

# IDEA-UCAB STUDY MISSION

## On conditions for the 2015 electoral process



## Preliminary report

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**Caracas, November 16, 2015**

**Note:** This is a preliminary version covering the electoral process up to three days before the beginning of the campaign (November 13, 2015), with the commitment to provide a follow-up report covering subsequent events up to election day.

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## IDEA-UCAB STUDY MISSION'S PRELIMINARY REPORT ON CONDITIONS FOR THE 2015 ELECTORAL PROCESS

### A. INTRODUCTION

The Venezuelan parliamentary elections on December 6, 2015 are being held in the midst of a complex political context. Following the death of President Chávez and Nicolás Maduro's subsequent election as Head of State, the country has faced a serious economic and social crisis. In economic terms, the price of oil has fallen from \$96 per barrel in July 2014 to \$37.23 per barrel in November this year<sup>1</sup>. This situation has undermined the government's ability to keep up the same level of consumption and social assistance that prevailed during the administration of deceased President Hugo Chávez; moreover, this has also meant that the country has been unable to honor its international commercial commitments. This situation has led to shortages of prime necessities, inflation at a rate close to 179%<sup>2</sup> and an economic contraction of approximately 7% of GDP, according to the IMF<sup>3,4</sup>. As for the social situation, the crisis can be seen in the deterioration of some of the social progress achieved during the Chávez administration. According to the Living Conditions Survey (*Encuesta de Condiciones de Vida* - ENCOVI) carried out by several universities, Universidad Central de Venezuela (UCV), Universidad Simón Bolívar (USB) and Universidad Católica Andrés Bello (UCAB)<sup>5</sup>, homes living in income-based poverty in Venezuela grew from 45% in 1998 to 48.4% in 2014<sup>6</sup>.

All this points to a difficult political situation, which led to violent protests in 2014, accusations regarding alleged human rights violations by the Nicolás Maduro administration<sup>7</sup> and the imprisonment of opposition leaders such as Leopoldo López, Enzo Scarano and Daniel Ceballos. In terms of public opinion, the negative evaluation of the situation in the country by more than 85%, and a negative assessment of Nicolás Maduro's government by 70% is further proof of a crisis situation<sup>8</sup>. All this in addition to the deterioration of the country's democratic institutions. The Freedom House index<sup>9</sup> reports a downward trend in the case of political and civil rights.

<sup>1</sup> Ministerio del Poder Popular de Petróleo y Minería, at <http://www.menpet.gob.ve/secciones.php?option=view&idS=45>.

<sup>2</sup> "Bank of América: Inflación cerrará el 2015 en Venezuela por encima de 170%" – El Universal (July 16, 2015), at <http://www.eluniversal.com/economia/150716/bank-of-america-inflacion-cerrara-el-2015-en-venezuela-por-encima-de-1>.

<sup>3</sup> "FMI: Venezuela sigue experimentando una profunda recesión" – El Mundo (July 15, 2015), at <http://www.elmundo.com.ve/noticias/economia/politica/fmi-venezuela-sigue-experimentando-una-profunda-r.aspx>.

<sup>4</sup> Based on secondary sources given that the Central Bank of Venezuela has not published official statistics since December 2014.

<sup>5</sup> It is important to point out that the National Statistics Institute has not published poverty indicators since 2013.

<sup>6</sup> Encuesta Nacional de Condiciones de Vida (ENCOVI) – Universidad Central de Venezuela, Universidad Simón Bolívar and Universidad Católica Andrés Bello, at <http://www.rectorado.usb.ve/vida/vida2014>.

<sup>7</sup> For more information see: Amnistía Internacional (2015). Venezuela. En: Amnistía Internacional. *Informe 2014/2015 Amnistía Internacional*. PP. 461-464. Available at: <https://www.amnesty.org/es/documents/pol10/0001/2015/es/>

<sup>8</sup> "Encuesta Nacional Omnibus, Julio –Agosto 2015" – Datanálisis, at <http://puzkas.com/wp-content/uploads/2015/09/julioagosto.pdf>.

<sup>9</sup> The *Freedom House* score covers two dimensions: Civil Liberties and Political Rights. The scores for each dimension range between 1 and 7, where one (1) represents the greatest degree of liberty possible and seven (7) the least. This way, the average of both dimensions makes it possible to classify countries in one of three categories: "Free" (1 to 2.5); "Partially Free" (3 to 5) and "Not Free" (5.5 to 7). In the case of Venezuela, in 1998 it scored 2.5 on the *Freedom House* index; in 2006 it scored 4, and by 2015 the score was 5 point. For further information, please see <https://freedomhouse.org/report/freedom-world/freedom-world-2015#.VkerFHYvfiU>.

In this context, the parliamentary elections should be a release valve for these tensions and an opportunity to legitimize the authorities of the new National Assembly. Nevertheless, the polarization dividing the political actors and the doubts harbored by several political sectors regarding this election, threaten the credibility and legitimacy of the process. This has all led to a progressive deterioration of the conditions for the process and, thus, of the confidence the people place in the same.

According to studies carried out by the UCAB Center for Political Studies<sup>10</sup>, the level of trust felt by the people in the National Electoral Council is relatively low. When replying to the question “*How trustworthy do you feel the National Electoral Council is?*” in 2014<sup>11</sup>, 44.2% replied that they considered it “somewhat or very trustworthy,” whereas in 2015 the percentage of people who felt the electoral agency was “somewhat or very trustworthy” was 36.25%<sup>12</sup>.

Emphasis must be placed, from the very beginning, on the failings, weaknesses and distortions affecting the integrity of the electoral process. The degree of polarization is very obvious, not only insofar as political options are concerned, but also at many different levels of social activity. On the side of the opposition leaders, this polarization is confirmed by the extent, intensity and uniformity of the comments and impressions of the people who were interviewed, as discussed later in this report. The opposition trusts polls of voter intentions that point to the possibility of a victory that could deprive the government party of its majority in the National Assembly<sup>13</sup>. In this regard, Capriles has said that “there is no way that the *Chavismo* can win the elections on December 6th”<sup>14</sup>. Yet he fears that this victory might not be recognized or that measures will be taken to thwart or reduce the impact.

Although it is true that the opposition has won some elections in the past, (at the national, regional and municipal levels) and that the government party has recognized these victories, as was the case of the 2007 referendum concerning the constitution, doubts and fears exist at present. The government seems to be ruling out the possibility of an opposition win entirely, and President Maduro himself considers that it would be a sort of coup<sup>15</sup>:

<sup>10</sup> The Center for Political Studies is a research center that is part of the Faculty of Law at Universidad Católica Andrés Bello, assigned the mission of contributing, from academia, to the construction, strengthening and progress of citizenship and democratic governance by means of a range of initiatives that include the design and implementation of academic programs to provide training for citizens and professional updating for civil servants and political and social leaders as well as research, publication and advisory services in its areas of expertise.

<sup>11</sup> Centro de Estudios Políticos de la Universidad Católica Andrés Bello. “Estudio sobre Percepción Ciudadana de Condiciones Electorales 2014”.

<sup>12</sup> Ibid.

<sup>13</sup> “Vicente León: La oposición aventaja en 30 puntos al chavismo” (November 11, 2015), at [http://www.el-nacional.com/politica/Vicente-Leon-oposicion-aventaja-chavismo\\_0\\_736726371.html](http://www.el-nacional.com/politica/Vicente-Leon-oposicion-aventaja-chavismo_0_736726371.html).

<sup>14</sup> “Henrique Capriles presenta estudio sobre intención de voto opositor”, at <http://www.eluniversal.com/nacional-y-politica/151114/henrique-capriles-presenta-estudio-sobre-intencion-de-voto-opositor>.

<sup>15</sup> “Maduro: ‘Ganaremos las elecciones parlamentarias con un récord histórico’” – BienDateao (February 23, 2015), at <http://biendateao.com/maduro-ganaremos-las-elecciones-parlamentarias-con-un-record-historico/>; “Maduro: La revolución bolivariana se declara en emergencia” – El Universal (October 26, 2015), at <http://www.eluniversal.com/nacional-y-politica/151026/maduro-la-revolucion-bolivariana-se-declara-en-emergencia>; “Gobierno de Venezuela ‘se declara en emergencia con un plan antigolpe’” – CNN Chile (October 27, 2015), at <http://www.cnnchile.com/noticia/2015/10/27/gobierno-de-venezuela-se-declara-en-emergencia-con-un-plan-antigolpe>; “Presidente venezolano denuncia ‘plan golpista’ de la derecha” – Xinhua en español (October 27, 2015) at [http://spanish.xinhuanet.com/2015-10/27/c\\_134753753.htm](http://spanish.xinhuanet.com/2015-10/27/c_134753753.htm); “La oposición no está preparada para ganar, sino para dar un golpe de Estado” – Noticias24 (October 28, 2015), at <http://www.noticias24.com/venezuela/noticia/300814/ameliach-la-oposicion-no-esta-preparada-para-ganar-sino-para-dar-un-golpe-de-estado/>; “Nicolás Maduro: Si la oposición gana ‘no entregaría la revolución’” – Perú.com (October 29, 2015), at <http://peru.com/actualidad/internacionales/nicolas-maduro-si-oposicion-gana-no-entregaria-revolucion-noticia-415101>.

*The domestic and international right is getting ready for a counterrevolutionary coup beginning December 6th. They are not getting ready to win the elections, no.... The Bolivarian revolution declares itself in an emergency with an anticoup plan to guarantee electoral victory....*<sup>16</sup>

*In the unlikely and transmuted event of this scenario [that the opposition were to win the parliamentary elections], Venezuela would enter one of the darkest and most distressing stages of its political life and we would defend the revolution, we would not surrender the revolution, and the revolution would move on to a new stage... I would govern with the people, always with the people and in a civilian-military union.*<sup>17</sup>

It is most probable that in Venezuela, as in all societies, there are a great many people on each side of the political spectrum who hold moderate positions, who are undecided or indifferent. But they usually keep a low profile. In the opinion of this Mission, what seems to predominate is a polarization that, inevitably, has considerable potential for conflict and that has already led to distressing events in the past. Unfortunately, all this is happening in a society with high levels of violence. Neil Buhne, director of the United Nations Development Programme (UNDP) in Geneva, recently stated during a press conference that “the violence has become concentrated in non-conflict countries.... in both Honduras and Venezuela, violent deaths are ten times the world average, which is 7.4 people killed per 100,000 inhabitants”<sup>18</sup>. Caracas ranks as the second unsafest city in the world, with a homicide rate of 115.98 per 100,000 inhabitants<sup>19</sup>.

In a situation such as that described above, international electoral observation would have been especially important. Nevertheless, given the National Electoral Council’s refusal —for a number of reasons— to allow the participation of some organizations that traditionally play this role, such as the Organization of American States or the European Union, quite probably the only international intergovernmental organization that will be present in the country is UNASUR<sup>20,21</sup>. This being the case, it

<sup>16</sup> “Maduro alerta que la derecha nacional se prepara para un golpe contrarrevolucionario tras el 6D” – Agencia Venezolana de Noticias (October 26, 2015), at <http://www.avn.info.ve/contenido/maduro-alerta-que-derecha-nacional-se-prepara-para-golpe-contrarrevolucionario-tras-6d>.

<sup>17</sup> “Nicolás Maduro advierte que gobernará “en unión cívico-militar” si gana oposición” – El Universo (October 30, 2015), at <http://www.eluniverso.com/noticias/2015/10/30/nota/5214080/nicolas-maduro-advierte-que-gobernara-union-civico-militar-si-gana>.

<sup>18</sup> “ONU: Venezuela está entre los países más violentos” – El Nuevo País / Zeta (May 8, 2015), at <http://enpaiszeta.com/onu-venezuela-esta-entre-los-paises-mas-violentos/>.

<sup>19</sup> “Por cuarto año consecutivo, San Pedro Sula es la ciudad más violenta del mundo” – Consejo Ciudadano para la Seguridad Pública, Justicia y Paz (January 19, 2015), at <http://www.seguridadjusticiaypaz.org.mx/sala-de-prensa/1165-por-cuarto-ano-consecutivo-san-pedro-sula-es-la-ciudad-mas-violenta-del-mundo>.

<sup>20</sup> Mention should be made of part of the content of the “Agreement between the National Electoral Council (CNE) and the Union of South American Nations (UNASUR) for the UNASUR Electoral Mission for the National Assembly Elections on December 6, 2015,” signed on November 12. Article 2 states that “the UNASUR Electoral Mission, within the framework of the provisions governing this Agreement, will accompany the CNE in the different stages and processes of the electoral event, fostering the exchange and generation of experiences and know-how on this matter, for the purpose of carrying out with better practices the tasks that their legislations provide for.” According to article 5, the purposes of the UNASUR Electoral Mission are to “witness the electoral process within a framework of respect, solidarity and cooperation for the generation of know-how and experiences on electoral matters, in favor of the electoral agencies of the UNASUR member States, as provided for in the UNASUR Criteria and Rules for Electoral Observation and Accompaniment.” Article 6 deals with the members of the Mission: A Special Representative appointed by the Council of Ministers of Foreign Relations of UNASUR; a General Electoral Coordinator, elected by the UNASUR Electoral Council; the assistants to the Special Representative and the General Electoral Coordinator, with a maximum of two for each; and up to four authorities or officials of the agencies making up the Electoral Council, for each member State. At the time there had been no decision regarding the names of the Special Representative or the General Electoral Coordinator. Lastly, article 22 states that “once the voting is over and the electoral results are known,

is especially important to have the presence of an international intergovernmental organization such as International IDEA<sup>22</sup> in a strategic alliance with UCAB, for the purpose of providing reliable and detailed information for Venezuela and the world concerning the conditions and complex situations in which this electoral process is taking place. An effort has been made to have this presence take the form of a high-level study mission<sup>23</sup> for the upcoming electoral process on December 6<sup>th</sup>. This is not the traditional electoral observation mission<sup>24</sup>. What it is is a study mission made up of researchers, analysts and experienced former electoral authorities whose work does not just focus on election day or the different stages of the electoral cycle but, rather, analyzes the conditions surrounding the electoral campaign and the period just before it from the standpoint of electoral integrity<sup>25</sup>, by interviewing major actors and processing reports by specialized local groups, such as, in this case, the work by the Venezuela Electoral Integrity Project of the Center for Political Studies at Universidad Católica Andrés Bello. The Mission also reviewed information from local electoral observation groups and consulted bibliography and newspaper articles dealing with the subject, compiled by the above-mentioned Project. The fieldwork consisted of two missions, one during the last week of October and the other in the second week of November that included visits to the interior of the country<sup>26</sup>. This preliminary report is the result of these missions.

This report consists of five sections, with an additional 12 appendices providing further details concerning some of the issues discussed. The following section seeks to define the meaning of *integrity of elections* based on democratic principles of universal suffrage and political equality as reflected in international agreements and standards. The third section contains most of the empirical material gathered, arranged on the basis of issues that are considered to be strategic.

A report on a mission of this kind usually suggests possible solutions for the problems found. Section 4 of this report presents the solutions being proposed. Some of them, despite the proximity of the elections on December 6<sup>th</sup>, could help improve the integrity, fairness and transparency of the process if there is a willingness to implement them. Others are suggestions that can only be implemented in the

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the Mission's Special Representative will deliver a preliminary report to the President of the CNE concerning the Accompaniment activity. The Report shall contain an analysis of the legal and political context, the activities carried out, the methodology used, the technical electoral aspects of the voting process and, in particular, the audits witnessed. It may contain suggestions and recommendations that foster the generation of know-how and the dissemination of good practices on electoral affairs for the host country and the electoral agencies that are members of the UNASUR Electoral Council. Later on, the Mission's Special Representative may make public an objective synthesis of the result of the Accompaniment experience. Moreover, a copy of the Report shall be delivered to the General Secretariat of UNASUR and the Pro Tem President of UNASUR."

<sup>21</sup> Despite this, Brazil's Superior Electoral Court refused to take part in the accompaniment mission in view of the lack of specifics regarding the conditions for engaging in this activity and the little time available to do the job properly. The press release is available at <http://www.tse.jus.br/imprensa/noticias-tse/2015/Outubro/nota-a-imprensa>.

<sup>22</sup> The International Institute for Democracy and Electoral Assistance (International IDEA) is an intergovernmental organization with headquarters in Stockholm (Sweden), whose programs aim to provide knowledge to democracy builders, provide policy development and analysis, and support democratic reform.

<sup>23</sup> Further details regarding the work of the missions may be found in Spanish in Appendices 1 and 2 (Agenda and Members of the Missions)

<sup>24</sup> Appendix 3, in Spanish, explains the difference between classic electoral observation and the idea of *accompaniment* used by the National Electoral Council

<sup>25</sup> In specific cases, such as that of Venezuela, the advantage of a study mission is that no invitation or permission, nor any certification by the electoral authorities, are required, which means greater autonomy for the work, despite the disadvantage of not being able to observe the election itself directly.

<sup>26</sup> As part of the activities carried out by the IDEA-UCAB Study Mission, a group of national and international experts spent two days on working visits to three states in the interior of Venezuela: Lara, Táchira and Zulia, as well as the *Altos Mirandinos* (suburban communities outside Caracas) and Sucre municipality in Miranda State. During these travels, the mission interviewed both pro-government and opposition mayors, candidates, municipal council members, activists and scholars.

longer term, and could be applied to have an effect on future elections. The last section presents some final considerations.

This report, obviously and undeniably, dedicates more space to an analysis of the problems and limitations faced by the opposition parties. However, the occasions for meeting with the government or the PSUV have been much more limited, despite the mission's efforts to make these contacts. The same can be said in connection with the National Electoral Council, which is undoubtedly busy organizing the elections that are to be held in less than one month; it was not possible to gather the opinions of this agency despite the mission's repeated requests in this regard<sup>27</sup>.

## B. CONDITIONS REQUIRED TO GUARANTEE INTEGRITY OF ELECTIONS

From the very moment of the entry into force of the Universal Declaration of Human Rights in 1948, and the International Covenant on Civil and Political Rights in 1976, further instruments and agreements have been added providing more specifics regarding the meaning of secret and equal votes. These make possible a clear understanding of the preconditions required for the integrity and fairness of suffrage. The concise definitions found in international covenants and agreements have been enriched by decisions handed down by the Courts in The Hague as well as opinions and decisions of organizations such as the Venice Commission. Several organizations and/or projects have sought to systematize the content of these instruments pertaining to integrity of the electoral process. The Electoral Integrity Project, headed by Pippa Norris and based at the University of Sidney and Harvard University (of which the UCAB Center Political Studies is part), is one such project<sup>28</sup>. The Carter Center, located in Atlanta, in turn, has a major database<sup>29</sup> covering electoral standards and obligations found in more than 200 international instruments.

This study will be based on the *Report of the Global Commission on Elections, Democracy and Security*, prepared by International IDEA and the Kofi Annan Foundation<sup>30</sup>. The Report of the Global Commission considers that elections with integrity are based on the democratic principles of universal suffrage and political equality as reflected in international standards and agreements, and are noted for professional, impartial, and transparent preparation and administration throughout the electoral cycle.<sup>31</sup> According to this report, five main problems must be solved to hold elections with integrity:

- building the rule of law to substantiate claims to human rights and electoral justice;

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<sup>27</sup> On the one hand, the Secretary-General of de International IDEA, Yves Leterme, in a letter sent on October 22 from his office in Stockholm, requested an audience with the National Electoral Council. Following that, two additional requests were made through the Rector of the Universidad Católica Andrés Bello, R.P. Francisco José Virtuoso, S.J., the first on October 23rd. and the second this past November 9th. To the date of this report, no answer has been received from the electoral authorities.

<sup>28</sup> The Project asks three questions: Do the elections meet international standards of electoral integrity? What happens if they fail to do so? What can be done to mitigate these problems? at <https://sites.google.com/site/electoralintegrityproject4/>.

<sup>29</sup> "Election Standards at The Carter Center", at <http://electionstandards.cartercucenter.org/eos/>.

<sup>30</sup> "Profundizando la democracia: una estrategia para mejorar la integridad electoral en el mundo", Fundación Kofi Annan e IDEA Internacional, Estocolmo, 2012.

<sup>31</sup> The electoral-cycle approach considers not only those activities undertaken on election day, but also the whole series of activities and processes undertaken before, during and after each election. Further details are available in IDEA International's publication *Elections: a continuous cycle*, at [http://www.idea.int/publications/15\\_years\\_supporting\\_democracy/a\\_continuous\\_cycle.cfm](http://www.idea.int/publications/15_years_supporting_democracy/a_continuous_cycle.cfm)

- building professional, competent electoral management bodies (EMBs) with full independence of action to administer elections that are transparent and merit public confidence;
- creating institutions and norms of multiparty competition and division of power that bolster democracy as a mutual security system among political contenders;
- removing barriers—legal, administrative, political, economic, and social—to universal and equal political participation; and
- regulating uncontrolled, undisclosed, and opaque political finance.

These are the basic requirements or conditions of integrity and fairness on which the Study Mission’s comments are based. The discussion is not organized on the basis of the five points in the Report of the Global Commission on Elections, Democracy and Security, given that some of the potential situations mentioned by the interviewees covered more than one.

### C. SITUATION OF THE ELECTORAL PROCESS AT THE BEGINNING OF THE CAMPAIGN

Based on the interviews and meetings held with a number of actors, and the bibliographic material and periodicals consulted, the Mission found a number of problems that could affect the fairness, integrity and transparency of the elections on December 6th. These problems are related with: (i) states of emergency decreed and their impact on the elections; (ii) the electoral authorities; (iii) the electoral roll; (iv) polling centers; (v) the integrity of suffrage and ballot secrecy (how ballot secrecy is perceived, voter assistance, and confusing ballot); (vi) interference by the Supreme Tribunal of Justice (TSJ) in the internal workings of political organizations; (vii) fairness of conditions for the electoral contest (use or misuse of government resources, freedom of the press and access to the media and party and campaign financing); (viii) registration of parties and nomination of candidates (refusal to register political parties and candidate disqualification); (ix) gender parity for nominations; (x) proportionality of the electoral system; and (xi) settlement of electoral disputes. Each of these issues will be dealt with separately below.

#### 1. State of emergency decrees and their impact on the election process

Between August and October 2015, the President of the Republic declared a State of Emergency in several municipalities on the Colombian border, in the states of Amazonas, Apure, Táchira and Zulia, reacting to violent clashes in San Antonio del Táchira where two members of the military were killed<sup>32</sup> and the smuggling of goods out of the country. These decrees have meant limitations to the rights against unwarranted searches of homes, the right to secrecy of private communications, freedom of movement, right of association, freedom to demonstrate and economic freedom. Many of the people interviewed stressed the unconstitutionality of these decrees (see detailed discussion of this issue in Appendix 4), while others voiced their fears that they would not be applied impartially, affecting the opposition’s ability to compete. It is to be hoped that these fears will be unwarranted and that the CNE will take a vigorous stance on this issue, guaranteeing the normal progress of the campaign and the

<sup>32</sup> “Cierran frontera con Colombia en San Antonio del Táchira tras emboscada a militares venezolanos” – Correo del Orinoco (August 19, 2015), at <http://www.correodelorinoco.gob.ve/regiones/cierran-frontera-colombia-san-antonio-tachira-tras-emboscada-a-militares-venezolanos/>; “Maduro decretó Estado de Excepción en municipios fronterizos del Táchira” – Panorama (August 21, 2015), at <http://www.panorama.com.ve/politicayeconomia/Maduro-decreto-Estado-de-Excepcion-en-municipios-fronterizos-del-Tachira-20150821-0069.html>.

election<sup>33</sup>. In fact, the president of the CNE has declared that the state of emergency will not affect voters' civil and political rights<sup>34</sup>.

Nevertheless, as part of the Study Mission's activities, a group of its experts spent two days on a work visit to the areas where the state of emergency is in place. There, the people interviewed all felt that this measure conditions how campaign will be carried out and the election itself<sup>35</sup>. These concerns have been voiced by the Secretary General of the OAS who, in a recent letter to the president of the CNE<sup>36</sup>, pointed out that,

*Bearing in mind that the Organic Law of Electoral Processes (LOPRE) defines an electoral campaign as activities of a public nature carried out by candidates with the aim of securing, encouraging, or persuading the electorate to vote for a particular contender within a specific period of time, there are at least two ways in which the declaration of the state of emergency could affect the campaign.*

*On one hand, there is a risk of concentration of discretionary power in the hands of state governors, since the authority to grant or withhold permission for rallies and meetings for the purpose of securing or encouraging voting is delegated to an individual.*

*The governors of the States of Táchira, Zulia and Apure were all elected by the United Socialist Party of Venezuela (PSUV) and are part of the ruling alliance, which increases the implicit risk of concentration of discretionary power.*

*On the other hand, the power of competent state agencies to conduct searches without a judicial order could lend itself to abuse by the security forces with political undertones, particularly when one considers that campaign headquarters are sometimes the meeting places of individuals or the domiciles of legal persons, which could generate inauspicious conditions for a fair election campaign.*

The United Nations High Commissioner for Human Rights, in turn, stated that "the declaration of a broad state of emergency in 24 municipalities, suspending human rights guarantees, is a matter of great concern and should be lifted."<sup>37</sup>

A state of emergency also means the deployment of a considerable number of military personnel to the affected areas. One of the concerns mentioned is that, if these people are unable to return to the districts where they are registered, they could be deprived of their right to vote. In the second place, there were fears of the possible application of what is known as "suffrage in inhospitable areas," which

<sup>33</sup> District 1 in Amazonas State (Atures municipality, the most populous), which elects one AN member by name; districts 1 (with the exception of Muñoz municipality, the state of emergency affects Páez municipality, the most populous in the district) and 2 in Apure State (only Pedro Camejo municipality, the least populous); districts 1, 2 (only Ayacucho —the most populous— and Lobatera out of eight municipalities) and 3 (only García de Hevia and Panamericano out of 10 municipalities) in Táchira State; and districts 1, 2, 3 and 12 (with the exception of Francisco Javier Pulgar and Sucre municipalities) in Zulia State. Each of these districts elects one AN member by name. In other words, the election of 10 members elected by name could be affected. Taking into account the proportion of voters, in comparison with the AN members voted by list, in the case of Amazonas, Apure and Táchira states, the state of emergency could affect the normal evolution of the process; this, however, is not the case in Zulia State.

<sup>34</sup> "Venezuela: estado de excepción no afectará comicios en zona fronteriza" – TeleSurTV (November 6, 2015), at <https://www.youtube.com/watch?v=njylggue6vY>.

<sup>35</sup> More detailed information is available in Spanish in Appendix 4.

<sup>36</sup> The letter is dated November 10 and may be found at <http://www.oas.org/documents/spa/press/Carta-a-Sra.-Tibisay-Lucena.pdf>.

<sup>37</sup> "Alto comisionado: Estado de excepción debe ser retirado" – El Nacional (November 13, 2015), at [http://www.el-nacional.com/politica/Alto-comisionado-excepcion-debe-retirado\\_0\\_737326506.html](http://www.el-nacional.com/politica/Alto-comisionado-excepcion-debe-retirado_0_737326506.html).

is a special procedure whereby military personnel located in areas defined as “inhospitable” are allowed to vote. Nevertheless, this procedure has only been used in the case of national elections, such as presidential elections or referenda. In the case of elections at other levels, such as the last parliamentary, municipal or regional elections, this system was not used.

## 2. Electoral authorities

As mentioned at the beginning of this section, among the requirements mentioned in the *Report of the Global Commission on Elections, Democracy and Security*, electoral integrity depends on the existence of professional and competent electoral authorities. When this condition is met, transparent electoral processes can be managed with independence and impartiality, meriting the trust of the people. The fact is that, for elections to have integrity they must be managed in a competent, professional manner, free of party influence, and be perceived as such by the voters and the political actors. The key institutions for promoting and protecting the integrity of elections are the electoral agencies; these must be professional and independent in order to manage transparent processes, and they must be responsible for guaranteeing that elections are credible from a technical standpoint, and that the citizens view it as a free, fair and credible process. Their work covers a wide range of activities, that include determining who may vote, enrolling those people in a register, organizing the elections, counting and tabulating the votes, as well as monitoring the electoral campaign, educating voters and settling electoral disputes<sup>38</sup>. Obviously, the legitimacy of the electoral agency is a key element.

Legitimacy is usually analyzed at two levels, origin and exercise. During the interviews held, the Mission heard critical remarks concerning both types of legitimacy in the case of the CNE, especially regarding its lack of independence and impartiality. In the case of the former, the comments had to do with the circumstances surrounding the appointments. The process for the appointment of three of the five CNE Rectors in 2014 was plagued by irregularities, inappropriate practices when analyzing the candidates, and lack of political will. The provision of article 296 of the Constitution (CBRV), whereby the members of the National Electoral Council are to be appointed by the National Assembly with the affirmative votes of two thirds of the Assembly members, means that the decision will be the result of a negotiation to ensure that the electoral referees have a minimum degree of legitimacy arising from the political support of a supermajority of the Legislative Branch. The last appointments of CNE rectors, between October and December last year, were made without any political negotiation whatsoever when, during a special session at the National Assembly on December 22, 2014, the pro-government members proposed a list of candidates and the opposition refused to back it. During this same session the President of the National Assembly (NA), congressman Diosdado Cabello, issued a communiqué addressed to the Chief Justice of the Supreme Tribunal of Justice (TSJ), Gladys Gutiérrez, asking that the Tribunal declare a legislative failure to appoint the rectors of the National Electoral Council and appoint the rectors itself. Two court days later, on December 26, the Constitutional Chamber of the Supreme Tribunal handed down ruling 1865/2014 accepting the PSUV proposal with only minor changes. According to comments made during the meetings, four of the main rectors have ties or sympathize with the government party and one —of those appointed by the Tribunal— with the opposition. All in all, the characteristics of the procedure (described at greater length in Appendix 5) show that no effort was made to reach a consensus, which is a fundamental requirement for a two-thirds supermajority.

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<sup>38</sup> See note 30, page 26.

The credibility of this institution has also been found to be declining. Do Venezuelans trust the CNE? According to the study by the UCAB Center for Political Studies, only 22% of the people say they feel “a great deal of trust” in the CNE, whereas 13% say they “trust it somewhat.” What is noteworthy is that those who have a negative opinion of the electoral agency add up to 50% of those surveyed, who say they “do not trust” the electoral agency, while 14% say they feel “little trust.”<sup>39</sup>

Doubts regarding the legitimacy of the actions taken have to do with some of the CNE’s decisions, which, according to people interviewed, suggest bias on the part of the agency. The Mission heard criticism concerning the limited campaigns regarding ballot secrecy, the way in which seats were reassigned in several districts, the lack of willingness to provide the information needed to carry out two-way audits of the Electoral Roll, the little interest shown in intervening in the case of restrictions to freedom of expression that could affect the election, insufficiently justified decisions regarding political party names that affected their registration, little interest in preventing voter confusion stemming from the design (party colors and names of candidates) of the ballot sheet, failure to play a more active role with regard to campaign financing and use of government resources for proselytizing activities during the period prior to the official beginning of the campaign, mishandling of the gender-parity issue. Additional details concerning these complaints will be presented in the following sections.

### 3. Electoral Roll<sup>40</sup>

The total number of voters in the December 6th elections will be 19,496,365, divided among 14,515 polling centers with 40,601 voting stations in all. A comparison of the data in the current electoral roll and that of the electoral roll used during the municipal elections in December 2013 shows 887,278 new voters.

The Venezuelan Electoral Roll (ER) has the usual problems found in other rolls given the complexity of the task of updating and weeding out the roll. One of these is the problem of incorporating young voters. When a special campaign to update the ER began in February 2015, it was calculated that there were 1,899,910 people under the age of 25 years (based on a comparison between the ER and the data in the records of Venezuelans with ID cards) who were not enrolled in the ER. This means that approximately one million voters under the age of 25 are not registered and will be unable to vote on December 6th. Another problem with the Electoral Rolls has to do with the difficulty of eliminating the deceased and those who are living abroad. In the case of the deceased, between December 2013 and July 2015, the CNE removed 223,970 people from the ER due to death or disqualification. This figure is lower than the estimate of the number of people who died during that period. In the case of voters who have left the country (immigration information is not public and cannot be compared with the ER) only 2,205 voters were found who had changed their registered voting place to a foreign center (and who cannot vote on December 6th) between the municipal elections in December 2013 and the preliminary cut-off date for the parliamentary elections, while 2,342 who voted abroad for the parliamentary elections will be able to do so in Venezuela. It can be assumed, however, that a far larger number of voters who emigrated during this period did not register to vote at their new place of residence abroad.

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<sup>39</sup> "10 respuestas sobre cómo perciben los venezolanos el Sistema Electoral" – ProDaVinci (May 20, 2015), at [http://prodavinci.com/blogs/10-respuestas-sobre-como-perciben-los-venezolanos-el-sistema-electoral-por-eugenio-g-martinez/#\\_ftn1](http://prodavinci.com/blogs/10-respuestas-sobre-como-perciben-los-venezolanos-el-sistema-electoral-por-eugenio-g-martinez/#_ftn1).

<sup>40</sup> All the data in this section, based on the Preliminary Electoral Roll published on July 24th by the CNE, were taken from the press release: “10 cosas que debe saber sobre el Registro Electoral antes del 6-D” – ProDaVinci (July 29, 2015), at <http://prodavinci.com/blogs/10-cosas-que-debe-saber-sobre-el-registro-electoral-antes-del-6-d-por-eugenio-martinez/>.

It was found that a total of 1,241,899 people have changed their voting center for the parliamentary elections on December 6th. These moves can be broken down as follows: 484,414 people changed center within the same parish; 176,524 people changed polling center from one parish to another in the same municipality; 238,666 voters changed municipality; and 337,519 voters changed to voting centers in another state. None of this data seems unusual in a country with the characteristics of Venezuela.

The campaign for updating the Electoral Roll was criticized by organizations that engage in electoral monitoring in the country<sup>41</sup>. The main complaint regarding the process carried out by the CNE was the lack of specific information regarding the location of the 1,568 sites being set up for registration and the updating of the roll. 90% of those registration and updating sites were mobile and there was no information regarding the location, daily route and times they would be open.

In a great many countries in the region the political parties and civil society organizations perform audits of the ER. Mexico provides a very clear example of a professional approach to this task. This cannot, however, be done in Venezuela given that the CNE has decided that addresses —essential information for this type of audit— are confidential.

One aspect that the Mission wishes to highlight is that the last audit of the ER was performed in 2005<sup>42</sup>. Since then, there have only been digital reviews on how many voters have been added and removed from the roll since the previous election. Furthermore, the records of Venezuelans with ID cards have not been audited since 2003. This situation must be corrected.

#### 4. Voting centers

One issue that was mentioned repeatedly is the fact that, in the case of the electoral infrastructure for the December 6th elections, it was found that there are 1,184 new polling stations in comparison with the municipal elections in 2013. A total of 367,619 voters are registered to vote at these new stations, and 59,184 are newly registered voters. Among the characteristics of some of these new centers that some of the people interviewed considered an issue of concern is that they have been set up in buildings that are the headquarters of civil associations with clear ties to the Executive Branch<sup>43</sup>.

The most worrisome issue, however, is that 70% of these new voting centers have one or two stations. In the opinion of opposition election technicians, the smaller the voting center the greater the possibility that the PSUV and the government can wield their political control. To date there are 8,819 polling centers with one or two stations (11,668 stations in all), accounting for 4,305,340 voters, 290,792 of whom are newly registered<sup>44</sup>.

<sup>41</sup> “CNE debe publicar dirección exacta y horario de puntos para inscripción en el registro electoral - Súmate insiste que el artículo 33 de la Ley de Procesos Electorales así lo exige” – Súmate (February 23, 2015), at [http://www.sumate.org/noticias/2015/N541\\_110215\\_CNE\\_DEBE\\_PUBLICAR\\_DIRECCION\\_EXACTA\\_Y\\_HORARIO\\_DE\\_PUNTOS-PARA\\_INSCRIPCION\\_EN\\_EL\\_RE.html](http://www.sumate.org/noticias/2015/N541_110215_CNE_DEBE_PUBLICAR_DIRECCION_EXACTA_Y_HORARIO_DE_PUNTOS-PARA_INSCRIPCION_EN_EL_RE.html).

<sup>42</sup> The data on this last audit, carried out by the Inter-American Institute of Human Rights (IHR) and the Center for Electoral Promotion and Assistance (Capel). <http://www.sumate.org/democracia-retroceso/attachments-spanish/T3%20ST05%20P11%20V1capel.pdf>.

<sup>43</sup> Mention was also made of the fact that several of them have names alluding to Hugo Chávez, Nicolás Maduro and their campaign slogans. The number of cases identified, however, accounts for only some 1% of the new center. This does not seem to pose a major problem, despite the symbolic effect it may have.

<sup>44</sup> This information was provided by electoral monitoring organizations and is in the electoral infrastructure file managed by the CNE.

Centers such as these were the subject of opposition complaints following the presidential elections on October 7, 2012 and April 14, 2013. Nevertheless, the presence of witnesses should do away with any reasons for concern. Probabilities are that, in many cases, the reason for the voting in favor of the PSUV is that these are centers in rural areas where that party tends to win. This also happens in a number of urban centers where that explanation would not necessarily apply. The hypothesis mentioned during the interviews with the opposition parties as to how manipulation can occur at stations of this type is that, at some of the one- or two-voting station centers witnesses were intimidated or not allowed into the polling center, above all those located in places such as the ones described above.

## 5. Integrity of suffrage and ballot secrecy

The report by Genaro Arriagada and José Woldenberg<sup>45</sup>, prepared following an earlier mission by International IDEA and the Woodrow Wilson Center, states that a great strength of the electoral system lies in the transparency of the fundamental elements for the monitoring and oversight of the electoral processes by the parties, citizens and observers. The electoral records, by voting station, are available and can be consulted by any interested party, although the home addresses of registered voters cannot be checked. By law the people in charge of the polling stations are chosen by public lottery by the National Electoral Council and their names are available to the parties. None of the people interviewed voiced any doubts concerning the actual implementation of these measures. This being the case, if the CNE were to guarantee that the members of the polling stations are properly notified and, moreover, trained and given the authority to take effective action vis-à-vis other actors during the election, this would prevent some problems, such as irregular substitution of members before and while the station is being set up. Furthermore, as is logical, the law recognizes the candidates' right to appoint one witness per station

The voting system in Venezuela is completely automated and all the stages can be audited. In 2004, Venezuela became one of the first countries in the world to hold a national election with machines that print out a ballot voucher; in 2012 biometric authentication of the voter, with the subsequent activation of the voting machine, was included. **Appendix 6 provides a brief description in Spanish of how the system operates.**

Lastly, the CNE publishes the results of each polling station on its website or in the *Electoral Gazette*. All of this allows for a three-way comparison: of the ballot results issued by the machine; of the "citizen verification record;" and of both these with the voting results published in the *Electoral Gazette*. This rapid publication of the results on the website is an element that makes the system especially secure.

The Mission had the opportunity to interview the MUD technical team in charge of checking these aspects, who provided a detailed report on the audits that had been carried out for at least the past five years. They were clear in their conviction that the system is reliable and regarding the ongoing and obvious willingness of the CNE and its technicians to test all the elements necessary to perform their audits.

Nonetheless, the system does have some weaknesses, although they are not related to the technical aspects. Awareness of these problems has existed for some time and the CNE has been working to solve them. The first is that there are a number of citizens whose fingerprints have not been properly taken or are illegible and, therefore, cannot be read by the fingerprint scanner. In those cases, the machine allows the person to vote, but makes a record of the event. The number of these cases has

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<sup>45</sup> Arriagada, G., y Woldenberg, J., "Informe sobre las elecciones del 7 de Octubre en Venezuela", Wilson Center e International IDEA, September 2012.

been dropping over time and at present they account for some 3.5% of the roll<sup>46</sup>. The rate of these problems varies from entity to entity. It is virtually nonexistent in urban areas, whereas in rural areas it tends to be higher than the average mentioned above. This allows for the possibility of voter impersonation in the event that one of the parties were to be in control of a polling station. In this case, a person could impersonate a registered voter who did not show up to vote. This is recorded as an event that cannot be differentiated from genuine cases of illegible prints.

### 5.1. Perception of ballot secrecy

The fact is that, despite all the guarantees that the mechanized system offers, and the conclusions of the technical audits by the opposition, distrust is fairly widespread among the public and is aimed at one issue in particular: the secrecy of the vote. Although this Mission does not share these fears, and considers that the system has more than adequate guarantees, the fact is that several polls suggest that a considerable proportion of the population is of the opinion that the ballot is not secret.

The study on People's Perception of the 2105 Electoral System, by the Electoral Integrity Project of Universidad Católica Andrés Bello's Center for Political Studies, found that 63% of those surveyed considered that the statement *The Ballot is Not Secret* is entirely or partially true, while 62.5% of those surveyed considered that *fingerprint scanners at the polling center will be linked to those at points of sale for food and medicine*. This would lead to the assumption that, although there is nothing to indicate that there is any truth to these statements, the voters' distrust regarding these aspects of the electoral system could have consequences as regard their electoral behavior<sup>47</sup>.

Critical remarks were also made concerning the behavior of technical and support personnel at the polling centers, who sometimes go beyond their specific role and become involved in aspects that have to do with how the polling stations operate.

One thing in particular that must be made clear is that the decision to close the polling station is not subject to prior authorization by the Plan República or by the polling-center coordinators, nor to an announcement by the National Electoral Council; it depends only on the determination by the members of the station that the conditions provided for in the law have been met. At this point the electoral process schedule does not include any type of training for the Plan República<sup>48</sup>, a problem that should be easy to solve.

### 5.2. Voter assistance

Under article 290 of the Regulations to the Electoral Processes Act, voters exercise their right to vote as individuals and they may not be accompanied by someone else. The only exceptions are voters who are illiterate, have some disability and the very old, who may ask to have someone they trust accompany them when exercising this right. This is what is called voter assistance. The regulations include measures aimed at preventing abuse, and provide that "a note regarding this circumstance shall be made in the instrument available for this purpose, fully identifying the trusted person who is accompanying the voter who is illiterate, disabled or very old." Nevertheless, based on some

<sup>46</sup> The result of this audit can be found at "¿Cuántos electores no tienen sus huellas registradas en el CNE?" – ProDaVinci (October 14, 2015), at <http://prodavinci.com/blogs/cuantos-electores-no-tienen-sus-huellas-registradas-en-el-cne-por-eugenio-martinez/>.

<sup>47</sup> Centro de Estudios Políticos de la Universidad Católica Andrés Bello. "Estudio sobre Percepción Ciudadana de Condiciones Electorales 2015".

<sup>48</sup> The same lack of training of Plan República personnel has been the case in earlier elections in Venezuela.

photographs and films that have circulated in the social networks, it is said that in many cases this voter assistance is forced upon a person and is actually improper coercion to force the person to vote for a given electoral option.

### 5.3. Ballot-sheet confusion

Concerns regarding the design of the ballot sheet were also mentioned to the Mission. The placement of the parties' symbols on the ballot sheet did not follow the usual practice of being chosen by lot, but was chosen by the parties themselves. The first choice goes to the party that had the most votes in the last election, followed by the other parties in descending order. Late in August 2015, the political organizations that will be taking part in the upcoming electoral process chose their spots on the ballot sheet. There are political organizations of different tendencies that are, however, next to each other on the ballot sheet, with names and identifying colors that are also quite similar; this could lead to worrisome confusion for the voters who, due to that, might end up making the wrong choice. The most obvious case is that of MIN-Unidad —a party that was subject to intervention by the TSJ (see section 6); this party's symbol is right next to that of the MUD<sup>49</sup>. This, of course, is neither a crime nor a violation of the rules, but, if intentional, would be a typical dirty trick —with no effective control by the CNE. Taking the necessary measures to ensure that ballot-sheet design does not lead to confusion that could affect the will of the voter is considered the proper practice for an electoral agency. Given that this has not happened, the parties affected will have to take care to clarify the situation during their campaign.

## 6. TSJ interference in the inner workings of the political organizations

The interference of the Supreme Tribunal of Justice, via the Constitutional and Electoral Chambers, has been a constant at election time. In 2015, it has handed down decisions regarding the legality of the leadership of four parties, Bandera Roja, Copei, MEP, and MIIN —whose symbol on the ballot had been used by Democratic Unity Roundtable in some elections. The strategic purpose of this judicialization of infighting within the parties would seem to be to influence decisions regarding candidates and electoral alliances. In the case of Copei, the Constitutional Chamber's decision would seem to have prevented — up to the date of this report— the nomination of the person who was the national president of the party and of 25 other candidates throughout the country<sup>50</sup>. In the case of MIN-Unidad, following the decision by the Constitutional Chamber, the CNE accepted nominations, after the deadline, of 61 candidates from that party who are against the opposition group<sup>51</sup>. Further details may be found **in Spanish** in Appendix 7.

## 7. Fairness of conditions for the electoral contest

One of the strongest criticisms of the process for the December 6th elections has to do with the lack of fairness in the following aspects: use and misuse of government resources, freedom of the press and

<sup>49</sup> "MUD rechaza ubicación de tarjeta de MIN unidad en boleta electoral" – El Impulso (September 2, 2015), at <http://elimpulso.com/articulo/mud-rechaza-ubicacion-de-tarjeta-de-min-unidad-en-boleta-electoral>; y "MUD se deslinda del partido Min-Unidad" – El Mundo (September 1, 2015), at <http://www.elmundo.com.ve/noticias/actualidad/politica/mud-se-deslinda-del-partido-min-unidad.aspx>.

<sup>50</sup> "Directiva ad hoc de Copei pidió al TSJ sustituir a 26 candidatos de la MUD" – El Nacional (October 21, 2015), at [http://www.el-nacional.com/politica/Directiva-Copei-TSJ-candidatos-MUD\\_0\\_723527795.html](http://www.el-nacional.com/politica/Directiva-Copei-TSJ-candidatos-MUD_0_723527795.html).

<sup>51</sup> "Después de intervención del TSJ el MIN-Unidad postuló 61 candidatos adversos a la oposición" – Política UCAB (August 29, 2015), at <http://politikaucab.net/2015/08/29/despues-de-intervencion-del-tsj-el-min-unidad-postulo-61-candidatos-adversos-a-la-oposicion/>.

access to the media, and party and campaign financing. As Arriagada and Woldenberg<sup>52</sup> say in the above-mentioned report,

*... if the strength of the Venezuelan electoral system lies in the way in which the votes are received, counted and reported, its greatest weakness lies in unfair conditions for the contest.*

### **7.1. Use and misuse of government resources**

Use and misuse of government resources during campaigns are a frequent occurrence in election processes, most especially in Venezuela where there is no public funding of political organizations. Pro-administration candidates do not compete on a equal footing. They have advantages that their adversaries do not, among others: promotion of candidates who are present during inaugurations of public works and/or when homes, scholarships or loans are being handed out; having government-owned assets at their disposal, such as computers, household appliances and food to be handed out to voters, etc.; overwhelming publicity in the form of leaflets, billboards, large-scale events with artists, etc., that are far beyond the wherewithal of a political party in Venezuela. The use of government vehicles and facilities is common practice during election campaigns. This sort of irregularity is found both in the case of the government and in that of the opposition, since the latter controls several federal entities and some municipalities. But it is unquestionably much greater in the case of the government party, which controls the country as a whole as well as most governorships and municipal governments around the nation, as well as any number of state-owned companies and services. One example of this is that pro-government candidates appear in the government media or during mandatory radio and TV broadcasts, where they are introduced by the President of the Republic. Furthermore, during activities of this kind, their adversaries are criticized without the right to equal time and without balanced access to state-owned media.

With regard to the use of public resources during the pre-campaign, the president of the CNE stated that they cannot regulate the period prior to the official campaign. Regulations will be in force as of November 13, when the electoral campaign begins, and it is then that they will apply whatever penalties may be required<sup>53</sup>.

### **7.2. Freedom of the press and access to the media**

Guaranteeing freedom of expression and access to information is a key element in a democratic system. The growing number of reports of restrictions to the work of journalists, unjustified judicial processes and criminalization of opinions involving dissent or opposition to government arguments create an atmosphere of intimidation that hinders full and free dissemination of the electoral choices. The essential role that freedom of expression and access to information play in the reporting and protection of the other human rights must not be forgotten. In this regard, it is essential that the media and, most especially, journalists, be assured that they can fully exercise their right to freedom of expression without undue interference.

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<sup>52</sup> Arriagada, G., y Woldenberg, J., "Informe sobre las elecciones del 7 de Octubre en Venezuela", Wilson Center e International IDEA, September 2012.

<sup>53</sup> "Lucena descarta que la MUD traiga observadores, porque 'es muy caro'" – Efecto Cocuyo (November 4, 2015), at <http://www.efectococuyo.com/efecto-cocuyo/politikom/lucena-descarta-que-la-MUD-traiga-observadores-porque-es-muy-caro>.

According to the Reporters Without Borders' *World Press Freedom Index 2015*, Venezuela ranks 137th out of 180 countries, having dropped 21 places since last year<sup>54</sup>. As reflected by this ranking, this was one of the issues most often mentioned in the interviews. The subject is dealt with **at greater length in Spanish in Appendix 8**; meanwhile we will merely mention the most outstanding items here.

Over the past 10 years the number of media that are independent of the government has been declining<sup>55</sup>, while the number of reported cases of censorship against information critical of the Venezuelan government has been growing. This makes dissemination of ideas contrary to the Bolivarian Revolution difficult. The sale of critical media has usually led to a change in the editorial line to adopt one that is favorable to the government; this has also led to the dismissal and departure of columnists, due to disagreements concerning the editorial line or because of political opinions journalists have expressed in their personal accounts.

Another complaint had to do with the constant use of official broadcasts for political proselytizing in Venezuela. In 2014, when there were no elections, Maduro imposed nationwide broadcasts lasting a total of 174 hours and 48 minutes; during the first four months of 2015, there 63 hours and 37 minutes of mandatory nationwide broadcasts<sup>56</sup>. In addition to this, there are the speeches that are only broadcast on the state-owned media and on some official channels especially close to the government.

Unlike 2014, when social and political conflict in February and March included physical aggression, threats of arrest and attacks on work instruments, the early months of 2015 were noted for a tendency towards an official discourse aimed at criminalizing the practice of journalism, especially following the publication of investigative pieces revealing possible cases of corruption or corporate misbehavior.

According to Ipys<sup>57</sup>, in editorial offices, reporters have reported being pressured, from inside and outside, in the case of information of public interest. At least seven dismissals seem to have involved editorial decisions, and the publication of information that political and business sectors might find uncomfortable could lead to reprisals. Discrediting or arresting those who reported on issues that the administration considered sensitive, and that prompted reactions in the public opinion during the first half of 2015, was another one of the methods used to silence these people. The harassment was aimed mainly at experts on issues related with lack of security, health and the economy.

The Mission found a great many problems involving restrictions or hurdles preventing the purchase of newsprint<sup>58</sup> and printing supplies. Between 2013 and 2015, no less than 12 print media stopped

<sup>54</sup> *World Press Freedom Index* (Clasificación mundial de la libertad de prensa 2015), at <https://index.rsf.org/#!/index-details>.

<sup>55</sup> In a period of 10 years, the government has taken over a network of 13 TV channels: Venezolana de Televisión (VTV), Vive TV, Ávila TV, TEVES, Conciencia TV, TVFANB, the Ministry of Youth's ZUM TV, the oil industry's PDVSA TV (this TV station has channels assigned on TDA/TDT), TV Comunas, the Sibci HD channel, Colombeia TV (this Ministry of Education channel has an analog signal in Caracas on the 64 UHF channel), 123 TV and Telesur; in addition to a network of 25 AM radio stations, 82 FM radio stations and seven dailies. This list does not include the so-called community media that support it. Further details regarding this may be found in the Hinterlaces study, "El Estado comunicador en Venezuela" (October 23, 2014), at <http://www.hinterlaces.com/analisis/el-estado-comunicador-en-venezuela>.

<sup>56</sup> The data may be seen at "Cadenó-metro: Contador de horas de Nicolás Maduro en Cadena Nacional de Radio y Televisión en Venezuela", de Monitoreo Ciudadano, at <http://monitoreociudadano.org/cadenometro/>.

<sup>57</sup> "Ipys Venezuela reportó más de una violación por día durante los primeros siete meses de 2015" – Ipys Venezuela (August 24, 2015), at <http://ipysvenezuela.org/2015/08/24/cada-dia-se-viola-la-libertad-de-expresion-en-venezuela-2/>.

<sup>58</sup> The Venezuelan government monopolizes paper imports through its Complejo Editorial Alfredo Maneiro, assigned to the Ministry of the Office of the President and Monitoring of Government Management.

circulating temporarily due to this crisis<sup>59</sup>. In other cases, the problems involved shortages of photographic plates needed for the printing process.

Although the Mission has been unable to gather any additional information on the subject, during two of the interviews mention was made that censorship is beginning to affect digital communication — there is hacking of personal accounts and media accounts. We were told that some 1,000 Websites have been blocked, such as, for example, Infobae from Argentina, and NTN24 from Colombia. It was pointed out that the Social Responsibility of Radio, Television and Electronic Media Act (Social Responsibility Act) also covers digital media and could be applied to them, too.

In general, on the issue of the situation of the right to freedom of the press and access to the media, in his letter to the President of the CNE, the Secretary-General of the OAS stated:

*Journalists from El Universal newspaper expressed their “alarm at the increasing media restrictions being erected around a number of public figures and institutions in Venezuelan society that represent large segments of the population, which, little by little, are being blacked out of the news, to the detriment of the constitutional rights to information*

*...bearing in mind the approaching elections in Venezuela, it is troubling that articles regarding press conferences and political acts by the governor of Miranda State, Henrique Capriles, are censored, along with any information put out by the leadership of the MUD. This smacks of inequality between representatives of the ruling party and the opposition in terms of media access.*

*The ongoing profusion of reports of intimidation, harassment, and violence toward journalists and media outlets in Venezuela is cause for concern.”*

### 7.3. Party and campaign financing

As stated in the *Report by the Global Commission on Elections, Democracy and Security*, uncontrolled, undisclosed and opaque political finance poses a fundamental threat to the integrity of elections. Therefore, it is necessary to “control political finance by regulating donations and expenditures, public financing of political campaigns, disclosure and transparency of donations and expenditures, and sanctions and penalties for non-compliance.”<sup>60</sup>

<sup>59</sup> July 31 was the last day that El Correo del Caroní was out on the street as a daily newspaper, following the announcement by its president and editor, David Natera Febreres, that they only had enough reserves of newsprint and other supplies to continue as a weekly newspaper. Reports by NGOs regarding the pressure used by the government, granting newsprint in return for favorable editorials, show that El Correo del Caroní was just one of a list of 10 critical media in the country that get no government advertising. At this point in time, other print media on this list are: El Tiempo, El Carabobeño, Notitarde, El Nacional, 6to Poder, Nuevo País, Tal Cual and La Verdad. Directors of regional print media, such as La Nación, in Táchira; El Siglo, in Aragua; El Impulso and El Informador, in Lara; Última Hora, in Portuguesa, and La Verdad in Monagas, have reported that they still face administrative hurdles involving the foreign exchange needed to buy newsprint. Recently two print media, Notidiario and El Nuevo Guayanés, that circulate in the southeastern part of the country, have temporarily halted circulation of print copies due to the shortage of the photographic plates needed for printing. This information was taken from: “Ipys Venezuela reportó más de una violación por día durante los primeros siete meses de 2015” – Ipys Venezuela (August 24, 2015), at <http://ipysvenezuela.org/2015/08/24/cada-dia-se-viola-la-libertad-de-expresion-en-venezuela-2/>.

<sup>60</sup> See note 30, page 8.

Article 67 of the CBRV —in the heading and ending— provides that “financing of associations having political purposes with funds from the State shall not be allowed.” This means that the system provided for under the Constitution is based on private funding.

Nevertheless, in its decision 780/2008, dated May , 2008<sup>61</sup>, the Constitutional Chamber gave another interpretation to article 67 of the CBRV that bans the financing of political associations with government funds, based on a petition filed by the political parties Patria Para Todos and Podemos two years earlier, when they were both part of the national government’s political alliance.

Early in 2008, a preliminary electoral-process bill had been presented that included a provision whereby the budget act would include an amount to be distributed under the heading of special contributions for campaigns. The Chamber ruled that the ban “is [limited] to the impossibility of contributing funds [of the State] for current and internal expenses of the different forms of political associations,” and, therefore, that “the limitation in questions does not apply to the electoral campaign, as a fundamental stage of the electoral process.” In support of its argument, based on political equality as a principle of participative democracy, the Chamber stated that:

*...public financing of electoral processes and, within them, of the campaign of candidates to elected office, is a requirement for control over political actors, their budget and the competitive relationship that includes electoral operations and, at the same time, an activity inherent in a transparent electoral system that advocates debate, participation and the role of the people and, therefore, develops the desideratum of the preamble to the constitution regarding the participative nature of Venezuelan democracy.*

*... the economic fostering by the State of electoral campaigns is consonant with the democratic principle as it guarantees that the voters have access to the different proposals that might be presented by the different political associations (not just parties alone) without financial backing, thus **aiming at equality of conditions for penetration by the different candidates** [highlighted by us].*

Nevertheless, up to now this decision of the Constitutional Chamber of the TSJ has not been implemented, despite the fact that article 78 of the Electoral Processes Act provides that the CNE has the authority to finance the dissemination of electoral advertising in the following terms:

*The National Electoral Council may finance all or part of the dissemination of electoral advertising in radio, television or print media as provided for in the rules drawn up for the purpose.*

This would have meant a major change in the rules governing the subject, but given that it has never been implemented, the weakness of the Venezuelan system when it comes to political funding continues to exist —and has even become worse— in terms of fairness, since the lack of any form of public funding of electoral activities provides those who hold public office with a *de facto* —although contrary to law— incentive to take advantage of this office, thus making illegitimate use of government resources to finance political activities or obtain private support from those who are interested in the

<sup>61</sup> For purposes of this section, use was made of some ideas expressed by Álvarez, Á. (2014), “El sistema venezolano de regulación del financiamiento de la política desde una perspectiva comparada: evaluación de su desempeño y lineamientos para su reforma”, in Alarcón, B., y Casal, J.M. (coordinadores), Proyecto Integridad Electoral Venezuela: las reformas impostergables, Caracas: Publicaciones UCAB, 187-215.

re-election of the person in office. This gives rise to a problem that involves more than fairness, it also affects transparency in private funding and incentives for corruption in the use of public resources.

Since the approval, in 1999, of the Constitution that, as stated above, prohibits direct public financing of organizations set up for political purposes, there has been significant backsliding on the little progress made in the past towards creating conditions of fairness in the access to the resources needed to engage in politics.

Moreover, and despite provisions in the Constitution and the laws whereby political organizations are under the obligation to report their financial affairs, little progress has been made in the area of monitoring and supervising the transparency of political financing over the past five years. This system of private funding means that it is necessary to create rules and institutions that can guarantee the transparency of the funding. Given the size of the amounts invested in an election campaign, the lack of supervision opens the door for illegal financing, whether by organized crime or via misappropriation of government funds. There are no legal provisions in Venezuela to truly discourage the raising of large amounts of money by politicians, either during election campaigns or at other times. The financing of parties and campaigns is private, yet the rules governing this financing are openly ignored and, furthermore, the use of public resources by some candidates and parties is quite notorious. In addition, the supervision of private financing is so opaque that there is no way of knowing where the political organizations', or their members', resources come from. Article 75 of the Electoral Processes Act which sets limits to private funding in politics, but sets no limits to donations or spending, reads as follows:

*The following types of electoral advertising shall not be allowed:*

- 1. Presented outside the time limits for the electoral campaign set by the National Electoral Council...*
- 2. That omits details that allow the promoter of the electoral propaganda to be identified and the Taxpayer ID number (R.I.F.)*
- 3. Is contracted or made by individuals or juridical persons other than those authorized by the candidates...*
- 4. Is financed with public funds other than as provided for in these regulations.*
- 5. Is financed with funds of foreign origin.*
- 6. Is financed with private funds not declared to the National Electoral Council and to the National Integrated Customs and Tax Administration (SENIAT)...*

In the case of the restriction on contributions from private domestic sources and the financial transparency of parties, it must be pointed out that there are no restrictions in Venezuela regarding amounts or types of source, other than those mentioned in articles 195 through 198 of the Anti-Drug Act, dealing with laundering money from drug trafficking<sup>62</sup>. Article 196, to be specific, authorizes the CNE to supervise the accounts of political organizations, while, under article 198, those responsible for the political parties' management and finance, as well as campaign managers, are under the obligation to prove the origin or legality of their income. In addition, article 198 provides for criminal charges in the event the origin or legality of the funds cannot be proven or it is found that these come from the unlawful activities covered in the Anti-Drug Act.

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<sup>62</sup> Strange place for a provision regarding elections.

A good financing system will not do away entirely with all possibilities of irregularities; neither will a good monitoring system necessarily cut back on the number of unlawful activities, but there is no question that a system that makes it easy to obtain illegal financing, where private financing is entirely free, will make corruption in politics more likely and more difficult to control. That is why it is necessary to advocate funding systems where government funding prevails, that increase transparency when it comes to the use of the funds needed for politics. Optimism that this could happen in the case of the 2015 parliamentary elections does not come easily.

## 8. Registration of parties and nomination of candidates

The obstacles preventing registration of the parties and nomination of candidates are serious violations of the rights to political participation (article 62), association (article 67), and suffrage (articles 63 and 64) guaranteed in the Constitution of the Bolivarian Republic of Venezuela, that is based —according to the preamble— on participative and protagonistic democracy. In this regard the *Report by the Global Commission on Elections, Democracy and Security* speaks of the need to eliminate barriers preventing universal and equal political participation, stating

*Broad inclusion is a fundamental principle underlying electoral integrity, but throughout the world barriers to voting and political participation threaten to undermine it. These barriers take a variety of forms. Legal restrictions can determine who is allowed to vote or run for office, limiting political rights to certain groups within a country. Administrative barriers can deter voting by making it harder for groups to participate in different aspects of the electoral process.<sup>63</sup>*

Some of the major obstacles are the refusal to register political parties and to allow candidates to run (disqualifications).

### 8.1. Refusal to register political parties

Among other items, the Political Parties, Public Gatherings and Rallies Act (Political Parties Act) regulates the registration or enrollment of political parties. On the issue of the names of political parties, article 7 of the law states, first of all, that “[p]olitical parties shall adopt a name that is different from that of other duly registered political parties.” In the second place, it provides that “[t]he name may not include names of people, nor of churches, nor be contrary to social and juridical equality, nor express antagonism towards foreign nations, nor be similar in any way or have any graphic or phonetic ties to the symbols of the Fatherland or religious emblems.” As can be seen this rule, limits the reasons for which the use of a name can be denied. The refusal to accept the name of a political party affects its registration. Under article 19, “[o]nce registration of the party has been accomplished or denied, the National Electoral Council shall inform those who are interested and publish it in the Official Gazette of the Bolivarian Republic of Venezuela within the time frame stipulated in the preceding article.” This same article goes on to state that “[i]n the event of a denial of registration, the National Electoral Council shall state its reasons for doing so.” On May 13, 2015, in issue No. 748 of the Electoral Gazette, the National Electoral Council published several resolutions in which it decided to “deny use of the provisional name” in the case of several “organizations having political purposes.” These organizations were: Frente de Entendimiento Nacional (FEN), Movimiento por la Democracia Directa (MDD) (which presented two alternative names: Plataforma de Cuadros and Plataforma Unitaria), Nueva Integración Unido (NINGUNO), Partido Democrático Nacional (PDN), Partido Nueva Solución Democrática (SOLUCIÓN), Marea Socialista (MS), Unión Nacional Organizada (UNO), Vente Venezuela (VENTE), and

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<sup>63</sup> See note 30, page 33.

Tolerancia Democrática (TOLERANCIA). In the summary of the Electoral Gazette, the alternative names proposed by each of these political organizations were denied together with the names listed above.

In the case of these CNE decisions, whose content is not published in the Electoral Gazette, contrary to the transparency that is supposed to govern all its actions (paragraph of article 293 of the CBRV), mention must be made of the statement made by the Inter-American Court of Human Rights in its decision in the *Yatama vs. Nicaragua* case:

*Instituting and applying requirements for exercising political rights is not, per se, an undue restriction of political rights. These rights are not absolute and may be subject to limitations. Their regulation should respect the principles of legality, necessity and proportionality in a democratic society. Observance of the principle of legality requires the State to define precisely, by law, the requirements for voters to be able to take part in the elections, and to stipulate clearly the electoral procedures prior to the elections. According to Article 23(2) of the Convention, the law may regulate the exercise of the rights and opportunities referred to in the first paragraph of this Article, only for the reasons established in this second paragraph. The restriction should be established by law, non-discriminatory, based on reasonable criteria, respond to a useful and opportune purpose that makes it necessary to satisfy an urgent public interest, and be proportionate to this purpose. When there are several options to achieve this end, the one that is less restrictive of the protected right and more proportionate to the purpose sought should be chosen.*

In fact, although freedom of political association is regulated by the Constitution (ex article 67) and in the Political Parties Act, the interpretation and application of regulatory rules must aim at favoring the right to political participation and not, as happened in the cases mentioned above, at providing interpretation that clash with the democratic system.

## 8.2. Disqualifications

The disqualifications in the case of the elections on December 6th have affected some opposition leaders. Mention can be made of three cases of disqualifications by the Office of the Comptroller General of the Republic that are public knowledge: Daniel Ceballos, twelve (12) months (nominated for district 5 in Táchira State); María Corina Machado, twelve (12) months (nominated for district 2 in Miranda State); and Enzo Scarano, twelve (12) months (nominated for district 3 in Carabobo State). As for disqualifications by the National Electoral Council, one noteworthy case is that of Carlos Vecchio (nominated as first on the list for Monagas State).

Further details regarding these two issues are available in Spanish in Appendix 9.

## 9. Gender equality for nominations

Under the Suffrage and Political Participation Act (Suffrage Act), passed in 1998, Venezuelan women were assigned a quota of 30%, as provided for in article 144 of that law. Nevertheless, in March 2000 application of this article was suspended following a decision by the National Electoral Council. Over the following years, organized groups of women petitioned the CNE to set a new gender parity standard.

More recently, and since August 2014, the Frente Nacional de Mujeres, made up of militants from all the opposition parties, backed by NGOs and well-known individuals, worked on a petition asking the CNE to issue an electoral resolution on gender parity. Among other conditions, the petition called for

mandatory parity on lists of candidates, based on a criterion of 50/50 or, at least 40/60, as well as alternate spots on the slates. In the event of failure to meet these requirements, the CNE should refuse to process the nominations. This petition was delivered to the CNE in February 2015.

There was no immediate reaction over the first three months. On June 25, 2015, the CNE approved the parity and alternating positions on lists. By that time the opposition alliance had already held its primaries, organized by the CNE itself. Since the parity and alternating rule did not exist at the time, it was not taken into account for the primaries, and the resulting nominations did not meet the requirement of this rule. The government party, however, had not yet held its primaries and, therefore, the rule caused no major consequences. This gave rise to strong objections, as well as accusations of fraud and favoritism. Finally internal agreements were reached with the CNE not to repeat the primaries, and the alternating spot rule was practically sidestepped, while parity was achieved by nominating the alternates. The opposition parties not in the MUD were the ones most affected, as the Mission was told during the interviews. On August 18, the CNE reported that it had denied a total of 283 nominations for failure to comply with the gender-parity rule (further details are available in Spanish in Appendix 10).

#### 10. Proportionality of the electoral system

Article 63 of the Constitution provides that the electoral system, to be established by law “must guarantee the principles of personalized suffrage and proportional representation [PR]”. The first of these principles has to do with how the vote is cast and means that the obligation is that the vote be cast for a person (and not for closed lists as is the case in many proportional representation systems), whereas the second is an obligation that involves the results, that requires that these reflect a proportion in the distribution of seats that is as close as possible to the distribution of the votes. It is important to remember that the proportionality of the results does not depend only on the electoral formulas used, but also —and very fundamentally,— on the size of the districts used and the number of parties and/or candidates running.

Article 186 of the CBRV, in turn, describes the composition of the National Assembly, which is to be made up of specific members according to a national population base, three members for each federal entity and three indigenous deputies. Details of the calculation as specified in the Electoral Processes Act may be found in Spanish in Appendix 11. To summarize them, however, this method means that there are 66 uninominal districts, 16 binominal districts and 5 trinominal districts, all assigned by simple majority. In the case of the 24 proportional lists (one for each federal district), 21 assign two seats and 3 assign three seats.

The underlying idea behind the design is that this is a parallel system in which the nominal seats cover the requirement of a candidate running by name. It is obvious that the 66 uninominal districts are based on the logic of a majority. In the case of the binominal or trinominal districts, the voter is entitled to as many votes as the number of seats being contested and, given that this is an open-list system, the voter may cast one vote for the candidate of one party, and the second and third votes for those of other parties. This, however, does not actually happen in practice since almost all voters cast their votes for candidates from the same party. In the 2010 elections, in every single case the winning party won all the seats, and the difference between the number of votes cast for candidates of the same party was, on average, less than 1% (see Appendix 11). This means that, in practice, these districts operate as though voting were by a closed-list system, which is the least proportional of all existing systems.

Some argue that the proportionality stems from the other part of the system, the seats assigned by voting by lists. Nevertheless, the size of these districts eliminates this wish for proportionality. In two-

seat districts, it is the second party that benefits (given that, except in unusual cases, it always wins one of the two seats), whereas in three-seat districts what usually happens is that the winner gets two seats and the loser one, except in special cases of extremely large majorities. Lastly, the deputies representing the indigenous peoples are elected in three regions, also by a majority system<sup>64</sup>.

The reasons for the adoption of a system as convoluted as this are not clear. To strictly comply with the constitutional requirement of nominal and proportional representation, a system of open, unblocked, lists could have been used, similar to the one in Ecuador; this would have met both conditions for each and every one of the seats. In Ecuador, the 1997 amendment to the constitution replaced closed, blocked lists with personalized voting on open lists (panachage). Under this system, the voter casts his vote for individuals chosen from among all the lists presented, and may vote for as many candidates as the number of seats being contested. Although the voters have voted for individuals, the votes are assigned to the lists these people are on and the seats are assigned proportionately<sup>65</sup> by a system of successive divisions (D'Hondt).

One consequence is that it is almost impossible for smaller parties to achieve representation unless they are part of electoral alliances. The representatives of small parties mentioned some additional problems, such as, for example, the fact that the very short campaigns make it very hard for their candidates to make a mark, together with the lack of public financing, which is especially hard on the smaller parties.

In addition, this system tends to mean that smaller federal entities are over represented and large ones are under represented, especially in the case of urban areas. Delta Amacuro, with 220,040 inhabitants elects two members of the AN by name and two by list. Carabobo, with 2,484,515 inhabitants chooses seven by name and three by list. This means that the average number of inhabitants per seat in Delta Amacuro is 55,010, while in Carabobo it is 248,451, close to five times that number.

The lack of proportionality of the system has a twofold impact. On the one hand, it favors the party that achieves a majority and, on the other hand, it benefits parties that are electorally strong in small entities. In the 2010 elections, both these factors worked in favor of the PSUV; in that election, the PSUV, with 48% of the votes, won 59% of the seats, in other words, 98 out of the 165 members of the NA. In the upcoming elections, according to some polls the opposition is ahead, and would gain an additional advantage from the first of the factors mentioned above. But the probabilities are that the PSUV would hold on to its advantage in small entities, with the resulting additional seats.

In the case of these elections, CNE did not change the electoral districts, but did change the number of seats up for election in some of them, based on population figures considered very questionable by electoral monitoring organizations. In comparison with the 2010 elections, they added one deputy in district 4 in Aragua, and in districts 1 in Guárico and Nueva Esparta, whereas they subtracted one seat from district 2 in Barinas, moving it to district 1 in the same state.

Another noteworthy and widely questioned case is that of the changes involving seats in Miranda State. Specifically, in district 2 of the state (comprising Baruta, Chacao and El Hatillo Municipalities, together with Leoncio Martínez Parish in Sucre Municipality) the CNE eliminated one of the deputies elected by name in 2010, who will now be elected by voters in district 6 of the same state (comprising Lander, Urdaneta, Simón Bolívar and Cristóbal Rojas municipalities). It has been said that district 2 has

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<sup>64</sup> Under article 186 of the CBRV, the three representatives of the indigenous peoples are elected following their own customs. Pursuant to article 179 of the Electoral Processes Act, they are elected in three large regional districts that cover several states, by a majority of all the population, both indigenous and non-indigenous.

<sup>65</sup> Pachano, S., *El sistema electoral de Ecuador*, at <http://www.flacso.org.ec/docs/proelec.pdf>.

traditionally been pro-opposition, whereas district 6 has always tended to be more pro-Chavista. To the extent that, as described above, the binominal and trinominal districts operate as a closed-list system, this would mean that, with no change in voting trend, the PSUV gains one seat while the opposition (Primero Justicia) loses one of the two that it had in district 2.

To summarize, in comparative terms, there is little proportionality under the Venezuelan electoral system as a whole. In a study that compares 1,112 elections held between 1945 and 2014 using the Gallagher disproportional index, Venezuela's 2010 parliamentary elections ranked 828th, with a score of 9.6 (where 0 is for perfect proportionality)<sup>66</sup>. In other words, nothing could be further from a proportional representation system.

## 11. Settlement of electoral disputes

The lack of any mechanisms for the settlement of post-election disputes was one of the reasons for the disputes between the political organizations and the National Electoral Council following the elections on April 13, 2013. In this regard, it is necessary to create a protocol, by common agreement, that will allow those taking part in elections to carry out the audits and reviews that would do away with any reasonable doubts there might be concerning the outcome of the election and allow the winner to benefit from the legitimacy of origin of free and fair elections.

An election process is, *per se*, a complex administrative procedure that ends with the electoral agency announcing the results of each election and then proclaiming the candidates who have won election to public office. Therefore, the natural course of action for settling any disputes or differences that might arise as a result of one of more actions during the election involves electoral administrative appeals and complaints filed before electoral litigation bodies—in the case of Venezuela, the Electoral Chamber of the TSJ. At the administrative level, the purpose of a review will always be to determine whether the electoral bodies acted in compliance with the law and, possibly, determine that their actions are null and void. At the judicial level, the purpose of the oversight, in addition to determining the legality as mentioned above, would also be to provide effective judicial protection to those affected by the actions. It is important to point out that all electoral actions are, without exception, subject to these mechanisms for administrative and judicial review, based on the constitutional principle of universality of oversight of government actions. Therefore, no actions taken by the Electoral Branch can be exempt from administrative and judicial oversight.

From the standpoint of this basic framework, mention can be made of two criticisms stemming from both the interviews held and consultation of bibliography and periodicals. To begin with, it has been argued that it is essential that the Electoral Chamber be made up of justices who are experts in electoral law and who are independent enough to reach objective, impartial decisions and, thus, exercise proper control over the actions of the electoral bodies and provide true judicial protection for the interested parties. Questions have been raised concerning both issues. It has been suggested, based on the summarized *résumés*<sup>67</sup> of the current members of the Electoral Chamber, that they are not experts in electoral law, something that, all in all, would be the only argument to justify the existence of this chamber or to explain why judicial oversight of electoral affairs is any different from oversight of other administrative activities. Secondly, questions have been raised concerning the impartiality and objectivity of the justices in that Chamber. Professor Antonio Canova<sup>68</sup> has reported

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<sup>66</sup> Gandrud, C., *Gallagher Electoral Disproportionality Data: 121 Countries, 1945-2014*, at [http://christophergandrud.github.io/Disproportionality\\_Data/](http://christophergandrud.github.io/Disproportionality_Data/). The lack of proportionality in some of the trinominal districts is even greater, as can be seen in Appendix 11.

<sup>67</sup> Published on the Supreme Tribunal of Justice's website, <http://www.tsj.gob.ve/es/magistrados>.

<sup>68</sup> Canova, A., et al (2014), *El TSJ al servicio de la Revolución*, Caracas: Editorial Galipán, pp. 179 y ss.

how, between 2005 and 2013, the Electoral Chamber has issued 54 decisions involving oversight of electoral bodies and only 9 of these have been in favor of the plaintiffs, annulling or censuring actions taken by the CNE. Of the 9 decisions, 8 ruled in favor of pro-government political parties. Therefore, at least from a statistical standpoint, there is nothing that would seem to point to an Electoral Chamber that has been sufficiently impartial in recent years. Although note is being taken of these criticisms, more solid arguments would be needed.

Secondly, it has been said that the rules regulating defects causing nullity of electoral actions are not consonant with the automated election system provided for in the laws now in force<sup>69</sup>. The law should specify which flaws can be attributed to the electoral process when flaws or failures are found in the automated voting system, whether they have to do with the voting machine working properly, the accreditation and performance of their duties by those who operate the machines, or that the Integrated Authentication System (SAI) works properly. At present there is a major loophole between the defects in electoral actions regulated by law and the automation of the electoral system currently being used. Furthermore, it is also necessary to have the law clearly state the consequences when electoral actions are declared null and void, an aspect that is not covered with the necessary precision in the current law. The specification of these consequences, and the procedure to be followed once an election has been declared null and void, must be based on the general principle of conservation of the electoral records and preservation of the voters' choice on the voting machines, on the understanding that any decision to annul electoral actions is the exception and that the rule must be that they are upheld, either by means of a correction or by validation. Nevertheless, in the case of the upcoming elections in December 2015, it is no longer possible to provide new provisions in this regard, which should, however, as stated, lead to an amendment of the Electoral Processes Act. Therefore, any objections will have to be dealt with based on the defects causing nullity provided for in the law now in force.

As reported in the national press on October 13, 2015 and the following days, the National Electoral Council<sup>70</sup> approved a request by Partido Socialista Unido de Venezuela that the different political organizations participating in the upcoming parliamentary elections be invited to sign an agreement to recognize the results of on December 6, 2015, setting October 15 as the date for signing. This is a document that is frequently used, and is voluntary, to confirm that the parties trust the impartiality of the electoral authorities. The parties in the government coalition, headed by President Maduro, signed it immediately, in the midst of considerable publicity. The MUD leaders, in turn, simply placed on record their position that they would consider doing so if the government side would be willing to accept a commitment involving fair access to public media, to refrain from using government resources, and to invite impartial international observers. Feeling that these conditions had not been met, they refused to sign. This episode is being mentioned, not because it is important *per se*, but because it confirms the extent of the polarization and the conflictive relationship between the main actors in the election process.

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<sup>69</sup> Urosa Maggi, D. (2014), "Resolución de conflictos electorales, revisión administrativa y judicial de actos electorales", at Alarcón, B., y Casal, J.M. (coordinadores), Proyecto Integridad Electoral Venezuela: las reformas impostergables, pp. 386 y ss.

<sup>70</sup> With regard to this agreement, mention must be made of the statements made by CNE president Lucena and by rector Rondón. The latter stated that signing the agreement was not mandatory (at [http://www.el-nacional.com/politica/Rector-Rondon-reconocimiento-resultados-obligatorio\\_0\\_719928199.html](http://www.el-nacional.com/politica/Rector-Rondon-reconocimiento-resultados-obligatorio_0_719928199.html)). Although Lucena said signing was not mandatory, she asked the organizations to do so, considering it to be "a commitment to the country," (at <http://www.noticierovenevision.net/politica/2015/octubre/15/138531=tibisay-lucena-invito-a-factores-politicos-a-firmar-acuerdo-de-respeto-a-resultados-en-parlamentarias>).

## D. RECOMMENDATIONS

Under Article 293 of the CBRV, the National Electoral Council is required to guarantee the principles of equality, reliability, impartiality, transparency and efficiency for electoral processes. Guaranteeing these principles means that conditions of integrity and fairness must exist that will allow the will of the Venezuelan people to be expressed and respected. At this point in time, the Venezuelan electoral system has weaknesses that could be remedied in the short term —in other words, before December 6th—, whereas others are structural and would require changes that would have to be made in the near future —after December 6th. Based on this, this Study Mission feels that it would be appropriate for the CNE to heed the following recommendations to guarantee the integrity and fairness of the electoral system, as well as transparency and social peace in Venezuela. If these recommendations are not implemented, there would be a risk of an exacerbation of the problems envisaged. The passivity shown by the CNE —based on apparent flaws in the electoral legislation— is not acceptable given that its institutional authority arises from the constitutional rules and provisions aimed at preventing violence, guaranteeing the fairness, integrity and transparency of the electoral process and, moreover, ensuring that the results are respected.

### 1. Recommendations involving fairness of the electoral process

The fairness of the elections on December 6th is being affected by a number of problems, but in the context of the election campaign some imbalances —already obvious even before the official launch date— can be avoided or corrected. These have to do with the use and misuse of government resources, in the form of proselytizing activities by government officials and the problems the opposition faces in gaining access to the media.

The fact is that there has been a precampaign (that is neither provided for nor regulated by election laws) that has not been monitored by the CNE. Despite the fact that article 75 of the Electoral Processes Act states that no electoral advertising produced “outside the time limits for the electoral campaign set by the National Electoral Council” will be allowed, the different political forces began their campaign activities before November 13. With regard to this subject, the President of CNE recently stated, during a television interview, that they cannot regulate the period prior to the official campaign, stating that “the precampaign is not regulated by law —and, by the way, the National Electoral Council does not make the law, we make the regulations, but not the law.”<sup>71</sup>

In the future the electoral agency should draw up precise regulations and take measures that prevent this irregularity from affecting the fairness of the electoral processes.

During the precampaign activities that clearly showed the use of government resources, specifically government officials taking part in political proselytizing activities, were observed<sup>72</sup>. Under the

<sup>71</sup> “Lucena: el proceso electoral es serio y verificable”, en <https://www.youtube.com/watch?v=6LTgj9hvQZk> (min. 12.30 al 12.48); “Tibisay Lucena: Cuando inicie la campaña regularemos las acciones de los partidos” – El Joropo (November 4, 2015), at <http://www.eljoropo.com/site/tibisay-lucena-cuando-inicie-la-campana-regularemos-las-acciones-de-los-partidos/>; “Lucena descarta que la MUD traiga observadores, porque ‘es muy caro’” – Efecto Cocuyo (November 4, 2015), at <http://www.efectococuyo.com/efecto-cocuyo/politikom/lucena-descarta-que-la-mud-traiga-observadores-porque-es-muy-caro>.

<sup>72</sup> “PSUV hace campaña en acto de entrega de pensiones” – Correo del Caroní (August 13, 2015), at <http://www.correodelcaroni.com/index.php/politica/item/35731-psuv-hace-campana-en-acto-de-entrega-de-pensiones>; “Rector de la Unefa obliga a profesores a buscar votos para el oficialismo” (October 25, 2015), at <https://www.youtube.com/watch?v=epm7ps8VMEE>; “Ministro de la Defensa encabezó recolección de firmas de respeto al 6D” – El Universal (November 10, 2015), at <http://www.eluniversal.com/nacional-y-politica/151110/ministro-de-la-defensa-encabezo-recoleccion-de-firmas-de-respeto-al-6d>; “Diosdado Cabello afirma que ‘el chavismo necesita una mayoría en la

Electoral Processes Act and the Anti-Corruption Act, the Office of the Comptroller General and the Office of the Prosecutor General are supposed work together to take timely action to sanction those who use government property to favor political parties or projects. The case is that the use of government resources is a type of activity that is hard to control, due to the frequency and distribution throughout the territory, the CNE should play a more active role in investigating some of the notorious cases of abuse, take measures, and publicize the fact that it has done so to have at least some dissuasive effect.

Specifically, the CNE must take steps to prevent certain government events, such as inaugurations of public works, the handing out of social assistance, distribution of merchandise and food, etc., from being used for election purposes and to prevent government officials from benefiting candidates from their party or coalition.

Another recommendation for the future involves strict penalties —not just fines alone — that include challenges to the election of any candidate who has made use of government funds during the campaign.

The use of government funds extends to the use of state-owned media by government officials and candidates from the government party. The state-owned media must guarantee fairness in the use of time for campaign advertising, coverage of the campaign and candidate interviews. This is already stipulated in the Electoral Processes Act and, therefore, the CNE must take measures to ensure true compliance.

This, moreover, occurs in a context where the opposition faces problems in gaining access to private media. To counteract this situation, a regulation concerning the election campaign was passed<sup>73</sup> for the purpose of providing balance for the candidates' radio and television time and for the broadcasting of advertising by telecommunication operators. This, however, is not enough to overcome the limitations reported by opposition actors in the case of making their candidates known. Therefore, the CNE must watch over free and fair access to the media —both state-owned and private— for all the parties taking part in the election.

Lastly, and in general, in the case of funding, information regarding the origin of funds as well as the amounts spent by the candidates should be published. For the future, rules regarding ceilings and monitoring of campaign spending should be put in place.

## 2. Recommendations concerning the integrity of the election process

Although there is consensus among the technicians and experts that the secrecy of the ballot is guaranteed, there is a widespread perception that this is not the case. The only possible instrument in this situation would be a vigorous public campaign countering this impression, emphasizing the guarantees that are in place. This type of campaign is usually handled by the electoral agency. Nevertheless, should it fail to do so, it is a task that should be handled by the media and by civil society organizations. Another alternative, more drastic than that of an information campaign, has been suggested to the Mission: eliminating, or making optional, the automated stages that are not essential or that can give rise to misgivings or doubts concerning their reliability when it comes to ballot secrecy, such as the Voter Information Station (SIE) and the Integrated Authentication System (SAI). In the case

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Asamblea Nacional” (November 11, 2015), at <https://www.youtube.com/watch?v=bERyKthb6kc>; “Ministro Pérez instó a votar por el oficialismo” – ODH Grupo Consultor (November 12, 2015), at <https://odh.wistia.com/medias/aa662c2pwu>.

<sup>73</sup> “Normas de Campaña Electoral para las Elecciones a la Asamblea Nacional 2015”, Resolución del Consejo Nacional Electoral N° 151105-354, dated November 5, 2015, at [http://www.cne.gob.ve/web/normativa\\_electoral/elecciones/2015/asamblea/documentos/RESOLUCION\\_151105-354.pdf](http://www.cne.gob.ve/web/normativa_electoral/elecciones/2015/asamblea/documentos/RESOLUCION_151105-354.pdf).

of the SIE, it could cease to be made mandatory, leaving it as an option for voters and mandatory only in cases of voter assistance or voters who are not identified on the respective lists. It is necessary to bear in mind that the use of fingerprint scanners at supermarkets and pharmacies that are similar to the scanners used by the SAI, could lead some groups in the population —those who are not technologically savvy— to feel that this is an automated networked system that undermines their right to ballot secrecy. Although quite probably changes such as these to the interconnection of the elements in the system would hardly be noticed by the population and might have little effect.

In addition, to guarantee the integrity of the vote, the CNE would need to launch a campaign to prevent voter confusion in the case of the choices on the ballot sheet.

Another set of fears has to do with the training of the personnel at the voting stations regarding the role they should play on December 6th to avoid abuse of voter assistance and possible attempts by witnesses, electoral center coordinators or military personnel in the Plan República to take actions that go beyond their authority. In this regard, the CNE's training efforts are important. In the case of the personnel at the voting stations, in general, so as to prevent other actors in the election from interfering in their duties. Most especially for the voting-station personnel to be aware of the protocol in place for voter assistance. In the case of the Plan República personnel, to make sure they remember that they are there to provide security for the voters, keep order, and to guard, transport and protect the electoral material, and to ensure public order, which does not include, for example, removing witnesses who object to something that is happening at a voting station. It is important that the Plan República, together with the respective police forces, play an active role in keeping public order in the vicinity of the voting centers, preventing the presence of groups whose actions could involve coercion, threats or harassment of voters while voting is underway, the votes are being counted and during the audits by the citizens. According to some of those interviewed, this type of irregularities have occurred during earlier elections, with the Plan República personnel doing nothing to prevent them.

In the case of the witnesses for the political organizations, voter groups and candidates, the criteria for their accreditation by the CNE must be clearly defined, so that they can be properly identified on election day; this identification should be an essential requirement for gaining access to the polling centers. It would also be advisable if, in the exercise of its power to issue regulations, the CNE were to issue orders that, for the upcoming parliamentary election, it is expressly forbidden for subordinate boards to deliver “blank” credentials to the training coordinators for them, in turn, to hand them over to polling-center coordinators and polling-station personnel. The training of witnesses is the responsibility of the parties themselves and it is an activity that they should take very seriously. Furthermore, electoral and security officials must also be trained to allow witnesses and national observers accredited by the CNE to have access to the polling centers, in accordance with the rules.

It would also be advisable if, in the framework of the upcoming elections in 2015, the CNE were to issue regulations governing the contingency procedures in the event that the technical operator of a voting machine isn't present when the votes are being counted, either by providing substitute operators, or by having the operator of another polling station at the same center fill in, and have in place mechanisms that would help prevent an operator from having to leave the station, for instance by having him vote at the same station that he is in charge of.

Lastly, it would be advisable to have the government lift the state of emergency imposed in municipalities in border states; this would allow the political organizations to have full freedom to carry out their activities before and on election day, and for the voters to fully exercise the civil and political rights that are protected by the Constitution.

### 3. Recommendations regarding the transparency of the election process

Transparency is a basis for avoiding conflict during electoral processes. Correlatively, distrust stems from obstacles hindering access to information as to how an electoral process is evolving. That is why it is necessary to stress the need for the CNE to guarantee transparency as a key element for social peace. On the one hand, the circumstances surrounding the elections on December 6th show obvious difficulties in gaining access to information and, therefore, it is necessary to respect the independence, plurality and diversity of the media —state-owned, community-owned and private— as a fundamental component of democratic deliberation, to achieve a quality campaign that provides the voters with access to balanced information. The Venezuelan government must also ensure that journalists can do their work without unjustified judicial procedures and free of risks, threats or pressure of any kind.

Furthermore, in the case of election day, in order to help build certainty regarding the December 6th election, the CNE should issue precise instructions to the members of the voting stations that they are to close at 6:00 p.m., the only exception being if there are voters still standing in line at that moment. Moreover, given that the automated system allows the CNE to know the results almost immediately after the voting stations close, it would be advisable if it were to make them known as they become available, not delaying the announcement for discretionary reasons.

Lastly, the Mission recommends allowing international electoral observation as that would help build greater confidence in the process and, most especially, in the results.

### E. FINAL CONSIDERATIONS

This report and its recommendations stress the rules and practices that must urgently be corrected to ensure the certainty, transparency and legitimacy of the election process, some of which can be and should be implemented before, and others after December 6th.

Over the next 20 days during which the election campaign will play out, the CNE, as the body in charge of the electoral process, must watch over full protection of the civil and political rights of all Venezuelans and guarantee conditions of electoral integrity in the broad sense of the term. There is a great deal that the CNE can and must do during this period.

We consider it equally advisable to voice a thought regarding the post-election period. These elections represent a critical moment given the rapidly deteriorating political, economic and social situation in the country. As analyzed in our report, the people still place their trust in democratic procedures and in the power of the vote to overcome differences. There is a risk, however, that if the election process lacks the proper levels of integrity and legitimacy, the Venezuelan society might be dragged into greater polarization and confrontation, where even circumstances fostering forms of violence could occur.

To avoid these dangers, we consider it important to recommend the taking of concrete steps that will allow good sense to prevail, polarization to be overcome for the reinstatement of a space for constructive dialogue. To create an environment that fosters understanding, it is necessary that, on December 7<sup>th</sup> itself, those who have lost accept the outcome and those who win act with openness, without arrogance and magnanimously. Mutual respect is a good sign for beginning a cycle of understanding.

The magnitude of the challenges is such that none of the political sectors can solve them acting on its own, much less in an environment of polarization. A polarizing attitude will place governance, the

integrity of the State, and the deepening of democracy at risk. In other words, any of the political forces' possibility of governing will be limited unless there is a basic underpinning of respect for democratic rules and an economic and social management that can deal rapidly with the serious imbalances.

Political leadership and vision will be tested following the elections. When processes for rapprochement and dialogue have been stymied for a long time, and language and attitudes have been noted for their aggressive and derogatory tone, these processes are hard to restart in the short term, but they are irreplaceable. Dialogue usually occurs in the midst of tension, questioning and even splits, but it prevails in the end when the will, the strategic vision and the love of country are there.

Venezuela can and must break through the polarization and return to dialogue, a positive dialogue, in good faith, inclusive and participative. In this regard we repeat and endorse the words of the Apostolic Nuncio Aldo Giordano, who said: "...the Catholic Church hopes that the Venezuelan people will be able to express their will freely in the upcoming parliamentary elections on December 6<sup>th</sup>, and I sincerely hope that the road to dialogue opens up for the country in search of the common good." Moreover, Pope Francis' representative also mentioned his hope that after the elections "we will all be able to sit at the same table and see how to contribute to the common good of the country."<sup>74</sup>

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<sup>74</sup> "Nuncio espera que Venezuela se abra al diálogo tras comicios" – El Universal (November 12, 2015), at <http://www.eluniversal.com/internacional/151112/nuncio-espera-que-venezuela-se-abra-al-dialogo-tras-comicios>.