Directorate General of Military Counterintelligence (DGCIM), raided a home in El Junquito, a residential community less than an hour from the nation’s capital, and killed seven persons, including Oscar Perez, a former officer in the National Police Scientific, Penal, and Criminal Investigative Corps (CICPC). Perez, according to government reports, had stolen a military airplane and dropped four hand grenades at a government building in July without causing structural damage or injury.

According to information presented in the UN’s Office of the High Commissioner on Human Rights (OHCHR) June report on human rights violations in the country, “[a]lthough the group had initiated negotiations with commanders of the GNB to surrender, officers received counterorders from the Strategic Operational Command to use lethal force and execute all members of the group once they had been subdued.” Perez had released a series of videos on social media during the siege in which the group’s negotiations with security forces could be heard. Death certificates revealed all seven individuals were shot in the head and killed. Many local NGOs termed the raid a massacre.

According to investigative journalists, 147 individuals younger than age 20 were killed in the Caracas metropolitan area between January and August. Of those deaths, 65 were committed by police. FAES, a specialized CICPC unit created by President Maduro in 2017 to quash “terrorist gangs” participating in large-scale countrywide protests, continued to be one of the deadliest. Between May and
November 2017, FAES committed 31 percent of homicides by security forces. FAES tactics resembled the government’s nationwide anticrime strategy begun in 2015, the Operation for the Liberation and Protection of the People (OLP), which was characterized by large-scale raids conducted by hundreds of government security agents in neighborhoods allegedly harboring criminals. NGOs reported that during OLP operations, officials committed grave human rights violations, including extrajudicial killings, arbitrary detentions, blackmail, torture, and destruction of property.

There were no developments in the cases of protesters killed in 2017. Government and NGO sources estimated at least 125 persons were killed in protests from April through July 2017. The Public Ministry reported 65 percent were victims of government repression. The NGO Foro Penal put the number at 75 percent, with colectivos responsible for half the deaths and the remainder divided between PNB and GNB forces. The NGO Venezuelan Program for Human Rights Action and Education (PROVEA) estimated that 83 percent of regime victims died from gunshot wounds. On numerous occasions security forces also used nonlethal ammunition at close range, severely injuring and in some cases killing protesters. Following the four months of antiregime protests, in September 2017 the government appointed a new attorney general, Tarek William Saab, who reopened investigations conducted during his predecessor’s tenure to undo the previous findings that held government security forces and colectivos responsible for widespread, violent repression.

According to NGOs, prosecutors occasionally brought cases against perpetrators of extrajudicial killings, but prosecutions often resulted in light sentences, and convictions were often overturned on appeal.

b. Disappearance

There were no reports of disappearances by or on behalf of government authorities.

c. Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment

Although the constitution prohibits such practices, there were credible reports that security forces tortured and abused detainees. There were no reports of any government officials being charged under the law.

The Office of the Human Rights Ombudsman did not publish statistics regarding
allegations of torture by police during the year. Several NGOs detailed cases of widespread torture and “cruel, inhuman, and degrading treatment.” Human rights groups reported the government continued to influence the attorney general and public defenders to conduct investigations selectively and subjectively. No data was available on investigations, prosecutions, or convictions in cases of alleged torture. Foro Penal maintained that hundreds of cases were not reported to government institutions because victims feared reprisal.

Press and NGO reports of beatings and humiliating treatment of suspects during arrests were common and involved various law enforcement agencies and the military. Torture and other cruel, inhuman, or degrading treatment or punishment of prisoners were reported during the year. Cruel treatment frequently involved authorities denying prisoners medical care and holding them for long periods in solitary confinement. The latter practice was most prevalent with political prisoners. NGOs also published reports that authorities generally mistreated, sexually abused, and threatened to kill detainees.

NGOs detailed reports from detainees whom authorities allegedly sexually abused, threatened with death, and forced to spend hours on their knees in detention centers. Foro Penal reported multiple instances of political prisoners denied adequate medical treatment while in government custody. Foro Penal noted instances in which authorities transferred detainees to a medical facility, where instead of receiving treatment, detainees were interrogated by security officials. The executive director of the Casla Institute for the Study of Latin America, Tamara Suju, and human rights lawyer Juan Carlos Gutierrez denounced 357 cases of physical abuse, alleged torture, and violence by security forces against political prisoners before the International Criminal Court. Among the 357 cases, there were 190 allegations of rape or sexual abuse.

**Prison and Detention Center Conditions**

Most prison conditions were harsh and life threatening due to gross overcrowding, food shortages, inadequate sanitary conditions and medical care, systemic violence, and poor infrastructure. Armed gangs effectively controlled some prisons in which they were incarcerated. Conditions were most acute in pretrial detention facilities such as police station jails.

**Physical Conditions:** The Ministry of Penitentiary Services reported there were 51,693 inmates in the country’s 41 prisons and penitentiaries and an estimated 33,000 inmates in police station jails in 2017. NGOs reported records for detainees
were not properly maintained and often contained incomplete information. According to the NGO A Window to Liberty (UVL), the capacity was approximately 19,000 inmates for penitentiaries and 5,000 for police station jails. Overcrowding was 172 percent for penitentiaries and 415 percent for police station jails on average, although the NGO Venezuelan Observatory for Prisons (OVP) noted that in some jails the overcrowding ranged from 800 to 1,200 percent.

There were two women’s prisons, one in Miranda State and the other in Zulia State. The law stipulates women in mixed prisons must be held in annexes or separate women’s blocks. A local NGO reported that in practice male and female prisoners intermingled. Security forces and law enforcement authorities often held minors together with adults, even though separate facilities existed. Because institutions were filled beyond capacity, hundreds of children accused of infractions were confined in juvenile detention centers, where they were reportedly crowded into small, unsanitary cells.

The CICPC and police station jails and detention centers also were overcrowded, causing many police station offices to be converted into makeshift prison cells. Prisoners reportedly took turns sleeping on floors and in office chairs, and sanitation facilities were inadequate or nonexistent. A 2017 UVL study of 89 facilities holding pretrial detainees revealed 432 percent overcrowding. According to the study, more than 80 percent of facilities provided no medical services, recreational areas, designated visiting areas, or laundry facilities. More than 60 percent did not have potable water, and more than 50 percent did not have regular trash collection or proper restrooms.

The GNB and the Ministry of Interior, Justice, and Peace have responsibility for prisons’ exterior and interior security, respectively. The government failed to provide adequate prison security. The OVP estimated a staffing gap of 90 percent for prison security personnel, with only one guard for every 100 inmates, instead of one for every 10 as recommended by international standards. The OVP reported 173 prisoner deaths and 268 serious injuries in 2016, the most recent year for which information was available. The OVP assessed that 90 percent of prison deaths were violent, resulting from prisoner-on-prisoner altercations, riots, and fires. The OVP reported some inmates also succumbed to the generally unsanitary and unsafe conditions prevalent in prisons. During the March 2017 renovation of Guarico State’s central prison, the construction team discovered 14 bodies in a shallow grave. The case remained under investigation at year’s end but highlighted uncertainty over the true number of annual prison deaths.
During the year prison and detention center riots resulted in inmate deaths and injuries. For example, on March 28, a fire erupted in an overcrowded police station in Valencia, Carabobo State, killing 66 male prisoners and two female visitors; more than 100 persons received burns in the fire. Media reported that after an argument with a guard, a group of prisoners lit their bed linens on fire. Many NGOs called the fire a massacre, noting some prisoners died from the fire itself, while others died of physical trauma or gunshot wounds.

A 2016 law limiting cell phone and internet availability inside prisons to prevent inmates from using the technology to engage in criminal activity remained unimplemented. Minister of Penitentiary Affairs Iris Varela admitted communicating with inmates by cell phone immediately before and during the 2017 Puente Ayala prison riot. There were credible reports that Varela may have had a hand in directing the violence, including her own admission to that effect during a media interview.

The UVL reported authorities required family members to provide food for prisoners at police station jails throughout the country due to inadequate provisioning of food by the prison administration. According to a UVL report, in 2017 at least 28 inmates died from complications associated with malnutrition and preventable disease such as tuberculosis. The OVP reported that due to inadequate nutrition plans and lack of potable water, stomach illnesses were common among inmates.

On February 24, Vista Hermosa prison inmate Alejandro Manuel Mago Coraspe was admitted into a local Bolivar state hospital after he fell ill, apparently from eating poisoned rodents. Vista Hermosa prisoners customarily ate wild birds and rodents to survive, according to Mago Coraspe. After undergoing surgery, he explained to journalists that he customarily killed and cooked rats but had most recently eaten rats he found in the prison garbage that were potentially poisoned. According to reports from Mago Coraspe’s family, prison guards beat him severely upon his return to the prison, allegedly for having spoken to media members. According to media reports, a judge ordered Mago Coraspe to serve out the remainder of his sentence under house arrest. Prison authorities disregarded the order, and Mago Coraspe died in prison on April 24.

The government restricted information regarding deaths in prisons from tuberculosis, HIV/AIDS, and other diseases or from lack of medical care. A study by the NGO Solidarity Action found prison rules regarding the classification of inmates resulted in the isolation of those with HIV/AIDS in “inadequate spaces
without food and medical attention.” The OVP reported a generalized lack of medical care, drugs, equipment, and physicians for prisoners. Inmates often received the same pills regardless of their symptoms, and pregnant women lacked adequate facilities for their medical attention.

Administration: The Ministry of Penitentiary Services did not respond to requests from the OVP, UVL, other human rights organizations, inmates, or families regarding inmates or investigations of the harsh conditions that led to hunger strikes or violent uprisings.

Prisoners and detainees generally had access to visitors, including some with overnight privileges, but in some cases prison officials harassed or abused visitors. Prison officials imposed significant restrictions on visits to political prisoners. When allowed access, visitors were at times subjected to strip searches.

Independent Monitoring: Human rights observers continued to experience lengthy delays and restrictions in gaining access to prisons and detention centers. Authorities had not approved requests by the International Committee of the Red Cross (ICRC) to visit penitentiary centers and interview inmates in confidentiality since 2013. More than 300 lay members from the Venezuelan Episcopal Conference of the Roman Catholic Church volunteered in 40 prisons. Although prohibited from formally entering prisons, Catholic laity visited prisoners on family visitation days.

d. Arbitrary Arrest or Detention

The constitution prohibits the arrest or detention of an individual without a judicial order and provides for the accused to remain free while being tried, but judges and prosecutors often disregarded these provisions. The law provides for the right of persons to challenge the lawfulness of their arrest or detention in court, but the government generally did not observe this requirement. While NGOs such as Foro Penal, COFAVIC, the Institute for Press and Society, Espacio Publico, and PROVEA noted at least 2,000 open cases of arbitrary detentions, authorities rarely granted them formal means to present their petitions. Authorities arbitrarily detained individuals, including foreign citizens, for extended periods without criminal charges.

Role of the Police and Security Apparatus

The GNB--a branch of the military that reports to both the Ministry of Defense and
the Ministry of Interior, Justice, and Peace--is responsible for maintaining public order, guarding the exterior of key government installations and prisons, conducting counternarcotics operations, monitoring borders, and providing law enforcement in remote areas. The Ministry of Interior, Justice, and Peace controls the CICPC, which conducts most criminal investigations, and the Bolivarian National Intelligence Service (SEBIN), which collects intelligence within the country and abroad, and is responsible for investigating cases of corruption, subversion, and arms trafficking. SEBIN maintained its own detention facilities separate from those of the Ministry of Penitentiary Services. Police include municipal, state, and national police forces. Mayors and governors oversee municipal and state police forces. The PNB reports to the Ministry of Interior, Justice, and Peace. According to its website, the PNB largely focused on policing Caracas’s Libertador municipality; patrolling Caracas-area highways, railways, and metro system; and protecting diplomatic missions. The PNB maintained a minimal presence in seven of the country’s 23 states.

Corruption, inadequate police training and equipment, and insufficient central government funding, particularly for police forces in states and municipalities governed by opposition officials, reduced the effectiveness of the security forces. There were continued reports of police abuse and involvement in crime, including illegal and arbitrary detentions, extrajudicial killings, kidnappings, and the excessive use of force.

Impunity remained a serious problem in the security forces. The Public Ministry is responsible for initiating judicial investigations of security force abuses. The Office of Fundamental Rights in the Public Ministry is responsible for investigating cases involving crimes committed by public officials, particularly security officials.

According to the Public Ministry’s 2016 annual report (the most recent one available), the Office of Fundamental Rights cited 13,343 specific actions taken to “process claims” against police authorities for human rights abuses and charged 320 with violations. Neither the Attorney General’s Office nor the Office of the Human Rights Ombudsman provided information regarding alleged human rights violations committed by police and military personnel.

State and municipal governments also investigated their respective police forces. By law the national, state, and municipal police forces have a police corps disciplinary council that takes action against security officials who commit abuses. The National Assembly also may investigate security force abuses.
The government at both the local and national levels took few actions to sanction officers involved in abuses. According to the NGO Network of Support for Justice and Peace, the lack of sufficient prosecutors made it difficult to prosecute police and military officials allegedly involved in human rights abuses. In addition NGOs reported the following problems contributed to an ineffective judicial system: long procedural delays, poor court administration and organization, lack of transparency in investigations, and impunity of government officials. In June 2017 Human Rights Watch reported the then attorney general Luisa Ortega Diaz had opened investigations in more than 600 cases of injury caused during the protests that began in April 2017. In at least 10 cases, her office charged security forces with unlawful killings of demonstrators or bystanders. After her removal, her successor did not pursue the cases.

NGOs and police noted that many victims did not report violent crimes to police or other authorities due to fear of retribution or lack of confidence in the police and that the actual occurrence was likely far higher than what was reported.

**Arrest Procedures and Treatment of Detainees**

While a warrant is required for an arrest, detention is permitted without an arrest warrant when an individual is apprehended in the act of committing a crime or to secure a suspect or witness during an investigation. Police often detained individuals without a warrant. The law mandates that detainees be brought before a prosecutor within 12 hours and before a judge within 48 hours to determine the legality of the detention; the law also requires that detainees be informed promptly of the charges against them. Authorities routinely ignored these requirements.

Although the law provides for bail, it is not available for certain crimes. Bail also may be denied if a person is apprehended in the act of committing a crime or if a judge determines the accused may flee or impede the investigation. The law allows detainees access to counsel and family members, but that requirement was often not met, particularly for political prisoners. The constitution also provides any detained individual the right to immediate communication with family members and lawyers who, in turn, have the right to know a detainee’s whereabouts. A person accused of a crime may not be detained for longer than the possible minimum sentence for that crime or for longer than two years, whichever is shorter, except in certain circumstances, such as when the defendant is responsible for the delay in the proceedings.
Arbitrary Arrest: Foro Penal reported 498 cases of arbitrary detention between January 1 and November 15, compared with 5,462 protest-related cases of arbitrary detention from April through December 2017. Opposition politicians and human rights NGOs attributed the reduction largely to a significant decrease in large-scale protests following National Constituent Assembly (ANC) elections in July 2017.

Caracas municipal councilmember Fernando Alban died on October 8 while in SEBIN custody. SEBIN officials had arrested Alban upon his return from a foreign trip on October 5 and held him in detention as a suspect in the August 4 drone attack believed to have been a presidential assassination attempt. Attorney General Tarek William Saab reported via social media and press statements that Alban jumped from a 10th-floor bathroom window, while Minister of Interior Nestor Reverol stated Alban jumped from a 10th-floor waiting room. NGOs and members of the opposition denounced these conflicting stories and alleged Alban was murdered.

Pretrial Detention: Pretrial detention remained an egregious problem. According to the OVP, approximately 79 percent of the prison population was in pretrial detention. According to the Public Ministry, in 2016 only 21 percent of trials concluded or reached sentencing. The NGO Citizen Observatory of the Penal Justice System attributed trial delays to the shortage of prosecutors and penal judges (4.7 penal judges per 100,000 inhabitants in 2010, the latest date for which information was available).

Despite constitutional protections that provide for timely trials, judges reportedly scheduled initial hearings months after the events giving rise to the cause of action. An automated scheduling system was ineffective at streamlining case logistics. Proceedings were often deferred or suspended when an officer of the court, such as the prosecutor, public defender, or judge, failed to attend.

According to the Public Ministry’s 2015 annual report (the most recent available), the ministry pressed charges in 9.7 percent of the 556,000 cases involving common crimes. The ministry reported the closure of the remainder of the complaints but did not indicate final outcomes. Prisoners reported to NGOs that a lack of transportation and disorganization in the prison system reduced their access to the courts and contributed to trial delays.

Detainee’s Ability to Challenge Lawfulness of Detention before a Court: Detained individuals may challenge the grounds for their detention, but proceedings were often delayed and hearings postponed, stretching trials for years. Courts frequently
disregarded defendants’ presumption of innocence. Authorities often failed to
allow detainees to consult with counsel or access their case records when filing
challenges. Some detainees remained on probation or under house arrest
indefinitely.

e. Denial of Fair Public Trial

The constitution provides for an independent judiciary, but the judiciary lacked
independence and generally judged in favor of the government at all levels. There
were credible allegations of corruption and political influence throughout the
judiciary. According to reports from the International Commission of Jurists, 66 to
80 percent of all judges had provisional appointments and were subject to removal
at will by the TSJ Judicial Committee. Provisional and temporary judges, who
legally have the same rights and authorities as permanent judges, allegedly were
subjected to political influence from various ministries and the newly appointed
attorney general to make progovernment determinations. There was a general lack
of transparency and stability in the assignments of district attorneys to cases and a
lack of technical criteria for assigning district attorneys to criminal investigations.
These deficiencies hindered the possibility of bringing offenders to justice and
resulted in a 90 percent rate of impunity for common crimes and a higher
percentage of impunity for cases of alleged human rights violations.

Trial Procedures

The law provides for the right to a fair and public trial with oral proceedings for all
individuals. By law defendants are considered innocent until proven guilty. The
law requires that detainees be informed promptly of the charges against them, but
the requirement was often ignored and, even when respected, involved dubious
allegations, according to human rights organizations. Defendants have the right to
consult with an attorney. According to the Office of the Human Rights
Ombudsman, there were approximately 1,500 public defenders in 2017, but
indigent defendants’ right to free counsel was often not respected because of
attorney shortages. Free interpretation was often not available to defendants.
Some NGOs provided pro bono counsel to defendants.

Defendants may request no fewer than 30 days and no more than 45 days to
prepare their defense. Defendants have the right to question adverse witnesses and
present their own witnesses. By law defendants may not be compelled to testify or
confess guilt. Defendants and plaintiffs have the right of appeal.
Trial delays were common. Trials “in absentia” are permitted in certain circumstances, although opponents of the procedure claimed the constitution prohibits such trials. The law also states that, in the absence of the defense attorney, a trial may proceed with a public defender that the court designates. The law gives judges the discretion to hold trials behind closed doors if a public trial could “disturb the normal development of the trial.”

At the January 31 hearing of Judge Maria Lourdes Afiuni, the judge did not set a date for the next phase of her trial, when it was expected a verdict would be announced. Afiuni was accused of corruption and abuse of authority for her 2009 decision conditionally to release a businessman who had been held in pretrial detention beyond the maximum time prescribed by law. Afiuni continued to be subjected to protective measures in place since her release to house arrest in 2011 that mandate she may not leave the country, talk to media, or use social media, although the law states such measures may not last more than two years.

The law mandates that municipal courts handle “less serious” crimes, i.e., those carrying maximum penalties of imprisonment of less than eight years. Municipal courts may levy penalties that include three to eight months of community service. Besides diverting some “less serious” crimes to the municipal courts, this diversion also permits individuals accused of “lesser crimes” to ask the courts to suspend their trials conditionally in exchange for their admission of responsibility, commitment to provide restitution “in a material or symbolic form,” community service, or any other condition imposed by the court.

The law provides that trials for military personnel charged with human rights abuses after 1999 be held in civilian rather than military courts. In addition, under the Organic Code of Military Justice, an individual may be tried in the military justice system for “insulting, offending, or disparaging the national armed forces or any related entities.” NGOs and the Inter-American Commission on Human Rights (IACHR) expressed concern with the government’s practice of trying civilians under the military justice system for protests and other actions not under military jurisdiction. According to Foro Penal, military courts processed at least 35 civilians between January 1 and August 1.

**Political Prisoners and Detainees**

The government used the judiciary to intimidate and selectively prosecute individuals critical of government policies or actions. The regime reportedly continued the policy it began in 2012 of denying the ICRC access to prisons. Foro
Penal reported 286 political prisoners in government custody as of November 18, down from 676 political prisoners reported at the height of 2017’s wave of political protests but well above averages recorded in 2015 and 2016. The government routinely held political prisoners in SEBIN installations or the Ramo Verde military prison without an explanation of why they were not being held in civilian detention facilities.

On June 2, the government provisionally released opposition coalition leader Roberto Picon and former San Cristobal mayor Daniel Ceballos. The two, like many others released immediately following the May 20 elections, were prohibited from leaving the country or speaking to media, and they were required to appear before a judge on a monthly basis. Ceballos was released from the Ramo Verde military detention facility, where prison authorities routinely held him in solitary confinement and denied him visitation. Picon was released from house arrest, which the government granted in December 2017, as part of a larger “good will” pardon. According to media reports and NGO representatives, SEBIN arrested Picon in June 2017 without an arrest warrant. At a military hearing on charges of rebellion and theft of items belonging to the military, NGO representatives claimed the prosecution entered evidence that included a paperweight and a reference to the Inter-American Democratic Charter.

The government increased its attack against civil liberties after an alleged failed presidential assassination attempt on August 4. On August 7, masked men abducted National Assembly Deputy Juan Requesens from his home during a nationally televised presidential address in which Maduro accused Requesens of involvement in the alleged August 4 attack. On August 9, the government released a video of a disheveled Requesens admitting he had information on one of the assassination plotters. On August 10, a second video appeared on social media showing Requesens, visibly weak and naked aside from his notably soiled underwear. Despite daily requests from his lawyer and family members, government authorities granted Requesens only two visits--September 21 and October 7--following his detention on August 7. According to reports, Requesens was held in solitary confinement for 23 hours a day. As of December 6, his detention conditions had improved slightly under new SEBIN leadership. Nevertheless, Requesens was not receiving medical attention in a timely fashion, and due process had yet to be afforded in his case.

As of October 1, jailed opposition party leader and former Chacao municipality mayor Leopoldo Lopez remained under house arrest and barred from communicating with individuals outside his home.
Civil Judicial Procedures and Remedies

While there are separate civil courts that permit citizens to bring lawsuits seeking damages, there are no procedures for individuals or organizations to seek civil remedies for human rights violations.

f. Arbitrary or Unlawful Interference with Privacy, Family, Home, or Correspondence

The constitution provides for the inviolability of the home and personal privacy, but the government generally did not respect these prohibitions. In some cases government authorities searched homes without judicial or other appropriate authorization, seized property without due process, or interfered in personal communications. FAES and other security forces regularly conducted indiscriminate household raids.

Section 2. Respect for Civil Liberties, Including:

a. Freedom of Expression, Including for the Press

The law provides for freedom of expression, including for the press, but the combination of laws and regulations governing libel and media content as well as legal harassment, physical intimidation of individuals and media, and executive influence on the judiciary resulted in significant repression of these freedoms. National and international groups, such as the IACHR, Human Rights Watch, Freedom House, the Inter American Press Association, Reporters without Borders, and the Committee to Protect Journalists, condemned government efforts throughout the year to restrict press freedom and create a climate of fear and self-censorship.

Freedom of Expression: The law makes insulting the president punishable by six to 30 months in prison without bail, with lesser penalties for insulting lower-ranking officials. In November 2017, however, the ANC gave final approval to the Constitutional Law against Hate, for Political Coexistence and Tolerance, which stipulates prison sentences of up to 20 years. While the government stated the purpose of the law was to “promote peace and tolerance,” NGOs observed the vaguely written law could be used to silence political parties, activists, and civil society leaders as well as media outlets and journalists. Comments exposing another person to public contempt or hatred are punishable by prison sentences of
one to three years and fines.

On September 16, DGCIM officers detained Merida state firefighters Ricardo Prieto Parra and Carlos Varon Garcia on charges of “instigating hate” after a satirical video they produced of a donkey depicted as President Maduro received wide publicity on social media. Prieto Parra and Varon Garcia faced up to 20 years in prison for the alleged crime.

Hospital worker Lenny Josefina Martinez Gonzalez remained in prison as of October 8, awaiting trial after SEBIN arrested her in October 2017 for photographing women giving birth in a hospital waiting room. The photographs, captured in Lara State, illustrated the country’s medical crisis and were widely viewed on social media.

Press and Media Freedom: The law provides that inaccurate reporting that disturbs the public peace is punishable by prison terms of two to five years. The requirement that media disseminate only “true” information was undefined and open to politically motivated interpretation. Human Rights NGO Espacio Publico counted 92 acts of censorship between January and June, as well as 73 attacks on journalists and reporters. Meanwhile, the local journalists’ union (SNTP) counted 26 “closures, sanctions, and blockings” of outlets and 87 attacks on journalists during the same period.

The law prohibits all media from disseminating messages that incite or promote hate or intolerance for religious, political, gender-related, racial, or xenophobic reasons; incite, promote, or condone criminal acts; constitute war propaganda; foment anxiety in the population or affect public order; do not recognize legitimate government authorities; incite homicide; or incite or promote disobedience to the established legal order. Penalties range from fines to the revocation of licenses. The threat of nonrenewal of operating licenses systematically led to self-censorship on the part of several media outlets.

Despite such laws President Maduro and the ruling United Socialist Party (PSUV) used the nearly 600 government-owned or -controlled media outlets to insult and intimidate the political opposition throughout the year. ANC president Diosdado Cabello continued to use his weekly television program to denounce individual journalists and media outlets, according to observers.

The law declares telecommunications a “public interest service,” thereby giving the government authority to regulate the content and structure of the radio,
television, and audiovisual production sectors. The law provides that the
government may suspend or revoke licenses when it judges such actions necessary
in the interests of the nation, public order, or security. The law empowers the
government to impose heavy fines and cancel broadcasts for violations of its
norms; the National Telecommunications Commission (CONATEL) oversees the
law’s application.

The government continued legal actions against high-profile independent media
outlets *Tal Cual*, *El Nacional*, *El Nuevo Pais*, *La Patilla*, *El Pitazo*, and
Globovision. In May a court found *El Nacional*, the nation’s largest independent
daily newspaper, guilty of “moral damage” against Cabello for republishing a
critical article from the Spanish newspaper *ABC* and ordered the newspaper to pay
a fine of one billion bolivares fuertes ($10,400).

The NGO Espacio Publico reported 219 violations of freedom of expression
between January and June. This represented a 72 percent decline from the
historically high numbers of 2017, but an 11 percent increase over the 2013-16
averages. The most common violations were aggressions against journalists and
censorship. State-owned and -influenced media provided almost continuous
progovernment programming. In addition private and public radio and television
stations were required to transmit mandatory nationwide broadcasts (*cadenas*)
throughout the year, including a daily 15-minute news broadcast that provided
reports and summaries of government achievements. Both Maduro and other
ruling-party officials utilized mandatory broadcast time to campaign for
progovernment candidates. Opposition candidates generally did not have access to
media broadcast time.

The law requires practicing journalists to have journalism degrees and be members
of the National College of Journalists, and it prescribes jail terms of three to six
months for those practicing the profession illegally. These requirements are
waived for foreigners and opinion columnists.

Violence and Harassment: Senior national and state government leaders continued
to harass and intimidate privately owned and opposition-oriented television
stations, media outlets, and journalists by using threats, property seizures,
administrative and criminal investigations, and prosecutions. Government
officials, including the president, used government-controlled media outlets to
accuse private media owners, directors, and reporters of fomenting antigovernment
destabilization campaigns and coup attempts.
Government officials also harassed foreign journalists working in the country. No charges were filed against GNB officers who allegedly attacked Elyangelica Gonzalez, a reporter for Univision Noticias and the Colombian-based station Caracol Radio, while she reported outside the Supreme Court in March 2017.

Censorship or Content Restrictions: In its 2016 report, the Venezuelan Institute of Press and Society (IPYS) noted the government’s preference for using legal proceedings, financial sanctions, and administrative actions against unfavorable news outlets instead of shutting them down outright. Members of the independent media stated they regularly engaged in self-censorship due to fear of government reprisals. This resulted in many journalists posting articles to their personal blogs and websites instead of publishing them in traditional media.

The government also exercised control over content through licensing and broadcasting requirements. CONATEL acted selectively on applications from private radio and television broadcasters for renewal of their broadcast frequencies. According to Nelson Belfort, former president of the Venezuelan Radio Chamber, and NGO reports, approximately 80 percent of radio stations were in “illegal” status throughout the country due to CONATEL’s not having renewed licenses for most radio stations since 2007.

According to the SNTP, during the year 25 print news outlets closed due to the government’s economic policies, which made it difficult for independent newspapers to access foreign currency, preventing many from purchasing critical supplies and equipment necessary for day-to-day business operations. During the first half of the year, five regional newspapers went out of print for lack of supplies, especially newsprint: Diario El Tiempo in Anzoategui State, El Impulso in Lara, El Oriental in Monagas, La Prensa de Barinas in Barinas, and La Region del Oriente in Sucre.

The government controlled a large portion of the country’s businesses and paid for advertising only with government-owned or government-friendly media.

Libel/Slander Laws: Government officials engaged in reprisals against individuals who publicly expressed criticism of the president or government policy. As of October 1, President Maduro had not acted on his June 2017 announcement that he would use slander laws to “defend his honor” in court against opposition leaders’ allegations that he was responsible for protest-related deaths.

National Security: The law allows the government to suspend or revoke licenses
when it determines such actions necessary in the interests of public order or security. The government exercised control over the press through a public entity, the Strategic Center for Security and Protection of the Homeland (CESPPA), established in 2013, which is similar to the governmental entity Center for National Situational Studies (CESNA) established in 2010. CESNA and CESPPA have similar mandates and are responsible for “compiling, processing, analyzing, and classifying” both government-released and other public information with the objective of “protecting the interests and objectives of the state.”

During the year President Maduro renewed three times the “state of exception” he first invoked in 2016, citing a continuing economic emergency, and granted himself the power to restrict rights otherwise provided for in the constitution. The 60-day emergency decree, which by law is renewable only once and requires National Assembly endorsement to be effective, allows the president to block any action he deems could “undermine national security” or could “obstruct the continuity of the implementation of economic measures for the urgent reactivation of the national economy.” The National Assembly continued systematically to refuse to ratify each renewal, and the Supreme Court annulled each refusal, reasoning that the assembly’s “contempt” status made its failure to endorse the renewal “unconstitutional.” According to Human Rights Watch, the “state of exception” negatively affected the rights to freedom of association and expression.

Nongovernmental Impact: Widespread violence in the country made it difficult to determine whether attacks on journalists resulted from common criminal activity or whether criminals or others targeted media members.

Internet Freedom

The government restricted or disrupted access to the internet and censored online content. The executive branch exercised broad control over the internet through the state-run CONATEL. Free Access, an NGO focused on freedom of expression and social justice, reported that CONATEL supported monitoring of private communications and repression of internet users who expressed dissenting opinions online. According to media reports, users of social networks accused CONATEL of monitoring their online activity and passing identifying information to intelligence agencies, such as SEBIN. According to Free Access, CONATEL provided information to SEBIN, including internet protocol addresses, which assisted authorities in locating the users.

The law puts the burden of filtering prohibited electronic messages on service
providers, and it allows CONATEL to order service providers to block access to websites that violate these norms and sanctions them with fines for distributing prohibited messages. IPYS reported that from 2017 to November, local internet providers following CONATEL orders blocked access to eight online outlets, including *El Nacional*, *La Patilla*, *Runrunes*, *Cronica Uno*, *Armando.Info*, and *El Pitazo*.

CONATEL’s director, Jorge Elieser Marquez Monsalve, reiterated the claims of his predecessors that CONATEL’s role is to enforce the law and prevent dissemination of illegal information or material unsuitable for children and adolescents. Nevertheless, the government continued to block internet sites that posted dollar- and euro-to-bolivar currency exchange rates differing from the government’s official rate. The government-owned internet service provider CANTV facilitated blockages.

Intelligence agencies, which lacked independent oversight, conducted surveillance for political purposes. Courts relied on evidence obtained from anonymous *patriotas cooperantes* (cooperating patriots) to harass perceived opponents of the government, and senior government officials used personal information gathered by patriotas cooperantes to intimidate government critics and human rights defenders.

According to the International Telecommunication Union, 64 percent of the population used the internet in 2017.

**Academic Freedom and Cultural Events**

There were no substantive reports of government restrictions on cultural events, but there were some government restrictions on academic freedom. Aula Abierta (Open Classroom), a local human rights NGO focused on academic freedoms, reported the government retaliated against opposition-oriented autonomous universities by providing insufficient funding and failing to adjust budgetary allocations to inflation. According to some university leaders, the 2018 budget allocation would not take them through the first semester. In September 2017 the National University Council, the government regulating body for university education, relinquished its functions to the ANC, disregarding the law requiring university autonomy. The government continued gradually increasing its control over local universities, including the admissions process. In 2015 the Ministry of Education began selecting at least 70 percent of those offered university seats using criteria based 50 percent on academic achievement, 30 percent on
socioeconomic conditions, 15 percent on residency, and 5 percent on involvement in social service activities. University leaders complained the student selection process unfairly advantaged ruling-party supporters and usurped authority from the universities.

In May the Ministry of Higher Education, Science, and Technology announced a nationwide university scholarship program that would reportedly benefit more than 50,000 university students. According to the ministry, students must have a *carnet de la patria* (homeland card, a government-issued social benefits card provided primarily to government supporters; see section 3, Political Parties and Political Participation) to qualify. In June the government similarly announced a financial incentive called the “student bonus” for cardholders with school-age children.

**b. Freedoms of Peaceful Assembly and Association**

**Freedom of Peaceful Assembly**

The constitution provides for this right, but the government generally repressed or suspended it. The law regulates the right to assembly. Human rights groups continued to criticize the law as enabling the government to charge protesters with serious crimes for participating in peaceful demonstrations. Ambiguous language in the law also allowed the government to criminalize organizations that were critical of the government. Protests and marches require government authorization in advance and are forbidden within designated “security zones.”

Citizens organized sporadic and often spontaneous small-scale protests throughout the year to demand basic services such as water and electricity. The government generally refrained from using the widespread, violent, and in some cases fatal responses they used to quash the 2017 protests, but NGOs reported cases of arbitrary detention and heavy-handed police tactics to quell protests.

**Freedom of Association**

The constitution provides for freedom of association and freedom from political discrimination, but the government did not respect these rights. Although professional and academic associations generally operated without interference, a number of associations complained that the TSJ and the National Electoral Council (CNE), which is responsible for convoking all elections and establishing electoral dates and procedures, repeatedly interfered with their attempts to hold internal elections.
A 2016 presidential decree called on the Foreign Ministry to suspend international funding to NGOs when “it is presumed” that the funding is used with “political purposes or for destabilization.” There were no reports the government implemented the decree during the year.

c. Freedom of Religion

See the Department of State’s International Religious Freedom Report at [www.state.gov/religiousfreedomreport/](http://www.state.gov/religiousfreedomreport/).

d. Freedom of Movement

The constitution provides for freedom of internal movement, foreign travel, emigration, and repatriation; however, the government did not respect these rights.

On October 5, the government announced the creation of a special migration police unit. Although some NGOs expressed concern the government would use the unit to restrict international travel of select individuals, the government asserted the force would essentially be customs and border patrol units. The government declared the migration police would provide citizen security at migration points and established 72 points of control to monitor the border situation and dispel what it called myths regarding a supposed Venezuelan migratory crisis.

The government did not cooperate with the Office of the UN High Commissioner for Refugees (UNHCR) and other humanitarian organizations in providing protection and assistance to refugees, asylum seekers, and other persons of concern.

Abuse of Migrants, Refugees, and Stateless Persons: With the refugee status determination process centralized at the National Refugee Commission (CONARE) headquarters in Caracas, asylum seekers often waited for years to obtain a final decision. During this period they had to continue renewing their documentation every three months to stay in the country and avoid arrest and deportation. While traveling to the commission, particularly vulnerable groups, such as women with young children, the elderly, and persons with disabilities, faced increased personal risks, such as arrest and deportation, extortion, exploitation, and sexual abuse by authorities at checkpoints and other locations.

On September 24, CONARE announced it would approve refugee applications for
54 Colombians who were awaiting approval. CONARE president Juan Carlos Aleman remarked the commission had more than 1,100 active requests for refugee status and that CONARE would respond to all of the requests in the next few months.

Arbitrary detentions continued but were reduced during the year. Security forces often used excessive force to control residents in states along the border with Colombia.

While no official statistics were available, a women’s shelter reported recurring problems with gender-based violence and trafficking of refugee women.

Also see the Department of State’s annual *Trafficking in Persons Report* at [www.state.gov/j/tip/rls/tiprpt/](http://www.state.gov/j/tip/rls/tiprpt/).

**In-country Movement:** The government restricted the movement of certain opposition leaders, preventing them from traveling on government-controlled airlines and refusing to allow them to board some domestic flights.

**Foreign Travel:** Obtaining a passport became increasingly difficult during the year. Prospective applicants waited overnight in lines and often did not receive passports even after years of delays. Some applicants reportedly paid several thousands of U.S. dollars to obtain a passport. The government repeatedly seized passports from journalists, members of the opposition, and National Assembly deputies at ports of entry without explanation as they attempted to depart the country.

**Exile:** There were new cases of citizens denied the right to return during the year. For example, the government released jailed University of Los Andes student leader Villca Fernandez on June 14, requiring that he leave the country as a condition of his release. SEBIN officials had arrested Fernandez in 2016 after he sent a tweet defending himself after then PSUV first vice president Diosdado Cabello threatened Fernandez on his weekly televised show. SEBIN officials reportedly tortured Fernandez, refused him medical attention, and kept him in solitary confinement, releasing him for less than 15 minutes at a time to use the bathroom.

**Protection of Refugees**

**Access to Asylum:** The law provides for the granting of asylum or refugee status,
and the government has established a system for providing protection to refugees. According to UNHCR, the vast majority of asylum seekers came from Colombia. UNHCR estimated there were 7,860 recognized refugees and 173,000 persons in need of international protection in the country in 2017. The majority of such persons remained without any protection. Despite the increased migration of Venezuelans to neighboring countries, NGOs supporting displaced Colombians noted many chose to remain in Venezuela despite the economic crisis, citing a cost of living comparatively lower than in Colombia, fear of violence, or the ease with which they could travel between the two nations without relocating. Most of the Colombians had not accessed procedures for refugee status determination due to the inefficiency of the process. UNHCR reported that few persons in need of international protection were legally recognized as refugees.

**Access to Basic Services**: Colombian asylum seekers without legal residency permits had limited access to the job market, education, and health systems. The lack of documentation created significant challenges to achieving sufficient protection and long-term integration. Authorities permitted Colombian children to attend school but inconsistently granted them diplomas or certificates of completion without residency documentation, resulting in high dropout rates for Colombian children.

**Section 3. Freedom to Participate in the Political Process**

The 1999 constitution, the country’s 26th since independence in 1811, provides citizens the ability to change their government through free and fair elections, but government interference, electoral irregularities, and manipulation of voters and candidates restricted the exercise of this right in the May 20 presidential elections.

**Elections and Political Participation**

Recent Elections: The CNE executed deeply flawed presidential elections on May 20 that elicited historically low participation and undermined public faith in the democratic process. The elections took place on a remarkably short timeline—announced on February 7, they were originally scheduled for April 22, less than 75 days later—effectively preventing a nationwide opposition campaign. The CNE banned the leading opposition parties, using the ad hoc explanation that they had given up their stature by boycotting December 2017 municipal elections. Furthermore, leading opposition politicians were prohibited from running, including Henrique Capriles (Primero Justicia) and Leopoldo Lopez (Voluntad Popular).
In September the CNE extended its ban to the oldest surviving opposition party, Accion Democratica (AD), declaring it would be prohibited from running candidates in municipal council elections scheduled for December. The ostensible reason the CNE gave for the ban was AD’s decision not to participate in a “recertification” process called abruptly in August. AD leaders noted they had successfully completed a similar process in January and no legal basis existed for the new requirement.

During the May 20 presidential elections, national media noted various irregularities, including financial benefits offered to PSUV voters, government vehicles used to transport PSUV voters to voting centers, opposition party observers blocked from polling centers, media blocked from covering events at polling centers, and distribution of food coupons to progovernment voters. There were no reports the government forced government workers or benefit recipients to vote, as had been customary in the most recent national elections.

Even though there had been no referendum to approve efforts for constitutional reform, in July 2017 at the president’s direction, the CNE held fraudulent and violently protested elections to choose representatives for the ANC that would reportedly rewrite the constitution. Observers claimed the CNE was used to usurp the authority of the National Assembly and legitimize unconstitutional acts of the regime.

Political Parties and Political Participation: Opposition political parties operated in a restrictive atmosphere characterized by intimidation, the threat of prosecution or administrative sanction on questionable charges, and very limited mainstream media access.

During the year the government expanded the carnet de la patria program, introduced in 2017 as a multipurpose identification card, so that it was required to access government-funded social services. In September the government announced gasoline, largely subsidized by the government, would be sold only at higher international prices to those without a carnet de la patria. Cardholders were reportedly also granted exclusive access to educational scholarships, subsidized food, and other government support. The government set up carnet de la patria check-in points outside of voting centers during national elections and urged cardholders to “register” their votes. According to the government, as of October more than 17 million of the 30 million residents had registered for the card. To qualify for the card, applicants must provide proof of political affiliation and
respond to a number of questions regarding the social service benefits they receive. Government opponents asserted the card amounted to social control, a tool to leverage access to scarce subsidized consumer products in return for political loyalty.

**Participation of Women and Minorities:** No laws limit participation of women or members of minorities in the political process, and they did participate. The ruling party had a number of high-level female politicians and ministers, while the opposition lacked female and minority representation.

**Section 4. Corruption and Lack of Transparency in Government**

The law provides criminal penalties for corruption by officials, but the government did not implement the law effectively. Some officials explicitly acknowledged corruption as a major problem. The government frequently investigated, prosecuted, and detained political opponents on corruption charges to harass, intimidate, or imprison them. According to Transparency International, among the main reasons for the country’s widespread corruption were impunity, weak institutions, and a lack of transparency in the management of government resources.

**Corruption:** On August 4, Attorney General Tarek William Saab announced the Public Ministry’s reportedly successful efforts to fight corruption during his first year in office. According to Saab, 616 persons were convicted of corruption-related charges; however, the government did not provide information regarding the alleged cases or persons convicted.

Corruption was a major problem in all police forces, whose members were generally poorly paid and minimally trained. There was no information publicly available about the number of cases involving police and military officials during the year, although the Public Ministry publicized several individual cases against police officers for soliciting bribes and other corrupt activities.

**Financial Disclosure:** The law requires public officials, as well as all directors and members of the boards of private companies, to submit sworn financial disclosure statements. By law the Public Ministry and competent criminal courts may require such statements from any other persons when circumstantial evidence arises during an investigation.

**Section 5. Governmental Attitude Regarding International and**
Nongovernmental Investigation of Alleged Abuses of Human Rights

A variety of independent domestic and international human rights groups generally operated with some government restrictions. Major domestic human rights NGOs conducted investigations and published their findings on human rights cases. Government officials were rarely cooperative or responsive to their requests. Domestic NGOs reported fear the government would use the 2017 Law against Hate to justify widespread repression of their activities, jailing of the participants and organizers, and threats against family members. Some domestic NGOs reported government threats and harassment against their leaders, staff, and organizations, in addition to government raids and detentions, but they were able to publish dozens of reports during the year. Some human rights activists reported authorities barred them from traveling abroad or that they feared not being able to return to the country if they traveled. NGOs played a significant role in informing citizens and the international community about alleged violations and key human rights cases.

NGOs asserted the government created a dangerous atmosphere for them to operate. The PSUV first vice president and ANC president, Diosdado Cabello, used his weekly talk show to intimidate NGO staff from Espacio Publico, PROVEA, and Foro Penal. Several organizations, such as the OVP, PROVEA, Foro Penal, and Citizen Control, reported their staffs received both electronic and in-person threats. Human rights organizations claimed they were subject to frequent internet hacking attacks and attempts to violate their email privacy.

The law prohibits domestic NGOs from receiving funds from abroad if they have a “political intent”--defined as the intent to “promote, disseminate, inform, or defend the full exercise of the political rights of citizens” or to “defend political rights.” The government threatened NGOs with criminal investigations for allegedly illegally accepting foreign funds. Various government officials accused human rights organizations on national television and media of breaking the law by receiving funding from international donors.

For violations the law stipulates monetary penalties, a potential five- to eight-year disqualification from running for political office, or both. The law defines political organizations as those involved in promoting citizen participation, exercising control over public offices, and promoting candidates for public office. Although there was no formal application or enforcement of the law, it created a climate of fear among human rights NGOs and a hesitancy to seek international assistance.
In addition to the restrictions placed on fund raising, domestic NGOs also faced regulatory limitations on their ability to perform their missions. The law includes provisions eliminating the right of human rights NGOs to represent victims of human rights abuses in legal proceedings. The law provides that only the public defender and private individuals may file complaints in court or represent victims of alleged human rights abuses committed by public employees or members of security forces.

The United Nations or Other International Bodies: The government was generally hostile toward international human rights bodies and continued to refuse to permit a visit by the IACHR, which last visited the country in 2002. The government also repeatedly refused to grant access to the OHCHR to investigate the human rights situation.

Government Human Rights Bodies: Throughout the year the government gave its 2016 human rights plan minimal attention.

The TSJ continued to hold the National Assembly in “contempt” status, which diminished the purview and operational effectiveness of the assembly’s subcommission on human rights.

Section 6. Discrimination, Societal Abuses, and Trafficking in Persons

Women

Rape and Domestic Violence: The law criminalizes rape of men or women, including spousal rape, making it punishable by a prison term of eight to 14 years. A man legally may avoid punishment by marrying (before he is sentenced) the person he raped. The law allows authorities to consider alternative forms of punishment, including work release, for those convicted of various crimes, including rape, if they have completed three-quarters of their sentence.

The law criminalizes physical, sexual, and psychological violence in the home or community and at work. The law punishes perpetrators of domestic violence with penalties ranging from six to 27 months in prison. The law requires police to report domestic violence to judicial authorities and obligates hospital personnel to notify authorities when admitting patients who are victims of domestic abuse. Police generally were reluctant to intervene to prevent domestic violence and were not properly trained to handle such cases. The law also establishes women’s bureaus at local police headquarters and tribunals specializing in gender-based
violence, and two-thirds of states had specialized courts. The Public Ministry’s Women’s Defense Department employed a team of lawyers, psychiatrists, and other experts who dealt exclusively with cases of femicide, gender-related violence, and other crimes against women.

Many advocates observed there was a lack of public awareness among women regarding resources and support available to prevent and combat domestic violence. The government offered some shelter and services for victims of domestic and other violence, but NGOs provided the majority of domestic abuse support services.

**Sexual Harassment:** Sexual harassment is illegal and punishable by fines and a prison sentence of one to three years. Although allegedly common in the workplace, sexual harassment cases were rarely reported.

**Coercion in Population Control:** There were no reports of coerced abortion or involuntary sterilization.

**Discrimination:** Women enjoy the same legal status and rights as men under the constitution. Women and men are legally equal in marriage, and the law provides for gender equality in exercising the right to work. The law specifies that employers must not discriminate against women with regard to pay or working conditions. According to the Ministry of Labor and the Confederation of Workers, regulations protecting women’s labor rights were enforced in the formal sector, although according to the World Economic Forum, women earned 36 percent less on average than men doing comparable jobs.

The law provides women with property rights equal to those of men.

**Children**

**Birth Registration:** Citizenship is derived by birth within the country’s territory. According to UNICEF, 81 percent of children younger than age five were registered at birth, based on 2011 statistics provided by the government.

**Child Abuse:** According to UNICEF and NGOs working with children and women, child abuse, including incest, occurred but was rarely reported. The government made efforts to detain and prosecute some perpetrators of child abuse. Although the judicial system acted to remove children from abusive households, the press reported public facilities for such children were inadequate. According to
NGOs, in many cases children were returned to their homes without proper reintegration measures or follow-up.

Early and Forced Marriage: The legal minimum age for marriage is 18 for women and men, but with parental consent, the minimum age is 16.

Sexual Exploitation of Children: By law sexual relations with a minor younger than age 13, with an “especially vulnerable” person, or with a minor younger than age 16 when the perpetrator is a relative or guardian, are punishable with a mandatory sentence of 15 to 20 years’ imprisonment. The law prohibits the forced prostitution and corruption of minors. Penalties range from 15 to 20 years’ imprisonment in the case of sex trafficking of girls, although the law requires force, fraud, or coercion in its definition of sex trafficking of children. The law prohibits the production and sale of child pornography and establishes penalties of 16 to 20 years’ imprisonment.

Displaced Children: Children’s rights advocates noted an increase of up to 40 percent in the number of children living on the street, compared with 2017, when leading advocates and the press estimated 10,000 children lived on the streets. As parents fled the country’s economic crisis, many left their children behind with family members, many of whom also struggled with the country’s economic downturn. State-run facilities already filled to capacity were unable to support the influx of children in need. The government did not provide additional resources to support these centers, and at least four centers closed in the first quarter of the year due to a lack of resources. Private institutions denounced the government’s refusal to provide subsidized food benefits to support their population. NGOs noted young girls made up close to half of the children living on the streets, a significant increase. The significant shift posed particular challenges for shelters, which historically managed predominantly male populations. With institutions filled to capacity, hundreds of children accused of infractions, such as curfew violations, were confined in inadequate juvenile detention centers.


Anti-Semitism
There were reports of societal abuses or discrimination based on religious affiliation, belief, or practice, including anti-Semitism.

The Confederation of Israelite Associations in Venezuela estimated there were 9,000 Jews in the country. Jewish community leaders expressed concern about anti-Semitic statements made by high-level government officials and anti-Semitic pieces in progovernment media outlets. They said government-owned or -associated media and government supporters again denied or trivialized the Holocaust, citing media reports of President Maduro’s comparing migrant Venezuelans to Jews persecuted by Hitler. The community leaders noted many other anti-Semitic incidents occurred during the year.

**Trafficking in Persons**

See the Department of State’s *Trafficking in Persons Report* at [www.state.gov/j/tip/rls/tiprpt/](http://www.state.gov/j/tip/rls/tiprpt/).

**Persons with Disabilities**

The law prohibits discrimination against persons with physical and mental disabilities, but the government did not make a significant effort to implement the law, inform the public of it, or combat societal prejudice against persons with disabilities. The law requires that all newly constructed or renovated public parks and buildings provide access, but persons with disabilities had minimal access to public transportation, and ramps were almost nonexistent. Many persons with disabilities expressed concerns that public transportation workers often were unwilling to transport them and forced them to find taxis, which were often out of their financial reach and also frequently not equipped to support patrons with disabilities. Parents of children with disabilities also complained they were forced to wait in long lines for services rather than provided preference in line as is afforded by law. Online resources and access to information were generally available to persons with disabilities, although access to closed-captioned or audio-described online videos for persons with sight and hearing disabilities was limited. Separately, leading advocates for persons with hearing disabilities lamented difficult access to public services due to a lack of government-funded interpreters in public courts, health-care facilities, and legal services, as well as a lack of other public accommodations.

The National Commission for Persons with Disabilities, an independent agency affiliated with the Ministry for Participation and Social Development, advocated
for the rights of persons with disabilities and provided medical, legal, occupational, and cultural programs. According to the commission, less than 20 percent of persons with disabilities who registered with government health programs were fully employed.

**National/Racial/Ethnic Minorities**

The constitution prohibits discrimination based on race. The law prohibits all forms of racial discrimination and provides for a maximum of three years’ imprisonment for acts of racial discrimination. As mandated by law, signage existed outside commercial and recreational establishments announcing the prohibition against acts of racial discrimination. Beyond signage the government did little to enforce the laws against discrimination or prosecute cases of discrimination.

There were no reports the government arrested or prosecuted suspects regarding 2017 attacks by demonstrators that killed two Afro-Venezuelan men, despite videos of the attacks circulating widely on social media.

**Indigenous People**

The law prohibits discrimination based on ethnic origin. The constitution provides for three seats in the National Assembly for deputies of indigenous origin to “protect indigenous communities and their progressive incorporation into the life of the nation,” but some indigenous communities had been without representation in the national legislature since the TSJ annulled the 2015 election of Amazonas State’s indigenous representative.

NGOs and the press reported local political authorities seldom took account of indigenous interests when making decisions affecting indigenous lands, cultures, traditions, or allocation of natural resources. Indigenous groups continued to call for faster implementation of the demarcation process.

Indigenous groups and NGOs expressed concern regarding mining in the growing “Arco Minero,” an area that extends between the states of Bolivar and Amazonas. Indigenous communities reported the government developed and expanded mining zones without consulting those native to the region. Armed groups, including Colombian guerrillas, had a considerable presence in the area, increasing the level of violence and insecurity in the communities. There was also an unprecedented influx of diseases, as well as prostitution and other illegal activities, in the mining
areas, putting indigenous communities at risk.

Indigenous groups regularly reported violent conflicts with miners and cattle ranchers over land rights. There were reports of harassment, attacks, and forced evictions against indigenous persons living in areas included as part of government mining concessions.

Border disputes with Colombia affected indigenous groups living in border regions. While the president proclaimed indigenous persons on the border could cross freely, there were many reported cases in which movements of indigenous groups were restricted.

**Acts of Violence, Discrimination, and Other Abuses Based on Sexual Orientation and Gender Identity**

The constitution provides for equality before the law of all persons and prohibits discrimination based on “sex or social condition,” but it does not explicitly prohibit discrimination based on sexual orientation or gender identity. According to a TSJ ruling, no individual may be subjected to discrimination because of sexual orientation, but the ruling was rarely enforced.

Credible NGOs reported incidents of bias-motivated violence against lesbian, gay, bisexual, transgender, and intersex (LGBTI) persons. Reported incidents were most prevalent against transgender individuals. Leading advocates noted that law enforcement authorities often did not properly investigate to determine whether crimes were bias-motivated.

Local police and private security forces allegedly prevented LGBTI persons from entering malls, public parks, and recreational areas. NGOs reported the government systematically denied legal recognition to transgender and intersex persons by preventing them from obtaining identity documents required for accessing education, employment, housing, and health care. This vulnerability often led transgender and intersex persons to become victims of human trafficking or prostitution.

**HIV and AIDS Social Stigma**

The law provides for the equal rights of persons with HIV/AIDS and their families. Nevertheless, leading advocates alleged discrimination against such persons.
Section 7. Worker Rights

a. Freedom of Association and the Right to Collective Bargaining

The law provides that all private- and public-sector workers (except members of the armed forces) have the right to form and join unions of their choice, and it provides for collective bargaining and the right to strike. The law, however, places several restrictions on these rights, and the government deployed a variety of mechanisms to undercut the rights of independent workers and unions. Minimum membership requirements for unions differ based on the type of union. Forming a company union requires a minimum of 20 workers; forming a professional, industrial, or sectoral union in one jurisdiction requires 40 workers in the same field; and forming a regional or national union requires 150 workers. Ten persons may form an employees association, a parallel type of representation the government endorsed and openly supported.

The law prohibits “any act of discrimination or interference contrary to the exercise” of workers’ right to unionize. The law requires all unions to provide the Ministry of Labor a membership roster that includes the full name, home address, telephone number, and national identification number for each union member. The ministry reviews the registration and determines whether the union fulfilled all requirements. Unions must submit their registration application by December 31 of the year the union forms; if not received by the ministry or if the ministry considers the registration unsatisfactory, the union is denied the ability to exist legally. The law also requires the presence of labor inspectors to witness and legitimize unions’ decisions before the Ministry of Labor. The International Labor Organization (ILO) raised concerns about the ministry’s refusal to register trade union organizations.

By law employers may negotiate a collective contract only with the union that represents the majority of its workers. Minority organizations may not jointly negotiate in cases where no union represents an absolute majority. The law also places a number of restrictions on unions’ ability to administer their activities. For example, the CNE has the authority to administer internal elections of labor unions, federations, and confederations. By law elections must be held at least every three years. If CNE-administered and -certified elections are not held within this period, the law prohibits union leaders from representing workers in negotiations or engaging in anything beyond administrative tasks. The ILO repeatedly found cases of interference by the CNE in trade union elections, and in 1999 it began calling for the CNE to be delinked from the union election process.
The law recognizes the right of all public- and private-sector workers to strike, subject to conditions established by law. By law workers participating in legal strikes receive immunity from prosecution, and their time in service may not be reduced by the time engaged in a strike. The law requires that employers reincorporate striking workers and provides for prison terms of six to 15 months for employers who fail to do so. Replacement workers are not permitted during legal strikes. The law prohibits striking workers from paralyzing the production or provision of essential public goods and services, but it defines “essential services” more broadly than ILO standards. The ILO called on the government to amend the law to exclude from the definition of “essential services” activities “that are not essential in the strict sense of the term…so that in no event may criminal sanctions be imposed in cases of peaceful strikes.”

The minister of labor may order public- or private-sector strikers back to work and submit their disputes to arbitration if a strike “puts in immediate danger the lives or security of all or part of the population.” Other legal provisions establish criminal penalties for exercising the right to strike in certain circumstances. For example, the law prohibits specified actions and makes punishable with five to 10 years in prison anyone who “organizes, supports, or instigates the realization of activities within security zones that are intended to disturb or affect the organization and functioning of military installations, public services, industries and basic [mining] enterprises, or the socioeconomic life of the country.” The law also provides for prison terms of two to six years and six to 10 years, respectively, for those who restrict the distribution of goods and for “those…who develop or carry out actions or omissions that impede, either directly or indirectly, the production, manufacture, import, storing, transport, distribution, and commercialization of goods.” There was no information on whether penalties were sufficient to deter violations.

The government restricted the freedom of association and the right to collective bargaining through administrative and legal mechanisms.

The ILO raised concerns about violence against trade union members and government intimidation of the Associations of Commerce and Production of Venezuela. ILO member countries voted to establish an ILO Commission of Inquiry against Venezuela to investigate longstanding complaints first lodged in 2015 of labor rights violations of ILO Conventions No. 26, 87, and 144, which pertain to minimum-wage fixing, freedom of association and protection of the right to organize, and tripartite consultation, respectively. The ILO had recommended that the government allow a tripartite delegation to provide technical assistance to
mediate unresolved complaints between the government, employers, and workers. The government continued to refuse access to the ILO High-Level Tripartite delegation to address complaints of labor rights violations.

Organized labor activists continued to report that the annual requirement to provide the Ministry of Labor a membership roster was onerous and infringed on freedom of association. They alleged the ministry removed member names from the rosters for political purposes, particularly if members were not registered to vote with the CNE. Labor leaders also criticized the laborious and costly administrative process of requesting CNE approval for elections and subsequent delays in the CNE’s recognition of such union processes. In addition there reportedly was a high turnover of Ministry of Labor contractors, resulting in a lack of timely follow-through on union processes. Labor unions in both the private and public sectors noted long delays in obtaining CNE concurrence to hold elections and in receiving certification of the election results, which hindered unions’ ability to bargain collectively.

The government continued to support many “parallel” unions, which sought to dilute the membership and effectiveness of traditional independent unions. In October, Labor Minister Eduardo Pinate announced the expansion of the ministry’s Youth Worker Program (Chamba Juvenil), which independent union leaders claimed was a government mechanism to displace independent workers with government-aligned workers and also to suppress wages, since youth are paid less than experienced workers. In general these government-supported unions were not subject to the same government scrutiny and requirements regarding leadership elections. The government excluded from consideration other, independent union federations, including the Confederation of Venezuelan Workers, General Confederation of Venezuelan Workers, Confederation of Autonomous Unions of Venezuela, and National Union of Workers.

The government continued to refuse to adjudicate or otherwise resolve the cases of 19,000 employees of the state oil company (PDVSA) who were fired during and after the 2002-03 strike. The Ministry of Labor continued to deny registration to the National Union of Oil, Gas, Petrochemical, and Refinery Workers.

The concept of striking, demonized since the 2002 national security law, was used periodically as a political tool to accuse government opponents of coup plotting or other destabilizing activities. Some companies, especially in the public sector, had multiple unions with varying degrees of allegiance to the ruling party’s version of the “socialist revolution,” which could trigger interunion conflict and strife. In
August striking regional union leaders of Corpoelec (a state-owned electricity operator) complained national union leaders failed to negotiate in good faith on behalf of striking workers demanding wage increases. Corpoelec regional union leaders alleged national union leaders were progovernment “chavistas” and therefore beholden to the government for political reasons.

In June Maduro provisionally released former University of Carabobo professor Rolman Rojas, former president of the Carabobo College of Nurses Julio Garcia, former president of FetraCarabobo Omar Escalante, and former secretary general of the National Federation of Retirees and Pensioners Omar Vasquez Lagonel but required weekly reports to a judge as a condition of their release. SEBIN detained the group in August 2017 for their participation in the national labor strike against the ANC election.

b. Prohibition of Forced or Compulsory Labor

The law prohibits some forms of forced or compulsory labor but does not provide criminal penalties for certain forms of forced labor. The law prohibits human trafficking by organized crime groups through its law on organized crime, which prescribes 20 to 25 years’ imprisonment for the human trafficking of adults carried out by a member of an organized-crime group of three or more individuals. The organized-crime law, however, fails to prohibit trafficking by any individual not affiliated with such a group. Prosecutors may employ other statutes to prosecute such individuals. The law increases penalties from 25 to 30 years for child trafficking with the purpose of forced labor. There was no comprehensive information available regarding the government’s enforcement of the law. The labor group Autonomous Front in Defense of Employment, Wages, and Unions (FADESS) reported that public-sector worker agreements included provisions requiring service in the armed forces’ reserves.

There were reports of children and adults subjected to human trafficking with the purpose of forced labor, particularly in the informal economic sector and in domestic servitude (see section 7.c.). According to FADESS, more than 60,000 Cubans worked in government social programs (such as the Mission Inside the Barrio) in exchange for the government’s provision of oil resources to the Cuban government. FADESS noted Cubans worked in the Ministries of Education, Registrar, Notary, Telecommunications, and Security. FADESS also cited that the G-2 Cuban security unit was present in the armed forces and in state enterprises. Indicators of forced labor reported by some Cubans included chronic underpayment of wages, mandatory long hours, limitations on movement, and
threats of retaliatory actions against workers and their families if they left the program. According to the Global Slavery Index, the estimated absolute number of victims in the country was 174,000.

The law does not sufficiently prohibit the trafficking of boys and requires proof of the use of deception, coercion, force, violence, threats, abduction, or other fraudulent means to carry out the offense of trafficking of girls, including for commercial sexual exploitation.

Also see the Department of State’s Trafficking in Persons Report at [www.state.gov/j/tip/rls/tiprpt/](http://www.state.gov/j/tip/rls/tiprpt/).

c. Prohibition of Child Labor and Minimum Age for Employment

The law sets the minimum employment age at 14. Children younger than 14 may work only if granted special permission by the National Institute for Minors or the Ministry of Labor. Such permission may not be granted to minors who are younger than the legal age for work in hazardous occupations that risk their life or health or could damage their intellectual or moral development. According to the ILO, the government had not made publicly available the list of specific types of work considered hazardous. Children ages 14 to 18 may not work without permission of their legal guardians or in occupations expressly prohibited by law, and they may work no more than six hours per day or 30 hours per week. Minors younger than age 18 may not work outside the normal workday.

Anyone employing children younger than age eight is subject to a prison term of between one and three years. Employers must notify authorities if they hire a minor as a domestic worker.

No information was available on whether or how many employers were sanctioned for violations. The government continued to provide services to vulnerable children, including street children, working children, and children at risk of working. There was no independent accounting of the effectiveness of these and other government-supported programs.

Most child laborers worked in the agricultural sector, street vending, domestic service, or in small and medium-size businesses, most frequently in family-run operations. There continued to be isolated reports of children exploited in domestic servitude, mining, forced begging, and commercial sexual exploitation (see section 6).
d. Discrimination with Respect to Employment and Occupation

The constitution prohibits employment discrimination for every citizen. The law prohibits discrimination based on age, race, sex, social condition, creed, marital status, union affiliation, political views, nationality, disability, or any condition that could be used to lessen the principle of equality before the law. No law specifically prohibits employment discrimination based on sexual orientation, gender identity, or HIV/AIDS status. Media and NGOs, such as PROVEA and the Human Rights Center at the Andres Bello Catholic University, reported the government had a very limited capacity to address complaints and enforce the law in some cases and lacked political will in some cases of active discrimination based on political motivations.

e. Acceptable Conditions of Work

Nominal wages increased 43,273 percent through the first nine months of the year, but accumulated inflation over the same period reached 81,043 percent, according to a monthly study conducted by the National Assembly Finance Committee, which conducted its work without official Central Bank data.

In January workers in the health, petroleum, transportation, and electricity began holding protests, work stoppages, and strikes denouncing “hunger salaries”—wages insufficient to afford the basic food basket and unable to keep pace with hyperinflation. Additionally, they decried the lack of adequate equipment, supplies, and safe working conditions. Emblematic was the nurses’ strike, which began in June and continued as of October. Nurses demanded a salary increase on par with those of military officials: Nurses earned 2.2 million, compared with military officials earning 240 million bolivares, a 100-fold salary disparity. Striking nurses also demanded hospital supplies and medicines to counteract severe shortages, rendering them unable to provide adequate patient care. In response President Maduro unilaterally issued a decree in August raising the national minimum wage to 1,800 bolivares soberanos ($11), a 60-fold increase from the previous minimum wage. Labor experts noted the unilateral nature of the decision countered ILO Convention No. 26 requiring the government to consult with employers and workers prior to enacting wage increases. Legislators noted the decree violated the law, since it supplanted collective bargaining agreements.
Union leaders from the petroleum, health, telecommunications, and electricity sectors highlighted that the decree did not include wage adjustments to keep up with hyperinflation and thus remained insufficient to afford the basic food basket. It also violated the law by nullifying previously signed collective bargaining agreements, including wage tables that scaled salaries accounting for seniority and merit pay.

The president of CONINDUSTRIA, the trade union of the industrial sector, stated that of the 15,000 industries existing in 2000, only 3,500 remained as of October.

The law sets the workweek at 40 hours (35 hours for a night shift). The law establishes separate limits for “shift workers,” who may not work more than an average of 42 hours per week during an eight-week period, with overtime capped at 100 hours annually. Managers are prohibited from obligating employees to work additional time, and workers have the right to two consecutive days off each week. Overtime is paid at a 50 percent surcharge if a labor inspector approves the overtime in advance and at a 100 percent surcharge if an inspector does not give advance permission. The law establishes that, after completing one year with an employer, a worker has a right to 15 days of paid vacation annually. A worker has the right to an additional day for every additional year of service, for a maximum of 15 additional days annually.

The law provides for secure, hygienic, and adequate working conditions. Workplaces must maintain “protection for the health and life of the workers against all dangerous working conditions.” The law obligates employers to pay workers specified amounts for workplace injuries or occupational illnesses, ranging from two times the daily salary for missed workdays to several years’ salary for permanent injuries. Workers may remove themselves from situations that endanger health or safety without jeopardy to their employment.

The law covers all workers, including temporary, occasional, and domestic workers. There was reportedly some enforcement by the Ministry of Labor of minimum wage rates and hours of work provisions in the formal sector, but 40 percent of the population worked in the informal sector, where labor laws and protections generally were not enforced. The government did not enforce legal protections on safety in the public sector. According to PROVEA, while the National Institute for Prevention, Health, and Labor Security required many private businesses to correct dangerous labor conditions, the government did not enforce such standards in a similar manner in state enterprises and entities. There was no publicly available information regarding the number of inspectors or the frequency
of inspections to implement health and safety, minimum wage, or hours of work provisions. Ministry inspectors seldom closed unsafe job sites. There was no information on whether penalties were sufficient to deter violations.

Official statistics regarding workplace deaths and injuries were not publicly available.
VENEZUELA 2017 HUMAN RIGHTS REPORT

EXECUTIVE SUMMARY

Venezuela is formally a multiparty, constitutional republic, but for more than a decade, political power has been concentrated in a single party with an increasingly authoritarian executive exercising significant control over the legislative, judicial, citizens’, and electoral branches of government. The Supreme Court determined Nicolas Maduro to have won the 2013 presidential elections amid allegations of pre- and postelection fraud, including government interference, the use of state resources by the ruling party, and voter manipulation. The opposition gained super majority two-thirds control of the National Assembly in the 2015 legislative elections. The executive branch, however, used its control over the Supreme Court (TSJ) to weaken the National Assembly’s constitutional role to legislate, ignore the separation of powers, and enable the president to govern through a series of emergency decrees.

Civilian authorities maintained effective, although politicized, control over the security forces.

Democratic governance and human rights deteriorated dramatically during the year as the result of a campaign of the Maduro administration to consolidate its power. On March 30, the TSJ annulled the National Assembly’s constitutional functions, threatened to abolish parliamentary immunity, and assumed significant control over social, economic, legal, civil, and military policies. The TSJ’s actions triggered large-scale street protests through the spring and summer in which approximately 125 persons died. Security forces and armed progovernment paramilitary groups known as “colectivos” at times used excessive force against protesters. Credible nongovernmental organizations (NGOs) reported indiscriminate household raids, arbitrary arrests, and the use of torture to deter protesters. The government arrested thousands of individuals, tried hundreds of civilians in military tribunals, and sentenced approximately 12 opposition mayors to 15-month prison terms for alleged failure to control protests in their jurisdictions.

On May 1, President Maduro announced plans to rewrite the 1999 constitution, and on July 30, the government held fraudulent elections, boycotted by the opposition, to select representatives to a National Constituent Assembly (ANC). On August 4, the ANC adopted a “coexistence decree” that effectively neutralized other branches of government. Throughout the year the government arbitrarily stripped the civil
rights of opposition leaders to not allow them to run for public office. On October 15, the government held gubernatorial elections overdue since December 2016. The ruling United Socialist Party (PSUV) maintained it won 17 of the 23 governors’ seats, although the election was fraught with deficiencies, including a lack of independent, credible international observers, last-minute changes to polling station locations with limited public notice, manipulation of ballot layouts, limited voting locations in opposition neighborhoods, and a lack of technical audit for the National Electoral Council’s (CNE) tabulation. The regime then called for mayoral elections on December 10, with numerous irregularities favoring government candidates.

The most significant human rights issues included extrajudicial killings by security forces, including government sponsored “colectivos”; torture by security forces; harsh and life-threatening prison conditions; widespread arbitrary detentions; and political prisoners. The government unlawfully interfered with privacy rights, used military courts to try civilians, and ignored judicial orders to release prisoners. The government routinely blocked signals, interfered with the operations, or shut down privately owned television, radio, and other media outlets. The law criminalized criticism of the government, and the government threatened violence and detained journalists critical of the government, used violence to repress peaceful demonstrations, and placed legal restrictions on the ability of NGOs to receive foreign funding. Other issues included interference with freedom of movement; establishment of illegitimate institutions to replace democratically elected representatives; pervasive corruption and impunity among all security forces and in other national and state government offices, including at the highest levels; violence against women, including lethal violence; trafficking in persons; and the worst forms of child labor, which the government made minimal efforts to eliminate.

The government took no effective action to combat impunity that pervaded all levels of the civilian bureaucracy and the security forces.

**Section 1. Respect for the Integrity of the Person, Including Freedom from:**

**a. Arbitrary Deprivation of Life and Other Unlawful or Politically Motivated Killings**

Although the government did not release statistics on extrajudicial killings, NGOs reported that national, state, and municipal police entities, as well as the armed forces and government-supported “colectivos,” carried out such killings during the
year.

There was also no official information available on the number of public officials prosecuted or sentenced to prison for involvement in extrajudicial killings, which, in the case of killings committed by police, were often classified as “resistance to authority.” The government described antigovernment protesters as terrorists, and the president granted security forces emergency powers to control demonstrations. The NGO Committee for the Families of Victims of February-March 1989 (COFAVIC) continued to report there was no publicly accessible national registry of reported cases of extrajudicial killings.

The National Police Scientific, Penal, and Criminal Investigative Corps (CICPC) reportedly committed 30 percent of extrajudicial killings, with others committed by regional and municipal police. According to NGOs, prosecutors occasionally brought cases against such perpetrators, but prosecutions often resulted in light sentences, and convictions were often overturned on appeal. Before her August 5 dismissal, then attorney general Luisa Ortega Diaz denounced the government’s failure to pursue officers suspected of committing human rights abuses. Ortega and her husband fled the country on August 17.

Government and NGO sources estimated at least 125 persons were killed in antiregime protests from April 1 to July 31. The Public Ministry reported 65 percent were victims of government repression. The NGO Foro Penal put the number at 75 percent, with “colectivos” responsible for half the deaths and the remainder divided between the Venezuelan National Police (PNB) and National Guard (GNB) forces. The Venezuelan Program for Human Rights Action and Education (PROVEA) estimated that 83 percent of regime victims died from gunshot wounds. On numerous occasions, security forces also used nonlethal ammunition at close range, severely injuring and in some cases killing protesters.

According to a Public Ministry investigation, in April a GNB officer shot and killed Juan Pablo Pernalete with a tear gas canister fired at point-blank range. Government and security officials rejected then attorney general Luisa Ortega’s findings and refused to apprehend potential suspects. On September 7, the newly appointed attorney general, Tarek William Saab, stated that this and other cases implicating government forces would be reopened. Saab’s appointment and subsequent decision to reopen investigations conducted during his predecessor’s tenure were widely criticized by local and international NGOs.

Protesters were also responsible for some deaths that occurred during and on the
margins of demonstrations. On April 19, a protester in an apartment building threw a frozen water bottle at security forces but missed and killed a passerby.

The government continued its nationwide anticrime strategy begun in 2015, the Operation for the Liberation and Protection of the People (OLP), which was characterized by large-scale raids conducted by hundreds of government security agents in neighborhoods allegedly harboring criminals. NGOs documented a number of operations that were carried out without court orders. OLP operations often resulted in civilian deaths; NGOs reported that at least 560 persons were killed as a result of OLP exercises between July 2015 and June, with illegal raids and violent attacks on homes becoming more widespread and far reaching. The Public Ministry reported that security forces killed 241 citizens during OLP exercises in 2016. The victims were largely considered to have been “resisting authority,” and only 17 security officials were formally charged for their involvement. The Public Ministry reported that authorities detained 2,310 persons during OLP operations between July and February 2016. Based on victim testimony, NGOs reported OLP operations were characterized by grave human rights violations, including extrajudicial killings, arbitrary detention, torture, blackmail, and destruction of personal property.

The Public Ministry continued to investigate the killings of 331 individuals during the 1989 “Caracazo.” In October 2016 the TSJ ruled that the 1988 El Amparo massacre case, in which government security forces allegedly killed 14 persons, would be reopened and tried before a military tribunal. NGOs appealed to the TSJ to hear the case in civilian court, but the TSJ denied their appeal, and the case remained open in military court.

b. Disappearance

There were no reports of disappearances by or on behalf of government authorities.

c. Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment

Although the constitution prohibits such practices, there were credible reports security forces tortured and abused detainees.

There were no reports of any government officials being charged under the law that states an agent or public official who inflicts pain or suffering—whether physical or mental—on another individual to obtain information or a confession or
seeks to punish an individual for an act the individual has committed, may be imprisoned for a maximum of 25 years, dismissed from office, and barred from holding public office for a maximum of 25 years. Prison and detention center officials who commit torture may face a maximum of five years in prison and a maximum fine of 90.6 million bolivars ($34,300 at the Dicom exchange rate). The law also includes mechanisms for reparations to victims and their families and creates a special National Commission for Torture Prevention composed of several government ministries.

The Office of the Human Rights Ombudsman did not publish statistics regarding allegations of torture by police during the year. Several NGOs detailed cases of widespread torture and “cruel, inhuman, and degrading treatment.” Human rights groups reported that the government continued to influence the attorney general and public defenders to conduct investigations selectively and subjectively. No data was available on investigations, prosecutions, or convictions in cases of alleged torture. Foro Penal maintained that hundreds of cases were not reported to government institutions because victims feared reprisal.

Press and NGO reports of beatings and humiliating treatment of suspects during arrests were common and involved various law enforcement agencies and the military. Torture and other cruel, inhuman, or degrading treatment or punishment of prisoners were reported during the year. Cruel treatment frequently involved authorities denying prisoners medical care and holding them for long periods in solitary confinement. The latter practice was most prevalent with political prisoners. NGOs also published reports that authorities generally mistreated, sexually abused, and threatened to kill detainees.

On July 27, GNB officers arrested protester and musician Wuilly Moises Arteaga during antiregime protests in Caracas. GNB officers repeatedly beat Arteaga, a frequent target for playing the violin, on the head with their helmets, causing him to lose hearing in one ear. They also burned his hair with lighters. An 18-year-old viola player, Armando Canizales, a graduate of the Simon Bolivar Musical Foundation, was shot in the neck at a May 3 protest and died from the wound.

NGOs detailed reports from detainees whom authorities allegedly sexually abused, threatened with death, and forced to spend hours on their knees in detention centers. Foro Penal reported multiple instances of political prisoners denied adequate medical treatment while in government custody. Foro Penal noted instances where authorities transferred detainees to a medical facility, where instead of receiving treatment, detainees were interrogated by security officials.
On November 4, Bolivarian National Intelligence Service (SEBIN) officials released jailed opposition leader Yon Goicoechea 11 months after a judge ordered his release in October 2016 due to insufficient evidence. In April Goicoechea reported being tortured while in SEBIN custody. Goicoechea said he was held in solitary confinement without a toilet or proper ventilation and that the cell was covered in maggots and excrement from previous prisoners. He also reported officials used electric shock and other forms of torture against him.

**Prison and Detention Center Conditions**

Most prison conditions were harsh and life threatening. Armed gangs effectively controlled some prisons in which they were incarcerated. Conditions were most acute in pretrial detention facilities such as police station jails.

**Physical Conditions:** The government had not updated prison statistics since 2015, and NGOs reported records for detainees were not properly maintained and often contained incomplete information. The Ministry of Penitentiary Services reported there were 50,791 inmates in the country’s 59 prisons and penitentiaries and an estimated 33,000 inmates in police station jails. According to the NGO Venezuelan Observatory for Prisons (OVP), the capacity was 22,459 inmates for penitentiaries and 5,000 for police station jails. Overcrowding was 154 percent for penitentiaries and 415 percent for police station jails on average, although the OVP noted that in some jails the overcrowding ranged from 800 to 1,200 percent.

There were two women’s prisons, one in Miranda State, with a 150-detainee capacity, and the other in Zulia State, designed for 450. The law stipulates women in mixed prisons must be held in annexes or separate women’s blocks. A local NGO reported that in practice male and female prisoners intermingled. Security forces and law enforcement authorities often held minors together with adults, even though separate facilities existed. Because institutions were filled to capacity, hundreds of children accused of infractions were confined in juvenile detention centers, where they were reportedly crowded into small, unsanitary cells.

The CICPC and police station jails and detention centers also were overcrowded, causing many police station offices to be converted into makeshift prison cells. Prisoners reportedly took turns sleeping on floors and in office chairs, and sanitation facilities were inadequate or nonexistent. A study by the NGO A Window to Liberty (UVL) of 89 facilities housing pretrial detainees revealed 432 percent overcrowding. According to the study, more than 80 percent of facilities
provided no medical services, recreational areas, designated visiting areas, or laundry facilities. More than 60 percent did not have potable water, and more than 50 percent did not have regular trash collection or proper restrooms.

The GNB and the Ministry of Interior, Justice, and Peace have responsibility for prisons’ exterior and interior security, respectively. The government failed to provide adequate prison security. The OVP estimated a staffing gap of 90 percent for prison security personnel, with only one guard for every 100 inmates, instead of one for every 10 as recommended by international standards. The OVP reported 173 prisoner deaths and 268 serious injuries in 2016, the most recent year that information was available. The OVP assessed that 90 percent of prison deaths were violent, resulting from prisoner-on-prisoner altercations, riots, and fires. The OVP reported some inmates also succumbed to the generally unsanitary and unsafe conditions prevalent in prisons. During the March renovation of Guarico State’s central prison, the construction team discovered 14 bodies in a shallow grave. The case remained under investigation but highlighted uncertainty over the true number of annual prison deaths.

During the year prison riots resulted in inmate deaths and injuries. On April 25, at least 14 persons were killed and 15 injured during a riot in Jose Antonio Prison, better known as Puente Ayala, in Anzoategui State. NGOs attributed the prisoner-on-prisoner clash to a gang turf war. There were credible reports that high-ranking government officials may have had a hand in directing the violence.

A 2016 law limiting cellphone and internet availability inside prisons to prevent inmates from using the technology to engage in criminal activity remained unimplemented. A high-level government official admitted communicating with inmates immediately before and during the Puente Ayala riot.

The UVL reported that authorities required family members to provide food for prisoners at police station jails throughout the country due to inadequate provisioning of food by the prison administration. At least eight prisoners died during the year from complications associated with malnutrition. The OVP reported that due to inadequate nutrition plans and lack of potable water, stomach illnesses were common among inmates.

The government restricted information regarding deaths in prisons from tuberculosis, HIV/AIDS, and other diseases or due to lack of medical care. A study by the NGO Solidarity Action found prison rules regarding the classification of inmates resulted in the isolation of those with HIV/AIDS in “inadequate spaces...
without food and medical attention.” The OVP reported a generalized lack of medical care, drugs, equipment, and physicians for prisoners. Inmates often received the same pills regardless of their symptoms, and pregnant women lacked adequate facilities for their medical attention.

**Administration:** The Ministry of Penitentiary Services did not respond to requests from the OVP, UVL, other human rights organizations, inmates, or families regarding inmates or investigations of the harsh conditions that led to hunger strikes or violent uprisings.

Prisoners and detainees generally had access to visitors, including some with overnight privileges, but in some cases prison officials harassed or abused visitors. Prison officials imposed significant restrictions on visits to political prisoners. When allowed access, visitors were at times subjected to strip searches.

**Independent Monitoring:** Human rights observers continued to experience lengthy delays and restrictions in accessing prisons and detention centers. Authorities have rejected requests by the International Committee of the Red Cross (ICRC) to visit penitentiary centers and interview inmates in confidentiality since 2013. More than 300 lay members from the Venezuelan Episcopal Conference of the Roman Catholic Church volunteered in 40 prisons. Although prohibited from formally entering prisons, Catholic laity visited prisoners on family visitation days.

**d. Arbitrary Arrest or Detention**

The constitution prohibits the arrest or detention of an individual without a judicial order and provides for the accused to remain free while being tried, but individual judges and prosecutors often disregarded these provisions. The law provides for the right of persons to challenge the lawfulness of their arrest or detention in court, but the government generally did not observe this requirement. While NGOs such as Foro Penal, COFAVIC, the Institute for Press and Society, Public Space, and PROVEA noted at least 2,000 open cases of arbitrary detentions, authorities rarely granted them formal platforms to present their petitions. Authorities arbitrarily detained individuals, including foreign citizens, for extended periods without criminal charges.

**Role of the Police and Security Apparatus**

The GNB--a branch of the military that reports to both the Ministry of Defense and the Ministry of Interior, Justice, and Peace--is responsible for maintaining public
order, guarding the exterior of key government installations and prisons, conducting counternarcotics operations, monitoring borders, and providing law enforcement in remote areas. The Ministry of Interior, Justice, and Peace controls the CICPC, which conducts most criminal investigations, and SEBIN, which collects intelligence within the country and abroad, and is responsible for investigating cases of corruption, subversion, and arms trafficking. SEBIN maintained its own detention facilities separate from those of the Ministry of Penitentiary Services. Police include municipal, state, and national police forces.

Mayors and governors oversee municipal and state police forces. The PNB reports to the Ministry of Interior, Justice, and Peace. According to its website, the PNB largely focused on policing Caracas’s Libertador municipality; patrolling Caracas-area highways, railways, and metro system; and protecting diplomatic missions. The PNB maintained a minimal presence in seven of the country’s 23 states. The PNB, in coordination with the GNB, took a leading role in repressing antigovernment protests between April 1 and July 31.

Corruption, inadequate police training and equipment, and insufficient central government funding, particularly for police forces in states and municipalities governed by opposition officials, reduced the effectiveness of the security forces. There were continued reports of police abuse and involvement in crime, including illegal and arbitrary detentions, extrajudicial killings, kidnappings, and the excessive use of force.

Impunity remained a serious problem in the security forces. The Public Ministry is responsible for initiating judicial investigations of security force abuses. The Office of Fundamental Rights in the Public Ministry is responsible for investigating cases involving crimes committed by public officials, particularly security officials.

According to the Public Ministry’s 2016 annual report, the Office of Fundamental Rights cited 13,343 specific actions taken to “process claims” against police authorities for human rights abuses and charged 320 with violations. The Office of the Human Rights Ombudsman did not provide information regarding alleged human rights violations committed by police and military personnel, nor did the Attorney General’s Office release data.

State and municipal governments also investigated their respective police forces. By law, the national, state, and municipal police forces have a police corps disciplinary council that takes action against security officials who commit abuses. The National Assembly also may investigate security force abuses.
During the year the government at both the local and national levels took few actions to sanction officers involved in abuses. According to the NGO Network of Support for Justice and Peace, the lack of sufficient prosecutors made it difficult to prosecute police and military officials allegedly involved in human rights abuses. In addition, NGOs reported the following problems contributed to an ineffective judicial system: long procedural delays, poor court administration and organization, lack of transparency in investigations, and impunity of government officials. On June 15, Human Rights Watch reported that then attorney general Luisa Ortega Diaz had opened investigations in more than 600 cases of injury caused during the protests that began in April. In at least 10 cases, her office charged security forces with unlawful killings of demonstrators or bystanders. After her removal, her successor did not pursue the cases.

The National Experimental University for Security (UNES), tasked with professionalizing law enforcement training for the PNB and other state and municipal personnel, had centers in Caracas and five other cities. UNES requires human rights training as part of the curriculum for all new officers joining the PNB, state, and municipal police forces. Members of the PNB and state and municipal police also enrolled for continuing education and higher-learning opportunities as part of the Special Plan of Police Professionalization at UNES.

Societal violence was high and continued to increase. In the absence of official data, media outlets compiled violent death statistics using information from hospitals and morgues. According to media reports, there were at least 5,486 homicides in the first quarter of the year. The NGO Venezuelan Observatory of Violence (OVV) reported approximately 28,479 homicides, a rate of 91.8 per 100,000 residents in 2016, while the Public Ministry cited 21,752 violent deaths. NGOs and police noted that many victims did not report kidnappings to police or other authorities due to fear of retribution or lack of confidence in the police and that the actual occurrence was likely far higher.

**Arrest Procedures and Treatment of Detainees**

While a warrant is required for an arrest, detention is permitted without an arrest warrant when an individual is caught in the act of committing a crime or to secure a suspect or witness during an investigation. Police often detained individuals without a warrant. The law mandates that detainees be brought before a prosecutor within 12 hours and before a judge within 48 hours to determine the legality of the detention; the law also requires detainees be informed promptly of the charges.
against them. Authorities routinely ignored these requirements.

Although the law provides for bail, it is not available for certain crimes. Bail also may be denied if a person is apprehended in the act of committing a crime or if a judge determines the accused may flee or impede the investigation. The law allows detainees access to counsel and family members, but that requirement was often not met, particularly for political prisoners. The constitution also provides any detained individual the right to immediate communication with family members and lawyers who, in turn, have the right to know a detainee’s whereabouts. A person accused of a crime may not be detained for longer than the possible minimum sentence for that crime or for longer than two years, whichever is shorter, except in certain circumstances, such as when the defendant is responsible for the delay in the proceedings.

Arbitrary Arrest: Foro Penal reported 5,462 protest-related cases of arbitrary detention between April 1 and December 31.

Several cases remained pending related to a series of arbitrary detentions the government carried out against opposition activists in the weeks before a planned opposition rally in September 2016. On May 24, authorities released independent journalist Braulio Jatar to house arrest after he had served eight months in SEBIN custody for reporting on an impromptu protest against President Maduro; a date for his next hearing had not been set by year’s end.

Pretrial Detention: Pretrial detention remained an egregious problem. According to the OVP, approximately 79 percent of the prison population was in pretrial detention. According to the Public Ministry, in 2016 only 21 percent of trials concluded or reached sentencing. The NGO Citizen Observatory of the Penal Justice System attributed trial delays to the shortage of prosecutors and penal judges (4.7 penal judges per 100,000 inhabitants in 2010, the latest date for which information was available).

Despite constitutional protections guaranteeing timely trials, judges reportedly scheduled initial hearings months after the events giving rise to the cause of action. An automated scheduling system was ineffective at streamlining case logistics. Proceedings were often deferred or suspended when an officer of the court, such as the prosecutor, public defender, or judge, failed to attend.

According to the Public Ministry’s 2015 annual report, the ministry pressed charges in 9.7 percent of the 556,000 cases involving common crimes. The
ministry reported the closure of the remainder of the complaints but did not indicate final outcomes. Prisoners reported to NGOs that a lack of transportation and disorganization in the prison system reduced their access to the courts and contributed to trial delays.

**Detainee’s Ability to Challenge Lawfulness of Detention before a Court:** Detained individuals may challenge the grounds for their detention, but proceedings were often delayed, and hearings were postponed, stretching trials for years. Courts frequently disregarded defendants’ presumption of innocence. Authorities often failed to allow detainees to consult with counsel or to access their case records when filing challenges. Some detainees remained on probation or under house arrest indefinitely.

**e. Denial of Fair Public Trial**

The constitution provides for an independent judiciary, but the judiciary lacked independence and generally judged in favor of the government at all levels. There were credible allegations of corruption and political influence throughout the judiciary. According to reports from the International Commission of Jurists, between 66 and 80 percent of all judges had provisional appointments and were subject to removal at will by the TSJ Judicial Committee. Provisional and temporary judges, who legally have the same rights and authorities as permanent judges, allegedly were subject to political influence from various ministries and the newly appointed attorney general to make progovernment determinations. There was a general lack of transparency and stability in the assignments of district attorneys to cases and a lack of technical criteria for assigning district attorneys to criminal investigations. These deficiencies hindered the possibility of bringing offenders to justice and resulted in a 90 percent rate of impunity for common crimes and a higher percentage of impunity for cases of alleged human rights violations.

**Trial Procedures**

The law provides for the right to a fair and public trial with oral proceedings for all individuals. Defendants are considered innocent until proven guilty. The law requires that detainees be informed promptly of the charges against them, but the requirement was often ignored and, even when respected, involved dubious allegations, according to human rights sources. Defendants have the right to consult with an attorney. According to the Office of the Human Rights Ombudsman, there were approximately 1,500 public defenders, but indigent
defendants’ right to free counsel was often not respected because of attorney shortages. Free interpretation was often not available to defendants. COFAVIC and Foro Penal noted that, in trials related to the 2014 student protests, the government pressured defendants into using public defenders instead of private defense attorneys with the promise of receiving more-favorable sentences. Several NGOs provided pro bono counsel to defendants.

Defendants may request no fewer than 30 days and no more than 45 days to prepare their defense. Defendants have the right to question adverse witnesses and present their own witnesses. By law, defendants may not be compelled to testify or confess guilt. Defendants and plaintiffs have the right of appeal.

Trial delays were common. Trials “in absentia” are permitted in certain circumstances, although opponents of the procedure claimed the constitution prohibits such trials. The law also states that, in the absence of the defense attorney, a trial may proceed with a public defender that the court designates. The law gives judges the discretion to hold trials behind closed doors if a public trial could “disturb the normal development of the trial.”

At the April 7 hearing of Judge Maria Lourdes Afiuni, the five remaining witnesses refused to appear for the prosecution. Afiuni was accused of corruption and abuse of authority for her 2009 decision to conditionally release a businessman who had been held in pretrial detention beyond the maximum time prescribed by law. Afiuni continued to be subject to protective measures in place since her release to house arrest in 2011 that mandate she may not leave the country, talk to the media, or use social media, although the law states that such measures may not last more than two years.

The law mandates that municipal courts handle “less serious” crimes, i.e., those carrying maximum penalties of imprisonment for less than eight years. Municipal courts may levy penalties that include three to eight months of community service. Besides diverting some “less serious” crimes to the municipal courts, this diversion also permits individuals accused of “lesser crimes” to ask the courts to suspend their trials conditionally in exchange for their admission of responsibility, commitment to provide restitution “in a material or symbolic form,” community service, or any other condition imposed by the court.

The law provides that trials for military personnel charged with human rights abuses after 1999 be held in civilian rather than military courts. In addition, under the Organic Code of Military Justice, an individual may be tried in the military
justice system for “insulting, offending, or disparaging the national armed forces or any related entities.” NGOs expressed concern with the government’s practice of trying civilians under the military justice system for protests and other actions not under military jurisdiction. During nationwide spring and summer protests, NGOs estimated at least 500 civilians were tried before military tribunals.

**Political Prisoners and Detainees**

The government used the judiciary to intimidate and selectively prosecute individuals critical of government policies or actions. The regime reportedly continued the policy it began in 2012 of denying the International Committee of the Red Cross access to Venezuelan prisons. The number of political prisoners skyrocketed compared with 2016. Foro Penal reported 213 political prisoners were incarcerated as of December 31, down from 676 prisoners in late summer but well above the number at the beginning of the year. Many of those were detained for participating in protests, with the government deliberately engaging in a campaign to “catch and release” individuals. In some cases, political prisoners were held in SEBIN installations or the Ramo Verde military prison without an explanation of why they were not being held in traditional facilities. On December 24, the government said it would release 80 political prisoners as a “good will” gesture, releasing 44 individuals as of December 26, although many of those released were still under house arrest.

On June 22, SEBIN arrested opposition coalition leader Roberto Picon. Media reports and NGO contacts claimed SEBIN operated without an arrest warrant. At a military hearing on charges of rebellion and theft of items belonging to the military, NGO sources claimed the prosecution entered evidence that included a paperweight and a reference to the Inter-American Democratic Charter. Picon remained in custody at year’s end.

On July 8, the Attorney General’s Office called for the immediate release of former San Cristobal mayor Daniel Ceballos, but the government failed to comply. On October 20, his lawyer reported that Ceballos had been held in solitary confinement for 14 days.

On August 1, SEBIN detained former metropolitan Caracas mayor Antonio Ledezma in his home, where he was under house arrest, and returned him to Ramo Verde military prison. Ledezma’s return to prison occurred after he released a video calling on citizens to support antiregime protests. On August 4, SEBIN officials returned Ledezma to house arrest. On November 17, Ledezma escaped
from house arrest and fled to Spain.

On August 1, SEBIN returned opposition party leader and former Caracas Chacao municipality mayor Leopoldo Lopez to prison for allegedly violating his house arrest conditions by posting a video in support of antigovernment protests. The TSJ had released him on July 8 to house arrest, allegedly due to health concerns. On August 5, SEBIN officials returned Lopez to house arrest, and the TSJ ordered him to cease outside communications.

Civil Judicial Procedures and Remedies

While there are separate civil courts that permit citizens to bring lawsuits seeking damages, there are no procedures for individuals or organizations to seek civil remedies for human rights violations.

f. Arbitrary or Unlawful Interference with Privacy, Family, Home, or Correspondence

The constitution provides for the inviolability of the home and personal privacy, but the government generally did not respect these prohibitions. In some cases, government authorities searched homes without judicial or other appropriate authorization, seized property without due process, or interfered in personal communications. From April to October, government-sponsored raids on private property increasingly targeted opposition-controlled areas.

On May 22, more than 100 security officers invaded an apartment complex in Miranda State, allegedly in search of terrorists. Residents reported that masked officers using tear gas, rubber bullets, and other weapons destroyed the building’s security cameras and went door to door, threatening to kill anyone who did not grant them access. The officers interrogated residents about protest activity, stole valuables, damaged vehicles, and physically assaulted several residents.

The 60-day “states of exception” first declared by President Maduro in 2015 continued in 23 municipalities bordering Colombia in Zulia, Tachira, Apure, and Amazonas States, thereby suspending the constitutional requirement for authorities to obtain a court order prior to entering a private residence or violating the secrecy of a person’s private communications, among other constitutional rights.

Section 2. Respect for Civil Liberties, Including:
a. Freedom of Expression, Including for the Press

The law provides for freedom of expression, including for the press, but the combination of laws and regulations governing libel and media content as well as legal harassment, physical intimidation of individuals and the media, and executive influence on the judiciary resulted in significant repression of these freedoms. National and international groups, such as the Inter-American Commission on Human Rights (IACHR), the UN Human Rights Committee, Human Rights Watch, Freedom House, the Inter-American Press Association, Reporters without Borders, and the Committee to Protect Journalists, condemned government efforts throughout the year to restrict press freedom and create a climate of fear and self-censorship.

Freedom of Expression: The law makes insulting the president punishable by six to 30 months in prison without bail, with lesser penalties for insulting lower-ranking officials. Comments exposing another person to public contempt or hatred are punishable by prison sentences of one to three years and fines. PSUV officials threatened violence against opposition figures and supporters, in particular during the four months of antiregime protests that began on April 1. On October 2, SEBIN arrested Lenny Josefina Martinez Gonzalez, a worker at Pastor Oropeza hospital in the city of Barquisimeto in Lara State, who, according to the local human rights group Funpaz, photographed women giving birth while in the hospital waiting room. The photographs—indications of the medical crisis—were widely viewed on social media. As of year’s end, authorities had not charged her with crimes.

Press and Media Freedom: The law provides that inaccurate reporting that disturbs the public peace is punishable by prison terms of two to five years. The requirement that the media disseminate only “true” information was undefined and open to politically motivated interpretation. An August report issued by the Office of the UN High Commissioner for Human Rights (OHCHR) highlighted that the National Telecommunications Commission (CONATEL) shut down 24 radio stations and ordered internet service providers to block certain digital outlets during the April-July protests.

The law prohibits all media from disseminating messages that incite or promote hate or intolerance for religious, political, gender-related, racial, or xenophobic reasons; incite, promote, or condone criminal acts; constitute war propaganda; foment anxiety in the population or affect public order; do not recognize legitimate government authorities; incite homicide; or incite or promote disobedience to the
established legal order. Penalties range from fines to the revocation of licenses. The threat of nonrenewal of operating licenses systematically led to self-censorship on the part of several media outlets.

Despite such laws, President Maduro and the ruling PSUV used the nearly 600 government-owned or controlled media outlets to insult and intimidate the political opposition throughout the year. Maduro regularly referred to Miranda state governor Henrique Capriles as insane on live television, while PSUV first vice president and ANC member Diosdado Cabello continued to use his weekly television program to bully journalists and media outlets.

The law declares telecommunications a “public interest service,” thereby giving the government greater authority to regulate the content and structure of the radio, television, and audiovisual production sectors. The law provides that the government may suspend or revoke licenses when it judges such actions necessary in the interests of the nation, public order, or security. The law empowers the government to impose heavy fines and cancel broadcasts for violations of its norms; CONATEL oversees the law’s application. Minister of Communications and Information Ernesto Villegas highlighted this power during an August 30 interview, declaring that “operating licenses are not a right” and that the government may elect to deny them without providing justification.

The government continued legal actions against high-profile independent media outlets Tal Cual, El Nacional, El Nuevo Pais, La Patilla, and Globovision. A court found the online news source La Patilla responsible for moral damage and ordered it to pay the equivalent of $500,000 in bolivars to Diosdado Cabello. The remaining outlets were awaiting trial at the end of the year.

The government’s economic policies made it difficult for newspapers to access foreign currency, preventing many newspapers from purchasing critical supplies and equipment necessary for day-to-day business operations. Ultima Hora, a regional news outlet, and Tal Cual, a national newspaper, stopped printing in August and November, respectively, the latest nongovernment-owned media outlets to cease production due to lack of access to dollars to purchase newsprint from the government. Other sources, such as regional newspaper La Prensa, opted to print fewer pages or to print weekly rather than daily publications. The National Press Workers Union (SNTP) estimated that, of 115 print news outlets that operated in the country in 2013, 93 remained in operation.

The NGO Public Space reported 887 cases of violations of freedom of expression...
between January and September—a nearly three-fold increase over 2016. The most common violations were aggressions against journalists and censorship. State-owned and state-influenced media provided almost continuous progovernment programming. In addition, private and public radio and television stations were required to transmit mandatory nationwide broadcasts ("cadenas") throughout the year, including a daily 15-minute news broadcast that provided reports and summaries of government achievements. According to the online tracking program Citizens Monitoring, run by the civil society network Legislative Monitor, between January and October the government implemented more than 160 hours of national cadenas featuring President Maduro, interrupting regular broadcasts. Both Maduro and other ruling-party officials utilized mandatory broadcast time to campaign for progovernment candidates. Opposition candidates generally did not have access to media broadcast time.

The law requires practicing journalists to have journalism degrees and be members of the National College of Journalists, and it prescribes jail terms of three to six months for those practicing the profession illegally. These requirements are waived for foreigners and opinion columnists.

**Violence and Harassment:** Senior national and state government leaders continued to harass and intimidate privately owned and opposition-oriented television stations, media outlets, and journalists by using threats, property seizures, administrative and criminal investigations, and prosecutions. Government officials, including the president, used government-controlled media outlets to accuse private media owners, directors, and reporters of fomenting antigovernment destabilization campaigns and coup attempts.

The Venezuelan Institute of Press and Society (IPYS) reported 539 violations and assaults on media offices, press equipment and tools, journalists, and media employees from January to August. The report also stated that IPYS recorded at least 280 cases of journalists affected by state-sponsored violence from January to August. On February 25, the Public Ministry charged Santiago Guevara, a University of Carabobo professor, with "betrayal of the homeland" after he published a series of editorials on the nation’s economic crisis.

According to IPYS, during the four months of antiregime protests, journalists reported 108 assaults against journalists by security forces, 40 injuries due to tear gas canisters, and 11 gunshot injuries. The August OHCHR report on the protests noted that authorities arrested an estimated 60 journalists, deleting their video footage before releasing them within a few hours, and conducted a smear campaign
against journalists, including death threats, that caused a number of them to leave the country.

Government officials also harassed foreign journalists working in the country. On March 31, GNB officers attacked Elyangelica Gonzalez, a reporter for Univision Noticias and the Colombian-based station Caracol Radio, while she reported outside the Supreme Court.

**Censorship or Content Restrictions:** In its 2016 report, IPYS noted the government’s preference for using legal proceedings, financial sanctions, and administrative actions against unfavorable news outlets instead of shutting them down outright. Members of the independent media stated they regularly engaged in self-censorship due to fear of government reprisals. This resulted in many journalists posting articles to their personal blogs and websites instead of publishing them in traditional media. The NGO Public Space reported 50 cases involving censorship as of September.

The government also exercised control over content through licensing and broadcasting requirements. CONATEL acted selectively on applications from private radio and television broadcasters for renewal of their broadcast frequencies. According to Nelson Belfort, former president of the Venezuelan Radio Chamber, and NGO reports, approximately 80 percent of radio stations were in “illegal” status throughout the country due to CONATEL having not renewed licenses for most radio stations since 2007.

On February 17, CONATEL banned the international news network CNN En Espanol, labeling its coverage “war propaganda” after the station broadcast a story about Venezuelan visa fraud allegations. On August 23, CONATEL forced two Colombian television stations, Caracol TV and RCN, off the air after they reported on former attorney general Luisa Ortega Diaz’s corruption allegations against President Maduro. On August 25, CONATEL shut the nationally broadcast radio stations 92.9 Tu FM and Magica 99.1 FM, immediately replacing them with progovernment outlets. According to SNTP statistics, using this method CONATEL closed 49 radio stations and six television stations through August.

The government controlled a large portion of the country’s businesses and paid for advertising only with government-owned or government-friendly media.

**Libel/Slander Laws:** Government officials engaged in reprisals against individuals who publicly expressed criticism of the president or government policy. In June
President Maduro announced he would use slander laws to “defend his honor” in court against opposition leaders’ allegations he was responsible for protest-related deaths. As of December Maduro had not acted on these threats.

**National Security:** The law allows the government to suspend or revoke licenses when it determines such actions to be necessary in the interests of public order or security. The government exercised control over the press through the public entity known as the Strategic Center for Security and Protection of the Homeland (CESPPA), established in 2013, which is similar to the government entity Center for National Situational Studies (CESNA), established in 2010. CESNA and CESPPA have similar mandates and are responsible for “compiling, processing, analyzing, and classifying” both government-released and other public information with the objective of “protecting the interests and objectives of the state.”

During the year President Maduro renewed 11 times the “state of exception” he first invoked in January 2016, citing a continuing economic emergency, and granted himself the power to restrict rights otherwise guaranteed in the constitution. The 60-day emergency decree, which by law is renewable only once and requires National Assembly endorsement to be effective, allows the president to block any action he deems could “undermine national security” or could “obstruct the continuity of the implementation of economic measures for the urgent reactivation of the national economy.” The National Assembly continued systematically to refuse to ratify each renewal, and the Supreme Court annulled each refusal, reasoning that the assembly’s “contempt” status made its failure to endorse the renewal “unconstitutional.” According to Human Rights Watch, the “state of exception” negatively affected the right to freedom of association and expression.

**Nongovernmental Impact:** Widespread violence in the country made it difficult to determine whether attacks on journalists resulted from common criminal activity or whether criminals or others targeted members of the media.

**Internet Freedom**

The government restricted or disrupted access to the internet and censored online content. The executive branch exercised broad control over the internet through the state-run CONATEL. Free Access reported that CONATEL supported monitoring of private communications and persecution of internet users who expressed dissenting opinions online. According to media reports, users of social networks accused CONATEL of monitoring their online activity and passing
identifying information to intelligence agencies, such as SEBIN. According to Free Access, CONATEL provided information to SEBIN, including internet protocol addresses, which assisted authorities in locating the users. Free Access cited arrests of Twitter users during the April-July protests.

The law puts the burden of filtering prohibited electronic messages on service providers and it allows CONATEL to order service providers to block access to websites that violate these norms and sanctions them with fines for distributing prohibited messages. In 2016 IPYS reported that local internet providers following CONATEL orders blocked at least 42 internet domains.

CONATEL’s director, Andres Eloy Mendez, appointed in October 2016, repeatedly declared in press statements that the government did not block websites, although officials ordered internet service providers to block certain digital outlets. Mendez reiterated the claims of his predecessor that CONATEL’s role was to enforce the law and prevent dissemination of illegal information or material unsuitable for children and adolescents. Nevertheless, the government continued to block internet sites that posted dollar- and euro-to-bolivar currency exchange rates differing from the government’s official rate. The government-owned internet service provider CANTV facilitated blockages. The government used Twitter hashtags to attain “trending” status for official propaganda and employed hundreds of employees to manage and disseminate official government accounts. At least 65 official government accounts used Twitter to promote the ruling PSUV party.

Intelligence agencies, which lacked independent oversight, conducted surveillance for political purposes. Courts relied on evidence obtained from anonymous “patriotas cooperantes” (cooperating patriots) to harass perceived opponents of the government, and senior government officials used personal information gathered by cooperating patriots to intimidate government critics and human rights defenders.

According to the International Telecommunication Union, 60 percent of the population used the internet in 2016, the latest figure available.

**Academic Freedom and Cultural Events**

There were some government restrictions on academic freedom and cultural events. University leaders and students alleged the government retaliated against opposition-oriented autonomous universities by providing government subsidies
significantly below the annual inflation rate to those universities. Autonomous universities, which are partially funded by the government, received considerably less than the amounts they requested. Furthermore, budgetary allocations were based on figures not adequately adjusted for inflation and covered expenses only through March. On September 26, the National University Council, the government regulating body for university education, relinquished its functions to the ANC, disregarding the law requiring university autonomy.

On August 9, University Education Minister Hugbel Roa announced that the “carnet de la patria,” a new government-issued social benefits card provided primarily to government supporters, would be required for enrollment in public universities, affecting approximately 305,000 students.

b. Freedoms of Peaceful Assembly and Association

Freedom of Peaceful Assembly

The constitution provides for this right, but the government generally repressed or suspended it. The Law on Political Parties, Public Gatherings, and Manifestations and the Organic Law for Police Service and National Bolivarian Police Corps regulate the right to assembly. Human rights groups continued to criticize such laws that enable the government to charge protesters with serious crimes for participating in peaceful demonstrations. Ambiguous language in the laws also allowed the government to criminalize organizations that were critical of the government. Protests and marches require government authorization in advance and are forbidden within designated “security zones.”

As part of the “states of exception” in place throughout the year in municipalities bordering Colombia and imposed via an economic emergency decree, the government ordered the suspension of the constitutional right to meet publicly or privately without obtaining permission in advance as well as the right to demonstrate peacefully and without weapons.

The political opposition organized frequent nationwide protests from April 1 to July 31 demanding elections, respect for constitutional norms, freedom for political prisoners, and effective government action to relieve severe economic and humanitarian crises. Demonstrations, which involved marches, sit-ins, and at times coordinated blockages of the country’s infrastructure, frequently attracted thousands of participants. According to Foro Penal, security forces arrested more than 5,000 persons during protests between April 1 and July 31; of those detained,
1,381 remained in custody at the end of December.

Violent security force repression, often coordinated with armed “colectivos,” resulted in thousands of injuries and more than 125 deaths. On April 5, GNB officers attacked student protesters at the University of Carabobo in Carabobo State and injured dozens of students, including one who was shot in the back.

The government blamed the protest violence and deaths on opposition “terrorists.” On July 30, several PNB officers were injured when a pyrotechnic/gasoline device detonated in Caracas. The device appeared placed and timed to ignite while a column of PNB on motorcycles was passing. Video of the explosion was similar to that of a July 10 pyrotechnic explosion that also targeted security forces. The opposition did not denounce the attack.

**Freedom of Association**

The constitution provides for freedom of association and freedom from political discrimination, but the government did not respect these rights. Although professional and academic associations generally operated without interference, a number of associations complained that the TSJ and the National Electoral Council (CNE), which is responsible for convoking all elections and establishing electoral dates and procedures, repeatedly interfered with their attempts to hold internal elections. In February the TSJ suspended all elections at the Central University of Venezuela (UCV), citing a complaint submitted to them by four students and their attorney. According to credible sources, the students were regime supporters seeking to halt processes that were almost certain to elect students politically inclined toward the country’s opposition. On February 17, UCV student leaders nonetheless held elections, electing vocal opposition supporter Rafaela Requesens as head of the student government.

The president’s 2016 “state of exception” decree called on the Foreign Ministry to suspend international funding to NGOs when “it is presumed” that the funding is used with “political purposes or for destabilization.” There were no reports that the government implemented the decree.

**c. Freedom of Religion**

See the Department of State’s *International Religious Freedom Report* at [www.state.gov/religiousfreedomreport/](http://www.state.gov/religiousfreedomreport/).
d. Freedom of Movement

The constitution provides for freedom of internal movement, foreign travel, emigration, and repatriation; however, the government did not respect these rights.

The government did not comply with the Office of the UN High Commissioner for Refugees (UNHCR) and other humanitarian organizations in providing protection and assistance to refugees, asylum seekers, and other persons of concern.

**Abuse of Migrants, Refugees, and Stateless Persons:** With the refugee status determination process centralized at the National Refugee Commission (CONARE) headquarters in Caracas, asylum seekers often waited for years to obtain a final decision. During this period they had to continue renewing their documentation every three months to stay in the country and avoid arrest and deportation. While travelling to the commission, particularly vulnerable groups, such as women with young children, the elderly, and persons with disabilities, faced increased personal risks, such as arrest and deportation, extortion, exploitation, and sexual abuse by authorities at checkpoints and other locations.

In addition to arbitrary deportations, Colombians expelled from the country complained of abuses by security forces. The IACHR reported that many deported Colombians alleged Venezuelan security forces used excessive force to evict them from their homes, which were subsequently destroyed, and that security agents subjected them to physical abuse and forceful separation from their families. The government implemented OLP security measures and increased the presence of security forces in Tachira State on the Colombian border.

While no official statistics were available, a women’s shelter reported recurring problems with gender-based violence and trafficking of refugee women.

Also see the Department of State’s annual *Trafficking in Persons Report* at [www.state.gov/j/tip/rls/tiprpt/](http://www.state.gov/j/tip/rls/tiprpt/).

**In-country Movement:** The government systematically deployed thousands of security forces and crowd control vehicles to hinder movement and restrict access to designated protest rally points in Caracas during spring and summer protests. The government also restricted the movement of certain opposition leaders from moving around the country and traveling internationally. Others were effectively forced into self-exile.
Protection of Refugees

Access to Asylum: The law provides for the granting of asylum or refugee status, and the government has established a system for providing protection to refugees. According to UNHCR, the vast majority of asylum seekers came from Colombia. UNHCR estimated there were approximately 7,860 recognized refugees and 173,000 persons in need of international protection in the country. The majority of such persons remained without any protection. Most of the Colombians had not accessed procedures for refugee status determination due to the inefficiency of the process. UNHCR reported that few persons in need of international protection were legally recognized as refugees.

Access to Basic Services: Colombian asylum seekers without legal residency permits had limited access to the job market, education, and health systems. The lack of documentation created significant challenges to achieving sufficient protection and long-term integration. Authorities permitted Colombian children to attend school but did not grant them diplomas or certificates of completion without residency documentation, resulting in high dropout rates for Colombian children. According to the Hebrew Immigrant Aid Society, an NGO dedicated to providing assistance to refugees, Colombian asylum seekers said nationwide antigovernment, antiregime protests further hindered their access to basic services and movement to and from service centers.

Section 3. Freedom to Participate in the Political Process

The 1999 constitution, the country’s 26th since independence, provides citizens the ability to change their government through free and fair elections, but government interference, electoral irregularities, and manipulation of voters and candidates restricted the exercise of this right in the July 30 ANC elections, the October 15 gubernatorial elections, and the December 10 mayoral elections.

Elections and Political Participation

Recent Elections: Even though there had been no referendum to approve efforts for constitutional reform, the president directed, and on July 30 the CNE held, fraudulent and violently-protested elections to choose representatives for the ANC that would rewrite the constitution.

The ANC was composed of 500 government-aligned representatives chosen in a bifurcated process, with 200 to 250 chosen by “classes” of workers, indigenous
persons and persons with disabilities, and farmers through direct votes in factories and offices. The other half was composed of “community leaders” chosen by direct, anonymous vote at the municipal level. President Maduro announced his intention, among other things, to use the ANC to incorporate government social welfare programs into the fabric of the constitution. During its first three weeks in office, the ANC dismantled the Attorney General’s Office, granted itself unchecked governing powers, moved up elections for governors, usurped legislative power, and stripped a parliamentarian of his immunity.

On August 5, the ANC unanimously voted to dismiss Attorney General and Chief Prosecutor Luisa Ortega Diaz. Ortega, formerly a Maduro government insider, began dissenting from the administration in March after the TSJ took formal measures to usurp the opposition-controlled National Assembly’s powers. She publicly described the TSJ’s decision as a “rupture of the constitutional order.” During the four months of antigovernment protests between April and July, Ortega also vocally denounced and investigated alleged human rights violations committed by government security officials. The International Commission of Jurists called for Ortega’s immediate reinstatement, describing the ANC’s decision “politically motivated.” Tarek William Saab, former human rights ombudsman and a government supporter, replaced Ortega and immediately moved to reopen cases investigated under his predecessor and remove all evidence of the investigations from the Public Ministry’s official website and social media accounts.

In the period preceding the ANC elections, PROVEA reportedly received 212 complaints from public workers whose employers threatened to fire them if they did not participate in the July 30 polling. The government reportedly fired a number of civil servants for failing to vote.

During the December 10 municipal elections, national media noted various irregularities, including: financial benefits offered to PSUV voters, government vehicles used to transport PSUV voters to voting centers, opposition party observers blocked from polling centers, media blocked from covering events at polling centers, forced mobilization of government workers and benefit recipients, and distribution of food coupons to progovernment voters.

Political Parties and Political Participation: Opposition political parties operated in a restrictive atmosphere characterized by intimidation, the threat of prosecution or administrative sanction on questionable charges, and very limited mainstream media access. On November 9, the ANC gave final approval to the “Constitutional
Law against Hate, for Political Coexistence and Tolerance.” While the government stated that the purpose of the law was to “promote peace and tolerance,” media observed that the vaguely written law could be used to silence political parties, activists, and civil society leaders as well as media outlets and journalists.

On August 12, the newly elected ANC usurped the CNE’s role and called for gubernatorial elections, overdue since December 2016, to be held October 15. Opposition candidates decried several electoral irregularities, including: a short period for candidate registration, campaigning, and coordination of election monitoring; a reduction in the number of voting machines in opposition neighborhoods; manipulation of ballot layouts, leading to a large number of invalid votes; a lack of official international election observers; the use of state resources to promote ruling party candidates; and a lack of a technical audit for CNE tabulation. The opposition won five of the 23 gubernatorial races. President Maduro demanded that opposition candidates submit to ANC authority by being sworn in before the body or be disqualified. The opposition governors-elect initially refused to recognize the ANC as constitutional, but on October 23, four of the governors were sworn in before the ANC president. The fifth candidate, Juan Pablo Guanipa, was disqualified, and on November 2, the CNE announced a new round of gubernatorial elections would be held in Zulia State on December 10.

In January the government began issuing a new, multipurpose identification card, the “carnet de la patria” (homeland card), required to access government-funded social services. Many applicants reported being required to provide proof of PSUV affiliation during the registration process to obtain the critical document. Government opponents said the card amounted to social control, a tool to leverage access to scarce subsidized consumer products in return for political loyalty.

Beginning on March 4, according to a new CNE mandatory registration process, political parties that won less than 0.5 percent of the 2015 legislative vote were required to participate in the CNE recertification process in order to participate in future elections. The CNE assigned each party a two-day period to register its supporters using biometric voting machines in a handful of locations across the country. Both opposition and progovernment parties described the process as punitive and biased against smaller political parties.

Participation of Women and Minorities: No laws limit the participation of women and/or members of minorities in the political process, and they did participate.
Section 4. Corruption and Lack of Transparency in Government

The law provides criminal penalties for corruption by officials, but the government did not implement the law effectively. Some officials explicitly acknowledged corruption as a major problem. The government frequently investigated, prosecuted, and detained political opponents on corruption charges to harass, intimidate, or imprison them.

Corruption: In July then attorney general Luisa Ortega released a Public Ministry investigation report that at least a dozen high-ranking officials and their relatives received bribes in exchange for contracts with the Brazilian construction company Odebrecht. Ortega said the government paid approximately 30 billion dollars for 20 infrastructure projects that were never finished. Ortega also claimed that Odebrecht provided campaign funding to politicians. On September 7, the newly appointed attorney general, Tarek William Saab, announced that the Public Ministry would not pursue investigations into Odebrecht infrastructure projects, including allegations that President Maduro was involved.

According to Transparency International, the main reasons for the country’s widespread corruption were the government’s anticorruption program, impunity, weak institutions, and lack of transparency in the management of government resources.

Corruption was a major problem in all police forces, whose members were generally poorly paid and minimally trained. There was no information publicly available about the number of cases involving police and military officials during the year, although the Public Ministry publicized several individual cases against police officers for soliciting bribes and other corrupt activities.

Financial Disclosure: The law requires public officials, as well as all directors and members of the boards of private companies, to submit sworn financial disclosure statements. By law, the Public Ministry and competent criminal courts may require such statements from any other persons when circumstantial evidence arises during an investigation.

Section 5. Governmental Attitude Regarding International and Nongovernmental Investigation of Alleged Abuses of Human Rights

A variety of independent domestic and international human rights groups generally operated with some government restrictions. Major domestic human rights NGOs
Government officials generally were not cooperative or responsive to their requests. Some domestic NGOs reported government threats and harassment against their leaders, staff, and organizations, in addition to government raids and detentions, but were able to publish dozens of reports during the year. Some human rights activists reported that authorities barred them from traveling abroad or that they feared not being able to return to the country if they traveled. NGOs played a significant role in informing citizens and the international community about alleged violations and key human rights cases.

NGOs asserted the government created a dangerous atmosphere for them to operate. PSUV first vice president and ANC member Diosdado Cabello used his weekly talk show to intimidate NGO staff from Public Space, PROVEA, and Foro Penal. Several organizations, such as OVP, PROVEA, Foro Penal, and Citizen Control, reported that their staff received both electronic and in-person threats. Human rights organizations claimed they were subject to frequent internet hacking attacks and attempts to violate their email privacy.

The law prohibits domestic NGOs from receiving funds from abroad if they have a “political intent”—defined as the intent to “promote, disseminate, inform, or defend the full exercise of the political rights of citizens”—or that seek to “defend political rights.” The government threatened NGOs with criminal investigations for allegedly illegally accepting foreign funds. Various government officials accused human rights organizations on national television and media of breaking the law by receiving funding from international donors.

For violations, the law stipulates monetary penalties, a potential five- to eight-year disqualification from running for political office, or both. The law defines political organizations as those involved in promoting citizen participation, exercising control over public offices, and promoting candidates for public office. Although there was no formal application or enforcement of the law, it created a climate of fear among human rights NGOs and a hesitancy to seek international assistance.

In addition to the restrictions placed on fund raising, domestic NGOs also faced regulatory limitations on their ability to perform their missions. The law includes provisions eliminating the right of human rights NGOs to represent victims of human rights abuses in legal proceedings. The law provides that only the public defender and private individuals may file complaints in court or represent victims of alleged human rights abuses committed by public employees or members of the security forces.
The United Nations or Other International Bodies: The government was generally hostile toward international human rights bodies and continued to refuse to permit a visit by the IACHR, which last visited the country in 2002. The Organization of American States (OAS) openly urged President Maduro to adopt reforms to avoid a humanitarian crisis in the country, and OAS secretary general Luis Almagro wrote a series of statements highly critical of President Maduro and his government’s actions on elections and political protests. Almagro also drafted several reports on the political crisis, including abuses by the government.

The OAS held a series of briefings by the country’s civil society leaders, activists, and former government officials to determine whether alleged government abuses should be referred to the International Criminal Court. On April 27, the Ministry of Foreign Affairs announced that it would initiate the two-year process to withdraw from the OAS. On August 5, MERCOSUR (Southern Common Market) determined that there was a breakdown in democratic order in the country and suspended its membership in the organization. The government withdrew from the Inter-American Convention on Human Rights in 2013, but the IACHR continued to receive complaints from citizens and civil society. The government also refused to grant access to the OHCHR to investigate the human rights situation. In August and September, the UN’s high commissioner for human rights warned that, as a result of “systematically using excessive force to deter demonstrations,” the government may have committed crimes against humanity.

Government Human Rights Bodies: Throughout the year the government gave its 2016 human rights plan minimal attention.

The TSJ’s continuing to hold the National Assembly in “contempt” status diminished the purview and operational effectiveness of the Assembly’s subcommission on human rights, which suspended its regular meetings in order to attend to more pressing matters, most notably restoring the National Assembly’s status.

Section 6. Discrimination, Societal Abuses, and Trafficking in Persons

Women

Rape and Domestic Violence: The law criminalizes rape of men or women, including spousal rape, making it punishable by a prison term of eight to 14 years. A man legally may avoid punishment by marrying (before he is sentenced) the
person he raped. The law allows authorities to consider alternative forms of punishment, including work release, for those convicted of various crimes, including rape, if they have completed three-quarters of their sentence.

The law criminalizes physical, sexual, and psychological violence in the home or community and at work. The law punishes perpetrators of domestic violence with penalties ranging from six to 27 months in prison. The law requires police to report domestic violence to judicial authorities and obligates hospital personnel to notify authorities when admitting patients who are victims of domestic abuse. Police generally were reluctant to intervene to prevent domestic violence and were not properly trained to handle such cases. The law also establishes women’s bureaus at local police headquarters and tribunals specializing in gender-based violence, and two-thirds of states had specialized courts. The Public Ministry’s Women’s Defense Department employed a team of lawyers, psychiatrists, and other experts who dealt exclusively with cases of femicide, gender-related violence, and other crimes against women.

Some 108 individuals were charged and 50 convicted for 122 femicides and 57 attempted femicides.

Many advocates observed there was a lack of public awareness among women regarding resources and support available to prevent and combat domestic violence. The government offered some shelter and services for victims of domestic and other violence, but NGOs provided the majority of domestic abuse support services.

Sexual Harassment: Sexual harassment is illegal and punishable by a prison sentence of one to three years. The law establishes a fine between 5,400 bolivars ($2.04 at the Dicom exchange rate) and 10,800 bolivars ($4.09 at the Dicom rate) for employers convicted of sexual harassment. Although allegedly common in the workplace, sexual harassment cases were rarely reported.

Coercion in Population Control: There were no reports of coerced abortion, involuntary sterilization, or other coercive population control methods. Estimates on maternal mortality and contraceptive prevalence are available at:

Discrimination: Women enjoy the same legal status and rights as men under the constitution. Women and men are legally equal in marriage, and the law provides
for gender equality in exercising the right to work. The law specifies that employers must not discriminate against women with regard to pay or working conditions. According to the Ministry of Labor and the Confederation of Workers, regulations protecting women’s labor rights were enforced in the formal sector, although according to the World Economic Forum, women earned 36 percent less on average than men doing comparable jobs.

The law provides women with property rights equal to those of men.

**Children**

**Birth Registration:** Citizenship is derived by birth within the country’s territory. According to UNICEF, 81 percent of children under the age of five were registered at birth.

**Child Abuse:** According to UNICEF and NGOs working with children and women, child abuse, including incest, occurred but was rarely reported. According to a National Institute for Statistics survey, 5 percent of victims of sexual abuse were children. Although the judicial system acted to remove children from abusive households, the press reported that public facilities for such children were inadequate.

**Early and Forced Marriage:** The legal minimum age for marriage is 18 for women and men, but with parental consent the minimum age is 16.

**Sexual Exploitation of Children:** By law sexual relations with a minor under the age of 13, with an “especially vulnerable” person, or with a minor under the age of 16 when the perpetrator is a relative or guardian, are punishable with a mandatory sentence of 15 to 20 years’ imprisonment. The law prohibits the forced prostitution and corruption of minors. Penalties range from 15 to 20 years’ imprisonment in the case of sex trafficking of girls, although the law requires force, fraud, or coercion in its definition of sex trafficking of children. The law prohibits the production and sale of child pornography and establishes penalties of 16 to 20 years’ imprisonment.

**Displaced Children:** Leading advocates and the press estimated that 10,000 children lived on the streets. With institutions filled to capacity, hundreds of children accused of infractions, such as curfew violations, were confined in inadequate juvenile detention centers.
On March 19, 12 children, ranging in age from six to 15, robbed two soldiers in civilian clothing. The soldiers chased the boys, who in turn attacked them and stabbed them to death. The case received widespread media attention and raised concerns regarding Caracas’s influx of street children.


Anti-Semitism

There were reports of societal abuses or discrimination based on religious affiliation, belief, or practice, including anti-Semitism.

The Confederation of Jewish Associations in Venezuela estimated there were 7,000 Jews in the country. Jewish community leaders expressed concern about anti-Semitic statements made by high-level government officials and anti-Semitic pieces in progovernment media outlets. The community leaders noted that many other anti-Semitic incidents occurred during the year.

Trafficking in Persons

See the Department of State’s Trafficking in Persons Report at www.state.gov/j/tip/rls/tiprpt/.

Persons with Disabilities

The law prohibits discrimination against persons with physical and mental disabilities, but the government did not make a significant effort to implement the law, inform the public of it, or combat societal prejudice against persons with disabilities. The law requires that all newly constructed or renovated public parks and buildings provide access, but persons with disabilities had minimal access to public transportation, and ramps were almost nonexistent. Online resources and access to information were generally available to persons with disabilities, although access to closed-captioned or audio-described online videos for persons with sight and hearing disabilities was limited. Separately, leading advocates for persons with hearing disabilities lamented difficult access to public services due to a lack of government-funded interpreters in public courts, health-care facilities, and legal services, as well as a lack of other public accommodations.
The National Commission for Persons with Disabilities (CONAPDIS), an independent agency affiliated with the Ministry for Participation and Social Development, advocated for the rights of persons with disabilities and provided medical, legal, occupational, and cultural programs. According to CONAPDIS, fewer than 20 percent of persons with disabilities who registered with government health programs were fully employed. Beginning in May monthly subsidies of 70,000 bolivars ($26.50 at the Dicom exchange rate) were provided by Mission Hogares de la Patria, a government social service program, to heads of households for each child or adult with disabilities they supported.

**National/Racial/Ethnic Minorities**

The constitution prohibits discrimination based on race. The law prohibits all forms of racial discrimination and provides for a maximum of three years’ imprisonment for acts of racial discrimination. As mandated by law, signage existed outside commercial and recreational establishments announcing the prohibition against acts of racial discrimination.

On May 18, demonstrators in a neighborhood in Caracas known as a rally point for antiregime activities surrounded Afro-Venezuelan Jose Rafael Noguera and his sister, accusing them of being government sympathizers based on their race. They beat Noguera, doused him with gasoline, and set him ablaze, causing severe burns over much of his body. In a similar incident later that month, demonstrators set on fire another Afro-Venezuelan man who was also accused of being “chavista” based on his race; the man died two weeks later.

**Indigenous People**

The law prohibits discrimination based on ethnic origin. The constitution provides for three seats in the National Assembly for deputies of indigenous origin to “protect indigenous communities and their progressive incorporation into the life of the nation,” but some indigenous communities had been without representation in the national legislature since the TSJ annulled the 2015 election of Amazonas State’s indigenous representative.

On May 7, the governor of Amazonas, Liboro Guarulla, stated the government had administratively barred him from political participation for 15 years, allegedly for corrupt practices. Guarulla stated that the disqualification was in response to his accusations of fraud in previous regional elections.
NGOs and the press reported that local political authorities seldom took account of indigenous interests when making decisions affecting indigenous lands, cultures, traditions, or allocation of natural resources. Indigenous groups continued to call for faster implementation of the demarcation process.

Indigenous groups regularly reported violent conflicts with miners and cattle ranchers over land rights. There were reports of harassment, attacks, and forced evictions against indigenous persons living in areas included as part of government mining concessions.

Border disputes with Colombia affected indigenous groups living in border regions. While the president proclaimed indigenous persons on the border could cross freely, there were many reported cases in which indigenous groups were restricted.

**Acts of Violence, Discrimination, and Other Abuses Based on Sexual Orientation and Gender Identity**

The constitution provides for equality before the law of all persons and prohibits discrimination based on “sex or social condition,” but it does not explicitly prohibit discrimination based on sexual orientation or gender identity. According to a TSJ ruling, no individual may be subject to discrimination because of sexual orientation, but the ruling was rarely enforced. On January 5, the TSJ ruled that children born of same-sex couples should be granted full rights of citizenship under the law as children of heterosexual parents.

Media and leading advocates for the rights of lesbian, gay, bisexual, transgender, and intersex (LGBTI) persons noted that since the law does not define a hate crime, official law enforcement statistics do not reflect LGBTI-related violence. Incidents of violence were most prevalent against members of the transgender community. Leading advocates noted that law enforcement authorities did not properly investigate to determine the motives for such crimes.

Local police and private security forces allegedly prevented LGBTI persons from entering malls, public parks, and recreational areas. NGOs reported the government systematically denied legal recognition to transgender and intersex persons by preventing them from obtaining identity documents required for accessing education, employment, housing, and health care. This vulnerability often led transgender and intersex persons to become victims of human trafficking.
or prostitution.

**HIV and AIDS Social Stigma**

The law provides for the equal rights of persons with HIV/AIDS and their families. Nevertheless, leading advocates alleged discrimination against persons with HIV/AIDS.

**Section 7. Worker Rights**

**a. Freedom of Association and the Right to Collective Bargaining**

The law provides that all private- and public-sector workers (except armed forces’ members) have the right to form and join unions of their choice, and it provides for collective bargaining and the right to strike. The law, however, places several restrictions on these rights, and the government deployed a variety of mechanisms to undercut the rights of independent workers and unions. Minimum membership requirements for unions differ based on the type of union. Forming a company union requires a minimum of 20 workers; forming a professional, industrial, or sectoral union in one jurisdiction requires 40 workers in the same field; and forming a regional or national union requires 150 workers. Ten persons may form an employees association, a parallel type of representation the government endorsed and openly supported.

The law prohibits “any act of discrimination or interference contrary to the exercise” of workers’ right to unionize. The law requires that all unions must provide the Ministry of Labor a membership roster that includes the full name, home address, telephone number, and national identification number for each union member. The ministry reviews the registration and determines whether the union fulfilled all requirements. Unions must submit their registration application by December 31 of the year the union forms; if not received by the ministry or if the ministry considers the registration unsatisfactory, the union is denied the ability to exist legally. The law also requires the presence of labor inspectors to witness and legitimize unions’ decisions before the Ministry of Labor. The International Labor Organization (ILO) raised concerns about the ministry’s refusal to register trade union organizations.

Under the law, employers may negotiate a collective contract only with the union that represents the majority of their workers. Minority organizations may not jointly negotiate in cases where no union represents an absolute majority. The law
also places a number of restrictions on unions’ ability to administer their activities. For example, the CNE has the authority to administer internal elections of labor unions, federations, and confederations. By law, elections must be held at least every three years. If CNE-administered and certified elections are not held within this period, the law prohibits union leaders from representing workers in negotiations or engaging in anything beyond administrative tasks. The ILO repeatedly found cases of interference by the CNE in trade union elections, and in 1999 it began calling for the CNE to be delinked from the union election process.

The law recognizes the right of all public- and private-sector workers to strike, subject to conditions established by law. By law, workers participating in legal strikes receive immunity from prosecution, and their time in service may not be reduced by the time engaged in a strike. The law requires that employers reincorporate striking workers and provides for prison terms of six to 15 months for employers who fail to do so. Replacement workers are not permitted during legal strikes. The law prohibits striking workers from paralyzing the production or provision of essential public goods and services, but it defines “essential services” more broadly than ILO standards. The ILO called on the government to amend the law to exclude from the definition of “essential services” activities “that are not essential in the strict sense of the term…so that in no event may criminal sanctions be imposed in cases of peaceful strikes.”

The minister of labor may order public- or private-sector strikers back to work and submit their disputes to arbitration if a strike “puts in immediate danger the lives or security of all or part of the population.” Other laws establish criminal penalties for the exercise of the right to strike in certain circumstances. For example, the law prohibits and punishes with a five- to 10-year prison sentence anyone who “organizes, supports, or instigates the realization of activities within security zones that are intended to disturb or affect the organization and functioning of military installations, public services, industries and basic [mining] enterprises, or the socioeconomic life of the country.” In addition, the law provides for prison terms of two to six years and six to 10 years, respectively, for those who restrict the distribution of goods and for “those…who develop or carry out actions or omissions that impede, either directly or indirectly, the production, manufacture, import, storing, transport, distribution, and commercialization of goods.”

The government restricted the freedom of association and the right to collective bargaining through administrative and legal mechanisms. Organized labor activists reported that the annual requirement to provide the Ministry of Labor a membership roster was onerous and infringed on freedom of association; they
alleged the ministry removed member names from the rosters for political purposes, particularly if members were not registered to vote with the CNE. Labor leaders also criticized the laborious and costly administrative process of requesting CNE approval for elections and subsequent delays in the CNE’s recognition of such union processes. In addition, there reportedly was a high turnover of Ministry of Labor contractors, resulting in a lack of timely follow-through on union processes. Labor unions in both the private and public sectors noted long delays in obtaining CNE concurrence to hold elections and in receiving certification of the election results, which hindered unions’ ability to bargain collectively.

The government continued to support many “parallel” unions, which sought to dilute the membership and effectiveness of traditional independent unions. In general these government-supported unions were not subject to the same government scrutiny and requirements regarding leadership elections. The government excluded from consideration other, independent union federations, including the Confederation of Venezuelan Workers, the General Confederation of Venezuelan Workers, the Confederation of Autonomous Unions of Venezuela, and the National Union of Workers (UNETE). The ILO expressed continuing concern that the government did not consult with representative worker organizations or accredit their members to the ILO. In contrast, the Labor and Trade Union Action Unit, an independent organization of labor federations and other labor groups and movements, was able to meet freely to coordinate interventions for the July meeting, analyze conclusions from the meeting, and discuss follow-up actions.

According to the labor group Autonomous Front in Defense of Employment, Wages, and Unions (FADESS), the ministry did not send labor inspectors to opposition-leaning union meetings to witness and legitimize unions’ decisions, as required by law, thus rendering moot decisions by many unions.

In March the ILO urged the government without success to establish a tripartite roundtable with labor unions, FEDECAMARAS (business and producers association), and ILO experts.

Workers were systematically threatened, dismissed, or arrested based on their political affiliations. As a condition of employment, the government required that federal employees attend political rallies in support of the regime. Several public workers received threats or were dismissed for abstaining from the July 30 ANC election or for participating in the opposition’s July 16 ANC straw poll.

The government continued to refuse to adjudicate or otherwise resolve the cases of
19,000 employees of the state oil company, PDVSA, who were fired during and after the 2002-03 strike. The Ministry of Labor continued to deny registration to the National Union of Oil, Gas, Petrochemical, and Refinery Workers (UNAPETROL), a union composed of these workers.

Union leaders were also subjected to harassment and verbal attacks. The ILO raised concerns about violence against trade union members and government intimidation of the Associations of Commerce and Production of Venezuela (FEDECAMARAS).

In practice the concept of striking had been demonized since 2002 and periodically used as a political tool to accuse government opponents of coup plotting or other destabilizing activities. Legal provisions on the right to strike were used to target company management as well as labor leaders. Some companies, especially in the public sector, had multiple unions with varying degrees of allegiance to the ruling party’s version of the “socialist revolution,” which could trigger interunion conflict and strife.

In July the Central Federation of Petroleum Workers and the National Union of Workers (UNETE) led a 72-hour general strike against the July 30 ANC election. The Confederation of Workers of Venezuela, the National Union of Workers, the General Confederation of Labor, and the Confederation of Autonomous Trade Unions also participated. According to UNETE, 85 percent of the nation’s transportation, oil, commercial, health, food, education, and electricity sector workers participated in the strike. Following elections, the ANC agreed to uphold President Maduro’s threats to fire workers who abstained from voting in the July 30 ANC elections.

In August SEBIN officials arrested Rolman Rojas, a professor at University Carabobo (Aragua) and Voluntad Popular regional coordinator for Aragua State; Julio Garcia, president of the Nurses College (Carabobo State); Omar Escalante, president of Fetracarabobo; Rosemary Di Pietro, president of the College of Accountants; and Omar Vasquez Lagonel, secretary general of the National Federation of Retirees and Pensioners, for their participation in the national labor strike against the ANC election. Their cases were heard before military tribunals, and the government charged each with instigating rebellion, transporting illicit arms, and/or disobeying authority. As of December 8, Roman Rojas and Omar Escalante remained in custody; no trial date had been set.

b. Prohibition of Forced or Compulsory Labor
The law prohibits some forms of forced or compulsory labor but does not provide criminal penalties for certain forms of forced labor. The law prohibits human trafficking by organized criminal groups through its law on organized crime, which prescribes 20 to 25 years’ imprisonment for the human trafficking of adults carried out by a member of an organized criminal group of three or more individuals. The organized crime law, however, fails to prohibit trafficking by any individual not affiliated with an organized criminal group. Prosecutors could employ other statutes to prosecute such individuals. The law increases penalties from 25 to 30 years for child trafficking with the purpose of forced labor. There was no comprehensive information available regarding the government’s enforcement of the law. FADESS reported that public-sector worker agreements included provisions requiring serving in the armed forces’ reserves.

In July 2016 the Ministry of Labor published Resolution 9855 requiring public- and private-sector businesses to provide male and female workers for 60 to 120 days in order to increase agricultural production. Amnesty International criticized the resolution as effectively amounting to forced labor. The resolution noted that the government would pay workers their normal salary while they participated in the program and that workers would not be fired from their ordinary jobs. The government did not implement the resolution during the year.

There were isolated reports of children and adults subjected to human trafficking with the purpose of forced labor, particularly in the informal economic sector and in domestic servitude (see section 7.c.). There were also reports of Cubans working in government social programs (such as the Mission inside the Barrio) in exchange for the government’s provision of oil resources to the Cuban government. Indicators of forced labor reported by some Cubans included chronic underpayment of wages, mandatory long hours, limitations on movement, and threats of retaliatory actions against workers and their families if they left the program.

The law does not sufficiently prohibit the trafficking of boys and requires proof of the use of deception, coercion, force, violence, threats, abduction, or other fraudulent means to carry out the offense of trafficking of girls, including for commercial sexual exploitation.

Also see the Department of State’s Trafficking in Persons Report at www.state.gov/j/tip/rls/tiprpt/.
c. Prohibition of Child Labor and Minimum Age for Employment

The law sets the minimum employment age at 14. Children younger than 14 may work only if granted special permission by the National Institute for Minors or the Ministry of Labor. Such permission may not be granted to minors under the legal age for work in hazardous occupations that risk their life or health or could damage their intellectual or moral development. According to the ILO, the government had not made publicly available the list of specific types of work considered hazardous. Children who are 14 to 18 years of age may not work without permission of their legal guardians or in occupations expressly prohibited by the law, and they may work no more than six hours per day or 30 hours per week. Minors under 18 may not work outside the normal workday.

The law establishes fines on employers between 6,420 bolivars ($2.43 at the Dicom exchange rate) and 12,840 bolivars ($4.86 at the Dicom rate) for each child employed under the age of 12 or for adolescents between the ages of 12 and 14 employed without proper authorization. Anyone employing children under the age of eight is subject to a prison term of between one and three years. Employers must notify authorities if they hire a minor as a domestic worker.

The Ministry of Labor and the National Institute for Minors enforced child labor laws effectively in the formal sector of the economy but less so in the informal sector. In 2015 the governmental statistics agency estimated that 41 percent of persons who were employed worked in the informal sector and 59 percent in the formal sector.

No information was available on whether or how many employers were sanctioned for violations. The government continued to provide services to vulnerable children, including street children, working children, and children at risk of working. There was no independent accounting of the effectiveness of these and other government-supported programs.

Most child laborers worked in the agricultural sector, street vending, domestic service, or in small and medium-size businesses, most frequently in family-run operations. There continued to be isolated reports of children exploited in domestic servitude, mining, forced begging, and commercial sexual exploitation of children (see section 6).

Also see the Department of Labor’s Findings on the Worst Forms of Child Labor at www.dol.gov/ilab/reports/child-labor/findings/.
d. Discrimination with Respect to Employment and Occupation

The constitution prohibits employment discrimination for every citizen. Labor law prohibits discrimination based on age, race, sex, social condition, creed, marital status, union affiliation, political views, nationality, disability, or any condition that could be used to lessen the principle of equality before the law. No law specifically prohibits employment discrimination on the basis of sexual orientation, gender identity, or HIV/AIDS status. The media and NGOs, such as PROVEA and the Human Rights Center at the Andres Bello Catholic University, reported the government had a very limited capacity to address complaints and enforce the law in some cases and lacked political will in some cases of active discrimination based on political motivations.

On January 3, President Maduro signed a presidential decree to protect government workers and shield them against arbitrary dismissals until 2018. Nevertheless, there were numerous reports that public workers who voted in the opposition’s July 16 “national consultation” were dismissed for their participation. Reports also surfaced that employees were fired for abstaining from the July 30 ANC elections. PROVEA reported that many public-sector employers forced their employees to recruit voters and to take photographs of themselves at voting centers as proof of their participation.

e. Acceptable Conditions of Work

In September President Maduro raised the monthly minimum wage by 40 percent to 136,544 bolivars ($51.70 at the Dicom exchange rate) and the food ticket benefit by 25 percent to 89,000 bolivars ($71.60 at the Dicom rate). The simultaneous increases—the fourth for the year—brought the combined minimum monthly income to 325,544 bolivars ($123 at the Dicom rate, or less than $15 per month when calculated at the widely referenced “parallel rate” quoted in December). According to the NGO Workers’ Center for Documentation and Analysis, the monthly food basket for a family of five for July cost 2,043,083 bolivars ($773.90 at the Dicom rate), or 14.9 times the minimum wage.

Nominal wages increased 212 percent through the first eight months of the year, but accumulated inflation over the same period reached 366 percent, according to a monthly study conducted by the National Assembly Finance Committee, which conducted its work without official Central Bank data.
According to FADESS, serial minimum wage increases affected company margins and drove the private sector to adjust by reducing worker hours or cutting employees. FADESS estimated 1,500,000 jobs were lost due to scarcity of investment capital to revitalize the manufacturing and agricultural sectors, as the executive government allocated most investment capital to buying imports to supply the country’s food program known by the Spanish acronym CLAP.

The law sets the workweek at 40 hours (35 hours for a night shift). The law establishes separate limits for “shift workers,” who may not work more than an average of 42 hours per week during an eight-week period, with overtime capped at 100 hours annually. Managers are prohibited from obligating employees to work additional time, and workers have the right to two consecutive days off each week. Overtime is paid at a 50 percent surcharge if a labor inspector approves the overtime in advance and at a 100 percent surcharge if an inspector does not give advance permission. The law establishes that, after completing one year with an employer, a worker has a right to 15 days of paid vacation annually. A worker has the right to an additional day for every additional year of service, for a maximum of 15 additional days annually.

The law provides for secure, hygienic, and adequate working conditions. Workplaces must maintain “protection for the health and life of the workers against all dangerous working conditions.” The law obligates employers to pay workers specified amounts for workplace injuries or occupational illnesses, ranging from two times the daily salary for missed workdays to several years’ salary for permanent injuries. Workers may remove themselves from situations that endanger health or safety without jeopardy to their employment.

The law covers all workers, including temporary, occasional, and domestic workers. There was reportedly some enforcement by the Ministry of Labor of minimum wage rates and hours of work provisions in the formal sector, but 40 percent of the population worked in the informal sector, where labor laws and protections generally were not enforced. The government did not enforce legal protections on safety in the public sector. According to PROVEA, while the National Institute for Prevention, Health, and Labor Security required many private businesses to correct dangerous labor conditions, the government did not enforce such standards in a similar manner in state enterprises and entities. There was no publicly available information regarding the number of inspectors or the frequency of inspections to implement health and safety, minimum wage, or hours of work provisions. Ministry inspectors seldom closed unsafe job sites. Employers may be fined between 12,840 bolivars ($4.86 at the Dicom rate) and 38,520 bolivars.
($14.59 at the Dicom rate) for failing to pay the minimum wage or provide legally required vacation time. Employers are required to report work-related accidents within 24 hours or face fines between 8,132 bolivars ($3.08 at the Dicom rate) and 10,700 bolivars ($4.05 at the Dicom rate). There was no information on whether penalties were sufficient to deter violations.

Official statistics regarding workplace deaths and injuries were not publicly available.
Tab #4
EXECUTIVE SUMMARY

Venezuela is formally a multiparty, constitutional republic, but for more than a decade, political power has been concentrated in a single party with an increasingly authoritarian executive exercising significant control over the legislative, judicial, citizen, and electoral branches of government. Nicolas Maduro won the presidency in 2013 by a 1.5 percent margin amid allegations of pre- and post-election fraud, including government interference, the use of state resources by the ruling party, and voter manipulation. The executive-controlled electoral and judicial bodies rejected the opposition’s claims and refused to conduct a full audit of the electoral process. These bodies, however, accepted the results of the December 6 election in which a coalition of opposition parties won two-thirds of the seats in the Legislative Assembly, ending the governing party’s control of that body. Civilian authorities maintained effective control over the security forces.

Principal human rights abuses reported during the year included use of the judiciary to intimidate and selectively prosecute government critics; indiscriminate police action against civilians leading to widespread arbitrary detentions and unlawful deprivation of life; and government actions to impede freedom of expression and restrict freedom of the press. The government arrested and imprisoned opposition figures and did not respect judicial independence or permit judges to act according to the law without fear of retaliation. The government blocked media outlets, and harassed and intimidated privately owned television stations, other media outlets, and journalists throughout the year using threats, fines, property seizures, arrests, criminal investigations, and prosecutions.

Nongovernmental organizations (NGOs), the media, and government agencies reported extrajudicial killings by police and security forces; torture and other cruel, inhuman, or degrading treatment; harsh and life-threatening prison conditions and lack of due process rights that contributed to widespread violence, riots, injuries, and deaths in prisons; inadequate juvenile detention centers; corruption and impunity in the police; arbitrary arrests and detentions; abuse of political prisoners; interference with privacy rights; lack of government respect for freedom of assembly; lack of protection for Colombian migrants; corruption at all levels of government; threats against domestic NGOs; violence against women; anti-Semitic statements by senior government officials; trafficking in persons; violence based on sexual orientation and gender identity; and restrictions on workers’ right of association.
The government sometimes took steps to punish lower-ranking government officials who committed abuses, but there were few investigations or prosecutions of senior government officials. Impunity remained a serious concern in the security forces.

Section 1. Respect for the Integrity of the Person, Including Freedom from:

a. Arbitrary or Unlawful Deprivation of Life

Although the government did not release statistics on extrajudicial killings, NGOs reported that national, state, and municipal police entities, as well as the armed forces and government-supported paramilitary groups, known as colectivos, carried out such killings during the year.

There was also no official information available on the number of public officials prosecuted or sentenced to prison for involvement in extrajudicial killings, which, in the case of killings committed by police, were classified as “resistance to authority.” The NGO Committee for the Families of Victims of February-March 1989 (COFAVIC) continued to report there was no publicly accessible national registry of reported cases of extrajudicial killings.

COFAVIC reported that in 2014 there were 1,018 alleged extrajudicial killings committed by members of the national police agency Scientific, Penal, and Criminal Investigative Corps (CICPC), as well as by regional and municipal police. According to NGOs, prosecutors occasionally brought cases against such perpetrators, but prosecutions often resulted in light sentences, and convictions often were overturned on appeal.

COFAVIC reported cases in all 23 states and the national capital district of what it defined as extrajudicial killings committed by elements within local and state police forces. COFAVIC reported these elements systematically and arbitrarily detained and killed individuals (mainly young individuals from lower social classes) without any recourse to proper investigation by the government.

In July the government initiated a new nationwide anticrime strategy, the Operation for the Liberation and Protection of the People (OLP), characterized by large-scale raids conducted by as many as hundreds of government security agents in neighborhoods allegedly harboring criminals. These operations often resulted in widespread deaths of suspected criminals. The NGO Venezuela Program for
Education/Action on Human Rights (PROVEA) noted that in the Cota 905 neighborhood of Caracas alone, 43 people were killed during multiple OLP-branded security exercises between July and September. PROVEA reported that a September 15 OLP involving 400 security officers resulted in the deaths of five residents of the Maracaibo neighborhood of Santa Rosa de Agua.

The government continued to prosecute individuals connected with the 1989 killings in Caracas known as the “Caracazo,” in which the Public Ministry estimated 331 individuals died, and the 1988 El Amparo massacre, in which government security forces allegedly killed 14 persons.

b. Disappearance

There were no substantiated reports of politically motivated disappearances.

c. Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment

Although the constitution states no person shall be subjected to cruel, inhuman, or degrading punishment, there were credible reports security forces tortured and abused detainees.

There were no reports of any government officials being charged under the law that states an agent or public official who inflicts pain or suffering—whether physical or mental—on another individual to obtain information or a confession, or seeks to punish an individual for an act the individual has committed, may be imprisoned for a maximum of 25 years, dismissed from office, and barred from holding public office for a maximum of 25 years. Prison and detention center officials who commit torture may face a maximum of five years in prison and a maximum fine of 53.5 million bolivars (Bs) ($8.5 million at the official rate). The law also includes mechanisms for reparations to victims and their families and creates a special National Commission for Torture Prevention composed of several government ministries.

The Office of the Human Rights Ombudsman and the Public Ministry did not publish statistics regarding allegations of torture by police during the year. Several NGOs detailed cases of widespread torture and “cruel, inhumane, and degrading treatment.” The Venezuelan NGO Foro Penal documented more than 138 cases of torture in the country between February 2014 and May 2015. Foro Penal maintained that hundreds of cases were not reported to government institutions
because of victims’ fear of reprisal. NGOs detailed reports from detainees whom authorities allegedly sexually abused, threatened with death, and forced to spend hours on their knees in detention centers.

In September authorities released student-protester Marco Coello, who then fled the country. CICPC authorities had detained Coello in February 2014 for participating in protests, and reportedly beat and threatened to kill him while he was in their custody. A government official publicly rejected his accusations of torture.

Human rights groups continued to question the commitment of the prosecutor general and the public defender to conduct impartial investigations. No data was available on investigations, prosecutions, or convictions in cases of alleged torture.

Press and NGO reports of beatings and humiliating treatment of suspects during arrests were common and involved various law enforcement agencies and the military. Torture and other cruel, inhuman, or degrading treatment or punishment of prisoners were reported during the year. Two common methods of cruel treatment were the denial of medical care by prison authorities and the remanding of prisoners to long periods in solitary confinement. In the case of opposition leader Leopoldo Lopez, family members stated he was in solitary confinement for much of his imprisonment and prison authorities denied him permission to see his doctor during a 30-day hunger strike in June.

The NGO Foro Penal reported multiple instances of political prisoners denied adequate medical treatment while in government custody. Foro Penal noted instances where detainees were transferred to a medical facility, where instead of receiving treatment, they were interrogated by security officials.

**Prison and Detention Center Conditions**

Prison conditions were harsh and life threatening due to poorly trained and allegedly corrupt prison staff; violence and alleged extortion by guards and inmates, some of which was gang related and fueled by trafficking in arms and drugs; severe overcrowding in most prisons; lack of adequate medical care; and shortages of food and potable water. NGOs, human rights lawyers, and the press frequently claimed prison gang leaders, rather than government authorities, controlled the penitentiaries and were able to lead organized crime networks based outside the prison system.
Physical Conditions: The Ministry of Penitentiary Services reported there were 51,256 inmates in the country’s 51 prisons and penitentiaries, 170 percent more than their capacity as estimated by the NGO Venezuelan Observatory for Prisons (OVP).

According to OVP reports, pretrial detainees (31,860) and convicted prisoners (18,316) were held in the same facilities. Authorities assigned another 590 individuals to work detachment programs, and held 490 individuals in police station facilities not fit to serve as detention centers. Women and men generally were held in separate prison facilities. The OVP stated women’s detention centers were generally less violent than those for men. There was only one penitentiary exclusively for women, and female prisoners in other detention centers were held in annexes or separate women’s departments in otherwise male-only prisons. Security forces and law enforcement authorities often held minors together with adults, even though separate facilities existed. Because reform institutions were filled to capacity, hundreds of children accused of infractions were confined in juvenile detention centers where they were reportedly crowded into small, unsanitary cells.

The CICPC and police station jails and detention centers also were overcrowded, causing police station offices to be converted into makeshift prison cells. Prisoners slept on floors and office chairs. In Caracas seven jails and detention centers with an estimated capacity of 197 held more than 300 detainees awaiting transport to prisons.

The National Guard and the Ministry of Interior, Justice, and Peace have responsibility for prisons’ exterior and interior security, respectively. The government failed to provide adequate prison security. The OVP reported 309 prisoner deaths and 1,709 serious injuries in 2014. Most deaths and injuries resulted from prisoner-on-prisoner violence, riots, fires, and generally unsanitary and unsafe conditions. In late December 2014, a National Assembly deputies’ ad hoc commission confirmed 45 inmates died and 250 were injured at David Viloria Penitentiary in Lara State following accidental overdoses from expired medicines provided by the prison’s pharmacy. In August a total of 18 prisoners and visiting family members died and 10 individuals were severely injured in a fire in Tocuyito Penitentiary in Carabobo State.

During the year numerous prison riots resulted in inmate deaths and injuries. On April 26, the media reported 40 prisoners took two prison guards hostage at the National Bolivarian Police Headquarters in Caracas, resulting in one inmate dead.
and several injured. The incident occurred after inmates used two firearms and several improvised knives to subdue the guards. The inmates demanded that Minister of Penitentiary Services Iris Varela personally respond to their complaints of overcrowding in the center and requested that she personally order their transfer to other facilities. Following resolution of the hostage situation, government authorities appointed a Caracas district attorney to investigate the case, and 25 inmates were moved to Puente Ayala penitentiary in Anzoategui State.

There was not sufficient information regarding deaths from tuberculosis, HIV/AIDS, and other diseases, or lack of medical care in prisons. A study by the NGO Solidarity Action found prison rules regarding the classification of inmates resulted in the isolation of those with HIV/AIDS in “inadequate spaces without food and medical attention.” The OVP reported a generalized lack of medical care, drugs, equipment, and physicians for prisoners; and reportedly inmates often received the same pills regardless of their symptoms. The OVP reported that due to inadequate nutrition plans and lack of potable water, stomach illnesses were common among inmates.

Administration: The government’s recordkeeping on prisoners was inadequate. Prison authorities did not maintain accurate counts of inmates. In 2013 Minister Varela acknowledged the Ministry of Penitentiary Services controlled only 14 of the country’s prisons, while criminal gangs controlled 35. According to press reports, the most recent accurate daily counts at the General Penitentiary of Venezuela and the La Planta Penitentiary occurred in 2009 and 2010, respectively.

The NGO Una Ventana a la Libertad (UVL) reported that prisoners’ dietary needs at the Fenix, Rodeo I, Rodeo II, Rodeo III, Yare III, and National Institute of Feminine Orientation (INOF) penitentiaries were provided by family members due to the inadequacy of food supplied by the prison administration. Authorities asked family members to bring nonperishable food items for inmates, and in cases where this was not possible, UVL reported authorities provided a single bowl of rice a day to prisoners, which resulted in cases of malnutrition. UVL released video footage of prisoners in Yare III cooking stray cats for lack of any other food. Subsequently, Minister Varela accused UVL Executive Director Carlos Nieto Palma of forging the video to undermine the ministry’s work.

Prisoners conducted hunger strikes and violent uprisings to protest administrative delays and harsh prison conditions. The government did not respond to most requests from independent organizations to investigate these conditions. The Ministry of Penitentiary Services did not respond to any of the requests regarding
inmates it received from the OVP, UVL, or other human rights organizations. According to OVP and press reports, Minister Varela did not respond to demands of inmates and relatives to meet to discuss prison conditions.

Prisoners and detainees had access to visitors, but in some cases prison officials allegedly harassed or abused visitors. Prison officials imposed significant restrictions on visits to political prisoners. In June Patricia Gutierrez de Ceballos denounced the Bolivarian Intelligence Service (SEBIN) officers who denied her and her children permission over a 90-day period to visit her husband, jailed Popular Will leader and former mayor of San Cristobal, Daniel Ceballos. Authorities refused to allow family members and the attorney of Laided Salazar, an air force captain accused of conspiracy to overthrow President Maduro, to visit her for two months from May to July. On February 12, Ingrid Diaz, mother of imprisoned political activist Rosmit Mantilla, stated that her son was kept in isolation in SEBIN headquarters and was not able to receive visits from family members or his attorney.

Independent Monitoring: Human rights observers continued to experience lengthy delays and restrictions in accessing prisons and detention centers. Requests by the International Committee of the Red Cross (ICRC) to visit penitentiary centers and interview inmates in confidentiality have been rejected since 2013. More than 300 lay members from the Venezuelan Episcopal Conference of the Roman Catholic Church volunteered in 40 prisons. Although prohibited from formally entering prisons, Catholic laity visited prisoners on family visitation days.

Improvements: On April 6, the Ministry of Penitentiary Services announced the temporary closure of Yare I workshop and Yare II prison facilities in Miranda State to curb violence and provide a safer environment for inmates. A total of 583 prisoners were moved to other government penitentiaries while renovation continued. The ministry implemented educational programs for inmates, although reports from an NGO claimed enrollment was low.

d. Arbitrary Arrest or Detention

The constitution prohibits the arrest or detention of an individual without a judicial order and provides for the accused to remain free while being tried, but individual judges and prosecutors often disregarded these provisions. While NGOs such as Foro Penal, COFAVIC, the Institute for Press and Society (IPYS), Public Space, and PROVEA maintained at least 2,000 open cases of arbitrary detentions, authorities rarely granted them formal platforms to present their charges.
In the first deployment of the government’s OLP strategy (see section 1.a.) into the Caracas neighborhood of Cota 905 on July 13, security forces killed a reported 14 suspected criminals and detained 100 others. According to PROVEA, authorities detained more individuals during the first six weeks of OLP activity than during all of the 2014 antigovernment protests. PROVEA reported that in the first month of OLP-related activity, 90 percent of the reported detentions were illegal or arbitrary.

The government continued to harass private-sector businesses, in some instances detaining executives for vaguely defined economic crimes. In February authorities detained two senior executives from the major pharmacy chain Farmatodo on charges of sabotage and destabilization due to the presence of long lines at many of the company’s locations. On February 2, police arrested Morales Ordosgiotti, director of supermarket chain Dia Dia, and the company’s external counsel, Tadeo Arriechi, on charges of “boycotting and destabilizing the economy” and detained them at SEBIN headquarters. On March 25, a judge formally charged them with violations of the Law of Just Prices. In late July, SEBIN officers detained Fray Roa, head of the Venezuelan Liquor Federation, after Roa told the press that due to the extreme scarcity of raw materials, the beer industry would soon have to suspend beer production. Officials charged Roa with “causing public anxiety or panic” under a provision of law.

Since April there were 13 hearings in the case of Judge Maria Lourdes Afiuni, who was accused of corruption and abuse of authority for her 2009 decision to release imprisoned banker Eligio Cedeno. According to defense counsel, there has been no evidence to show Afiuni committed a crime in issuing her decision. Six years have elapsed since Afiuni’s arrest, and she has never been convicted or sentenced. She continued to be subjected to protective measures that mandate she may not leave the country, talk to the media, or use social media, although the law states that such measures may not last more than two years.

On October 15, authorities arrested opposition politician and former Maracaibo mayor Manuel Rosales upon his return to the country following a six-year exile. The state prosecutor’s office said it would resume Rosales’ trial on charges of corruption, charges Rosales considered politically motivated.

On November 17, a judge delayed for the ninth time the trial of Metropolitan Caracas Mayor Antonio Ledezma, who has remained under house arrest since April 24 following surgery (see also section 1.e., Political Prisoners and Detainees).
Role of the Police and Security Apparatus

The Bolivarian National Guard (GNB), a branch of the military that reports to both the Ministry of Defense and the Ministry of Interior, Justice, and Peace, is responsible for maintaining public order, guarding the exterior of key government installations and prisons, conducting counternarcotics operations, monitoring borders, and providing law enforcement in remote areas. The Ministry of Interior, Justice, and Peace controls the CICPC, which conducts most criminal investigations, and SEBIN, which collects intelligence within the country and is responsible for investigating cases of corruption, subversion, and arms trafficking. Police include municipal, state, and national police forces. Mayors and governors oversee municipal and state police forces. The Bolivarian National Police (PNB) reports to the Ministry of Interior, Justice, and Peace and had a reported 16,000 officers. The PNB largely focused on policing one Caracas municipality; patrolled Caracas-area highways, railways, metro system, and diplomatic missions; and had a minimal presence in eight of the country’s 23 states.

Corruption, inadequate police training and equipment, and insufficient central government funding, particularly for police forces in states and municipalities governed by opposition officials, reduced the effectiveness of the security forces. There were continued reports of police abuse and involvement in crime, including illegal and arbitrary detentions, extrajudicial killings, kidnappings, and the excessive use of force.

Impunity remained a serious problem in the security forces. The Public Ministry is responsible for initiating judicial investigations of security force abuses. The Office of Fundamental Rights in the Public Ministry is responsible for investigating cases involving crimes committed by public officials, particularly security officials.

According to the Public Ministry’s annual report for 2014, the Office of Fundamental Rights cited 11,317 specific actions taken to “process claims” against police authorities, but it disclosed only 105 judgments against security officials and did not indicate the types of crimes or security body against which the cases were filed. The Office of the Human Rights Ombudsman did not provide information regarding human rights violations committed by police and military personnel, nor has the Attorney General’s Office released data.
State and municipal governments also investigated their respective police forces. By law national, state, and municipal police forces have a police corps disciplinary council, which takes action against security officials who commit abuses. The National Assembly also may investigate security force abuses.

During the year the government at both the local and national levels took few actions to sanction officers involved in abuses. According to the NGO Network of Support for Justice and Peace, the lack of sufficient prosecutors made it difficult to prosecute police and military officials allegedly involved in human rights abuses. In addition NGOs reported the following problems contributed to an ineffective judicial system: long procedural delays, poor court administration and organization, lack of transparency in investigations, and impunity of government officials.

The National Experimental University for Security (UNES), tasked with professionalizing law enforcement training for the PNB and other state and municipal personnel, has centers in Caracas and five other cities. UNES requires human rights training as part of the curriculum for all new officers joining the PNB, state, and municipal police forces. Members of the PNB and state and municipal police also enrolled for continuing education and higher-learning opportunities as part of the Special Plan of Police Professionalization at UNES.

Societal violence remained high and continued to increase. The NGO Venezuelan Observatory of Violence (OVV) reported 24,980 homicides in 2014, a rate of 82 per 100,000 residents. Criminal kidnappings for ransom were widespread in both urban centers and rural areas. Kidnappings included both “express kidnappings,” in which victims were held for several hours and then released, and traditional kidnappings. The Public Ministry reported 599 cases of kidnapping or extortion in 2014. NGOs and police noted many victims did not report kidnappings to police or other authorities due to fear of retribution, and that the actual occurrence was likely far higher.

**Arrest Procedures and Treatment of Detainees**

While a warrant is required for an arrest, detention is permitted without an arrest warrant when an individual is caught in the act of committing a crime or to secure a suspect or witness during an investigation. Police often detained individuals without a warrant. The law mandates that detainees be brought before a prosecutor within 12 hours and before a judge within 48 hours to determine the legality of the
detention; the law also requires detainees be informed promptly of the charges against them. Authorities routinely ignored these requirements.

Although there is a functioning system of bail, it is not available for certain crimes. Bail also may be denied if a person is apprehended in the act of committing a crime or if a judge determines there is a danger the accused may flee or impede the investigation. The law allows detainees access to counsel and family members, but that requirement was often not met, particularly for political prisoners. The constitution also provides any detained individual the right to immediate communication with family members and lawyers who, in turn, have the right to know a detainee’s whereabouts. A person accused of a crime may not be detained for longer than the possible minimum sentence for that crime or for longer than two years, whichever is shorter, except in certain circumstances, such as when the defendant is responsible for the delay in the proceedings.

**Arbitrary Arrest:** PROVEA reported that more than 3,400 cases of arbitrary detention occurred nationwide during the first six weeks of the government’s OLP campaign. Detainees claimed security personnel subjected them to inhuman and degrading treatment and in some cases torture. Foro Penal reported that 76 of the individuals arrested during 2014 protests remained in detention as of October.

**Pretrial Detention:** Pretrial detention was a serious problem. According to the OVP, approximately 68 percent of the prison population was in pretrial detention. According to the Supreme Court of Justice (TSJ), only 17 percent of trials concluded or reached sentencing. The NGO Citizen Observatory of the Penal Justice System attributed trial delays to the shortage of prosecutors and penal judges (4.7 penal judges per 100,000 inhabitants in 2010). The Public Ministry’s 2014 annual report stated it had 724 prosecutors who processed more than 573,000 criminal cases during that year (approximately 790 cases per prosecutor).

Cases were often deferred or suspended when pertinent parties, such as the prosecutor, public defender, or judge, were absent. An automated scheduling calendar in use since 2013, which selected dates based on the availability of all pertinent parties and prohibited judges from scheduling more than 10 hearings per day, did not reduce the backlog. In some instances judges scheduled hearings six months from the start of the case.

According to the Public Ministry’s 2014 annual report, the ministry took action in approximately 11.7 percent of its 348,000 cases involving common crimes. The ministry reported the closure of the remainder of the complaints but did not
indicate final outcomes. Prisoners reported to NGOs that a lack of transportation and disorganization in the prison system reduced their access to the courts and contributed to trial delays.

e. Denial of Fair Public Trial

While the constitution provides for an independent judiciary, there was significant evidence the judiciary lacked independence. There were credible allegations of corruption and political influence throughout the judiciary. According to reports from the International Commission of Jurists (ICJ), between 66 and 80 percent of all judges had provisional appointments, and the TSJ Judicial Committee could remove them from office at will. Provisional and temporary judges, who legally have the same rights and authorities as permanent judges, allegedly were subject to political influence from the Ministry of Interior, Justice, and Peace and the attorney general to make progovernment determinations. The ICJ reported a lack of transparency and stability in the assignments of district attorneys to cases and the lack of technical criteria to assign district attorneys to criminal investigations. These deficiencies hindered the possibility of bringing offenders to justice and resulted in a 90-percent rate of impunity for common crimes and a higher percentage of impunity for human rights violation cases.

An investigation conducted in 2014 by attorneys Antonio Canova, Luis Alfonso Herrera, Rosa Rodriguez, and Giussepe Graterol established that between 2005 and 2013 the TSJ Administrative, Constitutional, and Electoral chambers with jurisdiction over governmental acts favored the government in nearly all of the 45,474 sentences analyzed.

Trial Procedures

Defendants are considered innocent until proven guilty. The law requires that detainees be informed promptly of the charges against them, and the requirement was generally respected. The law provides for open, public, and fair trials with oral proceedings for all individuals. In 2012 reformed criminal procedure eliminated trial by jury. Defendants have the right to consult with an attorney. Public defenders are provided for indigent defendants, but there continued to be a shortage of such attorneys. According to the Office of the Human Rights Ombudsman, there were approximately 1,500 public defenders. COFAVIC and Foro Penal noted that the government pressured defendants in trials related to the 2014 student protests into utilizing public defenders instead of private defense
attorneys with the promise of receiving more favorable sentences. Additionally, several NGOs provide pro bono counsel to defendants.

While defendants and their attorneys have the right to access government-held evidence, access often was not allowed; in some instances, particularly in politically motivated cases, the court or prosecution did not allow defendants or their attorneys to access such information. Defendants may request no fewer than 30 days and no more than 45 days to prepare their defense. Defendants have the right to question adverse witnesses and present their own witnesses. By law defendants may not be compelled to testify or confess guilt. Defendants and plaintiffs have the right of appeal.

Trial delays were common. Trials “in absentia” are permitted in certain circumstances, although opponents of them claimed the constitution prohibits such trials. The law also states a trial may proceed in the absence of the defense attorney, with a public defender that the court designates. The law gives judges the discretion to hold trials behind closed doors if a public trial could “disturb the normal development of the trial.”

The law mandates municipal courts to handle “less serious” crimes, i.e., those carrying maximum penalties of imprisonment for less than eight years. Municipal courts may levy penalties that include three to eight months of community service. Besides diverting some “less serious” crimes to the municipal courts, this diversion also permits individuals accused of “lesser crimes” to ask the courts to suspend their trials conditionally in exchange for their admission of responsibility, commitment to provide restitution “in a material or symbolic form,” community service, and any other condition imposed by the court.

The law provides that trials for military personnel charged with human rights abuses after 1999 be held in civilian rather than military courts. In addition under the Organic Code of Military Justice, an individual may be tried in the military justice system for “insulting, offending, or disparaging the national armed forces or any related entities.” NGOs expressed concern with the government’s practice of trying citizens under the military justice system for protests and other actions not under military jurisdiction.

**Political Prisoners and Detainees**

At year’s end the NGO Foro Penal reported that 76 political prisoners remained incarcerated, 15 of whom were initially detained during the year. An additional
2,057 individuals who participated in the 2014 protests were still subject to either restricted movement or precautionary measures. The government used the judiciary to intimidate and selectively prosecute individuals critical of government policies or actions. The UN Human Rights Council Working Group on Arbitrary Detentions issued a resolution in support of 317 persons arbitrarily detained during the 2014 protests.

In some cases political prisoners were held in SEBIN installations and the Ramo Verde military prison without a specific rationale behind the locale decisions. Authorities have denied the ICRC access to these prisoners since 2013.

On February 19, without presenting a court order, SEBIN arrested Metropolitan Caracas Mayor Antonio Ledezma for alleged conspiracy to topple the government. President Maduro later stated on national television that Ledezma was arrested on the orders of the prosecutor general. On June 9, authorities released Ledezma to his home under precautionary measures for humanitarian reasons while he awaited trial.

On March 4, a court sentenced Raul Emilio Baduel (son of former army general Raul Baduel, released from prison in August) and Alexander Tirado to eight years in prison for conspiracy, incitement to crime, and public intimidation. They were arrested in March 2014 in San Jacinto, Aragua, where they were participating in what they maintained was a peaceful protest. Subsequently, the comptroller general declared them ineligible to run for public office.

On September 10, Judge Susana Barreiros found Popular Will party leader and former Caracas Chacao municipality mayor Leopoldo Lopez guilty on all four counts of public incitement, damage to property, fire damage, and association for conspiracy, in a trial that began in July 2014. The judge issued the maximum sentence of 13 years and nine months in prison. She also found codefendant Christian Holdack guilty of organizing delinquency, arson, and property damage and sentenced him to 10 years and six months; she found Demian Martin and Angel Gonzalez guilty of public incitement and sentenced them each to four years and six months in prison. Codefendant Marco Coello failed to appear for the final hearing (see section 1.c, Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment); the judge separated his case from the others and did not conclude it. Barreiros issued the formal sentencing document on October 2. President Maduro appointed Barreiros as the Venezuelan government’s Public Defender in December.
Throughout the 14-month trial, Barreiros refused defense lawyers’ requests to allow the media to cover the proceedings and denied admission to international observers. She accepted more than 100 witnesses for the prosecution and rejected all but two for the defense. On February 13, armed masked men ransacked Lopez’s cell, destroyed his books and personal trial preparation materials, violently removed him from his cell, and put him in a small isolation cell that had no toilet or running water. Approximately a week later, an estimated 30 heavily armed, masked military personnel again raided Lopez’s isolation cell. They reportedly struggled with Lopez, pointed a gun at him, and removed him from his cell, which they searched for seven hours.

In February, Daniel Ceballos concluded an 11-month sentence on charges he failed to take down barricades in San Cristobal in February 2014. As of September there were 19 hearings in the trial, which began in September 2014, for a second pending charge of civil rebellion. Conviction for rebellion may result in a maximum sentence of 25 years. Ceballos carried out a hunger strike in May and June to demand that the government release political prisoners and set a date for legislative elections. On June 3, the UN high commissioner for human rights publicly requested that the government provide medical attention to and release Daniel Ceballos, as well as political prisoners Leopoldo Lopez, Raul Emilio Baduel, and Alexander Tirado who were also on a hunger strike. On August 11, authorities released Ceballos to house arrest.

The case of former San Diego opposition mayor Enzo Scarano, arrested in March 2014, remained pending at the end of the year. The TSJ originally sentenced him to 10 months and 15 days in prison for allegedly failing to comply with a court order to take down barricades in San Diego, in Carabobo State. In October 2014 the government further charged Scarano with verbally assaulting several women during the 2013 presidential elections. According to Foro Penal, if convicted, Scarano could be sentenced to six to 18 months’ imprisonment, plus disqualification from running for office for the same amount of time as the conviction. On January 16, authorities moved Scarano to his house under “liberty with restrictions” due to health reasons.

Civil Judicial Procedures and Remedies

While there are separate civil courts that permit citizens to bring lawsuits seeking damages, there are no procedures for individuals or organizations to seek civil remedies for human rights violations.
f. Arbitrary Interference with Privacy, Family, Home, or Correspondence

The constitution provides for the inviolability of the home and personal privacy, but the government generally did not respect these prohibitions. In some cases government authorities infringed on citizens’ privacy rights by searching homes without judicial authorization, seizing property without due process, or interfering in personal communications.

Beginning in August, President Maduro declared 60-day “states of exception” in 23 municipalities bordering Colombia in Zulia, Tachira, Apure, and Amazonas states, thereby suspending the constitutional requirement for authorities to obtain a court order prior to entering a private residence or violating the secrecy of a person’s private communications, among other constitutional rights. The government extended the state of exception for an additional 60 days in Tachira on October 20 and in three municipalities in Zulia on November 20.

Section 2. Respect for Civil Liberties, Including:

a. Freedom of Speech and Press

The law provides for freedom of speech and press, but the combination of laws and regulations governing libel and media content, as well as legal harassment and physical intimidation of individuals and the media, resulted in practical limitations on these freedoms. National and international groups, such as the Inter-American Commission on Human Rights, the UN Human Rights Committee, Freedom House, the Inter American Press Association, Reporters without Borders, and the Committee to Protect Journalists, condemned or expressed concern over government efforts throughout the year to restrict press freedom and create a climate of fear and self-censorship.

On September 11, the Supreme Court declared nonbinding a September 8 ruling of the Inter-American Court of Human Rights that criticized the government’s refusal to grant a broadcasting license to the nation’s oldest television channel, Radio Caracas Television (RCTV), on grounds it backed a 2002 coup against then-president Chavez. Lawyers for RCTV argued the government’s refusal was a political move based on RCTV’s criticisms of the government. The Inter-American Court ordered the government, which was signatory to the American Convention on Human Rights at the time of the offense, to reinstate RCTV’s license. The Supreme Court argued RCTV had not exhausted its case in domestic
courts and that, as a company rather than an individual, RCTV was not entitled to the protection of human rights.

Freedom of Speech and Expression: The law makes insulting the president punishable by six to 30 months in prison without bail, with lesser penalties for insulting lower-ranking officials. Comments exposing another person to public contempt or hatred are punishable by prison sentences of one to three years and fines starting at Bs 55 ($8.74).

Press and Media Freedoms: The law provides that inaccurate reporting that disturbs the public peace is punishable by prison terms of two to five years. The requirement that the media disseminate only “true” information was undefined and open to politically motivated interpretation. The NGO IPYS reported that from January 1 through September 25, the government violated freedom of expression in 294 instances, affecting 324 journalists, editors, and human rights activists, as well as 143 media companies, including El Nacional, Tal Cual, and La Patilla.

The law prohibits all media from disseminating messages that incite or promote hate or intolerance for religious, political, gender-related, racial, or xenophobic reasons; incite, promote, or condone criminal acts; constitute war propaganda; foment anxiety in the population or affect public order; do not recognize legitimate government authorities; incite homicide; or incite or promote disobedience to the established legal order. Penalties range from fines to the revocation of licenses.

The law declares telecommunications a “public interest service,” thereby giving the government greater authority to regulate the content and structure of the radio, television, and audiovisual production sectors. The law provides that the government may suspend or revoke licenses when it judges such actions necessary in the interests of the nation, public order, or security. The law empowers the government to impose heavy fines and cancel broadcasts for violations of its norms; the National Telecommunications Commission (CONATEL) oversees the law’s application. According to IPYS, CONATEL violated freedom of speech eight times from January 1 through September 25, by opening punitive administrative cases against CNN and private cable company Supercable, ordering two regional radio stations off the air, and suspending three radio programs in Barinas.

The government’s economic policies made it difficult for newspapers to access foreign currency, preventing many newspapers from purchasing critical supplies and equipment necessary for day-to-day business operations. Items that must be
imported included ink, printing plates, camera equipment, and especially newsprint. As the government prevented newspapers from purchasing foreign currency, media companies were forced to buy newsprint from the government-run Alfredo Maneiro Editorial Complex, the only company allowed by the government to import it. Consequently, nearly every newspaper in the country reduced pages and news content in an attempt to conserve paper. The IPYS registered 22 cases in which the government restricted access to paper for those outlets considered critical of the government. For instance, *Tal Cual* ceased daily publication in February and limited its print edition to once a week, citing financial troubles and lack of raw materials due to government restrictions. Newspapers *Notidiario* in Delta Amacuro, *El Propio* in Caracas, and *Nuevo Guayanes* in Bolivar ended circulation during the year due to lack of newsprint.

As of August 31, the NGO Public Space reported 187 cases of violations of freedom of expression, defined as the “obstruction, impediment, or criminalization of the search, receipt, and distribution of information by the media,” noting an increasing trend. The most common violations were aggressions against journalists and censorship. State-owned and state-influenced media provided almost continuous progovernment programming. In addition private and public radio and television stations were required to transmit mandatory nationwide broadcasts throughout the year. According to the online tracker run by the *Citizen's Monitor*, between January 1 and September 11, the government imposed 113 hours and 17 minutes of mandatory broadcast time for presidential “cadenas” or regular broadcasts. The president used his airtime in the second half of the year to campaign for National Assembly candidates from his party, skirting rules that limit campaigning to two weeks before the December 6 election and mandate equal broadcast time for all political parties. Opposition candidates generally did not have access to media broadcast time.

The law requires practicing journalists to have journalism degrees and be members of the National College of Journalists, and it prescribes jail terms of three to six months for those practicing the profession illegally. These requirements are waived for foreigners and opinion columnists.

**Violence and Harassment:** Senior national and state government leaders continued to harass and intimidate privately owned and opposition-oriented television stations, media outlets, and journalists by using threats, property seizures, administrative and criminal investigations, and prosecutions. Government officials, including the president, used government-controlled media outlets to
accuse private media owners, directors, and reporters of fomenting antigovernment destabilization campaigns and coup attempts.

The NGO Public Space recorded nine cases of journalists detained while covering supermarket lines or police and military activity. On June 19, military officials detained journalist Gabrielda Di Giancaterino of the *Diario La Nacion* for taking a photograph with her cell phone of anticontraband operations near the border with Colombia. Authorities detained Di Giancaterino without access to legal representation for more than an hour and warned her that her work would bring her “legal consequences.” On July 29, a GNB member pointed a gun at journalist Nazareth Montilla of *Diario El Norte* and subsequently detained her to pressure her to erase a recording she took of officials shooting pellets or plastic bullets into a crowd protesting long supermarket lines.

Censorship or Content Restrictions: In its 2015 report, the IPYS asserted that legal proceedings, financial sanctions, and administrative actions against news outlets incurred lower political costs for the government than shutting down news outlets directly. Members of the independent media stated they regularly engaged in self-censorship due to fear of government reprisals. This resulted in many journalists posting articles to their personal blogs and websites. Public Space reported that between January and August 31, there were 35 cases involving censorship.

The government also exercised control over content through licensing and broadcasting requirements. CONATEL acted selectively on applications from private radio and television broadcasters for renewal of their broadcast frequencies. According to Nelson Belfort, former president of the Venezuelan Radio Chamber, approximately 2,000 radio stations were in “illegal” status throughout the country. According to local NGOs, CONATEL has not renewed licenses for most radio stations since 2007.

The government controlled a large portion of the country’s businesses and paid for advertising only with government-owned or government-friendly media. The brother of the vice president and the husband of a United Socialist Party of Venezuela (PSUV) National Assembly deputy run the main government-contracting advertising agency, Advertising Scope.

Libel/Slander Laws: Government officials took reprisals against individuals who publicly expressed criticism of the president or government policy. On April 21, National Assembly President Diosdado Cabello lodged a civil suit against 22 editors and board directors of opposition media outlets *El Nacional*, *Tal Cual*, and
La Patilla for reprinting news stories linking Cabello to a drug cartel. The charges of “aggravated defamation” are punishable by two to four years in jail. The judge in the civil suit enacted measures normally limited to criminal cases and prohibited the defendants from leaving the country. The IPYS said the case was emblematic of the increased pressure on media outlets critical of the government.

National Security: The law provides that the government may suspend or revoke licenses when it judges such actions necessary in the interests of public order or security. The government exercised control over the press through the government entity known as the Strategic Center for Security and Protection of the Homeland (CESPPA), established in 2013, which is similar to the government entity Center for National Situational Studies (CESNA), established in 2010. CESNA and CESPPA have similar mandates and are responsible for “compiling, processing, analyzing, and classifying” both government-released and other public information with the objective of “protecting the interests and objectives of the state.”

Nongovernmental Impact: Widespread violence in the country made it difficult to determine whether attacks on journalists resulted from common criminal activity or whether criminals or others targeted members of the media.

Internet Freedom

The law puts the burden of filtering prohibited electronic messages on service providers, and it allows CONATEL to order service providers to block access to websites that violate these norms and sanctions them with fines for distributing prohibited messages.

CONATEL blocked 1,008 websites during the year, according to testimony by CONATEL’s director, William Castillo, before the UN Human Rights Council. The government continued to block seven internet sites that post dollar- and euro-to-Bolivar currency exchange rates differing from the government’s official rate. The government used Twitter hashtags to attain “trending” status for official propaganda and employed hundreds of employees to manage and disseminate official government accounts. At least 65 official government accounts used Twitter to promote the PSUV, the ruling party. The NGO Public Space reported that on August 18 police detained Colonel Jose Martin Raga Garavito for more than a month for expressing an opinion critical of the government on Twitter and subsequently to a Newsweek journalist. Upon his release authorities relieved Raga of his duties.
Some NGOs, members of the opposition, and government critics expressed concern the government monitored e-mails and web searches without appropriate legal authority. Public Space reported that it suspected the government hacked social networking sites, e-mails, and websites of political figures, civil society activists, writers, journalists, and newspapers during the year, but it did not give specifics. According to the NGO, social network identities were usurped and personal communications and messages were broadly disseminated, some in government-controlled media.

CONATEL reported 51 percent of the population used the internet during the year and estimated that 16.2 million citizens connected to the internet five to seven days per week. Most access to the internet was through computers (75 percent) and mobile telephones (17 percent).

**Academic Freedom and Cultural Events**

There were some government restrictions on academic freedom and cultural events. University leaders and students alleged the government retaliated against opposition-oriented autonomous universities by allocating government subsidies for those universities significantly below the annual inflation rate. Autonomous universities, which receive partial funding from the government, received approximately 40 percent of the total budgets they requested, although calculations were based on figures not adequately adjusted for inflation and only covered expenses through July.

Unlike in 2014, there were no reported government-sponsored attacks on universities.

**b. Freedom of Peaceful Assembly and Association**

**Freedom of Assembly**

The constitution provides for freedom of assembly, but the government did not respect this right. Human rights groups continued to criticize the law for its strict penalties for some forms of peaceful demonstration.

As part of the “States of Exception” in municipalities bordering Colombia, the government ordered the suspension of the constitutional right to meet publicly or privately without obtaining permission in advance, as well as the right to demonstrate peacefully and without weapons.
On January 29, the Ministry of Defense published new regulations that authorized crowd-control measures up to and including lethal force against peaceful protesters. In August private polling firm Datanalisis released a report that indicated citizens, in a reversal of 2014 sentiment, were reluctant to protest, in part because of fear of government reprisals. The Venezuelan Observatory of Social Conflict (OVCS) reported that in the first half of the year, 2,836 protests occurred. The government continued repressing protesters and their leaders.

In February the Inter-American Commission on Human Rights (IACHR) expressed deep concern about the alleged use of criminal proceedings to punish peaceful protesters and government critics. In March, six UN special rapporteurs asked the government to clarify allegations of arbitrary detention and excessive use of force and violence against protesters. Allegations continued of arbitrary detention of protesters (some in military facilities), torture, and denial of legal assistance.

Nine human rights NGOs reported that since the conclusion of the protests in May 2014, the government continued to suppress protests in Tachira State. On February 24, a National Police officer shot and killed 14-year-old Kluiverth Roa Nunez while he was participating in a San Cristobal antigovernment protest. NGO reports indicated that security forces in Tachira frequently conducted raids on houses and patrolled emergency rooms for protesters seeking medical care for injuries sustained from “nonlethal” weapons used by police.

**Freedom of Association**

While the constitution provides for freedom of association and freedom from political discrimination, the government did not respect these rights. Although professional and academic associations generally operated without interference, a number of associations complained the National Electoral Council (CNE), which is responsible for convoking all elections and establishing electoral dates and procedures, and the Supreme Court repeatedly interfered with their attempts to hold internal elections. On August 5, the TSJ ruled in favor of a dissident splinter group of the opposition Social Christian Party (known as COPEI), which had filed suit against COPEI leadership for failing to include the party in key decisions. The TSJ dissolved COPEI’s executive board and installed the plaintiffs as the new COPEI leadership, effectively selecting the opposition party’s political leadership.

**c. Freedom of Religion**

The constitution provides for freedom of internal movement, foreign travel, emigration, and repatriation, and the government generally respected these rights. As part of the 60-day “States of Exception” along the Colombian border, the government suspended the constitutional right of free transit through the national territory, including across international borders.

The government generally cooperated with the Office of the UN High Commissioner for Refugees (UNHCR) and other humanitarian organizations in providing protection and assistance to refugees, asylum seekers, and other persons of concern.

Protection of Refugees

Access to Asylum: UNHCR estimated there were approximately 200,000 persons in need of international protection in the country, mostly Colombian citizens. Most of them, however, had not accessed procedures for refugee status determination, mainly due to the inefficiency of the process. UNHCR reported only 5,052 persons were legally recognized as refugees. The influx of individuals seeking international protection continued through the different border areas until August 21, when the government began closing key border crossings between Tachira and Zulia states and Colombia as part of the “States of Exception” and the OLPs. The vast majority of such persons remained without any protection.

The government launched its OLP strategy on July 13 to fight crime, smuggling, and terrorism. As part of these operations, authorities deported more than 1,714 Colombians, including 241 minors. In addition more than 22,000 Colombians fled the country as of September 23, according to the UN Office for the Coordination of Humanitarian Affairs. NGOs working in the border regions reported that among those deported were 120 persons needing international protection and a number of registered refugees. NGOs and the United Nations, however, also reported the government, through its office of immigration and the National Refugee Commission (NRC), made efforts to verify the migratory status of individuals before carrying out deportations. UNHCR Colombia investigated the cases of 350 potential returned refugees or people who were seeking asylum in Venezuela. The
International Organization for Migration, Refugee Education Trust, Norwegian Refugee Council, the Roman Catholic charity Caritas, and Hebrew Immigrant Aid Society worked closely with UNHCR and the government to respect migrants’ rights and meet basic needs.

Following allegations of physical beatings, destruction of property, and other abuses by government authorities, NGOs, foreign leaders, and opposition parties called for the government to respect the human rights of migrants in the country and to allow family reunification, deportees to recover their property, and individuals with educational and medical needs to cross through humanitarian corridors on the border.

At the beginning of the August border crisis, the NRC stopped accepting new applications for asylum and discontinued the renewal of asylum seekers’ identification papers, resulting in a de facto threat of deportation for many potential asylum seekers whose papers were out of date.

With the refugee status determination process centralized at the NRC in Caracas, asylum seekers could wait as long as three years to obtain a final decision. During this period they had to continue renewing their documentation every three months to stay in the country and avoid arrest and deportation. While travelling to the commission, particularly vulnerable groups, such as women with young children, the elderly, and persons with disabilities, faced increased protection risks, such as arrest and deportation, extortion, exploitation, and sexual abuse by authorities at checkpoints and other locations.

**Refugee Abuse**: While no official statistics were available, a women’s shelter reported recurring problems with gender-based violence and trafficking of refugee women.

Also see the Department of State’s annual *Trafficking in Persons Report* at [www.state.gov/j/tip/rls/tiprpt/](http://www.state.gov/j/tip/rls/tiprpt/).

**Access to Basic Services**: Colombian asylum seekers without legal residency permits had limited access to the job market, education, and health systems. The lack of documentation created significant challenges to achieving sufficient protection and long-term integration.

**Section 3. Freedom to Participate in the Political Process**
The constitution provides citizens the ability to change their government through free and fair elections, but a failure to investigate and resolve electoral irregularities, government interference, and manipulation of voters restricted the exercise of this right. In December 2014, after the political opposition prevented the PSUV from appointing its chosen candidates, the PSUV-dominated National Assembly ceded to the TSJ the authority pursuant to law to choose rectors of the CNE when, by law, the decision should have been debated in the National Assembly.

Elections and Political Participation

Recent Elections: On December 6, nationwide legislative elections took place largely peacefully, and the government accepted the results. Opposition candidates won 112 seats in the 167-seat National Assembly, while ruling-party candidates took 55 seats, despite a process that heavily favored the ruling party. On December 30, the TSJ blocked three opposition and one socialist deputies-elect from taking office, after the ruling party challenged the election results. The government rejected international election observation by the Organization of American States but permitted an “accompaniment” mission by the Union of South American Nations. Domestic observers reported voting machine failures, ruling party tents illegally close to the entrance of the polls, improper use of public resources (state oil company vehicles with campaign slogans and government buses near housing projects transporting people to vote), and press intimidation. On November 27, gunmen shot and killed opposition figure Luis Manuel Diaz at a campaign rally.

Political Parties and Political Participation: Opposition political parties operated in a restrictive atmosphere characterized by intimidation, the threat of prosecution or administrative sanction on questionable charges, and very limited mainstream media access. The ruling-party-dominated CNE made decisions that affected the political opposition adversely, including affirming the comptroller general’s administrative disqualification of at least five candidates for the December 6 National Assembly elections and the sudden proclamation of a new rule requiring political parties to field at least 40 percent female candidates after the political opposition had already chosen its candidates. Citing its constitutional power to make such decisions, the CNE did not investigate complaints by the affected individuals. Some political organizations reported their main activists and leaders were victims of harassment and violence by the government and progovernment groups.
Section 4. Corruption and Lack of Transparency in Government

The law provides criminal penalties for corruption by government officials, but the government did not implement the law effectively, and the press reported officials sometimes engaged in corrupt practices with impunity. The government frequently investigated and prosecuted its political opponents selectively on corruption charges to harass, intimidate, or imprison them. In July the Comptroller General’s Office declared several opposition-aligned politicians ineligible to hold public office based on allegations of corruption but did not levy bans against government-aligned politicians in similar circumstances. There were numerous reports of government corruption during the year. The Public Ministry cited numerous examples of investigations, stemming largely from improprieties in the distribution and sale of price-controlled items and government currency allocations.

Corruption: The government continued a campaign to tackle corruption through fast-track authority and executive powers, but critics contended the government’s efforts focused only on low- to mid-level public officials while targeting high-level opposition politicians. The campaign includes enforcement against smuggling of goods carried out by private citizens as part of what the government calls the fight against the “economic war” waged by the political opposition and foreign governments. According to the NGO Transparency Venezuela, weak government institutions and a lack of transparency allowed public officials at all levels to participate in corrupt activity with impunity.

On April 1, the Public Ministry filed charges against a judge in the 20th Judicial Circuit of Caracas for corruption on the grounds that the judge issued “too lenient” a sentence in a high-profile narcotics trafficking case.

The Public Ministry and the Office of the Human Rights Ombudsman also investigate abuses by police and military officials. Corruption was a major problem in all police forces, whose members were generally poorly paid and minimally trained. Some government officials explicitly acknowledged impunity for corruption as a major problem. There was no information publicly available about the number of cases involving police and military officials during the year, although the Public Ministry publicized several individual cases against police officers for soliciting bribes and other monetary corruption. In one instance the ministry cited the arrest and investigation of four Aragua State police officers for allegedly soliciting a bribe to drop charges against a person suspected of trafficking in narcotics.
On May 15, Attorney General Luisa Ortega Diaz reported that 277 individuals had been convicted on charges of corruption stemming from misuse of the government’s Foreign Exchange Administration Commission and that an additional 7,000 companies were under investigation for potential violations. Ortega stated that low-level government officials were prosecuted and convicted of crimes related to foreign-exchange adjudications, but disclosed no specific numbers.

On September 24, the Public Ministry reported the arrest and conviction of Jose Gregorio Velasquez Lozada, director of health economy at the Ministry of Health in Aragua State, on allegations of fraud and embezzlement stemming from the alleged misappropriation of 531,000 units of medical supplies.

Transparency Venezuela criticized the widespread practice of nepotism in the government in a September 21 announcement, citing the example of Minister of Housing, Habitat, and Eco-socialism Ricardo Molina, who appointed his wife, children, and other family members to serve in positions within the ministry. The NGO noted that nepotism of this type was not specifically illegal, which undercut effective oversight of improper benefits.

Financial Disclosure: The law requires public officials, as well as all directors and members of the boards of private companies, to submit sworn financial disclosure statements. The entities responsible for ensuring compliance with this requirement are the Central Bank; the comptroller general of the republic; the comptroller general of the armed forces; and the comptrollers of states, districts, metropolitan districts, and municipalities. By law the Public Ministry and competent criminal courts may require statements from any other persons when circumstantial evidence arises during an investigation. In 2014 (the most recent data available), the Public Ministry cited 12,319 complaints or grievances of corruption, leading to charges against 2,326 individuals.

Public Access to Information: Although the law provides for public access to government information, human rights groups reported the government routinely ignored this requirement. The law requires a government agency to respond to a petition within 20 days of filing. The agency must also notify the applicant within five days of any missing information needed to process the request. Government agencies are subject to sanctions if they do not respond to a request. If the agency rejects the petition, an individual may file another petition or appeal to a higher level within the government agency. The agency must respond to the appeal within 15 days. In a June presentation to the UN Human Rights Council, the Pro
Access Coalition, composed of NGOs advocating for the right to access public information, denounced difficulties in accessing public information. According to a 2013 study by the coalition, the government ignored 94 percent of citizen petitions for information, a trend cited as continuing during the year.

**Section 5. Governmental Attitude Regarding International and Nongovernmental Investigation of Alleged Violations of Human Rights**

A variety of independent domestic and international human rights groups generally operated with some government restrictions. Major domestic human rights NGOs conducted investigations and published their findings on human rights cases. Government officials were generally not cooperative or responsive to their requests. Some domestic NGOs reported government threats and harassment against their leaders, staff, and organizations, in addition to government raids and detentions. NGOs reported heightened scrutiny of their work but were still able to publish dozens of reports during the year. NGOs played a significant role in informing citizens and the international community about alleged violations and key human rights cases.

The law prohibits domestic NGOs from receiving funds from abroad if they have a “political intent”—defined as those that “promote, disseminate, inform, or defend the full exercise of the political rights of citizens”—or that seek to “defend political rights.” The government threatened NGOs with criminal investigations for allegedly illegally accepting foreign funds. Various government officials accused human rights organizations on national television and media of breaking the law by receiving funding from international donors.

For violations the law stipulates monetary penalties, a potential five- to eight-year disqualification from running for political office, or both. The law defines political organizations as those involved in promoting citizen participation, exercising control over public offices, and promoting candidates for public office. The law also prohibits foreign citizens sponsored by Venezuelan individuals or political organizations from “issuing opinions that offend the institutions of the state and its high officials or go against the exercise of sovereignty.” Although there was no formal application or enforcement of the law, it created a climate of fear among human rights NGOs and a hesitancy to seek international assistance.

In addition to the restrictions placed on fund raising, domestic NGOs also faced regulatory limitations on their ability to perform their missions. The law includes provisions eliminating the right of human rights NGOs to represent victims of
human rights abuses in legal proceedings. The law provides that only the public defender and private individuals may file complaints in court or represent victims of alleged human rights abuses committed by public employees or members of the security forces.

NGOs asserted the government created a dangerous atmosphere for them to operate. National Assembly President Cabello used his weekly talk show to accuse Marino Alvarado Betancourt, director of the NGO PROVEA, of supporting Colombian paramilitary groups because of Alvarado Betancourt’s denunciation of police abuses in a nationwide anticrime program. Cabello also accused Alvarado Betancourt on national television and radio of receiving foreign funds to destabilize the country. Several organizations, such as the OVP, PROVEA, Foro Penal, and Citizen Control, reported threats to their staff, conducted electronically or sometimes in person. Human rights organizations claimed they were subject to frequent internet hacking attacks and attempts to violate their e-mail privacy.

The United Nations or Other International Bodies: The government was generally hostile toward international human rights bodies and continued to refuse to permit a visit by the IACHR, which has not visited the country since 2002. The government withdrew from the Inter-American Convention on Human Rights in 2013, but the IACHR may receive complaints from Venezuelan NGOs and citizens.

Government Human Rights Bodies: The Office of the Human Rights Ombudsman, also called the Public Defender, intervened to negotiate reduced sentences in several cases monitored by human rights NGOs, according to several NGOs, including the August transferal to house arrest of noted political prisoner Daniel Ceballos (see section 1.e., Political Prisoners and Detainees). The government announced a draft national Human Rights Plan in July and opened a six-month period of public consultation. In September the government reported receiving 100,000 proposals from the public. NGOs Foro Penal and PROVEA criticized the plan for not addressing the lack of independence among the branches of government, political oppression, or arbitrary detention, and pointed out the plan called for collaboration with international organizations that provided protection mechanisms for victims of human rights abuses.

The National Assembly’s subcommission on human rights played an insignificant role in human rights debates.

Section 6. Discrimination, Societal Abuses, and Trafficking in Persons
The law prohibits discrimination based on race, gender, sexual orientation, disability, language, or social status; nonetheless, discrimination occurred against women; persons with disabilities; members of the lesbian, gay, bisexual, transgender, and intersex (LGBTI) community; and indigenous persons.

**Women**

**Rape and Domestic Violence:** The law criminalizes rape, including spousal rape, making it punishable by a prison term of eight to 14 years. Cases often were not reported to police due to fear of social stigma and retribution, particularly in light of widespread impunity. There were no reliable statistics on the incidence of rape, prosecutions, or convictions. A man may avoid punishment by marrying (before he is sentenced) the person he raped. Women faced substantial institutional and societal prejudice with respect to reporting rape and domestic violence. The law allows authorities to consider alternative forms of punishment, including work release, for those convicted of various crimes, including rape, if they have completed three-quarters of their sentence.

The law criminalizes physical, sexual, and psychological violence in the home or community and at work. The law punishes perpetrators of domestic violence with penalties ranging from six to 27 months in prison. The law requires police to report domestic violence to judicial authorities and obligates hospital personnel to notify authorities when admitting patients who are victims of domestic abuse. Police generally were reluctant to intervene to prevent domestic violence or were not properly trained to handle such cases. Reportedly, police systematically sent battered women to the Public Ministry without receiving victims’ complaints in cases where extreme physical violence was not visible. The law also establishes women’s bureaus at local police headquarters and tribunals specializing in gender-based violence, and two-thirds of states had specialized courts. According to a Public Ministry official, 69 prosecutors were exclusively responsible for dealing with crimes against women, and an additional 27 prosecutors could process domestic violence crimes in addition to other kinds of crimes.

Violence against women continued to be a serious and underreported problem. The attorney general announced that 59,211 domestic violence complaints were filed from January to September 10, while for the period ending June 15, a Public Ministry official, citing TSJ data, stated that of those complaints, only 1,138 domestic violence charges were filed. In the same period, 510 sexual violence and rape charges were filed.
From January to June, 96 femicides were recorded out of 516 women killed, but only 17 femicide charges were filed through September 15.

Many advocates observed there was a lack of public awareness among women regarding resources and support available to prevent and combat domestic violence. In March the Public Ministry implemented a 24-hour hotline in Caracas capable of receiving domestic violence complaints. The government offered some shelter and services for victims of domestic and other violence, but NGOs provided the majority of domestic abuse support services.

**Sexual Harassment:** Sexual harassment is illegal and punishable by a prison sentence of one to three years. The law establishes a fine between Bs 3,210 ($510) and Bs 6,420 ($1,020) for employers convicted of sexual harassment. Although allegedly common in the workplace, sexual harassment cases were rarely reported.

**Reproductive Rights:** Couples and individuals have the right to decide the number, spacing, and timing of their children; to manage their reproductive health; and to have access to the information and means to do so, free from discrimination, coercion, and violence. Access to information on contraception and skilled attendance at delivery and in postpartum care were widely available. Multiple women’s rights NGOs stated women could not always find birth control pills due to scarcity, but pills were affordable when available. On the other hand, condoms were both scarce and prohibitively expensive when available.

**Discrimination:** Women enjoy the same legal status and rights as men under the constitution. In June the CNE announced a new regulation that required political parties to put forth gender-balanced slates of candidates for legislative elections.

Women and men are legally equal in marriage, and the law provides for gender equality in exercising the right to work. The law specifies that employers must not discriminate against women with regard to pay or working conditions. The law also prohibits the requirement of a pregnancy test to qualify for a job and provides six weeks of maternity leave prior to birth and a 20-week period of maternity leave after birth or an adoption, and prohibits an employer from firing either parent for two years after a birth or adoption. According to the Ministry of Labor and the Confederation of Workers, regulations protecting women’s labor rights were enforced in the formal sector, although according to the World Economic Forum, women earned 36 percent less on average than men doing comparable jobs.
The law provides women with property rights equal to those of men, but women frequently waived these rights by signing over the equivalent of powers of attorney to their husbands.

Children

Birth Registration: Citizenship is derived by birth within the country’s territory. According to the UN Children’s Fund (UNICEF), 92 percent of children under five were registered at birth.

Child Abuse: According to UNICEF and NGOs working with children and women, child abuse, including incest, occurred but was rarely reported. According to a National Institute for Statistics survey, 5 percent of victims of sexual abuse were children. According to the Public Ministry, 67 specialized prosecutors were assigned to handle cases involving the protection of children. Although the judicial system acted to remove children from abusive households, the press reported public facilities for such children were inadequate.

Early and Forced Marriage: The legal minimum age for marriage is 18 for women and men, but with parental consent it is 14 for women and 16 for men.

Sexual Exploitation of Children: By law sexual relations with a minor under age 13 or an “especially vulnerable” person, or with a minor under age 16 when the perpetrator is a relative or guardian, are punishable with a mandatory sentence of 15 to 20 years’ imprisonment. The law prohibits the forced prostitution and corruption of minors. Penalties range from three to 30 years’ imprisonment in the case of sex trafficking of girls.

The law prohibits the production and sale of child pornography and establishes penalties of 16 to 20 years’ imprisonment. There was no publicly available information regarding the number of investigations or prosecutions of cases involving the commercial sexual exploitation of minors or child pornography.

Displaced Children: Leading advocates and the press estimated that 10,000 children lived on the streets. Authorities in Caracas and several other jurisdictions imposed curfews on unsupervised minors to attempt to cope with this problem, but with institutions filled to capacity, hundreds of children accused of infractions, such as curfew violations, were confined in inadequate juvenile detention centers.
International Child Abductions: The country is a party to the 1980 Hague Convention on the Civil Aspects of International Child Abduction. For information see the Department of State’s report on compliance at travel.state.gov/content/childabduction/en/legal/compliance.html and country-specific information at travel.state.gov/content/childabduction/english/country/venezuela.html.

Anti-Semitism

There were reports of societal abuses or discrimination based on religious affiliation, belief, or practice, including anti-Semitism.

There were an estimated 9,000 Jews in the country. There were no confirmed reports of anti-Semitic acts by the government, but Jewish community leaders expressed concern about anti-Semitic statements made by high-level government officials, and they assessed that many other anti-Semitic incidents occurred from January to May. The government-sponsored website Aporrea.org often published editorials asserting Venezuelan Zionists were conspiring against the government. On October 8, National Assembly President Cabello stated that El Hatillo Mayor David Smolansky carried out a Zionist political project against the government; on October 19, Cabello asserted Ricardo Haussman, a professor at a foreign university, was a lobbyist for financial Zionism, which was waging an “economic war” against Venezuela.

Trafficking in Persons

See the Department of State’s Trafficking in Persons Report at www.state.gov/j/tip/rls/tiprpt/.

Persons with Disabilities

The law prohibits discrimination against persons with physical and mental disabilities in education, employment, health care, air travel and other transportation, and the provision of other state services, but the government did not make a significant effort to implement the law, inform the public of it, or combat societal prejudice against persons with disabilities. The law requires that all newly constructed or renovated public parks and buildings provide access, but persons with disabilities had minimal access to public transportation, and ramps were almost nonexistent. Online resources and access to information were generally available to persons with disabilities, although access to closed-captioned or audio-
described online videos for persons with sight and hearing disabilities was limited. Separately, leading advocates for persons with hearing disabilities lamented difficult access to public services due to a lack of government-funded interpreters in public courts, health care facilities, and legal services, as well as a lack of other public accommodations.

The National Commission for Persons with Disabilities (CONAPDIS), an independent agency affiliated with the Ministry for Participation and Social Development, advocated for the rights of persons with disabilities and provided medical, legal, occupational, and cultural programs. The government developed a series of employment fairs to increase the number of persons with disabilities in formal employment sectors, an initiative to help companies meet the legal requirement for 5 percent of employees to be persons with disabilities. According to CONAPDIS fewer than 20 percent of persons with disabilities who registered with government health programs were fully employed. The state-run Mission for the Children of Venezuela provided monthly subsidies of Bs 600 ($95) to heads of households for each child or adult with disabilities they supported.

There were several NGOs dedicated to assisting persons with disabilities with employment, education, and quality of life. The University of Monteavila hosted a research institute focused on the education of persons with disabilities.

National/Racial/Ethnic Minorities

The constitution prohibits discrimination based on race. The law prohibits all forms of racial discrimination and provides for a maximum of three years’ imprisonment for acts of racial discrimination. As mandated by law, signage may be observed outside commercial and recreational establishments announcing the prohibition against acts of racial discrimination. The National Institute against Racial Discrimination worked under the Interior Ministry but did not have its own website or public information portal.

Indigenous People

The law prohibits discrimination based on ethnic origin, and senior government officials repeatedly stated support for indigenous rights. The constitution provides for three seats in the National Assembly for deputies of indigenous origin to “protect indigenous communities and their progressive incorporation into the life of the nation.” A member of the Wayuu indigenous group headed the Ministry for
Indigenous Peoples, and the governor of Amazonas State was a member of the indigenous group Baniva.

Many of the country’s approximately 800,000 indigenous persons were isolated from urban areas; lacked access to basic health, housing, and educational facilities; and suffered from high rates of disease. The government included indigenous persons in its literacy campaigns, in some cases teaching them to read and write in their native language(s) as well as in Spanish.

NGOs and the press reported local political authorities seldom took account of indigenous interests when making decisions affecting indigenous lands, cultures, or traditions, or the allocation of natural resources. Indigenous persons called on the government to recognize lands they traditionally inhabited as territories belonging to each respective indigenous group. The National Land Demarcation Commission, charged with implementing a land demarcation agreement reached after a violent 2008 land invasion, continued to provide land titles in several communities, but indigenous groups continued to call for faster implementation of the demarcation process.

Indigenous groups regularly reported violent conflicts with miners and cattle ranchers over land rights.

According to indigenous groups, the armed forces reportedly harassed, injured, and killed indigenous persons in multiple isolated incidents, often related to land demarcation disputes. On August 14, a court sentenced five individuals to seven years in the 2013 killing of Yukpa leader Sabina Romero in Zulia State. Romero was a high-profile advocate for the demarcation of indigenous lands in the Perija Mountains.

The country’s border disputes with Colombia affected indigenous groups living in the border regions. The government insisted the border closures were necessary to eradicate contraband and violence in the region. One media outlet estimated 600,000 Wayuu families lived on both sides of the border. While the president proclaimed indigenous persons on the border could cross freely, there were many reported cases in which indigenous groups were restricted. According to local media, in one case Bolivarian National Guard members shot two Wayuu men who were returning via motorcycle to Colombia from a funeral in Venezuela. One died at the scene and the other died at the Maicao hospital where he was taken for treatment.
Acts of Violence, Discrimination, and Other Abuses Based on Sexual Orientation and Gender Identity

The constitution provides for equality before the law of all persons and prohibits discrimination based on “sex or social condition,” but it does not explicitly prohibit discrimination based on sexual orientation or gender identity. According to a TSJ ruling, no individual may be discriminated against because of sexual orientation, but the ruling was rarely enforced. The media and leading advocates for the rights of LGBTI persons noted that victims of hate crimes based on sexual orientation or sexual identity frequently did not report incidents and were often subjected to threats or extortion if they filed official complaints.

Since the law has no definition of a hate crime, no official law enforcement statistics reflected LGBTI-related violence. Rather, most crimes against LGBTI persons were classified as “crimes of passion,” not crimes of hate. The NGO Stop VIH (HIV) denounced the September 17 stabbing death of a Margarita Island man as a hate crime motivated by the victim’s sexual orientation, and cited national statistics indicating that 47 such crimes were registered between May 2013 and May 2015. Incidents of violence were most prevalent in the transgender community. Leading advocates noted that the media underreported most cases of LGBTI-related crime and law enforcement authorities did not properly investigate to determine the motives for such crimes. LGBTI experts also noted an estimated 6,000 same-gender families, with and without children, lacked legal protection.

Local police and private security forces allegedly prevented LGBTI persons from entering malls, public parks, and recreational areas. NGOs reported the government systematically denied legal recognition to transgender and transsexual persons by preventing them from obtaining identity documents required for accessing education, employment, housing, and health care. This vulnerability often led transgender and transsexual persons to become victims of human trafficking or prostitution.

Psychological, verbal, and physical abuses towards the LGBTI community were common practice in schools and universities, according to leading advocates. No laws or policies protect LGBTI persons against bullying. As a result, according to NGOs, LGBTI students had a higher dropout rate than heterosexual students.

HIV and AIDS Social Stigma
Leading advocates lamented discrimination against persons with HIV/AIDS, although no new studies were available. In August 2014 the National Assembly passed a law to protect the equal rights of persons with HIV/AIDS and their families.

Section 7. Worker Rights

a. Freedom of Association and the Right to Collective Bargaining

The law provides that all private- and public-sector workers (except armed forces members) have the right to form and join unions of their choice, and it provides for collective bargaining and the right to strike. The law, however, places several restrictions on these rights. Minimum membership requirements for unions differ based on the type of union. Forming a company union requires a minimum of 20 workers; forming a professional, industrial, or sectoral union in one jurisdiction requires 40 workers in the same field; and forming a regional or national union requires 150 workers. Ten persons may form an employees association, a parallel type of representation the government endorses and openly supports.

The law prohibits “any act of discrimination or interference contrary to the exercise” of workers’ right to unionize. The law requires that all unions must provide the Ministry of Labor a full membership roster that includes the full name, home address, telephone number, and national identification number for each union member. The ministry reviews the registration and determines whether the union fulfilled all requirements. Unions must submit their registration by December 31 of the year the union forms; if not received by the ministry or if the ministry considers the registration unsatisfactory, the union is denied the ability legally to exist. The law also requires the presence of labor inspectors to witness and legitimize unions’ decisions before the Ministry of Labor.

Under the law employers may negotiate a collective contract only with the union that represents the majority of their workers. Minority organizations may not jointly negotiate in cases where no union represents an absolute majority. The law also places a number of restrictions on unions’ ability to administer their activities. For example, the CNE has the authority to administer internal elections of labor unions, federations, and confederations. By law elections must be held at least every three years. If CNE-administered and -certified elections are not held within this period, the law prohibits union leaders from representing workers in negotiations or engaging in anything beyond administrative tasks. The International Labor Organization (ILO) has repeatedly found cases of interference
by the CNE in trade union elections and has called since 1999 to delink the CNE from the union election process.

The law recognizes the right of all public- and private-sector workers to strike, subject to conditions established by law. By law workers participating in legal strikes receive immunity from prosecution, and their time-in-service may not be reduced by the time engaged in a strike. The law requires that employers re-incorporate striking workers and provides for prison terms of six to 15 months for employers who fail to do so. Replacement workers are not permitted during legal strikes. The law prohibits striking workers from paralyzing the production or provision of essential public goods and services, but defines “essential services” more broadly than ILO standards. The ILO has called on the government to amend the law to exclude from the definition of “essential services” activities “that are not essential in the strict sense of the term…so that in no event may criminal sanctions be imposed in cases of peaceful strikes.”

The minister of labor and social security may order public- or private-sector strikers back to work and submit their disputes to arbitration if the strike “puts in immediate danger the lives or security of all or part of the population.” Other laws establish criminal penalties for the exercise of the right to strike in certain circumstances. For example, the law prohibits and punishes with a five- to 10-year prison sentence anyone who “organizes, supports, or instigates the realization of activities within security zones that are intended to disturb or affect the organization and functioning of military installations, public services, industries and basic [mining] enterprises, or the social-economic life of the country.” In addition the law provides for prison terms of two to six years and six to 10 years, respectively, for those who restrict the distribution of goods and for “those…who develop or carry out actions or omissions that impede, either directly or indirectly, the production, manufacture, import, storing, transport, distribution, and commercialization of goods.”

The government restricted the freedom of association and the right to collective bargaining through administrative and legal mechanisms. Organized labor activists reported that the annual requirement to provide the Ministry of Labor a membership roster was onerous and infringed on freedom of association; they alleged the ministry removed member names from the rosters for political purposes, particularly if members were not registered to vote with the CNE. Labor leaders also criticized the laborious and costly administrative process of requesting CNE approval for elections and subsequent delays in the CNE’s recognition of such union processes. Additionally, there was reportedly a high turnover of
Ministry of Labor contractors resulting in a lack of timely follow-through on union processes.

Labor unions in both the private and public sectors noted long delays in obtaining CNE concurrence to hold elections and in receiving certification of the election results, which hindered unions’ ability to bargain collectively. The National Union of Public, Professional, and Administrative Health-Sector Workers was able to hold elections on February 10, almost a year after its March 2014 request to the CNE. The Ministry of Labor recognized the elections, but as of early December the CNE had not issued a certification of their validity. The CNE had required 16 notarized legal documents and three copies of each set for each of 300 electoral tables, leading to significant, costly delays.

According to PROVEA, “large sectors of national, state, and municipal public administrations and an important number of state enterprises continued to refuse to discuss collective agreements.” According to the Autonomous Front in Defense of Employment, Wages, and Unions (FADESS), there were more than 300 expired public-sector union contracts nationwide. Labor leaders reported the majority of unions that failed to negotiate collective agreements were in the public sector. The Model Contract for Public Administration, which covers approximately three million public workers, was last negotiated in 2004. President Maduro promised it would be finalized in 2013, but no further progress was made during the year. The government did not respond by year’s end to at least two formal ILO requests for information about reports that the majority of collective bargaining agreements in the public sector had expired but continued to be applied, with the right to collective bargaining denied by authorities due to “overdue elections” (not convoking or concluding the electoral process).

The government continued to support many “parallel” unions, which sought to dilute the membership and effectiveness of traditional independent unions. In general these government-supported unions were not subject to the same government scrutiny and requirements regarding leadership elections. For example, the Socialist Bolivarian Workers’ Central has not held elections since 2011, yet it has been regularly accredited to participate in ILO meetings, including for the ILO International Labor Conference in Geneva in July. The government excluded from consideration other, independent union federations, including the Confederation of Venezuelan Workers, the General Confederation of Venezuelan Workers, the Confederation of Autonomous Unions of Venezuela, and the National Union of Workers (UNETE). The ILO expressed continuing concern that the government did not consult with representative worker organizations or
accredit their members to the ILO Conference. In contrast, the Labor and Trade Union Action Unit, a newly formed independent organization of labor federations and other labor groups and movements, was able to meet freely to coordinate interventions for the July meeting, analyze conclusions from the meeting, and discuss follow-up actions.

According to the labor group FADESS, the ministry did not send labor inspectors to opposition-leaning union meetings to witness and legitimize unions’ decisions, as required by law, thus rendering decisions by many unions moot.

The government continued to refuse to adjudicate or otherwise resolve the cases of 19,000 employees of the state oil company, Venezuelan Petroleum, who were fired during and after the 2002-03 strike. The Ministry of Labor continued to deny registration to the National Union of Oil, Gas, Petrochemical, and Refinery Workers (UNAPETROL), a union composed of these workers. Union elections in the state steel conglomerate’s workers’ trade union were suspended in 2014, and the TSJ upheld the suspension on January 14.

Union leaders were subject to violent attacks—some of which resulted in killings. The lack of effective investigations made determining the motives for such attacks difficult. According to the Venezuelan Observatory of Social Conflict (OVCS) and PROVEA, the government did not make arrests or prosecute anyone for most violent crimes, including those committed between and against union workers, and few were solved.

On April 16, Ramon Jimenez, secretary general of the Barinas Construction Union, was killed. He had allegedly been threatened after denouncing a contract breach and extortion by “construction mafias.” Two other union leaders, Jose Salazar from UNETE and William Lizardo from Fetraconstruccion, were also injured in the attack. PROVEA reported that fewer than 5 percent of the cases were investigated. The ILO has requested the government establish a national tripartite committee on situations of violence and provide information on the findings of the investigations carried out by the national prosecutor appointed to investigate all cases of violence against trade union leaders and members.

Union leaders were also subjected to harassment and verbal attacks. For instance, on his weekly television show, the National Assembly president made accusations against leaders from FADESS and the National Association of Autonomous Workers, Entrepreneurs, and Small Business Persons.
The OVCS reported that during the first six months of the year, there were labor rights-related protests related to increased pay and benefits, the need for collective bargaining agreements, and outsourcing and the integration of contract workers. According to media reports, the government blacklisted and punished union leaders and workers for peaceful protests demanding wage increases and better conditions at work. Labor leaders reported the alleged beating and nonfatal stabbing of Secretary General Mauro Zambrano of the Union of Workers in University Hospitals. Union organizer Julia Lugo was also beaten, and her nose was fractured. Zambrano and Lugo were requesting a meeting with the new hospital director to raise worker-rights issues when 20 hospital workers allegedly attacked them. SEBIN detained and interrogated Carlos Rosales, president of the Association of Clinics and Hospitals of Venezuela, in Maracay on February 6 following his statements about the scarcity of medicines in the country.

In practice the concept of striking has been demonized since 2002 and has been periodically used as a political tool to accuse government opponents of coup plotting or other destabilizing activities. Legal provisions on the right to strike have been used to target company management as well as labor leaders. Labor activists have been charged under legal provisions on impeding the production, manufacture, import, storing, transport, distribution, and commercialization of goods, as well as under provisions for “instigation to commit a crime,” “blocking public access,” and restriction of the “right to work.” According to some business managers, some union leaders have extraordinary power to cause the arrest and prosecution of business managers for actions that could be considered normal aspects of their jobs. Some companies, especially in the public sector, have multiple unions with varying degrees of allegiance to the ruling party’s version of the “socialist revolution,” which can trigger interunion conflict and strife. The ILO again called on the government to respond to its concerns regarding complaints by the president of the Federation of Chambers and Associations of Commerce and Production of Venezuela, Jorge Roig, that he was being followed and harassed, that senior government figures were increasingly attacking the federation in the media, and that 50 legislative decrees on economic and production-related issues were adopted in November 2014 without consulting the federation.

The law passed in 2012 set a three-year deadline, concluding on May 7, for the incorporation of all contract workers in both the public and private sectors into the companies for which they worked. (The largest number of contract workers is in the public sector.) The media reported concerns that this deadline was not met and that the status of a large percentage of workers was not regularized. While there
were no official statistics, media sources estimated that 40 percent of the contractor force has been transitioned into formal positions.

b. Prohibition of Forced or Compulsory Labor

The law prohibits all forms of forced or compulsory labor but does not provide criminal penalties for certain forms of forced labor. The law prescribes penalties of between 20 and 30 years’ imprisonment for most forms of forced labor; these criminal penalties under the Organic Law against Organized Crime applied to the forced labor of women and girls, as well as the forced labor of men and boys, when carried out by an organized criminal group of three or more individuals. Criminal penalties for forced labor of men and boys carried out by individuals who are not members of an organized criminal group are not prescribed under the law; nonetheless, prosecutors could employ other statutes to prosecute such individuals. The law includes harsher penalties for imposing forced labor on minors. There was no comprehensive information available regarding the government’s enforcement of the law.

There were isolated reports of children and adults subjected to forced labor, particularly in the informal economic sector, in domestic servitude (see section 7.c.), and in government social programs by Cubans working in exchange for the government’s provision of resources to the Cuban government. Indicators of forced labor reported by some Cubans included chronic underpayment of wages, mandatory long hours, and threats of retaliatory actions to the workers and their families if they should leave the program.

Also see the Department of State’s Trafficking in Persons Report at www.state.gov/j/tip/rls/tiprpt/.

c. Prohibition of Child Labor and Minimum Age for Employment

The law sets the minimum employment age at 14 years. Children younger than 14 may work only if granted special permission by the National Institute for Minors or the Ministry of Labor. Such permission may not be granted to minors under the age for work in hazardous occupations that risk their life or health or could damage their intellectual or moral development, but according to the ILO, the government has not listed specific types of work considered hazardous. Children ages 14 to 18 may not work without permission of their legal guardians or in occupations expressly prohibited by the law, and they may work no more than six hours per day
or 30 hours per week. Minors under age 18 may not work outside the normal workday.

The law establishes fines on employers between Bs 6,420 ($1,020) and Bs 12,840 ($2,040) for each child employed under age 12 or for adolescents between ages 12 and 14 employed without proper authorization. Anyone employing children under age eight is subject to a prison term between one and three years. Employers must notify authorities if they hire a minor as a domestic worker.

The Ministry of Labor and the National Institute for Minors enforced child labor policies effectively in the formal sector of the economy but less so in the informal sector. No information was available on whether or how many employers were sanctioned for violations. The government also continued to provide services to vulnerable children, including street children, working children, and children at risk of working. There was no independent accounting of the effectiveness of these and other government-supported programs.

Most child laborers worked in the agricultural sector, street vending, domestic service, or in small- to medium-size businesses, most frequently in family-run operations. There continued to be isolated reports of children exploited in domestic servitude, mining, forced begging, and commercial sexual exploitation of children (see section 6).

Also see the Department of Labor’s Findings on the Worst Forms of Child Labor at www.dol.gov/ilab/reports/child-labor/findings/.

d. Discrimination with Respect to Employment and Occupation

The constitution prohibits employment discrimination for every citizen. Labor law prohibits discrimination based on age, race, sex, social condition, creed, marital status, union affiliation, political views, nationality, disability, or any condition that could be used to lessen the principle of equality before the law. No law specifically prohibits employment discrimination on the basis of sexual orientation, gender identity, or HIV/AIDS status. The media and NGOs, such as PROVEA and the Human Rights Center at the Andres Bello Catholic University, reported that the government had a very limited capacity to address complaints and enforce the law in some cases and lacked political will in some cases of active discrimination based on political motivations.

e. Acceptable Conditions of Work
Effective May 1, the government raised the monthly minimum wage by 30 percent, with 20 percent implemented as of May 1 and an additional 10 percent as of July 1, bringing it to a total of Bs 7,422 ($1,180). According to the NGO Workers’ Center for Documentation and Analysis, the monthly food basket for September cost Bs 50,625 ($8,040), or 6.8 times the minimum wage.

The law sets the workweek at 40 hours (35 hours for a night shift). The law establishes separate limits for “shift workers,” who may not work more than an average of 42 hours per week during an eight-week period, with overtime capped at 100 hours annually. Managers are prohibited from obligating employees to work additional time, and workers have the right to two consecutive days off each week. Overtime is paid at a 50 percent surcharge if a labor inspector approves the overtime in advance and at a 100 percent surcharge if an inspector does not give advance permission. The law establishes that after completing one year with an employer, the worker has a right to 15 days of paid vacation annually. In subsequent years the worker has the right to an additional day for every additional year of service, for a maximum of 15 additional days annually.

The law provides for secure, hygienic, and adequate working conditions. Workplaces must maintain “protection for the health and life of the workers against all dangerous working conditions.” The law obligates employers to pay workers specified amounts for workplace injuries or occupational illnesses, ranging from two times the daily salary for missed workdays to several years’ salary for permanent injuries. Workers may remove themselves from situations that endanger health or safety without jeopardy to their employment.

The law covers all workers, including temporary, occasional, and domestic workers. Reportedly, the Ministry of Labor effectively enforced minimum wage rates and hours of work provisions in the formal sector, but 40 percent of the population worked in the informal sector, where labor laws and protections generally were not enforced. The government did not enforce legal protections in the public sector. According to PROVEA, while the National Institute for Prevention, Health, and Labor Security required many private businesses to correct dangerous labor conditions, the government did not enforce such standards in a similar manner in state enterprises and entities. There was no publicly available information regarding the number of inspectors or the frequency of inspections to implement health and safety, minimum wage, or hours of work provisions. Ministry inspectors seldom closed unsafe job sites. Employers may be fined between Bs 12,840 ($2,040) and Bs 38,520 ($6,110) for failing to pay the
minimum wage or provide legally required vacation time. Employers are required to report work-related accidents within 24 hours or face fines between Bs 8,132 ($1,290) and Bs 10,700 ($1,700). There was no information on whether penalties were sufficient to deter violations.

Official statistics regarding workplace deaths and injuries were not publicly available.
Tab #5
CHAPTER IV.B
VENEZUELA

I. INTRODUCTION

1. In 2018, the Inter-American Commission on Human Rights (hereinafter “the Commission” or “the IACHR”) has continued monitoring the general human rights situation in Venezuela and has observed the persistence of structural situations that have had a detrimental impact on the human rights of Venezuelans, resulting in a serious political, social, and economic crisis. The aggravation of this critical situation, as it reported in this Chapter, resulted in the absence of the rule of law.

2. In Venezuela there is a serious failure to observe the principle of the separation of powers, evidenced in the lack of judicial independence and the constant meddling of the Executive, the Superior Court of Justice, and the National Constituent Assembly in matters that pertain to the National Assembly, whose work has been significantly hampered as a result. In addition, the Executive continues to exercise extraordinary powers under the economic emergency with the extension of the State of Emergency, which was not approved by the National Assembly, as required by the Constitution. This is happening in a structural context of repression and persecution of dissidents through the militarization of public security, in the context of an economic and social crisis that provokes serious undersupply and the scarcity of basic goods.

3. In the presidential elections held in May 2018, in which President Maduro was reelected, there was serious meddling by the National Constituent Assembly in the National Electoral Council, the highest-ranking authority for electoral matters, which posed real obstacles to the effective participation of the opposition forces and had a negative impact on the pluralism necessary for considering the elections to be compatible with a democratic society.

4. The Commission has also observed the persistent deterioration of political rights and participation in public life, which is closely related to the negative impact on the freedom of expression. The following phenomena have continued: deaths in the context of social protests; arbitrary detentions and imprisonment of opposition figures and persons who publicly voice their dissent; repression and undue restrictions on protest; dismissals of and threats against public employees as punishment for their dissent; campaigns to stigmatize and harass journalists, political opposition figures, human rights defenders, and citizens in general; the use of the criminal law and other state controls to punish or inhibit the work of political opponents and critical press outlets; and the obstruction of the right of access to information. Particularly serious are the attacks on and persecution and imprisonment of members of the National Assembly. At the same time, the number of dissident political parties continues to shrink in the wake of decisions on electoral matters that impose new requirements for their participation in the elections.

5. The independence of the courts continues to be seriously affected by the fact that many hold their positions on a provisional basis or have been appointed without respecting the procedures set out by the laws and regulations of the State. Another especially worrisome situation has to do with the growing prosecution of civilians in the military criminal jurisdiction, using criminal statutes such as “treason” (“traición a la patria”) and “rebellion” (“rebelión”), in the context of demonstrations and dissident acts.

6. As a result of the militarization of citizen security there continue to be extrajudicial executions, security force operations characterized by the excessive use of force, as well as searches without judicial orders and attacks on private homes, provoking serious violations of the rights to life, humane treatment, property, and due process, which is especially serious in the context of protests against the State.

7. The Commission observes the persistence of a worsening situation when it comes to access to economic, social, and cultural rights (hereinafter “ESC rights”). The situation of undersupply and scarcity of food, drugs, water, and energy has generated a serious crisis, triggering outbreaks of diseases and other
negative health impacts. In this context, the response has been deficient and, in some situations, has entailed a lack of access to necessary medical care, which has had a severe impact on children, the sick, pregnant women, persons with disabilities, and older persons, among other groups. In this context, together with the political context, there were increased public protests, which in turn have been repressed by security agents through the use of force.

8. The humanitarian crisis that is impacting the country, the scarcity of food, medicines, and medical treatments, the rising indices of violence and insecurity, and persecution based on political opinion have all provoked the massive displacement of migrants and refugees from Venezuela. As of June 2018 it was estimated that 2.3 million Venezuelans have left their country.

9. In addition, in the face of this crisis scenario the Commission continues monitoring, with concern, the specific violations of the rights of persons, groups, and communities facing historic discrimination and exclusion, such as children and adolescents; persons deprived of liberty; and migrants, refugees, and persons with international protection, among others.

10. Based on its observation and evaluation of the human rights situation in Venezuela, the IACHR decided to include Venezuela in this Chapter, in keeping with Article 59(6)(a)(i), 6(b), 6(d)(i), and 6(d)(iii) of the Rules of Procedure of the IACHR, which establish, as a criterion for inclusion of a member state in this chapter, the existence of:

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

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

   b. The free exercise of the rights guaranteed in the American Declaration or the American Convention has been unlawfully suspended, totally or partially, by virtue of the imposition of exceptional measures such as a declaration of a state of emergency, state of siege, suspension of constitutional guarantees, or exceptional security measures.

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

      i. serious institutional crises that infringe the enjoyment of human rights;
      iii. serious omissions in the adoption of the necessary measures to make fundamental rights effective, or in complying with the decisions of the Commission and the Inter-American Court....

11. On January 16th, 2019, in accordance with its Rules of Procedure, the IACHR transmitted to the State a copy of the preliminary draft and requested it to submit its observations. On February 16th, 2019, the State presented its remarks, which were incorporated in the present final version approved by the Commission on March 14th, 2019.

12. In its observations on the draft of this report, the State pointed out that “this chapter presents a selective and highly biased view of the real human rights situation in the Bolivarian Republic of Venezuela,
which contradicts the principles that should govern the treatment of human rights issues”. The State considered that “to a large extent, this distorted vision of Chapter IV.B is the result of substantial inadequacies in the methodology used to draw it up” and that “this project over-emphasizes sources lacking in objectivity and excludes almost all official information, despite all the documentation and elements provided by the State to the Commission during 2018, through the numerous available mechanisms”. In this regard, in the same sense as expressed in Venezuela’s Country Report of December 31, 2017, the Commission regrets that a lack of access to official sources of information persists, which have constituted an obstacle for the elaboration of the IACHR’s reports and for the visibility of the human rights situation in Venezuela. In spite of this, the articulation of different tools for monitoring, promoting, and defending human rights of the Commission allows it to count on recent, reliable, and convincing information obtained from the sources authorized by Article 59.5 of its Rules of Procedure.

13. The State also ratified its disposition to “sustain a constructive dialogue with the IACHR under the objective to continue advancing in regard of the compliance of its international obligations on the basis of strict respect for the principles that should govern the treatment of human rights issues, including the principles of universality, objectivity, impartiality and non-selectivity”.

14. In its observations on the draft of this report, the State considered that “in accordance with Article 59 of the IACHR’s Rules of Procedure, when the Commission prepares a country report on a particular State, it must follow up on compliance with the recommendations contained in that document, through Chapter V of its Annual Report” and given that the IACHR published a Country Report on February 12th, 2018 “what is legally appropriate is to follow up on this Country Report in Chapter V of the Annual Report and not to include it in Chapter IV.B.” Likewise, the State considered that “the required conditions stipulated by the Inter-American normative for Venezuela to be included in the Chapter IV.B of the Annual Report are not preceded” and “that the criteria expressly provided in the Regulations is not enough to ensure that the Chapter IV.B of the Annual Report would not constitute an illegitimate and unacceptable mechanism of pressure or punishment against certain States, for reasons unrelated to the fulfillment of their human rights obligations. The analysis of these criteria needs to be formulated with an approach based on the aforementioned principles of universality, objectivity, impartiality and non-selectivity”.

15. In this regard, the Commission considers that, in accordance with the provisions of Article 59.7, the decision on the specific countries to include in Chapter IV.B shall be adopted by the Commission each year, in accordance with the special quorum set forth in Article 18 of the present Rules of Procedure. As previously stated, based on the monitoring carried out and in light of the above criteria, the IACHR decided to incorporate Venezuela into Chapter IV.B., and in its observation the State did not extend an invitation to an on-site visit. In this sense, the Commission confirms his decision.

16. Similarly, in its comments on the draft of this report, the State stated that "the Bolivarian Republic of Venezuela is committed to a set of unilateral coercive measures imposed by the Government of the United States of America". It also recorded the negative impact of such measures on the enjoyment of human

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rights by the population. In addition, it recovered general positions of United Nations bodies regarding the impact of coercive measures consisting of economic sanctions on human rights”.

17. In its observations, the State also pointed out that there is no humanitarian crisis in Venezuela and referred to statements by the Executive Secretary of the Economic Commission for Latin America and the Caribbean (ECLAC) and the United Nations independent expert on the promotion of a democratic and equitable international order, Alfred-Maurice de Zayas. In this regard, the Commission takes note that none of those allegations are from the 2018 year which this Report analyses. Furthermore, the IACHR reiterates its concern expressed at the end of the 170th Period of Sessions regarding the serious human rights situation in Venezuela, given that, among others, the constitutional order was altered, the principle of separation of powers is unknown, there is a lack of independence of institutions and a socio-economic crisis that has worsened alarmingly in recent years.

18. The IACHR has based its analysis on monitoring the general human rights situation throughout 2018, drawing on information collected during its hearings – which included the active participation of the State – information from the mechanism of petitions, cases, and precautionary measures, information provided in the State’s responses to requests for information from the IACHR on various human rights issues under the power established in Article 18 of the Commission’s Statute, the information provided by civil society and other international organizations, and the information available from other public sources; all as per the methodology set out in Article 59 of the IACHR’s Rules of Procedure.

19. During this year the Commission has continued following up on the precautionary measures in force. The State has continued providing information in this respect. By a communication of June 15, 2018, the State reported that four persons who are beneficiaries of precautionary measures in force were benefitted by “alternatives to the deprivation of liberty,” which is said to have allowed the beneficiaries, Daniel Omar Ceballos, Raúl Emilio Baduel, Alexander Tirado, and Ángel Omar Vivas, to regain their liberty.

20. This year the IACHR granted six new precautionary measures in which it asked the State of Venezuela to protect the following persons: the children who are nephrology patients at the Hospital José Manuel de los Ríos, due to the lack of adequate medical treatment due to undersupply; Juan Carlos Caguaripano, Luis Humberto de la Sotta Quiroga, and Pedro Patricio Jaimes Criollo, who were deprived of liberty without access to adequate medical care; Juan Carlos Requesens Martinez, also deprived of liberty and at risk of being subjected to violent acts; and C.L. and 42 other persons at risk due to the failure to deliver antiretroviral medicines for adequately treating the human immunodeficiency virus (HIV) or acquired immunodeficiency syndrome (AIDS). The Commission also issued a precautionary measure asking the State of Panama to refrain from deporting M.B.B.P., a Venezuelan citizen with HIV/AIDS, given the risk that would be entailed for her health in the context of the scarcities and lack of access to medical care in Venezuela.

21. To date in 2018 the IACHR has issued seven press releases about Venezuela and three about Venezuelan migrants. The State replied one third out of six requests for information sent by the Commission based on Article 18 of the IACHR’s Statute. Furthermore, on December 5th, 2018, the IACHR examined the received information by the State of Venezuela regarding the alternative measure of freedom in favor of Kamel...
Salame Ajami, beneficiary of precautionary measures granted by the IACHR to protect his life and integrity in view of his detention conditions and health situation.

22. The Commission values that the State has attended the hearings that were convened this year and the response to the request for information sent by the IACHR. It also values certain human rights gains that have occurred in Venezuela this year. It is noted that pursuant to the recommendations of the National Commission for Truth, Justice, Attention to Victims and Peace, non-custodial measures were ordered for 192 persons, which are said to have left the detention centers where they were being held.

23. The Commission also views in a positive light the gains made as regards recognition of the rights of the Afro-descendent population. The Decree of the International Decade for People of African Descent embraces promoting the human rights of persons of African descent, in what represents a major step forward in legal recognition of the rights of this group. Along the same lines, the Commission celebrates the adoption of the Integral Prevention Plan called "The Route of the Drum" ("La Ruta del Tambor"), which seeks to eradicate patterns of discrimination and to promote Afro-Venezuelan traditions.

24. The Commission also recognizes and salutes the gains made by the State in adopting concrete measures to ensure electoral accessibility for persons with disabilities. Accordingly, the Commission recognizes the efforts to adapt the polling places, recognition by the Organic Electoral Law of the right of persons with disabilities to exercise their right to vote supported by the person of their choice, as well as the issuance by the National Electoral Council of the Directive for Attention and Support for Persons with any Disability in Elections.

25. This chapter of the Annual Report is divided into the following seven sections: (I) introduction; (II) the position of the State vis-à-vis the inter-American system; (III) the general human rights situation, which in turn includes: (A) democratic institutional framework; (B) the administration of justice and judicial independence; (C) the situation of political rights and participation in public life; and (D) violence and citizen security; (IV) poverty and economic, social, cultural, and environmental rights; (V) social protest and freedom of expression; (VI) groups in vulnerable situations, which in turn includes: (A) women; (B) human rights defenders; (C) persons deprived of liberty; (D) migrants, asylum-seekers, refugees, beneficiaries of supplemental protection, internally displaced persons, and victims of human trafficking; (E) lesbian, gay, trans, bisexual, and intersex persons; (F) indigenous peoples; (G) children and adolescents; (H) persons of African descent; (I) persons with disabilities; (J) older persons; (K) memory, truth, and justice; as well as (VII) the conclusions and (VIII) the recommendations that the Commission makes to the Venezuelan State.

II. POSITION OF THE STATE VIS-À-VIS THE INTER-AMERICAN SYSTEM

26. The IACHR made its last visit to Venezuela in May 2002 and approved the country report in 2003. Since that visit, the Commission has taken a series of steps to ask the State to consent to an onsite visit to the country. To date, the State has not agreed to such a visit.

27. Venezuela first appeared in Chapter IV of the Annual Report in 2002, where it has remained until 2017, with the exception of 2004, when it was included in Chapter V, on follow-up to the recommendations in the country report published the previous year. In 2009, the IACHR issued a country report without making a visit. In 2017, the Commission decided to issue a second country report without visiting, and to include Venezuela in Chapter IV.B of its Annual Report. The decision to prepare that report had to do with the serious deterioration in the observance of human rights and the serious political, economic, and social crisis Venezuela
is experiencing. The country report "Democratic Institutions, the Rule of Law and Human Rights in Venezuela" was published on February 12, 2018.\textsuperscript{18}

28. The IACHR has already issued pronouncements on other occasions regarding the serious backsliding and weakening of international protection that Venezuela’s denunciation of the American Convention on Human Rights represents; the denunciation of the American Convention came into force on September 10, 2013.\textsuperscript{19} The Commission also remarked that as a member state of the OAS, Venezuela continues to be subject to the jurisdiction of the Commission and to the obligations imposed on it by the OAS Charter and the American Declaration of the Rights and Duties of Man, both signed by the State in 1948. Venezuela submitted its denunciation of the OAS Charter on April 28, 2017. This decision without precedent in the inter-American system, which the IACHR has deplored, causes profound concern for its impact on Venezuelans' access to inter-American mechanisms for the protection of human rights, in the worrying context that the Commission has persistently reported. The effectiveness and validity of that denunciation is the subject of various discussions. The Commission further notes that Venezuela has not denounced several inter-American human rights instruments that grant mandates to the IACHR. The Commission will therefore assess in great detail all aspects of that denunciation and take a stand on its consequences concerning the IACHR's continued mandate for the promotion and protection of human rights in Venezuela. The IACHR stresses its call on the State to revoke its decision to withdraw from the OAS and asks Venezuela to sign and comply once again with its commitments under the American Convention and the contentious jurisdiction of the Inter-American Court.\textsuperscript{20}

29. In addition, Venezuela has set a grave precedent by not substantially complying with the judgments issued by the I/A Court HR and its judicial bodies have even declared the non-enforceability of such judgments, considering them contrary to the Constitution. The Commission reiterates that the position adopted by Venezuela of not accepting or complying with the decisions and recommendations of international human rights bodies, and in particular the organs of the inter-American system, based on the argument that they are at odds with national sovereignty, seriously contradicts the applicable principles of international law.\textsuperscript{21}

III. GENERAL HUMAN RIGHTS SITUATION

A. Democratic institutions

30. In the “Report on the Situation of Human Rights in Venezuela,” the IACHR noted a gradual deterioration in democratic institutions and the human rights situation in Venezuela that has deepened and intensified significantly as of 2015, continuing in 2018. The lack of separation of powers, which has its roots in the meddling of the Executive in the other branches of government, continues.\textsuperscript{22}

31. As the Commission has indicated, the aggravation of the institutional crisis in Venezuela is closely related to a series of decisions made by the Supreme Court of Justice, which represented interference with the National Assembly and negatively affected the principle of separation of powers. This situation was aggravated in 2017 to the point of bringing about an alteration in the constitutional order, with Judgments Nos. 155 and 156 handed down by the Supreme Court on March 28 and 29, respectively, in which it lifted the legislative immunities of the members of the National Assembly, established that their acts constituted “treason,” granted the Executive broad discretion, and assumed competences of the Legislative


\textsuperscript{20} IACHR, Situation of Human Rights in Venezuela – “Democratic Institutions, the Rule of Law and Human Rights in Venezuela,” 2018, paras. 54 and 55.


\textsuperscript{22} IACHR, Annual Report, Chapter IV,B, “Venezuela,” paras. 13 and 14.
As the IACHR indicated in due course, those measures constituted a usurpation of the functions of the Legislative branch by the Judicial and Executive branches, as well as a *de facto* annulment of the popular vote by which the legislators were elected. Such acts continued in 2018. Civil society has calculated that to date the Supreme Court of Venezuela has adopted 74 decisions that impair rights of the members of the National Assembly or encroach on the competences of the legislature. Among these, one notes that the Supreme Court lifted the legislative immunities of legislators Requesens, who was arrested, and Borges, in respect of whomever weighs the catch warrant, both were detained and are beneficiaries of precautionary measures issued by the Commission.

32. In the observations of the present report, the State appointed that the IACHR "continues ignoring that, from the beginning of 2016, in Venezuela exists a constitutional order conflict between Public Powers, originated by the decision of the National Assembly of disregard and fail to comply the verdicts of the Supreme Court of Justice and to repeatedly assault the Constitution of the Bolivarian Republic of Venezuela." In this regard, the Commission recalls that, as mentioned in the Country Report, results vital in a Rule of Law, that judicial decisions are complied, the disregard as utilized by the SCJ results incompatible with the democratic principles, since it is disproportionate and violates the principles of separation and independence of powers, as it prevents a branch of the National Public Power from legitimately exercising its functions.

33. Nevertheless, the IACHR observes that during 2018 the already serious deficiencies as regards to the democratic institutional framework of the country were exacerbated. The lack of independence of the Judicial branch is an element with a determinant impact in the interference of the Executive branch in the Judicial branch, and of the Judicial branch in the Legislative branch. In that context President Nicolás Maduro convened a National Constituent Assembly (ANC: Asamblea Nacional Constituyente), criticized for its origins and its composition, as well as for the measures it adopted once installed, which exceeded its nature and violated the principle of separation of powers. In addition to authorizing the prosecution of legislators, during 2018 this legislative body has issued other decisions that are within the purview of the National Assembly, such as supporting the designation of the president of the Central Bank by the Executive, or approving the Constitutional Law on Productive Foreign Investment, which establishes a special tax income regime.

With respect to the activity of the National Assembly, the Commission noted that while some of those measures issued by the Supreme Court were subsequently revoked, to date serious interference in the Legislative branch continues and it faces obstacles to the exercise of its constitutional functions, such as continuing to consider the lawmakers to be in contempt (*desacato*); the continued characterization of the actions by the legislators in the National Assembly as “treason”; and maintaining the authority of the President of the Republic to form mixed enterprises without legislative authorization, and to amend laws. At the same time, the freezing of the budget has been denounced, and likewise discretion in granting the financial resources of the National Assembly. In addition, the Supreme Court sworn in by the National Assembly in July 2017, which operates from exile, has issued a series of judgments. Among these, it convicted President Maduro and sentenced him to 18 years and 3 months in prison for the crimes of corruption (*corrupción propia*) and asset laundering.

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25 Transparencia Venezuela, request for a hearing with the IACHR with a view to the 170th period of sessions, pages 1 and 38; the same information was presented by the same organization in the hearing “Arbitrary detention and situation of political rights in Venezuela,” held during the 170th period of sessions of the IACHR.
28 Official Gazette No. 41,422 of June 19, 2018; Official Gazette No. 41,456 of August 8, 2018; Official Gazette No. 41,456 of August 8, 2018; Official Gazette No. 41,310 of December 29, 2017. Transparencia Venezuela, request for a hearing with the IACHR with a view to the 170th period of sessions, p. 27.
30 Transparencia Venezuela, Request for hearing before the IACHR with a view to the 170th period of sessions, p. 25.
Respectively, in its project observations of the present Report, the State objected to the Tribunal confirmation that considers arbitrary and contrary to the Constitution.

The Commission indicated that the Venezuelan Constitution and the applicable legislation establish that the National Constituent Assembly is governed by certain limits set by values and principles of the republican history of Venezuela, and by compliance with the international treaties, agreements, and commitments validly signed by the Republic. In view of this, and the fundamental principles enshrined in the Inter-American Democratic Charter, the Commission reiterates the call to undo the measures that are beyond the authority of a constituent body and that have a detrimental impact on the separation of powers and representative democracy; and to refrain from adopting decisions that reach beyond the scope of such authority.

The way in which the elections of May 20, 2018 unfolded deepened the institutional crisis. According to the information available, the electoral process was decreed by the National Constituent Assembly of Venezuela on the basis of powers that exceed the scope of authority of a constituent body, bringing forward the traditional time frames. The electoral calendar was clearly managed without impartiality or objectivity.

On January 23, 2018, the ANC approved a Constitutional Decree “of Actions in Defense of Peace, Democracy, Sovereignty, and the Independence of the Bolivarian Republic of Venezuela,” in which elections were called for some time in the first four months of 2018. On February 7, 2018, the National Electoral Council (CNE: Consejo Nacional Electoral) convened those elections for April 22, 2018. Then, on March 1, 2018, the ANC agreed to convene, for May 2018, the elections for the state legislative councils, and to reschedule the presidential elections. The CNE abided by the decisions of the ANC and convened the elections, originally for the month of April; it later pushed them back to May 20, 2018. Accordingly, the schedule was managed unforeseeably; it was not arranged by consensus with the opposition forces.

The presidential elections saw evidence of obstacles to the free participation of political parties and candidates. In effect, the ANC ordered the non-validation of the political parties that had not participated in the “immediately previous elections” (“elecciones inmediatamente anteriores”), which had a negative impact on the democratic pluralism that should govern such processes. By mandate of the ANC, the CNE organized a new period for validation that stipulated only four days (28 hours) during which only one party – the Acción Democrática party – was able to validate its participation.

Moreover, information was collected on disqualifications for holding public office affecting members of the opposition who are potential candidates for elective office, with the aim of permanently impeding their political participation. These disqualifications have significantly reduced the participation of several candidates in these and other elections, while effectively limiting the possibility of the population having substantive options for the position of president, such as those that the opposition had announced. In addition, according to the information available, the CNE ordered excessively short deadlines and requirements

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31 Europapress, El TSJ de Venezuela en el exilio condena a Maduro a 18 años y 3 meses de cárcel por corrupción, August 16, 2018.
35 Constituent Decree for participation in electoral processes, Official Gazette 41,308 of December 27, 2017; Information provided by civil society organizations in the context of the hearing “Electoral process and its impact on the general human rights situation in Venezuela,” held during the 168th period of sessions of the IACHR.
36 Information provided by civil society organizations in the context of the hearing “Electoral process and its impact on the general human rights situation in Venezuela,” held during the 168th period of sessions of the IACHR.
37 El Mundo, Venezuela inhabilita para ejercer cargos públicos al opositor Henrique Capriles durante 15 años, April 8, 2017; El Nuevo Herald, Capriles se despide de los cargos públicos pero no de la política venezolana, October 11, 2017.
that effectively kept potential candidates from exercising their right to register and participate in the election process.  

39. The rushed calling of elections and the handling of the electoral timeline referred to above had a serious negative impact on the guarantee of universal ballot and access to the vote by new voters and Venezuelans abroad. According to figures that were received by the Commission, more than 800,000 new voters were included in the voter rolls, yet at least 1,900,000 potential young voters did not register to vote given the short deadlines and lack of materials and public information. The electoral process apparently did not facilitate the timely registration of the large number of Venezuelans who have been forced to leave Venezuela as a result of human rights violations, violence and insecurity, persecution on grounds of political opinions, and the effects of the economic crisis.

40. Prior to the May elections the IACHR had issued pronouncements on the suspension of the referendum to recall the President of the Republic; the imposition of obstacles to the participation of opposition candidates and parties; the prolonged suspension of municipal and regional elections; and the rushed call for elections not in keeping with the timelines provided for by law; as well as the serious questioning and allegations of fraud in the July 30, 2017 elections for the ANC and the regional elections of October 15, 2017. It is a standard accepted by the international community that to ensure free elections there must be an electoral body with guarantees of autonomy, independence, and impartiality.  

41. The IACHR reiterated its concern over the lack of independence and impartiality of Venezuela’s National Electoral Council, insofar as it continues to be made up mostly of persons who are trusted by the Government, and its decisions have evidenced its bias in favor of the party in power. And this in addition to the lack of independence and its inappropriate exercise of the essential functions of constitutional oversight organs, such as the Attorney General’s Office (Ministerio Público) and the Office of the Human Rights Ombudsperson (Defensoría del Pueblo). The Commission considers it fundamental to adopt decisive actions to ensure that these bodies perform their work without undue political interference or influence, and that they properly carry out their constitutional mandate, which is crucial for ensuring the democratic rule of law in Venezuela.

42. The Commission considers that the elections convened for May 20 did not meet the minimal conditions necessary for holding free, fair, and reliable elections in Venezuela, with an independent electoral system and the guarantees of the principle of universality and electoral plurality, and it urged the State to adopt the measures necessary for holding another genuine electoral process, ensuring the effective exercise of the right to vote freely.  

43. President Maduro was proclaimed the winner by the National Electoral Council, with 67.7% of the votes, according to official figures.

44. At the same time, the IACHR notes that the validation procedures put in place by the CNE have significantly reduced the electoral offer. According to the information received, after the last process of validation the Venezuelan political system was made up of 21 national political parties. The Commission notes that in all 67 political parties participated in the 2016 elections.
45. The election has been characterized by the OAS as lacking legitimacy as it failed to include the participation of all of Venezuela’s political actors and was not carried out with the guarantees necessary for a free, fair, transparent, and democratic.\(^45\) The European Union also issued a press release noting that the guarantees needed for a democratic election were not in place and requesting that new elections be held in keeping with international standards and the Venezuelan constitutional order.\(^46\) The UN High Commissioner for Human Rights also questioned the legitimacy of the elections\(^47\), as did several countries that are part of the G-20 and the Lima Group.\(^48\)

46. Last September 11, Decree No. 3,610 was published in the Official Gazette.\(^49\) In that decree President Nicolás Maduro extended for 60 days the economic emergency and state of emergency. The decree authorizes the Executive to continue exercising extraordinary powers to adopt urgent, effective, exceptional, and necessary measures to ensure, among other things, the internal order, and timely access to goods, services, food and medicines. The State of Emergency authorizes restrictions on guarantees when necessary for the better exercise of the rights enshrined in the Constitution.\(^50\)

47. That extension was not approved by the National Assembly, as required by the Constitution\(^51\); nor does it clarify the nature and scope of the restrictions, or the specific measures that the Executive will adopt during the period covered. The Executive is empowered to authorize public credit operations, without any control by other branches of government. The Executive can also carry out special plans for public security\(^52\) and decide to suspend temporarily and on an exceptional basis the enforcement of political sanctions against the maximum government authorities\(^53\), measures with respect to which the IACHR has also expressed concern.\(^54\) It also authorizes the Executive to impose, in a generalized manner, the requirement of the ID cards known as “Carnet de la Patria.”\(^55\) Civil society groups warned about the possible use of this card as a new mechanism for controlling the population.\(^56\) The State has not given notice of the adoption of the extraordinary regime to the states that are signatories to the International Covenant on Civil and Political Rights or to the OAS.\(^57\) In this sense, within its observations on the draft of this report, the State indicated that Venezuela "ceased to be a State party to the American Convention on Human Rights, for which reason the obligation established in article 27 of that instrument is not applicable to it. Venezuela has no legal obligation to notify the OAS of the adoption of states of emergency.”\(^58\)

48. The Commission emphatically reiterates that the adoption of states of emergency should be reasonably in line with the needs of the situation to be addressed, without the measures going beyond what is strictly necessary, so as to avoid prolongations in time, disproportionality, and abuse of authority, for their arbitrary use might affect democracy and impose limits on the rights established in the American Declaration. The Commission recalls the importance of maintaining the rule of law and the constitutional provisions when invoking states of emergency. Similarly, it warns of the implications of using broad and ambiguous concepts in

\(^{47}\) BBC mundo, La oficina del Alto Comisionado de la ONU para los Derechos Humanos insiste en pedir investigar al gobierno de Venezuela por posibles “asesinatos extrajudiciales,” March 7, 2018.
\(^{48}\) INFOBAE, Desde el G20, seis países repudian las elecciones de Venezuela y exigieron sanciones, May 21, 2018; CNN, Grupo de Lima desconoce elecciones en Venezuela y llama a consultas a sus embajadores, May 21, 2018.
\(^{49}\) Official Gazette 41,478, September 11, 2018.
\(^{50}\) Decree 3,610, Article 2.
\(^{51}\) The requirement of approval by the National Assembly for extending the State of Exception and State of Emergency stems from Articles 337, 338, and 339 of the Constitution of the Bolivarian Republic of Venezuela.
\(^{52}\) Decree 3,610, Article 2(3).
\(^{53}\) Decree 3,610, Article 2(32).
\(^{55}\) Decree 3,610, Article 2(19).
\(^{56}\) Sinergia, Los Derechos de Asociación y Participación en un contexto de adversidad: caso Venezuela, December 2018, p. 10.
\(^{57}\) International Covenant on Civil and Political Rights, Article 4(3).
normative instruments, including in emergency decrees, as this may impose limitations on the exercise of human rights.59

49. Venezuela has a 2016-2019 National Plan for Human Rights that involves several organs of the State, whose implementation is entrusted to the National Human Rights Council. The programmatic actions include strengthening the capabilities of the Office of the Human Rights Ombudsperson (Defensoría del Pueblo de la Nación) so as to uphold human rights. At present, the Human Rights Ombudsperson holds the position on an interim basis. The IACHR continues receiving information about the lack of independence of said agency, which has a direct negative impact on its work.60

50. The Human Rights Committee of the United Nations already recommended that the State take the actions needed for ensuring that the Office of the Human Rights Ombudsperson can carry out its mandate independently, in keeping with the Paris Principles.61 The Commission reiterates to the State its duty to adopt the measures necessary to ensure that the Office of the Human Rights Ombudsperson can do its work without undue political interference or influence and can carry out the task assigned to it by the Constitution, i.e. to effectively protect the human rights of the population. Among the measures that the State should adopt are those that make it possible to ensure independence and pluralism in the appointment and removal of the Human Rights Ombudsperson.62

51. Finally, the IACHR notes that the allegations of high levels of corruption in Venezuela further undermine the weak institutional structures of the State. As of February 2018, Venezuela ranks 169th of 180 countries on the Corruption Perceptions Index maintained by Transparency International, the lowest ranking in the region.63 The IACHR reiterates that the states have the duty to adopt legislative, administrative, and any other measures to ensure the exercise of human rights in the face of the violations and restrictions brought about by the phenomenon of corruption.64 The IACHR also recalls that impunity furthers and perpetuates acts of corruption, and that one must ensure that the acts denounced are investigated independently and impartially, without delay and without influences or discrimination based on belonging to certain political parties or based on the positions held by the persons investigated. It is also necessary to adopt preventive measures, which include governing based on the principles of publicity, transparency, and effective public accountability.65

B. Administration of Justice and Judicial Independence

52. The IACHR has already drawn attention to the inadequate elections and lack of guarantees for the judges of the Supreme Court to remain in office, which constitutes a major factor in the lack of judicial independence, redounding to the detriment of the population’s access to justice. In 2018, the Commission continued receiving information that indicates that many judges are still chosen without any public competitive hiring process, which makes them susceptible to undue pressures.66


60 Information provided by civil society groups to the IACHR in the context of the hearing “Situation of persons deprived of liberty in the context of the political crisis in Venezuela,” held during the 169th period of sessions of the IACHR.


64 IACHR, Resolution Corruption and Human Rights, March 2018.


66 Information provided by civil society groups in the context of the hearing on "Citizen Security and institutional framework in Venezuela," held during the 167th period of sessions of the IACHR; and hearing "Reports of human rights violations by the military justice system of Venezuela," held during the 168th period of sessions of the IACHR.
53. In this regard, it is relevant to mention the case of the judge María Lourdes Afouni, who was detained in 2009 due to an independence exercise of her position by releasing a businessman who was held three years on pre-trial detention.\textsuperscript{67} In this opportunity, the Commission draws attention to the delays and postponements that stand in the way of securing a decision with regard to the accusations leveled against Judge María Lourdes Afouni. The Commission already held that it is an emblematic case of harassment and undue pressures suffered by judges, with the aim of limiting their judicial independence.\textsuperscript{68} According to the information received, from the beginning of this year the judge in charge of the matter ordered that a hearing be held to receive testimony from more witnesses before handing down a judgment, as the prosecutor had requested. Nonetheless, the hearing has not happened, and, according to the available information, the court is at a virtual standstill.\textsuperscript{69}

54. The Commission has already indicated that the provisional status of judges affects their independence\textsuperscript{70}, and reiterates that it is necessary to adopt measures to avoid risks to judicial independence in the selection, appointment, and permanence of the members of the highest judicial body in Venezuela, and the need to ensure that the appointment processes include prior dissemination of the announcements, time periods, and procedures; the guarantee of equal and inclusive access of candidates; the broad participation of civil society; and scoring based on merit and professional capacities, and not political affinities.\textsuperscript{71} The State should adopt urgent and decisive measures to significantly increase the number of full judges and to ensure that judges, even if provisional, are not removed other than by disciplinary proceeding or administrative act, strictly respectful of due process guarantees, especially the duty to be properly motivated and access to judicial review.\textsuperscript{72}

55. Moreover, the Commission is especially concerned about the information received on civilians facing proceedings or being prosecuted in the military criminal jurisdiction in the wake of their detention in the context of demonstrations, dissident acts, or common crimes.\textsuperscript{73} According to information from civil society groups, that situation intensified after the protests of April-June 2017\textsuperscript{,\textsuperscript{74}} since then, approximately 757 civilians have been brought before military courts.\textsuperscript{75}

56. Information was also received concerning the violation of the legal procedures for appointing the members of the military courts. The IACHR also received information about the use of criminal statutes such as “treason” ("traición a la patria"), rebellion ("rebelión"), and “attack on the sentinel” ("ataque al centinela") to prosecute civilians, including demonstrators, and even an opposition member of the National Assembly who was said to have been held without being brought before a judge for months, and other due process violations that could constitute a denial of justice. The State reported that the application of military justice answers to the nature of the act challenged, and not the person.\textsuperscript{76}

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\textsuperscript{67} El Nacional, Cronología Afiuni Attorney Case, April 12, 2017.

\textsuperscript{68} IACHR, Situation of Human Rights in Venezuela – “Democratic Institutions, the Rule of Law and Human Rights in Venezuela,” 2018, paras. 91 and 92.

\textsuperscript{69} Information presented by the International Bar Association’s Human Rights Institute to the Executive Secretariat of the IACHR on December 10, 2018. Venezuela Awareness, Tribunal de la Juez Afiuni lleva más de 6 meses cerrado por miedo a dictar sentencia, June 9, 2018.

\textsuperscript{70} IACHR, Situation of Human Rights in Venezuela – “Democratic Institutions, the Rule of Law and Human Rights in Venezuela,” 2018, para. 15.

\textsuperscript{71} IACHR, Annual Report, Chapter IV.B. “Venezuela,” para. 14.

\textsuperscript{72} IACHR, Annual Report, Chapter IV.B. “Venezuela,” para. 15.

\textsuperscript{73} At the hearing “Citizen Security and institutional framework in Venezuela,” held during the 167th period of sessions of the IACHR, information was provided on the case of legislator Gilbert Caro, who was detained for 17 months accused of treason. See INFOBE, El momento en que el diputado opositor Gilber Caro recuperó la libertad: “Me querían matar;” June 3, 2018.

\textsuperscript{74} Information provided by Acceso a la Justicia to the IACHR in its request for a hearing for the 167th period of sessions, p. 2.

\textsuperscript{75} Information provided by civil society in the context of the hearing “Reports of human rights violations by the military justice system in Venezuela,” held during the 168th period of sessions of the IACHR. See also HRW, Venezuelan Authorities Should Pay for their Crimes, January 23, 2018.

\textsuperscript{76} Information provided by the State in the context of the hearing “Reports of human rights violations by the military justice system in Venezuela,” held during the 168th period of sessions of the IACHR.
57. At the same time, the Commission reiterates that the use of the military criminal jurisdiction for trying civilians under the criminal statutes detailed herein entails the violation of a series of rights, such as the right to a pre-existing court with jurisdiction, who is independent and impartial, and it violates the principle of legality. Priority should be assigned to taking the measures necessary, including legislative ones, so that civilians are not investigated or prosecuted by the military criminal jurisdiction and removing, as the case may be, ongoing proceedings to the regular jurisdiction.77

C. Situation of political rights and participation in public life

58. In 2018 information continued to be received on serious acts of repression, persecution, and criminalization against political parties, opponents, activists and social leaders, human rights defenders, and demonstrators that have a serious negative impact on political rights and participation in public life.78 The context of institutional weakness has been propitious for such acts.

59. The IACHR drew attention to the serious events of April-June 2017, when thousands of persons demonstrated in several cities of the country to voice their rejection of the administration of President Maduro and the decisions of the Supreme Court, and also to demand improved living conditions vis-à-vis the alarming scarcity of food, medicines, and other essential goods. The Commission identified serious restrictions and state acts that gravely impacted the exercise of the right to social protest and freedom of expression, as well as the excessive use of firearms against demonstrators and the indiscriminate use of tear-gas bombs.79

60. At that time that IACHR appealed to the State to cease obstructing the legitimate exercise of the right to protest and to halt the use of force against the demonstrators; to institute training in the use of force for those officers in charge of security tasks; to refrain from involving any security force other than the police in these activities; and to adopt measures to rule out the use of firearms in social protests. It should be noted that the events that unfolded in the context of the protests from April to June 2017 are being examined by the Office of the Prosecutor of the International Criminal Court for the purposes of determining whether there is a reasonable basis for considering them to constitute crimes within the jurisdiction of the ICC.80

61. During 2018, the IACHR continues receiving information about episodes of repression and criminalization, with fatal results, in the context of pressing social grievances.81 As of November 2018, the Observatorio Venezolano de Conflictividad Social (OVCS) counted 10,773 protests, most of them aimed at demanding guarantees for economic and social rights in the health, university, electricity and telecommunications sectors; protests over the collapse of basic services such as drinking water, electricity, and domestic gas; demands for access to food and medicines; and protests over the payment of pensions or for


78 Information provided by civil society groups in the context of the hearings “Citizen Security and institutional framework in Venezuela,” held in the 167th period of sessions of the IACHR, and “Arbitrary detention and situation of political rights in Venezuela,” held in the 170th period of sessions of the IACHR.

79 IACHR, Annual Report, Chapter IV.B “Venezuela,” para. 22.


81 Information provided to the IACHR by Red venezolana de Organizaciones de la Sociedad Civil, Sinergia, Acceso a la Justicia, Instituto Prensa y Sociedad (IPYS), Centro de Justicia y Paz (Gepaz), Programa Venezolano de Educación Acción (Provea), Movimiento Ciudadano Dale Letra, Prepara Familia, and Asociación Médicos Unidos de Venezuela, in the request for a hearing for the 170th period of sessions. They mentioned, among others, the following episodes: (a) On May 10, 2018, when armed civilians were said to have burst into the Hospital José María Vargas in Caracas where physicians and nurses were protesting over the crisis and undersupply suffered at that hospital. The same day a group on motorcycles lashed out against the physicians who were protesting in the street and handing out pamphlets at the Concepción Palacios Maternity Hospital. (b) On May 14, members of the Bolivarian Police from the state of Zulia were said to have repressed a protest against the lack of medical supplies and critical hospital conditions, staged by family members and staff members of the health team at the Hospital Adolfo Pons in the city of Maracaibo. (c) On August 16 officers of state security forces impeded the advance of the march organized by health staff and patients, who had left the José Manuel de los Ríos Children’s Hospital, in Caracas, headed for the Miraflores Palace, the headquarters of the National Executive. That same day, members of the Bolivarian National Police halted the march of the health sector organized in Barquisimeto, state of Lara. The municipality indicated that the mobilization could not continue as the organizers did not have a permit.
better wages. In the first nine months of the year, the Observatorio Venezolano de Conflictividad Social reported that 14 persons had died in the context of protests; the victims have included women and children. Most of the deaths have been caused by the use of firearms. In many cases it has been reported that members of the security forces were involved. Such is the case of Evelio José Rodríguez, 12 years old, who is said to have died from a gunshot wound during a nighttime protest staged by residents of the San José de Chirica sector to demand drinking water and to protest the power outages. According to the information provided, four members of the police from the state of Bolívar have been detained for this incident. The Commission reiterates its forceful appeal to the Venezuelan State to bring a halt to all acts of repression against peaceful demonstrations, to adopt immediately appropriate measures to protect the population, including women, children and adolescents, and older persons, from all forms of violence.

62. The Commission reiterates that the use of force in public demonstrations should be very exceptional and should be limited to circumstances in which it is strictly necessary, in keeping with internationally recognized principles. The Commission has repeatedly indicated to the Venezuelan State that firearms should not be carried by the units involved in controlling social protests. Prohibiting those officers who may come into contact with demonstrators from carrying firearms and lead munitions has proven to be the best measure for preventing lethal violence and deaths in contexts of social protest. In addition, it is crucial that reports of the disproportionate use of force not remain in impunity and that urgent measures be taken to prevent this practice by security agents with the greatest rigor.

63. The Commission emphasizes that the obligation of the states to avoid the excessive use of force by public agents in protest marches and demonstrations should be borne in mind especially in the case of children and adolescents. The IACHR recalls that the criminalization of legitimate mobilization and social protest through direct repression of demonstrators is incompatible with a democratic society, for the legitimate exercise of the right to peacefully express one’s opinion is not a citizen security issue. The State should publicly recognize and protect the right to peaceful assembly and freedom of expression without discrimination on grounds of public opinion and should exclude the participation of members of the military and civilian groups from operations for handling public demonstrations, among other measures.

64. The organization Foro Penal Venezolano (FPV) reported that from January 1 to October 31, 2018, the total number of citizens arbitrarily arrested in Venezuela came to 492, and that 183 persons were still being detained. According to the FPV, as of December 2018 there were 288 political prisoners. It also reported that 35 citizens were being tried unconstitutionally in the military jurisdiction from January to October 2018.

65. The IACHR has already spoken out about the existence of arrests without any judicial warrant, by the SEBIN, the prosecution of activists for military offenses, and the imposition of pretrial detention without
justification, among other measures.90 The IACHR reiterates that a detention is arbitrary and illegal when it is carried out without the grounds and formalities established by law, when it is carried out without observing statutory requirements, and when there has been an abuse of the power to arrest, i.e. when it is carried out for purposes other than those provided for and required by law. In addition, an arrest for improper aims is, in itself, a form of punishment without trial, or of extralegal punishment, that violates the guarantee of a trial prior to any punishment and renders the term “arbitrary” synonymous with irregular, abusive, and illegal. Therefore, the Commission urges the State to refrain from engaging in mass, collective, or indiscriminate detentions, and to comply with all the requirements imposed by domestic laws and international standards in detentions effectuated by the security forces in contexts of social protest, particularly to ensure that the persons detained and their family members receive specific information on the reasons for the detention and where their family member is being held.91

66. As already noted, the “Constitutional Statute against hate, for peaceful coexistence and tolerance,” of November 8, 2017, approved by the ANC, provides for penalties of up to 20 years in prison, the shutdown of media outlets including broadcast media, and the blocking of websites. The IACHR continued receiving information about its possible application against persons engaged in peaceful protest (including through social networks), as well as against state workers who denounce the critical conditions of public services.92 The IACHR recalls that criminalization by investigations and/or judicial proceedings based on an ambiguous offense is contrary to the principles of a democratic society, in which persons have the right to express their opinions peacefully, without fear of any reprisal.93

67. The IACHR reiterates that the State should guarantee the full exercise of political rights for all persons, independent of their positions regarding government policies, and cease all actions that impede the right of persons to freely choose their representatives and to monitor their performance.94

68. Particularly grave are the serious allegations of violations of the human rights of members of the National Assembly and opposition activists. On August 4, 2018, two drones with explosives blew up near President Maduro as he was giving a speech. The facts were characterized by the government as an attack on the head of state and senior members of his government.95

69. National Assembly legislator Juan Carlos Requesens, the leader of the opposition political party "Primero Justicia," was arrested on August 7, 2018 for his alleged participation in these events. After his arrest a video was made public in which Requesens was shown in his underwear and in denigrating conditions. The IACHR recalled that states should adopt measures necessary to ensure that persons deprived of liberty enjoy conditions compatible with human dignity. Similarly, the IACHR noted that so as to not impair the right to the presumption to innocence, states should avoid presenting persons who are detained and who are being investigated in any informational medium that could become public.96

70. The IACHR granted precautionary measures for Requesens, asking Venezuela to adopt the measures necessary to protect his rights to health, life, and integrity, ensuring that he is not subjected to acts of violence. The IACHR took into account the seriousness of the allegations presented by the applicants, which

92 Information provided by civil society groups in the hearings “Citizen security and institutional framework in Venezuela,” held during the 167th period of sessions of the IACHR; “Reports of harassment of human rights defenders, journalists, and media outlets in Venezuela,” held during the 168th period of sessions of the IACHR, and “Arbitrary detention and the situation of political rights in Venezuela,” held during the 170th period of sessions of the IACHR.
involved purported torture, the administration of drugs or toxic substances, and allegedly degrading treatment in the context of his deprivation of liberty.\textsuperscript{97}

71. The Supreme Court also issued an arrest warrant for legislator Julio Borges on charges of continuous public instigation, treason, and attempted homicide (homicidio intencional calificado en grado de frustración) against President Nicolás Maduro.\textsuperscript{98} Borges is a beneficiary of precautionary measures issued by the IACHR with the objective of preserving his life and integrity, and so that he can exercise his political rights as a member of the National Assembly without threats, harassment, or acts of violence.\textsuperscript{99}

72. It was learned that on October 5, 2018, council member Fernando Albán – who was active in the political party Primero Justicia – was detained by the Bolivarian Intelligence Service (SEBIN) at the Maiquetía airport when returning to Venezuela from a visit to the United States. Some 20 hours after he was detained, his legal representative and family members were said to have been informed of his whereabouts and the charges against him: terrorism, treason, conspiracy to engage in criminal conduct, and attempted murder (magnicidio en grado de frustración), presumably in the wake of the events of August 4, 2018.

73. According to information that is a matter of public knowledge, former speaker of the National Assembly Julio Borges denounced that Fernando Albán was detained at the facilities of the SEBIN, where he was exposed to cruel and inhuman treatment; that report was filed one day after his detention. 48 hours later, the Government reported his suicide in the SEBIN waiting room, where Albán was awaiting his transfer to the courts. In the context of the 170th period of sessions, Fernando Albán’s widow asked the Commission to urge the State to transfer her husband’s corpse, so that she could bury him in the United States. She also asked that an independent and autonomous commission be constituted to investigate the human rights violations of which her husband was a victim.\textsuperscript{100}

74. The IACHR asked the State for information on the current status of the investigation into the death of council member Fernando Albán, in particular with respect to the principal lines of investigation, types of expert evidence sought, witness statements obtained, and results of the autopsy performed after this death. In December 28, the State reported that a specialized human rights unit of the Attorney General’s Office (Ministerio Público) was in charge of conducting the investigation and corresponding expert examinations, after which the hypothesis of suicide was confirmed. It also reported that two officials of the SEBIN had been tried for breach of the obligations to keep custody over a person under their charge. The State added that the National General Prosecutor released information to the press about the course of investigation and its results. Furthermore, it reported that relatives and lawyers of Fernando Albán had access to the files.\textsuperscript{101}

75. The Commission appeals to the State to carry out the actions required for Mr. Fernando Albán’s family members to have his remains; and to adopt all relevant measures to conduct an conclude an independent investigation of the circumstances of his death while in state custody.

76. The IACHR also granted precautionary measures, asking the State to preserve the health, life, and integrity of Pedro Patricio Jaimes Criollo\textsuperscript{102} and Juan Carlos Caguaripano\textsuperscript{103}, detained at SEBIN facilities, and Luis Humberto de la Sotta Quiroga, detained at the offices of the General Military Counterintelligence Bureau (DGCM: Dirección General de Contrainteligencia Militar), who is being tried on charges of committing

\textsuperscript{97} Resolution 79/18 - PM 1039/18 - Juan Carlos Requesens Martínez, Venezuela.
\textsuperscript{98} EFE, El Supremo de Venezuela ordena detener al opositor Borges por el atentado a Maduro, August 8, 2018.
\textsuperscript{100} Information provided by the State in the context of the hearing “Arbitrary detention and situation of political rights in Venezuela,” held in the 170th period of sessions of the IACHR.
\textsuperscript{101} Note directed by the State to the IACHR, December 28, 2018.
\textsuperscript{102} Resolution 78/18 - PM 688/18 - Pedro Patricio Jaimes Criollo, Venezuela.
\textsuperscript{103} Resolution 42/18 - PM 798/17 - Juan Carlos Caguaripano, Venezuela.
the crimes of “instigation to military rebellion” ("instigación a la rebelión militar"), rioting ("motín"), treason, and “acting against military decorum” ("contra el decoro militar").

77. As regards Jaimes Criollo, the applicants indicated that at the time of his detention at the offices of the General Military Counterintelligence Bureau:

“... they covered his head with bags, they asphyxiated him on the floor and turned with his arms up, they beat him with cushioned sticks and bats. He also suffered electrical discharges, ‘give him more volts’ the SEBIN agents said, and presumably trying to get him to tell them personal passwords.”

78. The IACHR reiterates its appeal to the State to adopt the measures necessary for ensuring the political rights of mayors, governors, legislators, and any other authority, as well as political leaders, so that they can perform their functions without being subjected to harassment, threats, and violence.

79. On May 16, more than 300 persons detained at the prison known as “El Helicoide,” of the Bolivarian National Intelligence Services (SEBIN), rioted to protest alleged violations of their human rights, such as torture and mistreatment; the detention of adolescents; the existence of prisoners with release orders who continue to be detained; in addition to due process violations. One of the persons detained there is Juan Pedro Lares, who is said to have spent more than a year without his case being brought before the courts. Lares was subsequently released. The IACHR has received information about allegations of torture of persons held in that facility. During the riot the State announced that a commission would be constituted to look into the claims. According to the information received, the authorities transferred detainees to another prison as a result of those events. Nonetheless, there is no official information in this regard.

80. The State informed the IACHR that the Commission of Truth, Justice, Peace and Public Tranquility of the Justice System recommended evaluating the application of non-custodial measures for persons detained or convicted for their alleged or proven participation in episodes of violence for political reasons in recent years. Based on these recommendations, 123 persons are said to have received non-custodial measures and so are free on the condition that they must present themselves periodically to the corresponding court. The State reported that 10 persons are beneficiaries of precautionary measures handed down by the IACHR.

81. The IACHR analyzed the information provided by the State and took the opportunity to ask the State for information about the failure to carry out a series of release orders issued by the judiciary in favor of persons who are still being detained, based on information provided by civil society organizations. In particular, details were requested concerning 58 persons of Colombian nationality and two of the 14 police agents known as “polichacaos” deprived of liberty due to their alleged ties to a crime, Fred Mavares and Reggie Jackson Andrade. As of this writing no response has been forthcoming.

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104 Resolution 75/18 - PM 862/18 - Luis Humberto de la Sotta Quiroga, Venezuela.
105 Resolution 78/18 - PM 688/18 - Pedro Patricio Jaimes Criollo, Venezuela, para. 6.
107 Information provided by Defiende Venezuela to the IACHR, May 16, 2018.
108 Provea, Entrevista Provea “Me rociaron con gasolina y me decían que iban a prenderla si no les decía dónde estaba mi padre,” June 15, 2018.
109 Written information provided by the organization Defiende Venezuela to the IACHR, May 16, 2018.
110 El País, Motín en la cárcel de Caracas que encierra a los presos políticos más emblemáticos, May 18, 2018.
111 IACHR, request for information to the State, July 16, 2018, Note CIDH/SE/Art.18/07-2018/37.
112 Information provided by civil society in the context of the hearing “Citizen security and institutional framework in Venezuela,” held during the 167th period of sessions of the IACHR.
On May 29, the Panel of International Independent Experts of the OAS issued its report on the possible commission of crimes against humanity in Venezuela. It concluded that there are sufficient grounds for considering that the acts to which the civilian population of Venezuela has been subjected, including the crimes of murder, incarceration, torture, rape and other forms of sexual violence, persecution, and forced disappearance, which date back to at least February 12, 2014, constitute crimes against humanity as per the Rome Statute. In addition to pointing to abundant evidence, the Panel noted that the IACHR contributed to the process by submitting a report on Venezuela’s judicial system.

The Panel recommended to the Secretary General of the OAS that this Report and the evidence compiled by the OAS General Secretariat be forwarded to the Office of the Prosecutor of the International Criminal Court (ICC), and that the Secretary General should invite the states party to the Rome Statute to refer the situation of Venezuela to the Office of the Prosecutor of the ICC, and ask the Prosecutor to open an investigation into the crimes against humanity described in this Report, in keeping with Article 14 of the Rome Statute. In December 2018, the Office of the Prosecutor of the ICC reported that the investigation with respect to whether there is a reasonable basis for considering the alleged crimes to fall within the jurisdiction of the Court is open, and that it would continue to receive evidence.

In June 2018, the Office of the United Nations High Commissioner for Human Rights (OHCHR) issued its report “Human rights violations and abuses in the context of protests in the Bolivarian Republic of Venezuela from 1 April to 31 July 2017.” That report describes an ever more critical human rights situation from the beginning of the protests, evidencing an escalation in repression of the political opposition by the security forces and an increase in the stigmatization and persecution of persons perceived as opposing the Government. The OHCHR found that agents of the security forces made systematic use of excessive force, including arbitrary detentions of demonstrators, patterns of mistreatment, which on occasion could constitute torture, and the violation of the rights to enjoy the highest possible level of health and an adequate diet. The report was prepared without access to Venezuelan territory due to the lack of consent and was rejected by the Government.

D. Violence and Citizen Security

The IACHR indicated in earlier years that the high levels of violence and crime, and the context of militarization of citizen security and involvement of civilians in security tasks had contributed to a sustained increase in extrajudicial executions.

In June the Scientific, Criminal, and Criminological Investigation Corps (CICPC: Cuerpo de Investigaciones Científicas, Penales y Criminalísticas) reported that the figures for homicides in Venezuela diminished in the first half of 2018, compared to the same period the previous year. It noted that there was a 26% reduction in the incidence of this crime as compared to 2017, with a total of 5,762 deaths due to homicide.
as of June 2018. At the same time, public officials reported that as of October 2018 there was a 35.4% reduction in homicides compared to the previous year. Nonetheless, the State has not produced disaggregated information regarding the causes, victims, and victimizers of these deaths. Specifically, there is no known official data on the number of deaths caused by confrontations, excessive use of force by the security forces, or extrajudicial executions.

87. The Observatorio Venezolano de Violencia (OVV), for its part, reported having recorded 23,047 violent deaths during 2018. Of these, 10,422 represent homicides. According to that information, the participation of the security forces in homicides continues to be high. They counted 7,523 deaths caused by resisting the authorities and 5,102 cases of deaths that are still being legally processed. The rate of violent deaths was 81.4 per 100,000 population. From January to September 2018, in the city of Caracas, 481 homicides were counted caused by putting up "resistance to the authorities," for a 13% increase with respect to the previous year.

88. In addition, information has continued to be received about security force operations in areas with high rates of violence, characterized by the excessive use of force. The Monitor de Víctimas reported that as of October 2018 the National Bolivarian Police (including the Special Actions Force) and the CICPC are the two security institutions that account for the largest number of homicides, 57% and 35% respectively. Concern has been expressed about the failure to investigate the public servants implicated in violent deaths. The State announced that 89 members of the Special Actions Force were under administrative and criminal investigation, and that 23 police officers are deprived of liberty as a result of reports of abuses perpetrated in the context of the program "Denounce Police who Commit Violations" ("Denuncia al Policía Transgresor").

89. In January 2018, in a joint action by the state security forces, Operation "Gedeón" was carried out in the area known as El Junquito, in Caracas. On January 16, the Minister of Internal Relations, Justice and Peace reported that after an armed confrontation, a self-styled rebel group in opposition to the government, led by Óscar Pérez, former inspector of the CICPC, had been dismantled. The members of the group were sought for their participation in the 2017 attack on the Supreme Court, and for having issued an appeal for civil disobedience.

90. According to reliable information, the operation included the participation of some 400 agents of the security forces belonging to the Bolivarian National Guard, the Bolivarian National Police, the National Anti-Extortion Command, and the General Military Counterintelligence Bureau. It was announced that as a result of the military operation known as "Gedeón" at least nine persons, including Óscar Pérez, six members of his group, and two police agents had lost their lives, and that eight security agents suffered bullet wounds. The official information indicated that the members of the rebel group shot at officers of the security forces, who took action to respond to the attack, following defined protocols.

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125 See Observatorio Venezolano de Violencia, 85% de los delitos más graves en octubre fueron homicidios, November 2018; Observatorio Venezolano de Violencia, ¿Es real la supuesta reducción de los homicidios en la capital de Venezuela?, November 7, 2018; Monitor de Víctimas, Reporte Mensual, October 2018.
127 Monitor de Víctimas, Reporte Mensual, October 2018.
130 BBC, Un helicóptero del CICPC dispara contra el ministerio del Interior y el Tribunal Supremo de Venezuela en lo que el gobierno denuncia como "escalada golpista," June 28, 2017.
91. Videos were disseminated in which Pérez and members of his group report on the negotiations that were initiated with the authorities for their surrender, as well as their calls for a ceasefire, given the presence of women and children in the place. Those videos record shots while the members of the group announce their surrender. According to information received, the seven members died from gunshot wounds to the head. The home that was the scene of these events was demolished. It was also reported that the family members of Óscar Pérez and his group faced a series of obstacles when it came to being allowed to identify the bodies; and that they were not allowed to decide on the details of their burials. The Commission sent a request to the State, asking for information on the state agents and authorities who were in charge of the operation and who participated in it; the persons who were wounded or killed in Operation Gedeón; the status of the investigations initiated in relation to this context and their findings; how the official removal of the bodies was conducted; which authorities or independent experts participated in these processes; the kind of assistance that was given to the persons who were wounded; how the burials of the persons killed took place and whether they were in keeping with the decisions, beliefs, and customs of the family members; and what family members of the deceased were present. As of this writing the State has not provided the information requested.

92. The Commission also received information that describes the violent deaths of at least eight persons in the residential zone of Fuerte Tiuna, in a sector known as “Los Rusos.” The incident was said to have occurred in the context of an operation carried out on September 9 by agents of the Special Actions Force of the Bolivarian National Police (FAES). At the same time, information was received on searches conducted without a judicial warrant and attacks on private homes in the context of protests against the State. According to the information received, the searches were conducted violently, breaking fences and gates, with the use of small tanks and armored vehicles, and with indiscriminate shots fired into homes. It was denounced that once in the homes the officials demanded to be told where the youths were who were protesting, without showing any arrest warrant. The State reported that the demonstrations that have taken place in Venezuela have been violent and that it has made legal use of force to bring them under control. Such events occur in the context of the extension of the state of emergency by decree issued by the Executive branch.

93. The Commission considers it essential to reiterate the call to end the involvement of the armed forces in citizen security activities that are within the purview of the police bodies, as well as ending the involvement of civilians in internal security strategies. In particular, the Commission reiterates to the State the request for information on the circumstances around Operation Gedeón and urges the State to determine the possible responsibilities of those state officials who participated in it. The IACHR reiterates that it is also fundamental to adopt a human rights perspective in addressing citizen security; such an approach is based on looking at people as citizens to be protected rather than enemies who must be combatted.

94. In addition, the Commission recalls that the State is under the inescapable obligation to adopt all measures necessary to protect the life and integrity of the persons under its jurisdiction; which implies taking the measures needed to ensure that the use of lethal force occurs strictly within the principles of

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134 Information provided to the Commission by Defiende Venezuela.
135 Information provided by civil society groups in the hearing “Citizen Security and institutional framework in Venezuela,” held during the 167th period of sessions of the IACHR.
136 Information provided by Amnesty International in the hearing “Citizen Security and institutional framework in Venezuela,” held during the 167th period of sessions of the IACHR.
exceptionality, legality, necessity, proportionality, non-discrimination, and accountability. In addition, the State is under the duty to prevent, investigate, prosecute, and punish violent acts.

IV. POVERTY AND ECONOMIC, SOCIAL, CULTURAL AND ENVIRONMENTAL RIGHTS

95. The Rapporteurship on Economic, Social, Cultural and Environmental Rights continued monitoring the situation in Venezuela, with great concern, throughout 2018. Antiretrovirals continued to be in short supply for persons with HIV or AIDS, as were medicines for insulin-dependent diabetes and hypertension. Associated with the effects of the health crisis, information is on record regarding the deaths of minor children due to infections caused by deficient hygiene in the hospitals. At the same time, deaths associated with pregnancy and childbirth care due to deteriorating public health services, malnutrition, and epidemics. In particular, projections with regard to child deaths due to malnutrition are alarming. With respect to the right to education, attacks have continued on institutional university autonomy and academic freedom, which led the National Assembly of Venezuela to declare a complex humanitarian emergency in education, which has been ratified by university councils of Venezuela’s leading universities. Finally, it is noted that problems persist stemming from pollution, deforestation, violence, and the increase in organized crime activities in what is called the Orinoco Mining Arc.

96. The Commission takes note on the observations of the State made to the project of the present report in which they note that “during 2018, Venezuela reached the sum of 2,500.00 constructed housing built and delivered to the population, with special preference for the sectors in conditions of social vulnerability; all of the aforementioned as part of the “Great Housing Mission of Venezuela”.

A. Health

97. The crisis in Venezuela’s health system has several aspects associated with different factors; it has taken a particular toll on the country’s most vulnerable populations. For example, from January to July the scarcity of medicines for insulin-dependent diabetes and hypertension persisted; these are causes of morbidity in older persons, fluctuating from 89.8% to 78.4% for insulin-dependent diabetes, and from 89.5% to 74.2% for hypertension. These figures are higher for acute respiratory infections and diarrhea, with maximum peaks of up to 97.2% and 92.4%, respectively. There are reports of deaths in older persons due to lack of access to medicines. This is supplemented by the general panorama, as widespread undersupply persists (greater than 79%). This means that more than half of all patients will not get medicines to treat the leading morbidities, whose worsening diminishes quality of life and life expectancy, while these diseases are perfectly treatable in a context in which public policies and investments in health are focused on the well-being of the population.

98. Venezuela has a deficit of medical personnel. According to the 2017 National Survey of Physicians and Medical Students more than 40% of all these professionals who have graduated in the last decade decided to migrate to other countries; and of those who are still in the country, 75% intend to emigrate due to the precarious conditions for health professionals. The playing out of these intentions makes it all the more difficult to provide health services to older persons in Venezuela.
99. In response to this situation, in October 2018, the Special Rapporteur for Economic, Social, Cultural and Environmental Rights of the IACHR, along with the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health of the United Nations, will issue a joint statement expressing their concern over the detriment to the right to health of older persons in Venezuela. In the document both mandates urged the State to guarantee the right to enjoy the highest attainable standard of health for older persons in Venezuela, recalled the forwarding to the Venezuelan State of a request for a joint visit, and reiterated their utmost interest, and offered to provide technical assistance for protecting the right to health.

100. In addition, other international organizations have taken actions to address the crisis in Venezuela. For example, the regional office of the Pan American Health Organization (PAHO), drew up the Master plan for strengthening the HIV, tuberculosis and malaria response, in June 2018, which included the participation of the directors of the programs of the Ministry of People’s Power of Health (MPPS: Ministerio del Poder Popular de la Salud), representatives of civil society, and experts from PAHO and UNAIDS. The Master Plan contains the activities needed for responding to these three health problems, as well as the detail of the needs and costs of medicines, laboratory reagents, equipment, and prevention materials. The Global Fund to Fight AIDS has already earmarked financial resources for purchasing antiretroviral medicines through the PAHO Strategic Fund and we believe we are making progress in addressing the needs for these three diseases, supplementing the efforts of the MPPS and guaranteeing their availability during 2019.145

101. Nonetheless, these efforts are diminished if one notes that there is a generalized supply crisis in Venezuela. For example, it is estimated that at least 60% of the medical care available in 2011 was lost from 2012 to 2017; it was provided by public health services to 82% of the user population. With respect to care, it is noted that from 2012 to 2015 the proportion of beds occupied in the public hospitals fell 40%, and from 2014 to 2015 the number of persons served daily in consultations, emergencies, and childbirths fell 58%, according to the latest statistics published by the Ministry of Health in its Memory and Account (Memoria y Cuenta). Moreover, according to the 2017 Survey of Living Conditions, population centers such as Barrio Adentro lost 96% of their beneficiaries from 2015 to 2017; and the only public hospital in the state of Amazonas was closed on technical grounds.146

102. Accordingly, the Commission finds it alarming that at this time the risk of dying in a public hospital is quite high, causing the extreme vulnerability of persons due to the precarious conditions of care. Most public health establishments have shortcomings in their structure, operating capacity, and logistics, and in some cases a lack of basic hygienic conditions. These inadequate sanitary conditions foster intrahospital infections and 50% of the hospitals with complex services do not have bacteriology laboratories. 147

103. As regards the health of children, information was received on at least 16 children under 5 years of age who have died at the Hospital Universitario de Pediatría Dr. Zubillaga (Dr. Zubillaga Pediatric University Hospital) in the state of Lara as of this writing in 2018, due to infections caused by deficient hygiene. In 2017 and 2018, 12 children and adolescents died who received dialysis at the J.M. de los Ríos Children’s Hospital due to bacterial infection in the water tanks and filters in the units. In one year the number of child deaths at this hospital doubled, from 79 to 160; the three leading causes were septic shock, pneumonia, and malnutrition. Similarly, from December 2017 to February 2018, the death of 112 newborns was reported in the Santa Ana Maternity Hospital of Caracas, due to the bacterium Klebsiella pneumoniae. 148

104. In 66%, the number of maternal deaths increased, while child deaths climbed 30% from 2015 to 2016. Both have continued to rise into 2018, with the aggravating factors of malnutrition and epidemics.

Deaths associated with pregnancy and childbirth care have escalated in Venezuela due to the decline in public health services, malnutrition, and epidemics. The rate of adolescent pregnancy, at 95 per 1,000, is the second highest in Latin America.149 From 2015 to 2016, maternal deaths grew 66%, reaching mortality of 140 pregnant women per 100,000 live births, and continued to climb during 2017 and 2018. Child deaths, more than 60% of them neonatal deaths, saw a 30% increase (from 8,812 to 11,466) with a rate of 19.0 deaths per 10,000 live births.150 In the 2017 Survey of Living Conditions, 25,000 pregnant females never received a prenatal check-up and 15,000 only as of the eighth month. In 2017, 117 pregnant females from the state of Bolívar lost their lives due to malaria complications; in 2018, 10 pregnant females also died, of a total of 690 indigenous women with malaria in the state of Amazonas.151

105. The number of persons receiving care at public psychiatric institutions fell from 23,000 to 3,500, and those in such institutions do not have food or medicines. Mental health policies have historically been weak in Venezuela. Persons with some mental health condition (schizophrenia, dementia, depression, and bipolar, anxiety, personality, or attention deficit disorders, intellectual disability, or autism) receive attention in only 11 hospitals of the Ministry of Health and 68 cases in rest homes operated by the social security institute. From 2009 to 2013, the number of beds fell off 42%, and from 2013 to 2015, the number of persons served fell from 23,000 to 5,500, due to serious problems with infrastructure, limited budget, and lack of medicines.152

106. As regards the lack of access to medicines and medical treatments in Venezuela, the IACHR learned that 85% of the pharmacies in the Venezuelan capital had no medicine for treating opportunistic infections that attack persons living with HIV or AIDS; and that 95% to 100% of the hospitals do not have a supply of antiretrovirals. This has meant that some patients have gone up to six continuous months without receiving the treatment indicated, resulting in approximately five persons a day dying due to causes related to that disease. In that same context, local scientific organizations have observed the serious deterioration of the blood banks in Venezuela, with serious shortcomings in the reception of reagents and inputs for discarding the possibility of diseases in blood donations, surgery and transfusion in kidney, hematology, and cancer patients, among others. That context is aggravated by a worrisome increase in diseases such as malaria, zika, and diphtheria, which has generated alerts due to their gradual spread since 2015.153

107. In 2016, the scarcity of psychotropic medicines reached 85%, generating a high probability of disability and mortality. According to the Survey of Living Conditions for 2016, 63% of the persons with these persons did not get medicines at pharmacies. Psychiatrists say they have gone back to practices that had become a thing of the past such as tying down a patient or isolating the patient in a room without clothing to avoid self-inflicted injuries. In 2018, 3,500 persons had to leave the centers due to severe malnutrition and psychotic episodes, for insulin, and due to the undersupply of anti-malaria medicine.154

108. Finally, some precautionary measures have been granted to provide immediate protection of the right to health. In Precautionary Measure PM No. 1039/17, the measure was granted in favor of child nephrology patients at the Hospital José Manuel de los Ríos. It argued that the proposed beneficiaries are at serious risk due to their health and the lack of adequate medical treatment, due to an alleged crisis of undersupply and other structural shortcomings. The Commission asked Venezuela to take the measures necessary to guarantee the life, integrity, and health of the children. Similarly, the IACHR granted Precautionary Measure (PM) No. 145/18 with respect to persons who have the HIV virus who are said to be at risk due to the failure to ensure a steady supply of antiretroviral medicines. In particular, the Commission asked Venezuela to adopt the measures necessary to safeguard the life and integrity of the 43 beneficiaries by immediately

150 Provea: Informe Anual 2016, Chapter on Health.
adopting measures that make possible adequate medical treatment, as well as the diagnoses and medical exams that make it possible to regularly evaluate their health conditions. 155

109. The Commission urges the State to make the adjustments needed in its public policies and budgets to respect and guarantee the rights to food and health, based on a differentiated and gender-sensitive approach that gives special consideration to the rights of older persons and children. In particular, it should make a change to its comprehensive health policy so as to address basic needs such as the lack of medicines and hospital care, diminishing the quality and availability of health care for the inhabitants of Venezuela.

110. The Commission recalls that the American Declaration, at Article XI, indicates that every person has the right to his or her health being preserved by sanitary and social measures relating to food, clothing, housing and medical care, to the extent permitted by public and community resources. This right should be satisfied such that it is available, accessible, acceptable, and of quality. 156 Along these lines, in the face of alarming figures, it is a duty of the Venezuelan State to make every possible effort to eradicate the scarcity of medicines and the lack of personnel at the health centers.

B. Food

111. The most recent report on food and nutrition security by the United Nations Food and Agriculture Organization in collaboration with the Pan American Health Organization, has verified an increase of 1.3 million persons who have been underfed in Venezuela from 2014 to 2016, i.e. 3.9% more than in the previous three-year period. That estimate corresponds to the number of persons in the population who do not meet the minimal nutritional requirements for leading a healthy and active life. Accordingly, the repeated reports on the risk thousands of children in Venezuela face of losing their lives due to malnutrition this year. According to the information received, in 2017 five to six children died weekly due to lack of food, and at least 33% of the child population is showing signs of stunted growth. In addition, an average of 4.5 million persons are eating only once a day, and on occasion only every other day, resulting in 11.4% of the child population already suffering malnutrition. 157

112. In addition, the scarcity of food products and the rising prices of the few protein products or nutritional supplements available in the country threaten to drive up child malnutrition to 25%, to reduce the number of meals per day, and to meals having less and less animal protein, leafy greens, fruits, and vegetables. This has particular and serious effects on children, older adults, and those persons who suffer diseases such as pneumonia, hepatitis, tuberculosis, or HIV/AIDS, who moreover report that they have not received their medicines for months, nor had access to food appropriate for their survival. 158

113. In 2017, according to reliable research in the locality of Miranda, older persons lost 1.3 kilograms monthly, which deteriorated their health and adequate levels of nutrition. The situation was worse for those who tend to be alone, without emotional and economic support, since their family members are forced to emigrate from the country to survive. Similarly, some data indicate that there has been a shift in the diet of inhabitants of Venezuela. According to information sent by civil society groups, the foods that many have stopped buying because of their cost or scarcity are animal proteins: chicken (21.3% attribute it to scarcity, 18.6% due to cost), beef (19.8% due to scarcity, 20.3% because of cost), and fish (10.4% because of scarcity, 12.3% because of cost). 159 As a result, approximately 76.8% of households reported that at some time in the last three

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155 The Commission also granted precautionary measures 1039, 862, and 798 of 2018 on behalf of persons deprived of liberty who were at serious risk due to their conditions of detention and due to the lack of adequate medical care, which was distinct for each person. In the various measures the Commission asked the government of Venezuela to take the steps necessary to guarantee the health, life, and integrity of persons deprived of liberty.


months, because of lack of money or other resources, the adults ceased having a healthy diet – due to not including foods in the quantity and quality needed for healthy and balanced meals. 160

114. At the same time, it was reported that 6 newborns died at the Hospital Menca in Leoni161, and 3 other babies died due to malnutrition at the Children’s Hospital in Maracaibo162, figures that are in addition to several deaths recorded in different parts of the country as the result of the lack of guarantees for the rights to health and food. According to civil society organizations, it is likely at least 280,000 children could die of malnutrition. 163 While for 2017, these same organizations were able to provide care to more than 3,000 children with malnutrition, this year the inventories of nutritional supplement are depleted in several parts of the country.164 As of August 2018, 48% of pregnant females in poor parishes had some degree of malnutrition; 21% had severe malnutrition.165

115. Finally, it is worth noting that in its comments on the draft of this report, the State referred to the Local Supply and Production Committees (CLAP) program, under which it "supplies, directly and on a monthly basis, 19 food products at subsidized prices to 6 million families in the country", and assured that "it reaches coverage of more than 24 million people." 166

116. The Commission reminds the State that under Article XI of the American Declaration, every person has the right to the preservation of his health by measures relating to food. Similarly, Article VII of the same instrument indicates that all women, during pregnancy and the nursing period, as well as every child enjoy the right to special protection, care, and aid. In addition, the Committee on Economic, Social and Cultural Rights, at its General Comment 12, indicates that the core content of the right to food implies "the availability of food in a quantity and quality sufficient to satisfy the dietary needs of individuals, free from adverse substances, and acceptable within a given culture" and “the accessibility of such food in ways that are sustainable and that do not interfere with the enjoyment of other human rights.”167

117. It is urgent that the State adopt a new public policy focused on eradicating chronic malnutrition, especially in the most vulnerable sectors of society. Within that strategy, adjustments should be made in monetary policy so as to ensure access to the basic market basket for the poorest and most vulnerable sectors of Venezuela.

C. Education

118. As regards the right to education, it is noted with concern that on November 21, 2018, the President of the Republic, in the context of the day of the university student, on a nationwide radio and television broadcast, asked the students to create “University Militia” to defend “the revolution” and support their government “with weapons in hand.” 168 In addition, from 2010 to 2018 at least 50 judicial decisions have been issued that violate the institutional autonomy of the universities, and consequently academic freedom, on avoiding holding elections of university authorities, having suspended the competitive hiring processes for university professors, having forced the autonomous universities to accept the impositions of places for new students by outside actors, and even with intervention in the graduations when it comes to giving out university

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167 Committee on Economic, Social and Cultural Rights, General Comment No. 12, E/C.12/1999/5, para. 8.
168 Aula Abierta, Maduro propone crear milicias universitarias.
degrees. Similarly, on November 27, 2018, the Electoral Chamber of the Supreme Court handed down judgment No. 102, which violates university autonomy on failing to recognize the results of the student elections held November 14, 2018, at the Universidad de Carabobo, instead imposing a student government.

Along these lines, one observes the recurrent suspension of elections and of the internal rules of political participation at the autonomous universities. Based on Article 34 of the Organic Law on Education, the Electoral Chamber of the Supreme Court has not allowed the renewal of authorities (rectors, deans, and co-governing bodies). The elections scheduled at the public universities of Venezuela have been suspended since 2011. The universities have pursued remedies before the Supreme Court, seeking the annulment of the effects of this article; no favorable decision has been forthcoming to date.

Observing this general situation, the National Assembly of Venezuela, on September 25, 2018 agreed to declare a complex humanitarian emergency in the education sector in Venezuela, pointing to the violations of academic freedom and university autonomy as well as the budgetary asphyxia at the universities caused by the Ministry of People’s Power for University Education, Science and Technology, the searches of university facilities, and the criminalization of the university protests, among other situations. This declaration has been ratified autonomously by the various university councils at the country’s leading universities.

The Commission expresses its concern over the reports regarding interference with university autonomy. The Commission reiterates that it is the duty of the State to respect university autonomy, as it is a fundamental pillar of the right to education, especially for the free development of the students and as a leading pillar of a strong democratic state. Academic debate not only enriches the internal discussion of the universities, but is also useful for fostering public debate, which strengthens democratic institutions.

While it is not mentioned expressly in the American Declaration, the IACHR recalls that university autonomy is an essential requirement for academic freedom, which in turn is necessary for full enjoyment of the right to education, which is recognized in Article XII of the American Declaration. In that regard, the Commission urges the State to review and modify, as relevant, any acts that may diminish the autonomy of the universities. In addition, the Commission expresses its condemnation of the reports of arbitrary expulsions of and reprisals against students motived by political considerations. The IACHR urges the State to refrain from carrying out such acts, and to investigate and, as the case may be, punish them.

**D. Healthy Environment**

Serious reports have been lodged regarding pollution, deforestation, violence, and an increase in organized criminal activities in the Orinoco Mining Arc, which was created in 2016 by supreme decree for the extraction of bauxite, coltan, diamonds, gold, iron, copper, kaolin, and dolomite all along the southern bank of the Orinoco River, encompassing an area of approximately 112,000 km². Among these, some 33 places have been identified where mining is taking place within or adjacent to the Canaima park. That information, together with that which the Rapporteurship for ESCE rights has pulled together, indicates that members of indigenous communities are participating in mines in the following locations: the middle stretch of the Caura river basin, the Paragua river basin, and the Caroní river basin.

In addition, the sector is especially rich in protected areas; and has the largest number of areas under a special regime in Venezuela, among them the three million hectares of the Canaima national park, the 7.5 million hectares of the Caura national park – formalized in 2016, after the serious of stinging criticisms of

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169 Aula Abierta, Informe preliminar sobre decisiones del Poder Judicial venezolano que vulneran la autonomía universitaria y la libertad académica.

170 Aula Abierta, Comunicado en rechazo a las decisiones del Poder Judicial venezolano que vulneran la autonomía universitaria y la libertad académica.

171 Aula Abierta, Comunicado en rechazo a las decisiones del Poder Judicial venezolano que vulneran la autonomía universitaria y la libertad académica.

172 Aula Abierta, La universidad de Zulia declara Emergencia Humanitaria Compleja en el sector educativo, October 22, 2018.

government mining policy – and the five million hectares of the Imataca forest reserve. The concern has to do primarily with the fact that the ecosystem has very fine soils that are very difficult to restore. In that sense, the forests of the Guyana shield serves as a protective shield for almost 2,000 endemic plant species.

125. One of the leading concerns is the excessive use of mercury to separate the metal from the minerals. It has been determined that exposure to mercury is causing neurological and kidney disorders, and dermatological harm. Moreover, according to a study conducted by the Sociedad Peruana de Derecho Ambiental (Peruvian Environmental Law Society), it was found that only 32% of the children analyzed in clinical studies showed mercury levels below the safety limit. Worse still, more than 90% of the persons who work in the processing centers had mercury levels above the warning level.

126. The United Nations independent expert for a healthy environmental has indicated that the states must comply with substantive and procedural obligations to prevent and safeguard the environment. The states have the obligation to apply legal frameworks for protection from environmental harm that may violate the enjoyment of human rights. Similarly, the states have the duty to comply with procedural obligations that are necessary for safeguarding the substantive aspects of the environment, and carry out Principle 10 of the Declaration of Rio de Janeiro on environment and development, which indicates that one should guarantee the right of access to information, justice, and participation in environmental matters.

127. The IACHR calls on the State of Venezuela to evaluate urgently the environmental, sociocultural, and human rights impact of the creation of the Orinoco Mining Arc National Strategic Development Zone. That evaluation should be done ensuring access to information and the effective participation of the indigenous communities, as well as prior consultation in relation to the decisions that affect them.

V. SOCIAL PROTEST AND FREEDOM OF EXPRESSION

128. In 2018 the situation of freedom of expression in Venezuela deteriorated significantly due to the initiation of criminal proceedings against journalists who investigate acts of corruption, arbitrary arrests of journalists who cover protests and the detentions of opposition leaders and citizens who express criticisms or dissent from the government via social networks. The so-called Law against Hatred was applied to demonstrators and citizens, and to apply sanctions and warnings to media outlets. The IACHR and its Office of the Special Rapporteur for Freedom of Expression were also informed of the violence brought to bear against journalists and media workers by members of the security forces while covering protests; many were forced by the agents to destroy recorded material or were kept from approaching to cover incidents. The practice of detaining foreign correspondents and visiting journalists persisted. At the same time, the government is deploying new strategies to attempt to control messages on the Internet by blocking websites and surveilling citizens’ communications on social networks. The situation of the supply of newsprint by the state company that monopolizes this input also worsened. As a result, 35 newspapers saw their issues, runs, and the number of pages decline. Several stopped circulating in paper versions.

A. Journalism and the Freedom of Press

129. The IACHR observes with concern the restrictive environment for the free exercise of journalism in Venezuela, considering that journalists are constantly at risk of becoming the target of attacks.

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175 Pulitzer Center on Crisis Reporting, “Digging into the Mining Arc.”
176 Pulitzer Center on Crisis Reporting, “Digging into the Mining Arc.”
intimation, and various forms of harassment for doing their work in different contexts.\textsuperscript{179} In addition, the IACHR received information about a continuing practice of arbitrarily detaining journalists while they are doing their work of reporting.\textsuperscript{180} Reporters are held temporarily and impeded from doing their work under unjustified pretexts, such as being in areas of public access without authorization. The information received points to several cases in which reporters were kept from approaching certain areas where there were protests or episodes of major public interest, and from taking statements from the persons involved or taking photographs.\textsuperscript{181} At the same time, the IACHR learned of several attacks on media facilities and harm to infrastructure and equipment.\textsuperscript{182}

130. The IACHR recalls that in keeping with Principle 9 of the Declaration of Principles on Freedom of Expression: “The murder, kidnapping, intimidation of and/or threats to social communicators, as well as the material destruction of communications media violate the fundamental rights of individuals and strongly restrict freedom of expression. It is the duty of the state to prevent and investigate such occurrences, to punish their perpetrators and to ensure that victims receive due compensation.”

2. 

**Stigmatizing statements**

131. In 2018, the IACHR and its Office of the Special Rapporteur for Freedom of Expression learned of stigmatizing statements by public authorities speaking against the work media outlets and journalists.\textsuperscript{183} The IACHR was informed of accusations by public authorities against the organization Transparencia Venezuela.\textsuperscript{184} On April 18, the website of the Ministry of People’s Power of the Office of the Presidency and Follow-up of Government Action is said to have published an article in the state-owned daily newspaper 	extit{Correo del Orinoco}, on occasion of the Summit of the Americas, in which it said that Transparencia Venezuela is “subversive” and one of the most dangerous organizations in the country. In November 2017, President Nicolás Maduro said, during an interview with a Spanish press outlet, that the organization was financed by the United States and that one should not rely on it. In addition, on September 10, President Nicolás Maduro said in a nationwide television and radio broadcast that his administration is the victim of a campaign of “worldwide defamation, of worldwide slander against Venezuela” ("difamación mundial, de injuria mundial contra Venezuela"), and that he had given assurances that there is “a great worldwide media operation to position a matrix of supposed humanitarian crisis to justify the crazy plans that those sectors are preparing for a military intervention in Venezuela.”\textsuperscript{185}


\textsuperscript{183} Espacio Público. May 6, 2018. Jacqueline Fariás intentó retirar a la prensa de protesta y manifestantes se negaron.


132. The IACHR recalls that public officials have the duty to ensure that their pronouncements do not cause harm to the rights of those who contribute to public deliberation by expressing and disseminating their thought, such as journalists, media outlets, and human rights organizations, and should heed the context in which they express themselves to ensure that their expressions do not amount to, in the words of the Court, “a form of interference with or pressure impairing the rights of those who intend to contribute to public deliberation by means of expression and dissemination of its thought.”\(^\text{186}\)

3. Indirect restrictions

133. According to the information received by the IACHR, the lack of supply and government control of newsprint continued to impair the free functioning of the written press in 2018. Several media outlets were forced to reduce the number of pages, reduce circulation or frequency, or have had to indefinitely interrupt their paper edition. According to information available, approximately 35 print media outlets have seen their circulation impacted in 2018 due to the scarcity of newsprint or economic difficulties acquiring plates and ink for printing. Of these, 26 are said to have ceased circulating permanently, and nine are said to have suffered intermittent interruptions.\(^\text{187}\)

134. The IACHR also received information that the National Telecommunications Commission (Conatel: Comisión Nacional de Telecomunicaciones) made warnings and initiated administrative proceedings regarding media outlets and journalists in the wake of expressions that the agency considered violent, disturbing, or questioning of the official discourse.\(^\text{188}\)

135. The IACHR recalls that Article 13(3) of the American Convention establishes: “The right of expression may not be restricted by indirect methods or means, such as the abuse of government or private controls over newsprint, radio broadcasting frequencies, or equipment used in the dissemination of information, or by any other means tending to impede the communication and circulation of ideas and opinions.”

4. Subsequent liability and criminalization of the freedom of expression

136. During 2018 the IACHR and its Office of Special Rapporteur for Freedom of Expression continued receiving information on the initiation of criminal proceedings aimed at having a chilling effect on criticism of the state authorities and critical discourse regarding matters of public interest. In this context, the IACHR was informed of the investigation begun into four reporters and editors of the investigative journalism website Armando.info in the wake of a complaint by Colombian businessman Alex Saab for the offenses of defamation and slander.\(^\text{189}\) After the justice system accepted the request to open an investigation, journalists


Reportedly subjected to pretrial detention. For one month family members and human rights organizations had no information as to his whereabouts and the State had refused to provide any information about his detention. On September 26, on his program on state television VTV Cabello is said to have read fragments of the court judgment that ruled favorably on his claim, of which La Verdad has yet to have received notice.

In addition, the IACHR was informed of several episodes in which it was warned that the “law against hatred” was being applied. In addition, it was reported that the owner of a website that puts out information about the exchange rate was arrested for disseminating information considered “false” and the conviction and sentencing to four years and ten months in prison of a military officer who, during a protest in the state of Táchira on May 18, 2017, tore up his “carnet de la patria” and made criticisms of the high-level military commanders and the policies of the national Government.

In another episode, the IACHR was informed that on May 10 officers of the Bolivarian National Intelligence Service (SEBIN) detained twitterer Pedro Patricio Jaimes Criollo, administrator of the account @AereoMeteo, after he published information about the route of the presidential airplane that transported Nicolás Maduro to the state of Aragua. Jaimes Criollo was accused of attacking national security and was reportedly subjected to pretrial detention. For one month family members and human rights organizations had no information as to his whereabouts and the State had refused to provide any information about his detention. On June 15, after he had been detained for 33 days, Jaimes Criollo communicated by telephone with his family and told them that he was being held at the SEBIN facility known as El Helicoide and that he had been the victim of mistreatment and beatings. On October 4, the IACHR granted a precautionary measure on behalf of Jaimes Criollo, considering that his situation meets prima facie the requirements of seriousness, urgency, and irreparability contained in Article 25 of the Rules of Procedure. The Commission asked the State of Venezuela to adopt the measures necessary for guaranteeing the rights to health, life, and personal integrity of Jaimes.


Criollo, the he be provided adequate medical care, and that it be assured that his conditions of detention are compatible with international standards.\(^{197}\)

140. On August 29, graphic journalist with the digital media outlet Dolar Today, Jesús Medina Ezaine, was reportedly detained while reporting on the situation in a Caracas hospital along with a team of international journalists.\(^{198}\) Two days later the 13\(^{th}\) Court of Control of Caracas was said to have issued a measure ordering his pretrial detention for purported crimes of asset laundering (\textit{legitimación de capitales}), conspiracy to engage in criminal conduct, illegal profiting from administrative acts, and instigating hatred. Medina was held at the Ramo Verde military prison.\(^{199}\) He had already been detained in November 2017, after having received threats for taking photographs of the Aragua prison. He was held for three days and was said to have been beaten and threatened. He was released along a highway partially naked with signs of violence. He does not know who was responsible for his detention.\(^{200}\)

141. The IACHR was informed of the detention of firemen Carlos Varón and Ricardo Prieto, on September 12, for producing a satirical video in which they compared President Nicolás Maduro with a donkey.\(^{201}\) The firemen were accused of the crimes set forth in Articles 20 and 21 of the “law against hatred,” but these were later changed to the crimes of offending the President and public instigation of hatred, established in Articles 147 and 285 of the Criminal Code, and which could draw a sentence of up to nine years in prison. On October 31, both were released on probation; they must report every 30 days and are prohibited on leaving the state of Mérida.\(^{202}\)

142. Billy Six, a journalist of German nationality, was reportedly arrested November 17 in Paraguana, state of Falcón. According to the information received, intelligence officers took him, without a judicial order, to the SEBIN facility El Helicoide, in the city of Caracas. In addition, he was accused before a military tribunal on charges of espionage (“\textit{espionaje}”), rebellion (“\textit{rebelión}”) and violation of security zones (“\textit{violación de zonas de seguridad}”).\(^{203}\)

143. Principle 11 of the Declaration of Principles on Freedom of Expression of the IACHR establishes: “Public officials are subject to greater scrutiny by society. Laws that penalize offensive expressions directed at public officials, generally known as ‘\textit{desacato} laws,’ restrict freedom of expression and the right to information.” In addition, the IACHR has held repeatedly that the application of the criminal law to punish expression referring to public officials is disproportionate when involving protected speech, such as information or expression about matters of public interest, and violates the right of freedom to expression.\(^{204}\)

5. Social protest and public demonstrations

144. As indicated at section III.C. of this report, the IACHR received information about various demonstrations that continued to take place in various parts of Venezuela, in general protesting the situations


\(^{200}\) Committee to Protect Journalists (CPJ). September 7, 2018. \textit{Venezuelan freelance photographer detained, sent to military prison}.


of undersupply and the economic difficulties the population faces.\textsuperscript{205} According to the information received by the IACHR, in this context of continuing protests and critical expressions against the Government, demonstrators and journalists have been arbitrarily arrested by the security forces.\textsuperscript{206} The IACHR is concerned about the climate of restriction in Venezuela and the possible reprisals against public servants who participate in the demonstrations, disseminate critical information, or speak out against the Government.\textsuperscript{207} In this context, the IACHR received information about episodes in which reporters were kept from approaching certain areas where protests take place and from taking statements from the persons involved, or taking photographs.\textsuperscript{208} According to the organization Espacio Público, from January to October 2018, at least 55 persons from the public sector were persecuted, threatened, or detained for protesting or denouncing critical situations in their workplaces.\textsuperscript{209}

145. The IACHR has reiterated that social protest is a fundamental tool for the work of defending human rights and is essential for critical political and social expression regarding the activities of the authorities. The Commission has stated that “in principle, criminalization per se of demonstrations in public thoroughfares is inadmissible when they are carried out in exercise of the rights to freedom of expression and to freedom of assembly”\textsuperscript{210} and that “the exercise of the right of assembly through social protest must not be subject to authorization on the part of the authorities or to excessive requirements that make such protests difficult to carry out.”\textsuperscript{211}

6. Access to public information and restrictions on journalistic coverage, public spaces

146. The IACHR observes a persistent failure by the state agencies to clearly inform the population about the situation at health centers and the scarcity of medicines that is affecting the response of the health system.\textsuperscript{212} At the same time, the IACHR received information about obstacles to journalists when it comes to accessing sites that should be places of public access, such as polling places or sessions of the National Assembly.\textsuperscript{213} In addition, journalists from throughout the country have reported delays in being delivered press credentials from the National Electoral Council (CNE: Consejo Nacional Electoral). According to monitoring by the organization Espacio Público, 63% of the media outlets consulted did not obtain the accreditation on time for entering the polling places and 25% of those who were accredited received incomplete accreditations.\textsuperscript{214}
7. **Internet and freedom of expression**

147. According to a study by IPYS Venezuela and the Internet MLAB data lab, Venezuelans’ quality of access to Internet deteriorated in the last two years. Average navigation in January and February 2018 was 1.6 megabytes per second (Mbps). This datum reflects a worsening in conditions compared with 2016, when citizens had an average velocity of 1.9 Mbps. Another research study by IPYS Venezuela in August 2018 revealed the existence of intermittent blockages by the public and private Internet providers –CANTV, Movinet, Movistar, and Digitel – of certain websites, especially news sites. For four days IPYS Venezuela entered 53 websites almost 700 times. The results shows that on average it was only possible to access the content less than half of the times attempted due to some type of intermittent blockage. The pages studied worked intermittently in all the regions, though the greatest frequency was in Táchira, Mérida, Monagas, and Caracas.

148. According to a report prepared by the legislators who are members of the Permanent Committee for Peoples Power and Communication Media of the National Assembly of Venezuela, which analyzes the difficulties in accessing certain news media that maintain an editorial line independent of the Government, the regulator National Telecommunications Commission "refrained from initiating investigations into the practice of blockages [of websites] despite being required to do so."

In addition, several media outlets are said to have been victims of cyberattacks in 2018, both their websites and their social network accounts. In addition, access to some media was blocked for the users of the Internet service provided by the state company.

VI. **VULNERABLE GROUPS**

A. **Women**

149. Regarding the rights of women, the Commission observes that the deficiencies in the legal framework on gender-based violence and structural shortcomings of State institutions continue to prevent women from having their right to a life free of violence guaranteed a situation that is made worse by the framework on gender-based violence and structural shortcomings of State institutions continue to prevent women from having their right to a life free of violence guaranteed a situation that is made worse by the

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**215** Instituto Prensa y Sociedad Venezuela. February 27, 2018. **Navegación a la mínima expresión / Condiciones de la calidad de internet en Venezuela.**

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**216** The Instituto Prensa y Sociedad of Venezuela undertook a study in which it searched the same 53 websites almost 700 times each for four days. See: Instituto Prensa y Sociedad. **Intercortados. Bloqueos intermitentes en Venezuela.** August 2018.

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country’s institutional and humanitarian crisis. Despite the existence of a Femicide Law and a Law on the Right of Women to a Life Free of Violence, Venezuela still does not have regulations to harmonize the procedures for providing care to women and handling their cases, nor does it have adequate interagency coordination, which makes fully implementing these laws and making them operational difficult. According to the information provided by the Venezuelan State, since 2017, the Ministry of the People's Power for Women and Gender Equality started drafting the regulations for the Law on Women's Right to a Life Free of Violence by forming a High Level Committee, regulations that have yet to be approved.  

150. Among the obstacles that remain to applying the legal framework for protecting the rights of women, the IACHR underscores the lack of official data for planning and programming public policies aimed at preventing and eradicating gender-based violence against women. Despite the lack of updated official statistics, a group of media organizations estimates that between May 2017 and February 28, 2018, 64 women were murdered in the greater Caracas area alone, and that between January and October 2018, a total of 375 women were murdered in Venezuela.

151. The Commission observes that the lack of communication and absence of public data that is consolidated, up to date, and properly disaggregated prevents a comprehensive analysis of the phenomenon of gender-based violence against women in the country, obscuring additional factors involved in the violations such as ethnic-racial origin, sexual orientation, or gender identity, which contributes to perpetuating impunity for these crimes. Likewise, the Commission recalls that the Convention of Belém do Pará establishes in its Article 8(h) the State obligation to take measures aimed at researching and gathering other relevant information relating to the causes, consequences and frequency of violence against women, in order to assess the effectiveness of measures to prevent, punish and eradicate violence against women and to formulate and implement the necessary changes. Likewise, the IACHR has stated that, with regard to the information that the State collects and produces, the right to access to information includes a State obligation to collect information on issues such as violence and discrimination against women, as well as the obligation to produce and disseminate statistical information on these issues.

152. In addition, the IACHR has expressed its concern at the differentiated and aggravated impact that the country’s economic crisis has had on the rights of women, particularly with regard to their rights to health and maternal health, and their sexual and reproductive rights. According to the information received by the Commission, public healthcare centers have completely run out of reagents for specialized exams for detecting HIV and Highly Active Antiretroviral Therapy (HAART). Pregnant and lactating women who are HIV-positive also do not have access to HAART to prevent transmission to their children, and neither do they have access to formula to substitute for their milk. According to publicly-available information, 5,900 cases of breast cancer are detected in Venezuela every year, but the equipment and drugs needed to treat it have practically disappeared, both in private healthcare centers and pharmacies and in those operated by the State. The Commission notes with concern that although there are no official up-to-date figures available on the issue,  

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220 Committee on the Elimination of Discrimination against Women (CEDAW). *Concluding observations on the combined seventh and eighth periodic reports of the Bolivarian Republic of Venezuela.* Information provided by Venezuela in follow-up to the concluding observations, CEDAW/C/VEN/CO/7-8/Add.1, January 11, 2018. Para. 3.


227 Action Solidaria (ACSOL), Programa Venezolano de Educación Acción en Derechos Humanos (PROVEA), Coalición de Organizaciones por el Derecho a la Salud y la Vida (CODEVIDA), Prepara Familia, Convive A.C, Observatorio Venezolano de la Salud (OVS), Acción Ciudadana contra el Sida (ACCSI), International Council of AIDS Service Organizations (ICASO), Fundación Manos Amigas por la Vida (MAVID), Centro por la Justicia y la Paz (CEPAZ) and Defiende Venezuela, *Situación de las Personas con VIH/sida y otras condiciones crónicas de salud en Venezuela,* Request for Thematic Hearing for the 169th Period of Sessions of the IACHR, received on July 17, 2018.

the Venezuelan Anticancer Society found that 2,300 women died of this type of cancer in 2017, or six deaths per day, in cases that were largely treatable, curable, and preventable.229

153. Regarding the maternal health of women in Venezuela, the Commission observes that since the beginning of 2017, the State has not published updated medical bulletins and takes note of the increase in maternal mortality between 2015 and 2017 in the context of the country’s health system crisis.230 Lack of anticoagulant medication, healing ointments, analgesics, antibiotics, or antiseptics; lack of basic medical inputs and supplies, such as scalpels, needles, or gloves; and an ever-shrinking supply of medical staff have led pregnant Venezuelan women to migrate to give birth to neighboring countries.231 In Colombia, the Erasmo Moez hospital reports providing maternity services to more than 2,100 women in 2017, with three times as many pregnant Venezuelan women receiving services in that hospital compared to the previous year.232 According to Colombia’s official figures on migration, 8,200 pregnant Venezuelan women entered the country during the first half of 2018,233 The maternity ward in Boa Vista recorded 571 births to Venezuelan women in the first half of the year, surpassing the total number of births recorded there in 2017.234 The IACHR expresses concern at the situation of vulnerability facing pregnant women who migrate to other countries, both because of their gender status, which exposes them to multiple forms of violence and discrimination; and because of their status as pregnant women needing specific care and attention.

154. With regard to this situation, the IACHR recognizes the efforts made by the Venezuelan State to protect pregnant women in Venezuela.235 Thus, since 2017, the State has conducted a campaign on Humanized Birth that provides resources for executing the “Humanized Birth Plan in Venezuela,” coordinated by the Ministry of Women, the National Institute of the Woman (Inamujer), and the Ministry of Health.236 The State reported that the Constitutional Decree for the Promotion and Protection of Humanized was approved on March 21, 2018. According to the information provided by the State, the decree contains provisions aimed at improving the gestation and birth process in the framework of a comprehensive policy to guarantee sexual and reproductive rights in the country, thereby addressing the maternal mortality issue.237 The Commission calls on the State to take the measures necessary to implement the policy to protect humanized birth by providing adequate resources, proper coordination, and accountability in order to effectively protect the rights of women in the country.

155. Likewise, the IACHR observes with concern that the country’s almost total lack of contraceptives and family-planning methods has a negative impact on women’s exercise of their sexual and reproductive rights in the country.238 The scarcity of contraceptives includes the most common forms, such as oral contraceptives and condoms. Although there are no official statistics on the issue, reports issued by the Federación Farmacéutica Venezolana indicate national scarcity levels of these contraceptives of 88%.239 The Commission observes with concern the consequences that this situation has for the lives of women and their enjoyment of their sexual and reproductive rights, those being an increase in unwanted pregnancies, including

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229 Efecto Cocuyo, Cáncer de mama en Venezuela: cada vez es mayor el riesgo de morir sin tratamiento, October 19, 2018.
231 Amnesty International, Fleeing the country to give birth: the exodus of pregnant Venezuelan women, May 6, 2018.
234 El Comercio, Las venezolanas embarazadas que van a Brasil a dar a luz, August 22, 2018.
235 PAHO, Venezuela afina estrategias para reducir morbilidad grave, mortalidad materna y perinatal desde un enfoque de curso de vida, November 23, 2017.
236 TELESUR, Plan Parto Humanizado protege a las embarazadas en Venezuela, November 16, 2018.
237 BOLIVARIAN REPUBLIC OF VENEZUELA, communication to the IACHR, AGEV/2018-0069, correspondence of April 18, 2018.
among adolescents; an increase in unsafe abortions that could have obstetric complications and result in maternal deaths; and the migration of pregnant women to access health services in other countries.

156. In this context, the Commission has paid particularly close attention to the implementation of the National Surgical Plan and the information received on surgical sterilizations of women that have been conducted regularly, in a coordinated fashion, free of charge, and at the national level. However, according to information received by the Commission, these procedures are not always preceded by the provision of complete information on their scope. Some of them are not being adequately documented in the patients’ medical records, and there have been cases of procedures performed on adolescent women, disabled women, indigenous women, and women in situations of poverty, among other groups of women in especially vulnerable situations. Also, in the context of the collapse of healthcare system and the lack of medical supplies and materials, the IACHR has been informed of a lack of proper medical follow-up following the procedures. In this regard, the IACHR recalls that States must adopt effective measures to ensure the availability, accessibility, acceptability, and quality of the information, goods, and services for contraceptive methods and practices and emphasizes that surgical sterilization should be only one part of a broad array of safe, effective, affordable, and acceptable contraceptive methods and practices. These methods and practices must be available in adequate quantities so that women may opt for and effectively access the practice or method that best fits their needs, interests, preferences, or health requirements.

157. Additionally, Venezuela’s humanitarian crisis has led to migration that is without precedent in the region and has put women, girls, and adolescents in a particular situation of risk. Desperate to leave Venezuela for reasons of health and to obtain work in other countries to support their families, migrant women find themselves at grave risk of falling victim to human trafficking networks. Despite the lack of official figures on the migration’s impact on women, countries including Colombia, Spain, and Mexico, as well as civil society organizations, have sounded the alarm regarding the concerning increase of cases of sexual exploitation of Venezuelan women and the existence of trafficking networks that aim to sexually exploit women of Venezuelan origin. According to the District Committee of Bogotá (Colombia), in the fight against human trafficking, in 2018 30% of the victims of sexual exploitation were Venezuelan women and girls. According to information issued by the Fundación Ideas para la Paz (FIP), the sexual trafficking of Venezuelan migrants is particularly extensive along the northern border of Colombia, where criminal gangs and guerrilla groups operate, particularly affecting women, girls, and adolescents. The Commission has thus become aware of reports of women and girls forced to prostitute themselves during their trip from Venezuela to Colombia and of women who have been the victims of sexual violence while crossing the border between the two countries, as well as reports on sexual trafficking and exploitation. The Commission observes with concern that their status as women migrants makes it difficult for them to access healthcare services, protection, and justice, in Venezuela as well as in their destination countries.

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240 IACHR, Request for information from the Venezuelan State, December 6, 2018.
243 Office of the Public Prosecutor of Colombia, Sexual slavery scheme discovered in Cartagena that uses Venezuelan and Colombian women, August 20, 2018.
244 CNN, Aumentan un 50% las mujeres venezolanas víctimas de trata en España, September 28, 2018.
245 El Universal, Mafias colombianas enganchan a venezolanas y las traen a México, May 8, 2018.
246 Corporación Anne Frank, “Situation of migrant and displaced Venezuelan women in situations and/or contexts of prostitution and extreme vulnerability in Latin America,” Request for thematic hearing for the 170th Periods of Sessions of the IACHR, September 23, 2018.
247 Reuters, Mujeres y niños migrantes de Venezuela están más expuestos a explotación sexual y laboral, August 30, 2018.
248 Reuters, Mujeres y niños migrantes de Venezuela están más expuestos a explotación sexual y laboral, August 30, 2018.
249 El Tiempo, Una lupa sobre las mujeres venezolanas migrantes, December 9, 2018.
250 El Tiempo, Una lupa sobre las mujeres venezolanas migrantes, December 9, 2018.
B. Human Rights Defenders

158. The IACHR observes that during 2018, the situation of human rights defenders in Venezuela continued to be characterized by an environment of intense stigmatization and harassment for their work.

159. In recent years, the IACHR has repeatedly called on the State of Venezuela to adopt measures regarding the intense campaigns of stigmatization and harassment aimed at people who defend human rights in the country. In its 2017 annual report, the Commission rejected the multiple acts of harassment and criminalization aimed at those who denounce the human rights situation in Venezuela, as well as at those who represent individuals detained because of their political stances or participation in demonstrations.251 Likewise, in its report Human Rights Situation in Venezuela, the Commission indicated its concern at the existence of acts of harassment that involved both state authorities and private individuals entering the homes of human rights defenders.252

160. In 2018, the Commission has found that these campaigns by State authorities and private parties to discredit, stigmatize, and harass have continued. For example, among other cases, the Commission received information indicating that on September 10, 2018, the executive director for Transparencia Venezuela participated in a meeting with the United Nations Security Council to present information on the situation of Venezuela. After the meeting, government officials made threatening and stigmatizing statements against those who participated in the meeting with the Council. That same day, the president of the Bolivarian Republic announced during a national broadcast that his government would take measures to address an "international smear campaign against Venezuela." According to this information, the president stated that the international campaign was being led by human rights defenders and foreign governments to justify a military intervention or a terrorist attack in the country.253

161. Days later, on September 12, 2018, a blog aligned with the State published an article describing Transparencia Venezuela as an organization funded and supported by the governments of the United States, the European Union, and financial fund KKR, claiming the latter had sent financial resources and weapons to DAESH in Syria and had ties to the CIA.254 The IACHR observes that this is not the first time that Transparencia Venezuela or its executive director has been direct or indirect target of senior officials of the Venezuelan government. The organization has documented at least 12 attacks between 2017 and 2018, especially related to its cooperation with international organizations and human rights protection mechanisms.255

162. The Commission also received information on the smear campaign against Lisa Henrito, an environmental defender who in 2018 was accused in the national media by an officer of the Armed Forces of being "a traitor to the homeland" and promoting the secession in Venezuela. Specifically, Lisa Henrito has been subjected to constant stigmatization over her work as an activist with the Pemón community, her demands that ancestral territories be demilitarized, and her demand that a prior consultation be conducted to secure the community’s consent for mining projects.256

163. For its part, the OHCHR stated it had evidence of a series of attacks against social activists, students, university professors, and human rights defenders in which senior authorities had publicly accused these individuals of being involved in acts of terrorism, treason, and other serious crimes. The victims interviewed by the OHCHR said they had been harassed, stigmatized, and intimidated by representatives of government authorities, including security forces and other members of pro-government groups.257

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253 Front Line Defenders, Threats from government officials against Transparencia Venezuela, September 20, 2018.
255 Front Line Defenders, Threats from government officials against Transparencia Venezuela, September 20, 2018.
164. In this context, the Commission underscores that public officials must refrain from making statements that stigmatize human rights defenders or suggesting that organizations are acting improperly or illegally simply by doing their work to promote and defend human rights. The IACHR finds that stigmatizing statements against human rights defenders can damage both the right to humane treatment, the right to honor and dignity, and the principle of presumption of innocence. In this regard, the Commission has found that when authorities give statements or issue communications that publicly accuse a human rights defender for facts that have not been proven in a court of law, it threatens their dignity and honor by delegitimizing their work to society, thereby affecting their work in the defense of human rights. The IACHR also notes that stigmatizing statements issued by public officials to publicly accuse human rights defenders for alleged crimes that have not been declared by a court of law can violate the principle of presumption of innocence, as they presume the human rights defenders are guilty without the corresponding judicial decision.

165. In addition, the Commission has found that the repetition of stigmatizing statements can contribute to exacerbating a climate of hostility and intolerance among different sectors of the population, which could put at risk the lives and personal integrity of human rights defenders and increase their vulnerability. This is due to the fact that government authorities or sectors of society could interpret these stigmatizing statements as instructions, instigation, authorization, or support for the commission of acts that endanger their lives, personal security, or other rights.

166. Regarding the situation of harassment, the IACHR was informed, among other things, that in January of this year, a search was conducted without a search warrant by SEBIN officials in the residence of Gregory Hinds, general director of the NGO Embajadores Comunitarios. He later voluntarily submitted to an interview with SEBIN, where he was detained and held incommunicado. The Commission notes that on the day following the detention of Gregory Hinds, Geraldine Chacón—director of programs for Embajadores Comunitario—was also detained. The Commission notes that the case was submitted to the United Nations Working Group on Arbitrary Detention.

167. The Commission also received information indicating that on June 29, 2018, the website of human rights organization Transparencia Venezuela was subjected to its fourth cyber-attack in less than 12 months. The attack changed the content of a statement by civil society association Alianza por la Libertad de Expresión entitled “Venezuela: la información en libertad condicional,” published on the website of Transparencia Venezuela. According to the organization, this was the fourth cyber-attack on Transparencia Venezuela in less than a year.

168. The IACHR notes that the Observatorio Venezolano de Conflictividad Social has indicated that the environment of stigmatization and harassment of human rights defenders could be aggravated with the implementation of the Sociopolitical Coordination and Action Network, a government initiative that would implement mechanisms so any public or private individual could provide information on the activities of citizens who make social demands, defend human rights, or criticize the government. The organization notes that the strategy is based on the doctrine of national security, and that its purpose is to encourage viewing human rights defenders and political dissidents as domestic enemies.

169. Regarding this, the Commission emphasizes that human rights can be defended freely only when the individuals involved are not the victims of threats or subjected to any kind of physical, psychological, or moral attacks or any other type of harassment. The Commission notes that when human rights defenders operate in a climate of hostility, the important issues on which they work can become secondary, and it can

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258 PROVEA, Comunicado de la organización Embajadores Comunitarios ante la detención de dos de sus miembros, February 5, 2018.
260 Front Line Defenders, Transparencia Venezuela subject to cyber attacks, July 9, 2018.
261 Observatorio venezolano de conflictividad social, Aumenta el control social, discriminación y represión en Venezuela: Red de Articulación y Acción Socio Política (Raas), March 29, 2018.
have a chilling effect on other human rights defenders. In this regard, the State of Venezuela must not only establish an adequate and effective legal framework, but also must guarantee on-the-ground conditions in which those who defend human rights can carry out their important work.

170. Based on this information, the Inter-American Commission concludes that the situation of human rights defenders in Venezuela has not changed substantially from what was reported in the 2017 Annual Report. Human rights defenders in Venezuela continue to face an environment of intense stigmatization and harassment for their work. It is therefore essential for the State to adopt measures to guarantee and respect the rights of human rights defenders and, specifically, to take all measures necessary to ensure that individuals who defend human rights are not subjected to smear campaigns or harassment, as well as provide effective measures for their protection.

C. Persons Deprived of Liberty

171. The Commission has repeatedly issued statements through a variety of mechanisms on the critical situation facing individuals deprived of liberty in Venezuela, which constitutes one of the most grave in the region. The situation includes overcrowding; excessive use of pretrial detention; deplorable detention conditions; high rates of violence; lack of effective State control; and corruption. Regarding this, the IACHR has indicated that these patterns have worsened in the context of Venezuela's political, economic, and social crisis, as well as due to citizen security strategies.262

1. Overcrowding and pretrial detention

172. The high rates of overcrowding represent one of the main concerns regarding Venezuela's penitentiary system. According to information provided by the State, at end of 2017, total of 53,344 people were deprived of liberty in Venezuela’s penitentiaries.263 For its part, civil society reports there are 57,096 detained individuals,264 7% higher than official figures. The IACHR observes that in terms of the number of beds available in the penitentiary system, there is a notable difference between the figures provided by the State and the information collected by civil society. Thus, according to official numbers, and as a result of completing more than 38 infrastructure works throughout the country, housing capacity has reached 82,376 beds.265 Meanwhile, civil society has found that capacity stands at only 19,000 beds. This would mean that the penitentiary is overfilled by 200%.266

173. Regarding the use of pretrial detention and according to the latest available figures, of the 57,096 individuals deprived of liberty in 2017, a total of 38,898 are in pretrial detention.267 This is equivalent to 68% of the total prison population. Regarding this, the IACHR notes that the fact that more than 60% of the total prison population is under pretrial detention is manifestly an indication that the measure is not used exceptionally, as required for pretrial detention.

174. Considering that overcrowding itself constitutes a violation of the right to humane treatment,268 and that excessive use of pretrial detention is one of the clearest indications of a justice system's
failure to guarantee the right to presumption of innocence, the Commission urges the State to immediately take actions to ensure that imprisonment is used reasonably. Among these measures, the IACHR underscores the use of conditional release, alternatives to pretrial detention, and the application of pretrial detention in keeping with its exceptional nature and the principles governing its application, those being legality, reasonableness, necessity, and proportionality.

2. Detention conditions

175. The Commission is particularly concerned over the deplorable detention conditions in Venezuelan prisons, as they pose a risk to the lives and integrity of the individuals deprived of liberty. Specifically, the IACHR has information indicating that in addition to overcrowding, the penitentiary infrastructure is deficient, and the people being processed are not separated from those who have been convicted. Likewise, the food provided is inadequate as far as its amount and nutritional value, access to drinking water is inadequate, facilities for personal hygiene are insufficient, there is a lack of social re-insertion programs, and penitentiary authorities are corrupt and do not control the facilities.

176. Specifically with regard to medical care, the IACHR has been informed of a lack of medical treatment, lack of medications, and obstacles to accessing health centers under the conditions ordered by courts. Specifically, the Commission is concerned that even though authorities are not able to provide medical treatment, relatives are prevented from bringing in medication they purchase themselves. Likewise, the deplorable situation faced by individuals deprived of liberty and the lack of adequate mechanisms for addressing those complaints has led to strikes among the prison population to demand better conditions. In this context, the IACHR recalls that the State is a guarantor of the rights of the individuals held in its custody.

177. Regarding the incidence of corruption in the penitentiary service and the lack of oversight by structures of the central government, one especially concerning aspect is the charging of so-called “vaccinations” (payments made to individuals deprived of liberty to guarantee safety in detention centers). Specifically, information available to the Commission indicates that five prisons—Tocorón, in Aragua; Tocuyito, in Carabobo; Puente Ayala, in Anzoátegui; La Pica, in Monagas; and Vista Hermosa, in Bolívar—have been declared independent territories, where leaders or “pranes” manage their business without interference from the authorities. In this regard, the IACHR recalls that lack of effective control by authorities of what happens in penitentiaries can lead to certain detained individuals having power over fundamental aspects of the lives of others, with disproportionate effects for individuals in particularly at-risk situations.

3. Incidents of violence

178. In recent years, the IACHR has received information on high rates of violence in the penitentiary system, resulting from overpopulation, deplorable detention conditions, lack of sufficient personnel to harmoniously address conflicts taking place within the prisons, and impunity for criminal acts.

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271 Una Ventana a la Libertad, Monagas: Denuncian Restricción para Entregar Medicinas a Reos en Polimonagas, November 30, 2018.
that take place within the prison. Although the total number of detained individuals who died during 2018 is not known, civil society reports that from July 2011 through the first half of June 2018, a total of 2,140 violent deaths were recorded within Venezuelan prisons. Likewise, 2,792 people have been injured. Of the cases identified in 2018, the Commission highlights the 11 individuals who lost their lives during a riot in the Fénix Penitentiary Community, in the state of Lara. In this context, the Commission reiterates that a fundamental measure for preventing prison violence and deaths is the investigation, processing, and punishment of those responsible. The IACHR reiterates that when acts of this nature remain in impunity, it sends a message to the population that such acts can be committed without serious legal consequences, leading to a climate of impunity.

4. Pretrial detention centers

179. As a result of the lack of beds in the formal penitentiary system, the IACHR observes that the so-called pretrial detention centers—intended for temporary detentions—are increasingly being used as permanent prison facilities. In this regard, civil society reports that outside the formal penitentiary system, such centers house approximately 45,000 people.

180. According to information available to the Commission, the centers tend to be overpopulated, with deplorable detention conditions and inadequate infrastructure. In addition, police officers are not trained to properly guard the detained individuals. In this respect, regarding high rates of overcrowding—based on the 93 pretrial detention centers in 12 states analyzed by the organization Una Ventana a la Libertad—it is reported that Falcón is the state with the highest overcrowding rate, at 704%. In this regard, the organization reports that with installed capacity for only 199 inmates, a total of 1,402 people are detained there. Likewise, it reports that 65% of the pretrial detention centers lack drinking water, 96% do not have a medical service area, and 93% do not provide recreation or sports areas. Additionally, the pretrial detention centers do not have enough resources to provide a proper diet, so detained individuals depend on the financial conditions of their relatives and the opportunities they can provide.

181. The IACHR also notes that the detention conditions in these types of centers are so poor that they have come to affect the detained individuals’ right to life. In this regard, according to information provided by civil society, more than 163 deaths were recorded during the first half of the year. Of those, 71 were the results of riots, 34 from tuberculosis, 11 from fights, 15 from confrontations following escapes, 6 from attempted escapes, 5 due to malnutrition, 5 due to a lack of medical care, 2 from suicide, and 4 whose causes were unknown. The most high-profile case took place on March 28 in a jail in Carabobo, in the north of Venezuela, when at least 68 people lost their lives in a riot. Regarding these events, the IACHR urged the State to, with all due diligence, investigate, identify, and punish those responsible, as well as take the measures necessary to prevent the repetition of similar facts.

182. In this context, the Commission recalls that using these places as permanent detention centers is a violation of international standards on deprivation of liberty. This is because such centers are overcrowded...
and lack the infrastructure and basic services to ensure dignified detention conditions in the long term. Likewise, they do not have the means of ensuring the social reintegration of detainees, and the police officers who run them do not have the training necessary to ensure the safety of the individuals in their custody. In this regard, the State must take urgent and necessary measures to stop using police jails as permanent prisons.

D. Migrants, asylum applicants, refugees, beneficiaries of complementary protection, internally displaced people, and victims of human trafficking.

183. The forced migration of Venezuelans that has taken place represents one of the greatest challenges in the history of the region as far as migration and asylum. In this regard, the IACHR has expressed its concern at the large number of Venezuelans who have been forced to migrate to other countries in the region in recent years for multiple reasons, including forced migration as a mechanism for survival as a consequence of the severe humanitarian crisis affecting the country, particularly in response to the effects of shortages of food, medicine, and medical treatment; violence and insecurity; and persecution based on political opinion.

184. In order to provide technical assistance to States on how to respond to the mass arrival of Venezuelans, the Commission issued Resolution No. 2/18 on the Forced Migration of Venezuelans and the Joint Statement for the development of a regional response to the massive arrival of Venezuelans to the Americas, together with the United Nations Committee on the Protection of the Rights of All Migrant Workers and Members of their Families (CMW); the United Nations Committee on the Rights of the Child (CRC); the Regional Office for South America of the United Nations High Commissioner of Human Rights (UNHCHR); and, Mr. Felipe González, United Nations Special Rapporteur on the Human Rights of Migrants.

185. The IACHR has monitored the situation resulting from Venezuela closing its border with Colombia in August 2015 and with Brazil in December 2016 under the declaration of a state of emergency for the border area. The Commission is concerned that this situation could lead to the violation of the right to seek and receive asylum, as it obstructs the right of all individuals wishing to leave Venezuelan territory and wishing to seek and receive asylum, complementary protection, or other protection.

186. According to a study conducted in Colombia, 72.3% of these individuals decided to migrate due to insecurity; 79.08% due to desperation at what was happening in the country; 63.1% due to hunger; 62.9% due to high levels of stress; 58.8% due to uncertainty; and 56.3% due to a lack of medicine for medical treatments. Regarding the profile of the Venezuelans who have decided to leave their country, it has been found that 49.67% of them in Colombia are women, with 50.24% being men and 0.075% being transgender. This study also found 118,709 children and adolescents, 26,572 indigenous people, and 6,150 Afro-descendants. The leading places of origin for these individuals were the states of Zulia (32.72%), Carabobo

285 IACHR, Annual Report - Chapter IV(B) - Venezuela, 2016, para. 207.
289 IACHR, Resolution 2/18 Forced Migration of Venezuelans.
291 Official Gazette of the Bolivarian Republic of Venezuela, Decree No. 1950, declaring a state of emergency in the Bolívar, Pedro María Ureña, Junín, Capacho Nuevo, Capacho Viejo, and Rafael Urdaneta municipalities in the state of Táchira, August 21, 2015.
294 Servicio Jesuita a Refugiados, UCAT, Universidad Simón Bolívar, Entreculturas, Migración Colombia. Informe sobre la Movilidad Humana Venezolana, Realidades y perspectivas de quienes emigran, April 9 to May 6, 2018.
In Brazil, it has been documented that 41% of the migrants are women and 58% are men, with high education levels: 51% having graduated high school and 26% having higher education.  

187. According to figures from the United Nations High Commissioner for Refugees, as of November 8, there were a total of 3 million Venezuelan migrants and refugees, a number that is expected to grow to 3.6 million in 2019. Also, as of December 31, 2018, 365,565 request for asylum from Venezuelans were recorded, while 958,965 Venezuelans had opted for other forms of legal migration, traveling mainly to Colombia, Chile, Peru, Ecuador, Argentina, the United States, and other countries in the world.

188. Regarding this, Article 22(1) of the American Convention on Human Rights establishes that "Every person lawfully in the territory of a State Party has the right to move about in it, and to reside in it subject to the provisions of the law." The Inter-American Court has found that this provision protects the right to not be forcibly displaced within a State and not be expelled from the territory of a State in which one is residing legally. Thus, guarantees must be provided to ensure that individuals can move about and reside freely in their places of origin.

189. One of the main difficulties that the Commission has been observing in recent years has to do with the obstacles facing Venezuelan people to accessing official identification documents, such as passports, identification cards, and civil registry certificates, as well as criminal records. Regarding this, the Commission observes that making it impossible to access government documents violates the rights to juridical personality and identity, along with related rights. The IACHR has observed that lack of access to documents make it hard for people to enter other States legally, thus violating the right to movement and residency. Regarding this, the Inter-American Court has established that the right to identity can be conceptualized as a collection of attributes and characteristics that enable an individual to be identified. It has also established that the direct consequence of the right to juridical personality is the recognition of any individual as a subject of rights and obligations, as it entails the capacity to be the bearer of said rights (capacity and enjoyment). Therefore, the
violation of this recognition is an absolute failure to acknowledge a person’s capacity to have rights. This situation has become an obstacle to Venezuelans who choose to migrate to do so legally to some countries in the region, such as Ecuador and Peru, which require the presentation of an official passport to enter their territory, a requirement that violates the provisions of Resolution 2/18 on Forced Migration of Venezuelans and are currently being litigated.

190. The most important challenges raised by the forced migration of Venezuelans are the lack of international protection, requirements of documentation that people cannot obtain, discrimination and xenophobia, physical safety, sexual and gender-based violence, abuse and exploitation, and the lack of access to basic rights and services. Likewise, the situation of vulnerability facing migrants could result in them becoming victims of human trafficking for sexual, labor, or other types of exploitation. Additionally, indigenous communities are affected by having had to flee their territories of origin. They need special care, as well as a humanitarian response and differentiated and specific protection.

191. The Commission observes that currently, there are protection gaps in different countries in the region when it comes to the forced migration crisis facing Venezuelans. However, the Commission recognizes that several countries of the region have reacted by providing protection to Venezuelan migrants. Measures worth highlighting include the Administrative Registry of Venezuelan Migrants in Colombia and the Special Residency Permit in Colombia; the Temporary Residency Permit in Peru; the granting of refugee status based on the Cartagena Declaration in Mexico; the Mercosur visa in Argentina and Uruguay; the options for legalization and receiving a UNASUR visa in Ecuador; and the granting of temporary residency in Brazil.

192. The Commission also values the different measures adopted by the different actors regarding the situation of forced Venezuelan migration and observes the need to unify those measures to secure a regional human rights-based response. The measures include the Declaration of Quito on Human Mobility of Venezuelan Citizens in the Region, the appointment of Eduardo Stain as special representative of the UNHCR and the IOM, the Joint Statement of National Human Rights Institutions on the Protection of the Rights of Venezuelans regarding Human Mobility, and the action plan prepared by civil society organizations on Venezuelans needing national and international protection.

193. Regarding internal displacement, the Commission received information on the effects caused by large mining operations, especially in the states of Bolívar and Amazonas, where indigenous communities have seen their way of life affected and reported that prior, free, and informed consultations have not been

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304 IACHR, Resolution 2/18 Forced Migration of Venezuelans.
305 Civil society action plan for Venezuelans who need national and international protection, November 16, 2018, p. 17.
306 UNHCR, El aumento de las solicitudes de asilo de venezolanos lleva a ACNUR a reforzar su respuesta, July 14, 2017.
307 UNHCR, El aumento de las solicitudes de asilo de venezolanos lleva a ACNUR a reforzar su respuesta, July 14, 2017.
308 Administrative Department of the Presidency of the Republic, Decree number 1288, July 25, 2018.
310 See: Ríos, Jorge, La COMAR reconoce violaciones a derechos humanos en Venezuela, September 1, 2016, Sin Embargo.
313 Official Newspaper of the Union, Regulatory Resolution No. 216, of March 2, 2017, Brazil.
314 Declaration of Quito on Human Mobility of Venezuelan Citizens in the Region, September 3 and 4, 2018.
315 UN News, ACNUR y OIM nombran un representante especial para los refugiados y migrantes venezolanos, September 19, 2018.
317 Civil society action plan for Venezuelans who need national and international protection, November 16, 2018.
conducted. The presence of the military and large enterprises has caused the displacement of some indigenous persons.318

194. With regard to the victims and survivors of human trafficking, the Commission observes that the crime of human trafficking is defined in the Organic Law on women’s right to a life free of violence (2007)319 and in the Organic Law against organized crime (2005),320 which only defines human trafficking as an act of organized crime.

195. The IACHR observes that these provisions do not fully comply with international and regional law and standards on the matter. For the Commission, it is extremely concerning that the definition of human trafficking is found in the Organic Law on the right of women to a life free of violence (2007),321 which, in its Article 56, only bans the trafficking of women, girls, and adolescents, leaving out the other modalities of human trafficking of men and boys. Additionally, the law requires force, fraud, or coercion for all forms of trafficking for sexual purposes, including for girls, which is contrary to Article 3(c) of the Protocol, which specifies that the capture, transportation, transfer, acceptance, or reception of a child for the purposes of exploitation is considered "human trafficking," including in the absence of any of the measures set forth in the section of that article.

E. Lesbian, gay, transexual, bisexual, and intersex (LGBTI) persons

196. The situation of the rights of LGBTI persons in Venezuela remains weak due to the context of the political situation affecting the country. The Commission is aware that many LGBTI persons who live with HIV are migrating to other countries in the region due to shortages of the specific drugs needed to treat HIV/AIDS-related infections. At the same time, the people staying behind are turning to the unregulated market in order to be able to continue with their treatments.322

197. The IACHR also learned of an increase in the number of crimes against trans persons in Venezuela, which increased from five in 2017 to six in 2018. The Inter-American Commission takes note of the murder of Malvina Paiva—a trans woman—in Caracas, allegedly carried out by police officers and which is the first time a death has been classified as a hate crime.323

198. It is concerning to the Commission that information on Venezuela’s LGBTI population is scarce, with no official information in its existence or on human rights violations carried out against these individuals. The situation causes consternation at the lack of visibility of the human rights situation of LGBTI persons in the country. The Commission reminds the State of Venezuela of its obligation to guarantee protection of LGBTI persons, as well as to produce official data on its efforts and allocate sufficient resources to systematically collect and analyze disaggregated statistics on the prevalence and nature of the violence and discrimination, as well as on the effective and proper inclusion of LGBTI persons via the laws and public policies implemented.

F. Indigenous peoples

199. Due to the humanitarian crisis in Venezuela, the structural problems that affect indigenous peoples have worsened.

318 Semana Sostenible, El crecimiento del Arco Minero de Venezuela aniquila a los pueblos indígenas, January 24, 2018.
322 El Nacional, Alertan de riesgo de epidemia de VIH por falta de tratamiento en Venezuela, July 1, 2018; Caribe Afirmativo, Crisis humanitaria de venezolanos LGBT en el Caribe, August 27, 2018; El Espectador, El drama de ser migrante venezolano y LGBT, August 28, 2018.
323 Fundación reflejos de Venezuela, Asesinan a mujer trans en Caracas, March 9, 2018; Transrespeto versus Transfobia en el Mundo (TvT), Press Release Trans Day of Remembrance (TDoR) 2018
200. According to the latest census—from 2011—Venezuela’s indigenous population is calculated at 725,128 people, or 2.5% of the total national population. Although 36.76% of the population lives on traditional territories (rural), the majority of the indigenous are moving to cities, increasing poverty in peripheral areas.

201. According to information provided to the IACHR by Amnesty International Venezuela’s economic, social, cultural, and environmental rights program, the complex health situation affecting the indigenous population in Venezuela is, among other things, related to the difficulties it faces in accessing aid services. These geographical barriers require them to seek medical care in far-off areas, and they therefore require very well coordinated transportation logistics. The lack of communication between service providers and indigenous communities and their failure to understand indigenous peoples’ realities is another significant barrier.324

202. The lack of epidemiological information is another problem noted, as the public health system does not include a variable for ethnicity. This means data must be sought from other types of entities, such as indigenous organizations and their allies. That is, there is a very significant underreporting of epidemiological information in territories that are difficult to access and where the healthcare system has very little coverage.325

203. In addition to this, the IACHR has been able to confirm the existence of illegal mining taking place in indigenous territories in Venezuela.

204. In addition to violence for territorial control, this activity produces a largely rootless population that becomes ill in the mines and infects the local indigenous population. Malaria, flu, and measles, as well as other infectious diseases, have reached communities such as the Warao in Delta Amacuro State and the Yanomami along the border with Brazil. The inaccessibility of aid centers in these cases presents a mortal risk.

205. In 2018, the IACHR received information on the serious health situation currently affecting the Yanomami indigenous people. According to the information provided by the State of Venezuela to the Commission in the framework of Friendly Settlement Agreement No. 32/12, health plans were drawn up to address the situation. However, measures adopted have not been sufficient to eradicate the illness.

206. Regarding the situation of indigenous human rights defenders and leaders in Venezuela, the situation of Lisa Henrito, an activist with the Pemón people, has drawn attention from a number of international bodies.326 The human rights defender has stated that her participation in the Pemón people’s security committee has brought her to the attention of State and non-State armed groups.

207. The IACHR has also received information regarding the call for attention made by the indigenous communities and the General Chiefs of the Pemón people. In a press release, they have asked the authorities to address the “true tragedy facing the indigenous residents and communities of El Dorado,” asking them to deal with the organized crime groups that afflict this population.327

208. Along with this, on December 9 of this year, the Commission took note of the situation of the Canaima National Park in Bolívar, where officials of the General Directorate of Military Counterintelligence (DGCIM) allegedly murdered a member of the Pemón people and injured another two indigenous people, upon which the National Civilian Aeronautics Institute suspended all flights to and from Santa Elena de

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324 Amnesty International said this year that “thousands of indigenous people from the Venezuelan Amazon travel daily to large cities in the country or outside it with one goal: to recover their health. From sleeping in the street to begging for food at the doors of a variety of State institutions, their severe need causes pain as well as illnesses and complications. Their stories show the most severe and least visible consequences of the human rights crisis facing Venezuela and the dismantling of public policies for providing care and protection to indigenous peoples,” Amnesty International, Salud indígena devastada por la crisis humanitaria, April 6, 2018.

325 Civilis, Derechos Humanos, Amnistía Internacional celebró el Foro la salud en emergencia humana, November 13, 2017.


Uairén and Canaima. Due to a lack of effective judicial oversight of the deployment of security forces, severe abuses and violence have taken place against the individuals inhabiting the territory, the majority of which are members of the Canaima indigenous community. Along with this, the militarization of the territory that includes the Canaima National Park continues, and air traffic was prohibited until December 14, leaving the families who lived there isolated.

209. Lastly, the context of the crisis in Venezuela has also included the forced displacement of indigenous peoples. This year, in the public hearing held by the IACHR during the 168th and 169th periods of sessions, the requesting organizations expressed their concern regarding the grave situation affecting migrant and refugee indigenous persons.

210. In the context of the displacement, indigenous peoples such as the Warao and Wayúu have had to abandon their lands to seek protection because of shortages of food and medicine. As the situation worsens, an increasing number of indigenous people seek humanitarian assistance and protection in Brazil and Colombia.

211. The IACHR urges the State of Venezuela to execute the recommendations contained in this chapter, as well as in the current body of law on indigenous rights. Pursuant to the American Convention, States must guarantee, under equal conditions, the full exercise and enjoyment of the rights of the individuals subject to their jurisdiction. To effectively guarantee those rights in the case of indigenous peoples, when interpreting and applying their domestic law, States must take into consideration the specific characteristics that differentiate members of these collectives from those of the general population, in consideration of their cultural identity. In keeping with this, they must intensify their efforts to ensure that all their institutions, as well as their legislative and administrative measures adopted, comply with international human rights standards.

G. Children and adolescents

212. Regarding children and adolescents, the IACHR observes that the context of Venezuela's economic, social, and political crisis has also affected the full exercise and enjoyment of human rights by children and adolescents. The affectation of these rights is particularly intense because this group is in a special situation of vulnerability and is often invisible when demanding its rights.

213. On one hand, shortages of food products has increased child malnutrition rates, causing retardation in the growth of Venezuelan children, at times even causing their deaths. In a press release, the IACHR urged the State to adopt the measures necessary to guarantee and respect the rights to food and health, as, according to information received by the Commission, during 2017, between five and six children died every week from lack of food; 33% of children suffered retardation in their growth; and 11.4% were experiencing malnutrition. The IACHR recalls that the State must adopt whatever measures may be necessary to ensure the right to adequate and sufficient food for all children and adolescents.

214. On one hand, the shortage of medicines prevents children and adolescents from receiving proper medical treatment, gravely violating their rights to life, humane treatment, and health, and in extreme cases, putting at risk the lives of those who suffer from serious illnesses. According to the information received...
by the Commission, so far in 2018, at least 16 children under the age of five lost their lives at the Hospital Universitario de Pediatría Dr. Zubillaga due to infections caused by poor hygiene; other children died at a number of hospitals because of malnutrition, severe respiratory infections, and severe diarrhea, among other ailments. This urgent context led to another press release in which the IACHR expressed its concern at the crisis facing Venezuela's healthcare system. The Commission reminds the State that both the right to health and the right to food are indispensable for the exercise of other human rights, such as the right to life, the right to humane treatment, and, especially in the case of children, the right to education.

215. On February 21 of this year, the IACHR granted precautionary measures to the benefit of the children who were patients in the nephrology area of the Hospital José Manuel de los Ríos in Caracas, who were in a grave situation of risk due to their delicate health (suffering from chronic renal insufficiency) and the lack of adequate medical treatment as a result of shortages of medications and inputs, deficient facilities, and unsanitary conditions in the hospital. In this context, the IACHR asked the State of Venezuela to adopt the measures necessary to guarantee their rights to life, humane treatment, and health, underscoring the importance of authorities providing medical treatment that was adequate to their needs and access to the necessary medications and procedures, as well as meeting their nutritional needs and ensuring the hygienic and safety conditions in the nephrology area.

216. Likewise, according to information provided to the IACHR by civil society organizations, there is a concerning increase in the number of children and adolescents living in the street because of food shortages, hyperinflation, abandonment and overpopulation in shelters, and the death of parents from the violence. According to a review conducted by the Asociación Civil Red de Casas Don Bosco, in the first half of 2018, there was a 40% increase in this population. The street children are also victims of stigmatization, abuse, and violence by police and shopping center security staff. There are reports of extreme cases in which they have lost their lives from remaining at length in this situation of vulnerability, abandonment, and hunger. The Commission underscores that children have a right to a living standard that is adequate for their full development, a right that is enshrined in Article 27 of the Convention on the Rights of the Child (CRC). Pursuant to this article, the State has the duty to adopt measures to support families and/or those responsible for caring for children with the aim of preventing children from ending up on the street and of enhancing caretakers’ capacities through programs that support them as they exercise their parental duties as a function of their need to comply with their caretaker obligations.

217. In addition, food shortages have led to situations of violence, criminality, and citizen insecurity that have negatively impacted the growth and development of children and adolescents, subjecting them to serious situations that have put their personal integrity and lives at risk. According to a report issued by the Observatorio Venezolano de Violencia (OVV), 6.2% of the fatal victims of violence in 2017 were adolescents between the ages of 12 and 17 years old. The IACHR reaffirms that, due to their status as individuals who are developing and growing, the State has an obligation to adopt specially-adapted and strengthened measures to protect children in order to prevent them from being subjected to any form of violence, abuse, or mistreatment. The State must adopt all appropriate measures to protect and preserve the right to life and humane treatment of all individuals under its jurisdiction.

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335 IACHR, Venezuela: Human rights experts say health system in crisis, October 1, 2018.
336 IACHR, Press Release No. 16/18, IACHR and its Special Rapporteurship on Economic, Social, Cultural, and Environmental Rights Urge the State of Venezuela to Protect and Respect the Rights to Food and Health, February 1, 2018.
337 IACHR, RES. 8/2018, Precautionary Measure No. 1039-17, Child Patients in the Nephrology Area at José Manuel de los Ríos Hospital, Venezuela, February 21, 2018.
339 The Asociación Civil Red de Casas Don Bosco is a civil society organization that focuses on caring for street children and protecting their human rights.
218. The IACHR continues to observe with concern the increased migration of the Venezuelan population as it seeks protection, security, and better living conditions. For Venezuelan children, this involves the loss of their right to grow up in the place where they belong, or even to grow up within a family, as in some cases, not all members of the family have the chance to migrate, while in others, the children lose their families on the way. It also means exposure to the risk of falling victim to kidnappers, forced recruitment by armed groups, trafficking, and sexual and labor exploitation. This outlook is especially serious for unaccompanied minor children, who are also exposed to enhanced risk of becoming victims, mainly of abuse, violence, human trafficking, and sexual exploitation. The IACHR underscores that children have the right to enjoy family life;\(^{344}\) that measures of protection should be adopted for them, especially to address any potential situation of violence, exploitation, or trafficking;\(^{345}\) and that the risks to which migrant children are exposed be identified, and that the children be provided with international protection.\(^{346}\)

H. Afro-descendants

219. The Commission welcomes the progress made by the government toward recognizing the rights of the Afro-descendant population, including the issuing of a decree on the International Decade for People of African Descent, with which it aims to promote the human rights of Afro-descendant persons through their recognition, justice, and development.\(^{347}\) Likewise, the IACHR recognizes the interest Venezuela has taken in Afro-descendant peoples and highlights its holding of the World Day on the Rights of Peoples of African Descent, “Reparations: From resistance to action,” which was held in the Bolivarian Republic of Venezuela and where officials recognized the importance of reparations as a type of reclamation in response to slavery.\(^{348}\)

220. The Commission also celebrated the planning and execution of the Comprehensive Prevention Plan called “The Route of the Drum,” through which the National Institute against Racial Discrimination (INCODIR) seeks to promote Afro-Venezuelan traditions and a life of peace. The “Route of the Drum” will take place locally and involve educators in order to promote Afro-Venezuelan knowledge and practices, as well as continue to promote these peoples’ popular and ancestral cultures.\(^{349}\) The Commission recognizes that the Venezuelan State is making efforts to raise awareness among the population on the cultural contributions of Afro-Venezuelans, with the aim of bringing a stop to acts of discrimination against people of African descent, indigenous peoples, and immigrants.

221. However, the IACHR notes with concern that people of African descent and their communities have been particularly affected by Venezuela’s economic crisis, which is worsening their historical and structural situational vulnerability.\(^{350}\) Likewise, the Commission notes with concern the obstacles facing Afro-Venezuelans to exercising their economic and social rights, including the rights to health, security, and mobility. Lastly, the IACHR is concerned at the lack of discussion over the rights of people of African descent in the framework of the Constitutional Reform being carried out by the National Constituent Assembly.\(^{351}\)


\(^{348}\) Bolivarian Government of Venezuela Reparations for Peoples of African Descent to be referred to international fora," May 10, 2018.

\(^{349}\) Correo del Orinoco, Ruta del Tambor” sembrará valores en niños y niñas de las comunidades de Venezuela, November 28, 2018.

\(^{350}\) Ministry of the People’s Power for Transportation, The Ministry of the People’s Power for Transportation opens its doors to the National Counsel for the Development of Communities of African Descent in Venezuela, April 12, 2018.

\(^{351}\) Movimientos, Venezuela: Afrodescendientes tomaron hoy la ANC para exigir sus derechos, August 2, 2018.
I. People with Disabilities

222. At the request of the State of Venezuela, the Commission held a hearing on the Human Rights Situation of People with Disabilities in Venezuela during its 168th Period of Sessions. According to information provided by representatives of the State, the 2011 national population and housing Census found there were 1,720,311 people with some kind of disability living in Venezuela, with visual disabilities being the most common. The State representatives underscored the recognition of people with disabilities as subjects endowed with rights under the Constitution, as well as the Constitution’s recognition of the right to communicate and express oneself in Venezuelan sign language. Regarding access to health and social protection, the State underscored the existence of the carnet de la patria system as a mechanism that benefits people with disabilities by providing economic assistance and streamlining processes for receiving benefits through government social policies. In its observations to the project of the present report, the State manifested that with the carnet system, “it has implemented a set of cash allocations for social protection that directly benefits more than 18 million people registered in this mechanism, and this is to say that approximately 80% of the adult population in the country”.

223. Additionally, in the renowned hearing, the State recognized that the crisis in Venezuela over shortages of medications disproportionately affects people with disabilities.

224. For their part, although they highlighted legal progress, civil society representatives pointed to the persistence of a series of challenges that have become more serious due to the country's humanitarian crisis. First, they argued that people with disabilities were undercounted, estimating the real figure at between 3 million and 4 million people with some type of disability, of which they estimate that 80% are living in poverty. They also alleged that the State authorities themselves discriminate against people with disabilities by failing to follow the law on the rights of people with disabilities. The civil society representatives alleged that the carnet de la patria system, which is managed by the ruling party, is used to discriminate and block access to medications when people with disabilities do not have the carnet. Regarding the right to health, the civil society representatives reported a lack of accessibility at hospitals, as well as shortages of medications and inputs for performing the medical procedures needed by people with disabilities.

225. Additionally, the IACHR requested information from the State on the exercise of the right to vote by people with disabilities. Both during the hearing and in its written response to the request for information, the State provided information on the adoption of measures including: (i) adjustments to make the voting stations accessible; (ii) the incorporation of assisted voting; (iii) the preparation of an instruction manual on providing assistance and support to people with disabilities during elections.

226. The State also communicated that its Political Constitution enshrines that people with disabilities have “the right to full and autonomous exercise of their capacities and to family and community integration.” However, the Commission takes note with regard to the Organic Law on Electoral Processes that it is legally impossible for people under interdiction regimes to exercise their right to vote, and that under Venezuela’s Civil Code, people subject to interdiction processes include those with "intellectual deficiencies."
227. The Commission appreciates the legal progress made by the State of Venezuela in recent years regarding its population of people with disabilities and urges it to continue working to fully include people with disabilities in the country’s social and political life. However, the Commission reminds the State of Venezuela that it must adjust its legal regimen to the postulates of the “social model” on disability enshrined in the Inter-American Convention on the Elimination of all Forms of Discrimination against Persons with Disabilities and the UN Convention on the Rights of Persons with Disabilities. This especially applies to the inability of people under interdiction regimens to vote.

228. Likewise, the Commission observes with concern how Venezuela’s economic and social crisis has disproportionately affected people with disabilities, a group that was already historically in a position of greater vulnerability, such that, with the difficulty accessing medications and food, their enjoyment of their human rights has been diminished and obstructed.

J. Elderly

229. During its 169th Period of Sessions, the Commission held a hearing on the situation of this group. Venezuela has a population of approximately 2,976,079 elderly people, according to the figures of the National Statistics Institute, or 9.71% of its total population. The State has reported that in the framework of its process to withdraw from the OAS, it will not ratify the Inter-American Convention on Protecting the Human Rights of Older Persons.

230. Civil society organizations alerted to an upward trend in homicides and suicides of the elderly. However, the State said the homicide rate for the elderly had declined, in line with an overall decline. The Commission is concerned over the lack of disaggregated statistics available to the public on the violent deaths of elderly individuals, something that prevents going into more depth on the causes and designing public programs aimed at addressing this phenomenon.

231. Information was also received on the failure to adopt plans to address the population’s rapid aging. According to civil society, the main problems facing elderly people in Venezuela include shortages of medication and food, the outbreak of illnesses such as malaria, and the suspension of healthcare services, a situation addressed in the section on the right to health (Section IV of this report). In particular, they emphasize the particularly acute impact of shortages of medications for diabetes and hypertension, two of the main causes of morbidity in this group.

232. During the hearing, the State said pensions coverage had reached 100% at the historically large figure of 4,095,023 pensions for elderly people. However, civil society has questioned the lack of disaggregated information on the pensions list in question. It has also questioned the program and criteria used to grant pensions.

233. The Commission appreciates the information provided by the State on the universality of pension coverage. However, it reiterates its request for the State to publicly and transparently make information available on the administration of State agencies, along with official figures broken down by age that would make it possible to evaluate whether human rights are effectively respected in Venezuela. Likewise,

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359 Inter-American Court, Furlan and relatives v. Argentina, August 31, 2012, para. 134.

360 Information provided by civil society during the hearing “Political crisis in Venezuela and its effects on the elderly and the LGBTI community,” held during the 169th Period of Sessions of the IACHR.

361 According to information from the organizations who participated in the hearing, in 2017, 321 murders were recorded, a 50% increase compared to the 213 elderly people murdered in 2016. They underscored that these figures could be undercounting the phenomenon, as the report only includes information on violent incidents collected from websites. Regarding suicides, they stated that according to the information gleaned from digital media sources, they increased from 15 suicides in 2016 in 10 states to 25 suicides in 2017 in only four states. They stated that the trend in 2018 appears to be worsening, given that as of May, 26 suicides were reported in the state of Trujillo, nine of which were elderly persons. For its part, the State indicated that between January and September 2017, there were 406 murders of elderly people, while from January to September 2018, the figure had declined to 272, or a 33% reduction. Also see El Nacional, En lo que va de año han asesinado a un adulto mayor cada mes, July 14, 2018.

362 National Institute of Statistics, Venezuela, Venezuela reaches 100% of pensioners, April 18, 2018.
it reiterates the inter-American standard that elderly people have a right to enhanced protection, which should be provided through differentiated measures.

K. Memory, Truth, and Justice

234. Through a variety of measures and mechanisms, the inter-American human rights system has found that truth, justice, reparation, and guarantees of non-repetition contribute to achieving two intermediate or medium-term objectives (providing recognition to the victims and fostering trust), as well as two final objectives (contributing to reconciliation and enhancing the rule of law). 363 Given that these pillars are complementary but have their own content and scope, "the truth cannot be a substitute for justice, reparation, or guarantees of non-repetition." 364 In this regard, the Commission urges the Venezuelan State to redouble its efforts, particularly in terms of justice, reparations, and guarantees of non-repetition with regard to the violations of human rights that have taken place both historically and in the recent past, as well as to procure the highest respect for the rule of law and the separation of powers and greater involvement of victims in the process of memory, truth, and justice.

235. Regarding the mass human rights violations that took place over the last century in Venezuela, the IACHR appreciated State efforts to establish historic truth and memory through a Justice and Truth Commission Report, which took note of and identified 10,071 victims of human rights violations. 365 The IACHR is not aware of any measures taken in 2018 to move forward judicially to complement the Truth Commission.

236. Regarding this situation, the Commission recalls that, without prejudice to the importance of having a truth commission to establish the facts related to the most serious violations, its functions, although relevant, cannot be considered a proper substitute for a judicial process. The value of truth commissions is that their establishment is not based on the premise that there will be no trials. Rather, they represent a step toward restoring truth and, eventually, justice. 366 The message sent emphatically by the inter-American human rights system through its various mechanisms has been that the State has an obligation to combat impunity and provide reparations to the victims of grave human rights violations through the justice system. 367

237. Thus ruled the Inter-American Court in the case of El Amparo v. Venezuela, where it accepted the State’s recognition of responsibility while establishing that acknowledging the truth and paying reparations is not sufficient if investigation and punishment of those responsible is not guaranteed. 368

238. Regarding this specific case, the IACHR notes that during 2018, no progress was made toward trying those responsible for the events in Venezuelan courts, in compliance with the judgment of the Inter-American Court. 369 Regarding this, the IACHR recalls that the State of Venezuela is required to pursue the investigations into the facts in question in this case and punish those found responsible, as well as fully comply with the Court's judgment.

239. Regarding human rights violations that took place subsequent to 1998, the IACHR takes note of the creation of the Commission on Public Truth, Justice, Peace, and Tranquility by the National Constitutional Assembly and its activities carried out in relation to providing reparations to victims and releasing individuals processed over the incidents of political violence within the scope of its competence. Regarding the victims, the State reported that as of June 2018, more than 681 people had received the necessary support from the State delegation. Regarding the releases, after the initial release in September 2017, others were released over the course of 2018.

240. Regarding this, the IACHR and civil society organizations have reacted with concern at the creation of the Commission for Public Truth, Justice, Peace, and Tranquility, stating that "in the end, what is being proposed is the installation and intensification of mechanisms for persecuting dissidents, not addressing the real and specific needs of the population." The IACHR reiterates the importance of a transitional justice program aimed at securing a lasting peace and respect for democratic institutions. It is for this reason that the transitional justice framework must be applied as a system of incentives aimed at revealing the truth, identifying and punishing those responsible, and providing reparations to victims, with a high degree of legitimacy among the affected population, not as a mechanism for political persecution or violation of the constitutional order. Regarding the releases, after the initial release in September 2017, others were released over the course of 2018.

241. The IACHR reiterates the same criticisms with regard to the Commission for Justice and Truth as far as the State obligation to support the search for truth and provide reparations by guaranteeing that justice is done. In this regard, the Victims Committee supported the government's measure, although it noted that little progress has been made on justice, as out of 43 deaths and 850 injuries, only one case has been resolved: the case in which Johnny Bolivar was implicated.

242. Likewise, the IACHR reiterates the same criticisms with regard to the Commission for Justice and Truth as far as the State obligation to support the search for truth and provide reparations by guaranteeing that justice is done. In this regard, the Victims Committee supported the government's measure, although it noted that little progress has been made on justice, as out of 43 deaths and 850 injuries, only one case has been resolved: the case in which Johnny Bolivar was implicated.

VII. CONCLUSIONS

244. Based on this analysis, the Commission observes that in 2018, the persistent structural situations that affect the human rights of the Venezuelan population have worsened and led to a severe political, social, economic, and humanitarian crisis, resulting in the absence of the rule of law. The presidential elections and the extension of the state of emergency further worsen the already critical institutional situation, characterized by the lack of effective separation, independence, and balance of State powers, with the lack of an independent and impartial judiciary being one of its main causes. The deterioration of political rights and the right to participate in public life led to new and serious episodes of attacks, persecution, and imprisonment of opposition politicians, dissidents, journalists, demonstrators, public employees, human rights defenders, and members of the general public. Deaths during social protests continued in a context of the militarization of security, which continues to affect the lives, safety, and property of Venezuelans. At the same time, Venezuela's severe economic and social crisis, characterized by shortages and scarcity, directly affects access to economic, social, and cultural rights, particularly of the most vulnerable groups, and has led to mass displacement of migrants and refugees from the country. All of this has negatively impacted the rule of law in Venezuela.

VIII. RECOMMENDATIONS

A. Position of the State toward the Inter-American System

1. Reverse the decision to withdraw from the OAS.


3. Fully comply with the recommendations of the inter-American human rights system in accordance with the obligations under the OAS Charter, pursuant to its Article 143.

B. Overall Human Rights Situation

• Democratic Institutionality

4. Reestablish constitutional order by guaranteeing (i) the independence and balance of powers, (ii) the political participation of the entire population without discrimination, and (iii) citizen control over the actions of the different State powers.

5. Ensure that the procedures for selecting and appointing the magistrates of the Superior Tribunal of Justice include the prior dissemination of the announcement of the process, terms, and procedures; guarantees of equal and inclusive access for the candidate; the participation of civil society; and selection based on merit and professional capacity.

6. Adopt decisive measures to guarantee the separation of powers and the proper exercise of the constitutionally established functions of the National Assembly, with respect for due process where parliamentary immunity must be lifted.

7. Promote spaces for permanent citizen oversight of electoral processes: Specifically, by conducting electoral audits in the presence of representatives from political parties and members of civil society without discrimination.

8. With regard to the National Constitutional Assembly, reverse the measures that exceed the competencies of a constitutional body and affect the separation of powers and representative democracy, and abstain from adopting decisions that overstep those competencies.

9. With regard to the National Electoral Council, take the measures necessary to ensure its independence by selecting its members based on the requirements established in the
Constitution, as well as ensuring that its decisions protect the political rights of the Venezuelan population, without undue interference.

10. Ensure that the provisions related to the state of emergency are used in situations of extreme gravity and real emergency, and adhere strictly and reasonably to the needs of the situation in question, without going beyond what is strictly necessary, extending excessively over time, disproportionality, deviation, or abuse of power.

11. Adopt the measures necessary for the Office of the Ombudsman to fully comply with its mandate under the Constitution and contribute to effectively protecting human rights in Venezuela, including by adopting legal measures to guarantee that the appointment and removal of the Ombudsman is done independently and pluralistically.

**Administration of Justice and Judicial Independence**

12. Urgently adopt measures to (i) significantly reduce the number of acting judges and increase the number of permanent judges; (ii) ensure that even acting judges can only be removed through a disciplinary process or administrative act that is strictly respectful of due process guarantees, especially the duty to provide proper grounds; and (iii) guarantee the stability of the position.

13. Adopt urgent measures to conclude the judicial actions pending and issue judgments in the shortest time possible and in keeping with international standards on due process.

14. Take the measures necessary—including legislative measures—to ensure civilians are not investigated, processed, and/or brought to trial by criminal military jurisdiction, and, where necessary, retry them in civilian courts.

**Political Rights and Right to Participate in Public Life**

15. Guarantee the full exercise of political rights for all people, independently of their stance toward government policies, and cease all actions that impede people’s exercise of their right to freely elect their representatives and hold them accountable for their performance.

16. Refrain from making illegal or arbitrary detentions, and when a person is deprived of liberty, ensure that the measure is exceptional and complies with all guarantees for restricting this right, including the requirement to be brought immediately before a judge.

17. Refrain from retaliation or using the punitive power of the State to intimidate or punish people based on their political opinions.

18. Adopt the measures necessary to guarantee the political rights of mayors, governors, deputies, and any other authority—including political leaders—so they can exercise their activities without being subject to harassment, threats, and violence. These measures must include withdrawal of measures declaring these authorities in contempt and/or disqualifying them for office, and the State must refrain from taking new measures without due process guarantees.

19. Guarantee that orders of the Judicial Branch to release detained individuals or apply measures other than deprivation of liberty are fully executed within the shortest amount of time possible.

20. Remove all legal obstacles to the legitimate exercise of the right to protest, specifically by eliminating the legal requirement of prior authorization to hold demonstrations.
21. Guarantee that at social mobilizations carried out in exercise of the right of assembly and peaceful demonstration, the rights to life, humane treatment, and personal liberty of everyone demonstrating are protected.

22. Adopt all necessary and appropriate measures to protect the right to life and humane treatment of children and adolescents during social protests. This includes establishing protocols for the actions of security forces and on the use of force, specifically regarding the treatment of children and adolescents to ensure their rights.

23. Take a variety of measures, including legal measures, to ensure that firearms are not used to control social protests, as well as establish guidelines to ensure the use of less lethal weapons, in keeping with human rights standards.

24. Immediately conduct the corresponding investigations into deaths that take place during demonstrations, and do so diligently, effectively, and independently in a way that results in the trial and punishment of those responsible, as well as the corresponding measures of reparation for the victims and their relatives.

25. Stop all acts of repression against peaceful demonstrations, immediately adopting the appropriate measures to protect the population from all forms of violence, with particular attention to women, adolescents, children, and the elderly.

26. Release all individuals who have been detained and/or processed for the sole fact of having exercised the right to social protest.

27. Refrain from any acts of torture; treatment or punishment that is cruel, inhumane, or degrading; and any type of sexual violence against detainees or during the detention; and investigate reports of such acts with due diligence, punishing those responsible and providing reparations to the victims.

• Violence and Citizen Security

28. Reform the policies and practices of security forces related to citizen control operations to bring them into a framework of respect for human rights.

29. Produce disaggregated State information that is accessible to the public on the causes, victims, and perpetrators of violent deaths.

30. Train public servants in charge of public order work on the protection and respect for human rights, particularly regarding the principles that govern the use of force.

31. Ensure that force is used in strict compliance with the principles of exceptionality, legality, necessity, proportionality, nondiscrimination, and accountability; and launch, ex officio and without delay, a serious, impartial, and effective investigation that is open to public scrutiny into facts related to the potentially excessive use of force.

32. Immediately and decisively adopt measures to exclude the military and armed forces from performing citizen security work. In exceptional cases in which members of the military participate in public order operations, which are the responsibility of the police, they must be placed under civilian authority.

33. Conduct an independent and impartial investigation into the circumstances surrounding the deaths and injuries during the so-called “Operation Gedeón,” to eventually assign responsibilities to the security forces officials who participated in it.
34. Cease including civilians in security work, and specifically, prevent civilians with military training from being part of domestic defense strategies.

35. Refrain from providing any type of support to civilian collectives, prevent them from acting in coordination with or with the acquiescence of the State; and when the State is aware or should be aware of acts of violence between private parties, it should take reasonable measures to prevent, investigate, and punish those actions.

C. Poverty and Economic, Social, Cultural, and Environmental Rights.

36. Take new measures to ensure the availability and quality of healthcare services, ensuring that the facilities have sufficient medications and medical equipment.

37. Monitor the availability of medicines and healthcare services and the population’s access to them, along with their consequences, and gather information on this for regular and detailed publication, including epidemiological bulletins, mortality statistics, inventories and acquisition of medicines, supplies, and equipment, and other public documents on the situation of healthcare services at the national level.

38. Refrain from any action or conduct that could limit the autonomy of universities, investigating and, where necessary, punishing attacks on that autonomy, as well as reviewing and amending all legislation or practices that reduce it.

39. Take urgent action to eradicate chronic malnutrition in vulnerable sections of the country, especially among children and adolescents and women. This includes providing the resources necessary to strengthen public food programs for children and the guarantees necessary for private aid programs to be able to operate without problems.

40. Conduct an environmental and social impact evaluation for the entire Orinoco Mining Crescent and set up a program for regular soil and water quality monitoring.

41. Establish an environmental reparations program with a social component to address the many needs of the sector’s inhabitants affected by the constant mining activities in order to stimulate the area’s economy.

D. Social Protest and Freedom of Expression

42. Grant journalists the highest level of protection to ensure they are not detained, threatened, or attacked for exercising their profession, especially during a public demonstration. Their work materials and tools must not be destroyed or confiscated. The State must guarantee national and foreign media the ability to broadcast live during demonstrations and public events and not adopt measures to regulate or limit the free circulation of information;

43. Refrain from exerting direct or indirect pressure aimed at silencing journalists, in accordance with Principle 13 of the Declaration of Principles on Freedom of Expression. In particular, remove all disproportionate or discriminatory restrictions that prevent media outlets of all formats, from effectively completing their commercial, social, or public missions;

44. Change ambiguous or imprecise criminal laws that disproportionately limit freedom of expression, such as laws intended to protect the honor of ideas or institutions or that seek to protect national security or public peace, in order to prevent the use of criminal proceedings to inhibit free democratic debate on matters of public interest and the full exercise of political rights. Also, move to repeal desacato laws, no matter what form they take, as these laws violate
Inter-American standards and restrict public debate, which is an essential element for the functioning of democracy;

45. Ensure that crimes against freedom of expression are subject to independent, quick, and effective investigations and judicial proceedings. In addition to criminal investigations, disciplinary proceedings should be launched when there is evidence that public officials have violated freedom of expression in the course of their professional conduct. As has been noted on other occasions, the failure to punish the perpetrators and masterminds of murders, attacks, and threats related to the exercise of journalism activity fosters the commission of new crimes and generates notable chilling effect, which severely impacts the possibility of having a truly open, uninhibited, and democratic debate;

46. Adopt legislation on access to public information in keeping with inter-American standards in order to provide all people with tools for effectively monitoring State operations, supervising public administration, and controlling corruption, all of which are essential for democracy. The IACHR and its Office of the Special Rapporteur also call on Venezuela’s judicial authorities to guarantee this right and ensure their rulings comply with international standards on the subject at all times.

47. Refrain from limiting the functioning of webpages, blogs, apps, or other systems for disseminating information over the Internet, electronically, or otherwise, including support systems such as ISPs or search engines. These limitations are permissible only when they are compatible with the conditions governing the limitation of freedom of expression.

E. Women

48. Regularly produce complete statistics on violence and discrimination against women, disaggregated at least by gender, age, race, ethnicity, socioeconomic status, disability, sexual orientation, and gender identity, as well as the location of the incidents, with the aim of building an accurate picture of the specific ways in which violence and discrimination affect women.

49. Diligently publish and disseminate the statistical information produced.

50. Enhance efforts to reduce maternal mortality by adopting a comprehensive strategy that includes the effective application of the current protocol for prenatal care and emergency obstetric care.

51. Take the measures necessary to implement the policy to protect humanized birth by providing adequate resources, proper coordination, and accountability.

52. Take necessary and urgent measures to make available a varied, accessible, and acceptable array of contraceptive and family-planning methods, both male and female, throughout the country for women, men, and adolescents.

F. Human Rights Defenders

53. Urge State authorities to refrain from making public statements that stigmatize human rights defenders and from using State media to conduct public campaigns that may incite violence against human rights defenders based on their work to defend human rights;

54. Provide human rights defenders with adequate resources when they are subject to stigmatizing statements that could affect their reputations, compromise their personal integrity, or lead to or facilitate their criminalization;
55. Adopt positive measures to enable human rights defenders to conduct activities freely by fostering a human rights culture and an environment free of violence and threats. Do this by, among other things, training public officials; educating the public as a whole; recognizing the value and importance of the work of human rights defenders; and conducting serious and effective investigations into any violation of the human rights of people who defend human rights.

G. Persons Deprived of Liberty

56. In order to make reasonable use of imprisonment, the State must promote the use of measures alternative to deprivation of liberty and use of pretrial detention that is in keeping with its exceptional nature and limited by the principles of legality, presumption of innocence, necessity, and proportionality.381

57. Regarding deaths that take place within prisons, the IACHR asks the State to prepare a detailed report covering 2015 through the present day that includes the following information at a minimum: (a) date and place of death; (b) cause of death; and (c) where applicable, the status of the investigation into the individual’s death. Likewise, the Commission reiterates the State’s duty to investigate, process, and punish those responsible, as well as its duty to adopt measures to prevent death resulting from incidents of violence within detention centers.

58. Guarantee that people in State custody are treated with dignity. Specifically, ensure that detained individuals have the medical care they need for their specific health conditions, receive sufficient food with high nutritional value, and have hygienic living conditions. The Venezuelan State also must adopt the measures necessary to guarantee that individuals deprived of liberty are transferred from police detention centers to prison facilities with the minimum conditions needed to guarantee the rights of individuals deprived of liberty.

H. Migrants, Asylum Applicants, Refugees, Beneficiaries of Complementary Protection, Internally Displaced People, and Victims of Human Trafficking

59. Adopt measures to address the humanitarian crisis by preventing situations of deprivation or denial of rights—in particular the rights to health, right to food, right to work, right to decent housing, and other economic, social, and cultural rights—that may be factors behind the forced migration of people from Venezuela.

60. Guarantee access to and provision of unobstructed humanitarian aid for the Venezuelan population that may need it, all of which should be provided in keeping with principles of humanity and impartiality and without any discrimination.

61. Eliminate all measures that hinder the right of all individuals wishing to leave Venezuelan territory and wishing to seek and receive asylum, complementary protection, or other protection.

62. Ensure the rights to juridical personality and identity by issuing identity documents in a timely fashion, including passports, ID cards, civil registry certificates, and criminal background records.

63. Properly define the crime of human trafficking pursuant to regional and international human rights regulations and standards, and execute a coordinated and comprehensive response to

prevent, address, and provide reparations to victims, as well as investigate, process, and punish the crime.

I. Lesbian, gay, Transsexual, Bisexual, and Intersex (LGBTI) Persons

64. Take the measures necessary—including legislative, public policy, and State programs—to address the underlying causes of violence against trans and genderqueer persons. Among other things, these measures must ensure that people have access without discrimination to formal employment, education, healthcare, and housing;

65. Conduct exhaustive and impartial investigations into cases of violence against LGBTI persons and take effective measures to try, punish, and provide reparations for the violence suffered by these individuals;

66. Develop measures to gather data to study and evaluate the scope of and trends in prejudicial violence against LGBTI persons.

67. Implement measures to prevent violence against LGBTI persons, including procedures for effectively and independently reporting the violations suffered. Likewise, offer training courses to raise awareness among State officials, especially justice and security officials and health and education professionals.

J. Indigenous Peoples

68. Immediately adopt measures to safeguard the security of indigenous human rights defenders, leaders, and communities, and carry out exhaustive, independent, and impartial investigations to establish the motives and circumstances of violations against them and identify, process, and punish the perpetrators and masterminds. These investigations should take into consideration the context of the defense of the right to territory;

69. Guarantee the exercise of the participatory rights belonging to indigenous peoples. The State specifically has a duty to conduct free, prior, and informed consultations on all legislative and administrative matters that may directly or indirectly affect indigenous peoples. The State is reminded that these consultations must be conducted in order to reach mutual agreement or consent. Likewise, the consultation initiatives carried out by indigenous organizations themselves must be recognized and strengthened in the framework of the State’s duty to conduct consultations;

70. Adopt urgent measures to eradicate illegal mining activities.

71. Ensure full respect and guarantee for the rights of indigenous peoples in voluntary isolation or initial contact in the Amazon—especially self-determination—by establishing effective mechanisms for protecting their territory and prohibiting the intrusion of outsiders.

72. Adopt sanitary measures to address the outbreak of measles and other uncontrolled illnesses that are affecting indigenous peoples and provide them with urgent medical care. The State is reminded that the health measures must take an inter-cultural approach.

73. Adopt measures aimed at respecting, protecting, and guaranteeing the rights of indigenous peoples in Venezuela with the aim of ending the forced displacement that has been taking place and that impacts their cultural survival.
K. **Children and Adolescents**

74. Implement nutrition programs that prioritize providing adequate and sufficient food for children and adolescents, especially taking into consideration their stage of growth and development.

75. Adopt the measures necessary to ensure that children have access to quality healthcare services, including the provision of medications, especially considering the situation of children suffering from grave illnesses.

76. Expand the capacities of shelters to ensure that all Venezuelan children have a safe place to live.

77. Provide material aid to families exposed to poverty, with the aim of ensuring acceptable and dignified living conditions for children and their families.

78. Adopt all necessary special measures to protect children from the risks of becoming victims of any form of violence, abuse, trafficking, sexual exploitation, or labor exploitation, as well as implement programs to prevent those risks.

L. **Afro-Descendants**

79. Adopt an ethno-racial approach in social policies for combating poverty to address the specific situation of people of African descent, particularly women and children.

80. Adopt affirmative action measures to prioritize the inclusion of the Afro-descendant population at all levels of the labor market and educational spaces, both public and private.

81. Modify school curriculums to include the contribution of people of African descent in the various countries of the region, thus promoting a more inclusive education, eradicating racial prejudices, and establishing national cultures to promote the real equality of persons in day-to-day life.

82. Incorporate a gender approach and address the cultural nature and various dimensions of the poverty facing women, particularly women of African descent, pregnant adolescents, migrants, human rights defenders, and those who live in rural areas.

M. **People with Disabilities**

83. Conduct a systemic evaluation of national legislation to adjust it to comply with international principles on the rights of people with disabilities. In particular, review the concepts of caretaking and custody currently in force in the Venezuelan Civil Code in view of the right to equal protection of people with disabilities.

84. Conduct a census on living, health, work, and educational conditions for people with disabilities in Venezuela in order to draft action plans for reducing the disproportionate impact that Venezuela's economic and social crisis has had on people with disabilities.

85. Refrain from placing obstacles to people with disabilities’ access to the healthcare system that are based on their political opinions.
N. Elderly

86. Develop a comprehensive plan for protecting the rights of the elderly in keeping with the precepts of the 1982 Vienna International Plan of Action on Ageing and of the Inter-American Convention on Protecting the Human Rights of Older Persons.

87. Generate disaggregated statistics that are accessible to the public on the violent deaths of the elderly, their causes, and actions taken by the State to reduce such deaths.

88. Make it a priority to address the needs of the elderly with regard to medications, healthcare, and food, and develop specific programs and policies targeting that group.

89. Generate disaggregated information that is accessible to the public regarding the list of pensions granted, programs developed, and criteria used for granting them.

O. Memory, Truth, and Justice

90. Guarantee the effectiveness of the recommendations presented by the Commission for Justice and Truth in its final report, specifically by following up by investigating grave human rights violations, launching a search for the remains of the disappeared, guaranteeing that those responsible will be punished, and providing comprehensive reparations to the victims.

91. Take measures to guarantee that the Commission on Public Truth, Justice, Peace, and Tranquility aims to establish the truth, identify and punish those responsible, and provide reparations to victims, while avoiding mechanisms to increase political persecution or violation of the constitutional order.
Tab #6
Cover Picture:
Rumichaca, border of Colombia with Ecuador. Laila Dailia Leon, three years old sitting on the shoulders of her father Jose Ramon Leon. Jose is a fisherman from Venezuela, now travelling with his wife and two daughters to Quito.
© UNICEF/Santiago Arcos
includes the need for free access to reproductive health, nutrition, family planning, and mental health services.

An increasing number of arrivals of families with children, unaccompanied and separated children (UASC), but also elderly and people with disabilities, is expected to continue next year. Recent monitoring activities reveal a worrying increase in the vulnerability of refugees and migrants, affecting in particular children and women on the move, including single or young mothers, and pregnant women, some of them teenagers. There are inadequate shelters or private spaces at the entry points and along the route for resting, showering, changing and breastfeeding. In addition, pregnant and lactating women have limited or no access to nutritional supplements, and quality pre- and post-natal care. Children and youth on the move, are particularly at risk of being recruited by armed groups or criminal elements near the border or along the route.

Furthermore, as of 2018, an estimated 7,700 refugees and migrants from Venezuela living with human immunodeficiency virus (HIV) are in need of life-saving antiretroviral treatment in host countries. They also require consistent access to targeted HIV prevention information, education and communication, voluntary counselling, testing and condoms.

Successful socio-economic and cultural integration is beneficial not only for refugees and migrants from Venezuela, but also for those communities hosting them. Providing support to members of host communities in these processes decreases social tensions and establishes constructive engagement between communities. This includes activities and campaigns geared towards mitigating rising discrimination, xenophobia and negative perceptions towards the presence of refugees and migrants. These activities will go hand-in-hand with establishing constructive engagement and interactions within receiving communities.

Furthermore, refugees and migrants without a regular status that would ensure access to rights and services, are often obliged to take irregular routes to access safety. They are particularly vulnerable to exploitation, including labour exploitation, as well as violence, human trafficking, sexual abuse, resorting to survival sex and recruitment by non-state armed groups, often in insecure border areas rife with criminal and armed groups. Increasing incidents of GBV and human trafficking are among the key protection concerns, primarily impacting women and girls but also men and boys, and vulnerable minorities such as lesbian, gay, bisexual, transgender and intersex (LGBTI) persons. Women engaging in survival sex, sexually exploited, and trafficked are reported as key concerns in most of the countries, especially in the Caribbean and in border areas with Venezuela. More efforts will be exerted to identify, prevent, and respond to instances of GBV. The specific situation of indigenous communities
Tab #7
IACHR Condemns Alarming Numbers of LGBT Killings in the Region So Far this Year

March 23, 2017

Washington, D.C. - The Inter-American Commission on Human Rights (IACHR) condemns the alarming number of killings of lesbian, gay, bisexual, and trans people (LGBT) in the region and urges the States to investigate these deaths with a differentiated approach and ensure that they do not go unpunished. The Commission is concerned about the information it has received indicating that in the first months of this year, at least 41 serious crimes against LGBT persons have been reported in Argentina, Brazil, Colombia, El Salvador, the United States, and Venezuela.

The Commission has received information from civil society organizations indicating that so far this year, 17 serious crimes based on prejudice against LGBT persons have been reported in El Salvador. The Commission was informed that in the third week of February, three trans individuals were killed and another violently attacked. One of the victims, identified as Elizabeth Castillo, was kidnapped and killed. Her body, showing signs of torture, was found on the road outside Villa de Cuyultitán, after she had attended the funeral of two trans women—identified as Yasuri Jandres, 22, and Daniela Rodríguez, 29—who had been shot to death in the city of San Luis de Taipa. The same week that these three women were killed, unknown individuals violently attacked a trans person, who was hospitalized and reportedly has yet to be identified. According to the information received, the identity of those responsible for all these crimes remains unknown.

The Commission notes with concern that the information available indicates that to protect their lives, trans people from El Salvador have been forced to flee to other countries, such as Mexico and the United States. The International Organization for Migration (IOM) has also reported at least 136 cases of forced displacements of LGBT persons, motivated by fear and threats to their personal integrity.

With regard to Brazil, the Commission received information indicating that every 28 hours an LGBT person is violently attacked due to homophobia, biphobia, or transphobia. For example, the Commission learned of a 20-year-old gay man, Marcos Valdevino, who was attacked by an unidentified man at a party. The case went viral on social media and said, "This is the price you pay for being gay in Brazil." The Commission has also been informed about violent attacks that ended the lives of Ágatha Mont, 26; Mirella de Carlio, 39; Emanuelle Muniz, 21; Hêrika Izidoro, 24; Chynna Gibson, 31; Ciara McElveen, 21; and Jaquarrius Holland, 18. Meanwhile, police have characterized as a homicide what happened to 28-year-old Jamie Lee Wounded Arrow, a two-spirit person, defined as a person who has both feminine and masculine spirits and recognize gender as a continuum that includes diverse identities, sexual orientations and social roles. In Pennsylvania, a 23-year-old trans man, Sean Hake, was killed by three gunshots to the torso, fired by a police officer who had responded to a domestic violence call.

In Venezuela, the body of a trans woman, 32-year-old Alexandra Peña Vizcaya, was found in the state of Lara. The expert examination carried out reportedly found that she had been kidnapped and tortured, her penis cut off and the skin on her face peeled back. This homicide has the same characteristics as the murder of a gay man, 60-year-old Ibán José Chávez, whose body was found in January of this year. The Commission was also informed that the body of someone perceived as a trans woman had been found showing signs of abuse and bullet wounds.

In Colombia, the information the Commission received indicates that Silvana Pineda, a 34-year-old trans woman, was killed when she was walking down the street in the municipality of La Dorada. In Barranquilla, the body of Johnny Mercado Ballestas, a 36-year-old man perceived as gay, was found tied to a chair; he was gagged and his body showed clear signs of torture.

In addition, the information available indicates that in Córdoba, Argentina, a 27-year-old trans woman was stabbed in the arm with a bladed weapon by her partner.

"This situation in disturbing and unsustainable," said Commissioner Francisco Eguiguren Praeli, IACHR Rapporteur on the Rights of Lesbian, Gay, Bisexual, Trans, and Intersex Persons (LGBTI). "States must urgently adopt the necessary measures to put an end to these situations and ensure that these crimes are investigated using a differentiated approach. The high levels of barbarity and cruelty could be
because the perpetrators were motivated by prejudice based on the victim’s real or perceived sexual orientation or gender identity or expression, something that must be clarified. There must be no impunity, and reparation must be made to the victims and their families,” he added.

As it recommended in its 2015 report Violence against LGBTI Persons, the Commission urges the OAS Member States to develop guidelines or protocols that include indicia or elements that would assist police officers, prosecutors, and other investigators in determining whether a particular crime was committed based on prejudice against the victim’s actual or perceived sexual orientation and/or gender identity, to ensure that they meet their obligation to investigate and punish those responsible.

According to the IACHR Registry of Violence and the 2015 report Violence against LGBTI Persons, 80 percent of trans persons killed between January 2013 and March 2014 were 35 years of age or younger. The IACHR observes with concern that, according to the information available, the average age of the trans women killed since January 1 of this year was 28.

The IACHR calls to mind that in serious and urgent situations, the IACHR may ask a State to adopt precautionary measures to prevent irreparable harm to individuals under its jurisdiction, regardless of whether there is a case or petition pending before the Commission, In addition, the Commission underscores the importance for States to ensure the safety of all LGBTI persons, guaranteeing that they can freely and fully exercise their human rights without discrimination on the basis of sexual orientation, gender identity or expression, or bodily diversity.

A principal, autonomous body of the Organization of American States (OAS), the IACHR derives its mandate from the OAS Charter and the American Convention on Human Rights. The Inter-American Commission has a mandate to promote respect for human rights in the region and acts as a consultative body to the OAS in this area. The Commission is composed of seven independent members who are elected in an individual capacity by the OAS General Assembly and who do not represent their countries of origin or residence.

No. 037/17
Tab #8
REPORT No. 66/16
PETITION 824-12
REPORT ON ADMISSIBILITY

TAMARA MARIANA ADRIÁN HERNÁNDEZ
VENEZUELA

Approved by the Commission at its session No. 2070 held on December 6, 2016. 159th Regular Period of Sessions.

REPORT No. 66/16
PETITION 824-12
REPORT ON ADMISSIBILITY
TAMARA MARIANA ADRIÁN HERNÁNDEZ
VENEZUELA
DECEMBER 6, 2016

I. SUMMARY

1. On April 29, 2012, the Inter-American Commission on Human Rights (hereinafter “the Inter-American Commission,” “the Commission” or “the IACHR”) received a petition submitted by Tamara Mariana Adrián Hernández (hereinafter “the petitioner” or “the alleged victim”) on her own behalf against the Bolivarian Republic of Venezuela (hereinafter “Venezuela” or “the State”) over the Venezuela legal system’s alleged failure to provide a suitable and effective remedy for changing an individual’s gender identity in the registry documentation system.

2. The petitioner maintains that the State has violated her human rights by denying her the opportunity to change her registry documentation to match her gender identity. Specifically, she indicates that there has been an unjustified delay of more than 10 years in resolving the protective measure she submitted to request that all public and private records be changed to match her gender identity. She states that as a consequence, she has experienced the restriction of a series of other fundamental rights. For its part, the State argues that the petition is not admissible because domestic remedies were not exhausted and because the rights protected in the American Convention on Human Rights (hereinafter the “American Convention” or the “Convention”) were not violated.

3. Without prejudging the merits of the petition, after analyzing the pleadings of the parties and pursuant to the requirements established in Articles 46 and 47 of the American Convention and Articles 31 through 34 of the Rules of Procedure of the IACHR, (hereinafter the “Rules of Procedure”), the Commission decides to declare this petition admissible regarding the alleged violations of the rights enshrined in Articles 3 (right to juridical personality) 5 (right to humane treatment), 8 (right to fair trial), 11 (right to honor and dignity), 13 (right to freedom of expression), 18 (right to a name), 22 (right to movement and residency), 23 (right to participate in government), 24 (right to equal protection), and 25 (right to judicial protection) of the American Convention, in relation to its Articles 1 and 2, while that instrument was in force; and Articles II (equality before law), IV (freedom of investigation, opinion, expression and dissemination), V (protection of honor, personal reputation, and private and family life), VIII (residence and movement), XVII (recognition of juridical personality), XVIII (fair trial), and XX (vote and participate in government) of the American Declaration of the Rights and Duties of Man (hereinafter the “American Declaration”) with regard to facts and affects taking place prior to moment the renunciation of the Convention took effect. The Commission also decides to notify the parties of this decision, to publish it, and to include it in its Annual Report to the General Assembly of the Organization of American States.

II. PROCEEDINGS BEFORE THE IACHR

4. The IACHR received a petition on April 29, 2012, and on June 7, 2013, it forwarded a copy of pertinent parts to the State, giving it two months to submit its comments, based on Article 30(3) of its Rules of Procedure in force at the time. On September 16, 2013, the State’s response was received. The response was forwarded to the petitioner on September 24, 2013.

5. The petitioner submitted additional comments on June 18, October 23, and November 8, 2013, as well as on January 5, 2015. For its part, the State sent additional comments on October 3, 2013. These comments were duly forwarded to the counter-party.
III. POSITION OF THE PARTIES

A. Position of the petitioner

6. The petitioner indicates that she was registered at birth as a male named Tomás Mariano Adrián Hernández. She said she was diagnosed with “gender identity disorder” for seeing herself and wishing to be socially recognized as a woman. For this reason, following the steps recommended by the World Health Organization, the American Psychiatric Association, and the Latin American Psychiatric Association, she was given social, hormonal, and physical gender reassignment, including definitive and irreversible genital surgery. The petitioner indicates that her gender identity was reaffirmed through sex reassignment surgery on August 3, 2002, outside Venezuela.

7. The petitioner maintains that despite viewing herself and being viewed socially as a woman, all her documents still identify her with a name and sex with which she does not identify. For this reason, she states that she filed for judicial protection in the form of a writ of *habeas data* before the Constitutional Chamber of the Supreme Tribunal of Justice on May 14, 2004. Twelve years later, her request remains pending resolution. The petitioner states that on more than 30 occasions she has submitted pleadings reiterating her case and expanding and adding to her arguments, as well as sought hearings with magistrates and requested certified copies of her case file without ever having received a response. She also indicates that she requested the intervention of the Ombudsman of the People but received no response. The petitioner argues that there is no ordinary procedure in place for protecting her fundamental rights in Venezuela, and that therefore, according to the case law of the Constitutional Chamber for cases in which no legal recourse is available to amend public records, the writ of *habeas data* can fulfill that role.

8. Regarding the State’s pleadings on the failure to exhaust administrative remedies, the petitioner explains that the birth certificate correction procedure only allows changing the name and not the sex assigned on the birth certificate unless the Civil Registry made a mistake when recording the sex. In addition, the correction leaves a marginal note in the certificate that would be visible and publicly accessible. She also argues that the two laws to which the State alludes—the Organic Civil Registry Law and its Regulation No. 1—entered into force in 2010 and in 2013, respectively, so at the time she filed for protection, they were not in force. Finally, she states that following the entry into force of the new law, there have been more than 30 cases of people requesting that their birth certificates be corrected by changing the name and the sex in the registry. However, none of these requests have been resolved, except for one case that was dismissed for having failed to follow the procedure properly, then after reconsideration was requested, it was denied.

9. Finally, the petitioner states that the lack of legal recognition of her gender identity has resulted in numerous professional and personal obstacles. She states that in the exercise of her profession as an attorney, it makes it difficult for her to sign briefs or make filings before courts because her physical identity does not match her name and legal registration as an attorney, forcing her to constantly explain this discrepancy. It also causes problems when she tries to buy airline tickets, travel abroad, pass through routine checkpoints, and live in another country, limiting her right to movement. She adds that this lack of legal recognition of her identity also makes it very difficult for her to participate in political life under equal conditions, as she cannot place her name on candidate lists using the sex and name under which she identifies. In this regard, she states that in 2010, she tried to launch her candidacy to be a deputy with the National Assembly, but that although she had the necessary signatures, her request was objected to because she had used the name with which she identifies herself. Also, she alleges that the silence of the courts is an abusive or arbitrary interference in her private life and violates her right to honor and reputation. The alleged victim argues that the alleged failure of recognition makes it impossible to express her identity through her body.

10. Based on this, the petitioner alleges that the State violated her rights as enshrined in Articles 3, 5, 8, 11, 13, 18, 22, 23, 24 and 25 of the American Convention, in conjunction with its Articles 1 and 2.
B. Position of the State

11. According to the State, the petitioner did not exhaust internal remedies because she did not request the correction of her name on her birth certificate via administrative channels.

12. Specifically, it indicates that the procedure for changing one's name is governed by Regulation No. 1 of the Organic Civil Registry Law under Chapter XI, "On Correcting Certificates and Changing Names." It adds that Article 146 of the Organic Civil Registry Law allows people to change their own names, establishing that: "All individuals can change their own name when it is shameful, causes public ridicule, threatens their moral integrity, honor, or reputation, or does not correspond to their gender, thereby affecting the free development of personality."

13. Moreover, the State indicates that the petitioner also filed a complaint with the Office of the Ombudswoman. It states that once the Ombudswoman became aware of the case, she sent a communication to the President of the Supreme Tribunal of Justice recommending that she "take all available measures toward providing an answer to the matter raised."

14. Finally, the State indicates that it has taken a number of steps toward eliminating discrimination against "sex diverse" individuals and recognizing their rights. It states that gender equality rights were recognized in the 2nd International Gathering of Civil Registry Specialists, organized by the Electoral Authority in March 2011. It notes that "recognition of gender diversity in civil Registry processes depends on legal frameworks to address it." The State indicates that the Office of the Ombudswoman backs the "recognition of, acceptance of, and respect for sexual diversity in [Venezuelan] society." It recognize that this is a vulnerable group and is taking a number of actions toward raising awareness on the rights of "sex diverse people and the psychosocial aspects of sexual diversity." The State notes that the Office of the Ombudswoman announced in August 2013 that it would create an Office of the Special Ombudsman on Sexual Diversity "to meet the needs of groups struggling against discrimination of sex diverse individuals, perform research, and propose public policies."

15. In conclusion, the State contends that, based on the lack of exhaustion of remedies, the petition is inadmissible and asks the IACHR to declare as much.

IV. ANALYSIS OF JURISDICTION AND ADMISSIBILITY

A. Jurisdiction

16. The petitioner is empowered, in principle, by Articles 23 of the Rules of Procedure and 44 of the American Convention to submit petitions before the Commission. The petition indicates that the alleged victim is a natural person, whose rights as set forth in the Convention the Venezuelan State has committed to respecting and guaranteeing. As concerns the State, the Commission indicates that Venezuela was a State Party to the American Convention from August 9, 1977, the date on which it deposited its ratification instrument, to September 10, 2013, the date on which the State's denunciation of the Convention took effect. The alleged facts that took place subsequent to that date will be analyzed based on the American Declaration. The Commission therefore has ratio personae competence to examine the petition. Likewise, the Commission has ratio loci competence to hear the petition insofar as the petition alleges violations of rights that would have taken place within the territory of Venezuela.

17. The Commission has ratio temporis competence, as the obligation to respect and guarantee the rights protected by the American Convention was already in force for the State on the date on which the facts alleged in the petition would have taken place. Finally, the Commission has ratio materiae competence due to the fact that the petition refers to alleged violations of human rights protected under the American Convention.
B. Admissibility requirements

1. Exhaustion of domestic remedies

18. Articles 31(1) of the Rules of Procedure and 46(1) of the American Convention require the prior exhaustion of the remedies available in domestic jurisdiction—in keeping with the generally recognized principles of international law—as a requirement for the admission of the claims presented in the petition. The purpose of this requirement is to allow domestic authorities to hear cases of alleged violations of protected rights and, where appropriate, to resolve the situation before it is brought before an international authority. For their part, Articles 31(2) and 46(2) of the Convention stipulate that the requirement to exhaust domestic remedies is not applicable when i) the domestic legislation of the State concerned does not afford due process of law for the protection of the right or rights that have allegedly been violated; ii) the party alleging violation of his rights has been denied access to the remedies under domestic law or has been prevented from exhausting them; or iii) there has been an unjustified delay in the ruling on the aforementioned remedies.

19. The petitioner argues that there is no legal remedy for recognizing her gender identity, as the remedy for correcting birth certificates does not allow changes to the sex but only changes to the name assigned on the birth certificate. She also alleges an unjustified delay in action on the remedy sought. For its part, the State indicates that internal remedies have not been exhausted pursuant to the provisions of Article 46(1)(a) of the Convention because the petitioner did not request correction of her birth certificate to change the name.

20. According to the State, Article 146 of the Organic Civil Registry Law allows name changes. However, the petition alleges that changing her name this way would leave a marginal note in the certificate that would visible and publicly accessible. Furthermore, upon reading that article, there is no indication that it allows changes to sexual identity, which, together with the name change, is the object of this petition. The Commission concludes that the remedy indicated by the State is not, prima facie, an ideal resource for remedying the situation alleged by the petitioner. Additionally, regarding the alleged unjustified delay in resolving the protective remedy, the petitioner alleges that she filed for the remedy on May 14, 2004, and filed more than 30 briefs requesting a ruling without receiving any response from the Supreme Tribunal of Justice. For its part, the State has not made any pleadings to contest this point. The Commission therefore concludes that in this case, an exception applies to the requirement of exhausting internal remedies established in Article 46(2)(c) of the American Convention and 31(2)(c) of the Rules of Procedure.

2. Timeliness of the petition

21. Articles 46(1)(b) of the American Convention and 32(1) of the Rules of Procedure establish that for a petition to be admissible by the Commission, it must be lodged within a period of six months from the date on which the party alleging violation of his rights was notified of the final judgment. In the claim under analysis, the IACHR has established that the exception to the exhaustion of domestic remedies applies, pursuant to Article 46(2)(c) of the American Convention and 31(2)(c) of the Rules of Procedure. In this regard, Article 46(2) of the Convention and 32(2) of the Rules of Procedure establish that in the cases in which the exceptions to the requirement of prior exhaustion of domestic remedies are applicable, the petition shall be presented within a reasonable period of time, as determined by the Commission. For this purpose, the Commission shall consider the date on which the alleged violation of rights occurred and the circumstances of each case.

22. In the claim under analysis, the IACHR has established that the exception to the exhaustion of domestic remedies applies, pursuant to Article 46(2)(c) of the American Convention and 31(2)(c) of the Rules of Procedure. The petition before the IACHR was received on April 29, 2012, and the alleged material facts of the claim began on May 14, 2004, the date on which the protective remedy was sought, which to this day has not been resolved. It is alleged that the human rights violations remain ongoing. Therefore, in view of the context and the characteristics of this case, the Commission finds that the petition was presented within a reasonable period of time and that the admissibility requirement on the submission deadline is satisfied.
3. Duplication of international proceedings and international res judicata

23. The case file does not indicate that the issue addressed in the petition is pending before any other international proceeding, nor that it repeats a petition that has already been heard by this or any other international body. Accordingly, the grounds for inadmissibility established in Articles 46(1)(c) and 47(d) of the Convention and 33(1) and 33(1)(b) of the Rules of Procedure are not applicable.

4. Colorable claim

24. For the purposes of admissibility, the Commission must decide if the facts alleged represent a violation of rights as stipulated in Articles 47(b) of the American Convention and 34(a) of the Rules of Procedure, or if the petition is “manifestly groundless” or “obviously out of order,” pursuant to Articles 47(c) of the American Convention and 34(b) of the Rules of Procedure. The criteria for analyzing admissibility differs from the criteria used to analyze the merits of the petition, as the Commission only performs a prima facie analysis to determine if petitioners establish that the violation of a right guaranteed by the Convention is apparent or possible. This is a summary analysis that does not involve prejudging or issuing a preliminary opinion on the merits of the matter.

25. Likewise, the applicable legal instruments do not require the petitioner to identify the specific rights that the State is allegedly violating in the case submitted to the Commission, although the petitioners may do so. It falls to the Commission, on the basis of the system’s case law, to decide in its admissibility reports which provision of the relevant inter-American instruments is applicable and whose violation could be established if the allegations are proven on the basis of sufficient evidence.

26. The petitioner alleges that the Venezuelan legal system lacks a suitable and effective remedy for changing an individual’s gender identity in the registry documentation system. She also alleges that there has been an unjustified delay in resolving the protective measures she filed to request this change. The petitioner also states that the lack of legal recognition of her gender identity has resulted in numerous professional and personal obstacles, and she therefore faces restrictions on a series of her rights, including the rights to exercise her profession as an attorney, to free movement, and to participate in political life. In this regard, she indicates that the situation represents abusive and arbitrary interference in her private life, making it impossible for her to express her gender identity through her body. For its part, the State argues that there is an administrative procedure available for correcting birth certificates that allows name changes. The State indicates that this procedure is not difficult and notes that it has put a series of policies in place to combat discrimination based on gender identity.

27. Generally speaking, the IACHR has established that States must ensure the “rights of trans persons to change the name and gender marker on birth certificates and identity documents, through quick and simple processes.”1 In this regard, the Commission observes that Article 146 of the Organic Civil Registry Law addresses administrative name changes, but does not allow for changing the sex in identification documents. The IACHR also notes that Article 96 of Regulation No. 1 of the Organic Civil Registry Law establishes that “once the name change has been made, a note will be stamped in the margin of all civil status certificates requested.”

28. In view of the elements of fact and law presented by the parties and the nature of the matter under consideration, the IACHR finds that should they be proven, the facts alleged by the petitioner could represent violations to the rights protected in Articles 3, 5, 8, 11, 13, 18, 22, 23, 24, and 25 of the American Convention, in conjunction with Articles 1(1) and 2 thereof. Also, taking into account the entry into force of the denunciation of the Convention on 10 September 2013, it is possible that the alleged ongoing nature of the affects represents a violation of Articles II (equal protection), IV (freedom of investigation, opinion, expression and dissemination), V (protection of honor, personal reputation, and private and family life), VIII

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(residence and movement), XVII (recognition of juridical personality), XVIII (justice), and XX (vote and participation in government) of the American Declaration.

V. CONCLUSIONS

29. Based on the considerations of fact and law described herein and without prejudging the merits of the case, the Inter-American Commission concludes that this petition meets the admissibility requirements established in Articles 31 through 34 of the Rules of Procedure and 46 and 47 of the American Convention.

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

DECIDES:

1. To declare this petition admissible with regard to Articles 3, 5, 8, 11, 13, 18, 22, 23, 24 and 25 of the American Convention, in conjunction with the obligations established in Articles 1(1) and 2 of the same instrument; and admissible with regard to Articles II (equal protection), IV (freedom of investigation, opinion, expression and dissemination), V (protection of honor, personal reputation, and private and family life), VIII (residence and movement), XVII (recognition of juridical personality), XVIII (justice), and XX (vote and participation in government) of the American Declaration.

2. To notify the parties of this decision;

3. To continue with the analysis of the merits of this matter; and

4. To publish this ruling and include it in its Annual Report to the General Assembly of the Organization of American States.

Done and signed in the city of Panama, on the 6th day of the month of December, 2016. (Signed): James L. Cavallaro, President; Francisco José Eguiguren, First Vice President; Margareta Macauley, Second Vice President; José de Jesús Orozco Henríquez, Paulo Vannuchi, Esmeralda E. Arosemena Bernal de Troitiño and Enrique Gil Botero, Commissioners.
Tab #9
Report on the 154th Session of the IACHR
Washington, D.C. - The Inter-American Commission on Human Rights (IACHR) held its 154th regular session on March 13-27, 2017. During this session, the IACHR elected its authorities, and its board of officers is now made up of Rose Marie Antoine as President, James Cavallaro as First Vice-President, and José de Jesús Orozco Henríquez as Second Vice-President. In accordance with the Commission's Rules of Procedure, the election was held on the first day of the session. The other Commissioners are: Tracy Robinson, Felipe González, Rosa María Ortiz, and Paulo Vannuchi. The Executive Secretary is Emilio Álvarez Icaza L.

During the session, the IACHR worked on analyzing petitions, cases, and precautionary measures, and on implementing plans to address its procedural backlog. The Commission also held numerous meetings with representatives of States, petitioners, and civil society organizations from around the region, as well as with the OAS Secretary General-elect, Luis Almagro. The Commission also received visits from representatives of the Arab League Human Rights Committee and of the United Nations, including Chaloka Beyani, Special Rapporteur on the Human Rights of Internally Displaced Persons, and John Knox, Independent Expert on Human Rights and the Environment. During the session, the IACHR also presented its report “The Right to Truth in the Americas.”

The IACHR received information indicating that people in some countries has suffered reprisals and receiving threats for attending hearings and for accessing the inter-American human rights system. The Commission considers it absolutely unacceptable for a State to take any type of action motivated by the participation or activities of individuals or organizations that engage the bodies of the inter-American human rights system, in the exercise of their rights under the Convention. As Article 63 of the Rules of Procedure of the IACHR establishes, States “shall grant the necessary guarantees to all the persons who attend a hearing or who in the course of a hearing provide information, testimony or evidence of any type to the Commission,” and they “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.”

Over the course of this session, the Commission held 55 public hearings, in which it received information on cases being heard on the merits, as well as on regional human rights issues and diverse situations in 22 countries. Delegations from 19 OAS Member States participated in the hearings, as did more than 200 civil society organizations and 17 academic institutions. The Commission also held 29 working meetings, of which 20 were related to friendly settlements. This report presents a summary of each hearing, in the chronological order in which they took place.

**Criminal Justice and Race in the United States**

The Commission convened this hearing, at the request of the government of the United States, to receive information concerning racial discrimination in the country, especially as it relates to the criminal justice system. In the context of the 50th anniversary of the U.S. Civil Rights Act, the representatives of the State affirmed that the federal government remains deeply committed to the struggle against racism and racial discrimination in the country. The representatives of the State presented an update on the work of the Task Force on 21st Century Policing, established in 2014 in the wake of the deaths of Michael Brown, Eric Garner, and other African-Americans at the hands of the police. They also presented information on the role of the Office of Federal Contract Compliance Programs in protecting workers from discrimination based on race, color, and other factors. For their part, participating civil society organizations noted that the criminal justice system has a disproportionate impact on African-Americans and Latinos, which they alleged perpetuates a harmful legacy of racism in the country. They mentioned specific cases in which police departments in some U.S. cities arrest African-Americans and Latinos at a rate they said is disproportionately
high when compared with the percentage of these groups in the total population. Finally, they indicated that many police departments engage in discriminatory practices toward racial minorities, including the use of racial profiling. The IACHR expressed its concern on the issue and its interest in contributing to make progress in the elimination of racial discrimination and justice.

General Human Rights Situation in Puerto Rico, United States

The Commission held a hearing during this session on the general human rights situation in Puerto Rico, 15 years after its last hearing on this issue. Civil society organizations pointed to a number of problems related to the rights of children; lesbian, gay, bisexual, trans, and intersex (LGBTI) persons; women; people of African descent; and migrants. The IACHR also received information concerning the serious situation of human trafficking and its possible connection to forced labor, child prostitution, and drug trafficking. The Commission was also told that even though there is a legal guarantee of access to information, in practice this access is being hampered by official agencies. Moreover, the participating organizations reported that even though Puerto Rico has abolished and prohibited the death penalty, this punishment continues to be imposed by the United States government for certain federal crimes, in trials held in English. For its part, the government of Puerto Rico indicated that significant progress has been made in the implementation of the rights of the American Declaration with regard to protecting children from maltreatment and combatting human trafficking. The government also highlighted the protections offered to women against domestic violence. However, the government recognized the need to prepare a plan for access to special education for children with disabilities in Puerto Rico and a plan to combat gender-based violence. The government of the United States, which was also present at the hearing, did not comment on the imposition of the death penalty on Puerto Rican people for federal crimes. The IACHR expressed concern over several issues, including the detention of migrants and the special vulnerability of low-income women migrants of African descent. It was also especially concerned about the fact that the United States, the only country in the region that currently carries out the death penalty, should impose this type of punishment on a population that has abolished and prohibited it in its domestic law, and it expressed concern over the fact that trials are being held in a language that may not be fully understood by the accused.

Case 12.834 – Leopoldo Zumaya and Francisco Berumen Lizalde, United States

The petitioners presented information concerning Case 12.834, Leopoldo Zumaya and Francisco Berumen Lizalde, United States, which is in the merits stage. Specifically, they alleged that after the Supreme Court of the United States ruled in the case of Hoffman Plastic Compounds, the scope of state laws was restricted, along with protectionist policies and practices at the federal level, leading to discrimination and the denial of justice for undocumented immigrant workers. The organizations also argued that the alleged victims had the right to receive workers’ compensation for work-related accidents, as well as other payments and disability benefits, but that they were deported before they could access them. They highlighted how challenging it is for immigrant workers, such as the alleged victims in the case in question, to pursue judicial remedies once they are deported. For its part, the State reiterated what it had maintained in its observations of June 26, 2014, to the effect that the case should not have been admitted by the IACHR since domestic remedies have not been exhausted and the claims are unwarranted. The State maintains that the Hoffman Plastic decision limited only one of the various legal remedies available to undocumented migrant workers, and that it has not been established that the alleged victims would not be able to return to the United States to continue pursuing their claims. The State also pointed to its efforts to protect the rights of all workers, regardless of their immigration status. The IACHR requested information
on the general situation of migrant workers so that the IACHR can take this into account in deciding on the merits of the case.

**Human Rights Situation of Persons Deprived of Liberty at the Guantánamo Naval Base, United States**

The IACHR held its 11th hearing on the human rights of persons deprived of liberty at the Guantánamo Naval Base. This hearing was requested by two groups of military public defenders who appear before the Military Commissions created to try Guantánamo detainees. The petitioners informed the IACHR about the impact of the “Committee Study of the CIA’s Detention and Interrogation Program” on proceedings currently underway before the Military Commissions and on detention conditions at Guantánamo. The study reveals that the use of torture against the detainees has been systematic. According to the hearing participants, the experiences and memories of the torture victims are considered classified information, which precludes remedies and rehabilitation for victims of torture and the establishment of accountability for those who are responsible for the torturing. Moreover, the organizations reported, the system of Military Commissions was designed to ensure the silence of torture victims, so that the actions of the perpetrators remain secret and unpunished. The United States delegation reaffirmed the commitment of President Obama’s administration to close the detention center at Guantánamo, and pointed to some recent steps forward. It also said that the Military Commissions incorporate fundamental rights of due process, and that the Office of the Chief Prosecutor of Military Commissions is reviewing the recent Senate study to look for potential exculpatory evidence. The government representatives indicated, as well, that it would take at least 12 more months for all eligible detainees to have access to a hearing before the Periodic Review Board.

The IACHR underscores that the absolute prohibition of torture as a peremptory norm in international law (*jus cogens*) creates obligations *erga omnes* for the States. States have the obligation to ensure that victims of torture and mistreatment have prompt, cost-free access to rehabilitation services, which should be comprehensive and victim-centered. They also have the obligation to consider inadmissible any evidence obtained directly or indirectly by means of torture or other cruel, inhuman, or degrading treatment. According to the information presented by the government, under the current circumstances it would be materially impossible to close the detention center at Guantánamo in the short term, considering the estimated time it would take to review the situation of all detainees being held in indefinite detention. The IACHR reiterates its call to the government of the United States to close the detention center at the Guantánamo Bay Naval Base without further delay and to investigate, prosecute, and punish all acts of torture and cruel treatment committed against those detained there, as well as to provide comprehensive reparation to the victims.

**Human Rights Situation of Child Victims of Trafficking and Sexual Exploitation in the United States**

The petitioning organizations presented information concerning the perilous situation being faced by child victims of trafficking for the purpose of sexual exploitation in the United States. According to the petitioners’ claims, the State prosecutes trafficking victims as offenders rather than victims of a crime. Thus, every year the State arrests around 1,000 children on charges of prostitution, even though the Trafficking Victims Protection Act requires that State authorities treat sexually exploited children and adolescents as victims of a severe form of trafficking in persons. In addition, victims of trafficking are being denied the protection they need, in contrast to the care provided to other children who are victims of child abuse or rape. The petitioners also reported that child trafficking
victims have been re-victimized and have faced barriers in access to education, employment, and housing after incarceration. The organizations indicated that the arrest of children and adolescents has had a disproportionate impact on African-American and Latina girls. For its part, the State highlighted its federal programs to combat child trafficking for the purpose of sexual exploitation, as well as the guidance and support the State has provided to other countries concerning this problem. The Commissioners called on the State to recognize children as holders of rights, and also expressed their concern regarding the situation of migrant children. The IACHR Rapporteur on the Rights of the Child underscored the importance of the State recognition of children as subjects of law, its ratification of the Convention on the Rights of the Child and its address to the causes of the problem of trafficking; likewise, she acknowledged the cooperation of the State with these issues in the region.

Construction of the Transoceanic Canal and its Impact on Human Rights in Nicaragua

The petitioners presented information on the construction of the transoceanic canal in Nicaragua and its negative impact on the rights of the Nicaraguan people. Specifically, they drew attention to the violation of the right to humane treatment, to a life of dignity, to a good environment, to water, to property, to not be forcibly displaced from the land, and to culture, among other rights. The participants also stated that the law on which the canal project is based and the contract signed with the Chinese company for its construction were carried out without environmental impact studies being performed and without having carried out a process of prior, free, and informed consultation with the indigenous peoples who would be affected and with the population in general. The organizations also noted that the concession granted for the canal's construction violates the Constitution, national laws, and international treaties. The organizations expressed their concern regarding the State's efforts to suppress the exercise of the right to protest by those who want the project to be suspended, which have led to violations of demonstrators’ physical integrity and the illegal detention of protest leaders. In addition, they requested that the IACHR conduct an onsite visit to Nicaragua in order to verify the effects the canal project represents for human rights in the country. For its part, the State reported that the Grand Canal project was of paramount national interest and that the State was taking into account human rights and environmental conservation. The State indicated that this project would boost the country’s economy, reduce poverty and marginalization, and help preserve the environment. The State also indicated that public consultations had been carried out for the studies that were done; that in the last week of April 2015 it would be presenting the appropriate environmental impact studies; and that the framework for carrying out free and informed consultation of the populations affected was about to be approved. The IACHR expressed its concern regarding police actions taken against opponents of the project; the apparent lack of adequate consultation and prior environmental studies on the project’s development in ancestral territories of indigenous communities; and the population’s access to water. The Commission asked the State for more information regarding consultation of indigenous peoples and the general population and the existence of appropriate compensation measures, as well as regarding the social and environmental impact studies to which the State referred.

Situation of Labor Rights in Nicaragua

The petitioning organizations presented information on the deterioration of and lack of compliance with Nicaraguans’ constitutional rights and their labor, human, trade union, and social security rights. According to the information they presented, violations of labor rights in particular are reflected in reprisals, discrimination, and illegal dismissals and suspensions; illegal hiring; the arbitrary transfer of workers; the elimination of union organizations; and the dismissal of union
leaders for carrying out their labor union activities. The organizations further indicated that public employees are constantly being required to participate in partisan political activities of the government in exchange for stability. The participants noted the situation of some groups that are vulnerable to labor violations, including children and adolescents, persons with disabilities, older persons, and small-scale farmers and farm laborers. The civil society participants called on the State to improve its public policy in this area. For its part, the State reported on progress made in the country on labor and social security issues, as well as on constitutional and legal protections in labor law. The State representatives reported on the creation in recent years of 1,267 new trade-union organizations and 485 collective bargaining agreements as evidence of progress. The Commission reiterated its keen interest in visiting Nicaragua, and expressed its concern over the allegations of political pressure in the workplace.

**Labor Association Rights in the Americas**

The participating organizations presented information at the hearing on the situation regarding the right to labor association in the Americas, with particular emphasis on the United States, the Dominican Republic, Ecuador, Colombia, and Honduras. According to the information presented, workers in the region are victims of serious, systematic violations of their right to free association and collective bargaining. The participating organizations believe these violations have produced a decline in union membership and lower coverage of collective bargaining agreements, and thus reductions in salary and social benefits, an increase in labor insecurity, and greater inequality. In this sense, the civil society organizations at the hearing called on the Commission to develop and promote the obligations of the Member States to respect labor rights, in accordance with international standards in this area. They also requested that the IACHR coordinate with the ILO to monitor and assess the protection of and respect for freedom of association and collective bargaining in the Americas. Finally, they asked the IACHR to prepare a report on trade union rights in the Americas. The Commission expressed its particular concern over reports of labor leaders being threatened or killed in the region, crimes which remain unpunished. For its part, the Commission stated that it was interested in receiving additional information on priorities in this area for the future work of the Office of the Special Rapporteur on Economic, Social, and Cultural Rights, which the Commission said will make labor rights a priority issue.

**The Death Penalty in the Greater Caribbean**

The IACHR held its first hearing related to the death penalty in the Greater Caribbean. With the exception of the United States, the 13 countries in the Americas that still have the death penalty are found in this region. The petitioning organization, Greater Caribbean for Life, pointed out that this region includes, on the one hand, Venezuela and Costa Rica, countries which abolished the death penalty in the 19th century, and on the other, Trinidad and Tobago and Barbados, whose laws still contemplate the mandatory death penalty. Among other troubling aspects, the participating organizations reported that while the death penalty has not been carried out in this region since 2008, a number of States are still opposed to abolishing it (although there have been no executions since 2008). They reported that between 59 and 80 individuals are on death row in eight countries of the Greater Caribbean. They also pointed to the lack of free, effective legal defense for people who are prosecuted for crimes subject to the death penalty. One positive aspect they noted was that Suriname recently abolished the death penalty, on March 3, 2015, and Barbados has made a commitment to abolish capital punishment. It is worth noting that ten countries in the region have abolished the mandatory death penalty, in compliance with decisions of the inter-American human rights system. The IACHR reiterates the need to move forward with legislative reforms in the
countries of the Greater Caribbean, so as to abolish capital punishment throughout this region or, failing that, to impose a moratorium on its application.

Human Rights and Uruguay’s New Criminal Legislation

The parties presented information concerning the reform of Uruguay’s Criminal Code. The petitioning organizations identified as a concern the lack of an appropriate forum to facilitate civil society’s participation in the development of the new legislation. As a result, they said, the bill contains language that undermines women’s human rights with regard to issues such as sexual violence and women’s sexual and reproductive rights. They referred to provisions regarding sex crimes, which do not include acts beyond penetration, and the omission of the crime of femicide and certain forms of domestic violence, exclusions the petitioners believe represent a setback in women’s rights. Moreover, the petitioners indicated that the new bill expands the protection of “prenatal life” and does not cover the violation of rights involved in forced sterilization and insemination. The petitioners asked the IACHR to issue recommendations for the State, laying out the international standards that should guide reforms of criminal law related to the prevention, investigation, punishment, and reparation of all forms of violence and discrimination against women. The Commissioners who were present expressed their concern over the alleged lack of an appropriate forum for civil society to participate in the reform process. The State reiterated its willingness to participate in an open, democratic process which includes civil society’s participation in the reform of the Criminal Code.

Social Protest and Human Rights in the Americas

Thirty civil society organizations from around the region presented information to the IACHR concerning a troubling tendency to criminalize and violently repress those who exercise the right to social protest in the Americas. The participants reported that in many countries of the region, security forces have employed abusive and disproportionate force to handle social protests, which has even led to deaths of demonstrators. Information was received concerning the authorization some governments have given the Army to act during protests, when this is not a force trained to engage in the public arena. Documentation was also provided on the specific type of repression directed against journalists who cover these events as well as citizens who record the events on digital devices. According to the participating organizations, the criminal prosecution of people who participate in demonstrations, as well as of social and community leaders, has been another phenomenon reported. The IACHR was concerned to receive information regarding the use of criminal charges—such as alteration of the public order, illicit association, obstruction of roads, usurpation, and contempt (desacato), among others—to discourage protests. Along these lines, the organizations reported that there are legal initiatives that seek to regulate, restrict, or improperly hide the right to protest or that endorse the violent suppression of protests. The organizations reported that these initiatives include unacceptable requirements such as prior authorization, the obligation not to loiter, or the use of technology to block communications and create circumstances in which loud noises are used to disperse demonstrators. In this hearing, the IACHR received the opinion of the United Nations Special Rapporteur on extrajudicial, summary or arbitrary executions, Christoph Heyns. The Commission expressed appreciation for the information provided and ensured that it will closely follow this situation in the hemisphere.

Freedom of Expression, Diversity, Pluralism, and Media Concentration in the Americas

During the hearing, the IACHR received information regarding the phenomenon of media ownership concentration in the Americas. A group of civil society organizations provided
information on the creation of communication monopolies or oligopolies in the region and the negative effects this has on the diversity and plurality of voices. Latin America has a high degree of media concentration, according to these groups, which called for the IACHR to issue a thematic report that includes standards for States to use in addressing this situation and recommendations to ensure greater diversity and pluralism. Meanwhile, a press association that includes the hemisphere’s major newspapers stressed that it is opposed to monopolies or oligopolies, but indicated that these should be regulated by general laws that apply to all markets and not by specific laws, since—in this group’s opinion—such laws can be used by those in authority for their own benefit. In particular, this news association referred to State-run monopolies or oligopolies, and noted the accumulation of media outlets in several countries by renowned entrepreneurs, such as the Mexican businessman Ángel González. The Office of the Special Rapporteur expressed appreciation for the studies and information provided and the input it received for its continued work on these issues.

**Situation of Trans Persons’ Economic, Social, and Cultural Rights in the Americas**

The petitioning organizations talked about the connection between the lack of recognition of trans persons’ gender identity, the violence they suffer, and the violation of their economic, social, and cultural rights. The IACHR takes note of the vicious cycle of violence, discrimination, and exercise of rights. As the petitioners indicated, trans women’s lack of access to formal employment is due in large part to exclusion and discrimination in family, educational, and social arenas. As a result, they indicated, trans women have to resort to occupations that place them at greater risk of suffering violence and becoming criminalized, which in turn means that they have even fewer possibilities for working in the formal sector. The organizations also presented a study indicating that in 16 countries of Latin America, approximately 90 percent of trans women engage in sex work as their only means of subsistence. The IACHR called on States to adopt laws on gender identity that do not pathologize people, as well as differentiated and specific affirmative measures to ensure that trans persons have access, without discrimination and under safe conditions, to employment and social security, housing, education, and health care.

**Situation of Freedom of Expression in Ecuador**

Several organizations—the Unión Nacional de Periodistas de Ecuador and the School of Law at Ecuador’s Pontificia Universidad Católica, on the one hand, and the Fundación Andina para la Observación Social y Estudio de Medios (FUNDAMEDIOS) and Usuarios Digitales, on the other—requested that the IACHR hold hearings to address the state of freedom of expression in their country. The Commission joined both requests and convened the interested parties and the State of Ecuador to give their points of view. The organizations expressed disagreement with the communication law currently in effect (Ley Orgánica de Comunicación) because they believe it has been used arbitrarily and has generated a climate of prior censorship, as they put it. They said that the government has imposed fines on media outlets, which have weakened them and led journalists to censor themselves, and that a lack of guarantees has resulted in a shortage of resources devoted to investigative journalism. They also presented cases in which Internet users who were critical of the government had been stigmatized and harassed. The organizations requested that the IACHR visit Ecuador and write a report that includes standards on digital rights, and that it analyze the country’s characterization of communication as a public service. The State of Ecuador did not attend the hearing to offer information and give its point of view.
Human Rights Situation of Leaders and Defenders of the Shuar People in Ecuador

The participating organizations presented information concerning the Shuar people’s opposition to the oil and mining projects the State of Ecuador has implemented in their territories without having carried out prior, free, and informed consultations. The organizations stated that these projects have led to the destruction of their lands and crops and to an escalation of violence. Further, they indicated that as a consequence of the Shuar people’s efforts to resist, three of their members have been killed, and these deaths have not been properly investigated and remain unpunished. Finally, they reported that there are no State mechanisms in place to protect human rights defenders. For its part, the Inter-American Commission expressed its concern regarding the failure to respect the right to prior, free, and informed consultation; the criminalization of and attacks on indigenous leaders; and the infringements on the right to a good environment and the right to water. The Commission also urged the State to respond to these allegations of human rights violations, stressing the importance of working together with civil society organizations. The Commission regretted the State of Ecuador’s failure to attend the hearing.

Forced Migration and Persecution of LGBT Defenders in Central America

The petitioning organizations presented information concerning threats and various forms of persecution that result in the forced migration of lesbian, gay, bisexual, and trans (LGBT) persons from Honduras, Guatemala, El Salvador, and Nicaragua to countries such as Costa Rica. They indicated that LGBT persons are more vulnerable to extortion and violence on the part of organized crime and that they are victims of hate crimes and police abuse. Moreover, they stated that international frameworks on asylum and refuge do not take into account the specific circumstances of LGBT persons, and that the qualifications and level of evidence required are inaccessible, which results in their being unable to receive effective international protection. The participants maintained that many LGBT persons arrive to countries in perilous circumstances and as a result of their irregular migration status are forced to live in hiding. They also indicated that policies related to LGBT asylum seekers and refugees in destination countries are often inadequate and inaccessible. Finally, the participating organizations complained that a number of LGBT organizations in these countries had had their legal status revoked and had been shut down. The IACHR urges the States of Central America to adopt effective, differentiated, and specific measures to protect and guarantee the right to life and humane treatment of LGBT persons.

Case 12.797 – Linda Loaiza López Soto et al., Venezuela

During the hearing, the parties presented information on the merits of this case. Linda Loaiza López offered her testimony, describing the incidents involved in the deprivation of her liberty and the serious acts of sexual, physical, and psychological violence she suffered at the hands of Luis Carrera Almoina. She also shared information with the IACHR concerning the many barriers she faced in accessing justice and explained why she feels that her case remains in impunity. The State, for its part, noted that the courts have issued two rulings in this matter and stressed that the judiciary is an independent power. The representatives claimed that the Venezuelan State had done everything it needed to do in this case to meet its obligation to protect human rights.

General Human Rights Situation in Venezuela

During the hearing, the Commission received information from civil society concerning the alleged interference by the executive branch and the ruling political party in State institutions, which reportedly has had a direct impact on human rights protections in the country. The organizations
pointed to the situation of the judiciary with regard to the large number of judges who, according to official figures, are holding provisional appointments. In this regard, the participating organizations indicated that processes for appointing high-level government authorities lack sufficient guarantees to ensure pluralism, and informed the Commission about acts of political persecution. They also presented figures related to cases of extrajudicial executions and the serious situation of impunity in cases involving human rights violations. In addition, the IACHR received complaints concerning an increase in intimidation and harassment of human rights defenders, particularly those who access international forums, such as the Inter-American Commission’s public hearings. For their part, the State representatives questioned the information provided concerning the situation of provisional judges, indicating that while the figure is 66 percent, the State has been making significant efforts to bring about a decrease. The representatives also said the establishment of a judicial disciplinary jurisdiction in 2010 represented a step forward, and noted that the Public Prosecutor’s Office has been taking important steps to “combat the violation of fundamental rights.” Finally, the Commission was concerned to receive information regarding the Ministry of Defense’s Resolution 8610, which authorizes the use of lethal force and firearms to control demonstrations. As the State explained, the resolution governs the progressive use of force when it becomes necessary to control demonstrations that turn “violent.”

**Human Rights Situation of LGBT Persons in Venezuela**

With regard to the human rights situation of lesbian, gay, bisexual, and trans (LGBT) persons in Venezuela, the petitioning organizations indicated that high-level public officials had spoken out publicly in a discriminatory manner against LGBT persons. As the organizations reported, in Venezuela there is no recognition of diverse families; discrimination exists in the health arena; and investigations are not conducted into cases involving hate crimes against LGBT persons, even when these include attacks and illegal detentions by agents of the State. Along those lines, the petitioners pointed out that impunity is becoming much worse in cases involving trans sex workers. In terms of activities by rights defenders, they alleged having received threats because of their defense of trans persons’ rights and said the State shuts down access to participation by organizations that criticize the situation concerning the rights of LGBT persons. For their part, the State representatives indicated that discrimination against LGBT persons is a cultural issue, and they referred to legal precedents and legislative measures to guarantee the rights of LGBT persons. In addition, they indicated that the Ombudsman’s Office has adopted a number of measures related to the training of State agents, although they recognized that challenges remain for the full inclusion of LGBT persons. The IACHR urges the State to adopt a non-pathologizing gender identity law; investigate with due diligence crimes committed against LGBT persons; and take further measures, including public policies for the benefit of LGBT persons and those who defend their rights.

**Situation of Economic, Social, and Cultural Rights in Venezuela**

In the hearing on the state of economic, social, and cultural rights in Venezuela, the petitioners indicated that while at one time a series of social policies (missions) were implemented, the fight against poverty began to lose ground starting in 2012. The participating organizations said that 2014 official poverty statistics have not been published, but that the deterioration of various indicators (higher inflation, crisis in basic services, and widespread shortages) supports the idea that poverty rates are on the rise. They also reported that the right to a pluralistic education has been restricted and that there have been various violations of the right to peaceful assembly, such as for example the case of Kluiverth Roa, a student they noted was shot and killed during a public demonstration. In terms of the right to health, the organizations maintained that public health services—on which more than 60 percent of the population depends—do not meet minimum
standards (deterioration of buildings and shortages of materials and medications). The organizations participating in the hearing specifically appealed to the Commission for an end to harassment of human rights defenders and organizations, as well as of those advocating for the right to education and health who are documenting and denouncing the aforementioned violations in Venezuela. For its part, the State reported on the steps it had taken to meet the United Nations Millennium Development Goals and indicated that, along with other countries in Latin America, it has been an example of social development. In addition, the State representatives assured the Commission that in Venezuela there are no attacks on individuals and organizations that defend human rights. In terms of the poverty statistics presented, the State requested that these analyses be done scientifically and in adherence to the truth, though they said this does not mean that alerts should not be issued when violations are detected.

Peru’s National Education Plan on Human Rights

In this hearing, the State presented its National Education Plan on Fundamental Rights and Duties. According to the State representatives, the plan seeks to incorporate instruction in human rights, fundamental obligations, and international humanitarian law, as well as the principles and norms governing the rule of law, into every venue, level, and type of education. They also indicated that the National Plan has three main components: equality and nondiscrimination, exercise of full citizenship, and a culture of peace. For its part, the Commission congratulated the State for developing the plan and emphasized how important this will be for the promotion and protection of human rights in Peru. Meanwhile, the civil society organizations participating in the hearing noted that the plan was the result of a very serious effort in human rights education, and stressed that the concept of gender had been incorporated to address discrimination suffered by women. With a view to making the plan comprehensive, the Commission called on the State to ensure that education in nondiscrimination also addresses discrimination against LGBTI groups and people with disabilities. The Commission also called for human rights education to encompass the inter-American human rights system and compliance with its judgments and recommendations, and asked the State to ensure that human rights education is an essential factor for professional advancement in the judiciary and among law enforcement and security forces.

Situation of the Right to Freedom of Association and Assembly in Peru

The petitioning organizations reported on the increase in social conflict and the State's repressive and restrictive response to social protest. In that regard, they indicated that 60 percent of social conflicts are associated with socio-environmental issues. Restrictions reportedly involve the abusive use of force by law enforcement through the use of lethal weapons and the participation of militarized police in controlling social protests; the lack of investigation into attacks on the lives of demonstrators; the use of the criminal legal system to criminalize and intimidate those who promote social protests; and the harassment and stigmatization of people who participate in demonstrations, who are characterized as terrorists or said to have ties to drug trafficking or be opposed to development. For its part, the State indicated that it has maintained a policy of dialogue with respect to social conflicts and the promotion of development opportunities. Specifically, it indicated that social tensions have been limited and that more than 100 social conflicts have been resolved. The State also indicated that rules on the use of force are under discussion and will be shared with civil society. The Commission offered its support in the process of drafting the legislation on the use of force and expressed its concern over the use in criminal law of the “preemptive complaint” and over the fact that there continue to be arrangements between private businesses and public police forces.
Situation of the Right to Access to Information in Haiti

The participating organizations presented troubling information on existing obstacles to the exercise of the right of access to public information, particularly related to foreign investment projects, tourism developments, mining, and exploitation of natural resources. The IACHR also received information reflecting the lack of a legal framework that establishes and develops mechanisms to access public information and limits the State’s wide discretion to classify information by means of confidentiality clauses. The participating organizations also reported that what little information is published by the State is done so in French, without including the Haitian Creole language, which limits the access of a large percentage of the population. The Commission was not able to obtain a response from the State because the government did not attend the hearing. The Office of the Special Rapporteur for Freedom of Expression, for its part, expressed the need to implement a specific law governing access to information, one that would guarantee the exercise of this right. The Commission regretted the State of Haiti’s failure to attend the hearing.

Reports of Violence against Trans Persons and Impunity in Paraguay

The participating organizations presented a study of 36 documented killings of trans persons since the end of the dictatorship, that is, between February 1989 and December 2013. The study showed that in none of these cases could it be verified that the person who was responsible had been punished. In particular, the petitioners indicated that there is no public policy or legislation prohibiting violence or discrimination against trans, lesbian, gay, or bisexual persons (LGBT persons). They criticized statements made by high-level public officials against LGBT persons, as well as the State’s refusal to sign and ratify the Inter-American Convention against All Forms of Discrimination and Intolerance. The State referred to measures it had taken to prevent violence against trans persons, such as training programs for police officers and other measures involving access to justice. The State pledged to provide information concerning the investigation of the cases that were presented. It also indicated that after the visit by the Rapporteur for Persons Deprived of Liberty, in 2014, the trans persons being held at the Tacumbú National Prison had been transferred to a cell with a private bathroom. The IACHR urges the State of Paraguay to investigate with due diligence the killings and acts of violence perpetrated against trans and LGB persons; approve an anti-discrimination law that explicitly includes sexual orientation and gender identity; and implement public policies designed to eliminate violence and discrimination against trans and LGB persons.

Reports of Discriminatory Practices related to Maternity Leave in Chile’s Public Sector

The Commission received information concerning Law No. 20.545 of 2011, as well as arguments concerning its alleged discriminatory impact. The participating organizations indicated that the law grants the right to maternity leave for 12 to 18 weeks, with a capped allowance that starts immediately following the beginning of the postnatal, 12-week leave. The participants informed the Commission that the capped allowance is discriminatory for women who earn more than the cap, and therefore these women have to choose between earning their salary and taking care of their children. The organizations argued that this decision reinforces the division of labor between the sexes and discriminates against children. Along these lines, they referred to ILO Convention 183 and the IACHR thematic report “Access to Maternal Health Services from a Human Rights Perspective.” The State, for its part, stressed the difference between public and private employment and reiterated that Law 20.545 offers a new benefit above and beyond what the international standards require. In addition, the State representatives explained that President Bachelet has made addressing this issue a priority for 2015. The Commissioners recognized the fact that the
State has offered women a new benefit, but expressed their concern that the law could send a negative message to women who have only recently gained access to higher-paid employment. The parties pledged to continue a dialogue to find a solution to this issue.

**Extractive Industries and Human Rights of the Mapuche People in Chile**

The organizations participating in the hearing presented information concerning the situation created by extractive industry projects in the territory of the Mapuche indigenous people and expressed their concern over the operation of these projects without prior, free, and informed consultation. They pointed to the harmful human rights effects that the Mapuche people have experienced due to projects carried out by the forestry, hydroelectric, mining, and salmon industries, including effects on their production systems, contamination of ecosystems, and loss of their territories. The organizations indicated that the system the State uses to evaluate environmental impacts has very low environmental standards, is not independent, and does not include an adequate consultation process. They also highlighted a project by the Neltume hydroelectric company, which will have a direct effect on the community, especially on a ceremonial complex that includes a Mapuche cemetery. For its part, the State stressed the importance of the United Nations Guiding Principles on Business and Human Rights and the various steps it has taken in the hemisphere to promote its application. The State representatives referred to the preparation of the National Plan of Action on Human Rights and Business, through which a study will be conducted to identify changes to be implemented in this area in conjunction with the country’s indigenous peoples. The IACHR welcomed the State’s initiative, requested additional information about it, and reiterated its interest in participating in the process. The Commission also expressed its concern regarding the tension between laws governing these industries and the rights to consultation, to private property, and to water.

**Corporations, Human Rights, and Prior Consultation in the Americas**

The participating organizations presented information to the Commission concerning the range of direct and indirect impacts that business has on human rights in the region. They identified the main advancements and obstacles related to the development of standards on corporations and human rights at the international level, particularly the United Nations Guiding Principles on Business and Human Rights. They pointed to problem issues related to the extraterritorial responsibility of States in which transnational corporations are based, and expressed concern regarding the problems they said characterize prior-consultation processes in the Americas. Specifically, the participants pointed to troubling situations involving corporations, indigenous peoples, and prior consultation in Guatemala, Peru, and Colombia. The organizations asked the Commission, through its petition and case system, to expand on States’ protection obligation with regard to human rights violations in which corporations are involved, taking into account the obligation of the States in which the companies are based. In addition, they requested that the IACHR carry out its protection functions in order to ensure access to justice for victims of human rights violations committed by companies, raising the possibility of processing complaints involving the extraterritorial responsibility of corporations’ home countries. The Commission asked the organizations to continue presenting information on this topic, since this is one of the areas the IACHR Unit on Economic, Social, and Cultural Rights is working on.

**Situation regarding the Right to Work of Persons with Disabilities in Tucumán, Argentina**

The Supreme Court of Tucumán, Argentina, requested this hearing, in which it talked about the inclusive policies it has put in place to make the right to work effective for people with disabilities
in the province's judicial system. As the petitioners reported, these policies have been developed pursuant to the highest international standards and have primarily involved implementing a number of reasonable adjustments, such as physical and communication accessibility and testing accommodations. For its part, the IACHR referred to how important the issue of disability is in its work, and stressed that the new paradigm is to treat persons with disabilities as “subjects of rights and obligations,” not “objects of protection.” The Commission also welcomed the policies carried out by the Tucumán Supreme Court to ensure workplace inclusion, and emphasized that this hearing would shine a light on the right to work for persons with disabilities as a right that represents a clear paradigm shift on disability.

Citizen Security and Reports of Torture in Argentina

During the hearing on citizen security and reports of torture in Argentina, representatives of the Public Defenders Offices of Buenos Aires and Santa Fe provinces discussed the existence of uniform, ongoing patterns and practices of torture and cruel, inhuman, and degrading treatment perpetrated by the police, and referred to representative cases by way of example. The participants emphasized the linkages between police corruption; drug trafficking and other illicit activities; the impunity surrounding cases of torture and cruel, inhuman, and degrading treatment; the absence of mechanisms to prevent torture; attacks on the independence of ombudsman’s offices as agents for the protection of human rights; the persistence of a populist iron-fist discourse by relevant political actors; and the cruelty shown by police forces toward certain vulnerable sectors. The State acknowledged that there had been an “opportunistic use” of the iron-fist discourse. It also pointed out various institutional practices and public policies designed to reduce instances of torture. For example, the State representatives mentioned the establishment of offices of prosecutors specialized in the investigation of cases involving judicial violence and the presentation of draft legislation to establish a Torture Prevention Mechanism in the province of Buenos Aires. In this regard, the IACHR emphasized the State of Argentina’s fundamental obligation to ensure that acts of torture do not remain unpunished. It stressed the importance of the records of torture complaints kept by the Public Defenders Offices and questioned the effectiveness of the public policies the State says it is has been taking in that regard. Finally, the Commission said that the alleged acts of torture of children and adolescents mentioned by the participants were “alarming.”

The Right to Truth, Justice, and Reparations for the Human Rights Violations of Military Dictatorships in Bolivia

The petitioning organizations explained the situation concerning access to and establishment of truth, justice, and reparation for human rights violations committed during the 1960s, ’70s, and ‘80s by various military regimes. In the participants’ opinion, no comprehensive policy on truth, justice, and reparation has yet been implemented. As to clarification of the truth, they indicated that there are multiple obstacles to access to military records, and they decried a lack of political will to approve the bill that was presented to the Congress in 2013 to set up a Truth Commission in the country. In terms of justice, they noted that very few individuals were convicted for the grave human rights violations that took place during the dictatorships. Finally, they reported that the country has never had a comprehensive reparations plan. The State, for its part, reported on steps that had been taken to find and identify the remains of the missing, and affirmed that more than one million people have been beneficiaries of reparations. The Commission, for its part, congratulated the State for the progress made and invited it to establish a Truth Commission and to work on the process of establishing and disseminating the truth about what happened during the dictatorships.
Human Rights and Extractive Industries in Latin America

During the hearing, the participants expressed the Catholic Church’s position with regard to the activities of extractive industries in the region, which they said had destroyed the environment and produced many violations of human rights, especially those of the most vulnerable individuals, groups, and communities such as indigenous peoples, peasants, and children. They reported that quality of life in the region is being sacrificed for extractive industries, and said that this produces an injustice across generations because of the effects on poverty rates. They also expressed concern over the criminalization of those who advocate for the rights of indigenous peoples and the environment, as well as the right of social protest. They stressed the responsibility of States—both where the extractive enterprises are operating and where they are based—to implement the environmental and social standards necessary to prevent the destruction of the environment and the social fabric. To illustrate the situation, the participants laid out cases in Colombia, Brazil, Ecuador, Honduras, and Mexico. They called on the States, the IACHR, the international community, national and transnational corporations, and civil society to work together to find a different development model, one based on human development. The Commission expressed its appreciation to the representatives of the Catholic Church for their presence and their commitment to such an important issue, and affirmed the need for cooperation to build the type of economic development that is respectful of human rights.

Access to Justice for People with Disabilities in Guatemala

The petitioners said that people with disabilities face a series of obstacles to full access to justice, due to a lack of recognition of their legal capacity and the State’s failure to make procedural adjustments. Specifically, they pointed out that under Guatemalan civil laws, when people with disabilities go into extended-stay facilities, such as the Federico Mora Psychiatric Hospital, their legal capacity is taken away without any administrative or judicial process, and they are unable to access justice. For its part, the Guatemalan State said that it bases its approach to people with disabilities on the Constitution and on relevant international treaties; in this regard, it referred to the implementation of various initiatives to ensure equality of opportunities for people with disabilities. For its part, the Commission expressed concern regarding Guatemalan laws that allow persons with disabilities to lose their legal capacity when they go into extended-stay institutions. The IACHR also discussed the importance of ensuring the legal capacity of persons with disabilities so that they can participate directly in their legal proceedings.

Reports of Trafficking of Women and Children in Guatemala

According to the petitioners, Guatemala is a country of origin, transit, destination, and return of migrant persons. Due in large measure to the factors of inequality, poverty and extreme poverty, violence, and the current geopolitical context, Guatemala suffers a serious problem of human trafficking. The organizations said that the number of trafficking victims had increased by 44.4 percent in 2012-2013, according to figures from the Office of the Human Rights Prosecutor, and said that this increase had had a disproportionate impact on women and children. In terms of factors that make it difficult to prosecute this crime, the participants identified justice operators’ lack of awareness about what the crime of human trafficking involves, as well as a shortage of specialized personnel, inadequate institutional capacity, and lack of follow-up by the State as victims are reintegrated into their communities or foreign victims are deported. They also pointed to the complete invisibility of the trafficking of boys and men and the level of complicity or corruption by some State officials. The State described a set of measures that are being implemented at the national and regional level to combat human trafficking and to create an
environment conducive to reporting these crimes without fear. The State representatives indicated that there are officials and institutions specialized in this issue, including a prosecutor's office, a police unit, and several shelters. The Commissioners requested more information on the impact of the specialized institutions on access to justice; the reasons this crime goes unpunished; and the State’s efforts to de-institutionalize child victims of trafficking.

**Human Rights and Judicial Independence in Guatemala**

In this hearing, the IACHR was concerned to receive information regarding the alleged interference in the judiciary by other branches of government and regarding various irregularities said to have occurred in the process to select and appoint judges to high-level courts. The organizations indicated that people who had reported corruption related to this process had become victims of reprisals by the judiciary body, including unwarranted dismissals, preventive supervision, and allegedly illegal transfers. For its part, the State said that selection and appointment procedures had been carried out in accordance with the law in effect. At the same time, it recognized the need to reform the regulatory framework and indicated that it is currently working on a legislative reform initiative on this subject. Further, with regard to transfers of judges, the State indicated that there are grounds for these transfers and that the Constitutional Court has the authority to renew judges' terms after five years have gone by. The Commission expressed its concern regarding the application of existing laws in selection and appointment procedures, as well as regarding the alleged reprisals suffered by judges who had reportedly expressed disagreement with those procedures. The Commission also underscored that it is important for transfers of justice operators to be carried out based on public, objective criteria and adopted through a previously and clearly established procedure, one that takes into account the interests and needs of the justice operators involved.

**Reports of Extrajudicial Executions and Impunity in Colombia**

The petitioning organizations presented a report regarding 230 cases of documented extrajudicial executions in the last four years. They said that up to six types or methods of such executions have been identified, adding that it is of utmost concern that at least 37 percent of the victims were reportedly under the age of 17. They also referred to the impunity they said surrounds a large number of cases committed in earlier times, especially those involving the phenomenon of “false positives,” and talked about shortcomings in the way these investigations are conducted. For example, they said, theories related to the context or structures conducive to such crimes are not being pursued, and high-ranking military authorities are rarely linked to judicial proceedings. For its part, the State indicated, first of all, that it has a zero tolerance policy toward serious human rights violations and toward impunity, and that it continues to carry out significant efforts to strengthen the justice administration system. The State also said that the cases of “false positives” are “execrable acts” that “must not happen again” and that the appropriate authorities continue to move forward in the investigation and punishment of those responsible. The State noted that multiple and different types of measures have been adopted to “counteract” this phenomenon, and that these have yielded significant results recognized by United Nations agencies. It also stated that it is the investigative judges and authorities—in ordinary jurisdiction—who in the framework of their authority must make any determination as to responsibility, and that the Office of the Prosecutor has been implementing methodologies that make it possible to discern possible patterns in common, among other things.
Reports of Setbacks in Legislation on Military Criminal Justice in Colombia

The Commission received information concerning the meaning and scope of three bills making their way through the Colombian Congress, having to do with the military criminal jurisdiction. The organizations said they are concerned because they believe these government-led initiatives would expand the military jurisdiction to hear cases involving serious human rights violations and breaches of international humanitarian law. For its part, the State noted that the aim of these initiatives is to reform the military criminal justice system so as to strengthen it and establish clear rules for prosecution—and only in cases in which crimes related to military service have been committed. Specifically, the Commission received information concerning Draft Law No. 085 of 2013, which aims to restructure the military criminal justice system to implement an adversarial system; Draft Law No. 022 of 2014, which would reform Article 221 of the Constitution regarding the jurisdiction of the military criminal courts; and Draft Law No. 129 of 2014, which establishes rules for prosecuting members of law enforcement through the application of international humanitarian law. The Commission appreciates the State's assurances that during the remaining legislative steps and debate on the issue it will take into account the various observations made, and that an examination by the Constitutional Court will enable the matter of compliance with international standards to be addressed. The IACHR reiterates, in this regard, that a potential expansion of the military criminal jurisdiction would mean a serious setback in the efforts Colombia has made in the area of truth, justice, and reparation to victims, in contravention of its international obligations, and would be an element that could only contribute to impunity.

Follow-Up to Implementation of the Justice and Peace Law (Law 975 of 2005) in Colombia

The petitioning organizations presented information concerning the “high vulnerability and lack of protection” faced by victims of sexual violence as a result of their aggressors' return to the places where incidents relevant to the Justice and Peace Law occurred. They claimed that only two of the nineteen judgments under the Justice and Peace Law contemplate the crime of sexual violence, which could have the effect of eliminating the memory of women's suffering and vulnerability in the context of the armed conflict. With respect to guarantees of non-repetition, the organizations stressed that there is no comprehensive program to ensure that those who have been demobilized will not return to illegal activities once they regain their freedom after serving their sentences. The participants also expressed their deep concern regarding the risk faced by women human rights defenders. The State, for its part, pledged to strengthen the efforts of the State-run group that aims to ensure that women actively participate in the peace transition process. The Commission recognized the progress the State has made and the fact that it has acknowledged that challenges remain in the transition to peace. However, the Commission expressed its deep concern over the low rates of prosecution in cases involving sexual violence.

Human Rights and Resettlement Processes in Colombia

The IACHR received information concerning the relocation of displaced people, prevention and risk-reduction programs, and displacements resulting from development projects and natural disasters. The participating organizations cited official figures showing there are 7.2 million victims of the armed conflict, of which 5.7 million are forced displacements. As a result, many of these people live in high-risk areas in Colombia’s major cities. They also reported that administrative irregularities still exist in the context of the resettlement process. They stated that priority should be placed on planning and management that is preventive, not reactive, given the displacements caused by climate change. The organizations also denounced the lack of regulation when it comes to displacement due to urban development projects and the broad discretion granted to local
agencies. For its part, the State reported that the legal framework makes a distinction between different types of resettlement, whether it is a result of forced displacement or dispossession of lands. Moreover, the State indicated that it has adopted a series of public policies to attend to the victims, and various projects have been designed for citizens’ social inclusion in the resettlement process. The IACHR requested more information on the current number of people who have had their own or other lands returned to them, and the number of people who have actually been resettled.

**Human Rights Situation of Persons Deprived of Liberty in El Salvador**

In a hearing on the human rights situation of persons deprived of liberty in El Salvador, the participating organizations presented a general overview of the main structural problems that have led to the current prison crisis being faced by the State. According to official information provided by the participants, the prison system in El Salvador has a capacity for 8,490 beds, in 22 adult prisons, while the prison population is reported to be 28,697, which represents an overall occupation rate of 338 percent. As a result of this saturation, judges who impose prison sentences order people to be held in police station lock-ups. On this point, the Human Rights Ombudsman’s Office has observed that of the approximately 1,231 individuals in custody in police lock-ups in San Salvador, 93 percent are in pretrial detention or are even serving criminal sentences. The participants referred to other serious problems with the prison system, related to health services, food and drinking water, family visits, sanitation and hygiene, and productive activity. The State provided information on access to prison statistics and on some palliative measures that are being adopted to address the country's current prison crisis. The Inter-American Commission stressed the need to adopt comprehensive public policies on prisons, geared fundamentally toward reversing the causes of the overcrowding.

**Impunity for Grave Human Rights Violations during the Armed Conflict in El Salvador**

The petitioning organizations indicated that impunity for grave human rights violations during the armed conflict has become “a deliberate pattern of conduct” by the State. They reported that the situation has worsened with the implementation of amnesty laws, and victims of the conflict have been kept from access to justice, truth, and reparation. They also stated that a lawsuit filed 10 months ago by civil society organizations, requesting that the Amnesty Law be revised, is pending before the Constitutional Chamber of the Supreme Court. The petitioners said that this action could represent an opportunity for the law to be overturned on constitutional grounds. The State expressed its commitment to the victims of the armed conflict and said that the current administration is carrying out efforts to ensure their rights to truth, justice, and reparation. However, the State also expressed regret concerning the serious limitations faced by the Attorney General’s Office in carrying out investigations into these cases, since the Treasury Ministry has not allocated funds for that purpose. For its part, the Commission expressed its concern regarding the application of the Amnesty Law in cases involving grave human rights violations, as well as its interest in learning about the progress made in the investigations into the cases mentioned.

**General Human Rights Situation in Cuba**

The petitioners stated that since December 2014, with the announcements that diplomatic relations would be normalized between the United States and Cuba, repression of the Cuban people has been on the rise. They also expressed concern over the risks faced by human rights defenders, such as the criminalization of their activities, acts of torture, threats, arbitrary deprivation of liberty, home searches, and evictions. The petitioners also referred to the reprisals reportedly suffered by Yris
Tamara Pérez Aguilera and her husband, Jorge Luis Pérez Antúnez, in Cuba after they testified before the IACHR during its 153rd regular session. For its part, the IACHR expressed its concern over the alleged reprisals suffered by two participants in public hearings before this Commission, and reiterated that States have an international obligation to ensure participants’ safety. The IACHR also welcomed the progress made in the context of the negotiations between Cuba and the United States, but expressed its concern over the human rights situation in the State of Cuba and over the fact that the embargo has not come to an end.

**Human Rights and the Equal Opportunity Act and Commission in Trinidad and Tobago**

The IACHR held a hearing on the Equal Opportunity Act, adopted in the year 2000, and the Equal Opportunity Commission established under that law in 2008 to promote and defend human rights in Trinidad and Tobago. The law prohibits the denial of employment, housing, and goods and services in the public and private sector based on sex, ethnic group, origin, marital status, or disability. According to the information received, the Equal Opportunity Commission on several occasions recommended that the State expand the prohibition of discrimination to other categories, such as age, sexual orientation, and HIV status. However, these recommendations, which were also made by various United Nations committees, reportedly have not been followed. The Commission also received information regarding the multiple, interrelated forms of violence and discrimination against trans women, women living with HIV, and girls in Trinidad and Tobago. The organizations participating in the hearing further indicated that people with HIV should be considered a separate group and not included in the disability category. The organizations reported that women living with HIV/AIDS face serious barriers to obtaining full access to health services, as well as severe stigma from their communities. They also indicated that one of the country’s human rights challenges is the lack of a national human rights institution in line with the Paris Principles. The IACHR expresses its concern regarding the lack of compliance with the Equal Opportunity Commission’s recommendations, and requests that the State include the categories of age, sexual orientation, gender identity, and HIV status as grounds on which to ban discrimination. The IACHR regrets that the State of Trinidad and Tobago did not participate in the hearing. The State responded in written to the issues raised in the hearing.

**General Human Rights Situation in the State of Guerrero, Mexico**

The petitioners indicated that in October 2014, the State of Guerrero Truth Commission managed to issue its final report, despite the lack of needed resources and obstacles in access to information. That report pointed to the existence of a widespread and systematic context of serious human rights violations directed against political dissidents, activists, and students during the Dirty War. The petitioners also said that impunity related to these crimes has meant that to this day there remains a pattern of serious human rights violations, and human rights defenders are criminalized and defamed. Specifically, they pointed to a campaign to stigmatize the Centro de Derechos Humanos de la Montaña “Tlachinollan,” a human rights center whose members—some of them beneficiaries of provisional measures—had reportedly been linked by the Center for Research and National Security (CISEN) to armed groups and were considered “subversives.” The State of Mexico welcomed the Truth Commission’s investigative work and pledged to follow up on the recommendations contained in its final report. The Mexican State recognized that the recent events of Tlatlaya and Ayotzinapa put to the test the progress made on human rights, legislatively and in terms of strengthening institutions. For its part, the Inter-American Commission reiterated that it is important for the State to fulfill its international obligation to protect the work of human rights defenders. The Commission expressed interest in learning more about the follow-up plan to comply
with the recommendations in the Truth Commission’s report, as well as the process of defining the crimes of forced disappearance and torture.

**Reports of Acts of Forced Disappearance and Impunity in Mexico**

The petitioners stated that Mexico is going through a crisis of disappearances, which the UN Committee on Enforced Disappearances recently characterized as widespread. Consequently, according to the participating organizations, what happened in Ayotzinapa should serve as a turning point to address this serious problem. They also pointed to the absence of concrete data on disappearances, which reflects the lack of comprehensive record-keeping policies, as well as the lack of policies on prevention, identification of remains, investigation, punishment, and the protection of families. During the hearing, the Commission heard statements from three women whose family members disappeared in the states of Mexico, Chihuahua, and Nuevo León. From 2010 to 2014, according to official information, 90 graves were found in Chihuahua containing 225 bodies, and only 100 of them have been identified. During the same period in Guerrero, 207 graves with 299 bodies were uncovered, of which only 40 individuals have been identified. According to the petitioners, “Mexico is a human cemetery, and the tragedy continues.” They stated that there have been only six final judgments for the crime of forced disappearance of persons, and that international recommendations on this issue have not been met. The State recognized the gravity of the situation and the fact that there are still many challenges to overcome, despite progress that has been made on human rights, particularly in the regulatory aspect and in the establishment of protocols. The State also pledged to continue to work with civil society to combat forced disappearance. It also reiterated its desire to continue cooperating with the IACHR and the international community. The IACHR talked about the anguish faced by family members and the need to find the missing persons, and required the State to provide information about the measures adopted related to elements of corruption that make forced disappearances possible, such as the case of the students from Ayotzinapa.

**Energy Reform and Economic, Social, and Cultural Rights in Mexico**

The organizations participating in the hearing indicated that energy reform in Mexico has serious effects on human rights. They indicated that the reform aimed to eliminate the Mexican State’s exclusive rights in various areas of the energy sector, facilitating and prioritizing the entry of companies into territories over and above the human rights of the people who live there. They also indicated that the whole process of introducing, discussing, and approving the reform violated the rights of access to information and to the free, prior, and informed consultation and consent of indigenous peoples, as well as the right to citizen participation. They also expressed their concern over the exploitation of unconventional hydrocarbons, such as through fracking, and the impacts this would have on the human rights to a healthy environment, water and sanitation, health, property, and decent housing. The petitioners also mentioned the consultation of the Zapotec indigenous community of Juchitán de Zaragoza, Oaxaca, a process which was carried out after the reform took effect and for which multiple violations of relevant standards have been identified. As a consequence, the petitioners asked the IACHR to conduct an onsite visit and to consider asking the Inter-American Court for an advisory opinion regarding the energy reform’s compliance with ILO Convention 169. For its part, the State indicated that it was convinced that the energy reform would lay the groundwork for an improved quality of life for all Mexicans and would lead to tangible benefits for the communities. The State also mentioned that secondary legislation will enable Mexico to meet its environmental commitments and said that it will take the necessary steps to ensure that administrative regulations allow for appropriate consultations. The IACHR stressed the
need for a type of economic development that is respectful of human rights, and asked the parties for more information regarding the implementation of the right to consultation.

**Reports of Sexual Torture of Women in Mexico**

The petitioning organizations presented a video with testimony from several victims of sexual torture in Mexico. They indicated that sexual torture of women is a manifestation of socio-cultural and historical patterns of discrimination against women and gender stereotypes. According to the participating organizations, members of law enforcement have perpetrated acts of sexual violence for the purpose of producing confessions and false evidence, and several of these cases have been presented to the IACHR. They also referred to obstacles in access to justice and to health services, such as the re-victimization of victims and their family members and the lack of a gender and intercultural perspective in investigations. For its part, the State reported that its 2013-2018 development program incorporates a gender perspective and places a priority on measures designed to protect the human rights of women with disabilities, women deprived of liberty, and girls. The State also described reforms to the justice system and indicated that it has established justice centers to comprehensively address access to justice. As the State reported, this will enable the establishment of a follow-up mechanism to attend to women who are released from jail. The Commission requested more information on the conceptualization of the crime of sexual torture; the integration of a gender and intercultural perspective into investigative protocols for these crimes; and the groups of women most affected by this problem based on age, sex, gender, race, and other factors.

**Access to Justice for Migrant Persons in Mexico**

The petitioning organizations provided up-to-date information on the violence faced by migrant persons in transit through Mexico. The IACHR has called this situation a grave humanitarian tragedy. Five relatives of Central Americans and Mexicans who disappeared in Mexico offered testimony regarding the many efforts they have made to search for and identify their loved ones, and the responses they have received from the authorities. As the participating organizations indicated, migrants and their families face multiple challenges in terms of real access to justice in Mexico; therefore, they asked that work continue to be done on the creation of a transnational mechanism to provide access to justice for migrants. For its part, the State of Mexico underscored the importance of the Protocol of Conduct for Those Who Impart Justice in Cases that Affect Migrant Persons and Subjects of International Protection, which was approved by Mexico’s Supreme Court in 2013. They also noted the signing of the Cooperation Agreement for Identification of Remains Found in San Fernando, Tamaulipas, and in Cadereyta, Nuevo León, carried out by a Forensic Commission. The State also reported that it has agreed to establish a Transnational Mechanism for Seeking and Accessing Justice, in response to the IACHR’s recommendation to develop effective and regionally coordinated investigative mechanisms that enable aggrieved migrants and their family members to have effective access to justice. The IACHR stressed that it is important for the Mexican State to continue moving forward with the measures it has been implementing in conjunction with civil society organizations and relatives of migrants, and it reiterates its recommendation to create an online system to locate detained migrants, which would provide information on the whereabouts of many migrants whose families may believe they have disappeared.

**Situation of Economic, Social, and Cultural Rights in Guyana**

In this hearing, the IACHR received information concerning the difficulties that women, indigenous persons, persons with hearing disabilities, and LGBT persons face to be able to enjoy and exercise
their economic, social, and cultural rights in Guyana. Along these lines, the petitioning organizations reported that the rates of maternal mortality and adolescent pregnancies are very high, and that there are barriers to accessing health and protection services. They also argued that a cultural genocide is taking place as a result of the extinction of the languages of traditional communities. The IACHR also received information indicating that individuals with hearing disabilities face serious difficulties in terms of access to education, due to the small number of specialized schools and the fact that the teachers do not know how to communicate with the students in sign language, as they are not required to learn it. With regard to LGBT persons, the organizations said that in addition to the criminalization of consensual, same-sex relations and non-standard gender identities and expressions, these individuals are also victims of employment discrimination both in the public and the private sector. For its part, the government acknowledged many of the problems mentioned by the civil society organizations. It stressed the progress that has been made and expressed its willingness to work together to move forward on these issues. For its part, the Commission said it was pleased that the State was willing to work with civil society and to face these problems.

Reports of Killings of Young People of African Descent in Brazil

The petitioning organizations laid out a series of concerns regarding the alarming level of violence faced by adolescents, particularly by Afro-Brazilian males between 15 and 29 years of age who live in urban areas with the lowest level of development. According to official statistics, homicides are the leading cause of death among adolescents and youth in Brazil; in 2012, more than half of the 56,337 people who died by homicide were young people (30,072, equivalent to 53.37 percent), of which 77 percent were of African descent and 93.3 percent males. The participating organizations reported that in some states in Brazil the youth mortality rate due to homicide tripled from 2002 to 2012. They pointed out in particular that institutional racism and discrimination continue to permeate the security and justice systems, and noted their concern regarding human rights violations perpetrated by the security forces, especially the military police. Among the situations identified, the participants indicated that there are alleged extrajudicial executions, forced disappearances, excessive use of pretrial detention, a disproportionate number of detentions, and an overrepresentation of Afro-Brazilians in the prison population, in addition to obstacles to equal access to justice when their rights have been violated. The petitioners denounced the fact these adolescents are stigmatized and blamed by society for the climate of insecurity and violence, and decried the high level of impunity surrounding acts of violence against them, which leads to a recurrence of such acts. For its part, the State acknowledged that the current situation is serious and laid out some of the initiatives it is adopting to address it. The IACHR expressed its concern about the situation and requested the State to urgently redouble its efforts to prevent abuse by the security forces, and to ensure an appropriate investigation and punishment of cases of killings of young persons of African Descent, in addition to further strengthen public policies on equity and social inclusion.

The Right to Truth and the Report of Brazil’s National Truth Commission

Information was provided on the conclusions of the National Truth Commission (CNV) with regard to crimes against humanity committed in Brazil during the period that was investigated. The petitioners indicated that the work of the National Truth Commission helped to ensure the right to memory and truth in Brazil, but that it is necessary to continue its efforts and to create mechanisms to implement and follow up on its recommendations. In this regard, the participants said that the work of the CNV does not replace the State’s obligation to investigate and punish these crimes, and indicated that the Amnesty Law continues to be a problem in terms of assigning blame to those who
committed and ordered the crimes. The State, for its part, noted that the creation and the work of the National Truth Commission were very important. It also indicated that it understood that the CNV's conclusions are merely a sampling of everything that has happened in the country, and that it is necessary to continue investigating and punishing the crimes. In this regard, the State indicated that State agencies are already pursuing cases against some of those allegedly responsible for the crimes. The IACHR commended the State for this important step, but reiterated the importance of continuing the work of the National Truth Commission so as to investigate all the crimes and punish those responsible. The IACHR called to mind that amnesty laws which forgive torturers are incompatible with international human rights law and that it is necessary to take steps to ensure that this does not hamper access to justice.

**Human Rights Situation of Migrant Persons in The Bahamas**

The IACHR received information concerning the new immigration policy announced by The Bahamas on September, 2014 and on related enforcement actions. The petitioners described mass raids of well-established immigrant, and particularly Haitian, communities, leading to detentions and deportations of persons unable to prove their migratory situation on the spot, including persons born in The Bahamas. In immigration detention at the Carmichael Road Detention Centre, petitioners allege that detainees are kept in unsafe and unsanitary conditions, citing that a woman gave birth unassisted in the Detention Centre, and that children have been kept with un-related adults for days at a time. The State explained that the Belonger's Permit allows non-Bahamians to work and study, which they were previously unable to do. The State displayed photographs of newly constructed dormitories at the Carmichael Road facility. The petitioners requested that the Commission conduct an on-site visit to The Bahamas and that the State engages with civil society, revise its immigration policy, and stop arbitrary detentions. The State reiterated its invitation for the IACHR to conduct a visit. Commissioners Felipe González and Tracy Robinson, Rapporteur on Migrants and Rapporteur on The Bahamas, respectively, thanked the State for the invitation to visit, stating that it is under serious consideration. During the hearing, the defender Diego Alcalá said he was worried about a posting on Facebook made by the Manager of Press, Culture and Information of the Embassy of The Bahamas in the United States, saying that he would use every resource at his disposal to try to press criminal charges against the delegation that participated in the hearing, after other Bahaman authorities indicated to the defenders Fred Smith and Joseph Darville that they would file criminal charges of libel and sedition against them. The State denied this information and stated that it would defend the petitioners' right to free speech, just as it stands ready to defend The Bahamas from defamation and other crimes. The Commissioners expressed their concern about this information and urged the State to avoid the stigmatization of human rights defenders.

**Children's Rights and the Media in the Americas**

This hearing was regional in nature, and it laid out current challenges for guaranteeing children's rights to freedom of expression and access to information. The petitioning organizations discussed the media's role in producing and providing high-quality, informative content, which should be adapted to different age groups, with respect for cultural diversity. They also analyzed the need to ensure that media outlets' headlines and advertising are compatible with children's rights and their protection from content that could be harmful or counterproductive to their development. They also made reference to the protection of the identity and privacy of children who are exposed to media coverage, for example children in conflict with the law. In addition, the petitioners presented some of the model regulations in place to ensure that the rights of children and adolescents are respected and guaranteed. On another matter, participants noted the importance of encouraging
children and adolescents to play a leading role in developing programming content, and talked
about the media's educational role for very young children. The Office of the Special Rapporteur for
Freedom of Expression and the Rapporteur on the Rights of the Child organized a working group
with representatives of the States and civil society organizations to further discuss these and other
related aspects. They underscored the importance of delving deeper into the issue and having the
IACHR provide recommendations to the States.

The Right to Property and the Right to a Healthy Environment of Indigenous Peoples in
Bocas del Toro, Panama

The petitioning organizations indicated that the State has not complied with its commitment to
create areas adjacent to the Ngöbe-Buglé Reserve, and therefore the indigenous inhabitants are
living without any type of territorial recognition. They stated that their territories have been
occupied at different times by national and foreign corporations and individuals, as a result of
concessions granted to the hydroelectric industry, real estate development, and road construction,
with no respect for indigenous communities’ rights to the environment, to territory, and to
consultation. In this regard, the participants denounced the acts of violence that have been
perpetrated against indigenous peoples, including forced evictions, physical attacks, and the
destruction of their homes by the authorities. They concluded by asking the State to prepare a
report on the situation of the indigenous population of Bocas del Toro, in cooperation with civil
society. They also requested that the IACHR conduct an onsite visit to the province to prepare a
Merits Report on one of the cases presented. The State reiterated its commitment to respect for
human rights and respect for a healthy environment. It also indicated that it has acted at all times
with respect for the rights of indigenous peoples, and pledged to prepare the report requested by
the participants. The Commission expressed concern over the lack of recognition of indigenous
property in Bocas del Toro and requested more information on that point. It also took note of the
State’s willingness to resolve the Bocas del Toro situation.

Right of Access to Water of Rural Communities in Costa Rica

During the hearing, the IACHR was informed about the environmental consequences of large-scale
pineapple cultivation, such as the contamination of surface and underground water, changes in soil
use, the appearance of plagues, displacement of families, and effects on people's health. The
participants emphasized the situation of certain communities in Limón province, where
contamination of water sources has been documented since 2003. The State has taken palliative
steps to address the situation since 2007, by distributing water in cistern trucks. The participants
also proposed that a moratorium be declared on the expansion of pineapple plantations until
proper planning is in place. To that end, they asked that environmental impact studies be done and
that guarantees be made that companies will abide by applicable environmental and labor laws.
The State, for its part, reiterated its commitment to this issue and its willingness to work in
conjunction with the affected communities. It also pointed to the adoption of concrete measures
such as the uninterrupted distribution of water by means of cistern trucks; the creation of the
“Single Plan Commission,” in compliance with judgments No. 09040 and 09041 of the
Constitutional Chamber; and the beginning of a comprehensive project designed to supply drinking
water to the affected communities in Limón province. The IACHR reiterated the need for the State
to adopt concrete measures to ensure that the affected communities are provided a steady supply
of drinking water.
Situation of Economic, Social, and Cultural Rights of People Living in Urban Shantytowns in the Americas

The petitioning organizations referred to UN Habitat’s definition of what is considered a slum. In that regard, they reported that of the 180 million people in Latin America and the Caribbean who live in poverty, 125 million live in cities and 113.4 live in informal shantytowns. They said that people who live in shantytowns are under permanent threat of eviction due to the insecurity regarding ownership of their homes, and indicated that this mostly affects groups that have historically faced discrimination. A resident of the “Rodrigo Bueno” shantytown in the province of Buenos Aires, Argentina, exemplified the situation faced by people who live in poor urban settlements. He talked about the lack of access to a sewer system, drinking water, and electricity. He also indicated that, following an eviction order, the 1,200 families of Rodrigo Bueno have begun a legal battle for recognition of their rights to the area. In addition, the petitioning organizations pointed to the situation in Mexico and indicated that this problem is found throughout Latin America and the Caribbean. They also denounced the criminalization of human rights defenders who work on this issue and indicated that there are no adequate public policies in place to prevent problems or address the housing situation from a structural standpoint. They also asked the IACHR to conduct an assessment of the situation of economic, social, and cultural rights of the people who live in shantytowns, and to make recommendations to the States so that they can improve their inhabitants’ living conditions and guarantee the observance of their human rights.

Working Meetings Held

During the 154th session, the IACHR held the following working meetings:

- Case 12.905 – Osvaldo Isaías Migues and Pablo Rafael Galván, Argentina
- Case 12.306 – Juan Carlos de la Torre, Argentina
- Case 12.053 – Mayan Communities of the Toledo District, Belize
- Case 11.426 – Marcela Alejandra Porco, Bolivia
- Petition 687/11 GBB and CBB, Chile
- Case 12.904 – Aymara Chusmiza Usmagama Community and its Members, Chile
- Case 12.433 – Sonia Arce, Chile
- Petition 946/12 – César Antonio Peralta Wetzel et al., Chile
- Precautionary Measure 265/02 – Embera Chamí Indigenous Community, Colombia
- Precautionary Measure 152/14 – Afro-Colombians from the “La Playita” Neighborhood of Buenaventura, Colombia
- Precautionary Measure 242/09 – Members of the Consultancy on Human Rights and Displacement (CODHES), Colombia
- Petition 1745/13 – Gustavo Petro Urrego, Colombia
- Petition 11.550 – Maurilia Coc et al., Guatemala
- Petition 9.586 – Godoy Aldana, Guatemala
- Precautionary Measure 457/13 – APUVIMEH, Honduras
- Precautionary Measure 18/10 – Indyra Mendoza Aguilar et al., Honduras
- Precautionary Measure 50/14 – Bajo Aguán, Honduras
- Case 11.565 – González Pérez Sisters, Mexico
- Case 11.411 – Santiz Lopez et al. (Ejido Morelia), Mexico
- Case 12.551 – Paloma Angélica Ecobar Ledezma et al., México
- Case 12.130 – Miguel Orlando Muñoz Guzmán, Mexico
- Precautionary Measure 252/14 – Journalists and Directors of “Contralinea” Magazine, Mexico
• Precautionary Measure 185/13 – Sofía Lorena Mendoza, Mexico
• Case 11.381 – Milton García Fajardo et al., Nicaragua
• Precautionary Measure 277/08 – Vilma Núñez de Escorcia and Members of CENIDH, Nicaragua
• Case 12.359 – Cristina Aguayo, Paraguay
• Precautionary Measure 452/11 – Indigenous Leaders of Cajamarca, Perú
• Petition 452/TE – Cases of the Press Release of Feb. 22, 2001, Peru
• Precautionary Measure 279/12 – Luisa Fransua et al., Dominican Republic

Reports Approved on Petitions and Cases

Admissibility Reports:
• 374-05 – Trade Union Workers of the National Federation of Coffee Growers of Colombia, Colombia
• 4596-02 – Fidel Camilo Valbuena Silva et al., Ecuador
• 1139-04 – Massacre of the Village of Los Josefinos, Guatemala
• 929-04; 1082-07; 1187-07 – José Antonio Arrona Salazar and Family; Luz Claudia Irozaqui Félix; Joel Gutiérrez Ezquivel, Mexico
• 320-03 – Judges Not Ratified by the CNM

Merits Report with a Decision to Publish:
• 12.833 – Félix Rocha Díaz, United States

In addition, the IACHR approved seven reports that are confidential; six are Merits Reports and one is a final Merits Report.

Financial Contributions

The IACHR is especially grateful for the significant financial contributions made since the 153rd session and so far in 2015 by countries within and outside the region, as well as by international organizations and agencies, foundations, and other entities. These donations make it possible for the IACHR to carry out a large part of its activities related to the mandates from the political bodies of the OAS.

In particular, the IACHR welcomes the recent contributions made by the governments of the following OAS member countries: Canada, United States, Mexico, and Paraguay. It would also like to thank the permanent observer countries that support the Commission’s activities: Spain, France, and Norway. The Commission also welcomes and appreciates the contributions it has received from Avina and the International Work Group for Indigenous Affairs (IWGIA). These donations contribute concretely to strengthening the inter-American human rights system in the Americas.
Tab #10
CHAPTER IV.B
VENEZUELA

I. INTRODUCTION

1. During 2016, the Inter-American Commission on Human Rights (hereinafter “the Commission” or “the IACHR”) has continued to monitor the overall human rights situation in Venezuela and has observed persistent structural situations that affect the human rights of Venezuelans and led to a grave political, social, and economic crisis. These structural situations identified by the Commission have first of all included a worsening of the citizen security situation, related to the right to life and humane treatment.

2. Second, there has been deterioration of the rule of law and democratic institutions. Reports continue of lack of access to justice and an independent and impartial judicial branch, while on the other hand, political polarization has been exacerbated, resulting in open confrontation between the legislative branch and the other State authorities that has affected the balance and separation of powers necessary for a democratic society. In this context, the Commission has also observed a corresponding impact on political rights and the right to participate in public life.

3. Third, a deterioration of the right to freedom of expression has been observed, including the arbitrary detention and imprisonment of opposition figures and individuals who publicly express their disagreement with the government; repression of and undue restrictions on the right to protest; dismissal of public employees or threatening them with losing their jobs should they express political opinions against the government; campaigns to stigmatize and harass journalists, opposition politicians, and citizens; the use of criminal law and other State controls to punish or inhibit the work of a critical media; and impediments to the right to access to information.

4. Fourth, access to economic, social, and cultural rights (ESCR) has been severely restricted. Shortages and scarcity of food, medicine, water, and electricity have led to a grave crisis, contributing to disease outbreaks and other affects on health. The response to the situation has been deficient and in some situations entailed a lack of access to necessarily medical care. This has severely affected children, sick individuals, pregnant women, people with disabilities, and the elderly, among other groups. In this context, added to the political context, public protests have increased, and security forces have responded to them by using force.

5. The Commission has also continued to observe the precarious situations of human rights defenders, people deprived of liberty, migrants and refugees, and other particularly vulnerable groups. Finally, the Commission continues to find it difficult to conduct monitoring given that access to public information on the performance of State bodies is scarce, as is access to official data that would enable it to evaluate respect for human rights in Venezuela.

6. Upon evaluation of the human rights situation in Venezuela, the IACHR has decided to add Venezuela to this Chapter pursuant to Article 59, section 6(a)(i) of the Rules of Procedure of the IACHR, which establishes that in order for a Member States to be included in this chapter, there must be:

- a serious breach of the core requirements and institutions of representative democracy mentioned in the Inter-American Democratic Charter, which are essential means of...
achieving human rights, including: i. there is discriminatory access to or abusive exercise of power that undermines or denies the rule of law, such as systematic infringement of the independence of the judiciary or lack of subordination of State institutions to the legally constituted civilian authority [...] 

7. The Commission has also decided to include Venezuela in this chapter pursuant to section 6(d)(iii) of the article cited above on having identified the persistence of “the presence of other structural situations that seriously affect the use and enjoyment of fundamental rights recognized in the American Declaration [...]” such as grave failures to comply with decisions of the Commission and decisions of the Inter-American Court of Human Rights, issued while Venezuela was under its jurisdiction and was a State Party to the American Convention on Human Rights (hereinafter “the American Convention”).

8. On December 20, 2016, the IACHR sent the State a copy of the preliminary draft of this section of its 2016 Annual Report, in accordance with Article 59, section 10 of its Rules of Procedure, and asked it to reply with its comments within a period of one month. The IACHR later extended the deadline to January 30, 2017. The State submitted its response on January 30, 2017, rejecting its inclusion in this chapter. Its comments have been included in this chapter where pertinent. The Commission approved this chapter on March 15, 2017.

9. In its comments on the draft of this chapter, the State indicated that “the conditions set forth in inter-American law for including Venezuela in Chapter IV.B have not been met [...]”. The Venezuelan Government therefore takes note of the Commission’s offer [to conduct a country visit], but emphasizes that it is not possible to accept any mechanism that would involve the Venezuelan State’s acceptance of its arbitrary inclusion in Chapter IV.B.” The State notes that "like the other countries in the region, on issues of human rights, Venezuela has strengths as well as weaknesses. However, no objective and nondiscriminatory analysis would lead to the conclusion that the human rights situation in Venezuela deserves treatment by the OAS different from what it gives to other States". Moreover, the State indicated its "willingness to have a constructive dialogue with the IACHR toward moving forward in compliance with its international obligations [...]".

10. The IACHR has based its analysis on its monitoring of the overall human rights situations conducted throughout 2016 using information collected during hearings that included the active participation of the State, on information available from other public sources; on its petitions and cases mechanism; on its precautionary measures mechanism; on the State’s responses to requests for information from the IACHR on various human rights issues made under the authority established in Article 18 of the Statute of the Commission; and on the information contributed by civil society and other international organizations. All this was taken into account using the methodology established in Article 59 of the Rules of Procedure of the IACHR.

11. For its part, the State argues that this chapter is "largely supported by unofficial sources with little objectivity” given that it is based “largely on information collected from private media outlets whose editorial stances are clearly antigovernment [...]” The State does a count of the sources of

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3 Bolivarian Republic of Venezuela, Comments on the draft of Chapter IV B, IACHR Annual Report, Venezuela, received on January 30, 2017, para. 5.


5 Bolivarian Republic of Venezuela, Comments on the draft of Chapter IV B, IACHR Annual Report, Venezuela, received on January 30, 2017, para. 11.

6 Bolivarian Republic of Venezuela, Comments on the draft of Chapter IV B, IACHR Annual Report, Venezuela, received on January 30, 2017, para. 18.

7 Bolivarian Republic of Venezuela, Comments on the draft of Chapter IV B, IACHR Annual Report, Venezuela, received on January 30, 2017, para. 7.
information used by the IACHR in its draft report and concludes that 47% of the sources used in the chapter are media outlets, with that figure rising to 62% in the section on freedom of expression. Other sources it identifies include civil society organizations (17%), reports from governments or regional organizations (10%), official State documents (10%), information from the inter-American system (10%), IACHR hearings (5%), and information from international human rights bodies (1%).^8 Valencia notes that "it is especially concerning that the State's official information is practically ignored and it reiterates its rejection of the methodology used, especially the sourcing."^9 Regarding this, it should be noted that the Commission continues to find it difficult to access official sources and public information on the performance of State agencies and on the figures compiled by the State that would enable evaluation of whether human rights are effectively being respected. Based on this, the IACHR calls on the Venezuelan State to make official sources of information and statistics available so as to enable effective monitoring of the measures adopted by the State to address the IACHR's recommendations and the issues it addresses in its successive annual reports.

12. The Commission has also noted that some progress has been made this year on human rights in Venezuela. In February, Venezuela adopted its first National Human Rights Plan, while in April it established the National Commission for Truth, Justice, Victim Response, and Peace (see infra II). Also, on September 22, the State presented the Human Rights Council of the United Nations (UN) with the progress it had made on access to justice and the right to defense. Specifically, it indicated that between 2013 and 2016, the Office of the Public Defender helped more than 2 million users in its various areas of competence. These included the elderly, children, adolescents, Afro-descendants, lesbian, gay, bisexual and trans (LGBT) persons, indigenous peoples, people with disabilities, and others. Also, regarding criminal jurisdiction, the Commission highlighted that throughout 2015 and in the first half of 2016, the Office of the Public Defender represented 22,709 people facing criminal proceedings at different stages.^10

13. This chapter of the Annual Report is divided into six sections: I) an introduction; II) the position of the State toward the Inter-American system; III) the overall human rights situation, which includes: A) the situation of citizen security; B) rule of law and democracy in Venezuela; C) freedom of expression; and D) economic, social, and cultural rights; and IV) vulnerable groups, which includes: A) human rights defenders; B) people deprived of liberty; C) migrants and refugees; D) lesbian, gay, transsexual, and bisexual persons; E) indigenous peoples; and F) children and adolescents; as well as V) conclusions VI) the Commission's recommendations for the Venezuelan State.

II. POSITION OF THE STATE TOWARD THE INTER-AMERICAN SYSTEM

14. The Commission recalls that its last visit to Venezuela took place in May 2002, following the coup d'état that took place in April of that same year. Since the publication of its Report on the Situation of Human Rights in Venezuela in 2003 resulting from that visit, the Commission has taken a number of steps to seek State consent to an in loco visit to the country. To date, the State has not allowed any visits, which not only affects the authorities assigned to the Commission as the Organization of American States (OAS) main body for promoting and protecting human rights, but also weakens the protection system created by the Organization's Member States.

15. It should be recalled that Venezuela denounced the American Convention. This denunciation entered into force on September 10, 2013. It remains subject to the competence of the Commission and the obligations established in the OAS Charter, the American Declaration of the Rights and Duties of Man (hereinafter "the American Declaration"), and other applicable instruments.

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^8 Bolivarian Republic of Venezuela, Comments on the draft of Chapter IV B, IACHR Annual Report, Venezuela, received on January 30, 2017, paras. 20 and 22.

^9 Bolivarian Republic of Venezuela, Comments on the draft of Chapter IV B, IACHR Annual Report, Venezuela, received on January 30, 2017, paras. 20, 21, and 22.

16. The Commission has already indicated that despite the denunciation, as a member of the OAS, the Venezuelan State is still under the jurisdiction of the Commission and subject to the obligations of the OAS Charter and the American Declaration. Likewise, the Commission reiterates that the human rights violations that took place in Venezuela during the period in which the State was a party to the American Convention are binding to the State in keeping with the obligations established in that Convention. Venezuela ratified the Convention on June 23, 1977, and the denunciation entered into force on September 10, 2013. Consequently, the petitions that the Inter-American Commission received previously and has received subsequent to September 10, 2013, that allege human rights violations that took place prior to that date will be processed in light of the State’s obligations under the American Convention, and they may also be heard by the Inter-American Court. As a member State of the OAS, Venezuela is still under the jurisdiction of the Commission and subject to the obligations contained in the OAS Charter and the American Declaration.

17. The Commission reiterates, however, that Venezuela set a grave precedent by failing to substantially comply with the judgments issued by the Inter-American Court, and its courts have declared certain decisions from the Inter-American Court to be unexecutable on finding they violate the Constitution. The Commission has stated repeatedly that Venezuela’s position of neither accepting nor complying with the decisions and recommendations of international human rights bodies, and the bodies of the Inter-American human rights system in particular, under the argument that they run contrary to national sovereignty conflicts with the applicable principles of international law. The State’s decision to not comply with the decisions handed down by the Court while Venezuela was under its jurisdiction and its failure to comply with decisions of the IACHR remained unchanged in 2016.

18. On several occasions, the IACHR has expressed deep concern at the setback entailed in this denunciation and in Venezuela’s position toward the system as regards the OAS Member States’ shared objective of moving toward the universalization of the inter-American human rights system. It has also expressed concern that the residents of Venezuela have lost in the Inter-American Court a court that protects their rights.

19. The IACHR has used the various mechanisms provided for in the American Convention and its Rules of Procedure to monitor the human rights situation in the country, and in 2009, it issued the report Democracy and Human Rights in Venezuela. The Commission has monitored the human rights situation in Chapter IV of its Annual Reports from 2010 to 2015. This year, the IACHR granted four precautionary measures and continued monitoring the precautionary measures granted in previous years. Pursuant to the authorities established in Article 18 of its Statute, the IACHR also requested information from the State on the situation of television channel Globovisión; the situation of the miners who have disappeared in the state of Bolivar; the reports of lynchings in Venezuela; and the limitations on the right to freedom of expression and political opinion in the framework of a campaign to request a referendum to recall President Nicolás Maduro. The State has participated in all the hearings held this year by the Commission. The Commission continues analyzing the overall human rights situation in Venezuela in this chapter of its 2016 Annual Report.

20. The IACHR reiterates that it continues to communicate openly with the State to support the process of complying with the recommendations of this report and to advise it on compliance where

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necessary; as well as to move forward jointly in the protection of human rights of the residence of Venezuela. In this regard, the IACHR is pleased that in its response, the State has noted its willingness to hold a constructive dialogue with the IACHR.

III. OVERALL HUMAN RIGHTS SITUATION

21. As noted, the overall human rights situation in 2016 has been in decline in the context of polarization and of political, economic, and social crisis. In this section, four structural issues are examined that gravely affect the overall human rights situation in the country: the situation of citizen security; the right to freedom of expression; the crisis confronted due to the lack of access to ESCR; and the situation of the rule of law and democratic institutions in Venezuela. Regarding the latter subject, the Commission will examine the status of the state of emergency and economic emergency declared by the State, the administration of justice, and judicial independence; the separation and balance of powers; the attempt to activate a referendum to recall President Nicolás Maduro; and the initiative for dialogue between the government and the opposition.

22. It should also be highlighted that in April, at the request of the State, the IACHR held a hearing on the overall situation of human rights in Venezuela during which the States’ representatives reported on the adoption in February of the first National Human Rights Plan in the country. Sixteen It indicated that its draft version was subjected to a broad and inclusive national consultation process with all sectors of society. The process included vulnerable groups; more than 150 human rights organizations that made contributions and submitted proposals; police and the military; children; and other social actors. It indicated that the plan is comprised of 213 programmatic actions around five focal points: building an emancipatory human rights culture; strengthening institutionality to guarantee the rights of everyone; participation of the people in a leading role for full enjoyment of human rights; relations with the international human rights systems and bodies from a transformative perspective; and deepening the human rights focus of State legislation, politics, and actions. Seventeen In its comments on the draft of this chapter, the State also indicated that the plan’s objective is to “establish structural conditions that enable ongoing improvements and respect for, guarantee of, and enjoyment of the human rights of all individuals subject to the jurisdiction of the Venezuelan State, the consolidation of well-being, and the conquest of supreme social happiness.”

23. For their part, the civil society representatives who participated in the hearing responded that the consultation on the aforementioned National Plan did not allow them to discuss the use of the justice system for political persecution and only the recommendations of pro-government organizations were heard.

24. The State also indicated that progress had been made on its policy of comprehensive compensation for victims of human rights violations and the adoption of mechanisms to provide them with healthcare and rehabilitation. Nineteen In April, the National Commission for Truth, Justice, Victim Response, and Peace was established. Twenty The State reported that 18 of the Commission’s recommendations contained in Chapter IV of its 2014 Annual Report on Venezuela were explicitly included in the National Human Rights Plan. Twenty-One The Commission welcomes the inclusion of these recommendations into the National Human Right Plan and will continue to monitor the actions that the State takes to effectively comply with them.

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18 Bolivarian Republic of Venezuela, Comments on the draft of Chapter IV B, IACHR Annual Report, Venezuela, received on January 30, 2017, para. 35.
25. For their part, the civil society organizations also gave statements on the government's contempt for and rejection of the decisions of the Inter-American system and the concerning consequences the denunciation of the American Convention would have for Venezuela, which in their opinion would leave the population unprotected.22

26. In November, Venezuela was evaluated in the second cycle of the UN's universal periodic review on human rights.23 The draft report contains 274 recommendations for Venezuela, which match closely with the challenges identified for Venezuela by the IACHR in recent years. The recommendations from a number of States stand out, including: a) engage in a dialogue among all Venezuelans, including the opposition, to resolve Venezuela's political divisions, economic crisis and humanitarian situation; b) invite and accept the visits requested by the UN and the IACHR; c) take measures to reduce the number of homicides, address the level of impunity, and stop the abuses by the security forces; d) strengthen measures to ensure the investigation and sanction of all politically-motivated acts of violence that took place in the country in recent years, "make[ing] a proportional use of force during protests and proceed[ing] to the immediate release of political prisoners;" e) ensure that no one is detained arbitrarily and that all persons who are charged with an offense have access to a fair and impartial trial, while ensuring the independence of the judiciary; f) take the necessary measures to respect the separation of powers and independence; g) remove all restrictions preventing full enjoyment of the right to freedom of expression and association and allow the opposition to express itself, the National Assembly to perform its functions, and the media to be independent, and also allow peaceful protests. The State must submit its response to these recommendations by March 2017.24

A. Situation of citizen security

27. The Commission continues to be concerned at Venezuela's security situation. During 2016, the IACHR has consistently received information on the alarming increase in crime in Venezuela. The country's homicide rate continues to be one of the highest in the region and in the world.25 In February, the Venezuelan Violence Observatory (Observatorio de Venezolano de Violencia, OVV) reported that the homicide rate in 2015 reached 90 homicides per 100,000 residents, and each year the crime rates set new records.26 According to a study by the UN Office on Drugs and Crime (UNODC), the 2014 homicide rate in Venezuela was 19.03 for every 100,000 residents.27 Meanwhile, the Office of the Attorney General of the Republic reported that homicides increased by 47% during the first quarter of 2016 compared to the same period in 201428 (comparative figures are not available for 2015).

28. In May, the Attorney General of the Republic reported that in Venezuela during the first quarter of 2016, 4,969 violent deaths were reported, an increase of 300 deaths compared to the first quarter of 2015, according to official figures.29 At the same time, unofficial figures indicate that the morgue of one city alone (the Bello Monte morgue, in Caracas) handled 2,210 bodies in the first four months of the year (475

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25 InSight Crime, Tools and Data. 2015 Homicide rates in Latin America and the Caribbean. Venezuela has the second highest homicide rate in Latin America after El Salvador (90 per 100,000 residents).
26 Venezuelan Violence Observatory (OVV), 2015 Tasa de homicidios llegó a 90 por cada 100 mil habitantes, February 18, 2016; El Universo, Cifras de la violencia en Venezuela rompen récords cada año que pasa, August 14, 2016.
bodies in January, 449 in February, 401 in March, and 495 and April). During Holy Week alone it handled 119 bodies, or 17 per day. Some media and several deputies of the National Assembly reported that in July, the morgue was fenced off to prevent the entry of media and victims of the violence.

29. For the purposes of comparison, the media have reported that in 2012 there were 21,692 murders, a 12% increase over the previous year; in 2013, that number rose to 24,763; in 2014 it increase to 24,980; and in 2015, Venezuela finished the year as the most violent country in Latin America, with 27,875 murders. Also, in January the organization Security, Justice, and Peace (CCSP-JP) reported that in 2015, Caracas was the city with the highest homicide rate in the world. As indicated previously, lack of access to information on official crime statistics for the country persists, constituting an obstacle to monitoring the situation and implementing policies for addressing it. According to reports, since 2005, the government has banned dissemination of crime statistics for the country, which up until that point had been made public in the weekly Judicial Police bulletin.

30. The Commission has continued monitoring the programs implemented by the State for combating violence. In July 2015, the so-called “Operation to Liberate the People” (OLP) was launched. It has been harshly criticized by civil society organizations, who report that it includes alleged illegal detentions and extrajudicial executions disguised as clashes with the police. It has also been noted that the State agents implementing it include members of the Bolivarian National Guard (GNB).

31. During the hearing on the OLP held by the IACHR in April, Human Rights Watch (HRW) and PROVEA, who requested the hearing, submitted their report Unchecked Power on the operations. They stated that the operation includes surprise, large-scale, and illegal searches by police and soldiers of homes in poor areas. During these sweeps, grave violations of fundamental rights have taken place, and the State agents have not been held accountable for their actions. They indicate that in 24 of these operations, there have been 14,000 arbitrary arrests, resulting in charges for only 100 individuals. They stated that 445 people have died in the OLP operations.

32. The participating organizations indicated they had collected direct testimony from victims stating that at least 20 people had been executed after having been neutralized. They also stated that the sweeps are conducted at night and include theft of belongings, destruction of property, and the burning of homes, and that those arrested are not informed of the charges. They reported that the response from the Office of the Public Prosecutor and the Office of the Ombudsman has not been sufficient. They stated that the

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31 Sumarium, Niegan acceso a diputados de la AN a la morgue de Bello Monte, August 17, 2016; Noticiero Venevisión, Impiden constatar condiciones de la morgue de Bello Monte, August 17, 2016; El Correo del Orinoco, Parcialmente cerrada entrada de la Morgue de Bello Monte, July 26, 2016.
32 El Universal, Cifras de la violencia en Venezuela rompen récords cada año que pasa, August 14, 2016.
33 CCSP-JP, Caracas, Venezuela, la ciudad más violenta del mundo en 2015, January 25, 2016. This ranking does not take cities in war zones into account, nor cities for which it does not have information.
34 El País, La violencia arrecia en Caracas con más de 500 homicidios en julio, August 4, 2016.
36 El Universal, Cifras de la violencia en Venezuela rompen récords cada año que pasa, August 14, 2016; PROVEA, HRW y PROVEA presentaron informe conjunto sobre abusos de OLP, April 4, 2016.
38 HRW and PROVEA, Unchecked Power (2016).
40 El Universal, Cifras de la violencia en Venezuela rompen récords cada año que pasa, August 14, 2016; PROVEA, HRW y PROVEA presentaron informe conjunto sobre abusos de OLP, April 4, 2016.
OLP is a repetition of the illegal actions taken by police that have been identified since 2006 by the National Police Reform Commission, and that they violate the Constitution, which requires that citizen security bodies be civilian.\textsuperscript{41}

33. The State responded that it would look carefully at the report \textit{Unchecked Power} and stated that its housing policy in Venezuela has been emblematic.\textsuperscript{42} It stated that what is at issue is 1% of the homes delivered by the program Gran Misión Vivienda, noting that citizens have been clamoring for the State to take action to return peace and security to these areas, which are controlled by criminals.\textsuperscript{43} In May, President Maduro stated: "we are here to stay with the new phase of the OLP,"\textsuperscript{44} announcing that its new phase would correct the problems, errors, and weaknesses of the first phase. He stated that the central purpose of the new phase was to "eradicate cells whose political objective was to destabilize the country of the Venezuelans."\textsuperscript{45}

34. As an example, it was reported that witnesses stated that on June 25, "colectivos" traveling on motorcycles and trucks comprising more than 100 armed men and women wearing dark shirts and military style trousers came to Ciudad Caribia and announced the following: the organization of the Local Food and Production Committees (\textit{Comités Locales de Alimentación y Producción}, CLAP); vengeance for the violent death of a member of the United Socialist Party of Venezuela (PSUV); and an end to the construction unions. The next day, the GNB arrested people with connections to the construction union. On June 30, armed groups of masked man arrived in the early morning hours riding GNB motorcycles and driving National Bolivarian Intelligence Service (\textit{Servicio Bolivariano de Inteligencia Nacional}, SEBIN) trucks, saying they were conducting an OLP. They surrounded the place and conducted abusive illegal searches and threatened extrajudicial executions.\textsuperscript{46} This operation resulted in 6 dead and 10 arrested. Some media outlets reported that during the operation, members of the gang known as "Los Sindicalistas" (Union Members) were killed,\textsuperscript{47} while others reported that one of the dead was Johan Perez, a Union Member of the Bolivarian Workers Union and construction contractor.\textsuperscript{48}

35. In June, PROVEA reported that during the first five months of the operation, only 1,600 detainees were brought before the courts, meaning that more than 15,000 people were innocent of the crimes of which they were accused.\textsuperscript{49}

36. The Commission notes that in July, the Attorney General of the Republic expressed concern regarding the OLPs, stating that she had received a number of complaints, especially of human rights violations. She indicated that there was a high rate of OLP participants belonging to the GNB being criminally processed in response to complaints over destruction of homes, theft, and misconduct. For their part, HRW and PROVEA indicated that in its report to the National Assembly, the Attorney General presented a list of 245 deaths, of which only three were State agents. They thus conclude that these death were not from clashes, as the State argues, but rather from extrajudicial executions.\textsuperscript{50}

\textsuperscript{41} IACHR, \textit{Hearing on human rights and the "Operation to Liberate the People" in Venezuela}, April 4, 2016.

\textsuperscript{42} IACHR, \textit{Hearing on human rights and the "Operation to Liberate the People" in Venezuela}, April 4, 2016.

\textsuperscript{43} IACHR, \textit{Hearing on human rights and the "Operation to Liberate the People" in Venezuela}, April 4, 2016.

\textsuperscript{44} VTV, \textit{Nueva fase de las Operaciones de Liberación del Pueblo (OLP) para continuar protegiendo a los venezolanos}, May 30, 2016.

\textsuperscript{45} VTV, \textit{Nueva fase de las Operaciones de Liberación del Pueblo (OLP) para continuar protegiendo a los venezolanos}, May 30, 2016.

\textsuperscript{46} Runrunes, \textit{Colectivos comandan las OLP y ejecutan a presuntos delincuentes para tomar control de los territorios}, June 17, 2016.

\textsuperscript{47} Analítica, \textit{OLP en Ciudad Caribia dejó 6 muertos y 10 detenidos}, July 1, 2016; Sumarium, \textit{OLP en Ciudad Caribia dejó 10 detenidos y 6 fallecidos}, June 30, 2016.


\textsuperscript{49} Venezuelanalysis, \textit{Las OLP violan DDHH en intento de frenar los crímenes en Venezuela}, July 17, 2016.

37. Prior to the launch of this operation, in August 2015, the IACHR had requested information from the State under the authority of Article 18 of its Statute.\textsuperscript{51} In a response received in April 2016, the State indicated that during execution of the OLPs, 292 people had died, allegedly due to the actions of officials assigned to various State investigative bodies: specifically, 247 died in 2015 and 45 in 2016. Among the dead were 12 adolescents. The State also reported that 211 criminal investigations had been launched with the purpose of clarifying the circumstances of these deaths, close the file on the cases where appropriate, and bring charges where necessary.\textsuperscript{52}

38. It was also reported that during an OLP operation in August on the border with Colombia in which three FANB officers and a civilian were shot, Colombian citizen Érica Moncada was arrested and accused of being "a collaborator in the attack on the guards." Her lawyer states that her main "crime" was being the wife of Carlos Andrés Arando, who was accused by an anonymous "cooperating patriot" of being the perpetrator in the attack on the authorities. It was reported that since then, she had been held without a court order and isolated from her family and attorneys, and was waiting to be tried before a military court. According to her attorney, Érika Moncada had been suffocated with plastic bags to obtain "confessions," raped and tortured with a beating that broke open a breast implant, causing unbearable pain; and electrocuted on her breasts.\textsuperscript{53}

39. Also, since October, the disappearances of 20 young people have been reported to the Public Ministry and the Office of the Ombudsman. The young people were allegedly arrested by Army officials in the municipality of Acevedo in the state of Miranda during an OPL on October 15. Eight of them were released after having been tortured and after signing documents against their will and without having read them.\textsuperscript{54} It was later learned that mass graves were discovered in two areas of Barlovento: in the La Maturetera sector of the Brion municipality and in the Aragüita sector, in Acevedo. The bodies of 10 of the detainees were found in a mass grave in the former and the bodies of the other two were found in a shared grave in the latter.\textsuperscript{55} Regarding this, the Public Ministry reported that 11 Army officials had been charged with the death of the 12 people whose bodies were found.\textsuperscript{56} In its comments on the draft of this chapter, the State said that based on these events, a total of 18 soldiers of the National Bolivarian Army were deprived of liberty, and in a statement issued by the Ministry of the People’s Defense Authority, the FANB rejected the conduct of the soldiers allegedly involved in the aforementioned incidents and publicized the decision of the President of the Republic to demote and discharge the aforementioned soldiers.\textsuperscript{57}

40. In November, nine men were allegedly shot in the head and killed in the El Porvenir sector of Cariaco, Sucre state.\textsuperscript{58} Regarding this, the authorities reported that five GNB officers were deprived of

\textsuperscript{51} IACHR, request for information from the State, August 2015; IACHR, Annual Report 2015, Chapter IV. B Venezuela, para. 51.
\textsuperscript{54} Actualidad, Cronología. Los muertos de Barlovento o cómo una OLP terminó en masacre, December 2, 2016.
\textsuperscript{56} COFAVIC, Comunicado: medidas de seguridad basadas en violaciones de derechos humanos, miedo y deshumanización profundizan la exclusión social y atentan contra la democracia en Venezuela, November 29, 2016, El Nuevo Herald, Cadáveres de 12 detenidos en operativos policiales reviven polémica en Venezuela, November 28, 2016.
\textsuperscript{57} Ministry of the People’s Defense Authority, press release of the FANB on the Barlovento incidents, November 26, 2016 in: Últimas Notícias, FANB repulsa desaparición forzada de varias personas en Barlovento, November 26, 2016; Bolivarian Republic of Venezuela, Comments on the draft of Chapter IV B, IACHR Annual Report, Venezuela, received on January 30, 2017, para. 40; Alba ciudad 96.3 FM, Presidente Maduro ordenó expulsar de la FANB a militares implicados en masacre en Barlovento, November 28, 2016.
\textsuperscript{58} COFAVIC, Comunicado: medidas de seguridad basadas en violaciones de derechos humanos, miedo y deshumanización profundizan la exclusión social y atentan contra la democracia en Venezuela, November 29, 2016, El Nuevo Herald, Cadáveres de 12 detenidos en operativos policiales reviven polémica en Venezuela, November 28, 2016.
liberty for allegedly committing the crime of aggravated intentional homicide with malice, conspiracy, improper use of a service weapon, and aggravated theft.59

41. Regarding this, the IACHR recalls that the use of force must be exceptional and proportionally limited by the authorities. Force may only be used when all other means of control have been tried and failed. Interpretation of this must be restrictive, and the use of force must be minimized under all circumstances to no more than absolutely necessary. 60

42. On another matter, since the Executive Branch issued Decree 2,323 declaring a state of emergency and an economic emergency, the IACHR has issued statements on, among other issues, the authorities granted to the Bolivarian National Armed Forces (Fuerza Armada Nacional Bolivariana, FANB) for citizen control, including the “correct distribution and sale of food and essential goods,” the protection of wooded areas, and oversight of the CLAPs.61 It reiterated that because the armed forces was not properly trained to do citizen security work, it was the responsibility of civilian police, duly trained and respectful of human rights, to guarantee safety and maintain public order domestically.62

43. The IACHR reiterates that States have the unavoidable obligation, in line with their international human rights obligations, to adopt all measures necessary to protect the life and personal integrity of everyone under their jurisdiction, and that the existence of high rates of violence and criminality diminishes the rule of law and contributes to eroding the democratic progress made in recent decades in the region. Thus, the implementation of comprehensive citizen security public policies that are respectful of human rights is fundamental for the validity of the democratic system. 63

44. There were a number of reports of forced disappearances in 2016. In October, the World Organization against Torture (OMCT) reported on the forced disappearances of Carlos Gabriel Marchena Silva, Elierer Ramírez, Anthony Vargas, Antonio Miguen Aladejo, Luis Alirio Sanz, Dennys Acevedo, Oscar Rodríguez, Yorman Mejías, Freddy Hernández, Kendri González, Víctor Manuel Martínez, Susano Farfán, and Jairo Rivas in the municipality of Acevedo, Miranda state, and urged the authorities to locate them. It indicated that the detentions were made during an OLP operation between October 7 and 15 that included the participation of at least 18 soldiers. It expressed concern that the alleged victims may have been mistreated or victims of extrajudicial execution because as of November 4, their whereabouts and physical status were not known despite the fact that complaints regarding the incident were filed with the Office of the Public Prosecutor and the Office of the Ombudsman.64

45. Also, the Commission requested information from the State under the authority of Article 18 of its Statute on acts of violence that took place in the town of Tumeremo on February 4, 2016. Allegedly, 28 minors who worked informally in the municipality of Sifonte, Bolivar state, were disappeared.65 The media reported that a gang led by Henry Norberto Bonalde, alias “El Topo,” had allegedly massacred them.66 It was


60 IACHR, Annual Report 2015, Chapter IV(B), para. 51.


63 See IACHR, Annual Report 2015, Chapter IV(B), para. 52.

64 OMCT, Case VEN 041116, Forced disappearance / Fear for physical integrity / Fear of impunity, November 4, 2016.

65 IACHR, Request for information from the State, May 21, 2016.

also reported that the minors had been dismembered and that witnesses stated that the attackers had included members of the SEBIN and the Criminal and Forensic Investigations Agency.\(^{67}\)

46. In its response, the State reported that 17 bodies were found and identified and 16 of them were turned over to their families. They all had fractured skulls from bullet wounds.\(^{68}\) It indicated that there were 17 victims, not 28, and that none of them had been dismembered, as reported. The State reported that officials with the Office of Social Management of the Office of the Public Prosecutor provided comprehensive assistance.\(^{69}\) The State did not report the names of the individuals identified and provided no information on the whereabouts of the other individuals alleged to have been disappeared.

47. The Santa María Institute for Criminal and Forensic Sciences reported that kidnapping increase by 170% in Venezuela in 2016. The finding was based on a report on citizen perceptions and considered “an indication of the State’s inability to provide safety at a time in which the economic and political crisis continue to hurt the nation.”\(^{70}\) It stated that kidnappings had quintupled during the first five months of the year,\(^{71}\) basing its statements on anecdotal evidence and perceptions, as no official data was available. It also indicates that kidnappings are significantly underreported, estimating that only 8% of cases are reported to the police.

48. Also, the IACHR has issued statements on the proliferation of speculators—known as “bachaqueros”—acts of corruption, clashes between private parties, looting of stores and shopping centers, and violence during demonstrations and acts of social protest, all of which pose a grave risk to citizen security.\(^{72}\) Additionally, in response to increasing reports of and information on people taking justice into their own hands, in May the Commission asked the State under the authority of Article 18 of its Statute about the concerning increase in the number of lynchings reported in different parts of Venezuela in the context of the insecurity and violence facing the country.\(^{73}\) According to reports from the Attorney General, between January and March, 74 lynchings took place resulting in 37 deaths and another 37 people injured, most of them young people and adolescents.\(^{74}\) The Commission inquired into the figures on lynchings for 2016 and sought information on the circumstances, the investigations conducted, and the implementation of actions to prevent repetition.\(^{75}\) The State did not submit a response.

49. Also, the Commission highlights that on November 3, the National Office for Comprehensive Care for Victims of Violence was created. Its duties include drafting and approving institutional policies for providing comprehensive care to victims of violence.\(^{76}\)

50. The Commission reiterates that States must adopt measures not only to protect their citizens from human rights violations committed by State agents but also, when it is aware of or should be aware of acts of violence between private parties, it has the obligation to take reasonable measures to

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\(^{67}\) FPV, Report on cases of murders and disappearances in Tumeremo (Bolívar state, Venezuela) FPV s/f; Tal Cual, \textit{Amnistía Internacional activa acciones sobre caso de mineros de Tumeremo}, March 11, 2016.


\(^{73}\) IACHR, Request for information from the State, May 23, 2016.


\(^{75}\) IACHR, Request for information from the State, May 21, 2016.

prevent and punish these acts. The Commission has also pointed out States’ obligations regarding the actions of non-State actors involved in organized crime, corruption, drug trafficking, and other activities.

51. The Commission has made a series of recommendations to Venezuela for addressing this situation of insecurity and violence, invoking compliance with its obligations to respect and guarantee human rights and urging it to evaluate its citizen security policies from that perspective. It has also indicated that the lynchings are both a justice problem and a citizen security problem, and that it is the State’s responsibility to take the measures necessary for State bodies to address it and resolve it in keeping with international human rights standards.

52. Based on this, the IACHR reiterates that the State’s actions on this matter are still insufficient. The Commission remains concerned at the reports of violence committed by State agents in the context of high crime rates and Venezuela’s structural situation of impunity. The Commission also reiterates that certain actions taken by the State to address this situation—such as the OLP operations—represent significant challenges from the perspective of the human rights the State must guarantee as it implements citizen security policies.

B. Rule of law and democracy in Venezuela

53. During 2016, the Commission has observed a significant deterioration in Venezuela’s institutionality; the separation, independence, and balance of state powers; respect for political rights; and democratic institutions, as described in this section.

1. State of emergency and economic emergency

54. First, the Commission observes that the State began the year by declaring a nationwide state of emergency and economic emergency through executive decrees 2,184 and 2,323 respectively. Both decrees were issued in a context of protests and increasing violence, partly the result of progressive and worsening shortages of food and medicine, infrastructure deterioration, and polarization and political conflict. These executive decrees were also issued in response to the declaration of a humanitarian emergency by the National Assembly in January, which was rejected by the Executive Branch. The states of emergency and of economic emergency have been extended throughout the year. Despite these extensions,
the emergency situations these decrees were issued to address remain, as this chapter will show, especially in the section on ESCR.

55. Very early on in its history, the Commission recognized the importance of maintaining the rule of law and constitutional law when invoking states of emergency. In 1968, the Commission established a fundamental requirement: a state of emergency can only be invoked to preserve democracy. Suspension of constitutional guarantees and martial law are only compatible with representative democracy if they do not restrict the validity of the rule of law or constitutional law, nor alter the authorities of the branches of government or the functioning of checks and balances.87

56. As indicated previously (see supra III.A), the decree gives the Executive Branch discretionary powers using broad and ambiguous language, gives the FANB policing powers, and allows financing of civil society organizations to be blocked. The IACHR expressed concern, indicating that the adoption of these measures is exceptional and must reasonably match the needs of the situation in question without going beyond what is strictly necessary, thereby avoiding extension over time, disproportionality, or diversion or abuses of power, arbitrary use of which affects democracy and limits freedom of expression, equal protection, and freedom of association as established in the American Declaration.88 The Commission was also concerned that this decree could compromise respect for the rule of law and separation of State powers. The IACHR observes that this decree granted the Executive Branch discretionary powers and used broad and ambiguous language to establish concepts such as “destabilizing actions that threaten security and national sovereignty” to make it possible to adopt public security measures and “special plans.”89

2. Administration of justice and judicial independence

57. Continuing with the monitoring the Commission performs of access to justice and the fragile status of judicial independence, it has observed in the past that a large number of judges in Venezuela have provisional appointments and can be removed without a disciplinary proceeding, a situation that persisted in 2016. In this regard, it should be noted that the Constitutional Chamber of the Supreme Tribunal of Justice (TSJ)90 ratified its authority to remove temporary judges, stating that the judicial disciplinary jurisdiction does not have authority to process provisional judges accused of any irregularities. PROVEA stated that this means that fewer than 700 of the country’s 2000 judges have a right to trials with due process guarantees because they are permanent, while the remaining 66%, because they are temporary, can be removed by the Judicial Committee at any moment and without any prior procedure.91 It indicated that according to the TSJ, in 2015, the number of floating judges increased to 279; 54 courts were established throughout the country; and 1576 administrative judges were appointed, along with 555 civil judges and 292 criminal judges.92

58. The Venezuelan Justice Observatory (Observatorio Venezolano de la Justicia, OVJ) conducted an investigation into management of the judiciary. The first thing it discovered was opacity in this area, as

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data is scarce and unclear. It found that from 2001 to 2004, the TSJ handed down a total of 10,500 decisions, while between 2005 and 2015, it handed down 7,400, a decline in efficiency of more than 30%. It also found that almost two thirds of all judges (67.35%) are not permanent—that is, they have not been appointed through the public process required by the Constitution. It found that the Judicial Branch does not fulfill its obligation of providing an account of its performance and reporting on its budget, and it stopped providing statistics on the courts five years ago. It also found that the information on “case files resolved” mixes together all types of decisions (the majority being to simply admit cases) and does not specify which matters were effectively concluded and which are pending, nor the number of years by which they are delayed. Finally, it found that on average, less than 25% of court rulings are final.

59. This year, in a communication to the UN Human Rights Council’s Special Rapporteur on the Independence of Judges and Lawyers, the Instituto Iberoamericano de Derecho Procesal expressed concern at “the serious deterioration of the independence of the judiciary” in Venezuela and its consequences for the exercise of fundamental rights in a situation in which democracy is notably weekend. It urgently requested that actions be taken to mitigate and eliminate these serious human rights violations as soon as possible.

60. Using the same methodology as in previous years and according to the information made available on the TSJ’s website and the regular publications of the Executive Directorate of the Magistracy, the Commission observes that as of September 2016, the Judicial Committee of the TSJ continues to name and designate judges in courts throughout the country, almost all of which are provisional or appointed temporarily. In most cases, the appointments continue to be for reasons such as transfers, replacements, and/or creation of new courts, or to provide replacements for other court officials.

61. Specifically, based on the information available for the months of January through September 2016, the TSJ has appointed 49 judges throughout the country, of which seven are permanent. Moreover, during the first nine months of 2016, 18 resolutions were issued to nullify appointments of judges in Venezuela. Of the total appointments, 23 were temporary judges, and 19 were provisional, including appointments for creating a new court, to replace a judge who resigned, and replacements.

62. Regarding this, in its comments on the draft of this chapter, the State indicated that on August 23, 2016, the TSJ published its “Rules for Evaluation and the Competitive Selection Processes for Hiring and Promotion within the Judiciary.” Its objective is to regulate hiring, promotion, and career permanency within the judiciary through public competitive selection processes and performance evaluations, in observance of the provisions of Article 255 of the Constitution of the Bolivarian Republic of Venezuela. It also reported on the so-called "competitive selection process for admitting the nonpermanent judges currently serving to career posts,” carried out on December 6, by the Judicial Committee of the TSJ. Its objective was to regularize the permanent appointment of judges in the judicial circuits of the Caracas Metropolitan Area, Miranda and Vargas states, with competence in the areas of
adversarial administrative and tax law, ordinary criminal law, violence against women, criminal responsibility of adolescents, protection of children and adolescents, labor law, and agrarian law. 102

63. The Commission has also continued monitoring the temporary status of a high number of prosecutors in public prosecutor offices at the national, state, and municipal levels, as well as of prosecutors before the Plenary Chamber and the cassation, constitutional, political administrative, and electoral chambers of the TSJ, and before the adversarial administrative courts. According to the information available on the official website of the Office of the Public Prosecutor, in 2016, none of the prosecutors in its various offices with national jurisdiction are permanent. Rather, of the 208 prosecutors, 84 are provisional and 124 are auxiliary.104

64. Regarding this, the State reported that from October 17, 2011, to November 2016, five permanent positions with workplace stability have been opened for applications. It noted that more than 900 attorneys have entered the program for beginning a career as a public prosecutor and for specializing in the exercise of prosecutorial duties. According to the press release issued by the Public Ministry, during the ceremony for the Fifth Competitive Application Process for Entering the Prosecutor Career, the Attorney General of the Republic urged Public Ministry directors to motivate prosecutors to participate in the hiring process is to be opened in the future for the National Prosecutor School, while highlighting that it was important for all the institution’s officials to always respect the Constitution. 105

65. The State also reported that the National Human Rights Plan includes the following strategic actions: (i) continue to conduct public hiring processes for career judges and the Public Ministry; (ii) speed up the process to transform the system of justice to guarantee that the whole population has access under conditions of real equality, thereby ensuring timely protection of their rights and guarantees, especially for groups traditionally excluded from the system; and (iii) strengthen the mechanisms for coordinating the actors of the justice system, set forth in the Justice System Act. 107

66. In September, the State presented its progress on guaranteeing access to justice, the right to defense, and general protection of human rights of the Venezuelan people to the plenary of countries represented at the UN Human Right Council. It indicated that in Venezuela, “more favorable conditions are in place for guaranteeing the full and effective exercise of the human right to organized, direct, and protagonist participation, with personalized support for all citizens who require it, free of charge.” 108

67. For its part, the Fundación Pro Bono Venezuela reported to the IACHR that access to justice in the country is precarious. It expressed concern at the lack of access to an adequate, timely, and just legal proceeding for defending human rights. Among the many factors that block access to this, it identified: a) the population’s scarce financial resources, making it difficult to access an attorney; b) lack of trust in the
judiciary due to the slim chance of receiving timely and adequate service; c) the lack of preparation and equipment in public institutions; d) the uncertainty among public servants given the number of provisional and temporary judges that can be removed from their positions for simple irregularities, producing a lack of judicial independence and progressiveness when judicial decisions are made; e) procedural delay; and f) the TSJ’s uncertain budget. It also highlighted the lack of information and training of public servants on the State’s international obligations, as well as a shortage of public defenders, prosecutors, judges, and officials.

68. It should be noted that subsequent to the issuing of decree 2,323 declaring a state of emergency and economic emergency, 125 Venezuelan and international human rights organizations gave statements on the need for the international community to press for this decree to be revoked. They stated that:

Since the government’s political takeover of the Supreme Court in 2004, the judiciary has ceased to function as an independent branch of government, and has routinely validated the government’s policies and practices that fail to meet international human rights standards. The National Assembly, which was controlled by government supporters for most of the past decade, repeatedly enacted “enabling laws” granting the president broad powers to legislate. It repacked the Supreme Court, most recently in December 2015, to ensure that a loyal court remained in place.

69. Regarding this, the IACHR recalls once more that the bodies of this system have established that the provisional judges in Venezuela exercise exactly the same functions as permanent judges—that is, they administer justice—for which reason the State must provide the guarantees emanating from the principle of judicial independence to provisional judges the same as to permanent judges. The Commission reiterates that one of the essential elements of representative democracy is the independence of the branches of government.

3. Separation and balance of powers

70. Since the legislative elections took place in 2015, giving the opposition a majority in the National Assembly—in the form of a coalition known as the Democratic Unity Roundtable (Mesa de Unidad Democrática, MUD)—the opposition majority has been in open confrontation with the executive branch, the judiciary, and the electoral branch, which are all staffed with senior pro-government officials. In this context, the National Assembly has approved a series of laws that have been overturned by the Constitutional Chamber of the TSJ under President Maduro’s requirement that it review the constitutionality of these laws before they go into effect. It has also been observed that the TSJ has issued judgments with the initial effect of limiting the powers of the National Assembly. Most recently, it declared the actions of the National Assembly manifestly unconstitutional and “absolutely null and lacking all validity and legal effect,” including

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109 Request for hearing from the Fundación Pro Bono Venezuela (ProVene) on the fragile right to access to justice in Venezuela, October 5, 2016. Attached to the UN Human Rights Council’s Universal periodic review on Venezuela on the access to justice in Venezuela.

110 ProVene, Report for the UN Human Rights Council’s Universal periodic review on Venezuela on the access to justice in Venezuela, October 5, 2016.

111 HRW, Venezuela Should Revoke Emergency Decree, June 6, 2016.


113 Article 3 of the Inter-American Democratic Charter.

114 TSJ, Constitutional Chamber, Judgment No. 9, March 1, 2016.
the laws it passed, as long as it disregards the legal authority of the Electoral Chamber; this violates the principle of the separation of powers that is necessary for democratic society, as described hereinafter.

71. For its part, the State believes that the members of the different branches of government are independent and autonomous, as they are appointed by the National Parliament through constitutionally-established procedures.

72. Toward the beginning of the year, in February, after the National Assembly's initial passage of a law to strengthen national production, President Maduro called on Venezuelans to "mobilize and rebel" against the bill, saying that it "seeks to privatize [...] all public, socialist, communal, or mixed entities in which the working class has a stake."

73. In March, the TSJ issued a decision to “place democratic limits on the National Assembly in response to unconstitutional actions.” The decision limited parliamentary oversight exclusively to the executive branch, eliminating the possibility that the National Assembly could oversee the acts of the judicial, electoral, and citizen branches. For its part, the National Assembly rejected this judgment as nonbinding and asked the OAS to invoke the Inter-American Democratic Charter, arguing that the judgment alters the country’s constitutional order.

74. The TSJ also issued a series of decisions upholding the actions of the Electoral Chamber and the emergency decrees issued by the Executive Branch. Of the 112 seats obtained by the opposition in the national assembly in the December 6, 2015 election, the Electoral Chamber ordered three indigenous opposition deputies and one pro-government deputy from Amazonas state removed, with which the opposition lost its super majority in the National Assembly. The Constitutional Chamber issued a judgment ratifying this decision. Regarding this, the IACHR received information from deputies of the National Assembly indicating that the voters of the state of Amazonas still are not represented in the National Assembly because the situation has not yet been resolved. In July, the IACHR expressed concern at the lack of representation of indigenous peoples in the National Assembly.

75. Also, the TSJ found economic emergency decree 2,184 and decree 2,323 extending the state of emergency and economic emergency for 60 days issued by the President of the Republic and rejected by the National Assembly to be constitutional and valid “due to extraordinary social, economic, political, natural, and ecological circumstances gravely affecting the national economy.”

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115 TSJ, Judgment of September 2, 2016.
116 National Human Rights Plan, strategic line 3, programmatic action 9; strategic line 3, programmatic action 1; and strategic line 2, programmatic action 2. Bolivarian Republic of Venezuela, Comments on the draft of Chapter IV B, IACHR Annual Report, Venezuela, received on January 30, 2017, para. 81.
117 Télam, Maduro llamó a rebelarse contra la ley para la producción nacional, March 2, 2016; El Mundo, Maduro pide una "rebelión" de venezolanos contra la ley de producción nacional, March 2, 2016.
118 TSJ, Constitutional Chamber, judgment No. 9, March 1, 2016.
121 Noticias 24, TSJ declara procedente desacato de la AN ante juramentación de los diputados de Amazonas, January 11, 2016.
123 TSJ, Decree of economic emergency remains valid, February 11, 2016.
124 TSJ, TSJ finds decree declaring state of emergency and economic emergency to be constitutional, May 19, 2016.
125 Noticia al Día, Con 107 votos AN rechaza decreto de emergencia económica emitido por Maduro, January 22, 2016, and El Capitolio TV, ANTV, El parlamento de todos, 17 de mayo de 2016, May 23, 2016.
76. As indicated above, the IACHR expressed concern at this last decree because it could harm respect for the rule of law and separation of State powers. It also observed that this decree allows the suspension of financing agreements between domestic natural or legal persons and foreign entities or bodies “when they are presumed to be used for political purposes or to destabilize the Republic” (see infra IV A). The IACHR found that this decree could severely restrict the freedom to express political ideas, public debate, the right of the population to receive information from a variety of sources, and the exercise of the right to protest, all of which affects political pluralism, which is a fundamental principle for all democratic societies.

77. The TSJ also ruled inadmissible a constitutional challenge to the appointment of five magistrates. The challenge was filed by the previous national Assembly during a special session in December 2015 and argued the appointment was unconstitutional and illegal. The TSJ also ruled the Amendment to the Law on the Central Bank of Venezuela unconstitutional because it “attempts to attribute authorities to the National Parliament to appoint, ratify, and remove the President and other directors of the BCV.” Through partial amendment of this law, the National Assembly reestablished its comptroller authorities over the Central Bank and authority to appoint the BCV’s Board of Directors. It also required the Bank to publish economic indicators.

78. Likewise, the TSJ declared the Amnesty and Reconciliation Act adopted in March by the National Assembly unconstitutional. The act granted amnesty to the opposition politicians deprived of liberty. For its part, the Executive Branch said this law “violates all international case law on amnesty,” was retroactive from 1999, and even covered possible future crimes.

79. In a hearing before the IACHR, civil society replied that the bill specifically covered political crimes. It noted that there were 82 political prisoners, and that 3,785 individuals had been detained for political reasons since 2014. It highlighted that since 2014, the UN Working Group on Arbitrary Detention had reached a decision on 327 of these cases.

80. In addition, the TSJ also declared the National Assembly’s Rules of Procedure and Parliamentary Rules unconstitutional, along with, for economic reasons, the Voucher Act to provide food

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129 The National Assembly approved a report on July 14, 2016, recommending canceling the judicial appointments made by the previous National Assembly in December 2015 based on the argument that they were the result of a procedure other than the one that should have been followed. ProDavicni, Asamblea Nacional dejo sin efecto los nombramientos de magistrados en el TSJ: ¿Y ahora?, por José I. Hernández, July 14, 2016; see TSJ, Judgment of March 29, 2016.

130 TSJ, Amendment of central bank law in Venezuela declared unconstitutional, March 31, 2016.

131 See EFE, El Supremo venezolano declara inconstitucional la reforma de Ley de Banco Central, April 1, 2016.

132 TSJ, TSJ declares national amnesty and reconciliation act unconstitutional, April 11, 2016.

133 As of October 26, 2016, the Foro Penal Venezolano (FPV) reported there were 110 political prisoners. FPV, Summary of political prisoners. See Draft Amnesty and Reconciliation Act 2016.

134 EFE, Venezuela pide a la ONU que investigue la constitucionalidad de la ley de amnistía, March 2, 2016, and La Jornada, Venezuela pide a ONU estudiar ley de amnistía para presos políticos, March 2, 2016.


137 El Informador, TSJ declara nulidad a reforma parcial del Reglamento de Interior y Debate de la AN, April 22, 2016, and Noticias 24, TSJ admitió solicitud de los diputados opositores sobre la Ley de Interior y de Debate de la AN, April 22, 2016.
and medicine to pensioners and retirees and passed by the National Assembly on March 30.\textsuperscript{138} It should also be noted that the Second Adversarial Administrative Court banned unauthorized demonstrations in front of the National Electoral Council (CNE) and ordered the GNB to shut down violent demonstrations.\textsuperscript{139}

81. It should also be highlighted that in the OAS, in response to complaints filed by the National Assembly and its requests for application of the Inter-American Democratic Charter to the situation of Venezuela,\textsuperscript{140} on May 30, Secretary General Luis Almagro presented a brief calling a meeting of the Permanent Counsel in accordance with Article 20 of the aforementioned Charter to push for restoration of democratic institutionality in Venezuela.\textsuperscript{141} The OAS Permanent Council issued a resolution expressing its "support for the initiative of former presidents José Luis Rodríguez Zapatero of Spain, Leonel Fernández of the Dominican Republic, and Martín Torrijos of Panama to reopen effective dialogue between the government and the opposition," and for the various dialogue initiatives on respect for human rights.\textsuperscript{142}

82. In September, the TSJ issued a preliminary constitutional oversight judgment on the Organic Law issued that year reserving gold exploration and exploitation activities for the State. The judgment established that:

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\text{[...]} \text{the acts issued by the National Assembly are manifestly unconstitutional and absolutely null and lacking all validity and legal effect, including the laws it passes, as long as it disregards the legal authority of the Electoral Chamber.} \textsuperscript{143}
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83. The Court further held that the National Assembly was in contempt on having sworn in the three deputies from Amazonas state that the Electoral Chamber of the TSJ had ordered suspended while suits filed to challenge their election were investigated.\textsuperscript{144} In view of this, the IACHR expressed concern at this decision through which the TSJ declared all decisions of the National Assembly null and lacking legal validity, thereby violating the principle of separation of powers that is necessary for democratic society.

84. Since the issuing of that judgment, a number of acts or authorities of the National Assembly have subsequently been annulled, limited, or obstructed by other judgments issued by the TSJ. For example, in response to the National Assembly’s rejection of presidential decree No. 2,452 extending the state of emergency, the TSJ ruled ex officio and without having received any petition because it was "newsworthy," arguing that all the actions of the National Assembly, including the agreement, would be null, nonexistent, and without affect as long as the "illegal situation" of contempt continued, including those it learns of due to their "newsworthiness."\textsuperscript{146}

85. Later, at the request of President Maduro, the TSJ ruled to extend the declaration of unconstitutionality of the acts coming from the National Assembly\textsuperscript{147} as long as it disregards the legal authority of the Electoral Chamber. It also ruled in that judgment that the President must submit the fiscal

\textsuperscript{138} VTV, \textit{Tribunal Supremo declara constitucionalidad de Ley de Bono para la Alimentación y Medicinas}, May 1, 2016, and ProDavinci, \textit{La Ley de Bonos es constitucional e inaplicable según Sala Constitucional}, May 2, 2016.

\textsuperscript{139} Panorama, \textit{Esta es la sentencia del TSJ que prohíbe las manifestaciones frente a sedes del CNE}, May 23, 2016, and Informe 21, \textit{Publican sentencia del TSJ que prohíbe manifestaciones cerca del CNE}, May 23, 2016.

\textsuperscript{140} National Assembly, \textit{The basis for the OAS invoking the Inter-American Charter for Venezuela’s situation}, May 16, 2016.


\textsuperscript{142} OAS, Permanent Council, \textit{Resol. CP-DEC.63 (2076/16)}, June 1, 2016.

\textsuperscript{143} TSJ, \textit{Judgment of September 2, 2016}.

\textsuperscript{144} TSJ, \textit{Judgment of September 2, 2016}.


\textsuperscript{146} TSJ, Constitutional Chamber, \textit{Judgment No. 810}, September 21, 2016.

\textsuperscript{147} TSJ, Constitutional Chamber, \textit{Judgment No. 814}, October 11, 2016.
year 2017 national budget before the TSJ by decree with rank and force of law. The TSJ indicated that based on that decision, the National Assembly will not be able to alter the budget items “or obstruct or interfere with the provisions” established in the budgetary decree.\textsuperscript{148} Prior to this, it was the National Assembly that was in charge of approving the budget proposed by the President of the Republic.\textsuperscript{It also held that the President was constitutionally relieved of any obligation to submit to any attempt at political oversight the legislative body might exercise as long as the majority of deputies continued to disregard the legal authority of the Electoral Chamber.}\textsuperscript{149}

86. The result of the conflict described above is damage to the effective separation and balance of State powers that is necessary in a democratic society. In this regard, the Commission recalls that Article 3 of the Inter-American Democratic Charter holds that “Essential elements of representative democracy include, inter alia, respect for human rights and fundamental freedoms, access to and the exercise of power in accordance with the rule of law; [...] and the separation of powers and independence of the branches of government. In this regard, the Inter-American Court has highlighted that the separation of powers is closely related not only to the consolidation of democracy but also with the preservation of the liberties and human rights of citizens.}\textsuperscript{150}

87. It should be noted that in its comments on the draft of this chapter, the State indicated that in 2016, the National Assembly “has repeatedly acted in contempt for the decisions issued by the highest court of the Republic, thereby violating the Constitution and the country’s current law.” It stated that this contempt has been recognized by the opposition parties in the framework of the national dialogue process, in which it was agreed in the area of politics to move toward overcoming the situation of the National Assembly’s contempt as declared by the TSJ.\textsuperscript{151}

4. Political rights and right to participate in public life

88. The Commission notes that the political opposition continues to be criminalized, deprived of liberty, or subject to retaliation for their political activities. This year, the situation has escalated to include physical attacks and even the murder of political activists. According to publicly available information, in May 2016 in the state of Lara, Germán Mavare, a political leader with opposition party Un Nuevo Tiempo, who had been threatened, was killed with a gunshot to the head while he was handing out invitations to attend a political event.\textsuperscript{152} The IACHR condemned his murder and called on the State to conduct an investigation—with respect for due process—to clear up the facts, bring those responsible to trial, and punish them.\textsuperscript{153} The Commission also learned of the murder of La Causa R activist Diomar Carrasquel. He was shot multiple times during an event to promote the activation of the recall referendum in Unare, Bolívar state.\textsuperscript{154}

89. The IACHR also expressed deep concern at reports of attacks and acts of violence against demonstrators during protests.\textsuperscript{155} Since the end of April, marches have taken place in Venezuela to protest deteriorating access to water, food, and healthcare. In this context, in April, the Executive Secretary of the MUD, Jesús Torrealba, reported that he was beaten and had rocks thrown at him while leading a March in

\textsuperscript{148} TSJ, Constitutional Chamber, \textit{judgment No. 814}, October 11, 2016.
\textsuperscript{149} TSJ, Constitutional Chamber, \textit{judgment No. 814}, October 11, 2016.
\textsuperscript{150} Inter-American Court. Case of the Supreme Court of Justice (Quintana Coello \textit{et al.}) v. Ecuador, judgment of August 23, 2013, para. 179.
\textsuperscript{151} Prodavinci, \textit{Lea acá el comunicado Conjunto del Gobierno y la MUD #MonitorProDaVinci}, November 12, 2016, Bolivarian Republic of Venezuela, Comments on the draft of Chapter IV B, IACHR Annual Report, Venezuela, received on January 30, 2017, para. 92.
\textsuperscript{152} Informe 21, \textit{Asesinan en Lara a dirigente de Un Nuevo Tiempo Germán Mavare}, June 5, 2016; El Mundo, \textit{Muere de un disparo en la cabeza un dirigente opositor venezolano}, June 5, 2016.
\textsuperscript{154} NTN 24, \textit{Asesinan de múltiples disparos a joven opositor durante evento politico}, July 13, 2016.
Caracas to protest electricity cuts, and that the National Bolivarian Police had not acted to stop it. According to media reports, the Secretary for Safety and Public Order of the Zulia state government warned that “when we see protests turning political, we will use force against them.” The IACHR emphatically called on the State to take urgent measures to guarantee the rights of assembly and freedom of expression can be exercised in Venezuela without violence or harassment.

90. Regarding political persecution, the media has reported a significant increase in arrests of opposition figures who dissent publicly. For example, according to the information received, the SEBIN arrested political leaders with the party Voluntad Popular and accused them of being the “lead figures in the conspiracy” against the government. In June, GNB troops arrested Gabriel Salomón San Miguel Rodríguez and Francisco Javier Márquez Lara in Apartadero as they headed toward Cojedes-Portuguesa. The detainees, activists with Voluntad Popular, were on their way to participate in the signature validation process for the recall referendum. Reports indicate that the arrests took place without a court order. They were accused of money laundering and incitement, although supposedly were not arrested in flagrante; they were allegedly interrogated without the presence of their attorneys and held in isolation. It was subsequently reported that Gabriel San Miguel was released on August 6.

91. Also, in July, Daniel Ceballos, a leader with Voluntad Popular and beneficiary of precautionary measures issued by the IACHR, was transferred by SEBIN agents from house arrest to a common prison. In August, former student leader Yon Goicoechea, a member of the Voluntad Popular party, and Carlos Melo, leader of the Avanzada Progresista party, were arrested at Voluntad Popular headquarters in Caracas. In September, Delson Guarate, the mayor of the municipality Mario Briceño Iragorry, Aragua state, and a member of Voluntad Popular, was arrested and his home was searched. They are accused of planning “the placement of explosive devices, they had firearms and counterfeit dollars in their possession.” Civil society organizations have claimed that the arrests were illegal and that the

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156 El Nuevo Diario, Secretario de la MUD denuncia agresión de chavistas, April 30, 2016.
159 El Mundo, Las autoridades penitenciarias de Ramo Verde endurecen el régimen carcelario de Leopoldo López, July 9, 2016.
160 EFE, El partido de López, en la mira de las autoridades venezolanas por supuesto golpismo, September 5, 2016.
161 Proiuris, communication to the IACHR “Arbitrary detention of Francisco Márquez and Gabriel San Miguel”, June 21, 2016; VTV, Detenidos dos militantes de Voluntad Popular con Bs. 3 millones para financiar saqueos, June 22, 2016.
163 ProDavinci, Sobre la detención arbitraria de Francisco Márquez y Gabriel San Miguel, José Ignacio Hernández, José Ignacio Hernández G., June 22, 2016.
166 El Nacional, Secretario de Avanzada Progresista; Carlos Melo fue llevado al Sebin para ser investigado, August 30, 2016.
detainees were held incommunicado and mistreated.\textsuperscript{170} The IACHR expressed concern over, among other matters, the wave of arrests of and cases brought against members of opposition parties.\textsuperscript{171}

92. The Commission also received information on a series of incidents of persecution and threats toward David Smolansky, the mayor of the El Hatillo municipality, Miranda State, and a member of the Voluntad Popular party. These included an incident in February when a number of individuals broke into his residence to steal information and leave anti-Semitic messages painted on the walls. Information was also provided on acts of surveillance conducted by public officials and smear campaigns carried out by Diosdado Cabello, former president of the national assembly, against the mayor.\textsuperscript{172}

93. A court order was issued in October banning former presidential candidate Henrique Capriles from leaving the country, along with the members of the MUD: Jesús Torrealba, Ramón José Medina, José Cartaya, Oscar Barreto, Ricardo Sucre, Luis Aparicio, and Arnoldo Gabaldón. According to reports, the crimes of which they are accused were not specified.\textsuperscript{173}

94. The Human Rights Center of the Universidad Católica Andrés Bello (CDH-UCAB) and PROVEA reported to the IACHR that the State has a policy of discrimination based on political motives that mainly affects the employees of public institutions and has a negative impact on civil, political, and social rights. They indicated that in 2016, cases of persecution in the context of the request to activate the recall referendum were documented, including arbitrary detentions, suspension of salaries, dismissals, and exclusion from social programs, all as a means of political retaliation.\textsuperscript{174}

95. Through its precautionary measures mechanism, the Commission has also been monitoring the security situation of people who oppose government policies. In 2016, the Commission issued a series of precautionary measures aimed at protecting the lives and personal integrity of Amel Salame Ajami, Américo De Grazia, and Lester Toledo, who claimed to be at risk of retaliation or harassment in response to their political stances and public criticism. In particular, the Commission continues to monitor the situation of Leopoldo López, leader of opposition party Voluntad Popular, who continues to state that he is subject to violent searches in his cell, has been placed in solitary confinement, and is held under a restrictive detention regime that violates international standards. The Commission has also received information on the continual harassment faced by Lilian Tintori (his wife) and his family when they visit Leopoldo López at the National Military Prisoners Center (CENAPROMIL), also known as “Ramo Verde.” This harassment and restrictions on visits is alleged to include invasive searches, asking family members to take off all their clothes, inappropriate comments from prison officials, degrading searches, and other situations that the family members of Leopoldo López have called arbitrary and violent.

96. In this context, on April 1, 2016, the IACHR decided to broaden the aforementioned precautionary measures to protect the life and personal integrity of Juan Carlos Gutiérrez and Ana Leonor


\textsuperscript{171} Document presented to the IACHR on November 30, 2016. See 2001, \textit{Smolansky denunció que 2 GNB lo persiguieron por órdenes del Ministro González López}.

\textsuperscript{172} El Mundo, \textit{Henrique Capriles denuncia que le han prohibido salir de Venezuela}, October 21, 2016.

\textsuperscript{173} Request for a hearing filed by the Human Rights Center of the Universidad Católica Andrés Bello (CDH-UCAB) and PROVEA on the exercise of political rights, received by the IACHR on October 8, 2016.

\textsuperscript{174} IACHR, \textit{MC 58/16} Kamel Salame Ajami (Venezuela), April 15, 2016.

\textsuperscript{175} IACHR, \textit{MC 359/16} Américo de Grazia (Venezuela), June 21, 2016.

\textsuperscript{176} IACHR, \textit{MC 413/16} Lester Toledo (Venezuela), June 4, 2016.
Acosta, Leopoldo López’s legal counsel. According to the information received, both individuals have allegedly been subject to acts of violence, threats, and harassment as a direct result of their work as Mr. López’s attorneys.

97. In its comments on the draft of this report, the State reported that the conditions under which Leopoldo López is imprisoned meet international standards. He is being held in a space measuring 11.33 m², among other conditions. The State also reported that he was guaranteed visits from his relatives, friends, and attorneys; had access to daily telephone calls; participated in other recreational activities; and was provided with medical care, among other conditions pursuant to applicable standards. The State also indicated that searches of visitors are conducted in accordance with international human rights standards.

98. A complaint was filed with the International Criminal Court alleging systemic torture and cruel, inhuman, and degrading treatment against opposition figures and demonstrators in the country. Along the same lines, HRW has accused the Venezuelan government of “launching a brutal campaign of repression against the opposition and arbitrarily detaining 21 people since May,” following the launch of the recall referendum campaign.

99. Finally, the Commission notes that the Venezuelan Penal Forum (FPV) maintains a list of 110 people that it calls its “political prisoners list.” It also reported that between January 2014 and September 30, 2016, 3,758 politically motivated arrests took place, for reasons including publishing messages on social networks against the government or some public official, participating in a political demonstration or social protest against shortages of food or basic products, insecurity, or the poor functioning of a public service, and other reasons. Of these arrests, 101 people remain deprived of liberty, while 77 were being held with judicial processes pending. It also indicated that 2,055 people were subject to measures restricting their liberty and were facing trials. It further indicated that between January 1 and September 30 of 2016, 2,436 arrests were recorded, “of which 35 political prisoners were kept imprisoned.”

100. In light of this context of harassment, persecution, criminalization, and attacks on opposition politicians, which have escalated to include the death of some, the IACHR recalls that since 2009, it has indicated to Venezuela that consolidation of democracy requires increased effective participation of all social sectors in the political, social, economic, and cultural life of a nation. The effective implementation of the values of pluralism and participation is essential for overcoming the country’s current climate of polarization.
a) Recall referendum

101. The MUD’s request filed with the CNE in March\(^{107}\) to activate the process to recall President Maduro via referendum further exacerbated the social and political conflict in Venezuela. This section provides a description of the process launched for this referendum. As of the date of the presentation of this chapter, after multiple stumbles, the process was postponed indefinitely following an injunction issued by regional criminal courts in six states in Venezuela in the context of criminal charges filed for crimes allegedly involved in the collection of the 1% of signatures necessary to activate the referendum process.\(^{108}\)

102. Following the request filed by the MUD to start the referendum process, in April the National Assembly approved the referendum law to clarify and regulate the process referendums must follow while at the same time activating the referendum against President Maduro.\(^{109}\) Although the Venezuelan Constitution allows for various types of referendums and a number of laws are in place on the matter, the details of the requirements are not clearly spelled out.\(^{110}\) The Constitution establishes that all officials elected by the popular vote can be recalled once they have served half their term.\(^{111}\) The State indicated that President Maduro was elected to complete the constitutional period begun on January 10, 2013, by the deceased President Hugo Chávez Frias, so the halfway point of his six-year term was reached on January 10, 2016.\(^{112}\) This law was also declared unconstitutional by the TSJ.\(^{113}\)

103. In June, the CNE declared 1.3 million of the signatures requesting activation of the referendum to be valid.\(^{114}\) This figure was validated by the President of the CNE on August 1.\(^{115}\) At that time, the opposition was awaiting the CNE’s announcement of the date on which 20% of the signatures had been collected in order to start the recall referendum process.\(^{116}\) In this context, the opposition held

\(^{107}\) See Mundo Oriental, Respuesta del CNE sobre inicio del revocatorio será después de Semana Santa, March 16, 2016.

\(^{108}\) Globovisión, Tribunales penales anularon recolección del 1% de firmas en cinco estados del país, October 20, 2016 and National Electoral Council, Poder Electoral acata medidas cautelares ordenadas por tribunales de la República, October 20, 2016.

\(^{109}\) La Nación, Asamblea Nacional aprueba ley de referendo en Venezuela, March 10, 2016.

\(^{110}\) CNE, Regulations for Recalls 2007; BBC, Venezuela aprueba una ley para activar el referéndum revocatorio de Maduro, April 21, 2016; Venezuelan Constitution, Article 72. “All officials and magistrates elected by popular vote can be recalled.

Once half of an elected official’s term has elapsed, no fewer than 20% of registered voters in the corresponding constituency may request a referendum to recall the official.

When the same or greater number of voters who elected an official vote to recall him or her, as long as the number of voters is equal to or greater than 25% of registered voters, the official will be considered recalled and the office will be immediately filled pursuant to this Constitution and the law.

Recalls for professional organizations will be conducted in accordance with the provisions of the law.

During the term to which an official was elected, no more than one recall referendum may be held.”

\(^{111}\) Art. 200 of Chapter V of Resolution No. 070327-341 National Electoral Council: an official will be considered recalled if the following concurrent conditions are met:

1. If the number of voters participating in the vote is at least twenty-five percent (25%) of the total electorate;

2. If the number of votes in favor of the recall is equal to or greater than the number of voters who elected the official;

3. If the number of votes in favor of the recall is greater than the number of votes voting against the recall, Recall referendum regulations, March 27, 2007; also see BBC, Venezuela aprueba una ley para activar el referéndum revocatorio de Maduro, April 21, 2016.

\(^{112}\) Bolivarian Republic of Venezuela, Comments on the draft of Chapter IV B, IACHR Annual Report, Venezuela, received on January 30, 2017, para. 87.

\(^{113}\) TSJ, Constitutional Chamber, Judgment No. 264, April 11, 2016.

\(^{114}\) El Mundo, El poder electoral venezolano valida 1.3 millones de firmas para el revocatorio, April 11, 2016.

\(^{115}\) See La Jornada, Poder electoral venezolano discutirá el 1 de agosto si activa revocatorio, July 26, 2016.; Efecto Cocuyo, 7 claves sobre lo que dijo Tibisay Lucena del referendo revocatorio, August 10, 2016.

\(^{116}\) La Jornada, Poder electoral venezolano discutirá el 1 de agosto si activa revocatorio, July 26, 2016. To recall President Maduro, at least 7.5 million voters would have to vote yes.
demonstrations calling on the CNE to not delay the initial process of reviewing the signatures in order to schedule the recall referendum.  

104. For its part, the State said that there had been "a massive usurpation or theft of the identities of thousands of Venezuelans committed by those promoting the recall referendum when they processed the request." In this regard, it indicated that according to the CNE’s "Report on the Results of the Digitalization and Fingerprinting of the Rolls Expressing Support," the identities and signatures of 10,995 deceased people, 1,335 politically ineligible people, and 3,003 minors were illegally used and incorporated in the request to activate the presidential recall referendum.

105. Also, it was reported that people supporting the recall referendum faced retaliation. For example, a number of signers were threatened with being fired, or were actually fired. It was also reported that a number of public officials serving in roles in which they can be freely appointed and removed as well as in management were dismissed because they expressed support for the referendum to recall President Maduro. The Ministry of Communication issued a public announcement giving a deadline of 48 hours to dismiss all functionaries whose names were found on a list delivered by the president to the heads of the ministries of food, basic enterprises, and finance and labor, as well as the office of the presidency. Meanwhile, the Ombudsman of Venezuela has questioned the firing of functionaries for signing the recall:

The right to work must always be evaluated based on the efficiency of both employees that may be freely dismissed and employees that may not, and their commitment to the institution, to the country, and to peace. He stated that if a person is not working efficiently, regardless of whether he or she has a political affiliation with the opposition or with the government, "he or she will be subject to evaluation. That being said, the evaluation will have to be well grounded [...] to improve the country’s efficiency and productivity.

106. On August 15, the OAS Member States issued a press release calling on Venezuelan authorities to guarantee the Venezuelan people’s exercise of their constitutional rights, and that it clearly and without delay grant the referendum to recall the president, "thereby contributing to quickly and effectively resolving the country’s current political, social, and economic difficulties.”

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197 Actual, Agreden a opositores venezolanos en una manifestación para exigir el referéndum contra Maduro, April 8, 2016; Rtve, La policía de Venezuela impide la marcha de la oposición en caracas para exigir un referéndum, May 18, 2016; BBC, Autoridades de Venezuela vuelven a dispersar una marcha de la oposición en caracas para exigir revocatorio, June 7, 2016; and SIPSE, Bloquean manifestaciones “anti Maduro” en Venezuela, July 27, 2016. Will regulations establish that the referendum must be carried out within 90 days of the CNE calling for it: Article 30 of Resolution 070906-2770, regulations for promoting and requesting recall referendums for public officials elected through a popular vote. Resolution No. 070906-2770. Electoral Gazette Nº 405, Friday, December 18, 2007.


200 El Litoral, Pese a las amenazas se acorta el camino al revocatorio venezolano, June 18, 2016.
201 La Nación, En Venezuela quieren despedir a los que firmaron el referéndum revocatorio contra Maduro, May 5, 2016.
202 Diario Las Américas, Despiden a funcionarios del Seniat por firmar por el revocatorio, June 21, 2016; Revista Semana, Maduro toma medidas contra funcionarios que firmaron a favor del revocatorio, August 23, 2016.
203 Venezolana de Televisión (VTV), Jorge Rodríguez: no puede haber en cargos directivos de confianza personas que estén contra la revolución, August 22, 2016; El Correo del Orinoco.com, Más despido por firmar por el referendo revocatorio, August 25, 2016; El Nuevo Herald, Despedidos empleados públicos que firmaron para revocatorio contra Maduro, June 30, 2016.
204 VTV, Jorge Rodríguez: no puede haber en cargos directivos de confianza personas que estén contra la revolución, August 22, 2016.
205 Xinhua Español, Ombudsman venezolano cuestiona despido de funcionarios firmantes del revocatorio | Spanish.xinhuanet.com, August 24, 2016.
206 OAS, Joint press release of OAS Member States on recent events in the Bolivarian Republic of Venezuela; August 11, 2016.
107. The MUD called for demonstrations that it dubbed “Occupy Caracas” on September 1, 207 to be attended by crowds of people from all over the country. The march included the participation of indigenous leaders from Amazonas state 208 and continued into the evening with a “cacerolazo.” A counter-march called by the PSUV was also held. Both marches were national in their scope.

108. For their part, civil society organizations issued a report on the events surrounding these gatherings and observed that from August 30 to September 2, incidents took place that involved the violation or limitation of the exercise of the rights to protest, free travel, association and assembly for legal purposes, personal liberty and integrity, and other rights. They report that 34 arbitrary detentions were made, and there were eight cases of harassment, five cases of impeding travel, three of searches, one violation of the right to life, and three cases of the violation of the right the physical integrity. 209

109. The MUD called for two more marches on September 7 and 13, with the expectation that the CNE would issue its decision on the referendum on September 13. 210 Following these marches, the IACHR condemned the wave of threats, arrests, searches, and criminal proceedings brought against members of opposition political parties, peaceful demonstrators, and journalists in the context of a series of restrictions on the exercise of fundamental rights imposed by the government on those expressing support for a referendum to recall the president. It also expressed regret over the mass dismissal of public functionaries, allegedly for having signed the recall referendum request. 211

110. On September 21, the CNE announced the timeline and conditions for collecting the signatures of a minimum 20% of registered voters in order to activate the referendum against the President of the Republic, as requested by the MUD. The CNE initially said the collection would take place on the October 26, 27, and 28, 2016. Also, the CNE indicated that signatures had to be collected from 20% of registered voters in each of Venezuela’s 24 states, rather than 20% of total registered voters nationwide. 212 It also reported that 5,392 fingerprint scanners would be installed for validating the signatures in 1,355 voting centers, open seven hours per day. However, the MUD indicated that 19,500 machines would be needed, located throughout the country, in order to collect the signatures in three days. 213

111. According to the timeline for collecting the signatures (expressions of support) announced by the CNE, the 90-day deadline for holding the referendum would start in December, putting it halfway through the first quarter of 2017. Based on these dates, the referendum would take place after January 10, 2017, and according to the Constitution, should President Maduro be recalled subsequent to that date, the remainder of his term (until 2019) must be served by his vice president, who was named by the current president. 214

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207 La Nación, La oposición apuesta su última carta a tomar la calle, August 11, 2016.
209 Red de Activistas Ciudadanos por los Derechos Humanos (REDAc), Centro de Justicia y Paz (CEPAZ), and the Human Rights Center of the Universidad Metropolitana, Citizen human rights monitoring, September 2016.
210 OAS, Joint Statement of the General Secretariat of the OAS and the Carter Center, September 1, 2016.
212 See Article 15: Once half of an elected official’s term has elapsed, a recall referendum may be requested by no fewer than 20% of voters registered in the Electoral Registry at the time of the request in the corresponding constituency, pursuant to the terms of Article 72 of the Bolivarian Constitution of Venezuela. Resolution 070906-2770, regulations for promoting and requesting recall referendums for public officials elected by popular vote. Resolution No. 070906-2770. Electoral Gazette Nº 405, Friday, December 18, 2007.
213 TS1, Telemundo Miami, Venezuela: fijan fecha para recaudar firmas del revocatorio, September 21, 2016; Crónica, Anuncian fecha para recolección de firmas en Venezuela, September 21, 2016; Univision, “La oposición venezolana llama a más protestas de calle para presionar por el referendo contra Maduro, 26 de septiembre de 2016.”
112. On October 17, the Electoral Chamber of the TSJ ruled that, among other things, the recall referendum petition must collect the signatures of 20% of registered voters in each one of the states and the Capital District of the Republic, and that failing collection of this percentage in each one of the states or in the Capital District, the presidential recall could not be held. 

113. On October 20, the regional criminal courts of the states of Aragua, Bolívar, Apure, Monagas, and Carabobo issued five injunctions ordering the indefinite postponement off any act resulting from the MUD's collection of the 1% of expressions of support for activation of the recall referendum. The injunctions were issued in the context of investigations into criminal charges filed for the crimes of giving false statements to a public functionary, taking advantage of a forged document, and giving false information to the Electoral Branch. Based on this, the CNE halted any act that could be issued as a consequence of the collection, therefore freezing the process to collect 20% of the signatures until a new court order is issued. A number of civil society organizations denounced these actions, alleging that they annulled the collection of signatures "suddenly" and "without legal authority." According to the information available, the injunctions—issued simultaneously by the various courts—were implemented almost immediately by the CNE. This raises the possibility that the decisions were coordinated to block the citizenry from evaluating the president's performance through a referendum.

114. On October 21, 13 OAS Member States expressed deep concern at the aforementioned decision issued by the CNE to postpone the signature collection process. In their view, the freezing of the process and the decision of the judiciary to prevent the main opposition leaders from leaving Venezuela impacted the possibility of establishing a process of dialogue between the government and the opposition that would enable peaceful resolution of the critical situation facing this sister nation. They also reiterated their call for all political actors to make conclusive efforts to have a national dialog peacefully and as soon as possible, either directly or with the support of intermediaries, so as to find durable solutions that favor democracy and social stability and guarantee full respect for human rights, the separation of powers, and institutional strengthening.

115. On October 23, the National Assembly approved a draft agreement for restoring the Constitution of the Republic, institutional order, and democracy, which, among other things, declared that constitutional order in Venezuela has been violated and that an ongoing coup d'état was taking place, executed by the administration headed by President Maduro. The National Assembly announced that it would begin impeachment proceedings against President Maduro and hold debates on accusations of the president's alleged dual nationality.

116. On October 26, a mass march was held. Dubbed "occupy Venezuela," it was called by the MUD to protest suspension of the proceedings for holding the recall referendum. Reportes were that at least 120 people were injured and 245 detained, with multiple clashes, including the following: two state police

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215 TSJ, Resolution No. 147 October 17, 2016; ProDaVinci, Sobre la exigencia del 20% ratificada por decisión de la Sala Electoral; por José Ignacio Hernández, October 18, 2016.

216 Globovisión, Tribunales penales anularon recolección del 1% de firmas en cinco estados del país, October 20, 2016 and National Electoral Council, Poder Electoral acata medidas cautelares ordenadas por tribunales de la República, October 20, 2016.

217 CNE Poder Electoral acata medidas cautelares ordenadas por tribunales de la República, October 20, 2016.


219 States of Argentina, Brazil, Canada, Chile, Colombia, Costa Rica, United States of America, Guatemala, Honduras, Mexico, Paraguay, Peru, and Uruguay, Joint press release of OAS Member States on recent events in the Bolivarian Republic of Venezuela, October 22, 2016.


221 National Assembly, National Assembly declares constitutional order has been violated and that a coup d'état has taken place in Venezuela, October 23, 2016.

222 La Nación, Toma de Venezuela: un policía muerto, más de 120 heridos y 245 detenidos, October 27, 2016.
officers were shot and one killed in San Antonio de los Altos; the so-called chavista “colectivos” fired on opposition marchers in Mérida; four young people were shot in Maracaibo; an activist with political party Primero Justicia lost an eye in Barinas; the Student Movement reported that at least 50 of its members were on the final list of people injured in Táchira; and the headquarters of the Voluntad Popular party in Vargas was destroyed and robbed. The demonstration was part of a series of actions the MUD took, including a general strike October 28 and a march to the Miraflores presidential residence scheduled for November 3, which was later canceled as talks began between the government and the opposition, as described in the following section.

117. The Commission has recognized the presidential recall referendum as an exercise of political rights, as well as an expression of political opinion protected by the right to freedom of expression and the principle of nondiscrimination. When the aforementioned court rulings were issued, the Commission condemned the State’s actions aimed at closing vital spaces for political participation in Venezuela and persecuting those who have exercised their right to freedom of expression and raised the alarm as to the impact these measures have on democracy. It also indicated that all these actions on the part of the State have taken place in the context of a profound weakening of the separation of powers in the country and crisis at all levels, reiterating that there is a “direct relationship between the exercise of political rights and the concept of democracy as a form of State organization.”

118. The Commission recalled that in the inter-American system, the relationship between human rights, political rights, and democracy was captured in the Inter-American Democratic Charter, which establishes that:

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

119. Based on this, the Commission reiterates its call for the State to fulfill its duty to facilitate mechanisms of political participation and decision-making such as the recall referendum and cease such actions preventing the exercise of the rights of persons to elect their representatives and hold them accountable.

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223 La Nación, Toma de Venezuela: un policía muerto, más de 120 heridos y 245 detenidos, October 27, 2016.
224 BBC Mundo, Toma de Venezuela: cientos de miles salen a las calles para protestar contra el gobierno de Nicolás Maduro, October 26, 2016.
5. **Dialogue initiative**

120. In addition to the UNASUR initiative with former presidents José Luis Rodríguez Zapatero of Spain, Leonel Fernández of the Dominican Republic, and Martín Torrijos of Panama to support the process of national dialogue, initiatives were launched in the OAS to encourage an effective dialogue between the government and the opposition. After the “occupy Venezuela” march, 12 OAS member States expressed concern at the situation facing the country and reiterated their call for the parties to have the political will to establish a constructive dialogue to come up with solutions that respect the rule of law and constitutional guarantees and enable all Venezuelans to exercise their fundamental rights.

121. Also, in October, 25 former heads of State expressed through the “Iniciativa Democrática de España y las Américas” (IDEA) that they were concerned at the National Assembly’s declaration that the constitutional order had been violated with the “decision in collusion” of the Judicial branch, electoral branch, and the TSJ with subordinate criminal judges to suspend the referendum. They stated that it represented a severe attack on democracy and loss of legitimacy of the Venezuelan regime pursuant to the provisions of the Inter-American Democratic Charter and other clauses on democracy in applicable international treaties. They also urged the OAS to execute the democracy protection mechanisms provided for under its regulations and welcomed the Holy See’s involvement in the dialogue initiative.

122. A meeting between President Maduro and Pope Francis at the Holy See heralded the start of dialogue, with an invitation to the Venezuelan Government and the MUD to attend a first formal meeting on October 30. Some representatives of the MUD attended, however others did not participate. Voluntad Popular indicated that it would not attend because the government did not take action to improve conditions and prevent repression, harassment, and persecution. Four working tables were planned as a result of the meeting: respect for sovereignty; victim reparations; electoral calendar; and the economic situation. Each working table would be coordinated by a representative of the Vatican and a mediator appointed by UNASUR.

123. The State indicated that as a result of the actions of the Judiciary and the Public Ministry, on October 31, the government freed five members of the opposition who had been deprived of liberty. On November 1, National Assembly president Henry Ramos Allup, temporarily called off the march to the Miraflores presidential residence as a gesture of support for the talks; he also announced the suspension of the impeachment trial of President Maduro. However, the member from the Voluntad Popular party, Leopoldo López, expressed concern at these measures.

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230 UNASUR, Secretaría General renueva su apuesta por el diálogo, la convivencia y la paz en Venezuela, May 23, 2016.

231 Argentina, Brazil, Chile, Colombia, Costa Rica, Guatemala, Honduras, Mexico, Paraguay, Peru, and Uruguay. Foreign Ministry, Republic of Argentina, Press release from the governments of Argentina, Brazil, Colombia, Costa Rica, Chile, Guatemala, Honduras, Mexico, Panama, Paraguay, Peru, and Uruguay, October 26, 2016.

232 Iniciativa Democrática de España y las Américas (IDEA), Statement on the violation of constitutional order in Venezuela, October 27, 2016.

233 PanamPost, Noticias y Análisis de las Américas, Inició el diálogo en Venezuela entre una oposición dividida y un régimen “de paz y amor”, October 31, 2016.


235 República Bolivariana de Venezuela, Observaciones al proyecto de Capítulo IV B, Informe Anual de la CIDH, Venezuela, recibida el 30 de enero de 201, párr. 89.

236 Carlos Melo, Andrés Moreno, Marco Trejo, Coromoto Rodríguez, and Andrés León, El Día, Gobierno de Maduro libera a cinco presos políticos, November 2, 2016.

237 CNN, Suspender convocatoria a marcha opositora hacia el Palacio de Miraflores, November 1, 2016.

238 Daily Briefing, Venezuela’s political opposition fractures, November 2, 2016.
For its part, the State reported that a joint press release was issued by the National Government and the MUD on November 12 as a result of the second plenary meeting of the national dialogue process in which “political sectors of the opposition recognize the existence of mechanisms of ‘sabotage, boycott, or attacks on the Venezuelan economy’ that have resulted in situations that affect the supply of food and medicine, ruling out the existence of an alleged ‘humanitarian crisis’ in the country.”

The Commission reiterates that only through strengthening the open channels of dialogue, respect for the plurality of ideas and opinions, and respect for and guarantee of the right of all sectors to participate in a country’s political life can a solution to this political conflict be found, a conflict that seriously affects Venezuelan society as a whole. The Commission calls on the government and the opposition to maintain and strengthen this dialogue mechanism toward finding participatory solutions within the framework of respect for human rights.

C. Freedom of Expression

Throughout 2016, the IACHR and its Office of the Special Rapporteur for Freedom of Expression received reports of the ongoing deterioration in the right to freedom of expression and access to information, the exercise of which authorities have blocked by both applying and skirting the law. The actions it has been monitoring include arbitrary detention and imprisonment of opposition figures and individuals who publicly express their disagreement with the government or express themselves through the media; repression of and undue restrictions on the right to protest; firing of public employees or threatening them with losing their jobs should they express political opinions against the government; campaigns to stigmatize and harass journalists, opposition politicians, and citizens; the use of criminal law and other State controls to punish or inhibit the work of a critical media; impediments to the right to access to information; and the use of a variety of indirect methods to improperly restrict the right to freedom of expression through media or over the internet.

The IACHR and its Office of the Special Rapporteur expressed their concerns in three letters to the State requesting information on specific incidents, as well as through the issuing of four press releases reiterating the standards that the Inter-American system has established for guaranteeing the full exercise of freedom of expression and access to information.

During the hearing on the situation of the right to freedom of expression and information in Venezuela, held in December 2016, the applicants said that a social and economic crisis was taking place in Venezuela, and that in this context, the media were neither plural nor diverse, as media outlets that were independent from the government had been penalized. They added that all international and regional human rights bodies were in agreement that the media’s freedom of expression in Venezuela is being violated and that their recommendations have not been followed. They also pointed to discrimination in the exercise of the right to participate in government, indicating for example that the contents of the lists of names of people supporting the recall referendum was published, resulting in the arrest of some of them. The State said that full freedom of expression exists in a legal framework that is in compliance with all international standards.

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239 Bolivarian Republic of Venezuela, Comments on the draft of Chapter IV B, IACHR Annual Report, Venezuela, received on January 30, 2017, para. 28.

240 The Office of the Special Rapporteur for Freedom of Expression asked the Venezuelan State for information on the situation of television channel Globovisión on February 8; on the alleged illegitimate restrictions on journalism and the media on August 2; and on allegations of limitations to the right to freedom of expression and political opinion on September 2. Available in the archives of the Office of the Special Rapporteur.

It added that there is broad transparency and access to public information and alleged that a campaign of vandalism carried out by paramilitary groups against telecommunications infrastructure has left entire areas in the dark. The IACHR expressed concern at the arrest of journalist Braulio Jatar over the publication of a video containing information in the public interest. It also expressed concern at the retaliation for the exercise of the right to express public opinion in the form of signing in support of the referendum. The Commission also insisted on the need to conduct a country visit.

129. In its comments on the draft of this chapter, the State said "it is neither State practice nor policy to arrest or harass journalists or limit the exercise of their profession." It noted that "in Venezuela, no journalists have been arrested or subjected to legal proceedings based on their professional activities."

1. Journalism and freedom of the press

130. Throughout the year, journalism continues to face multiple direct and indirect obstacles due to actions by State agents or civilians acting with their acquiescence. A few of the most concerning cases are described hereinafter.

a) Attacks, threats, and intimidation

131. According to the information received, there were at least 30 cases of communicators being attacked in various ways, including beatings, threats, arrests, confiscation of equipment, and destruction of journalistic evidence by State agents, including members of the GNB, the SEBIN, and the Guard of the People (one of the GNB's operating units, responsible for preventative work, according to its organizational chart), as well as a number of local police departments. Here are a few of the most concerning cases.

132. On January 15, reporter Fabiana Barboza and photographer Yorvis Weffer, with Diario La Costa, were attacked by GNB soldiers while covering a protest. The soldiers temporarily confiscated Weffer's camera and erased the photographs it contained; on January 4, soldiers with the People's Guard detained journalist Diana Moreno, with the newspaper El Impulso, allegedly for taking pictures in a supermarket located in a shopping center in Barquisimeto, Lara state; on March 28, journalists Faviana Delgado and Humberto Matheus, with La Versión; José Antonio González and María Fuenmayor, with La Verdad; and Ángel Romero and José López, with Noticia al Día; and José Antonio González and María Fuenmayor, with La Verdad; and Ángel Romero and José López, with Noticia al Día, were detained, beaten, intimidated, and threatened by Zulia state police officers and forced to erase images documenting a clash between the detainees and the guards at the El Marite jail, run by the Zulia state police. On April 21, the journalists covering a protest held by National Assembly deputies in Caracas were forced to leave the building by GNB troops and later attacked by a group of civilians, allegedly government sympathizers; on March 9, in Atenea de Tumeremo, Atena de Tumeremo,

242 IACHR, Hearing on the situation of the right to freedom of expression and information in Venezuela, December 2, 2016.
243 Bolivarian Republic of Venezuela, Comments on the draft of Chapter IV B, IACHR Annual Report, Venezuela, received on January 30, 2017, para. 56.
247 NTN24. April 21, 2016. "Todo ocurre con la mirada complaciente de las autoridades": periodista de NTN24 tras agresión de la GNB a la prensa en el CNE.
Bolívar state, journalists were on their way to the El Miamo mine where the 28 miners were allegedly disappeared and massacred on March 4 when they were intercepted by Criminal and Forensic Investigations Unit (CICPC) agents who confiscated their work equipment and cellular telephones before allowing them to visit the scene of the incidents. They said they were trying to prevent up-to-the-minute information from being sent from there.248

133. More than 30 cases were also reported of journalists who, during the course of their work, were injured, illegally detained, beaten, threatened, intimidated, and had their equipment stolen by individual civilians or groups of civilians aligned with the government. In a significant portion of these cases, the attacks on communicators took place despite the presence of police officers.

134. For example, on February 16, journalist Eleida Briceño, with El Tiempo, was shot in the leg while covering a confrontation between neighbors and CICPC officers;249 on March 9, journalists Rafael Urdaneta and Fabiola Niño, with El Venezolano TV; René Méndez with NTN 24, and Manuel Cardozo with broadcaster Ecos del Torbes were detained and subject to threats, harassment, and attempted robbery by a group of masked individuals while covering a protest at the Escuela Técnica Industrial, located in the municipality of San Cristóbal, Táchira state250; on February 29, while covering the visit of the chair of the health committee of the National Assembly to the University Hospital of Maracaibo, a group of around 20 journalists were attacked by members of the Bolivarian Circles—grassroots organizations created by the PSUV to spread the ideas of the Bolivarian revolution—who had come to stop the deputy's visit to the hospital;251 on April 7, journalists Alejandro Hernández, with Circuito Éxitos; Antonieta La Rocca, with Telecaribe; Alejandro Molina, with Notiminuto; and Luis Pérez Rojas, with Caraota Digital, were attacked while covering a visit by leaders of the Primero Justicia party to the CNE. The attack was allegedly carried out by a group aligned with the government.252 On April 12, freelance photographer Miguel González was attacked and robbed by government sympathizers outside the CNE while covering the MUD's delivery of signatures to launch the recall process.253
Principle 9 of the Declaration of Principles on Freedom of Expression establishes that, "The murder, kidnapping, intimidation of and/or threats to social communicators, as well as the material destruction of communications media violate the fundamental rights of individuals and strongly restrict freedom of expression. It is the duty of the State to prevent and investigate such occurrences, to punish their perpetrators and to ensure that victims receive due compensation." In line with this, the IACHR issued a press release on June 9 that called on the Venezuelan State “to guarantee and protect the physical integrity and security of demonstrators and journalists during public protests” and recalled that “protection of freedom of expression requires authorities to ensure the necessary conditions for journalists to be able to cover noteworthy events of interest to the public, such as those involving public protests.” Also, the Office of the Special Rapporteur issued a press release on August 4 jointly with the United Nation’s Special Rapporteur on the right to freedom of opinion and expression recalling that “Law enforcement agents must protect and not harass reporters and journalists who are carrying out their legitimate work informing the public,” and that “threats or attacks against journalists and the media not only violate the rights of these persons but undermine the ability of Venezuelans and others elsewhere to be informed on events of critical importance.”

b) Stigmatizing statements

Attacks and acts of intimidation against journalists and media take place in a context of stigmatization by government officials, including President Maduro and legislator and first vice president of the United Socialist Party of Venezuela Diosdado Cabello, who accuse them of being part of an attempted “coup d’état” supported by foreign governments and including the participation of media outlets that are critical of the government.

According to publicly available information, on January 6, President Maduro accused the owners of TV stations Televén and Globovisión of repeating how they behaved in 2002, when former President Hugo Chávez was temporarily deposed. During a mandatory national TV broadcast, the president said “... Now they are unleashed... You see what Televén is like, right?... what Globovisión is like... You look at Globovisión and Televén and April 9, 2002 all over again. You’re going to make a mistake, you owners of Globovisión and Televén... and you won’t be able to take it back...”; on January 30, he stated that “the private media” are making “war” on him, although he only mentioned the leading television channels by name; on June 2, during broadcast of his program “En Contacto con Maduro,” he announced that he would take “a series of actions under international law” to bring an end to the “campaign of psychological warfare” that Spanish media outlets had launched against Venezuela. The president made his statements following accusations on May 17 and 28 of an alleged plan to conduct a “military intervention” to depose him, hatched in Madrid; on October 8, during a mandatory television broadcast, President Maduro ordered the Petroleum Minister, Eulogio del Pino, to file suit against a newspaper “directed from Miami” for allegedly disseminating false information on state oil company PDVSA. Although President Maduro did not mention the

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259 20 minutos. May 17, 2016. Maduro denuncia campaña para justificar intervención militar; ABC. May 28, 2016. Maduro insiste en que desde Madrid se hace campaña para invadir Venezuela; La Vanguardia. June 1, 2016. Maduro dice que presentará acciones legales en España para que cese su "campaña de guerra".
newspaper by name, the editor of El Nuevo País, Rafael Poleo, stated on his twitter account that the message from the president was aimed at his publication. For his part, legislator and first PSUV vice president Diosdado Cabello said on March 16 during the broadcast of his television program “Con el Mazo Dando” that “the owners of media companies Televen, Globovisión, Venevisión, are once again involved in a coup d’état... I say this responsibly... 2002, we defeated them; now we will do it again. The only difference will be the treatment you will receive. That will be the only difference;” on August 30, during a public demonstration in Caracas, he reiterated his statements, saying: “... I’ll tell you this escuálidos [scrawny people, an epithet for members of the opposition], and by escuálidos I also mean the owners of the media: we will be victorious... but don't even dream you will receive the same treatment as in 2002. Don’t even dream of it. Everyone who is actively participating in the coup d’état, let's call it what it is; whether they have money or no; whether or not they wear a priest's collar, they will go to prison to pay for the crimes they are committing."

The Inter-American Court has found repeatedly that public officials “are guarantors of the fundamental rights of persons, and therefore, their statements cannot be construed as direct or indirect interference with the rights of those seeking to contribute to the public debate through the expression and dissemination of thought. This duty is particularly accentuated in situations of greater social conflict, disruption of public order, or social and political polarization, precisely due to the combination of risks involved for certain persons or groups at a given time.”

c) Prior censorship and indirect restrictions

The use of prior censorship as a mechanism of undue restriction on journalism work and the free distribution of information in the public interest has also been reported to the IACHR.

On June 8, the Constitutional Chamber of the TSJ issued a judgment banning Venezuelan media, in particular the websites La Patilla and Caraota Digital, from distributing videos containing images of lynchings of suspected criminals by private individuals. In this regard, the Office of the Special Rapporteur issued statement indicating that the judgment "establishes a disproportional and unreasonable restriction confronting Inter American and global standards for the right to freedom of expression" as "exercise of the right to freedom of expression cannot be subject to prior censorship."

On August 23, the Second Trial Court of the Civil, Mercantile, and Traffic Circuit of Barinas state banned newspapers Diario de Los Llanos, La Prensa, and La Noticia—which are published there—from

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262 Notitotal. August 30, 2016. Las amenazas de Cabello a la oposición venezolana de cara al 1 -S (Video); Noticias. August 30, 2016. La advertencia de Diosdado Cabello a los medios de comunicación; La Voz. August 31, 2016. Diosdado Cabello: "Atrévanse a entrar en Caracas".


264 TSJ. Constitutional Chamber. June 8, 2016. Available at Tsj condemns lynchings, finding that they run contrary to social coexistence, the human condition, and the rule of law.


printing “information or statements from politicians, leaders, or any citizen accusing Governor (Adán) Chávez of criminal acts unless charges for them have been filed in a court of law.” According to the information available through the judicial proceeding brought by Governor Chávez, this was in response to publications in the three aforementioned newspapers indicating an investigation had been ordered and launched by the Comptroller Committee of the National Assembly into irregularities in the execution of works in his state.267

143. A study conducted by IPYS Venezuela found that 43 websites had been systematically blocked by one or more of the country’s leading Internet service providers. Almost 19% of the blocked sites were media outlets, including the website of Colombia-based NTN24, which is blocked by all Internet service providers. According to the study, “the criteria for blocking websites in Venezuela seems to be politically motivated,” as in addition to systematic blocking of websites distributing banned content, such as websites with information on the parallel dollar market, the next two most significant categories of blocked sites are media outlets and blogs that are critical of the government and the ruling party.268

144. The State reported that the number of Internet users in Venezuela had increased from 300,000 in 1998 to 17 million in 2016, or 65% of all Venezuelans. A significant number of these users access the Internet through low-cost or free wired connections. The State indicated that Venezuela has set up 5,000 free Wi-Fi access points and more than 1,000 Internet cafés.269 For their part, the representatives of civil society at the public hearing on freedom of expression in Venezuela held during the 159th Period of Sessions recognized that Venezuela has a very high rate of Internet use. However, they expressed concern at download speeds (1.5 mbps), the difficulty accessing the service, rising fees, and Conatel’s constant announcements of new Internet regulations.270

145. The IACHR reiterates that Principle 5 of its Declaration of Principles establishes that, “Prior censorship, direct or indirect interference in or pressure exerted upon any expression, opinion or information transmitted through any means of oral, written, artistic, visual or electronic communication must be prohibited by law. Restrictions to the free circulation of ideas and opinions, as well as the arbitrary imposition of information and the imposition of obstacles to the free flow of information violate the right to freedom of expression.”

146. The IACHR and its Office of the Special Rapporteur have also been informed of a variety of mechanisms of indirect restriction used in Venezuela to block the work of communicators and the free circulation of ideas and opinions. One practice that was common during 2016 was blocking the purchase of and access to newsprint by establishing a State monopoly on acquiring foreign currency and importing newsprint. The 86 newspapers that are members of the Chamber of Regional Newspapers of Venezuela declared an emergency on January 27, as the policies under which the Alfredo Maneiro Editorial Complex distributes newsprint have made it increasingly difficult for newspapers that take an editorial stance that is not in line with the government’s interests to stay in circulation. Many of them have been forced to reduce their size, shorten their print runs, suspend regional additions, and, in some cases, such as that of the newspaper El Carabobeño, definitively suspend circulation after 82 years in print.271


270 IACHR, Hearing on freedom of expression in Venezuela, December 2, 2016.

147. State power to assign radio frequencies continues to be used by the government as a mechanism for rewarding or punishing media outlets depending on their editorial stances. In 2016, the processes for renewing and granting radio and television concessions continued to be postponed by authorities. This is concerning to the IACHR and its Office of the Special Rapporteur because the uncertainty resulting from the lack of a government response to requests for confirmation of concessions can lead communicators to self censor and become an indirect measure of undue restriction on freedom of expression. Regarding this, on April 21, a number of civil society and university student organizations delivered a letter to the offices of the National Telecommunications Commission (Conatel) urging it to speed up those processes. The signers expressed concern at the “lack of plurality and diversity in the concessions granted for broadcast media, as the processes are not governed by clear criteria but rather by politics, with close to 200 media outlets holding expired concessions, many of which have turned in the required documentation yet are kept in a limbo that encourages them to self-censor to avoid non-renewal of their licenses.”

148. Regarding this, in a judgment issued on June 22, 2015, in the case of Marcel Granier et al. v. Venezuela, the Inter-American Court emphasized that in the exercise of its authority to regulate the broadcast spectrum, the State must respect the guidelines imposed by the right to freedom of expression. The Court stressed the need for States to establish clear and precise processes for granting or renewing radio broadcasting concessions or licenses that adhere to objective criteria so as to prevent arbitrariness. It stated that this regulation cannot be based on “a government’s political disagreement with a particular editorial stance.” In its ruling, the Court ordered the Venezuelan State to “take all the measures necessary to guarantee that all future processes for assigning and renewing frequencies for radio and television are conducted in a way that is open, independent, and transparent” (unofficial translation).

149. Regarding this, in its comments on the draft of this chapter, the State noted that “the private sector controls 67% of the radio spectrum in Venezuela and completely dominates the subscription radio and television sector.” It also noted that 7 out of 10 homes have cable or satellite television, and over-the-air and paid television reach nearly 100% of families. It stressed that “the process of democratizing the radio spectrum carried out over the last 16 years has strength in the public media system and created more than 300 small community radio and television broadcasters.” The representatives of civil society at the public hearing on freedom of expression in Venezuela held during the 159th Period of Sessions expressed concern at the lack of pluralism in the radio spectrum, noting that 15 of the over-the-air television channels are completely funded by the State, compared to three private broadcasters. In addition, 300 broadcasters do not have permits that are duly registered.

150. According to the information received, during the second half of 2016, at least nine journalists working for media outlets based in Qatar, Colombia, France, and the United States were prevented from entering Venezuelan territory “on failing to comply with [Venezuela’s] entry requirements,” pursuant to the “Migration and Alien Status Act.” The journalists reported that compliance with these requirements is
based on rules that are difficult to understand and make it materially impossible to obtain a visa to enter the
country.278

151. The IACHR’s Declaration of Principles on Freedom of Expression states in its Principle 13 that “The exercise of power and the use of public funds by the state, the granting of customs duty privileges, 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. The means of communication have the right to carry out their role in an independent manner. Direct or indirect pressures exerted upon journalists or other social communicators to stifle the dissemination of information are incompatible with freedom of expression.”

d) Subsequent liability and criminalization of criticism

152. The IACHR and its Office of the Special Rapporteur have reiterated their concern over the use of criminal proceedings to punish and inhibit expression that is critical of the actions of State authorities or on issues in the public interest, particularly through charges of criminal defamation. In Venezuela, these criminal proceedings have been accompanied by court orders that include censorship and restrictions to the personal liberty of the accused, disproportionately affecting the work of journalists and the media.

153. For example, on May 11, the Sixth Criminal Trial Court of Bolívar state convicted the director of Correo del Caroní, David Natera Febres, and sentenced him to four years in prison and the payment of a fine equivalent to 1,137 tax units for defamation based on his paper’s coverage of the case of alleged corruption involving State company Ferrominera del Orinoco.279 The court also banned him from leaving the country; it ordered him to appear before it every 30 days until his sentence is final and can be executed; it issued an injunction prohibiting the disposal or encumbrance of the newspaper’s assets and banned the Correo del Caroní from publishing information on the case. On March 14, the Office of the Special Rapporteur issued a press release expressing concern at these facts.280

154. The president and editor of the newspaper El Nacional, Miguel Henrique Otero, and the director of the website La Patilla, Alberto Federico Ravell, remained outside Venezuela during 2016 due to the risk they faced of being arrested if they returned to their country, as legal proceedings had been opened against them for the crime of “ongoing and aggravated defamation.”282 On November 9, the IACHR asked the

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State to adopt precautionary measures to the benefit of Miguel Henrique Otero, President and editor of *El Nacional*; Alberto Federico Ravell, director of *La Patilla*, and his daughter, Isabel Cristina Ravell; and Teodoro Petkoff, director of *Tal Cual*, due to the judicial harassment of these media outlets and their leadership by public officials.283

155. The IACHR and its Office of the Special Rapporteur have indicated that using these criminal offenses as mechanisms for assigning subsequent liability for speech that is specifically protected is a violation of freedom of the freedom of expression protected by Article 13 of the American Convention and Article IV of the American Declaration. The Commission and the Inter-American Court have emphatically held that this type of expression enjoys greater protection in the framework of the Inter-American system for the protection of human rights.284 This protection has been justified by, among other things, the importance of maintaining a legal framework that encourages public debate, as well as the fact that public servants voluntarily expose themselves to greater social scrutiny and have more and better opportunities to contribute to the public discussion.285

156. Also of concern to the IACHR and its Office of the Special Rapporteur is the use of criminal law by public officials as a tool to intimidate and criminalize criticism. Of particular concern is the opening of criminal proceedings against journalists based on unsubstantiated allegations. On September 3, journalist Braulio Jatar, director of the website *Reporte Confidencial*, was arrested and held in an undisclosed location for 36 hours after he published a series of videos on his website documenting a type of protest (“cacerolazo”) that took place during a visit made by President Maduro to Villa Rosa, on Margarita Island. According to the information available, the demonstration resulted in the arrest of 30 people. All of them were later released except the communicator.286 The communicator was later charged with money laundering, as a large amount of money was supposedly found in his car. His defense attorney reported that the Public Prosecutor did not have evidence to charge him with any crime.287
2. Social protest and public demonstrations

157. The lack of good quality and accessible food, water, and medicine, claims from unions, and demands that the CNE process a referendum to recall President Maduro led to numerous protests in Venezuela throughout the year. The IACHR notes with concern information indicating that where they express dissent and criticism of the government, these demonstrations and protests were subject to a series of restrictions—including refusal to grant prior authorization to protests in front of public institutions, automatic dispersal of protests considered illegal, abusive use of force by security forces, mass arrest of demonstrators, and stigmatization and criminalization of organizers—that are not compatible with the right to freedom of expression and assembly. The following is an overview of some of the facts that have been especially concerning to the IACHR and its Office of the Special Rapporteur for Freedom of Expression:

a) Prior authorization or permit requirement

158. According to the information available, Venezuelan State authorities continue to require prior authorization for holding meetings and demonstrations, despite the fact that the national Constitution guarantees the right of all people to "meet, publicly or privately, without prior permit." Additionally, court rulings have been issued restricting the use of emblematic spaces, such as the headquarters of the National Electoral Council and its surrounding area, for holding public demonstrations. According to the information available, this requirement is discriminatory, as it is applied only to the demonstrations and protests organized by sectors of society that are critical of the government and has been used to deny the exercise of the right to meet "within hearing and sight" of the State institutions at which the demands or claims are being directed.

159. On May 18, 2016, the Second Adversarial Administrative Court, in Caracas, issued a ruling stating that "to protect the rights invoked and foster an environment of social and citizen peace, as well as to prevent general psychological disturbance, especially among the workers and governors of the National Electoral Council," it would issue an injunction ordering the commander of the GNB and the director of the National Bolivarian Police to take:

the security measures necessary to permanently protect the offices of the National Electoral Council and its surroundings, nationally, in order to prevent unauthorized events, marches, protests, unpermitted gatherings, and violent demonstrations called by political and civil society organizations that may limit worker access and disrupt the normal operation of the offices of the National Electoral Council, nationally; [...] to municipality authorities so that in the framework of their authority to grant permits, they comply with the legal requirements to prevent violent gatherings, [and to] the National Executive Branch to evaluate, pursuant to articles 47 and 48 of the Organic Law on National Security, declaring the spaces adjacent to the offices of the Electoral Branch as security zones.

160. The IACHR has expressed that “in democracies, states should act based on the legality of protests or public demonstrations and under the assumption that they do not constitute a threat to public order. This means an approach focused on building the highest levels of citizen participation, with the streets and plazas considered privileged places for public expression.” In this sense, it has reiterated that

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288 TSJ, Case File Nº 14-0277, April 24, 2014. Article 53 of the Political Constitution establishes that, "unarmed people have the right to meet, publicly or privately, without prior permit, for legal purposes. Meetings in public places will be regulated under the law." Meanwhile, Article 68 establishes that "citizens have the right to peaceful and unarmed demonstration without any requirements other than those established by law." In April 2014, the TSJ found that the authorization must be granted by the highest civil authority of a jurisdiction, "noncompliance with which limits the right to peaceful demonstration absolutely, thereby preventing any meeting or demonstration from being held."


290 In that regard, the United Nations Human Rights Council recognized that protests "can make a positive contribution to the development, strengthening and effectiveness of democratic systems, and to democratic processes." UN Human Rights Council, Resolution A/HRC/25/L.20, preamble. The Office of the Special Rapporteur for Freedom of Expression of the IACHR has underscored
requiring prior authorization or permit to hold demonstrations and protests in public spaces is not compatible with international human rights law and best practices and has urged those States that still require prior authorization or permit to eliminate this requirement and explicitly establish a general presumption in favor of the exercise of the right to assembly and freedom of expression.

b) Use of force and participation of the military in the management of public demonstrations.

161. Both abusive use of force through the use of firearms and the participation of the military in controlling and managing public demonstrations continue to be concerning during 2016. According to the information obtained, during the demonstrations that took place over food shortages in different parts of the country, at least four people were shot to death by security forces. According to available information, these incidents took place in the municipalities of San Cristóbal, Sucre, and Cariaco on June 5, 9, and 10, as well as in the town of Lagunillas on June 15.

162. Soldiers with the Bolivarian National Guard are implicated in these incidents. In this regard, the IACHR reiterates its concern over resolution 008610, “Rules of engagement for the Bolivarian National Armed Forces performing public order and social peace and citizen coexistence oversight duties at public meetings and demonstrations,” which allow armed interventions in public meetings and demonstrations and allows the use of firearms in them. The Commission addressed this resolution in depth in Chapter IV B of its Annual Report 2015 and asked the State for information on February 27, 2015, pursuant to the authorities established in Article 18 of its Statute. The Commission has received no reply on the matter. The Office of the United Nations High Commissioner on Human Rights issued a similar statement, finding the authorization of the Venezuelan military to participate in suppression of demonstrations to be incompatible with the Venezuelan military's human rights obligations.


297 IACHR, Request for information from the State on Resolution No. 008610 of the Ministry of the People's Power for Defense, February 18, 2015.

163. The IACHR reiterates that firearms should not be included among the tools used for controlling social protests.\(^{299}\) There is no scenario that would justify the use of lethal force to break up a protest or demonstration or indiscriminately disperse the crowd.\(^{300}\) States must implement mechanisms to effectively ban the use of lethal force as an option for controlling public demonstrations.\(^{301}\) The IACHR has also strongly emphasized that domestic security and order must be “exclusively the purview of duly organized and trained civilian police forces, not military armed forces.” Given the imperative social interest of the exercise of the rights involved in public protests or demonstrations to democratic life, the Commission has found that in this area specifically the reasoning behind banning the involvement of soldiers and armed forces is even stronger.

\[\text{c) Attacks on demonstrators by third parties or non-State agents}\]

164. The protection of the exercise of the rights to assembly and freedom of expression entails not only a State obligation to not interfere with their exercise but also a duty to adopt, during and prior to certain circumstances, positive measures to ensure them.\(^{302}\) These measures include the duty to protect the rights of demonstrators during a protest from acts committed by private or nonstate actors.\(^{303}\) They also encompass the obligation to investigate and punish anyone who commits acts of violence against the life or personal integrity of demonstrators.

165. For example, the IACHR and its Office of the Special Rapporteur received concerning information on attacks on leaders, representatives, and members of opposition parties during the protests organized to seek activation of the mechanism to hold a recall referendum, including the attacks that took place on June 9, when a group of opposition deputies demonstrating in front of the headquarters of the electoral branch in Caracas were attacked by individuals presumed to be government sympathizers. The attack took place despite the presence of the police and the GNB.\(^{304}\)

\[\text{d) Stigmatization and criminalization of social protest}\]

166. A statement issued on August 31 by 30 Venezuelan human rights organizations accused public media of being used to criminalize, stigmatize, and create a climate of anxiety and terror against the right to peaceful protest. The use of public media to single out, criminalize, and accused citizens without evidence is contrary to the rule of law and due process, which are inherent to justice that is truly democratic.\(^{305}\)

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\(^{300}\) During its 25th period of sessions, the United Nations Human Right Committee issued a statement on “The promotion and protection of human rights in the context of peaceful protests” (para. 11 and 13) in which it “Affirms that nothing can ever justify the indiscriminate use of lethal force against a crowd, which is unlawful under international human rights law” and “Urges all States to avoid using force during peaceful protests and to ensure that, where force is absolutely necessary, no one is subject to excessive or indiscriminate use of force.” Human Rights Committee. 25th Period of Sessions Resolution 25/L.20. March 24, 2014, paras. 11 and 13.


\(^{305}\) Efecto Cocuyo. August 31, 2016. ONG instaron al Defensor del Pueblo a velar por el derecho a la protesta pacífica; Fundación Reflejos Venezuela. August 31, 2016. ONGs rechazan obstáculos y amenazas contra el derecho a la manifestación pacífica de la ciudadanía.
Indeed, according to the information available, senior officials of the national government made statements linking the demonstration called for September 1 to a plan by the Venezuelan opposition to carry out a coup. For example, the vice president of Venezuela, Aristóbulo Isturiz, stated on August 28 that “it’s not a March, this is a destabilization plan, a coup to topple President Maduro (…), they want to destabilize the country, a death, prisoner, someone beaten up, so they can say that’s what they’re fighting against, but they don’t have the capacity to mobilize the people.” Deputy Diosdado Cabello stated that “what is going to end on September 1 is that low-life, imperialism-serving opposition,” adding that “this is a terrorist protest to topple the government.” As a result, on August 29, Deputy Diosdado Cabello made a call to government supporters to block all traffic traveling toward Caracas, announcing that “nothing coming from the Andes or the west to Caracas will pass.”

Also, it was reported that President Nicolás Maduro has stated that eventually, “Erdogan (the president of Turkey) is going to look like a nursing child compared to the Bolivarian revolution if the right tries a coup.” Likewise, Deputy Cabello announced that “the law will be applied” to every member of the opposition who “trespasses it,” and that they are on alert for any “subversive attack from the right.” He stated that intelligence agencies are conducting operations to capture the alleged conspirators.

The statements were followed by the rest of members of opposition political parties, particularly from the Voluntad Popular party. On August 26 Daniel Ceballos, former mayor of the San Cristóbal municipality, under house arrest on charges of rebellion, was transferred to prison. His imprisonment was allegedly justified by the discovery of an escape plan. On August 29, Yon Goicoechea, leader of the Voluntad Popular party, was arrested for allegedly possessing “detonation cords for explosives.” On August 30 the leader of the party Avanzada Progresista, Carlos Melo, was also arrested for allegedly being in possession of explosive materials. On September 2, Delson Guarate, mayor of the municipality of Mario Briceño Iragorry and a member of Voluntad Popular, was arrested as the alleged perpetrator of the crimes of violation of land use regulations, possession of fire arms, criminal conspiracy, and improper disposal of solid hazardous waste. On September 5, the Venezuelan government asked the government of Colombia to arrest and extradite Lester Toledo, a leader of Voluntad Popular, accusing him of the crimes of financing terrorism and criminal conspiracy.

Voluntad Popular is led by Leopoldo López. On August 12, the Appellate Court of the TSJ upheld the judgment sentencing him to almost 14 years in prison for the crimes of public incitement, criminal...
conspiracy, property damage, and arson based on statements made by the political leader in a video recorded on February 12, 2014, calling people to participate in protests against measures taken by the government.\textsuperscript{312}

171. Likewise, Marco Trejo, César Cuellar, James Mathison, and Andrés Eloy Moreno Febres-Cordero face a similar situation. They were arrested by SEBIN officers as the authors of a Primera Justicia video calling on law enforcement officers not to repress demonstrations and protests. The detainees were charged with crimes of offense to the national armed forces; usurpation of authority against military duty and honor; improper use of military decorations, insignias and titles; and offenses against military administration, as well as “incitement to rebellion.” Based on this, the Public Prosecutor would be seeking a sentence of 15 years in prison. It is extremely concerning to the IACHR that this criminal proceeding is taking place in a military court.\textsuperscript{313}

172. The Commission has expressed particular concern at the use of criminalization and the State’s punitive power by State and non-State actors to control, punish, or prevent the exercise of the right to protest. The IACHR “has found that criminalization processes usually begins with the filing of baseless allegations or complaints based on criminal offenses that do not conform to the principle of legality or criminal offenses that do not meet inter-American standards. These criminal offenses are often linked to punishable conduct such as “incitement to rebellion,” “terrorism,” “sabotage” “incitement to crime,” and “attack on or resistance to public authority,” and tend to be arbitrarily applied by the authorities. Often, the misuse of criminal law is preceded by statements made by public officials in which human rights defenders are accused of committing crimes.”\textsuperscript{314} It has thus recommended that States take the measures necessary to ensure that authorities or third parties do not use the State’s punitive power and its bodies of justice to punish or inhibit the exercise of the right to social protest, as well as refrain from making statements to stigmatize protests and suggest that people participating in them are acting improperly or illegally simply by issuing calls to take to the streets.

3. Access to public information

173. For a number of years, the Office of the Special Rapporteur has followed with concern the situation of the right to access to information in Venezuela.\textsuperscript{315} Unlike the vast majority of countries in the region, Venezuela does not have a law on access to public information and in the last decade, the National Assembly and the Executive Branch have issued dozens of rules establishing broad and ambiguous exceptions to access to the public information.\textsuperscript{316} Also, the judicial and administrative remedies that could be used to


\textsuperscript{316} Information submitted by civil society organizations in the context of a hearing held during the 156th Period of Sessions of the IACHR, available through the Office of the Special Rapporteur for Freedom of Expression of the IACHR and Transparencia Venezuela. Es Legal pero Injusto. 2014. Includes the Organic Public Administration Act of July 31, 2008; the Central Bank of Venezuela Act of May 7,
used for the purposes of access of that information have repeatedly been shown to be ineffective for that purpose.  

174. The nonexistence of a legislative framework guaranteeing the right to access to public information in Venezuela continues to present an obstacle to its effective exercise. In this regard, the IACHR and its Office of the Special Rapporteur received information on judgments handed down in which, contrary to established Inter-American standards, the courts declared the remedies filed by citizens against the authorities’ refusal to provide public information to be inadmissible based on a standard adopted by the Constitutional Chamber of the TSJ in June 2010 according to which “even when the text of the Constitution recognizes citizens’ right to be informed, external limits are established to the exercise of that right, with the understanding that no rights are absolute.” Based on this standard, the Political Administrative Chamber of the TSJ declared a suit filed by civil society organization Espacio Público against the Minister of the People’s Power for Penitentiary Services, Iris Varela, to be inadmissible. The suit sought to obtain statistical information on inmate deaths and health in the prisons managed by that ministry. The suit was denied because in the Court’s opinion, it did not comply with the requirement “that the volume of the information requested be proportional to its intended use.”

175. The IACHR and its Office of the Special Rapporteur reiterate their recommendation that the State adopt legislation on access to public information in keeping with inter-American standards in order to provide all people with tools for effectively monitoring State operations, supervising public administration, and controlling corruption, all of which are essential for democracy. The IACHR and its Office of the Special Rapporteur also call on Venezuela’s judicial authorities to guarantee this right and ensure their rulings comply with international standards on the subject at all times.

D. Economic, social, and cultural rights (ESCR)

176. During 2016, the extreme shortage and scarcity of basic medications and food in Venezuela has developed into a crisis that has greatly compromise the effective enjoyment of a number of ESCR-related rights. Food shortages in Venezuela affects more than 80% of the population and the average Venezuelan citizen does not have the purchasing power to afford the basic food basket.

177. Regarding this, in its comments on the draft of this chapter, the State cited the statements of the executive Secretariat of the Economic Commission for Latin America and the Caribbean (ECLAC), Alecia Bárcena, to the effect that:

It cannot be ignored how many people have been taken out of poverty (...) The country is not facing a humanitarian crisis, definitively not, this should be made clear. There are shortages of certain products and political tension, but many elements are still in place for


317 Information submitted by civil society organizations in the context of a hearing on the human rights situation of Venezuela, held during the 156th Period of Sessions of the IACHR.


320 Analítica, Escasez de alimentos básicos en el país supera el 80% según Datanálisis, May 27, 2016.

321 According to information from the Center for Documentation and Social Analysis of the Venezuelan Federation of Teachers.
Venezuela to be a vibrant and economically thriving country, and it is making efforts to diversify its production.\textsuperscript{322}

178. The State also noted that the representative in Venezuela of the United Nation's Food and Agriculture Organization (FAO) has stated that "Venezuela does not need humanitarian aid."\textsuperscript{323}

179. During the hearings on the right to health and access to medication in Venezuela, held in April and June, the IACHR was informed by the organizations of the State's failure to fulfill its duty to safeguard and supervise the companies that produce medications and the lack of minimum adequate conditions in public health centers, loss of personnel, fragility of infrastructure and equipment, shortages of medicines, inputs, and medical materials, and the closure or suspension of medical services.\textsuperscript{324}

180. They also pointed to the grave situation resulting from a more than 95% reduction in spending on healthcare in the national budget from 2000 to 2012, meaning Venezuela is among the countries with the lowest public expenditure on health in the region.\textsuperscript{325} For its part, the State indicated that Venezuela has made important progress on health care since it recognized the right to health as a fundamental right. However, it did not provide specific figures or information.\textsuperscript{326} The information it did provide indicated that Venezuela has 20 doctors for every 10,000 residents, and that its adjusted mortality rate is lower than the regional average. It also noted that in recent years, the number of health centers in the country has increased by 332.95%. More than 20,000 comprehensive community doctors have graduated and more than 35,000 more are currently being trained, with investment in the health sector reaching close to US$26 million.\textsuperscript{327} It also stated that free access to medication is guaranteed for people with chronic illnesses based on active ingredient, noting that from January to May 2016, 260,724,360 doses of medicine were distributed.\textsuperscript{328} It also reported that a law was passed to promote and protect the right to equality of people living with HIV, as well as laws to provide universal healthcare that have enabled significant expansion in terms of healthcare coverage, medical staff, and infrastructure\textsuperscript{329}. It indicated that a list of 230 high-cost medications are guaranteed free of charge, providing a total of 788,000 people with pharmaceutical treatment.\textsuperscript{330} The State acknowledged a problem with availability of medications, but said it was not a humanitarian crisis.\textsuperscript{331}

181. The State reported that during 2016, the country faced a severe economic situation "fundamentally the result of actions aimed at affecting the functioning of the national economy for political purposes," and that the economic situation has led to difficulties in making certain foods and medicines fully available. It noted that the issue of availability of medications is directly linked "to what we have called the economic war on our country that includes the manipulation of the price per barrel of oil that thanks to certain geopolitical interests has collapsed from $100 to around $20." This has meant that "monthly oil income to Venezuela’s treasury dropped from US$3.5 billion to US$70 million at the price of oil in February of


\textsuperscript{324} IACHR, \textit{Hearing on the right to health in Venezuela}, April 4, 2016; \textit{Hearing on the right to health and access to medications in Venezuela}, June 7, 2016.

\textsuperscript{325} World Bank, \textit{Public sector health spending (% of total health spending)}, 2014.

\textsuperscript{326} IACHR, \textit{Hearing on the right to health in Venezuela}, April 4, 2016.


\textsuperscript{329} IACHR, \textit{Hearing on the right to health in Venezuela}, April 4, 2016.

\textsuperscript{330} Hearing on the right to health and access to medications in Venezuela, June 7, 2016. Bolivarian Republic of Venezuela, Comments on the draft of Chapter IV B, IACHR Annual Report, Venezuela, received on January 30, 2017, para. 60.

\textsuperscript{331} IACHR, \textit{Hearing on the right to health and access to medications in Venezuela}, April 4, 2016.
this year”, directly impacting the issue of availability of medications. The State explained that Venezuela has historically had a policy of providing foreign currency to the private sector for importing both medicine and the raw materials needed to produce medications domestically.\(^{332}\)

182. It indicated that this has not meant that the State has pared back its policy of fulfilling economic, social, and cultural rights. For example, the percentage of the budget aimed at social investment reached a record 73%, higher than the 71.4% dedicated to this in the 2015 budget.\(^{333}\)

183. The IACHR has been also monitoring the situation and has learned of a statement issued jointly by the Venezuelan Society on Infectious Disease (SIV) and other networks and nongovernmental organizations that work with people with HIV and doctors who care for patients with HIV. The statement indicates that currently, Venezuela “does not have any of the HIV treatments considered first-line by international guidelines.”\(^{334}\)

184. Also, during the hearing on the overall human rights situation in Venezuela held in April 2016, civil society organizations described a grave food crisis, indicating that since 2015, more than 1,200 protest had taken place over food and food shortages. They noted an increase in looting and attempted looting across the country, adding that the State’s response has been repression. The various measures taken by the State to ration consumption of staple foods such as creating networks for trading food and medicine have led to the creation of groups of speculators or “bachaqueros,” which has exacerbated confrontations between people, as well as the looting of stores and shopping centers.\(^{335}\)

185. In July, President Maduro announced the creation of the “Great Sovereign Supply Mission,” saying it would be directed by a “supply Commandant” appointed by him and by senior military officials. He indicated that the new mission will have the authority to issue orders on the purchase, sale, and distribution of food, medicine, personal hygiene, and home cleaning products, with the ministries in charge of these areas placed under its control.\(^{336}\) According to a number of news items in the media, the plan would militarize almost the entire food distribution chain for 18 primary categories and 50 priority categories, including for scarce staple goods like milk, beef, sugar, rice, and corn flour.\(^{337}\)

186. In the framework of its 26th period of sessions, the UN human rights committee conducted the second cycle of its universal periodic review on human rights, on Venezuela. To do so, the United Nations High Commissioner on Human Rights has collected the information received from civil society, which has reported that Venezuelans’ access to basic health services continue to deteriorate and that the medical staff in charge of health centers are forced to take responsibility for the respective treatments “as the authorities do not allow them to disclose the lack of medicines.”\(^{338}\) In its report for the Universal Periodic Review, the State indicated that in response to adverse economic conditions, it has deployed policies to safeguard socioeconomic rights through the “State of Economic Emergency” and “State of Emergency and Economic

\(^{332}\)IACHR, Hearing on the right to health, April 4, 2016; Bolivarian Republic of Venezuela, Comments on the draft of Chapter IV B, IACHR Annual Report, Venezuela, received on January 30, 2017, para. 29.

\(^{333}\)IACHR, Hearing on the right to health, April 4, 2016; Bolivarian Republic of Venezuela, Comments on the draft of Chapter IV B, IACHR Annual Report, Venezuela, received on January 30, 2017, para. 79.

\(^{334}\)Venezuelan Society on Infectious Disease (SIV), Public statement on the shortage of antiretroviral medications in Venezuela, November 6, 2016.

\(^{335}\)IACHR, Hearing on the General Human Rights Situation in Venezuela, April 4, 2016.

\(^{336}\)ProDavinci, ¿Qué es la Gran Misión Abastecimiento Soberano y Seguro, anunciada por Nicolás Maduro?, July 12, 2016.


\(^{338}\)UN, Human Right Council, Summary prepared by the UNHCR in accordance with to paragraph 15(c) of the annex to Human Rights Council resolution 5/1 and paragraph 5 of Council resolution 16/21, Venezuela (Bolivarian Republic of), A/HRC/WG.6/26/VEN/3, August 23, 2016, pg. 11, para. 86.
Emergency” decrees, noting that these laws have been applied to strengthen the continuity of social policies through investment in agricultural and industrial productive infrastructure, supply of medicines, food, and other essential products for life, and special measures for reducing tax evasion.\footnote{339 UN, Human Right Council, \textit{National report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21 - Bolivarian Republic of Venezuela}, A/HRC/WG.6/26/VEN/1, August 22, 2016, pg. 7, para. 17.}

187. During the hearing on the human rights housing in Venezuela, held in December 2016, the State reported on its “Great Housing Mission Venezuela,” and its “Great New Tricolor Barrio Mission.” It emphasized the success of its new approach to housing policy from 2009 to 2016. During this period, the amount of inadequate housing was reduced and 1,828,596 adequate homes were built. It stated that the goal is to build 3 million homes by 2019, and that progress has been made in developing subdivisions and remodeling homes. It reported on the financial investment that between 2011 and 2016 was aimed at building decent homes for every family that needs them, noting that in 2010, the largest mass homebuilding program in the history of the country was launched, granting urban land titles and providing homes to people. It said that the right to housing has been guaranteed without distinction, and families in poverty were given priority.\footnote{340 IACHR, \textit{Hearing on freedom of expression in Venezuela}, December 2, 2016.}\footnote{341 IACHR, \textit{Hearing on the right to health}, April 4, 2016; Bolivarian Republic of Venezuela, Comments on the draft of Chapter IV B, IACHR Annual Report, Venezuela, received on January 30, 2017, para. 62.}\footnote{342 IACHR, \textit{Hearing on freedom of expression in Venezuela}, December 2, 2016.}\footnote{343 IACHR, \textit{Hearing on human rights in the context of the “Arco Minero del Orinoco” project in Venezuela}, December 2, 2016.} The State also reported that despite Venezuela’s economic difficulties, in 2016, the State built and delivered 359,000 homes and fully remodeled more than 335,000 homes through the Great Barrio Mission New Tricolor Barrio.

188. For their part, the organizations participating in the hearing submitted information on a lack of access to housing policy information and contradictions in the figures on the policy’s execution; violations to the legal certainty of inherent possession of the right to a decent home; and violations of the right to housing as a result of the OLP. The organizations asked the State not to retaliate against the people participating in the hearing. The IACHR highlighted the importance of the measures adopted for making progress and not regressing with regard to the right to housing in the country. It reiterated to the State the importance of ensuring that petitioners and victims can participate before the bodies of the inter-American system in an environment free of reprisal and retaliation.

189. During the hearing on human rights in the context of the “Orinoco Mining Crescent” (hereinafter the “Mining Crescent”), the petitioners indicated that Decree 2248 published on February 24, 2016, creating the Mining Crescent represents a violation of international standards and the Venezuelan Constitution. Specifically, they allege that environmental and social impact studies were not conducted and that the corresponding prior, free, and informed consultations were not carried out. They also pointed to the effect that the Mining Crescent had on the demarcation of land and territories of indigenous peoples and communities, on the rights to freedom of assembly and peaceful association, and on labor rights. They emphasized the relationship between the Mining Crescent and the government’s emergency authorities. For its part, the State indicated that the project’s objective is not an extractive policy. Rather, the intention is for mining to drive the economy. The State invoked the principle of self-determination to apply sustainable models that ensure the economic, political, and social conditions necessary to fulfill human rights and indicated that conditions have been put in place for all stakeholders to be able to participate. The IACHR reiterated the importance of not permitting any type of retaliation against organizations that appear before it so as to safeguard their right to defend their human rights.

190. The IACHR also received information indicating that the government implemented a series of measures to deal with the energy crisis and water shortage resulting from, among other factors, the severe drought exacerbated by the “El Niño” phenomenon. Among these measures, in February the government launched an energy savings plan that included reducing the public sector work week to two days, as well as
providing paid time off. This lack of public services and the cuts to the working hours of public servants has also affected the services needed by Venezuelans. Notwithstanding the above measures, the shortage of good-quality water and personal hygiene products has resulted in outbreaks of diseases such as scabies, malaria, diarrhea and amoebiasis. Limiting access to a steady supply of water has affected the cleanliness of food and utensils. Water storage in homes has increased the prevalence of mosquitoes that carry dengue, zika, and chikungunya. Also, power outages mean that cold storage cannot be guaranteed for preserving food and biological products (vaccinations) in clinic freezers: once their temperature increases, they become inviable or lose their effectiveness.

191. In response to the crisis, the IACHR has issued statements emphasizing this situation's particular effects on vulnerable individuals and groups, such as young children, pregnant women, the elderly, people with disabilities, people with chronic illnesses and HIV, and other particularly affected groups. The Commission also stated emphatically its concern at the health conditions in medical centers, the significant number of neonatal deaths, the absence of the necessary maternal health medical services needed by pregnant and postpartum women, the reuse of disposable supplies and utensils, and the long wait for vital surgeries.

192. Regarding this, the IACHR recalls that States have an obligation to guarantee access to sufficient quantities of drinking water as an unavoidable condition for the satisfaction and exercise of a number of human rights, such as the rights to life, to personal integrity, to health, and others.

IV. VULNERABLE GROUPS

A. Human Rights Defenders

193. During this year, the Commission has continued to receive information on grave attacks on the work of human rights defenders in Venezuela. It has continued to monitor situations of criminalization and judicial harassment, such as the opening of criminal and administrative investigations into human rights defenders, limits on access to international funding for human rights defender organizations, and harassment and defamation at the hands of authorities, as described hereinafter.

194. In January, it was reported that Héctor Sánchez Losada had been murdered. Sánchez Losada had been a member of the Human Rights Committee of the Federation of Bar Associations in the state of Monagas, created under a project led by the OVP in 20 states in Venezuela. He was killed by two unidentified individuals in the city of Maturín, Monagas state.
195. The Commission is also concerned at the various defamation campaigns launched by the authorities against human rights defenders. It notes that through a number of different media outlets, the authorities have continued to describe the actions of civil society organizations and human rights defender organizations as crimes of “betraying the Fatherland” or “destabilization.” Through these campaigns, the government has issued statements assailing the work of human rights defenders, repeating accusations on their alleged intentions to attack democracy. For example, during his weekly state TV program “Con el Mazo Dando,” former National Assembly president and current deputy Diosdado Cabello has stated multiple times that the participation of human rights organizations in public hearings before the IACHR or the UN Committee were intended deliberately to destabilize the government. For example, in June, Deputy Cabello called the director of the OVCS, Marco Antonio Ponce, a “traitor” because he was going to participate in the 47th Ordinary Period of Sessions of the General Assembly of the OAS. Mr. Cabello then gave information on the flight Mr. Ponce would be taking, including his seat number on the plane.

196. In May, State newspaper Ciudad CCS published an article entitled “International Patrons of NGO Criollas Revealed,” with pictures of Rafael Uzcátegui, a human rights defender with PROVEA; Rocio San Miguel, with Control Ciudadano; and Marco Ponce, with OVCS. The article stated that these organizations “are nothing more than instruments of United States foreign policy” and “façades for receiving foreign financing. They have been set up as “grass roots” organizations to challenge national sovereignty, as many of them are no more than channels for distributing logistical and financial resources.” Likewise, another article published on the website “Con el Mazo Dando” suggested that staff with OVCS, FPV, PROVEA, and other civil society organizations were agents of the political opposition and responsible for inciting violence through “guarimbas” (blockades).

197. Frontline Defenders reported in October that Deputy Cabello reported on his TV program and his website that OVP Director Humberto Prado Sifontes receives financing from the National Endowment for Democracy, “some of which he steals to deposit in a company he supposedly has registered in Panama under the name of his wife.” The group indicated that the article also states that this “imaginary company” deals in arms trafficking. It noted that these false statements are aimed at discrediting the human rights defender and generating hostility toward him.

198. As the Commission has indicated in its press release (see supra III(B)(iii), decree 2,323 enables the suspension of financing agreements struck with foreign entities “when it is presumed used for political purposes or to destabilize the Republic.” In this regard, the Commission has held that “human rights defenders have the right to seek and obtain economic resources to finance their work. States must guarantee the exercise of this right in the broadest possible manner, and promote it.” The IACHR reiterates

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353 Diario Las Américas, Opositores acusados de “traición a la patria” continuarán denunciando la situación de Venezuela, May 10, 2016; El Nuevo Herald; Diputados opositores venezolanos seguirán denunciando la situación de Venezuela, May 10, 2016; Efecto Cocuyo, “Qué hay detrás de la ‘traición a la patria’ que el Gobierno impulsa a los diputados opositores,” June 29, 2016; See presidential decree 2,323, May 13, 2016, published in Extraordinary Official Gazette No. 6,227.

354 HRW, World Report 2016

355 Con el Mazo Dando, ¡Vendepatria! Ponce y Alvarado irán con Almagro a Dominicana para tratar de rayar los Clap, June 8, 2016; Diario Tal Cual, Director de OVCS es víctima de campaña de desprestigio por el gobierno, June 16, 2016; Frontline Defenders, Defensor de derechos humanos Marco Antonio Ponce blanco de campaña de desprestigio, June 15, 2016.

356 Ciudad CSS, Revelan mecenas internacionales de ONG criollas, May 5, 2016; Frontline Defenders, Defensor de derechos humanos Marco Antonio Ponce blanco de campaña de desprestigio, June 15, 2016.

357 Con el Mazo Dando, “Más de 15 millones de dólares ha destinado la NED a ONG en Venezuela (+infografía),” May 20, 2016.

358 Frontline Defenders, Campaña de desprestigio contra el Director del OVP Humberto Prado Sifontes, October 28, 2016; web page “Con el mazo dando”, ¡Sepa qué esconde Humberto Prado en Panamá!, October 26, 2016.


that civil society organizations may legitimately receive funds from foreign or international NGOs or from foreign governments to promote human rights, and that the State is required to guarantee their establishment and operations without imposing restrictions beyond those permitted under the right to freedom of association.\textsuperscript{361}

199. For its part, HRW stated that the imprecise language used in the aforementioned decree seems designed to stifle the ability of independent civil society organizations to operate effectively without fear of retaliation.\textsuperscript{362}

200. For its part, the State noted that during the Universal Periodic Review of the United Nations, it "recognized the work that human rights defenders do and described in the measures implemented domestically to continue promoting the work that they do."\textsuperscript{363}

201. Based on this, it is observed that human rights defenders continue to face serious obstacles to doing their work. The Commission reiterates that harassment of and attacks on human rights defenders not only impact their own rights as guaranteed to all humans, but also threaten the fundamental role these defenders play in society and render defenseless everyone on whose behalf they work. The Commission also recalls that the work of human rights defenders is essential for building a democratic and lasting society. They play a leading role in the process of fully realizing the rule of law and the strengthening of democracy.\textsuperscript{364}

B. Persons deprived of liberty

202. During this year, the Commission continued to receive concerning information on grave violations to the human rights of people deprived of liberty in Venezuela. The situation faced by this particularly at-risk group is one of the most serious on the continent,\textsuperscript{365} involving overcrowding; excessive use of preventative detention; deplorable detention conditions; general violence; lack of effective State control; and corruption in the form of the so-called “vaccinations” (fees charged to inmates for their safety in detention centers).

203. As the Commission has expressed previously, the overcrowding in Venezuelan prisons is one of the main problems facing people deprived of liberty in the country.\textsuperscript{366} According to the OVP, at the end of 2015, prisons were 190% over capacity.\textsuperscript{367} The IACHR was also informed of the excessive use of preventative detention in the country, which, as indicated by the IACHR, has a direct impact on the increase in the prison population and therefore the negative consequences of overcrowding.\textsuperscript{368} Specifically, according to information provided by the OVP, 69% of all people deprived of liberty are in preventative detention.\textsuperscript{369}


\textsuperscript{362} HRW, \textit{Venezuela’s Humanitarian Crisis – Severe Medical and Food Shortages, Inadequate and Repressive Government Response}, October 24, 2016.

\textsuperscript{363} IACHR, \textit{Hearing on the right to health}, April 4, 2016; Bolivarian Republic of Venezuela, Comments on the draft of Chapter IV B, IACHR Annual Report, Venezuela, received on January 30, 2017, para. 64.


\textsuperscript{365} According to the OVP, about 1,622 deaths over the last five years during the term of Ministry of Penitentiary Services Iris Varela, OVP, \textit{Doctor Humberto Prado: El sistema penitenciario de Venezuela se quiebra entre pranes, motines, secuestros y muerte}, August 16, 2016.

\textsuperscript{366} IACHR, Annual Report 2015; IACHR, Democracy and Human Rights in Venezuela, December 30, 2009, para. 44.


According to information available to the Commission, this situation results mainly from violations of the due process rights of accused people and a lack of coordination between the bodies of the judiciary and the Penitentiary Ministry.370

204. The IACHR likewise observes that violence from riots, confrontations between members of criminal gangs, attacks with firearms, and other disturbances remains prevalent. On March 22, 2016, the IACHR expressed concern over this situation and condemned the violent deaths of 12 people deprived of liberty at the José Antonio Anzoátegui Judicial Jail and Police Headquarters, both in Anzoátegui state, as well as in the Fénix Community Penitentiary, located in the state of Lara, Venezuela. These violent incidents arising from clashes between inmates took place during early 2016 and in three detention centers known to be significantly overcrowded.371 Also, according to information available to the Commission, a grenade explosion in the General Penitentiary of Venezuela (PG V), located in the state of Guárico, killed approximately 11 people and injured 22.372

205. Other information available to the IACHR indicates that women deprived of liberty are particularly at risk considering the lack of gender-focused penitentiary policies and that conditions are deplorable in the only women’s prison.373

206. Likewise, indications are that the majority of illegal acts committed within prisons, particularly by the heads of criminal gangs (the so-called “pranes” or as they are known officially, the “negative leaders”) remain in impunity, and the State still fails to effectively exercise control over the prison populations.374

207. Regarding detention conditions in the prisons, the IACHR has received information on the risk to life and personal integrity that people deprived of liberty face due to a lack of cleanliness, poor medical care, insufficient opportunity for personal hygiene, inadequate food, and shortage of drinking water.375 Specifically, the IACHR expresses particular concern at the use of police jails as permanent detention centers despite the fact that these detention centers are set up for temporary detention. Now they are overcrowded and lack the infrastructure and basic services to ensure a dignified detention conditions.376

208. Regarding medical care in detention centers, the Commission has been informed of shortages of medical staff and lack of medicine and equipment. This has led to the death of people deprived of

370 OVP, request for thematic hearing on the human rights situation of people deprived of liberty in Venezuela, 159th ordinary period of sessions, October 3, 2016, and OVP, information sent to the IACHR in the framework of the public hearing called on measures to reduce preventative detention in the Americas, held on April 4, 2016, during the 157th ordinary period of sessions.


372 Efecto, Granada explotó en la PGV en preparativos para fiesta de cumpleaños del pran, September 16, 2016. Also see: El Nacional, Fiesta de “pran” en la PGV terminó con muertos y heridos, September 14, 2016; Caraota Digital, Suben a seis los fallecidos por explosión de granada en la PGV, September 15, 2016, and El Estímulo, OVP reporta 8 muertos y más de 32 heridos por explosión en la PGV, September 15, 2016. The Commission was provided with information on these events on September 15, 2016, by the OVP.

373 OVP, request for thematic hearing on the human rights situation of people deprived of liberty in Venezuela, 159th ordinary period of sessions, October 3, 2016.

374 OVP, information sent to the IACHR in the framework of the public hearing called on measures to reduce preventative detention in the Americas, held on April 4, 2016, during the 157th ordinary period of sessions. Doctor Humberto Prado: El sistema penitenciario de Venezuela se quiebra entre pranes, motines, secuestros y muerte, August 14, 2016 and OVP, OVP submits eight solutions to the penitentiary crisis in the country, July 3, 2016.

375 OVP, information sent to the IACHR in the framework of the public hearing called on measures to reduce preventative detention in the Americas, held on April 4, 2016. Also see: OVP, Prisoners do not receive medicine, even from family members, July 5, 2016.

376 Along these lines, see OVP, information sent to the IACHR in the framework of the public hearing called on measures to reduce preventative detention in the Americas, held on April 4, 2016, during the 157th ordinary period of sessions, and PROVEA, information sent to the IACHR via email, October 4, 2016.
liberty from infectious disease, gastrointestinal illness, and respiratory and skin disease.\textsuperscript{377} In particular, the IACHR has information indicating a lack of regular checkups in jails and prisons for people with HIV or tuberculosis. This is especially concerning considering that these illnesses are common in the prison population due to an absence of preventative care and support.\textsuperscript{378}

209. The Commission notes that in Venezuela, as of May 2015, 159 people were detained for every 100,000 residents.\textsuperscript{379} During the hearing held in December on the human rights situation of people deprived of liberty in Venezuela, the OVP reported that as of October 30, 2016, 55,000 people were deprived of liberty. Of these, 37,950 were being processed, 16,500 were being punished, and 550 were on work detail. It noted that approximately 33,000 people were being held in National Police, state police, municipal police, and CICPC headquarters and stations. It indicated that 69\% of inmates are in pretrial detention despite the plans implemented by the State to reduce procedural backlog. This is mainly due to a lack of coordination between the bodies that administer justice and the Penitentiary Ministry. It also stated that individuals in pretrial detention face deficiencies with regard to health and judicial protection guarantees. For its part, the State said that new penitentiaries have been built and a number of health and education programs were under development. For its part, the Commission expressed its willingness to conduct a site visit to the penitentiaries in Venezuela should the State consent to such a visit.\textsuperscript{380}

210. The State, meanwhile, reported that 38 penitentiaries had been built or remodeled, increasing installed capacity to more than 57,000 inmates. This has enabled it to address overcrowding, given that the current penitentiary population is approximately 55,000 inmates.\textsuperscript{381} It indicated that implementation of the Penitentiary and Disciplinary Regime reached 100\% for the women’s facilities and 100\% in facilities for adolescents who come in conflict with criminal law, as well as 96\% in facilities for adult males. The State notes that this has enabled it to retake control of these facilities and eradicate the "negative leaders" who have historically existed in the country's prisons.\textsuperscript{382} It also reported that it guarantees the right to food to people deprived of liberty by providing them with three balanced meals a day, in accordance with the nutritional requirements of the penitentiary population.\textsuperscript{383}

211. The State highlighted the inauguration of the first stage of the Penitentiary Technology and Security System, which enables the blocking of cellular phones and real-time monitoring of all the country's prisons through investment of approximately US$155 million. It also highlighted the existence of 10 chapters of the Penitentiary Orchestra System, through which the reintroduction of inmates to society is aided through the study and practice of music.\textsuperscript{384}

212. Considering the information examined in this section, the IACHR expresses concern at the grave situation facing people deprived of liberty in Venezuela, which reflects a failure to adopt effective prison policies to guarantee the rights of people deprived of liberty, mainly the rights to life and personal integrity.

\textsuperscript{377} OVP, \textit{Prisoners do not receive medicine or visits from family members}, July 5, 2016.

\textsuperscript{378} OVP, information sent to the IACHR in the framework of the public hearing called on measures to reduce preventative detention in the Americas, held on April 4, 2016, during the 157th ordinary period of sessions, and OVP, \textit{Prisoners do not receive medicine, even from family members}, July 5, 2016.


\textsuperscript{381} IACHR, \textit{Hearing on the right to health}, April 4, 2016; Bolivarian Republic of Venezuela, Comments on the draft of Chapter IV B, IACHR Annual Report, Venezuela, received on January 30, 2017, para. 67.

\textsuperscript{382} IACHR, \textit{Hearing on the right to health}, April 4, 2016; Bolivarian Republic of Venezuela, Comments on the draft of Chapter IV B, IACHR Annual Report, Venezuela, received on January 30, 2017, para. 68.

\textsuperscript{383} IACHR, \textit{Hearing on the right to health}, April 4, 2016; Bolivarian Republic of Venezuela, Comments on the draft of Chapter IV B, IACHR Annual Report, Venezuela, received on January 30, 2017, para. 69.

\textsuperscript{384} IACHR, \textit{Hearing on the right to health}, April 4, 2016; Bolivarian Republic of Venezuela, Comments on the draft of Chapter IV B, IACHR Annual Report, Venezuela, received on January 30, 2017, para. 70.
C. Migrants and refugees

213. During this year, the Commission has continued to monitor the human rights situation of migrants, refugees, and asylum applicants in Venezuela. Specifically, it has been monitoring the situation resulting from the closure of the border in six municipalities of the state of Táchira between Venezuela and Colombia, ordered by President Maduro in August 2015.385 According to the United Nations Office for the Coordination of Humanitarian Affairs (OCHA), following the closure of the border, GNB troops carried out an operation to collectively expel 1,950 undocumented Colombian migrants living in Venezuela.386 According to HRW, none of the more than 700 Colombians interviewed by the Office of the Ombudsman of Colombia after having been deported from Venezuela said they had been given a hearing to challenge the expulsion.387

214. In 2016, the IACHR received information indicating that while the border was closed, the negative impact on the social dynamic deepened, especially regarding trade and access to healthcare services, education, and work. This situation particularly affected the Colombian children and adolescents living in Venezuela and studying in Cúcuta (Colombia), or living in Colombia and going to school in Venezuela.388

215. The Commission notes that since January, measures have been taken to partially and temporarily reopen the border for students and cargo and public service vehicles.389 Also, the governments of Colombia and Venezuela agreed to adopt a special identity document390 as a step toward gradually reopening the border. In February, the Venezuelan government announced a partial opening of the border.391 Finally, on August 13, 2016, after a bilateral agreement was reached, the progressive reopening of the border was begun, and it was decided to adopt new immigration regulations along with measures for combating the proliferation of illegal activities.392 However, this year, the border with Colombia has remained partially closed.393 and measures were implemented to close it once again by the end of this year.394

216. For its part, COFAVIC is very concerned at the spreading phenomenon of forced internal displacement in a number of states in the country, including areas of Caracas. It noted that internally displaced families flee because of a lack of institutional protection. It said that families that are forcibly displaced face a variety of difficulties for having fled their homes or places of residence and are especially vulnerable given that they flee in search of security and protection, leaving behind their life projects as a result of situations of generalized violence and grave violations of human rights.395

217. In addition, the representative of the United Nations High Commissioner for Refugees (UNHCR) in Colombia warned of “the silent arrival of a lot of people who cross the border (from Venezuela)
and stay on the Colombian side with irregular immigration status," mainly seeking security and medical 
attention in response to the crisis the country is facing, despite the closure of border crossings. 396

218. Another area of concern has to do with the constant stream of Venezuelans migrating to different South American and European countries. 397 especially Colombia. 398 According to publicly available 
information, the factors leading Venezuelan citizens to leave include urban insecurity resulting from State and non-State actors, inequality, poverty, a failure to guarantee economic, social, and cultural rights, political instability, and corruption. 399

D. Lesbian, gay, transexual, bisexual, and intersex (LGBTI) persons

219. Civil society organizations report that in the context of the situation of shortages and 
scarcity affecting Venezuela, LGBT persons have been victims of mistreatment, humiliation, and 
discrimination and been turned away when trying to purchase food, basic goods, and medicines. 400 Reports indicate that the situation "is exacerbated for trans people due to the legal and social exclusion of which they are victims." 401 This has been reported by deputy, attorney, and activist Tamara Adrián, who said clerks at a 
supermarket refused to sell her food because her national ID card did not match her gender identity. 402 A 
cashier at a supermarket in Caracas stated that this was not intended as a malicious act against these people. "Ever since they started using the fingerprint machines, you see everything. The other day, a man came dressed like a woman and want to buy. The fingerprint was fine, but I couldn't tell if it was his real identity. I asked my boss and he told me I could not sell to him because he could be lying in order to "bachaquear" [resell]. I just follow orders. " 403 Lack of trust in the administration of justice and mismanagement in matters involving sexual orientation, gender identity, and gender expression have also been reported. 404

220. The Inter-American Commission reiterates its concern that a culture prevails in Venezuela 
in which acts of violence and attacks against LGBT persons—trans persons in particular—is normalized. 405 
The IACHR also reiterates its concern at the high rates of violence against LGBT persons in Venezuela. 
According to a report prepared by a civil society organization, between January and May of this year, at least 
10 murders took place, 406 all of them committed in public. 407 The same organization reported that during 
that time period, 16 LGBT persons had been attacked.

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396 La Nación, Precupa a la ONU la migración de venezolanos, July 23, 2016; El Nuevo Herald, ACNUR advierte ‘llegada silenciosa de mucha gente’ de Venezuela a Colombia, July 22, 2016; El Tiempo, Las caras de la crisis de migración venezolana en Bogotá, August 9, 2016.


398 Noticias Hoy México, Las caras de la migración venezolana en Bogotá, August 9, 2016.

399 El País, La emigración de Venezuela a España se dispara en los dos últimos años, July 1, 2016.

400 Acción Ciudadana Contra el SIDA (ACCSI), Informe Venezuela 2016 Crímenes de Odio por Orientación sexual, Identidad de género y Expresión de género en la noticia de los Medios de Comunicación y Organizaciones de la Sociedad Civil, 2016, p. 17.

401 Notitotal, El drama de ser transgénere e intentar comprar alimentos, July 31, 2016.

402 Canal de noticia, Niegan venta de alimentos a Tamara Adrián porque su CI no coincide con su género, May 31, 2016.

403 ACCSI, Informe Venezuela 2016 Crímenes de Odio por Orientación sexual, Identidad de género y Expresión de género en la noticia de los Medios de Comunicación y Organizaciones de la Sociedad Civil, 2016, p. 17.

404 ACCSI, Informe Venezuela 2016 Crímenes de Odio por Orientación sexual, Identidad de género y Expresión de género en la noticia de los Medios de Comunicación y Organizaciones de la Sociedad Civil, 2016, p. 17.

405 IACHR, Violence against Lesbians, Gays, Bisexuals, Trans and Intersex persons (LGBTI) in the Americas, November 12, 2015, pg. 246, para. 427.


407 ACCSI, Informe Venezuela 2016 Crímenes de Odio por Orientación sexual, Identidad de género y Expresión de género en la noticia de los Medios de Comunicación y Organizaciones de la Sociedad Civil, 2016, p. 80.
221. For its part, the Commission expresses alarm at the situation faced by defenders of LGBTI persons in Venezuela. The Commission has received information indicating that since 2014, Yonathan Matheus and Wendell Oviedo, spokespeople with the NGO Venezuela Diversa, have been persecuted, harassed, and photographed without their consent by unknown individuals. They have received death threats several times, forcing them to leave the country and relocate to the United States.

222. The IACHR has established that the members of organizations promoting and defending the rights of LGBTI persons play a fundamental role in the region in terms of supervising the State to ensure it complies with its obligations and, in general, in the process of promoting equality for LGBTI persons. The Commission reiterates that the human rights defenders who identify themselves as LGBTI and work to protect and promote the human rights of LGBTI persons face alarming levels of vulnerability to violence due to the intersection of their sexual orientation and/or gender identity with their roles as human rights defenders and the causes they defend.

223. As far as good practices, the IACHR highlights the that in June of this year, the Ordinance on Discrimination in All Areas and Forms in the Municipality of Chacao, Caracas, passed the first vote. The ordinance is sponsored by councilmember Diego Scharifker, who, in explaining the need for it, said “we all know what happens to homosexual persons at the Altamira Plaza. They walk through the Plaza holding hands or displaying affection and citizens—in some cases municipal police officials—use violence and force against these people That’s discrimination”. The Commission also highlights the approval of Decree No. 006 of May 17, 2016, by the Government of the Capital District, published in Official Gazette of the Capital District No. 387, which declares Caracas a territory free of homophobia, transfobia, and any kind of social discrimination as part of a full recognition of the LGBTI community that lives in the country. It also notes Resolution NºDDPG-2016-46845 of the Office of the Public Defender adopting measures to ensure equal protection and nondiscrimination of the LGBTI community in all of that State institution’s facilities.

224. The State also reported on the actions called for in its National Human Rights Plan on the rights of LGBTI persons with regard to the promotion and protection of the right to equality and nondiscrimination due to sexual orientation, gender identity, or gender expression; promoting messages aimed at ensuring respect for the right to equal protection and nondiscrimination in all public and private environments, with particular emphasis on groups or sectors that have historically been discriminated against; and creating and maintaining specialized mechanisms within the Office of the Ombudsman and the Public Ministry to promote and protect these rights.

E. Indigenous peoples

225. The Commission has been following the situation of indigenous peoples in Venezuela, especially with regard to the process of demarcating their lands, the status of the protection of the right to prior consultation, the living conditions of the Añú and Wayúu peoples after the declaration of the state of emergency, and the notable militarization of the area near the border with Colombia.

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408 IACHR, "Violence against LGBTI Persons", OAS/Ser.L/V/II.rev.2 Doc. 36, November 12, 2015, pg. 196, para. 333.
409 IACHR, "Violence against LGBTI Persons", OAS/Ser.L/V/II.rev.2 Doc. 36, November 12, 2015 pg. 197, para. 335.
410 Councilman Diego Scharifker, Session of the Municipal Council of Chacao of May 3, 2016, Presentation of the draft Ordinance on Discrimination in Chacao, min. 1:12.
411 IACHR, Hearing on the right to health, April 4, 2016; Bolivarian Republic of Venezuela, Comments on the draft of Chapter IV B, IACHR Annual Report, Venezuela, received on January 30, 2017, para. 72.
412 IACHR, Hearing on the right to health, April 4, 2016; Bolivarian Republic of Venezuela, Comments on the draft of Chapter IV B, IACHR Annual Report, Venezuela, received on January 30, 2017, para. 73.
413 IACHR, Hearing on the right to health, April 4, 2016; Bolivarian Republic of Venezuela, Comments on the draft of Chapter IV B, IACHR Annual Report, Venezuela, received on January 30, 2017, para. 74.
226. Regarding land demarcation, civil society organizations report that until 2014, progress was being made in the process to demarcate the land, with 93 collective property land titles delivered, benefiting 545 communities representing 20,271 families and a total area of 2,951,852.66 hectares. However, they noted that a detailed review of the National Demarcation Process and its official results over the last 15 years show that of the number of communities surveyed, only approximately 12.4% of indigenous territory has been demarcated. Likewise, the demarcation process has not been expedited and no significant progress has been made as far as the number of hectares recognized or indigenous peoples benefited. The organizations indicate that despite progress with regard to policy, speeding up the processes of demarcating the land ready to be processed remains a challenge for the State, as does providing support to the numerous indigenous peoples and communities that have not been able to conduct these processes on their own.

227. Regarding prior, free, and informed consultation, according to indigenous organizations and civil society, in recent years the State continued to plan and execute actions on indigenous territories without consulting the peoples affected and without their prior consent as required under international standards on the subject. The Association of Indigenous Peoples of Venezuela (APIVEN) states that in February, the Compañía Anónima de Materiales Industriales Nacionales y Productos Estratégicos Globales (National Industrial Materials and Global Strategic Products Corporation, CAMINPEG) was formed, and decree 2,231 gave the Armed Forces authority to carry out “everything having to do with legal activities for petroleum, gas, and general mining services without any limitation.” They stated that two weeks after these decrees were handed down, the Executive Branch announced the signing of agreements with mining companies for what has come to be known as the “Orinoco Mining Belt.” The agreements cover exploration for, certification, and extraction of gold, copper, coltan, and other minerals on indigenous territories. The State decided on all these actions without consulting the affected indigenous peoples beforehand and without performing the effective demarcation of their territories.

228. Regarding this, the State reported the creation of the Presidential Committee on Ecosocialism and Protection of Indigenous Peoples in Mining Activities, whose objective is to “ensure the preservation of the natural and cosmological elements of indigenous peoples in the context of the development of mining projects in the country.” It also indicated that in 2016, more than 58 consultation
meetings were held with the following indigenous communities: Mapoyo, Eñepe, Huotujja, Jivi, Curripaco, Baniva, Pume, Piapoco, Sanema, Baré, Pemón, Kariña, Ye’kwana, Warao, Akawaio, and Arawako. 422

229. In 2016, incidents of violence between soldiers and Wayúus resulting from the closure of the border crossing persisted, without any investigation into them and those responsible. Soldiers continued to mistreat members of the Añú and Wayúu peoples. During the state of emergency, the Commission for Human Rights of Zulia State (CODHEZ) conducted a survey of 100 residents of La Guajira where respondents were asked whether they had ever been threatened and/or assaulted by security officials during the state of exception; 38 people said yes, 60 said no, and 2 did not answer the question. 423

230. Regarding indigenous jurisdiction, civil society organizations indicated that although it is recognized by the Constitution of the Bolivarian Republic of Venezuela and the Indigenous Peoples and Communities Act, it is crucial to create a special law to regulate it, precisely define its limits, and establish how general jurisdiction would articulate with indigenous jurisdiction. 424 Currently, the indigenous jurisdiction hears and rules on criminal and noncriminal cases between indigenous individuals.

231. With regard to militarization, CODHEZ reported to the Commission that despite the withdrawal of the soldiers, their functions have been taken over by the “Strategic Comprehensive Development Regions” (REDI) and the “Comprehensive Defense Operating Zones” (ZODI), which fall under military rule and are under the FANB’s Strategic Operational Command. It stated specifically that La Guajira, formerly a military district on the border with Colombia, Zulia state, is inhabited by Añú and Wayúu peoples. 425 They note that since September 2015, when the government declared a state of emergency, militarization was reinforced. They indicated that the state of emergency restricted civil and political rights, such as the inviolability of the home and private communications, freedom of movement, private or public assembly, the right to public demonstration, and economic freedom. 426 They noted that the presidential decree was enacted without prior consultation with indigenous peoples’ legitimate authorities, as required by the Organic Indigenous Peoples and Communities Act 427 and that despite the decree stating that a “humanitarian corridor” would be created for free movement of indigenous peoples, in practice this has not been the case. 428

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422 IACHR, Hearing on the right to health, April 4, 2016; Bolivarian Republic of Venezuela, Comments on the draft of Chapter IV B, IACHR Annual Report, Venezuela, received on January 30, 2017, para. 77.


425 Presidential Decree No. 7,938, published in the Official Gazette of the Republic number 39,583, December 29, 2010; Request for thematic hearing on the militarization of the Venezuelan Guajira, October 10, 2016, pg. 1. According to the 2011 census of the National Statistics Institute, 443,544 indigenous people live in Zulia, or 61.2% of the national indigenous population, 1.63% of the country’s total population, and 12% of Zulia’s population (3,704,494 people). Additionally, the Wayúu people is the predominant indigenous ethnicity in Venezuela, present in all the country’s federal entities. They account for 1.52% of the country’s total population and 57.05% of the total indigenous population. The municipality of La Guajira, Zulia state, has 65,545 inhabitants, of which 88.25% are indigenous.

426 CODHEZ, Request for thematic hearing on the militarization of the Venezuelan Guajira, October 10, 2016, pg. 2; CODHEZ and Proyecto M, Report for the Second Cycle of the Universal Periodic Review of Venezuela for the 26th Period of Sessions, October-November 2016, para. 2; La Patilla, Cronología de los Estados de Excepción en la frontera colombo-venezolana, September 16, 2016.


428 CODHEZ, Request for thematic hearing on the militarization of the Venezuelan Guajira, October 10, 2016, pg. 2.
F. Children and adolescents

232. The scarcity and shortages of food, medicine, medical inputs and materials, and other basic products that the country faces and that has continued during 2016 makes children and adolescents especially vulnerable, as the IACHR has warned during the course of this year.\footnote{IACHR, Press Release No. 096/16, \textit{IACHR Calls on Venezuelan State to Adopt Comprehensive Measures in the Face of Scarcity in Venezuela}, July 22, 2016.} The increased scarcity and high cost of pasteurized milk, baby formula and other derivatives, food of high nutritional value, cereals, vitamin supplements, and nutritional supplements that puts the right to food, childhood nutrition, and the nutrition of pregnant and nursing mothers at risk is concerning. It affects the right to health and the growth and development of children. Based on the importance of good nutrition for children, especially nursing infants and in early childhood, the effects of these shortages can put children's lives at risk and harm their health for the rest of their lives. Thus one of the most concerning pieces of information was submitted by organizations that care for orphans. They reported that they have reduced the amount and quality of the supply of food necessary to provide an adequate standard of living to the children by 72.22%.\footnote{In the framework of the Universal Periodic Review process, CDH-UCAB, \textit{Contribuciones de la sociedad civil venezolana, 2ndo ciclo EPU Venezuela 2016}, pg 59.}

233. It is also noted that the nutritional support program implemented by the Education Ministry does not extend to all public education facilities, and the food provided has been reduced in terms of amount, variety, and quality. This situation is associated with an increase in absence from school, affecting the right to education.\footnote{CDH-UCAB, \textit{Contribuciones de la sociedad civil venezolana, 2ndo ciclo EPU Venezuela 2016}, pg 59.} Teachers are missing school so they themselves can find food and basic goods by standing in long lines on their designated days, causing interruptions to classes and irregularity as far as the provision of educational services. This seriously affects children's rights to education. Estimates are that children miss an average of 40% of their classes.\footnote{Associated Press, \textit{No food, no teachers, violence in failing Venezuela schools}, June 17, 2016.} One study on public schools in the state of Miranda in 2016 found that 48.1% of students missed class for reasons related to food (there was no food, they were weak, they were saving to buy food, they went to stand in line to buy food).\footnote{CDH-UCAB, \textit{Contribuciones de la sociedad civil venezolana, 2ndo ciclo EPU Venezuela 2016}, pgs. 5 and 6.} The number of classes has been cut back due to suspension of educational services to save money. This violates the number of days required in the Organic Education Act and the priority that the State should place on education.\footnote{CDH-UCAB, \textit{Contribuciones de la sociedad civil venezolana. 2ndo ciclo EPU Venezuela 2016}, pgs. 5 and 6.} According to some sources, the annual dropout rate has doubled and more than a quarter of adolescents are not enrolled. The security situation is also affecting the right to education by increasing absence and drop-out rates.\footnote{Associated Press, \textit{No food, no teachers, violence in failing Venezuela schools}, June 17, 2016.} Student attendance declined by around 30%—as did attendance of some teachers—due to insecurity and violence in the form of robberies, theft, and vandalism, including theft of equipment, materials, and supplies.\footnote{CDH-UCAB, \textit{Contribuciones de la sociedad civil venezolana, 2ndo ciclo EPU Venezuela 2016}, pgs. 5 and 6.}

234. Regarding the right to health, deterioration in the country's health infrastructure, lack of staff, and shortages of medications and medical supplies, as well as technical equipment in laboratories that no longer functions and power outages all prevent the health needs of children and young people from being adequately met.\footnote{IACHR, Press Release No. 096/16, \textit{IACHR Calls on Venezuelan State to Adopt Comprehensive Measures in the Face of Scarcity in Venezuela}, July 22, 2016.} Infant mortality has increased, especially of newborns. In April, it was reported that a total of 82 newborns had died in the state of Zulia during the first quarter of the year.\footnote{El Nacional, \textit{Más de 80 neonatos han muerto en el Zulia durante 2016}, April 10, 2016.} Similarly, 71 newborns...
were reported dead in Táchira through March 31, an increase of 25% compared to the same period in 2015.439

235. According to figures from the Ministry of Health, the infant mortality rate rose from 14.8 to 18.6 from 2014 to 2016, with 80% of the deaths being of babies less than 28 days old who died in hospitals.440 Pediatric hospitals such as the Hospital J.M. de los Ríos, a national pediatric center for the treatment of certain illnesses in children, has severe deficits in medical and hospital care, according to reports from the Sociedad Médica and the General Comptroller of the Republic. The IACHR has also been made aware of the grave situation of children with blood diseases and cancer cared for in that hospital, who on a number of occasions have had to deal with its suspension of hospitalization services.441

236. Decree No. 2,303 of the Presidency of the Republic, dated April 26, 2016, establishes “special temporary paid leave while the effects of the “El Niño” weather phenomenon on the Simón Bolívar Hydroelectric Plant persist,” declaring Wednesday, Thursday, and Friday as “no work” days for public sector employees as a way to save electricity. This situation has limited the administrative and judicial services provided to children and adolescents, such as social protection services and response services for at-risk children and victims. No priority was placed on children, and their higher interests and special need for protection and care in the situation facing the country were not taken into account.442

237. The IACHR has also expressed concern at the climate of violence and insecurity facing the country and its impacts on children and adolescents.443 In 2016, the Citizens’ Council for Public Security and Criminal Justice, an organization that conducts an annual study to collect homicide statistics for cities throughout the world, rated Caracas as the most insecure and violent city in the world, along with seven other Venezuelan cities.444 Homicide is the leading cause of death among adolescents and young people, mainly among the poor. The Country Programme Action Plan signed by UNICEF and the State for the period (2015-2019) states that the homicide rate among adolescents is one of the highest in Latin America and mainly affects adolescent males. According to UNICEF, Venezuela is among the top three countries in Latin America in terms of homicides of children and adolescents.445

G. Afro-descendents

238. The IACHR expressed concern at the scarcity of information available in 2016 on the human rights situation of Afro-descendent persons, and Afro-descendent women in particular. With regard to this, the Inter-American Commission has expressed concern at the structural inequality facing the Afro-descendent population in the region and the particularly pressing situation faced by Afro-descendent women, adolescents, and children as a result of the persistence of institutional norms and practices that block them from fully exercising their human rights. This Commission recently noted that Afro-descendent women are among the most marginalized social groups in the region, warning likewise that one of the main challenges

439 El Periódico Venezolano, [Cifras de exterminio! 71 bebés recién nacidos han muerto en Hospital de Táchira], May 3, 2016.
440 In the framework of the UPR process, CDH-UCAB, [Contribuciones de la sociedad civil venezolana. 2ndo ciclo EPU Venezuela 2016], pg 60; El Nacional, [A la semana mueren 194 niños en el país], June 24, 2016. Also, the United Nations country group expresses its concern at the neonatal deaths contributions to the Universal Periodic Review, UN, Human Right Council, collected by the UNHCR, A/HRC/WG.6/26/VEN/2, August 25, 2016, paragraph 47. para. 77.
441 In the framework of the UPR process, CDH-UCAB, [Contribuciones de la sociedad civil venezolana. 2ndo ciclo EPU Venezuela 2016], pg 60.
442 Infovzla, [Decreto de días no laborables compromete la protección de los niños, niñas y adolescentes], May 11, 2016. El Universal, [Trabajadores públicos retoman jornada laboral de toda la semana: laborarán de 8 a 13 horas], June 13, 2016.
443 IACHR, [Violence, children and organized crime], OEA/Ser.L/V/II.Doc. 40/15, 2015, paras. 41, 45, 56, 57, 59, 150, and 195, among others.
they face is the institutional violence they suffer at the hands of government and judicial authorities. In this regard, the IACHR asks the Venezuelan State to collect, with all due diligence, information on the human rights situation of Afro-descendent persons—and Afro-descendent women in particular—and report to the IACHR on the policy and measures adopted to meet their needs.

V. CONCLUSIONS

239. Based on this analysis of the overall human rights situation in Venezuela, the Commission observes that in 2016, the persistent structural situations that affect the human rights of Venezuelans have worsened and led to a severe political, social, and economic crisis. These situations include the worsening citizen security situation; the state of emergency in place in Venezuela during the whole year; the lack of effective separation, independence, and balance of State power; and the violation of freedom of expression, political rights, and the right of all social actors to participate in public life, as well as the persistent lack of effective access to independent and impartial justice; and other violations of rights of particularly vulnerable groups. It has also been observed that Venezuela is facing a severe-crisis that directly affects access to ESCRs. All of this, added to the political conflict and institutional weakness, have a negative effect on the rule of law in Venezuela.

VI. RECOMMENDATIONS

240. Pursuant to the above analysis and the monitoring that the IACHR has conducted of the human rights situation, the Commission gives the following recommendations to the State of Venezuela:

Situation of citizen security

- Take comprehensive measures to guarantee citizen security, especially with regard to the homicide rate;
- Reform the policies and practices of security forces related to crime-fighting operations to bring them into a framework of respect for human rights;
- Implement measures to prevent the excessive use of force by security forces, and where excessive force is used, duly investigate, try, and punish those responsible;
- Limit the participation of the military in public order operations, which are the responsibility of the police; where the military does get involved in exceptional situations, place it under civilian authority;
- Adopt the measures necessary to protect the life and personal integrity of all people and the specific measures necessary to protect social communicators, human rights defenders, union members, people participating in public demonstrations, people deprived of liberty, children, adolescents, indigenous peoples, Afro-descendent persons, and the LGBTI population; and
- Train public servants in charge of public order work on the protection and respect for human rights.

Rule of law and democracy

- Place a deadline on the use of states of emergency and use them only in situations of extreme gravity that are true emergencies;
- Effectively guarantee the separation, independence and balance of public powers, and specifically, take urgent measures to ensure the independence of the judiciary,

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strengthening procedures for appointing and removing judges and prosecutors, ensuring the stability of their positions, and eliminating the provisional nature of the posts of the large majority of judges and prosecutors; also, improve the institutional capacity of the judiciary to combat impunity and human rights violation;

- Guarantee the full exercise of political rights for all people regardless of their political stance, and take the measures necessary to promote tolerance and pluralism in the exercise of political rights;
- Refrain from retaliation or using the punitive power of the State to intimidate or punish people based on their political opinions, and guarantee the pluralism of spaces for the exercise of democracy, including electoral processes; and respect demonstrations and protests carried out in the exercise of the right to peaceful assembly and demonstration.

**Freedom of Expression**

- Grant journalists the highest level of protection to ensure they are not detained, threatened, or attacked for exercising their profession, especially during a public demonstration. Their work materials and tools must not be destroyed or confiscated. They also must not be called as witnesses by judicial agencies, and authorities must respect their right to keep their sources of information confidential. The State must guarantee national and foreign media the ability to broadcast live during demonstrations and public events and not adopt measures to regulate or limit the free circulation of information;
- Refrain from exerting direct or indirect pressure aimed at silencing journalists, in accordance with Principle 13 of the Declaration of Principles on Freedom of Expression. In particular, remove all disproportionate or discriminatory restrictions that prevent media outlets of all formats, from effectively completing their commercial, social, or public missions;
- Change ambiguous or imprecise criminal laws that disproportionately limit freedom of expression, such as laws intended to protect the honor of ideas or institutions or that seek to protect national security or public peace, in order to prevent the use of criminal proceedings to inhibit free democratic debate on matters of public interest and the full exercise of political rights. Also, move to repeal desacato laws, no matter what form they take, as these laws violate Inter-American standards and restrict public debate, which is an essential element for the functioning of democracy;
- Adopt whatever legislative or other measures may be necessary to regulate the use of force—lethal and less lethal—by security forces for controlling social protest, pursuant to the standards of the Inter-American system. With this in mind, the IACHR recommends striking down resolution 008610, Rules of engagement for the Bolivarian National Armed Forces performing public order and social peace and citizen coexistence oversight duties at public meetings and demonstrations, which allow armed interventions in public meetings and demonstrations, which allows the use of firearms for this work, and guarantee the right to participate in public demonstrations without prior permit; and
- Adopt legislation on access to public information in keeping with inter-American standards in order to provide all people with tools for effectively monitoring State operations, supervising public administration, and controlling corruption, all of which are essential for democracy.

**Economic, social, and cultural rights (ESCR)**

- Intensify measures to address the shortage and insecurity in access to economic, social and cultural rights, ensuring that they focus on the full enjoyment of these rights and create conditions of real equality;
- Take urgent human rights-focused public policy measures that take into account the special condition of vulnerable people and groups such as children, pregnant women, the elderly, and people with disabilities and chronic illnesses, among others, and meet people’s basic
needs in order to guarantee their rights to health and food, pursuant to international law; and
• Take measures to ensure the availability and quality of healthcare services, ensuring that the facilities and care centers have adequate trained medical staff, medications, and hospital equipment.

Human Rights Defenders

• Publicly and unequivocally recognize the fundamental role that human rights defenders play in guaranteeing democracy and the rule of law and society. This commitment should be reflected at all levels of the State, national and local, and in the actions of the executive, legislative, and judicial branches;
• Refrain from making statements that stigmatize human rights defenders and suggest that they, along with human rights organizations, are acting improperly or illegally just because of the work they do promoting and protecting human rights. Likewise, the State must guarantee that public officials receive specific instructions in this regard, and that officials who do not follow those instructions properly be subject to appropriate disciplinary measures;
• Respect the right of human rights defenders and civil society organizations to manage their resources, including their funding, in compliance with legitimate laws and to plan their activities with full independence and no improper influence by authorities; and
• Amend and/or repeal any legislation that prohibits or criminalizes human rights defenders or organizations due to the simple fact that they receive foreign funding to support their work.

Persons deprived of liberty

• Adopt and implement comprehensive public policies aimed at ensuring that detainees in any prison are held in decent conditions that are congruent with the principle of humane treatment. In this sense, adopt measures aimed at the following: a) reducing overcrowding; b) improving detention conditions; c) preventing, diagnosing, and treating illnesses in a timely fashion; d) caring for the needs of particularly at-risk groups of inmates; and e) providing adequate food;
• Take the urgent and necessary measures to stop using police jails as permanent prisons, and increase State control over penitentiaries;
• Implement all measures necessary to prevent violence and conduct immediate, exhaustive, and impartial investigations into the various incidents of violence that have recently taken place in the country's penitentiaries to identify those responsible and punish them appropriately—including using administrative and disciplinary sanctions—as a mechanism of prevention to stop new incidents of violence from taking place; and
• In order to reduce the use of preventative detention and thereby address overcrowding, use pretrial measures other than preventative detention. In this sense, take specific steps such as the following: a) put adequate regulations in place on the use and application of alternative measures; b) ensure the necessary resources are allocated to make them functional and used for the greatest number of people possible; and c) apply the measures rationally based on their purpose and effectiveness, according to the characteristics of each case.

Migrants and refugees

• Urgently and without delay take all necessary measures to ensure that the applicable inter-American and international standards on procedures for deporting foreigners are respected;
• Adopt measures aimed at comprehensively compensating people who were victims of the collective expulsions following the closure of border in August 2015; and
• Adopt measures to prevent situations of deprivation or denial of rights—in particular the rights to health, right to food, right to work, right to decent housing, and other economic, social, and cultural rights—that may be factors behind the forced migration of people from Venezuela.

Lesbian, gay, bisexual, and trans, and intersex (LGBTI) persons

• Take measures, including legislative, public policy, and state programs, to address the underlying causes of violence against trans and genderqueer persons. Among other things, these measures must ensure that people have access without discrimination to formal employment, education, healthcare, and housing;
• Establish or strengthen specialized departments or units within the Office of the Ombudsman to address the situation of violence and discrimination faced by LGBTI persons;
• Adopt antidiscrimination legislation or change existing legislation to ban all kinds of discrimination, including discrimination based on sexual orientation, gender identity and gender expression, sexual characteristics, or factors related to an identity as intersex;
• Adopt a gender identity law that recognizes the right of trans persons to change the name and gender marker on birth certificates, identity documents, and other legal documents through quick and simple processes, without the need to present evaluations or medical or psychological/psychiatric certifications; and
• Take measures to prevent, investigate, punish, and provide reparations for violence aimed at defenders of the rights of LGBTI persons, who face greater vulnerability due to the intersection of their orientation and/or identity, their role as human rights defenders, and the issues in which they work. The specific measures must be designed and adopted in consultation with defenders and activists and should include measures to effectively address violence against trans defenders who are sex workers. These measures must also take into account the specific characteristics of violence perpetrated against defenders of the human rights of LGBTI persons by State security forces, as well as by gangs and members of illegal armed groups.

Indigenous peoples

• Regarding the process to demarcate indigenous lands, the State must adopt measures to accelerate the processes of granting collective property titles to all indigenous peoples who have presented their case files to the regional demarcation committees. In this sense, the Venezuelan State must take urgent actions to speed up this process, as established in the National Human Rights Plan; and
• The State must take measures to respect and guarantee the right of indigenous peoples to prior, free, and informed consultation on all matters pertinent to their territories. The policies adopted by the State must also structurally and comprehensively take into account their rights, world view, and needs, as well as their right to live free from all discrimination.

Children and adolescents

• Given the acute shortages and scarcity of medicines, medical supplies, and food in Venezuela, take all measures necessary to make it a priority to guarantee the rights of children and adolescents, particularly to protect their rights to health, food, personal integrity, development, and life;
• Increase investment in basic education and ensure education that is high-quality, universal, free of charge, accessible and adapted, and provided in environments that are safe and free of violence and discrimination. Regularly collect and publish information on enrollment
levels, absenteeism, and the dropout rate, as well as the results of educational quality assessments to enable monitoring of compliance with the right to education;

- Review the measures taken to address the energy crisis in order to ensure that the services directed at children are not affected and to prioritize their higher interests and special needs for protection and care; and
- Adopt public citizen security policies that take into account the rights of children and adolescents. In particular, articulate measures for preventing children and adolescents from being captured, used, and exploited by criminal groups to conduct illegal activities, as well as decrease the high rates of child and adolescent victimization by the violence in the country with programs that have clear and precise objectives and measurable indicators that make it possible to monitor and evaluate the policies.

**Afro-descendants**

- Collect, with all due diligence, information on the human rights situation of Afro-descendent persons—and Afro-descendent women in particular—and report to the IACHR on the policy and measures adopted to meet their needs.
Tab #11
**Human Rights Committee**

**Concluding observations on the fourth periodic report of the Bolivarian Republic of Venezuela**

1. The Human Rights Committee considered the fourth periodic report submitted by the Bolivarian Republic of Venezuela (CCPR/C/VEN/4) at its 3164th to 3166th meetings (CCPR/C/SR.3164 to 3166), held on 29 and 30 June 2015. At its 3191st and 3193rd meetings (CCPR/C/SR.3191 and 3193), held on 20 and 21 July 2015, the Committee adopted the following concluding observations.

**Introduction**

2. The Committee welcomes the submission of the fourth periodic report of the Bolivarian Republic of Venezuela, albeit seven years late, and the information contained therein. It expresses appreciation for the opportunity to renew its constructive dialogue with the State party’s high-level delegation on the measures that the State party has taken during the reporting period to implement the provisions of the Covenant. The Committee appreciates the State party’s written replies (CCPR/C/VEN/Q/4/Add.1) to the list of issues (CCPR/C/VEN/Q/4), which were supplemented by the oral responses provided by the delegation, and for the supplementary information provided to it in writing.

**Positive aspects**

3. The Committee welcomes the following legislative and institutional steps taken by the State party:

   (a) The adoption of the Indigenous Peoples and Communities Act, in December 2005, and the establishment of the Ministry of People’s Power for Indigenous Peoples, in December 2006;

   (b) The adoption of the Act on Women’s Right to a Life Free from Violence, in March 2007, and its partial amendment, in November 2014, among other things, to include the offence of femicide;

   (c) The establishment of the Ministry of People’s Power for Women and Gender Equality, in March 2009;

   (d) The adoption of the Racial Discrimination Act, in August 2011;

*Adopted by the Committee at its 114th session (29 June-24 July 2015).*

(f) The adoption of the Special Act on the Prevention and Punishment of Torture and Other Cruel, Inhuman and Degrading Treatment, in June 2013, and the approval of the National Plan for the Prevention of Torture and Other Cruel, Inhuman and Degrading Treatment, in October 2013.

4. The Committee welcomes the ratification of, or accession to, the following international instruments by the State party:

(a) The Optional Protocols to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, on 8 May 2002, and on the involvement of children in armed conflict, on 23 September 2003;

(b) The Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women, on 13 May 2002;


Principal subjects of concern and recommendations

Domestic applicability of the Covenant

5. The Committee notes with satisfaction that the Constitution provides that human rights treaties are immediately and directly applicable by the courts and other public bodies. However, it finds the limited nature of the information provided on cases in which the courts have invoked or applied directly the provisions of the Covenant to be regrettable (art. 2).

The State party should adopt the necessary measures to increase awareness of the Covenant and its applicability in domestic law among judges, lawyers and prosecutors with a view to ensuring that domestic law is applied and interpreted in the light of the Covenant.

National Human Rights Institution

6. The Committee is concerned that, at its March 2015 session, the Sub-Committee on Accreditation of the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights recommended that the Ombudsman’s Office should be downgraded to B status (art. 2).

The Committee recommends that the State party take the necessary steps to ensure that the Ombudsman’s Office is able to carry out its mandate to protect and promote human rights fully, effectively and independently, in accordance with the principles relating to the status of national institutions for the promotion and protection of human rights (Paris Principles).1

Gender equality

7. The Committee takes note with satisfaction of the measures adopted by the State party in the area of gender equality, including legislative measures such as those arising from the decisions of the Supreme Court regarding articles 46 and 57 of the Civil Code and article 393 of the Criminal Code. However, the Committee is concerned at reports that legal provisions that discriminate against women remain in

1 General Assembly resolution 48/134 of 20 December 1993, annex.
force, such as those on adultery contained in Title VIII of the Criminal Code (arts. 2, 3 and 26).

The Committee recalls its general comment No. 28 (2000) on the equality of rights between men and women and recommends that the State party intensify its efforts to ensure de jure and de facto equality between men and women in all areas. In particular, it recommends that the State party take the necessary steps to ensure that no legal provisions that discriminate against women remain in force. It further recommends that the State party step up its efforts to eliminate gender stereotypes regarding the role and responsibilities of men and women in the family and in society.

Alleged acts of discrimination and violence on the grounds of sexual orientation or gender identity

8. The Committee acknowledges the efforts of the Ombudsman’s Office with regard to the rights of lesbian, gay, bisexual, transgender and intersex (LGBTI) persons. However, it is concerned at reports of discrimination and acts of violence, including murder, directed at these persons on the basis of their sexual orientation or gender identity (arts. 2, 6, 7 and 26).

The State party should redouble its efforts to combat stereotypes of and prejudice against LGBTI persons and ensure that acts of discrimination are prevented and that acts of violence against such persons are investigated effectively and that those responsible are prosecuted and punished appropriately. Furthermore, the State party should consider enacting wide-ranging and comprehensive anti-discrimination legislation that sets forth a definition containing a complete list of prohibited grounds for discrimination, including sexual orientation and gender identity.

Violence against women

9. While it welcomes the State party’s efforts to combat violence against women, the Committee takes note with concern of reports that such violence remains a serious problem (arts. 3, 6 and 7).

The State party should step up its efforts to prevent and combat all acts of violence against women and to investigate such acts and to prosecute and appropriately punish those responsible. It should also ensure that all victims promptly receive appropriate reparation and protection, including access to a sufficient number of shelters throughout the country.

Voluntary termination of pregnancy

10. The Committee welcomes the State party’s statement that the criminal provisions concerning abortion are not applied in practice. Nevertheless, it notes with concern that voluntary termination of pregnancy, except when it is essential in order to save a woman’s life, is still an offence under the Criminal Code, which leads pregnant women to seek clandestine abortions that endanger their lives and health (arts. 3, 6 and 7).

In the light of its previous concluding observations (CCPR/CO/71/VEN, para. 19), the Committee recommends that the State party amend its legislation to establish exceptions to the general prohibition of non-therapeutic abortions and see to it that women do not resort to clandestine abortions under unsatisfactory conditions that may endanger their lives and health. It further recommends that the State party take the necessary steps to ensure the provision of appropriate sexual and reproductive health services.
Right to life

11. While it takes note of the State party’s crime prevention efforts, the Committee is concerned at reports of a very large number of violent deaths in the country, including cases allegedly committed by law enforcement officials (art. 6).

The State party should redouble its efforts to prevent and combat violent deaths, including increased action to disarm the civilian population. It should also ensure that all cases of violent death are investigated promptly, thoroughly, independently and impartially and that the perpetrators are brought to justice and duly punished.

Conditions of detention

12. The Committee is concerned at the conflicting reports it has received regarding levels of overcrowding and conditions of detention, in particular with respect to access to adequate health services, in places of deprivation of liberty. It is also concerned at reports of the large number of persons who are deprived of their liberty, sometimes for very long periods, in police facilities designed to house individuals for only a few days. While it takes note of the information provided by the State party that indicates that the number of victims of violence in places of deprivation of liberty is declining, the Committee is concerned at reports that acts of violence continue to take place (arts. 6, 9 and 10).

The State party should:

(a) Step up its efforts to improve conditions of detention in all places of deprivation of liberty, including by making sure that there is no overcrowding, and ensure that the dignity of those deprived of their liberty is respected in all such places in accordance with article 10 of the Covenant;

(b) Adopt measures to ensure that persons are not held in police facilities for long periods;

(c) Redouble its efforts to put an end to violence in places of deprivation of liberty, including by effectively eliminating the presence of weapons, and ensure that all cases of violence are investigated promptly, thoroughly, independently and impartially and that the perpetrators are brought to justice and duly punished.

Pretrial detention

13. The Committee notes with concern that in 2014 more than 60 per cent of persons deprived of their liberty were in pretrial detention (CCPR/C/VEN/Q/4/Add.1, para. 164) and finds it regrettable that it has not received disaggregated information in that regard (art. 9).

The State party should step up its efforts to reduce the high percentage of persons in pretrial detention. In particular, it should take the necessary steps to ensure that pretrial detention is not the rule and that, in practice, priority is given to alternatives to that form of detention. In this connection, the Committee wishes to draw the State party’s attention to paragraph 38 of its general comment No. 35 (2014) on liberty and security of the person.

Observance of human rights in the context of demonstrations

14. The Committee takes note with concern of reports of the alleged commission of human rights violations during protests. In this connection, and while taking into account the information it has received which indicates that some protesters may have
resorted to violence, the Committee is concerned at numerous reports of the alleged commission of human rights violations during the protests that took place in the early months of 2014, including cases of excessive and disproportionate use of force, torture and ill-treatment, arbitrary detention and failure to uphold fundamental legal safeguards. While it takes note of the information provided by the State party regarding the investigations under way, the Committee notes with concern that only seven civil servants have been convicted to date. It is further concerned at reports of the involvement of military personnel in the policing of public gatherings and demonstrations (arts. 2, 6, 7, 9, 10, 14, 19 and 21).

The State party should:

(a) Continue to take steps effectively to prevent and eliminate the excessive use of force by law enforcement officials, especially during demonstrations, including by intensifying training in human rights and the appropriate use of force;

(b) Ensure that all human rights violations, including those that may have been committed by private individuals with the acquiescence of State officials, are investigated promptly, thoroughly, independently and impartially and that the perpetrators are brought to justice and, if found guilty, are punished in accordance with the gravity of their acts;

(c) Redouble its efforts to effectively prevent acts of torture and ill-treatment and punish those responsible;

(d) Ensure that no one is detained arbitrarily and that all persons who are charged with an offence have access to a fair and impartial trial;

(e) Ensure that, in the light of article 9 of the Covenant, persons deprived of their liberty enjoy all the fundamental legal safeguards from the very outset of their deprivation of liberty. In that connection, the Committee encourages the State party to implement the relevant recommendations made by the Committee against Torture in its recent concluding observations (CAT/C/VEN/CO/3-4, para. 9);

(f) Ensure that public order is, to the maximum extent possible, upheld by civilian rather than military authorities.

Independence of the judiciary

15. The Committee remains concerned at the situation of the judiciary in the State party, in particular with regard to its autonomy, independence and impartiality. It notes with concern that only 34 per cent of judges are tenured, which means that the remainder have provisional status and that they can be appointed and removed on a discretionary basis. The Committee finds it regrettable that it has received no information on the percentage of prosecutors of the Public Prosecution Service who are tenured and, in this regard, it is concerned by reports indicating that the percentage is very low. The Committee is further concerned by reports of the adverse consequences faced by some judges who, in the course of their duties, have handed down decisions that were unfavourable for the Government. The Committee is, in particular, concerned about the case of Judge María Lourdes Afiuni, who was arrested in 2009 for having ordered the conditional release of a person whose detention had been deemed arbitrary by the Working Group on Arbitrary Detention and, later, by this Committee (communication No. 1940/2010). It is also concerned at claims that Judge Afiuni was subjected to ill-treatment and sexual assault during her detention and that those claims were not promptly investigated (arts. 7 and 14).
The State party should take immediate steps to ensure and uphold the full autonomy, independence and impartiality of judges and prosecutors and guarantee that they are free to operate without pressure or interference of any kind. In particular, it should take action to remedy the provisional status of the majority of judges and prosecutors as soon as possible. It should also ensure that Judge Afuni’s legal situation is resolved as soon as possible by means of a fair, independent and impartial trial and that the claims that she was subjected to ill-treatment and sexual assault during her detention are investigated in a prompt, thorough, independent and impartial manner.

Military courts

16. The Committee notes with satisfaction that article 261 of the Constitution of the Bolivarian Republic of Venezuela provides, inter alia, that criminal offences, human rights violations and crimes against humanity are to be tried by the ordinary courts. However, it is concerned that military courts are competent to try civilians under certain circumstances. Moreover, it finds that it is regrettable that it has not received information concerning the actual use of military courts to try cases against civilians, in particular trade unionists (art. 14).

The State party should adopt the legislative or other necessary measures to prohibit military courts from trying civilians.

Alleged intimidation, disparagement, threats and/or attacks against journalists, human rights defenders and lawyers and alleged arbitrary detentions of some members of the political opposition

17. The Committee is concerned at reports that journalists, human rights defenders and lawyers have been subjected to intimidation, disparagement, threats and/or attacks. It is further concerned at reports of the arrest of political opposition members Leopoldo López and Daniel Ceballos, which have been declared arbitrary by the Working Group on Arbitrary Detention (arts. 6, 7, 9, 19, 22 and 25).

The State party should take the necessary steps to:

(a) Provide effective protection to journalists, human rights defenders, social activists and lawyers who are subjected to intimidation, threats and/or attacks because of the work they perform in monitoring and providing information on human rights issues and other matters of public interest;

(b) Ensure that no public official takes measures or performs acts that may constitute intimidation, persecution, disparagement or undue interference in the work of journalists, human rights defenders, social activists, lawyers or members of the political opposition or in the exercise of their rights under the Covenant;

(c) Ensure that all allegations concerning intimidation, threats and attacks are promptly, thoroughly, independently and impartially investigated and that the perpetrators are brought to justice and duly punished.

Disparaging statements about members of civil society organizations who have contributed to the work of the Committee

18. The Committee is concerned at reports that some persons who contributed to its work in connection with the consideration of the fourth periodic report of the State party were subsequently the target of disparaging statements made by the President of the National Assembly in the television programme Con el Mazo Dando, who cited information provided by “cooperating patriots”. Those statements were made shortly
19. The Committee takes note of the wealth of information provided by the State party concerning the situation in the State party with regard to freedom of expression. It is concerned, however, at reports regarding a number of provisions and practices which could discourage the expression of critical positions or critical media and social media reporting on matters of public interest and which could adversely affect the exercise of freedom of expression, including provisions that make defamation and offending or failing to show respect to the President and other senior officials criminal offences, and reports regarding the extensive monitoring of media content by the National Telecommunications Commission. The Committee also expresses concern at reports regarding the limited nature of access to information that is in the public interest (arts. 19, 20 and 25).

The State party should take all necessary steps to guarantee the full and effective exercise of the right to freedom of expression and freedom of the press enshrined in article 19 of the Covenant. In particular, it should:

(a) Ensure that its legislation is in full conformity with article 19 of the Covenant; that any restrictions on the exercise of freedom of expression, including the exercise of monitoring powers, are in accordance with the strict requirements set out in article 19, paragraph 3, of the Covenant, which are elaborated upon in the Committee’s general comment No. 34 (2011) on freedoms of opinion and expression; and that the authorities in charge of enforcing legislation on the exercise of freedom of expression discharge their mandate independently and impartially;

(b) Consider the possibility of decriminalizing defamation and repealing provisions that establish criminal penalties for persons who offend or fail to show respect for the President or other senior officials and any other similar provisions, and, in any event, restrict the application of criminal law to the most serious cases, bearing in mind that imprisonment is never an appropriate punishment in such cases;

(c) Guarantee easy, prompt, effective and practical access to information that is in the public interest.

Freedom of peaceful assembly and freedom of association

20. The Committee is concerned at reports of the existence of a number of rules, including some of those set out in the National Security Act, which could adversely affect the exercise, in practice, of the right to freedom of peaceful assembly. In addition, it finds it regrettable that there has been a lack of clarity about the need to
request authorization to hold a public gathering or demonstration and about the reality of the situation since, although the State party reported that the notification to be given to the relevant authorities by the organizers does not constitute a request for authorization, the Committee observes that, in its judgement of 24 April 2014, the Constitutional Chamber of the Supreme Court ruled that there was an obligation to exhaust the administrative procedure for granting authorization. The Committee is further concerned at reports of the adoption of certain measures that could hinder the full realization of the right to freedom of association. In this connection, it finds it regrettable that there has been a lack of clarity about the scope of the concept of “political rights organizations” and, consequently, about whether the restrictions on funding from abroad for such organizations under the National Sovereignty and Self-Determination Act could have an impact on the work of human rights organizations.

The Committee finds it regrettable that it has received no clarification on the implications for legal persons of their registration in the Register for Comprehensive National Defence (arts. 21 and 22).

The State party should take the necessary measures to ensure that all individuals under its jurisdiction are able to fully enjoy their rights to freedom of peaceful assembly and freedom of association and that the exercise of those rights is subject only to restrictions which are in accordance with the strict requirements of articles 21 and 22 of the Covenant.

Rights of indigenous peoples

21. The Committee takes note with satisfaction of the extensive legal framework developed in the State party in the area of indigenous peoples’ rights, which includes the recognition of the right to be consulted. It finds it regrettable, however, that it has not received sufficient information about the implementation of the right to prior consultation in relation to the granting of exploration and resource development licences in their territories. While it takes note of the information provided by the State party which indicates that a significant percentage of the applications for land demarcation have led to the award of collective land titles, the Committee observes that the demarcation process had proceeded very slowly. The Committee is also concerned at the information it has received which indicates that some indigenous peoples have been victims of acts of violence committed by State and non-State actors (arts. 1, 2, 6, 7 and 27).

The State party should take the necessary measures to:

(a) Ensure that the necessary prior consultations are held with indigenous peoples to obtain their free, prior and informed consent before any measure is adopted or implemented that may substantively compromise their way of life and culture, in particular in relation to projects that may have an impact on their lands and territories and other resources, such as natural resource exploration and/or development projects. The State party should expedite the adoption of regulations on prior and informed consultation and ensure that indigenous peoples are actively involved in developing those regulations;

(b) Expedite and complete the demarcation of indigenous lands as soon as possible;

(c) Provide effective protection for indigenous peoples against all acts of violence and ensure that the perpetrators of such acts are brought to justice and duly punished and that victims obtain appropriate redress.
Denunciation of the American Convention on Human Rights

22. The Committee takes note with concern of the State party’s denunciation of the American Convention on Human Rights.

The Committee invites the State party to consider becoming a party to the American Convention on Human Rights once again with a view to providing supplementary protection for the rights enshrined in the Covenant at the regional level.

Dissemination of information relating to the Covenant

23. The State party should widely disseminate the Covenant, the two Optional Protocols thereto, the text of its fourth periodic report, the written replies to the list of issues drawn up by the Committee and the present concluding observations among the judicial, legislative and administrative authorities, civil society and non-governmental organizations operating in the country, as well as the general public.

24. In accordance with rule 71, paragraph 5, of the Committee’s rules of procedure, within one year the State party should provide relevant information on its implementation of the recommendations made by the Committee in paragraphs 14 (observance of human rights in the context of demonstrations), 15 (independence of the judiciary), 17 (alleged intimidation, disparagement, threats and/or attacks against journalists, human rights defenders and lawyers and alleged arbitrary detention of some members of the political opposition) and 18 (disparaging statements about members of civil society organizations who have contributed to the work of the Committee).

25. The Committee requests the State party to provide specific, up-to-date information on the implementation of all its recommendations and on the Covenant as a whole in its next periodic report, which is to be submitted no later than 24 July 2018. The Committee also requests the State party, when preparing its next periodic report, to consult extensively with civil society and non-governmental organizations operating in the country. In accordance with General Assembly resolution 68/268, the report should not exceed 21,200 words.
Tab #12
Report for the Committee against Torture during its revision of the combined 3rd and 4th periodic reports submitted by the Bolivarian Republic of Venezuela (53rd period of sessions, November 3-28, 2014)

Coalition of non-governmental organisations, academic institutions and organised civil society

October, 2014
Presentation:

This shadow report was jointly written by the Civil Association Foundation for Justice, Solidarity and Peace (Asociación Civil Fundación Justicia, Solidaridad y Paz - Funpaz); the Civil Association for a Diverse Venezuela (Asociación Civil Venezuela Diversa); the Human Rights Program and the RedDes Project at the Lisandro Alvarado University; the Centre for Human Rights at the University of Margarita; the Human Rights Centre at the Metropolitan University; the “Padre Luis María Olaso” Centre for Peace and Human Rights (Centro para la Paz y los Derechos Humanos “Padre Luis María Olaso”) at the Central University of Venezuela; the Inter-Institutional Human Rights Commission in the Faculty of Law and Political Science at the University of Zulia, the School of Law at the Rafael Urdaneta University and the Human Rights Commission of the Zulia Bar Association; the Committee of Relatives of the Victims of the Events of February-March 1989 (Comité de Familiares de las Victimas de los Sucesos de Febrero-Marzo de 1989 - COFAVIC), Nueva Esparta in Motion (Nueva Esparta en Movimiento); the Venezuelan Observatory for the Human Rights of Women (Observatorio Venezolano de los Derechos Humanos de las Mujeres); and the Human Rights Vicariate of the Archdiocese of Caracas (Vicaría de Derechos Humanos de la Arquidiócesis de Caracas); with the support and cooperation of the World Organisation Against Torture (OMCT). The report aims to provide additional information to the United Nations Committee against Torture on the implementation of Articles 1-16 of the Convention against Torture and Other Cruel, Inhuman and Degrading Treatment and Punishment in the Bolivarian Republic of Venezuela.

Despite the long list of recommendations addressed to the Venezuelan government, this report describes the ways in which torture continues to be committed by the security forces and perpetuated due to a lack of action on the part of the national authorities.

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Contents
Presentation: ................................................................................................................................................. 2
I. Normative context (Arts. 1, 2 and 4 of the Convention Against Torture) ...................... 4
   1. Constitutional and normative framework......................................................................................... 4
      a) Norms which regulate the use of force to control demonstrations and public order ... 5
II. Investigation of the crimes of torture, cruel, inhuman and degrading treatment and the fight against impunity. Sanctions and remedies (Articles 12, 13 and 14 of the Convention against Torture) ................................................................. 7
   1. Statistical references to impunity. Analysis of official data.............................................................. 7
   3. Patterns of impunity in investigations ............................................................................................. 10
III. Torture, cruel, inhuman and degrading treatment as a pattern of conduct of the security forces of the State (Articles 10, 11, 16 of the Convention against Torture) ............................. 12
   1. In cases of alleged extrajudicial killings by State security forces ............................................. 12
   2. As a way of repressing social protest ......................................................................................... 13
      a) Excessive use of force and arbitrary detentions in the context of social protest .......... 14
      b) Civilian Armed Groups .............................................................................................................. 17
   3. Effects on Specific Groups......................................................................................................... 18
      a) Women ....................................................................................................................................... 18
      b) Children and adolescents ......................................................................................................... 22
      c) Lesbian, Gay, Bisexual, Trans and Intersex Persons .............................................................. 23
      d) Human rights defenders ......................................................................................................... 25
I. Normative context (Arts. 1, 2 and 4 of the Convention against Torture)

1. Constitutional and normative framework

Article 46 of the Constitution of the Bolivarian Republic of Venezuela (hereinafter CBRV) enshrines the right of every person to have his or her physical, mental and moral integrity respected, and consequently prohibits torture and cruel, inhuman or degrading treatment; it also establishes the duty to respect the dignity and proper treatment of all persons deprived of liberty, whether convicted or under prosecution, and imposes the obligation to punish public officials who by virtue of their office, mistreat or cause physical or mental suffering, or instigate or tolerate this treatment.

Article 337 of the CBRV also “prohibits torture or incommunicado detention” during states of emergency, and obliges the State in insert 4.1, to approve legislation sanctioning torture within the first year from the date of installation of the National Assembly in Venezuela. This law eventually materialized 12 years after the fact in 2013 with the approval of the Special Law to Prevent and Punish Torture and other Cruel, Inhuman or Degrading Treatment² (hereinafter the Law Against Torture”).

The Venezuelan State ratified the Convention against Torture, Cruel, Inhuman and Degrading Treatment (hereinafter “the Convention” or “Convention against Torture”) in 1991 and also recognised the competence of the Committee against Torture under articles 21 and 22 of the Convention, however although the State did sign the Optional Protocol to the Convention in July 2011 during the Universal Periodic Review of Venezuela in the Human Rights Council, it has not complied with its declared “determined political will”³ to ratify said Protocol. The Venezuelan State’s ratification of the Convention gives it constitutional status, with direct and immediate application by national courts and other public law institutions as required by Article 23 of the CBRV.

The Special Law to Prevent and Punish Torture and Other Cruel, Inhuman or Degrading Treatment, was enacted on July 22, 2013⁴, with the aim of regulating the prevention, criminalization and punishment of the crime of torture and other cruel, inhuman or degrading treatment, and of repairing damages caused to people who have been the victims of such acts.

The Law Against Torture defines the crime of torture in Article 17 as a deliberate offence committed when physical, mental or moral harm is caused to a person under the custody of a public official, however, the crime of torture does not apply if the person is not being held in custody; moreover, criminal liability depends on the total completion of the action. The law
identifies three crimes defined as ill-treatment with different punishments: the crime of cruel
treatment, the crime of inhuman and degrading treatment, and physical and verbal abuse.

a) Norms which regulate the use of force to control demonstrations and public order

In accordance with Article 68 of the CBRV, “Citizens have the right to demonstrate, peacefully
and without weapons, subject to such requirements as may be established by law” ⁵. This
provision is further developed in the Law on Political Parties, Public Meetings and
Demonstrations (hereinafter the Law on Political Parties)⁶ in Articles 43⁷, 47⁸ and 49⁹.
Nevertheless, the Constitutional Chamber of the Venezuelan Supreme Court of Justice has
recently made a regressive judgment with regards to the right to demonstrate, by conditioning
this right on the prior existence of State authorization, as follows: “any assembly, demonstration
or public meeting without the prior endorsement of an authorization by the respective
competent authority, may result in the police and security forces, in order to maintain public
order to ensure the right of transit and other constitutional rights [...] dispersing these
concentrations with the use of the most appropriate mechanism to do so, under the provisions of
the Constitution and national law”¹⁰.

Article 68 of the Constitution also enshrines the prohibition of the “use of firearms and toxic
substances to control peaceful demonstrations”, which was later established as a general
provision of the Organic Law on Police Service and the National Police Force (hereinafter the
National Police Law)¹¹ and was also outlined in Resolution 113 of the Ministry of Popular Power
for Interior Relations and Justice (hereinafter the Ministry of Interior and Justice) on April 15,
2011¹², directed at the National Police¹³ the decentralised agency for public safety at the
national level; and the State Police bodies¹⁴, in charge of prevention and crime control activities
throughout the country.

Resolution 113 is further developed in the Manual on the actions of police forces to ensure
public order, social peace and peaceful coexistence in public meetings and demonstrations¹⁵,
which underpins the actions of police forces in relation to human life and dignity, stating that
force must only be used as a last resort when all means of negotiation and persuasion have
been exhausted and applied using the principles of legality, necessity and proportionality.

Furthermore, this provision is applicable to any security body which carries out police functions,
in accordance with the provisions of Article 65 of the Law on National Police (Article 1 of
Resolution 113). In this regard, Article 4.7 of the Organic Law of the Bolivarian National Armed
Forces (hereinafter the Armed Forces Law)¹⁶ states that the Armed Forces are responsible for
“helping to preserve or restore internal order, in the face of serious social disruption”. In the
specific case of the National Guard, Article 329 of the CBRV and 4.7 of the Law on the Armed Forces state that this body may lead military operations required for the defence and maintenance of the internal order of the country via specific, joint or combined operations, and that for this reason, its functions include carrying out activities using police measures in specific and routine tasks. Indeed, Venezuela’s armed forces carry out public safety duties as part of the special measures taken by the National Executive to reduce the high rate of violence.

This creates concern among the organisations who are the authors of this report because, according to Article 332 of the CBRV: “Public security organs are civilian in nature”, and so the involvement of military forces in public security actions should be exceptional, limited and subject to the strictest controls17. Indeed, warnings have been made at the regional level about the dangers of such action, as “(...) States must restrict to the maximum extent the use of armed forces to control domestic disturbances, since they are trained to fight against enemies and not to protect and control civilians, a task that is typical of police forces”18, and so it is “advisable to avoid the intervention of the armed forces in internal security matters because it carries the risk of human rights violations”19.

**Recommendations:**

- **Ratify the Optional Protocol to the United Nations Convention against Torture, Cruel, Inhuman or Degrading Treatment or Punishment**

- **Amend the Law Against Torture so that it complies fully with international standards**

- **Guarantee the right to freedom of assembly without linking the peaceful enjoyment of this right to the need for prior authorization (...)**

- **Guarantee that the law enforcement bodies and related agencies working on public safety have a strictly civilian and professional character at all levels, with a clear institutional and conceptual differentiation between crime prevention, criminal investigation and national defence.**
II. Investigation of the crimes of torture, cruel, inhuman and degrading treatment and the fight against impunity. Sanctions and remedies (Articles 12, 13 and 14 of the Convention against Torture)

1. Statistical references to impunity. Analysis of official data

In Venezuela crimes against human rights including extrajudicial executions, torture and other inhuman and degrading treatment have increased steadily and significantly, as shown by figures from non-governmental organisations and the few official public reports in existence. Since 2009 the format for most official reports from human rights bodies was modified, which has limited public information available on the subject and has increased the lack of institutional transparency, preventing effective access to information from key bodies, such as the Public Prosecution, the Ombudsman and the Office of Scientific, Penal and Criminal Investigations (Cuerpo de Investigaciones Científicas, Penales y Criminalísticas - CICPC); this is the reason why there are no updated official figures and individual records on the commission of these crimes in recent years.

This lack of information also affects access to figures about all cases of torture and ill-treatment in Venezuela, added to the fact that most cases are not reported due to the lack of credibility afforded to the victims by the competent institutions and the fear of further reprisals. The Public Prosecutor’s Office does not keep a publicly available national registry of reported cases of torture, inhuman, cruel and degrading treatment, and in existing reports, cases are not counted as torture, but instead as “injuries” or “abuse of authority”.

The serious impunity situation in Venezuela is revealed in the limited information available via the annual reports of institutions responsible for receiving complaints of human rights violations committed by State officials. As an example, during 2006-2010 thirty thousand (30,000) cases of alleged human rights violations were recorded, 93% of them ended with a stay of proceedings, or were dismissed or archived. Only 7% ended with a formal indictment and of this 7%, only 4% led to convictions, which is a violation of the right to a prompt and impartial response from the authorities and the right of victims to be guaranteed fair and adequate reparation.

During 2011, the annual report of the Public Prosecutor’s Office to the National Assembly stated that they had received eight thousand eight hundred and thirteen (8,813) cases of alleged human rights violations, of which ninety-seven (97%) were dismissed or archived and a formal charge was made in only three percent (3%) of the cases. This pattern of impunity continued throughout 2012 and 2013, when eight thousand two hundred and twenty-seven (8,227) and eight thousand one hundred and ninety-six (8,196) new cases were recorded by the
Department for the Protection of Fundamental Rights (Dirección de Protección de Derechos Fundamentales). By 2013, there were sixty (60) prosecutors in the Public Prosecutor’s Office assigned with carrying out criminal investigations related to human rights violations.29

With regard to cases of torture and cruel, inhuman and degrading treatment which allegedly occurred during student protests taking place between February and June 2014, the Public Prosecution Service stated in a special report that the Department for the Protection of Fundamental Rights had initiated one hundred and eighty-nine (189) investigations of rights infringement, of which two (2) cases are currently being investigated for murder, two (2) for torture and one hundred and eighty-five (185) for cruel treatment. The report also mentioned that eight hundred and seventy-three (873) people had been injured; namely five hundred and ninety-five (595) civilians and two hundred and seventy-eight (278) public officials; in addition to forty-two (42) people killed; namely thirty-two (32) civilians and ten (10) public officials.

In terms of investigation, it was reported that thirty (30) final decisions had been made relating to one hundred and eighty-nine (189) open investigations. Of the final decisions, twenty-two (22) were dismissals, six (6) led to formal charges and two (2) cases were archived, which means that in eighty-two percent (82%) of cases, the investigation process was not continued.

Despite the fact that the Public Prosecutor’s Office acknowledged the existence of forty-two (42) people who had been killed, they only reported two (2) open investigations for murder without specifying the procedural status of the case and without determining whether the remaining forty (40) cases involved the commission of a criminal offence or a violation of the right to life committed by officials from State security bodies.

According to a special report from the Public Prosecutor’s Office, thirteen (13) officers were imprisoned pending trial for these offences, five (5) officials were granted bail and required to present themselves every 30 days in court and two (2) cases are pending arrest warrants.

The investigation initiated for the one hundred and eighty-five (185) cases of cruel treatment led to five (5) individual charges for ten (10) officials, twenty-two (22) case dismissals and two (2) archived cases. There is no official information on the two torture cases under investigation. The publicly available information shows that investigations are being conducted within the ordinary criminal justice system.
2. Application of the Istanbul Protocol

According to publicly-available information and declarations from the competent authorities responsible for criminal investigation, it is believed that to date, the authorities have not implemented the Istanbul Protocol in any of the cases in this report, for the documentation of alleged torture, cruel, inhuman and degrading treatment.

In many cases, forensic medical examinations to document wounds and injuries suffered by the victims were performed several days or even weeks after the events. Some of the statements from the alleged victims, which are purported to have been extracted while under torture, were included in criminal proceedings without the objection of the Public Prosecutor’s Office or the judicial bodies acting in these cases.

When receiving complaints, the bodies responsible for criminal investigation did not ensure the confidentiality and independence of the reporting system, or the protection of the victim from possible retaliations. In a landmark case in which sexual violation with a rifle was reported, the head of the Public Prosecutor’s Office addressed the issue using the following terms: “It is not true that a rifle was inserted into the anus (...) It is not true that this event occurred, according to the medical-legal examination. After all the tests were carried out it is proven that the statement is not true”.

“Do you think that a person who has been raped, that is, has had the tip of a rifle inserted into their anus could sit in this hearing during this presentation? It is disagreeable to talk about this, but we must do it, because much of what is said about Venezuela internationally is false (...) and that is how the Venezuelan State has been attacked at the national and international level”.

The lack of implementation of the standards established in the Protocol and other instruments leads to the improper documentation of cases, a lack of registration and identification of attacks, physical and psychological effects, and a real inability to effectively investigate and punish those held to be allegedly responsible, making victims’ access to justice and reparations unfeasible, and making the victims invisible.

The following emblematic case which occurred in Miranda State highlights delays in medical attention:

The case of Luis Alberto Gutiérrez Prieto, Miranda State, Venezuela

On 19-02-2014, at approximately 7:00pm, young Gutierrez was taking some pictures during a demonstration in the city of Teques in Miranda State. The National Guard was allegedly using tear gas and had started chasing demonstrators, so Luis Alberto Gutiérrez ran for shelter but was intercepted by an unidentified armed civilian group who prevented him from continuing, and he...
was arrested along with 43 people by presumed members of the National Guard. He reported that while in custody he was physically and psychologically abused. He states that he was kicked in the face with a regulation uniform boot by alleged members of the National Guard, which caused him severe fractures to the face in the region of his forehead, on the left side of his nose and eye socket. In addition to this injury, Luis Pietro reports having received a sharp blow to the neck.

He was held at the Maria Ochoa Pedro Morales (PMON) Military Academy in Teques, until the early hours of the next day 20-02-2014, when he was taken at approximately 3:00am by soldiers to the Victorino Santaella City Hospital in Teques, Miranda State, to receive attention for his injuries. Once in the hospital grounds, the soldiers allegedly threatened the medical staff ordering them not to contact the relatives of the wounded young man. After this he was meant to be transferred to the Miguel Pérez Carreño Hospital in Caracas, but this was not respected by the troops and they transferred him back to the PMON allegedly under death threat. Despite being seriously wounded he was allegedly left outside for several hours before being transferred to the “El Paso” Clinic in Miranda State, where he was treated by medical staff from the institution and given an emergency operation, while being heavily guarded by at least 6 soldiers with rifles.

3. Patterns of impunity in investigations

The Venezuelan State has a duty to investigate allegations of torture and cruel, inhuman or degrading treatment. The obligation to investigate is mandatory and “cannot be disregarded or conditioned by domestic acts or legal provisions of any nature”.

The Attorney General of the Bolivarian Republic of Venezuela addressed the issue of impunity in 2009, stating that the underlying cause as to why human rights violations remain unpunished “lies in the fact that investigations are being conducted by the police agencies themselves”.

The Public Prosecutor has stated that when we are faced with events that involve the infringement of fundamental rights, those responsible for the investigation are often officials from different state security bodies who, in many cases, are investigators with vast experience in detecting, locating and collecting items leading to a conviction. Such a situation “is an obstacle to the investigation conducted by the Public Prosecutor”, as it facilitates the obstruction of the proceedings and protects those responsible.

Among the mechanisms of impunity that often occur simultaneously and systematically in most cases of human rights violations, the following should be mentioned by way of example: i) in the police force: the existence of “elite groups”, impunity in cases of corruption, criminalization of the victim, tendency to view violations as “isolated cases”; ii) in the Office of Scientific, Penal and Criminal Investigations (Cuerpo de Investigaciones Científicas, Penales y Criminalísticas - CICPC), the criminal investigation body: cooperation with officials allegedly involved,
modification of police records, lack of resources leading to delays in investigations; discrepancies between the contents of the forensic medical examination and the versions of family members; iii) in the Judiciary: persistence in Venezuela’s justice administration of a high number of temporary judges and prosecutors, a situation that has a negative impact on the rights of victims in criminal proceedings related to human rights violations.

Added to this are new practices and mechanisms of impunity related to the expansion of so-called death squads and the participation of armed civilian groups. Among the new practices are: i) changes to the crime scene where the incident occurred, moving the victim to a different place with subsequent stripping of clothes and accessories; placing weapons and psychotropic substances in the place where the crime took place or at the victim’s home; ii) the use of elements to conceal the identity of the officer, and in some cases the use of unmarked vehicles or taxis; iii) threats and harassment of relatives and witnesses after they have made complaints. All of these hinder, or even prevent prosecutors’ investigation work.

The case of the Barrios family in Aragua State is an emblematic case of retaliations reported by victims, families and witnesses of human rights violations. This family has continued to be harassed after suffering the violent death of ten members since 1998.

Recommendations:

• **Include in legislation and policing protocols the application of investigation mechanisms and guidelines for cases of alleged torture, cruel, inhuman and degrading treatment and extralegal arbitrary or summary killings.**

• **Guarantee prompt, thorough and impartial investigations into all cases where it is alleged that torture, cruel, inhuman or degrading treatment occurred, leading to the identification, prosecution and punishment of those responsible. Ensure the adequate protection of victims and the suspension of the officers involved from their duties according to domestic and international law.**

• **Remove barriers that facilitate impunity including the concealment of the identity of law enforcement officers, the criminalization and trivialization of victims and the modification of police reports.**

• **Adopt and ensure that the remedies and the right to fair and adequate compensation, including comprehensive care programs aimed at promoting comprehensive rehabilitation, bringing the legal framework and institutional practice in line with the standards established in Article 14 of the Convention against Torture and in line with General Comment No. 3 of the Committee against Torture.**
III. Torture and cruel, inhuman and degrading treatment as a pattern in the conduct of the State security forces (Articles 10, 11, 16 of the Convention against Torture)

1. In cases of alleged extrajudicial killings by State security forces

According to figures from the National Statistics Institute (Instituto Nacional de Estadística - INE), in 2009, nineteen thousand one hundred and thirty-three (19,133) murders were recorded in Venezuela, placing the country’s homicide rate at seventy-five (75) per 100,000 inhabitants. Of all the homicides registered, 79.48% were committed with firearms, 81.13% of those killed were male and 18.87% female; and 44.12% were aged between 25 and 44 years. The INE document adds that most of the victims belonged to the poorest sectors of society.

The National Government, through the “Great Venezuelan Mission to all Life!” (Gran Misión ¡A toda Vida! Venezuela) reported that the murder rate in 2011 stood at 50 per 100,000 inhabitants and on March 1, 2013, the Minister of Interior and Justice reported that in 2012 16,000 people had been killed in the country. In contrast, monitoring activities conducted by civil society indicate a progressive increase in figures related to violence. According to the Venezuelan Observatory on Violence (Observatorio Venezolano de Violencia), 2013 closed with an estimated 24,763 violent deaths in the country, representing a rate of 79 deaths per 100,000, one of the highest rates in the world. According to this study, violent deaths in Venezuela represent 12% of overall mortality rates, with young men the main victims, creating a demographic distortion in the country. In Venezuela, 53% more men are dying than women; young men of working age.

The Ministry of Home Affairs, Justice and Peace reported that out of every 100 homicides occurring in Venezuela, seventy-six (76) are the result of gang wars and clashes between gangs and security forces. The United Nations Office on Drugs and Crime Global Study on Homicide, published in 2013, ranked Venezuela as the second country in the region with the highest murder rate after Honduras with the rate for 2012 standing at 53.7 per 100,000 inhabitants, while Caracas, the capital, was particularly highlighted with a homicide rate of 122 per 100,000 inhabitants. Venezuela is the only country in the region whose murder rate has steadily risen since 1995 while the general trend has been for the rate to be maintained or to decrease.

The Human Rights Ombudsman has stated that extrajudicial killings are committed “as a police mechanism to ensure security [...] via which the death penalty has been unofficially established through the use by police agencies, of mechanisms of violence that violate the fundamental right to life and the principles of justice, solidarity and respect for the human being.”
In 2008, the Ombudsman noted that a total of one hundred and thirty four (134) complaints were made concerning the arbitrary deprivation of life, all following a pattern of extrajudicial killing. According to the Ombudsman, the organs allegedly most responsible were the State police forces in different regions, which had a total of sixty-five (65) complaints against them (representing 48.51% of the total, or almost half); followed by the Office of Scientific, Penal and Criminal Investigations (CICPC) with thirty-two (32) complaints (23.88%) and the municipal police forces, with seventeen (17) complaints (12.69%)

In 2009, the Attorney General stated that crimes against human rights “are in the majority attributed to police officers”. Between 2000 and 2008, the Public Prosecution had in its files 8,350 cases of extrajudicial executions committed by this sector, with an average of 1,044 cases per year. The sheer scale of these figures, coupled with lobbying undertaken by the victims’ families organized into committees, as well as advocacy carried out by Venezuelan human rights NGOs at the national and international level (OAS/UN), has led to various State agencies increasingly recognizing the problem. However, this public recognition has not translated into a significant reduction in the impunity which has prevailed in these cases during the past 10 years. It is believed that the three elements that favour the existence of a pattern of impunity identified in 2001 by the Ombudsman, still apply today: i) the police discourse that these crimes occurred during attacks is accepted, even by citizens themselves; ii) the media treatment of these practices as “an effective tool to combat high crime rates”; and iii) society’s lack of knowledge of their rights and guarantees as well as the means to defend them.

Between January to December 2013, COFAVIC documented eight hundred and two (802) cases of alleged violations of the right to life in 23 states. The figure reached five hundred and forty-one (541) cases between January to June 2014. The first six months already account for more than half of the cases which occurred last year, and we must add to this data describing an increase in political violence, shown dramatically by the substantial increase in the criminalization of public protest.

2. As a way of repressing social protest

In the social protests that have occurred in the country, it has been found that the police and / or military forces have consistently used repressive practices incompatible with legislation on human rights and the proportional and differential use of force; establishing a widespread pattern used to repress social protest that can be described as torture, cruel, inhuman or degrading treatment.
In February 2014, social protests took place in a number of cities across the country, which were mostly peaceful, and where repressive actions were used by the police, the military and even civilian armed groups who allegedly acted with the acquiescence of State institutions.

The use of excessive force by security forces in charge of public order and the use of prohibited weapons and ammunition against people peacefully demonstrating, has also been a constant in several cities in Venezuela. This pattern has been used: 1) to suppress mass protest demonstrations, 2) To make arrests or apprehensions and 3) during detention or imprisonment.

a) Excessive use of force and arbitrary detentions during social protest

Complaints have been made about alleged arbitrary detentions and indiscriminate use of force by state security forces. For example, in February 2014, multiple complaints were received from people who claimed to have been victims of illegitimate detention, without an arrest warrant and without the formal requirements related to the flagrante delicto commission of a crime.

The victims of these events reported that they had been arrested were near to the scene of the protests, and in some cases that the arrest was made after an illegal raid on their home from where they were arbitrarily and violently taken without the requirements established by law having been met.

One recurring pattern in the arrests was shown by the use of a similar discourse by the authorities to justify detentions. Testimonies of victims or their lawyers concluded that various records relating to different students who were arrested on various dates and in different parts of the city contained very similar wording, as if it were some kind of pattern, a kind of fabricated record.

CANTV Case, Barquisimeto, Lara State

It has been reported that people who had no responsibility in the events, were linked to alleged damages to the facilities of National Venezuelan Telephone Company (Compania Anonima Telefonos de Venezuela Nacional - CANTV), premises in Avenida Lara and Avenida Venezuela in Barquisimeto, Lara State. Particularly in the case of the Avenida Venezuela CANTV, Mr. Moisés Ríos, Jesús Escalante and Wilson Vásquez were deprived of liberty on February 21, 2014, although their responsibility in burning vehicles within CANTV facilities was not proven. In this case there is evidence, videos and photographs, confirmed by Funpaz in which it can be verified that all these people were arrested at three locations by police officers and then taken to the headquarters of the Avenida Venezuela CANTV to incriminate them for the damages. These three people were detained for over 45 days at the military installations of the 354 Military Police
Brigade at Fort Terepaima in Barquisimeto, where after pressure from civil society in Lara State, the student movement in the area, various NGOs and a number of political actors (Members of the Legislative Council of Lara State) they were released on probation and ordered to report to the police every 30 days before the trial stage began. Currently these three (3) citizens are waiting for the dismissal of the case at the request of the Public Prosecutor’s Office.

Moreover, most of the arrests were made by members of the National Guard and regional police forces from the states involved. However, when carrying out the arrests, the officials did not properly identify themselves, nor were the detainees able to verify their name or rank as the bulletproof jackets used by these officials covered their identification insignia. Venezuelan Law requires every official carrying out police functions to bear the official uniform of the security body to which they belong during the exercise of their duties, with insignia, equipment and identification documents visibly proving them to be officials and to properly identify themselves at the request of citizens.

The victims of arbitrary detention reported that after being apprehended they were moved from one place to another in civilian vehicles for several hours, “and then left in some military or police facility.” Another irregularity relating to arrest consisted of failure to provide information on the reasons for the detention and denial of the right of detainees to communicate with their families, lawyers or trusted friends. In many cases, information about their arrest and place of detention was denied to relatives and lawyers during the first 8-14 hours after the fact. Similarly, during the time spent in detention, before being brought before the court, they were denied access to lawyers to prove their status, conditions of detention and to read the police reports to enable them to know the reasons for their arrest.

Regularly, detainees were brought before the preliminary proceedings courts within 48 hours as required by Article 44.1 of the Venezuelan Constitution, but the hearings were held late in the afternoon or even at night and in the early morning, so that people were often detained for 48 hours or more. In cases where bail was required as a precautionary measure to replace a custodial sentence, the detention could be extended for several days.

In many cases, attorneys only had access to the detainees once they were brought before the preliminary proceedings courts at the onset of their hearing. Added to this, given the nature of the facilities in these courts, lawyers were unable to hold private conversations with each of their clients before the hearing. These circumstances allow us to infer that the detainees and their lawyers had neither the time nor the adequate physical space for the proper exercise of the right to defence.
Regarding the crimes, in most cases detainees were charged with three to four different types of crimes, regardless, in some cases, that the facts of their arrest clearly demonstrated that they could not have committed any of the offences they were charged with\textsuperscript{81}. The offences included: Public Incitement (Article 285 of the Penal Code), Resisting the Authorities (Article 296 of the Penal Code), Conspiracy (Article 286 of the Penal Code), Obstruction of a National Public Road (Article 357 of the Penal Code), Criminal Association (Article 37 of the Law against Organized Crime and Terrorist Financing) Violent Damage to Property (Article 474 of the Penal Code). The Law against Organized Crime and Terrorist Financing was also applied, as in the case of Hotel Venetur in Nueva Esparta State\textsuperscript{82}.

There have been recurrent and systematic reports of alleged acts of torture, cruel, inhuman or degrading treatment by both the National Guard and the Police Forces at the time of arrest, during transport and at the detention centre itself\textsuperscript{83}. Lawyers and human rights defenders who assisted victims requested on repeated occasions that the injuries and mistreatment of the detainees be recorded. Nevertheless, the trial judges often refused\textsuperscript{84}. They also repeatedly reported that the courts did not allow or agree to detainees being transferred for medical examination\textsuperscript{85}. Another irregularity used was subjecting guarantors for bail to verification by the courts, who often refused offers of bail, thereby delaying for several days the release of some detainees suffering from injury, with the result that after 3, 4 or 5 days, physical evidence of abuse was lost\textsuperscript{86}.

In general, the excessive use of police force and repression used by the security forces in Venezuela during student protests in 2014 and in April 2013, violated not only the right to demonstrate, but also constitutional rights to physical, mental and moral integrity, inviolability of the home, and even property as the destruction of belongings such as cell phones, jewellery and money belonging to people in detention was a common practice used by the security bodies in cities across the country\textsuperscript{87}.

The authors of this report are also highly concerned about numerous testimonies, reports and complaints we have received about the improper and indiscriminate use of rubber bullets, tear gas and water cannons, at short range or in enclosed or residential spaces\textsuperscript{88}, allegedly with the aim not only of dispersing demonstrations, avoiding closing roads or as punishment to lift barricades, but for the purpose of causing physical harm to the protesters, without first negotiating or engaging in dialogue with them\textsuperscript{89}.

Another pattern that characterized the conduct of the security forces in Venezuela, especially during the protests in 2014, was the excessive use of police force in certain areas, mostly residential, with unprecedented cases of raids on residences and residential complexes in
Venezuela, accompanied in many cases by the destruction of property\textsuperscript{90}. The Interagency Commission on Human Rights in Zulia State reported serious cases such as that of the \textit{Torres de El Saladillo} in Maracaibo, Zulia State\textsuperscript{91}.

Testimonial, photographic and audiovisual evidence related to the above raids shows attacks on people, widespread arrests, excessive and illegal use of weapons against people in their homes, widespread attacks against residents’ property and infrastructure areas in residential complexes, especially to parked cars, and also the presence of unidentified civilians working alongside Venezuelan State security officials\textsuperscript{92}.

The following case is an example of the criminalization of protest with alleged use of arbitrary arrest:

\begin{center}
\textbf{The case of Johnny Alvarado, Valencia, Miranda State}
\end{center}

Mr. Alvarado was allegedly attacked simultaneously by at least six members of the National Guard, who shot him multiple times at close range in his left hand and elbow, causing the loss of muscle tissue. He also was hit in the back by a projectile shot at close range causing a deep wound with tissue loss; his treating physicians at the time found the remains of a rubber bullet fired from a shotgun. The trigger for the assault, according to the testimony of the victim’s mother, was that the young man had been identified as a participant in demonstrations being held in the State against the National Electoral Council\textsuperscript{93}.

Moreover, the authors of this report are concerned about a recurring pattern in different cities, the use of tear gas up to twelve (12) years out of date, and the indiscriminate use at short distance of tear gas and rubber bullets\textsuperscript{94}. The security forces have failed to present accountability reports on the methods of control used in each of the demonstrations they suppressed, or on the officers and troops acting in these events, as required under the general principle of accountability and access to public information established in Articles 141 and 143 of the CBRV\textsuperscript{95} and provisions 25 and 26 of the Rules on the performance of the police in public meetings and demonstrations\textsuperscript{96}.

\textbf{b) Civilian Armed Groups}

The participation of plainclothes individuals used to repress actions against demonstrators was an equally evident pattern in cities across the country. These individuals were unidentified and travelled mostly on bikes or in vans, acting with the alleged acquiescence of the police officers and military personnel present\textsuperscript{97}.
It is important to establish a strong position in relation to the alleged involvement of armed civilian groups in some of the violence in cities across the country, which further aggravates the complexity of the current situation. We express our deep concern about the use of restricted ammunition by armed civilian groups, since only the Venezuelan State may possess and use weapons of war as established by Article 324 of the Constitution.

**Recommendations:**

- **Conduct a comprehensive review of current practices used to maintain law and order, including the training and deployment of officials in charge of law enforcement operations for crowd control and rules on the use of force and firearms, so that these practices fall in line with requirements to respect and protect human rights; adopting measures to control the actions of all members of the security forces to prevent abuses from occurring due to the overuse and misuse of force and firearms; and applying the appropriate criminal and disciplinary regime**

- **Design and implement effective strategies for disarmament and control by the State of any irregular armed group as a necessary condition for social cohesion and the fight against insecurity in the country.**

3. **Effects on Specific Groups**

   a) **Women**

Venezuelan organisations and institutions working on human rights have repeatedly expressed concern about the significant rise in human rights violations. Some of these crimes correspond to a worsening of general violence in Venezuela, which is increasingly affecting women and girls.

**Violence against Women**

In practice, there is no access to justice for Venezuelan women for certain kinds of human rights violations and breaches of the law, which keeps them in a state of emotional and physical vulnerability and puts them at risk of continuing to be victims of all forms of violence. One example of this is the poor implementation of protection and security measures when women report crimes against them, due to a lack of training of officials who receive these reports, persistent cultural prejudices against women who denounce crime and scarce resources to enforce these measures. Another factor is the persistent use of mediation processes to settle disputes even though the use of these processes has been abolished; or the filing of psychological reports on victims when receiving their complaints. Likewise, there is no regulation or legal protocol to unify the procedures used to care for the victims and manage
their case, nor has a National Plan for Prevention of and Attention to Violence Against Women been developed, with the active participation of independent NGOs. Impunity prevails in ninety-six percent (96%) of cases filed before the Public Prosecutor’s Office; according to the Alternative Report on Violence against Women in Venezuela, produced by the Venezuelan Observatory for the Human Rights of Women (Observatorio Venezolano de los Derechos Humanos de las Mujeres) in 2010, of “58,421 cases handled in 2008 alone, just two thousand one hundred and sixty-five (2,165) were taken before the competent courts” which means that long delays in procedural times continue, both in the investigative stage and during the administrative proceedings, which leads to a high percentage of cases being dismissed. There has also been a progressive increase in femicide, the ultimate expression of violence against women, since 2009, rising from 1.5 to 2.5 percentage points, according to COFAVIC. More recently, the same NGO conducted an investigation in 18 states into the murders of women between January and October 2013. As part of this study, four hundred and fifty-two (452) cases were reported of deaths presumed to have occurred due to general violence and gender-based violence; of which, sixty-two percent (62%) were caused by firearms and fifteen percent (15%) by knives; four (4) out of every ten (10) cases took place in the street and three (3) inside the person’s residence. The results of the study indicate that sixty-four percent (64%) of the victims were between 18 and 40 years old and a significant number of fourteen percent (14%) were females (64 cases).

The annual report of the Public Prosecutor in 2013 indicated that a total of seventy-one thousand eight hundred and twelve (71,812) crimes of gender-based violence against women have been filed, representing thirty-three percent (0.33%) of the overall figures from the Prosecutor’s Office. Sixty-seven (67) of these cases were under criminal investigation, eight thousand and eighty-three (8,083) were being indicted by the courts, two thousand three hundred and thirty-three (2,333) were being indicted by prosecutors, five hundred and seventeen (517) were under trial, and four fifty-four (454) had led to arrest warrants.

During the first half of 2014, the Public Prosecutor has confirmed that it has processed sixty (60) cases of femicide, of which forty-two (42) are under investigation, fourteen (14) are at the intermediate stage of the proceedings and only four (4) are under trial. As reported by the Deputy-Director for the Defence of Women in the Attorney General’s Office, there are sixty-seven (67) specialized prosecutors to handle cases of violence against women across the country. In Caracas, two prosecutors specialise in the intermediate phase and trial stage of criminal cases and a further two have national jurisdiction to deal with more complex cases of gender-based violence.
On August 14, 2014, Femicide was incorporated into the Organic Law on the Right of Women to a Life Free from Violence. Also incorporated were the aggravating circumstances that constitute this violence, the recognition of private medical certificates and the possibility of bringing one’s own case when the Prosecutor’s Office fails to do so in the legally required time frame. However, this reform has not yet entered into force; it has not been enacted by the National Executive and published in Official Gazette.

Another factor that limits the possibility of developing public policies for the care and prevention of violence against women is the lack of accurate and reliable statistics on the prevalence and incidence of violence against women in the country. Even though the law provides for the establishment of at least one women’s refuge in each state, there are currently only three in existence, situated in Aragua, Miranda and the capital.

The crime of trafficking in women and girls and their exploitation through prostitution

According to reports by the Venezuelan Observatory for the Human Rights of Women, there is no systematic and reliable information compiled by the State on trafficking and prostitution of women and girls; nor public policies for their prevention and attention.

The Ministry of Health continues to identify female sex workers with a “pink card” in order to “control prostitution” thereby discriminating against this group of people. The Association of Women for Wellbeing and Mutual Assistance (Asociación de Mujeres por el Bienestar y Asistencia Recíproca Amber) has been requesting since 1995 that this practice be eliminated without obtaining a positive response.

The Office for Crime Prevention in the Ministry of the Interior, Justice and Peace produced a National Action Plan to Prevent, Suppress and Punish Trafficking in Persons, which was presented in 2007 as a Bill before the National Assembly and has yet to be approved. For its part, the Office of Scientific, Penal and Criminal Investigations (Cuerpo de Investigaciones Científicas Penales y Criminalísticas - CICPC) opened an Office on Trafficking in Persons, designating prosecutors from the Public Prosecutor’s Office with national jurisdiction in this matter. However, their activities and data are unknown because these are not provided to civil society or private investigators. There are no campaigns in the country for the prevention and care of victims of trafficking; nor are any actions being taken to reduce the demand for prostitution.

Torture, inhuman and degrading treatment against women during arrests in the first half of 2014 and the April 2013 protests
During the repression of social protests in the April 2013 post-electoral context and the first half of 2014, women were affected by alleged acts of violence showing different patterns from the repression used against men, in some cases specifically related to their gender. In particular, it was reported that women officers and soldiers from the Venezuelan National Guard assaulted female protesters. Patterns of abuse related to gender can also be identified in some cases in which women were not arrested but suffered abuse during public demonstrations, either because they were participating in them or because they happened to be passing by.

The recurrent use of death threats was documented, as was the use of guns as a means of intimidation. Practices included firing rubber bullets at point blank or close range, throwing protesters against the pavement or counting bullets in front of detainees as if to refer that they were going to be shot. Cases were also documented in which detainees were not separated by gender, and in which women shared cells with people arrested for criminal offences who hurled insults at them, including expressions of a sexual nature.

In one alleged case, a female soldier, after having neutralized the detainee, bit her on the arm and insulted her womanhood, hitting her severely about the head and pulling her hair, while another officer pointed a rifle at her head.

Female detainees were regularly held in small spaces, and had their physiological needs neglected by being denied supplies for washing, toilet paper and sanitary pads, regardless of their gender-specific needs. In relation to the neglect of specific needs during detention, the International Committee of the Red Cross has established that the State must ensure that sanitary conditions (in detention centres) are adequate to maintain the health and hygiene of prisoners, allowing them regular access to toilets and allowing them to bathe and wash their clothes regularly.

The women’s testimonies collected by the non-governmental organisations who have written this report, include recurring reports that the women were threatened with rape and with being obliged to perform oral sex on officers who were holding them in custody. In other cases women reported having been subjected to forced nudity while officers referred to their physical form or body shape. In cases from Lara State, it was reported that members of the National Guard randomly and violently cut detainees’ hair then cleaned their boots with the off cuts.

We would also like to highlight our concern in cases where it is alleged that officers carried out vaginal and anal inspections with their fingers, practices which constitute sexual violation as established by the Inter-American Commission and the Court of Human Rights, and which in turn constitute torture because of the effects on the victim. Thus, in many cases finger vaginal
examinations were performed under the excuse of searching detainees, in the course of which obscene expressions were used, in treatment that violated the detainees’ personal dignity\textsuperscript{115}.

When women prisoners made reference to their family, officials allegedly threatened them that they would be killed and that their children would grow up on their own or face needs that they could not help them with, causing severe psychological and emotional distress\textsuperscript{116}.

\textbf{b) Children and adolescents}

Figures from the non-governmental organisation CECODAP\textsuperscript{117} highlight the impact of violence on children and adolescents which has increased sixfold since 1992, and note that the majority of deaths among adolescents aged 12 to 17 years were due to violent causes. According to the NGO, seventy-five (75\%) of violent deaths of boys occur in urban areas and are caused by firearms\textsuperscript{118}.

Young people in urban neighbourhoods are most affected by police repression and by the actions of so-called vigilantes. This is confirmed by information provided by the Venezuelan State in its report to the independent expert of the United Nations Secretariat in May 2005, which stated that according to statistics from the Human Rights Ombudsman’s Office, “\textit{41\% of victims of extrajudicial killings associated with control of public safety (crime) are between 15 and 20 years old}”\textsuperscript{119}. In 2008, the Ombudsman said that: “\textit{Most of the victims were in the 18-28 age group (42.54\% of the total); followed by victims between 12 and 17 years old (19.40\%)}”\textsuperscript{120}.

During the demonstrations in Venezuela, specifically in February 2014, violence and violations of the human rights of children and adolescents were also reported. During these events, the authorities reacted by carrying out mass arrests, with excessive use of force contrary to national legislation and the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials. The Centre for Human Rights at the Universidad Metropolitana is currently working on 15 juvenile cases and all of them are related to violations of their personal integrity while under arrest. These violations consisted of children being beaten, both at the time of the arrest itself and during transfer to detention centres, with the officers’ helmets, with their regulation truncheons and with bare hands; also, threats and insults to minors were reported in all cases.

To date there is no information about the initiation or possible outcomes of investigations or sanctions on the officials responsible for these violations.
c) Lesbian, Gay, Bisexual, Trans and Intersex Persons

The definition of torture includes the prohibition of “discrimination of any kind” including discrimination based on sexual orientation\textsuperscript{121}, or gender identity and expression\textsuperscript{122}. In Venezuela Lesbian, Gay, Bisexual, Trans and Intersex persons are dehumanized by cruel, inhuman and degrading treatment, which is generally not reflected in official statistics kept by State institutions. There is no precise data available due to the lack of complaints made by victims, caused by fears of being re-victimized and mistrust in the justice system.

i) Hate crimes and acts of discrimination (LGBTI)

Police officers and members of the National Guard have been systematically identified by victims as perpetrators of violence against LGBTI persons, including through disproportionate use of force and violation of the physical, mental and moral integrity of LGBTI persons who work within the security forces, those who attempt to use police services or those being held in detention.

There are an increasing number of reports of arbitrary arrests and illegal raids, with the aim of arresting LGBTI groups, who are treated with excessive violence by the State security forces, including threats and demeaning and discriminatory language. For example, in October 2009, officers of the Caracas Police during a joint procedure with officials from the National Guard and the Ministry of Popular Power for the Interior and Justice arrested 19 gays and lesbians in Villaflor Street in the El Recreo district of the capital city Caracas; 11 of these people were teenagers. Most were stripped of their belongings, cell phones and IDs, subjected to inhuman and degrading verbal abuse related to their sexual orientation, and physically beaten\textsuperscript{123}.

The case of Avenida Libertador, Caracas.

In October 2012, officers from the Office of Scientific, Penal and Criminal Investigations (CICPC) arbitrarily detained 23 Trans women in Libertador Avenue, Caracas, using excessive force and intimidation with firearms, and transferred them to the CICPC facilities in Paraíso allegedly to question them in relation to the murder of a man which occurred in early September. Four of the detainees: Dixon Hidalgo (Alejandra), Daniel Díaz (Danielis), Juan Basanta (Barbara) and Ender Veliz were subjected to electric shock torture, suffered physical abuse to different parts of the body and face, and verbal abuse related to their sexual orientation and gender identity, when they refused to provide information about the case to CICPC officials and protested in the facilities about the way in which the rest of their companions were being treated at the police station. To date there has been no official response as to whether investigations have been initiated\textsuperscript{124}. 
In May 2013, members of the National Guard attacked a group of trans women in Libertador Avenue resulting in one woman suffering a bullet wound to her foot.

In response to this pattern of attacks against LGBTI people which are prohibited by the Convention against Torture and other standards, the State security agencies have not included specific training programs on sexual orientation, gender identity and expression to eradicate such conduct, the perpetrators are not punished, and there is no reparation for the victims.

The Venezuela Diversa civil association has registered from 2008 to 2013, 17 murders of trans people and gay people in the city of Caracas and in the states of Vargas and Miranda, all in degrading conditions with signs of torture, the victims having been subjected to multiple stab wounds, blows with blunt instruments to the head and bullet wounds in different parts of the body.

Such cases have gone unpunished due to the failure of justice administrators and criminal investigation bodies, who have dismissed these cases considering the victims to be people who violate decency and good manners because of their lifestyle, the type of work they do, their socioeconomic status, and because they pose a threat to family life and the stability of children.

_Degrading treatment in health centres, schools and prisons_

In healthcare establishments, LGBTI people are subjected to psychological abuse, distress, humiliation and discrimination when they require healthcare in general and especially when they go for treatment and prevention of HIV and AIDS.

In public and private education at all levels, people who define themselves as LGBTI or those who are perceived as such, are often the victims of teasing, harassment, physical punishment and degrading treatment by other students and even teachers, situations which lead to students dropping out of school due to a lack of plans, programs and actions aimed to punish and eradicate such acts.

In October 2012, in the municipality of Francisco Linares Alcántara in Aragua State, Angello Alfredo Prado Perdomo, an 18 year-old gay man, was doused with gasoline and set on fire, causing third-degree burns to thirty percent (30%) of his body, which occurred after he was bullied and harassed at secondary school where he was studying for his final exams.
In prisons, LGBTI individuals and groups are subjected to psychological, physical and sexual attack, while held together with the general Venezuelan prison population. They also suffer poor prison conditions and lack of provision of basic services, the use of excessive force by security forces and prison guards, high rates of prison violence and a lack of effective control by the authorities.

Imprisoning trans women with men disregards their identities and causes a high level of emotional distress and acute anxiety, which may amount to torture. As for gay and bisexual men, they suffer from macho and sexist stereotyping in which they are regarded as weak (effeminate) and willing to consent to any sexual contact with other men. In the case of lesbian and bisexual women, the risk of sexual violence and abuse originates from prison officials themselves or other women detainees.

**d) Human rights defenders**

During the period from January 2010 to September 2014, conditions for the work of human rights defenders in Venezuela deteriorated significantly. The Venezuelan State has breached its obligations by failing to provide the necessary means for human rights defenders to conduct their activities freely; by failing to protect them when they are threatened in order to prevent attacks on their life and integrity; by imposing obstacles to their work and by failing to seriously and effectively investigate violations committed against them and thereby fighting impunity.\(^{129}\)

In 2004, one of the moments in which political polarization in Venezuelan society reached its peak, the attitude of the Venezuelan State changed with respect to NGOs and human rights defenders. It changed from neutralizing the human rights sector by adopting a defensive strategy against criticism, to the adoption of a clear policy of confrontation and public discrediting, which has had serious consequences. There is clear and public evidence of this shift, as the highest State authorities have not only denied responsibility for violations of human rights during their tenure, as did other governments in the past, but have also made serious public allegations against both NGOs and human rights defenders, most notably that of “treason” for receiving finance from international cooperation, specifically from the United States. Also, for the first time in Venezuela's democratic history, there have been assassinations and extrajudicial executions of human rights defenders.\(^{130}\)

Figures between 2010 and March 2014 show 208 cases of attacks on human rights defenders, including several violations of defenders’ rights. Seventy-one (71) cases involved NGOs, human rights defenders and members of victims’ committees; one hundred and seventeen (117) involved labour rights advocates, and twenty (20) were carried out against defenders of land rights.
State officials are held responsible for a high percentage of assaults and obstacles faced by human rights defenders, even though the State has the primary responsibility to ensure their protection. The rest of the attacks are the responsibility of individuals who identify themselves as supporters of the national government. We note with grave concern the prevailing impunity in most cases, even though the authorities have full knowledge of the facts.

Human rights defenders working on the promotion and enforcement of the rights of LGBTI people in Venezuela are subjected to threats, harassment, arbitrary detention, abuse and - in extreme cases - physical violence by State officials and / or social groups who support the government, and by other individuals.

One emblematic case showing the vulnerability of human rights defenders is that of Mijaíl Martínez in Barquisimeto, Lara State.

Recommendations

- Adopt legislative, administrative, judicial or other measures to strengthen the prohibition of torture practices related to gender, sexual orientation, gender identity and expression, in health services, public and private schools, prisons and in public life.

- Establish mechanisms for the statistical recording of violence against specific groups with public data disaggregated by age, gender, number of complaints received, investigations conducted, protection mechanisms applied, suspects and sanctions applied.

- Provide protection to human rights defenders, promoting legislation that favours freedom of association and guarantees the work of human rights defenders and non-governmental organisations, as well as conducting investigations to prosecute and punish those responsible for actions that violate their human rights because of their work in defence of human rights.


7 Ley de Partidos Políticos, Reuniones Públicas y Manifestaciones

8 Ley de Partidos Políticos, Reuniones Públicas y Manifestaciones

9 Ley de Partidos Políticos, Reuniones Públicas y Manifestaciones


13 The Bolivarian National Police force a is a “public safety agency, with administrative and functional dependency on the Ministry of Popular Power responsible for public safety”. Ley Orgánica del Servicio de Policía y del Cuerpo de Policía Nacional Bolivariana. Article 35.

14 “The State police forces are public safety agencies or bodies responsible for undertaking the Police Service in their territorial area and whose remit is primarily oriented toward preventive activities and crime control, with strict adherence to the principles and guidelines established in this Law, its regulations and the guidelines and directives issued by the police governing body”. Ley Orgánica del Servicio de Policía y del Cuerpo de Policía Nacional Bolivariana. Article 42.


17 IACtHR, Case of Montero Aranguren and others (Retén de Catia) vs. Venezuela. Sentence of July 5, 2006, Series C No. 150, para 78.

18 Ibid.


22 Stay of Proceedings (Sobreseimiento) is a Concluding Act of the Preparatory Phase of criminal proceedings. It is appropriate when the events did not take place or cannot be attributed to the accused, the events were not typical or criminal action has been exhausted. Article 300 of the Criminal Procedure Code.

23 Dismissal (Desestimación) is appropriate if the act is not of a criminal nature or the case is clearly closed, or there is a legal impediment to the development of the proceedings. Article 283 of the Criminal Procedure Code.
Archiving cases is a Concluding Act in the Preparatory Phase of the criminal process. It is appropriate when the outcome of the investigation is insufficient to indict. Article 297 of the Criminal Procedure Code.

Indictment is a Concluding Act of the Preparatory Phase of the criminal process. It applies when the Public Prosecutor’s Office believes that research provides serious grounds for the public prosecution of the accused. Article 308 of the Criminal Procedure Code.


Ibid.


Ibid.

Ibid.

Ibid.

Ibid.


Agencia Venezolana de Noticias. Fiscalía determinó que no hubo caso de violación en Carabobo. http://www.avn.info.ve/contenido/fiscal%C3%ADa-determin%C3%B3-que-no-hubo-caso-violaci%C3%B3n-carabobo


Ibid.


Protesting: Rights Violations in Venezuela’s Streets, Detention Centres, and Justice System. Pp. 27 and 35.
http://www.hrw.org/reports/2014/05/05/punished-protesting-0. See also: IACHR. Case of Uzcátegui and others vs. Venezuela. Merits and Reparations. Sentence of September 3, 2012 Series C No. 249, para 78. 
http://www.corteidh.or.cr/docs/casos/articulos/seriec_249_ing.pdf.


46 Ibid.


49 Ibid


51 Ibid.


54 Ibid.


57 Ibid.


60 Ibid.


COFAVIC presents balance on Human Rights in IACHR hearings: 
- in Spanish

The Venezuelan Observatory on Social Conflict recorded in the first half of 2014 at least 6,369 protests. An average of 35 took place daily across the country. 
- in Spanish

http://issuu.com/ddhhcofavic/docs/informe_sobre_situacion_ddhh_en_vz.html
- in Spanish

http://www.hrw.org/reports/2014/05/05/punished-protesting-0

https://docs.google.com/folderview?id=0B8r6TL2ePMjnMmZybhnNZIBQNTg
- in Spanish

Inter-Institutional Commission on Human Rights of the Faculty of Legal Policy at the University of Zulia, School of Law, Universidad Rafael Urdaneta and Commission on Human Rights of the Zulia Bar. Preliminary Report on the Situation of Human Rights in the context of the protest. February 12th - April 12th 2014. Maracaibo Zulia (Venezuela). Available online at: 
https://docs.google.com/folderview?id=0B8r6TL2ePMjnMmZybhnNZIBQNTg

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https://docs.google.com/folderview?id=0B8r6TL2ePMjnMmZybhnNZIBQNTg
- in Spanish.

Ibid. P 20.


http://www.hrw.org/reports/2014/05/05/punished-protesting-0

In accordance with Article 328 of the Constitution of the Bolivarian Republic of Venezuela, the National Guard, along with the Army, Navy and Air Force, make up the National Armed Forces.

http://www.tsj.gov.ve/gaceta_ext/diciembre/23122010/E-23122010-3043.pdf#page=1
- in Spanish

https://docs.google.com/folderview?id=0B8r6TL2ePMjnMmZybhnNZIBQNTg
- in Spanish.

79 Ibid. P. 22.


82 The case of the protest near the Hotel Venetur in Nueva Esparta State is emblematic of the criminalization of protest, where the Organic Law against Organized Crime and Terrorist Financing was applied as a tool to intimidate and restrict the right to express dissent - accusing seven people of instigating the public, resisting arrest, conspiracy and incitement to crime – in addition mistreatment was reported (beatings, insults, assaults) of citizens who were arrested, tried and sent to an extremely dangerous prison located in Anzoategui State called Puente Ayala Prison. Information provided by the organization Nueva Esparta en Movimiento. See also: Periódico El Universal, 04/02/14 “Envián a prisión a ciudadanos que protestaron el domingo contra equipo cubano de béisbol en Margarita”. http://www.eluniversal.com/nacional-y-politica/140204/presunt-a-agresion-a-delegacion-cubana-de-beisbol-hay-si-te-detenido. See also YouTube Video testimonies of victims of arrests compiled by Nueva Esparta en Movimiento http://www.youtube.com/watch?v=pNxqZbs-yIc.


91 Inter-Institutional Commission on Human Rights of the Faculty of Legal Policy at the University of Zulia, School of Law, Universidad Rafael Urdaneta and Commission on Human Rights of the Zulia Bar. Preliminary Report on the Situation of Human Rights in the context of the protest. February 12th - April 12th 2014. Maracaibo Zulia (Venezuela). P. 51. Available online at: https://docs.google.com/folderview?id=0B8r6TL2ePMjnMmZybnhNZIBQNTgusp=gmail – in Spanish


95 Citizens have the right to be informed in a timely and truthful manner by the Public Administration on the status of its actions in matters in which they have a direct interest, and to know the final decisions to be taken on these matters. They must also have access to administrative files and records, subject to the limits acceptable in a democratic society in matters relating to internal and external security, criminal investigation and the intimacy of private life, in accordance with the law regulating the classification of confidential or secret documents. No censorship shall be permitted to public officials or public servants to report on matters under their responsibility.


99 Article 324 of the Constitution establishes that: “Only government can own and use weapons of war, those which exist, are manufactured or imported into the country, will become the property of the Republic without compensation or proceedings. The National Armed Forces shall be the competent institution to regulate and control, according to the respective law the manufacture, import, export, storage, transit, registration, monitoring, inspection, trade, possession and use of other weapons, ammunition and explosives”.

100 Venezuelan Observatory for the Human Rights of Women. Alternative report on the list of issues and questions raised by the CEDAW committee with regards to the combined seventh and eighth periodic reports of the Bolivarian Republic Of Venezuela (CEDAW/C/VEN/7-8). http://observatoriooddhmujeres.org/documentos/informe%20alternativo.htm – in Spanish


102 Ibid.


110 Ibid.


116 Ibid.

117 CECODAP is a Venezuelan organization that since 1984, works to promote and defend the human rights of children and adolescents with a special emphasis on building peaceful coexistence via the public participation of children and adolescents, families, schools and society.


125 Information provided by the Asociación Civil Venezuela Diversa.

126 Ibid.

127 Ibid.

128 Coalición Venezolana de Organizaciones LGBTI. PRESS RELEASE AGAINST ACTS OF HOMOPHOBIA IN THE CITY OF FRANCISCO LINARES ALCÁNTARA ARAGUA STATE. Available online: http://venezueladiversaac.blogspot.com/2012/11/coalicion-venezolana-de-organizaciones.html - in Spanish

129 Information provided by the Vicaría de Derechos Humanos de la Arquidiócesis de Caracas.

130 Ibid.

131 Information provided by the Asociación Civil Venezuela Diversa.

Tab #13
Overview:

Venezuela’s democratic institutions have deteriorated since 1999, but conditions have grown sharply worse in recent years due to the continued concentration of power in the executive, and harsher crackdowns on the opposition. Following a strong performance by the opposition in 2015 legislative elections, the powers of the National Assembly were curtailed by a politicized judiciary, and in 2017 the body was supplanted by a new National Constituent Assembly that serves the executive’s interests. Government corruption is pervasive, and law enforcement has proven unable to halt violent crime. The authorities have closed off virtually all channels for political dissent, restricting civil liberties and prosecuting perceived opponents without regard for due process. The country’s severe economic crisis has left millions struggling to meet basic needs, and driven mass emigration.
Key Developments:

KEY DEVELOPMENTS IN 2018:

- President Nicolás Maduro was reelected in May, in a poll that failed to meet minimum international standards and was widely condemned as illegitimate. The election was held on an accelerated schedule designed to advantage Maduro, most prominent opposition parties and candidates were banned from participating, and record-low turnout reflected widespread dissatisfaction with the process.

- Authorities increasingly required citizens to use a special identity card to access social services and subsidized food. The Maduro administration urged voters to display these cards at special booths near polling stations, prompting a widespread perception that authorities were using the cards to monitor voting patterns.

- Venezuelans suffered from a worsening humanitarian and financial crisis characterized by acute food and medicine shortages, historically high hyperinflation, and rampant crime. The United Nations in November announced that over 3 million Venezuelans have fled the country due to the crisis.

- The Maduro administration continued its brazen crackdown on the political opposition, employing frequent arrests, torture, and temporary disappearances to quash dissent.

Political Rights and Civil Liberties:

POLITICAL RIGHTS: 3 / 40 (−5)

A. ELECTORAL PROCESS: 0 / 12 (−2)

A1. Was the current head of government or other chief national authority elected through free and fair elections? 0 / 4 (−2)

The president serves six-year terms. Since 2009, neither the president nor other elected officials have been subject to term limits.
Incumbent president Nicolás Maduro won the 2018 snap presidential election with 67.9 percent of the vote, defeating Henri Falcón of the Progressive Advance party, who took 20.9 percent, and independent candidate Javier Bertucci, who took 10.8 percent. The election saw record-low turnout, with only 46 percent of voters participating, a sharp decline from the nearly 80 percent who participated in the last presidential election in 2013.

The poll was initially planned for December, but was moved up to April and then ultimately to May by the National Constituent Assembly, the progovernment body that in 2017 controversially supplanted the opposition-controlled National Assembly elected two years before. The decision to hold the poll early was widely criticized as a move to benefit Maduro by leaving a crippled and divided opposition little time to coalesce around a unity candidate, and by holding it before increasingly dire economic conditions became even worse. Leading opposition figures, including Leopoldo López and Henrique Capriles, were barred from competing. Maduro sought to intimidate voters by insisting that they present the so-called Fatherland ID card—the special identity card required to receive subsidized food and other services—at government-run booths near polling places. This drove a perception that those who did not vote could see aid revoked.

By most international accounts, the election lacked even a veneer of competitiveness. The Organization of American States (OAS) called it a “farce,” while the Lima Group—comprised of mostly Latin American governments seeking address the crisis in Venezuela—deemed it illegitimate. The European Union said it did not comply with “minimum international standards for a credible process.”

Score Change: The score declined from 2 to 0 because prominent opposition political parties and candidates were banned from participating in the presidential election, which was marked by voter intimidation and was held on an accelerated schedule designed to advantage the incumbent.

A2. Were the current national legislative representatives elected through free and fair elections? 0 / 4

The unicameral, 167-seat National Assembly is popularly elected for five-year terms, using a mix of majoritarian and proportional-representation voting. Three seats are reserved for indigenous representatives. In the 2015 elections, the opposition Democratic Unity Roundtable (MUD) coalition won 109 seats, while the United Socialist Party of Venezuela (PSUV) took 55. Subsequent government challenges against certain opposition victories—and notably the decision by the Supreme Tribunal of Justice (TSJ) to block the swearing-in of four representatives, three of whom were members of the opposition—deprived the MUD of a two-thirds majority.
The TSJ repeatedly nullified legislation passed by the National Assembly during 2016, and in 2017 the Maduro administration effectively replaced it with the National Constituent Assembly, a new body elected through an undemocratic process and comprised entirely of regime loyalists. Elections to the new assembly did not give voters the option to reject its establishment, were widely derided as unconstitutional, and were dismissed by the opposition, which boycotted the vote. Throughout 2018, the National Constituent Assembly functioned as a legislative body, solidifying its de facto replacement of the legitimate National Assembly. It is reportedly drafting a new constitution.

**A3. Are the electoral laws and framework fair, and are they implemented impartially by the relevant election management bodies? 0 / 4**

Venezuela’s electoral system is heavily influenced by political manipulation and institutional interference in favor of the ruling party. The National Electoral Council (CNE) consists of five members, four of whom are openly aligned with the PSUV. The CNE rarely finds the ruling party has violated any rules, leading to a system in which the opposition is heavily regulated, while the government is unconstrained. After the National Constituent Assembly was created in 2017, it assumed the National Assembly’s constitutional role of selecting and confirming members of the CNE. In addition, the National Constituent Assembly has taken over certain CNE functions, including setting election dates—a move that prompted significant controversy in 2018.

Recent elections, including the 2018 presidential election, have been characterized by disqualifications of prominent opposition candidates, government abuse of public resources, uneven access to the state-dominated media, the diminished presence of international observers, and intimidation of state employees.

**B. POLITICAL PLURALISM AND PARTICIPATION: 3 / 16 (–3)**

**B1. Do the people have the right to organize in different political parties or other competitive political groupings of their choice, and is the system free of undue obstacles to the rise and fall of these competing parties or groupings? 0 / 4 (–1)**

Opposition leaders are harassed, attacked, imprisoned, and otherwise impeded from participating in political processes or leading political parties in peaceful activities. Leopoldo López, founder of two opposition parties, remains under house arrest after spending more than three years in prison on spurious charges. Intelligence officials raided his home in March 2018 after the *New York Times* published an article based on dozens of interviews he had secretly given to one of its journalists.
Dozens of other political leaders have been subjected to harassment or arrest, and an apparent assassination attempt against President Maduro in August prompted a major crackdown. Opposition lawmaker Juan Requesens and Caracas councilman Fernando Albán were among those arrested for alleged involvement in the incident. After more than two days in which Requesens’ whereabouts were unknown, videos surfaced in which he appeared to have been physically abused and likely tortured by state officials. Albán was arrested in October upon returning from an advocacy trip to the United Nations in New York. He was held by intelligence services for several days until his death was reported by officials as a suicide. Many opposition leaders and several foreign governments believe he was tortured and murdered by state officials; the United Nations has called for an investigation into his death. A number of other opposition figures have fled the country.

In 2018, the government increasingly adopted what human rights groups termed a “revolving door” approach to repress critics, employing more frequent detentions but for shorter periods of time. In many cases, detained individuals disappear for multiple days before any information is provided about their whereabouts. The effect has been to broaden the government’s campaign to stifle protest and dissent while roughly maintaining the total number of political prisoners at a given time. A May report published by the OAS detailed the widespread use of torture to persecute government opponents. There have been over 12,800 arbitrary detentions since 2014 and there were 288 political prisoners at the end of 2018.

Score Change: The score declined from 1 to 0 due to sustained state-sanctioned violence and attacks against opposition leaders, including arbitrary arrests, forced disappearances, and torture.

B2. Is there a realistic opportunity for the opposition to increase its support or gain power through elections? 0 / 4 (–1)

While discontent with the Maduro administration continues to grow, the government has cut off virtually all avenues for political change. After pushing through the de facto replacement of the National Assembly with the National Constituent Assembly in 2017, Maduro went further in 2018 by ensuring that no publicly known opposition figure would be able to challenge him in the 2018 election. Opposition parties that had boycotted the 2017 municipal elections due to the unjust conditions were banned by the National Constituent Assembly from competing under their names in the presidential election, prompting the opposition MUD coalition to declare a boycott of the process. Opposition parties also boycotted the December 2018 municipal elections, in which, as a sign of widespread dissatisfaction, only 27 percent of voters participated.
Score Change: The score declined from 1 to 0 because major opposition political parties and candidates were denied the ability to compete in presidential elections.

B3. Are the people's political choices free from domination by the military, foreign powers, religious hierarchies, economic oligarchies, or any other powerful group that is not democratically accountable? 1 / 4

State-affiliated colectivos routinely commit acts of violence against civilians with impunity, particularly at antigovernment protests, and carry out government efforts to intimidate voters.

The government’s 2017 deployment of the Fatherland ID card—which is necessary to access subsidized food, subsidized oil medical procedures, and other services—has enabled authorities to institutionalize a form of political discrimination. In the lead-up to the 2018 presidential election, the government directed aid recipients to display their identification cards at government-run booths near polling stations. This fueled a widespread perception that those who failed to vote would see food aid withdrawn. Moreover, the government has also effectively bought votes by offering prizes of food to ID holders who vote. There were additionally reports of state employees being pressured to send photographs of themselves voting to their managers. The Reuters news agency, in a 2018 story on the Fatherland ID card, reported on the existence of a Justice Ministry list of state employees who had failed to vote.

B4. Do various segments of the population (including ethnic, religious, gender, LGBT, and other relevant groups) have full political rights and electoral opportunities? 2 / 4 (–1)

While several women hold senior positions in government, the general underrepresentation of women in politics contributes to a lack of policy discussions about issues that primarily affect women, such as gender-based violence. Discrimination against LGBT (lesbian, gay, bisexual, and transgender) Venezuelans impacts their ability to fully engage in political and electoral processes. The government has professed support for the rights of indigenous people, but in practice they too lack meaningful political representation. Three indigenous legislators were prevented from taking office after their victories in 2015 elections to the National Assembly in order to deny the opposition a two-thirds majority. Some indigenous leaders have been impeded from running for office and others have been targeted by government stigmatization campaigns.
The de facto replacement of the National Assembly with the progovernment National Constituent Assembly in 2017 effectively erased constitutional protections designed to ensure political representation for indigenous and other groups. Members of these groups now have little opportunity to advance any interests that fall outside of the body’s agenda.

*Score Change:* The score declined from 3 to 2 because authorities’ drive to quash dissent has left women, indigenous populations, and LGBT people with fewer opportunities to advocate for their interests.

**C. FUNCTIONING OF GOVERNMENT: 0 / 12**

**C1. Do the freely elected head of government and national legislative representatives determine the policies of the government? 0 / 4**

Venezuela does not function as a representative democracy. The opposition-controlled legislature has had no practical ability to carry out its constitutional mandate since the 2015 elections, and since August 2017 has been supplanted by a body packed with regime loyalists who were elected under undemocratic conditions. While the National Assembly was never formally dissolved, the new National Constituent Assembly granted itself sweeping legislative powers, essentially leaving the old assembly with no functional role.

Military officials, many of them in active service, occupy a number of top positions in government ministries and state-level administrations, and the armed forces perform routine government duties, blurring the lines between civilian and military functions. The unpopular Maduro administration relies heavily on support from the military to maintain power. In 2018, a growing number of military officers were arrested, as the administration became increasingly concerned about divisions within the ranks.

**C2. Are safeguards against official corruption strong and effective? 0 / 4**

Corruption is rampant in Venezuela. The government’s economic policies—particularly its currency and price controls—have greatly increased opportunities for black-market activity and collusion between public officials and organized crime networks, while exacerbating the effects of the economic crisis for poor and middle-class Venezuelans. The scale of Venezuelan corruption is exemplified by Alejandro Andrade, former head of Venezuela’s treasury, who was sentenced by a US court to 10 years in prison after pleading guilty to taking over $1 billion in bribes, in exchange for helping a network of elites purchase dollars at fixed exchange rates and resell them on the black market for a massive markup.

**C3. Does the government operate with openness and transparency? 0 / 4**
There is little transparency regarding government spending. The government has consistently failed to publish vital economic data, including monthly inflation statistics. In 2017, President Maduro fired the health minister after the ministry published data confirming a dramatic rise in maternal and infant mortality.

**CIVIL LIBERTIES: 16 / 60 (–2)**

**D. FREEDOM OF EXPRESSION AND BELIEF: 7 / 16 (–1)**

**D1. Are there free and independent media? 1 / 4**

Venezuela’s independent journalists operate within a highly restrictive regulatory and legal environment, and risk arrest and physical violence in connection with their work. Most independent newspapers have shut down or moved to a digital format.

The Maduro government maintains a state communications infrastructure, bolstered by a broad legal framework, which is used to propagate its political and ideological program. Critical media face various forms of harassment. A series of private news outlets have changed ownership under financial pressure in recent years, and their coverage subsequently grew more favorable to the authorities.

In November 2017, the National Constituent Assembly passed a hate-speech law mandating fines and up to 20 years’ imprisonment for anyone who disseminates information deemed “intolerant” via traditional or social media. In September 2018, two men were arrested by military counterintelligence officers under the law for posting a video that compared President Maduro to a donkey. They were held for several weeks before being “freed with restrictions.”

Obstruction, intimidation, physical attacks, confiscations of equipment, and detentions and arrests of media workers continued in 2018. Venezuela’s Press and Society Institute (IPYS) reported that there were 25 arbitrary detentions of journalists in the first nine months of 2018, and that two journalists had been prohibited from leaving the country as punishment for their reporting. A German freelance writer was detained in a military detention facility in mid-November on charges of spying and “violating security zones,” and remained there at year’s end, though authorities have not provided any evidence to support the charges.

In September, the National Telecommunications Commission (CONATEL) ordered internet service providers in Venezuela not to allow an investigative journalism website, Armando.info, to publish a report about Alex Saab, a Colombian businessman responsible for importing staple foods for the government food-distribution program.
Constitutional guarantees of religious freedom are generally respected, though tensions between the government and the Roman Catholic Church remain high. Government relations with the small Jewish community have also been strained at times.

**D3. Is there academic freedom, and is the educational system free from extensive political indoctrination? 2 / 4**

Academic freedom came under mounting pressure during Chávez’s tenure, and a school curriculum developed by his government emphasizes socialist concepts. More recently, budget cuts and other funding problems have undermined universities’ autonomy and prompted an exodus of academics from the country.

The OAS and Venezuelan civil society organizations have noted growing government efforts to stifle political speech by university students. In late 2017, the Inter-American Commission on Human Rights (CIDH), an OAS body, released a report expressing concern over the detention of more than 300 university students involved in a 2017 protest movement calling for political reforms. The report added that 21 students had been murdered amid the movement, and that 92 demonstrations called by university students or lecturers have been repressed.

**D4. Are individuals free to express their personal views on political or other sensitive topics without fear of surveillance or retribution? 1 / 4 (–1)**

Authorities’ monitoring of citizens’ behavior via their use of the Fatherland ID card and through scrutiny of content posted on social media platforms has created a climate of fear. Social media users have been subject to arrest in response to comments posted online, with at least 17 individuals detained since 2014 for opinions expressed on Twitter alone. In May 2018, Pedro Jaimes Criollo, a private citizen, was detained for tweeting information about the flight route of an aircraft carrying President Maduro. The incident was considered by many human rights groups to be a forced disappearance, given that after he was detained his whereabouts were unknown for more than a month. He was reportedly tortured while in custody.

The government has also employed the Fatherland ID system to monitor citizens’ activities. With guidance from Chinese company ZTE, authorities have reportedly developed a sophisticated monitoring system that not only allows them to withhold food aid and other services from political opponents, but also enables them to gather
Score Change: The score declined from 2 to 1 due to arrests of social media users for online comments, and the Maduro administration’s use of the Fatherland ID card to monitor citizens’ activities.

E. ASSOCIATIONAL AND ORGANIZATIONAL RIGHTS: 2 / 12

E1. Is there freedom of assembly? 0 / 4

Freedom of assembly is guaranteed in the constitution, but is not protected in practice. Widespread antigovernment protests in 2017 gave way to violent clashes with security forces, leading more than 1,900 injuries and 136 deaths, at least 102 of whom were apparently killed directly by security forces or state-affiliated colectivos.

There were fewer mass protests in 2018, likely due in part to the government’s brutal crackdown on demonstrations the previous year. Most focused on discontent with the country’s economic and social conditions, rather than the political situation. A growing number of professionals in the health sector, as well as transportation workers and grocery store owners, protested food and medicine shortages and criticized government policies. A peaceful march by 400 doctors and nurses in August was broken up by police.

E2. Is there freedom for nongovernmental organizations, particularly those that are engaged in human rights- and governance-related work? 1 / 4

Activists and nongovernmental organizations (NGOs) are routinely harassed, threatened, and subject to legal and administrative sanctions for their work. Dozens of civil society activists have been physically attacked in recent years. In 2017 and 2018, the government has focused mainly on attempting to delegitimize these organizations by accusing them of conspiring with foreign governments.

E3. Is there freedom for trade unions and similar professional or labor organizations? 1 / 4

Workers are legally entitled to form unions, bargain collectively, and strike, with some restrictions on public-sector workers' ability to strike. Control of unions has shifted from traditional opposition-allied labor leaders to new workers' organizations that are often aligned with the government. The competition has contributed to a substantial increase in labor violence as well as confusion and delays during industry-wide collective bargaining.
government reforms that failed to stem hyperinflation.

F. RULE OF LAW: 1 / 16

F1. Is there an independent judiciary? 0 / 4

Politicization of the judicial branch increased dramatically under Chávez and has progressed further under Maduro. High courts generally do not rule against the government. In late 2015, the outgoing PSUV-controlled legislature stacked the TSJ with its own appointees before the opposition-controlled National Assembly took office. The progovernment National Constituent Assembly has since installed over a dozen regime loyalists on the TSJ, solidifying the judiciary’s alignment with the executive branch. In opposition to these developments, a group of former “justices-in-exile” has been working internationally to bring largely symbolic charges against Maduro and other government officials.

F2. Does due process prevail in civil and criminal matters? 0 / 4

Opponents of the government and ruling party are routinely detained and prosecuted without regard for due process. In recent years, the Bolivarian National Intelligence Service (SEBIN) has increasingly carried out policing functions and arrested opposition politicians and journalists without informing the Public Ministry or presenting official charges. The military has also assumed roles previously reserved for civilian law enforcement institutions, and foreign governments allege that the military has adopted a permissive attitude toward drug trafficking. According to Venezuelan human rights groups, at least 800 civilians have been tried in military court proceedings since 2017.

In 2017, the National Constituent Assembly dismissed prosecutor general Luisa Ortega, who has been critical of Maduro. She then fled the country, saying she feared for her life.

F3. Is there protection from the illegitimate use of physical force and freedom from war and insurgencies? 0 / 4

Venezuela’s violent crime rates rank among the highest in the world. A 2018 report by Insight Crime cited a homicide rate of 89 per 100,000 people—which would make Venezuela the most dangerous country in Latin America—and called the country a “mafia state” due to the degree of infiltration by organized crime into state institutions. Venezuela also ranked last of all 142 countries surveyed in Gallup's latest
The police and military have been prone to corruption, torture, and extrajudicial killings. Prison conditions in Venezuela remain among the worst in the Americas. *Pranes*, or gang leaders who operate from prisons, are able to coordinate criminal networks throughout Venezuela.

**F4.** Do laws, policies, and practices guarantee equal treatment of various segments of the population? 1 / 4

The rights of indigenous people, who make up about 2 percent of the population, are upheld by the constitution but poorly protected by local authorities. Although discrimination based on sexual orientation is barred, LGBT Venezuelans face widespread intolerance and are occasionally subjected to violence.

Despite legal protections, women suffer from violence and discrimination in practice, including earning lower salaries than men doing similar work.

Segments of the population that were already disadvantaged or marginalized appear to have suffered disproportionately from Venezuela’s economic and health crises. Maternal mortality has increased in recent years. People living with HIV/AIDS—most of whom are gay men and transgender people—have suffered due to the government’s decision to stop subsidizing antiretroviral drugs.

**G. PERSONAL AUTONOMY AND INDIVIDUAL RIGHTS: 6 / 16 (–1)**

**G1.** Do individuals enjoy freedom of movement, including the ability to change their place of residence, employment, or education? 2 / 4

The country’s currency controls and other economic policies, combined with an enormous decline in the number of flights to and from Venezuela, and periodic border closures, have made it extremely difficult for Venezuelans to travel abroad. Venezuelans of all social classes nevertheless fled the country in massive numbers in 2018, even as neighboring countries imposed more rigorous passport and visa controls in an effort to slow the influx.

**G2.** Are individuals able to exercise the right to own property and establish private businesses without undue interference from state or nonstate actors? 1 / 4

Property rights have been affected by years of price controls, nationalizations, overregulation, and corruption. Accusations of mismanagement, underinvestment, graft, and politicized hiring practices within state-owned enterprises are common.
G3. Do individuals enjoy personal social freedoms, including choice of marriage partner and size of family, protection from domestic violence, and control over appearance? 3 / 4

The government generally does not restrict social freedoms. A 2007 law was designed to combat violence against women, but domestic violence and rape remain common and are rarely punished in practice.

G4. Do individuals enjoy equality of opportunity and freedom from economic exploitation? 0 / 4 (-1)

Venezuelan women and children are increasingly vulnerable to sex trafficking within Venezuela and in neighboring countries, as well as in Europe, with the problem exacerbated by worsening economic conditions. Migrants to Venezuela have also been subjected to forced labor and sex trafficking. The government has reportedly done little to combat human trafficking.

With job opportunities growing scarce and wages not keeping up with hyperinflation, more citizens have turned to jobs in the informal economy, where they are more exposed to dangerous or exploitative working conditions. Meanwhile, the United Nations estimated in December 2018 that roughly 5,500 Venezuelans were leaving the country each day due to a lack of employment opportunities, food shortages, and violence.

Score Change: The score declined from 1 to 0 due to the severe economic crisis, which has prompted mass emigration, and increases in sex trafficking and sexual exploitation, trafficking of children, forced child labor, and dangerous working conditions.
Tab #14
Venezuela:

Situación del colectivo LGTB

Comisión Española de Ayuda al Refugiado
Soledad Román Pérez-Moreira
Equipo de Voluntariado y Participación
Madrid, 7 Marzo 2018
www.cear.es
Servicios Centrales: Avda. de General Perón 32, 2° derecha
28020 Madrid
El presente informe ha sido elaborado mediante una labor de investigación a partir de fuentes relevantes, fiables y creíbles, especializadas en la investigación de la situación de Derechos Humanos en diferentes países y zonas de conflicto. La selección de fuentes de información se ha basado en criterios de pertinencia, fiabilidad, equilibrio, precisión, verificación y transparencia. El equipo encargado de la elaboración del informe está formado por profesionales voluntarios especializados que trabajan de forma presencial o virtual, y estudiantes en prácticas de universidades españolas y extranjeras. La finalidad del presente informe es proveer información con respecto a cuestiones sobre la situación política, social, cultural, económica y de derechos humanos, así como la situación humanitaria en los países de origen. La Comisión Española de Ayuda al Refugiado excluye cualquier responsabilidad por las informaciones de terceros recogidas en el presente informe.
1. Situación de Derechos Humanos del colectivo LGTB en Venezuela

En Venezuela el colectivo LGTB carece de suficiente reconocimiento (especialmente las personas trans) y la normativa de protección de sus derechos es escasa e ineficiente. Si bien la discriminación está prohibida de iure, las personas LGTB la sufren de facto, estando expuestos a situaciones de discriminación y violencia tanto por parte de la policía como de la sociedad. Con la situación de crisis humanitaria y de derechos humanos que atraviesa actualmente el país, la situación del colectivo parece estar menos en el punto de mira, sin embargo, esta crisis está sumiendo a estas personas en una vulnerabilidad aún mayor.

2. Estatus legal y social del colectivo LGTB en Venezuela

Venezuela ha ratificado todos los tratados internacionales en materia de derechos humanos. Asimismo, ha ratificado todos los convenios relevantes en el seno de la Organización de Estados Americanos (OEA), si bien el Gobierno actual ha expresado su deseo de abandonar dicha organización.

La Constitución de la República Bolivariana de Venezuela de 1999 establece la igualdad ante la ley en su artículo 21, aunque no incluye expresamente la prohibición de discriminación por motivos de orientación sexual o identidad de género. En el año 2008, la Resolución N° 190 de la Sala Constitucional del Tribunal Supremo de Justicia (TSJ) aclaró que la Constitución también prohibía la discriminación por razones de orientación sexuales. Sin embargo, no se menciona la prohibición de discriminación por razón de identidad de género.

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1. Esto se observa en la escasa presencia (a diferencia de años anteriores) de la problemática LGTB en los informes de, p.ej. Amnistía Internacional, HRW o Freedom House.

2. V. última parte del presente informe.


4. Si bien en abril de 2017 Venezuela inició el proceso de salida de la organización mediante denuncia de la Carta de la OEA, esta tarda dos años en hacerse efectiva.

Si bien no existe criminalización de la homosexualidad en Venezuela, la legislación protectora es escasa. Tal y como recoge el informe de ILGAs, solo existen normas que prohíben la discriminación (por ejemplo en materia laboral), pero no hay normas que prohíban la incitación al odio por orientación sexual ni esto es considerado circunstancia agravante de los delitos. Además, no existe reconocimiento del colectivo: quedan expresamente excluidos el matrimonio, las uniones de hecho o la posibilidad de adoptar para estas personas.

En cuanto al colectivo trans, si bien la Ley Orgánica del Registro Civil (art. 146) permite el cambio de nombre para que este se adecúe al género de la persona (si bien en la práctica los solicitantes encuentran muchas dificultades para ello), pero el cambio de sexo no está reconocido.

Además, sí que existe **criminalización de las relaciones homosexuales en las fuerzas armadas**. El artículo 565 del Código Orgánico de Justicia Militar dice: “El oficial que cometa actos que lo afrenten o rebajen su dignidad o que permita tales actos, sin tratar de impedirlo por los medios autorizados por la ley, será penado con prisión de uno a tres años y separación de las Fuerzas Armadas. La misma pena se aplicará a todo militar que cometa actos sexuales contra natura.” Si bien este artículo no debería aplicarse por ser incompatible con la Constitución (recordemos que el TSJ declaró que esta prohibía la discriminación por orientación sexual), continúa siendo aplicado. Venezuela es, pues, el único país de Latinoamérica con este tipo de criminalización.

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7 Artículo 21 de la Ley Orgánica del Trabajo (2012). Solo incluye la discriminación por orientación sexual, no por identidad o expresión de género.


9 Las organizaciones locales han documentado casos de oficiales destituidos de sus cargos por estos motivos y de vejaciones. Véase como ejemplos:

- **En Venezuela ser gay es un delito militar**, Fundación Reflejos de Venezuela, 20 mayo 2016

- **¿Homofobia militar en Venezuela?: La historia de un joven expulsado de las Fuerzas Armadas por ser gay**, Asociación Civil Control Ciudadano, 16 mayo 2016
Por otra parte, existen importantes problemas de implementación de las pocas normas protectoras del colectivo LGBT que sí existen, ya que no se han creado los instrumentos de desarrollo de las mismas ni los cauces adecuados de reclamación.10 Tal y como indica Amnistía Internacional en su informe de 2016, “no ha habido avances para garantizar derechos igualitarios”11.

La comunidad internacional ha incluido como recomendaciones al país en el último examen periódico universal (2016/17) el “Garantizar el respeto y la protección de las personas lesbianas, gais, bisexuales, transgénero e intersexuales a través de medidas como la descriminalización de las relaciones homosexuales en las fuerzas armadas y de seguridad, el reconocimiento de las parejas del mismo sexo y el derecho al cambio de identidad de las personas transgénero”12, así como “Impedir todas las formas de discriminación, en especial la discriminación por motivos de orientación sexual o identidad de género, asegurando la igualdad de trato, en particular en las escuelas, los servicios de salud y las fuerzas armadas”13.

Respecto a la violencia que sufre el colectivo, encontramos que no existen datos oficiales por parte del Gobierno Venezolano dado que, como ya se ha expuesto, en el país no están reconocidos los crímenes de odio contra las personas LGTB. Este tipo de crímenes suele ser clasificado como “crímenes pasionales”, no como de odio14.

3. Principales violaciones de DDHH sufridas por personas LGTB por parte de agentes estatales

La población LGBT sufre discriminación de facto y, en ocasiones, violencia,15 por parte de estos actores.

11 Annual Report 2016/2017 Venezuela. [Sitio web accesado] (Consulta 02/03/2018 19:18)
14 USDOS - Departamento de Estado de EE. UU. Informe nacional sobre prácticas de Derechos Humanos 2016: Venezuela, pág. 36. [Sitio web accesado] (Consulta 02/03/2018 21:20)
15 Freedom House – Annual Report on Political Rights and Civil Liberties in 2016. [Sitio web accesado] (Consulta 02/03/2018 20:30)
Las organizaciones LGBT denuncian que las víctimas de delitos de odio suelen ser extorsionadas o amenazas por la policía cuando intentan denunciar estos actos. Sirva como ejemplo un caso denunciado por Amnistía Internacional: en febrero de 2017 el abogado transgénero Samantha Seijas fue amenazado por un funcionario policial del Estado de Aragua, cuando realizaba una denuncia en una comisaría acompañado por su hija.

En cuanto al colectivo trans, se denuncia que el gobierno impide sistemáticamente su reconocimiento, impidiéndoles la obtención de documentos de identidad, que son indispensables para poder acceder a cualquier prestación social.

Asimismo, desde las altas esferas de poder se promueve la homofobia al utilizarla para agredir verbalmente a los adversarios políticos. Esto se ha visto intensificado con la creciente polarización política que vive Venezuela.

4. Principales violaciones de DDHH sufridas por personas LGTB por parte de agentes no estatales

Según Transgender Europe, desde 2008 a septiembre de 2017, 116 personas trans fueron asesinadas en el país, lo que sitúa a Venezuela como el cuarto país de América Latina con mayor número de asesinatos de personas trans. Las circunstancias de los asesinatos y el estado de los cuerpos muestran un especial odio de los autores hacia las víctimas.

Atendiendo al informe de ACCSI, desde 2009 a mayo de 2015, 72 personas de la diversidad sexual fueron asesinadas en el país y se contabilizaron 67 agresiones. A fecha...
de emisión del informe, más del 90% de dichos asesinatos no habían sido resueltos. Por lo tanto, se denuncia que estos casos no son debidamente investigados23. Los datos sobre agresiones que se conocen no son exactos por falta de denuncia de las víctimas, a causa del temor de ser revictimizadas y la desconfianza en el sistema de justicia. En un nuevo informe de ACCSI24, esta organización identifica entre junio de 2015 y mayo de 2016 un total de 18 asesinatos y 75 agresiones de personas de la comunidad LGTB, lo que supone un evidente aumento.

Además, las agresiones verbales, psicológicas y físicas contra el colectivo LGBT son habituales en los centros educativos y las universidades, sin que exista ninguna ley que proteja a esta población frente al acoso25. Así pues, no se aplican sanciones, multas ni penas de ningún tipo contra personas o instituciones que se expresen de manera discriminatoria contra la población LGBT.26

5. Derechos Económicos, Sociales, Culturales:

La situación de crisis humanitaria que atraviesa actualmente el país, ha generado una mayor vulnerabilidad del colectivo. Con una gran parte de la población que sobrevive gracias a las subvenciones y ayudas que el Estado otorga a las familias, las familias LGTB quedan excluidas de las mismas al no estar reconocidas como tales. Los expertos estiman que unas 6000 familias LGBT carecen de protección legal27.

Asimismo, las personas transgénero, al carecer de un documento acorde a su identidad de género, encuentran grandes dificultades para acceder al mercado laboral y para adquirir productos en los supermercados. Esta denegación de documento de identificación acorde también afecta a su derecho a la vivienda y a la salud, ocasionándoles una gran vulnerabilidad que a menudo termina dando lugar a que estas personas sean víctimas de la trata o la prostitución28.

En lo que respecta al derecho a la salud, la subida de precios impide el acceso de muchas personas a los anticonceptivos, hasta el punto de que un 72% de los consultados dice no haber tenido acceso a preservativos en los últimos 12 meses29, lo que puede derivar en un aumento en la incidencia del VIH.

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24 Informe Venezuela 2016: Crímenes de odio por Orientación sexual, Identidad de género y Expresión de género en la noticia de los Medios de Comunicación y Organizaciones de la Sociedad Civil, ACCSI Acción Ciudadana Contra el SIDA. http://www.redlgbtidevenezuela.org/wp-content/uploads/ACCSI-Informe-Venezuela-2016-Cr%C3%ADmenes-de-Odio-por-Orientaci%C3%B3n-sexual-Identidad-de-g%C3%A9nero-y-Expresi%C3%B3n-de-g%C3%A9nero-versi%C3%B3n-final.pdf (Consulta 18/02/2018 20:25)
25 Ibid.
28 Ibid.
Por otra parte, debido a la ya comentada inacción gubernamental para evitar el acoso escolar a las personas LGBT, este grupo presenta mayores tasas de abandono escolar\textsuperscript{30}, por lo que su derecho a la educación también se encuentra afectado.

6. Consideración social de las personas LGTB

Atendiendo a los datos de ILGA\textsuperscript{31}, el 69\% de los venezolanos encuestados está de acuerdo con que las personas homosexuales tengan los mismos derechos\textsuperscript{32} y sólo un 17\% de los encuestados cree que estas personas deben ser criminalizadas. Los datos son similares cuando se pregunta por el colectivo trans, existiendo además bastante apoyo a que estas personas tengan pleno reconocimiento legal\textsuperscript{33}.

Observamos, además, cómo en 2016, la abogada Tamara Adrián, del partido opositor Voluntad Popular, se convirtió en la primera congresista transgénero de Venezuela y que, en ese mismo año, la Asamblea Nacional decretó el 17 de mayo como Día Nacional contra la Homofobia, Transfobia y Bifobia. A lo largo de este informe, hemos observado también como existen numerosas organizaciones defensoras de los derechos LGTB en el país, si bien algunos de sus miembros sufren acoso por dicha labor.

Pese a lo anterior, continúa existiendo un fuerte peso de la religión en el país y de los valores tradicionales.

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(Consultado 02/03/2018 23:45)

\textsuperscript{30} Ibid. pág. 37.

Documento Word con datos desagregados por países.
\textsuperscript{32} 3393 venezolanos encuestados. El 69\% incluye a quienes estaban “muy de acuerdo” con tal afirmación (53\%) y quienes estaban “de acuerdo” (16\%).
\textsuperscript{33} Un 70\% de los encuestados dijo estar “muy de acuerdo” o “de acuerdo” con la igualdad de derechos de las personas trans y un 59\% dijo estar “muy de acuerdo” o “de acuerdo” con que estas personas tuviesen pleno reconocimiento legal.
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1. Human Right’s situation in Venezuela regarding LGBT collective

In Venezuela, the LGTB collective lacks sufficient recognition (especially trans people) and their rights protection regulations are scarce and inefficient. While discrimination is prohibited *de jure*, LGBT people suffer it *de facto*, being exposed to situations of discrimination and violence by both the police and society. With the humanitarian and human rights crisis that the country is currently going through, the collective’s situation seems to be less in the spotlight, however, this crisis is plunging these people into an even greater vulnerability.

2. LGBT Collective Legal and Social Status in Venezuela

Venezuela has ratified all international human rights treaties. Likewise, it has ratified all the relevant conventions within the Organization of American States (OAS), although the current Government has expressed its desire to abandon said organization.

Article 21 of the 1999 Constitution’s of the Bolivarian Republic of Venezuela establishes equality before the law, although it does not expressly include the prohibition of discrimination based on sexual orientation or gender identity. In 2008, Resolution No. 190 of the Constitutional Chamber of the Supreme Court of Justice (“TSJ”) clarified that the Constitution also prohibited discrimination based on sexual orientation. However, there is no mention of the prohibition of discrimination based on gender identity.

Although there is no criminalization of homosexuality in Venezuela, protective legislation is scarce. As stated in the ILGA report, there are only regulations that prohibit discrimination (for example in labor matters), but there are no regulations that prohibit incitement to hate based on sexual orientation, nor is this considered an aggravating circumstance for crimes. In addition, there is no recognition of the collective: marriage, de facto unions or the possibility of adopting for these people are expressly excluded.

Furthermore, there is criminalization of homosexual relations in the armed forces. Article 565 of the Organic Code of Military Justice says: “The officer who commits acts that infringe or demean his dignity or that allows such acts, without trying to prevent it by the means authorized by law, will be punished with one to three years of prison and separation from the Armed Forces. The same penalty will be applied to any military man who commits sexual acts against nature.” Although this article should not be applied as it is incompatible with the Constitution (remember that the TSJ declared that it prohibited discrimination based on sexual orientation), it continues to be applied. Venezuela is, therefore, the only country in Latin America with this type of criminalization.

On the other hand, there are significant problems in the implementation of the few protective norms for the LGBT community that do exist, since the instruments for their development and
adequate channels of complaint have not been created. As Amnesty International indicates in its 2016 report, “there has been no progress in guaranteeing equal rights.”

The international community has included as recommendations to the country in the last universal periodic review (2016/17) for the country to “ Guarantee the respect and protection of lesbian, gay, bisexual, transgender and intersex people through measures such as decriminalization of relationships homosexuals in the armed and security forces, the recognition of same-sex couples and the right to change of identity of transgender people”, as well as “Prevent all forms of discrimination, especially discrimination based on sexual orientation or gender identity, ensuring equal treatment, particularly in schools, health services and the armed forces.”

Regarding the violence suffered by the collective, we find that there are no official data from the Venezuelan Government given that, as previously stated, hate crimes against LGBT people are not recognized in the country. These types of crimes are usually classified as "crimes of passion", not as hate crimes.

3. Main human rights’ violations suffered by the LGBT collective from state agents

The LGBT collective suffers de facto discrimination and, on occasions, violence, by these actors.

LGBT organizations report that victims of hate crimes are often extorted or threatened by the police when they try to report these acts. As an example, a case denounced by Amnesty International: in February 2017, the transgender lawyer Samantha Seijas was threatened by a police officer from the State of Aragua, when he was making a complaint at a police station accompanied by his daughter.

As for the trans collective, it is denounced that the government systematically prevents their recognition, preventing them from obtaining identity documents, which are essential to be able to access any social benefit.

Likewise, homophobia is promoted from the highest spheres of power by using it to verbally attack political opponents. This has been intensified with the growing political polarization that Venezuela is experiencing.

4. Main human right’s violations suffered by the LGBT collective from non-state agents

According to Transgender Europe, from 2008 to September 2017, 116 trans people were murdered in the country, which places Venezuela as the fourth country in Latin America with the highest number of murders of trans people. The circumstances of the murders and the state of the bodies show a special hatred of the authors towards the victims.

Based on the ACCSSI report, from 2009 to May 2015, 72 people of sexual diversity were murdered in the country and 67 attacks were counted. As of the date of the report, more than 90% of these murders had not been resolved. Therefore, it is reported that these cases are not properly investigated. The data on known attacks is not accurate due to the lack of reporting by the victims, because of the fear of being re-victimized and mistrust in the justice system. In a new ACCSSI report, this organization identifies between June 2015 and May 2016 a total of 18 murders and 75 attacks on people from the LGBT community, which is an evident increase.
Furthermore, verbal, psychological and physical attacks against the LGBT community are common in educational centers and universities, without there being any law that protects this population against harassment. Thus, no sanctions, fines, or penalties of any kind are applied against persons or institutions that express themselves in a discriminatory manner against the LGBT population.

5. Economic, Social, and cultural rights

The humanitarian crisis that the country is currently going through has generated greater vulnerability for the community. With a large part of the population surviving thanks to the subsidies and aid that the State grants to families, LGBT families are excluded from them because they are not recognized as such. Experts estimate that some 6,000 LGBT families do not have legal protection.

Also, transgender people, lacking a document according to their gender identity, find many difficulties to access the labor market and to acquire products in supermarkets. This denial of a suitable identification document also affects their right to housing and health, causing them great vulnerability that often ends up making them victims of trafficking or prostitution.

Regarding the right to health, the rise in prices prevents many people from accessing contraceptives, to the point that 72% of respondents say that they have not had access to condoms in the last 12 months, which can lead to an increase in the incidence of HIV.

On the other hand, due to the aforementioned government inaction to prevent bullying of LGBT people, this group has higher school dropout rates, so their right to education is also affected.

6. Social believe regarding the LGBT people

Based on ILGA data, 69% of Venezuelans surveyed agree that gay people have the same rights and only 17% of respondents believe that these people should be criminalized. The data is similar when asked about the trans community, and there is also quite a bit of support for these people to have full legal recognition.

We also observed how the lawyer Tamara Adrián, from the opposition party Voluntad Popular, became the first transgender congresswoman from Venezuela in 2016, and that, in that same year, the National Assembly decreed May 17 as National Day against Homophobia, Transphobia and Biphobia. Throughout this report, we have also observed how there are numerous organizations that defend LGBT rights in the country, although some of its members are harassed for this work.

Despite the above, there continues to be a strong weight of religion in the country and of traditional values.
CERTIFICATE OF TRANSLATION

I, Milton Gutcovsky, am competent to translate from Spanish into English, and certify that the translation of Spanish Commission for Refuge Support, Venezuela: LGBT Group Situation (Tab No. 14 of the Venezuela’s Country Conditions Report) is true and accurate to the best of my abilities.

Signature

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Tab #15
Venezuela es el cuarto país con más asesinatos de personas LGBTI en América

5 diciembre, 2017

En altas esferas del poder se promueve la homofobia al agredir verbalmente al adversario político, señala Alberto Nieves, de Acción Ciudadana contra el Sida.

Por ARTURO GUILLÉN | AGUILLEN@EL-NACIONAL.COM

03 DE DICIEMBRE DE 2017

Alexandra Peña, de 32 años de edad, mujer trans y de profesión estilista, fue asesinada en febrero de 2017. Su cuerpo lo hallaron en el municipio Torres del estado Lara sin pene ni ojos y parte del rostro devorado por animales. La familia aseguró que el crimen constituyó un acto irracional de homofobia, reseñaron diarios de esa entidad federal.

En Venezuela han ocurrido 109 homicidios similares entre enero de 2009 y mayo de 2017, según el Observatorio de Personas Trans Asesinadas, con sede en Viena, que con base en publicaciones de los medios de comunicación registra casos de crímenes de odio contra la comunidad LGBTI (lesbianas, gays, bisexualas y personas transgénero e intersexuales).

De esa forma el país figura en el cuarto lugar en América con el mayor índice de asesinatos de personas LGBTI. Brasil ocupa el primer lugar de la lista con 868, lo siguen México con 259 y Estados Unidos con 146.

En Venezuela las entidades con más homicidios contra esas personas son Lara, con 37,5% de incidencias; Distrito Capital, junto con Mérida y Zulia, con 12,5% de crímenes, según informe de Acción Ciudadana contra el Sida correspondiente al lapso junio de 2016-mayo de 2017.
El coordinador general de esa ONG, Alberto Nieves, explicó que uno de los motivos de que Venezuela se encuentre en esa posición es que en altas esferas del poder se han utilizado términos peyorativos que aluden a la orientación sexual para denigrar del oponente político.

Recordó que el constituyente Pedro Carreño, vicepresidente del PSUV, empleó el año pasado el término “maricón” contra el ex gobernador de Miranda Henrique Capriles y que Iris Varela, ex ministra de Asuntos Penitenciarios, lo llamó “capriloca”.

“Si los que deben dar el ejemplo, como son los políticos de altos cargos, promueven la homofobia, ¿qué quedará para los demás?”, expresó Nieves.

Otro de los motivos es que funcionarios policiales incurrirían en 50% de las agresiones contra la comunidad LGBTI, de acuerdo con el informe. Las víctimas no denuncien los crímenes de odio debido al temor que generan las acciones y posteriores represalias de la autoridad.

“La sociedad venezolana todavía sigue siendo homofóbica, llena de prejuicios, y los tomadores de decisiones políticas están enfermos de todo eso”, manifestó Nieves.

Considera que “la normalización” de las elevadas cifras de homicidio en el país (más de 18.000 homicidios por año, según el Observatorio Venezolano de Violencia), así como la no aplicación de la justicia, son parte del problema.

“¿Cómo es posible que en un país se ‘normalice’ que esa cantidad de personas sean asesinadas anualmente?”, señaló.

Apuntó que la ley no responde para que ese tipo de crímenes –desde la burla hasta el asesinato– se penalice. “No aparece en la ley, no hay basamento legal contra los crímenes de odio”.

Violencia exacerbada. No conforme con el asesinato, que es considerado la máxima expresión de la violencia, los homicidas dejan un claro mensaje cuando le quitan la vida a una persona de la comunidad LGBTI, afirmó Nieves. Ese mensaje se evidencia con lo que hacen con el cuerpo.

El 25 de mayo pasado hallaron en Hoyo de la Puerta, municipio Baruta, estado Miranda, el cadáver de Alejandra Díaz, mujer trans asesinada por un presunto funcionario de la Guardia Nacional Bolivariana, en otro caso que refleja esa violencia exacerbada. Luego de que le arrebataran la vida, por “ensañamiento” le cortaron el cabello, que tenía largo, denunció el hermano de la víctima, Gustavo Andrade.


Las zonas de caracas con mayores riesgos para las personas LGBTI son las avenidas Libertador y Lecuna, así como el Centro Simón Bolívar, dice el informe de la ONG.
En esos lugares, añade Alberto Nieves, personas trans ejercen labores de trabajadores sexuales y están expuestas a continuos ataques ya sea de conductores que transitan por allí y las insultan o las atacan físicamente, como de quienes accionan armas de fuego contra ellas.

**Sociedad conservadora.** El sociólogo Luis Cedeño manifestó que aunque en Venezuela no se observan movimientos organizados contra la comunidad LGBTI, hay ciertos individuos a quienes les incomoda y tienden a ser intolerantes con esas personas.

“La comunidad LGBTI en Venezuela tiene un difícil trabajo en cuanto a lograr patrones de tolerancia y disminuir la violencia”, aseguró.

Entre los problemas que observa en la sociedad figura el de que esta aún no se encuentra preparada para aprobar cambios en la legislatura que permitan, por ejemplo, el matrimonio entre dos personas del mismo sexo.

En cuanto a influencia, Cedeño puntualizó: “Hay una importante responsabilidad en las personas que tienen vocería pública; en el caso de los políticos, hay personas que los votan y los siguen”.

“Insultan como si la condición de ser gay fuera negativa y eso parece formar parte de la idiosincrasia del venezolano”, señaló. “En el país hay mucha gente que asume esta forma de vida como una desviada y corrompida”.

Aseveró que eso forma parte del imaginario popular del ciudadano, con la creación de la imagen política con base en el machismo.

Recomendaciones de Acción Ciudadana contra el Sida para que disminuyan los crímenes de odio en el país:

– Que se generen políticas públicas en materia de diversidad sexual que respondan a sus exigencias, con una mirada de género y derechos humanos que les puedan dar atención en el área de educación y salud
– La Defensoría y la Fiscalía deberían incluir protocolos especializados para el trato de los derechos humanos de una persona LGBTI.
– Que estén tipificados en la ley los crímenes de odio.
– Debería existir una ley contra la discriminación contra todo, no solo para la discriminación sexual.
– Estos temas deberían estar incluidos en el pénsum escolar.
– Una buena administración de la justicia.

Fuente: El Nacional
ACCSL, crímenes de odio, Venezuela

No Comments Yet

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« Agresión a mujeres lesbianas también es violencia de género

Recomendaciones de la ONU para el respeto y la inclusión »
Translation of Press Release from Red LGBTI de Venezuela, entitled “Venezuela es el cuarto país con más asesinatos de personas LGBTI en América.”

**Red LGBTI From Venezuela**

*Venezuela is America’s Fourth Country with more LGBTI People being Murdered*

In high levels of power, homophobia is promoted by verbally attacking the Political opponent, says Alberto Nieves, of Citizen Action Against AIDS ONG (“Acción Ciudadana contra el Sida”.)

Alexandra Peña, 32 years old, a trans woman and a stylist by profession, was murdered in February 2017. Her body was found in the Torres Municipality, State of Lara, and it had no penis or eyes and part of her face was devoured by animals. The family assured that the crime constituted an irrational act of homophobia, they outlined newspapers of that federal entity.

In Venezuela, 109 similar homicides have occurred between January 2009 and May 2017, according to the Vienna-based Trans Murder Observatory, which, based on media publications, records cases of hate crimes against the LGBTI community (lesbians, gays, bisexuals and transgender, and intersex people).

Thus, Venezuela is the fourth country with higher LGBT murders rate. Brazil is in first place of the list with 868, followed by Mexico with 259, and the United States of America with 146.

In Venezuela the entities with the most homicides against these people are Lara, with 37.5% of incidents; Distrito Capital, along with Mérida and Zulia, with 12.5% of crimes, according to the Citizen Action Against AIDS report corresponding to from June 2016 to May 2017.

The mentioned NGO’s general coordinator, Alberto Nieves, explained that one of the reasons that Venezuela is in that position is that in high spheres of power have used pejorative terms that refer to sexual orientation to denigrate the political opponent.

He recalled that the constituent Pedro Carreño, vice president of the PSUV, used the last year the term "fagot" against the former governor of Miranda, Henrique Capriles and that Iris Varela, former Minister of Penitentiary Affairs, called him "Capriloca”.

“If those who must lead by example, such as high-ranking politicians, promote homophobia, what will be left for others?” said Nieves.

Another reason is that police officials would incur 50% of the attacks on the LGBTI community, according to the report. The victims do not report hate crimes due to fear of actions and subsequent retaliation from the authority.

“Venezuela’s society is still homophobic, full of prejudice, and the political decision makers are sick of all that” said Nieves.

He considers that “the normalization” of the high homicide figures in the country (more 18,000 homicides per year, according to the Venezuelan Violence Observatory), as well like the non-application of justice, as part of the problem.
“How is it possible for a country to 'normalize' this number of people being annually murdered?” he noted.

He pointed out that the law does not include such crimes - from mockery to murder - to be penalized. “It does not appear in the law, there is no legal basis against hate crimes.”

**Exacerbated violence.** Not satisfied with the murder, which is considered the maximum expression of violence, murderers leave a clear message when they take the life of a person from the LGBTI community, Nieves said. That message is evidenced in what they do with the body.

On May 25 they found in Hoyo de la Puerta, Baruta’s municipality, state of Miranda, the corpse of Alejandra Díaz, a trans woman murdered by an alleged Bolivarian National Guard official, in another case that reflects that exacerbated violence. After his life was taken, they cut her hair, which was long just for “cruelty”, denounced the victim's brother, Gustavo Andrade.

Nieves pointed out: “They throw the bodies of transgender people onto the street, as trash. With that, the perpetrators of these crimes are saying: ‘This is a scourge.”

Avenues Libertador and Lecuna are the areas of Caracas with the highest risks for LGBTI people, as well as the Simón Bolívar Center, says the NGO report.

In these places, adds Alberto Nieves, trans people carry out sex related work and are exposed to continuous attacks from either drivers who pass by and insult, or physically attack them, such as those who firearms against them.

**Conservative society.** Sociologist Luis Cedeño stated that although in Venezuela there are no organized movements against the LGBTI community, there are certain individuals who are uncomfortable and tend to be intolerant towards those persons.

“The LGBTI community in Venezuela has a difficult job in terms of achieving tolerance patterns and decrease violence”, he assured.

Among the problems he observes in society is that it is not yet prepared to approve changes in the legislature that allow, for for example, marriage between two people of the same sex.

Regarding the influence, Cedeño pointed out: “There is an important responsibility in people who have a public voice; in the case of politicians, there are people who vote for them and follow them”.

"They insult as if the condition of being gay is negative and that seems to be part of the idiosyncrasy of the people in Venezuela”, he pointed out. “In the country there are many people who assume this way of life as a deviant and corrupted”.

He asserted that this is part of the popular imagination of the Venezuelan citizen, with the creation of the political image based on a “Macho” culture.
Citizen Action against AIDS’s recommendations to reduce the hate crimes in the country:

- That public policies be generated regarding sexual diversity that respond to their demands, with a gender and human rights perspective that can give attention in the area of education and health.
- The Ombudsman and the Prosecutor's Office should include specialized protocols for the treatment of the human rights of an LGBTI person.
- That hate crimes are criminalized in the law.
- There should be a law against discrimination with ample scope, not only for sexual discrimination.
- These topics should be included in the school curriculum.
- A good administration of justice.
CERTIFICATE OF TRANSLATION

I, Milton Gutcovsky, am competent to translate from Spanish into English, and certify that the translation of Red LGBTI From Venezuela, *Venezuela is America’s Fourth Country with more LGBTI People being Murdered* (Tab No. 15 of the Venezuela’s Country Conditions Report) is true and accurate to the best of my abilities.

Signature

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Tab #16
URGENT ACTION

TRANS MAN AND DAUGHTER THREATENED BY POLICE

Transgender lawyer Samantha Seijas was threatened by a police officer from the Aragua Police Force, in central Venezuela, while filing a complaint in a police station accompanied by his daughter. Fears exist for their safety.

On 31 January, after filing a complaint at a police station, transgender lawyer Samantha Seijas and his daughter Aleska Seijas were beaten about the head and face by police officers from the Police Force of Aragua, who uttered derogatory phrases such as “what happened to trying to act all manly?” (¿no te la tiras de macho?), referring to his gender identity. He told Amnesty International that as well as beating them, one of the officers threatened Samantha by saying "pray to God that I don't find you out alone at night" (pídele a Dios que no te encuentre de noche sola por la calle). It is important to note that Samantha Seijas and his daughter live in front of the police station.

The day after these events, Samantha Seijas presented a complaint before the Public Prosecutor’s office. He is afraid that the proximity of the police station and by extension, the presence of the police officers from the Aragua Police Force, will lead to the threats being carried out.

To date, there have been no reports of an investigation having been initiated based on Samantha Seijas’ complaint.

Please write immediately in Spanish or your own language:

- Expressing concern for the safety of Samantha Seijas and Aleska Seijas and urging the authorities to guarantee their safety in accordance with their wishes;
- Calling on the authorities to initiate a comprehensive and impartial investigation into the reported attacks, to make the results public and ensure that those responsible are brought to justice.

PLEASE SEND APPEALS BEFORE 24 MARCH 2017 TO:

<table>
<thead>
<tr>
<th>Attorney General</th>
<th>Director General of the Aragua Police Force</th>
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<tr>
<td>Dra. Luisa Ortega Díaz</td>
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<td>Fiscalía General de la República</td>
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<td>Edif. Sede Fiscalía General de la</td>
<td>Aragua, Venezuela</td>
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<td>República, La Candelaria</td>
<td>Tel: +58 243 671 8669</td>
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<tr>
<td>Caracas, Venezuela</td>
<td>Email: <a href="mailto:far.val.eul@gmail.com">far.val.eul@gmail.com</a></td>
</tr>
<tr>
<td>Fax: +58 212 509 8504</td>
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<th>Ombudsperson</th>
<th>Dr. Tarek William Saab</th>
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URGENT ACTION
TRANS MAN AND DAUGHTER THREATENED BY POLICE

ADDITIONAL INFORMATION

The Aragua Police Force has a history of excessive use of force. In 2016 there were complaints of excessive use of force during demonstrations, such as in the case of Laura Lara, the victim of a brutal beating which was caught on video, carried out by various male police officers from the Aragua State Police Force, in central Venezuela. There have also been reports registered of harassment of LGBTI individuals in the past by this police force.

Among other complaints, there have been cases where police officers from the Aragua Police Force have been implicated in the harassment, threatening and murder of members of the Barrios family since 1998, confirmed by the Inter-American Court of Human Rights in their 2011 ruling. To date, the events have not been investigated, nor have the respective perpetrators been identified.

Name: Samantha Seijas (transgender man) and Aleska Seijas (female)
Gender: all

UA: 40/17 Index: AMR 53/5651/2017 Issue Date: 10 February 2017
Tab #17
Vulneran derechos de LGBTI en Venezuela

4, junio 2016

Derechos de LGBTI en Venezuela. El Estado venezolano discrimina a las colectividades LGBTI, tanto por acción y el contenido de sus discursos, como por omisión que se revela en la falta de políticas para garantizar sus derechos.

Desde hace algunos años, diferentes organizaciones que trabajan por los derechos humanos de los colectivos de lesbianas, gais, bisexuales, trans e intersexuales (LGBTI) vienen denunciando las muestras de homo, lesbo, trans y bifobia por parte de representantes del Estado venezolano. Estas manifestaciones de odio se pueden ver tanto en los discursos del Presidente de la República, Nicolás Maduro, que llama “mariconzones” o “pelucón lechero” (en Venezuela la jerga popular llama leche al semen) a personeros de la oposición para descalificarlos, como de otros representantes del gobierno, como el diputado oficialista Pedro Carreño que utiliza la etiqueta “homosexual” para anular el trabajo de un adversario político o el diputado chavista, antiguo ministro de agricultura y tierras y vicepresidente ejecutivo, Elías Jaua, que llama “lesbiana” a una mujer de la oposición para minimizar su trabajo.

Los discursos de odio, en general, tienen implicaciones negativas sobre la posibilidad del disfrute de los derechos de las personas de los colectivos LGBTI. Sin embargo, es importante hacer notar que la posición de poder que tienen estos funcionarios como representantes del gobierno y de las instituciones públicas del país, hace mucho más grave el uso de este tipo de etiquetas y calificativos hacia sus adversarios políticos (y hacia cualquier otra persona).

Derechos de LGBTI en Venezuela

En este sentido Edgar Baptista, coordinador político del Movimiento Proinclusión y miembro de la Red LGBTI de Venezuela, comentó en una entrevista para Corresponsales Clave:

Proyecto: Noticias
Tamara Adrián

A pesar de las implicaciones negativas profundas que tienen este tipo de discurso, Tamara Adrián Abogada, directora en derecho y primera diputada trans del continente, nos advierte que las peores muestas

En una entrevista para Corresponsales Clave, Adrián comentó que esta situación de discriminación por parte del gobierno venezolano:

“Puede ser por acción o por omisión y lo ha sido por todo este tiempo, quizás es más visible aquella que es por acción, pero es más perversa la que es por omisión (...) por acción, la encontramos no solo a nivel más alto de la presidencia de la república o de un diputado, (...) sino también en la Policía Nacional y la Guardia nacional que extorsiona y ataca por razón de su orientación sexual, por su identidad de género real o percibida; pero por omisión es todavía peor:

Ni siquiera, después de 15 días se ha publicado el acuerdo de la Asamblea Nacional para declarar el Día en contra de las homofobia, la bifobia y la transfobia en gaceta oficial; ¿por qué, señor Maduro?, pregunto, ¿será por la misma razón que el Consejo Nacional Electoral no permite el cambio de nombre simple de las personas trans que está previsto en la Ley Orgánica de Registro Civil?

¿Será por la misma razón que, por ejemplo, dos personas trans no pudieron casarse en Venezuela a pesar de la disparidad de género? ¿Será por ejemplo porque mi recurso pasó 11 años antes de ser admitido a trámite y empezar el juicio?.

¿La misma razón que el Tribunal Supremo de Justicia (venezolano) ha sido el único en todo el mundo que ha dicho que las parejas del mismo sexo son distintas a las parejas heterosexuales y por ende no tienen derecho a casarse? ¿Será por la misma razón que, eventualmente, no se ha permitido a nivel de la Asamblea Nacional, hasta ahora, que si lo estamos haciendo, ningún tipo de discusión sobre el tema, y hoy en día México, Ecuador, Brasil, Argentina, Uruguay, Colombia, Chile y Bolivia tienen derechos iguales en mayor o menor medida? Y en consecuencia vemos que esa omisión es todavía más perversa y todavía peor que cualquier acción.”

Willian Barriendos

En un discurso realizado en la Asamblea Nacional por el día en contra de la fobia en contra de las personas de la comunidad LGBTI, el diputado Willian Barriendos afirmó que:

“En el año 2015 asesinaron a 266 personas por su condición sexual, es decir tres crímenes diarios”.

Más aplastante que este dato, es el hecho de que en Venezuela no se cuenten con estadísticas oficiales al respecto y que son las organizaciones de la sociedad civil las que realizan el esfuerzo titánico de visibilizar esta situación. En este sentido Baptista comentó que:

“a nosotros nos preocupa muchísimo las pocas cifras que tenemos que, si bien son limitadas, son bastante reveladoras. Lo que hemos venido registrando en prensa y otros medios de comunicación son crímenes de odio que por supuesto no son todos, ni de cerca, solo la punta del iceberg, pero es una cifra bien importante.

Un estudio Acción Ciudadana contra el sida (ACCTI) entre 2011-2013 mencionó que hubo 99 crímenes de odio registrados y de los cuales el 40 por ciento fueron homicidios y el 70 por ciento afectaron a personas trans. Otro estudio, realizado por una ONG extranjera, afirma que estamos entre los dos a tres primeras países en de la Región en términos relativos de asesinatos a personas trans, esto para mencionar solo el indicador más fuerte de la homofobia dentro del país que son los crímenes de odio”.

Lesbo, homo, trans y bifobia

La falta de datos y el silencio por parte de los organismos del Estado, forma parte de lo que Tamara llama lesbo, homo, trans y bifobia por omisión. Edgar bien lo menciona:

“la representante del Estado Venezolano en una de las audiencias de los comités de derechos humanos de las Naciones Unidas, Isis Ochoa, indicó que cerca del 40 por ciento de las denuncias que reciben en la Defensoría del pueblo están vinculadas con el tema de orientación sexual e identidad de género. Nosotros no tenemos información desglosada y específica sobre esas denuncias, sin son crímenes de odio, cual es el estatus en el que se encuentran, cual es el origen y el motivo de esas denuncias, (...) lamentablemente no hay acciones gubernamentales orientadas ni a la prevención, ni a la atención y sanción de estos crímenes de odio, ni a la homo, bi, lesbo, transfobia en general”.

En cuanto a las acciones que se han realizado, Baptista comenta que “hay ahora una política pública, entendemos, en la jefatura de gobierno del distrito capital orientada a la diversidad sexual. Hemos tenido conocimiento de iniciativas similares de oficinas adscritas a gobiernos locales sobre el tema de diversidad sexual antes (...) sin embargo, esas políticas han sido muy incipientes y nosotros hemos reclamado en innumerables ocasiones que se cree una Defensoría especial para personas LGBTI en la Defensoría del pueblo y eso no ha sido posible.”
No es poca cosa mencionar las acciones u omisiones que el Estado venezolano ejerce contra los colectivos de personas LGBTI pues de estas, la vida de miles de personas se hace o no posible. Un ejemplo de ello es la situación de las mujeres trans que la diputada Adrián denuncia:

"Los estudios que hemos realizado en Venezuela demuestran que la situación de las personas trans es quizás, dentro de todas las minorías que existen, la peor. Se trata de la minoría más discriminada y más segregada, entre todas las minorías, y más desprovista de derechos [...]."

Así resume la diputada los datos que tienen a la mano que señalan que el 95% de las personas trans tienen un nivel educativo de 5 a 7 años inferior al promedio educativo, que la mayoría se dedica al trabajo sexual, ante la débil o nula formación, producto de la deserción escolar por razones de bulling, sin derecho a la identidad. Se sabe también que el 40% de las mujeres trans que viven en situación de calle tiene adicciones, y en el caso de los hombres trans, en su gran mayoría, no tienen trabajo formal.

"Nos encontramos para un caldo de cultivo para la marginalidad y la marginación", dice Adrián. Todo ello contribuye a tasas de prevalencia de VIH altísimas.

"He escuchado cosas tan lastimosas como- yo prefiero morirme antes de que me traten como hombre en una sala de rehabilitación", lamenta la diputada.

En medio de la peor crisis institucional que se ha vivido en el país y el cerco informativo más aplastante, se abren paso las luchas que organizaciones y la ciudadanía en general ejercen para visibilizar el horror de un Estado que por acción y por omisión afecta de manera directa e indirecta los derechos de miles de personas. Pronunciémonos también.

#SOSviHVenezuela

Autor: Constanza Armas

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Reflejos de Venezuela Foundation

Rights of LGBTI violated in Venezuela

LGBTI rights in Venezuela. The Venezuelan State discriminates against LGBTI communities, both for action and the content of their speeches, and by omission by the lack of policies to guarantee their rights.

For some years now, different organizations working for the human rights of lesbian and gay groups, bisexual, trans and intersex (LGBTI) have been exposing the examples of attacks by representatives of the Venezuelan State. These manifestations of hatred can be seen both in the speeches of the President, Nicolás Maduro, who calls “mariconzones” or “pelucón lechero” (in Venezuela the popular jargon semen is called as “milk”) to opposition representatives to disqualify them, as well as other government representatives, such as the official deputy Pedro Carreño who uses the label "homosexual" to annul the work of a political adversary, or the Chavista deputy, former minister of agriculture and executive vice president, Elías Jaua, who calls a woman from the opposition “lesbian” to minimize her job.

Hate speeches, in general, have negative implications on the rights enjoyment possibility of the LGBTI groups. However, it is important to note that the position of power held by these officials as representatives of the government and public institutions of the country, makes the use of this type of labels much more serious and qualifying for their political opponents (and for anyone else).

LGBTI Rights in Venezuela

In this sense, Edgar Baptista, Proinclusion Movement political coordinator and member of the LGBTI Network of Venezuela, commented in an interview for Key Correspondents:

"We are very concerned about the manifestations of homophobia from the government discourse because that fuels a general homophobic attitude in the population, the militants of the government party, and in general, muddies the entire political debate with homophobic overtones that have strong negative consequences for the breaking down of myths and prejudices that are deeply rooted in people."

Tamara Adrian

Despite the profound negative implications of this type of discourse, Tamara Adrián, attorney, director of law and first trans deputy of the continent, warns us that the worst shows.

In an interview for “Corresponsales Clave”, Adrián commented that this situation of discrimination by the government Venezuelan:

“It can be by action or by omission and it has been for all this time, perhaps the one that is by action is more visible, but the one that is by omission is more perverse (...) by action, we find it not only at a higher level of the presidency of the republic or of a deputy, (...) but also in the
National Police and the National Guard who extort and attack because of their sexual orientation, for their gender identity whether real or perceived; but by omission it is even worse:

Not even after 15 days the agreement of the National Assembly to declare the Day against homophobia, biphobia and transphobia in the official gazette has been published; Why, Mr. Maduro? I ask, will it be for the same reason that the National Electoral Council does not allow the simple name change of trans people that is foreseen in the Organic Law of Civil Registry?

Is it for the same reason that, for example, two trans people were unable to marry in Venezuela despite the gender disparity? Could it be, for example, that my appeal waited for 11 years before it was admitted for processing and the trial began?

The same reason that the (Venezuelan) Supreme Court of Justice has been the only one in the world that has said that same-sex couples are different from heterosexual couples and therefore have no right to marry? Will it be for the same reason that, eventually, it has not been allowed at the level of the National Assembly, until now, that if we are doing it, no discussion on the subject, and today Mexico, Ecuador, Brazil, Do Argentina, Uruguay, Colombia, Chile and Bolivia have equal rights to a greater or lesser extent? And consequently we see that this omission is even more perverse and even worse than any action.”

Willian Barriendos

In a speech made in the National Assembly for the day against LGBTI phobia, the Deputy Willian Barriendos stated that:

“In 2015, 266 people were murdered for their sexual condition, that is, three crimes a day.”

More overwhelming than this data, is the fact that in Venezuela there are no official statistics in this regard and that civil society organizations make the titanic effort to make this situation visible. In this sense Baptista commented that:

“We are very concerned about the few numbers we have but, although limited, are quite revealing. What we have been recording in the press and other media are hate crimes that of course are not all, not even close, just the tip of the iceberg, but it is a very important figure.

A Citizen Action Against AIDS (ACCTI) study between 2011-2013 mentioned that there were 99 registered hate crimes and of which 40 percent were homicides and 70 percent affected trans people. Another study, carried out by a foreign NGO, affirms that we are among the first two or three countries in the Region in relative terms of murders of trans people, this to mention only the strongest indicator of homophobia within the country, which are the hate crimes.”

Lesbo, homo, trans, and biphobia
The lack of data and the silence on the part of the State’s agencies, is part of what Tamara calls leso, homo, trans and default biphobia. Edgar mentions it well:

"The representative of the Venezuelan State at one of the hearings of the United Nations Human Rights Committee United, Isis Ochoa, indicated that about 40 percent of the complaints they receive at the Ombudsman's Office are linked to the topic of sexual orientation and gender identity. We do not have disaggregated information and specific about these complaints, if they are hate crimes, what is the status in which they are found, what is the origin and reason for these complaints. (…) Unfortunately, there are no governmental actions aimed at prevention or attention and sanction of these hate crimes, nor to homo, bi, lesbo, transphobia in general ”.

Regarding the actions that have been carried out, Baptista comments that “there is now a public policy, we understand, in the head of government of the capital district office oriented to sexual diversity. We have been aware of similar initiatives of offices attached to local governments on the issue of sexual diversity before (…), however, these policies have been very incipient and we have demanded on countless occasions that a special Ombudsman for LGBTI persons be created in the pleople’s Ombudsman's Office, and that has not been possible.”

Actions and Omissions

It is not a small thing to mention the actions or omissions that the Venezuelan State exercises against groups of people LGBTI because of these, the lives of thousands of people depend. An example of this is the situation of trans women that the deputy Adrián denounces:

“The studies that we have carried out in Venezuela demonstrate that the situation of trans people is perhaps, among all the minorities that exist, the worst. I know it deals with the most discriminated and most segregated minority, among all minorities, and most devoid of rights (…)”.

This is how the house representative summarizes the data at hand that point out that 95% of trans people have a level educational 5 to 7 years lower than the educational average, than most are engaged in sex work, given the weak or no training due to dropping out of school for reasons of bulling, without right to identity. It is also known that 40% of trans women living in the street have addictions, and in the in the case of trans men, the vast majority do not have a formal job.

“We find ourselves for a breeding ground for marginality and marginalization,” says Adrián. All this contributes to extremely high HIV prevalence rates. “I have heard such pitiful things as- I would rather die before I treat like a man in a rehabilitation room”, regrets the house representative.

In the midst of the worst institutional crisis in the country and the most overwhelming information wall, the struggles are making the way for organizations and citizens to exercise and make visible the horror of a State that by action and omission affects directly and indirectly the rights of thousands of people. Let us also pronounce.
CERTIFICATE OF TRANSLATION

I, Milton Gutcovsky, am competent to translate from Spanish into English, and certify that the translation of Reflejos de Venezuela Fundation, Rights of LGBTI violated in Venezuela (Tab No. 17 of the Venezuela’s Country Conditions Report) is true and accurate to the best of my abilities.

Signature

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Tab #18
AMNESTY INTERNATIONAL

Amnesty International is a global movement of more than 7 million people who campaign for a world where human rights are enjoyed by all. Our vision is for every person to enjoy all the rights enshrined in the Universal Declaration of Human Rights and other international human rights standards.

Amnesty International’s mission is to conduct research and take action to prevent and end grave abuses of all human rights – civil, political, social, cultural and economic. From freedom of expression and association to physical and mental integrity, from protection from discrimination to the right to housing – these rights are indivisible.

Amnesty International is funded mainly by its membership and public donations. No funds are sought or accepted from governments for investigating and campaigning against human rights abuses. Amnesty International is independent of any government, political ideology, economic interest or religion. Amnesty International is a democratic movement whose major policy decisions are taken by representatives from all national sections at International Council Meetings held every two years. Check online for current details.
casualties, in contrast to the absence of any police injuries or fatalities, suggested that security forces may have used excessive force or carried out extrajudicial executions.

According to human rights organizations, 90% of the more than 4,000 people detained during the first three months of the operation were subsequently released without charge, suggesting high numbers of arbitrary arrests.

In August, in a community south of Valencia, Carabobo State, security forces allegedly detained all men over 15 years of age and demolished all of the community’s houses, leaving at least 200 families homeless.

IMPUNITY
Progress was slow in bringing to justice those responsible for the killing of 43 people, including security force personnel, and the ill-treatment of protesters during protests in 2014. According to the Public Prosecutor’s Office, 238 investigations had been initiated by February but charges were filed in only 13 cases.

No one had been brought to justice for the killing of eight members of the Barrios family or the threats and intimidation against other family members in Aragua State since 1998.

PRISON CONDITIONS
Prisons remained seriously overcrowded despite several reforms to the system since 2013. According to the Venezuelan Prisons Observatory (OVP), prisons overall were holding over three times the number of prisoners they were designed to house. In this context, the prison authorities were unable to protect the rights of prisoners, such as the rights to health and physical integrity. Uprisings and protests, including self-harming, to demand better prison conditions remained common. OVP reported over 1,200 incidents of self-harm in the first six months of the year. In addition, it reported the deaths of 109 inmates and at least 30 injuries as a result of violence in prison facilities, during the same period. The large number of weapons in detention facilities remained a concern.

VIOLENCE AGAINST WOMEN AND GIRLS
Implementation of the 2007 legislation criminalizing gender-based violence remained slow due to a lack of resources. Legal aid and access to justice, as well as other effective protection measures such as shelters, had not materialized by the end of the year.

Statistics from the Public Prosecutor’s Office indicated that of the more than 70,000 complaints of gender-based violence received during 2014, less than 1% went to trial. According to women’s rights organizations, 96% of the cases that did reach the courts did not result in convictions.

RIGHTS OF LESBIAN, GAY, BISEXUAL, TRANSGENDER AND INTERSEX PEOPLE
LGBTI organizations expressed concern at entrenched discrimination. There were continuing reports of violence against LGBTI people. Those responsible were rarely held to account as complaints were not investigated or prosecuted.

There was no specific provision in law criminalizing hate crimes based on sexual orientation, gender identity or expression.

SEXUAL AND REPRODUCTIVE RIGHTS
Access to contraceptives, including emergency contraception, was limited and generally available only to those who could afford it. Abortion was criminalized in all cases except when the life of the woman or girl was at risk.

According to a 2015 report by the WHO, maternal mortality had increased to 110 per 100,000 live births. This was significantly higher than the regional average of 63 per 100,000 live births.

INDIGENOUS PEOPLES’ RIGHTS
There was no legal provision to guarantee and regulate consultation with Indigenous Peoples over matters affecting their livelihoods. Those defending Indigenous Peoples’ rights reported that the right to free, prior and informed consent was not upheld by the authorities.

In many regions, large numbers of refugees were on the move against a backdrop of conflict and repression. Torture and the failure to uphold sexual and reproductive rights were key concerns. Government surveillance and impunity continued to deny many their rights.

This report also celebrates those who stand up for human rights across the world, often in difficult and dangerous circumstances. It represents Amnesty International’s key concerns and calls for action. It is essential reading for policy makers, activists and anyone with an interest in human rights.

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Tab #19
INFORME ALTERNATIVO PARA EL SEGUNDO EXAMEN PERIÓDICO UNIVERSAL

Derechos Humanos de Lesbianas, Gays, Bisexuales, Trans e Intersexuales en Venezuela

Autor: Magister Quiteria Franco

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2016
<table>
<thead>
<tr>
<th>ÍNDICE</th>
<th>Pág.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Resumen Ejecutivo</td>
<td>3</td>
</tr>
<tr>
<td>Introducción</td>
<td>3</td>
</tr>
<tr>
<td>Derecho a la protección legal de parejas y familias conformadas por</td>
<td>4</td>
</tr>
<tr>
<td>personas del mismo sexo</td>
<td></td>
</tr>
<tr>
<td>Derecho a la no discriminación por razones de orientación sexual,</td>
<td>4</td>
</tr>
<tr>
<td>identidad y expresión de género</td>
<td></td>
</tr>
<tr>
<td>Situación de discriminación en los ámbitos de salud, trabajo,</td>
<td>5</td>
</tr>
<tr>
<td>educación, espacios públicos y privados, y en medios de</td>
<td></td>
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<tr>
<td>comunicación</td>
<td></td>
</tr>
</tbody>
</table>
Resumen Ejecutivo

1. Este Informe fue elaborado por Unión Afirmativa de Venezuela (UNAF) para consideración del Consejo de Derechos Humanos de las Naciones Unidas, con motivo del Segundo Examen Periódico Universal del Estado venezolano. UNAF es una Asociación Civil sin fines de lucro, fundada el 24 de noviembre de 2000 que promueve el cumplimiento de los estándares internacionales de derechos humanos que protegen a las personas frente a la discriminación por orientación sexual y lograr el reconocimiento jurídico y social de estos derechos.

2. El Informe de Unión Afirmativa de Venezuela ofrece información sobre cuatro aspectos, a saber: el derecho a la protección de parejas y familias del mismo sexo; el derecho a la no discriminación por orientación sexual, identidad y expresión de género; situación de discriminación en los ámbitos de salud, trabajo, educación, espacios públicos y privados, y en medios de comunicación.

3. Solicitamos al Consejo de Derechos Humanos recomiende al Estado adoptar todas las medidas necesarias dentro de un plazo razonable para realizar avances en materia de reformas legislativas y políticas públicas que garanticen una igualdad real y efectiva de los derechos humanos de las personas lesbianas, gays, bisexuales, trans e intersexuales, sin que valgan excusas fundadas en la cultura, tradición y religión, o en las preferencias políticas.

4. Así mismo, solicitamos al Consejo instar al Estado venezolano a realizar las reformas legales necesarias para garantizar la protección de las parejas LGBTI, sus familias y sus hijos; especialmente en lo relativo al reconocimiento legal de las uniones, los derechos de los conyuges y la condición legal de las niñas, niños y adolescentes de las familias del mismo sexo.

INTRODUCCIÓN

5. Venezuela ha firmado y apoyado todas las declaraciones internacionales que abogan por la protección de las personas frente a la discriminación por orientación sexual e identidad de género. Asimismo, se encuentran vigentes en el país tanto el pacto de derechos civiles y políticos como el pacto de derechos económicos, sociales y culturales, los cuales según la Constitución nacional, tienen rango constitucional y aplicación preferente frente a la propia Constitución (artículo 23). La Constitución igualmente impone la adopción de las medidas legales necesarias para dar vigencia y efectividad a las decisiones de los organismos internacionales de Derechos Humanos, cuando se refieran a peticiones de ciudadanos venezolanos (artículo 31 de la Constitución de la República Bolivariana de Venezuela).

6. La orientación sexual, la identidad de género y expresión de género no son delitos en Venezuela. La Constitución de la República Bolivariana de Venezuela establece en su artículo 21 numeral primero que “No se permitirá discriminaciones fundadas en la raza, el sexo, el credo, la condición social o aquellas
que, en general, tengan por objeto o por resultado anular o menoscabar el reconocimiento, goce o ejercicio en condiciones de igualdad, de los derechos y libertades de toda persona\(^1\).

7. Sin embargo, las lesbianas, gays, bisexuales, trans e intersexuales han sufrido y sufren discriminaciones e impunidad, que les coloca como un grupo vulnerable. Este informe describe la falta de observancia y aplicación de la legislación vigente en Venezuela, en tanto que ésta incluye la protección frente a la discriminación por orientación sexual. Describe algunas situaciones de rechazo social y de violaciones de derechos humanos contra las personas por su orientación sexual.

**DERECHO A LA PROTECCIÓN LEGAL DE PAREJAS Y FAMILIAS CONFORMADAS POR PERSONAS DEL MISMO SEXO**

8. La Resolución No. 190 del Tribunal Supremo de Justicia del año 2008, arriba mencionada, señaló que es a la Asamblea Nacional a quien le corresponde legislar sobre la protección de las parejas del mismo sexo. Esto, sin embargo, no ha ocurrido. No ha habido dentro de la Asamblea Nacional iniciativa alguna por parte de ningún diputado y diputada para legislar en este respecto. A pesar de que las ONG con trabajo en diversidad sexual han entregado varias solicitudes ante el Poder Legislativo.

9. Cabe destacar que la Asamblea Nacional (2010-2015) recibió en febrero de 2011 una propuesta de Agenda Legislativa por parte de la Red LGBTI de Venezuela, con el fin de realizar las modificaciones necesarias en la Ley de Orgánica de Registro Civil con el objeto de permitir el Registro de las Relaciones de hecho entre personas del mismo sexo y de los matrimonios realizados en el extranjero. En enero de 2014 se entregó una propuesta de modificación parcial del Código Civil para ampliar el matrimonio civil a las parejas del mismo sexo. El periodo de la Asamblea Nacional culminó en enero de 2016 y ésta quedó en mora legislativa al no haber discutido las solicitudes mencionadas, según lo estipulan las leyes y normas venezolanas.

**DERECHO A LA NO DISCRIMINACIÓN POR RAZONES DE ORIENTACIÓN SEXUAL, IDENTIDAD Y EXPRESIÓN DE GÉNERO**

10. Venezuela no cuenta con una ley específica que oblige al Estado a garantizar y proteger el derecho a la igualdad y no discriminación de las lesbianas, gays, bisexuales, trans e intersexuales. Solo tiene pocos instrumentos legales que mencionan la no discriminación por motivo de la orientación sexual en algunas áreas específicas, a saber: Artículo 4 de la Ley Orgánica del Poder Popular (2010), Artículo 173 de la Ley de Instituciones del sector Bancario (2010), Resolución 185, Artículo 3 Normas y Garantías relativas a los Derechos de las Mujeres y la Sexodiversidad a la Igualdad y Equidad de Género en los Cuerpos de Policía

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Nacional Bolivariana y demás cuerpos de Policía Estadales y Municipales (2010), Art. 5 de la Ley de regulación y control de Arrendamientos de Viviendas (2011), Artículo 21 de la Ley Orgánica del Trabajo, de las Trabajadoras y Trabajadores (2012). Además que estas leyes carecen de mecanismos que permitan implementar estrategias reales y efectivas para evitar la discriminación y la desigualdad, de tal manera que en la realidad son leyes vacuas, inocuas e inútiles.

11. Venezuela no cuenta con planes estratégicos (políticas), programas y servicios públicos orientados a responder a las necesidades y exigencias de las personas LGBTI. Se identifica que la especificidad o equidad en la distribución de los recursos para la implementación de políticas públicas no existe para la comunidad LGBTI, quienes continúan invisibles en las estadísticas demográficas, de población y otros estudios, lo que se traduce en exclusión para el ejercicio de los derechos fundamentales desde la perspectiva de su orientación sexual, identidad o expresión de género. Lo que constituye un trato desigual, que genera a su vez tratos crueles inhumanos y degradantes.

12. reconoce que el Poder Legislativo venezolano ha hecho esfuerzos en la protección de grupos históricamente discriminados como las mujeres, indígenas, niñas, niños y adolescentes, jóvenes, afrodescendientes, e inclusive los animales, pero las lesbianas, gays, bisexuales, trans e intersexuales no aparecen en las poblaciones prioritarias, tal como se ha evidenciado en su gestión durante los últimos años.

13. La Defensoría del Pueblo es el organismo del Estado responsable de velar los derechos humanos en Venezuela, y el Ministerio Público es el responsable de garantizar en los procesos judiciales el respeto a los derechos y garantías constitucionales, así como a los tratados, convenios y acuerdos internacionales suscritos por la República. Pero la Defensoría del Pueblo ha realizado pocas acciones en materia de diversidad sexual, sin logros ni impacto relevante que vele por los derechos humanos de las personas LGBTI en el país. En cuanto al Ministerio Público, ésta institución pública carece de respuestas que garanticen los procesos judiciales el respeto de los derechos y garantías consagradas en la Constitución de la República Bolivariana de Venezuela.

14. En Venezuela no existen avances realizados en materia legislativa y de políticas y prácticas para investigar y procesar judicialmente los actos de violencia contra lesbianas, gays, personas trans, bisexuales y/o intersex, o contra aquellas personas percibidas como tales.

**DISCRIMINACIÓN EN LOS ÁMBITOS DE SALUD, TRABAJO, EDUCACIÓN, ESPACIOS PÚBLICOS Y PRIVADOS, Y EN MEDIOS DE COMUNICACIÓN**

15. **En el ámbito de la salud**: En los bancos de sangre adscritos al sistema público de salud venezolano, persiste en la práctica la prohibición de donación de sangre de personas LGBTI en los centros de salud públicos y/o privados. Un ejemplo de ello es lo publicado en la página Web del Banco Municipal de
Sangre, el cual establece como requisito para ser donantes (cita textual) “No pertenecer a grupos de conducta de alto riesgo para el SIDA”\(^2\), en clara alusión a las personas de orientación sexual, identidad de género y expresión de género.

16. Los servicios ginecológicos no están preparados para la atención de mujeres lesbianas, siguiendo el mismo protocolo de atención utilizado en mujeres heterosexuales. También ocurre en los casos de los hombres gays y bisexuales que son atendidos con los mismos protocolos de los hombres heterosexuales.

17. **En el ámbito de trabajo:** A pesar de que el Artículo 21 de la Ley Orgánica del Trabajo, las Trabajadoras y los Trabajadores aparece de manera explícita la prohibición de discriminación por orientación sexual, en el lugar de trabajo son frecuentes las situaciones de discriminación y violencia contra las personas LGBTI, siendo víctimas de atropellos, despídos injustificados, vulnerando así todos sus derechos y beneficios laborales establecidos en el marco legal vigente.

18. No obstante, no hay registros de casos, esto debido a que no existen mecanismos que sancionen estos delitos. Quienes son discriminados no se sienten protegidos y temen exponer su caso por miedo a mayores y peores consecuencias, como el riesgo de perder su empleo y en el peor de los casos a agresiones físicas.

19. **En el ámbito de la educación:** En Venezuela no existe una cátedra de educación sexual a ningún nivel; los casos de abuso escolar no son documentados por las escuelas y muchas maestras, maestros y autoridades no saben cómo abordar la situación en casos de orientación sexual, identidad y expresión de género.

20. Las pocas informaciones que se manejan sobre acoso escolar provienen del trabajo realizado por las ONG CECODAP y Reflejos de Venezuela, evidencian que a las niñas, niños, adolescentes y jóvenes se les viola el principio de no discriminación e igualdad establecido en el artículo 3 de la Ley para la Protección del Niño, Niña y Adolescente (LOPNNA). Los niños, niñas y adolescentes “No estudian con tranquilidad. Sienten presión y tristeza porque siempre se burlan de ellos: son blanco de acoso escolar por su orientación sexual”. “El rechazo por la orientación sexual en planteles es un fenómeno silente. Todavía un asunto relegado a cuchicheos de pasillo. No ocurre lo mismo con otras formas de violencia escolar, de las cuales sí se conversa con franqueza.”\(^3\)

21. CECODAP afirma que “En los Consejos de Protección de los municipios Baruta y Chacao no se han recibido denuncias por esta forma de acoso escolar, pero sí por las demás. El año pasado CECODAP visitó 19 estados del país para dictar talleres sobre violencia en centros educativos. La metodología utilizada


consistió en el abordaje de situaciones concretas de agresividad que se hayan presenciado en los planteles, para luego perfilar soluciones.” “En 100% de las instituciones visitadas se observó la presencia de discriminación por orientación sexual, refiere Oscar Misle, director de la ONG.” “Es un tema que no sale en las conferencias para tratarlo abiertamente. A uno le llegan comentarios después, en los pasillos, que hay un muchacho raro, o una chica rara”. “El rechazo no sólo lo impulsan los compañeros de clases, sino que, a veces, también lo practican los docentes, quienes intentan en ocasiones apoyar a las víctimas para que cambien su forma de ser.” Este tipo de situaciones la vivió Alfonso quien afirma que “…su maestra llamó a la mamá para que lo llevaran a un psicólogo porque parecía “raro”. Lo cambió de puesto para que jugara más con los niños.” Por esas actuaciones de los docentes, concuerdan los especialistas, los afectados terminan sintiendo que ellos se buscaron el rechazo.

22. **En los espacios públicos y privados:** Parques, museos, restaurantes, centros comerciales, entre otros, son lugares que se han experimentado situaciones de estigma y discriminación contra las personas LGBTI por parte de funcionarios policiales, de vigilancia o de orden público. En el caso de espacios privados como restaurantes la situación es muy similar. Las expresiones de afecto, tales como caminar tomadas de la mano o abrazadas, besos o cualquier otra expresión que normalmente son llevadas a cabo por dos personas de sexo distinto, en el caso de dos personas del mismo sexo son objeto de censura.

23. A través de la red social Twitter se denunció el caso de una pareja de hombres que fueron discriminados por darse un beso en las instalaciones de un bar restaurante “Cielo Restobar” ubicado en la ciudad de Mérida, estado Mérida. El gerente de ese lugar les exigió desalojar el local de forma agresiva. Posteriormente hubo un pronunciamiento público del restaurante en donde se expresaba “no comulgamos con ningún tipo de discriminación ni apoyamos acciones que van en contra de la moral ciudadana”, pero no se disculparon con la pareja⁴. Se desconoce si se produjo alguna denuncia ante las instituciones públicas, al igual que si hubo algún reacción oficial.

24. **En los medios de comunicación social:** No es raro ver en la televisión y particularmente en programas de humor la presencia de personajes homosexuales masculinos que son estereotipados, ridiculizados y utilizados como fuente de burla.

25. En diciembre de 2011, el Observatorio Revolucionario de Medios por la Diversidad Sexual y de Género presentó ante la Comisión Nacional de Telecomunicaciones (CONATEL) una denuncia en contra del programa “¡A que te ríes!”, transmitido por el canal privado de televisión Venevisión. Según la

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denuncia en dicho programa se utiliza “un lenguaje de doble sentido, machista, sexista, clasista, homofóbico y xenóbico”.

26. Las denuncias realizadas por las ONG no reciben ningún tipo de respuesta. Adicionalmente, no se aplican sanciones ni multas ni penas de ningún tipo contra personas o instituciones que se expresen de manera discriminatoria contra la población LGBTI, a pesar de estar contempladas en varias leyes como la Ley de Responsabilidad Social en Radio, Televisión y Medios Electrónicos6 (2010) en el Artículo 3 que estipula “Promover el efectivo ejercicio y respeto de los derechos humanos, en particular, los que conciernen a la protección del honor, vida privada, intimidad, propia imagen, confidencialidad y reputación...”.

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Consultado el 21-10-2014

Executive Summary

1. This Report was prepared by the Affirmative Union of Venezuela (UNAF) for the consideration of the Council of Human Rights of the United Nations, on the occasion of the Second Universal Periodic Review of the Venezuelan state. UNAF is a non-profit association, founded on November 24, 2000 that promotes compliance with international human rights standards protecting people face discrimination based on sexual orientation and achieve legal and social recognition of these rights.

2. The Affirmative Union Report of Venezuela offers information on four aspects, namely: the right to protection of same-sex couples and families; the right to non-discrimination for sexual orientation, gender identity and gender expression; situation of discrimination in the areas of health, work, education, public and private spaces, and in the media.

3. We request the Human Rights Council to recommend the State to adopt all necessary measures within a reasonable time to make progress on legislative reforms and public policies that guarantee real and effective equality of the human rights of people lesbian, gay, bisexual, trans and intersex, without excuses based on culture, tradition and religion, or in political affiliations.

4. Likewise, we request the Council to urge the Venezuelan State to carry out the necessary legal reforms to guarantee the protection of LGBTI couples, their families and their children; especially regarding the legal recognition of unions, the rights of spouses and the legal status of girls, children and adolescents from families of the same sex.

INTRODUCTION

5. Venezuela has signed and supported all international declarations that advocate protection of people against discrimination based on sexual orientation and gender identity. Also, both the International Covenant on Civil and Political Rights and International Covenant on Economic, Social and Cultural Rights are in force in the country, which according to the national Constitution, have constitutional rank and preferential application over the Constitution itself (article 23). The Constitution also imposes the adoption of the necessary legal measures to give effect and effectiveness to the decisions of the international human rights organizations, when they refer to petitions from Venezuela’s citizens (article 31 of the Constitution of the Bolivarian Republic of Venezuela).

6. Sexual orientation, gender identity, and gender expression are not crimes in Venezuela. The Constitution of the Bolivarian Republic of Venezuela establishes in its article 21 first numeral that "Discrimination based on race, sex, creed, social status, or those with the only object or result of nullifying or impairing recognition, enjoyment or exercise under conditions of equality, the rights and freedoms of all persons, will not be allowed.”
7. However, lesbians, gays, bisexuals, trans and intersexes have suffered and suffer discrimination and impunity, which places them as a vulnerable group. This report describes the lack of observance and application of the legislation in force in Venezuela, while it includes the protection against discrimination based on sexual orientation. Describe some situations of rejection social and human rights violations against people for their sexual orientation.

**SAME SEX COUPLES’ AND FAMILIES’ PROTECTION RIGHT**

8. 2008’ Resolution No. 190 of the Supreme Court of Justice, mentioned above, stated that it is under the National Assembly responsibility to legislate on the protection of the same sex couples. This, however, has not happened. There has been no initiative within the National Assembly on the part of any deputy and legislator to legislate in this regard. Despite the fact that NGOs with work on sexual diversity have submitted several applications to the Legislative Branch.

9. It should be noted that the National Assembly (2010-2015) received in February 2011 a proposal for Legislative Agenda by the LGBTI Network of Venezuela, in order to make the modifications necessary in the Organic Law of Civil Registry in order to allow the Registry of relationships between people of the same sex and of marriages performed abroad. In January 2014, a proposal was submitted to partially modify the Civil Code to extend civil marriage to same-sex couples. The period of the National Assembly ended in January 2016 and it remained in legislative arrears for not having discussed the aforementioned requests, as required by law and Venezuelan standards.

**RIGHT TO NOT BEING DISCRIMINATED BASED ON SEXUAL ORIENTATION, GENDER IDENTITY, AND GENDER EXPRESSION.**

10. Venezuela does not have a specific law that force the State to guarantee and to protect the right to equal treatment and non-discrimination of lesbians, gays, bisexuals, trans and intersexes. It only has few legal instruments that mention non-discrimination based on sexual orientation in some specific areas, namely: Article 4 of the Organic Law of Popular Power (2010), Article 173 of the Law of Institutions of the Banking sector (2010), Resolution 185, Article 3 Standards and Guarantees related to Rights of Women and Sex-diversity to Gender Equality and Equity in the Police and other State and Municipal Police Corps (2010), Art. 5 of the Law of regulation and control of Housing Leases (2011), Article 21 of the Organic Labor Law, of the Workers (2012). Furthermore, these laws lack mechanisms that allow to implement real and effective strategies to avoid discrimination and inequality, so that in reality they are empty, innocuous and useless laws.

11. Venezuela does not have strategic plans (policies), programs, and public services oriented to respond to the needs and demands of LGBTI people. It is identified that the specificity or equality in the distribution of resources for the implementation of public policies does not exist for LGBTI community, who remain invisible in demographic, population, and other statistics studies, which translates into exclusion for the exercise of fundamental rights from the perspective of their sexual orientation, identity or gender expression. This constitutes an unequal treatment, which in turn generates cruel, inhuman and degrading treatment.
12. Recognizes that the Venezuelan Legislative Power has made efforts to protect groups historically discriminated as women, indigenous people, girls, boys and adolescents, youth, people of African descent, and even animals, but lesbians, gays, bisexuals, transsexuals and intersexes do not appear in priority populations, as evidenced in their management during the last years.

13. The Ombudsman's Office is the State agency responsible for monitoring human rights in Venezuela, and the Public Ministry is responsible for guaranteeing in judicial processes the respect to constitutional rights and guarantees, as well as international treaties, conventions and agreements subscribed by the Republic. But the Ombudsman's Office has carried out few actions regarding sexual diversity, without achievements or relevant impact that safeguards LGBTI people's human rights in the country. As for the Public Ministry, this public institution lacks answers to guarantee the respect of the rights and guarantees enshrined in the Constitution of the Bolivarian Republic of Venezuela during judicial processes.

14. In Venezuela there are no advances made in legislation, policies, and practices for investigate and prosecute acts of violence against lesbians, gays, trans people, bisexual and/or intersex, or against those perceived as such.

DISCRIMINATION IN AREAS SUCH AS HEALTH, WORK, EDUCATION, PUBLIC AND PRIVATE SPACES, AND MEDIA

15. In the field of health: In the blood banks attached to the Venezuelan public health system, persist the ban on donating blood from LGBTI people in public and/or private health centers. An example of this is published on the website of the Blood Municipal Bank which establishes as a requirement to be donors (textual quote) “Not belong to groups of high-risk behavior for AIDS”, in clear reference to persons of sexual orientation, identity gender and gender expression.

16. Gynecological services are not prepared for the care of lesbian women, following the same care protocol used in heterosexual women. It also occurs in the cases of gay and bisexual men who are treated with the same protocols as heterosexual men.

17. In the workplace: Despite the fact that Article 21 of the Organic Workers and Labor Law explicitly prohibits the discrimination based on sexual orientation, situations of discrimination and violence against LGBTI persons are frequent in the workplace, being victims of abuses, unjustified dismissals, violating, thus, all their labor rights and benefits established in the current legal framework.

18. However, there are no records of cases, this because there are no mechanisms to sanction these crimes. Those who are discriminated do not feel protected and fear to expose their case for fear of greater and worse consequences, such as the risk of losing your job and in the worst case physical assaults.

19. In the field of education: In Venezuela there is no chair of sexual education for any level; school abuse cases are not documented by schools and many teachers and authorities do not know how to address the situation in cases of sexual orientation, identity and expression of gender.
20. The little information that is handled about bullying comes from the work carried out by the NGO CECODAP and Reflejos de Venezuela, and it shows a violation of these girls, boys, adolescents and young people principle of non-discrimination and equality established in article 3 of the Law for the Protection of the Boy, Girl and Adolescent (LOPNNA). Children and adolescents “do not study calmly. They feel pressure and sadness because they always make fun of them: they are bullied for their sexual orientation”. “Rejection of sexual orientation on campus is a silent phenomenon. Still a matter relegated to hallway whispers. The same is not the case with other forms of school violence, which are discussed frankly.”

21. CECODAP affirms that “In the Protection Councils of the municipalities of Baruta and Chacao, they have not received complaints for this form of bullying, but they have for the others. Last year CECODAP visited 19 states of the country to teach workshops on violence in educational centers. The methodology they used consisted of addressing specific situations of aggressiveness that have been witnessed in the schools, and then outline solutions.” “We observed the presence of discrimination based on sexual orientation in 100% of the visited institutions, says Oscar Misle, director of the NGO.” “It is a subject that do not comes out at conferences to treat it openly. You get comments later, in the hallways, that there is a strange boy, or a strange girl.” “Rejection is not only driven by classmates, but sometimes it is also practiced by teachers, who sometimes try to support victims so that they change their way of being.” This type of situation was experienced by Alfonso who affirms that “… his teacher called mom so that she takes him to a psychologist because it seemed ‘weird.’ Shifted it to play more with the children.” For these actions of the teachers, the specialists agree, those affected end up feeling that they sought rejection.

22. **In public and private spaces:** Parks, museums, restaurants, shopping centers, among others, are places that have experienced situations of stigma and discrimination against LGBTI people by police, surveillance or public order officials. In the case of private spaces such as restaurants, the situation is very similar. Expressions of affection, such as walking holding hands or hugging, kissing or any other expression that is normally carried out by two people of different sex, in the case of two people of the same sex are subject to censorship.

23. Through the social network Twitter, the case of a couple of men who were discriminated against for kissing in the facilities of a bar restaurant “Cielo Restobar” located in the city of Mérida, Mérida state. The manager of that place required them to vacate the premises in an aggressive manner. Later, there was a public pronouncement of the restaurant where it was expressed “we don’t commune with any type of discrimination and we do not support actions that go against morality”, but they did not apologize to the couple. It is unknown if there was any complaint before the public institutions, as if there was any official reaction.

24. **On social media:** It is not uncommon to see on television and particularly on humor shows the presence of male homosexual characters who are stereotyped, ridiculed and used as a source of ridicule.

25. In December 2011, the Revolutionary Media Observatory for Sexual Diversity and Gender filed a complaint against the National Telecommunications Commission (CONATEL) from the program “¡A que te ríes!”, aired by the private television channel Venevisión. According to The
complaint in said program uses "a two-way language, macho, sexist, classist, homophobic, and xenophobic."

26. The complaints made by the NGOs do not receive any type of response. Additionally, sanctions, fines, or penalties of any kind are applied against persons or institutions that express themselves in a discriminatory way against the LGBTI population, despite being covered by various laws such as Law on Social Responsibility in Radio, Television and Electronic Media (2010) in Article 3 that stipulates "Promote the effective exercise and respect for human rights, particularly those they concern the protection of honor, privacy, privacy, self-image, confidentiality and reputation...".
CERTIFICATE OF TRANSLATION

I, Milton Gutcovsky, am competent to translate from Spanish into English, and certify that the translation of Union Afirmativa of Venezuela, Alternative Report for the Second Universal Periodic Exam, *Human Rights of Lesbians, Gays, Bisexuals, Trans and Intersexual People in Venezuela* (Tab No. 19 of the Venezuela’s Country Conditions Report) is true and accurate to the best of my abilities.

Signature

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Tab #20
VENEZUELA: THE FACES OF IMPUNITY

ONE YEAR SINCE THE PROTESTS, VICTIMS ARE STILL WAITING FOR JUSTICE

AMNESTY INTERNATIONAL
Amnesty International is a global movement of more than 7 million supporters, members and activists in more than 150 countries and territories who campaign to end grave abuses of human rights.

Our vision is for every person to enjoy all the rights enshrined in the Universal Declaration of Human Rights and other international human rights standards.

We are independent of any government, political ideology, economic interest or religion and are funded mainly by our membership and public donations.
# CONTENTS

PROTEST-RELATED DEATHS FEBRUARY-JULY 2014 ................................................................. 5

EXECUTIVE SUMMARY ........................................................................................................... 7

METHODOLOGY ....................................................................................................................... 11

BACKGROUND ........................................................................................................................ 12

THE FACE OF IMPUNITY ........................................................................................................ 15

DEATHS DURING THE PROTESTS ........................................................................................... 15

BASSIL DA COSTA FRÍAS ........................................................................................................ 16

JUAN MONTOYA ....................................................................................................................... 17

GÉNESIS CARMONA ................................................................................................................ 17

GHINA RODRÍGUEZ AND GUILLERMO SÁNCHEZ ................................................................. 18

EXCESSIVE USE OF FORCE .................................................................................................... 18

GERALDÍN MORENO ................................................................................................................ 23

ANTHONY GREGORIO CARRERO .......................................................................................... 24

YANEULIZ VACA ..................................................................................................................... 24

JOHN MICHAEL ORTIZ FERNÁNDEZ ................................................................................... 25

TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT ....................... 25

DANIEL QUINTERO ................................................................................................................ 28

JUAN MANUEL CARRASCO .................................................................................................... 29

CARLOS VILLAMIZAR ............................................................................................................. 30

GLORIA TOBÓN ...................................................................................................................... 31

MARVINIA JIMÉNEZ ............................................................................................................... 32

WUADDY MORENO DUQUE ................................................................................................ 33
PROTEST-RELATED DEATHS
FEBRUARY-JULY 2014

Bassil Alejandro Da Costa Fría, aged 24, carpenter, 12/02/2014, Caracas
Juan Carlos Crisóstomo Montoya, aged 50, leading social activist, 12/02/2014, Caracas
Roberto José Redman Orozco, aged 26, pilot, 12/02/2014, Caracas
Asdrúbal Jesús Rodríguez Araguayán, aged 26, worker, 19/02/2014, Caracas
Elvis Rafael Durán De La Rosa, aged 29, worker, 21/02/2014, Caracas
José Alejandro Márquez, aged 45, engineer, 22/02/2014, Caracas
José Gregorio Amarís Cantillo, aged 25, motorbike-taxi driver, 06/03/2014, Caracas
Acner Isaac López Lyon, aged 29, Sergeant in the National Guard, 06/03/2014, Caracas
Johan Alfonso Pineda Morales, aged 37, contractor, 07/03/2014 Caracas
Glidis Karelis Chacón Benítez, aged 25, SEBIN official, 07/03/2014, Caracas
Francisco Alcides Madrid Rosendo, aged 32, worker, 18/03/2014, Caracas
Jorge Steven Colina Tovar, aged 24, National Police official, 08/05/2014, Caracas
Wilmer Juan Carballo Amaya, aged 43, businessman, 24/02/2014, Aragua
Johan Gabriel Quintero Carrasco, aged 33, worker 5/02/2014, Aragua
José Isabelino Guillén Araque, aged 34, Captain in the National Guard, 16/03/2014, Aragua
Geraldín Moreno Orozco, aged 23, student, 22/02/2014, Carabobo
Eduardo Ramón Anzola Carmona, aged 29, carpenter, 25/02/2014, Carabobo
Julio Eduardo González Pinto, aged 45, assistant prosecutor, 18/02/2014, Carabobo
Génesis Cristina Carmona Tovar, aged 22, student, 18/02/2014, Carabobo
Giovanni José Pantoja Hernández, aged 28, Sergeant in the National Guard, 28/02/2014, Carabobo
Jesús Enrique Acosta Matute, aged 22, student, 12/03/2014, Carabobo
Guillermo Alfonso Sánchez Velásquez, aged 42, builder, 12/03/2014, Carabobo
Ramzor Ernesto Bracho Bravo, aged 36, Captain in the National Guard, 12/03/2014, Carabobo
Argenis de Jesús Hernández Moreno, aged 30, worker, 21/03/2014, Carabobo
Mariana del Carmen Ceballos Belisario, aged 32, secretary, 10/04/2014, Carabobo
Arturo Alexis Martínez, aged 58, taxi driver, 20/02/2014, Lara
José Cirilo Damas García, aged 24, National Police official, 09/04/2014, Lara
Doris Elena Lobo Arias, aged 40, housewife, 20/02/2014, Mérida
Gisella Victoria Rubilar Figueroa, aged 46, teacher, 09/03/2014, Mérida
Jesús Orlando Labrador Castiblanco, aged 39, electronics technician, 22/03/2014, Mérida
Miguel Antonio Parras, aged 42, Sergeant in the National Guard, 24/03/2014, Mérida
Adriana Grissel Urquiola Pérez, aged 28, sign language interpreter, 23/03/2014, Miranda
José Ernesto Méndez Gómez, aged 17, 17/02/2014, Sucre
Jimmy Erwill Vargas González, aged 32, worker, 20/02/2014, Táchira
Danny Joel Melgarejo Vargas, aged 20, student, 22/02/2014, Táchira
Luis Alejandro Gutiérrez Camargo, aged 23, 04/03/2014, Táchira
Edicson Olivo Daniel Tinoco Carrillo, aged 24, 10/03/2014, Táchira
Jhon Rafael Castillo Castillo, aged 23, Second Sergeant in the National Guard, 19/03/2014, Táchira
Franklin Alberto Romero Moncada, aged 44, manager, 28/03/2014, Táchira
Wilfredo Giovanny Rey Jaimes, aged 32, bus driver, 22/04/2014, Táchira
Jonathan Enrique Martínez García, aged 30, unemployed, 08/03/2014, Zulia
Roberto Luis Annese Gorin, aged 33, businessman, 29/03/2014, Zulia
Josue Emmanuel Farías Sánchez, aged 19, student, 25/05/2014, Zulia
A year after the pro and anti-government protests that took place in Venezuela between February and July 2014, Amnesty International is publishing this report which highlights the plight of hundreds of victims of human rights abuses who are still awaiting justice. More than 43 people died and a further 878 were injured during the protests. Scores were ill-treated and 3,351 were detained, 27 of whom remain in detention awaiting trial. By the beginning of March 2015, all those responsible for human rights violations had not been brought to justice, victims and their relatives had yet to receive reparations and those arbitrarily detained had not been released, showing a clear lack of political will on the part of the Venezuelan authorities to ensure that these grave human rights violations are not repeated.

The report details cases in which members of the security forces or pro-government armed groups acting with their acquiescence were involved in killings, as well as cases of torture and other ill-treatment of detainees and arbitrary detentions. During the past year, Amnesty International has also documented cases of harassment and intimidation of victims, their relatives and legal representatives for their efforts to obtain justice. Human rights defenders who have reported these serious abuses have also been the target of attacks.

The concerns and cases highlighted in this report are the result of interviews with victims and their relatives, human rights defenders, journalists and lawyers between February 2014 and February 2015 in Caracas as well as in the states of Valencia, Miranda, Zulia, Táchira and Mérida. The organization also met the Attorney General and representatives of the Office of the Ombudsperson.

Public Prosecutor’s Office investigations indicate that law enforcement officials and armed civilians, including members of pro-government armed groups, were responsible for the deaths of demonstrators and passers-by and that a number of people died in incidents at the barricades erected by demonstrators to block public roads.

The Public Prosecutor’s Office has investigated 238 reports of human rights violations, 13 of which have resulted in charges being brought against the alleged perpetrators. According to the Attorney General, 30 police officers have been charged in connection with the deaths of protesters, excessive use of force and torture and other ill-treatment, and three law enforcement officials have been convicted of ill-treatment. Fourteen officers have been detained and an arrest warrant has been issued, but not served, for another; the remainder have been granted conditional release.

While most of the 3,351 people detained during the protests were released without charge, 1,404 of those released have been charged with obstructing public roads, wounding, damaging public property and conspiracy to commit a crime and are awaiting trial, and 27 remain in pre-trial detention. Amnesty International has documented five of the 27 cases of people who remain in prison awaiting trial and found that they were arbitrarily detained.
The impunity surrounding human rights violations committed during the protests in 2014 is not the exception. In Venezuela, the vast majority of human rights violations are not investigated or punished. The Public Prosecutor’s Office had already stated back in 2012 that in the majority of cases the perpetrators of human rights violations are not brought to justice. The justice system has not only been ineffective in guaranteeing the right to justice of victims of human rights violations, it has also frequently been the target of government interference.

Over the past decade, Amnesty International and other non-governmental organizations, both national and international, as well as the Inter-American Commission on Human Rights and various UN human rights monitoring bodies have called on Venezuela to prioritize human rights protection in order to establish a robust rule of law in which judicial authorities can guarantee protection before the law for the entire population without discrimination.

Venezuela has ignored these calls. Instead of strengthening the rule of law and the protection of human rights it has taken steps that have helped undermine that protection. For example, in September 2013 it denounced the American Convention on Human Rights and withdrew from the jurisdiction of the Inter-American Court of Human Rights, the final court of appeal and last hope for victims of human rights violations and their relatives seeking justice throughout the Americas.

EXCESSIVE USE OF FORCE

The authorities’ response to the wave of demonstrations that took place in 2014 showed once again that the government will not tolerate dissent or protests criticizing government policies. Excessive use of force by the security forces and reports of torture and other ill-treatment are evidence of this. At no point during the protests or the past year have the authorities clearly and publicly signalled that abuses by state agents would not be tolerated, despite the findings of investigations by the Public Prosecutor’s Office that the security forces used excessive force.

Indeed, far from showing a clear commitment to respect the right to peaceful assembly the government issued Ministry of Defence Resolution 008610 as recently as 27 January 2015, allowing all sections of the armed forces to be deployed in public order operations, including the policing of public protests, and authorizing the use of firearms in such operations.

Given the numerous serious human rights violations resulting from the excessive use of force by state agents, considering using all sections of the armed forces in public order operations is of grave concern. International standards clearly state that the use of the armed forces for internal policing operations should be considered only in clearly defined exceptional circumstances, and that should such deployments take place, excessive force must not be used and the right to life and physical integrity must be respected at all times.

Instead of sending a clear message condemning human rights violations, the authorities have continued to seek to justify the unlawful actions of the security forces in the name of public order and security and of political stability.

Fourteen-year-old Kluiberth Roa Núñez died after being hit by a rubber bullet fired by national police in Táchira State a few weeks ago on 24 February 2015, a month after
Resolution 008610 was issued. He was walking near a protest when the security forces opened fire on demonstrators who had been throwing stones and Molotov cocktails. His death sparked student protests in Mérida the following day during which five students were shot and injured, reportedly by members of the security forces.

**TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT**
Scores of people were beaten, burned, subjected to sexual abuse and electric shocks and threatened with rape and death by law enforcement officials during the protests. These violations were inflicted on detainees at the time of arrest, during transfer to detention centres and while in detention.

In the cases documented by Amnesty International, security forces ill-treated detainees in order to punish them for their participation, or alleged participation, in the protests; to coerce them into confessing to having committed crimes while they were taking part in the protests; or to obtain information in order to identify those who had taken part in or organized anti-government protests.

**ARBITRARY DETENTION**
After reviewing the evidence presented by the Public Prosecutor’s Office in the case of five of the 27 people who remain in detention, Amnesty International was able to confirm that these five have been arbitrarily detained. They are facing trial despite the absence of credible evidence to support the charges brought against them and some were detained without an arrest warrant.

Not only have those arbitrarily detained since 2014 yet to be released, but people continue to be imprisoned for their political views or for holding anti-government opinions.

Antonio Ledezma, the Mayor of Caracas, was detained on 19 February 2015 in circumstances suggesting that his arrest was politically motivated. According to the Venezuelan Mayors’ Association, at the end of February 2015, 33 of the 73 mayors belonging to opposition parties were facing legal proceedings.

Judge Ali Fabricio Paredes was also detained recently on 10 February. His arrest appears to be linked to a sentence he handed down in a high-profile case that did not conform to the wishes of the Attorney General. Also of great concern is the recent detention on 8 February of lawyer Tadeo Arriechi, apparently in reprisal for carrying out his duties and providing legal representation for a company accused of destabilizing the economy.

These detentions clearly call into question the authorities’ lack of respect for dissenting views and for the independence of the judiciary, and illustrate the difficulties faced by judges and lawyers in carrying out their professional duties.

The report highlights the manifest lack of commitment on the part of the authorities to end impunity for grave violations committed a year ago and to ensure the protection of human rights for all, without discrimination and regardless of political affiliation. It concludes that this lack of commitment creates a serious risk that the tragic events documented by Amnesty International will be repeated, especially given the context of increasing social discontent.
A series of concrete recommendations that must be implemented as a matter of urgency, are included in the last chapter. In particular, the Venezuelan authorities must guarantee the right to peaceful assembly and the right of victims of human rights violations to justice and reparation. All those arbitrarily detained must be released without delay and the intimidation and harassment of those who report abuses – whether victims, relatives, lawyers or human rights defenders – must end. The authorities must also refrain from using the armed forces in public order operations, except for clearly defined emergency situations; and must ensure that the security forces act in accordance with the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials.

Amnesty International is concerned that the level of violence will intensify and more lives will be lost unless the Venezuelan government prioritizes the protection of human rights and the executive sends a clear message that excessive use of force by the security forces will not be tolerated. The government must also guarantee that protesters and dissidents will not be targeted. Without such a commitment, the rule of law will continue to be eroded, potentially putting everyone at risk of human rights violations.
METHODOLOGY

The concerns and cases of human rights violations included in this report are the result of research undertaken by Amnesty International between February and July 2014, as well as in subsequent months in the capital, Caracas, and in the states of Valencia, Miranda, Zulia, Táchira and Mérida.

During the past year, Amnesty International held meetings with human rights defenders, journalists and citizen journalists who were documenting the protests, and with lawyers representing the hundreds of victims of human rights violations. In addition, Amnesty International interviewed more than a hundred people, including victims of excessive use of force and torture and other ill-treatment, and relatives of those who died as a result of the use of lethal force by the security forces and attacks by armed pro-government groups and demonstrators.

In a number of cases interviewees asked that their complaints or version of events not be published for fear of possible reprisals; such cases have not been included in the report.

Amnesty International had several meetings with the Attorney General and in July 2014 delegates met the Ombudsperson. In addition, delegates met representatives of the state Ombudspersons in Táchira and Mérida.

In the course of the past year, Amnesty International has raised concerns about individual victims of human rights violations with the President, Vice-President and the Ministers for Internal Affairs, Justice and Peace; Defence; and the Prison Service. The organization has also sought information from the Public Prosecutor's Office regarding the progress of investigations into violations and abuses of human rights committed during the protests and the trials of the suspected perpetrators. To date, only the Public Prosecutor's Office, via the Attorney General, has responded to Amnesty International's letters.
BACKGROUND

Between February and July 2014, Venezuela was convulsed by a wave of pro and anti-government protests that affected the majority of states.

The protests began on 4 February 2014 in San Cristóbal, Táchira State, in the west of the country. They were led by university students demanding better security on university campuses following a series of reported thefts and an attempted rape.

Following the arrest of a group of students in San Cristóbal, student movements backed by opposition parties organized protests in different parts of the country demanding their release. In the six months that followed, thousands of people, led by students and some opposition politicians, took to the streets in most of the country’s states. The protests now focused not only on security issues, but also on the economic crisis, high inflation and the lack of basic commodities and demanded the resignation of President Nicolás Maduro.

Counterdemonstrations in support of the President’s leadership and policies also took place in various states.

In the face of rising social discontent, the authorities responded to the strong criticisms voiced by a large section of society by accusing demonstrators, the organizers of the protests, student leaders and opposition political parties who supported them of attempting to destabilize the country and of fomenting a coup d’état against the government of President Nicolás Maduro.

The demonstrations, and the confrontations that soon followed, are the latest example of the increasing polarization that has riven the country for more than a decade. This latest wave of social discontent left 43 people dead and a further 878 injured, according to the most recent official statistics published in February 2015. Among the dead and injured were demonstrators and law enforcement officials as well as passers-by and local residents who were not involved in the protests. Suspected perpetrators include law enforcement officials and armed civilians, both protesters and members of pro-government armed groups.

Violent confrontations during the protests and the response of the security forces resulted, as the authorities have admitted, in abuses and violations of human rights.

In April 2014, Amnesty International published a report highlighting reports of human rights violations reportedly committed by the security forces during the first months of the protests. In that report, the organization warned of the unfolding human rights crisis and spiralling violence in the country. It urged the government to investigate the allegations and punish those responsible and to put human rights at the forefront of the political agenda by implementing a National Human Rights Plan. Amnesty International called on political leaders from across the political spectrum to set up a constructive dialogue with the aim of
resolving the crisis and seeking consensus on policies that would address the legitimate demands of the protesters.

In November 2014, Amnesty International submitted its concerns about the human rights situation in the context of six months of protests to the UN Committee against Torture prior to its consideration of the combined third and forth periodic reports of the Bolivarian Republic of Venezuela on its implementation of the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

During the six months of the protests and in the following months, Amnesty International issued statements and initiated actions on behalf of individual victims of human rights violations. It called on the authorities to release those arbitrarily detained and investigate all reports of human rights violations and to ensure that those responsible were brought to justice and that victims received reparations.

However, one year after the events, the vast majority of relatives of those who died as well as the victims of torture and other ill-treatment, excessive use of force and arbitrary detention are still waiting for truth, justice and reparations.

The impunity surrounding human rights violations committed during the protests in 2014 is not the exception. In Venezuela, the vast majority of human rights violations are not investigated or punished. The Public Prosecutor’s Office itself stated in 2012 that in the majority of cases, the perpetrators of human rights violations are not brought to justice.\(^1\) According to its figures, only 3% of reports of human rights violations result in the suspected perpetrators being charged and brought before a court.

The justice system not only lacks the necessary resources to guarantee the right to justice of victims of human rights violations, it has also frequently been the target of government interference. This interference is facilitated by the fact that a large number of judges and public prosecutors are appointed on a temporary basis, leaving them open to political pressure.

As far back as 2009, the Inter-American Commission on Human Rights noted regarding a number of cases in which judges in Venezuela had been dismissed that “the fact that they occurred almost immediately after the judges in question handed down judicial decisions in cases with a major political impact... sends a strong signal – to society and to other judges – that the judiciary does not enjoy the freedom to adopt rulings that go against government interests and, if they do so, that they face the risk of being removed from office.”\(^2\)

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1. See Report of the Bolivarian Republic of Venezuela to the Committee against Torture on the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment, August 2012.

In 2009, UN experts also raised concerns about “reprisals for the exercise of constitutionally guaranteed functions and the creation of a climate of terror in the judiciary and among lawyers” in Venezuela. They warned that this serves “no purpose except to undermine the rule of law and obstruct justice.”

Venezuela has ignored these calls. Instead of strengthening the rule of law and the protection of human rights it has taken steps that have helped undermine that protection. For example, in September 2013 Venezuela denounced the American Convention on Human Rights and withdrew from the jurisdiction of the Inter-American Court of Human Rights, the ultimate and independent judicial body that acts as a final court of appeal and last hope for victims of human rights violations and their relatives seeking justice throughout the Americas, and which is a necessary complement to national systems of justice.

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THE FACE OF IMPUNITY

DEATHS DURING THE PROTESTS
Forty-three people died in the context of the protests, including eight law enforcement officials and two public prosecutors.

To date, in at least four cases, investigations by the Public Prosecutor’s Office indicate that members of the security forces, including members of the National Intelligence Service (Servicio Bolivariano de Inteligencia Nacional, SEBIN), are believed to be responsible for the deaths of protesters and passers-by.

In addition, Amnesty International has received reports and statements regarding confrontations between protesters and the security forces, violent attacks by protesters and violence against demonstrators by members of pro-government armed groups, in some cases acting with the acquiescence of the authorities.

According to investigations carried out by the Public Prosecutor’s Office, 14 people reportedly died as a result of incidents that took place at the barricades erected by protesters to block public roads. Some died as a result of injuries caused by the razor wire protesters had used to block the roads. Others died after being shot as they tried to remove the barricades.

At least eight people died after being shot during demonstrations, reportedly by armed pro-government groups.

Reports from victims and photographic and video evidence of the violence, including the use of firearms, indicate that pro-government armed groups, sometimes carried out attacks with the acquiescence of the security forces. The targets of these attacks included protesters, passers-by, houses where local residents were protesting by beating cooking utensils and residential areas where protests and barricades were present.

For example, in Mérida, dozens of statements from local residents as well as photographic and video evidence, indicate that armed groups attacked homes with stones and firearms in full view of the security forces. On some occasions, security force personnel policing protests either let armed groups through the police lines or withdrew from the area, allowing members of the groups to carry out attacks against groups of protesters, sometimes using live ammunition. Many of the statements gathered by the organization indicate that people living in Mérida set up barricades in front of their homes to protect themselves from these armed groups. The organization received reports and photographic and video evidence of similar abuses from Táchira, Caracas and Valencia.

In its recent concluding observations on the situation in Venezuela, the UN Committee against Torture expressed its concern about reports of 437 attacks by pro-government armed groups against demonstrators during the protests. A large number of these were carried out
with the complicity and acquiescence of the security forces and those responsible have not been brought to justice.

To date, the authorities have failed to carry out comprehensive, independent and impartial investigations into the participation in violent attacks of government supporters acting with impunity and in full view of the security forces. No member of these groups has been punished for committing human rights abuses during the protests, including abuses of the right to life and physical integrity.

In only one case in which the actions of pro-government armed groups are suspected of causing deaths has the suspected perpetrator handed himself in to the authorities. The relatives of other victims continue to wait for justice.

**BASSIL DA COSTA FRÍAS**

Twenty-three-year-old Bassil Da Costa Frías died on 12 February 2014 in Caracas after taking part in a demonstration. The day before he left home to join the protest Bassil Da Costa wrote on his Facebook page: “I am going out to march tomorrow without fear”.

According to the testimony of one of Bassil Da Costa’s relatives who was also on the 12 February protest, that evening, at the end of the demonstration, one of the protesters was detained and several others started shouting and throwing stones at the security forces in protest. In response, members of the National Intelligence Service (Servicio Bolivariano de Inteligencia Nacional, SEBIN) and armed men in plainclothes started firing at the protesters using rifles and handguns. Bassil Da Costa was shot in the head.

Bassil’s cousin, who was with him on the demonstration, described what happened to Amnesty International: “I was running down the street, I crossed on to the other pavement. When I got there I heard someone say: ‘someone’s been hit, someone’s been hit!’ Then I saw it was my cousin. Straight away, I got hold of him, picked him up, but immediately saw that he had been hit in the head because he was bleeding heavily. I picked him up, shouting: ‘Let's get him out of here, let's get him out of here!’ Some friends and I carried him. One of those who was helping to carry him said to me: ‘no, he's already dead, he's already dead’. And I said: ‘no, he’s not dead, let’s carry on, let’s get him out of here’... Deep down I knew that my cousin was dead, but I did not want to leave him there. I was hoping that he would live because he was breathing and he was still breathing when we arrived at the hospital.”
VENEZUELA: THE FACES OF IMPUNITY
ONE YEAR SINCE THE PROTESTS, VICTIMS ARE STILL WAITING FOR JUSTICE

JUAN MONTOYA

Juan Montoya, aged 51, died on 12 February after being shot in the face as he was walking in an area close to where a protest was taking place in Caracas and near to where Bassil Da Costa was shot.

Juan Montoya was a leading social activist and Coordinator of the Revolutionary Secretariat of Venezuela, a network bringing together pro-government grassroots groups (colectivos populares), in Greater Caracas and Vargas. His brother, Jonny, told Amnesty International that he and other members of the neighbourhood collectives had gone to central Caracas to support the government and counter the anti-government protest called for that day.

The Public Prosecutor’s Office has accused a member of the Revolutionary Secretariat of Venezuela leadership of the murder of Juan Montoya. According to Public Prosecutor’s Office, the accused has been detained since August 2014 awaiting trial.

GÉNESIS CARMONA

Génesis Carmona, a 22-year-old a marketing student and the 2013 Miss Carabobo Tourism, was shot in the head on 18 February 2014 while taking part in a student protest. She died the following day.

Génesis’ family told Amnesty International that she had gone with her brother, mother and classmates to join a protest in Avenida Cedeño in the city of Valencia, Carabobo State. The demonstration was peaceful, with a cordon of National Guard officers at the front of the march. At a certain point, the police cordon reportedly parted to let through a group of armed men in civilian clothing on motorbikes. The armed men opened fire on the demonstrators. Most of the protesters threw themselves to the ground to avoid the bullets, but Génesis reportedly started running in the opposite direction and was shot in the head.

To date the Public Prosecutor’s Office has accused one person of complicity in intentional homicide in connection with Génesis’ death. And an international arrest warrant has reportedly been issued for another person, although there is no information about whether or not this is the person who actually carried out the killing.
GUILLERMO SÁNCHEZ

Guillermo Sánchez died after being shot, reportedly by a pro-government armed group, in La Isabelica, Valencia, on 12 March 2014. Guillermo Sánchez, who lived in the road where protests were taking place, had left home that day to go and paint his mother’s house. His wife, Ghina Rodríguez, told Amnesty International that eyewitnesses stated that a group of armed men shot and beat him. They then put him on a motorbike and flung him towards state police officers who were stationed near the protests, saying: “here’s another one for you, expect some more”. According to reports, it was the police officers who took Guillermo to the door of a medical centre where staff tried to save his life.

To date, one law enforcement official has reportedly been tried in connection with the death of Guillermo Sánchez on the basis of ballistic evidence linking him to the crime. According to reports, the official alleged that he had lent his gun to another, as yet unidentified, person.

Ghina Rodríguez is a member of the Victims’ Anti-repression Front (Frente de Víctimas contra la Represión), an organization set up by relatives and victims of human rights violations committed during the protests between February and July 2104. Members and supporters of the Front have been harassed by unidentified individuals in plainclothes. Vicziliz Faudul, a reporter and supporter of the Front, was threatened in June. Ghina told Amnesty International that stones were thrown at the journalist’s home and a leaflet was left there that read: “We see that you did not heed the first warning... Now you see that we have people infiltrated everywhere and that we are following you everywhere. This is your second warning. You will not get a third. This time it was stones. The next time it will be bullets.” The threat included a photograph of members of the Front, including Ghina.

When Ghina reported these incidents, the public prosecutor ordered that she receive protective measures, which consisted of 24-hour protection by the Valencia Municipal Police. However, she stated that when she went to the police to ask that the measures be implemented, “the police officers made fun of us. They made it clear that they were not going to waste their time protecting us and they never implemented the measures”. Ghina and her two children left Venezuela in July 2014, fearing for their safety. At the time of writing, they were living in Mexico where they had been granted refugee status.

EXCESSIVE USE OF FORCE

The security forces in Venezuela used excessive force during public order operations and violated the right to physical integrity of people exercising their right to peaceful assembly and association. In doing so, they breached international human rights standards, in particular Article 3 of the UN Code of Conduct for Law Enforcement Officials and the UN
Basic Principles on the Use of Force and Firearms by Law Enforcement Officials. Their actions also violated national laws and protocols for law enforcement agencies.

Statements from victims, eyewitnesses, journalists reporting on the protests and medical personnel who treated the injured, as well as photographic and video evidence and analysis of riot equipment and non-regulation equipment used, show that law enforcement officials used excessive force on many occasions against protesters, passers-by and residents in areas where protests took place between February and July 2014.

In its recent assessment of the situation in Venezuela, the Committee against Torture expressed concern about the unlawful use of firearms and riot equipment against protesters in residential areas during the 2014 protests.

Evidence obtained by Amnesty International indicates that the security forces frequently saw dispersing protests, including peaceful protests, as a priority and used force to do so, often when there was no clear reason for doing so to maintain order or prevent a crime. Protests were also dispersed without any attempt being made to negotiate with the demonstrators and without giving a clear prior warning that would allow protesters and passers-by to leave the area.

Even in those situations where the use of force by law enforcement officials may have been a legitimate response to some groups of protesters who were using violence, according to the evidence available, it was not used in a targeted manner to contain those groups of protesters engaged in acts of violence. Rather, it was used in an indiscriminate, generalized and disproportionate manner against peaceful protesters and passers-by. On many occasions the use of force by the security forces served to exacerbate and escalate tension and violence.

Amnesty International has documented cases when live ammunition was fired at demonstrators and homes in residential areas where “cacerolazos” were taking place or where residents had set up roadblocks. In at least one case, the actions of the security forces resulted in the death of a protester.

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6 Protests in the street or their homes in which people use cooking utensils or other objects to make a noise.

7 See the case of Bassil Da Costa Frías, p.16.
The Public Prosecutor’s Office has estimated that 90 people were injured by live ammunition.\(^8\)

According to information obtained by Amnesty International, law enforcement officials failed to give a clear prior warning of their intention to use firearms giving people sufficient time to take appropriate action, as required by the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials. Amnesty International received information that in at least one case expanding bullets were used; these are not appropriate ammunition for use in the context of policing social protests.

Amnesty International has documented the inappropriate use of rubber bullets by law enforcement officials who fired them directly at protesters and passers-by. According to the evidence gathered by the organization, in a number of cases officers fired rubber bullets at clearly unarmed people at close range and without giving a clear warning, with the apparent intention of causing maximum injury. Rubber bullets fired at close range resulted in at least one death.\(^9\)

According to the Public Prosecutor’s Office, at least 54 people were injured by rubber bullets during the protests that took place between February and July 2014.\(^10\)

Photographs, videos, statements from eyewitnesses and from protesters and passers-by who were injured and medical personnel, all attest to the use on a number of occasions of non-regulation riot equipment and firearms by law enforcement officials. Amnesty International has obtained evidence that riot equipment was allegedly tampered with to insert marbles, nails, candles or broken glass into cartridges with the apparent intention of causing maximum physical injury.\(^11\)

On dozens of occasions, law enforcement officials – and in at least one case, in the municipality of Rubio in Táchira State, members of the military – shot pellets at houses in residential areas where there were protests or barricades. They also used tear gas excessively and indiscriminately. For example in some instances they fired tear gas directly at protesters or in enclosed spaces and in residential areas. These incidents occurred when law enforcement officers arrived to disperse demonstrators or remove barricades. Photographs obtained by the organization show that in many cases shots and tear gas grenades entered people’s homes through windows causing symptoms of asphyxia and risking injuries as

\(^8\) See the report of the Public Prosecution Office, Balance de la actuación del Ministerio Público ante los hechos violentos ocurridos durante los meses febrero-junio de 2014, 14 July 2014.

\(^9\) See the case of Geraldín Moreno, p.23.

\(^10\) See the report of the Public Prosecution Office, Balance de la actuación del Ministerio Público ante los hechos violentos ocurridos durante los meses febrero-junio de 2014, 14 July 2014.

\(^11\) Victims did not report these incidents formally to the Public Prosecutor’s Office because they feared reprisals and lacked confidence in the justice system. They also asked Amnesty International to preserve their anonymity. The organization has also gathered statements from medical personnel and witnesses noting dozens of cases of protesters injured in this way. Those who spoke to Amnesty International asked that their names be withheld.
residents were forced to throw themselves to the ground or rush to the back of the house to take cover.

To date, the authorities have not sent a clear signal condemning the grave violations resulting from the excessive use of force by the security forces. They have also failed to show due diligence in investigating these events, clarifying who was responsible at all levels and bringing the perpetrators to justice.

Far from showing a clear commitment to respect the right to peaceful assembly, the Ministry of Defence decided to issue a resolution on the eve of the first anniversary of the protests that began in February 2014 that allows all sections of the armed forces to be deployed in public order operations, including public protests. The resolution also authorizes the use of firearms in such operations. The fact that the authorities are now considering using all sections of the armed forces in public order operations is a cause for concern given that under the Constitution the only body mandate to cooperate with the National Police in matters of internal policing is the National Guard.

Ministry of Defence Resolution 008610 was issued on 27 January 2015. This states that military personnel will be trained in and will act in accordance with international human rights standards. However, there is concern that the Resolution does not give a clear definition of the exceptional circumstances that would justify the use of the armed forces in public order operations, nor does it establish clearly in which limited circumstances the armed forces are authorized to carry and use firearms, which arms they are authorized to carry and how they are to be used to comply strictly with international standards on the use of force. The Resolution has been criticized, including by the Public Prosecutor's Office itself, which raises questions about the circumstances in which the armed forces would be permitted to use firearms in the policing of protests.

In November 2014, the UN Committee against Torture had noted with concern the participation of military personnel, such as the National Guard, in the policing of protests given that their functions do not include maintaining law and order and that there had been no declaration of a state of emergency or other exceptional circumstance. The Committee stated that there had been 121 complaints of excessive use of force against members of the

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13 In a press conference on 10 February 2015, the Attorney General stated: “It is not necessary to use firearms in public order operations or to police protests.” She added: “There may be situations which the National Police do not have the resources to deal with, situations of such gravity that they pose a threat to internal security. In such cases, where the National Guard, which is a part of the National Armed Forces, may intervene, however in these situations the use of firearms is prohibited.” The Attorney General was in effect referring to the text of Resolution 008610, published in the Official Gazette on 27 January 2015 in order to highlight that this was “ambiguous and could confuse rather than clarify… There must be no doubts because at the point where these regulations are implemented, unless there is clarity, actions will be neither consistent not appropriate.”
National Guard for their actions during the February to July 2014 protests.  

On 10 February, a spokesperson for the UN Office of the High Commissioner for Human Rights reminded the Venezuelan authorities that “the use of the military for law enforcement should only be an exceptional way to respond to an emergency situation” and urged “the Venezuelan Government not to use the armed forces in the control of peaceful demonstrations.”

The decision of the Venezuelan authorities to use the armed forces, whose role and training is not appropriate for public order operations, such as policing social protests, would appear to suggest a certain lack of real commitment on the part of the authorities to fulfil their obligations to respect the right to peaceful assembly and to ensure that the grave human rights violations that occurred in the context of the protests between February and July 2014 will not recur.

Although the authorities have announced that they will establish procedures that are in line with international human rights standards and that they will provide training for the armed forces that are in accordance with these standards, Amnesty International believes that respecting these standards involves much more than the publication of a series of regulations and manuals on these issues.

For example, for several years the National Police has had specific rules, principles and manuals on the progressive, selective and proportional use of force, including during the policing of public protests. According to these rules and regulations, any security force involved in public order operations must act in accordance with all these various rules and manuals.


principles. However, the National Police as well as the National Guard were directly linked to a series of grave human rights violations resulting from excessive use of force. These included the indiscriminate use of plastic pellets, tear gas and in a number of cases firearms against protesters, passers-by and local residents in the areas where protests were taking place, as well as torture and other ill-treatment. The officials implicated in these offences have not been held to account in the manner stipulated by their own rules and regulations and there has been no thorough review of the operating procedures that led to these abuses.

The numerous grave human rights violations committed by law enforcement officials during the 2014 protests clearly show that the security forces, including those that should be trained for such operations and in the progressive, proportionate and selective use of force during social protests, such as the National Police, failed to fulfil their obligation to respect and protect the right to life and physical integrity and the right to peaceful assembly. In the light of this, the Venezuelan authorities must concentrate and redouble their efforts to strengthen and ensure appropriate training for civil law enforcement officials so that they can fulfil their obligation to maintain order and respect human rights at all times. The authorities must ensure that those officials who have violate these rights are punished rather than allowing and indeed increasing the use of the armed forces in public order operations, including the policing of public protests, which is outside the scope of their proper function and for which they are clearly not trained.

**GERALDÍN MORENO**

“Justice must be done. All the hate in this country has to stop. The main thing is that justice must be done... and peace, peace for this country”

Words of the father of Geraldín Moreno

Geraldín Moreno, a 23-year-old student from Valencia, Carabobo State, died on 22 February 2014 after being hit in the eye by a rubber bullet during a protest on 19 February 2014.

According to testimony given by family members and accounts from eyewitnesses at the protest, members of the National Guard on motorbikes dispersed demonstrators by firing rubber bullets. Geraldín was lying on the ground when the bullet was fired at close range, piercing through her eye and lodging in her brain. Other demonstrators took her to a nearby hospital where she died.

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17 Article 1 of “las Normas sobre la Actuación de los Cuerpos de Policía en sus diversos Ámbitos Político Territoriales para garantizar el orden público, la paz y la convivencia ciudadana en reuniones públicas y manifestaciones”.
A relative of Geraldín told Amnesty International: “The guards that wounded people, they fired their guns... bang, bang, bang, then they regrouped and rode off. The guards were not bothered about getting the wounded to hospital. They just rode off together. Plastic bullets are for dispersing people. People get hurt but the bullets are not supposed to be lethal, the [rubber bullets] usually disperse the crowds. But [the guards] must have known that the girl was going to need help”.

The Public Prosecutor’s Office recently informed Amnesty International that two members of the National Guard had been detained and were awaiting trial. At the time of writing, the trial of those accused of killing Geraldín Moreno had been deferred eight times.

ANTHONY GREGORIO CARRERO

“Sometimes I wonder why this happened to me, why did this have to happen to me.”

Anthony Gregorio Carrero was wounded on his way home from work on 19 March 2014. He was struck on the left-hand side of his chest by a bullet fired at close range, reportedly by an officer of the National Guard, as officers dispersed a protest by local residents in San Cristóbal, Táchira State.

According to the medical report, to which Amnesty International was given access, Anthony Carrero required surgery for a gunshot wound; a bullet had pierced the left-hand side of his diaphragm. Anthony Carrero told Amnesty International that he was discharged prematurely, just five days after the operation, because medical personnel feared that he would be detained if he remained in hospital. Several months later he had to be readmitted to hospital for emergency treatment to drain his lung. At the time of writing, he was waiting to undergo further surgery linked to the gunshot wound.

Despite an initial reluctance to report the incident for fear of reprisals and further attacks, Anthony Carrero lodged a formal complaint with the Public Prosecutor’s Office, which launched an investigation. However, the Public Prosecutor’s Office has recently informed Amnesty International that it has requested that the case be dismissed. This would result in the investigation being closed without any of those responsible being brought to justice.

YANEULIZ VACA

Yaneuliz Vaca, a 20-year-old student nurse, told Amnesty International how she was shot and wounded by members of the security forces near her family home in La Fría municipality (Táchira State) on 26 February 2014.

Yaneuliz described how that day, the security forces started to throw tear-gas grenades and fire rubber bullets at the demonstrators to disperse them. Although she was suffering from the effects of tear gas, she tried to take cover behind a parked car to protect herself from the bullets. While she was crouched there, she was shot in the shoulder. The wound resulted in a haemothorax (the rupture caused blood to flow into the space between the thorax and the lung) and two broken ribs.

She was hospitalized for two weeks and almost a year later she was still in pain. The bullet wound still causes Yaneuliz pain. It has not been possible to remove the bullet, which remains lodged near her spine causing her intense back pain.
Yaneuliz gave her statement to representatives from the Public Prosecutor’s Office a few days after the incident. However, the Public Prosecutor’s Office has recently informed Amnesty International that it has requested that the case be dismissed. This would result in the investigation being closed without any of those responsible being brought to justice.

JOHN MICHAEL ORTIZ FERNÁNDEZ

On 21 April 2014, 16-year-old John Michael Ortiz Fernández was hit in the left eye by a rubber bullet, when he went out onto the balcony of his home in San Cristóbal (Táchira State). The bullet burned the retina and doctors believe he will not retain more than 30% of his sight in his left eye.

John Michael told Amnesty International that on that day protests broke out in the area where he lives. A member of the National Police reportedly fired tear-gas grenades and rubber pullets to break up the protest. John Michael went out onto the balcony when he heard shots. He described the circumstances in which the shot was fired: “I went out and as soon as the police officer saw me on the balcony, he raised his gun and fired immediately”. According to his family, despite the seriousness of the injuries, when they arrived at the medical centre, staff initially refused to treat him until representatives of the Public Prosecutor’s Office arrived.

John Michael and his family lodged a formal complaint with the Public Prosecutor’s Office. However, at the time of writing they had not been informed of any significant progress in the case and no one had been charged in connection with the incident.

TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT

Dozens of people were the victims of torture or other ill-treatment by members of the security forces during the protests. These violations were reported to have been inflicted on detainees at the time of arrest, during transfer to detention centres and while in detention. In some cases people were not taken to detention centres but simply held and then released a few hours later.

In the majority of cases, detainees were ill-treated in order to punish them for their participation, or alleged participation, in the protests; to coerce them into confessing to having committed crimes while they were taking part in the protests; or to obtain information in order to identify those who had taken part in or organized anti-government protests.

Victims were punched, kicked and beaten with blunt objects, such as helmets, by law enforcement officials, in some cases while the detainee was lying on the ground, restrained and offering no resistance to arrest. In a number of cases members of the security forces tortured detainees during interrogation by applying electric shocks, putting plastic bags over their heads until they almost asphyxiated and burning them with sharp objects.

Some detainees reported that they had been forced to stay on their knees or remain standing
for many hours in detention centres. Others reported that they were blindfolded or hooded while being transferred to the detention centre and while held there, sometimes for days.

Amnesty International has also documented cases of asphyxia where tear gas was used in enclosed spaces, such as patrol cars or police cells, and of sexual abuse and threats of rape against detainees. It has also received reports of death threats, including in cases where the detainees had been sprayed with petrol.18

The authorities have acknowledged that cases of torture and other ill-treatment did occur in the course of the protests. In its latest report, the Public Prosecutor’s Office stated that it has initiated 238 investigations into reports of human rights violations including two cases of torture and 184 cases of other ill-treatment.19 In addition, in meetings with Amnesty International in July 2014, the state Ombudspersons for Táchira and Mérida indicated that they had recorded cases of cruel, inhuman and degrading treatment: 19 cases in Mérida and 109 in Táchira, including three cases of torture.

The evidence obtained through interviews with victims, witnesses, lawyers, human rights defenders and medical personnel indicate that most of those who were tortured or otherwise ill-treated have not reported these violations. Some fear reprisals from the perpetrators or that they will be detained if they admit that they took part in the protests. Others who took part in the protests and are facing charges fear that making allegation of torture or other ill-treatment could have a negative impact on their court cases.

The majority of the victims interviewed by Amnesty International said that they had no confidence in the state institutions responsible for investigating such cases and for bringing those responsible to justice. The number of cases reported to the authorities, therefore, represents only a fraction of the real number of victims of these human rights violations.

Although the Public Prosecutor’s Office has taken a number of steps to ascertain who was responsible for the grave human rights violations committed during the protests, in the vast majority of cases of torture and other ill-treatment, one year after the violations occurred, those responsible have not been brought to justice. Indeed, they remain on active service and in some cases have harassed and intimidated victims. At the same time, a number of victims continue to face investigation and trial for their alleged participation in violent clashes during the protests.

During a visit to the country in July 2014, Amnesty International representatives were able to identify some of the obstacles faced by victims in getting access to justice. For example, victims, lawyers and human rights defenders stated that in some cases, despite the

18 In the cases documented by Amnesty International, the victims requested that their information not be made public because they feared reprisals or that making a statement about their treatment could have a negative impact on the outcome of investigations or court cases being brought against them for alleged offences committed while they were taking part in protests.

19 See the report of the Public Prosecutor’s Office, Informe Hechos de Violencia 2014, of 12 February 2015.
detainees’ visible signs of injury, public prosecutors did not initiate investigations or judges did not order such investigations.

The complaints received by lawyers and human rights defenders indicate that most of those detained were not given medical examinations when they arrived at detention centres. In some cases detainees did not get any medical attention until they appeared before a judge, at least 48 hours after their arrest, even though they had clearly visible wounds caused by pellets (perdigones) or rubber bullets and despite requests for medical attention for injuries caused by pellets or beatings inflicted at the time of arrest.

According to some reports, some doctors refused to produce complete medical reports recording that detainees bore signs of torture or other ill-treatment because their feared reprisals.

According to statements made, as well as in conversations with Amnesty International representatives, the Attorney General, Luisa Ortega, and members of the Attorney General’s Human Rights Unit (Fiscalía Especializada en Derechos Humanos) and the Ombudsperson’s Office, in many cases the progress and outcome of the prosecutor's investigation is determined by the forensic medical report. Dozens of detainees interviewed by Amnesty International said that forensic doctors often do not carry out a thorough examination aimed at revealing evidence of torture or ill-treatment that may not be visible, as required by international standards. This was the case even when the detainee showed visible signs pointing to the likelihood of ill-treatment.

Amnesty International was given access to a number of forensic medical reports and believes that in some cases these did not meet the minimum standards set out in the Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. For example, reports do not include information about the circumstances in which the examination took place or who was present when it was carried out. Nor do they give a detailed account of the detainee’s version of events or give the medical personnel’s view of the probable link between injuries and possible torture or other ill-treatment. In addition, there are concerns that medical reports are often not shared with the detainee or their lawyer.

In a number of cases, medical examinations of detainees were carried in the presence of the law enforcement officials responsible for their detention or of public prosecutors investigating them for alleged offences. Consequently many detainees stated that they felt intimidated or did not want to report the ill-treatment because they were afraid of reprisals by the law enforcement officials or because they feared that if they lodged a complaint they would be subjected to further ill-treated while in detention or denied conditional release or that making a report would have a negative impact on their court case.

In Amnesty International’s opinion, all these factors have helped create a situation in which the vast majority of the victims of torture and other ill-treatment during the 2014 protests

20 See the cases of people detained in Rubio, Táchira State, on pp.31-32 and the case of Ángel Cardozo on p.34.
have yet to receive any redress for violations of their human rights.

One year on, the government cannot continue to avoid fulfilling its obligation to condemn, prevent and punish torture and other ill-treatment. It must send a clear signal that it rejects and condemns all forms of torture and other ill-treatment and that all those responsible for such violations will be punished.

**DANIEL QUINTERO**

“First they punched me in the face, kicked me in the ribs and hit me with the butts of their guns on the forehead. I told them to leave me alone but they insulted me, saying ‘shut up you idiot, shut up you son of a bitch, get on the bike’ and they kept on hitting me.”

Daniel Quintero, a 21-year-old student, joined an anti-government demonstration on 21 February in Maracaibo, Zulia State. He described to Amnesty International how he was tortured and ill-treated after being stopped as he was on his way home by members of the National Guard. He was put in an armed vehicle where officers took turns in beating him. Daniel said that afterwards: “One of officers switched on the video on his mobile phone, handed it to a colleague, then got on top of me and made obscene sexual movements, they brushed my legs with their rifles and said to me ‘hey, he shaves his legs, they are going to rape you in Marite,’ and if they rape you, they will kill you as well’.”

Daniel Quintero was then taken to the National Guard’s Regional Base No. 3 (Comando Regional 3) in Maracaibo, where the commanding officer “told me they were going to burn me. And at his side he had a can of petrol, wires and matches… and he said they were going to burn me and that nobody would ask about me… The whole army unit, about 150 soldiers, surrounded me while he hit me nine times with his baton while talking to me and while I was still handcuffed.”

Daniel was then taken to the offices of the National Guard’s Anti-Extortion and Kidnapping Squad (Grupo Antiextorsión y Secuestro, GAES), also in Maracaibo. Daniel told Amnesty International, “they put [me] in a cell and ordered me to strip down to my underwear. In the cell, they handcuffed my left hand to a bar attached the wall at about foot height. They said I had to obey two rules: I must not fall asleep, because guards do not sleep and they wanted me to feel like they did, and that I had to keep my feet together, with my right hand touching my ankles, and my navel practically touching my thighs. I had to stay in this doubled-up position all night, otherwise they would come and start hitting me.”

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21. El Marite is a prison in Maracaibo State (el Centro de Arreitos y Detenciones Preventivas El Marite).
The Public Prosecutor’s Office recently informed Amnesty International that it has requested that the case be dismissed. This would result in the investigation into the Daniel’s complaint of torture being closed without any of those responsible being brought to justice. Daniel is facing trial on charges of incitement to commit a crime, blocking public roads and possession of illegal drugs.

JUAN MANUEL CARRASCO

“They put us in a foetal position, on our knees and hit us, they just hit us and hit us. A guard went out and said that God would not save us even if we prayed and that this was our last day. They pulled my underpants down and stuck something up my behind. And they continued to hit us, hitting us until they were tired out”.

Juan Manuel Carrasco, aged 21, and two friends were detained by the National Guard on the night of 13 February 2014 near to where a protest was taking place in Valencia, Carabobo State. Juan Manuel Carrasco was sexually assaulted, threatened with death and repeatedly beaten while in detention.

He was detained for three days, along with 10 others, in the National Guard’s Urban Security Detachment (Destacamento de Seguridad Urbana) facility in Valencia. While detained he was punched, kicked and beaten with guns and helmets, intimidated with dogs, threatened with death and raped with an object. Juan Manuel Carrasco told Amnesty International that some guards even tried to intervene on his behalf when they saw the beating he was taking. “One of the guards said ‘don’t hit the lad with the yellow shirt (which was me) anymore or you’ll kill him”. They kicked me here and I spat out a mouthful of blood. They kept hitting us”.

During his detention, Juan Manuel Carrasco was visited by staff from the Public Prosecutor’s Office. He did not tell them anything for fear of reprisals, as the visit took place in the presence of members of the National Guard. Attorney General Luisa Ortega told Amnesty International that Public Prosecutor’s Office was investigating the complaint of ill-treatment and torture, including rape.

The Public Prosecutor’s Office recently informed Amnesty International that non-custodial measures had been imposed on three National Guard officials pending trial. Legal proceedings against Juan Manuel Carrasco on charges of causing violent damage to property, obstructing a public highway, inciting a minor to commit a crime, public intimidation and conspiracy to commit a crime have stalled.
CARLOS VILLAMIZAR
Carlos Eduardo Villamizar Guerrero, a 20-year-old student, was knocked to the ground, beaten and detained by members of the National Police on 6 October 2014, in San Cristóbal municipality, Táchira State. According to his statement, he was with a group of students on a public road. According to the police and the Public Prosecutor’s Office, he was blocking a road and armed with a mortar (rocket launcher) when he was detained. Carlos Villamizar denies the allegation. The only evidence against him in the files of the Public Prosecutor’s Office consists of the statements of the law enforcement officers who detained him.

Carlos Villamizar’s family told Amnesty International that a few days after the incident, a member of the National Police on a motorcycle had knocked Carlos Villamizar down while he was standing with a group of students in the street. While he was on the ground, other officers kicked and beat him with their helmets. They also tried to hit him with a metal rod, but he managed to protect himself with his hands. Carlos Villamizar was also beaten while he was being taken to the National Police centre, where he was detained for five days.

Carlos Villamizar’s injuries were clearly visible and recorded in the report of the medical forensic examination that was carried out on the day he was detained (“injuries and abrasions on the left arm, face and both hands”), to which Amnesty International has had access. Despite this, the judge ordered that he be held in pre-trial detention until 8 October and failed to order an investigation into possible torture or other ill-treatment. Carlos Villamizar was too afraid to make a complaint when he appeared before the judge.

On 11 October, Carlos Villamizar lost consciousness while held in the police station and had to be taken to hospital where doctors recorded multiple injuries to his head and spinal column (multiple injuries, cranial trauma, trauma to the spinal cord and lower motor neurone damage).

At the time of writing, Carlos Villamizar was under house arrest awaiting trial on charges of public incitement, illegally making incendiary or explosive substances or devices and obstructing a public highway and means of transport. He was still receiving treatment for his injuries.

Carlos Villamizar’s mother lodged a formal complaint about the ill-treatment of her son with the Attorney General’s Fundamental Rights Office in Táchira on 10 October 2014. According to the information received by Amnesty International, the case is currently under investigation.
GLORIA TOBÓN

Gloria Tobón was detained, along with her daughter, during a joint National Guard and army operation in Rubio, Táchira State, on 19 March 2014. Two days later, Gloria Tobón appeared before a judge and was released. However, while she was in detention, she was subjected to torture and other ill-treatment.

Gloria Tobón told Amnesty International that on the day she and her daughter were detained, she was trying to go to the state capital to buy food. When they arrived at the bus station, they saw that a protest was taking place. Officials advised them not to travel, so they decided to sit down with the people who were protesting. Security force officials grabbed her by the neck and dragged her along the road for several metres before forcing her into a van. While she was being taken to the detention centre, she was beaten and threatened with electric shocks to force her to say who the leaders and financial backers of the protests were.

While she was detained, she was kept blindfolded and she was doused with water and then electric shocks were applied to her arms, breasts and genitals. Gloria Tobón described how while she was in detention, they threatened to kill her: “They taunted us. They told us that they were going to take us up into the mountains and kill us and chop us up into pieces. They said they would dig a grave and bury us where no one would ever find us.”

At least 21 other people were detained during the operation in Rubio in which Gloria was apprehended. Amnesty International was able to speak to four of those detained. All said that they too had been subjected to torture and other ill-treatment. However, most of those interviewed asked that their names not be made public for fear of reprisals.

In statements made to Amnesty International about their detention and time in custody, the detainees described how they had repeatedly been kicked; beaten, including using a metal bar, a tear-gas canister and firearms; insulted and threatened with death and sexual violence; and, in some cases, given electric shocks while they were handcuffed. They said that all the detainees, both men and women, were held in the same room and were kept blindfolded for several hours. Although they couldn’t see what was happening around them, they could hear how those near them were being beaten. They were asked to name the leaders of the protest and reveal who was financing them. In at least one case, a detainee was reportedly forced to watch while another detainee was beaten.

The following day, all the detainees were given a forensic medical examination. Amnesty International has been given access to the reports of the examinations. Although key information required to meet international standards is missing, the reports do establish that 12 of the 23 detainees had sustained some form of injury.

Gloria Tobón made a formal complaint to the Public Prosecutor’s Office about her treatment. She was subsequently threatened and insulted in the street by the security force officials who
had detained her and who remained on active service. Amnesty International has no information about the outcome of any investigations that may have been initiated into the threats and intimidated.

The Public Prosecutor’s Office recently informed Amnesty International that it has requested that the case be dismissed. This would result in the investigation into the Gloria Tobón’s complaint of torture and other ill-treatment being closed without any of those responsible being brought to justice.

MARVINIA JIMÉNEZ

“I don’t think I should be beaten up just for recording a demonstration.”

Marvinia Jiménez, aged 36, described to Amnesty International how she was beaten by a member of the National Guard in Valencia, Carabobo State. On 24 February 2014, Marvinia Jiménez was taking photos with her mobile phone of National Guard armoured vehicles breaking up a demonstration near her home. She was surrounded by several officers, one of whom attacked her, hit her with her helmet and pulled her hair. Marvinia Jiménez told Amnesty International she was still in pain several days later.

She was detained for several days. During that time she was not told the reason for her detention nor was she allowed access to her family or lawyer. It was only when she was brought before a judge that she was able to see her family. “That’s when I was able to speak to my brother, who told me he’d been looking for me for days. I realized I had not been alone and that my family was trying to find out where I was. That’s when I could start breathing... The worst thing for me was to see my seven-year-old son at the hearing, seeing me like that and having to explain to him that I had been arrested and beaten up”.

The Attorney General told Amnesty International that she had requested the detention of the member of the National Guard who ill-treated Marvinia Jiménez. However, nearly a year after the incident, the arrest warrant against the officer believed to be responsible for the attack had yet to be served and she was believed to remain on active service in National Guard facilities in Valencia, Carabobo State.

Marvinia Jiménez made formal complaints about the intimidation she has suffered. For example, she reported to the Public Prosecutor’s Office that she was being followed in her neighbourhood, near her son’s school and around her place of work by unidentified individuals. As a result, on 12 March 2014, the supervising court (tribunal de control) ordered that Marvinia Jiménez should receive protection and charged the Valencia Municipal Police with implementing the order. However, protective measures have not been properly put in place. For example, two weeks after the protection order was granted, the Municipal Police argued that they did not have enough officers to comply with the order. At the time of writing...
Marvinia was not receiving any form of police protection.

**WUADDY MORENO DUQUE**

Wuaddy Moreno Duque – a 21-year-old peasant farmer living in Cerro Palenque, Jáuregui municipality, Táchira State – was tortured because the authorities suspected him of taking part in a protest.

Wuaddy Moreno told Amnesty International that on 27 February 2014 he had gone out with two friends to go to a birthday party. On the way back home, his motorcycle ran out of petrol in La Grita, Táchira State. Fifteen National Guard officers spotted them and pulled up beside them.

The officers accused them of participating in the anti-government protests that had taken place. They took Wuaddy Moreno and his two friends to the public square in front of the army headquarters La Grita. There in this public space, the military officers tortured them to try to get them to admit that they had participated in the protests and used firearms, and to implicate the Mayor of La Grita in the financing of the protests.

Wuaddy Moreno described what happened next: “That was when they burned all my papers... all those I had. They... took a screwdriver out the bag where I kept the tools for my motorcycle... they started to heat the screwdriver and to burn me with it. They said that I had been on the demonstrations. We told them that I hadn’t. And they burned me. They beat up the friends that were with me, but I was the only one they burned.” They were kept in the square for two hours, where Wuaddy Moreno was beaten with batons. He was then taken to the National Guard headquarters and held there until the following morning, when he was released without charge.

Wuaddy lodged a formal complaint with the Public Prosecutor’s Office. However, he and his family have been the targets of intimidation on two occasions by members of the National Guard, including the officer alleged to have carried out the torture; he remains on active service. Officers have approached the family demanding that they withdraw the complaint.

Amnesty International understands that the Attorney General of Táchira State is investigating the case. However it has not yet had access to the findings of the investigation.
RAFAEL ÁNGEL CARDOZO MALDONADO

Rafael Ángel Cardozo Maldonado, a 20-year-old man with mental disabilities, was detained during an army operation in the city of San Cristóbal, Táchira State, as he was making his way home on 17 March 2014. He was detained for five days and spent at least one day in incommunicado detention in a military barracks.

Ángel and his lawyer spoke to Amnesty International in July 2014 in Táchira. They described how the military repeatedly denied that it was holding Ángel and refused to allow access to him. They said that from the moment he was arrested, Ángel was punched and beaten in the face with helmets, deprived of sleep and threatened with death. According to witnesses, he was forced to wear a crown made of rope and nails (known as “miguelitos”) on his head. His family is concerned that the forensic medical report of 18 March, to which Amnesty International has had access, only notes that the detainee had “lesions to the skin on his scalp… of approximately 2cm, no other physical trauma or injuries, no clinical problems noted during the examination”. However, his injuries were sufficiently visible for the judge to order that an investigation be initiated into torture and other cruel, inhuman and degrading treatment.

Prosecutors charged Ángel and other detainees with incitement and conspiracy to commit a crime. The charges against Ángel were dismissed following a medical report that confirmed Ángel suffered from “mental impairment … a cognitive disability that should be evident to any person with a sufficient level of education, given that people suffering from this condition have severe difficulties in understanding”.

At the time of writing, Amnesty International had no information on the progress of the prosecutor’s investigation into the allegations the torture and other ill-treatment of Ángel during detention.

MOISÉS GUÁNCHEZ

Moisés Guánche was arbitrarily detained and ill-treated by members of the National Guard in Carrizal municipality, Miranda State, as he leaving work on 5 March 2014. He stated that he was beaten and injured with rubber bullets while he was detained. There had been a confrontation between the National Guard and demonstrators who were erecting barricades near to the shopping centre where he worked, part of the pro and anti-government protests that took place between February and July 2014.

Moisés Guánche was released without charge two days later, on 7 March 2014. The court that ordered his release also ordered an investigation into his detention and ill-treatment. However, to date no one has been brought to justice for his terrible ordeal. The injuries he sustained were so serious that he had had to undergo surgery twice.

Since his release Moisés Guánche has been harassed on several occasions by members of the National Guard with apparent intention of intimidating him. He has received a number of
official summonses to appear at the local headquarters of the National Guard purportedly in connection with an “administrative investigation”, despite having been released without charge. In addition, according to reports, National Guard officers went to the place where he studies and questioned one of his teachers about him, took photographs of him and inspected his car.

Amnesty International is concerned that all this has occurred since his unconditional release and after an investigation was initiated into his arbitrary detention and ill-treatment.

ARBITRARY DETENTION
According to recent statements made by the Attorney General, 3,351 people were apprehended during the 2014 protests.22 Statements from detainees, their relatives and lawyers and from human rights defenders who monitored the protests and the treatment of detainees in detention centres indicate that many people were arbitrarily detained and that they were denied access to a lawyer during the 48 hours they were held prior to appearing before a judge and to medical attention.23 Dozens were victims of torture and other ill-treatment.

Although most of those who were detained were released, according to the latest information published by the Attorney General, one year later, 1,402 people are facing charges for offences allegedly committed during the protest, such as blocking a public road, wounding, damage to property and conspiracy to commit a crime. While the majority of those charged were granted conditional release pending trial, to date, according to the recent statements of the Attorney General, 27 people remain in detention.24

After reviewing the evidence presented by the Public Prosecution Service on a number of the 27 cases of those who remain in detention, Amnesty International was able to confirm that some detainees had been arbitrarily detained. Some had been detained although they had

22 See the report of the Public Prosecution Service, Informe Hechos de Violencia 2014, of 12 February 2015.

23 The UN Working Group on Arbitrary Detention has defined arbitrary detention as deprivation of liberty that is contrary to provisions laid down the relevant international human rights instruments. More specifically, the Working Group has defined three categories of arbitrary detention:

1. When it is clearly impossible to invoke any legal basis justifying the deprivation of liberty (as when a person is kept in detention after the completion of their sentence or despite an amnesty law applicable to them);

2. When the deprivation of liberty results from the exercise of the rights or freedoms guaranteed in the Universal Declaration of Human Rights (UDHR) or the International Covenant on Civil and Political Rights.

3. When a person is deprived of their liberty after a trial that did not comply with international norms relating to the right to a fair trial, spelled out in the UDHR and other relevant international instruments.

24 See the report of the Public Prosecution Service, Informe Hechos de Violencia 2014, of 12 February 2015
committed no offence and without an arrest warrant had been issued. In the five cases examined by Amnesty International, detainees are facing trial despite the absence of credible evidence to support the charges against them. The organization is gravely concerned that these detainees may have been prosecuted because they held opinions which were critical of the authorities or contrary to government interests. The lack of credible and admissible evidence against them means there is a serious risk that their right to due process will be undermined. Amnesty International considers that their detention is arbitrary and is concerned that it appears to be political motivated.

Amnesty International is also concerned that others among the 27 people who continue to be deprived of their liberty may also be facing trial for crimes connected with the protests without any credible evidence linking them to the crimes of which they are accused.

**MARCELO CROVATO**

Marcelo Crovato, a lawyer working with the organization the Venezuelan Penal Forum, has been detained on 22 April 2014. He was apprehended when he arrived at his clients’ home in order to represent them during a police raid of their house in Chacao municipality in the capital, Caracas. The police were looking for evidence linked to support and funding for the anti-government protests that had been taking place since the beginning of February 2014.

The Public Prosecutor’s Office has accused Marcelo Crovato of endangering safety on a public road, incitement to break the law, public intimidation and conspiracy to commit a crime. These offences carry sentences of at least 15 years’ imprisonment.

Amnesty International has been given access to the indictment issued by the Public Prosecutor’s Office. The main basis for the charges is the testimony of an unidentified police officer who has accused Marcelo Crovato of taking part in a meeting on 10 April 2014 at which people allegedly responsible for organizing and building barricades and blocking the roads in Chacao were also present. These barricades, known as “guarimbas” (where protesters block roads with burning rubbish, forcing local residents to stay indoors) were a feature of the anti-government protests between February and July 2014. Marcelo Crovato denied being present in this meeting. However, to date, the authorities have not produced any credible evidence to support the charges against him or implicating him in criminal acts. Amnesty International, therefore, called on the authorities to release him.

25 See the case of Marcelo Crovato, below.
In the 10 months that Marcelo Crovato was arbitrarily detained, his family and lawyer told Amnesty International of their concern about the negative effects on his state of health of his imprisonment in the Capital Region Central Prison, Yare III, especially following his attempted suicide in December 2014.

The medical report of a psychiatric assessment carried out by a team from the Public Prosecution Service itself in October 2014, to which Amnesty International had access, stated that: “His emotional instability and the appearance of thoughts of death indicate that there is a serious risk of suicide linked to current living conditions and circumstances.” Despite this report, the authorities took no preventive measures for several months to safeguard Marcelo Crovato’s life.

At a press conference on 10 February 2015, the Public Prosecutor’s Office announced that it had requested a review of the decision to hold Marcelo Crovato in pre-trial detention. On 26 February 2015, the judge in charge of the case ordered that he be placed under house arrest.

CHRISTIAN HOLDACK

Christian Holdack has been detained since his arrest on 12 February 2014 near an anti-government demonstration in Caracas. His lawyer told Amnesty International that Christian Holdack was filming the protest when he was detained by the national investigative police (Cuerpo de Investigaciones Científicas, Penales y Criminalísticas, CICPC). Christian has stated that he was beaten, insulted and forced to kneel for protracted periods at the time of his arrest and while he was in the custody of the CICPC for two days before being before a court.

Christian Holdack has been accused of incitement to commit a crime, arson, damage to property and conspiracy to commit a crime, charges which carry a maximum sentence of eight years’ imprisonment. The Public Prosecutor’s Office indictment, to which Amnesty International has had access, contains no credible evidence to support the charges against him. Christian Holdack’s case is part of the same judicial proceedings as Leopoldo López, leader of the opposition Popular Will (Voluntad Popular) party, who has been arbitrarily detained since 18 February 2014 for politically motivated reasons. Three other people reportedly charged in the same case have been granted bail pending the outcome of the trial.

Christian Holdack’s lawyers are gravely concerned about the impact on his health of his continued detention. According to a psychological assessment carried out by the Public Prosecutor’s Office forensic doctor on 2 April 2014 Christian Holdack: “exhibited symptoms of post-traumatic stress disorder as a result of his experiences”. In August 2014, another official medical examination found that he was suffering from a mixture of anxiety and depression and recommended that Christian Holdack be removed from his stressful environment.

On the basis of these reports, the Ombudsperson’s Office wrote to the courts on 17
September 2014 asking that they reconsider the decision to impose pre-trial detention because: “as a citizen deprived of his liberty, Christian Holdack is unable to access or complete the course of treatment prescribed for him (psychotherapy). This is having a serious effect on his mental health and could compromise his physical health and integrity.” Despite this, the court has on at least two occasions rejected similar requests by the defence and Christian Holdack remains in detention at the Municipal Police Station in Chacao.

ROSMIT MANTILLA

Rosmit Mantilla, a lesbian, gay, bisexual transgender and intersex (LGBTI) rights activist and member of the opposition Popular Will (Voluntad Popular) party, has been detained for nearly a year by the National Intelligence Service (Servicio Bolivariano de Inteligencia Nacional, SEBIN). On 30 January 2015, after nine months of procedural delays during which the committal hearing was postponed 11 times, and despite the lack of credible evidence, the investigating judge ordered that Rosmit Mantilla should face trial.

On 2 May 2014, Rosmit Mantilla was detained at his home in the capital, Caracas, by SEBIN officers. The basis of the detention order was a statement by an unidentified individual alleging that Rosmit Mantilla had received funds from a group of businessmen in order to finance the anti-government protests taking place in Caracas at the time. SEBIN officials claim that during a search of Rosmit Mantilla’s home on the day he was detained they found leaflets urging people to join the anti-government protests and envelopes containing money. Both Rosmit Mantilla and his family deny these allegations. According to their statements, the officials went into his bedroom, put money in some envelopes on which they wrote the names of the two squares where protesters, mostly students, had set up camp as a symbol of protest against the government.

The Public Prosecutor’s Office has accused Rosmit Mantilla of public incitement and intimidation, obstructing a public highway, arson involving public and private buildings, violent damage and conspiracy to commit a crime. These offences carry a penalty of at least 18 years’ imprisonment.

Amnesty International has been given access to the charges brought by the Public Prosecutor’s Office. The main basis for the charges is the testimony of an unidentified individual and the evidence that SEBIN officers claim to have discovered in Rosmit Mantilla’s home. Amnesty International believes that to date the Public Prosecutor’s Office has failed to present credible evidence linking Rosmit Mantilla to the crimes of which he is accused. For example, according to the Public Prosecutor’s Office’s report, the authorities have based the charges of incitement, arson involving public and private buildings and violent damage on the fact that Rosmit Mantilla, according to SEBIN’s version of events, was in possession of leaflets calling for anti-government student protests.
LEOPOLDO LÓPEZ

The authorities must release Leopoldo López, leader of the opposition Popular Will (Voluntad Popular) party, immediately and implement the recommendation of the UN Working Group on Arbitrary Detention issued in August 2014. Leopoldo López was detained by the National Guard during an anti-government protest in a square in east Caracas called by his party on 18 February 2014. He has remained in detention ever since. On 19 February, he appeared before a court, which found that there was no evidence to support the serious crimes listed in the detention order, such as terrorism, homicide and causing serious injury. However it stated that there was evidence to support other charges, such as arson, damage to property and conspiracy to commit a crime. These crimes carry a penalty of at least 13 years’ imprisonment. The judge ordered that he be remanded in custody pending the outcome of an investigation by the Public Prosecutor’s Office.

Four months later, on 4 July 2014, the judge determined the results of the investigation by the Public Prosecutor’s Office admissible and found that there was sufficient evidence to bring Leopoldo López to trial. In addition, he refused to grant bail pending trial. Leopoldo López has now spent more than a year in pre-trial detention in CENAPROMIL (Centro Nacional de Procesados Militares), a military prison in Los Teques, on the outskirts of the capital, Caracas.

Amnesty International is concerned that Leopoldo López’s detention appears to be politically motivated. The warrant for his detention was issued the day after the President of the National Assembly, Diosdado Cabello, and the Minister of Foreign Affairs, Elías Jaua Milano, publicly accused him of being responsible for the violence that broke out during the anti-government protests. In addition, President Nicolás Maduro called for Leopoldo López’s imprisonment the day after his arrest. The fact that the government has made such public allegations without credible evidence to support them, does not send a clear message that the impartiality and independence of the judiciary will be respected. It also casts doubt as to whether the presumption of innocence, crucial to a fair trial, is being respected in the case Leopoldo López. The case calls into question the independence and impartiality of the judicial system – a cornerstone of the rule of law – and as a result the casts doubt on the impartiality of trial proceedings from the outset.

On 26 August 2014, the UN Working Group on Arbitrary Detention stated that it considered the detention of Leopoldo López to be arbitrary. In an opinion adopted at its seventieth session the Working Group notes that this is not the first time that Leopoldo López has faced

legal proceedings and “suffered retaliations”. The Working Group concludes that: The arrest of Mr. López on February 18 2014, having been executed without order from a judicial authority; having been extended for a period of more than six months; having exposed Mr. López to isolation; not having granted Mr. López provisional freedom subject to bail if necessary; and having imposed obstacles to the defense lawyers, including the censorship of their communications with the detainee, affects the right to a fair and impartial trial, the presumption of innocence, and due process.”

**DANIEL CEBALLOS**

Daniel Ceballos, Mayor of San Cristóbal (Táchira State) and a member of the opposition Popular Will (Voluntad Popular) party, was detained on 19 March 2014 by members of the National Intelligence Service (Servicio Bolivariano de Inteligencia Nacional, SEBIN). At the time of writing, he remained in detention in CENAPROMIL (Centro Nacional de Procesados Militares), a military prison in city of Los Teques, more than 800km from San Cristóbal.

Daniel Ceballos has been the subject of two legal proceedings. On 25 March 2014, the Constitutional Chamber of the Supreme Court of Justice sentenced him to 12 months' imprisonment and removal from the post of Mayor for contempt of court for failing to comply with a ruling by the Chamber. On 12 March 2014, the Constitutional Chamber had issued a ruling ordering a number of mayors belonging to the opposition to guarantee security and other rights, such as the right to freedom of movement, in their municipalities during the protests that began in February 2014. This ruling was extended to include Daniel Ceballos only on 17 March 2014.

In addition, Daniel Ceballos is currently on trial charged with civil rebellion and conspiracy to commit a crime. The charges relate to his alleged involvement in the anti-government protests that shook the country between February and July 2014. At the time of writing the trial was continuing; if convicted he could face at least eight years in prison.

On 28 August 2014, the UN Working Group on Arbitrary Detention stated that it considered Daniel Ceballos to have been arbitrarily detained and called on the government to release him immediately. The opinion of the UN Working Group, adopted at its 70th session, concludes that: “the detention of Mayor Daniel Omar Ceballos was arbitrary and motivated by a desire to prevent him exercising his right to freedom of opinion and expression and his right to political participation in his capacity as an opposition Mayor”. It added that: “Mr Ceballos was arbitrarily detained because the Venezuelan Bolivarian Republic had failed to abide by international standards of judicial impartiality.”

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REPRISALS AGAINST VICTIMS, THEIR FAMILIES AND LAWYERS AND HUMAN RIGHTS DEFENDERS FOR REPORTING HUMAN RIGHTS VIOLATIONS

Amnesty International interviewed dozens of victims, relatives, lawyers and human rights defenders during the six months when the protests were taking place and in the months that followed. The organization was able to ascertain that the vast majority victims and their families report a lack of confidence in their ability to get justice and a fear of possible reprisals if they make a formal complaint. In a number of cases, the victims live in the same neighbourhoods as the suspected perpetrators, who remain on active services, and have been pressurized and harassed. Even when the victims or their relatives have been given protection, it has not always been implemented effectively.

The continuous attacks, smear and intimidation directed against human rights defenders are a cause of particular concern to Amnesty International. These have continued and in some cases intensified as a result of the 2014 protests and the work of human rights defenders in defending the rights of the hundreds of victims of torture and other ill-treatment, excessive use of force and arbitrary detentions.

To date, the authorities have failed to take action to bring those responsible to justice and to guarantee that defenders of human rights can carry out their work without fear of reprisals. In addition, the authorities, at the highest level have been involved in smearing human rights defenders for their legitimate work.

Recognizing those who defend human rights are human rights defenders is nothing to do with conferring a special status on them, rather it is about adopting concrete protection measures. States have the same obligation to protect and respect the human rights of defenders as they do to protect and respect the human rights of everyone in their jurisdiction, as the UN Declaration on Human Rights Defenders states.

However, states also have an obligation to create and implement special mechanisms to protect defenders from abuses inflicted on them for exercising their rights. Firstly, those who defend human rights must be recognized as human rights defenders and their work as an import part of creating the rule of law. Secondly, the authorities must take specific measures to address the risks the face because of their human rights work or arising from it in order to ensure that they provide the necessary conditions for defenders to carry out their work. States also have an obligation to ensure that they undertake effective investigations and bring to justice those responsible for abuses.

Humberto Prado of the Venezuelan Prisons Observatory has been repeatedly intimidated and threatened. In February 2014, in the context of the demonstrations that began that month, the Minister of the Interior accused Humberto Prado of being involved in violence during the protests and of conspiring to destabilize the government and the prisons. In October 2014,
the President of the National Assembly read out on his weekly television programme information allegedly sent by a member of the public about Humberto Prado’s visit to Panama at the end of September, stating that he had met “strange people” there.\(^{31}\) In fact, Humberto had participated in a Regional Forum on the Optional Protocol to the Convention against Torture organized by Association for the Prevention of Torture. In the same programme, viewers were asked to “remember that he has close links with prison mafias and was always behind public order and prison disturbances”.\(^{32}\)

In November 2014, the President of the National Assembly once again criticized Humberto Prado and Carlos Correa, a member of the human rights organization Public Space, for their trip to Europe after they appeared before the Committee against Torture while it was reviewing Venezuela’s human rights record.\(^{33}\)

Amnesty International has also received reports of the harassment of lawyers representing victims of human rights violations. The security of lawyers and their right to fulfil their professional functions without intimidation, hindrance or harassment are fundamental principles designed to ensure the protection of the rights of those detained to a defence and a fair trial and the right of victims of human rights violations to justice.

The UN Basic Principles on the Role of Lawyers state that the authorities have an obligation to ensure that lawyers are able to fulfil all their professional functions without intimidation, hindrance, harassment or improper interference and to ensure that lawyers are adequately safeguarded when their security is threatened as a result of discharging their functions.\(^{34}\)

**Alfredo Romero, along with other member of the lawyers’ network Penal Forum, have frequently been disparaged by on his weekly television programme.** Alfred Romero has represented hundreds of people detained during the protests, many of whom were victims of arbitrary detention, torture and other ill-treatment.\(^{35}\)

\(^{31}\) Statements made on the programme *Con el Mazo Dando*, broadcast on 9 October 2014 by the television channel, Venezolana de Televisión, available at [http://www.youtube.com/watch?v=WbeAm2s-pO](http://www.youtube.com/watch?v=WbeAm2s-pO), last visited 14 October 2014.

\(^{32}\) Statements made on the programme *Con el Mazo Dando*, broadcast on 9 October 2014 by the television channel, Venezolana de Televisión, available at [http://www.youtube.com/watch?v=WbeAm2s-pO](http://www.youtube.com/watch?v=WbeAm2s-pO), last visited 14 October 2014.

\(^{33}\) Statements made on the programme “*Con el Mazo Dando*” broadcast on 6 November 2014 by the television channel, Venezolana de Televisión, available at [https://www.youtube.com/watch?v=CGY03WFhG4](https://www.youtube.com/watch?v=CGY03WFhG4), last visited 18 March 2015.


\(^{35}\) Statements made on the programme “*Con el Mazo Dando*” broadcast 12 May 2014 by the television channel, Venezolana de Televisión that: Alfred Romero of Penal Forum – one of the ones who go around beating their breasts, talking about peace and who knows what else. You are actively conspiring for a
Omar Ernesto Silva Martínez, a private defence lawyer who has worked with Penal Forum, made a formal complaint on 14 October 2014 after he received several threatening calls and being followed by people who, judging by the cars they were using and the weapons they had, he believes were members of the intelligence services. This surveillance reportedly started after Omar Silva represented a Venezuelan citizen extradited from Colombia and charged with rebellion in Venezuela.

In February 2015, Alfredo Romero told Amnesty International that the National Intelligence Service (Servicio Bolivariano de Inteligencia Nacional, SEBIN) had requested that the Public Prosecutor’s Office intercept his communications and those of members of his family in connection with an investigation into charges of conspiracy and association to commit a crime linked to an alleged plan to destabilize the government of President Nicolás Maduro. Amnesty International is concerned that the same institution that is accused of grave human rights violations in cases in which Penal Forum is providing legal representation is seeking access to the communications of the Director of Penal Forum. This could undermine the right of detainees and those facing charges to a legal defence and confidential communications and consultations with their legal representatives and also jeopardize the right to justice of victims of human rights violations.36

Human rights defenders and lawyers representing victims of human rights violations have repeatedly expressed concern to Amnesty International that in a society as polarized as that in Venezuela these continuing attacks and smear campaigns on the part of the authorities at the highest level could incite government sympathizers, including pro-government armed groups, to carry out physical attacks on them.

Amnesty International considers that, to date, the authorities have failed to fulfil their obligation to ensure the protection of human rights defenders and victims of human rights violations who lodge complaints, their families and legal representatives.

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36 Principle 22 of the UN Basic Principles on the Role of Lawyers, adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990 (A/CONF.144/28/Rev) states: “Governments shall recognize and respect that all communications and consultations between lawyers and their clients within their professional relationship are confidential.”
CONCLUSIONS AND RECOMMENDATIONS

More than a year since the pro and anti-government protests that shook Venezuela between February and July 2014, the authorities have yet to ensure that all those responsible for the human rights violations committed in the context of the protests are brought to justice. The relatives of the 43 people who lost their lives and the hundreds of victims of torture and other cruel, inhuman or degrading treatment and those arbitrarily detained are still waiting for justice. This clearly shows a lack of political will on the part of the Venezuelan authorities to guarantee truth, justice and reparations and to ensure that these grave human rights violations are not repeated.

The government has also failed to state clearly that excessive use of force by the security forces will not be tolerated and that state agents must in all circumstances comply with international and national laws and standards on the progressive, proportionate and selective use of force.

Indeed, far from showing a clear commitment to respect the right to peaceful assembly the government issued a Ministry of Defence Resolution allowing all sections of the armed forces to be deployed in public order operations, including the policing of public protests; the criteria for such deployments remain unclear. The resolution also authorizes the use of firearms in such operations.

In response to the serious political, economic and social problems facing the country, the authorities have continued to seek to silence critics rather than seeking consensual solutions and responding to the legitimate demands of the population, within the framework of the rule of law and establishing full respect for human rights.

Until the authorities send a clear and unequivocal signal at the highest level condemning human rights violations, bring to justice those response and take decisive steps to strengthen the rule of law and ensure the human rights of all, irrespective of their political opinions, the distressing events of a year ago risk becoming a sad everyday reality in the country. It is crucial that state institutions who have a fundamental role in the protection and promotion of human rights, such as the Public Prosecutor’s Office, the justice system, the Ombudsperson and the police, are strengthened and given the necessary resources to ensure that they are able to carry out their work effectively and with the necessary independence and impartiality.

In this context, Amnesty International urges the Venezuelan authorities to:

Guarantee the rights of all victims of human rights violations in the context of the protests to truth, justice and reparations.

- Undertake independent, comprehensive and prompt investigations into all cases of human rights violations and violent incidents resulting in loss of life or injury in the context of the protests, bring those responsible to justice, and ensure that those
convicted receive a punishment appropriate to the seriousness of the crime.

- Ensure that those who suffered violations of their human rights and who did not receive justice in the national courts have access, without risk of reprisals, to the Inter-American human rights system as well as to UN bodies responsible for the protection of human rights.

- Ensure that all victims and their relatives received reparations and rehabilitation.

- Implement all provisions of the Special Law to Prevent and Punish Torture and Other Cruel, Inhuman or Degrading Treatment.

- Implement international standards on the protection from torture, such as the Manual on Effective Investigation and Documentation of Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment (Istanbul Protocol); ensure, among other things, that forensic doctors use forms amended to bring them into line with Annex IV of the Istanbul Protocol and include the interpretation of findings; and ensure that medical examinations are comprehensive and carried out in accordance with the principles of confidentiality and privacy.

**Ensure the right to peaceful assembly**

- Make public the obligation of the forces of law and order to respect fully the right to peaceful assembly and to comply in all circumstances with international and national standards on the progressive, selective and proportionate use of force.

- Ensure that the security forces comply fully and at all times with the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials.

- Strengthen the accountability of all law enforcement agencies and diligently review training and procedures for the policing of protests in order to ensure that the security forces comply fully with their obligation to maintain public order while at all times respecting the human rights of all.

- Train all members of agencies involved in public order operations, including the policing of protests, in order to enable them to comply fully with international standards on the use of force and international human rights law and, in particular with their responsibilities under the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and ensure that all training manuals and use of equipment comply full with these standards.

- Refrain from using the armed forces in public order operations and, if in exceptional circumstances this does occur, the authorities must ensure that the armed forces act solely in support of and under the control of the civilian authorities and are subject to the same training, accountability mechanisms and sanctions as any other section of the security forces.

**Arms control**

- Continue existing efforts to ensure effective arms control among the civilian population.
Implement programmes to mark and trace ammunition and control police firearms.

Disarm illegal groups of armed civilians and ensure that members of such groups who have committed crimes and brought to justice.

**Arbitrary detention and due process**

- Release those arbitrarily detained immediately.

- Ensure that all those in pre-trial detention and those conditionally released pending trial have access to a fair trial within a reasonable time.

**Intimidation and harassment of victims of human rights violations, their relatives and lawyers and of human rights defenders**

- Ensure victims of human rights violations, their relatives and lawyers receive full protection, in accordance with their wishes, and undertake comprehensive investigations into their complaints.

- Ensure that lawyers are able to fulfil their professional role without intimidation, hindrance, harassment or undue interference.

- Ensure all human rights defenders and lawyers receive full protection, especially those who have been the targets of threats, harassments or attack because they reported human rights or provided services to support victims and initiate comprehensive investigations into their complaints.

- Explicitly recognize the legitimacy of the work of human rights defenders. This must include public declarations recognizing their contribution to the promotion of human rights.
VENEZUELA: THE FACE OF IMPUNITY
ONE YEAR SINCE THE PROTESTS, VICTIMS ARE STILL WAITING FOR JUSTICE

One year after the pro and anti-government protests that swept Venezuela between February and July 2014, leaving 43 people dead, hundreds injured, including police officers, and dozens tortured and ill-treated, the victims and their families are still waiting for justice.

In this report, Amnesty International highlights cases of those who died in which members of the security forces, or pro-government armed groups acting with their acquiescence, were implicated; as well as cases of torture and other ill-treatment and arbitrary detention.

At the time of writing, all those responsible for human rights violations had not been brought to justice, victims and their relatives had yet to receive reparations and those arbitrarily detained had not been released, showing a clear lack of political will on the part of the Venezuelan authorities to ensure that these grave human rights violations are not repeated. Of particular concern is that people continue to be imprisoned for their political views or for holding opinions contrary to government interests.

Amnesty International concludes that the manifest lack of commitment on the part of the authorities to end the impunity that surrounds the serious violations committed a year ago as well as to protect human rights without discrimination and irrespective of political affiliation, creates a serious risk that the tragic events documented in this report will be repeated, especially given the context of increasing social discontent.

Amnesty International urges the Venezuelan authorities to ensure the right to peaceful assembly and the right of all victims of human rights violations to justice and appropriate reparations.

All those arbitrarily detained must be released without delay and the intimidation and harassment of those who report abuses — whether victims, relatives, lawyers or human rights defenders — must end.
VENEZUELA: THE FACES OF IMPUNITY
ONE YEAR SINCE THE PROTESTS, VICTIMS ARE STILL WAITING FOR JUSTICE
Tab #21

Human Rights Situation of Lesbian, Gays, Bisexual, Trans and Intersex persons in Venezuela

May 2015
## INDEX

<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>EXECUTIVE SUMMARY</td>
<td>3</td>
</tr>
<tr>
<td>INTRODUCTION</td>
<td>5</td>
</tr>
<tr>
<td>I. RIGHT TO NON DISCRIMINATION BASED ON SEXUAL ORIENTATION, GENDER IDENTITY AND EXPRESSION, MEASURES TO MAKE IT EFFECTIVE AND ACCESS TO RECOURSES FOR ITS DEFENSE (ARTICLE 2)</td>
<td>7</td>
</tr>
<tr>
<td>II. TORTURE, CRUEL, INHUMAN AND DEGRADING TREATMENT OR PUNISHMENT OF LGBTI PERSONS (ARTICLES 7, 9 and 10)</td>
<td>14</td>
</tr>
<tr>
<td>III. RIGHT TO RECOGNITION BEFORE THE LAW OF TRANS AND INTERSEX PERSONS (ARTICLE 16)</td>
<td>23</td>
</tr>
<tr>
<td>IV. FREEDOM OF EXPRESSION, APOLOGY TO NATIONAL HATRED BASED ON HOMOPHOBIA AND TRANSPHOBIA, AND RIGHT TO FREEDOM OF ASSEMBLY AND ASSOCIATION OF LGBTI PERSONS (ARTICLES 19, 20 and 21)</td>
<td>26</td>
</tr>
<tr>
<td>V. LEGAL PROTECTION OF SAME SEX COUPLES AND FAMILIES (ARTICLE 23.1)</td>
<td>33</td>
</tr>
<tr>
<td>ANNEX</td>
<td>38</td>
</tr>
</tbody>
</table>
EXECUTIVE SUMMARY

This report was prepared by the LGBTI Network of Venezuela for consideration by the United Nations Committee on Human Rights, during the fourth periodic report of the Venezuelan State in the 114th Period of Sessions, on compliance with the International Covenant on Civil and Political Rights (ICCPR). The LGBT Network is a coalition of organizations dedicated to the defense of human rights of lesbian, gay, bisexual, trans and intersex people (LGBTI) in Venezuela; and it is currently made up of five organizations: Acción Ciudadana contra el Sida (ACCSI), Grupo Ases de Venezuela, Fundación Reflejos de Venezuela, Unión Afirmativa (UNAF) and Venezuela Diversa.

With reference to the implementation and enforcement of the ICCPR by the Venezuelan State, the Report of the LGBTI Network provides information about rights to non-discrimination based on sexual orientation, gender identity and expression, measures to make them effective and access to resources for their defense (Article 2); situations of torture, punishment, cruel, inhuman and degrading treatment, and arbitrary arrests of LGBTI people (Articles 7, 9 and 10); the right to recognition before the law of trans and intersex persons (Article 16); the right to freedom of expression, apology to national hatred based on homophobia and transphobia, and the right to peaceful assembly of LGBTI persons (Articles 19, 20 and 21); and the right to protection of same sex couples and families (Article 23.1).

Venezuela has not made significant progress in the recognition and protection of civil and political rights of lesbian, gay, bisexual, trans and intersex (LGBTI) people, who constantly live situations of discrimination, threats and attacks against their moral, psychological or physical integrity, and still lack legal protection which makes them defenseless citizens in an atmosphere of alarming growth of homophobia and transphobia, as a result of the absence of laws, policies and institutions that guarantee equality in the exercise of fundamental rights and freedoms. While it is recognizable that the Venezuelan government has made efforts in the protection of historically discriminated groups such as women, indigenous people, children and adolescents, young, African descendants, and even the animals; LGBTI people are not among priority populations, as evidenced by the information provided in this report.

As such, under the provisions of the Covenant and the Venezuelan Constitution, and by virtue of the existence of favorable circumstances to change the conditions that stop LGBTI people from fully exercising their rights, we request the Committee to recommend the State to adopt all the necessary measures within a reasonable time to make progress on legislative reforms and policies to ensure real equality of civil and political rights of lesbian, gay, bisexual, trans and intersex without excuses.
founded on terms of culture, tradition and religion, or political preferences. Likewise, the Venezuelan government should revise its penal laws in order to consider the violations of civil and political rights on grounds of sexual orientation, gender identity and expression as hate crimes, and implement diligent procedures to ensure effective protection of LGBTI people as well as the investigation, punish those responsible and adequate reparation for victims. For this purpose, it is given that the State claims to have created a Special Ombudsman with National Jurisdiction in the area of human rights of LGBTI people, we request the Committee to urge the State to put in full operation and to act diligently, together with the Public Ministry in cases of violation of rights on grounds of sexual orientation, gender identity and expression.

We also request the Committee to recommend the Venezuelan State to instruct all security forces, national, regional and local, including police officers and military about standards and procedures to ensure effective protection of the human rights of LGBTI people, their partners and family; establishing specific penalties that they would be incurred in if infringed; and incorporate in its information systems detailed data on complaints of torture and other cruel, inhuman or degrading treatment, arbitrary detentions and violations of the right to life and personal integrity based on sexual orientation, gender identity and expression; and investigated and resolved cases and penalties imposed in order to make a proper monitoring and tracking of cases.

In order to ensure full equality for LGBTI people in the exercise of their civil and political rights, we request the Committee to urge the Venezuelan government to implement changes to internal rules to allow the changing of names and references to sex in the records of legal identity for transgender and intersex people; to ensure respect from officials -regardless of their rank- towards LGBTI people and ensure strict compliance with the prohibition of any opinion, speeches or messages that may incite hatred, violence or stigmatization against them because of sexual orientation, gender identity and expression; to implement policies and communication and educational programs aimed at promoting equality and non-discrimination of LGBTI people; and to carry out the necessary legal reforms to ensure the protection of LGBTI couples, their families and their children; especially with regard to legal recognition of unions, the rights of spouses and the legal status of children and adolescents of same-sex families.
INTRODUCTION

This report was prepared by the LGBTI Network of Venezuela for consideration by the United Nations Committee on Human Rights, during the Fourth Periodic Report of the Venezuelan State in the 114th Period of Sessions, on compliance with the International Covenant on Civil and Political Rights (ICCPR). The LGBT Network is a coalition of organizations dedicated to the defense of human rights of lesbian, gay, bisexual, trans and intersex (LGBTI) people in Venezuela; and it is currently made up of five organizations: Acción Ciudadana contra el Sida (ACCSI), Grupo Ases de Venezuela, Fundación Reflejos de Venezuela, Unión Afirmativa (UNAF) and Venezuela Diversa.

In the preparation of the Report a review of the ICCPR and the fourth report submitted by the Venezuelan State to the Committee in 2012 and the document that includes their responses to the List of Issues Test sent in 2015 was made. It is important to mention that the Report of the State did not provide any information about civil and political rights of LGBTI people in Venezuela and they only sent incomplete information and restricted to the actions of the Ombudsman, in the response document to the List of issues presented to the Committee -paragraphs 18 to 24.

Due to the limited information provided by the State -which is a sign of the little relevance that human rights of LGBTI people in the agenda of legislative and executive priorities - this report provides information on 9 rights of the ICCPR, accompanied by 8 recommendations to advance on real and effective change of the conditions that prevent LGBTI people to fully exercise their civil and political rights in Venezuela. These recommendations, however, have a favorable background, since organizations from the LGBTI community in the country have been persistent in pursuing a series of legislative proposals and policies that so far have not been fulfilled due to the rejection, failure and inaction of public authorities responsible for their implementation.

The report is divided into five (5) parts. The first includes the right to non-discrimination based on sexual orientation, gender identity and expression, measures to make them effective and access to resources for their defense (Article 2). The second refers to situations of torture, punishment, cruel, inhuman and degrading treatment, and arbitrary arrests of LGBTI people (Articles 7, 9 and 10). The third deals with the right to the legal status of trans and intersex persons (Article 16). The fourth refers to the right to freedom of expression, apology to national hatred of homophobia and transphobia, and the right to peaceful assembly of LGBTI persons (Articles 19, 20 and 21); and fifth, the right to protection of same sex couples and families (Article 23.1).
I. RIGHT TO NON DISCRIMINATION BASED ON SEXUAL ORIENTATION, GENDER IDENTITY AND EXPRESSION, MEASURES TO MAKE IT EFFECTIVE AND ACCESS TO RECOURSES FOR ITS DEFENSE (ARTICLE 2)

1. Venezuela has signed and ratified all the resolutions, agreements and treaties on both the UN and the OAS, especially the Sixth resolution AG / RES. 2807 (XLIII-O / 13) Human Rights, Sexual Orientation and Gender Identity and Expression, and two conventions such as the Inter-American Convention against Racism, Racial Discrimination and Related forms of Intolerance, as well as the Inter-American Convention against All Forms of Discrimination and Intolerance. Similarly, Venezuela made commitments with regional organizations such as MERCOSUR, CELAC and ALBA to implement the provisions of international law in order to ensure the protection of human rights of LGBTI people; including the Yogyakarta Principles. However, these laws are not implemented.

2. The Constitution of the Bolivarian Republic of Venezuela (CRBV) recognizes the principle of non-discrimination of human rights¹, prohibiting any act or omission that might nullify or impair their enjoyment and inalienable, indivisible and interdependent exercise, and equality before the law for reasons of race, sex, creed or social status, religious belief and other. Although it is not explicitly mentioned the non-discrimination on grounds of sexual orientation, it was clarified in Resolution No. 190 of the Constitutional Chamber of the Supreme Tribunal of Justice (TSJ) in 2008, in response to a request for interpretation of that Article, by the Civil Association Unión Afirmativa de Venezuela: "...the Constitutional Chamber of the Supreme Court, administering justice on behalf of the Republic by authority of law, interpreted in terms that were exposed, Article 21 the Constitution, in the sense that it is not possible within the Venezuelan constitutional framework, individual discrimination on grounds of sexual orientation of the person, and declare that there is no collision whatsoever, including as regards the terms of this request for interpretation, between Article 21 and Article 77 of the Constitution of 1999 "² (emphasis added).

¹ Article 19. The State shall guarantee to every person, in accordance with the progressive principle and without discrimination, the enjoyment and inalienable, indivisible and interdependent exercise of human rights.
3. In addition, to correct situations of discrimination, the CRBV establishes that the State has the duty to take **positive measures** to develop legal and administrative conditions to ensure real and effective equality before the law³, and the **progressive nature** of human rights, which can extend their guarantees under treaties, covenants and conventions on human rights signed and ratified by Venezuela, as it is favorable to the universal exercise⁴. But, so far, Venezuela has failed to **materialize a legislative initiative to change the legal status of LGBTI people**. In 2009, a draft of a Law on Gender Equality and Equity was introduced to the National Assembly (AN), which was approved in first reading and amended, without approval, by deleting all references to sexual orientation and gender identity. In 2011, the LGBTI Network participated in several initiatives to reform the Civil Registration Act and the Organic Code of Criminal Procedure, to recognize the right to identity and LGBTI rights partner, they were not accepted. The Law on Health Subsystem of the Social Security System it is expressly excluded the public coverage for change of sex; Organic Law for the Protection of Children and Adolescents, the adoption of children and adolescents was limited to heterosexual couples; and, the Education Law, in the original project all references on education against discrimination based on sexual orientation and gender identity were deleted.


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³ Article 21.2. The law shall guarantee legal and administrative conditions for equality before the law to be real and effective; adopt positive measures in favor of persons or groups who may be discriminated against, marginalized or vulnerable; especially protect those who for some of the conditions specified above, are in obviously vulnerable circumstances and punish any abuse or ill-treatment perpetrated against them.

⁴ Article 23. Treaties, covenants and conventions on human rights signed and ratified by Venezuela, have constitutional status and take precedence in domestic law, insofar as they contain provisions concerning the enjoyment and exercise more favorable than those established in this Constitution and the laws of the Republic, and are of immediate and direct application by the courts and other public bodies.

⁵ The Popular Power is designed to ensure the life and welfare of the people, by creating mechanisms for their social and spiritual development, ensuring equal conditions for everyone freely develop their personality, direct their destination, enjoy human rights and attain the supreme social happiness; without discrimination on grounds of ethnic, religious background, social status, sex, sexual orientation, gender identity and expression, language, political opinion, national origin, age, economic status, disability or any other personal, legal or social circumstance which has the effect of nullifying or impairing the recognition, enjoyment or exercise of human rights and constitutional guarantees.

⁶ The Superintendency of Institutions from the Banking Sector, in order to make more effective and transparent the provision of banking services in the exercise of jurisdiction should (6) " ensure that banking institutions conduct their activities under the constitutional principle of participatory democracy, without discrimination on conditions of ethnic origin, religion, social status, gender, gender identity and expression, language..."
Police (2010)\(^7\); Article 5 of the Law for the Regulation and Control of Housing Leasing (2011)\(^8\); and Article 21 of the Labor Law and the Workers (2012)\(^9\). These laws lack mechanisms to implement real and effective strategies to prevent discrimination and inequality, so that, in reality, they are empty, harmless and useless laws.

5. Likewise, Venezuela has no policies, plans, programs and services designed to meet the needs and demands of LGBTI people. Specificity or equitable distribution of resources for the implementation of public policies do not exist for the LGBTI community who are invisible in official statistics, which results in exclusion from the exercise of basic rights from the perspective of their sexual orientation, gender identity or expression. This contributes to unequal treatment, including inhuman and degrading treatment.

6. The National Statistics Institute (INE) gave no results on LGBTI people that should have emerged from the last National Census of Population and Housing, conducted in 2011. Based on a request by the Civil Association Unión Afirmativa (UNAF) before this body, the "rule of inconsistency" that prevented the census registration of same-sex couples in the population census was removed. The INE commissioned UNAF with the work of informing the LGBTI and population in general, while the Institute would be responsible for training their personnel in this area. In October 2012, the President of INE, Elias Eljuri, reported that based on preliminary figures, there are between 4000 and 6000 same-sex couples in the country\(^{10}\). In August 2014, these figures disappeared from Census 2011 final report submitted and approved by the AN. The response from INE officials to UNAF was that the final data were much lower and inconsistent and, therefore, were insufficient to be included in the official figures.

7. Executive agencies have frequently alleged the existence of cultural barriers to justify the limited progress in the recognition and protection of the rights of LGBTI people. In 2011, in response to requests made by activist organizations to the competent authorities to allow renaming of trans and intersex people, the Rector of the National Electoral Council (CNE), Tibisay Lucena, told

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\(^7\) “eradicate the conduct or situations of discrimination against women and gender-diverse people and ensure timely and comprehensive care to victims of discrimination and gender-based violence in order to create a culture of equality in the body of Bolivarian National Police and other state and municipal ...”

\(^8\) Prohibit discrimination and provide protection to those who are especially vulnerable, or vulnerable to discrimination by: sexual orientation, gender identity, ethnicity, political and religious affiliation, economic status, marital status, age, social class, health and fitness, among others.

\(^9\) “They are contrary to the principles of this Act, discriminatory practices. Any distinction, exclusion, preference or restriction on access and in working conditions is prohibited, based on reasons of race, sex, age, marital status, union membership, religion, political opinion, nationality, sexual orientation, disability or origin social, impeding the right to work are contrary to the constitutional principles ...”

\(^{10}\) STOPVIH. (9-08-2012) INE: In Venezuela, there are between 4 and 6,000 homosexual couples. Available at: http://www.stopvih.org/noticias/ine-en-venezuela-hay-entre-4-mil-y-6-mil-parejas-homosexuales/ Consulted on 21-10-2014
representatives of the Organization Divas of Venezuela: "That has been and remains difficult to permeate the minds of people influenced by religious and cultural precepts in this issue"\textsuperscript{11} (emphasis added). In the 154 hearing of the Commission in March 2015, where the LGBTI Network presented a report on the situation of human rights of LGBTI people, the state representative, Maria Alejandra Diaz said to the petitioners from the civil society and the Commissioners "We have much to learn, because the issue is a cultural issue and a cultural issue is not resolved in 10 years or 15 years. Sometimes the cultural issue is resolved generationally, it's not an excuse, it's plain and simple reality"\textsuperscript{12} (emphasis added).

8. In March 2015, Freddy Bernal, deputy of the ruling party and by then President of the Police Reform Commission from Ministry of Popular Power for Interior Relations and Justice, during a television program at Globovisión and when asked by the journalist -can a homosexual be a police officer? – he said: "... yes, they can be a police officer, provided they do not publicly reveal their sexual appetite because, imagine, a police officer who then wants to wear a pink shirt or paint his lips. That, at least in Venezuela, that does not go with our culture. And, I ratify, I have nothing against “sexual diversity”. Everyone has the right to their sexual self-determination and there are men and women, sexual diversity, well qualified, intellectuals, university professors, but in terms of the National Armed Forces, it is my opinion, and on the Bolivarian National Police, there could be a person who is gay and that is the right of everyone to, but they could not say so publicly, because it goes against the structure formation of what should be a police officer"\textsuperscript{13} (emphasis added).

9. The \textbf{Ombudsman (DyP)} is the government agency responsible for monitoring human rights in Venezuela. But, contrary to the assertions by the State in paragraphs 18-14 of its response to the List of Issues, DyP has done little action on LGBTI matters without accomplishments or significant impacts to ensure the human rights of LGBTI people in the country. Gabriela Ramirez, former Ombudsman, publicly announced twice, first in 2010 and then in 2013\textsuperscript{14}, the creation of a Special Ombudsman for the attention of LGBTI people, but it has not yet been created or updated the reasons for this situation, even though the State stated in paragraph 23 of its response to the List of Issues "DdP created a Special Ombudsman with National Jurisdiction in the area of human rights of LGBTI people ...".

\textsuperscript{11} Dr. Tibisay Lucena meets with DIVAS DE VZLA. Kenya Azuaje. Available at: https://divasdevenezuela.wordpress.com/2011/11/03/dra-tibisay-lucena-se-reune-con-divas-de-vzla/
\textsuperscript{12} Venezuela: Situation of human rights of LGBTI people in Venezuela https://www.youtube.com/watch?v=4H_8Vvx9xoY
\textsuperscript{13} Freddy Bernal on tattooed and homosexuals people in the police. Available at: https://www.youtube.com/watch?v=v53krAWjmoM
\textsuperscript{14} Diario Últimas Noticias. (29-08-2013). Ramirez announces the creation of Special Ombudsman for LGBTI community. Available at: http://www.ultimasnoticias.com.ve/noticias/chevere/sexo/ramirez-anuncia-creacion-de-defensoria-especial-de.aspx Consulted on 21-10-2014.
10. Likewise, although it is recognized the work undertaken by DyP with civil society organizations for the approval of the "Law for the Promotion and Protection of the Right to Equality of People with HIV/AIDS and their Families" before the National Assembly (AN), in the original draft submitted by NGOs and DyP it was mentioned throughout the legal instrument to protect people because of their "sexual orientation" and the necessary protection to people for their "gender identity and expression." However, the text adopted by the National Assembly eliminated all mention of these two aspects, except for one provision that defines them as "vulnerable groups" and called them "communities of different sex." This reiterates the rejection of the authorities to keep all mention that refers to LGBTI people.

11. Moreover, although in Venezuela sexual orientation, gender identity and gender expression are not crimes, no progress has been made to investigate and prosecute acts of violence against lesbian, gay, bisexual, trans and/or intersex people, or against those perceived as such. There are no effective mechanisms to properly process complaints and civil, administrative, criminal penalties or disciplinary actions, when it comes to violence linked to discrimination based on sexual orientation, gender identity and expression. In addition, the agencies responsible for processing such serious situations, have shown in different forms, verbal, by omission and inaction, ignorance about the relevant procedure for cases of violence linked to sexual diversity, bringing as a result, the total abandonment of LGBTI victims and the violations to their rights are not punished.

12. The Public Ministry is the organ responsible for ensuring respect for constitutional rights and guarantees in legal proceedings, as well as treaties, conventions and international agreements signed by the Republic. But this institution lacks answers in court proceedings that ensure respect for the rights and guarantees enshrined in the CRBV. Repair information given to LGBTI victims of violence (for example, compensation, rehabilitation, compensation, guarantees of non-repetition, satisfaction) is unknown.


16 Final version was approved on August 14th, 2014 by the National Assembly. Available at: http://www.acassi.org.ve/acssi/wp-content/uploads/Ley-VIHSIDA-versi%C3%B3n-aprobada-por-la-Asamblea-Nacional-el-14-agosto-2014.pdf

17 Video of the audience requested by the LGBTI Network to the Inter-American Commission on the Situation of LGBTI people in Venezuela. March, 2015. Available at: http://www.oas.org/OASPage/videosasf/2011/10/102811_PV_V3_11am.wmv
13. On February 22, 2011, the LGBTI Network of Venezuela, supported by a massive march, presented a proposal of a legislative agenda\textsuperscript{18} to the National Assembly with the needs of LGBTI people\textsuperscript{19}, the content is presented below:

a) To establish clear and precise provisions, including specific security organs and severe sanctions in case of discrimination based on sexual orientation or gender identity in all human activities, including without limitation: education, health, social security, housing, sports, labor and others, as well as the definition of hate crimes as a generic aggravating of all crimes. All in accordance with the principle of non-discrimination set out in the judgment of the Constitutional Chamber of the Supreme Court of February 28, 2008 (case Unión Afirmativa de Venezuela) and Article 4 of the Organic Law of People's Power.

b) To recognize the economic rights of same-sex couples in conditions of equality and non-discrimination with opposite-sex couples, as it has been established by the Office of the High Commissioner of the UN on Human Rights in different resolutions, and in accordance with the voluntary declarations of protection of persons based on sexual orientation, through the amendment of three articles of the Law on Civil Registry, following criteria widely accepted in law or jurisprudence guidelines of the region.

c) To recognize the right of persons to their gender identity-psycho-social self-perceived through a prompt, clear and not pathologizing and private that preserves equality of opportunity through administrative procedure that reserves the previous identity, as it happens in the case of adoption, along the lines of the voluntary statements of protection of human rights of transsexuals, transgender and intersex assumed by Venezuela, in accordance with the principles of the protection of human rights under declarations, recommendations and opinions derived from international bodies to protect human rights. This includes the change of name and sex on all the documentation of the individual without genital reassignment. The lack of legal identity for trans people condemns them to exclusion, marginalization and the near impossibility of access to health, education, employment, housing and other basic benefits with equality and non-discrimination. To overcome this situation, it is necessary the reform of two articles of the Law on Civil Registry as described below, following the criteria embodied in laws or judicial decisions widely accepted in the region.

\textsuperscript{18} Proposal of LGBTI Legislative Agenda. Available at: https://es.scribd.com/doc/49292745/Propuesta-legislativa-de-la-Red-LGBTI-de-Venezuela-a-la-Asamblea-Nacional-para-el-periodo-2011-2016

14. On May 17, 2011, the social movements that defend the human rights of LGBTI people held a rally in the vicinity of the National Assembly to reiterate the request for a declaration of May 17th as a "National Day against Homophobia and Transphobia". On September 15, 2011, representatives of the LGBTI Network of Venezuela met with the President of the National Assembly, Deputy Soto Rojas, to request the legislature to answer demands made in February of the same year.20 "You need to educate society, we listen but will not take any legal action in this regard" was the response of the deputy. On September 19, 2011, after the failure of the meeting with deputy Rojas, the LGBTI Network delivered a letter demanding attention to the above requests made in February, to Cilia Flores, who served as the chairman of the Committee on Domestic Policy of the National Assembly, and who is the current First Lady of the Republic of Venezuela. No response was obtained.

15. On January 31, 2014, the NGO Venezuela Igualitaria along with other NGOs, social movements and LGBTI groups of all political preferences handed to the NA a project of the Equal Civil Marriage21 that contemplates the partial amendment of the Civil Code, backed by over 21,000 signatures of citizens, and more than 47 civil society organizations of human rights. On July 17, 2014 Vice President of the Domestic Policy Committee of the National Assembly, José Javier Morales appointed deputy Modesto Ruiz as Chairman of the Subcommittee to discuss the Draft for the Equal Marriage Act. The media informed: "Deputy Ruiz estimated that, by the end of July, the NA will prepare an agenda of forums and discussion groups to enable the different groups to discuss the essence of this struggle and be able to address the issue with the necessary knowledge to make decisions". Organizations that consign Project of Equal Marriage Act, do not know if these activities were carried out.

RECOMMENDATIONS

16. Considering that discrimination violates human rights recognized in the Covenant and the Venezuelan Constitution, and by virtue of the existence of initiatives in favor of its elimination, the State must take all appropriate measures within a reasonable period to make progress on legislative reforms to ensure a real and effective equality of civil and political rights of lesbian, gay, bisexual, trans and intersex, with no excuses based on culture, tradition and religion, or political preferences.

20 Available at: https://es-la.facebook.com/permalink.php?story_fbid=251668844877932&id=228229400520760
21 Available at: https://es.scribd.com/doc/194454348/Proyecto-de-Ley-de-Matrimonio-Civil-Igualitario-Venezuela
17. In order to advance on the judicial protection and enforcement of justice when rights recognized in the Covenant are violated on grounds of sexual orientation, gender identity and expression, the State must revise their criminal laws in order to consider these violations as hate crimes, and implement as soon as possible diligent and appropriate procedures to ensure effective protection of LGBTI people as well as the research, to punish those responsible and appropriate redress to the victims.

18. In terms of providing assurance in bodies and instruments for protection and defense of the rights recognized in the Covenant for LGBTI people, the State must set in operation the Special Ombudsman with National Jurisdiction in the area of Human Rights of LGBTI persons of the Ombudsman, as the State claims to have created; and to establish mechanisms for effective coordination between the Special Ombudsman and the Public Ministry, in order to act diligently in investigating cases of violation of these rights on grounds of sexual orientation, gender identity and expression.

II. TORTURE, CRUEL, INHUMAN AND DEGRADING TREATMENT OR PUNISHMENT OF LGBTI PERSONS (ARTICLES 7, 9 and 10)

19. Lesbian, gay, bisexual, trans and intersex people have suffered and are suffering discrimination and impunity, that exposes them to torture, punishment, cruel, inhuman and degrading treatment, including murder and acts of physical and verbal aggression, blackmail, extortion, persecution and arbitrary arrests, especially committed by state security bodies. LGBTI people are in a total state of helplessness, abandonment and absolutely unprotected by the Venezuelan State. There is also a high degree of impunity in relation to the cases reported by LGBTI people about discrimination, aggression, violence, abuse, torture and killings based on sexual orientation, gender identity and expression. These situations are motivated by inaction and failure of public institutions in the administration of justice against the cases related to sexual diversity.

20. In 2003, the Organization Acción Ciudadana contra el SIDA (ACCSI) published the “Report on Impunity in the Violation of Human Rights of the LGBT community.” This report shows the results of a study conducted in Caracas on a universe of 76 people surveyed, broken down into 63% gay men, lesbian 14%, 9% bisexual and 13% transgender. 68% of the total sample said they had

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22 [www.accsi.org.ve](http://www.accsi.org.ve)
negative experiences with the police related to their sexual orientation; 100% of transgender people said they had negative interactions with the police, and 36% of lesbians reported a lower occurrence of these experiences. The team of ACCSI said: "It is overwhelming that such high incidence of negative experiences (including ‘rattle’ or extortion, burglary, threats and detention, physical and verbal aggression and rape, among others), we find very low levels of reporting: the entire survey population, only 13% reported negative experiences. Among transgender and lesbians we cannot find any complaint". (emphasis added).

21. The same report notes that discrimination, prejudice, hatred and contempt towards LGBTI sexual orientation or identity; shame or low self-esteem of the victims and their families; false beliefs regarding the condition LGBTI as an offense; the false belief regarding the LGBTI condition as harmful to society; the criminalization of LGBTI environment; the daily violence and aggression, particularly in the case of transgender, are due to a desensitization to violations such as sexual harassment, rattling and detention: "... for impunity of human rights violations against LGBT people to operate and to fester in, there must be a highly discriminatory society, that looks at the members of that community with prejudice and hate, people whose sexual orientation and identity are considered harmful to society, which in the psychological mechanisms of impunity justify crimes and aggression. Usually, these crimes and human rights violations are committed in the belief that a service to society is being done. A mechanism for impunity such as the abuse of authority, very common in the LGBT community, also perpetuates this belief" (emphasis added).

22. In 2008, ACCSI published the second "Report on Homophobia, Violence and Impunity against the Community of Lesbians, Gays, Transsexuals and Bisexuals in the Bolivarian Republic of Venezuela"25, which showed the results of a study conducted in Caracas, Mérida and Maracaibo, cities where surveys were applied to a universe of 742 people of the LGBTI community, distributed as follows: 465 (63%) gay men, 107 (14%) bisexual, 103 (14%) lesbians and 67 (9%) transgender. 50% of respondents claimed to have had negative experiences with the police: verbal aggression (36%), rattle (20%), physical assault (12%) and imprisonment (11%). As the report states: "The transgender population remains the most affected by police and private violence, and the situation of impunity; it appears as the population with the highest percentage of complaints

24 According to Pablo Fernández Blanco, it is a term that is defined in Venezuela in the manner of bribe or extort to the population applied by police officers or soldiers, removing people’s money or items for reasons of any kind and affecting ordinary citizens and in vulnerable conditions. This practice, while suffered in many countries, in Venezuela it is considered a way that makes it a cultural characteristic in policing and military linked to public security. See: http://www.eluniversal.com/opinion/131202/matraqueo-y-reforma-policial
compared to gays and lesbians." It also stated: "It has kept the distrust of the justice system, fear and shame as the main reasons for impunity. Lesbians are the ones who denounce the least violations and abuses (92%), followed by Gay (90%), Bisexuals (87%) and Trans (82%) "(emphasis added).

23. About the results of complaints, the Report indicates: "The percentage of cases resolved on the total reported is 15%. Of the total respondents, 61% reported having been assaulted by individuals. 79% of these people did not report them. "Among the conclusions of this report it can also be noted: "The LGBT community in Venezuela is still highly stigmatized and socially discriminated. This is because phobias to sexual diversity and transgenderism as well as prejudices and animosities generated from the churches, political parties, trade unions, media, education system, health sector, unions and communities in general, what often includes the same affected people and their families "(emphasis added).

24. In 2012, the NGO Diverlex published the final report of the survey "Situation of discrimination and violence against LGBT people in Venezuela"26. A total of 237 LGBT people surveyed in various regions of the country, 219 (92%) respondents have been victims of discrimination and violence on the condition of LGBTI; 199 (82%) say that once were verbally attacked for being LGBT; 117 (73%) said they had thought about emigrating because of discrimination, though still living in Venezuela. 47 of those surveyed said they did not report the assault because of distrust in the justice system, shame, lack of information about possibilities of complaint and fear of reprisals, among others. As for discrimination in school or university for the past five years, 111 (46.84%) people said they believe discrimination remained the same, whereas 131 (55.27%) stated that the acceptance of the community had increased.

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25. In 2013, ACCSI publishes "Venezuela 2013 report on hate crimes based on sexual orientation, gender identity and gender expression" to the results of a newspapers study in 13 federal entities, in the country where hatred crimes occurred based on sexual orientation, gender identity and gender expression between January 2009 and August 2013, broken down into 46 murders (beheadings, bullet wounds, burns, cast into the void, coils, choking, beating with blunt objects) and 53 aggressions of all kinds (torture, cruel, inhuman and degrading treatment, arbitrary arrests, verbal, physical and psychological abuse, threats, police onslaught, abuse of power, etc.) due to sexual orientation, gender identity and gender expression of the victims. In the media and reports of civil society working with the community of LGBTI, considered within the study, it was found that the victims are disrespected in their human dignity product of lesbophobia, homophobia, biphobia and transphobia that prevails in Venezuelan society, with the added problem that many LGBTI people are helpless and unprotected by public institutions. A clear demonstration was the increase of 55.56% of murders motivated by sexual orientation, gender identity and gender expression between 2012 and 2013. See Table 1.

**TABLE 1:**

<table>
<thead>
<tr>
<th>Year</th>
<th>No. of murders of LGBTTTI per year</th>
<th>Variation in comparison with the previous year</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>No.</td>
<td>%</td>
</tr>
<tr>
<td>2009</td>
<td>5</td>
<td></td>
</tr>
<tr>
<td>2010</td>
<td>5</td>
<td>0</td>
</tr>
<tr>
<td>2011</td>
<td>13</td>
<td>8</td>
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<tr>
<td>2012</td>
<td>9</td>
<td>-4</td>
</tr>
<tr>
<td>2013 (January to August)</td>
<td>14</td>
<td>5</td>
</tr>
<tr>
<td>Total</td>
<td>46</td>
<td></td>
</tr>
</tbody>
</table>

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28 Distrito Capital, Miranda, Zulia, Aragua, Mérida, Carabobo, Bolívar, Barinas, Lara, Vargas, Nueva Esparta, Táchira and Monagas.

29 Each of these cases (killings, attacks and threats) are available in the annexes of the report, including links which are published in the consulted information sources.

30 The International Lesbian, Gay, Bisexual, Trans and Intersex Association (ILGA), defines hate crimes as “all that crime or attempted crime motivated by prejudice toward and against the victim on grounds of color, sex, sexual orientation, gender, gender identity, origin, ethnicity, marital status, birth, disability or mental, social status, religion, age, religious or political beliefs. "The Office for Human Rights and Democracy believes that hate crime is a term that can be used for those violent behavior against persons and / or their properties, which are presented in different variations: from strong words, teasing, jokes, threats, vandalism, hate, assault, theft, beating up to the murder. For “Letra S” these crimes communicate a menacing message to the rest of the members of those groups, communities or minorities.
26. Most of those killed were young people between 17-30 years of age (56.5%), followed by adults aged between 31 and 49 years (24%). 19.5% of the cases reviewed by news sources said the ages of the victims. In turn, 34.8% of those killed were men, 15.2% (7) trans and 2.2% (1) women. 47.8% of news sources did not identify the sex of the victims. Sources indicate that transgender 33 (71.7%) accounted for the highest number of LGBTI people killed, followed by 10 people male (21.7%) and female (2.2%). Most of the reviews (91.3%) did not report the sexual orientation of those killed; however, some indicated that 3 people were gay (6.5%) and lesbian (2.2%). Also, the type of job, 18 persons were sex workers (39.1%) ranked first of those killed, following 6 persons who worked in the area of beauty services (13.0%). Among the people killed were: a trans activist, a defender of human rights of LGBTI, two lenders, a watchman and an artist. Fifteen of the cases reported by news sources did not indicate the trade or occupation of the murdered victims.

27. This report highlighted the "disposable character" of the bodies of the LGBTI people killed as a common element of the cases reported by the consulted information sources. In this regard, avenues, streets and highways are the places where most of the killings of LGBTI people occurred (76%) or where their bodies were found. There were other places as areas to dump waste (garbage of an invaded building, blackwater river and scrub) and less traveled places (cemetery, construction sites and lonely places). In these murders, the anger, hatred and contempt of the victimizers against people with sexual orientation, gender identity and gender expression, other than heterosexual are evident. 54.3% of LGBTI people killed appeared with bullet holes; 10.9% of the murders were by stabbing. It was also found that 6.5% of the cases reviewed by news sources did not indicate how the bodies were. The rest of the killings of LGBTI presented a wide variety: beheadings, torture, drowning, and beatings with objects, among others. See Table 2.

**TABLE 2:**

*State of the bodies of LGBTI persons murdered*

<table>
<thead>
<tr>
<th></th>
<th>Frequence</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Gunshots</td>
<td>25</td>
<td>54.3</td>
</tr>
<tr>
<td>Stabbing</td>
<td>5</td>
<td>10.9</td>
</tr>
<tr>
<td>Beating, stabbing, gunshots</td>
<td>3</td>
<td>6.5</td>
</tr>
<tr>
<td>Not specified</td>
<td>3</td>
<td>6.5</td>
</tr>
<tr>
<td>Torture (blows to the face, scalp partial loss, etc.)</td>
<td>2</td>
<td>4.3</td>
</tr>
<tr>
<td>Drown in a Blackwater river “Río Guaire de Caracas”</td>
<td>1</td>
<td>2.2</td>
</tr>
<tr>
<td>Launched into space from a floor 9 and crashed into the concrete</td>
<td>1</td>
<td>2.2</td>
</tr>
<tr>
<td>Mowed down or thrown from a running car</td>
<td>1</td>
<td>2.2</td>
</tr>
<tr>
<td>Beheaded and stabbed</td>
<td>1</td>
<td>2.2</td>
</tr>
<tr>
<td>Savagely beaten with a block to sink his skull</td>
<td>1</td>
<td>2.2</td>
</tr>
</tbody>
</table>
Gunshots, beheaded and thrown into a grave of a cemetery | 1 | 2,2
Gunshots, beheaded and burned | 1 | 2,2
Beaten with a tire iron (tool for changing car tires) | 1 | 2,2

Total | 46 | 100,0

28. 76.1% of murders of LGBTI people reported by news sources did not indicate the reasons that led to these crimes. 8.7% of motive of homicides were unknown. The rest of the cases were for recovery of debts from drugs, theft, revenge and kidnapping, among others. One case corresponds to the murder of a lesbian whose motive was refusing to be groped by a man. Also, in 91.3% of cases of complaints by LGBTI killings, their status was unknown. In this regard, information sources consulted asserted that four (8.7%) cases were resolved (with 4 people charged), but it is not mentioned if the 42 (91.3%) remaining cases were successfully completed, see Table 11 of the report. The sources further indicated that 21 (45.7%) cases were reported to the organs of justice and 26 (56.5%) were under investigation. They also mentioned that during the study period, the organs of justice captured 10 people for the alleged murder of eight LGBTI people, whose motives are linked to sexual orientation, gender identity and gender expression of the victims.

29. On the other hand, during the period of this report study involving a total of 53 threats and attacks against LGBTI people occurred, noting that in 2011 no news about assaults were published. However, for 2012 the highest number of cases was identified, with 33 attacks. See Table 3. Of the 53 cases identified in only two informational sources said the ages of the victims, one 18 and the other aged 19, representing 3.9% of all cases. Greater Caracas ranked first with more frequent attacks and threats related to sexual orientation, gender identity and gender expression. The second place was in Zulia and Aragua states.

**TABLA 3:**
Attacks and threats against LGBTI between January 2009 and August 2013

<table>
<thead>
<tr>
<th>Year</th>
<th>No. of threats and attacks against LGBTI / per year</th>
<th>Variation in comparison with previous year</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>No.</td>
<td>%</td>
</tr>
<tr>
<td>2009</td>
<td>1</td>
<td>-</td>
</tr>
<tr>
<td>2010</td>
<td>8</td>
<td>7</td>
</tr>
<tr>
<td>2011</td>
<td>No available records</td>
<td>-</td>
</tr>
<tr>
<td>2012</td>
<td>35</td>
<td>27</td>
</tr>
<tr>
<td>2013 (January to August)</td>
<td>9</td>
<td>-18</td>
</tr>
</tbody>
</table>
30. As for attack patterns, the report of ACCSI found **verbal, physical and psychological attacks (including extortion and torture with electricity)** were combined in 47.2% of cases; 18.9% were verbal type (such as teasing, insulting language, insults, threats, incitement to stigma, discrimination, persecution, violence and hatred); and 11.3% the attack was verbal with abuse of power. The remaining 7.5% combined acts of incitement to hatred, both written and verbal, and abuse of power. **66% of the attacks occurred in public places, and in many cases the workplace of some of the victims.** The report notes that 24.5% of verbal assaults were committed by actors of Venezuelan society with national influence; 7.5% occurred during statements offered to the media. Including representatives of political parties sympathetic to the government and the opposition, representatives of media and high officials of the different churches (Catholic Christian, evangelical Christian, Adventist, Jehovah's Witnesses, among others). See Table 4.

31. Some high authorities of the State (President, Ministers, Members of the National Assembly) committed these attacks with insults, degrading treatment, harassment, threats, stigmatization, discrimination, social hatred and violent practices. The report also highlighted the verbal attack by a deputy of the National Assembly, who from the Chamber publicly expressed his homophobia. In the case of police officers, the disproportionate use of force, arbitrary arrest and unjustified deprivation of liberty are practiced. Some attackers used firearms to threaten and cause gunshot wounds, according to news sources. **In 98.1% of cases, it does not mention whether or not the attacks were known to organs administrators of justice.**

### Table 4:

**Forms of attacks and threats against LGBTI persons**

<table>
<thead>
<tr>
<th>Forms of aggressions</th>
<th>Frecuency</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Verbal, physical and psychological</td>
<td>25</td>
<td>47,2</td>
</tr>
<tr>
<td>Verbal</td>
<td>10</td>
<td>18,9</td>
</tr>
<tr>
<td>Verbal y abuse of power</td>
<td>6</td>
<td>11,3</td>
</tr>
<tr>
<td>Instigation to hatred, harrassment, difamation, written/verbal aggression, abuse of power</td>
<td>4</td>
<td>7,5</td>
</tr>
<tr>
<td>Gunshots</td>
<td>3</td>
<td>5,7</td>
</tr>
</tbody>
</table>


Burned for being gay: Angelo Alfredo Prado Perdomo, a 18-year-old gay man was soaked in petrol and set on fire in front of the doors of a school where he was to be enrolled, causing third degree burns to 30% of his body. Then a young neighbor told the media "Here in this neighborhood we do not accept gays." The authors of this attack were a youth group of high school students. The status of the case is unknown.32

A lesbian killed and another wounded by demanding respect: A lesbian couple was injured by gunshots, because one of them refused to be groped by a man. One victim was hit in the arm and the other girl in the head, who died a few weeks. The status of this case is unknown.33

32. In 2014, ACCSI publishes "Sexual Diversity Report: Rights, discrimination and violence Survey Venezuela Pride Parade 2013", which reflects the results of a survey of 650 people who attended three LGBTI Pride marches performed in 2013, in the cities of Caracas, Valencia and Maracaibo. The aim of the survey was to determine the perception of respondents about discrimination and violence that affect them, and the actions of public institutions in these situations. 42.6% of the population group surveyed was LGBTI young people between 18 and 24, and 28.6% were aged between 24 and 30 years. The results showed that the relationship with the security forces of the Venezuelan State was misqualified by most LGBTI people surveyed: 38.6% rated it as "very negative", 14.2% "negative"; 2.3% considered it "very positive" and 2.0% "positive"; even when only 172 people (26.5%) asserted having had negative experiences with these bodies due to their sexual orientation, gender identity and gender expression.

34 Further information at: http://venezueladiversaac.blogspot.com/2012/11/jovenes-lesbianas-resultan-heridas-por.html
36 Capital of Venezuela.
37 Main industrial city of Venezuela, capital of Carabobo state.
38 Capital of Zulia state and considered the second capital of Venezuela, it is the main city of the western side of the region where the main oil industry of the country is located.
39 In terms of educational level, 33.7% reported having a full university level, 29.2% an incomplete university level and 26.8% complete secondary level. On their employment status, 59.1% said they were employed in contrast with 20.5% who said having an informal job, and 19.7% reported being unemployed.
33. Of the people who said they had been victims of officials only 36 people (20.9%) decided to denounce, mostly to the Public Ministry (11.1%) and, secondly, the CICPC (11, 1%). It is noteworthy that only one person submitted his complaint to the DyP and 14 LGBTI (38.9%) did not provide the name of the institution where he made his. Of the reported cases, 44, 40% was not resolved, 13.90% were rejected and only 19.4% were answered. As for the group of LGBTI people who did not realize complaint, 45.6% said they had "no confidence in the system of administration of justice"; 19.96% said they felt "fear and shame", 19.99% expressed frustration with the process; and 22.8% described the dismissal of the case for lack of documentation.

34. About the negative experiences with state security bodies, referred to in this report, 45.9% of LGBTI people reported verbal abuse due to sexual orientation, gender identity and gender expression; 22.7% reported being a victim of extortion; 19.8% reported physical assault and 9% injuries with weapons and sexual violation. 21.5% did not answer the kind of experience. Among the security forces involved in 27.1% of cases it was identified to the Bolivarian National Police (PNB); 22.4%, the National Guard (part of the Bolivarian National Armed Forces; and 5.9% officials from CICPC. Others were members of Regional and Municipal Police, Patrimonial Guard and Traffic Police.

35. These data show that attacks against the LGBTI community have been occurring in Venezuela for many years, majority of which being unpunished, because the Venezuelan State has failed to fulfill its obligations to prevent, investigate and deliver justice to stop hatred crimes based on sexual orientation, gender identity and gender expression. Repeatedly, both civil society and the movements of the LGBTI community belonging to political parties (government and opposition) have been denouncing and alerting about the seriousness of these crimes, as well as presenting proposals and recommendations of laws and policies for the effective guarantee and restitution of the rights of people of sexual diversity and to criminalize hate crimes in the Criminal Procedure Code. But none of this has happened.

36. This is how the results of the above mentioned report indicate that the LGBTI community in Venezuela has a negative perception of the performance of state institutions about their obligation to respect and guarantee their rights. Of the 650 people surveyed in the three LGBTI Pride marches 2013 held in Caracas, Valencia and Maracaibo:
   a) 31,4% evaluated “Very negative” and 17,5% considered “Negative” the performance of the Presidency of the Republic,
   b) 34, 2% evaluated “Very negative” and 20, 5% considered “Negative” the performance of the National Assembly.
c) 33, 7% evaluated “Very negative” and 20% considered “Negative” the performance of the Public Ministry.

d) 27, 8% evaluated “Very negative” and 21, 1% considered “Negative” the performance of the Ombudsman (DyP).

RECOMMENDATIONS

37. In accordance with the agreement and the recommendations of the United Nations on the implementation of the United Nations Convention Against Torture, cruel, inhuman or degrading penalties, the State must instruct all security forces, national, regional and local including police and military officials on rules and procedures to ensure the effective protection of the human rights of LGBTI people, their partners and families; establishing specific penalties in which they would be incurred for breaking them.

38. In order to give sufficient visibility to the issue of violence against LGBTI people and show progress in the fight against impunity, the State must incorporate into their information systems, detailed data on complaints of torture and other treatment or cruel, inhuman or degrading punishment, arbitrary detentions and violations of the right to life and personal integrity based on sexual orientation, gender identity and expression; and detailed statistics of cases investigated and resolved, and sanctions applied, in order to make a proper monitoring and tracking of cases.

III. RIGHT TO RECOGNITION BEFORE THE LAW OF TRANS AND INTERSEX PERSONS (Article 16)

39. Several organizations dedicated to the rights of LGBTI (Diverlex, Divas and Unión Afirmativa de Venezuela) have asked the CNE to approve the change of name and gender of trans people and intersex to allow legal identity documents, but until the date it has not been put into effect. Diverlex, in its report to the Universal Periodic Review of the Venezuelan State at the UN October 2011, said: "In Venezuela, there are no mechanisms to change name and gender of transsexual and transgender people. Lacking of legal identity is like being a species of illegal immigrants in their own country, and therefore, they suffer violations of their civil and human (...) rights. Their vulnerability often leads them to be subject to situations of near slavery, trafficking and prostitution as the only way of life "(emphasis added).\(^\text{39}\)

40. The Civil Registration Act provides in Article 146, the changing of name -one time- through a simple administrative act of rectification of birth certificate, in cases where the name "is infamous, subject to public ridicule, undermines his moral integrity, honor and reputation, or does not match their gender, affecting the free development of his personality" (emphasis added). This right due to a reform of the Act by the National Assembly in 2009, with the explicit aim of allowing the renaming of trans and intersex people, as it was picked up by the official media in statements by then MP of the ruling party Iris Varela: "-People who decide to change their sex, may change its name with the adoption of the draft of Civil Registry Law" - as reported by the deputy Iris Varela, after the second reading in the National Assembly. According to Varela "This represents a breakthrough in Venezuelan law, it is a way of breaking discrimination against people who decide to change their sex and who because of the difficulty of the modification process, they must keep a name that does not identify with their appearance or what they want to be. The law is simplifying such important acts as it was a very cumbersome affair to start rectification, now this establishes an expeditious process even without the red tape at the registration office- she said".  

41. However, organizations dedicated to defending the rights of LGBTI people do not know of any case in which it was possible to exercise this right provided by law in the Registry Offices of the country, whose officials have been ordered to lead such cases to courts to be aired through legal proceedings, leaving the decision to allow renaming of trans and intersex persons to discretionary criterion of the judges. In 2011, several organizations exercised their right to peaceful demonstration outside the main office of the Civil Registry of the city of Caracas, due to the lack of response to a proposed regulation of article 146 of the Civil Registration Act in order to facilitate its application, including the provision in the proposal for requirements of written manifestation of will, upon confirmation of identity, medical certificate and affidavit of informed consent. So far, no effective progress has been made for implementing the Article. By contrast, trials continue to be held for processing requests for change of name by trans and intersex people, the majority being rejected by the judges, after being subjected to a long and humiliating amount of medical, psychological or psychiatric examinations, and forensic tests.

42. Moreover, in 2011 the Organization Divas of Venezuela presented to Tibisay Lucena, Rector of the CNE-organ responsible for developing the National System of Civil Registration- a request for doing the corresponding errands in order to advance on the change of sex identification on birth certificates and other identity records of trans and intersex people. However, the response by the

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40 New Civil Registration Act to allow rename of transsexuals. Taken from Agencia Venezolana de Noticias (AVN) by El Universal, 31.07.09. Available at: http://www.eluniversal.com/2009/07/31/pol_ava_nueva-ley-de-registr_31A2570963
Rector was that "... the change in biological identity was difficult at the moment\(^{41}\) (emphasis added). On this view, Article 56 of the CRBV dictates that birth registration at the registry aims to "obtain public documents constituting evidence of the biological identity" (emphasis added); which could be interpreted as an obstacle to the possibility of sex change in the records of legal personality of trans and intersex people. However, consistent with the right to free development of personality and physical, mental and moral integrity of every person, enshrined in Articles 20 and 46 of the CRBV; "biological identity" contained in birth could not by itself, nor be a document whose contents obey the judgment of others at the time of birth (doctors, parents and registrars), determining overlap or gender identity the person gives themselves. In this regard, Tamara Adrian, Venezuelan activist for the rights of LGBTI people, said: *The state cannot but recognize who you are, and cannot prevent you from being who you are* (...). Why there is the word "sex" in identity documents?, for the same purpose, the term "race" or the word "religion" to deny rights to some and give rights to others (...). (Also) to deny rights to women and give them to men ...\(^{42}\) (emphasis added).

43. Furthermore, since the legal personality has direct effects on the enjoyment of other rights, the Report *"The Right to Nondiscrimination for HIV in Venezuela"*, 2011, published by the NGO Acción Solidaria notes that the prohibitive interpretation of Article 56 of the Constitution "... limits the right to citizenship, which all Venezuelans exert is not subject to political disablement or civil interdiction (...). To impose acceptance of a foreign biological identity to the person -through which the recognition of nationality and citizenship-is acquired, places them in a context beyond protection and condemns them to be invisible as a citizen\(^{43}\) (emphasis added).

**RECOMMENDATIONS**

44. To ensure full citizenship by transsexuals and intersex in Venezuela, a condition that affects all human rights, the Venezuelan state must tackle to enforce or modify internal rules enabling the change of name and sex mention in the records for legal personality or identity, including birth certificate and other registry documents, without hindrance, arbitrary or unreasonable requirements; according to the Constitution and the favorable international law, protecting personal information of trans and intersex people handled by the State.

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\(^{41}\) *Divas de Venezuela at the Electoral Power*. May 09, 2011. Divas de Venezuela. Available at: https://divasdevenezuela.wordpress.com/2011/05/09/650/

\(^{42}\) Tamara Adrián in tv program "Vladimir a la Una", on Globovisión. Available at: https://www.youtube.com/watch?v=t4aeKRAAZr0

IV. FREEDOM OF EXPRESSION, APOLOGY FOR NATIONAL HATRED BASED ON HOMOPHOBIA AND TRANSPHOBIA, AND RIGHT TO FREEDOM OF ASSEMBLY AND ASSOCIATION OF LGBTI PERSONS (Articles 19, 20 y 21)

45. CRBV establishes in Article 57 that, the right to freely express thoughts, ideas and opinions orally, in writing or by other forms of expression, uncensored, anonymous, or war propaganda are not allowed or discriminatory messages or those promoting religious intolerance. However, the discourses and practices of homophobia have reached extraordinary levels in Venezuela.

46. Public and private spaces (parks, museums, restaurants, shopping centers, etc.), are places where LGBTI people experience situations of stigma and discrimination by law enforcement officials, or police surveillance. In the case of private spaces, such as restaurants, the situation is very similar. The expressions of affection, such as walking holding hands or hugging, kissing or any other expression that are normally carried out by two people of different sexes, are censored in the case of two persons of the same sex.

47. Through the social network Twitter, it was reported the case of a couple of men who were discriminated against because of a kiss on the premises of a restaurant bar "Cielo Restobar" located in the city of Merida, Merida state. The manager of the place demanded the couple to vacate the premises aggressively. Later there was a public announcement of the restaurant where they expressed "we do not agree with any discrimination or support actions that go against public morality" (emphasis added), but never apologized to the couple. It is unknown if there was any complaint with public institutions and also, if there was any official reaction.

48. In the media, it is often seen on television and comedy shows particularly, the presence of gay male characters that are stereotyped, ridiculed and used as a source of mockery. In December 2011, the Revolutionary Media Observatory for Sexual and Gender Diversity filed with the National Telecommunications Commission (CONATEL) a complaint against the program "¡A qué te ríes!" a broadcast by the private TV channel Venevisión. According to the complaint in the program "a language of double meaning, macho, sexist, classist, homophobic and xenophobic" was used.


49. Furthermore, the allegations made by NGOs do not receive any response. No sanctions, fines or penalties of any kind against individuals or institutions that express in a discriminatory manner against the LGBTI population, although it is covered by several laws, including the Law on Social Responsibility in Radio, Television and Electronic Media\(^{46}\) enacted in 2010, and whose Article 3 stipulates the duty of the media to "promote the effective exercise of and respect for human rights, in particular those concerning with the protection of honor, privacy, intimacy, image, confidentiality and reputation .... "

50. At its 29th session in November 2002, the Committee against Torture of the United Nations, expressed concern about "reports of threats and attacks against sexual minorities", having considered the report submitted by the Venezuelan State. This reality has been strongly denounced by several organizations, including Venezuela Diversa, Unión Afirmativa de Venezuela (UNAF), Red LGBTI de Venezuela and Reflejos de Venezuela. It has also been made visible in reports produced by civil society organizations.

51. The Venezuelan case is an expression of the concerns of the UN about the damage caused by homophobia and transphobia to human rights\(^{47}\). Homophobic expressions of senior Venezuelan State (President, Ministers and Deputies), as well as members of the police, political party leaders and senior representatives of the different churches were present in the period 2009-2013. Between 2011-2013, these expressions reached alarming levels as an instrument of offense and denigration of political opponent in the context of presidential and gubernatorial elections, and in polarization in Venezuela. According to the report on hate crimes based on sexual orientation, gender identity and gender expression by ACCSI in 2013- mentioned above, 56.9% of attacks against LGBTI people come from officials of the police, and 19.6% of senior Venezuelan government officials and political leaders from the ruling party and opposition). The same report notes that 90.6% of people who carried out the attacks were linked to the victims, since they


\(^{47}\) "The fight against homophobia is an essential part of the broader human rights for all battle," said UN Secretary General Ban Ki-moon on the International Forum on the International Day Against Homophobia. In the same forum, the High Commissioner of the United Nations for Human Rights, Navi Pillay, said "Homophobia and transphobia are no different from sexism, misogyny, racism or xenophobia. These last forms of prejudice are universally condemned by governments. However, homophobia and transphobia are often overlooked by the authorities. " Among the issues of greatest concern to the UN, "are hate crimes, ranging from harassment and torture to the kidnapping and murder; the criminalization of homosexuality; and discrimination against these people for lack of national laws to protect them. " In his speech to the International Forum on the International Day Against Homophobia (IDAHO), held in The Hague, Netherlands, on May 17, 2013". See: [http://acnudh.org/2013/05/onus-dstaca-los-derechos-humanos-de-las-personas-lgbt-en-el-dia-internacional-contra-la-homofobia/](http://acnudh.org/2013/05/onus-dstaca-los-derechos-humanos-de-las-personas-lgbt-en-el-dia-internacional-contra-la-homofobia/)
exercised their work in an institution or organization to which the authors belonged\textsuperscript{48}, such as State agencies, the media, churches and social organizations. See Table 5.

**TABLE 5:**

*Authors of attacks and threats against LGBTI persons*

<table>
<thead>
<tr>
<th>Authors of attacks and threats</th>
<th>Frecuencia</th>
<th>Porcentaje</th>
</tr>
</thead>
<tbody>
<tr>
<td>Officials of Security Forces (National Guard, Police of Chacao, CICPC)</td>
<td>29</td>
<td>54,7</td>
</tr>
<tr>
<td>Politicians (President of the Republic, Foreign Affairs Minister, Minister for Prisons, President of the Comptroller Commission of the National Assembly, political party spokesperson, Deputy, Ex candidates for Deputy at the NA, Secretary of a political party from opposition)</td>
<td>12</td>
<td>22,6</td>
</tr>
<tr>
<td>Religious personalities from different churches</td>
<td>3</td>
<td>5,6</td>
</tr>
<tr>
<td>Media</td>
<td>2</td>
<td>3,8</td>
</tr>
<tr>
<td>Human Right and LGBTI Activist in Venezuela</td>
<td>1</td>
<td>1,9</td>
</tr>
<tr>
<td>President of Organization Miss Venezuela</td>
<td>1</td>
<td>1,9</td>
</tr>
<tr>
<td>Student</td>
<td>1</td>
<td>1,9</td>
</tr>
<tr>
<td>Not specified</td>
<td>4</td>
<td>7,6</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>53</strong></td>
<td><strong>100,0</strong></td>
</tr>
</tbody>
</table>

52. Among the emblematic cases of speeches of homophobia, we highlight the state officials, among which are:

a) In April 2012, Minister of Foreign Affairs of Venezuela, Nicolas Maduro -current President of the Republic in a public ceremony held outside the embassy of the Republic of Cuba in Caracas, said: "... so it is the likes of these snobs “sifrinitos”, fags “mariconsones” and fascists who seek election to the people of Venezuela ..."\textsuperscript{49}. This homophobic speech won laughter and applause in approval of the Minister for Youth, Mary Pili Hernandez; the Health Minister Coronel Eugenia Sader; of the Ombudsman of the Republic of Venezuela Dr. Cilia Flores\textsuperscript{50}; and the late Robert Serra, deputy of the ruling party PSUV (United Socialist Party of Venezuela) to the AN. Given these statements, various LGBTI organizations and public opinion spoke in rejection. The Organization Venezuela Diversa\textsuperscript{51} issued a statement which said: "Such statements become an institutional

\textsuperscript{48} According to the Dictionary of the Royal Spanish Academy. Also it notes that institution is "Each of the key organizations of a state, nation or society." Available at: [http://lema.rae.es/drae/?val=instituci%C3%B3n](http://lema.rae.es/drae/?val=instituci%C3%B3n)

\textsuperscript{49} These statements were broadcasted by Venezolana de Television, the main TV channel of the Venezuelan State. Available at [http://www.youtube.com/watch?v=gVLoIFSZDI](http://www.youtube.com/watch?v=gVLoIFSZDI)

\textsuperscript{50} She is currently the First Lady of the Republic of Venezuela wife to President Nicolás Maduro.

problem to be taken into account as soon as possible, because those who send these messages to society are political actors adding to the cycle of violence, attacks and hate against each other, right now that are in electoral campaign, which can lead his followers to intensify situations of hatred, bigotry, harassment and conflict, on the one hand, by the dehumanization and disqualification of political opponents and, the other, by the fact morally justify homophobic actions against LGBTI individuals and groups due to the direct connection of different sexual orientations and gender identities with such partisan political fray" (emphasis added).

b) In March 2013, as Acting President of the Republic, Nicolas Maduro, at the time of the registration of his candidacy to the CNE to participate in presidential elections scheduled for April, alluding to his main political adversary Henrique Capriles -current governor of Miranda state, who is a young bachelor of 40 years, said: "Hear me out, I have a woman, I like women and I have her here," "How good is the kiss of a woman or a being you love." Given this, a mobilization of members of the organization Frente por la Inclusión y el Respeto de la Diversidad Sexual (Firedisex) was called out, which went before the CNE to demand a ban of homophobic allusions in the speeches of the candidates. This group originated "from the great discomfort caused throughout the LGBTI community in the country by the homophobic statements of the candidate Nicolas Maduro and Acting President of the Bolivarian Republic of Venezuela, during the registration of his candidacy." They said they made a walk in rejection of the use of homosexuality as a political weapon. Jose Ramon Merentes activist of NGO Unión Afirmativa de Venezuela Said: "Our Constitution prohibits discrimination of all kinds, including sexual orientation." In addition, in the document handed in to the CNE they reminded the agency: "It is a debt that the National Civil Registry Office keeps with the trans population whose right to identity is being violated". The CNE never spoke about it.

c) In April 2013, the Minister for Prisons Iris Varela, wrote on her Twitter account: "What is the problem “peo” with Chavez becoming a bird? Capriles is alive and he is a tremendous duck (fag)". In August 2013, Pedro Carreño, deputy of the ruling party, during a session in the National Assembly, also expressed in reference to Henrique Capriles, "respond homosexual, queer, accept the challenge, you, accept the challenge. You must be serious". LGBTI community members held protest actions in the doors of Parliament to reject the homophobic attack and the use of offensive and

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52 Video available at: https://www.youtube.com/watch?v=Z4ON8l0VGQ0
53 A Newspaper entitled its review of the news “Community of sexual diversity demands the CNE to ban homophobic expressions”. In Noticias 24 (March 2013). Available at: http://www.noticias24.com/venezuela/noticia/157406/comunidad-de-diversidad-sexual-exige-al-cne-prohibir-alusiones-homofobicas/
55 Available at: http://www.ultimasnoticias.com.ve/noticias/actualidad/politica/pedro-carreno-tilda-de-homosexual-a-capriles-r.aspx
discriminatory language inciting hatred of people of sexual diversity by the Deputy, stating that: "We are facing a homophobic and transphobic State." They also noted that "Homophobia from the State is a set of actions and omissions that tend to deny equalities of rights to people because of their sexual orientation or gender identity. A state is homophobic when it directly attacks the people by laws, with police, insults or other means of verbal and physical aggression and with the non-legislation for equal rights. We condemn the PSUV, the National Assembly, the Supreme Court, the Public Ministry and all agencies of the executive as violators of Human Rights and particularly as a homophobic and transphobic State." (Emphasis added). They also said: "For years the government has said it defends the LGBTI community, while in practice we see how deputies who identify with the ruling party attack us (...). Venezuela is in arrears with legislation to protect the rights of the LGBTI community. In much of Latin America, they have taken important steps in this direction." (Emphasis added). A leader of the political party Movimiento al Socialismo noted that "... the deputy Pedro Carreño with his homophobic, scatological claims raises a pattern known as homophobia or transphobia of State, characterized by the actions or omissions that tend to deny equality right to people for their sexual orientation or gender identity."

He warned that such conduct was not only Carreño, but also of President Nicolas Maduro "who took a similar position in the past when he spoke in a derogatory to homosexuals, producing a very strong immediate reaction from civil society groups who joined this sector, forcing Maduro to publicly recant." Also, a spokesman for the opposition party Voluntad Popular said: "Such behavior now expressed in the National Assembly, is called homophobia of State and this has been a repetitive conduct by the ruling party. These messages dehumanize the status of homosexuals and transgender" (emphasis added).

53. Between 2009 and 2013, other attacks from public personalities who incited homophobia were:

a) The Executive Secretary of the Democratic Action Party, Henry Ramos: "... it is not appropriate to go to the street and extol the virtues of homosexuality and lesbianism," "That is an issue
that should not be appointed, or exalted, or criticized. Those who are lesbian or gay, it is up to them ...” (emphasis added).

b) Cardinal Jorge Urosa Sabino of the Venezuelan Catholic Church: "... gay marriages are a negative current that has occurred in recent years in many parts of the world, it is bad to call marriage to a union between man and man or between a woman and another woman, because this has to do with the family, the procreation of children and the same sexual and physical reality of human beings" (emphasis added). As for gay couples could adopt children, the cardinal said that goes against the same natural standards. In his opinion, "this could cause great suffering to children in school, because his teammates would mock them when they know that their parents are of the same sex" (emphasis added).

c) The Chairman of the Miss Venezuela Organization Osmel Sousa, also expressed about the possibility that transgender women to participate in beauty contests: "Transsexuals can compete with other transsexuals. I personally think it would be disrespectful to the Venezuelan woman to put a transsexual to compete with her, then we should also put a woman in the Mister Venezuela to compete with a man” (emphasis added).

54. On May 17, 2014, it was held in Caracas the 3rd. Walk against Homophobia organized by Venezuela Diversa and Positivos en Colectivo, with a demonstration from Plaza Altamira Plaza Brion to Chacaíto, Chacao Municipality, where the attendants made an appeal to the government to protect the rights of LGBTI. Representatives of the NGO claimed that the Bolivarian Municipality of Libertador forbade making the trek when denying them the permission to develop the march. Similarly, the Ministry of Popular Power for Women and Gender Equality, denied the logistical support for the stage and sound. They also reported that officials of the Ministry verbally expressed "we do not support rightist and coup NGOs". The mayor informed the NGO through a
written communication that the application was not admissible because it coincided with the date and place requested to another activity required in advance. 67

RECOMMENDATIONS

55. In order to ensure the protection of LGBTI people in Venezuela from discrimination and attacks on their moral, psychological or physical integrity, all public authorities and officials must strictly comply with the ban of issuing opinions, speeches or messages, or engaging in practices that may incite hatred, stigmatization or violence against LGBTI people because of their sexual orientation, gender identity and expression; as it is imperative that the State implements policies and communicational and educational programs from secular, scientific and gender perspectives aimed at promoting equality and non-discrimination of LGBTI people.

V. PROTECTION OF SAME SEX COUPLES AND FAMILIES (Article 23.1)

56. In Venezuela, there is no legal protection for couples and families made up of people of the same sex. Resolution No. 190 of the Supreme Court in 2008, mentioned earlier, said the AN is responsible for legislation on the protection of same-sex couples. However, to date, it has not been in the AN any initiative on the part of any deputy to legislate in this regard, although the NGO’s working on sexual diversity matters have delivered several requests to the legislature.

57. Besides the legislative proposal of February 22, 2011, made by the LGBTI Network of Venezuela, which proposed to the NA the recognition of the economic rights of same-sex couples in equal conditions and with no discrimination in relation with opposite-sex couples, through the amendment of three articles of the Civil Registry Law; on May 22, 2013, the NGO Affirmative Unión Afirmativa de Venezuela requested the right to speak in the Committee on Domestic Policy of the National Assembly to request the reform of article 44 of the Civil Code of Venezuela, to permit marriage of same-sex people, a right that the aforementioned Article denies, stating that: "Marriage cannot be contracted but between one man and one woman. The law shall not recognize another marriage contracted in Venezuela but that which is regulated by this Title, the only that will produce legal effects, both in terms of people and in respect of the goods".

67 Venezuela Diversa (2014). Available at http://venezueladiversaac.blogspot.com/2014/05/alcaldes-de-libertador-y-chacao-violan.html
58. Similarly, Unión Afirmativa de Venezuela informed the Commission that they would deliver a bill partially amending the Civil Code. Verbally, Members of the Commission expressed its readiness to receive and discuss any project emanated from the "People Power". Finally, on January 31, 2014, the NGO Venezuela Igualitaria along with other NGOs, social movements and LGBTI groups of all political preferences handed to the AN a proposal for Equal Civil Marriage⁶⁸ that includes the aforementioned partial amendment of the Civil Code, endorsed by more than 21,000 signatures of citizens, and more than 47 civil society human rights organizations. Members of the NA Elvis Amoroso, Odalis Monzon and Alejandra Benitez from PSUV, with opposition deputies received on their hands this project⁶⁹. LGBTI people massively attended a public rally at the gates of the Venezuelan Parliament⁷⁰ as a sign of support for this important project. The signatures were collected in a voluntary process of broad citizen participation in all regions of the country for seven months, from June 2013 to January 2014.

59. As a result of the right to speak in the National Assembly, granted to members of the Civil Association Venezuela Igualitaria and Ejercito Emancipator of the Great Patriotic Pole, close to the government party⁷¹, on July 17, 2014 the vice president of the Committee for Internal Policy of the AN, José Javier Morales, appointed deputy Modesto Ruiz as Chairman of the Subcommittee to discuss the Draft of Civil Law of Equal Marriage. The media said: "The deputy Ruiz estimated, by the end of July, to prepare an agenda of forums and discussion groups to enable them to different groups to discuss the essence of this struggle and be able to address the issue with the necessary knowledge to make decisions". Organizations that consigned the Project of Equal Marriage Act do not know if these activities were carried out. Particular attention should the given to reasons by some deputies of both political fractions represented in the National Assembly for not addressing this issue, since in several of their participations and public demonstrations prevail the allegations related to their different religious beliefs. This argument contradicts and violates the provisions of Article 59 of the CRBV which states that "no one may invoke religious beliefs to evade compliance with the law."

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⁶⁸ Available at: https://es.scribd.com/doc/194454348/Proyecto-de-Ley-de-Matrimonio-Civil-Igualitario-Venezuela
60. This non-recognition and therefore lack of legal protection of families of same sex with Venezuelan nationality have serious consequences in their daily lives. Such is the case of couples who have decided to marry in countries like Argentina or Spain, who come to our country to lose the civil status, since their union is not recognized by the Venezuelan State. For example, the CNE through Resolution No. CRCE/2012-02, dismissed the appeal exercised by the Venezuelan Jesus Ravelo against the administrative act contained in the letter number ONRC/035/2011 issued by the National Office of Civil Registration dated January 25, 2011, whereby the insertion in the books of the Civil Registry of the Bolivarian Republic of Venezuela, of the marriage contracted in the Netherlands with a person of that nation, citizen Oliver Schnider is denied. A similar case is that of Ginyveth Soto Quintana and Migdely Miranda, who on Monday December 16, 2013 went to the Principal Registry Office of the Libertador municipality of Caracas, to insert the act of marriage formally concluded with the authorities of the Republic of Argentina, according to the Organic Law of Civil Registry, specifically Articles 115 and 116. In response to this request, representatives of the agency responded that based on Article 77 of the CRBV and Article 44 of the Civil Code, this procedure could not be performed.

61. Similarly, there are cases of Venezuelan couples who have chosen to turn to methods of conception through assisted reproduction, either using eggs from two mothers, through the donation of embryos or in vitro conception, in order to conceive children. Such are the cases of two female couples Nancy Aguilera and Patricia Arenas, Ginyveth Soto and Migdely Miranda, and a couple of Venezuelan men Jhonnie Garcia and Antonio Torrealba. The Nancy Aguilera and Patricia Arenas is considered "the first case, at least publicly, of a lesbian couple in Venezuela who conceives a child through assisted fertilization".

62. The case of Ginyveth Soto and Migdely Miranda, happened after their marriage in Argentina: "On their return to Venezuela, Ginyveth donated an egg to make it artificially inseminated and placed in the womb of her wife, to create a closer link between them and the baby". The couple said that they "analyze the option of self-exile, we’ll go to Argentina to have him, we want him to have both last names, if here our marriage is not legalized. In the absence of equal marriage and regulations

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73 Available at: http://www.inoutpost.com/noticias-LGBT/registro-civil-de-caracas-niega-a-pareja-de-lesbianas-insercion-de-matrimonio-celebrado-en-argentina-20131217170602.html Consulted on 21-10-2014.

to assisted motherhood in Venezuela, the only one that would be recognized as the mother of their son would be her partner because she is the one who is pregnant". 75

Likewise, Jhonnie Garcia and Antonio Torrealba, became parents in December 2013 in Venezuela. Triplets born through surrogate womb. The couple says that "Despite being victims of discrimination and homophobia by deciding to be parents, they have received the unconditional support of their family and friends." In June 2014, they were married in New York "formalizing their commitment, which could not be fulfilled in Venezuela due to the lack of laws to protect the homosexual families and they expect the National Assembly to discuss and adopt the draft law on Civil Equal Marriage to be able to do it one day in their country" 76. The children of these couples, at birth, or even those who are adopted, are born or brought into a new home in a legal limbo for only parenthood of one of the partners is recognized and not to both parents.

RECOMMENDATIONS

With the purpose of the enjoyment and exercise non-discriminatory, indivisible and interdependent of all human rights, it is necessary for the Venezuelan State to provide legislative, administrative and judicial developments in the protection of LGBTI couples, their families and their children; especially with regard to legal recognition of unions, the rights of spouses and the legal status of children and adolescents of same-sex families.

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ANNEXES

Cases of murder, attacks and threats are available in the attachments of the report, including the links where the sources are published at the consulted information sources.
Tab #22
La discriminación y la impunidad no son iguales ante la ley

Situación de los Derechos Humanos de las Lesbianas, Gays, Bisexuales, Trans e Intersexuales en Venezuela

Presentada ante la Comisión Interamericana de Derechos Humanos por la Red de lesbianas, gais, bisexuales, trans e intersex de Venezuela.

2015
La discriminación y la impunidad no son iguales ante la ley
Situación de los Derechos Humanos de las Lesbianas, Gays, Bisexuales, Trans e Intersexuales en Venezuela

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<table>
<thead>
<tr>
<th>ÍNDICE</th>
<th>Pág.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Introducción</td>
<td>4</td>
</tr>
<tr>
<td>Ausencia de marco legislativo y jurídico y políticas públicas de protección a personas LGBTI contra la discriminación por razones de orientación sexual, identidad y expresión de género</td>
<td>5</td>
</tr>
<tr>
<td>Ausencia de protección legal de parejas y familias conformadas por personas del mismo sexo</td>
<td>6</td>
</tr>
<tr>
<td>Imposibilidad a desarrollar la propia personalidad</td>
<td>11</td>
</tr>
<tr>
<td>Discriminación, violencia e impunidad contra LGBTI en Venezuela</td>
<td>12</td>
</tr>
<tr>
<td>Discriminación en los ámbitos de salud, trabajo, educación, espacios públicos y privados, y en medios de comunicación</td>
<td>23</td>
</tr>
<tr>
<td>Declaraciones y expresiones que incitan la homofobia en Venezuela</td>
<td>28</td>
</tr>
<tr>
<td>Institucionalizada la exclusión a LGBTI</td>
<td>34</td>
</tr>
<tr>
<td>Recomendaciones</td>
<td>36</td>
</tr>
<tr>
<td>Fuentes consultadas</td>
<td>38</td>
</tr>
</tbody>
</table>
INTRODUCCIÓN

La orientación sexual, la identidad de género y expresión de género no son delitos en Venezuela. La Constitución de la República Bolivariana de Venezuela establece en su artículo 21 numeral primero que “No se permitirá discriminaciones fundadas en la raza, el sexo, el credo, la condición social o aquellas que, en general, tengan por objeto o por resultado anular o menoscabar el reconocimiento, goce o ejercicio en condiciones de igualdad, de los derechos y libertades de toda persona”\(^1\). Aunque no se menciona de manera explícita la no discriminación por razones de orientación sexual, ésta fue aclarada en la Resolución No. 190 de la Sala Constitucional del Tribunal Supremo de Justicia en el año 2008, como respuesta a una solicitud de interpretación de dicho artículo realizada por la Asociación Civil Unión Afirmativa de Venezuela:

“...esta Sala Constitucional del Tribunal Supremo de Justicia, administrando justicia en nombre de la República por autoridad de la Ley, INTERPRETA, en los términos que fueron expuestos, el artículo 21 de la Constitución, en el sentido de que no es posible, dentro del marco constitucional venezolano, la discriminación individual en razón de la orientación sexual de la persona, y asimismo DECLARA que no existe colisión alguna, también en lo que se refiere a los términos de esta solicitud de interpretación, entre el artículo 21 y el artículo 77 de la Constitución de 1999.”\(^2\)

El numeral segundo del mismo artículo 21 de la Constitución venezolana establece que:

“...la ley garantizará las condiciones jurídicas y administrativas para que la igualdad ante la ley sea real y efectiva; adoptará medidas positivas a favor de personas o grupos que puedan ser discriminados, marginados o vulnerables; (...) y sancionará los abusos o maltratos que contra ellas se cometan.”

Sin embargo, las lesbianas, gays, bisexuales, trans e intersexuales han sufrido y sufren discriminaciones e impunidad, que les coloca como un grupo vulnerable para la tortura y malos tratos, lo que incluye: asesinatos, agresiones físicas y verbales, chantaje, extorsión, persecución, detenciones arbitrarias, especialmente de cuerpos de seguridad del Estado.

Además, el impacto de la lesbo-homo-bi-transfobia son vías seguras para la proliferación del VIH/SIDA y para obstaculizar los esfuerzos para su control y erradicación mediante el cumplimiento de las políticas públicas en materia de VIH/SIDA, desde la mirada de los derechos humanos.

La Carta Magna establece la jerarquía constitucional de todos los tratados y acuerdos internacionales que el país haya suscrito o no; en tanto y cuando estos sean más favorables y deben ser de inmediata ejecución. En este sentido, Venezuela ha firmado y ratificado todas las resoluciones, acuerdos y tratados internacionales tanto en la ONU como en la OEA, especialmente la Sexta Resolución AG/RES. 2807 (XLIII-O/13) Derechos Humanos, Orientación Sexual e Identidad y Expresión de Género, y dos convenciones como son la Convención Interamericana contra el Racismo, la Discriminación Racial y formas Conexas de Intolerancia, y la Convención Interamericana contra toda forma de Discriminación e Intolerancia.

De igual modo, Venezuela asumió compromisos con organismos regionales como Mercosur, CELAC y ALBA para aplicar lo establecido en la legislación internacional con el objetivo de garantizar la protección de derechos humanos de las personas LGBTI; entre ellos los Principios de Yogyakarta. No obstante, estas leyes no se ponen en práctica.

En el presente informe mostramos la situación real que viven las personas lesbianas, gays, bisexuales, trans e intersexuales (LGBTI) en Venezuela.

**AUSENCIA DE MARCO LEGISLATIVO Y JURÍDICO Y POLÍTICAS PÚBLICAS DE PROTECCIÓN A PERSONAS LGBTI CONTRA LA DISCRIMINACIÓN POR RAZONES DE ORIENTACIÓN SEXUAL, IDENTIDAD Y EXPRESIÓN DE GÉNERO**

Venezuela no cuenta con una ley específica que obligue al Estado a garantizar y proteger el derecho a la igualdad y no discriminación de las lesbianas, gays, bisexuales, trans e intersexuales. Solo tiene pocos instrumentos legales que mencionan la no discriminación por motivo de la orientación sexual en algunas áreas específicas, a saber: Artículo 4 de la Ley Orgánica del Poder Popular (2010), Artículo 173 de la Ley de Instituciones del sector Bancario (2010), Resolución 185, Artículo 3 Normas y Garantías relativas a los Derechos de las Mujeres y la Sexodiversidad a la Igualdad y Equidad de Género en los Cuerpos de Policía Nacional Bolivariana y demás cuerpos de Policía Estadales y Municipales (2010), Art. 5 de la Ley de regulación y control de Arrendamientos de Viviendas (2011), Artículo 21 de la Ley Orgánica del Trabajo, de las Trabajadoras y Trabajadores (2012). Además que estas leyes carecen de mecanismos que permitan implementar estrategias reales y efectivas para evitar la discriminación y la desigualdad, de tal manera que en la realidad son leyes vacas, inocuas e inútiles.

Venezuela no cuenta con planes estratégicos (políticas), programas y servicios públicos orientados a responder a las necesidades y exigencias de las personas LGBTI. Se identifica que la especificidad o equidad en la distribución de los recursos para la implementación de políticas públicas no existe para la
comunidad LGBTI, quienes continúan invisibles en las estadísticas demográficas, de población y otros estudios, lo que se traduce en exclusión para el ejercicio de los derechos fundamentales desde la perspectiva de su orientación sexual, identidad o expresión de género. Lo que constituye un trato desigual, que genera a su vez tratos crueles inhumanos y degradantes.

Se reconoce que el Poder Legislativo venezolano ha hecho esfuerzos en la protección de grupos históricamente discriminados como las mujeres, indígenas, niñas, niños y adolescentes, jóvenes, afrodescendientes, e inclusive los animales, pero las lesbianas, gays, bisexuales, trans e intersexuales no aparecen en las poblaciones prioritarias, tal como se ha evidenciado en su agenda política de los últimos años.

La Defensoría del Pueblo es el organismo del Estado responsable de velar los derechos humanos en Venezuela, y el Ministerio Público es el responsable de garantizar en los procesos judiciales el respeto a los derechos y garantías constitucionales, así como a los tratados, convenios y acuerdos internacionales suscritos por la República. Pero la Defensoría del Pueblo ha realizado algunas pocas acciones en materia de diversidad sexual, sin logros ni impacto relevante que vele por los derechos humanos de las personas LGBTI en el país. En cuanto al Ministerio Público, ésta institución pública carece de respuestas que garanticen los procesos judiciales el respeto de los derechos y garantías consagradas en la Constitución de la República Bolivariana de Venezuela.

En Venezuela no existen avances realizados en materia legislativa y de políticas y prácticas para investigar y procesar judicialmente los actos de violencia contra lesbianas, gays, personas trans, bisexuales y/o intersex, o contra aquellas personas percibidas como tales.

Se desconoce información sobre reparaciones otorgadas a las personas LGBTI víctimas de violencia (por ejemplo, indemnización, rehabilitación, compensación, garantías de no repetición, satisfacción).

Las instituciones públicas del Estado venezolano se niegan a suministrar informaciones y datos relativos a las personas LGBTI, suponemos que se debe a la ausencia de estadísticas vinculadas con este grupo poblacional.

**AUSENCIA DE PROTECCIÓN LEGAL DE PAREJAS Y FAMILIAS CONFORMADAS POR PERSONAS DEL MISMO SEXO**

La Resolución No. 190 del Tribunal Supremo de Justicia del año 2008, arriba mencionada, señaló que es a la Asamblea Nacional a quien le corresponde legislar sobre la protección de las parejas del mismo sexo. Esto, sin embargo, no ha ocurrido. No ha habido dentro de la Asamblea Nacional iniciativa alguna por parte de ningún diputado y diputada para legislar en este respecto. A pesar de que las ONG con trabajo en diversidad sexual han entregado varias solicitudes ante el Poder Legislativo.
El 22 de febrero de 2011, la Red LGBTI de Venezuela, apoyada por una marcha multitudinaria, entregó a la Asamblea Nacional un documento contentivo con una propuesta de agenda legislativa con las necesidades de las personas LGBTI, a continuación:

1) “Que se establezcan disposiciones claras y precisas, que incluyan órganos de protección específicos y sanciones severas, en caso de discriminación por razón de orientación sexual o identidad de género en todas las actividades humanas, incluyendo sin limitación: educación, salud, seguridad social, vivienda, deportes, trabajo y otras, así como la tipificación de los crímenes de odio como agravante genérica de todos los delitos. Todo ello en concordancia con el principio de no discriminación establecido en la sentencia de la Sala Constitucional del Tribunal Supremo de Justicia del 28 de febrero de 2008 (caso Unión Afirmativa de Venezuela) y en el artículo 4 de la Ley Orgánica del Poder Popular. Más adelante se detallan las principales disposiciones a considerar.

2) Que se reconozcan los derechos patrimoniales de las parejas del mismo sexo en condiciones de igualdad y no discriminación con las parejas de distinto sexo, tal y como lo ha determinado la Oficina del Alto Comisionado de los Derechos Humanos de la ONU en diferentes resoluciones, y en concordancia con las declaraciones voluntarias de protección de las personas por razón de orientación sexual, por medio de la modificación de tres artículos de la Ley Orgánica de Registro Civil, tal y como se señala más adelante, siguiendo criterios y pautas ampliamente aceptados en la ley o la jurisprudencia de la región.

3) Que se reconozca el derecho de las personas al reconocimiento de su identidad de género físico-psico-social autopercibida por medio de un procedimiento administrativo expedito, claro, no patologizante, privado y que preserve la igualdad de oportunidades a través de la reserva de la identidad anterior, como acontece en el caso de la adopción, siguiendo los lineamientos de las declaraciones voluntarias de protección de derechos humanos de las personas transexuales, transgénero e intersexuales asumidas por Venezuela en concordancia con los principios de protección de derechos humanos derivados de declaraciones, recomendaciones y opiniones derivadas de los órganos internacionales de protección de derechos humanos. Esto incluye el cambio de nombre y sexo en toda la documentación de la persona sin necesidad de reasignación genital. La falta de identidad legal de las personas transexuales les condena a la marginalización, marginalidad y a la casi imposibilidad de acceder a la salud, educación, trabajo, vivienda y otras prestaciones básicas en condiciones de igualdad y no discriminación efectiva. Para superar esta

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situación basta la reforma de dos artículos de la Ley Orgánica de Registro Civil tal y como se señala más adelante, siguiendo los criterios incorporados en leyes o decisiones judiciales ampliamente aceptados en la región.”

El 17 de mayo de 2011, los movimientos sociales que defienden los derechos humanos de las personas LGTBI llevan a cabo una concentración en las adyacencias de la Asamblea Nacional para reiterar la solicitud de declaración del 17 de mayo como “Día Nacional contra la Homofobia y la transfobia”.

El 15 de septiembre de 2011, representantes de la Red LGBTI de Venezuela se reunieron con el Presidente de la Asamblea Nacional, Diputado Soto Rojas, para solicitar respuesta del Poder Legislativo sobre demandas realizadas en febrero del mismo año. “Ustedes deben educar a la sociedad, nosotros los escuchamos pero no emprenderemos ninguna acción legal en este respecto” fue la respuesta del Diputado.

El 19 de septiembre de 2011, luego del fracaso de la reunión con el Diputado Rojas, se hace entrega a quien fungía como presidenta de la Comisión de Política Interior de la Asamblea Nacional, Diputada Cilia Flores y quien es la actual Primera Dama de la República de Venezuela, de una carta exigiendo atención a las citadas demandas realizadas en febrero.

Posteriormente, el 22 de mayo de 2013, la ONG Unión Afirmativa de Venezuela solicita un derecho de palabra en la Comisión de Política Interior de la Asamblea Nacional para pedir se considere en la reforma del artículo 44 del Código Civil de Venezuela para permitir así la ampliación del matrimonio a personas del mismo sexo. A continuación el artículo que impide legalmente la protección de las familias conformadas por personas del mismo sexo por el Estado:

“El matrimonio no puede contraerse sino entre un solo hombre y una sola mujer. La Ley no reconoce otro matrimonio contraído en Venezuela sino el que se reglamenta por el presente Título, siendo el único que producirá efectos legales, tanto respecto de las personas como respecto de los bienes.”

Igualmente, Unión Afirmativa de Venezuela informó a esta Comisión que entregaría un proyecto de ley de modificación parcial del Código Civil. De forma verbal, los Diputados de la Comisión expresaron su disposición a recibir y discutir cualquier proyecto emanado del Poder Popular.

Finalmente, el 31 de enero de 2014 la ONG Venezuela Igualitaria junto con ONG, movimientos sociales y grupos LGBTI de todas las tendencias políticas hacen entrega a la Asamblea Nacional del proyecto de Matrimonio Civil Igualitario que contempla la referida modificación parcial del Código Civil, respaldado

\[7\] Disponible en https://es.scribd.com/doc/194454348/Proyecto-de-Ley-de-Matrimonio-Civil-Igualitario-Venezuela
por más de 21 mil firmas de ciudadanos y ciudadanas, y más de 47 organizaciones de la Sociedad Civil con trabajo en Derechos Humanos. Las y los Diputados de la Asamblea Nacional Elvis Amoroso, Odalis Monzón y Alejandra Benítez del partido de gobierno PSUV junto con diputados de la oposición recibieron en sus manos este proyecto variability.

Las personas LGBTI asistieron masivamente a una concentración pública en las puertas del Parlamento venezolano variability, en señal de respaldo a este importante proyecto.

Las firmas fueron recolectadas en un proceso voluntario de amplia participación ciudadana en todas las regiones del país durante siete meses, desde junio de 2013 hasta enero de 2014.

El 17 de julio de 2014 el vicepresidente de la Comisión de Política Interior de la Asamblea Nacional, José Javier Morales, designó al diputado Modesto Ruíz como presidente de la subcomisión para tratar el proyecto de Ley de Matrimonio Civil Igualitario. Esta decisión es el resultado del derecho de palabra concedido a miembros de la Asociación Civil Venezuela Igualitaria y Ejército Emancipador del Gran Polo Patriótico, partido afecto al gobierno, en el Parlamento venezolano, donde expusieron las demandas fundamentales que esperan sean debatidas por el Poder Legislativo, a fin de garantizar la ciudadanía plena de las personas LGBTI en Venezuela variability. Medios de comunicación reseñaron que “El diputado Ruíz estimó para finales de julio la preparación de una agenda de foros y conversatorios que les permita a los distintos colectivos exponer los fundamentos de esta lucha y así poder abordar el tema con el conocimiento necesario para tomar decisiones”. Se desconoce si se realizaron estas actividades.

Particular atención merecen las razones esgrimidas por algunos Diputados y Diputadas de ambas fracciones políticas representadas en la Asamblea Nacional para no abordar este tema, puesto que en varias de sus manifestaciones públicas prevalecen alegatos vinculados con sus distintas creencias religiosas. Este argumento contradice y viola lo establecido en el artículo 59 de la Constitución de la República Bolivariana de Venezuela donde se establece que “nadie podrá invocar creencias religiosas para eludir el cumplimiento de la ley”.

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11 Video disponible en http://www.youtube.com/watch?v=G-evM50-3fs&feature=share
12 AVN (17 de julio 2014). “Asamblea Nacional designó subcomisión para tratar proyecto Ley de Matrimonio Civil Igualitario”. Disponible en http://www.avn.info.ve/contenido/asamblea-design%C3%B3-subcomisi%C3%B3n-para-tratar-proyecto-ley-matrimonio-civil-igualitario Consultado el día 21 de octubre de 2014.
Este no reconocimiento y por ende falta de protección legal de las familias de personas del mismo sexo con nacionalidad venezolana les acarrea graves consecuencias en su cotidianidad. Tal es el caso de parejas que han decidido contraer matrimonio en países como Argentina o España, quienes al llegar a nuestro país pierden ese estatus civil, dado que su unión no es reconocida por el Estado venezolano.

Por ejemplo, el Consejo Nacional Electoral (CNE) a través de la Resolución N° CRCE/2012-02, declaró sin lugar el recurso ejercido por el venezolano Jesús Ravelo contra el acto administrativo contenido en el oficio número ONRC/035/2011 dictado por la Oficina Nacional de Registro Civil de fecha de 25 de enero 2011, mediante el cual se niega la inserción en los libros de Registro Civil de la República Bolivariana de Venezuela, del acta de matrimonio que contrajo en Holanda el referido ciudadano con un nacional de dicha nación, ciudadano Oliver Schnider.\textsuperscript{14}

Un caso similar lo constituye el de Ginveth Soto Quintana y Migdely Miranda, quienes el lunes 16 de diciembre de 2013 acudieron a la Oficina Principal del Registro Civil del Municipio Libertador de Caracas, para insertar el acta del matrimonio celebrado formalmente ante las autoridades de la República de Argentina, de acuerdo a lo establecido en la Ley Orgánica de Registro Civil (LORC), específicamente los artículos 115 y 116. Ante dicha solicitud, representantes de ese organismo respondieron que con base en el Artículo 77 de la Constitución de la República Bolivariana de Venezuela y el Artículo 44 del Código Civil, dicho procedimiento no podría ser realizado, por lo establecido en los artículos 6 y 8 de la LORC se les solicitó que dieran respuesta formal por escrito y se espera la misma para finales de la próxima semana.\textsuperscript{15}

De igual manera, existen casos de parejas de mujeres venezolanas que han optado por acudir a métodos de concepción a través de la reproducción asistida, bien sea con el uso de óvulos de ambas madres, o a través de la donación de embriones o por concepción in vitro, con el objeto de concebir los hijos de ambas.

Tales son los casos de dos parejas de mujeres Nancy Aguilera y Patricia Arenas, Giniveth Soto y Migdely Miranda, y una pareja de hombres venezolanos Jhonnie García y Antonio Torrealba. El de Nancy Aguilera y Patricia Arenas “Es el primer caso de una pareja de lesbianas en Venezuela que concibe un hijo por fecundación asistida, al menos públicamente.” \textsuperscript{16} El caso de Giniveth Soto y Migdely Miranda, antes mencionado, sucedió luego de su matrimonio en Argentina. “A su regreso a Venezuela, ella aportó un


\textsuperscript{15} Disponible en http://www.inoutpost.com/noticias-LGBT/registro-civil-de-caracas-niega-a-pareja-de-lesbianas-insercion-de-matrimonio-celebrado-en-argentina-20131217170602.html Consultado el día 21-10-2014.

óvulo para que fuera inseminado artificialmente y colocado en el vientre de su esposa, a fin de crear un vínculo mayor entre ambas y el bebé.” La pareja ha manifestado que “Analizamos la opción del autoexilio, pensamos irnos a Argentina a tenerlo si aquí no se legaliza nuestro matrimonio. Queremos que tenga el apellido de ambas”, dado que “Ante la ausencia del matrimonio igualitario y de regulaciones a la maternidad asistida en Venezuela, la única que sería reconocida como madre de su hijo sería su pareja, porque es la que llevará el embarazo a término.”

Finalmente, el caso de Jhonnie García y Antonio Torrealba, quienes se convirtieron en padres el pasado mes de diciembre de 2013 en Venezuela. Sus trillizos nacieron a través de vientre subrogado. La pareja cuenta que “A pesar de haber sido víctimas de discriminación y homofobia por tomar la decisión de ser padres, han recibido el apoyo incondicional de sus familiares y amigos.” El pasado mes de junio de 2014 se casaron en Nueva York “formalizando su compromiso, el cual no pudieron concretar en Venezuela por falta de leyes que protejan a las familias homoafectivas y esperan que la Asamblea Nacional discuta y apruebe el proyecto de ley de Matrimonio Civil Igualitario para poder hacerlo algún día en su país.”

Todas estas parejas una vez casadas y luego regresar a Venezuela pierden todo sus derechos civiles derivados del matrimonio realizado en el extranjero. Igualmente, sus hijos, al nacer, o inclusive aquellos que son adoptados/as, vienen al mundo o a un nuevo hogar en un limbo legal pues se reconoce la maternidad o paternidad de uno de los miembros de la pareja no de ambos.

**IMPOSIBILIDAD A DESARROLLAR LA PROPIA PERSONALIDAD**

El Informe “El Derecho a la No Discriminación por VIH en Venezuela” (2011) publicado por Acción Solidaria señala que “La Constitución venezolana sólo reconoce el derecho a una identidad civil basada en el sexo biológico, en el sentido siguiente: ‘toda persona tiene derecho a ser inscrita gratuitamente en el registro civil después de su nacimiento y a obtener documentos públicos que comprueben su identidad biológica’.”

El citado informe indica que “Ello limita el ejercicio de los derechos de las personas que no se identifiquen con sus condiciones biológicas, y restringe el derecho a la nacionalidad venezolana, consagrado en la Constitución, la cual se adquiere automáticamente por haber nacido en territorio

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venezolano y de la cual ninguna persona nacida en el país puede ser privada, así como el derecho a la ciudadanía, la cual ejercen todos los venezolanos no sujetos a inhabilitación política o interdicción civil. El que se obligue a una persona a llevar una identidad biológica que no comparte, para ejercer su nacionalidad y ciudadanía en Venezuela, violenta su derecho a la protección de su vida privada, intimidad, propia imagen y confidencialidad, así como sus libertades para desarrollar la propia personalidad, autodefinirse y expresarse de acuerdo con su conciencia, ideas y opinión. Imponer la aceptación de una identidad biológica ajena a la persona–a través de la cual se adquiere el reconocimiento de la nacionalidad y la ciudadanía–, la coloca en un marco fuera de toda protección y la condena a ser invisible como ciudadana.”

ACSOL en su informe también indica que “En Venezuela, la Ley Orgánica de Registro Civil no permite que una persona del colectivo LGTBI pueda llevar a cabo trámites legales como pedir un crédito, legalizar uniones y heredar bienes de la pareja a su fallecimiento. Aunque esta ley permite el cambio de nombre, ello no se les ha permitido a personas LGBTI que lo han solicitado. Asimismo, muy pocas normas se refieren a la no discriminación por orientación sexual o por identidad y expresión de género, por lo que la legislación venezolana, en general, no reconoce plenamente la existencia de las personas LGBTI, a pesar de que ya muchos países han realizado grandes avances en su protección jurídica. De esta manera, se les impone que vivan sometidas, en contextos discriminatorios en los que se las excluye de derechos y en los que se propicia la violencia, la homo, lesbo y transfobia, así como los entornos y los crímenes de odio.”

“No obstante, en Venezuela no ha procedido hasta ahora iniciativa alguna dirigida al cambio del estatus legal de las personas LGBTI. En un reciente Proyecto de Ley Orgánica de Igualdad y Equidad de Género, se eliminaron todas las menciones sobre orientación sexual e identidad de género. En las reformas de la Ley Orgánica de Registro Civil no se han aceptado propuestas para reconocer el derecho a la identidad de las personas LGBTI y los derechos de pareja. En la Ley de Subsistema de Salud del Sistema de Seguridad Social se excluyó expresamente la cobertura pública del cambio de sexo; en la Ley Orgánica de Protección de Niños, Niñas y Adolescentes se limitó la adopción a parejas heterosexuales; y en Ley Orgánica de Educación se suprimieron las referencias en el Proyecto original acerca de la educación contra la discriminación por orientación sexual e identidad de género.”

**DISCRIMINACIÓN, VIOLENCIA E IMPUNIDAD CONTRA LGBTI EN VENEZUELA**

Las personas LGBTI se encuentran en un total estado de indefensión, abandono y absolutamente desprotegidas por el Estado venezolano. Existe un alto grado de impunidad de los casos denunciados por las personas LGBTI sobre discriminación, agresiones, violencia, maltratos, torturas y hasta asesinatos por razón de orientación sexual, identidad y expresión de género. Estas situaciones son motivadas a la inacción y omisión de las instituciones públicas en la administración de justicia frente a los casos vinculados con la diversidad sexual.
La situación de la homofobia ha llegado a niveles extraordinarios que el Comité de Tortura de la Organización de las Naciones Unidas (ONU) en su 29º período de sesiones, noviembre de 2002, expresó como uno de los motivos de su preocupación “las denuncias sobre amenazas y ataques contra las minorías sexuales” en la República Bolivariana de Venezuela, luego de haber examinado el informe presentado por nuestro país, en virtud del Artículo 19 de la Convención contra la Tortura y otros Tratos o Penas Crueles, Inhumanos o Degradantes.

Estas realidades han sido denunciadas por importantes ONG que trabajan en este campo como es Venezuela Diversa, Unión Afirmativa de Venezuela (UNAF), Red LGBTI de Venezuela, y Reflejos de Venezuela. También han sido visibilizadas a través de informes producidos por varias organizaciones de la sociedad civil.

En el año 2003, Acción Ciudadana Contra el SIDA (ACCSI)21 publicó el Informe sobre Impunidad en la violación de los Derechos Humanos Comunidad GLBT22, donde muestra los resultados de un estudio realizado en Caracas con una muestra poblacional de 76 (100%) personas encuestadas, desglosada en 63% de hombres gay, 14% lesbianas, 9% bisexuales y 13% transgéneros.

El 68% de la muestra total afirmó haber tenido experiencias negativas con la policía vinculados a su sexodiversidad, el 100% de las personas transgéneros expresó que tuvo interacciones negativas con la policía y el 36% de las lesbianas informan una menor ocurrencia de estas experiencias negativas. El informe señala que “Las lesbianas tuvieron la mejor opinión de la policía, calificándolos en 1,7. Irónicamente, los transgéneros también calificaron su opinión de la policía más alto que el promedio, en 1,0, a pesar de que todos han tenido experiencias negativas.”

El equipo de investigadores de ACCSI señaló que “Es abrumador que con tan alta incidencia de experiencias negativas (que incluyen “matraqueo”23 o extorsión, allanamiento, amenazas y privación de libertad, agresión física y verbal y violación, entre otros), encontramos muy bajos niveles de denuncio: por la población entera de la encuesta, solamente el 13% denunciaron sus experiencias negativas. Entre los transgéneros y las lesbianas, no encontramos denuncia alguna.”

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21 www.accsi.org.ve
23 Según Pablo Fernández Blanco, es un término con el que se define en Venezuela a la manera de sobornar o extorsionar a la población aplicada por funcionarios policiales o militares, quitándoles a las personas dinero u objetos por razones de toda índole y afectando a ciudadanos comunes y en condición de vulnerabilidad. Esta práctica, si bien la sufren muchos países, cobra en Venezuela formas que la hacen prácticamente una característica cultural en el ámbito policial y el militar vinculado a la seguridad ciudadana. Ver http://www.eluniversal.com/opinion/131202/matraqueo-y-reforma-policial
En cuanto a la impunidad y sus mecanismos en la comunidad LGBTI, se identifican algunos elementos a ser considerados: “Discriminación, prejuicios, odio y descrépico hacia la orientación sexual o identidad LGBTI; Vergüenza o baja autoestima de las víctimas y sus familiares; Falsas creencias en relación a la condición LGBTI como delito; Falsa creencia en relación a la condición LGBTI como dañina para la sociedad; Criminalización del entorno LGBTI; Prácticas de extorsión (matraqueo) dirigidas a poblaciones vulnerables como jóvenes, trabajadores sexuales, hombres gay y transgéneros; Cotidianidad de la violencia y agresión, particularmente en el caso de los transgéneros, que causa una desensibilización a violaciones como acoso sexual, matraqueo, y privación de libertad.”

El mismo informe expresa:

“...para que la impunidad en las violaciones a los DDHH de las personas LGBT opere y se enjuzare, debe existir una sociedad altamente discriminatoria, que mira prejuciosamente y con odio a los miembros de esa comunidad, quienes son todas aquellas personas que por su condición de identidad u orientación sexual son consideradas como dañinas para la sociedad, lo que en los mecanismos psicológicos de la impunidad justifica crímenes y agresiones. Por lo general estos delitos y violaciones a los derechos humanos se comenten en la creencia de que se está haciendo un servicio a la sociedad. Un mecanismo para la impunidad como lo es el abuso de la autoridad, muy frecuente en la comunidad LGBT, igualmente perpetúa esa creencia.”

En el 2008, ACCSI publica el Segundo Informe sobre Homofobia, Violencia e Impunidad contra la Comunidad de Lesbianas, Gays, Transexuales y Bisexuales en la República Bolivariana de Venezuela24, el cual muestra los resultados de un estudio efectuado en Caracas, Mérida y Maracaibo, ciudades donde se aplicaron encuestas a 742 (100%) personas de la diversidad sexual, distribuidos en: 465 (63%) hombres gays, 107 (14%) bisexuales, 103 (14%) lesbianas y 67 (9%) transgéneros.

El 50% de las personas encuestadas afirmaron haber tenido experiencias negativas con los cuerpos policiales: agresión verbal (36%), matraqueo (20%), agresión física (12%), y privación de libertad (11%). “La población transgénero continúa siendo la más afectada por la violencia policial y particular, y por la situación de impunidad; aparece como la población que tiene el más alto porcentaje de denuncias comparado con los gays y las lesbianas.” “Se ha mantenido la desconfianza en el sistema de justicia, el miedo y la vergüenza como las principales causas para la impunidad. Las lesbianas son las que menos denuncian las violaciones y los atropellos (un 92%), seguidas por los Gays (90%), Bisexuales (87%) y Trans

El porcentaje de casos resueltos sobre el total denunciado es del 15%. Del total de personas encuestadas, el 61% reportaron haber sufrido agresiones provenientes de particulares. El 79% de estas personas no denunciaron las mismas.

Para ese entonces, el informe 2008 de ACCSI afirmaba: “Aún la comunidad LGBT en Venezuela está muy estigmatizada y discriminada socialmente. Esto se debe a las fobias a la diversidad sexual y el transgenerismo, así como a los prejuicios y animadversiones generados desde las iglesias, partidos políticos, sindicatos, medios de comunicación social, sistema educativo, sector salud, gremios y comunidades en general, lo que incluye con frecuencia a las mismas personas afectadas y su entorno familiar.”

En el 2012 la ONG DIVERLEX publicó el reporte final de la encuesta “Situación de discriminación y violencia contra la población LGBT en Venezuela”25. De un total de 237 (100%) personas LGBT encuestadas (viral), 219 (92%) respondieron haber sido víctimas de discriminación y violencia por la condición de LGBTTI en varias regiones del país; 199 (82%) dicen que alguna vez fueron agredidas verbalmente por ser LGBT; 117 (73%) expresaron haber pensado emigrar por la discriminación aunque seguían viviendo en Venezuela; 47 de las personas encuestadas dijeron que no denunciaron las agresiones sufridas por desconfianza en el sistema de justicia, vergüenza, falta de información sobre posibilidades de denuncia, miedo a represalias, entre otros. En cuanto a la discriminación en el ámbito escolar o universitario durante los últimos 5 años, 111 (46,84%) personas dijeron creer que la discriminación continuaba igual, en cambio 131 (55,27%) afirmaron que la aceptación de la comunidad había aumentado.

En el año 2013 ACCSI publica el Informe Venezuela 2013 sobre Crímenes de odio por Orientación sexual, Identidad de género y Expresión de género26, con los resultados de un estudio hemerográfico realizado en 13 entidades federales27 venezolanas, donde ocurrieron 9928 crímenes de odio29 por la

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27 Son Distrito Capital, Miranda, Zulia, Aragua, Mérida, Carabobo, Bolívar, Barinas, Lara, Vargas, Nueva Esparta, Táchira y Monagas.
28 Cada uno de estos casos (los asesinatos, ataques y amenazas) se encuentran disponibles en los anexos del informe, incluyendo los enlaces donde aparecen publicados en las fuentes informativas consultadas.
29 Para la International Lesbian, Gay, Bisexual, Trans and Intersex Association (ILGA), crímenes de odio se define como “todo aquel delito o intento de delito motivado por prejuicio hacia y contra la víctima por razón de color, sexo, orientación sexual, género, identidad de género, origen, origen étnico, status civil, nacimiento, impedimento físico o mental, condición social, religión, edad, creencias religiosas o políticas”. La Oficina para los Derechos Humanos y las Instituciones Democráticas considera que el crimen de odio es un término que puede emplearse para aquellos comportamientos violentos contra las personas y/o sus propiedades, los cuales se presentan con distintas variaciones: desde fuertes palabras, burlas, chistes, amenazas, vandalismo, incitación al odio, asalto, robo,
orientación sexual, identidad de género y expresión de género entre enero de 2009 a agosto de 2013, desglosado en 46 asesinatos (degollamientos, impactos de balas, quemaduras, lanzados al vacío, arrollamientos, ahogamiento, golpes con objetos contundentes) y 53 agresiones de todo tipo (tortura, tratos crueles, inhumanos y degradantes, detenciones arbitrarias, agresiones verbales, físicas y psicológicas, amenazas, embate policial, abuso de poder, entre otras), debido a la orientación sexual, identidad de género y expresión de género de las víctimas.

Lo anterior fue reseñado por algunos medios de comunicación y denuncias de organizaciones de la sociedad civil que trabajan con la comunidad de lesbianas, gays, bisexuales, transgéneros, transexuales, travestis e intersexuales.

Analizando las notas informativas y denuncias de las Organizaciones de la Sociedad Civil, se determina que las víctimas LGBTTTI son irrespetadas en su dignidad humana producto de la lesbofobia, homofobia, bifobia y transfobia que impera en la sociedad venezolana, con el agravante que las personas sexo diversas se encuentran desprotegidas y desamparadas por las instituciones públicas. Una clara demostración es el incremento del 55,56% de los asesinatos motivados por la orientación sexual, identidad de género y expresión de género en lo transcurrido del año 2013 (entre enero a agosto de 2013) en relación al año anterior.

**Tabla 1:**

<table>
<thead>
<tr>
<th>Año</th>
<th>No. de asesinatos cometidos contra LGBTTTI / año</th>
<th>Variación con respecto al año anterior</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>No.</td>
<td>%</td>
</tr>
<tr>
<td>2009</td>
<td>5</td>
<td>-</td>
</tr>
<tr>
<td>2010</td>
<td>5</td>
<td>0</td>
</tr>
<tr>
<td>2011</td>
<td>13</td>
<td>8</td>
</tr>
<tr>
<td>2012</td>
<td>9</td>
<td>-4</td>
</tr>
<tr>
<td>2013 (enero a agosto)</td>
<td>14</td>
<td>5</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>46</td>
<td></td>
</tr>
</tbody>
</table>

La mayoría de las personas asesinadas son jóvenes (56,5%) entre 17 a 30 años de edad, seguido por adultos (24%) con edades entre 31 y 49 años; el 19,5% de los casos reseñados por las fuentes informativas no señalan las edades de las víctimas. El 34,8% de las personas asesinadas son hombres, el 15,2% (7) son trans y el 2,2% (1) es mujer; el restante de los casos con un 47,8%, las fuentes informativas no identificaron el sexo de las víctimas. Las fuentes indican que 33 (71,7%) transgéneros fueron la mayoría de las personas de la diversidad sexual asesinadas, seguido por 10 (21,7%) personas masculinas golpes hasta llegar al asesinato. Para Letra S estos crímenes comunican un mensaje amenazante al resto de los integrantes de esos grupos, comunidades o minorías.
y una (2,2%) femenina. La mayoría de las reseñas (91,3%) no reportan las orientaciones sexuales de las personas asesinadas, en cambio señalan que 3 personas eran gays (6,5%) y una (2,2%) era lesbiana.

Diez y ocho (39,1%) personas que ejercían el trabajo sexual fueron asesinadas ocupando el primer lugar, seguidas por 6 (13,0%) personas que laboraban en el área de servicios de belleza. Se destaca una activista trans defensora de los derechos humanos de la diversidad sexual, dos prestamistas, un vigilante y un artista fono mímico entre las personas de la diversidad sexual asesinadas. Quince de los casos publicados por las fuentes informativas no indicaron el oficio/ocupación de las víctimas asesinadas.

Destaca el “carácter desechable” como elemento común en los casos de los asesinatos de las personas de la diversidad sexual reportados por las fuentes informativas consultadas. En este sentido, las avenidas, calles y autopistas son los lugares donde ocurrieron la mayoría (76%) de los asesinatos de personas de la diversidad sexual y/o donde se localizaron sus cadáveres. También se presentan otros lugares como zonas para botar desechos (basurero de un edificio invadido, río de aguas negras y matorrales) y sitios poco transitados (cementerio, obra en construcción y paraje solitario).

En los asesinatos se evidencian la saña, odio y desprecio de las victimarias contra las personas con orientación sexual, identidad de género y expresión de género distinta a la heterosexual. El 54,3% de las personas de la diversidad sexual asesinadas aparecieron con impactos de balas, seguidas por el 10,9% de los asesinatos con apuñalamiento. Se observa que el 6,5% de los casos reseñados por las fuentes informativas no indican cómo aparecieron los cuerpos. El resto de los asesinatos a personas LGBTTTI presentan una amplia variedad: degollamientos, torturas, ahogamiento, golpizas con objetos, entre otras, ver Tabla 2.

**Tabla 2:**

<table>
<thead>
<tr>
<th>Estado de los cuerpos de las personas de la diversidad sexual asesinadas</th>
<th>Frecuencia</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Impactos de balas</td>
<td>25</td>
<td>54,3</td>
</tr>
<tr>
<td>Apuñalamiento</td>
<td>5</td>
<td>10,9</td>
</tr>
<tr>
<td>Golpiza, apuñalamiento e impactos de balas</td>
<td>3</td>
<td>6,5</td>
</tr>
<tr>
<td>No indica</td>
<td>3</td>
<td>6,5</td>
</tr>
<tr>
<td>Tortura (golpes en la cara, pérdida parcial del cuero cabelludo, entre otros)</td>
<td>2</td>
<td>4,3</td>
</tr>
<tr>
<td>Ahogada en el Río Guaire de Caracas</td>
<td>1</td>
<td>2,2</td>
</tr>
<tr>
<td>Lanzado al vacío desde un piso 9 y estrellado en el concreto</td>
<td>1</td>
<td>2,2</td>
</tr>
<tr>
<td>Arrollamiento o arrojado desde un carro en marcha</td>
<td>1</td>
<td>2,2</td>
</tr>
<tr>
<td>Degollado y apuñalado</td>
<td>1</td>
<td>2,2</td>
</tr>
<tr>
<td>Golpeado salvajemente con un bloque hasta hundir su cráneo</td>
<td>1</td>
<td>2,2</td>
</tr>
<tr>
<td>Impactos de bala, degollado y lanzado en una fosa del cementerio</td>
<td>1</td>
<td>2,2</td>
</tr>
<tr>
<td>Impactos de bala, degollado y quemado</td>
<td>1</td>
<td>2,2</td>
</tr>
<tr>
<td>Golpeados con llave de cruz (herramienta para cambiar cauchos de carro)</td>
<td>1</td>
<td>2,2</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>46</strong></td>
<td><strong>100,0</strong></td>
</tr>
</tbody>
</table>
En el 76,1% de los asesinatos de personas de la diversidad sexual reportados por las fuentes informativas no indicaron los motivos que originaron estos delitos. En el 8,7% se desconoce el móvil de los homicidios de personas LGBTTTI. El resto de los casos varían desde cobro de deudas por drogas, robo, venganza hasta secuestro, entre otros. Uno de los casos corresponde al asesinato de una lesbiana cuyo móvil fue negarse a ser manoseada por un hombre.

Se desconoce el estatus del 91,3% de los casos de las denuncias por asesinatos de personas LGBTI en Venezuela. Al respecto, las fuentes informativas consultadas aseguran que 4 (8,7%) casos fueron resueltos (4 personas imputadas), pero no mencionan si los 42 (91,3%) casos restantes culminaron con éxito, ver Tabla 11 del citado informe. Señalan que 21 (45,7%) de los casos fueron denunciados ante los órganos de justicia y 26 (56,5%) se encontraban en proceso de investigación. También mencionan que entre enero de 2009 a agosto de 2013 los órganos de justicia capturaron a 10 personas por el supuesto asesinato de ocho (8) personas de la diversidad sexual, cuyos motivos se vinculan con la orientación sexual, identidad de género y expresión de género de las víctimas, ver Tabla 12 del citado informe.

Un total de 53 amenazas y ataques contra personas de la diversidad sexual ocurrieron en Venezuela entre enero de 2009 a agosto de 2013, según algunos medios de comunicación social y organizaciones de la sociedad civil, ver Tabla 3. Destacamos que el año 2011 no se consiguieron noticias sobre agresiones, en cambio para el año 2012 se identificaron el mayor número de casos con 33 ataques.

<table>
<thead>
<tr>
<th>Año</th>
<th>No. de amenazas y ataques contra LGBTTI / año</th>
<th>Variación con respecto al año anterior</th>
</tr>
</thead>
<tbody>
<tr>
<td>2009</td>
<td>1</td>
<td>-</td>
</tr>
<tr>
<td>2010</td>
<td>8</td>
<td>7</td>
</tr>
<tr>
<td>2011</td>
<td>No hay registro</td>
<td>-</td>
</tr>
<tr>
<td>2012</td>
<td>35</td>
<td>27</td>
</tr>
<tr>
<td>2013 (enero a agosto)</td>
<td>9</td>
<td>-18</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>53</strong></td>
<td></td>
</tr>
</tbody>
</table>

De los 53 casos identificados, solo dos casos de agresiones se identifican las edades de las víctimas, uno de 18 años y el otro de 19 años, lo que representa el 3,9% de la totalidad de los casos. La Gran Caracas ocupa el primer lugar en Venezuela con mayor frecuencia de ataques y amenazas vinculadas con la

orientación sexual, identidad de género y expresión de género. El segundo lugar lo ocupan Zulia y Aragua. Destacan las ataques verbales provenientes de actores clave de la sociedad venezolana con impacto nacional corresponde al 24,5% del total. La mayoría de los ataques y amenazas ocurrieron en la vía pública con un 66,0% de los casos, siendo en muchos de los casos el lugar de trabajo de algunas de las víctimas. El 7,5% de las ataques fueron declaraciones de actores clave ofrecidas a los medios de comunicación. El 18,8 no indica el lugar. Destaca un (1,9%) ataque verbal de un diputado de la Asamblea Nacional quien desde el Hemiciclo expresó públicamente su homofobia.

El 47,2% de los casos presentan ataques verbales, físicos y psicológicos (incluye extorsión, torturas con electricidad); le sigue el 18,9% con ataques verbales (tales como: burlas, lenguaje denigrante, insultos, amenazas, instigación al estigma, discriminación, persecución, violencia y odio); el tercer lugar corresponde a ataques verbales y abuso de poder con el 11,3%; continua con ataques mixtos (instigaciones al odio, escrita, verbal y abuso de poder) con el 7,5%. Ver Tabla 4.

Destaca el abuso de poder de algunas altas autoridades del Estado y funcionarios policiales, quienes cometieron insultos, trato denigrante, hostigamiento, amenazas, incitación a prácticas estigmatizantes, discriminatorias, violentas y al odio social, uso desproporcionado de la fuerza policial, detenciones arbitrarias, privaciones de libertad no justificadas. También algunos agresores usaron armas de fuego para amenazar y ocasionaron heridas con el arma y con balas, según las fuentes informativas.

TABLA 4:
Formas de los ataques y amenazas contra las personas LGBTI

<table>
<thead>
<tr>
<th>Forma de las agresiones</th>
<th>Frecuencia</th>
<th>Porcentaje</th>
</tr>
</thead>
<tbody>
<tr>
<td>Verbal, física y psicológica</td>
<td>25</td>
<td>47,2</td>
</tr>
<tr>
<td>Verbal</td>
<td>10</td>
<td>18,9</td>
</tr>
<tr>
<td>Verbal y abuso de poder</td>
<td>6</td>
<td>11,3</td>
</tr>
<tr>
<td>Instigación al odio, acoso, difamación, agresión escrita/verbal, abuso de poder</td>
<td>4</td>
<td>7,5</td>
</tr>
<tr>
<td>Impactos de bala</td>
<td>3</td>
<td>5,7</td>
</tr>
<tr>
<td>Instigación al odio y persecución</td>
<td>3</td>
<td>5,7</td>
</tr>
<tr>
<td>Golpeada con una llave de cruz (herramienta para desmontar cauchos)</td>
<td>1</td>
<td>1,9</td>
</tr>
<tr>
<td>Quemaduras del 30% en el cuerpo</td>
<td>1</td>
<td>1,9</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>53</strong></td>
<td><strong>100,0</strong></td>
</tr>
</tbody>
</table>
Algunos ataques ocurridos entre septiembre de 2012 y febrero de 2013

Quemado por ser gay: Ángelo Alfredo Prado Perdomo, un joven gay de 18 años de edad, lo rosearon de gasolina y le prendieron fuego frente a las puertas de un liceo donde buscaba cupo, causándole quemaduras de tercer grado en un 30% de su cuerpo. Luego un vecino del joven declaró a medios de comunicación “Aquí en este barrio no se aceptan gays”. Los autores de este ataque fue un grupo de jóvenes del liceo. Se desconoce el estatus de este caso. Más información en http://eltiempo.com.ve/venezuela/violencia/aqui-en-este-barrio-no-se-aceptan-gays/70318

Una lesbiana asesinada y otra herida por exigir respeto: Una pareja de jóvenes lesbianas fueron heridas por balas, porque una de ellas se negó a ser manoseada por un hombre. Una de las víctimas recibió el impacto en un brazo y la otra joven en la cabeza, quien a las pocas semanas falleció. Se desconoce el estatus de estos dos casos. Más información en http://venezueladiversaac.blogspot.com/2012/11/jovenes-lesbianas-resultan-heridas-por.html

Se desconoce estatus del 98% de las agresiones contra LGBTI en Venezuela. Las fuentes consultadas no indican el estatus del 98,1% de los casos de las agresiones contra las personas LGBTI, es decir si fueron o no denunciados a los órganos administradores de justicia, ver Tabla 18 del informe ACCSI año 2013. Se identifican entre los agresores a altos representantes del Estado venezolano (Presidente de la República, Ministros, Diputados de la Asamblea Nacional), representantes de partidos políticos afectos al actual gobierno como de la oposición, representantes de medios de comunicación social, altos personeros de las distintas iglesias (cristiana católica, cristiana evangélica, adventista, testigos de Jehová, entre otras).

En el año 2014 ACCSI publica el Informe Diversidad Sexual: Derechos, discriminación y violencia Encuesta Marcha del Orgullo Venezuela 201331, donde se muestran los resultados de una encuesta aplicada a 650 personas LGBTI asistentes a tres marchas del Orgullo realizadas en el año 2013 y en tres ciudades venezolanas como son Caracas32, Valencia33 y Maracaibo34, para conocer su percepción sobre la discriminación y la violencia que les afecta, y sobre la acción de las instituciones públicas frente a estas situaciones.

La mayoría de este grupo poblacional LGBTI encuestado son jóvenes, es decir nos referimos a que el 42,6% tienen edades entre 18 y 24 años, y el 28,6% con edades entre 24 y 30 años. En cuanto al nivel educativo, el 33,7% manifestó tener un nivel universitario completo, el 29,2% con un nivel universitario

32 Capital de Venezuela.
33 Primordial ciudad industrial de Venezuela.
34 Considerada la segunda capital de Venezuela, es la principal ciudad de la región occidental donde se localiza la industria petrolera del país.
incompleto y el 26,8% un nivel secundario completo. Sobre su estatus laboral, un 59,1% dijo estar empleado en contraste con un 20,5% que expresó tener un trabajo informal y un 19,7% manifestó estar en situación de desempleo.

Entre los resultados del informe, se identifica que la relación existente con los cuerpos de seguridad del Estado venezolano fue mal calificada por la mayoría de las personas LGBTI encuestadas en las tres Marchas del Orgullo 2013. En tal sentido, las calificaciones obtenidas fueron: 251 personas encuestadas (38,6%) calificaron de “Muy negativo”, y 92 personas (14,2%) consideraron “Negativa”. Lo que contrasta con 15 personas (2,3%) que la consideraron de “Muy positiva” y 13 LGBTI (2,0%) calificaron de “Positiva”.

Otro dato importante surgió como es que la mayoría de las personas LGBTI encuestadas, es decir 471 personas (72,5%) reconocieron no haber tenido alguna experiencia negativa con los cuerpos de seguridad por su orientación sexual, identidad de género y expresión de género; pero esta opinión contrasta con 172 personas (26,5%) quienes aseveraron haber tenido experiencias negativas. Estas 172 personas (100%) manifestaron haber sido víctimas de los cuerpos de seguridad del Estado venezolano, pero tan sólo 36 personas (20,9%) decidieron denunciar las experiencias negativas ocasionadas por los citados cuerpos de seguridad ante las autoridades competentes.

A estas personas se les preguntó ante qué organismo presentaron sus denuncias, quienes afirmaron que éstas fueron presentadas en su mayoría a la Fiscalía General de la República, conocido como Ministerio Público, (11,1%) y al Cuerpo de Investigaciones, Científicas, Penales y Criminalísticas CICPC (11,1%). Llama la atención dos situaciones: a) Solo 1 persona (2,8%) presentó su denuncia a la Defensoría del Pueblo; y b) 14 personas LGBTI (38,9%) no suministraron el nombre de la institución donde supuestamente formularon sus denuncias.

De los casos denunciados, el 44,40% dijeron que sus casos no fueron resueltos mientras que un 13,90% fueron rechazados y tan solo el 19,40 fueron resueltos. En cuanto al grupo de personas LGBTI que expresaron no haber realizado la denuncia, manifestaron que tomaron sus decisiones basadas en “no tener confianza en el sistema de administración de justicia” (45,6%), “miedo y vergüenza” (19,9%), frustración con el proceso (19,99%), falta de documentación/no había caso (22,8%).

Las 172 personas LGBTI encuestadas (100%) tuvieron la oportunidad de ofrecer respuestas múltiples cuando se les consultó sobre el tipo de experiencias negativas experimentadas. En tal sentido, 79 personas (45,9%) refirieron agresiones verbales por la orientación sexual, identidad de género y expresión de género; seguida por 39 LGBTI (22,7%) que afirmaron haber sido víctimas de extorsiones; y 34 personas (19,8%) denunciaron haber sido agredidas físicamente. Otro tipo de experiencias negativas con los cuerpos de seguridad del Estado venezolano fueron manifestadas, tales como lesiones con armas y violación sexual, cada una con un 4,7%. Llama la atención dos situaciones: la primera es que el sexo oral se identifica en la lista de experiencias negativas cometidas por algunos miembros que integran los
cuerpos de seguridad del Estado venezolano; y la segunda, es que 37 personas (21,5%) LGBTI decidieron no contestar este item de la encuesta.

Los principales cuerpos de seguridad de Venezuela fueron mencionados como los perpetradores de las experiencias negativas contra las personas LGBTI. En las respuestas múltiples de las personas encuestadas, la Policía Nacional Bolivariana ocupó el primer lugar porque apareció con 46 experiencias negativas contra las LGBTI (27,10%), seguido por la Guardia Nacional (uno de los brazos de las Fuerzas Armadas Bolivarianas) con 38 agresiones (22,40%), y el Cuerpo de Investigaciones Científicas, Penales y Criminalísticas (CICPC) con 10 experiencias negativas (5,90%). Varias Policías Regionales y Municipales como también la Guardia Patrimonial y Fiscal de Tránsito fueron mencionados por las personas encuestadas.

Estos datos evidencian que lamentablemente estos graves hechos vienen ocurriendo sin control contra la comunidad LGBTI desde hace muchos años en Venezuela, quedando la mayoría de los casos en situación de impunidad, debido a que el Estado venezolano no ha logrado cumplir con sus obligaciones como es prevenir y averiguar los delitos e impartir justicia a los culpables de los crímenes de odio por la orientación sexual, identidad de género y expresión de género.

De forma reiterada, tanto las Organizaciones de la Sociedad Civil como los movimientos de la comunidad LGBTI pertenecientes a los partidos políticos (unos a favor del gobierno y otros a la oposición), han venido denunciando y alertando estas anormalidades, han presentado a distintos órganos del Estado importantes propuestas y recomendaciones de leyes y políticas públicas para la efectiva garantía y restitución de los derechos de las personas de la diversidad sexual y tipificar como delito los crímenes de odio en el Código Orgánico Procesal Penal. Pero nada de esto ha ocurrido.

Es por ello que la mayoría de las lesbianas, gays, bisexuales, e intersexuales encuestadas en las Tres Marchas del Orgullo 2013 rechazan la homofobia y la transfobia institucionalizada por el Estado. Esto se evidencia claramente en las respuestas ofrecidas a las preguntas sobre su percepción sobre el desempeño de las cuatro principales instituciones públicas del Estado de la República Bolivariana de Venezuela (Presidencia de la República, Asamblea Nacional, Fiscalía General de la República y Defensoría del Pueblo) en materia de orientación sexual, identidad de género y expresión de género, que aparecen en el citado informe de ACCSI.

Las personas LGBTI encuestadas consideran “Muy negativa” el desempeño de las cuatro principales instituciones públicas de Venezuela en materia de orientación sexual, identidad de género y expresión de género. Lo anterior significa que de las 650 (100%) personas LGBTI encuestadas en las tres Marchas del Orgullo 2013 realizadas en Caracas, Valencia y Maracaibo:
Un 31,4% evaluaron de “Muy negativa” y un 17,5% consideraron de “Negativa” el desempeño de la Presidencia de la República Bolivariana de Venezuela en materia de orientación sexual, identidad de género y expresión de género.

Un 34,2% evaluaron de “Muy negativa” y un 20,5% consideraron de “Negativa” el desempeño de la Asamblea Nacional en materia de orientación sexual, identidad de género y expresión de género.

Un 33,7% evaluaron de “Muy negativa” y un 20% consideraron de “Negativa” el desempeño del Ministerio Público o Fiscalía General de la República en materia de orientación sexual, identidad de género y expresión de género.

Un 27,8% evaluaron de “Muy negativa” y un 21,1% consideraron de “Negativa” el desempeño de la Defensoría del Pueblo en materia de orientación sexual, identidad de género y expresión de género.

DISCRIMINACIÓN EN LOS ÁMBITOS DE SALUD, TRABAJO, EDUCACIÓN, ESPACIOS PÚBLICOS Y PRIVADOS, Y EN MEDIOS DE COMUNICACIÓN

En el ámbito de la salud: En los bancos de sangre adscritos al sistema público de salud venezolano, persiste en la práctica la prohibición de donación de sangre de personas LGBTI en los centros de salud públicos y/o privados. Un ejemplo de ello es lo publicado en la página Web del Banco Municipal de Sangre, el cual establece como requisito para ser donantes (cita textual) “No pertenecer a grupos de conducta de alto riesgo para el SIDA”35, en clara alusión a las personas de orientación sexual, identidad de género y expresión de género.

Los servicios ginecológicos no están preparados para la atención de mujeres lesbianas, siguiendo el mismo protocolo de atención utilizado en mujeres heterosexuales. También ocurre en los casos de los hombres gays y bisexuales que son atendidos con los mismos protocolos de los hombres heterosexuales.

Un estudio realizado por Acción Solidaria36 en el 2011 donde participaron 298 personas (100%), afirma que estas personas experimentaron situaciones de discriminación o violencia por tener el VIH. “Entre los participantes, los mayores porcentajes de discriminación se registraron en los estados Portuguesa, Aragua, Bolívar y Distrito Capital/Miranda.”

“Del total de personas discriminadas, 61,8% corresponde a los hombres con VIH. “En estos últimos, los homosexuales (54,9%) han experimentado más situaciones de discriminación que el resto de los hombres. La vivencia de prácticas discriminatorias se concentra en las personas de 26 a 35 años (32,1%); le siguen las del grupo de 36 a 45 años (30,7%), repitiéndose el mismo patrón en hombres y en mujeres. Sin embargo, de todos los grupos de edad, los hombres homosexuales entre 18 y 25 años son quienes

35 Banco Municipal de Sangre. Disponible en http://www.bms-fundasangre.org/donacion.html
presentan el más alto porcentaje de personas que han pasado por situaciones de discriminación por tener el VIH (65,5%).” “35,3% de las prácticas discriminatorias experimentadas por estas personas ocurrió en centros de salud y 31% en la casa.”

**Personas Trans sin servicios de salud especializados:** El estudio realizado por la ONG Acción Ecuménica denominado “Situación de derechos y acceso a los servicios de salud de Personas HSH, Bi, Gay y Trans”\(^{37}\) señala lo siguiente:

“Cuando se trata de la población de la Diversidad Sexual, se encontró que los HSH-Bi y Gays no tienen mayores problemas al acceder a los Servicios de Salud, siempre y cuando mantengan oculta su orientación sexual. Esta práctica dificulta el acompañamiento a estas poblaciones con políticas adecuadas a su identidad, ya que se les asume heterosexuales. En opinión de los encuestados, reconocerse como homosexual en servicios de Salud generalmente significa ser estigmatizado con señalamientos que van más hacia estereotipos que hacia conductas reales (se les trata como promiscuos, irresponsables, potenciales infectados con VIH, etc.).

Algunas personas entrevistadas explicaron que prefieren acceder a servicios de Salud conexos a ONGs, donde se sienten libres de presentarse desde su identidad de género y pueden manifestar sus preocupaciones o dudas específicas en la práctica de sexo con hombres.

En los Servicios donde se entrega la Prueba de VIH, muchas veces no hay la Consejería Pre y Post, y los ambientes para entrega de resultados no son los más adecuados, porque fallan en privacidad y en calidez.”

“La Población Trans no cuenta con Servicios especializados para acompañar su proceso de reasignación de género, lo cual deriva en prácticas altamente riesgosas producto de automedicación y por acceder a procedimientos estéticos clandestinos. Las entrevistas y los grupos focales permitieron identificar diversas barreras que existen para el Acceso a los Servicios de Salud por parte de la Población Trans:

- **Barrera Psicológica:** dificultad de la persona que se identifica como trans para comprender su proceso de identidad de género, y condicionantes culturales introyectados que dificultan su propia aceptación (al igual que en el resto de las personas de la Diversidad Sexual)
- **Barrera Familiar:** negación del apoyo por parte de la familia en comprender la situación de la persona. En algunos casos maltrato, humillación y tortura con terapias “curativas”, expulsión del hogar o ruptura de relaciones con miembros del hogar (al igual que en el resto de las personas de la Diversidad Sexual)

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**Barrera Institucional:** discriminación en el acceso a los servicios de Salud, ausencia de servicios especializados para atender un diagnóstico de este tipo, discriminación por parte del personal médico.

**Barrera Económica:** el protocolo para la reasignación de género es largo, complejo y costoso. Frente a la ausencia de respuesta en los servicios públicos, la persona Trans debe acudir a servicios privados, que son costosos, razón por la cual muchas veces esta persona hace su proceso sin el debido acompañamiento profesional.

**Barrera Social:** son pocas las organizaciones que trabajan en el acompañamiento de personas Trans, y las opciones que tienen para la inserción educativa y laboral se restringen por ser personas discriminadas.

Estas personas son el grupo más vulnerable de la Diversidad Sexual. Por todas estas barreras, las personas Trans sólo tienen conocimiento indirecto de los temas de Salud, a través de otras personas Trans o, quienes tienen los recursos, acceden a Servicios de Salud privados. Pero sus pares generalmente manejan información inadequada para hacerles acompañamiento y la discriminación laboral las obliga a solventar sus necesidades económicas ejerciendo trabajos tradicionales para su género (servicios de Cosmetología, Peluquería, Estética, etc.) o en otras opciones altamente riesgosas como el comercio sexual.

En declaraciones de algunas personas Prestadoras de Servicios especializados en esta población, se reconoce la necesidad de facilitar el acceso a los servicios para atender la reasignación de género de las personas Trans, a través de: la aprobación de protocolo gratuito, y la creación de Unidades de Servicios Especializadas.“

**Desabastecimiento de medicamentos para tratar el VIH y de reactivos para exámenes de diagnóstico, control y seguimiento al VIH:** Desde el año 2009 hasta el 2014 han existido episodios de desabastecimiento de los medicamentos antirretrovirales, especialmente en el año 2013 ocurrieron hasta 10 episodios de desabastecimiento de estas medicinas, afectando en su mayoría a las personas LGBTI que viven con VIH y SIDA en Venezuela\(^\text{38}\). Estas personas dependen de estas medicinas para poder vivir y tener una calidad de vida con dignidad. Esta grave situación ha sido denunciada por la Red Venezolana de Gente Positiva (RVG+) y ACCSI ante el Ministerio de Salud, también evidenciada en varios informes\(^\text{39}\) publicados por ambas ONG. Los esfuerzos de ente rector de la salud pública no son suficientes, ya que los problemas de desabastecimiento de antirretrovirales persisten, al no llegar estas medicinas a los estómagos de las personas con VIH.

\(^{38}\) Los datos epidemiológicos oficiales afirman que la población más afectada por el VIH y el SIDA en Venezuela son los homosexuales y los hombres que tienen sexo con hombres.

Se destaca que la negativa de entregar estas medicinas, es un claro desacato al Mandato Constitucional del Tribunal Supremo de Justicia emanado en fecha del 15 de julio de 1999\textsuperscript{40}, quien ordena al Ministerio de Salud a suministrar de forma permanente y sin costo alguno los medicamentos antirretrovirales, los fármacos para el tratamiento de las infecciones asociadas al SIDA, realizar los exámenes de laboratorio y toda la atención integral a las personas con VIH y SIDA en Venezuela. El TSJ señala que cualquier desacato a este Mandato puede generar sanciones administrativas y penales.

Esta situación fue conocida fuera de nuestras fronteras. Dos informes con resultados de estudios realizados y publicados por la Organización Panamericana de la Salud afirman que por dos años consecutivos, Venezuela ocupa el primer lugar de la lista de países de América Latina con mayor número de episodios de desabastecimiento de antirretrovirales en los años 2012\textsuperscript{41} y 2011\textsuperscript{42}.

**En el ámbito de trabajo:** A pesar de que el Artículo 21 de la Ley Orgánica del Trabajo, las Trabajadoras y los Trabajadores aparece de manera explícita la prohibición de discriminación por orientación sexual, en el lugar de trabajo son frecuentes las situaciones de discriminación y violencia contra las personas LGBTI, siendo víctimas de atropellos, despidos injustificados, vulnerando así todos sus derechos y beneficios laborales establecidos en el marco legal vigente.

No obstante, no hay registros de casos, esto debido a que no existen mecanismos que sancionen estos delitos. Quienes son discriminados no se sienten protegidos y temen exponer su caso por miedo a mayores y peores consecuencias, como el riesgo de perder su empleo y en el peor de los casos a agresiones físicas.

**En el ámbito de la educación:** En Venezuela no existe una cátedra de educación sexual a ningún nivel; los casos de abuso escolar no son documentados por las escuelas y muchas maestras, maestros y autoridades no saben cómo abordar la situación en casos de orientación sexual, identidad y expresión de género.

Las pocas informaciones que se manejan sobre acoso escolar provienen del trabajo realizado por las ONG CECODAP y Reflejos de Venezuela, evidencian que a las niñas, niños, adolescentes y jóvenes se les viola el principio de no discriminación e igualdad establecido en el artículo 3 de la Ley para la Protección del Niño, Niña y Adolescente (LOPNNA). Los niños, niñas y adolescentes “No estudian con tranquilidad. Sienten presión y tristeza porque siempre se burlan de ellos: son blanco de acoso escolar por su orientación sexual”. “El rechazo por la orientación sexual en planteles es un fenómeno silente. Todavía


un asunto relegado a cuchicheos de pasillo. No ocurre lo mismo con otras formas de violencia escolar, de las cuales sí se conversa con franqueza.”

CECODAP afirma que “En los Consejos de Protección de los municipios Baruta y Chacao no se han recibido denuncias por esta forma de acoso escolar, pero sí por las demás. El año pasado CECODAP visitó 19 estados del país para dictar talleres sobre violencia en centros educativos. La metodología utilizada consistió en el abordaje de situaciones concretas de agresividad que se hayan presenciado en los planteles, para luego perfilar soluciones.” “En 100% de las instituciones visitadas se observó la presencia de discriminación por orientación sexual, refiere Oscar Misle, director de la ONG.” “Es un tema que no sale en las conferencias para tratarlo abiertamente. A uno le llegan comentarios después, en los pasillos, que hay un muchacho raro, o una chica rara”. “El rechazo no sólo lo impulan los compañeros de clases, sino que, a veces, también lo practican los docentes, quienes intentan en ocasiones apoyar a las víctimas para que cambien su forma de ser.” Este tipo de situaciones la vivió Alfonso quien afirma que “…su maestra llamó a la mamá para que lo llevaran a un psicólogo porque parecía “raro”. Lo cambió de puesto para que jugara más con los niños.” Por esas actuaciones de los docentes, concuerdan los especialistas, los afectados terminan sintiendo que ellos se buscaron el rechazo.

**En los espacios públicos y privados:** Parques, museos, restaurantes, centros comerciales, entre otros, son lugares que se han experimentado situaciones de estigma y discriminación contra las personas LGTBI por parte de funcionarios policiales, de vigilancia o de orden público. En el caso de espacios privados como restaurantes la situación es muy similar. Las expresiones de afecto, tales como caminar tomadas de la mano o abrazadas, besos o cualquier otra expresión que normalmente son llevadas a cabo por dos personas de sexo distinto, en el caso de dos personas del mismo sexo son objeto de censura.

A través de la red social Twitter se denunció el caso de una pareja de hombres que fueron discriminados por darse un beso en las instalaciones de un bar restaurante “Cielo Restobar” ubicado en la ciudad de Mérida, estado Mérida. El gerente de ese lugar les exigió desalojar el local de forma agresiva. Posteriormente hubo un pronunciamiento público del restaurante en donde se expresaba “no comulgamos con ningún tipo de discriminación ni apoyamos acciones que van en contra de la moral ciudadana”, pero no se disculparon con la pareja. Se desconoce si se produjo alguna denuncia ante las instituciones públicas, al igual que si hubo algún reacción oficial.

**En los medios de comunicación social:** No es raro ver en la televisión y particularmente en programas de humor la presencia de personajes homosexuales masculinos que son estereotipados, ridiculizados y utilizados como fuente de burla.

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En diciembre de 2011, el Observatorio Revolucionario de Medios por la Diversidad Sexual y de Género presentó ante la Comisión Nacional de Telecomunicaciones (CONATEL) una denuncia en contra del programa “¡A que te ríes!”, transmitido por el canal privado de televisión Venevisión. Según la denuncia en dicho programa se utiliza “un lenguaje de doble sentido, machista, sexista, clasista, homofóbico y xenfóbico”. 45

Las denuncias realizadas por las ONG no reciben ningún tipo de respuesta. Adicionalmente, no se aplican sanciones ni multas ni penas de ningún tipo contra personas o instituciones que se expresen de manera discriminatoria contra la población LGBTI, a pesar de estar contempladas en varias leyes como la Ley de Responsabilidad Social en Radio, Televisión y Medios Electrónicos46 (2010) en el Artículo 3 que estipula “Promover el efectivo ejercicio y respeto de los derechos humanos, en particular, los que conciernen a la protección del honor, vida privada, intimidad, propia imagen, confidencialidad y reputación...”.

DECLARACIONES Y EXPRESIONES QUE INCITAN LA HOMOFOBIA EN VENEZUELA

“La lucha contra la homofobia es parte esencial de la batalla más amplia de los derechos humanos para todos”, expresó el Secretario General de la ONU, Ban Ki-moon47 en el Foro Internacional sobre el Día Internacional contra la Homofobia y la Transfobia.

En el mismo foro, la Alta Comisionada de la Organización de las Naciones Unidas para los Derechos Humanos, Navi Pillay, afirmó que “La homofobia y la transfobia no son distintas del sexismo, la misoginia, el racismo o la xenofobia. Estas últimas formas de prejuicios son universalmente condenadas por los gobiernos. Sin embargo, la homofobia y las transfobia a menudo son pasadas por alto por las autoridades”. Entre los aspectos de mayor preocupación para la ONU, “figuran los crímenes de odio, que van desde el acoso y la tortura hasta el secuestro y asesinato; la penalización de la homosexualidad; y la discriminación que sufren estas personas por falta de legislaciones nacionales que los protejan.”48

El caso venezolano pudiera ser unos de los motivos de gran preocupación para la ONU, puesto que las expresiones homofóbicas procedentes de altos funcionarios del Estado venezolano (Presidente de la República, Ministros y Diputados), de algunos miembros de los cuerpos policiales, de renombrados dirigentes de varios partidos políticos y de altos representantes de las distintas iglesias estuvieron presentes en el periodo 2009 a 2013. Pero entre 2011-2013 llegaron a niveles alarmantes, por la

45 ALBATV. (15 de diciembre de 2011) Disponible en http://www.albatv.org/Denuncian-a-canal-privado-por.html Consultado el 21-102014
47 En su discurso para el Foro Internacional sobre el Día Internacional contra la Homofobia y la Transfobia (IDAHO), realizado en La hay, Holanda, el 17 de mayo de 2013, ver http://acnudh.org/2013/05/oun-destaca-los-derechos-humanos-de-las-personas-lgbt-en-el-dia-internacional-contra-la-homofobia/
48 Ibid.
utilización de la homofobia como arma para ofender y denigrar al adversario político en el contexto de la contienda electoral (presidenciales y gobernadores), y la polarización que vive Venezuela. Como era de esperarse, la comunidad LGBTI y la opinión pública reaccionaron.

De acuerdo al Informe Venezuela 2013 sobre crímenes de odio por orientación sexual, identidad de género y expresión de género realizado por ACCSI, el primer lugar es ocupado con un 56,9% de los ataques y amenazas provienen de funcionarios de los cuerpos policiales; y el segundo lugar con el 19,6% de las agresiones de altos funcionarios tomando de decisiones del Estado venezolano y dirigentes políticos (Presidente de la República, Ministra y Ministros, Diputado de la Asamblea Nacional, altos representantes de los partidos de gobierno y de oposición), ver Tabla 5.

TABLA 5:
Autores/as de los ataques y amenazas contra las personas LGBTI

<table>
<thead>
<tr>
<th>Autores/as de los ataques y amenazas</th>
<th>Frecuencia</th>
<th>Porcentaje</th>
</tr>
</thead>
<tbody>
<tr>
<td>Funcionarios de Cuerpos de Seguridad (Guardia Nacional, Policía de Chacao, CICPC)</td>
<td>29</td>
<td>54,7</td>
</tr>
<tr>
<td>Políticos (Presidente de la República, Canciller, Ministra de Asuntos Penitenciarios, Presidente de la Comisión de Contraloría de la Asamblea Nacional, Vocero de partido político, Diputado, Ex candidatos para Diputados de la AN, Secretario de partido político de oposición)</td>
<td>12</td>
<td>22,6</td>
</tr>
<tr>
<td>Religiosos de distintas iglesias</td>
<td>3</td>
<td>5,6</td>
</tr>
<tr>
<td>Medios de comunicación social</td>
<td>2</td>
<td>3,8</td>
</tr>
<tr>
<td>Activista de DDHH del Colectivo Diverso Sexual de Venezuela</td>
<td>1</td>
<td>1,9</td>
</tr>
<tr>
<td>Presidente de la Organización Miss Venezuela</td>
<td>1</td>
<td>1,9</td>
</tr>
<tr>
<td>Estudiante</td>
<td>1</td>
<td>1,9</td>
</tr>
<tr>
<td>No Indica</td>
<td>4</td>
<td>7,6</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>53</strong></td>
<td><strong>100,0</strong></td>
</tr>
</tbody>
</table>

El 90,6% de las personas autoras de los ataques y amenazas estaban vinculadas con las víctimas personas de la diversidad sexual, puesto que en el momento de las agresiones, los agresores laboraban en alguna institución u “organismo que desempeña una función de interés público”49, tales como entes del Estado, medios de comunicación, iglesias y organización social. Por tanto existe una relación entre institución y ciudadanía.

49 Según el Diccionario de la Real Academia Española. También señala que Institución es “Cada una de las organizaciones fundamentales de un Estado, nación o sociedad”, disponible en http://lema.rae.es/drae/?val=instituci%C3%B3n
ALGUNOS CASOS EMBLEMÁTICOS DE LA HOMOFOBIA DE ESTADO

"Yo si tengo mujer oyeron, me gustan las mujeres y aquí la tengo" "Que bueno es el beso de una mujer o de un ser que uno ama"\(^{50}\)

Presidente Encargado de la República Bolivariana de Venezuela Nicolás Maduro en el momento de la inscripción de su candidatura a la Presidencia de la República ante el Consejo Nacional Electoral (11 de marzo de 2013) y en clara alusión a su principal adversario político Henrique Capriles quien es un joven soltero de 40 años.

Al respecto, sucedió una movilización de calle de integrantes del Frente por la Inclusión y el Respeto de la Diversidad Sexual (Firedisex), quienes acudieron a la sede del Consejo Nacional Electoral (CNE) para exigir que se prohibieran las alusiones homofóbicas en los discursos de los candidatos. Un medio de comunicación tituló su reseña “Comunidad de diversidad sexual exige al Consejo Nacional Electoral prohibir alusiones homofóbicas”\(^{51}\) tituló un medio de comunicación a una reseña de una movilización de calle Voceros de la ONG señalaron que el frente se originó “a partir del gran malestar que causaron en toda la comunidad de LGBTI del país, las declaraciones homofóbicas del candidato Nicolás Maduro y Presidente Encargado de la República Bolivariana de Venezuela, durante la inscripción de su candidatura”. Dijeron haber realizado una caminata el pasado domingo en rechazo al uso de la homosexualidad como “arma política”. “Nuestra Constitución prohíbe la discriminación de todo tipo, inclusive por orientación sexual”, indicó José Ramón Merentes, un activista de la ONG Unión Afirmativa de Venezuela.

También colocaron como ejemplo el caso de Ecuador donde se multo al presidente por una alusión homofóbica. Además, en el documento consignado al CNE recuerdan al ente que su deber es incluir a todos. “Es una deuda que mantiene la Oficina Nacional de Registro Civil con la población trans, que mantiene vulnerado su derecho a la identidad”, puntualizó Merentes.

Cabe destacar que el Consejo Nacional Electoral nunca se pronunció al respecto.

“...así será la calaña de estos sifrinitos, mariconsones y fascistas que pretenden las elecciones al pueblo de Venezuela...”\(^{52}\)

Ministro de Relaciones Exteriores de Venezuela Sr. Nicolás Maduro en abril de 2012 y actual Presidente de la República de Venezuela, en un acto público realizado frente a la Embajada de Cuba en Caracas. Esta expresión homofóbica del ExCanciller obtuvo las risas y aplausos en señal de

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\(^{50}\) Video disponible en https://www.youtube.com/watch?v=Z4ONBI0vPG0


\(^{52}\) Disponible en http://www.youtube.com/watch?v=gVLoi-FSZDI Estas declaraciones fueron transmitidas por Venezolana de Televisión, el principal canal de TV del Estado venezolano.
Ante las declaraciones del exCanciller Nicolás Maduro, las distintas ONG LGBTI y la opinión pública se pronunciaron en señal de rechazo. La ONG Venezuela Diversa publicó un comunicado donde expresó que “Este tipo de declaraciones se convierten en un problema institucional a ser tomado en cuenta cuanto antes, porque quienes mandan este tipo de mensajes a la sociedad son los actores políticos acrecentando el ciclo de violencia, ataques y odio de unos contra otros, justamente ahora que están en campaña electoral, lo que puede conducir a sus seguidores a intensificar las situaciones de odio, fanatismo, hostigamiento y conflicto, por un lado por la deshumanización y descalificación del adversario político y por el otro por el hecho de justificar moralmente acciones homofóbicas contra las personas y grupos LGBTI debido a la vinculación directa de las distintas orientaciones sexuales e identidades de género con dicha contienda política partidista.”

“Responde homosexual, acepta el reto maricón, acepta el reto. Hay que ser serio”, “Eso es problema suyo lo que hagan con su culo (sic), pero tienen que ser serios.”

Diputado del partido de gobierno PSUV durante una sesión en la Asamblea Nacional Pedro Carreño (agosto 2013).

Miembros de la comunidad LGBTI reaccionaron y realizaron acciones de protesta en las puertas del Parlamento para rechazar el ataque homofóbico del citado diputado y el empleo de términos ofensivos y discriminatorios que incitaron al odio hacia las personas de la diversidad sexual.

“Estamos ante un Estado homofóbico y transfóbico” denunciaron varios defensores de derechos humanos LGBTI, al referirse al comportamiento de quienes toman las decisiones políticas desde la alta esfera del poder en Venezuela. Señalaron que “La homofobia de Estado es un conjunto de acciones y omisiones que tienden a negar igualdades de derechos a las personas por su orientación sexual o de su identidad de género. Un Estado es homofóbico cuando ataca directamente a las personas por leyes, con la policía, insultos u otro medio de agresión verbal y física y la no legislación por la igualdad de derechos. Denunciamos al PSUV, a la Asamblea Nacional, al Tribunal Supremo de Justicia, al Ministerio Público y a

53 Actualmente es la esposa del Presidente Nicolás Maduro y la Primera Dama de la República Bolivariana de Venezuela.
todos los organismos del Ejecutivo como violadores de Derechos Humanos y particularmente como un Estado homofóbico y transfóbico.  

“Durante años el gobierno ha dicho defender a la comunidad LGBTI, mientras en la práctica vemos como diputados que se identifican con el partido de gobierno nos atacan”, “Venezuela está en mora con una legislación que proteja los derechos de la comunidad LGBTI. En gran parte de los países de América Latina, se han dado importantes avances en esta dirección”, dijeron.

Un dirigente del partido político Movimiento al Socialismo señaló que "...el diputado Pedro Carreño con sus afirmaciones homofóbicas, decimonónicas y escatológicas plantea un patrón que se conoce como homofobia de Estado o transfóbia de Estado, caracterizada por las acciones u omisiones que tienden a negar igualdades de derecho a las personas por su orientación sexual o su identidad de género". Alertó que esta conducta no sólo ha sido de Carreño, sino también del propio presidente Nicolás Maduro "quien asumió una posición similar en el pasado cuando se refirió en forma despectiva a los homosexuales, produciendo una reacción inmediata muy contundente de los grupos civiles que se afilian a este sector, obligando a Maduro a retractarse públicamente").

“Ese comportamiento ahora expresado en la Asamblea Nacional, se denoma homofobia de Estado y esto ha sido reiterativo por personajes del oficialismo. Estos mensajes deshumanizan la condición de las personas homosexuales y de los transgéneros", expresó un vocero del partido político de oposición Voluntad Popular.

“¿Cuál es el peo que Chávez se convirtiera en pajarito? Capriles está vivo y es tremendo pato".

57 Ibid.
60 Ibid.
OTROS ATAQUES VERBALES DE PERSONEROS PÚBLICOS QUE FOMENTARON LA HOMOFOBIA EN VENEZUELA ENTRE 2009 A 2013

“...no es conveniente pasarse a la acera de enfrente y exaltar las virtudes de la homosexualidad y del lesbianismo”, “Ese es un tema que no se debe nombrar, ni para exaltarlo, ni para criticarlo. Quienes sean lesbianas u homosexuales, allá ellos...”


“El Cardenal Jorge Urosa Sabino relató a los medios nacionales que los matrimonios gays son una “corriente negativa que se ha dado en los últimos años en muchas partes del mundo, mal se le pudiera llamar matrimonio a una unión entre un hombre y otro hombre o entre una mujer y otra mujer, porque este tiene que ver con la familia, la procreación de los hijos y la misma realidad sexual y física de los seres humanos”. En cuanto a que las parejas homosexuales pudieran adoptar niños, el Cardenal Urosa Sabino dijo que eso va en contra de las mismas normas naturales. En su opinión, “esto podría causarle grandes sufrimientos a los niños en la escuela, porque sus compañeros pudieran burlarse de ellos al saber que sus papás son del mismo sexo.”


“Los transexuales pueden competir con otros transexuales. Yo, personalmente, considero que sería un irrespeto ponerle a la mujer venezolana un transexual al lado que compita con ella, entonces también tendríamos que meter a una mujer en el Mister Venezuela a competir con un hombre”.


La Organización Miss Venezuela pertenece a la Organización Cisneros integrado por empresas privadas de medios de comunicación, entretenimiento, medios digitales, inversiones inmobiliarias, desarrollos turísticos y productos de consumo en el mundo, ofrecen marcas y servicios a 550 millones de consumidores de habla hispana y portuguesa en las Américas y Europa, y vende programación televisiva y otros contenidos mediáticos en cinco continentes y en más de 90 países.”
INSTITUCIONALIZADA LA EXCLUSIÓN A LGBTI

El 17 de mayo de 2014 se realizó en Caracas la 3era. Caminata contra la Homofobia y la Transfobia organizada por Venezuela Diversa y Positivos en Colectivo, con una movilización desde la Plaza Altamira hasta la Plaza Brión de Chacaíto, Municipio Chacao, donde las personas asistentes hicieron un llamado al gobierno a proteger los derechos de LGBTI.

Representantes de esa ONG denunciaron que la Alcaldía Bolivariana del Municipio Libertador les prohibió la realización de la caminata al haberles negado el permiso para su desarrollo; de igual modo el Ministerio de la Mujer les negó el apoyo logístico para la tarima y sonido. También que funcionarios del Ministerio manifestaron de forma verbal que “no apoyamos a ONG golpistas y de derecha”. La Alcaldía informó a la ONG a través de una comunicación escrita que sus solicitud no era procedente por coincidir en la fecha y lugar solicitado con otra actividad requerida con antelación.

La Defensora del Pueblo Gabriela del Mar Ramírez anunció públicamente en dos ocasiones, primero en el año 2010 y luego en el año 2013 la creación de una Defensoría Especial para la atención de las personas LGBTI, pero aún no ha sido creada ni informado las razones de esta situación.

Se reconoce el trabajo y empeño de la Defensoría del Pueblo en el trabajo emprendido junto a las Organizaciones de la Sociedad Civil para la creación de la “Ley para la promoción y protección del Derecho a la Igualdad de las Personas con VIH/SIDA y sus Familiares”. No obstante, en el proyecto original presentado por las ONG y presentado por la Defensoría del Pueblo en la Asamblea Nacional, se mencionaba a lo largo de todo el instrumento legal la protección a personas por su “orientación sexual” no heterosexual y la necesaria protección a personas por su “identidad y expresión de género”. El texto aprobado por la Asamblea Nacional elimina toda mención de estos dos aspectos con excepción que les ubica en “Grupos vulnerables” y los denomina “comunidades de sexo diverso”. Esto demuestra el rechazo que existe hacia toda mención que haga referencia a las personas LGBTI.

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64 Venezuela Diversa (2014). Disponible en http://venezueladiversaac.blogspot.com/2014/05/alcaldes-de-libertador-y-chacao-volan.html
Otro caso de exclusión institucional se presentó en los datos y estadísticas que debieron haber surgido del Censo Nacional de Población y Vivienda realizado en el año 2011. A partir de una solicitud de la Asociación Civil Unión Afirmativa de Venezuela ante este organismo, se eliminó la regla de inconsistencia que impedía el registro censal de las parejas del mismo sexo.

El Instituto Nacional de Estadística (INE) dejó únicamente en manos de la Asociación Civil Unión Afirmativa de Venezuela la labor de difusión de la información y ellos se encargaron del entrenamiento a sus empadronadores. A finales del año 2012, el Presidente del Instituto Nacional de Estadísticas Elias Eljuri anunció unas cifras preliminares que mencionaban la existencia de entre 4 y 6 mil parejas del mismo sexo en el país. En agosto de 2014, estas cifras desaparecieron del informe final entregado y aprobado por la Asamblea Nacional. La respuesta de funcionarios del Instituto Nacional de Estadísticas a activistas de UNAF es que los datos finales fueron muy inferiores e inconsistentes y, como consecuencia, insuficientes para ser incluidos en las cifras oficiales.

RECOMENDACIONES
1.- Garantizar la No discriminación contemplada en la Constitución de la Republica Bolivariana de Venezuela.
2.- Desarrollar políticas públicas de atención y servicios con equidad, que traten la especificidad de la casuística de tortura y otros tratos o penas crueles, inhumanos o degradantes en la comunidad LGBTI, especialmente de las víctimas LGBTI, sus parejas y familiares.
3.- Implementar estrategias comunicacionales para el fortalecimiento de la prevención y la denuncia de las personas responsables de los asesinatos, torturas, ataques, amenazas y malos tratos contra las personas de la diversidad sexual.
4.- Garantizar la aplicación del marco legal nacional e internacional que permita mejorar los procesos técnicos y administrativos para la formación en derechos humanos, registro de casos, denuncias, monitoreo y evaluación, investigaciones, enjuiciamiento y condenas de los autores de los asesinatos, torturas, ataques, amenazas y malos tratos contra las personas de la diversidad sexual.
5.- Visibilizar la problemática de la tortura y malos tratos que sufre la comunidad LGBTI, en las estadísticas y datos nacionales sobre violencia e impunidad.
6.- Fortalecer los mecanismos de coordinación entre sector gobierno y sociedad civil para mejorar la denuncia y disminuir la impunidad.
7.- Fortalecer a las Organizaciones de la sociedad civil con trabajo en la diversidad sexual.
8.- Permitir el acceso de personas LGBTI en los cuerpos policiales y de seguridad del Estado venezolano.
9.- Implementar estrategias de formación y capacitación en derechos humanos y diversidad sexual a los miembros de los cuerpos policiales, de la Defensoría del Pueblo, del Poder Judicial y del Ministerio Público.
10.- Aprobar leyes vinculadas con los derechos humanos y la diversidad sexual por la Asamblea Nacional, tales como: proyecto de Ley del Matrimonio Civil Igualitario; reconocimiento de la identidad de género; cambio de nombre de personas transexuales en el Consejo Nacional Electoral; Ley para la promoción y protección del derecho a la igualdad y no discriminación de las personas con VIH/SIDA, sus parejas y familiares, entre otras.
11.- Cumplir la Resolución No. 286 del Ministerio de Relaciones Interiores y Justicia que se refiere a la Normas y garantías relativas a los derechos de las mujeres y a la Igualdad y Equidad de Género en los Cuerpos de Policía Nacional Bolivariana y demás cuerpos de policía.
12.- Cumplir fielmente el Mandato Constitucional del Tribunal Supremo de Justicia de fecha 15 de julio de 1999 y el Plan Estratégico Nacional 2012-2016 sobre VIH, SIDA y otras ITS para garantizar el acceso a los tratamientos antirretrovirales a las personas con VIH y SIDA.
13.- Monitorear los programas de televisión, radio y otros medios de comunicación a fin de verificar la presencia de personajes que representen personas LGBTI no estereotipados donde se les dé un trato de respeto y dignidad.
14.- Implementar talleres de capacitación dirigidos a funcionarias y funcionarios públicos con el propósito de brindar un trato no discriminatorio a las personas LGBTI.
15.- Implementar cátedras de educación sexual en todos los niveles educativos a nivel nacional enmarcado en la laicidad, perspectiva de género y científico.
FUENTES CONSULTADAS

• Código Civil de Venezuela
La orientación sexual, la identidad de género y expresión de género no son delitos en Venezuela. La Constitución de la República Bolivariana de Venezuela establece en su artículo 21 numeral primero que “No se permitirá discriminaciones fundadas en la raza, el sexo, el credo, la condición social o aquellas que, en general, tengan por objeto o por resultado anular o menoscabar el reconocimiento, goce o ejercicio en condiciones de igualdad, de los derechos y libertades de toda persona”. Aunque no se menciona de manera explícita la no discriminación por razones de orientación sexual, ésta fue aclarada en la Resolución No. 190 de la Sala Constitucional del Tribunal Supremo de Justicia en el año 2008, como respuesta a una solicitud de interpretación de dicho artículo realizada por la Asociación Civil Unión Afirmativa de Venezuela:

LGBTI people are in a total state of helplessness, abandonment and absolutely unprotected by the Venezuelan State. There is a high degree of impunity in the cases reported by LGBTI people on discrimination, assaults, violence, mistreatment, torture and even murder because of sexual orientation, identity and gender expression. These situations are motivated by the inaction and omission of public institutions in the administration of justice against cases related to sexual diversity”. [Excerpt from page 12 of Report]

“The main security forces in Venezuela were mentioned as the perpetrators of negative experiences against LGBTI people”. [Excerpt from page 22 of Report]

“The ‘disposable character’ highlights as a common element in the cases of the murders of persons of sexual diversity reported by the information sources consulted”. [Excerpt from page 17 of Report]

“The murders show the viciousness, hatred and contempt of the perpetrators against people with sexual orientation, gender identity and gender expression other than heterosexual”. [Excerpt from page 17 of Report]

“Analyzing the informative notes and denunciations of the Civil Society Organizations, it is determined that LGBTI victims are disrespected in their human dignity as a result of lesbophobia, homophobia, biphobia and transphobia that prevails in Venezuelan society, with the aggravating factor that people of diverse sex are unprotected and helpless by public institutions”. [Excerpt from page 16 of Report]
CERTIFICATE OF TRANSLATION

I, Milton Gutcovsky, am competent to translate from Spanish into English, and certify that the translation of the relevant excerpts from Red LGBTI of Venezuela, Discrimination and Impunity are not equals before the law, Human Rights Situation of Lesbians, Gays, Bisexuals, Trans and Intersexual People in Venezuela (Tab No. 22 of the Venezuela’s Country Conditions Report) is true and accurate to the best of my abilities.

Signature

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Tab #23
Venezuela's shrinking economy has sparked an exodus of LGBT people as the economic crisis has put the brakes on the country's growing tolerance toward its gay and trans community, activists Reuters.

Not that Venezuela was ever an easy place to be different.

For years, Daniel Arzola endured homophobic abuse from his neighbors in Maracay, a city in the north of Venezuela.

Homophobic slogans were daubed on the walls of his house and he was shouted at in the street.

"One day, a group of neighbors tied me with old cables to an electric pole and they threw fireworks at me," he told Reuters from Chile. "They also put out some cigarettes on my body, while others destroyed all the drawings that I brought with me."

Eventually, Arzolo, a 29-year-old artist, was forced to flee his native Venezuela for Chile.

"My answer to all this was to try to ignore them, but you can't ignore it forever," he said.

Arzola's story is not unique, but things may be getting worse.

"The impact of the crisis on LGBT+ people is evident," said Tamara Adrian, a lawyer and politician living in Caracas, Venezuela's capital. "As a vulnerable population, they do suffer the consequences of the crisis much worse."

There are no official figures on the number of gay or trans migrants, but according to the United Nations' refugee agency, three million people have fled Venezuela, with the majority heading for neighboring Colombia.

Over the past three years, the Venezuelan economy has shrunk by a third, resulting in what has been described as the worst economic crisis to hit the country in its history.
The turmoil has pushed gay rights to the bottom of the pile of priorities, with funding for many organizations and resources either reduced or cut entirely, a number of LGBT Venezuelans told Reuters.

A government limit on the sale of food has also penalized same-sex couples.

Under the government's family food bag scheme, same-sex couples were excluded.

"For this scheme, a census of families was ordered," Quiteria Franco, general coordinator at Union Afirmativa de Venezuela, told Reuters from Venezuela's capital Caracas. "This measure affected families made up of same-sex couples, because they were not counted as they are not considered families."

Transgender people are also struggling to find food supplies because the Venezuelan government does not issue identity documents that recognize their gender identity.

"Supermarkets were forced to install biometric reading machines so that each buyer could be identified and know how many products they have bought and when to avoid hoarding," Franco said.

"This system of buying and selling affected trans people, due to the incongruence between their gender identity and the legal identity reflected in their identity document."

The economic crisis has also led to a spike in human trafficking, with trans people particularly at risk.

There has been a rise in "human trafficking of trans women, as well as of biological women and young men, forced into sex work in Spain, Panama, Colombia, Dominican Republic and other countries," Adrian said.

**A better life**

Adrian Ynfante from Altagracia de Orituco, a town in the north of Venezuela, left his hometown in search of a better life in Colombia.

"Venezuela is a hard country. The culture [toward LGBT people], instead of improving, is getting worse every day," Ynfante, a transgender man, told Reuters from Colombia. "Living in Venezuela is now so complicated, but even more so for LGBT+ people."

With the country's health infrastructure stretched to a breaking point by the economic turmoil, a lack of drugs and medical supplies has particularly affected those living with HIV — both gay and straight.
According to the United Nations, there were 120,000 people living with HIV in Venezuela in 2016.

"The complex economic situation has greatly impacted UNAIDS work in the country," said Regina Lopez De Khalek, Venezuela's country manager for the UNAIDS program. "The health ministry has been limited in acquiring antiretroviral drugs, supplies for diagnostic and control tests, as well as condoms and other supplies."

**Coming home**

A resolution to the economic and political turmoil in Venezuela may be a long way off, but many LGBT migrants have found that their situation is often not much better in their host countries.

"In Colombia, you can't find a lot of opportunities when you're a migrant," Ynfante said. "And even less so if you're a transgender person."

"I have thought about [returning to Venezuela]," he added. "But the answer is no."

Arzola in Chile is also closely monitoring events back home.

"The situation in the country is much worse than when I left," he said. "Venezuela is a wound that does not close, but it keeps opening every day."

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Venezuelan opposition leader Juan Guaido is expected to announce Sunday when humanitarian aid will be delivered to the crisis-ridden country. Guaido told supporters Saturday the opposition would start collecting humanitarian aid in Brazil, Colombia and an unnamed Caribbean island and called on the military to allow the aid into the country. The United States has said it would transport aid to Venezuela at Guaido's request. President Nicolas Maduro has refused to accept aid...

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Sun, 02/03/2019 - 06:19

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The U.S. recognition of opposition leader Juan Guaido as Venezuela's interim president is being touted by the Trump administration as the only way to restore the country's democracy. But as Elizabeth Pineda was stocking up on staples Sunday at a sidewalk market near a Caracas slum, she was bracing for things to get a lot worse, not better. A retired secretary, Pineda survives on a monthly pension of just 18,000 bolivars, or about $6. She supplements her income...
Tab #24
A photo from the Gay Pride Parade in Caracas on July 12, 2015 (FEDERICO PARRA/AFP/Getty Images)

CARACAS — While Venezuela continues to face an economic crisis in the midst of more political power struggles, many Venezuelans consider LGBTQ rights to be irrelevant.
Even in the most dire conditions, non-straight, non-cisgender people feel they are still treated like second-class citizens. Lacking resources, structure, as well as support from most politicians, organizations such as Venezuela Igualitaria, Reflejos de Venezuela and Unión Afirmativa manage to continue going, no small thanks to help from volunteers.

José Manuel Simons is one of them.

“Despite having won the case for parental rights, we continue without legal protection for couples, no civil unions nor same-sex marriages, and less so, anything related to gender identity,” Simons told Latino USA.

Currently living in Chile, Simons is a lawyer and activist heading up the legal process for gender recognition at Venezuela's Supreme Court.

Simons is no stranger to these fights. Helping with Venezuela Igualitaria, he recalls the uphill battle to get same-sex marriage discussed by the National Assembly, the country's unicameral legislature.

“The same-sex civic marriage bill was shelved. In the middle of this political conflict, nobody has cared to start the debate, and many even call it as a waste of time,” Simons added.

Elected in December of 2015, the opposition-led legislature was seen by many as a change agent for Venezuela, including the LGBTQ population. Among those elected was lawyer and activist Tamara Adrián, who at the time was the second transgender person to become a legislator in the Americas.

But the Venezuelan opposition is a heterogeneous group, made up of parties from the left, center and right. Such a topic as same-sex marriage didn’t sit well with some. Now with the National Assembly declared in contempt by the country's Supreme Court, the prospects to pass any type of marriage bill are virtually impossible, according to Simons.
“Even if it got approved, it wouldn’t be applied,” he said. Attempts to go through the Supreme Court have been met with indifference and neglect from authorities.

Like everything else in Venezuela, LGBTQ rights were addressed during the Bolivarian Revolution, started by Hugo Chávez in 1999. For many years, local government institutions allied to chavismo promoted grassroots groups and activities, including backing the Caracas Pride Parade, which has been held since 2000.

However, in the past few years, the same political divisions that affected Venezuelan society started to hit the LGBTQ movement. Since 2014, two different parades have been going on. Some, like lesbian activist and college professor Quiteria Franco, blame this to the exclusive attitude in pro-chavista organizations.

In a message posted on her blog last year, she wrote: “The LGBTQ Pride Parade must be filled with political content demanding rights and keeping distance from party preferences. The political parties can assist and support the parade, but never be protagonists of these civic society activities.”

For his part, Simons believes that neither the government or the opposition is willing to address LGBTQ rights.

“Both political factions in Venezuela have plenty of ignorance and conservatism about the subject,” Simons explained. “There’s not one politician taking up the banner for our rights. Not from the so-called inclusive and revolutionary left, nor from so-called activist deputies.”

But Simons is still committed to his fight, even from afar. In a case where five transgender persons are demanding their right to change their name and gender, he has great hope for a positive Supreme Court ruling, noting that less than a year has passed since the case was heard, and now Simons is waiting for a verdict.

“Though we’re waiting for a ruling in favor, we can’t tell how much ‘in favor’ it will be,” he said.

Meanwhile, in probably the biggest contradiction about Venezuelan society, there has been a boom of LGBT cinema coming from the country. Award-winning movies like *Pelo Malo*, *Azul y No Tan Rosa*, and *Desde Allá* have showcased a different face of Venezuela that rarely gets reported in mainstream U.S. media.
“Venezuela is ready, there’s no doubt about it, but it’s the politicians who still live in the past,” Simons explained.

For most people, it’s hard to picture how Venezuela will recover from its present state. But for Venezuelans like Simons, Franco and other LGBT activists, it’s all about small victories.

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NPR's Latino USA with Maria Hinojosa, produced by The Futuro Media Group, is the longest running Latino-focused program on U.S. public media.
Tab #25
For Some LGBTQ Venezuelans, Fleeing Home Was Their Only Option


By Kevin Truong

When Armstrong Santana still lived in Venezuela, he attended many protests against the government of Venezuelan President Nicolas Maduro. As a student at one of the most prestigious public universities in the country, Santana felt the need to fight against what he believed to be a broken government.

Now living in France, Santana watches the current protests in Venezuela from afar, and feels a sense of sadness as civil unrest continues across his country.

“|left the country because living in the most dangerous city in the world (Caracas) is not propaganda, but a cruel reality,” Santana said. “I also realized [leaving] was the only way I was going to be able to be who I really was.”
For Santana and many other LGBTQ Venezuelans living abroad, leaving the country was a necessary step toward living more openly as a gender or sexual minority.

“The basic issue is that we are not an issue,” said Isaac Perez, who left Venezuela in 2015 and now lives in Argentina. “When basic needs [are not being met], when people are more concerned with finding a meal to eat, you don’t have time to focus on [LGBTQ rights],” he explained.

Many times those who do fight for progress for the country’s LGBTQ community find their own lives and livelihoods put at risk. Activists Wendell Oviedo and Yonatan Matheus fled Venezuela in 2016 after receiving threats of violence to their personal safety.

The two activists believe the threats they received were in response to the work they did as directors of Venezuela Diversa – an LGBTQ civil society organization fighting for LGBTQ and human rights in the country, with a focus on hate crimes, police abuse and the violation of rights of transgender women engaged in sex work.

“Cases of violations of LGBTI rights [in Venezuela] continue to rise and are not reflected in official statistics,” Matheus told NBC Out. “Victims prefer anonymity rather than being doubly victimized by law enforcement.”

Related: LGBTQ Activists in Brazil Use Social Media to Spread Awareness

The challenges present when reporting hate crimes to local law enforcement as an LGBTQ individual in Venezuela is something that Venezuelan artist Daniel Arzola knows from firsthand experience.
Born in a poor community in Maracay, a city in northern Venezuela, Arzola suffered a violent hate crime for being gay while only 15.

“Some neighbors tried to burn me alive, and they destroyed all my drawings,” Arzola told NBC Out. When he reported the crime to the local law enforcement, he says he was told that he needed to act more like a man.

After the attack, Arzola said he didn’t draw again for six years. It wasn’t until he learned of a similar hate crime years later that he began to create art again.

Daniel Arzola

Today, the artist is known internationally for his art campaign titled “No Soy Tu Chiste” (“I Am Not a Joke”), a series of illustrations depicting the diversity of the LGBTQ community. Along with each image is a set of captions stating why sexuality and gender should not be used as a basis for discrimination or ridicule.

“All the time in Venezuela the media is used to ridicule the LGBT [community],” Arzola explained. As evidence, he points to the lack of positive LGBTQ characters on Venezuelan television and to comments made by President Maduro, who in the past has been accused of using a homophobic slur to ridicule his political opponent.

“So in that moment, I created ‘I Am Not a Joke,’” Arzola said. “The campaign went viral in the first six months.”

Soon Arzola was working with activists from across the world, and the campaign eventually caught the attention of pop icon Madonna, who included five pieces of Arzola’s work in her campaign “Art for Freedom.”

“I became more recognized because of my work, which gave me opportunities to talk about what is happening in Venezuela,” Arzola said. “I exposed the government in Venezuela, because they are really homophobic.”

It was then that Arzola began to receive threats of violence against his own personal safety, and the artist was forced to flee the country in 2014. Currently living in Chile, Arzola said the threats stopped after he left Venezuela but that his work is still being obstructed in other ways.

Related: [Argentine Filmmaker Brings Personal Touch to Gay Characters](#)

Since November, Arzola has been trying to renew his passport with the Venezuelan embassy in Chile so that he can travel to upcoming art exhibitions of his work, but he said his efforts have been ignored.

Arzola said that planned exhibitions in San Francisco and Paris in June will have to be canceled if he is unable to get his passport renewed in time.

“Even when you’re out of your country, your nationality can be a jail,” Arzola said. “I’m trapped here. I can’t go anywhere, just because they don’t give me a passport.”

But Arzola is hopeful that the current protests in Venezuela are a sign that change can finally come to the people of his country – including positive change for the LGBTQ community.

As a sign of progress, Arzola points to the election of Tamara Adrian to Venezuela’s National Assembly in 2015. With her election, Adrian became the [first transgender lawmaker elected to public office in Venezuela](#), and one of the first transgender legislators in all of South America.
“It was a great responsibility,” Adrian told NBC Out of her election to the National Assembly. “Many people always tell me they have the intention of entering politics [because of my election].”

Since being elected to office, Adrian has found a cause in fighting for LGBTQ rights in Venezuela, recently introducing an amendment to the country's Civil Registry Law. If passed, the amendment would bring marriage equality to Venezuela and recognize the preferred name and gender of transgender and intersex people. The amendment would also recognize same-sex marriages and gender changes done abroad and allow for gay people to adopt.

But Adrian said the current social and political situation in the country makes it difficult for her and other legislators to fulfill their roles as elected officials.

“During the past year, the government tried to impede the National Assembly to legislate or fulfill any of its functions,” Adrian said, referring to a move made in March by the Venezuelan Supreme Court that stripped the National Assembly of its powers. Though the decision was ultimately reversed, protests resulting from what many perceived as a power grab by the Maduro government have continued throughout the country.

“We cannot stop, we cannot get tired, we have to recover democracy and freedom for Venezuela,” Adrian said. “Everybody has a job to do in order to promote equal rights. That’s in particular to the LGBTI issues, but at the same time to fight for democracy.”

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Kevin Truong
Tab #26
Venezuelan LGBTQ Activists Denounce Homophobic Aggression by Government Official

Venezuela’s LGBTQ movement denounced the closure of a Caracas office tasked with safeguarding the human rights of the sex and gender diverse community last week.

Activist Leandro Villoria protests outside Carolina Cestari’s office in downtown Caracas with poster that reads: "No to the repeal of the anti-discrimination decree." (Aporrea/Paola Martucci)

By Jeanette Charles

Mar 21st 2017 at 4.59pm

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Los Angeles, Tuesday March 21, 2017 (ve ne zuelanalysis.com) - Venezuelan grassroots organizations denounced the unannounced forced closure of the Sex and Gender Diversity Integral Attention Office and subsequent arrest of LGBTQ activists by authorities last week. While Caracas Chief of Government Carolina Cestari ordered the closure under unclear circumstances, activists have pointed to a history of homophobic and transphobic actions taken by the local official.

Leandro Villoria, self-identified Chavista and president of the LGBTQ Liberation Army, told Venezuelan press that the office closure last Monday came as a surprise, stating that staff never received official paperwork and only a phone call moments before authorities sent by Cestari arrived citing “budgetary limitations”.

The office in question has been responsible for implementing Caracas’ groundbreaking Anti-Discrimination Decree 006 which declares all spaces in the South American capital free of homophobia, transphobia and lesbophobia.

In its last and first year, the office has provided a wide range of services including organized political education and skills training, support for trans women especially in regard to dignified employment opportunities, as well as legal, psychological and HIV/AIDS treatment for the LGBTQ community among others.

“We’re a small office but carry out a lot of work on a national and international level. When authorities [National Bolivarian Guard] came, they removed us from the office and we were detained overnight,” Villoria explained.

Activists are additionally concerned as there are rumors Cestari plans to repeal the anti-discrimination decree implemented last May by former Caracas Chief of Government Daniel Aponte.

“We came to protest in front of Cestari’s office to denounce her abuse of power today [Wednesday]. She is going against the Homeland Law and international recommendations for Venezuelan on the rights of LGBTQ people,” he continued.

Co-coordinator of the Caracas LGBTQ office, Koddy Campos, was arrested during the peaceful protest in downtown Caracas. Authorities released Campos following nearly two days in detention after the Caracas Chief of Government office could not provide evidence to sustain charges of death threats and damages.

Villoria remarked that in Cestari’s previous government post as the Vice-Minister of Supreme Happiness, she eliminated services for trans women, gay men and lesbians.

“We call on the government to respect our rights. These are homophobic acts,” he stressed.

Venezuelan grassroots organizations have publicly denounced last week's actions calling Cestari's unilateral move a step backward and roll-back of the gains won by LGBTQ movements under the Bolivarian revolution.
“We wish to remind all these officials that you momentarily occupy a place of institutional power, while we every day fight for the right to public space, to health services, education without discrimination and especially dignified labor. We call for solidarity from the organized and Chavista people, and social movements... we call for the restitution of the Sex and Gender Diversity Integral Attention Office,” reads a communique released by the Revolutionary Sex and Gender Diversity Alliance last Thursday.

Additionally, the human rights collective SurGentes echoed similar sentiments, highlighting ongoing contradictions in the Bolivarian process in which the government has yet to rectify wrongs done to the LGBTQ community.

“The work that this office does constitutes the first step in what should be a public political conversation that recognizes the historical and structural discrimination that this sector of society has suffered and that the government should adopt positive actions that overcome these inequalities in practice and in rights. However this continues to be a debate within some sectors of Chavismo despite the fact that President Nicolás Maduro has called on the sex and gender diverse community to defend the revolutionary process,” reads their statement published in Venezuelan magazine Sacudón.

Despite significant outrage and disappointment, the Chief of Government's office has remained publicly silent on the matter.

Villoria and others continue to demand answers from the Bolivarian government regarding the issue and hope to restore their office as soon as possible.

In 2012, then President Hugo Chávez named the sex and gender diversity community in his Homeland Plan, now law, as an historically marginalized and vulnerable sector of Venezuelan society, underscoring the need for specialized programming and services to rectify historical negligence and mistreatment.

Special thanks to Paola Martucci for her contribution in reporting on scene during last week's protests.
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Tab #27
Luis Alberto Rojas Marin says he was arrested, beaten and raped by police in Peru because he is gay.

The perplexing narrative about being gay in Latin America

By Marilia Brocchetto, CNN

Updated 7:04 PM ET, Fri March 3, 2017

Para leer en Español, haz clic aquí

(CNN) — On a February night in 2008, Luis Alberto Rojas Marin says, his life changed forever.

At 26 years old, the Peruvian gay man was arrested by police officers while heading home shortly after midnight. Throughout the six hours he was in police custody, he says, he was stripped, raped with a baton and verbally abused by police officers before being let go.

All of this, he says, because of his sexuality.

Peruvian authorities investigated the incident and reported that Marin was taken into custody after neighbors reported unfamiliar people in the vicinity of the highway. The authorities also told the Organization of American States (OAS), which has been looking into the allegations, that they conducted an extensive investigation and found no indication the acts described by Marin had occurred.

In the nine years since, Marin has complained, but few have listened. After multiple failed attempts to have his case heard in Peru, Marin took it to the OAS Inter-American Commission on Human Rights (IACHR), which monitors and protects human rights in the Americas. The commission heard his case December 1.

Marin says he hopes to have an answer soon -- it's not clear when the commission will issue its ruling -- but mostly he wants justice for anyone else that may have been raped or tortured because of their sexuality.

"I would have liked to be able to turn the page on this, and to put this behind me. But I am putting my face out there for everyone (who has been a victim)," he says. "I'm not doing this for me. I'm doing this because I am a human being who pleads for and begs for justice for all the people who have been victims and anyone that might have died."

His case is not isolated. Nearly 600 people died across Latin America from anti-LGBT violence between January 2013 and March 2014, according to a 2015 report by the IACHR.
The IACHR report, and other reports from the region, show that violence against LGBT individuals is becoming more extreme. They are often stoned, tortured and raped before they are killed, and crimes often go unpunished.

Many times, crimes against the LGBT population go underreported because of fear of reprisals and skepticism of the justice system.

Violence despite progressive LGBT protection laws

Luis Alberto Rojas Marin marches in a parade in Lima, Peru, holding up a sign for an LGBT non-profit.

Latin America offers a contradictory narrative: The region has the highest rates of violence against the LGBT community, according to research done by Transgender Europe, a non-governmental organization, but it also has some of the most progressive laws for LGBT equality and protection.

While many LGBT rights in the United States are tied up in legal wrangling in individual states, in Latin America, laws about same-sex marriage and adoption, changing gender on national ID cards, and anti-discrimination laws all went into effect in the past decade -- many of them before the US Supreme Court legalized same-sex marriage.

Chilean President Michelle Bachelet recently promised to continue to push for a law allowing same-sex marriages. Chilean law already allows same-sex couples to enter into civil unions and the country's hate crime laws include sexual orientation protections.

However, LGBT youth in Chile say they still feel scared.
Sebastián Urrutia Lutz, a gay man, was attacked in 2012 by a group of men while leaving a party in a gay neighborhood in Santiago. Sebastian says witnesses stood by while he was savagely beaten on the street. He tells CNN no one has been held accountable for the events of that night.

After his attack -- and after seeing the wave of anti-LGBT violence that's spreading in the region -- Lutz says he doesn't feel safe at all.

"I have heard stories of other people who have died, and friends telling me that others have been beaten up by other gangs," he says. "It's frustrating. You hear this every day and no one does anything about it."

He adds, "We live here, so we have to deal with it, but it's heartbreaking."

Lutz argues that while more LGBT people have been coming out of the closet in Chile, some of the violence is a backlash to society's increasing acceptance of the LGBT community.

"That has made a lot of people that dislike (LGBT people) become more frustrated that our society is accepting us and considering us normal people," he says. "They are really angry and they want to express that."

Related Article: Lesbians' baby baptized by Catholic Church in Argentina

Today, same-sex marriage is legal in Argentina, Brazil, Uruguay, Colombia and in several Mexican states plus Mexico City. Mexican President Enrique Peña Nieto signed a proposed measure in 2016 to make it legal countrywide, but the congressional commission that deals with changes to the constitution voted to strike down Peña Nieto's proposal.

Chile and Ecuador allow same-sex civil unions.

Fourteen Latin American countries have also passed laws that prohibit discrimination in the workplace based on sexual orientation. Many countries such as Argentina, Brazil, Colombia and Uruguay now allow same-sex couples to adopt.

In Bolivia, transgender and transsexual individuals are allowed to change their national ID cards, but the country -- along with Paraguay -- has instituted a constitutional ban on same-sex marriages.
Advancement in LGBT acceptance is a spectrum

For Javier Corrales, a professor of political science at Amherst College, there are positive trends in the region. But he says it's hard to know whether violence is increasing or whether victims are simply more comfortable speaking out against their aggressors.

"Fifteen years ago, 20 years ago, the region probably looked somewhat hopeless -- and yet we have seen progress, so one could draw lessons from it," he says.

Corrales adds that one of the most important lessons from the region "is that in Latin America, LGBT movements were able to connect with human rights defenders, and that alliance proved very fruitful."

Luis Larraín, president of the Chilean LGBT group iguales, says his country may not be as advanced as others in Latin America, but it has made progress.

"In the last few years there has been a very notable shift by the people, with their support, and at the political level, with a government that has approved civil unions," he says.

On the other hand, Venezuela tops the list when it comes to the lack of rights for same-sex couples or members of the LGBT group, says Omar Encarnacion, a political scientist at New York's Bard College and author of Out in the Periphery: Latin America's Gay Rights Revolution.

The traditionally leftist-leaning government has made almost no significant progress in recognizing or protecting members of the LGBT community. The situation "dismisses this idea that the farther to the left you are the more likely you are to be pro-gay," Encarnacion says.
A 2015 report prepared by Venezuelan LGBT associations for the United Nations said members of the community "constantly live situations of discrimination," and that lack of protection for LGBT citizens "makes them defenseless citizens in an atmosphere of alarming growth of homophobia and transphobia."

In December 2016, Isabella Saturno and her partner were reprimanded at a Tony Roma's restaurant in Caracas for being "overly affectionate."

"The manager brought us our check and asked us to not be so affectionate. My partner and I were behaving like a normal couple, a hug or a small kiss. A normal level of affection for a couple in love."

Saturno's experience spurred protests and Tony Roma's Venezuela hit back, saying the type of actions that led to the incident "are inappropriate in public places and go against morality and respect to others. They added the restaurant "proudly serves people of all races, religions and sexual preferences."

"Venezuela unfortunately is in the back of Latin America," says Ana Margarita Rojas, who works for an LGBT organization in Venezuela. "The situation is very bad. We are always in limbo."

Rojas' group, Reflejos de Venezuela, aims to change that by educating and creating a census of LGBT people living in Venezuela. She says she hopes her efforts will help change people's perceptions.

But, she tells CNN, despite all the marketing and effort that her organization and others throughout Venezuela have put in the past few years, they have very little to show for it.

"My partner and I are a lesbian couple with a child looking for recognition," she explains, adding there are very few other couples that make themselves known because they fear retaliation against them or their children.

Cultural, religious roots

Catholic and evangelical churches also play a large role in shaping societal and political opinion in the region.

"If you look at religion as a variable, what you find is that the more Catholic the country, the more likely they are to be accepting of homosexuality and vice versa," Encarnacion says. "The more Protestant they are, the less likely they are to be accepting, and the less likely they are to have an active gay rights legislation."
Encarnacion adds that LGBT people living in countries dominated by evangelical churches tend to be the ones that have the hardest time.

The Catholic and evangelical churches have similar views on homosexuality, although there are notable differences.

While both oppose homosexuality, "the Catholic clergy tends to be less opposed to anti-discrimination statutes than the evangelical clergy," explains Corrales. "Sometimes, the Catholic clergy has come out in favor of civil unions while still opposing gay marriage."

Crissthian Manuel Olivera Fuentes, who works for MHOL, the Homosexual Movement of Lima, says some evangelical priests in Peru have come out strongly in the past few months preaching that homosexuality is a disease that can be cured.

Activists who spoke to CNN say Latin American LGBT youth also continue to struggle with a culture of "machismo" and sexism. Boys and men are pushed to be manly and have an exaggerated masculine pride. Women are pushed to be submissive to their husbands and act very feminine.

A protester against homophobia at a march in Brasilia, Brazil holds a sign that reads: "The problem is not being Catholic or being Evangelical, but being intolerant."

Regional outlook: Still work to be done

According to analysts, the picture as a whole in Latin America is encouraging, but there is still plenty to worry about.

Marin says that regardless of the outcome of his case at the Inter-American Commission on Human Rights, he will never stop fighting.
The activists CNN spoke to all say they would like to see more recognition of same-sex partnerships as well as the legalization of marriage across the continent. They would also like to see less impunity for crimes against LGBT people and broader access to health care and counseling for members of the LGBT population.

In the region, public opinion seems to be shifting toward tolerance. A survey by ILGA showed that 81% of people in the Americas have no concerns about their neighbors' sexuality.

LGBT activism is also on the rise. More and more activists have taken to the streets to stand up for their rights and demand investigation and punishment for crimes against LGBT people.

But activists say changing the law alone isn't enough.

Alex Bernabe, founder of Igualdad in Bolivia, says even though there have been some strides in creating anti-discrimination laws, those are not always enforced.

"You have to have educational campaigns, sensitization campaigns and education or else your progressive laws will sit in the drawer, unused."

CNN's Kelly Chen and Anastasia Beltyukova contributed to this report.
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<td>led transgender and intersex persons to become victims of human trafficking or prostitution.” (p. 32)</td>
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<td>• “No law specifically prohibits employment discrimination based on sexual orientation, gender identity, or HIV/AIDS status.” (p. 38)</td>
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<td>• “The constitution provides for equality before the law of all persons and prohibits discrimination based on ‘sex or social condition,’ but it does not explicitly prohibit discrimination based on sexual orientation or gender identity.” (p. 32)</td>
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<p>|     | • “Credible NGOs reported incidents of bias-motivated violence against lesbian, gay, bisexual, transgender, and intersex (LGBTI) persons. Reported incidents were most prevalent against transgender individuals. Leading advocates noted that law enforcement authorities often did not properly investigate to determine whether crimes were bias-motivated.” (p. 32) |
|     | • “Local police and private security forces allegedly prevented LGBTI persons from entering malls, public parks, and recreational areas. NGOs reported the government systematically denied legal recognition to transgender and intersex persons by preventing them from obtaining identity documents required for accessing education, employment, housing, and health care. This vulnerability often led transgender and intersex persons to become victims of human trafficking or prostitution.” (p. 32) |</p>
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<td>3.</td>
<td>“Incidents of violence were most prevalent against members of the transgender community. Leading advocates noted that law enforcement authorities did not properly investigate to determine the motives for such crimes.” (p. 35)</td>
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<td>“Local police and private security forces allegedly prevented LGBTI persons from entering malls, public parks, and recreational areas. NGOs reported the government systematically denied legal recognition to transgender and intersex persons by preventing them from obtaining identity documents required for accessing education, employment, housing, and health care. This vulnerability often led transgender and intersex persons to become victims of human trafficking or prostitution.” (p. 35-36)</td>
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<td>“[The constitution] does not explicitly prohibit discrimination based on sexual orientation or gender identity.” (p. 35)</td>
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<td>“Psychological, verbal, and physical abuses towards the LGBTI community were common practice in schools and universities, according to leading advocates. No laws or policies protect LGBTI persons against bullying. As a result, according to NGOs, LGBTI students had a higher dropout rate than heterosexual students.” (p. 36)</td>
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<td>“Local police and private security forces allegedly prevented LGBTI persons from entering malls, public parks, and recreational areas. NGOs reported the government systematically denied legal recognition to transgender and intersex persons by preventing them from obtaining identity documents required for accessing education, employment, housing, and health care. This vulnerability often led transgender and intersex persons to become victims of human trafficking or prostitution.” (p. 36)</td>
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<td>“The constitution provides for equality before the law of all persons and prohibits discrimination based on ‘sex or social condition,’ but it does not explicitly prohibit discrimination based on sexual orientation or gender identity…The media and leading advocates for the rights of lesbian, gay, bisexual, transgender, and intersex (LGBTI) persons noted that victims of hate crimes based on sexual orientation or sexual identity frequently did not report incidents and were often subjected to threats or extortion if they filed official complaints.” (p. 36)</td>
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<td>“Since the law does not define a hate crime, no official law enforcement statistics reflected LGBTI-related violence. Most crimes against LGBTI persons were classified as ‘crimes of passion,’ not crimes of hate. The NGO Citizens’ Association Against AIDS noted that in 28 of 29 cases of LGBTI persons who had been killed between 2004 and 2015, only one perpetrator was sentenced for a crime. Incidents of violence were most prevalent against members of the transgender community.”</td>
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Leading advocates noted that the media underreported most cases of LGBTI-related crime and law enforcement authorities did not properly investigate to determine the motives for such crimes. LGBTI experts also noted an estimated 6,000 same-gender families, with and without children, lacked legal protection.” (p. 36)

**INTER-GOVERNMENTAL SOURCES**

5. **Inter-American Commission on Human Rights, Annual Report 2018 (Mar. 21, 2019), available at:**
   - “The situation of the rights of LGBTI persons in Venezuela remains weak due to the context of the political situation affecting the country.” (p. 492)
   - “It is concerning to the Commission that information on Venezuela’s LGBTI population is scarce, with no official information in its existence or on human rights violations carried out against these individuals. The situation causes consternation at the lack of visibility of the human rights situation of LGBTI persons in the country. The Commission reminds the State of Venezuela of its obligation to guarantee protection of LGBTI persons, as well as to produce official data on its efforts and allocate sufficient resources to systematically collect and analyze disaggregated statistics on the prevalence and nature of the violence and discrimination, as well as on the effective and proper inclusion of LGBTI persons via the laws and public policies implemented.” (p. 492)

   https://data2.unhcr.org/es/documents/download/67282
   - “Increasing incidents of GBV and human trafficking are among the key protection concerns, primarily impacting women and girls but also men and boys, and vulnerable minorities such as lesbian, gay, bisexual, transgender and intersex (LGBTI) persons.” (p. 18)

   - “Washington, D.C. - The Inter-American Commission on Human Rights (IACHR) condemns the alarming number of killings of lesbian, gay, bisexual, and trans people (LGBT) in the region and urges the States to investigate these deaths with a differentiated approach and ensure that they do not go unpunished. The Commission is concerned about the information it has received indicating that in the first months of this year, at least 41 serious crimes against LGBT persons have been reported in Argentina, Brazil, Colombia, El Salvador, the United States, and Venezuela.” (p. 1)
TAB | SUMMARY
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- “In Venezuela, the body of a trans woman, 32-year-old Alexandra Peña Vizcaya, was found in the state of Lara. The expert examination carried out reportedly found that she had been kidnapped and tortured, her penis cut off and the skin on her face peeled back. This homicide has the same characteristics as the murder of a gay man, 60-year-old Ibán José Chávez, whose body was found in January of this year. The Commission was also informed that the body of someone perceived as a trans woman had been found showing signs of abuse and bullet wounds.” *(p. 1)*

8. **Inter-American Commission on Human Rights, Report No. 66/16, Petition 824-12, Report on Admissibility (Dec. 6, 2016), available at:**

   - “On April 29, 2012, the Inter-American Commission on Human Rights (hereinafter “the InterAmerican Commission,” “the Commission” or “the IACHR”) received a petition submitted by Tamara Mariana Adrián Hernández (hereinafter “the petitioner” or “the alleged victim”) on her own behalf against the Bolivarian Republic of Venezuela (hereinafter “Venezuela” or “the State”) over the Venezuela legal system’s alleged failure to provide a suitable and effective remedy for changing an individual’s gender identity in the registry documentation system.” *(p. 1)*

   - “The petitioner maintains that the State has violated her human rights by denying her the opportunity to change her registry documentation to match her gender identity. Specifically, she indicates that there has been an unjustified delay of more than 10 years in resolving the protective measure she submitted to request that all public and private records be changed to match her gender identity. She states that as a consequence, she has experienced the restriction of a series of other fundamental rights.” *(p. 1)*

   - “The petitioner alleges that the Venezuelan legal system lacks a suitable and effective remedy for changing an individual’s gender identity in the registry documentation system. She also alleges that there has been an unjustified delay in resolving the protective measures she filed to request this change. The petitioner also states that the lack of legal recognition of her gender identity has resulted in numerous professional and personal obstacles, and she therefore faces restrictions on a series of her rights, including the rights to exercise her profession as an attorney, to free movement, and to participate in political life.” *(p. 5)*


   - “With regard to the human rights situation of lesbian, gay, bisexual, and trans (LGBT) persons in Venezuela, the petitioning organizations indicated that high-level public officials had spoken out publicly in a discriminatory manner against LGBT persons. As the organizations reported, in Venezuela there is no recognition of diverse families; discrimination exists in the health arena; and investigations are not conducted into
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| cases involving hate crimes against LGBT persons, even when these include attacks and illegal detentions by agents of the State.”  
- “The IACHR urges the State to adopt a non-pathologizing gender identity law; investigate with due diligence crimes committed against LGBT persons; and take further measures, including public policies for the benefit of LGBT persons and those who defend their rights.”  
(p. 9) |

10. **Inter-American Commission on Human Rights, Annual Report 2016 (Apr. 27, 2016), available at:**  
- “Civil society organizations report that in the context of the situation of shortages and scarcity affecting Venezuela, LGBT persons have been victims of mistreatment, humiliation, and discrimination and been turned away when trying to purchase food, basic goods, and medicines. Reports indicate that the situation ‘is exacerbated for trans people due to the legal and social exclusion of which they are victims… Lack of trust in the administration of justice and mismanagement in matters involving sexual orientation, gender identity, and gender expression have also been reported’”  
(p. 662)  
- “The Inter-American Commission reiterates its concern that a culture prevails in Venezuela in which acts of violence and attacks against LGBT persons—trans persons in particular—is normalized. The IACHR also reiterates its concern at the high rates of violence against LGBT persons in Venezuela. According to a report prepared by a civil society organization, between January and May of this year, at least 10 murders took place, all of them committed in public. The same organization reported that during that time period, 16 LGBT persons had been attacked.”  
(p. 662)  
- “For its part, the Commission expresses alarm at the situation faced by defenders of LGBTI persons in Venezuela. The Commission has received information indicating that since 2014, Yonathan Matheus and Wendell Oviedo, spokespeople with the NGO Venezuela Diversa, have been persecuted, harassed, and photographed without their consent by unknown individuals. They have received death threats several times, forcing them to leave the country and relocate to the United States.”  
(p. 663)  
- “The Commission reiterates that the human rights defenders who identify themselves as LGBTI and work to protect and promote the human rights of LGBTI persons face alarming levels of vulnerability to violence due to the intersection of their sexual orientation and/or gender identity with their roles as human rights defenders and the causes they defend.”  
(p. 663) |

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<td>• “In healthcare establishments, LGBTI people are subjected to psychological abuse, distress, humiliation and discrimination when they require healthcare in general and especially when they go for treatment and prevention of HIV and AIDS.” (p. 24)</td>
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<td>• “… LGBT Venezuelans face widespread intolerance and are occasionally subjected to violence.” (p. 12)</td>
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<td>14.</td>
<td>Spanish Commission for Refuge Support, Venezuela: LGBT Group Situation (Mar. 7, 2018), (with translation) available at: <a href="https://www.cear.es/wp-content/uploads/2018/10/Informe-LGBT-Venezuela.-2018.pdf">https://www.cear.es/wp-content/uploads/2018/10/Informe-LGBT-Venezuela.-2018.pdf</a></td>
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<td>• “In Venezuela, the LGTB collective lacks sufficient recognition (especially trans people) and their rights protection regulations are scarce and inefficient. While discrimination is prohibited de jure, LGBT people suffer it de facto, being exposed to situations of discrimination and violence by both the police and society.” (p. 1 of translation)</td>
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<td>• “Furthermore, there is criminalization of homosexual relations in the Army.” (p. 1 of translation)</td>
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<td>• “Regarding the violence suffered by the collective, we find that there are no official data from the Venezuelan Government given that, as previously stated, hate crimes against LGBT people are not recognized in the country. These types of crimes are usually classified as ‘passion crimes’, not as hate crimes.” (p. 2 of translation)</td>
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<td>• “LGBT organizations report that victims of hate crimes are often extorted or threatened by the police when they attempt to report these acts.” (p. 2 of translation)</td>
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<td>• “In Venezuela, 109 similar homicides have occurred between January 2009 and May 2017, according to the Vienna-based Trans Murder Observatory, which, based on media publications, records cases of hate crimes against the LGBTI community (lesbians, gays, bisexuals and transgender and intersex people).” (p. 1 of translation)</td>
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<td></td>
<td>• “Venezuela’s society is still homophobic, full of prejudices, and political decision makers are sick of all that” (p. 1 of translation)</td>
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<td>• “On 31 January, after filing a complaint at a police station, transgender lawyer Samantha Seijas and his daughter Aleska Seijas were beaten about the head and face by police officers from the Police Force of Aragua, who uttered derogatory phrases such as ‘what happened to trying to act all manly?’, referring to his gender identity. He told Amnesty International that as well as beating them, one of the officers threatened Samantha by saying ‘pray to God that I don’t find you out alone at night.’ It is important to note that Samantha Seijas and his daughter live in front of the police station.” (p. 1)</td>
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| | • “The day after these events, Samantha Seijas presented a complaint before the Public Prosecutor’s office. He is afraid that the proximity of the police station and by
extension, the presence of the police officers from the Aragua Police Force, will lead to the threats being carried out.”  (p. 1)
- “To date, there have been no reports of an investigation having been initiated based on Samantha Seijas’ complaint.”  (p. 1)
- “The Aragua Police Force has a history of excessive use of force. In 2016 there were complaints of excessive use of force during demonstrations, such as in the case of Laura Lara, the victim of a brutal beating which was caught on video, carried out by various male police officers from the Aragua State Police Force, in central Venezuela. There have also been reports registered of harassment of LGBTI individuals in the past by this police force.”  (p. 2)

17. **Reflejos de Venezuela Foundation, Rights of LGBTI violated in Venezuela (Jun. 4, 2016), (with translation) available at:**
https://www.fundacionreflejosdevenezuela.com/hagamos-un-hecho/derechos-de-lgbti-en-venezuela/
- “A Citizen Action Against AIDS (ACCTI) study between 2011-2013 mentioned that there were 99 registered hate crimes and of which 40 percent were homicides and 70 percent affected trans people.”  (p. 2 of translation)
- “For some years now, different organizations working for the human rights of lesbian, gay, bisexual, trans and intersex (LGBTI) groups have been exposing the examples of attacks they suffer from representatives of the Venezuelan State”  (p. 1 of translation)

https://www.amnesty.org/download/Documents/POL1025522016ENGLISH.PDF
- “LGBTI organizations expressed concern at entrenched discrimination. There were continuing reports of violence against LGBTI people. Those responsible were rarely held to account as complaints were not investigated or prosecuted.”  (p. 397)
- “There was no specific provision in law criminalizing hate crimes on sexual orientation, gender identity or expression.”  (p. 397)
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<td>• “Situations of discrimination and violence are frequent against LGBTI persons are frequent in the workplace, being victims of abuses, unjustified dismissals, violating, thus, all their labor rights and benefits established in the current legal framework.” (p. 3 of translation)</td>
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<td>• “Parks, museums, restaurants, shopping centers, among others, are places that have experienced situations of stigma and discrimination against LGBTI people by police, surveillance or public order officials. In the case of private spaces such as restaurants, the situation is very similar. Expressions of affection, such as walking holding hands or hugging, kissing or any other expression that is normally carried out by two people of different sex, in the case of two people of the same sex are subject to censorship” (p. 4 of translation)</td>
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<td>• &quot;The impunity surrounding human rights violations committed during the protests in 2014 is not the exception. In Venezuela, the vast majority of human rights violations are not investigated or punished.” (p. 8)</td>
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<td>• “Scores of people were beaten, burned, subjected to sexual abuse and electric shocks and threatened with rape and death by law enforcement officials during the protests. These violations were inflicted on detainees at the time of arrest, during transfer to detention centers and while in detention.” (p. 9)</td>
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<td>• “Rosmit Mantilla, a lesbian, gay, bisexual transgender and intersex (LGBTI) rights activist and member of the opposition Popular Will (Voluntad Popular) party, has been detained for nearly a year by the National Intelligence Service (Servicio Bolivariano de Inteligencia Nacional, SEBIN). On 30 January 2015, after nine months of procedural delays during which the committal hearing was postponed 11 times, and despite the lack of credible evidence, the investigating judge ordered that Rosmit Mantilla should face trial.” (p. 38)</td>
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<td>• “Venezuela has failed to materialize a legislative initiative to change the legal status of LGBTI people” (p. 7)</td>
<td>• “Venezuela has not made significant progress in the recognition and protection of civil and political rights of lesbian, gay, bisexual, trans and intersex (LGBTI) people, who constantly live situations of discrimination, threats and attacks against their moral, psychological or physical integrity, and still lack legal protection which makes them defenseless citizens in an atmosphere of alarming growth of homophobia and transphobia, as a result of the absence of laws, policies and institutions that guarantee equality in the exercise of fundamental rights and freedoms.” (p. 3)</td>
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<td>• “Likewise, Venezuela has no policies, plans, programs and services designed to meet the needs and demands of LGBTI people” (p. 8)</td>
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<td>• “Likewise, Venezuela has no policies, plans, programs and services designed to meet the needs and demands of LGBTI people” (p. 8)</td>
<td>• “Public and private spaces (parks, museums, restaurants, shopping centers, etc.), are places where LGBTI people experience situations of stigma and discrimination by law enforcement officials, or police surveillance” (p. 25)</td>
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<td>• “LGBTI people are in a total state of helplessness, abandonment and absolutely unprotected by the Venezuelan State. There is a high degree of impunity in the cases reported by LGBTI people on discrimination, assaults, violence, mistreatment, torture and even murder because of sexual orientation, identity and gender expression. These situations are motivated by the inaction and omission of public institutions in the administration of justice against cases related to sexual diversity”. (p. 1 of translation)</td>
<td>• “The main security forces in Venezuela were mentioned as the perpetrators of negative experiences against LGBTI people”. (p. 1 of translation)</td>
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<td>• “The ‘disposable character’ highlights as a common element in the cases of the murders of persons of sexual diversity reported by the information sources consulted”. (p. 1 of translation)</td>
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<td>• “Analyzing the informative notes and denunciations of the Civil Society Organizations, it is determined that LGBTI victims are disrespected in their human dignity as a result of lesbophobia, homophobia, biphobia and transphobia that prevails in Venezuelan society, with the aggravating factor that people of diverse sex are unprotected and helpless by public institutions”. (p. 1 of translation)</td>
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<td>• “For years, Daniel Arzola endured homophobic abuse from his neighbors in Maracay, a city in the north of Venezuela. Homophobic slogans were daubed on the walls of his house and he was shouted at on the street.” (p. 1)</td>
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<td>• “‘One day, a group of neighbors tied me with old cables to an electric pole and they threw fireworks at me,’ he told Reuters from Chile. ‘They also put out some cigarettes on my body, while others destroyed all the drawings that I brought with me.’” (p. 1)</td>
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<td>• “‘The impact of the crisis on LGBTQ+ people is evident,’” said Tamara Adrian, a lawyer and politician living in Caracas, Venezuela’s capital. ‘As a vulnerable population, they do suffer the consequences of the crisis much worse.” (p. 1)</td>
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<td>• “Venezuela is a hard country. The culture [toward LGBT people], instead of improving, is getting worse every day,’ Adrian Ynfante, a transgender man, told Reuters.” (p. 2)</td>
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<td>• “While Venezuela continues to face an economic crisis in the midst of more political power struggles, many Venezuelans consider LGBTQ rights to be irrelevant.” (p. 1)</td>
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<td>• “‘Even in the most dire conditions, non-straight, non-cisgender people feel they are still treated like second-class citizens. Lacking resources, structure, as well as support from most politicians…”” (p. 2)</td>
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<td>• “Despite having won the case for parental rights, we continue without legal protection for couples, no civil unions nor same-sex marriages, and less so, anything related to gender identity,’ Simons told Latino USA.” (p. 2)</td>
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<td>• “‘Both political factions in Venezuela have plenty of ignorance and conservatism about the subject, ’ Simons explained. ‘There’s not one politician taking up the banner for our rights. Not from the so-called inclusive and revolutionary left, nor from so-called activist deputies.’” (p. 3)</td>
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<td><strong>25.</strong> Kevin Truong, “For Some LGBTQ Venezuelans, Fleeing Home Was Their Only Option” National Broadcasting Company (NBC) News (May. 10, 2017), available at: <a href="https://www.nbcnews.com/feature/nbc-out/some-lgbtq-venezuelans-fleeing-home-was-their-only-option-n757431">https://www.nbcnews.com/feature/nbc-out/some-lgbtq-venezuelans-fleeing-home-was-their-only-option-n757431</a></td>
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<td>• “‘I left the country because living in the most dangerous city in the world (Caracas) is not propaganda, but a cruel reality,’ Santana said. ‘I also realized [leaving] was the only way I was going to be able to be who I really was.” (p. 1)</td>
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• “For Santana and many other LGBTQ Venezuelans living abroad, leaving the country was a necessary step toward living more openly as a gender or sexual minority.” (p. 2)

• “‘The basic issue is that we are not an issue,’ said Isaac Perez, who left Venezuela in 2015 and now lives in Argentina.” (p. 2)

• “‘When basic needs [are not being met], when people are more concerned with finding a meal to eat, you don’t have time to focus on [LGBTQ rights],’ he explained.” (p. 2)

• “Many times those who do fight for progress for the country’s LGBTQ community find their own lives and livelihoods put at risk. Activists Wendell Oviedo and Yonatan Matheus fled Venezuela in 2016 after receiving threats of violence to their personal safety.” (p. 2)

• “The two activists believe the threats they received were in response to the work they did as directors of Venezuela Diversa — an LGBTQ civil society organization fighting for LGBTQ and human rights in the country, with a focus on hate crimes, police abuse and the violation of rights of transgender women engaged in sex work.” (p. 2)

• “‘Cases of violations of LGBTI rights [in Venezuela] continue to rise and are not reflected in official statistics,’ Matheus told NBC Out. ‘Victims prefer anonymity rather than being doubly victimized by law enforcement.’” (p. 2)

• “The challenges present when reporting hate crimes to local law enforcement as an LGBTQ individual in Venezuela is something that Venezuelan artist Daniel Arzola knows from firsthand experience.” (p. 2)

• “Born in a poor community in Maracay, a city in northern Venezuela, Arzola suffered a violent hate crime for being gay while only 15.” (p. 3)

• “‘Some neighbors tried to burn me alive, and they destroyed all my drawings,’ Arzola told NBC Out. When he reported the crime to the local law enforcement, he says he was told that he needed to act more like a man.” (p. 3)

• “After the attack, Arzola said he didn’t draw again for six years. It wasn’t until he learned of a similar hate crime years later that he began to create art again.” (p. 3)
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<td>• “Venezuelan grassroots organizations denounced the unannounced forced closure of the Sex and Gender Diversity Integral Attention Office and subsequent arrest of LGBTQ activists by authorities last week. While Caracas Chief of Government Carolina Cestari ordered the closure under unclear circumstances, activists have pointed to a history of homophobic and transphobic actions taken by the local official.” (p. 2)</td>
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<td>• “Leandro Villoria, self-identified Chavista and president of the LGBTQ Liberation Army, told Venezuelan press that the office closure last Monday came as a surprise, stating that staff never received official paperwork and only a phone call moments before authorities sent by Cestari arrived citing ‘budgetary limitations.’” (p. 2)</td>
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<td>• “‘We came to protest in front of Cestari’s office to denounce her abuse of power today [Wednesday]. She is going against the Homeland Law and international recommendations for Venezuelan on the rights of LGBTQ people,’” he continued.” (p. 2)</td>
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<td>• “Co-coordinator of the Caracas LGBTQ office, Koddy Campos, was arrested during the peaceful protest in downtown Caracas. Authorities released Campos following nearly two days in detention after the Caracas Chief of Government office could not provide evidence to sustain charges of death threats and damages.” (p. 2)</td>
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<td>• “Additionally, the human rights collective SurGentes echoed similar sentiments, highlighting ongoing contradictions in the Bolivarian process in which the government has yet to rectify wrongs done to the LGBTQ community.” (p. 3)</td>
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<td>• “Venezuela tops the list when it comes to the lack of rights for same-sex couples or members of the LGBT group, says Omar Encarnación, a political scientist at New York’s Bard College and author of Out in the Periphery: Latin America's Gay Rights Revolution.” (p. 4)</td>
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<td>• “The traditionally leftist-leaning government has made almost no significant progress in recognizing or protecting members of the LGBT community. The situation ‘dismisses this idea that the farther to the left you are the more likely you are to be pro-gay,’ Encarnación says.” (p. 4)</td>
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<td>• “Same-sex couples have no protections or rights under Venezuelan law, and there are currently no mechanisms for a transgender or transsexual person to change their name and gender on their legal documents.” (p. 4)</td>
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|     | • “A 2015 report prepared by Venezuelan LGBT associations for the United Nations said members of the community ‘constantlly live situations of discrimination,’ and
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<td>that lack of protection for LGBT citizens “makes them defenseless citizens in an atmosphere of alarming growth of homophobia and transphobia.” (p. 5)</td>
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<td>“In December 2016, Isabella Saturno and her partner were reprimanded at a Tony Roma’s restaurant in Caracas for being ‘overly affectionate.’” (p. 5)</td>
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<td>“The manager brought us our check and asked us to not be so affectionate. ‘My partner and I were behaving like a normal couple, a hug or a small kiss. A normal level of affection for a couple in love.’” (p. 5)</td>
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<td>Saturno’s experience spurred protests and Tony Roma’s Venezuela hit back, saying the type of actions that led to the incident ‘are inappropriate in public places and go against morality and respect to others.’” (p. 5)</td>
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<td>“Venezuela unfortunately is in the back of Latin America,’ says Ana Margarita Rojas, who works for an LGBT organization in Venezuela. ‘The situation is very bad. We are always in limbo.’” (p. 5)</td>
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Dated: [DATE]                     Respectfully submitted,
[CITY, STATE] 

[FIRM]

*Pro Bono Counsel for Respondent__________*

By: _________________________

[NAME]
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