

**The Minister of Popular Power for  
Foreign Affairs of the  
Bolivarian Republic of Venezuela**

000125


Caracas, September 6th, 2012

Your Excellency,

I have the honor to refer to the American Convention on Human Rights (Pact of San José), signed in the city of San José, Costa Rica, on November 22, 1969 and ratified by the Republic of Venezuela, as it was known then, as well as to the two bodies governed by it: the Inter-American Commission of Human Rights and the Inter-American Court of Human Rights, whose competence was recognized by the Republic of Venezuela, as it was known then, on August 9, 1977 and June 24, 1981, in accordance with Articles 45 and 62 of the American Convention on Human Rights, respectively.

For the countries of our region at the time it was very important to ratify the American Convention on Human Rights and institutionalize mechanisms that would establish a framework for the promotion and protection of human rights in the region. Our country was among the first to ratify the Pact of San José, as well as the only one to do so by unilateral declaration, and the second country to accept the Court's jurisdiction.

Subsequently, the Bolivarian Republic of Venezuela, since the promulgation of our Constitution in 1999, consecrated in even broader terms human rights and fundamental guarantees and freedoms which are enjoyed by all people living in this country, recognizing and legally enshrining the rights of indigenous communities, environmental rights and political, economic, social and cultural rights, establishing by our Constitution new institutions within the state structure, dedicated to protecting the rights, and ensuring compliance and unconditional respect for such rights.



His Excellency Mr.  
**José Miguel Insulza**  
**Secretary General**  
**Organization of American States**  
Washington, D.C.

Thus, the Venezuelan legal system is at the forefront of guarantee systems in the region, establishing new institutions that are intended to ensure full respect for human rights and fundamental freedoms, such as the Ombudsman's Office and the Public Ministry, as well as the establishment of two new branches of Public Power: the Electoral Power and the Citizen's Power.

From the moral and political authority that this circumstance gives the Bolivarian Republic of Venezuela on human rights issues, it is coherent to report that in recent years the practice of bodies governed by the Pact of San José, both the Inter-American Human Rights Commission and the Inter-American Court of Human Rights, have moved away from the sacred principles that they are expected to protect, becoming an easily thrown political weapon aimed at undermining the stability of certain governments, especially that of our country, taking a course of action that interferes in the internal affairs of our government, violating and ignoring basic and essential principles widely recognized in international law, such as the principle of respect for state sovereignty and the principle of self-determination of peoples, even ignoring the content and provisions of the Inter-American Commission on Human Rights, particularly in matters relating to budgets that according to the Convention, would make legally advisable the action of the Inter-American Commission on Human Rights and the Inter-American Court of Human Rights, as it would be the required exhaustion of domestic remedies of the State party to the Convention, which suggests ignorance of the institutional and legal systems of each State party to this International Treaty, and therefore it is also another disrespect for the sovereignty thereof; denoting significant regression to the so called Inter-American Human Rights System, whose remedy should not be deferred.

The efforts of Member States of the Organization of American States to promote much needed reform and modification of both institutions have been to no avail, since they are hijacked by a small group of unscrupulous bureaucrats that have blocked, obstructed and prevented necessary changes.

By comparison, much progress has been made in the field of the Universal Promotion and Protection of Human Rights, which has been strengthened with the establishment of the Human Rights Council and structuring a valuable tool in the Universal System such as the Universal Periodic Review mechanism, which has allowed the discussion and analysis of the human rights situation in all countries, on the basis of constructive dialogue on an equal footing, support, respect and justice.

The Bolivarian Republic of Venezuela remains committed to deepening the co-operation with the Human Rights Council as well as the committees that consider the reports of the various Conventions ratified by Venezuela, hoping that this system will be strengthened and become efficient and unbiased, to advance a genuine promotion and protection of all human rights, including the right to development.

This is why our country considered very unfortunate that the Inter-American Human Rights System does not follow the example of the Universal Promotion and Protection of Human Rights, regarding the need for a review and reform process required by competent bodies for the implementation and enforcement of the American Convention on Human Rights.

It is particularly regrettable that a system that was created to strengthen American solidarity in all matters regarding respect and guarantee of fundamental rights, as it was established in the Charter of the Organization of American States, today violates and infringes with their malpractice the Pact of San José, and even undermines the rights and obligations of States parties which have been acquired within the framework of the UN Charter.

The Bolivarian Republic of Venezuela considers that it is pertinent to recall that the principle of universality of human rights, reflected in Article 131 of the OAS Charter, calls upon us to ensure that the Inter-American system does not prejudice the rights and obligations that we have acquired within the framework of the United Nations Universal System and therefore it is necessary to react.

Venezuela cannot remain silent about what today has become an exercise in gross and systematic violation of the Pact of San José by the Inter-American Commission on Human Rights and the Inter-American Court of Human Rights, as evidenced in cases that we express in detail in the annex to the present note.

The Inter-American Court cannot attempt to exclude, ignore, or replace the constitutional order of States Parties, since international protection derived from it contributes to or complements the protection provided by the domestic law of the American states. However, repeated decisions of the Commission and the Court have hit the precepts and principles of the Constitution of the Bolivarian Republic of Venezuela, as stated by the Constitutional Chamber of the Supreme Court of our State, in its Decision 1572 of 2008.

For its part the Commission, that in accordance with the Charter of the OAS has the power to promote the observance and defense of human rights and, by means of the Convention has jurisdiction to "hear and determine on matters relating to the implementation of commitments made by the States Parties" (Article 33), has no power whatsoever to attempt "implementation of the Convention" or to "declare" or "decide" on the responsibility of a State, or the legal

consequences as it has attempted to do regarding the facts concerning Venezuela, clearly transgressing its own mandates and functions.

**It is unacceptable that a country like Venezuela, which has given a historic leap to end the human rights violations that were systematic before 1999, is summoned and libeled for political reasons, through unfounded allegations, devoid of probative substrate, from political sectors linked to breaches of the laws and the Constitution, which receive immediate attention and are accepted by the Commission and the Court even though, in all cases involving Venezuela, have recognized failure to exhaust domestic remedies and, in some cases, had not even been brought before them, in violation of Article 46.1 of the Convention.**

The speed with which these clearly politicized and biased cases are dealt with against the Venezuelan government and its democracy, violating the Convention, have compelled our country to ask, both the Commission and the Court:

- What are the reasons that delayed for more than six years considerations on the most serious, massive and brutal violation of human rights in Venezuela, from the events of 27 and 28 February 1989, known internationally as "*The Caracazo*", where hundreds of Venezuelans were killed?,
- Why the American Commission did not issue statements or resolutions on the Cantaura massacres of 1982, or Yumare's in 1986, despite their extreme gravity, and did not express concern about this very serious bloodshed, but instead it has consistently expressed since 1999, over events which have no emergency characteristics such as bills of cooperation or information in Venezuela?,
- Why our country to this date has not received an explanation about the recognition of fact made by the then Executive Secretary of the Commission, Santiago Canton, to the de facto authorities who settled in Venezuela as a result of the coup d'état of 11 April 2002?
- Why, even acknowledging that a de facto government had been installed, and the life of the kidnapped Constitutional President of the Bolivarian Republic of Venezuela was in danger, the Commission did not admit and did not process the request for precautionary measures submitted by MINGA Association in favor of our President?

These questions and many others, still unanswered, contrast with the fact that too many cases are already known against the Bolivarian Republic of Venezuela showing overstepping by the Commission and the Court and their action violates the Inter-American Convention on Human Rights and the Constitution of the Bolivarian Republic of Venezuela, among which we would mention the following:

The cases of journalists Rios, Perozo *et al* against Venezuela, whose petitions were accepted by the Commission without the parties having exhausted remedies under domestic law, in violation of Article 46.1 of the American Convention on Human Rights, and later submitted to the Court, and even though the Court recognized that the alleged violation of the rights to freedom of expression, property and equality before the law was not true, accused the Venezuelan government of failing to ensure that particulars may not hinder the exercise of freedom of speech.

This irregular behavior of the Commission and the Court, and unreasonably in favor of Perozo and Rios -who on the date of the alleged events carried out a public political activity of significant belligerence against the government of President Hugo Chavez, invoking their journalist condition-, was in fact, from the mere admission of the cause, the underpinning of the international campaign to discredit the Bolivarian Republic of Venezuela, accusing it of restricting freedom of expression. Additional details on these cases are included in the attached note.

Something similar happened in the case of Allan Brewer Carías against Venezuela, which was admitted by the Commission without the complainant having exhausted remedies under domestic law, in violation of Article 46.1 of the American Convention on Human Rights, and urging the Venezuelan State to "take measures to ensure the independence of the judiciary", even though the criminal trial that he is subjected to, for the crime of conspiracy to violently change the Constitution has not been possible, since the defendant is a fugitive of justice and the Venezuelan criminal procedure legislation prevents trial *in absentia*.

This irregular behavior of the Commission unreasonably in favor of Brewer Carías, who participated in the authorship of the text of the decree dismissing public powers, which was proclaimed by the de facto authorities who stormed to power after the coup of April 11, 2002 in Venezuela, was in fact, from the mere admission of the cause, the underpinning of the international campaign to discredit the Bolivarian Republic of Venezuela, accusing it of political persecution. Additional details on these cases are included in the attached note.

Another embarrassing example is the case of Leopoldo López against Venezuela, which was admitted by the Commission, not only without the complainant having exhausted remedies under domestic law, in violation of Article 46.1 of the American Convention on Human Rights, but despite the fact that the complainant would have expressly waived it by failing to challenge before the Supreme Court of Venezuela the administrative decision that disqualified him from holding public office for corruption. In this case the Court issues a judgment that was unenforceable, attempting to order the Venezuelan State to amend its domestic law, arising from the fulfillment of international obligations, including the inter-American obligation.

This irregular behavior of the Commission and the Court, unreasonably in favor of López, who carried out in his capacity as mayor repressive activities in support of the coup of April 11, 2002, and was also disqualified from holding public office for administrative corruption, was in fact, from the mere admission of the cause underpinning an international smear campaign against the Bolivarian Republic of Venezuela, accusing it of political persecution. Additional details on these cases are included in the attached note.

Another example, particularly shocking, is the case of Uson Ramírez's complaint against Venezuela, in which the Court's judgment repeats the pattern of trying to stigmatize Venezuela for alleged restrictions on freedom of expression, through a judgment that, as documented by recordings of the deliberations of the judges, was agreed and decided without hearing the allegations, without hearing the parties concerned, or even the answers to the questions posed by the Court itself.

This unlawful conduct of the Commission and the Court, unreasonably in favor of Uson Ramírez, who carried out an insurrectionary call in the military field, produced in fact, from the mere admission of the cause, the underpinning of the international campaign to discredit the Bolivarian Republic of Venezuela, accusing it of restricting freedom of expression. Additional details on these cases are included in the attached note.

This inventory of grievances, that despite being extensive is not in the least exhaustive, would not be complete without special reference to the shameful case of terrorist Raul Diaz Peña against Venezuela.

This is about the latest and aberrant expression of the flagrant violation of the American Convention by their own institutions, both the Commission and the Court. A case was received by the Commission, admitting that remedies under Venezuelan law had not been exhausted, violating the provisions of Article 46.1 of the American Convention on Human Rights and that, nevertheless, it was referred to the Inter-American Human Rights Convention which, in the most shameless manner in judgment dated June 26, 2012 became aware of the merits of only one element, even though the preliminary recognized the non-exhaustion of remedies under domestic law: conditions of detention, followed by statement that the Venezuelan State is internationally responsible for the violation of the right to personal integrity and inhuman and degrading treatment of terrorist Peña, even if in the text of the judgment there was no evidence that could actually prove the situation stated in that decision. Additional details about this case are included in the attached note.

Thus, a convicted criminal who attacked with bombs the diplomatic missions of Colombia and Spain on February 25, 2003, as part of a plan to destabilize Venezuela's democracy, was used by the Inter-American system as a fourth instance, to appeal the fair and firm decisions taken by the legal system of a sovereign country like Venezuela. The principle of legality is then reversed, and the criminal becomes the victim according to a peculiar political criterion, rather than a legal criterion of the current Inter-American system, an absurd and incongruous system that requires the Venezuelan State to adapt the conditions of detention of a criminal who, paradoxically, has fled and remains at large.

It is extraordinary besides being shameful that a system that was created to defend the highest values associated with human rights, indeed serves to shelter victimization brazen attempts of a criminal who has committed one of the meanest acts against human beings and the State, such as a terrorist act. As expressed by the Inter-American Court: -

*"(...) Tolerance of gross violations of procedural rules laid down in the Convention itself, would lead to the loss of authority and credibility which are essential in the bodies responsible for administering the system of protection of human rights."*

That is why, in order to protect the values and principles enshrined in the relevant conventions of the Universal Convention on Human Rights, and respect for the principles enshrined in our Constitution, our country is forced to distance itself from the current pervert exercise of the organs of the Inter-American System of Human Rights, composed of the Inter-American Commission on Human Rights and the Inter-American Court of Human Rights. The principles relating to human rights must be preserved outside these flawed institutions that, with their practice, have delegitimized and altered the nature of their role as guarantors of the commitments made by the States in the Pact of San José.

So, the Constitution of the Bolivarian Republic of Venezuela compels us to react to these abuses in the defense of human rights, the dignity of our people and the democratic institutions, which have obviously been assaulted by decisions taken in recent years by the Commission and Court that violate the American Convention on Human Rights. And as a government that respects the legal system, we must reject all these decisions that protect criminals and crimes against society.

Since in accordance with the OAS Charter, the powers, structure and procedures of the Inter-American Commission on Human Rights are determined by the American Convention on Human Rights, the Bolivarian Republic of Venezuela issues the complaint of the American Convention on Human Rights, also ceasing the Declaration issued on August 9, 1977, at the time of ratification of said Convention.

**On the basis of the above considerations, on behalf of my government, I wish to convey the sovereign decision of the Bolivarian Republic of Venezuela to denounce the American Convention on Human Rights, therefore, in accordance with the provisions of Article 78, would much appreciate if this note is considered as notice of termination, so that, from the time specified therein, will cease its international impact, in matters it refers to, and the competence of its organs in our country, both the Inter-American Commission on Human Rights and the Inter-American Court of Human Rights.**

The Bolivarian Republic of Venezuela will continue to comply with the elements contained in the OAS Charter and other instruments duly ratified by the Republic within the framework of this continental organization, particularly with all the clauses and provisions that do not contradict the spirit, purpose and reason of this complaint, sufficiently argued in this Note.

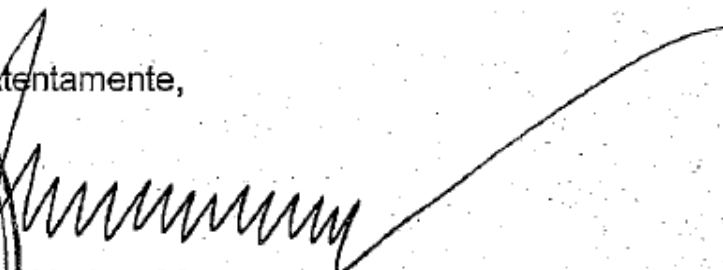
The Bolivarian Republic of Venezuela will continue to promote respect for the most sacred principles of international law, such as independence, non-interference in internal affairs, sovereignty and self-determination of peoples, as well as continue to respect and comply with the provisions of other mechanisms of integration and international cooperation, particularly those pertaining to the promotion and protection of human rights, and in particular the Protocol of Asunción on Commitments to the Promotion and Protection of Human Rights of MERCOSUR, signed on 19 June, 2005.

I wish to avail of this opportunity, Your Excellency, to express that the Bolivarian Republic of Venezuela will remain firmly committed, as it has been since 1999, with the promotion and protection of human rights and democracy, and the balanced realization of economic, social, cultural, civil and political rights,

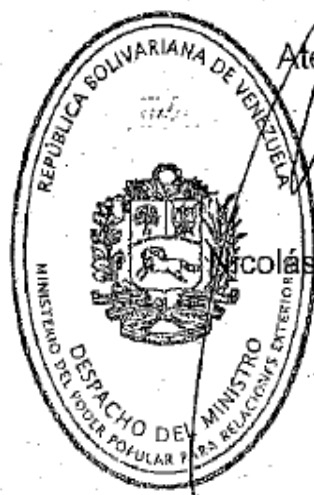


including the right to development, and I would express the firm willingness of our country to contribute to the construction of our American System of Human and Peoples Rights that in a truly independent and impartial manner would help to ensure human rights in the region without interfering tutelage, and with due respect for sovereignty, institutions and the legal system of States.

Atentamente,



Nicolás Maduro Moros  
Ministro



REPUBLICA BOLIVARIANA DE VENEZUELA  
MINISTERIO DEL PODER POPULAR PARA LAS RELACIONES EXTERIORES  
DESPACHO DEL MINISTRO

**GROUNDS SUSTAINING THE DENUNCIATION  
BY THE BOLIVARIAN REPUBLIC OF VENEZUELA  
OF THE AMERICAN CONVENTION ON HUMAN RIGHTS  
FILED BEFORE THE OAS GENERAL SECRETARIAT**

*As to the facts and rights that assist our country in the sovereign decision of denouncing the American Convention on Human Rights, pursuant to the provisions of Article 78.*

**A .Concerning the facts related to the proceedings of the Commission**

The Bolivarian Republic of Venezuela, from 2002, has been pointed by the Inter-American Commission for situations allegedly undermining human rights in our country.

In a systematic fashion during these years, Venezuela has indicated that the Commission has not acted with objectivity and transparency, violating the spirit of the Convention by **sponsoring impunity**, particularly of those individuals involved in the events of April 2002 coup, as well as in the business and oil strike of December 2003. The international law has been manipulated to eliminate the faults of those who break our laws, and make them victims of unfounded false violations of their human rights.

During the last twelve years, the Bolivarian Republic of Venezuela has pointed out multiple cases that demonstrate the rupture with the nature and spirit with which the Commission and its proceedings were conceived, including the following:

- 1.- The bias and lack of precision in the study of the conditions that justify the inclusion of countries in Chapter IV of the Annual Report on the Human Rights Situation in the region.** The current methodology used by the Commission does not provide criteria that allow analyzing the situation of human rights in the region in an objective and universal fashion. It admits vague denunciations which do not contain names, dates, places, and the exact relation of the facts, nor the probative means sustaining the allegations properly. Furthermore, the Commission establishes the criteria justifying the inclusion of a State in the special analysis, but not the parameters that allow excluding a country from said chapter. Our country has maintained that the content of the annual report must be set as defined in paragraph a) of section one of Article 59 of the Regulations of the Commission itself, and in this sense, it must record "an analysis on the situation of human rights in

the hemisphere, along with recommendations to States and organs of the OAS on the measures necessary to strengthen respect for human rights.”

**2.- Interference in the sovereign legislative practice of the nation, by accepting and disclosing denunciations on hypothetical future and uncertain facts,** such as the effects that the passing or not of certain laws may have, which is also an affront to the sovereignty of the Venezuelan State, in the exercise of functions and powers of the National Government. Two cases in particular are examples of this type of interventionist foreign pressure that Venezuela has received:

- The Commission issued a statement on December 3, 2010, in which substantive considerations were presented against the Bill for International Cooperation, before it was passed by the National Assembly, which occurred ten days later, on December 13, 2010, when it adopted the name of "Law for the Defense of Political Sovereignty and National Self-Determination".

- Similarly, the Commission issued a statement on December 15, 2010, in which substantive considerations were presented against the enabling law before it was passed by the National Assembly, which occurred two days later, on December 17, 2010.

**3.- Imprecision in the terms of precautionary measures and individual petitions.**

With regard to these, there has been absence of an expressed and equitable rationale, in compliance with the provisions of the Rules and Regulations of the Commission for the establishment of precautionary measures, which shall include a concrete analysis in order to determine that the situation complies with the requirements of gravity, urgency and prevention of irreparable damages. In its reports on the establishment of Precautionary Measures, the Commission does not explain, with legal grounds, how a specific situation fits these requirements, but merely states that “based on its criteria”, the circumstances are typical. Precautionary and Provisional Measures shall be characterized by revocability, accessoriness, extreme gravity and real urgency. Nevertheless, the Commission does not guarantee that such measures be subject to a periodical revision system that guarantees their essentially transitory nature.



- 4.- **Deadlines for the procedures of the Commission.** Revisiting the repertoire of petitions and precautionary measures considered by the Inter-American Commission, one can notice that there are no clear criteria that allow determining when a case is being delayed, be it for lack of information or for lack of interest by the petitioners, if indeed violations were committed under the American Declaration or the American Convention. Maintaining cases open, without the manifest interest of the victims is not the interest of any international system for the Protection of Human Rights, since unresolved open proceedings affect the perception of their conflict solving capabilities.
- 5.- **The discretionary nature and laxity with which their mandates and regulations have been reinterpreted,** acting even beyond Article 106 of the Chart of the OAS, attempting to play the role of implementers of the Convention by formulating “recommendations” that are clearly beyond the mandate of the Commission.
- 6.- **The accessory negligence of Executive Secretary Santiago Canton and the recognition of the Commission to the coup d’état of April 11, 2002, and the *de facto* authorities of the regime resulting from the coup.** A few hours after the Coup d’état that put paid to Democracy, stability, authorities and institutions of Venezuela, the Association for Alternative Social Policy —Colombian Minga— requested the Commission Precautionary Measures for the Constitutional President, Hugo Chavez Frias, given his abduction and confinement. On April 13, 2002, the Executive Secretary of the Commission, Santiago Canton, sent a letter to the Authorities that took part in the Coup, requesting “His Excellency” the Minister for Foreign Relations of the *de facto* government information concerning “Mr. Hugo Chavez Frias”, thus ignoring his investiture as Head of State of the Bolivarian Republic of Venezuela and legitimating the unconstitutional and *de facto* authorities resulting from the Coup d’état.

The Commission never granted precautionary measures in favor of President Hugo Chavez Frias during the abduction in which he was kept incommunicado on April 11, 12 and 13, risking death. No excuses were presented for the lack of due action with regard to a government resulting from a Coup. The Commission also failed to grant precautionary measures in favor of the then President of the Foreign Policy Commission of the National Assembly, Tarek William Saab, who was also abducted and assaulted before the television cameras, and for whom MINGA also requested urgent proceedings from IDEA.

- 7.- **The inability to make the necessary reforms in a System that has been profoundly challenged by the vast majority of the OAS members.** Failure to improve was evident during the 42° period of sessions of the General Assembly of the Organization of American States, held last June in the city of Cochabamba, in the Plurinational State of Bolivia.

Given the avalanche of challenges, the Permanent Council of the OAS appointed a Special Working Group to Reflect on the Workings of the Inter-American Commission on Human Rights (IACHR), which submitted its conclusions on January 25, 2012, by means of report CP/doc.4675/12, which were to be supported through a resolution that should be adopted in the aforementioned Assembly of the regional organ.

In said report the following recommendations for the IACHR were included:

- a. Rigorously apply the criteria for admissibility of petitions, including the exhaustive verification of the exhaustion of domestic remedies in order to avoid parallel procedures between national instances and the IACHR.
- b. Develop and widen the criteria for the filing of petitions and cases, including mainly those with long procedural inactivity.
- c. Implement deadlines (at least indicative) for each stage of the procedure.
- d. Define criteria or parameters and support and motivate the properness of the exceptional mechanism of accumulation of the admissibility and merits stages.
- e. Establish mechanisms to determine and individualize the alleged victims.
- f. Ensure prompt notification of initial requests to States, immediately after completion of the registration stage.



- g. An update on facts concerning initial petitions whenever they are communicated to States significantly later to their registration, or in cases of long procedural inactivity.
- h. Continue developing objective criteria in order to determine priorities as for the consideration of petitions and other cases, in virtue of the nature, complexity and impact of the alleged situations.
- i. Grant reasonable terms and extensions for States in order to communicate remarks, bearing in mind the age of the facts claimed in the petition, the volume of their background and/or the complexity of the matter.
- j. Grant reasonable terms and extensions for States in order to follow the recommendations given by the IACHR, in virtue of their nature, as well as the scope of the actions required of the State, as appropriate, in accordance with the applicable regulations.
- k. Improve the mechanisms for access to files in electronic format of the petitions and cases for the involved States, petitioners and victims, with the purpose of fostering the prompt solution of said matters.
- l. Consider the development of an electronic mechanism tending to systematize records, reports and decisions by the IACHR.

These recommendations, although approved by the Permanent Council, could not be adopted due to the resistance of two Countries, the United States among them, stating that said recommendations were not mandatory for their States.

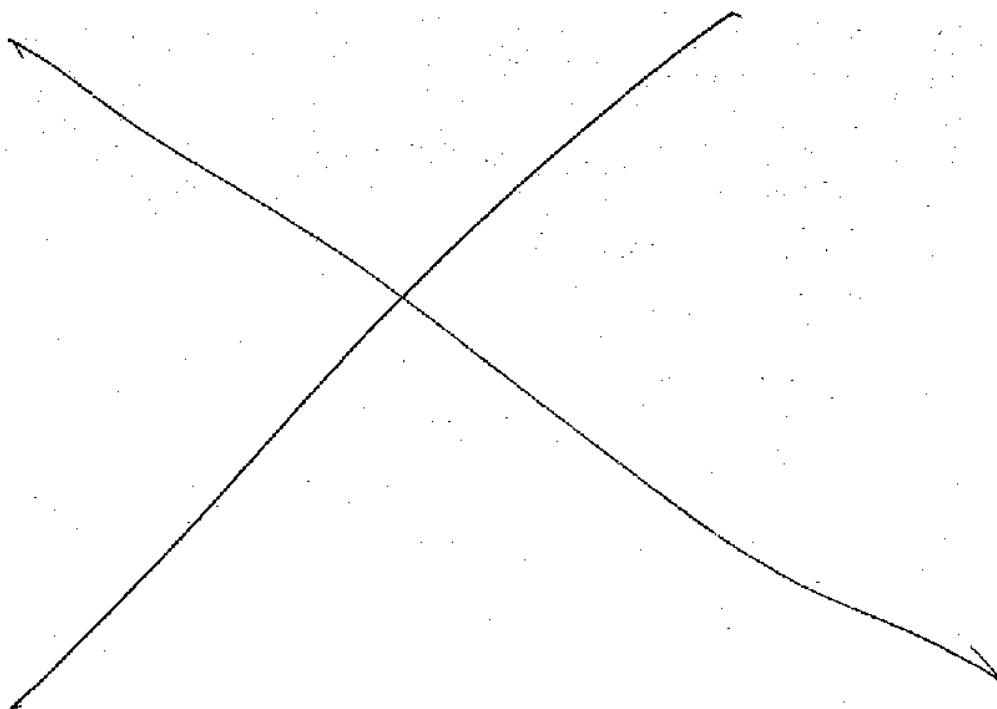
In the only Resolution adopted in Cochabamba to redeem the recommendations made by the Working Group, the United States, in its already common exercise of alleged supremacy and self-exclusion, introduced an ambiguous foot note, which was longer than the resolution itself, reiterating its position of not being linked to the recommendations, demonstrating with its own attitude the absolute ineffectiveness of this biased Human Rights System, where the United States, with the greatest effrontery, carries out an exercise that should be subject to the strongest and most categorical rejection, since it makes it impossible to modify and correct the mistakes from malpractices by the organs of the system, impeding therefore to strengthen it, with the with the aggravating circumstance that the United States has not ratified the American Convention on Human Rights and therefore is not subject to its organs. It is

a system, therefore, that has been kidnapped by the ill will of a few States that exercise their total control and dominance.

**A. As to the cases presented by the Commission before the Court**

Pursuant to Article 50 of the American Convention, the Commission is empowered to file the cases considered to have sufficient merits before the Inter-American Court, upon issuing the Merits Report.

This operational scheme between the Commission and the Court has allowed these two organs to act in an articulated fashion against the Bolivarian Republic of Venezuela by means of the **admission of denunciations on cases that were being heard and processed by the legal instances of the country, or admitting denunciations that were never filed before said instances, in flagrant violation of Article 46.1 of the American Convention.**



Bellow we will detail some precise cases tainted for being inadmissible:

- **Cases of Rios, Perozo et al. versus Venezuela**<sup>1</sup>

On February 27, 2004, the Inter-American Commission admitted two cases filed by journalists of the TV channels RCTV (case of Luisiana Rios, dated July 23, 2002) and Globovision (case of Gabriela Perozo, dated June 22, 2003) for the aggressions of which they were allegedly victims.

These cases should never have been admitted because the complainants had not exhausted domestic remedies. With this admission, the Commission led to the unleashing of a media campaign to discredit the Venezuelan government.

The Inter-American Court ruled, on January 28 and March 3, 2009, respectively, determining that the Venezuelan State and the Government of President Chavez had not violated the rights to free expression, property and equality before the law of any of these television channels.

In the absence of evidence, the Court opted to stating that *“the State failed in its obligation to guarantee that others (individuals) did not impede the television channels to exercise their right to freedom of expression and personal integrity”*. These are typical cases unsubstantiated, either from the procedural or the merits stand point, built to constitute a false record against the Venezuelan government, demonstrating the blatant bias in favor of the complainant factors, which represent the right-wing opposition to the government.

#### **Case of Allan Brewer Carías versus Venezuela**

On September 8, 2009, the Commission admitted the petition filed on January 24, 2007, by a group of lawyers, according to which the Venezuelan Courts were allegedly responsible for the *“political persecution of Constitutional Lawyer Allan R. Brewer Carías within the framework of a legal procedure against him for the crime of conspiracy to violently change the Constitution, in the context of the **events that occurred** from April 11 to 13, 2002.”*

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Inter-American Court of Human Rights. Case of Rios et al. v. Venezuela. Judgment on preliminary objections, merits, reparations and costs. Judgment of 28 January, 2009. Series C 194. Inter-American Court of Human Rights. Case of Perozo et al. v. Venezuela. Judgment on preliminary objections, merits, reparations and costs. Judgment of 28 January 2009. Series 195.



It is noteworthy that the aforementioned Mr. Brewer Carías is trialed in Venezuela for his involvement in the coup of April 2002, being drafter of the decree by means of which a *de facto* president was installed, the National Constitution was abolished, the name of the Republic was changed, all State institutions were disavowed, and all members and representatives of the Branches of Government were removed, among others.

Admitting the petition, the IACHR urges the Venezuelan State to '*take measures to ensure the independence of the judicial branch*', thereby prejudging that this independence did not exist.

On March 07, 2012, the Commission informed the Venezuelan government that the case would be submitted to the Court, even domestic remedies had not been exhausted. This example is more serious, because the criminal case against Allan Brewer has failed to be carried out in Venezuela, since under our criminal procedural law a trial cannot take place in the absence of the defendant, and it is the case that the defendant Brewer Carías fled the country, as it is publicly known, being a fugitive from justice up to date.

### **Case of Diaz Peña versus Venezuela**

Mr. Raul Diaz Peña was indicted in Venezuela for his involvement in two terrorist attacks with explosive devices (bombs) against the Consulate General of the Republic of Colombia in Caracas and against the Embassy of the Kingdom of Spain in Caracas in 2003.

On April 29, 2008, he was sentenced to nine years and four months in prison "*for the crimes of public intimidation, public property damage and minor injuries*". This terrorist managed to escape and traveled illegally to Miami, USA, in September 2010, being currently a fugitive from justice.

On October 12, 2005, **the Inter-American Commission on Human Rights** received a petition in favor of Mr. Raul Diaz Peña alleging the responsibility of the Venezuelan State in the violation of the rights to personal integrity, judicial guarantees and protection of honor and dignity. Subsequently, the petitioners added to the petition the allegations of violation of the rights to life, personal liberty, freedom of assembly, equality before the law and judicial protection.

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2 Inter-American Court of Human Rights. Ruling on the case of Peña versus Venezuela. Judgment on Preliminary Objections, Merits, Reparations and Costs. June 26, 2012.

The Bolivarian Republic of Venezuela, in a letter of May 3, 2007, submitted its observations on the petition, in which reference was made to the criminal proceedings against Mr. Diaz Peña rejecting all the terms set forth in the letter of petition and stating that the case did not meet the necessary requirements to be admitted by the Commission, inter alia, that it was a process that, by then, was still open before the competent bodies of the State. In the writings of August 5 and 8, 2007, the Bolivarian Republic of Venezuela reiterated the preliminary objection of the Lack of Exhaustion of Domestic Remedies.

During the proceedings of the case, the Bolivarian Republic of Venezuela ratified that it did not meet the conditions of eligibility set forth in Article 46.1 of the American Convention on Human Rights<sup>3</sup>, which incorporates the principle of complementarity of the system of petition reception procedure.

The preamble of the American Convention recognizes "*that the essential rights of the person are not derived from being national of a certain state, but are based upon attributes of the human person, which is why international protection of conventional nature reinforcing or complementing the one offered by domestic law of the American States.*"

In this sense, the Convention demands that for a petition to be admissible, it is necessary that all the effective and adequate remedies be exhausted in order to comply with the legal situation allegedly infringed.

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3 Article 46.1, in order for a petition to be admissible before the IACHR, the following requirements shall be met: a) the remedies offered by domestic law shall be exhausted, in accordance with generally recognized principles of international law; b) the petition must be lodged within a period of six months from the date on which the petitioner is notified of the final judgment exhausting domestic remedies. c) The subject of the petition or communication shall not be pending another international settlement procedure, and d) in the case of Article 44, the petition shall contain the name, nationality, occupation, address and signature of the person or the legal representative of the entity submitting the petition.

2. The provisions of paragraphs 1.a and 1.b of this Article shall not apply when: a) The domestic legislation of the State in question does not provide for the due legal process for the protection of the right or rights that have allegedly been violated; b) the party whose rights have been allegedly violated has not been granted access to the remedies offered by domestic law or has not been allowed to exhaust them, and c) there has been unwarranted delay in the decision on the aforementioned remedies.

The Inter-American Court of Human Rights has ruled that the Commission must conduct a proper examination of the circumstances of the case<sup>4</sup>, in order to determine the basis of the preliminary objection of non-exhaustion of domestic remedies.

Nevertheless, in its report on admissibility, dated March 20, 2009, the Commission decided to declare the complaint admissible in virtue of examination of articles 4, 5, 7, 8 11, 15, 24 and 25 of the American Convention.

In the analysis on competence and inadmissibility carried out, the Inter-American Commission indicated that the petitioner had presented several recourses aiming at remedying the allegedly infringed situation, without clarifying how said recourses may have exhausted remedies offered by the internal jurisdiction.

In the remarks on the merits, the Bolivarian Republic of Venezuela reiterated the allegations of inadmissibility, since the defendant had at his disposal the remedy of appeal and even the remedy of constitutional revision; furthermore, the Venezuelan State pointed out to the Inter-American Commission that at the moment of filing the petition, the Venezuelan Courts were still hearing the case.

Despite this, the IACHR ordered to redress the violations of human rights allegedly committed, and on November 12, 2010, the IACHR submitted to the jurisdiction of the Court, in accordance with the provisions of articles 51 and 61 of the American Convention, case 12.703 versus the Bolivarian Republic of Venezuela.

On June 26, 2012, the **Inter-American Court of Human Rights** delivered its judgment on the Case of Diaz Peña versus the Bolivarian Republic of Venezuela, after the State filed its brief on preliminary objections<sup>5</sup> and reply to the written submission of the case and requests, arguments and evidence on May 24, 2011. In its defense, Venezuela rejected its international responsibility for the violation of the rights claimed by the Commission and by the representative, while

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4 Inter-American Court of Human Rights, Case of Velasquez Rodriguez Vs. Honduras, Ruling of June 26, 1987 (Preliminary Objections) and Inter-American Court of Human Rights, Case of Velasquez Rodriguez Vs. Honduras, Ruling of July 26, 1988 (Merits).

5 One of the two preliminary objections filed by the State was an allegation of "lack of impartiality" by some of the Judges and the Secretary of the Court.

asking the Court to dismiss the Report on Merits presented by the Inter-American Commission, since it was carried out based on a brief and partial examination exceeding its mandate, and based on the conditions for admissibility of the petition.

**And here is the fact that denotes why this case becomes emblematic in showing the perverse and evil practice of the Commission and the Court:** in considering the admissibility of this complaint, **the Court recognized that the domestic remedies had not been exhausted, since the Commission had made reference to applications submitted after the initial petition to the Commission. The Court also noted that, when the initial petition was transferred to the State, on February 23, 2007, the ruling of May 11, 2007, which according to the Commission would have exhausted domestic remedies, had not been issued.**

Despite determining that the case was inadmissible, the Court committed a new offense against the principles enshrined in the OAS Charter, against the Convention and against the Bolivarian Republic of Venezuela. Instead of declaring inadmissible the proceedings in their entirety, it proceeded to analyze the merits of a case that was, even for the Court, clearly inadmissible.

In the case of Peña, the Court and the Commission have evidently failed to comply with the rules and regulations that serve as a source, affecting blatantly the principles of subsidiarity and complementarity of the Inter-American system for the protection of the human rights provided for in the Preamble to the Convention.

The conventional rules and regulations concerning the preliminary objection of exhaustion of domestic remedies clearly understand the petition as a single document, and refer repeatedly to the denunciation that contains it as a fundamental unit<sup>1</sup>. Therefore, proceeding to consider the merits of segments or partial sections of the denunciation, regardless of the non-compliance with the conditions of admissibility, is an accommodative and illegal interpretation of Article 46 of the Convention.

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<sup>6</sup> Cfr. Article 46.1. In order for a petition or communication submitted in accordance with articles 44 or 45 to be admitted by the Commission, the following requirements shall be met (...)

- artículos 44 ó 45 sea admitida por la Comisión se requerirá (...)

With regard to the statement in the Ruling concerning prison conditions and ill health of the terrorist, which were used to justify condemnation against the Bolivarian Republic of Venezuela, it is necessary to note that the same judgment admits that *"it is a proven fact that, after the precautionary measures adopted, the material conditions of detention were progressively improving"*<sup>7</sup> and it is pointed out that the detainee subsequently received medical care<sup>8</sup>.

Despite these expressions denoting the evident lack of reasoning of the Ruling, the Court concludes by sentencing the Bolivarian Republic of Venezuela<sup>9</sup> to improve prison conditions for a terrorist who escaped from justice and did not serve his sentence.

This makes it intolerable for any democratic country that respects the rule of law to remain silent before a rights system which is obviously corrupt and acts outside of the principles and values that it is supposed to protect, and to the contrary, end up becoming accomplices and protectors of convicted terrorists.

- **Case of Uson Ramirez versus Venezuela**<sup>10</sup>

The cause of General (R) Francisco Uson Ramirez vs. Venezuela submitted to the consideration of the Inter-American Court of Human Rights by the IACHR on July 25, 2008, which ruled on the case on November 20, 2009.

The public hearing was held on April 01, 2009, in Santo Domingo, Dominican Republic, and Venezuela requested the digital recording of the hearing. The recording, which was submitted to Venezuela by the Court, included the audio of the public hearing, but also additional audio in which it can be noted that deliberations took place among the Judges of the Court on the following day, on April 2, concerning the sentence draft on the case and showing that they made a decision before hearing the allegations of Venezuela and without hearing the responses of the Parties to the questions posed by the Court itself during the oral hearing.

During that recorded deliberation, it is evidenced that the Judges arranged the content of the Sentence without hearing the allegations of the parties and acting in this cabal, they determined the criteria to condemn the Bolivarian Republic of Venezuela, agreeing between them to accept **that an alleged violation to freedom of expression be included in the terms of the Sentence, despite the**

<sup>7</sup> Ruling on the case of Diaz Peña vs. Venezuela . Paragraph 94.

<sup>8</sup> Cf. Paragraphs 100 to 107.

<sup>9</sup> Ruling on the case of Diaz Pena vs. Venezuela. Dissenting vote by Judge Eduardo Via Grossi.

<sup>10</sup> Inter-American Court of Human Rights. Case of Uson Ramirez *versus* Venezuela. Preliminary objections, merits, reparations and costs. Ruling of November 20, 2009, Series C, No. 207.

**fact that the rationale for the lawsuit is constituted by alleged violations related to the right to due process and to a fair trial, particularly concerning military justice<sup>11</sup>.**

The definitive ruling of the Inter-American Court condemned the Venezuelan State for violation of the principle of legality and the right to freedom of thought and expression, the right to a fair trial, the right to judicial protection and the right to personal liberty, as planned on April 2, 2009.

▪ **Case of Apitz Barbera et al. versus Venezuela<sup>12</sup>**

This case refers to three temporarily appointed judges of the First Court of Contentious-Administrative Matters, who, in the exercise their functions, made a '*serious juridical mistake of inexcusable nature*' that led to their destitution by the competent judicial disciplinary organs.

The Inter-American Court of Human Rights ruling of August 5, 2008, states that, with the destitution of the former judges of the First Court of Contentious-Administrative Matters, Ana Maria Ruggeri Cova, Perkins Rocha Contreras and Juan Carlos Apitz B., the Venezuelan State violates their rights to due process, particularly, according to the Court: to be judged by an impartial court, to a simple, quick and effective remedy, and to be heard.

The Court ordered the Venezuelan State to modify national laws, to compensate the former judges on account of pecuniary and non-pecuniary damages and their reinstatement in the judiciary branch.

The Inter-American Court of Human Rights, in the verification of the alleged violation of the rights or freedoms protected by the Convention, tried to dictate mandatory rules upon the Government and the administration of the Judicial Branch, which are exclusive competence of the Supreme Court of Justice, attempting to even establish guidelines for the Legislative Branch concerning matters of judicial career and responsibilities of judges, thus violating the sovereignty of the Venezuelan State in the organization of the branches of government and the selection of its officials, which is inadmissible.

11 Recording of deliberations of the Judges of the Inter-American Court of Human Rights on the Case of Francisco Uson *versus* Venezuela.

12 Inter-American Court of Human Rights, Case of Apitz Barbera et al. *versus* Venezuela. Preliminary Objections, merits, reparations and costs. Ruling of August 5, 2008. Series C, No. 182.

This ruling of the Inter-American Court of Human Rights constitutes an offence against the provisions of the preamble to the American Convention, inasmuch as it violates and misinterprets the principle of complementarity of the Inter-American Human Rights Protection System, by attempting to rule, as a domestic court would, with regard to provisions of domestic law.

The Inter-American Court, overstepping its boundaries, even committed imprecision related to the denominations of Venezuelan domestic law, which constitutes a demonstration of the reproachable practice of the Court and the Commission in pretending to construe provisions that belong exclusively to the jurisdiction of national courts, facilitating that some transgressors of our legislation have started to use that international jurisdiction as a "fourth judicial instance."

Indeed, paragraph 147 of the Inter-American Court of Human Rights ruling of August 5, 2008, provides that the omission of the National Assembly to dictate the Venezuelan Judge's Ethics Code, *"has had an impact on this case, since the victims were judged by an exceptional Organ without defined stability and whose members may be appointed or removed without previously established procedures and to the sole discretion of the Venezuelan Supreme Court of Justice"*. Amazingly, this very same paragraph states the inability to prove that the Judicial Emergency and Restructuring Commission has committed misuse of power, or that it was directly pressured by the National Executive Branch to destitute the aforementioned former judges, and then it concludes in paragraph 6 of Chapter X that *"it has not been established that the Judicial Branch as a whole lacks independence."*

It is evident that the Inter-American Court, by not limiting itself to ordering compensation, used the ruling to unacceptably intervene in matters of the State by ordering the reinstatement of judges that the national juridical system considers as being legitimately removed from their positions.

The Inter-American Court of Human Rights has issued sentences affecting principles and values of Constitutional and Conventional order, affecting also the justice system and seeking not only to ensure the human rights of allegedly aggrieved parties, but also to undermine the sovereign autonomy of the Organs of the Bolivarian Republic of Venezuela.

The Constitutional Division of the Supreme Court of Justice of the Bolivarian Republic of Venezuela declared, on December 18, 2008, that the Court's decision was UNENFORCEABLE.

- **Case of Leopoldo Lopez versus Venezuela**<sup>13</sup>

It is the case that Mr. Leopoldo Lopez was subject to sanctions by the Comptroller General of the Bolivarian Republic of Venezuela within the framework of two administrative processes:

1. The first investigation to which Mr. Lopez Mendoza was subject was related to events that occurred while he occupied a position in the company Petroleos de Venezuela SA. Being then employee of the state company PDVSA, the non-governmental organization "*Primero Justicia*" (of which Mr. Lopez was a member) received a substantial donation through his mother, Antonieta Mendoza Lopez, who then held the position of Public Affairs Manager of the Services Division of PDVSA Oil and Gas S.A. The Comptroller General's Office of the Bolivarian Republic of Venezuela determined that said donation contravened the rules on conflict of interest since "*there is a conflict of interest between PDVSA and an employee or group of employees, when a decision, act or agreement of the Company, the worker or workers who take part or influence the decision, act or contract personally benefit or favor their immediate relatives (...)*".
2. The second investigation was circumscribed to facts related to his proceedings as Mayor, position that he held from 2000 to 2004.

In November 2008, Leopoldo López was sanctioned with disqualification from holding public office by the Comptroller General's Office of the Bolivarian Republic of Venezuela, for violations of norms that constitute acts of administrative corruption.

Case No. 12668 of Leopoldo López Mendoza was originated by means of petition received by the Commission on March 4, 2008, and filed under No.

<sup>13</sup> Inter-American Court of Human Rights. Case of Lopez Mendoza *versus* Venezuela. Ruling on Preliminary Objections, Merits, Reparations and Costs. Ruling of September 1, 2011. Series C, No. 233.



275-08. On July 25, 2008, the Commission issued the Admissibility Report No. 67/08. On August 08, 2009, the Commission adopted the Merits Report No. 92/09 and communicated it to the Bolivarian Republic of Venezuela. On December 14, 2009, the Inter-American Commission on Human Rights filed a lawsuit against the Bolivarian Republic of Venezuela with regard to this case.

The Commission and the representatives of Mr. Lopez Mendoza requested the Court to declare the Venezuelan State responsible for violation of the political rights, fair trial, judicial protection, along with the obligation of Respecting the rights and having to adopt provisions of domestic law, with respect to Mr. Lopez. Furthermore, the Commission requested the Court to order the State to adopt measures of reparation as well as the payment of costs and expenses.

It is worth noting that, on September 26, 2005, the Comptroller General issued a resolution<sup>14</sup> by means of which, considering the gravity of the irregularities committed and sanctioned with administrative accountability, as well as the procedure set forth in the Organic Law of the Comptroller General's Office of the Republic, a sanction of disqualification from holding public office was issued, indicating that the *"the gravity of the irregularity committed, sanctioned with the declaration of administrative accountability dated November 2, 2004 [which became final on March 28, 2005], as well as the recurrence of a misconduct subject to sanction in the aforementioned terms<sup>7</sup>, it was decided to "sanction [Mr.] LOPEZ MENDOZA, [...], with disqualification from holding public office for a period of six (6) years"<sup>15</sup>.*

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14 Cf. resolution 01-00-235 of September 26, 2005 issued by the Comptroller General of the Republic.

15 Resolution 01-00-235 of September 26, 2005 issued by Comptroller General of the Republic. On October 27, 2005, Mr. Lopez Mendoza was notified of the resolution. By means of the corresponding official letter he was informed that "he could file a reconsideration remedy against said decision before the [...] Comptroller [...], within fifteen (15) working days from the date of notification, in accordance with the provisions of Article 94 of the Organic Law of Administrative Procedures". Additionally, it was indicated that "he could file the corresponding appeal for annulment [...] before the Supreme Court of Justice, within six (6) months from the date of [...] notification, in accordance with what is set forth in paragraph 20 of Article 21 of the Organic Law of the Supreme Court of Justice". Official Letter No. 08-01-1074 dated September 27, 2005, by the Directorate for Determination of Accountability.

The Court Considers that the provisions of domestic law violated the right to be elected, the obligation to duly state reasons, the right to judicial protection and the obligation of adjusting domestic law to the American Convention.

Mr. Lopez Mendoza did not exhaust domestic remedies before turning to the Inter-American human rights protection system, since the resolution by means of which the Comptroller General established the sanction of disqualification becomes final as it was not appealed before the Political-Administrative Division of the Supreme Court of Justice. The petition of Mr. Leopoldo Lopez before the Inter-American system must have been declared inadmissible with the purpose of safeguarding the complementarity of the system in accordance with Article 46 of the American Convention on Human Rights.

The court did not consider that the Bolivarian Republic of Venezuela has subscribed and ratified other conventions and treaties, assuming obligations such as by means of the Inter-American Convention against Corruption of 1996, which obliges American States to *"take the adequate measures against people who commit acts of corruption in the exercise of public functions or specifically linked to said exercise"*, without requiring that such measures be necessarily jurisdictional. In fact, the Inter-American Convention against Corruption urges States to promote and strengthen the necessary "mechanisms" (not exclusively judicial) in order to punish acts of corruption in the exercise of public functions."

Similarly, Venezuela is a signatory country of the "United Nations Convention against Corruption", signed in 2003, aimed at introducing a set of standards and measures that can be implemented by all countries to strengthen their legal systems for fighting corruption. It is worth noting that the protection of the sovereignty of the States is expressly stated in Article 4 of the treaty:

- *"1. The States Parties shall fulfill their obligations under this Convention in accordance with the principles of sovereign equality and territorial integrity of States and that of non-intervention in the internal affairs of other States. 2. Nothing in this Convention entitles a State Party to exercise, in the territory of another state, jurisdiction or functions that the law of that State reserves exclusively for its authorities"*.

The Inter-American Court of Human Rights again interpreted in an accommodative fashion the objectives of the American Convention, by challenging the role and powers of the Branches of the Venezuelan Government, assuming in a biased way the arguments manipulated by the right-wing opposition, consequently exceeding its functions.

### **C. As to the Constitutional Right that assists the Bolivarian Republic of Venezuela**

Article 7 of the Constitution of the Bolivarian Republic of Venezuela provides that **"the Constitution is the supreme and fundamental norm of the legal framework"**, thus every person and organ in the exercise of Public Authority are subject to it.

Under the establishment imposed by the **"Principle of Constitutional Supremacy"** set forth in the aforementioned **Article 7 of the Constitution of the Bolivarian Republic of Venezuela**, it cannot but be noted that it is our Constitution, which defines the assumption that *"...international relations of the Republic serve the purposes of the State based upon **the exercise of sovereignty and the people's interests**"* and that for the purpose of developing such a proclamation, international relations are framed in the principles of interdependence, **equality among States, self-determination and non-intervention in internal affairs, peaceful resolution of international conflicts, cooperation, respect for human rights and solidarity among peoples in the struggle for their emancipation and the welfare of mankind**, which are proclamations consecrated in **Article 152** of our **Constitution**, whose final part provides that the Republic is urged to maintain *"...**the most firm and resolute defense of these principles and the democratic practice in all international organizations and institutions.**"*

The Bolivarian Republic of Venezuela, historically and ancestrally, is a profound lover of peace, and profuse guarantor of human rights, to the point of recognizing them **as one of the guiding principles of the Venezuelan State**, by establishing in **Article 2** that Venezuela *"...constitutes itself in a democratic and social State of Law and Justice, which holds as superior values of its legal order..."*, among others, that of the **preeminence of human rights**.

Therefore, our glorious country has placed itself in the vanguard of the Inter-American System by adopting, other than the aforementioned postulates and **with constitutional character**, other core and cardinal principles of human rights protection, inasmuch as: a) It establishes that the State shall guarantee to every individual no renounceable, indivisible and interdependent enjoyment and exercise of human rights, **in accordance with the principle of progression and without discriminations of any kind** (v.g. **Article 19** of the Bolivarian Republic of Venezuela); b) It establishes the **principle of the non-exhaustive and enuntiative nature of human rights set forth in the Constitution and the international instruments, with respect to other rights that are not expressly enunciated in said texts** (v.g. **Article 22** of the aforementioned Constitutional text); and, c) It establishes the principle of **"Non-Applicability of Statutory Limitations on the proceedings to sanction crimes against humanity and serious violations of human rights and war crimes"** (v.g. **Article 29; eiusdem**), only to mention some Constitutional provisions demonstrating the profound respect that the Venezuelan State and its democratic institutions guarantee for the effectiveness and fulfillment of such principles.

Similarly, within the context of the aforementioned Constitutional postulates, in accordance with Article 23 of the Constitution, it is consecrated that Treaties, Pacts and Conventions concerning human rights signed and ratified by Venezuela have Constitutional rank and prevail within the domestic legal system, in so far as they contain norms on their enjoyment and exercise that are more favorable than the ones provided for in the Constitution and the laws of the Republic, and they shall be immediately and directly enforced by Courts and other organs of the government.

Nevertheless, the scope of the aforesaid constitutional provision has been construed by the Supreme Court of Justice by means of a binding ruling issued by its Constitutional Division, through Ruling No. 1572/2008, related to the judgment of the Inter-American Court dated August 5, 2008, in which it was ruled that "Article 23 of the Constitution does not grant international treaties on human rights with **"supraconstitutional" rank**, therefore, in case of antinomy or contradiction between a provision of the Constitution and a rule of an international treaty, the Judicial Branch shall determine which one is applicable, considering both the provisions of the aforesaid rule and the Jurisprudence of the Constitutional Division of the Supreme Court of Justice, in accordance with the content of articles 7, 266.6, 334, 335, 336.11 of the Constitution and ruling No. 1077/2000 of the Constitutional Division.

Likewise, the Constitutional Division of the Supreme Court of Justice in its ruling No. 1942/2003 specified the following with respect to Article 23 of the Constitution:

*According to this Division, two key elements derive from Article 23: 1) It is related to human rights applicable to individuals; 2) It refers to rules establishing rights, not rulings or judgments of institutions, resolutions of organs, etc., prescribed in Treaties, but only rules establishing human rights.*

*The Constitutional Division reiterates that it concerns the prevalence of the rules contained in Treaties, Pacts and Conventions (terms that are synonyms) related to human rights, but not reports or opinions of international organs that attempt to construe the scope of the norms of international instruments, since Article 23 of the Constitution is clear: the constitutional Rank of Treaties, Pacts and Conventions refers to their rules and regulations, which, by being integrated to the Constitution in force, can only be interpreted, within the framework of Venezuelan Law, by the Constitutional Judge, in accordance with Article 335 of the current Constitution, especially with the ex officio interpreter of the Constitution of 1999, which is the Constitutional Division, and so be it declared (...).*

*It is thus the Constitutional Division the one in charge of determining what norms on human rights of said treaties, pacts and conventions prevail in the domestic legal system (...).*

*This jurisdiction of the Constitutional Division on the matter, which emanates from the Constitution, shall not be diminished by norms of adjective character contained in Treaties or other International texts on Human Rights signed by the country, that allow the States Parties of the Treaty to consult international organs on the interpretation of the rights referred to in the aforesaid Convention or Pact, as it is established in Article 64 of the Law approving the American Convention on Human Rights, Pact of San Jose, since, if that were possible, it would be a form of constitutional amendment on this matter, without compliance with the corresponding requirements for this purpose, diminishing the competence of the Constitutional Division and transferring it to multinational or transnational (international) entities that would carry out binding construes (...).*

The decisions made by these organs shall be complied with in the country, in accordance with the provisions of the Constitution and the laws, provided that they do not oppose what is set forth in Article 7 of the current Constitution, which reads as follows: The Constitution is the supreme law and the foundation of the legal order. All individuals and organs exercising Public Power are subject to this Constitution as long as they meet the organic competences set forth in Conventions and Treaties. For this reason, despite the respect of the Judicial Branch for the rulings and judgments of said organs, they cannot violate the Constitution of the Bolivarian Republic of Venezuela or infringe the regulations of Treaties and Conventions governing these protections or other decisions.

Should an international organ, legally accepted by the Republic, shelter someone in violation of human rights of groups or individuals within the country, such decision shall be rejected although it emanates from international bodies protecting human rights (...).

This Division considers that, and for the purposes of Article 7, of the Constitution, there is no jurisdictional organ above the Supreme Court of Justice, unless the Constitution or the law indicates so, and even in this case, a decision contradicting the Venezuelan constitutional provisions shall not be applicable in the country and so it is declared (...).

Articles 73 y 153 of the Constitution contemplate the possibility of transferring Venezuelan competences to supranational organs, allowing them to encroach into national sovereignty:

But the Constitution itself points out the areas where this might occur, such as –for example- Latin American and Caribbean Integration (article 153 **eiusdem**). Areas different from Human Rights **per se**, and where rulings dictated are to be immediately applied in the territory of member states, as provided for by Article 91 of the Law approving the Statute of the Court of Justice of the Andean Community.

*This Division understands that, beyond these explicit areas, the national sovereignty cannot suffer any distension whatsoever by mandate of Article 1 of the Constitution, which establishes as inalienable rights of the Nation the following: independence, freedom, territorial integrity, immunity and national self-determination, Said constitutional rights are **inalienable**, are not subject to be relaxed, unless the Constitution itself provides it, along with the mechanisms that make this possible, such as the ones contemplated in Articles 73 and 336.5 of the Constitution, for example.*

*As consequence of the above, in principle, the execution of rulings of Supranational Courts shall not undermine the sovereignty of the country or the fundamental rights of the Republic" (highlighted in the original ruling).*

The position of the Bolivarian Republic of Venezuela promoted by means of this document, far from placing our State on the margins of the international community, as it is pretended through a systematic campaign aiming at disturbing our resolute convictions, seeks to raise, by making our Constitution known, the flag upon which the foundations of our State are laid, for our State profoundly loves Human Rights, and to raise awareness on all the proceedings that allow ensuring the essential end and purposes set forth in the Constitution of the Bolivarian Republic of Venezuela, trying to avoid elements that may disturb the sound peace of the Republic and the glorious people of Venezuela, in the light of a methodical and systematic campaign in avalanche that seeks to tarnish the image, the interests and dignity of the Nation of Bolivar.

Similarly, our commitment and loyalty to the depository of sovereignty, -which resides in the people in an untransferrable fashion, in accordance with **Article 5 of the Constitution of the Bolivarian Republic of Venezuela**, upon which we shall guarantee the principles of **independence, equality between States, self-determination, pacific resolution of international conflicts, respect for human rights and solidarity between the peoples in the struggle for their emancipation and the welfare of human kind, as stated before**, obliging us to maintain from all sectors of Public Power the most firm and resolute defense of these principles and their practice in all international organs and institutions, framed in the impregnated notion of sovereignty, in response to which the Republic is to maintain international relations with the peoples of the world.

In virtue of all the above, and in light of the fact that **repeated decisions of the Inter-American Court of Human Rights collide with the precepts and principles of our Constitution and even with the American Convention on Human Rights itself, this is the reason for the Bolivarian Republic of Venezuela to consider that it is important to terminate the incompatibility between our domestic legislation and our sovereign rights, taking distance from the wicked exercise of the Competent Organs of the Inter-American System of Human Rights, constituted by the Inter-American Commission on Human Rights and the Inter-American Court of Human Rights.**

Therefore, our country, on this date, has proceeded to notify the General Secretariat of the Organization of American States about the Denunciation of the American Convention on Human Rights, in accordance with the provisions set forth in Article 78.



*[Handwritten signature]*