

## CAN THE BOLIVARIAN EXPERIMENT IMPLEMENT TRANSITIONAL JUSTICE IN VENEZUELA?

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*Transitional justice in Latin America emerged in relation to accountability for human rights abuses at the period of transition to democracy from dictatorship. Venezuela was often considered an exception since it generally avoided the prolonged military dictatorships, which gripped the region during much of the Cold War. Under closer scrutiny though, Venezuela has had a history of violent politics but with little accountability. The Caracazo stands out as the worst case of repression, which became a politically symbolic event for President Hugo Chávez as it addresses both aspects of the Bolivarian Experiment: redressing inequality and implementing the rule of law. This paper looks at the advances and contradictions Venezuela has done in transitional justice during the Bolivarian experiment (1999–present). Transitional justice is relevant to the Bolivarian experiment because justice emerges as part of establishing a new rule of law by implementing state institutional reforms in the constitutional, judicial, police and prison systems.*

### I TRANSITIONAL JUSTICE UNDER THE BOLIVARIAN EXPERIMENT

With the death of the late Venezuelan President Hugo Chávez Frías in early March 2013, and the recent violence initiated by student protests in February 2014, Venezuela has again received a high level of international attention. Repeatedly overshadowed by the brutal dictatorships in Latin America during the Cold War, and often praised as a ‘stable’ or ‘exceptional democracy’, academia began to turn its attention towards one of the world’s largest oil states in late 1998, with the election of Chávez.<sup>1</sup> Standing on a broad populist program, Chávez, who, as a Lieutenant Colonel attempted to carry out a military coup in February 1992, won the 1998 elections on the basis of a broad anti-business sentiment.<sup>2</sup>

The Fifth Republic, as envisioned by Chávez and the popular sectors that became the base of the government’s backing, would support the ideas of the Bolivarian revolution — what we in this

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<sup>1</sup> For a critique of the ‘exceptional democracy’ perspective see Steve Ellner, *Rethinking Venezuelan Politics: Class, Conflict, and the Chávez Phenomenon* (Lynne Rienner Publishers, 2008) 1–4.

<sup>2</sup> Leslie C Gates, *Electing Chávez: The Business of Anti-Neoliberal Politics in Venezuela* (University of Pittsburgh Press, 2010) 14–58.

paper call the ‘Bolivarian Experiment’.<sup>3</sup> A complex process, the Bolivarian Experiment has thus worked along the lines of holding regular (and highly monitored) multi-party elections, a mixed economy with some strategic nationalisations and where the state is seen to have social responsibilities for its citizens’ well-being in access to education, health and housing among other things so as to pursue their happiness.<sup>4</sup> Access to justice is one of the most important factors in the achievement of this aim, and it is by looking at the different processes and reforms that are needed for this aim that we would like to centre our attention.

Transitional justice as a young discipline has gone through different developmental stages and reviews. Having stemmed after World War II from the universal judicial attempt to bring to justice the perpetrators of the Holocaust, it started as a legal attempt to review and penalise injustices committed in the past. After the many episodes of human rights abuses committed in Latin America, Eastern Europe and Africa, the term’s definition has widened to encompass a more inclusive mission of bringing back or instituting the rule of law in these regions. Bell et al, in their review of the term, define it much more accurately for our times:

Meaningful societal change (of which accountability is likely to be a key part) requires the overhaul of political, legal and social institutions. Most notably, in a policy context, the United Nations Secretary-General has recognised an organic relationship between ‘transitional justice’ and the rule of law (United Nations Secretary-General, 2004). This recognition has vital policy implications, signalling both the broad institutional appropriation of the term ‘transitional justice’, as well as the fact that it is fast becoming a by-word for a bundle of transformative efforts, mostly of a legal nature.<sup>5</sup>

Thus, to be able to achieve an overall view of how transitional justice has been progressing under the Bolivarian Experiment we need to have a global look at different aspects of this equation.

Chávez came to redress social inequality and to implement a new rule of law. Both elements are intrinsically related: you have to have a legal system in which people’s rights are realisable. While a part of the Chávez government agenda, transitional justice has often moved at a slow pace. In the first few years of the Chávez administration (1999–2013), this delay was primarily

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<sup>3</sup> Some of the first observers to write on the nature of this new Bolivarianism were Steve Ellner and Richard Gott. See Steve Ellner, ‘The Assault on Benefits in Venezuela’ (1999) 32(4) *NACLA: Report on the Americas* 29–33; Steve Ellner, ‘The Contrasting Variants of the Populism of Hugo Chávez and Alberto Fujimori’ (2003) 35 *Journal of Latin American Studies* 139 and Richard Gott, *In the Shadow of the Liberator: Hugo Chávez and the Transformation of Venezuela* (Verso, 2001).

<sup>4</sup> While a revolution in a more classical manner has certainly been taking place in Venezuela, in the sense that a shift in power has taken place from traditional elites to sectors of the working poor, the working class and middle class, we believe this process is very much experimental within a broad leftist ideological framework. While still encompassing elements of representative democracy such as regular multi-party elections, the support of community councils has very much been more akin to the ideas of a participatory democracy. For some literature on this complex process, see Gregory Wilpert, *Changing Venezuela by Taking Power: The History and Policies of the Chávez Government* (Verso, 2007); David Smilde and Daniel Hellinger, *Venezuela’s Bolivarian Democracy: Participation, Politics and Culture under Chávez* (Duke University Press, 2011); George Ciccariello-Maher, *We Created Chávez: A People’s History of the Venezuelan Revolution* (Duke University Press, 2013).

<sup>5</sup> Christine Bell, C Campbell and F Ní Aoláin, ‘Transitional Justice: (Re)conceptualising the Field’ (2007) 3(2) *International Journal of Law in Context* 81. For a genealogy of the term, see Ruti G Teitel, ‘Transitional Justice Genealogy’ (2000) 16 *Harvard Human Rights Journal* 69.

due to the fact that Fifth Republican institutions were not completely functioning while the opposition also still controlled key state and judicial institutions. Although in recent years this situation has changed in favour of the government's reforms and at times new forms of centralisation, accusations of a re-politicisation of the bureaucracy and the judiciary have been made against the government. The administration, for its part, both under Chávez and the incumbent President Nicolás Maduro (2013–present), has claimed that its legitimacy and reforms have repeatedly been challenged in a non-democratic manner, pointing to cases like the April 2002 military coup that briefly ousted Chávez.

In this paper we would like to concentrate on three aspects of transitional justice mechanisms implemented in Venezuela during the last decades: constitutional, judicial and police and prison reforms aimed to bring the rule of law to this society.

## II CONSTITUTIONAL REFORMS

Shortly after assuming office, Chávez entered into conflict with the opposition constituted by traditionally powerful and established political figures with strong connections to the private sector. At the core of this initial dispute lay the fact that Chávez refused to provide opposition figures with key government positions.<sup>6</sup> Surviving this initial criticism, after a wide process of consultation with sections of Venezuela's society, the newly elected government redrafted the country's constitution in 1999 and renamed the country the Bolivarian Republic of Venezuela. The Congress (composed of the Chamber of Deputies and a Senate) was dissolved and substituted by a National Assembly.<sup>7</sup> This major legal act initiated a period of transition between the Fourth Republic (1958–1998), where the most substantial amount of human rights violations took place, and the Fifth Republic.

The 1999 Constitution breaks away with Montesquieu's tripartite theory of powers — Legislature, Executive and Judiciary — and establishes a fourth power: Citizen Power (*Ministerio Público*). It is worth noting here that this is not a new institution but a newly interpreted function of the *Ministerio Público*, which was inspired originally by Simón Bolívar in 1830 and implemented under a different form in the Constitution of 1901.<sup>8</sup>

Article 285 created this new *Ministerio Público* in charge of guaranteeing citizens' rights as well as respecting international agreements. Its office is under the authority of the Attorney General (*Fiscal General*) and it contributes to the state's criminal law policies. The *Ministerio Público* is executed through the Moral Counsel (*Consejo Moral Republicano*) constituted by the Ombudsman (*Defensor del Pueblo*) and the Comptroller General (*Controlador General de la República*) and it gives functional, financial and administrative independence and autonomy to

<sup>6</sup> In many Latin American countries, ministries often comprise members of opposition political parties if the ruling party feels the need to make special concessions to traditional economic and political elites to remain in office.

<sup>7</sup> For analysis of the 1961 Constitution and the country's other important institutions see Lynn Kelly, 'Venezuelan Constitutional Forms and Realities' in John D Martz and David J Myers (eds), *Venezuela: The Democratic Experience* (Praeger, revised ed, 1986) 32. *Constitución de la Republica Bolivariana de Venezuela* (1999) [*Constitution of the Bolivarian Republic of Venezuela*].

<sup>8</sup> For more details, see the official site of the *Ministerio Público*: <<http://www.mp.gob.ve/web/guest/mp>>.

all institutions it comprises as each represent a branch of the National Citizen Power (*'Poder Público Nacional'*) according to art 273 of the 1999 Constitution.<sup>9</sup>

Articles 273 and 280–283 of the 1999 Constitution created the legal figure of the People's Ombudsman (*'Defensor del Pueblo'*) with the charter of defending people's rights against the state. 'The *Defensor* has human rights education and law reform mandates, and is constitutionally required to protect the rights of indigenous peoples'.<sup>10</sup> This new breed of Ombudsman has been controversial, accused of being partisan and refusing to collaborate with international organisations such as the United Nations and the Organisation of American States.<sup>11</sup> However, despite its criticisms we shall see the Ombudsman's effective intervention in several transitional justice cases below. The *Ministerio Público* has been criticised for having politicised its functions and to rule in favour of the government in many instances. The last criticism arose from its defence of the government's figures against the Human Rights Watch accusation of human rights abuses.<sup>12</sup>

The 1999 Constitution has best exemplified as a key and contentious aspect of transitional justice in Venezuela and has been criticised as concentrating 'state power, state centralisation, extreme presidentialism' and promoting an 'extensive state participation in the economy'.<sup>13</sup> These criticisms, of course, overlook the mechanisms of the 1961 Constitution and the concentration of powers, which previously existed in the executive. According to Lynn:

The powers of the president under the 1961 constitution are significant. The president is commander of the armed forces, can call special sessions of the Congress, and appoints all cabinet ministers and governors. He can also declare a state of siege and temporarily order the restriction or suspension of constitutional guarantees. Perhaps as important, the president is constitutionally empowered through his ministers to adopt all necessary regulations to bring laws into effect. Such regulations are neither subject to the approval of Congress nor to the courts. Under such circumstances the Venezuelan president could be considered virtually unfettered in his use of power.<sup>14</sup>

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<sup>9</sup> Ibid.

<sup>10</sup> For a comparative analysis of the functions of the Venezuelan Ombudsman with other legal systems see Linda C Reif, *The Ombudsman, Good Governance, and the International Human Rights System* (Martinus Nijhoff Publishers, 2004) 90 (note 125).

<sup>11</sup> For a summary of the opposition criticism to this figure see G Hernández Acevedo, 'The Government's Ombudsman' on *Caracas Chronicles* (26 August 2013) <<http://caracaschronicles.com/2013/08/26/the-governments-ombudsman/>>.

<sup>12</sup> 'Human Rights Watch denuncia repression "sistemática" en Venezuela', *BBC Mundo* (online), 5 de mayo 2014 <[http://www.bbc.co.uk/mundo/ultimas\\_noticias/2014/05/140505\\_ultnot\\_venezuela\\_derechos\\_humanos\\_az.s.html](http://www.bbc.co.uk/mundo/ultimas_noticias/2014/05/140505_ultnot_venezuela_derechos_humanos_az.s.html)>.

<sup>13</sup> Allan R Brewer-Carías, *Dismantling Democracy in Venezuela: The Chávez Authoritarian Experiment* (Cambridge University Press, 2010) 35. Brewer-Carías concedes that as a 'member of the National Constituent Assembly', he himself 'opposed the Constitution and led a political campaign for a no vote in the referendum'. For another criticism of the 1999 Constitution, see Mario J Garcia-Serra, 'The "Enabling Law": The Demise of the Separation of Powers in Hugo Chavez's Venezuela' (2001) 32(2) *The University of Miami Inter-American Law Review* 265.

<sup>14</sup> Kelly, above n 7, 38–39.

In contrast to the 1961 Constitution, from the perspective of others, the new charter has enhanced democracy and increased the rights and participation of the country's working poor. Hellinger, for example, writes that the 1999 Constitution

created a new branch with responsibility for protecting human rights; mandated popular participation in policy making; allowed for recall of elected officials (including the president); created possibilities for popular initiative and referendum; and mandated consultation with civil society in appointments to the judiciary, the election commission ... [and] the anticorruption branch.<sup>15</sup>

Hellinger adds that while the 1999 Constitution was made to 'promote a participatory and protagonist democracy', the new charter made 'no mention of socialism'.<sup>16</sup> According to Amnesty International ('AI'), the new Constitution recognised 'international human rights treaties and the outlawing of enforced disappearances'. However, AI sided with the view of non-governmental human rights organisations, which argued that the charter 'increased the political power of the armed forces'.<sup>17</sup> Within the 1999 Constitution, art 72 though allows for a recall of any elected representative, including the President. Article 72 states:

All magistrates and other offices filled by popular vote are subject to revocation. Once half of the term of office to which an official has been elected has elapsed, a number of voters constituting at least 20% of the voters registered in the pertinent circumscription may extend a petition for the calling of a referendum to revoke such official's mandate.<sup>18</sup>

In 2004 the opposition used art 72 to set up a recall referendum on Chávez's presidency, which they eventually lost. Despite controversy as to how the opposition managed to trigger the recall referendum, the final results were in the government's favour and were recognised as legitimate by the Carter Centre — run by former US President Jimmy Carter — and the Organization of American States ('OAS').<sup>19</sup> Thus, this constitutional reform guaranteed more political accountability and redressed the balance of power between the private and public sectors of the economy, hopefully promoting more justice in the governmental processes.

While the new 1999 Constitution created a state of the art set of rules to live by, it is a long way yet to have them fully implemented. However, it is indeed an excellent step forwards in the transitional justice reforms needed to establish the rule of law in Venezuela.

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<sup>15</sup> Daniel Hellinger, *Global Security Watch* (Praeger, 2012) 22.

<sup>16</sup> Ibid.

<sup>17</sup> Amnesty International, *VENEZUELA 'Disappearance'/Fear for Safety* (7 March 2000) Amnesty International  
<<http://www2.amnesty.se/uaonnet.nsf/dfab8d7f58eec102c1257011006466e1/98f8832c37e26c24c125689c0030f907?OpenDocument>>.

<sup>18</sup> *Constitution of the Bolivarian Republic of Venezuela (in English Translation From the Original Legal Text)*  
<<http://www.venezuelaemb.or.kr/english/ConstitutionoftheBolivarianingles.pdf>>.

<sup>19</sup> Jennifer McCoy and Francisco Diez, *International Mediation in Venezuela* (United States Institute for Peace, 2011) 65–186.

## III JUDICIARY REFORMS

During the Bolivarian Experiment several judiciary reforms have taken place, such as the re-appointment of new high court judges that were accused of bias towards this new regime. These measures were complemented by the condemnation and review of human rights violations in past events, such as the *Caracazo*; the acceptance of the rulings of the Inter-American Commission of Human Rights ('IACHR') and ultimately by the National Assembly's creation of a new Truth and Justice Commission and a Special Commission to Investigate the Murder, Disappearance, and Torture of Venezuelans.

A *Redressing the Caracazo Injustices*

Chávez makes the *Caracazo* the focus of social justice for the poor and criminal justice for repressors and as such it has become an emblematic event in the development of transitional justice in Venezuela.

The *Caracazo* was a popular revolt, fiercely repressed, that took place in 1989, nearly ten years before Chávez took power. It represents a social protest about large-scale inequality that rose from the implementation of neoliberal policies impacting on the subsidy of public transport. It was stimulated by a question of social inequality and then compounded by the fact that there was no remedy and there was impunity for those who caused the deaths and the repression. It is an emblematic event because it contains both elements of the Bolivarian Experiment: redressing social inequality and implementing the rule of law.

According to a 1993 US Department of State Report, almost five years after the *Caracazo* 'no progress was made on charges of extrajudicial killings by security forces'.<sup>20</sup> Noting the continued discrepancy between the government's figures and those of human rights groups regarding the number of people killed during the riots, it added:

At least 68 of those killed were buried anonymously in mass graves in a Caracas cemetery. Some human rights organizations accused the authorities of intentionally disposing of the bodies in unmarked graves to conceal the identity, cause and manner of death of the victims and thus protect the perpetrators from prosecution. Although the bodies were exhumed in 1991, only three have been positively identified. Approximately 300 cases regarding the 1989 killings remained under consideration in both military and civilian courts, but only 1 has been adjudicated: a police officer was found guilty in 1991 of homicide and sentenced to 1 year's imprisonment. The Committee of Family Members of Victims of the Riots ('COFAVIC') continued to seek a thorough investigation and prosecution of the cases. The Government and the courts, however, made no substantial effort to hasten proceedings.<sup>21</sup>

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<sup>20</sup> US Department of State, *Venezuela Human Rights Practices 1993* (31 January 1994) US State Department Electronic Research Collections  
<[http://dosfan.lib.uic.edu/ERC/democracy/1993\\_hrp\\_report/93hrp\\_report\\_ara/Venezuela.html](http://dosfan.lib.uic.edu/ERC/democracy/1993_hrp_report/93hrp_report_ara/Venezuela.html)>.

<sup>21</sup> Ibid.

As a result of the violence and rising discontent throughout the country, state repression increased after February 1989. According to Amnesty International reports prepared in 1993 and 1996, the administrations in Caracas from the late 1980s and the 1990s utilised violence to quell dissident activists in the capital's shanty towns through arrest, torture and, in some cases, murder by security forces.<sup>22</sup> While trade unionists and student leaders were also pursued, most victims came from the poorest segments of Venezuelan society. In the cases of other victims, extra-judicial killings took place because the police suspected their involvement in criminal activity. According to the 1993 US Department of State Report:

The Venezuelan Program for Action and Education in Human Rights ('PROVEA'), one of Venezuela's most respected human rights organizations, reported 187 extrajudicial killings from October 1992 through September 1993. At least eight of the victims were under 15 years of age. According to PROVEA, 66 of the killings were carried out by the metropolitan police, 33 by state police, 22 by the Intelligence Police ('DISIP'), 21 by the National Guard, 16 by the Judicial Technical Police ('PTJ'), 11 by the armed forces, 8 by municipal police, and 10 by other branches of the security apparatus. The perpetrators act with near impunity, as the Government rarely brings charges against them. If the perpetrators are prosecuted, sentences issued are frequently light, or, more commonly, the convictions are overturned during the appeal process. Unlike common prisoners, police charged with crimes rarely spend much time in prison.<sup>23</sup>

Part of the reason for a lack of investigation into police human rights abuses occurred due to the lack of independence of the Institute of Forensic Medicine, whose doctors examined cases of torture but were also linked to PTJ.<sup>24</sup> Also, without a centralised national police force, tracking human rights abuses by a centralised authority was non-existent. Here is where human right NGOs such as COFAVIC, PROVEA and the *Red de Apoyo por la Justicia y la Paz*, have played a pivotal role in bringing these cases to the attention to the public and to international players such as the IACHR.<sup>25</sup>

In 1998, the IACHR condemned the actions of the second Carlos Andrés Pérez administration (1989–1993) regarding the *Caracazo*. Andrés Pérez was also the first Venezuelan head of state forced to resign by the Supreme Court after having been accused of misappropriating 250 million bolivars (some US\$110 000).<sup>26</sup> The Commission referred the case to the Inter-American Court of Human Rights, which in 1999 concluded that one decade earlier the Venezuelan state had committed serious human rights violations that included extra-judicial killings.<sup>27</sup> By 2002, the Inter-American Court of Human Rights declared that the Venezuelan State must pay as

<sup>22</sup> James Ferguson, *Venezuela in Focus: A Guide to the People Politics and Culture* (Latin America Bureau, 1994).

<sup>23</sup> US Department of State, *Venezuela Human Rights Practices 1993* (31 January 1994) US State Department Electronic Research Collections  
<[http://dosfan.lib.uic.edu/ERC/democracy/1993\\_hrp\\_report/93hrp\\_report\\_ara/Venezuela.html](http://dosfan.lib.uic.edu/ERC/democracy/1993_hrp_report/93hrp_report_ara/Venezuela.html)>.

<sup>24</sup> Ibid.

<sup>25</sup> For a detailed account of the participation of NGOs in the processes of Transitional Justice see the report: Organismos Nacionales de Derechos Humanos, *PROVEA Informe Anual* (2008–09).

<sup>26</sup> Hellinger, above n 15, 27. According to Hellinger these were trumped up charges, however, 'CAP did personally benefit from corruption in other cases. Especially notorious was his connection to kickbacks stemming from the purchase of a refrigerator ship during his first administration'.

<sup>27</sup> *Caracazo v Venezuela* (2002) IACtHR Ser C 95 (Reparations and Costs)  
<[http://www.corteidh.or.cr/docs/casos/articulos/Seriec\\_95\\_ing.pdf](http://www.corteidh.or.cr/docs/casos/articulos/Seriec_95_ing.pdf)>.

compensation US\$1 559 800 in pecuniary damages, US\$3 921 500 for non-pecuniary damage and pay the legal fees of the Committee of Families of the Victims of February–March 1989 (*‘Comité de Familiares de las Víctimas de los Sucesos de Febrero-Marzo de 1989’* or *‘COFAVIC’*).<sup>28</sup>

In Venezuela, the Chávez administration accepted the state’s responsibility for the crimes committed during the *Caracazo*. In 2002 Foreign Minister Roy Chaderton declared that: ‘[a]lthough justice has not been done with respect to the *Caracazo*, the state is at least living up to the obligation to indemnify the families and the human rights organisations that were created to seek justice’.<sup>29</sup> Originally, an internal investigation launched after the 1989 massacre was stalled until the Chávez administration took office. Afterward though, this process proceeded slowly, as parts of the bureaucracy and the judiciary opposed the central government’s moves to hold accountable those responsible for past human rights abuses. It was not until 2004–2005, when the government purged these bureaucracies, held by AD and COPEI members or supporters, and replaced them with Chavistas or government sympathisers (another problem in itself as a new political monopoly was created), that further steps were made in transitional justice. In July 2005, the Venezuelan state itself acknowledged responsibility for the disappearance of three people after police and military forces were mobilised in the wake of heavy floods in 1999.<sup>30</sup> With the DISIP believed to have caused the disappearance of two of the victims, in the past such actions by this security body would have merited little enquiry.

In 2010, further steps were taken regarding the *Caracazo* victims. Ombudsman Gabriela Ramírez welcomed the approval by the Finance Committee of the National Assembly (*‘AN’*) to compensate the victims of the *Caracazo*. Ramírez added that, ‘[t]he truth must be known, and as a state we must not cede. If we expect justice to prevail, we cannot allow impunity in our country’.<sup>31</sup> In an official ceremony the following year in February, 71 people were laid to rest in a special pantheon from what was originally a communal grave known as *‘the Plague’*.<sup>32</sup> Present at the ceremony Attorney General Luisa Ortega Díaz told those gathered, ‘[w]e will never again allow any police officer or public servant to act as they did during the *Caracazo’*.<sup>33</sup> That same year in October, the National Assembly passed the Law to Punish Crimes, Disappearances, Torture, and Violations of Human Rights for Political Reasons during 1958–1998. With the recent creation in February 2013 of a new Truth and Justice Commission to investigate politically-motivated crimes including forced disappearances, torture and other human rights violations committed during those same decades, the head of the National Assembly, Diosdado

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<sup>28</sup> Ibid 106–8.

<sup>29</sup> Humberto Márquez, ‘RIGHTS-VENEZUELA: Reparations for Victims of “Caracazo”’, *Inter Press Service* (online), 12 November 2003 <<http://www.ipsnews.net/2003/11/rights-venezuela-reparations-for-victims-of-caracazo/>>.

<sup>30</sup> Johan Gindin, ‘Venezuela Accepts Responsibility for 3 Disappearances in 1999’ on *Venezuelanalysis* (3 July 2005) <<https://venezuelanalysis.com/news/1228>>.

<sup>31</sup> Embassy of the Bolivarian Republic of Venezuela, *Venezuelan Ombudswoman: Compensation for Victims of The Caracazo Serves as Evidence of Respect for Human Rights* (2010) <<http://venezuela-us.org/2010/05/27/compensation-for-victims-of-the-caracazo-serves-as-evidence-of-respect-for-human-rights/>>.

<sup>32</sup> Sarah Grainger, ‘Victims of Venezuela’s Caracazo clashes reburied’, *BBC News* (online), 28 February 2011 <<http://www.bbc.com/news/world-latin-america-12593085>>.

<sup>33</sup> Ibid.

Cabello, was also sworn in along with 19 members to further investigate the events surrounding the *Caracazo*.<sup>34</sup>

Judicial processes have moved slowly against those responsible for the *Caracazo*. In February 2009 President Chávez declared that while it was important to reclaim the *Caracazo* ‘as a historical event of fair rebellion of the poor,’ it was also necessary to pursue the ‘search of justice to find the perpetrators’.<sup>35</sup> As well as charging former Defence Minister Italo del Valle Alliegro in relation to the protests, the Attorney General’s office also charged two other high-ranking former army officials. In October that same year, the Attorney General’s Office exhumed the remains of 125 bodies believed to have been victims of the *Caracazo* in a cemetery in Caracas and by that stage the Office had also filed a request with Interpol for the arrest of the former Venezuelan President Carlos Andrés Pérez. Speaking on this issue Chávez declared that Carlos Andrés Pérez ‘is protected by the US government; he is the first one who should pay for the genocide’.<sup>36</sup> Chávez added that blame also lay at the hands of Metropolitan Mayor Antonio Ledezma — Caracas Governor in 1989 — as ‘[h]e is mostly responsible for that assault on the Venezuelan people, because he led the Metropolitan Police’.<sup>37</sup> While it always seemed unlikely that US authorities would have ever extradited such a close former ally, on 25 December 2010 Carlos Andrés Pérez died at Mercy Hospital in Miami and his remains were returned to Venezuela the next year in October.

Finally, by February 2014, 112 relatives of victims of the *Caracazo* were indemnified by the State in an act at Miraflores Presidential Palace headed by Chief of Staff Hugo Cabezas, Attorney General Luisa Ortega Díaz and Ombudsman Gabriela Ramírez. Juan José Nieves, a relative of one of the victims, declared that:

Today, we are gathered here not to receive a payment, since we think our relatives are priceless. This is just a compensation given by the Government and, it’s worth mentioning it, this owes to the memory of our supreme commander Hugo Rafael Chávez Frías.<sup>38</sup>

Whether these actions to indemnify the victims of the *Caracazo* will suffice in the next few years remains to be seen.

## B *Redressing Other Past State Crimes*

Worth mentioning here is that the Attorney General’s Office notes that, during the 1960s, the 1970s and the 1980s, 756 people were murdered or disappeared by state security forces.<sup>39</sup> In

<sup>34</sup> Tamara Pearson, ‘Large Rally Remembers Venezuela’s Caracazo, While Opposition Students Protest’ on *Venezuelanalysis* (27 February 2013) <<http://venezuelanalysis.com/news/7953>>.

<sup>35</sup> Alicia De La Rosa Chávez, ‘The Government is in Debt to the Caracazo Victims’, *El Universal* (online), 27 February 2009 <[http://www.eluniversal.com/2009/02/27/en\\_pol\\_art\\_chavez:-the-governme\\_27A2237975](http://www.eluniversal.com/2009/02/27/en_pol_art_chavez:-the-governme_27A2237975)>.

<sup>36</sup> *Ibid.*

<sup>37</sup> *Ibid.*

<sup>38</sup> ‘El Caracazo victims indemnified by the Executive’, *AVN* (online), 27 February 2014 <<http://www.avn.info.ve/contenido/caracazo-victims-indemnified-executive>>.

<sup>39</sup> James Suggett, ‘Venezuela Advances Investigations of Fourth Republic Massacres’ on *Venezuelanalysis*, (1 October 2009) <<http://venezuelanalysis.com/news/4830>>.

2005 the National Assembly of Venezuela created the Special Commission to Investigate the Murder, Disappearance, and Torture of Venezuelans, another important institutional reform that was unfortunately abandoned. According to Ciccariello-Maher, after only five months the commission was dissolved amid budget issues, however, it did carry out ‘significant research into the crimes of the era’.<sup>40</sup> By 2006, the Attorney General’s Office reopened the case of the Yumare Massacre — where nine members of the revolutionary group *Punto Cero* were executed by the DISIP<sup>41</sup> with charges brought against 29 participants. Ten arrest warrants were also filed, including an extradition request against Henry López Sisco — head of the DISIP at the time and believed to be living in Costa Rica.<sup>42</sup> The Attorney General’s Office has made less progress in relation to a massacre in the eastern state of Anzoátegui of 23 political activists of the armed guerrilla Americo Silva Front in October 1982.<sup>43</sup> According to PROVEA, retired military man Roger Cordero Lara, who participated in the massacre, is now a member of the United Socialist Party of Venezuela (‘PSUV’) and a deputy of the National Assembly for Guárico. Due to his newly found status, PROVEA claims that authorities have become reluctant to pursue Cordero Lara for his past alleged crime.<sup>44</sup>

Likewise, after the Venezuelan Supreme Court approved the extradition from the United States of Posada Carriles in May 2005, few observers expected the former head of the DISIP to face a court in Venezuela. In September that year, a US immigration judge ruled that Posada Carriles could not be extradited to Venezuela given that he faced the possibility of torture. In an angry response from Caracas, the Chávez government declared that this decision once again highlighted Washington’s ‘double standard in its so-called war on terrorism’.<sup>45</sup>

As the above cases highlight, while many positive steps have been taken to enquire into previous state crimes under the Bolivarian Experiment, the process has been slow and by no means conclusive. With the judiciary and the armed forces long closely related or connected to the established political parties, they remain reluctant to investigate their own actions during the initial years of the Chávez administration. After the April 2002 US-backed military coup occurred, which briefly ousted President Chávez, an even more striking example of this was

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<sup>40</sup> Ciccariello-Maher, above n 4.

<sup>41</sup> Ibid 75.

<sup>42</sup> Ibid.

<sup>43</sup> At the time of the massacre the Venezuelan President, Luis Herrera Campins, stated that the battle was ‘one of the most serious encounters with guerrillas’: ‘Venezuela Units Fight Rebels’, *New York Times*, 4 October 1982.

<sup>44</sup> Rafael Uzcátegui, a member of Provea states that ‘Cordero appears on the case file and he has never denied his involvement ... We are witnessing a support to impunity and very little willingness to administer justice in regard to these crimes’: Oscar Medina, ‘Parliamentary Immunity to a Certain Extent’, *El Universal* (online), 9 November 2013 <<http://english.eluniversal.com/nacional-y-politica/131109/parliamentary-immunity-to-a-certain-extent>>.

<sup>45</sup> ‘No Deportation for Cuban Militant’, *BBC News* (online), 28 September 2005 <<http://news.bbc.co.uk/2/hi/americas/4289136.stm>>.

obvious.<sup>46</sup> Despite evidence to the contrary that a violent takeover against the Chávez administration had taken place, in August that same year the Supreme Court ruled by a slim margin that the incident was not a coup d'état, but rather a 'power vacuum'.<sup>47</sup> In a similar manner, Hellinger notes that while most Latin American governments were condemning the coup in Caracas as events unfolded, the IACHR's 'status as an honest broker was compromised in the eyes of supporters of Chávez when it failed, like the United States, to immediately condemn the 48-hour coup of 2002'.<sup>48</sup> This led Chávez to withdraw Venezuela from the IACHR, a controversial move at the time.

In May 2004, after the administration assigned new judges and prosecutors, the Supreme Court's Constitutional Chamber overturned the decision and ruled that Chavez's recusal as President was unconstitutional while the culprit military officers for the takeover should face justice. When the judiciary was criticised for being pro-Chávez, instead of impartial, the administration defended the new appointments as a response to the previous judges' lack of impartiality. In 2008 the US-based Human Rights Watch ('HRW') organisation published a long report on Venezuela and, amongst other issues, strongly criticised Caracas for its actions against the judiciary.<sup>49</sup> Noting that political discrimination within state institutions had long existed in Venezuela, the HRW report argued that while the Chávez administration had 'managed to uproot the established system of political discrimination, it has replaced it with new forms of discrimination against real and perceived political opponents'.<sup>50</sup>

Widely cited by critics of the Chávez government, the HRW report did not go uncontested. As Hellinger observed, more than 100 Latin American area studies scholars criticised the lead author of the report — José Miguel Vivanco — for 'sloppy scholarship, especially for overreliance on a hostile opposition media and for political bias'.<sup>51</sup> Another observer noted that while HRW claimed that the stacking of new judges meant that the court system had lost its

<sup>46</sup> Ellner, above n 1, 198–9. On these developments, Ellner writes:

The Bush administration supported the April 2002 coup on different fronts. During the weeks prior to April 11, administration officials and those tied to the government-financed National Endowment for Democracy ('NED') met with numerous Venezuelan opposition leaders in Washington without in any way attempting to discourage them from carrying out the coup. The CIA knew of the details of their plans, which included (in the words of one document dated April 6 that the agency sent to the State Department) efforts 'to try to exploit unrest stemming from opposition and demonstrations' to serve as the justification for the coup and the arrest of Chávez along with ten government officials.

Ellner adds:

The day after Chávez's removal, White House Press Secretary Ari Fleischer justified the coup by referring to the April 11 shootings: 'We know that the action encouraged by the Chávez government provoked this crisis'. The statement was deceptive because the White House had known that the coup was in the making at least several days prior to April 11.

<sup>47</sup> Brian A Nelson, *The Silence and the Scorpion: The Coup and the Making of Modern Venezuela* (Nation Books, 2009) 269.

<sup>48</sup> Hellinger, above n 15, 34.

<sup>49</sup> Human Rights Watch, *A Decade Under Chávez: Political Intolerance and Lost Opportunities for Advancing Human Rights in Venezuela* (2008) <<http://www.hrw.org/reports/2008/09/18/decade-under-ch-vez>>.

<sup>50</sup> Ibid.

<sup>51</sup> Hellinger, above n 15, 34.

independence, ‘the report itself cites countless court decisions that have gone against Chávez or his supporters’.<sup>52</sup> The criticisms of the IACHR and HRW are both significant, given they are the human rights groups that have leverage internationally to gain judgments against their governments.

In another turn of events, on 18 November 2004, Danilo Anderson — the leading state prosecutor against those involved in the April 2002 coup — was assassinated through the use of C4 explosives soon before he was due to indict 400 people for their involvement in the takeover. Although eventually six Metropolitan Police officers with connections to the opposition were sentenced to 30 years prison for their shootings of protestors, with the aim of blaming the government, most high-level military and political participants, including Pedro Carmona — the self-appointed head of state during 11–13 April 2002 — never stood trial.<sup>53</sup> On December 2007, Chávez issued a presidential pardon for more than 60 individuals that signed the Carmona Decree that originally aimed to give legal legitimacy to the coup.<sup>54</sup>

#### IV POLICE AND STATE SECURITY REFORMS

While the Bolivarian Experiment under both Chávez and Maduro has seen the promotion of army officers and judges supportive of its political agenda, reforms of the state security, the police and the prison system have occurred, albeit slowly at times. In 2005, the government fired the head of the DISIP and undertook a process of restructuring the intelligence body by reducing its personnel from 6000 to 3000 while declaring it would no longer be involved in fighting organised crime.<sup>55</sup> The latter decision was made in light of revelations that a high profile Colombian drug dealer, José María Corredor Ibagué — also known as ‘*El Boyaco*’ — bribed DISIP agents in the amount of ‘between one and two million dollars’.<sup>56</sup> In 2009, the government renamed the DISIP the *Servicio Bolivariano de Inteligencia Nacional* (‘Bolivarian National Intelligence Service’ or ‘SEBIN’) and proceeded to restructure it.

Other reforms worth mentioning in the context of advancing transitional justice mechanisms have also taken place. In 2006, the administration in Caracas oversaw a nation-wide consultation with local police forces and community organisations. Two years later, in April 2008, the National Assembly adopted the *Organic Law of the Police Service and the National Police* that established a new model of law enforcement, which prohibited the police from carrying live ammunition at protests and strikes while emphasising the need to respect human rights.<sup>57</sup> In 2009, the National Police Academy was created to train Venezuela’s new centralised police force

<sup>52</sup> Gregory Wilpert, ‘Smoke and Mirrors: An Analysis of Human Rights Watch’s Report on Venezuela’ on *Venezuelanalysis* (18 October 2008) <<http://venezuelanalysis.com/analysis/3882>>.

<sup>53</sup> Tamara Pearson, ‘Nine Police Found Guilty of April 2002 Venezuelan Coup Deaths’ on *Venezuelanalysis* (6 April 2009) <<http://venezuelanalysis.com/news/4354>>.

<sup>54</sup> Ian James, ‘Chavez Pardons Accused Coup Backers’, *USA Today* (online), 31 December 2007 <[http://usatoday30.usatoday.com/news/topstories/2007-12-31-1482318110\\_x.htm](http://usatoday30.usatoday.com/news/topstories/2007-12-31-1482318110_x.htm)>.

<sup>55</sup> Sarah Wagner and Gregory Wilpert, ‘Venezuela’s Intelligence Service To Be Restructured’ on *Venezuelanalysis* (17 July 2005) <<http://venezuelanalysis.com/print/1198>>.

<sup>56</sup> *Ibid.*

<sup>57</sup> Pablo Fernández Blanco, Maryluz Guillén and James Suggett, ‘Human Rights and Police Reform in Venezuela: A Venezuelan Perspective’ on *Venezuelanalysis* (3 April 2009) <<http://venezuelanalysis.com/analysis/4349>>.

known as the Bolivarian National Police ('PNB'). By late 2011, over 100 of these new officers were expelled due to corruption while the PNB developed athletic and cultural community programs which benefited some 21 000 children.<sup>58</sup> Prior to these reforms, every state governor and mayor had their own police force — a total of 135 police forces — with the Judicial Technical Police and Metropolitan Police numbering 6000 and 8000 respectively, which made the implementation of national security almost a myth.<sup>59</sup>

While transitional justice has continued to move slowly in Venezuela, in the last few years it has constantly been reported, according to non-government sources, that crime has been on the increase. Used as a political issue, further challenges to the government's legitimacy have been made by the most radical sections of the opposition while certain judicial cases, which have attracted internal media attention, have become highly politicised.<sup>60</sup> The fact that in 2004 the government stopped publishing statistics on the number of murder rates has not helped its case.<sup>61</sup> According to Lemoine, the homicide rate for 2008 stood at 48 citizens per 100 000 citizens while, by 2013, an NGO known as the *Venezuelan Violence Observatory* reported that 24 763 killings took place pushing up the homicide rate to 79 per 100 000.<sup>62</sup>

While the government has continued to invest in the expansion of the PNB, the issue of crime has become so pertinent that in January 2014 observers claimed that a remilitarisation of the police force was taking place, 'with military officers placed at the head of the National Security

<sup>58</sup> Rodrigo Acuña, 'The Captain of a Sinking Ship?', *New Matilda* (online), 10 October 2011 <<https://newmatilda.com/2011/10/10/captain-sinking-ship>>.

<sup>59</sup> Michael Humphrey and Estela Valverde, 'Hope and Fear in Venezuela: Violence, Citizen Insecurity, and Competing Neoliberal and Socialist Urban Imaginaries' in Luis Fernando Angosto-Ferrández (eds) *Democracy, Revolution and Geopolitics in Latin America: Venezuela and the International Politics of Discontent* (Routledge, 2014) 161.

<sup>60</sup> One of the most notable cases of Presidential interference with the judiciary came in during the trial of Judge María Lourdes Afiuni who was accused of corruption after the release of businessman Eligio Cedeño, who later fled to the United States. With Chávez denouncing her as a 'bandit', he also called for her to be given a sentence of 30-years imprisonment. Writing on the matter in Human Rights Watch, *Venezuela: Chávez's Authoritarian Legacy: Dramatic Concentration of Power and Open Disregard for Basic Human Rights* (2013) <<http://www.hrw.org/news/2013/03/05/venezuela-chavez-s-authoritarian-legacy>>, the HRW states that:

Although Afiuni's ruling complied with a recommendation by United Nations human rights monitors — and was consistent with Venezuelan law, she was promptly arrested and ordered to stand trial by a provisional judge who had publicly pledged his loyalty to Chávez. ('I give my life for the Revolution', he wrote on the website of the president's political party. 'I would never betray this process, and much less my Commander'.) Afiuni spent more than a year in pretrial detention, in deplorable conditions, together with convicted prisoners — including many she herself had sentenced — who repeatedly threatened her with death. In the face of growing criticism from international human rights bodies, Afiuni was moved to house arrest in February 2011. After long delays, her trial opened in November 2012. Afiuni has refused to appear, arguing that she would not receive a fair trial, but the proceedings have continued in her absence.

<sup>61</sup> Humphrey and Valverde, above n 59, 162.

<sup>62</sup> Maurice Lemoine, 'Venezuela Murder Mystery', *Le Monde Diplomatique* (online), August 2010 <<http://mondediplo.com/2010/08/07venezuela>>; 'Venezuela's Homicide Rate Quadruples in Fifteen Years, NGO Reports', *Associated Press* (online), 26 December 2013 <<http://bigstory.ap.org/article/venezuelas-homicide-rate-rises-ngos-report-says>>.

University ('UNES') and the National Police ('PNB'). They added that '[t]hese changes amount to a setback to citizen security reforms that have attempted to separate the military and the police since 2008'.<sup>63</sup> These developments have also taken place with a background of corruption within the military and smuggling rings which hoard or sell subsidised government products in Colombia.<sup>64</sup> Similarly, the government does have real security issues when, for example, in 2004, 116 Colombian paramilitaries were discovered in a farm outside Caracas with plans to 'destabilise Venezuela's government and assassinate its head of state'.<sup>65</sup> With rising crime and further alleged activities by right-wing Colombian paramilitaries, President Maduro, in late 2013, called for an expansion of the country's voluntary militia.<sup>66</sup> Numbering close to 130,000, Maduro told the media he hopes to have 500 000 volunteers by 2015, and double that number by 2019.<sup>67</sup>

Under these circumstances, governments can and do use real security threats to their advantage. On the other hand, by February 2014 the world was once again reminded how sections of the Venezuelan opposition were willing to use non-democratic methods to challenge the government. After losing the April 2013 presidential elections by a close margin, and seeing the government significantly increase its vote in the December 2013 municipal elections, opposition leader Leopoldo López called on indefinite 'students' street demonstrations until the government resigned.<sup>68</sup> While many of these protests were peaceful, others were extremely violent and saw assaults on government buildings, the burning of public buses and attacks on the PBN and the National Guard which were called onto the streets.<sup>69</sup> By mid-March authorities in the state of Carabobo arrested three paramilitary groups (some with C4 explosives and military-grade firearms) while at the end of the month 34 people had died, 460 were reported wounded and

<sup>63</sup> Rebecca Hanson and David Smilde, 'Will Venezuela's Citizen Security Reform Continue Despite Re-militarization?', *Insight Crime: Organized Crime in the Americas* (online), 12 February 2014 <<http://www.insightcrime.org/news-analysis/will-venezuelas-citizen-security-reform-continue-despite-re-militarization>>.

<sup>64</sup> Daniela Castro, 'Maduro Launches Civil-Military Force on Venezuela Border', *Insight Crime: Organized Crime in the Americas* (online), 29 August 2013 <<http://www.insightcrime.org/news-briefs/maduro-launches-civil-military-force-on-venezuela-border>>.

<sup>65</sup> According to Lemoine, in 2007 seven more paramilitaries were arrested in the La Vega district: Lemoine, above n 62.

<sup>66</sup> 'Venezuela Arrests Colombians over Maduro Assassination Plot', *BBC News* (online), 10 June 2013 <<http://www.bbc.com/news/world-latin-america-22850494>>.

<sup>67</sup> Ryan Mallett-Outtrim, 'Venezuela's Maduro Calls for More Police Reform, Expansion of Militias' on *Venezuelanalysis* (24 October 2013) <<http://venezuelanalysis.com/news/10119>>.

<sup>68</sup> Luis Fernando Angosto-Ferrández and Rodrigo Acuña, 'Don't Write off Maduro: Why Venezuela is not Another Ukraine', *The Conversation* (online), 24 March 2014 <<http://theconversation.com/dont-write-off-maduro-why-venezuela-is-not-another-ukraine-24657>>.

<sup>69</sup> Writing at the time and highly critical of the Maduro administration, Smilde noted that the government position was not 'particularly vulnerable' and 'it would make no sense in such a context for the government to organise violence against a modest student march (with a turnout of around 10 000 it was much bigger than recent protests, but by no means large by Venezuelan standards)'. In David Smilde, 'Who Was Responsible for Yesterday's Violence in Venezuela?' on *Venezuelan Politics and Human Rights* (13 February 2014) <<http://venezuelablog.tumblr.com/post/76591076425/who-was-responsible-for-yesterdays-violence-in>>, Smilde added that:

Leopoldo López's calls for peaceful mobilisation are disingenuous when his acts seem to be intentionally creating the conditions for unintended violence. He is effectively putting student protestors in the line of fire to further what he sees as the interests of the country.

1044 people, of whom — contrary to the opposition's claim — only 418 were students, were arrested.<sup>70</sup>

At the end of March, the government also arrested 21 members of the security services for alleged abuses (which included killings) and sacked the head of SEBIN while the Attorney General's Office created a commission where people could report human rights violations by the authorities.<sup>71</sup> With López arrested and charged for inciting violence, the issue of the protests and surrounding violence was discussed at both the OAS and the Union of South American Nations ('UNASUR').<sup>72</sup>

While UNASUR backed the Maduro government's version of events, in early March, a similar outcome occurred at the OAS with only Panama and the Obama administration in Washington objecting. One report noted that:

The OAS approved a declaration that rejected violence and called for justice for the 21 people the government says have died in street protests since 12 February. The declaration offered 'full support' for a government peace initiative that the opposition has refused to join until dozens of jailed protesters and an opposition leader are freed. Twenty-nine countries voted in favor of the declaration after 15 hours of debate spread over two days.<sup>73</sup>

On April 1, the *New York Times* published an open-editorial by President Maduro titled 'Venezuela: A Call for Peace'. Defending the country's participatory democracy and drawing further attention to the violence by some of the protesters, he wrote that:

Antigovernment protesters have physically attacked and damaged health care clinics, burned down a university in Táchira State and thrown Molotov cocktails and rocks at buses. They have also targeted other public institutions by throwing rocks and torches at the offices of the Supreme Court, the public telephone company CANTV and the attorney general's office. These violent actions have caused many millions of dollars' worth of damage. This is why the protests have received no support in poor and working-class neighborhoods. The

<sup>70</sup> Ibid; Mark Weisbrot, 'The Truth about Venezuela: a Revolt of the Well-off, not a "Terror Campaign"', *The Guardian* (online), 21 March 2014 <<http://www.theguardian.com/commentisfree/2014/mar/20/venezuela-revolt-truth-not-terror-campaign>>.

<sup>71</sup> Ibid; Ewan Robertson, 'Venezuelan Intelligence Official Arrested in Connection with 12 February Violence in Caracas' on *Venezuelanalysis* (17 February 2014) <<http://venezuelanalysis.com/news/10357>>.

<sup>72</sup> George Ciccariello-Maher, '#LaSalida? Venezuela at a Crossroads', *The Nation* (online), 22 February 2014, <<http://www.thenation.com/article/178496/lasalida-venezuela-crossroads#>>. Commenting on the funding from the US that the most radical elements of the opposition have received, Ciccariello-Maher observed that:

The political party in which both López and Capriles cut their teeth — Primero Justicia — emerged at the intersection of corruption and foreign intervention: López would later be barred from public office for allegedly receiving funds from his mother, a state oil executive. Less deniable is the FOIA revelation that the party received significant injections of funding from US government ancillaries like the National Endowment for Democracy, USAID, and the International Republican Institute. López is no stranger to street violence, nor does he flinch at taking the extra-institutional route: during the 2002 coup — of which he has said he is 'proud' — he led witch hunts to root out and arrest Chavista ministers amid a violent opposition mob.

<sup>73</sup> Associated Press, 'Venezuela Divisions Deepen as Protest over Food Shortages is Halted', *Guardian* (online), 9 March 2014 <<http://www.theguardian.com/world/2014/mar/09/venezuela-protest-food-shortages>>.

protesters have a single goal: the unconstitutional ouster of the democratically elected government.<sup>74</sup>

In the future, the region will undoubtedly once again turn towards Venezuela and its judiciary to see if López will be provided with a fair and transparent trial, to find out how Maduro tackles the issues of crime and security threats and to see how the opposition decides to engage in the next electoral process.

## V PRISON SYSTEM REFORM

Moving on to Venezuela's prison system, under the Fourth Republic, frequent and serious human rights violations also took place. Poor funding for prison administration and infrastructure, lack of well-trained staff members, along with high levels of corruption, were endemic. These problems were exacerbated by overcrowding and impoverished living conditions for inmates. According to one report, the annual number of deaths in prison in 1992 reached 600.<sup>75</sup> An important contributing factor was that during the 1990s prison riots were accompanied by extreme violence. For example, during one riot at the Barcelona prison, two bands of inmates fought each other with sticks and guns for control of the remand centre. With six inmates killed and 20 wounded, a police report noted that the bodies of the dead inmates were found decapitated.<sup>76</sup> In another case, this time involving a riot at the Sabaneta prison in Maracaibo on 4 January 1994, 104 prisoners were left dead and, with 80 inmates wounded, Sabaneta became known as 'the prison of death'.<sup>77</sup> With crime on the rise throughout the 1990s, this situation reflected broader social trends like the increase of poverty and a lack of confidence in the country's representative institutions.<sup>78</sup>

The country's prison population in 2008 stood at 20 000, which was a substantial decrease from the all-time high of 31 400 in 1992.<sup>79</sup> According to art 272 of the new Constitution, 'the state will guarantee a penitentiary system that assures the rehabilitation of the inmate and respect for her or his human rights'.<sup>80</sup> By 2005 though, with the state's correctional facilities originally built to house 17 000 inmates, the issue of the country's appalling state of affairs in prisons was once again made evident as some 12 000 prisoners went on a hunger strike to demand better conditions.<sup>81</sup> By 2007, conditions in Venezuela's 32 prisons remained poor, with 415 inmates killed in that year due to prison violence.<sup>82</sup>

<sup>74</sup> Nicolás Maduro, 'Venezuela: A Call for Peace', *The New York Times* (online), 1 April 2014 <[http://www.nytimes.com/2014/04/02/opinion/venezuela-a-call-for-peace.html?\\_r=0](http://www.nytimes.com/2014/04/02/opinion/venezuela-a-call-for-peace.html?_r=0)>.

<sup>75</sup> Ibid.

<sup>76</sup> Ibid.

<sup>77</sup> Ibid.

<sup>78</sup> According to one source, from 1995 to 2003 homicide rates increased from 21 per 100 000 inhabitants to 44: Lucía Dammert, *Fear and Crime in Latin America: Redefining State-Society Relations* (Routledge, 2012) 128.

<sup>79</sup> James Suggett, 'Prisoner Rights Restored Following Venezuelan Supreme Court Decision' on *Venezuelanalysis* (23 April 2008) <<http://venezuelanalysis.com/news/3379>>.

<sup>80</sup> Ibid.

<sup>81</sup> Ibid; 'The Fifth Circle of Hell', *The Economist* (online), 14 July 2011, <<http://www.economist.com/node/18958990>>.

<sup>82</sup> Suggett, above n 79.

According to one source, from 1999 to 2011 some 5000 inmates were killed as a result of violence while awaiting or serving out their sentences.<sup>83</sup> While this same source in 2011 placed the number of prisoners at 50 000, the government gave a figure of 40 000.<sup>84</sup> Either way, an increase in Venezuela's prison population was taking place. According to Vice Minister of Justice and Internal Affairs, Edwin Rojas, the reason for this was due to a strengthening of the country's public safety initiatives. She stated that '[c]urrently, we have a penitentiary population of approximately 145 inmates per every 100 thousand inhabitants, displaying a growth in the prison population of 100 per cent in only two years'.<sup>85</sup> To the government's credit it has created a number of new initiatives in the right direction, like programs for inmates to complete their high school education. In the face of mounting criticism, the administration also created Operation Cayapa that — it claimed — by early 2012 resulted in 40 per cent of prisoners having their judicial cases processed.<sup>86</sup> Despite promising the construction of nine new prisons though, by that same year the government had only finished two new centres for incarceration.<sup>87</sup>

## VI CONCLUSION

In Venezuela, transitional justice procedures have been slow due to the numerous obstacles faced by the new government and the process is by no means conclusive. On the one hand, the Bolivarian Experiment that focuses on institutional reform and greater social justice has made great strides to end the repressive and exclusionary practices of the state institutions of the Fourth Republic. Transitional justice has progressed through the mechanisms of constitutional and judicial reform — including the investigations into the *Caracazo*. Other past state crimes, police and prison system reforms have also progressed, albeit somewhat slowly at times. On the other hand, after the Fifth Republic, the country has witnessed a greater concentration of power in the executive and a re-politicisation of state institutions. With the country still highly polarised after Chávez's death, as the February protests highlight, some sections of the opposition have continued to prefer an unconstitutional removal of the government rather than continue down the path of the Bolivarian Experiment.

At the same time, if we believe that the rule of law needs to be anchored in a solid social justice society, we need to also credit the government implementation of vast social programs in health, education and housing (among other areas). According to the United Nations Economic Commission on Latin America ('CEPAL'), poverty rates between 1999 and 2010 decreased by 21 per cent.<sup>88</sup> In 2008 the World Bank noted that 32.6 per cent of Venezuelans lived on the poverty line, while in 2012 that figure stood at 25.4 per cent.<sup>89</sup> In almost every facet of the

<sup>83</sup> 'The Fifth Circle of Hell', *The Economist* (online), 14 July 2011  
<<http://www.economist.com/node/18958990>>.

<sup>84</sup> Correo del Orinoco, 'Improving Prison Conditions' on *Venezuelanalysis* (8 April 2011)  
<<http://venezuelanalysis.com/news/6119>>.

<sup>85</sup> Ibid.

<sup>86</sup> Ewan Robertson, 'Venezuela Moves Ahead with Prison Reforms' on *Venezuelanalysis* (27 January 2012)  
<<http://venezuelanalysis.com/news/6777>>.

<sup>87</sup> Ibid.

<sup>88</sup> Steve Ellner, 'The Chávez Election', *Le Monde Diplomatique* (online), 7 September 2012  
<<http://mondediplo.com/2012/09/04chavez>>.

<sup>89</sup> El Banco Mundial, *Venezuela* (2014) <<http://datos.bancomundial.org/pais/venezuela>>.

government's policies though, highly contentious debates have taken place with the opposition that at times have spilled into the area of transitional justice. In this respect, challenges lie for both sides of the political spectrum. As former US President Jimmy Carter once told President Chávez, while '[y]our government has complied with the constitution in every test ... your public statements and animosity aggravate the divisions' within the country.<sup>90</sup> Regarding the opposition, even harsher criticisms need to be made because, despite a decline of AD and COPIE, and a regrouping of these traditional parties into the *Mesa de la Unidad Democrática* ('Democratic Unity Roundtable', or 'MUD'), under the Fourth Republic the traditional parties failed to build a more inclusive democracy by introducing constructive processes of transitional justice, a factor that would have paved the way for and facilitated this development under the Bolivarian Experiment. With the death of Chávez, Maduro has a difficult task to keep advancing these processes in the next years. The opposition is running a harsh campaign to discredit his government through students' protests that are manipulated by the media. Luisa Ortega Díaz, Venezuelan Attorney General, denounced openly that only 60 per cent of detainees were students, pointing out the fact that the international media was tainting the perception of these recent demonstrations to discredit and destabilise Maduro's government.<sup>91</sup> Whether the processes of transitional justice being implemented will finally force the rule of law remains to be seen in a country where human rights abuses were the norm until so recently.

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<sup>90</sup> McCoy and Diez, above n 19, 165.

<sup>91</sup> 'El 60% de detenidos por violencia en Venezuela no son estudiantes' *Telesur* (online), 28 February 2014, <<http://m.telesurtv.net/articulos/2014/02/28/solo-35-de-detenidos-por-violencia-en-venezuela-son-estudiantes-5168.html>>.