

NGO Coalition Forum for Life



VENEZUELA

Alternative report on implementation of the Covenant on Civil and Political Rights  
(Reply to List of Issues - CCPR/C/VEN/Q/4)

**Caracas – Geneva, June 2015**

**Prepared by the following organizations:**

Acción Solidaria (Acsol) – Solidarity Action

Human Rights Center - Universidad Católica Andrés Bello (CDH-UCAB)

Peace and Human Rights Center - Universidad Central de Venezuela

Espacio Público – Public Space

Venezuelan Program on Education – Action for Human Rights (Provea)

With the support of the Center for Civil and Political Rights



## Tabla de contenido

	Pág.
Executive summary and recommendations	3
Presentation and methodology	11
Implementation of Articles of the Covenant	12
I. Constitutional and legislative framework (articles 1 and 2)	12
II. Non-discrimination, minority rights and equal rights for men and women (articles 2, 3 and 26)	15
III. Right to life, violence against women, prohibition of torture and cruel, inhuman and degrading treatment and fight against impunity (articles 2, 6 and 7)	17
IV. Right to freedom and personal security, and the rights of detainees (articles 9 and 10)	27
V. Fair Trial and Judicial Independence (article 14)	28
VI. Freedom of thought, conscience and religion (article 18)	33
VII. Freedom of opinion and expression, assembly and association (articles 19, 21 and 22)	34
VIII. Participation in public affairs and right to vote (article 25)	45
IX. Minority rights (article 27)	47
X. Dissemination of information about the Covenant and its Optional Protocols (article 2)	48

## Executive summary

Significant advances in the 1999 Constitution regarding human rights contrast with weak and non independent **institutional framework** and is threatened by regressive laws in this area.

The State continues to show a systematic pattern of **non-compliance with its international human rights obligations** which is expressed in events such as contempt of judgments, decisions and recommendations, the refusal of access to the country to representatives of the Inter-American and international human rights systems, the removal of references to international standards of protection in legislation and, more worrying, the complaint, already in force, of the American Convention on Human Rights. Since 2002, no representative of the inter-American and the United Nations systems has been able to visit the country.

The **National Human Rights Institution** does not conform to the principles of **independence** set out in the Paris Principles in the form of selection of the holder, nor in the performance of the functions of the institution.

The documentation given to prove the identification and quality of **refugee applicants** is not transparent, insufficiently supported and lacking speed.

A **discriminatory practice** for political motives is maintained in areas such as employment in the public service, scholarships and study quotas and contracts with the public administration.

The **militarization of citizen security policies** have not reduced crime rates, with alarming increases in the numbers of dead people as a result of violent acts.

Standards to **prevent, investigate and punish torture** are not applied and there are **no official statistics** adjusted to the requirements of the Human Rights Committee.

**Deliberate practices** of incommunicado detention, transfer of injured detainees by excessive use of force to military hospitals, pressures to victims of violations of the right to physical integrity, use of the Public Defense as a mechanism to prevent allegations of abuse in court, lack of provision of forensic reports in the files and entry in records of non independent medical reports by health professionals assigned to the organ of detention, have been verified.

The thesis of the coup that in several regions was strengthened with the idea of the "*internal enemy*" was used to justify the **disproportionate use of force** against demonstrators, mostly peaceful. The state has a tendency to label as violent those demonstrations that occur with road closures, having criminalized such behavior an offense under the Penal Code of 2005.

**Toxic gases and lead pellets** are repeatedly used in the repression of demonstrations. Improper use of pellet guns and weapons with lethal force has caused the deaths of protesters.

While it is true that the phenomenon of **armed civilians** has some years in the country, their participation in coordination with the bodies of state security was in evidence during the first half of 2014 on actions involving attacks on homes, arrests, assault, crash groups, but the authorities have taken no steps to identify and punish those responsible, or to the dissolution of these illegal organizations.

The State has not taken steps to **redress victims** of arbitrary detentions and violations of personal integrity in the context of protests in 2013 and 2014.

**Preventive detention** is no longer an exception to become the rule, with consequences not only in overcrowded prisons but also in police detention centers.

Since early 2000 there has been a progressive **politicization of the judiciary** which has led to the adoption of judicial decisions that are far from democratic principles and violate the rule of law. Since the adoption of the 1999 Constitution, has been called Competitions for judges only for the Supreme Court in 2000; at present it is estimated that 80% of judges remain with provisional status.

**Military jurisdiction** continues to be used against civilians, even if the alleged crimes do not correspond to the assumptions of law.

There are worrying cases where **lawyers have been detained** in the exercise of their professional work.

In practice, the right to **conscientious objection** is not recognized because alternative means of service to the country are subject to military authority; a new law has been approved that penalizes individuals and legal entities and conditions the exercise of other human right to registration in a military record.

The Law of Social Responsibility in Radio, Television and Electronic Media is applied selectively as an instrument for  **censorship**.

The Venezuelan Penal Code and other laws continue to establish criminal offenses because of speeches against officials, by the figures of **contempt or vilification**.

National courts apply **measures against media executives and journalists** for criticizing officials, or for the faithful reproduction of information from international media regarding Venezuelan officials.

A high number of **physical attacks on journalists and citizen journalists** was recorded, most of which remain unpunished.

A **State monopoly** continues, placing restrictions on access to newsprint paper and other supplies for critical or independent newspapers of regional and national circulation.

**Human rights defenders** are under attack and disqualifications for their work, as well as violations of the privacy of their communications; they also face criminalization of donors, registration restrictions and reprisals for attending regional and international human rights meetings. The protection measures adopted for defenders are not effectively enforced by authorities.

Thousands of people have been subjected to appearance before courts for having participated in **demonstrations**; most of them are students, neighborhood leaders, workers and union leaders. The cumulative figure from 2006 to February 2013 was about 2,400 people, which was more than doubled in 2014.

The right to **peaceful assembly faces new restrictions** by the interpretation of the Supreme Court (TSJ) that a "permit" would be necessary to demonstrate, and by a resolution of the Ministry of Defense that authorizes all components Armed Forces to act in the control of public order, including the carrying and use of firearms.

The State has legislated regressively on the right to **freedom of association**, establishing unconstitutional and unjustifiable restrictions. In this way, organizations freely constituted are intimidated and harassed, the use of international financing is criminalized and attempts reduce the space for civil society to act in public life, affecting other rights such as participation in public matters and the defense of human rights.

There is an imposition of mechanisms affecting the **autonomy and independence of social organizations**, through forced and clientele association with partisan purposes and loyalty to the state authorities. It has been established in law, as a condition for the enjoyment and exercise of rights, the organization of citizens in public law figures known as organizations of Popular Power (OPP), which are constituted in accordance with purposes of the State.

**Civil society**, and particularly the organizations defending human rights, has been excluded from the substantive stage of the criminal process, such as the ability to represent victims in lawsuits against officials allegedly under suspicion for human rights violations.

**Trade union freedom** is affected by restrictive interpretations of the “*representation*” of the spokesmen of workers' organizations, whose periods are overcome just by obstacles for renewing their representatives; equally, trade unions face barriers to draw up their bylaws and elect their representatives, as well as the imposition of non-independent parallel figures *known as Workers Councils as expression of the Popular Power*.

Several legal instruments have been approved which aim to restrict and criminalize the exercise of the right to strike.

There are increasing restrictions to the **political participation** of political and social organizations; also, various actions have been taken by the State to disregard the popular will, either by creating parallel figures to legitimately elected governors and mayors, or through the imposition of laws that deviate from the Constitution and were rejected in the 2007 consultation on constitutional reform.

The State has not taken measures to ensure the **prior, free and informed consent of indigenous peoples** for the granting of operating licenses or exploration in indigenous territories.

The State has not complied with the transitional provision of the Constitution which, in 1999, set a deadline of two years for the **demarcation of all indigenous territories** in Venezuela.

Civil society was not invited to **participate in drafting the report**, undermining opportunities for advocacy on strengths and weaknesses regarding the obligations of the State under the Covenant.

## Recommendations

### **I. Constitutional and legislative framework (articles 1 and 2)**

---

- Comply fully with the recommendations, decisions and judgments of international and regional bodies for the protection of human rights, without alleging interference in internal affairs or violation of sovereignty.
- Ensure compatibility of legislative and judicial measures to the rules laid down in the Covenant and refrain from taking regressive notions that disregard or deny the quality of the rights recognized in the Covenant.
- Allow access to the country of representatives of international and regional bodies for the protection of human rights.
- Refrain from using the enabling laws for purposes other than intended, particularly with regard to the creation of offenses or the regulation of rights.
- Refrain from interfering with the work of the National Human Rights Institution, ensuring its independence from the moment that the consultation process for the appointment of its head begins, and ensuring that such designation conforms to the principles of participation of the civil society, as established in the Constitution, laws and the Paris Principles.
- Set the actions, policies and practices of the Ombudsperson to the Paris Principles.

### **II. Non-discrimination, minority rights and equal rights for men and women (articles 2, 3 and 26)**

---

- Ensure expeditious and transparent procedures for issuing temporary documents to refugee claimants.
- Decide refugee claims in the period prescribed by law, reasoning sufficiently those rejected applications, in order to ensure the right to reconsideration.
- Take all necessary and effective measures to ensure the abolition of the practice developed by public agencies regarding dismissal of workers for having opinions critical of or different from those of the government and investigate and punish the practices of political discrimination.

### **III. Right to life, violence against women, prohibition of torture and cruel, inhuman and degrading treatment and fight against impunity (articles 2, 6 and 7)**

---

- Ensure that police commanders, citizen security strategies and control of public order, as well as training bodies of the officials responsible for enforcing the law are in the hands of properly trained civilian personnel.
- Proceed to establish a transparent and accessible system of statistical data disaggregated by gender, age and nationality of victims of torture and cruel, inhuman or degrading treatment and of the status of

cases and prosecutors proceedings against defendants, making them visible in Public Ministry annual reports.

- Adjust immediately the detention conditions of the headquarters of the Bolivarian Intelligence Service (SEBIN).
- Ensure all persons in the custody of the State, access to a second opinion from doctors of their choice and access to the results of their own medical tests.
- Expressly prohibit the transfer of civilian detainees to military hospitals.
- Ensure full compensation for all victims of torture and provide clear and accessible information on the matter in general and especially with regard to the judgments of the Inter-American Court of Human Rights on *El Caracazo* and *El Amparo massacre*.
- Undertake ex officio investigations to determine responsibilities in implementation, concealment and failure to report violations of the right to physical integrity, as well as accelerate the requested investigations.
- To universalize the training of law enforcement officers responsible for public order and citizen security, according to existing international protocols and standards on the proportionate use of force.
- Correct the practice of criminalizing protesters by aggravating the qualification of alleged behaviors using offenses under the Organic Law against Organized Crime and Terrorism Financing.
- Create an independent body empowered to receive and investigate all complaints of excessive use of force and other abuses of power by police and other security forces, as the Committee had recommended in 2001.
- Adjust imputation processes, where they are necessary, to the principle of individualization of crimes allegedly committed and refrain from making generic allegations.
- Investigate and punish those who make use of toxic substances, firearms and others lethal force against demonstrators as well as the superiors who have ordered or allowed the carrying of such weapons.
- Dismantle parastatal groups and disarm all its members, also ensuring prosecution of those who have committed crimes and human rights violations.
- Investigate with due diligence acts committed by law enforcement officials in areas of residence, punish those responsible and provide adequate compensation to victims.

#### **IV. Right to freedom and personal security, and the rights of detainees (articles 9 and 10)**

---

- Ensure respect for the presumption of innocence, making preventive detention an exception and ensuring the presentation of all persons before courts in a period no longer than 48 hours, as required by law.
- Proceed to take immediate measures to ensure the classification and separation of detainees in accordance with international standards in this area.

#### **V. Fair Trial and Judicial Independence (article 14)**

---

- Disapply the figure of “*cooperating patriot*” and declare invalid any evidence supported by anonymous complainants.
- Proceed without further delay, to the implementation of competitions for all posts of judge in the country.
- Ensure stability of judges with full respect for the judicial career.
- Refrain from using the criminal justice system as an instrument of retaliation against judges in the performance of their judicial functions.

## **VI. Freedom of thought, conscience and religion (article 18)**

---

- Ensure transparency and speed of disciplinary investigations against judges, when they were necessary.
- Prohibit the trial of civilians in military courts, as well as the presence of civilian inmates at military installations.
- Refrain from using the criminal justice system as an instrument of retaliation against lawyers as a result the performance of their functions.
- In accordance with the previous recommendation of the Committee <sup>1</sup>, respect the constitutional right to conscientious objection, providing alternative means of service to the country and not subject to military authority.
- Abolish the provisions that penalize individuals and corporations conditioning the exercise of other human rights to the registration on a military record.

## **VII. Freedom of opinion and expression, assembly and association (articles 19, 21 and 22)**

---

- Investigate, in an impartial and effective way, cases of attacks, harassment and killings of media professionals and prosecute and punish those responsible.
- Amend the Criminal Code and Code of Military Justice, eliminating the figures of contempt or vilification and adjusting the protection of the right to honor international standards.
- Refrain from further arbitrary blocking of access to websites and media in cable operators.
- Ensure access to paper and supplies to the national and regional media.
- Investigate, beyond the formalities, all reports of attacks, threats, killings and other attacks on human rights defenders, ensuring the punishment of those responsible and timely, transparent and accessible information on the progress of judicial proceedings.
- Comply effectively with the agreed protective measures for human rights defenders.
- Refrain from using the public network media to issue threats and insults against human rights defenders, especially when such acts are reprisals against defenders for their cooperation with regional and international organizations for protection of human rights.

---

<sup>1</sup> CCPR/CO/71/VEN, paragraph 26



- Repeal Resolution 8610 and refrain from developing any other regulatory instrument to incorporate the participation of components of the Bolivarian National Armed Forces in controlling public order.
- Agree on the dismissal of all cases against demonstrators, including not only those initiated in February 2014, but those that are pending for more than five years ago, when it started applying the criminal justice to demonstrators.
- Investigate with due diligence all cases of people killed in the context of demonstrations, ensuring the protection of witnesses and the punishment of those responsible.
- Refrain from action to restrict funding of civil society organizations, including funds of foreign or international origin, by administrative, legislative or judicial means and repeal those measures that apply restrictions beyond what is strictly stipulated in the Covenant; and ensure a safe and supportive environment for maintaining the space for civil society.
- Refrain from imposing military registration to civil society organizations, and adapt the Law of Military Registration and Enlistment in accordance with the provisions of the Covenant to protect the right to freedom of association and conscientious objection, for organizations as well as for its members.
- Refrain from adopting, and proceed to derogate any administrative, legislative or judicial action that may involve interference in the internal affairs of trade unions organizations or may prevent, restrict or impede the exercise of freedom of association and the right to strike, including discriminatory practices or the use of domestic criminal law to ban or criminalize the exercise of these rights.

#### **VIII. Participation in public affairs and right to vote (article 25)**

---

- Conduct a review of all the laws of People's Power and to ensure their compatibility with the rights to freedom of association and participation in public affairs.
- Facilitate, under conditions of transparency and freedom of movement, the activity of election observation missions and to guarantee, when requested by citizens, appropriate and expedite mechanisms of vote counting.
- Refrain from acts of persecution and harassment of citizens for the legitimate exercise of their right to participation in public affairs.

#### **IX. Minority rights (article 27)**

---

- Provide real and concrete progress in the process of demarcation of the lands of all indigenous peoples and the granting of land titles.
- Implement effective measures to protect indigenous territories against illegal mining and severe sanctions against exploitative practices or economic control by military personnel, officials or private individuals.
- Develop, without further delay, the legislative framework necessary for the exercise of the right of indigenous peoples to free, prior and properly informed consultation on all projects carried out in their territories.

- Investigate, beyond the forms, all killings, assaults, violence or attacks against members of indigenous communities and punish those responsible.

#### **X. Dissemination of information about the Covenant and its Optional Protocols (article 2)**

- To promote and ensure the broadest public consultation of periodic reports on the implementation of the Covenant and of other conventions, without exclusion or discrimination, and desist from policies that may produce disregard of civil society in the legitimate exercise of their autonomy and independence of the State.

Provide information to citizens and civil society organizations on reports submitted to the human rights bodies, complying with the State obligation to ensure access to public information and establish mechanisms for continuous monitoring related to efforts to implement the recommendations issued by these bodies.

## Presentation and methodology

This report is submitted by a group of organizations that are part of the Forum for Life (*Foro por la Vida*, hereinafter the Forum) with the aim of raising before the Human Rights Committee (hereinafter the Committee), matters of concern about the situation of human rights in the framework of international commitments made by the Bolivarian Republic of Venezuela, under the International Covenant on Civil and Political Rights (hereafter the Covenant). Its content is focused on responses from the State<sup>2</sup> to the List of Issues<sup>3</sup> produced by the Committee in 2014 and sent by the State in April 2015.

The Forum for Life is a platform of non-governmental human rights organizations in Venezuela with a history of over 20 years of work, comprising some 20 NGOs from around the country, to ensure full respect for human rights and contribute to the rule of law. The preparation of this report was carried out by the following organizations of the Forum: Acción Solidaria (Solidarity Action, Acsol)<sup>4</sup>, Human Rights Center - Universidad Católica Andrés Bello (Centro de Derechos Humanos de la Universidad Católica Andrés Bello CDH-UCAB)<sup>5</sup>, Centro para la Paz y los Derechos Humanos de la Universidad Central de Venezuela (Peace and Human Rights Center - Universidad Central de Venezuela)<sup>6</sup>, Espacio Público (Public Space)<sup>7</sup> and Programa Venezolano de Educación – Acción en Derechos Humanos (Venezuelan Program on Education – Action for Human Rights Provea)<sup>8</sup>.

It also counted on contributions from organizations outside the Forum: Civilis Derechos Humanos (Civilis Human Rights), Equipo de Defensores de Derechos Humanos del estado Táchira (Team of Human Rights Defenders Táchira State), Laboratorio de Paz (Peace Laboratory) and Observatorio de Derechos Humanos de la Universidad de Los Andes (Human Rights Observatory of the Universidad de Los Andes), and it took into consideration reports previously published by other human rights organizations outside the Forum but with significant experience in areas relevant to the issues addressed by this Committee.

The undersigned organizations warn that databases or information system of statistics on some of the issues of concern to the Committee are not available in the country, and access to public information sources is not transparent, therefore, a reconstruction effort of some indicators was conducted, based on own sources and supplementary information.

---

<sup>2</sup> [http://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/VEN/CCPR\\_C\\_VEN\\_Q\\_4\\_Add-1\\_19868\\_S.doc](http://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/VEN/CCPR_C_VEN_Q_4_Add-1_19868_S.doc)

<sup>3</sup> <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G14/224/84/PDF/G1422484.pdf?OpenElement>

<sup>4</sup> Founded in 1995, Acción Solidaria works on the rights of people with HIV or AIDS.

<sup>5</sup> Founded in 1999, CDH-UCAB, focuses on the right to political participation, freedom of expression, rights of refugees and migrants, strengthening democratic institutions and international systems of human rights protection.

<sup>6</sup> Founded in 2009, it is a center of the Central University of Venezuela, attached to the Rector, performs research, extension and teaching for the promotion and consolidation of human rights both in the university and outside the campus.

<sup>7</sup> Founded in 2002, Espacio Público It is a civil non-profit organization that aims to promote and defend human rights, especially freedom of expression; the right to information and social responsibility in the media.

<sup>8</sup> Founded in 1988, Programa Venezolano de Educación-Acción en Derechos Humanos (Provea) It is a nongovernmental organization that aims to promote and defend human rights, particularly economic, social and cultural rights.

## Implementation of Articles of the Covenant

### I. Constitutional and legislative framework (articles 1 and 2)

---

#### ***Constitutional status of human rights instruments***

1. Article 23 of the Constitution gives constitutional status to the treaties signed by Venezuela on human rights and even states that they prevail in the internal order when “*contain provisions concerning the enjoyment and exercise **more favorable to those established in the Constitution and the laws of the Republic***”(emphasis added). In this regard, there is a contradiction in the State's claim according to which only those rulings from international bodies that conform to the Constitution may be executed, arguing that “*no State organ could give enforceability to any decision or action that goes **in clear violation of the constitutional order***”<sup>9</sup>. It is inconceivable to pretend that a decision of an international body goes against the constitutional order, when the Constitution establishes such superior hierarchy.

2. In practice, the state has had a systematic attitude of noncompliance with its international obligations on human rights. Since 2000, the Supreme Court has abrogated the power to interpret the Constitution and make use of it in a discretionary manner to declare remedies of *amparo* inadmissible and to ignore judgments from international human rights bodies.

3. In 2008, the Constitutional Chamber of the Supreme Court issued a judgment in which it referred to the American Convention on Human Rights as: “*...a **declaration of principles, rights and duties of the conventional type which gives priority to individual, civil and political rights within a system of formal democracy (...)** this ruling (...) vindicates the constitutional supremacy, sovereignty and national self-determination and the claim of tradition of culture as a source of interpretation (...) against the **supposedly universal principles, founded on natural law, and which are merely an option for globalizing and hegemonic interpretation of individualistic rationalism***”<sup>10</sup>.

4. Only between 2008 and 2011, the Inter-American Court of Human Rights has issued a total of 9 sentences<sup>11</sup>, which have not been complied with by the Venezuelan State<sup>12</sup>. The Court has registered this failure<sup>13</sup>. Additionally, the Court issued during the same period provisional measures in 17 cases<sup>14</sup>; in most of these the State has not adopted the measures necessary for the fulfillment of such requests.

---

<sup>9</sup> Reply by the Bolivarian Republic of Venezuela to the List of Issues, March 5, 2015. Paragraph 7. Emphasis added.

<sup>10</sup> Supreme Court, Constitutional Chamber. Magistrate Arcadio Delgado Rosales. File No. 08-1572, December 18, 2008. Case Apitz et al. Available at: <http://www.tsj.gov.ve/decisiones/scon/octubre/1547-171011-2011-11-1130.html>. Emphasis added.

<sup>11</sup> Barbera Apitz et al. (“court first litigation administrative”) vs. Venezuela, judgment of August 5, 2008; Case rivers and other vs. Venezuela, ruling from January 28, 2009; Case Perozo and other vs. Venezuela, ruling from January 28, 2009; Case Reverón Trujillo vs. Venezuela, judgment of 30 June 2009; Case Barreto Leiva vs. Venezuela, judgment of November 17, 2009; Case Uson Ramirez vs. Venezuela, judgment of November 20, 2009; Chocrón Chocrón Vs. Venezuela, judgment of July 1<sup>st</sup>, 2011; López Mendoza Vs. Venezuela, judgment of September 1<sup>st</sup> de septiembre, 2011; Familia Barrios Vs. Venezuela, judgment of November 24<sup>th</sup> 2011.

<sup>12</sup> In the views of the Venezuelan government on the recommendations rejected in the Universal Periodic Review (UPR 2011), is established as a general argument that “*Venezuela cannot accept statements that usurp sovereign to any branch of the National Government functions being the treaty or international instrument which gives jurisdiction to the respective court is not empowered to compel such ‘usurpation’ of their own work of local or national bodies ...*”. Views on conclusions and / or recommendations, voluntary commitments and replies presented by the State concerned. Report of the Working Group. Paragraph 4.

<sup>13</sup> Resolution of the Inter-American Court of human rights of 4 February 2010, case El Amparo vs. Venezuela; Resolution of the Inter-American Court of human rights of July 7, 2009, case white Romero and others vs. Venezuela; Resolution of the President of the Inter-American Court of human rights of December 18, 2009, case Apitz Barbera and others (“Corte Primera de lo Contencioso Administrativo) vs. Venezuela.

5. The Venezuelan State has gone from a first phase where the recommendations and rulings are ignored, to a next stage in which its validity is not recognized through the judicial channels, stating that the judgments of the Inter-American Court of Human Rights are "*unenforceable*", based on a supposed "*usurpation of functions*" by the international tribunal<sup>15</sup>; to finally reach a third phase in which the judge Maria Lourdes Afiuni, who based a decision on a recommendation by the Working Group on Arbitrary Detention of the United Nations, is itself arbitrarily detained and subjected to trial.

6. Since 2002, no representative of international or regional bodies for the protection of human rights has been authorized to visit the country.

7. In addition, after the popular rejection of the proposed constitutional reform in 2007, a series of regressive laws on human rights have been issued, some of which directly affect matters of interest to the Committee. This downward trend in the law, is not only the responsibility of the legislature (National Assembly, hereinafter NA), it falls directly on the Presidency of the Republic, to the extent that it continues to enact regulations under the umbrella of enabling laws which empower the chief Executive to legislate directly, including legal reserve areas for which he is not constitutionally empowered, and affecting human rights.

8. At the time of the contribution of the Forum for Life to the List of Issues, an enabling law agreed by the National Assembly was in effect, with duration of 12 months, which expired in November 2014. On March 15, 2015, a new enabling law was enacted "*anti-imperialist for peace*" in response to Executive Order of the President of the United States declaring Venezuela a "*threat to national security and foreign policy of the United States*". On this occasion, it empowers the President to "*Regulate guidelines aimed at strengthening the system of civil, administrative and criminal liabilities that might arise in defense of the principles, values and constitutional rules set forth in this Law*"<sup>16</sup>.

9. In previous enabling legislation the presidential powers to legislate in criminal matters were not set directly, but they were used to do so at different times. The law approved in 2015, for the first time expressly delegated this authority to the Head of State, in violation of the constitutional provision that establishes the legal reserve to legislate on the matter to the NA.

### ***Recommendations***

**10. Comply fully with the recommendations, decisions and judgments of international and regional bodies for the protection of human rights, without alleging interference in internal affairs or violation of sovereignty.**

---

<sup>14</sup> Luisiana Ríos and others, a matter on July 3, 2007; Case Guerrero Gallucci and Martinez Barrios, November 29, 2007; Issue of the radio station of television "Globovisión", January 29, 2008; Issue daily "National" and "Así es la news", November 25, 2008; Carlos Nieto, a matter on January 26, 2009; Issue Luis Uzcatogui, January 27, 2009; Liliana Ortega, a matter on July 9, 2009; Issue Guerrero Larez, November 17, 2009; Matter of the central prison region Capital Yare I and Yare II, issue of the Internado Judicial Capital El Rodeo I and El Rodeo II, subject of the Internado Judicial of Monagas ("La Pica") and subject Centre prison of the West Central region: Uribana prison, November 24, 2009; Issue Natera Balboa, February 1, 2010; Issue Belfort Istúriz and others, April 15, 2010; Subject penitentiary Center of Aragua "Tocorón prison", November 24, 2010; Issue Eloisa neighborhoods and others, November 25, 2010; Maria Lourdes Afiuni, December 10, 2010 issue

<sup>15</sup> Apitz et al. ("Corte Primera de lo Contencioso Administrativo") vs. Venezuela, judgment of August 5, 2008. Supreme Court of Justice: judgment on December 18, 2008: <http://www.tsj.gov.ve/decisiones/scon/diciembre/1939-181208-2008-08-1572.html>. The judgment of the TSJ requests in addition to the National Executive, to "*denounce*" the American Convention on human rights.

<sup>16</sup> Bolivarian Republic of Venezuela. National Assembly: Enabling Law anti- imperialist for peace. Official Gazette N° 6.178, March 15, 2015. Emphasis added.

11. Ensure compatibility of legislative and judicial measures to the rules laid down in the Covenant and refrain from taking regressive notions that disregard or deny the quality of the rights recognized in the Covenant.
12. Allow access to the country of representatives of international and regional bodies for the protection of human rights.
13. Refrain from using the enabling laws for purposes other than intended, particularly with regard to the creation of offenses or the regulation of rights.

### ***Independence of the Ombudsperson Office (NHRI)***

14. In December 2014, the NA proceeded to appoint the heads of the organs of Citizen Power, including the holder of the NHRI, through a different procedure to that established in the Constitution and setting aside public participation. The selection procedure of the holders of Citizen Power was characterized by various obstacles to citizen participation that did not facilitated the formation of the Nomination Evaluation Committee (NEC) required under the Constitution and the Organic Law of Citizen Power<sup>17</sup>, handing over the process to a parliamentary committee. This situation, which had already been presented in the previous two processes, is repeated in December 2014, undermining the legitimacy of origin of the holder and in breach of the Paris Principles<sup>18</sup>.

15. The ruling bloc interpreted that as the NEC was not formed, the shortlist could be skipped<sup>19</sup>, and that it was necessary to put the decision popular consultation, based on a ruling made in haste by the Supreme Court stating that the decision can be taken by a questionable simple majority<sup>20</sup>. The Forum believes that, on the contrary, in the absence of broad consultation mechanism that seeks to ensure the NEC, it was the duty of the various forces that make up the NA to reach a consensus by two thirds or, failing that, refer the decision to the popular consultation.

16. The new holder of the Ombudsperson Office, presented as the sole candidate and elected by a simple majority of the National Assembly, has, like his predecessor, a track record of open identification with the ruling party. The same day of his appointment, the new holder took oath, *“before the symbol and infinite icon of the father of the Venezuelan revolution, Hugo Chávez”*. He added to his oath *“to have a vision of the Ombudsperson Office, nationalist, anti-imperialist, at a time when Venezuela is being attacked by foreign powers to undermine the revolutionary and democratic essence of a people **who do not deserve to be branded and qualified in international organizations** as it is being in right now”*<sup>21</sup>.

---

<sup>17</sup> Article 10.16 Organic Law of Citizen Power outlines the functions of the Moral Republican Council (consisting of the Ombudsperson, the Attorney General and the Comptroller General): *“To convene an Evaluation Nominations Committee of the Citizen Power, in accordance with the provisions of the Constitution of the Bolivarian Republic of Venezuela and Chapter II of Title II of this Law”*.

Article 23. *The Evaluation Nominations Committee will be formed by representatives of different will be integrated with representatives of various sectors of society, who must be Venezuelan by birth, and in the enjoyment and exercise of their civil and political rights, of no more than twenty-five (25) members, and whose requirements will be established in the domestic law of the Moral Republican Council, which shall convene sixty days before the expiration of the period for which the heads of the organs of Citizen Power were appointed, in order to select them through a public process, in accordance with the provisions of Article 279 of the Constitution of the Bolivarian Republic of Venezuela.*

<sup>18</sup> UNGA. National institutions for the promotion and protection of human rights. Res. 48/134, December 20, 1993

<sup>19</sup> The law provides that a short list of three for each office of Citizen Power should be presented, including the Ombudsperson.

<sup>20</sup> The Constitution requires a two thirds majority

<sup>21</sup> Oath of the Ombudsperson before the National Assembly. <https://www.youtube.com/watch?v=51s3hAOmzcU> Emphasis added

17. It should be noted that, unlike what is stated by the State <sup>22</sup>, in November 2014 the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights (ICC) did not “endorse” any decision on accreditation to Category “A” for the Venezuela NHRI. On the contrary, that date was scheduled for a review of the accreditation granted in March 2014. However, based on procedural arguments, the head of the Ombudsperson Office asked to postpone the review, which finally took place in March 2015. When presenting this alternative report, the outcome of the review is unknown.

### ***Recommendations***

**18. Refrain from interfering with the work of the National Human Rights Institution, ensuring its independence from the moment that the consultation process for the appointment of its head begins, and ensuring that such designation conforms to the principles of participation of the civil society, as established in the Constitution, laws and the Paris Principles.**

**19. Set the actions, policies and practices of the Ombudsperson to the Paris Principles.**

## **II. Non-discrimination, minority rights and equal rights for men and women (articles 2, 3 and 26)**

---

20. In Venezuela there is a significant number of organizations dedicated to defending and protecting the rights of minorities, many of which present alternative reports on the implementation of the Covenant, so the Forum will make only brief references to three issues of concern, with the certainty that the Committee will obtain valuable additional information for these specialized organizations.

### ***Refugees and asylum seekers***

21. The documentation provided to prove the identification and quality of refugee claimant, is inadequate because it prevents the enjoyment of their rights in areas such as registration of belongings, formal employment, social insurance registration, certification by studies (especially boys / girls and adolescents) and free transit. The provisional document issued, which is required for any procedure before the Venezuelan State takes long time to be issued and does not correspond to minimum criteria for individual identification <sup>23</sup>, to enable the exercise of rights in under Venezuelan jurisdiction <sup>24</sup>. More seriously, the delay in delivery and the inadequacy of it, generate risks of deportation<sup>25</sup>. Nonconformity of the provisional document with the characteristics of an identity document, results in its non-acceptance or validity for the exercise of personal transactions (education, banking, tax, labor).

22. The Venezuelan State informed the Committee that, in accordance with legal regulations, refugee claims should be resolved “... *within a maximum period of 90 continuous days*”. This assertion, derived from the legal guarantee to adopt the decisions without undue delay, is not fulfilled in practice. The

---

<sup>22</sup> Reply of the Bolivarian Republic of Venezuela to the List of Issues, March 5, 2015. Paragraph 13

<sup>23</sup> Obligation based on Article 6 of the UDHR, in concatenation with Article 16 of the ICCPR, Article 8 of the CRC, Article 25 and article 27 of CGER. UNHCR Executive Committee. Conclusion number 35 on identity documents for refugees, Conclusion No. 64 on Refugee Women and International Protection.

<sup>24</sup> The provisional document is delivered on plain paper as a group (identification of the family group), without security measures, having little legitimacy with authorities and institutions in general and lacks a numeric code required for private or public procedures.

<sup>25</sup> According to the Jesuit Refugee Service-Venezuela, in 2009 there were ten arbitrary arrests and five deportations. There are no other figures, since the same agencies working in the field have difficulties and / or fear to share information.

average wait for decisions of the National Commission for Refugees (Comisión Nacional de Refugiados, CNR) is 5 months to 2 years approximately<sup>26</sup>.

23. The decisions of denial of refugee status should clearly state the reasons in fact and in law <sup>27</sup> why the CNR adopted decision <sup>28</sup>; however, about 90% of the applications are rejected without sufficient substantiation of the reasons for denial <sup>29</sup>.

24. The Office of the United Nations for Refugees (UNHCR) reported that as of early 2012, 17,369 persons had applied for refugee status; of which approximately 2,900 have obtained it. Similarly, UNHCR reported that the recognition rate has increased from 13% to 20%<sup>30</sup>. Until July 2012, there had been 9,464 cases to the CNR, of which 1,091 were approved <sup>31</sup>. It is mild and still insufficient progress. Out of the total population recognized as a refugee, only 73 (5%) are children.

25. Apparently has fallen into disuse figure of “*displaced persons in transit*” through which, from 2000, the State returned to Colombia to many people who were in Venezuela to escape violence. However, there has not been expressly discarded by the authorities.

### ***Recommendations***

**26. Ensure expeditious and transparent procedures for issuing temporary documents to refugee claimants.**

**27. Decide refugee claims in the period prescribed by law, reasoning sufficiently those rejected applications, in order to ensure the right to reconsideration.**

### ***Discrimination in employment***

28. The Forum for Life wishes to reiterate the concerns raised in the List of Issues on discrimination for political reasons <sup>32</sup>. Beyond the prohibition of discrimination contained in the Constitution and various laws, a discriminatory practice in areas such as employment in the public service, scholarships and study quotas, contracts with the public administration, among others, remains. These practices affected since 2004 those who signed to enable the referendum mechanism enshrined in the Constitution as part of the political rights of Venezuelans<sup>33</sup>. Then in 2013 a similar practice was repeated against persons suspected they had not voted for the candidate of the coalition of government parties in the presidential elections in April that year<sup>34</sup>. More recently, during a signatures campaign promoted by the Presidency of the Republic to send a communication to the President of the United States in order to demand the repeal of the decree declaring Venezuela a threat to the security of that country, spokesmen for the opposition

---

<sup>26</sup> Diagnosis of Colombians in need of international protection in Tachira State (Colombian-Venezuelan border). Norwegian Refugee Council 2013.

<sup>27</sup> The obligation to give reasons of the decisions is part of respect for due process and the right to petition for obtaining a due response, in accordance with Articles 51, 23 and 69 of the Constitution of the Bolivarian Republic of Venezuela, in concatenation articles 4, 5 and 17 of the Refugees Act (LORRAA) and article 9 of the Organic Law on Administrative Procedures.

<sup>28</sup> Article 17, LORRAA.

<sup>29</sup> Provea Annual Report 2010 includes the historic 2002-2010 (see box on p. 263:

[http://www.derechos.org.ve/proveaweb/?page\\_id=9235](http://www.derechos.org.ve/proveaweb/?page_id=9235))

<sup>30</sup> Provea, Annual Report, 2012

<sup>31</sup> Figures provided by the CNR in communication sent to PROVEA

<sup>32</sup> Forum for Life: VENEZUELA – Contribution to the Lol, HR Committee. July, 2014. Section 2.a

<sup>33</sup> The fact, known as "Tascon List," led to the declaration of admissibility of a case before the Inter-American Commission on Human Rights in 2014.

<sup>34</sup> Some of these cases reached the labor administrative authority, without satisfactory response. One of the cases accompanied by CDH-UCAB ended with the resignation of the victim due to work pressures and her subsequent departure from the country.



Democratic Unity Roundtable (Mesa de la Unidad Democrática, MUD), complained that government officials and students of universities under the political control of the government, have been subjected to pressure and threats affecting their places of study or work if they refused to sign.

### ***Recommendations***

**29. Take all necessary and effective measures to ensure the abolition of the practice developed by public agencies regarding dismissal of workers for having opinions critical of or different from those of the government and investigate and punish the practices of political discrimination.**

## **III. Right to life, violence against women, prohibition of torture and cruel, inhuman and degrading treatment, the fight against impunity (art. 2, 6 and 7)**

---

### ***Right to life***

30. Although in 2012 the “*Grand Mission Life Venezuela*” (Gran Misión A Toda Vida Venezuela) was launched as a “*comprehensive public policy of the State that aims to reduce crime related situations, misconducts, traffic accidents, disasters or emergencies (...) contrary to the ‘heavy-handed’ policies and the increase of penalties suggested by some sectors of the country*”<sup>35</sup>; the “*Secure Homeland Plan*” (Plan Patria Segura) has been implemented in parallel since May 2013, which includes the use of at least 3,000 troops of the Bolivarian National Armed Forces (FANB) performing functions of public safety, thus placing a military command at the head of police operations.<sup>36</sup>

31. Military officers are not trained to meet the requirements necessary to secure public safety. The Public Prosecutor’s Office announced the development of a training program in human rights for military officers, which began after the implementation of the Plan<sup>37</sup> and was applied in a fragmented and incomplete manner, with the predictable consequences for the civilian population, causing several homicides of civilians at the hands of military officers.

32. Recently, after the murder of a famous actress in January 2014, the Executive announced the re-launching of the Secure Homeland Plan<sup>38</sup> and simultaneously appointed military officers to lead the Bolivarian National Police (PNB) and the National Security University (UNES)<sup>39</sup>. Within this context, declarations made by officials of the highest level contradict the previous discourse of opposing “heavy-handed” policies, given that the President himself announced an “iron fist”.<sup>40</sup>

33. According to experts from the Venezuelan Observatory of Violence (OVV), the policies of militarization of the public security have not reduced crime rates; on the contrary, they have increased

---

<sup>35</sup> Ministry of the People’s Power for Internal Affairs, Justice and Peace. Grand Mission Life Venezuela, ¿Who are we? [http://www.misionatodavidavenezuela.gob.ve/index.php?option=com\\_content&view=article&id=1&Itemid=102](http://www.misionatodavidavenezuela.gob.ve/index.php?option=com_content&view=article&id=1&Itemid=102)

<sup>36</sup> Venezuelan News Agency/ Ministry of Defense: President Maduro: We are committed to fight with all our souls for a safe homeland. <http://www.mindefensa.gob.ve/index.php/eje-bienestar-social/article-categories/80-noticias-anteriores/165-presidente-maduro-estamos-comprometidos-a-luchar-con-toda-nuestra-alma-por-una-patria-segura>

<sup>37</sup> Ministry of the People’s Power for Communication and Information: Officers of the Secure Homeland Plan participate in human rights workshops. <http://www.minci.gob.ve/2013/05/funcionarios-del-plan-patria-segura-participan-en-talleres-sobre-ddhh/>

<sup>38</sup> Venezuelan Press Agency: President Maduro announces the re-launch of the Secure Homeland Plan. <http://www.avn.info.ve/contenido/presidente-maduro-anuncia-relanzamiento-del-plan-patria-segura>

<sup>39</sup> Official Gazette No. 40.328, January 7, 2014.

<sup>40</sup> Caracas Municipality. Ciudad Caracas: Iron fist against crime, announces Maduro. <http://www.ciudadccs.info/?p=520950>

fivefold in the last 15 years<sup>41</sup>. At the end of 2013, the OVV estimated that the death toll from violence amounted to more than 24,700 deaths, with a homicide rate of 79 per hundred thousand inhabitants<sup>42</sup>. However, it is not possible to know the real dimensions of the situation, given that the Body of Scientific, Penal and Criminal Investigations (CICPC) shut its press office in 2003.<sup>43</sup>

### ***Recommendations***

**34. To guarantee that police authorities and strategies of public safety and control of public order, as well as the bodies in charge of training the officers tasked with the enforcement of the law, are in the hands of properly qualified civilian personnel.**

### ***Torture and cruel, inhuman or degrading treatment and punishments***

35. In its contribution to the List of Issues<sup>44</sup>, the Forum for Life warned about the absence of standards to prevent torture, as well as the lack of official statistics that met the requirements of the Human Rights Committee. This issue has not been amended.

36. In March 2015, the Attorney General published its annual report of 2014, in which statistical information regarding violations of the right to personal integrity is once more missing. In its introduction, the report indicates that *“torture is not a policy of the State”*, thus limiting to the general reference that, in 2014, the Public Prosecutor *“accused 30 police officers for the alleged violation of fundamental guarantees, such as homicide and cruel treatment”*<sup>45</sup>, without giving further details.

37. Regarding denounces of torture and cruel treatment, the state of affairs is alarming. Shortly after the protests held during the first semester of 2014, the Public Prosecutor released some partial details that were updated somewhat periodically. However, in June 2014, the institution presented a report entitled *“Results of the violent protests February – June 2014”*; which represented the latest official update thus far. In this report, the Public Prosecutor uses the term *“torture”* for the first time, which had been omitted in all the previous reports.

38. The report indicates that until June 11, 2014, the Public Prosecutor was carrying on two investigations for torture and 185 for cruel treatment. Information regarding the victims' profiles and the institutions to which the alleged perpetrators belonged was omitted, issue that had already been noted by the Committee Against Torture (CAT) back in 2002. Of the registered cases, there had been 5 criminal indictments, 22 dismissals and 2 closed files for cruel indictment, for an overall of 10 indicted officials. There is no indication of further advances in the only two cases recognized by the Attorney General's Office as torture.

39. In the presentation given at the Committee against Torture in November of 2014, the State offered new figures that do not reflect mayor changes: 242 denounces for 15 accusations that involved 121 officials from the Bolivarian National Guard (GNB), of which 5 had been indicted. It is worth noting that in some of the denounces that are *“under investigation”*, after more than a year, the officials charged have not even been called to make a statement, even though they are fully identified.

---

<sup>41</sup> El Nacional: militarization of public safety multiplied fivefold murders in 15 years [http://www.el-nacional.com/politica/Militarizacion-seguridad-quintuplico-asesinatos-anos\\_0\\_334766790.html](http://www.el-nacional.com/politica/Militarizacion-seguridad-quintuplico-asesinatos-anos_0_334766790.html)

<sup>42</sup> Venezuelan Observatory of Violence. Report OVV 2013 <http://observatoriodeviolencia.org.ve/ws/informe-del-ovv-diciembre-2013-2/>

<sup>43</sup> Idem

<sup>44</sup> Forum for Life: VENEZUELA – Contribution to the Lol by the Human Rights Committee. Caracas, July 12, 2014. Section 2.b

<sup>45</sup> Public Prosecutor, Annual Report 2014, page 5.

40. It represents an advance that the State makes reference to statistical information from the Ombudsman (although incomplete). Nonetheless, it is noteworthy that the Public Prosecutor, institution in charge of criminal proceedings, does not count with a similar registration that would permit a precise follow-up of the cases. In the report, there is only reference to “cases that caused an impact in the public opinion”<sup>46</sup>, of which four are for the violation of the right to life and one involving three persons for a death under custody with evidences of torture.

41. Furthermore, the report of the Public Prosecutor, which has the obligation of acting with independence, dedicates a section to the “*Defense of the State before the Committee Against Torture from the UN*”<sup>47</sup>, in which it is stated that “*In this space, it was rejected the discredit campaign against the State by some Non-Governmental Organizations that have had and have the doors open at the Public Prosecutor offices to introduce their denounces, despite the fact that when we have met with their representatives and asked for detailed information, they do not facilitate it.*”

42. It should be noted that, in a report published in 2015 by the CDH-UCAB<sup>48</sup>, it was demonstrated the existence of a deliberate and conscious practice by different State bodies, aimed at hiding the evidences of torture and cruel treatment and at blocking denounces of violations to the right to personal integrity of victims of the repression in 2014, which took form a) In Incommunicado detentions; b) the transportation of wounded to military hospitals, where hermetic silence was kept concerning their health and the access to familiars was hindered; c) pressure on victims of violations to the right of physical integrity, who were obliged to sign declarations where they denied having been subjected to mistreatment or to place on the record that their injuries had not been produced in a determinate center of detention; d) Impeding private meetings of the detainees with their lawyers; e) the utilization of the Public Advocacy as a mechanism to prevent that, during the presentation hearing, the victims exposed the circumstances in which their injuries were produced; f) not consigning the forensic medical report in the file; g) consignment in the files of non-independent medical reports conducted by health professionals that worked for the institution that had carried out the detention h) the intention to transform the victims in perpetrators, arguing that their injuries and wounds were produced as a response to alleged injuries inflicted by them to officials, without providing the identity of the supposedly assaulted person or the forensic registry of the wounds allegedly caused. The Public Prosecutor participated in such practices, thus facilitating the understanding of the difficulties faced by the victims to formalize their complaints that, on the other hand, had to be investigated ex officio.

43. Moreover, the irregularities registered during the detentions are particularly worrisome, including several cases registered by the CDH-UCAB, in which the victims presented grave injuries, being taken by the authorities, without the consent or notification of their familiars, to **military medical institutions** such as the Military Hospital Vicente Salias Rojas – known as “*Hospitalito*” – located inside Tiuna Fort, and the Military Hospital Dr. Carlos Arvelo, both of them in Caracas. The CDH-UCAB also received notice of injured and wounded being taken to the military hospital in Maracaibo, Zulia state, and in Nueva Esparta state.

44. In all the cases, the presence of the Bolivarian National Guard (GNB) was recurrent in health facilities, deterring the communication of the wounded and injured with their family or lawyers; as well as controlling what the physician could mention or not about the case. It was demonstrated that there were also impediments for the injured to be treated by a doctor of his confidence. The covering up of the

---

<sup>46</sup> Public Prosecutor, Annual Report 2014, pages 38 and 39

<sup>47</sup> Public Prosecutor, Annual Report 2014, page 44. Added emphasis.

<sup>48</sup> Human Rights Center of the Andrés Bello Catholic University. *There should be no trace. Concealment of medical and legal evidence in the context of demonstrations and arrests.* Caracas, May 2015.

medical condition and the administered treatment constitutes itself a form of inhuman and cruel treatment, according to international standards<sup>49</sup>. These practices had already happened in previous cases, such as Franklin Brito in 2009 and María Lourdes Afiuni in 2010, and took place regularly during 2014.

45. Finally, it is necessary to make a reference to the detention conditions at the Bolivarian Service of Intelligence (SEBIN) in the “*Helicoide*”, Caracas, which qualifies as a violation of the obligations of the State regarding personal integrity, according to the Interamerican Court of Human Rights<sup>50</sup>. These conditions have not changed, on the contrary, they have expanded to the headquarters in Plaza Venezuela. Up until now, it is known the death of a detainee, presumably by suicide at the *Helicoide* headquarters,<sup>51</sup> and a suicide attempt<sup>52</sup> at the Plaza Venezuela headquarters.

### ***Recommendations***

46. **To establish a transparent and accessible system of statistical data disaggregated by genre, age and nationality of victims of torture or cruel, inhuman or degrading treatment, as well as the status of their cases and the prosecutor’s actions against the defendant, giving them a place in the annual reports of the Public Prosecutor.**

47. **To immediately adequate the conditions of detention at the headquarters of SEBIN.**

48. **To guarantee all the people under the custody of the State the access to a second opinion from the doctors of their choice, access to the results to their own medical results.**

49. **To expressly prohibit the transportation of detained civilians to military hospitals or facilities.**

50. **To guarantee the comprehensive reparation of all the victims of torture and provide transparent and accessible information, particularly regarding the decision of the Interamerican Court of Justice with regard to the Caracazo and the Amparo.**

51. **To initiate ex officio investigations aimed at establishing responsibilities in the execution, concealment and omission of reporting violations to the right of physical integrity, as well as accelerating the requested and ordered investigations.**

### ***Excessive use of force***

52. In the response to the List of Issues, the Estate characterized the protests during the first semester of 2014 as “*a violent offensive intended to lay down the legitimate authorities elected by the Venezuelan people in free elections*”, which is why, under its logic, “*the action of the Venezuelan State was necessary through its security bodies, several persons were apprehended in flagrant commission of offenses*”<sup>53</sup>. The overall number of detainees, far from “*several*”, was of 3,351 persons. Judging from the numbers given by the State itself on the issue of the cases dismissed and waiting for trial, the force used to contain the protests, as well as the arbitrary and massive detention of protesters brought before court; it does not seem like a violent offensive, since more than half the cases were dismissed (1,436 of 2,844 persons), while the vast majority of those waiting for trial are not under detention, but subjected to alternative measures

---

<sup>49</sup> United Nations: Human Rights Committee: *Zhedludkov c. Ukraine* (726/96) Par. 8.4

<sup>50</sup> Interamerican Court of Human Rights: *Díaz Peña vs. Venezuela*. June 26, 2012.

<sup>51</sup> Mr. Rodolfo González committed suicide on March 13, 2015, after being in detention for 11 months. The only evidence presented was the testimony of a *cooperating patriot*.

<sup>52</sup> According to its lawyer, Lorent Saleh attempted suicide on April 20 in the area of the SEBIN headquarters at Plaza Venezuela known as “The Tomb”, which accommodates detainees in a basement that is 5 stories underground.

<sup>53</sup> Reply of the Bolivarian Republic of Venezuela to the List of Issues. March 5, 2015, par. 83 and 86. Emphasis added.

that is not correlated with the severity of the accusation of a “*violent offensive intended to lay down legitimate authorities*”.

53. The Coup d’État theory, reinforced in some regions with the idea of the “*internal enemy*”, was used to justify the disproportionate use of force against protesters, mostly pacific. According to records of Espacio Público and Provea, only 4.6% from the total amount of protests were violent.<sup>54</sup> Contrary to international standards in the subject<sup>55</sup>, the State has the tendency of labeling as violent any protest that causes street closures criminalizing this conduct in the reform of the Criminal Code in 2005<sup>56</sup>.

54. Between February and April of 2014, Provea registered and individualized an overall amount of 854 persons wounded or injured in the context of protests. Of them, 138 were caused by bullets, 330 by pellets, 72 by beating, 34 by blunt objects and 280 were included in the category “others”, which includes people that had been electrocuted, stabbed, ran over, among other injuries of diverse nature. Bullet-wounded persons represent 16% of the total amount, while the wounded by pellets represent 38% of the global amount.

55. This registry does not quantify persons that were affected by asphyxia due to the use of toxic substances by security forces, given that it is an indeterminate number of citizens affected by the excessive utilization of them. Provea’s records reflect that the number of wounded and injured considerably increased 270%, compared to the 12 months of 2013, when 316 victims of wounds and injuries in the context of protests were registered. Likewise, this is the highest number of wounded and injured registered in the last 10 years.

56. As it was previously pointed out, in the context of protests during 2014, it has been noted that the injuries of the citizens that had been apprehended were justified with the argument that they had inflicted injuries on third persons themselves. However, there is no element in the files to verify the alleged attacks against officials carrying out the detentions, there are no declarations of the supposed victims, there is no legal medical exam to sustain the argument that the detainees committed the offenses attributed to them to such extent that the Public Prosecutor, during the presentation hearings, omitted the accusation for the supposed aggressions against third parties. In a noteworthy case, in Nueva Esparta estate, 15 people were charged for alleged injuries caused to an official with a rock. It is impossible to imagine the collective responsibility of 15 individuals for throwing a rock. There is no forensic exam in the file that could be used to verify the alleged injuries caused.

### ***Recommendations***

**57. To universalize the training of officials in charge of public order and citizen safety, in accordance with the protocols and existing international standards on the proportionate use of force.**

**58. To correct the practice carried by public prosecutors of criminalizing protesters, aggravating the qualification of supposed offenses characterized in the Organic Law against Organized Crime and the Financing of Terrorism.**

---

<sup>54</sup> Public Space and Provea. Website [manifestar.org](http://manifestar.org). Figures of pacific and violent demonstrations in Venezuela. <http://manifestar.org/datoteca-2/datoteca-2014/>

<sup>55</sup> As an example: Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association. A/HRC/23/39. April 24, 2013.

<sup>56</sup> Article 357 of the Criminal Code establishes a sanction of 6 to 8 years in prison to whomever “*places obstacles on any sort of public road, opens or closes the communication of these roads...*” the article adds that the obstruction of the road must have as objective “to prepare a casualty”; however, authorities interpret widely the conduct of obstructing roads, omitting the objective and bringing before court any protester that incurs in this conduct.

59. To create an independent institution entitled to receive and investigate all the denunciations regarding excessive use of force and other abuses of power committed by police institutions and other security forces, as the Committee recommended in 2001<sup>57</sup>.

60. If necessary, to adjust the process of indictment to the principle of individualization of the offenses supposedly committed, to abstain from formulating generic accusations.

### ***Use of toxic gases, pellets and firearms against demonstrators***

61. Toxic gases and plumb pellets were used in 36% of the protests repressed by the security forces in Venezuela.

62. Many of the injuries caused by pellets in 2013 and 2014 were made at pointblank and intended to cause the greatest possible damage to those affected. The cases of Moisés Guánchez (19 years old)<sup>58</sup> and Geraldine Moreno (23 years old)<sup>59</sup>, are only two of the emblematic and well documented cases that sustain this affirmation, as well as the case of Ehisler Vásquez (19 years old)<sup>60</sup> in April 2013.

63. In the protests held during the years 2013 and 2014, the use of toxic substances prohibited by the Constitution has also been recurrent. A story made by two journalists and published in the *Últimas Noticias* newspaper<sup>61</sup>, revealed the excessive use of these substances to disperse a demonstration summoned by students from the Central University of Venezuela (UCV) on March 12, 2014. According to it, officers from the Bolivarian National Police (PNB) and the Bolivarian National Guard (GNB) used approximately 2,310 tear gas bombs to contain the protest, which could not complete its route.

64. In 2014, there were numerous complaints about the use of expired tear gas bombs, and the excessive utilization of them, which was directed not only against those that had participated in the protests, but to the civilians that were passing by or resided in the adjacencies of the places where demonstrations took place.

65. The Bolivarian National Guard (GNB) remains as the security force involved in the highest number of cases of excessive use of force. Just like in 2013, between February and April 2014, this body concentrated the largest amount of complaints for injuries caused to demonstrators. The GNB was also responsible of instigating wounds and/or injuries to 333 persons in the context of protests during the first semester of 2014, which represented 38.9% of the overall amount of wounded and/or injured. Likewise, joint operations carried out by military and police bodies – in many cases, accompanied by civilians or groups of civilians illegally armed – were responsible of 25.7% of the harmed persons between February and April 2014. These operations included the participation of the GNB, the Bolivarian Intelligence Service

---

<sup>57</sup> CCPR/CO/71/VEN, par. 8

<sup>58</sup> Guánchez was harmed by pellet shots in the testicles by the GNB in Carrizal, Miranda state. Provea. *Court granted full freedom to Moisés Guánchez and ordered to investigate the officials involved in the incident.* 03.07.2014.

<http://www.derechos.org.ve/2014/03/07/provea-remitio-a-defensoria-del-pueblo-nueva-denuncia-de-presunta-agresion-de-funcionarios-de-la-gnb-contra-ciudadano-en-carrizal-estado-miranda>

<sup>59</sup> Moreno was wounded by pellet shots in the eye by an official of the GNB in Valencia, Carabobo estate, passing away afterwards. *The student Geraldine Moreno has died.* El Universal, 02.22.14. <http://www.eluniversal.com/nacional-y-politica/140222/murio-la-estudiante-geraldine-moreno>

<sup>60</sup> Vásquez was the target of several pellet shots in the face, made by GNB officials, which caused him going to surgery several times.

Provea: Testimony of Ehisler Vásquez, wounded by officers of the National Guard in Lara state.

<http://www.derechos.org.ve/2013/05/03/testimonio-de-ehisler-vasquez-herido-por-funcionarios-de-la-guardia-nacional-en-el-estado-lara>

<sup>61</sup> Video: *Brazil sells most of the tear gas bombs.* ÚLTIMAS NOTICIAS, March 23, 2014. At:

<http://www.ultimasnoticias.com.ve/noticias/actualidad/investigacion/video---brasil-vende-casi-todas-las-bombas-lacrimo.aspx>

(SEBIN), regional police forces, the Bolivarian National Police (PNB), CICPC and armed civilians. Lastly, the protesters were responsible in 74 cases of wounds and/or injuries, 8.6% of the overall amount.

66. It is noteworthy that since 2013, official sectors had already brought notice to the “*violence and destabilization attempts*”<sup>62</sup> as a formula to justify repression. On April 16, 2013, more than 150 persons – mostly Youth – were repressed and arbitrarily detained for going to and concentrating in the surroundings of regional headquarters of the National Electoral Council (CNE) to hand audit and vote recount enquiries, mainly in the states Lara, Carabobo and Barinas<sup>63</sup>. In the report regarding the events, Committee of Familiars of the Victims of “el Caracazo” (COFAVIC) documented 72 cases (36 in Lara, 20 in Carabobo and 16 in Barinas)

67. On February 12, 2014, during the student protest that was marching towards the headquarters of the Public Prosecutor, SEBIN officials- body that does not have the competency to act in control of public order- were photographed and videotaped while they were shooting against demonstrators in the surroundings of Parque Carabobo, in Caracas. Several persons were wounded due to the intervention of police officers, who acted in coordination with member of irregular civilian groups. Two citizens, Juan Montoya and Bassil Da Costa, lost their lives as a consequence –allegedly- of the shots perpetrated by the SEBIN and the armed civilians that were very close from one another in Caracas. Although some official spokespersons rushed to held the students accountable for these actions, an investigation carried out by the *Últimas Noticias* newspaper<sup>64</sup> detracted the initial accusations and forced the President of the Republic to admit the participation of the SEBIN in the protest, which resulted in the dismissal of the Director of this body<sup>65</sup>.

68. Similarly, officials of the People’s Guard were photographed and videotaped using firearms to disperse protesters on February 24, 2014, at La Isabelica, in Valencia, Carabobo estate<sup>66</sup>. Another documented case is the aggression perpetrated by officials from the regional police of the Bolívar estate against demonstrators in the city of Puerto Ordaz. These officials were videotaped making use of their firearms to disperse a protest in a residential zone<sup>67</sup>. Similar situations have been documented in different states and involve officials from military and police bodies that use firearms in the control of protests.

69. Lastly, it is relevant to mention that in 2009, the reform to the Organic Law of the Bolivarian National Armed Forces was approved. The article 50 of the law contemplates the creation of the Bolivarian National Militias (MNB), described as a “*combatants force*”. It enables civilians to be registered, organized

---

<sup>62</sup> Ombudsperson Office. Annual Report 2013. p. 114

<sup>63</sup> That same day, President Maduro, in national radio and TV broadcast, banned the march towards the headquarters of the CNE in Caracas, which had been convened by the candidate Henrique Capriles for Wednesday 17, arbitrarily suspending the right to peaceful demonstration, under presumption of possible conspiracy or violence. His words were: “*they are now considering a march for tomorrow to the center of Caracas. It will not be allowed. You’re not going to go downtown Caracas to fill it with blood and death. I am not going to let it. Do what you want to do. I’m not going to allow it*”. See: <http://www.mpprij.gob.ve/index.php/component/content/article/19-noticias/mas-noticias/671-presidente-maduro-no-autorizara-marcha-de-la-oposicion-al-centro-de-caracas>. He also said that there had been attacks on residences of officials and relatives: “*The residence of William Izarra was attacked (father of Minister Andres Izarra), [they] almost kill him; the residence of Andres Izarra was attacked, almost kill him and his sons*”. See: <https://www.youtube.com/watch?v=4Vh5fwUeU9g>. In that same speech, after expressing that would “*strike hard against fascism and intolerance*,” he urged private social media to “*be defined*” between “*peace and the fatherland*” and “*fascism*”. Faced with this situation candidate Capriles, the same Tuesday 16 canceled the mobilization.

<sup>64</sup>Video: *Uniformed and civilian fired shots in Candelaria on 12F*. ÚLTIMAS NOTICIAS, 19.02.2014. In:

<http://www.ultimasnoticias.com.ve/noticias/actualidad/investigacion/video---uniformados-y-civiles-dispararon-en-candel.aspx>

<sup>65</sup>SEBIN director dismissed and Gustavo Gonzalez is appointed. EL UNIVERSAL, 18.02.2014. En:

<http://www.eluniversal.com/nacional-y-politica/140218/destituyen-a-director-del-sebin-y-nombran-a-gustavo-gonzalez>

<sup>66</sup>Video: *Guard hits a woman with helmet and drags her hair | Aggression | La Isabelica*

<http://youtu.be/5MY2H0IMtzE>

<sup>67</sup>Video: *Puerto Ordaz #12M* - <http://youtu.be/D5s1gsSukxA>

and trained by their own Commando, in order to act along the other bodies that compose the Bolivarian National Armed Forces (FANB)<sup>68</sup>. The late President of the Republic, Hugo Chávez, declared April 13 the Bolivarian Militia's Day and, during the commemoration of the date and in numerous public speeches, he stated that the MNB ought to extend to the rest of the public sector and to all the social spheres (juvenile, communal, labor) given that their main purpose was the defense of the political project against destabilizing plans or "*Coup d'Etats*" planned by some social sectors and opposition groups, that were stigmatized as "*bourgeois*" or "*oligarchs*". Considering those terms, the MNB consists in a parastatal body that could be easily used to intimidate protesters, repress any sort of public activities, impede the stalemate of production in labor strikes, or be used as strike breakers or clash groups.

70. In 2014, the Especial Brigade against Groups Drivers of Violence (BEGV)<sup>69</sup>, was created. It is ascribed to the Strategic Operational Command of the Armed Forces, which has the task of coordinating, analyzing, evaluating, organizing, directing, executing and collecting information and actions deriving from all the security and intelligence forces of the State and from other public and private entities<sup>70</sup>.

### ***Recommendations***

71. **Investigate and punish those who make use of toxic substances, firearms and others lethal force against demonstrators as well as the superiors who have ordered or allowed the carrying of such weapons.**

### ***Actuación de grupos civiles ilegalmente armados***

72. In a report presented to the Interamerican Commission of Human Rights by the NGO Citizen Control (Control Ciudadano) in October 2010, it is stated: "*in Venezuela, the existence of armed groups at the margin of the law constitutes a threat to the life, integrity and security of people. In Caracas, in a ratio of 12 Km. Around the Presidential Palace of Miraflores and the headquarters of the MNB (National Bolivarian Militias), there are social collectives armed at the margin of the law that are close to the process that the President Chávez leads. These armed social collectives, publicly and communicationally have exhibited war firearms, have threatened with criminal offenses and, in some cases, have committed crimes that have not been effectively resolved by the Estate. We make reference to the following collectives: Simón Bolívar Coordinator, La Piedrita, Carapaica, Montaraz Collective, Tupamaros and Alexis Lives (Alexis Vive)*"<sup>71</sup>.

73. Although it is true that human rights organizations have registered the participation of parastatal civilian groups in previous years (understanding that these are non-uniformed persons that act under orders or in coordination with some of the security forces of the State) in the dispersion of protests, their current capacity of deployment in several cities, in different moments, and their activities in cooperation with police and military bodies is an important indicator of the growth of these groups.

74. According to Provea, 437 attacks by pro-government armed groups to protests occurred between February 12 and April 15 2014. The deployment of these collectives has corresponded with declarations of high-ranking officials that have endorsed their participation in determined situations. Even though the

---

<sup>68</sup> Ley Orgánica de la Fuerza Armada Nacional Bolivariana. Gaceta Oficial de la República Bolivariana de Venezuela No. 6.020 Extraordinario del 21 de marzo de 2011, artículo 50.

<sup>69</sup> Presidential Decree 1.014. Official Gazette 4.440. June 25, 2014.

<sup>70</sup> Official Gazette N 4.440.

<sup>71</sup> Forum for Human Rights and Democracy: Presentation to the 140th session of hearings of the Inter-American Commission on Human Rights on Friday, October 29, 2010. Washington DC. Available at en: <http://www.infoc Ciudadano.com/wp-content/uploads/2010/11/Presentaciones-ante-la-CIDH-en-la-Audiencia-del-29-de-October-de-2010.pdf>



phenomenon of the presence of armed civilians has been occurring for years in the country, their **coordination** with Estate security forces became evident during the first semester of 2014.

75. On February 21, 2014, the President Nicolás Maduro himself announced the activation of the “*Popular Anti-Coup Commands*”, instances created by the late President Chávez with the purpose of “*counteracting the fascist coup with the organized and mobilized people*”<sup>72</sup>. These commands, conducted by the President of the National Assembly, undertake the tasks of monitoring, following and controlling activities considered as terrorists and conspirational activities, in coordination with the Bolivarian National Armed Forces (FANB) and national and regional police corps.

76. A press note published on February 25, 2014 in the webpage of the Venezuelan Press Agency (AVN), reviews the actions of the “*Popular Anti-Coup Commandos*” in Monagas state, who, through labors of intelligence and patrolling in the streets of Maturín, informed the security forces about the installation of “*18 disturbance spots*” in different areas of the city, which resulted in the arrest of 7 persons that participated in demonstrations after a joint operation of civilians with security forces<sup>73</sup>.

77. During a speech on March 5, 2014, President Nicolás Maduro urged the civil population to assume the task of control of public order. He stated: “*I summon all the people, the Bolívar Chávez Battle Fronts, the communes, the social movements, the Youth movements, workers, farmers, women, I summon all the people to assert the order of our Commander Hugo Chávez in their communities: flame that is lit, flame that is extinguished along with the organized people, in order to ensure peace in our country*”<sup>74</sup>.

78. There have been numerous complaints regarding the detention of protesters at the hand of unidentified civilians or groups that could be identified as pro-Government. Many persons were detained by armed civilians with no identification, acting in coordination with military and police corps. They moved in motorcycles or trucks to carry on their patrolling tasks.

79. An emblematic case was the testimony collected by the CDH-UCAB of a person whose name will be kept private. This person was subjected to attacks and intimidation by groups denominated “*collectives*” on March 12, 2014, while he was transiting the sector Plaza Venezuela in Caracas. The victim affirms that he was detained along two friends by what they thought were officials dressed as civilians, but who were identified by police officers as members of a “*collective*”. The victim witnessed how another young man was handed to the police by the armed groups. Later, they were taken to the CICPC and the Service of Identification (SAIME) to set their criminal record: “*They took us a photograph with our names, ID number and a poster with the word ‘guarimbero’ (term used by the government officials to identify demonstrators that block streets with objects such as tires and garbage that they usually set on fire), even though we were not participating in a guarimba. We guess this is the way to justify the fact that they held us without reason.*” He concludes his testimony expressing his fear of reprisals: “*I had to move out of my apartment*”. There are diverse records of persons that have had to abandon –temporarily or permanently- their residencies due to the threats made by these collectives.

80. The case of aggression against student Jaime Yéspica from the Central University of Venezuela (UCV) on March 19 in Maracay, Aragua state, was taped on security cameras from a residential building,

---

<sup>72</sup>Government will form Anti-coup Popular Commands nationwide. YVKE MUNDIAL, 21.02.2014.

<http://www.radiomundial.com.ve/article/gobierno-nacional-conformar%C3%A1-comandos-populares-antigolpe-en-todo-el-pa%C3%ADs-audio>

<sup>73</sup>In Monagas popular anti-coup command helps maintaining civil peace. AVN, 25.02.2014. <http://www.avn.info.ve/contenido/monagas-comando-popular-antigolpe-ayuda-mantener-paz-ciudadana>

<sup>74</sup>President to the people; tealight that is lit up will be turned off. Radio YVKE MUNDIAL, 05.03.2014. En:

<http://www.radiomundial.com.ve/article/primer-mandatario-al-pueblo-candelita-que-se-prenda-candelita-que-se-apaga-audio>

which made it possible to identify armed civilians severely beating the victim, later joined by a police officer in uniform. Yéspica presented fractures in the forehead (frontal sinus), the septum and the nose, and severe injuries in the arms and abdomen caused by the beating. The video was uploaded and circulated on YouTube<sup>75</sup>, as well as the testimony from the victim<sup>76</sup>, which led to the arrest of the police officer. Nonetheless, there is yet no information on the civilians that started the attack.

81. In Zulia state, the report from the CDDHH ZULIA<sup>77</sup>, describes the case of the student Andrés Acosta, who was arrested on February 19, 2014. The victim declared that he was beaten and detained by a group of armed civilians. He made the following statement: *“After we arrived at the regional police department (...); they made us kneel and took photographs, which they later published in the Twitter account @batalladeideas, depicting us as the leaders of the protest in the Republic Square”*<sup>78</sup>.

82. It is not known if any of the members of these armed groups has been sanctioned for their responsibility in abuses against life and physical integrity during the protests of 2014.

83. In October 2014, officials from the CICPC murdered the leader of a *“collective”*; during the event fifteen persons were harmed. The armed civilian group to which this leader belonged to had its operations base in an old office of the dissolved Metropolitan Police, a facility that belongs to the State. In February 2015, two young men were assassinated by an armed civilian group that operates in from another old office of the Metropolitan Police in Catia, Caracas<sup>79</sup>.

### ***Recommendations***

**84. Dismantle parastatal groups and disarm all its members, also ensuring prosecution of those who have committed crimes and human rights violations.**

### ***Attacks against civilians in residential zones***

85. An investigation carried out by Civilis Human Rights found that the conducts of criminalization, repression and human rights violations in the context of protests that took place from February until May of that year reached a new dimension and amplified with the execution of generalized and systematic attacks against civilians inside residential zones. This was reported in at least 14 states of the country, in places where protests had been taking.

86. During the time those attacks occurred, the residential zones were subjected to military control and to a non-declared state of emergency, with the pretext of enforcing measures of public order. An extremely repressive and indiscriminate force concentrated in them. In these actions participated diverse uniformed civil and military bodies, as well as a group of civilian aggressors that, in 61% of the cases, acted in coordination with or under the protection of military and police officers. Furthermore, damages to

---

<sup>75</sup> It can be seen in: <https://www.youtube.com/watch?v=T9Ni7yrSkIA>

<sup>76</sup> It can be seen in: [https://www.youtube.com/watch?v=O\\_-cCgmb3xs](https://www.youtube.com/watch?v=O_-cCgmb3xs)

<sup>77</sup> Inter-Institutional Commission on Human Rights of the Faculty of Law and Political Sciences at the University of Zulia and, the School of Law of the University Rafael Urdaneta and the Human Rights Commission of the Bar

<sup>78</sup> Inter-Institutional Commission on Human Rights of the Faculty of Law and Political Sciences at the University of Zulia and, the School of Law of the University Rafael Urdaneta and the Human Rights Commission of the Bar: Preliminary report on human rights in the context of the protests. Digital version available at:

[http://w2.ucab.edu.ve/tl\\_files/CDH/Lineastematicas/INFORME%20FINAL%20CDDHH%20ZULIA.pdf](http://w2.ucab.edu.ve/tl_files/CDH/Lineastematicas/INFORME%20FINAL%20CDDHH%20ZULIA.pdf)

<sup>79</sup> It is Yamir Tovar and Luis Fabiano, members of a youth organization known as "Resistance", missing since February 20 and found dead on the 22nd of that month. One of them had previously received threats. A third member of the group had to leave Caracas, following threats received on March 1, in which armed civilians expressly referred to the death of Tovar and Fabian.

property occurred in 36% of the cases, and in 34% of them there were illegal raids with the objective of apprehending supposed protesters.

87. Civilis Human Rights documented, in only 4 states, 204 attacks from February until May 2014. Táchira state occupied the first place with 73 attacks registered in 38 residencies, housing developments and towns. Lara came in second with 59 attacks on 33 residencies; Zulia is the third with 49 attacks against 22 residencies and urbanizations; next comes Bolívar with 23 attacks on 12 residencies and housing developments. In average, each of these zones was subjected to at least 2 attacks.

88. In its response to the List of Issues, the State omits any reference to this situation, in spite of its illegal, disproportionate massive and generalized nature. It remains unknown if the authorities have undertaken any action to investigate and sanction those responsible for these attacks.

#### ***Recommendations***

**89. Investigate with due diligence acts committed by law enforcement officials in areas of residence, punish those responsible and provide adequate compensation to victims.**

#### **IV. Right to freedom and personal security, and the rights of detainees (articles 9 and 10)**

---

##### ***Actions taken to investigate and compensate the victims of the alleged violations of due process (April-June 2013 and February 2014)***

90. In its response, the State failed to answer this question from the Committee.

91. With regard to people arbitrarily detained in the city of Barquisimeto in Lara state, in April 2013 the Association Funpaz recorded numerous cases of torture and cruel treatment, many of which are documented and reported, but until now the results of investigations to identify the possible perpetrators are unknown, much less to provide redress to victims. Again, the GNB was the body that concentrated the largest number of complaints. A month after the events, the Legislative Council of Lara state, with a official majority, paid tribute to the GNB "*as guarantors and defenders of the democratic system*"<sup>80</sup> and in August of that year, it was announced that a General of the GNB reported by various human rights violations, was selected as a candidate of the United Socialist Party of Venezuela (PSUV) to the mayorship of Barquisimeto.

92. Following the 2014 protests in several states the official majority made awards and tributes to the Regional Operational Command (CORE) of the GNB, in what can be interpreted as a message of support to their performance, despite numerous and documented allegations of excessive use of force, arbitrary detention, torture and cruel treatment against protesters.

93. From the analysis of 37 files of criminal courts of Metropolitan Caracas and Miranda State, involving 399 people arrested during protests since February 2014, CDH-UCAB found the arbitrary nature of the arrests and the irregularity of subsequent processes, being that in 80% of cases, it has been requested and / or agreed to the dismissal of cases. No cases are known in which the authorities have developed actions to compensate the victims. Conversely, in the few cases in which investigation was ordered and the aggressors are fully identified, they have not yet been called to testify; they remain active

---

<sup>80</sup> El Informador, May 9, 2013 <http://issuu.com/elinformador.com.ve/docs/elinformador2013.05.09/1?e=1189344/4358982>

and, in some cases, acts of intimidation have been made against victims without providing effective protection to them.

94. It should also be remembered that the State has ignored all the recommendations issued by the UN WGAD in several cases between 2009 and 2015, even to detain Judge Maria Lourdes Afiuni for complying one of its recommendations.

#### ***Recommendations***

**95. Undertake ex officio investigations to determine responsibilities in implementation, concealment and failure to report violations of the right to physical integrity, as well as accelerate the requested investigations.**

#### ***Preventive detention***

96. The Forum for Life reiterates the concerns expressed in its contribution to the List of Issues<sup>81</sup> in the sense that the detention is no longer exceptional; its increasingly frequent use has negative effects on prison overcrowding.

97. Similarly, as explained in the List of Issues, the situation of overcrowding has led to the displacement of the prison problem to police detention centers, which are outside the rules that should govern the institutional system since the authorities seem to interpret these rules only apply to detainees in prison facilities, ignoring that should be applied to persons under *any form of detention* or imprisonment. The detainees in police stations can be counted in the tens of thousands.

98. The aforementioned situations have been exacerbated with the approval of a reform of the Code of Criminal Procedure by decree of the Executive, taking advantage of an Enabling Law granted to address the effects of the heavy rains of 2010. The new Code of Criminal Procedure, in violation of the principle of legal reserve which does not allow delegation of legislative functions in regard to the creation of offenses and human rights, has a negative impact on rights relating to the terms and criteria to implement freedom of an accused, the right to be heard, the right to a public criminal proceedings and the right to the presumption of innocence.

#### ***Recommendations***

**99. Ensure respect for the presumption of innocence, making preventive detention an exception and ensuring the presentation of all persons before courts in a period no longer than 48 hours, as required by law**

**100. Proceed to take immediate measures to ensure the classification and separation of detainees in accordance with international standards in this area**

## **V. Fair trial and judicial independence (article 14)**

---

### ***Fair trial***

101. The figure of the “*cooperating patriot*” is a worrying breach of the provisions of Article 14.e of the Covenant, to the extent that this is an anonymous complainant who has often been used as the only evidence against detainees for political motivations. Although some analysts interpret the “*cooperating*

---

<sup>81</sup> Forum for Life: VENEZUELA – Contribution to the Lol for HR Committee. Section II.d

*patriot*” can be derived from the principle of shared responsibility laid down in Article 5 of the Organic Law of Security of the Nation 2002<sup>82</sup>, the figure only began to be used from 2010, when it was incorporated as part of the SEBIN regulation as one of the six operational units of the Directorate of Counterintelligence of that body, whose purpose is “to plan, implement, monitor and control strategies to detect and neutralize internal threats, which jeopardize the security, defense and integral development the nation”<sup>83</sup>. For its part, the Law against Organized Crime establishes the possibility of using “undercover agents”; however, they can only act prior authorization of a court and only in investigations on terrorism and organized crime. It is a mechanism without legal basis in current legislation in Venezuela concerning guarantees of criminal proceedings.

102. Under the concept of “*cooperating patriot*”, several people have been detained by the SEBIN and are awaiting trial. Similarly, the concept has been used recurrently by the President of the National Assembly to provide information on State television spaces, on the work of human rights defenders, including private information. In a monitoring carried out by the Press and Society Institute (IPYS) between October 3 and December 3, 2014, references was accounted to 165 individuals and organizations for alleged crimes and actions described as irregular<sup>84</sup>. In August 2014, the President of the National Assembly thanked for information provided by “*cooperating patriots*”<sup>85</sup>; in early April; referring to monitoring by “*cooperating patriots*” to human rights defenders, he said “*I take the responsibility*”<sup>86</sup>.

### **Judicial independence**

103. Since early 2000 there has been a progressive politicization of the Supreme Court <sup>87</sup> which led to the adoption of judicial decisions that are far from democratic principles and violate the rule of law. In 2005, the Andean Commission of Jurists (CAJ) warned of a crisis of independence which jeopardized democratic institutions <sup>88</sup>. Similarly, in 2009 the Inter-American Commission on Human Rights (IACHR) expressed concern about cases in which members of the judiciary openly expressed support for the Executive <sup>89</sup>. The Special Rapporteur on the independence of judges and lawyers, has not been indifferent to this concern about the lack of independence of the judiciary in Venezuela <sup>90</sup>.

104. In its annual report for 2011, Provea conducted an analysis in order to determine which of the decisions of the Supreme Court, where some recourse had been exercised against the President of the Republic, the National Assembly, the Comptroller General of the Republic (CGR), Te Electorate Council (CNE) or the General Prosecutor, had been declared in favor of the complainant. The results showed that only in 6.81% of the decisions of the Supreme Court, the appeals were admitted, these being only against the CNE and CGR. Not one was the case of the President of the Republic, the National Assembly and the

---

<sup>82</sup> Organic Law on National Security. Official Gazette No. 37.594. December 18, 2002

<sup>83</sup> Organic Regulation of the Bolivarian Intelligence Service. Official Gazette No. 40.153. April 24, 2013. Article 17.

<sup>84</sup> Press and Society Institute: “Mallet blows” against the media and dissidence: <http://www.civilisac.org/civilis/wp-content/uploads/IPYS-Los-Mazazos-contralos-medios-y-la-disidencia.pdf>

<sup>85</sup> PSUV web site: Cabello thanked cooperating patriots for information provided: <http://www.psuve.org/temas/noticias/cabello- agradece-a-patriotas-cooperantes-informacion-suministrada-sobre-%E2%80%9Cmafia-amarilla%E2%80%9D/>

<sup>86</sup> TV show “*Con el mazo dando*”, March 25, 2015

<sup>87</sup> Antonio Canova González, Luis A. Herrera Orellana Roa, E Rodríguez Ortega Giuseppe, Graterol Stefanelli: *The Supreme Court at the service of the Revolution. (2004-2013)*. 2014.

<sup>88</sup> Andean Commission of Jurists, *Democratic alert n de Judiciary in Venezuela*. June 28, 2005:

<http://www.sumate.org/democracia-retroceso/attachments-spanish/T2%20ST01%20N5%20Comisi%F3n%20Andina%20de%20Juristas%20Junio%202005.pdf>

<sup>89</sup> Inter-American Commission on Human Rights, *Democracy and Human Rights in Venezuela*, OEA/Ser.L/V/II. Doc. 54, December 30, 2009, p. 49-57. <http://www.cidh.oas.org/countryrep/Venezuela2009sp/VE09.indice.sp.htm>.

<sup>90</sup> UN concerned about lack of judicial independence in Venezuela, El Tiempo, June 11, 2014.

<http://www.eltiempo.com/mundo/ee-uu-y-canada/onu-preocupada-por-falta-de-independencia-judicial-en-/14104751>

General Prosecutor. Moreover, 27.27% of the cases were dismissed. In just 34.08% (27.27% dismissed and 6.81% admitted), the decisions of the Supreme Court had a ruling on the merits; and in 54.54%, the Court referred only to aspects of form. Consequently, directly or indirectly, the Supreme Court has avoided setting limits to the exercise of public powers, distorting its role as guarantor of the rights of people<sup>91</sup>.

105. Since the adoption of the 1999 Constitution, the Supreme Court has only called for Competitions for Judges of in 2000, when a total of approximately 150 permanent judges were appointed. In later years, the rest of the judges have been appointed by the Judicial Commission, being in accidental, temporary or provisional situation, without stability or career. At present it is estimated that 80% of judges remain with a provisional status.

### ***Recommendations***

**106. Disapply the figure of “cooperating patriot” and declare invalid any evidence supported by anonymous complainants.**

**107. Proceed without further delay, to the implementation of competitions for all posts of judge in the country.**

**108. Ensure stability of judges with full respect for the judicial career.**

### ***Case of Judge María Lourdes Afiuni***

109. As is known, Judge Maria Lourdes Afiuni was arrested by SEBIN officials who raided the headquarters of her court on December 10, 2009, minutes after she agreed to probation of a defendant whose detention had been declared arbitrary by the UN WGAD. She was sentenced on national radio and TV broadcast by the late President Chavez, who asked for 30 years in prison and called her “*bandit*”. Judge Afiuni was transferred to a women's prison where she shared space with detainees who were tried in her court. There she was the victim of several attacks by other inmates and a violation by an official.

110. The State's response to the Committee requires three important precisions. First, it is not true that the procedural delay referred to by the State is attributable to Judge Afiuni. The first trial against her was annulled after unjustified delays caused by the prosecution. Since June 2012, the Code of Criminal Procedure reform had entered into force that unconstitutionally allows trial in absentia, so it was possible to make the judicial process, as indeed was started in November 2012, without her presence. By contrast, as noted above, the cancellation of the first trial is only attributable to the Public Ministry. On two occasions a prosecutor, who should give testimony as a witness, did not appear. When he finally came to give his statement, were the prosecutors in the case who did not attend the hearing and the Public Ministry did not send to other prosecutors as their replacement, as befits by law, thereby achieving the disruption of the judicial process. After 17 months of waiting, a new trial began on April 29, 2015.

111. Second, the Public Ministry declined to open an *ex officio* investigation for violation of Judge Afiuni, as required by law. In her response to CAT, in November 2014 session, the Director of Fundamental Rights of the Public Ministry, advised the UN experts “*stop worrying*” about Afiuni’s case. The assertion by the State in its response, according to which two public prosecutors went to the National Institute of Feminine Orientation (INOF) on November 29, 2012 “*in the presence of the defense lawyers*” is, at least, inaccurate, and that the State must remember that the Judge was *under house arrest* since February 2011. Indeed a

---

<sup>91</sup> PROVEA, *Right to justice*, Annual Report, November 20, 2011. <http://www.derechos.org/vp/wp-content/uploads/15Justicia.pdf>

transfer was made under custody for continuing to under house arrest, but she went to the headquarters of the Public Ministry, where she was taken to the office of the same prosecutor who the day before had been by her indictment at the beginning of the trial. There was no presence of officials from the Victim Services Unit, the Directorate of Fundamental Rights or the Directorate for the Defense of Women's Public Prosecutor.

112. Third, Judge Maria Lourdes Afiuni, contrary to the assertions by the State in its response, is not "free." The restrictive measures remain in force, including the ban on leaving the country, to declare to the media and to make use of social networks. From the time of her arrest, five and a half years ago, Judge Afiuni remains suspended without pay. The disciplinary process against her is suspended indefinitely because of the "*misplacement*" of the evidence tendered by the defense, which was always in the hands of the authorities of the judicial disciplinary body.

113. The name of Maria Lourdes Afiuni, is not mentioned in any report of the Ombudsperson and the institution has never verified compliance with the protection measures granted by the IACHR, and the Inter-American Court, equally disregarding all the calls of the various human rights bodies of the UN in this regard.

#### ***Case of judge Ali Paredes***

114. Judge Ali Paredes is one of the many judges who entered without competition to the judiciary and kept in a position as "*temporary*". On 10 February he was detained by intelligence officials (SEBIN), less than 24 hours after a judgment on a drug case that was not satisfactory to the Executive, and for which the same judge had been appointed illegally, for his known lack of independence and open expression of loyalty to the late President Chavez and the revolutionary process. He was the judge in the case of Judge Maria Lourdes Afiuni and directly responsible for the concealment of evidence of aggression and violation of Judge Afiuni. Despite his questionable background, nothing justifies his detention because of a sentence, leaving aside the application of disciplinary procedures. Judge Paredes was formally charged on 31 March for "*alleged favoring a processed*" and dismissed on 7 April 2015. The decision only says that "*the Judicial Commission agreed to rescind the appointment*"<sup>92</sup>, as occurs, without motivations, in most cases of removal. Again, a judge is arrested by the political police because of a sentence, regardless of disciplinary proceedings.

#### ***Recommendations***

**115. Refrain from using the criminal justice system as an instrument of retaliation against judges in the performance of their judicial functions.**

**116. Ensure transparency and speed of disciplinary investigations against judges, when they were necessary.**

#### ***Military jurisdiction against civilians***

117. Military jurisdiction continues to be used against civilians, even if the alleged crimes do not correspond to the assumptions of law. Between October 2007 and September 2008, according to calculations made by *Provea* from information published by the Military Court, it was possible to note that, of 34 decisions issued, 10 were referred to civilians, ranging in all 12 individuals.

118. In 2011 three cases involving trade unionists and indigenous leaders were reported. In Tachira state, five union leaders were arrested by the Armed Forces and charged with insulting the sentinel,

---

<sup>92</sup> Supreme Court: <http://www.tsj.gob.ve/es/web/tsj/designaciones#5> (See date 07/04/2015).

insulting the armed forces and violation of national sovereignty, while leading a protest in an area considered “*security zone*”. Trade unionists worked for a private company contracted by the Ministry of Housing and Habitat to build homes at Fort Murachi, located on military land; they were claiming back pay<sup>93</sup>. They were sent to the jail in Santa Ana, Tachira, and subjected to military trial. It was also reported that Villy Ramon Gomez, a bus driver was detained in a mobile checkpoint in Santa Elena de Uairen, subjected to military trial and sent to La Pica prison in Monagas state<sup>94</sup>. In Ciudad Guayana, six indigenous Pemon leaders were arrested by order of the military prosecutor's office and tried by a military court in connection with the events of October 25, 2011, in which 15 indigenous communities disarmed 23 soldiers who allegedly exercised illegal mining in La Paragua, and committed excesses against aborigines. The Pemon leader Alexis Romero, in a strange and astonishing decision, was pardoned by the President, four days after being transferred to the prison of La Pica; after being pardoned, he was requested to appear before military courts<sup>95</sup>.

### ***Recommendations***

**119. Prohibit the trial of civilians in military courts, as well as the presence of civilian inmates at military installations.**

#### ***Free professional performance of lawyers***

120. In addition to the arrests of government opponent political leaders, there are worrying cases in which lawyers have been arrested in the exercise of their professional work.

121. The case of the lawyer **José Amalio Graterol**, who was defender of Judge Maria Lourdes Afiuni, shows the vulnerability of lawyers in the exercise of its function. Graterol was arrested at the courthouse in which a case represented by him was debated on June 3, 2012, for alleged obstruction of justice, when he refused trial in the absence of the accused. At that time the CCP had not yet reformed to enable the right to be heard been violated<sup>96</sup>. He was sentenced to six months in prison for the crime of obstruction of justice, even when numerous contradictions and irregularities occurred during the course of the trial, especially in the evidentiary phase<sup>97</sup>. Time served was never calculated and eventually, after nine months of his sentence<sup>98</sup>, the prescription of punishment was declared and were lifted the restrictive measures of freedom.

122. The lawyer **Marcelo Crovato** was arrested in the exercise of his duties on April 22, 2014, after a raid on a building in the municipality of Chacao to which he went to provide legal assistance as a member of the Venezuelan Penal Forum. His detention was declared arbitrary at the hearing, because there was no prior judicial order or flagrant, but it was validated for anonymous reports on alleged conspiracy plans. He was charged with the offenses of breaching the security on the road, incitement to disobey the law, public intimidation and conspiracy. Crovato was deprived of liberty initially at Investigations Police (CICPC) headquarters in San Agustín and on May 30 he was taken to “*Yare III*” prison, where he was a Director

---

<sup>93</sup> Estefanía Todisco: Protestant workers arrested in Táchira will continue 45 days more. Correo del Caroní, 24.08.12, p. A4.

<sup>94</sup> William Pérez: Commander of the border detachment No. 84 of the National Guard is declared “*persona non grata*” El Progreso, 20.01.12, p. 37

<sup>95</sup> In Venezuela the President can pardon only if the person has been convicted. The law gives him the power to dismiss cases in the military justice system, which was not the decision. In addition, once released by administrative act of the President, he had to appear regularly before military courts

<sup>96</sup> Venezuela trial observation, Jose Amalio Graterol, 2012 – 2013.

<http://www.ibanet.org/Article/Detail.aspx?ArticleUid=d6d70307-d68c-4517-9fe9-0782fd43a2a8#film>

<sup>97</sup> *Ibidem*. Págs 13-15

<sup>98</sup> The prescription of applies when it has elapsed time 1.5 times the time of the sentence.



between 1999 and 2000; his life there was at risk. In December 2014, Crovato made a suicide attempt<sup>99</sup>; other prisoners prevented the consummation of the fact. Besides psychiatric condition that he developed during the first eight months that remained detained, Crovato did not receive adequate medical care for cancer, back problems and malnutrition. Due to his health conditions, the prosecution asked the court to order an alternative measure. Finally after starting a hunger strike for lack of a pronouncement and 10 months of illegal deprivation of liberty, on February 25, 2015 the Court granted the measure of house arrest. This measure was given with a prohibition of interviews or media contact.

123. On February 8, 2015 the lawyer Tadeo Arrieche was arrested, while representing a supermarket chain taken over by the government, and it was imputed the crime of boycott with the aggravation of economic destabilization in contravention of the Basic Principles of Nations United on the Role of Lawyers, which states that *"lawyers shall not be identified with their clients or their clients causes as a result the performance of their functions"*. The International Bar Association Human Rights Institute (IBAHRI) spoke out about the case of Judge Paredes and attorney Arrieche, expressing grave concern at the deteriorating situation of the rule of law in Venezuela: *"The brazen attacks on the judiciary currently taking place in Venezuela are of serious concern to the International Bar Association's Human Rights Institute (...)o arrest any judge for passing a sentence considered too lenient by the Government, as in Judge Paredes' case, fundamentally undermines basic notions of the rule of law, democracy and the separation of powers"*<sup>100</sup>. On May 7, 2015, IBAHRI made a new call for the immediate release of Arrieche<sup>101</sup>.

#### **Recommendations**

**124. Refrain from using the criminal justice system as an instrument of retaliation against lawyers as a result the performance of their functions.**

## **VI. Freedom of Thought, Conscience and Religion (art. 18)**

---

### ***Conscientious objection and military service***

125. In its response, the State refers to an amendment to the "Law on Military Conscription and Enlistment" published in Official Gazette No. 39,359 dated 21 October 2009. In fact, this change was made and published in Official Gazette No. 39 553 dated 16 November 2010. However, the state fails to mention that the law and its reform were repealed. On June 25, 2014, in the Official Gazette No. 40,440, the Law on Registration and Enlistment to the overall defense of the Nation, was published, replacing the aforementioned law and aiming at "regulating the registration and readiness for the defense, security and integral development of the Nation".

126. The provisions of this Act apply to Venezuelans by birth and naturalization, and public and private entities. While it is positive that Article 5 of this Act reiterates the provisions of the Constitution regarding the prohibition of forced recruitment, the following aspects are troubling and violate the provisions of the Constitution and Article 18 of the Covenant: a) all Venezuelans by birth or naturalization, as well as all legal entities, public and private entities, are required to register in a registry of military nature (arts. 1, 38, 39,

---

<sup>99</sup>"Crovato: Prisoner at risk" El Universal: <http://www.eluniversal.com/nacional-y-politica/141228/crovato-presos-en-riesgo>

<sup>100</sup> IBAHRI expresses serious concern over new arrests and increasing deterioration of the rule of law in Venezuela. Communiqué. International Bar Association: <http://www.ibanet.org/Article/Detail.aspx?ArticleUid=d0aad4e-b0e4-496e-a875-27119ba91662>

<sup>101</sup> IBAHRI demands the immediate release of the Venezuelan lawyer Tadeo Arrieche Franco <http://www.ibanet.org/Article/Detail.aspx?ArticleUid=d58412f7-d1c1-4ce2-bc9f-fe58521588f6>

40, 41 and 42 of the law); b) all persons, natural or juridical, public or private entities, are required to cooperate and contribute with authorities Registration and Enlistment to the comprehensive defense of the nation (art. 23).

127. Failure to register would prevent -according to the law- the full realization of the right to work, making the person unable to be hired by public or private entities or having the possibility of obtaining labor certificates (art. 44 and 46). It also violates the right to freedom of movement, prohibiting the person from getting a driver license (art. 45), and the right to education, preventing the awarding of academic degrees if the certificate of registration in the Registry for Readiness for the Comprehensive Defense of the Nation is not presented (art. 47).

128. The possibility to freely choose a civil service or to exercise the right to freedom of conscience are not listed as grounds not performing military service, as provided in Article 61 of the Constitution. You could only serve civilian service after being selected as "ineligible" due to an illness, for being the family's breadwinners, during pregnancy, being married or have firm prison sentence. The civil service, which in the Constitution has the same status as the military, would be subordinated to the FANB, being handled under military jurisdiction and regulation.

### ***Recommendations***

**129. In accordance with the previous recommendation of the HR Committee<sup>102</sup>, to respect the constitutional right to conscientious objection, providing for alternative means of performing service to the country, not subject to military authority.**

**130. To repeal the provisions that penalize individuals and legal entities and that condition the exercise of other human rights to the enrollment in a military registry.**

## **VII. Freedom of Opinion and Expression, of Assembly and Association (articles 19, 21 and 22)**

---

### ***Law on Social Responsibility in radio, Television and Electronic Media***

131. According to the Law on Social Responsibility in Radio, Television and Electronic Media, a channel or radio station may be fined, suspended or have its concession revoked if during a live transmission elements of violence or language are broadcast, which can be interpreted by the State as destabilizing or unsuitable for children. The penalty is 3% to 10% of annual gross income, or even the revocation of the concession.

### ***Media blackout***

132. On February 11, 2014, prior to the completion of student marches in commemoration of Youth Day, the Board on Social Responsibility in Radio and Television of the National Telecommunications Commission (CONATEL) released a statement in which it warned on the possibility of future sanctions against service providers on radio, television and electronic media covering violent events registered in several states during protests<sup>103</sup>. The day after the pronouncement by CONATEL, on February 12, 2014, coinciding with events in which three people were killed in the context of the protests, President Nicolas

---

<sup>102</sup> CCPR/CO/71/VEN, paragraph 26

<sup>103</sup> CONATEL Communiqué: "The Board on Social Responsibility will be in permanent sessioning <http://www.conatel.gob.ve/directorio-de-responsabilidad-social-se-declara-en-sesion-permanente/>

Maduro ordered the blocking of NTN24, an international news channel which had remained reporting complaints or remarks relating to the situation in the country at this juncture. This decision was implemented by CONATEL, without any administrative or judicial procedure<sup>104</sup>. The news channel was removed unexpectedly from cable services, and its web pages, Youtube channels and social networks remain blocked in Venezuela<sup>105</sup>. During the following months, NTN24 created several domains to avoid blockage of its website from Venezuela, but all were also blocked by CONATEL<sup>106</sup>. Until the date in which this report was written, in April 2015, NTN24 cannot transmit in Venezuela on cable or through its websites. Additionally, it was announced that reporters of CNN in Spanish would not be allowed in the country and the news channel was threatened with removal as well for "poisoning with its lies", according to President Maduro<sup>107</sup>.

133. The list of more than 18,071 violations mentioned by the State as observed by CONATEL in private media, despite being public information, is not available. In this regard, the NGO *Espacio Público* requested this information<sup>108</sup> but there has been no answer. With the information available on the website of the Commission<sup>109</sup>, and that which has been public knowledge through the reporting of affected media themselves, sanctions there reflected are evidence that in more than ten years of implementation of the Act, there are no equivalent processes open against public programs or media managed by the Venezuelan Government and which are favorable to the official line, even though during transmissions these media broadcast messages that promote intolerance and are prohibited by the Law in Article 27.

#### ***Venezuelan Criminal Code: the cases of Daily Newspaper Tal Cual and Twitter users***

134. The Venezuelan Penal Code and other laws continue to establish criminal offenses for criticizing officials, with serious consequences for the media and freedom of expression in Venezuela. One of the most affected media is the newspaper *Tal Cual*. On February 27, 2015, after facing eight judicial procedures in fifteen years of existence, *Tal Cual* stopped circulating as a daily newspaper and became a weekly. In addition, the shortage of raw material, restrictions on access to newsprint, is one of the reasons that drives the action taken by the *Tal Cual*. It is not the only newspaper that faces the inability to import raw materials. To date, at least eight more are in danger of closing due to restrictions on access to newsprint. Currently, at least five people face criminal proceedings for expressing opinions through the social network Twitter.

---

<sup>104</sup> VIDEO: Maduro confirms that withdrawing NTN24 from the airwaves was a State decision: Recovered on 28/04/2015 from: <https://www.youtube.com/watch?v=nu5lsnYaG-M>, Statements RSMRTV Official CONATEL Site, recovered on 28/04/15 from: <http://www.conatel.gob.ve/william-castillo-el-espectro-radioelectrico-no-es-propiedad-privada/>

<sup>105</sup> NTN24 Communiqué. Recovered on 28/04/2015 from: <http://www.ntn24.com/noticia/comunicado-ntn24-censurado-en-venezuela-ahora-en-internet-25964>

<sup>106</sup> The 16 blocked domains are: [www.ntn24.com](http://www.ntn24.com), [www.portalntn24.co](http://www.portalntn24.co), [www.canalntn24.tv](http://www.canalntn24.tv), [www.ntn24we.com](http://www.ntn24we.com), [www.portalntn24.tv](http://www.portalntn24.tv), [www.canalntn24.info](http://www.canalntn24.info), [www.portalntn24.info](http://www.portalntn24.info), [www.ntn24noticias.com](http://www.ntn24noticias.com), [www.ntnve.com](http://www.ntnve.com), [www.portalntn24.net](http://www.portalntn24.net), [www.ntn24ve.com](http://www.ntn24ve.com), [www.portalntn24.com](http://www.portalntn24.com), [www.ntn24venezuela.com](http://www.ntn24venezuela.com), [www.canalntn24.com](http://www.canalntn24.com), [www.ntn24venezuela.com](http://www.ntn24venezuela.com) y [www.ventn24.com](http://www.ventn24.com)

<sup>107</sup>Video: Maduro: CNN will leave Venezuela "if it does not cease with the war propaganda". Recovered on 28/04/15 from: [https://www.youtube.com/watch?v=HD\\_JyqY74o4](https://www.youtube.com/watch?v=HD_JyqY74o4), Interamerican Press Society (SIP) condemns "informative censorship" in Venezuela by the Government of Nicolás Maduro. Recovered on 28/04/15 from: <http://goo.gl/C4ScTT>

<sup>108</sup> *Espacio Público* sent a request for information to the National Telecommunications Commission (Conatel) on April 30, 2012 concerning the punitive administrative proceedings under the Act on Media Social Responsibility; the NGO insisted on the petition on 14 May and 11 June 2012. CONATEL was silent. On October 23, 2012, the Second Administrative Court admitted the demand. An injunction was refused. On April 18, 2013, the trial hearing was held. On May 30, 2013, the object of the demand is declared as outdated. An appeal was served on June 13, 2013; On October 9, 2013, a substantiation of the appeal is filed. On February 6, 2014, the NGO filed a petition for a decision on the appeal.

<sup>109</sup> Official CONATEL website. Reviewed on 23/04/2015 from: <http://www.conatel.gob.ve/>

### ***Criteria for guaranteeing transparency and non-discrimination by CONATEL***

135. The Social Responsibility Board of CONATEL is the body responsible, among other things, for imposing sanctions on the media which, at its discretion, are supposed to commit any of the offenses included in the Law on Social Responsibility in Radio, Television and Electronic Media. This Board was created by Article 20 of the Law, establishing its composition, powers and forms of operation.

136. By April 2015, according to information from the official website of CONATEL, the Board is comprised of the following persons: Director General and Chairman, William Castle; Hind El Anderi, representing the Ministry of Popular Power for Communication and Information; Isbelia Montiel, representing the Ministry of Popular Power for Indigenous Peoples; Maureen Riveros, representing the Ministry of Popular Power for Culture; Elena Medina, representing the Ministry of Popular Power for Women and Gender Equality; Pedro Prieto and Samir Luzardo, as spokesmen for the Organization of Users of Telecommunications Services.

137. The decisions of this body are taken by simple majority. Suffice it to evaluate the composition mentioned to observe that there are five members who are directly appointed by the Executive branch. This distribution does not generate the necessary guarantees of impartiality of the Board. In addition, according to Article 40 of the Telecommunications Act, the Director General of CONATEL, as well as Board members and their alternates, can be freely removed by the President of the Republic.

### ***Attacks against journalists and citizen journalists***

138. In its latest reports, *Espacio Público* has registered continuing physical attacks against journalists. Typologies illustrate that this situation occurs in the context of long queues outside shops, due to the scarcity of various products. This situation has been exacerbated since early 2015, when journalists and citizen journalists have been attacked for recording queues or taking pictures<sup>110</sup>. In 7 opportunities, coverage has been hampered mostly by police or military bodies, and employees of establishments selling food. Seventeen people, including media workers and citizen journalists, were subjected to insults and physical attacks on queues, representing 29.31% of total cases in the first quarter of 2015 (17 of 58 cases)<sup>111</sup>.

139. In 2014 José Alejandro Márquez, a citizen journalist, was murdered by State Security Forces for trying to register with the camera of his mobile phone the repression taking place in a protest.

### ***Access to newsprint and its impact on newspapers***

140. Since the second half of 2013, newspapers have denounced restrictions to purchase paper needed to print the daily news. Initially, the Government was not approving foreign currency for imports; then, the State-owned Maneiro Corporation monopolized the import and sale of newsprint. As a result, some independent or critic newspapers complain that they are not provide the paper needed, others have reduced the number of editions and pages, while others have disappeared.

### ***Recommendations***

**141. Investigate impartially and effectively cases of assault, harassment and killings of media professionals and, consequently, prosecute and punish those responsible.**

---

<sup>110</sup> Complaints filed by Espacio Público, available at:

<http://espaciopublico.org/index.php/noticias/1-libertad-de-expresi/3262-impiden-cobertura>

<sup>111</sup> Espacio Público (2015) Quarterly report on the situation of the rights to Freedom of Expression and Access to Information. Available at: <http://goo.gl/QQ4iQ1>

142. **Amend the Criminal Code and the Code of Military Justice, eliminating the figures of contempt or vilification, adjusting the protection of the right to honor to international standards.**
143. **Ensuring access to paper and supplies to the national and local media.**
144. **Refrain from further arbitrary blocking of access to websites and media in cable operators.**

### ***Human Rights Defenders***

145. **Rodrigo Diamanti.** On May 1st, 2014, at dawn, SEBIN officials raided a house called "Michoacan" in Caracas, which operated as the headquarters of the organizations "World Without Gag", "Human and Free" and the Federation of Students of Secondary Education (FENEEM). Computer equipment was checked and the property's caretaker, Yeimi Valero, was arbitrarily arrested. He was doing his job when officers arrived, but was nevertheless taken to the headquarters of SEBIN and interrogated for more than four hours.<sup>112</sup> Until this report was written, Valero remains imprisoned. Rodrigo Diamanti, President of World Without Gag, said the raid was in response to the campaign "SOS Venezuela" that the organization developed<sup>113</sup>. On the night of May 7, Diamanti was arrested by SEBIN officials<sup>114</sup>.

146. El The same day the raid mentioned occurred, at around midday, the Minister of Internal Affairs, Justice and Peace gave a press conference in which he claimed to have information about alleged "national and international" insurrectional plans against the Government of Nicolas Maduro, attacking Venezuela on several fronts, including the issue of human rights: "*They gather information through so-called proconsuls, such as Maria Corina Machado, Diego Arria, among others, whereby manipulating information they make the world think that human rights are violated in Venezuela*"<sup>115</sup>. The long list of alleged conspirators included student leaders and human rights defenders.

147. El The State contradicts its own response when it affirms that Diamanti "*refused to comply with the summons to appear before the Bolivarian Intelligence Service (SEBIN) to give testimony as a witness*"<sup>116</sup> and later states, that "*Diamanti is not exempt from the provisions of Article 208 of the criminal procedural instrument, whereby every inhabitant of the country or person who is in it shall have the duty of attending to the summons practiced by a court*"<sup>117</sup>. There was not an open court case and, in fact, the subpoena was issued by the SEBIN, not by a court. Even assuming that effectively Diamanti had been summoned to give statements as witnesses and had not complied, he could have not been detained without a court order, held incommunicado for 48 without contact with families and lawyers, criminally prosecuted, accused of criminal charges of "*obstruction of roads*" and "*possession of explosives*" and subjected to a precautionary measure banning him from leaving the country, which currently remains in force.

<sup>112</sup>Press release and video of press conference held by Rodrigo Diamanti, President of A World without Gag, can be seen at: <http://sinmordaza.org/libertad/?p=560>

<http://www.venezuelaaldia.com/2014/05/presidente-de-un-mundo-sin-mordaza-denuncia-atropellos-del-sebin-durante-allanamiento-video/>

<http://transparencia.org.ve/transparencia-venezuela-rechaza-el-allanamiento-a-ong-un-mundo-sin-mordaza-y-humano-y-libre/>

<sup>113</sup>Press release with statements by Rodrigo Diamanti, President of A World without Gags:

<http://www.eluniversal.com/nacional-y-politica/protestas-en-venezuela/140502/un-mundo-sin-mordaza-dice-que-buscan-sembrar-miedo-en-defensores-de-dd> <http://www.lapatilla.com/site/2014/05/01/allanamiento-de-un-mundo-sin-mordaza-sera-el-comienzo-de-una-caceria-de-brujas/>

<sup>114</sup> See press release in Globovision: <http://globovision.com/articulo/mundo-sin-mordaza-denuncia-detencion-del-presidente-de-la-organizacion>. The Diamanti case is seen in this section

<sup>115</sup> Official Press release and video can be seen at: <http://www.vtv.gob.ve/articulos/2014/05/02/ministro-rodriguez-torres-presenta-pruebas-sobre-hostilidad-de-eeuu-contra-venezuela-video-2318.html>

<sup>116</sup> Venezuela's response to the List of Issues, March 5, 2015. Paragraph 267. Emphasis added.

<sup>117</sup> Venezuela's response to the List of Issues, March 5, 2015. Paragraph 270. Emphasis added.

148. When a citizen does not comply with a summons to give statements as witnesses, the State can implement a mechanism provided for under Article 292 of the Venezuelan Code on Criminal Procedures (COPP). In conclusion, the legal basis that motivates action against Diamanti is not the alleged failure to testify as a witness, nor can it be used to justify his arrest and prosecution. Diamanti is currently accused of two offenses and is being processed on probation, with an arbitrary injunction preventing him from leaving the country. At the close of this Report, the Attorney 20th of Public Prosecutions with National Competence had not submitted the final act of the criminal investigation opened against Diamanti. His lawyers are asking for his full freedom.

149. **Humberto Prado y Marianela Sánchez.** Humberto Prado and Marianela Sánchez. In the aforementioned press conference of May 1, referred to by the State in its response, the Minister of Internal Affairs, Justice and Peace, reiterated serious allegations against Humberto Prado, director of the NGO Venezuelan Prison Observatory (OVP). According to press release from the official media, AVN, the Minister said that *"the director of the Venezuelan Prison Observatory, Humberto Prado, also participated in this plan that was presented in Mexico, which consists of demonstrations inside prisons to generate more violence"*<sup>118</sup>. The alleged plan had been prepared since 2012. On February 13, 2014, the Minister had already raised accusations against Prado, which prompted strong reactions of concern by the international human rights community. The organization Frontline Defenders recalled that *"Humberto Prado Sifontes has been subjected to a campaign of defamation and intimidation that has intensified since the last elections in Venezuela"*<sup>119</sup>. As well, as noted by the International Federation for Human Rights (FIDH), *"the OVP and its members are victims of a continuous company of defamation by members of the Government and have also been subjected to intimidation and threats on several occasions."*<sup>120</sup>

150. Although Sanchez and Prado have interim measures of protection ordered by the Inter-American Court, attacks and insults by several official spokespersons have not ceased. In addition to the serious allegations made by the Minister of the Internal Affairs, Justice and Peace, in May 2014, there were new allegations in the second half of 2014 and throughout the first half of 2015.

151. **Mijail Martínez y Víctor Martínez.** Victor Martinez was the victim of a new attack on April 6, 2015, when several men approached him as he arrived at his home, pointing guns. Martinez screamed for help and managed to flee in his vehicle. The next day, he went to the Public Ministry to formalize the complaint, and since April 8 has received police protection. This is the third attack that affects Martinez since 2010, after the murder of his son Mijail in November 2009 -also outside his home- who was also a human rights defender in the city of Barquisimeto, Lara state. The two men identified as allegedly responsible for the murder of Mijail were arrested, as the State notes in its response to the List of Issues. However, one escaped and another is on probation; therefore, four and a half years after the facts, the case remains unpunished.

152. **Other recent cases.** In the context of the debate of Venezuela report before the CAT in November 2014, the President of the National Assembly, Diosdado Cabello, who leads a television program called

---

<sup>118</sup> AVN: "Political subversion by the right started when Chávez was a candidate". Digital version in: <http://www.avn.info.ve/contenido/rodr%C3%ADguez-subversi%C3%B3n-pol%C3%ADtica-derecha-comenz%C3%B3-desde-que-ch%C3%A1vez-era-candidato>

<sup>119</sup> Frontline defenders: Defamation against human rights defender Dr. Humberto Prado continues. Digital version in: <https://www.frontlinedefenders.org/es/node/22608>

<sup>120</sup> Venezuela: Acts of intimidation and threats against Ms. Marianela Sánchez Ortiz, OVP's Legal Coordinator <https://www.fidh.org/es/americas/venezuela/Venezuela-Actos-de-intimidacion-y-amenazas-contra-la-Sra-Marianela-Sanchez-13159>

"The hammer", broadcast by state channel *Venezolana de Television (VTV)*, expressed a series of disqualifications and false accusations against several defenders. The Committee urged the State to refrain from disqualifying the work of human rights defenders and journalists, expressing "deep concern" for the public remarks by the President of the National Assembly, based on reports by "cooperating patriots" (people reporting anonymously) against Carlos Correa, of *Espacio Público*, Humberto Prado, of *OVP*, and Marino Alvarado, of *Provea*. These disqualifications are not the first, nor the only, but have intensified since late 2014, with new unfounded accusations, on December 17, 2014, and on February 11 and March 11, 2015. In addition to uttering false accusations, the President of the National Assembly referred to the participation of advocates in meetings on human rights and in hearings of the IACHR and meetings with UN human rights bodies, as if they were a conspiracy, disruptive or illegal activity. It should be noted that such accusations are made through state media and abuse of parliamentary immunity.

153. Within the 154 period of hearings of the IACHR on the situation of human rights in Venezuela, held on March 16 and 17, 2015, the Commissioners repeatedly urged the Venezuelan government on its responsibility to ensure the safety and protection of Venezuelan defenders present at the meetings. In this regard, on March 20, 2015, the IACHR issued a public statement in which Commissioners expressed their "alarm" for new accusations by the President of the National Assembly, made on March 18 2015, and previously, on February 2, 2015, in his TV program, against defenders who had requested hearings.

154. 184. On March 21, the IACHR granted protective measures in favor of Marco Antonio Ponce, being considered one of the defenders at greater risk. In this context, most of the defenders who attended these hearings were subjected to acts of surveillance and harassment when they returned to the country, from the moment they arrived at Simon Bolivar International Airport in Maiquetía, and during security checks by immigration and tax authorities -in areas of the airport to which only authorized staff has access- until they left the airport. The disqualifications were repeated during the participation of several human rights defenders at the Seventh Summit of the Americas, convened by the Organization of American States in Panama City in April 2015.

### ***Recommendations***

**155. Investigate, beyond formalities, all reports of attacks, threats, killings and other acts of aggression against human rights defenders, ensuring the punishment of those responsible and timely, transparent and accessible information on the progress of judicial proceedings.**

**156. The effective implementation of the agreed protective measures for human rights defenders.**

**157. Refrain from using public media to issue threats and insults against human rights defenders, especially when such acts are reprisals against defenders for their collaboration with regional and international bodies for protection of human rights.**

### ***The Right to Freedom of Peaceful Assembly***

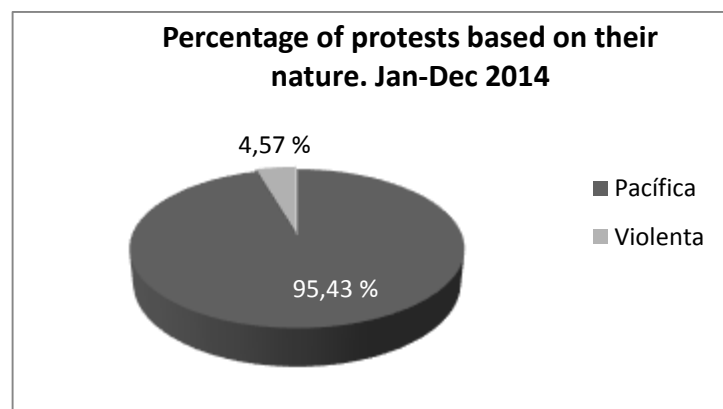
**158.** Between 2006 and February 2013, more than 2,400 people were subjected to a precautionary measure of regular presentation before the courts for taking part in protests; most of them are students, neighborhood leaders, workers and union leaders. The adoption in 2002 of the reform of the Organic Law on National Security<sup>121</sup>, led to the creation of numerous security zones in which it restricts or prohibits the staging of protests, considering about 30% of the country as security zones, according to the NGO Citizen Watch.

---

<sup>121</sup> Official Gazette N° 37.594 Dec 18, 2002

159. According to the daily monitoring by *Espacio Público*, total protests of 2014 -from January to December- fell 31% from the previous year. 2,363 citizens conducted public demonstrations; 95% were peaceful, some lasting more than a week, and 30% took place during February and March, staged mostly by students and neighbors. For the first time in the last decade, a variation on the scale of demands occurred in 2014, and the category "against the country's crisis" appeared. This category displaced labor demands and ranks as the main demand of public demonstrations in Venezuela (541)<sup>122</sup>. The most common forms of protest were the closure of streets or roads (38.33%) and concentrations (27.66%).

160. The data show that violent protests increased 184%; however, the intensity of the repression was disproportionate to the frequency of violent protests, increasing 534%. During the first half of 2014, 21.31% (323) of the demonstrations were repressed, with the Bolivarian National Guard (GNB in Spanish) being the agency responsible for the highest number of protests repressed. This number represents the highest percentage of repression recorded in the last decade. During the government of late President Hugo Chavez, the highest percentage of repression was 5.88% in 2009.



161. From 1989 to 2013, 10,400 people were arrested by State security forces during the organization and development of protests, while in the first 4 months of 2014, the number of arrests was the equivalent of 30% of all arrests of demonstrators in those 24 years.<sup>123</sup>

### ***Deaths in the context of protests***

162. Between February and May, 2014, 42 people were killed in different incidents in the context of demonstrations in the country. This represents an increase of 323% compared to that recorded during the 12 months of 2013, when 13 people died in demonstrations.

163. According to the Joint Report on protests 2014 by a group of Venezuelan Human Rights Organizations, "28 people were killed by firearms shots, a citizen was beaten to death, 6 people died after colliding with barricades and/or steel cable placed across public roads, 3 in events classified as accidents, 2 after being run over by vehicles, and 2 in still unexplained circumstances"<sup>124</sup>.

### ***New restrictions on the Right to Peaceful Assembly***

164. On April 24, 2014, the Constitutional Chamber of the Supreme Court issues an interpretation of Article 68 of the Constitution<sup>125</sup>, imposing the unconstitutional and illegal requirement for a "permission"

<sup>122</sup> Espacio Público: Reports on the Right to Peaceful Demonstration <http://manifestar.org/category/informes-tematicos/informes-sobre-el-derecho-a-la-reunion-pacifica-en-venezuela/>

<sup>123</sup> See PROVEA's Report "Venezuela 2014: Protests and Human Rights"

<sup>124</sup> VENEZUELA 2014: Protests and Human Rights, reviewed on Aug 2, 2015 at URL: <http://www.derechos.org/vp/wp-content/uploads/Informe-final-protestas2.pdf>

<sup>125</sup> TSJ, SC (April 24, 2014), "Interpretation of Art 68 of the Venezuelan Constitution", N° 276, available at <http://goo.gl/edY4Yy>.



before any public meeting can be held and authorizing the actions of the police to dissolve meetings that do not have such a permit. Similarly, in 2014, a series of decrees in various localities of the country were issued. Among them, a decree of February 17, by the Mayor of the Libertador Municipality of Caracas, declaring the municipality as "a territory free of fascism."<sup>126</sup> This was emulated the following days by some mayors of Miranda and Aragua states. Since then, with or without the previous notification required by law and before the decision of the Supreme Court, protests were being repressed when trying to cross the limits of the municipalities. Additionally, the Law on Political Parties, Public Meetings and Demonstrations was reformed, granting governors and mayors, in Article 46, the possibility to prohibit public meetings or demonstrations in places they consider appropriate, after hearing the points of views of the parties, with the ability to authorize protests in banned sites, when they do not affect public order, free movement or other civil rights.

165. A fact of great concern is Resolution 8610, issued by the Ministry of Defence on January 27, 2015<sup>127</sup>, authorizing all components of the Armed Forces to participate in monitoring activities of public order, including the carrying and use firearms. This measure is clearly unconstitutional because it incorporates armed military components in the control of public order, in addition to lacking a preamble or being part of the development of any law.

#### ***Recommendations***

**166. Repeal Resolution 8610 and refrain from developing any other regulatory instrument to incorporate the participation of components of the Bolivarian National Armed Forces in controlling public order.**

**167. Dismiss all charges against protesters, including not only those initiated in February 2014, but those that are pending for more than five years ago, when it started applying the criminal justice to protesters.**

**168. Investigate with due diligence all cases of people killed in the context of demonstrations, ensuring the protection of witnesses and the punishment of those responsible.**

#### ***The Right to Freedom of Association***

169. With regard to the laws about which the Committee has asked questions, Forum for Life wants to confirm that, as of 2009, the State has been regressively legislating on the right to freedom of association, establishing unconstitutional and unjustifiable restrictions beyond those strictly necessary in a democratic society, with which it intimidates and harasses freely established organizations, criminalizes the use of funds from international cooperation, and tries to reduce the space for civil society as a legitimate right to exist and act in life public, therefore affecting other rights and participation in public affairs and the defense of human rights.

170. Also of concern is that parts of these laws, and their reproduction in others, have been conceived as an exclusionary and discriminatory instrument on access to goods and services of the State by citizens, setting as a condition for the enjoyment and exercise of rights -both civil and political, as well as economic, social and cultural- the organization of citizens in the so-called People's Power Organizations (OPP in Spanish), entities of public law. They must be constituted to comply with State objectives -even granting them public responsibilities. In their triple character of rights holders, intermediaries and the only

---

<sup>126</sup> Libertador Municipality. "Peace Decree". Digital versión in: [http://www.caracas.gob.ve/images/decreto/decreto\\_paz.pdf](http://www.caracas.gob.ve/images/decreto/decreto_paz.pdf)

<sup>127</sup> Resolution MPPD N. 008610, January 23, 2015, published in Official Gazette 40.589 on January 27, 2015, available in <http://historico.tsj.gob.ve/gaceta/enero/2712015/2712015-4190.pdf>

recognized form of organized society, OPP's have become a mechanism of *forced association*, for partisan purposes and loyalty to State authorities.

### ***Reform of the Organic Code on Criminal Procedure and citizen participation***

171. In its response, the State asserts that the OPP are those that can perform functions in the implementation of certain aspects of criminal proceedings concerning the enforcement of sentences, so Forum for Life reiterates its concern about the exclusion of civil society and particularly of organizations defending human rights, in substantive stages of criminal proceedings, such as the ability to represent victims in judicial proceedings against officials allegedly incur human rights violations. Since the function to present claims on behalf of victims now remains exclusively in the hands of the Ombudsman, no single case is yet known in which the institution has exercised such powers.

### ***Restictions on the financing of civil society organizations***

172. The Law on Political Parties, Public Meetings and Demonstrations, provides that political parties may not receive funding from other States. Despite the existence of this rule, in December 2010, the Defence Committee of the National Assembly considered necessary to extend this restriction to all organizations "*with political purposes and defending political rights*", approving the Law on the Defense of Political Sovereignty and National Self-Determination.

173. In its response, the States indicates that this law effectively prohibits organizations from receiving international resources to promote the participation of citizens in public spaces or the comptrollership of citizens on public authorities; and to publicize, inform and defend the exercise of political rights, in order to "*protect and defend the interest of the nation from any foreign interference*". It also includes the ban on financing the presence of foreigners who, according to the Executive, undermine the sovereignty, the independence of the nation, national institutions or legal authorities. The Act stipulates administrative sanctions, without ruling out criminal sanctions.

174. This Act not only gives the State the power to regulate discretionary and arbitrary measures that may restrict civil society's access to international funds, as well as to apply undue limitations to the rights involved in the restriction, but also to criminalize and outlaw organizations by the mere fact of the source of funding. In June 2012, the Standing Committee on Comptrollership of the National Assembly threatened Transparency Venezuela and the Legislative Monitor Alliance, composed of organizations, academics and journalists, with the application of provisions of that law, after they published a report ranking Parliamentary Performance, in which all Members of the National Assembly were assessed without distinction.

175. Furthermore, in 2012, the Organic Law against Organized Crime and the Financing of Terrorism was enacted. It has the nature of a criminal law and ambiguously defines the crimes of terrorism, financing of terrorism and organized crime. This law provides for the control, monitoring, fiscalization and surveillance, including the police and judicial investigation without notice and with undercover identity, of any "*unusual or suspicious*" financial operation<sup>128</sup>, even when there is transparent economic justification and comes from a legitimate source, as judged by the supervisory institution or the Executive. By placing NGO's under constant surveillance and having the possibility of imposing undue restrictions on

---

<sup>128</sup> As derivation of this Act, the Regulations of the Autonomous Service of Registries and Notaries (SAREN), under the Ministry of Interior and Justice, stipulates the obligation of the registrars to issue a regular monitoring report on organizations and enterprises registered, which is named Record of Suspicious Activity (RAS).

international financing, the approval of this law was a concern of the United Nations High Commissioner for Human Rights, Navi Pillay<sup>129</sup>.

176. In this regard, in 2013 the National Assembly installed the "*Special Committee to Investigate the Financing of Offices or Organizations with Political Goals and Groups Acting with the Purpose of Destabilizing and Generating Social Unrest and a Coup to attack the Bolivarian Republic of Venezuela's Constitutional Order*", chaired by the highest authority of the Standing Commission on Security and Defence, and composed of representatives of pro-government parties.

### ***Militarization of Society***

177. As already mentioned, the Law on Registration and Enlistment for the Integral Defense of the Nation was enacted, in which all legal persons (associations of any kind and private companies) must register mandatorily -failure to do so may be punished with heavy fines-, with the purposes of: a) providing information about their members and activities, b) require staff to register, and c) perform civil service, whose definition is not included in the Law, under the command of military authorities.

178. Furthermore, by Presidential Decree, the People's Protection System for Peace (SP3) was created in 2014, which, according to Article 1, is a mechanism of coordination among State branches, People's Power Organizations and military organs, for plans on Public Safety against any "*internal or external threat*"<sup>130</sup>. Together, its members have to defend the homeland against individuals or groups who seek to violate the peace of the country.

### ***Recommendations***

**179. The State should refrain from restricting the financing of civil society organizations, including funds from foreign or international origin, through administrative, legislative or judicial procedures, and repeal those that impose restrictions not complying strictly with the provision of the Covenant; and to ensure a safe and supportive environment for maintaining the space for civil society.**

**180. To refrain from imposing the military registry on civil society, and to adapt the Law on Military Enlistment to the provisions of the Covenant which protect the right to freedom of association and conscientious objection, both for organizations and their members.**

### ***Trade Union Freedoms and Elections***

181. Although the Decree with Rank, Value and Force of Organic Law on Labor, Male and Female Workers (DLOTTT) decreased the interference of the National Electoral Council (CNE) in trade union elections, serious doubts arise about the purpose of the notification that must be made to this body when union elections are organized (Article 405). As well, in Article 437, the DLOTTT incorporated the norm included in the regulations of the repealed Labor Law (LOT), which gave grounds for the national government to refuse collective agreement negotiations in the public sector. This is called the "*overdue elections*", according to which the Board of a trade union organization whose mandate has expired cannot represent workers before the employer, both in negotiations or in collective disputes. In regards to the right of organizations to draw up their constitutions and elect their representatives, trade unions are

---

<sup>129</sup> El Mundo: UN concerned about restrictions to NGO's in Venezuela. 25.04.12. At:

<http://www.elmundo.com.ve/noticias/actualidad/noticias/onu-preocupada-por-restricciones-a-ongs-en-venezue.aspx>

<sup>130</sup> Formed by so-called Missions -"Full Life" and "Safe Homeland"-, Movement for Peace and Life; Communes, communal councils and Socialist Missions Bases; the agencies in charge of public and private security and those involved in the integral defense of the country, including Armed Forces, the Militia, the intelligence and counterintelligence services of each component and the SEBIN.

forced to enshrine in their constitutions the "*alternation*" of the members of the Board (Articles 399 DLOTTT).

182. The DLOTTT creates the Workers Councils, as expressions People's Power Organizations, with distinct and different powers to those of the trade unions. The purpose of these councils is to participate in the social process of labor, as defined in Article 18, as a social fact that is protected and a fundamental process for achieving the goals of the State; the reason why it is the task of the workers to produce goods and services that meet people's needs and the fair distribution of wealth.

### ***Criminalization of the Right to Strike***

183. In recent years, various legal instruments have been adopted, aimed at restricting and criminalizing the exercise of the right to strike. In 2002, the National Assembly approved the reform of the Organic Law of National Security (LOSN) and in Titles IV and V added to it the classification of so-called "Security Zones" (art. 48). These are: "(...) 4. *The areas surrounding military and public facilities, basic, strategic industries and essential services* 5. *The air space over military installations, basic industries, strategic and essential services* 6. *Zones adjacent to the main means of air, land and water communications*".

184. Article 56 of the LOSN establishes sanctions against the violation of safety zones: "*Anyone who organizes, holds, or instigates to the staging of activities within the security zones, intended to disrupt or affect the organization and operation of military facilities, utilities, industries and basic industries, social or economic life of the country, shall be punished by imprisonment of five (5) to ten (10) years*". According to the organization Citizen Watch, 30% of the territory of the country would be a security zone.

185. Since 2005, an average of 150 workers and union leaders nationwide have been subjected to criminal proceedings, in the framework of the implementation of the LOSN, for exercising the right to strike. The most emblematic case is that of Ruben Gonzalez, an employee of the State-owned Orinoco Ferromining Company, who spent 17 months in prison accused, among other offenses, of violating Article 56 of the LOSN, after leading a strike in the company. The Committee on Trade Union Freedoms of the ILO has repeatedly ruled on this case and on others, where the norms approved by the State limit and criminalize the exercise of freedom of association.

186. Other legal instruments restricting and criminalizing the right to strike are:

a) The Organic Law against Organized Crime and Terrorism Financing (LODOFAT), adopted in May 2012. Given its ambiguous definition of "*terrorist act*" and of "*organized crime*", it even qualifies the closure of roads or disruption of activities in the industry as a potential "*terrorist activity*".

b) The reform of the Organic Law of the Bolivarian National Armed Forces (LOFANB) in 2009, in Article 50 creates the figure of the so-called "*combat corps*", militarized units in public and private enterprises aimed at ensuring production and preventing acts aimed at paralyzing industries.

c) The Law for the Defense of People's Access to Goods and Services, in Article 140, and the Decree with Rank, Value and Force of Special Law of Popular Defense against Hoarding, Speculation, Boycott and any other conduct affecting the consumption of food or products subject to price control, in Article 24, establish prison sentences of between 2 to 10 years for those who "*take actions to prevent, directly or indirectly, production, manufacture, import, storage, transportation, distribution and marketing*" of food or goods.

## *Recommendations*

**187. Refrain from adopting, and to proceed to repeal any administrative, legislative or judicial action that may involve interference in the internal affairs of trade unions or that may impede, restrict or create obstacles to the exercise of freedom of association and the right to strike, as recommended by the Committee in 2001<sup>131</sup>, including discriminatory practices or the use of domestic criminal law to criminalize or ban the exercise of these rights.**

### **VIII. Participation in public affairs and right to vote (article 25)**

---

188. Although this topic is not on the List of Issues of the Committee, the Forum for Life considers relevant to include some concerns already identified in its contribution to the list of issues, given their relevance in the current Venezuelan context.

#### ***Exclusion from public affairs, discrimination and forced association***

189. The Organic Laws of People's Power (LOPP) was enacted in 2010; in 2009, the Organic Law of the Federal Council of Government had already been enacted. In its regulations, the concepts of Communal State and Organized Society were established, defining the latter as the set of People's Power Organizations (OPP), including Communes and Communal Councils. These laws are based the draft constitutional reform rejected by the people in a referendum in 2007. However, the late President Hugo Chavez continued with his intention to impose the reform through legislation, supported by the Development Plans of the Nation, or Socialist Plans (the first from 2007 to 2013, and the second from 2013 to 2019).

190. While the State portrays the LOPP as a new and more effective model of popular participation, in them, democratic principles and the essential content of the right to participate established in over 100 articles of the Constitution are violated. Moreover, according to their provisions, about 70 organic laws have been modified, in which citizens are replaced by the OPP<sup>132</sup>. People's Power, as proposed in the constitutional reform, is based on a fundamental change of the Constitution. In the Constitutional norm, people's sovereignty -as the basis of democracy- is freely exercised through forms of direct or indirect participation. In the People's Power State, sovereignty is exercised by the OPP, through which citizens directly play roles of the State, as part of the State. Therefore, in the Communal State, as the unity between State Branches and Popular Power is called, there is no civil society.

191. Based on these laws, since 2010, most organizations of Venezuelan civil society (whether community-based, local or national) have been excluded from participation in public affairs and are strongly disqualified or attacked for not following the legal norms governing the People's Power.

192. The State, in turn, directs its efforts to the creation of OPP's in all areas of State action. Article 3 of the Organic Law of People's Power states that human rights are "*determined by the level of political consciousness and organization of the people*"<sup>133</sup>. Furthermore, although Article 4 prohibits discrimination

---

<sup>131</sup> CCPR/CO/71/VEN, Paragraph 27

<sup>132</sup> CIVILIS Human Rights: Comparative analysis between the 1999 Constitution, the proposed constitutional reform rejected by referendum in 2007, and the Laws of the Communal State enacted between 2008 and 2012. In: [http://www.civilisac.org/civilis/wp-content/uploads/comparacic3b3n-constitucic3b3n-reforma-y-leyes-\\_definitivo\\_.pdf](http://www.civilisac.org/civilis/wp-content/uploads/comparacic3b3n-constitucic3b3n-reforma-y-leyes-_definitivo_.pdf)

<sup>133</sup> Article 4. People's Power is designed to ensure the life and welfare of the people, (...) without discrimination on grounds of ethnic, religious background, social status, sex, sexual orientation, gender identity and expression, language, political opinion, nationality or origin, age, economic status, disability or any other circumstance (...), which has the effect of nullifying or impairing (...) human rights and constitutional guarantees. Article 29. The organs and entities of State branches, in their relations with the People's Power, will

–meaning that anyone could be part of the People’s Power–, since it is required to be in an OPP to enjoy rights, those who do not belong are not entitled to the same guarantees. Article 29 further states that the OPP’s will have preference before State Branches, representing an unjustified difference of treatment to others. As an example:

- a) In the reform of the Organic Law on the Protection of Children and Adolescents, organizations dedicated to childhood and adolescence can no longer elect representatives to Councils for the Protection of Children and Adolescents; OPP’s replaced them, and Shelter Homes and Comprehensive Protection Centers were also transferred to the OPP’s.
- b) In primary schools, public and private, the Ministry of Education issued Resolution 058, without proper consultation, to create the Educational Councils as part of the OPP’s, dissolving in practice 20,000 Societies of Parents and Representatives. Currently, these associations are prevented from getting registered and from updating internal documents. In high school education, Student Councils also were created.
- c) At the Ministry for Women and Gender Equality (MINMUJER), women must participate in the People’s Power through socialist, ideological and political training in socialism, feminism and gender<sup>134</sup>; forming committees of women, communal councils, communes and others.
- d) The State established the National System of Popular Culture (SNCP) composed by OPP’s which accept as their own the strategic lines of the socialist project, and are duly registered and qualified as such by the corresponding governing body.
- e) The State created the National Housing and Habitat System to pursue policies and plans through the active participation of the People’s Power. In 2011, the National Registry of the Great Housing Mission was established, to provide housing solutions for self-building of homes to families registered, which most organize as Communes.
- f) The former Ministry of the Environment created the National Registry of Organized Communities in the Environmental Sector, RENACSA, as expressions of socialism, as well as the Volunteer Network of Environmental Rangers, Redviva, formed by OPP’s.

193. Forum for Life wishes to reiterate to the Committee the concerns raised in its contributions to the List of Issues, relating to growing restrictions imposed on political participation of political and social organizations<sup>135</sup>, as well as various actions taken by the State to disregard popular will, either by creating parallel governors and legitimately elected mayors, or through the imposition of laws that deviate from the Constitution and which were rejected by the people in 2007, in the referendum to reform the Constitution.

194. Equally concerning are the disqualifications and criminalization of initiatives, recognized by the Constitution, laws and international treaties to which Venezuela is a party, such as electoral observation and requests for recount<sup>136</sup>.

195. Finally, Forum for Life wishes to remind the Committee that on at least two occasions<sup>137</sup> there have been massive situations of persecution and discrimination against persons exercising their legitimate right

---

give preference to organized communities, to the communes and systems of aggregation and articulation which arise among them, having regard to the requirements formulated by them in order to meet their needs and exercise their rights ... Article 3. The People’s Power is based on the principle of sovereignty and sense of progressiveness of rights under the Constitution of the Republic, the exercise and development is determined by the levels of political consciousness and organization of the people.

<sup>134</sup> MINMUJER: Report 2011. Pgs. 51 y 52. In: <http://www.derechos.org/ve/documentos-oficiales/memoria-y-cuenta-2011/>

<sup>135</sup> We refer to the Law on Defense of Political Sovereignty and National Self-determination, imposing restrictions and sanctions to organizations "*whose purpose in their constitution is to promote, publicize, inform and defend the full exercise of political rights of citizens*" (Article 3).

<sup>136</sup> Human Rights Committee. General Observation Nº 25. Article 25 – Participation in Public Affairs and the Right to Vote. Paragraph 20

to political participation, as happened after the collection signatures to trigger a recall referendum mechanism provided for in the Constitution (2004) and after the presidential elections of 2013.

### ***Recommendations***

**196. To conduct a review of all the laws of People's Power and to ensure their compatibility with the rights to freedom of association and participation in public affairs.**

**197. Accommodate, under conditions of transparency and freedom of movement, observation missions of national elections and to guarantee, when requested by citizens, appropriate and expedite mechanisms of vote recount.**

**198. Refrain from acts of persecution and harassment of citizens for the legitimate exercise of their right to participation in public affairs.**

## **IX. Minority rights (article 27)**

---

199. Contrary to what is stated in its response<sup>138</sup>, the Venezuelan State, through Decree 1606, published in the Official Gazette 40,599 of February 10, 2015, renewed the five concessions for coal mining in indigenous territories of Zulia state, to a total of 24,192 hectares, affecting the Yukpa, Wayuu and Bari communities in the area. In addition, in its program called "Homeland Plan 2013-2019", the Government expressed, in its national target 3.1, strengthening the role of Venezuela as a world energy power, specifying in item 3.1.15.2 "*Locate new mineral deposits in the Guyana Shield, Caribbean Mountain System, Andean Range and Sierra de Perija, with geological prospecting and the use of new technology with low environmental impact*".

200. In its reply to the Committee<sup>139</sup>, the Venezuelan State does not provide information on measures taken to ensure free, prior and informed consent of indigenous peoples for the granting of operating licenses or exploration in indigenous territories. Indigenous organizations and their allies have complained that although this right is enshrined in Article 120 of the Constitution, the Venezuelan State did not make any prior, free and informed consultation on the concessions granted since 1999 in energy, mineral and logging in indigenous territories. One example is the concession for the exploitation of gold awarded to the Chinese company Citic Group in August 2014, at the site "Las Cristinas" located in a territory of Bolívar state inhabited by the Warao, Kariña y Pemón peoples.

201. In its reply, the State claims to have advanced the process of demarcation of land<sup>140</sup>, without providing data on the amount of territories demarcated and turned over to indigenous communities. In late 2014, the Coordination of Indigenous Organizations of the Venezuelan Amazon (COIAM) reported that it had demarcated only 12.4% of habitats and indigenous lands in the country, despite the fact that the twelfth transitory provision of the Constitution established, in 1999, that within two years all indigenous habitat in Venezuela had to be demarcated.

---

<sup>137</sup> We refer to the events known as "The Tascon", to which reference is made in section 3 of this document, and acts of employment discrimination based on political motivations that occurred after the presidential elections of 2013, documented by the Centre for Human Rights of the Catholic University Andres Bello:  
in:[http://w2.ucab.edu.ve/tl\\_files/CDH/Lineastematicas/Casos%20de%20discriminacion%20laboral%20con%20motivaciones%20politicas.pdf](http://w2.ucab.edu.ve/tl_files/CDH/Lineastematicas/Casos%20de%20discriminacion%20laboral%20con%20motivaciones%20politicas.pdf)

<sup>138</sup> Answers by the Venezuelan State to the List of Issues, March 5, 2015. Paragraph 338

<sup>139</sup> Answers by the Venezuelan State to the List of Issues, March 5, 2015. Question 28

<sup>140</sup> Answers by the Venezuelan State to the List of Issues, March 5, 2015. Paragraph 335

### ***Recommendations***

**202. To provide real and concrete progress in the process of demarcation of the lands of all indigenous peoples and in granting land titles.**

**203. To implement effective measures to protect indigenous territories against illegal mining and severe sanctions against exploitative practices or economic control exercised by military officials or private groups.**

**204. To develop, without delay, the necessary legislative framework for the exercise of the right of indigenous peoples to free, prior and duly informed consultation regarding all projects carried out in their territories.**

**205. To investigate, beyond the forms, all the murders, assaults, violence or attacks against members of indigenous communities and to punish those responsible.**

### **X. Dissemination of information about the Covenant and its Optional Protocols (article 2)**

---

206. In its response, the State confirmed that there was no consultation with civil society organizations in preparing the report.<sup>141</sup>

207. Additionally, it is important to note that in the English version of the Venezuelan State's report prepared by the United Nations, the phrase "*consultation with the People's Power*" ("consulta con el Poder Popular") was translated erroneously as "*grassroots consultation*"<sup>142</sup>. "People's Power" is a figure of public law, established by law, which aims to develop new structures of governance at the local level through community councils, communes, communal cities and communal aggregation systems<sup>143</sup>, and has various functions of co-government exercised by delegation of the Executive and being subordinated to it. It does not correspond to the concept of civil society and consulting the People's Power can hardly be considered as part of the provisions of paragraph 20 of the guidelines established by the committee.<sup>144</sup>

### ***Recommendations***

**208. To promote and ensure the broadest public consultation of periodic reports on the implementation of the Covenant and of other conventions, without exclusion or discrimination, and desist from policies that fail to recognize civil society organizations in their legitimate exercise of autonomy and independence of the State.**

**209. To provide information to citizens and civil society on reports submitted to the organs of protection of human rights, fulfilling its obligation to ensure access to public information and establish mechanisms for continuous monitoring efforts to implement the recommendations issued by these bodies.**

---

<sup>141</sup> Answers by the Venezuelan State to the List of Issues, March 5, 2015. Paragraph 342. The State indicated that "the main contributors to providing information in regards to the Covenant were *the Ministry of Popular Power for Internal Affairs, Justice and Peace, the National Electoral Council, as well as other ministries and bodies*".

<sup>142</sup> Answers by the Venezuelan State to the List of Issues, March 5, 2015. Paragraph 10

<sup>143</sup> Organic Law on People's Power, Article 15

<sup>144</sup> Human Rights Committee: Guidelines for the specific document related to the International Covenant on Civil and Political Rights which must be presented by the States in accordance to Article 40 of the Covenant CCPR/C/2009/1