

SITUATION OF THE VENEZUELAN DEMOCRACY IN THE  
EVE OF THE APRIL 2002 POLITICAL CRISIS AND THE 2001  
INTER AMERICAN CHARTER

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I. INTER-AMERICAN DEMOCRATIC CHARTER

The General Assembly of the Organization of American States, in the Twentieth Extraordinary period of sessions held on September 11, 2001 in Lima Peru, issued the *Inter-American Democratic Charter*. For that, it took into consideration that the Charter of the Organization of American States

recognizes that representative democracy is indispensable for the stability, peace, and development of the region, and that one of the purposes of the OAS is to promote and consolidate representative democracy, with due respect for the principle of nonintervention; that solidarity among and cooperation between American states require the political organization of those states based on the effective exercise of representative democracy, and that economic growth and social development based on justice and equity, and democracy are interdependent and mutually reinforcing;

The General Assembly, furthermore, recognized the contributions of the OAS and other regional and sub-regional mechanisms to the promotion and consolidation of democracy in the Americas; that a safe environment is essential to the integral development of the human being, which contributes to democracy and political stability; that the right of workers to associate themselves freely for the defense and promotion of their interests is fundamental for the fulfillment of democratic ideas; and that all the rights and obligations of member states

under OAS Charter represent the foundation on which democratic principles in the Hemisphere are built.

Among the backgrounds of the Charter in the international ambit there is the adoption by the Heads of State and Government of the Americas, gathered at the Third Summit of the Americas, held from April 20 to 22, 2001 in Quebec City, adopted a democracy clause which establishes that any unconstitutional alteration or interruption of the democratic order in a state of the Hemisphere constitutes an insurmountable obstacle to the participation of that state's government in the Summits of the Americas process. Moreover, the American Declaration on the Rights and Duties of Man and the American Convention on Human Rights contain the values and principles of liberty, equality, and social justice that are intrinsic to democracy; and the Protocol of San Salvador on Economic, Social, and Cultural Rights emphasizes the great importance of the reaffirmation, development, improvement, and protection of those rights in order to consolidate the system of representative democratic government.

Aimed at adopting the Charter, the General Assembly reaffirmed

that the participatory nature of democracy in our countries in different aspects of public life contributes to the consolidation of democratic values and to freedom and solidarity in the Hemisphere; that the fight against poverty, and especially the elimination of extreme poverty, is essential to the promotion and consolidation of democracy and constitutes a common and shared responsibility of the American states; and that the promotion and protection of human rights is a basic prerequisite for the existence of a democratic society, and recognizing the importance of the continuous development and strengthening of the inter-American human rights system for the consolidation of democracy.

Furthermore, in the Santiago Commitment to Democracy and the Renewal of the Inter-American System, the ministers of

foreign affairs expressed their determination to adopt a series of effective, timely, and expeditious procedures to ensure the promotion and defense of representative democracy, with due respect for the principle of nonintervention; and that resolution AG/RES. 1080 (XXI-O/91) therefore established a mechanism for collective action in the case of a sudden or irregular interruption of the democratic political institutional process or of the legitimate exercise of power by the democratically-elected government in any of the Organization's member states, thereby fulfilling a long-standing aspiration of the Hemisphere to be able to respond rapidly and collectively in defense of democracy.

Additionally, in the Declaration of Nassau [AG/DEC. 1 (XXII-O/92)], it was agreed to develop mechanisms to provide assistance, when requested by a member state, to promote, preserve, and strengthen representative democracy, in order to complement and give effect to the provisions of resolution AG/RES. 1080 (XXI-O/91).

On the other hand, in the Declaration of Managua for the Promotion of Democracy and Development [AG/DEC. 4 (XXIII-O/93)], the member states expressed their firm belief that democracy, peace, and development are inseparable and indivisible parts of a renewed and integral vision of solidarity in the Americas; and that the ability of the Organization to help preserve and strengthen democratic structures in the region will depend on the implementation of a strategy based on the interdependence and complementarity of those values. Finally, in the Declaration of Managua for the Promotion of Democracy and Development, the member states expressed their conviction that the Organization's mission is not limited to the defense of democracy wherever its fundamental values and principles have collapsed, but also calls for ongoing and creative work to

consolidate democracy as well as a continuing effort to prevent and anticipate the very causes of the problems that affect the democratic system of government.

Based on all those these backgrounds, the Ministers of Foreign Affairs of the Americas, at the thirty-first regular session of the General Assembly, held in San Jose, Costa Rica, in keeping with express instructions from the Heads of State and Government gathered at the Third Summit of the Americas, in Quebec City, accepted the base document of the Inter-American Democratic Charter and entrusted the Permanent Council of the Organization with strengthening and expanding the document, in accordance with the OAS Charter, for final adoption at a special session of the General Assembly in Lima, Peru, from September 11, 2001.

The Charter is divided in six chapters, in which the following aspects are developed: democracy and the Inter-American system; democracy and human rights; democracy, integral development and combating poverty; strengthening and preservation of democratic institutions; democracy and electoral observation missions, and promotion of a democratic culture.

1. *Democracy and the Inter-American System*

A. *The Right to Democracy*

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

B. *The Reaffirmation of Representative Democracy and Political Participation*

The effective exercise of representative democracy as per Article 2 of the Charter is the basis for the rule of law and of the constitutional regimes of the member states of the Organization of American States.

Representative democracy, on the other hand, is strengthened and deepened by permanent, ethical, and responsible participation of the citizenry within a legal framework conforming to the respective constitutional order.

### *C. Essential Elements of Representative Democracy*

Article 3 of the Charter lists as essential elements of representative democracy among others, the following: 1) respect for human rights and fundamental freedoms, 2) access to and the exercise of power in accordance with the rule of law, 3) the holding of periodic, free, and fair elections based on secret balloting and universal suffrage as an expression of the sovereignty of the people, 4) the pluralistic system of political parties and organizations, 5) and the separation of powers and independence of the branches of government.

### *D. Essential Components of the Exercise of Democracy*

The following are essential components of the exercise of democracy, as listed in Article 4° of the Charter: 1) transparency in government activities, 2) probity, 3) responsible public administration on the part of governments, 4) respect for social rights, and 5) freedom of expression and of the press.

Furthermore, it is stated that are equally essential to democracy, 1) The constitutional subordination of all state institutions to the legally constituted civilian authority and 2) respect for the rule of law on the part of all institutions and sectors of society.

### *E. Political Parties and their Financing*

Article 5 of the Charter considers that the strengthening of political parties and other political organizations is a priority for democracy. Moreover, it adds that special attention will be paid to the problems associated with the high cost of election campaigns and the establishment of a balanced and transparent system for their financing.

### *F. Political Participation*

Article 6 of the Charter declares that it is the right and responsibility of all citizens to participate in decisions relating to their own development. This is also a necessary condition for the full and effective exercise of democracy. Promoting and fostering diverse forms of participation strengthens democracy.

## *2. Democracy and Human Rights*

### *A. Democracy and the Exercise of Rights and Freedoms*

Democracy, as defined in Article 7 of the Charter, is indispensable for the effective exercise of fundamental freedoms and human rights in their universality, indivisibility and interdependence, embodied in the respective constitutions of states and in inter-American and international human rights instruments.

### *B. The Right of Persons to Report Violations of Human Rights before International Organizations*

Article 8 of the Charter establishes the right of any person or group of persons who consider that their human rights have been violated may present claims or petitions to the inter-American system for the promotion and protection of human rights in accordance with its established procedures.

For that purpose, the Charter is a reaffirmation of the intention of the member states to strengthen the inter-American system for the protection of human rights for the consolidation of democracy in the Hemisphere.

### *C. The Elimination of Discrimination*

In particular, Article 9 of the Charter considers that the elimination of all forms of discrimination, especially gender, ethnic and race discrimination, as well as diverse forms of intolerance, the promotion and protection of human rights of indigenous peoples and migrants, and respect for ethnic, cultural and religious diversity in the Americas contribute to strengthening democracy and citizen participation.

### *D. Democracy and Workers Rights*

In addition, The Charter sets forth that the promotion and strengthening of democracy requires the full and effective exercise of workers' rights and the application of core labor standards, as recognized in the International Labour Organization (ILO) Declaration on Fundamental Principles and Rights at Work, and its Follow-up, adopted in 1998, as well as other related fundamental ILO conventions (Art. 10), which is completed with the statement that democracy is strengthened by improving standards in the workplace and enhancing the quality of life for workers in the Hemisphere.

## *3. Democracy, Integral Development and Combating Poverty*

### *A. Democracy and Economic Development*

Article 11 of the Charter considers and declares that democracy and social and economic development are interdependent and are mutually reinforcing.

### *B. Democracy and Social Problems*

Poverty, illiteracy, and low levels of human development are considered by Article 12 of the Charter as factors that adversely affect the consolidation of democracy. Consequently, the OAS member states are committed to adopting and implementing all those actions required to generate productive employment, reduce poverty, and eradicate extreme poverty, taking into account the different economic realities and conditions of the countries of the Hemisphere.

This shared commitment regarding the problems associated with development and poverty also underscores the importance of maintaining macroeconomic equilibrium and the obligation to strengthen social cohesion and democracy.

### *C. Democracy and Economic Development*

Article 13 of the Charter declares that the promotion and observance of economic, social, and cultural rights are inherently linked to integral development, equitable economic growth, and to the consolidation of democracy in the states of the Hemisphere.

### *D. OAS Rol in Matters of Development*

In Article 14 of the Charter, member states agree to review periodically the actions adopted and carried out by the Organization to promote dialogue, cooperation for integral development, and the fight against poverty in the Hemisphere, and to take the appropriate measures to further these objectives.

### *E. Democracy and Environment*



Article 15 of the Chart sets forth that the exercise of democracy promotes the preservation and good stewardship of the environment. It is essential that the states of the Hemisphere implement policies and strategies to protect the environment, including application of various treaties and conventions, to achieve sustainable development for the benefit of future generations.

#### *F. Democracy and Education*

Article 16 of the Charter, on the other hand, considers that education is a key to strengthening democratic institutions, promoting the development of human potential, and alleviating poverty and fostering greater understanding among our peoples. To achieve these ends, it is essential that a quality education be available to all, including girls and women, rural inhabitants, and minorities.

### *4. Strengthening and Preservation of Democratic Institutions*

#### *A. The Request of OAS Assistance*

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

#### *B. OAS Visits*

When situations arise in a member state that may affect the development of its democratic political institutional process or the legitimate exercise of power, as per Article 18 of the Charter, the Secretary General or the Permanent Council may, with prior

consent of the government concerned, arrange for visits or other actions in order to analyze the situation. The Secretary General will submit a report to the Permanent Council, which will undertake a collective assessment of the situation and, where necessary, may adopt decisions for the preservation of the democratic system and its strengthening.

*C. Effects of the Interruption of the Democratic Order or the Alteration of the Constitutional Order in a Member State*

Article 19 of the Charter sets forth that based on the principles of the Charter of the OAS and subject to its norms, and in accordance with the democracy clause contained in the Declaration of Quebec City, an unconstitutional interruption of the democratic order or an unconstitutional alteration of the constitutional regime that seriously impairs the democratic order in a member state, constitutes, while it persists, an insurmountable obstacle to its government's participation in sessions of the General Assembly, the Meeting of Consultation, the Councils of the Organization, the specialized conferences, the commissions, working groups, and other bodies of the Organization.

*D. Initiatives in the Event of Alteration of the Constitutional Order in a State*

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

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

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

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

*E. The Consequence of the Interruption of the Democratic Order Determined by the General Assembly: The Suspension of the Right to Participate in OAS*

Article 21 of the Charter sets forth that when the special session of the General Assembly determines that there has been an unconstitutional interruption of the democratic order of a member state, and that diplomatic initiatives have failed, in accordance with the Charter of the OAS, the special session shall make the decision to suspend said member state from the exercise of its right to participate in the OAS by an affirmative vote of two thirds of the member states. In such event, the suspension shall take effect immediately. Notwithstanding the suspension of the member state, the Organization will maintain diplomatic initiatives to restore democracy in that member state.

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

#### *F. Lifting of the Suspension*

Once the situation that led to suspension has been resolved, pursuant to Article 22 of the Charter, any member state or the Secretary General may propose to the General Assembly that suspension be lifted. This decision shall require the vote of two thirds of the member states in accordance with the OAS Charter.

### *5. Democracy and Electoral Observation Missions*

#### *A. Electoral Processes and International Assistance*

The Article 23 of the Charter declares that member states are responsible for organizing, conducting, and ensuring free and fair electoral processes. The provision specifies, nevertheless, that member states, in the exercise of their sovereignty, may request that the Organization of American States provide advisory services or assistance for strengthening and developing their electoral institutions and processes, including sending preliminary missions for that purpose.

#### *B. The International Missions of Electoral Observations*

The electoral observation missions, pursuant to Article 24 of the Charter, shall be carried out at the request of the member state concerned. To that end, the government of that state and the Secretary General shall enter into an agreement establishing the scope and coverage of the electoral observation mission in question. The member state shall guarantee conditions of security, free access to information, and full cooperation with the electoral observation mission.

Electoral observation missions shall be carried out in accordance with the principles and norms of the OAS. The Organization shall ensure that these missions are effective and independent and shall provide them with the necessary resources for that purpose. They shall be conducted in an objective, impartial, and transparent manner and with the appropriate technical expertise.

Electoral observation missions shall present a report on their activities in a timely manner to the Permanent Council, through the General Secretariat.

*C. The Information on the Conditions for Carrying out Free and Fair Elections*

The electoral observation missions, as per Article 25 of the Charter, shall advise the Permanent Council, through the General Secretariat, if the necessary conditions for free and fair elections do not exist. In such a case, the OAS may, with the consent of the state concerned, send special missions with a view to creating or improving said conditions.

*6. Promotion of a Democratic Culture*

*A. OAS Obligations*

As per Article 26 of the Charter, The OAS will continue to carry out programs and activities designed to promote democratic principles and practices and strengthen a democratic culture in the Hemisphere, bearing in mind that democracy is a way of life based on liberty and enhancement of economic, social, and cultural conditions for the peoples of the Americas. The OAS will consult and cooperate on an ongoing basis with member states and take into account the contributions of civil society organizations working in those fields.

*B. Programs Content*

The programs and activities, pursuant to Article 27 of the Charter, will be to promote good governance, sound administration, democratic values, and the strengthening of political institutions and civil society organizations. Special attention shall be given to the development of programs and activities for the education of children and youth as a means of ensuring the continuance of democratic values, including liberty and social justice

### *C. Women Participation*

States, as per Article 28 of the Charter, shall promote the full and equal participation of women in the political structures of their countries as a fundamental element in the promotion and exercise of a democratic culture.

Until here the content of the Inter-American Democratic Charter. As it can be seen, it is a document of great importance in the definition of essential values and fundamental components of democracy in Latin America, which commits all the member states of the OAS and serves for the protection of the democratic and constitutional order in the same.

## I. DEMOCRATIC CULTURE IN VENEZUELA AND THE IMPORTANCE OF THE INTER-AMERICAN DEMOCRATIC CHARTER

The most important historical-political-cultural heritage that Venezuela has in the beginning of the 21<sup>st</sup> century, without doubt, is democracy as political regime and as a way of living, which should imply both the guarantee of the public rights and freedoms and the functioning of the rule of law.

The last forty years has all their effects and those were produced precisely in a country with the lesser democratic

tradition among all the countries in Latin America. Currently, with all its defects and problems, it is still the Latin American country with the eldest and most experimented contemporary democracy, despite the efforts for destroying it made in the last years.

The truth is that Venezuelans got used to democracy. That was the great heritage left by the traditional political parties that led the political life during the second half of the former century. The fact that they didn't understand at the end of the century the needs of their own democratic work, which made them collapse, does not mean absolutely that democracy hasn't take roots until the core of the people and in the institutions.

That made Venezuelans used to living in freedom, and in this situation, the people doesn't accept nor tolerate authoritarianism, and rejects violence.

On the other hand, the crisis of the system of state of parties produced the political emptiness that featured the political system from the final years of the nineties, which originated a marked desire for and hope for political change for which the majority voted in 1998, that wasn't meant to terminate democracy and the public freedoms, but to improve democracy itself, to make it more representative and more participative. Because of that, the reaction wasn't against representative democracy, as many persons interpreted it, but against party autocracy and the absence of citizen participation. In 1999, even a constitution was sanctioned, which established a series of principles inspired in a marked reaction against the predominance of the political parties, which could lead to effectively establishing of that more representative and more participative democracy for which everyone has claimed. Nevertheless, in the Constitution, provisions were set forth that

could affect the rule of law. Therefore, the Inter-American Commission on Human Rights, in its Preliminary Observations N°23/02 dated 05/10/02 on the occasion of the on-site visit to Venezuela after the facts of April 2002, pointed out the following:

22. Notwithstanding these significant constitutional advances, the Commission notes that the Constitution also includes various parts that may hinder effective observance of the rule of law. These provisions include the requirement for a preliminary proceeding on the merits (*antejuicio de mérito*) for high-ranking officers of the Armed Forces prior to starting any investigation into a crime (Article 266(3)); the stipulation of the Office of the Comptroller General of the National Armed Forces without clarifying its relationship with the Office of the Comptroller General of the Republic (Article 291); and the participation of the National Electoral Council in trade union elections. Article 58, which stipulates the right to timely, accurate, and impartial information, has been criticized, among others by this Commission. Furthermore, Article 203 includes the concept of *leyes habilitantes*, or enabling statutes, and allows for the possibility of a delegation of legislative powers to the President of the Republic, without establishing limits on the content of this delegation. In so doing, new crimes may be established by Executive decrees – as has already happened – and not through statutes adopted by the National Assembly, in violation of the requirements of the American Convention on Human Rights. In addition, the Constitution has suppressed some constitutional provisions that are important for the rule of law, such as legislative review of military promotions, the provision that established the non-involvement of the Armed Forces in political decision-making, and the prohibition on the military authority and the civilian authority being exercised simultaneously.

In any case, some times it seems not to be understood that what the people wanted was, precisely, more representation, not only by the parties, and more political participation and presence of the civil society made up by organizations contrary to the state. For that it was essential the effective territorial decentralization of the Public Power. It hasn't been understood that, definitively, in a people with a deep democratic culture, the change wanted was aimed at improving democracy, not destroying it, one of its essential components is the power control, and, therefore, the rejection of its concentrate and authoritarian exercise.



The Inter-American Democratic Charter analyzed hereinbefore summarizes the principles of democracy as a political regime, to which the Venezuelan people has right to and also all the American peoples and whose promotion and defense is an obligation of the governments (Art.1). It must be remembered, in any case, that even though the Charter was approved in the General Assembly of OAS held in Lima, Peru, on 09-11-01 with the affirmative vote of Venezuela, before that, a draft was discussed in the General Assembly meeting of the OAS held in June 2001 in San Jose, Costa Rica, where the Venezuelan government expressed certain opposition.

In any case, it is true that in Venezuela there is a government elected by the people and that a Constitution and laws sanctioned by the State organs are in force. Because of that, an interruption of the constitutional order that lead to the overthrow of the government shall not be admitted, on principle. That would be contrary to the Inter-American Instruments and Declarations and could lead to the exclusion of Venezuela from the Inter-American System. Therefore, even before the facts of Caracas in April 2002 the Secretary General of the Organization of American States, Cesar Gaviria, before the public and individual manifestation of an officer of the Venezuelan Air Force on 02-07-02, in a press release dated 02-08-02 pointed out the commitment of the OAS with democracy and the rejection of “any attempt to altering the constitutional order”, and expressed that “democracies built with great efforts in the Continent have mechanisms wherefore persons defend their rights, check up on the government and the state, situation familiar to Venezuelan democracy” and that “if something goes wrong, the solution ought to be found in the Constitution and Laws”.

With greater reason, facing the interruption of the constitutional order produced in April 2002, the Inter- American Commission on Human Rights, in its Preliminary Observations dated 05-10-02 stated the following:

10. As regards the events of April, the Commission expressed its repudiation of the coup d'état in due course. The breakdown of the constitutional order constituted a violation of basic principles of international law in force in the Americas, reflected mainly in the Inter-American Democratic Charter, and of rights enshrined in the American Convention. Nothing justifies a break with the constitutional order or an effort to impede the operation of key institutions such as the various branches of government. The Commission recalls that in the investigation, determination of responsibilities, and punishment of the persons responsible for this attack on the democratic institutional framework, the Venezuelan State is called upon to set an example of impartiality and respect for human rights, which implies, among other things, full respect for judicial guarantees and all other rights and guarantees for persons investigated for these acts. The IACHR will closely monitor the development of these processes and its compliance with the provisions of the American Convention on Human Rights that enshrine judicial guarantees.

Nevertheless, the importance of the Inter-American Charter is that its noncompliance can be produced by a government of a member state that even though its origin is formally a popular election, serious alterations of the democratic and constitutional order, in which case it could also lead to the isolation of the state from the Inter-American system.

Such as expressed by the Inter-American Commission on Human Rights in its Preliminary Observations dated 05-10-02,

62. The main source of democratic legitimacy is that granted by the popular will, expressed in free, periodic, and universal elections. Yet elections in themselves are not sufficient to ensure the full observance of democracy. As indicated in the Inter-American Democratic Charter, the essential elements of representative democracy include, among others, respect for human rights and fundamental freedoms; access to and the exercise of power subject to the rule of law; the holding of periodic, free, and fair elections, based on universal suffrage and secret balloting as an expression of the popular sovereignty; a pluralistic regime of political parties and organizations; and the separation of powers and independence of the various branches of government. In addition, the following are fundamental components of the exercise of democracy: transparency in government, openness, responsible public administration on the part of governments, respect for social rights, and respect for freedom of expression and

freedom of the press. The constitutional subordination of all the institutions of the State to the lawfully-constituted civilian authority, and respect by all entities and sectors of society for the rule of law, are also fundamental for democracy. In this context, the functioning of an independent and impartial Judiciary as a guarantor of the protection of human rights, as a vehicle for obtaining justice from the victims, and as an organ of oversight and a check on the action of the other branches of government is fundamental to the rule of law.

Therefore, being the Inter-American Democratic Charter the most up-to-date international document for preserving democracy in our countries, we will analyze hereafter the situation of Venezuelan democracy when the events of April 2002 occurred in the light of the provisions of said Charter. If the text of the Charter was confronted with the political practice of the government, it could be seen the breach that was separating us from it was opening and deepening quickly.

Because of that, the General Assembly of the OAS in its emergency meeting on the occasion of the events of April 2002 resolved:

4. To encourage the Venezuelan government in its express will of fully observing and applying the essential elements and components of representative democracy, as set forth by Articles 3 and 4 of the Inter-American Democratic Charter.

## II. THE SITUATION OF REPRESENTATIVE DEMOCRACY AND ITS DEFORMATIONS

According to what we have pointed out, the Democratic Charter commence by stating that the effective exercise of representative democracy is the basis for the rule of law and of the constitutional regimes (Art. 2). Said statement revalued representative democracy in Latin America, despite all the efforts and suggestions made to change de adjective “representative” identifying democracy, for “participative democracy”, in the meeting of Heads of State and Government of the Americas, (Third Summit of the Americas), held in

Quebec city in 2001 and in the General Assembly of the OAS, held in San Jose, Costa Rica, in 2001.

In fact, in our opinion representation is the antithesis of a regime based on supposed popularity of a media leader supported by the Armed Forces. Historically, it is about the well-known relationship leader-people-military that featured the fascist and national-socialist praxis of the first half of the former century and that in the second half of said century was used to confiscate democracy to several peoples, including some Latin American countries.

In Venezuela, democracy as basis of the rule of law and of constitutional regime, without doubt, from ages had to be improved to make it representative of the people, of its organizations, regions, communities and neighborhoods, and not only of some political parties that monopolized it. That was the great political change that Venezuelans claimed for, and because of that, from the electoral process of 1998 a great majority didn't vote, and several persons vote "against" the traditional parties.

Regarding representative democracy, it has been distorted, since it is deduced from some statements of state officers, the same seems to be understood as only "representative" of the government party and didn't admit another representation. The truth is that from a pluralist-party representation democracy, we moved to a democracy representing one only party, who has monopolized the majority of the representative bodies. In this way, in Venezuela in the former four decades we haven't seen a party autocracy as the one exercised by the government party in the last three years, which didn't admit dissidence, and didn't admit that the majority it had, for example, in the National Assembly could be democratically changed by the dissidence of

former followers. In that sense, it must be remembered the formal statement of a Congressman of the government party in the National Assembly when he said, straightly, that “if on January 5, 2002 the government party loses the control on the Assembly, that would be the end of democracy as support of the political regime.”

That is to say, representative democracy was conceived and accepted only when it represented exclusively the government party, but not when it represented other forces and political organizations. Therefore, representative democracy in Venezuela as basis for the rule of law and of the constitutional regime, such as announced formally, was weakened, except for the solely representation of the government party.

The claim for a change in democracy based on the reaction against the exclusive representation of traditional political parties has been discriminated in favour of the exclusive representation of a political party, the governmental one. Furthermore, some violations of constitutional provisions that ruled the parties have occurred, among them the following shall be pointed out:

*First*, the provision ruling that the internal elections of the authorities of the same be organized by the National Electoral Council (Art. 297,6), which has been ignored since said election didn't take place as per the provision.

*Second*, the provision aimed at guaranteeing the internal renovation of the parties. In the government party such internal renovation of its directors couldn't be made, since its President is the President of the Republic and the Board of Directors was made up of high state officers he had appointed.

*Third*, the provision ruling the constitutional prohibition to public officers exclusively at state service to serve any party (Art. 145). Said provision had been forgotten, and never, as in these last years, Venezuela has had a President acting more as a chief of a political party than as Head of government and state.

*Fourth*, the provision ruling the prohibition of public financing to public parties (Art. 67), which due to the overlapping of the government party with the state, is not absolutely in force.

On the other hand, the constitutional provision that eliminated parliamentary blocks in the National Assembly, originated a change in the denomination for “opinion groups”, but hasn’t mean the end of the practice of instructing the vote to congressmen. In the case of the government party, it has a strong parliamentary block subjected to party guidelines, as never seen before.

The conscience vote of which the constitution talks regarding the congressmen (art. 201), therefore, has been turned into death letter, and the provision establishing that the congressmen are only representatives of the people and are not bounded to instructions or directions has been death letter as well.

On the other hand, it is enough to remember what happened to the congressmen of the government party that decided to think by themselves in December 2001 and January 2002 and believed that they could have their own conscience to which they cannot betray. The lesser thing they were told was traitors, being removed, as they said.

In Venezuela, consequently, representative democracy hasn't been based on pluralism, tolerance, dissidence, discussion, dialogue and consensus. What we have had is a deformation of democracy representative exclusively of political parties, which Venezuelans wanted to change in 1998, transformed in a democracy of one solely party far from the provisions of the Inter-American Democratic Charter.

#### IV SITUATION OF THE PARTICIPATIVE DEMOCRACY AND THE DISCRIMINATION OF THE RIGHT TO CITIZEN PARTICIPATION

The Inter-American Democratic Charter, as we have said, not only reaffirms the need of an effective exercise of representative democracy as basis for the rule of law and of the constitutional regime, but also states that such representative democracy shall be strengthened and deepened by permanent, ethical and responsible participation of the citizenry within a legal framework, conforming to the respective constitutional order (Art. 2). Furthermore, the Charter adds that the participation of the citizenry in decisions relating to their own development is a right and a responsibility and a necessary condition for the full and effective exercise of democracy. Therefore, it affirms that promoting and fostering diverse forms of participation strengthens democracy (Art. 6).

The improvement of democracy of which the Venezuelan people has claimed for consists, therefore, in making it truly participative, wherefore citizenry, based on the right to political participation, could participate in the management of public matters in a permanent basis and not exclusively through political parties, as it has occurred in the last decades.

##### *1. Political Participation in the Constitution of 1999*

The Constitution of 1999 is totally marked by the concept of participation, wherefore it not only declares the government of the Republic and of all the political entities as participative (Art. 6), but formally establishes the right to political participation (Art. 62) and even lists the diverse ways of participating in political matters, beyond the election of public positions: through the referendum, popular consultation, revocation of the power, legislative, constitutional and constituent initiatives, the open council meeting and the citizen assembly whose decisions, the Constitution states, have binding character (Art. 70).

Not only there finishes the constitutional consolidation of political participation, but in the direct ruling of specific ways of participation in public management:

*First*, in the exercise of the legislative function by imposing the National Assembly the obligation of consulting the state organs, the citizens and the organized society to listen their opinions on the draft laws (Art. 211); and by the obligation of consulting the states, through their legislative councils when ruling matters regarding them (Art. 206); obligation that without doubt is translated to the President of the Republic when a legislative delegation is produced through *leyes habilitantes* (enabling statutes) to issue executive statutes with law force (Art. 203), since on the contrary, it would be a fraud of the Constitution.

*Second*, the process of choosing by the National Assembly the heads of the organs of the Citizen Power (Attorney General of the Republic, Comptroller General, and the Human Rights Ombudsman), of the Electoral Power (National Electoral Council) and the Judicial Power (magistrates of the Supreme Court of Justice). In all these cases, the Constitution --an exceptional case in contemporary constitutionalism- sets forth



expressly that postulations before the National Assembly of the candidates for those positions corresponds solely to two nominations committees made up for “representatives of the diverse sectors of the society” (Arts.270, 279, 295) and not in any other way.

That participative feature of the democratic regime in Venezuela derived from those precise and categorical constitutional provisions, nevertheless, has been discriminated in the last few years.

## *2. The Mockery to the Right to Participate in the Process of Making Laws*

The most recent violation to a constitutional provision took place in 2001 on the occasion of the execution of the Enabling Statute of November 2000: The President of the Republic in Cabinet issued 48 Decrees-Laws on bestowed matters of primary importance in the country, without submitting the drafts to public consultation as required by the Constitution and as specified by the Organic Law of Public Administration of October 2001, which punishes with absolute nullity (Art. 137) legal and ruling texts issued by the National Executive without following the procedure of public consultation set forth.

The wide use of the practice of legislative bestowal threaten the participation of popular representation in sanctioning the laws. Because of that, the Secretary General of the OAS, Cesar Gaviria in his Report to the General Assembly dated 04-18-02 on the occasion of his visit to Venezuela after the events of April, 2002, stated:

They called attention to the use of mechanisms of the enabling law. This is an old provision in Venezuelan constitutions that bestows on the Executive extensive legislative powers. The government of President Chavez made wide use

of these powers, and illustrated the great resistance generated by the approval of norms without parliamentary debate and without public discussion in the Assembly.

### *3. The Violation of the Right to Citizen's Participation in the Appointment of the Organs of the National Public Powers*

The right to political participation of the society through its representatives had been violated, precisely in the process of appointment by the National Assembly of the heads of the organs of Citizen, Electoral and Judicial Powers, expressly ruled in the Constitution, whose text was ignored by the National Assembly itself when issuing the Special Law for the Ratification or Designation of Officers of the Citizen Power and Justices of the Supreme Court of Justice for the first constitutional period of November 2000.

Through this law a parliamentary commission was created made up of a majority of congressmen to chose said officers, substituting the nominations committees ruled in the Constitution, that should be made up of "representatives from different sectors of society". Civil society was in this way discriminated, and the heads of the organs of the Citizen and Judicial Powers were appointed with discretionary elements (Attorney General, Human Rights Ombudsman, and Comptroller General of the Republic), and the Justices of the Supreme Court were appointed without complying with some of the objective requisites the Constitution establishes as condition to taking those offices. Through that law, the political control of the Executive branch consolidated through the dominance of the National Assembly regarding all the Public Powers.

This constitutional problem was pointed out by the Secretary General of the OAS in his Report to the General Assembly dated 04-18-02, by stating:

Opposition groups and other leaders of society distance themselves from constitutional standards in different ways. In particular, they express concern about the separation and independence of the branches of government and the lack of checks and balances in the specific case of Venezuela, since they believe that the leading figures were chosen by political majorities within the Assembly. The opposition representatives in the Assembly have called attention to a recent ruling by the Supreme Court of Justice which concludes that the presidential term begins in January, 2002.

The Secretary General added in his Report that:

The government and opposition should do everything within their reach to guarantee the separation of powers and effective checks and balances. Beyond the importance of establishing the supremacy of the Constitution, it is essential to re-establish complete confidence in the rule of law and ensure that all the pillars of society are to heed it. That is spelled out in Art. 4 of the Democratic Charter.

However, the problem was pointed out in a stronger way by the Inter-American Commission on Human Rights in the Press Release N° 23/02 issued on 05-10-02, in which it declared:

7. Regarding the Judicial Power, the Commission heard questions raised about the legitimacy of the process used to choose the highest-ranking members of the Judiciary, the Office of the Human Rights Ombudsman, the Public Ministry, and the Office of the Comptroller General of the Republic. Such procedures are not provided for in the Venezuelan Constitution. The information received indicates that those authorities were not nominated by the committees established for that purpose by the Constitution, but on the basis of a law that was passed by the National Assembly after the Constitution was approved, called the "Special Law for the Ratification or Designation of the Officers of the Citizen Power (*Poder Ciudadano*) and Members of the Supreme Court of Justice."

This matter was deeply developed by the Inter-American Commission in the Preliminary Observation dated 05-10-02:

25. The Commission received comments questioning the legitimacy of the election of the current members of the Supreme Court of Justice, the Office of the Human Rights Ombudsman, the Public Ministry, and the Office of the Comptroller General. As a result of the failure to follow the constitutional procedures for choosing those officials, the persons appointed to fill those positions do not have the requisite independence.

26. In this respect, the Commission was informed that the Constitution of the Bolivarian Republic adopted in 1999 provided for a “Judicial Nominations Committee” made up of different sectors of society. The current members of the Supreme Court of Justice, as well as the Human Rights Ombudsman, the Attorney General, and the Comptroller General were not nominated by such committees as required by the Constitution, but rather pursuant to a law issued by the National Assembly after the adoption of the Constitution called the “Special Law for the Ratification or Designation of Officers of the Citizen Power and Justices of the Supreme Court of Justice” for the first constitutional period. The constitutional reforms made to the way these authorities are chosen were not used in this case. Those provisions were aimed precisely at limiting undue interference, ensuring greater independence and impartiality, and allowing various voices of society to be heard in the selection of such high-level authorities.

27. The Commission also noted that questions have been raised regarding the exercise of the powers of the Judicial branch without the proper independence and impartiality. On several occasions, the Supreme Court of Justice is said to have made only decisions favoring the interests of the Executive branch. Decisions were mentioned, among others, in response to questions raised about the Special Law for the Ratification or Designation of the Officers of the Citizen Power and Judges of the Supreme Court of Justice, and the decision as to the duration of the presidential term.

28. The Commission is concerned about the possible lack of independence and autonomy of the other branches of government, vis-a-vis the Executive, as they would indicate that the balance of power and the possibility of keeping a check on the abuses of power that should be characteristic of the rule of law might be seriously weakened. In this respect, the IACHR must note that the separation of powers and independence of the branches of government is an essential element of democracy, according to Article 3 of the Inter-American Democratic Charter.

29. The Commission considers it urgent to adopt the organic laws so as to establish the mechanisms provided for in the Constitution of the Bolivarian Republic of Venezuela for the selection of the members of the Supreme Court of Justice, as well as the Human Rights Ombudsman, the Attorney General, and the Comptroller General.

#### *4. The Support of the Supreme Court of Justice in the Process of Power Concentration*

It must be pointed out that the Human Rights Ombudsman challenged the foregoing Special Law for the Ratification or Designation of Officers of the Citizen and Judicial Powers due to its unconstitutionality; but despite that, the Supreme Court never pronounced on the claim and even decided in a sentence dated 12-12-00 that the Constitution doesn't apply regarding the requisites to be magistrates, to the magistrates who wanted to be "ratified", who were the same who were deciding. The most elemental principle in the history of law, according to which no one shall be judge and a party in the same procedure, that is to say, no one shall decide his own procedure, can be considered violated by the judicial organ in charge of looking after the integrity of the Constitution (Art. 335).

Nevertheless, the Court decided on the grounds of a constitutional transitory regime supported by the Supreme Court itself, justifying rules apart from the Constitutional text.

Precisely, regarding the constitutional "transitory regime" it must be pointed out an statement of the Inter-American Commission on Human Rights in the Preliminary Observations of 05-10-02:

One important issue, from the constitutional standpoint, is what has been called the "transitory regime"; it is of concern to the Commission insofar as it limits the full implementation of the Constitution. The Transition Regime of the Public Power was approved by the National Constituent Assembly on December 22, 1999, before the entry into force of the new Constitution, mainly to ensure the survival of provisions tacitly derogated by the approved constitutional text, until the new statutes required are enacted. While such transition regimes are common when new constitutions are adopted, in Venezuela, this regime has endured beyond the normal time frame, and has included guidelines for executive enactment of legislative provisions beyond what is normally within the scope of a transitory regime. The information received by the Commission indicates that the transitory regime led, for example, to the failure to set in motion the mechanisms provided for in the Constitution for the designation of the magistrates of the Supreme Court of Justice, the Human Rights Ombudsman, the Attorney General, and the Comptroller General. This is all because the Supreme Court of Justice has held that for the Constitution to come fully into force, several specific statutes needs to be adopted, which has yet to happen. The failure of the

Constitution to come fully into force, together with the variety of official constitutional texts, creates a situation of juridical insecurity making it difficult to fully consolidate the rule of law. The Commission hopes that the transitory regime is concluded as soon as possible, to which end it is essential that the legislative branch adopt the legislation necessary to develop the constitutional provisions.

In any case, participative democracy, in its direct constitutional provisions had been discriminated by the state organs, who, on the contrary, were in charge of assuring their effective exercise.

#### V. SITUATION OF THE HUMAN RIGHTS AND THE EFFECTS OF THEIR DISRESPECT

The Inter-American Charter, in addition to establishing the right to democracy and the obligation of the governments of protecting it and defending it, and defining democracy through its representative and participative contents, in order to raise no doubts, lists the essential elements of representative democracy (Art. 3), indicating, among others, the following five:

In the *first place*, the respect for the human rights and fundamental freedoms. The relation between democracy and constitutional rights is so important that the Democratic Charter specifies that the former is indispensable for the effective exercise of the fundamental freedoms and the human rights, in their universality, indivisibility and interdependence embodied in the Constitution and in inter-American and international human rights instruments.

However, in the last three years, in Venezuela, due to the concentration of power produced and the absence of effective controls of power and political counterbalances, the human rights have suffered in their exercise and protection with an accumulation never seen before.

The Inter-American Commission on Human Rights never before has received so many denounces of violations of human rights as now, from 2000 and 2001 and the first months of 2002 regarding terrorist acts derived from kidnapping linked to Colombian guerrilla; disrespect for the freedom to form and join unions, attacks to the freedom of association, violations to the guarantee of due process, interference of the Executive branch in the other state Powers, subjection of the Judicial branch, disrespect for the right to life and to personal security because of extrajudicial executions and creation of “death squads”, attacks to the freedom of expression and violations of the right to privacy of communications.

In particular, “grupos de exterminio” (death squads) within regional police forces has acted during months provoking the military intervention of state police forces and the action of the Attorney General of the Republic.

On this matter, the Inter-American Commission on Human Rights made a specific analysis. In the Press Release dated 05-10-02, it pointed out the following:

14. According to information received by the IACHR, and particularly based on what has been pointed out by the Human Rights Ombudsman, there are death squads (“*grupos de exterminio*”) made up of State security officers operating in the states of Portuguesa, Yaracuy, Anzoátegui, Bolívar, Miranda, and Aragua. In its visit to the state of Portuguesa, the Commission observed with serious concern that the death squads are not only an illegal means of social control, but that, in the particular case of Portuguesa, they are part of a criminal organization that operates for monetary gain within the state police force, and that continues operating and threatening the family members of victims and witnesses, who are absolutely defenseless.

15. Given the gravity of the situation, the Commission demands a serious and complete investigation into these death squads, the prosecution and punishment of the persons responsible without delay, and reparations for the harm caused. In addition, it requests that the Venezuelan State grant effective measures of protection to the witnesses and the victims’ next-of-kin. The Commission considers it crucial to increase the human, technical, and logistical

resources earmarked for investigating these death squads, and to remove the members of the security forces involved immediately.

Furthermore, in the Preliminary Observation it made in the Press Release N° 23/02 on 05-10-02 it insisted in a marked way on the subject of the “death squads”, by pointing out the following:

59. According to information received by the IACHR, and particularly what has been pointed out by the Human Rights Ombudsman, there are “death squads” (*los grupos de exterminio*) made up of state security officers operating in the states of Portuguesa, Yaracuy, Anzoátegui, Bolívar, Miranda, and Aragua. According to official figures in the state of Portuguesa, which the IACHR visited, there have been 131 extrajudicial executions perpetrated by those groups since the beginning of 2001. The Commission observed with serious concern that the *grupos de exterminio* are not only an unlawful mechanism of social control, but also, in the case of Portuguesa, part of a for-profit criminal organization operating within the state police force. These organizations continue operating and threatening the relatives of victims and witnesses, who are absolutely defenseless.

60. The persecution and extermination of individuals who belong to specific groups, such as alleged criminals, is a particularly reproachable violation of the right to life and of the right to humane treatment, which has repeatedly been condemned by this Commission. The fact that security officers belong to such groups also represents a radical departure from due process and the rule of law. As an extreme crime-fighting practice, it can only result in greater citizen insecurity. The lack of due diligence in terms of investigating, prosecuting, and punishing the members of the so-called *grupos de exterminio* is fundamental in allowing them to operate.

61. Given the gravity of the situation, the Commission demands a serious and thorough investigation of the *grupos de exterminio*, the prosecution and punishment of those responsible without delay, as well as reparation for the harm caused. In addition, the Venezuelan State asks that effective measures of protection be granted to protect witnesses and the victims’ next-of-kin. The Commission considers it crucial that human, technical, and logistical resources be specially earmarked to investigate these “*grupos de exterminio*” and that the members of the security forces involved be dismissed immediately.

On the other hand, the harassment exercised by groups that say they act on behalf of the government party against demonstrators, against media and against the free action of congressmen to the National Assembly and Legislative Councils recall us the fascist practices of harassment, threaten an



destruction not only against constitutional rights, but against opposition groups and against democracy itself.

The forgoing outlook surely led the Secretary General of the OAS to state in his Report to the General Assembly on 04-18-02 that:

Since the events mentioned earlier, there have been increased reports of human rights violations, acts of intimidation, and significant acts of vandalism and looting, and increasing numbers of persons dead or injured. This happened before, during and after the recent crisis. We referred these cases to the IACHR and, in some cases, to the Commission's Rapporteur for Freedom of Expression as well.

## VI. SITUATION OF THE RULE OF LAW AND THE ACCESS TO POWER

The *second essential element* of democracy according to the Inter-American Democratic Charter is the access to and the exercise of power, in accordance with the rule of law. This implies that for the existence of democracy the access to power ought to be based on the constitutional methods, and furthermore, the power has to be exercised in accordance with the rule of law, that is to say, once again, by respecting the Constitution and the legal order. There is no democracy where there is no respect for the Constitution.

It is clear that regarding the election of representative positions, this principle has been respected in Venezuela and in that sense, in the last years, several elections have been carried out. However, it was openly violated, as we mentioned before, regarding the access to the organs of Public Powers whose heads are not elected popularly, as the organs of the Citizen Power, Electoral Power and Judicial Power.

The Inter-American Commission on Human Rights pointed out the necessity of strengthening the rule of law, by pointing out in the Press Release of 05-10-02 and in its Preliminary Observations of the same date, the following:

17. The IACHR considers that the lack of independence of the Judiciary, the limitations on freedom of expression, the proclivity of the Armed Forces to engage in politics, the extreme polarization of society, the action of the death squads, the scant credibility of the oversight institutions due to the uncertainty surrounding the constitutionality of their designation and the partiality of their actions, and the lack of coordination among the security forces, represent a clear weakness of the basic elements of the rule of law in a democracy, in the terms of the American Convention and the Inter-American Democratic Charter. Accordingly, the Commission calls for the rule of law to be strengthened in Venezuela as soon as possible.

## VII. SITUATION OF DEMOCRACY BROKEN FOR THE DEPENDENCE OF THE ELECTORAL POWER

In *third place*, another essential element of democracy according to the Inter-American Democratic Charter is the holding of periodic, free and fair elections based on secret balloting and universal suffrage as an expression of the sovereignty of the people. Therefore, the elective regime is essential in representative democracy wherefore the organ of electoral control is also essential to assure its effectiveness and the fair character of the elections.

The Constitution of 1999 makes the Electoral Power a component of the Public branches with organic independence, functional and budget autonomy, participation of no party in the electoral organism, impartiality and citizen participation; decentralization of the electoral administration, transparency and speed of the balloting act and scrutiny (Art.294). However, all these principles with which free and fair election can be assured, wait for the law developing them and updating them to make them reality.

In the meantime, the members of the National Electoral Council in charge of implementing representative democracy were "transitorily" appointed by a transitory legislative organ called National Legislative Commission, without the constitution of the Electoral Nomination Commission "made up of representatives from the different sectors of society" provided for in article 295 of the Constitution. Constitutional transitory regime created by the National Constituent Assembly on December 22, 1999, violating the Constitution itself popularly approved a week before (12-15-99) harmed the autonomy of the Electoral branch.

All the foregoing has served to weaken progressively representative democracy in Venezuela, since the elections have been directed by an organ in which civil society and the majority of the political parties haven't confidence in. Transitory regime regarding the conformation of the Electoral Branch according to the Constitution, in any case, has been extended *sine die* because of the decision of the parliamentary majority of discussing no law that shall rule the Electoral Nomination Committee provided for in the Constitution.

The Inter-American Commission on Human Rights, in its Preliminary Observations of 05-10-02, devoted the following considerations to the problem of the composition of the National Electoral Council:

50. During its on-site visit, the Commission received numerous observations regarding the composition of the National Electoral Council, in which the electoral power is vested according to the terms of the Constitution. Its members have yet to be selected in keeping with the procedure regulated by the Constitution. This would suggest that in practice, the Council is kept from making decisions in all matters that are important for all types of elections under its jurisdiction.

51. The organs of public power with jurisdiction to settle claims regarding the transparency and legality of elections should be endowed with the utmost impartiality, and should resolve such matters fairly and promptly, as the

best way to ensure the effective exercise of the right to elect and be elected established in Article 23 of the American Convention. Accordingly, the Commission recommends that the full and definitive composition of the National Electoral Council proceed as regulated in the Constitution.

## VIII. SITUATION OF DEMOCRACY AND LIMITATIONS TO PLURALISM

### 1. *Political Pluralism and its Implications*

The *fourth* essential element of representative democracy is the pluralistic system of political parties and organizations, to which the Democratic Charter devoted another rule providing that the strengthening of the parties and other political organizations is a priority for democracy (Art. 5). Definitively, it is about the principle of political pluralism, which is opposed to all idea of power concentration and of political organization of the society promoted by the state or from the state.

Plural democratic regime, in this way, is always opposed to state super power, trying that the parties and political organizations be always outside the sphere of the state and its influence, so as individuals and social groups freely develop their personality. Pluralism, furthermore, ought to assure free elections, governmental alternativeness and political participation and, through the latter, power decentralization. Plural regime of parties and political organizations, in short, is the antidote to totalitarianism featured by the existence of a sole source of authority that even pretend to appropriate sovereignty.

Political pluralism, therefore, implies the democratic existence of a multiplicity of political groups, parties and organizations that articulate society, outside the reach of the state. Because of that, the Constitution in several provisions refers to associations or organizations with political purposes

(Art.67), to organizations of the civil society (Art. 293,6; 296) and to organized society (Art. 211). In contrast, the Constitution grants the Electoral Power, which is a state organ, an inadmissible interference in the organizations of the civil society, by granting it the power of organizing the elections of unions, professional groups and organizations with political purposes (Art. 293,6). This, in itself, is an attack to political pluralism and an inconvenient transformation of the social organization into a part of the state.

That is more serious if the Electoral Power does not have effective independence regarding the Executive branch, as happened with the National Electoral Council.

In any case, society groups outside the ambit of the state power and its scope, are the ones that guarantee the political pluralism as essential element for democracy. Because of that, the Constitution, as is has been said, bestows the public officers the obligation of being "at the service of the state and not at the service of any party" (Art. 145) to separate clearly the political organization of the society (the state) from the organized groups of the society (parties and organizations of the civil society), preventing even in the Constitution, even though inconveniently and contrary to the provisions of the Democratic Charter (Art. 5) the financing of the associations with political purposes with funds from the state (Art. 67).

## *2. The Inconvenient Integration of the Government Party to the State*

In Venezuela, in any case, political pluralism has been harmed, on the one hand, when the government party integrated the state in a way never known before in the Venezuelan political history. As it was said, the President of the

Republic has been the President of the government party and his more close ministers have been the directors of the same. The state in several aspects, therefore, seems to be at the service of the government party and the latter to the service of the state. Other political organizations and parties different from the governmental one have been discriminated from power.

In this sense, the Secretary General of the OAS, in his Report to the General Assembly of 04-18-02 highlighted that not only “representatives of the opposition parties in the National Assembly consider their minority rights to have been violated”, but that:

The international community should provide support to Venezuela to ensure that political parties and other political groups or movements once again become the principle actors in Venezuelan politics. The current vacuum, which other social sectors have sought to fill, has clearly demonstrated its limitations. Here we could look to actions under Art. 5 of the Democratic Charter.

On the other hand, the integration of the government party to the state makes us remember the application of the old technique of the “boot” regarding Public Administration trying to provoke the supposed conformation of a “new” public function made up almost exclusively by members of the government party.

In *second place*, with the concentration of power in the Executive branch, whose head has been president of the government party that has controlled all power instances, and through these ones, has tried to control the organizations of the civil society as the unions and professional groups whose elections are controlled by a state organ politically subjected, as the Electoral power.

### *3. The Inconvenient Interference of the Power in the Organization of the Society and the Regimentation of Civil Society*

On the other hand, the state, from the Executive branch tried to organize politically the society and the governors and mayor members of the government party tried to do so as well, through the so called “Bolivarian Circles”, groups that are the antithesis of pluralism because of their full dependence of the organs of power.

It must be pointed out the importance that the Secretary General of the OAS gave in his Report to the General Assembly of 04-18-02 to the subject of the Bolivarian circles, by expressing the following:

This Mission has received numerous complaints alleging that the Bolivarian Circles are responsible for these actions. The Bolivarian Circles are groups of citizens or grassroots organizations who support the President’s political platform. Many sectors consider them responsible for the human rights violations, acts of intimidation, and looting.

Furthermore, the Secretary General stated the following:

It is an absolute necessity to resort only to peaceful measures. The state, and let there be no doubt about this, must retain a monopoly on the legitimate use of force. The accusations that certain sectors are jeopardizing the legitimate use of force must be investigated. In all cases, any use of force must occur under authorization and within the normative framework to which the military adheres.

The Inter-American Commission on Human Rights, in the Press Release of 05-10-02 gave importance to the subject of the civil society and the Bolivarian circles, by expressing the following:

13. The IACHR noted that political participation, the right of association, and freedom of expression are all rights guaranteed in the American Convention, and in this regard, the "Bolivarian Circles," as free groups of citizens or grassroots organizations that support the President’s political project, may, under

certain conditions, be a suitable channel for the exercise of these rights. Nonetheless, the IACHR understands that the expression of certain partisan political ideas cannot be accorded privilege to the detriment of others, nor can there be any justification for acts of violence or restrictions on the rights of third persons with different political outlooks or given professional roles, especially if they receive public financing. The Commission reminds the Government that it is a responsibility of the State to ensure the effective exercise of the rights of all inhabitants of Venezuela. The international responsibility of the State is triggered if groups of civilians are freely violating rights, with the support or acquiescence of the Government. Therefore, the Commission calls on the Government to seriously investigate the acts of violence attributed to some Bolivarian Circles, and to adopt, with the utmost urgency, all actions necessary for preventing the recurrence of such acts. In particular, it is essential that the monopoly over the use of force be vested exclusively in the public security forces; the complete disarming of any group of civilians should take place immediately.

In its Preliminary Observation of the same date, the Inter-American Commission on Human Rights developed even more the subject in this way:

56. During its on-site visit, and even before it, the IACHR received several statements of concern over the creation, training, organization, and financing with funds from the public treasury of the so-called "Bolivarian Circles," whose main purpose is said to be to give political support to the regime of President Chávez. Some of the members of those circles have been accused of acting as shock troops to verbally and physically assault those who they identify as enemies of the political process, in particular leaders of the political opposition, including members of the National Assembly and municipal authorities, journalists and social communicators, and social leaders, especially in the trade union and university movements. It is also said that some of these circles are armed. The Government rejects these charges and asserts that the "Bolivarian Circles" are mere instruments of social action and social solidarity.

57. Political participation, the right to association, and the right to freedom of expression are rights guaranteed by the American Convention. In this regard, the "Bolivarian Circles" as free groups of citizens or grass-roots organizations that support the political project of the President, may under certain conditions be a suitable channel for the exercise of those rights. Even so, the Commission understands that the expression of certain politically partisan ideas cannot be privileged to the detriment of others, nor can it be a justification for acts of violence or restrictions on the rights of third persons with different political views or certain professional roles, especially if it is supported by public financing. The Commission reminds the Government that it is the responsibility of the State to ensure the effective exercise of the rights of all inhabitants of Venezuela. The international responsibility of the State is triggered if groups of civilians act freely violating rights, with the support or acquiescence of the Government. Accordingly, the Commission called on the Government to investigate seriously the acts of violence attributed to some "Bolivarian Circles," and to take, as urgently as possible, all measures necessary to prevent these acts



from recurring. In particular, it is essential that the monopoly of force be maintained exclusively by the public security forces; complete disarmament of any group of civilians should immediately be guaranteed.

58. According to the information collected by the IACHR, one cannot dismiss the possibility of other armed groups existing, whether Government partisans or opposition groups. It is essential to investigate the existence of such groups, and to disarm them completely, as quickly as possible.

On the other hand, regarding the right to form and join unions, it should be highlighted the interference of the state in the unions and even of the President of the Republic in the unions elections, promoting a candidate of the government to the Venezuelan Confederation of Workers.

The Secretary General of the OAS, in his Report to the General Assembly of 04-18-02 emphasized the subject of the problems of the union freedom, pointing out that:

The Venezuelan Confederation of Workers (CTV) (Central de Trabajadores de Venezuela) demanded that the Executive accept the CTV leaders chosen in the election called at the initiative of the national government itself. This confederation and its leaders are recognized by the International Labour Organization (ILO) and this demand can also be viewed in light of Article 10 of the Democratic Charter. The CTV leaders also call for the convocation of tripartite dialogue.

The Inter-American Commission on Human Rights gave a particular treatment to the subject of the right to form and join trade unions in the country as well. In the Press Release of 05-10-02 it stated the following:

12. Furthermore, the IACHR learned of a clear conflict regarding the right to form and join trade unions. The IACHR was informed that once the elections were held, in keeping with the rules of the National Electoral Council, the elected directors of the CTV union federation were not recognized by the national authorities. The American Convention protects the right to elect and to be elected, and to form and join trade unions. Accordingly, the IACHR urged the Venezuelan State to resolve as soon as possible, and in keeping with Venezuela's international obligations, the conflict that came about due to the failure of the authorities to recognize the freely elected authorities of the CTV.

Moreover, in the Preliminary Observations of 05-10-02, the Inter-American Commission on Human Rights made the following considerations:

45. On December 3, 2000, a referendum was held by the Government, through a legislative measure, in which the voters were asked whether they agreed with reforming the trade union leadership through elections to be held within six months. During that period, the directors of Venezuela's trade union federations (*centrales, federaciones, and confederaciones*) were suspended.

46. The referendum resulted in a significant victory of the position in favor of reforming union leadership, accompanied by widespread abstentions. In accordance with the prevailing vote in favor of the reforms, the above-mentioned directors were effectively suspended from their trade union functions, and new elections were held, in keeping with the Elections Statute issued by the National Electoral Council (CNE) to regulate new elections for union leaders.

47. The IACHR is of the view that having allowed the population at large to participate in that referendum, i.e., including persons other than union members, entailed a violation of the right to form and join trade unions, and the right of workers to elect their leaders. The above-mentioned actions were severely criticized by the Committee on Freedom of Association of the International Labor Organization (ILO).

48. Once the elections were held, in keeping with the provisions laid down by the National Electoral Council, the authorities of the individual trade unions and the union federations were elected. The Commission has received information indicating that the Confederación de Trabajadores de Venezuela (CTV) represents the largest number of trade unions. Nonetheless, due to different interpretations of what has happened, the officers of the CTV elected in the election called by the national government have yet to be recognized by the national authorities.

49. The Commission notes that the right to elect and to be elected and to organize in trade unions are rights recognized in the American Convention, and in the Inter-American Democratic Charter. The right to form and join trade unions, without undue interference from the state, is, in the view of the IACHR, an important element in any democracy. It requires that the conflict that has arisen due to the failure to recognize the authorities of the CTV be resolved as soon as possible, and in keeping with Venezuela's international obligations.

The Supreme Court of Justice, sadly, had been in charge of regimenting and distorting the organizations of civil society, excluding from this concept, for example, the ones of the Church; requesting them to be "representatives" of the society, when it is about instrument of participation; excluding from the concept of civil society the associations, groups and institutions

receiving external subsidy (coming from international solidarity, for example), to which the character of Venezuelan has been removed; stating that they shall be regimented by the state, which is contrary to its essential free and outside-the-state character (Decision of 06-30-00 and 08-23-00), and pretending that whoever acted on behalf of the social organization shall do so “elected by someone to fulfil such representation”.

On this criterion, the Inter-American Commission on Human Rights, in its Preliminary Observations of 05-10-02, called the attention of the following:

53. The Commission wishes to call attention to the importance of the concept of civil society being understood in democratic terms, without unreasonable exclusion or unacceptable discrimination. In this regard, the IACHR has had the opportunity to learn of several decisions of the Supreme Court of Justice that have laid down a doctrine according to which non-governmental organizations that receive grants from abroad or whose boards of directors include foreigners or religious men or women, are not part of civil society, and therefore would be excluded from the right to participate in the Nominations Committees provided for in the Constitution for selecting the persons for the organs of the Citizen Power, the Electoral Power, and the Supreme Court of Justice. Acknowledging the power of the State to issue reasonable regulations of the right to association in the context of a democratic society, the Commission calls attention to this jurisprudential thesis, which, applied in discriminatory terms against independent organizations, has an exclusionary effect that is unacceptable for the open participation of civil society in Venezuela.

Political pluralism, essential element of democracy, had been seriously threatened from the state power.

#### 4. *The Attacks of the Power against the Catholic Church*

The ecclesiastic patronage regime established in Venezuela from the 19<sup>th</sup> century, provided for in the Constitution of 1961 as a right of the state (Art. 130) was eliminated in the Constitution of 1999, which establishes the guarantee of “independence and autonomy of the churches and religious confessions with no further limitations than the ones derived from this Constitution and the law (Art. 59), consequently, all subjection of patronage of the Catholic Church was eliminated from the Constitution, and its autonomy and independence was guaranteed.

In particular, the role of the Catholic Church in Venezuela has been outstanding, giving opinions and encouraging actions regarding governmental policies.

Nonetheless, in the last years from the power of the State a harassment policy and an interference of the state in the matters of the church have been developed, accompanied by personal attacks to its leaders. There have been also attempts of dividing of the Church itself, to try to weaken its spiritual leadership.

#### IX. SITUATION OF DEMOCRACY FOR THE ABSENCE OF EFFECTIVE SEPARATION AND CONTROL OF POWER AND ITS DISTORTION

The *fifth* essential element of representative democracy according to the Inter-American Democratic Charter is the separation and independence of public branches. It is about the instruments of controlling and limiting the power through its distribution and separation, to serve as check and balance.

With no institutional control of power, democracy couldn't exist, since definitively all the essential elements of the same formerly analyzed depend upon the latter: only by controlling the power the respect for human rights and fundamentals freedoms exists; only by controlling the power the subjection to the rule of law can be reached; only by controlling the power, periodic, free and fair elections can be held, based on universal suffrage and secret balloting as an expression of the sovereignty of the people; and only by controlling the power a plural regime of parties and political organization could exist.

Therefore, without separation and independence of public branches both vertically and horizontal, there is no democracy.

The Constitution of 1999 provides a double distribution (separation and independence) of public branches: in the first place, *the vertical distribution*, by establishing that the Public Power is distributed among Municipal Power, State Power and National Power, each one with political autonomy; and in the second place, *the horizontal distribution* regarding the National

Power, by establishing its division into five branches: Legislative, Executive, Judicial, Citizen and Electoral, each one with independence and autonomy (Art. 136).

1. *The Contradiction between the “Decentralized Federal State” and the Centralist Policy and Practice*

The vertical distribution of power is a consequence of the form of decentralized state (Art. 4) provided for in the Constitution, whose text rises decentralization as a national policy for, precisely, deepen democracy, making the power closer to population and creating the better conditions both for the exercise of democracy and for rendering effectively states purposes (Art. 158). As it has been said before, political decentralization is essential for participative democracy, since citizen participation in the management of public affairs is only possible by approaching the power to the citizen and, consequently, multiplying the primary political organization, which is the municipality.

Unfortunately, after 10 years of decentralizing policy, with lows and highs and backsets, from 1998 the country has been suffering a progressive process of centralization and concentration of recourses and public competencies in the National Power, to the detriment of the autonomy of the municipalities and the states. The Constitution of 1999, in this regard, is contradictory, since parallel to the exaltation of decentralization, it reduced the autonomy of the states and municipalities and even nationalized the organization of the state legislative organ (Legislative councils), which passed from been ruled in the Constitutions of the states to a national law enacted in 2001. The centralism process, moreover, financially sank the states and, consequently, the municipalities, nationalizing in a definitive way the management of the financing funds related to AVT (FIDES) and hydrocarbons (Special allocations) which are now controlled and distributed

by national organs. Democracy, therefore, as political regime, has move backward due to the attacks of centralism.

## *2. The Principle of Separation of Powers and its Contrast with Concentrating Policy and Practice of the Executive Branch*

In the functioning of the State, the main and more essential element of democracy is the principle of separation of powers, so the power controls the power and there exist a check and balance between the state powers as an antidote to concentration of power and authoritarianism. There exist no democracy when the exercise of the Public Power is concentrated in just a pair of hands.

In this regard, democracy in Venezuela has suffered a disaster for the concentration of the Public Power in the sole hands of the Executive branch.

As it has been said, the National Assembly has been dominated and totally controlled by the government party, acting the President of the Republic as President of such party. The National Assembly in Venezuela, in the last years, acted according to the instructions of the President and the partisan congressmen who thought they could consider themselves as “representatives of the people” and not of the government and that they should vote according to their conscience, with no subjection to mandates or instructions as provided for in the Constitution (Art. 201), were treated as traitors and submitted to public contempt. On the other hand, the National Assembly ruled what the President of the Republic proposed to them, as it happened with the Enabling Statute of 11-13-00, with no debate.

If the Executive branch has controlled the Legislative Power to its will, through this control it has also controlled the other

State Powers, whose heads have been appointed irregularly by a submitted National Assembly. Because of that, the other national power haven been able to show actual signs of autonomy and independence, even though in democracy that is never late.

### *3. The Problems of the Judicial Branch*

As it has been pointed out regarding the Supreme Court of Justice, the initial appointment of its magistrates was made on December 22, 1999 by a Constituent National Assembly based on the Transitory Regime for the Public Power, which wasn't subjected to approval by a referendum, and which the Supreme Court recognized it a constitutional rank, with which the magistrates appointed in this way decided their own case.

Subsequently, when the National Assembly, in 2000, being the Constitution of 1999 in force, shall appoint the magistrates for the Supreme Court, many of them wanted to be ratified and, as it was said before, they once again decided their own case and resolved that the requisites established in the Constitution to be a magistrate do not apply for them.

The Supreme Court of Justice in several decisions has supported the illegitimate constitutional transitory regime and has decided in coincidence with the executive actions.

The control that correspond to the Judicial Branch regarding the actions of the Executive, therefore, unfortunately is in doubt.

Additionally, the intervention of the Judicial branch decreed by the National Constituent Assembly continued even on the Supreme Court sideline and with its support, so the constitutional provision that establish a disciplinary jurisdiction

(Art. 267) were not in force yet. The provisional status of judges was a common thing and with that, unfortunately, the break of their autonomy and independence for their dependence with respect to the power.

On the problem of justice administration in Venezuela, the Inter- American Commission on Human Rights in the Press Release of 05-10-02, pointed out the following:

8. Another aspect related to the autonomy and independence of the Judiciary has to do with the provisional status of judges. The IACHR is aware that the problem of provisional judges in Venezuela is long-standing. According to the information provided to the IACHR during the visit, at present, 60% to 90% of the judges are provisional, which, in the Commission's view, has a negative impact on the stability, independence, and autonomy that should govern the Judiciary. The Commission expresses the importance of a process beginning immediately in Venezuela, in keeping with its domestic law and international obligations under the American Convention, to reverse the situation whereby most of the judges are provisional.

In the text of the Preliminary Observation of 05-10-02 the Inter-American Commission on Human Rights was even clearer on the subject of judges provisional status, by stating:

30. Another issue having to do with the autonomy and independence of the Judicial branch is the provisional status of judges. After almost three years of re-organization of the Judicial branch, a significant number of the judges – from 60% to 90%, depending on the source – are provisional. This affects the stability, independence, and autonomy that should prevail in the Judiciary.
31. 31. The Commission is aware that the problem of provisional judges pre-dates the present administration by several years. Nonetheless, the Commission has been informed that the problem of provisional judges has become more severe and more widespread since the current administration began the process of restructuring the Judiciary. The President of the Supreme Court of Justice informed the IACHR of progress made in correcting that situation.



32. The Judicial branch has been established to ensure compliance with the laws, and is undoubtedly the fundamental organ for protecting human rights. In the inter-American human rights system, the adequate functioning of the Judiciary is an essential element for preventing the abuse of power by State organs, and, accordingly, for protecting human rights. In order for the Judicial branch to be able to perform effectively its role in overseeing, ensuring, and protecting human rights, it is not sufficient that it exist formally; it must also be independent and impartial.
33. The Commission expresses the importance of speeding up the process aimed at reversing the situation in which a significant number of Venezuelan judges are provisional, immediately and in keeping with its domestic laws and its international obligations under the American Convention. The need for judges to be designated with full guarantees cannot justify the persistence of their provisional status for a lengthy period.

#### 4. *Subjection of the Citizen Branch*

In the Citizen Branch, the situation was not less dramatic. The Comptroller General of the Republic hasn't act as comptroller organ and, even the Comptroller General seemed to become in a sort of judge, alleging that he hasn't decided anything in the well known cases of public corruption due to the absence of proofs presented to him, when in reality he rules an organ of fiscal control, which is an investigative administrative organ.

Regarding the Human Rights Ombudsman, very little attention it had had in the worst cases of violation of constitutional rights, as the one refereed to the police death squads, the violation of the right to political participation on the occasion of the enactment of decrees-laws bestowed in 2001, or in the attacks against the freedom of expression that have provoked the adoption of precautionary measures by the Inter-American Commission on Human Rights. Unfortunately, the international control organs needed to act because of the absence of action of the Human Right Ombudsman, despite the wide range of faculties he has in the Constitution (Art. 281).

In any case, the subjection of the organs of the Public Power to the Executive branch through the National Assembly who appointed them in an exclusionist way and according to instructions from the Executive branch, has provoked a power concentration in Venezuela that harm the essential element of democracy consisting in the separation and independence of the Public Powers.

## X. SITUATION OF DEMOCRACY AND THE PROBLEMS OF GOVERNMENTAL TRANSPARENCY

The Inter-American Democratic Charter establishes as fundamental component of democracy the transparency in government activities, probity, responsible public administration on the part of governments, respect for social rights, and freedom of expression and of the press (Art. 4).

Unfortunately, these components also show a debit balance in Venezuela.

Among the fundamental components of the exercise of democracy, indeed, there is the transparency in government activities, which means that the same shall be carried out in an open, frank and confident way, submitted to citizen's scrutiny. Hidden government activities, carried out at citizenry back, distrusting the same and denying participation are contrary to the request of transparency.

In that sense, the government hasn't been transparent. On the contrary, the latter has been substituted by the secret, hidden work, as it happened with the elaboration of the decrees -laws bestowed in 2001, whose text was only known by the public organs in charge of their execution after their publication in Official Gazette. The political and civil society organizations were greatly discriminated in this process, in which the constitutional request of public consultation wasn't respected.

On the other hand, signs of corruption in public administration have appeared, which put the country in the last two years in the worst comparative levels in the world of countries with great corruption. That have been evident from the denounces made through media of actions of administrative corruption in different levels of execution of governmental programs, which weren't sanctioned in particular, due to irregularities of the Sole Social Fund, and in the management of the "Plan Bolivar 2000" that implied the management of great budget resources by the regiments of the Armed Forces in all the country, with no control.

The National Assembly, on the other hand, who as organ of political control of the public administration should know about the responsibility of public officers, has debated shortly on the subject.

## XI. SITUATION OF DEMOCRACY AND THE LIMITATIONS TO THE FREEDOM OF EXPRESSION AND PRESS

The freedom of expression and of press has suffered severe attacks from the President of the Republic or under his incitation; and even the Supreme Court with the decision N° 1013 dated 06-12-01 has limited said freedom, contrary to the Constitution.

Said attacks have been also made through the governmental threaten and harassment to media and their directors.

The attacks affected journalists and reporters of media, and the situation reach the extreme of laying siege to the paper *El Nacional*, on 01-07-02 and with the attack with explosives to the paper *Asi es la Noticia*, on 01-31-02.

On the freedom of expression, the Secretary General of the OAS, in his report to the General Assembly on 04-18-02, expressed that:

Representatives of television network owners and a group of journalists believe that the Bolivarian Circles represent the greatest threat to freedom of the press and of expression. Several of these cases have already been submitted to the Inter-American Commission on Human Rights and to the Rapporteur for Freedom of Expression. It would be advisable for the government to work on these issues and to dispel many of the serious doubts that have arisen.

Television network representatives complain of the abrupt interruption of their private television channel signals, which they consider a violation of the Organic Telecommunications Act. This produced a systematic interruption of programming, with long statements by the President and other executive officials in the days leading up to April 11. They also demand that, in keeping with the IACHR recommendation, the Government issue “a categorical denunciation of the acts of aggression to which media personnel have been subjected.”

Later, he added:

Whatever agreement is reached among the different sectors of Venezuelan society should, as the Democratic Charter indicates, fully respect freedom of expression and therefore of the press. It should be clear that any complaint or deficiency on this should be resolved in accordance with the Declaration of Chapultepec. This Secretariat publicly expressed its confidence that the government of President Chávez would resolve in a satisfactory manner concerns about security and intimidation alleged by representatives of the media with whom I met.

On the issue of television, it is important to come to an agreement on a code of conduct which, beyond the issue of laws, ensures compatibility between public interest television transmissions and the media's normal programming.

On its side, the Inter-American Commission on Human Rights, in the Press Release of 05-10-02 expressed on the freedom of expression the following:

9. As regards freedom of expression, the Commission, through its Rapporteur for Freedom of Expression, has been closely monitoring the protection of this right in Venezuela through its annual reports and the report provided to the IACHR on the visit by the Executive Secretary, Santiago A. Canton, in February 2002. The IACHR has found that while it is possible to direct criticisms at the authorities, they result in acts of intimidation that limit the possibility of free expression. The IACHR finds that in Venezuela newspapers have not been shut down, nor have journalists been detained. Nonetheless, free expression cannot be limited to the absence of censorship, shutdowns of newspapers, or

arbitrary detentions of those who speak freely. In the particular case of journalists, the IACHR received information describing verbal and physical assaults in recent months, and recalled that it is a responsibility of the state to provide protection to citizens, including social communicators, through strong measures aimed at disarming sectors of the civilian population who operate outside the law and who have been involved in such incidents.

In the Preliminary Observations dated 05-10-02, the Inter-American Commission on Human Rights highlighted the following:

36. As noted above, the IACHR has found that while it is possible to criticize the authorities, criticism brings on intimidation, which limits the possibility of free expression. In this regard, the IACHR finds that in Venezuela newspapers have not been shut down, nor have journalists been arrested. Nonetheless, protection of free expression cannot be limited to the absence of censorship, newspaper closings, or arbitrary detentions of those who speak freely, and journalists need an atmosphere of security and guarantees. In the particular case of journalists, the Commission found repeated verbal and physical attacks in recent months and days. It is the responsibility of the State to provide protection to citizens, including social communicators, through forceful measures aimed at disarming sectors of the civilian population who operate outside the law, and who could be involved in such acts.

37. Information has been received on other ways in which the full exercise of the freedom of expression has been hindered. These include the laws that criminalize offensive speech aimed at public officials, known as contempt laws (*leyes de vilipendio* or *leyes de desacato*). The IACHR has already held that such laws are incompatible with Article 13 of the Convention.

Progressively, an open violation to the citizen right to information begins to consolidate due to the uncontrolled abuse of the so called presidential "chains", with which the Secretary of the Presidency of the Republic obliged all media to broadcast political messages of the President of the Republic as party chief and not as a state or government chief, even impeding that the citizenry be informed on other events it has the right to know.

The Inter-American Commission on Human Rights, in the Press Release of 05-10-02 stated on this problem the following:

10. In addition, the IACHR has observed with concern the scant information or, on occasion, total lack of information, available to Venezuelan society during the institutional crisis of last April. The IACHR noted that "although there may

be many justifications to explain this lack of information, to the extent that the suppression of information has resulted from editorial decisions motivated by political considerations, it should be subject to a necessary process of analysis by the Venezuelan media as to their role at that time.”

In the Preliminary Observations of 05-10-02, the Inter-American Commission on Human Rights was even more explicit, indicating the following:

37. Information has been received on other ways in which the full exercise of the freedom of expression has been hindered. These include the laws that criminalize offensive speech aimed at public officials, known as contempt laws (*leyes de vilipendio* or *leyes de desacato*). The IACHR has already held that such laws are incompatible with Article 13 of the Convention. Another example is the abusive use of emergency broadcast systems. The IACHR issued a press release, in a timely fashion, condemning the abusive and unnecessary use of this mechanism, which, used in a highly discretionary manner, and for purposes alien to the public interest, may constitute a form of censorship. The IACHR has been pleased to receive the information provided during this visit that indicates that to date there has been a considerable decline in the use of this mechanism. Nonetheless, the IACHR expects that in the future, clear criteria will be considered for the use of such emergency broadcast systems that take account of the public interest and real emergencies or truly compelling national needs. The various kinds of pressure brought to bear on the broadcast media by initiating administrative proceedings which, if abusive, also constitute an indirect restriction on the freedom of expression, are a third example.

38. The difficulty of public access to information continues to go unanswered; accordingly, any initiative by the government to facilitate free access to information will contribute to ensuring that the citizenry is better informed.

39. The IACHR has been concerned by the scant information, or at times total lack of information, available to Venezuelan society during the days of the institutional crisis of April. Although there may be any number of justifications to explain this lack of information, to the extent that the suppression of information resulted from politically-motivated editorial decisions, this should be the subject of an essential process of reflection by the Venezuelan media about their role at that moment.

Another limitation to the citizen right to information was the governmental prohibition to journalist and reporters of flying over the city of Caracas on the occasion of the march called by the opposition on 01-3-02. Police intelligence officers were the only ones who flew over in helicopter.

The precarious situation of the freedom of expression in Venezuela, in any case, was witnessed by the Rapporteur for the Freedom of Expression and Secretary Executive of the Inter-American Commission on Human Rights, Santiago Canton, on the occasion of his visit to Caracas in February 2002. In this occasion he pointed out that:

Anyone who read Venezuelan papers could verify that, indeed, there exists a free debate of ideas. Nevertheless, from its viewpoint, freedom of expression is truly effective when that free debate of ideas does not generate negative consequences, and added that during his visit to Venezuela, he could verify the attacks against journalists and the attempts of harassment.

## XII. SITUATION OF DEMOCRACY AND THE PROBLEM OF SUBJECTION OF THE MILITARY TO CIVIL POWER

The Inter-American Democratic Charter states, furthermore, that the constitutional subordination of all the state institutions to the civil authority legally constituted is fundamental for democracy (Art. 4). That statement points to the subordination of the military to the civilian authority. However, in contrast, in Venezuela the progressive militarization of the state, as governmental policy has broken that subordination, and the danger of a military party at the service of the President of the Republic has arisen.

It is enough to remember how through the "Plan Bolivar 2000" public resources that should be managed for activities of social character by the state Governors, came to be managed by Commanders of Garrison, with the catastrophic administrative result denounced at all levels with serious prejudice of the military institution itself. The militarization of the government, on the other hand, is shown in the illegitimate extension of the scope of military justice to judge civil crimes.

It was also shown in the appointment he had made for almost all the high positions of the Public Administration of ex military officers of his personal circle, or active military officers.

Militarization, in any case, started to show negative effects within the Armed Forces, whose active Generals started to be concerned for the politics within the Armed Forces.

It must be pointed out, finally, that politics within the Armed Forces have been encouraged from the beginning by the President of the Republic himself, when justifying the elimination from the Constitution of the prohibition they have of being "deliberative". That contributed to justify the manifestations of Generals in public acts supporting the President of the Republic as party chief and not as Commander in chief of the Armed Forces, and of his political project. That also caused public manifestations of officers of the Armed Forces rejecting the President of the Republic and his policies.

Now, on this subject of military deliberation, the Secretary General of the OAS, in his Report to the General Assembly of 04-18-02, pointed out the following:

I also want to note the development of a dangerous practice of debate within the armed forces. Many leaders of public affairs constantly listen for what the various armed forces have to say about political developments, and even about the orders of the Commander in Chief, Constitutional President of the Republic. Some cite an article of the Constitution as grounds for such debate.

Later, he added in the same Report:

It is essential that the government, opposition, social actors, human rights organizations and the media commit to rejecting any participation in political debate on the part of the military, and to supporting military regulations which penalize this behavior. It is also essential that we abandon the interpretation held by some that that article of the constitution can serve as the basis for actions of any officials of the armed forces. I would like to reiterate that if we do not move in this direction, we could see new acts of insubordination against the civilian



authorities. This General Assembly should be categorical in pointing out the obligation of constitutional subordination of all state institutions to the legally constituted civilian authority, as enshrined in Art. 4 of the Democratic Charter.

In the Press Release of 05-10-02, the Inter-American Commission on Human Rights expressed the following on the subject of the "Armed Forces and Security Forces":

11. As for the armed forces and the security forces, during the visit the IACHR received expressions of concern over the undue influence of the armed forces in the country's political life, as well as excessive engagement by the armed forces in political decision-making. The IACHR takes this opportunity to recall that, in keeping with Article 4 of the Inter-American Democratic Charter, the constitutional subordination of all state institutions to civil authority is fundamental.

In the Preliminary Observation of 05-10-02, the Inter-American Commission on Human Rights widely developed its considerations on the subject of the Armed Forces and security bodies, in this way:

41. During its on-site visit, the IACHR was concerned to hear several accounts of the undue influence of the Armed Forces in the political life of the country, and the existence of excessive involvement by the Armed Forces in political decisions. That concern can be traced back to the fact that the 1999 Venezuelan Constitution removed a rule traditionally included in the constitutions that preceded it, according to which the Armed Forces are an "*apolitical and non-deliberating*" body. Also of special concern to the Commission is that the government and the social sectors have incited the Armed Forces or groups of officers to support them, and even to alter the constitutional order. The IACHR recalls that, under Article 4 of the Inter-American Democratic Charter, the constitutional subordination of all state institutions to the civilian authority is fundamental.
42. The Armed Forces cannot be involved in political decision-making. It is essential that there be a clear step forward in applying the military and criminal codes that punish such conduct, to avoid new acts of insubordination on the part of sectors of the Armed Forces against the democratically-elected civilian authority. The reality in the region shows that the involvement of the armed forces in politics generally precedes departures from the constitution, which in almost all cases leads to serious human rights violations. It is a responsibility of all sectors, but especially the Executive, to ensure that the Armed Forces play exclusively the roles of defending the

national sovereignty for which they have been established and trained.

Finally, in the Final Comments of said Preliminary Observations, the Commission highlighted:

65. Priority should be accorded to rejecting any means of involvement by the Armed Forces or National Police in political decision-making and to applying the military and criminal codes that punish such conduct. A decisive step forward in this direction is essential to avoid new acts of insubordination by sectors of the Armed Forces against the democratically-elected civilian authority. The reality in the region shows that the involvement of the Armed Forces in political decision-making is generally the prelude to a breakdown in the constitutional order, which in every case leads to grave violations of human rights. It is the responsibility of all sectors, especially the Government, to ensure that the Armed Forces perform exclusively their role of defending national sovereignty, for which they have been established and trained.

### XIII. SITUATION OF DEMOCRACY AND THE PRECARIOUS FUNCTIONING OF THE RULE OF LAW

Finally, the Inter-American Democratic Charter specifies also that the respect for the rule of law by all institutions and sectors of the society is equally essential to democracy. The latter can only exist in the rule of law. However, when the public institutions and the control over them do not work due to the concentration of power in a few hands it is difficult to find the rule of law. The sad thing is that such situation had provoked that violence started to be institutionalized.

An example of the bad functioning of the check and balance among the state power was the issuing of 48 laws of primary importance for the country, in 2001, through decrees-laws, issued by the President of the Republic in execution of an Enabling Statute, violating openly the Constitution.

Indeed, the President of the Republic when issuing the set of decrees-laws bestowed, first violated the constitutional right to citizen participation set forth in articles 62, 70, 206 and 211 of the Constitution, by submitting no legislative draft to public consultation as provided for in those provisions and, furthermore, the recently issued Organic Law on Public Administration additionally penalizes with absolute nullity

legislative texts issued by the President of the Republic without public consultation. Second, a good part of said decrees-laws violated the constitutional guarantee of legal reserve set forth in the Constitution and the American Convention on Human Rights, which reserve to the legislative organ made up by congressmen or representatives elected, the ruling and limitation of human rights, such as the right to property or economic freedom, whose regime cannot be delegated. Third, several decrees-laws are distorted of functions usurpation and are constitutionally null (Art. 138), for being issued by the President of the Republic with no bestowal or with no legislative delegation, violating, furthermore, article 203 of the Constitution that requires that decrees-laws bestowed shall be subjected to directions, purposes and frame of the subject established in the Enabling Statute, and violating also article 218, which only permits that laws be derogated by other laws and never by decrees without habilitation. Additionally, several decrees-laws have intrinsic and singular vices of unconstitutionality, for example, for being confiscatory of county and state public properties and in addition, private ones, as in the Law of Coastal Zones; or the attribute of rural property, as the use, pleasure and enjoyment that the Constitution guarantees and that have been violated by the Law on Lands and Rural Development.

In a democracy ruled by the rule of law, the possibility of controlling the constitutionality of these acts of legal rank, if the institutions worked, would be guaranteed by: first, the Human Right Ombudsman, acting in defense of the violated constitutional rights; second, the Supreme Court, diligently deciding the actions of unconstitutionality; third, the Attorney General of the Republic, rising claims to determine the responsibilities of the officers who could issue or execute acts in violation of human rights, and fourth, the National Assembly initiating an open discussion to review the laws.

On the other hand, we witness how in the National Assembly, in December 2001, congressmen who dare to create a Special Commission for studying and reviewing the decrees-laws bestowed were expelled from the government party,

considering that the National Assembly never ought to review the decrees-laws and that the Commission, for the only thing it could serve for was to justify them. The reaction of the public opinion, in any case, provoked that the National Executive reformed some of the laws issued through decrees-laws, but through the irregular way of reprinting them in Official Gazette "due to material error".

From the aforementioned, in Venezuela, at the light of the Inter-American Charter, democracy was in danger, or at least, in a precarious state, which jeopardize the public freedoms and justified the close attention and the solidarity of the international community, specially within the Inter-American system, to prevent a break of the democratic commitment of the American nations and of the democratic vocation of the Venezuelan people.

The Inter-American Commission on Human Rights, on the subject, in its Press Release of 05-10-02 specified that:

The Constitution includes various elements that may hinder the effective observance of the rule of law. The constitutional machinery does not provide, in important situations, for checks and balances as a means of controlling the exercise of public authority and of guaranteeing the observance of human rights. The main legislative powers were derived under a regime authorizing the Executive branch to exercise them, with no defined limits. Also troubling for the Commission is the so-called "transitory regime." The IACHR considers that in the case of Venezuela, the transitional provisions have lasted beyond the normal and proper time frame, and have included directives with legislative content that go beyond the nature of a transitory regime.

Finally, it must be highlighted that the same Inter-American Commission on Human Rights, in the Preliminary Observations of 05-10-02 pointed out:

23. Both the constitutional gains and the backsliding in the new Constitution are reflected in the day-to-day situation in Venezuela. For important situations, the constitutional machinery does not provide for checks and balances as a means of controlling the exercise of public power and to ensure the observance of human rights. Thus, for example, the main legislative powers were derived under an enabling regime granted to the Executive branch that does not establish clear limits on the nature of the matters that can be the subject of such legislative powers.

The same Inter-American Commission on Human Rights, in the Preliminary Observations of 05-10-02 also expressed the following, when urging the strengthening of the rule of law in Venezuela as soon as possible:

66. The IACHR considers that the lack of independence of the Judiciary, the limitations on the freedom of expression, the active role of the Armed Forces in political decision-making, the extreme degree of polarization of society, the actions of the death squads, the scant credibility of the oversight institutions due to the uncertainty surrounding the constitutionality of their designation and the partiality of their actions, the lack of coordination among the security forces, all represent a clear weakness of the fundamental pillars of the rule of law in a democracy, in the terms of the American Convention and the Inter-American Democratic Charter. Accordingly, the Commission calls for the immediate strengthening of the rule of law in Venezuela.

#### XIV. EXTREME POLARIZATION AND SOME BASIS FOR AN AGREEMENT NEGOTIATED TO RESTORE DEMOCRACY

##### 1. *The Problem of Intolerance derived from the Extreme Polarization*

The situation of democracy in Venezuela on the occasion of the political practice developed by the government, with all the distortions of democracy analyzed before, has led to an extreme political polarization in the Venezuelan society that has caused intolerance between the government and the opposition, which seriously threaten the democratic governability. This situation existed prior to the events of April 2002 and has worsened subsequently.

The situation was pointed out by the Secretary General of the OAS, Cesar Gaviria, in his Report to the General Assembly of 04-18-02 on the occasion of the in-site visit to Venezuela, expressing:

Although a good number of representatives of organizations outside the government have accepted the call of the President for dialogue, even after the

fateful events of April 11 and 12, there is excessive polarization, not only among the natural political actors, such as the government, the political parties, and opposition groups, but among almost all labor, business, and civil society groups, representatives of some other branches of government, and the media. This excessive polarization has shades of intolerance that stand in the way of democratic dialogue and the quest for agreements that would provide a degree of understanding so as to maintain social harmony. There seems to be a widespread conviction that renewed confrontation between friends and opponents of the government is inevitable and could lead to increased social protest.

Equally, the Inter-American Commission on Human Rights, in the Preliminary Observations dated 05-10-02, after the *in-loco* visit to the country, pointed out this problem in the following way:

14. It should be underscored that prior to the events of April, the IACHR was profoundly concerned to learn of the existence of an extreme polarization of Venezuelan society, which had its most tragic and grave expression in the events of April 10, 11, 12, 13, and 14. In the report of the Office of the Special Rapporteur for Freedom of Expression for the year 2000, the IACHR stated that during that year, President Hugo Chávez made certain statements that could be considered as intended to intimidate the press and journalists. His attitude may have contributed to creating an environment of intimidation of the press that does not foster public debate and the exchange of opinions and ideas, which are necessary for coexistence in democracy. In addition, during the visit by the Executive Secretary in February 2002, an atmosphere of intolerance and political polarization was found which, if maintained, could have threatened the full and responsible exercise of freedom of expression and the rule of law, which is aimed at safeguarding democratic institutions.

Therefore, it is evident that after the events of April 2002, one of the more concerning political problems of the current Venezuela is the excessive polarization of the society and of the governmental and opposition positions, which even more leads to be irreconcilable. To much hate has been sowed in the constant speech of the President of the Republic and the fruits of the same we are suffering now all the Venezuelans. Hate leads to the consolidation of extremes in irreconcilable situation, and from hate to violence there is only a pace. We shall avoid that the country breaks in two halves definitively,

since no one will be the winner. We all will lose and even more in the situation of economic worsening and poverty in which we are now.

What we Venezuelans should think immediately, more than identifying those guilty of the bad things happening to the country, is how shall we prevent a definitive confrontation. Any help that we receive is useful, so we should start by identifying the two parties in conflict, in order to solve it.

On the one hand, there is the government, and on the other hand, there are the opposition political parties and the different groups of civil society that, fortunately in June 2002 created a Democratic Coordination of the Venezuelan Society, which even adopted a Democratic Reconstruction Agreement. Those should be the parties that have to prevent the confrontation and negotiate the reconstruction of democracy.

For that, the first thing to look for was a dialogue between the parties. The Secretary General of the OAS, Cesar Gaviria, in this way, in his Report to the General Assembly of 04-18.02 expressed:

Given the very difficult situation experienced by democratic institutions in Venezuela, I also thought it advisable to look at aspects of the country's institutional order in relation to the Democratic Charter.

Adding furthermore that:

I would like to highlight, as well, some measures that must be taken to diffuse some of the more serious conflicts, to regain governability, to achieve political stability, and to foster economic recovery.

It is fundamental that all sectors of society, at least all those I have referred to, seek mechanisms or agreements which ensure that respect for the Constitution is the foundation and framework of action for everyone in Venezuelan public life.

Because of that, the General Assembly, on the occasion of the Report of the Secretary General, Cesar Gaviria, of 04-18-02, resolved:

3. To support the initiative of the Government of Venezuela to convoke immediately a national, all-inclusive dialogue, and to urge all sectors of Venezuelan society to participate and devote their best and most determined efforts to bringing about the full exercise of democracy in Venezuela, abiding fully by the Constitution and taking into account the essential elements of representative democracy set forth in Articles 3 and 4 of the Inter-American Democratic Charter.

Time has passed with no effective dialogue, and perhaps we are now in the situation that the phase for dialogue alone as an instrument to conciliate positions passed and is over. Dialogue, currently, does resolve nothing, since it is now a deaf's exercise in which each party talks without listening the other party. Instead of conciliating, it has produced more frustration, disappointment and polarization.

We think that Venezuelans shall undertake the phase of negotiation between the parties. As recently said father Jose Virtuoso in his speech on July 05:

The peace we are looking for in Venezuela, through dialogue and conciliation cannot be other than a consensual agreement product of a true negotiation between the parties involved.

Even though Virtuoso referred to the negotiation for the social matters, so the "Republic commits to satisfying its debts with the majorities of poor people of the country", the principle is applied to all the matters affecting the country, and particularly, to the economy and politics. For that, we proposed in July 2002 the following points for an agenda of negotiation from a political viewpoint.

## *2. Negotiation to Preserve Democracy*



It is essential to assume political negotiation between government and opposition, therefore, if we really want to prevent a war and a confrontation, to reaffirm and reconstruct democracy in the country. In my opinion, that is the major political challenge that Venezuelans have in the future.

Venezuela did not vote in 1998 and 1999 to terminate democracy. The collective manifestation of will of political change that meant that Hugo Chavez assumed the power, had as a purpose and objective to improve democracy. The latter, on the one hand, had lost its representative essence, since the political parties have monopolized the representation; and on the other hand, it didn't allow spaces for political participation due to the state and partisan centralism.

That form of exercising democracy, which functioned badly, was the one that needed to be changed to make it more representative and more participative; that is to say, to improve it, not to terminate it.

However, the political practice of the last three years, particularly the one carried out from the government and from different centers of the public power has harmed the basis of democracy, whose legitimacy seems to remain just in the popular election as origin of the rulers. However, in the contemporary world, democracy is not limited to sole representation through the suffrage of the rulers. As pointed out by the Inter-American Commission on Human Rights in the Press Release of 05-10-02 on the occasion of its on-site visit to Venezuela, when making its Final Comments:

62. The main source of democratic legitimacy is that granted by the popular will, expressed in free, periodic, and universal elections. Yet elections in themselves are not sufficient to ensure the full observance of democracy. As indicated in the Inter-American Democratic Charter, the essential elements of representative democracy include, among

others, respect for human rights and fundamental freedoms; access to and the exercise of power subject to the rule of law; the holding of periodic, free, and fair elections, based on universal suffrage and secret balloting as an expression of the popular sovereignty; a pluralistic regime of political parties and organizations; and the separation of powers and independence of the various branches of government. In addition, the following are fundamental components of the exercise of democracy: transparency in government, openness, responsible public administration on the part of governments, respect for social rights, and respect for freedom of expression and freedom of the press. The constitutional subordination of all the institutions of the State to the lawfully-constituted civilian authority, and respect by all entities and sectors of society for the rule of law, are also fundamental for democracy. In this context, the functioning of an independent and impartial Judiciary as a guarantor of the protection of human rights, as a vehicle for obtaining justice from the victims, and as an organ of oversight and a check on the action of the other branches of government is fundamental to the rule of law.

Consequently, democracy is much more than electing rulers, since those even with an electoral origin in many cases have turned into tyrants who have terminated historical democracies. History has taught us that leaders that had popular support and reached power through votes several times originated majorities that later were despotic.

The essential condition for a negotiation between the government and the opposition in Venezuela, therefore, is the acknowledge of democracy as the only political regime Venezuelans want, which, as affirmed and developed in the Inter-American Charter is not reduced to the sole election of the rulers. That negotiation has to be aimed at satisfying a series of essential conditions of democracy that currently are omitted.

That is why the General Assembly, on the occasion of the Report of the Secretary General of 04.18-02, after his visit to Venezuela resolved:

5. To encourage the Government and all social sectors and institutions in Venezuela to pursue their activities in accordance with the rule of law, and to seek national reconciliation.

7. To provide the support and help of the OAS as required by the Government of Venezuela for the consolidation of the democratic process.

### 3. *Agreement to Assure the Effectiveness of Participative Democracy*

Before all and beyond the official speeches there is the need to negotiate the effectiveness of participative democracy. Political participation beyond votes in elections or referenda implies the right of citizens and organized groups of society to be consulted on the text of draft laws and by-laws. Congress and the Executive have the constitutional and legal obligation (Arts. 206 and 211) and (Organic Law on Public Administration) of consulting. *This obligatory popular consultation of draft laws before their sanctioning or approval is the first point of negotiation* to reach an agreement between the involved parties and to prevent confrontation and to assure peace.

Moreover, according to the Constitution, political participation requires the institution of the Nominations Committees for appointing the heads of the Judicial branch and the Citizen and Electoral branches. Said Nominations Committees shall be made up exclusively for representatives of the diverse sector of the society as provided for in the Constitution (Arts. 270, 279 and 295). *The government shall comply with and execute the Constitution and assure that those Committees be effective instruments of political participation. This is the second point of negotiation* for an agreement between the involved parties, in reconstructing democracy.

In addition, the State and all its components have to assume the policy of decentralization of power as only effective way to assure the possibility of participation of the citizenry in the management of public affairs. The execution of article 158 of the Constitution is unavoidable and *an agreement in that sense*

*shall be negotiated, to approach the power to the citizen and its communities, which constitutes the only way to participate in the public management. This is the third point of negotiation of the involved parties to assure the effective democratization of all the national territory and of all the inhabited centers that made it up.*

#### *4. Agreement to Assure the Effectiveness of the Human Rights*

The effectiveness of the exercise and guarantee of the Human Rights shall be object of an agreement between the involved parties. These ones, and particularly the government shall assure that the constitutional rights are in force, in particular, the right to life, the right to freely associate and the right to property. *The fourth point of negotiation to reach a democratic agreement between the involved parties, therefore, shall consist in the effective elimination of the death squads and of all group pretending to exercise force functions outside the state scope, assuring the Armed Forces the monopoly of the weapons.*

In addition, *a fifth point of negotiation implies reaching an agreement that effectively assure by the government the right to property, through a systematic and generalized public action that prevent the occupation of lands and properties and that in the event of producing invasions, the lands be effectively restored to their legitimate owners.*

#### *5. Agreements to Assure the Effective Functioning of Public Powers*

The access to power and its exercise shall assure that it be made according to the rule of law. The Constitution sets forth two ways to accessing power: in the first place, through popular election of representatives to conform the Legislative Power and the head of the Executive Power; and in the second place

through the appointment of the heads of the Citizen Power (Attorney General, Comptroller General and Human Right Ombudsman) and Electoral Power (National Electoral Council) and the magistrates of the Supreme Court by the National Assembly previous nomination by two Nominations Committees made up exclusively by representatives of the different sector of the society. *A sixth point of negotiation between the involved parties must lead to an agreement for the immediate sanctioning of laws ruling the Nominations Committees for the appointment of said high officers.*

There shall also be assured the exercise of the power subjected to the rule of law, that is to say, as set forth in the Constitution. *A seventh point of negotiation shall be an agreement to assure that the congressmen to the National Assembly, effectively, be representatives of the people and the states, not subjected to mandates and instructions, but to their conscience as provided for in the Constitution. (Art. 201),* eliminating the strong control of the parliamentary blocks or opinion blocks which are contrary to the Constitution.

It must be an object of negotiation, moreover, effectively holding periodic, free, fair elections based on universal suffrage and secret balloting as expression of the popular sovereignty. *An eighth point of negotiation shall consist in reaching an agreement to assure the effective independence and autonomy of the Electoral Power, through the sanctioning of the Organic Law of Suffrage according to the constitutional principles.*

#### *6. Agreements to Effectively Assure Democratic Political Pluralism*

It shall be negotiated between the government and the opposition the assurance of the effective existence of a plural regime of parties and political organizations. Political pluralism

is the democratic guarantee of the possibility that all political organizations have of participating in the leading of the political and of accessing to power. Therefore, *a ninth point of negotiation is reaching an agreement to make pluralism effective, assuring that officers be only and effectively at the state service and not at the service of any party (Art. 145).*

The President of the Republic, consequently, cannot continue being the president of a political party and his ministers cannot continue being members of the board of directors of the government party.

On the other hand, in order to assure political pluralism, public administration shall be at the service of all the citizens (Art. 141) and not at the service of a part of them or a group of them. *The tenth point of negotiation to reach an agreement between the involved parties is separating the State of its interference in the organization of the civil society, in particular, stopping the organization of the Bolivarian Circles from the public organs, such as the Presidency of the Republic or the Counties.*

The Constitution sets forth that the political parties shall elect their authorities in internal elections with the participation of their members (Art. 67). *An eleventh point of negotiation between the parties is reaching an agreement between all the political parties of submitting to the process of internal renovation of their authorities in elections in which all their members participate.*

#### *7. Agreements to Assure the Independence of the Public Branches*

Effectively assuring the separation and independence of public branches shall be submitted to negotiation between the government and the opposition.

In consequence, *a twelfth point of negotiation between the involved parties is reaching an agreement on dismantling the scheme of power concentration and the control of all the power of the state by the Executive branch.* For that, the involved parties shall reach an agreement that assure that the appointment of the magistrates of the Supreme Court, of the members of the National Electoral Council, the Attorney General, the Comptroller General and the Human Right Ombudsman is made as provided for in the Constitution.

For that, *a thirteenth point of negotiation between the government and the opposition shall lead to an agreement to put an end to the transitory constitutional regime, violating the Constitution and established from 1999 when it commence to be in force, and developed in 2000, through laws contrary to the Constitution.*

#### *8. Agreements to Assure the Transparency and Responsibility of Public Management*

In order to assure the exercise of democracy, the transparency of governmental activities shall be negotiated. For that, *a fourteenth point of negotiation has to lead to an agreement between the involved parties that assure that the Public Administration is at the service of all the citizens, and not at the service of part of them, and, in addition, that it is managed and led by public officers appointed in open competition, as provided for in the Constitution.* This agreement shall imply the exclusion from the public function of the "governmental boot" and assuring the existence of a permanent civil service that operates irrespective of the government.

On the other hand, in order to assure the probity and responsibility of the government in the public management, we

shall negotiate. For that, *a fifteenth point of negotiation between the government and the opposition shall be reaching an agreement to assure effectively the control mechanism of the public management, in particular, the parliamentary control of Public Administration and the fiscal control of the public management, with an autonomous and independent General Comptrollership, and a efficient national system of tax control.*

#### *9. Agreements to Assure the Freedom to Form and Join Unions*

It shall be object of negotiation between the involved parties the effective respect of labor rights, in particular, the right to form and join unions. For that, *a sixteenth point of negotiation between the government and the opposition is an agreement that put to an end to the state interference in the functioning of trade unions and in the state organization of the election of professional groups, which shall be outside the state control.*

Additionally, it is unavoidable a negotiation between government and the opposition to effectively assure the freedom of expression and of press. In a democratic society the media are an effective mean of controlling the exercise of power, therefore, *a seventeenth point of negotiation between the involved parties shall assure the effective exercise of the freedom of expression and the right to information, with no private or official distortions.*

#### *10. Agreements to Assure the Subjection of the Armed Forces to the Civilian Authority*

It is unavoidable in a democratic society to reach an effective constitutional subjection of all the state institutions to the civilian authority legally constituted, in particular, the subjection of the military authority to the civilian authority. Therefore, *a eighteenth point of negotiation is reaching an*



*agreement to eliminate the military deliverance and accomplishing the re conduction of the activity of the National Armed Force to its constitutional functions.*

*That implies a nineteenth point of negotiation between the parties that lead to reassuming by the Armed Forces the monopoly it constitutionally has of the weapons, and disarming the civilian groups that have appeared in the last years, particularly the Bolivarian Circles.*

#### *11. Agreements to Assure the Effectiveness of the Constitution*

*Finally, all the involved parties shall reach an agreement to respect the rule of law, which involves all the entities and sectors of the society. That leads to a twentieth point of negotiation between the government and the opposition so an unbreakable commitment exists of assuring the respect of the Constitution and laws, eliminating all marks of transitory constitutional regime and preventing all action of civilian disobedience.*

*The Secretary General of the OAS, in his Report to the General Assembly of 04-18-02 expressed as a point of agreement the following:*

*It is imperative that an agreement be reached so that Article 350 of the Constitution is not interpreted as everyone's right to rebellion. Such an interpretation might well lead to worse violence than that which has already occurred. Everyone must do their part to reach that understanding.*

*In any case, the forgoing leads to a twenty-one point of negotiation to reach an agreement that allows assuring the institution of a judicial branch effectively independent, with a set of magistrates separated from politics, which implies eliminating the syndrome of provisional regimes that currently exists in the*

*Judicial branch, which conspires against its autonomy and independence.*

In this context, immediately and in particular the involved parties shall create mechanisms to clarify the true of the events of April 11 and establish the responsibilities for the deaths that occurred during a pacific walk. Before the lack of a reliable Judicial branch *a twentieth second point of negotiation shall be reaching an agreement for creating a Commission of the Truth that has credibility for that mission.*

*August 2002*