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September 25, 2017  
OSG/ 445-17

His Excellency  
Ambassador Jose Luiz Machado E Costa  
Permanent Representative of Brazil  
to the Organization of American States  
Chair of the Permanent Council  
Washington, D.C.

Excellency:

I have the pleasure of addressing your Excellency in order to submit my fourth report on the persisting crisis in Venezuela.

**DENUNCIATION OF A DICTATORIAL REGIME'S CONSOLIDATION IN  
VENEZUELA  
PRESENTED BY LUIS ALMAGRO  
SECRETARY GENERAL OF THE ORGANIZATION OF AMERICAN STATES**

**I. BACKGROUND**

The work of the Organization of American States (OAS) is to provide for and support solutions to achieve the most enduring development of democracy in the countries that are its members. Competence in this regard is the remit of the Organization's deliberative bodies and the OAS General Secretariat itself. This work is undertaken with a vision of responsibility and commitment to the instruments of the inter-American system. The dynamics of such work are varied as they essentially depend on the different conditions that prevail in the countries' democracy.

Indeed, democracy can be perfected in all countries in the Hemisphere and cooperation both among member states and between the General Secretariat and the member states is the primary tool proposed by the legal instruments of the inter-American system for strengthening the effective exercise of democracy in the region.

For OAS member states, peoples have a right to democracy and their governments have an obligation to promote and defend it (Article 1 of the Inter-American Democratic Charter -IADC<sup>1/</sup>).

That same Article 1 and Article 7 of the IADC establish why democracy is so important, stating that it is "essential for the social, political, and economic development of the peoples of the Americas" and "indispensable for the effective exercise of fundamental freedoms and human rights in their universality, indivisibility and interdependence, embodied in the respective constitutions of states and in inter-American and international human rights instruments."

Article 2 states that the **effective exercise** of representative democracy is the basis for the rule of law, while Article 3 establishes the *essential elements* of representative democracy, by declaring that the prerequisites for the rule of law are:

- a) Respect for human rights and fundamental freedoms.
- b) Access to and the exercise of power in accordance with the rule of law.
- c) Holding of periodic, free, and fair elections based on secret balloting and universal suffrage as an expression of the sovereignty of the people.
- d) Pluralistic system of political parties and organizations.
- e) Separation of powers and independence of the branches of government.

Article 4 refers again to the **exercise** of democracy and establishes its *essential components* as:

- Transparency in government activities,
- probity,
- responsible public administration on the part of governments,
- respect for social rights, and freedom of expression,
- the constitutional subordination of all state institutions to the legally constituted civilian authority and
- respect for the rule of law on the part of all institutions and sectors of society.

For its part, Article 6 declares that citizen participation is a *necessary condition* "for the full and effective **exercise** of democracy."

Note how democracy is proclaimed to be essential for the exercise of freedoms and human rights while at the same time the exercise of those freedoms and rights is regarded as essential for democracy: democracy as an essential component for access to rights and access to rights as an essential component for the effective exercise of democracy. This focus on the mutual feedback between democracy and human rights provides keys for analyzing the possibility of both vicious and virtuous circles in societies. Similar statements are made about democracy and development being interdependent and mutually reinforcing (Article 11 of the IADC).

At the same time, it is worth pointing out that a country's laws may often hamper the development or realization of those essential or fundamental components needed for the effective exercise of democracy.

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1. Organization of American States Inter-American Democratic Charter. Available at: [https://www.oas.org/charter/docs\\_es/resolucion1\\_es.htm](https://www.oas.org/charter/docs_es/resolucion1_es.htm) [English: [http://www.oas.org/charter/docs/resolution1\\_en\\_p4.htm](http://www.oas.org/charter/docs/resolution1_en_p4.htm)]

Let us therefore distinguish between legality and legitimacy. Certain collective actions in a country may be considered legal, but also as illegitimate from an exercise of democracy perspective.

This distinction draws on another distinction between "legitimacy of origin" and legitimacy derived from the actual exercise of democracy. The IADC refers only to the latter and considers components of "legitimacy of origin", such as access to power and its use in accordance with the rule of law as also being part and parcel of the effective exercise of democracy.

In short, the IADC refers to *essential elements*, *essential components* and a *necessary condition* for the effective exercise of democracy and, in so doing, it regards civil, political, economic, social, and cultural rights as interdependent within a comprehensive definition of democracy.

Dysfunctionality in implementing these elements demands that the OAS and the country affected work together. The Organization must be consistent in defending these principles as tolerance (whether by action or omission) of such dysfunction leads to systemic problems and creates systemic habits through the acceptance of bad practices.

This General Secretariat has been particularly committed to developing cooperation aimed at strengthening the effective exercise of democracy in member states as a way to overcome the dysfunctions encountered in all the countries in the region.

The legal instruments of the inter-America system, in general, and the IADC, in particular, are geared to both strengthening and preserving democratic institutions.

Thus Chapter IV of the IADC lays the foundations for steps to be taken when the political institutional process or the legitimate exercise of power is at risk in a member state, or when there is a possibility of an interruption of the democratic order or an alteration of the constitutional regime that seriously impairs the democratic order in a member state.

In such circumstances, the IADC empowers any member state or the Secretary General to convene a meeting of the Permanent Council to undertake a collective assessment of the situation and to determine what path to pursue.

However, in cases involving alteration of the constitutional regime, cooperation is no longer the option of choice proclaimed by the IADC.

Indeed, Article 19 of the IADC states:

*"Based on the principles of the Charter of the OAS and subject to its norms, and in accordance with the democracy clause contained in the Declaration of Quebec City, an unconstitutional interruption of the democratic order or an unconstitutional alteration of the constitutional regime that seriously impairs the democratic order in a member state, constitutes, while it persists, an insurmountable obstacle to its government's participation in sessions of the General Assembly, the Meeting of Consultation, the Councils of the Organization, the specialized conferences, the commissions, working groups, and other bodies of the Organization."*

**This General Secretariat realizes that, in the quest to restore the democratic and constitutional order in Venezuela, there are possibilities for dialogue between the member states and the country concerned as well as among the parties in conflict within that member state. Nevertheless, it is its obligation and responsibility, and within its sphere of competence, to draw attention to the systematic violations of the essential elements and components required for effective exercise of democracy proclaimed by the IADC.**

It is against that backdrop that the General Secretariat presents this fourth report on Venezuela to the Permanent Council:

Within the framework of the IADC and the definitions and conditions it establishes.

The IADC constitutes the specific framework for preventive and affirmative actions for upholding democracy in the Hemisphere. This instrument bears in mind “the progressive development of international law and the advisability of clarifying the provisions set forth in the OAS Charter and related basic instruments on the preservation and defense of democratic institutions, according to established practice.” The IADC is therefore interpreted in a manner entirely consonant with the provisions of the OAS Charter unanimously agreed upon by the member states. The mechanisms and procedures established in the IADC are fully consistent with Article 1 of the OAS Charter, which states that “The Organization of American States has no powers other than those expressly conferred upon it by this Charter, none of whose provisions authorizes it to intervene in matters that are within the internal jurisdiction of the Member States.”

The provisions of the IADC are consistent with the principles for the defense of democracy set forth in the OAS Charter and do not constitute an intervention in matters that pertain to the domestic jurisdiction of member states, given that it is the member states themselves that accord the IADC its validity and that the IADC is part of inter-American law, which is accepted by the states.

## II. RESPECT FOR HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS.

These rights and freedoms can solely exist in the framework of guarantees and predictable application of existing regulations, particularly a constitution and legislation that provides both for the formalities as well as for the effective guarantees.

In Venezuela’s case, the State’s repressive system does not recognize the validity of the procedures that ensure such guarantees taking account that

- individuals are detained for lengthy periods of time,
- release orders are ignored,
- prosecutions are conducted under military justice,
- and demonstrators are murdered.

In this process we have the most heartbreaking effect of all—the worsening of the country’s social crisis. This is a country that already has 2 million displaced persons, who have had to emigrate for social, economic, and political reasons.

645 political prisoners detained by the government; individuals tortured; 130 murdered in demonstrations; 16,000 injured; thousands of victims of violence.

54% of all children are malnourished.

This blow to society is the result of a systematic deterioration of the country's social variables, which reflect the deterioration in the population's standard of living.

The regime's break with the constitutional and democratic order has been established on a systematic strategy of human rights violations, using a method characteristic of authoritarian or dictatorial regimes.

The government has denied the Venezuelan people the right to life, physical integrity, and freedom of assembly and association, although these rights are enshrined in the constitution and international law. The regime has responded to nationwide protests through repression and terror.

Characteristic of a dictatorial system, protests have been criminalized and the government's response subsequent to the demonstration of thousands of civilians who flooded the streets to oppose the government has become excessively militarized. The *Observatorio Venezolano de Conflictividad Social* [Venezuelan Observatory on Social Conflict] (OVCS) estimates there was a total of 2,675 demonstrations from April 1 to June 19, 2017. According to the Office of the Public Prosecutor, as of July 31, a total of 121 individuals have died in demonstrations. Of these deaths, according to official accounts, 25% were due to actions on the part of state security forces, and in 40% of the cases involvement of armed civilians acting in coordination with security forces has been verified.<sup>2</sup> The government does not conceal its intention to decimate the population's human rights or to murder civilians. In fact, in April of this year the President announced he intended to arm a million civilian militias,<sup>3</sup> assuring there would be "a rifle for each militia member"<sup>4</sup> to respond to the demonstrations.

There are thousands of individuals who have been injured and arbitrarily detained by state security forces in the context of the protests.<sup>5</sup> A growing number of prisoners of conscience have also been identified—an extraordinary turn of events in the 21st century for the Americas' community of democracies. According to the *Foro Penal Venezolano*, as of July 25 there were 620 political prisoners. This figure constitutes an increase of more than 430%, as compared to the 117 political prisoners accounted for prior to the start of the demonstrations.<sup>6</sup> This is the highest figure recorded since the dictatorship of General Marcos Pérez Jiménez.

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2. "Declaraciones de la Fiscal General" ["Statements by the Attorney General"], PSCPTV, July 31, 2017, Available at: <https://www.pscptv.w/bE4cdDFwempNdnZOYIZkRWR8MW1yR21tRGxRanZHeYbliS4QxBJzbqE7za3TDEdkB1j3-bIOZM7Xsdc6gviN>
  3. *Maduro arma a las milicias y recibe el apoyo "incondicional" del Ejército* ["Maduro arms militias and receives the "unconditional" support of the Army"], El País, March 18, 2017, Available at: <http://www.elpais.com.uy/mundo/maduro-revelo-expansion-milicia-civiles.html>
  4. "Maduro prometió un "fusil para cada miliciano" [Maduro promised a "rifle for each militia member"], El Nuevo Herald, April 17, 2017, Available at: <http://www.elnuevoherald.com/noticias/mundo/america-latina/venezuela-es/article145054754.html>
  5. According to the Office of the Public Prosecutor, as of July 31 there were 1,958 individuals injured.
  6. "Certificamos lista actualizada de Foro Penal @PorHumanidad sobre presos políticos #Venezuela. Son 620. Aumento dramático en los últimos días" [We certify updated list of Foro Penal @PorHumanidad on political prisoners #Venezuela. There are 620. Dramatic increase in recent days"], Luis Almagro on Twitter, August 2, 2017, Available at: [https://twitter.com/Almagro\\_OEA2015/status/892801022443352064](https://twitter.com/Almagro_OEA2015/status/892801022443352064)

Similarly to military dictatorships of the past century, the government of Venezuela has systematically tortured individuals detained. As mentioned in my third report, the CASLA Institute has noted incidences of torture since July 2016 and has denounced them before the International Criminal Court (ICC) in The Hague. The 120 new cases submitted on June 15 refer to persons tortured by the Bolivarian National Guard (GNB), the Bolivarian National Intelligence Service (SEBIN), the Bolivarian National Police (PNB), and some regional or municipal police.

A government that represses its people, civilians, with such intensity is not much different from those involved in cases of crimes against humanity in other parts of the world.

The regime has also denied the right of due process. The government of Venezuela's abuse has been such that it began unconstitutionally resorting<sup>7</sup> to military courts to try civilians detained in protests. In keeping with the *Foro Penal Venezolano's* report of June 2017, 415 individuals detained have been subject to military justice.<sup>8</sup> This is an unacceptable state of affairs in a democracy and definitively wipes out any constitutional right or guarantee to due process, in addition to violating the IADC. Nevertheless, the government has deliberately undermined this basic right.

The Venezuelan regime continued its escalation by once again jailing Leopoldo López and Antonio Ledezma in the early morning of August 1. Both were detained by the Bolivarian Intelligence Service (SEBIN), who burst into their homes where they were under house arrest, frightening and intimidating their families.

On August 2, the Permanent Mission of the Bolivarian Republic to the Organization of American States sent to the Chair of the Permanent Council by note an informational sheet from the Ministry of the People's Power for Foreign Relation on the decision of the Supreme Court of Justice to revoke the measures issued for both leaders. According to the note, the decision was made "in keeping with the information received by official intelligence sources that reported on a plan by these citizens to flee." In addition to this, the note underscores that "the conditions imposed on López did not allow him to carry out any kind of political proselytism" and in Ledezma's case, a condition imposed on him was "the obligation to abstain from issuing statements to any media outlet."

In the early morning of August 4, SEBIN transferred Ledezma to his house once again under house arrest. Lilian Tintori [Leopoldo López's wife] stated that they had not received any news since her husband had been transferred to the Ramo Verde military prison early Tuesday morning.

These were selective actions targeting political opponents. They sought in this way to silence Ledezma and López and, through them, the Venezuelan people. They are political leaders of the opposition in a context of social, political, and economic crisis in which Venezuela is having a hard time finding its way back to democracy. The use of violence, repression, and intimidation is typical of a regime that has definitively failed to exercise authority legitimately, that is to say, by governing in a manner that respects the will of the people. The exercise of power by force and at gunpoint is the cowardly response of those who are afraid to face the will of the people expressed at the polls.

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7. Constitution of the Republic of Venezuela (1999), Article 261, Available at:

[http://www.cne.gov.ve/web/normativa\\_electoral/constitucion/indice.php](http://www.cne.gov.ve/web/normativa_electoral/constitucion/indice.php)

8. "Reporte sobre la represión en Venezuela durante manifestaciones, junio de 2017" ["Report on repression in Venezuela during protests, June 2017"], *Foro Penal Venezolano*, p. 10, July 10, 2017, Available at:

<https://foropenal.com/reportes>

The Government of Venezuela has destroyed democracy because it has refused to respect human and fundamental rights. Proof of that is provided day after day, at a lamentable cost in terms of the loss of peace, freedom, and dignity for the Venezuelan people and the list of abuses is painful for the democratic governments of the region: repression, torture, arbitrary arrests, political prisoners, civilians tried by military tribunals, censorship, intimidation, and harassment of the population, hunger, shortages of basic products and medicines, and rampant crime.

Dictatorships are of their very nature cruel, because of the high price they exact from countries in terms of destitution, the absence of rights, and the annihilation of human dignity, and that is what is happening in Venezuela.

### III. ACCESS TO AND THE EXERCISE OF POWER IN ACCORDANCE WITH THE RULE OF LAW

Nicolás Maduro's "legitimacy of origin" ended definitively when he placed his position at the disposal of the National Constituent Assembly (ANC) and it kept him on. That validation by an illegitimate and fraudulent body renders his position definitively unconstitutional.

Access to and the exercise of power in accordance with the rule of law are seriously impaired when power loses its legitimacy of origin and/or its legitimacy of exercise.

The loss of the regime's legitimacy of origin arises from the tortuous process of annulling the recall referendum. The annulment of the people's constitutional right to recall their leader is tantamount to annulling an election because it is, in fact, just that. Moreover, the [regime's] exercise of power has ignored the basic principles of the rule of law. The violation of the legal system and institutions as they were set forth by the constitution has been ongoing; the regime's authorities have disregarded essential legal tenets and acted unconstitutionally and unlawfully.

The rule of law has succumbed to the dictatorial bent of the regime, which has imposed its will by trampling the constitution and the concept that sovereignty lies with the people. The contempt for the legislative branch, collusion of the judicial and electoral branches of government, and disregard for the guarantees of citizens whose individual rights are systematically violated are prime examples of this political logic.

The government has systematically violated the Bolivarian Constitution itself. Examples of the obliteration of the rule of law in recent months abound. Of note is the fact that the President has governed by decree, and following a process that is inconsistent with the law. The Constitutional Chamber of the Supreme Court of Justice ruled in favor of the executive branch regarding the five presidential decrees of states of emergency and the four extensions thereof recorded to date. This, despite the fact that the decrees were rejected by the National Assembly, and exceeded the time limits established by the Constitution.

Ruling 156 issued by the constitutional Chamber on March 29 is a clear example of the regime's indifference for the rule of law. In said ruling, the Constitutional Chamber usurped the functions of the National Assembly and even ruled that it would arrogate to itself the powers of the Assembly. Although this measure was overturned, the ruling revealed how the judicial branch operates based on partisan and vested interests, not on the rule of law.

Branches of government have once and for all been divested of their autonomy and independence; institutions have been perverted, forcing them to serve the interests of the regime in clear and flagrant violation of the constitution. Any official who has attempted to follow the law has been dismissed from his or her position and prosecuted for treason.

The basic principles of the rule of law have been eviscerated of their content and blatantly manipulated to the point of being completely wiped out. The original constituent power, sovereignty, justice, freedom, and homeland, the most precious public goods of any nation, are transformed into senseless delusions when uttered in propagandistic and mendacious speeches by illegitimate dictators.

#### IV. HOLDING OF PERIODIC, FREE, AND FAIR ELECTIONS BASED ON SECRET BALLOTING AND UNIVERSAL SUFFRAGE AS AN EXPRESSION OF THE SOVEREIGNTY OF THE PEOPLE

What we have witnessed in Venezuela is not merely the elimination of the minimal presumption of democracy, but, rather, the alteration of the fundamental principle that sovereignty lies with the people and is expressed through universal suffrage. The National Constituent Assembly process invents a new manner of consultation that does not respect constitutional provisions themselves, in particular Articles 62 and 63 that provide for universal suffrage.

When regional and sectoral constituency groups are invented to favor indirect voting over universal suffrage, this is an attack on the very foundation of democracy.

The election of the constituent delegates for the NCA was not free. It was a flawed process from the outset, beset by violence, in which the basic freedoms of citizens were violated.

##### — *Violence*

According to the Office of the Public Prosecutor, 10 people died on July 30 last in the states of Lara, Mérida, Sucre, Táchira, and Zulia. In keeping with the daily newspaper El Nacional, there were 15 dead: 6 in Táchira; 5 in Mérida; 2 in Lara; 1 in Sucre; and 1 in Zulia.<sup>9</sup> Indeed, other sources indicate that a total of 16 people died, in addition to reporting numerous people injured. These figures can be compared, for example, with the 2014 elections in Iraq where it was reported that at least 14 died in attacks on polling stations.

If we take into account that violence in electoral processes are not solely measured by the incidents that occur on Election Day, the figures are even more alarming. Experts on the subject define an electoral period as “extremely violent” when there are repeated and generalized physical attacks that lead to the deaths of more than 100 people in a specific period (six months prior to an election and up to three months after).<sup>10</sup> In Venezuela, 121 deaths have been recorded since April 1 of this year,<sup>11</sup> which puts it in the same category as Zimbabwe (2008), Kenya (2007), and Togo (2005).

9 . “Aumentó a 15 la cifra de muertos en protestas en las últimas 24 horas” [“The number of dead rises to 15 in the last 24 hours”], El Nacional, July 30, 2017, Available at:

[http://www.el-nacional.com/noticias/oposicion/aumento-cifra-muertos-protestas-las-ultimas-horas\\_196092](http://www.el-nacional.com/noticias/oposicion/aumento-cifra-muertos-protestas-las-ultimas-horas_196092)

10 . Claes, Jonas. Electing Peace: Violence Prevention and Impact at the Polls (2016)



The number of dead is not the only indicator on the levels of violence that surround an electoral process. We must bear in mind harassment and political intimidation, neutralization of the opposition through arrest, torture, or murder; violence to hinder the presence of activists; protests related to the electoral process or result that lead to repression and violence, among others.<sup>12</sup> The Office of the Public Prosecutor reported 1,958 injured between April and July.

— Coercing the Vote

To execute its plan to elect members of the Constituent Assembly, the government intimidated the population using the social safety network. This is a questionable practice in any electoral process but highly reprehensible when it happens in circumstances in which people are going hungry. On Election Day the polling stations used social program beneficiaries' ID cards (*Carnet de la Patria*<sup>13</sup>) to identify voters, as well as monitor their participation.

President Maduro himself made an appeal to voters to go to vote with their national identity cards as well as with their *Carnet de la Patria*, announcing that there would be a count to know how many people with a *Carnet de la Patria* had gone to the polls. "And you know, do not forget it tomorrow. Your national identity card and *Carnet de la Patria*, because tomorrow we are going to count how many people with the *Carnet de la Patria* went to the polls. Understand?"<sup>14</sup>

Evidence of the fact that this plan was implemented is that the Office of the Attorney General of the Republic has received approximately 100 complaints from individuals threatened [and told] to participate in the elections of the National Constituent Assembly, for which a special office has been created to address them.<sup>15</sup> Citizens allege having been threatened with being excluded from social programs for education, health, pensions, and housing, and that they would not receive their bag of food from the *Comité Local de Abastecimiento* [Local Supply Committee] (CLAP) if they did not go to cast their vote.<sup>16</sup> Government officials have likewise reported intimidation through harassing phone calls, threats of dismissal, pressure, among other reprehensible actions.

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11. "Fiscal general desconoce el origen, proceso y resultado de la Constituyente" ["The Attorney General repudiates the origin, process, and outcome of the Constituent [Assembly]"], Globovision, July 31, Available at: <http://globovision.com/article/fiscal-general-desconocio-el-origen-proceso-y-resultado-de-la-constituyente>
  12. Bekoe, Dorina. Voting in fear (2012)
  13. President Maduro launched an initiative called "Carnet de la Patria," which is an electronic National Identity Card with a QR code that seeks to regulate citizens' purchases of consumer staples and foodstuffs acquired at the Local Supply Committees (CLAP).
  14. "Maduro pide saber cuantas personas con carnet de la patria van a votar y dice: "entendido" ["Maduro wants to know how many people with a 'carnet de la patria' are going to vote and says: "understand"], Noticiero digital, July 29, 2017, Available at: <http://www.noticierodigital.com/2017/07/maduro-pide-saber-cuantas-personas-con-carnet-de-la-patria-van-a-votar-y-agrega-entendido/>
  15. "La Fiscalía venezolana recibió un centenar de denuncias de personas amenazadas: los obligan a participar en la Constituyente" ["The Venezuelan Office of the Prosecutor received a hundred complaints by individuals threatened: they are being forced to participate in the constituent [assembly election]"], Infobae, July 26, 2017, Available at: <http://www.infobae.com/america/venezuela/2017/07/26/la-fiscalia-venezolana-recibio-un-centenar-de-denuncias-de-personas-amenazadas-los-obligan-a-participar-de-la-constituyente/>
  16. "Así intimidan y obligan a empleados públicos para que acudan a las elecciones de la ANC" ["This is how they intimidate and force government employees to participate in the National Constituent Assembly's election"], El Cooperante, July 29, 2017, Available at: <http://elcooperante.com/asi-intimidan-y-obligan-a-empleados-publicos-para-que-acudan-a-las-elecciones-de-la-anc/>

— *Electoral Observation*

Once again, the CNE decided not to permit the presence of independent international observers. It only permitted observation by the Council of Latin American Electoral Experts (CEELA). This group did not sign the Declaration of Principles for International Electoral Observation and has been questioned for legitimizing fraudulent elections. Its report whitewashes the work of the CNE.<sup>17</sup>

At the national level, courageous men and women citizens observed where possible, with or without official accreditation, even risking their lives in view of the permanent threat from public forces and arbitrary illegal restrictions.

One example of this was the denunciations made by what is known as the Venezuelan Electoral Observatory. This civic organization analyzed the electoral process and questioned its legality, reporting on the elimination of audits and usual election activities, noting that it was impossible for parties to present candidates, and observing key technical points such as the electronic ballot on which candidates were not identified with full name and photograph.

The national electoral observation was an independent and objective mechanism of civic control of the electoral process. Its actions upheld democratic values and gave transparency and legitimacy to the action of the electoral authority. I therefore regret that the CNE has not encouraged the formal, plural, and inclusive participation of a greater number of associations and organizations of this type.

Civic participation was not limited to organized structures. Thousands of courageous Venezuelan men and women conducted observed and monitored the process insofar as they were able. They denounced abuses on the social media even though they decided not to vote; their voices were heard on the means at their disposal,

For these elections, 173 Assembly members were chosen from eight sectors of society selected by President Maduro. The criteria used to determine the number of representatives per sector was the following: one Assembly member for every 83,000 electors on the sector electoral register.<sup>18</sup> The arbitrariness with which these categories were determined was another dark spot on this electoral process.

There were no choices in these elections. Given the way they were called, the opposition decided not to legitimize the process with its participation, denouncing it as fraudulent, unconstitutional, and indicating that the representation system was designed to favor the regime. As a result, nearly all the candidates were members of the governing party or similar ones. A clear example of this is that according to the CNE the stalwarts of the official line were elected to the Assembly, among them the number two member of the ruling United Socialist Party of Venezuela (PSUV), Diosdado Cabello; former Foreign Minister Rodríguez; and the first lady, Cilia Flores.

— *Campaign and use of Government resources*

The campaign for these elections lasted 19 days (July 9 to 27). During this period the regime established campaign operations elements such as the 4x4 Command and the Zamora 200 Command. The 4x4

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17 . “Report of the Electoral Accompaniment Mission in the Bolivarian Republic of Venezuela”, Alai, August 2, 2017, <http://www.alainet.org/fr/node/187253>

18 . Decree N° 2.878, Official Gazette of the Bolivarian Republic of Venezuela, May 23, 2017, Available at: <https://www.scribd.com/document/349417758/Gaceta-Oficial-N-41-156-Article-2>.

Command consisted of providing motorcycles, taxis, and buses to drivers in order to guarantee the turnout of Venezuelans who had to go to vote.<sup>19</sup>

The Zamora 200 National Constituent Command operated through five fronts, including clear government campaign initiatives such as: the Front for Organization of Electoral Political Structure and Machinery; and the Front of Labor, Strategy, and Propaganda. These groups were organized and led by government officials.

These activities clearly reflect the use of government resources in a campaign marked with rallies and propaganda on the government television channel. Here again there was a flagrant lack of electoral justice in Venezuela. The CNE never questioned the irregularities and unconstitutionality of the voting districts, the lack of representativeness of the candidates, the violation of the principle of popular participation and universal suffrage, the use of public resources for the campaign for the ruling party, and the treacherous and blatant buying of votes. On the contrary, it acted in total complicity with the dictatorship, muddying the process, hiding information, adulterating the voting mechanisms, and manipulating the results.

— *Changes in the election rules*

On Friday, July 28, just two days before the election, the CNE announced that all voters could vote at any polling place where they were registered. This was a completely unusual and even irregular measure. Moreover, on Thursday the 27<sup>th</sup> and Saturday the 29<sup>th</sup>, the electoral authority made announcements about the contingency centers that would be used to receive voters in areas that the CNE identified as pockets of violence.

Both situations had practical effects on who could vote and where. This has a technical counterpart related to the use of the election register, which is vital on election day. On this subject, one of the rectors of the CNE, Luis Emilio Rondón, stated that the voter notebooks (voter lists) would include data of other voters registered at that polling place. According to that authority, “these changes were made using as a pretext the violence in the country’s streets (...) However, on other occasions, faced with similar events and even of lesser magnitude, they threatened the suspension of the election.”<sup>20</sup>

The CNE rector Luis Emilio Rondón also stated that in these elections there were fewer audits. In contrast to the last election in 2015, when there were 18, on this occasion they planned only 8. According to him, “This was not only a backward step, but the Venezuelan electoral system was severely damaged. On this matter it is essential to immediately release the results of the audit of duplicate fingerprints and No Match, i.e., determine if an individual voted more than once.”<sup>21</sup> The rector confirmed that indelible ink was not used to ensure that voters did not vote more than once.

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19 . “*En el marco del operativo 4x4 Nicolás Maduro entrega carros y motos antes de la ANC [In the context of operation 4x4, Nicolás Maduro delivers cars and motorcycles before the ANC]*,” *Contraste Newspaper*, July 25, 2017, Available at: <http://www.diariocontraste.com/2017/07/en-el-marco-del-operativo-4x4-nicolas-maduro-entrega-carros-y-motos-antes-de-la-anc-25jul/#>

20 . *Statements of the Rector of the CNE Luis Emilio Rondón*, National Electoral Council, August 1, 2017, Available at: [https://es.scribd.com/document/355289238/Declaracion-Rector-Rondon-Sobre-Resultados-Electorales-30j#from\\_embed](https://es.scribd.com/document/355289238/Declaracion-Rector-Rondon-Sobre-Resultados-Electorales-30j#from_embed)

21 . *Ibid.*

— *Results*

The president of the National Electoral Council, Tibisay Lucena, announced after midnight of Sunday July 30 that the turnout was 41.3%, equivalent to 8,089,320 of Venezuela's registered voters. After this announcement, she read the names of the candidates who were elected in the capital cities without giving details of the number of votes received or showing the tally sheets of the voting in the precincts. Information available on the web site was also limited.

On Monday, August 1, the electoral authority issued a press release announcing that the CNE had delivered to the President a copy of the territorial results of the election of the ANC.<sup>22</sup> In spite of these announcements, as of the date of preparation of this document the CNE has not published a bulletin with the number of votes received by each candidate, null and blank ballots, and precinct totals examined and missing, as provided in the electoral rules.

It is common international practice for electoral authorities to publish detailed information on their web site on the votes received by each candidate. In 2015 the CNE itself published on its web site the results of the National Assembly election.<sup>23</sup>

That same day, CNE Rector Luis Emilio Rondón gave a press conference at which he said that “The CNE must publish not only the final result of participation and the names of the winners (...) It must also present to the country the certified results of all votes in each precinct and the total number of votes obtained by each candidate, and the awarding of each of them with victory. In view of all this I, as a rector of the CNE, cannot trust any figure that comes out of an election that did not have all the controls that over the years have been included to generate confidence in the elections held in Venezuela. As I said, this all is in addition to the unconstitutionality of the election process, because the people, only the people, should call for the election. What happened this Sunday is very alarming; it violates our electoral controls and sets a precedent that should not be repeated in any other Venezuelan election.”<sup>24</sup>

On August 2, the Smartmatic company, which has been in charge of the computer platform for voting in Venezuelan elections since 2004, issued a press release in which it said that “in the recent elections for the National Constituent Assembly there was manipulation of the participation data.”<sup>25</sup> According to the company, in the elections of last Sunday the political parties were not present in the vote-counting room when the report was issued.

The press release also says that “in all elections held in Venezuela, the certified results of each precinct are in the hands of witnesses from the political parties. When the electoral entity publishes the precinct-by-precinct results on its web site, it is very easy to compare the results of the written certifications with them. Furthermore, the totals of all these records must agree with the results published by the National

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22 . *CNE delivered to the President a copy of the territorial results of the election of ANC*, Consejo Nacional Electoral, August 1, 2017, Available at:

[http://www.cne.gov.ve/web/sala\\_prensa/noticia\\_detallada.php?id=3552](http://www.cne.gov.ve/web/sala_prensa/noticia_detallada.php?id=3552)

23 . *Assembly Results*, National Electoral Council, Available at:

[http://www.cne.gob.ve/resultado\\_asamblea2015/r/0/reg\\_000000.html?](http://www.cne.gob.ve/resultado_asamblea2015/r/0/reg_000000.html?)

24 . *Statements of the CNE Rector Luis Emilio Rondón*, National Electoral Council, August 1, 2017, Available at: [https://es.scribd.com/document/355289238/Declaracion-Rector-Rondon-Sobre-Resultados-Electorales-30j#from\\_embed](https://es.scribd.com/document/355289238/Declaracion-Rector-Rondon-Sobre-Resultados-Electorales-30j#from_embed)

25 . *Statement of Smartmatic on the recent election of the Constituent Assembly in Venezuela*. Smartmatic, Available at: <https://www.smartmatic.com/es/noticias/articulo/declaracion-de-smartmatic-sobre-la-reciente-eleccion-de-la-asamblea-constituyente-en-venezuela>

Electoral Council. This mechanism precludes any manipulation in the transmission, addition, and publication of the results. This has been done in all Venezuelan elections from 2004 to 2015, but was not done in the election of last Sunday.”<sup>26</sup>

On August 2 the National Assembly of Venezuela decided to request an audit of the Smartmatic company, after the latter denounced manipulation in the results of the elections for the National Constituent Assembly (ANC). It also appointed a committee to investigate “the fraud of the constituent assembly” and announced that it would ask the Prosecutor General’s Office to start an investigation to determine the responsibility of the president of the National Electoral Council (CNE), Tibisay Lucena, and all implicated authorities.<sup>27</sup>

The same day the President of the National Electoral Council, Tibisay Lucena, rejected the statements of Smartmatic and termed them part of “a context of permanent aggression launched two weeks ago against Venezuela’s electoral branch.”<sup>28</sup>

The Prosecutor General of the Republic, Luisa Ortega Díaz, said in an interview with international media that she had appointed two prosecutors from the Public Prosecutor’s Office (MP) to investigate the accusations made by the Smartmatic company on manipulation of the results of the National Constituent Assembly elections.<sup>29</sup> In that interview, the Prosecutor General said that the accusations “are one more element in the whole fraudulent, illegal, and unconstitutional process of the presidential constituent assembly, which was rejected by one sector of the country and herself, who from the outset rejected the ANC.”

In an election lacking the minimum elements for certainty, with discrepancies on the rate of participation and in which manipulation has been alleged by the company in charge of totaling the results, it is impossible to determine the validity of the data disseminated. In any other country of the Hemisphere the number of irregularities seen in this election would be sufficient to nullify it.

On August 3, the Public Prosecutor’s Office reported that National Prosecutor 4 and Prosecutor 77 of the Metropolitan area of Caracas requested a precautionary measure for immediate suspension of the installation of the National Constituent Assembly. According to the Ministry, the prosecutors’ petition is based on the alleged commission of crimes during the July 30 election.<sup>30</sup>

With no certainty as to election calendars, and manifest electoral fraud, suffrage in Venezuela does not currently exist today to enable a functioning democracy of any scale to be rebuilt.

No debate about an electoral timetable can begin without first discussing due electoral guarantees for citizens and without the release and rehabilitation of all political prisoners.

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26 . *Ibid.*

27 *NA designated a commission to investigate “fraud in the Constituent Assembly.”* National Assembly, Available at: <http://www.asambleanacional.gob.ve/noticias/an-designo-una-comision-para-investigar-el-fraude-de-la-constituyente>

28 *CNE rejects declarations against the electoral system, National Electoral Council, August 2, 2017,* Available at: [http://www.cne.gov.ve/web/sala\\_prensa/noticia\\_detallada.php?id=3554](http://www.cne.gov.ve/web/sala_prensa/noticia_detallada.php?id=3554)

29 *Statements of the Prosecutor General of the Republic, Luisa Ortega Díaz.* CNN, Video available at: <https://t.co/rh7kw1z0Sf>

30 “*Prosecutors of the Public Prosecutor’s Office seek to annul installation of the Constituent Assembly,*” Globovisión, August 3, 2017, Available at: <http://globovision.com/article/mp-solicito-ante-la-anulacion-de-la-instalacion-de-la-constituyente>

There will be no free and fair elections while there are still political prisoners deprived of their positions and rights because of their conscientious objection.

## V. PLURALISTIC SYSTEM OF POLITICAL PARTIES AND ORGANIZATIONS

This system was totally violated by the ANC election process.

The election organized to select the constituent assembly was rife with serious issues of partisan representation, directly benefiting the ruling party's majority under a system that put an end to any remnants of representativity and proportionality.

The rules applied in Venezuela meant that on Sunday, July 30, the principles of equality and universality of the vote were violated. These are basic principles of democracy established in international treaties and the country's own Constitution.

In the case of delegates elected on a territorial basis, each municipality had one representative, while the state capitals had two and Caracas seven. This system favored states with more municipalities even though they had less population. The political weight of each vote was very different depending on the elector's place of residence.

An analysis of the design of the electoral districts shows that 64% of the population (17,488,606 inhabitants)<sup>31</sup> living in the 23 capital cities and the Federal District, is represented in the Assembly by 9.72% (53) of its members, while the remaining 36% of the population has 90.28% of the Assembly. This strategy is known in English as *malapportionment*, a term used to indicate cases in which there is a distortion between representation and population.

This was observed by the European Commission for Democracy through Law, also known as the Venice Commission, a technical institution whose opinion I requested on the legality of President Maduro's Decree calling the Constituent Assembly elections. According to this group of experts, the rules set for the recent elections mean that "the relative political weight of each vote will be very different depending on the residence of the voters"<sup>32</sup> and the system "benefits rural areas with a low number of voters and harms the country's most populated districts."<sup>33</sup>

Also, it is important to stress that only citizens who belonged to one of the eight selected sectors could vote for a sector representative. The rest of the citizens did not have this option.

According to the report of the Venice Commission, "The electoral rules based on sectoral representation set out in Decree 2.878 violate the egalitarian principle of 'one citizen, one vote' as established in articles 1, 2, 21, and 63 of the Constitution of Venezuela, as well as the democratic principle of equal voting rights."<sup>34</sup> It adds that this system of "corporative representation" is a method that has been used in the past by dictatorial regimes such as that of Franco in Spain, Salazar in Portugal, and Mussolini in Italy, so its "democratic" character is highly questionable.

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31 . 2011 Census. National Statistical Institute (latest published official information)

32 . "Venezuela: Preliminary Opinion on the legal issues raised by decree No. 2878 of May 23 2017 of the President of the Republic on calling elections to a National Constituent Assembly," Council of Europe, European Commission for Democracy through Law. (2017). p. 13. Available at: [www.venice.coe.int](http://www.venice.coe.int)

33 . *Ibid.*

34 . *Ibid.* p. 15

With respect to the specification of those citizens who could vote for a sector representative, Article 5 of Decree N° 2.878 provided that the CNE should request sector membership registers from duly established official institutions, unions, and associations. The information on the workers' sector had to be requested on the basis of their type of work. Also, information from the student sector had to be requested based on public university education, private university education, and educational missions.

After the CNE had the proper registers, it could “group them by areas of similar condition and distribute them according to the established population base.”<sup>35</sup> The legislation provided that no voter could be listed in more than one sector register. However, these voter lists did not have basic guarantees of technical verification and the necessary audits to ensure that the information on the electoral register was correct.

Moreover, the limited transparency and discretionary use of the list did not inspire confidence in the way these registers were compiled and the veracity of the information that they contained. They were used by the government as instruments of absolute control of the candidates and voters.

The Venice Commission also commented on this aspect, saying that “the data provided by each sector could be easily manipulated”<sup>36</sup> and that the need for persons to have registered at “official institutions, guilds, and legally recognized associations”<sup>37</sup> to be eligible to vote “clearly infringes the fundamental right of freedom of association.”<sup>38</sup>

The OAS General Secretariat repudiated this election and its results. From the outset, it condemned its illegitimacy of origin, its unconstitutional nature, and the forced and selective manipulation of parish constituencies to bring about results favorable to perpetuating the regime. It likewise repudiated the legitimacy of the Venezuelan electoral tribunal, which far from respecting and promoting the expression of popular will, continues to furnish ample evidence of its usefulness to the dictatorship.

## VI. SEPARATION OF POWERS AND INDEPENDENCE OF THE BRANCHES OF GOVERNMENT

The principle of the separation of powers and independence of branches of government is a basic requirement for the functioning of a democratic system. In theory, in a democracy, if a branch of government abuses its functions, the other branches exist and have the duty to control it, stop it, question it, and demand it be accountable. Tyranny, thus, is the opposite of this concept of checks and balances.

Separation of powers and independence of the branches of government is non-existent in Venezuela. Once the ruling party was no longer in the majority, it became apparent that it could not function in keeping with democratic values and principles, as a system of checks and balances in a democracy creates dysfunctions that authoritarian power dynamics cannot tolerate. The judicial branch's collusion became the regime's main tool.

35 . Decree N° 2.878, Official Gazette of the Bolivarian Republic of Venezuela, May 23, 2017, Available at: <https://www.scribd.com/document/349417758/Gaceta-Oficial-N-41-156>. [Artículo 5](#)

36 . *Venezuela: Preliminary Opinion on the legal issues raised by decree No. 2878 of May 23 2017 of the President of the Republic on calling elections to a National Constituent Assembly*, Council of Europe, European Commission for Democracy through Law. (2017). p. 16. Available at: [www.venice.coe.int](http://www.venice.coe.int)

37 . Decree N° 2.878, Official Gazette of the Bolivarian Republic of Venezuela, May 23, 2017, Available at: <https://www.scribd.com/document/349417758/Gaceta-Oficial-N-41-156>. [Artículo 5](#)

38 . *Venezuela: Preliminary Opinion on the legal issues raised by decree No. 2878 of May 23 2017 of the President of the Republic on calling elections to a National Constituent Assembly*, Council of Europe, European Commission for Democracy through Law. (2017). P.16. Available at: [www.venice.coe.int](http://www.venice.coe.int)

The Supreme Court of Justice began by overturning each decision and law approved by the National Assembly, as was noted in our report of May 30, 2017. Subsequently, it declared the National Assembly to be in contempt, a legal concept that is obviously inadmissible with regard to another branch of government. The Court then handed down judgments divesting the National Assembly of its power. To top off these measures, ruling party henchmen attacked the National Assembly, physically assaulting representatives and officials.

In Venezuela, there is collusion between the branches of government which represent the interests of the administration. Although the National Assembly and the Attorney General have attempted to salvage the principle of mutual oversight, the regime has wholly abolished it. There are a whole host of substantiated examples where the executive has co-opted the judicial branch and electoral branch in order to act against the opposition-controlled National Assembly and against other dissident officials, such as in the case of the Office of the Attorney General of the Republic.

The voiding of the checks and balances system began to be explicit in December 2015, when the opposition won the majority in the National Assembly. As from this date, the regime's deliberate intention to disable the National Assembly and weaken the opposition could be observed.

Before the new National Assembly began its term of office on January 5, 2016, the ruling party majority, in a session approved by the Supreme Court of Justice, swore in 13 out of 32 justices and 21 alternate justices of the Court. Furthermore, the Court suspended the proclamation of [national assembly] representatives from the Amazon region, thus preventing the opposition from holding the qualified majority. After the parliament swore in those representatives, the judicial branch ruled the National Assembly to be in contempt.

The disappearance of the separation of powers has deteriorated ever since. One Supreme Court ruling after another has favored the regime. The powers and responsibilities of the National Assembly have been curtailed; decrees of emergency rule and state of economic emergency and their respective extensions have been upheld as constitutional despite the National Assembly's express rejection thereof; laws approved by the National Assembly, such as the Law on Amnesty and National Reconciliation, have been rescinded, among other numerous examples documented in prior reports.

Throughout 2016 and so far this year, three symbolic cases of the complete absence of separation of powers and independence of branches of government stand out: the judicial decisions and irregularities that resulted in the suspension of the process to request a recall referendum; the harassment and motion to prosecute the Attorney General once she had publicly criticized the regime, and the most symbolic and shameless ruling—judgment 156 of the Supreme Court—that left a trail of written evidence of the government's self-initiated coup.

The presidential recall referendum in Venezuela, initiated on March 9, 2016 and suspended on October 20 by the National Electoral Council, was an initiative undermined by the ruling party through coordinated action on the part of the judicial and electoral branches. These branches of government did not honor their constitutional duty to uphold the law and respect the principle of separation of powers.

In the 225 days the initiative survived, irregularities were identified regarding the handling of the deadlines provided for by the law, the creation of new bureaucratic processes not included in the law—and in some cases that contradicted established law, and inadequate electoral infrastructure. Above all, there was the unusual coincidence of judgments almost simultaneously issued by first-instance court in



four states<sup>39</sup> where the governors are from the ruling party, which led to the referendum's suspension a day after these judgments were handed down. This confirms the bias of the judicial and electoral branches.

With respect to the Office of the Public Prosecutor, which is part of the citizen branch of government, of note is the government response to Attorney General Luisa Ortega Díaz's criticism. Ms. Ortega, who headed up the Office of the Public Prosecutor, was appointed with the support of the then President Hugo Chávez. The Chief Prosecutor publically criticized the government, expressing concern about the deaths of civilians during demonstrations, the absence of due process, the imposition of military trials on civilians, and corruption of government officials.

The Attorney General criticized the "savage repression"<sup>40</sup> and condemned the electoral branch for violating constitutional sovereignty regarding the process of convening the National Constituent Assembly. On June 8 Ortega submitted a motion to invalidate the constituent assembly initiative spearheaded by the President. What has been the regime's response to this growing criticism? Prosecution. In keeping with vested interests and not the law, the Supreme Court of Justice invalidated the appointment of the Deputy Attorney General and swore in a follower of the regime. As for Ortega Díaz, the Supreme Court of Justice granted a motion and authorized proceedings to be initiated against her.

This is how those with an authoritarian mindset behave in their handling of power—not those who seek mutual control by government powers.

Additionally, on March 29, 2017, the Constitutional Chamber, reiterating that the National Assembly was in contempt, usurped its functions. In other words, a self-initiated coup took place in which the Constitutional Chamber arrogated to itself the powers that the Bolivarian Constitution assigns to the National Assembly. The wording of the ruling is self-explanatory: "Finally, it is noted that while the situation of contempt and invalid actions on the part of the National Assembly persist, this Constitutional Chamber shall ensure that parliamentary powers are directly exercised by this Chamber, or the body that it provides for, in order to protect the rule of law."<sup>41</sup>

A judicial branch that decides to arrogate to itself the functions of the legislative branch can only be conceived of in an authoritarian regime where the separation of powers and independence of branches of government does not exist, such as in Venezuela.

It is not surprising therefore that as of this ruling, i.e. April 1, the opposition protests nationwide have increased considerably and have not stopped to date. In response to this ruling the OAS Permanent Council approved resolution CP/RES/1078 on April 3, which states that there is "an alteration of the constitutional order" in Venezuela.

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39 Aragua, Carabobo, Bolívar, and Apure almost simultaneously issued judgments, invalidating the collection of signatures for the presidential recall referendum due to alleged fraud committed by the MUD.

40 "Resumen de AFP: Fiscal Luisa Ortega pidió a venezolanos que rechacen Constituyente" ["Summary from AFP: [Chief] Prosecutor Luisa Ortega asked Venezuelans to reject the Constituent [Assembly]"], Panorama, June 9, 2017, Available at: <http://www.panorama.com.ve/politicaeconomia/Resumen-de-AFP-Fiscal-Luisa-Ortega-pidio-a-venezolanos-que-rechacen-Constituyente-20170609-0004.html>

41 . "TSJ suprimió decisiones que atentan contra la Asamblea Nacional" ["Supreme Court of Justice eliminated decisions that undermine the National Assembly"], El Nacional Web, April 1, 2017, Available at: [http://www.el-nacional.com/noticias/politica/tsj-suprimio-decisiones-que-atentan-contra-asamblea-nacional\\_88457](http://www.el-nacional.com/noticias/politica/tsj-suprimio-decisiones-que-atentan-contra-asamblea-nacional_88457)

This systematic and reiterated violation of the institutional order culminated in the installation of the ANC. In no time at all, the ANC stripped the National Assembly (AN) of its constitutional legislative functions. To make matters even clearer, the President of the ANC declared that the AN had not been dissolved. Thus, it will continue to be a Legislative Branch, but with no legislative functions (and with no control over the Executive Branch).

Subsequently, the Constituent Assembly dismissed the Attorney General, the senior official of the so-called “moral branch of government,” who had also expressed her disagreement with the Supreme Court of Justice and the executive branch.

With the installation of the National Constituent Assembly on August 4 the principle of separation of powers was definitively abandoned. This is the organ that seeks to determine by decree the future of Venezuelans for the next two years. Its first two actions were aimed specifically at neutralizing the two democratic institutions that remain in Venezuela: the Prosecutor’s Office and the National Assembly. The ANC not only dismissed the Prosecutor but also assumed de facto the functions of the National Assembly.

In recent hours, the ANC approved a new decree that orders the start of treason trials for those considered responsible for “having promoted economic aggression and intervention against the Bolivarian Republic of Venezuela.” This means that the regime institutionalizes by decree repression, persecution, and stifling of dissent; and that it definitively eliminates the parliamentary authority of the legislators.

That constitutes interruption of the democratic order and a systematic and reiterated alteration of the constitutional regime (Article 19 of the IADC).

## VII. RESPONSIBILITY OF GOVERNMENTS FOR PUBLIC ADMINISTRATION, TRANSPARENCY IN GOVERNMENTAL ACTIVITIES, AND HONESTY

Corruption is an inherent characteristic of the Venezuelan regime, which is totally incompatible with democracy in keeping with Article 4 of the IADC.

Beyond the provisions of the IADC, Venezuela is one of the original signatories to the 1996 Inter-American Convention against Corruption. Article VI thereof points to “the solicitation or acceptance, directly or indirectly,” (...) “the offering or granting, directly or indirectly,” (...) “of any act or omission in the discharge of his [duties]” (...) “by a government official or a person who performs public functions, of any article of monetary value, or other benefit, such as a gift, favor, promise or advantage for himself or for another person or entity, in exchange for any act or omission in the performance of his public functions.”<sup>42</sup>

In the 2016 *Corruption Perceptions Index*, the most recent published by Transparency International, Venezuela is 166 out of 176 countries. In its report Transparency International identifies no less than 511 companies that belong either in their entirety or partially to the State, of which 70% are operating at a loss.<sup>43</sup>

42 . 1996 Inter-American Convention against Corruption, Article VI(1). Available at: [http://www.oas.org/en/sla/dil/inter\\_american\\_treaties\\_B-58\\_against\\_Corruption.asp](http://www.oas.org/en/sla/dil/inter_american_treaties_B-58_against_Corruption.asp)

43 “*Corruption Perceptions Index 2016*”, Transparency International, Available at: <https://www.transparency.org/country/VEN>

The Attorney General recently stated that the Office of the Public Prosecutor has more than 36,000 investigations open for corruption-related issues.<sup>44</sup> One of the emblematic drivers of the lack of institutional probity and transparency is the nepotism and conflicts of interest in key institutions, such as the Office of the Comptroller General of the Republic. Another slew of worrisome cases involve a series of contracts with the construction company Odebrecht.

Alleging corruption, the breakdown of democracy, and the violation of human rights, the US Department of the Treasury has sanctioned 14 officials, including President Maduro, as well as former officials of the Venezuelan regime by freezing assets and banning them from making transactions in the US financial system.<sup>45</sup>

In addition to individual sanctions, on August 25 last the White House approved a new executive order aimed at the financial markets, sanctioning Venezuelan institutions that issue debt. The executive order prohibits US citizens and persons on US territory from carrying out transactions with debt securities and shares issued by the Venezuelan government and the state petroleum company PDVSA. It likewise prohibits transactions with some existing bonds that belong to the Venezuelan public sector, as well as payment of dividends to the government of Venezuela.

The regime categorically denies these accusations and defends itself domestically with more repression and internationally with insults and lies. Indeed, as mentioned previously, it fraudulently and unconstitutionally removed the Attorney General from her post through a trial lacking any guarantees, installing officials who are close to the regime and are as equally corrupt as those who appoint them. Corruption has become endemic and has filtered down into all levels of the regime's bureaucracy, creating a vicious cycle controlled from the top.

To ensure the complicity of the security forces and military authorities, they have been granted powers and functions that go beyond their mandate and are not within the remit of their duties.

Those who dare to condemn this situation or get around it by seeking to comply with their legal mandate are prosecuted and punished. As Jose Antonio Marina has stated "The corrupt must defend the same legal and moral order they transgress, as it is precisely from this order that they receive their benefits." It is imperative we use all means at our disposal to be able to pull Venezuela out of this blind alley to which it has been driven by the corruption facts.

There are reports<sup>46</sup> showing that corruption has become rampant and that this is directly related to the absence of countervailing forces among the branches of government. Violation of the rule of law is the principal cause of corruption.

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44 "La fiscal general Luisa Ortega desconoce la Constituyente de Venezuela y acusa al gobierno: "Estamos ante un delito de lesa humanidad" ["The Attorney General Luis Ortega repudiates the Venezuelan Constituent Assembly and levels accusations against the government: "This is a crime against humanity"], BBC Mundo, July 31, 2017, Available at: <http://www.bbc.com/mundo/noticias-america-latina-40784445>

45 "Treasury Sanctions 13 Current and Former Senior Officials of the Government of Venezuela", Treasury, July 26, 2017, <https://www.treasury.gov/press-center/press-releases/Pages/sm0132.aspx>

46 . See, in particular, Freedom House (forthcoming): "Caso Venezuela, Redes de Impunidad y Corrupción" [The Venezuelan Case: Networks of Impunity and Corruption]

The Freedom House report<sup>47</sup> considers that:

*“Although there are no exact figures as to the full scope of embezzlement in Venezuela, those considered given most credence come from Chávez's followers: approximately US\$300 billion in legally dubious transactions and operations inside and outside Venezuela, according to denunciations by former Finance Minister Jorge Giordani, one of those closest to Hugo Chávez<sup>48</sup>. Those proceeds stemmed from more than 36,000 cases of corruption registered thus far by the Office of the Attorney General of Venezuela that have yet to be addressed by the justice system<sup>49</sup>.’*

Of all those corruption cases, the most serious in our view are those directly related to unsatisfied basic needs of the population, especially in respect of food and medicine.

Indeed, and in light of the aforementioned Report:

*“Lack of transparency and conflicts of interest are the norm in the Office of the Comptroller General of the Republic under the current Comptroller **Manuel Galindo**, who has appointed his daughter **Mayra Alejandra Galindo León**, to a position that allows her to handle “unlimited” resources and to hand out contracts at her own discretion in the Health Care Foundation run by the Office of the Comptroller General of the Republic (SERSACON)<sup>50</sup>.’*

*“Using data furnished by Transparencia Venezuela, the Venezuelan National Assembly adopted a report and then voted to dismiss the Minister of Food Supplies, Marco Torres. The report showed how during his administration and that of his predecessor the Ministry had misspent \$27 billion, the highest single corruption-related amount ever, stemming from the purchase, importing, supply and gathering of food run by that Ministry.<sup>51</sup>”.*

The government of Venezuela has denied its people basic human rights, gradually wiping out democracy. Rights are not ensured because the rule of law—another building block of democracy—simply does not exist. The regime has abolished it. In the 2016 report, *Rule of Law Index*,<sup>52</sup> Venezuela obtained the last position, with a score below that of Afghanistan and Zimbabwe.

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47 *Ibid.*

48 Venezuela ex-ministers seek probe into \$300 billion in lost oil revenue, Reuters, Febrero 2, 2016. Link: <http://www.reuters.com/article/us-venezuela-politics-idUSKCN0VB26F>.

49 Luisa Ortega claims to have knowledge of 36,000 corruption cases involving the Government, Tal Cual, July 31, 2017. Link: <http://www.talcualdigital.com/Nota/145988/luisa-ortega-asegura-tener-mas-de-36-mil-casos-de-corrupcion-relacionadas-con-el-gobierno>.

50 Mayra Galindo León, the Comptroller General's daughter who distributes contracts to "hand-picked" contractors, Portal El Cooperante, July 25, 2017. Link: <http://elcooperante.com/mayra-galindo-leon-la-hija-del-contralor-de-la-republica-que-reparte-contrataciones-a-dedo/>.

51 The National Assembly's estimate is that embezzlement amounts to more than \$87 billion. El Nacional, March 25, 2017. Link: [http://www.el-nacional.com/noticias/asamblea-nacional/determinado-malversacion-por-mas-millardos\\_87119](http://www.el-nacional.com/noticias/asamblea-nacional/determinado-malversacion-por-mas-millardos_87119).

52 “*Rule of Law Index*”, World Justice Project 2016, Available at: [https://worldjusticeproject.org/sites/default/files/documents/RoLI\\_Final-Digital\\_0.pdf](https://worldjusticeproject.org/sites/default/files/documents/RoLI_Final-Digital_0.pdf)

## VIII. RESPECT FOR SOCIAL RIGHTS, FREEDOM OF EXPRESSION, AND FREEDOM OF THE PRESS

The contempt for human rights runs even deeper. The government has restricted access to basic human rights such as health, food, and security. The grave humanitarian and economic crisis noted as from the first report in March 2016 continues to worsen with each passing day. The economy is in free fall due to deliberate actions and government negligence. Meanwhile the people suffer—from lack of medicines, widespread malnutrition and hunger, in addition to high rates of crime and violence—and the government denies it and depicts an alternate reality. The practices of a state media monopoly, a press hijacked by the government to exercise a propaganda favorable to the regime—controlled in its entirety and supervised in its content—and the exercise of indoctrinating the masses are actions characteristic of totalitarian and repressive regimes.

The critical situation persists. It is estimated that the economy will contract for the second consecutive year—in 2016 it contracted 18% and this year 12%.<sup>53</sup> The hyperinflation the country endures is similar to that seen in lost decade of the 80s and is expected to reach 2,000% by the end of 2017.<sup>54</sup> Just in the week preceding the election of the National Constituent Assembly, the money supply increased 10%, its highest level in 25 years.<sup>55</sup>

This overall situation directly undercuts the quality of life of the Venezuelan people. The human tragedy Venezuela is experiencing is reflected in high rates of child malnutrition (11.4% versus the 10% crisis threshold of the WHO), maternal and infant mortality, and cases of preventable and eradicated diseases.

Additionally, the Venezuelan people do not have their safety assured. Caracas is the most violent city in the world.<sup>56</sup> And according to the *Law and Order Index* published by Gallup in August 2017, Venezuela is the least safe country of the 135 country analyzed. 88% of the people do not feel safe walking alone at night where they live and 86% stated they had no confidence in the police.<sup>57</sup>

Moreover, the government of Venezuela has violated the right to freedom of expression and information. Direct and indirect censorship, as well as harassment and intimidation of individuals and media that criticize the government, have intensified.

Given the blatant violation of this essential element of democracy, the UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, David Kaye, and the Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights (IACHR),

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53. “*IMF Sees Venezuela Cratering With Another Double-Digit GDP Dive*”, Bloomberg, July 25, 2017, Available at: <https://www.bloomberg.com/news/articles/2017-07-25/imf-sees-venezuela-cratering-with-second-double-digit-gdp-dive>

54. *Ibid.*

55 “*Venezuela money supply surges 10 percent in one week, fastest in 25 years*”, Girish Gupta, Reuters, July 29, 2017, Available at: <https://www.reuters.com/article/us-venezuela-economy-idUSKBN1AE0H2>

56 “*Caracas, Venezuela, the most violent city in the world*”, Consejo Ciudadano para la Seguridad Pública y Justicia Penal, April 6, 2017, Available at: <http://www.seguridadjusticiaypaz.org.mx/biblioteca/download/6-prensa/231-caracas-venezuela-the-most-violent-city-in-the-world>

57 “*Venezuela’s descent: Least safe country in the world*”, Gallup, August 2, 2017, Available at: <http://www.gallup.com/poll/214988/venezuela-descent-least-safe-country-world.aspx>

Edison Lanza, condemned in a joint press release on April 26, 2017 the “censorship, arrests, and attacks on journalists” in the framework of the protests.<sup>58</sup>

The data that came to light in the May 18, 2017 quarterly report of the organization *Instituto Prensa y Sociedad de Venezuela* [Institute for Press and Society of Venezuela] (IPYS), substantiates the claim of government attacks on freedom of expression and journalism. In keeping with the IPYS, 183 persons –73 natural persons and 110 legal persons– had the exercise of this right impaired.”<sup>59</sup>

In the context of this electoral process, and after four months of protest in Venezuela, new measures were adopted to impede the exercise of freedom of expression, freedom of the press, and to prohibit the exercise of the right to demonstrate and assemble peacefully, thus violating the basic elements of a democratic election.

On July 27 the Minister of the People’s Power for Interior Relations, Néstor Reverol, announced the various measures and restrictions for the holding of the elections for the National Constituent Assembly on July 30. The Minister announced that he had ordered implementation of a “National Plan for Patrolling with Active Restraint,” which included the establishment of 96 places for processing electoral offenses and crimes of a military nature, in accordance with the provisions of the Organic National Security Decree Law. He also said that during the elections the Strategic Operations Command of the Bolivarian National Armed Forces (CEOFANB) will be in charge and will have operational control of all the state and local civil police forces.<sup>60</sup>

Similarly, the Minister recalled that Article 8 of Decree 2.992 of July 17 provided that anyone who organizes, carries out, or instigates activities intended to disrupt the electoral process or the social life of the country will be subject to prison for five to 10 years, as provided in Article 56 of the Organic National Security Decree Law.<sup>61</sup>

The world has seen the brutal force used to prevent citizens from demonstrating. The government denies people the right to demonstrate peacefully and the right to freely express their thoughts, ideas, or opinions orally, in writing, or in any other form of expression, although their rights are protected in the Constitution.

In addition to the restrictions on freedom of association in the days leading up to the election, the work of the media was affected on election day. The CNE announced that they had to stay 500 meters away from the polling centers of El Poliedro in Caracas and the Sports Palace of Los Teques. According to a report of the National Press Workers Union, this rule was strictly applied, sometimes violently, in more polling places by members of the Republic Plan, who prevented access of journalists and the media from the start of the day.

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58 . “Joint Press Release: Venezuela / Protests: UN and IACHR Rapporteurs condemn censorship, arrests and attacks on journalists”, Organization of American States, April 26, 2017, Available at:

<http://www.oas.org/en/iachr/expression/showarticle.asp?artID=1062&IID=1>

59 . “Misión Desconectar/ Reporte trimestral IPYS Venezuela” [“Mission To Disconnect/IPYS Quarterly Report Venezuela”], Ramirez Indira, IPYS Venezuela, May 18, 2017, Available at:

<http://ipysvenezuela.org/2017/05/18/mision-desconectar-al-pais-reporte-trimestral-ipys-venezuela/>

60 . “Reverol: Prohibidas manifestaciones y expendio de bebidas alcoholicas desde este viernes [Reverol: Demonstrations prohibited and sale of alcoholic beverages as of this Friday]”, Alba Ciudad, July 27, 2017, Available at: <http://albaciudad.org/2017/07/reverol-prohibidas-manifestaciones-y-expendio-de-bebidas-alcoholicas-desde-este-viernes/>

61 . *Ibid.*

Here is the list of journalists who were threatened, injured, arrested, and robbed during the July 30 elections.<sup>62</sup>

#### **Aggression against journalists and media workers on July 30**

<b>Event</b>	<b>Victim</b>	<b>Media</b>	<b>Victimizer</b>	<b>Place</b>
Arrest	Euclides Sotillo	Venevisión	Sebin	Caracas
Intimidation/Threat	Mariana de Barros	VivoPlay	GNB	Caracas
	Pablo Pimentel	VivoPlay	GNB	Caracas
	Guido Villamizar	VivoPlay	GNB	Caracas
	Gabriela González	Nuevo País	GNB	Caracas
Injuries	Mariana de Barros	VivoPlay	PNB	Caracas
	Guido Villamizar	VivoPlay	PNB	Caracas
Confiscation of security equipment	Fabiola Ferrero	Independiente/Internacional	Armed civilians	Caracas
	Santiago Escobar	Independiente/Internacional	Armed civilians	Caracas
Arrest	Brigitte Gerdel	Las Noticias de Cojedes	Policojedes	San Carlos
	Daniel Rodríguez	Las Noticias de Cojedes	Policojedes	San Carlos
Injuries	Ángel Colmenares	Independiente	PNB	Caracas
Arrest	Felipe Royet	Cambio 16	PNB	Caracas
Confiscation of motorcycle/injuries	Orlando Pérez	Independiente	PNB	Caracas
Injuries	Leonardo Rodríguez	Independiente	PNB	Caracas

In addition, the Office of the Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights denounced the arrest of journalists, as in the case of Jorge Lanata, an Argentine citizen who was deported for not having a journalist visa. In addition, Luis Garripa, Odacir Junior, Lourdes Murguía, and Antonio Mandujano were denied entry.<sup>63</sup>

#### **IX. THE SUBORDINATION OF ALL STATES INSTITUTIONS TO THE LEGALLY CONSTITUTED AUTHORITY AND RESPECT FOR THE RULE OF LAW BY ALL ENTITIES AND SECTORS OF SOCIETY**

As part of President Maduro's plan to hold on to power, prevent the holding of free elections, and wrap up consolidation of his dictatorship, he sought to propose the design and implementation of a new legal and political framework. To this end, on May 1, 2017, he convened a National Constituent Assembly to amend the Constitution of the Bolivarian Republic of Venezuela.<sup>64</sup>

On May 23, by means of Executive Decree No. 2.878, Nicolás Maduro published the voting rules for the election of delegates to the National Constituent Assembly. That very day, the National Electoral Council set the date of this election for July 30, 2017.

62 . Source: National Union of Press Workers of Venezuela.

63 . *Press Release R109/17 OAS/IACHR/ Office of the Special Rapporteur for Freedom of Expression*, Organization of American States, <http://www.oas.org/en/iachr/expression/showarticle.asp?artID=1072&IID=1>

64 . Convening of the National Constituent Assembly. Executive Decree No. 2.830.

The convening of such elections negated the referendum process that precedes the call for the Constituent Assembly. The voting rules presented for constituting the Constituent Assembly are unconstitutional and its convening does not take into account its repudiation by different sectors of the country and of 85% of the population, according to a survey by Datanalisis conducted between May 29 and June 4.<sup>65</sup>

In keeping with Article 347 of the Constitution, the Venezuelan people are the depositary of the original constituent power and in the exercise of such power may convene a National Constituent Assembly for purposes of transforming the State, creating a new legal system, and drafting a new constitution.

Nevertheless, a debate arose regarding Articles 347, 348, and 349 of the Constitution about confounding “initiative” with the convening of a National Constituent Assembly, or about endowing the voting rules provided to the National Electoral Council with a sectoral and territorial slant.

The Constitutional Chamber ruled on the “convening [of the Constituent Assembly]” undertaken by the national government. For the court, it was not necessary to consult the people—holders of the constituent power—in this regard. The decision, No. 378 of March 31, 2017, halted any institutional mechanism to detain such a proposal.

As a precedent, in 1999, a constitutional reform backed by President Hugo Chávez took place through a National Constituent Assembly. Although the 1961 Constitution did not provide for convening such an Assembly, the old Supreme Court of Justice opened the door to a constitutional referendum that allowed the people to decide whether to go forward with the constituent process.

The Constitutional Chamber further ruled that the right to suffrage may be replaced by election mechanisms through “participation” under the bodies of the people’s branch of government. This entails a disregard for the right to suffrage in the interest of second degree indirect elections, violating the most fundamental political rights like the right to vote or be voted for through free, direct, and universal balloting.

The voting rules for the Constituent Assembly and the subsequent specific amendments thereto made by the National Electoral Council provided that a total of 545 delegates would be elected. Of those, 364 were to be elected at a municipal level based on geography, while 173 were to be elected from eight sectors: workers, retirees, students, townships and township councils, farmers and fishermen, businessmen, and disabled. Together with these, eight representatives would be chosen from indigenous communities in keeping with the traditions and customs of these people.<sup>66</sup> The system of representation that was defined sought to privilege certain segments of the population over others, assigning them greater representation.

To this end, the election rules for the National Constituent Assembly, contained in Decree 2.830, did not ensure the exercise of Venezuelans’ political rights set forth in Article 63 of the 1999 Constitution: “Suffrage is a right. It shall be exercised through free, universal, direct elections with secret balloting. The law shall ensure the principle of individual suffrage and proportional representation.”<sup>67</sup>

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65 . “85% de los venezolanos rechaza modificar la Constitución” [“85% of Venezuelans are against changing the constitution”], Prodavinci, June 9, 2017, Available at: <http://prodavinci.com/2017/06/09/actualidad/datanalisis-85-de-los-venezolanos-rechaza-modificar-la-constitucion-laminas-2-2/>

66 . These elections were held on Tuesday, August 1.

67 . Constitution of the Republic of Venezuela (1999), Article 63, Available at: [http://www.cne.gov.ve/web/normativa\\_electoral/constitucion/indice.php](http://www.cne.gov.ve/web/normativa_electoral/constitucion/indice.php)



On June 8, the Attorney General of the Republic, Luisa Ortega Díaz, requested that the Electoral Chamber of the Supreme Court of Justice overturn the decisions made by the National Electoral Council, including all the decisions on the election rules and nomination of constituent delegates. With this motion, the Attorney General sought to assert her constitutional and legal powers.

The Attorney General's motion requested precautionary measures in order to immediately suspend the electoral process given the irreparable damage the election of constituent delegates would cause to participatory democracy and the exercise of popular sovereignty.

The website of the Supreme Court of Justice was blocked; nevertheless, on June 12 at 6:47 a.m. the Electoral Chamber of the Court, through its Twitter account, ruled that the motion was inadmissible due to its "inept joining of claims." The court also concluded that it was inadmissible "because the same complaint joins claims to overturn measures emanating from different branches of government, cognizance of which corresponds to different jurisdictions."<sup>68</sup>

On June 27 the Constitutional Chamber of the Supreme Court of Justice unlawfully decided to remove from the Office of the Public Prosecutor the powers of indictment and investigation, which are under its exclusive competence in keeping with Articles 284-286 of the Constitution, and hand them over to the Office of the Ombudsman.<sup>69</sup> The Court ruled that the Ombudsman "has powers to investigate, issue opinions, and receive complaints, requiring, where necessary, the cooperation of the other branches of government."<sup>70</sup> This is yet another example of the Court deliberately and unconstitutionally dismantling the democratic institutions of the State.

The Court did not stop there. It overturned the appointment of the Deputy Attorney General, Rafael González, who was to replace the Attorney General, and on June 28, 2017, it decided to prevent the Attorney General from leaving the country, in addition to freezing her accounts and hindering her from selling her assets while it decided whether there were grounds to try her on July 4.<sup>71</sup> On June 30, the Office of the UN High Commissioner for Human Rights stated it was "disturbed" by the Supreme Court's Decision and applauded the Attorney General for her "important steps to defend human rights, documenting deaths during the wave of demonstrations, insisting on the need for due process and the importance of the separation of powers, and calling for people who have been arbitrarily detained to be

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68 . "Por "inepta acumulación" de pretensiones, TSJ declara inadmisibile recurso ejercido por Luisa Ortega Díaz (sentencia)" [*The Supreme Court of Justice rules the motion filed by Luisa Ortega Díaz inadmissible due to "inept joining" of claims (judgment)*], La Patilla, June 12, 2017, Available at: <https://www.lapatilla.com/site/2017/06/12/por-inepta-acumulacion-de-pretensiones-tsj-declara-inadmisibile-recurso-ejercido-por-luisa-ortega-diaz-sentencia/>

69 . Constitution of the Republic of Venezuela (1999). Articles 284-286, Available at: [http://www.cne.gov.ve/web/normativa\\_electoral/constitucion/indice.php](http://www.cne.gov.ve/web/normativa_electoral/constitucion/indice.php)

70 . "El Tribunal Supremo de Justicia de Venezuela transfirió competencias de la Fiscal General al Defensor del Pueblo" [*"The Supreme Court of Justice of Venezuela transferred competences from the Attorney General to the Ombudsperson"*], Infobae, June 28, 2017, Available at: <http://www.infobae.com/america/venezuela/2017/06/28/el-tribunal-supremo-de-justicia-de-venezuela-transfirió-competencias-de-la-fiscal-general-luisa-ortega-diaz-al-defensor-del-pueblo/>

71 . "TSJ prohíbe salir del país y congela bienes a Fiscal General Luisa Ortega Díaz" [*"The Supreme Court of Justice prohibits Attorney General Luisa Ortega Díaz from leaving the country and freezes her assets"*], Prodavinci, June 29, 2017, Available at: <http://prodavinci.com/2017/06/29/actualidad/tsj-prohibe-salir-del-pais-y-congela-bienes-a-fiscal-general-luisa-ortega-diaz-monitorprodavinci/>

immediately released.”<sup>72</sup> It further stated: “The dismissal of judicial officials should be subject to strict criteria that do not undermine the independent and impartial performance of their functions.”<sup>73</sup>

The Attorney General refused to appear before the Supreme Court on July 4. At a press conference held on that same day she asserted that the members of the Court were illegitimate and unconstitutional and that she “would not condone a circus.” The Attorney General stated that her prosecution and dismissal “is already a foregone conclusion.”<sup>74</sup>

Meanwhile, the Supreme Court appointed Katherine Harrington as the new Deputy Attorney General in yet another fraudulent and unconstitutional act. Mrs. Harrington, a former prosecutor of the Office of the Public Prosecutor, was sanctioned by the United States in 2015 for human rights violations.<sup>75</sup> Pursuant to the provisions of the Constitution, the appointment of the deputy attorney general is the exclusive purview of the National Assembly.<sup>76</sup>

In response to the co-opting of branches of government by the executive and the clearly illegitimate convening of a Constituent Assembly, on July 5 the National Assembly approved the “agreement to salvage democracy and the constitution,” in which it decided to initiate “the national process of sovereign decision-making through a referendum to consult the people of Venezuela on the path that the country should take,” in keeping with Articles 5, 62, 70, and 187(4) of the Constitution.<sup>77</sup>

The legislature set July 16, 2017 as the date to hold the referendum, in which all Venezuelans 18 or older who were registered with the National Electoral Council could participate.

With 99.01% of the votes counted by July 17, 7,535,259 Venezuelans had voted in the referendum. The results of each one of the three questions were categorical. The first question obtained 7,432,764 “yes” votes and 9,076 “no” votes; the second received 7,446,381 “yes” votes and 9,835 “no” votes; and the third question got 7,454,703 “yes” votes and 11,348 “no” votes.<sup>78</sup>

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72 . “Press Briefing note on Iraq, Al Jazeera, Venezuela and Guatemala”, United Nations, June 30, 2017, Available at:

<http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=21818&LangID=E>

73 . *Ibid.*

74 . “Luisa Ortega: Golpe de Estado del TSJ es más grotesco que el de Carmona” [“Luisa Ortega: Coup d’Etat of the Supreme Court of Justice is more grotesque than that of Carmona”], CNN in Spanish, July 4, 2017, Available at: <http://cnnespanol.cnn.com/2017/07/04/la-fiscal-general-luisa-ortega-no-se-presentara-ante-el-ts-j-no-voy-a-convalidar-un-circo/>

75 . “Executive Order 13692 of March 8, 2015 Blocking Property and Suspending Entry of Certain Persons Contributing to the Situation in Venezuela”, Federal Register, Vol. 80, No. 47, March 11, 2015, [https://www.treasury.gov/resource-center/sanctions/Programs/Documents/venezuela\\_eo.pdf](https://www.treasury.gov/resource-center/sanctions/Programs/Documents/venezuela_eo.pdf)

76 . “Quien es Katherine Harrington, vicefiscal designada por el TSJ?” [“Who is Kathrine Harrington, the Deputy Attorney General appointed by the Supreme Court of Justice?”], El Nacional, July 4, 2017, Available at: [http://www.el-nacional.com/noticias/politica/quien-katherine-harrington-vicefiscal-designada-por-ts-j\\_191164](http://www.el-nacional.com/noticias/politica/quien-katherine-harrington-vicefiscal-designada-por-ts-j_191164)

77 . “Acuerdo sobre el rescate de la Democracia y la Constitución, Asamblea Nacional de Venezuela [Agreement on Salvaging Democracy and the Constitution, Venezuelan National Assembly], July 5, 2017, Available at: <http://www.asambleanacional.gob.ve/actos/acuerdo-sobre-el-rescate-de-la-democraciay-la-constitucion>

78 “En la consulta popular de este domingo participaron 7.535.259 venezolanos” [“7,535,259 Venezuelans participated in the referendum this Sunday”], Prensa Unidad, July 17, 2017, Available at:

The people voted to recover their fundamental freedoms and the rule of law. This was also an important lesson for those in government and the opposition: it is in the hands of the people to find the way for Venezuela to overcome the political, social, and economic crisis it is mired in.

On Sunday, July 30, despite the government's attempts to conceal it, citizens decided not to participate in an election process they considered fraudulent. Although the President of the National Electoral Council announced right after midnight that 8,089,320 citizens had voted, this was not seen at the polls. For his part, the President of the National Assembly, Julio Borges, stated that voter turnout was less than 1.5 million voters by 3 in the afternoon, and according to his estimates, the total was not even 7 % of registered voters.

The fraudulent elections of Sunday, July 30, were held although there are still pending electoral processes in which the citizens would indeed like to express themselves and have been unable to. First, there are the delayed regional elections, and second, the National Electoral council suspended the presidential recall referendum.

The elections to choose 23 state governors and 236 members of state legislative assemblies should have taken place prior to December 16, 2016. This was the date when the four-year constitutionally-mandated terms expired for the members of legislative bodies who had been elected on December 16, 2012.

Scarcely two months prior to the lapsing of the governors' constitutionally-mandated terms, the National Electoral Council approved at its meeting on October 18, 2016, the electoral activities that would take place in 2017. According to an Electoral Council press release, "the schedule of activities presented by the National Electoral Board for 2017 was approved. Of note among these activities are the regional and municipal elections, primaries, and the renewal of the lists of political organizations that do not have the required one percent to maintain their registration with the National Electoral Council. [...] Regional elections were set for the end of the first half of 2017 and the municipal elections for the second half."<sup>79</sup>

This announcement constituted a clear violation of Venezuelan citizen's political rights. In the first place, the National Electoral Council deliberately ignored the December 12, 2016 deadline for the election, thus violating Article 160 of the Constitution<sup>80</sup> regarding the four-year term for governors. In the second place, it denied citizens the possibility to vote, which is a right enshrined in the Constitution, pursuant to Article 63.<sup>81</sup> In the third place, it hindered voters from freely participating in public affairs directly or through their elected representatives, another right enshrined in Article 62 of the Constitution.<sup>82</sup> And in the fourth place, no specific date was in reality announced for the elections; rather only vague timeframes, which hamper citizens and political parties from planning and organizing elections.

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<http://www.unidadvenezuela.org/2017/07/la-consulta-popular-este-domingo-participaron-7-535-259-venezolanos/>

79 . "CNE aprobó calendario electoral para el año 2017" [*National Electoral Council approves election calendar for 2017*], Consejo Nacional Electoral, October 18, 2016, Available at:

[http://www.cne.gov.ve/web/sala\\_prensa/noticia\\_detallada.php?id=3482](http://www.cne.gov.ve/web/sala_prensa/noticia_detallada.php?id=3482)

80 . Article 160 of the Constitution of the Bolivarian Republic of Venezuela: "The Governor shall be elected for a term of four years by the majority of individuals that vote."

81 . Article 63 of the Constitution of the Bolivarian Republic of Venezuela: "Suffrage is a right. This right shall be exercised through free, universal, and direct elections with secret balloting. The law guarantees the principle of individual suffrage and proportional representation."

82 . Article 62 of the Constitution of the Bolivarian Republic of Venezuela: "All citizens have the right to freely participate in public affairs, either directly or through their elected representatives."

The presidential recall referendum in Venezuela, initiated on March 9 2016<sup>83</sup> and suspended on October 20 by the National Electoral Council, was an initiative against which the ruling party threw up multiple obstacles due the pressure it was facing from the January 10 threshold. If the referendum had taken place before that date, it was possible that the successor chosen by President Chávez would not finish his term. Given their fear of this outcome, it should come as no surprise that the initiative to hold a referendum on President Maduro's term was deliberately blocked by the government, and specifically by the National Electoral Council, again demonstrating its bias. The Electoral Council did not honor its constitutional duty to uphold the law and facilitate the full exercise of Venezuelan's political participation; instead, it opted for hindering the holding of the referendum, thwarting and successively postponing the process of validating signatures.

Throughout the 225 days the initiative survived, irregularities were identified in the handling of the timeframes provided for by law, the creation of new bureaucratic processes not included in the law, and insufficient electoral infrastructure.<sup>84</sup> Also of note is the unusual coincidence of almost simultaneous events that led to the suspension of the referendum in a day. A glance at the salient events between March 9 and October 20 explains in part how the irregularities and the executive's intervention halted the mechanism's implementation, to such an extent that only the first stage was completed.<sup>85</sup>

The facts highlighted in this section clearly show that in Venezuela electoral justice does not exist. The National Electoral Council has definitively lost any shred of legitimacy and operates as yet another instrument of authoritarian repression. Far from respecting its constitutional mandate to draw up periodic election schedules adjusted to the people's will, they adjust them according to the desires of the governing clique to ensure its hold on power. The Council accommodates schedules and resources at the convenience of the dictatorship, drifting increasingly away from the basic principles of free, universal, and direct suffrage as the essence of representative democracy.

## X. CONCLUSIONS

The OAS General Secretariat understands that democracy in Venezuela was eliminated on July 30, 2017, after the installation of the illegitimate Constituent Assembly.

During the last 18 months, the regime has deliberately destroyed the country's institutional framework, has eviscerated the rule of law and legality of any content, and is now preparing to definitively pervert the Venezuelan Constitution, governing through an entity imposed via fraudulent elections.

The three reports that I presented on May 30, 2016, March 14, 2017, and July 19, 2017, respectively aimed to condemn this process before the hemispheric community.

Between the publication of the first and second report—a mere 10 months—the crisis worsened precipitously. While the first report argues that there had been an “alteration of the constitutional order,” the second affirms that the country had reached a “complete break of the democratic order.” Following

83 . Date on which the MUD introduces the request to activate the Committee on Participation and Finance (COPAFI).

84 . “*Informe de seguimiento sobre la activación del Referendo Revocatorio del Mandato Presidencial*” [“*Follow-up report on the implementation of the presidential recall referendum*”], Politikaucab, Available at: <https://politikaucab.files.wordpress.com/2016/10/informe-de-seguimiento-sobre-la-activaciocc81n-del-referendo-revocatorio-del-mandato.pdf>

85 . The three stages are the following: Creation of the Group to Introduce the Initiative; request for the recall referendum; holding of the recall referendum.

the Constitutional Chamber's ruling that usurped the National Assembly's functions at the end of March of this year and the start of citizen protests, the abuses and attacks worsened even more. The government of Venezuela responded to the protests with a systematic and deliberate strategy of repression against civilians. The third report emphasizes for this very reason that the systematic use of violence and terror constitute crimes against humanity under international law.

The documents published prior to the electoral farce of July 30 reveal that the government of Venezuela has violated the essential elements of democracy contained in the Inter-American Democratic Charter (IADC), such as: the respect for human rights and fundamental freedoms; the rule of law, separation of powers and independence of the branches of government; transparency and probity in government activities.

This report throws light not only on essential elements of democracy, but also on what the IADC refers to as its fundamental components.

All those elements and components have been explicitly violated in the past year and a half.

Taking also the three previously published reports into account, abundant documentation has been provided on the regime's repeated violation of the essential elements and components of democracy established in the IADC, by denying the Venezuelan people's human rights, abolishing the rule of law and the principle of the separation and independence of the branches of government, and encouraging and protecting a corrupt Government. The deadliest blow, however, was struck with the electoral farce of July 30, 2017.

This documents has provided added proof that a dictatorial and illegitimate regime has established itself in Venezuela, by deliberately preventing the holding of periodic, free, and fair elections based on universal and secret voting. And it has done so with impunity.

On July 30, the regime deprived the Venezuelan people of the possibility of resorting to elections as a way to manifest its will.

The OAS General Secretariat has all along been documenting, denouncing, and showing proof of the alteration of the constitutional order and continuing attacks on Venezuela's institutions. It has raised its voice of protest against every act of violence and every assault on the Constitution.

When I assumed my responsibilities as Secretary General I expressed my commitment to democratic values and the nations that defend them. This document presents clear proof that the regime headed by Nicolás Maduro assassinated democracy in the country that gave birth to it.

The regime of Nicolás Maduro has firmly trampled on the rights of the Venezuelan people.

Venezuela has had to endure systematic and reiterated violation of the essential elements and fundamental components of democracy, as they are defined in the Inter-American Democratic Charter. There is no respect for human rights and fundamental freedoms; there is no rule of law; there are permanent attacks against parties and political organizations; there is no separation and independence for the branches of government; and as of July 30, there are no longer periodic, free, and fair elections based on secret balloting and universal suffrage as an expression of the sovereignty of the people.

These crimes must not continue with impunity. Today as citizens we can all do something. We can demand that those who represent us take a firm position against the dictatorship. We must insist on compliance with the international commitments our countries have undertaken. If today we permit it in Venezuela, the shadow of dictatorship will expand across our region. We already said NEVER AGAIN; let's honor that promise.

Our Permanent Council is an example of democracy. All member states have equal weight in decision making; the smallest country and the largest; the poorest and the richest; the most vulnerable and the most powerful. Our peoples must be able to enjoy a democracy in which all are equal before the law.

The measures taken by the Permanent Council have been insufficient. The situation in Venezuela continues deteriorating before our eyes.

It is not a question of isolating the Venezuelan people, but rather of lending it support and condemning the dictatorship.

That is why I am submitting the following petitions to the Council.

#### PETITIONS TO THE PERMANENT COUNCIL

**FIRST: WE RENEW** our request that the international community continue to impose increasingly tough sanctions on the regime and its officials.

**SECOND: RECOGNIZE** that most of the countries in the Hemisphere have declared that they will not accept the results of the elections for the Constituent Assembly on July 30, 2017, and therefore acts deriving from that election will lack international legitimacy.

**THIRD: REAFFIRM** solidarity with the people of Venezuela.

**FOURTH: ADMIT** that the current situation in the Bolivarian Republic of Venezuela represents a risk to the peace and security of the Hemisphere owing to its increasing isolation, the level of its external and internal debt, the grave humanitarian and migration crisis, the proven links of government structures with international organized crime; the increase in violent crime rates; the systematic repression of the population by government entities; the procurement of military arms that makes the country the largest arms buyer in Latin America, and the rapid expansion of the Bolivarian National Militia.

**FIFTH: ORDER** reparation to the Venezuelan people for the violation of the abovementioned international instruments through the following actions:

- Annulment of the Constituent Assembly process.
- Immediate cessation of repression.
- The release of all political prisoners.
- Large scale investigation of the actions of key figures of the regime and their subordinates to ensure accountability for the crimes committed against the civil population.
- The holding of free, fair, and universal elections as soon as possible with qualified international observers.
- The return to constitutional order with full respect for the separation of powers of the government branches.

- The establishment of an effective mechanism to fight corruption.
- Ensure that the Supreme Court of Justice is composed of sworn justices

The principle of hemispheric solidarity that inspired the birth of this Organization assumes special historical relevance at this time. The emergence of a totalitarian regime in the Americas is an international problem. There is an urgent need for a response based on hemispheric solidarity to help Venezuela restore democracy and rebuild itself. The OAS reaction is imperative and urgent, because the cause of the Venezuelan people is urgent and we owe it to those people.

Venezuela is today a country without a legitimate government. It is a dictatorship in the hands of a President who through an illegitimate organ imposed by him and his ruling clique seeks to destroy the government institutions and Constitution in a period of two years. In this time it will persecute, torture and even kill all those opposed to its outrages.

It is a regime that ignores the dignity of the sovereign people and has completely lost respect for its will. A regime that imposes itself in the most cowardly manner by terror and infusing fear. A regime that is confronted daily in the streets by a courageous people that never tires of demanding by the means still left to it the voice, presence, and rights that it never should have lost.

Our duty is with this people. With every family that grieves for victims of violence and repression, with every one of those who died and are being tortured with impunity, whose only crime was to think, dissent, and express themselves. With those who don't have anything to eat. With those who are sick. With all those that are suffering and continue fighting. Our solidarity is with them, with the Venezuelans.

Venezuela is passing through an unprecedented process of total destruction of its political and social institutions, and to deal with this we must act urgently in solidarity.

We must insist that the people's voice be heard in free and honest elections, and then on the reconstruction of the Venezuelan social fabric through accountability. Venezuela is going to need memory, truth, justice, reconciliation, and guarantees of no repetition. Our countries and the world need to be witnesses and helpers in this process.

In these dark hours for our community, we must respond to preserve the dignity and freedom of Venezuelans and of our countries if we are to be consistent with the spirit and purpose of this Organization.

We are conscious of the efforts of leaders and governments in the region to achieve dialogue and a peaceful way out of the dictatorship that the people of Venezuela are enduring today.

We add our voice to theirs and issue an urgent call for peace, even as we urge the OAS member states to steadfastly condemn the regime, in such a way that the voice of this Organization is heard regarding the need for the Inter-American Charter and compliance with its principles to be at the center of any dialogue or negotiated settlement.

There can be no negotiated compromising of peace, democracy, or freedom.

Democracy, peace, and freedom are our most prized and inalienable assets. They must be the outcomes achieved in any dialogue and cannot be negotiated.

The parties to a dialogue must listen to the voice of the OAS in defense of its principles, which are those that offer guarantees to the people of Venezuela.

We cannot abdicate the freedom or dignity of a single person in the Americas, so we cannot allow the Regime to take Venezuelans' most prized assets.

Dignity and freedom make it necessary to reject tyranny, and out of respect for the Venezuelan people we cannot kowtow to any tyrant. NEVER AGAIN.

No negotiation should be premised on the distribution of power, but on restoring democracy to the country.

A handwritten signature in black ink, appearing to be 'Luis Almagro', written over a light blue horizontal line.

Luis Almagro  
Secretary General



## ANNEXES

## A) LEGAL INSTRUMENTS USED IN VENEZUELA

Venezuela has ratified various international documents that are legally binding in the following areas:

1. The instrument that created the Organization of American States
  - Charter of the Organization of American States (1948),
2. Human Rights:
  - Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984),
  - International Covenant on Economic, Social and Cultural Rights (1966),
  - International Covenant on Civil and Political Rights (1966),
  - Optional Protocol to the International Covenant on Civil and Political Rights (1966),
  - The Convention on the Elimination of all Forms of Discrimination Against Women (1979),
  - The Convention on the Rights of the Child (1989),
  - Rome Statute (1998).<sup>86</sup>
3. Regional instruments for protection of men and women:
  - American Convention on Human Rights (1969),<sup>87</sup>
  - Inter-American Convention to Prevent and Punish Torture (1985).
4. Other Charters and Declarations approved by Venezuela:
  - American Declaration of the Rights and Duties of Man (1948),
  - Declaration of Principles on Freedom of Expression (2000)
  - Inter-American Democratic Charter (2001).<sup>88</sup>

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86 . Venezuela ratified the Rome Statute on June 7, 2000. The International Criminal Court therefore has jurisdiction over applicable crimes committed in Venezuelan territory or by Venezuelan citizens as of July 1, 2002.

87 . The Bolivarian Republic of Venezuela announced its decision to renounce the American Convention on Human Rights on September 10, 2012. However, renunciation of the American Convention by Venezuela does not affect the competence of the Inter-American Commission on Human Rights to consider matters related to Venezuela. As a member state of the OAS, it will continue to be subject to the jurisdiction of the Inter-American Commission on Human Rights and the obligations imposed on it by the OAS Charter and the American Declaration of the Rights and Duties of Man, signed by the State of Venezuela en 1948.

88 . Venezuela was the first country to apply the Inter-American Democratic Charter. However, the Supreme Court of Justice ruled that adherence by Venezuela to the Inter-American Democratic Charter was an act of treason.

B) APPLICABLE LAW

— *American Declaration on the Rights and Duties of Man (1948)*

**Article XX.** Every person having legal capacity is entitled to participate in the government of his country, directly or through his representatives, and to take part in popular elections, which shall be by secret ballot, and shall be honest, periodic and free.

Protects: The right of suffrage and of participation in the government.

— *International Covenant on Civil and Political Rights(1966)*<sup>89</sup>

**Article 19:**

1. Everyone shall have the right to hold opinions without interference.
2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.
3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:
  - a) For respect of the rights or reputations of others;
  - b) For the protection of national security or public order (*ordre public*), or of public health or morals.

**Article 25:** Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions:

- c) To take part in the conduct of public affairs, directly or through freely chosen representatives;
  - a) To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression and will of the electors;
  - b) To have access, on general terms of equality, to public service in his country.

**Article 41:** A State Party to the present Covenant may at any time declare under this article that it recognizes the competence of the Committee to receive and consider communications to the effect that a State Party claims that another State Party is not fulfilling its obligations under the present Covenant. Communications under this article may be received and considered only if submitted by a State Party which has made a declaration recognizing in regard to itself the competence of the Committee. No communication shall be received by the Committee if it concerns a State Party which has not made such a declaration. Communications received under this article shall be dealt with in accordance with the following procedure:

- a) If a State Party to the present Covenant considers that another State Party is not giving effect to the provisions of the present Covenant, it may, by written communication, bring the matter to the attention of that State Party. Within three months after the receipt of the communication, the receiving State shall afford the State which sent the communication an explanation or any other statement in writing clarifying the matter, which should include, to the extent possible and pertinent, reference to domestic procedures and remedies taken, pending, or available in the matter.
- b) If the matter is not adjusted to the satisfaction of both States Parties concerned within six months after the receipt by the receiving State of the initial communication, either State shall

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<sup>89</sup>. Venezuela signed the Covenant in 1969 and ratified it in 1978.

have the right to refer the matter to the Committee, by notice given to the Committee and to the other State.

— *International Covenant on Economic, Social, and Cultural Rights (1966)*

**Article 11:** The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international cooperation based on free consent.

— *American Convention on Human Rights – Pact of San José (1969)*

**Article 7. Right to Personal Liberty**

1. Every person has the right to personal liberty and security.
2. No one shall be deprived of his physical liberty except for the reasons and under the conditions established beforehand by the constitution of the State Party concerned or by a law established pursuant thereto.
3. No one shall be subject to arbitrary arrest or imprisonment.
4. Anyone who is detained shall be informed of the reasons for his detention and shall be promptly notified of the charge or charges against him.
5. Any person detained shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to be released without prejudice to the continuation of the proceedings. His release may be subject to guarantees to assure his appearance for trial.

**Article 13. Freedom of Thought and Expression**

1. Everyone has the right to freedom of thought and expression. This right includes freedom to seek, receive, and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing, in print, in the form of art, or through any other medium of one's choice.
2. The exercise of the right provided for in the foregoing paragraph shall not be subject to prior censorship but shall be subject to subsequent imposition of liability, which shall be expressly established by law to the extent necessary to ensure:
  - a. respect for the rights or reputations of others; or
  - b. the protection of national security, public order, or public health or morals.
3. The right of expression may not be restricted by indirect methods or means, such as the abuse of government or private controls over newsprint, radio broadcasting frequencies, or equipment used in the dissemination of information, or by any other means tending to impede the communication and circulation of ideas and opinions.
4. Notwithstanding the provisions of paragraph 2 above, public entertainments may be subject by law to prior censorship for the sole purpose of regulating access to them for the moral protection of childhood and adolescence.
5. Any propaganda for war and any advocacy of national, racial, or religious hatred that constitute incitements to lawless violence or to any other similar action against any person or group of persons on any grounds including those of race, color, religion, language, or national origin shall be considered as offenses punishable by law.

**Article 15. Right of Assembly.** The right of peaceful assembly, without arms, is recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and necessary in a democratic society in the interest of national security, public safety or public order, or to protect public health or morals or the rights or freedom of others.

**Article 16. Freedom of Association**

1. Everyone has the right to associate freely for ideological, religious, political, economic, labor, social, cultural, sports, or other purposes.
2. The exercise of this right shall be subject only to such restrictions established by law as may be necessary in a democratic society, in the interest of national security, public safety or public order, or to protect public health or morals or the rights and freedoms of others.
3. The provisions of this article do not bar the imposition of legal restrictions, including even deprivation of the exercise of the right of association, on members of the armed forces and the police.

**Article 23. Right to Participate in Government**

1. Every citizen shall enjoy the following rights and opportunities:
  - a) to take part in the conduct of public affairs, directly or through freely chosen representatives;
  - b) to vote and to be elected in genuine periodic elections, which shall be by universal and equal suffrage and by secret ballot that guarantees the free expression of the will of the voters; and
  - c) to have access, under general conditions of equality, to the public service of his country.
2. The law may regulate the exercise of the rights and opportunities referred to in the preceding paragraph only on the basis of age, nationality, residence, language, education, civil and mental capacity, or sentencing by a competent court in criminal proceedings.

— [Inter-American Convention against Corruption \(1996\)](#)

**Article VI: Acts of Corruption**

1. This Convention is applicable to the following acts of corruption:
  - a) The solicitation or acceptance, directly or indirectly, by a government official or a person who performs public functions, of any article of monetary value, or other benefit, such as a gift, favor, promise or advantage for himself or for another person or entity, in exchange for any act or omission in the performance of his public functions;
  - b) The offering or granting, directly or indirectly, to a government official or a person who performs public functions, of any article of monetary value, or other benefit, such as a gift, favor, promise or advantage for himself or for another person or entity, in exchange for any act or omission in the performance of his public functions;
  - c) Any act or omission in the discharge of his duties by a government official or a person who performs public functions for the purpose of illicitly obtaining benefits for himself or for a third party;
  - d) The fraudulent use or concealment of property derived from any of the acts referred to in this article; and
  - e) Participation as a principal, coprincipal, instigator, accomplice or accessory after the fact, or in any other manner, in the commission or attempted commission of, or in any collaboration or conspiracy to commit, any of the acts referred to in this article.
2. This Convention shall also be applicable by mutual agreement between or among two or more States Parties with respect to any other act of corruption not described herein.

— *Rome Statute (1998)*<sup>90</sup>

**Article 5. Crimes within the jurisdiction of the Court.**

1. The jurisdiction of the Court shall be limited to the most serious crimes of concern to the international community as a whole. The Court has jurisdiction in accordance with this Statute with respect to the following crimes: (a) The crime of genocide; (b) Crimes against humanity; (c) War crimes; (d) The crime of aggression.

**Article 12. Preconditions to the exercise of jurisdiction**

1. A State which becomes a Party to this Statute thereby accepts the jurisdiction of the Court with respect to the crimes referred to in article 5.
2. In the case of article 13, paragraph (a) or (c), the Court may exercise its jurisdiction if one or more of the following States are Parties to this Statute or have accepted the jurisdiction of the Court in accordance with paragraph 3: (a) The State on the territory of which the conduct in question occurred or, if the crime was committed on board a vessel or aircraft, the State of registration of that vessel or aircraft; (b) The State of which the person accused of the crime is a national.
3. If the acceptance of a State which is not a Party to this Statute is required under paragraph 2, that State may, by declaration lodged with the Registrar, accept the exercise of jurisdiction by the Court with respect to the crime in question. The accepting State shall cooperate with the Court without any delay or exception in accordance with Part 9.

**Article 25. Individual criminal responsibility**

1. The Court shall have jurisdiction over natural persons pursuant to this Statute.
2. A person who commits a crime within the jurisdiction of the Court shall be individually responsible and liable for punishment in accordance with this Statute.
3. In accordance with this Statute, a person shall be criminally responsible and liable for punishment for a crime within the jurisdiction of the Court if that person:
  - (a) Commits such a crime, whether as an individual, jointly with another or through another person, regardless of whether that other person is criminally responsible;
  - (b) Orders, solicits or induces the commission of such a crime which in fact occurs or is attempted;
  - (c) For the purpose of facilitating the commission of such a crime, aids, abets or otherwise assists in its commission or its attempted commission, including providing the means for its commission;
  - (d) In any other way contributes to the commission or attempted commission of such a crime by a group of persons acting with a common purpose. Such contribution shall be intentional and shall either: (i) Be made with the aim of furthering the criminal activity or criminal purpose of the group, where such activity or purpose involves the commission of a crime within the jurisdiction of the Court; or (ii) Be made in the knowledge of the intention of the group to commit the crime;
  - (e) In respect of the crime of genocide, directly and publicly incites others to commit genocide;

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90 . Venezuela made one of the first ratifications, in 2000.

(f) Attempts to commit such a crime by taking action that commences its execution by means of a substantial step, but the crime does not occur because of circumstances independent of the person's intentions. However, a person who abandons the effort to commit the crime or otherwise prevents the completion of the crime shall not be liable for punishment under this Statute for the attempt to commit that crime if that person completely and voluntarily gave up the criminal purpose.

4. No provision in this Statute relating to individual criminal responsibility shall affect the responsibility of States under international law.

**Article 28. Responsibility of commanders and other superiors.** In addition to other grounds of criminal responsibility under this Statute for crimes within the jurisdiction of the Court:

(a) A military commander or person effectively acting as a military commander shall be criminally responsible for crimes within the jurisdiction of the Court committed by forces under his or her effective command and control, or effective authority and control as the case may be, as a result of his or her failure to exercise control properly over such forces, where:

(i) That military commander or person either knew or, owing to the circumstances at the time, should have known that the forces were committing or about to commit such crimes; and

(ii) That military commander or person failed to take all necessary and reasonable measures within his or her power to prevent or repress their commission or to submit the matter to the competent authorities for investigation and prosecution.

(b) With respect to superior and subordinate relationships not described in paragraph (a), a superior shall be criminally responsible for crimes within the jurisdiction of the Court committed by subordinates under his or her effective authority and control, as a result of his or her failure to exercise control properly over such subordinates, where:

(i) The superior either knew, or consciously disregarded information which clearly indicated that the subordinates were committing or about to commit such crimes;

(ii) The crimes concerned activities that were within the effective responsibility and control of the superior; and

(iii) The superior failed to take all necessary and reasonable measures within his or her power to prevent or repress their commission or to submit the matter to the competent authorities for investigation and prosecution.

**Article 29. Non-applicability of statute of limitations.** The crimes within the jurisdiction of the Court shall not be subject to any statute of limitations.

**Article 33. Superior orders and prescription of law.**

1. The fact that a crime within the jurisdiction of the Court has been committed by a person pursuant to an order of a Government or of a superior, whether military or civilian, shall not relieve that person of criminal responsibility unless:

- (a) The person was under a legal obligation to obey orders of the Government or the superior in question;
- (b) The person did not know that the order was unlawful; and
- (c) The order was not manifestly unlawful.

2. For the purposes of this article, orders to commit genocide or crimes against humanity are manifestly unlawful.

— *Declaration of Principles on Freedom of Expression (2000)*

**Principle 5.** Prior censorship, direct or indirect interference in or pressure exerted upon any expression, opinion or information transmitted through any means of oral, written, artistic, visual or electronic communication must be prohibited by law. Restrictions to the free circulation of ideas and opinions, as well as the arbitrary imposition of information and the imposition of obstacles to the free flow of information violate the right to freedom of expression.

— *Inter-American Democratic Charter (2001)*

**Article 1.** The peoples of the Americas have a right to democracy and their governments have an obligation to promote and defend it. Democracy is essential for the social, political, and economic development of the peoples of the Americas.

**Article 3.** Essential elements of representative democracy include, *inter alia*, respect for human rights and fundamental freedoms, access to and the exercise of power in accordance with the rule of law, the holding of periodic, free, and fair elections based on secret balloting and universal suffrage as an expression of the sovereignty of the people, the pluralistic system of political parties and organizations, and the separation of powers and independence of the branches of government.

**Article 4.** Transparency in government activities, probity, responsible public administration on the part of governments, respect for social rights, and freedom of expression and of the press are essential components of the exercise of democracy.

The constitutional subordination of all state institutions to the legally constituted civilian authority and respect for the rule of law on the part of all institutions and sectors of society are equally essential to democracy.

**Article 17.** When the government of a member state considers that its democratic political institutional process or its legitimate exercise of power is at risk, it may request assistance from the Secretary General or the Permanent Council for the strengthening and preservation of its democratic system.

**Article 18.** When situations arise in a member state that may affect the development of its democratic political institutional process or the legitimate exercise of power, the Secretary General or the Permanent Council may, with prior consent of the government concerned, arrange for visits or other actions in order to analyze the situation. The Secretary General will submit a report to the Permanent Council, which will undertake a collective assessment of the situation and, where necessary, may adopt decisions for the preservation of the democratic system and its strengthening.

**Article 19.** Based on the principles of the Charter of the OAS and subject to its norms, and in accordance with the democracy clause contained in the Declaration of Quebec City, an unconstitutional interruption of the democratic order or an unconstitutional alteration of the constitutional regime that seriously impairs the democratic order in a member state, constitutes, while it persists, an insurmountable obstacle to its government's participation in sessions of the General Assembly, the Meeting of Consultation, the

Councils of the Organization, the specialized conferences, the commissions, working groups, and other bodies of the Organization.

**Article 20.** In the event of an unconstitutional alteration of the constitutional regime that seriously impairs the democratic order in a member state, any member state or the Secretary General may request the immediate convocation of the Permanent Council to undertake a collective assessment of the situation and to take such decisions as it deems appropriate.

The Permanent Council, depending on the situation, may undertake the necessary diplomatic initiatives, including good offices, to foster the restoration of democracy.

If such diplomatic initiatives prove unsuccessful, or if the urgency of the situation so warrants, the Permanent Council shall immediately convene a special session of the General Assembly. The General Assembly will adopt the decisions it deems appropriate, including the undertaking of diplomatic initiatives, in accordance with the Charter of the Organization, international law, and the provisions of this Democratic Charter.

The necessary diplomatic initiatives, including good offices, to foster the restoration of democracy, will continue during the process.

**Article 21.** When the special session of the General Assembly determines that there has been an unconstitutional interruption of the democratic order of a member state, and that diplomatic initiatives have failed, the special session shall take the decision to suspend said member state from the exercise of its right to participate in the OAS by an affirmative vote of two thirds of the member states in accordance with the Charter of the OAS. The suspension shall take effect immediately.

The suspended member state shall continue to fulfill its obligations to the Organization, in particular its human rights obligations.

Notwithstanding the suspension of the member state, the Organization will maintain diplomatic initiatives to restore democracy in that state.

**Article 23.** Member states are responsible for organizing, conducting, and ensuring free and fair electoral processes.

Member states, in the exercise of their sovereignty, may request that the Organization of American States provide advisory services or assistance for strengthening and developing their electoral institutions and processes, including sending preliminary missions for that purpose.