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Accidental Detention: A Threat to the Legitimacy of Venezuelan Democracy

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Accidental Detention: A Threat to the Legitimacy of Venezuelan Democracy

by

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A thesis submitted in partial fulfillment
of the requirements for the degree of
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Abstract

The main argument of this thesis is that the penitentiary crisis in Venezuela is brought about an inept criminal justice system whose functioning (or lack thereof) further exacerbates overcrowding in penitentiary facilities as well as violates the most basic human rights. More elaborately, I argue that the unintentional (mis)use of pre-trial preventive detention, one of the consequences of the inept criminal justice system, further exacerbates the overcrowding in prisons and creates serious human rights implications. The purpose of this study is to establish a connection between the penitentiary crisis in Venezuela, with a focus on pre-trial preventive detention, and the larger criminal justice system failure in the country. The data source and data gathering technique for the thesis consists of a content analysis and a secondary literature review. Since the theoretical framework of the project is international human rights, instruments from the United Nations and the Organization of American States are used. Reports from non-governmental organizations like Amnesty International, Human Rights Watch, and *Observatorio Venezolano de Prisiones* provide the data to conduct the analysis which is specific to pre-trial preventive detention in Venezuela. These reports are produced on a yearly basis and will help to compliment the data obtained from government sources, mainly the Venezuelan Ombudsman's office. The findings of the thesis support the argument that contrary to common belief, the (mis)use of pre-trial preventive detention in Venezuela is in fact mainly accidental, it is not systematic in the sense that it is not targeting a particular group of people due to their political affiliation and/or beliefs. Furthermore, I prove that Venezuelan penitentiary facilities are overcrowded due to the (mis)use of pre-trial preventive detention. Immediate recommendations for the

Venezuelan state include re-categorizing the penal population in Venezuela as well as diminishing the use of deprivation of liberty, specifically pre-trial preventive detention.

Chapter 1: Introduction

The initial objective of this thesis was to study the problems experienced in Venezuelan prisons and their underlying causes during the administration of President Hugo Chávez. However, as the research process progressed, I realized that the highly reported penitentiary crisis in Venezuela emerged from a larger criminal justice system failure, and not solely because of the many problems found within the penitentiary facilities themselves. The penitentiary system in Venezuela is over its capacity, and the criminal justice system is in shambles. Consequently, unconvicted persons can be found in prisons and convicted criminals in police stations; convicted and unconvicted mixed together.

Although the present penitentiary crisis in Venezuela has received considerable media attention, I noticed that existing research on the much more specific topic of pre-trial preventive detention in Venezuela was minimal, mainly pursued on behalf of inter-governmental organizations (IGOs) and non-governmental organizations (NGOs); often leading to highly politicized narratives on the topic. Furthermore, when mainstream media outlets did discuss pre-trial preventive detention in Venezuela, the conversation tended to focus on particular cases of political importance, as in the case of Judge Maria Lourdes Afiuni Mora, which further shifted the discussion into the realm of the political. Consequently, this thesis intends to provide a counter-hegemonic perspective on the

issue. I aim to prove that the penitentiary crisis is brought about deficiencies in the Venezuelan criminal justice system which further exacerbate overcrowding in penitentiary facilities as well as violate the most basic human rights. Pre-trial preventive detention is an important component/consequence of this.

Pre-trial preventive detention refers to the detention of an unconvicted individual. Although this practice has gained notoriety internationally as a consequence of the United States' Global War on Terror (specifically, due to its aberrant usage in the Guantanamo Bay Detention Camp where no trial is implied in the future), pre-trial preventive detention is in actuality an internationally accepted practice. So much so that there are established international guidelines which outline the minimum requirements that states must comply with when using pre-trial preventive detention. Meant to protect the human rights of detainees, these guidelines mainly focus on the legitimacy and legality of the detention as well as on the treatment of the detainee.

Although there are established guidelines for the practice of pre-trial preventive detention, these procedures are often ignored. Venezuela is an intriguing example because, unlike in the case of the United States where these international guidelines are violated intentionally, the Venezuelan state seems to be disregarding the established guidelines almost on accident, predominantly as a result of an inept criminal justice system.

The failing criminal justice system in Venezuela is best made palpable by the conditions in the penitentiary facilities. The deadly riots at prisons *El Rodeo I* and *II* during the months of June and July of 2011 highlighted and verified that the problem in

Venezuelan prisons is an emergency.¹ The 27-day long standoff between the National Guard and the inmates as well as the death of 22 individuals is just an example of an all too common ongoing story of the Venezuelan penitentiary crisis.² Protests conducted by the inmates themselves as well as their families, both within as well as outside of prison walls, demanding the betterment of conditions and treatment continue on a periodic basis; and gang-related violence both inside and outside of the prisons has become commonplace. For instance, in mid-August of 2012, the battle between two groups of inmates in the *Centro Penitenciario Región Capital Cárcel Yare*, south of Caracas, left 25 dead and 43 wounded.³ The level of devastation caused by these two instances is not an exception, but rather the norm. These are just two examples of the everyday violence experienced in the penitentiary facilities in Venezuela. More recently, on January 25-27, 2013, the *Uribana* prison riots left 58 inmates dead and 46 others wounded, according to official sources and placed Venezuela's prison conditions again on the international stage.⁴ The massacre occurred due to the revelation of a secret government operative

¹ Virginia López, "Venezuela Prison Uprising Ends after 27 Days of Violence," *The Guardian*, July 13, 2011, <http://m.guardiannews.com/world/2011/jul/14/venezuela-prison-uprising-violence>.

² Ibid.

³ Valentina Lares Martiz, "Nueva Pelea Entre Presos Deja 25 Muertos En Cárcel Venezolana," *El Tiempo*, August 20, 2012. http://www.eltiempo.com/mundo/latinoamerica/mas-de-20-muertos-deja-enfrentamiento-en-prision-venezolana-_12144001-4.

⁴ Petra Dos Santos, "Min. Varela: 58 personas perdieron la vida en hechos de violencia en Uribana," *Ministerio del Poder Popular para la Comunicación y la Información*, January 27, 2013. <http://www.minci.gob.ve/2013/01/min-varela-58-personas-perdieron-la-vida-en-hechos-de-violencia-en-uribana/>

meant to disarm one of the most heavily armed prisons in Venezuela, which had become increasingly violent in the week prior to the riots as a result of a gang related-dispute over control.⁵

Prison violence of the physical kind is just one of the many problems facing the Venezuelan prison system. More explicitly than perhaps in the other examples, the source of the protest mentioned above in prisons *El Rodeo I* and *II* have to do with other types of violence, structural violence. For instance, it is estimated that the current prison system is at three times its capacity, with over 40,000 prisoners in a system built for 12,000.⁶ In addition to the lack of penitentiary establishments, prisoners rarely have access to health care due to a lack of investment in health care facilities, medical supplies, and doctors. The penitentiary system also lacks sufficient sanitary facilities for prisoners, and consistently experiences issues such as sewage leaks and clogged sewers. But, apart from the infrastructural problems mentioned, Venezuelan prisoners also experience rare and inconsistent access to educational and vocational opportunities, have no food security, and rarely any access to potable water.

Other less violent problems within the Venezuelan penitentiary system include the lack of professionalism practiced by the Public Ministry as well as the judges, in part

⁵ Catherine Shoichet, "Report: Prison riots kills dozens in Venezuela," *CNN*, January 26, 2012. <http://www.cnn.com/2013/01/26/world/americas/venezuela-prison-riot>

⁶ Amnesty International, *Venezuela: Human Rights Guarantees Must Be Respected: a Summary of Human Rights Concerns*. (2011).

because of a deficiency in trained technicians.⁷ Illegal detentions and procedural delays also plague the system. These less obvious inefficiencies are important because they further exacerbate the poor conditions in the prisons. However, although important, these inefficiencies have been rarely discussed, much less studied, in detail. These issues have not been a priority when analyzing the penitentiary crisis in Venezuela.

This thesis presents the structural problems found in the Venezuelan criminal justice system as a leading cause of human rights abuse. Specifically, the thesis focuses on pre-trial preventive detention. Furthermore, this research arose from a concern for those individuals within the Venezuelan penitentiary system. The discussion revolves around a moral problem: if the Venezuelan penitentiary system is failing the convicted prison population, then it is failing even more those who are not convicted.

Venezuelan detainees experience violations to many of the human rights not only guaranteed by the Venezuelan constitution, the nation's penal and criminal procedure codes, but also by regional and international human rights instruments, the most general, and perhaps fundamental of which include: the right to human dignity; the right to life and security; the right to be innocent until proved guilty; the right to treatment appropriate to an individual's unconvicted status, including the right to be kept separate from convicted prisoners; and the guarantee that arrests, detentions or imprisonment

⁷ Observatorio Venezolano de Prisiones, *Situación de los derechos humanos y procesales de las personas privadas de libertad en Venezuela*. (2007). 119.

should only be carried out in accordance to the law as well as by competent officials. A real life example in Venezuela of these violations includes the mixing of detainees with the rest of the convicted prison population, which places them in great danger. The penitentiary system in Venezuela does not classify convicted felons according to the severity of their crimes and/or dangerousness. This occurs even though guidelines (national, regional, and international) establish that individuals under detention must be kept separate from the general prison population. Another example of the routine violations experienced by detainees in Venezuela is that they are regularly held for longer than the two year maximum established by the Venezuelan Organic Code of Criminal Procedure.

The main argument of this thesis is that the penitentiary crisis in Venezuela is brought about an inept criminal justice system whose functioning (or lack thereof) further exacerbates overcrowding in penitentiary facilities as well as violates the most basic human rights. This thesis puts forth two other hypotheses which further develop the main argument just previously mentioned. The first emphasizes the (mis)use of pre-trial preventive detention as a main factor contributing to overcrowding in Venezuelan prisons. The second hypothesis stresses that the (mis)use of pre-trial preventive detention is not done purposefully, but rather occurs on accident as a result of an inept criminal justice system.

More elaborately, I believe that the mismanagement of the entire criminal justice system leads to the exacerbation of the problems in the prisons. Overcrowding is of particular importance because it continues to erode the existing dilapidating prison

infrastructure and few available services in the facilities. Even though pre-trial preventive detention is allowed for a maximum of two years under the Venezuelan Organic Code of Criminal Procedure, the system works in such a way that deprives many Venezuelans of their liberty, and they are often kept in conditions of pre-trial preventive detention past the allotted legal time. Therefore, I argue that the (mis)use of pre-trial preventive detention further exacerbates the overcrowding in prisons and creates serious human rights implications.

The second part of the argument of this thesis claims that there is also a widespread political discourse which has allowed the depiction of the (mis)use of pre-trial preventive detention to be based on political terms. Consequently, I argue that contrary to common belief, the (mis)use of pre-trial preventive detention is accidental, that it is not systematic in the sense that it is not targeting a particular group of people due to their political affiliation and/or beliefs.

Methodology

The theoretical framework of this thesis is international human rights. The thesis incorporates an outline of principle human rights legal frameworks protecting detained persons and a presentation of Venezuela's positioning within this context. Looking into these legal frameworks will help to place Venezuela along a spectrum of rights respecting democracies based on a internationalist, universal, and minimalist approach to human rights, and for the purpose of this thesis, the rights of detained persons specifically.

The data source and data gathering technique for the thesis consists of a content analysis and a secondary literature review. Since the theoretical framework of the project is international human rights, instruments such as the United Nations (UN) Universal Declaration of Human Rights (UDHR), International Covenant on Civil and Political Rights (ICCPR), and the Organization of American States (OAS) American Declaration of the Rights and Duties of Man, and the American Convention on Human Rights are used. Consequently, these standards, because of their universal nature also apply to those individuals deprived of their liberty, regardless of the nature of their crime. The UDHR and ICCPR were chosen as documents for analysis because of their centrality to the human rights regime. In fact, the UDHR defined human rights for the first time and it also spearheaded the promotion of these rights on the global scale since the end of the Second World War. In other words, there would be no human rights without the UDHR. Moreover, both the American Declaration of the Rights and Duties of Man and the American Convention on Human Rights were chosen mainly to better explain the adoption and interpretation of the universal human rights proposed by the UDHR into the regional context of the Americas.

Other international human rights instruments more specific to the cause of detainee and prisoner rights include: The Standard Minimum Rules for the Treatment of Prisoners, the Basic Principles for the Treatment of Prisoners, the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Torture Convention), and the Code of Conduct for Law Enforcement Officials. Similar to the UN's Torture Convention, the OAS has the Inter-American

Convention to Prevent and Punish Torture. These instruments are of importance because they set the international guidelines. Since the framework of the project is first and foremost international human rights, the analysis of these instruments allows me to place Venezuela in the international context and establish its position with regard to human rights within this global setting.

Reports from NGOs like Amnesty International (AI), Human Rights Watch (HRW), and *Observatorio Venezolano de Prisiones* (OVP, Venezuelan Prison Observatory) provide the data to conduct the analysis which is specific to preventive detention. These reports are produced on a yearly basis (for the most part) and will help to compliment the data obtained from government sources, mainly the Venezuelan Ombudsman's office.

The Bolivarian Constitution, the Venezuelan Penal Code, the Venezuelan Organic Code of Criminal Procedure, the Regulations for Judicial Internment Centers as well as Venezuelan government sources, including the newly established Ministry of Penitentiary Services, are used to explain the Chávez administration's conceptualization of human rights into its politics and policies.

This set of data sources were chosen because they provide a range of international and local perspectives, of more political to less political associations (or at least outside of the governmental realm), and of high opposition to the vast support for the Chávez regime. Therefore, the UN, the Inter-American Commission on Human Rights (IACHR) (a branch from the OAS), AI, and HRW all provide an international perspective. While the UN and the IACHR provide an inter-governmental, perhaps political account, NGOs

like AI and HRW provide less political (but nevertheless politicized) views on the violation of the human rights of detainees in Venezuela. Furthermore, the IACHR also provides a regional perspective while the local NGO, OVP, expresses a local but biased opposition perspective that counterbalances the government narrative.

Consequently, the units of observation in this thesis are reports produced by NGOs, both international and local, as well as IGOs, and the Venezuelan government itself. A concern when dealing with the country reports as well as official statistics is the possibility of not being able to access all annual accounts. On the other hand, the unit of analysis for this thesis consists solely of individuals under preventive detention in the Venezuelan penitentiary system. The individuals in the Venezuelan prison system that conform to the definition of detainees under preventive detention. Furthermore, the period of analysis is from February 2, 1999, when Chávez took the presidency for the first time, until March 5, 2013, the day of Chávez's death. The research used purposive/judgmental sampling to determine its units of observation. Therefore, the data sources were chosen because they were viewed to be the most useful for the purposes of this thesis.

Annual human rights country reports from 1999 until 2012 from the previously mentioned sources are evaluated. Each annual country report will be examined, searching specifically for cases of pre-trial preventive detention, the offenses associated with them, as well as the length of the detentions discussed.

This is a descriptive and exploratory research study. I seek to provide an in-depth evaluation of the Venezuelan case in regards to the (mis)use of pre-trial preventive

detention. The importance of this thesis is, in part, due to its emphasis on a contradiction: A democratic regime which openly and very strongly supports human rights but has failed to protect the prison population's most basic human rights. Furthermore, research on this general topic, human rights violations in the Venezuelan penitentiary system, has been consistently focused solely on prison conditions instead of on the factors that contribute to the prison conditions in the first place. Even the government response has been one that focuses on improving the actual penitentiary establishments, a step forward, but still a step that disregards the larger issues that will continue to exacerbate the human rights failures. Therefore, this research seeks to unveil how a regime with such characteristics can fail to meaningfully tackle human rights questions in its prisons, and still successfully label itself as supportive of human rights.

Chapter Overview

The structure of the thesis consists of six total chapters. Chapter 2 provides the theoretical literature and, in turn, the foundation of the entire thesis. This section begins with a basic background on human rights using Jack Donnelly's (2007) interpretation of international human rights. Subsequently, an explanation of the meaning of pre-trial preventive detention follows. Then, a description of the development of criminology in Latin America and in Venezuela is provided in order to place the (mis)use of pre-trial preventive detention into context.

Chapter 3 provides an insight into the contemporary Venezuelan historical-political context. This chapter explains the immediate conditions preceding the Chávez administration which led to his rise to power as well as his administration's emphasis on

human rights. This chapter is central to understanding the overwhelming impact the actual administration has had on the country in general and, in turn, it also facilitates in assessing the administration's shortfalls, specifically when it comes to the (mis)use of pre-trial preventive detention.

Chapter 4 highlights the penitentiary crisis in Venezuela focusing on the perceptions of the penitentiary system on behalf of the general Venezuelan public as well as inmates, and also the system's actual conditions both before and during the Chávez administration. This chapter demonstrates that the vast problems in the prisons have existed prior to the Chávez administration; that these issues are not particularly new nor consequences of the Bolivarian Revolution. Furthermore, the chapter provides an insight into a new initiative the government has taken in order to deal with the penitentiary crisis.

Chapter 5 elaborates the statement of the problem: that the penitentiary crisis in Venezuela is brought about an inept criminal justice system whose functioning further exacerbates overcrowding in penitentiary facilities as well as violates the most basic human rights. The case of Judge Afiuni is introduced and compared to that of other less reported cases of pre-trial preventive detention in Venezuela.

Chapter 6 is the concluding chapter and provides an overview of the entire thesis, highlights the findings, proposes immediate policy recommendations, and signals areas for further research.

Chapter 2: Theoretical Literature

This chapter serves as a foundation of the thesis, helping to place the (mis)use of pre-trial preventive detention in Venezuela into context. I argue that the penitentiary crisis in Venezuela is brought about an inept criminal justice system whose functioning (or lack thereof) further exacerbates overcrowding in penitentiary facilities as well as violates the most basic human rights. A main component contributing to the penitentiary crisis in Venezuela is the (mis)use of pre-trial preventive detention which continues to inject individuals into an inept system. Most importantly, the (mis)use of pre-trial preventive detention occurs as a consequence of ineptitude, rather than political persecution.

The section on the theoretical literature on human rights first and foremost, highlights the universality of human rights; rights inherent to all human beings because of their humanity. This section also explains the state's responsibilities as the main proprietor of human rights within an internationalist system of human rights. Nevertheless, the importance of regional and international factors in the protection of human rights is also emphasized. This chapter also defines pre-trial preventive detention and provides insight into how the (mis)use of pre-trial preventive detention can lead to an aberration of traditional criminal justice systems. The chapter concludes with a section on the development of criminology in Latin America, although highly punitive since its beginnings, there has been recent attempts to try and change this tendency.

Human Rights Theoretical Framework

Jack Donnelly, in his book entitled *International Human Rights* (2007), explains that in the English language, “right” has two principal moral and political senses. The first places a focus on the righteousness of a required action as well as on the duty-bearer’s obligation to do “what is right.”⁸ The second refers to a special entitlement that one has to something. In this sense the focus is on the relationship between the right-holder and duty-bearer.⁹ Therefore, the “right” in human rights can be understood as a combination of both senses, highlighting the moral righteousness of the right-holder’s entitlements and the political duties of the duty-bearer to respect, protect, and fulfill those entitlements. While convicted felons may have violated their obligation to do “what is right,” they are still subjected to the second sense regarding their entitlement as right-holders. If this is so then the case of detainees is unique since their criminal status is ambiguous and we cannot know if they have failed to fulfill their obligations. According to Donnelly, Henry Shue argues that all human rights (and most rights in general) entail three responsibilities: To be conducive to the right-holders’ enjoyment of their rights; to protect against the deprivation of their rights; and to aid those whose rights have been violated.¹⁰ Donnelly defines human rights as those entitlements that are inherent to

⁸ Jack Donnelly, *International Human Rights* (Boulder: Westview Press, 2007), 21.

⁹ *Ibid.*, 22.

¹⁰ *Ibid.*, 27.

human beings simply because of their humanity.¹¹ These rights are held by all human beings equally and inalienably.¹² They are considered special due to their moral supremacy in comparison to all other rights and as a result, they trump any other type of law or right. Furthermore, denying these entitlements is considered improper and even harmful.¹³

There are two major interpretations on the theory of human nature which justify why belonging to the human species gives rise to particular rights. One interpretation is scientific while the other takes a moral position. Adherents of the scientific approach to human nature perceive human rights as those entitlements meant to fulfill the most basic human needs. On the other hand, the moral or philosophical approach focuses on what it means to be human, which implies a capability of reflective action and morality. Donnelly's stance combines both the scientific and the moral and philosophical interpretations, establishing that the purpose of human rights is to guarantee what is needed for a life of dignity rather than just survival. Consequently, this requires the fulfillment of the most basic human needs (scientific approach) and more (moral and philosophical approach). Donnelly's justification for human rights has to do with human nature and the moral account of human possibility, emphasizing what "human beings

¹¹ Ibid., 21.

¹² Ibid.

¹³ Ibid., 22.

might become, not what they have been historically or ‘are’ in some scientifically determinable sense.”¹⁴ Therefore, human rights are founded on the idea that human beings are ‘by nature’ suited to a life of dignity. Consequently, detainees should also have the opportunity at a dignified life while under detention. This is exactly where human rights play a central role. They ensure that the entitlements specified by the underlying theory of human nature are universally implemented and enforced so everyone can realize their dignity as such.¹⁵

Donnelly argues that human rights are especially needed when they are not effectively guaranteed by national law and practice.¹⁶ Since human rights empower as well as benefit their holders, in an ideal scenario the relationship between right-holders and duty-bearers is highly controlled by the right-holders themselves.¹⁷ The subject of this thesis is just one piece of evidence that this ideal scenario rarely comes to fruition in practice. In fact, Donnelly labels human rights as “the language of victims and the dispossessed.”¹⁸ Consequently, human rights claims aim at altering legal or political practices and structures so that it is no longer necessary to claim those rights as human

¹⁴ Ibid., 23.

¹⁵ Ibid.

¹⁶ Ibid., 22.

¹⁷ Ibid.

¹⁸ Ibid.

rights. This highlights the importance of human rights as the most fundamental type of rights in the sense that they make claims for the entitlements necessary to live a life of dignity.¹⁹

The origin of human rights is still highly contested. Although in theory there is much discussion about what is right or wrong, almost all states acknowledge the existence of universal human rights regardless of nationality, and religious and cultural practices. Furthermore, despite the lack of a philosophical consensus, an international legal and political consensus has been established. This is best exemplified by the list of rights in the UDHR and the International Human Rights Covenants.²⁰ For instance, the basic idea of dignity has been legally and politically appropriated by the international community. As a result the rights recognized in these instruments originate from the inherent dignity of the human person.²¹ Article 6 of the UDHR presents this clearly, expressing that one must be recognized as a person in order to be treated with any sort of concern or respect.²² Even though the universality of such rights is also highly debated, these documents are perceived as the core of the present human rights regime. Nevertheless, the international legal and political consensus draws theoretical support

¹⁹ Ibid. 22-23.

²⁰ Ibid., 24.

²¹ Ibid., 25.

²² Ibid., 24.

from a widely-accepted philosophical account which notes the requirement that the state treat each person with equal concern and respect.²³ In other words, the state is perceived as the default and primary proprietor of human rights within the international system. This thesis follows the state-centric model in the sense that the state is indeed perceived to be the principal proprietor of human rights.

The current practice of international human rights fits in between the statist and cosmopolitan models and is known as the internationalist model. The statist model sees human rights as principally a matter of sovereign national jurisdiction. Donnelly defines sovereignty as the attribute of states which establishes that there is no higher power than the state itself. Currently, international relations is structured around the legal idea that states have “exclusive jurisdiction over their territory, its occupants and resources, and the events that take place there.”²⁴ The basic norms, rules, and practices of contemporary international relations rest on state sovereignty and the equality of all sovereign states.²⁵ For statist, there is no significant, independent international community, and certainly no international body with the right to act on behalf of human rights. Therefore, an international system exists, but not necessarily an international society.²⁶ On the other

²³ Ibid.

²⁴ Ibid., 28.

²⁵ Ibid.

²⁶ Ibid., 30.

hand, a cosmopolitan model starts with individuals rather than states, which according to Donnelly, are often perceived as the problem. Cosmopolitans see the state challenged both from below, by individuals and NGOs, and from above, by the global community. They see intervention in the face of gross and persistent violations of human rights without any remorse. International society, in other words, is seen as a global or world society.²⁷ Both of these models emphasize the role of the state in the promotion, provision, and protection of human rights. There is an international human rights regime, yet its consolidation is mainly hindered by the fact that this same international system is also state-centric.

While the internationalist and current model establishes that the international community consists of essentially the society of states, the present human rights regime consists of a “weak” internationalist model with modest international societal constraints on state sovereignty.²⁸ Presently, in both national practice and international law, duties to protect and aid fall almost exclusively on the state. The current human rights system is one of national implementation.²⁹ Although human rights are held universally (by all human beings), implementation and enforcement lie with states, which have duties to protect and aid only their own citizens (and certain others under their territorial

²⁷ Ibid.

²⁸ Ibid., 31.

²⁹ Ibid., 28.

jurisdiction). Neither states nor any other actors have legal rights or obligations to protect or aid victims in other jurisdictions (with the limited exception of genocide).

Since states are the principal enforcers and protectors of human rights, rule of law is central to achieving the fulfillment of these responsibilities. The literature on the rule of law and human rights emphasize the importance of an independent judiciary. According to Shapiro (1981) cited in Gibler and Randazzo (2011), judicial independence exists when a neutral third party impartially resolves conflict.³⁰ Since the judiciary is responsible for maintaining the rule of law (i.e. interpreting the constitution), it plays a central role in ensuring that political leaders do not act in complete disregard for statutory and constitutional law.³¹ Therefore, an independent judiciary is essential to maintaining an impartial rule of law.

Moreover, most countries recognize many of these international human rights in their national legal systems as well. Consequently, the same rights are often guaranteed on several levels.³² Human rights are also emerging as an international political standard of legitimacy. Once citizens no longer need to assert their rights regularly; their

³⁰ Douglas M. Gibler and Kirk A. Randazzo, "Testing the Effects of Independent Judiciaries on the Likelihood of Democratic Backsliding," *American Journal of Political Science* 55, no. 3 (2011): 697.

³¹ *Ibid.*, 698.

³² Donnelly, *International Human Rights*, 22.

governments are likely to be considered fully legitimate in the contemporary world.³³ For Donnelly (2007) it is clear that there are powerful practical reasons for adopting the list of human rights in the UDHR and the Covenants, since doing so reduces international shaming.³⁴

The future of international human rights activity can be seen as a struggle over balancing the competing claims of sovereignty and international human rights and the competing conceptions of legitimacy that they imply.³⁵

The theoretical literature on human rights is useful because it demonstrates a simple fact; that is that detainees are human beings and thus, they have human rights. It also highlights the tensions that exist between the international and state levels within this internationalist model of human rights. Venezuela is a good case that somaticizes this. Although international guidelines are infused into regional and national guidelines, there is a disconnect when it comes to bringing these norms and principles to fruition.

Defining Pre-trial Preventive Detention

Pre-trial preventive detention refers to the neutralization of the supposed dangerousness of an individual through the temporary imprisonment of this individual

³³ Ibid., 23.

³⁴ Ibid., 25.

³⁵ Ibid., 29.

until confirmation of the conviction.³⁶ Paul H. Robinson's article entitled "Punishing Dangerousness: Cloaking Preventive Detention as Criminal Justice" (2009), evaluates the American criminal justice system. Robinson argues that the American criminal justice system, has taken on an additional preventive function, and therefore, is no longer just a purely punitive system. For Robinson, the appropriation of preventive measures into the traditional American criminal justice system has transcended the criminal justice system's duties. In doing so, it has also created an aberrant form of preventive detention measures, which take the form of punitive procedures instead of the restraining measures characteristic of preventive detention.

Robinson links punishment to a past wrong, while dangerousness to a threat of future harm. Therefore, he concludes that dangerous individuals could be restrained, detained, or incapacitated, but that logically, dangerousness is not punishable.³⁷ Therefore, if a person is detained for the benefit of society, the conditions of detention cannot be punitive; the preventive detainee experiences an intrusion of liberty for the benefit of society and unlike a convicted prisoner, does not meet the standards for

³⁶ Renzo Orlandi, "Fourth Conference on the Future of Adversary Systems: Preventive Detention and Criminal Justice" (2012). 2.

³⁷ Paul H. Robinson, "Punishing Dangerousness: Cloaking Preventive Detention as Criminal Justice," *Harvard Law Review* 114 (2009): 1432.

punishment.³⁸ It is for this reason that the author argues the American criminal justice system is a contradiction.

Robinson perceives that the use of the criminal justice system as the principal mechanism for preventing future crimes is distorting the traditional goals of the American institutions of justice.³⁹ He argues for segregation between the criminal justice system and the preventive system. Consequently, the criminal justice system would focus on imposing punishment for past offenses, and the other would be a post-sentence civil commitment system that considers the protection of society from future offenses by a determined dangerous offender.⁴⁰ As a result, each system has more legitimacy, achieves its objectives, and encompasses the correct population for the intended individuals.

Although, pre-trial preventive detention is generally known simply as preventive detention, since there are also other forms of this measure that can take place after trial (for instance, past offenders with convictions who are newly accused or continue to be perceived as dangerous). This thesis is solely focusing on the pretrial aspect of preventive detention.

³⁸ Ibid., 1446.

³⁹ Ibid., 1434.

⁴⁰ Ibid., 1454.

For Robinson, a rational preventive detention system would determine the present dangerousness of an individual in a setting for detention for a limited period (approximately six months) and periodically re-evaluate the decision of whether the need for detention continues.⁴¹ Furthermore, according to Robinson, a rational preventive system would also follow a principle of minimum intrusion.⁴²

Renzo Orlandi (2012) argues that three principles must always be taken into account in order to be lawful and fall within the guidelines of practical rationality when considering preventive detention (which legislative choices that restrict individual rights must follow).⁴³ The principles of legality, proportionality, and judicial review. The principle of legality has to do with the notion of dangerousness. Dangerousness, in this sense, does not have to be connected to a possible crime, safety simply has to appear to be at serious risk.⁴⁴ The principle of proportionality claims that preventive measures must be adopted with the aim of preventing serious risks and not to avoid the commission of an offense.⁴⁵ Furthermore, the duration of preventive measures should be reasonably brief;

⁴¹ Ibid., 1452-1453.

⁴² Ibid., 1453.

⁴³ Orlandi, "Fourth Conference on the Future of Adversary Systems: Preventive Detention and Criminal Justice," 9.

⁴⁴ Ibid., 6.

⁴⁵ Ibid., 9.

only the needed amount of time to provide solutions to deal with the predicted danger.⁴⁶ The judicial review principle, as its name suggests, states that every measure of preventive detention should be subject to judicial review since it is not necessarily a judge's responsibility to make such decisions.⁴⁷

Criminology in Latin America

This section will be dedicated to the understanding of regional struggles with preventive detention. A particular emphasis is placed on the most basic characteristics of the criminal justice systems in Latin America and the effects of these on the integrity of preventive detention.

Rosa del Olmo's work entitled "The Development of Criminology in Latin America" (1999) is important because it highlights that, from the very beginning of the formation of the criminal justice system, prisons in Latin America emerged as centers for punishment rather than rehabilitatory spaces. In fact, Del Olmo demonstrates that criminology was developed from the positivist science known initially as criminal anthropology and was spread to Latin America from its origins in Italy as early as in the 1870s. According to Del Olmo, criminal anthropology became well-accepted throughout the Latin American region because it stressed physical and mental differences between

⁴⁶ Ibid., 10.

⁴⁷ Ibid., 11.

criminals and noncriminals. This type of thinking, the author argues, legitimated the racism that was emerging in Latin America at the end of the 19th century.⁴⁸ Therefore, criminal anthropology justified the presence of criminals in those countries and it is no surprise that Indians and blacks were considered to be the region's first criminals, followed by immigrants. These groups were labeled 'degenerate' due to supposed innate inferior traits.⁴⁹

The distinct racial prejudice among numerous other shortcomings which hampered the purpose of rehabilitation in the penitentiary system, called for drastic improvements in the criminal procedure during the 1990s. The highly racist punitive systems continued to persist until, according to Claudio Fuentes Maureira in his essay "Régimen de Prisión Preventiva en America Latina: La Pena Anticipada, la Lógica Cautelar y la Contrarreforma" (2010), major criminal procedure reforms took place throughout Latin America to diminish the use of preventive detention as it was, and redefined it along the basic established international human rights guidelines. However, by the beginning of the 2000s these reforms were almost disregarded, and in fact, counterbalanced with a series of counter-reforms. Fuentes Maureira labeled these second-time reforms as "counter-reforms" because criminal codes had either been changed back

⁴⁸ Rosa del Olmo, "Fourth Conference on the Future of Adversary Systems: Preventive Detention and Criminal Justice," *Social Justice* 26, no. 2 (76 (1999): 25.

⁴⁹ *Ibid.*, 25.

to their strictly punitive character or had consistently been interpreted in such terms, even after the initial reforms.

César Fortete and José Daniel Cesano in “Punitive Attitudes in Latin America” (2009), help place the changes explained by Fuentes Maureira (2010) into a larger regional context. At the same time that the criminal codes were being re-evaluated throughout the region, there was an increase in crime and violence. Consequently, it is easy to understand why Fuentes Maureira argues that the reform and counter-reforms of the criminal justice procedures in the region predominantly took place as a result of legislators seeking for ways to meet the demands of citizens in regards to public safety, establish a “harsh hand” against criminal behavior and delinquency, all while strengthening the state’s image, especially as an efficient entity when it comes to matters of criminal prosecution.⁵⁰

Interestingly, it is Fortete and Cesano (2009) who also mention the potential danger of increased crime and violence for the quality of the region’s relatively new democratic institutions, especially given Latin America’s history of military dictatorships which used domestic security and public safety as a basis of their legitimacy. Fortete and Cesano fear exactly what Fuentes Maureira (2010) described as the reasons why the criminal code reforms and counter-reforms took place. The lack of legitimacy and trust

⁵⁰ Claudio Fuentes Maureira, “Régimen de prisión preventiva en América Latina: la pena anticipada, la lógica cautelar y la contrarreforma/Pre-Trial Detention Regime in Latin America: The Pre-trial Punishment, Flight Risk and the Counter Reform,” *Revista Sistemas Judiciales* 1, no. 14 (2010): 38.

found throughout Latin American countries in their criminal justice systems further exacerbates this emerging fear among Latin Americans, creating a cycle of violence in which both delinquents and the state are perpetrators.

Criminology in Venezuela

Just as the region was experiencing rising crime and violence in the 1990s, Venezuela also suffered from the same. Carmen Alguíndigue and Rogelio Pérez Perdomo in “La Prisión Preventiva en Tiempos de Revolución (Venezuela 1998-2008)” (2008), argue that the 1980s and 1990s in Venezuela were characterized by a rising crime wave in conjunction with feelings of discontent with the penal mechanisms of the state (as in the police and the criminal justice system).⁵¹ According to Alguíndigue and Pérez Perdomo, at the time, the nature of an irrelevant inquisitive penal process was responsible for the high percentage of unconvicted detainees. This indirectly lengthened the duration for which individuals awaited their sentencing while in prison.⁵² Therefore, due to the widespread discontent with the pre-existing system, the state took on some UN recommendations which suggested a change towards an adversarial penal process. The adversary system holds that the accused must be free until his/her conviction. Other structural changes focused predominantly on improving the general speed of the penal

⁵¹ Carmen Alguíndigue and Rogelio Pérez Perdomo, *La prisión preventiva en tiempos de revolución (Venezuela 1998-2008)*, (2008): 443.

⁵² *Ibid.*, 444.

process.⁵³ Therefore, Venezuela, with the UN's advice, changed its old penal code dating to 1926 to a new Organic Code of Criminal Procedure in 1998.⁵⁴

These changes were meant to make justice fast, prisons solely for convicted individuals, as well as creating a system that met the international standard human rights guidelines.⁵⁵ Since Chávez came into power in 1999, he made sure to continue this project and follow the legislative changes, and invested great amounts of funds into infrastructure and new technologies.⁵⁶ Alguíndigue and Pérez Perdomo argue that regardless of all the changes, the system continues to take an inquisitive form. The reform was interpreted in a way that is reminiscent of the inquisitive process.⁵⁷ In particular, the reforms of the Venezuelan Organic Code of Criminal Procedure in the years of 2000, 2001, 2006, and 2008 have included changes in the extensions in the allotted two year time maximum for preventive detention, due to exceptions as well as extension of hours before a detainee case can be presented to a judge. Again, the Venezuelan case is a local illustration of the counter-reforms that Fuentes Maureira discussed.

⁵³ Ibid.

⁵⁴ Ibid.

⁵⁵ Ibid.

⁵⁶ Ibid., 445.

⁵⁷ Ibid., 446.

The intent of the aforementioned reforms was not completely satisfied. Although Alguíndigue and Pérez Perdomo highlight that the Código Orgánico Procesal Penal placed freedom at the forefront, emphasizing the exceptional character of preventive detention measures, Alguíndigue and Pérez Perdomo argue that this has become second in importance to penal efficiency as described Francisco Ferreira de Abreu in “El Valor Libertad en un Proceso Penal Eficiente. Prioridades y Realidades de la Segunda Reforma del Código Orgánico Procesal Penal” (2003).

Alguíndigue and Pérez Perdomo (2008) also mention how the judicial system is expected to serve the revolutionary process.⁵⁸ Another essay by Rogelio Pérez Perdomo entitled “Derecho y Cultura Jurídica en Venezuela en Tiempos de Revolución (1999-2009)” (2009) discusses this same issue. His focus is the law and legal culture in Venezuela during the Chávez administration. Pérez Perdomo defines legal culture as the attitudes, opinions, as well as behaviors of citizens, government functionaries, and lawyers that reveal a conceptualization of the law and its positioning within society.⁵⁹ According to the author, changes in the legal culture can help explain the functioning of the legal system more than formal laws and the organization of the legal system could.⁶⁰ He argues that there is a new legal culture in Venezuela since 1999, when Chávez took

⁵⁸ Ibid.465.

⁵⁹ Rogelio Pérez Perdomo, *Derecho y cultura jurídica en Venezuela en tiempos revolución (1999-2009)*, 2009: 2.

⁶⁰ Ibid.

office. In this new legal culture, law is no longer perceived as a separate entity but is instead expected to serve the revolution.⁶¹ According to Pérez Perdomo, there is currently a political character to law, when clearly there should not be.

Much along the same lines, Mark Ungar in his essay entitled “Prisons and Politics in Contemporary Latin America” (2003), has made an attempt to describe influence of politics and the administration on criminal justice. He argues that regardless of the improvements many of the Latin American governments have sought to enforce in regards to their prison systems since the 1990s, inefficient criminal justice systems, poor policy administration, and rising crime rates leading to greater detention powers on behalf of the police, continue to undermine these reforming efforts.⁶² In the political sense, these officials experience professional uncertainty and institutional pressures that lead to abuse and neglect of the new policies and laws. Therefore, Ungar argues that administratively reformed laws and policies need a higher level of institutional accountability and cooperation than is currently available.⁶³

Both Ungar and Pérez Perdomo (2009) raise a very important point, mentioning that not only do the present criminal justice structures throughout Latin America violate

⁶¹ Ibid., 3.

⁶² Mark Ungar, “Prisons and politics in contemporary Latin America,” *Human Rights Quarterly* 25, no. 4 (2003): 909.

⁶³ Ibid., 910.

human rights, but perhaps more seriously, they also show the central weaknesses in contemporary Latin American democracies.⁶⁴ The need for a “hard hand” policy on crime shows the little self-confidence and legitimacy of government institutions that are supposed to protect citizens and promote citizenship.

Alguíndigue and Pérez Perdomo (2008) argue that there is a gap in the literature, especially since the government never followed-up on the many legislative and structural changes made. Therefore, it is a very difficult task to determine whether these reforms have improved the penal situation in Venezuela, particularly in the case of preventive detention.⁶⁵ Furthermore, there are also problems with official statistics, detainees are now being held in municipal and state police stations, as a consequence of the national penitentiary system being filled to its capacity. For that reason, there are no official numbers for those detained in local police stations outside of the national prison system.⁶⁶

Nevertheless, the majority of the work on the criminal justice system and its components in Venezuela has been focused on the penitentiary crisis, predominantly on its most visible manifestations including issues like the prison conditions and not on

⁶⁴ Ibid., 909.

⁶⁵ Alguíndigue and Pérez Perdomo, *La prisión preventiva en tiempos de revolución (Venezuela 1998-2008)*, 445.

⁶⁶ Ibid., 456.

larger but less visible structural problems. The excessive unnecessary use of preventive detention is a consequence of these less visible structural problems.

In sum, the theoretical literature by Donnelly on human rights highlights the universality of these rights as well as the state's responsibilities to enforce and protect these rights within an internationalist human rights system. The chapter also emphasized how the use of pre-trial preventive detention can redefine traditional criminal justice systems into aberrant forms. Yet the section on the development of criminology in Latin America and Venezuela explains why such measures as pre-trial preventive detention are common place in the region; this is due to the highly punitive nature of the region's criminal justice systems.

Chapter 3: Venezuelan Historical-Political Context

This chapter highlights the Chávez administration's emphasis on human rights and is a good precursor to understanding why the penitentiary crisis was perhaps not a top-level priority, especially during the first years of the Bolivarian government. Consequently, I argue that the penitentiary crisis in Venezuela is brought about an inept criminal justice system whose functioning (or lack thereof) further exacerbates overcrowding in penitentiary facilities as well as violates the most basic human rights. I also want to emphasize that the criminal justice system has been dysfunctional even prior to the Chávez administration, yet the human rights focus of this government leads to some confusion as to why this issue was not a top priority.

A main component contributing to the penitentiary crisis in Venezuela is the unintentional (mis)use of pre-trial preventive detention which continues to inject individuals into an inept system. This chapter is central to understanding the positive impact the Chávez administration had on human rights in general. But, it also facilitates in assessing the administration's shortfalls, specifically when it comes to the (mis)use of pre-trial preventive detention.

This chapter begins with a description of the circumstances which led to the rise of Chávez. The following sections describe the central changes that occurred once Chávez took the presidency, including the vast changes in social and political rights, and

human rights in general. The chapter concludes with a brief overview of a HRW report from 2008 which depicts many of the conventional views on the administration.

From Puntofijismo to Chavismo

By the early 1960s, Venezuela was perceived to be different from the rest of Latin America. As explained by Dick Parker in “Chávez and the Search for an Alternative to Neoliberalism” (2005), Venezuela was believed to be “immune” to the region’s constant political and social instability.⁶⁷ The establishment of the democratic era in Venezuela was brought about with the *Pacto de Punto Fijo* of 1958 (Punto Fijo Agreement), a power sharing arrangement between the two principal political parties *Acción Democrática* (AD) and *Comité de Organización Política Electoral Independiente* (COPEI). Venezuela’s newly established democracy quickly led to the formation of an “exceptionalism thesis,” priding Venezuela’s state-sponsored industrialization model all within the framework of democratic institutions, making the nation a beacon of light in the midst of darkness.⁶⁸ In fact, according to Steve Ellner and Miguel Tinker Salas in “Introduction: The Venezuelan Exceptionalism Thesis: Separating Myth from Reality” (2005), the Venezuelan exceptionalism thesis consisted of three basic formulations: (1) Venezuela was privileged with respect to the rest of Latin America; (2) Venezuela

⁶⁷ Dick Parker, “Chávez and the Search for an Alternative to Neoliberalism,” *Latin American Perspectives* 32, no. 2 (2005): 39.

⁶⁸ *Ibid.*

remained free of the critical conflicts and cleavages that threatened political stability in the rest of the region; and (3) Venezuela's democratic system and political culture were healthy and solid.⁶⁹

Venezuela's privileged standing, basic formulation number one, arose out of many different factors, including its status as a Third World oil producing country which was relatively safe from the political turmoil prevalent in most of the other Third World oil producing countries (particularly those located in the Middle East). The fact that Venezuelan territory is rich in many other raw materials like natural gas, iron, gold, diamonds, and bauxite, also places it in a privileged position.⁷⁰

Regarding the second basic formulation of the Venezuelan exceptionalism thesis, the country remained free of conflicts and cleavages that have threatened political instability in the region because Venezuela has historically had greater social mobility in comparison to other Latin American countries. This is due to Venezuela's marginal importance during colonial times which consequently, did not allow for the consolidation of Spanish (cultural) colonialism which was exceedingly hierarchical. The authors also argue that the nation's aristocracy was almost completely decimated by the civil wars that took place in the 1800s, and unlike the militaries of other Latin American states, the

⁶⁹ Steve Ellner and Miguel Tinker Salas, "Introduction: The Venezuelan Exceptionalism Thesis Separating Myth from Reality," *Latin American Perspectives* 32, no. 2 (2005): 7.

⁷⁰ *Ibid.*, 5.

Venezuelan army after independence ceased to be the exclusive domain of the upper classes.⁷¹ Moreover, in Venezuela there was an absence of a strong nationalism unlike in many other countries in Latin America which had led to armed conflict and economic disruption in those countries.

The third and final basic formulation regarding Venezuela's solid and healthy democratic system and political culture refers to Venezuela's protracted democracy that emerged in 1958. This spared Venezuela the military dictatorships that dominated the rest of the region from the 1960s to the 1980s.⁷² Consequently, Venezuela was perceived as the exception to political instability, unpredictability, and violence.

Although hailed for its democratic institutions and processes, Venezuelan democracy did not establish itself by fully democratic means. The first undemocratic instance can be perceived in the political pact of Punto Fijo itself, which pushed the communist party aside from any discussion even though it also had a leadership role in the struggle against the military dictatorship of General Marcos Pérez Jiménez (1952-1958).⁷³ Many more undemocratic manifestations developed throughout the years of the Punto Fijo Pact, all eventually adding up and leading to massive discontent, and

⁷¹ Ibid.

⁷² Ibid.

⁷³ Ibid., 11.

ultimately proving the exceptionalism thesis wrong. The *Caracazo* or *Sacudón* is the perfect example of just this.

The *Caracazo* was a large social protest that emerged from the urban poor sector of Caracas on February 27 and 28 of 1989.⁷⁴ This so-called violent shake, as implied by the name *Sacudón*, involved Caracas and most of the main and secondary cities of the country, all of which experienced barricades, road closures, the burning of vehicles, the stoning of shops, shooting, and widespread looting.⁷⁵ The reasons for the *Caracazo* burst are attributed to Venezuela's deceptive democracy. In fact, Margarita López Maya, in "The Venezuelan 'Caracazo' of 1989: Popular Protest and Institutional Weakness" (2003), describes the *Caracazo* as a popular revolt carried out by a society that did not have adequate channels of communication with its government.⁷⁶ The *Caracazo* was also ignited by a financial collapse, headed by the democratic *puntofijista* regime.

At the end of the 1980s Venezuela experienced a deep economic crisis, in part brought about the decrease in world oil prices beginning in 1983 as explained by José Honorio Martínez, in "Causas e Interpretaciones del Caracazo" (2009). For instance, while a barrel of Venezuelan oil was worth 28.9 dollars in 1973, by 1986 this price had

⁷⁴ José Honorio Martínez, "Causas e interpretaciones del Caracazo," *Historia Actual Online* 16 (2009): 85.

⁷⁵ Margarita López Maya, "The Venezuelan Caracazo of 1989: popular protest and institutional weakness," *Journal of Latin American Studies* 35, no. 1 (2003): 117.

⁷⁶ *Ibid.*, 135.

decreased to 10.9 dollars. This, in addition to the growing foreign debt obtained in 1975 through 1978, which increased from six billion dollars to thirty-one billion dollars, placed the state in a fiscal crisis. Oil revenues represented an average 72 percent of the total revenue obtained by the Venezuelan state between 1972 and 1982,⁷⁷ therefore, it is quite understandable how a 62.2 percent decrease in oil rents from 1973 to 1986 could lead to a financial crisis of great proportions, inhibiting the state to deal with its expected domestic expenditures, and much less with its foreign debt obligations. In two instances, February of 1983 and December of 1988, the Venezuelan government declared a moratorium on its foreign debt.⁷⁸ Furthermore, this economic crisis was complimented with a massive escape of capital. For instance between the end of 1982 and the first six months of 1983, five billion dollars were taken out of the country.⁷⁹

Honorio Martínez highlights the *puntofijista* regime's favoritism towards what he labeled an "industrial and commercial bourgeoisie" which received important public resources.⁸⁰ When the first of a series of currency devaluations took place in February of 1983, driving the *bolívar* from 4.3 to 7 *bolívars* per dollar;⁸¹ the government of Luis

⁷⁷ Honorio Martínez, "Causas e interpretaciones del Caracazo," 85.

⁷⁸ Ibid.

⁷⁹ Ibid.

⁸⁰ Ibid., 87.

⁸¹ Ibid., 85.

Herrera Campins (1979-1984), on that same year created a fund to assist the business sector with its accumulated debts, providing entrepreneurs and businessmen with a preferential currency exchange rate of 4.3 *bolívares* per dollar versus the official exchange rate of 7 *bolívares* per dollar.⁸²

These circumstances further pushed the Venezuelan state into a vicious cycle of loan-seeking and debt. In fact, the state looked into the International Monetary Fund (IMF) to resolve the economic crisis, and in 1986 the government of President Jaime Lusinchi launched the first package of economic measures to achieve a refinancing of the foreign debt.⁸³ According to Honorio Martínez, accepting neoliberal policies implied putting down certain mechanisms of redistribution of oil revenues, which had contributed to the stability and legitimacy of the political regime. Honorio Martínez explains that the Punto Fijo Pact established the guarantee of access to the surplus revenue coming from oil sales through free public services such as health and education, the subsidy of certain staple foods as well as basic supplies for public transport, as well as the distribution of energy.⁸⁴ Furthermore, both AD and COPEI supported the model of import substitution

⁸² Ibid., 86.

⁸³ Ibid., 87.

⁸⁴ Ibid., 86-87.

and government intervention in the economy, factors that enhanced the legitimacy of the *puntofijista* regime and the popularity of these proestablishment political leaders.⁸⁵

Carlos Andres Pérez's second term from 1989 to 1993 had a political cabinet filled with students of the *Instituto Económico Superior de Administración* (IESA), which according to Honorio Martínez, was an academic space for neoliberalism.⁸⁶ On the February 16, 1989, only a month after Carlos Andres Pérez took power, the president accepted a new IMF package of 4,500 million dollars in loans that also came with IMF conditionalities. These conditions included the restriction on public expenditure and salaries, monetary and currency exchange liberalization, progressive elimination of tariffs on imports, liberalization of the prices of all goods with the exemption of 18 belonging to the basic food basket, increase in public service rates (telephone, water, electricity, and gas), and finally, an increase in the prices of products derived from petroleum, with a 100 percent increase in gasoline and a 30 percent increase in public transport rates.⁸⁷ To place the economic crisis in perspective, by the end of 1988 food prices had already increased by 60 percent in comparison to prices in 1985.⁸⁸ According to Bernardo Alvarez Herrera, Venezuela's Ambassador to the United States since 2003, in the aftermath of the

⁸⁵ Ellner and Tinker Salas, "Introduction: The Venezuelan Exceptionalism Thesis Separating Myth from Reality," 6.

⁸⁶ Honorio Martínez, "Causas e interpretaciones del Caracazo," 88.

⁸⁷ *Ibid.*, 88.

⁸⁸ *Ibid.*

structural reforms instituted in 1989 by the Pérez administration, the percentage of Venezuelans living in extreme poverty jumped from 43.9 to 66.5 percent in a single year.⁸⁹

All of these circumstances led to the massive disenchantment and outrage played out during the days of February 27 and 28, 1989. Although there had been anti-neoliberal protests in Merida as well as other cities prior to February 27,⁹⁰ the *Caracazo* shocked the nation, due to its extension and violence, and proved the institutional weakness of the *puntofijista* regime.

The *Caracazo* took shape after failed negotiations between the *Cámara del Transporte* (Transport Chamber) and the government. When the Transport Chamber asked the government for an increase of 70 percent for public transport rates (due to an increase of 100 percent in gasoline prices) and the government declined the request, only allowing a 30 percent price increase, the association summoned a strike on February 27.⁹¹ Some of the bus drivers that did not go through with the strike, decided to, instead, set their own prices, an act that led to a violent response from the public transport users.⁹²

⁸⁹ Bernardo Alvarez Herrera, "A Benign Revolution: In Defense of Hugo Chávez," *Foreign Affairs* 85, no. 4 (2006): 198.

⁹⁰ López Maya, "The Venezuelan Caracazo of 1989: popular protest and institutional weakness," 136.

⁹¹ Honorio Martínez, "Causas e interpretaciones del Caracazo," 88.

⁹² *Ibid.*

This in turn, led the urban poor, the most marginalized sectors of Caracas and the metropolitan area, in addition to students, to take to the streets to demonstrate against the overall price hikes as well as the shortages brought about the recently authorized macroeconomic package.⁹³

The *Plan Avila* was launched on the same day the massive strike, protest, and looting began as a means to regain public order, via the national armed forces. President Pérez declared a state of emergency and a curfew. On February 28 at 4p.m. the Minister of the Interior declared a suspension of all constitutional guarantees and during the next day and half, the armed forces stormed the city of Caracas, leaving death on its path.⁹⁴ Honorio Martínez (2009) finds that the estimates of the deaths that occurred during the *Caracazo* range from 300 to over 2,000, depending on the sources (official versus unofficial, respectively).⁹⁵

López Maya (2003) believes that the *Caracazo* took the shape that it did, transforming itself from a massive strike-to a protest-to the ransacking of shops was due to the Venezuelan state's institutional weakness. According to López Maya, the protestors found themselves for hours in a public space where there was no restraint or control by the authorities. As a result the masses turned on the shops as they have always done in the

⁹³ Ibid., 89.

⁹⁴ Ibid.

⁹⁵ Ibid.

past in such circumstances of institutional weakness or a “vacuum” of authority.⁹⁶ Furthermore, López Maya argues that if the political actors and unions had been in tune with their constituencies, they could have foreseen the trouble arising from the presidential announcement of the macroeconomic adjustment.⁹⁷ Moreover, López Maya also argues that government institutions themselves showed great weakness. First, the government failed to make public transport drivers comply with the agreements they had signed. Second, the police was not prepared to deal with the first outbreaks of civil disobedience effectively. Third, the national government made almost no efforts to build a minimum consensus before making the neoliberal package announcements. Fourth, it did not study the implications such structural adjustment measures could have had in the country during a time of deep economic crisis and socio-political frustrations.⁹⁸

The deadly riots of the *Caracazo* in February of 1989 were a popular backlash directly related to the structural reforms and indirectly related to the *puntofijista* regime. The two coup attempts of 1992, the first led by then Lieutenant Colonel Hugo Chávez and the other by another group of military-men, were also expressions of the general discontent with the ultra-neoliberal bipartite democratic system at the time.

⁹⁶ López Maya, “The Venezuelan Caracazo of 1989: popular protest and institutional weakness,” 136.

⁹⁷ Ibid.

⁹⁸ Ibid., 136-137.

After the failed coup attempt, Chávez appeared on national television acknowledging the defeat of his military insurrection but claimed that it was only for the time being that his movement could not achieve its objectives.⁹⁹ Chávez accepted sole responsibility for the failed coup and impressed Venezuelans who were accustomed to politicians circumventing accountability.¹⁰⁰ Chávez was imprisoned in 1992 and after two years, he was pardoned by the Rafael Caldera administration in 1994.

The attempted coup of February 4, 1992 placed Chávez under the national spotlight, in which he appeared to be a possible source of change. Yet, Venezuelan political scientist Luis Gómez Calcaño (2000), as quoted by Parker (2005), stated that despite the widespread recognition of the existence of a political crisis in the country:

The only alternative discourse seemed to be that of ‘modernization,’ understood as the replacement of political parties by civil society, of ideology by pragmatism, of utopias by technocratic thinking, and of the state by the market...Very few thought that the force capable of displacing Acción Democrática (AD) and COPEI [the traditionally dominant parties] would be [Chavismo].¹⁰¹

But, in fact, Chávez’s rise to power represented a refutation of the exceptionalism thesis and a repudiation of neoliberalism.¹⁰² While in prison, Chávez received

⁹⁹ Damarys Canache, “From bullets to ballots: The emergence of popular support for Hugo Chávez,” *Latin American Politics and Society* 44, no. 1 (2002): 69.

¹⁰⁰ Steve Ellner and Daniel Hellinger, *Venezuelan Politics in the Chávez Era: Class, Polarization, and Conflict* (Lynne Rienner Publishers, 2003), 32.

¹⁰¹ Parker, “Chávez and the Search for an Alternative to Neoliberalism,” 39.

¹⁰² *Ibid.*, 40.

substantial support from Venezuelans, in grand part due to his willingness to take responsibility for his actions. Quickly after having received amnesty, Chávez began a campaign that denied any association with the traditional political parties, encouraged the creation of a new constitution as well as a radical departure from the economic policies proposed by the IMF and the World Bank. He successfully rallied massive support from the Venezuelan public.¹⁰³ According to Damarys Canache in “From bullets to ballots: the emergence of popular support for Hugo Chávez” (2002), a key component to Chávez’s electoral win was the existence of an early foundation of popular support which came about after the coup attempt. In fact, the author recalls how many of Venezuelans rallied for Chávez’s release from prison after his failed coup attempt.¹⁰⁴ Chávez won the 1998 presidential election with a 56.2 percent of the vote, he was perceived by the people as a “political outsider”¹⁰⁵ and, as a result, as a complete rupture from the *puntofijista* regime, of the old politics.

¹⁰³ Steve Ellner and Daniel Hellinger, *Venezuelan Politics in the Chávez Era: Class, Polarization, and Conflict*, 43.

¹⁰⁴ Canache, “From bullets to ballots: The emergence of popular support for Hugo Chávez,” 70.

¹⁰⁵ *Ibid.*, 69, 84.

The Emergence of the Fifth Republic

Since Chávez took the presidency in 1999, the administration has made “correcting long-standing social ills” and encouraging the participation of Venezuelans to direct their future, central to the Bolivarian government’s policies.¹⁰⁶ The 1999 amended constitution is a great example of the earliest, and perhaps most fundamental, attempt to head the country towards a new direction and fulfill the Bolivarian government’s two main objectives. In fact, the emergence of the Fifth Republic came about with the development of the constitutional changes that took place within the first year of Chávez’s presidency, which significantly redefined Venezuelan citizenship and democracy. As described by Alvarez Herrera, the new Constitution of the Bolivarian Republic of Venezuela “broadened the definition of rights and responsibilities, expanded political participation, and encouraged Venezuelans to become more active stakeholders in the country’s political, economic, and social development.”¹⁰⁷ Moreover, not only did the new constitution redefine citizenship, but it also gave a new definition to the nature and role of the state as a participatory space, in addition to being a central guarantor of social rights.¹⁰⁸

¹⁰⁶ Alvarez Herrera, “A Benign Revolution: In Defense of Hugo Chávez,” 196.

¹⁰⁷ Ibid.

¹⁰⁸ Delgado Blanco and Gómez Calcaño, 2001 in Hans-Jurgen Burchardt, “Un misionero y sus misiones. Progresos y trabas de la nueva política social en Venezuela,” *Politeia* 32, no. 42 (2009): 82.

According to Hans-Jurgen Burchardt in “A Missionary and His Missions. Progress and Obstacles in Venezuela’s New Social Policies” (2009), the Bolivarian Constitution of 1999 is integrated by three components: (1) The promotion of social citizenship based on the universalization of social rights and excluding all forms of discrimination; (2) the creation of social justice as the first goal of the social and economic order; and (3) the formation of public policy as a space for the participation of all citizens.¹⁰⁹ Therefore, the new Constitution promoted activism in all fronts—social, economic, and political.

Michael Walzer (1995) reminds us that contemporary democracies do not make politics accessible to the people as in Rousseau's ideal Republican community. Consequently, citizenship today is predominantly a passive role only requiring/encouraging participation when voting is concerned.¹¹⁰ Regardless of the fact that citizenship is currently passive, Walzer argues that the state has to be open to citizens’ indefinite/unstated/occasional involvement.¹¹¹ He argues that it is in the associational networks of civil society, as in unions, political parties, interest groups, among others, where passive citizenship can become active citizenship through smaller

¹⁰⁹ Burchardt, “Un misionero y sus misiones. Progresos y trabas de la nueva política social en Venezuela,” 83.

¹¹⁰ Michael Walzer, “The Civil Society Argument,” in *Theorizing Citizenship*, ed. Ronald Beiner, (Albany, NY: SUNY Press, 1995), 164.

¹¹¹ *Ibid.*, 170.

decision-making opportunities that contribute to shaping parts of the state and the economy.¹¹² According to Alvarado Chacín (2009), the Bolivarian government has generated new organizational spaces for community action through which the popular sectors can organize and manage directly public policies, by designing and executing their own community projects and administering their own budgets.¹¹³ The Bolivarian social missions, created by the Chávez administration in 2003, are an example of these newly demarcated organizational spaces for community action.

Moreover, according to Alvarez Herrera (2006), Venezuelans have participated in numerous elections since Chávez took office.¹¹⁴ In fact, the idea of constitutional reform was proposed to and approved by the Venezuelan people through a referendum. Furthermore, the amended constitution was ratified by Venezuelans as well through popular vote.¹¹⁵ Citizen participation has undoubtedly increased in Venezuelan public life, voter turnouts in Venezuelan presidential elections since Chávez have increased

¹¹² Ibid., 164.

¹¹³ Neritza Alvarado Chacín, “Las estrategias de inclusión social en Venezuela: un acercamiento a la experiencia de las misiones,” *Convergencia* 16, no. 5 (2009): 96.

¹¹⁴ Alvarez Herrera, “A Benign Revolution: In Defense of Hugo Chávez,” 196.

¹¹⁵ Delgado Blanco and Gómez Calcaño (2001) in Burchardt, “Un misionero y sus misiones. Progresos y trabas de la nueva política social en Venezuela,” 82.

drastically, with the October 2012 presidential elections experiencing over 80 percent participation on behalf of the electorate.¹¹⁶

As reflected by the increase in participation of citizens, there was also a distinct dichotomy between the political composition during Chávez's presidency and that before 1999. Julia Buxton in "Venezuela's Contemporary Political Crisis in Historical Context" (2005), finds that while the Fourth Republic, the historical period that preceded Chávez's project (spanning from 1830 to 1999), excluded the radical left and the poor, the current system under Chávez, the Fifth Republic, excludes the politicians and beneficiaries of the Fourth Republic.¹¹⁷ Hence, demarcating a clear separation from the past, but, nevertheless, making the same mistake of excluding those outside of the bounds of the officialist band. Buxton argues that Chávez's program negatively affected acquired interests of groups, parties, and organizations that had been favored by the Pact of Punto Fijo.¹¹⁸

¹¹⁶ William Neuman, "Chávez Wins New Term in Venezuela, Holding Off Surge by Opposition.," *New York Times*, October 7, 2012. http://www.nytimes.com/2012/10/08/world/americas/venezuela-presidential-election.html?pagewanted=all&_r=0.

¹¹⁷ Julia Buxton, "Venezuela's contemporary political crisis in historical context," *Bulletin of Latin American Research* 24, no. 3 (2005): 345.

¹¹⁸ *Ibid.*

Human Rights within the Context of the Bolivarian Revolution

The majority of scholars agree that democracy is the most conducive system for the development of citizenship, civil society, and ultimately, human rights. This thesis follows this discourse and places a strong emphasis on democracy and democratic processes; they represent the context within which the subject of study develops and is engaged. Although the Chávez administration is consistently under scrutiny for the president's strengthening of the executive, for the purpose of this thesis, Venezuela is presented strictly as a democratic system under Chávez. Especially since the bi-partite system experienced by Venezuela prior to the Chávez administration was internationally acknowledged as a strong democratic process, although power was formally concentrated in the hands of an oligarchy, then Chávez's democracy cannot be too deviant from Venezuelan (and perhaps even international) standards of democracy in the first place. Also, taking into consideration Howard J. Wiarda's (2004) definition of authoritarianism: A "top-down, absolutist, dictatorial control by one person, a military regime, an elite, a monopolistic political party,"¹¹⁹ the Chávez administration clearly does not fit this extreme.

Instead, this thesis will focus on the actual language used by the government when it comes to defining its governance style. The Venezuelan state under the Chávez

¹¹⁹ Howard J. Wiarda (ed.), *Authoritarianism and Corporatism in Latin America—Revisited* (Gainesville: University Press of Florida, 2004), 3.

administration has taken the character of that of a participatory democracy according to government sources. Kirk A. Hawkins in *Who Mobilizes? Participatory Democracy in Chávez's Bolivarian Revolution* (2010), defines participatory democracy as the use of mass participation in the political decision-making process as a means of complimenting and sometimes even replacing the traditional institutions of elections and lobbying associated with representative democracy.¹²⁰ Therefore, participatory democracy resembles direct democracy.

With a participatory type of democracy, an active and engaged citizenship is needed. According to T. H. Marshall in his influential essay entitled *Citizenship and Social Class* (1949), the definition of citizenship is based on three major components: Civil, political, and social. The civil element is composed of individual freedom rights like liberty of the person, freedom of speech, thought and faith, the right to own property and to conclude valid contracts, and the right to justice.¹²¹ Political rights, on the other hand, involve the right to participate in political life, either as a member of a body invested with political authority or as an elector of the members of such a body.¹²² Finally, social rights are composed of a range of rights including the right to a minimum

¹²⁰ Kirk Hawkins, "Who Mobilizes? Participatory Democracy in Chávez's Bolivarian Revolution," *Latin American Politics & Society*. 52. no. 3 (2010): 32.

¹²¹ Thomas Humphrey Marshall and Tom Bottomore, *Citizenship and Social Class* Vol. 2. (London: Pluto Press, 1995), 8.

¹²² Ibid.

of economic and social welfare and security to the right to share parts in the social heritage narrative.¹²³

This thesis concerns the definitions of each of these components of citizenship. It is clear that the Chávez administration has promoted and improved social rights before the other two. Although Marshall developed a chronology which established that civil rights evolved first, followed by political rights, and finally by social rights, the emphasis of this research is solely on the elements of citizenship as developed by Marshall.

The Bolivarian social missions are the foundation of the socio-political context of the Chávez administration which seeks to address and tackle the social injustices that had been long ignored in Venezuelan society.¹²⁴ According to Alvarez Herrera, government spending on social programs has risen significantly since Chávez took office, and it stands at approximately 15 percent of GDP (as of 2006).¹²⁵ Furthermore, as of 2005, 15 million Venezuelans, almost half the total population have received free health care through *Misión Barrio Adentro*.¹²⁶ Another nine million Venezuelans have benefitted

¹²³ Ibid.

¹²⁴ Alvarado Chacín, “Las estrategias de inclusión social en Venezuela: un acercamiento a la experiencia de las misiones,” 86.

¹²⁵ Alvarez Herrera, “A Benign Revolution: In Defense of Hugo Chávez,” 197.

¹²⁶ Ibid.

from subsidized prices on basic foodstuffs through *Misión Mercal*.¹²⁷ In addition, Venezuela also declared itself free from illiteracy in 2005, in large part due to the *Ribas* educational mission.¹²⁸ The social missions, apart from addressing social problems were also formed with the intention of involving communities in the government's social development program; inherently, the missions involve citizens in civil society.

The Bolivarian Revolution and its social missions highlight an incongruence in the Bolivarian administration, since the promotion of human rights cannot just be focused on the social. The Chávez administration has also improved political rights in the sense that there has been political inclusion of previously marginalized sectors. Civil rights have most definitely improved in writing, but unlike social and political rights, they have not come to fruition.

Human Rights Language in the Constitution of the Bolivarian Republic of Venezuela

The Constitution of the Bolivarian Republic of Venezuela was developed by a National Constituent Assembly and approved by popular referendum on December 15, 1999. According to a document produced by PROVEA analyzing the human rights found in the Constitution of the Bolivarian Republic of Venezuela, the new constitution incorporated a series of juridical attributes present in modern international instruments

¹²⁷ Ibid.

¹²⁸ Ibid., 198.

amplifying the catalogue of rights consecrated in the 1961 Constitution. This new constitution consecrates the universality and indivisibility of human rights. For instance articles 2 and 3 establish that any law approved by the Venezuelan state must respect and fit international human rights norms and principles and that the state's primary goal is to respect human rights, respectively. In addition, articles 23, 152, and 154 outline that international human rights treaties ratified by the Venezuelan state are also constitutionally binding. Furthermore, Article 19 establishes that the state must guarantee human rights equally and without discrimination.

Civil Rights

Among the most relevant civil rights mentioned in the new Venezuelan constitution are: the right to life and complete prohibition of the death penalty (Article 43); the right to due process (Article 49); the right to free movement (Article 50); the right to freedom of association (articles 52 and 118); the right to freedom of assembly (Article 53); and the right to freedom of speech but prohibition of anonymity (Article 57).

Political Rights

Political rights protected by the 1999 constitution include: the right to participate in public affairs (articles 41, 62, and 65); the right to vote (articles 63 and 64); the right of political association and participation in electoral processes (Article 67); and the right to public demonstrations as long as they are peaceful and without arms, in turn, authorities cannot use shotguns, pellet guns, or other firearms, nor tear gas or other toxic substances to control peaceful demonstrations (Article 68).

Social and Family Rights

Social rights under the Bolivarian constitution include: the right to housing (Article 82); the right to free healthcare (Article 83); the right to social security (articles 86 and 88); the right to work (Article 87); the protection of workers' rights (articles 89, 90, and 91); the right to unionization with job security (Article 95); and the right to go on strike (Article 97).

International Perspective of Human Rights and the Bolivarian Revolution

From the international view of protection and universality of the aforementioned rights, there has been a strong influence and control of international organizations on Venezuela, particularly those from the United States. This included association with organizations such as affiliate bodies of the OAS, with commissions recommending and submitting human rights cases to the court for review. Among recent developments, Venezuela no longer (since 2012) recognizes the IACHR or the sister organization, the Inter-American Court of Human Rights. This is mainly due to the fact that the government cites the OAS and its human rights bodies as seeking to destabilize the country.¹²⁹

¹²⁹ Rachael Boothroyd, "Chavez Announces 'Immediate' Withdrawal from Inter-American Court of Human Rights," *venezuelanalysis.com*, July 26, 2012. <http://venezuelanalysis.com/news/7131>.

A Decade under Chávez: The Human Rights Watch Report

There has been widespread discussions on the human rights of the Chávez administration. The HRW report from September 2008 titled “A Decade under Chávez Political Intolerance and Lost Opportunities for Advancing Human Rights in Venezuela” best represents the nature of these discussions. A summary of the report findings note that the April 2002 coup was the first major blow to human rights protections established in the 1999 constitution. The coup in April 2002 led to the replacement of Chávez with an unelected president for less than two days. The temporary president within hours of holding office, suspended the legislature, dissolved the Supreme Court as well as the country’s democratic institutions. The report claims that ever since then, the government policies and practices have been shadowed by distinct discrimination and denouncing of critics as coup mongers as well as anti-democratic conspirators, all of which represents a disheveled state of rights as well as orderly and biased functioning of the state.¹³⁰

Moreover, the report also highlights that during the Chávez presidency there was a clear disregard for the separation of powers presented in the 1999 constitution symbolized by an independent judiciary for the crucial and basic protection of fundamental rights. Lacking this independence, the Chávez government practiced

¹³⁰ Human Rights Watch, *A Decade under Chávez: Political Intolerance and Lost Opportunities for Advancing Human Rights in Venezuela*. (2008). 1.

discrimination in the form of policies and judgments thereby hampering the freedom of expression of journalists, freedom of association of workers as well as the civil society's ability to promote human rights in the country.¹³¹

This chapter sought to demonstrate the Chávez administration's emphasis on human rights in general, and social rights in particular, and is a good precursor to the following chapter on the penitentiary crisis in Venezuela. By placing the focus predominantly on social and even political rights, the Chávez administration failed to promote some of the most basic human rights encompassed within civil rights. This chapter also facilitates in assessing the administration's shortfalls regarding human rights concerns, specifically when it comes to the (mis)use of pre-trial preventive detention, keeping in mind that the criminal justice system has been dysfunctional since even prior to the Chávez administration.

¹³¹ Ibid., 1-2.

Chapter 4: The Venezuelan Penitentiary Crisis in Focus

The main argument of this thesis is that the penitentiary crisis in Venezuela is brought about an inept criminal justice system whose functioning (or lack thereof) further exacerbates overcrowding in penitentiary facilities as well as violates the most basic human rights. The unintentional (mis)use of pre-trial preventive detention is a main factor contributing to overcrowding in Venezuelan prisons.

This chapter highlights the earliest and perhaps most ambitious project aimed at tackling the penitentiary crisis during the Chávez administration: The Penitentiary Humanization Program. Seeking to completely shift the system from that of a punitive one to a rehabilitation-focused system, the Penitentiary Humanization Program seeks to humanize prison facilities, as the program's name suggests. This chapter is focused on providing an intensive look at the components of the program while also assessing the program's relevance.

The chapter first begins with an explanation of the perceptions of the penitentiary system on behalf of the general Venezuelan public as well as inmates. Then a description of the system's actual conditions both before and during the Chávez administration follows. This chapter in particular demonstrates that the vast problems in the prisons have existed prior to the Chávez administration and are not consequences of the Bolivarian

Revolution. The chapter closes with an analysis of the Penitentiary Humanization Program.

The Penitentiary Crisis and the Bolivarian Government's Response

Consuelo Cerrada Méndez, Director of the now dissolved National Penitentiary Services, described the current Venezuelan penitentiary system as being an inherited system. According to Cerrada Méndez, the Venezuelan penitentiary system was a governmental organism that had been completely forgotten and abandoned, and that had become equated with that of “a deposit for human beings.”¹³²

But dealing with the Venezuelan penitentiary crisis has become an increasingly important issue for the Chávez administration and the Bolivarian Revolution. In fact, the Chávez administration has made structural changes to the country's prison system, particularly with its Penitentiary Humanization Program. However, even with these structural changes, human rights violations in Venezuelan prisons persist. I argue that the program has not been able to produce significant improvements because the problematic found in the penitentiary system is a result of a larger institutional problem: the inefficiencies stemming from an (overall) inadequate criminal justice system.

¹³² Consuelo Cerrada Méndez, “Intervención de la Ciudadana Consuelo Cerrada Méndez, Directora Nacional de los Servicios Penitenciarios del Ministerio del Poder Popular para Relaciones Interiores y Justicia, para Referirse al Sistema Penitenciario” *República Bolivariana de Venezuela*, accessed November 18, 2011, http://www.asambleanacional.gob.ve/index.php?option=com_docman&task=search_result&Itemid=185&lang=es.

It is considered that the Chávez administration, during its second term, has undertaken an active stance in regards to solving the penitentiary crisis by consolidating efforts through the development of a government program. This section consists first of a discussion on how Venezuelans generally view the penitentiary system (what influences their judgments). Then, a description of the situation in Venezuelan prisons follows. Third, the Chávez administration's Penitentiary Humanization Project is presented. Finally, an analysis of the Penitentiary Humanization Project and its impact on Venezuelan society is also provided.

Philosophical Foundations and the Present Penitentiary Reality in Venezuela

Roldan Tomasz Suárez Litvin in "El carácter problemático de la situación penitenciaria venezolana: hacia una solución de fondo" (1999) sought to find an answer to the question: "Why is the current situation in Venezuelan prisons perceived as problematic?"¹³³. Suárez Litvin found that there was a disconnect between the values of Venezuelan society and the reality in the prisons. He suggested that the solution to the penitentiary problem in Venezuela was simply the reunification of societal values and the penitentiary system.¹³⁴ According to the author, there was a disjuncture between the

¹³³ Roldan Tomasz Suárez Litvin, "El carácter problemático de la situación penitenciaria venezolana: hacia una solución de fondo," *Frónesis* 6, no. 1 (1999): 86, accessed November 13, 2011. <http://www.revistas.luz.edu.ve/index.php/frone/article/viewFile/1968/1905>.

¹³⁴ *Ibid.*, 110.

constitution¹³⁵ and the penal code, the first following the post-modern rehabilitation model while the second taking a classic rational character.¹³⁶

Although Suárez Litvin's study was published in 1999 and it strictly refers to the era prior to the Chávez presidency, major structural changes in the penitentiary system were not carried out until after 2005, with the declaration of the Penitentiary Humanization Program. Therefore, Suárez Litvin's analysis of the causes of the penitentiary problem in Venezuela is justifiably a good foundation for understanding the general atmosphere in Venezuela prior to 1999 as well as in the 2000s. Suárez Litvin's analysis will also provide some insight into the formation and composition of Chávez's Penitentiary Humanization Project. But first, let's discuss the philosophical foundations of modern definitions of penitentiary systems.

Suárez Litvin's description of a criminal justice system based on rationality highlights its exceedingly dichotomous character. It is important to remember that this system emerged from the influence of Enlightenment ideals of morality and rationality. Any elements different from these were considered deviant and, in fact, as the exact opposite.¹³⁷ The model revolves around the principles of liberty and dignity, which are

¹³⁵Suárez Litvin referred to the Fourth Republic Constitution; the document prior to Chávez's amended constitution of 1999.

¹³⁶ Ibid., 109.

¹³⁷ Ibid., 93, 90.

perceived to be the foundation of human nature, and responsibility and justice, mechanisms that emphasize the individual's agency (will) and the protection of their humanity.¹³⁸ Responsibility is always defined in terms of morality, based on either good or ill will in a classic rational model. Hence, ill will is perceived as intolerable for the good will because it threatens the core of human nature, as mentioned previously, the concepts liberty and dignity.¹³⁹ In this type of system, justice is solely sought through punishment.¹⁴⁰ The rehabilitation model emerges from a critique of the 18th century model; because although the classic rational system advocated the protection of the human dignity, it did so only for non-deviants, those individuals considered good-willed.¹⁴¹ The author argues that in such a system, like the classic rational model, individuals are used as a means of teaching others to respect human dignity, while evading the education of the actual subject.¹⁴² This last aspect also makes the classic rational model very different from a rehabilitation model.

A rehabilitation system is supposedly based on strictly scientific facts about human nature and its main objective is to resocialize individuals who have deviated from

¹³⁸ Ibid., 93.

¹³⁹ Ibid., 93, 91.

¹⁴⁰ Ibid., 94.

¹⁴¹ Ibid., 96.

¹⁴² Ibid., 94.

their particular society's moral standards so that they can, eventually, function in society.¹⁴³ This model emerged in the 19th century and is closely linked to scientific positivism, a movement which sought to study the human being based on its biological, psychic, and social components.¹⁴⁴ Within a rehabilitation system perspective, it is believed that since moral standards are not innate, people must be socialized from a very early age.¹⁴⁵ Human nature here is defined by the biological need to survive, and hence, humans, like all other animal species seek to maximize survival by organizing into cooperative groups or societies.¹⁴⁶ However, the process of socialization is not enough to safeguard society and it is precisely for this reason that penal (sentencing) systems were created, to enforce the very moral standards that guide societies.¹⁴⁷ Punishment, in this type of system, focuses on creating a conditioned negative response to the possibility of engaging in what would be considered a bad behavior.¹⁴⁸ As a result, prisons in a rehabilitation system become therapeutic-like institutions managed by specialists ranging from doctors to anthropologists.¹⁴⁹ Suárez Litvin mentioned that ironically, in this system

¹⁴³ Ibid., 97.

¹⁴⁴ Ibid., 97.

¹⁴⁵ Ibid., 100.

¹⁴⁶ Ibid., 98, 99.

¹⁴⁷ Ibid., 100.

¹⁴⁸ Ibid., 100.

¹⁴⁹ Ibid., 103.

the individual is also dehumanized through punishment because in order to create the conditioned consciousness mentioned before, punishment needs to be performed in a public manner.¹⁵⁰

In other words, the rehabilitation model focuses on resocializing the individual so that he/she can be reintegrated into society.¹⁵¹ On the contrary, the classic rational model is based on talion law; a system that is founded solely on punishment.¹⁵² Furthermore, while the rehabilitation system is constructive, the classic rational system is not, yet nevertheless, both systems dehumanize individuals at one point or another.

Suárez Litvin provides an analysis of Venezuelans' moral judgments over the current prison crisis and the author argues that these judgments do not emerge from classic rational thought but rather, Venezuelans would find such a philosophy quite appalling, barbaric, and outdated.¹⁵³ According to Suárez Litvin, Venezuelans oppose the idea of punishment, particularly because they view the classic rational type of punishment as having a hypocritical nature; a system in which inmates are punished in the name of a supposed moralist universal truth put in place by those in power.¹⁵⁴

¹⁵⁰ Ibid., 101.

¹⁵¹ Ibid., 97.

¹⁵² Ibid., 92.

¹⁵³ Ibid., 96.

¹⁵⁴ Ibid., 96, 105.

Furthermore, the Venezuelan penitentiary system is not criticized through a rehabilitation lens either.¹⁵⁵ According to Suárez Litvin, Venezuelans fear that this system is misused by authorities because the resocialization process will most likely take the shape of the interests of those in power and hence, the system's subtle nature could easily allow for authorities to use resocialization as a means to brainwash inmates.¹⁵⁶ The author goes as far as to suggest that the deeper reason why Venezuelans are unhappy with their prison system is that they see the reflection of the unequal relationship in Venezuelan society in the prisons as well.¹⁵⁷ The major problem in the Venezuelan penitentiary system is the fact that there is clearly an oppressive power relationship between authorities representative of a minority and those imprisoned, particularly because inmates tend to come from the lower socio-economic strata.¹⁵⁸ In fact, the 1997 Human Rights Watch report mentioned a feeling of helplessness among Venezuelans who turned to authorities to fix the rising crime problem of the 1980s and 1990s; doubting their criminal justice system's capacity and seeing no other violable options but imprisonment. According to data from 2005, about 61.3 percent of inmates declared *barrios* or poverty-stricken

¹⁵⁵ Ibid., 103.

¹⁵⁶ Ibid., 104, 105.

¹⁵⁷ Ibid., 109.

¹⁵⁸ Ibid., 105.

neighborhoods often times in the outskirts of cities, as their place of residence.¹⁵⁹ Also, for that same year, it was registered that approximately 30 percent of inmates had primary education, 50 percent had secondary education, 3 percent had higher education, and the illiteracy rate among prisoners was eight percent.¹⁶⁰

In summary, Suárez Litvin (1999) suggests then that the major concern for Venezuelans when analyzing the prison situation is corruption. The inequalities in Venezuelan society and the disconnect between the general public and leaders are issues that are exacerbated in the nation's prisons. Christopher Birkbeck and Neelie Pérez-Santiago in "The character of penal control in Latin America: Sentence remissions in a Venezuelan prison" (2006) show how this sense of hopelessness (in the penitentiary system specifically) has been translated into the Venezuelan culture and language.

Birkbeck and Pérez-Santiago's study highlights the linguistic difference between English-speaking (industrialized) countries and Venezuela in which the expressions 'doing time' and 'discharging time' are used, respectively, to refer to imprisonment.¹⁶¹ The authors argue that while imprisonment in English speaking countries is equated with

¹⁵⁹ Posada, A. and Díaz-Tremarias, M, "Las cárceles y población reclusa en Venezuela," *Revista Española de Sanidad Penitenciaria* 10 (2008): 25, accessed November 18, 2011, http://scielo.isciii.es/pdf/sanipe/v10n1/04_especial.pdf.

¹⁶⁰ Ibid.

¹⁶¹ Christopher Birkbeck and Neelie Pérez-Santiago, "The character of penal control in Latin America: Sentence remissions in a Venezuelan prison," *Criminology and Justice* 6, no. 3 (2006): 289, accessed November 13, 2011, <http://crj.sagepub.com.ezproxy.lib.usf.edu/content/6/3/289.full.pdf+html>.

time, in Venezuela, imprisonment is “something to be relieved rather than traversed.”¹⁶² In other words, imprisonment is perceived as ‘discharging a sentence’ in Venezuela because it is understood that prisoners must endure incarceration and find methods of dealing with the process of imprisonment.¹⁶³ Therefore, while in English-speaking countries ‘doing time’ refers to completing something similar to that of a (feasible) task in a predetermined amount of time, the phrase ‘discharging a sentence’ clearly shows the deep structural problems that are attributed to prisons in Venezuela.

The problem with the penitentiary system is so extensive and perhaps so endemic to the Venezuelan penitentiary structure that it is ingrained in the culture and society, and reflected in the language. Furthermore, imprisonment is something to undergo, suffer, and tolerate as a result of the prison conditions; time does not become a driving factor in the prisoner’s demands because of the many inefficiencies of the sentencing system in Venezuela. Instead prisoners demand for mechanisms to better deal with incarceration. For instance, Birkbeck and Pérez-Santiago found that between October 2003 and September 2004, out of 47 protests in Venezuelan prisons only nine highlighted the issue of procedural delays while the rest focused on the betterment of prison life.¹⁶⁴

¹⁶² Ibid., 290.

¹⁶³ Ibid., 292.

¹⁶⁴ Ibid., 305.

Interestingly, the Chávez administration, through its Penitentiary Humanization Program, is also trying to change the narrative with which individuals refer to the penitentiary system and its elements. For instance, in articles 184 and 272 of the Bolivarian Constitution of Venezuela, prisoners were referred to as *internos*, or inmates, and prisons as penitentiary establishments.¹⁶⁵ Cerrada Méndez in her 2010 speech at the Federal Legislative Palace mentioned that penitentiary functionaries now talk about custodial care and the penitentiary service and not about prisons or rehabilitation. In addition, the Chávez administration emphasizes that the prisoner is also a human being who happened to make a mistake during his/her lifetime.¹⁶⁶ The latter change in the way prisoners are perceived has also influenced the way in which they are described, less as an individual defined by the penitentiary institution, which automatically draws a connection to criminality (a word with vast negative connotations), and instead as an individual deprived of freedom, *una persona privada de libertad*.¹⁶⁷ Evidently, Chávez does not promote a classic rational model. Instead, the Humanization Program takes the form of a rehabilitation model but without the system's condescending nature. In Chávez's humanist approach individuals do not need to be fixed, but rather they need to realize their own potential.

¹⁶⁵ “¿Conoces los Artículos 272 y 184 de la CRBV?” Observatorio Venezolano de Prisiones, accessed November 18, 2011, http://www.ovprisiones.org/pdf/Diptico_272.pdf.

¹⁶⁶ Cerrada Méndez, “Intervención de la Ciudadana Consuelo Cerrada Méndez, Directora Nacional de los Servicios Penitenciarios del Ministerio del Poder Popular para Relaciones Interiores y Justicia, para Referirse al Sistema Penitenciario.”

¹⁶⁷ Ibid.

Prison Conditions in Venezuela

Prior to 1999

In fact, a HRW report from 1997 entitled “Punishment Before Trial: Prison Conditions in Venezuela” established that Venezuela’s penitentiary crisis began in the late 1980s and early 1990s as a consequence to the government response to Venezuelans’ demands on dealing with the drastic crime wave of this time.¹⁶⁸ As a result of the soaring crime rates, Venezuelans felt compelled that the government take on a more active policy to control the situation. For this reason, imprisonment became an appealing (and simple) solution to the crime problem.¹⁶⁹ Furthermore, the report established that by the mid-1990s overcrowding, detention of unsentenced individuals, violence, lack of provision of services, and a deficient and degenerate infrastructure were among the most significant problems in Venezuelan prisons at the time; issues that persist today.¹⁷⁰

During the Bolivarian Revolution:

The focus of this chapter is Chávez’s second administration because it was not until his second term that we start seeing efforts towards tackling the penitentiary crisis. It

¹⁶⁸ “Punishment Before Trial: Prison Conditions in Venezuela,” Human Rights Watch, accessed November 19, 2011, <http://www.hrw.org/legacy/reports/1997/venez/>.

¹⁶⁹ Ibid.

¹⁷⁰ Ibid.

was not until 2005 that the first evaluation of the penitentiary system was made. The Penitentiary Humanization Program is a result of this evaluation and it is the first major program meant to structurally change the penitentiary system.

In 2006 Venezuela's prison population equaled 19,700 of which 40 percent had been convicted, 57 percent were undergoing trial, and six percent were sentenced for work release, according to a Venezuelan NGO, OVP report.¹⁷¹ By 2009, the national prison population increased to 32,624 individuals of whom approximately 29 percent had been convicted, 67 percent was undergoing trial, and 4 percent were sentenced to work release.¹⁷² More recently, according to an AI report from March 2011, there are over 40,000 prisoners in Venezuela.¹⁷³

One of the major problems found in Venezuelan prisons is overcrowding. A March 2011 AI report describes the Venezuelan prison system as being fit for 12,500 inmates; it currently has three times the system's capacity.¹⁷⁴ To put this into perspective,

¹⁷¹ "Situación Carcelaria en Venezuela: Informe 2006," Observatorio Venezolano de Prisiones, accessed November 18, 2011, http://www.ovprisiones.org/pdf/Informe_2006.pdf.

¹⁷² "Situación Carcelaria en Venezuela: Informe 2009," Observatorio Venezolano de Prisiones, accessed November 18, 2011, <http://www.ovprisiones.org/pdf/INFOVP2009.pdf>.

¹⁷³ "Venezuela: Human rights guarantees must be respected: a summary of human rights concerns," Amnesty International, accessed November 18, 2011, <http://www.amnesty.org/en/library/asset/AMR53/007/2011/en/38e76a72-760f-48d9-9eb6-6b1d40d79107/amr530072011en.pdf>.

¹⁷⁴ Ibid.

in *El Rodeo* I and II there are 3,500 prisoners in a penitentiary facility made for 750.¹⁷⁵ Apart from overcrowding, violence within prisons between inmates as well as between prisoners and the prison authorities is a major issue. The report mentions that more than 1,600 inmates have died as a result of violence while another 3,100 were injured from 2006 until 2009.¹⁷⁶ During the first six months of 2010 alone, 221 inmates were killed and 449 were injured.¹⁷⁷ Weapons are commonplace in Venezuelan prisons. In 2006, 3,821 weapons were confiscated nationally, with spiked sticks and homemade firearms being the most prevalent, with a total of 2,712 and 802, respectively.¹⁷⁸ However, the range of weapons is vast. For instance, in 2008 2,213 bladed weapons, 113 pistols, 107 revolvers, 445 improvised firearms, 43 shotguns, two submachine guns, 60 grenades, and 5,432 rounds of ammunition were confiscated.¹⁷⁹

A 2007 report from the OVP found that the following human rights of prisoners in Venezuela were violated: the right to human dignity; personal security; non-

¹⁷⁵ Reardon, Juan, "Behind the Venezuelan prison riots: the state of Venezuela's prisons today," *Correo del Orinoco*, accessed November 18, 2011, <http://www.correodelorinoco.gob.ve/wp-content/uploads/2011/06/COI69.pdf>.

¹⁷⁶ "Venezuela: Human rights guarantees must be respected: a summary of human rights concerns."

¹⁷⁷ Ibid.

¹⁷⁸ "Situación Carcelaria en Venezuela: Informe 2006."

¹⁷⁹ "Fact Sheet: The Humanisation of Venezuelan Prisons," *Embassy of the Bolivarian Republic of Venezuela to the UK and Ireland*, accessed November 13, 2011, http://www.embavenez-uk.org/pdf/fs_Humanisation_Venezuelan_Prisons.pdf.

discrimination; freedom of expression, opinion and information; equality before the law, due process and judicial guarantees; education, culture and sports; work; and health. In reports produced by the OVP, from the years 2006, 2007, and 2009, common complaints about the penitentiary system included: Vast infrastructural problems in penitentiary institutions including the lack of sufficient establishments as well as the deteriorating conditions of prisons with problems ranging from sewage leaks and clogged sewers to a complete absence of potable water and deficient medical personnel and supplies.

More specifically, according to the 2007 OVP report, the violation of the human dignity of Venezuelan prisoners involves the lack of sanitary facilities, potable water, and food security.¹⁸⁰ In addition, inmates in Venezuelan penitentiaries are not classified or categorized by the functionaries, putting their personal security at high risk.¹⁸¹ The right to non-discrimination of Venezuelan prisoners is violated, particularly for female inmates and those individuals with HIV. Conjugal visits are made much more difficult for females and HIV infected prisoners are often times physically and socially isolated.¹⁸² The report found that although inmates did enjoy the opportunity to access information, it was

¹⁸⁰ “Situación de los Derechos Humanos y Procesales de las Personas Privadas de Libertad en Venezuela,” Observatorio Venezolano de Prisiones, 113, accessed November 18, 2011, http://www.ovprisiones.org/pdf/informe_2007.pdf.

¹⁸¹ *Ibid.*, 114.

¹⁸² *Ibid.*, 115.

obtained through their families and not the state.¹⁸³ Although educational, cultural and sports initiatives have been promoted by the government through the Bolivarian missions and other state agencies, they happen to take place on an irregular basis.¹⁸⁴ The study found that inmates who work receive little to no remuneration; hence, their right to decent work is also being violated.¹⁸⁵ The right to health has been violated on the basis that medical check-ups prior to entering the prisons are rarely performed and that there is a scarcity of medical personnel in penitentiary establishments.¹⁸⁶

Common complaints indirectly related to the penitentiary system and characteristic of the penal institutions included the persistence of illegal detentions and procedural delays. According to an OVP report from 2009, some individuals have awaited trial results for more than two years.¹⁸⁷ Another constant concern is the lack of professionalism practiced by the Public Ministry as well as the judges, in part because of a deficiency in trained technicians in the area, which has also allowed for the police to take on leading roles in the decision-making process.¹⁸⁸

¹⁸³ Ibid., 115.

¹⁸⁴ Ibid., 116.

¹⁸⁵ Ibid., 116.

¹⁸⁶ Ibid., 117.

¹⁸⁷ “Situación Carcelaria en Venezuela: Informe 2009.”

¹⁸⁸ “Situación de los Derechos Humanos y Procesales de las Personas Privadas de Libertad en Venezuela,” 119.

According to the OVP 2009 report, between the years 2000-2008, the budget established for the penitentiary system was equivalent to no more than 0.82 percent of the national budget. The OVP argued in its report that even though the administration has promulgated reforms, the investments to carryout the projects have been highly insufficient, making it easy to question the government's disposition to actually change the decadent prison system.¹⁸⁹ To put into perspective the inadequate supply of funds in the penitentiary system while in the United States USD 34 are spent per inmate in Venezuela each inmate receives an average of USD 2.¹⁹⁰

The same OVP report outlines the policies and plans of the Ministry of the Interior and Justice from 1999 through 2010. Interestingly, there has been a policy/plan established for each year except for the years 2003 and 2005, all of which focused on tackling the aforementioned issues.¹⁹¹ However, prior to 2006, none of the policies/plans were established based on a diagnostic of the penitentiary system. Chávez's Penitentiary Humanization Program opened up a new chapter in the way with which penitentiary issues are handled.

¹⁸⁹ "Situación Carcelaria en Venezuela: Informe 2009."

¹⁹⁰ Ibid.

¹⁹¹ Ibid.

The Chávez Administration's Penitentiary Humanization Program

Although Chávez's Penitentiary Humanization Program was not established until 2006, his government did implement some reforms prior to his second term. According to the OVP, Chávez's 1999 amended Constitution of the Bolivarian Republic of Venezuela was the first constitution to directly acknowledge the penitentiary system.¹⁹² Articles 184 and 272 of the new constitution mention areas of reform. For instance, Article 184 describes the importance and expected participation of the free community in the prisons in cultural, educational, and work-related activities, especially since the government expected to create new mechanisms that would allow states and municipalities to decentralize their control over the penitentiary system.¹⁹³

Complementing Article 184, Article 272 of the Bolivarian Constitution of Venezuela, mentions the state guarantee that the rehabilitation of inmates as well as the respect of their human rights would become a priority and that this would be achieved by introducing spaces for work, education, sports, and recreation in penitentiary establishments as well as by ensuring that these institutions would function under qualified professionals. In addition, the administration of the penitentiary establishments would be decentralized from the federal government and could even undergo some forms

¹⁹² “¿Conoces los Artículos 272 y 184 de la CRBV?” Observatorio Venezolano de Prisiones, accessed November 18, 2011, http://www.ovprisiones.org/pdf/Diptico_272.pdf.

¹⁹³ Ibid.

of privatization. As a means to facilitate the reinsertion of former inmates into society and reduce recidivism, the government would create post-penitentiary institutions. Finally, the reformed constitution also established that imprisonment would be considered as the last alternative when dealing with criminal cases.¹⁹⁴

In 2005, the Chávez government carried out a study of the problems in the Venezuelan prisons and, as a result, the Penitentiary Humanization Program was created in 2006.¹⁹⁵ The study looked at approximately 90 percent of all penitentiary establishments in the nation, a revision, according to Cerrada Méndez, that had never been done prior to the Chávez administration.¹⁹⁶ According to a fact sheet produced by the Venezuelan Embassy to the United Kingdom and Ireland, the program's focus is to promote 'ethical, moral and social values' while also fostering 'social integration.'¹⁹⁷ The Humanization Program involves all of Venezuela's prisons and is designed to reduce violence, improve health conditions, and encourage the social reintegration of inmates.¹⁹⁸ The plan's main objectives as outlined by Cerrada Méndez include the creation of a new institutional structure that is efficient, a fitting infrastructure that meets the needs of the

¹⁹⁴ Ibid.

¹⁹⁵ "Fact Sheet: The Humanisation of Venezuelan Prisons."

¹⁹⁶ Cerrada Méndez, "Intervención de la Ciudadana Consuelo Cerrada Méndez, Directora Nacional de los Servicios Penitenciarios del Ministerio del Poder Popular para Relaciones Interiores y Justicia, para Referirse al Sistema Penitenciario."

¹⁹⁷ "Fact Sheet: The Humanisation of Venezuelan Prisons."

¹⁹⁸ Ibid.

prisoners, and a system of comprehensive attention that will allow for the personal development of the prisoners.¹⁹⁹

During a press conference on March 16, 2010, Cerrada Méndez highlighted that among the most progressive changes of the penitentiary system under the Chávez administration is the promotion, enforcement, and protection of human rights. One of the explicit expressions of the human rights agenda in the Penitentiary Humanization Program can best be seen in the appointment of human rights delegates in some police stations and in all prisons nationwide.²⁰⁰ In addition, Human Rights Defense Councils have been created within prisons. These councils work to organize and represent the inmates of different prison blocks and function as mechanisms that allow for a direct dialogue between inmates and the authorities of the prisons.²⁰¹

Another institutional change led by the Penitentiary Humanization Project is that of creating a new institutional structure which will focus on strengthening institutional ethics.²⁰² In part, this requires the creation of a new organizational culture. For instance, the Humanization Project seeks to provide direct attention to inmates from what Cerrada

¹⁹⁹ Ibid.

²⁰⁰ Ibid.

²⁰¹ Ibid.

²⁰² Cerrada Méndez, “Intervención de la Ciudadana Consuelo Cerrada Méndez, Directora Nacional de los Servicios Penitenciarios del Ministerio del Poder Popular para Relaciones Interiores y Justicia, para Referirse al Sistema Penitenciario.”

Méndez describes will be a strictly hardworking and knowledgeable personnel that is truly committed to the betterment of the prisoners as individuals and their living conditions while in custody.²⁰³ Great emphasis is placed on the professionalization of the penitentiary service and the project seeks to bring in criminologists, sociologists, psychologists, social workers, and lawyers into the system.²⁰⁴

As a means to improve the system's efficiency, Prison Commissions have been created to take on case reviews and reduce procedural delays and an itinerant judges program has also been introduced as a means to ensure effective judicial supervision during the trial phases of cases against individuals who are detained while facing trial.²⁰⁵ The decentralization of the penitentiary system from the control of the Ministry of the Interior and Justice is an important component of the Humanization Project, hence, mechanisms like the National Correctional Services Address have been created (although this institution was recently dissolved in August of 2011 and has been replaced by a new ministry on penitentiary services).²⁰⁶ Another institutional change involves the creation of a well-integrated Superior Penitentiary Congress consisting of the Supreme Tribunal of

²⁰³ Ibid.

²⁰⁴ Ibid.

²⁰⁵ "Fact Sheet: The Humanisation of Venezuelan Prisons."

²⁰⁶ Cerrada Méndez, "Intervención de la Ciudadana Consuelo Cerrada Méndez, Directora Nacional de los Servicios Penitenciarios del Ministerio del Poder Popular para Relaciones Interiores y Justicia, para Referirse al Sistema Penitenciario."

Justice, the Public Ministry, the Ombudsman's Office, and the different ministries including Education, Culture, Sports, Social Protection, Interior Relations and Justice, and the Bolivarian National Guard as an effort to gain different perspectives on penitentiary issues and, therefore, provide a comprehensive response; another crucial factor in the Penitentiary Humanization Program.²⁰⁷

According to Cerrada Méndez, in regards to infrastructure, the Penitentiary Humanization Program will focus on the consolidation of the penitentiary establishments as well as the construction of new facilities.²⁰⁸ For instance, the program has created Penitentiary Communities, which provide the infrastructure that will allow for the comprehensive attention that seeks to be established nationwide.²⁰⁹ The creation of Penitentiary Communities exemplifies a philosophical change in regards to penitentiary establishments in which now the importance of family and integration is upheld.²¹⁰ The first of these communities built was *La Comunidad Penitenciaria de Coro* in the state of

²⁰⁷ Ibid.

²⁰⁸ Ibid.

²⁰⁹ Ibid.

²¹⁰ "Humanización Penitenciaria: infraestructuras para la vida," *Ministerio del Poder Popular para la Comunicación y la Información*, accessed November 19, 2011, http://www.minci.gob.ve/pagina/1/186310/humanizacion_penitenciarainfraestructuras_para.pnt.

Falcon in 2008.²¹¹ As of 2008, another five penitentiary communities were in progress of being constructed as well, while 106 renovations nationwide were taking place.²¹²

Another aspect of the Humanization Program that seeks to both increase efficiency and security involves a technological upgrade. The installation of the *Sistema Informático de Gestión Penitenciaria* (Informational System for Penitentiary Management, SIGEP), allows the registration of inmates into the system which in turn facilitates accessing records and following up on the inmates' progress.²¹³ The *Sistema Electrónico de Control de Acceso* (Electronic System for Access Control, SECA) has also been recently introduced in the penitentiaries as a means to make the prisons safer in a noninvasive manner and with the aim of respecting the fundamental rights of all individuals.²¹⁴ The SECA consists of metal detectors, metal detector bars, and a computer/scanner system as well as lockers to put away those objects that are

²¹¹ Ibid.

²¹² Ibid.

²¹³ Cerrada Méndez, "Intervención de la Ciudadana Consuelo Cerrada Méndez, Directora Nacional de los Servicios Penitenciarios del Ministerio del Poder Popular para Relaciones Interiores y Justicia, para Referirse al Sistema Penitenciario."

²¹⁴ Ibid.

confiscated.²¹⁵ According to Cerrada Méndez, as of March 2010, both of these systems of control have been put in place in 14 centers of the 33 total nationally.²¹⁶

The Humanization Program seeks to provide prisoners with comprehensive attention by ensuring that they have access to assistance in the areas of health, nutrition, education, recreation, as well as in job training and skill acquisition.²¹⁷ In June 2010, the Venezuelan Ministry for the Interior and Justice signed an accord with the National Experimental Polytechnic University of the Armed Forces (UNEFA) to provide vocational training to the nation's prisoners while also training prison personnel in human rights.²¹⁸ In addition, the provision of individualized attention to the prisoner is another fundamental component of the Humanization Project and it would allow the classification and determination of the inmate's particular policy of comprehensive attention during their time in custody.²¹⁹ The project also seeks to establish custodial care by this year, an initiative that would designate a professional to take care of a particular inmate.²²⁰

²¹⁵ Ibid.

²¹⁶ Ibid.

²¹⁷ "Fact Sheet: The Humanisation of Venezuelan Prisons."

²¹⁸ Ibid.

²¹⁹ Cerrada Méndez, "Intervención de la Ciudadana Consuelo Cerrada Méndez, Directora Nacional de los Servicios Penitenciarios del Ministerio del Poder Popular para Relaciones Interiores y Justicia, para Referirse al Sistema Penitenciario."

²²⁰ Ibid.

Furthermore, Venezuela, according to Cerrada Méndez, is the only country in the world to have created a Penitentiary Symphony Orchestra network.²²¹ Established in 2007 as an initiative to help reduce violence in the prisons and assist in preparing inmates to reenter their societies after the completion of their sentences, the Penitentiary Symphony Orchestra network, as of August 2011, has been introduced in a total of seven prisons and there are plans of expanding it into three more prisons by the end of this year.²²² In order to join the orchestra, prisoners must demonstrate a record of good behavior. Students are expected to attend lessons eight hours a day for five days a week and music instructors insist on hygiene and a neat appearance.²²³ The orchestra network is funded by the Inter-American Development Bank and is carried out by the State Foundation for the National System of Youth and Children's Orchestras of Venezuela, the system which the Penitentiary Symphony Orchestra is based on.²²⁴ According to Cerrada Méndez, this orchestra has already had 3 concerts in Venezuela as of 2010.²²⁵ In addition to the innovative Penitentiary Symphony Orchestra, the Humanization Program has also

²²¹ Ibid.

²²² Sarah Grainger, "Venezuela prison orchestra gives hope to inmates," BBC News Latin America and Caribbean, accessed November 19, 2011, <http://www.bbc.co.uk/news/world-latin-america-14050825>.

²²³ Ibid.

²²⁴ "Fact Sheet: The Humanisation of Venezuelan Prisons."

²²⁵ Cerrada Méndez, "Intervención de la Ciudadana Consuelo Cerrada Méndez, Directora Nacional de los Servicios Penitenciarios del Ministerio del Poder Popular para Relaciones Interiores y Justicia, para Referirse al Sistema Penitenciario."

implemented annual championships in different sports such as basketball, softball, and soccer.²²⁶

More recently, on June 14, 2011, Chávez, through decree number 8,266, created the Ministry for Penitentiary Services.²²⁷ The decree established that the responsibilities of the Correctional Services National Address will be transferred to the Ministry for Penitentiary Services (Article 6) and, as a result, the former institution will be eliminated (Article 10). According to this decree, the responsibilities of this new ministry include: The design and evaluation of policies, strategies, plans, and programs that exercise the fundamental rights of inmates and that focus on their security and helping them increase their possibilities of reinserting society by developing their potential and capabilities; the regulation of the organizational structure and functioning of the penitentiary system so that it strictly follows what is established in the constitution; the guarantee of an efficient penitentiary system serviced by professionals in the subject; to promote the construction, adaptation, and maintenance of penitentiary establishments; to design policies that guarantee comprehensive attention in the areas of education, health, culture, sports, work, and nutrition; to pursue the participation of families, and communal congresses.²²⁸

²²⁶ “Fact Sheet: The Humanisation of Venezuelan Prisons.”

²²⁷ Chávez Frías, Hugo, “Decreto N 8.266,” *Tribunal Supremo de Justicia*, accessed November 13, 2011, <http://www.tsj.gov.ve/gaceta/Julio/2672011/2672011-3191.pdf#page=28>.

²²⁸ *Ibid.*

Clearly, Chávez has taken a humanist approach to tackle the prison crisis in Venezuela. In order to understand why the Chávez administration has chosen such an approach to try to solve the penitentiary crisis, it is important to consider the cultural perspective with which the issue is viewed. The following section will explain the philosophical foundations with which modern penitentiary systems emerged, Venezuelans' perceptions of the penitentiary reality in their country, as well as an analysis of where Chávez's Humanization Program falls.

Why the Penitentiary Humanization Program is a First Step, but Not the Solution

Although the Chávez government has made the renovation, remodeling, and construction of new penitentiary establishments a priority, with the drastic increase of prisoners in Venezuela, this solution is simply not going to solve the root of the problem. From 2006 to March of 2011, Venezuela's prison population doubled, reaching 40,000 for a system that is meant to hold about 12,000 inmates. Overcrowding has become the principal issue in Venezuela's penitentiary system which has led to an increase in violence within prisons and caused further damage to the old already, disintegrating, penitentiary establishments. As a result of rampant violence within prisons, human rights like the right to dignity and personal security are continuously violated. The lack of decent penitentiary infrastructure also endangers the possibility of inmates fully realizing their human right to dignity, personal security, education, culture, and sports, and health.

If these are still usual problems five years after the introduction of the Penitentiary Humanization Program, one can only wonder how long it will take to begin to see a more positive picture of Venezuelan prisons. There is no doubt that the

Humanization Program itself is revolutionary and that its potential to change the lives of Venezuela's imprisoned population is quite vast. However, there seems to be a disconnect between theory and practice. For instance, the OVP estimates of the budget attributed to the penitentiary system (0.82 percent of the national budget from the years 2000 to 2008) clearly show that it is highly underfunded. Although more recent data on the penitentiary system budget is not provided, the Humanization Program had already been promulgated for two years within the time of this study. With such idealistic goals as those set forth by the Penitentiary Humanization Project, one would think that expenditures would be greater than an equivalent of USD 2 per inmate. Custodial care as an initiative and the professionalization of the penitentiary service alone are highly expensive projects. To add to these goals, the investment in penitentiary infrastructure is also profoundly costly. It is crucial then that the Chávez government make increasing the prison system's budget a priority.

It may be too soon to fully evaluate Chávez's Penitentiary Humanization Program and perhaps the real problem lies in Venezuela's larger criminal justice system. The reform undertaken within prison walls can only do so much, true change can only be achieved within the actual institutions that make, enforce, and practice the law.

In sum, the Penitentiary Humanization Program is the earliest and perhaps most ambitious project aimed at tackling the penitentiary crisis during the Chávez administration. This program seeks to completely shift the system from that of a punitive one to a rehabilitation-focused system, and in turn, predominantly aims at humanizing prison facilities. Although the program has the potential of changing the living conditions

of individuals deprived of their liberty in a significantly positive way, and although the system also emphasizes reforms outside prison walls, commitment to the program is still questionable. Furthermore, the penitentiary crisis in Venezuela requires more than just a reform in the penitentiary system, but also in the criminal justice system at large.

Chapter 5: Elaboration of the Statement of the Problem

Statement of the Problem

This thesis argues that even though preventive detention is allowed for a maximum of two years under the Venezuelan Organic Code of Criminal Procedure, the system works in such a way that deprives many Venezuelans of their liberty, keeps those under preventive detention past the allotted legal time, and does so in appalling conditions violating human dignity. The (mis)use of preventive detention exacerbates the overcrowding in prisons. This, in turn, further intensifies the precarious conditions of prison facilities in Venezuela which inherently (negatively) affect the already abysmal living conditions for individuals deprived of their liberty.

Moreover, these circumstances arise out of a larger criminal justice system failure. As the research process progressed, it became evident that in addition to there not being much available information on the topic of preventive detention in Venezuela, whatever little information that was available came from sources with a distinct political tendency. This clear political tendency has translated into a highly politicized discussion on preventive detention and the criminal justice system failure in Venezuela. The lack of clear-cut available data on behalf of the Venezuelan state does not contribute in a positive manner to the discussion either. However, contrary to common belief, this thesis seeks to prove that the (mis)use of preventive detention is mostly accidental, that it is not

systematic in the sense that it is not targeting a particular group of people due to their political affiliation and/or beliefs. Nevertheless, there are certainly cases where it is undeniable that politics played a role, yet these cases are not the rule. Instead, I argue that it is the political discourse on both sides which has allowed the depiction of the (mis)use of preventive detention to be based on political (really politicized) terms. In the midst of this highly politicized debate, I want to highlight what is (and should be) of utmost importance, the human rights violations experienced by detained Venezuelans in general.

Justification

It is argued that the current criminal justice system in Venezuela has its origins as a consequence of the rising crime and violence that began in the 1980s, which led to widespread feelings of discontent with the state and its penal mechanisms. In fact, due to this significant change in Venezuelan society, imprisonment began to be perceived as a logical solution to crime and violence. Nevertheless, the perceived (and existing) inefficiencies of the system at the time pushed the state to take on UN recommendations and shift the legal system from that of an inquisitive to an adversarial system. It was hoped that the reformed penal code of 1998 would make justice fast and prisons solely for convicted individuals, placing freedom as a priority.

Accordingly, Chávez, after taking power in 1999, took the responsibility to uphold these new changes that were meant to espouse international human rights guidelines. Authors like Alguíndigue and Pérez Perdomo (2008) as well as Ungar (2003) suggest that the penal reform of 1998 did not propagate the required shift of the legal system from that of an inquisitive to that of an adversarial system, which was at the core

of the reform. In practice, this has translated into the interpretation of the new reformed adversarial penal code along inquisitive lines, meaning that there is still a disregard for freedom in exchange for achieving penal efficiency. Consequently, the Chávez administration has failed to uphold international human rights guidelines regarding preventive detention.

The most prominent argument explaining this failure is that of a new legal culture under Chávez. According to Pérez Perdomo (2009), there is currently a political character to law, suggesting that the judicial system is expected to serve the interests of the Bolivarian Revolution, when clearly there should not be.²²⁹ Moreover, as Ungar (2003) argues, administratively reformed laws and policies need a higher level of institutional accountability and cooperation, factors which seem to not be currently available in most of Latin America, with Venezuela being no exception. In other words, Pérez Perdomo (2009) and Ungar (2003) suggest that there is a lessening of judicial independence and as a result, a weakening of the rule of law.

Julia Buxton's (2005) analysis of the political crisis in Venezuela under Chávez helps place the legal culture argument into a politico-historical context. Buxton finds that Chávez's Bolivarian Revolution has demarcated a clear separation from the past, but,

²²⁹ Rogelio Pérez Perdomo, *Derecho y Cultura Jurídica en Venezuela en Tiempos de Revolución (1999-2009)*, (2009): 465.

nevertheless, has made the same mistake of exclusion, in this case those outside of the bounds of the officialist band.²³⁰ Although Buxton's focus is the current political crisis in Venezuela, this stark separation in politics may also help explain the supposed waning of judicial independence and the rule of law in Venezuela.

Nevertheless, it should be noted that there is no existing scholarly work on pre-trial preventive detention specific to Venezuela. Most of the scholarly work on the topic was very general and did not provide a detailed analysis of the issue, particularly since the majority of the work on the criminal justice system and its components has been focused on the penitentiary crisis at large, with preventive detention being just a small component of the chaos in the prisons and other penal institutions. Although it is consistently highlighted throughout this literature that there are less visible structural problems within the instruments and institutions of criminal justice which feed into the penitentiary crisis in Venezuela, these less visible structural problems have also not been the focus of study. In summary, very little has been written on the issue of preventive detention in Venezuela. Moreover, the scholarly emphasis has been very general, in turn, providing a very general understanding of the penitentiary crisis and its causes.

There *has been* a proliferation of discourse on the issue of preventive detention in Venezuela due to the work of national local community organizations as well as that of

²³⁰ Julia Buxton, "Venezuela's contemporary political crisis in historical context," *Bulletin of Latin American Research* 24, no. 3 (2005): 245.

IGOs and NGOs and the means of mass communications. This public discussion of pre-trial preventive detention is equally as politicized as any other conversation involving the Chávez administration; fact which is quite problematic due to the limited amount of information on the topic. In addition, information on preventive detention is not readily available on behalf of the state, putting the government at a disadvantage, as well as at fault, in the direction the nature of these discussions have taken. In fact, Alguíndigue and Pérez Perdomo (2008) argue that there is a gap in the literature, especially since the government never followed-up on the legislative and structural changes made throughout the Chávez administration. Therefore, these authors argue it is a very difficult task to determine whether reforms during the Chávez administration have improved the penal situation in Venezuela, particularly in the case of preventive detention.²³¹

This thesis presents the structural problems found in the Venezuelan criminal justice system, namely both the lack of sufficient staff and professionalism in the workforce. Specifically, the thesis focuses on the effects of preventive detention on overcrowding; and the effect of overcrowding on the human rights of those that are detained. Furthermore, when following both Venezuelan and United States news and media outlets, it becomes quite apparent that most of the work on preventive detention has an undermining, if not explicit, political agenda. This has led to a disconnect between more notorious cases of preventive detention and the rest, which I believe to be just

²³¹ Carmen Alguíndigue and Rogelio Pérez Perdomo, *La prisión preventiva en tiempos de revolución (Venezuela 1998-2008)*, (2008): 445.

another, of the many, political strategies to defame human rights under the Chávez administration.

In sum, the contribution of this thesis is that it shines a light on the politicization of the topic and provides a counter-hegemonic discourse on the issue, proving that the present hegemonic discourse on preventive detention in Venezuela consists of a generalization of highly politicized cases. All this takes away from the issue at hand, which is that of the grave violations of human rights of those preventively detained in Venezuela, regardless of their status as political prisoners or not.

Why Challenge the Hegemonic Discourse on Preventive Detention in Venezuela?

This section seeks to highlight the politicization of the discourse on preventive detention in Venezuela. The Venezuelan state has, in recent years, been featured in the media for its supposed systematic attacks on human rights, particularly the rights of activists, reporters, and any others depicted as threats to the Bolivarian government's interests. Surprisingly, local legal experts, as reported by Simon Romero in *The New York Times* article "Criticism of Chávez Stifled by Arrests" in April of 2010, claim that "political prisoners" are relatively few, amounting to no more than 30 Venezuelans total in 2010, including Afiuni herself.²³² This relatively small number of individuals

²³² Simon Romero, "Criticism of Chávez Stifled by Arrests" *The New York Times*, April 3, 2010, http://www.nytimes.com/2010/04/04/world/americas/04venez.html?_r=0.

considered political prisoners, in fact shows that preventive arrests and detentions may not be as systematic as the overall media suggests.

I am not suggesting that political prisoners are a necessary evil nor am I condoning the existence of political prisoners, but rather, I want to emphasize that although Chávez has been consistently portrayed in the media as a dictator, strongman, despot, autocrat, caudillo, among many other nouns referring to authoritarian and militaristic leadership, this number of political prisoners is most definitely small. As a result, this sole piece of evidence creates a challenge for the argument that claims Chávez to have been an authoritarian ruler. In addition, it is important to keep in mind that there is a significant difference between an authoritarian ruler and a government with authoritarian tendencies.

Consequently, there is a dominant discourse that continues to promote the political polarization of Venezuelan society, depicting those detained as enemies of the Bolivarian Revolution currently taking shape in Venezuela. The politicization of the issue of preventive detention seems to be just another strategy aimed at tarnishing not just the human rights record of the Chávez administration, but also delegitimizing the Bolivarian administration in general. This hegemonic discourse supersedes and disregards any of the accomplishments, even in human rights, that the Bolivarian government has achieved. Therefore, although vast human rights violations have undoubtedly taken place during this administration, I want to bring to the fore that the issue of preventive detention has not escaped politicization. In turn, this issue has been viewed through a particular lens, blurring reality and generalizing exceptionally politicized cases of preventive detention.

The private Venezuelan local media as well as Western liberal outlets must be specially recognized for its accomplishments in highlighting particularly important political cases of the (mis)use of preventive detention, further politicizing them and transforming them into larger generalizations of the reality of preventive detention in Venezuela. This, in turn, shifts the emphasis of the discussion to politics rather than on the vast human rights violations experienced by detainees regardless of their status and background (and media attention received).

The purpose of this thesis is not to overlook the faults and failures of the Chávez administration, but instead to propose a shift in the politicized discussion. Rather than following the hegemonic discussion which depicts Chávez and his Bolivarian Revolution as a prominent (negative) break in Venezuelan political and democratic history, I propose a new lens. This new lens, which is equally critical, perceives the Bolivarian Revolution to be an *attempted* break from the past. It is an attempted break from the past because although the law has changed significantly in Venezuela since 1999, the practice of the law has not. In turn, the disconnect between law and reality have led to a continuation, perhaps in a more explicit form, of the politics of the past.

Nevertheless the politicization of the issue of preventive detention in Venezuela should not shift the main focus of this thesis which is that, individuals deprived of their liberty in Venezuela, specifically those under preventive detention, whether political prisoners or not, experience a vast number of violations to their human rights.

The case of Judge Afiuni exemplifies both, the exceptional cases as well as the problems experienced by detainees whose arrest was not highly politicized/personalized.

The goal of this section is to show how Afiuni's case although exceptional in some ways, is also not deviant from most of the other cases of preventive detention. Afiuni's case shows an undoubtedly powerful influence of the President in judicial decisions and the vast human rights violations detained persons experience regardless of the protections set forth in the Bolivarian constitution, in addition to a politicized discourse.

The Afiuni Case

Afiuni was the 31st Control Judge for the Metropolitan Area of Caracas.²³³ On December 10, 2009, Afiuni carried out a preliminary hearing for Eligio Cedeño, individual detained for accusations of subverting currency controls and whom had already been deprived of his liberty for more than two years, the maximum term of preventive detention as provided in the Venezuelan Code of Criminal Procedure, Article 230.²³⁴ Since September 1, 2009 Cedeño's detention had been declared arbitrary by the UN Working Group on Arbitrary Detention, which cited violations to a fair trial on behalf of the Venezuelan state. Afiuni decided to follow UN recommendations to replace the current custodial measure against Cedeño (since it had surpassed the two year maximum permitted by the Venezuelan Code of Criminal Procedure) with a non-custodial path to trial which also prohibited Cedeño from leaving the country, and demanded the retention

²³³ Comisión Interamericana de Derechos Humanos, *Democracia y Derechos Humanos En Venezuela*, 2009, 93.

²³⁴ Romero, "Criticism of Chávez Stifled by Arrests;" *Democracia y Derechos Humanos En Venezuela*, 93.

of his passport and that he present himself before the court every 15 days.²³⁵ However, it is important to note that Cedeño quickly fled the country after his release, an important detail often left out by the opposition media.²³⁶

It is reported that hours after former Judge Afiuni's decision on Cedeño, the Venezuelan intelligence agency (then DISIP, now SEBIN) raided the headquarters of the 31st control court, taking Afiuni as well as two sheriffs into custody.²³⁷

On December 11, 2009 Chávez's response to Afiuni's decision was broadcasted nationwide on both television and radio, where he called Afiuni a "bandit" and personally requested the maximum penalty of 30 years imprisonment to the Attorney General and the Supreme Court of Justice, a measure in order to preserve the dignity of the country.²³⁸ Chávez even exclaimed that:²³⁹

... A new law needs to be established because a judge that frees a bandit is much more severe than the bandit himself. It is infinitely severe for a Republic, for a country, that a murderer be released by a judge for pay. This is more severe

²³⁵ *Democracia y Derechos Humanos En Venezuela*, 93.

²³⁶ Virginia López and Tom Phillips, "Noam Chomsky pleads with Hugo Chávez to free judge in open letter," *The Guardian*, December 21, 2011, <http://www.guardian.co.uk/world/2011/dec/21/chomsky-chavez-free-judge-letter>.

²³⁷ *Democracia y Derechos Humanos En Venezuela*, 93.

²³⁸ Romero, "Criticism of Chávez Stifled by Arrests;" *Democracia y Derechos Humanos En Venezuela*, 93.

²³⁹ *Democracia y Derechos Humanos En Venezuela*, 93.

than a murder, as a result, she and others who do the same must be sentenced with the highest punishment...

The president also mentioned that Afiuni's action would have put her before a firing squad in earlier times, due to his belief that she had accepted a bribe from Cedeño.²⁴⁰

On December 12, 2009, information from the Prosecutor General stated that Judge Afiuni was imputed on that same day by the Public Ministry for alleged crimes, including: Corruption, abuse of authority, and favoring evasion and association to commit a crime.²⁴¹

Like the man Afiuni ordered for release, she has also been detained for more than the two year maximum allotted in the Venezuelan criminal code.²⁴² Afiuni was initially placed in a women's prison near Caracas, the National Institute of Feminine Orientation (INOF). It is unclear if Afiuni was put in a space near or actually in a cell with more than 20 inmates whom she had sentenced on charges like murder and drug smuggling. Nevertheless, the proximity to inmates she had tried in either case put her personal

²⁴⁰ Romero, "Criticism of Chávez Stifled by Arrests."

²⁴¹ *Democracia y Derechos Humanos En Venezuela*, 93.

²⁴² "Venezuela: HRF Calls on Venezuelan Authorities to Release Judge María Lourdes Afiuni, Publishes Legal Report on Her Case," *Human Rights Foundation*, January 17, 2012, <http://humanrightsfoundation.org/Venezuela-HRF-calls-for-Afiuni-release-publishes-legal-report-17-01-2013.php>; María Eugenia Díaz and Willian Neuman, "Venezuelan Judge Who Angered Chávez Says She Was Raped While in Prison," *The New York Times*, November 26, 2012, http://www.nytimes.com/2012/11/27/world/americas/jailed-under-hugo-chavez-judge-alleges-prison-rape.html?_r=0.

integrity in constant risk.²⁴³ According to a July 2011 report from the Andres Bello Catholic University (UCAB) Center for Human Rights, forensic studies of Afiuni noted a series of scars that had not been reported in the first medical evaluation realized on December 10, 2009, when she was first placed in state custody.²⁴⁴ Therefore, reports suggest that Afiuni experienced plenty of physical violence during her detention at INOF, including more recent, yet not confirmed, allegations that she was also raped while in prison and consequently had an abortion.²⁴⁵

In addition to the physical violence Afiuni experienced at INOF, she was also deprived some of the most basic rights, including the lack of exposure to sun light for approximately 10 months. It is reported that the few times she was allowed outside of her cell occurred only at night time and still within prison hallways and facilities.²⁴⁶ The one time Afiuni was exposed to the sun, she was forced to sit under the sunlight for 20 minutes straight, which resulted in Afiuni feeling nauseous and weak to the point of

²⁴³ Romero, “Criticism of Chávez Stifled by Arrests;” Centro de Derechos Humanos de la UCAB, *Trato Cruel e Inhumano Contra María Lourdes Afiuni*, 2011, [http://www.ucab.edu.ve/tl_files/CDH/Maria Lourdes Afiuni/TRATO CRUEL E INHUMANO.pdf](http://www.ucab.edu.ve/tl_files/CDH/Maria%20Lourdes%20Afiuni/TRATO%20CRUEL%20E%20INHUMANO.pdf); López and Phillips, “Noam Chomsky pleads with Hugo Chávez to free judge in open letter.”

²⁴⁴ *Trato Cruel e Inhumano Contra María Lourdes Afiuni*, [http://www.ucab.edu.ve/tl_files/CDH/Maria Lourdes Afiuni/TRATO CRUEL E INHUMANO.pdf](http://www.ucab.edu.ve/tl_files/CDH/Maria%20Lourdes%20Afiuni/TRATO%20CRUEL%20E%20INHUMANO.pdf).

²⁴⁵ “Venezuela Must Release Judge Who Suffered Sexual Violence in Jail – UN Experts,” *UN News Centre*, February 12, 2013, <http://www.un.org/apps/news/story.asp?NewsID=44141&Cr=venezuela&Cr1=#.UYa2V8qSIkQ>.

²⁴⁶ *Trato Cruel e Inhumano Contra María Lourdes Afiuni*, [http://www.ucab.edu.ve/tl_files/CDH/Maria Lourdes Afiuni/TRATO CRUEL E INHUMANO.pdf](http://www.ucab.edu.ve/tl_files/CDH/Maria%20Lourdes%20Afiuni/TRATO%20CRUEL%20E%20INHUMANO.pdf).

fainting (the sudden exposure to sun was a drastic change for a human being who had been kept encaged). The UCAB report claims that due to Afiuni's reaction to her first encounter with the outdoors and sunlight in months, from that day onwards she was no longer permitted outside of her cell.²⁴⁷

Apart from the inevitable health concerns Afiuni acquired from living in such conditions at INOF, her health began to take a turn for the worse when a lump was found beneath one of her underarms in March of 2010. By November 2010, Afiuni's condition worsened, presenting hemorrhages which were a product of uterine problems. Afiuni's defense consistently asked for permission to seek medical assistance for the defendant, attempts which according to the UCAB were left unheard. In December 10, 2010, the president of the Inter-American Court on Human Rights even ordered provisional measures necessary for Afiuni to be assisted by doctors of her choice.²⁴⁸ The resolution also required that the State adopt measures that would allow Afiuni to remain in a place adequate to her circumstances, paying close attention to her former position as a penal judge.²⁴⁹

²⁴⁷ Ibid., 1-2.

²⁴⁸ *Trato Cruel e Inhumano Contra María Lourdes Afiuni*, [http://www.ucab.edu.ve/tl_files/CDH/Maria Lourdes Afiuni/TRATO CRUEL E INHUMANO.pdf](http://www.ucab.edu.ve/tl_files/CDH/Maria_Lourdes_Afiuni/TRATO_CRUEL_E_INHUMANO.pdf); Corte Interamericana de Derechos Humanos, *Informe Anual De La Corte Interamericana De Derechos Humanos*, 2010.

²⁴⁹ *Informe Anual De La Corte Interamericana De Derechos Humanos*, 86.

On January 27, 2011, at the Oncological Hospital of Caracas, Afiuni was told that she required a total hysterectomy, which was performed on February 3, 2011 by the doctor of her choice. Due to Afiuni's condition, the court agreed on February 2, 2011 that she would undergo house arrest after she was released from the hospital. Afiuni was released on February 8, 2011 and has been in house arrest ever since.²⁵⁰ The UCAB report highlights that contrary to common belief, house arrest has not actually improved Afiuni's living conditions, for she is still unable to engage in outdoor activities, also further inhibiting access to sunlight, a basic right.²⁵¹ As a result, on June 22, 2011 Afiuni's lawyers presented to the judge, that in accordance with rules 11 and 21.1 of the Standard Minimum Rules for the Treatment of Prisoners, Afiuni was allowed and consequently would use the common areas of the building where she is under house arrest for the purpose of being exposed to natural light and take part in open air exercise. However, on June 30, 2011 the judge responded that the court denied the request providing no justification.²⁵²

The UCAB report stated that although Afiuni was granted access to the hospital for her surgery, the follow-up exams needed after Afiuni's surgery to ensure a complete recovery, had not been completed. In fact, Afiuni's defense denounced that this was due

²⁵⁰ *Trato Cruel e Inhumano Contra María Lourdes Afiuni*, [http://www.ucab.edu.ve/tl_files/CDH/Maria Lourdes Afiuni/TRATO CRUEL E INHUMANO.pdf](http://www.ucab.edu.ve/tl_files/CDH/Maria_Lourdes_Afiuni/TRATO_CRUEL_E_INHUMANO.pdf).

²⁵¹ *Ibid.*, 2.

²⁵² *Ibid.*

to blackmailing and attempted extorting on behalf of the judge responsible for Afiuni's case, who threatened to send Afiuni back to INOF if she did not accept to go to court, matter which Afiuni has consistently refused to do because of the lack of judicial guarantees provided to her. The judge also promised that Afiuni would be allowed to visit the doctor of her choice if she followed through with the judge's petition. Afiuni's defense argues that it is for this reason that on April 28, 2011 the judge unilaterally and with no consultation changed the date of Afiuni's transportation for a medical appointment, inherently forcing her to miss it.²⁵³

The report mentions countless instances where Afiuni's medical appointments were completely disregarded and the consequences of this on Afiuni's health. In mid-July of 2011, Afiuni's defense presented a written request asking for measures that would allow more flexibility for the realization of Afiuni's pending medical exams. But on July 25, 2011 the judge denied the request, claiming that the defense had not presented documents that supported the request. The UCAB report highlights a contradiction in the judge's decision, mainly due to the fact that the defense does not have access to Afiuni's health reports in the first place.²⁵⁴ This is so because it has been established by judicial order that Afiuni's clinical/medical history remain safeguarded in the hospital without any legal justification. Furthermore, a copy of the medical history is not available on the

²⁵³ Ibid., 3.

²⁵⁴ Ibid., 6.

judicial record. The UN Commission on Human Rights has classified the denial of medical history records as a form of cruel and inhuman treatment.²⁵⁵

More recently, on June 7, 2013, the national prosecutor's office requested to release Afiuni due to her necessary medical treatments. On June 14, Afiuni was granted conditional release by the 17th Court Judge, Marilda Ríos. The terms of the conditional release granted to Afiuni require her to report to authorities every 15 days, she is not allowed to leave the country, and is still prohibited from engaging with the media.²⁵⁶

Although the conditional release granted to Afiuni undoubtedly enhances her human rights, her prior experiences were constant threats to her most basic rights. The human rights violations experienced by Afiuni are those predominantly related to principles concerning the physical, psychological, and moral integrity of the individual and range from abuses discussed in instruments like: The Standard Minimum Rules for the Treatment of Prisoners; the ICCPR; and the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment; the Code of Conduct for Law Enforcement Officials; The American Declaration of the Rights and Duties of Man; The American Convention on Human Rights; Inter-American Convention to Prevent and Punish Torture; the Constitution of the Bolivarian Republic of Venezuela; the Venezuelan

²⁵⁵ Ibid.

²⁵⁶ Alicia de la Rosa, "Tribunal otorgó libertad condicional a la jueza Afiuni," *El Universal*, June 14, 2013, <http://www.eluniversal.com/nacional-y-politica/130614/tribunal-otorgo-libertad-condicional-a-la-jueza-afiuni>.

Organic Code of Criminal Procedure; and the Regulations for Judicial Internment Centers.

The inherent right to life is guarded by law to ensure that no human being is arbitrarily deprived of their life. This is established in the articles 6.1, 4, 43 of the ICCPR, the American Convention on Human Rights, and the Bolivarian Constitution respectively. There are also several provisions in law to guard every individual's right to humane treatment. Article XXV, Article 2, Article 5, Article 10.1, Article 272, and Principle 1 of the American Declaration of the Rights and Duties of Man, the Code of Conduct for Law Enforcement Officials, the American Convention on Human Rights, the ICCPR, the Bolivarian Constitution, and the Body of Principles for the Protection of All Persons state that under any form of detention or imprisonment the individual has the right to humane treatment due to the inherent human dignity of persons. Most detainees are unable to exercise this right and are often subjected to mental torture and physical suffering during their investigation or detention period. This trend is coherent with what is observed in the case of Judge Afiuni who was put in a cell with/close to more than 20 inmates who she had herself sentenced on charges such as drug smuggling and murder. She was raped in prison and it is claimed that INOF Governor Isabel Gonzalez abused her in the form of insults to her personal dignity, in addition to physical and moral forms of abuse. This explains how inhumane and unprotected the environment can be for the detainee.

Much along the same lines fall some other human rights instruments like the ICCPR (Article 7), the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (Principle 6), the Code of Conduct for Law

Enforcement Officials (Article 5), the American Convention on Human Rights (Article 5), Inter-American Convention to Prevent and Punish Torture (Article 2), and the Bolivarian Constitution (Article 46), which state that no one, regardless of the circumstances shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

The Inter-American Convention to Prevent and Punish Torture defines torture as any act intentionally performed whereby physical or mental pain or suffering is inflicted on a person as personal punishment, as a preventive measure, as a penalty, or for any other purpose. Furthermore, torture shall also be understood to as any use of methods upon a person, which is intended to obliterate the personality of the victim or to diminish his physical or mental capacities, even if they do not cause physical pain or mental anguish. Furthermore, Code of Conduct for Law Enforcement Officials defines torture as an intentionally inflicted form of pain or suffering that may be physiological or psychological, and that caused by or at the instigation of a public official in order to force information out of the detainee. This could also be aimed to not only procure information from the tortured individual but also to get him to confess or to intimidate or punish him for any act he is suspected of having committed/has committed. Torture, according to this definition excludes pain and suffering caused within the lawfully sanctioned limits well covered in the Standard Minimum Rules for the Treatment of Prisoners. This right was also among others which could not be exercised in the case of Afiuni. In addition to other forms of violence including confinement and physical torture, she was forced to live without any exposure to sun light for approximately 10 months. Needless to say, such deprivation can cause irreparable psychological damage.

Article 9 of the ICCPR states that everyone has the right to liberty and security of person. This article heavily emphasizes that it shall not be the general rule that persons awaiting trial shall be detained in custody. Following the right to security, Article 5, Article 10.2, Principle 8 of the American Convention on Human rights, the ICCPR, The Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, respectively, establish that accused persons shall be segregated from convicted persons and shall be treated appropriately according to their status as unconvicted persons. In addition, Rule 8 of The Standard Minimum Rules for the Treatment of Prisoners highlights the further categorization of individuals deprived of their liberty within and from institutions, taking into account their sex, age, and their criminal record. Once again Judge Afiuni's case clearly reflects the lack of concern for the security of the detainee. It is easy to fathom the threat and constant fear for a woman who is confined in a cell with/close to 20 other inmates who she had herself sentenced on charges like murder or drug smuggling.

Another contextually appropriate right for those under detention is their right to be presumed innocent until proven guilty. Article XXVI, Article 8, Article 14.2, Principle 36, and Rule 84 of the American Declaration of the Rights and Duties of Man, the American Convention on Human Rights, the ICCPR, the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, and the Standard Minimum Rules for the Treatment of Prisoners, respectively, states that everyone charged with a criminal offense shall have the right to be presumed innocent until proven guilty according to law. In the case of Judge Afiuni, the very day after her arrest, a television broadcast publicly presented then President Chávez's statement

declaring Afiuni a “bandit”. Also, the Chief Justice of the Supreme Court was asked to hold Afiuni “in prison” and to penalize with “maximum penalty for her: 30 years in prison.” Such public declarations are a downright violation of the right to presume as innocent till proven guilty.

Equally important as other rights mentioned below would be one to ensure proper, timely and free medical assistance to these individuals under consideration. Rule 24, Principle 24, Article 83 of the Standard Minimum Rules for the Treatment of Prisoners, the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, the Bolivarian Constitution states that medical care and treatment shall be provided whenever necessary during detention and shall always be provided free of charge. Furthermore, Article 6 of the Code of Conduct for Law Enforcement Officials states that law enforcement officials shall ensure the full protection of the health of persons in their custody. In the case of Afiuni, as a result of her harsh living conditions at INOF, it was found that she had developed a lump beneath one of her underarms. Her condition worsened, presenting hemorrhages which were a product of uterine problems. Afiuni’s defense consistently asked for permission to seek medical assistance for the defendant which according to reports seems like these attempts were left unheard.

There are several legal provisions meant to protect and empower detained individuals with a right to due process. Articles XXV, XXVI, and XVIII of the American Declaration of the Rights and Duties of Man, Article 8 of the American Convention on Human Rights, and Principles 36 and 38 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, and the Venezuelan Organic

Code of Criminal Procedure establish that in cases where individuals have been deprived of their liberty, they have the right to a public hearing and a fair trial, with due guarantees and within a reasonable time, by a competent, independent, and impartial tribunal, previously established by law. All criminal proceedings shall be public, except insofar as may be necessary to protect the interests of justice. The presumption of Judge Afiuni's being guilty, a public declaration of the same along with demand for maximum penalty of thirty years of imprisonment even before a fair trial, all of these are inherently very brutal violations of right to due process.

The Politicization of the Afiuni Case

According to the 2009 Inter-American Court of Human Rights Report on democracy and human rights in Venezuela, three rapporteurs from the UN expressed that the arrest and detention of Judge Afiuni was “a hit on behalf of President Hugo Chávez to the independence of judges and lawyers in the country.”²⁵⁷ They also highlighted that “the retaliation for exercising functions that are guaranteed in the constitution and the creation of an environment of fear within the judiciary and among lawyers does not serve any other purpose than that of undermining the rule of law and obstruct justice.”²⁵⁸

²⁵⁷ *Democracia y Derechos Humanos En Venezuela*, 94.

²⁵⁸ *Ibid.*, 94.

The same report expresses that along with Judge Afiuni, there are also other cases where judges have been dismissed, under similar conditions, almost immediately after having adopted judicial decisions in cases of supposed political importance. In addition, the report also highlights that due to almost the immediate arrests of these judges, it is hard to determine if they were detained with prior declarations of their wrongdoings. Moreover, the resolutions that establish the causes which motivate the dismissals are not clear and there is not even a reference to the procedure with which the decision was adopted. The report highlights how this is a strong signal to society as well as the rest of the judges that the judiciary does not have the freedom to adopt decisions contrary to government interests, since doing so may put them at risk of being removed from their positions.²⁵⁹

In an interview with *BBC Mundo*, Roberto Garretón, member of the UN working group on Arbitrary Detention, stated that in order for Afiuni to be a political prisoner, she needed to have been imprisoned as a result of her ideas. Garretón mentioned that he was not sure that this was the case. However, according to *BBC Mundo*, Garretón believes that Afiuni's case is emblematic of how an individual fulfilling their duty can be put in jail, asking "what will other judges in Venezuela think?"²⁶⁰

²⁵⁹ Ibid.

²⁶⁰ Juan Paullier, "¿Hay presos políticos en Venezuela?," *BBC Mundo*, February 1, 2012, http://www.bbc.co.uk/mundo/noticias/2012/02/111230_venezuela_justicia_liberacion_presos_politicos_jp.shtml.

Even Noam Chomsky, an American Institute Professor and Professor Emeritus in the Department of Linguistics and Philosophy at MIT as well as a prominent public intellectual, and an ally of sorts to Chávez, had an opinion on Afiuni's case. Chomsky communicated to the Venezuelan president his concern over the case of former judge Afiuni through public letters in two different instances, in July and December of 2011. Chomsky's main concern in his letters to former President Chávez is Afiuni's health, asking for "clemency on humanitarian grounds," mainly due to Afiuni's health. In addition, Chomsky perceives that Afiuni has undoubtedly been treated very badly and asks the Chávez administration to act on its humanitarian and Bolivarian values and free Afiuni. He also pointed out that Venezuela was not alone in facing a situation in which judges felt a sense of intimidation in carrying out their duties.²⁶¹

Chomsky's open letters caused a stir in the international community. A July 2, 2011 *The New York Times* article by journalist Simon Romero, is a perfect example of how language in the media continues to promote the hegemonic discourse, even when discussing issues like preventive detention in Venezuela. For instance, the article by Romero is titled "Noted Leftist Urges Chávez to Release Ailing Judge." The title is highly subjective, already starting off the article with a wow factor, implying to readers that even those on the left are extremely critical of the Chávez administration; as if

²⁶¹ Rory Carroll, "Noam Chomsky criticises old friend Hugo Chávez for 'assault' on democracy," *The Guardian*, July 2, 2011, <http://www.guardian.co.uk/world/2011/jul/03/noam-chomsky-hugo-chavez-democracy>; Noam Chomsky, "Humanitarian Release for Judge Maria Lourdes Afiuni" (public letter, Cambridge, 2011).

criticism from within was something previously unheard of. Another interesting use of language on behalf of Romero in this article can be seen with the following statement: “Mr. Chomsky’s willingness to press for Judge Afiuni’s release shows how the president’s aggressive policies toward the judiciary have stirred unease among some who are generally sympathetic to Mr. Chávez’s socialist-inspired political movement.” The language in this sentence, as in the title, continues to suggest how terrible the Chávez administration must be that even one of its own is critical of it.

Furthermore, another problematically expressed claim is that of describing Afiuni’s arrest as having been carried out by “the president’s secret intelligence police,” when, in fact, Afiuni was arrested by the Bolivarian Intelligence Service and is a security force subordinate to the Ministry of the Interior and Justice, and contrary to what is implied, is not the president’s private security force.²⁶²

In a *The Guardian* article published by Virginia López and Tom Phillips on December 21, 2011 and titled “Noam Chomsky pleads with Hugo Chávez to free judge in open letter,” the authors mention that the news of December 13, 2011 that a judge in Venezuela extended Afiuni’s house arrest by two years prompted Chomsky’s latest open letter to demand humanitarian release for Afiuni. The article also mentions that Chomsky has been, nevertheless, very critical of the way in which the media has covered the case,

²⁶² Simon Romero, “Noted Leftist Urges Chávez to Release Ailing Judge,” *The New York Times*, July 2, 2011. <http://www.nytimes.com/2011/07/03/world/americas/03venezuela.html>.

arguing that the Afiuni case has received the widespread attention it has only because of the Venezuelan government's status as an "official enemy" of the United States. He also mentioned in the phone interview with *The Guardian* that he is constantly involved in many other similar appeals but that he receives no attention until it is a case like that of Afiuni's, where an enemy of the United States is involved. He also added that this situation is more reflective of the media than on the actual case.²⁶³

In a highly debated article by Rory Carroll from *The Guardian* titled "Noam Chomsky criticises old friend Hugo Chávez for 'assault' on democracy" and published on July 2, 2011, among Carroll's non-controversial statements, the journalist highlights that even though Chomsky is critical of Afiuni's continued detention, he remains fiercely critical of the United States as well, highlighting the case of Bradley Manning and the continued "vicious, unremitting" campaign against Venezuela.²⁶⁴

Keane Bhatt's blog "Manufacturing Contempt," affiliated with the *North American Congress on Latin America's* (NACLA) Media Accuracy on Latin America project, takes a critical look at the U.S. media and its portrayals of the hemisphere. On May 14, 2013 Bhatt reports on a petition signed by 23 experts on Latin America and the media, including Chomsky and himself, and was sent on that same day to Margaret Sullivan, Public Editor of *The New York Times*. Sullivan had written a column for the

²⁶³ López and Phillips, "Noam Chomsky pleads with Hugo Chávez to free judge in open letter."

²⁶⁴ Carroll, "Noam Chomsky criticises old friend Hugo Chávez for 'assault' on democracy."

opinion pages of *The New York Times* on April 12, 2013 titled “‘Targeted Killing,’ ‘Detainee’ and ‘Torture’: Why Language Choice Matters” where she expressed:²⁶⁵

Although individual words and phrases may not amount to very much in the great flow produced each day, language matters. When news organizations accept the government’s way of speaking, they seem to accept the government’s way of thinking. In *The Times*, these decisions carry even more weight.

Referring to this column, the authors urged Sullivan to compare *The New York Times*’ characterization of Chávez’s leadership in Venezuela and that of Roberto Micheletti and Porfirio Lobo’s in Honduras. The petitioners expressed that there was a clear distinction, in fact a “disparity in coverage and language use,” in the way each leadership style is talked about; highly suggestive of the U.S. government’s positions regarding the Honduran government (which is perceived as an ally) and the Venezuelan government (which is perceived as an enemy). According to the petitioners, in the past four years, *The New York Times* news coverage has referred to Chávez as an “autocrat,” “despot,” “authoritarian ruler” and a “caudillo” and when opinion pieces are included, *The New York Times* has published at least fifteen separate articles employing language that depicts Chávez as a “dictator” or “strongman.” Even though Chávez is a democratically elected leader; even despite the widespread disagreements on the democratic credentials of the Chávez administration, there are most definitely democratic elements. While since the June 28, 2009 military overthrow of elected resident Manuel Zelaya of Honduras, *The*

²⁶⁵ Margaret Sullivan, “‘Targeted Killing,’ ‘Detainee’ and ‘Torture’: Why Language Choice Matters,” *The New York Times*, April 12, 2013, <http://publiceditor.blogs.nytimes.com/2013/04/12/targeted-killing-detainee-and-torture-why-language-choice-matters/>.

New York Times contributors have never used such terms to describe Micheletti, who headed the coup regime after Zelaya's ousting, or Micheletti's successor, Porfirio Lobo. The authors claim that instead, *The New York Times* has described these leaders in its news coverage as "interim," "de facto," and "new."²⁶⁶

Cases of Accidental Detention

Data that outlined the total number of individuals under preventive detention in Venezuela in comparison to the rest of the penitentiary population was not available in online Venezuelan government sources like the Ministry of Penitentiary Services, the Attorney General, the judiciary, the Supreme Court, or the interior and justice ministry. However, annual reports from the Venezuelan Ombudsman's office, a government agency directed at addressing citizen's human rights grievances, do report citizen claims related to cases of preventive detention under the heading of violations to the right of liberty of person. The data from the Ombudsman's office helps put into perspective how much of a prevalent issue preventive detention is according to the number of citizen claims. Although nevertheless helpful, the information from the Ombudsman's office does not provide with a clear count of individuals under preventive detention.

²⁶⁶ Keane Bhatt, May 14, 201, Noam Chomsky, Scholars Ask NY Times Public Editor to Investigate Bias on Honduras and Venezuela, *Manufacturing Contempt*, <http://www.nacla.org/blog/2013/5/14/noam-chomsky-and-scholars-ask-ny-times-public-editor-investigate-bias-honduras-and-ve>.

On the other hand, OVP is one of the most prominent human rights organizations in Venezuela whose work solely focuses on the rights of Venezuelans deprived of their liberty. OVP's annual reports provide insightful information regarding the penitentiary population and its composition. The OVP annual reports primarily divide the composition of the penitentiary population into two categories, that of prosecuted and convicted individuals. Although the OVP annual reports do not provide numbers on those under preventive detention, these reports still depict the slow speed of the judicial process; a factor also affecting those that are under preventive detention. Moreover, the data from OVP, as seen in Table 1, also makes evident the significant growth of the penitentiary population in recent years, with 2009 seeing almost a 66 percent increase of the penitentiary population since 2004, with the prosecuted population approximately doubling in numbers during this period of time. The sharp increase of the penitentiary population, mainly reflected in the high number of prosecuted but not convicted individuals, points at structural problems in the criminal justice system.

Table 1: Breakdown of National Penal Population in Venezuela

Year	# of Prosecuted	% Prosecuted of Total	# of Convicted	% Convicted of Total	# Total
2004	9,791	50	9,870	50	19,660
2006	10,700	54	7,864	40	19,700
2009	21,825	67	9,287	28	32,624
2010					37,000

*For the years 2006 and 2009, the prosecuted and convicted population do not add to 100% because it is not taking into consideration a small sector of the penal population which is under work release.

**Source: OVP: "Situación Carcelaria en Venezuela Informe 2006;" "Situación de los Derechos Humanos y Procesales de las Personas Privadas de Libertad en Venezuela;" & "Situación Carcelaria en Venezuela."

On the other hand, the annual Obudsman’s office annual reports show the large influx of individuals that are detained but that do not reach prosecution. Table 2 outlines the number of claims received annually by the Ombudsman’s office. These annual reports demonstrate that the (mis)use of pre-trial preventive detention in Venezuela is a widespread practice.

Table 2: Complaints to the National Ombudsman’s Office in Venezuela Regarding Violations to the Right to the Liberty of Person

Year	# of Complaints
2001	1,058
2002	925
2006	443
2007	410
2008	430
2009	276
2010	203
2011	188
2012	186
*Source: Defensoria del Pueblo Informe Anual: 2001, 2002, 2007, 2008, 2009, 2010, 2011, 2012.	

The Ombudman’s office annual reports cite that the right to the liberty of person is often violated in Venezuela. The right to the liberty of persons in international as well as regional human rights instruments is usually combined with that of the rights of life and security, usually termed “the right to life, security, and liberty of person.” The Ombudsman’s annual reports also showed that whenever the right to liberty of person was violated, it was mainly due to arbitrary arrests. The cases of pre-trial preventive detention outlined by the Ombudman’s office mainly involve arbitrary arrest and detention, cases in which the police and other national security/armed forces had exceeded their power and had detained individuals without a judicial order.

Arbitrary arrests, as noted in the Ombudsman's reports, often came accompanied with other violations including the denial of any form of communication on behalf of the detained person with their family (isolation), the failure of the agents to identify themselves prior to taking part in the arrest, and in the most extreme cases, forced disappearances. Clearly, the violation of the right to liberty of person through arbitrary arrest is accompanied by the violation of life and security of person through the other practices that usually follow. Mainly isolation and some form of cruel, inhuman or degrading treatment or punishment, and the arbitrary deprivation of life. Other complaints included violations to the freedom of movement.

Apart from the many cases reported noting police brutality, two cases briefly mentioned in the Ombudsman's office annual reports highlight the incredible abuse of power on behalf of the police. The Ombudsman's office reports that in 2007, one of the complaints received came from a lawyer whose visit to a police station to see their client was denied by a supervisor in the station who said that the police chief had prohibited any visits on behalf of lawyers.²⁶⁷ A complaint from 2008 came from an Ombudsman's office assistant for the Metropolitan area of Caracas who was detained by *Policaracas* while serving his duties, defending citizens in a popular street market in Caracas.²⁶⁸

²⁶⁷ Defensoría del Pueblo, *Informe Anual 2007*, 456, <http://www.defensoria.gob.ve/dp/index.php/publicaciones/informes-anuales/1403-informe-anual-2007>.

²⁶⁸ Defensoría del Pueblo, *Informe Anual 2008*, 214, <http://www.defensoria.gob.ve/dp/index.php/publicaciones/informes-anuales/1404-informe-anual-2008>.

Rather than the thirty or so political prisoners, the data from the Ombudsman's office annual reports notes a far larger number of claims in regards to individuals who have been detained (although these numbers have been declining significantly through the years, phenomenon which can also be seen in Table 2). It is for this reason that it is argued that the Afiuni case is only exceptional due to the attention it has received worldwide, but not due to any exceptional characteristics that make the case any different from other cases.

These annual reports demonstrate that the (mis)use of pre-trial preventive detention in Venezuela is a widespread practice. Furthermore, the Ombudsman office reports allege that this widespread practice affects young men between the ages of 17 and 24 years of age from the lowest sectors of society, many of whom had previously committed a criminal act, the most.²⁶⁹ Consequently, pre-trial preventive detention not only affects persons of political interest but also everyday citizens.

Afiuni's case is not an exceptional one in terms of the brutalities during investigation, sustaining the prison conditions or the despair for lacking fair trial. It is indeed not a usual case of detention in Venezuela when we compare the extent of widespread media coverage that it has received. Not many cases of pre-trial preventive detention ever make it to reach the awareness of the common citizens. But, in this case, social activists from all over the world participated in the movement to free Afiuni, public

²⁶⁹ *Informe Anual 2007*, 452.

protests were seen in the country and not only national but even international media brought the case to spotlight. Even the media discussion was often politicized, information from different sources was found to be inconsistent and with disparities. In spite of serious media attention, the propaganda seemed to be hiding several aspects of the entire case situation.

Chapter 6: Conclusion

The main argument of this thesis was that the penitentiary crisis in Venezuela is brought about an inept criminal justice system. The (mis)use of pre-trial preventive detention is a component of this larger criminal justice system failure and feeds into the Venezuelan penitentiary crisis. Even though pre-trial preventive detention is allowed for a maximum of two years under the Venezuelan Organic Code of Criminal Procedure, the system works in such a way that deprives many Venezuelans of their liberty, and they are often kept in conditions of pre-trial preventive detention past the allotted legal time. Therefore, I argued that the unintentional (mis)use of pre-trial preventive detention further exacerbates the overcrowding in prisons and creates serious human rights implications.

Throughout the research process I realized that there was not much literature or existing research recorded about pre-trial preventive detention in Venezuela. The little informative research that exists is logged by IGOs and NGOs. Such content mostly consists of highly politicized narratives on pre-trial preventive detention in Venezuela. Thus, the aim of this thesis was to introduce a counter-hegemonic perspective on the issue and highlight the deficiencies of the criminal justice system which have caused the violation of the most basic human rights. Pre-trial preventive detention has proven to be one of the most basic components of this dysfunctional criminal justice system.

Both the OVP as well as the Ombudsman's Office reports consistently mentioned in their recommendations, year after year, to reduce the use of pre-trial preventive detention in Venezuela. These reports also consistently mentioned procedural delays as a widespread problem which in turn, kept individuals under pre-trial preventive detention for longer than the two year maximum established in the Venezuelan Organic Code of Criminal Procedure. Both the OVP and the Ombudsman's Office reported that in large part, these problems arise from the fact that there are not enough criminal justice professionals, and to make matters worse, that there are low levels of professionalism in the Venezuelan criminal justice system in general.

In fact, looking at Afiuni's case as well as that of the cases reported in the Ombudsman's Office reports, the problems previously mentioned are obvious. These cases showed that the (mis)use of pre-trial preventive detention is unintentional, most often perpetrated by the police and other security forces (which have gained aberrant forms of power due to the ineptitude of the system) and targeting young males. In sum, the excessive unnecessary use of pre-trial preventive detention is a consequence of untrained police officers and unqualified judges. Moreover, Afiuni's case is not an exceptional one in terms of the brutalities and injustices experienced. However, her case does become significantly different from the rest due to the widespread media coverage that it has received.

Furthermore, the Venezuelan case highlights a contradiction: A democratic regime which openly and very strongly supports human rights, but yet, has failed to protect the penal population's basic human rights. Both Ungar (2003) and Pérez Perdomo (2009)

point out that not only do the present criminal justice structures throughout Latin America violate human rights, but perhaps more seriously, they also show the central weaknesses in contemporary Latin American democracies.²⁷⁰ The need for a “hard hand” policy on crime shows the little self-confidence and legitimacy of government institutions that are supposed to protect citizens and promote citizenship. This is a very important point, however, one that should not be turned around and used against the Chávez administration, which often times seems to be the case (even though “hard hand” policies have been dominant prior to his administration). This may not be strictly a problem of the Chávez administration, but rather a larger problem in the structure of the Venezuelan state and the criminal justice system. Nevertheless, it is an issue the current administration still needs to address (perhaps even more so after Chávez’s passing) as a means to legitimize contemporary Venezuelan democracy: the shift from a punitive system to that of a system focused on the liberty of persons and the preservation of their most basic human rights.

Areas for Future Research

The major delimitation of this research is its specific focus on pre-trial preventive detention. Although there are a variety of different problems within the criminal justice system affecting the penitentiary conditions, all of which are of high significance and are closely interconnected with each other, pre-trial preventive detention is the focus of this

²⁷⁰ Mark Ungar, “Prisons and politics in contemporary Latin America,” *Human Rights Quarterly* 25, no. 4 (2003): 909.

study due to the high margin of positive change a reduction in its usage can lead to. Nevertheless, future avenues of research should consider other deficient aspects of the Venezuelan criminal justice system in-depth, including: The Venezuelan legal framework, the functioning of the criminal justice system, professionalism of the workforce, corruption, clientelism, and fiscal expenditures. For instance, a profound study (a chronology) on the Venezuelan penal and criminal code, its development and reforms could be very indicative of the changes (or lack thereof) in the evolution of the usage of pre-trial preventive detention. Placing it within the context of the administrations in which these took place, as well as in the political discourse of the time, and the narrative used in the constitution could help further understand the gap between laws and reality.

Policy Suggestions

Immediate Recommendations

1. The state must re-classify penal the population, beginning by the separation of unconvicted and convicted persons, and later moving on to separating the convicted sectors according to crimes. Sex, age, and illness are transversal themes which are dominant over the two main categories (convicted and unconvicted). Underage individuals shall be kept separate. Females shall be kept separate from males. And those individuals with contagious diseases must also be kept separate from others.
2. Continue to encourage the use of deprivation of liberty, specifically pre-trial preventive detention, as a last resort.

I have chosen these recommendations mainly because I believe that they are quite easy to implement immediately without having to wait for legal and larger systemic changes to occur. In fact, it is believed that these two recommendations would give the state the time needed to develop longer-term solutions for the penitentiary and criminal justice systems while significantly changing the living conditions of individuals deprived of their liberty in Venezuela. Nevertheless, the first recommendation may experience some implementation issues especially in those prisons that are completely run by inmates themselves. Even in these cases, the state should try to engage in dialogue with the inmates and perhaps establish a plan for re-categorization that involves the prison leaders. As long as the state can regain some kind of power back over these facilities, it is an accomplishment in itself.

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