

DEMOCRACY IN VENEZUELA

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BEFORE THE
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THE WESTERN HEMISPHERE
OF THE
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DEMOCRACY IN VENEZUELA

THURSDAY, NOVEMBER 17, 2005

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON THE WESTERN HEMISPHERE,
COMMITTEE ON INTERNATIONAL RELATIONS,
Washington, DC.

The Subcommittee met, pursuant to notice, at 10:36 a.m. in room 2172 of the Rayburn House Office Building, the Honorable Dan Burton (Chairman of the Subcommittee) presiding.

Mr. BURTON. Good morning. A quorum being present, the Subcommittee on the Western Hemisphere will come to order. I ask unanimous consent that all Members and witnesses' written and opening statements be included in the record and without objection, so ordered.

I ask unanimous consent that all articles, exhibits and extraneous or tabular material referred to by Members or witnesses be included in the record and without objection, so ordered.

I ask unanimous consent that any Member that may attend today's hearing be considered a Member of the Subcommittee for the purposes of receiving testimony and questioning witnesses after Subcommittee Members have been given the opportunity to do so and without objection, so ordered.

Today we are convening a hearing on Democracy in Venezuela to take stock of the state of political and economic freedoms in that country.

Your testimony today, Mr. Secretary, will help the Subcommittee in making an assessment of political developments in that country so that we can make an objective or take an objective inventory of real and perceived threats to democratic institutions and freedoms and the implications for stability in the region.

It will also help us achieve a better understanding of the opportunities to strengthen U.S. engagement in the region that is geared to promoting democratic and equitable growth and stability.

I first want to welcome the Honorable Thomas A. Shannon, the newly sworn-in Assistant Secretary for the Bureau of Western Hemisphere Affairs. I want to thank you for joining us today. We look forward to working with you, Tom and we share the confidence that Secretary Rice and President Bush has in you.

You have got a tough job, but we want to be as much help to you as we possibly can and we look forward to hearing what you have to say.

I am convinced by the growing body of evidence that the Government of Venezuela is dismantling the institutions of democracy. I also believe the greatest threat to democracy in Venezuela is

authoritarianism. The greatest threat to democracy in Venezuela is not American hedge money or free markets. It is fragile or corrupted institutions and the lack of respect for constitutional mechanisms and the rule of law.

In the 1970s, Venezuela enjoyed a tradition of civilian democratic rule and earned a reputation as one of the more stable democracies in Latin America, with a burgeoning middle class.

The United States has traditionally had close relations with Venezuela, but there has been deepening friction in the relationship with President Chavez, accompanied by an erosion of democratic institutions.

The Government of Venezuela is becoming more authoritarian, replacing the country's multi-party democracy with a political system that revolves around the state with its President controlling all the levers of power.

Some of this is called statification of Venezuelan society. Others point to the increasing influence of the armed forces and President Chavez's open admiration of people like Che Guevara and cooperation with Fidel Castro in Cuba as a matter of deep concern.

Given Mr. Castro's record in Cuba and trying to start revolutions throughout Central and Latin America, I can certainly appreciate this concern.

In President Chavez's speech at the Summit of the Americas meeting this month and I watched all of it personally, I wanted to hear what he had to say, because I have had the opportunity to meet with President Chavez twice and he is a very engaging fellow. He has a Clintonesque, if you will, personality. He is very engaging. He is a very warm guy. He talks a good game. I did not mean that in a detrimental way, I am just using that as a comparison. I always thought of Mr. Clinton as one of the finest politicians, I did not agree with him on a lot of other things, one of the finest politicians we have ever had.

But in any event, when I met with Mr. Chavez he was very engaging and he said he wanted to work with the United States and he wanted to have a rapport with us.

When we talked about having his foreign minister meet with our State Department, he was open to that, even though he had not been engaging Mr. Brownfield, our Ambassador down there, in meetings and so we were hopeful.

Then in New York, once again, we had some kind of positive statements from him. So I left with some encouraging feelings that maybe there were some things that we could work out with Mr. Chavez by having a dialogue with him.

But when I heard that speech at the Summit of the Americas, I was extremely disappointed. Now I have heard that he wanted to give F-16 fighter planes to Fidel Castro in Cuba. I have heard of some of the other things that have been said and that kind of rhetoric bothered me, but I thought well you know he is a politician. Maybe he is talking to the people in his country and he is trying to whip up more support for himself.

But when he finished his speech at the Summit of Americas to that mob down there, rent-a-mob or whatever you want to call it and he started saying that we need to continue to push for the

goals of Che Guevara, I felt like everything that I had heard him say before was all a bunch of bologna.

I am very sad to say that, because I think it is extremely important for a powerhouse in South America, like Venezuela, to start going down this path. They get \$100 million a day in oil revenues, 60 percent of it coming from us and so we would like to have a good working relationship with them.

But there is a real concern among many of the Central and South American leaders with whom I have talked that the money that Mr. Chavez is getting is being used to undermine some of those other fledgling democracies and it is not just one or two or three or four, there is a whole bunch of them down there in Central and South America.

I can tell you, although they may not be saying publicly the things that I am saying to you today, they are very, very concerned about this.

I have been one who believed that the best way to work out our problems and I hope our State Department feels the same way, is to open up a dialogue with these leaders down there.

We may have differences of opinion. We cannot make the world over in our image. That is not possible. But when we hear a leader who has the financial wherewithal to undermine fledgling democracies and export revolution, like Che Guevara and Fidel Castro wanted to do and now we have a guy who has the money to do it, openly extolling the virtues of Che Guevara, who was a cutthroat revolutionary who wanted to undermine all the governments of Latin America, it really concerns me.

So this hearing today, I wanted to express very clearly my position and I will put the rest of my statement in the record, but it really concerns me that a man with whom I have talked and we have gone out of our way to meet with President Chavez, is now talking about the virtues of somebody like Che Guevara, who was a hardcore communist, bothers me a great, great deal.

This could lead to a very difficult situation with the leader of Venezuela and we don't want that to happen. So I would just like to say, if this is going to Venezuelan television and I hope it is today, I hope Mr. Chavez will take a hard look at what he said in the past.

I hope he will listen to the rhetoric that is coming out of this hearing today and from somebody who has met with him and had a heart-to-heart talk with him on a couple of occasions along with Mr. Delahunt and Mr. Rangle and Mr. Meeks and others, that we still want to work with all of the leaders of Central and South America and that includes Mr. Chavez, but the kind of revolutionary rhetoric that we heard coming out of the Summit of Americas, when he met with that street mob, is not conducive to a situation where we can work together.

I hope that message gets out there and I hope that things will change for the better, because if they do not, I have real concerns about what may happen in the future down there and we hate to see that happen.

With that, I yield to my colleague, Mr. Menendez.
[The prepared statement of Mr. Burton follows:]

PREPARED STATEMENT OF THE HONORABLE DAN BURTON, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF INDIANA, AND CHAIRMAN, SUBCOMMITTEE ON THE WESTERN HEMISPHERE

Today we are convening a hearing on Democracy in Venezuela to take stock of the state of political and economic freedoms in that country. Your testimony today will help the Subcommittee in making an assessment of political developments in that country, so that we may take an objective inventory of real and perceived threats to democratic institutions and freedoms and the implications for stability in the region. It will also help us achieve a better understanding of the opportunities to strengthen U.S. engagement in the region that is geared to promoting democratic and equitable growth and stability.

I first want to welcome the Honorable Thomas A. Shannon, the newly sworn-in Assistant Secretary for Western Hemisphere Affairs. Thank you for joining us this morning. We look forward to working with you Tom and we share Secretary Rice and President Bush's confidence in your capacity to execute your duties.

I am convinced by the growing body of evidence that the government of Venezuela is dismantling the institutions of democracy. I also believe the greatest threat to democracy in Venezuela is authoritarianism. The greatest threat to democracy in Venezuela is not American hegemony or free markets. It is fragile or corrupted institutions, the lack of respect for constitutional mechanisms and the rule of law.

In the 1970s Venezuela enjoyed a tradition of civilian democratic rule and earned a reputation as one of the more stable democracies in Latin America with a burgeoning middle class. The United States has traditionally had close relations with Venezuela, but there has been deepening friction in the relationship with President Chavez accompanied by an erosion of democratic institutions. The government of Venezuela is becoming more authoritarian; replacing the country's multiparty democracy with a political system that revolves around the state with its president controlling all the levers of power—some call this a STATIFICATION of Venezuelan society. Others point to the increasing influence of the armed forces and President Chávez's open admiration of Che Guevara and cooperation with Castro's regime in Cuba as a matter of deep concern. Given Mr. Castro's record in Cuba, I can certainly appreciate this concern.

In President Chavez's speech at the Summit of Americas meeting this month, he talked about the revolutionary goals of communist Che Guevara, and the need for Guevara's revolution to continue throughout Latin America and the Caribbean. I want to tell President Chavez that my Colleagues and I do not support his idea of a communist revolution throughout Latin America, and simply abhor his vitriolic, leftist, revolutionary rhetoric. While we wish to work with President Chavez to create better U.S.—Venezuela relations, his continued use of dangerous, destabilizing, anti-U.S. rhetoric, is unacceptable and could easily lead to serious problems. All of the democratically-elected governments in the region are concerned about the activities of the Venezuelan president. If he continues to follow the path of his rhetoric, it is apparent that he

poses a threat to freedom and democracy in Central and South America.

His speech at the demonstration during the Summit of the Americas was un-statesmanlike and he lost an opportunity to engage his fellow leaders in discussing the pressing issues of our hemisphere in a constructive way.

What can we and other democracies in our hemisphere do to prevent Mr. Chavez from undermining, if he is trying to undermine, these other fledgling democracies in Central and South America?

Our government and like-minded societies that have embraced the promise of democracy are seeking to spread prosperity throughout the Western Hemisphere by means different than Mr. Chavez, namely through reforms, long-term economic and social development and political stability and where the rights and freedoms of individuals are respected. President Chavez has called this "Neo-Imperialism" and says it is something that we are trying to impose on the rest of the world. The facts are however, President Bush has laid out a roadmap for cooperation to consolidate democracy in the Western Hemisphere, and use trade as a catalyst for positive growth in the region to create conditions which will alleviate poverty and strengthen democratic institutions. Most of the governments in the region want to participate in these goals. Twenty-nine of the 34 Western Hemisphere nations that met down in Argentina earlier this month are in favor of moving forward on negotiations with the FTAA.

A turn to authoritarianism poses a grave danger to the social fabric in Venezuela and the region and does not present a viable alternative that can otherwise lift the millions who now live in poverty out from their despair.

While our policies may be condemned and while our leaders may be scorned, the fact remains that we are committed to working closely with the people of Venezuela to create new opportunities to rebuild a relationship that is in our mutual interests.

I now recognize my good friend, the distinguished Ranking Member from New Jersey, Bob Menendez for any statement he may wish to make.

Mr. MENENDEZ. Thank you, Mr. Chairman. I want to thank you for holding this important hearing today and for your commitment to the Subcommittee over the past year. I want to welcome the Assistant Secretary and wish him well in his new position.

I want to thank you, Mr. Chairman, for your positive observations of President Clinton. I would be having a different introductory statement if President Chavez had done what President Clinton did, which was to balance the budget for the first time in a generation, create record surpluses, low unemployment, low interest rates and the greatest peacetime economy in over a generation and we—

Mr. BURTON. I wish I hadn't made that comparison.

Mr. MENENDEZ [continuing]. Were at peace in the world, Mr. Chairman.

But let me get to the matter at hand. I want to provide a framework before I get to Venezuela specifically, because I think this hearing on Venezuela, to some extent, makes the case that I have been making for the past year.

I think we can have no greater evidence of the President's failed policy in Latin America, or more accurately a lack of a policy, than what we saw a few weeks ago at the Summit of the Americas.

The images sent back to us here in the United States of massive anti-American and anti-Bush demonstrations, coupled with little support for the U.S. summit agenda paint a stark picture of a failed U.S. policy in our own hemisphere.

Let me be clear. I certainly don't agree with President Chavez and I disagree with many of the protestors on their methods and their agenda, but I will tell you that these protests come from valid frustrations.

Frustrations with poverty, with massive inequality and with governments that fail to respond to the basic needs of their citizens.

That is why we saw a massive protest at the summit, and street revolutions overturning democratically-elected governments in Bolivia and Ecuador.

Meanwhile, the only response from the United States is free trade, free trade, free trade. Even Karen Hughes seemed to ignore the reality of these recent protests when she cited free trade and other governments' support for free trade as the cornerstone for our plan for public diplomacy in the hemisphere.

I believe that what we saw in Argentina is the result of a massive failure of leadership. As Ronald Reagan once said, "To grasp and hold a vision, that is the very essence of successful leadership."

So I would ask, what is our vision for the hemisphere and where is our leadership?

If the United States and Latin American leaders don't offer a vision, a comprehensive solution to the valid frustration from poverty, inequality and lack of effective governments, the people of Latin America will continue to buy the fool's gold offered by Chavez and others.

This fool's gold glitters with the idea of eliminating poverty and hunger, but in reality it carries the heavy price of increased poverty, crushed democratic institutions and human rights violations.

So, Mr. Secretary, we need a real plan. This is your first time before the Committee. You have just started in your position. You have an opportunity, I hope within the context of the Administration, to make a different case, even though I am sure you will defend the Administration in its present plan. But I hope that we can get to a real plan.

Let us create a real plan together. I offered one with the Social Investment and Economic Development plan, which has bipartisan support, but it certainly doesn't have to be my plan. But the plan must be comprehensive, innovative, effective and powerful.

Let me remind you that if we don't even participate in the process of responding to the real problems of Latin America, then we will continue to create fertile ground for people like Chavez, who will feed on the growing discontent.

Now let us take a close look at what is going on in Venezuela. Frankly, I am deeply concerned that democracy in Venezuela is in danger.

I am concerned when an elected leader is attempting to consolidate power within the presidency, purging critics and packing the

courts, intimidating the media and harassing human rights workers and religious groups.

I am concerned when initial Venezuelan statistics, confirmed by separate United Nations and World Bank statistics, point to a 10-percent rise in poverty during Chavez's first 5 years and a rise in extreme poverty to 25 percent during the same period.

I am even more concerned when supposedly independent National Institute of Statistics suddenly revises its numbers and says that poverty actually fell 4.5 percent, after being scolded by President Chavez for reporting the truth.

I am concerned that Chavez is using his oil largesse to buy power and influence inappropriately throughout the region.

Through oil initiatives, such as PetroSun, Petrocaribe and Petro Andina, he is solidifying relationships with the poorer Caribbean countries, Central America and South America.

He is also antagonizing other countries in the region, including Mexico and Colombia. If he was simply using the oil to help those poorer countries, that would be one thing. But he is promoting his idea of what government should be and I don't believe, based upon his actions and the concerns that have been raised internationally by many others including those who don't hold many of my views, but who have sent letters to President Chavez concerning what is happening inside of Venezuela that this is a real concern.

I am concerned when foreign direct investment is one-third of what it was 5 years ago and the U.N. Development Program's 2005 Human Development Report dropped Venezuela from 68th place last year to 75th place this year, because per capita income has fallen.

So let us be clear. Democracy is not just about elections or polls. No democracy can exist without strong democratic institutions. No democracy can exist without an independent judiciary. No democracy can exist without freedom of the press and respect for human rights.

I challenge us here in the United States to make it clear that we expect real long-term and robust democracy for the Venezuelan people.

Mr. Chavez likes to use a lot of strong words and he certainly has a lot of oil money to throw around, but as they say, all that glitters is not gold.

Our best answer to President Chavez is a real plan to address the real problems in the hemisphere. In the absence of that, the vacuum that we have allowed to take place gets filled by the Chavezes of the hemisphere. It is time for the United States to show some real leadership and a new shared vision for the hemisphere.

I look forward to the Secretary and the other witnesses in their testimonies.

Mr. BURTON. We will try to confine the remarks of the Committee to 5 minutes if it is possible. With that, Ms. Ros-Lehtinen.

Ms. ROS-LEHTINEN. Thank you so much, Chairman Burton. I am gratified that your Subcommittee is holding this hearing on the status of democracy in Venezuela and I think Chairman Burton and Ranking Member Menendez for the opportunity to discuss this important topic.

The focus regarding the situation in Venezuela is on the corrosive effect that Hugo Chavez has had on the process of democracy in the country, how he has undermined the consolidation and the strengthening of democratic institutions and how he has launched a full assault on Venezuelan independent civil society.

The people of Venezuela and of the United States share a rich and fruitful relationship. Nonetheless, the tight grip of Venezuela's oppressive government continues to plague the democratic institutions and its civil society.

According to the State Department's country reports on human rights practices, the abuse of political power is reported in connection with human rights violations by the Government of Venezuela.

Women, children and the disabled and indigenous people often bear the brunt of human rights violations, being subjected to physical violence and discrimination.

International human rights organizations have expressed concerns about the deterioration of democratic institutions and the threats to freedom of speech and press in Venezuela under the Chavez government.

Other groups, such as the Committee For the Protection of Journalists and Reporters Without Borders have expressed concerns about Chavez's attacks against journalists during street protests.

The Inter-American Commission on Human Rights issued a report last year expressing concerns about Chavez's government's tendency to militarize public administration.

The Commission expressed extreme concern about reports of undo influence of the armed forces in the country's political affairs and excessive involvement by the armed forces in political decision-making.

When we look at the status of democracy in Venezuela, the facts speak for themselves. The Inter-American Commission on Human Rights and human rights organizations talked about extra judicial killings, serious delays in prosecution of human rights violations, death squads, torture and abuse of detainees, little or no tolerance for government protestors, severe corruption of civil judicial system and serious restrictions upon the freedoms of speech and press.

The horrific alliance between Castro and Chavez illustrates the dangers of a regime that models its practices on the evil and terrorist dictatorship in Cuba.

The Venezuelan leader claims that he is a small D democrat, whose social policies are meant to help those whom he describes as marginalized sectors of the population, while his international policies aim to improve Venezuela's stature in the region.

However, what possible advantage could Venezuela derive from Chavez's association with the leaders of the world's most repressive governments, while he distances himself from the most prosperous democracies in the region?

Chavez recently reaffirmed his close friendship with Cuba's brutal dictator, with Libya's Qadafi and of course with Iran and this is indicative of the external component of the Chavez threat to democracy that is the Chavez threat is not limited to the domestic sphere in Venezuela, but also to the consolidation of democracy throughout our hemisphere. This in turn poses a serious threat to our United States national security.

In late August of this year, on his way home from visits to Paraguay and Peru, Secretary of Defense Rumsfeld honed in on the case of Bolivia, where social uprisings have pushed out two Presidents in less than 2 years.

He told reporters that Cuba and Venezuela have been influencing the Andean nation in highly unhelpful ways. Not only is this Cuba/Venezuela axis of evil displaying itself overtly, it is also manifesting itself through Chavez's broadcasts, *Alo Presidente* on Telesur, which are vehicles for anti-American propaganda and for fomenting instability and leftist revolutionary ideology in the region.

I am therefore gratified with Congressional initiatives to counter telesur's incitement by initiating radio and television broadcasts that will provide a consistently accurate, objective and comprehensive source of news to Venezuela.

The U.S. must respond to the realignment that is taking place between Chavez and repressive dictatorships as well as between Chavez and Islamist extremist regimes by strengthening our own democratic alliances to counter emerging threats.

I thank the Chairman for the hearing. I can see that my time is up.

Mr. BURTON. Is Mr. Meeks next?

Mr. MEEKS. If you say so.

Mr. BURTON. Mr. Meeks.

Mr. MEEKS. Thank you, Mr. Chairman. Clearly I wish certain things hadn't taken place. Clearly I wish the rhetoric between President Chavez and President Bush had not taken place.

Clearly I wish that at the time of the attempted coup attempt in Venezuela that the United States would have taken a strong position, when we talk about democracy, since we had a person that was elected. The United States stepped in and said that we are not going to have a situation where we are going to allow democratically-elected people to be overturned. Clearly, I think that that would have had some or made some difference in the relationships that we currently have with Venezuela and President Chavez.

That being said, I don't like the rhetoric and the war of words that are going back and forth and I wish that that would not have taken place, but sometimes I think you know the impression one would get is that all was well in Venezuela pre-Chavez.

Sometimes I question whether we know really what democracy is. Some people say that democracy in this country existed in 1776. If you ask my ancestors, democracy was not in this country in 1776 or 1876. In fact, it just began in 1964, when we had the civil rights and the voting rights act.

So the question of what a democracy is and who does what is really a big question that I have. Now, when you look at democracy and that is what this hearing is supposed to be about, democracy in Venezuela 40 years prior to the 1998 election of Hugo Chavez was weak and riddled with corruption and at best gave the perception of participatory.

With the election of Hugo Chavez, it marked the first time that all citizens of Venezuela had the experience of participating in a real democracy, under which the people began to take control of their lives, their community and their country.

I was there during the referendum election. I saw lines around the block where people who had not voted before and wanted to vote in the first election with Chavez, came out in strong numbers to make sure that their vote, they waited all day.

I wish in my district I had the kind of voter participation that they had in Venezuela. I wish in my district I could see people waiting for hours upon hours to vote.

I had not seen anything like that other than when Nelson Mandela was being elected President of South Africa.

Let us look through the numbers and I have heard a lot of things really with the numbers. Under the neoliberal model and the IMF enforced policies, poverty rose in Venezuela from 28 percent in early 1980s to 85 percent in 1998, the year President Chavez took office.

According to the Center for Economic and Policy Research, for the 28 years that preceded the current government, 1970 to 1998, Venezuela suffered one of the worst economic declines in Latin America and the world. This is a worst decline than even Sub-Saharan Africa.

During the Presidency of Hugo Chavez, social expenditures equaled \$5 billion per year, thus wiping out, to a large extent, illiteracy, providing 40 percent of the population with subsidized food and ensuring that 18 million people have free health care.

Venezuelan economy is growing at the second fastest rate in the world actually and the non-oil sectors grew at a faster pace than their oil sectors.

Venezuela and what is important here is when we talk about the 5 years of when they went down, that is predominantly if you look at what happened with the strike, the oil strike and the attempted coup, which had devastating, a devastating affect on the economy of Venezuela during that period of time.

Now we can go back and forth and I know that time is short, but it is important to recognize, I think and this is basically what I am saying, because I don't want to make you think that I think that Hugo Chavez is 100 percent right and he is doing everything right, but I do subscribe to what I think my colleague Mr. Menendez did say and that is, let us look at our policies toward Latin America.

If we think that Hugo Chavez is the cause of Latin America's troubles, then I think we are badly mistaken and we will miss the boat.

He is not the cause of it. He may be the symptoms of neglect of South America and Latin America and our policies and I agree. I am a guy who believes in free trade and pro trade, but that is not the only thing that is going to resolve the issues of the people and poor people in Latin America.

That is part of the answer and we have got to do much, much more than that and I happen to think that when we look at democracy, when we look at the popularity of the people in Venezuela as they look at their President, his popularity and his ratings is much higher than the popularity of our President in this country and his policies.

If you want to go by that, if you go and ask the people of Venezuela whether they think their democracy is working, they will tell you they believe in their democracy and if you go and ask the

people in this country whether they think we are headed in the right direction with our President, they will tell us that we are headed in the wrong direction.

I see my time is up and I know the Chair wants to shut me up, but so I yield.

Mr. BURTON. Mr. Meeks, you and I have traveled together. I would never ever attempt to shut you up.

Mr. Weller.

Mr. WELLER. Thank you, Mr. Chairman. Of course I want to thank you for this hearing.

I want to thank Mr. Shannon and others for joining us. Welcome the new Assistant Secretary for the Western Hemisphere. It was a real privilege to join you at your swearing in 2 weeks ago. I congratulate you on your new role in the Administration.

Mr. Chairman, I want to thank you for your continuing series of hearings focused on important issues in our own hemisphere.

Today's hearing in Venezuela is timely, as relations between the United States and Venezuela, although historically very close, continue to be strained and are a source of concern not only for myself, but I know many others in this Committee, in this Congress.

Unfortunately, many of the actions taken by the Government of Venezuela serve to further weaken our relationship, cause greater concern for democracy, as well as for the people of Venezuela.

Notably Venezuela joined Burma this year as one of the only two countries who have failed to demonstrably adhere to their obligations under international counternarcotics agreements.

This determination followed Venezuela's ending of cooperation between the Drug Enforcement Administration and their Venezuelan counterparts, after they were labeled spies by the Venezuelan Government.

Regrettably, Venezuela's democratic institutions have been weakened with the Supreme Court packing plan, broadcast media laws that restrict the ability to criticize the incumbent government and continuing pressure on independent civic groups, such as Súmate, for simply working to preserve democracy in Venezuela.

Corruption continues to be a problem and one that becomes more difficult to control the more concentrated power becomes in the hands of a few, President Chavez's cronies.

Mr. Chairman, I am also concerned about Venezuela's support for Iran and Iran's nuclear ambitions. Only one nation voted against the International Atomic Energy Agency's resolution calling on Iran to observe fully its commitments and to return to the negotiating process that has made good progress in the last 2 years. Of course that country was Venezuela.

President Chavez we know has met with Saddam Hussein at a time when no other world leader would and has met with the Iranian Mullahs to talk about mutual interests.

Venezuela's Ambassador to Iran has even said that the principles and ideals that inspire the Bolivarian revolution of Venezuela are inspired by values common to the Iranian Islamic revolution.

This should be a concern for all peace loving people in the world. Many potential links between Venezuela and radical extremist Islamic elements must be carefully monitored and explored.

As we saw at the Summit of the Americas, Mr. Chavez has attempted to portray the future of this hemisphere as a struggle against the United States, where there is an adversarial relationship between the United States and our neighbors to the south.

We must reject this misguided and false vision for our hemisphere. The United States wants to be a partner with our friends and neighbors in the democracies of Latin America and the Caribbean.

We must continue to engage with our hemispheric partners and work together, especially in the efforts to ensure the success and strengthening of democracy in all of Latin America.

Again, I want to thank you, Mr. Chairman, for conducting this important hearing and welcoming Secretary Shannon as well as the other witnesses and I look forward to your testimony. Thank you, Mr. Chairman.

Mr. BURTON. Thank you.

Mr. Faleomavaega.

Mr. FALEOMAVAEGA. Mr. Chairman, I believe my good friend, the gentleman from Massachusetts, was here before me and I kind of want to defer that.

Mr. BURTON. Sure.

Mr. FALEOMAVAEGA. I will have a statement.

Mr. BURTON. Mr. Delahunt.

Mr. FALEOMAVAEGA. Thank you.

Mr. DELAHUNT. Mr. Secretary, welcome. At your confirmation hearing, you described the poor relations between the United States and Venezuela as tragic and I concur.

I also noted that there is nothing in your prepared remarks relative to an effort or desire for rapprochement with the Chavez government. I would infer that the current policy is either one of so-called containment or isolation.

While we are here to discuss the bilateral relationship that we have with Venezuela, I agree with my Ranking Member that we should put it in the larger context of our relationship with Latin America, in American foreign policy challenges worldwide.

The truth is that we have a serious problem in Latin America and throughout the world and that has nothing to do with Hugo Chavez, no matter how much some would wish the answer were that simple.

Ironically, I hear much about democracy and democratic institutions, obviously with a specific focus on Venezuela and you reference a poll in your remarks that 60 percent of Venezuelans do not trust the electoral system.

I don't know where that poll came from, but I know you must be familiar with the poll done by the respected Chilean polling firm that was reported in the Economist, which had this to say and I hope my colleagues are listening carefully.

According to that poll, the Venezuelans themselves, the people of Venezuela have the second highest satisfaction level in Latin America with the way their own democracy functions.

I guess it is right after Uruguay and it should be noted for the record that there were 18 nations that were part of that survey.

But again, back to America for a moment and democracy. A poll again you must be familiar with that was commissioned by the

Miami Herald and the University of Miami School of Business that was taken in Colombia, Chile, Brazil, Argentina and Venezuela.

That poll found that 81 percent of the respondents, 81 percent of the respondents gave President Bush a negative job approval rating.

Now what I find particularly disturbing is that the sample comprised of the so-called elite, the opinion makers in Latin America. Certainly not adherents of Hugo Chavez.

The pollster, who was Mr. Zogby, had this to say. This was his conclusion, not mine, not yours, but his and I am quoting: "Clearly, Bush's Presidency has done damage to U.S. prestige in Latin America. Their apparent lack of confidence in him is no doubt behind opinion leaders in the region wanting to look elsewhere to form economic alliances." It says nothing about Hugo Chavez.

Of course we see similar results in polls from around the globe. You must be familiar with them. I am sure you are.

By the way, I want to commend you for what you have done for this country through the years. I have great respect for you, Mr. Shannon.

But as the GAO, our GAO recently reported, anti-Americanism is spreading and deepening everywhere, with profound consequences for our national interests.

Do we have any responsibility for this decline in American prestige? What about our own policies and attitudes? Are we fueling this rampant anti-Americanism or is Hugo Chavez responsible for it, along with the 81 percent negative rating for President Bush?

I would put forth that one factor in this disturbing trend appears to be the disparity between our rhetoric and our actions.

I constantly have the word hypocritical thrown in my face when I travel and at meetings with officials and citizens of other governments.

An example, as we lecture about democracy, we embrace dictators. I and Lloyd Doggett introduced a measure to end American support for the dictator of Uzbekistan that got 84 votes on the Floor of the House and many of those in this House who expressed concern about tyranny voted to keep providing military assistance to Islam Karimov, a thug. A thug.

Mr. BURTON. Mr. Delahunt, could you sum up, sir? We are trying to stay as close as we can to the 5 minutes, but that is all right. We will give you a little more time.

Mr. DELAHUNT. Can I have a couple of more minutes? Maybe a minute and a half?

Mr. BURTON. Okay.

Mr. FALEOMAVAEGA. Will the Chairman yield?

Mr. BURTON. Yes.

Mr. FALEOMAVAEGA. I would be glad to yield 1 to 2 minutes of my time to—

Mr. BURTON. Then why don't I do this? I will just recognize you and you can yield to Mr. Delahunt? If you will recognize Mr. Faleomavaega and start the clock.

Mr. FALEOMAVAEGA. I would like to, at this time, yield 2 minutes of my time to Mr. Delahunt and then I will proceed then too.

Mr. DELAHUNT. I thank my friend. Mr. Karimov, who has got a great habit of boiling dissidents alive and he is invited to the White House for a meeting with President Bush.

There is Jose Miguel Vivanco, who recently stated and again he is no fan of Hugo Chavez, "the trouble is that the Bush Administration has a serious credibility problem."

Well recent history between the United States and Venezuela certainly hasn't helped our image as a defender of democracy either. Whether the Bush Administration likes them or not, he was democratically elected and in April 2002 there was an attempted coup against him, but even as the rest of the Latin America condemned what was happening, this Administration was quietly applauding.

In fact, the Administration actually blamed Chavez for his own overthrow and our Ambassador, the then Ambassador at the OAS, sought to block the Inter-American Democratic Charter from being applied to Venezuela.

Well, the perception is that our support for democracy depends on the circumstances. Those circumstances include democratically-elected leader at odds with United States interests, such as Hugo Chavez, or an unelected leader, who sides with Washington, like Musharaff of Pakistan, Mubarak of Egypt, the Saudi oil family, Turkmenbashi of Turkministan, Islam Karimov of Ubezakistan. The list goes on, but you get the point.

Let me conclude by saying this. I am convinced of one thing. Hugo Chavez is profoundly concerned by the poverty and inequality in Venezuela and I know that we share those concerns.

The question is whether his efforts to address these fundamental issues do erode support for democracy to succeed or not. The Administration clearly has a different approach.

You have spoken about engaging with him in a clash of ideas. I would rather that we seek to have a respectful exchange of ideas that could accomplish those mutual goals and I will do whatever I can, however negligible it may be, to help promote that dialogue, because both the American and Venezuelan people deserve it.

Thank you, Mr. Chairman.

Mr. FALEOMAYEGA. I thank my good friend from Massachusetts. Mr. Chairman, I would like to associate myself with the comments made earlier by our Ranking Member and the gentleman from New Jersey, Mr. Menendez and also the comments made by my good friend from Massachusetts, Mr. Delahunt.

I think the response recently that happened in Argentina, in my humble opinion and I do welcome Mr. Secretary Shannon this morning, is not just on Hugo Chavez.

I don't think Hugo Chavez is on trial here. I think it is an overall reflection of passiveness, indifference, benign negligence if you will just about of the whole situation dealing with Latin America.

In all the years that I have served as a Member of this Committee, not just by a Republican Administration, both Republican and Democratic Administrations, have been just all rhetoric and hardly any results or any real substantive, serious not only dialogue but consideration on how we deal with our neighbors throughout Latin America.

Why is it if it is symptomatic of the frustrations that our Latin America friends have toward us, how isn't it a nationally man of the cloth, a professed Christian preacher who is supposed to be promoting peacemaking being forgiven?

All this relates to Christianity to international public radio, television, promoting the idea that the President, a President duly elected by the people of Venezuela, should be assassinated, if that doesn't put a chill on your backs, my dear colleagues, I don't know what will.

I am not a defender of Mr. Chavez with all his failings and I am sure he is not a perfect man, no more perfect than our own President if you will.

My understanding is President Chavez's government is not the only government in Latin America that also recognizes Fidel Castro and his government in Cuba. I think we need to keep that in proper perspective and I am not a defender of Castro either.

Now my understanding, no other Latin American leader has done more to help the most critical, the lowest cast of the cast and I am talking about indigenous Indians, Mr. Chairman, than this President right now of Venezuela.

He has done more for indigenous Indians, the lowest in economics and opportunities ever throughout Latin American, than President Chavez. I think that is something that should be noted.

It is——

Ms. ROS-LEHTINEN. Will the gentleman yield?

Mr. FALEOMAVAEGA. I am limited in my time, Madam Chairman. Is that all right with you?

It is going to be my privilege to visit Venezuela in the near future and I sincerely hope that I will have an opportunity to express my concerns and the problems that we are having with Latin America and leaders such as Hugo Chavez.

Mr. Chairman, whatever time I have I would be more than happy to yield to my good friend——

Mr. BURTON. I will let you yield for one question from Ms. Ros-Lehtinen, but your time has expired.

Mr. FALEOMAVAEGA. Please.

Mr. BURTON. Ms. Ros-Lehtinen.

Ms. ROS-LEHTINEN. Thank you so much for your generosity, Mr. Burton. Just a quick comment. Alluding to the statements that Mr. Delahunt made and I agree with him about Karimov being a bloody tyrant and as you know the Subcommittee the Middle East and Central Asia held a hearing where we talked about the violations in Uzbekistan, but then you allude to the elections of Hugo Chavez.

I was wondering if my good friend, Mr. Delahunt, is aware that Mr. Karimov was technically also elected, just as many other so-called leaders were technically elected, but that the difference is not just an election, but whether you are ruling as a democratic leader?

Mr. DELAHUNT. I don't think, if the gentlelady would yield to me?

Ms. ROS-LEHTINEN. Yes.

Mr. DELAHUNT. I don't think that any comparison made between the election of Islam Karimov and Hugo Chavez would pass the smell test.

Mr. BURTON. Okay. I think this is a debate that goes beyond the scope of the hearing. We will pass on that right now and the gentlewoman's time has expired.

Mr. Payne?

Mr. PAYNE. Thank you very much, Mr. Chairman. Let me commend you for calling this important hearing and I would just commend you for your overall leadership of the Committee.

Let me say that it is important that we examine democracy in the nation of Venezuela. Of course based on recent events in press reports, it is clear that this will be an issue that will require sustained attention by our Committee.

Indeed, some of the news coming out of Venezuela should give us all cause for concern. We have heard from Human Rights Watch that their leaders have continued to take steps to undermine the independence of the country's judiciary and to threaten freedom of the press and this is not going in the right direction and we deplore that.

They also note problems with police abuse, unpunished extrajudicial killings, rampant violence in prisons and intimidation of government opponents, all of which are certainly going in the wrong direction.

We must continue to monitor these developments to ensure the strengthening of democracy in Venezuela continues in the right direction.

However, we must all recognize the reality of how President Chavez was elected in 1998 in the first place. He ran on a message of radical change to rid the country of corruption, the same way that we saw in Cuba back in the 1950s and 1960s, where corruption was rampant and people ran to change the corruption that was corrupting the country and that is what was happening in Venezuela and most importantly to aggressively deal with the high poverty rate.

He spoke to millions of Venezuelans who were ready to take a new path in the country's development and while many of his initiatives have been controversial, it is undeniable that President Chavez's numerous social programs have made an enormous difference for the civilians of Venezuela.

His government has embarked on an adult literacy campaign that has given over one million adults the skills needed to participate in the political and economic life of the country.

Schools for children are being built at a fast rate. People that could not get access to doctors before are seeing community based health care programs and doctors in their neighborhoods for the first time in the history of their country.

As a matter of fact, the adult literacy program, an 85-year-old man for the first time had an opportunity to put a pencil in his hand and he said that "this is freedom to me."

A major land reform campaign has been undertaken to redistribute this wealth and the land to those of the poor that can use it for agriculture.

We can argue over his motives, but President Chavez has made an enormous effort to provide other countries, including the Caribbean region, with discounted access to his nation's oil.

Regarding elections, most would agree that President Chavez's government has overseen a fair, free, peaceful and orderly process. He was elected in 1998, re-elected under the rules of the new constitution in 2000 and he won a re-election in August 2004.

While there was a dispute over the results of the recall election, the Organization of American States validated the results and the Carter Center found that the process suffered from some irregularities, delays, politicizing and intimidation.

Nevertheless, the Carter Center noted that it is important to distinguish between irregularities and fraudulent acts that could change the outcome of a process. It is the Carter Center's finding that the official results reflect the will of the Venezuelan electorate.

Perhaps if the United States is concerned with democracy in Venezuela, it should question its endorsement for the coup, when President Chavez in 2002, the United States supported on the morning of April 12, 2002, Assistant Secretary Otto Reich, told a gathering of Latin American and Caribbean Ambassadors that they had to support the new government in an article that was reported in the *New York Times* that day.

This is absolutely unprecedented that the United States of America would recognize a country that is taken over by a coup, a military coup.

Even in the organization the OAU, now the Africa Union, in Mauritania, a bad, bad dictator person who actually even practiced slavery in Africa, even to today, was overthrown about 4 or 5 months ago and the Africa Union said that even though this was a despot, terrible person and should be out of office, that they could not recognize a new government that took over by a military coup d'etat.

Here the United States recognized or moved to recognize the government. That is absolutely wrong, whether you applaud the government or not.

So in conclusion, in a region with extremely high poverty rates that recently saw massive street, the whole region is having problems, we saw it at the Summit of the Americas, that there is a question about the so-called free trade, we must take a look at U.N. millennium development goals so we could talk about halving poverty.

Let me also indicate that we have seen statistics that say that the poverty rate has increased in Venezuela. I believe if you would take into account, as you may recall, the long strikes of the oil producing area where months and months there was no income when the country is primarily dependent on oil, you will probably see in the out years, now that there is stability in the oil markets, that you will see that that was a blip in the accounting and you will see that poverty is going to actually increase.

Finally, there was a question regarding NED in its funding of Súmate. NED has put in maybe \$4 million in democracy building and that is good.

However, there was a question of IRI and its funding of an organization to lead the recall drive, the Súmate, and it was a question whether that funding for a particular political purpose should have happened.

I think that we like NED. We like what they do. However, they should not get involved in partisan politics, but in educating people about democracy and training people how to go about it.

I yield back the balance of my time, Mr. Chairman.

Mr. BURTON. Thank you, Mr. Payne.

We, unfortunately, Mr. Secretary have three votes and I do not want to cut you off in the middle of your statement, because we want to hear what you have to say, plus we want to be able to ask you questions.

Please bear with us. We apologize. We will probably be gone for about 20 minutes.

I would like to just end, before we go, by saying that there has been a little bit of misinformation about the attitudes of other countries regarding the free trade agreement down there and 29 of the 34 Western Hemisphere nations that met in Argentina earlier this month are in favor of moving forward on negotiations.

There is a lot of support for this and we will discuss that further when we come back. We will stand in recess until the call of the Chair, which will be in about 20 minutes.

[Recess.]

Mr. BURTON. Mr. Secretary, thank you for being so patient. We appreciate everybody's patience while we were gone.

Thomas A. Shannon is a Senior Foreign Service Officer and was sworn in as the Assistant Secretary of State for Western Hemisphere Affairs last week and I am sorry I wasn't there at your swearing in. It was quite an affair I understand. I apologize.

He has twice served as Director on the National Security Council and he has served our country with distinction at our Embassies and Consulates in Venezuela, South Africa, Brazil and Guatemala.

It is good to have you with us. Since you are now an official in this area, why don't you stand up so we can swear you in and we will take your testimony?

[Witness sworn.]

Mr. BURTON. Mr. Secretary, we will hear your comments.

TESTIMONY OF THE HONORABLE THOMAS A. SHANNON, ASSISTANT SECRETARY, BUREAU OF WESTERN HEMISPHERE AFFAIRS, U.S. DEPARTMENT OF STATE

Mr. SHANNON. Thank you very much, Mr. Chairman and thank you to the distinguished Members of the Committee. I especially appreciate those Members who have spent time and effort in Venezuela and engaging both the Government of Venezuela and the people of Venezuela.

I thank you for this opportunity to appear before the Subcommittee today to address an important topic, the state of democracy in Venezuela.

I realize that in the statements made previously there were additional comments about the state of our larger relationship with Latin America and I would be happy to address those either today or in a separate fora.

I am going to restrict my opening comments to democracy and then take questions as you see fit, sir.

It is not news to Members of this Committee that over the past year the assault from within on Venezuela's democratic institutions has continued.

Indeed, there is a growing hemispheric and international consensus that democracy in Venezuela is in peril, as documented by international human rights groups, the Inter-American Commission on Human Rights, the Venezuelan Episcopal Conference and independent Venezuelan NGO's, among others.

As the Secretary of State has noted, our interest in the fate and well-being of Venezuela's democracy is part of a larger hemispheric commitment to democracy, made by leaders of the hemisphere at the 2001 Quebec City Summit of the Americas and expressed most eloquently in the Inter-American Democratic Charter.

Our goal in the Americas is to promote democratically-elected governments that govern democratically and responsibly, expand economic opportunity for their people and work cooperatively with their neighbors.

Our concern is that the Venezuelan Government is backsliding on all these fronts, undermining democratic institutions, restricting fundamental freedoms, slowly hollowing out economic freedoms and turning away from the hemispheric commitment to free markets and economic integration.

But let me take a moment to put our concern in perspective. Venezuela is in the midst of a long-term and slow-motion political transition.

The Venezuelan people, through their civic traditions, democratic institutions and constitutional processes, are searching for a path that will allow them to modernize their state, address the social and economic needs of the country and create the conditions for Venezuela to be an integral part of the Americas and a larger world.

The election of President Hugo Chavez in 1998 was a clear vote of no confidence by the Venezuelan people for old line political parties and a clear expression of the Venezuelan electorate's desire to create new political space where modern, accountable and democratic political leadership could emerge.

At that moment, Venezuela and Hugo Chavez had an opportunity to bind up the wounds of Venezuelan society, build bridges across Venezuela's social divide and create a new national consensus around the development and modernization of Venezuela.

Venezuela had an opportunity to show the world that dramatic social transformation could take place within a democratic and constitutional context.

Regrettably, the government of Hugo Chavez chose otherwise. Instead of attempting to overcome Venezuela's social divisions, it mined them, using confrontation and conflict to drive a political agenda that President Chavez has slowly revealed to be the socialism of the 21st century.

The results of this decision we all know, profound polarization, political upheaval and serious damage to Venezuela's economic infrastructure.

Venezuela was saved from devastating internal conflict only through the intervention of the Organization of American States and the international community.

What the international community was able to preserve, however, was a tattered democracy with weakened institutions and a sullen hostile standoff between the Chavez government and its opposition.

Again, instead of reaching across a political divide to build a basis for democratic governability, the Chavez government accelerated its efforts to consolidate control over political institutions, marginalize any who opposed it, suffocate democratic debate within Venezuela and resist any external effort to support broader democratic political activity within Venezuela.

So where are we now? Speaking at a human rights conference held in Caracas in September, Human Rights Watch Americas Director, Jose Miguel Vivanco, characterized the state of the rule of the law, the backbone of liberal democracy, in Venezuela as “extraordinarily grave” and necessitating urgent action by the Inter-American system.

Indeed, we are witnessing an increasing and unchecked concentration of power in the executive, the politicization of the judiciary, the electoral authorities and the legal system.

In other words, the separation of powers and the independence of the branches of government, always a fragile thing in Venezuela, have been seriously undermined.

Also, we are witnessing political persecution of civil society and the democratic opposition, arbitrary restrictions on and intimidation of the press and threats to free association.

In its 2005 World Report, Human Rights Watch noted that the Venezuelan Government continued to take steps to undermine the independence of the country’s judiciary and to threaten freedom of the press.

In the statement issued in December 2004, following the politically motivated expansion of the Supreme Court, Human Rights Watch condemned the government for packing the court with 12 new loyalist judges as “a severe blow to judicial independence,” adding that the move would “degrade” and “betray” Venezuelan democracy.

Similar concerns have been echoed by Amnesty International and the Andean Commission of Jurists.

The politicization of the judiciary also extends to the lower courts. According to the Venezuelan judicial watchdog, NGO Fora Penal, over 200 judges have been removed or retired for political reasons.

During the 123rd session of the Inter-American Commission on Human Rights in October, several respected Venezuelan human rights NGO’s, such as PROVEA, COFAVIC and the Center for Human Rights at the Andres Bello Catholic University, identified the deterioration of the justice system as the root cause of the rising climate of impunity and increased criminality and violence in the country.

These NGO’s themselves face increased harassment by the government and impediments in carrying out their work.

While Venezuela continues to enjoy an independent media, in the past year the government has taken a number of steps to erode freedom of expression.

Last year's enactment of the punitive media law, which places restrictions on broadcast content, has resulted in self-censorship by major media outlets and the termination of certain radio and TV programs.

This and other laws serve as pretexts to stifle press freedom and intimidate government critics. In September, for example, the National Telecommunications Council, or the FCC equivalent, opened administrative proceedings into seven TV stations for alleged failure to make proper use of assigned frequencies.

Twenty-two radio stations are under investigation for other alleged improprieties. Stations found in violation could lose their broadcast licenses.

Alleged tax violations have also been used to harass media outlets critical of the government. The October 24 closure of a regional paper, *El Impulso*, for alleged tax infractions is but the latest example.

This alarming trend has not gone unnoticed. The Inter-American Press Association, Reporters Without Borders, Human Rights Watch and the Special Rapporteur for Freedom of Expression for the Inter-American Commission on Human Rights have all voiced concern about increased threats to freedom of expression in Venezuela.

In March of this year, the Special Rapporteur specifically criticized the passage of certain amendments to the Criminal Code that expand the reach and increase criminal penalties for "desacato" or "contempt" of public officials.

At a time when many of the hemispheres democracies are repealing such anachronistic laws, Venezuela is giving them added teeth.

Citing the Declaration on Principles of Freedom of Expression approved by the Inter-American Commission on Human Rights in October 2000, the Special Rapporteur noted that "Laws that penalize offensive expressions directed at public officials . . . restrict freedom of expression and the right to information."

Most disturbing of all is the attempt to use the criminal justice system to stifle media criticism. On November 4, the Attorney General announced a detention order for a well-known journalist and vocal government critic, Patricia Poleo, for her alleged participation in the plot to assassinate prosecutor Danilo Anderson, who was killed in November 2004.

The Inter-American Press Association immediately condemned this charge as an attempt to silence the media through intimidation.

In July, the Office of the Attorney General said it was opening a criminal investigation against the leading daily *El Universal* for publishing an editorial criticizing the politicization of the judicial system.

This action too was denounced by the Inter-American Press Association and the Inter-American Commission on Human Rights Special Rapporteur for Press Freedom.

The Venezuelan Catholic Bishop's Conference has stated it most succinctly: "All persons and institutions have the right to express their opinion in accordance with their convictions, a right that must be respected and guaranteed in any democratic society."

Mr. Chairman and Members of the Committee, I know some of you have had the opportunity to meet with the leaders of the electoral watchdog NGO Súmate, Maria Corina Machado and Alejandro Plaz.

Theirs is perhaps the best and most well-known example of the government's harassment and persecution of those who disagree with it.

Machado, Plaz, and two of their colleagues, have been indicted for conspiracy to overthrow the republican form of government, for receiving a \$31,000 grant from the National Endowment for Democracy for voter education activities. We understand that oral arguments in their case are scheduled to begin in early December.

Perhaps less visible, but equally disturbing, is the continued persecution of political appointments and discrimination against those who signed the recall referendum petition.

These citizens have been denied basic government services, including passports and national identity cards, forced from their jobs and excluded from government contracts as punishment for exercising their constitutional right to petition the government.

In January, the respected Venezuelan human rights organization, PROVEA, reported a 13 percent increase in politically motivated detentions from the previous year.

Between October 2003 and September 2004, according to the NGO, 54 such cases were reported. A comparison with the number of reported detentions in 1999 underline the point even more dramatically. That year PROVEA only noted one case.

These latest moves against the freedom of the press and freedom of association come just weeks before the December 4 National Assembly elections.

These elections will be a test of the transparency and fairness of the electoral authorities and the electoral system, which are increasingly in doubt.

Observers from the European Commission and the OAS will be in Venezuela in advance of the elections to monitor preparations and push for greater transparency.

Opposition political parties are participating in the elections, but they, along with Súmate and other NGO's, have denounced obstructionism by electoral officials.

Voter turnout and confidence in the electoral system appears to be at an all time low. Abstention levels in the August parish and municipal elections were over 70 percent. Recent polls indicate that over 60 percent of Venezuelans do not trust the electoral system.

Independent pollsters are predicting close to 80 percent abstention rates in the upcoming legislative elections. We will see whether or not these pollsters are correct.

These deepening suspicions are fueled by the political makeup of the CNE and its reluctance to implement the recommendations made by the OAS and the Carter Center after the August 2004 Presidential recall referendum.

Speaking directly to the issue of public confidence in elections, among its recommendations, the Carter Center noted the need for the CNE to "communicate and consult much more regularly with the political parties and put in play much greater mechanisms of transparency to restore confidence in the electoral process."

Indeed, the Carter Center report underscored that the referendum's "numerous irregularities" mostly centered "around the lack of transparency of the CNE in its decision-making process and its ad hoc implementation of the recall referendum process."

In its own separate report, the OAS observer mission recommended a third party audit of the electoral registry, whose results would be made public.

The CNE has contracted the Costa Rica-based Center For Electoral Assistance and Promotion, CAPEL, which is the electoral arm of the Inter-American Institute for Democracy and Human Rights, to conduct such an audit.

This decision was made unilaterally by the CNE, without consulting other groups and some NGO's, such as Súmate, have questioned the independence and ability of CAPEL to conduct a thorough audit.

We have no position on this, but I would like to underscore that the differences and concerns about the transparency of the electoral registry continues to be an important problem.

CAPEL has said that it expects to issue a final report before the end of November. Still, with less than a month before the legislative elections, it is all but impossible to implement significant changes by then, even if the audit result were presented and disseminated on schedule. Any real changes will take time and more importantly political will.

The Administration is working multilaterally, engaging the OAS, and the European Union, the Council of Europe, among others to support Venezuelan civil society, speak out against abuses of democracy and hold the Venezuelan Government accountable to its commitments under the Inter-American Democratic Charter.

We are likewise reaching out at a bilateral level to our partners in the hemisphere and in Europe to do the same.

Within Venezuela we are working to help preserve political and civic space for increasingly at-risk groups. The Venezuelan business community, organized labor, the independent media, NGO's and religious institutions, in particular the Catholic church, have a critical role to play in providing the checks and balances that government institutions are no longer able to provide.

Establishing linkages between these groups and institutions and their U.S. and international counterparts will fortify their ability to perform their essential role.

The work of the National Endowment for Democracy is especially important in helping foster these kinds of linkages.

The Administration is reaching out to international human rights and other NGO's to help create an international network to support and defend Venezuelan civil society.

Our USAID program in Caracas supports local human rights NGO's, judicial and penal watchdog groups, press freedom activities and provides small high impact grants for programs that serve poor communities.

Our Embassy's public diplomacy outreach is also a key part of our effort to highlight American values, our ties and affection for the Venezuelan people and to communicate the Administration's positive hemispheric agenda.

President Bush, during his recent stop in Brazil following the Summit of the Americas, said it best when he noted that “ensuring social justice for the Americas requires choosing between two competing visions: One offers a vision of hope. It is found that on representative government, integration into the world community, and faith in the transformative power of freedom. The other seeks to role back the democratic progress of the past two decades by playing to fear, pitting neighbor against neighbor, and blaming others for their own failures to provide for their people.”

Mr. Chairman, this concludes my prepared remarks. Once again, I would like to thank you for the opportunity to appear before you and I would be pleased to respond to your questions.

[The prepared statement of Mr. Shannon follows:]

PREPARED STATEMENT OF THE HONORABLE THOMAS A. SHANNON, ASSISTANT SECRETARY, BUREAU OF WESTERN HEMISPHERE AFFAIRS, U.S. DEPARTMENT OF STATE

Mr. Chairman, thank you for the opportunity to appear before this Subcommittee today to address an important topic—the state of democracy in Venezuela.

It is not news to the members of this Committee that, over the past year, the assault from within on Venezuela’s democratic institutions has continued. Indeed, there is a growing hemispheric and international consensus that democracy in Venezuela is in grave peril, as documented by international human rights groups, the Inter-American Commission on Human Rights, the Venezuelan Episcopal Conference, and independent Venezuelan NGOs, among others.

As the Secretary has noted, the United States does not seek to have poor relations with Venezuela. What we want, our Hemispheric and international partners want, and we believe the Venezuelan people want and deserve, is the very goal we are striving for in the rest of the Hemisphere—*democratically-elected* governments that *govern democratically* and responsibly, expand economic opportunity for their people, and work cooperatively with their neighbors. Regrettably, the democratically-elected Venezuelan government is backsliding on all these fronts, subverting democratic institutions by using them to restrict the rights of those who disagree with it, slowly undermining economic freedoms, and rejecting the opportunities of globalization.

Speaking at a human rights defenders conference held in Caracas in September, Human Rights Watch Americas Director José Miguel Vivanco characterized the state of the rule of law, the backbone of liberal democracy, in Venezuela as “extraordinarily grave” and necessitating urgent action by the Inter-American system. Indeed, we are witnessing an increasing and unchecked concentration of power in the executive; the politicization of the judiciary, the electoral authorities and the legal system; political persecution of civil society and the democratic opposition; arbitrary restrictions on, and intimidation of, the press; and threats to free association.

President Chávez controls the five branches of government set out in Venezuela’s constitution—executive, legislative, judicial, electoral and the so-called “citizens’ power” (which includes the Attorney General and the Accounting Office). Most notably he has centralized his control over the Supreme Court, which last year he expanded and packed with loyalists, and lower courts; the National Electoral Council (CNE) (four of whose five members are government supporters); the National Assembly, where all polls indicate he will secure a two-thirds majority in the December 4 legislative elections and achieve absolute control; and the office of the Attorney General. This is also true of the military and previously independent entities such as the state-owned oil company, PDVSA, and the Central Bank. The impact on the civic, political and economic life of the country is evident in increased self-censorship by the media, lack of public confidence in the electoral system, reluctance to express disagreement with government policies for fear of government retribution, capital flight, decreased oil production by the now politicized state company and decreased foreign investment in any sector outside of oil, which is now to be subject to increased state control.

JUDICIAL INDEPENDENCE AND ADMINISTRATION OF JUSTICE

In its 2005 World Report, Human Rights Watch noted that the Venezuelan government continued “to take steps to undermine the independence of the country’s judiciary and to threaten freedom of the press.” In a statement issued in December 2004, following the politically motivated expansion of the Supreme Court, Human

Rights Watch condemned the government for packing the Court with 12 new loyalist justices as “a severe blow to judicial independence,” adding that the move would “degrade” and “betray” Venezuelan democracy. Similar concerns have been echoed by Amnesty International and the Andean Commission of Jurists.

The politicization of the judiciary also extends to the lower courts. According to the Venezuelan judicial watch-dog NGO *Foro Penal*, over 200 judges have been removed or retired for political reasons. During the 123rd session of the IACHR in October, several respected Venezuelan human rights NGOs—PROVEA, COFAVIC, and the Center for Human Rights at the Andrés Bello Catholic University—identified the deterioration of the justice system as the root cause of a rising climate of impunity, and increased criminality and violence in the country. These NGOs themselves face increased harassment by the government and impediments in carrying out their work.

FREEDOM OF THE PRESS

While Venezuela continues to enjoy an independent media, in the past year, the government has taken a number of steps to erode freedom of expression. Last year’s enactment of a punitive media law, which places arbitrary restrictions on broadcast content, has resulted in self-censorship by major media outlets and the termination of certain radio and TV programs. This and other laws serve as pretexts to stifle press freedom and intimidate government critics. In September, for example, the National Telecommunications Council (CONATEL), or FCC equivalent, opened administrative proceedings into seven TV stations for alleged failure to make proper use of assigned frequencies. Twenty-two radio stations are under investigation for other alleged improprieties. Stations found in violation could lose their broadcast licenses. Alleged tax violations have also been used to harass media outlets critical of the government. The October 24-closure of a regional paper (*El Impulso*) for alleged tax infractions is but the latest example.

This alarming trend has not gone unnoticed. The Inter-American Press Association, Reporters Without Borders, Human Rights Watch and the Special Rapporteur for Freedom of Expression for the Inter-American Commission on Human Rights Association have all voiced concern about increased threats to freedom of expression in Venezuela. In March of this year, the Special Rapporteur specifically criticized the passage of certain amendments to the Criminal Code that expand the reach and increase criminal penalties for “*desacato*” or “contempt” of public officials. At a time when many of the Hemisphere’s democracies are repealing such anachronistic laws, Venezuela is giving them added teeth. Citing the Declaration on Principles of Freedom of Expression approved by the IACHR in October 2000, the Special Rapporteur noted that “Laws that penalize offensive expressions directed at public officials . . . restrict freedom of expression and the right to information.”

Most disturbing of all is the attempt to use the criminal justice system to stifle media criticism. On November 4, the Attorney General announced a detention order for a well-known journalist and vocal government critic, Patricia Poleo, for her alleged participation in the plot to assassinate prosecutor Danilo Anderson, who was killed in November 2004. The Inter-American Press Association immediately condemned this charge as an attempt to silence the media through intimidation. In July, the Office of the Attorney General said it was opening a criminal investigation against the leading daily *El Universal* for publishing an editorial criticizing the politicization of the judicial system. This action too was denounced by the Inter-American Press Association and the IACHR Special Rapporteur for Press Freedom.

The Venezuelan Catholic Bishops Conference has stated it most succinctly: “All persons and institutions have the right to express their opinions in accordance with their convictions, a right that must be respected and guaranteed in any democratic society.”

CIVIL AND POLITICAL RIGHTS

Mr. Chairman, members of the Committee, I know some of you have had the opportunity to meet with the leaders of the electoral watch-dog NGO Súmate, Maria Corina Machado and Alejandro Plaz. Theirs is perhaps the most well-known example of the government’s harassment and persecution of those who disagree with it. Machado, Plaz, and two of their colleagues, have been indicted for “conspiracy to overthrow the republican form of government” for receiving a \$31,000 grant from the National Endowment for Democracy for voter education activities. We understand that oral arguments in their case are scheduled to begin in early December.

Perhaps less visible but equally disturbing is the continued persecution of political opponents and discrimination against those who signed the recall referendum petition. These citizens have been denied basic government services, including passports

and national identity cards, forced from their jobs, and excluded from government contracts as punishment for exercising their constitutional right to petition the government. In January, the respected Venezuelan human rights organization PROVEA reported a 13% increase in politically motivated detentions from the previous year. Between October 2003 and September 2004, according to the NGO, 54 such cases were reported. A comparison with the number of reported detentions in 1999 underlines the point even more dramatically. That year, PROVEA only noted one case.

ELECTORAL RIGHTS

These latest moves against freedom of the press and freedom of association come just weeks before the December 4 National Assembly elections. The elections will be a test of the transparency and fairness of the electoral authorities and the electoral system, which are increasingly in doubt. Observers from the European Commission and the OAS will be in Venezuela in advance of the elections to monitor preparations and push for greater transparency. Opposition political parties are participating in the elections, but they, along with Sumate and other NGOs, have denounced obstructionism by electoral officials.

Voter turn-out and confidence in the electoral system is at an all-time low. Abstention levels in the August parish and municipal elections were over 70 percent. Recent polls show that over 60 percent of Venezuelans do not trust the electoral system. Independent pollsters are predicting close to 80 percent abstention rates in the upcoming legislative elections. These deepening suspicions are fueled by the political make-up of the CNE (only one of whose five members is not a government loyalist) and its reluctance to implement the recommendations made by the OAS and Carter Center after the August 2004 presidential recall referendum. Speaking directly to the issue of public confidence in elections, among its recommendations, the Carter Center noted the need for the CNE to “communicate and consult much more regularly with the political parties, and put in place much greater mechanisms of transparency to restore confidence in the electoral process.” Indeed, the Carter Center report underscored that the referendum’s “numerous irregularities” mostly centered “around the lack of transparency of the CNE in its decision-making process and its ad hoc implementation of the recall referendum process.”

In its own separate report, the OAS observer mission recommended a third-party audit of the electoral registry, whose results would be made public. The CNE has contracted the Costa Rica-based Center for Electoral Assistance and Promotion (CAPEL), which is the electoral arm of the Inter-American Institute for Democracy and Human Rights, to conduct such an audit. Sumate and many in the opposition have questioned CAPEL’s independence and ability to conduct a thorough audit. CAPEL has said it expects to issue a final report before the end of November. Still, with less than a month before the legislative elections, it is all but technically impossible to implement significant changes by then—even if the audit results are presented and disseminated on schedule. Any real changes will take time, and, more importantly, political will.

WHAT WE ARE DOING

The Administration is working multi-laterally, engaging the OAS, the EU, and the Council of Europe, among others, to support Venezuelan civil society, speak out against abuses of democracy, and hold the Venezuelan government accountable to its commitments under the Inter-American Democratic Charter. We are likewise reaching out, at a bilateral level, to our partners in the Hemisphere and in Europe to do the same, and sensitizing them to the threat to regional stability posed by the Venezuelan government’s arms shopping spree and its support for radical political movements.

Within Venezuela, we are working to preserve political and civic space for increasingly at-risk groups. The Venezuelan business community, organized labor, the independent media, NGOs, and religious institutions, in particular, the Catholic Church, have a critical role to play in providing the checks and balances that government institutions are no longer able to provide. Establishing linkages between these groups and institutions and their U.S. and international counterparts will fortify their ability to perform their essential role. The work of the National Endowment for Democracy (NED) is especially important in helping foster these kinds of linkages.

The Administration is reaching out to international human rights and other NGOs to help create an international network to support and defend Venezuelan civil society. Our USAID program in Caracas supports local human rights NGOs,

judicial and penal watch-dog groups, press freedom activities and provides small, high-impact grants for programs that serve poor communities.

Our Embassy's public diplomacy outreach is a key part of our effort to highlight American values, our ties and affection for the Venezuelan people, and to communicate the Administration's positive hemispheric agenda. President Bush said it best during his stop in Brazil following the Summit of the Americas earlier this month. He said:

"Ensuring social justice for the Americas requires choosing between two competing visions: One offers a vision of hope. It is founded on representative government, integration into the world community, and faith in the transformative power of freedom; the other seeks to roll-back the democratic progress of the past two decades by playing to fear, pitting neighbor against neighbor, and blaming others for their own failures to provide for their people."

Mr. Chairman, this concludes my prepared remarks. Once again, I would like to thank you for the opportunity to meet with you today and I would be pleased to respond to your questions.

Mr. BURTON. Thank you very much. We appreciate that comprehensive statement. I made a lot of notes here, if I can read them and I would like to run through some of these questions that came up during your statement.

First of all, I would like to ask you a question that goes beyond the borders of Venezuela. Obviously this is a hearing about the problems within the confines of Venezuela, but I have been to a number of countries in Central and South America and talked to leaders down there about the problems and their concerns that emanate from Venezuela.

Have you had an opportunity, in your role as Assistant Secretary for Western Hemisphere, to talk to any of those leaders about their concerns about the possibility that support for Venezuela is trying to undermine their democracies?

Mr. SHANNON. We have had an opportunity in our regular consultations, in Central America and in the Caribbean and the Andes and elsewhere, to discuss the broad range of challenges that these countries face.

I would make a couple of points in response to your question. First, there is concern expressed at a variety of levels that on occasion, Venezuela will fish in troubled waters.

Several Members of the Committee have noted that Hugo Chavez is not the cause of Latin America's problems and they are correct and this is recognized within the region.

The different challenges that countries in the hemisphere face have a variety of causes. One of the causes actually has to do with the expectations that have been generated through the success of democracy in the region and the belief that democracy needs to deliver the benefits, needs to provide the goods to the people and the problem of institutional capacity in some of these countries.

In effect, because of the success we have had in promoting a democratic agenda, so many of the conflicts, whether they be social conflicts, economic or political conflicts, are now being channeled through democratic institutions and this was not true in the past.

In those countries that have weak institutions, weak political party structures and nascent civil societies, this has been a big challenge and in that environment the ability of a small amount of money linked to an organizational skill can have an impact and it is something that is worrisome to some countries.

But ultimately, as many people on this Committee have noted, the response to this really has to come in two forms. One of course is to resist interventionism in any shape, but the ultimate solution comes from the development of a positive agenda in response to that kind of interventionism.

I believe that the countries facing this challenge understand that. We understand it and that really is a central point of the President's policy in the region.

Mr. BURTON. I guess I can deduct from your statement, which was very eloquent, that yes there is concern.

Mr. SHANNON. There is concern.

Mr. BURTON. Thank you. At the Summit of the Americas and let me just ask one more question real quick, I talked to Condoleezza Rice and Ambassador Zoellick about having some dialogue with leaders of the Chavez government, because I always think that dialogue is good, especially when there is a strong disagreement and the kind of rhetoric gets a little bit out of control as I alluded to about some of the comments that Chavez made down there at the Summit of the Americas.

Has anybody had a chance to talk? I know Ambassador Brownfield down there has tried to talk with him on a number of occasion, our Ambassador, but has anybody like Secretary Zoellick or anybody had a chance to talk to the Foreign Minister of Venezuela to discuss some of the issues that we have been concerned about?

Mr. SHANNON. Not at this moment, sir. We, at the Department, of course are open to talking with other countries. That is our job. We are diplomats and we do believe that talking with other countries does indeed provide us an opportunity to deepen our understanding.

One of the problems that we face, however, in our effort to have a constructive outreach to Venezuela is indeed the very public comments of President Chavez attacking the United States and attacking the President.

What that effectively does is freeze Venezuela's diplomatic community and it freezes many of their ministers and puts them in a position in which they have to be very, very careful about being open to us in any way, largely because of the very vitriolic and personal attacks on the President and the Secretary of State.

Mr. BURTON. Let me just say that you heard my opening statement. I don't like what Chavez has said. When he starts talking about Che Guevara and furthering the goals of Che, I mean the hair on the back of my neck starts to stand up, because what he is talking about is a communist revolution that Castro was pushing for all of Latin America.

That just is the kind of rhetoric that is intolerable and some of the comments he has made about our Secretary of State and our President I think are just horrible.

But, I would just like to ask that the United States be viewed as reaching out as much as possible so that we can have a dialogue, if possible, with his government. That way if everything goes to hell nobody can say that we didn't do our best to find solutions to the problems.

I am not sure it is going to benefit anything. I am not sure it is going to work, but I think that one of the things and it is a tough thing for you because you are stepping into a very difficult situation, not only in Venezuela but in a lot of the areas down there, but I would urge that there be an attempt on our part to have a dialogue with them and if it doesn't work and if we continue to have the kind of rhetoric that comes out of Mr. Chavez's mouth, then of course the world will see that the United States went that extra step and then whatever has to be done has to be done.

But I want us to be the good guys and let his vitriolic rhetoric speak for itself. So I wish you would carry that message back.

Mr. SHANNON. I would be happy to do so, sir.

Mr. BURTON. I think it is important for our foreign policy that the world says, hey yes, the United States has done everything they can and this guy just doesn't get it. Okay?

At the Summit of the Americas, Venezuela and I am going to sum up here pretty quick because I know I have probably gone beyond my 5 minutes, but that is the Chairman's prerogative, but I will get through here in a quick second, at the Summit of the Americas, Venezuela indicated reservations about the Inter-American Democratic Charter principles.

Is Venezuela committed to the OAS charter and its full and effective implementation? What is Venezuela's stated alternative to representative democracy recognized in the Inter-American Democratic Charter?

In a trip Chavez made to Cuba he referred to the Cuban system as a revolutionary democracy, which is really a joke. But in any event, if you could just give us your view on whether or not they are committed to the OAS charter and working within that framework.

Mr. SHANNON. They are a signatory to the charter, so we assume they are committed to it and we believe that they need to be held to that charter.

When the charter was negotiated, of course, the major point of divide between Venezuela and the other countries around the negotiating table was how you describe democracy.

Thirty-three countries around the table wanted to describe democracy as representative and by representative they meant elected officials acting on behalf of constituents within a governmental context, defined by separation of powers and independent branches of government, with all of the freedoms that apply to a representative democracy.

The Venezuelans wanted to present a vision of participatory democracy, which they distinguish from representative democracy by indicating that effectively the people need to be consulted on a regular basis through referenda in order to legitimize the direction of government and address long-term problems of corruption.

There was openness around the negotiating table to the idea of participatory democracy in the sense that many countries in the region, ours included, at the state level have referenda, but the larger concern was that looking behind the idea of participatory democracy was an effort to effectively lay the groundwork for the beginning of an attack on some of the fundamental freedoms that we consider to be a vital part of representative democracy.

One of the points of my testimony today has been to underscore what we consider to be a degradation or a decline in important aspects of that fundamental freedom and also the hollowing out of institutions that are going to be vital to the long-term democratic governability of Venezuela.

Mr. BURTON. Do you intend to request a democracy review or formal report on Venezuela from the OAS?

Mr. SHANNON. That is a very good question and at this point, we do not have that intention, but it is certainly something that we would consider, especially as we move forward in determining—

Mr. BURTON. Might I suggest that that might give credence to some of the issues that we are raising about him is if the OAS would review their democratic institutions there and give a report to not only the United States, but to all the members of the OAS about what the heck is going on down there.

That might put some light on the whole issue and Mr. Chavez then you know would have to explain why those things are happening.

One more question and then I will yield to my colleague. For what overarching purposes or purpose is Chavez antagonizing the U.S. and our allies in the region? I just would like to have your opinion on that. Why do you think he is raising all that cain?

Mr. SHANNON. I believe there are several reasons for it. One, President Chavez has a different vision for the Americas than we do and a different vision than that expressed through the summit process.

He does not see the ultimate goal of hemispheric policy to be a united Americas. He sees South America and North America as distinct, politically, culturally and socially. He views the United States as a hegemonic power, which needs to be contained. He believes that by highlighting these differences with the United States, by highlighting his differences over key policy initiatives, not just with the United States but more largely within the summit process, the Free Trade Area of the Americas being one of them, he will have an opportunity to more sharply make an argument that South American integration is an important means to protect South America from North America and that that integration need not be economic, but should be social and political and cultural. That is one reason.

A second reason, sir, I believe is that the kind of political dynamic created in Venezuela is a profoundly negative dynamic. It is a dynamic based on confrontation and conflict and in order to sustain it over time, it requires an ever increasing search for enemies.

I believe that the anti-American rhetoric of the President is part of a larger effort to keep a constituency mobilized.

Mr. BURTON. Thank you very much.

Mr. Menendez.

Mr. MENENDEZ. Thank you, Mr. Chairman. Thank you, Mr. Secretary. Before I get to questions, I just do want to make a comment.

In some of the opening statements I heard, I heard the reference to the corruption in Cuba that created the rise of a revolution and that is true. It also created a rise of a dictatorship, a dictatorship that has existed for 46 years of unelected, one-man rule.

It is also a dictatorship that has the greatest corruption that we know in the Caribbean right now, that prostitutes its women and then ultimately denigrates the fundamental rights that we as Americans enjoy, to its people.

I hope that is not the course that the Venezuelans are on, because while there is certainly corruption in Venezuela, I hope that the course of events doesn't lead us to the same type of situation. Dictatorships, whether they are from the left or the right, in my view are anti-democratic and go against the very grain of what we want to see.

That is why I want to pick up where the Chairman left off with you, Mr. Secretary and I do want to talk about broader U.S. policy, but I won't do it today and I will look forward to the opportunity to meeting with you.

You were talking about division of representative democracy versus participatory democracy. You could have a referendum that basically says the people support criminalization of speaking out against the present administration. Would that not be true?

Mr. SHANNON. Of course, yes.

Mr. MENENDEZ. You could have a referendum that says that the press can be limited in its scope in terms of the criticisms that it can raise against any incumbent administration. Would that not be true?

Mr. SHANNON. It would be.

Mr. MENENDEZ. You could actually in essence, through a referendum, if you got that referendum passed, could in essence undermine the very essence of what we would generally consider, not only in the United States but in most of the free world, as the fundamental underpinnings of democracy. Would that not be true?

Mr. SHANNON. Correct.

Mr. MENENDEZ. Therefore, the referendum process, while under the guise of participatory democracy, has a great opportunity to undermine what all of us, regardless of where we live in this world, would want to have as fundamental basic human rights and that is a real concern, as is the fact that it seems to me that President Chavez has been pursuing stronger relationships with several countries that run against our own interests as a country.

That is often not unusual, but it is the nature of the relationships that is concerning such as Chavez's close relationship with Castro, he giving thousands of barrels of oil a day to Cuba.

He has increased arms sales with Russia, attempted to work with Iran for nuclear technology, has been pursuing increasingly close relationships with China, including joint ventures to share technology and launch satellites. He has said that he is going to give our United States-made aircraft, F-16's, to Cuba and to China, which would be in violation of the agreements under which they were given and a risk, potentially, to the national security of the United States. And there have been also reports that Chavez has been attempting to influence elections in both Nicaragua and Bolivia and assisting Marxist guerrillas in Colombia.

That is a lot that is not just simply about vitriolic statements, but go to the very grain of undermining democracy in various parts of the hemisphere.

Can you respond to some of those allegations?

Mr. SHANNON. It is quite a list, sir and it is a disturbing list. I think everything you said is a statement of fact.

As you note, it is reflective of what is happening inside of Venezuela. In other words, as confrontation and conflict become the mode of political discourse inside of Venezuela, confrontation and conflict become the means by which Venezuela engages with the world.

It is one of the reasons why Venezuela is attracted to countries like Iran, to Iraq and to Saddam Hussein, to Fidel Castro and it is one of the reasons why they prefer provocative statements in their effort to describe their relationship with the United States.

Mr. MENENDEZ. On October 3, Venezuela announced that it was starting research into "peaceful uses of nuclear energy" and indicated it was interested in working with Iran to achieve those goals.

A week later the Venezuelan Minister of Energy denied that Venezuela was developing a nuclear reactor, but admitted that it was working with both Argentina and Brazil to develop scientific and technological knowledge of nuclear material.

The Argentine newspaper, *Clarín*, reported that PDSVA, the Venezuelan state run oil company, had asked the Argentine technology network, RTA, to develop a medium-sized nuclear reactor to help process fuel on the Orinoco tar belt.

Venezuela is the fourth major supplier of oil to the United States. It has huge reserves. What does it need nuclear technology for?

Mr. SHANNON. I am no expert on nuclear technology, sir, or on the petroleum industry, but it is my understanding that the effort to extract petroleum, especially from the heavy tar that Venezuela has in some areas, requires an enormous amount of energy. Often-times natural gas is used for that.

One could imagine a nuclear power plant providing that kind of energy, but from our point of view, Venezuela has plenty of natural gas to manage that process and more importantly, the relationship that Venezuela has with countries like Iran would make this kind of arrangement worrisome.

Mr. MENENDEZ. You know I am concerned, especially when we deal with Iran, who the world has real concerns about in terms of nuclear technology.

When President Chavez recently called the United States—not President Bush but the United States—"the greatest threat to life on earth." The greatest threat to life on earth.

That is the type of statement that goes beyond his views of the President of the United States. It goes to a country as a people.

I am concerned why we would even consider seeking nuclear technology in a country that has, like Iran, such huge oil reserves.

Finally, what about the issues of transferring United States technology to Cuba and China?

Mr. SHANNON. I know the Chinese have made clear that they are not interested in our F-16's. Obviously this would violate the terms of the agreement by which the F-16's were transferred to Venezuela and we would act very vigorously to prevent that kind of transfer.

Mr. MENENDEZ. Thank you, Mr. Chairman.

Mr. BURTON. Thank you..

Mr. Weller?

Mr. WELLER. Thank you, Mr. Chairman.

Mr. Shannon, welcome. Good to have you here.

Mr. SHANNON. Thank you.

Mr. WELLER. First official appearance as Assistant Secretary and we hope to see you many, many times and we look forward to working with you.

Clearly the greatest threat to democracy in hemisphere is narcotrafficking and the terrorism that it sponsors. Many of us are concerned when it is discovered that the foreign minister of the FARC, one of the leading narcotrafficking terrorist groups in the world, is residing in Caracas, the capital of Venezuela, with Venezuelan Government issued official identification documents.

Many of us are concerned when the Venezuelan Government steps away from previous agreements regarding narcotrafficking stops cooperating with the Drug Enforcement Administration, dismisses the head of the counter narcotics agency because of perceived cooperation with the United States in joint counter narcotics efforts.

Also you know we have concerns regarding President Chavez's relationship with the leadership in Iran. Iran has been identified around the world as a state sponsor of terrorism. President Chavez has made repeated visits to Iran.

Hezbollah, an Iranian sponsored terrorist group, has been suggested to have activities on Margarita Island as a fundraising base through contraband and intellectual piracy as a fundraising source.

President Chavez has made statements in support of the Iranian nuclear program and again the Venezuelan Ambassador to Iran stated that the principles of the Iranian Islamic revolution were basically the principles of the Bolivarian revolution.

So clearly there are signals coming out of Venezuela that caused a lot of us concern for the future of democracy, but also we question why the Venezuelan Government would seek such supportive ties to Iran.

Recently the President of Iran made a statement calling for the elimination of Israel and while governments around the world expressed outraged and condemnation, there was silence in Venezuela and from its President regarding elimination of a democratic nation of good standing in the Mid East.

I was wondering, Mr. Secretary, what your thoughts are about the ties between the government of Hugo Chavez and Iran and should we have concern?

Mr. SHANNON. From my point of view, the relationship is a worrisome one, because obviously it goes beyond just a state-to-state relationship.

It is reflective of an affinity I believe that the President has for Iran, because he perceives it as a fellow revolutionary in a larger world effort, sees it as a country which has stood fast against the United States and against the rest of the world, not only in terms of nuclear issues but also in terms of human rights issues and that there is a degree of solidarity there that goes beyond normal state-to-state relationships.

Mr. WELLER. President Chavez has welcomed a large number of Cuban security and intelligence personnel into his country. Have we seen any Iranian security or intelligence presence in Venezuela?

Mr. SHANNON. That is a very good question. There is an Iranian Embassy in Caracas, but I am afraid in this venue I cannot go into greater detail in terms of what intelligence presence there might be.

Mr. WELLER. President Chavez has moved forward and established a one and a half million person military reserve under his personal command and the Inter-American Commission on Human Rights has expressed concern regarding President Chavez's policies of militarizing many public institutions in Venezuela.

We have seen an increasing number of current and former military personnel placed in decisionmaking positions, in various institutions in Venezuela.

What have you seen, as a result of this, regarding the day-to-day activities of the Venezuelan Government as well as the impact on the day-to-day activities of Venezuelan citizens with the increased militarization of the Venezuelan Government?

Mr. SHANNON. I would say, sir, that the increased militarization is actually indicative of a larger problem that President Chavez faces, which is one of governability.

It is very hard to govern a modern state from a consolidated center. What I mean by that effectively is that modern states require power to be devolved or decentralized and trying to run a modern state from a single power point requires organizational structures and loyalties that typically don't exist within democratic systems.

For that reason, he has found over time a need to rely either on Cuban intelligence or social service personnel and military personnel to manage aspects of his bureaucracy that typically would fall to civil authorities and I think this is a larger problem that Venezuela is going to have to deal with over time, which is as President Chavez consolidates power, his ability to govern actually lessens over time.

Mr. WELLER. With this one and a half million essentially personnel militia for President Chavez, is that a potential tool for suppression and intimidation of the people of Venezuela on a neighborhood and barrio basis?

Mr. SHANNON. It could be. This militia has several purposes. Number one, to act as a popular counterweight to the military and a check on the military.

Secondly, it is part of a larger effort by President Chavez to finally grind away and break down an historic relationship between the U.S. Armed Forces and Venezuelan Armed Forces and to create a militia that is capable of responding to any type event inside of Venezuela, including the growing apocalyptic and dark visions that President Chavez sometimes expresses about invasion.

Mr. WELLER. Thank you.

Mr. BURTON. Thank you, Mr. Weller.

I would just like to ask if we could get, at some point, an intelligence briefing. The question that Congressman Weller just asked, Vice Chairman Weller asked about other potential military personnel, besides the Cubans there, we would like to talk to you about and not just Iranians.

Mr. SHANNON. Sure.

Mr. BURTON. So if we could talk to you about a closed briefing on that we would appreciate it.

Mr. SHANNON. Happily.

Mr. BURTON. Mr. Meeks?

Mr. MEEKS. Speaking of intelligence, is there any weapons of mass destruction there?

Mr. SHANNON. In Venezuela?

Mr. MEEKS. Yes.

Mr. SHANNON. Not that I am aware of.

Mr. MEEKS. Intelligence. Speaking of intelligence, before we go there, let me just ask you, because it is your first time before the Committee and I don't know whether or not you have any position, but clearly I think you would agree that the relationship between the United States and Venezuela is not good.

What, if anything, do you think that you will be proposing to the Administration to change what our policies are in Venezuela or other parts of Latin America for that matter?

What would you suggest to be different? As indicated by every poll, most people in Latin America all of them have a bad opinion of the United States of America and President Bush in particular.

So I hope that if you are going to be of any service to President Bush that you are going to have to do something to change his image, not only in Venezuela, but all of Latin America. Do you have any ideas on that?

Mr. SHANNON. Yes. Thank you very much. Sir, as I began my testimony, you were not here, but I did single out those Members of the Subcommittee and I meant yourself, sir and also Mr. Delahunt, who have spent time in Venezuela and made a special effort to engage with the Venezuelan Government and especially the Venezuelan Congress.

I had the pleasure of working with Mr. Delahunt and former Representative Cass Ballenger to help bring to birth the Boston Group and you know we very much value that level of engagement and we have always valued the activities that you have undertaken in Venezuela.

In regard to how we could begin to improve the relationship with Venezuela, I would identify three areas where we could work more closely, if the Venezuelans wanted to work with us.

The first is counter narcotics cooperation. As you are aware, Venezuela was decertified recently because of actions that it has taken, which we believed compromised its ability to cooperate with us in a meaningful way on counter narcotics operations. We are currently in discussions with the Venezuelan Government trying to determine how we can get that relationship back on track. It is an important relationship for us, because we have found as the Colombian Air Bridge Denial program is successful and as the Brazil Air Bridge Denial program is successful, more and more cocaine trafficked out of Colombia or through the northern part of Brazil actually flies into Venezuela and then is shipped out of Venezuela or flowing out of Venezuela and the air tracks that we get from JATF East and from U.S. Southern Command are stark in how they describe the flow of illegal narcotics out of the Andes through Venezuela.

So from our point of view, having a productive counter drug relationship with Venezuela is vital. So we are quite open to finding ways to restore that relationship.

Mr. MEEKS. But is that going to change the opinion of the Venezuelan people and many Latin Americans as reference to their impressions as to George Bush and this Administration? Is that kind of an agreement going to make a difference to them as far as improving that kind of relationship?

Mr. SHANNON. I had understood your question in two parts, the first being how we could improve our relationship with Venezuela and the second being how we could improve a larger popular understanding of President Bush and the United States.

Just very quickly, I also believe that on the counterterrorism front and on the energy front there are historic relationships that could be revived and could serve as a basis for increased dialogue with Venezuela.

In terms of the image of the United States, I believe in Venezuela. I know many Venezuelans. I would argue that the image in Venezuela of the United States is relatively strong.

Where it has run into problems is in what I noted earlier about the level of political polarization. That polarization is so intense that it is like a political black hole that sucks everything into it and how Venezuelans perceive their relationship with the United States is affected by that and that kind of brings—

Mr. MEEKS. But Mr. Secretary, let me just say this. Could it not be a problem with this Administration, when in fact you had a democratically-elected government and there was a coup attempt? Talk about silence? We were silent.

Could it not be you know when we talk rhetoric also, I mean someone has made the question of the statement that he was, he being President Chavez, was with the Saddam Hussein and Iraqi Government, when in fact if I recall correctly at the time when most of the atrocities were taking place, we were with the Iraqi Government and Saddam Hussein and we don't talk about that?

Could it be that at the time when we are talking about packing courts in Venezuela we have a President here who is trying to pack courts in the United States?

Could it be the fact that when you talk about elections, you could go back to 2000 when every vote was not counted and you talk about elections in Venezuela?

Could it be that maybe sometimes we talk and we are hypocritical and we say, do as we say, but don't do as we do? Could that be causing a problem with the people in Latin America that they are not watching what we are saying? They are watching what we are doing and if we do things differently, that that would change the relationship with the people of Latin America?

Or could it be that we don't care the fact that there is poverty, people are hungry, there is lack of education, there is lack of health care, we don't care? We don't talk about that.

That has been going on for awhile, but anytime that something is happening where people begin to have better health care, become more literate, become more respectful of themselves, then we have a problem with that?

If in fact we made a difference in those kinds of policies, showing that we truly care for the people of Latin America, of Venezuela, that then maybe the image of the United States and this Administration would be a little bit different.

Could it be that if we are not hypocritical, could it be if we were just a little truthful that that could make a tremendous difference in our relationships in Latin America and in particular in Venezuela?

Mr. BURTON. Thank you, Mr. Meeks. Your time has expired. You can respond if you would like.

Mr. SHANNON. I would just say, sir, that sincerity is always important in relationships between peoples. I obviously would disagree with some of the comparisons you drew between Venezuela and the United States.

However, I would say in the larger policy in the region you know our commitment, which is a commitment that was shaped at the Quebec City Summit, to democracy and economic development and with economic development being driven through free markets and economic integration. Part of the larger vision of development in the region that the President has expressed are exactly the things you talk about.

It is education. It is health care and it is providing people the means and the resources they need to take control of their destinies and to be a meaningful participants in an economy.

In that regard, our focus in the region has been about that and in fact, if you look at how we have used our official development assistance in the region, if you look at the additional funds that have been brought to bear under the emergency plan for AIDS and the efforts to attack malaria, it is significant and it is considerable.

Again, if you look at polling data in the region, especially that coming out of Latinobarometro, what you see is that the more engaged the United States is in a country, the more favorable the opinion is of the United States and the less engaged the United States is, the less favorable. I think what that underscores is that in our diplomacy and in our development programs we need to be more engaged.

Mr. BURTON. Mr. Delahunt.

Mr. DELAHUNT. I think that Mr. Payne is before me.

Mr. BURTON. Okay. Mr. Payne. I would try to do it in order of liable, but Mr. Payne, go ahead.

Mr. PAYNE. Thank you very much. Thank you, Mr. Delahunt.

There was a comment made by the Chairman in his statement that 29 countries in Latin America were in support of moving forward on negotiations of the free trade, areas of the American FTAA and it was not necessarily saying that they endorsed it. It was just that they wanted to continue to move forward, however noted that only five countries opposed moving forward.

I just might draw to the attention of the Chairman that the only five countries happen to be Venezuela, Brazil, Argentina, Paraguay and Uruguay and if you take a look at those countries who opposed it, you will find that probably 80 percent of the population, the vast majority of the land mass in South America happens to be encompassed in those five countries.

So even though 29 countries said let us go to the next step, I think that it is very clear that an overwhelming majority of the countries where the population resides happens to be opposed to it.

The world is moving into world organizations and so forth. However, the smaller countries wonder how are they going to make it in these organizations.

You take Dominica. Dominica had a Lomay treaties with the British Government. Lomay was Lomay II and done in Africa where the former British colony said that we will give preferences to our former colonies. We will try to help them out. We will give them a hand up.

So Dominica, which is very dependent on bananas, their bananas are smaller, their bananas were not as pretty as Chiquita banana, it could not really compete because of the small farmers in Dominica, but that was the largest income producer in the country.

WTO, United States, you know Mr. Kamptor went and put a challenge into poor Dominica saying that we don't grow bananas in the United States, but Chiquita banana being a big U.S. firm said that Chiquita banana should.

That poor Dominica and some of the other countries should not have any more. The British said, we don't mind paying a couple of dollars more, you know a few cents more per banana so that we can keep this one commodity country alive, but we went in and now Dominica will have to lose the banana trade.

Now the big trade is drugs that are moving in, because there is virtually nothing else to do. So we are weakening our war on drugs, our third border initiative that we started, saying that the Caribbean countries are our third border. They are the countries who support the United States the most. They are English speaking countries.

There are countries, Jamaica and Trinidad and others that supply us with our nurses and many of our intellectuals that come to the United States, but our policies have hurt those poor fragile Caribbean states.

It is not surprising that in Latin America there is a question about how do we benefit? How do we, the small countries and the countries of Latin America benefit? I think we have to do a better job with this whole world trade and free trade.

I have opposed all of them. I have opposed NAFTA. I opposed CAFTA. I opposed this FTAA, because until we stop foreign subsidies, where there is over \$300 billion subsidized between the EU and the U.S. and the G-8, where countries, rural communities in Africa where 80 percent of the people live in rural communities cannot compete for agriculture, cotton or you name it and so these world organizations are absolutely devastating the ability of these poor, fragile countries to exist.

I think there has to be a better way. I am happy that the United States is strong in some areas. However, there has got to be some way that there is a fair kind of a playing field and I know you are just new in this area and you can see that there is definitely a strong difference of opinion on our Committee.

We all want to see the United States prosper and move forward. We all want to see a better policy of the United States and Latin America, because we believe there has been no policy at all.

Other than Plan Colombia, there has been virtually no financial assistance and with Article 98, the way that we are treating our countries, our friends, Jamaica and countries that will not sign Article 98 that we say you have got to sign Article 98 or we are going to cut off aid.

My question quickly is: Do you think that NED needs to review its funding policies that IRI did? Much of the funding was not necessarily full NED and protection of NED, but it was done by the USAID.

Have you looked at that and to see whether there could be a way to make sure that the government and I am for democracy, I am a big NED fan, but to see if they can keep it from looking like it is a U.S. opposition party to the government?

Mr. BURTON. Mr. Payne's time has expired. You may respond, sir.

Mr. SHANNON. Thank you very much. I can't speak for NED or IRI, since they are independent organizations. However, it is my understanding that they regularly review their funding practices to be certain that they do fund organizations that are promoting democracy as opposed to participating in directly partisan politics.

My own belief, sir, in tracking the role that NED and both IRI and NDI have played in Venezuela is it has been a very positive role.

The Venezuelans need this kind of engagement. They need it not only from NED as an institution, but also in a bipartisan way from IRI and NDI.

I actually would be in favor of increased NED engagement and increased IRI and increased NDI engagement in Venezuela and elsewhere in the hemisphere.

Mr. BURTON. Thank you, Mr. Secretary.

Mr. Delahunt.

Mr. DELAHUNT. You know I undoubtedly believe, and I read your statement quite carefully this morning, single party dominance in any government tends to eliminate checks and balances that are really necessary. Some of us on this side of the aisle understand that quite well and we have made that point again and again and again.

Let me say this. I think that Hugo Chavez needs an opposition. I believe and I know that he understands that concept, but it has to be an opposition that is not discredited, is not tainted by the past, so to speak.

I respect that, but to move on to other observations that you made, I think you are right that small, not small but not as a consequence such as working together in terms of drug interdiction and those issues is important.

I understand that there has been some progress made, is that correct?

Mr. SHANNON. Slowly, sir, but there is still a ways to go.

Mr. DELAHUNT. Then let us continue that. You spoke earlier about Iran and it is true that we all share concerns about the design of Iran. I think we have to understand that Venezuela is part of OPEC, but as you heard me in my opening statement, this inconsistency that sometimes rears its very ugly head.

This past week we had Ahmed Chalabi visiting with the Vice President and yet reports in our own media indicate that Mr. Chalibe was disseminating intelligence that put military personnel, American military personnel at risk in Iraq.

He has been identified as close to the Iranian leadership and yet for some reason he has access to the Vice President. I understand he is the Deputy Prime Minister.

In your statement you indicated that the Venezuelan Government is backpedaling on expanding economic opportunity for their people and yet that same poll we both alluded to indicates that in Venezuela the Venezuelans tend to be far more optimistic about the direction that their country is heading in, in economic terms, with the single exception of two.

You talk about rejecting the opportunities of globalization. I don't want to reject the opportunities of globalization, but I do want to discuss and debate the consequences of globalization.

So that these are legitimate concerns that are shared by elected Members of Congress of the United States, not just Hugo Chavez.

You know we had a vote on CAFTA here. Do you know what the results were, Mr. Shannon?

Mr. SHANNON. I watched it, sir.

Mr. DELAHUNT. What was the final margin of victory?

Mr. SHANNON. It depends on how you are counting. It is either one or two.

Mr. DELAHUNT. Right. So these are good, healthy debates. Debates that we should be having with Hugo Chavez and others. This engagement, I call it an engagement of ideas, I think that is really important and I would encourage that.

I pick up on what the Chairman said about utilizing the OAS to grade democracy in Venezuela, but I would expand that. I would like the OAS, I think it would energize that particular multilateral institution, to grade every democracy in the hemisphere.

That could be a very interesting experience for all of us, because some of us have concerns and I know they are shared by Members on this side, including my dear friend and Ranking Member about democracy in this institution. We have got to be careful about this.

In any event, do I have a question for you? No, I don't other than simply this. I would respectfully request that we reenergize the parliamentary, the Congress-to-Congress relationship.

To take the group of all of us, I know I should be speaking for Mr. Meeks, deal with our counterparts in Venezuela and attempt to use that as a mechanism for dialogue and understanding.

I think it is very, very useful and I will encourage my good friend from Indiana and the Chairman of the Subcommittee to fully participate that. We can go down to Venezuela. It is time they hosted it and you know have the kind of dialogue that I know that he wants and I think is in the best interest of all of us.

One other final comment. Maybe it is time that, whether it is President Bush, Hugo Chavez and everyone in the Administration declare a moratorium, moratorium on rhetoric. I think that could benefit our respective peoples.

Mr. BURTON. Thank you, Mr. Delahunt. I hope that Mr. Chavez, if he is watching, will get that last part as well.

Ms. Lee.

Ms. LEE. Thank you, Mr. Chairman. Congratulations, Mr. Secretary.

Mr. SHANNON. Thank you.

Ms. LEE. There are of course spoken and unspoken rumors that the United States has been pressuring allies to ostracize Venezuela through a variety of mechanisms.

I am trying to really, quite frankly, understand our policy toward Venezuela. It appears that central to the United States' foreign policy, especially in the Western Hemisphere, is a country's ties with Cuba.

With all due respect to my colleague from New Jersey, Mr. Menendez, that is the basis of our foreign policy, yet and maybe this may be naive on my part, but I always thought that sovereign nations had a right to self-determination and also had a right to determine their own foreign policy.

Many of us don't agree with many of China's human rights policies and the lack of democracy in China, yet the United States has preferred trade relations with China and I don't see us going around bluffing and blackmailing other countries as the basis for the hostility or our hostility to another country, based on China policy.

We all know that President Chavez his support comes from marginalized, poor communities, minority communities, really quite frankly people who look like me. That is where his support comes.

It was reported that 71 percent of eligible voters, Venezuelans came to the polls. Of course in our election in 2004 I guess it was 54 percent.

Also they used electronic voting machines with a paper trail, which many of us think we need to have here. They use that for accuracy and the Carter Center has and others have certified the election results.

History has demonstrated time and time again that the United States engages in covert actions to set up conditions for regime changes, assassinations and invasions. That is a documented historical fact.

You probably disagree, but look at what really happened in Grenada and you look at what most recently has happened in Haiti. So my question to you is: Mr. Secretary, in your position as a diplomat as Assistant Secretary, will you emphasize diplomacy?

Will you defend the democratic process, regardless of the outcome, whether or not the Bush Administration likes it or not? Will you oppose any efforts at covert actions and assassinations and an invasion, if in fact that is being discussed and we do not know if it is or not?

But I think as a diplomat you know your obligations and your duties internally I hope would be to aggressively defend diplomacy and I would like to know if that is exactly what you intend to do in your new job.

Mr. SHANNON. Thank you very much. I can answer affirmatively. I am a diplomat and the diplomatic action of the United States is an important and powerful arm of our engagement with the world and especially our engagement in the Western Hemisphere. Working with our partners in the region, what we have been able to ac-

comply through the summit process is a common agenda, an ambitious agenda for the hemisphere and an agenda that is only going to be successful if we are able to cooperate and collaborate in pursuit of that agenda.

As I have noted, that agenda is all about democracy and it is all about development. We are prepared to engage, at all levels, to promote that. That is the reason the President went to Mar del Plata and it is the reason why we continue our outreach throughout the hemisphere.

You can be sure, ma'am, that within this hemisphere we are committed to democracy. We are not committed to picking winners. We are committed to respecting the popular will of peoples as expressed through elections and through their democratic institutions and constitutional processes, because we believe at the end of the day that what is going to define the Americas is not whether it is leftist or rightist or centrist, but whether it is democratic and whether it is committed to the kind of development that this region needs to provide the people of the region the resources and the benefits to take control of their own destinies and live a life of human dignity.

Ms. LEE. Thank you, Mr. Secretary, because I think it is important for the Venezuelan Government, the Venezuelans, for Americans to hear you say that, because quite frankly we do hear assassination threats and we do hear of covert activities being planned.

We do not know if they are true or not, but I think it is very important to know that our top diplomat will be definitely opposed to such actions, because again I still am not clear on what our policy is toward Venezuela, but I am sure that there are those in the CIA and in the military who are trying to fight for just the opposite of what you just said. Thank you, Mr. Secretary.

Mr. BURTON. Gentledady's time has expired.

Mr. Secretary, you have had your test under fire the first time before our Committee and I hope you have found it, if not easy work, at least entertaining.

Mr. SHANNON. Sir, it will help keep me young.

Mr. BURTON. It will help keep you young. I look forward to having a close working relationship with you and I hope that you will take to heart some of the suggestions that we have made. You are excused. Thank you very much. Your testimony was very good.

Mr. SHANNON. Thank you very much, sir.

Mr. BURTON. On our next panel is Dr. Ana Julia Jatar. She is a member of the Executive Committee and Director of the Political Discrimination Project at Súmate.

She was a visiting scholar at the David Rockefeller Center for Latin American studies at Harvard University and a Senior Fellow at the Inter-American Dialogue in Washington, D.C.

Ms. Jatar has researched and written extensively on economic and social affairs in Venezuela and Cuba and we appreciate you being here very much. Thank you.

Joseph McSpedon is a Senior Program Manager at Freedom House, with a responsibility for the Mexico, Venezuela community of democracies and exchange programs.

Prior to working at Freedom House, Mr. McSpedon managed academic exchange programs for the state University of New York and

Santiago, Chile. Mr. McSpedon has traveled extensively in Latin America.

John Walsh is a Senior Associate at the Washington Office on Latin America, also known as WOLA. WOLA's key concerns in the Andes relate to strengthening the rule of law, promoting respect for human rights and bolstering democratic institution.

Mr. Walsh holds a master's degree in public policy from the Johns Hopkins University and we appreciate you being so patient while we had all this questioning and dialogue. Would you please rise so I can swear you in?

[Witnesses sworn.]

Mr. BURTON. We will start with you, Ms. Jatar and if we could try to hold your comments to 5 minutes so we could get the questions we would really appreciate it.

**TESTIMONY OF MS. ANA JULIA JATAR, EXECUTIVE
COMMITTEE, SÚMATE**

Ms. JATAR. Absolutely. Thank you, Mr. Chairman. I would like to start by saying that I am very glad to be here, but I would be happier if my colleagues from Súmate were here with me, but as it has been said, they are facing charges for conspiracy to destroy the Venezuelan republican system.

Some of them had prohibition to leave the country. I understand that some of them also got that prohibition lifted yesterday, but they will have a trial December 6.

My colleagues are just another example of the political persecution suffered by hundreds of Venezuelans. There are more than 200 political prisoners in Venezuela today, but many more are affected by rampant political discrimination.

Political discrimination on the internet, political discrimination of the 21st century. More than 3.4 million citizens are politically segregated today for having signed a petition for a Presidential recall referendum in 2003. We at Súmate are writing a book on this issue.

Why are they being discriminated? Because the identity of those who signed was delivered by the CME, the electoral council, to a member of the National Assembly. Congressman Tascon, from President's political party and then Tascon proceeded to put it in an easy to search database and post it on his Web site.

This list is today used by government officials to fire public sector workers, deny employment and contracts and withhold public services.

On April this year, President Chavez was forced to acknowledge the existence and the ill use of this list and he declare on TV that it should be buried, but the Tascon list unfortunately, and the intent to intimidate has not been buried at all.

As a matter of fact, the list has been enriched with additional data on electoral behavior, on participation in government sponsored programs. Now the regime has the new and improved Maisanta list and with it, in a big brother fashion, is perpetrating an environment of fear and intimidation that is undermining independent political expression.

In Venezuela today, political discrimination is a state policy. The powers and the powers of the General Public Prosecutor have been used to enforce this policy.

Since his appointment on December 2000, General Public Prosecutor, formerly appointed by President Chavez as Vice President for Venezuela, the Prosecutor has initiated more than 400 legal proceedings against opposition leaders, where none has been initiated by him against any senior member of the government.

Instead his office has shielded the administration from multiple well-documented accusations of human rights violations, abuse of power and corruption.

The General Public Prosecutor has been very busy building arbitrary cases against perceived political threats. Among others, he has charged Carlos Ayala-Corao, former President of the Inter-American Human Rights Commission, for conspiracy.

Yes, my country has become a place with less freedom and also fewer check and balances. The National Assembly has made it a habit to change through simple majority rules that according to the constitution require two-third majority and for example in this fashion has reformed the Supreme Court rule, increasing the number of justices and appointing them, thus packing the court unconstitutionally with government supporters.

This Supreme Court and I want to make a note of this, has ignored human rights decisions taken by supranational authorities and in our opinion, this is preparing the ground for non-recognition of decisions by international tribunals or organizations.

The combination of changes to the legal expression of opinion were those made to the penal code have been severely criticized by organizations such as Inter-American Commission of Human Rights, who has expressed its concern, plus granting many journalists precautionary protection measures, which I have to say most of them have been ignored by the government.

In Venezuela today, the voice of political dissent has few possibilities to express itself, while the President has been overflowing airwaves with his message.

During the January–October period, the President was able to transmit 20,944,000 minutes, while the democratic minorities transmitted only 825, a ratio of 25,000 to 1.

In Venezuela, private phone conversations between citizens or even private conversations between residents of other countries can be aired on state owned TV stations.

Venezuela has used its immense oil windfall to put in place the most sophisticated electronic voting and identification system in the world, but I can state categorically that this has not translated into greater transparency nor efficiency or increased trust.

As a matter of fact, recent polls from SECA say that 69 percent of Venezuelans do not trust the CNE. A Felix Senas poll says that 61 percent doesn't trust the CNE and InterLassus, a last leader, is 59 percent.

Mr. BURTON. Ms. Jatar, can you sum up, please?

Ms. JATAR. Yes, I am. I am finishing.

Mr. BURTON. Okay.

Ms. JATAR. Recent polls indicate that the right to vote secretly can no longer be guaranteed. The combination of electronic voting

machines with an electronic fingerprinting system, which identifies the voter, in situ right before voting opens up the possibility of identifying a person's votes and Súmate is fighting over the issue that paper trails should be used and not the way it is used now, that less than 1 percent of the boxes are being opened.

I could go on for hours, but my time has run out. I did not come to this prestigious audience to ask for help, nor did I come to persuade the U.S. Congress of the need to interfere in our destiny, but I do come today to make you reflect about our current challenges and opportunities.

Fish don't know they are in water. They take water for granted. Venezuelans used to take freedom for granted. Today those institutional foundations have been taken away. History is full of lessons of what happens to countries where governments are not constrained by laws.

Venezuela is becoming one more exhibit in that gruesome also. Thank you very much.

[The prepared statement of Ms. Jatar follows:]

PREPARED STATEMENT OF MS. ANA JULIA JATAR, EXECUTIVE COMMITTEE, SÚMATE

I would like to start by saying that I should not be here. Alejandro Plaz and Maria Corina Machado, the president and the vice-president of SUMATE should be addressing this prestigious audience instead of me. But unfortunately for SUMATE and shamefully for Venezuela, both of them have been accused of "conspiracy to destroy the Venezuelan Republican system". Their trial is set to start on December 6th, 2005 and last week, when they were preparing their trip to attend your invitation, the judge in charge of the case, violating once more the principles of due process, issued them a prohibition to leave the country. The proof held by the prosecutors to initiate this political trial against my colleagues is the \$31,400 donation from the National Endowment for Democracy (NED) to SUMATE to develop and teach courses on democratic principles and citizen rights. Alejandro and Maria Corina are just another example of the political persecution suffered by hundreds of Venezuelans. Today there are more than 200 political prisoners in my country while a much larger number is being accused with the sole purpose of preventing them from dedicating their full attention to their political rights. Leaders such as recently elected mayors, former governors, former Supreme Court justices, journalists, military officers, trade union leaders and members of NGOs defending democratic principles and human rights have to divide their time and energies between what they want to do to improve their country and what they need to do to stay out of arbitrary imprisonment.

In Venezuela there is not only persecution but also political discrimination. Today more than 3,450,000 citizens are politically segregated for having signed a petition for a Presidential Recall Referendum in 2003. The list of those who signed was put into an easily searchable dataset and published by a member of the government party, congressman Tascón on his website. Those who are on that list have become second class citizens, many losing their public-sector jobs or restricted from benefiting from public services. Over a year after the list was published, President Chavez was forced to respond to public opinion pressures against this form of discrimination and in April 2005 he acknowledged the problem and stated on national TV: "Lets bury the Tascón List! . . . The famous list perhaps had a significant role at a specific moment, but that is over". But the infamous Tascón list has not been buried. Instead, it has been enriched with additional data on electoral behavior and participation in government-sponsored programs and has become the Maisanta list. With it, Big Brother is creating an environment of fear and intimidation against independent political expression.

In fact, in Venezuela today, political discrimination is the policy of the State. President Chavez said a year ago in November 2004 in Fuerte Tiuna the Caracas military garrison: "In this new phase, he who is with me, is with me; and he who is not with me, is against me . . . Today I announce the offensive to impede that [the opposition] reorganize. Speaking in military terms, if they try to reorganize we shall attack and harass them without rest." Yes, Venezuelans are afraid of the presidential wrath.

Also, the powers of the General Public Prosecutor have been used as a weapon against the political opposition and as a shield against corruption. Since his appointment on December 2000 Isaías Rodríguez, former Vice President of Venezuela appointed by President Chavez, more than 400 legal proceedings have been initiated against political opposition leaders. Nevertheless, very few have been initiated by the General Public Prosecutor against any supporter or member of the government, in spite of massive evidence of corruption and illegal handling of public money. Among many others, the case of the missing 4 billion dollars of the Oil Stabilization Fund in 2002; or the missing 3.5 billion dollars of oil revenues that last year never made it into the country, thus violating the Central Bank law which specifically required that all dollar-income coming from the oil company, PDVSA, be sold to the Venezuelan Central Bank. Instead, the General Public Prosecutor has been busy building arbitrary cases against perceived political threats. Among others, his office opened, on April 7, 2005, a criminal prosecution—for “conspiracy” on the bases of hearsay and press articles—against Carlos Ayala-Corao, former president of the Inter-American Human Rights Commission. Also, it has recently pressed charges against a major opposition journalist—Ibéyise Pacheco—who is standing as a candidate for the National Assembly, for “false testimony against the Public Prosecutor”.

Yes, Venezuela has become a country with less freedom, fewer checks and balances and less democracy. The National Assembly has made it a habit to change by simple majority rules that according to the Constitution require a 2/3 majority. In order to do so, the Assembly changed in 7 occasions—also by simple majority—its rules for internal debate. It has thus reformed the Supreme Court Law, increasing the number of justices and unconstitutionally packing it with its own supporters. It has changed the Penal Code, making it a crime to criticize the President and other public officials even in private. It has changed the Law that regulates the use of the airwaves, limiting freedom of expression. It has ignored Human Rights decisions taken by supranational authorities, thus preparing the ground for non-recognition of decisions by international tribunals or organizations. Just a few days ago the Supreme Court authorized an electoral rule that would undo the constitutional mandated system of proportional representation with a system that would give the Government an unwarranted advantage in the way votes are transformed into seats.

In Venezuela today freedom of expression has been terribly suppressed by new legislation which was approved by a simple majority vote. The Law of Social Responsibility of the Radio and Television introduced rules internationally known as “contempt laws”. General Uson, President Chavez’s own Finance Minister, was accused of contempt of the Armed Forces and sentenced to a 6-year prison term for condemning on TV the use of a flamethrower in an incident in which a number of soldiers lost their lives in a military prison. The combination of changes to the legal expression of opinion with those made to the Penal Code have been severely criticized by organizations such as the Inter American Commission of Human Rights, Reporters without Frontiers, Human Rights Watch (HRW), Inter American Press Society (SIP) and the International Association of Broadcasting Radio (AIR). These organizations share the view that the new laws create an unbearable “strait jacket” on Freedom of Speech and the Press, criminalizing political dissent and using the criminal law as an intimidating and threatening weapon against political minorities. As a result, in Venezuela today there are numerous journalist prosecuted, persecuted and harassed by the Public Prosecutor and the Courts. The Inter-American Human Rights Commission has expressed its concern and many journalists have been granted precautionary protection measures.

In Venezuela today the voice of political dissent has few possibilities to express itself while the President has been overflowing airwaves with his message. The government regularly requires radio and TV stations to transmit live propaganda and sections of the 5-hours-long TV program *Aló Presidente*, starring Mr. Chavez. During the January-October period the President was able to transmit 20.944.000 minutes while the democratic minorities transmitted only 825 minutes: a ratio of about 25.000 to 1. In Venezuela today your telephone conversations can be taped and aired in the state-owned TV stations. Last year one of my emails was read by MVR congressman William Lara in the government owned channel 8 as a “proof” that the OAS electoral mission was biased in favor of the opposition.

In Venezuela the institution of the vote is in jeopardy while the National Electoral Council (CNE) violates the Constitution and the electoral laws. In my country, the secrecy of the vote cannot be guaranteed because of the use of a system which combines electronic voting machines with an electronic fingerprinting system which identifies the voter *in situ* right before voting. The system was not design to prevent FARC guerillas from voting in the Recall Referendum but it does allow the Govern-

ment to check in real time who has not yet voted on an election-day so as to pressure them to do so, as happened in the last municipal elections held on August 7, 2005. According to SUMATE, during that election, the Electoral Council violated electoral laws more than 20 times. (*State of Democracy in Venezuela: only the facts* at www.SUMATE.org)

In Venezuela today there is no difference between the budget of the government and the pocket of the government party. The government thrives in the ambiguity of whether social programs are for citizens or just for militants. Program participants are required to wear t-shirts with the colors and slogans of the government party. These programs are not financed through the national budget but instead through obscure and un-transparent transfers from the National Oil Company PDVSA. The oil company spent over 2 years without auditing its books, making it impossible for citizens to monitor the use of their resources.

I could go on for hours but my time has run out. I did not come to speak to this prestigious audience to ask for help, nor did I come to persuade the US Congress of the need to interfere in our destiny. Venezuela has a long history of self determination and we will continue to stand for it. But I did come today to make you reflect about our current challenges and opportunities. Fish don't know they are in water. They take water for granted. Venezuelans used to take freedom for granted, not knowing what the institutional underpinnings of their freedom were. Today those institutional foundations have been taken away. History is full of lessons about countries where governments are not constrained by laws. Venezuela is becoming one more exhibit in that gruesome old lesson.

Mr. BURTON. Thank you, Ms. Jatar. I apologize.
Mr. McSpedon.

**TESTIMONY OF MR. JOSEPH McSPEDON, SENIOR PROGRAM
MANAGER, FREEDOM HOUSE**

Mr. McSPEDON. Thank you, Mr. Chairman and thank you for the opportunity to testify today on the critical and timely issue of democratic institutions and human rights in Venezuela.

I would like to focus my remarks today on our analysis of democratic governance in Venezuela, paying special respect to the questions of rule of law and human rights.

I will also draw on our experience working in the region with the number of human rights defenders as well as share with you some of our recommendations for increased U.S. focus.

Through our annual report, *Freedom in the World*, Freedom House has analyzed the state of political and civil liberties in Venezuela for the past 30 years. In addition, a newer publication, *Countries At A Crossroad*, which focused specifically on democratic governance, included Venezuela in its first publication in 2004.

Freedom House gives each country a designation of one of the following: Free, signifying respect of democratic norms and an adherence to international human rights standards; partly free, signifying the adherence to some democratic standards and not free, signifying the systematic suppression of democratic institutions and massive violations of human rights.

In the 1970s, Venezuela was consistently given a rating of free and was regarded by Freedom House as one of the region's most stable democracies.

During the last 1980s and throughout the 1990s, our analysts began identifying gaps in the country's democratic performance, a trend that accelerated under the rule of President Chavez.

Venezuela is currently ranked as a partly free country and has been for the entire period that President Chavez has been in power.

Venezuela has generally held free and fair elections, although obviously there was and is controversy surrounding the recall referendum. It is unclear what role, if any, fraud played and how great its impact was and without further proof, there will be no definitive answer.

That being said, there is more to democratic governance than just elections and the rankings for Venezuela have gone down in a few of the areas critical to this, specifically talking about the rule of law and the functioning of government sections of our reports.

Highly politicized climate in Venezuela, the rule of law score has consistently gone down. The Chavez government has made one of its central focuses the control of the judiciary and they have accomplished this through a variety of means.

The high percentage of judges are provisional, which has a serious detrimental impact on citizens' right to proper justice. There have been a number of instances where the provisional status has led to judges being removed from office for making decisions with which the Executive Branch didn't agree.

In addition, there have been recent cases where judges have been named by the government who do not have the required by law academic credentials to serve in the positions and whose sole qualifications are the connections to the ruling party.

In terms of rule of law and prevailing in criminal and civil matters, this is also an area where there are deficiencies. Extrajudicial killings, while not on the level of some other countries in the region, continue to be a problem.

In the most recent annual report of the human rights group PROVEA, the number of deaths that came at the hands of state security groups, which are reported officially as occurring while suspects are resisting arrest, has increased 300 percent over the past 10 years.

When combined with the ineffectiveness of the judiciary, it is not surprising that recent information shows that 90 percent of all investigations into human rights violations do not make it past the preliminary stages.

In one state, Anzoategui, alone there have been human rights groups have documented over 500 cases of extrajudicial killings over the past 4 years and have encountered countless obstacles in bringing the perpetrators to justice.

Torture is also on the rise. Recent studies by PROVEA show that the number of cases have increased by 90 percent in the past 5 years.

Under the functioning of government category, we looked at the pervasiveness of official corruption, government openness and transparency and the degree to which government policies are determined by freely elected officials.

Corruption and its corrosive effect on democratic governance has continued to be an issue in Venezuela under the Chavez regime. The executive controls the citizen power of rights of government created to fight corruption in 1999. This branch is made up of the officers of the ombudsman, the comptroller general and the public prosecutor.

In 2003, law against corruption was put into effect, which establishes citizens' right to know and set out the state's obligations to

provide a thrice yearly rendition of public goods and expenses, except for those in the security national defense.

The effectiveness of this law is highly suspect, considering that Venezuela's ranking by Transparency International's 2005 corruption perceptions index was 130 out of 158 of the countries surveyed, down from 114 I think out of 146 from the year before.

Consistent threats and a climate of intimidation characterizes government's interaction with civil society groups. The Chavez government has also made an effort to undermine the legitimacy of reputable human rights and other civil society organizations by questioning their ties to international organizations and foreign governments.

This has resulted in personal attacks against leading human rights defenders, including a series of recent statements by high level officials with both veiled and open threats against Venezuelan groups that participated in the most recent session of the Inter-American Commission on Human Rights.

These attacks are designed to cow Venezuela human rights defenders and prevent them from carrying out their work and also to create a climate where supporters of the government and the society at large rejects these groups, which increased their vulnerability.

Restrictions on international funding are a means for limiting the effectiveness of Venezuelan civil society and lead to both greater impunity and greater reliance on state organs.

Mr. BURTON. Excuse me, Mr. McSpedon. We have two votes coming up here pretty quick. If you could sum up, I would like to get to Mr. Walsh before we do that.

Mr. MCSPEDON. Sure. Certainly. I will just close with a couple of recommendations that we think future United States focus in Venezuela.

Number one, the U.S. should remain focused on human rights, especially as the rising crime rates are creating pressures within the region that bypass basic human rights procedures.

The U.S. should increase support for human rights defenders that monitor and report on abuses, as well as the functioning of the justice system and that can provide legal advice and services to citizens who are accessing justice.

Two, the United States should continue to advocate for effective ways to utilize the Inter-American Democratic Charter and the steps that it spells out in the event of the steady erosion of democratic institutions, not just in Venezuela, but throughout the region.

The United States finally should look to broaden the support among other countries in the region by deepening their engagement in the promotion of democracy. Venezuela has taken an international approach to its perceived conflict with the United States, enlisting the support of many other Latin American countries.

The U.S. needs to effectively engage these countries, not solely on issues of trade and security, but also on the fundamental support necessary to maintaining democratic rule in the region. Thank you.

[The prepared statement of Mr. McSpedon follows:]

PREPARED STATEMENT OF MR. JOSEPH MCSPEDON, SENIOR PROGRAM MANAGER,
FREEDOM HOUSE

Mr. Chairman, thank you for the opportunity to testify today on the critical and timely issue of democratic institutions and human rights in Venezuela.

I would like to focus my remarks today on our analysis of democratic governance in Venezuela, paying special respect to questions of rule of law and human rights. I will also draw on our experience working in the region with a number of human rights defenders as well share with you some of our recommendations for increased U.S. focus. As you are aware, a core part of Freedom House's mission is to monitor and analyze information about the state of freedom around the world. To this end, we publish on a regular basis a series of reports and surveys on global freedom, including reports that focus on specific aspects of democracy including press freedom, as well as on democratic governance, rule of law and corruption.

Through our annual report, *Freedom in the World*, Freedom House has analyzed the state of political and civil liberties in Venezuela for the past thirty years. In addition, a newer publication, *Countries at a Crossroads*, which focuses more specifically on democratic governance, included Venezuela in its first publication in 2004. Freedom House gives each country a designation of one of the following: Free, signifying a respect for democratic norms and an adherence to international human rights standards; Partly Free, signifying an adherence to some democratic standards; and Not Free, signifying the systematic suppression of democratic institutions and a massive violation of human rights.

During the 1970s Venezuela was consistently given a rating of Free, and was regarded by Freedom House as one of the region's most stable democracies. During the late 1980s and throughout the 1990s, our analysts began to identify gaps in the country's democratic performance, a trend that accelerated after the election of President Hugo Chavez.

Venezuela is currently ranked as a Partly Free country, and has been for the entire period that President Chavez has been in power. Venezuela has generally held free and fair elections, although obviously there was controversy surrounding the recall referendum. It is unclear what role fraud played and how great its impact was, and without further proof there will be no definitive answer. That being said, there is much more to democratic governance than just elections, and the rankings for Venezuela have gone down in a few of the areas critical for this, including in the rule of law and functioning of government sections.

Under the category of rule of law, our analysts specifically look at the degree of judicial independence, the predominance of the rule of law in criminal and civil matters, civilian control of the police and security forces, protection from torture and unjust imprisonment, and equal treatment of all people under the law.

In the current highly politicized climate in Venezuela, the rule of law score has consistently gone down. The Chavez government has made one of its central focus points the control of the judiciary, and they have accomplished it through a variety of means. A high percentage of judges are provisional, which has a serious detrimental impact on citizens' right to proper justice and on the judges' right to stability in their positions as a guarantee of judicial independence and autonomy. There have been a number of instances where this provisional status has led to judges being removed from office for making decisions with which the executive branch did not agree. In addition, there have been a number of recent cases where judges have been named by the government who do not have the required (by law) academic credentials to serve in those positions, and whose sole qualifications are their connections to members of the ruling party.

The Organic Law of the Supreme Court allowed Justices to be added and removed through a simple majority vote in the Congress. In addition, the recent reforms have increased the number of Supreme Court Justices and made it easier for the Chavez government to pack the court with supporters. These overall weaknesses in the judicial sector have contributed to increased impunity within the country.

In terms of the rule of law prevailing in criminal and civil matters, this is also an area where there are deficiencies. Extrajudicial killings, while not on the level of some of the other countries in the region, continue to be a problem. In the most recent annual report of the human rights group Provea, the number of deaths that came at the hands of state security groups, which are reported officially as occurring while suspects were "resisting arrest", has increased by 300% over the past ten years. When combined with the ineffectiveness of the judiciary, it is not surprising that recent information shows that 90% of all investigations into human rights violations did not make it past the preliminary stages of the process.

Widespread arbitrary detention and torture of suspects, as well as extrajudicial killings by the often-corrupt military security forces and the police, have increased

as crime continues to soar. Since the 1992 coup attempts, weakened civilian governments have had less authority over the military and the police, and overall rights abuses are committed with impunity. In the state of Anzoategui, human rights groups have documented over 500 cases of extrajudicial killings over the past four years, and have encountered countless obstacles in bringing the perpetrators to justice.

Torture also increasingly is a problem in Venezuela. Recent studies by Provea state that the number of cases has risen by over 90% in the past five years.

Venezuela has scored consistently low in the area pertaining to the equal treatment under law for all segments of the population. This has certainly been the case for Venezuelans who signed in favor of the recall referendum, and all information regarding these signatures has been made public. Many of the signatories have faced increased discrimination, including being fired from government positions, excluded from government sponsored social programs, and prevented from receiving passports. In addition, the indigenous population, although a small portion of the total population remains for all intents and purposes excluded from most of the benefits of representative democracy.

Under the functioning of government category, we look at the pervasiveness of official corruption, governmental openness and transparency, and the degree to which government policies are determined by freely elected officials.

Corruption, and its corrosive effect on democratic governance, has continued to be an issue in Venezuela under the Chavez Regime. The Executive controls the Citizen Power branch of government created to fight corruption by the 1999 constitution. This branch is made up of the offices of the ombudsman (responsible for compelling the government to adhere to the constitution and laws), the comptroller-general (who controls the revenues and expenses incurred by the government), and the public prosecutor (who provides opinions to the courts on the prosecution of criminal cases and brings to the attention of the proper authorities cases of public employee misconduct and violations of the constitutional rights of prisoners or accused persons).

On April 7, 2003, the Law against Corruption was put into effect. It established a citizen's right to know, and set out the state's obligations to provide, a thrice-yearly rendition of public goods and expenses, except those security and national defense expenditures as exempted by law. The effectiveness of this law is highly suspect considering that Venezuela's ranking by the Transparency International's 2005 Corruption Perceptions Index, was 130 out of 158 countries surveyed, down from 114 the year before.

The Chavez government has done little to free the country from excessive bureaucratic regulations, registration requirements, and other forms of control that increase opportunities for corruption. It has relied instead on attacking persons and social sectors it considers to be corrupt and selectively enforcing good-government laws and regulations against its opponents. At the same time, Chavez replaced the old meritocracy at the state oil company, PDVSA, with his own directorate. New regulations and controls over the economy have ensured that public officials have retained ample opportunities for personal enrichment enjoyed under previous governments.

Consistent threats and a climate of intimidation characterize the government's interaction with civil society groups. The Chavez government has also made an effort to undermine the legitimacy of reputable human rights and other civil society organizations by questioning their ties to international organizations and foreign governments. This has resulted in particularly personal attacks against leading human rights defenders, including a series of statements by high level officials with both veiled and not so veiled threats against the Venezuelan groups that participated in the most recent session of the Inter American Human Rights Commission. These statements are designed to cow Venezuelan human rights defenders and prevent them from fulfilling their work, and also to create a climate where supporters of the government and the society at large rejects these groups, which increases their vulnerability. Restrictions on international funding are a means for limiting effectiveness of Venezuelan civil society, leading to both greater impunity and reliance on state organs.

It is important to note, that in terms of the Inter American system, Venezuela places obstacles before all the "provisional and precautionary measures" handed down in favor of human rights defenders, journalists and NGOs, by the Inter American Court and Inter American Commission on Human Rights (OAS). This increases the danger faced by human rights defenders when carrying out their work, and demonstrates a complete lack of will in fulfilling its international obligations on the part of the Venezuelan Government.

Freedom of peaceful assembly and association are guaranteed in the constitution, and the government generally respected these rights in practice. Public meetings and marches, the latter of which require government permits, are generally permitted without impediment, although government supporters often sought to disrupt these, frequently using violence.

It is important to also note the increasing presence of the military in all aspects of Venezuelan life. Since Chavez's election, Venezuela's military, which is largely unaccountable to civilian rule, has become an active participant in the country's social development and delivery of public services. The 1999 constitution assigns the armed forces a significant role in the state but does not provide for civilian control over the military's budget or procurement practices, or for related institutional checks. A separate system of armed forces courts retains jurisdiction over members of the military accused of rights violations and common criminal crimes, and decisions cannot be appealed in civilian court. The military's massive participation in non-traditional public administration missions has helped to reduce official accountability for acts of corruption.

To this situation has been added the recent development of the creation of private militias, responsible only to the president of the republic. These militias are made up of ordinary citizens, ostensibly to protect the country in the case of invasion, but are more likely a danger to be used against fellow Venezuelans in the current politicized environment. In the statewide elections held last year, candidates from Chavez's party took twenty of the twenty-two gubernatorial slots in the country. Ten of these governors are former military colleagues of President Chavez. The military is also used to run many of the country's prisons, in violation of the Venezuelan Constitution.

Finally, freedom of the press is one of the most important freedoms in a functioning democracy. In the most recent version of Freedom House's *Freedom Of the Press* annual survey, Venezuela was ranked not free, for the consistent efforts of the Chavez government to control the mostly opposition owned media. Although the constitution provides for freedom of the press, the exercise of that right is difficult in practice. A climate of intimidation and hostility, including physical attacks, exists with a strong anti-media rhetoric by the government and a significant anti-Chavez slant on the part of media owners. In July 2004, a new law was ratified that regulates the work of journalists, provides for compulsory registration with the national journalism association, and punishes reporters' "illegal" conduct with prison sentences of three to six months. A Supreme Court ruling upheld censorship laws that effectively declared that laws protecting public authorities and institutions from insulting criticism were constitutional. The Law on the Social Responsibility of Radio and TV, giving the government control over the content of radio and television programs, went into effect in December. According to the Inter-American Press Association, the government "uses official advertising as an instrument of coercion and has become the country's 'main communicator.'" The Special Rapporteur for Freedom of Expression of the Inter American Commission has also condemned this law and the restrictions it places on freedom of the press. All of this has resulted in self censorship. Recent reports on all of the major stations show that they are extremely careful about airing anything that could be considered illegal under the new laws.

In closing, I would like to include some suggestions for future U.S. focus in Venezuela.

- (1) The U.S. should remain focused on human rights—especially as rising crime rates are creating pressures within the region to bypass basic human rights procedures. The U.S. should increase support for the work of human rights defenders that monitor and report on abuses, as well as the functioning of the justice system, and can provide legal advice and services for citizens in accessing justice and raise public awareness of their rights. Human rights defenders must be able to continue to do their job professionally and credibly, which is the only way they can face the public attacks on their reputation.
- (2) The U.S. should continue to advocate for effective ways to utilize the Inter American Democratic Charter and the steps that it spells out in the event of the steady erosion of democratic institutions, working with other concerned nations specifically on the case of Venezuela.
- (3) The U.S. should look to broaden the support among other countries in the region by deepening their engagement in the promotion of democracy. Venezuela has taken an international approach to its perceived conflict with the U.S., enlisting the support of many other Latin American countries. The U.S. needs to effectively engage these countries, not solely on issues of trade and security, but also on the fundamental support necessary to maintaining

democratic rule in the region. The U.S. should take advantage of the existing mechanisms of the Community of Democracies, of which many of Latin American countries are members, to build support for increased pressure on Venezuela to maintain its fragile democracy.

Mr. BURTON. Thank you, Mr. McSpedon.
Mr. Walsh.

**TESTIMONY OF MR. JOHN WALSH, SENIOR ASSOCIATE,
WASHINGTON OFFICE ON LATIN AMERICA**

Mr. WALSH. Thank you, Chairman Burton, other Members of the Subcommittee. I know you are pressed and I will be brief.

WOLA has supported United States policies promoting human rights and democracy in Latin America for 30 years. We are very pleased to be here today, and trust that what we have to say here today will not preclude further such invitations.

Obviously today's remarks make it evident how polarized and difficult the issue of democracy in Venezuela is. We think that given such polarization, discussions like this need to be as open as possible, again underscoring our appreciation for being invited today.

It is also clear how discussion about Venezuela links to so many other issues in the hemisphere. WOLA for one supported Representative Menendez's Social Investment Fund. Whether it is his plan or someone else's, we think these broader policy perspectives are very much in order in the discussion.

Very briefly, five main points to boil down my testimony. One, WOLA shares the very serious concerns raised about the state of democracy and the rule of law in Venezuela today.

Most especially concerns over the concentration of power, the weakness of the judiciary, its vulnerability to political pressures from the executive and the legislative branches.

Two, the context in which the further discussion of democracy in Venezuela needs to take place must include, in our view, the views of majority of Venezuelans on the functioning of their own democratic institutions.

Three, a note on Chavez's own legitimacy as an elected leader.

Four, a complete understanding, full understanding of democracy in Venezuela needs to take into account the government's social programs and their popularity. And finally if we are to consider United States relations with Venezuela and what the United States might intend to do with respect to democracy in Venezuela, we need to do so understanding the state of Venezuelan/United States relationships and views of the United States within Venezuela.

So very briefly on those five points, the genuine concerns especially the concentration of power. Whole volumes have been written about them. We can discuss them at length and they need to be taken seriously. But they shouldn't be exaggerated and that discussion should take place in the overall context.

Representative Delahunt mentioned the Latinobarometro poll earlier. Its findings were striking, particularly to observers in Washington who may be surprised to hear that Venezuelans indeed, according to this poll and compared to most of their regional brethren are very happy with the functioning of their democracy today.

Indeed, on a scale of one to ten, with ten being totally democratic, Venezuelans judged their country at a 7.6, the highest in the region.

Also, 56 percent expressed satisfaction or great satisfaction with the functioning of their democracy. The Latin American average was 31 percent. So the context requires taking that into account.

Obviously democracy consists of elections, but is more than elections. And even in the case of elections, the truest test of commitment to democracy is not when you win, but when you lose.

For its part, sectors of the opposition in Venezuela showed a profound contempt for democracy in launching an April 2002 coup attempt against Chavez. For his part, while not yet tested by defeat at the polls, Chavez's own leadership of a coup attempt in 1992 leaves room for doubt about his democratic commitment.

Unfortunately, the opposition has not been able to move forward to devise a positive agenda for Venezuela that would give them the viable opposition that Chavez needs and Venezuelans need.

Also disappointingly, Chavez has not taken the opportunity to be magnanimous in victory, but has pursued a campaign to intimidate and harass political opponents.

That said, it has to be clear to everyone here that Chavez has been the legitimately elected President of Venezuela. He has won in numerous elections and survived a recall referendum, with more or less identical vote results and nearly 60 percent of the vote.

When we discussed the legitimacy of Chavez and his popularity, that needs to be kept in mind as well as the reasons for it and that goes to the question of the "missions" in massive spending on social programs that have won over and have harnessed enormous goodwill on the part of the Venezuelan people to participate in communities in programs such as this.

[The prepared statement of Mr. Walsh follows:]

PREPARED STATEMENT OF MR. JOHN WALSH, SENIOR ASSOCIATE, WASHINGTON
OFFICE ON LATIN AMERICA

On behalf of the Washington Office on Latin America (WOLA), I thank you for inviting me to testify today. I am honored to be here and I look forward to a constructive exchange of views on this important issue. I am the Senior Associate for the Andes at WOLA, and I have been following the situation in Venezuela closely in recent years.

The state of Venezuelan democracy is an important topic, the consideration of which is dramatically affected by Venezuela's fiercely polarized social and political climate. In such a context, it is easy to fall into simplistic, black and white views, and all the more important to seek a more nuanced appreciation of the complex issues at play. In no small measure, gaining such an appreciation involves understanding how Venezuelans themselves view the state of their democracy. Assessments of the functioning of democracy in Venezuela should also take into account historical and regional contexts.

With this in mind, I will touch very briefly, even cursorily, on a number of aspects of the broad topic of Venezuelan democracy. Free and fair elections are of course key to democracy, but other important elements to consider include the separation of powers; the rule of law and human rights; and the role of civil society. In addition, consideration of U.S. policies with respect to democracy in Venezuela requires an appreciation of the state of U.S.-Venezuelan relations.

Before proceeding further, I would like underscore the importance of taking into account Venezuelans' own views about democracy in general, and their appraisals of the functioning of their own government institutions in particular. A recent survey of public opinion in 18 Latin American countries, undertaken in August and September 2005 and coordinated by the well-respected Chilean non-profit Latinobarómetro, sheds some light on these questions. Among the survey's most no-

table results is the obvious preference of Venezuelans for democratic governance, and—in what may come as a surprise to observers in the United States—the relatively high levels of satisfaction that Venezuelans express with the functioning of their own democracy.

Specifically, 76 percent of Venezuelan adults consider democracy to be preferable to any other form of government (confidence interval of plus or minus 3 percent). The 18-country average was only 53 percent, and Uruguay (77 percent) was the only country that recorded a higher preference for democracy than Venezuela. Indeed, since 1996, the preference for democracy as measured by the Latinobarómetro survey has eroded in 13 of the 18 countries, while the largest increase in preference for democracy was recorded in Venezuela (up from 62 percent in 1996).

Even more notably, the survey indicates that Venezuelans regard their country as being in fact quite democratic. On a scale of 1 to 10, where 1 signifies “not democratic” and 10 signifies “totally democratic,” Venezuelans scored their country at 7.6, the highest of any of the 18 countries. Uruguay was the only other country with a score of more than 7, and the 18-country average was 5.5. Moreover, the survey found 56 percent of Venezuelans to be very satisfied or satisfied with the functioning of democracy in their country, well above the 18-country average of 31 percent, and again trailing only Uruguay (63 percent).

Of course, these survey results do not exhaust the topic of the status of democracy in Venezuela. But it is surely important to keep these findings in mind, and to appreciate their significance in light of each state’s fundamental right to self-determination, explicitly enshrined in the Charter of the Organization of American States (OAS): “Every State has the right to choose, without external interference, its political, economic, and social system and to organize itself in the way best suited to it, and has the duty to abstain from intervening in the affairs of another State. Subject to the foregoing, the American States shall cooperate fully among themselves, independently of the nature of their political, economic, and social systems” (article 3e).

ELECTIONS AND THE ELECTORAL PROCESS

Venezuelans have gone to the polls frequently in recent years. The intense polarization and zero-sum character of the political conflict in Venezuela have led to significant international attention and monitoring of these elections. On balance, the elections have been deemed free and fair enough to faithfully express the preferences of the majority of voters in Venezuela. By no means have the elections been flawless, and international and Venezuelan monitor groups continue to cast doubt on the impartiality of Venezuela’s electoral institutions. On the other hand, the elections have not been stolen. While there should be little doubt that irregularities have occurred, the consensus among international observers has been that such irregularities have not been on the scale to affect outcomes. Indeed, the Carter Center and the OAS both deemed valid the results of the hotly contested August 2004 recall referendum, won by President Hugo Chávez with 59 percent of the vote.

To be sure, democracy consists of more than elections, and the truest test of a leader’s commitment to electoral democracy comes with the reaction to defeat, not victory. In that regard, those sectors of the Venezuelan opposition responsible for the April 2002 coup attempt against President Chávez demonstrated a profound contempt for democracy. The strength of Chávez’s own commitment to democracy has not been tested by defeat, though his own leadership of a failed coup attempt in 1992 against an elected government leaves room for doubt.

At the same time, it is beyond any doubt that Chávez is the legitimate elected leader of Venezuela, and that he continues to enjoy strong popular support. The Latinobarómetro survey found that 65 percent of Venezuelans approve of the way in which Chávez is leading the country, an approval rating significantly higher than the 18-country average of 49 percent. For the record, Chávez initially won election to the presidency in December 1998, with 58 percent of the vote. His allies won 62 percent of the vote (and 93 percent of the seats) in July 1999 elections for a constituent assembly to draft a new constitution. In December 1999, the new constitution was approved by 72 percent of the voters. Chávez then won new elections in July 2000 with 59 percent of the vote, and, as noted above, prevailed in the August 2004 recall referendum, again with 59 percent of the vote. His allies are poised to win convincingly in next month’s National Assembly elections, and no candidate has yet emerged as a viable challenger to Chávez for the December 2006 presidential elections.

Democracy entails not only that the majority should rule, but that the minority’s rights should be protected. While Chávez’s margins of electoral victory have been consistently large, the size of the minority of Venezuelans voting against Chávez is far from insignificant, and it is crucial to the health of Venezuelan democracy that

their views find adequate expression through peaceful, democratic political processes. This requires both that President Chávez and his government recognize the legitimate place of the political opposition, and that the opposition participate in the political process.

Disappointingly, President Chávez has not consistently signaled his tolerance of political disagreement. At the same time, unfortunately, many in the opposition have found it difficult to accept their electoral defeats, and have been slow to develop a positive political agenda with the potential to appeal broadly to Venezuelans. The opposition has been burdened by the blatantly anti-democratic actions of some Chávez opponents, immensely complicating their task of trying to appeal to the country's pro-Chávez majority. Both sides should be encouraged to take more constructive positions.

While international monitors have endorsed the results of Venezuela's recent elections, they have also raised serious concerns over the lack of transparency within the country's electoral institutions, specifically the National Electoral Council (CNE). In the events surrounding the controversial August 2004 recall referendum, the CNE came to conduct business along party lines, with pro-Chávez members consistently outvoting opposition-aligned members by three to two. Since then, the composition of the CNE has become even more pro-government, with Chávez supporters holding four of the five seats. This clear domination of a key electoral institution increases the chances that election rules will be made and interpreted in ways that favor Chávez and his allies at the expense of the opposition.

Boosting confidence in the basic fairness of electoral institutions is crucial, lest perceptions of unfairness prompt those opposed to the Chávez government to conclude that the electoral avenue to political power is no longer open. Fortunately, the question is one of degrees, and many of those who are opposed to Chávez and have little confidence in the impartiality of the CNE see little alternative but to participate in electoral politics, along the way negotiating the best set of rules they can. Arguably, the Chávez government, whose rightful claim to legitimacy stems from its electoral performance, has much to lose if the credibility of the electoral system falls further into doubt. The government therefore would appear to have important incentives at least to ease some of the opposition's concerns over lack of transparency, and some observers suggest that this appears to be occurring in the negotiation around provisions for the December National Assembly elections.

The international community should continue to monitor electoral processes in Venezuela, to encourage both President Chávez and his opponents to abide by agreed-upon rules of the game.

RULE OF LAW AND HUMAN RIGHTS

In Latin America generally, inefficient, corrupt and politicized justice systems have been significant obstacles to the consolidation of democracy, and have facilitated the impunity that perpetuates crime and undermines public trust in government. Historically, there has been little confidence that all will be treated equally before the law, and Venezuela has been no exception. Nevertheless, Latinobarómetro found relatively strong support in Venezuela (60 percent) for the proposition that justice arrives slowly, but arrive it does. By comparison, the 18-country average was only 48 percent.

Still, Venezuelan and international human rights monitors have pointed to serious concerns regarding the rule of law in Venezuela, including but not limited to concerns about the independence of the judiciary from the other branches of government; the impact of new media and penal laws on freedom of expression; impunity for para-police groups responsible for extrajudicial executions; and the use of the justice system to harass political opponents, most notably in the case of Súmate. Though these issues will only be mentioned briefly here, each has occasioned volumes of commentary (for example, the annual report of PROVEA, a prominent Venezuelan human rights NGO, runs to more than 600 pages).

Some observers have expressed concerns that new laws governing the media, combined with a revised penal code, are resulting in self-censorship of political views that might be seen as running afoul of the law or risking reprisals. It is important to evaluate these new laws and their likely impact on freedom of expression in light of the behavior of the Venezuelan private media. Most of the major media operated in a highly partisan fashion, supporting efforts to dislodge Chávez, especially during the April 2002 coup attempt and the subsequent oil strike. At a time when viable opposition political parties did not exist, the private media took on an overtly partisan political role. This role was sharply at odds with its responsibilities to provide a balanced view of events.

To date at least, it is also clear that, notwithstanding the new laws, freedom of expression remains alive and well in Venezuela. But if the restrictiveness of the new laws should not be exaggerated, neither should the potential for self-censorship be discounted. Given the value of freedom of expression, in and of itself, as well as its importance in guaranteeing other political liberties, the debate over the role of the media and how it ought to be regulated by the state can be expected to continue apace in Venezuela.

Venezuelan human rights monitors and the Inter-American Commission on Human Rights (IACHR) have drawn particular attention to the lack of independence and impartiality of the judiciary. As noted above, a weak judiciary is nothing new in the region or in Venezuela. Even so, the very high proportion (more than 80 percent) of Venezuelan judges with only temporary or provisional appointments, vulnerable to rapid dismissal, gives rise to the concern that the judiciary is subservient to the will of the legislative and executive branches. The Chávez government has acknowledged that such a high proportion of provisional judges poses one of the most serious problems facing the judiciary, but provisional appointments continue. Human rights monitors have also raised concerns over a 2004 law empowering the National Assembly, by simple majority vote, to alter the number of judges in the different chambers of the Supreme Court and revoke the appointments of individual justices. As President Chávez looks set to build on his advantage in the National Assembly, the 2004 law, combined with the already tenuous job security of judges throughout the Venezuelan judiciary, makes it increasingly easy for the executive and legislative branches to exercise political control over the judiciary.

RESPECT FOR SEPARATION OF POWERS, LIMITS ON PRESIDENTIAL POWER

Well-established international norms do not exist with respect to separation of powers, which can vary widely from country to country. The executive's power vis-à-vis the legislature varies, and how presidents wield their power when they have strong legislative majorities also varies from country to country and from president to president.

That said, there is a long tradition of strong, often autocratic presidents in Latin America, a tradition that should make the international community sensitive to issues about the limits of presidential power in Latin America. There is reason for concern, therefore, about how far President Chávez may seek to go in concentrating power, especially if, as expected, he wins a strong majority in the upcoming National Assembly elections. The international community should urge President Chávez not to seek to concentrate power unduly. All parties should keep in mind the low tolerance of Venezuelans for authoritarian government: Latinobarómetro found only 11 percent support in Venezuela for the proposition that, in certain circumstances, an authoritarian government can be preferable to a democratic one.

CIVIL SOCIETY

Venezuelan civil society has been deeply polarized, with some organizations strongly in favor of President Chávez, and some strongly opposed. The polarization has made it difficult to seek a middle ground position, critical of both sides, without being labeled an extremist by one camp or the other. In this difficult environment, funding provided to some Venezuelan civil society groups by U.S. government agencies such as the National Endowment for Democracy (NED) has proven extremely controversial within Venezuela.

On the one hand, Venezuelan civil society groups should be free to seek and receive international support, assuming that they are engaged in what are otherwise legal, peaceful and democratic activities. If so, their work should be judged on its merits. At the same time, however, given the obvious role of the U.S. government in Venezuela's political conflict, and the well-founded skepticism about Bush administration intentions with respect to Chávez, it is difficult to see how U.S. funding in support of democracy can be productive at this juncture. It seems more likely to be counterproductive, increasing the polarization rather than easing it.

SOCIAL PROGRAMS

President Chávez has used Venezuela's surging oil wealth to implement a number of domestic programs, including the highly popular food, health and literacy programs, known as the "missions." These programs contributed to Chávez's victory in the 2004 recall referendum and continue to pay political dividends, as is clear in Chávez's high approval ratings.

Abroad, we often focus on Chávez's provocative rhetoric and anti-U.S. statements. But Venezuelans are responding to these social programs, and, at a deeper level, poor Venezuelans are responding to a leader who they regard as the first to take

them and their priorities seriously. As a result, Chávez has tapped into an enormous reservoir of good will among poor Venezuelans, many of whom feel energized to take part in and promote the "missions" in their communities. Whether Chávez can institutionalize these programs in a way that sustains their on-the-ground benefits and their political payoffs remains to be seen. But as Venezuelans evaluate the state of their own democracy and evaluate the performance of the Chávez government, it is obvious that the missions are crucial. Rather than seek to discredit such programs, the Venezuelan opposition will have to convince their fellow citizens that they will confront the issues of poverty, unemployment, crime and other social problems better than Chávez.

U.S.-VENEZUELA RELATIONS

Obviously, relations between the Chávez and Bush governments are troubled. Chávez's provocative rhetoric, his opposition to U.S. initiatives—especially the Free Trade Area of the Americas—and his close friendship with Fidel Castro are especially grating to the Bush administration. At the same time, we should be aware that the U.S. government—the Bush administration in particular—is not viewed favorably by most Venezuelans. Latinobarómetro found that only 41 percent of Venezuelans have a good opinion of the United States, compared to an 18-country average of 61 percent. The Bush administration's doctrine of pre-emptive military action, the U.S.-led war in Iraq, and revelations of detainee abuse have undoubtedly tarnished the image of the U.S. government in Latin America. In Venezuela, skepticism about U.S. support for democracy and human rights is all the more acute given the apparent U.S. support for the failed coup against Chávez in April 2002.

Despite the distrust on both sides and the escalating rhetoric, U.S.-Venezuelan commercial relations, particularly with respect to oil, remain stable. The Bush administration, for its part, can ill-afford disruptions in the flow of oil from Venezuela, especially given the ongoing turmoil in the Middle East. By the same token, the Chávez government relies heavily on the U.S. market for Venezuela's oil, the proceeds of which are funding the social programs that have boosted Chávez's domestic popularity. In the longer run, as both governments seek to reduce their dependence on one another, the oil-based relationship as it has existed may be altered. But for now, this mutual dependence on the continued flow of oil lends some stability to the relationship.

As the U.S. government and the American people look at Hugo Chávez, we should recognize that he is a legitimately elected president with strong support in Venezuela. He is pursuing foreign policy goals sometimes sharply at odds with the desires of the Bush administration; while some may not like this, we should recognize that he has a right to do so. U.S. policy toward Chávez ought not be directed at confrontation. We should not refrain from expressing genuine concerns about democracy, human rights and rule of law issues in Venezuela, but neither should we exaggerate them. And we should seek dialogue with Chávez and with the hemisphere as a whole about our foreign policy differences.

Mr. BURTON. Mr. Walsh, excuse me just for a second. We have less than 5 minutes to get to the Floor for two votes. We will be coming back for questions for those of you who do have questions and it will be hopefully a relatively short session, but we will be back in about 20 minutes.

Mr. WALSH. Good.

Mr. BURTON. Thank you. We stand in recess.

[Recess.]

Mr. WELLER [presiding]. Good afternoon. The Chair would like to reconvene the meeting. Good afternoon. We just had a vote on the Floor and Chairman Burton and other Members of the Committee will be arriving shortly.

In respect for our witnesses, it would be good to reconvene the hearing and get things under way. I would like to begin my questioning with Ms. Ana Julia Jatar.

The Inter-American Commission on Human Rights has expressed concerns about acts of violence of persecution against human rights activists. In fact, in recent testimony before the Commission members of several Venezuelan human rights organizations asserted

the government of Hugo Chavez has labeled members of the human rights groups as traitors and coup plotters.

One example is Carlos Ayala, a former President of the Inter-American Commission on Human Rights, who has been charged with supporting the April 2002 coup against Hugo Chavez, even though he was on public record of opposing the coup attempt. Charges were filed after Ayala initiated human rights cases against the government.

Human rights groups have also criticized Venezuela's charges against four leaders of your organization for accepting United States foreign assistance in a program to encourage citizen participation in elections.

The four, which include Maria Corina Machado, who met with President Bush in May 2005, are charged with conspiring against the government and could face up to 16 years in prison.

Let me ask this. Do those who disagree with Hugo Chavez, those who would be defined as being in the opposition, do you fear for your safety? Do you fear for the safety of your children? Your family? Your jobs?

Ms. JATAR. Yes, absolutely. I think that today the combination of the new penal code and the new laws that in one way or another restrict the airwaves, what is said on TV, what is said on the radio is a very dangerous combination for the freedom of expression and for the safety of those who are opposing the government of President Chavez.

As a matter of fact, in my own case I had to give up a job I had last year, because it was openly said by members of the administration that while I stayed in that company, the different permissions and the different documentation for the company to maintain its activities will not be granted. So I had to resign.

Fear, I guess that you don't realize how many liberties have been constrained until you start thinking about your children and I think that what has happened to some of the leaders of the opposition is that they try to have their children abroad and if they want to give a fight, they stay in Venezuela, while the children are abroad.

Mr. WELLER. There is a recent news clipping that I saw where armed members of the Venezuelan military were sent into a Jewish grade school while the children were present. Is that a frequent occurrence?

Ms. JATAR. No. That was actually last year and it was a terrible mistake by the government. It was very early on Monday morning and in fact, they were actually looking for some kind of proof relating a case of prosecutor Danilo Anderson, who was murdered over a year ago and his case has not been resolved.

So under the investigation of this case, they went into the Jewish school and that brought back a lot of very terrible memories to many of the parents and I have to say that the Jewish community has been reducing the number of members in Venezuela. Some of them have been fleeing the country.

Mr. WELLER. It certainly is——

Ms. JATAR. Not because of being persecuted, but they feel in danger.

Mr. WELLER. That is a pretty chilling message to send the military into a grade school, regardless if it is a Catholic, Jewish or public grade school.

Hugo Chavez is in the process of setting up a one and a half million person, both men and women, militia in addition to its traditional standing military of Venezuela. What is the view of the average citizen, particularly those who may disagree with Hugo Chavez on President Chavez's purpose of this one and a half million manned citizen militia?

Ms. JATAR. I have to be very honest here. I am telling the truth, but also I want to bring my own personal feelings here.

The day that President Chavez sworn in that militia, it was a very sad day, but it was again in all TV stations and you could see this, I don't know if there were 5,000 or I don't know how many was like the first bunch of militia that was being sworn in by the President and you saw the soldiers applauding the President.

You saw the President speaking to the militia under his command and you saw the lines of all these soldiers in the backyard of the military school and you know we were wondering if those militias were to defend us or to attack us.

Mr. WELLER. The militia, are they present on the street? Do you see these individuals walking the streets?

Ms. JATAR. No. I have to say no. We do know, because we have met some of them, that they do have training and that they are being paid. We don't know how many there are anymore, but we don't see them. No.

Mr. WELLER. Are Cuban security or intelligence personnel involved in the training of this citizen militia?

Ms. JATAR. There are rumors about that, but I couldn't say.

Mr. WELLER. Do you, as an average citizen, do you see Cuban security or intelligence personnel openly walking around the community? Openly participating?

Ms. JATAR. I see a lot of Cubans in Venezuela now. I had a conversation with a member of the Cuban Embassy a month ago and he told me that there were over 25,000 Cubans in Venezuela. So it is a very—

Mr. WELLER. How do they—

Ms. JATAR [continuing]. Usual now. You go to beaches and—

Mr. WELLER. How do they keep track of them all if they have got 25,000 of them running around the country?

Ms. JATAR. Many of them are medical doctors. I have actually interviewed a few of them. Nice people I have to say.

I have not met, at least I don't know if I have met, any Cuban that is part of the G-2 or member of the security. Obviously, they are not going to say who they are, but I have seen and met and spoken with many Cubans.

Mr. WELLER. Thank you. I realize I have gone beyond my 5 minutes, but thank you for your participation.

Ms. JATAR. You are welcome.

Mr. WELLER. Mr. Delahunt.

Mr. Chairman. Mr. Burton.

Mr. BURTON [presiding]. Mr. Delahunt is fine with me.

Mr. DELAHUNT. Thank you, Mr. Chairman. Those Cuban doctors, were they well received in Venezuela?

Ms. JATAR. The Cuban doctors? Yes. I don't think that they have anything against Cuban doctors.

Mr. DELAHUNT. Are they doing a good job, from what you can tell?

Ms. JATAR. There have been complaints that some of them are not doctors and as a matter of fact, as I said, I know a few of them. I have to say that I was born in Cuba and I wrote a book on Cuba and I remember you, Congressman Delahunt, from other years that we were also in this Congress trying to lift the United States embargo.

So I do have relationship with many Cubans and——

Mr. DELAHUNT. By the way, do you support lifting the travel there?

Ms. JATAR. The Cuban people and the Venezuelan people are very similar. Now there is a sense in Venezuela that Cubans are welcome. The medical doctors are welcome, but not those who work for security.

Mr. DELAHUNT. There has been a lot of talk about it was self-censorship being embraced, if you will, by the national media. I have to be very candid. When I go to Venezuela, I see article after article castigating, the President, castigating the Chavez administration.

I mean if any one of us on this dais were receiving the constant criticism and I applaud that by the way, I want to be very clear that the media does in terms of the government and the government officials, I cannot accept that self-censorship is being practiced by the Venezuelan media and that is fine.

But when I hear about the erosion of press freedoms, I am sure that from President Bush on down none of us would want to experience the withering criticism that Hugo Chavez receives on a constant almost daily basis from Venezuelan media.

To me it is one of the most vigorous, healthy presses that I have observed. My point is, if it is self-censorship, they are doing an awful lousy job of it, because they are out there. They are vigorous.

Mr. Chairman, I would like to select a random week of articles that appear in the Venezuelan press and submit them as evidence of that statement.

Mr. BURTON. Mr. Delahunt, we will be glad to do it.

Mr. DELAHUNT. Thank you.

Mr. BURTON. Let me just say that our hearing was supposed to be able to be wrapped up at 1:30 and Mr. Smith, the Chairman of the Subcommittee that is coming in next——

Mr. DELAHUNT. So you want me to wrap up?

Mr. BURTON. If you could and——

Mr. DELAHUNT. I will

Mr. BURTON. Mr. Menendez has a couple of questions and I don't want to keep all these people waiting for the next hearing.

Mr. DELAHUNT. Sure.

Mr. BURTON. I really apologize for cutting you short.

Mr. DELAHUNT. I appreciate that. I just wanted to bring up the issue of Súmate. I think that you know that I have made efforts, personal efforts to attempt to intervene in that particular issue.

I think at the same time you mentioned Senora Corina Machado. It is true that she was at Miraflores in support of Pedro Carmona. Is that a fair statement?

Ms. JATAR. No. She was not in Miraflores in support of Pedro Carmona. No.

Mr. DELAHUNT. She told me she was there.

Ms. JATAR. She went there with her mother to visit the wife of Pedro Carmona, but she was not there supporting Pedro Carmona.

Mr. DELAHUNT. But she was there——

Ms. JATAR. She was there for friend——

Mr. DELAHUNT. She was there as a friend?

Ms. JATAR. Yes.

Mr. DELAHUNT. She was there when Mr. Carmona swore himself in as President provisional, if you will, of Venezuela. Is that a fair statement?

Ms. JATAR. Yes.

Mr. DELAHUNT. It was Mr. Carmona who issued certain decrees eliminating the National Assembly, abolishing the National Assembly, is that correct?

Ms. JATAR. Yes.

Mr. DELAHUNT. And abolishing the judicial system, the judiciary?

Ms. JATAR. Yes.

Mr. DELAHUNT. And null and voided the constitution? Abrogated the existing constitution in Venezuela at that time?

Ms. JATAR. Yes.

Mr. DELAHUNT. Thank you.

Mr. BURTON. Thank you, Mr. Delahunt.

Mr. Payne, I——

Mr. PAYNE. Mr. Chairman, because of the next hearing coming up, I will yield and will not ask any questions. Thank you.

Mr. BURTON. Mr. Menendez? Thank you, sir.

Mr. MENENDEZ. Thank you, Mr. Chairman. I regret that votes, actually, have made this hearing late.

Mr. BURTON. It was a problem, yes.

Mr. MENENDEZ. We have witnesses that have traveled a great distance, though. I will try to be brief.

Mr. McSpedon, let me ask you this. You referenced in your testimony that in March of this year amendments to Venezuela's Criminal Code entered into law.

According to Human Rights Watch, these amendments extend laws that make it a criminal offense to insult or show disrespect for the President and other governmental authorities and flout international principles that protect free speech.

In addition to the laws that already protect the President, the Vice President, government ministers, state governors and members of the Supreme Court from disrespect, whatever that exactly means, the new amendments also cover legislators of the National Assembly, members of the National Electoral Council, the Attorney General, the Public Prosecutor, the Human Rights Ombudsman, the Treasury Inspector and members of the high military command.

The penalties for breaking this law are also astounding, up to 40 months in prison for disrespecting the President and up to 20 months for disrespecting anyone else.

Do we know whether anyone has been convicted yet under any of these new amendments?

Mr. MCSPEDON. I don't have any information on whether or not anyone has been convicted. I do know that the——

Mr. MENENDEZ. Or charged?

Mr. MCSPEDON. I don't know of anyone who has been charged.

Ms. JATAR. General Muson has been charged and he is in prison 6 years for exactly, because I want to be precise, for condemning on TV the use of a flamethrower in an incident in which a number of soldiers lost their lives in a military prison.

Mr. MENENDEZ. He criticized that?

Ms. JATAR. Yes.

Mr. MENENDEZ. He was charged under this statute?

Ms. JATAR. Yes.

Mr. MENENDEZ. He was found guilty?

Ms. JATAR. Yes and now he is in prison and was sentenced for 5 years.

Mr. MENENDEZ. For 5 years?

Ms. JATAR. Yes.

Mr. MENENDEZ. In prison?

Ms. JATAR. In prison.

Mr. MENENDEZ. To those who believe that Mr. Chavez is making some social progress in his country, this is the essence, the essence of the concerns. Imagine, if we could not say something about President Bush, how many of my colleagues would be upset. And then if they would go to jail as a result of it, for 5 years.

Let me ask one other question. I note by the way that this is not a view of just some of us. Former Czech President Vaclav Havel, former U.S. Secretary of State Madeleine Albright and United States Senator John McCain of Arizona are members of an international coalition of more than 70 democrats, small "d," who sent a letter last year to President Chavez expressing concern over the prosecution of civic activists in that country, calling it a grave threat to democracy.

Mr. Chairman, I would like to have that letter included for the record.

Mr. BURTON. Without objection, so ordered.

Mr. MENENDEZ. When you look at the lists, you will see that there is a very wide expanse of people from the left to the right on this list and many who I don't agree with on other policy issues, but nonetheless who felt compelled to make this statement. It is a real concern.

Lastly, Ms. Jatar, in your written testimony you talk about the legal problems facing the President and Vice President of Sumate, Alejandro Paz and Maria Corina Machado.

You also mentioned that there are 200 political prisoners and that many more are facing accusations, persecution and harassment.

Have you personally been harassed and if so——

Ms. JATAR. Yes.

Mr. MENENDEZ. If so, how?

Ms. JATAR. Well, I mentioned earlier that I had to resign to a job I had, because there was pressure from the government that I had to leave and secondly, also I have had to change my telephone

number three times, because I get death threats during the night that have made my children very fearful.

One of my e-mails was read by one of the members of the governed party as a proof that I was corroborating with the OAS and biasing OAS criteria and opinion on the recent elections.

So yes, you feel that and when you see that everybody around you is getting some kind of harassment or some kind of persecution, you realize that you can be next anytime.

Mr. MENENDEZ. Finally, the lists that were put out of those who signed the petition that Súmate had for the referendum, are those still being used?

Ms. JATAR. Yes. They are still being used and it is being enriched with new data. You could download it from the internet. I can look up my name and it is there where I live, if I voted or didn't vote in the last election, if I participated or not in so-and-so social government problem. You do feel that big brother is watching you.

Mr. MENENDEZ. Thank you, Mr. Chairman.

Mr. BURTON. Let me just thank you very much. I see Mr. Meeks came back, but Mr. Meeks unfortunately there is another hearing coming up immediately and we—

Ms. JATAR. Could I leave just something for the record?

Mr. MEEKS. I just wanted to say because I think I wanted to make sure that one thing for the record is clear because Ms. Jatar I wanted you to know that from what I heard with you that we probably have more in common than that. You are in the minority. We are in the minority in Congress.

I think that clearly I think Mr. Delahunt was right. I think clearly there needs to be opposition to, that is what helps make democracies thrive.

I would just hope that you know you do it in the way that you should do it. Organizing people politically to motivate them to come out to vote and things of that nature.

I don't have any opposition. I just want to make sure the record is clear on that. I do believe that we should do it as a political party or in that aspect as opposed to anything else.

The only thing that I would like to indicate is that, because I am a member of the NED board and so I just thought that it was important for me and how I voted on it that I thought that it was important that if in fact you are going in as a nonpartisan organization that is one thing, but if you go in as a partisanship, which I believe has to happen, I think that there is not an organized opposition in Venezuela and there should be and Súmate may be the group that needs to get out there to be that organizing element, but be that.

Be the opposition party. Don't go under the guise of well we don't care which side wins. That is all I said, because I think that here we are going to organize and we are going to try to make sure that we become the majority party in 2006. We are going to do that.

Mr. BURTON. Thank you, Mr. Meeks. God forbid that last comment. We want to thank you very much.

Mr. MENENDEZ. Mr. Chairman, God has nothing to do with that.

Mr. BURTON. There are a couple of other documents we want to submit for the record and without objection, so ordered.

Thank you very much. I would like to talk to you after we leave the meeting, if you might, in the hall.

Ms. JATAR. Sure.

Mr. BURTON. Once again, to the Chairman of the Subcommittee, Mr. Smith, thank you very much for being so patient. We stand adjourned.

[Whereupon, at 2:45 p.m., the Subcommittee was adjourned.]

A P P E N D I X

MATERIAL SUBMITTED FOR THE HEARING RECORD

LETTER FOR THE RECORD SUBMITTED BY THE HONORABLE ROBERT MENENDEZ, A
REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW JERSEY

Letter for the Record, Submitted by Representative Robert Menendez, released by The National Endowment for
Democracy on November 11, 2004

Honorable Hugo Chavez, President
Honorable Ivan Rincon, President of the Supreme Court
Francisco Ameliach, President, National Assembly

Dear Sirs:

We write to you as democrats from around the world to express our solidarity with and deep concern for some fellow democrats in your country who face prosecution for exercising their civic rights.

It has come to our attention that the leaders of Sumate, a civic organization, face criminal prosecution for accepting international assistance to help educate citizens about their rights under Venezuela's constitution. As democrats, we are appalled that this group is being singled out for punishment, a group whose deep commitment to democratic principles we share and applaud.

We are equally troubled that this prosecution appears to be just the beginning of a larger effort to criminalize the receipt of foreign funds by Venezuelan NGOs. We agree with the denunciations of this proposed "reform" of the penal code by human rights groups in Venezuela and elsewhere as a clear violation of international standards and practices.

As you undoubtedly know, proceeding against nongovernmental organizations for receiving democratic assistance is a violation of both the Inter-American Democratic Charter and the Warsaw Declaration of the Community of Democracies, a document your government signed along with over 100 others four years ago.

The charges against Sumate include its having received support from the National Endowment for Democracy (NED), a highly reputable and established nongovernmental foundation that promotes democracy in over 80 countries around the world. In fact, NED is but one of dozens of democracy foundations in North America, Europe, and Asia that receive public funding from their respective parliaments for the purpose of providing assistance to support democracy-related programs no different from the one conducted by Sumate.

We urge you to reconsider the prosecution of the leadership of Sumate, as well as the proposal to criminalize democracy assistance from abroad. Both are clearly inconsistent with international democratic norms and constitute a grave threat to democracy.

Morton Abramowitz, Senior Fellow, Century Foundation
Mahnaz Afkhami, Founder and President, Women's Learning Partnership
Sergio Aguayo, Professor, El Colegio de Mexico
Madeleine Albright, former US Secretary of State
Sergio Fernando Araya Alverado, President, Colegio Ciencias Politicas y Relaciones Internacionales de Costa Rica
Zainah Anwar, Executive Director, Sisters in Islam, Malaysia
Bernard Aronson, former Assistant Secretary of State for Latin America and the Caribbean (US)
Genaro Arriagada, former Chilean Ambassador to the U.S.
Timothy Garton Ash, Senior Research Fellow, St. Anthony's College, Oxford and Director European Studies Center
Ronald Asmus, German Marshall Fund
Dr. Werner Bohler, Konrad-Adenauer Stiftung, Germany
Robert M. Borden, CEO, Bumpers Corporation (Canada)
Jack Buchner, President, US Association of Former Members of Congress

Emma Bonino, former European Union Commissioner and former member, European Parliament (Italy)
William E. Brock, former US Senator and former Secretary of Labor
Rt. Hon. Kim Campbell, former PM of Canada
Frank Carlucci, former National Security Advisor (US)
Violeta Chamorro, former President of Nicaragua
Lorne Craner, President, International Republican Institute and former Assistant Secretary of State for Democracy, Human Rights and Labor
Michael Danby, Member of Parliament, Australia
Gianfranco Dell'Alba, Member of European Parliament, Italy
Larry Diamond, Senior Fellow, Hoover Institution and co-editor, *Journal of Democracy*
Philip Dimitrov, former Prime Minister, Bulgaria
Jorge Dominguez, Professor, Harvard University
Thomas R. Donahue, President Emeritus, AFL-CIO
Nicholas Eberstadt, American Enterprise Institute
Peter Eigen, Chairman, Transparency International
Jean Bethke Elshtain, Laura Spelman Rockefeller Professor of Social and Political Ethics, The University of Chicago
Joao Carlos Espada, Director, Institute for Political Studies, Portuguese Catholic University
Francis Fukuyama, Bernard L. Schwartz Professor of International Political Economy, Paul Nitze School of Advanced International Studies, Johns Hopkins University
Richard Goldstone, former Prosecutor, International Criminal Tribunal for Former Yugoslavia
Peter Hakim, President, Inter-American Dialogue
Vaclav Havel, former President, Czech Republic
Francois Heisbourg, French Academic
Bi-khim Hsiao, Member of Parliament, Taiwan
Penn Kemble, Senior Fellow, Freedom House
Harvey Klehr, Andrew W. Mellon Professor of Politics and History, Emory University
Stephan Klingelhofer, President, International Center for Not-for-Profit Law
Robert LaGamma, Council for a Community of Democracies
Bolivar Lamounier, Augurium Consulting, Brazil
Amb. Luis Lauredo, former U.S. Ambassador, Organization of American States
Ulrich Laute, Konrad-Adenauer-Stiftung, Germany
John McCain, US Senator
Edward J. McElroy, President, American Federation of Teachers
Matthew McHugh, former Member of US Congress
Edward McMillan-Scott, Member of European Parliament (UK)
Sascha Müller-Kraenner, Heinrich Böll Stiftung
Ghia Nodia, Chairman, Caucasian Institute for Peace, Democracy and Development, Republic of Georgia
Janusz Onyszkiewicz, former Minister of Defense, Poland
Marco Pannella, Member of European Parliament (Italy)
Amb. Mark Palmer, Vice Chairman, Freedom House
Robert A. Pastor, Director, Center for Democracy and Election Management, American University
Theodore Piccone, Democracy Coalition Project (US)
Surin Pitsuwan, Member of Parliament, Thailand
James N. Purcell, former Director General, International Organization for Migration
Xiao Qiang, U. of California at Berkley, Past Executive Director, Human Rights in China
John Richardson, Chair, Council for a Community of Democracies
Markus Rosenberger, Konrad Adenauer Foundation, Perú
Richard C. Rowson, Council for a Community of Democracies
John Shattuck, CEO, John F. Kennedy Library Foundation and former Assistant Secretary of State for Democracy, Human Rights and Labor
Michael Shifter, Vice President for Policy, Inter-American Dialogue
Stephen Solarz, Former Member of US Congress

Theodore C. Sorensen, Former Special Assistant to President John Fitzgerald Kennedy
Strobe Talbott, former Deputy US Secretary of State
Amb. Terence Todman, former US Ambassador to Argentina, Costa Rica and Spain
Elisabeth Ungar, Universidad de los Andes (Columbia)
Arturo Valenzuela, Director, Center for Latin American Affairs, Georgetown University
Gianni Vernetti, Member of Parliament, Italy
Alexandr Vondra, former Deputy Foreign Minister, Czech Republic
Gerhard Wahlers, Head of International Cooperation, Konrad Adenauer Foundation
Reinhard Willig, Konrad Adenauer Stiftung-Costa Rica
Jennifer Windsor, Executive Director, Freedom House
Kenneth Wollack, President, National Democratic Institute for International Affairs
Mortimer Zuckerman, Editor, *U.S. News and World Report* and *New York Daily News*

Media Quotes submitted by Representative William Delahunt

DATE: 27 September 2005
 RE: Anti-Chavez Excerpts from Recent Venezuelan Newspapers

EL NACIONAL

- “If no one does anything Chávez will last to 2021, the solutions do not come by themselves, we have to generate them. I will not sit and look at a crystal ball or try to divine it. I simply call upon the resistance, because I know that through the fight we will find the solution. There are no people in the world which have fought and not obtained their objective. If the people of Venezuela return to the streets, return to the active fight, I think that the solution can be near.”
 Interview with Mohamad Merhi, human rights activist, EL NACIONAL, 27 September 2005.
- “Protesters adverse to the regime responded to the announcement of the Frente Nacional por la Liberación de los Presos Políticos and gathered at noon this Sunday to protest the expropriation of land, the administrative proceedings against radio and TV transmitters, and the impediments to candidacy to the [national assembly] of political prisoners. ...The journalist Patricia Poleo appeared in the Plaza Altamira and gave assurances that the protests in various places suggest the ‘national repudiation’ of the project of Hugo Chávez.”
Oposición Cumplió Con Jornada De Protesta “Toma Tu Calle”, EL NACIONAL, 27 September 2005.
- “I believe that all appearance of strength of the Government has more to do with the weakness of their adversaries than with their own strength. The bubbles are starting to burst, economic, social, political, in which the Government is so invested. There is a serious fragility: the inefficiency, ineffectiveness, the corruption is so obvious, that Chávez himself is complaining. ...No one denounces his own government with as much force as him, who protests against his own management. A person that supposes that if a street in Caracas is not swept or a block not laid it is because the will of his followers is lacking. He does not have ministers, he has servants who obey him because they fear him. Chávez is not the first among equals. He does not discuss with his collaborators, and he never would accept losing a discussion or a vote with them.” Interview with Teodoro Petkoff, potential presidential candidate, EL NACIONAL.
- “With this information policy that [Telesur] is using I do not think that it is a means of cooperation [with Latin America]. On the contrary, it is going to be an element of division and disturbance in the region, instead of uniting us in the things upon which we can cooperate as with language, some cultural traditions,

or issues which occupy us all, such as poverty.” Interview with Gloria Cuenca, EL NACIONAL.

EL UNIVERSAL

- “César Pérez Vivas, secretary general of Copei, indicated that the land distribution ordered by Hugo Chávez is not an act of social justice but ‘an act of revenge.’ ...‘In Copei, we rejected the demagogic and revengeful act of Hugo Chávez in La Marqueseña, because he did not have as his objective to help any poor person, nor to benefit any farmer’ and stressed that the Government cannot invade land without fulfilling the stipulations in the law.” *Oposición Rechaza Que El Estado Se Erija Como Único Propietario*, EL UNIVERSAL, 27 September 2005.
- “Then, in Venezuela they want to us to impose a revolution that would do nothing more than to send the country towards a type of socialism that already failed in the world and that inevitably will lead to a Cuban-type dictatorship. But the mechanism being applies to impose that change on us is also quite unorthodox. And taking advantage of the high prices petroleum, the leaders of the revolution launched a program of collective bribes. Even, they no longer have shame. ...They bribe the town with breadcrumbs: missions, scholarships, gifts and words and more words. The bad thing is that investments are not being created, nor real jobs, nor education nor quality healthcare, nor equitable justice, nor security, nor institutions that work and render accounts. We stand on a petroleum barrel with a rope around the neck. The day when the prices of petroleum fall, the rope will have strangled us. The gifts and the missions will end. The gains of the businessmen will also end and the gift of petroleum to other countries will also end. That day, the shadow will have fallen on Venezuela. We will have handed over our mother country and also the future of our children. We will already have a police state.” José Toro Hardy, *Comunismo Con Vaselina*, EL UNIVERSAL, 27 September 2005.
- “Although Chávez never could completely hide the [irrefrenable] attraction to totalitarian power and rejection of democratic methods that was evidenced from February 4, 1992, a good part of the votes that he obtained in December of 1998 adhered to the mistaken belief that he came to impose order, to eradicate corruption, to fight injustice and to guarantee a minimum of efficiency in the responsibilities of the Government. ...Simple threats, electoral tactics, groundless provocations? I do not think so. A new game with a candle, now more confident and sure, to see if Venezuelans, denied majority to live in total subjugation, in fear or out of good faith, will stop their support or accept their own erosion of free society and democracy. We will see, then, how much fear we feel and how resigned we are to the supposed fatality that he wants to impose like unstoppable destiny.” Roberto Giusti, *En La Encrucijada*, EL UNIVERSAL, 27 September 2005.

- “President Chávez and his government are the champions in producing the poor. Its attitude and arbitrariness measures against businessmen and property is what produces more poor, pushes away investment, scares and drives away people capable of producing work and wealth. They destroy, in addition, the image of our country abroad and divide Venezuelans.

“President Chávez does not gain one with that aggressive and provoking conduct, when violating all the legal order of the country, the Constitution and the laws of the Republic, uses to the Venezuelan Army like a personal body to threaten and to burst in into the properties of individuals, as if the sovereignty and the national security were in danger, to evict the owner of a property or an urban land. This offensive behavior is only comparable with that used by the *chácharos* of Gómez and the hated National Security.” Enrique Mendoza, former governor of Miranda. *Mendoza. Convoca A Anilizar Confiscaciones*, EL UNIVERSAL, 26 September 2005.

TAL CUAL

- “[I]t is necessary to tell the president that it is he and his government whose turn it is, before anyone else, to cautiously respect the legal texts, the Constitution, and judicial decisions.” *The Bad Sign*, TAL CUAL, 26 September 2005.
- “People feel that Chávez cares more about being Magnón, the Emperor of the Galaxy, that character from the comic strip Mandrake, than the modest president of this generous land. He cannot help but notice, then, that the people’s ‘empowerment’, the new forms of people’s organization in the barrios, begins to overflow into the government. There are too many years of ‘pure lies’, in contrast with the multimillion income that is spent without seeing the result of the spending.” *Angry Citizens Demand Their Rights*, TAL CUAL, 21 September 2005.
- “Anyone would be left with a bad taste in the mouth at the realization that it is not solidarity with other nations that moves Chavez, but pure political calculation.” *The Savior of the World*, TAL CUAL, 15 September 2005.



**On the State of Democracy in Venezuela
Only the Facts**

This document presents the most relevant facts regarding the evolution of Democracy in Venezuela during the Presidency of Hugo Chávez Frías, which began in January 1999.

The facts are organized according to the items that define a Democracy:

- 1-. On the Independence of Public Powers**
- 2-. The rule of law**
- 3-. The transparency of the electoral power**
- 4-. Freedom of expression**
- 5-. Respect for human rights and fundamental freedoms**
- 6-. The state of the institutions**

Update 9/23/2005

Is the Legislative Branch Controlled by the Executive?

Is the National Electoral Council controlled by the Executive?

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IS THE LEGISLATIVE BRANCH CONTROLLED BY THE EXECUTIVE?

1. In December 1998 Hugo Chávez Frías won the presidential elections with 35% of total votes. 36.55% of the electorate chose to abstain while 56.20% voted for Chavez. In November of that same year the same electorate had elected a new bicameral Congress in which all the political groups of the time were represented.

2. Immediately, President Chávez Frías began a process aimed at transforming the Venezuelan State. On the basis of a decision issued in January 1999 by the Supreme Court of Justice Chávez promoted the convening of a consultative referendum a provision for which was included in the Basic Law on Voting and Political Participation but not in the 1961 constitution in force at the time. The Referendum would launch a process aimed at drafting a new Constitution.

3. In 1999, and with only 35% of total electoral votes, the government's party secured 96% of the delegates to the Constitutional Assembly.

4. Before the Constitutional Assembly began its task, Congress was forced to "enter into recess" and was thus de facto "dissolved". The National Constitutional Assembly took control of the Legislative Power.

5. Following the approval of the new Constitution, elections were called in July 2000 for a new National Assembly in which the government's party succeeded in securing a majority.

6. Chávez, in turn, won the new presidential elections with 32% of total votes and an abstention rate as high as 43%.

7. On November 11, 2000, the National Assembly passed the second Enabling Law (Ley Habilitante), based on Articles 203 and 236 of the 1999 Constitution. Since the Enabling Law granted the Executive Branch the authority to legislate, albeit in a transitory manner, this proceeded to change several basic laws. (The first Enabling Law had been approved by the former Congress on April 27, 1999, in accordance to Article 190/8 of the 1961 Constitution).

8. The above developments sparked, the December 2001 lock out, the labor strike and the events of April 2002.

9. As a result of the April 2002 events, the government lost the support of some of the parties in its coalition as well as its qualified majority (two thirds) in the National Assembly.



10. One of the tactics used by the parliamentary faction controlled by the Administration has been to restrict or impede Assembly debates and to expedite the approval of Basic Laws through modifications of the Assembly's Internal Rules of Procedure and Debates (7 in only two years), approved by simple majority.

11. The opposition has denounced the multiple modifications to the National Assembly's Rules of Procedure as unconstitutional. In this regard, it has presented several complaints before the TSJ (Supreme Court of Justice), which is yet to rule on the matter.

12. Following the appointment in January 2005 of the National Assembly's new leadership, controlled by the pro-government factions and presided by Nicolás Maduro, the situation in the Assembly became very tense. At one point, the National Guard was asked to intervene to oust Congressman Nicolás Sosa (MAS) from the premises in the midst of a dispute regarding the modification of the Central Bank Law. The modification of the Central Bank Law was approved even though copies of it were not distributed on the floor of the Assembly and it was not debated as regulations required. The opposition strongly protested this maneuver.

13. Several statements by pro-government members of the Assembly should also be noted. For example, Congresswoman Iris Valera has clearly indicated: "We will not stop whatever reforms we choose to introduce to the laws of this country; this is why we have the majority". (El Nacional, Wednesday, June 22, 2005).



IS THE JUDICIAL BRANCH CONTROLLED BY THE EXECUTIVE?

1. Ever since his inauguration, President Chávez and his Administration exerted much pressure on the Supreme Court of Justice to obtain the Court's approval for the carrying out of a referendum that would lead to a Constituent Assembly, even though the 1961 Constitution included no such provision.

2. Pressure intensified to such level that by the end of August 1999 most of the Court's magistrates had no choice but to resign, among them the then President of the Supreme Court, Cecilia Sosa, who resigned following the swearing-in of the nine members of the Judicial Emergency Commission entrusted with reorganizing the judicial system.

3. Following the approval of a new Constitution and the election of a new National Assembly, the new members of the Supreme Court of Justice were elected by the Assembly's two thirds pro-government faction. However, the rules regarding the nomination of magistrates, embodied in Article 263 of the new Constitution, were discarded in favor of other criteria established by the Court's magistrates - some of whom were up for re-election. These criteria are included in a Supreme Court ruling issued on December 12, 2000, regarding the Special Law on the Ratification or Designation of Members of the People's Power and Magistrates of the Supreme Court of Justice for the First Constitutional term.

4. When the Supreme Court of Justice issued decisions that contravened the Executive's political line - such as (1) its not finding enough merits to bring to trial the members of the Armed Forces who had been accused of treason following the April 2002 events that led to the brief ousting from power of President Chavez and (2) the Supreme Court's Electoral Chamber's rulings in favor of the signatures gathered by the opposition to request a Referendum to Revoke the President- the Government began a campaign aimed at modifying the Basic Law of the Supreme Court of Justice. al.

5. According to Article 203 of the Constitution, all Basic Laws must be passed by qualified majority, that is, two thirds of the members of the Assembly. However, in December 2004, the Basic Law of the Supreme Court of Justice was modified by simple majority (83 out of 165 Congressmen).

6. One of the arguments put forth by the government to justify its modification of the Basic Law of the Supreme Court of Justice was that the number of magistrates needed to be increased due to the volume of work pending. However, in January 2005 the then President of the TSJ, Judge Iván Rincón Urdaneta, in his speech on the occasion of the beginning of activities pointed out that during the year 2004 the TSJ had been more productive than usual and added, adding that "...This annual increase in



activities reflects the high level of efficiency of each of the Court's Chambers ...” (TSJ, Serie Eventos No. 14, P.10). The TSJ's 2004 Activities' Report indicates that the Court ruled on 94% of the cases that were brought to its attention.

7. The New Basic Law of the Supreme Court of Justice expands the number of magistrates from 20 to 32. Even though many within and outside the Assembly argued that such modification should be declared null, on January 26, 2004 the Supreme Court issued a ruling ratifying its constitutionality. On December 14, 2004. On December 14th 2004, the National Assembly appointed 17 new principal magistrates: 12 to comply with the increases dictated by the new law and 5 to fill the posts of those magistrates who had opted for retirement. Moreover, the National Assembly appointed 32 deputy magistrates, a provision that was not included in the previous law.

8. The Chairman of the Nominating Commission, — Congressman Pedro Carreño— stated very clearly that the Government of President Hugo Chávez Frías would not allow any opposition in the Supreme Court of Justice: “We will not allow a self inflicted goal”. Adding that those elected “are magistrates whose revolutionary affiliation is more than guaranteed”. Thus, among the newly appointed magistrates were members or sympathizers of the government's party, as well as former members of the national Assembly on the government's party ticket and even the President of the National Electoral Council, Francisco Carrasquero.

9. In his inaugural address the new President of the Supreme Court of Justice, Judge Omar Mora Diaz, described himself as a “revolutionary”, declared that he was determined to apply a “revolutionary justice”. Later, upon presenting his strategic plan to reform the Judicial Power, Mora Diaz proposed the adoption of a procedure for the “revolutionary cleansing” of the Supreme Court, sparking the concerned reaction of several important lawyers.



IS THE NATIONAL ELECTORAL COUNCIL CONTROLLED BY THE EXECUTIVE?

1. The new National Electoral Council (CNE), appointed in July 2000 by the Constituent Assembly's Legislative Commission, was entrusted with organizing the elections that were held later that year to elect all authorities, including the presidents, governors, mayors, local officials and members of the National Assembly, in accordance with the new 1999 Constitution.

2. The People's Advocate, Dilia Parra, questioned the legitimacy of the new CNE, as well as its provisional character, and petitioned the Supreme Court of Justice to declare invalid the new CNE. However, the Court rejected her petition, ratified the Legislative Commission's decision and approved the Electoral Statute for Public Powers that would regulate only the above mentioned elections, as the Basic Voting Law then in force did not envision some of the positions that were to be filled through the elections nor did it include provisions for the re-legitimization of other posts, including the Presidency.

3. This CNE was never ratified by the National Assembly elected in the year 2000. Nevertheless, it carried out functions until a group of pro-government congressmen requested it be declared invalid when the CNE decided to carry out a referendum on the President of the Republic.

4. The Supreme Court of Justice's Electoral Chamber suspended the referendum and ordered the CNE to abstain from organizing any type of election until the National Assembly nominated a new CNE. Thus, during more than six months, the Supreme Court of Justice denied all Venezuelans their constitutional right to vote.

5. When it became evident that the National Assembly would not reach a consensus regarding the election of a new CNE, on August 25, 2003, the Supreme Court of Justice argued neglect of legislative duties and proceeded to appoint a new CNE on August 25, 2003. However it went even further, appointing as well the CNE's Secretary and Legal Council...

6. The selection of the new CNE's members violated Article 296 of the Constitution and Article 9.3 of the Basic Law of the Electoral Power (LOPE), which establishes that the members of the CNE must be politically independent. These articles dictate that the CNE must be comprised of five members not belonging to any political organization. However, following its rule on legislative neglect, the Supreme Court of Justice proceeded to appoint the new CNE's members, in consultation with the political parties.

7. Following the resignation of the CNE's President and Vice-President, on January 20, 2005, the Supreme Court designated, once again, a new, largely



pro-government CNE (4 to 1), pre-emptying the National Assembly's right, under the Constitution, to appoint the members of the CNE. Later, the National Assembly ratified the Supreme Court's decision, amidst strong protest by the opposition.

8. By appointing the new leadership of the CNE the Supreme Court violated Article 296 of the Constitution and Article 13 of the LOPE which reads that "Deputies shall replace the corresponding electoral rectors when he or she is temporarily or permanently absent". The deputies of each of the CNE's members, all designated according to the rules, were never allowed to take over the duties of those they were appointed to replace.

9. The CNE that emerged from such manipulations is illegitimate not only because it was appointed by a body, the Supreme Court, that has no authority to do so, but also because it repeatedly violates the Constitution and the Basic Law on Political Voting and Participation by not examining the fraud accusations brought forth following the 2004 elections. Finally, it must be stressed that four of the CNE's five members – Jorge Rodríguez, Oscar Battaglini, Tibisay Lucena and Oscar León Uzcategui – are openly pro-government.

10. The CNE's pro-government's leaning became openly apparent when that body allowed the Comando Maisanta, the President's campaign command, to be staffed with public officials – ministers, congressmen, mayors and high government officials – who dedicated part or most of their time to campaign activities, as did the President of the Republic, Hugo Chávez Frías. No inquiries were made to ascertain whether these officials used public resources to move around during the campaign.



**IS THE NEW CITIZENS' POWER
(THE PUBLIC PROSECUTOR, THE OFFICE OF THE
COMPTROLLER AND THE PEOPLES' ADVOCATE)
CONTROLLED BY THE EXECUTIVE?**

1. Before his appointment as Public Prosecutor, Isaías Rodríguez held the following posts: (1) member of President Chavez's campaign command for the 1998 elections, (2) Senator for the State of Aragua, elected in November 1998 on the ticket of Movimiento Quinta República, the government's main party, (3) member and First Vice-President of the National Constituent Assembly, elected in April 1999 again under the government's ticket and (4) and Vice-President of the Republic, appointed on January 23, 2000, by the President. In December 2000 he resigned from the post of Vice-President and was later presented to the National Assembly as candidate for the post of Public Prosecutor.

2. On December 26, 2000, the National Assembly appointed Rodríguez Public Prosecutor of the Republic, thus violating Article 145 of the Constitution which establishes the principle of impartiality and independence of the branches of government. It is precisely the Public Prosecutor's responsibility to insure legality and the rule of law.

3. Under Isaías Rodríguez the Office of the Public Prosecutor (FGR) has initiated 400 legal proceedings against the political opposition. However, very few proceedings have been initiated against public officials. The following are some of the most notorious cases undertaken against the opposition:

- The request for the cassation of judgment regarding the August 14, 2004 ruling that acquitted the members of the Armed Forces who had participated in the events of April 2002 from the charges of military rebellion. The verdict was revised and annulled. It is important to point out that Rodríguez did not introduce the request for such cassation of judgment by his own initiative, but was prompted to do so by no less a figure than the President of the Supreme Court of Justice, Rincón Urdaneta.
- Conspiracy charges against Maria Corina Machado, Alejandro Plaz and other members of SUMATE.
- Charges against the attorney Carlos Ayala Corao, former President of the Andean Commission of Jurists and of the Interamerican Human Rights Commission, for his alleged participation in the drafting of the decree by which Pedro Carmona dissolved all public powers on April 12, 2002, forty-eight hours after taking over the Presidency of the Republic.

4. Nevertheless, regarding the April 11, 2002 events, neither the National Assembly nor the Office of the Public Prosecutor have taken any initiative to



shed light on what really occurred at the time, in spite of the fact that the establishment of a Truth Commission Issue 11- was one of the agreements reached at the Negotiating Table coordinated by the OAS Secretary General.

5. Recently, the Venezuelan Penal Forum, which represents a large number of lawyers, presented a report on "...the numerous irregularities...and the initiation of countless procedures and penal investigations of a political nature in relation to the regrettable events that occurred in Venezuela on April 11, 12 and 13 of the year 2002". The report points out that: "...9 judges and 10 prosecutors are processing the cases against 400 political suspects."

6. Similarly, the Andean Commission of Jurists issued a communiqué in which it strongly criticizes Venezuela's Office of the Public Prosecutor was In 1999 the National Constituent Assembly appointed Clodosbaldo Russián Comptroller General. In 2000 the National Assembly ratified the appointment for a period of seven years.

7. Even though the Public Prosecutor has rejected some of these criticisms, the critical position voiced by the Venezuelan Penal Forum and the Andean Commission of Jurists coincides with a Memorandum by the Public Prosecutor Isaias Rodríguez published on June 8, 2005 on the web page of the Office of the Public Prosecutor. The Memorandum, titled Bureaucratic Obstacles in the Public Prosecutor's Office, strongly criticizes the working of this institution that Mr. Rodríguez has presided during the last six years. Recently a second section of the Memorandum also signed by the Public Prosecutor was published.

8. In 1999 Clodosbaldo Russián was designated Comptroller General by the National Constituent Assembly and in the year 2000 the National Assembly ratified the appointment for a period of 7 years. Mr. Russián was an active member of one of the parties that supported Chávez for President and to this date has not brought corruption charges against any of the regime's officials.

9. Germán Amundaraín was appointed the People's Advocate by the National Assembly on December 26, 2000. Before that he had practiced law and had held some third level public positions. According to Article 280 of the Constitution, his main responsibility is to defend the legitimate, collective and general interests of the people, yet he has dedicated a great deal of his time to defending the government's record in national and international fora. For example, when in February 2004 several cases of police brutality were reported in Caracas against demonstrators the People's Advocate declared: "...in Venezuela we do not have political prisoners but rather politicians who are imprisoned". Recently, in a speech before the 61 st Session of the United Nations' Human Rights Commission, meeting in Geneva on April 11-16, 2005, Mr. Amundaraín echoed President Chávez' campaign denouncing an alleged intervention by the USA in Venezuela.



2 - ON THE RULE OF LAW

Are the Supreme Court Justices biased in the discharge of their Duties?

Is the Independence of the Judicial Career respected?

Do Venezuelan Courts respect Constitutional Law principles?

Is the Supreme Court at the service of the Administration?



ARE THE SUPREME COURT JUSTICES BIASED IN THE DISCHARGE OF THEIR DUTIES?

1. After the National Assembly modified, by a simple majority vote (83 to 165), the Organic Law on the Supreme Court of Justice it proceeded to designate seventeen new Justices of the Supreme Court. Out of those seventeen, twelve were meant to cover the expansion in the number of Justices from twenty to thirty-two and five were appointed to replace those Justices who had been forced into retirement following pressure from the Government.

2. By expanding the number of Justices by seventeen new members, and by adding a complete set of thirty-two new alternate Justices, all the Supreme Court's Chambers came to have a firm pro-government majority. According to statements by the Chairman of the Commission on Judicial Nominations of the National Assembly, Pedro Carreño, a Congressman and former military officer, the Administration of President Hugo Chávez-Frías, would not allow the opposition to be represented at all in the Supreme Court. "We will not score a goal against ourselves", he stated announcing the hard line position that would guide judicial designations, adding that those chosen "are judges whose revolutionary credentials are more than guaranteed".

3. Among the newly designated Justices those more notorious for their pro-government bias are: Luis Velásquez-Alvaray and Luis Franceschi, both Members of the National Assembly on the pro-government benches; Francisco Carrasquero, previously the President of the National Electoral Council; Eladio Aponte-Aponte, a retired officer and the Armed Forces' former General Prosecutor; and Deyanira Nieves, a former Caracas Judicial Circuit Judge notorious for her pro-government sentences in cases such as those regarding Carlos Melo, an opposition leader sentenced to prison, attacks to foreign embassies and the assassination of dissident soldiers.

4. On the occasion of the swearing-in ceremony of the new Justices, held on December 14, 2004, Justice Luis Velásquez-Alvaray, former Congressman, co-author of the Supreme Court Law and of the Penal Code's widely criticized revision approved in January 2005, stated that while he would formally present his resignation to his Fifth- Republic Movement party membership, he would never be able to put aside his unwavering commitment to the political process undertaken under the leadership of President Chávez. He equally indicated that he would sponsor a process of 'revolutionary justice', thereby placing himself in violation of Article 256 of the Constitution, which reads as follows: "In order to guarantee the impartiality and the independence of Justices, Judges, Public Prosecutors and Attorneys in the discharge of their duties, they shall not carry out, exception made for the right to vote, any activism of a political, professional, labor-union or similar nature, nor shall they carry out, whether directly or through a third party, any activity for gain incompatible with



their responsibilities, nor any other public endeavor, exception made for teaching. Judges shall not have the right to organize.”

5. The passing of the amendments to the Supreme Court Law and the appointment of the new judges was widely criticized at the national level by well-known law professors and by opposition Congressmen. The latter withdrew from the National Assembly session that was considering the amendments, in protest for what they considered to be a violation of the principle of impartiality and independence of the Judiciary.

6. Human Rights Watch (HRW), an organization devoted to the defense of Human Rights, issued a statement on December 14, 2004, indicating that by this law the Assembly inflicted a severe blow to the independence and autonomy of justice in Venezuela. Recently, the Andean Commission of Jurists expressed in a public letter a similar concern regarding the independence of the judiciary power and its actions.

7. On February 4, 2005, Omar Mora Díaz became the new President of the Supreme Court. In his first statement to the press, he promised to remove from the Court all the ‘coup-plotting judges’: “It is unacceptable that, on the basis of the principle of popular sovereignty, a Judge allows himself to become a coup-plotter. It can not be. Such Judges must be removed, whatever the cost, ... It can not be that a Judge, who saw on TV how an individual by the name of Pedro Carmona-Estanga led a coup, sets him free the very next day under the spurious argument that there existed a power-vacuum. Such a man must not sit as a Judge.” (El Universal, February 3, 2005). He added that the sentence issued by the Supreme Court, by which those military officers who had been present in the April 2002 developments (Efraín Vásquez-Velasco, Héctor Ramírez-Pérez, Ramón Pereira-Olivares, and Daniel Comisso-Urdaneta) were absolved, should be reverted. He equally suggested that such a decision should be taken by the Constitutional Chamber of the Supreme Court, acting on its own initiative.

8. Omar Mora, the President of the Supreme Court, has openly declared his support for the political process Venezuela is undergoing: “... each revolution must be original ... one of the mistakes made by those of us who fought for a revolutionary transformation of society was to think that we could copy foreign models in a straightforward way. At a certain point in time we wanted to copy the Bolshevik model and we failed; afterwards, we tried to copy the Chinese revolution and we failed; then, as the Cuban revolution made a strong impression on the 1960's generation, we tried to copy it in a mechanical way and equally failed. The virtue of this process of revolutionary transformation Venezuela is presently undergoing is that it is an original experience ... In '66 and '67, I was put in jail four times by the Police (DIGEPOL), and three times by the Metropolitan Police ... I was even sent to Cachipo, an anti-guerrilla camp located in the East. I was an active member of the Communist Youth, then clandestine. I was in jail for six months after having being charged with collaboration with the guerrilla, with the Front then active in Falcón State ... I started when I was thirteen and continued to be a militant until the Communist Party broke up. As a hard-liner, I joined the PRV, but then it was infiltrated by intelligence



organizations and collapsed. From then on and until today, I have taken an independent stand on the left." (El Nacional, February 3, 2005, Page A-5).

9. During recent years and in what can only be seen as a pro-government bias, the Administrative Penal Chamber of the Supreme Court, responsible for the legal oversight of the Administration's acts, has not issued a single precautionary ruling in favor of any party who had presented a complaint against public administration . On the other hand, every action brought to the attention of the Supreme Court of Justice involving the President has been either dismissed or rejected, in most cases without even allowing the initiation of the relevant proceedings.



IS THE INDEPENDENCE OF THE JUDICIAL CAREER RESPECTED?

1. Given that in Venezuela deputy judges and prosecutors do not enjoy job stability nor do they benefit from a judicial career, the autonomy and independence of the Judiciary cannot be guaranteed. This has been a cause of concern for several national and international organizations.

2. At the time President Chávez took office, 60 % of the total number of judges held their position in a provisional manner; today such a number reaches 80 %. This situation has been consistently denounced by Human Rights Watch (HRW). In its 2004 Report, Item IV, HRW, points out that in Venezuela, of the total number of judges (1,732) "...52% are provisional judges, 26% are temporary judges and 2% hold their position with no stability whatsoever". The Inter-American Commission on Human Rights has equally highlighted this situation in its 2003 Report.

3. Such a situation was confirmed by the new President of the Supreme Court, who upon designation stated that the majority of judges hold their positions with a provisional status and that their job stability is therefore precarious,. He also indicated that, contrary to Haw's contention, this situation affects "only 75%" of all judges and not 80% , while confirming that "judges in the labor-law field are part of those who might be under outside pressure" (El Nacional, February 3, 2005, Page A-5).

4. After declaring the judiciary in a state of emergency in 1999 and initiating its reform, in the year 2000 the Government organized a credentials tender for admission into the Judiciary by way of which 200 judges came to be selected. In March 2003, without any explanation, the tender was suspended. The general understanding was that the Commission on Judicial Affairs wished to appoint and suspend judges at its sole discretion. The Commission is presently chaired by Judge Luis Velásquez-Alvaray, a member of the governmental party Fifth-Republic Movement (MVR), and former Congressman on its ticket.

5. Even since the judicial emergency was declared, many judges have been removed and replaced, many without due process of law and recourse to defense. The following are some of the most notorious cases:

- Judge Luis Mariachi, President of the Civil Law Appeals Chamber of the Supreme Court was removed from his post through a doubtful constitutional procedure. Demotion procedures were also initiated against the President of the Electoral Chamber, Judge Alberto Martini-Urdaneta, who was eventually forced into retirement after authoring and presenting draft court decisions in favor of the Presidential Recall Referendum. Judge Blanca Rosa Marmot de León, of the Penal Law Appeals Chamber, was equally subject to a demotion procedure



(which has not been sustained) for c drafting a decision favorable to Súmate.

- The most notorious case of suspension of judges was that involving three magistrates of the First Contentious Administrative Court, Juan Carlos Apitz, Perkins Rocha and Ana-María Ruggeri. All three were fired in October 2003 after allowing several demands against government policies and programs. Their rights to a defense and to due procedure were blatantly ignored. One of their most relevant decisions pertained to medical doctors of Cuban nationality, sent by the Cuban government to work as volunteers in 'Misión Barrio-Adentro' who by law would have needed prior certification by the Venezuelan College of Medical Doctors to be able to practice medicine in Venezuela. The case was recently admitted for review by the Inter American Commission on Human Rights.
- The case of the judges of the First Contentious Administrative Court was not an isolated one. Other judges have been fired for issuing sentences the Government considers disagreeable. For example, Judges Miguel Luna, Petra Jiménez, and María Trastoy were suspended after releasing from custody people who had participated in the February 2003 protests against the government.
- Judge Mercedes Chocrón was fired after trying to verify if precautionary measures dictated by the Inter American Commission on Human Rights were being respected within the military compound where a dissident senior rank officer was detained.
- Judges Pedro Troconis-Da Silva and Herten Vilela-Sibada, of the Tenth Circuit of the Court of Appeals were suspended for having lifted the prohibition to leave the country issued against 27 individuals charged with civil rebellion for allegedly supporting the decree by which Pedro Carmona-Estanga replaced Hugo Chávez on April 12, 2002.

6. The issue of temporariness equally affects the Public Prosecutor's Office. On March 11, 2005, the Inter American Commission on Human Rights issued a statement expressing its concern that since 2004 a significant number of provisional Public Prosecutors (436) have been appointed.

7. Between April and June of 2005, it has continued its intervention of courts of law and removal of judges and prosecutors in the States of Lara, Táchira, Falcón, Yaracuy, Anzoátegui, Nueva Esparta, et.al. Such actions have been seen as abusive in some cases and have been in several manners, leading even to a National Assembly's request for formal explanations to Judge Velásquez Alvaray, President of the Supreme Court's Judicial Chamber.



DO VENEZUELAN COURTS RESPECT CONSTITUTIONAL LAW PRINCIPLES?

Principle of Impartiality

1. In January 2005, on the occasion of the inauguration into office of the new Justices of the Supreme Court, its new President, Omar Mora, confessed his political inclination towards the "revolutionary process", announced the removal of "coup-plotting" magistrates and judges and stated his position in favor of reverting the August 14, 2002, sentence of the Supreme Court absolving four military officers accused of rebellion for participating in the events of April 2002. Among the new judges are some members of the government's party, Congressmen on the government's party ticket and even a former President of the National Electoral Council, Francisco Carrasquero.

Principle of Res-Judicata

2. On March 11, 2005, the Constitutional Chamber, in session with only seven members, including two alternate judges, announced that the final sentence issued by the Supreme Court, acting in Plenary Session, on August 14, 2002, had been annulled by unanimity. Such sentence ruled that there were no grounds to prosecute for military rebellion Generals Efraín Vásquez and Pedro Pereira, Vice Admiral Héctor Ramírez and Rear Admiral Daniel Comisso. The annulment of this sentence not only violates the principle of res-judicata, it so does on the basis of mere formalities and issues of procedure without addressing the substance of the matter.

3. This precedent opens allows for new trials against those same officers, just as it opens the possibility to revise for political reasons and not on legal grounds, any Supreme Court decision that may in the past have favored any individual. As a matter of fact, the Prosecutors' Office has already initiated proceedings of a kind, the Attorney general's office announced that it will request extradition and will take them to trial.

4. On February 9, 2005, the Tenth Chamber of the Caracas Circuit Court of Appeals overruled its own sentence of February 1 by which it suspended the prohibition to leave the country to 27 individuals accused of signing the Pedro Carmona-Estanga decree, extant since December 2004

5. By Sentence N° 24 of March 15, 2004, the Electoral Chamber of the Supreme Court admitted that the change of regulations introduced in order to declare invalid the signatures gathered in a petition for a referendum to recall the presidential mandate constituted a violation of the non retroactivity principle. Nevertheless, even though the afore-mentioned sentence was final in nature, the National Electoral Council chose not to abide by it, thereby fostering a squabble among the Chambers of the



Supreme Tribunal. The Constitutional Chamber's position eventually prevailed and on March 23, 2004, the Supreme Court declared null and void Sentence N° 24. It equally asserted the right of the National Electoral Council to regulate procedures in elections and referenda, and instructed the Electoral Chamber to abstain from issuing any annulment or safeguard measure, or adopting any decision whatsoever in relation to electoral processes. The contention between Chambers of the Court, which had given way to a restructuring of the Supreme Court, was thus put to rest. (For further information on this see *Is the Judiciary Career Respected?*)

Principles of Competent Judge and Due Process

6. Retired Army General Ovidio Poggioli, former head of Military Intelligence and other officers, among them Army Lieutenant Rafael Farias-Villasmit and National Guard Colonel Jesús Farias-Rodríguez, are being trialed by the Second Military Control Court for the crime of rebellion, for their alleged involvement in "the paramilitaries case" (in May 2004, a group of more than one hundred individuals, a majority of which of Colombian nationality, were arrested under the accusation of plotting to depose and assassinate the President).

7. As a retired officer, General Ovidio Poggioli appealed the military court's detention order issued against him, contesting its competency and upholding his right as a civilian to be trialed by a competent judge. However, the Constitutional Chamber of the Supreme Court denied the writ introduced by General Poggioli's defense council against the September 30, 2004, decision by the Second Military Control Court. The trial is currently underway and the Military Prosecutors Office is asking for a 27 years jail sentence.

8. Retired Colonel Miguel Prieto-Morales, National Guard, is facing a similar situation. He has been accused by the Military Prosecutor's Office of military rebellion for his alleged links with the operation by which more than 140 Colombian paramilitary entered Venezuelan territory.

Principles of Due Process and Right to Defense

9. A majority of those individuals brought to trial by the Prosecutor's Office in several Venezuelan courts have denounced the following violations to their right to due process: absence of information regarding the charges brought against them, denial of access to their files, misrepresentation of legal proceedings such as been called upon to declare as witnesses only to be then indicted, being trialed while in detention even though the Constitution guarantees the right to be trialed in freedom, prohibitions to leave the country issued against them for reasons of a private nature, etc. This has caused great concern among several human rights organizations in Venezuela.

10. Among the most notorious cases is the one pertaining to the present Mayor of Baruta, Henrique Capriles, arrested on May 11, 2004.



Notwithstanding the provisions of the law, and the fact that a tribunal had ordered that he should be tried while in liberty, Henrique Capriles, was imprisoned during several months while his case was decided.

11. Retired General Carlos Alfonso Martínez was arrested on December 30, 2002. General Martínez had declared himself in opposition to the President of the Republic following the April 11, 2002, events during which 19 individuals lost their life. On October 22, 2002, he and other military officers, gathered at the Altamira Square in Caracas, declared themselves in a state of rebellion, and on December 30, 2002, took part in a gathering in front of the National Guard Command Headquarters, located in El Paraiso neighborhood in Caracas. General Martínez was arrested and detained for several months within military compounds without ever being charged. This was a grave violation of the rights to personal freedom and to due process in matters of a penal nature, having been subjected to a prolonged arbitrary detention as well as to a denial of his right to a grounds of claim hearing, a procedure guaranteed by the Constitution to, among others, high-ranking military officers, in cases of a penal nature.

12. Another emblematic case of due process violations is that of Attorney Tulio Álvarez, who was acting as legal council of a group of retired employees of the National Assembly. The latter had initiated legal proceedings against William Lara, former President of the National Assembly and a member of the government's party Fifth-Republic Movement (MVR). Congressman Lara accused Mr. Álvarez of defamation because he had made available to the press a non reserved report drafted by the Assembly's own Comptroller's Office which detailed all the irregularities committed under Mr. Lara's chairmanship. Tulio Álvarez's right to leave the country was suspended, notwithstanding the fact that such a precautionary measure is restricted to cases of crimes against the public interest and does not apply in cases of a private nature. The following are some of the irregularities committed in this case: one of Mr. Álvarez's clients, accused of defamation, was arrested while rendering testimony in court, none of the witnesses brought forth by the defense was allowed to give testimony, they were not allowed, either, to substantiate their case, and even though the judge was formally objected to, he ignored the objection and ruled on it himself. Finally, before all of Mr. Álvarez's witnesses had had a chance to give testimony, a provisional verdict was issued by which he was sentenced to over two years of imprisonment. Mr. Álvarez is also being arraigned for other alleged charges.

13. Equally significant is the case of the Civil Association SÚMATE, whose leadership is accused of "conspiracy" by the Government for having accepted financial support from the National Endowment for Democracy for a citizens' education program. After several months of citations, during which judicial principles and procedures were violated, the Judge, Norma Sandoval, admitted as valid the arguments put forth by the Public Prosecutor's Office and ruled that the members of SÚMATE's Board of Directors be charged with and brought to trial for "conspiracy to destroy the Republican form of government the Nation has chosen for itself". The SÚMATE case has been followed with attention by the international



community which made its opinion heard when the decision to bring to trial its Directors became public. Such decision was rejected, by, among others, the U.S. State Department and the NGO, Human Rights Watch. The Venezuelan Government and the Office of the Public Prosecutor were quick to condemn such solidarity and support for SUMATE.

Principle of Non Retroactivity and Transfer of the Burden of Proof

14. The enactment of retroactive regulations, in violation of the principle of non retroactivity, was exemplified by the case of the collection of signatures to request a Presidential Recall Referendum. The National Electoral Council, in its "Rules to regulate processes to revoke the mandate of elected officials", established the rules and procedures to be followed for the collection of signatures and for these to be considered valid, as well as a number of other regulations in relation to the process as such. Nevertheless, once the signatures were collected and formally presented to the Council, the latter pretended, by way of a Resolution dated March 2, 2004, to annul 876.017 signatures. This Resolution challenged the results of the process and introduced changes to the original rules and regulations.

15. This case made evident how the good faith of those who had signed was put in doubt by a transfer of the burden of proof. All those who had signed the petition were forced to take part in a procedure to confirm or validate their signatures. This prompted the OAS and the Carter Center to issue a joint communiqué, objecting the CNE's interpretation regarding the validity of the signatures. By Sentence N° 24, dated March 15, 2004, the Electoral Chamber of the Supreme Court admitted that the changes introduced in the applicable rules and regulations in order to declare invalid the collected signatures were in violation of the principle of non retroactivity enshrined in Articles 69 and 70 of the Constitution. Finally, the Court ordered that the signatures be accepted.

16. Nevertheless, and even though this was a final sentence issued by the Supreme Court of Justice, the National Electoral Council decided to ignore it, unleashing a squabble between the Supreme Court's Chambers. Finally, on March 23, 2005, the Constitutional Chamber of the Supreme Court annulled Sentence No. 24 issued on March 15, 2004 by the Acting Electoral Chamber, ratified the CNE's right to establish rules to regulate electoral and referenda processes and ordered the Electoral Chamber to abstain from adopting any annulment or relief measure or any decision regarding electoral processes. Thus ended a squabble that had led to a restructuring of the Supreme Court of Justice.



IS THE SUPREME COURT AT THE SERVICE OF THE ADMINISTRATION?

Human Rights decisions taken by supranational authorities are ignored.

1. When a petition was introduced before the Supreme Court to annul the Penal Code provisions criminalizing any expression which might be considered offensive to government authorities or institutions, the Supreme Court, by Sentence N° 1942 of July 15, 2003, ratified as crime those alleged offenses under the scope of what are internationally known as 'contempt laws'. It further established the option of a prior 'judicial' censure.

2. The above-mentioned sentence includes expressions, arguments and decisions that are in clear violation of legal doctrine developed by the Inter American Commission on Human Rights, of jurisprudence conceived by the Inter American Court on Human Rights and the San José de Costa Rica American Convention on Human Rights, of November 22, 1969, which is, as of its congressional approval by law and publication in the Official Gazette (N° 31.256 of June 14, 1977), legally binding in Venezuela.

3. Salient points of the above-mentioned Sentence are the following:

- (...) The Chamber rules that, in relation to Article 7 of the Constitution, there does not exist any higher jurisdictional authority than the Supreme Court unless the Constitution itself or the Law so provides for. It equally rules and declares that, even in such a circumstance, any decision which might be in contradiction to Venezuelan constitutional provisions shall have no applicability within the country;
- (...) Any and all decisions by supranational, transnational or international jurisdictional organs which might be in violation of the Constitution or which might not have previously exhausted all internal judicial procedures, shall not be applicable within Venezuela;
- (...) Recommendations by international organizations, and in particular by the Inter American Commission on Human Rights, do not have the same legal standing as those issued by the Inter American Court on Human Rights, and are consequently not mandatory, as they are, as the term implies, non-binding recommendations.

4. The Supreme Court has thus prepared the ground for a non-recognition within Venezuela of decisions by international tribunals or organizations, a matter of grave concern to the legal community, to the very same international organizations and to NGO's active in the field of protection of Human Rights in Venezuela.



Contempt of Higher Court

5. On March 15, 2004, the Electoral Chamber of the Supreme Court issued Decision No. 24, by which it ordered the National Electoral Council, by way of precautionary measure, to add the 876.017 signatures that had been recollected in the petition for the Presidential Recall Referendum and declared invalid by the Council, to those other signatures already considered valid. It equally ordered the Council to solely abide by its own original rules and regulations in relation to possible annulments of signatures. Notwithstanding the final nature of the sentence issued by the Supreme Court, through its Electoral Chamber, the National Electoral Council chose to ignore it and stated that it would only abide by decisions issued by the Constitutional Chamber.

6. On March 23, 2005, the Constitutional Chamber of the Supreme Court, declared null Sentence N° 24, of March 15, 2004, passed by the Electoral Chamber. It confirmed the right of the National Electoral Council to develop rules and regulations in relation to elections and referenda and forbade the Electoral Chamber from adopting any annulment or relief measure and from issuing any decision regarding in electoral processes.

7. In March 2004, an order of arrest was issued against Henrique Capriles - Radonsky, Mayor of Baruta, for having allegedly participated in attacks against the Embassy of Cuba on April 12, 2002. On April 1, 2004, the Penal Chamber of the Supreme Court lifted the sentence. Nevertheless, on May 11, 2004, the Second Control Tribunal of the Caracas Metropolitan Area issued an order of arrest against Mayor Capriles-Radonsky, who was thus once more detained. He remained in jail throughout his trial until he was finally absolved of all charges in September 2004.

8. On December 30, 2002, Retired General Carlos Alfonzo-Martínez was incarcerated and held without charges in the Political Police's (DISIP) headquarters. A writ of relief in his favor was submitted, to and granted by the 18th Control Court, presided by Judge David Manrique, who ordered his liberation. Nevertheless, General Alfonzo-Martínez continued to be held in jail. On June 19, 2003, the First Contentious Administrative Court, ruling by unanimity, granted General Alfonzo-Martínez's freedom. Such ruling was equally ignored. The accused continued in detention until his trial concluded with a five years jail sentence. On October 30, 2004, the Second Chamber of the Court of Appeals absolved General Alfonzo-Martínez of the alleged crime of violating security areas. Nevertheless, on April 16, 2005, the Criminal Cassation Chamber of the Supreme Court approved the motion to vacate that had been introduced by the Office of the Public Prosecutor against the decision issued by the Second Chamber of the Court of Appeals, which absolved General Martínez.

9. The Venezuelan press has followed and presented to the public the most emblematic cases of notorious disregard to due process and to the independence and autonomy of the Judiciary.

Is the National Electoral Council (CNE) an Impartial Body?

Does the National Electoral Council Act In Conformity to the law?

Does the Permanent Electoral Register (REP) contain true and precise information?



IS THE NATIONAL ELECTORAL COUNCIL (CNE) AN IMPARTIAL BODY?

1. Article 19 of the Basic Law of the Electoral Power passed in October 2002 by the National Assembly (AN), states that the Postulations Committee is comprised of 21 members. This Committee is in charge of evaluating and presenting to the National Assembly candidates for the National Electoral Council (CNE) which, by definition, must be comprised of members of civil society (Article 295 of the Constitution). Eleven of the CNE's 21 members are congressmen. The official position whereby congressmen can be members of the CNE since they are members of civil society contradicts not only Article 296 of the Constitution, but also a November 21, 2002 ruling by the Supreme Court of Justice, which reads:

- "... As the State is comprised of citizens who belong to political associations, civil society must be different from these associations, whose representatives are parties or political groups. Consequently, political organizations do not comprise civil society but rather the political society whose fields of action are defined by the Constitution and the body of laws. Therefore, any kind of party participation by the body corporate corrupts their condition as organizations representing civil society." (No. 1395, Exp.00-1901, of 21 November 2000, on the case of the Governors against the Ministry of Finance.)

2. Article 296 of the Constitution states that the CNE must be appointed "...by the National Assembly by two thirds of its members". However, the current CNE was appointed by the Supreme Court of Justice on two separate occasions, on August 25, 2003 and on January 20, 2005.

3. In view of the institutional void resulting from the National Assembly's failure to appoint the members of the CNE, on August 25, 2003 the Supreme Court proceeded to appoint them "taking into account consultations carried out with the political parties represented in the national Assembly..." This procedure contravenes Articles 294 and 296 of the Constitution and Article 9.4 of the LOPE, aimed at insuring the impartial membership of an organization that should be free from party affiliations.

4. In its first designation of the CNE, the Supreme Court overstepped its authority regarding its power to offset a "legislative dereliction of duties" by appointing the CNE's Secretary, William Pacheco; the CNE's Legal Council, Andrés Brito; the members of the subordinate bodies (the National Electoral Junta, the Registry and Electoral Office Commission and the Political Participation and Financing Commission) and the members of the Political Participation Council. The Supreme Court also overstepped its authority by appointing the CNE's President and Vice-President, a decision that should be taken internally by the CNE's five directors.



5. Later, on January 20, 2005 , following the resignation of the CNE's President and Vice President, the TSJ appointed the CNE's new members, without any previous consultations with the National Assembly. The appointment of these new CNE members represented a clear violation of Article 13 of the LOPE, which states that the deputy directors will fill the vacancy resulting from the temporal or permanent absence of the principal directors. Once again, the Supreme Court did not wait for the National Assembly to attempt to fill these vacancies and appoint a definitive CNE.

6. According to the Constitution, the CNE should steer clear of any political affiliation and partisan discussion; however, the TSJ never hid the fact that it was selecting the members of the CNE according to guidelines discussed with the political parties. Thus, the CNE that was appointed on August 25, 2003 reflected this political maneuvering: three of its members, Francisco Carrasquero, Oscar Battaglini and Jorge Rodríguez were viewed as government sympathizers, whereas the other two members, Ezequiel Zamora and Sobella Mejías, as opposition sympathizers. The CNE Directors' political sympathies was clearly demonstrated by that organizations' polemical decisions, beginning with the September 13, 2003 ruling to reject the signatures presented on August 20, 2002 by the opposition to request a Presidential Recall Referendum. The political leaning and discretionary nature of the CNE was noted even by international observers, who referred to it in their August 15, 2004 Report on the Presidential Recall Referendum.

7. The CNE's three-to-two alignment in favor of the Government changed considerably on January 20, 2005 , when Tibisay Urdaneta and Oscar León-Uzcátegui were appointed principal members, bringing the pro-government membership to four-to-one.

8. The pro-government leaning of one of the CNE members, Francisco Carrasquero, was further confirmed by his appointed to the Supreme Court of Justice by a National Assembly in which pro-government factions enjoy a simple majority.

9. The aggressiveness with which some members of the CNE – Rodríguez and Battaglini - refer to representatives of the opposition and civil society is well documented.



DOES THE CNE ADDRESS THE INTERESTS OF CIVIL SOCIETY OR THOSE OF THE GOVERNMENT?

1. The issues of the CNE's political independence and of the participation within it of civil society representatives, envisioned in the Basic Law on Suffrage and Political Participation, was included in Articles 294 and 296 of the 1999 Constitution and in Article 3 of the Basic Law of the Electoral Power (LOPE). These articles clearly state the principle of separating the electoral body from any political organization and insuring the participation of citizens and civil society organizations. The National Assembly and the Supreme Court of Justice did not take this principle into account when they designated the members of the CNE in August 2003 and January 2005.

2. When in October 2002 the National Assembly approved Article 19 on the membership of the Postulations Committee, which established that 11 of the 21 members would be Congressmen, it disregarded the objective of the above mentioned articles, contravening not only the spirit of Article 296 of the Constitution, but also a clear ruling by the TSJ. This ruling No. 1395, Exp. 00-1901, of November 21, 2000, states:

- "(...) As the State comprises citizens who belong to political powers, civil society must be different from these powers, whose expounders are parties or political groups. Consequently, political organizations do not comprise civil society, but rather the political society whose fields of action are defined by the Constitution and the body of laws. Therefore, any kind of party participation by the body corporate corrupts their nature as organizations representing civil society".

3. Similarly, in August 2003, the Supreme Court of Justice's violation of the principle of political independence and social participation, which should guide the CNE's participation in any political and party consultation process aimed at selecting its new members, became apparent. Not one single civil society organization was taken into account in that consultation process.

4. When it defined the norms regulating the gathering of signatures to request a Presidential Recall Referendum and those guiding the Recall Referendum itself, the Electoral Council acted beyond its jurisdiction, contravening a number of sentences passed by the Supreme Court. The Council's actions represented, in practice, an appropriation of tasks that are the responsibility of the citizenry and therefore were in clear violation of the constitutional principles of citizens' participation, the non partisan affiliation of members of the electoral body, and efficiency and celerity in electoral processes.

- The Electoral Council's decision to impede the collection of signatures to revoke the mandate of Governors, Mayors and City Council members – a request presented by the Government's party -



represented a violation of the constitutional right established in Article 72 of the Constitution and contravened a decision of the Court regarding the interpretation of such Article.

- By refusing to endorse national observers, as it endorsed international observers, the Electoral Council violated Article 33.14 of the Basic Law of the Electoral Power and Article 7.5 of its own Rules on Referenda.
- The CNE also ignored the right of citizens residing abroad to request a recall referendum for popularly elected officials.



DOES THE NATIONAL ELECTORAL COUNCIL ACT IN CONFORMITY TO THE LAW?

1. On August 20, 2003 the opposition consigned in the National Electoral Council the signatures gathered on February 2, 2003 to request a Presidential Recall Referendum. The Council refused to accept the signatures alleging that they had been gathered in an "untimely" manner and that the wording of the Recall Referendum's consultation was inappropriately drafted. The opposition rejected these arguments, arguing that they were hardly of a legal nature and contravened constitutional norms and the Supreme Court's own decisions.

2. In view of the lack of norms regarding Recall Referenda, the Supreme Court adopted a decision stating that a Recall Referendum is not an election and granting the Electoral Council the power to regulate Recall Referenda. The Council based its decision partly on the Constitution, partly on the Basic Law of the Electoral Power (LOPE), and partly on regulations approved in 1999 by the Constituent Assembly, the so-called Public Power's Electoral Statute. On other occasions, the Council based its rulings on a number of Supreme Court's decisions or sentences and on the Basic Law on Suffrage and Political Participation. As was to be expected, this created a major confusion regarding the electoral norms to be applied.

3. On countless occasions the Electoral Council violated its own rules regarding Recall Referenda, (its terms and conditions, the adoption and retroactive application of criteria regarding the annulment of signatures following the gathering process, automatic processes, etc.).

4. This "flexibility" regarding the enforcement of laws during electoral processes was also apparent in the October 31, 2004 regional elections and the August 2005 local elections. During the October 2004 regional elections the CNE violated more articles of the Basic Law on Suffrage and Political Participation. Many are the norms and regulations that the CNE has or r applied at its discretion during electoral processes.

5. The delay in the publication of the norms regulating the Presidential Recall Referendum was widely criticized by many, including the Organization of American States (OAS) and the Carter Center. The data base of those eligible to participate in the casting of lots for the members of the electoral tables, the modifications to the electoral timetable, the voting centers and their number of electoral tables, the Electoral Register (RE) and, finally, the whole set of norms regulating the process, were not published in the Electoral Gazette (GE), or the National Electoral Council's Web page until shortly before the elections or even following them.



6. The Electoral Register (RE) that will be used in coming elections has not been published in the Electoral Gazette or any other information media, as required by Articles 96, 106 and 120 of the Basic Law on Suffrage and Political Participation (LOSPP). This denies voters the possibility of accessing the Electoral Register 60 days before the elections so that they may contest it, if need be, 30 days before the elections, as prescribed by law.

7. Currently the Electoral Council is carrying out, together with the National Government, a Special Identification Plan (Plan Especial de Cedulación). The law dictates that those officials participating in this Plan who are simultaneously overseeing enrollment into the Electoral Register are "auxiliary agents" and that enrollment through these agents must terminate six months before the electoral process. Therefore, any enrollment into the Electoral Register that takes place six months before an election must be viewed as illegal and must be rejected.

8. The National Electoral Council (CNE) intends to introduce electronic voting rolls, in violation of Article 122 of the Basic Law on Suffrage and Political Participation (LOSPP). This Article establishes that each electoral table shall have an electoral roll with "...blank space for the certification of the act of voting by each voter, another blank space for the voter's fingerprint and one more blank space for the voter's signature".

9. The use of electronic voting rolls implies the following: (1) It violates the right to voting secrecy. Both the voting rolls and the voting machines are electronic equipments that by definition store information (sequence and time of transaction) that can be accessed to disclose voters' choice upon checking data; (2) it grants the CNE the possibility to alter the electoral rolls at any time, even during the act of voting; (3) it confers the CNE the possibility, following the act of voting and prior to the printing of the rolls, of including votes that were not cast and eliminate those who were, without leaving any trace; (4) it grants those who have access to the information the advantage of knowing in real time who voted in each voting center.





IS VOTING BY WAY OF ELECTRONIC MACHINES RELIABLE?

1. Article 63 of the Constitution establishes that "Suffrage is a right. It shall be exercised through free, universal, direct and secret voting". Ever since the Presidential Recall Referendum, the secrecy of voting and the results of electoral processes have been questioned due to attempts to render automatic the whole electoral system. The following are the major issues causing lack of confidence in current electoral processes:

- During the August 15, 2004 Presidential Recall Referendum, the fingerprints machine was introduced. Voters' fingerprints and presentation of identification card (Cédula) were required before exercising the right to vote. This made it possible to delay the process, as indeed occurred, and to find out whether the voter had signed the petition for the Presidential Recall Referendum in November 2003, simply by comparing the voter's ID number with the list of those who signed the petition. Officials at the voting centers thus took it upon themselves to deny some voters the right to vote alleging that their name did not appear on their voting center's rolls.
- Electronic voting ledgers, announced for future elections, would replace the paper voting ledgers in which voters, in all elections to date, consigned their signature and finger print after casting their vote. The use of electronic ledgers does not guarantee the secrecy of voting established in the Constitution and the LOSPP, since the information -sequence and time of voting- therein contained can be compared with information stored in the voting machines, thus disclosing voters' choice.
- One of the most sensitive issues regarding an electronic voting process is the scrutiny of data, especially in view of the many doubts and suspicions generated by the outcome of the August 15 Presidential Recall Referendum. Electronic voting machines may transmit and receive data (bi-directional communication); hence electoral results may be corrected or altered.
- The scrutiny of votes is understood to be "the acknowledgment and computing of votes that have been cast, in elections or similar acts, by way of paper or any other mean" (DRAE) Even though Venezuelan legislation grants that the act of scrutiny will be automatic (Art. 175 of the LOSPP), it also establishes that it must be insured that each vote can be registered individually (Art. 153 of the LOSPP) and that this can be verified (Art. 154). IT ADDS THAT THIS MUST BE A PUBLIC ACT (Art.169 of the LOSPP) and, most important, that the procedure must be carefully detailed by the CNE six months before any electoral process (Art.168 and Art. 171 of the LOSPP). In view of the serious fraud allegations that were brought forth in previous electoral processes – which we have already mentioned and have not been clarified to the satisfaction of an important part of the population –



the electoral authorities must consider this issue closely in order to create confidence in the electoral process.

- As regards the announcement of electoral results, the LOSPP establishes that "...data will be divulged only after scrutiny" (Article 157). However, the Rules Regarding the Membership and Installment of Referendum Centers and the Acts of Voting and Scrutiny of Referenda to Revoke Popularly Elected Officials and in CNE regulations regarding the October 31, 2004 Regional elections (of a lesser legal standing than LOSPP norms) establish that results will be announced following the end of suffrage and before scrutiny. This represents a clear violation of Article 157 of the Basic Law on Suffrage and Popular Participation (LOSPP). The same norms were used for the August 2005 local elections.

2. Contrary to expectations, electronic voting has not insured more precise and trustworthy results. In the October 2004 regional elections, 5% of all result sheets were not counted, whereas in previous manual or less machine-assisted elections the uncounted result sheets did not exceed 2% of total result sheets.

3. Also contrary to expectations, electronic voting has not eased the voting and scrutiny process. In the past, much time was spent counting the paper votes and awaiting their totaling. Today even more time is spent standing in line to cast one's vote due to the slowness of fingerprint registration machines. Delays in voting and scrutiny tend to increase people's tendency to abstain. This has been noted even by international observers who have witnessed past elections.



DOES THE PERMANENT ELECTORAL REGISTER (REP) CONTAIN TRUE AND PRECISE INFORMATION?

1. The Government of President Chávez-Frías, together with the National Electoral Council (CNE), has undertaken a Special Identification Plan known as 'Misión Identidad'. The Basic Law on Suffrage and Political Participation (LOSP) clearly indicates that those officials participating in this Special Plan who are simultaneously overseeing enrollment into the Electoral Register (RE) are 'auxiliary agents' and that enrollment through these agents must terminate six months before the electoral process (Article 92). Therefore, all registrations in the electoral rolls performed after February 7, 2005 by way of these 'auxiliary agents' should be rejected.

2. The issuance of National Identity Cards has proceeded in conjunction with a process of nationalization of foreigners of a massive scope and over which there is an absolute lack of adequate control. There have been cases of foreigners, such Rodrigo Granda, el de Gentil Galvis-Patiño, Rubén González alias El Chiquiro or El Comandante, who, having been granted Venezuelan identity documents, have voted.

3. The nationalization of foreign-born individuals has been performed in the context of huge public concentrations of a political and electoral nature, in the course of which the Government of President Chávez-Frías distributes T-shirts with the colors and symbols of the government party as political slogans.

4. President Chávez has publicly acknowledged the political and electoral nature of these identification processes. On November 12, 2004, in a speech at the Military Academy, addressing Ministers, Members of the National Assembly, Governors, Mayors and other supporters of his Government, he stated in relation to this issue:

- "... I will make only one comment. The issuance of Identity Cards must be continued. We did many things well, but should we not have undertaken the issuance of identity documents, Oh my God! We would have even lost the Recall Referendum. Those people got four million votes and that should not make us feel as winners, no! The opposition, when it defeated Arias-Cárdenas, had less than three million votes - two million six-hundred thousand - and now it gets four million. Do you realize that they had the required number of signatures? That they were able to collect them? ... I was always told that that they would be unable to collect the signatures, but why would they not if they managed to collect 2 million 600 thousand and only 2 million 400 thousand are required ... Ah! They got 4 million" (N° 258, page 27).



5. According to the Law on Suffrage and Political Participation (LOSSP), the Electoral Register is permanent. It must close only in the case of elections and for the preparation of electoral rolls 60 days before such elections are to be held. For last October's elections, this legal provision was not respected. The Electoral Register remained open for a longer period and no indication was given as to when it would close.

6. Normally the of electors included in the Electoral Register has grown around 11 % every five year, that is to say between elections. Nevertheless, between July 10 and 28, 2004, according to official numbers by the National Electoral Council, the number of electors went from 12.518.812 to 14.037.900, an increase of 12,9 % in only an 18 day period, and of nearly 20 % in comparison to the last presidential election held in 2000.

7. In violation of the Law on Suffrage and Political Participation, the National Electoral Council proceeded to unilaterally move electors from one electoral circumscription to another. Such a change, or migration, was performed without the elector's consent (Art. 69 of the LOSSP) In the case of presidential elections or of consultative or presidential recall referenda, such migrations may not be of significance, but in the case of local or regional elections, such the August 2005 local elections and the coming December 2005 congressional elections, they are of critical significance. In such cases, a difference of only a few hundred votes may change the result of an election.

8. Another violation to the law undertaken by the National Electoral Council has to do with modifications to the electoral circumscriptions. SUMATE has estimated that changes introduced to electoral circumscriptions in more than 19 states and more than 80 municipalities involve, based on population data projections by the National Statistics Institute INE), more than 30 % of the estimated population. Under no circumstances can such alterations be considered 'minimal', as recently indicated by the President of the National Electoral Council, Jorge Rodríguez. They are also illegal in as far as they are not based on projections approved by the National Assembly nor performed within the time frame required by Article 6 of the Law on Suffrage and Political Participation.



4 - FREEDOM OF EXPRESSION

Are the media really independent?

Does the Penal Code limit freedom of expression?

Are journalists persecuted, threatened or harassed because of the way they cover the news?



ARE THE MEDIA REALLY INDEPENDENT?

1. Since President Chávez took power in 1998 he has taken aim at Venezuela's privately held media because he believes that they are his main enemies. He has referred to the four main private television stations as "the Four Horsemen of the Apocalypse" for the critical stance they've taken regarding his government's policies. Through government-sponsored pressure tactics aimed at restricting the television media's freedom of expression, President Chávez has attempted, successfully in several instances, to suppress public affairs and political talk shows and interview programs which were critical of his government. For example, the TV station Venevisión, which together with another TV station, RCTV, are viewed by 80% of the population, has cancelled its daytime opinion and news programs. Televen has cancelled the opinion programs anchored by some controversial journalists such as Martha Colomina and Cesar Miguel Rondón and some radio stati allowed suit.

2. For the last two y uler to curb dissenting views and opinions, the regulatory body wtf es the broadcasting industry has initiated numerous punitive procedures, including levying sanctions and fines, against television station. The fines range from the equivalent of hundreds of thousands to millions of dollars, compliance with which could put any television station out of business. The government itself has defined these procedures as a way to pressure the TV stations into not broadcasting opinions against the government.

3. On December 7, 2004 the National Assembly passed the Radio and Television Social Responsibility Law (or Ley Resorte). The new law increases State control over radio and television programming and includes measures which go against accepted international norms in the field. These include stipulations in Articles 6 and 7, which limit the broadcasting of images and sounds based on concepts that are so ambiguous that stations have no way of knowing at what point they are breaking the law since such stipulations are subject to the arbitrary interpretation of the regulatory agency.

4. The law establishes within the regulatory agency a Directorate for Social Responsibility, which is composed of eleven people, whose main function is to oversee compliance with the provisions of the law and to impose sanctions on offenders. Sanctions include taking cultural and educational programming off the air, fines, the suspension of business licenses which allow stations to broadcast, and revoking their concessions. In practice, the Directorate is nothing less than a media censoring agency.

5. Of the Directorate for Social Responsibility's eleven members, seven are designated by the Government in representation of State agencies and none represents the broadcasting industry. This means that radio and television stations have no direct recourse within the Directorate to plead their cases



or to appeal sanctions that might be levied upon them. In addition, the Directorate's chairman is the Director General of the regulatory agency, the National Telecommunications Commission (CONATEL), and thus a presidential appointee.

6. A number of international organizations have expressed their opinions and concerns about this law. Human Rights Watch, through its Executive Director for the Americas, José Miguel Vivanco, has sharply questioned the law, stating that "putting straitjackets on the media is not the right way to promote democracy."

7. The Inter-American Press Society (SIP) has stated that the law creates mechanisms via which the State can exercise control over what the media can publish or broadcast. In light of this, the SIP has asked the Venezuelan government to repeal the law on the grounds that it contravenes basic principles of freedom of press and freedom of expression.

8. The international NGO, Reporters Without Borders, has issued a communiqué in which it expressed its deep concern regarding "the enactment of a law whose scope for interpretation is so broad that it could be used against the media that do not share the government's point of view".

9. The Inter-American Human Rights Commission has stated that "The use of vague terminology in the law, in addition to the possibility of sanctions that could be applied excessively, can result in the intimidation of the media and reporters, thereby limiting the flow of information on issues of public interest".

10. Finally, the Radio and Television Social Responsibility Law allows the government to control program scheduling and content in the broadcast media thus, according to experts, putting a straitjacket on freedom of expression.

REPEAL OF THE RADIO AND TELEVISION SOCIAL RESPONSIBILITY LAW



DOES THE PENAL CODE LIMIT FREEDOM OF EXPRESSION?

1. On December 9, 2004 , the National Assembly approved by simple majority (83 out of 165 votes) the second review of the Bill on the Partial Reform of the Venezuelan Penal Code. On March 16, 2005 , following the incorporation of a number of modifications suggested by the President of the Republic, this bill became law.

2. The reforms to the Penal Code have caused serious concern within several sectors of Venezuelan society, due to the effect they have on the Venezuelan prison system and to the classification as crime of new activities viewed as contempt. In the reformed Penal Code all opinions, expressions of dissent or manifestations, whether expressed in public or in private, against any public official, can be viewed as an offense and can thus be punishable with 6 to 30 months in prison.

3. The new Penal Code includes articles that sanction offences such as: the use of language deemed to be insulting to the President of the Republic (Article 147), the Vice-President, the Justices of the Supreme Court, and members of several Public Powers, Ministers, Congressmen or the Military High Command (Article 148), these are punishable with 6 to 30 months in prison; instigation to infringe the law (Article 283) or defy it (Article 285), punishable with 3 to 6 years in prison; causing panic by divulging information through a media outlet (Article 297), punishable with 2 to 5 years in prison and blocking public roads (Article 357), 4 to 8 years in prison. These newly classified crimes, together with the serious penalty they entail, limit "democratic" life and constrain the activities of reporters, whose work is further limited by the new Law of Social Responsibility in Radio and Television.

4. According to experts, the new Penal Code represents an attempt at classifying political dissidence as a "crime" and impede the types of public demonstrations that have taken place in Venezuela during the last two years, as penal law is used as a weapon to intimidate the opposition and the so-called "contempt crimes" are punished with harsher sentences. One of the best-know recent cases is that of General Francisco Usón, who was accused of contempt of the Armed Forces and sentenced to a six years jail term for expressing an opinion on television regarding the use of a flame thrower in an incident in which a number of soldiers lost their lives.

5. According to a report by the Inter-American Human Rights Commission contempt laws are incompatible with the American Human Rights Convention. The Commission declared void the norms regarding contempt laws and ever since 1994 has been urging the OAS Member States to adapt their legislations to international human rights obligations.

6. When the Supreme Court of Justice received a petition to void the Penal Code norms that classify as crime language deemed to be insulting to public



officials and institutions, its Constitutional Chamber issued Sentence No. 1942 reaffirming the classification as crime of such offenses and established the possibility of "previous judicial censorship". This sentence includes arguments, expressions and decisions that contravene the Inter-American Human Rights Commission's doctrine, jurisprudence issued by the Inter-American Human Rights Court, as well as the November 22, 1969 American Human Rights Convention of San Jose, Costa Rica, which became mandatory in Venezuela when the corresponding approval law was published in the Official Gazette No. 31.256 of June 14, 1977.

7. International organizations such as the Inter-American Press Association (SIP) and Human Rights Watch have publicly expressed their concern regarding the approval of the new Penal Code and the effects it will have on the rights and freedom of expression of the Venezuelan people. For example, José Miguel Vivanco, of Human Rights Watch, said literally that "Venezuela has mocked the international human rights principles that protect freedom of expression".



ARE JOURNALISTS PERSECUTED, THREATENED OR HARASSED BECAUSE OF THE WAY THEY COVER THE NEWS?

1. Recently, a number of well-known journalists and anchor men and women have been ordered to appear before the Public Prosecutor and the Courts of the Republic to testify regarding news that affects the government's image. Patricia Poleo, Ibeyise Pacheco, Napoleon Bravo, Leopoldo Castillo and Marta Colomina are among the journalists who have been summoned.

2. Some of these journalists have been accused by public officials. They are: Patricia Poleo, Director of the newspaper El Nuevo País; Ibéyise Pacheco, columnist for the newspaper El Nacional, Director of Así es la Noticia and radio anchor woman; and Marianella Salazar, columnist for El Nacional and radio anchor woman.

3. Patricia Poleo, director of the newspaper El Nuevo País, and Tamoa Calzadilla reporter for the newspaper Ultimas Noticias, were summoned to reveal their sources in the investigation carried out by the Public Prosecutor regarding the leaking of documents related to the case of the death of prosecutor Danilo Anderson.

4. In the case of Patricia Poleo pressure tactics became even more evident when her house was raided by the police in search of documents that might reveal her sources. The journalist was further notified that charges will be brought against her for her allegedly illegal use of information and classified documents related to the Danilo Anderson case.

5. When the newspaper El Nuevo País published a photo of a person identified as the Minister of the Interior and of Justice, Jesse Chacon, bent over a dead body at the headquarters of the TV station Venezolana de Television, the Minister filed a suit for libel against Patricia Poleo, arguing that he was not the person in the photograph. Following a brief trial Patricia Poleo was sentenced to six months in jail. As it was a first offence the sentence was later suspended, however Ms Poleo was forced to pay the total costs of the trial and to publish the sentence twice, with an interval of seven days, in the newspapers El Nuevo País and El Nacional.

6. Ibéyise Pacheco, a reporter for the newspaper El Nacional and anchor woman for a radio opinion program, was sentenced to nine months in jail following a suit for libel brought against her by Colonel Angel Bellorin.

7. Pacheco was also charged by Office 56 of the Public Prosecutor for information she published on May 2003, in her column "In Private" in the newspaper El Nacional, based on a recording of a meeting at the Presidential Palace (Palacio de Miraflores) between the Vice-President José



Vicente Rangel and the Ministers Aristóbulo Istúriz and Maria Cristina Iglesias.

8. The journalist Napoleón Bravo was charged by the Office of the Public Prosecutor for the alleged crime of incitation to hate for having mentioned the grandchild of the Vice-President of the Republic.

9. Marianella Salazar, a columnist for the newspaper El Nacional and anchor woman of a radio program, was charged for libel when she denounced alleged irregularities committed by the Vice-President José Vicente Rangel and the Governor of the State of Miranda, Diosdado Cabello.

10. The Inter-American Human Rights Commission has been expressing its concern with the situation of journalists in Venezuela, ever since the year 2002. Some journalists have filed suits for physical aggression by government officials or sympathizers. Some of these journalists have been granted precautionary protection measures, however these have not been very effective and, in the opinion of the journalists concerned, the government has not made an effort to insure their enforcement.

11. In view of the Government's failure to enforce the precautionary measures approved by the Inter American Commission on Human Rights, this body urged the Inter American Human Rights Court to order the Venezuelan State to adopt the Provisional Measures for the protection of journalists' right to life, personal integrity and freedom of expression (<http://www.corteidh.or.cr/seriee/index.html#luisiana>) and to insure the protection of some print and audiovisual media's equipment and headquarters. During the last two years, the Inter American Court has issued several resolutions ordering such provisional protection. (<http://www.corteidh.or.cr/paises/venezuela.html>)

12. During the years 2002, 2003 and 2004 several television and radio stations and newspaper headquarters were attacked by government sympathizers. Hundreds of street reporters were also subject to attacks, so much so that they were forced to wear bullet proof vests, helmets and gas masks to protect themselves from attacks by the National Guard and violent pro-government groups. All episodes of aggression to media headquarters and reporters by pro-government sympathizers followed some speech or declaration by the President or high level government officials against private media. Congressman Alberto Jordán Hernández bore witness to some of these attacks.



5 - RESPECT FOR HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS

Have the human rights of the April 2002 victims been respected and have those responsible been indicted? ?

Does discrimination on political grounds exist in Venezuela?

Is freedom of thought in education respected?

Is there respect for a citizen's private life respected?

Are human rights violated in Venezuela ?

Are those active in the defense of democracy in Venezuela persecuted and imprisoned?

Are there political prisoners in Venezuela ? Are people persecuted for political reasons?



HAVE THE HUMAN RIGHTS OF APRIL 2002 VICTIMS BEEN RESPECTED AND HAVE THOSE RESPONSIBLE BEEN INDICTED?

1. During the April 2002 events, 19 persons were killed and to this date those responsible remain unknown. The establishment of a Truth Commission which had been agreed upon on May 29, 2003 in the Negotiations and Agreements Roundtable chaired by the Secretary General of the Organization of American States, never took place. Nevertheless, those considered to rank with the opposition are treated by the courts and other civil authorities quite differently from those close to the government.

2. Among those indicted for the April 2002 events are four individuals who have come to be known as the Puente-Llaguno Gunmen: Richard Peñalver, Rafael Cabrices, Nicolás Rivera-Muentes, and Henry Atencio. They were filmed and taped while shooting at the opposition demonstration as it walked along the Baralt Avenue towards Miraflores Palace, on April 11, 2002. Yet they are all free today, following the September 18, 2002 ruling by the Fourth Court that exonerated them of all charges. Some have even been treated as heroes by the President of the Republic himself.

3. Eight members of the Metropolitan Police Force, at the service of the Caracas Metropolitan Government, whose Mayor, identified with the opposition, ordered the Force to protect the demonstrators were charged with the crime and are currently held in jail in Maracay. Their names are: Sergeant Julio Ramírez Rodríguez-Salazar, Sergeant Rafael Alfredo Nazoa-López, Private Luis Enrique Molina-Cerrada, Inspector Héctor José Rovain, Corporal Arube José Pérez-Salazar, Corporal Ramón Humberto Zapata Alfonso, Commissar-in-Chief Marcos Javier Hurtado, and Agent Erasmo Bolívar.

4. Two Metropolitan Police Chief-Inspectors, Commissars Henry Vivas and Lázaro Forero, as well as Commissar Iván Simonovis, who at the time was Secretary for Citizens Security, have been under arrest for months, charged as accomplices to the crimes of murder and battering. The Judge who issued the arrest and detention orders against Commissar Simonovis is Maikel Moreno, Control Judge N° 34. Even though he had been the defense attorney for Richard Peñalver, one of the Puente-Llaguno gunmen, he did not deem it necessary to withdraw from the case. (See the press briefing on the case of the three Commissars). Simonovis' rights were further trampled upon when he was apprehended and jailed without a judicial order.

5. Even the political rights of the ex-commissioners Forero and Simonovis are at risk. Their names have been proposed as opposition candidates for the 2005 elections of the National Assembly in order to guarantee their freedom thanks to the parliamentary immunity. Nicolás Maduro, president of the actual National Assembly said that in the case they are elected, their immunity would be waived by the resulting pro-government majority as predicted by him.



DOES DISCRIMINATION ON POLITICAL GROUNDS EXIST IN VENEZUELA?

1. A vast number of the more than three and a half million people who signed the petition for the Presidential Recall Referendum find themselves threatened, discriminated upon or the object of reprisals, such as, among others: loss of employment or impossibility to find one; refusal of acceptance into state educational institutions or denial of scholarships; refusal of credits in public financial institutions and difficulties in obtaining identity and travel documents.

2. Such a situation is a direct consequence of the requirement by the National Electoral Council that the identity of those signing in favor of the Recall Referendum be published in the press, and of the leakage to the government and to members of the National Assembly, by some of the Council's members, of the final list of those who signed the petition..

3. Some media have denounced this situation. They have reported on the cases of duly identified individuals who have dared to make their cases known and how they have been discriminated. The following are just some of them:

- Lisbeth Calzadilla, a young journalist, was denied employment at the National Fund for Science and Technology, FONACIT, a public institution dependent of the Ministry of Science and Technology, on the basis of having petitioned for the Presidential Recall Referendum;
- Jesús Moreno, who until 1996 worked in CORPOVEN, a subsidiary of PDVSA, was denied a job opportunity in 2004 in the maintenance area once a former supervisor, who proceeded to order him expelled from the refinery grounds, identified him as a non-sympathizer of the government;
- Mrs. Ana Kosa, was expelled from the Deposits Guarantee Fund, FOGADE, on June 15, 2004, after 4 years of service, under the accusation of being 'a spy for Yankee imperialism'.

4. Congressman Luis Tascón, of the pro-government party Fifth-Republic Movement, responsible for this situation, as he was the one who placed or the list of all those who signed the petitioned for a Presidential Referendum. This list, which came to be known as the 'Tascón List', presumably obtained by Tascon after processing the rolls with the signatures handed by the National Electoral Council to the President.

5. The existence of such a list and its use to foster discrimination against those whose names appear therein was acknowledged by the President himself. On April 15, 2005 on the occasion of the Fifth Cabinet Meeting held outside Caracas, at the Caroní Eco-Museum in Puerto Ordaz, the President



mentioned that he was constantly receiving complaints from Venezuelan citizens who felt that they were being denied job opportunities because their names appear on the Tascon List. He went on to state: 'I say this because I have received letters that make me think that in some quarters the Tascón List is still used to determine whether someone will get a job. I order the list to be buried' (El Nacional, April 16, 2005 , page A-1). "...It was a moment that is now behind us...the famous list surely played an important role at a specific time, but this is now in the past". (Tal Cual, Editorial of April 18, 2005).



IS FREEDOM OF THOUGHT IN EDUCATION RESPECTED?

1. The Government has been carrying out an Education Reform Plan geared towards what is called the Bolivarian Educational Community. Such Plan is based on a document (Inquietudes y Propuestas de Tabor) that the Minister of Education and Sports acknowledges as a mere draft aimed at enacting a resolution, which the Minister also defines as a draft, that would lead to the establishment of the said Bolivarian Educational Community. The document points out the need to insure that "strategic directorial posts are reserved to those professionals who identified with and are committed to the Bolivarian Process. They will guarantee the implementation of policies and measures in favor of an education of excellence for all, capable of inducing transformations and geared towards the creation of the New Bolivarian Republican". The drafters of the project state that "... those teaching positions already gained, as well as the knowledge gained in order to assist the transformation, may be lost if their consolidation is done through the existing mechanisms", that is to say, through the 'Rules and Regulations for the Practice of the Profession of Educator'. They thereby urge the Minister to "... grant legal grounding – whether by way of a Ministerial Decree or Regulation – to those activities carried out by temporary personnel, who are, at large, committed to the transformation and will allow the process to continue with lower professional requirements, experience and professional level."

2. The idea is to control all public and private educational institutions by way of granting permanent status to all temporary personnel named by the Ministry of Education, who might not comply with the Regulations for the Practice of the Profession of Educator but are committed to the revolutionary process. Such Rules and Regulations are an old achievement of Venezuelan educators, dating from the mid 20th Century. They establish the principle that, whatever a teacher's political position, promotions will be based exclusively on professional qualifications and on satisfaction of the established excellence requirements.

3. Another goal of the Draft Resolution on the Organization and Operation of Educational Communities is to engage non-educational actors into the process by declaring them to be members of the Educational Community.

Resolución No. 10.000, de 19 de mayo de 2010, publicada en el Gaceta Oficial No. 39.900, de 20 de mayo de 2010.



IS THERE RESPECT FOR A CITIZEN'S PRIVATE LIFE?

1. Fears about the excessive control the State seeks to exercise over the citizenry are reinforced by three very significant developments:

- The approval by the National Assembly, on December 7, 2004, of the new Law on Social Responsibility in Radio and Television. This law is widely perceived to represent an increase in the State's control on radio and television programs in as much as it establishes a whole new series of mandatory provisions which are in violation of media standards and represent a clear intent to intimidate and compromise freedom of the press;
- The approval of the Law on the Reform of the Penal Code, which entered into force on March 16, 2005, widely understood to represent, as it effectively does, an intent to silence political opposition by defining dissent as a crime and by increasing the punishment for the so-called 'contempt crimes';
- The reversal of final sentences adopted by courts of law, including by the Supreme Court, in what constitutes an indication that any individual might be tried again even after having been declared innocent.

2. For a number of years, transcripts of conversations among opposition personalities have been made public both in State-owned television stations as in government-sponsored press and on the Internet. Such conversations are illegally taped, without the knowledge or consent of the interested parties and are used to slander, intimidate or accuse individuals for any content or intent of their conversations.

3. Thus, the Writ of Administration published on April 1, 2005 in the Official Gazette N° 38157 is viewed with distrust and as a threat to privacy. The Writ establishes the obligation to ask for private information from subscribers to mobile telephone services at the time of contracting such services, as well as the obligation by those same providers to convey information on the use of such services to the state security organizations.



ARE HUMAN RIGHTS VIOLATED IN VENEZUELA?

1. In Venezuela the violation of human rights in the country's prisons is an issue of much concern. Moreover, cases such as El Amparo and the so-called Caracazo regarding which the Inter American Human Rights Court (CIDH), with headquarters in Costa Rica , has issued final sentences and even ordered compensations are widely remembered. Ever since the year 2000, several national and international organizations have been denouncing these human rights violations and their increase in recent years.

2. COFAVIC has presented specific accusations and has done a follow up of the parapolice groups' activities. In its annual reports PROVEA has also reported multiple human rights violations, particularly violations to the right to life.

3. Ever since the year 2002 the CIDH has dictated provisional protective measures for journalists (Marta Colomina and Liliana Velásquez, reporters for RCTV) media (El Nacional and Así Es la Noticia and Globovisión), human rights militants (Liliana Ortega and COFAVIC, Carlos Nieto and José Luis Uzcátequi) and regular citizens (Eloisa Barrios and members of her family) who have all been threatened by parapolice groups or extermination groups comprised of former or active police officers.

4. A clear indication of the deteriorated situation of human rights in Venezuela is provided by the case of soldiers who are subjected to disciplinary regulations that include even detention in punishment cells, in violation of the most basic human rights. Some of these soldiers have lost their lives in fires which happened to ignite their cells yet to date no one has been indicted for any such incident. The cases of soldiers burned to death while detained in such ignominious punishment cells, are the following:

- Ángel Ciro Pedreñez died on May 4, 2004. Another soldier, Orlando Bustamante, died after 35 days in intensive care for the severe burns he suffered while detained in a punishment cell in Fort Mara.
- Soldier José Fébres-Narváez, of the Army's Special Forces Light Brigade, stationed in Monagas State, deceased on January 30, 2001, as a consequence of having been drenched in thinner and ignited, together with three other soldiers, while in detention in a disciplinary cell, by Army Lieutenant Alessandro Sicat-Torres.
- Corporal Rommer José Luían-Martínez (aged 20) and Raúl Royett-Gutiérrez, (aged 19), members of the Reserve Battalion stationed at the Gran Mariscal de Ayacucho Barracks in Cumaná.



5. The National Military Detention Center of Ramo Verde houses a number of members of the Armed Forces, detained and indicted for the crime of military rebellion without having been formally charged and without the benefit of a grounds of claim trial to which they have a right by law in consideration of their senior officers status. Even though many of those senior officers have retired from the Armed Forces, their cases have not been transferred to civilian courts of justice. Among these are the following: General (Ret.) Ovidio Poggioli, General (Ret.) Francisco Usón, Col. Jesús Farías-Rodríguez, Col. Jesús Castro-Yeyes, Col. Carlos Guerra, Lt. Col. Humberto Quintero, Lt. Col. Francisco Martínez, Capt. Javier Nieto, Capt. Rafael Faría Villasmil, Capt. Javier Quintero, Capt. Otto Guevaguer, Lt. Darwin Valera, Merchant Marine Capt. Luis Salazar, General Felipe Rodríguez, alias El Cuervo.

6. Of all the above-mentioned officers, the only one who has been sentenced is Army Gen. (Ret.) Francisco Usón, condemned by a Military Court of Justice to five years and six months imprisonment for expressing an opinion about what would be the probable impact of a flamethrower weapon fired at the interior of a detention cell. In the opinion of Alberto Arteaga-Sánchez, a noted specialist in criminal law, Gen. Usón should not have been tried by a military court since at the time the events took place he was already a retired officer.

7. In May 2004, the Government revealed an alleged attempt to attack Miraflores Palace by a paramilitary group, composed in its majority of Colombian citizens. The members of such group were arrested in a farm located at the outskirts of Caracas. Those involved in the case, known as that of the 'Paramilitaries', have yet to be tried after more than a year in detention. Six Venezuelan officers are also being tried in relation to this case, among them the: Gen. (Ret.) Ovidio Poggioli – arrested without charges and brought to trial before a military court, notwithstanding his civilian condition – Colonels Jesús Farías- Rodríguez, Jesús Castro-Yelles, and Captains Javier Quintero-González, Rafael Farías-Villasmil, and Javier Nieto, who have finally been charged and for whom, in some cases, a penalty of over twenty-years imprisonment has been requested.

8. On April 21, 2005, Colonel Darío Faría-Rodríguez, brother of Jesús Faría-Rodríguez, indicted in the Paramilitaries Case, was arrested in the neighborhood of Tiuna Fort. Colonel Darío Farías was charged with possession of a FAL rifle, hidden in his car's fender. Soon after his arrest, members of his family denounced he was being subjected to torture. Neither Darío Farías' lawyers nor his family were able to establish contact with him for several days and he remained out of bounds until a commission from the Office of the Peoples' Advocate was finally able to visit him of May 4, 2005.



ARE THOSE ACTIVE IN THE DEFENSE OF DEMOCRACY IN VENEZUELA PERSECUTED AND IMPRISONED?

1. The Committee of Family Members of the Victims of the February – March 1989 Events (Cofavic), a NGO that has felt under harassment by the government for having sued the Venezuelan State for compensation on behalf of those victims, will introduce a complaint against the Office of the Public Prosecutor before the Human Rights Office of the United Nations, the Inter American Commission on Human Rights and the Inter American Court on Human Rights, for recent statements made by that Office which this NGO considers damaging to its reputation.

2. The Public Prosecutor's Office opened, on April 7, 2005, a criminal prosecution against Carlos Ayala-Corao, President of the Andean Commission of Jurists and former President of the Inter American Human Rights Commission. On April 15, 2005, on the basis of hear say and press articles, he was charged with the crime of 'conspiracy' for having allegedly participated in the drafting of the April 12, 2002, proclamation known as the 'Carmona Decree'. This decree made void the Bolivarian Constitution, dissolved all branches of Government and dismissed from their positions all public officials. The Ayala-Corao case is an emblematic case since his position against the dissolution of the Government on April 12, 2002, as well as his active defense of the rights of President Chavez's followers, some of which were persecuted immediately after the President abandoned his duties for a few hours, is well known. This case has been read as an indication of the Government's intention to harass pro-human rights individuals and organizations. It has given rise to very public polemics and to the solidarity of NGO's active in the field of human rights.

3. Four members of Sumate's board of directors have been charged with "conspiracy to destroy the republican political road chosen by the Nation", for having received funds from the National Endowment for Democracy to prepare and offer courses on citizens' rights. Finally, after 15 months of harassments, subpoenas to declare in court, accusations made through the media, etc., in July 2005 a court ruled to bring them up for trial. Súmate is a Civil Association for the defense of people's voting rights. In 2003 and 2004 it organized the gathering of firms to request the Presidential Recall Referendum.



ARE THERE POLITICAL PRISONERS IN VENEZUELA? ARE PEOPLE PERSECUTED FOR POLITICAL REASONS?

1. There are presently more than two hundred political prisoners and people who are persecuted for political reasons in Venezuela, many without any guarantee of access to due process, and many living in such precarious conditions that these, in and of themselves, represent a violation of their human rights. This situation has been brought to the attention of several international bodies, most recently the United Nations (UN).

2. One of the most emblematic cases is that of the political prisoners in the State of Táchira, in Venezuela's Andean region. The following eight civilians were arrested in Táchira State for the April 12, 2002, events: Elsy de Peña, Neira Celis, Jacobo Supelano, Wilfredo Tovar, William Forero, Omar Guillén, Dany Ramírez, Orlando Pantaléon and Saúl Lozano. With the exception of William Forero, all were indicted. The case of Saúl Lozano, former President of the Táchira Workers Federation, is particularly representative of abusive treatment. Although in need of surgery to alleviate his suffering for spinal-discus hernia, a condition that has impaired his ability to move, he has been denied treatment at an appropriate medical facility. His case will be brought to the attention of the Inter American Commission on Human Rights and the International Committee of the Red Cross, in order to request their good offices on humanitarian grounds. In August 2002, on the grounds of lack of evidence and time already spent in jail, a court's final sentence set free some of the eight political prisoners. Nevertheless, on October 14, 2004, the Second Trial Court of Táchira State annulled such sentences and proceeded to announce that new procedures would be initiated against some of them. Moreover, after the Supreme Court's decision to revoke the sentence exonerating those military officers accused for the April 11, 2002, events, the case was reopened and new charges will likely be brought forward.

3. Carlos Ortega, a Labor Union leader and former President of the Venezuelan Confederation of Workers, is imprisoned at the Ramo Verde Military Detention Center, charged with civil rebellion and with instigation to commit crimes for the December 2002 and January 2003 lockdown. Carlos Ortega is convinced that this is a political one and therefore he expects to be sentenced without access. As the press has not been allowed in the courtroom the report not be able to cover the trial in an adequate manner. Moreover, only a single member jury was selected, thus denying Mr. Ortega his constitutional right to a regular jury.

4. Besides the above mentioned cases, a number of individuals, all of them belonging to the opposition, are being arraigned in several courts and for different reasons. Among them are: Enrique Mendoza, former Governor of the State of Miranda; Cecilia Sosa, former President of the Supreme Court of Justice; Gisela Parra, former President of the Judiciary Council; Enrique Capriles Radonsky, Mayor of the Baruta Municipality; Leopoldo López, Mayor of the Chacao Municipality; Luis Lippa, former Governor of the State of



Apure; Ramón Escobar Salom, former Public Prosecutor of the Republic; José Curiel, former Governor of the State of Falcón; David de Lima, former Governor of the State of Anzoátegui.



6 - The state of institutions

Is the Executive ruling under a military style?

Is the political parties system declining in Venezuela?

Are traditional trade-union organizations being respected?

Is the civil society allowed to exercise the functions conferred by the Constitution?



IS THE EXECUTIVE RULING UNDER A MILITARY STYLE?

1. The President Chávez Frías has a military background, which can be observed in his speeches and in his government style. There are multiple occasions in which he appears dressed up with the military uniform, notwithstanding that according to the Law, he is permitted to wear it only at determined protocol acts. On April 14th, 2002, after his return to the Presidency of the Republic, he raised this topic as one of the points of his speech, in which he promised not to wear the military uniform ever again.
2. The occasional use of the military uniform, the constant allusions to the military life and the use of military examples for electoral campaigns, are not the only areas in which the military character of the regime is showed. Even more significant is the amount of militaries, in service or retired, exercising high public positions in the Government .
3. The Government of President Chávez Frías is, at the present moment, negotiating the purchase of weapons -one hundred thousand "AK-103" attack rifles- with Russia, as well as armament with Spain. Besides the not so real prejudice that this could recall an armaments race in the region, the destiny that could be given to the disused weapons is a worry to the analysts, as well as the possibility that these weapons could reach the hands of guerrilla groups in the region or of some violent fellows of the régime.
4. In the presence of a suspected thread of an invasion by the United States or of an external aggression, the President of the Republic has promoted a modification in the Regulations of the National Army Law, in order to establish a contingent of two million "reservists" -beginning from a number not yet determined- which depends on the Presidency and which is out of the control of the National Army.
5. On April 13th, 2005, declared as the "Day of the military reserve, the national mobilization and the civil-military union", President Chávez Frías, wearing his military uniform and with his parachutist beret, activated the reserve command at the Honor Patio of the Military Academy, denominated "Sovereignty or Death". This command is conformed by a starting contingent of 20 thousand reservists, equal to approximately one third of the National Army. Such command is under the orders of General Quintero Vilorio, who declared as ". stateless or ignorant persons, or well-meaning people who are not yet acquainted with reality" those who have criticized the creation of such reserves directly depending on the Presidency and which are not under the authority of the National Army.
6. On recent date and within the context of a "possible invasion by the United States", the Executive has been promoting the concept of "asymmetric war" or fourth generation war. To that effect, the First Military Forum on Fourth Generation War and Asymmetric Conflict took place at



"Fuerte Tiuna" Military Academy, organized by the National Army General Command (date). In that Forum, this topic was raised as the new philosophy or strategy of the National Army. The possible external aggression was constantly used as one of the reasons behind the purchase of weapons and the increase of reservists. President Chávez Frías stated in his speech, that some characteristics of the concept of asymmetric war are: ".the application of non conventional tactics, such as guerrillas war and terrorism, with the purpose of debilitating the adversary". ("El Nacional", April 9th, 2005, page A-3).

7. As for the Legislature, it has discussed and approved an amendment to the National Army Organic Law, which is only waiting for the approval in plenary meeting, such law being modified in several articles affecting the topic of the "reserves" and which have caused great controversy.

8. Once declared the road of the bolivarian revolution as socialist, President Chávez Frías has been promoting this idea in all and every interventions and speeches and has exhorted this idea to be discussed in military quarters: "This topic shall be brought to the military quarters, without fear, because there we were brainwashed, the capitalist model and the terror of socialism were sold to us". ("El Nacional", May 23rd, 2005).



IS THE POLITICAL PARTIES SYSTEM DECLINING IN VENEZUELA ?

1. President Chávez Frías promoted the idea of a Constituent Assembly in order to create a new Constitution in 1999. Such Constitution contains some organizational elements related to the political organization of the civil society that shall be underlined, because they act against the formation of partisan organizations in Venezuela . For example:

- The new Constitution not only eliminates all and every possibility of public financing -as it was considered in the Constitution of 1961- but it also disregards the concept of political parties. Political parties are not even mentioned in the constitutional text, which only talks about "organizations with political purposes".
- The lack of public financing to political parties becomes more difficult each time for the Venezuelan democratic balance. We are living a political reality in which the institutional balances and counterbalances have been disappearing and the budget division between the finances of the government party and those of the government itself has been banished. While the minority parties do not receive financing from the Venezuelan State and receive it from abroad, it is for no one a secret, that the Government campaigns are being financed with resources from the Venezuelan State, such thing being admitted by the President of the Republic.

2. That attempt to eliminate the parties is consistent with the ideology of President Chávez Frías, inspired by the recommendations of Norberto Ceresole, an Argentine sociologist, who proclaims a direct relation between leader-army-population without the mediation of the parties.

3. Only some rank and file organizations have succeeded, in popular sectors, created for the electoral processes held on August and October of 2004. Such organizations are the Electoral Battle Units, now being transformed in Endogenous Battle Units, encouraged by the President of the Republic and which claim for a direct relation with President Chávez Frías, with no direct subjection whatsoever to the MVR party or to any other allied party of the Government.

4. Among the parties that support the Government, "Movimiento Quinta República" (MVR) is the strongest and the most voted of the existing parties in Venezuela; notwithstanding, it appears that the efforts towards its consolidation have found internal disputes, of which the most evident expression was **that occurred with the recent internal process held to select the candidates for "Movimiento Quinta República" (MVR)**. Within this process, a confrontation took place between the MVR and some allies, which ended in violence, fraud accusations and actions before the "TSJ" (Supreme Court of Justice), as well as hunger strikes.

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ARE TRADITIONAL TRADE-UNION ORGANIZATIONS BEING RESPECTED?

1. The Venezuelan trade-union movement is currently undergoing a very difficult situation. From a unionization rate of 35% in the 80's, at the present moment only one or, at the most 2, of each 10 workers is organized. The trade-union organization is usually divided in three fronts, a traditional sector, with the "Confederación de Trabajadores de Venezuela" (CTV) (the Venezuelan Workers Association), founded in 1947, being the strongest trade-union organization, and in which also are the "Confederación de Sindicatos Autónomos" (CODESA) (the Autonomous Trade-Union Association), founded in 1964, having a Christian-democratic orientation, and the "Confederación General de Trabajadores" (CGT) (the Workers General Association), being a division of the Christian-democratic, founded in 1971; on the second front, there are the "Confederación Unica de Trabajadores de Venezuela" (CUTV) (the Venezuelan Unique Workers Association), founded in 1961, having a communist orientation; and on the third front, the "Unión Nacional de Trabajadores" (UNT) (the Workers National Union), founded on October, 2003, having an official orientation.

2. Once noted this weakness regarding trade-union matters, the Government proposed the realization of a Consulting Referendum on December of the year 2000, in order to ask the people about their conformity with declaring the "Corporación de Trabajadores de Venezuela" (CTV) in re-organization and, therefore, ". finish with the trade-union corrupted elites." in words of the President of the Republic. The result - although being favorable to the Government- showed an abstention higher than 76% and, therefore, it is considered as a defeat.

3. After the Consulting Referendum the Government candidates were defeated by the minority traditional leaders on the trade-union elections held on October of 2001. The Government never admitted this victory and, therefore, it has been brought as a case before the "OIT" (International Labor Organization).

4. In view of the trade-union defeat, the Government created -among others- a parallel trade-union central, the "UNT", and a workers movement denominated Frente Bolivariano de Trabajadores " and it refused to discuss the collective contracts with the trade-unions affiliates of the "CTV". Notwithstanding, the creation of such parallel centrals, qualified by the "CTV" leaders as "Government followers" or official, has not given good results to the Government and the "CTV" is still the main trade-union force of the country.

5. In view of this failure, the Government has begun to propose new organizational schemes for the labor force, based on "co-management" and the organization of cooperatives, as alternative mechanisms to the capitalist



economic development, which also implicate an organization of the workers different from the traditional trade-union organization. A proposal of a Co-Management Law has been circulating, brought by the official central, "UNT". Such trend of economic and social conduction is described in the objective No. 7 of " The New Stage: The New Strategic Map", brought by President Chávez Frías on November 17 th , 2004, before the members of his Government, at "Fuerte Tiuna".

6. Same organizational plan has been proposed -on the part of the Government- to entrepreneurs, which -in exchange for resources and for economic and financial aid- agree to join in some "co-Management" plans.





IS THE CIVIL SOCIETY ALLOWED TO EXERCISE THE FUNCTIONS CONFERRED BY THE CONSTITUTION?

1. Unlike the Constitution of 1961, which not even mentioned the civil society, the new Constitution of 1999 grants great preeminence to same. Notwithstanding, in practice, the Government of President Chávez Frías aims to reduce the role of society and the participation of the people, given the great resistance to its plans, which has been exercised until now by some non-government organizations and by a great portion of the civil society.

2. The "Consejo Nacional Electoral" (CNE) (the National Electoral Council), for example, has been assuming tasks, which the Constitution, the "Ley Orgánica del Poder Electoral" (the Electoral Authority Organic Law) and the "Ley Orgánica del Sufragio y Participación Política" (Voting and Political Participation Organic Law) had reserved to the civil society as center of the electoral process; among others, the designation of officers to manage the electoral process: polling-place members, regional electoral boards and directive positions in the "CNE".

3. The Legislature has backed up this task by replacing the civil society (11 members of the Legislature and 10 members of the civil society integrate the Nominations Committee) in selecting the candidates for rectors of the "CNE", even in disregard of a decision of the "TSJ" (Supreme Court of Justice), which states that political parties are not a part of the civil society.

4. The most aggressive position regarding the intention to weaken the role of the civil society and of the people, is that taken by the "TSJ" (Supreme Court of Justice), by reducing, through several decisions, the functions attributed by the Constitution to the civil society.

5. From the Constitutional Court of the "TSJ", the most important decisions in restricting the attributions of the civil society are:

Nº 656, file Nº 00-1728, dated June 30th, 2000, in the case of the "Defensoría del Pueblo" (Counsel for the Defense of the People) against the "Comisión Legislativa Nacional" (National Legislative Commission).

Nº 1050, File Nº 00-2378, dated August 23rd, 2000, in the case of the "habeas data" of the "Red de Veedores" (Supervisors' System).

Nº 1395, File No. 00-1901, dated November 21, 2000, in the case of the Governors against the Ministry of Finance.

6. An element in common among the aforementioned decisions is the narrow interpretation of Article 70 of the Constitution, which aims to restrict the people's participation. The Constitutional Court of the "TSJ", in its judgments, does not consider a great amount of institutions as part of



the civil society and, in consequence, such institutions cannot exercise the functions conferred upon them by the Constitution. In doing so, such Constitutional Court prepares the scenery so that, in the future, practically no organization may be considered as civil society. In other words, the former decisions, even though they do not restrain the possibility to act or to constitute non-government organizations nor do they restrain the civil society from organizing itself or from obtaining internal or external financing, they limit its possibilities to perform activities attributed by the Constitution in its condition of civil society.
