



Human Rights Watch Concerns and Recommendations on Venezuela

Submitted to the UN Human Rights Committee in advance of
its Pre-Sessional Review of Venezuela

July 2014

Human Rights Watch welcomes the upcoming review of Venezuela by the Human Rights Committee. This briefing provides an overview of our main concerns with regard to Venezuela's compliance with the International Covenant on Civil and Political Rights (ICCPR). We hope it will inform the Committee's pre-sessional review of Venezuela and that the areas of concern highlighted here will be reflected in the list of issues submitted to the Venezuelan government ahead of the review.

Excessive Use of Force against Demonstrators (Articles 7, 9, 10 and 21)

Beginning on February 12, 2014, members of the Bolivarian National Guard, the Bolivarian National Police, and state police forces routinely used unlawful force in response to anti-government protests, including the severe beating of unarmed protesters and bystanders. They fired live ammunition, rubber bullets, and teargas indiscriminately into crowds, and on occasion fired rubber bullets deliberately, at point blank range, at unarmed individuals already in custody.

They also allowed armed pro-government gangs to attack unarmed civilians, and in some cases openly collaborated with the gangs.

In instances involving both professional journalists and people who had been taking photographs or filming security force confrontations with protesters, the aim of the abuse appears to have been to prevent those individuals from documenting the security force tactics or to punish those attempting to do so.

Detainees were often held incommunicado on military bases for 48 hours or more, before being presented to a judge. Detainees routinely suffered a range of violations that included severe beatings, electric shocks or burns, and being forced to squat or kneel, without moving, for hours at a time. In some cases, the ill-treatment clearly constituted torture.

The fact that the abuses were carried out repeatedly, by multiple security forces, in multiple locations across three states and the capital—including in controlled environments such as military installations and other state institutions, and over a period of several weeks—supports the conclusion that the abuses were part of a systematic practice.

For additional information, please see:

<http://www.hrw.org/reports/2014/05/05/punished-protesting>

Lack of Judicial Independence and Due Process Rights (Article 14)

President Hugo Chávez and his supporters in the National Assembly conducted a political takeover of the Supreme Court in 2004. Since then, the judiciary has largely ceased to function as an independent branch of government. Members of the Supreme Court have openly rejected the principle of separation of powers, publicly pledged their commitment to advancing the government's political agenda, and repeatedly ruled in favor of the government, validating the government's disregard for human rights.

The criminal prosecution of Venezuelan Judge María Lourdes Afiuni as a result of a 2009 ruling against the government has had an impact on the judicial independence of lower court judges. In December 2009, Afiuni was detained on the day she authorized the conditional release of a government critic who had spent nearly three years in prison awaiting trial on corruption charges. Although Afiuni's ruling complied with a recommendation by international human rights monitors—and was consistent with Venezuelan law—a provisional judge who had publicly pledged his loyalty to Chávez ordered her to stand trial on charges of corruption, abuse of authority, and "favoring the evasion of justice." Afiuni spent more than a year in deplorable conditions in a women's prison, and over two years under house arrest. In June 2013, she was granted conditional liberty but remains under criminal prosecution at this writing.

For additional information, please see: <http://www.hrw.org/node/108883/section/3>

During the protests that erupted since February 12, 2014, justice officials failed to fulfill their role as a safeguard against abuse of power and instead were party to serious due process violations. Human Rights Watch interviewed scores of victims who were denied access to a lawyer until minutes before judicial hearings, which were often scheduled in the middle of the night. Prosecutors and judges routinely turned a blind eye to evidence suggesting that detainees had been physically abused, or that evidence against them had been planted by security forces.

In addition, the government of Venezuela has repeatedly sought to blame its political opponents, or simply the opposition as a whole, for the violence that erupted during the demonstrations, without providing credible evidence. For

example, the government accused Leopoldo López, an opposition leader, of being the “intellectual author” of the protest-related deaths on February 12. The Attorney General's Office promptly sought his arrest for several alleged crimes—initially including homicide, a charge it dropped when video footage appeared showing security force members shooting at unarmed protesters. In early June, a provisional judge (ie., who does not enjoy security of tenure) ruled López and two students accused of being the material authors of his alleged crimes would remain detained during their trial. (One of them was released on conditional liberty weeks later due to medical reasons.) After keeping López in a military prison for months without providing credible evidence to justify his detention, his trial began on July 23.

Similarly, the Attorney General's Office has also obtained an order to forbid opposition leader María Corina Machado to leave the country and arrest warrants for other opposition figures, while the Supreme Court has summarily tried and sentenced two opposition mayors to prison terms, in judicial proceedings that violated basic due process guarantees.

For additional information, please see:

<http://www.hrw.org/reports/2014/05/05/punished-protesting>

Freedom of Expression (Article 19)

Over the past decade, the government has expanded and abused its powers to regulate media. While sharp criticism of the government is still common in some newspapers and radio stations, fear of government reprisals has made self-censorship a serious problem.

In 2010, the National Assembly amended the telecommunications law to grant the government power to suspend or revoke concessions to private outlets if it is “convenient for the interests of the nation.” It also expanded the scope of a restrictive broadcasting statute of 2004 to cover the Internet, allowing the arbitrary suspension of websites for the vaguely defined offense of “incitement.” Previously, amendments to the criminal code in 2005 had expanded the scope and severity of defamation laws that criminalize disrespect of high government officials.

The government has taken aggressive steps to reduce the availability of media outlets that engage in critical programming. Venezuela's oldest private television channel, RCTV, which was arbitrarily removed from public airwaves in 2007, was then driven off cable TV in 2010.

The government subsequently pursued administrative sanctions against Globovisión, which was for years the only major channel that remained critical of Chávez. The broadcasting authority opened nine administrative investigations against the channel. In one case, it imposed a fine of US\$2.1 million for allegedly violating the broadcasting statute when Globovisión aired images of a prison riot in 2011. In April

2013, Globovisión was sold to government supporters because, according to its owner, it had become politically, economically, and legally unviable. Since then, it has significantly reduced its critical programming.

The government has also targeted other media outlets for arbitrary sanction and censorship. For example, in a case brought by the ombudsman, a specialized court to protect children fined *El Nacional* newspaper in August 2013 for publishing on its front page a photograph of a dozen naked corpses in the Bello Monte morgue in Caracas. The image accompanied an article about illegal arms and violence, which are major public concerns in Venezuela. Since the picture was printed in 2010, the court forbade the paper from publishing "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."

In November 2013, the broadcasting authority opened an administrative investigation against eight Internet providers for allowing web sites that published information on unofficial exchange rates, and threatened to revoke their licenses if they did not immediately block the sites. Days later, it asked Twitter to suspend accounts related to such websites.

In January 2014, the president of the National Assembly, Diosdado Cabello, filed a criminal defamation suit against a Venezuelan citizen who published an opinion piece in the newspaper *Tal Cual*, and against four of the paper's directors, including Teodoro Petkoff, the paper's editor. The article, published on January 17, included information from unofficial sources regarding the number of people who had been killed in the country in 2013, and states that Cabello had said: "If you don't like insecurity, leave." It was accompanied by a caricature of Cabello, saying good-bye, with stacks of money in his pocket and hand, according to the suit. Cabello argues the quote does not accurately reflect what he said, and that the article undermines his reputation. In March, a criminal court admitted the case, and ordered the five men not to leave the country until it was resolved.

For additional information, please see: <http://www.hrw.org/node/108883/section/4> .

Human Rights Defenders (Articles 2.1, 3, and 22)

The Venezuelan government has sought to marginalize the country's human rights defenders by repeatedly accusing them of seeking to undermine Venezuelan democracy with the support of the US government. In 2010, the Supreme Court ruled that individuals or organizations that receive foreign funding could be prosecuted for "treason." In addition, also in 2010 the National Assembly enacted legislation blocking organizations that "defend political rights" or "monitor the performance of public bodies" from receiving international assistance.

For additional information, please see: <http://www.hrw.org/node/108883/section/5> .

Prison Conditions (Article 10)

Despite the creation of the Ministry of People's Power for Penitentiary Service in 2011, referenced by the government of Venezuela in its 2012 report before the Human Rights Committee, Venezuelan prisons remain among the most violent in Latin America. Weak security, deteriorating infrastructure, overcrowding, insufficient and poorly trained guards, and corruption allow armed gangs to effectively control prisons. Hundreds of violent prison deaths occur every year. For example, in January 2013, at least 56 prisoners and one member of the National Guard were killed during a clash between members of the National Guard and inmates, in which security forces used lethal force during a weapons search in the Uribana prison in Lara state. Forty-six prisoners were hospitalized with serious injuries.

Political Discrimination (Article 26)

Political discrimination has long plagued Venezuela. For decades, government patronage and spoils were divided along party lines at the expense of large sectors of Venezuelan society. Hugo Chávez assumed the presidency in 1998, in part on the promise to free Venezuela from its entrenched patterns of political exclusion. While his government managed to uproot the established system of political discrimination, it replaced it with new forms of discrimination against real and perceived political opponents.

The Chávez government proclaimed a commitment to political inclusion, but openly discriminated against those who did not share its views. Government officials removed scores of detractors from the career civil service, purged dissident employees from the national oil company, and denounced critics as subversives deserving of discriminatory treatment.

Political discrimination under Chávez was most pronounced in the aftermath of the 2004 recall referendum on Chávez's presidency. Citizens who exercised their right to call for the referendum—invoking one of the new participatory mechanisms championed by Chávez during the drafting of the 1999 Constitution—were threatened with retaliation and blacklisted from some government jobs and services. After denouncing the referendum effort as an act “against the country”, Chávez requested that electoral authorities give legislator Luis Tascón a list of those who signed the referendum petition, which was made publicly available on the internet. The “Tascón list” and an even more detailed list of all Venezuelans' political affiliations—the “Maisanta program”—were then used by public authorities to target government opponents for political discrimination. (There were also reports that private sector employers utilized the lists to discriminate against Chávez supporters.)

Political discrimination against workers in state institutions remained a problem after the death of Hugo Chávez. In April 2013, Minister of Housing Ricardo Molina called on all ministry personnel who supported the opposition to resign, saying that he would fire anyone who criticized President Nicolás Maduro, Chávez, or the “revolution.” The Human Rights Center of the Catholic University Andrés Bello received complaints involving hundreds of workers from public institutions — including the state oil company, the office in charge of customs and taxes, and state electrical companies— who were allegedly threatened with losing their positions for supporting the opposition presidential candidate Henrique Capriles Radonski, or for not openly supporting the government, after the April elections.

For additional information, please see: <http://www.hrw.org/node/64174/section/3> .

Labor rights (Article 22)

For several years, the government has promised to reform the relevant labor and electoral laws to restrict state interference in union elections. In April 2012, former President Chávez adopted a new labor law by decree. Although the law states that unions are free to organize elections without interference, it lays down the voting system that unions must incorporate into their statutes, as well as the maximum length of tenure of union officers. These provisions limit the full freedom that unions should have under international norms to draw up their constitutions and rules and elect their representatives.