

**UPR Submission  
Bolivarian Republic of Venezuela  
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**I. Summary**

President Hugo Chávez and his supporters have effectively neutralized the independence of Venezuela's judiciary. In the absence of a judicial check on its actions, the Chávez government has systematically undermined freedom of expression and the ability of human rights groups to promote basic rights. It has also prosecuted government critics.

**II. Human Rights Issues**

**Lack of Judicial Independence**

In 2004 President Chávez and his supporters in the National Assembly launched a political takeover of the Supreme Court, filling it with government supporters and creating new measures that make it possible to purge justices from the court.<sup>1</sup> Since then the court has largely abdicated its role as a check on executive power, failing to uphold fundamental rights enshrined in Venezuela's constitution in key cases involving government efforts to limit rights.

The impact of the political takeover of the Supreme Court soon extended to the entire judiciary. The packed Supreme Court, in charge of appointing and removing lower court judges, has significantly altered the composition of the judiciary.

In December 2010, Chávez's allies in the National Assembly rushed to keep the Supreme Court packed. By modifying the legal timeline to appoint Supreme Court Justices, they were able to appoint nine permanent Supreme Court justices and 32 stand-ins, just weeks before the new National Assembly—with a substantial opposition composition—took office in January 2011.

When initiating the judicial activities of 2011, Supreme Court President Luisa Estella

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<sup>1</sup> In May 2004, the National Assembly passed the new Organic Law of the Supreme Court (Ley Orgánica del Tribunal Supremo de Justicia, LOTSJ), which granted the slim Chavista majority in the National Assembly powers to pack and purge the highest court in the country. The new court-packing law increased the Supreme Court from 20 to 32 justices. The new justices could be selected with a simple majority vote of the National Assembly: a nominee who failed to receive a two-thirds majority in the first three votes could be selected by a simple majority on the fourth vote. In addition, the law eliminated, in practice, the constitutional requirements to impeach justices. While the impeachment of justices still requires a two-thirds majority vote, the law creates two new mechanisms for removing justices, short of impeachment and without the need for a two-thirds majority. One entails suspending justices (in practice, indefinitely) pending an impeachment vote, and the other allows the National Assembly to "nullify" justices' appointments by a simple majority vote in certain cases.

The new law provided the basis for a political takeover of the Supreme Court. Within weeks of its passage, the three justices responsible for the rulings most criticized by Chávez's supporters were off the court. And, by December, pro-government members of the National Assembly had filled their seats, two additional vacancies, and 12 new seats created by the law, with people known to be political allies.

Morales held that laws in Venezuela “respond to an ideological purpose.” The keynote speaker during the public event, Justice Fernando Torre Alba, stated that the judiciary “has the duty to participate in the effective implementation... of the government’s public policy to develop... a Bolivarian and democratic socialism” and that all courts, including the Supreme Court, “must severely ... sanction behaviors or cases that undermine the construction of [such] socialism.”

A paradigmatic case that shows the lack of judicial independence in Venezuela is the arbitrary detention of Judge María Lourdes Afiuni. In December 2009, Judge Afiuni was detained on the day she authorized the conditional release of Eligio Cedeño, a banker accused of corruption. Afiuni was following a recommendation by the UN Working Group on Arbitrary Detentions, given that Cedeño had been in pre-trial detention for almost three years, although Venezuelan law prescribes a two-year limit. A day after her arrest, Chávez branded Afiuni a “bandit” who should be sentenced to the maximum 30 years in prison. Judge Afiuni was accused of corruption, abuse of authority, and “favoring evasion of justice.” She will be tried by a judge who has openly supported President Chávez, stating that he “would never betray ... [his] Commander because [he] take[s] the Revolution in [his] blood.”

Judge Afiuni was held in pretrial detention in deplorable conditions in a violent women’s prison in Caracas for over a year. At this writing, she continues to be arbitrarily detained under house arrest. Several international bodies from the United Nations and Inter American human rights systems have questioned the legality and conditions of Afiuni’s detention.

### **Freedom of Expression**

Venezuela enjoys a vibrant public debate in which anti-government and pro-government media are equally vocal in criticizing and defending the president. However, the government has discriminated against media that air views of political opponents, has strengthened the state’s capacity to limit free speech, and has created powerful incentives for government critics to self-censor.

Laws contributing to a climate of self-censorship include 2005 amendments to the criminal code extending the scope of “desacato” laws that criminalize disrespect of high government officials, despite international standards that require such laws be abolished. A broadcasting statute (Law on Social Responsibility in Radio and Television) adopted in 2004 allows arbitrary suspension of channels for the vaguely defined offense of “incitement.” In December 2010, the National Assembly extended the scope of this broadcasting statute to include the Internet. It also amended the telecommunications law, which now states that broadcast media and the Internet are “a public service” and, as such, are “reserved for the state.” This law grants the government the power to suspend or revoke broadcasting concessions to private outlets if it considers that is “convenient for the interests of the nation, or if public order and security demands it.”

The government has abused its control of broadcasting frequencies to punish radio and television stations with overtly critical programming, while obliging private media to transmit speeches of the president and other officials. Since taking office in February 1999 Chávez has compelled radio and TV stations using public airwaves to transmit more than 2,000 of his speeches live.

In January 2010 the government broadcasting authority CONATEL ordered the country's cable providers to suspend transmitting channels that did not comply with the broadcasting statute until they applied for, and received, the status of "international" channels (to which the statute does not apply). The suspension affected seven channels, including RCTV International, the cable channel created after RCTV—a critic of Chávez—was taken off public airwaves in 2007. Most channels were soon back on air, but CONATEL rejected RCTV International's application for status as a national broadcaster. At this writing the channel was only available online and unable to transmit in Venezuela.

CONATEL is also currently investigating six cases of alleged violations to the broadcasting statute or the telecommunications law by Globovisión, the only open air TV channel that remains critical of the government. According to Globovisión's lawyer, all cases are ready to be resolved but no decision has been adopted to date; some have been pending for over a year.

Additionally, the government has adopted vague norms that expand its power to limit access to almost any information it holds, which contradicts the principle of maximum disclosure of public information. In June 2010 Chávez created by decree a Center for Situational Studies of the Nation (CESNA), which has broad powers to limit public dissemination of "information, facts or circumstance[s]" that it decides should be confidential. The decree's language is so broad it could allow the government to block information disseminated by civil society groups and media entirely at its discretion. And in December, the Chávez administration adopted regulations that establish that all government offices must consider that "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" should be confidential. It provides a list of examples but establishes that government authorities may consider that "any other information" may also be confidential.

### **Human Rights Defenders**

The Chávez government has aggressively sought to discredit local and international human rights organizations. Officials, including the president, have repeatedly made unsubstantiated allegations that human rights advocates are engaged in efforts to destabilize the country.

Rights advocates have been targeted for prosecutorial harassment. In July 2010, President Chávez stated that prosecutors should "thoroughly investigate" the "millions and millions of dollars" that the US State department gives Venezuelan NGOs. His statements came a day after a pro-Chávez organization presented a formal complaint before prosecutors seeking an investigation into funding received by two leading human rights groups in Venezuela. The Supreme Court ruled the same month that "obtaining financial resources, either directly or indirectly, from foreign states with the intent of using them against the Republic, [and] the interest of the people [could constitute] treason." According to press accounts, over 30 nongovernmental organizations are under investigation, but the organizations have not received any formal notification regarding these cases.

Human rights defenders are often stigmatized in government-controlled media and harassed or intimidated by unidentified individuals aligned with the government. A

recent example is the aggressive publicity campaign against Carlos Correa, director of Public Space (Espacio Público), in 2010—which included an animated sequence aired by state television (VTV) depicting him leaving the US embassy in a limousine with a suitcase overflowing with US dollar bills.

In December 2010, the National Assembly adopted two laws that, if applied to human rights organizations, could severely undermine their ability to work independently. The Law for the Defense of Political Sovereignty and National Self Determination blocks nongovernmental organizations that “defend political rights” or “monitor the performance of public bodies” from receiving international funding. It 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.” The organizations that invite the foreigners would face stiff fines. The broad language included in the law has made it increasingly difficult for human rights organizations to obtain international funding, which is critical for them to carry out their work.

Additionally, 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.” The law states that information and documentation obtained during their work must be “reserved,” that this type of work must be *ad honorem*, that individuals must follow the “[socialist] principles and values” included in the law, and that those who violate the law may be subject to administrative, civil, or criminal sanctions.

### **Prosecution of Government Critics**

Several critics of the Chávez government have been targeted for criminal prosecution. The courts' lack of independence diminished the accused parties' chances of receiving a fair trial.

In March 2010, the Attorney General's Office opened an investigation into the responsibility of Guillermo Zuloaga—president of Globovisión—for “disseminating false information, offense and insulting the President of the Republic.” In a speech at a public meeting in Aruba, Zuloaga had accused the president of having “ordered the shooting” of demonstrators during the April 2002 coup against him. In June, the president voiced outrage in a televised speech that Zuloaga was still free. A week later, police arrived at Zuloaga's house to arrest him and his son for alleged irregularities in their car sales business, an investigation their lawyers said had been stalled for months. In August the Venezuelan Supreme Court authorized a request for Zuloaga and his son's extradition from the United States, where they are seeking asylum.

Oswaldo Álvarez Paz, a former governor of the state of Zulia and a Chávez opponent, was accused of “public incitement [to violate laws] endangering public tranquility” and “publicizing false information” for criticizing the Chávez administration during a television interview in March. Álvarez Paz had said that, “Venezuela has turned into a center of operations that facilitates the business of drug trafficking.” He was in pretrial detention for almost two months, and remains under criminal investigation.

In February 2011, Rubén González, the secretary general of the Ferrominera Orinoco

Union was convicted for having organized and participated in a strike with 2000 workers in Guyana to protest the government-owned company's lack of compliance with a collective bargaining agreement. In September 2009, González was detained after prosecutors charged him with "incitement to commit crimes" (instigación a delinquir), conspiracy (agavillamiento), and violation of the prohibition to enter security zones. The International Labor Organization held in November 2010 that the facts that led to Gonzalez's prosecution—taking over the company's installations, blocking trains, and stopping the production during several days—did not justify his detention and requested Venezuela to release him. González remained under house arrest until January 2010, when he was transferred to the Patrulleros de Caroní prison. After his conviction, the Supreme Court reportedly authorized him to serve his sentence on conditional liberty but must report to the police every 15 days.

### **III. Recommendations**

#### **Regarding Judicial Independence**

The Attorney General's Office should immediately release and drop all charges against Judge María Lourdes Afiuni.

The National Assembly should:

- Implement a one-time ratification process to legitimize the composition of the Supreme Court, for example, by requiring a two-thirds majority affirmation vote for each Supreme Court justice whose appointment occurred after the passage of the 2004 Supreme Court law, including those appointed in December 2010. Measures should then 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 broadest possible political consensus.
- 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 Supreme Court should:

- Resolve quickly and impartially appeals involving allegations of infringements of fundamental rights, particularly if the court's delay would result in an irreparable harm; and
- Recuse justices who face clear conflicts of interests to ensure that all decisions are adopted impartially, and that the court is seen to be impartial, as well as acting impartially.

The government of Venezuela, and Supreme Court justices, should refrain from adopting measures or issuing statements that undermine—or generate the perception that they undermine—judicial independence.

#### **Regarding Freedom of Expression**

The National Assembly should repeal all legal provisions that contravene international norms on freedom of expression and generate undue pressure for self-censorship. Specifically, it should repeal all insult laws (desacato) and 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; and amend the Social Responsibility 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.

The government of Venezuela should ensure the impartiality and due process in the procedures by which broadcasting laws are enforced. Specifically, it should ensure that investigation and sanctioning of alleged infractions of broadcast laws are carried out by an impartial and independent body protected from political interference; and that alleged violators of broadcast regulations are guaranteed the right to contest the charges against them.

### **Regarding the Protection of Human Rights Defenders and Prosecution of Critics**

The Chávez administration should abandon its aggressively adversarial posture toward local human rights defenders and civil society organizations. Specifically, 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.

In addition, the Attorney General's Office should:

- Conclude outstanding criminal investigations against human rights defenders and civil society representatives in a timely manner;
- Refrain from filing unsubstantiated or grossly exaggerated charges against human rights defenders and civil society leaders; and
- Refrain from filing charges against government critics in response to their questioning of government actions or policies.

**Annexes:**

1. "Rigging the Rule of Law: Judicial Independence Under Siege in Venezuela," *Human Rights Watch report*, June 2004.
2. "A Decade Under Chavez: Political Intolerance and Lost Opportunities for Advancing Human Rights in Venezuela," *Human Rights Watch report*, September 2008.