

Restrictions on political participation to the political and social organizations

I. Contributions of the Human Rights Center of the Universidad Católica Andrés Bello (CDH-UCAB), during the Universal Periodic Review March, 2011)

The right to political participation

The right to participation is widely enshrined in the Constitution of the Bolivarian Republic of Venezuela, from the preamble to the final article (article 350). However, this right has been violated in different ways.

The year of 2004 was a process of collecting signatures to convene a consultation on the revocation of the mandate of the President of the Republic. The President of the National Electoral Council, on instructions from the President of the Republic ^[1], gave a copy of the list of signatories to the then Deputy Luis Tascón, who made it public on a web site; it is known as "Tascón list". In April 2005, the President ordered "bury" the Tascón list, but it is still active under the name of "Maisanta", being so far used by the State as a tool of discrimination towards those who signed in 2004, in areas such as jobs in public administration, scholarships and study quotas, contracts with the public administration, among other^[2]. CDH-UCAB has evidence that at least until 2010, the list remains active and continues to be used as a tool of discrimination ^[3].

While the executive authorities have formally recognized the results of elections that have been adverse, in practice there is a lack of knowledge of the will of the people. In 2007 the President proposed a package of reforms to the Constitution, which was submitted for consultation through a referendum which resulted in the rejection of 51% of voters who participated. Even though the reform was defeated, most of the laws published on July 31st 2008, under special powers granted to the President of the Republic, contain provisions that violate the Constitution whose reform was rejected.

In November of 2008 the election of Governors and mayors was held. Immediately a series of decisions were taken, through a legislative or administrative way, in order to reduce powers and regional and local budgets, being the Governors and mayors of the coalition of parties in opposition to the Government the most affected. The Special Law on the Organization and Regime of the Capital District adopted in April of 2009 created the role of the Head of Government

of the Capital District, taking functions, resources and infrastructure to the new headquarters, which is headed by a person appointed by the President, on the fringes of popular election^[4].

The election of the members of the Parliament occurred in September of 2010. The results implied the loss of the 2/3 and 3/5 parts of seats required to maintain the parliamentary majorities to make certain decisions. Immediately, the outgoing Parliament streamlined the approval of a series of laws, proceeded to appoint 9 judges and 32 deputies of the Supreme Court of Justice, approved a new internal regulation that limits the parliamentary management and passed a new enabling law to the President for a period of 18 months; through this empowerment, for the first time, the President was empowered to create offences and penalties. For its part, the Supreme Court of Justice, through a decision that contradicted the Constitution, rejected the parliamentary immunity to two members of the Parliament who, upon being elected, were facing a process before the national courts.

Restrictions on political participation to the political and social organizations

In the month of December, 2010, the outgoing^[5] Parliament, adopted the Law of Defense of the Political Sovereignty and Self National Determination^[6]. This law restricts the action of "*organizations for the defense of political rights*"^[7]. The breadth of the definition involves regular activities that constitute the main activity of the majority of civil organizations, including human rights organizations, such as the control on the governmental management.

One of the main constraints referred to in the Law is the prohibition and punishment to receive funding from foreign entities. It should be noted that in Venezuela, political parties already are prevented from receiving external funding; however the scope of the law seems to be directed to organizations other than these, such as civil organizations, including those of human rights.

Among the sanctions established by the law there are fines, which amounts totaled unmanageable numbers for the bulk of the

organizations; political inhabilitation towards its directors and even custodial measures against them, considering that penalties contained in other laws could be applied; the issuance of opinions by invited foreigners are equally punished when they are deemed offensive by the institutions of the State, which is expected will cause inhibitory effects.

^[1] A facsimile of the letter from the President of the Republic to the President of the National Electoral Council can be seen on the web site: <http://www.noolvidaremos.com/news/lista-de-tascon-aplicacion-maisanta/> (capture date: March 11, 2011); There are also detailed explanations on the use of the list:

<http://vcrisis.com/index.php?content=pr/200512061532> (capture date: March 11, 2011).

^[2] Between 2004 and 2005, the CDH-UCAB attended several discrimination cases for having signed the request for consultation to the revocation of the presidential term. Cases were not successful in national bodies and one of them was elevated to the Inter-American Commission on Human Rights. The study was published in 2009 "The price of political opposition: Evidences from Venezuela's Maisanta", which can be consulted at:

http://frrodriguez.web.wesleyan.edu/docs/working_papers/maisanta_april2009_final.pdf

^[3] There is currently a large number of pages on the internet from which you can download the list: can prove with the Google search engine by writing "maisanta.exe".

^[4] In July of 2009 affected Governors, as well as the Major of the Metropolitan District of Caracas, were attended by the Organization of American States where they submitted documentation to the Secretary-General's report of the entity and the Inter-American Commission on Human Rights on the limitations imposed by the Executive on the exercise of their mandate. The Inter-American Commission on Human Rights, in its report "Democracy and human rights in Venezuela" reflects this situation in the section "Modification of the powers of elected officials" (paras. 74 et seq.).

^[5] The mandate will extinguish on January 5th 2011, date in which was set up a new National Assembly, as a result of the parliamentary election held on September 26th 2010.

^[6] The full text of this law can be searched in http://www.tsj.gov.ve/gaceta_ext/Diciembre/23122010/E-23122010-3043.pdf#page=1 (capture date: March 6, 2010).

^[7] For the purposes of the Act defines the **Organizations with political object**: those involved in public or private activities to promote the participation of citizens in public spaces, exercise control over the public authorities or promoting candidates who aspire to hold public office of popular choice. And the **organizations for the defense of political rights**: those which have as their purpose in its constitution promote,

disclose, report, or defend the full exercise of the rights of political citizenship.

Question:

- What are the scope and implications of the Law of Defense of National Sovereignty and Self-Determination policy to guarantee the independent exercise of human rights organizations that advocate, promote and disseminate political rights report, taking into account the "Declaration on the Right and Responsibility of individuals, Groups and Organs of Society to Promote and Protect human Rights and fundamental Freedoms "of the UN?

Recommendation:

- Ensuring the conditions for people and organizations that advocate, promote and disseminate political rights report freely conduct their activities and refrain from any action that would restrict or impede their work and to retaliate or to use the State's punitive power to intimidate or punish individuals and organizations, even if the defense of these rights are receiving funding through international cooperation.
- Abolish all legislation that restricts freedom of association and obstructs the free performance of the legitimate tasks of accountability over governmental administration.
- Provide all the guarantees to the civil organizations including human rights groups, in order to enable them to carry out their tasks without any kind of threat or obstacle.

II. The inter-american human rights 2010 annual report Chapter IV Venezuela

B. The International Cooperation Bill

608. Addressing the issue of the administrative and financial controls placed on human rights organizations, in its 2009 Report on *Democracy and Human Rights in Venezuela* the Commission noted with concern that although civil society organizations may be established by foreigners and external financing is allowed, participation by certain organizations in public affairs continues to be restricted based on

their financing, their members' national origin, the type of organization or the absence of laws governing their activity.¹ These restrictions are based on Venezuelan Supreme Court rulings dated June 30, 2000, August 21, 2000 and November 21, 2000.² In these rulings, the Venezuelan Supreme Court held that the representative authority of these organizations depends on the size of their membership and they must meet the same prerequisites as political parties.³ The Supreme Court also held that:

[...]civil society, as considered by the Constituent Assembly, is Venezuelan civil society, wherefrom arises the principle of its general, joint responsibility with the State, and its particular responsibility vis-à-vis the economic, social, political, cultural, geographical, environmental and military arenas. The consequence of this national character is that its representatives may not be foreigners or bodies affiliated with, or led, subsidized, financed, or sustained, either directly or indirectly, by states or by movements or groups influenced by states, nor by cross-border or global associations, groups, or movements that pursue political or economic goals to their own benefit [...].⁴

609. The Commission also underscored its concern over the possible passage of the International Cooperation Bill approved by the National Assembly in June 2006 after the first round of debate. It also observed that a number of civil society organizations had told the State of their concern over the passage of this bill. They include the Forum for Life (a Venezuelan coalition of 14 human rights NGOs⁵) and the

social development network SINERGIA, which submitted its observations on the bill to the National Assembly's Foreign Policy Commission in August 2006.⁶

610. In 2010 the Commission received information -which the State later confirmed in response to a request for information which the Commission filed under Article 41 of the American Convention- about the existence of a request filed with the Office of the Prosecutor General asking that a criminal investigation be launched into the organizations *Espacio Público* and the *Instituto de Prensa y Sociedad* (IPYS) in order to ascertain the source of the funding of their activities, on the premise that their funding came from the United States Department of State, which presumably was a strategic connection with the Venezuelan media for the purpose of undermining the established order.⁷ According to this

(ACCSI), Cáritas de Venezuela [Caritas of Venezuela], Cáritas de Los Teques [Caritas of Los Teques], the Human Rights Center of the Universidad Católica Andrés Bello, the Center for Peace of the Universidad Central de Venezuela, Comité de Defensa del estado Guárico [Guárico State Defense Committee], Comité de Familiares y Víctimas de los sucesos febrero-marzo de 1989 [Committee of Relatives and Victims of the events of February-March 1989] (COFAVIC), Espacio Público [Public Arena], Fundación de Derechos Humanos de Anzoátegui [Anzoátegui Human Rights Foundation], Observatorio Venezolano de Prisiones [Venezuelan Observatory of Prisons], Red de Monitores de Táchira [Táchira Monitors Network], Servicio Jesuita para Refugiados [Jesuit Service for Refugees], Vicaría de Derechos Humanos Caracas [Caracas Human Rights Vicariate] and Vicaría de Puerto Ayacucho [Puerto Ayacucho Vicariate].

⁶ IACHR. *Report on Democracy and Human Rights in Venezuela*, December 30, 2009, Chapter 5, para. 575.

⁷ On July 23, 2010, the Commission, exercising its authorities under Article 41 of the American Convention, asked the Venezuelan State to report the following to the Commission within five days: the criminal investigations that were requested; the organizations and persons that are the targets of the requested criminal investigations; the bases or grounds for requesting those investigations; and, most especially, the laws and regulations that prohibit NGOs from receiving international funding and the status of the earlier cases. In a communication dated August 10, 2010, the State informed the IACHR that in fact, on July 13, 2010, the *Movimiento Periodismo Necesario*, represented by journalists Esther Quiaro, Harin Rodríguez D'Santiago and Isidoro Hugo Duarte, filed a complaint with the Prosecutor General's Office asking for an investigation of the millions of dollars in financing that the United States Government's Department of State was allegedly funneling to media outlets and journalists by way of Venezuelan nongovernmental organizations, as reported

¹ IACHR. *Report on Democracy and Human Rights in Venezuela*, December 30, 2009, Chapter 5, para. 562.

² IACHR. *Report on Democracy and Human Rights in Venezuela*, December 30, 2009, Chapter 5, para. 562.

³ Supreme Court of Justice, Constitutional Chamber, "Ombudsman's Office v. National Legislative Commission," June 30, 2002, Judgment "Governors v. Minister of Finance", November 21, 2000.

⁴ Supreme Court of Justice of Venezuela, Constitutional Chamber, Justice writing the decision: Jesús Eduardo Cabrera Romero, Judgment of November 21, 2000.

⁵ Members of the Foro por la Vida: Acción Ciudadana Contra el Sida [Citizen Action against AIDS]

information, the complaint was filed in July 2010, by members of the *Movimiento Periodismo Necesario*, an organization integrated by revolutionary journalists.

611. Later, on November 23, 2010, the President addressed a special session of the National Assembly held on the occasion of the “Act of State in Defense of the Homeland’s National Sovereignty and against the Hegemonic Interests of Imperialism”. His speech was carried in a nationwide broadcast from the National Assembly’s Sal6n El6ptico; he asked the Assembly to create a law banning international funding of political parties and nongovernmental organizations:

“How can we allow political parties, NGOs, counterrevolutionary figures to continue to be funded with millions and millions of Yankee imperialist dollars? These groups then take advantage of our freedom to abuse and violate our constitution and try to destabilize the country. I implore you: toughen the law so that this can be stopped,” the President said.

“That must be the answer to the imperialist aggression, the imperialist threat; we have to radicalize our positions, and not relent,”

612. The Commission has repeatedly expressed its concern over the renewed efforts to pass the International Cooperation Bill, which was approved at its first debate by the National Assembly in 2006, in the press release issued on July 19, 2006, in Chapter IV of its 2006 Annual Report, in the letter it sent to the State in April 2009 in exercise of its authorities under Article 41 of the American Convention, in its 2009 Report on *Democracy and Human Rights in Venezuela*,⁸ and in its press release of December 3, 2010.⁹

613. In its communication of February 18, 2011, the State reported that “it

is true that the Venezuelan State has been critical of NGOs that accept funding from foreign governments,” which is why a law prohibiting it was enacted.” It observed that in exercise of its constitutional functions, the National Assembly had debated and passed the Defense of National Political Sovereignty and Self-Determination Act, published on December 23, 2010 in the Official Gazette of the Bolivarian Republic of Venezuela No. 39,580. That law “prohibits foreign-government funding of NGOs and political parties.”¹⁰

614. The Commission also observes that on Friday, December 17, 2010, the Bolivarian Official Gazette published the “Law authorizing the President of the Republic to issue decrees with the rank, value and force of law, on the subject matters delegated to him.” Known as the “Ley Habilitante” [“Enabling Law”], the new legislation gives the executive branch the ability to make law on the subject of international cooperation for a period of 18 months.¹¹ As pointed out in press release 122/10, the Commission is concerned that the Enabling Law might seriously compromise the ability of nongovernmental human rights organizations to perform their important functions. In its communication of February 18, 2011, the State wrote that the 1999 Constitution gives the President this authority in its Article 203, which is a legacy passed down from all previous Venezuelan constitutions and a function present in the constitutions of a number of Latin American countries.

615. As for the possible restrictions that states can impose on human rights organizations’ involvement in public affairs, invoking arbitrary rationales for those restrictions, the IACHR recalls that in its Report on the Situation of Human Rights Defenders in the Americas, it recommended to the states that they refrain “from restricting the means of financing of human rights organizations. The States should allow and facilitate human rights organizations’ access to foreign funds in the context of international cooperation, under conditions of transparency” (Recommendation No. 19).

in documents declassified and researched by Eva Golinger, a Venezuelan-American journalist.

⁸ IACHR. *Report on Democracy and Human Rights in Venezuela*, December 30, 2009, Chapter 5, paragraphs 576- 581.

⁹ IACHR, Press Release 118/10, IACHR concerned over International Cooperation initiative in Venezuela, December 3, 2010.

¹⁰ Communication from the State, dated February 18, 2011.

¹¹ Official Gazette of the Bolivarian Republic of Venezuela, Special Issue No. 6,009, Caracas, Friday, December 17, 2010.

The Commission wishes to underscore the recommendation it made in its report on *Democracy and Human Rights in Venezuela*, published in 2010, to the effect that Article 203 of Venezuela's Constitution should be amended; as it now reads, Article 203 allows legislative powers to be delegated to the President of the Republic without establishing clear and unambiguous limits on the nature of that delegation.

C. Registration and establishment of human rights organizations

616. In its 2009 Report the Commission observed that in connection with the registrations required under domestic law in order to set up an organization whose purpose is to promote and defend human rights, and in order to finance its activities, the State has said that Venezuela's legal system does not have laws or rules regulating nongovernmental organizations' financing or use of funds; thus their structure and legal and administrative operations are to conform to the provisions of the Civil Code that are for foundations and nonprofit organizations.¹²

617. As it had in 2009 -and as reported in the document on *Democracy and Human Rights in Venezuela*-, the Commission continued to receive information in 2010 to the effect that some civil society organizations have had their rights to freedom of association and participation restricted due to obstacles and difficulties encountered when attempting to register with the competent authorities. The Commission was told that in 2010 officials with the Ministry of the People's Power for Domestic Relations and Justice denied the request of the newly created *Asociación Civil Civilis* to legalize its operating statute¹³ on the grounds that the document could not make reference to terms like democracy and politicians.¹⁴

¹² IACHR. *Report on Democracy and Human Rights in Venezuela*, December 30, 2009, Chapter 5, para. 560.

¹³ Information supplied during the hearing on Democratic Institutions and Human Rights Defenders in Venezuela, held during the Commission's 140th session.

¹⁴ Information supplied during the hearing on Democratic Institutions and Human Rights Defenders in Venezuela, held during the Commission's 140th session.

618. As the Commission has observed, "freedom of association, in the specific case of human rights defenders, is a fundamental tool that makes it possible to fully carry out the work of human rights defenders, who, acting collectively, can achieve a greater impact. Because of this, when a state impedes this right, it not only restricts the freedom of association, but also obstructs the work of promoting and defending human rights."¹⁵ Thus, any act that tends to impede the association of human rights defenders, or in any way thwarts the purposes for which they have formally associated, is a direct attack on the defense of human rights.¹⁶

III. The inter-american human rights 2010

Democracy and human rights in venezuela¹⁷

Chapter V December 30, 2009

V. The Defense of Human Rights and The Freedom of Association

556. The IACHR has indicated that the work of human rights defenders in protecting individuals and groups of individuals who are victims of human rights violations, publicly denouncing the injustices that affect large sectors of society, and pointing to the need for citizen oversight of public officials and democratic institutions, among other activities, means they play an irreplaceable role in building a solid and lasting democratic society.

557. Thus, the process of democratic strengthening in the hemisphere must incorporate full respect for the work of human rights defenders, and the States must guarantee the conditions necessary for them to be able to freely conduct their activities, refraining from taking any action that would limit or obstruct their work.

558. In this chapter, the Commission will analyze the State of Venezuela's compliance with the right to freedom of

¹⁵ IACHR. *Report on the Situation of Human Rights Defenders in the Americas*. March 7, 2006, paragraph 69.

¹⁶ IACHR. *Report on the Situation of Human Rights Defenders in the Americas*. March 7, 2006, paragraph 76.

¹⁷ <http://www.cidh.oas.org/countryrep/Venezuela2009eng/VE09CHAPVENG.htm#B>.

association for the promotion and defense of human rights, as well as the obstacles that human rights defenders encounter in their work, including violations of the right to life, humane treatment, and personal liberty.

A. Association for the promotion and defense of human rights

559. The IACHR has stressed that the States have the authority to regulate the registration, oversight, and control of organizations within their jurisdictions, including human rights organizations. Nonetheless, the right to associate freely requires that the States ensure that those legal requirements do not impede, delay, or limit the creation or functioning of these organizations. Below, the Commission will analyze whether the State of Venezuela's existing legal framework and policies allow human rights organizations to freely exercise their right of association.

B. Obstacles to the work of defending human rights

588. The Commission has been informed that a climate of hostility and threats continues against the life and physical integrity of human rights defenders in Venezuela. Information received by the IACHR makes reference to State actions aimed at delegitimizing and criminalizing the activity of human rights defenders and Venezuelan and international human rights NGOs that work in Venezuela. The information received by the Commission also indicates that high-level public officials, including the President of the Republic, have publicly accused several human rights organizations, as well as their members, of being part of a coup-mongering strategy or of having improper ties to foreign countries that are supposedly planning to destabilize the government. Moreover, statements have been made to discredit the professionalism of individuals who have appeared before the human rights protection bodies of the inter-American system.

589. Below, the Commission will analyze how the work of defending human rights in Venezuela has been hindered through smear campaigns and criminalization efforts, as well as through attacks and threats directed at those who devote themselves to defending Venezuelans' human rights. The IACHR will also consider how the lack of

access to public information has impeded the work of defending human rights in Venezuela.

1. Smear campaigns and criminalization campaigns

591. As has been indicated, the majority of attacks by the State on human rights defenders are currently done through smear campaigns. According to information received by the IACHR, from May 2007 to May 2008, there were six cases of discrediting defenders and four cases of discrediting human rights organizations reported to the appropriate authorities in Venezuela.

592. In that regard, the Commission has observed how in recent years, State officials have persisted in publicly discrediting human rights defenders so as to delegitimize any complaint they may present regarding violations to human rights, in some cases accusing them of being part of a destabilization plan and of acting "against the revolution" for having received funds from foreign organizations and countries for their financing.

594. Another recent example took place in February 2009, in the context of the commemoration of the anniversary of the events of February 27, 1989, when the human rights organization COFAVIC sought to propose the creation of a coalition to investigate the most serious cases of human rights violations in Venezuela. The State's response was to disparage the organization that made the proposal; it indicated, via the Human Rights Ombudswoman, that COFAVIC has no legitimacy to offer proposals regarding the investigation of facts because it has been hijacked and its actions have been denaturalized.

603. In the judgment of the Commission, the discrediting remarks made by authorities of the State, or tolerated by them, have not only assaulted the right to honor and dignity of those who have been attacked, but they have also helped to create adverse conditions and to produce a chilling effect on the work of human rights defenders. Disparaging human rights defenders and their organizations could cause them, out of fear of possible reprisals, to hold back from making public statements critical of government policies, which in turn hampers debate and the ability to reach basic agreements

regarding the problems that afflict the Venezuelan people.

608. Similarly, in April 2005 the Attorney General's Office opened an investigation against Carlos Ayala Corao, former President of the IACHR and human rights defender, for the alleged crime of conspiracy, linking him to the events of April 2002. In 2008, and without being previously consulted, the Attorney General's Office requested the closure of the investigation in application of a Presidential Amnesty decreed in December of 2007. Although Carlos Ayala expressed his disagreement with the manner of ending the investigation, the amnesty was imposed upon him and although he appealed the decision to apply it to him, he did not receive justice.

609. The Attorney General's Office has also attempted to open judicial actions, including defamation complaints, against beneficiaries of provisional measures issued by the Inter-American Court, in an attempt to have the victims prove the acts of aggression they have suffered.

2. Attacks, threats, and harassment

621. According to the information received by the IACHR, human rights defenders in Venezuela are not only affected by smear campaigns and criminalization campaigns, but they are also victims of attacks, threats, and harassment, and even murders. This leads to a chain effect that affects the state of human rights in general because only when human rights defenders have appropriate protection for their rights can they seek to protect the rights of others.

622. It is worth noting that acts of violence and harassment directed against human rights defenders intensified with the institutional crisis that affected Venezuela in 2002, but had not been a problem that affected the country before that. In fact, in its last *Report on the Situation of Human Rights in Venezuela*, issued in 2003, the Commission noted that this situation did not reflect a generalized practice and that previously human rights defenders in Venezuela had been able to pursue their functions without any such problems.

623. Along these same lines, Venezuelan human rights organizations have noted with concern that murders and executions of human rights defenders have been recorded for the first time in

Venezuela's democratic history. The Vicariate of Human Rights of Caracas has documented six cases of violations of the right to life of human rights defenders in Venezuela between 1997 and 2007.

624. One of the six murders was a landmark case that demonstrated the change in conditions under which human rights defenders in Venezuela began to work from the time of the 2002 institutional crisis. The victim of the murder of August 27, 2003 was Joe Luis Castillo González, former coordinator of the Office of Human Rights of the Vicariate of Maquiques. Joe Castillo, who had previously received threats related to his work, was shot nine times when he was heading home with his wife and young son. This act was allegedly perpetrated by two men on a motorcycle, who opened fire on the human rights defender's vehicle, killing him, wounding his wife, and leaving his 1½-year-old son in critical condition.

628. In addition, the report of the Vicariate of Human Rights of Caracas documents 71 cases of attacks or obstructions to the work of human rights defenders from 1997 to 2007. Most of the attacks (26.73% of the documented cases) consist of threats. These are followed by smear campaigns, with 18.81% of cases; acts of aggression, 14.85%; following and surveillance, 8.91%; and extrajudicial executions, 5.94% of the registered cases. The rest refer to the filing of judicial actions; trespass into an activist's residence or office; and arbitrary detentions, with 4.95% for each of those types of cases. Less frequent types of attacks are the application of arbitrary financial and administrative controls on NGOs, in 3.96% of cases, and failed murder attempts and restrictions to public information in the hands of the State, with 2.97% each.

632. In addition, COFAVIC has informed the Commission that over the last two years there has been a worsening of acts of aggression against activists who turn to the inter-American system for the protection of human rights. The IACHR was informed that in the majority of the cases, no judicial investigations have been opened, and in the few cases in which they have been opened, the jurisdictional bodies have ordered the files to be closed.