

Foro por la Vida Coalition of Venezuelan NGOs



**Alternative Report to the Third and Fourth combined periodic reports due
to be submitted by the Bolivarian Republic of Venezuela in 2004
to the Committee against Torture**

February 2014

Content

	Executive summary	3
I.	Presentation	4
II.	Preliminary General observations	5
	a. Civil society participation in preparing the report	5
	b. Legislative and institutional developments and threats	6
	c. Limited statistical information	8
	d. Increasing militarization of citizen security	9
	e. Action of parapolice groups	11
III.	Articles 1 and 4	12
IV.	Articles 2 and 16	12
	a. The new Code of Criminal Procedure and Human Rights	12
	b. Development of the prohibition of torture in other legal Instruments	16
	c. Municipalization of justice and citizen participation	17
	d. Proportional use of force and criminalization of protest	19
V.	Article 11	24
VI.	Article 13	26
	a. Franklin Brito	27
	b. Raúl Díaz Peña, prison conditions at SEBIN and Ivan Simonovis' Health	30
	c. María de Lourdes Afiuni	32
VII.	Article 14	35
	a. Massacre of El Amparo	35
	b. Caracazo	36
VIII.	Rights of vulnerable sectors	36
	a. Situation of refugees and asylum seekers	36
	b. Threats and attacks against sexual minorities	38
	c. Indigenous peoples	39
	d. Human rights defenders	40
IX.	Failure to comply with international obligations	41
X.	Conclusions and recommendations	42

Executive summary

- Civil society was not invited to participate in the preparation of the combined report, subtracting advocacy opportunities on weaknesses and strengths in torture and CIDT.
- Significant progress in the 1999 Constitution on human rights in contrast to a weak and little independent institutional framework and is threatened by regressive laws in this area.
- The State has not complied with requests to develop statistical systems disaggregated by profile victims and organism of presumed perpetrators.
- There has been a growing militarization of public security policies, including police training, with negative balances on the rights of individuals.
- Parapolice groups continue to operate with impunity and express or tacit support of the authorities.
- The Executive approved, unconstitutionally and in violation of rights, a new Code of Criminal Procedure that affects guarantees of due process, the right to be heard, public trial and the presumption of innocence, with negative consequences on the rights of processed, which resulted in greater or procedural delays and overcrowding. Also, the spectrum of officials protected by the military court was expanded.
- Reforms to legal instruments adopted in recent years, especially in the area of children and adolescents, have reduced the level of protection in terms of juvenile justice and the protection of their integrity.
- The municipalization of justice has only been implemented in less than 10% of the territory and citizen participation was eliminated from the criminal justice.
- It continues to register large number of cases in violation to the principle of proportional use of force, accentuating the criminalization of protest by tolerating, covering up and even rewarding alleged perpetrators.
- The situation in prisons is still one of the most violent in the world, without tangible results from various announced plans to improve it. Most prisons are under the control of inmates and in recent years the problem has also been moved to police detention centers, in some cases, by specific politically motivated instructions.
- Access of members of civil society to prisons and other places of detention is prevented or obstructed.
- There is no clear policy to ensure that any person deprived of liberty has chance to make a complaint, without implying additional risks and threats to his/her personal integrity and life. There are emblematic and well-documented cases in which the authorities of various branches of government, however, have hampered complaints and undercover potential perpetrators.
- There is not yet a system that allows rehabilitation, reparation and compensation to victims of torture and in cases where there have been international rulings, the State has not complied with the ordered integral reparation.
- Vulnerable groups such as refugees and asylum seekers, sexual minorities, indigenous peoples and human rights defenders continue to face attacks, threats, insults, assaults and even death, without the State having conducted investigations beyond formalities.
- The State continues to have a systematic performance of breaching its international human rights obligations, expressed in events such as contempt of judgments, decisions and recommendations, the refusal of access to the country of representatives of the Inter-American and International system, removing references to international standards of protection in internal legislation and, most worrisome, the denunciation— already in effect – of the American Convention on Human Rights.

I. Presentation

1. This report is submitted by a group of organizations belonging to the *Foro por la Vida* (hereinafter the Forum), in order to present to the Committee against Torture (hereinafter the Committee), issues of concern on the situation of torture and other cruel, inhuman or degrading treatment within the framework of international commitments made by the Bolivarian Republic of Venezuela, under the UN Convention against torture (CAT).
2. The Forum is a platform of non-governmental human rights organizations in Venezuela with a history of over 20 years of work, consisting of some 20 non-governmental organizations from around the country, working in order to achieve the full realization of human rights and contribute to the rule of law. The Forum aims to monitor the political process to oversee consistency with democratic principles and human rights, influence the elaboration and monitoring of public policies and accompany allegations of human rights violations human of its member organizations through urgent actions, counseling and public statements, among others.
3. This report was prepared by the following organizations:

Acción Ciudadana contra el SIDA (ACCSI) - Citizen Action against AIDS

Centro de Derechos Humanos de la Universidad Católica Andrés Bello (CDH-UCAB) – Human Rights Center, Andres Bello Catholic University

Civilis, Derechos Humanos – Civilis Human Rights

Espacio Público - Public Sphere

Programa Venezolano de Educación – Acción en Derechos Humanos (Provea) – Venezuelan Program on Education – Action for Human Rights

4. It also took into consideration previously published reports by other human rights organizations outside the Forum but with significant experience in areas relevant to the issues addressed by this Committee.
5. Although the period covered by the third and fourth combined reports ranges from 2002-2011, in some aspects we have considered incorporating relevant recent information. This is due, firstly, to the fact that the State included information on facts after 2011, over which we consider necessary to share some observations. Secondly, the need to bring to the attention of the Committee a series of recent events of concern.

6. The information provided by the Forum in this alternative report, while taking into account the combined report submitted by the State (hereinafter the Report or the combined report) ¹, takes into account:

- The Committee's final observations to the second report from Venezuela (CAT/C/CR/29/2, December 23, 2002);
- The follow-up to the Committee's recommendations;
- The list of issues to be addressed prior to the submission of the fourth periodic report of the Bolivarian Republic of Venezuela (CAT/C/VEN/Q/4)
- The follow-up of recommendations by the Special Rapporteur on Torture;
- Other concerns on the fulfillment of international commitments.

7. The undersigned organizations warn that a database or statistics information on some of the issues that concern to the Committee is not available in the country, and access to public information sources is not transparent, so a reconstruction effort of some indicators was done based on different sources.

II. Preliminary General observations

a. Civil society participation in preparing the report

8. A first element of concern is the lack of transparency in the preparation of the report by the Venezuelan State. In mid-2011, the Resident Representative of the United Nations Program for Development (UNDP) in Venezuela opened a set of calls for consultancies, including one identified with the acronym CI/108/MPPRE/2011 on *Information gathering for the 4th report of the Bolivarian Republic of Venezuela under Article 19 of the Convention against torture and other cruel, inhuman or degrading treatment or punishment*². The announcement was later removed from the website of the UNDP - Venezuela, at the request of the State as it wished to approve the contracts under its own criteria, which overstep the query function and compromises the independence of the specialists.

9. Although the UN system considers healthy and necessary the participation of civil society in the preparation of reports ³, the State itself recognized that the development of this combined report was made only with the participation of government agencies ⁴, limiting the participation of civil society and dialogue opportunities that this type of exercise involves.

¹ Bolivarian Republic of Venezuela: Third and Fourth combined periodic reports due to be submitted in 2004 to the Committee against Torture. CAT/C/VEN/3-4. February 12, 2013

² The announcement was placed in the UNDP website – Venezuela:

http://www.pnud.org.ve/component/option,com_docman/task,cat_view/gid,20/Itemid,81/

³ NACIONES UNIDAS: *Preparación de informes sobre los derechos humanos conforme a seis importantes instrumentos internacionales de derechos humanos*. Ginebra, 1998. Item e) Aportación de las organizaciones no gubernamentales, pág. 38 y siguientes

⁴ Venezuela. Combined report. CAT/C/VEN/3-4. Paragraph 2

b. Legislative and institutional developments and threats

10. In its concluding observations to Venezuela's second report, the Committee emphasizes positive aspects as the incorporation of a number of provisions in the 1999 Constitution, among those mentioned: the constitutional rank of international treaties, recognition of the right to file petitions to international bodies, the imprescriptible character of crimes against human rights, ensuring prosecution of civilians in civilian courts, compensation for victims of torture, guarantees for detained persons and action on extradition of alleged violations of human rights.
11. Although it is true that these constitutional measures are appreciated and benefited from the full support of civil society, its legislative development has been limited and where has occurred, there have been no administrative and other measures to implement these provisions, as in the case of the recently approved Special Law to Prevent and Punish Torture and Other Cruel, Inhuman and Degrading Treatment, on which more detailed reference will be made later.
12. Additionally, after the popular rejection of the constitutional reform proposed in 2007, a series of regressive laws on human rights have been passed, some of which directly affect matters of interest to the Committee. This downward trend in the law, is not only the responsibility of the legislature (National Assembly, hereafter AN), it falls directly on the Presidency of the Republic, to the extent that only from 2007 to 2012, three enabling laws have been approved, authorizing the head of the Executive to legislate directly for a total period of 46 months, including legal reserve areas for which he has no constitutional authority and affecting human rights.
13. The Committee observations to the second report also highlight the creation with constitutional rank of the *Defensoría del Pueblo* (DP) as an autonomous body, which currently holds the status of National Human Rights Institution at the UN. Such autonomy, capacity and performance on human rights, however, are far from practice as set out in the Paris Principles. According to report by the human rights organizations that evaluated the performance of the Ombudsperson from 2007 to 2012⁵:
 - i. The DP has not intervened in one court case on human rights, nor has encouraged the ratification of regional and international instruments protecting human rights. Its action has focused on public services, mainly provided by private sector, not by the State. In its reports, analyzes and recommendations do not take into account the applicable international standards. The DP has not exercised the power under the law to produce special reports that help to analyze and provide solutions to the main problems of the country, among which is the prison matters, even when the Annual Report 2012 of the

⁵ AAVV: Ya ti ¿quién te defiende? Informe sobre la gestión de la Defensoría del Pueblo para el quinquenio 2007 – 2012. http://w2.ucab.edu.ve/tl_files/CDH/recursos/Info%20DP%20VEN.pdf

NGO Venezuelan Prisons Watch (*Observatorio Venezolano de Prisiones, OVP*)⁶, noted that year as the most violent in Venezuelan prisons.

- ii. Some 150 organizations submitted 48 reports to the Universal Periodic Review of the year 2011 where Venezuela was first evaluated. Reports presented there, exhibiting a pattern of regression and serious violations of human rights⁷, as well as reports produced annually by human rights organizations, are systematically ignored, dismissed and even attacked by DP. This institution only maintains relationships with organizations of the so called "*People Power*" aligned with the political project of the Bolivarian revolution. There are no spaces for dialogue or cooperation with independent civil society organizations working on human rights or social development.
 - iii. It also has become regular practice a clear identification of the head of the DP, as well as other representatives of the institution, with "the Bolivarian project", turning the DP in a partisan and non-independent instance; although it receives no direct and formal instructions from one party or another state entity, the DP acts in adherence to lines of the executive branch and its coalition. In fact, the way the selection of the head of the DP was handled restricts direct participation of civil society, negatively affecting the independence of the DP, as noted by several Venezuelan independent studies⁸.
14. Moreover, the DP does not cooperate with international and regional institutions for the protection of human rights. Rather than urging the compliance with decisions, it has become a spokesperson over questioning and contempt of judgments and resolutions by international and regional mechanisms. In fact, the institution was silent during this period, with regard to the open contempt of authorities of all branches of government to the judgments and provisional measures of the Inter-American Court of Human Rights, as well as precautionary measures of the Inter-American Commission on Human Rights and the opinions and decisions of protection bodies of the United Nations system, as well as on the denunciation of the American Convention on Human Rights.
15. Finally, we note that the combined State Report provides a detailed explanation of existing laws, but little or no mention of its effective implementation. In the following sections of this alternative report, we present concerns on the gap between existing standards and practices and policies of the State.

⁶ OVP: Informe 2012: Situación penitenciaria de Venezuela. Available at: <http://www.derechos.org/ve/2013/02/01/ovp-informe-2012-situacion-penitenciaria-de-venezuela/>

⁷ Ver <http://epuvenezuela.blogspot.com/>

⁸ These research works are: Pinto, Raúl: Comité de Postulaciones: Participación y control social en la preselección de candidatos a ocupar cargos de los poderes públicos nacionales Judicial, Ciudadano y Electoral. Instituto Latinoamericano de Investigaciones Sociales. Caracas, 2003; Cubas, Raúl: Oportunidades para la participación en el Poder Ciudadano. Instituto Latinoamericano de Investigaciones Sociales. Caracas, S/F ; Díaz, Rafael: El Poder Ciudadano. Mimeo.

c. Limited statistical information

16. The Committee requested "disaggregated statistical data, among others, in terms of nationality, age and sex of the victims and the services to which the perpetrators belong"⁹. Addressing this request, the State asserts that: (a) The Ombudsperson has since 2002 data disaggregated by age, sex, petitioner, victim and vulnerable group; (b) the Public Ministry would have, from 2012, disaggregated data in terms of number of cases and allegations of crimes.
17. However, in its combined report the State has only an overall figure of 636 persons convicted of various crimes involving human rights violation for injury, torture, forced disappearance, illegal deprivation of liberty and murder¹⁰, without disaggregating such information according to the characteristics of victims and with no possibility of discriminating the number accused for each of the crimes referred to.
18. Regarding the information provided in the reports of the Ombudsperson, it does not have a consistent presentation to assess the situation over the years. Between 2002 and 2007, the Report of the Ombudsperson presented statistical information and tables, disaggregated by type of violated right and in the narrative included information on gender of victims. From 2007 statistical tables disappear and narrative information is presented, but only indicating the organ of assignment of the alleged perpetrators, without the disaggregation of the victims' profile. In recent reports for the period under study, data is disaggregated by type of complaint received, under the right allegedly violated and there is also information on age and gender of the victims, but it is presented in a general manner, without crossing data to the type of complaint, being impossible to determine the profile of the victims according to rights of interest to the Committee. Finally, it should be clarified that the information contained in the reports of the Ombudsperson refers only to complaints received, without reference to how they subsequently evolve into lawsuits or judgments, so it is not possible to obtain data on these reports about accused persons and only, in the best case, the bodies to which those suspected belong.
19. Regarding the Public Ministry, the situation is even more worrying as **the word torture is not mentioned even once** in the reports of 2012 and 2013, except to refer to the Commission to investigate the killings, torture and enforced disappearances Venezuelans during the decade of the 60s, 70s, 80s and 90s, created by Law to Punish Crimes, Disappearances, torture, and other violations of human rights for political reasons in the period 1958-1998¹¹. Reports are limited to presenting tables that indicate the cases admitted to the Public Prosecutor office, complaint, grievance and flagrancy by organ of assignment of the claim, so it is only possible to know that

⁹ Comité contra la Tortura: *Observaciones finales del Comité al segundo informe de Venezuela*. CAT/C/CR/29/2, 23 de diciembre de 2002, paragraph. 12; Comité contra la Tortura: *Lista de cuestiones que deben abordarse antes de la presentación del cuarto informe periódico de la República Bolivariana de Venezuela (CAT/C/VEN/Q/4)*, 2 de agosto de 2010, párr. 38. Emphasis added.

¹⁰ Venezuela. Combined report. CAT/C/VEN/3-4. Paragraph 56. The same information is repeated in paragraph 161.

¹¹ República Bolivariana de Venezuela. Ley para Sancionar los Crímenes, Desapariciones, Torturas, y otras Violaciones de los Derechos Humanos por razones políticas en el periodo 1958-1998. Official Gazette N° 39.808 November 25, 2011.

there were complaints received by the Office of Crime and the Department of Fundamental Rights, with no specific details of the cases received much less the victim profile. Neither the reports account for the proceedings initiated and completed in relation to officials involved in events related to the type of rights interest to the Committee¹².

20. Thus, it appears that there is no such detailed record and the State has not complied with the recommendation made by the Committee in 2002, or with the express request of August 2010, made in the list of issues to address, remaining a situation of invisibility of cases of torture and cruel, inhuman or degrading treatment of their suspected perpetrators of the sanctions and the profile of the victims of these serious violations of human rights.

d. Increasing militarization of citizen security

21. Though not part of the period under review, the State includes in its report the creation of the Great Mission Life Venezuela (*Gran Misión a Toda Vida Venezuela*)¹³, in response to the increasing situation of citizen insecurity, therefore we consider necessary to make a few clarifications.

22. Although in 2012 the Great Mission was launched to lifetime Venezuela as *"integral State public policy, which aims to reduce the situations related to crime, offenses, traffic accidents, disasters or emergencies (...) contrary to 'hard' policies and tougher penalties suggested by some sectors of the country"*¹⁴, since May 2013 *"Homeland Security Plan"* is implemented in parallel that includes the use of at least 3,000 troops of the Bolivarian National Armed Forces acting on citizen security and placing military commands at the top of the police operations¹⁵.

23. The military officers are not trained to meet the requirements of public safety. The Public Ministry announced the development of a training program of military officials on human rights, which was initiated **after** the plan had begun¹⁶ and it was applied in a fractional and incomplete manner, with foreseeable consequences for the civilian population, resulting in several homicides by military officers against citizens.

24. One case that most shocked the public opinion was the death by gunshot of a woman aged 42 and her daughter 12, also being hurt by firearm two other daughters, in Falcon state. Although the suspects in this case were passed to justice, the authorities sought to reduce the impact of the

¹² The annual reports of the Public Prosecutor may be found at: <http://www.mp.gob.ve/web/guest/informe-anual>

¹³ Venezuela. Combined report. CAT/C/VEN/3-4. Paragraph 17

¹⁴ Ministerio del Poder Popular para las Relaciones Interiores, Justicia y Paz. Gran Misión a toda vida Venezuela. ¿Quiénes somos?

http://www.misionatodavidavenezuela.gob.ve/index.php?option=com_content&view=article&id=1&Itemid=102

¹⁵ Agencia venezolana de noticias / Ministry of Defence: President Maduro: We are committed to fight with all our soul for a secure homeland <http://www.mindefensa.gob.ve/index.php/eje-bienestar-social/article-categories/80-noticias-antiores/165-presidente-maduro-estamos-comprometidos-a-luchar-con-toda-nuestra-alma-por-una-patria-segura>

¹⁶ Ministry of Popular Power for Communication and Information: Homeland Security Plan officials involved in human rights workshops: <http://www.minci.gob.ve/2013/05/funcionarios-del-plan-patria-segura-participan-en-talleres-sobre-ddhh/>

event, claiming that they had mistaken the vehicle where the victims moved with one that was being followed by officers, to what the question is whether the eventual murder of suspected could have been justified as a case of proportionate use of force¹⁷. It was also claimed that military officials who acted were not part of the "Homeland Security Plan", though in truth that it was military officers in public security work, regardless of the "plan" in which they were participating. This occurred in July 2013; according to Provea's records in that month five people killed were in different incidents perpetrated by military personnel in public safety functions¹⁸.

25. More recently, following the murder of a famous actress in January 2013, the Government announced the "relaunch" of the Homeland Secure Plan (Plan Patria Segura)¹⁹ and simultaneously appoint military officers to head the National Police and the National Security University²⁰, which still offers fewer guarantees as to the civilian training required in this area. In this context, statements by high level officials contradict the discourse previously expressed to oppose the policies of "tough", as the President declares that there will be "iron fist"²¹.

26. According to experts of the Venezuelan Observatory of Violence (OVV), policies of militarization of public security have not reduced crime rates and, on the contrary, they have quintupled in the past 15 years²². By the end of 2013, the OVV estimated the death toll from violence amount to more than 24,700 deaths, with a homicide rate of 79 per hundred thousand inhabitants²³. However, it is not possible to know the actual dimensions of the situation, because the Criminal Investigations Police (CICPC), closed its press office since 2003: *"In December 2003 was the last time when it was possible to have free access to statistics on crime in Venezuela; to date, the numbers of offenses known to the police were public, could be obtained without interference from the authorities and were available in the directories and the websites of the competent bodies for any researcher or citizen. The notable increase reported in 2003, in which 11,342 homicides occurred and that showed in the previous five years had more than doubled the murders, was perhaps what motivated the government's decision to prohibit the dissemination of information"*²⁴

¹⁷ Noticia al día: Conmoción en Falcón: Por error 10 funcionarios de la GNB mataron a tiros a una mujer y a su hija adolescente: <http://noticialdia.com/2013/07/conmocion-en-falcon-por-error-funcionarios-de-la-gnb-mataron-a-tiros-a-una-mujer-y-a-su-hija-adolescente-hay-10-detenidos/>

¹⁸ El Nacional: Asesinaron a estudiante de la UC en alcabala de Patria segura http://www.el-nacional.com/sucesos/Asesinaron-estudiante-UC-Patria-Segura_0_241776110.html

¹⁹ Agencia Venezolana de Noticias: Presidente Maduro anuncia relanzamiento del plan Patria segura <http://www.avn.info.ve/contenido/presidente-maduro-anuncia-relanzamiento-del-plan-patria-segura>

²⁰ Gaceta Oficial número 40.328 con fecha 7 de enero de 2014

²¹ Alcaldía de Caracas. Ciudad Caracas: Mano de hierro contra el delito anuncia Maduro: <http://www.ciudadccs.info/?p=520950>

²² El Nacional: Militarización de la seguridad quintuplicó asesinatos en 15 años http://www.el-nacional.com/politica/Militarizacion-seguridad-quintuplico-asesinatos-anos_0_334766790.html

²³ Observatorio Venezolano de la Violencia. Informe OVV 2013 <http://observatoriodeviolencia.org.ve/ws/informe-del-ovv-diciembre-2013-2/>

²⁴ Observatorio Venezolano de la Violencia. Informe OVV 2013 <http://observatoriodeviolencia.org.ve/ws/informe-del-ovv-diciembre-2013-2/>

e. Action of parapolice groups

27. In its list of questions, the Committee requests the State information about groups as "*La Piedrita*" and "*Círculos Bolivarianos*"²⁵.

28. *La Piedrita* is one of several "colectivos" (groupings) operating in the 23 de Enero district in Caracas, a few blocks from the Government Palace. The "*colectivos*" are also present in other cities. The director of the NGO Venezuelan Observatory of Violence did not hesitate to qualify as "*left-wing paramilitary groups with the support of the government, which does nothing to them*"²⁶.

29. In a report presented at a hearing before the Commission by the NGO Watch in October 2010, the following information is provided:

In Venezuela the existence of armed groups outside the law is a threat to life, integrity and security of the people. In Caracas, in a range of 12 km around the Miraflores Presidential Palace and the headquarters of the Bolivarian National Militia, armed groups identified with the process led by President Chavez, operate outside the law.

*These armed groups have publicly displayed weapons, have threatened to commit offenses and in some case have committed crimes but until now the Venezuelan government has taken no effective legal action in this regard. We refer, among others, to groups such as: Coordinadora Simón Bolívar, La Piedrita, Carapaica, Colectivo Montaraz, Tupamaros and Alexis Vive*²⁷.

30. Under disarmament plans implemented by the government, a member of a *colectivo* of 23 de Enero district was arrested by the National Bolivarian Police (PNB) on July 16, 2013. A firearm required for having being used in crimes was confiscated to him with a variety of ammunition. From 3:00 am, members of different *colectivos* went to the PNB headquarters demanding the release of the detainee. Around 11 am the PNB was surrounded by members of *colectivos* in motorcycles, blocking traffic. At 3:00 pm, after the arrival of a commission of intelligence, members of *colectivos* withdrew, claiming that they had reached an "*agreement*". There were no arrests²⁸.

31. In the city of Mérida, action by *colectivos* is recurrent. In response to any expression of public protest, these individuals belonging to the group of the *Tupamaros*, take city streets and student residences, committing vandalism, destruction to property, assaults with firearms;

²⁵ Comité contra la Tortura: Lista de cuestiones que deben abordarse antes de la presentación del cuarto informe periódico de la República Bolivariana de Venezuela (CAT/C/VEN/Q/4), August 2, 2010, paragraph 31

²⁶ El Comercio: Five armed militias are loyal Chavismo in http://www.elcomercio.com/mundo/Chavismo-Hugo_Chavez-milicias-armadas-colectivos-urbanos-violencia-guerrillas-Venezuela-inseguridad-Capriles-Maduro_0_899910026.html

²⁷ Foro para los derechos humanos y la democracia: Presentation to the 140th period of Hearing American Commission on Human Rights on Friday, October 29th, 2010 at 5:00 pm in Washington DC. available in: <http://www.infocudadano.com/wp-content/uploads/2010/11/Presentaciones-ante-la-CIDH-en-la-Audiencia-del-29-de-October-de-2010.pdf>

²⁸ They surrounded the Police to demand release of fellow. At: <http://www.entornointeligente.com/articulo/1469579/Cercaron-la-PNB-para-exigir-liberacion-de-companero-17072013>

several people have resulted wounded and dead. Merida is the seat of a major national university, so students go out in protest against various issues and the *Tupamaros* have taken students and university campus as the main target of attack. These actions are performed in front of the passive look of police force, and although its performance has been documented in videos and photographs, are not brought to justice. There have been isolated cases of arrests of members of *colectivos*, only when they are allegedly related assaults and fatalities involving officers.

III. Articles 1 y 4

32. Venezuela finally has a Special Act to Prevent and Punish Torture and Other Cruel, Inhuman or Degrading Treatment²⁹, which should be noted as something positive, developing the constitutional guarantee that protects individuals against violations of the right to personal integrity and commitments made by the country under the Convention.

33. Because of the limitations set forth in section II.3 of this alternative report, it is impossible to determine to what extent existing regulations are consistent with policies and practices that ensure the investigation and punishment of those responsible for crimes related to issues of concern to the Committee, as follows from Article 4 of the Convention. However, in later sections of this alternative report, some emblematic cases that demonstrate the still existing gap between policy and its implementation are presented.

IV. Articles 2 and 16

a. The new Code of Criminal Procedure and human rights

34. The combined report states that "*with the entering into force of the Code of Criminal Procedure in July 1999, there was a paradigm shift of the transition of the inquisitorial system to the adversarial*"³⁰ and adds that "*in June 2012 these principles are confirmed with approval of a new Code of Criminal Procedure, based on the ' need to adapt the rules of the criminal procedure to the constitutional mandate*"³¹.

35. In this regard it is important to clarify that two days before the end of the special powers granted to the President by the National Assembly in December 2010, a decree with the rank, value and force of law is issued, by which the Code of Criminal Procedure (CCP) is substantially reformed to the point that rather than reforms, puts the country in front of a new criminal justice system.

²⁹ Published in Official Gazette N° 40.212, July 22, 2013

³⁰ Venezuela. Combined report. CAT/C/VEN/3-4. Paragraph 59

³¹ Venezuela. Combined report. CAT/C/VEN/3-4. Paragraph 60

36. The President does not have authority to create crimes or to legislate over rights. This not only fails to comply with the provisions of the Constitution, but with Venezuela's international commitments on human rights.

37. It is, as it was warned by a group of civil society organizations in a hearing before the Inter-American Commission on Human Rights (IACHR) an unconstitutional provision, to the extent that alters the constitutional order in areas such as (a) the procedure to consult laws, (b) the prohibition on delegating legislative power in blank, and without limit, and (c) the principle of legality, because delegates to the President the power to create crimes and legislate on rights³².

38. In this regard, the Commission found that *"By allowing legislative delegations too broadly, which may extend to criminal matters, interferes with the principle of legality required for restrictions on human rights concerns. The frequent concentration of executive and legislative functions into a single branch by the Constitution and the Enabling Act without establishing appropriate limits and controls, allows interference in the sphere of rights and freedoms"*³³

39. The mechanism of development of the new CCP, regardless of the procedure for the formulation of laws applicable to the Legislative Branch, contravenes the provisions of the Inter-American Court of Human Rights in its Advisory Opinion 6/1986, which determined that *"the expression laws, used in Article 30, cannot have other meaning than that of formal law, i.e. legal standard adopted by the legislature and promulgated by the Executive Branch, as the procedure required by the domestic law of each State"*³⁴. It concludes: *"The expression laws in the context of the protection of human rights would be meaningless if it is not with reference to the concept that the sole discretion of governmental power is not enough to restrict such rights. This would amount to recognize virtually absolute powers of the rulers to the ruled. Instead, the word law takes on its logical and historical sense if it is considered as a requirement of the necessary restriction of governmental interference in the sphere of rights and freedoms of the human person"*³⁵. This new Code, imposed from the Executive without any parliamentary or social control affects a range of human rights.

The right to be heard

40. The recent reform of CCP violates the right to a fair hearing under both the Constitution and international treaties signed by Venezuela, incorporating a new article on the preliminary hearing (Article 310), and changing article 327 regarding the opening hearing. Both articles now

³² Centro de Derechos Humanos, Universidad Católica Andrés Bello: Hearing on the Enabling Law and Human Rights in Venezuela, request to the Inter-American Commission on Human Rights, 141st Regular Session, Washington, March 2011.

³³ IACHR. Press release 122/10. December 15, 2010. IACHR Concerned about Law Initiatives in Venezuela that can affect the full enjoyment of human rights. Available in: <http://www.cidh.oas.org/Comunicados/Spanish/2010/122-10sp.htm>.

³⁴ Inter-American Court, The Word "Laws" in Article 30 of the American Convention on Human Rights, Advisory Opinion OC-6/86 of 9 May 1986 (Serie A No. 6), paragraph. 27

³⁵ Ibidem, paragraph 27

establish the continuation of the trial, even if the defendant does not attend, claiming that it should be understood that the defendant "*does not want to use his/her right to be heard*". This approach is intended to justify an alleged renunciation of an inalienable right; moreover, the defendant may be punished by revocation of precautionary measures alternative to imprisonment.

The right to a public criminal trial

41. So far, the CCP specifically established exceptions to public trials, consistent with international principles on the matter when:

- a. *Privacy of any party or any person summoned to participate is affected.*
- b. *The State security or morality is severely disturbed.*
- c. *An official secret, particularly commercial and industrial information, whose unauthorized disclosure is punishable.*
- d. *A minor is presenting a statement and the court considers the publicity inconvenient.*

42. The reform includes a fifth situation: "*Any other circumstance which in the opinion of the Judge disturbs the normal development of the trial*"³⁶. Thus, the judge is granted with a discretionary power that distorts the meaning of this exceptional measure.

The right to be presumed innocent

43. The New CCP now incorporates new paragraph to Article 111:

Article 111. The public prosecutor in criminal proceedings may:

(...)

18. *Request to the court to declare the absence of the escapee or fugitive against whom a warrant was ordered and proceed to issue definitive measures to dispose of the assets related to the offense owns by the escapee or fugitive or their intermediaries.*

44. This provision violates the presumption of innocence as it applies an early and irreversible sanction, which may additionally affect goods which, being on the name of the accused, can transcend his person such as, for example, the house where the family inhabits. The rule does not provide exceptions to preserve the interests and rights of third parties affected by this provision.

45. Finally, it should be noted that none of the principles of the preamble to the 1998 CCP had been questioned³⁷ by the legislature in subsequent reforms. The intended justification provided

³⁶ Article 316

³⁷ Explanatory statement on partial reform of the Code of Criminal Procedure 2009:

http://www.google.co.ve/url?sa=t&rct=j&q=&esrc=s&source=web&cd=4&ved=0CFQQFjAD&url=http%3A%2F%2Fwww.asambleanacional.gov.ve%2Findex.php%3Foption%3Dcom_docman%26task%3Ddoc_download%26gid%3D1757%26ite

in the 2012 preamble indicates that these new provisions are intended to ensure speedy process; however, the problem of procedural delays cannot be solved at the expenses of rights of the accused.

Impact on detainees

46. The new CCP provides in article 374 that the decision to agree to the release of the accused is of immediate execution, but provides for exceptions based on the type of crime and not on the length of the sentence, as stipulated in the previous CCP. In some cases it refers to crimes causing "serious injury" or "multiple victims", which could lead to a reinterpretation of crime and punishment, an issue that is not for the procedural instrument but for the Penal Code. Accordingly, the President legislated on crimes, violating the Principle of legal reserve.

47. In addition, the same article gives the Public Prosecutor the faculty to appeal orally at the hearing against the decision that settles freed the accused. Article 347 also removed the provision according to which the Court of Appeal had to decide the appeal (no oral) within 48 hours, having heard the arguments of the defense. The new CCP not only does not set a time period to the Court of Appeals, but the defense will not be heard by it. In short, if the prosecutor appeals orally and the defendant lost the right to be heard by the Court of Appeals – which is not subject to decide at a particular time- then, a person can continue under detention, even though there is a decision that guarantees his/her freedom.

48. The new CCP extends deadlines for granting alternative sanctions to imprisonment as follows:

ALTERNATIVE SANCTION	CCP 1998- 2009	CCP 2012
Work	A quarter of sentence served	Half sentence served
Open prison	A third of sentence served	Two thirds of sentence served
Probation	Two thirds of sentence served	Three quarters of sentence served

49. In addition, the new CCP added new conditions for the granting of alternative measures among which are:

3. Favorable forecast of punishable conduct, issued according to the assessment by an evaluation team appointed by the Minister with responsibility for Prison's matters.

a. Not being involved in acts of violence that disturb the peace of the area or the prison system.

b. Completed, pursue studies or work effectively in educational programs implemented by the Ministry with responsibility for prisons.

[mid%3D185%26lang%3Des&ei=UPPkT_KWLYiC8ATD0bzODg&usg=AFQjCNE28uymvXxwattASqInZHMvB-P6Hw&sig2=6q5QlPpHeNGQtABJroe1SQ](#)

50. Circumstances for granting alternatives measures to prison (six in total) should now be concurrent and its implementation has an early application, which in practice means almost the total suspension of all alternatives measures to prison, at least in the short and medium term, since the population currently working or studying in the country's prisons is minimal.

Military Courts

51. The new CCP represents major setbacks regarding the attraction of civil jurisdiction over the military, which is observed in the inclusion of members of the Military High Command in Article 381, related to a special procedure for the trial of senior officials as well as the article related to the applicable procedures.

52. On this second point, the now repealed COPP stated that the military criminal jurisdiction would apply in a supplementary way the rules of ordinary procedure, while the new Code provides in Article 517 that "*The military criminal jurisdiction is governed by the rules set out in its special legislation and the provisions of this Code, insofar as they are applicable*".

b. Development of the prohibition of torture in other legal instruments

52. As noted by the State in its combined report, there are other laws in the country aimed at the prevention and punishment of torture. However, this legislative development is faced with two difficulties: first, the lack of implementation of policies to ensure compliance and, second, the creation of new laws that contradict the spirit and letter of the above.

53. While the legislation applicable in the field of juvenile justice and integrity protection of children and adolescents, specifically establishes the right of children to personal integrity in their physical, mental and moral dimensions, the Protection Councils as municipal bodies, receive a high percentage of complaints regarding threats to this law, including cases of bullying or harassment through social networks, and of these cases approximately 15% are linked to school violence and abuse by classmates: death threats, stabbings and beatings³⁸.

54. As for protection from sexual exploitation and forced labor and servitude, the State has created the Inter-sector Commission Against Abuse and Sexual Exploitation of Children and Adolescents, according to information provided to the Human Rights Council in 2011 on the occasion of the Universal Periodic Review³⁹, but did not report results to date, and did not accept recommendations in this area⁴⁰. Reports of civil society organizations working for children rights⁴¹

³⁸ Red por los Derechos Humanos de los niños, niñas y adolescentes (Venezuela) Alternative Report to the 3rd, 4th and 5th report by the Venezuelan State to the Committee on the Rights of the Child http://www.cecodap.org.ve/descargables/derechosNNA/Informe_Alternativo_REDHNNA_Venezuela_Octubre_2013.pdf

³⁹ National report submitted in accordance with paragraph 15 a) of the annex to resolution 5 / Council of Human Rights, July 19, 2011. A/HRC/WG.6/12/VEN/1 pág. 17

⁴⁰ Report of the Working Group on the Universal Periodic Review A / HRC / 19/12 December 7, 2011 p. 21

given for the period 2010-2011 identify a total of 469 victims 42 of sexual violence⁴², based on press monitoring.

55. Nor are specially forensic services staff trained to address childcare needs, as reported by the Network for Human Rights of children and adolescents (REDHNNA) in its alternative report to the Committee on the Rights of the Child: *"The LOPNNA⁴³ in its Article 34 orders to secure forensic services specially trained to care for children and adolescents, especially in cases of sexual exploitation and abuse. However, these services do not exist and the child and adolescents are attended by adults without specialized protocols, without trained staff for this delicate task. In addition, services are provided in collapsed and inadequate infrastructures without sufficient staff and poor equipment"*⁴⁴.

56. Regarding the situation of children and adolescents in conflict with the law, the REDHNNA report presented to the Committee on the Rights of the Child is of great concern: *"The competence for adolescents in conflict with the law has been assumed by the Ministry of Popular Power Prison Service, via the Department of Services for Adolescents in Conflict with the Law. This Ministry is responsible for the national treatment and detention of adults and currently, adolescent's care is run by unqualified personnel; in addition, they have not developed technical guidelines consistent with applicable standards of juvenile justice. A significant number of the population is being held for a long time, as apprehended in police detention centers, where they remain contravening the provisions of national law and without supervision or inspection corresponding to the Ombudsperson. No action or measures for the monitoring of the rights of adolescents detained in these centers are known"*⁴⁵.

c. Municipalization of justice and citizen participation

57. The Combined State Report refers to the decentralization of justice and citizen participation, as part of the innovations of the new Code of Criminal Procedure (CCP), while noting the removal of the figure of the jurors as " alien " to the legal country tradition⁴⁶.

58. In this regard, the 2012 CCP preamble pretends to interpret as mechanisms of social control and participation in the administration of justice, the selection and appointment of judges as well as monitoring the implementation of alternative formulas to prosecution and enforcement of penalties. However, although there are mechanisms that allow the justice system to be closer to citizens, participation in the selection process already has a default of 13 years without any signs in the near future or in the same CCP on realization, while the second is not, in itself, a form of

⁴¹ CECODAP Report "Somos Noticia" 2010-11, available at:

http://www.cecodap.org.ve/descargables/derechosNNA/Somos_Noticia_2010-2011.pdf

⁴² CECODAP. Cases of sexual violence against children and adolescents accounted for in the period October 2010 / September 2011

⁴³ Acronyms of the Organic Law for the Protection of Children and Adolescents

⁴⁴ Red por los Derechos Humanos de los niños, niñas y adolescentes (Venezuela). Op. Cit, paragraph 77

⁴⁵ Op. Cit, paragraph 78

⁴⁶ Venezuela. Combined report. CAT/C/VEN/3-4. Paragraph 60

participation of justice, but rather a mechanism for co - management of the prison administration, associated with the constitutional principle of co-responsibility, but not to principle of participation.

59. Even before the enactment of the new CCP, both the General Prosecutor Office⁴⁷ as well as the President of the Supreme Court⁴⁸ justified the changes based on the pre-constitutional character of the CCP then in force and the need to adapt it to the country since the CCP supposed to have rules "*absolutely divorced from Venezuelan reality*"⁴⁹. According to the Explanatory statement of the new CCP, the now repealed Code "*incorporated to our system the 'escabinado' - jurors- a figure that is totally alien to our tradition*".

60. If there is a principle that has roots and tradition in the history of Venezuela, is precisely the one related to citizen participation in criminal proceedings. The Explanatory statement to the 1998 CCP recalls: "*This institution is no alien to the Venezuelan and Latin American legal system. Indeed, the Declaration of the Rights of the Venezuelan people July 1811 provides for resolution by jury of criminal and civil trials, and is repeated in the Venezuelan Constitution of 1811, then in 1819, 1821, 1830 and 1858, ending with this constitutional tradition. Similarly, in almost all Venezuelans Codes of Criminal Procedure, until the early twentieth century the jury trial appears reflected in some way*"⁵⁰.

61. Participation by the figures of jurors and juries, now removed, was amply justified on the grounds of CCP 1998 Explanatory statement, invoking principles of political democracy, founded on the need to exercise social control by the people in the administration justice.

62. It also noted that Article 184 of the Constitution provides for mechanisms in states and municipalities to incorporate communities in various services "*guided by the principles of interdependence, coordination, cooperation and shared responsibility*" among those expressly stated in its Section 7: "*The participation of communities in outreach activities to penal institutions and linking them with the population*". The incorporation of Communal Councils⁵¹ in the new CCP does not obey the principle of participation, but of responsibility. The jurors disappear immediately, while the co-management of communal councils operates from 2013, which shows that there is not a real interest in citizen control over justice. Citizen participation in the criminal process has disappeared.

⁴⁷ Prosecutor General considers that it must restructure the entire system of justice in Venezuela
<http://globovision.com/news.php?nid=232923>

⁴⁸ Approval of the amendment to the COPP via enabling law adapts to constitutional framework
<http://www.avn.info.ve/contenido/aprobaci%C3%B3n-reforma-al-copp-v%C3%ADa-habilitante-se-adapta-esquema-constitucional>

⁴⁹ Explanatory statement. CCP 2012

⁵⁰ Explanatory statement. CCP 1998

⁵¹ Foreseen only in article 516, effective from January 1, 2013

63. Moreover, with regard to the above mentioned process of municipalization of justice, in 2013 only 23 of the 250 courts that were predicted were actually created, ie a little less than 10% of what is required to deal with the growing backlog of criminal cases⁵².

d. Proportional use of force and criminalization of protest

64. The proportional use of force is regulated by law and the Bolivarian National Police (BNP) has training materials on the subject for officers trained in the National Police, but coverage of this new police force is not general, so that training has not reached all law enforcement agencies and even the same BNP practical implementation has been insufficient. In addition, as part of a growing trend of criminalization and prosecution of peaceful protest, police officers (including BNP) are not limited to the control of public order, but the BNP has the discretion to decide if the demonstrators are transferred to the General Prosecutor office, which, in turn comes to charge the detainees.

65. Violence against peaceful demonstrations by the security forces remains a constant, with significant amounts of people injured and some dead. The protest is also suppressed by invoking laws such as the Law on National Security⁵³ and the Law against Organized Crime and Financing Terrorism⁵⁴.

66. In Venezuela, 99 % of street demonstrations are peaceful. They are made mostly by the most vulnerable sectors of society to make their voices heard. Demanding the right to work, basic services (water, electricity, garbage, gas), the right to housing , public safety and the right to education are the main reasons.

67. Since 2002 after the adoption of the Law on National Security , and until 2011, it has been counted an estimated of 2000 social leaders, among them social neighborhood leaders, students and workers, who have been subjected to criminal proceedings for offenses under this law and other legal instruments. This happens after participating in demonstrations demanding respect for their rights.

68. In the same period, 908 peaceful demonstrations were repressed; the potential of physical force used in these protests is a defining feature of the activity of state security, giving a total of 1,425 injured. The repression of public demonstrations in Venezuela is characterized by the implementation of different control arms that have been banned by international human rights conventions. Toxic gases and lead shot are used in 36% of protests suppressed by security forces in Venezuela.

⁵² El Universal: In 2013 the Supreme Court opened only 23 of the 250 courts that promised:

<http://www.eluniversal.com/nacional-y-politica/140128/en-2013-el-tsj-solo-abrio-23-de-los-250-juzgados-que-prometio>

⁵³ Official Gazette N° 37.594 December 18, 2002

⁵⁴ Official Gazette N° 39.912 April 30, 2012

69. In 2009, the reform of the Organic Law of the Bolivarian National Armed Forces was approved and the Article 50 created the figure of the so-called "*combat corps*" which empowers civilians to be recruited, organized and trained by the Bolivarian Militias Commands to act together with the Military Armed Forces⁵⁵. In these terms, the aim of these groups could be to intimidate protesters, to suppress street activities, to prevent the stoppage of production in labor strikes, by using these bodies as scabs or shock troops. Resorting to the use of military to intimidate and curb social conflicts constitute a breach of the rights of Venezuelans.

70. Sometimes legal actions against individuals linked to the ruling party, have prescribed by the inaction of the Public Prosecutor, as the crime of "*injury*" for which the alleged perpetrators are prosecuted, prescribed in a few years. In August 2009, a dozen journalists who were on a peaceful demonstration in the city of Caracas were physically assaulted, suffering some serious injuries. The Public Prosecutor initiated investigations immediately, bringing together sufficient evidence to identify a number of perpetrators. However, few days later, President Chavez gave statements in which he said that reporters "*had sought to be beaten*". Following these statements investigations stopped and the case file remained missing for more than three years, reappearing in October 2012. After the victims took some legal steps before the Public Prosecutor and the appropriate court, in December 2012 the Prosecutor submitted the indictment against three suspects. The preliminary hearing of the case was postponed innumerable times until finally held in July 2013, in which it was considered that the prosecution's accusation was not completed in the right terms. The prosecution failed to make appropriate corrections. In November 2013, this led to the court to decide the dismissal of the case and the absolute nullity of the impeachment proceedings and all acts performed during the course of the investigation.

71. On April 16, 2013, more than 150 people, mostly young, were repressed and arbitrarily detained for target and focus around the regional headquarters of the NEC to deliver audit requests and the request to count the votes, mainly in Lara , Carabobo and Barinas states⁵⁶. In its report on the events, the Committee of Relatives of the Victims of the "Caracazo" (COFAVIC) documented a total of 72 cases (36 in Lara, 20 in Carabobo and 16 in Barinas): In all 72 cases can be assumed clearly the alleged direct involvement of Venezuelan government officials and in the cases reported as presumed injured, the victims reported a delay in receiving medical care, since

⁵⁵ Organic Law of the Bolivarian National Armed Forces. Oficial Gazette No. 6.020 Extraordinary, March 21, 2011, article 50.

⁵⁶ That same day, President Maduro, on a simultaneous radio and TV broadcast, banned the mobilization towards the NEC headquarters in Caracas, which had been convened by the candidate Henrique Capriles for Wednesday 17, arbitrarily suspending the right to peaceful demonstration, under the anticipated assumption of possible conspiracy or violence. His words were: "They are now considering a march tomorrow to downtown Caracas. I will not allow it. You are not going to go downtown Caracas to fill it with blood and death. I will not allow it. Do what you want. I'm not going to allow it". See: <http://www.mpprij.gob.ve/index.php/component/content/article/19-noticias/mas-noticias/671-presidente-maduro-no-autorizara-marcha-de-la-oposicion-al-centro-de-caracas>. He also said that there had been attacks on residences of officials and their relatives, "the residence of William Izarra (father of Minister Andres Izarra) was attacked; almost killed him. Andres Izarra's residence was attacked, also almost killed him and his children". See: <https://www.youtube.com/watch?v=4Vh5fwUeU9g>. In that same speech, after stating that it would "strike hard against fascism and intolerance", he urged the private mass media to "be defined" between "peace and the fatherland" and "fascism" situation for which, on Tuesday 15, candidate Capriles canceled the mobilization.

in none of the cases, forensic medical examinations were officially ordered, which would have facilitated and encouraged the alleged victims to report the facts.

72. With regard to the context in which occurred these facts, COFAVIC says: *"In most of these cases, publicly senior spokesmen of the Venezuelan state, disregarding openly the principle and the obligation of the presumption of innocence, described to people who were detained or under presentation in court as 'terrorists'⁵⁷, 'murderers'⁵⁸, 'fascist'⁵⁹, 'antichavistas'⁶⁰ and 'destabilizing'⁶¹ among other epithets". Regarding the classification of the demonstrations, COFAVIC also states that "in all the documented evidence can verify the peaceful nature of concentrations, although in some cases small outbreaks of violence occurred".*

73 In its report, COFAVIC documented 49 cases of arbitrary detentions and 40 cases of torture, cruel inhuman and degrading treatment, as exposed below:

***"Torture, cruel inhuman and degrading treatment.** It should be noted that forty (40) cases of alleged torture, cruel inhuman and degrading treatment were recorded. During the repression of concentrations, the alleged indiscriminate use of weapons such as shotgun fire loaded with rubber and lead buckshot were fired at close range in most case was observed, as well as the use of tear gas as chemical agent, a situation which resulted in people with respiratory problems and older adults seen visibly affected.*

... On one of the reported cases, the victim suffered from chronic asthma attacks and when he gets disabled from inhaling this gas was reportedly hit by a group of members of the National Guard, who allegedly shot him lead buckshot at close range.

Upon transfer of detainees, victims reported being subjected to continuous physical and verbal abuse. On several occasions, presumably, there were beatings with batons and helmets on head, neck and back as well as threats of being taken to the nearby prison for sexually abusing them, and threats such as 'you will not be saved', if 'trying to escape on foot we shoot', 'you're worthless' or do not remove tricolor caps because you 'have to die with your boots on'. In at least eight (8) of the documented cases, detainees were allegedly stripped naked, they were threatened with death, of being sexually abused or burn their private parts, this with a special recurrence in women.

(...)

⁵⁷ National Assembly. Venezuelan terrorist right escalation throws seven people dead. See: <http://www.antv.gob.ve/m8/noticiam8.asp?id=53248>

⁵⁸ Telesur. The dangerous game of Henrique Capriles and the Venezuelan opposition. See: <http://www.telesurtv.net/articulos/2013/04/23/el-juego-peligroso-de-henrique-capriles-y-laoposicion-venezolana-301.html>

⁵⁹ United Socialist Party of Venezuela. Diosdado Cabello: "We will act criminally against the fascists." See: <http://www.psu.org.ve/portada/diosdado-cabello-%E2%80%9Cactuaremospenalmente-contra-fascistas%E2%80%9D/#.UbAAINJFVvA>

⁶⁰ National Assembly: <http://www.antv.gob.ve/m8/noticiam8.asp?id=53484>

⁶¹ Noticias VIVE. We are investigating the violence created by sectors of the opposition: <http://www.vive.gob.ve/actualidad/noticias/estamos-investigando-los-hechos-deviolencia-creados-por-sector-de-la-oposici%C3%B3n>

In the case of Lara State, victims reported allegedly been squatting long hours with their head down, before finally being taken to the courtyard of Detachment 47 of the National Guard on April 16, 2013. Several witnesses recounted (...) the alleged action of several soldiers who continually threatened by preventing sleep, a situation that lasted until the change of guard, advanced dawn.

... Generally alleged torture were applied during the period between the victims were allegedly arbitrarily detained until they were presented to prosecutors. This period was approximately 24 hours during which most of the victims were held incommunicado, including withdrawing all mobile phones”.

74 According to the documentation of COFAVIC, in court people were charged with one or more crimes such as “... *public intimidation, damage to government property, public incitement, insulting officials, obstruction of public highway, resisting arrest, conspiracy, violent injury, generic injuries, damage to public works, public disorder, all enshrined in the Criminal Code. Also, charges for possession of explosives under Law of Firearms and Explosives, the crime of association under the Organic Law against Organized Crime and Terrorist Financing, and use of adolescent to commit a crime under the Organic Law on Child Protection, were reported”.*

75 The Venezuelan Program for Education-Action in Human Rights (Provea) and the Center for Peace and Human Rights at the Central University of Venezuela (UCV-CDH) on behalf of the Coalition of Human Rights Organizations *Foro por la Vida*, visited the city of Barquisimeto in which could corroborate through testimonies of victims, that at least 62 people were arbitrarily deprived of liberty, and during their detention were subjected to cruel, inhuman and degrading treatment by having peacefully demonstrating in the streets:

... 62 people were unlawfully deprived of their liberty and 38 people were injured in the exercise of the right to peaceful demonstration, 11 of these people are professionals in the media. About detendos, it was learned that 62 people spent at least 48 hours detained at the headquarters detachment of 47 National Guard until they were taken before a judge.

All individuals were subjected to presenting themselves in courts, in periods ranging from 5 to 15 days until a upcoming trial determine whether they are guilty or innocent of the charges against them. The list of offenses include: public intimidation (article 296 of the Penal Code, CP.); damage to property (article 474 of the CP.); outrage of officials (article 223 of the CP.); resisting arrest (article 218 CP) and generic injury against GNB officials (article 413 CP). Five people were charged for 'conspiracy', laid down in article 37 of the Organic Law against Organized Crime and Terrorist Financing.

All the defendants were banned from attending public demonstrations and in five cases was imposed an economic deposit (bond) of 3,210 Bs [That is roughly equivalent to 1.5 minimum wages for that time]. According to testimonies, the detainees spent more than 24 hours without food, were beaten continuously and systematically, were subjected to psychological harassment with threats of sexual violence and taken to a prison compound. Detainees were asked 'Who is your president?' And if the answer was not 'Nicolas Maduro'

were beaten on different parts of the body. Several witnesses claim that a person was subjected to electric shocks through a 'paralyzer'.

Provide also talked to people injured in the demonstrations in Barquisimeto. All were injured with buckshot fired at close range, between one and two meters, so it is presumed that these actions were aimed to cause maximum damage to the demonstrators. Despite being identified as professionals in mass media eleven reporters were injured with buckshot. An emblematic case is Ehisler Vasquez, a teenager whose face was disfigured by the impact buckshot. Moreover, one of the victims received a gunshot wound. Also, tear gas prohibited in Article 68 of the Constitution, were used. Not all injured persons have made a complaint with the Public Ministry due to fear of reprisals”.

76. Reports by COFAVIC and Provea indicate that all persons subject to detention were visited by staff of the Public Ministry and the Ombudsperson 24 hours after being arrested, so it is unacceptable that in the Ombudsperson Special Report, all cases of people repressed and tortured were made invisible, this being very serious in its implications as to the lack of access to justice and impunity. Equally worrying is that the NHRI has just written a paragraph about the demonstrations in Lara state, in events referred to as "public order disturbances" and defined as "*Siege to the Regional office of the National Electoral Council*":

77. Referring to the siege of the regional headquarters of the National Electoral Council, on April 17, the NHRI had information about events at the Regional Office of the NEC. Around 900 people were grouped in the place. The representative of the Ombudsperson Office in Lara went to the scene and interviewed the Director of the Regional Office of the NEC, who noted that the demonstrators had to be controlled by the National Guard.

78. Special Report of the NHRI only refers to three people injured in Lara state, Ronald Lopez, Pedro Antonio Rangel and José Benigno Castillo for events related to alleged acts of political violence.

79. The Ombudsperson did not report the *de facto* ban of the right to peaceful demonstration but became part of the criminalization of it, documenting the events as situations of "*public disorder*". Additionally, the facts were made invisible contributing to the lack of access to justice and impunity, despite the wide deployment of its officials, and these knew of the serious acts of arbitrary detention and cruel, inhuman and degrading treatment and torture that occurred in different states. Finally, the institution took the same position of disqualification and attack as government officials, rather than investigating more thoroughly and even consult with human rights organizations, when these contradict responsibly, according to their own research, the official version on violence.

80. It should also be noted that a few days after these events, the Legislative Council of Lara state, with government majority, held a special session to recognize the actions of the National Guard

in the events referred⁶² and subsequently the United Socialist Party of Venezuela presented as a candidate for mayor of Barquisimeto (Lara state capital) Major General (r) Luis Bohorquez Soto, who had previously been in charge of Regional Command No. 4 of the National Guard, directly responsible for the repression April in that city. More than 60 of those arrested are still under presentation in court, awaiting the start of the trial against them on charges of terrorism.

V. Article 11

81. Although the issue of the conditions of detention and the prison situation is of serious gravity, the organizations responsible for this alternative report do not have in their mandates conducting systematic monitoring of it, so we cannot provide substantive input on the rights associated with this situation, beyond some general approaches, so as not to incur an unacceptable omission on this serious problem.

82. The first penitentiary emergency was declared by the Executive in 2004. Since then, several plans have been implemented without substantial improvements observed in the prison situation. On the contrary, between 2009 and 2010 the Inter-American Court of Human Rights ordered provisional measures in favor of the inmate population in five prisons in the country, while there is an increasing overcrowding⁶³ and violence, with the consequent number of injured and deceased.

83. There remains also the absence of classification and separation of accused and sentenced, the presence of minors in adult facilities, the entry of weapons and drugs with the complicity of prison custody personnel and the National Guard and, more recently, handing control of the prisons over internal groups known as "Prames".

84. In a report on Venezuela, the IACHR reflects how the State intends to minimize the prison problem: *"The State has informed the Commission that Venezuela is one of the countries with fewer persons deprived of liberty in the world, with less than 10% of the total population is detained"*⁶⁴.

85. Although the provisional measures ordered by the Inter-American Court provide that compliance is verified with the participation of non-governmental human rights organizations who requested them, they do not have access to these prisons. On several occasions, the Minister of People's Power for the Prison Service has disqualified the work of human rights

⁶² El Impulso: Legislative Council of Lara honor GN performance during protests: <http://elimpulso.com/articulo/clel-honrara-actuacion-de-gn-durante-protestas#.Uvq-oGJ5Njo>

⁶³ According to the report of the Venezuelan Observatory of Prisons for 2012, overcrowding rose 231% in 2013

⁶⁴ IACHR: Democracy and human rights in Venezuela, 2009. Paragraph 858

defenders working in the prison area, saying that they lie and “do not want to lose the business they have inside, the mafia they represent”⁶⁵.

86. The Special Rapporteur on the Rights of Persons Deprived of Liberty of the IACHR has repeatedly requested to visit the country; the last time such a request was made was in 2009, during a hearing before the Court on provisional measures in various jails in Venezuela. At the same hearing, the Agent of the Venezuelan State again denied the request.

87. In this extremely worrying situation, adds the problem of police detention centers, to where the overload of processed population has been displaced to evade responsibility for the preservation of the rights of detainees, since in these precincts there is no any registration or other controls of any prison system. Police detention centers are a sort of deposits for processed persons who are in preventive or temporary detention, without the minimum rights.

88. In cases of detention under court order or in flagrante delicto, the detainee must be brought before a judicial authority within a period not exceeding 48 hours from the time of arrest. The purpose of 48 hours stipulated is to allow the judicial authority to examine within a short time, according to the circumstances of the specific case, the legality and lawfulness of the detention, and thus determine if it will keep the custodial measure, grant a precautionary measure, or if instead proceeds to declare the full and immediate release of the apprehended.

89. According to figures from Provea for 2012 there is an increase of 33% in the number of victims in situations of violation of rights in jails and police precincts. In the same year, highlights the situation of overcrowding in cells of Polilara (Barquisimeto, Lara state police), where about 432 detainees are not accepted in Urbana prison for allegedly being detained by an opposition administration (Governor of the State has expressed a contrary political position to the President). The Polilara commander reported that there have been two violent deaths, fights, escapes and riots, and claims that the situation is critical in these cells, as they do not meet the minimum requirements for habitability according to inspections carried out by the Fire Department, Civil Defense, health authorities and a national commission of officers from the General Prosecutor’s Office and the 13th Prosecutor with national jurisdiction on penitentiary matters.

90. It also highlights the case of overcrowding in the cells of the police of the municipality Sotillo (Anzoategui state), where the prison population exceeds 320% staff guardianship, according to the director of the police force, who also declared emergency after the escape of a detainee December 8, 2012, indicating that police personnel serving there are not trained on prisons and

⁶⁵ Venezolana de Televisión: Minister Iris Varela: Liars on Coro situation are upset because they lose their business: <http://www.vtv.gob.ve/articulos/2012/10/19/varela-mentirosos-sobre-situacion-en-coro-estan-molestos-porque-pierden-sus-negocios-5661.html>. Similar statements have been issued by the Minister on several occasions throughout 2011, 2012 y 2013.

that there are 168 detainees at its headquarters, which is a number much higher than the custodial staff can handle.

91. This situation is repeated in the vast majority of police precincts in the country, so the "Case Investigations Police - El Rosal" referred to in the combined State Report, it is just one and not an isolated situation. The result of investigations that have been undertaken following the parliamentary agreement requesting investigation of the situation in El Rosal is unknown, as well as similar situations in other police detention centers in the country.

92. According to the director of the NGO *A Window to Freedom*, these events are a consequence of the implementation of *Plan Patria Segura*: "In order to access to the prison system detainees need the Ministry of the Prison Service will assign a quota. Without it, they have no Access, even if there is a judicial decisión. Detainees are presented to courts and then sent back to police detention centers. Meanwhile, the support is paid by the governors and mayors"⁶⁶.

VI. Article 13

93 There are widely known emblematic cases in the country in which the State has not taken action against the alleged perpetrators and, by contrast, has sought to justify or conceal their actions, remaining to this day with impunity, even with the consent of the Ombudsperson, in contradiction with Article 4.2 of the Convention.

94 In all these cases, highlights the fact that the victims, who were in the custody of the state, were taken against their will to the **Military Hospital** "Dr. Carlos Arvelo", despite being civilians, limiting access to information on their own health and medical care of their choice, which openly contravenes the principle contained in the Standard minimum rules for the treatment of prisoners, point 22.2: "Sick prisoners who require specialist treatment shall be transferred to specialized institutions or to civil hospitals. Where hospital facilities are provided in an institution, their equipment, furnishings and pharmaceutical supplies shall be proper for the medical care and treatment of sick prisoners, and there shall be a staff of suitable trained officers."

95 These facts also constitute contempt of the recommendations of the Special Rapporteur on Torture following his visit to Venezuela in 1996, who expressed: "A detained or imprisoned person or his counsel, subject only to reasonable conditions to ensure security and order in the place of detention or imprisonment is entitled to request authorization from a judge or other authority for a second medical examination or a second medical opinion"⁶⁷.

⁶⁶ El Nacional: Crisis for overcrowding in police precincts: http://www.el-nacional.com/sucesos/amazonas-caracas-cicpc-cojedes-retenes-zulia_0_229777343.html

⁶⁷ Civil and political rights, including the questions of torture and detention. Torture and other cruel, inhuman or degrading treatment or punishment. Report of the Special Rapporteur, Manfred Nowak. Addendum. Follow-up to the recommendations made by the Special Rapporteur Visits to Azerbaijan, Brazil, Cameroon, Chile, Mexico, Romania, the

a. Franklin Brito

96. Franklin Brito, was a farmer in the Sucre Municipality, Bolívar State and was named President of the Federation of Peasants of Sucre Municipality from where presented a project to recover crops diminished by the arrival of a disease that affected planting and crops yams in the region. As a result of their struggles and accusations, the official organ of regional development withdrew funding approved and begins a campaign of sabotage against the Brito family, led by officials, beginning with the wrongful dismissal of Mr. Franklin Brito and his wife Elena Rodríguez de Brito, who worked as teachers in the Municipal Autonomous Institute for Agricultural Development and the National Education Unit "the Guarataro" respectively. Additionally, an administrative measure taken in 2003 prevents him from the possibility of entering his property.

97. After going to various agencies with competence in the subject in order to seek his rights were restored, Mr. Brito decides to start his first hunger strike on November 26, 2004, which was followed by another that began on July 2, 2005. On December 13, 2009, after making two hunger strikes outside the headquarters of the Organization of American States (OAS) and having signed a new agreement with officials of the Venezuelan state, which was breached, Franklin Brito is addressed abruptly by 35 men, who in the early morning hours without having shown any identification or court order, proceeded to violently remove him from the place where he was protesting peacefully. Later it was discovered that they were state officials.

98. Mr. Brito was taken by ambulance to the **Military Hospital** "Dr. Carlos Arvelo" in the city of Caracas, based on an appeal filed by the General Prosecutor to protect his life and health, issued by a criminal court. This information was obtained thanks to the director of the hospital, since Mr. Brito was never notified of the hearing at which the decision would be made, and once the *amparo* was decided and executed, access to the decision in question was denied to his family.

99. According to the arguments used to justify this decision, judicial intervention was required based on the serious health condition in which Mr. Brito was, as mentioned in the examination practiced the December 3, 2009 in the vicinity of OAS headquarters, with presence of the Public Ministry and the Directorate of Health of Baruta Municipality. In this it was stated that the health condition of Mr. Brito was precarious, also making it clear that his mental health was satisfactory, since it was oriented to place, space and time.

Russian Federation, Spain, Turkey, Uzbekistan and Venezuela. E/CN.4/2006/6/Add.2. 21 March 2006. *Seguimiento dado a las recomendaciones del Relator Especial reflejadas en su informe sobre su visita a Venezuela en junio de 1996* (E/CN.4/1997/7/Add.3, paragraph. 423).

100. Once inside the Military Hospital and based on previous statements by the Ombudsperson (contradicting the forensic medical examination without being certified in the subject) in which stated that the mental health of Franklin Brito was not optimal and also due to the violent form through which he is transferred to the Military Hospital, Mr. Brito refuses to receive any type of medication, for fear of being supplied with substances that would alter his mental and physical conditions, so as to justify the measures that were being taken. Despite the arguments of Franklin Brito regarding medical treatment and repeatedly requesting to be allowed to go to doctors he could trust, as well as the precautionary measures granted by the Inter-American Commission on Human Rights (IACHR), such requests were never addressed.

101. Bearing temperatures below 8 degrees Celsius, Mr. Brito was held in a sort of cubicle in which the medical equipment that was used for the remaining patients was kept. He spent days and nights accompanied by constant and incessant noise of air conditioning machine that was right next to him, whose dimensions were proportional to the function fulfilled, ie, to get air into the entire area. The noise and movement of this machine prevented him from sleeping, seriously affecting his psyche, which, according to reports from the Venezuelan Red Cross before admission, was in perfect condition.

102. In view of this, doctors at the Military Hospital, under the pretext of counteract insomnia which was a victim, begin to give him medications for schizophrenia, specifically hallucinogens. This situation is known by the family, when in one of the short visits they were allowed, they extract one of the bottles of drugs that were being supplied to him.

103. In the Military Hospital, Franklin Brito start having breathing problems attributable to the negligent performance of doctors who, through a procedure executed inefficiently, pierced a lung, which resulted that this be filled with water; in this procedure he also suffers havoc in the glottis, generating difficulties in speaking. Is worth noting that this occurs in mid-July, eight months after a Criminal Court decided that only under the custody of state his life could be safe.

104. Franklin Brito had to withstand these conditions for 99 days. Although the family repeatedly asked to move him to a room, the Court never responded. During all this time, the entrance to the place where he was held was guarded by two National Guards. Franklin Brito was forced to be fed through a tube that was inserted through the nose into the stomach, an act that constitutes torture.⁶⁸

105. It is also clear that the confinement of Franklin Brito was intended to punish and intimidate him. As the victim repeatedly noted, the State, before recognizing the mistake it had

⁶⁸ Venezuelan-Dutch Alliance for Democracy (2010) Franklin Brito was subjected to inhuman treatment. Retrieved on August 9, 2013: <http://alianzavenhil.blogspot.com/2010/09/franklin-brito-fue-sometido-tratos.html>; El Universal (2010) *Brito Family will present his case before International Courts*. Retrieved on August 9, 2013: http://www.eluniversal.com/2010/08/31/imp_pol_ava_familia-brito-presen_31A4411171.

made, chose to initiate an array of actions that forced him to suspend his strike, even to put his mental stability into question, preferring to argue that his claims were due to delusions of an unbalanced person, and not to the demands of a Venezuelan citizen.⁶⁹

106. Franklin Brito was subjected to physical and psychological torture. In the absence of circumstances that would support the violation of his right to humane treatment, the Venezuelan state, through qualified agents, subjected the victim to severe suffering that affected his physical and mental integrity, for the sole purpose of achieving a degree of intimidation as take him to the suspension of the strike.

107. Statements by human rights activists in Venezuela, described the detention of Franklin Brito at the Military Hospital, as arbitrary detention, since he was kept in the same facility against his will, based on a court order grounded in false facts, which also was the product of a flawed process. These activists could also verify the status of confinement and isolation in which he was, because as evidenced by the facts, his family could only visit between 5 and 10 minutes a day, allowing access only to his eldest daughter and his wife; sporadically access media representatives was allowed.⁷⁰

108. Franklin Brito died on August 30, 2010, in the intensive therapy at the Military Hospital, where he suffered torture and cruel treatment of different nature. According to autopsy, the cause of his death was a “septic shock”.

109. The Ombudsperson Office published a 14-page special report on Brito’s case in which concludes: “The Ombudsperson Office in exercise of its constitutional and legal powers, made a comprehensive monitoring of the case of the citizen Franklin José Brito Rodríguez, in order to ensure respect of his human rights”⁷¹, without any reference to the measures requested by the Inter-American Commission on Human rights, his forced confinement in a military hospital, and administration of medications and food against his will. No official has been investigated for the treatment or death of Mr. Brito.

⁶⁹ El Mundo.es (2010) *The challenge of Franklin Brito, Venezuelan Fariñas*. Retrieved on August 9, 2013: http://casofranklinbrito.blogspot.com/2010_06_01_archive.html; El Universal (2010) *Chronology of Franklin Brito’s case*: http://www.eluniversal.com/2010/08/31/pol_esp_cronologia-del-caso_31A4407063; Globovisión.com (2010) *Franklin Brito from the Military Hospital: I have been kidnapped*. Retrieved on August 11, 2013: <http://globovision.com/articulo/franklin-brito-desde-el-hospital-militar-me-tienen-secuestrado>; Luisa Ortega Díaz: *Franklin Brito suffers from delusional disorder*: http://www.ministeriopublico.gob.ve/web/guest/buscador/-/journal_content/56/10136/33186. Provea: Listen to the statements of the Ombudsperson where she argued the "mental incapacity" of Franklin Brito: <http://www.derechos.org/provea/web/?p=6210>

⁷⁰ El Universal (2010) *Cofavic: Brito’s death reflects the failure of the State in human rights*. Retrieved on August 11, 2013: http://www.eluniversal.com/2010/08/31/pol_ava_cofavic:-muerte-de-b_31A4408531.

⁷¹ Ombudsperson’ Office report. Case of Mr. Franklin José Brito Rodríguez, page. 13. Available at: <http://www.defensoria.gob.ve/dp/index.php/publicaciones/informes-especiales/1466-informe-brito>

b. Raúl Díaz Peña, prison conditions at SEBIN and Ivan Simonovis health

110. On November 12, 2010 the Inter-American Commission on Human Rights (IACHR) submitted to the Court (Court) the case Díaz Peña v Venezuela. Among the allegations of the Commission was the fact that during his detention at the headquarters of the Bolivarian Intelligence Service (SEBIN), **Raúl Díaz Peña** during six years was subjected to detention conditions that severely affected his health. Detainees remain in SEBIN 24 hours per day with artificial light and ventilation.

111. In a judgment of 26 June 2012, the Court found that *“Mr. Díaz Peña’s detention conditions did not comply with the minimum material requirements of decent treatment and, consequently, taken as a whole, constituted inhuman and degrading treatment that violated the provisions of Article 5(1) and 5(2) of the American Convention, in relation to Article 1(1) thereof, to the detriment of Mr. Díaz Peña.”* The Court also determined that the State should adopt *“... the necessary measures to ensure that the detention conditions in the Pre-Trial Detention Center of the former General Directorate of Intelligence and Prevention Services (DISIP) – now, Bolivarian Intelligence Service (SEBIN) – located in El Helicoide, in Caracas, Venezuela, are in accordance with the relevant international standards (...) which include, inter alia: (a) well-ventilated cells with access to natural light; (b) access to clean showers and sanitary installations with sufficient privacy; (c) food of good quality, with sufficient nutritional value to maintain the health and strength of the person deprived of liberty, and (d) the necessary, adequate, decent and timely health care”*⁷².

112. The State rejected the judgment, alleging, among other things, that it was a decision which demonstrated *“complicity with Washington’s policy of protecting terrorists”*⁷³, as if, assuming unproven that he was a terrorist, could be subjected to detention conditions that constitute cruel, inhuman or degrading treatment. The State has not applied any necessary measures to improve the conditions of detention at the headquarters of SEBIN.

113. At the delivery of this judgment of the Inter-American Court, the Secretary of Public Safety of the Mayor (Caracas), **Ivan Simonovis** had remained for more than eight years in the same SEBIN facilities since November 2004, where he was serving a sentence of 30 years in prison for his alleged role as "necessary accomplice" in homicide in the context of the events that led to the coup of April 2002. Simonovis’ deteriorating health is obvious as a result of the inhuman conditions of detention, so his family and lawyers have requested a humanitarian measure several times, so that it can cope with his declining health.

⁷² Inter-American Court of Human Rights. Díaz Peña v. Venezuela. Judgement of June 26, 2012. Available at: http://www.corteidh.or.cr/docs/casos/articulos/seriec_244_ing.pdf

⁷³ Telesur: Venezuela rejects Inter-American Court decision on case Raúl Díaz Peña <http://www.telesurtv.net/articulos/2012/07/24/venezuela-rechaza-decision-de-cidh-en-caso-de-raul-diaz-pena-5825.html>

114. In February 2013, after multiple requests and at the continued deterioration of his health, a court ordered a new place of detention for Simonovis, being sent to the National Center for Military Processed (CENAPROMIL), despite being a civilian trial for alleged civil offenses. The court order contemplates sunbathing and exercise twice a day, but he was located on the fifth floor of the military prison where there is no lift despite having symptoms of severe osteoporosis that makes his movement difficult, according diagnostic in October 2012. According to his family and lawyers, Simonovis suffers 19 diseases, including severe osteoporosis, five hernias, 2 spine disks fractured, low back pain, severe vitamin D deficiency (due to lack of sun exposure) and carpal tunnel syndrome. From his stay in the military prison Simonovis has had serious health complications, being transferred to the **Military Hospital** "Dr. Carlos Arvelo" twice, the first in November 2013 and the second in January 2014, showing that the conditions of detention in military prison have not helped to improve his declining health.

115. Since July 2012, Simonovis was again subjected to a series of tests that showed his poor health. Between November and December 2013 he underwent further examinations at the Military Hospital, but the judge ordered further tests claiming that the report issued by the Military Medical Board "*were not clear, compelling and accurate*". Simonovis refused further examinations stating that "*is proven, with multiple previous tests that have been performed to me, that I suffer serious health complications. My health continues to be exacerbated by indecision about the Court grant humanitarian measure*", after which he concluded: "*I express my firm and irrevocable decision to refuse categorically to undergo further medical examinations*"⁷⁴.

116. Poor conditions of detention in the SEBIN, which have not been corrected by the authorities despite the ruling of the Inter-American Court, referral to a military prison where should rise 5 floor by stairs, placement in a military hospital despite his civilian status, and lack of access to the results of medical tests, constitute violations to his personal integrity that have been ordered and executed by the authorities, without having investigated or established responsibilities.

117. The Ombudsperson has merely opposed the release of Simonovis ⁷⁵, ignoring that what is required in his case is a humanitarian measure to provide for his health, without commenting on any of the above facts raised.

⁷⁴ El Universal: Simonovis: I will not subject myself to further medical testing. <http://www.eluniversal.com/nacional-y-politica/131211/simonovis-no-me-sometere-a-mas-examenes-medicos>

⁷⁵ Globovisión: Ombudsperson: We have followed the case of Simonovis <http://globovision.com/articulo/defensora-del-pueblo-hemos-venido-haciendole-seguimiento-al-caso-de-simonovis>

c. **María Lourdes Afiuni**

118. María Lourdes Afiuni is a titular Judge of a Court in the penal area since year 2006. On December 10, 2009 she decided to substitute a custodial measure against a detainee who at the time had been in prison for 2 years and 10 months, being the case that Venezuelan legislation establishes a period of 2 years as the maximum period of detention. The judge based her decision on the country's normative for penal process, and on a report emanated from the UN Arbitrary Detentions Working Group, referred to Cedeño.

119. Her court is immediately raided by intelligence services and the staff was arrested. Two days later her detention is ratified and judge is subsequently transferred to the National Institute of Feminine Orientation (INOF), a women prison in which several inmates are serving sentences for Afiuni's decision.

120. Six days after her detention, three UN bodies issued a joint statement expressing concern about Judge Afiuni⁷⁶. On January 11, 2010, The Inter American Commission of Human rights provided precautionary measures on Judge Afiuni's favor, requesting for the State to respect the guarantees of due process and her transfer to a place where her life and integrity were safe.⁷⁷

121. Persons under any form of detention or imprisonment in Venezuela, are subject to conditions that can affect their physical and mental health, but in this case, the status of judge had further repercussions, as is clear from the forensic report, which notes the existence of a hostile environment which meant "*marked weight loss and change in sleep habits, showing signs of fatigue and weakness and mild psychomotor agitation*". The report also reflects the existence of "*mild features of visual-motor incoordination (...) that match her anxious state*". These examinations were performed after four months of imprisonment, which indicates a rapid deterioration; at that time Maria Lourdes Afiuni had lost 15 kilos of weight. Since entering the INOF, María Lourdes Afiuni had no exposure to the sun, was not informed of the results of medical and laboratory tests, was denied access to a doctor of her choice and was sent to **Military Hospital** "Dr. Carlos Arvelo", despite her status as civil processed; sometimes male military personnel remained present during medical examinations.

122. On December 10, 2010, the Inter- American Court adopted provisional measures in favor of María Lourdes Afiuni, attending to her health conditions, lack of timely care and repeated obstruction of attention from doctors of her choice⁷⁸. After the provisional measures new episodes that affected the health of María Lourdes Afiuni arose, in clear violation of the

⁷⁶ The press statement was signed by The Chairperson-Rapporteur of the Working Group on Arbitrary Detention, Mr. El Hadji Malick Sow; the Special Rapporteur on the independence of judges and lawyers, Ms. Gabriela Carina Knaul de Albuquerque e Silva; and the Special Rapporteur on the situation of human rights defenders, Ms. Margaret Sekaggya. See: <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=9677&LangID=E>

⁷⁷ IACHR. MC 380-09 – María Lourdes Afiuni, Venezuela <http://www.oas.org/es/cidh/decisiones/cautelares.asp>

⁷⁸ Inter-American Court: President's resolution, December 10, 2010: http://w2.ucab.edu.ve/tl_files/CDH/Maria%20Lourdes%20Afiuni/MedidasCorte.pdf

protection ordered by the Court, to such an extent that after several requests and months, finally the tribunal ordered an emergency surgery.

123. After her surgery, on February 2, 2011, the Twenty-Sixth Trial Court agreed to an injunction, ordering the transfer of Judge Afiuni to her home (apartment) to fulfill the measure of house arrest, besides ordering the ban on speaking to media and imposing her transfer and regular appearance to the court. This new measure against Judge Afiuni, was also developed under restrictive and inhumane conditions, since she also was banned from leaving her apartment (which lacks an open balcony), so she had no access to the rays of direct sunlight, or public recreation areas of the building.

124. During her detention in INOF, Judge Afiuni was a victim of torture and cruel and inhuman treatment by acts of sexual violence; she suffered at least two sexual assaults: in January 2010, when her intimate parts were burned by the action of other inmates; and in July of that year, when she was raped in the infirmary of the INOF, by whom identified himself as an official of the Ministry of Interior and Justice, and also injuring and impregnating her while she was in the custody of the authorities of INOF.

125. Judge Afiuni on November 8, 2010 formally denounced the then Director of INOF before the Attorney General, on charges of abuse of detainees or convicted and failure to provide assistance, under Articles 181 and 438 of the Criminal Code of Venezuela, based the vexatious conduct in which the prison administration incurred prejudice to judge, as well as by the lack of diligence in caring for her and other inmates⁷⁹. However, considering the physical and psychological impact suffered by Judge Afiuni and in consideration of her daughter and her parents (who live with her) and social humiliation, Judge Afiuni decided that the facts relating to sexual aggression were not made public at the moment, until November 23, 2012, the date on which the book "*Afiuni: The Commander's prey*" is published, where a series of interviews with Judge Afiuni are disclosed and exposing for the first time what happened. The November 2010 complaint remains unanswered to this day; on the contrary it was shelved⁸⁰.

126. Following the publication of the above facts, instead of deciding their research, a new communication and harassment policy was initiated by the national government against Judge Afiuni. Between November 23 and 29, various statements by different officials (interestingly, all women) denying a priori the complaint by Judge Afiuni, were produced, including : the Minister of Popular Power for Women⁸¹, the Ombudsperson⁸², the former director of INOF⁸³ the General

⁷⁹ complaint filed by the legal representative of Judge Afiuni before the Public Ministry on November 8, 2012

⁸⁰ El Universal, *Complaint against former director of INOF was shelved*, November 27, 2012, available at: <http://www.eluniversal.com/nacional-y-politica/121127/fue-engavetada-la-denuncia-contra-exdirectora-del-inof>

⁸¹ El Universal, *Sexual abuse against Afiuni will be sanctioned, "in case it is true"*, November 23, 2012, available at: <http://www.eluniversal.com/nacional-y-politica/121123/sancionaran-abuso-sexual-de-afiuni-en-caso-de-ser-cierto>

⁸² VTV, *Ombudsperson: Afiuni did not report alleged sexual abuse*, November 23, 2012, available at: <http://www.vtv.gob.ve/articulos/2012/11/23/defensoria-del-pueblo-afiuni-no-denuncio-supuesto-abuso-sexual-8885.html>

Prosecutor⁸⁴, the Minister of Penitentiary System⁸⁵, and again on the 29th the Ministry of Popular Power for Women endorsed the message of the Minister Varela, adding that “*Judge Maria Afiuni is only one card in the gall emanating from the national and international right wing*”⁸⁶.

127. Similarly, on November 25, the main state television channel (“VTV”) transmitted a forum called “*Rape of Truth*”⁸⁷, where some inmates gave statements claiming that these are “*inventions and fabrications*”⁸⁸. In the video program (link in footnote) it can be seen Elvis Rodriguez, 80th prosecutor of the Public Ministry with national jurisdiction on fundamental rights, who is precisely the officer that received the complaint by Judge Afiuni two years ago and still not processed by the authorities. After the televised interviews, two of the female prisoners were released, although in one case, the crime for which she was charged is not subject to alternative measures to imprisonment. Other people prosecuted for the same case (two women and one man) remained in prison. It is clear that the inmates who testified against Judge Afiuni did so under pressure, in return for benefits that are already being granted.

128. On November 29, 2012, without a warrant or some nature to justify it, or statement on the grounds, Judge Afiuni was forcibly transferred to the General Prosecutor’s Office to denounce the events, being transferred to the office of the same attorney that the day before had proceeded to formalize the accusation against her when the trial in absentia began. The judge refused to sign the dismissal of the information disclosed, and her legal representative urged that the complaint filed in 2010 be dealt with⁸⁹. It is important to remember that according to international standards, in any case, violations of human rights must be investigated by the State as a public interest and not as a private matter. Similarly, Article 379 of the Penal Code states that Venezuela rape investigation should be initiated ex officio, “*3. If the act was committed with abuse of paternal power or supervisory authority or public functions*”. On December 3, 2012, in the last of her actions on the case, Minister Varela urged

⁸³ AVN (Venezuelan News Agency), *Afiuni remained in high security space while in the INO.*, November 25, 2012, available at: <http://www.avn.info.ve/contenido/afiuni-permaneci%C3%B3-espacio-m%C3%A1xima-seguridad-durante-su-estad%C3%ADa-inof>

⁸⁴ AVN, *General Prosecutor said Afiuni must report alleged violation to the Public Ministry*, November 26, 2012, available at: <http://www.avn.info.ve/contenido/fiscal-general-indic%C3%B3-que-afiuni-debe-denunciar-presunta-violaci%C3%B3n-ante-ministerio-p%C3%BAblico>

⁸⁵ AVN, *Iris Varela: Afiun’si story is a vile hoax*, November 28, 2012, available at: <http://www.avn.info.ve/contenido/iris-varela-relato-afiuni-es-una-vil-patra%C3%B1a>

⁸⁶ Ministry of Popular Power for Women, *Hoax from the right in Afiun’si case*, November 29, 2012, available at: http://www.minmujer.gob.ve/index.php?option=com_content&view=article&id=1807:patrana-de-la-derecha-en-el-caso-afiuni&catid=10:noticia-editorial&Itemid=4

⁸⁷ VTV, *TV Forum presents: “Rape of the truth,” an analysis of the lies of María Lourdes Afiuni*, November 24, 2012, available at: <http://www.vtv.gob.ve/articulos/2012/11/24/tv-foro-presenta-este-domingo-violacion-a-la-verdad-un-analisis-de-las-mentiras-de-maria-lourdes-afiuni-7289.html>

⁸⁸ VTV, *Former prison mates refute Afiuni (+ PHOTOS + VIDEOS)*, November 25, 2012, available at:

<http://www.vtv.gob.ve/articulos/2012/11/25/companeras-de-redusion-desmienten-a-exluez-afiuni-7497.html>

⁸⁹ El Universal, *Defense clarifies that Afiuni did not refuse to denounce*, November 29, 2012, available at: <http://www.eluniversal.com/nacional-y-politica/121129/defensa-aclara-que-afiuni-no-se-nego-a-denunciar>

the former director of INOF to request a criminal investigation against Judge Afiuni, over allegations made⁹⁰, pretending that she passed from victim to victimizer.

129. In light of new facts, another statement from UN bodies occurs, this time of 5 special procedures⁹¹.

130. Recurrent negative for examinations performed with doctors of her choice and referral to a military hospital to prevent evidence of physical aggression as well as the strategy set up by different State institutions to dismiss the complaint in November 2010 and the *a priori* deny of allegations of sexual violence, without having done any research, make jointly responsible and accomplices various organs of State in this case. The name of María Lourdes Afiuni is not mentioned in any report of the Ombudsperson and the institution never verified compliance with the precautionary measures granted by the IACHR and the Inter-American Court, also neglecting all calls from various human rights bodies of the UN in this regard.

VII. Article 14

131. While national legislation recognizes the right of victims to redress and compensation, the Law for Punishment of Crimes, Disappearances, Torture and Other Violations of Human Rights for Political Reasons in the period 1958-1998, adopted by the National Assembly in October 2011, its biased implementation makes it insufficient. Although the Public Ministry has taken action in some of the cases, it has not ensured equal access to justice for all the victims.

a. Massacre of El Amparo

132. Since 2009 the two survivors of the "Massacre of El Amparo" (10/28/88), José Augusto Arias and Wollmer Pinilla, with the support of Provea, have been repeatedly requesting a hearing with the General Prosecutor, Luisa Ortega Díaz, to demand the enforcement of the judgment against the Venezuelan state by the Inter-American Court of Human Rights, ordering an investigation and punishment against the perpetrators and instigators. This request has not been answered. Relatives of the victims have asked the General Prosecutor to meet with them at the town of El Amparo. The different reports of the Public Ministry indicate no institutional actions on this case. Provea has held that this omission is due to the fact that a senior government official, Ramon Rodriguez Chacin, is accused as one of the perpetrators of the case. Rodriguez Chacin has been Minister of Interior and Justice twice, and currently serves as governor of Guarico state.

⁹⁰ El Universal, *Varela urges former director of INOF to ask investigation for Afiuni case*, December 3, 2012, available at: <http://www.eluniversal.com/nacional-y-politica/121203/varela-exhorta-a-exdirectora-del-inof-a-pedir-investigacion-por-caso-a>

⁹¹ Venezuela: expertos en derechos humanos de la ONU piden la liberación inmediata de la Juez Afiuni: <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=12994&LangID=S>

b. "Caracazo"

133. In its combined Report, the State documents as a fact that "should be highlighted" the actions taken to prevent impunity in this case which claimed the lives of hundreds of Venezuelans in February-March 1989.

134. In the context of the search for those assassinated and missing, in 1989 emerged the Committee of Relatives of Victims of the Events of February 1989 (COFAVIC). The Public Ministry did not take into account COFAVIC in preparing its Report, nor has it done it in the process of combating impunity for these cases. This has been repeatedly rejected by the NGO, which said: "*In the investigations of the few 'Caracazo' cases which have made it to trial, for various reasons, no one has been convicted. On the contrary, it has become public knowledge that the exhumed remains on September 21, 2009, allegedly belonging to victims of the Caracazo, will again be buried without being fully identified and without hearing requests from victims' families grouped in COFAVIC. From COFAVIC, we ask the authorities: What are the reasons prevailing, so that 22 years later you turned your back to the victims and intended to rebury the truth regarding the 'Caracazo'? What kind of wounds and responsibilities do you want to hide? Where are the results of DNA testing performed to several 'Caracazo' families?* Indeed, as noted by the State, this burial took place and with it was buried the hope for justice of victims' families.

135. It is very striking that the State admits in its Report that the remains of several victims not yet identified "*are at the order of the Tenth Criminal Court, kept in the forensic laboratory located in Fort Tiuna, Caracas*". In this regard, it should be noted that Fort Tiuna is a military installation and that in the months after the "Caracazo", human rights organizations and relatives of the victims made every effort to ensure that the case files kept in a military court were brought to ordinary criminal justice. In this regards, keeping the remains of the victims in a military installation is unacceptable and a sign of the lack of a genuine willingness of the State to meet the demands of justice, truth and redress for victims and their families.

VIII. Rights of vulnerable sectors

a. Situation of refugees and asylum seekers

136. The Venezuelan Constitution recognizes and guarantees the right to seek asylum⁹², which has been developed in its legislation⁹³ and implemented through the creation of an administrative competent body⁹⁴. However, the documentation given as identification, recognizing the quality of refugees, is inadequate, since it prevents the enjoyment of their rights in areas such as registering

⁹² Article 69. Constitution of the Bolivarian Republic of Venezuela.

⁹³ Organic Law on Refugees and Asylum Seekers, October 3, 2001.

⁹⁴ Article 12. Organic Law on Refugees and Asylum Seekers, National Commission for Refugees and Asylum Seekers (CONARE).

improvements to property, formal employment, enrollment in social security, certifications for studies (especially children and adolescents) and free movement.

137. Although the law provides for a period of 90 days to respond to requests for asylum, usually an excessive delay in the decision occurs; in addition, about 90% of applications rejected have insufficient substantiation of the reasons for the denial⁹⁵.

138. According to the United Nations Agency for Refugees (UNHCR)⁹⁶, for the year 2009 there were over 200 requests for refugee status to the Venezuelan state, of which 95% are people of Colombian origin, forced to leave their country due to persecution and threats by armed groups and extreme violence. By 2009, 2,873 people submitted their application for refugee status with the Venezuelan state and only 1,364 people were recognized as such, pending (taking into account the cumulative requests) a total of 14,604 applications. Of the total population recognized as a refugee, only 73 (5%) are children.

139. UNHCR reported that until the beginning of 2012 a total of 17,369 people had applied for refugee status, of whom about 2,900 had obtained it. Similarly, the UN agency reported that the recognition rate increased from 13% to 20%⁹⁷. Until July 2012 there had been 9,464 cases filed before the National Commission for Refugees (CNR), of which 1,091 were approved⁹⁸. These are small and insufficient improvements.

140. The Network for human rights of children and adolescents (REDHNNA) has stated that: "*Although the CRVB [Venezuelan Constitution] guarantees asylum, the Venezuelan State has still not ratified the Convention on the Status of Stateless Persons and the Convention on the Reduction of Statelessness, which brings very negative consequences for children and adolescents who are in this situation; those who are not recognized in such capacity may not have access to education, health, psychological support or otherwise on account of their situation*"⁹⁹. The precariousness of this situation also covers protection against situations that might violate rights under Article 3 of the Convention. Venezuela has not signed the Cartagena Declaration.

141. Apparently, the figure of "*displaced persons in transit*" has fallen into disuse. It was used since 2000 by the Venezuelan government to send back to Colombia numerous people who were in Venezuela fleeing violence, through informal agreements between participating military and immigration authorities of both countries, affecting potential asylum seekers on the pretext that they wanted, at some point, to return to their country of origin. However, this figure has not been explicitly ruled out by the authorities.

⁹⁵ Provea, Annual Report 2010, documents 2002 to 2010 (See page. 263: http://www.derechos.org/ve/proveaweb/?page_id=9235).

⁹⁶ See: www.acnur.org/t3/fileadmin/script/doc.php?file=biblioteca/pdf/4184

⁹⁷ Provea, Informe anual 2012

⁹⁸ Data by the CNR in a communication to PROVEA

⁹⁹ The Network for human rights of children and adolescents (Venezuela) Alternative Report to the 3rd, 4th and 5th Report prepared by the Venezuelan State before the UN Committee on the Rights of Children, Op. Cit. Paragraph 70

142. According to the Jesuit Service for Refugees in Venezuela, in 2009 there were 10 arbitrary detentions and 5 deportations. There is no other information data, since these agencies working in the field have difficulties and/or fear to share it.

b. Threats and attacks against sexual minorities

143. The Committee against Torture expressed as one of the reasons for concern "*allegations of threats and attacks against sexual minorities*" in Venezuela.

144. Between 2009 and 2013, there were 99 cases of hate crimes: 46 murders and 53 cases of threats and attacks (torture, cruel, inhuman and degrading treatment, arbitrary detention, verbal, physical and psychological threats, police onslaught, abuse of power, etc.), due to sexual orientation, gender identity and gender expression of the victims, according to the "*Venezuela 2013 Report on hate crimes based on sexual orientation, gender Identity and gender expression*" by Citizen Action Against AIDS (ACCSI)¹⁰⁰.

145. It is highlighted in the report: a) "*We are facing a homophobic and transphobic State*"¹⁰¹ denounced LGBTI human rights referring to the behavior of some Officers (President Nicolás Maduro¹⁰², Foreign Affairs Minister¹⁰³, Ministers¹⁰⁴ and a Member of Parliament¹⁰⁵) who have publicly expressed homophobic conducts; b) There has been no statement by public institutions on hate crimes against LGBTI; c) Only 4 (8.7%) cases of LGBTI killings were solved and it is unknown if the 42 (91.3%) remaining cases have been successfully investigated; d) the status of 98% of cases of attacks and threats against LGBTI people is unknown, i.e. whether there were any complaints brought before the courts of justice; e) More than 60% of the LGBTI victims of murder and attacks or threats are between adolescence and 30 years of age.

¹⁰⁰ www.accsi.org.ve

¹⁰¹ Daily El Universal (2013). Tamara Adrian: *We are before a homophobic and transphobic State*. See: <http://www.eluniversal.com/nacional-y-politica/130814/tamara-adrian-estamos-ante-un-estado-homofobico-y-transfobico>

¹⁰² President Nicolás Maduro (2013) "*I have a woman, you hear? I like women and here she is*" "It is good to be kissed by a woman or someone one loves". Video: <https://www.youtube.com/watch?v=Z4ONBIOvPG0>

¹⁰³ Foreign Affairs Minister Nicolás Maduro (2012) "...bourgeois, faggots and fascists pretending to be elected by the Venezuelan people..." Video: <http://www.youtube.com/watch?v=gVL0l-FSZDI>

¹⁰⁴ Correctional Affairs Minister Iris Varela in her Twitter account (2013) "*What the fuck matters if Chávez turned into a bird? Capriles is alive and he is a tremendous duck*". (President Maduro has said that Deceased ex-President Chávez had appeared before him as a bird; "Pato" is a Venezuelan derogatory expression meaning faggot) <http://www.noticiasdeaquí.net/actualidad/politica/7780-ministra-iris-varela-cual-es-el-peo-que-chavez-se-convirtiera-en-pajarito-capriles-esta-vivo-y-es-tremendo-pato.html>

¹⁰⁵ Pro-Government Member of Parliament Pedro Carreño (2013) at a National Assembly session, referring to Henrique Capriles "Answer to us homosexual, accept the challenge faggot, accept the challenge. Be serious", "It is your problema what you do with your ass, but you have to be serious". See: <http://www.ultimasnoticias.com.ve/noticias/actualidad/politica/pedro-carreno-tilda-de-homosexual-a-capriles-r.aspx>

146. Four days after the murder of Lulú, a transgender woman, in Caracas (June 2012), the IACHR¹⁰⁶¹⁰⁷ called the State's attention¹⁰⁸ regarding the recurrence of these crimes in Venezuela. The Commission expressed concern about "*problems in the investigation*" of these cases: "*The ineffectiveness of the justice system promotes high levels of impunity, which in turn lead to the chronic repetition, leaving the victims and their families in the total defenselessness*". The Commission warned of continuing reports of arbitrary arrests and abuse of power by police officers and asked the Venezuelan State to take action to prevent and respond to these abuses, including "*making the necessary reforms to make legislation compliant with Inter-American instruments on human rights*." The Venezuelan State itself acknowledged its debt to the LGBTI population. In the report presented in October 2011 at the Universal Periodic Review (UPR) before the Human Rights Council of the United Nations, the State recognizes that the country's "*promotion, protection and monitoring of human rights of the people 'sexodiversa' is still a challenge*". This was one of the few failings recognized by the State during the UPR.

c. Indigenous peoples

147. In its list of questions, the Committee requests information on cases of violence affecting indigenous peoples with special reference to Cacique Sabino Romero and Yukpa people.

148. Cacique Sabino Romero was murdered on March 3, 2013. Provea confirmed that he and his wife were victims of an attack when passing through Tokuko highway, heading for an electoral process. Sabino's wife, Lucia, was wounded in the attack, but not seriously. During 2012, there were reports of 6 Yukpas murdered by contract killers. Sabino himself had previously undergone five attempts on his life, various attacks and harassment. His centenary grandfather had died 15 days after being beaten up by thugs. In May 2011, the army, CICPC and the Public Prosecutors kidnap Sabino Romero while he was being treated at the Coromoto hospital for gunshot wounds in his back and right arm. He was taken to the military hospital in Maracaibo, where he was kept isolated, prosecuted and imprisoned first in Fort Macoa and then in the Trujillo prison, along with Alexander Fernandez, for allegedly killing Ever and Mireya Romero. During the trial, based in the city of Trujillo to keep him away from his supporters, his innocence was proved and he was released from prison after 19 months of isolation. In June 2013, the Public Prosecution charged five men for their alleged involvement in the death of Cacique Romero¹⁰⁹.

¹⁰⁶ IACHR (2012). See <http://www.oas.org/es/cidh/prensa/comunicados/2012/059.asp>

¹⁰⁷ Daily El Tiempo (2012). <http://eltiempo.com.ve/venezuela/violencia/aqui-en-este-barrio-no-se-aceptan-gays/70318>

¹⁰⁸ Daily Últimas Noticias (2012). <http://www.ultimasnoticias.com.ve/noticias/actualidad/sucesos/cidh-condeno-el-caso-del-transexual-lulu-y-pidio.aspx>

¹⁰⁹ Provea: Public Ministry accused five men in death of Cacique Sabino Romero: <http://www.derechos.org.ve/2013/10/12/mp-ministerio-publico-a-cinco-hombres-por-muerte-del-cacique-sabino-romero-en-zulia/>

149. Persecution against Yukpas and the Romero family did not end with the killing of their leader. On January 3, 2014, Silverio Romero, son of Sabino, was seriously wounded by gunfire. So far, no progress in investigations is known.

150. The Yukpas are not the only ones who have had to deal simultaneously with state powers and illegal groups. On Thursday, January 19, Pemón leader Alexis Romero was arrested by members of the National Guard and charged for the crimes of “*theft of effects of the national armed forces and attacking the sentry*”. The accusation was based on events that occurred on 25 October in *La Paragua*, Bolivar state, where representatives of 13 indigenous communities acted against 19 military officers, retaining their weapons, after corroborating that they continued to exploit a reservoir, located in the *Casabe* sector, which months before had been closed by the military. Romero was imprisoned in the state of Monaga’s Correctional Institution, better known as “*La Pica*” prison and tried in a military court, in violation of the Constitution which clearly states that only soldiers can be tried by military courts¹¹⁰.

151. Subsequently, on December 6, 2013, The Scientific Criminal Investigations Bureau (CICPC) in Bolivar state, arrested Pemón Captain Alberto Moreno who, along with other leaders of various indigenous communities of that entity, had disarmed military officials in 2011 and 2012, due to constant abuse and the involvement of military troops in illegal mining. Alexis Romero denounced that Pemón leader Alberto Moreno was being held at the headquarters of the 5th Division of the Army, and is expected to be transferred to the prison of La Pica¹¹¹.

d. Human Rights Defenders

152. In its list of questions, the Committee requests information on the investigation into the death of human rights defender Mikhail Martinez¹¹², murdered on November 26, 2009. Four years after his death, his case remains in impunity.

153. Given omissions in this case by the Ombudsperson’s Office and the slowness of the Public Ministry, the Martinez’s have participated actively in monitoring investigations. In this way they contributed to the arrest of two of the perpetrators of the crime, which were later released in an operation by the Correctional Affairs Ministry called “*judicial cayapa*” (judicial expeditiousness). So far, the different trial hearings have been postponed for various reasons.

154. Human rights defenders continue to be targets of defamatory campaigns and criminalization by official spokesmen, as well as of attacks and threats that are not investigated.

¹¹⁰ Provea: Telephone interview with Pemón illegally arrested by the military: <http://www.derechos.org/ve/2012/01/23/provea-entrevista-telefonicamente-a-indigena-pemon-detenido-ilegalmente-por-el-ejercito/>

¹¹¹ Provea: Pemón Captain Alberto Moreno arrested. En: <http://www.derechos.org/ve/2013/12/07/detenido-en-el-estado-bolivar-el-lider-indigena-pemon-alberto-moreno/>

¹¹² Committee Against Torture: *List of questions to be taken into consideration before presenting the fourth periodic report by the Bolivarian Republic of Venezuela* (CAT/C/VEN/Q/4), August 2, 2010, Paragraph 8

The Inter-American Commission has issued a number of precautionary measures in their favor, but the State has not made provisions for their protection or for the investigation of the facts.

155. Only in the year 2010, there were 21 cases of violations against human rights defenders and organizations, representing a 91% increase with regards to 2009: 11 actions to discredit defenders, 5 arbitrary arrests, 4 threats to start legal proceedings, 3 court actions initiated, 2 assaults, 3 cases of intimidation, 2 restrictions to freedom of association, 1 case of torture and 1 case of extrajudicial execution. It should be noted that the figures do not match the sum of all cases, because the same case can include more than one pattern of violation of human rights.

IX. Failure to comply with international obligations

156. Venezuela as had a systematic attitude of breaching its international obligations on matters of human rights. Beyond complying on formalities in some issues, there is no evidence of substantive compliance.

157. The greatest concern is the denunciation, in September 2012, of the American Convention on Human Rights, which entered into force on September 11, 2013. However, before the denunciation, there was a sort of *de facto* exclusion of the inter-American mechanisms, to the extent that their decisions were ignored or openly disobeyed. The imprisonment of Judge María Afiuni for implementing a resolution by a UN Special Procedures is the most emblematic.

158. Since 2002, no representative of the Inter-American or the UN systems of human rights has been able to visit the country. Besides denying authorization to the Rapporteur of Detainees of the IACHR, the State has not responded to or obeyed the calls made by the latter in the case of Judge Afiuni. Moreover, the State has yet to ratify the Optional Protocol against Torture and other cruel, inhuman or degrading treatment.

159. Additionally, Article 506 of the new Organic Code on Criminal Procedures (COPP) removed references to the Standard Minimum Rules for the Treatment of Prisoners of the United Nations, as part of the rules applicable to persons deprived of their liberty, for the protection of their rights.

160. During the Universal Periodic Review in October 2011, recommendations on the prison system ranked second in terms of number of proposals during the interactive dialogue with member states of the United Nations. Of these, Venezuela claimed that the majority was in the process of implementation or would be accepted. Only one recommendation was rejected with the following argument: "recommendation 96.23 is not accepted despite the challenges present in prisons and that it is a priority issue for the various State agencies; there are structural and progressive policies being implemented in this sector, humanizing and transforming reality in prisons, policies designed by detainees and their families, taking into account international

principles of human rights and including the UN Standard Minimum Rules for the Treatment of Prisoners¹¹³.

X. Conclusions and recommendations

161. The combined report presents legislative developments that are important, but insufficient and with large gaps between the standards and the development of policies and practices tailored to the standards of the Convention. Therefore, we submit to the Committee the following recommendations to the State:

- a. To promote the process to ratify the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment;
- b. To ensure the participation of independent civil society in the preparation and monitoring of periodic reports;
- c. To establish a transparent and accessible system of statistical data disaggregated by gender, age and nationality of victims of torture and cruel, inhuman or degrading treatment, as well as to include cases and proceedings against defendants, documenting them in the Public Ministry's Annual Reports;
- d. To ensure that police officers and public safety strategies and control of public order, as well as organs for training law-enforcement officers are in the hands of trained civilian personnel;
- e. To implement a universal training of law-enforcement and public-safety officers, according to current international standards and protocols on proportional use of force;
- f. To ensure respect for the principle of presumption of innocence, making preventive custody an exception and ensuring presentation before the courts in a period no longer than 48 hours, as required by law;
- g. To dismantle paramilitary groups and disarm all of their members, also ensuring prosecution of those who have committed crimes and human rights violations;
- h. To expressly prohibit the trial of civilians in military courts as well as the presence of civilians tried in military installations, and to keep forensic evidence and other elements related to processes on human rights outside of military facilities;
- i. To provide adequate training to legal, tax and forensic teams responsible for processing complaints of torture and other cruel, inhuman or degrading treatment, with special attention to those in charge of issues involving women, children, indigenous people, refugees and sexual minorities;
- j. To take immediate measures to ensure the classification and separation of detainees in accordance with international standards on the subject;

¹¹³ Human Rights Council. 19th Period of Sessions. Agenda Item 6. Universal Periodic Review. Report by the Working Group on the UPR. Venezuela (Bolivarian Republic of). Addition. Opinions on conclusions and recommendations, voluntary commitments, and answers by the State under review. Paragraph 9

- k. To provide adequate guarantees of access to civil society organizations to detention centers, particularly in regards to the monitoring of protective measures emanating from international and regional bodies for the protection of human rights;
- l. To immediately make adequate changes to the conditions of detention at the headquarters of the Bolivarian Intelligence Service (SEBIN);
- m. To ensure all persons in State custody access to a second opinion from doctors of their choice, access to the results of their own medical tests and to expressly prohibit the transfer of civilian detainees to military hospitals;
- n. To ensure full compensation to all victims of torture and to provide transparent and accessible information on their cases, both in general and regarding sentences of the Inter-American Court of Human Rights on the Caracazo and El Amparo in particular;
- o. To investigate, beyond formalities, all reports of attacks, threats, killings and other acts of aggression on human rights defenders, ensuring the punishment of those responsible and timely, transparent and accessible information on the evolution of the judicial proceedings;
- p. To allow the visit requested by the Special Rapporteur on Torture.