



CIVILIS

INVESTIGACIÓN Y ACCIÓN DE LA SOCIEDAD CIVIL
EN DERECHOS HUMANOS
RESEARCH AND ACTION OF CIVIL SOCIETY ON
HUMAN RIGHTS

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CIVILIS is a non-profit civil association, established in 2010. It is independent, pluralistic, and autonomous, and is devoted to support for the work of groups and organizations of civil society in the field of human rights.

The objectives of the association are the creation and development of knowledge and the education and encouragement of the action of citizens organized for the promotion and protection of human rights, with the support of associative, multidisciplinary, civic, and democratic approaches, to contribute to expanding and strengthening respect for, and guarantees of, the dignity of persons in civil, political, social, economic, and cultural dimensions.

Situation of human rights and democracy in Venezuela vis-à-vis the recent legislative actions

Working Paper

Contents

Introduction

- 1. Laws that undermine the rights to free association and free speech of individuals, civil society organizations, the media, political parties, trade unions, and universities — Page 4**

Organic Law on the People's Power/Branch

Organic Law on Social Oversight

Law for the Defense of Political Sovereignty and National Self-Determination

Legislative Amendment to the Organic Telecommunications Law

Law on Social Accountability on Radio, Television, and the Electronic Media

Law on University Education (vetoed January 4, 2011)

- 2. Laws that violate the constitutional, democratic, decentralized character of the Venezuelan State — Page 9**

Organic Law on the Federal Council of Government and its Regulations

Organic Law on the *Comunas* and Law on the Communal Economic System

Amendments to the Organic Law on Public Planning, Laws on Local Councils for Public Planning

and State-level Councils for Public Policy Planning and Coordination, and Organic Law of Municipal Public Power/Branch

- 3. Laws that violate the principles of separation and independence of public powers and their plural makeup — Page 12**

Enabling Law

Amendment to the Law on Political Parties, Public Meetings, and Demonstrations

Partial Reform of the Bylaws and Debate Rules of the National Assembly

Introduction

The measures adopted by the national government in late 2010, represent a dangerous break with the rule of law. They portend profound changes for Venezuelan society and the nation's democracy. In particular, the deputies of the National Assembly in just the two weeks prior to the conclusion of the Assembly's term, passed —without the required consultation of the population—more than 20 laws that violate the Constitution and the international obligations of the Venezuelan government. These illegitimate laws and measures reveal the absence of checks and balances among the branches of government and the institutions that safeguard human rights; they demonstrate a precipitous attempt by the State to impose a system to restructure society that would close the door to our democratic way of life and exert control over the individual and society as a whole.

The measures illegally amend fundamental constitutional safeguards and international treaties that enshrine democracy and human rights to which the Republic is party; in addition, these measures come at a time of growing conflict and social distress in Venezuela, as seen in an economic depression that is severely affecting living conditions, a rash of protests largely against the lack of safeguards for economic and social rights, and a precipitous upswing in violence and impunity. These measures would be imposed at a time when public institutions have lost their independence and the institutional operations of government have been skewed in order to exclude legitimate actors, in the face of internal decay. In response to the general alarm over this decay, repeated calls for dialog and correction of the measures, and various peaceful demands for respect for the Constitution made by organizations of civil society and grassroots communities, the Government has taken repressive steps and threatened fundamental rights and liberties: in particular, restrictions on the freedom of assembly and freedom of speech, attempts to ignore the popular will, discrimination against those taking part in debate over public decisions, failure to respect social and economic rights, criminalization of the right to protest, and the denigration of the international system for the protection human rights.

Several government spokespersons have clearly announced that the new measures and laws passed by the National Assembly reflect an attempt to eliminate any obstacle or impediment raised by Venezuelan society and institutions to thwart the advancement of the Simon Bolivar National Project. The President of the Republic arbitrarily launched the country on this "Project" after his 2006 reelection, notwithstanding its rejection by the population in the referendum on constitutional reform held in December 2007, which, if affirmed, would have legitimized the project. Nevertheless, in blatant disregard of popular will, the project was adopted as the "First Socialist Plan" in 2008 in the form of a government directive under the Economic and Social Development Plan for 2007-2013. This is the framework in which these measures have been adopted in contravention of constitutional rule, in order to curtail the independent activity of public powers with their broad-based makeup, and curb freedoms of expression, the activities of civil society organizations, the media, political parties, trade unions, and universities, thereby casting aside democratic rule of law and the decentralized structure of the Venezuelan State, all of which are achievements that the Venezuelan people enshrined in the National Constitution.

These events, which began to unfold in 2008, violate the Constitution and the treaties and conventions concerning democracy and human rights to which Venezuela is party. They have dealt a severe blow to tolerance and the quality of life in Venezuela, as demonstrated by unacceptably high levels of violence, the severe decline in the public health system, shortages of decent housing, lack of steady employment, and severe problems occasioned by dysfunctional public services. In addition, the country faces uncertainty stemming from the loss of property rights in cities and the countryside, including property rights at the grassroots level. The latest measures spell a definitive break with the rule of law, and will undermine even more seriously the ability of the vast majority of citizens to live decent, honorable lives; they ignore the Constitution and the legitimate exercise of power, based on the people's sovereignty; with each day, they increasingly subject individuals to arbitrary decisions, made without consultation, by an increasingly isolated president.

1. Laws that undermine the rights to free association and free speech of individuals, civil society organizations, the media, political parties, trade unions, and universities.

Organic Law on People's Power

This new law passed by the National Assembly on December 10, 2010, regulates citizen participation, restricting it to the development and consolidation of the so-called "People's Power" (or "People's Branch of Government," art. 1). It is conceived as a set of organizations that lay the foundation for building a "Communal State" (art. 2) in patent contravention of the principles of democracy and law that form the concept of the State enshrined in the Constitution; it submits citizens to a framework that violates rights of free association and participation without discrimination, and subordinates social life. Under this law, citizens in the Communal State may fully exercise their sovereignty through direct handling of people's power in "all spheres of advancement and development in society, through sundry and various forms of organization" (art. 2, art. 7). However, in violation of citizen guarantees to free, universal, and inalienable sovereignty, the state only recognizes groups as sovereign—that is, entitled to associate and take part in social life—if they form part of a people's organizational representation, "councils of male and female workers, farm workers, fishermen and fisherwomen, and any other social organization at the grassroots, as expressed to an agency of People's Power duly recognized under the Law and registered with the Ministry of corresponding jurisdiction in the area of citizen participation".¹ These groups are the "Communal Councils, Communal Neighborhoods, Communal Cities, Communal Federations, Communal Confederations, and those which under the Constitution, the corresponding law, and its regulations arise from the people's initiative" (art. 8, no. 9, art. 15).

Contrary to an autonomous and democratic sovereignty, the Communal State solely recognizes the act of association and participation for what are deemed to be socialist purposes —wherein collective interests prevail over individual ones and popular consensus over democratic debate (art. 11, no. 3) —and their influence is basically limited to social management in community and neighborhood spheres or to their "every-day reference points or social spheres for development (art. 10), performing their functions (art. 14), authorized governance, and public administration competencies, which must necessarily be delegated to them by the political-geographic jurisdictions" (i.e., states and municipalities: art. 26) in violation of these entities' constitutional powers and functions. The Law declares the Communal State —where the Public Power and the People's Power share public responsibilities— to be a "federative cooperative system," thereby suppressing the decentralized nature of the political territorial organization of the Republic set forth in the Constitution. In executing their public roles, the organizations and groups of people's power must follow "the principle of legality in the composition, execution, and control of public administration" (art. 6) and in making decisions that "facilitate policies of the State at every level in order to act in a coordinated manner in the execution of the National Economic and Social Development Plan and the other plans established in each of the political-geographical levels and administrative policy agencies and offices established by the law" (art. 7, no. 5), as well as in their social oversight of "the administration of People's Power, the groups of People's Power, and the private activities that affect the collective interest"(art. 8, no. 6).

Under this law, the Communal State affects the national economic system, territorial zoning and management, the administration of justice, and the forms of public policy planning established under the Constitution, which are deemed as spheres of action for People's Power:

1. The economic model for social property is the organizational structure of the Communal State composed of "*comunas*," each serving as a "fundamental cell" or unit (art. 8, no. 8). Within the *comuna*, a "system of communal economy" is organized whose social relations for the production, distribution, exchange, and consumption of goods and services are realized by the socio-productive organizations (art. 8, no. 13) and economic financial entities under types of social communal property, geared toward the satisfaction of social needs, the exchange of knowledge and skills, and social reinvestment of profits (art. 11, no. 2), as per the National Economic and Social Development Plan and legislation for these areas (art. 17).
2. Land zoning and management is the area in which the organizations and groups of People's Power take part in activities concerning the process of land zoning and management (art. 19).
3. Communal justice concerns alternative means of justice in which the organizations and groups of People's Power perform roles of arbitration, reconciliation, mediation and other forms of conflict resolution in response to situations that arise directly from the exercise of the right of participation and social cohabitation, without breaching the legal agencies of the regular justice

¹ Article 8, no. 5; article 9. Article 31 states: "The agencies and organizations of People's Power, recognized under this present law, gain the status of legal entity [juridical person] by registration with the Ministry of People's Power [Ministerio del Poder Popular]" competent in the area of citizen participation, following the procedures established in the Regulations of this present law." Moreover, its second provision ["Disposición"] sets forth: "Until such time as the Regulations of this present law are issued, the Ministry of People's Power competent in the area of citizen participation, subject to its provisions, is charged with establishing the guidelines concerning the operations of the agencies and organizations of People's Power that existed prior to the enactment of the law."

system. The corresponding law will establish its organization, functions, procedures, and rules, as well as its special jurisdiction (art. 20, art. 21).

4. **Public Policy Planning** is a sphere shared between government institutions and the groups of People's Power in order to achieve the strategic guidelines of the National Economic and Social Development Plan (art. 16). In this sphere, the National Executive Branch will plan, convey, and coordinate joint actions with the organizations and groups of People's Power to maintain the integrity of strategies and policies at the national regional, local, communal, and communitarian levels (art. 24). The organs and entities of Public Power will give preference to these organizations and groups, attending to their requested needs (art. 28) and will adopt measures so that social property organizations, in particular, may enjoy priority and preference in public contracts for the acquisition of goods, provision of services, and execution of works (art. 29).

Organic Law on Social Oversight

This is a new law, enacted by the National Assembly on December 10, 2010, and recorded among the set of laws arising from the Organic Law on People's Power. The objective is to develop social oversight as a "means of citizen participation and shared responsibility". This sphere is shared with the branches of Public Power and People's Power, major components of the Communal State, sharing responsibilities for the performance of public functions (art. 1, art. 2). Social oversight is defined as the prevention and correction, monitoring, supervision, and control of "behaviors, attitudes, and actions that run counter to social interests and morale in the performance of public and communitarian action, and of the private sector activities that impinge on collective or social interest," particularly those related to the "production, distribution, exchange, marketing, and provision of goods and services necessary for the population..." (art. 3). Thus, the law attempts an extensive state control over social and economic life, imposed on citizens who "represent or express collective interests," understood as a "culture of social control" imparted through educational programs and policies based on "the socialist morale," especially for women, children and adolescents,² as a "mechanism to guard, oversee, monitor, and control public, community, and private matters that effect the common welfare" (art. 5, no. 1), by means of the "work of the groups, organizations, and expressions of People's Power in coordination with the organizations and entities of Public Power" (art. 5, no. 2).

This may be activated individually or collectively through a complaint, criminal complaint, or official government notification made directly to the competent local, regional or national authority, thereby initiating an investigation to determine the infraction, irregularity, or failure to take action. Once the complaint has been ascertained and certified, and oversight action documented, follow-up action will proceed before the corresponding authorities for administrative, criminal, judicial, or fiscal control (art. 13). Those who organize themselves to perform control functions shall meet the registration requirements before the corresponding ministry for citizen participation (art. 9, no. 2), submit to the regulatory standards,³ report and render accounts with their collectives, present reports to the competent public agencies, maintain the confidentiality of the information and documents obtained in the performance of social control (art. 8) and refrain from accepting any economic benefit in connection with their roles (art. 11). These conditions would prohibit the public denunciation of improper actions by public agencies and establish a financial barrier to oversight by autonomous organizations that endeavor to act as observers and monitors of government functions.

Law for the Defense of Political Sovereignty and National Self-Determination

This new law, enacted by the National Assembly on December 21, 2010, is a measure that violates the political rights of citizens whether they be exercised by individuals or through organizations; it allows the national government to arbitrarily classify as "destabilizing or insurrectional against the State" the mere fact that international financing has been received or the invitation to the country of foreign citizens who may express opinions critical of the conduct of government institutions. The reform would treat any citizen political activity in the same manner as the activity of political parties, which are prohibited from accepting donations or subsidies from foreign companies, States, or political organizations, under the Law on Political Parties, Public Meetings, and Demonstrations (art. 24, no. 4).

Following the thrust of the new organic laws for People's Power and Social Oversight, which violate the free exercise of the freedoms of assembly and autonomous and democratic participation, this reform deems as "political organizations" —capable of attacking national sovereignty and independence, the action of national institutions and legally constituted authorities (art. 2)— all those whose purposes are: "to promote citizen participation in the public arena, citizen oversight over public powers, the

² Art. 5, no 5. art. 18 states that "the Ministries of People's Power with jurisdiction for education and higher education will design and include in the curricula for all levels and modalities of the Venezuelan educational system training based on the doctrine of the Liberator Simon Bolivar and socialist values and principles with regard to social control."

³ Under art. 14, "Male and female citizens who exercise Social Oversight and who commit deeds, acts, or omissions in contravention of this same law will be liable at the administrative, civil, and criminal levels, in accordance with applicable laws in these areas."

participation of candidates to public positions through democratic elections, and the disclosure, information, and defense of the full exercise of the political rights of the citizenry” (art. 3).

Under these presumptions and with no attempt to specify either the procedure to be followed or the public agencies tasked with enforcement of the law, a person or organization that holds these objectives is forbidden from receiving international funding and their assets and revenues must consist exclusively of national assets and resources (art. 4, art. 5); likewise prohibited is funding the presence of foreign citizens, who in the government’s judgment threaten national sovereignty, independence, and institutions (art. 8, art. 9). The penalties provided for under the law are: a fine equivalent to double the amount of the resources received in the case of international funding (art. 6, art. 7), and disqualification from taking part in elections for a period of five to eight years; a fine from 5,000 to 10,000 tax units for those who provide the economic assistance or financial support, or who host foreign citizens deemed undesirable by the government, including their expulsion from the territory (art. 8), and political disqualification of the president of the host organization, for a five-to-eight-year period (art. 9).

Legislative Amendment to the Organic Telecommunications Law

This law was enacted by the Constituent Assembly in the year 2000 for purposes of telecommunications regulation. The current amendment, enacted by the National Assembly, December 20, 2010, broadens the State’s restrictive and punitive powers over the sector, including radio and television services and networks and all communications over the broadcast spectrum in the country (art. 5, 16, 147, 150, 151, 159, 174, 182, 190, 214, 215). Moreover, under this law the National Executive is directly empowered to regulate and punitively sanction infractions or crimes of operators through the telecommunications regulatory agency, functions that heretofore were exclusively assigned to the National Commission for Telecommunications (CONATEL), an agency invested by the State with technical, financial, organizational, and administrative autonomy, although it figures under the Executive Branch budget (art. 35). Art. 5 of the law deems as being of “public interest and service” the telecommunications and provision of services for “radio, television, and national audiovisual and sound production,” activities that will require an administrative operating license, concession, or permit issued by the regulatory agency or CONATEL, the validity of which has been decreased from 25 to 15 years (art. 21). It holds that “The regulatory agency can, when it deems it to be in the national interest, or when public order or security so require it, to revoke or suspend the administrative qualifications or concessions” (art. 22). This authorization provides for fees on stock or shares and a 20% increase in the minimum capital of operator companies (art. 204).

Additional causes for revocations of authorizations are the ceding, removing, leasing, or utilization by third parties of the operating license, concession, or permit (art. 170); defined as the “clandestine use” (art. 174, art. 205) of the broadcast waves is the failure to hold the corresponding concession or operating and usage permit or its revocation or suspension by the competent government agency. This violation or crime may lead to the confiscation of equipment and the subsequent disqualification (art. 190) of shareholders, partners, participants, or board directors. Once the amendment comes into effect, all authorizations issued will be declared to be in process of transformation during the interim and under the conditions that become established. “Non-ratification of the transformation application [...] will be deemed a rejection of the corresponding license, contract, or permit” (art. 214, art. 215).

Even though under the law the State is obliged to guarantee free competition, CONATEL can assign to the State-owned basic telephone operator universal services, including telephone hook-ups, public telephones, and internet service “heeding the nature of the community’s geographic area, social and economic conditions, and the characteristics of the services to be provided,” and it “can reserve bandwidth for itself” (art. 208). Among the telecommunications resources regulated by CONATEL, authority for “the assignment and registration of domains under the ‘.ve’ [suffix or] first level structure in the worldwide web Internet,” was incorporated, and the ability to “dictate any other regulations for assignment and registration of domain names” and establish “the conditions and mechanisms for the modification or suppression of domain names,” in accordance with the national plan of enumeration that is issued (art. 110, 111, 7 148). Provision of satellite capacity to third parties, which includes band width, transmission speed, or both, without necessarily including telecommunications services, must also be authorized by a permit or operating license issued by CONATEL (art. 121), as well as the use of radio stations for radio listening activities undertaken by individuals or organizations (art. 137).

Law on Social Accountability on Radio, Television, and the Electronic Media

This law, enacted in 2004 and amended by the National Assembly, December 20, 2010, is geared toward extending Executive Branch social accountability regulations to the national media, principally radio and television. Articles 28 and 29 prohibit dissemination of messages that incite or promote hatred, intolerance, or crime or which constitute war propaganda, or which promote fear among

the population or disturb public order, as provided in the original legislation; furthermore, also prohibited are messages that “fail to recognize the legitimately constituted authorities” or that “incite or promote noncompliance with the legal structure in effect.” Any operator that runs these messages must restrict them whenever requested by CONATEL and will be responsible for their broadcasting when they have created them, modified their data, selected audiences for them, or failed to limit the access of the population to their information and content. Should they not do so, those responsible will be fined as much as 10% of their gross earnings; electronic media will face fines between 50 and 200 Tax Units or as much as 4% of their earnings. Under article 33, CONATEL may apply preventive measures and therewith order the suspension of the messages. Noncompliance or failure to observe these measures will lead to revocation of the operating license or concession.

Law on University Education (vetoed by the President of the Republic and returned to the National Assembly for further consideration)

The amendment of this law, enacted December 20, 2010, by the National Assembly, would place all institutions of higher learning in the country under a regime of control based on an acutely restrictive concept of the State as Instructor (art. 1), in light of the current antidemocratic thrust in the situation of institutions. Although the principle of autonomy is preserved (art. 4, 11, 13, 17), the law stresses the public character of all universities, which are “at the service of achieving supreme social contentedness of the people” (art. 12) “...corresponding to the national development plans” (art. 16, art. 17) and “...the strengthening, consolidation, and defense of the sovereignty and independence of the Fatherland...” (art. 17, no. 1). Art. 3 defines university education as an “irrevocably public good [...] in the framework of the construction of a socialist society” (no. 3 & 6, and art. 8, no. 6). Under this concept, universities are considered “administrator” institutions [“gestoras”], which lose any authority to make decisions freely on their own about their organization, structure, and operations. Specifically, public universities become branches of the national public administration (art. 13). The others are classified as institutions of the people’s (or popular) management, self-managed or co-managed with the State (art. 14), and privately administered institutions are to become foundations whose purpose is to develop university education in various areas of knowledge.⁴

In furtherance of the purposes of the State, even though the reform preserves the principles of “freedom of expression and free exchange of ideas [...] respect for diversity [...] and the exercise of academic freedom” (art. 17 & 46), universities must orient their educational processes toward “endogenous development for the construction of a socialist Fatherland (art. 46, no. 2)..., the leading role of students and workers in order to contribute to strengthening sovereignty in socio-productive areas (ibid., no. 5), ...the epistemological conception of totality and dialectics (no. 8), ...the insertion of students from the start in work, contributing to the construction of the socialist model of production” (no. 14). Along these lines, the universities must facilitate the cooperation, coordination, complementarity, and consultation with their political, community-related, cultural, territorial, and productive environs (art. 10); and engage in ongoing interaction with the communities, understood as “the dialectical relationship between social classes and sectors, the agencies of the State, productive enterprises, social movements, and the organizations of people’s power” (art. 47); in addition, the “territorial structuring” of the institutions, understood as the transformation of the vicinity of influence of the universities into a “space for knowledge for its collective appropriation and the productive socialist model... geared toward plans and projects demanded by the community organizations within the framework of national development” (art. 4, no. 11).

The Ministry of University Education is the supervisory agency for the national universities (art. 10, art. 46, no. 2) with broad powers to intervene in (art. 11):

1. The objectives, transformation, and territorial structure of university education.
2. The creation, authorization, and control of the institutions in their existence and operations (art. 30) and in the forms of administration and academic and administrative structures; educational programs; campuses; nuclei, off-campus extensions, and facilities; student enrollment and fee collections arrangements; payroll, career, and training of academic and administrative staff, and maintenance and all other workers; capital resources and revenues; intellectual property of products, inventions, and patents; shared use of spaces, laboratories, workshops, and resources, information and student services with the missions; etc.
3. The criteria for university budget allocations, based on territorial development, educational inclusion, and instructional programs and interaction with the communities.
4. Admissions of all secondary school graduates into the universities.
5. Participation of organizations representing people’s power in university administration.

⁴ Under article 15, provision 6, all private universities must become foundations, in accordance with the Venezuelan Civil Code, within three months. Failure to do so can lead to revocation of their authorization.

6. Productive insertion of graduates in accordance with the national Economic and Social Development Plan and other public agencies and organizations of the People's Branch (or People's Power), preventing the siphoning off of university professionals to other countries.
7. Security, protection, and confidentiality of data deemed strategic.
8. Development of science and technology and of alternative networks of communication to offset cultural penetration and knowledge as a mechanism of domination.
9. Orientation, regulation, supervision, and monitoring of bilateral, multilateral, and funding agreements with national and international agencies for educational projects.

Likewise, the National Executive and the Ministry of University Education are responsible for:

1. Approval of the Plan for Institutional Development (art. 32), educational programs (art. 56), and supervision of the overall internal regulations of every university (art. 31).
2. Issuance of the regulations so students and workers can organize and forge ties of solidarity (art. 65).
3. Setting instructional guidelines for academic workers in accord with the National Plan of Economic and Social Development (art. 75).
4. Issuance of the electoral regulations for electoral processes, votes, terms of service, polling stations, electoral agencies, central electoral commissions, and subordinate agencies, announcements and swearing-in of winning candidates, elected positions, elections of representatives according to sectors, eligibility of the highest authorities and trustees or board members, referendums for consultations and vacating policies.
5. Issuance by government agencies⁵ of regulations to establish powers, organization, responsibilities, number and proportion of spokespersons for the university community, mechanisms and eligibility requirements, or procedures to designate its members. These agencies are:⁶ the university's legislative assembly (art. 84), the Executive Agency, the Disciplinary Council (art. 89), the Appeals Council (art. 90), the Auditing Council (art. 87), the Electoral Agency, and the university ombudsman (art. 85, 86, 88).
6. Issuance of the regulations to set conditions requirements, and procedures for people's power organizations to take part in university education (art. 78, art. 79).
7. A reserve of graduates with strategic areas of knowledge for the security and defense of the nation (art. 42) and national education programs in the strategic areas as defined by the National Plan of Economic and Social Development (art. 56).
8. Creation of University Transformation Councils.

In order to facilitate the policies of the Ministry and the National Executive, universities must facilitate the mobility of students and workers between programs and institutions (art. 52, no. 7); accommodate students' social community service to the "needs proposed by the organizations, social groups or *comunas*, State organs or agencies," in areas of knowledge that contribute to the strategic lines of the National Plan of Economic and Social Development (art. 59); contribute to the "construction of the productive socialist model through student and worker participation in the communities, in activities for asset production, technology transfer, and provision of services (art. 60); as well as create mechanisms for participation in equality of conditions by students, academic and administrative workers and maintenance workers and others in the administration, instruction, interaction with communities, budgets, accounting for university expenditures and resources; academic and administrative structures, and educational practices" (art. 17, no. 3).

To commence the transformation of the university institutions, as per the provisions of the law, new agencies are to be created:

- The National Council for University Transformation which seeks the participation of university communities and people's power organizations to promote objectives of the State and to coordinate implementation of policies set by the Ministry.⁷
- University Transformation Councils in each institution to fulfill the purposes of the University Education Subsystem and coordinate the task of the universities with the Ministry, public agencies, and people's power organizations.⁸
- Territorial Councils for University Transformation, to coordinate with educational missions, neighborhood offices, and the policies issued from the Federal Council of Government in the axes of territorial development defined in the National Economic and Social Development Plan (art. 23 and 24).

⁵ In the Third Provision, in six months the passage and promulgation of the Regulations for university governance agencies, rules and regulations that are not inconsistent with the Law will remain in force..

⁶ In the Seventh Provision, the National Executive will pronounce the provisions to transform the Office of Planning for the University Sector and of the Permanent Secretariat of the National Council of Universities to facilitate specific projects of the Ministry of University Education to give form to its policies.

⁷ Articles 21, 22. In the Tenth Provision, the National Council of University Transformation will set the conditions to democratically elect authorities in those universities where they are not elected.

⁸ Articles 19, 20. Under the second Provision, in 30 days there will be elected in each university an Assembly for University Transformation, with the same proportional representation of students, academic and administrative workers, maintenance and other workers. Within six months, it will draft a preliminary general university regulation.

- Territorial Councils for University Education, as coordinators between university education and the Development Promoter Districts and Communal Axes (art. 25 and 26).
- Territorial Studies Centers (art. 27 and 28) whose purposes is to develop the concept of territoriality in greater depth, and “its relationship to the construction of a new society and form of State with communal laws, Federal Council of Government; ethical, moral, and political education; and solidarity-based forms of economic and social organization;” promote ethical-political reflection on the contradictions between “a society under transformation and a capitalist society and consumer lifestyles;” investigate the socio-cultural composition of the communities “in order to transform attitudes, habits, and behaviors that pose barriers to the processes of change;” and create data bases on the territory to orient the academic centers, programs, lines of research, and academic-community projects.

2. Laws that violate the constitutional, democratic, decentralized character of the Venezuelan State.

Organic Law on the Federal Council of Government and its Regulations

This legislation, enacted February 10, 2010, creates the Federal Council of Government —made up of the Vice President, Ministers, Governors and a representation of the Mayors and the People’s Power (art. 11). Its functions are incompatible with those assigned under the Constitution. It would be the highest authority of the national planning system and would be tasked to continue with decentralization. This legislation and its regulations makes the Federal Council the executor agency for policies issued by the President of the Republic (Regulations, art. 3) who can, should he choose to, transfer authorities which are held exclusively by the agencies of local and state government to the “grassroots organizations of People’s Power,” who are deemed as “handlers of the original sovereignty of the State” (art. 1) and the only ones recognized as organized society (art. 4, and Regulations art. 3), just as with the Organic Law on People’s Power. Thus, the legislation with its regulations allow the President to decree new territorial arrangements, called “District Development Promoters,” administered by national authorities of the President’s choosing, which will operate as indicated by the *comunas* (or communities) system (art. 6, and Regulations, art. 3). These “Development Promoters” will receive transferred authority (art. 7) and a share of resources from the Inter-territorial Compensation Fund (art. 5). The target of this legislation and its regulation transcends the creation of a public agency that violates its constitutional functions. The definitions of this legislation establish a new form of State that violates the federative nature of the Republic and the decentralized nature of public power, and at this time has faced six judicial motions for revocation, all dismissed, before the Supreme Court of Justice.

Organic Law on the *Comunas* and Law on the Communal Economic System

These laws were enacted by the National Assembly on December 10 and 13, 2010, and originate in the Law on the Federal Council of Government and the Organic Law on People’s Power, which created *comunas* as basic economic units of the social property regime, which will be directed in the Communal State. Moreover, the points of authority are found in the amendment of 26 November 2009 to the Communal Councils Law of 2006, whereby these Councils were transformed from community spokes groups into organizations intended to “exercise communitarian government and direct administration of public policies and projects geared toward responding to the communities, in... the new model of socialist society...” (art. 2), having among its purposes promotion of a “communal economy... under forms of social property... as per the provisions of the Centralized Planning System and the National Economic and Social Development Plan (...as well as) new relationships of production, trade, distribution, exchange, and consumption... that contribute to strengthening People’s Power” (art. 4, no. 11 & 21). Under their new status, the Communal Councils will answer to the Ministry of People’s Power for citizen participation (art. 10), which will determine their legal status, stand by them in “fulfilling the ends and purposes,” facilitate their coordination with Public Power, and issue policies, plans, programs, and projects for community participation in public affairs (art. 56 & art. 18, no. 1).

The Organic Law on *Comunas* defines these as “local entities” where citizens will be able to develop forms of self-government in order to engage in public administration for the purpose of constructing the Communal State (art. 1, 5, 6, 7, no. 1 & 2). The *comunas* will handle, administrate, transfer, finance, facilitate, collect, and control financial and non-financial resources to construct a productive system of social property; rules are established to guarantee “public order, the compatibility and precedence of collective interest over private interest...” (art. 4), public responsibilities and services will be delineated, executed, administered and managed. The Plan for Communal Development will be delineated and adjusted according to the National Economic and Social Development Plan, the Regional Development Plan, and those plans issued by the Federal Council of Government (art. 30, no. 2). Oversight will be conducted to ensure that collective obligations of socio-productive organizations are fulfilled and that profits from activities get reinvested (art. 48, no. 3); and the *comunas* will provide alternative means of justice for the peace and harmony of the community (art. 6).

The initiative to form *comunas* will come from the Communal Councils and organizations from organized communities (art. 10); they will be established by referendum approved by a simple majority of at least 15% of the voters (art. 8, 12, & 14). The *comunas* can join cities, federations, and communal confederations (art. 59). The self-government of the *comunas* is the Communal Parliament, (art. 22) made up of spokespersons who are elected by the Communal Councils, socio-productive organizations, and the Bank of the *Comuna* (art. 24).

Its dependencies are: Executive Council (art. 28-31), Administration Committees (art. 32), Communal Planning Council (art. 33-37), Communal Economy Council (art. 38-40), Bank of the *Comuna* (art. 41-45), and the Communal Control Board (art. 46-49), and it may also be called together by the Promoter District Single Authority or the Strategic Development Axis to which it belongs (Art. 26). In the same manner as the Communal Councils Law, the Ministry of People's Power from citizen participation will issue to the *comuna* its status as a legal entity, set its guidelines and rules or its development and consolidation, stand by its "achievement of aims and purposes," and facilitate its coordination with Public Power (art. 62)

The Law on the Communal Economic System, which supersedes the Law for the Promotion and Development of the Popular Economy of 2008, regulates the economic relationships and activities of the socio productive organizations (social property enterprises, family productive units, and solidarity exchange groups) that are officially created in the *comunas*⁹ under the social property regime; these can be propelled by People's Power, Public Power or through agreement of the two in order to meet collective needs (art. 1). Social Property is defined as "the right of society to own the means and factors of production or entities essential to the development of a full life or the production of works, goods, or services that by their nature and condition are part of the State's domain..." (art. 6, no. 15). Social property even includes the knowledge and skills generated by the socio productive organizations, whose intellectual authorship will be recognized (not, however, the application, which is for the general welfare [art. 37]). Regarding socialist production relationships, the law holds that prior identification of collective needs will be performed to determine the types of goods or services to be provided, as per the National Economic and Social Development Plan and the directives from the National Executive through the Ministry of People's Power for Communal Economy (art. 40, no. 3).

The system is geared toward eliminating the division of labor found in capitalism, through collective forms of labor, fair pay for work performed (art. 32, no. 1), and social reinvestment of profits (art. 6, no. 12). Accordingly, the participants in social property enterprises cannot enjoy a claim to or share of its capital (art. 40, no. 12). This profit will be transferred to People's Power and to the Executive, according to proportions decreed by the President of the Republic (art. 66). The system will have "socio-productive projects" and "socio-productive networks" (art. 6, no. 17, 18), and an "alternative system of solidarity exchange" (art. 51 & 52), consisting of "community barter-trade networks;" that is, a physical space for exchange of goods, services, knowledge, and skills, where communal currency is used (art. 6, no. 11, art. 53-56) and in attendance will be "prosumers" as everyone will be dubbed who belongs to groups that must engage in these exchanges (art. 41-44, 49, 50); a "Fair Trade and Socialist Provision Network," made up of units determined by the State (art. 70-73); and access to international exchange with countries of Latin America and the Caribbean, particularly those in the Bolivarian Alliance for the Americas (ALBA). This system is intended to encourage socialist values and principles; educate and accredit in political, technical, and productive aspects the members of the socio-productive organizations (art. 4, no. 8-10), who must be faithful to revolutionary ethics and discipline (art. 31, no. 3, art. 33, no. 13). The Ministry of People's Power for communal economy will coordinate and finance the socio-productive projects (art. 7 & 8, no. 2) and oversee to ensure that they follow the National Economic and Social Development Plan (art. 6, no. 3); it will declare the policies and guidelines for communal economy (art. 8, no. 1), grant the status as legal entity (juridical person), and establish the rules for the reclaiming and reorganization of the socio-productive organizations, design the programs for socialist training and certification of its members (art. 8, no. 8, art. 31, no. 10, art. 32, no. 3) following the principles of revolutionary democracy (art. 24, no. 12), establish the minimum contributions of profits from the organizations (art. 67) and monitor, evaluate, and control its activities (art. 8, no. 9). Public Power must, at its various political-territorial levels, favor and give priority and preference to socio-productive organizations in contracting works, and purchases of goods and services (art. 22). Individual persons or legal entities who act against, impede, obstruct, or restrict the normal and proper development of the Communal Economic System or who engage in subliminal, false, or deceptive advertising (concerning goods, services, or knowledge, or their means of production, exchange, distribution, marketing, or supply) will be sanctioned with imprisonment for a period from two to eight years (art. 76-78).

⁹ Articles 12-15 indicate that social property enterprises and family productive units (family groups up to the fourth degree of blood relations and second degree by marriage) should possess a statutory constitutive document and a socio-productive project; groups of solidarity exchange should have a Record of "Prosumer" Assembly.

Amendments to the Organic Law on Public Planning, Laws on Local Councils for Public Planning and State-level Councils for Public Policy Planning and Coordination, and Organic Law of Municipal Public Power

The new regime of State, under the Law of the Federal Council of Government, has centralized planning and reflects a national planning system. In accordance, the National Assembly on December 10, 2010, enacted the Organic Law of Public and People's Planning, superseding the Public Planning Law of 2001. This reform establishes the principles and rules for planning for Public Power and People's Power (art. 1) —branches of the new Communal State (art. 4, no. 9)— defined as a “process for planning and project formulation... in the framework of a national organic system that allows for the coordination, cooperation, monitoring, and evaluation of the planned actions...” in accordance with and for the aims of the National Economic and Social Development Plan (art. 5 & art. 8), directed by the President of the Republic (art. 28), in particular the construction of a “new socialist society” (art. 3). This plan is formulated by the National Executive as are the regional development plans in accordance with the guidelines of the Central Planning Commission (art. 26 & 31), which must also be followed by all plans at individual state, municipal, communal, strategic, sector, and institutional levels (art. 32, 36, 40, 44, & 48). Execution will be the responsibility of the agencies of the National Planning System; these are the Federal Council of Government, the (individual) State Councils of Public Policy Planning and Coordination (CEPLACOP), the Local Councils for Public Planning (CLPP), and the agencies of People's Power through the Communal Planning Councils and the Communal Councils (art. 10).

On December 27, 2010, the National Assembly enacted reforms that adapted the Law on Local Councils for Public Planning (CLPP) and the Law on State Councils for Public Policy Coordination and Planning (CEPLACOP) to the centralized regime of the Communal State and to the *comuna* economic system,¹⁰ even though both types of councils, state and local, are constitutional agencies that also are part of the decentralized planning system in the political territorial contexts of municipalities and states, with participation from authorities and members of organized society. Under these reforms, participation from organized society in municipal and state policy planning and investment is tailored to the levels of People's Power in response to the socialist goals dictated by the State.¹¹ These are the organizations that elect the CLPPs and CEPLACOPs through a procedure in which: “each social movement or organization, duly coordinated with a communal council registered with the Ministry of People's Power that has jurisdiction in the area of participation, will elect the corresponding assembly of male and female citizens... a spokesman or spokeswoman before the municipal assembly...” and in that assembly “each social movement or organization will elect one of its members to serve as councilman or councilwoman to the Local Council for Public Planning” (Art. 7, Law on Local Councils for Public Planning). Likewise, the levels of People's Power will be formed from the dependencies of the Councils,¹² which in turn will issue the municipal and state plans, subordinate to the National Planning System.¹³

In the same direction, the National Assembly on December 16, 2010, enacted an amendment to the Organic Law on Municipal Public Power. The amendment modifies the composition and functions of the Parochial Boards, administrative dependencies of the parishes and the advisory and evaluation boards of municipal governments, as per the Constitution and the provisions of the law prior to amendment. The text changes the name to “Communal Parochial Board,” it changes the procedure from universal election of its members to election by spokespersons of the Communal Councils, tending to receive the backing from the Citizens' Assembly to propose candidates; the responsibilities of coordinating People's Power are assigned to Municipal People's Power, and among other responsibilities, the Communal Parochial Board must also “assist with the policies of the State... in order to act in a coordinated manner in the execution of the National Economic and Social Development Plan” and promote the principles of co-accountability, active citizen leadership and participation in municipal public administration and citizen security, civil defense, and integrated defense of the Republic (art. 35-37). In addition, the amendment eliminates the Parochial and Communal Councils, replacing them with Communal Planning Councils, agencies created under the Law on *Comunas* as entities tasked with “integrated planning which takes in the geographic confines, territory, and the population of *comuna*, and the design of the Communal Development Plan, consistent with... the other plans regarding collective interests, coordinated under the National Planning System,” and establishes the duty of the municipal bodies to respond to the requirements of these councils (art. 113). Finally, this reform transfers authority from states and municipalities to the People's Power agencies, as per the Law on the Federal Council of Government and the Law on the Transfer of Authority and Services from States and Municipalities to People's Power (art. 218).

¹⁰ Article 5, Law on Local Planning Councils and Article 5 of Law of State Councils for Public Policy Planning and Coordination.

¹¹ Article 1, Law on Local Planning Councils and Article 1 of Law of State Councils for Public Policy Planning and Coordination.

¹² Article 6, Law on Local Planning Councils and Article 8 of Law of State Councils for Public Policy Planning and Coordination.

¹³ Article 2, Law on Local Planning Councils and Article 2 and 10, no. 1, Law of State Councils for Public Policy Planning and Coordination.

Also in the framework of the Law on the Federal Council of Government and the Organic Law on People's Power, on December 19, 2011, the Assembly passed the new Organic Law on the System for Transfer of Jurisdictions and Powers from States and Municipalities to People's Power Organizations. This new legal text spells out the procedure by which the states and municipalities must deliver the management and administration of goods, resources, and services that are their exclusive responsibility to "the organized communities and any other manifestation of People's Power" (art. 1), as provided for in the Centralized Planning System and in the National Economic and Social Development Plan (art. 5, no. 1). As set forth in the Organic Law on People's Power, the authorities designated several organizational forms of People's Power (including Communal Councils, communities, *comunas*, and others) to the authorities and to receive service transfers in areas of health, education, housing, sports, culture, social programs, urban maintenance and conservation, neighborhood prevention and protection, works construction and provision of public services (art. 2, art.7), for which they form socio productive community enterprises (art. 16) and their activities must respond to the structure of a Communal State and the economic systems of the *comunas* (art. 5, no. 2, 4, 5).

3. Laws that violate the principles of separation and independence of public powers and their plural makeup

Enabling Legislation

This is the fourth law in 11 years that empowers the President to legislate by decree in matters that affect the life of the country. Its passage for an 18-month period (until June 2012) just a few days before the end of the National Assembly's mandate (on January 4, 2011) was an arbitrary act by deputies who abused their powers as members of the Legislative Branch and turned a blind eye to the legitimacy to exercise these same powers that properly belongs to the new National Assembly elected by popular vote on September 26, 2010. This law grants unwarranted powers to the National Executive.

The law regulates public and private entities in the area of emergencies from the heavy rains and flooding that resulted in burgeoning needs for housing construction and other attention for the affected families (art. 1, no. 1-3). This was the reason the President used to justify his request for the legislation. However, with this legal enablement, the President at his own initiative can abridge the foundations and guarantees of the country's democratic life through the use of intrusive provisions in the new pieces of legislation enacted by the Assembly, which regulate: a) telecommunications and computer-based, electronic, or telephonic communications (art. 1, no. 2); b) land use and zoning and social use of urban and rural lands (art. 1, no. 4); c) taxes, public finance, and international cooperation (art. 1, no. 5 & 8); d) personal and legal security of citizens, including identification and immigration (art. 1, no. 6); e) the functions of the Armed Forces, civil protection system, military discipline and career, weapons regulation and border vigilance (art. 1, no. 7); f) the national socioeconomic system in order to eradicate both speculation and capital accumulation; and issue any public policy concerning culture, environment, industry, mining, tourism, food products, agriculture, health, education, and labor relations (art. 1, no. 9).

Amendment to the Law on Political Parties, Public Meetings, and Demonstrations

This partial reform, passed by the National Assembly on December 17, 2010, adds a new chapter to the body of the Law on Political Parties, Public Meetings, and Demonstrations of 1965. The amendment give the Assembly the power to mete out sanctions against deputies (chapter IV) who repeatedly fail to fulfill the policy directives and positions contained in the administration program agreed to before the National Electoral Council when they register their candidacies (art. 26). Any failure to comply is defined as "electoral fraud, which constitutes a violation of the political rights and public responsibilities of the deputies and imposes on them the obligation to obey their party and its militants", notwithstanding the obligation set forth in the Constitution (art. 201) to represent "the people and the States, independent of mandates or instructions, subject only to their conscience". "Fraudulent" conduct includes: to vote against the programmatic content and political-ideological orientation of the program; to make common cause with contents and political positions that contradict the program or to support political forces opposing the social movements or political positions that backed the deputy; to dissociate one's self from the Parliamentary Opinion Group that belongs to the political or social movements that launched their candidacy in order to join or form another Parliamentary Group opposing the program (art. 29). The sanctions set forth would be suspension, partial, or total disqualification from the post of deputy, after a request from 0.1% of the total number of registered voters, either at the federal level or in the electoral district where the member was elected, and the approval by a majority vote of the National Assembly (art. 30). The amendment also allows for a referral of the Assembly's decision to the Office of the Comptroller General of the Republic to seek the disqualification of the political rights of the sanctioned deputy (art. 31).

Partial Reform of the Bylaws and Debate Rules of the National Assembly

This reform, passed by the National Assembly on December 22, 2010, violates constitutional guarantees that the Legislative Branch must uphold and upsets the balance of power within the National Assembly. Its Board of Directors and its President are given the powers that formerly were exercised by a Coordinator Commission,¹⁴ which consisted of the Board of Directors, the Chairpersons and Vice-Chairs of commissions, a deputy from the Parliamentary Opinion Group and a deputy representing those not belonging to this group. Among these powers are the authority to: decide on the holding of legislative sessions (art. 1, art. 28) and sessions of the Delegated Commission (art. 56) in different parts of the Assembly building; propose the weekly agenda, and the daily account and agenda, draft the annual legislative program, ensure Assembly functions and provisions for citizen participation are exercised correctly, direct the formation of the Standing Commissions and authorize alternates, designate the secretaries of the Commissions (art. 46), request from the full body statements on issues being debated (art. 11), ensure reprimands of deputies are heeded (art. 28), resolve parliamentary points of order concerning the bylaws and rules of debate and determine the relevance of motions for information (art. 122), issue rules for citizen participation in sessions and commission meetings (art. 172), arrange for the monitoring of the commissions' tasks (art. 29), call to meeting the Delegated Commission whenever necessary (art. 57), serve notice to the Executive Vice President and Ministers of their need to report or make appearances (art. 159). In addition, procedures were modified for elections of the Board of Directors and the Standing Commissions. For the Board candidates are proposed by slates, with each position being filled by candidates who receive the majority of votes (art. 8); for the commissions (art. 42) the majority political force will select the Chairpersons and the Vice Chairs of all commissions, and then the remaining members will be chosen until all spaces are filled.

Moreover, this reform violates deputies' right to free assembly; specifically to form parliamentary groups on the basis of affiliation by party, region, state, or special interest (art. 19), as guaranteed by article 67 of the Constitution. The regional and state groups have kept their regions informed, forged ties with state and municipal authorities concerning development and decentralization, organized citizen participation, presented proposals, overseen government administration and the legislative task. Their motions were deemed urgent and could be presented on the floor without prior debate, whenever they had support from two-thirds of their group and the issue concerned a given state or region. The formation of these ad hoc legislative groups (or "opinion groups") ensured the right of plural representation on legislative commissions, where the Board President was required to determine the number of members to serve on commissions based on the numerical proportion of members in the given group in relation to the full body. Moreover, article 25 of the reform legislation violates deputies' due process rights, in that the criteria is "according to the seriousness of the case" for a deputy or the Board to ask the floor to approve authorization requested by the Supreme Court of Justice to suspend parliamentary immunity at the same time said request is made. Even though article 24 holds that "no deputy will be held to account for votes cast or opinions voiced in the course of their duties," it goes on to state that sanctions can be meted out in the event of fraud committed against the legislative body or the voters," in which case the deputy must account for his or her actions in relation to the campaign platform or program of government presented to voters in the lead-up to elections (art. 13, no. 3), as per the Amendment to the Law on Political Parties, Public Meetings, and Demonstrations.

The new legislative enactments on "the people's power" (or "the people's branch of government") violates the right to citizen participation by incorporating "people's power" as an entity before which the Assembly must report on its actions (art. 9) and the requirement that it maintain its ties to the voters through "participatory modes," and not directly to any one citizen (art. 13, no. 2). Furthermore, "the social parliamentarianism in the streets" is established as a mechanism to facilitate citizen participation in the creation of laws (art. 26, no. 3). Consultations and other procedures that are the responsibility of the Assembly are to be carried out using this mechanism and the assemblies with People's Power organizations (art. 48) (community organizations, organized social movements, communal councils, and other forums: art. 171). Another violation of citizens' political rights was the elimination of the guarantee to consultation through state legislative councils, when legislation affects their interests; and consistent with the orientation of the new laws, the definitions of the purviews of Standing Commissions were changed. Thus, zoning and territorial integration became part of the Defense and Security Commission; decentralization was eliminated; mass media, telecommunications, and freedoms of expression and access to information have now come under the purview of the Commission on Citizen Participation; while the issues of national sovereignty, self-determination, and international cooperation now come under the purview of the Commission on Foreign Policy (art. 41).

¹⁴ The Coordinator Commission was eliminated and replaced by an Advisory Commission.

Regarding Assembly operations, constraints were placed on the deputies' participation and on citizens' access to information about the deputies' activities. First, sessions of the full Assembly can now only be broadcast live by the State television station ANTV (97, 107), thereby eliminating the article that guaranteed to the social communications media broad and timely coverage of the sessions. Second, the time allowed for oral interventions and their number were reduced (art. 112, 115, 124, 136); provisions were established that can arbitrarily limit their speech; no debate on observations made concerning the reading of the minutes from previous sessions, nor on dissenting votes (art. 138); said observations must be made in writing (art. 105); authorizations requested by the National Executive are to be admitted without debate; the day's agenda will be made known through an automated system, regardless of whether or not it ensures that the deputies are sufficiently briefed prior to sessions; and the right to speak is denied for the remainder of a session once a deputy in an "ostensible and repeated [manner]... strays from an issue or matter under discussion," (art. 113) or when the member violates the rules of debate; in fact, when the infraction is considered serious, disqualification from debate may last as long as a month with the vote of the majority of members present, without debate (art. 118).

Conclusions

With their adoption of these measures, the branches and powers of the Venezuelan Government have seriously undermined the continuation of democracy and human rights in Venezuela. They have cast aside the framework of the Constitution and the treaties and conventions to which the Republic is party. Among the fundamental principles of the national Constitution, we find that "Venezuela is a social democratic State of Law and Justice; that it is a "decentralized, federal" State; that it holds as supreme the values of its legal structure and action; namely, life, liberty, justice, equality, solidarity, democracy... and in general the preeminence of human rights, political morality and pluralism; and that it holds "as essential goals... the democratic exercise of the people's will... and guarantees the fulfillment of the principles, rights, and duties acknowledged and enshrined in this Constitution."

The attempt to impose, by means of legislation that is neither legal nor legitimate, a state distinct from the social democratic, decentralized, federal state of Law and Justice is nothing but a fraud against the Constitution, no matter what "constitutional" language is used to dress it up. It is a break with the rule of law that seriously endangers the Venezuelan people, removing from us the possibility of enjoying the rights to life, liberty, justice, equality, solidarity, democracy, and political pluralism. The Constitution and the international human rights treaties —with constitutional status— contain the essential elements for the people to lead decent and honorable lives; they place the authorities of the State under the obligation to enforce and fulfill these mandates. With its abandonment of this path, the new legislation has exposed the Venezuelan people to a dire blow against their family, community, social, and personal lives.

Just as the unconstitutional attempt to impose the Law on University Education suffered a setback, it is now imperative to vacate the rest of the laws described in this document if we seek to return to the road to legality, to legitimacy, to institutional democracy, and to the rule of law. Let us recall what is set forth under Article 3 of the Inter-American Democratic Charter, "Essential elements of representative democracy include, *inter alia*, respect for human rights and fundamental freedoms,... the exercise of power in accordance with the rule of law... the separation of powers and independence of the branches of government." Should we fail to act, we will continue to witness the consolidation of a fraud against the Constitution and a break with the rule of law.