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# Tightening the Grip

Concentration and Abuse of Power in Chávez's Venezuela



# **Tightening the Grip**

**Concentration and Abuse of Power in Chávez's Venezuela**

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## Summary

In 2008, Human Rights Watch released *A Decade Under Chávez*, a 230-page report documenting how the government of President Hugo Chávez had squandered an historic opportunity to shore up the country's democratic institutions and strengthen the protection of human rights in Venezuela. After enacting a new constitution with ample human rights guarantees in 1999—and surviving a short-lived coup d'état in 2002—President Chávez and his supporters moved to concentrate power by seizing control of the Supreme Court and undercutting the ability of journalists, human rights defenders, and other Venezuelans to exercise fundamental rights.

The 2008 report, which Human Rights Watch released at a press conference in Caracas, offered detailed recommendations of steps the Venezuelan government could take to salvage the human rights potential of the 1999 Constitution. President Chávez responded by having Human Rights Watch's representatives forcibly detained and summarily expelled from the country.

Since then, the human rights situation in Venezuela has become even more precarious. The pro-Chávez majority in the National Assembly has passed legislation expanding the government's powers to limit free speech and punish its critics. And the Supreme Court—re-packed with Chávez supporters in 2010—has explicitly rejected the principle that the judiciary should serve as a check on presidential power, while joining with the president in dismissing the authority of the Inter-American system of human rights.

The accumulation of power in the executive, the removal of institutional safeguards, and the erosion of human rights guarantees have given the Chávez government free rein to intimidate, censor, and prosecute Venezuelans who criticize the president or thwart his political agenda. In the past four years, President Chávez and his supporters have used these powers in a wide range of cases, including the following:

- After Judge **María Lourdes Afiuni** granted conditional freedom in December 2009 to a government critic who had spent nearly three years in prison awaiting trial on corruption charges, President Chávez denounced her as a “bandit” and called for her to be given a

30-year prison sentence. Although Afiuni's ruling complied with a recommendation by UN 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 President 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 prison in pretrial detention, in deplorable conditions, together with convicted prisoners—including many she herself had sentenced—who subjected her to repeated death threats. In the face of growing criticism from international human rights bodies, Afiuni was moved to house arrest in February 2011, where she remains today while awaiting trial.

- After the weekly newspaper **6to Poder** published a satirical article in August 2011 depicting six high-level female officials—including the attorney general and Supreme Court president—as dancers in a cabaret entitled “The Revolution” directed by “Mr. Chávez,” the six officials called for a criminal investigation and for the paper to be closed down. Within hours, arrest warrants were issued for the paper's director, Dinora Girón, and its president, Leocenis García, on charges of “instigation of public hatred.” Girón was arrested the following day, held for two days, then granted conditional liberty. García went into hiding, but turned himself in to authorities the following week, and was imprisoned for two months, then granted conditional freedom. At this writing, both Girón and García remain under criminal investigation pending trial. The newspaper is under a court order to refrain from publishing any text or images that could constitute “an offense and/or insult to the reputation, or to the decorum, of any representative of public authorities, and whose objective is to expose them to public disdain or hatred.”
- After human rights defender **Rocío San Miguel** appeared on a television show in May 2010 and denounced the fact that senior military officers were members of Chávez's political party (a practice prohibited by the Venezuelan Constitution), she was accused on state television of being a “CIA agent” and “inciting insurrection,” and in the official magazine of the Armed Forces of seeking to foment a coup d'état in Venezuela. The NGO that she directs, Citizen Watch, was also named—along with other leading NGOs—in a criminal complaint filed by several youth groups affiliated with Chávez's political party for alleged “treason” due to having received funding from the US government. San Miguel has since received repeated death threats from unidentified individuals. While

she does not know the source of those threats, she believes the denunciations in the official media have made her more vulnerable to such acts of intimidation.

- After Venezuela's oldest television channel, **RCTV**, broadcast a video in November 2006 showing Chávez's energy minister telling his employees at the state oil company to quit their jobs if they did not support the president, Chávez publicly warned RCTV and other channels that they could lose their broadcasting license—a threat he had made repeatedly in response to critical broadcasting. A month later, the president announced his (unilateral) decision that RCTV would no longer be “tolerated” on the public airwaves after its license expired the following year. RCTV stopped transmitting on open frequencies in May 2007, but continued as a cable channel. Since then, the government has used its regulatory power to drive RCTV off of cable television as well. In January 2010, the National Telecommunications Commission (CONATEL) determined that RCTV was a “national audiovisual producer” and subject to newly established broadcasting norms. Days later, Chávez's communications minister threatened to open administrative investigations against cable providers whose broadcast channels were not in compliance with the norms. In response, the country's cable providers stopped broadcasting RCTV International. CONATEL has since denied RCTV's repeated efforts to re-register as a cable channel. Today, RCTV can only be viewed on the internet, and it no longer produces news coverage due to lack of funding.
- After **Globovisión**, the only remaining television station with national coverage consistently critical of Chávez's policies, provided extensive coverage of a prison riot in June 2011—including numerous interviews with distressed family members who claimed security forces were killing prisoners—President Chávez responded by accusing the station of “set[ting] the country on fire...with the sole purpose of overthrowing this government.” The government promptly opened an administrative investigation of Globovisión's coverage of the violence and, in October, ruled that the station had “promoted hatred for political reasons that generated anxiety in the population,” and imposed a US\$ 2.1 million fine, which is equivalent to 7.5 percent of the company's 2010 income. Globovisión is currently facing six additional administrative investigations—including one opened in response to their reporting that the government failed to provide the public with basic information in the aftermath of an earthquake and another for broadcasting footage of an opposition political candidate



criticizing the electoral authority for delaying the release of local election results. Under the broadcasting law enacted by President Chávez and his supporters in the National Assembly in 2004, a second ruling against Globovisión could result in another heavy fine, suspension of the station's transmission, or revocation of its license.

- After **Oswaldo Álvarez Paz**, an opposition politician, appeared on Globovisión's main political talk show in March 2010 and commented on allegations of increased drug trafficking in Venezuela and a Spanish court ruling that referred to possible collaboration between the Venezuelan government and Colombian guerrillas, Basque separatists, and other "terrorist" groups, President Chávez responded in a national broadcast that these comments "could not be permitted" and called on other branches of government "to take action." Two weeks later, Álvarez Paz was arrested on grounds that his "evidently false statements" had caused "an unfounded fear" in the Venezuelan people. Álvarez Paz remained in pretrial detention for almost two months, and was then granted conditional liberty during his trial, which culminated in July 2011 with a guilty verdict and a two-year prison sentence. The judge allowed Álvarez Paz to serve his sentence on conditional liberty, but forbade him from leaving the country without judicial authorization.

These high-profile cases—and the others documented in this report—have had an impact not only on the individuals and groups directly involved, but also on many other Venezuelans who themselves have not been targeted. For judges, journalists, broadcasters and human rights defenders in particular, the government's actions have sent a clear message: the president and his followers are willing and able to punish people who challenge or obstruct their political aims. While many Venezuelans continue to criticize the government, the prospect of facing similar reprisals—in the form of arbitrary or abusive state action—has undercut the ability of judges to adjudicate politically-sensitive cases, and forced journalists and rights defenders to weigh the consequences of publicizing information and opinions that are critical of the government.

## The Courts

*A Decade Under Chávez* documented how President Chávez and his supporters in the National Assembly carried out a political takeover of the Supreme Court in 2004,

expanding it from 20 to 32 members and filling the new seats with government supporters. This packed Supreme Court effectively abdicated its responsibility to safeguard fundamental rights in prominent cases involving the media and organized labor.

Since then, President Chávez and his supporters have taken dramatic steps to maintain their political control over the judiciary. In 2010, after legislative elections greatly reduced the size of the pro-Chávez majority in the National Assembly, the president's supporters in the outgoing Assembly rushed to change the law governing the process for appointing justices and then re-packed the Supreme Court before the newly elected opposition legislators took their seats.

The Supreme Court's record has only gotten worse in recent years, as its members have openly rejected the principle of separation of powers and publicly pledged their commitment to advancing the political agenda of President Chávez. This political commitment has been reflected in the court's rulings, which have repeatedly validated the government's disregard for international human rights norms.

The most disturbing example of the lack of judicial independence in Venezuela has been the jailing of Judge Afiuni, which has had a powerful impact on lower court judges. Since the political takeover of the Supreme Court in 2004, they have been afraid of issuing rulings that might upset the Chávez government. But whereas in the past they only feared losing their jobs, now they also fear being criminally prosecuted for upholding the law.

In addition to neutralizing the judiciary as guarantor of rights, the Chávez government has rejected the authority of the Inter-American Court of Human Rights and the Inter-American Commission on Human Rights, failing to implement binding rulings of the court, and preventing the commission from conducting in-country monitoring of human rights problems (as the commission has done for decades in countries throughout the region). Both President Chávez and the Supreme Court have advocated for Venezuela's withdrawal from the Inter-American system, a move that would leave Venezuelans without recourse to what has been for years—in countries throughout the region—the most important external mechanism for seeking redress for abuses when national courts fail to provide it.

## The Media

*A Decade Under Chávez* documented how President Chávez and his supporters in the National Assembly had undermined freedom of expression through a variety of laws and policies aimed at reshaping the content of and control over the media. Since then, the Chávez government has further expanded and abused its powers to censor its critics.

In December 2010, the pro-Chávez majority in the National Assembly amended the 2004 broadcasting law so that its restrictions on free speech in the media now apply to the internet as well. It also added new restrictions, including a prohibition on transmitting messages that “foment anxiety in the public,” and granted CONATEL greater powers to sanction TV and radio broadcasters, as well as websites, that violate them. In addition, the National Assembly passed legislation allowing CONATEL to suspend or revoke broadcasting licenses whenever the agency considers such action to be “convenient for the interests of the nation.”

Chávez’s supporters have sought to justify the government’s policies in this area by claiming they are efforts to “democratize” the country’s media. Yet, instead of promoting pluralism, the Chávez government has used its regulatory authority to expand the number of pro-government media outlets, while reducing the availability of those that engage in critical programming.

While the government has actively promoted the creation of community radio stations, giving new opportunities for public expression to residents of many poor communities, even this important initiative has been used by the government for explicitly partisan purposes.

The government has also expanded the number of state-run TV channels from one to six, all of which maintain a strong pro-Chávez editorial line. Meanwhile, it has taken aggressive action against private stations. After being arbitrarily removed from the public airwaves in 2007, RCTV, Venezuela’s oldest private television channel, has since been driven off cable TV by the government, leaving Globovisión as the only major channel that remains critical of President Chávez. The government has pursued administrative sanctions against Globovisión, which could lead to its suspension or closure, and pressed criminal charges

against the station's president, a principal owner, and a guest commentator after they issued public statements criticizing the government.

In addition, the government has also targeted media outlets for sanction and/or censorship for their critical reporting on the government's response to issues such as water pollution, violent crime, a prison riot, and an earthquake, as well as a series of political advertisements in support of property rights, a satirical news story depicting senior officials as dancers in a Chávez-led cabaret, and a Colombian soap opera in which a character named Venezuela who loses her dog named Huguito (Little Hugo) asks her boyfriend, "What will become of Venezuela without Huguito?" and he responds "You will be free, Venezuela."

The sanctioning and censorship of the media have had a powerful impact on broadcasters and journalists. While sharp criticism of the government is still common in the print media, on Globovisión, and in some other outlets, the fear of government reprisals has made self-censorship a serious problem in the country.

### **Human Rights Defenders**

*A Decade Under Chávez* documented how President Chávez and his supporters had aggressively sought to discredit the country's human rights defenders by accusing them of receiving support of the US government to undermine Venezuelan democracy.

While it is true that some (though not all) of Venezuelan human rights NGOs have received funding from US sources—a common practice among independent NGOs throughout Latin America—there is no credible evidence that the independence and integrity of their work on behalf of human rights in Venezuela has been compromised by any of this reliance on international support. (Indeed, Venezuela's leading human rights NGOs receive far more assistance from European sources than they do from US ones.)

Nonetheless, these efforts to discredit local human rights defenders have intensified, and the stakes have grown significantly higher, as Chávez's supporters in the National Assembly have increased the state's capacity to sanction nongovernmental organizations that receive foreign funding. In July 2010, the Supreme Court ruled that individuals or

organizations receiving foreign funding could be prosecuted for “treason” under a provision of the criminal code that establishes a prison sentence of up to 15 years. And in December 2010, the National Assembly enacted the Law for the Defense of Political Sovereignty and National Self Determination, which blocks organizations that “defend political rights” or “monitor the performance of public bodies” from receiving international funding and imposes stiff fines on organizations that invite foreigners who express opinions that “offend” government institutions. While it is reasonable for governments to regulate foreign funding of civil society groups in order to promote greater transparency, these norms go well beyond legitimate forms of accountability and regulation.

In addition, while claiming to be promoting transparency for civil society, the Chávez government has enacted rules that dramatically reduce the public’s right to obtain information held by the government.

In combination, these measures have significantly increased the government’s ability to prevent or deter human rights defenders from obtaining the funding, information, legal standing, and public visibility that they need to be effective advocates.

Moreover, there is a strong perception among local human rights defenders that the government’s aggressive efforts to cast doubt on their motives and allegiances has contributed to an environment in which they are more vulnerable to acts of intimidation by low-level officials and threats and acts of violence by private citizens who support President Chávez.

### **Note on Methodology**

This report’s findings are based on an extensive review of official sources, including judicial and administrative rulings, government websites, press releases, news accounts in state media outlets, and video recordings of public statements by government officials. The findings are also based on in-depth interviews with human rights defenders, jurists, journalists, academics, diplomats, and victims of human rights abuses, conducted during four Human Rights Watch visits to Venezuela between May 2010 and March 2012, as well as prior and subsequent interviews by telephone, email, and Skype.

All those interviewed were informed of the purpose of the interview, its voluntary nature, and the ways in which the information would be used. Interviewees were told they could decline to answer questions or end the interview at any time. All provided oral consent to be interviewed. None received compensation.

When conducting research in Venezuela, Human Rights Watch intentionally avoided establishing contact with government officials or drawing public attention to our presence in the country. Our principal reason for this practice was the fact that the Chávez government had forcibly detained Human Rights Watch representatives in 2008 and declared that our representatives would not be “tolerated” in the country.

Human Rights Watch submitted written information requests to high-level Venezuelan officials, including the president of the Supreme Court of Justice, the attorney general, the ombudsperson, and the director of CONATEL, with specific questions regarding the issues covered in this report. At this writing, we have received no response to these requests.

## The Courts

### Re-Packing the Supreme Court

The 1999 Bolivarian constitution sought to address the major shortcomings of Venezuela's judicial system. Decades of rampant corruption and political meddling had left the country's judiciary dysfunctional and profoundly discredited. The drafters of the constitution hoped to salvage the judicial branch by creating a new Supreme Court and establishing essential protections for judicial independence, thus laying the groundwork for the judiciary to fulfill its crucial role as guarantor of the rule of law and protector of basic rights.

*A Decade Under Chávez* documented how President Chávez and his supporters in the National Assembly squandered this opportunity by carrying out a political takeover of the judiciary in 2004, expanding the Supreme Court from 20 to 32 members and filling the new seats with government supporters.

In September 2010, President Chávez's supporters in the National Assembly moved to extend this control. Five days after the legislative elections—in which the pro-Chávez majority in the National Assembly was reduced from close to 100 percent to approximately 60 percent of the seats<sup>1</sup>—they modified a key article of the 2004 court-packing law to accelerate the process for naming new justices. While the original article granted individuals “at least” 30 days to present nominations, the revised version states that they now have “no more than” 30 days.<sup>2</sup> (The legislators claimed they were merely correcting “errors” in the text of a reformed version of the law that had been published earlier that year.)<sup>3</sup>

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1 In the September 2010 elections, Chávez's political party won 98 seats, the opposition (Mesa de Unidad Democrática) won 65, and the political party Patria Para Todos won 2. “PSUV is the largest political force in Parliament” (PSUV es la mayor fuerza política del Parlamento), *Agencia Venezolana de Noticias*, <http://www.avn.info.ve/node/20087> (accessed May 25, 2012); “Opposition fabricates ‘majority’ using votes of small parties” (Sector opositor fabrica ‘mayoría’ apropiándose de votos de partidos pequeños), *Agencia Venezolana de Noticias*, September 28, 2010, <http://www.avn.info.ve/node/20130> (accessed May 25, 2012); National Electoral Council, “Parliamentary results” (Divulgación de elecciones parlamentarias), September 26, 2010, [http://www.cne.gob.ve/divulgacion\\_parlamentarias\\_2010/](http://www.cne.gob.ve/divulgacion_parlamentarias_2010/) (accessed May 25, 2012).

2 Official Gazette of the Bolivarian Republic of Venezuela (Gaceta Oficial de la República Bolivariana de Venezuela), No. 39.522, October 1, 2010, pp. 1-2.

3 Ibid.

With the new rules in place, Chávez's supporters were able to appoint their allies to the Supreme Court before the new Congress was installed. In December 2010, they selected nine new justices, including several former legislators from Chávez's political party, former high-level government officials, and former ambassadors appointed by the Chávez administration.<sup>4</sup> (To create the new vacancies, the Supreme Court also gave several justices authorization to retire before the conclusion of their constitutional 12-year terms.)<sup>5</sup>

The political control over the Supreme Court translates directly into control over lower courts as well, as the Supreme Court effectively controls the appointment and removal of lower court judges.<sup>6</sup> Since 2000, Venezuela's Judicial Commission—currently made up of six justices from the packed Supreme Court—has used its discretionary powers to appoint and remove hundreds of lower court provisional or temporary judges through mechanisms that lack basic due process safeguards.<sup>7</sup> (Moreover, even though the 1999 constitution

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<sup>4</sup> Ministry of the Popular Power for Communication and Information, "National Assembly appoints new Supreme Court Justices" (Asamblea Nacional juramentó los nuevos magistrados del TSJ), press release, December 9, 2010, [http://www.minci.gob.ve/noticias/1/202174/asamblea\\_nacional\\_juramentlos.html](http://www.minci.gob.ve/noticias/1/202174/asamblea_nacional_juramentlos.html) (accessed May 21, 2012); "Gladys Gutiérrez Alvarado Substitutes Marisol Plaza at Attorney General's Office" (Gladys Gutiérrez Alvarado sustituye a Marisol Plaza en la Procuraduría), *El Universal*, March 31, 2006, [http://www.eluniversal.com/2006/03/31/pol\\_art\\_31104E.shtml](http://www.eluniversal.com/2006/03/31/pol_art_31104E.shtml) (accessed May 21, 2012); "The Nine Principals" (Los Nueve Principales), *El Universal*, December 8, 2010, [http://www.eluniversal.com/2010/12/08/pol\\_apo\\_los-nueve-principale\\_o8A4828331.shtml](http://www.eluniversal.com/2010/12/08/pol_apo_los-nueve-principale_o8A4828331.shtml) (accessed May 21, 2012); "Congress approves appointment of Supreme Court justices" (Parlamento aprueba designación de magistrados al Tribunal Supremo de Justicia), *Correo del Orinoco*, December 8, 2010, <http://www.correodelorinoco.gob.ve/politica/parlamento-aprueba-designacion-magistrados-al-tribunal-supremo-justicia/> (accessed May 21, 2012); United Socialist Party of Venezuela (Partido Socialista Unido de Venezuela, PSUV), "Members of PSUV: Representatives (Elected December 4, 2005)" (Cuadros del PSUV: Diputados y Diputadas (Electos el 4 de diciembre de 2005)), undated, <http://www.psu.org.ve/psuv/diputados/> (accessed May 21, 2012).

<sup>5</sup> Supreme Court of Justice of Venezuela, Resolution Number 2010-0011, March 10, 2010, [http://www.tsj.gov.ve/informacion/resoluciones/sp/resolucionSP\\_0001147.html](http://www.tsj.gov.ve/informacion/resoluciones/sp/resolucionSP_0001147.html) (accessed May 21, 2012); Constitution of the Bolivarian Republic of Venezuela, art. 264; "Justice Jaimes denies mass retirement at Supreme Court of Justice" (Magistrada Jaimes desmintió jubilación masiva en el TSJ), *Correo del Orinoco*, March 17, 2010, <http://www.correodelorinoco.gob.ve/judiciales-seguridad/magistrada-jaimes-desmintio-jubilacion-masiva-tsj/> (accessed May 21, 2012).

<sup>6</sup> In March 2012, Human Rights Watch asked the Supreme Court for updated information on the number of judges in the Venezuelan judiciary, specifying how many are permanent, provisional, and temporary; how many judges were appointed after the open competitions mandated by the constitution; how many judges had been removed and for which motives; and how many cases were pending before disciplinary courts and how many had been resolved. At this writing, we have received no response to our information request. Letter from Joseph Saunders, deputy program director at Human Rights Watch, to Luisa Estella Morales, president of the Supreme Court of Justice, February 27, 2012.

<sup>7</sup> Between January and October 2008, the appointments of 44 judges were voided and 20 other judges were suspended. Between January and September 2009, 72 judges were removed or had their appointments nullified. In 2010, the Judicial Commission voided the appointment of 67 judges. The commission appointed 1451 non-permanent judges in 2008, 359 between January and September 2009, and 1064 in 2010. In March 2012, the Supreme Court appointed 89 additional provisional judges. Inter-American Commission on Human Rights (IACHR), "Democracy and Human Rights in Venezuela," OEA/Ser.L/V/II. Doc. 54, December 30, 2009, <http://www.cidh.org/countryrep/Venezuela2009eng/VEo9.TOC.eng.htm> (accessed May 25, 2012), paras. 209-210, 270, 271, 275; Inter-American Court of Human Rights, *Chocrón Chocrón Case*,



mandated the creation of disciplinary tribunals to oversee the work of permanent judges, the Supreme Court exercised such disciplinary powers for over a decade, until the new National Assembly appointed judges to the disciplinary tribunals in 2011.)<sup>8</sup>

The Judicial Commission has granted stability of tenure to hundreds of provisional and temporary judges.<sup>9</sup> In theory, this reduction in the number of provisional and temporary judgeships is a positive development. However, these new positions were not won through open competitions, as required by the Venezuelan constitution, but rather through promotions of provisional and temporary judges who had been appointed at the full discretion of the Judicial Commission.<sup>10</sup>

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Judgment of July 1, 2011, [http://www.corteidh.or.cr/docs/casos/articulos/seriec\\_227\\_esp.pdf](http://www.corteidh.or.cr/docs/casos/articulos/seriec_227_esp.pdf) (accessed May 25, 2012), para. 71; IACHR, “Annual Report 2010”, OEA/Ser.L/V/II. Doc 5, rev. 1, March 7, 2011, <http://www.cidh.oas.org/annualrep/2010eng/TOC.htm> (accessed May 25, 2012), paras. 621, 623; United Nations Human Rights Council, “Promotion and Protection of All Human Rights, Civil, Political, Economic, Social and Cultural Rights, including the Right to Development. Report of the Special Rapporteur on the independence of judges and lawyers, Leandro Despouy”, A/HRC/11/41, March 24, 2009, [http://www2.ohchr.org/english/bodies/hrcouncil/docs/11session/A.HRC.11.41\\_en.pdf](http://www2.ohchr.org/english/bodies/hrcouncil/docs/11session/A.HRC.11.41_en.pdf) (accessed May 25, 2012), paras. 60, 62; Supreme Court of Justice of Venezuela, “Supreme Court President took oath to new judges” (Presidenta del TSJ juramentó nuevos jueces y juezas), press release, March 8, 2012, <http://www.tsj.gov.ve/informacion/notasdeprensa/notasdeprensa.asp?codigo=9204> (accessed March 9, 2012); Inter American Commission on Human Rights, “Annual Report 2011”, April 9, 2012, <http://www.oas.org/es/cidh/docs/anual/2011/indice.asp> (accessed May 25, 2012), para. 453.

<sup>8</sup> For years, the Supreme Court was in charge of discretionally appointing and removing members of the Commission on Functioning and Restructuring of the Judiciary (Comisión de Funcionamiento y Reestructuración del Poder Judicial)—an “emergency” commission created by the 1999 Constituent Assembly that exercised disciplinary powers over permanent judges. The emergency commission ceased to exist in 2011, after the National Assembly appointed judges to new disciplinary courts, which had been mandated by the constitution of 1999 but had not been created until 2009. (In 2009, the National Assembly adopted the Code of Ethics of Venezuelan Judges (Código de Ética del Juez y la Jueza Venezolanos), which provides for the creation of disciplinary tribunals.) Constituent Assembly, “Decree creating the Transition Regime of Public Powers” (Decreto mediante el cual se dicta el Régimen de Transición del Poder Público), Official Gazette 36.859, December 29, 1999. The Supreme Court extended this process of “judicial restructuring” in 2009. Supreme Court of Justice of Venezuela, Resolution No. 2009-0008, March 18, 2009, [http://www.tsj.gov.ve/informacion/resoluciones/sp/resolucionSP\\_0000888.html](http://www.tsj.gov.ve/informacion/resoluciones/sp/resolucionSP_0000888.html) (accessed May 21, 2012); Inter-American Court of Human Rights, *Apitz Barbera and others Case (“Corte Primera de lo Contencioso Administrativo”)*, Judgment of August 5, 2008, Inter-Am.Ct.H.R.,(Ser. C) No. 195 (2008), para. 147; Constitution of the Bolivarian Republic of Venezuela, art. 267; Code of Ethics of Venezuelan Judges, [http://www.oas.org/juridico/spanish/mesicic3\\_ven\\_anexo4.pdf](http://www.oas.org/juridico/spanish/mesicic3_ven_anexo4.pdf) (accessed May 21, 2012); IACHR, “Annual Report 2011”, para. 456.

<sup>9</sup> While in 2004 only 20 percent of the country’s 1732 judges held permanent appointments and enjoyed the rights established in the constitution, the percentage of judges with security of tenure rose to 44 in 2010. In 2005 and 2006, the Judicial Commission gave stability of tenure to 823 judges through the Special Program for the Regularization of Status (Programa Especial para la Regularización de la Titularidad). Human Rights Watch e-mail correspondence with Ricardo Jiménez Dan, then-executive director of the Magistracy, Supreme Court of Justice, May 20, 2004; Inter-American Court of Human Rights, *Chocrón Chocrón Case*, para. 71.

<sup>10</sup> Constitution of the Bolivarian Republic of Venezuela, art. 255; “Rules for Evaluations and Public Competitions for Entry into and Promotion within the Judicial Career” (Normas de Evaluación y Concurso de Oposición para el Ingreso y Ascenso a la Carrera Judicial), July 6, 2005, <http://www.tsj.gov.ve/informacion/acuerdos/normasdeeyc.htm> (accessed May 21, 2012).

## The Record of the Supreme Court Since 2004

Since the political takeover of the judiciary in 2004, the Supreme Court and lower courts have repeatedly failed to fulfill their role as checks on arbitrary state action and guarantors of basic rights.

*A Decade Under Chávez* documented this failure in various high impact cases prior to 2008—including the 2004 court-packing law,<sup>11</sup> the sweeping constitutional reform proposals promoted by Chávez in 2007,<sup>12</sup> the closure of Radio Caracas Television (RCTV) in 2007,<sup>13</sup> the government’s interference in the union elections,<sup>14</sup> and a range of other cases involving the erosion of basic human rights guarantees.<sup>15</sup>

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According to the IACHR, “no competitions have been organized and all appointments since 2002 have been made without any sort of oversight or procedure.” IACHR, “Democracy and Human Rights in Venezuela,” para. 204.

In a case against Venezuela, the Inter-American Court of Human Rights held that “all citizens who meet the requirements set in law must be able to participate in the selection processes without suffering arbitrary or unequal treatment [and all] candidates must compete in equal conditions, even against those holding positions on a provisional bases, who may not, for that reason, be afforded privileges, or advantages, or disadvantages, with respect to the position that they occupy or to which they aspire.” Inter-American Court of Human Rights, *Reverón Trujillo Case*, Judgment of June 30, 2009, Inter-Am.Ct.H.R., (Ser. C) No. 197 (2009), [http://www.corteidh.or.cr/docs/casos/articulos/seriec\\_197\\_esp.pdf](http://www.corteidh.or.cr/docs/casos/articulos/seriec_197_esp.pdf) (accessed June 15, 2012), para. 73.

<sup>11</sup> Shortly after Chávez signed the court-packing law in 2004, several prominent Venezuelan jurists filed petitions with the Supreme Court challenging its constitutionality. Despite the urgent nature of these appeals, it took the court three years to rule on the petitions, at which time it dismissed them on procedural grounds without ever addressing the merits. See Human Rights Watch, *A Decade Under Chávez: Political Intolerance and Lost Opportunities for Advancing Human Rights in Venezuela*, September 2008, <http://www.hrw.org/reports/2008/09/18/decade-under-ch-vez> (accessed June 15, 2012), p. 55.

<sup>12</sup> The reforms included measures that would have dramatically expanded the powers of the executive branch by, among other things, authorizing the president to suspend fundamental rights indefinitely during states of emergency without any Supreme Court oversight. Petitioners challenged both the content of the reforms and the process through which Chávez and his supporters were seeking to enact them, but the court declined to address any of these challenges, arguing that it could not review them until the referendum had been held. *Ibid.*, p. 56.

<sup>13</sup> The Supreme Court failed to protect freedom of expression, due process, and the rule of law in the high profile RCTV case. By failing to resolve key rights issues, it allowed the government to use its regulatory power in a discriminatory and punitive manner against a channel because of its critical coverage of Chávez and his government. *Id.*, p. 126.

<sup>14</sup> The Supreme Court failed to uphold the freedom of association of Venezuelan workers when it dismissed a petition to clarify the proper role of the state in union leadership elections. Given that state interference in union elections (a direct violation of international labor standards) has been a widespread problem in Venezuela throughout Chávez’s presidency, the court’s failure to issue a clear ruling has effectively allowed the government to continue to violate workers’ basic right to freely elect their representatives. *Id.*, p. 193.

<sup>15</sup> For example, in 2003, in response to an appeal against speech offense provisions of the criminal code filed by a human rights lawyer, the Supreme Court’s constitutional chamber ruled unanimously that Venezuela’s insult provisions were constitutional. However, insult laws (known in Spanish as *leyes de desacato*), which criminalize expressions deemed to offend the honor of public officials and institutions, directly contravene international human rights norms. In refusing to align Venezuelan constitutional protection of freedom of expression with international standards, the court also noted that the IACHR’s recommendations were not binding on the state, and expressed the opinion that applying the norms set out by the IACHR could even endanger it and threaten its independence if implemented. *Id.*, p. 178.

Similarly, the Supreme Court helped establish the tone for discrediting NGOs early on in the Chávez government by ruling in two decisions that NGOs that receive funds from abroad do not form part of civil society. In these rulings, issued in 2000, the

Since 2008, the judiciary has continued to abdicate its role as a check on arbitrary state action. According to the respected nongovernmental organization Venezuelan Program of Education and Action in Human Rights (Programa Venezolano de Educación - Acción en Derechos Humanos, PROVEA), in 2009 and 2010 the Supreme Court rejected or failed to adopt a decision on the merits in 90 percent of the cases in which individuals challenged actions by President Chávez, the National Assembly, and other state institutions controlled by Chávez supporters.<sup>16</sup> Similarly, a comprehensive study by a Venezuelan scholar found that, during an 18-month period between 2007 and 2008, the vast majority of cases handled by the Supreme Court's Political Administrative Chamber, the highest body to hear petitions against the state, were decided in favor of the government. In over 80 percent of the 293 rulings in which petitioners asked the court to annul a government decision, the court ruled against the petitioners.<sup>17</sup>

### *Rejecting the Principle of Separation of Powers*

In recent years, justices on the packed Supreme Court have openly rejected the notion of the judiciary as an independent branch of government. Instead of serving as a check on arbitrary state action, they have espoused the view that the role of the country's courts is to support the political agenda of President Chávez.

For example, at the public ceremony initiating judicial activities for 2011, the keynote speaker, Justice Fernando Torre Alba, declared that the judiciary has the duty to participate in the effective implementation of the government's public policy to develop "a deliberate and planned action to carry out a Bolivarian and democratic socialism" and that the courts

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court defined "civil society" in such a way as to exclude organizations that receive foreign funding, thereby preventing them from exercising the rights to political participation that other NGOs enjoy. Such rulings remain in effect today. *Id.*, p. 226.

<sup>16</sup> The other state institutions include the National Electoral Council, the Attorney General's Office, and the Comptroller General's Office (Contraloría General de la República). PROVEA, "Annual Report 2010", December 2010, <http://www.derechos.org/ve/informes-anales/informe-anual-2010/> (accessed May 21, 2012), p. 287.

<sup>17</sup> Of the 222 cases (acciones de anulación) filed in 2007, 82 percent were declared without merit (sin lugar), 10 percent were decided in favor of the government (con lugar) and 8 percent were decided partially in favor of the petitioner (parcialmente con lugar). Of the 71 cases (acciones de anulación) decided in the first half of 2008, 86 percent were declared without merit (sin lugar), 8 percent were decided in favor of the petitioner (con lugar) and six percent were decided partially in favor of the petitioner (parcialmente con lugar). Antonio Canova González, *The Reality of Administrative Jurisdiction in Venezuela (La Realidad del Contencioso Administrativo Venezolano)*, (Caracas: Fundación Estudios de Derecho Administrativo, 2009).

“must severely...sanction behaviors or correct judicial cases that undermine the construction of [this] Socialism.”<sup>18</sup>

Later that year, Supreme Court President Luisa Estella Morales declared publicly that President Chávez’s “direction, inspiration, and conception of the Republic is what constitutionally inspires...our activities.” Addressing the president—whom she referred to as “our leader”—she said: “Here are all your institutions, and we are firmly moving forward with the responsibilities that you have given us, which we will never betray, not now, not ever.”<sup>19</sup>

More recently, in May 2012, while addressing newly appointed judges at their swearing-in ceremony, the Supreme Court president exhorted them to understand their role as adjudicators in terms of “our revolutionary project and of the change that is taking place in Venezuela today.”<sup>20</sup>

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<sup>18</sup> Supreme Court of Justice of Venezuela, “The judiciary has a duty to contribute to the state’s policies towards a Bolivarian and democratic socialism” (Poder Judicial está en el deber de dar su aporte a la política de Estado que conduce a un socialismo Bolivariano y democrático), press release, February 5, 2011, <http://www.tsj.gov.ve/informacion/notasdeprensa/notasdeprensa.asp?codigo=8239> (accessed May 21, 2012). (El Poder Judicial venezolano está en el deber de dar su aporte para la eficaz ejecución, en el ámbito de su competencia, de la Política de Estado que adelanta el gobierno nacional en el sentido de desarrollar **“una acción deliberada y planificada para conducir un socialismo bolivariano y democrático”** (...) “[E]ste Tribunal Supremo de Justicia y el resto de los tribunales de la República, **deben aplicar severamente las leyes para sancionar conductas o reconducir causas que vayan en desmedro de la construcción del Socialismo Bolivariano y Democrático.**”)

<sup>19</sup> “Chávez, we know God has a great purpose for you” (Chávez, sabemos que Dios tiene para tí un propósito grande), video of press conference by Luisa Estella Morales, Vive Television, July 1, 2011, [http://www.youtube.com/watch?v=kfvLQB-i8Xg&feature=player\\_embedded](http://www.youtube.com/watch?v=kfvLQB-i8Xg&feature=player_embedded) (accessed May 21, 2012). (Compartiendo con usted Presidente esta nueva lucha. Una lucha de otra naturaleza y de otro nivel pero que también es de todo el pueblo venezolano y es de todos los poderes públicos porque nuestra institucionalidad se encuentra de tal modo arraigada, de tal modo establecida que **un solo poder representa cada uno de los poderes públicos y por supuesto su dirección, su inspiración, su concepción de República es lo que inspira constitucionalmente el desarrollo de nuestras actividades**” ... **“Aquí están todas sus instituciones y estamos, pues, sobre todo firmes en el avance de las responsabilidades que nos ha encomendado y las cuales no vamos a defraudar ni ahora ni nunca.”**)

“Testimony of Luisa Estella Morales regarding Chávez’s illness” (Testimonio de Luisa Estella Morales sobre la enfermedad de Chávez), YouTube video, posted by “ndkarma,” August 22, 2011, <http://www.youtube.com/watch?v=rP4mpuz4Rfc> (accessed May 21, 2012). (Orando, ayunando, pidiéndole a mi Dios que me diera una respuesta de que en el momento en el que íbamos justamente en la etapa más importante, por qué **nuestro líder** tenía que sufrir esta enfermedad.)

<sup>20</sup> Supreme Court of Justice of Venezuela, “The country has a new group of judges” (El país cuenta con un nuevo grupo de jueces y juezas), press release, May 16, 2012, <http://www.tsj.gov.ve/informacion/notasdeprensa/notasdeprensa.asp?codigo=9345> (accessed May 17, 2012); “40 members of the legal profession sworn in as judges of the Republic” (Juramentados 40 profesionales del derecho como jueces de la República), *Radio Nacional de Venezuela*, May 16, 2012, <http://www.rnv.gov.ve/noticias/?act=ST&f=27&t=184092> (accessed May 23, 2012). (Cuando ustedes se van a juramentar como jueces comprometan lo más sagrado que exista en su interior, no es tanto el formalismo de hacer cumplir las leyes, que es importante, el otro, más comprometedor por la Patria y de hacer cumplir la constitución que es justamente **el norte de nuestro proyecto revolucionario y de cambio que se desarrolla en Venezuela hoy día.**)

(This view of the judiciary's role has not been limited to the Supreme Court. As discussed later in this chapter, the provisional judge in charge of the case against Judge María Lourdes Afiuni publicly declared his loyalty to President Chávez on the website of the president's political party. "I give my life for the Revolution," he wrote, "I would never betray this process and much less my Commander.")

The rejection of the principle of separation of powers has been incorporated into case law as well. In a July 2009 ruling, the Supreme Court dismissed the "so-called division, distinction or separation of powers" as "the instrument of a liberal doctrine" established to "ensure that the State remained limited to the protection of individualist interests of the ruling class."<sup>21</sup> The court held that this principle should not be understood to necessarily require a "homogeneous, exclusive, or excluding distribution...of tasks [and] powers" amongst branches of government.<sup>22</sup>

### *Rejecting Binding Rulings by the Inter-American Court*

The Supreme Court has repeatedly ruled that the Venezuelan government is not obliged to implement binding decisions of the region's most authoritative human rights body, the Inter-American Court of Human Rights.

In December 2008, for example, the Supreme Court rejected a binding judgment in which the Inter-American Court had ordered Venezuela to reinstate four judges who had been arbitrarily removed from their positions and modify the existing mechanisms for appointing and removing judges.<sup>23</sup> The Inter-American Court had found that the removals and existing mechanisms undermined judicial independence in the country. But the

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<sup>21</sup> The petitioners were challenging the constitutionality of the Law on Consumer and User Protection, which, they argued, imposed excessive restrictions on their ability to do business and therefore violated their right to economic liberty. Supreme Court of Justice of Venezuela, File No. 04-2233, July 23, 2009, <http://www.tsj.gov.ve/decisiones/scon/julio/1049-23709-2009-04-2233.html> (accessed May 21, 2012). (La llamada división, distinción o separación de poderes fue, al igual que la teoría de los derechos fundamentales de libertad, **un instrumento de la doctrina liberal del Estado mínimo**... el referido "principio" no es un mero instrumento de organización de los órganos del Poder Público, sino un modo mediante el cual se pretendía asegurar que el Estado se mantuviera limitado a la **protección de los intereses individualistas de la clase dirigente**.)

<sup>22</sup> Ibid. ([H]abría que convenir en que la llamada división, distribución o separación de poderes, al menos en el marco de nuestra Constitución, **no supone una distribución homogénea, exclusiva o excluyente, o no en todos los casos, de tareas, potestades o técnicas entre los conglomerados de órganos del Poder Público**.)

<sup>23</sup> Supreme Court of Justice of Venezuela, Case No. 08-1572, December 18, 2008, <http://www.tsj.gov.ve/decisiones/scon/Diciembre/1939-181208-2008-08-1572.html> (accessed May 21, 2012); Inter-American Court of Human Rights, Apitz Barbera and others Case.

Supreme Court dismissed the Inter-American Court’s ruling as “inadmissible” on the grounds that it “violate[d] the Venezuelan state’s sovereignty.”

In the ruling, the Supreme Court went so far as to recommend that the executive branch renounce Venezuela as a signatory to the American Convention on Human Rights, a treaty to which Venezuela has been a party since 1977. Such a measure would mean renouncing the country’s commitment to upholding the region’s foundational human rights treaty and denying Venezuelan citizens recourse to the region’s principal human rights enforcement mechanism.

More recently, in October 2011, the Supreme Court rejected a binding judgment in which the Inter-American Court ordered Venezuela to allow opposition politician Leopoldo López to run for political office.<sup>24</sup> As discussed below, López was one of hundreds of politicians—most of whom were from the political opposition—who had been prohibited from seeking elected office as a result of corruption charges for which they had never been formally charged or convicted by a court of law. The Inter-American Court held that this prohibition constituted a violation of the right to run for political office, established in the American Convention on Human Rights.<sup>25</sup>

Again the Supreme Court argued that implementation of the Inter-American Court judgment would violate Venezuelan sovereignty.<sup>26</sup> In so ruling, the Supreme Court disregarded the basic principle of international law that states may not invoke provisions of domestic law to justify failing to meet their obligations under the treaties they have ratified in good faith.<sup>27</sup>

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24 Supreme Court of Justice of Venezuela, “Constitutional Chamber declares the Inter-American Court’s ruling on the Leopoldo López case impossible to execute” (Sala Constitucional declaró inejecutable fallo de la CIDH sobre el caso de Leopoldo López), press release, October 17, 2011, <http://www.tsj.gov.ve/informacion/notasdeprensa/notasdeprensa.asp?codigo=8847> (accessed May 21, 2012).

25 Inter-American Court of Human Rights, López Mendoza Case, Judgment of September 1, 2011, Inter-Am.Ct.H.R., (Ser. C), No. 233 (2011), [http://www.corteidh.or.cr/docs/casos/articulos/seriec\\_233\\_esp1.pdf](http://www.corteidh.or.cr/docs/casos/articulos/seriec_233_esp1.pdf) (accessed May 21, 2012).

26 Supreme Court of Justice of Venezuela, “Constitutional Chamber declares the Inter-American Court’s ruling on the Leopoldo López case impossible to execute.”

27 Vienna Convention on the Law of Treaties, art. 27; Inter-American Court of Human Rights, Almonacid Arellano and others Case, Judgment of September 26, 2006, Inter-Am.Ct.H.R., (Ser. C), No. 154 (2006). [http://www.corteidh.or.cr/docs/casos/articulos/seriec\\_154\\_esp.pdf](http://www.corteidh.or.cr/docs/casos/articulos/seriec_154_esp.pdf) (accessed May 21, 2012), paras. 124 - 125.

## *Ruling against the Independence of NGOs*

In July 2010, the Supreme Court issued a ruling that barred a nongovernmental organization that received foreign funding from presenting a legal challenge to government policies.<sup>28</sup> The ruling also established that individuals or organizations receiving foreign funding could be prosecuted for treason.

The ruling came in response to an appeal brought by *Súmate*, a nongovernmental organization that identifies its main purpose as “promot[ing] democracy” in Venezuela, challenging the legality of the sweeping 2009 constitutional reform referendum. *Súmate* challenged the fact that electoral authorities had failed to comply with applicable law regarding the process to publicize the referendum *before* it took place. Nonetheless, the court ruled that it could not evaluate the constitutionality of a constitutional referendum before it was approved.

The court also held that *Súmate* had no legal standing to bring the challenge given that the nongovernmental organization was partially funded by the National Endowment for Democracy, which is itself funded by the US Congress.<sup>29</sup>

Even more problematically, the court held that “obtaining financial resources, either directly or indirectly, from foreign states with the intent of using them against the Republic, the interests of the people, political, social, economic, or other acts, could

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28 Supreme Court of Justice of Venezuela, Ruling No. 796, July 22, 2010, <http://www.tsj.gov.ve/decisiones/scon/Julio/796-22710-2010-09-0555.html> (accessed May 25, 2012).

29 According to the court, this foreign funding constituted “a typical manifestation of the interventionist policies of a foreign power to influence internal affairs of the Venezuelan state”, and therefore the organization’s legal appeal amounted to “defend[ing] foreign interests regarding issues of internal politics.” *Ibid.* ([E]s evidente, que la “ASOCIACIÓN CIVIL SÚMATE”, tiene como fin pretender guiar al Pueblo Venezolano en la adopción de posiciones políticas... las actividades públicas de la citada asociación civil fueron parcialmente **financiadas por la National Endowment For Democracy, que es una organización vinculada financiera e ideológicamente a la política de otra nación, pues se encuentra supervisada y recibe permanentemente fondos del Congreso de los Estados Unidos...** Tal financiamiento constituye, en el contexto expuesto, una **típica manifestación de la política intervencionista de una potencia extranjera para incidir en los asuntos internos del Estado venezolano**, toda vez que la aportación de recursos, es sin duda, una de las modalidades a través de las cuales se sirven los distintos centros de poder (entre ellos otros Estados), para el fomento de sus intereses, incluso, fuera de sus fronteras. Por ello, en salvaguarda de la plena soberanía de la República, de su independencia y del deber que tienen los órganos del Estado de no someterse a un poder extranjero (artículos 1 y 5 del Texto Fundamental), esta Sala, a los fines de garantizar que las funciones del Estado se desarrollen de forma unilateral en provecho de los particulares y no de intereses otro Estado, de conformidad con el artículo 19.6 de la Ley Orgánica que rige las funciones de este Alto Tribunal, **desestima la cualidad de la “Asociación Civil SÚMATE” para interponer la presente demanda de nulidad, por carecer de legitimidad para actuar en defensa de intereses extranjeros sobre asuntos de política interna...**)

constitute...treason.”<sup>30</sup> The ruling specifically cites Article 140 of the Criminal Code, which establishes a 10 to 15-year prison sentence for anyone “who collaborates directly or indirectly with a foreign country or Republic...or provides or receives money from them...that could be used against the Bolivarian Republic of Venezuela, the integrity of its territory, its republican institutions, citizens, or destabilizes the social order.”<sup>31</sup> While treason laws are permissible under international law, they cannot be overly broad—either in form or application—so that they can be applied arbitrarily, in a discriminatory manner, or as retaliation for the legitimate exercise of internationally protected fundamental rights, including the rights to peaceful expression, association, and assembly. The article in the Venezuelan Criminal Code on treason and the Supreme Court’s ruling do not comply with these basic safeguards.

As discussed further in the chapter on human rights defenders, the Supreme Court ruling could have serious negative implications for defenders in Venezuela who (like other defenders throughout Latin America) rely on foreign funding to finance their work. Under this ruling, they could be disqualified from bringing legal challenges to abusive state policies. Worse still, many are facing criminal complaints brought by supporters of President Chávez, and those complaints could now lead to criminal prosecution for alleged treason.

The Supreme Court’s ruling in this case runs counter to Venezuela’s obligation to refrain from imposing arbitrary limitations on the ability of nongovernmental organizations to solicit and receive funds for their activities. The United Nations Declaration on Human Rights Defenders specifically states that “[e]veryone has the right, individually and in association with others, to solicit, receive and utilize resources for the express purpose of promoting and protecting human rights and fundamental freedoms through peaceful means.”<sup>32</sup> And, according to the Inter-American Human Rights Commission (IACHR), civil

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<sup>30</sup> Ibid. (Adicionalmente, debe esta Sala recordar que **la obtención de recursos financieros, ya sea de manera directa o indirecta, provenientes de estados extranjeros con la intención de emplearse en perjuicio de la República, los intereses del Pueblo** (donde reside la soberanía a que alude el artículo 5 de la Constitución de la República Bolivariana de Venezuela), **actos políticos o sociales, económicos etc., podría eventualmente configurar el delito** previsto en el artículo 140 del Código Penal Venezolano, incluyendo el párrafo único que prohíbe gozar de los beneficios procesales de ley, ni a la aplicación de medidas alternativas del cumplimiento de la pena, comprendidos en el Título Primero de los delitos contra la independencia y seguridad de la Nación, concretamente, **referido a la traición a la Patria** y otros delitos contra ella.)

<sup>31</sup> Criminal Code (Código Penal), <http://www.ministeriopublico.gob.ve/LEYES/codigo%20penal/codigo%20penal.html> (accessed May 20, 2012), art. 140.

<sup>32</sup> “United Nations Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms”, adopted March 8, 1999, G.A. res. 53/144, art. 13.



society organizations may legitimately receive money from foreign or international NGOs or foreign governments to promote human rights.<sup>33</sup>

### *Ruling against Government Transparency*

In November 2008, the nongovernmental organization Public Space (Espacio Público) asked the Comptroller General's Office for information regarding the salaries earned by members of its staff, including the comptroller general himself. The office denied the request, claiming that releasing this information would entail "an invasion of the privacy of public officials, which would violate the rights to honor and privacy."<sup>34</sup> Public Space appealed this decision to the Supreme Court.

The right to seek, receive, and impart information—recognized in the American Convention on Human Rights and the International Covenant on Civil and Political Rights—encompasses a positive obligation of states to provide access to official information in a timely and complete manner. This obligation can only be overridden under circumstances clearly defined by law, in which the release of information could undermine the rights of others or the protection of national security, public order, or public health or morals. The Model Law on Access to Information—which was approved by the OAS General Assembly in June 2010—specifically states that every individual has the right to request information "without having to justify the reasons" for asking for it. It also states that the salaries of high-level officials, and the salary scales of all government officials, should be proactively disseminated by governments.<sup>35</sup>

Nonetheless, in July 2010, the Supreme Court rejected Public Space's appeal on the grounds that "information regarding the salaries of public officials is part of the officials' privacy" and that Public Space "did not demonstrate how the requested information would be useful for citizen participation in favor of transparency."<sup>36</sup> In the ruling the Supreme

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<sup>33</sup> IACHR, "Report on the Situation of Human Rights Defenders in the Americas", March 7, 2006, OEA/Ser.L/V/II.124, IV (40).

<sup>34</sup> Supreme Court of Justice of Venezuela, no file number, July 15, 2010, <http://www.tsj.gov.ve/decisiones/scon/Julio/745-15710-2010-09-1003.html> (accessed May 25, 2012). ([I]mplica una invasión a la esfera privada de los funcionarios públicos y que con ello se violaría el derecho al honor y privacidad consagrado en el artículo 60 de la Constitución.)

<sup>35</sup> See chapter "Venezuela's Obligations under International Law."

<sup>36</sup> Supreme Court of Justice of Venezuela, no file number, July 15, 2010, <http://www.tsj.gov.ve/decisiones/scon/Julio/745-15710-2010-09-1003.html> (accessed May 25, 2012). ([T]al información no es un dato de difusión pública, pues se trata de **información que se contrae a la esfera privada o intimidad económica de los funcionarios.** (...) Al respecto, cabe

Court also established additional restrictions on access to official information that are inconsistent with international norms regarding the right to information. These restrictions include requirements that requests for information from government offices must explicitly state the reasons for requesting such information and the purposes for which it will be used, and that the amount of required information should be proportionate to the use the party making the request would give to it, without specifying who would make such determination.<sup>37</sup> These overly broad and onerous requirements impose a burden on the individual to justify why he or she should be entitled to information, rather than placing the burden on the authorities to justify why certain information should be legitimately withheld. Furthermore, the restrictions open the opportunity for arbitrary and discriminatory determinations to be made.

### *Upholding Prior Censorship*

In November 2010, the Supreme Court upheld state censorship of a series of political advertisements that criticized legislation being promoted by the Chávez government.<sup>38</sup> The proposed legislation sought to define, establish, and regulate the existence of “social property” in Venezuela. The advertisements included six 30-second spots in which ordinary citizens—including a housewife, a taxi driver, and a young woman working in a family-owned bakery—describe the effort they put into acquiring their property and conclude by committing to “defend” that property should someone try to take it away from them.<sup>39</sup>

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señalar que aun cuando efectivamente se invocó un interés que se interrelaciona con la necesidad de proteger otro bien jurídico constitucional, este es, la participación ciudadana en la gestión pública; sometida la pretensión de amparo al test de constitucionalidad, constata la Sala que **la parte accionante no acredita cómo la información solicitada sería de utilidad para la participación ciudadana en pro de la transparencia de la gestión pública**. En otras palabras, no parece proporcional la magnitud de la información solicitada en pro de la transparencia de la gestión fiscal, ni siquiera las acciones concretas para las cuales se utilizaría la información solicitada.)

<sup>37</sup> Id. (De modo que, esta Sala determina con carácter vinculante, a partir de la publicación de esta decisión, que en ausencia de ley expresa, y para salvaguardar los límites del ejercicio del derecho fundamental a la información, se hace necesario: **i) que el o la solicitante de la información manifieste expresamente las razones o los propósitos por los cuales requiere la información; y ii) que la magnitud de la información que se solicita sea proporcional con la utilización y uso que se pretenda dar a la información solicitada.**)

<sup>38</sup> Supreme Court of Justice of Venezuela, Case No. 2010-0507, November 24, 2010, <http://www.tsj.gov.ve/decisiones/spa/noviembre/01212-251110-2010-2010-0507.html> (accessed May 22, 2012).

<sup>39</sup> CEDICE, “Defend your Private Property” (Defiende tu Propiedad Privada), YouTube video, 2008, <http://www.youtube.com/watch?v=XYoAcOuOAX4> (accessed May 22, 2012); CEDICE, “Defend your Private Property 2” (Defiende tu Propiedad Privada 2), YouTube video, 2008, <http://www.youtube.com/watch?v=nRIA3xmSFM8&feature=related> (accessed May 22, 2012); CEDICE, “Defend your Private Property 3” (Defiende tu Propiedad Privada 3), YouTube video, 2008, <http://www.youtube.com/watch?v=QHlHr1Qa2w&feature=related> (accessed May 22, 2012); CEDICE, “Defend your Private Property 5” (Defiende tu Propiedad Privada 5), YouTube video, 2009, <http://www.youtube.com/watch?v=21i->

In July 2009, the National Telecommunications Commission (Comisión Nacional de Telecomunicaciones, CONATEL) ordered TV and radio stations to stop broadcasting the spots immediately on the grounds that the ads “contain[ed] messages that could cause anguish, fear, and unrest in the population, which could encourage group actions to alter the public order that could threaten the security of the nation.”<sup>40</sup> CONATEL also prohibited the broadcast of any “similar” advertisements in the future.<sup>41</sup> Diosdado Cabello, then CONATEL’s director, publicly justified the decision on the grounds that “it is a crime to undermine the mental health of the population with this type of campaign.”<sup>42</sup>

The Center to Disseminate Economic Knowledge for Liberty (Centro de Divulgación del Conocimiento Económico para la Libertad, CEDICE), one of the nongovernmental organizations that prepared the campaign, appealed CONATEL’s decision to the Supreme Court, arguing it constituted prior censorship and infringed on their right to free speech.

Under international human rights law, a blanket ban on advertisements criticizing an official legislative proposal constitutes an unreasonable restriction on the right to free speech. As described in the last chapter of this report, Article 13 of the American Convention explicitly prohibits prior censorship. The Declaration of Principles on Freedom of Expression, adopted by the IACHR in 2000, explicitly prohibits “[p]rior conditioning of expressions, such as truthfulness, timeliness or impartiality,” and states that “[p]rior censorship, direct or indirect interference in or pressure exerted upon any expression, opinion or information transmitted through any means of oral, written, artistic, visual or electronic communication must be prohibited by law.” The declaration also states that “restrictions to the free circulation of ideas and opinions, as well as the arbitrary

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[oSBQnZc&feature=related](#) (accessed May 22, 2012); CEDICE, “Defend your Private Property 6” (Defiende tu Propiedad Privada 6), YouTube video, 2009, <http://www.youtube.com/watch?v=tbC-g28A8SM&feature=related> (accessed May 22, 2012).

<sup>40</sup> Supreme Court of Justice of Venezuela, Case No. 2010-0507. (Dichas propagandas contienen mensajes que **presuntamente causan angustia, temor, zozobra en la población pudiendo fomentar en el colectivo conductas tendientes a alteraciones del orden público y que pueden ser contrarias a la seguridad de la nación.**)

<sup>41</sup> Ibid. (En consecuencia, se ordena como medida cautelar a los prestadores de servicio (...) **abstenerse en forma inmediata de difundir todas las propagandas que conforman la campaña ‘En Defensa de la Propiedad’ ofrecida por los anunciantes CEDICE y ASOESFUERZO, en sus distintas versiones o similares, tanto de radio como de televisión, así como cualquier otra Propaganda que podrían Promover, hacer apología o incitar (...) a alteraciones del orden público.**)

<sup>42</sup> Ministry of Popular Power for Communication and Information, “The Media must Abstain from Transmitting Ads of Asoesfuerzo y Cedice” (Medios deben abstenerse de transmitir cuñas de Asoesfuerzo y Cedice), press release, July 3, 2009, [http://www.minci.gob.ve/noticias/1/190202/medios\\_deben\\_abstenerse.prnt](http://www.minci.gob.ve/noticias/1/190202/medios_deben_abstenerse.prnt) (accessed February 14, 2012). (El ministro recalcó **que constituye un delito atentar contra la salud mental de la población por medio de este tipo de campañas** en radio, prensa y televisión.)

imposition of information and the imposition of obstacles to the free flow of information violate the right to freedom of expression.”

Nonetheless, the Supreme Court rejected the appeal, upholding CONATEL’s decision on the grounds that these spots “could affect democracy, peace, and human rights” and “could generate situations that could affect the general interest.” The court held that the right to free speech is “not absolute, and instead is limited by constitutional values and principles,” and that CONATEL had correctly restricted a “particular interest” to protect a “public” one.<sup>43</sup> (Additionally, the court decided that CEDICE did not have standing to represent the right of Venezuelans to have access to information and that, being an organization and not a human being, it had no right to free speech.)

### *Upholding Presidential Power to Establish Crimes by Decree*

The Inter-American Court has previously advised that basic rights should only be limited by a law issued by a legislative branch as opposed to one imposed through decree by the head of state.<sup>44</sup> Yet, in December 2010, the National Assembly authorized President Chávez to unilaterally establish crimes as part of an “enabling law” that granted him broad powers to legislate by decree for 18 months on a wide variety of issues during this period.<sup>45</sup>

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<sup>43</sup> Supreme Court of Justice of Venezuela, Case No. 2010-0507. (Así, la autoridad administrativa consideró que la difusión de tales propagandas **podría atentar contra la democracia, la paz y los derechos humanos**, valores estos que se encuentran previstos en el texto constitucional. Al respecto se observa, que tal como lo establece el criterio jurisprudencial transcrito, **el derecho a la libertad de expresión no tiene carácter absoluto, teniendo como límites el respeto de los valores y principios constitucionales**. En el presente caso, ante la presunción de que los mencionados mensajes propagandísticos vulneraban los referidos valores constitucionales y **podían generar situaciones que afectarían el interés general**, la Administración dictó el acto impugnado con el objeto de suspender tales difusiones, al ponderar que en casos como el de autos **debía prevalecer el interés general sobre el interés particular...dándole preeminencia al interés público sobre el particular.**)

<sup>44</sup> Inter-American Court of Human Rights, “Advisory Opinion 6/86,” May 9, 1986,

[http://www.corteidh.or.cr/docs/opiniones/seriea\\_06\\_esp.pdf](http://www.corteidh.or.cr/docs/opiniones/seriea_06_esp.pdf) (accessed May 25, 2012), paras. 22, 27, 35, 38.

<sup>45</sup> Although the enabling law was supposedly adopted to address the consequences of storms and floods that occurred at the end of 2010 in Venezuela, it authorized Chávez to legislate on nine issues, including several that go far beyond the problems produced by the floods. For example, the law authorized the president to determine which criminal penalties apply to specific cases, to regulate international cooperation, and to modify rules regarding media content and controls. In addition, the enabling law included overly vague provisions that enabled President Chávez to adopt almost any type of measure, such as “measures that allow the ... just, democratic, and participative development of the right of the Venezuelan family to have a good life.”

National Assembly of the Bolivarian Republic of Venezuela, “Law authorizing the President of the Republic to issue decrees with rank, value, and force of law on the matters delegated [herein]” (Ley que autoriza al Presidente de la República para dictar decretos con rango, valor y fuerza de ley en las materias que se delegan), December 17, 2010, [http://www.asambleanacional.gob.ve/index.php?option=com\\_docman&task=doc\\_view&gid=2783&tmpl=component&format=raw&Itemid=185&lang=es](http://www.asambleanacional.gob.ve/index.php?option=com_docman&task=doc_view&gid=2783&tmpl=component&format=raw&Itemid=185&lang=es) (accessed May 21, 2012), arts. 1 (1) (c), (2) (b), (6), (8).

This is the fourth time that President Chávez obtained legislative powers since he took office in 1999. IACHR, “Democracy and Human Rights in Venezuela,” paras. 325-326.

In March 2011, Chávez used this authority to decree the reinstatement of a crime— involving the misappropriation of bank funds—that had been removed from a banking law by the National Assembly the previous December.<sup>46</sup> Shortly after the president’s decree, the Attorney General’s Office requested that the Supreme Court determine whether it could bring charges under the new legal provision against two men who had originally been charged under the old legislation (before the latter had been modified). The Supreme Court ruled that the prosecution could indeed proceed under the new provisions decreed by President Chávez.<sup>47</sup>

The reasoning offered by the Supreme Court to justify this ruling demonstrated a disturbingly cavalier attitude toward international human rights norms. The court maintained that the removal of the crime from the old law in December had been an illegitimate action on the grounds that—according to the court—banking crimes are “crimes against humanity” and thus could not be decriminalized. The court argued that, “an obligation to prosecute and sanction those responsible of crimes against humanity derives from general principles of international law.”<sup>48</sup>

International law does indeed oblige states to prosecute crimes against humanity. Yet the internationally recognized concept of “crimes against humanity”—which is clearly defined in multiple international instruments—does *not* cover banking crimes.<sup>49</sup>

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The possibility to grant legislative powers to the president is provided for in the constitution, and previous presidents have also exercised such powers in Venezuela. Constitution of the Bolivarian Republic of Venezuela, art. 203; Human Rights Watch interview with Carlos Ayala, law professor and former member of the IACHR, Caracas, February 3, 2011; Human Rights Watch interview with Pedro Nikken, law professor and former member of the Inter-American Court of Human Rights, Caracas, February 3, 2011.

<sup>46</sup> The National Assembly passed legislation in December 2010 establishing a new definition of the crime that did not include certain actions that were included in the prior definition. Supreme Court of Justice of Venezuela, File No. 11-0439, May 27, 2011, <http://www.tsj.gov.ve/decisiones/scon/Mayo/11-0439-27511-2011-794.html> (accessed May 21, 2012).

<sup>47</sup> Ibid.

<sup>48</sup> Ibid. (De los principios generales del derecho internacional, emana la **obligación de perseguir y sancionar a los responsables de crímenes contra la humanidad, de modo que la obligación de sancionar estos delitos que recae sobre los Estados partes de la comunidad internacional**, como el Estado Venezolano, está por encima de la prescripción u otras instituciones extintivas de la responsabilidad penal.... Siendo así, **en el caso en examen y bajo las premisas anteriormente formuladas en el presente fallo, referidas al alcance y contenido de derecho a la libertad económica y a la estabilidad y sustentabilidad del sistema económico como derechos humanos fundamentales...**).

<sup>49</sup> The Rome Statute of the International Criminal Court states that only specific acts—such as murder, extermination, enslavement, deportation or forcible transfer of population, imprisonment or other severe deprivation of physical liberty, torture, rape, and enforced disappearances, amongst others serious abuses—may be considered crimes against humanity if they are committed “as part of a widespread or systematic attack directed against any civilian population, with knowledge of

### *Upholding the Government's Power to Impose Mandatory Broadcasts*

The Chávez government has for years made extensive use of its power to require private media to broadcast government spots and presidential speeches.<sup>50</sup> According to information provided by the Center for Communications Studies of the Catholic University Andrés Bello to the IACHR, “between February 1999 and July 2009, the Venezuelan communications media transmitted a total of 1,923 blanket presidential broadcasts, equivalent to...52 days of uninterrupted broadcasting of presidential messages.”<sup>51</sup>

In 2007, Globovisión filed an appeal with the Supreme Court after the government required it to air several mandatory broadcasts between one and four times per day for a period of 10 to 30 days. One of the spots that was required shows images of the national flag and subsequent images of protestors with the national flag upside down, played along with audio of a song that says, “Those who turn around the Venezuelan flag are not good Venezuelans. They are villains who do not love Venezuela.”<sup>52</sup> Another spot celebrates the construction of a viaduct as an accomplishment of the Chávez administration, presenting smiling workers who praise the “progress [of] the Bolivarian Revolution.”<sup>53</sup> Globovisión argued that the obligation to air these messages for free imposed excessive restrictions on its right to free speech. (It also alleged a violation of its right to “economic freedom.”)

Under international human rights norms, a government can require private media to broadcast official statements when these statements include information of general interest—but for such interference to be justified it must have a legitimate purpose, and the contents of the message should be necessary and proportionate to fulfill that aim. According to the IACHR, “the information that the president transmits to the public through blanket broadcasts should be that which is strictly necessary to serve urgent

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the attack.” Rome Statute of the International Criminal Court, July 17, 1998, entered into force July 1, 2002, <http://www2.ohchr.org/english/law/criminalcourt.htm> (accessed May 21, 2012), art. 7.

<sup>50</sup> Article 10 of the broadcasting law of 2004 grants the government the power to force radio and TV stations to broadcast for free “cultural, educational, informative, or preventive messages about public services” and specifically prohibits using such powers to “disseminate [state] publicity or propaganda.” Law on Social Responsibility in Radio and Television (Ley de Responsabilidad Social en Radio y TV), [http://www.leyresorte.gob.ve/ley\\_resorte/100](http://www.leyresorte.gob.ve/ley_resorte/100) (accessed May 22, 2012), art. 10.

<sup>51</sup> IACHR, “Democracy and Human Rights in Venezuela,” para. 407.

<sup>52</sup> “National Flag” (“Bandera Nacional”), video provided to Human Rights Watch by Globovisión (copy on file at Human Rights Watch). (Quien voltea su bandera no es un buen venezolano. Se comporta cual villano y no quiere a Venezuela.)

<sup>53</sup> “Viaduct: 5 versions” (“Viaducto: 5 versiones”), video provided to Human Rights Watch by Globovisión (copy on file at Human Rights Watch). (Cada día veo más obras y cada vez veo más avances en la revolución bolivariana de Venezuela.)

informational needs on subjects of clear and genuine public interest and during the time that is strictly necessary to transmit such information.”<sup>54</sup> Moreover, according to the commission, “[p]ermitting governments the unlimited use of independent communications media, under the justification of informing citizens about every issue related to the functioning of the state or about different issues that are not urgent or necessary and that the citizenry can obtain information about from other sources, leads to, in practice, the acceptance of the right of governments to impose upon the communications media the content that they must broadcast.”<sup>55</sup>

Nonetheless, in May 2011, after a four-year delay, the Supreme Court rejected Globovisión’s appeal.<sup>56</sup> In a single paragraph, absent of any thorough analysis of the content of the mandatory messages, the court held that there was no violation of the right to free expression, and that failing to air these messages would “violate the people’s right to be informed about important issues and achievements of the state.” (In another brief paragraph, the court also held that Globovisión had not suffered any economic damage for having to air these messages, and that its obligation to air them was its “social duty toward the State and the people.”)

CONATEL has subsequently cited the Supreme Court’s ruling to order Globovisión to air additional mandatory broadcasts celebrating purported accomplishments by the Chávez administration.<sup>57</sup>

### *Ruling against the Right to Run For Office*

In August 2008, the Supreme Court ruled that the decision by the Comptroller General’s Office to temporarily disqualify individuals accused of corruption from running for public office—before they were formally charged and convicted of a crime—was constitutional and compatible with the American Convention of Human Rights. This practice, however, violates the right to run for public office.

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<sup>54</sup> IACHR, “Democracy and Human Rights in Venezuela,” para. 410.

<sup>55</sup> *Ibid.*, para. 414.

<sup>56</sup> Supreme Court of Justice of Venezuela, File No 00633, May 11, 2011, <http://www.tsj.gov.ve/decisiones/spa/Mayo/00633-12511-2011-2007-0620.html> (accessed May 22, 2012).

<sup>57</sup> Letter from Pedro Rolando Maldonado Marín, general director of the National Telecommunications Commission (Comisión Nacional de Telecomunicaciones, CONATEL), to Carlos Zuloaga, director of Corpomedios GV Inversiones, C.A. (“Globovisión”), March 15, 2012.

Under Venezuelan law, the comptroller general has discretionary powers to “suspend the responsible individual from his position without pay for up to 24 months...or to remove the individual from office...and...to bar the individual from occupying any public office for up to 15 years...”<sup>58</sup> As of May 2012, approximately 800 individuals had been politically disqualified by the Comptroller General’s Office, barring them from taking public office for one to fifteen years.<sup>59</sup> (At this writing, approximately 300 remained politically disqualified.)<sup>60</sup>

In 2005, Leopoldo López, a prominent opposition leader, and four other politicians who had been blocked from running for office by the Comptroller General’s Office on grounds of alleged financial improprieties appealed their cases to the Supreme Court.<sup>61</sup> In August 2008, two months before regional elections in which López was seeking to run for mayor, the Supreme Court rejected the appeal, holding that the comptroller general’s power to disqualify individuals did not violate their due process rights.<sup>62</sup> The following day, in a separate ruling, the Supreme Court held that these disqualifications were constitutional and compatible with the Inter-American human rights system.<sup>63</sup>

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<sup>58</sup> Organic Law of the Comptroller General’s Office of the Republic and of the National System of Fiscal Control (Ley Orgánica de la Contraloría General de la República y del Sistema Nacional de Control Fiscal), December 23, 2010, <http://www.cgr.gob.ve/contenido.php?Cod=015> (accessed May 22, 2012), art. 105.

<sup>59</sup> Comptroller General’s Office, “Sanctions” (Sanciones), undated, <http://www.cgr.gob.ve/contenido.php?Cod=080> (accessed May 28, 2012).

<sup>60</sup> *Ibid.*

<sup>61</sup> The Comptroller General’s Office had disqualified López from running for office in two different instances, for three and six years respectively. The first disqualification was due to an alleged conflict of interest in two donations made in 1998 by PDVSA, where López worked, to Primero Justicia, the political organization that López had founded and where he was a board member at the time. López’s mother also worked at the company in the department that administered the donations. López and his mother were fined in relation to this charge and he later received the disqualification sanction for three years on August 24, 2005. López was disqualified for six years in a separate decision by the Comptroller General’s Office on September 26, 2005, in relation to charges that he had used funds irregularly when he was mayor of the municipality of Chacao, Caracas. He was accused of mispending a budget surplus for ends different from those for which the funds were allocated in 2002. López was also fined in relation to these charges. Inter-American Court of Human Rights, López Mendoza Case, paras. 40-43, 54-55, 58, 65-81.

<sup>62</sup> Supreme Court of Justice of Venezuela, Case No. 2005-5124, August 5, 2008, <http://www.tsj.gov.ve/decisiones/spa/agosto/00912-6808-2008-2005-5124.html> (accessed May 28, 2012).

A new code of regulations had been approved by the National Electoral Council on June 21, 2008, stipulating that those who were politically disqualified could not run for popularly elected office. Inter-American Court of Human Rights, López Mendoza Case, paras. 91-93.

<sup>63</sup> Supreme Court of Justice of Venezuela, “Ruling by the Constitutional Chamber of the Supreme Court of Justice: Constitutionality of Administrative Disqualifications is Confirmed” (Decisión de la Sala Constitucional del Tribunal Supremo De Justicia: Confirman la constitucionalidad de las inhabilitaciones administrativas), press release, August 6, 2008, <http://www.tsj.gov.ve/informacion/notasdeprensa/notasdeprensa.asp?codigo=6304> (accessed May 22, 2012).



Yet, when the Inter-American Court subsequently examined the case, it found just the opposite. In a September 2011 judgment, the Inter-American Court ruled that López's political disqualifications violated his right to seek election to public office.<sup>64</sup> The American Convention stipulates that a law may regulate political rights "only on the basis of age, nationality, residence, language, education, civil and mental capacity, or *sentencing by a competent court in criminal proceedings.*"<sup>65</sup> The court found that none of these requirements had been met, and that López's disqualification constituted an undue restriction of his right to run for public office.<sup>66</sup>

Nonetheless, the following month, the Supreme Court refused to order that the Inter-American Court ruling be implemented. Supreme Court President Luisa Estella Morales stated in a press conference that the ruling was "impossible to execute" as it would require "backtracking" on Venezuela's fight against corruption. She also said that while López could run for office, she could not comment on whether he would eventually be able to take office if elected because "the court cannot comment on events that have not occurred."<sup>67</sup> She also stated that individuals who were politically disqualified by the comptroller could not hold public positions that require managing public funds.<sup>68</sup> López, who had announced his presidential candidacy the previous year, stated in January 2012 that he would withdraw and would no longer participate in the opposition primaries.<sup>69</sup>

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<sup>64</sup> Inter-American Court of Human Rights, *López Mendoza Case*.

<sup>65</sup> American Convention on Human Rights, art. 23 (2).

<sup>66</sup> Inter-American Court of Human Rights, *López Mendoza Case*, paras. 107, 108, 206.

<sup>67</sup> Supreme Court of Justice of Venezuela, "Supreme Court President Luisa Estella Morales Lamuño said: It is impossible for Venezuela to backtrack on its fight against corruption" (Afirmó la presidenta del TSJ, magistrada Luisa Estella Morales Lamuño: Es inejecutable que Venezuela retroceda en sus avances en la lucha contra la corrupción), press release, October 17, 2011, <http://www.tsj.gov.ve/informacion/notasdeprensa/notasdeprensa.asp?codigo=8848> (accessed May 22, 2012). (Destacó que cualquier situación futura derivada de tal participación no estuvo en el análisis de la Sala, ya que **no puede pronunciarse sobre hechos que no han ocurrido.**)

<sup>68</sup> "President of the Supreme Court of Justice: Leopoldo López is disqualified to administer public funds" (Presidenta del TSJ: Leopoldo López está inhabilitado administrativamente para manejar fondos públicos), *Venezolana de Televisión*, article and video, November 8, 2011, [http://www.vtv.gov.ve/index.php?option=com\\_content&view=article&id=70742:presidenta-del-tsj-leopoldo-lopez-esta-inhabilitado-administrativamente-para-manejar-fondos-publicos&catid=49:nacionales&Itemid=102](http://www.vtv.gov.ve/index.php?option=com_content&view=article&id=70742:presidenta-del-tsj-leopoldo-lopez-esta-inhabilitado-administrativamente-para-manejar-fondos-publicos&catid=49:nacionales&Itemid=102) (accessed May 22, 2012).

<sup>69</sup> "Leopoldo López announces agreement with Capriles Radonski" (Leopoldo López anuncia acuerdo con Capriles Radonski), *Agencia Venezolana de Noticias*, January 24, 2012, <http://www.avn.info.ve/node/96449> (accessed May 5, 2012).

### *Ruling against the Independence of Lower Court Judges*

The Supreme Court has repeatedly upheld case law stating that provisional and temporary judges may be removed from office at the sole discretion of the Judicial Commission of the Supreme Court, despite the fact that this undermines judicial independence.

*A Decade Under Chávez* documented how the Judicial Commission of the packed Supreme Court had summarily fired hundreds of judges who lacked security of tenure, extending the impact of the 2004 court-packing law to the entire judiciary. The Inter-American Court of Human Rights and the United Nations rapporteur on the independence of judges and lawyers have stated that these discretionary removals of judges run counter to Venezuela's international human rights obligation to ensure judicial independence and increase the risk of undue interference in the judiciary.<sup>70</sup>

In response, the packed Supreme Court has repeatedly sought to justify giving its Judicial Commission such broad discretion by pointing out that provisional judges had not participated in the public competitions required to enter the judiciary and by stating that temporary appointments are necessary to keep the judiciary functional while it undergoes ongoing structural reform. However, neither explanation justifies the subjective and discretionary manner in which the choice of judges to remove or appoint was made. The 1999 constitution provides for a process of public competitions through which judges can be appointed, which could have been used. Such a framework provides the potential for objective, independent appointments to be reached. Instead, this process was circumvented to empower the Judicial Commission unfettered choice in the selection of judges.

For example, in the case of Yolanda del Carmen Vivas Guerrero, whose appointment as provisional judge in the state of Mérida was revoked in June 2005, the court ruled that, while tenured judges can only be removed or sanctioned after receiving an oral public hearing with full due process guarantees, provisional judges can be summarily fired at the

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<sup>70</sup> Inter-American Court of Human Rights, *Chocrón Chocrón Case*, para. 106; Inter-American Court of Human Rights, *Apitz Barbera and others Case*, para. 43; United Nations Human Rights Council, "Promotion and Protection of All Human Rights, Civil, Political, Economic, Social and Cultural Rights, including the Right to Development. Report of the Special Rapporteur on the independence of judges and lawyers, Leandro Despouy", A/HRC/11/41, March 24, 2009, [http://www2.ohchr.org/english/bodies/hrcouncil/docs/11session/A.HRC.11.41\\_en.pdf](http://www2.ohchr.org/english/bodies/hrcouncil/docs/11session/A.HRC.11.41_en.pdf) (accessed May 22, 2012), paras. 60, 62.

discretion of the Judicial Commission.<sup>71</sup> This decision was cited as supporting precedent in subsequent rulings.<sup>72</sup>

### *Judge María Lourdes Afiuni*

On December 10, 2009, Judge María Lourdes Afiuni was arrested after she authorized the conditional release of Eligio Cedeño—a prominent critic of President Chávez—who had been in prison awaiting trial on corruption charges for almost three years.<sup>73</sup>

Venezuelan law places a two-year limit on pretrial detention, and allows this period to be extended only in very exceptional circumstances—including when the delay in the trial has been caused by the defendant or his or her legal representatives.<sup>74</sup> In the Cedeño case, the delay had been the result of the lack of action by the Attorney General's Office.<sup>75</sup>

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<sup>71</sup> Supreme Court of Justice of Venezuela, Case No. 07-1417, December 20, 2007, <http://www.tsj.gov.ve/decisiones/scon/Diciembre/2414-201207-07-1417.htm> (accessed February 14, 2012).

<sup>72</sup> For example, Supreme Court of Justice of Venezuela, Case No. 00517, April 30, 2008, <http://www.tsj.gov.ve/decisiones/spa/Abril/00517-30408-2008-2005-5065.html> (accessed February 14, 2011); Supreme Court of Justice of Venezuela, Case No. 00015, January 14, 2009, <http://www.tsj.gov.ve/decisiones/spa/enero/00015-14109-2009-2004-1311.html> (accessed June 13, 2012); Supreme Court of Justice of Venezuela, Case No. 00232, February 18, 2009, <http://www.tsj.gov.ve/decisiones/spa/febrero/00232-18209-2009-2006-1061.html> (accessed June 13, 2012); Supreme Court of Justice of Venezuela, Case No. 00696, May 21, 2009, <http://www.tsj.gov.ve/decisiones/spa/mayo/00696-21509-2009-2006-1033.html> (accessed June 13, 2012); Supreme Court of Justice of Venezuela, Case No. 01453, October 14, 2009, <http://www.tsj.gov.ve/decisiones/spa/octubre/01453-141009-2009-2007-0612.html> (accessed June 13, 2012); Supreme Court of Justice of Venezuela, Case No. 00012, January 13, 2010, <http://www.tsj.gov.ve/decisiones/spa/enero/00012-13110-2010-2007-0909.html> (accessed June 13, 2012); Supreme Court of Justice of Venezuela, Case No. 00732, July 22, 2010, <http://www.tsj.gov.ve/decisiones/spa/julio/00732-22710-2010-2005-5192.html> (accessed June 13, 2012); Supreme Court of Justice of Venezuela, Case No. 00505, April 26, 2011, <http://www.tsj.gov.ve/decisiones/spa/abril/00505-26411-2011-2004-1585.html> (accessed June 13, 2012).

<sup>73</sup> When no other source is explicitly cited, the information on this case is based on direct testimony of members of the Afiuni family and on information provided to Human Rights Watch by Judge Afiuni's defense team.

<sup>74</sup> Article 244 states that, "It is not possible to order pretrial detention if it appears to be disproportionate with respect to the gravity of the crime, the circumstances in which it was committed, and the possible sanction. It may never exceed the maximum penalty for each crime, nor two years... Exceptionally, and when there are serious reasons that justify the extension of the measure of deprivation of liberty that is about to expire, the Public Ministry ... may request... an extension that may not exceed the maximum penalty to be imposed for the crime... Such extension may also be requested when the expiration is the consequence of undue delays product of actions by the defendant or his or her legal representatives. Such circumstances must be duly motivated by the prosecutor... In this case ... the Judge of Control must carry out an oral hearing with the accused and the parties to adopt a decision, taking into account, when determining the extension, the principle of proportionality." Code of Criminal Procedures, [http://www.ministeriopublico.gob.ve/LEYES/CODIGO%20ORGANICO%20PROCESAL%20PENAL/cod\\_procesal\\_penal.html](http://www.ministeriopublico.gob.ve/LEYES/CODIGO%20ORGANICO%20PROCESAL%20PENAL/cod_procesal_penal.html) (accessed May 22, 2012).

<sup>75</sup> UN Working Group on Arbitrary Detention, Opinion 10/2009 (Venezuela), September 1, 2009, <http://www2.ohchr.org/english/bodies/hrcouncil/docs/13session/A-HRC-13-30-Add1.pdf> (accessed May 2, 2012), paras. 52-54.

Venezuelan law allows judges to “substitute” the pretrial detention of a suspect with other “less burdensome” measures “whenever [the judge] considers it prudent.”<sup>76</sup>

The conditions for release that Judge Afiuni imposed on Cedeño included a requirement that he present himself before the court every 15 days and a prohibition on leaving the country.<sup>77</sup> To ensure his compliance, she also ordered him to turn over his passport.<sup>78</sup>

In granting the conditional release, Judge Afiuni was complying with a recommendation by the UN Working Group on Arbitrary Detention, which had determined that Cedeño’s prolonged detention was arbitrary given that the delay in his trial had been caused by the prosecution. The working group had also concluded that there was no evidence to assume Cedeño would flee, noting that he had voluntarily presented himself before the court when the case against him began in 2007. The working group had urged Venezuelan authorities to grant Cedeño provisional liberty.<sup>79</sup>

Immediately after issuing the decision, Afiuni was arrested on charges of having committed a crime when granting conditional liberty to Cedeño (the actual arrest warrant was issued later that day, according to her defense team).<sup>80</sup>

The following day, President Chávez denounced Judge Afiuni as a “bandit” on national television and called for her to be sentenced to 30 years in prison, the maximum sentence

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<sup>76</sup> Code of Criminal Procedures, arts. 244 and 264. Article 264 states that, “The defendant can petition for the cancellation or substitution of the judicial measure of preventive detention the number of times the defendant considers it necessary. The judge should examine the need for maintaining the precautionary measures every three months and when the judge considers it prudent, he or she will substitute the measure with less burdensome ones. The denial by the court to cancel or substitute the measure is not subject to appeal.”

<sup>77</sup> Decision by Judge María Lourdes Afiuni, “Release Order No 046-09” (Boleta de excarcelación No. 046-09). Copy on file at Human Rights Watch.

<sup>78</sup> Human Rights Watch interview with José Amalio Graterol and Thelma Fernández, Judge Afiuni’s lawyers, Caracas, February 5, 2011. Human Rights Watch email communication with Peter Sahlas, lawyer responsible for communications on the Cedeño and Afiuni cases with Special Procedures of the United Nations Human Rights Council, June 4, 2012.

<sup>79</sup> UN Working Group on Arbitrary Detention, Opinion 10/2009 (Venezuela), paras. 52-54.

<sup>80</sup> Human Rights Watch written communication with Thelma Fernández, Judge Afiuni’s lawyer, June 1, 2012. Human Rights Center at the Catholic University Andrés Bello, “María Lourdes Afiuni: Judge imprisoned for applying a UN resolution, Updated report as of April 7, 2010” (María Lourdes Afiuni: Juez encarcelada por aplicar resolución de la ONU, Informe actualizado al 7 de abril de 2010), report prepared by Judge Afiuni’s defense team, April 2010, [http://www.ucab.edu.ve/tl\\_files/CDH/Maria%20Lourdes%20Afiuni/AfiuniLargoWeb.pdf](http://www.ucab.edu.ve/tl_files/CDH/Maria%20Lourdes%20Afiuni/AfiuniLargoWeb.pdf) (accessed May 23, 2012). The Human Rights Center works with Judge Afiuni’s defense team in bringing international attention to the case.

possible in Venezuela.<sup>81</sup> A few days later, he said she was “correctly jailed” and reiterated that she should be given a maximum sentence, adding that he “would give her 35 years.”<sup>82</sup>

A week after Afiuni's arrest, after spending a few days in hiding, Cedeño fled the country. He left Venezuela on a boat to an island and flew from there to the United States in a private plane. He immediately sought asylum, which was granted to him in May 2011.<sup>83</sup>

### Dubious Criminal Charges

In January 2010, prosecutors charged Judge Afiuni with corruption, abuse of authority, and “favoring evasion of justice.” Prosecutors provided no credible evidence to substantiate the charges.

With regards to the corruption charge, prosecutors acknowledged at a later hearing that Judge Afiuni had not received any money or benefit in exchange for her action—which is a

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<sup>81</sup> “Chávez demands 30 years of prison for Judge who freed political prisoner Eligio Cedeño” (Chávez pide 30 años cárcel para la Juez que liberó preso político Eligio Cedeño), YouTube video, posted by “Plasmatico,” December 12, 2009, <http://www.youtube.com/watch?v=wHnVzZGBvfl&feature=related> (accessed May 11, 2012). (Entonces viene **una juez bandida**, una bandida, y los alguaciles reciben de los policías que vienen trasladando al preso porque la juez lo llamó a declarar al, ¿cómo se llama, al...? Audiencia. Y todo estaba montado. Y **yo exijo dureza contra esa jueza**. Incluso le dije a la Presidenta del Tribunal Supremo, “Doctora...”, y así lo digo a la Asamblea Nacional: habrá que hacer una ley porque es mucho, mucho, mucho más grave un juez que libere a un bandido que el bandido mismo. Entonces ahora **hay que meterle pena máxima a esta jueza y a los que hagan eso. 30 años de prisión**. Pido yo a nombre de la dignidad del país.)

<sup>82</sup> “Judge Afiuni” (Juez Afiuni), YouTube video, posted by “Noticias24,” December 21, 2009, <http://www.youtube.com/watch?v=AOWPXh3yxBM&NR=1> (accessed May 21, 2012). (Mira cómo me tienen por ahí, cocido a críticas, porque yo lo que dije fue, y lo voy a repetir pues: una juez (yo hago el pedido, pues yo lo que hago es pedir), ¿cómo es posible que un juez, o una juez, lo que sea, se preste para una vagabundería como la que ocurrió con el señor este Cedeño? Allá está detenido en Estados Unidos. Ojalá que lo cumplan y lo extraditen ante la solicitud que ya estamos elaborando, ¿verdad? ¿Eh? ¿Cómo? Sí, estamos solicitando. Ahora, viene la juez, se pone de acuerdo con unos señores. Yo no voy a acusar a nadie, pero la juez está en evidencia, es una cosa tan evidente que ¿cómo ella va a decir que no? Y entonces viene y le da, toma una decisión y estaba todo trabajado, todo preparado. Y sacaron a este señor por la puerta de atrás y se perdió. Ahora apareció, fíjense, en Estados Unidos. **¿Está o no está bien presa esa juez? Está bien presa, comadre. Y yo pido que se le aplique todo el peso de la ley**. ¿Cómo va a haber justicia en un país donde un juez se preste para eso, chico? Y por eso digo, es mucho más grave. Supónganse ustedes que un asesino, un violador, esos delitos horribles... sea liberado, un narcotraficante. Es más grave que el mismo homicida el juez que libere a un homicida, saltándose las leyes y los procedimientos. Es más grave. Entonces si a un homicida le salen 30 años, pena máxima, ¿verdad?, en Venezuela, a un juez le saldrían, **yo le pondría, 35**. Y yo pido que se estudie, señora Fiscal, señores expertos en la materia. Por eso **yo pido pena máxima para juez que se preste a una vagabundería como ésta**. Pido pena máxima. Y no en una oficina por ahí, no: donde debe estar, **en una prisión**.)

<sup>83</sup> Human Rights Watch obtained a copy of a US Department of Homeland Security document indicating that Cedeño arrived in the United States on December 19, 2010. Copy on file at Human Rights Watch. Human Rights Watch email communication with Peter Sahlas, lawyer responsible for communications on the Cedeño and Afiuni cases with Special Procedures of the United Nations Human Rights Council, June 4, 2012.

central component of the crime of corruption.<sup>84</sup> According to prosecutors, Judge Afiuni's decision was "in benefit of a third party and not herself, that is, the benefit was obtained by Eligio Cedeño, who was freed."<sup>85</sup> In other words, the alleged illicit exchange was between Cedeño (who was granted release) and *Cedeño* (who benefited from being granted the release). By this logic, any ruling by a judge that benefits a criminal defendant could result in the criminal prosecution of the judge.

With regards to the abuse of authority charge, prosecutors pointed to the fact that Judge Afiuni had adopted the decision during a hearing in which there were no prosecutors present. Yet, under Venezuelan law, prosecutors did not need to be present when Judge Afiuni adopted the decision to grant Cedeño provisional liberty. The Organic Code of Criminal Procedures requires a public hearing if prosecutors are requesting an extension of pretrial detention. But there is no such requirement when a competent judge decides to adopt "less burdensome measures," such as home arrest, periodic presentations before the court, or prohibitions on leaving the country.<sup>86</sup>

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<sup>84</sup> Article 62 of the Law Against Corruption states that a public official who carries out an act against his or her duties in exchange for "money or other benefit" is subject to a sentence of up to seven years in jail and up to 50 percent of the promised or received benefit. The prison sentence can rise to eight years or 60 percent of the benefit if the consequence of the act is to favor or harm one of the parties in an administrative or judicial case. Law Against Corruption (Ley Contra la Corrupción), art. 62.

<sup>85</sup> The prosecutors argued that there was no evidence in the investigation that Judge Afiuni "had obtained money or economic benefit." They held that "it has not been determined that she received money or something, but the crime of corruption does not only talk about obtaining money by a public official, it talks about any other utility for him or herself, or for a third party, which means any other benefit, in this case... the Public Ministry considered that the arbitrary act carried out by Maria Afiuni is in benefit of a third party and not herself, that is, the benefit was obtained by Eligio Cedeño, who was freed." 50<sup>th</sup> First Instance Control Court of the Criminal Judicial Circuit of the Metropolitan Area of Caracas (Juzgado Quincuagésimo de Primera Instancia en Función de Control del Circuito Judicial Penal del Área Metropolitana de Caracas), Document on Preliminary Hearing on File No. 50-C-14.270-09 (Acta de Audiencia Preliminar Exp. No. 50-C-14.270-09), May 17, 2010. Copy on file at Human Rights Watch. ([C]uando se habla del delito de Corrupción Propia establecido en el artículo 62 de la Ley Contra la Corrupción, todas las personas piensan que debe haber dinero o un beneficio económico de por medio, cuando en realidad la **ley también sanciona a los funcionarios que aun sin recibir dinero incumplan con sus funciones, efectivamente de la investigación llevada a cabo no se desprende que la ciudadana MARÍA LOURDES AFIUNI haya obtenido algún dinero o beneficio económico, no se ha determinado que la misma haya recibido dinero o algo, pero el delito de corrupción propia no solo habla de obtención de dinero por parte del funcionario, habla de cualquier otra utilidad para sí mismo o para un tercero**, lo que significa la existencia de cualquier otro beneficio, en el presente caso, y así lo dejo establecido, **el Ministerio Público consideró que el acto arbitrario realizado por la ciudadana MARÍA AFIUNI, es en beneficio de un tercero y no suyo propio, es decir, el beneficio obtenido es para el ciudadano Eligio Cedeño, siendo ese beneficio su libertad.**)

<sup>86</sup> Code of Criminal Procedures, arts. 244, 256. Article 256 states that, "As long as the reasons motivating the preventive detention can be reasonably satisfied with the application of another measure that is less burdensome for the accused, one or more of the following measures should be imposed in its place through a motivated resolution: 1. Home arrest..., 2. Obligation to submit to the care of a specific person or institution..., 3. Periodic presentation before the court..., 4. Prohibition to leave the country..., 5. Prohibition to attend designated meetings or places..., 6. Prohibition to communicate with specific

Prosecutors also backed the abuse of authority charge by pointing to the fact that an appeal regarding Cedeño's pretrial detention was pending before the Supreme Court at the time she granted the release.<sup>87</sup> Yet, the question pending before the Supreme Court was not whether the pretrial detention of Cedeño was legal, but rather for how long the courts could impose restrictive measures to ensure that Cedeño would attend his trial and not obstruct justice.<sup>88</sup> In short, the deliberation was over the *duration*—not the nature—of Cedeño's restrictive measures. Whatever the outcome of the appeal might have been, it would have had no bearing on Judge Afiuni's authority to replace pretrial detention with other less restrictive measures.<sup>89</sup>

In addition, prosecutors alleged that Judge Afiuni had failed to issue a written release order before Cedeño left the courtroom. A judicial employee subsequently declared before the courts that Afiuni had ordered her to prepare the document and had signed it, but a prosecutor who arrived at the courtroom a few minutes later forcibly took it from her hands.<sup>90</sup> The document resurfaced later when the Office of the Inspector General of the Judiciary submitted it to the court. (Judge Afiuni's defense team provided Human Rights Watch a copy of the document from the official case file.)<sup>91</sup>

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people, as long as this does not affect the rights of the defense..., 9. Any other preventive measure that the court ... considers ... necessary through a reasoned decision."

<sup>87</sup> After Cedeño had completed two years in pretrial detention, a lower court judge ordered him to remain in pretrial detention for two additional years, but an appeals court subsequently reduced this extended period to eight months. The prosecution appealed this reduction, and it was a decision on this appeal that was pending with the Supreme Court. Attorney General's Office (Ministerio Público), Accusation by Juan de Jesús Gutiérrez Medina, 12<sup>th</sup> prosecutor at the national level with jurisdiction over corruption issues (Fiscal Duodécimo del Ministerio Público a Nivel Nacional con competencia en materia de Corrupción) on Case No. 01-F68-0149-09, January 26, 2010. Copy on file at Human Rights Watch.

<sup>88</sup> The prosecutor accusing Judge Afiuni stated that, "due to the expiration of the two years mentioned in article 244 of the Organic Criminal Procedures Code, and the corresponding extension request by the Public Ministry, [the imposed precautionary measure] had been extended, and a decision on its duration is currently pending, and was pending at the time when former Judge María Lourdes Afiuni adopted her null and void decision." Ibid. (Con ocasión al vencimiento de los dos (02) años a los que se contrae el artículo 244 del Código Orgánico Procesal Penal, y a la correspondiente solicitud que efectuara el Ministerio Público la misma se encontraba en lapso de prórroga **cuya duración se encuentra y se encontraba para el momento en que la ex Jueza María Lourdes Afiuni dictó su írrito "pronunciamiento", pendiente para ser decidido.**)

<sup>89</sup> Human Rights Watch telephone interview with José Amalio Graterol, Judge Afiuni's lawyer, May 2, 2012.

<sup>90</sup> Transcription of testimony of Ana Teresa Lombardi Ramírez in Attorney General's Office, Accusation by Juan de Jesús Gutiérrez Medina.

<sup>91</sup> "Release Order" (Boleta de Excarcelación), File No. 31C-15,197-09, signed by Ma. Lourdes Afiuni, December 10, 2009. Copy on file at Human Rights Watch. Human Rights Watch telephone interview with José Amalio Graterol, Judge Afiuni's lawyer, May 2, 2012.

As for the charges of “favoring the evasion of justice,” prosecutors provided no credible evidence that Judge Afiuni had any reason to suspect Cedeño would disregard her orders and leave the country, or that the substance of her decision was inconsistent with established law. It is noteworthy that prosecutors never appealed her decision to grant him provisional liberty, and judicial authorities have never opened a disciplinary procedure to investigate and sanction her alleged misconduct.<sup>92</sup>

### A Pro-Chávez Provisional Judge

The judge who received Afiuni’s case, Ali Paredes, was a provisional appointee who, just weeks before her arrest, had publicly declared his loyalty to President Chávez on the website of the president’s political party. “I give my life for the Revolution,” he wrote, “I would never betray this process and much less my Commander.”<sup>93</sup>

In May, Judge Paredes ordered Afiuni to be tried on all of the charges presented by prosecutors. The trial was postponed repeatedly as Afiuni sought to have a judge other than Judge Paredes hear the case, asserting her right to be tried by an independent judge. Under the Venezuelan constitution, judges may not “carry out political partisan activism.”<sup>94</sup> Judge Paredes refused to recuse himself, and an appeals court rejected Afiuni’s appeals.<sup>95</sup>

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<sup>92</sup> Judge Afiuni’s defense team told Human Rights Watch that since Judge Afiuni was detained, her lawyers have asked disciplinary courts 17 times if there was an administrative investigation open against her, and they were told that there was not. The courts eventually revoked Cedeño’s provisional liberty because he did not comply with the requirements imposed by Judge Afiuni in her decision—namely, presenting himself before the court and staying in Venezuela—but Judge Afiuni’s decision to grant him provisional liberty was not challenged before an appeals court. Human Rights Watch interview with Thelma Fernández, Judge Afiuni’s lawyer, March 23, 2012.

<sup>93</sup> The text appeared on the PSUV webpage at [www.psuv.org.ve/?=node/4802](http://www.psuv.org.ve/?=node/4802), but all comments, including this one, were later deleted from the site. An image of the webpage with the comments is on file at Human Rights Watch. (Buenas tardes camaradas amigos, ante todo les envío un saludo revolucionario y solidario. (...) Me siento muy orgulloso de tener unos familiares que son base de este gran proceso revolucionario que estamos viviendo, y que además déjenme decirle que **nunca traicionaría a este proceso ni mucho menos a mi comandante por que llevo la revolución en la sangre** y de verdad me duele mi pueblo. **Por la revolución doy la vida** como la expuse el 11 de abril en Puente Llaguno.)

<sup>94</sup> Constitution of the Bolivarian Republic of Venezuela, art. 256.

<sup>95</sup> Judge Afiuni’s lawyers told Human Rights Watch that the day after Judge Paredes rejected the recusal, they asked him to postpone the hearing scheduled for that day. The judge instead appointed public defenders to defend Judge Afiuni, against her will. The lawyers and Judge Afiuni left the room, and appealed Judge Paredes’s decision to appoint public defenders and the fact that he had decided his own recusal. An appeals court reinstated Judge Afiuni’s lawyers and rejected the appeal to recuse Judge Paredes. In December, Judge Afiuni’s defense team asked Judge Paredes again to recuse himself (que se inhiba) in the case but he refused. Decision by Judge Elsa Janeth Gómez Moreno, Arlene Hernández, and Carmen Teresa Bentancourt Meza, Second Chamber of the Appeals Court of the Criminal Judicial Circuit of Caracas (Sala 2 de la Corte de Apelaciones del Circuito Judicial Penal de la Circunscripción Judicial del Área Metropolitana de Caracas), November 18, 2010; Request by Judge Afiuni’s defense team to Judge Paredes to recuse himself (Solicitud de Inhibición), December 7, 2010; Human Rights Watch interviews with José Amalio Graterol and Thelma Fernández, Judge Afiuni’s lawyers, Caracas, February 5, and



Under Venezuelan law, lower court judges are supposed to rotate courts once a year, passing along the cases they handled in a specific court to the judges who replace them there.<sup>96</sup> However, Judge Paredes remained in charge of Afiuni's case for nearly two years. It was not until January 2012 that a new judge was appointed to Judge Afiuni's case.<sup>97</sup>

### **A Year in Prison**

Judge Afiuni was held for more than a year in a women's prison in Caracas.<sup>98</sup> Conditions in the facility were deplorable. She was kept in a two-by-four meter cell, which her family had to paint to cover blood and excrement stains.

Under international human rights standards, there is a clear prohibition on imprisoning pretrial detainees with convicted criminals. Yet in the facility where Afiuni spent a year, there was no separation between pretrial detainees and convicted criminals, which included more than 20 women whom she herself had sentenced while serving as a judge.

Afiuni has reported that she was repeatedly subjected to threats and acts of intimidation by inmates. In December 2009, for example, some inmates accosted her verbally with threats: "Damn bitch, we will burn you!" and "We will turn you into ground meat!"<sup>99</sup> In January 2010, a group of inmates threw gasoline in her cell and threatened to burn her alive.<sup>100</sup> In May 2010, inmates shouted at her, "We will spill your blood in the prison!" and

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September 2, 2011; Decision by Judge Arlene Hernández Rodríguez, Judge Elsa Janeth Gómez Moreno, Judge Rosalba Muñoz Fiallo, members of the Second Chamber of the Appeals Court of the Criminal Judicial Circuit of Caracas (Sala 2 de la Corte de Apelaciones del Circuito Judicial Penal del Área Metropolitana de Caracas), Case No. 2012-3343, March 7, 2012. Copies on file at Human Rights Watch.

<sup>96</sup> Article 106 of the Code of Criminal Procedures states, "The control of the investigation and the intermediate phase will be the responsibility of a one-person court that will be called the control court; the judgment phase corresponds to the trial courts that are made up of professional judges that will act alone or with jurors, according to the case, in conformity with the dispositions of this Code, and they will rotate annually..."

<sup>97</sup> Two different judges assigned to the case—Robinson Vázquez and Cristóbal Martínez Murillo—recused themselves. At this writing, the case remains pending before Judge Marilda Ríos. Human Rights Watch telephone interview with José Amalio Graterol, Judge Afiuni's lawyer, May 2, 2012.

<sup>98</sup> The prison is called the National Institute of Feminine Orientation (Instituto Nacional de Orientación Femenina, INOF).

<sup>99</sup> "María Lourdes Afiuni: Judge imprisoned for applying a UN resolution, Updated report as of April 7, 2010" (María Lourdes Afiuni: Juez encarcelada por aplicar resolución de la ONU, Informe actualizado al 7 de abril de 2010), report prepared by Judge Afiuni's defense team, April 2010, [http://www.ucab.edu.ve/tl\\_files/CDH/Maria%20Lourdes%20Afiuni/AfiuniLargoWeb.pdf](http://www.ucab.edu.ve/tl_files/CDH/Maria%20Lourdes%20Afiuni/AfiuniLargoWeb.pdf) (accessed May 23, 2012);

"Venezuela: The case of Judge María Lourdes Afiuni," report prepared by Judge Afiuni's defense team, May 2010.

<sup>100</sup> Inter-American Court of Human Rights, "President's resolution regarding the request of provisional measures presented by the Inter-American Commission regarding Venezuela, Case María Lourdes Afiuni" (Resolución del Presidente de la Corte

“Damn bitch, because of people like you we are here!”<sup>101</sup> In November 2010, two inmates allegedly attacked her with knives and told her she “did not deserve to be in prison with them; instead she should be dead.”<sup>102</sup>

### **Delayed Medical Treatment**

An official psychological evaluation of Judge Afiuni concluded in March 2010 that the judge was anxious and depressed, and feared for her health and physical integrity.<sup>103</sup>

That same month she discovered a lump in one of her breasts.<sup>104</sup> Judge Paredes repeatedly refused to allow her to be evaluated by her doctor, instead authorizing her to be examined in a military hospital.<sup>105</sup> In July, military doctors concluded that the lump required further medical treatment. However, it was not until November that she was allowed to receive it at the Oncology Hospital Padre Machado, where doctors had to conduct tests on Afiuni in the presence of female military officers who refused to leave the room.

In addition to the lump in her breast, Afiuni started suffering hemorrhages due to problems in her uterus in November 2010. After another evaluation conducted in January 2011, the medical team at the Oncology Hospital operated on her the following month.<sup>106</sup>

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Interamericana de Derechos Humanos sobre solicitud de medidas provisionales presentada por la Comisión Interamericana de Derechos Humanos respecto de Venezuela, Asunto María Lourdes Afiuni), December 10, 2010, [http://www.corteidh.or.cr/docs/medidas/Afiuni\\_se\\_01.doc](http://www.corteidh.or.cr/docs/medidas/Afiuni_se_01.doc) (accessed May 23, 2012), para. 2(g).

<sup>101</sup> Ibid., para. 2(l).

<sup>102</sup> Id., para. 2(t).

<sup>103</sup> Report by Carellys Maquilena Ruiz, forensic psychiatrist, and Carlos Ortiz, forensic clinical psychologist, March 12, 2010, prepared for the Ministry of the Popular Power for Interior Relations and Justice (Ministerio del Poder Popular para Relaciones Interiores y Justicia).

<sup>104</sup> Human Rights Center of the Catholic University Andrés Bello, “María Lourdes Afiuni. Urgent Appeal. Deterioration of her health conditions,” January 2011, [http://www.ucab.edu.ve/tl\\_files/CDH/Maria%2oLourdes%2oAfiuni/Update\\_on\\_the\\_health\\_conditions\\_of\\_Judge\\_Afiuni.pdf](http://www.ucab.edu.ve/tl_files/CDH/Maria%2oLourdes%2oAfiuni/Update_on_the_health_conditions_of_Judge_Afiuni.pdf) (accessed May 21, 2012).

<sup>105</sup> Due to her refusal to be transferred to military property, Judge Afiuni was initially sent to the National Directorate of Forensic Sciences (Dirección Nacional de Ciencias Forenses) in June, but there was no suitable available medical equipment to evaluate her there.

<sup>106</sup> Human Rights Center of the Catholic University Andrés Bello, “Cruel and Inhuman Treatment of María Lourdes Afiuni” (Trato cruel e inhumano contra María Lourdes Afiuni), July 2011, [http://www.ucab.edu.ve/tl\\_files/CDH/Maria%2oLourdes%2oAfiuni/TRATO%2oCRUEL%2oE%2oINHUMANO.pdf](http://www.ucab.edu.ve/tl_files/CDH/Maria%2oLourdes%2oAfiuni/TRATO%2oCRUEL%2oE%2oINHUMANO.pdf) (accessed June 1, 2012).

## House Arrest

Only after a crescendo of criticism from the international community did Judge Paredes finally relent and grant Judge Afiuni home arrest after her surgery in February 2011.<sup>107</sup> However, he imposed highly restrictive conditions, including the requirement that 16 members of the National Guard be based at her building 24 hours a day; a requirement that she present herself before the court every week (a seemingly gratuitous obligation for someone confined to house arrest); and a prohibition on her communicating with the press (including international and local print media, radio, and television<sup>108</sup>). Judge Paredes also prohibited her from stepping outside her apartment in order to get exposure to the sun, although it was a measure her doctor had recommended to improve her health.<sup>109</sup>

In December 2011, Judge Paredes extended Judge Afiuni's house arrest two additional years.<sup>110</sup> An appeals court upheld the decision in March 2012.<sup>111</sup>

As of May 2012, Judge Afiuni still had not been told whether the lump in her breast is a malign or benign tumor. In February 2012, a medical examination by doctors appointed by the court recommended that the lump be studied through a biopsy. Following the advice of her personal doctor, she asked the court to obtain a second medical opinion, which a new judge appointed to her case authorized in May.<sup>112</sup>

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<sup>107</sup> First Instance Criminal Court No. 26 of the Criminal Judicial Circuit of the Metropolitan Area of Caracas (Tribunal de Primera Instancia en lo Penal en Funciones de Juicio y Nro. 26 del Circuito Judicial Penal de Circunscripción Judicial del Área Metropolitana de Caracas), Decision by Ali Jose Fabricio Paredes on File 486-10, February 2, 2011. "María Lourdes Afiuni is no longer in jail, but she is still not free" (María Lourdes Afiuni ya no está en la cárcel, pero todavía no es libre), public statement by Judge Afiuni's defense team, February 7, 2011. Copies on file at Human Rights Watch.

<sup>108</sup> Every time she goes to the court, she is taken in a military armored vehicle, accompanied by several motorcycles, two pickup trucks, and approximately 30 armed military officers. She was originally required to go once a week, and was later authorized to go every 15 days. Human Rights Watch interview with José Amalio Graterol and Thelma Fernández, Judge Afiuni's lawyers, Caracas, September 2, 2011.

<sup>109</sup> Decision by Judge Ali José Paredes, File No. 26 J-486-10, June 30, 2011. Copy on file at Human Rights Watch.

<sup>110</sup> Decision by Judge Ali José Paredes, File No. 26 J-486-10, December 13, 2011. Copy on file at Human Rights Watch.

<sup>111</sup> Decision by Judge Evelyn Dayana Mendoza, Judge Jimai Calles, and Judge César Sánchez Pimentel, members of the First Chamber of the Appeals Court of the Criminal Judicial Circuit of Caracas (Sala Uno de la Corte de Apelaciones del Circuito Judicial Penal del Área Metropolitana de Caracas), EDMH/JMC/CSP/ICVI/Ag.- Case No. 2788, March 7, 2012. Copy on file at Human Rights Watch.

<sup>112</sup> Human Rights Watch written communication with Thelma Fernández, Judge Afiuni's lawyer, May 4, 2012.

## International Condemnation

The arrest and prolonged detention of Judge Afiuni has drawn strenuous condemnation by UN and Inter-American human rights monitors.

In December 2009, three UN human rights rapporteurs issued a joint press release describing Afiuni's arrest as "a blow by President Hugo Chávez to the independence of judges and lawyers in the country," and called for her "immediate and unconditional" release.<sup>113</sup> One of them, the Special Rapporteur on the independence of judges and lawyers, reiterated concern over Judge Afiuni's detention in a statement in April 2010.<sup>114</sup> In March 2011, the chairperson of the Working Group on Arbitrary Detention called on the government of Venezuela to "immediately free" Afiuni.<sup>115</sup> Finally, in December 2011, three UN rapporteurs questioned the fact that Judge Afiuni's house arrest had been extended, calling it an "unacceptable worsening of her situation," and called once again for her immediate release.<sup>116</sup>

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<sup>113</sup> UN News Centre, "Venezuelan leader violates independence of judiciary – UN rights experts," joint press release by El Hadji Malick Sow, Chairperson-Rapporteur of the Working Group on Arbitrary Detention; Gabriela Carina Knaul de Albuquerque e Silva, Special Rapporteur on the Independence of Judges and Lawyers; and Margaret Sekaggya, Special Rapporteur on the Situation of Human Rights Defenders, December 16, 2009, <http://www.un.org/apps/news/story.asp?NewsID=33273&Cr=judges&Cr1> (accessed May 21, 2012).

Similarly, in May 2010, at the biennial meeting of the International Association of Women Judges, the UN High Commissioner for Human Rights "express[ed her] solidarity with judicial colleagues who have been attacked or jailed by their governments, not necessarily because they are women but for their integrity and conviction" and named Judge Afiuni. Statement by Ms. Navanethem Pillay, United Nations High Commissioner for Human Rights, at the Jubilee Biennial Conference of the International Association of Women Judges, Seoul, May 12, 2010.

The Special Rapporteur on the Independence of Judges and Lawyers also mentioned the case in her presentation. Statement by Ms. Gabriela Carina Knaul de Albuquerque e Silva, United Nations Special Rapporteur on the Independence of Judges and Lawyers, at the Jubilee Biennial Conference of the International Association of Women Judges, Seoul, May 12, 2010.

<sup>114</sup> Statement by Gabriela Carina Knaul de Albuquerque e Silva, United Nations special rapporteur on the independence of judges and lawyers, Mar del Plata, Argentina, April 12, 2010.

<sup>115</sup> Office of the High Commissioner for Human Rights, "Council holds interactive dialogue with experts on enforced disappearances, arbitrary detention and internally displaced persons," press release, March 7, 2011, <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=10812&LangID=E> (accessed May 21, 2012).

<sup>116</sup> Joint statement by Chair-Rapporteur of the Working Group on Arbitrary Detention, Mr. El Hadji Malick Sow; Special Rapporteur on the independence of judges and lawyers, Ms. Gabriela Knaul; and Special Rapporteur on torture and other forms of cruel, inhuman, degrading treatment or punishment, Mr. Juan Méndez, "UN experts alarmed at continued detention of Venezuelan Judge Afiuni," December 27, 2011, <http://acnudh.org/en/2011/12/un-experts-alarmed-at-continued-detention-of-venezuelan-judge-afiuni> (accessed May 21, 2012).

Similarly, in January 2010, the IACHR ruled that Venezuela had to protect Judge Afiuni and “adopt the necessary measures to guarantee [her] life and physical integrity.”<sup>117</sup> Given the lack of compliance by the Venezuelan government, the Inter-American Court of Human Rights, which issues binding decisions, ordered Venezuela in December 2010 to protect Judge Afiuni, transfer her to a safe location, and provide her with adequate medical treatment.<sup>118</sup>

The treatment of Afiuni has also been denounced by other members of the international community. For example, during Venezuela’s Universal Periodic Review before the United Nations Human Rights Council in September 2011, the governments of Germany and the United States criticized Venezuela for the lack of judicial independence in the country, the risk of political interference in judicial decisions, and Judge Afiuni’s detention.<sup>119</sup>

Other international voices have expressed concern over the case as well, including US scholar Noam Chomsky, who has previously spoken out in defense of the Chávez government’s human rights record. In July 2011, Chomsky wrote a public letter lamenting the “acts of violence and humiliation” that Afiuni had suffered and urging Venezuelan authorities to release her from house arrest.<sup>120</sup> In December 2011, he reiterated his request, stating that, “Afiuni has suffered enough and should be released.”<sup>121</sup>

### **Lack of Protection by the Supreme Court**

The Supreme Court has twice rejected appeals by Judge Afiuni seeking protection of basic rights. In one, Judge Afiuni challenged Judge Paredes’ order prohibiting her from speaking with the media (on the grounds that it violated her right to free speech) and requiring that she present herself before the court on a weekly basis (on the grounds that this requirement normally applies to defendants released on conditional liberty but serves no

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<sup>117</sup> Letter from Elizabeth Abi-Mershed, acting executive secretary of the InterAmerican Commission on Human Rights, to Ligia Bolivar and others, stating that the IACHR had adopted “Provisional Measures MC-380-09,” January 11, 2010. Copy on file at Human Rights Watch.

<sup>118</sup> Inter-American Court of Human Rights, “President’s resolution regarding the request of provisional measures presented by the Inter-American Commission regarding Venezuela, Case Maria Lourdes Afiuni,” para. 12.

<sup>119</sup> UN Human Rights Council, “Draft report of the Working Group on the Universal Periodic Review. Venezuela (Bolivarian Republic of). Unedited Version,” A/HRC/WG.6/12/L.10, October 11, 2011, 2011, [http://www.upr-info.org/IMG/pdf/a\\_hrc\\_wg.6\\_12\\_l.10\\_venezuela.pdf](http://www.upr-info.org/IMG/pdf/a_hrc_wg.6_12_l.10_venezuela.pdf) (accessed May 21, 2012).

<sup>120</sup> Public letter by Noam Chomsky, “Judge María Lourdes Afiuni has suffered enough,” July 2011.

<sup>121</sup> Public letter by Noam Chomsky, “Humanitarian Release for Judge María Lourdes Afiuni,” December 21, 2011.

purpose in the case of someone under house arrest). The court rejected the appeal in July 2011, stating that it may not review a lower court decision unless it violates constitutional rights. According to the court, Afiuni was in a better situation with these precautionary measures than when she was detained in prison, and therefore there was no “real damage” that justified the appeal.<sup>122</sup>

In another appeal, Judge Afiuni challenged Judge Paredes’ decision to proceed with the trial without the two-member jury (escabinos) required by law. Venezuelan law applicable at the time required that a three-member panel made up of the judge and two jurors determine the culpability of the accused in cases such as this one, which carry a maximum sentence of at least four years in prison.<sup>123</sup> Under the then-applicable law, if members of the jury did not appear for a trial and failed to provide a reason for their absence, the judge could move ahead with the trial without jurors.<sup>124</sup> Judge Paredes invoked this provision when announcing he would try the case without jurors. Judge Afiuni's defense team argued in the appeal that judicial authorities had failed to provide adequate notice to individuals who had been selected as jurors and to review the reasons others provided to justify their lack of appearance before the court.<sup>125</sup>

In October 2011, the Supreme Court rejected the appeal on the jury question without addressing the merits, ruling that Afiuni’s lawyers had “desisted” from their appeal because they had failed to act on the case for more than six months.<sup>126</sup> According to Afiuni’s lawyers, however, this was a purely legal question that the court needed to resolve and there was nothing they could do during those six months but await the court’s decision.<sup>127</sup>

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<sup>122</sup> The Supreme Court also stated that the petitioners could not use this type of appeal to challenge the decision on the merits. Supreme Court of Justice of Venezuela, File No. 11-0389, July 26, 2011, <http://www.tsj.gov.ve/decisiones/scon/Julio/1238-26711-2011-11-0389.html> (accessed June 4, 2012). (De allí que le asistió razón a la Corte de apelaciones cuando estimó que la **decisión recurrida en apelación, al no resultar desfavorable para la actora, respecto a la condición en la cual se encontraba** sometida a una medida judicial privativa de libertad frente a unas cautelares menos gravosa, carecía de interés para apelar ya que la lesión debía devenir de un **real agravio** y no de su apreciación subjetiva. (...) Sin que el juzgador de amparo pueda inmiscuirse dentro de esa autonomía del juez en el estudio y resolución de la causa salvo que tal criterio viole, notoriamente, derechos o principios constitucionales.)

<sup>123</sup> In these cases, if the accused is found guilty, the judge decides which crime is applicable to the case and imposes the sentence. Code of Criminal Procedures, arts. 65, 105, 106, 161, 162, 166, 362.

<sup>124</sup> *Ibid.*, art. 164.

<sup>125</sup> Appeal presented by José Amalio Graterol, undated. Copy on file at Human Rights Watch.

<sup>126</sup> Supreme Court of Justice of Venezuela, File No. 11-0345, October 11, 2011, <http://www.tsj.gov.ve/decisiones/scon/Octubre/1505-111011-2011-11-0345.html> (accessed June 11, 2012).

<sup>127</sup> Human Rights Watch email communication with Thelma Fernández, Judge Afiuni’s lawyer, October 17, 2011.

## Impact on Judicial Independence

The imprisonment and prosecution of Judge Afiuni has had a profoundly negative impact on the judiciary, according to dozens of members of the legal profession—including judges, lawyers, and law professors—who spoke with Human Rights Watch.

Since the political takeover of the Supreme Court in 2004, lower court judges have been afraid of issuing rulings that might upset the Chávez government. But whereas in the past what they feared was losing their jobs, now they also fear being thrown in jail.<sup>128</sup>

One judge told Human Rights Watch that, since Judge Afiuni was detained, judges have felt “more pressure to resolve in favor of the government,” and that those unwilling to succumb to the pressure routinely recuse themselves from politically sensitive cases.<sup>129</sup> Another said that judges get phone calls from higher court judges “on a daily basis” telling them how to decide cases, and everyone is “very scared to adopt proper legal decisions” because they know “what the consequences will be” if the Chávez government takes issue with their rulings.<sup>130</sup> A third judge told Human Rights Watch that the majority of judges refuse to rule against “what they perceive to be the government interest,” even if no government official has commented on the case.<sup>131</sup>

According to Judge Afiuni herself, many judges have told her privately that “they do not have an alternative to obeying the government’s orders” because they now fear that if they do not, they will be imprisoned. When she was detained in prison, some inmates told her

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<sup>128</sup> Human Rights Watch interview with a member of the judiciary, April 16, 2012. (Son decisiones ejemplarizantes que causaron además de temor, terror... **Ya no hay riesgo de ver afectado tu cargo, sino también tu libertad personal.**)

<sup>129</sup> Human Rights Watch interview with a member of the judiciary, March 30, 2012. ([El caso] Afiuni ha generado un gran miedo en el Poder Judicial... La **presión para resolver a favor del gobierno es mayor** a raíz del caso Afiuni... Saber que puedo ser víctima de una situación tipo Afiuni asusta. Hay mucho miedo y es generalizado. **Quienes quieren mantener independencia es habitual que se excusen o se inhiban de casos resonados o políticos.**)

<sup>130</sup> Human Rights Watch interview with a member of the judiciary, Caracas, March 20, 2012. (Los jueces tienen **mucho miedo porque saben o presumen cuáles pueden ser las consecuencias porque ya pasó**. No se arriesgan para no pasar por eso. Cuidan cada paso que dan. **Todos los días**, a cada rato, hay llamados de la presidencia del Circuito que te dicen lo que tienes que hacer. [El caso] **Afiuni genera miedo a tomar decisiones ajustadas a derecho**. Antes había miedo, pero ahora es peor.)

<sup>131</sup> Human Rights Watch interview with a member of the judiciary, April 16, 2012. (Los jueces no deciden con independencia porque **no deciden contra lo que suponen pueden ser los intereses... el criterio del gobierno y del Estado.**)

that the judges in charge of their cases had said to them that they could not let them go, even if there was evidence in their favor, because “they would go to jail like Afiuni.”<sup>132</sup>

A report by the International Bar Association published in 2011 documented that, while conducting research in Venezuela, their researchers heard “on several occasions” that “nobody wants to be the next Afiuni” and concluded that her detention “has had a chilling effect on the independence of the judiciary in Venezuela.”<sup>133</sup>

## The Inter-American Human Rights System

In addition to undermining the role of the judiciary, the Chávez government has actively sought to limit the role of the Inter-American human rights system as an alternative mechanism for monitoring and enforcing human rights in Venezuela.

For decades, the Inter-American Court of Human Rights, based in San José, Costa Rica, and the IACHR, based in Washington, D.C., have closely monitored the human rights situation in Venezuela and countries throughout the region, providing a crucial mechanism for redressing abuses when local remedies are ineffective or unavailable. Venezuela has been a party to the American Convention on Human Rights and subject to the jurisdiction of the Inter-American Court since 1977.<sup>134</sup>

Yet President Chávez and members of his administration have aggressively sought to discredit the Inter-American system by repeatedly accusing the Inter-American Commission of having supported the 2002 coup d'état against Chávez. Specifically, they

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<sup>132</sup> Information provided to Human Rights Watch by member of the Afiuni family. (**Muchos jueces**, de forma privada, me manifestaron que **no tienen otra alternativa que asumir las directivas del gobierno**. Lo tienen que obedecer. Ahora tienen miedo que los apresen. **Decenas de internas en el INOF dijeron que el juez le había dicho que no había pruebas pero no las podían soltar porque sino iba preso como Afiuni.**)

<sup>133</sup> International Bar Association, “Distrust in Justice: The Afiuni case and the independence of the judiciary in Venezuela,” April 2011, <http://www.ibanet.org/Document/Default.aspx?DocumentUid=CE82F018-221F-465B-81CD-2C4E1669A2EE> (accessed May 21, 2012), p. 9; Letter from Sternford Moyo, IBAHRI Co-Chair, to President Hugo Chávez, February 13, 2011, <http://www.ibanet.org/Article/Detail.aspx?ArticleUid=5907E767-FBBF-4CC4-BFCF-4A6323CF9303> (accessed May 21, 2012).

<sup>134</sup> The treaty was signed on November 22, 1969, and ratified on June 23, 1977. OAS International Law Department, “B-32: American Convention on Human Rights” (B-32: Convención Americana sobre Derechos Humanos ‘Pacto San José de Costa Rica’), undated, <http://www.oas.org/juridico/english/Sigs/b-32.html> (accessed May 21, 2012).



allege that the commission was “silent” during the coup and granted recognition to the de facto government that was installed temporarily after Chávez’s ouster.<sup>135</sup>

The IACHR in fact issued a press release on April 13, 2002, expressing concern that President Chávez’s removal from office two days earlier “could constitute an interruption of the constitutional order as defined in the Democratic Charter” and urging “to promptly restore the rule of law and the democratic system of government by guaranteeing full observance of human rights and basic freedoms.”<sup>136</sup> In the statement, the commission also “deplore[d] the dismissal, by a decree issued by the government that took office on April 12, of the highest officers of the judiciary and of independent officials within the executive branch, and the suspension of the mandate of the members of the legislature.”<sup>137</sup>

The Chávez administration has nonetheless used these allegations to justify denying the commission permission to carry out research in Venezuela, and to dismiss the commission’s assessments of the country’s human rights problems. When the IACHR published a comprehensive report in 2009, for example, President Chávez repeated the allegation that the commission had supported the coup, and announced that Venezuela should “denounce” the American Convention and no longer be subject to the Inter-

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<sup>135</sup> “Chávez criticizes the IACHR’s reaction on April 11, 2002” (Chávez criticó actuación de la CIDH el 11 de abril de 2002), video, June 5, 2012, <http://www.eluniversal.com/nacional-y-politica/120605/chavez-critico-actuacion-de-la-cidh-el-11-de-abril-de-2002> (accessed June 7, 2012); Ministry of Popular Power of Information and Communication, “Chávez talks about the decision by the ‘sadly famous’ IACHR” (Chávez habló sobre decisión de la ‘tristemente célebre’ CIDH), September 17, 2011, [http://www.minci.gob.ve/noticias\\_-\\_prensa/28/207968/](http://www.minci.gob.ve/noticias_-_prensa/28/207968/) (accessed May 21, 2012); “IACHR is morally incompetent to judge Venezuela” (CIDH está imposibilitada moralmente para emitir juicio sobre Venezuela), *Radio Nacional de Venezuela*, April 27, 2007, <http://www.rnv.gob.ve/noticias/index.php?act=ST&f=2&t=46392> (accessed May 21, 2012); “President rejects OAS comments against Venezuela” (Presidente rechazó señalamientos de OEA contra Venezuela), *Radio Nacional de Venezuela*, May 9, 2009, <http://www.rnv.gob.ve/noticias/index.php?act=ST&f=29&t=96991&hl=&s=8fa3a9b7cd43931731e30f14aa5b27a5> (accessed May 21, 2012); “IACHR presents biased information on the human rights situation in the country” (CIDH presenta datos sesgados sobre la situación de DD HH en el país), *Radio Nacional de Venezuela*, <http://www.rnv.gob.ve/noticias/?act=ST&f=&t=120819> (accessed May 21, 2012); “Government rejects lack of impartiality of the IACHR’s rapporteurship” (Gobierno rechaza parcialización de Relatoría de CIDH), *Radio Nacional de Venezuela*, October 25, 2004, <http://www.rnv.gob.ve/noticias/index.php?act=ST&f=2&t=9578&hl=&s=2fcce081db6131fcb63db5deo8671dof> (accessed May 12, 2012); “Venezuela will not cede to blackmail of right wing politicians of the IACHR” (Venezuela no cederá ante chantaje de políticos de ultraderecha de la CIDH), *Radio Nacional de Venezuela*, June 17, 2010, <http://www.rnv.gob.ve/noticias/index.php?act=ST&f=29&t=130411&hl=&s=8fa3a9b7cd43931731e30f14aa5b27a5> (accessed May 21, 2012).

<sup>136</sup> IACHR, “Press Release on Events in Venezuela,” press release 14/02, April 13, 2002, <http://www.cidh.oas.org/Comunicados/English/2002/Press14.02.htm> (accessed May 21, 2012)

<sup>137</sup> *Ibid.*

American human rights system.<sup>138</sup> A high level official in Chávez's political party stated at the time that the Inter-American Court was a "political instrument...that responds to the imperial interests represented by the Central Intelligence Agency."<sup>139</sup> The country's human rights ombudsman, Gabriela Ramírez, also criticized the commission for its response to the coup and stated that the report was biased.<sup>140</sup>

On another occasion, when the Inter-American Commission criticized the detention of Globovisión president Guillermo Zuloaga in March 2010 (see the following chapter), Chávez's foreign affairs minister, Nicolás Maduro, publicly dismissed the commission, claiming it reflected solely the views of the "coup-plotting opposition."<sup>141</sup> Roy Chaderton, the Venezuelan ambassador before the OAS, said the regional body was interfering with Venezuelan internal affairs.<sup>142</sup>

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<sup>138</sup> IACHR, "Democracy and Human Rights in Venezuela;" "Chávez criticizes IACHR for its report" (Chávez critica informe de la CIDH), YouTube video posted by "telesurtv," February 25, 2010, <http://www.youtube.com/watch?v=2Rshtj11KZs&noredirect=1> (accessed May 8, 2012). (Fíjense ustedes cómo funciona **la OEA**. Una institución que conformada por una burocracia, haya tenido un señor de presidente que apoyó dictaduras, que **reconoció al gobierno de Carmona** en este salón se juramentó él mismo como Napoleón allá en Notre Dame, que se puso él mismo la corona. Más o menos así fue Carmona. Yo, el supremo. Y me acusan a mí de dictador. **Yo recuerdo los informes de esa Comisión después del golpe de estado. Que nunca se pronunció en relación al atropello contra la democracia en Venezuela.**)

"Chávez announces that he will abandon the IACHR" (Chávez anuncia que abandonará la CIDH), video posted online by José Aguilera, February 26, 2010, <http://eju.tv/2010/02/chvez-anuncia-que-venezuela-abandonar-la-cidh/> (accessed May 21, 2012). ([Y]o le di instrucciones al canciller, por cierto, porque ya no vale la pena ni responderle a esa gente ¿Para qué? Es pura basura. No, lo que nosotros deberíamos hacer es **prepararnos para denunciar el acuerdo a través del cual Venezuela se adscribió o como se llame a esa nefasta Comisión Interamericana de Derechos Humanos**, y salirnos de ahí porque no vale la pena. Es una mafia, es lo que hay ahí.)

<sup>139</sup> "The IACHR has no moral grounds to talk about human rights in Venezuela" (CIDH no tiene moral para hablar de derechos humanos en Venezuela), PSUV press release, March 1, 2010, <http://www.psuv.org.ve/temas/noticias/CIDH-no-tiene-moral-para-hablar-de-derechos-humanos-en-Venezuela/> (accessed May 21, 2012). (**[N]o tiene ninguna moral para hablar de Venezuela pues es un instrumento político que forma parte de la mundialización capitalista y responde a los intereses imperiales representados por la Agencia Central de Inteligencia.**)

<sup>140</sup> "Ombudsperson does not recognize the IACHR as an impartial institution" (Defensoría del Pueblo no reconoce a la CIDH como institución imparcial), *Correo del Orinoco*, February 25, 2010, <http://www.correodelorinoco.gob.ve/nacionales/defensoria-pueblo-no-reconoce-cidh-institucion-imparcial/> (accessed May 21, 2012).

<sup>141</sup> According to the commission, Zuloaga's detention, which was the consequence of a judicial investigation for statements he made during a meeting of the Inter-American Press Association abroad, "showed the lack of judicial independence in Venezuela and the use of the criminal justice [system] to sanction critical expressions, which produces a chilling effect that extends to society as a whole." IACHR, "IACHR Repudiates arrest of Guillermo Zuloaga in Venezuela," press release 37/10, March 25, 2010, <http://www.cidh.oas.org/Comunicados/English/2010/37-10eng.htm> (accessed May 21, 2012).

"Venezuela repudiates politicized position of the IACHR, which defames public powers" (Venezuela repudia posición politicizada de la CIDH que difama poderes del estado), PSUV press release, March 26, 2010, <http://www.psuv.org.ve/temas/noticias/Venezuela-repudia-posicion-politicizada-de-la-CIDH-que-difama-poderes-del-Estado/> (accessed May 21, 2012). ([L]a posición de la CIDH está basada únicamente en los **argumentos de la oposición golpista** en Venezuela.)

<sup>142</sup> Ibid.

A similar situation arose when, in December 2010, the IACHR and its Office of the Special Rapporteur for Freedom of Expression criticized proposed legislation under discussion in the National Assembly.<sup>143</sup> In response, Ambassador Chaderton stated a day later that members of the commission were “characters at the service of the US Central Intelligence Agency’s strategies and silent accomplices of the continuous human rights violations committed at the Inter-American and global level by the most violent military power of the world.”<sup>144</sup>

Chávez’s supporters in other government offices have also publicly dismissed the authority of the Inter-American system. For example, in 2010, the human rights ombudsperson said the IACHR was not impartial, lacked credibility, and should be closed.<sup>145</sup>

As discussed above, the Supreme Court has rejected binding rulings by the Inter-American Court and gone so far as to recommend that President Chávez renounce Venezuela’s status as a signatory to the American Convention. More recently, Supreme Court President Luisa Estella Morales publicly dismissed the Inter-American Commission after it issued a press release expressing concern over clashes between inmates and security forces in La Planta prison in Caracas that led to the deaths of two individuals and injuries of seven others and calling on Venezuelan authorities to investigate these incidents and adopt measures to disarm the prison population.<sup>146</sup> When a journalist asked her opinion, Estella Morales stated that Venezuela was a “democratic, autonomous, and sovereign state” and

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<sup>143</sup> The commission stated that the broad language included in the proposed enabling law granted the president powers that could undermine basic rights, particularly by allowing him to create crimes, regulate international cooperation, and impose excessive restrictions when regulating the media. It also expressed concern regarding proposals to extend existing problematic restrictions to the internet. IACHR, “IACHR concerned about law initiatives in Venezuela that could undermine the effective exercise of human rights,” press release 122/10, December 15, 2010, <http://www.cidh.oas.org/Comunicados/English/2010/122-10eng.htm> (accessed May 21, 2012).

<sup>144</sup> “Chaderton denounces the IACHR for its new attacks against Venezuelan democracy” (Chaderton denuncia nueva arremetida de la CIDH contra la democracia venezolana), *Correo del Orinoco*, December 16, 2010, <http://www.correodelorinoco.gob.ve/nacionales/chaderton-denuncia-nueva-arremetida-cidh-contra-democracia-venezolana/> (accessed May 21, 2012). ([P]ersonajes al servicio de las estrategias de la Agencia Central de Inteligencia de los Estados Unidos de América y cómplices silentes de las continuas violaciones de los Derechos Humanos, cometidas a escala interamericana y global por la más violenta potencia militar de mundo, arremeten contra la democracia venezolana y se colocan al lado de la dictadura mediática y de los elementos desestabilizadores nacionales e internacionales que tratan de destruir las instituciones democráticas electas soberanamente por el pueblo venezolano.)

<sup>145</sup> “Ombudsperson does not recognize the IACHR as an impartial institution,” *Correo del Orinoco*, February 25, 2010; “Ombudsperson proposes to close the IACHR” (Defensora del pueblo propone ‘bajar la Santamaría’ de la CIDH), *Correo del Orinoco*, October 29, 2010, <http://www.correodelorinoco.gob.ve/nacionales/defensora-pueblo-venezuela-propone-%e2%80%9cbajar-santamaria%e2%80%9d-cidh/> (accessed May 21, 2012).

<sup>146</sup> IACHR, “IACHR Concerned about Security Crisis at Venezuelan Prison,” May 22, 2012, [http://www.oas.org/en/iachr/media\\_center/PReleases/2012/055.asp](http://www.oas.org/en/iachr/media_center/PReleases/2012/055.asp) (accessed May 28, 2012).

that the “Venezuelan justice system has the capacity to resolve its own problems.”<sup>147</sup> And in June 2012, she spoke in favor of withdrawing from the IACHR, arguing that international treaties “must respect the self determination of the people and their sovereignty.”<sup>148</sup>

In addition to disparaging the Inter-American Court and Commission, in recent years the Chávez government has begun promoting the creation of new regional bodies to replace the Inter-American human rights system.<sup>149</sup> In early December 2011, the government supported a proposal by Ecuador calling for the creation of a new regional human rights body and the adoption of recommendations in an OAS report that could reduce funding for the OAS Office of the Special Rapporteur for Freedom of Expression and jeopardize that body’s ability to publish its own annual report.<sup>150</sup> And in May 2012, Venezuela’s foreign affairs minister proposed the creation of new regional human rights bodies beyond “the experience of an international bureaucracy controlled from Washington.”<sup>151</sup>

In April 2012, President Chávez appointed members to the “State Council” (Consejo de Estado), an institution created by the 1999 constitution that had never functioned in the country, and asked them to analyze how to “immediately withdraw Venezuela from the

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<sup>147</sup> “Justice system guarantees human rights of people deprived of liberty” (Sistema de justicia garantiza derechos humanos de privados de libertad), *Radio Nacional de Venezuela*, May 24, 2012, <http://www.rnv.gov.ve/noticias/index.php?act=ST&f=27&t=184857> (accessed May 28, 2012); “Venezuelan justice system is capable of resolving its problems” (La Justicia Venezolana está en capacidad de resolver sus problemas), *Agencia Venezolana de Noticias*, May 25, 2012, <http://www.avn.info.ve/node/114190> (accessed May 28, 2012); “Supreme Court president states that leaving the IACHR is a ‘sovereign’ decision” (Presidenta del TSJ asegura que decisión de abandonar la CIDH es ‘soberana’), Youtube video posted by “SoyGlobovisión,” May 24, 2012, <http://www.youtube.com/watch?v=kNC13rlmNq4> (accessed May 28, 2012).

<sup>148</sup> “Luisa Estella Morales: Venezuela can withdraw from the IACHR” (Luisa Estella Morales: Venezuela sí puede abandonar la CIDH), *Agencia Venezolana de Noticias*, June 4, 2012, <http://www.avn.info.ve/node/115835> (accessed June 5, 2012).

<sup>149</sup> “Chávez criticizes the IACHR’s reaction on April 11, 2002” (Chávez criticó actuación de la CIDH el 11 de abril de 2002), video, June 5, 2012, <http://www.eluniversal.com/nacional-y-politica/120605/chavez-critico-actuacion-de-la-cidh-el-11-de-abril-de-2002> (accessed June 7, 2012); “President Chávez proposes to create Latin American mechanisms of unity and integration” (Presidente Chávez propone crear mecanismos latinoamericanos de unidad e integración), *Agencia Venezolana de Noticias*, June 4, 2012, <http://www.avn.info.ve/node/115797> (accessed June 5, 2012).

<sup>150</sup> “OAS approved proposal by Ecuador and Venezuela about Inter-American human rights system” (OEA aprobó propuesta de Ecuador y Venezuela sobre sistema interamericano de DDHH), *Correo del Orinoco*, January 26, 2012, <http://www.correodelorinoco.gob.ve/paises/oea-aprobo-propuesta-ecuador-y-venezuela-sobre-sistema-interamericano-dd-hh/> (accessed May 21, 2012).

<sup>151</sup> “Maduro calls on the región to protect human rights beyond the Washington bureaucracy” (Maduro insta a la región a velar por los derechos humanos lejos de la burocracia de Washington), *Agencia Venezolana de Noticias*, May 3, 2012, <http://www.avn.info.ve/contenido/maduro-insta-regi%C3%B3n-velar-ddhh-lejos-burocracia-washington> (accessed May 21, 2012). ([A] crear instancias propias para la defensa de los derechos humanos, **más allá de la experiencia de una burocracia internacional controlada desde Washington.**)

sadly famous IACHR.”<sup>152</sup> Days later, the attorney general said in a radio interview that the IACHR had “maintained a systematic persecution against the country since 1999” and proposed creating a new regional body to replace it.<sup>153</sup> The National Assembly has also supported the move.<sup>154</sup>

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<sup>152</sup> “Chávez asks the State Council to withdraw Venezuela from the IACHR” (Chávez pide al Consejo de Estado retirar a Venezuela de la CIDH), *Correo del Orinoco*, April 30, 2012, <http://www.correodelorinoco.gob.ve/nacionales/chavez-pide-al-consejo-estado-retirar-a-venezuela-cidh/> (accessed May 21, 2012). (Lo primero que pido (al Consejo de Estado) es el estudio acelerado y las recomendaciones **para retirar de inmediato a Venezuela de la tristemente célebre Comisión Interamericana de Derechos Humanos.**)

<sup>153</sup> “The Attorney General proposes to create a Latin American council to replace the IACHR” (La Fiscal General propuso crear un consejo latinoamericano que reemplace la CIDH), *Correo del Orinoco*, May 4, 2012, <http://www.correodelorinoco.gob.ve/nacionales/fiscal-general-propuso-crear-un-consejo-latinoamericano-que-reemplace-cidh/> (accessed May 21, 2012). (El organismo ha tenido una **persecución sistemática** contra la patria de Bolívar desde 1999.)

<sup>154</sup> “National Assembly approved accord to support withdrawal of Venezuela of the IACHR” (Asamblea Nacional aprobó acuerdo que respalda retiro de Venezuela de la CIDH), *Correo del Orinoco*, May 9, 2012, <http://www.correodelorinoco.gob.ve/nacionales/asamblea-nacional-aprobo-acuerdo-que-respalda-retiro-venezuela-cidh/> (accessed May 21, 2012).

## The Media

### Expanded Powers to Censor and Punish Critics

*A Decade Under Chávez* documented how President Chávez and his supporters in the National Assembly had undermined freedom of expression through a variety of laws and policies aimed at influencing the control and content of the country's mass media. Specifically, they had expanded the scope of criminal law punishing expression deemed to insult public officials and established draconian penalties for defamation, including increased prison sentences and onerous fines. Under reforms to the criminal code enacted in 2005, they had increased the number of public officials benefiting from the protection of insult laws and greatly increased penalties, including prison terms, for criminal defamation.

Additionally, the 2004 Law on Social Responsibility in Radio and Television (hereinafter the "Broadcasting Law") expanded the scope of an already broad prohibition on incitement and established severe penalties for broadcasters that violated it.<sup>155</sup> Under the 2004 law, broadcast media can face suspension and ultimately revocation of their licenses for broadcasting material deemed to "promote, justify, or incite" war, breaches of public order, or crime. The transmission of such material can also be banned under this law. Enforcement of these provisions is left to the state broadcasting authority, the National Telecommunications Commission (Comisión Nacional de Telecomunicaciones, CONATEL), which answers directly to the vice president of the country. The broad and imprecise wording of the incitement provisions, the severity of the penalties, and the fact that the law is enforced by an executive branch agency all increase the broadcast media's vulnerability to arbitrary interference and pressure to engage in self-censorship.

Since 2008, President Chávez and his supporters have adopted additional amendments to applicable laws that further expand the government's ability to regulate the media and to harass and intimidate critical media outlets.

In December 2010, the National Assembly amended the Broadcasting Law to extend existing restrictions on free speech to the internet. The amended law prohibits electronic

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<sup>155</sup> The 2004 broadcasting law replaced broadcasting regulations enacted in 1984.

media from transmitting messages that “foment anxiety in the public or disturb public order,” “incite or promote disobedience of the current legal order,” “refuse to recognize the legitimately constituted authority,” or “incite or promote hatred or intolerance.”<sup>156</sup> CONATEL may order internet service providers to restrict access to websites that contain expressions deemed to violate these restrictions. Both websites and service providers that fail to comply with such orders are subject to fines of up to 4 percent of their gross income in the previous tax year.<sup>157</sup>

In addition, the December 2010 law expands the government’s control over radio and television broadcasters, similarly prohibiting them from broadcasting messages that “foment anxiety in the public or disturb public order” or “refuse to recognize the legitimately constituted authority.” It also prohibits radio and television broadcasters from airing “anonymous” messages. CONATEL can sanction any violation of this prohibition by suspending their transmissions for up to 72 hours and/or imposing a fine of up to 10 percent of their gross income in the previous tax year. The agency can also revoke broadcasters’ licenses if they are deemed to have aired messages “against the security of the nation.”<sup>158</sup>

Under the 2010 Broadcasting Law, CONATEL also has broad powers to censor information. CONATEL can order radio stations, television stations, or electronic media to “abstain from issuing messages” that could violate the law. These “precautionary measures” can be adopted by CONATEL preemptively, before a determination has been made regarding whether a violation has in fact taken place. If a media outlet violates the precautionary measure, CONATEL may revoke the outlet’s permit to operate.<sup>159</sup>

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<sup>156</sup> Law on Social Responsibility in Radio, Television, and Electronic Media (Ley de Responsabilidad Social de Radio, Televisión y Medios Electrónicos), December 20, 2010, [http://www.asambleanacional.gob.ve/images/leyes/se\\_reimprime\\_responsabilidad\\_social\\_radio\\_television.pdf](http://www.asambleanacional.gob.ve/images/leyes/se_reimprime_responsabilidad_social_radio_television.pdf) (accessed May 30, 2012), art. 27.

<sup>157</sup> *Ibid.*

<sup>158</sup> *Id.*, art. 29. The 2010 law also mandates the creation of a new administrative body—effectively controlled by the executive branch—to enforce these provisions, the Directorate of Social Responsibility (Directorio de Responsabilidad Social). The law grants the government majority representation on the 12-member directorate, with six representatives from government offices, and a seventh, the director of CONATEL, presiding. The directorate can hold sessions if the CONATEL director and five additional members are present, and decisions can be adopted through a simple majority vote. *Id.*, art. 20.

<sup>159</sup> *Id.*, art. 33.

In December 2010, the National Assembly also amended the Organic Law on Telecommunications to grant CONATEL the power to suspend or revoke broadcasting concessions to private outlets if it considers that such action is “convenient for the interests of the nation, or if public order and security demands it.”<sup>160</sup>

### *RCTV*

Radio Caracas Televisión (RCTV) was once one of Venezuela’s most widely watched television stations and a constant critic of President Chávez. By 2006, it was one of just two stations available without cable television service that maintained an editorial line openly critical of the government.<sup>161</sup>

In response to this critical coverage, President Chávez had repeatedly threatened not to renew RCTV’s broadcasting concession—including in November 2006 after the channel broadcast footage of Chávez’s energy minister telling his employees at the state oil company that they should resign from their jobs if they did not support the president’s political agenda.<sup>162</sup> The following month, President Chávez made good on the promise,

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<sup>160</sup> Organic Law on Telecommunications (Ley Orgánica de Telecomunicaciones), December 28, 2010, [http://www.asambleanacional.gob.ve/images/leyes/reimprime\\_la\\_ley\\_de\\_telecomunicacion.pdf](http://www.asambleanacional.gob.ve/images/leyes/reimprime_la_ley_de_telecomunicacion.pdf) (accessed May 30, 2012), art. 22.

<sup>161</sup> During the early years of Chávez’s government, four private television channels—RCTV, Venevisión, Televen, and Globovisión—sided openly with the political opposition, providing uniformly partisan and anti-Chávez news coverage and commentary. During the short-lived 2002 coup, all four channels gave extensive coverage to the opposition protests, but then replaced news coverage with cartoons and old movies after Chávez had been taken by the military to an unknown destination and his supporters were filling the streets demanding his return. The news blackout of Chávez’s return to power was followed by highly partisan coverage during confrontations between the government and opposition in subsequent years. In 2005 two of the stations that had previously given full support to opposition campaigns, Venevisión and Televen, pulled controversial opinion shows and ceased to engage in overtly anti-Chávez commentary. Only RCTV and Globovisión retained their clearly critical editorial line. See Human Rights Watch, *A Decade Under Chávez*, chapter IV.

<sup>162</sup> In November 2006, one month before the December presidential election, Energy Minister and PDVSA President Rafael Ramírez gave a speech to PDVSA employees in which he told workers that those who did not support Chávez should leave the company. After the speech was aired on TV, rather than denouncing his energy minister’s overtly discriminatory message, President Chávez publicly endorsed it, urging its repetition “100 times.” Chávez added that PDVSA workers were part of his political project, and those who were not “should go somewhere else, go to Miami.” In that same speech, Chávez “reminded” TV stations that some broadcast concessions ended the following year, and stated “no one should be surprised if I tell them there will be no more concession for certain TV channels.” Chávez had previously accused private channels, which he did not identify, of “fomenting a psychological war between Venezuelans” in a speech given six months before he announced the decision not to renew RCTV’s license. “Rafael Ramírez Part 1” (Rafael Ramírez Parte 1), YouTube video, posted by “Libreuso,” November 3, 2006, <http://youtube.com/watch?v=dmXpbT7Fhiw>, (accessed May 22, 2012); “Chávez to Minister Ramírez: ‘Go and repeat what you said to Pdvsa a hundred times’” (Chávez al ministro Ramírez: ‘Vaya y repítale a PDVSA cien veces lo que usted ha dicho’), November 3, 2006, <http://www.aporrea.org/oposicion/n86027.html> (accessed May 11, 2012). (Vaya y repítale a PDVSA **cien veces** lo que usted ha dicho, Pdvsa es revolucionaria y debe ser revolucionaria (...). **Los trabajadores de Petróleos de Venezuela están en esta revolución y el que no mejor que se vaya a otro sitio,**



announcing on a nationwide broadcast that he would not renew RCTV's broadcasting license when it expired in 2007. Filmed standing on a military parade ground, he declared that Venezuela would no longer tolerate private media "at the service of coup-plotting, against the people, against the nation, against the independence of the nation, and against the dignity of the Republic!"<sup>163</sup>

RCTV stopped transmitting on the public airwaves in May 2007.<sup>164</sup> That same month, the Supreme Court ordered the "temporary" transfer—which remains in effect five years later—of RCTV's equipment to TVES, the state channel created to replace RCTV.<sup>165</sup> In July 2007, RCTV created a cable station, called RCTV International, which continued to produce programming critical of President Chávez.

Since then, the Chávez administration has again moved against RCTV, this time using its regulatory power to drive the channel off cable television. In January 2010, CONATEL determined that RCTV International was a "national audiovisual producer"—which meant it was subject to regulations CONATEL had enacted a month earlier for cable channels with more than 30 percent Venezuelan-produced programming—including the obligation to interrupt regular programming to air mandatory government and presidential broadcasts, and a prohibition on interrupting regular programming with commercial advertisements.<sup>166</sup> (Advertisements must instead be run between programs.)

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**que se vayan a Miami o a donde quieran ... El 27 de marzo no les extrañe que yo les diga no hay más concesión a algunos canales de televisión, que a nadie le extrañe.)**

<sup>163</sup> "The concession of the coup plotting channel RCTV will not be renewed" (No renovarán la concesión al canal golpista RCTV), YouTube video, posted by "JairoMartinezdorta," March 29, 2007, <http://www.youtube.com/watch?v=AujQgo6u4xl> (accessed April 18, 2012). (No habrá nueva concesión para ese **canal golpista** de televisión que se llamó Radio Caracas Televisión. Se acaba la concesión. Ya está redactada la medida. Así que vayan preparándose, apagando los equipos, pues. **No se va a tolerar aquí ningún medio de comunicación que esté al servicio del golpismo, contra el pueblo, contra la nación, contra la independencia nacional, contra la dignidad de la República!**)

<sup>164</sup> The Chávez government had been under no obligation to renew RCTV's concession. However, as Human Rights Watch documented in *A Decade Under Chávez*, the president's decision and the manner in which it was executed constituted a flagrant abuse of the state's regulatory power to punish RCTV for its critical programming. The government discriminated against the channel on political grounds and disregarded basic due process considerations in its handling of the case. In March 2007, three months after Chávez announced his decision, the Ministry of Communication and Information published *The White Book of RCTV (El libro blanco sobre RCTV)*, a compendium of the government's accusations against the channel. During the same month RCTV received a resolution and cover letter from the communication and information minister—the official responsible for television concessions—formalizing Chávez's decision. Yet neither the official resolution nor the letter mentioned any of the accusations publicly leveled by Chávez against the channel as grounds for the decision not to renew the license.

<sup>165</sup> See Human Rights Watch, *A Decade Under Chávez*, chapter IV.

<sup>166</sup> Official Gazette of the Bolivarian Republic of Venezuela, No. 39.333, December 22, 2009.

Days after CONATEL made this determination, Chávez’s communications minister threatened to open administrative investigations against cable providers whose broadcast channels were not in compliance with the new norms. In response, the country’s cable providers stopped broadcasting RCTV International.<sup>167</sup> (The cable providers also stopped broadcasting six other channels, but resumed broadcasting these shortly thereafter.)<sup>168</sup>

RCTV asked CONATEL to reconsider its decision to classify its cable channel as a “national audiovisual producer,” stating that it would adapt its programming to fit the criteria of an “international channel.”<sup>169</sup> CONATEL rejected the request.

RCTV subsequently requested that CONATEL formally register the channel as a national audiovisual producer. But CONATEL rejected this request as well, maintaining that RCTV had taken more than 15 working days—since CONATEL’s January 15 decision—to file the request, which, under Venezuelan administrative law, means that the petitioners had “desisted” from their interest in filing such a claim.<sup>170</sup> In fact, according to official documents from CONATEL, the station had been notified of the decision on January 21, had asked CONATEL to revisit its decision on February 8, and had subsequently filed the petition to be registered as a national audiovisual producer on February 22. There was never a period of 15 working days in which RCTV had failed to act.<sup>171</sup>

In other words, CONATEL refused to let RCTV register as an international channel because it determined it was in fact a “national” channel, and then refused to allow it to register as a

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[http://www.conatel.gob.ve/files/Servicio\\_Produccion\\_Nacional\\_Audiovisual/Norma\\_Tec\\_Prod\\_Nacional\\_Audiovisual.pdf](http://www.conatel.gob.ve/files/Servicio_Produccion_Nacional_Audiovisual/Norma_Tec_Prod_Nacional_Audiovisual.pdf) (accessed May 22, 2012), arts. 3, 5, 6.

<sup>167</sup> Diosdado Cabello press conference, aired by Venezolana de Television, YouTube video, posted by “radiovzla,” January 23, 2010, [http://www.youtube.com/watch?v=UPQonu2WC\\_I&feature=related](http://www.youtube.com/watch?v=UPQonu2WC_I&feature=related) (accessed May 22, 2012).

<sup>168</sup> Reporters Without Borders, “Venezuela: Five cable networks resume broadcasting, RCTVI still suspended” (Venezuela: Cinco canales por cable vuelven al aire, RCTVI sigue suspendido), February 4, 2010, <http://www.rsf-es.org/news/venezuela-cinco-canales-por-cable-vuelven-al-aire-rctvi-sigue-suspendido/> (accessed May 22, 2012).

<sup>169</sup> CONATEL, Administrative Decision (Providencia Administrativa) No. PADSR – 1.599, February 9, 2010 (copy on file at Human Rights Watch); CONATEL, Administrative Decision (Providencia Administrativa) No. PADSR – 1.569, March 4, 2010, [http://www.conatel.gob.ve/files/Servicio\\_Produccion\\_Nacional\\_Audiovisual/nota\\_providencia.pdf](http://www.conatel.gob.ve/files/Servicio_Produccion_Nacional_Audiovisual/nota_providencia.pdf) (accessed May 23, 2012).

<sup>170</sup> CONATEL, Administrative Decision (Providencia Administrativa) No. PADSR – 1.569.

<sup>171</sup> CONATEL, Administrative Decision (Providencia Administrativa) No. PADSR – 1.599. Human Rights Watch interview with Oswaldo Quintana Cardona, Corporate Vice President for Legal Matters of RCTV, and Elías Bittar, counsel, Caracas, March 20, 2012.

“national” channel on the grounds that the broadcaster had missed the deadline for registering.

RCTV representatives told Human Rights Watch that they have since repeatedly sought to be registered as a national audiovisual producer but that every time they go to CONATEL headquarters during working hours, they are told by CONATEL officials that the “registry is closed.”<sup>172</sup> (In February 2012, Human Rights Watch asked CONATEL for updated information on the status of RCTV’s request, but received no response.<sup>173</sup>)

In addition to requesting that CONATEL register RCTV International, the company on February 22, 2010 asked CONATEL for authorization to create a new international channel, RCTV Mundo. Once again, CONATEL rejected the petition, stating that the information provided on RCTV Mundo’s future programming was “inexact and incomplete.”<sup>174</sup>

RCTV has presented multiple legal appeals to the Supreme Court, but as of March 2012, all of the appeals remained pending.<sup>175</sup> RCTV’s petitions include an appeal of CONATEL’s 2007 decision to take RCTV off the air; an appeal of the 2007 Supreme Court decision ordering the “temporary” transfer of RCTV’s equipment to TVES; a constitutional appeal of the 2009 CONATEL regulations defining “national audiovisual producer”; an appeal against CONATEL’s decision to apply such regulations to RCTV International; and an appeal of CONATEL’s failure to register RCTV International as a national audiovisual producer.<sup>176</sup>

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<sup>172</sup> Human Rights Watch interview with Daniela Bergami, General Director of RCTV, Oswaldo Quintana Cardona, Corporate Vice President for Legal Matters of RCTV, and Elías Bittar, counsel, Caracas, February 7, 2011; Human Rights Watch interview with Oswaldo Quintana Cardona, Corporate Vice President for Legal Matters of RCTV, and Elías Bittar, counsel, Caracas, March 20, 2012.

<sup>173</sup> Letter from Joseph Saunders, deputy program director of Human Rights Watch, to Pedro Maldonado, director of CONATEL, February 28, 2012.

<sup>174</sup> CONATEL, Administrative Decision (Providencia Administrativa) No. PADSR – 1.569.

<sup>175</sup> Human Rights Watch interview with Oswaldo Quintana Cardona, Corporate Vice President for Legal Matters of RCTV, and Elías Bittar, counsel, Caracas, March 20, 2012.

<sup>176</sup> Ibid. Petition (demanda de nulidad) presented by RCTV’s legal counsel before the Political Administrative Chamber of the Supreme Court of Venezuela, April 17, 2007; Petition (demanda de nulidad) presented by RCTV’s legal counsel before the Political Administrative Chamber of the Supreme Court of Venezuela, January 28, 2010; Constitutional appeal (amparo constitucional) presented by RCTV’s legal counsel before the Constitutional Chamber of the Supreme Court of Venezuela, January 22, 2010. Copies on file at Human Rights Watch.

Today, RCTV International can only be viewed on the internet. RCTV used to broadcast five hours of news and opinion shows per day. RCTV International subsequently reduced that to a single hour of news per day. In April 2012, all news coverage by RCTV was suspended due to lack of resources.<sup>177</sup>

### *Globovisión*

The closure of RCTV left Globovisión as the only television channel in Venezuela available without cable (and Globovisión is available only in Caracas and Valencia) that remains critical of the Chávez administration. Since its airwave concession extends through 2015, the channel has not faced imminent threat of non-renewal. However, the Chávez government has repeatedly reacted to Globovisión's critical reporting by opening administrative investigations that could lead to the station's suspension or closure.

For example, in June 2011, Globovisión reported on a prison riot and clashes between inmates and members of the National Guard in the El Rodeo prison complex near Caracas, which led to the death of at least 25 people and injuries to approximately 60 others, including inmates and members of the National Guard. During the broadcast, Globovisión reporters interviewed distressed family members, who stated that members of the National Guard were "massacring," "killing," "burning," and "beating" prisoners.<sup>178</sup> (Human rights defenders also reported on possible excessive use of force by security forces during the confrontations.)<sup>179</sup>

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<sup>177</sup> Human Rights Watch interview with Daniela Bergami, General Director of RCTV, Oswaldo Quintana Cardona, Corporate Vice President for Legal Matters of RCTV, and Elías Bittar, counsel, Caracas, February 7, 2011; Human Rights Watch email communication with Elías Bittar, RCTV's legal counsel, May 3, 2012.

<sup>178</sup> Directorate of Social Responsibility of CONATEL (Directorio de Responsabilidad Social de CONATEL), Document No. 163, October 18, 2011, [http://issuu.com/globovision/docs/sancion\\_globovision\\_caso\\_el\\_rodeo](http://issuu.com/globovision/docs/sancion_globovision_caso_el_rodeo) (accessed May 23, 2012). ("Maritza Rodríguez (hora del operador 7:47 a.m. / hora original del sistema 7:37 a.m.): "...a los muchachos los están masacrando..." (p. 2) "Jackeline Rojo, familiar de recluso de El Rodeo (hora original del sistema de monitoreo 09:11 a.m.) "...están golpeando a los reclusos..." (p. 4) "Rosmary Rubio, familiar de recluso (hora original del sistema de monitoreo 09:12 a.m.) "...ellos le metieron candela, a ellos los estaban quemando..." (p. 4).)

<sup>179</sup> At the time, local and international organizations criticized the government for the way it dealt with the prison riots. The IACHR granted "precautionary measures" to family members of those detained in the prisons, ordering the government to protect their lives and physical integrity, stating that they had received information that "security forces launched tear gas canisters and used water cannons against them, in a context of tension." IACHR, "PM 219-11 - Relatives of Inmates at the El Rodeo I and El Rodeo II prisons, Venezuela," undated, <http://www.oas.org/en/iachr/decisions/precautionary.asp> (accessed May 22, 2012).

COFAVIC issued a press release "energically rejecting the disproportionate use of force to control the internal situation in prisons in the country, particularly in El Rodeo I." "Cofavic urges the state to guarantee the integrity of people deprived of their liberty in the El Rodeo Prison" (COFAVIC exhorta al Estado a garantizar la integridad de privados de libertad en Centro

President Chávez responded to the coverage by publicly accusing Globovisión of “sett[ing] the country on fire” with “the sole purpose of overthrowing this government.”<sup>180</sup> Pedro Maldonado, CONATEL’s director general, declared that Globovisión’s coverage was “unacceptable,” claiming that the station had aired on “almost 300” occasions the “most heart-felt” and “desperate” testimonies by 18 relatives of inmates, while not airing all the statements made by government officials. He also claimed that the station had added the sound of machineguns that were not part of the original audio track (a claim that Globovisión has denied).<sup>181</sup>

CONATEL opened an administrative investigation into Globovisión’s use of the testimonies in its coverage. It also said it would investigate whether Globovisión had violated the Broadcasting Law by airing images of members of the National Guard throwing teargas canisters, of a security force vehicle dispersing protesters with a water cannon, of a helicopter flying over the area, and of people hiding to avoid the teargas or running.<sup>182</sup>

Four months later, CONATEL ruled against Globovisión, imposing a US\$ 2.1 million fine, which is equivalent to 7.5 percent of the company’s 2010 income.<sup>183</sup> According to CONATEL,

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Penitenciario El Rodeo I), press release, June 17, 2011, [http://www.cofavic.org/det\\_comunicados.php?id=44](http://www.cofavic.org/det_comunicados.php?id=44) (accessed May 23, 2012).

Other Venezuelan NGOs, including the Venezuelan Observatory of Prisons (Observatorio Venezolano de Prisiones) and A Window for Liberty (Una Ventana por la Libertad), also criticized the government for the measures it adopted during the incidents. “Report/Conflictive: What happened in El Rodeo” (Reporte/Conflictive: Lo que pasó en El Rodeo), June 20, 2011, <http://www.derechos.org.ve/2011/06/20/reporteconflictive-lo-que-paso-en-el-rodeo/> (accessed May 23, 2012).

<sup>180</sup> “The owners of Globovisión are on the run” (Los dueños de Globovisión andan huyendo), *Hugo Chávez’s Blog*, July 2, 2010, <http://www.chavez.org.ve/temas/noticias/duenos-globovision-andan-huyendo/> (accessed May 23, 2012). **(Permitir que un canal de televisión incendie un país es muy peligroso, no podemos permitirlo. ¿Hasta dónde es capaz de hacer daño a la mente de una sociedad un canal en manos de una locura desatada de odio, con la única intención de derrocar a este gobierno?)**

<sup>181</sup> “CONATEL sanctions Globovisión for its coverage of the events in El Rodeo I and II” (CONATEL sanciona a Globovisión por tratamiento informativo en hechos de El Rodeo I y II), *Correo del Orinoco*, October 18, 2011, <http://www.correodelorinoco.gob.ve/nacionales/conatel-sanciona-a-globovision-por-tratamiento-informativo-hechos-rodeo-i-y-ii/> (accessed May 23, 2012); Human Rights Watch telephone interview with Ricardo Antela, Globovisión’s lawyer, October 2011.

<sup>182</sup> CONATEL, Administrative Decision (Providencia Administrativa) No. PADSR-1839, June 30, 2011. (En el programa Aló Presidente... fue difundido un micro... cuyo cintillo inferior central de la pantalla es del texto siguiente: “Situación penitenciaria en El Rodeo I y II”, en el que inicialmente sólo se transmiten imágenes editadas, sin audio original, sino con una musicalización de fondo similar a las usadas en los documentales de guerra, mostrando las imágenes que se describen a continuación: 1. A los efectivos de la Guardia Nacional, vestidos con su uniforme antimotín, realizando acercamientos a las bombas lacrimógenas, ubicadas en el pecho de tales funcionarios; 2. El vehículo “ballena” perteneciente a este Cuerpo de Seguridad, cuando lanzaba chorros de agua para dispersar a los manifestantes; 3. Helicóptero artillado sobrevolando el área; 4. Grupos de personas refugiándose por los efectos de las bombas lacrimógenas y otras personas corriendo.)

<sup>183</sup> Directorate of Social Responsibility of CONATEL, Document No. 163, p. 95; “CONATEL sanctions Globovisión for coverage of the events in El Rodeo I and II,” *Correo del Orinoco*, October 18, 2011.

Globovisión had “aired messages that promoted alterations of public order, incited the commission of crimes... [and] promoted hatred for political reasons that generated anxiety in the population.”<sup>184</sup> CONATEL determined that Globovisión committed those faults by repeatedly airing the statements of 18 alleged family members that were “compelling, charged with feelings and expressions of desperation”; by airing images that “falsely showed a situation of continuous alteration”; by “suggesting or stating” that authorities had failed to comment on the incidents; by “incorrectly inform[ing] about the inexistence of official information”; and by only once airing images showing individuals throwing rocks at the National Guard.<sup>185</sup>

Globovisión appealed the sanction, requesting a court an injunction to suspend its obligation to pay the fine until courts ruled on the merits of the case. A lower court judge rejected the appeal, a decision that was upheld by the Supreme Court in March 2012.<sup>186</sup> CONATEL subsequently asked the courts to force Globovisión to pay the fine.<sup>187</sup> Globovisión paid the fine in June 2012, after the Supreme Court ordered the seizure of

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<sup>184</sup> Directorate of Social Responsibility of CONATEL, Document No. 163, p. 95. ([E]n virtud de haber transmitido mensajes que promovieron alteraciones del orden público, hicieron apología al delito, e incitaron al ordenamiento jurídico vigente, promovieron el odio pro razones políticas y fomentaron la zozobra en la ciudadanía.)

<sup>185</sup> *Ibid.*, pp. 91 - 93. (La difusión reiterada de declaraciones de un grupo de sólo 18 presuntos familiares de los internos de una población total que alcanza un aproximado de 4000 reclusos, repetidas doscientas sesenta y nueve (269) veces, en sólo cuatro (4) días, las cuales una vez verificadas se observó que éstas son las más emotivas, cargadas de sentimientos y expresiones de desesperación....se incluía un “micro de imágenes editadas impactantes...con lo que se mostraba falsamente una situación continua de alteración...La incorporaron en todos sus programas de comentarios sobre el caso del Rodeo, insinuando o aseverando la falta de pronunciamiento de las autoridades.... El hecho que los periodistas “in situ” y “anclas” del canal informaban incorrectamente sobre una total inexistencia de información suministrada por las autoridades... En contraposición con lo expuesto, sólo en una ocasión se transmitieron las imágenes de la llegada de la Guardia Nacional a la pasarela, del sector La Rosa en las cercanías del Centro Penitenciario, durante el cual les tiran piedras desde las casas aledañas, lo cual no fue reseñado por el canal.)

“Venezuela: Globovisión fined US \$2.1 million,” (Venezuela: multa a Globovisión de US \$2.1 millones), *BBC Mundo*, October 18, 2011, [http://www.bbc.co.uk/mundo/ultimas\\_noticias/2011/10/111018\\_ulnot\\_venezuela\\_globovision\\_multa.shtml](http://www.bbc.co.uk/mundo/ultimas_noticias/2011/10/111018_ulnot_venezuela_globovision_multa.shtml) (accessed May 23, 2012).

<sup>186</sup> Supreme Court of Justice of Venezuela, File No. 2012-0051, March 6, 2012, <http://www.tsj.gov.ve/decisiones/spa/Marzo/00165-6312-2012-2012-0051.html> (accessed May 23, 2012); Supreme Court of Justice of Venezuela, “Supreme Court ratifies that Globovisión’s request to suspend the effects [of challenged measure] does not proceed” (TSJ ratifica improcedencia de medida de suspensión de efectos solicitada por Globovisión), press release, March 15, 2012, <http://www.tsj.gov.ve/informacion/notasdeprensa/notasdeprensa.asp?codigo=9218> (accessed May 23, 2012); “Administrative procedures initiated against Globovisión” (Procedimientos administrativos iniciados contra Globovisión), April 2, 2012, summary of cases provided to Human Rights Watch via email by Ricardo Antela, Globovisión’s lawyer, April 4, 2012. Copy on file at Human Rights Watch.

<sup>187</sup> “CONATEL presents judicial action to force Globovisión to pay fine” (CONATEL interpone acción judicial para exigir a Globovisión pago de multa), *Agencia Venezolana de Noticias*, March 27, 2012, <http://www.avn.info.ve/node/105340> (accessed May 23, 2012).

Globovisión's assets to pay for it.<sup>188</sup> (According to Globovisión's lawyer, the "considerable" effort that the channel needs to make to pay the fine "affects [its] financial stability and seriously complicates its operations and finances.")<sup>189</sup>

Under the Broadcasting Law enacted by President Chávez and his supporters, if CONATEL were to rule against Globovisión in a second case, it could impose another monetary sanction, suspend its transmission, or revoke the channel's broadcasting license.<sup>190</sup> The agency currently has six additional administrative investigations open against Globovisión.

One case involves Globovisión's coverage of an earthquake in May 2009, in which the station cited information regarding the epicenter and magnitude provided by the US government's Earthquake Hazards Program, because (according to the channel) the website of the Venezuelan Foundation of Seismic Investigations (Fundación Venezolana de Investigaciones Sismológicas, FUNVISIS) was down.<sup>191</sup> During the coverage, a Globovisión reporter stated that "we are very worried because...we cannot find any authority to ask for precise, exact information." (The reporter also stated that "everything is quiet [now], everything is peaceful.")<sup>192</sup>

The following day, Cilia Flores, the pro-Chávez president of the National Assembly, criticized Globovisión's coverage of the earthquake, accusing the reporter of "blaming the

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<sup>188</sup> Supreme Court of Justice of Venezuela, File No. 2012-0104, June 28, 2012, <http://www.tsj.gov.ve/decisiones/spa/Junio/00765-28612-2012-2012-0104.html> (accessed July 2, 2012). "Globovisión pays and questions fine before Supreme Court" (Globovisión pagó bajo protesta la multa ante el TSJ), *Globovisión*, June 30, 2012, <http://www.globovision.com/news.php?nid=237019> (accessed July 2, 2012).

<sup>189</sup> Human Rights Watch written communication with Ricardo Antela, Globovisión's lawyer, October 19, 2011. (Un canal pequeño y con las características de Globovisión no tiene disponible esa suma de dinero, y tendremos que hacer un esfuerzo económico supremo y considerable para pagarla y mantener abierto el canal. La multa trastorna la estabilidad financiera del canal y complica seriamente su viabilidad operativa y financiera.)

<sup>190</sup> Broadcasting Law, art. 29.

<sup>191</sup> "Conatel opens procedure against Globovisión for disseminating [information on] an earthquake" (CONATEL abre procedimiento sancionatorio contra Globovisión por divulgación de sismo), *Globovisión*, May 7, 2009, <http://www.globovision.com/news.php?nid=116427> (accessed May 23, 2012).

<sup>192</sup> CONATEL, Administrative Decision (Providencia Administrativa) No. PADSR-1412, May 7, 2009. (La gente salió a la calle, no han habido más réplicas, todo está tranquilo, todo está en paz. Nos angustia mucho que no encontramos a quién localizar, no encontramos a ninguna autoridad a quien pedirle una información precisa, exacta.)

government for being irresponsible” and “generating terror in the population.”<sup>193</sup> The National Assembly subsequently asked CONATEL to open an investigation.<sup>194</sup>

CONATEL opened the investigation two days later, transcribing the journalist's statements about the difficulty in obtaining official information and having to rely on US sources for data on the earthquake. CONATEL argued that Globovisión had “continuously and repeatedly aired...messages regarding the earthquake” during an entire day, that these messages “could unjustifiably generate a feeling of anxiety and fear in the population,” and that they could “be contrary to the security of the nation and presumably promote or incite alterations of public order.”<sup>195</sup> At this writing, the investigation remains open.

Another case involves Globovisión’s coverage of elections in November 2008, during which the channel broadcast footage of Enrique Salas Feo, the opposition candidate for governor in Carabobo state, criticizing the National Electoral Council for not reporting that he had won the vote the day after it took place. Salas Feo claimed that the National Electoral Council had access to 97.75 percent of the electoral ballots, that all preliminary results confirmed he had won the elections, and that there was no reason to delay publicizing the final results. He urged the people in Carabobo “to go to with [him] to the Electoral Council to demand [recognition of our] victory in Carabobo.” Explaining his intentions, he stated: “We are simply asking for respect of the popular will... The only thing we’re asking the National Electoral Council to do is release the final results because they cannot keep this region without results, which everyone knows.”<sup>196</sup>

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<sup>193</sup> National Assembly, “CONATEL is urged to apply the broadcasting law to Globovisión” (Exhortan a CONATEL aplicar Ley Resorte a Globovisión), undated, [http://www.asambleanacional.gob.ve/index.php?option=com\\_content&task=view&id=21859&Itemid=63](http://www.asambleanacional.gob.ve/index.php?option=com_content&task=view&id=21859&Itemid=63) (accessed May 24). ([T]enía que adelantarse para acusar al gobierno de irresponsable, y generar terror en la población.)

<sup>194</sup> Ibid.

<sup>195</sup> CONATEL, Administrative Decision (Providencia Administrativa) No. PADSR-1423, May 7, 2009. (Visto que desde la madrugada del lunes 04 de mayo de 2009 y durante todo el día la sociedad mercantil Globovisión difundió de manera continua y reiterada durante toda su programación mensajes alusivos al sismo que se registró en Venezuela en esa misma fecha y que dichos mensajes podrían generar una sensación de zozobra y temor en la población, de manera injustificada. Visto que de la transcripción anterior se observa que la sociedad mercantil Globovisión difundió en su programación mensajes que presuntamente pudieren ser contrarios a la seguridad de la nación y presuntamente promover, hacer apología o incitar alteraciones del orden público...)

<sup>196</sup> CONATEL, Administrative (Providencia Administrativa) No. PADSR-1309, November 27, 2008. (Carabobo sabe exactamente que ocurrió el día de hoy. El Consejo Nacional Electoral tiene en sus manos el 97,75% de las actas. Tengo en mi poder todas las actas del Estado Carabobo que claramente dicen que Enrique Fernando Salas es el nuevo gobernador del Estado Carabobo. Tengo también en mi poder tres encuestas de salida, en donde señala que la distancia fue inmensa, y por eso he estado siendo respetuoso del Consejo Nacional Electoral, porque quiero guardar siempre, siempre quiero guardar el



Three days later, CONATEL opened an administrative investigation, arguing that Globovisión had aired “messages that could presumably promote, vindicate, or incite alterations of public order.”<sup>197</sup> According to the head of CONATEL’s Directorate of Social Responsibility, Salas Feo had “urged the people of Carabobo to violently take over the regional office of the National Electoral Council.”<sup>198</sup> Yet CONATEL’s decision provides no evidence that Salas Feo’s statements urged people to take over the installations, let alone do so violently. At this writing, the investigation remains open.

Three of the other four administrative investigations involve: 1) statements by the host of a political talk show who compared Chávez to Mussolini and suggested that Chávez could “end up like Mussolini, hanging with his head down”<sup>199</sup>; 2) the airing of a political

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respeto las normas, el respeto a la ley. Pero lo que nunca el pueblo carabobeño, y tampoco el pueblo venezolano va a escuchar de mi parte es aceptar una sinvergüencería en donde no hay ningún motivo para retrasar el anuncio a toda Venezuela del triunfo rotundo que hemos obtenido el día de hoy. Por esa razón yo no puedo aceptar más, yo les dije a ustedes, a perro macho lo capan una vez, y de aquí de Carabobo queremos exigir resultados al Consejo Nacional Electoral de inmediato, pero como siguen retrasando el proceso, **yo le quiero pedir a todo el pueblo carabobeño, a todos ustedes que me acompañan, para que nos vayamos a la Junta Electoral a reclamar el triunfo de Carabobo.** (...) Aquí lo que está en juego no es nada contra nadie. **Queremos simplemente que se respete la voluntad popular.** Ya los medios de comunicación de diferentes televisoras, radios, han señalado claramente que el triunfo se ha consolidado en Carabobo. **Lo único que le pedimos al Consejo Nacional Electoral es que de el boletín definitivo,** porque nopuede ser que mantengan a esta región sin un resultado, el cual todo el mundo lo sabe.)

<sup>197</sup> According to CONATEL, since Salas Feo had “invited the people to mobilize and together request that [the National Electoral Council] provide [election results]... it is possible to presume that this citizen’s statements could incite an alteration of public order.” CONATEL, Administrative Decision (Providencia Administrativa), No. PADS-R-1309, November 27, 2008..(De las referidas declaraciones se desprende que el ciudadano Enrique Salas Feo se consideraba ganador de las elecciones regionales efectuadas el pasado 23 de noviembre de 2008, para ejercer el cargo de Gobernador del Estado de Carabobo y en vista de que el Consejo Nacional Electoral no lo había declarado como tal invitó al colectivo a movilizarse y juntos exigir de ese cuerpo colegiado electoral el pronunciamiento anteriormente señalado. De este modo, **es factible presumir que las declaraciones del ciudadano pudiese existir una presunta incitación a alteración del orden público, en los términos anteriormente planteados.**)

<sup>198</sup> “CONATEL opens administrative procedure against Globovisión for inciting violence” (CONATEL abre procedimiento administrativo contra Globovisión por incitación a la violencia), *Agencia Bolivariana de Noticias*, November 27, 2008, <http://www.aporrea.org/medios/n124749.html> (accessed May 23, 2012); Ministry of the Popular Power for Communication and Information, “Globovisión seals its destiny by practicing again media terrorism” (Globovisión sentencia su destino al reincidir en la práctica del terrorismo mediático), press release, December 5, 2008, <http://minci.gob.ve/noticias/1/186744> (accessed May 23, 2012). (Pasan en vivo desde el estado Carabobo un mitin que estaba pronunciando el gobernador electo Salas Feo. Pronuncia un discurso en el cual **promueve e incita a la población a que vaya a tomar la junta regional del estado Carabobo para reclamar su triunfo.**)

<sup>199</sup> On October 13, 2008, Rafael Poleo, the host of “Aló Ciudadano,” compared Chávez to Mussolini, and stated that their trajectories were “the same,” that “Hugo will end up like Mussolini, hanging with his head facing downwards,” and that “Chávez will fall.” On October 15, Andrés Izarra, the communications minister, stated that Poleo had “asked for an assassination” and called on CONATEL to act. The following day, CONATEL opened an administrative investigation, accusing Globovisión of broadcasting messages that could “promote, vindicate, or incite the commission of crimes” or “alterations of public order.” CONATEL, Administrative Decision (Providencia Administrativa) No. PADS-R-1289, October 16, 2008. IACHR, “Democracy and Human Rights in Venezuela,” paras. 420-422. Copy on file at Human Rights Watch. (Visto que en la transmisión del programa de opinión “Aló ciudadano,” de fecha 13 de octubre de 2008, el ciudadano Rafael David Poleo

advertisement in which individuals say they will defend their private property from any effort to take it away from them<sup>200</sup>; 3) the airing of messages that could have contributed to the commission of crimes, though CONATEL has not informed Globovisión which messages or which crimes.<sup>201</sup>

The fourth investigation concerns the displaying in 2009 of text messages from viewers across the bottom of the screen mentioning the possibility of an upcoming coup d'état.<sup>202</sup>

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Isava, expresó a través de sus declaraciones, mensajes que pudiesen promover, hacer apología o incitar al delito; promover, hacer apología o incitar a alteraciones del orden público, y pueden ser contrarios a la seguridad de la nación, en los siguientes términos: "...Tu sigues la trayectoria de Benito Mussolini y la trayectoria de Chávez y es igualita, por eso yo digo, con preocupación que Hugo va a terminar como Mussolini, colgado con la cabeza pa 'bajo.... Chávez va a caer..."

<sup>200</sup> CONATEL, Administrative Decision (Providencia Administrativa) No. PADSR - 1427, July 2, 2009. Copy on file at Human Rights Watch. See description of Supreme Court ruling "Upholding Prior Censorship" for additional information on this case.

<sup>201</sup> According to information provided by Globovisión's lawyers to Human Rights Watch, CONATEL listed a series of shows in which Globovisión issued messages that could constitute crimes and stated that prosecutors were conducting criminal investigations but provided no information regarding which statements were problematic or which crimes were allegedly committed. "Summary of Globovisión cases (trials and procedures)" (Resumen Caso Globovisión (juicios y procedimientos), written report provided to Human Rights Watch by Margarita Escudero, Globovisión's lawyer, May 25, 2010.

CONATEL's resolution suspends the administrative process until prosecutors finalize their investigations. Globovisión's lawyer told Human Rights Watch that they have no information as to what precisely was said in those shows that could constitute a crime, and that they were never formally notified of any criminal investigation against the channel. Once the process is resumed, CONATEL could revoke Globovisión's license. CONATEL cites article 171 of the Organic Telecommunications Law, which establishes that it may revoke the license of a TV station that "collaborates with the commission of crimes." Article 172 states that if the license is revoked, the station would be prohibited from obtaining another one for five years. Human Rights Watch interview with Ana Cristina Nuñez, Globovisión's lawyer at the time, Caracas, February 7, 2011.

<sup>202</sup> On September 4, 2009, CONATEL opened an administrative investigation against Globovisión, arguing that a series of text messages aired during its "Good Night" show "could be inciting [people] to disregard institutions, carry out a coup d'état and generate alterations of the public order, allegedly affecting the security of the Nation." One message, for example, stated, "Urgent. Activate networks of information, possible coup d'état... Beware on Friday morning. Pass it along." Another message read, "It is necessary to go out and march and not to abandon the streets, whatever happens, and the coup against the tyrant will finally explode." In another one, the viewer urged the show to "inform about the said coup which will happen tomorrow morning." CONATEL argued that since the messages were transmitted at a time in which demonstrations were being organized, they "could be generating a climate of tension and fear in the population through messages that implicitly and explicitly allegedly refer to acts of violence and a coup d'état in the country." According to CONATEL, these messages could violate the broadcasting statute, which forbids airing messages that "generate an incentive not to comply with existing laws" or "promote, vindicate or incite the commission of crimes... , alterations of public order, or could run counter national security." CONATEL, Administrative Decision (Providencia Administrativa) No. PADSR-1477, September 4, 2009. Copy on file at Human Rights Watch. (Urgente. Activar redes de información, posible golpe de Estado... Ojo viernes a primeras horas de la madrugada. Pasalo. (Uo437). Hay que salir y marchar y no abandonar la calle, pase lo que pase y que reviente de una vez el golpe al tirano.... Buenas noches informen sobre el dicho golpe que va a hacer mañana en la madrugada. Luo a (U97747-6).... La difusión de mensajes por parte de los prestadores de servicio de televisión...se encuentran sancionados [cuando] ... Difunda mensajes que inciten al incumplimiento del ordenamiento jurídico vigente. Del mismo modo, la difusión de mensajes que promuevan, hagan apología o inciten al delito, promuevan, hagan apología o inciten a alteraciones del orden público, y puedan ser contrarios a la seguridad de la nación, se encuentran sancionados .... Ahora bien, si se analiza a la luz de los artículos precedentemente transcritos, la conducta desplegada por GLOBOVISIÓN y BUENAS NOCHES, al difundir mensajes que como los referidos...se puede observar que la misma podría infringir lo dispuesto en la Ley de Responsabilidad Social en Radio y Televisión, toda vez que los referidos mensajes podrían estar incitando al desconocimiento de las instituciones, a la realización de un golpe de estado y a la generación de alteraciones del orden

While the state has a legitimate interest in investigating genuine threats to national security or public order, as with the other investigations, CONATEL has failed to provide any updated information on the status of this investigation. To keep an investigation open for over two and half years into actions that were alleged to constitute potential incitement at the time the investigation was opened calls into question whether there was ever deemed to be any credible threat or whether the investigation was an excuse to open yet another case against a critical broadcaster.

In February 2012, Human Rights Watch asked CONATEL for updated information on the status of the six pending investigations against Globovisión, but received no response.<sup>203</sup>

### *Globovisión President Guillermo Zuloaga*

In March 2010, Globovisión's president, Guillermo Zuloaga, delivered a speech at a conference of the Inter-American Press Association in Aruba in which he criticized President Chávez for the closure of RCTV and accused him of having ordered the shooting of demonstrators prior to the 2002 coup.

During the speech, Zuloaga declared: "It is not possible to talk about true free expression when a government uses its forces to repress the media, to close media outlets like Radio Caracas Televisión after 53 years on air" or "when there are more than 2,000 mandatory presidential broadcasts...[by] a President of the Republic, using his power and authority to manipulate public opinion and to try to impose a line of thought."<sup>204</sup>

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público, atentado presuntamente contra la seguridad de la nación. Cabe destacar que los mensajes se transmitieron en un contexto en el cual se promuevan manifestaciones públicas, con lo cual se podría estar generando un clima de tensión y zozobra en la colectividad, a través de mensajes implícitos y explícitos que presuntamente aluden a actos de violencia y a la realización de un golpe de Estado en el país....)

<sup>203</sup> Letter from Joseph Saunders, deputy program director of Human Rights Watch, to Pedro Maldonado, director of CONATEL, February 28, 2012.

<sup>204</sup> Prosecutor's Office of the Bolivarian Republic of Venezuela (Ministerio Público de la República Bolivariana de Venezuela), accusation by María del Carmen Fuentes G, Prosecutor 72 of the Prosecutor's Office in the Metropolitan Area of Caracas, and Andrés Pérez Amundaraim, Prosecutor 19 (A), March 25, 2010. Copy on file at Human Rights Watch. (No se puede hablar de libertad de expresión de verdad cuando un gobierno utiliza sus fuerzas para reprimir medios, para cerrar medios como Radio Caracas Televisión después de 53 años en el aire la cierran, eso no es libertad de expresión, no se puede hablar de libertad de expresión cuando hay más de dos mil cadenas, algo así que suman más de 60 días continuos que un Presidente de la República utilizando la fuerza que tiene y la autoridad que tiene para manipular la opinión pública y para tratar de imponer una manera de pensar...).

When journalists from Venezuelan state media who were at the presentation accused him of having participated in the April 2002 coup d'état against Chávez, Zuloaga stated that Chávez had “ordered the shooting” of demonstrators prior to the coup. (Zuloaga also asserted that, at the time of the coup, the Armed Forces “had declared publicly that they had asked Chávez to resign and he had accepted,” and said that he was “against what happened at that time because if it had been done correctly, we would have a different Venezuela.”)<sup>205</sup>

Two days later, the National Assembly publicly “rejected” Zuloaga’s statements in Aruba and called for a criminal investigation, alleging the Globovisión president had made “a series of false accusations” against President Chávez.<sup>206</sup>

The Attorney General's Office immediately began investigating Zuloaga. Two days later, it obtained an arrest warrant on charges of committing “the crimes of false information and offenses against the head of state.”<sup>207</sup> Zuloaga was detained that day, and was then

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<sup>205</sup> Ibid. (Una manifestación humana, como pocas veces ha habido, que se calcula que pasaba el millón de personas a la cual el Presidente le mandó a disparar, echar plomo y terminó esa noche con el General en Jefe, primera vez que hay un General en Jefe en los últimos 50 años nombrado por el Presidente Chávez, él que declaró públicamente que le habían pedido la renuncia al Presidente Chávez el cual él había aceptado, que después hayan pasado una serie de circunstancias que hizo que él volviera es otra cosa de victoria. El Doctor Granier ni yo tampoco firmamos ese decreto el cual hace alusión donde estamos nosotros en contra de la forma que se realizó aquel momento porque si se hubiese hecho bien tuviéramos una Venezuela distinta.)

<sup>206</sup> National Assembly, “Accord to reject statements by Guillermo Zuloaga, shareholder of Globovisión, before the Inter-American Press Association” (Acuerdo en Rechazo a las Declaraciones del Ciudadano Guillermo Zuloaga, accionista de Globovisión ante la Sociedad Interamericana de Prensa (SIP)), March 23, 2010. The accord is signed by Cilia Flores, president of the National Assembly, and four others. Copy on file at Human Rights Watch. (Exhortar al Ministerio Público para que realice todas las investigaciones y actuaciones pertinentes con la finalidad de determinar las responsabilidades penales, de conformidad con el ordenamiento jurídico vigente, al ciudadano Guillermo Zuloaga, por reiterar una serie de falsas acusaciones en contra del Gobierno Constitucional y democrático del ciudadano Presidente de la República Bolivariana de Venezuela, Hugo Chávez Frías, ante la Sociedad Interamericana de Prensa (SIP).)

<sup>207</sup> Prosecutor’s Office of the Bolivarian Republic of Venezuela (Ministerio Público de la República Bolivariana de Venezuela), Document No. 01-772-126-10, March 24, 2010; Prosecutor’s Office of the Bolivarian Republic of Venezuela (Ministerio Público de la República Bolivariana de Venezuela), accusation by María del Carmen Fuentes G, Prosecutor 72 of the Prosecutor’s Office in the Metropolitan Area of Caracas, and Andrés Pérez Amundaraim, Prosecutor 19 (A), March 25, 2010; 40<sup>th</sup> First Instance Court of the Criminal Circuit of the Metropolitan Area of Caracas (Juzgado Cuadragésimo de Primera Instancia en Funciones de Control del Circuito Judicial Penal del Area Metropolitana de Caracas), decision by Jesús Alberto Villarroel Cortez on Case No. 40-S-663-10, March 25, 2010. Copies on file at Human Rights Watch. (Se evidencia que se ha cometido los delitos de Informaciones falsas y ofensas a los Jefes de Gobierno.)

Criminal Code, art. 296-A: “Anyone who, through false information disseminated via any media outlet including written press, radio, television, telephone, email or pamphlets, causes panic in the collectivity or causes fear, will be sanctioned with prison sentences of two to five years...”

Criminal Code, art. 147: “Anyone who, orally or in writing, or through any other means, offends the President of the Republic or the person who is exercising that position, will be sanctioned with prison sentences of six to 30 months if the offense were serious, or half of that if it were minor. The sentence will be tripled if the offense were public.”

granted conditional liberty, with a prohibition on leaving the country without the court's permission.<sup>208</sup>

In early June 2010, in a televised speech, President Chávez expressed outrage that Zuloaga was free, insisting that he should be imprisoned for the accusation he had made in Aruba regarding the 2002 coup. He also commented that Globovisión's president had "a bunch of cars in his house [which] is a crime"—an oblique reference to the fact that a criminal investigation had been opened in May 2009 against Zuloaga and his son, who ran an auto retail business, for allegedly obtaining illegal economic benefits by keeping 24 cars off the market in order to increase their value.<sup>209</sup>

Two days later, members of the National Guard arrived at Zuloaga's home, saying they were conducting an investigation on illegal hunting, and seized his collection of hunting trophies.<sup>210</sup> The following week a judge issued arrest warrants for Zuloaga and his son to face criminal charges for alleged irregularities in their auto retail business.<sup>211</sup> Zuloaga's

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<sup>208</sup> Decision by Judge Jesús Alberto Villarroel Cortez, Case 40-C-S-663-10, March 26, 2010. Copy on file at Human Rights Watch. Human Rights Watch email communication with Ana Cristina Nuñez, Globovisión's lawyer, March 25, 2010; Human Rights Watch interview with Perla Jaimes, Guillermo Zuloaga's lawyer, Caracas, September 1, 2011.

<sup>209</sup> "Chávez recently questioned that Globovisión's president is free" (Chávez cuestionó recientemente que el presidente de Globovisión esté en libertad), video, June 23, 2010, <http://www.globovision.com/news.php?nid=151789> (accessed February 14, 2012). (Él por cierto me acusó por ahí en un foro internacional hace poco de que yo había mandado a matar a la gente del 11 de abril. Y anda libre, ¿ves? Eso solo ocurre aquí, en Venezuela. Que vaya Zuloaga a cualquier país a decir: "No, que el presidente de aquí mandó a matar a una gente". ¿A ver que le pasa? Lo agarran de inmediato, preso. Solo aquí todavía tenemos una debilidad estructural, ¿eh?, en el sistema del Estado, que todavía eso es posible en Venezuela. Que alguien acuse a otro. No, porque no se trata del presidente, no. No. Cualquiera. Cualquiera persona, mire, que salga por ahí diciendo: "Yo acuso a Barroso, que él mandó a matar y mató a tal persona". Barroso no puede quedarse... Bueno, me están acusando de asesino. Tengo derecho a actuar legalmente. Yo en este caso no lo hago porque soy presidente. Otra cosa sería si no fuera el presidente. Yo no voy a querellarme contra un burgués, no. Pero **hay un sistema, pues. Un sistema que debería poner las cosas en su lugar. Debería, ¿eh? Y por ahí a ese señor se le agarró en su casa un bojote de carros. Eso es un delito. Acaparamiento. Y anda suelto, y tiene un canal de televisión.**)

"Guillermo Zuloaga Case, President of Globovisión. New arrest warrant. Attack against Freedom of Expression in Venezuela" (Caso Guillermo Zuloaga, Presidente de Globovisión. Nueva orden de captura. Ataque contra la Libertad de Expresión), Globovisión urgent communication, June 12, 2010; Public Ministry of the Bolivarian Republic of Venezuela (Ministerio Público de la República Bolivariana de Venezuela), Citation (Boleta de Citación), May 28, 2009; Letter to Guillermo Zuloaga from Daniel Jesús Medina Sarmiento, 76<sup>th</sup> prosecutor of the public ministry at the national level to investigate cases of corruption, banks, and capital markets (Fiscal Septuagésimo Tercero del Ministerio Público a Nivel Nacional con Competencia en Materia Contra Corrupción, Bancos, Seguros y Mercado de Capitales), July 14, 2009. Copies on file at Human Rights Watch.

<sup>210</sup> Human Rights Watch interview with Ana Cristina Nuñez, Globovisión's lawyer at the time, Caracas, February 7, 2011; Human Rights Watch interview with Ricardo Antela, Globovisión's lawyer, Caracas, September 1, 2011.

<sup>211</sup> By the end of the month, prosecutors had formally charged Zuloaga and his son with "generic usury" (usura genérica) and conspiracy (agavillamiento) in the case related to their car sales business. 13<sup>th</sup> Court of Control of the First Criminal Court of the Metropolitan Area of Caracas (Juzgado Décimo Tercero en Funciones de Control del Tribunal de Primera Instancia en lo Penal de la Circunscripción Judicial del Área Metropolitana de Caracas), Notice (Boleta de Notificación), June 11, 2010.

lawyers maintain that the investigation had been stalled for months, and there was no new evidence that justified the arrest warrant.<sup>212</sup>

On the day the warrant was issued, Zuloaga and his son fled to the United States, where they now reside. At this writing, the case against Zuloaga for alleged irregularities in his car sales business, as well as the criminal investigations of his statements in Aruba and the alleged violation of environmental laws, remain open.

### *Globovisión Owner Nelson Mezerhane*

In December 2009, Nelson Mezerhane, one of the principal owners of Globovisión and owner of a private bank, gave an interview to a business newspaper in which he praised the work of Chávez's economy ministers but claimed that individuals "linked to the government" had spread rumors that provoked withdrawals of savings from Venezuelan banks.<sup>213</sup>

The interview was published at a time when the Chávez administration was nationalizing banks with the purported aim of guaranteeing Venezuelans access to their savings in bank accounts.<sup>214</sup>

Two days after Mezerhane's interview was published, President Chávez denounced him in a televised speech for making "extremely serious and irresponsible" statements, and said

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<sup>212</sup> Human Rights Watch interview with Ana Cristina Nuñez, Globovisión's lawyer at the time, Caracas, February 7, 2011; "Guillermo Zuloaga Case, President of Globovisión. New arrest warrant. Attack against Freedom of Expression in Venezuela;" Documentation presented by Perla Janice Jaimes Jorge, Jenny Ambasco Soto and Osmil Tamara Salas, Zuloaga's lawyers, before the Supreme Court of Justice of Venezuela, July 21, 2010. Copies on file at Human Rights Watch.

<sup>213</sup> Mezerhane Gosen, "The Political and Judicial Persecution of Nelson Mezerhane Gosen, Globovisión, and the Federal Bank – File 961" (La Persecución Política y Judicial de Nelson Mezerhane Gosen, Globovisión y el Banco Federal – El Expediente 961," [http://www.uru.org/papers/DDHH/DDHH\\_2010\\_varios/CIDH\\_expediente961\\_NMezerhane.pdf](http://www.uru.org/papers/DDHH/DDHH_2010_varios/CIDH_expediente961_NMezerhane.pdf) (accessed May 23, 2012), pp. 7-8; "The Federal Bank resisted the minicrisis in superb fashion" (El Banco Federal resistió la minicrisis de manera estupenda), *El Mundo, Economía y Negocios*, December 17, 2009, <http://www.entornointeligente.com/resumen/resumen.php?items=994937> (accessed May 23, 2012). **(No puedo decir que es el gobierno. Hay personas que están vinculadas que han hecho su trabajo.** Hay laboratorios activos que han creado rumores y los bancos son casas de confianza. En la medida que te empiezan a crear rumores es comprensible que la gente diga "aquí está pasando esto" y "a aquél otro banco le pasó", entonces "a mi me puede pasar". Es una cosa por demás natural. (...) **El Banco Central y los ministros de la Economía que han trabajado el tema lo han hecho con mucha seriedad.** Creo que están viendo el problema del comportamiento de todo el sistema con bastante agudeza, con mucha preocupación, para que no se contaminen las cosas, pero esos laboratorios sucios y personajes que siembran odio y malestar por intereses o razones desconocidas crean problemas, sin duda que los crean.)

<sup>214</sup> "Chávez: Mandatory broadcast December 2, 2009, Banking Crisis" (Chávez: Cadena nacional 02/12/2009 Crisis Bancaria), YouTube video, posted by "Politemario," December 3, 2009, <http://www.youtube.com/watch?v=b29j3ffHJ8s> (accessed May 23, 2012).

he would ask the attorney general “to open a formal investigation.”<sup>215</sup> In another televised speech several days later, the president said “those excesses cannot be permitted” and denounced Mezerhane once again, this time identifying him as an owner of a powerful “opposition channel” and stating:

[I]f he is going to get into politics, then get into politics. As for the bank, give it to me, to the State, sir, and you [Mezerhane] go into politics. I will not allow it. And the same thing happens with the media. If a television station crosses the line again, violating the laws, lacking respect for society, the State, or institutions, it cannot, it should not remain open.<sup>216</sup>

Two days later, at President Chávez’s behest, the Attorney General’s Office opened a criminal investigation of Mezerhane.<sup>217</sup> Six months later, it seized several of Mezerhane’s assets, including his home, personal belongings, and his Globovisión shares, while the office in charge of overseeing banks and institutions of the financial sector (called the Superintendencia de las Instituciones del Sector Bancario, SUDEBAN) ordered a takeover

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<sup>215</sup> “Chávez to Mezerhane” (Chávez a Mezerhane), YouTube video, posted by “Noticias24venez,” December 19, 2009, <http://www.youtube.com/watch?NR=1&v=3NzzmVGtqIs> (accessed May 23, 2012). (Yo voy a llamar a la Fiscal más tarde para **pedirle que ella abra un proceso de investigación** en torno a estas declaraciones. **Yo las considero sumamente graves, irresponsables**, y sobre todo que vienen de boca del presidente de un banco, que ha tenido problemas graves, por cierto. Ha tenido problemas graves y aquí se acabó el tiempo aquél en que venían instituciones públicas a auxiliar bancos privados como el Federal.)

<sup>216</sup> “Chávez to Globovisión” (Chávez a Globovisión), YouTube video posted by “Noticias24venez,” December 21, 2009, [http://www.youtube.com/watch?v=QB7N\\_ii5oQs](http://www.youtube.com/watch?v=QB7N_ii5oQs) (accessed June 15, 2012). **([N]o se pueden permitir esos excesos.** En un país serio no puede permitirse eso. (...) Uno de los puntos claves [es que hay] una oposición que está secuestrada por uno o dos medios de comunicación pero que tienen mucho poder. Uno de esos canales por cierto, propiedad de uno de estos banqueros, de este banquero que salió diciendo lo que dijo, y que tendrá que aclararlo ante los órganos competentes. Pero yo no puedo permitir que siga habiendo banqueros en Venezuela, Eh? **Si se va a meter a político, que se meta a político y entonces el Banco demelo pa’ ca, bueno, pa’l Estado pues señor, y usted vaya pa’ la política. Yo no lo voy a permitir. Y lo mismo pasa con los medios de comunicación. Televisora que vuelva a pasar la raya a la violación de las leyes, al irrespeto a la sociedad, al Estado, a las instituciones, no puede, no debe seguir abierta.** No puede, no podemos permitirlo, una locura. Porque lo que ellos quieren es incendiar la pradera. Yo llamo a todos los entes correspondientes a que actúen.)

<sup>217</sup> Attorney General’s Office, “Public Ministry opens investigation for alleged financial destabilization” (Ministerio Público inicia investigación por presunta desestabilización financiera), press release, December 21, 2009, <http://www.aporrea.org/contraloria/n147542.html> (accessed May 23, 2012); “An investigation is opened for allegedly destabilizing the financial system” (Inician investigación por presunta desestabilización financiera), *Radio Nacional de Venezuela*, December 22, 2009, <http://www.rnv.gob.ve/noticias/index.php?act=ST&f=27&t=115982&hl=&s=3df816c14f5ea07ae522a282155f2f45> (accessed May 23, 2012).

of his bank, alleging it had failed to comply with applicable banking laws.<sup>218</sup> The Attorney General's Office also forbade Mezerhane from leaving the country, but, according to his lawyer, he was abroad at the time and never returned.<sup>219</sup> In July, prosecutors charged Mezerhane with several banking crimes, including conspiracy, providing false financial information, and fraudulent mishandling of public funds.<sup>220</sup>

A day after the attorney general announced that Mezerhane had been charged with crimes, Chávez denounced Globovisión for its coverage of the bank takeover, declaring that government would not allow a TV channel to “light the country on fire.” Referring to Globovisión’s “fugitive owners,” the president said the station was “trying to destabilize the country but we will not permit it” and announced: “I will wait a little bit to see if Globovisión’s owners appear, it is necessary to wait and see if they appear, because they are on the run. We’ll have to think about what will happen to this channel.”<sup>221</sup> In another televised speech several weeks later, he stated: “We now hold 25.8 percent of [Globovisión’s] shares, and that gives the right to the holder to appoint a member to the Board of Directors.”<sup>222</sup>

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<sup>218</sup> Human Rights Watch interview with Magaly Vázquez, Nelson Mezerhane’s lawyer, Caracas, August 31, 2011; Juan Reardon, “Attorney General Accuses INTERPOL of ‘Meddling’ in Venezuelan Internal Affairs,” February 25, 2011, *Venezuelanalysis.com*, <http://venezuelanalysis.com/news/6027> (accessed May 23, 2012).

<sup>219</sup> Human Rights Watch written communication with Magaly Vázquez, Nelson Mezerhane’s lawyer, May 6, 2012.

<sup>220</sup> “Prosecutors ask for arrest warrant against Nelson Mezerhane” (Fiscalía solicitó orden de aprehensión contra Nelson Mezerhane), *Agencia Venezolana de Noticias*, July 1, 2010, <http://www.avn.info.ve/contenido/fiscal%C3%ADa-solicit%C3%B3-orden-aprehensi%C3%B3n-contra-nelson-mezerhane> (accessed May 23, 2012); Supreme Court of Justice of Venezuela, File No. 2010-269, August 26, 2010, <http://www.tsj.gov.ve/decisiones/scp/agosto/396-26810-2010-e10-269.html> (accessed May 23, 2012).

<sup>221</sup> “Chávez: We cannot allow a TV channel to turn the country on fire” (Chávez: no podemos permitir que un canal de televisión incendie el país), *Agencia Venezolana de Noticias*, July 2, 2010, [http://www.avn.info.ve/node/3102?guicktabs\\_5=2](http://www.avn.info.ve/node/3102?guicktabs_5=2) (accessed May 23, 2012). (“Los que están al frente de **Globovisión**, cumpliendo instrucciones de sus **dueños prófugos, están tratando de desestabilizar al país, pero no lo vamos a permitir**, acúsenme de lo que me acusen (...) nosotros estamos obligados a hacer cumplir las leyes,” dijo Chávez. Chávez recordó que de las más de 200 empresas de las que es dueño Nelson Mezerhane, muchas son sólo de maletín, pero “hay otras que sí tienen activos, como Globovisión; **yo voy a esperar un tiempito a ver si aparecen los dueños de Globovisión, hay que esperar a ver si aparecen, porque andan huyendo. Habrá que pensar qué va a pasar con ese canal.**”)

<sup>222</sup> “Globovisión’s board will have a government representative, 48.5% will be state-owned” (Globovisión tendrá un representante del Gobierno, 48.5% será del Estado), YouTube video, posted by “silveratto,” July 20, 2010, <http://www.youtube.com/watch?v=PWp2PQ6iKUQ> (accessed May 23, 2012). (Ahora tenemos nosotros 25.8% de las acciones y eso da derecho al que la tenga, a nombrar un representante en la Junta Directiva.)



In August 2010, the Supreme Court authorized prosecutors to seek Mezerhane's extradition from the United States.<sup>223</sup> In February 2011, Interpol removed Mezerhane from its list of "red notice" alerts, arguing that several cases from Venezuela (including this one) were related to political persecutions. Attorney General Ortega Díaz criticized the decision as favoring impunity and constituting "meddling" in Venezuelan internal affairs.<sup>224</sup>

### *Globovisión Commentator Oswaldo Álvarez Paz*

On March 8, 2010, Oswaldo Álvarez Paz, an opposition politician and former governor of Zulia state, appeared on Globovisión's main political talk show, "Aló Ciudadano," and commented on allegations that had been made stating the Chávez government had a relationship with "terrorist" groups and had failed to contain drug trafficking in Venezuela.

During the show, the hosts read statements by Spanish President Rodríguez Zapatero in a radio interview regarding a recent Spanish court ruling that refers to "indications of collaboration between ETA, FARC, and the Venezuelan government." Zapatero said he would seek Venezuelan government cooperation with these investigations.<sup>225</sup> When asked his opinion, Álvarez Paz stated that the Spanish judicial ruling "provided legal basis" for suspicions "that something very serious is happening in terms of the Venezuelan government's relations not only with ETA, [but also] with the FARC, with other subversive and terrorist movements of the world."<sup>226</sup> He also said that if he were president, he would

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<sup>223</sup> Supreme Court of Justice of Venezuela, File No. 2010-269, August 26, 2010, <http://www.tsj.gov.ve/decisiones/scp/agosto/396-26810-2010-e10-269.html> (accessed May 23, 2012).

<sup>224</sup> Juan Reardon, "Attorney General Accuses INTERPOL of 'Meddling' in Venezuelan Internal Affairs."

<sup>225</sup> "Hello Citizen" (Aló Ciudadano), transcript, March 8, 2010. Copy on file at Human Rights Watch. (Hasta en dos ocasiones se ha referido Zapatero a las acusaciones del líder de Mariano Rajoy de dejar a la deriva al juez Eloy Velasco después que este emitiera un auto en el que veía indicios de colaboración entre ETA y las FARC y el gobierno venezolano. Exijo respeto para las instituciones judiciales y también para el ex Presidente del Gobierno José María Aznar, contra lo que cargó el Ministro Venezolano de Exteriores Nicolás Maduro. No considero razonables las críticas del juez Velasco por parte del Ministro de Exteriores venezolano ha sostenido Zapatero, quien ha anunciado que pedirá la colaboración del gobierno de Caracas que ha desmentido su relación con ETA y expresado su condena a los actos terroristas.)

<sup>226</sup> *Ibid.* (El hecho cierto es que le guste al gobierno venezolano o no, hay tres temas por los cuales la comunidad internacional tiene los ojos puestos sobre Venezuela, que son el tema del terrorismo y el ejemplo pues lo pongo por la investigación, el auto de proceder de la audiencia española, que le da el soporte jurídico y procesal a muchas viejas sospechas y a nuevas convicciones de que algo muy serio está pasando en cuanto a las relaciones del régimen venezolano, no solamente con la ETA, con las FARC, con otros movimientos subversivos y terroristas del mundo y del planeta, que en este caso específico la Audiencia Nacional de España ha concretado jurídica y procesalmente en el caso de ETA, FARC, con colaboración del gobierno venezolano.)

fully cooperate with the Spanish investigation, “no matter who fell” even if it meant that “the one who falls is the head of state.”<sup>227</sup>

During the interview, Álvarez Paz also said that Chávez was “not a democrat” and that he had a “subversive personality.”<sup>228</sup> And when the host read a news article reporting that drug traffickers had been attempting to purchase airplanes in Venezuela, Álvarez Paz said that the article confirmed that “Venezuela had turned into a center of operations that facilitates the business of drug trafficking.”<sup>229</sup>

The next day, President Chávez reacted by stating in a mandatory presidential broadcast that Álvarez Paz’s statements were “very grave,” “could not be permitted,” and constituted “a crime that is subject to prison sentences.” He urged other branches of government to “take action.”<sup>230</sup> That same day, two legislators from Chávez’s political party filed a criminal complaint with the Attorney General’s Office.<sup>231</sup>

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<sup>227</sup> Id. ([S]i yo fuera Chávez, si yo estuviera en el gobierno y me veo en esta coyuntura, le daría toda la cooperación del mundo, caiga quien caiga, lo que pasa es que cuando uno dice caiga quien caiga, el que puede caer es el propio Jefe del Estado ¿no?).

<sup>228</sup> Id. ([Y]o cada día reafirmo más mi convicción de que el actual Presidente de la República de Venezuela no es un demócrata, es un hombre de personalidad subversiva, de espíritu subversivo que no es capaz de entender las normas más elementales de la vida ciudadana y de la convivencia internacional, ni siquiera aquellas que sin estar escritas, se derivan del sentido común y de los intereses pues del pueblo que él tiene la obligación de bien representar.)

<sup>229</sup> Id. (Venezuela se ha convertido en un centro de operaciones que facilita las actividades del narcotráfico, es más, yo cada día me convenzo de que detrás de la confiscación que le hicieron a los gobernadores y a los alcaldes, de todos los puertos y aeropuertos comerciales de Venezuela, está la mano del narcotráfico metida, porque no les interesa que haya ojos observadores que podrían controlar, neutralizar o denunciar a esas estructuras que ahora operan con absoluta libertad.)

<sup>230</sup> “Chávez: It is necessary to act against Noticiero Digital (and Globovisión)” (Chávez: Hay que actuar contra Noticiero Digital (y Globovisión)), YouTube video, posted by “cadsvm,” March 13, 2010, <http://www.youtube.com/watch?v=3fokCyUZhHI&NR=1> (accessed May 24, 2012). **(Eso es muy grave, eso no se puede permitir!** Bueno, yo no puedo meter preso a nadie, ahí están los poderes del Estado que tienen que actuar, y el pueblo mismo que tiene que actuar! Tiene que actuar! Porque ya basta. Miren, no es por mí, no, no, en este caso es por la Fuerza Armada. Porque sea quien sea él que lo diga, él debe, debe presentar las pruebas, verdad, de lo que está diciendo. Una cosa temeraria como esa. Bueno, **yo espero que actúen los órganos correspondientes de los poderes del Estado**, ahora, tanto el que lo dice como el que lo deja decir y desarrollar. Porque ellos **saben que están cometiendo un delito, que es penado con cárcel en cualquier parte del mundo!**)

<sup>231</sup> Attorney General’s Office, “Public Ministry obtains a two year sentence against Oswaldo Álvarez Paz for [disseminating] false information” (MP logró condena de 2 años para Oswaldo Álvarez Paz por información falsa), press release, July 13, 2011, [http://www.ministeriopublico.gob.ve/web/guest/contra-la-corrupcion?p\\_p\\_id=101\\_INSTANCE\\_DmE8&p\\_p\\_lifecycle=o&p\\_p\\_state=maximized&p\\_p\\_mode=view&p\\_p\\_col\\_id=column-2&p\\_p\\_col\\_pos=1&p\\_p\\_col\\_count=2&\\_101\\_INSTANCE\\_DmE8\\_struts\\_action=%2Fasset\\_publisher%2Fview\\_content&\\_101\\_INSTANCE\\_DmE8\\_urlTitle=mp-logro-condena-de-2-anos-para-oswaldo-alvarez-paz-por-difusion-de-informacion-falsa&\\_101\\_INSTANCE\\_DmE8\\_type=content&redirect=%2Fweb%2Fguest%2Fcontra-la-corrupcion](http://www.ministeriopublico.gob.ve/web/guest/contra-la-corrupcion?p_p_id=101_INSTANCE_DmE8&p_p_lifecycle=o&p_p_state=maximized&p_p_mode=view&p_p_col_id=column-2&p_p_col_pos=1&p_p_col_count=2&_101_INSTANCE_DmE8_struts_action=%2Fasset_publisher%2Fview_content&_101_INSTANCE_DmE8_urlTitle=mp-logro-condena-de-2-anos-para-oswaldo-alvarez-paz-por-difusion-de-informacion-falsa&_101_INSTANCE_DmE8_type=content&redirect=%2Fweb%2Fguest%2Fcontra-la-corrupcion) (accessed May 5, 2012).

Two weeks later, Álvarez Paz was arrested. On March 19, a prosecutor accused Álvarez Paz of conspiracy, public incitement, and disseminating false information.<sup>232</sup> A judge subsequently ordered his pretrial detention, arguing that the dissemination on TV of his “evidently false statements... is so grave and irresponsible that it may, and does effectively cause... an unfounded fear” in the Venezuelan people.<sup>233</sup>

Álvarez Paz remained in pretrial detention for almost two months. In May 2010, after prosecutors dropped the conspiracy charge, a judge granted him conditional liberty, ordering him to present himself before the court every 15 days, remain in the country, and refrain from publicly commenting on the case.<sup>234</sup>

In July 2011, a court found Álvarez Paz guilty of disseminating false information. Citing jurisprudence from the Venezuelan Supreme Court that says that crimes related to drug

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<sup>232</sup> Public Ministry of the Bolivarian Republic of Venezuela, accusation by Gineira Jakima Rodríguez Urbina, public prosecutor, on Case F21NN-008-2010, March 22, 2010. Copy on file at Human Rights Watch.

Criminal Code, art. 132: “Anyone who conspires to destroy the Republican government of the nation will be sanctioned with prison sentences of eight to sixteen years...”

Criminal Code, art. 285: “Anyone who incites [others to] disobey the law or hatred among its inhabitants or vindication of acts that the law considers crimes, placing public tranquility at risk, will be sanctioned with prison sentences of three to six years.”

Criminal Code, art. 296-A: “Anyone who, through false information disseminated through any media outlet including written press, radio, television, telephone, email or pamphlets, causes panic in the collectivity or causes fear, will be sanctioned with prison sentences of two to five years.”

Under Venezuelan law, if someone is accused of a crime that could lead to a prison sentence of more than 10 years, the judge should presume that there is risk of flight. Code of Criminal Procedures, art. 251.

<sup>233</sup> According to the judge, Álvarez Paz’s statements led to “incitement to disobey the laws and ... lack of respect for our institutions.... undermining them and consequently generating with his positions the possibility of failing to abide by the legal and constitutional requests of our government entities, which... puts public tranquility at risk.” Decision by Judge Rafael Osío, 25<sup>th</sup> First Instance Court in the Criminal Circuit of the Metropolitan Area of Caracas (Juzgado Vigésimo Quinto de Primera Instancia en Funciones de Control del Circuito Judicial Penal del Área Metropolitana de Caracas), File 620-10, March 22, 2010. Copy on file at Human Rights Watch. ([E]l eco de este tipo de irresponsables e infundados comentarios propicia situaciones en el plano internacional que siempre pueden generar una puesta en peligro de la salud social colectiva, toda vez que utilizando el espacio televisivo *Aló Ciudadano*, transmitido por Globovisión (canal de televisión con cobertura en el territorio nacional) asumió la vocería y difusión de informaciones evidentemente falsas, capaces de causar zozobra o pánico colectivo, toda vez que las referencias, conceptos y deformadas informaciones transmitidas por este ciudadano al afirmar que nuestras instituciones gubernamentales y nuestros poderes públicos constituidos, son cómplices y operarios del narcotráfico internacional y el terrorismo, **es tan grave e irresponsable que puede y efectivamente causa como puede evidenciarse un infundado temor en nuestro colectivo.**)

<sup>234</sup> Accusation by Gineira Jakima Rodríguez Urbina, public prosecutor (Fiscal Vigésima Primera a Nivel Nacional con Competencia Plena), File N-FMP-F21NN-0264-2010, May 6, 2010; Decision by Judge Rafael Osío Tovar, File 25-620-10, May 13, 2010; Decision by Judge Jesus Orangel García, Judge Moraima Carolina Vargas J., and Judge Carmen Mireya Tellechea, File 237-10/Case S5-10-2704, July 21, 2010. Copies on file at Human Rights Watch. Human Rights Watch interview with Juan Carlos Álvarez Paz, son of Oswaldo Álvarez Paz and part of his defense team, Caracas, February 8, 2011; Human Rights Watch email communication with Juan Carlos Álvarez Paz, March 25, 2011.

trafficking are crimes against humanity, the judge concluded that Álvarez Paz’s statements had generated “anguish in the people that results in a natural condition of extreme preoccupation and... anxiety.”<sup>235</sup> (According to international law, a false allegation of government complicity in drug trafficking would not constitute a “crime against humanity.”)<sup>236</sup>

The judge sentenced Álvarez Paz to two years in prison, but allowed him to serve his sentence in conditional liberty, with a prohibition on leaving the country without judicial authorization.<sup>237</sup> As of May 2012, an appeal presented by Álvarez Paz against the conviction remained pending.<sup>238</sup>

### *Tu Imagen TV*

In November 2010, the pro-Chávez mayor of a municipality in Miranda state, José Ramírez, wrote to the cable company Tele Red, calling on it to stop broadcasting Tu Imagen TV, a local cable channel that was critical of the municipal government.

Ramírez accused the channel of having been “systematically biased in favor of the political opposition,” and having aired “distorted messages against the municipality’s government.” The only example provided in the letter was an interview with a member of Ramírez’s family (with whom he had “personal differences”) who had made “pompous allegations that were offensive to human dignity and my position as mayor.”<sup>239</sup> He provided no information on the content of the comments.

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<sup>235</sup> Decision by Judge Alberto J. Rossi Palencia, File No. 21J-552-10, September 19, 2011. Copy on file at Human Rights Watch. ([P]or lo que ante el razonamiento derivado del concepto de lesa humanidad que implica una grave y sistemática violación de los derechos humanos del pueblo venezolano, no puede desconocer este juzgador, con base en la sana crítica y bajo los principios de la lógica, que un señalamiento directo y a través de un medio de comunicación en transmisión de señal abierta, del régimen político de nuestro país, como relacionado con el narcotráfico, compromete la perspectiva de angustia del colectivo derivando en una natural condición de preocupación extrema y mantenimiento en zozobra en los términos exigidos por la norma jurídica.)

<sup>236</sup> Rome Statute of the International Criminal Court, art. 7.

<sup>237</sup> Human Rights Watch email communication with Juan Carlos Álvarez Paz, July 14, 2011. The ruling came out in September 2011. Decision by Judge Alberto J. Rossi Palencia, File No. 21J-552-10, September 19, 2011.

<sup>238</sup> Human Rights Watch email communication with Juan Carlos Álvarez Paz, May 5, 2012.

<sup>239</sup> Letter from José Ramírez, mayor, to José Manuel Angarita, president of Tele Red, November 16, 2010. Copy on file at Human Rights Watch. (Hoy se ha llegado a lo intolerable, cuando sus conductores recogen imágenes en la comunidad Ciudad Miranda, mediante la cual logran entrevistar a una ciudadana que pese a ser de mi vínculo familiar, mantenemos “diferencias personales en el seno de esa relación doméstica” y tras señalar acusaciones altisonantes y ofensivas a la dignidad humana y mi investidura como alcalde, los directivos de ese canal-67, están transmitiendo dichas imágenes con

Claiming he was exercising his “rights to ensure the government and the Bolivarian Revolution are respected,”<sup>240</sup> Ramírez sent a copy of the letter to CONATEL, which subsequently ordered Tele Red to suspend Tu Imagen TV’s broadcasts indefinitely. The reason CONATEL provided for the order was that the channel and the cable company—which had operated under an oral contract for eight years—had failed to comply with 2009 regulations that required a written contract between the parties.<sup>241</sup>

The following month, Tu Imagen TV and Tele Red presented a signed contract to CONATEL.<sup>242</sup> But the telecommunications authority waited eight months before authorizing the cable company to renew broadcasting of the channel. In addition, according to Douglas Abreu, Tu Imagen TV’s general director, a senior CONATEL official warned Tele Red that that the channel would be removed from cable once again if it produced programs criticizing the government. Abreu told Human Rights Watch, “We’re back on the air, but working under pressure.”<sup>243</sup>

### *Censoring Satire*

On August 20, 2011, the weekly newspaper *6to Poder* published a satirical article that presented six high level female government authorities—including Attorney General Luisa Ortega Díaz and Supreme Court President Luisa Estella Morales Lamuño—as performers in a cabaret entitled “The Revolution,” directed by “Mr. Chávez.”<sup>244</sup> The article—which also provided information on the women’s actual jobs, academic training, and professional backgrounds—described their close relationship with “Mr. Chávez” and suggested that

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un “corte de campaña en micros” y en horarios supervisados que contravienen abiertamente las limitantes contempladas en la Ley de Responsabilidad en Radio y Televisión.)

<sup>240</sup> Ibid. (No me queda otra opción como alcalde de la ciudad, de apelar a los derechos que me asisten para hacer respetar al gobierno y a la Revolución Bolivariana.)

<sup>241</sup> Information provided by the nongovernmental organization Public Space (Espacio Público) to Catalina Botero, OAS Special Rapporteur for Freedom of Expression and Information, July 15, 2011; CONATEL, “Document signed after inspection to the National Audiovisual Producer Tu Imagen TV in Charallave, State of Miranda” (Acta de Inspección al Productor Nacional Audiovisual Producciones Tu Imagen TV en la Población Charallave, Estado de Miranda), March 28, 2011.

<sup>242</sup> Contract signed by Douglas Javier Abreu Zarate, Tu Imagen TV, and Paulina Sandoval, Representaciones Inversat SA (Tele Red), received by CONATEL on April 8, 2011.

<sup>243</sup> Human Rights Watch telephone interviews with Douglas Abreu, president of Tu Imagen, April 4 and May 10, 2012.

<sup>244</sup> The other four were Blanca Rosa Eekhout Gómez, a legislator; Tibisay Lucena Ramírez, the president of the National Electoral Council; Gabriela Ramírez, the ombudsperson, and Adelina González, the comptroller general.

they do President Chávez's bidding. Accompanying the article was a photomontage in which the officials' faces were superimposed upon the image of a cabaret troupe.<sup>245</sup>

The day the article appeared, the six officials called for a criminal investigation and for the paper to be closed down.<sup>246</sup> Within hours, a prosecutor sought—and a judge delivered—an arrest warrant for the paper's director, Dinora Girón, and its president, Leocenis García, on charges of “instigation of public hatred.”<sup>247</sup>

Girón was arrested the following day by members of the Bolivarian Intelligence Service, an intelligence police that reports to the Ministry of Justice and Interior, and charged with the crimes of insult, instigation of hatred, and public offense based on gender.<sup>248</sup> She was granted conditional liberty two days later, with orders to appear before judicial authorities every 15 days and a prohibition on commenting publicly on her case.<sup>249</sup>

García went into hiding but turned himself in on August 30.<sup>250</sup> He was formally charged with insult, instigation of public hatred, and public offense based on gender, and imprisoned for two months. He was granted conditional liberty only after he conducted a

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<sup>245</sup> “The Powerful Women of the Beautiful Revolution” (Las Poderosas de la Revolución Bonita), *6to Poder*, August 21, 2011. Copy on file at Human Rights Watch.

<sup>246</sup> “Women call for investigation of the weekly paper *6to Poder* for inciting symbolic violence” (Mujeres exigieron investigar al semanario *6to Poder* por promover violencia simbólica), *Agencia Venezolana de Noticias*, August 21, 2011, <http://www.avn.info.ve/node/73502> (accessed May 23, 2012); “Measures against the weekly paper *6to Poder* for gender violence are being considered” (Evalúan medidas contra el semanario *6to Poder* por agresión de género), *Agencia Venezolana de Noticias*, August 21, 2011, <http://www.avn.info.ve/contenido/eval%C3%BAan-medidas-contra-semanario-6to-poder-agresi%C3%B3n-g%C3%A9nero> (accessed May 23, 2012); “March in defense of the role of women in national life” (Marchan en defensa y reivindicación del rol de la mujer en la vida nacional), *Agencia Venezolana de Noticias*, August 21, 2011, <http://www.avn.info.ve/contenido/marchan-defensa-y-reivindicaci%C3%B3n-del-rol-mujer-vida-nacional> (accessed May 23, 2012).

<sup>247</sup> Letter from Emylce Ramos Julio, 37th prosecutor of the Public Ministry (fiscal trigésima séptima del Ministerio Público a Nivel Nacional con Competencia Plena), to the First Instance Criminal Judge on call in Caracas (Juez de Guardia de Primera Instancia en lo Penal en Funciones de Control del Circuito Judicial Penal del Área Metropolitana de Caracas), Case F.37NN.0565.2011; Decision by Judge Denise Bocanegra D., File 15.386-11, August 20, 2011; Ninth First Instance Criminal Court of Caracas (Juzgado Noveno de Primera Instancia en función de Control del Circuito Judicial Penal de la Circunscripción Judicial del Área Metropolitana de Caracas), Notice (Boleta de Notificación), File 15.386-11, August 20, 2011. Copies on file at Human Rights Watch.

<sup>248</sup> Girón was accused of “vilipendio,” “instigación al odio,” and “violencia de género.” Human Rights Watch interview with Elenis Rodríguez Martínez, president of FUNDECI, and Rigoberto Quintero Azuaje, member of board of directors of FUNDECI, Caracas, March 22, 2012. FUNDECI is providing legal assistance to Girón in this case.

<sup>249</sup> *Ibid.*

<sup>250</sup> Decision by Judge Denisse Bocanegra Díaz, File No. 15.386-11, September 1, 2011. Copy on file at Human Rights Watch. “Leocenis García,” YouTube video, posted by “n24fuenteno,” August 30, 2011, <https://www.youtube.com/watch?v=bMCEs1E3KKQ> (accessed May 21, 2012).

12-day hunger strike to protest his imprisonment.<sup>251</sup> The court forbade him from leaving the country, discussing his case with the media, and participating in public demonstrations.<sup>252</sup>

At this writing, both Girón and García remain under criminal investigation awaiting trial. Their lawyers advised Human Rights Watch that the pretrial preliminary hearing required by law had been repeatedly suspended in both cases because prosecutors have not attended the hearings.<sup>253</sup>

When issuing the arrest warrants, the judge also ordered *6to Poder* to suspend all further distribution of its paper.<sup>254</sup> A week later, the court lifted the ban but ordered *6to Poder* to avoid publishing material, either in text or photographs, that constitutes “an offense and/or insult to the reputation, or to the decorum, of any representative of public authorities, and whose objective is to expose them to public disdain or hatred,” as well as any “humiliating and offensive content against the female gender.” It also ordered *6to Poder* to ensure that no copies of the paper with the satirical piece remained available to the public.<sup>255</sup>

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<sup>251</sup> The crimes for which he was charged were: “vilipendio contra funcionario público,” “instigación al odio público,” and “ofensa pública por razones de género.” Accusation by Emylce Ramos Julio, 37th prosecutor of the Public Ministry (fiscal trigésima séptima del Ministerio Público a Nivel Nacional con Competencia Plena), Case 00-F37-0015-11, October 14, 2011. Copy on file at Human Rights Watch.

<sup>252</sup> “Journalist Leocenis García begins indefinite hunger strike” (Periodista Leocenis García empieza huelga de hambre indefinida), video, undated, [http://www.dailymotion.com/video/xid3it\\_periodista-leocenis-garcia-empieza-huelga-de-hambre-indefini\\_news](http://www.dailymotion.com/video/xid3it_periodista-leocenis-garcia-empieza-huelga-de-hambre-indefini_news) (accessed May 21, 2012); “Leocenis García is on hunger strike” (Leocenis García se declara en huelga de hambre), *Últimas Noticias*, November 9, 2011, <http://www.ultimasnoticias.com.ve/noticias/actualidad/politica/leocenis-garcia-se-declaro-en-huelga-de-hambre.aspx> (accessed May 21, 2012); “Leocenis García in conditional liberty” (Leocenis García en libertad condicional), video, *Lapatilla*, November 21, 2011, <http://www.lapatilla.com/site/2011/11/21/otorgan-medida-cautelar-a-leocenis-garcia/> (accessed May 21, 2012).

<sup>253</sup> Human Rights Watch interview with Elenis Rodríguez Martínez, president of FUNDECI, and Rigoberto Quintero Azuaje, member of board of directors of FUNDECI, Caracas, March 22, 2012; Human Rights Watch interview with Pedro Aranguren, Leocenis García's lawyer, Caracas, March 20, 2012.

<sup>254</sup> Decision by Judge Denise Bocanegra D., File 15.386-11, August 20, 2011; Ninth First Instance Criminal Court of Caracas (Juzgado Noveno de Primera Instancia en función de Control del Circuito Judicial Penal de la Circunscripción Judicial del Área Metropolitana de Caracas), Notice (Boleta de Notificación), File 15.386-11, August 20, 2011. Copies on file at Human Rights Watch.

<sup>255</sup> Ninth First Instance Criminal Court of Caracas (Juzgado Noveno de Primera Instancia en función de Control del Circuito Judicial Penal de la Circunscripción Judicial del Área Metropolitana de Caracas), Notice (Boleta de Notificación), File 15.386-11, August 29, 2011. Copy on file at Human Rights Watch. (Se autoriza la edición y distribución en los términos siguientes: 1. Se prohíbe al Semanario 6to Poder la publicación por cualquier medio de contenidos gráficos o textuales que se constituyan en una ofensa y/o ultraje a la reputación o al decoro de algún representante de los Poderes Públicos y cuyo objeto sea exponerlos al desprecio o al odio público. 2. Se prohíbe la publicación de contenidos vejatorios y ofensivos contra el género femenino, más aún cuando los medios de comunicación son un elemento fundamental en la difusión de contenidos relativos a los derechos de las mujeres... 3. Se ordene retirar todos los ejemplares que se encuentren a disposición del público y que contengan el artículo identificado, así como cualquier otra publicación que busque reeditar.)

## *Censoring News Coverage*

In early February 2012, after a sewer broke in a petroleum plant in Monagas state, tens of thousands of barrels of petroleum were spilled in the Guarapiche River. Within a few days, the government reported that the vast majority of petroleum had been removed from the river. Yet the governor of Monagas, José Gregorio Briceño, announced that he would not be reopening a water treatment plant because tests had found “traces of petroleum sediment” in the river.<sup>256</sup> The official Venezuelan News Agency, reporting on Briceño’s comments, also observed that tests performed in the area “showed signs of hydrocarbons.”<sup>257</sup>

In mid-March, after the dispute over whether the water was contaminated received widespread news coverage, Chávez’s political party expelled Briceño.<sup>258</sup> Chávez’s vice president, Elías Jaua, explained that the party had repeatedly warned Briceño in the past that he should end his public statements attacking members of the party and going against party lines but Briceño had “persisted in his attacks.”<sup>259</sup> On Twitter, Chávez stated, “I fully support our [party’s] decision! I think governor Briceño reached his limit.”<sup>260</sup>

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<sup>256</sup> “Almost 90% of the petroleum spilled in Guarapiche has been removed” (Ha sido recuperado cerca de 90 % del crudo derramado en Guarapiche), *Correo del Orinoco*, February 17, 2012, <http://www.correodelorinoco.gob.ve/tema-dia/ha-sido-recuperado-cerca-90-crudo-derramado-guarapiche/> (accessed May 21, 2012); “Work to contain petroleum spill in Guarapiche River moves forward” (Avanzan trabajos para contener derrame de crudo en río Guarapiche), *Prensa YVKE Mundial/AVN*, February 10, 2012, <http://www.radiomundial.com.ve/article/avanzan-trabajos-para-contener-derrame-de-crudo-en-r%C3%ADO-guarapiche> (accessed May 21, 2012); “Governor of Monagas: The water treatment plant in the Guarapiche river will not be reactivated” (Gobernador de Monagas: Aún no se reactivará planta de agua en río Guarapiche), video, March 8, 2012, [http://www.dailymotion.com/video/xpbgci\\_aun-no-se-reactivara-planta-de-agua-en-rio-guarapiche\\_news](http://www.dailymotion.com/video/xpbgci_aun-no-se-reactivara-planta-de-agua-en-rio-guarapiche_news) (accessed May 22, 2012).

<sup>257</sup> “New tests will be done to evaluate if water plant of Monagas will be reopened” (Harán nuevas pruebas para evaluar reapertura de planta de Aguas de Monagas), *Agencia Venezolana de Noticias*, March 8, 2012, <http://www.avn.info.ve/node/102551> (accessed May 21, 2012).

<sup>258</sup> “The PSUV decided to suspend the governor of Monagas for violating the principle of revolutionary unity” (PSUV decidió suspender al gobernador de Monagas por violar el principio de unidad revolucionaria), *PSUV News*, March 14, 2012, <http://www.psuv.org.ve/portada/tribunal-disciplinario-psuv-decidio-suspender-al-gobernador-monagas/> (accessed May 21, 2012); “José Gregorio Briceño definitively expelled from the PSUV” (Expulsado definitivamente del PSUV José Gregorio Briceño), *Correo del Orinoco*, March 19, 2012, <http://www.correodelorinoco.gob.ve/regiones/expulsado-definitivamente-psuv-jose-gregorio-briceno/> (accessed May 21, 2012).

<sup>259</sup> “PSUV suspends Monagas governor, José Gregorio Briceño” (PSUV suspende al gobernador de Monagas, José Gregorio Briceño), *Venezolana de Televisión*, March 14, 2012, <http://www.vtv.gov.ve/index.php/nacionales/78762> (accessed May 21, 2012).

<sup>260</sup> “President Chávez supports the suspension of the governor of Monagas from the PSUV” (Presidente Chávez apoya suspensión del gobernador de Monagas del PSUV), *Venezolana de Televisión*, March 14, 2012, <http://www.vtv.gov.ve/index.php/nacionales/78763-presidente-chavez-apoya-suspension-del-gobernador-de-monagas-del-psuv> (accessed April 12, 2012).



The following day, Chávez's environmental minister, Alejandro Hitcher, responding to complaints about the water by an opposition party leader who stated that water in Caracas was contaminated, declared that the water was potable and that these comments were part of a "terrorist campaign" by the opposition.<sup>261</sup>

Several days later, in a televised speech, President Chávez echoed this charge, stating that the comments on the water contamination constituted "a dirty war" and that those who made them must "assume the responsibility for the attack to the mental health of the people."<sup>262</sup> He also called on the attorney general and the president of the Supreme Court to "assume their responsibilities," saying, "We should at least open an investigation."<sup>263</sup>

In a press conference the day after the president's speech, the attorney general announced that her office had opened a criminal investigation and was seeking a court order to prevent media outlets from reporting that water was contaminated without providing a scientific study as evidence.<sup>264</sup> The court granted the injunction on the same day, using very vague language that ordered all print and broadcast media to have "truthful, technical support approved by a competent body" before disseminating information on alleged contamination of drinking water.<sup>265</sup>

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<sup>261</sup> "Environmental Ministry guarantees safe drinking water in all the country" (Ministerio del Ambiente garantiza salubridad del agua potable en todo el país), *Venezolana de Televisión*, March 15, 2012, <http://www.vtv.gov.ve/index.php/nacionales/78792-min-hitcher-los-servicios-de-agua-que-entregamos-en-todo-el-pais-son-de-absoluta-potabilidad-> (accessed May 21, 2012).

<sup>262</sup> "Chávez asks the justice system to act in light of campaign against the quality of water" (Chávez pidió a la justicia actuar ante campaña contra calidad del agua), *Correo del Orinoco*, March 21, 2012, <http://www.correodelorinoco.gob.ve/wp-content/uploads/2012/03/CO915.pdf> (accessed May 21, 2012).

<sup>263</sup> "Chávez urged an investigation into terrorism campaign about water" (Chávez exhortó a investigar campaña de terrorismo sobre el agua), *Venezolana de Televisión*, article and video, March 20, 2012, <http://www.vtv.gov.ve/index.php/nacionales/79140-chavez-exhorto-a-investigar-campana-de-terrorismo-sobre-el-agua> (accessed May 21, 2012). (Bueno tenemos que actuar, al respecto de esto, **al menos abrir una investigación** y si está lo que están diciendo estos, pues. Bueno dónde están sus pruebas? Demuéstrenlo. Y si no, bueno aquí está la ley compadre. Usted rectifique o esto, bueno. Yo no soy juez ni nada, pero soy jefe de estado. Y tengo que hacer un llamado a los entes del Estado a asumir **cada quien su responsabilidad.**)

<sup>264</sup> "Public Ministry opened investigation into campaign of alleged water contamination" (MP Inició Investigación por campaña de presunta contaminación del agua), *Venezolana de Televisión*, video, March 21, 2012, <http://www.vtv.gov.ve/index.php/multimedia/viewvideo/103396/noticias/mp-inicio-investigacion-por-campana-de-presunta-contaminacion-del-agua-21-03-2012> (accessed April 12, 2012). (Por esa razón yo he instruido en el marco de esta investigación al fiscal 20, al doctor Daniel Guedes, para que solicite al Tribunal de Control una medida cautelar y esta medida consiste en que se les exija a los medios de comunicación que toda información relacionada con la contaminación del agua sea soportada con un **informe técnico.**)

<sup>265</sup> Public Ministry of the Bolivarian Republic of Venezuela, "Injunction requiring responsibility when disseminating information about alleged water contamination is granted" (Acuerdan medida cautelar innominada que exige responsabilidad al difundir

Two veteran TV and radio journalists told Human Rights Watch that, given the vague terms of the injunction—which did not specify what was meant by “truthful or technical support” or by a “competent body”—they were not able to cover the issue of alleged water contamination properly.<sup>266</sup> One of them stated that his producers immediately told him he could only report on possible water contamination if his report relied exclusively on official statements. The other said the injunction prohibited them from broadcasting the testimony of individuals who have been affected by what they believe was unclean water.

### *Censoring Violent Images*

In August 2010, the independent newspaper, *El Nacional*, published on its front page a photograph of a dozen naked corpses in the Bello Monte morgue in Caracas. The faces of the dead men were blurred and the bodies were piled on stretchers and on the floor. The image accompanied an article about illegal arms and violence in Venezuela, and included a caption stating that 2,177 corpses had been taken to the Bello Monte morgue in the first six months of 2010.<sup>267</sup>

The high levels of violence, in particular soaring crime rates and the number of people killed by firearms in the country, is a major public concern and news topic in Venezuela.

The day the photograph ran, the Ombudsman’s Office sought a court order requiring the newspaper to “avoid the publication of images with a violent, bloody, or grotesque content...that in one way or another, affects the mental and moral integrity of children and adolescents.”<sup>268</sup> The Ombudsman’s Office argued that viewing such images “distort[s] and

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información sobre presunta contaminación del agua), press release, [http://www.ministeriopublico.gob.ve/web/guest/defensa-integral-del-ambiente-y-delito-ambiental;jsessionid=0130B292DD487500768F8DCD9E6EAB93?p\\_p\\_id=101\\_INSTANCE\\_W4eD&p\\_p\\_lifecycle=0&p\\_p\\_state=maximized&p\\_p\\_mode=view&\\_101\\_INSTANCE\\_W4eD\\_struts\\_action=%2Fasset\\_publisher%2Fview\\_content&\\_101\\_INSTANCE\\_W4eD\\_urlTitle=acuerdan-medida-innominada-que-exige-responsabilidad-al-difundir-informacion-sobre-el-agua&\\_101\\_INSTANCE\\_W4eD\\_type=content&redirect=%2Fweb%2Fguest%2Fdefensa-integral-del-ambiente-y-delito-ambiental%3Fp\\_p\\_id%3D101\\_INSTANCE\\_W4eD%26p\\_p\\_lifecycle%3D1%26p\\_p\\_state%3Dmaximized](http://www.ministeriopublico.gob.ve/web/guest/defensa-integral-del-ambiente-y-delito-ambiental;jsessionid=0130B292DD487500768F8DCD9E6EAB93?p_p_id=101_INSTANCE_W4eD&p_p_lifecycle=0&p_p_state=maximized&p_p_mode=view&_101_INSTANCE_W4eD_struts_action=%2Fasset_publisher%2Fview_content&_101_INSTANCE_W4eD_urlTitle=acuerdan-medida-innominada-que-exige-responsabilidad-al-difundir-informacion-sobre-el-agua&_101_INSTANCE_W4eD_type=content&redirect=%2Fweb%2Fguest%2Fdefensa-integral-del-ambiente-y-delito-ambiental%3Fp_p_id%3D101_INSTANCE_W4eD%26p_p_lifecycle%3D1%26p_p_state%3Dmaximized) (accessed April 26, 2012). (A solicitud del Ministerio Público, fue acordada una medida cautelar innominada que exige a los medios de comunicación nacionales y regionales impresos; así como a los noticieros de radio, televisión y digitales que actúen con extrema responsabilidad en la difusión de información relacionada con la presunta contaminación del agua en el país destinada al consumo humano, debiendo contar con el debido **soporte técnico veraz avalado por un organismo competente.**)

<sup>266</sup> Human Rights Watch interview with two journalists from audiovisual media, Caracas, March 22, 2012.

<sup>267</sup> Image of the cover of *El Nacional*, August 13, 2010, [http://www.facebook.com/note.php?note\\_id=421782656566](http://www.facebook.com/note.php?note_id=421782656566) (accessed April 27, 2012).

<sup>268</sup> Ombudsman Office, “The Ombudsman Office requests protective action due to images published in the newspaper *El Nacional*” (Defensoría del Pueblo solicita acción de protección por imágenes publicadas en el diario *El Nacional*), undated,

perturb[s] [children], affecting their personality and... their future” and “leave[s] lasting impressions, which affect their mental and... psychological health.”<sup>269</sup> After the newspaper *Tal Cual* reprinted the image in its own pages, the Ombudsman Office asked the court to expand the prohibition to all printed media in the country.<sup>270</sup>

Several days later, a judge imposed a broad injunction, ordering *El Nacional* to cease all publication of “images, information and publicity of any type containing blood, arms, and messages of terror, physical aggression, images with contents of war and messages about deaths that could alter the psychological well-being of boys, girls, and adolescents in Venezuela” until the court decided on the merits of the case.<sup>271</sup>

The judge also ordered all print media in the country to “abstain from publishing violent, bloody and grotesque images that undermine the psychic and moral integrity of childhood

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[http://www.defensoria.gob.ve/index.php?option=com\\_content&view=article&id=590:defensoria-del-pueblo-solicita-accion-de-proteccion-por-imagenes-publicadas-en-el-diario-el-nacional&catid=7:principal&Itemid=79](http://www.defensoria.gob.ve/index.php?option=com_content&view=article&id=590:defensoria-del-pueblo-solicita-accion-de-proteccion-por-imagenes-publicadas-en-el-diario-el-nacional&catid=7:principal&Itemid=79) (accessed February 15, 2012); Petition (Acción de Protección), presented by Larry Devoe Márquez, Jesús Antonio Mendoza Mendoza, and Alejandra Bonalde Colmenares, from the Ombudsman Office, before a Specialized Court to Protect Children and Adolescents in the Metropolitan Area of Caracas (Tribunal de Mediación, Sustanciación y Ejecución del Circuito Judicial de Protección de Niños, Niñas y Adolescentes del Área Metropolitana de Caracas), August 13, 2010. Copy on file at Human Rights Watch. (Que en virtud de la declaratoria con lugar de la presente Acción de Protección se ordene al Diario El Nacional se abstenga de publicar imágenes de contenido violento, sangriento, grotescas, bien sea de sucesos o no, que de una u otra forma vulneren la integridad psíquica y moral de los niños, niñas y adolescentes.)

<sup>269</sup> Complaint filed by Larry Devoe Márquez, Jesús Antonio Mendoza Mendoza, and Alejandra Bonalde Colmenares, from the Ombudsman Office, before Judge William Alexander Páez Jiménez, Judge from the Court of Protection of Boys, Girls and Adolescents from Caracas (Juez del Tribunal de Protección de Niños, Niñas y Adolescentes, Circunscripción Judicial del Área Metropolitana de Caracas), August 13, 2010. Copy on file at Human Rights Watch. (La imagen publicada en el Diario El Nacional... genera emociones, valores negativos, impropios e inoportunos para un (sic) niños, niñas y adolescentes toda vez que distorsionan y perturban su psiquis, afectando su personalidad y en definitiva su vida futura.... El uso de imágenes grotescas, violentas y sangrientas como la presentada en el Diario El Nacional en nada contribuyen a la buena calidad de vida, formación y desarrollo integral de los niños, niñas y adolescentes, las cual (sic) se ven mermadas, ya que la interpretación de las imágenes que publican los medios dejan impresiones duraderas, que afecten su salud mental, psíquica o psicológica.)

<sup>270</sup> Ombudsman Office, “Ombudsman Office requests printed media to abstain from publishing images that undermine childhood and adolescence” (DdP solicita que medios impresos se abstengan de publicar imágenes que atenten contra la infancia y la adolescencia), press release, undated,

[http://www.defensoria.gob.ve/index.php?option=com\\_content&view=article&id=589:defensoria-solicita-a-tribunales-medida-preventiva-para-que-medios-impresos-se-abstengan-de-publicar-imagenes-que-atenten-contra-la-infancia-y-la-adolescencia-&catid=7:principal&Itemid=79](http://www.defensoria.gob.ve/index.php?option=com_content&view=article&id=589:defensoria-solicita-a-tribunales-medida-preventiva-para-que-medios-impresos-se-abstengan-de-publicar-imagenes-que-atenten-contra-la-infancia-y-la-adolescencia-&catid=7:principal&Itemid=79) (accessed February 15, 2012).

<sup>271</sup> Attorney General’s Office, “Court prohibits El Nacional from publishing violent messages” (Tribunal de Protección prohíbe a El Nacional publicar mensajes violentos), press release, August 17, 2010,

[http://www.ministeriopublico.gob.ve/web/guest/buscador/-/journal\\_content/56/10136/56395](http://www.ministeriopublico.gob.ve/web/guest/buscador/-/journal_content/56/10136/56395) (accessed May 21, 2012); Decision by Judge William Alexander Páez Jiménez, Case AP51-V-2010-013967, August 16, 2010. Copy on file at Human Rights Watch. (Se prohíbe al Diario El Nacional la publicación de imágenes, informaciones y publicidad de cualquier tipo con contenido de sangre, armas, mensajes de terror, agresiones físicas, imágenes que aticen contenidos de guerra y mensajes sobre muertes y decesos que puedan alterar el bienestar psicológico de los niños, niñas y adolescentes que tienen residencias en la República Bolivariana de Venezuela, hasta que se decida el fondo de la presente acción de amparo.)

and adolescence.”<sup>272</sup> Two days later, the court allowed *El Nacional* to begin publishing articles and advertisements again, but maintained the prohibition on publishing violent images.<sup>273</sup> It also revoked the prohibition imposed on other media.<sup>274</sup>

At this writing, while the case against *El Nacional* and *Tal Cual* remains pending before specialized court to protect children, the prohibition remains in effect. In addition, prosecutors have opened a criminal investigation into *El Nacional*'s publication of the photograph.<sup>275</sup>

### *Censoring a Soap Opera*

In January 2011, the popular Colombian soap opera “Chepe Fortuna”—aired in Venezuela on channel Televen—included a scene in which a character named Venezuela responds to the news that her dog, “Little Hugo” (Huguito), has been lost, by asking her boyfriend: “What will become of Venezuela without Huguito?” He tells her: “You will be free, Venezuela. Huguito made a habit of getting inside everybody’s business, making you look bad, Venezuela.”<sup>276</sup>

Soon after it was aired, the host of *La Hojilla*, the state TV channel’s political talk show, denounced the soap opera for showing “a lack of respect for Venezuela.”<sup>277</sup> A day later,

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<sup>272</sup> A press release issued by the Ombudsman Office is reproduced at: “Ombudsman Office justifies prohibition of violent images” (Defensoría justifica medida de prohibición de imágenes violentas), *Agencia Venezolana de Noticias*, August 18, 2010, <http://www.avn.info.ve/node/12154> (accessed May 24, 2012). (Ante las decisiones adoptadas por el Tribunal Décimo Segundo de Primera Instancia de Protección de Niños, Niñas y Adolescentes, en fecha 17 y 18 de agosto de 2010, mediante las cuales ordenó a los medios de comunicación social impresos de todo el país abstenerse de publicar imágenes violentas, sangrientas y grotescas, que de una u otra forma vulneren la integridad psíquica y moral de los niños, niñas y adolescentes...)

<sup>273</sup> Decision by Judge William Alexander Páez Jiménez, Judge of the 12th First Instance Court of Mediation (Juez del Tribunal Décimo Segundo de Primera Instancia de Mediación y Sustanciación), Case (Asunto) AP51-V-2010-013967, August 19, 2010. Copy on file at Human Rights Watch. (Se prohíbe al Diario El Nacional la publicación de imágenes de cualquier tipo con contenido de sangre, armas, mensajes de terror, agresión física, imágenes que utilicen contenidos de guerra y mensajes sobre muertes y decesos que puedan alterar el bienestar psicológico de los niños, niñas y adolescentes que tienen residencias en la República Bolivariana de Venezuela hasta que se decida el fondo de la presente Acción de Protección.)

<sup>274</sup> “The prohibition to publish images with violent content in the printed media is revoked” (Revocan prohibición de publicar en medios impresos imágenes con contenidos violentos), *Agencia Venezolana de Noticias*, August 19, 2010, <http://www.avn.info.ve/node/12388> (accessed March 30, 2012).

<sup>275</sup> Human Rights Watch interview with Vivianne Font and Juan Garretón, *El Nacional*'s lawyers, Caracas, March 21, 2012.

<sup>276</sup> Scene from *Chepe Fortuna*, Episode 44, RCN Televisión, <http://www.youtube.com/watch?v=f-gkTfyuuSE> (accessed February 15, 2012). (Qué va a ser de Venezuela sin su Huguito? Vas a ser libre, Venezuela, porque Huguito ultimamente vivía ... metiéndose en la casa de todo mundo, haciéndote quedar mal, Venezuela.)

<sup>277</sup> “Soap opera ‘Chepe Fortuna,’ Colombian TV trash aired by Televen mocks Venezuela” (Novela ‘Chepe Fortuna,’ telebasura colombiana por Televen, una burla a Venezuela), *Aporrea*, January 13, 2011, <http://www.aporrea.org/medios/n172942.html> (accessed May 21, 2012). Human Rights Watch saw images of the *La Hojilla* tape, in which Mario Silva said: “**Es una falta de respeto a Venezuela.** Se le pierde un perro y el perro se llama Hugo,

CONATEL issued a public statement calling on Televen to “immediately suspend” the show on the grounds that it promoted “political and racial intolerance, xenophobia, and incitement to commit crimes”—a charge that could lead to civil, criminal, and administrative sanctions, including the suspension or revocation of its broadcasting license.<sup>278</sup>

The same day that CONATEL’s statement was issued, Televen stopped airing the soap opera.<sup>279</sup> President Chávez subsequently denounced the soap opera in a nationally televised speech before the National Assembly, and said that he had asked someone to talk to Televen’s owner so he would remove this show from the air because it demonstrated “a lack of respect for Venezuela.”<sup>280</sup>

## Remaking the Media Landscape

The Chávez administration has for years sought to justify its media policies as efforts to “democratize” the media in Venezuela.<sup>281</sup> As Human Rights Watch observed in *A Decade*

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entonces dice Venezuela ¿qué va a ser sin Hugo? (...) Vamos a poner las cosas a la inversa: dicen que nosotros utilizamos el canal de todos los venezolanos para atacarlos a ellos, pobrecitos, ellos tan santos que son. Supongan ustedes a la inversa que nosotros hacemos una novela y le ponemos, le ponemos a la señora el nombre de Colombia o el nombre de Estados Unidos. Y ponemos al señor que está ahí ‘¡Ay! ¿Qué va a ser Colombia sin Santos, sin mi perrito Santos?’ o ‘¿Qué va a ser Estados Unidos sin mi perrito Obama? Yo coloco las cuestiones a la inversa.’”

<sup>278</sup> Broadcasting Law, art. 28. CONATEL, “Conatel urges Televen to suspend *12 hearts* and *Chepe Fortuna* for airing denigrating contents” (CONATEL exhortó a Televen la suspensión de *12 corazones* y *Chepe Fortuna* por contenidos denigrantes), January 13, 2011, [http://www.conatel.gob.ve/#http://www.conatel.gob.ve/index.php/principal/noticiacompleta?id\\_noticia=2916](http://www.conatel.gob.ve/#http://www.conatel.gob.ve/index.php/principal/noticiacompleta?id_noticia=2916) (accessed May 21, 2012).

<sup>279</sup> “Venezuela asks that ‘Chepe Fortuna’ be removed from the air for xenophobia” (Venezuela pide sacar del aire a ‘Chepe Fortuna’ por ‘xenofobia’), *Terra*, January 14, 2011, <http://www.terra.com.co/farandulaytv/articulo/html/far5469-venezuela-pide-sacar-del-aire-a-chepe-fortuna-por-xenofoba.htm> (accessed February 15, 2012).

<sup>280</sup> “C5N - Chávez censors a soap opera” (CSN - Chávez censura a una telenovela), YouTube video posted by “c5n,” January 20, 2011, <http://www.youtube.com/watch?NR=1&feature=fvwp&v=9H2mRZuYyKs> (accessed May 11, 2012). (¿Oye qué cosa es esa horrible, chico, una novela? Una novela que estaban pasando por ahí. Era un irrespeto a Venezuela, hecha en Colombia. A ver, no, que hay una señora muy bonita que se llama... No, Venezuela como que era una señora ahí de mala conducta, altanera, etcétera, gorda... yo no tengo nada contra los gordos ni gordas, pero bueno. Y otra llamada Colombia. Y entonces el perro de Venezuela, Huguito. Una novela... y así la pasaban, yo ni sabía. Pero lo peor es que viene Televen y la pasa aquí. **Qué irrespeto por el orgullo venezolano, chico. Qué irrespeto para Venezuela.** Menos mal que Televen accedió a retirarla del aire.)

“Commandant President Hugo Chávez before the National Assembly” (El Comandante Presidente Hugo Chávez ante la Asamblea Nacional), January 17, 2011, <http://www.youtube.com/watch?v=tsb6SyASUwU> (accessed February 15, 2012); “Presidente Chávez entregará Ley Habilitante en mayo,” *Aporrea*, January 15, 2011, <http://www.radiomundial.com.ve/node/158469> (accessed February 15, 2012). (Pedí que hablaran con Camero y menos mal que Televen accedió a sacar programas que denigraban a Venezuela.)

<sup>281</sup> A key aspect of the Chávez administration’s 2007-2013 “Economic and Social Development Plan for the Nation” is to promote “social control” of mass media; to advance “using the media as a tool for capacity building; to strengthen public media; and ‘democratize’ information.” General Guidelines for the Social and Economic Development Plan for the National 2007-2013, September 2007, [http://www.cenditel.gob.ve/files/u1/lineas\\_gen\\_nacion.pdf](http://www.cenditel.gob.ve/files/u1/lineas_gen_nacion.pdf) (accessed May 21, 2012).

*Under Chávez*, governments are entitled to regulate the concentration of media ownership and to back public service and community outlets in order to promote a more diverse and plural public debate.<sup>282</sup>

Yet, instead of promoting pluralism, the Chávez government has used its regulatory authority to expand the number of pro-government media outlets, while reducing the availability of those that engage in critical programming. Moreover, the government's major initiative to expand community radio has unfortunately been used to promote clear politically partisan goals.

While the Chávez administration only had one national TV channel during the early years of his government, today there are six public TV networks in the country, all of which maintain a strong pro-Chávez editorial line: Venezolana de Televisión, ViVe, TVes, Telesur, ANTV, and Ávila TV.<sup>283</sup> In addition, the National System of Public Media, created in 2006 “to contribute to create a socialist conscience,” includes an official news agency, the Venezuelan News Agency (Agencia Venezolana de Noticias); three newspapers, Ciudad Caracas, Diario Veá, and Correo del Orinoco; four radio stations, La Radio del Sur, Radio Nacional de Venezuela, Radio Mundial, Alba Ciudad; two websites, The Hugo Chávez Blog and Venezuela de Verdad; and a magazine, América XXI.<sup>284</sup>

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<sup>282</sup> *A Decade Under Chávez* cited a joint declaration of the special rapporteurs on freedom of expression of the United Nations, the OAS, and the OSCE of 2001, which stated that: “Promoting diversity should be a primary goal of broadcast regulation; diversity implies gender equity within broadcasting, as well as equal opportunity for all sections of society to access the airwaves; broadcast regulators and governing bodies should be so constituted as to protect them against political and commercial interference.” Joint Declaration by the UN Special Rapporteur on Freedom of Opinion and Expression, the OSCE Representative on Freedom of the Media, and the OAS Special Rapporteur on Freedom of Expression, “Challenges to Freedom of Expression in the New Century,” November 2001, <http://www.osce.org/fom/40053> (accessed May 18, 2012).

<sup>283</sup> Venezolana de Televisión webpage, <http://www.vtv.gob.ve/> (accessed May 22, 2012); ViVe TV homepage, <http://www.vive.gob.ve/> (accessed May 22, 2012); TVes homepage, <http://www.tves.gob.ve/> (accessed May 22, 2012); Telesur homepage, <http://www.telesurtv.net/> (accessed May 22, 2012); ANTV webpage, <http://www.antv.gob.ve/m8/portal.asp> (accessed May 22, 2012); Ávila TV webpage, <http://www.avilatv.gob.ve/> (accessed January 31, 2012).

<sup>284</sup> The Radio Mundial webpage lists the “Public Media System allies,” undated, <http://www.radiomundial.com.ve/> (May 22, 2012); Venezolana de Televisión, “The Channel” (El Canal), undated, <http://www.vtv.gob.ve/index.php/el-canal> (accessed May 22, 2012); Agencia Venezolana de Noticias webpage, <http://www.avn.info.ve/> (accessed May 22, 2012); Ciudad Caracas webpage, <http://www.ciudadccs.info/> (accessed May 22, 2012); Diario Veá webpage, <http://diariovea.com.ve/> (accessed May 22, 2012); Correo del Orinoco webpage, <http://www.correodelorinoco.gob.ve/> (accessed May 22, 2012); La Radio del Sur webpage, <http://laradiodelsur.com/> (accessed May 22, 2012); Radio Nacional de Venezuela webpage, <http://www.rnv.gov.ve/noticias/> (accessed May 22, 2012); Radio Mundial webpage, <http://www.radiomundial.gob.ve/> (accessed May 22, 2012); Alba Ciudad webpage, <http://albaciudad.org/wp/> (accessed May 22, 2012); The Hugo Chávez Blog webpage, <http://www.chavez.org.ve/> (accessed May 22, 2012); Venezuela de Verdad webpage,

As noted, the Venezuelan government has also promoted the creation of community radio stations by granting licenses, and by providing capital, infrastructure grants, and training. According to CONATEL, there are currently 244 community radio stations and 36 community TV stations in the country.<sup>285</sup> As we observed in the 2008 report, these efforts have had the positive effect of giving new opportunities for public expression to residents of many poor communities in Venezuela.

However, an examination of the manner in which the roll out of the program has been administered and enforced indicates that the thrust of this policy has been decidedly partisan. In a 2007 interview, Andrés Izarra, then minister of communication and information, identified the promotion of community media as part of the government's pursuit of "communication and information hegemony."<sup>286</sup> In 2009, Mileidys Marcano, a vice minister in the Office of the Presidency, described the community media as an "arm of the Bolivarian Revolution."<sup>287</sup>

Today the majority of community radio stations relies on the Chávez government for funding and has an editorial line that is favorable to the government.<sup>288</sup> The vast majority of these stations (around 200) are affiliated with the National Movement of Alternative and Community Media, whose members—according to the association's founding declaration—share a "full commitment to the Bolivarian Revolution" and see themselves as the

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<http://www.venezueladeverdad.gob.ve/> (accessed May 22, 2012); América XXI webpage, <http://www.americaxxi.com.ve/> (accessed May 22, 2012).

<sup>285</sup> CONATEL, "Total number of of community media outlets with licenses" (Total de medios comunitarios habilitados), undated, [http://www.conatel.gob.ve/files/solicitudes/habilitaciones/Total\\_de\\_Medios\\_Comunitarios\\_Habilitados.pdf](http://www.conatel.gob.ve/files/solicitudes/habilitaciones/Total_de_Medios_Comunitarios_Habilitados.pdf) (accessed May 22, 2012).

<sup>286</sup> University of Carabobo, "Andrés Izarra: Socialism needs communication hegemony" (Andrés Izarra: El socialismo necesita una hegemonía comunicacional), January 8, 2007, [http://www.boletin.uc.edu.ve/index.php?option=com\\_content&task=view&id=4990&Itemid=38](http://www.boletin.uc.edu.ve/index.php?option=com_content&task=view&id=4990&Itemid=38) (accessed February 15, 2012). (En la hegemonía comunicacional va a haber varios niveles: integración de los sistemas de los medios públicos, articulación de un plan estratégico que permita la orientación de esos medios públicos; la creación de un sistema nacional de medios comunitarios y alternativos; el impulso hacia una producción independiente.)

<sup>287</sup> "Community media are an arm of the Bolivarian Revolution" (Medios comunitarios son el brazo de la Revolución Bolivariana), *Radio Nacional de Venezuela*, April 29, 2009, <http://www.rnv.gov.ve/noticias/index.php?act=ST&f=2&t=96209> (accessed May 22, 2012).

<sup>288</sup> Human Rights Watch interview with Marcelino Bisbal, professor of communications at the Andrés Bello Catholic University, Caracas, February 7, 2011; Raisa Urribarri, "Community to Government Media: Alternative Media Outlets During Times of Revolution" (De comunitarios a gobunitarios: los medios alternativos en tiempos de revolución), December 15, 2009, <http://issuu.com/ellibertario/docs/gobunitarios> (accessed February 15, 2012), p. 19.

“communicational vanguard” in “the great battle for the defense of the Bolivarian process and the establishment of the rank and file of the socialist society of the 21st Century.”<sup>289</sup>

As the government has promoted pro-Chávez community radio stations, it has also moved to close private radio stations. The most dramatic closure came in July 2009 when CONATEL announced it was shutting down 32 radio stations. The official reason for the closures was that these stations were out of compliance with the licensing requirements in the Organic Law on Telecommunications.<sup>290</sup> Local advocates of press freedom, broadcasters critical of the government, and international observers, however, believe that many of the closures were arbitrary and politically motivated.<sup>291</sup>

There is evidence for this view. Among the 32 radio stations closed, for example, were five stations belonging to the Belfort National Circuit chain, which broadcast programming critical of the government.<sup>292</sup> Nelson Belfort, one of the owners of the Belfort Circuit, told

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<sup>289</sup> “Final Declaration of the National Constituent Assembly of the National Movement of Alternative and Community Media Outlets” (Declaración Final de la Asamblea Nacional Constituyente del Movimiento Nacional de Medios Alternativos y Comunitarios), March 2008, <http://alainet.org/active/22894/lang=es> (accessed May 22, 2012). (Ya se cuentan por miles las venezolanas y venezolanos que activan en los medios alternativos y comunitarios, ejercitando una práctica comunicacional de **compromiso pleno con la revolución bolivariana**, con los anhelos transformadores del pueblo venezolano, apuntando ciertamente al diseño y construcción de un nuevo modelo comunicacional...En esta hora clave de la vida nacional, en la que la lucha ideológica/comunicacional constituye el escenario fundamental en el que se libra la gran **batalla por la defensa del proceso bolivariano** y por la instauración de las bases de la sociedad socialista del siglo XXI, el Movimiento que integra y articula a los MAC **tiene que erigirse en vanguardia comunicacional del pueblo venezolano**.)

<sup>290</sup> Embassy of the Bolivarian Republic of Venezuela in the United States, “Descriptive Fact Sheet: Real Facts regarding Recent Events Involving the Media in Venezuela” (Ficha Descriptiva: Hechos reales sobre recientes eventos mediáticos en Venezuela), undated, <http://venezuela-us.org/es/wp-content/uploads//2009/05/fd-hechos-reales-sobre-recientes-eventos-mediaticos1.pdf> (accessed May 21, 2012).

<sup>291</sup> IACHR, “IACHR and Office of the Special Rapporteur Send Communication to the Venezuelan State Expressing Deep Concern About the Situation of Freedom of Expression,” August 5, 2009, <http://www.oas.org/en/iachr/expression/showarticle.asp?artID=759&IID=1> (accessed June 7, 2012); UNHCHR, “Special Rapporteur for Freedom of Opinion and Expression expresses serious concern about the situation of free expression in the Bolivarian Republic of Venezuela” (Relator Especial sobre el derecho a la libertad de opinión y de Expresión manifiesta seria preocupación por la situación del derecho a la libertad de expresión en la República Bolivariana de Venezuela), August 5, 2009, <http://www.ohchr.org/SP/NewsEvents/Pages/DisplayNews.aspx?NewsID=8500&LangID=S> (accessed June 7, 2009); Human Rights Watch interview with Nelson Belfort, president of the National Belfort Circuit, Caracas, August 30, 2011; Human Rights Watch interview with Silvia Alegrett, director of the National College of Journalists, Caracas, August 29, 2011; Human Rights Watch interview with Edwald Scharfenberg, director of the Institute of Press and Society (Instituto de Prensa y Sociedad, IPYS), Caracas, February 3, 2011; Human Rights Watch interview with Marcelino Bisbal, professor of communications at the Catholic University Andrés Bello, Caracas, February 7, 2011; “Press release of the National Union of Press Workers” (Comunicado del Sindicato Nacional de Trabajadores de la Prensa), August 1, 2009, [http://www.tribunalatina.com/es/Viewer\\_100\\_1columna.php?IDN=19678](http://www.tribunalatina.com/es/Viewer_100_1columna.php?IDN=19678) (accessed June 7, 2012); Public Space, “Annual report 2009. Venezuela. Situation of Freedom of Expression and Information” (Informe Anual 2009. Venezuela. Situación de la libertad de expresión e información), 2010, p. 19.

<sup>292</sup> Human Rights Watch interview with Nelson Belfort, president of the National Belfort Circuit, Caracas, August 30, 2011.



Human Rights Watch that since 2000 they had made repeated requests to regularize the legal status of the stations but CONATEL had not responded. After the closures, CONATEL claimed that Belfort and the others operating the radio stations had relinquished their licenses.<sup>293</sup> In August 2009, Belfort challenged the closures before the Supreme Court, arguing that he was given no opportunity to present arguments or evidence to CONATEL prior to the closures.<sup>294</sup> (He also argued that CONATEL for years had recognized the stations, de facto, and that the closures were the consequence of the radio stations' editorial line.) As of June 2012, the Supreme Court had still not resolved the appeal.<sup>295</sup>

The perception that the closures were politically motivated was reinforced by the fact that the head of CONATEL, when announcing the CONATEL's findings before the National Assembly, justified the government's media policies with a sweeping claim that some radio stations were "try[ing] to destroy the Bolivarian Revolution...to distort what we have been doing in Venezuela, where they have a number of opinion-makers without license who make up their own news."<sup>296</sup> Also, the National Assembly subsequently passed a resolution praising CONATEL's efforts to "democratize the media" and to "protect the mental health of Venezuelans from media terrorism, exercised by private media outlets with editorial lines that serve the interests of the national and international oligarchy."<sup>297</sup>

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<sup>293</sup> In two cases, CONATEL argued that the owner of the licenses had died, and in the other three that those operating the radio stations had surrendered their licenses (renuncia del título). Ministry of the Popular Power for Public Works and Housing, Resolution 177, July 31, 2009; Resolution 149, July 31, 2009; Resolution 176, July 31, 2009; Resolution 148, July 31, 2009; and Resolution 146, July 31, 2009.

<sup>294</sup> Information provided to Human Rights Watch via email exchange by Maria Luisa Villalobos from the National Belfort Circuit, December 15, 2011, and January 27, 2012.

<sup>295</sup> In August 2011, the Supreme Court of Justice rejected Belfort's request to adopt an injunction to stop the closures. As of June 2012, it had yet to adopt a decision on the merits of the constitutional appeal. Supreme Court of Justice of Venezuela, File No. 2009-0737, August 10, 2011. Human Rights Watch email communication with Maria Luisa Villalobos, from Belfort Circuit, February 3, 2012. Human Rights Watch written communication with Nelson Belfort, president of Circuito Nacional Belfort, June 7, 2012.

<sup>296</sup> "Minister Cabello: CONATEL actions end media estate" (Ministro Diosdado Cabello: Acciones de CONATEL ponen fin al latifundio mediatico), undated, [http://www.asambleanacional.gob.ve/index.php?Itemid=27&id=22530&option=com\\_content&task=view](http://www.asambleanacional.gob.ve/index.php?Itemid=27&id=22530&option=com_content&task=view) (accessed April 20, 2012). ((D)esde esos circuitos han intentado destroz a la revolución bolivariana, desfigurando lo que se ha venido haciendo a favor del pueblo, porque tienen una serie de opinadores sin oficio que hacen de ellos mismos la noticia.)

<sup>297</sup> "Agreement to support measures announced by the executive for the Tjtelecommunications sector" (Acuerdo en respaldo a las medidas anunciadas por el Ejecutivo en el sector de Telecomunicaciones), June 14, 2009, [http://www.asambleanacional.gob.ve/index.php?option=com\\_docman&task=cat\\_view&gid=233&Itemid=185&lang=es&limitstart=20](http://www.asambleanacional.gob.ve/index.php?option=com_docman&task=cat_view&gid=233&Itemid=185&lang=es&limitstart=20) (accessed May 21, 2012). (Que es deber del Estado proteger la salud mental de los venezolanos y de las venezolanas contra el terrorismo mediático, ejercido por medios de comunicación privados con líneas editoriales al servicio de los intereses de la oligarquía tanto nacional como internacional.)

Along with the closures, CONATEL also announced in 2009 that it was reviewing the licensing status of an additional 200 radio stations, without identifying which stations these were.<sup>298</sup> To this day, it has not released the results of this review.

More recently, in 2011, the agency announced a nationwide campaign “to control illegal telecommunications services,” and, according to press accounts, has since suspended and revoked the licenses of dozens of radio stations that it claimed had been operating illegally.<sup>299</sup> In February 2012, Human Rights Watch asked for updated information from CONATEL on the status of its investigations, but received no response.<sup>300</sup>

The Chávez government has not taken comparable steps to rein in the print media. In general, the country’s leading newspapers continue to be critical of the government. However, only a limited number of Venezuela’s more than 27 million people read them. In 2009, the most recent year for which we were able to obtain data, *Últimas Noticias*, the newspaper with greatest circulation, printed 260,000 copies per day. The circulation of the most critical papers was even smaller: *El Nacional* printed 120,000 copies per day; *El Universal*, 110,000; and *Tal Cual*, 40,000.<sup>301</sup>

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<sup>298</sup> Embassy of the Bolivarian Republic of Venezuela in the United States, “Descriptive Fact Sheet: Real Facts regarding Recent Events Involving the Media in Venezuela.”

<sup>299</sup> IACHR, “Annual Report 2011,” para. 442; “During 2011, CONATEL closed 27 stations in 10 states” (Durante 2011 Conatel cerró 27 emisoras en 10 estados), *El Universal*, January 2, 2012, <http://www.eluniversal.com/nacional-y-politica/120104/durante-2011-conatel-cerro-27-emisoras-en-10-estados> (accessed February 14, 2012); “Pirate Radios” (Radios Piratas), *Tal Cual*, January 18, 2012, <http://www.talcualdigital.com/Nota/visor.aspx?id=64599&tipo=AVA> (accessed May 21, 2012); “Venezuelan agency seizes radio station equipment,” *The Guardian*, November 4, 2011, <http://www.guardian.co.uk/world/feedarticle/9931597> (accessed May 21, 2012); “CONATEL opens administrative proceeding against two radios in Tachira” (Conatel inició procedimiento sancionatorio a dos emisoras tachirenses), *El Universal*, November 29, 2011, <http://www.eluniversal.com/nacional-y-politica/111129/conatel-inicio-procedimiento-sancionatorio-a-dos-emisoras-tachirenses> (accessed May 21, 2012); CONATEL, “CONATEL imposes precautionary measures against FM Ritmo 107.9” (Conatel ejerció medidas cautelares contra el prestador de servicio de radiodifusión en frecuencia modulada Ritmo 107.9), press release, March 2, 2012, [http://www.conatel.gob.ve/#http://www.conatel.gob.ve/index.php/principal/noticiacompleta?id\\_noticia=3094](http://www.conatel.gob.ve/#http://www.conatel.gob.ve/index.php/principal/noticiacompleta?id_noticia=3094) (accessed May 21, 2012); “CONATEL closes radio stations in Monagas” (CONATEL cierra emisoras de radio en Monagas), *Últimas Noticias*, March 30, 2012, <http://www.ultimasnoticias.com.ve/noticias/actualidad/politica/conatel-cierra-emisoras-de-radio-en-monagas.aspx> (accessed May 21, 2012).

<sup>300</sup> Letter from Joseph Saunders, deputy program director of Human Rights Watch, to Pedro Maldonado, director of CONATEL, February 28, 2012.

<sup>301</sup> World Association of Newspapers and News Publishers, 2010 World Press Trends, pp. 1176-1177; “Census 2011” (Censo 2011), undated, <http://www.ine.gob.ve/CENSO2011/index.htm> (accessed June 7, 2012).

## Impact on Free Speech

The Chávez government’s harassment, intimidation, prosecution, and censorship of media critics have had a powerful impact on broadcasters and journalists in Venezuela.

The most visible anti-Chávez media outlet remaining in the country today, Globovisión, continues to broadcast commentary and news coverage that is highly critical of the government. Nonetheless, the station’s lawyers told Human Rights Watch that the administrative investigations CONATEL has opened against the channel have generated “enormous uncertainty” among its reporters.<sup>302</sup> For example, because CONATEL has forbade Globovisión from airing “any” information “similar” to the advertising campaign about private property that it was forced to take off the air, reporters are not sure to what extent or how they can cover criticism of the government’s expropriation policies.

Similarly, since the arrest and criminal prosecution of Oswaldo Álvarez Paz, reporters ask Globovisión’s lawyers “all the time” how they should cover news about drug trafficking in Venezuela.<sup>303</sup> Additionally, two veteran reporters at the station told Human Rights Watch that self-censorship is common. They are “more careful” when deciding which images to show while reporting. “The caution is excessive,” said one. “When in doubt, we censor ourselves.”<sup>304</sup>

The problem of self-censorship is even more acute among radio broadcasters. According to Nelson Belfort, president of the Chamber of Radio Stations between 2007 and 2011, the majority of private radio broadcasters in the country have replaced opinion shows with music or entertainment since the 2009 closure of 32 stations.<sup>305</sup> The nongovernmental organization PROVEA documented in its 2011 annual report that “more and more media impose self-censorship, and fewer maintain critical positions regarding government

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<sup>302</sup> Human Rights Watch interview with Ricardo Antela, Globovisión’s lawyer, Caracas, March 21, 2012; Human Rights Watch interview with Ana Cristina Nuñez, Globovisión’s lawyer at the time, Caracas, February 7, 2011. ([L]a incertidumbre que generan los procesos es enorme.)

<sup>303</sup> Human Rights Watch interview with Ana Cristina Nuñez, Globovisión’s lawyer at the time, Caracas, February 7, 2011.

<sup>304</sup> Human Rights Watch interview with two leading journalists from Globovisión, September 1, 2011. (Uno tiende a tener más cuidado. Nos tenemos que cuidar de cada cosa que decimos, las imágenes que mostramos. El cuidado es excesivo. En caso de duda, censuramos.)

<sup>305</sup> The Chamber of Radio Stations comprises a majority (approximately 400) of the more than 600 private radio stations that exist in Venezuela. Human Rights Watch written communication with Nelson Belfort, former president of the Chamber of Radios, June 14, 2012.

actions, [changes in] behavior motivated by desire to avoid temporary or permanent closure and millions of dollars in fines.”<sup>306</sup> Silvia Alegrett, executive director of the National College of Journalists (Colegio Nacional de Periodistas), which represents 19,000 Venezuelan journalists, also noted that there are increasing levels of self-censorship among journalists.<sup>307</sup>

Unai Amenabar, a journalist who worked for 17 years in Venevisión until 2011, and who continues to work at Unión Radio, said in an interview to a Spanish paper that “independent media outlets are very scared, because they do not know when the government [will] decide to close a radio or TV station, and that leads to journalists thinking two, three, five times [about] what will be said, who will be interviewed, and how the interview will be conducted.” According to Amenabar, this generates “great levels of self-censorship.”<sup>308</sup>

Similarly, two other veteran radio journalists interviewed by Human Rights Watch also said the closures had led to an increase in self-censorship where they worked. One said that she was told by her station she could no longer “provide news information on anything that is uncomfortable for the government.” She left that radio station to work in another one where she could have more freedom, but said that, given the risks, “one is 1000 times more careful about what one says” and “one begins to censor oneself out of fear of being sanctioned.” For instance, when interviewing a doctor about President Chávez’s health, she specifically asked the doctor not to use the word “metastasis” for fear of suffering reprisals if she broadcast it.<sup>309</sup>

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<sup>306</sup> PROVEA, “Annual Report 2011,” 2011, <http://www.derechos.org/ve/pw/wp-content/uploads/16LibertadExpresión.pdf> (accessed May 22, 2012), p. 301.

<sup>307</sup> Human Rights Watch interview with Silvia Alegrett, president of the National College of Journalists, Caracas, August 29, 2011.

<sup>308</sup> Marta Martínez, “In Venezuela there is self-censorship” (En Venezuela hay autocensura), *Noticias De Gipuzkoa*, January 7, 2012, <http://www.noticiasdegipuzkoa.com/2012/01/07/mundo/en-venezuela-hay-autocensura> (accessed April 11, 2012).

<sup>309</sup> Human Rights Watch interview with a journalist from audiovisual media, Caracas, March 22, 2012. ([El productor me dijo que] van a cambiar programación a 100% entretenimientos [y] que no hable de noticias, “no puedes informar nada que sea incómodo para el gobierno, no puedes tocar las noticias” ... Como hubo tantos controles, leyes que nos amenazan, tantas amenazas, uno como periodista se cuida 1000 veces más lo que va a decir porque puede haber consecuencias para uno y para el medio. Uno comienza a autocensurarse por riesgo que se sancione.)

Two of the radio journalists interviewed by Human Rights Watch said that their station had told them not to read information from certain webpages or discuss certain topics on the air, and that they could not interview certain individuals who were known critics of the government.<sup>310</sup> One of them was instructed “on multiple occasions” to tone down statements and questions—instructions, she says, which force a journalist to rethink every question and avoid expressing her own views.<sup>311</sup>

Alegrett from the National College of Journalists told Human Rights Watch of a journalist colleague who had been instructed by the owner of a radio station where he worked that he should refrain from commenting on the news headlines he read because the radio was the owner’s sole income and he did not want it to be closed. Eventually the journalist was told he could not even read the news headlines.<sup>312</sup>

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<sup>310</sup> Human Rights Watch interviews with two journalists from audiovisual media, Caracas, March 22, 2012.

<sup>311</sup> Human Rights Watch interview with a journalist from the audiovisual media, Caracas, March 22, 2012. (En múltiples oportunidades me han llamado a bajar el tono de lo que digo y pregunto... Cada pregunta hay que repensarla 500 veces.)

<sup>312</sup> Human Rights Watch interview with Silvia Alegrett, president of the National College of Journalists, Caracas, August 29, 2011.

## Human Rights Defenders

### Criminal Complaints against Human Rights Defenders

For years, President Chávez and his supporters have responded to criticism by local (and international) human rights defenders with unfounded allegations that their critics were receiving support from the US government to undermine Venezuelan democracy. In 2010, this tactic for deflecting criticism took a more troubling turn when Chávez supporters filed a series of criminal complaints against NGOs for receiving international funding.

In one complaint, filed on July 7, 2010, leaders of Chávez’s political party (Partido Socialista Unido de Venezuela, PSUV) sought to press criminal charges against several human rights and other NGOs—along with journalists and politicians—based on a report by the National Assembly that accused them of being “traitors” for allegedly having received funding from the US government aimed at “destabilizing the country.”<sup>313</sup>

In another case, filed on July 13, a pro-Chávez association of journalists, Movement for Necessary Journalism (Movimiento Periodismo Necesario, MPN), presented a formal complaint to the Attorney General’s Office against two prominent NGOs that monitor press freedoms, Public Space (Espacio Público) and the Institute of Press and Society (Instituto de Prensa y Sociedad, IPYS), for receiving international funding and allegedly committing “crime[s] against national sovereignty.”<sup>314</sup>

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<sup>313</sup> “PSUV demands celerity in investigations about foreign funding to the opposition” (PSUV exige celeridad en investigaciones sobre financiamiento externo a la oposición), *Correo del Orinoco*, August 17, 2010, <http://www.psuve.org.ve/temas/noticias/exigen-celeridad-en-investigaciones-sobre-financiamiento-externo-a-la-oposicion/> (accessed May 23, 2012); National Assembly, “Report by the Permanent Commission of Science, Technology and Social Communication, in relation to the funding from the United States to journalists, social organizations and opposition policies” (Informe que presenta la Comisión Permanente de Ciencia, Tecnología y Comunicación social, en relación al financiamiento proveniente del gobierno de los Estados Unidos a periodistas, organizaciones sociales y políticas opositoras), undated, <http://www.derechos.org.ve/pw/wp-content/uploads/informefinalinjerenciadeeeuu200710.pdf> (accessed May 23, 2012); “National Assembly presents report of financing to counterrevolutionary sectors” (Asamblea Nacional presentó informe de financiamiento a sectores contrarrevolucionarios), *Radio Mundial YVKE*, July 21, 2012, <http://www.radiomundial.com.ve/node/154907> (accessed May 23, 2012).

<sup>314</sup> “Venezuelan journalists and media outlets have received more than four million dollars from the United States” (Periodistas y medios venezolanos han recibido más de 4 millones de dólares de Estados Unidos), *Correo del Orinoco*, July 14, 2010, <http://www.radiomundial.com.ve/node/232195> (accessed May 29, 2012); “Foreign interference in local politics” (Injerencia externa en la política local), *Ciudad Caracas*, July 13, 2010, <http://www.ciudadccs.org.ve/?p=85631> (accessed May 23, 2012); National Assembly, “International organizations are denounced for providing international funding to opposition sectors” (Denuncian financiamiento de organizaciones internacionales a sectores de la oposición), July 13, 2010,

In a third, filed on August 22, several youth groups affiliated with Chávez’s political party presented a complaint to the Attorney General’s Office against 23 NGOs—including leading human rights organizations, such as COFAVIC, PROVEA, Citizen Watch, Public Space, and IPYS—for alleged “treason” due to having received funding from the US government.<sup>315</sup>

Such criminal complaints have no merit under international law and norms, which protect the right of human rights and other civil society organizations to work with, and receive assistance from, entities outside of their host state.<sup>316</sup> In Venezuela, as in other Latin American countries, moreover, raising funds from outside of their national base is key to enhancing human rights organizations’ capacity to do their work in a sustainable manner. Domestic charitable giving to civil society groups, while somewhat more common today than in past years, is far more limited than in Europe or North America.<sup>317</sup>

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[http://www.asambleanacional.gob.ve/index.php?catid=1%3Alatest-news&id=25920%3Avideo-manuel-villalba-organizaciones-de-oposicion-reciben-dinero-del-imperio-para-desestabilizar-el-pais&lang=es&option=com\\_content&view=article](http://www.asambleanacional.gob.ve/index.php?catid=1%3Alatest-news&id=25920%3Avideo-manuel-villalba-organizaciones-de-oposicion-reciben-dinero-del-imperio-para-desestabilizar-el-pais&lang=es&option=com_content&view=article) (accessed May 23, 2012); Movement for Necessary Journalism, “Evidences analyzed in light of Eva Golinger’s investigation” (Las evidencias analizadas según investigación de Eva Golinger), July 13th, 2010, [http://www.asambleanacional.gob.ve/index.php?catid=1%3Alatest-news&id=25920%3Avideo-manuel-villalba-organizaciones-de-oposicion-reciben-dinero-del-imperio-para-desestabilizar-el-pais&lang=es&option=com\\_content&view=article](http://www.asambleanacional.gob.ve/index.php?catid=1%3Alatest-news&id=25920%3Avideo-manuel-villalba-organizaciones-de-oposicion-reciben-dinero-del-imperio-para-desestabilizar-el-pais&lang=es&option=com_content&view=article) (accessed May 25, 2012); “MPN reiterates request to the National Assembly to reform Media Law” (MPN reitera solicitud ante la AN para reforma de La Ley del Ejercicio del Periodismo), *Correo del Orinoco*, July 17, 2010, : <http://www.correodelorinoco.gob.ve/comunicacion-cultura/mpn-reitera-solicitud-ante-an-para-reforma-ley-ejercicio-periodismo/> (accessed May 25, 2012).

The Movement for Necessary Journalism defines itself as a group of journalists that are independent from “party directives” but “support the revolutionary process directed by Hugo Chávez.” Movement for Necessary Journalism, “Who are we?” (Quiénes somos), <http://www.periodismonecesario.org/el-movimiento-por-el-periodismo-necesario-que-es/> (accessed May 23, 2012). (Somos un grupo de periodistas venezolanos, ... El nuestro es un grupo de opinión, por tanto, independiente de directrices partidistas, aún cuando somos simpatizantes del proceso revolucionario que lidera Hugo Chávez.)

<sup>315</sup> “PSUV Youth filed claim against 23 NGOs for receiving US funds” (Jóvenes del PSUV denunciaron a 23 ONGs de recibir dinero de EEUU), *Correo del Orinoco*, August 25, 2010, [http://issuu.com/correo\\_del\\_orinoco/docs/web\\_co355](http://issuu.com/correo_del_orinoco/docs/web_co355) (accessed May 25, 2012); “JPSUV at the Attorney General’s Office” (JPSUV en Fiscalía), YouTube video posted by “noticias24venez,” August 24, 2010, [http://www.youtube.com/watch?v=jpfjMRQfW-g&feature=player\\_embedded](http://www.youtube.com/watch?v=jpfjMRQfW-g&feature=player_embedded) (accessed May 23, 2012); “Venezuelan NGOs are financed by the US State Department” (ONG’s venezolanas son financiadas por Departamento de Estado de EEUU), *Radio Nacional de Venezuela*, August 24, 2010, <http://www.rnv.gov.ve/noticias/?act=ST&f=&t=135243> (accessed May 23, 2012).

<sup>316</sup> See chapter “Venezuela’s Obligations under International Law.”

<sup>317</sup> The Index of Donors for Latin America—a website created by the Avina Foundation, an organization that focuses on promoting development in Latin America, and the Inter-American Development Bank—lists 548 organizations that donate funds to organizations in the region, including local and international donors. “Index of Donors for America,” undated, <http://www.indicedonantes.org/organizations> (accessed May 23, 2012).

According to their 2010 report on the main philanthropy trends in Latin America, more than 45 percent of international financing for work in the region comes from foreign governments, 30 percent from international civil society organizations, 15 percent from private foundations, and 9 percent from corporate donations. Almost 40 percent of funds are destined to projects related to democratic governance and civil society. AVINA - IDB, “Main Philanthropy trends in Latin America,” August 2010, [http://www.lacdonors.org/biblio/Tendencias%20Filantropicas%20en%20America%20Latina/avina\\_articulo\\_2010\\_09\\_eng.pdf](http://www.lacdonors.org/biblio/Tendencias%20Filantropicas%20en%20America%20Latina/avina_articulo_2010_09_eng.pdf) (accessed May 23, 2012), p. 3.

In Venezuela, the majority of funding received by leading human rights NGOs comes from non-US sources, such as the European Union and European governments. Several of these NGOs receive no funding from US sources, and in the case of those who do receive such funding, it constitutes a fraction of their total income.<sup>318</sup>

The directors of several of the organizations that face criminal complaints told Human Rights Watch that they have never received any formal notification from the Attorney General's Office regarding the status of the cases against them.<sup>319</sup> However, as discussed below, for the past two years they have had to contend with the possibility that prosecutors could move against them at any time.

### **Expanded Powers to Punish Human Rights Defenders**

The potential impact of these criminal complaints was greatly increased by the July 2010 Supreme Court ruling that individuals or organizations receiving foreign funding could be prosecuted for “treason”—a crime that carries a prison sentence of up to 15 years (see discussion of the Supreme Court ruling against the independence of NGOs in the first chapter of this report).

In its ruling, the Supreme Court also held that the NGO that had brought the appeal—because it received foreign funding—had no legal standing to challenge government policies. This holding could effectively provide the basis for depriving the country's human rights defenders of an essential tool for advocating on behalf of victims.

In December 2010, at the urging of President Chávez, members of the outgoing Chávez party-dominated National Assembly passed laws that imposed additional limits on NGO activity

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<sup>318</sup> Human Rights Watch interview with Humberto Prado, Venezuelan Observatory of Prisons, Caracas, March 19, 2012; Human Rights Watch interview with Carlos Correa, director of Public Space, March 20, 2012; Human Rights Watch interview with Liliana Ortega, director of COFAVIC, Caracas, March 20, 2012; Human Rights Watch interview with José Gregorio Guareñas, director of the Vicaría Episcopal de Derechos Humanos de la Arquidiócesis de Caracas, Caracas, March 21, 2012; Human Rights Watch interview with Marino Alvarado, director of PROVEA, Caracas, March 21, 2012; Human Rights Watch interview with Rocío San Miguel, director of Control Ciudadano, March 22, 2012; Human Rights Watch interview with Feliciano Reyna, SINERGIA and CIVILIS, Caracas, March 19, 2012; Human Rights Watch telephone interview with Ligia Bolívar, director of the Human Rights Center at the Catholic University Andrés Bello, April 17, 2012.

<sup>319</sup> Human Rights Watch interviews with several human rights defenders allegedly under investigation, Caracas, February 2011 and March 2012.



and increased human rights defenders' vulnerability to reprisals for their work.<sup>320</sup> One was the Law for the Defense of Political Sovereignty and National Self Determination (hereinafter the "Sovereignty Law"), which blocks organizations that "defend political rights" or "monitor the performance of public bodies" from receiving international funding.<sup>321</sup> Such organizations that receive international funds may be subject to a fine that is twice the amount of the foreign funding received, and may be subject to "sanctions included in other laws" as well.<sup>322</sup> The law does not specify which "other laws" may apply, but the language suggests that NGOs could be subject to administrative or criminal sanctions as well.

The law also states that foreigners invited to Venezuela by these groups will be summarily expelled from the country if they express opinions that "offend the institutions of the state, top officials or attack the exercise of sovereignty."<sup>323</sup> The organizations that invite the foreigners are subject to stiff fines.<sup>324</sup>

The government explicitly recognized that this law could apply to human rights NGOs when officials told the IACHR that "it is true that the Venezuelan State has been critical of NGOs that accept funding from foreign governments, which is why a law prohibiting it was enacted."<sup>325</sup> And in May 2012, a commission in the National Assembly cited this law as the basis for opening an investigation into the human rights NGO Transparency Venezuela.<sup>326</sup>

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<sup>320</sup> National Assembly, "Speech by Commander Hugo Chávez, Constitutional President of the Bolivarian Republic of Venezuela, during the Official Act in Defense of the Nation, its Sovereignty and Against Imperialism" (Discurso pronunciado por el Comandante Hugo Chávez, Presidente Constitucional de la República Bolivariana de Venezuela con Motivo del Acto de Estado en Defensa de la Patria, su Soberanía y Contra el Imperialismo), November 23, 2010 [http://www.asambleanacional.gob.ve/index.php?option=com\\_docman&task=cat\\_view&gid=41&Itemid=124&lang=es&limitstart=15](http://www.asambleanacional.gob.ve/index.php?option=com_docman&task=cat_view&gid=41&Itemid=124&lang=es&limitstart=15) (accessed May 25, 2012). (Cómo es que aquí se sigue... permitiendo... que partidos políticos, ONG, personalidades de la contrarrevolución, continúen siendo financiados con millones y millones de dólares del imperio yanqui y anden por allí haciendo uso de la plena libertad para abusar y violar nuestra Constitución y tratar de desestabilizar al país. Imploro que se haga una ley muy severa para impedirlo.)

<sup>321</sup> National Assembly, Law for the Defense of Political Sovereignty and National Self Determination (Ley de Defensa de la Soberanía Política y Autodeterminación Nacional), December 21, 2010, arts. 1, 4, 5.

<sup>322</sup> *Ibid.*, art. 6.

<sup>323</sup> *Id.*, art. 8.

<sup>324</sup> *Id.*

<sup>325</sup> IACHR, "Annual Report 2010," para. 671.

<sup>326</sup> National Assembly, "Oversight Commission will investigate funding of Transparency Venezuela and Legislative Monitor" (Comisión de Contraloría investigará financiamiento a Transparencia Venezuela y Monitor Legislativo), May 16, 2012, [http://www.asambleanacional.gob.ve/index.php?option=com\\_content&view=article&id=40634:comision-de-contraloria-investigara-financiamiento-a-transparencia-venezuela-y-monitor-legislativo&Itemid=50](http://www.asambleanacional.gob.ve/index.php?option=com_content&view=article&id=40634:comision-de-contraloria-investigara-financiamiento-a-transparencia-venezuela-y-monitor-legislativo&Itemid=50) (accessed May 17, 2012).

Also in December 2010, the National Assembly adopted the Organic Law on Social Control, which regulates the work of “organizations and individuals...that perform activities with an impact on general or collective interests.”<sup>327</sup> The law states that “social control”—which may be exercised “individually or collectively through all activities in social life”—should be done on a pro bono basis and must follow “socialist principles and values.”<sup>328</sup> Any organization that wishes to participate in these broadly defined activities must register with the government, following a procedure to be established by the president.<sup>329</sup> Those who violate the law may be subject to administrative, civil, or criminal sanctions.<sup>330</sup>

### *Venezuelan Observatory of Prisons*

Humberto Prado is the director of the Venezuelan Observatory of Prisons (Observatorio Venezolano de Prisiones), an NGO founded in 2002 that documents abuses in Venezuela’s notoriously violent prison system, advocates on behalf of prisoners’ rights, and promotes reforms to address chronic problems such as overcrowding.<sup>331</sup> In 2009, the Embassy of Canada awarded Prado its annual Human Rights Prize in recognition of his work.<sup>332</sup>

In 2009, after Prado represented several inmates seeking protection before the Inter-American Court of Human Rights, the court found that he was facing a “grave risk for his life and integrity” due to threats and attacks against his life and that of his family.<sup>333</sup> It

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<sup>327</sup> National Assembly, “Organic Law on Social Control” (Ley Orgánica de Contraloría Social), December 10, 2010, art. 4.

<sup>328</sup> *Ibid.*, arts. 6, 7, 11.

<sup>329</sup> *Id.*, art. 9.

<sup>330</sup> *Id.*, art. 14.

<sup>331</sup> Venezuelan Observatory of Prisons webpage, <http://www.ovprisiones.org/cms/> (accessed May 24, 2012).

<sup>332</sup> Government of Canada, “Humberto Prado receives Human Rights Prize of the Embassy of Canada” (Humberto Prado recibe Premio de Derechos Humanos de la Embajada de Canadá), undated, <http://www.canadainternational.gc.ca/venezuela/highlights-faits/HumbertoPrado.aspx?lang=es&view=d> (accessed May 24, 2012).

<sup>333</sup> Venezuelan Observatory of Prisons, “The Venezuelan penitentiary system falls to pieces” (A pedazos se cae el sistema penitenciario venezolano), June 18, 2009, [http://www.ovprisiones.org/cms/index.php?option=com\\_content&view=article&id=85:a-pedazos-se-cae-el-sistema-penitenciario-venezolano-&catid=1:noticiero&Itemid=40](http://www.ovprisiones.org/cms/index.php?option=com_content&view=article&id=85:a-pedazos-se-cae-el-sistema-penitenciario-venezolano-&catid=1:noticiero&Itemid=40) (accessed May 24, 2012); Venezuelan Observatory of Prisons, “Report on the procedural situation of people deprived of liberty in Venezuela 2008” (Informe sobre la situación procesal de las personas privadas de libertad en Venezuela 2008), 2009, [http://www.ovprisiones.org/pdf/INF\\_SituaPPLo8.pdf](http://www.ovprisiones.org/pdf/INF_SituaPPLo8.pdf) (accessed May 24, 2012); COFAVIC, “Inter-American Court ratifies measures in cases of Venezuelan prisons” (Corte-IDH ratifica medidas a penales venezolanos), December 29, 2009, [http://www.cofavic.org/det\\_noticia.php?id=163](http://www.cofavic.org/det_noticia.php?id=163) (accessed May 24, 2012); Inter-American Court of Human Rights, “Provisional Measures with Respect to the Bolivarian Republic of Venezuela. Case Internado Judicial de Monagas (“La Pica”); Centro Penitenciario Región Capital Yare I and Yare II (Cárcel de Yare); and Internado Judicial Capital El Rodeo I and El Rodeo II” (Medidas Provisionales Respecto de la República Bolivariana

ordered the Venezuelan government to provide him with protection.<sup>334</sup> Yet, as of March 2012, the government still had not adopted any measures to protect Prado.<sup>335</sup>

In May 2010, Prado participated in a peaceful demonstration in front of the Supreme Court with families of inmates, protesting long delays in judicial procedures and prison violence. A week later, according to Prado, seven unidentified individuals dressed in black, wearing sunglasses, and riding motorcycles without license plates, appeared at his apartment building when he was not home, and asked a building employee for the “director of prisons.”<sup>336</sup> Prado filed a complaint with the Attorney General’s Office, but as of March 2012, had received no response.<sup>337</sup>

More recently, in June 2011, Prado publicly criticized the government for its handling of a prison riot and subsequent clashes between inmates and members of the National Guard at El Rodeo prison complex near Caracas, which led to several deaths and injuries on both sides. In one TV interview, for example, Prado blamed the violence on government policies that contributed to overcrowding, poor health conditions, and other factors.<sup>338</sup>

The Chávez administration responded to the criticisms by publicly denouncing Prado. Justice Minister Tarek El Aissami accused him of attempting to “destabilize the prison system,”<sup>339</sup> while Vice President Elías Jaua declared that criticism of the government’s

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de Venezuela. Asuntos Yare I y Yare II (Cárcel de Yare); y Internado Judicial Capital El Rodeo I y El Rodeo II), November 24, 2009, [http://www.corteidh.or.cr/docs/medidas/centro\\_se\\_03.pdf](http://www.corteidh.or.cr/docs/medidas/centro_se_03.pdf) (accessed May 24, 2012), para. 34.

<sup>334</sup> Inter-American Court of Human Rights, “Provisional Measures with Respect to the Bolivarian Republic of Venezuela. Case Internado Judicial de Monagas (“La Pica”); Centro Penitenciario Región Capital Yare I and Yare II (Cárcel de Yare); and Internado Judicial Capital El Rodeo I and El Rodeo II” (Medidas Provisionales Respecto de la República Bolivariana de Venezuela. Asuntos Yare I y Yare II (Cárcel de Yare); y Internado Judicial Capital El Rodeo I y El Rodeo II), November 24, 2009, [http://www.corteidh.or.cr/docs/medidas/centro\\_se\\_03.pdf](http://www.corteidh.or.cr/docs/medidas/centro_se_03.pdf) (accessed May 24, 2012), para. 36.

<sup>335</sup> Human Rights Watch interview with Humberto Prado, director of the Venezuelan Observatory of Prisons, Caracas, March 19, 2012.

<sup>336</sup> Human Rights Watch telephone interview with Humberto Prado, director of the Venezuelan Observatory of Prisons, July 16, 2011; IACHR, “Annual Report 2010,” para. 663.

<sup>337</sup> Human Rights Watch interview with Humberto Prado, director of the Venezuelan Observatory of Prisons, Caracas, March 19, 2012.

<sup>338</sup> “Humberto Prado: Overcrowding in El Rodeo is of 380 percent” (Humberto Prado: el hacinamiento en El Rodeo está en 380%), video, June 14, 2011, <http://www.noticias24.com/actualidad/noticia/267087/el-porcentaje-de-hacinamiento-en-el-rodeo-esta-en-un-380/> (accessed May 24, 2012); “Humberto Prado: Intervening in El Rodeo was a mistake” (Humberto Prado: Intervenir en El Rodeo fue un error), *El Universal*, June 27, 2011, <http://www.eluniversal.com/2011/06/27/humberto-prado-intervenir-el-rodeo-fue-un-error.shtml> (accessed May 24, 2012).

<sup>339</sup> “Bolivarian National Guard enters the prison El Rodeo II. Humberto Prado and Radonski leaders of the opposition – La Hojilla” (GNB ingresa a El Rodeo II cárcel. Humberto Prado y Radonski pranes de la oposición – La Hojilla), YouTube video,

handling of the situation by NGOs and opposition leaders was part of a strategy to “politically destabilize the country.”<sup>340</sup>

At the time, state controlled media outlets accused Prado of fomenting violence in the prisons, and doing so with the financial backing of the US government. The host of the daily political talk show La Hojilla claimed that Prado and the Observatory were “preparing an internal war between inmates.”<sup>341</sup> Meanwhile, the official paper VEA reported that the US government had funded the involvement of nongovernmental organizations, including the Observatory, in the prison incidents.<sup>342</sup>

Prado told Human Rights Watch that, within days of these denunciations, he began receiving anonymous threats, consisting of telephone calls in which unidentified callers told him to “shut up” if he cared about his children. His wife received an anonymous call in which the caller said Prado “would be the next one to fall.”<sup>343</sup> According to the Forum for Life, a consortium of human rights organizations, unidentified individuals published Prado’s phone number and home address on a blog, with a note that said, “Family information to come soon...so that the people try him. Capital punishment.”<sup>344</sup>

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posted by “zurcf95,” June 19, 2011, <http://www.youtube.com/watch?v=05xD1SoLhEW> (accessed May 25, 2012). (Su organización [de Prado] es sinceramente una caja chica del Departamento de Estado, y se beneficia, son de las dádivas que le da el imperio y esas son (sic) su función: desestabilizar el sistema penitenciario.)

<sup>340</sup> “President Chávez is fully exercising his functions even though he is resting due to medical advice” (Presidente Chávez está en pleno ejercicio de sus funciones aunque guarde reposo médico), *Agencia Venezolana de Noticias*, June 23, 2011, <http://www.psuv.org.ve/temas/noticias/presidente-chavez-pleno-ejercicio-funciones-reposo/> (accessed May 24, 2012). ([A]l tiempo que advirtió sobre una estrategia de desestabilización política que han fraguado algunos partidos y organizaciones no gubernamentales para intentar sacar provecho de esa situación.)

<sup>341</sup> “El Rodeo Case: The leader Humberto Prado” (Caso El Rodeo: El pran Humberto Prado), *Radio Nacional de Venezuela*, June 20, 2011, <http://www.rnv.gov.ve/noticias/?act=ST&f=29&t=159609> (accessed May 24, 2012). (Están preparando una guerra interna de reclusos.)

<sup>342</sup> “The State Department is involved in the Prison Problem” (Al problema carcelario le llegó el Departamento de Estado), *Diario Vea*, June 22, 2011, <http://www.clippingdigital.com/email/detalle.php?num=539567448&alt=259,600,600,5395674482&cl=282> (accessed May 24, 2012).

<sup>343</sup> Human Rights Watch telephone interview with Humberto Prado, director of the Venezuelan Observatory of Prisons, July 19, 2011.

<sup>344</sup> “Forum for Life considers Minister Tarek El Aissami would be responsible of any attack against the physical integrity of Humberto Prado and his family” (Foro por la Vida responsabiliza al Ministro Tarek El Aissami de cualquier ataque contra la integridad física de Humberto Prado y su familia), June 23, 2011, <http://www.derechos.org.ve/2011/06/23/foro-por-la-vida-responsabiliza-al-ministro-tarek-el-aissami-de-cualquier-ataque-contra-la-integridad-fisica-de-humberto-prado-y-su-familia/> (accessed May 24, 2012).

On June 27, Prado left Venezuela to participate in an event organized by Amnesty International in Spain. According to Prado, during the following week, a group of unidentified individuals riding motorcycles went to his house and asked the doorman if he still lived there. On a separate occasion, a group of women dressed in what appeared to be National Guard uniforms asked the doorman if Prado's apartment was available for rent. Prado told Human Rights Watch he interpreted these visits as threats, which prompted him to remain abroad and take his family out of the country.<sup>345</sup>

As he prepared to return to Venezuela on August 27, 2011 he received an anonymous email with a photographic image of what appeared to be an official document from the Attorney General's Office, stating that Prado was under criminal investigation for "treason" and "incitement to commit crimes." Prado was able to enter the country and, a few days later, confronted the prosecutor whose name appeared on the document. The prosecutor said there was no such investigation underway, but could not explain the source of the document he had received via email.<sup>346</sup>

Prado told Human Rights Watch that, since his return to Venezuela, he has continued to be the target of denunciations by the Chávez administration and its supporters, as well as acts of intimidation by strangers. For example, in November 2011, three men wearing red shirts arrived at his home in a white truck of the sort that is usually used by police forces and asked Prado's wife if he was home. Prado, who was in Geneva doing advocacy with the United Nations at the time, interpreted this visit as a threat.<sup>347</sup>

In January 2012, the minister of penitentiary system, Iris Varela, told the official press that "an intelligence report shows contacts of Humberto Prado...with international media, trying to agitate an international campaign."<sup>348</sup> And in March, the Twitter account of La

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<sup>345</sup> Human Rights Watch telephone interview with Humberto Prado, director of the Venezuelan Observatory of Prisons, July 19, 2011.

<sup>346</sup> Human Rights Watch interview with Humberto Prado, director of the Venezuelan Observatory of Prisons, Caracas, March 19, 2012.

<sup>347</sup> Ibid.

<sup>348</sup> "Prisons are useless, we need a penitentiary revolution" (La cárcel no sirve para nada, hay que hacer una revolución penitenciaria), *Ciudad Caracas*, January 23, 2012, <http://www.ciudadccs.info/?p=252526&print=1> (accessed May 25, 2012). (Encontramos una gran manipulación, dirigida por intereses foráneos, en torno a la verdad penitenciaria... En un informe de inteligencia aparecen los contactos de Humberto Prado (director del Observatorio Nacional de Prisiones) con medios internacionales, tratando de agitar la campaña en el exterior.)

Hojilla accused Prado of planning to destabilize the prison system by kidnapping visitors and displaying posters criticizing Varela.<sup>349</sup>

In February 2012, Human Rights Watch asked the Attorney General's Office for information on the status of criminal investigations into the threats against Prado, but received no response.<sup>350</sup>

### *Citizen Watch*

Rocío San Miguel is the director of Citizen Watch for Security, Defense, and the Armed Forces (Asociación Civil Control Ciudadano para la Seguridad, la Defensa y la Fuerza Armada Nacional), an NGO that since 2005 has monitored transparency within the Venezuelan Armed Forces.<sup>351</sup> San Miguel has taught international humanitarian law at the Central University of Venezuela and has served as an advisor to the International Committee of the Red Cross in Venezuela.<sup>352</sup>

In May 2010, San Miguel gave a television interview on Globovisión in which she presented evidence that 30 military officials, including some high level officers, were members of Chávez's political party, a practice that is prohibited by the Venezuelan constitution.<sup>353</sup>

After the interview, San Miguel was denounced by the hosts of two pro-government shows on state-run television. One of them accused her of "inciting insurrection" and "exposing

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<sup>349</sup> "Irregular situation in El Rodeo I is allegedly being planned for tomorrow, Sunday" (Situación irregular en el Rodeo I estaría siendo planificada para mañana domingo), *La Hojilla*, March 10, 2012, <http://lahojillaentv.com/?p=784> (accessed May 24, 2012).

<sup>350</sup> Letter from Joseph Saunders, deputy director of Human Rights Watch, to Luisa Ortega Díaz, attorney general, February 27, 2012.

<sup>351</sup> Citizen Watch webpage, <http://www.controlciudadano.org/> (accessed May 25, 2012).

<sup>352</sup> Biography of Rocío San Miguel, <http://www.resdal.org/expertos/venezuela.html> (accessed May 5, 2012).

<sup>353</sup> Constitution of the Bolivarian Republic of Venezuela, art. 328: "The National Armed Forces are an institution that is essentially professional, without any political partisanship, organized by the state to guarantee national independence and sovereignty... When fulfilling its functions, it is at the exclusive service of the Nation and never of any individual or political partisanship." Citizen Watch, "Venezuela Report No. 41" (Informe Venezuela No. 41), May 2010, <http://www.controlciudadano.org/documentos/getbindata.php?docid=834&fieldname=documento> (accessed May 5, 2012); "Rocío San Miguel denounces military officers for being PSUV members" (Rocío San Miguel denuncia militares inscritos en PSUV), May 6, 2010, *Noticiero Digital*, <http://www.noticierodigital.com/forum/viewtopic.php?t=648439> (accessed May 5, 2012). Images of the National Electoral Council webpage where you can see that members of the military are members of the PSUV are available at: "Rocío San Miguel presents information of active military members in the PSUV" (Rocío San Miguel presenta datos de militares activos miembros del PSUV), May 13, 2010, <http://www.derechos.org.ve/2010/05/13/rocio-san-miguel-presenta-datos-de-militares-activos-miembros-del-psuv/> (accessed May 5, 2012).

the military to public scrutiny to undermine their work,” while the other accused her of being a “CIA agent” and receiving public funding from abroad.<sup>354</sup>

In January 2011, *Ámbito Cívico Militar*, the official magazine of the Armed Forces, published an article accusing San Miguel of seeking to foment a coup d'etat in Venezuela.<sup>355</sup> San Miguel asked the head of the Armed Forces, Gen. Henry de Jesús Rangel Silva, for information on which sources had been used to conclude that she was involved in efforts to destabilize the country. He refused to provide the information, stating that it was reserved. San Miguel has filed a claim with the Supreme Court asking it to overturn the decision to deny information, but, as of March 2012, the case remained pending.<sup>356</sup>

In addition to the public allegations against her, San Miguel reports having been subject to multiple acts of intimidation by strangers. In May 2010, the day after her television interview, an unmarked car began to follow her while she was driving with her daughter. She then received repeated threats via Twitter, including one claiming, “I am following you.”<sup>357</sup> (San Miguel filed formal complaints before the Attorney General’s Office and the Ombudsman Office, which remain pending.)<sup>358</sup>

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<sup>354</sup> IACHR, “Annual Report 2010,” para. 662; Petition by Carlos Nieto to the IACHR to order the government of Venezuela to grant protective measures in favor of Rocío San Miguel, September 17, 2011 (copy on file at Human Rights Watch); COFAVIC, “Opinion: Rights without consequences: Supporting Rocío San Miguel” (Opinión: Derechos sin revés: Respaldo a Rocío San Miguel), May 20, 2010, <http://www.derechos.org/ve/2010/05/20/opinion-derechos-sin-reves-respaldo-a-rocio-san-miguel/> (accessed May 29, 2012); Citizen Watch, “Rocío San Miguel denounced harassment and persecution” (Rocío San Miguel denunció hostigamiento y persecución), May 14, 2010, <http://www.controlciudadano.org/noticias/detalle.php?&notid=7226> (accessed May 29, 2012).

<sup>355</sup> The article accused “radical sectors of the opposition,” including San Miguel, of attacking the Armed Forces and of carrying out a strategy to promote “confrontation and a coup d'etat.” “Bolivarian Armed Forces are Being Targeted” (Fuerza Armada Nacional Bolivariana en la mira), *Ámbito Cívico Militar*, December/January 2011, <http://fuerza-armada-bolivariana.blogspot.com/2011/08/el-articulo-que-no-le-gusta-rocio-san.html> (accessed May 29, 2012). (El esquema hipotético de ataque conducido por sectores radicales de la oposición de la mano del imperialismo contra las FANB están direccionados al Golpe de Estado. (...) Asimismo, Rocío San Miguel, quien ha intensificado sus acciones en las últimas semanas contra la FANB... Su estrategia ha estado siendo presentada por fases que buscan incidir de manera intrínseca en la promoción de la tesis de la confrontación y Golpe de Estado.)

<sup>356</sup> Request by Carlos Nieto to the IACHR to order the government of Venezuela to grant protective measures in favor of Rocío San Miguel; Human Rights Watch interview with Rocío San Miguel, director of Citizen Watch, Caracas, March 22, 2012.

<sup>357</sup> Ibid; Human Rights Watch telephone interview with Rocío San Miguel, director of Citizen Watch, Caracas, July 2010; A Window for Democracy (Ventana a la Libertad), “Rocío San Miguel’s complaint before the Public Ministry and the Ombudsman Office” (Denuncia de Rocío San Miguel ante Ministerio Público y Defensoría del Pueblo), May 11, 2010, <http://www.infocudadano.com/2010/05/12/denuncia-de-rocio-san-miguel-ante-ministerio-publico-y-defensoria-del-pueblo/> (accessed May 25, 2012).

<sup>358</sup> On May 17, a prosecutor asked a judge to authorize protective measures in favor of San Miguel, but the judge ruled the case should be decided by a court that focuses on gender violence. Yet the specialized court decided that, given that the threats were allegedly related to San Miguel’s work as a human rights defender and not to the fact that she was a woman, an

In 2011, she received death threats on multiple occasions, including two days after she presented a report criticizing the Defense Commission at the National Assembly in December, when an unidentified individual rang the doorbell at her home and said into the intercom, “You will die, bitch!”<sup>359</sup>

In January 2012, the Inter-American Commission on Human Rights ordered the government of Venezuela to protect the lives and physical integrity of San Miguel and her daughter.<sup>360</sup> In March, San Miguel participated in a hearing before a Venezuelan judge to agree on which protective measures the government would grant them. She asked for several measures, including a prompt investigation of the threats she had received, and explicitly told the judge that she did not want to be assigned police protection. Nonetheless, according to San Miguel, the judge rejected all of her requests and instead authorized multiple daily police visits to her home.<sup>361</sup>

In February 2012, Human Rights Watch asked the Attorney General’s Office for information on the status of investigations into the threats against San Miguel, but received no response.<sup>362</sup>

### *Public Space*

Carlos Correa is the director of Public Space (Espacio Público), an NGO that monitors the situation of freedom of expression in the country and advocates for greater government transparency and accountability.<sup>363</sup> Correa participates regularly in international fora, including hearings before the IACHR, and publishes critical opinion pieces in local newspapers. Prior to joining Public Space, Correa directed PROVEA, one of the country’s leading human rights organizations, and taught in several Venezuelan universities.

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ordinary court should analyze the prosecutor’s request. The judge eventually rejected the protective measures. Supreme Court of Justice of Venezuela, File No. 01-F1-C-004-2010, July 13, 2010, <http://www.tsj.gov.ve/decisiones/scp/Julio/265-13710-2010-CC10-179.html> (accessed May 29, 2012); Human Rights Watch telephone interview with Rocío San Miguel, director of Citizen Watch, Caracas, July 2010; Human Rights Watch interviews with Rocío San Miguel, director of Citizen Watch, Caracas, February 9, 2011, and March 22, 2012.

<sup>359</sup> Human Rights Watch written communication with Rocío San Miguel, December 27, 2011; Formal complaint presented by Rocío San Miguel before the Attorney General’s Office, December 28, 2011. Copy on file at Human Rights Watch.

<sup>360</sup> Letter from Santiago Canton, executive secretary of the IACHR to Carlos Nieto, regarding case MC-349-11, January 18, 2012. Copy on file at Human Rights Watch.

<sup>361</sup> Human Rights Watch interview with Rocío San Miguel, director of Citizen Watch, Caracas, March 22, 2012.

<sup>362</sup> Letter from Joseph Saunders, deputy director at Human Rights Watch, to Luisa Ortega Díaz, attorney general, February 27, 2012.

<sup>363</sup> Public Space webpage, <http://espaciopublico.org/> (accessed April 19, 2012).



In early July 2010, Eva Golinger, a US-trained lawyer and outspoken supporter of President Chávez, published copies of official US documents that describe US funding to Venezuelan NGOs (along with universities, websites, and political parties), including Public Space. These documents include information regarding a US Federal Assistance Award of US\$699,996 to the Pan American Development Foundation (PADF) for a two-year project called “Fostering Media Freedom in Venezuela,” in which Public Space and another NGO, IPYS, are sub-grantees.<sup>364</sup> According to Golinger, US agencies—including USAID, NED, PADF, and Freedom House—have provided funding to Venezuelan political parties and NGOs “precisely to work against the Revolution.”<sup>365</sup>

Several weeks later, Correa stated in an interview on Globovisión that Public Space is an autonomous organization with multiple sources of funding, and that the majority of it comes from non-US sources.<sup>366</sup> (Regarding the specific PADF project mentioned by Golinger, Correa told Human Rights Watch that Public Space received US\$183,504 dollars over the course of two years, 30 percent of its total income during that period, and that it used the funds to finance trainings on new technologies for civil society groups, journalists, and students.)<sup>367</sup>

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<sup>364</sup> United States Department of State Congressional Notification, “Support for Democracy, Human Rights and Rule of Law in the WHA Region,” March 15, 2010; US Department of State Federal Assistance Award to “Fostering Media Freedom in Venezuela,” March 15, 2010 (copies on file at Human Rights Watch); IACHR, “Annual Report 2010,” para. 668; “Venezuelan journalists and media have received more than four million dollars from the United States” (Periodistas y medios venezolanos han recibido más de 4 millones de dólares de Estados Unidos), *Correo del Orinoco*, July 14, 2010, <http://www.correodelorinoco.gob.ve/tema-dia/periodistas-y-medios-venezolanos-han-recibido-mas-4-millones-dolares-estados-unidos/> (accessed May 4, 2012); Eva Golinger, “Documents show the US provides millions of dollars to media and Venezuelan journalists” (Documentos revelan millones de dólares en financiamiento de Estados Unidos a medios y periodistas venezolanos), July 12, 2010, <http://www.aporrea.org/tiburon/n161110.html> (accessed May 4, 2012); “US government finances organization that criticizes Venezuela on human rights” (Gobierno estadounidense financia a organización que “aplaza” a Venezuela en DDHH), *Agencia Venezolana de Noticias*, July 26, 2010, <http://www.avn.info.ve/node/7109> (accessed May 4, 2012).

<sup>365</sup> “International agencies invest millions of dollars in the Venezuelan opposition each year” (Agencias internacionales invierten millones de dólares en la oposición venezolana anualmente), YouTube video, posted by “benitopablojuarezg,” July 26, 2010, <http://www.youtube.com/watch?v=HA6EHZIB2GM&feature=related> (accessed May 4, 2012). ([El informe habla del hecho de que principalmente la gente financistas a los grupos políticos en el país - partidos políticos tanto como ONGs - ya creados dentro de esta, estos últimos años de la revolución, para justamente trabajar contra la revolución. Son gente estadounidense, son los que ya siempre hemos venido denunciando - la USAID, la NED, el IRI, el Instituto Demócrata Nacional, el Freedom House y hay otros que no se hablaba mucho pero que aquí yo tengo una cantidad de documentos sobre ellos que son la Fundación Panamericana para el Desarrollo...).

<sup>366</sup> “The executive organizes systematic campaign of discredit against the NGO Public Space” (Ejecutivo Nacional realiza campaña sistemática de descrédito contra la ONG Espacio Público), July 30, 2010, video, <http://www.derechos.org.ve/2010/07/30/ejecutivo-nacional-realiza-campana-sistematica-de-descredito-contra-la-ong-espacio-publico/> (accessed May 4, 2012).

<sup>367</sup> Human Rights Watch telephone interview with Carlos Correa, director of Public Space, May 3, 2012.

Later the same day, the host of La Hojilla denounced him on state-run television as a “hypocrite” for not stating explicitly that he had received funds from the United States government.<sup>368</sup>

A few days later, the state-run channel began airing spots ridiculing Correa for receiving US funding. One spot consisted of an animated sequence that depicts a cartoon image of Correa leaving the US embassy in a limousine, his suitcase overflowing with US dollar bills.<sup>369</sup> Another spot showed images of the documents used by Golinger and questioned the veracity of Correa’s statements in the Globovisión interview.<sup>370</sup> A third spot included both the cartoon and images of the interview.<sup>371</sup>

The spots were aired as many as 20 times a day for approximately four weeks on various channels, according to Correa.<sup>372</sup> In May 2011, they were aired again after the organization published its annual report criticizing restrictions on freedom of expression in Venezuela.<sup>373</sup>

The content of the spots is particularly alarming given the fact (discussed earlier in this chapter) that Public Space is facing criminal complaints for receiving international funding and could potentially face charges of “treason.”<sup>374</sup>

Public Space has been unable to obtain any information from the public television station, Venezolana de Televisión (VTV), on whether the television station could provide information on who produced the television spots, how much they cost, and how many times they were aired.<sup>375</sup>

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<sup>368</sup> La Hojilla, aired July 26, 2011, YouTube video, posted by “1966FOX MULDER,” July 27, 2010, [http://www.youtube.com/watch?v=WVX1du-baUM&feature=player\\_embedded](http://www.youtube.com/watch?v=WVX1du-baUM&feature=player_embedded) (accessed May 29, 2012).

<sup>369</sup> “VTV continues campaign to discredit Public Space” (VTV continúa campaña de descrédito en contra de Espacio Público), YouTube video, posted by “NoticieroDigitalcom,” August 7, 2010, <http://www.youtube.com/watch?v=oVSN6S25nWU> (accessed May 29, 2012).

<sup>370</sup> “Criminalization of work of NGOs in Venezuela” (Criminalización trabajo ONGs en Venezuela), YouTube video, posted by “albertcamus5,” July 28, 2010, <http://www.youtube.com/watch?v=RLhdsx6hipc&feature=related> (accessed May 29, 2012)

<sup>371</sup> VTV, video, <http://www.vtv.gov.ve/videos-especiales-vtv/41009> (accessed August 19, 2010). The spot was subsequently taken down and is no longer available online.

<sup>372</sup> Human Rights Watch email communication with Carlos Correa, director of Public Space, December 14, 2011.

<sup>373</sup> Human Rights Watch interview with Carlos Correa, director of Public Space, Caracas, August 29, 2011.

<sup>374</sup> Supreme Court of Justice of Venezuela, Ruling No. 796, July 22, 2010, <http://www.tsj.gov.ve/decisiones/scon/Julio/796-22710-2010-09-0555.html> (accessed May 25, 2012).

<sup>375</sup> Information request to Mauricio Rodríguez Gelfenstein, president of VTV, from Marianna Belalba, Public Space, and Antonio Puppio, PROVEA, August 16, 2010. Public Space, “Judicial restrictions to access public information in Venezuela”

Correa told Human Rights Watch that after the spots were aired, government supporters posted his home address on Twitter and he was subject to repeated harassment and threats by strangers.<sup>376</sup> For example, in several instances while he was walking down the street near his office, unknown individuals accused him of being an “enemy of the president.” On one occasion, a person he passed said out loud, “I don’t understand why these traitors are not put in jail,” and, on another occasion, a passerby told him to “stop messing with [the] president.”<sup>377</sup>

In December 2010, Correa participated in a demonstration with other human rights defenders in front of the National Assembly against several legislative proposals that they considered would undermine free expression. When they were arriving at the Assembly to deliver a letter to legislators, a government supporter shouted at them, “This is red territory, this is Chavista territory!” While they were giving a copy of the letter to a legislator, a truck drove by at low speed and an unidentified individual hurled a plastic cone at Correa, striking him in the face and producing a contusion on his forehead that required medical attention. After the incident, a civilian who had been standing nearby told Correa, “I will kill you.”<sup>378</sup> Correa filed a formal complaint before prosecutors regarding this incident, which, as of March 2012, remained pending.<sup>379</sup>

In February 2012, Human Rights Watch asked the Attorney General’s Office for information on the status of criminal investigations into the physical assault and threats against Correa, but received no response.<sup>380</sup>

### *COFAVIC*

The nongovernmental organization COFAVIC (Comité de Familiares de las Víctimas de los sucesos ocurridos entre el 27 de febrero y los primeros días de marzo de 1989) was

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(Restricciones judiciales al acceso a la información pública en Venezuela), October 2011. Copy on file at Human Rights Watch. Human Rights Watch interview with Carlos Correa, director of Public Space, March 20, 2012.

<sup>376</sup> Human Rights Watch interview with Carlos Correa, director of Public Space, Caracas, February 9, 2011.

<sup>377</sup> Human Rights Watch email communication with Carlos Correa, director of Public Space, June 8, 2012.

<sup>378</sup> “Carlos Correa of Public Space is attacked in front of the National Assembly” (Agredido Carlos Correa de Espacio Público frente a la Asamblea Nacional), December 16, 2010, <http://www.derechos.org.ve/2010/12/16/agredido-carlos-correa-de-espacio-publico-frente-a-la-asamblea-nacional/> (accessed April 27, 2012); IACHR, “Annual Report 2010,” para. 664.

<sup>379</sup> Human Rights Watch interview with Carlos Correa, director of Public Space, March 20, 2012.

<sup>380</sup> Letter from Joseph Saunders, deputy director of Human Rights Watch, to Luisa Ortega Díaz, attorney general, February 27, 2012.

created by victims and family members of victims of El Caracazo—a violent crackdown on street protestors in Caracas in February 1989 that led to hundreds of deaths—to promote accountability for these crimes.<sup>381</sup> Since its creation, the organization has repeatedly denounced the lack of accountability for the crimes committed during El Caracazo.

In February 2011, days before the anniversary of El Caracazo, COFAVIC issued a press release questioning the ongoing lack of progress in investigations of the killings, expressing concern that bodies of victims exhumed in September 2009 would be re-buried without having been identified, and criticizing the Attorney General’s Office for refusing to allow independent experts to participate in the exhumations.<sup>382</sup>

The Attorney General’s Office responded to COFAVIC’s statement the same day by accusing the organization of failing to cooperate with its investigations. Attorney General Luisa Ortega Díaz claimed that COFAVIC had failed to provide her office with information on exhumations carried out in the 1990s. Alejandro Castillo, a senior official at the Attorney General’s Office, claimed that COFAVIC had “not provided any support” to the investigations.<sup>383</sup> (The national human rights ombudsperson, Gabriela Ramírez, also publicly denounced COFAVIC, calling it a “nongovernmental organization that recently became opposition.”)<sup>384</sup>

The allegations by the Attorney General’s Office are particularly problematic because, under Venezuelan law, failing to cooperate with ongoing investigations could constitute

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<sup>381</sup> COFAVIC webpage, <http://www.cofavic.org/contenido.php?id=30> (accessed May 23, 2012).

<sup>382</sup> COFAVIC, “22 years after El Caracazo, the truth is buried once again” (A 22 años del Caracazo la verdad de lo ocurrido se vuelve a enterrar), press release, February 25, 2011, [http://www.cofavic.org/det\\_comunicados.php?id=33](http://www.cofavic.org/det_comunicados.php?id=33) (accessed May 23, 2012).

<sup>383</sup> Forum for Life, “Forum for Life denounces acts to criminalize Cofavic” (Foro por la Vida denuncia actos de criminalización contra COFAVIC), March 2, 2010, <http://www.derechos.org/ve/2010/03/02/foro-por-la-vida-denuncia-actos-de-criminalizacion-contra-cofavic/> (accessed May 23, 2012); “Prosecutors are working to obtain pre-mortem information about victims of El Caracazo” (MP trabaja para obtener información pre-mortem sobre víctimas del Caracazo), *Radio Nacional de Venezuela*, February 25, 2010, <http://www.rnv.gov.ve/noticias/index.php?act=ST&f=2&t=120860> (accessed May 23, 2012); “IACHR issues negative report against the government of President Hugo Chávez” (CIDH emite informe negativo contra Gobierno del Presidente Hugo Chávez), *Correo del Orinoco*, February 26, 2010, <http://www.correodelorinoco.gob.ve/nacionales/cidh-emite-informe-negativo-contra-gobierno-presidente-hugo-chavez/> (accessed May 23, 2012).

<sup>384</sup> United Nations Human Rights Council, “Report of the Special Rapporteur on the situation of human rights defenders, Margaret Sekaggua - Human Rights Council,” A/HRC/16/44/Add.1, February 28, 2011, [http://www2.ohchr.org/english/issues/defenders/docs/A.HRC.16.44.Add.1\\_EFOnly.pdf](http://www2.ohchr.org/english/issues/defenders/docs/A.HRC.16.44.Add.1_EFOnly.pdf) (accessed May 23, 2012), para. 2451.

obstruction of justice, which is a criminal offense subject to a prison sentence of up to three years.<sup>385</sup> Indeed, in an opinion piece published in 2009 on the subject of obstruction of justice, the attorney general stressed that her office is committed to “sanction[ing] any act that attempts to undermine” its work.<sup>386</sup>

COFAVIC representatives insist that the allegations are entirely false, and they provided Human Rights Watch with documentation showing that, in fact, over two decades, the organization had repeatedly provided prosecutors with the information it had on cases from El Caracazo.<sup>387</sup>

The UN special rapporteur on the situation of human rights defenders has also expressed concern that the allegations by the Attorney General’s Office could “be part of a defamation campaign to discredit the legitimate activities of COFAVIC.”<sup>388</sup>

## ***PROVEA***

PROVEA, one of the oldest and most influential human rights organizations in the country, has monitored the human rights situation in Venezuela since 1988, with specific focus on economic, social, and cultural rights. It produces detailed reports on rights issues and provides legal assistance to victims.<sup>389</sup>

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<sup>385</sup> Under the Organic Law of the Judiciary, “anyone who, through violence, intimidation or fraud prevents or obstructs acts by the judiciary or the Public Ministry will be sanctioned with prison sentences of six months to three years.” Organic Law on the Judiciary (Ley Orgánica del Poder Judicial), art. 110. See also Criminal Code, art. 216 and Code of Criminal Procedures, art. 309.

<sup>386</sup> “Obstruction of Justice” (Obstrucción de la Justicia), opinion piece by Luisa Ortega Díaz, *Últimas Noticias*, April 12, 2009, [http://www.ministeriopublico.gob.ve/web/guest/articulos-de-opinion-fiscal-general/-/blogs/obstruccion-de-la-justicia;jsessionid=CC6653DCDoEEA1465A3C177962EDE092?\\_33\\_redirect=%2Fweb%2Fguest%2Farticulos-de-opinion-fiscal-general](http://www.ministeriopublico.gob.ve/web/guest/articulos-de-opinion-fiscal-general/-/blogs/obstruccion-de-la-justicia;jsessionid=CC6653DCDoEEA1465A3C177962EDE092?_33_redirect=%2Fweb%2Fguest%2Farticulos-de-opinion-fiscal-general) (accessed May 23, 2012).

<sup>387</sup> COFAVIC submitted the information to prosecutors on November 23, 1990, November 26, 1990, March 2, 1990, January 31, 2001, August 7, 2002, August 18, 2009, September 16, 2009, November 24, 2009, March 5, 2010, and May 10, 2010.

COFAVIC also submitted information to the Institute of Legal Medicine on December 19, 1990, and to the 10th First Instance Criminal Court of Caracas (Juzgado Décimo de Primera Instancia en lo Penal de la Circunscripción Judicial del Distrito Federal) on May 24, 1991. It also provided copies of the documents to the Inter-American Court of Human Rights, which forwarded them to the government of Venezuela. Letter by Liliana Ortega to Luisa Ortega Díaz, attorney general, May 7, 2010. The letter was received and stamped by the Attorney General’s Office on May 7, 2010. Copy on file at Human Rights Watch. Human Rights Watch interview with Liliana Ortega, director of COFAVIC, Caracas, February 3, 2011.

<sup>388</sup> Human Rights Council, “Report of the Special Rapporteur on the situation of human rights defenders, Margaret Sekaggua - Human Rights Council,” A/HRC/16/44/Add.1, February 28, 2011, [http://www2.ohchr.org/english/issues/defenders/docs/A.HRC.16.44.Add.1\\_EFSONly.pdf](http://www2.ohchr.org/english/issues/defenders/docs/A.HRC.16.44.Add.1_EFSONly.pdf) (accessed May 23, 2012), para. 2457.

<sup>389</sup> PROVEA webpage, <http://www.derechos.org.ve/> (accessed May 23, 2012).

In recent years, Chávez officials and supporters have repeatedly responded to the release of PROVEA's annual report—which provides a comprehensive overview of human rights practices in Venezuela—by aggressively denouncing the organization and threatening to open investigations against it for receiving international funding.

In 2008, for example, Justice Minister Tarek El-Aissami stated that PROVEA's annual report was “ridiculous” and said the organization deserves to have “shoes thrown at them for being liars.”<sup>390</sup> More recently, in December 2010, Iris Varela, a legislator from Chávez's political party, accused Provea of receiving funding from the United States government “to undermine national sovereignty.”<sup>391</sup>

These charges were echoed in May 2011 by Miguel Ángel Pérez, the host of a prominent political program on state-run television, who accused PROVEA of having carried out “strong political actions against the government” and receiving “illegal” funding from the US government.<sup>392</sup> Pérez called on authorities to apply the Sovereignty Law, which establishes heavy penalties for NGOs that receive international funding while defending “political rights.”

### *Human Rights Defenders Outside of Caracas*

The threat of violence appears to have been more acute for human rights defenders operating outside of Caracas. Human Rights Watch has interviewed defenders who work

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<sup>390</sup> “Minister El Aissami: Shoes at PROVEA for lying about prisons” (Ministro El Aissami: Zapatazos para PROVEA por mentir sobre cárceles), *Aporrea*, December 16, 2008, <http://www.aporrea.org/actualidad/n125658.html> (accessed May 23, 2012). (Por ahí salió un informe de PROVEA, que a los ojos de nuestro pueblo es una ridiculez. Merece que en el momento que lo presentaron caerle a zapatazos también, por mentirosos y embusteros.)

<sup>391</sup> “Iris Varela: PROVEA is at the service of U.S. to undermine national security” (Iris Varela: PROVEA está al servicio de EE.UU. para atentar contra la soberanía nacional), December 12, 2010, *Radio Mundial*, <http://www.radiomundial.com.ve/node/157838> (accessed May 23, 2012). ([T]odos conocemos las posiciones políticas que juegan los representantes y directores de Provea y de otros organismos que han surgido ante el proyecto de Ley que actualmente estudia esa instancia legislativa, para impedir que esas organizaciones no gubernamentales (ONG), sigan recibiendo financiamiento por parte del Departamento de Estado Norteamericano y otros países, que atenta contra la soberanía nacional.)

<sup>392</sup> “False information about Provea is disseminated on the state channel” (En el canal del Estado se difunden informaciones falsas sobre Provea), YouTube video, posted by “ONGProvea,” May 16, 2011, <http://www.youtube.com/watch?v=SoReozwLsCk&feature=youtu.be> (accessed May 23, 2012). (PROVEA, otra de las ONG, ya hablamos de SUMATE aquí tiene otra, venezolanas que ha tenido una fuerte actuación política en los últimos años en contra del gobierno es PROVEA...Solo en el 2010 estas organizaciones ‘independientes’ y lo repito por tercera vez, recibieron 57 millones de dólares como ayudas de la USAID. Que por cierto, es un financiamiento ilegal. Y de acuerdo con la nueva ley de defensa a la soberanía política, que prohíbe - y por favor gobierno aplique sus leyes - el financiamiento de organizaciones con actividad política por parte de organismos extranjeros.)

outside the capital and have been targeted for violence and intimidation. To document these cases, we have also relied on findings by international human rights bodies and written information provided by local organizations on these cases.

One case involves members of the Barrios family in the state of Aragua, in which seven family members were killed between 1998 and 2011, and several others suffered reprisals after they actively sought justice for these crimes.<sup>393</sup> (Based on international standards, any individual who in any way promotes the respect of basic rights should be considered a human rights defender.)<sup>394</sup>

In 2004, after two men from the Barrios family were killed by Aragua state police officers and other family members were arbitrarily detained, beaten, and received death threats, the Inter-American Court of Human Rights ordered Venezuela to protect 10 members of the Barrios family.<sup>395</sup> The following year, the court extended the request to protect 19 additional family members.<sup>396</sup>

In November 2011, the Inter-American Court ruled that Venezuela had failed to implement the protective measures for Barrios family members and was responsible for all seven deaths. In two cases, which occurred before the measures were issued, there was evidence

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<sup>393</sup> Inter-American Court of Human Rights, *Barrios Family Case*, Series C No. 237, November 24, 2011, [http://www.corteidh.or.cr/pais.cfm?id\\_Pais=13](http://www.corteidh.or.cr/pais.cfm?id_Pais=13) (accessed May 23, 2012), paras. 308, 314.

<sup>394</sup> United Nations General Assembly, "Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms," March 8, 1999, A/RES/53/144, <http://www.ohchr.org/Documents/Issues/Defenders/Declaration/declaration.pdf> (accessed May 23, 2012), art. 1: "Everyone has the right, individually and in association with others, to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels." IACHR, "Second Report on the Situation of Human Rights Defenders in the Americas," December 31, 2011, OEA/Ser.L/V/II.Doc 66, <http://www.oas.org/en/iachr/defenders/docs/pdf/defenders2011.pdf> (accessed May 25), para. 12: "the IACHR understands "every person who in any way promotes or seeks the realization of human rights and fundamental freedoms, nationally or internationally" has to be considered as a human rights defender."

<sup>395</sup> The measures benefitted Eloisa Barrios, Jorge Antonio Barrios Ortuño, Rigoberto Barrios, Oscar José Barrios, Inés Josefina Barrios, Pablo Julian Solórzano Barrios, Beatriz Barrios, Néstor Caudi Barrios, Orismar Carolina Alzul García, and Juan José Barrios. Inter-American Court of Human Rights, *Barrios Family Case*, para. 11.

<sup>396</sup> The measures benefitted Maritza Barrios, Roni Barrios, Roniex Barrios, Luis Alberto Alzul, Orianny Nazareth Barrios, Oriana Nazareth Barrios, Víctor Daniel Cabrera Barrios, Beatriz Cabrera Barrios, Luilmari Guzmán Barrios, Luiseydis Guzmán Barrios, Wilmer José Flores Barrios, Génesis Andreina Barrios, Víctor Tomás Barrios, Heilin Alexandra Barrios, Elbira Barrios, Darelbis Carolina Barrios, Elvis Sarais Barrios, Cirilo Robert Barrios, and Lorena Barrios. Ibid.

that state police killed the victims, and in the others, the court ruled that the government had failed to provide the victims with adequate protection to prevent their deaths.<sup>397</sup> The Inter-American Court also found that Venezuelan authorities had failed to take basic steps to carry out adequate investigations, and no one had been held accountable for any of the abuses suffered by the Barrios family.<sup>398</sup>

Another example is the case of the Committee of Victims against Impunity in the State of Lara (Comité de Víctimas contra la Impunidad – Lara, COVICIL), another organization that promotes police accountability at the local level.<sup>399</sup> On November 26, 2009, two unknown individuals arrived at the home of Mijail Martínez, a member of the committee who was preparing a documentary on impunity in the state, asked for his father, and shot at Mijail several times, killing him instantly.<sup>400</sup> Mijail’s father, Víctor Martínez—who founded COVICIL and is a former local legislator and member of Chávez’s political party—had for years hosted a TV show in which he denounced local police authorities for their alleged involvement in corruption cases and human rights violations. Víctor had repeatedly received death threats.<sup>401</sup>

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<sup>397</sup> In September 2004, Luis Alberto Barrios, who had witnessed the arbitrary detention of Benito Barrios in 1998, received seven shots when he exited his home after hearing strange noises. His wife claims he received death threats that day. In January 2005, Rigoberto Barrios, a 16-year-old who had previously made public that he had been beaten and subject to death threats, was shot to death. In November 2009, Oscar José Barrios, who had also received death threats, was shot seven times and killed. In September 2010, unknown individuals opened fire at Wilmer Jose Flores, who had also received death threats, and killed him. In May 2011, the body of Juan José Barrios was found by a lake near Guanayén, in the state of Aragua. He had received two gunshots. Juan José had reported to authorities he had received death threats and had asked for protection due to his participation in the investigation of the death of his brother, Narciso, in 2003. *Id.*, paras. 62, 94, 101, 111-113, 115; Human Rights Watch interview with COFAVIC representative, Caracas, March 20, 2012.

<sup>398</sup> *Id.*, paras. 292, 234.

<sup>399</sup> Human Rights Watch interview with members of COVICIL, Caracas, August 30, 2011.

<sup>400</sup> “Victor Martínez asks for an impartial investigation” (Víctor Martínez exige investigación imparcial), May 26, 2010, <http://www.derechos.org.ve/2010/05/27/victor-martinez-exige-investigacion-imparcial/> (accessed May 23, 2012); Forum for Life, “Call for investigation of the killing of human rights defender and the participation of police forces in Lara” (Solicitan investigar el sicariato del defensor de DDHH y la actuación de los cuerpos policiales en Lara), press release, undated, <http://justiciaparamijail.blogspot.com.ar/search?updated-min=2009-01-01T00:00:00-08:00&updated-max=2010-01-01T00:00:00-08:00&max-results=35> (accessed May 25, 2012).

<sup>401</sup> IACHR, “Annual Report 2010,” para. 654; CIVILIS, “Threats and Restrictions to Human Rights and Democracy in Venezuela” (Amenazas y Restricciones a los Derechos Humanos y la Democracia en Venezuela), March 2011, pp. 66-67; Letter to Santiago Cantón, executive secretary of the IACHR, from Francisco Quintana from CEJIL, Liliana Ortega from COFAVIC, Marianna Belalba from Public Space, and José Gregorio Guareñas from the Vicaría Episcopal de Derechos Humanos de la Arquidiócesis de Caracas, October 2010. Copy on file at Human Rights Watch. Víctor Martínez, “Mijaíl Martínez, 2 years after his death” (Mijaíl Martínez, a 2 años de su sicariato), December 5, 2011, <http://www.derechos.org.ve/2011/12/05/mijail-martinez-a-2-anos-de-su-sicariato/> (accessed May 23, 2012); Letter from the Forum for Life, a coalition of nongovernmental organizations, to Santiago Cantón, executive secretary of the Inter American Commission on Human Rights, January 27, 2012.



After Mijail's death, Víctor—who headed an outspoken campaign to seek justice for his son's killing—continued to receive threats and attacks from unknown individuals.<sup>402</sup> For example, the organization reported that on July 3, 2010, an unknown individual assaulted Víctor on the street while he was distributing fliers about the death of his son, threw him to the ground, kicked him in the stomach, and told him he could not distribute the fliers.<sup>403</sup> On January 23, 2012, an unknown individual threatened him with a firearm as Víctor was entering his home. His attacker escaped in a black truck after Víctor ran into the street yelling. According to Víctor, neighbors had reported seeing a pick-up truck and a car without license plates patrolling the neighborhood on several occasions before he was attacked.<sup>404</sup> As of March 2012, no one had been convicted for Mijail's killing.<sup>405</sup>

A number of other human rights defenders and organizations with whom Human Rights Watch spoke also recounted incidents illustrating the hostile and intimidating environment in which they have to conduct their work.

For example, Human Rights Watch received such accounts from the Committee in Favor of the Defense of Human Rights of Family Members of Victims in the State of Falcón (Comité Pro Defensa de los Derechos Humanos de Familiares y Víctimas del Estado Falcón, COPRODEH), an organization created in 2006 by family members of victims of police abuse seeking justice for human rights violations suffered by their loved ones. In 2011, members of COPRODEH were threatened after a local mayor was subject to criminal charges in one of the cases documented by the organization.<sup>406</sup> Jean Carlos Guerrero, COPRODEH's director,

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<sup>402</sup> Víctor Martínez gave several interviews to Venezuelan media outlets and repeatedly contacted several authorities—including prosecutors, legislators, and the ombudsperson—asking them to bring perpetrators to justice. *Ibid.*

<sup>403</sup> COVICIL, "Committee of Victims Against Impunity of Lara Reject Attack against Víctor Martínez (Comité de víctimas contra la impunidad de Lara rechaza agresión contra Víctor Martínez), press release, July 3, 2010, [http://www.cofavic.org/det\\_anuncios.php?id=36](http://www.cofavic.org/det_anuncios.php?id=36) (accessed May 23, 2012).

<sup>404</sup> Formal complaint presented by Víctor Martínez before the Public Ministry of the State of Lara, January 24, 2012. Copy on file at Human Rights Watch. Víctor Martínez, "Impunity haunts him" (La impunidad lo acosa), press release, January 26, 2012, <http://www.talcualdigital.com/Nota/visor.aspx?id=65030&tipo=AVA> (accessed May 23); "Justice for Mijail blog" (Justicia para Mijail blog), <http://justiciaparamijail.blogspot.com> (accessed May 23, 2012); Letter from Foro por la Vida, a coalition of nongovernmental organizations, to Santiago Cantón, executive secretary of the Inter American Commission on Human Rights, January 27, 2012.

<sup>405</sup> Human Rights Watch interview with COFAVIC representative, Caracas, March 20, 2012.

<sup>406</sup> In July 2011, a court ordered the detention of Oswaldo Rodríguez León, mayor of Coro and former head of the police in Falcón (2000-2005) for his alleged responsibility in the "disappearance" of Javier Vargas in 2003. Letter from Ana Hernández, president of COPRODEH, and Jean Carlos Guerrero, director of COPRODEH, to Argenis Martínez, head of the prosecutor's office (fiscal superior) of the State of Falcón, August 18, 2011. Copy on file at Human Rights Watch. "Order to detain the mayor of Coro" (Ordenan detener al Alcalde de Coro), *El Universal*, July 8, 2011, <http://www.eluniversal.com/2011/07/08/ordenan->

told Human Rights Watch that soon after prosecutors brought charges, a law school friend who worked for the investigative police told him that “they wanted to get him out of the way” and were planning to “scare him.”<sup>407</sup> According to Guerrero, on August 17, he was walking down the street with Ana Hernández, the organization’s president, when unknown individuals drove by and shouted at them “Damn [you], you will appear with flies in your mouths.”<sup>408</sup> When Guerrero went to the prosecutor’s office to file a complaint, he was told he should “stop appearing in the press.”<sup>409</sup> As of March 2012, according to COFAVIC, an investigation by prosecutors into these incidents remained pending.<sup>410</sup>

Another example of the hostile environment in which human rights defenders in the interior of the country operate involves threats against Oscar Pineda and his son, Oscar Mafred Pineda, who are active members of the Movement for Peace and Life (Movimiento de Paz y Vida), a nongovernmental organization that documents alleged extrajudicial executions and “disappearances” in the state of Barinas.<sup>411</sup>

Oscar Pineda told Human Rights Watch that in July 2009, while he was being interviewed about kidnappings in Barinas for a Globovisión TV show, he got a text message from an unfamiliar number that said: “Rat, tomorrow you won’t be talking.”<sup>412</sup> In November 2010, a man and a woman pretending to be patients came to the office of his son, Oscar Manfred, a medical doctor, and told him that he should be careful and should “urge his father to stop

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[detener-al-alcalde-de-coro.shtml](#) (accessed May 23, 2012); “Public Ministry accused former mayor of Coro of Enforced Disappearance” (Ministerio Público acusó a ex alcalde de Coro por desaparición forzada de personas), *Radio Nacional de Venezuela*, October 17, 2011, <http://www.rnv.gob.ve/noticias/index.php?act=ST&f=27&t=168151&hl=oswaldorodr%EDguez+le%F3n&s=ad78obe348259c74fb5882dc92754cf2> (accessed May 23, 2012); “Deprivation of Liberty of Mayor of Coro” (Privativa de Libertad Contra Alcalde de Coro), *Últimas Noticias*, July 7, 2011, <http://www.ultimasnoticias.com.ve/noticias/actualidad/politica/privativa-de-libertad-contra-alcalde-de-coro.aspx> (accessed May 23, 2012); Human Rights Watch interview with Jean Carlos Guerrero, COPRODEH, Caracas, August 30, 2011.

<sup>407</sup> Human Rights Watch interview with Jean Carlos Guerrero, COPRODEH, Caracas, August 30, 2011.

<sup>408</sup> Letter from Ana Hernández, president of COPRODEH, and Jean Carlos Guerrero, director of COPRODEH, to Argenis Martínez, head of the prosecutor’s office (fiscal superior) of the State of Falcón, August 18, 2011. (Malditos van a aparecer con un mosquero en la boca.)

<sup>409</sup> Prosecutors and representatives from the ombudsperson’s office refused to receive Guerrero’s complaint; he filed a written complaint on August 19, which, as of March 2012, remained pending. Human Rights Watch interview with Jean Carlos Guerrero, COPRODEH, Caracas, August 30, 2011; Human Rights Watch interview with COFAVIC representative, Caracas, March 20, 2012.

<sup>410</sup> Human Rights Watch interview with COFAVIC representative, Caracas, March 20, 2012.

<sup>411</sup> Information provided by COFAVIC to the IACHR, March 2011, p. 9. Copy on file at Human Rights Watch. Human Rights Watch interview with Oscar Pineda, Movement of Peace and Life, Caracas, August 30, 2011.

<sup>412</sup> Human Rights Watch interview with Oscar Pineda, Movement of Peace and Life, Caracas, August 30, 2011.

denouncing” the kidnappings.<sup>413</sup> Oscar Pineda also told Human Rights Watch that after the newspaper *El Nacional* published a long article on the work of Movement for Peace and Life in August 2011, individuals called a radio show in which he was participating to tell him he was “despicable” and that “[he had] to leave.”<sup>414</sup> Following each threat, Pineda filed complaints with the prosecutor’s office. However, according to a representative of COFAVIC, who works closely with local defenders, as of March 2012, the Attorney General's Office had provided no information on any progress in the investigations.<sup>415</sup>

## Limiting Public Access to Information

*A Decade Under Chávez* documented how government officials had routinely failed to implement constitutional norms guaranteeing access to official information.<sup>416</sup> Since the report was released, the Chávez administration has enacted rules that grant government officials sweeping powers to withhold information from civil society organizations and the general public.

In June 2010, President Chávez created a Center for Situational Studies of the Nation (Centro de Estudios Situacionales de la Nación, CESNA). The decree creating the center says that CESNA’s function is to “gather, process and analyze permanently” information from different sources, including information “from society on any issue of national interest,” and gives its president authority to declare that any “information, facts or circumstance[s]” the center learns about in the context of its work are “reserved, classified, or of limited distribution.”<sup>417</sup> The decree’s language is so broad it could effectively

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<sup>413</sup> Information provided by COFAVIC to the IACHR, March 2011, p. 9. (Que se cuidara y que instara a su padre a no continuar con sus denuncias.)

<sup>414</sup> Human Rights Watch interview with Oscar Pineda, Movement of Peace and Life, Caracas, August 30, 2011.

<sup>415</sup> Human Rights Watch interview with COFAVIC representative, Caracas, March 20, 2012.

<sup>416</sup> The constitution of Venezuela guarantees the right of access to government files and records, “without prejudice to the limits acceptable in a democratic society concerning interior and external security, criminal investigation, and the intimacy of private life, in accordance with the law regulating the classification of documents whose contents are confidential or secret.” The constitution also guarantees the right to “timely and truthful” information about official procedures affecting individuals directly, and access to any official resolutions adopted. And it establishes that “no censorship by public officials affecting the provision of information on matters under their responsibility will be permitted.” Constitution of the Bolivarian Republic of Venezuela, art. 143. See also Organic Law of the Public Administration (Ley Orgánica de la Administración Pública), <http://www.cgr.gob.ve/contenido.php?Cod=015> (accessed May 25, 2012), arts. 141, 158-160; Organic Law of Administrative Procedures (Ley Orgánica de Procedimientos Administrativos), <http://www.tsj.gov.ve/legislacion/lopa.html> (accessed May 24, 2012), art. 5.

<sup>417</sup> Presidential Decree 7.454, Official Gazette 39,436, June 1, 2010, <http://www.controlciudadano.org/documentos/getbindata.php?docid=830&fieldname=documento> (accessed February 15,

empower the government to block civil society groups and the private media from disseminating non-official information that they themselves have gathered.

Then, in December 2010, the Chávez administration enacted rules requiring that all government offices treat as confidential “any information related to personnel, clients, financial, technical or administrative issues, and any other sensitive information that if known and made public to unauthorized people may cause harm to the institution.” The rules also grant officials authority to arbitrarily treat as confidential “any other information.”<sup>418</sup>

Since these norms were adopted, government officials have repeatedly denied or failed to respond to requests for official information presented by NGOs. Based on an analysis of 61 information requests presented to several government offices between August and October 2011, NGOs documented that individuals had been unable to obtain information in 85.2 percent of the cases (Venezuelan authorities failed to respond to 83.6 percent of requests and rejected 1.6 percent).<sup>419</sup> In 2010 that figure was 67 percent and in 2008 it was 71 percent.<sup>420</sup>

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2012). (El Centro de Estudio Situacional de la Nación, en ejercicio de sus funciones, gozará de autonomía administrativa y financiera, y será el encargado de recopilar, procesar y analizar de manera permanente la información proveniente de las distintas salas situacionales u órganos similares de las instituciones del Estado y de la sociedad sobre cualquier aspecto de interés nacional, con el objeto de proveer de apoyo analítico-informativo al Ejecutivo Nacional, suministrándole la información oportuna y necesaria que facilite la toma de decisiones estratégicas para proteger los intereses y objetivos vitales de la Nación y para facilitar la ejecución de las políticas públicas y el cumplimiento de los cometidos esenciales del Estado (art. 3). El Presidente o Presidenta del Centro de Estudio Situacional de la Nación podrá declarar el carácter de reservada, clasificada o de divulgación limitada a cualesquiera información, hecho o circunstancia, que en cumplimiento de sus funciones tenga conocimiento o sea tramitada en el Centro... (art. 9).)

<sup>418</sup> “Norms Regarding the Classification and Treatment of Information by the Public Administration” (Normativa de Clasificación y Tratamiento de la Información en la Administración Pública), December 21, 2010, <http://es.scribd.com/doc/45854432/Normas-para-Clasificacion-y-Tratamiento-de-la-Informacion-en-la-Administracion-Publicaca-Suscerte-2010> (accessed May 25, 2012), art. 15. (El propietario deberá asignar la clasificación de “confidencial” a los Activos de información relacionados con el personal, clientes, información financiera, técnica, administrativa y cualquier otra información sensible de la institución, cuyo conocimiento y divulgación a personas no autorizadas causen daños a la institución. A los efectos de esta disposición, tendrán esta clasificación los siguientes activos.... [y] cualquier otro activo de información que el Propietario así establezca.)

<sup>419</sup> According to the report, in 6.5 percent of the cases, authorities responded adequately, in 3.2 percent they did so inadequately, in 1.6 percent they asked Public Space to submit the request to another institution, and in 3.2 percent the information requests could not be delivered. Public Space, “Access to Public Information in Venezuela (2011). Final Report” (Acceso a la Información Pública en Venezuela (2011). Informe Final), January 17, 2012, p. 6. Copy on file at Human Rights Watch.

<sup>420</sup> Ibid.

Examples of requests that were never answered include:<sup>421</sup>

- Whether the public television station, Venezolana de Televisión (VTV), could provide information on who produced the television spots (described above) criticizing the NGO Public Space for receiving international funds, how much the spots cost, and how many times they were aired;<sup>422</sup>
- Whether the Ministry of Health had implemented recommendations by the Comptroller General's Office to address irregularities in the storage and distribution of medicines;<sup>423</sup>
- Whether the government had a plan to prevent gender violence and what had been the main results obtained by government programs to reduce violence against women;<sup>424</sup>
- Whether the minister of the penitentiary system could provide the names of inmates who fled the El Rodeo prisons during the disturbances in June 2011, as well as the names of those who had been injured;<sup>425</sup>
- Whether the investigative police (Cuerpo de Investigaciones Científicas, Penales y Criminales, CICPC) could provide information on the number of homicides recorded in Venezuela in the first half of 2011;<sup>426</sup>
- Whether the National Commission for Refugees (Comisión Nacional para los Refugiados, CNR) could provide information on how many requests for refugee status were received in 2011, how many were rejected and why, and how many men, women, and children were registered as refugees in the country;<sup>427</sup>

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<sup>421</sup> Information provided to Human Rights Watch via email by representatives from Public Space, December 16, 2011. Copy on file at Human Rights Watch.

<sup>422</sup> Information request by Marianna Belalba, Public Space, and Antonio Puppio, PROVEA, to Mauricio Rodríguez Gelfenstein, president of VTV, from August 16, 2010; Public Space, "Judicial restrictions to Access to Public Information in Venezuela" (Restricciones judiciales al Acceso a la Información Pública en Venezuela), October 2011; Human Rights Watch interview with Carlos Correa, director of Public Space, March 20, 2012. Copy on file at Human Rights Watch.

<sup>423</sup> Information request by Carlos Correa, director of Public Space, Feliciano Reyna, Solidarity Action (Acción Solidaria), Mercedes de Freitas, Transparency Venezuela, and Marino Alvarado, PROVEA, to Health Minister Eugenia Sader, undated; Human Rights Watch email exchange with Public Space, December 16, 2011. Copy on file at Human Rights Watch.

<sup>424</sup> Information request by Carlos Correa, director of Public Space, to Nancy Pérez Sierra, Ministry of Popular Power for Women and Gender Equality, and Nancy Pérez Sierra, National Institute of Women, September 7, 2011.

<sup>425</sup> Information request by Carlos Correa, Public Space, to María Iris Varela, Ministry of Popular Power for the Penitentiary System, September 26, 2011. Copy on file at Human Rights Watch.

<sup>426</sup> Information request by Carlos Correa, director of Public Space, to Wilmer Flores Trosel, CICPC, September 6, 2011. Copy on file at Human Rights Watch.

<sup>427</sup> Information request by Carlos Correa, director of Public Space, to Yldefonso Finol, CNR, September 6, 2011. Copy on file at Human Rights Watch.

- Whether the president’s office could provide information on the number of real estate properties that had been expropriated by the government, on whether the government had provided adequate compensation in such cases, and on when outstanding compensation payments would be made;<sup>428</sup> and
- Whether the Ministry of Education could provide information on how many schools were built in the country in 2010 and in the first half of 2011, how much they cost, where were they located, and when they opened.<sup>429</sup>

The difficulty in obtaining information has been further compounded by recent Supreme Court rulings that have upheld the government’s power to limit public access to official information. In two of the cases mentioned above, the Supreme Court rejected claims filed by NGOs asking the court to uphold the right of access to official information.<sup>430</sup>

Moreover, as described in the first chapter of this report, the court ruled that any individual who requests official information from government offices must explicitly state the reasons and purposes for which it is requesting such information.<sup>431</sup> Citing this ruling, in September 2011, CONATEL rejected an NGO’s request to obtain a list of administrative procedures that had been opened under the Broadcasting Law, and a list of broadcasting licenses granted in 2010 and 2011.<sup>432</sup>

### Impact on Human Rights Advocacy

Leading Venezuelan human rights defenders told Human Rights Watch that they are increasingly fearful that they may be physically attacked or targeted for prosecutorial harassment or other reprisals for doing their work. While they continue to criticize the

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<sup>428</sup> Information request by Carlos Correa, director of Public Space, to President Hugo Chávez Frías, August 16, 2011. Copy on file at Human Rights Watch.

<sup>429</sup> Information request by Carlos Correa, director of Public Space, to Maryann Hanson, Ministry of Popular Power for Education, September 20, 2011. Copy on file at Human Rights Watch.

<sup>430</sup> Supreme Court of Justice of Venezuela, File No. 2012-0358, June 6, 2012, <http://www.tsj.gov.ve/decisiones/spa/Junio/00667-6612-2012-2012-0358.html> (accessed June 14, 2012); Supreme Court of Justice of Venezuela, File No. 12-0389, <http://www.tsj.gov.ve/decisiones/scon/Mayo/679-23512-2012-12-0389.html> (accessed June 14, 2012).

<sup>431</sup> Supreme Court of Justice of Venezuela, no file number, July 15, 2010, <http://www.tsj.gov.ve/decisiones/scon/Julio/745-15710-2010-09-1003.html> (accessed February 15, 2012).

<sup>432</sup> Letter from Pedro Rolando Maldonado Marín, general director of CONATEL, to Carlos Correa, director of Public Space, Document DG/CJ/No. 606, September 23, 2011. Copy on file at Human Rights Watch.

government for its human rights policies, they have felt compelled to take precautions and make significant changes in the way they carry out their work.<sup>433</sup>

In May 2010, a group of organizations adopted a “security protocol” to protect individuals and information in the event that defenders are threatened, harassed, followed, subject to criminal prosecution, arbitrarily detained, kidnapped, or killed. Human rights defenders have also set up security cameras in their offices; modified their electronic filing methods; only carry out discussions on sensitive issues in face-to-face meetings, or via Skype or blackberry chat; and constantly change email passwords.

Human rights defenders have adjusted the way they operate in ways that limit their public visibility and could undermine their ability to promote and protect fundamental rights. A few concrete examples include the following:

- A leading human rights defender told Human Rights Watch that he had drastically scaled back the number of TV appearances in which he discusses human rights in Venezuela (from approximately five to one interview per month) to decrease his visibility.
- An NGO that organizes capacity-building seminars for local groups in the interior of the country—on how to document abuses and on the role of national and international mechanisms in protecting fundamental rights—told us they no longer publicize these meetings in advance. They work with a local counterpart organization that only invites individuals it knows and trusts to the meetings. This limits the NGO’s ability to reach a wider audience and document more cases.
- In 2011, a leading NGO invited international human rights experts to a workshop on human rights issues in Venezuela. While in previous years they had organized several media interviews for the foreigners during the visit, this time they canceled all media work while the foreigners were in town for fear that the government would expel the foreigners and sanction the organization. Instead, they only taped one interview, which was aired after the foreigners left the country.
- Since 2009, NGOs requesting hearings before the IACHR on the situation of human rights defenders in Venezuela have asked the commission to organize private hearings,

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<sup>433</sup> The information in this section comes from Human Rights Watch interviews with more than 30 human rights defenders and academics. In several cases, we have not identified the source or provided other details of the interview to protect them against possible retaliation.

instead of public ones, foregoing wider visibility for their claims. Some defenders told Human Rights Watch that they fear that the publicity of these hearings in Washington, D.C. gives them greater exposure in Venezuela, which they want to avoid.

- In 2010, an NGO stopped organizing press conferences and granting individual interviews to journalists when releasing their public reports. Instead, it organizes academic presentations with civil society allies and only sends copies of the report to journalists.
- Only three of approximately 100 organizations working on environmental issues in Venezuela presented submissions before the UN Human Rights Council prior to Venezuela's first Universal Periodic Review (UPR) in 2011. According to the director of one of the organizations that did submit a report, other organizations had decided not to do so when they learned that the UPR reports would be public, fearing possible reprisals. "[T]hey had enough problems already and, being small organizations, they wouldn't survive a confrontation or reprisals," she said.<sup>434</sup>

Human rights NGOs have also faced obstacles when seeking to have documents notarized, making it harder to register new organizations and submit written documents to international human rights bodies. For example, representatives from COFAVIC told Human Rights Watch that more than 10 notaries had refused to notarize documents they needed to send to the Inter-American Court of Human Rights.<sup>435</sup>

Similarly, a notary in Caracas told representatives of CIVILIS, an NGO that seeks to raise international awareness of the human rights situation in Venezuela, that they would not be able to register the organization because it should not use terms such as "democratic" and "political" in their proposed statutes.<sup>436</sup> The notary only certified the organization's statute after its representatives presented a new version incorporating changes that had been proposed by a representative from the notary office.<sup>437</sup>

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<sup>434</sup> "Hostile environment against NGOs" (Ambiente hostil contra las ONGs), *El Nacional*, October 9, 2011, <http://www.eluniversal.com/nacional-y-politica/111009/ambiente-hostil-contra-las-ong> (accessed May 23, 2012).

<sup>435</sup> Human Rights Watch interview with COFAVIC representatives, Caracas, March 20, 2012.

<sup>436</sup> Human Rights Watch interview with Feliciano Reyna, president of CIVILIS, Caracas, February 4, 2011; Letter to Santiago Cantón, executive secretary of the IACHR, from Francisco Quintana from the Center for Justice and International Law (CEJIL), Lilibiana Ortega from COFAVIC, Marianna Belalba from Public Space, and José Gregorio Guareñas from the Vicaría Episcopal de Derechos Humanos de la Arquidiócesis de Caracas, October 2010 (copy on file at Human Rights Watch); IACHR, "Annual Report 2010," para. 675.

<sup>437</sup> Human Rights Watch interview with Feliciano Reyna, president of CIVILIS, Caracas, February 4, 2011.



In another case, a human rights defender who tried to register the Forum for Life (Foro por la Vida), a consortium of human rights organizations in Venezuela, was told that the notary office would not be able to authenticate the document because it was related to human rights. As of March 2012, the organizations were preparing to resubmit the document to the notary for authentication.<sup>438</sup>

Finally, the constant threat that international funding could lead to criminal prosecution, discussed above, is having a negative impact on Venezuelan organizations. When asked about the impact of the Sovereignty Law, two senior European diplomats told Human Rights Watch that the prevailing opinion within the international community is that supporting local human rights NGOs is now more difficult.<sup>439</sup>

Although many organizations have continued to receive international funding, the uncertainty has already had an impact on their ability or willingness to obtain foreign funds. For example, the director of a leading NGO told Human Rights Watch that an overseas foundation that had supported their work since 2002 stopped doing so in 2011. The director stated that representatives from the foundation had informed him that “due to the[ir] visibility and the possible implications of the law's content, they had decided to no longer financially support the organization.”<sup>440</sup>

In February 2011, Citizen Watch returned 23,400 bolívares (approximately US\$5,400) that the Canadian government had granted them to organize capacity-building seminars for journalists throughout the country. In a press release, Citizen Watch stated that its members feared that, under the Sovereignty Law, they could criminally prosecute them for treason.<sup>441</sup>

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<sup>438</sup> Human Rights Watch interview with Oswaldo Cali, Public Space, Caracas, March 20, 2012.

<sup>439</sup> Human Rights Watch interview with senior European diplomats, Caracas, February 8, 2011, and September 9, 2011.

<sup>440</sup> Human Rights Watch email communication with this NGO's director, May 9, 2012. Copy on file at Human Rights Watch. (Luego de la aprobación de la Ley de Defensa de la Soberanía Política, a principios del año 2011, el representante de [la fundación], en una reunión de trabajo, manifestó a los representantes de [la ONG] que dada [su] visibilidad y las posibles implicaciones del contenido de esa ley habían decidido no seguir apoyando financieramente a la organización y por tanto cesaban en la cooperación que mantenían con la ONG.) Human Rights Watch contacted a representative of the foundation, who acknowledged that the law was a factor (among others) in their decision. Human Rights Watch telephone interview with a representative of the foundation, June 8, 2012.

<sup>441</sup> Citizen Watch, “Citizen Watch returns international cooperation funds to Canada as a consequence of the Law to Defend Political Sovereignty” (Control Ciudadano devuelve fondos de cooperación internacional a Canadá por causa de Ley de Defensa de la Soberanía Política), press release, February 7, 2011, <http://www.controlciudadano.org/documentos/getbindata.php?docid=1148&fieldname=documento> (accessed May 23, 2012).

## Venezuela's Obligations Under International Law

### Judicial Independence

Venezuela is party to human rights treaties—including the International Covenant on Civil and Political Rights (ICCPR) and the American Convention on Human Rights—that require it to safeguard the independence and impartiality of its judiciary.<sup>442</sup> The United Nations Human Rights Committee, which monitors the implementation of the ICCPR by states party, has ruled that for a tribunal to be “independent and impartial,”<sup>443</sup> the executive must not be able to control or direct the judiciary,<sup>444</sup> judges “must not harbor preconceptions about the matter put before them, and...must not act in ways that promote the interests of one of the parties.”<sup>445</sup>

A series of authoritative international documents set forth criteria to determine whether a justice system is in fact independent and impartial:

- Judges should be free from constraints, pressures, or orders imposed by the other branches of government. According to the UN Basic Principles on the Independence of the Judiciary (UN Basic Principles), “[i]t is the duty of all governmental and other institutions to respect and observe the independence of the judiciary,” and the judiciary “shall decide matters before them impartially, on the basis of facts and in accordance with the law, without any restrictions,

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<sup>442</sup> The American Convention on Human Rights provides that: “Every person has the right to a hearing, with due guarantees and within a reasonable time, *by a competent, independent, and impartial tribunal*, previously established by law, in the substantiation of any accusation of a criminal nature made against him or for the determination of his rights and obligations of ( . . . ) any other nature” (emphasis added). American Convention on Human Rights (“Pact of San José, Costa Rica”), adopted November 22, 1969, O.A.S. Treaty Series No. 36, 1144 U.N.T.S. 123, entered into force July 18, 1978, ratified by Venezuela on June 23, 1977, art. 8(1). The International Covenant on Civil and Political Rights (ICCPR) also imposes an obligation to guarantee the independence of the judiciary in Article 14 (1): “All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, *everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law...*” (emphasis added). International Covenant on Civil and Political Rights, adopted December 16, 1966, General Assembly Resolution 2200 A (XXI), entered into force March 23, 1976, ratified by Venezuela on August 10, 1978.

<sup>443</sup> ICCPR, art. 14 (1).

<sup>444</sup> *Bahamonde v. Equatorial Guinea*, Communication No. 468/1991, October 20, 1993, CCPR/C/49/D/468/1991, para. 9.4.

<sup>445</sup> *Karttunen v. Finland*, Communication No. 387/1989, October 23, 1992, CCPR/C/46/D/387/1989, para. 7.2.

improper influences, inducements, pressures, threats or interferences, direct or indirect, from any quarter or for any reason.”<sup>446</sup>

- Proper training and qualifications should be the basis of the appointments of judges. The Universal Charter of the Judge points out that, “[t]he selection and each appointment of a judge must be carried out according to objective and transparent criteria based on proper professional qualification.”<sup>447</sup> The UN Basic Principles, similarly, state that “[a]ny method of judicial selection shall safeguard against judicial appointments for improper motives.”<sup>448</sup>
- Judges should have security of tenure to avoid fear of being removed from their posts for the decisions they adopt. The UN Basic Principles state that “[t]he term of office of judges, their independence, security, adequate remuneration, conditions of service, pensions and the age of retirement shall be adequately secured by law” and that “[j]udges, whether appointed or elected, shall have guaranteed tenure until a mandatory retirement age or the expiry of their term of office, where such exists.”<sup>449</sup>

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<sup>446</sup> Basic Principles on the Independence of the Judiciary, adopted by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Milan, 26 August to 6 September 1985, U.N. Doc. A/CONF.121/22/Rev.1 at 59 (1985), <http://www2.ohchr.org/english/law/indjudiciary.htm> (accessed April 10, 2012), arts. 1 and 2. The Bangalore Principles of Judicial Conduct (Bangalore Principles) further add that “[a] judge shall exercise the judicial function independently on the basis of the judge’s assessment of the facts and in accordance with a conscientious understanding of the law, free of any extraneous influences, inducements, pressures, threats or interference, direct or indirect, from any quarter or for any reason” and that “[a] judge shall not only be free from inappropriate connections with, and influence by, the executive and legislative branches of government, but must also appear to a reasonable observer to be free there from.” The Bangalore Principles of Judicial Conduct, revised at the Hague, November 25-26, 2002, arts. 1(1) and 1(3), [http://www.unodc.org/pdf/crime/corruption/judicial\\_group/Bangalore\\_principles.pdf](http://www.unodc.org/pdf/crime/corruption/judicial_group/Bangalore_principles.pdf) (accessed April 10, 2012).

The Council of Europe has stated that “[i]n the decision-making process, judges should be independent and be able to act without any restriction, improper influence, inducements, pressures, threats or interferences, direct or indirect, from any quarter or for any reason” and that “[j]udges should not be obliged to report on the merits of their cases to anyone outside the judiciary”; Council of Europe, Recommendation No. R (94) 12 of the Committee of Ministers to Member States on the Independence, Efficiency and Role of Judges, adopted on October 13, 1994, <https://wcd.coe.int/com.instranet.InstraServlet?command=com.instranet.CmdBlobGet&InstranetImage=534553&SecMode=1&DocId=514386&Usage=2> (accessed April 10, 2012).

<sup>447</sup> The Universal Charter of the Judge, <http://www.hjpc.ba/dc/pdf/THE%20UNIVERSAL%20CHARTER%20OF%20THE%20JUDGE.pdf> (accessed October 7, 2010), art. 9. The Council of Europe has also noted that “[a]ll decisions concerning the professional career of judges should be based on objective criteria, and the selection and career of judges should be based on merit, having regard to qualifications, integrity, ability and efficiency.” Council of Europe, principle I, art. 2 (c).

<sup>448</sup> UN Basic Principles, art. 10.

<sup>449</sup> UN Basic Principles, arts. 11 and 12. Similarly, the Council of Europe says that “[j]udges, whether appointed or elected, shall have guaranteed tenure until a mandatory retirement age or the expiry of their term of office.” Council of Europe, principle I, art. 3.

Judges may only be suspended or removed from their jobs “for reasons of incapacity or behaviour that renders them unfit to discharge their duties” and they have the right to a fair hearing.<sup>450</sup> According to the Statute of the Ibero-American Judge, “the disciplinary responsibility of judges will be determined by the judicial bodies established by law, through processes that guarantee the respect of due process and, in particular, the right to a hearing, to defense, to contest [evidence], and to applicable legal recourses.”<sup>451</sup>

## Freedom of Expression

The right to “seek, receive, and impart” information is recognized in the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights (ICCPR), and the American Convention on Human Rights.<sup>452</sup> This right gives rise to state obligations related to censorship, access to information, and the regulation of broadcast media.

### *Prior Censorship*

Under international law, any restriction—direct or indirect—on the right to freedom of expression must be prescribed by law, proportionate to a legitimate objective, and non-discriminatory.<sup>453</sup> If a measure that censors information fails to meet these standards, it constitutes an unreasonable restriction on the right to free speech.

Additionally, article 13 of the American Convention explicitly prohibits prior censorship. The Declaration of Principles on Freedom of Expression, adopted by the Inter-American Commission on Human Rights (IACHR) in 2000, explicitly prohibits “[p]rior conditioning of expressions, such as truthfulness, timeliness or impartiality,” and states that “[p]rior censorship, direct or indirect interference in or pressure exerted upon any expression, opinion or information transmitted through any means of oral, written, artistic, visual or electronic communication must be prohibited by law.” The principles also state that

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<sup>450</sup> UN Basic Principles, arts. 17 and 18.

<sup>451</sup> Statute of the Iberoamerican Judge (Estatuto del Juez Iberoamericano), adopted by the VI Iberoamerican Meeting of Supreme Court Presidents (VI Cumbre Iberoamericana de Presidentes de Cortes Supremas y Tribunales Supremos de Justicia) on May 23-25, 2001, [http://www.cidej.org/c/document\\_library/get\\_file?uuid=oddb8eba-4802-461e-b997-5441coe37a7f&groupId=10131](http://www.cidej.org/c/document_library/get_file?uuid=oddb8eba-4802-461e-b997-5441coe37a7f&groupId=10131) (accessed April 10, 2012), art. 20.

<sup>452</sup> Most of this chapter reproduces the international norms sections of Human Rights Watch's report *A Decade Under Chávez*. Universal Declaration of Human Rights (UDHR), adopted December 10, 1948, G.A. Res.

217A(III), U.N. Doc. A/810 at 71 (1948), art 19; ICCPR, art. 19(2); American Convention on Human Rights, art. 13(1).

<sup>453</sup> ICCPR, art. 19(3); American Convention on Human Rights, art. 13(2).

“restrictions to the free circulation of ideas and opinions, as well as the arbitrary imposition of information and the imposition of obstacles to the free flow of information violate the right to freedom of expression.”<sup>454</sup>

### *Regulating Media Content*

It is generally recognized that incitement to violence may legitimately be subject to legal sanctions on public order grounds. But the power to prohibit such speech is not unlimited. Because of the importance of allowing full and free public debate, governments may only impose restrictions on grounds of incitement where there is a direct relation between the speech in question and a specific criminal act.

Governments are required to tread with care to avoid endangering freedom of expression in efforts to prevent violence or the disruption of public order. Moreover, because the crucial link between speech and action must be demonstrated by interpretation and argument, it is essential that the procedures under which cases are examined are transparent and impartial.

The International Criminal Tribunal for Rwanda, for example, ruled that the “direct” element of incitement implies that the incitement “assume[s] a direct form and specifically provoke[s] another to engage in a criminal act,” and that “more than mere vague or indirect suggestion goes to constitute direct incitement.... The prosecution must prove a definite causation between the act characterized as incitement...and a specific offense.”<sup>455</sup>

In *Incal v. Turkey*, the European Court of Human Rights ruled that Turkey had violated the European Convention on Human Rights by sentencing a Turkish national to prison because he had written a propaganda leaflet that, according to the government, incited hatred and hostility through racist words and advocated illegal forms of protest. The court agreed that the leaflet included a number of “virulent” criticisms of the government's policies towards the Kurdish minority, and called on Kurdish citizens to “oppose” these policies by forming

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<sup>454</sup> Declaration of Principles on Freedom of Expression, approved by the IACHR at its 108th regular sessions in October 2000, <http://www.cidh.org/Relatoria/showarticle.asp?artID=26&IID=1> (accessed April 10, 2012), principles 5, 7.

<sup>455</sup> The International Criminal Tribunal for Rwanda, Decision of September 2, 1998, Prosecutor v. Jean Paul Akayesu, Case No. ICTR-96-4-T, 6.6.3: 557. The tribunal was applying Article 2(3)(c) of the Convention on the Prevention and Punishment of the Crime of Genocide, which prohibits “direct and public incitement to commit genocide.”

“neighborhood committees.” The court concluded, however, that these appeals could not be taken as incitement to the use of violence, hostility, or hatred between citizens. It also considered that a prison sentence was “disproportionate to the aim pursued and therefore unnecessary in a democratic society.”<sup>456</sup>

### *Controlling the Airwaves*

Evolving norms in international law have strengthened the obligation of governments to promote pluralism in broadcasting. In 2001, in a joint declaration, the special rapporteurs on freedom of expression for the United Nations, the OAS, and the OSCE, determined that:

Promoting diversity should be a primary goal of broadcast regulation; diversity implies gender equity within broadcasting, as well as equal opportunity for all sections of society to access the airwaves; broadcast regulators and governing bodies should be so constituted as to protect them against political and commercial interference.<sup>457</sup>

The special rapporteurs issued a further declaration in 2007 stressing that media regulation to promote diversity must be protected from political interference:

Regulation of the media to promote diversity, including governance of public media, is legitimate only if it is undertaken by a body which is protected against political or other forms of unwarranted interference, in accordance with international human rights standards.<sup>458</sup>

Moreover, regional human rights norms on free expression do not allow states to use their control of radio-electrical frequencies to “impede the communication and circulation of

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<sup>456</sup> European Court of Human Rights, *Incal v. Turkey*, judgment of June 9, 1998, Reports and Decisions 1998-IV, paras. 50, 59.

<sup>457</sup> Joint Declaration by the UN Special Rapporteur on Freedom of Opinion and Expression, the OSCE Representative on Freedom of the Media, and the OAS Special Rapporteur on Freedom of Expression, “Challenges to Freedom of Expression in the New Century,” November, 2001, <http://www.osce.org/fom/40053> (accessed April 10, 2012).

<sup>458</sup> Joint Declaration by the UN Special Rapporteur on Freedom of Opinion and Expression, the OSCE Representative on Freedom of the Media, the OAS Special Rapporteur on Freedom of Expression, and the African Commission on Human and Peoples’ Rights Special Rapporteur on Freedom of Expression and Access to Information, “Joint Declaration on Diversity in Broadcasting,” December 8, 2007, <http://www.osce.org/fom/29825> (accessed April 10, 2012).

ideas and opinions.”<sup>459</sup> Nor may they use such control to “put pressure on and punish or reward and provide privileges to social communicators and communications media because of the opinions they express.”<sup>460</sup>

To safeguard against bias, political favoritism, and corruption, the procedures for granting or refusing broadcasting licenses should be open, impartial, and transparent. According to the IACHR,

[I]n competitions for or in the awarding of licenses for the use of wave bands, in accordance with the principle of equality of opportunity, states must promote open, independent and transparent procedures with clear, objective and reasonable criteria that avoid any political discrimination on the basis of the editorial line of a media outlet.<sup>461</sup>

### *Access to Information*

There is growing international recognition that the right to seek, receive, and impart information encompasses a positive obligation of states to provide access to official information in a timely and complete manner. Both regional and international organizations have stated that the right of access to official information is a fundamental right of every individual.<sup>462</sup> In the Americas, the Inter-American Court on Human Rights has ruled that article 13 of the American Convention on Human Rights (on the right to freedom of expression) entails the right to receive information held by government offices, as well as these offices’ obligation to provide it.<sup>463</sup> Moreover, it is internationally recognized that

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<sup>459</sup> American Convention on Human Rights, art. 13 (3).

<sup>460</sup> Declaration of Principles on Freedom of Expression, principle 13.

<sup>461</sup> IACHR, “IAHCR concerned about freedom of expression in Venezuela,” press release 29/07, May 25, 2007, <http://www.cidh.oas.org/Comunicados/English/2007/29.07eng.htm> (accessed April 10, 2012).

<sup>462</sup> Joint declaration by Ambeyi Ligabo, U.N. Special Rapporteur on Freedom of Opinion and Expression; Miklos Haraszti, OSCE Representative on Freedom of the Media; and Eduardo Bertoni, OAS Special Rapporteur for Freedom of Expression, December 6, 2004, <http://www.cidh.org/Relatoria/showarticle.asp?artID=319&IID=1> (accessed April 10, 2012); Declaration of Principles on Freedom of Expression, principle 4; United Nations Economic and Social Council, Commission on Human Rights, *Civil and Political Rights, Including the Question of Freedom of Expression: The Right to Freedom of Opinion and Expression, Report of the Special Rapporteur, Ambeyi Ligabo, submitted in accordance with Commission resolution 2003/42*, (New York: United Nations, 2003).

<sup>463</sup> Inter-American Court of Human Rights, *Claude Reyes Case*, Judgment of September 19, 2006, Inter-Am.Ct.H.R., (Series C), No. 151, paras. 76 and 77. See also IACHR, Report on Terrorism and Human Rights, OAS/Ser.L./V/II 116, Doc. 5 rev. 1 corr. 22, October 2002, para. 281.

this right is crucial to ensure democratic control of public entities and to promote accountability within the government.<sup>464</sup>

The right of access to information is governed by the “principle of maximum disclosure,” meaning the government is presumed to be under an obligation to disclose information.<sup>465</sup> This presumption can only be overridden under circumstances clearly defined by law in which the release of information could undermine the rights of others or the protection of national security, public order, or public health or morals.<sup>466</sup>

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<sup>464</sup> This right has been recognized in Europe since the early 1980s. Toby Mendel, “Freedom of Information: a human rights protected internationally” (Libertad de Información: derecho humano protegido internacionalmente), *Comparative Law of Information (Derecho Comparado de la Información)*, January-June 2003, pp. 13-19, <http://www.juridicas.unam.mx/publica/librev/rev/decoinc/cont/1/cnt/cnt3.pdf> (accessed April 10, 2012).

The Inter-American Court of Human Rights held in 1985 that effective citizen participation and democratic control, as well as a true debate in a democratic society, cannot be based on incomplete information. Understanding freedom of expression as both the right to express oneself, and the right to obtain information, the court held that “freedom of expression is a cornerstone upon which the very existence of a democratic society rests. It is indispensable in the formation of public opinion.... It represents, in short, the means that enable the community, when exercising its options, to be sufficiently informed. Consequently, it can be said that a society that is not well informed is not a society that is truly free.” Inter-American Court of Human Rights, “Compulsory Membership in an Association prescribed by Law for the Practice of Journalism (Articles 13 and 29 American Convention on Human Rights),” Advisory Opinion OC-5, November 13, 1985, para. 70.

The OAS General Assembly has held since 2003 that access to public information is an indispensable requirement for a democracy to work properly, and that states have an obligation to ensure it. For example, Access to Public Information: Strengthening Democracy, OAS General Assembly Resolution, AG/Res. 1932 (XXXIII-O/03), adopted June 10, 2003; Access to Public Information and Protection of Personal Data, OAS General Assembly Resolution, AG/Res.1932 (XLI-O/11), adopted on June 7, 2011, <http://www.oas.org/juridico/English/regeneas.html> (accessed April 10, 2012).

The Chapultepec Declaration, signed by most heads of state in the hemisphere, and the Lima Principles, endorsed by the OAS and U.N. Special Rapporteurs on Freedom of Expression and Opinion, also recognize this consensus. Chapultepec Declaration, adopted by the Hemisphere Conference on Free Speech, Mexico City, Mexico, March 11, 1994, [http://www.declaraciondechapultepec.org/english/declaration\\_chapultepec.htm](http://www.declaraciondechapultepec.org/english/declaration_chapultepec.htm) (accessed April 10, 2012); Lima Principles, adopted by experts on freedom of expression and by the U.N. and OAS Special Rapporteurs on Freedom of Opinion and Expression, November 16, 2000, <http://www.cidh.org/Relatoria/showarticle.asp?artID=158&IID=1> (accessed April 10, 2012), principles 1 and 2.

<sup>465</sup> Principle 1 of The Public’s Right to Know—Principles on Freedom of Information Legislation holds that “[t]he principle that all information held by public bodies should be subject to disclosure and that this presumption may be overcome only in very limited circumstances.” The Public’s Right to Know: Principles on Freedom of Information Legislation, adopted by Article XIX, an NGO working on freedom of expression and access to information, June 1999, <http://www.article19.org/pdfs/standards/righttoknow.pdf> (accessed April 10, 2012). It was later endorsed by the U.N. and Inter-American systems on human rights. IACHR, Report on Terrorism and Human Rights, para. 284; IACHR Annual Report 1999, Vol. III, Report of the Office of the Special Rapporteur for Freedom of Expression, chapter II, OEA/Ser.L/V/II.111, Doc. 3 rev., Vol. III; UN Commission on Human Rights, “Resolution 1999/36,” E/CN.4/2000/63 (January 18, 2000), para. 43.

<sup>466</sup> ICCPR, art. 19(3); American Convention on Human Rights, art. 13(2). The Declaration of Principles on Freedom of Expression states that the right may only be limited exceptionally and such limitations must “be previously established by law in case of a real and imminent danger that threatens national security in democratic societies.” Declaration of Principles on Freedom of Expression, principle 4. Finally, the Johannesburg Principles hold that restrictions must be “necessary in a democratic society to protect a legitimate national security interest.” Johannesburg Principles on National Security, Freedom of Expression and Access to Information, adopted by Article XIX, November 1996, <http://www.article19.org/pdfs/standards/joburgprinciples.pdf> (accessed April 10, 2012), principles 1 (d) and 11. The



A Model Law on Access to Information, approved by the OAS General Assembly in June 2010, states that the right of access to information is a fundamental human right and an essential condition for all democratic societies, and that “measures should be adopted to promote, implement and ensure the right of access to information in the Americas.”<sup>467</sup>

### *Community Media*

The United Nations has recognized the role of community media in fostering sustainable development objectives for more than a decade.<sup>468</sup> International bodies like UNESCO and the IACHR have stressed the importance of non-profit community media for the poorest sectors of the population who normally have very restricted access to the conventional media. In his 2002 report, the Special Rapporteur on Freedom of Expression of the OAS recognized their role in expanding the scope of free expression in societies with significant levels of poverty.<sup>469</sup>

### **Protection of Human Rights Defenders**

As part of their duty to promote and protect human rights, governments must ensure that human rights defenders are allowed to pursue their activities without reprisals, threats,

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Johannesburg Principles were adopted on October 1995 by experts in international law, national security, and human rights, and were later recognized by the U.N. Special Rapporteur on Freedom of Opinion and Expression and the OAS Special Rapporteur for Freedom of Expression; UN Commission on Human Rights, “Report of the Special Rapporteur Mr. Abid Hussain,” UNCHR resolution 1993/45, E/CN.4/1996/39, March 22, 1996, para. 154; and IACHR, Annual Report 2003, Vol. III, Report of the Special Rapporteur for Freedom of Expression, chapter IV, OEA/Ser.L/V/II.118 Doc. 70 rev. 2.

<sup>467</sup> OAS General Assembly, Inter-American Model Law on Access to Public Information (Ley modelo interamericana sobre acceso a la información pública), AC/RES. 2607 (XL-o/10), adopted June 8, 2010, [http://www.oas.org/dil/esp/AG-RES\\_2607-2010.pdf](http://www.oas.org/dil/esp/AG-RES_2607-2010.pdf) (accessed February 14, 2012).

<sup>468</sup> In 1996, the UN General Assembly adopted Resolution A/C. 2/51/L.45, stressing “the need to support two-way communication systems that enable dialogue and that allow communities to speak out, express their aspirations and concerns and participate in the decisions that relate to their development.” United Nations General Assembly, “Sustainable Development and International Economic Cooperation,” Resolution A/C.2/51/L.45, A/51/604/Add.8., December 5, 1996. According to UNESCO, which supports community media initiatives in many parts of the world, “community-based media ensure media pluralism, diversity of content, and the representation of a society’s different groups and interests. Community media encourage open dialogue and transparency of administration at local level and offer a voice to the voiceless. They are established on the concepts of public access, sharing experiences and information.” UNESCO, International Programme for the Development of Communication, <http://www.unesco.org/new/en/communication-and-information/media-development/community-media/community-radio/> (accessed June 15, 2012).

<sup>469</sup> The Rapporteur stressed that states were bound not to discriminate against them in the award of broadcasting frequencies, intimidate them, or arbitrarily close them down: “Given the potential importance of these community channels for freedom of expression, the establishment of discriminatory legal frameworks that hinder the allocation of frequencies to community radio stations is unacceptable. Equally worrisome are those practices that, even when the legal framework is being respected, pose unjustified threats of closure or arbitrary seizures of equipment.” United Nations Commission on Human Rights, Report of the Special Rapporteur on Freedom of Expression, Chapter IV., 2002, para. 47.

intimidation, harassment, discrimination, or unnecessary legal obstacles. Moreover, both the United Nations and the Organization of American States (OAS) have recognized the importance of the work of human rights defenders to the protection of human rights and the consolidation of democracy.

According to the United Nations Declaration on Human Rights Defenders, states must “take all necessary measures to ensure the protection by the competent authorities of everyone, individually and in association with others, against any violence, threats, retaliation, de facto or de jure adverse discrimination, pressure or any other arbitrary action as a consequence of their legitimate exercise of the rights referred to in this Declaration.”<sup>470</sup>

In its first report on the situation of Human Rights Defenders in the Americas, the Inter-American Commission on Human Rights stressed the importance of the defense of human rights to the consolidation of democracy. “Human rights defenders, from different sectors of civil society, and, in some cases, from state institutions, make fundamental contributions to the existence and strengthening of democratic societies. Accordingly, respect for human rights in a democratic state largely depends on the human rights defenders enjoying effective and adequate guarantees for freely carrying out their activities.”<sup>471</sup>

The Inter-American Court of Human Rights has embraced the same principle: “Respect for human rights in a democratic state depends largely on human rights defenders enjoying effective and adequate guarantees so as to freely go about their activities, and it is advisable to pay special attention to those actions that limit or hinder the work of human rights defenders.”<sup>472</sup>

Among government actions that limit or hinder the work of human rights defenders are spurious criminal proceedings or legal action taken or threatened against them on

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<sup>470</sup> United Nations Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, March 8, 1999, G.A. res.53/144, art.12(2).

<sup>471</sup> IACHR, Report on the Situation of Human Rights Defenders in the Americas, March 7, 2006, OEA /Ser. L/V/II.124, (B) 20, <http://www.cidh.oas.org/countryrep/Defenders/defenderschap1-4.htm#III> (accessed April 10, 2012).

<sup>472</sup> Inter-American Court of Human Rights, *Lysias Fleury v. Haiti*, June 7, 2003, [http://www.corteidh.or.cr/docs/medidas/fleury\\_se\\_01\\_ing.pdf](http://www.corteidh.or.cr/docs/medidas/fleury_se_01_ing.pdf) (accessed April 10, 2012), para. 5; Inter-American Court of Human Rights, *Nieto Palma v. Venezuela*, July 9, 2004, [http://www.corteidh.or.cr/docs/medidas/nieto\\_se\\_01.pdf](http://www.corteidh.or.cr/docs/medidas/nieto_se_01.pdf) (accessed April 10, 2012), para. 8.

unfounded charges, or intimidating accusations leveled at them by government officials. The IACHR has pointed out that:

the punitive power of the state and its judicial apparatus should not be manipulated for the purpose of harassing those who are dedicated to legitimate activities such as the defense of human rights.... [J]udicial proceedings brought by the state authorities should be conducted in such a way that—based on objective evidence that is legally produced— only those persons who can reasonably be presumed to have committed conduct deserving of a criminal sanction are investigated and submitted to judicial proceedings.<sup>473</sup>

Governments must not only protect human rights defenders but also ensure that they can engage in public debates through the issuing of findings and recommendations. Among the rights recognized by the UN Declaration on Human Rights Defenders is the right

individually and in association with others, to submit to governmental bodies and agencies and organizations concerned with public affairs criticism and proposals for improving their functioning and to draw attention to any aspect of their work that may hinder or impede the promotion, protection and realization of human rights and fundamental freedoms.<sup>474</sup>

Although governments are under no obligation to heed the criticism or advice of human rights defenders, they are obliged to refrain from actions that undermine the defenders' ability to exercise this right, including unfounded public statements aimed at intimidating or endangering them.

Finally, states may not impose arbitrary limitations on the right of organizations dedicated to human rights protection to solicit and receive funds for their activities. According to the UN Declaration:

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<sup>473</sup> IACHR, Report on the Situation of Human Rights Defenders in the Americas, para. 114.

<sup>474</sup> UN Declaration on the Right and Responsibility of Individuals, art. 8 (2).

Everyone has the right, individually and in association with others, to solicit, receive and utilize resources for the express purpose of promoting and protecting human rights and fundamental freedoms through peaceful means.<sup>475</sup>

Similarly, the IACHR's view is that civil society organizations may legitimately receive money from foreign or international NGOs, or foreign governments, to promote human rights.<sup>476</sup>

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<sup>464</sup> *Ibid.*, art. 13.

<sup>476</sup> IACHR, Report on the Situation of Human Rights Defenders in the Americas, IV (40).

## Recommendations

Human Rights Watch urges the Chávez government to remove obstacles to judicial independence, freedom of expression, and the independence of civil society organizations. Many of our recommendations, detailed below, were included in *A Decade Under Chávez*, our previous report on the country. None have yet been adopted by the Chávez administration or by his supporters in other branches of government.

If Venezuela is to fulfill the promise of the 1999 constitution, it should amend or repeal policies, laws, and practices that undermine its citizens' basic rights.

### Regarding Judicial Independence

At this point, there is no easy way to reverse the damage done to the independence of the Venezuelan judiciary by the 2004 court-packing law. Given the circumstances, Human Rights Watch recommends as an extraordinary measure that the current National Assembly implement a one-time ratification process to legitimize the composition of the Supreme Court, for example, by requiring a two-thirds majority affirmative vote for each justice whose appointment occurred after the passage of the 2004 Supreme Court law. Measures should be taken to permit the lawful removal of any justice who does not receive a two-thirds majority vote during this process. Any resulting vacancies should be filled through a selection process that is open, transparent, and ensures the broadest possible political consensus.

Once the National Assembly has completed the ratification process, the new Supreme Court should seek to reassume its role as an independent guarantor of fundamental rights. Specifically, it should:

- Resolve quickly and impartially appeals involving allegations of infringements of fundamental rights, particularly if delay would result in irreparable harm;
- Ensure that justices who face clear conflicts of interests in particular cases recuse themselves from adjudication of those cases to ensure that all decisions are adopted impartially and are seen to be adopted impartially;

- Recognize the jurisdiction and binding rulings of the Inter-American Court of Human Rights; and
- End the practice by the Judicial Commission of appointing judges who lack security of tenure and then removing them at will, and instead adopt mechanisms to ensure that all judges are appointed to positions with security of tenure through open and public competitions as required by the Bolivarian constitution.

More immediately, the National Assembly should:

- Repeal the provisions of the Supreme Court law that undermine the court's independence by allowing justices to be removed by a simple majority vote.

The Attorney General's Office should:

- Investigate, and hold to account, public officials who may have abused their authority in violation of Article 67 of the Law Against Corruption, or similar provisions, by improperly using the criminal justice system against perceived political opponents as documented in this report; and
- Drop all charges against Judge María Lourdes Afiuni and seek her immediate release from house arrest; and investigate, and hold to account, public officials who may have abused their authority in violation of Article 67 of the Law Against Corruption, or similar provisions, by improperly procuring her arrest, prosecution, and prolonged detention.

### **Regarding Freedom of Expression**

Venezuelan authorities should amend or repeal laws that grant government officials undue power to censor and punish critics, and refrain from pursuing policies and practices that undermine freedom of expression, including those that generate undue pressure for self-censorship among journalists and broadcasters.

The National Assembly should repeal all legal provisions that contravene international law and norms on freedom of expression. Specifically, it should:

- Repeal all insult laws (*desacato*);
- Repeal all laws that criminalize defamation of public officials and institutions;
- Ensure that civil damages for defamation are limited so as to avoid a chilling effect on free expression;
- Amend the language of article 29(1) of the Broadcasting Law to ensure that the offense of incitement is clearly defined and restricted to situations in which broadcasters directly and explicitly incite the commission of crimes; and
- Amend the language of article 27 of the Broadcasting Law to ensure that existing restrictions on free speech are not applicable to the internet.

The government should ensure that broadcasting laws are enforced impartially and with full respect for due process guarantees. Specifically, it should:

- Ensure that investigation and sanctioning of alleged infractions of broadcast laws is carried out by an impartial and independent body protected from political interference; and
- Ensure that alleged violators of broadcast regulations are guaranteed the right to contest the charges against them.

To safeguard the right of access to information and increase government transparency, the government should:

- Introduce legislation to implement effectively and without discrimination the constitutional right of public access to information held by public entities;
- Respond in a timely manner to information requests presented by journalists, human rights defenders, and members of the general public;
- Provide public information on the role and activities of the Center for Situational Studies of the Nation, ensuring that they comply with international standards on access to information; and
- Revoke administrative provisions expanding the definition of what constitutes confidential or reserved information.

To ensure the impartiality of decisions to grant, renew, and revoke broadcasting licenses, the government should:

- Give applicants for concessions and frequencies equal opportunities to present their cases through a fair process that adheres to basic due process, including by introducing safeguards against political interference.

In addition, the government should:

- Restrict the obligation on private media to broadcast official statements, including presidential speeches, to occasions which conform with international legal standards, i.e. the broadcast should have a legitimate purpose for the public good, and the content, scope and length of the broadcast should be necessary and proportionate to achieve the public good.

### **Regarding Human Rights Defenders**

The Venezuelan government should abandon its aggressively adversarial posture toward human rights defenders and civil society organizations.

Specifically, the president and high-level officials should:

- Refrain from unfounded attacks on the credibility of human rights defenders and civil society organizations;
- Publicly retract unfounded public statements against rights advocates and organizations; and
- Engage constructively with human rights defenders in seeking solutions to address Venezuela's human rights problems.

The National Assembly should:

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



- Amend article 4 of the Organic Law on Social Control to clarify that obligatory adherence to "socialist principles" does not apply to human rights defenders or civil society organizations that work to protect and promote human rights in the country.

In addition, the Attorney General's Office should:

- Only open investigations in which it independently considers that suspects have committed a crime, without undue interference of other branches of government;
- Conclude outstanding criminal investigations against human rights defenders and civil society representatives in an impartial, objective and timely manner;
- Refrain from filing unsubstantiated or unwarranted charges against human rights defenders and civil society leaders; and
- Conduct thorough, prompt, and impartial investigations after human rights defenders report attacks, threats, or harassment they have suffered.

### **Regarding the Inter-American Human Rights System**

All branches of government in Venezuela should actively collaborate with international human rights monitoring bodies to ensure Venezuelans can have access to alternative mechanisms to redress abuses when local remedies are ineffective or unavailable.

Specifically, Venezuelan authorities should:

- Recognize the jurisdiction of the Inter-American Court of Human Rights, and adopt all necessary measures to comply with and implement its rulings;
- Allow the Inter-American Commission on Human Rights to conduct in-country research in Venezuela; and
- End its international campaign to undermine the independence, autonomy, and powers of the Inter-American Commission and Court of Human Rights.

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# Tightening the Grip

## Concentration and Abuse of Power in Chávez's Venezuela

The human rights situation in Venezuela has become more precarious since 2008, when Human Rights Watch released its last report on Venezuela, *A Decade Under Chávez*. The pro-Chávez majority in the National Assembly has passed legislation expanding the government's powers to limit free speech and to punish its critics. The Supreme Court—packed with Chávez supporters in 2004 and re-packed in 2010—has openly rejected its role as an independent check on presidential power, while joining with the president in dismissing the authority of the Inter-American system of human rights.

The accumulation of power in the executive, the removal of institutional safeguards, and the erosion of human rights guarantees have given the Chávez government free rein to intimidate, censor, and punish Venezuelans who “offend” the president or obstruct his political aims.

*Tightening the Grip* documents the abuses, showing how President Hugo Chávez and his supporters have made ample use of these powers over the past four years in a wide range of cases, with negative consequences for judicial independence, media freedom, and civil and political rights.



*President Hugo Chávez waves to supporters on the day he registered for re-election in Caracas, Venezuela, on June 11, 2012.*

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