

Bolivarian Rule of Lawlessness

The Eligio Cedeño Case: the Erosion of
Judicial Autonomy Under Hugo Chávez

“In [Venezuela] the state guarantees the material
content required for the achievement of the
common good: justice is superior to law”

*—Outline of the 2007-2013 economic and social
plan of the Bolivarian Republic of Venezuela*

A white paper by

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Executive Summary

The rule of law and liberal democracy in Venezuela are crumbling under the leadership of President Hugo Chávez. Chávez has subverted the fundamental institutions of government, converting them into tools for maintaining and consolidating personal power. His government and its supporters harass those who do not align themselves politically and ideologically with the Bolivarian Revolution. They use various means to persecute their political opponents, including (among other things) assaults in the media, violence, censorship and false criminal charges.

Chávez has gained complete control of the criminal justice system in Venezuela, and he uses it as a weapon against his perceived political opponents. Prosecutors and judges who do not obey instructions, regardless of the law, risk immediate dismissal. A growing class of political prisoners has emerged, including businessman Eligio Cedeño. The government violates the legal and human rights of these individuals with impunity. Attempts to seek redress in international human rights forums are largely successful, although the Venezuela government is increasingly distancing itself from its obligations under international law to honor their rulings. In addition, the Venezuela Supreme Court has expressly repudiated international human rights treaties to the extent that they do not comply with Venezuelan law. Intervention by the international community is both necessary and appropriate in order to preserve the rights of Venezuelan citizens.

This White Paper explains Venezuela's recent history, leading to the current conditions. It identifies the typical pattern employed by the pliant judiciary to attack Chávez's political opponents, and it describes the emblematic case of Eligio Cedeño in detail. Additionally, it contains a long list of individuals who are subject to political persecution by the Chávez government, together with a brief explanation of their circumstances.

Part 1 - Rule of Law - A Casualty of the Bolivarian Revolution

The Chávez administration seized control of the courts in steps, beginning with key legislative measures: (1) establishment of a Judicial Commission in 2001, and (2) passage of a Supreme Court Law in May 2004.

The Judicial Commission, comprised of five members of the Venezuela Supreme Court (TSJ), is vested by the legislature with authority to hire and fire all judges in its sole discretion. During the Chávez administration, hundreds of judges have been removed from the bench without any substantive basis or disciplinary proceedings, while new candidates have taken their place without testing for qualification or third party oversight. The process has been highly politicized, with judges removed or appointed primarily on the basis of political affiliation.

The Supreme Court Law of 2004, which was widely criticized as unconstitutional, increased the number of justices on the TSJ from 20 to 32, while allowing for appointment of justices by a simple majority vote of the legislature (rather than the two-thirds super-majority required by the Venezuela Constitution). The 12 newly appointed justices were, without exception, political supporters of Chávez. Consequently, each of the five chambers of the TSJ has come under the control of President Chávez.

These two laws quickly eroded judicial independence in Venezuela, as judges who refuse to tailor their rulings to the desires of the government face removal. Other independent lower court judges and TSJ justices have resigned in the face of pressure. In order to create a judiciary that would produce “trustworthy” and predictable verdicts, the executive succeeded in purging independent and renowned jurists such as Franklin Arrieche, Alberto Martini Urdaneta and Rafael Hernández Uzcátegui (all Supreme Court Justices), and judges such as Herten Vilela, Pedro Troconis, Alcy Maite Viñales, Monica Fernandez, Guadalupe Sánchez, Dorys Cruz, Irasema Vílchez and Luisa Rojas.

The Attorney General’s Office has experienced similar subordination to the executive, as prosecutors not clearly aligned with Chávez have been arbitrarily removed from their positions. The stated reason for their removal has often been that they have not passed public examinations which, ironically, have not been held under established rules since the beginning of Chávez’s presidency. New prosecutors have been hired primarily on the basis on their allegiance to the Chávez regime.

Having secured the cooperation of the courts and the Attorney General’s Office, the Chávez government now routinely uses the criminal justice system to consolidate power by attacking political opponents through criminal investigations and prosecutions. Together with a cooperative judiciary, a small band of political prosecutors is responsible for routinely leveling criminal charges against political targets of the government. The pattern that has emerged includes: slander in the national media, manifestly false or unfounded criminal charges, assignment of cases to pliant judges, illegal pretrial detention and denial of bail, gross due process violations, manipulation of evidence, bribery and sometimes even torture of witnesses. These practices are allowed to stand, as appellate court justices refuse to overturn manifestly erroneous rulings, leaving the victims with no domestic recourse.

In addition to Eligio Cedeño, victims that have been charged and/or investigated criminally by the Chávez government as a consequence of their political views, speech and activities include:

Ivan Simonovis	Mónica Fernández Sánchez	Leopoldo López	Ricardo Estevez
Lázaro Forero	Alfredo Romero Mendoza	Henrique Capriles	Luis E. Palacios
Henry Vivas	Gonzalo Himiob Santomé	Manuel Rosales	Francisco Usón Ramírez
Erasmus Bolívar	Antonio Rosich Saccani	Antonio Ledezma	Nixon Moreno
Luis Molina Cerrada	Ibeyise Pacheco	Gabriel Gallo	José Dacre
Ramón Zapata Alonso	José Humberto Quintero	Miguel Ponte	Delfín Gómez
Arube Pérez Salazar	Felipe Rodríguez	Héctor Castro	José Sánchez
Rafael Neazoa López	Carlos Alberto Millán Millán	Elías Capogian	Luis Rodríguez
Marco Hurtado	Carlos Alberto Millán Alvarado	Dereck Blanco	Diana Mora
Héctor Rovain	Raúl Baduel	Andrés Senior	Silvio Mérida
Julio Rodríguez	Yon Goicoechea	Alejandro Mejía	Raúl Díaz Peña
Otto Gebauer	Patricia Poleo	Alejandro Aguirre	Wilfredo Barroso
Ovidio Poggioli	Carlos Ortega	Federico Black	Marianela Salazar
Jesús Farías		Carlos Velar	Nelson Bocaranda
Rafael Farías		Rafael Del Rosario	Gustavo Azócar
Otoniel Guevara		Alejandro Pulido	250+ Students
Rolando Guevara		María Corina Machado	
Juan Guevara		Alejandro Plaz	

Many of these cases have been the subject of successful proceedings in international human rights regulatory bodies, such as the Inter-American Commission on Human Rights.

Part 2 - *Chavista* Justice – The Attack on Eligio Cedeño

The case of Eligio Cedeño is emblematic of the problem within Venezuela’s criminal justice system. First indicted in 2005 in retaliation for his support of political opponents of Chávez, he has been held illegally in pretrial detention since February 2007, during which time he has been subject to repeated violations of his rights by politically compliant courts. In February 2009, he completed the maximum allowable term for pretrial detention, yet more than 35 demands to be released have been ignored. In June 2009, the court added a potential additional two years to his pretrial detention.

Cedeño’s personal history is a fascinating story of improbable success. The 45-year-old executive was raised in severe poverty in a one-room home in Caracas, without electricity or running water. Thanks to youthful persistence and early academic achievement, Cedeño secured a bank internship at age 17. He rapidly rose inside Venezuela’s financial sector and was promoted to Vice President at the age of 28. In 1994, he founded his own brokerage company and eventually became one of the country’s most successful institutional bond traders. In 1996, he established *Fundación Cedel*, a charitable organization dedicated to fighting poverty in Venezuela.

Cedeño became a target of the Chávez government, as a consequence of his support for political opponents of Chávez. In addition to providing financial support to politicians, he provided assistance to union leader Carlos Ortega and columnist Patricia Poleo, both of whom would later be forced to flee Venezuela and seek political asylum. Further, the criminal charges against Cedeño appear to have been part of an orchestrated effort to force him to sell bank assets to individuals close to Chávez at an enormous discount.

The criminal charges against Cedeño relate to a currency exchange application submitted by Consorcio Microstar, a customer of the bank where Cedeño was employed (Banco Canarias), and one of the largest computer retailers in Venezuela. Microstar's currency application claimed that it had imported roughly \$27 million in computer equipment from the United States, which was being held in the Venezuela Customs Administration pending payment with U.S. currency. Banco Canarias, acting as exchange agent, passed along the currency application to CADIVI, Venezuela's currency exchange agency and the entity responsible for verifying the accuracy of the application. After performing its review, CADIVI approved the application and returned the forms to Banco Canarias, complete with documentation that CADIVI had obtained to verify that the computer equipment was in possession of the Venezuela Customs Administration. Accordingly, Banco Canarias took possession of Venezuelan bolivars supplied by financial entities on behalf of Microstar, transferred that Venezuelan currency to the Central Bank of Venezuela and took \$27 million in U.S. currency in exchange. Those funds were then delivered to Microstar's supplier.

The reality, however, was that the purported computers never existed. The Microstar application appears to have been part of a scheme to secure U.S. currency at a low exchange rate in order to profit from Venezuela's currency regime through the black market. Significantly, CADIVI appears to have been one of the principal conspirators in the fraud, and was seemingly responsible for forging customs forms that documented the existence of the fictional computers. One of the prosecutors in Cedeño's case sought to indict CADIVI officials, but his request was denied and he was summarily dismissed from his job.

Despite the fact that the currency exchange agent is exempt from any due diligence in connection with the contents of currency applications, Cedeño was eventually indicted for alleged involvement in the transaction. The allegations have taken various forms, but at their heart is the claim that Cedeño embezzled Venezuelan currency from Banco Canarias to fund the exchange transaction. The allegations are manifestly false, as ample documentary evidence demonstrates that the Venezuelan currency came from independent sources on behalf of Microstar and that Cedeño's employer earned its statutory profit from the transaction. The Attorney General's Office was informed of this fact in writing by another government agency, but prosecutors ignored that exculpatory evidence and withheld it from the court and from Cedeño's attorneys.

Nevertheless, the case against Cedeño – initiated by the well-known group of pro-Chávez prosecutors in Caracas that is responsible for politically sensitive cases – was assigned to a judge controlled by the

government, who was called upon to decide whether the prosecution could demonstrate a valid exception to Cedeño's constitutional right to be free pending trial. The prosecution asserted that Cedeño presented a flight risk, but it cited no facts falling within the specific criteria by which judges are required to evaluate that issue under Venezuelan law. Conversely, Cedeño presented specific facts demonstrating that he was not a flight risk, including the fact that he had voluntarily surrendered to the authorities when he learned that an arrest warrant had been issued. The judge ordered Cedeño's pretrial detention in February 2007, citing only the fact that he had access to a private aircraft.

During the course of the proceedings, Cedeño has been subject to a string of due process violations. In advance of trial, the same judge that had ordered his detention refused to permit him to introduce any documentary evidence in his defense, including documents from the Ministry of Finance showing the true source of the Venezuelan currency. Notwithstanding this handicap, Cedeño proved his innocence at trial by cross-examining expert witnesses called by the government.

In Venezuela, a judge presides over criminal trials. However, the judge shares the decision whether to convict or acquit with two qualified Venezuelan citizens (*escabinos*), all three of whom have an equal vote in the final decision. In Cedeño's case, rather than permit the two *escabinos* to outvote the judge and render an acquittal, the government illegally suspended the proceedings.

In the meantime, Cedeño completed the maximum allowable two-year period of pretrial detention on February 8, 2009, but the government refuses to release him. Further, on May 4, 2009, the Supreme Court of Venezuela ruled that Cedeño had never been properly indicted for the crime of embezzlement – the only crime upon which the prosecution had based its motion for pretrial detention – yet it refused to release him. Moreover, on May 7, 2009, the Supreme Court voided all of the trial proceedings and permitted the prosecution to indict Cedeño. On June 4, 2009, the court extended the potential term of Cedeño's detention by an additional two years. Cedeño will now be forced to go through the same criminal proceedings once again, and will be required to demonstrate his innocence at some undetermined future time. Meanwhile, he remains incarcerated, with all of his assets in Venezuela frozen.

Conclusion

The rule of law in Venezuela is in a state of decay. Chávez has subverted the democratic institutions of government. He controls the criminal justice system and uses it as a weapon against his opponents. Consequently, decisions of the Venezuela courts should be viewed with skepticism. All individuals who are being held in violation of local and international law must be released immediately, including Eligio Cedeño. International pressure should be applied. Those who read this White Paper should take action in any way possible to secure the release of those who are incarcerated illegally.

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Part One: Rule of Law — A Casualty of the Bolivarian Revolution

“I am therefore convinced that the prince who, in presence of an encroaching democracy, should endeavor to impair the judicial authority in his dominions, and to diminish the political influence of lawyers, would commit a great mistake.”

— *Alexis de Tocqueville,*
Democracy in America, Book 1, Chapter 16

1.1 Legalizing Authoritarianism

Democracy is unraveling in Venezuela. The Venezuelan constitution provides the formal guarantees of judicial independence. For instance, it prohibits the reduction of judges' salaries and grants tenure protection. Indeed, standing on its own, the constitution seems to indicate a high degree of judicial autonomy. An analysis of actual practice, however, demonstrates that Chávez frequently violates formal, constitutional guarantees. Chávez's Venezuela has been marked by informal practices that erode the separation of powers and allow the president to govern without judicial restraint, fostering executive impunity.

Authoritarian-leaning states sometimes go to great lengths to conceal the consolidation of power behind a façade of democracy – under legal rulings and procedures that appear to legitimize the activity. Studies in constitutional law and comparative politics have focused on such practices, exploring the degree to which an official system is actually a form of authoritarianism or a tool to

legalize actions of dubious constitutionality.¹ Venezuela embodies this trend, as President Hugo Chávez has seized control over the judicial branch and other potential checks on his power.

1.1.1 The Emergence of Hugo Chávez

Like many of the world's contemporary populist leaders (Alberto Fujimori, Vladimir Putin and Carlos Menem), Chávez first burst onto the political scene against the backdrop of national economic crisis. Severe poverty and socioeconomic inequality set the stage for the election of Chávez in 1998. One study characterizes Venezuela as a “growth disaster” between 1976 and 1997.² An exclusionary and corrupt party system contributed to the rise of Chávez and the perception of Chávez as a savior. The nation's two major parties, the Democratic Action Party (AD) and the Christian Democratic Party (COPEI), failed to address the pervasive poverty. A report by the International Crisis Group reveals that urban poverty increased from 18% in 1980 to 33% in 1990. In 1988, almost 40% of the population qualified as poor. Underemployment increased from 39.7% in 1989 to 49.3% in 1994, while inflation spiked to 84.5% in 1989.³

From the 1958 Pact of *Punto Fijo* until the 1990s, Venezuela was considered by many outsiders an “exceptional democracy” that was characterized by the peaceful alternation of power between two institutionalized parties.⁴ A closer look, however, reveals an incremental weakening of democratic institutions, an increase in cronyism and corruption, and a sowing of the seeds that would eventually blossom into a stage for Chávez's entrance – owing primarily to failures of governance and administration by the AD and COPEI.

Puntofijismo undoubtedly helped maintain democracy and stability in Venezuela during a period when others in the region were plunging into dictatorship and civil war. Its constraints, however, undermined accountability and contributed to government corruption and unresponsiveness, paving the way for populism and the promise of income redistribution. Additionally, serious financial weaknesses in the *Punto Fijo* arrangement made it difficult for the party-led government

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- 1 Rebecca Bill Chavez, *The Rule of Law in Nascent Democracies: Judicial Politics in Argentina* (Stanford University Press, 2004); Tom Ginsburg and Tamir Moustafa (eds.), *Rule by Law: The Politics of Courts in Authoritarian Regimes* (Cambridge University Press, 2008).
 - 2 Asdrubal Baptista is quoted extensively on the subject. <http://www.misionriqueza.org/detalle.php?id=54>
 - 3 International Crisis Group, *Venezuela: Hugo Chavez's Revolution*, Latin America Report N°19 – 22 February 2007
 - 4 Steve Ellner and Miguel Tinker Salas (eds.). *Venezuela: Hugo Chavez and the Decline of an “Exceptional Democracy.”* (Rowman & Littlefield, 2006). The *Punto Fijo* agreement (Spanish) can be found here: http://www.analitica.com/bitbliblioteca/venezuela/punto_fijo.asp. The *Punto Fijo* Pact was a series of agreements between Venezuela's main political parties. Seeking political stability following the overthrow of dictator Marco Pérez Jiménez in 1958, the leaders of AD, COPEI and URD jointly agreed to observe a set of basic democratic principles, including universal suffrage, freedom of the press, equitable representation, and civilian control over the armed forces. *Puntofijismo*, as it is known, ultimately became the foundation for the country's 1961 constitution.

to address commodity price cycles (i.e., low oil prices) efficiently, or to deliver social spending adequately to the rapidly growing population.⁵

Juan Carlos Rey notes that Venezuela failed to develop sufficiently adaptive and lasting political parties in the decades following *Punto Fijo*.⁶ Both the AD and COPEI fell short of fulfilling their responsibilities, yet the economic power they derived from their rentier networks in the oil sector, together with their access to the media, allowed little room for competition. This dynamic led public opinion toward the elimination of the parties altogether. In this environment, successful entry of a non-institutional, anti-politics candidate like Chávez was far from revolutionary; it was a product of the political arena itself. Because the AD and COPEI failed to respond to voter demands, they imploded, the party system splintered and personalistic parties emerged. An inchoate party system replaced Venezuela's institutionalized party system. Several new political parties have emerged, but they have yet to gain a significant base of support.⁷

1.1.2 Venezuela's Democracy Deficit

After assuming the presidency of Venezuela, Chávez has maintained and accumulated power by observing only limited democratic practices – most notably the popular vote. Since 2004, Chávez has secured popular vote victories in five major presidential, parliamentary, referendum, and plebiscite elections – contests that, for the most part, met minimum standards for “free and fair” elections, despite complaints of irregularities.⁸ In December 2006, Chávez was elected to a new six-year term, winning 63% of the vote. In 2007, he conceded a rare defeat on a constitutional referendum bill that included, among other things, a repeal of term limits. On February 15, 2009, he brought the issue of term limits to vote again, this time achieving victory, as 55% of voters favored indefinite reelection.⁹

Venezuelan citizens have voted upon more referendums, amendments and constitutional changes in local, regional and national elections than most other countries in the world. The result is

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- 5 Jennifer McCoy, “Chávez and the End of ‘Partyarchy’ in Venezuela,” *Journal of Democracy* 10:3 (July 1999), 64-77.
 - 6 Juan Carlos Rey, “*Personalismo o liderazgo democrático. El caso de Rómulo Betancourt.*” Fundación Rómulo Betancourt. Serie cuadernos de ideas políticas No 5. 2008.
 - 7 Rebecca Bill Chavez, “Democracy Challenged: Latin America in the Twenty-First Century.” *Taiwan Journal of Democracy* 1, no. 1 (July 2005): 169-190. See also See Scott Mainwaring and Timothy R. Scully, “Introduction: Party Systems in Latin America,” in *Building Democratic Institutions: Party Systems in Latin America*, eds. Mainwaring and Scully (Stanford: Stanford University Press, 1995).
 - 8 International election monitoring missions, such as that of the Organization of American States, have been increasingly restricted and prevented from performing their duties. Source: “If the OAS could only have quit while ahead,” *Washington Post*, Marcela Sanchez, Dec. 1, 2006. <http://www.washingtonpost.com/wp-dyn/content/article/2006/11/30/AR2006113000879.html>
 - 9 The opposition has argued that calling a referendum on the same issue twice in the same voting cycle was unconstitutional.

continual campaigning and a perpetually polarized electorate. The Venezuelan government is neither dictatorship nor democracy, but the kind of “plebiscitarian authoritarianism” that is criticized for its negative impact upon the integrity of political parties and the independence of democratic institutions. The plebiscitarian model flows from a concentration of power in relatively few hands, together with a reliance upon the “deliberate politics of deinstitutionalization” and electoral majorities, meaning that “corruption spreads in a systemic way.”¹⁰

René Antonio Mayorga argues that Venezuela (like Peru under Alberto Fujimori and Argentina under Carlos Menem) represents a paradigmatic case of anti-institutional neopopulism, a model that uses the electoral functions of a democracy to erode the independence of institutions and consolidate personalistic power.

*However, once in power the personalistic conception of politics, the central role played by the leader, and the lack of an institutionalized party and support inevitably leads to undermining democratic institutions and to concentrate power in the hands of the leader. As anti-institutionalist practice, neopopulism, therefore, is a pervasive form of anti-politics, i.e. politics carried out against parties, democratic institutions and established political and economic elites.*¹¹

Russell Crandall echoes Mayorga’s warning about the threat to pluralistic participation in Venezuela politics. Indeed, even after Chávez was defeated in the reelection referendum of 2007, Crandall was one of the few to voice skepticism that democracy in Venezuela was healthy and that the authoritarian tendencies had been tamed by the popular will of the people.¹² His insight proved to be accurate, as Chávez succeeded with his repeat referendum in 2009.

*Since first elected in 1998, Chávez has perfected the playbook of “democratic authoritarianism” —using a popular majority and relatively (although certainly contested) open democratic elections to consolidate his control. Unlike a violent revolution, democratic authoritarianism is by definition a more gradual process. One only has to look to Putin’s Russia to see another crafty ruler using swollen state revenues and the ostensible legitimacy of the ballot box to gradually but radically institutionalize his personal grip on power. If Fidel Castro was a hare during his sudden and total revolution in Cuba in 1959, Hugo Chávez is taking the tortoise approach in Venezuela in the 21st century. Different animals, perhaps, but the goal of absolute rule remains the same.*¹³

10 René Antonio Mayorga, “Outsiders and Neopopulism: the Road to Plebiscitarian Authoritarianism,” paper submitted to the Conference “The Crisis of Democratic Representation in the Andes,” (Kellogg Institute for International Affairs, University of Notre Dame. May 13-14, 2002).

11 Ibid.

12 Russell Crandall, “The 49er,” *The New Republic*, Dec. 4, 2007. <http://www.tnr.com/politics/story.html?id=5c0ea7e7-701d-42d8-8b54-f00e1c230a9d>

13 Ibid.

1.1.3 The Erosion of Liberal Democracy in Venezuela

Chávez’s assaults against democracy go far beyond his subordination of the judiciary. The steps to weaken the rule of law are part of a dangerous pattern that has allowed Chávez to accumulate a tremendous amount of power. Chávez has gradually chipped away at all elements of liberal democracy – not just the rule of law. Although the erosion of other democratic institutions is not the focus of this White Paper, it is important to have an understanding of the broader political context in which the pliant courts operate. In addition to fair and free elections and the rule of law, liberal democracy demands autonomous government institutions that constrain executive power, respect for civil liberties, access to alternative sources of information, and the subordination of the military to elected authorities.¹⁴ Chávez has systematically dismantled each of these elements of democratic government.

Chávez’s Venezuela clearly lacks the requisite independent institutions that constrain presidential authority. According to Guillermo O’Donnell, “In institutionalized democracies, accountability runs not only vertically, making elected officials answerable to the ballot box, but also horizontally, across a network of relatively autonomous powers (i.e., other institutions) that can call into question, and eventually punish, improper ways of discharging the responsibility of a given official.”¹⁵ Venezuela represents an extreme case of executive dominance or *caudillismo*. By taking control of both the legislature and the judiciary, Chávez has eliminated horizontal accountability. The system of checks and balances does not function in ultrapresidential Venezuela.

Civil liberties have been another casualty of the Chávez administration. The government has restricted the ability of minority groups and civil society to participate in the political process.¹⁶ For instance, as discussed below, the government has sought to silence student demonstrations. Moreover, according to Freedom House, “In practice, widespread arbitrary detention and torture of suspects do take place in Venezuela.”¹⁷ In addition, as illustrated vividly by the Cedeño case, gross violations of due process are commonplace.

The Chávez government has deliberately reduced access to alternative sources of information in Venezuela. The opposition media has been one of the president’s principal targets. According to Human Rights Watch, “President Chávez and his supporters in the Venezuelan Congress have undermined freedom of expression through a variety of measures aimed at influencing the

14 See Larry Diamond, *Developing Democracy: Toward Consolidation* (Baltimore: Johns Hopkins University Press, 1999), Chavez, Rebecca Bill, *The Rule of Law in Nascent Democracies: Judicial Politics in Argentina* (Stanford University Press, 2004).

15 Guillermo O’Donnell, “Delegative Democracy,” *Journal of Democracy* 5 (January 1994), 61-62.

16 Human Rights Watch, *A Decade Under Chávez: Political Intolerance and Lost Opportunities for Advancing Human Rights in Venezuela* (New York: Human Rights Watch, 2008), pp. 198-229.

17 Freedom House, *Venezuela Country Report 2006*.

control and content of the country's mass media. They have extended and toughened penalties for speech offenses; implemented a broadcasting law that allows for the arbitrary suspension of channels for a vaguely defined offense of "incitement"; limited public access to official information; and abused the government's control of broadcasting frequencies to punish stations with overtly critical programming."¹⁸ The government has refused to renew the licenses of television stations that pursue an independent editorial line, as evident in the treatment of both Radio Caracas (RCTV) and Globovisión. In addition, the government has used the pliant judiciary to attack and silence individual journalists who have critiqued the administration.

Civil-military relations in Venezuela no longer meet the requirements of liberal democracy. As Harold Trinkunas argues, Chávez's goals have included: "loosening constitutional constraints on political participation by the military; expanding the role of the armed services in social and economic development; and increasing military autonomy by removing legislative influence over officer promotions."¹⁹ Plan Bolívar 2000 gave the military a central role in national development projects. Also, Chávez usurped power from the Venezuelan legislature over military promotions, which has further politicized the armed forces.²⁰

1.1.4 The Construction of "Trustworthy" Courts

Like respect for civil liberties, horizontal accountability and a free press, the rule of law plays an integral role in the development of a competitive, liberal democracy:

*In contrast to electoral democracy, the rule of law is a central requisite of liberal democracy. Liberal democracy demands rights that transcend elections. It also requires constraints on rulers. The rule of law constrains rulers by holding them accountable to those they govern... The rule of law helps ensure the supremacy of Constitutions and the predictable, consistent application of law to all sectors of society, including the state. Despite the presence of elections, executive subordination of the judiciary persists in many Latin American nations where presidents are not subject to the law. Ultrapresidentialism stands in the way of the rule of law.*²¹

18 Human Rights Watch, 2008, pp. 37.

19 Harold A. Trinkunas, "Civil-Military Relations in Venezuela after 11 April: Beyond Repair?" *Strategic Insights*, Vol. 1 (May 2002).

20 Trinkunas, "The Crisis in Venezuelan Civil-Military Relations: From Punto Fijo to the Fifth Republic," *Latin American Research Review*, Vol. 37 (2002), pp. 41-76.

21 Rebecca Bill Chavez, *The Rule of Law in Nascent Democracies: Judicial Politics in Argentina* (Stanford University Press, 2004).

Many observers believe that Venezuela has for years moved away from liberal democracy and rule of law, toward some form of mixed authoritarian regime characterized by “elections without democracy.”²² The Chávez administration’s visible interference in the administration of justice has led to some widely held false assumptions: that Venezuela’s legal system has collapsed, that the court system is a nonfunctional disaster. This assumption is not entirely accurate. In reality, hearings are held, investigations and prosecutions are carried out, and rulings and sentences are issued. Despite this outward appearance of regularity, the country’s legal institutions have been vastly weakened, basic rule-of-law principles have eroded and independence from the executive has virtually disappeared. Anthony W. Pereira has explained why other regimes have found it useful to go through the motions of “legality”:

*Legal manipulations and political trials are useful to a regime because they can demobilize popular oppositional movements efficiently, reducing the need to exercise force; garner legitimacy for the regime by showing that it “plays fair” in dealing with opponents; create positive political images for the regime and negative ones for the opposition; under some circumstances, help one faction gain power over another within the regime; and stabilize the repression by providing information and predictable set of rules around which opponents and government officials’ expectations can coalesce.*²³

In Venezuela, the Chávez government has slowly transformed the criminal justice system into an arbitrary instrument that serves the administration’s interests. The Chávez methodology has emerged that includes assignment of political cases to a select group of obedient prosecutors, falsification of charges of ordinary crime (usually financial), manipulation of evidence (including bribery of witnesses and sometimes even torture), denial of defense evidence, gross violations of due process, and prolonged arbitrary detention. This methodology is implemented within a judicial framework that is marked by a combination of loyalty and fear, as judges and justices who fail to rule in accordance with the wishes of the government are summarily dismissed and, in many cases, are subjected to disciplinary proceedings. In Eligio Cedeño’s case, for example, one judge who had the temerity to rule in his favor – even on a tangential issue, as described below – was immediately removed from the bench, and was eventually granted political asylum in the United States.

This control over the criminal justice system permits the government to prosecute its political opponents – individuals engaged too actively in free expression, members of banned opposition parties, financial supporters of opposition politicians – for ordinary, non-political crimes such as

22 Stephen Levitsky and Lucas A. Way. “The Rise of Competitive Authoritarianism,” *Journal of Democracy*, 13.2 (2002) pp. 51-65.

23 Anthony W. Pereira, *Political (in)justice: authoritarianism and the rule of law in Brazil, Chile, and Argentina* (University of Pittsburgh Press, 2005) pp. 192.

corruption and fraud. Such charges tend not to attract international attention, particularly if a government enjoys a presumption of regularity. Indeed, Venezuela has taken great pains to maintain the appearance that it governs according to the rule of law, and its strategic approach to the undermining of judicial independence has been largely successful toward that end.

1.2 Weaponizing the Criminal Justice System

The current conditions in Venezuela did not develop overnight; rather, they are the result of a series of steps that have effectively eliminated the autonomy of both the Attorney General's Office and the courts. Independent observers support the conclusion that the judiciary has lost its independence. For instance, the Human Rights Institute of the International Bar Association (IBA) carried out a fact-finding mission to Venezuela in March 2007. The IBA concluded that Venezuelan judges are subject to direct interference and pressure from Chávez, which undermines the rule of law and judicial autonomy. The IBA also criticized Chávez for the erosion of the separation of powers. According to the IBA, Chávez controls the National Assembly, which in turn controls the appointment and removal of judges, creating serious doubt about the existence of checks and balances.²⁴

Human Rights Watch and Freedom House have drawn similar conclusions. According to Human Rights Watch, “the political takeover of the Supreme Court effectively neutralized the judiciary as an independent branch of government. The packed court has largely abdicated its role as a check on arbitrary state action.”²⁵ A 2006 report by Freedom House characterized the Venezuelan judiciary as “highly inefficient and often corrupt” and criticized a politicized appointment process that allowed Chávez to appoint a pliant Attorney General and docile Supreme Court justices without following constitutionally mandated procedures.²⁶

1.2.1 Executive Control of Court Composition

During the decades preceding Chávez, the public had grown skeptical of the judiciary, not because it was controlled by the executive, but because it was plagued by questionable competence and by judges who sometimes compromised their ethics in favor of personal economic interests. Although reform was already underway when Chávez took office in 1999,

24 International Bar Association Human Rights Institute, *Venezuela: Justice under threat*, Report of a mission to Venezuela, June 2007.

25 Human Rights Watch, 2008, pp. 37.

26 Freedom House, 2006.

one of his first acts was to hold a referendum to convene a National Constituent Assembly that – in addition to drafting a new Constitution that took effect in December 1999 – created a Judicial Emergency Commission empowered to remove judges suspected of corruption or who had made seriously erroneous legal decisions. The Judicial Emergency Commission was composed of recognized and preeminent jurists such as attorney Manuel Quijada and Professor Elio Gómez Grillo, also a member of the National Constituent Assembly.²⁷ Any judge involved in seven or more judicial complaints was suspended – without regard to the actual validity or resolution of the complaints – and hundreds of judges were removed on that basis.²⁸

The autonomy of the judiciary began to erode seriously in 2001 with the creation of the Judicial Commission, comprised of five Justices of the Venezuela Supreme Court (*Tribunal Supremo de Justicia*) (“TSJ”), which took over the responsibilities of the Emergency Judicial Commission, along with the broader duty of general administration of the courts. All decisions regarding admission, promotion and removal within the judiciary were placed under its authority. Shortly thereafter, as a consequence of the shortage of judges in the wake of mass removals, the Judicial Commission called for applicants to submit to public examination (*concurso de oposición*), ostensibly to identify the most qualified candidates for the vacancies. The process, however, became politicized, as applicants who clearly lacked sufficient legal knowledge, suffered from psychological problems or even had criminal records were appointed by the Judicial Commission on the basis of their political support for Chávez.²⁹ Eventually, the public examinations were eliminated altogether, and appointments were made by the Judicial Commission without any public oversight or input. As a consequence of these events, the personal political alignment of the judiciary began to move toward Chávez as scores of judges who had been removed on a somewhat arbitrary basis were replaced by Chávez loyalists. Additionally, the overall competence of the judiciary was diminished by the absence of examinations that would have set an objective minimal standard of aptitude.

1.2.2 Overt Assaults on the Judiciary

In addition to the appointment of judges on the basis of their politics, the Chávez government soon took more overt action to prevent independent judicial decision-making. Official government messages began to emerge, public warnings to the judiciary about how to rule in specific cases.³⁰ Further, government representatives supportive of Chávez, particularly in the executive branch, began to challenge and interfere directly in judicial decisions, especially

27 Report of the Foro Penal Venezolano, 2007.

28 Lauren Castildi, “Judicial Independence Threatened in Venezuela: The Removal of Venezuelan Judges and the Complications of Rule of Law Reform,” *Georgetown Journal of International Law*, Spring 2006.

29 Report of the Foro Penal Venezolano, 2007.

30 *Ibid.*

those with political overtones. One notable example occurred in 2001, during a student protest at the Central University of Venezuela (*Universidad Central de Venezuela*), where a group of pro-Chávez students had taken control of the university rector. Due to the fact that controlling law prohibited police officers from entering the premises on their own accord to remove the students, the Rector applied to the court for a constitutional order (*amparo*) that they be removed by force. The case was assigned randomly to Judge Mónica Fernández, who granted the Rector's request and ordered their removal.

In response to that ruling, Attorney General Julian Isaías Rodríguez publicly announced that the order would not be followed. Immediately after that pronouncement, legal counsel for the Attorney General's Office, Luz Patricia Mejía, appeared in Judge Fernández's courtroom, threatened her and demanded that she reverse her decision. Judge Fernández responded by opening a criminal proceeding against Mejía based on her disrespect of judicial authority. Later in the day, five legislators from the General Assembly forced their way into Judge Fernández's courtroom, physically assaulting the courtroom bailiff in the process, also demanding a reversal of the decision. In response, Judge Fernández filed a formal complaint against them in the TSJ. The TSJ set the matter for hearing, but the legislators failed to appear. It was now clear that judicial independence was under attack in Venezuela.³¹

1.2.3 Taking Over Constitutional and Administrative Courts

On April 11, 2002, a massive public demonstration was held in Caracas in protest against policies of the Chávez government. In response to crowd movement, Chávez ordered the implementation of *Plan Ávila*, a security plan that had, in separate events in 1989, resulted in the deaths of hundreds of Venezuelan citizens. On April 11, key military leaders ignored Chávez's order and refused to implement *Plan Ávila*. The events of that day – the details of which are still hotly debated – resulted in Chávez's three-day absence from the Presidency and 19 deaths. Chávez has described the incident as a *coup d'état*. Others characterize it as a power vacuum or a coup against the civil protest movement.

The events of that day marked a turning point for Chávez in many ways, but certainly in his approach toward the judicial branch. After Chávez returned to power, the Attorney General's Office opened more than 600 criminal investigations against members of the opposition and, in the process, made clear that the government would not tolerate judges who ruled contrary to its wishes.

The initial target of Chávez's takeover of the judiciary was the First Court of Administrative Disputes (*Corte Primera en lo Contencioso Administrativo*) ("Administrative Court") – the one

31 Mónica Fernández statement to authors, March 2009.

responsible for resolving disputes involving public administration – which made two significant and controversial rulings that offended Chávez. First, the Administrative Court ruled that the government could not fire thousands of employees of *Petróleos de Venezuela, S.A. (PDVSA)* or the state-owned oil company) who had participated in a national strike designed to topple the Chávez government. Second, it ruled that Cuban doctors hired by the Venezuela government could not practice medicine without passing an equivalency examination. As a consequence of these decisions, the government closed the court in October 2003, and the five judges were fired for “inexcusable judicial errors.” Of those five, two judges were loyal to Chávez and were later promoted to positions on the Venezuela Supreme Court.³²

The next target was the Venezuela Supreme Court (TSJ), a creation of the 1999 Constitution. During its first two years in existence, the TSJ had been divided evenly between supporters and opponents of Chávez, leaving three of the body’s six chambers in each camp. Two significant confrontations ensued, both of which bore directly on the issue of Chávez’s political power. First, the criminal chamber of the TSJ – which was not controlled by Chávez loyalists – narrowly ruled that there was insufficient evidence to support criminal charges against four generals that Chávez had accused of direct involvement in the events of April 11, 2002. Shortly after the decision was published, Chávez characterized it on public television as “*plasta*” (loosely translated “excrement”). In the second confrontation, the electoral chamber of the TSJ reinstated hundreds of thousands of signatures that supported a referendum to recall Chávez, which had earlier been invalidated by the National Electoral Council.³³ Although the reinstatement was eventually overturned by the pro-Chávez constitutional chamber, the opponents of Chávez on the TSJ had clearly thrown down the gauntlet.

Chávez responded in May 2004 with a new Supreme Court Law (*Ley Orgánica del Tribunal Supremo de Justicia*), which was passed in the National Assembly by a slim majority of pro-Chávez legislators. The law had three primary features: (1) it permitted the National Assembly to appoint TSJ justices by a simple majority instead of the 2/3 super-majority previously required; (2) it increased the number of justices on the TSJ from 20 to 32, adding at least two justices in each chamber; and (3) although it left alone the constitutional requirement of a 2/3 vote of the National Assembly to impeach a sitting Supreme Court justice, it created an alternative mechanism for removal of justices by a simple majority vote of the National Assembly, through “nullification” of their appointments. It also allowed for the indefinite suspension of justices who were subject to disciplinary proceedings.

32 Inter-American Court of Human Rights, Case of *Apitz Barbera, et al. (“First Court of Administrative Disputes”)* v. Venezuela, Judgment of August 5, 2008.

33 TSJ Decision in Case N° AA70-E-2004-000021, dated March 15, 2004; <http://www.tsj.gov.ve/decisiones/selec/Marzo/24-150304-X00006.htm>.

The 2004 Supreme Court Law was widely criticized by legal scholars in Venezuela and in the international legal community, and it provided the necessary tools for the National Assembly to pack the TSJ with Chávez supporters.³⁴ First, it annulled the appointment of Franklin Arrieche, the TSJ Justice who had authored the decision acquitting the four generals accused of involvement in the April 11 events. Next, the National Assembly threatened TSJ Justices Alberto Martini Urdaneta and Rafael Hernández Uzcátegui – both of whom had been instrumental in the decision to reinstate the signatures supporting the recall referendum – with impeachment. Rather than subjecting themselves to indefinite suspension, they both resigned. Finally, it filled the 12 new seats on the TSJ, along with the empty seats it had just created, with pro-Chávez jurists. Each of the six chambers of the TSJ was now controlled by Chávez supporters.³⁵

Among the newly appointed TSJ justices, several were well known for their pro-government bias, including Luis Velásquez-Alvaray and Luis Franceschi (both Members of the pro-Chávez camp in the National Assembly), Francisco Carrasquero (previously the President of the National Electoral Council), and Deyanira Nieves (a former Caracas Judicial Circuit Judge noted for her pro-government sentences). During the swearing-in ceremony for the new TSJ justices on December 14, 2004, Justice Luis Velásquez-Alvaray, a former Congressman, conceded that, although he would resign his political party, he would never put aside his unwavering commitment to the political direction under Chávez's leadership, and he promised to advance "revolutionary justice."³⁶

When Justice Omar Mora Díaz assumed the presidency of the TSJ on February 4, 2005, his first statement to the press affirmed his commitment to remove the "coup-plotting judges":

It is unacceptable that, on the basis of the principle of popular sovereignty, a Judge allows himself to become a coup-plotter. It cannot be. Such Judges must be removed, whatever the cost. It cannot be that a Judge, who saw on TV how an individual by the name of Pedro Carmona-Estanga led a coup, sets him free the very next day under the spurious argument that there existed a power-vacuum. Such a man must not sit as a Judge.³⁷

Indeed, Justice Mora Díaz expressed his support for reversal of the 2002 judgment by the TSJ absolving the four generals who had been charged with complicity in the events of April 11, suggesting that the issue be taken up by the constitutional chamber of the TSJ, acting on its

34 Elizabeth Núñez, "Parlamentarios impugnarán designación de magistrados," *El Nacional*, December 15, 2004; Vanessa Gómez Quiroz, "Álvarez desistió de recursos contra Ley del TSJ," *El Nacional*, December 15, 2004. Sourced by Sumate.org: http://www.sumate.org/democracia-retroceso/cap2_en_1.htm.

35 Human Rights Watch, 2008, pp. 36-38; <http://www.hrw.org/reports/2008/venezuela0908/3.htm>.

36 From Sumate.org report, On the State of Democracy in Venezuela, published in August, 2005, citing El Universal, February 3, 2005. http://www.sumate.org/democracia-retroceso/cap2_en_1.htm#.

37 From Sumate.org report, On the State of Democracy in Venezuela, published in August 2005. http://www.sumate.org/democracia-retroceso/cap2_en_1.htm#.

own initiative.³⁸ Numerous judges applauded his speech, chanting the following Chávez campaign slogan: “*Uh, Ah! Chávez no se va!*” (“Ooh, Ah! Chávez stays!”).³⁹

Aside from the statements of justices, additional evidence suggests that Chávez seized control of the TSJ. Every case heard by the TSJ involving Chávez has either been dismissed or rejected, usually without permitting proceedings to initiate.⁴⁰ A recent study by Law Professor Antonio Canova shows that in all of 2007 and the first half of 2008, the administrative political chamber of the TSJ – the one responsible for oversight of the Chávez administration – issued 293 decisions in cases challenging the validity of administrative acts, yet only one was declared valid. That decision was subsequently revoked by the constitutional chamber.

During the same period, the TSJ heard 75 contract cases involving the government, ruling against private parties in every case. Out of 45 non-contract lawsuits against the government, the TSJ entered outright judgment against the government only once. The TSJ granted provisional measures against the government in only two out of 211 cases, and it denied 99 out of 100 requests for constitutional protection (*amparo*). The TSJ denied all requests for provisional relief brought by citizens under the Code of Civil Procedure, although it granted every such request made by a public entity.⁴¹

1.2.4 Purging the Lower Courts

Chávez’s takeover of the TSJ and the Administrative Courts was only the beginning, as he next took aim at the lower courts. After the National Assembly appointed Luis Velásquez Alvaray to fill one of the new TSJ seats, the TSJ elected him to head the Court’s Judicial Commission, responsible for hiring and firing lower court judges. From there, Velásquez Alvaray presided over the removal of hundreds of lower court judges and the appointment of hundreds more, using their political orientation as the litmus test.

Indeed, the removal of judges in response to decisions that run contrary to the interests of the Chávez regime has become commonplace. Judges Herten Vilela and Pedro Troconis are classic examples. Both men were serving as appellate judges in 2005 when they were called upon to decide a significant political case. The lower court had issued travel prohibitions against various

38 Sumate.org, “Are the Supreme Court Justices biased in the discharge of their duties?”, *On the State of Democracy in Venezuela*, (Caracas: Sumate.org Report, August, 2005) http://www.sumate.org/democracia-retroceso/cap2_en_1.htm.

39 “TSJ Judges Chanting Pro-Chavez Slogan,” video uploaded to YouTube on March 28, 2007. <http://www.youtube.com/watch?v=TqhGverE-98>.

40 Sumate.org Report, 2005.

41 Antonio Canova González, “The Reality of the Venezuelan Administrative Courts,” (FUNEDA. 2009).

individuals accused of supporting Pedro Carmona Estanga's claim to the Presidency during the events of April 11, 2002, and several of the defendants had appealed that decision. It appeared to both Judge Vilela and Judge Troconis that the lower court's decision had been erroneous. Accordingly, by a 2-1 majority decision that was published in the media, the court of appeals reversed that decision. Within a matter of days, the Judicial Commission – comprised of newly appointed *Chavista* TSJ justices – suspended both Judge Vilela and Judge Troconis without a hearing and without pay. The stated reason for the suspension was that the decision had caused “public commotion on a national level.” They were eventually subjected to disciplinary proceedings and permanently removed from the bench.⁴²

The dismissal of Judge Alcy Maite Viñallales is another example of reprisal. After opposition member and former Governor of Yaracuy, Eduardo Lapi – who had been indicted on questionable charges and placed in preventive detention – escaped custody, 29 people who had some responsibility for his custody were indicted and incarcerated. Judge Viñales ruled that those 29 defendants should remain free pending trial. As a consequence of that ruling, she was immediately removed from the bench. Her replacement reversed her ruling and returned the defendants to preventive detention, despite the fact that the legal requirements had not been satisfied.⁴³

In March 2009, the Chávez government officially implemented a formal, comprehensive strategy to purge its opponents in the judiciary. TSJ Resolution 2009-0008 calls for a “complete restructuring of the Venezuelan Judicial Power.” In order to “guarantee an efficient and effective restructuring,” all judges and judicial administrative personnel are subject to an “institutional evaluation” by the Judicial Commission over a one-year period (subject to extension). Those judges and personnel not approved face immediate suspension without pay. The resolution further provides that the Judicial Commission will fill any vacancies, subject to subsequent ratification by the TSJ. The TSJ resolution contains no criteria for conducting the evaluations, leaving those decisions to the discretion of the Judicial Commission.⁴⁴

The Judicial Commission immediately provided a glimpse into how it would carry out this “institutional evaluation.” The first judges to be suspended under the TSJ's resolution were Guadalupe Sánchez, Dorys Cruz, Irasema Vílchez and Luisa Rojas, all removed because they purportedly met with the Mayor of Maracaibo, Manuel Rosales.⁴⁵ Rosales – Chávez's opponent in the most recent presidential elections – was accused in early 2009 by the Chávez government

42 Interview with Herten A. Vilela Sibada, April 2009.

43 El Universal, April 8, 2007.

44 Resolución No. 2009-0008, Tribunal Supremo de Justicia de la República Bolivariana de Venezuela.

45 “Suspendidos cuatro jueces en el Zulia por presunta reunión con Rosales,” Noticias24, March 24, 2009; <http://www.noticias24.com/actualidad/noticia/30111/suspendidos-cuatro-jueces-en-el-zulia-por-presunta-reunion-con-rosales/>.

of financial crimes. Although Rosales's preliminary hearing was scheduled for April 20, 2009, a draft of the court's ruling against him was circulated days in advance.⁴⁶ Rosales left Venezuela without appearing in court and was granted political asylum in Peru.⁴⁷

1.2.5 The Attorney General's "Political Prosecutors"

The Attorney General's Office is another key component in the weaponization of the criminal justice system, and the Chávez government has been active in eliminating uncooperative prosecutors. The strategy has been relatively simple: Dismiss those prosecutors who are not loyal to the government and replace them with prosecutors who are. The starting point for this process was to eliminate the requirement of minimum professional qualifications by failing to invoke the public examination (*concurso*) requirement for new prosecutors. This opened the door to loyalists who might not otherwise have qualified for the position.⁴⁸ At the same time, existing prosecutors who failed to demonstrate their loyalty to the Chávez regime were dismissed, ironically on the basis that they had not passed *concurso*.⁴⁹ By July 2005, more than 200 prosecutors had been removed.⁵⁰ Further, because *concursos* were never actually carried out, all prosecutors became "provisional," rendering them subject to dismissal by simple decision of their superiors, without the need for any administrative or disciplinary proceedings.⁵¹

The most significant change brought to the Attorney General's Office by the pro-Chávez generation of prosecutors was a lack of respect for the institution and its protocols. Out of this new generation of prosecutors emerged a small, close-knit group of "political prosecutors" extremely loyal to Chávez and willing to do whatever was necessary to help him achieve his objectives. All politically sensitive cases were assigned to one or more of these "political" prosecutors.⁵² Some of these political prosecutors participated in extortion rings, threatening criminal charges in exchange for money. In other cases, political prosecutors bribed witnesses to testify falsely against political targets.⁵³

The Cedeño proceedings are an example of how the government treats provisional prosecutors who try to prosecute cases in accordance with the requirements of the law. As discussed

46 "A fiscalía 'decisión lista' contra Rosales," *El Universal*, April 20, 2009.

47 "Venezuela Opposition Leader Rosales Flees to Peru," April 21, 2009, www.bloomberg.com.

48 Statement of former prosecutor Antón Bostjancic Prosen, April 2009.

49 See, e.g., Resolution 538 of the Attorney General's Office, dated June 15, 2007.

50 *El Universal*, June 12, 2005.

51 Freedom House, 2006: <http://www.freedomhouse.org/template.cfm?page=140&edition=7&ccrpage=31&ccrcountry=141>.

52 Statement of Antón Bostjancic Prosen, April 2009.

53 Interview with former prosecutor Hernando Contreras, *Globovisión*, November 13, 2008.

below, Prosecutor José Benigno Rojas was summarily fired for suggesting that officials from CADIVI, the government’s currency exchange regulator, should have been indicted for complicity in the transaction for which Cedeño has been cited. Similarly, prosecutor Yoneiba Parra appears to have complained to her superiors about Cedeño’s detention, and she was summarily dismissed.⁵⁴ By contrast, prosecutors who obeyed instructions and brought unfounded charges against Cedeño for improper motives were rewarded with promotions.

1.2.6 Patterns of Judicial Attack

The pliant judiciary and this small group of “political” prosecutors in the Attorney General’s Office work in tandem to convict and/or incarcerate Chávez’s political targets, with the knowledge of and under instructions from high-level government officials, including Chávez himself. Their techniques are practiced and sophisticated, and a discernable, coordinated pattern has emerged. As discussed in detail in Part II of this paper, the Chávez government employed each and every one of these illegal techniques against Cedeño:

1. Condemnation in the media by government officials, including Chávez;
2. False criminal charges of an ordinary, non-political nature, usually financial;
3. Disregard for the requirement of random assignment of criminal cases in favor of direct assignment to loyalist judges;
4. Criminal proceedings fraught with persistent and flagrant due process violations;
5. Falsification and manipulation of evidence by prosecutors, including bribery of witnesses;
6. Manifestly erroneous rulings in the lower courts, affirmed or ignored by the higher courts, including the TSJ; and
7. Chávez administration interference with and/or disregard for undesirable decisions by the judiciary.

1.2.7 Moral, Legal and Physical Harassment

Leopoldo López, the popular former mayor of the Chacao Municipality of Caracas, describes a spectrum of mechanisms the government uses against its political opponents: moral, legal and physical harassment. The government employs these mechanisms with the full force of all

54 Letter from Iris Maru Rojas Rabol to Director Livia Estela Romero Sánchez, dated February 15, 2007.

public powers, from the Supreme Court to the National Assembly to the police and military to the state-owned media.⁵⁵

Moral harassment refers primarily to government rhetoric in response to political opposition, which it often expresses in broadcasts over its extensive television, radio, and internet media network. The government began to intensify the practice of moral harassment after its victory in the February 2009 referendum. Its methods are institutionalized, and they include openly illegal wiretaps and electronic hacking, which find their way to the broadcast media.

The government often implements moral harassment in tandem with arrest warrants, as it criminalizes its opposition. On March 19, 2009, for example, prosecutor Katiuska Plaza announced publicly that the Mayor of Maracaibo, Manuel Rosales – Chávez’s challenger in the last presidential elections and a leading opposition figure – was wanted on corruption charges and was subject to arrest. Rosales applied for political asylum in Peru, which was granted. Days earlier, Chávez threatened to jail Governor Pablo Pérez of Zulia and Governor Henrique Salas Feo of Carabobo, both opposition politicians. In April 2009, the government incarcerated Raúl Baduel, a former Chavista who joined the opposition, on corruption charges.⁵⁶

Chávez’s harassment of Antonio Ledezma is particularly egregious. In November 2008, Ledezma, a member of the opposition, was elected mayor of Caracas, the second most important political position in Venezuela. Notwithstanding Ledezma’s bona fide political victory, Chávez supporters seized control of the Metropolitan Mayor’s office and destroyed much of the facility. Subsequently, Chávez infringed upon Ledezma’s official power through legislation that permits the president to appoint unelected “regional executive authorities,” who report directly to Chávez and have political authority over the country’s mayors and governors. In the case of Caracas, Chávez appointed loyalist Jackeline Farías as regional executive authority over Ledezma and transferred budgetary authority to her.

The government also harasses student leaders and attorneys who represent members of the opposition. The student movement has captured the attention of loyalist public officials, including Chávez, who have publicly lashed out and labeled its members “fascists,” “enemies of the fatherland,” “far-right collaborationists,” and “puppets of the empire.” Yon Goicoechea, a prominent student leader and recent recipient of the Milton Friedman Prize, has been physically assaulted, and his family has been subjected to constant threats and intimidation.⁵⁷

55 From an interview conducted with former Mayor of Chacao, Leopoldo López, by the editors of Robert Amsterdam’s blog on February 11, 2009: <http://www.youtube.com/watch?v=VmwYUcMozp0>.

56 Observador Global, April 24, 2009; <http://observadorglobal.com/baduel-detenido-v488.html>.

57 A summary of the campaign against student leader Yon Goicoechea can be found on the “Caracas Nine” website, a human rights project of The Human Right Foundation. Available here: <http://www.caracasnine.com/cgi-local/content.cgi?!=eng&n=2>.

In June 2003, Chávez ordered a criminal investigation of a list of people he labeled “traitors to the fatherland.” Most were lawyers who had filed legal action against Chávez in the TSJ, the Inter-American Commission on Human Rights or the International Criminal Tribunal.

State media outlets play an important role in these moral attacks, which have at times involved broadcasting private telephone phone calls and email communications. In one instance, the government-funded television program La Hojilla broadcast an illegally wiretapped telephone conversation between 19-year-old student leader Diego Scharifker and an opposition politician.⁵⁸ The television host openly suggested that viewers take action against Scharifker and others, such as student leader David Smolansky, because they are Jewish.

Similarly, *Los Papeles de Mandinga*, which is carried on the state-owned television channel VTV, often broadcasts illegally hacked email and other communications, using them to humiliate, attack and incite violence against perceived opponents of the government. For instance, on March 10, 2009, the show broadcast private email messages between Venezuela’s former Ambassador to the United Nations, Milos Alcalay, and Mayor Ledezma, while the host of the show demanded that prosecutors bring charges against them for treason. Similarly, on March 18, 2009, *Los Papeles de Mandinga* broadcast privileged and confidential email communications between Cedeño and his attorneys.

These forms of harassment violate Article 48 of the Venezuela Constitution, which states:

The right to secrecy in private communications is guaranteed in all its forms. They shall not be interfered with except by order of a competent court, with the fulfillment of all legal requirements, preserving the secrecy of private materials that are unrelated to the corresponding process.

The second mechanism the government employs to harass and discourage the opposition is the legal attack. The government sometimes files a barrage of frivolous lawsuits, criminal charges and procedural complaints, which, although baseless, can have the cumulative effect of bankrupting individuals and sapping their public reputation and resources. On a separate and significant legal front, the Chávez government has denied some of the country’s most successful elected officials the right to run for reelection, through a process of legal disqualification (*inhabilitación*). In November 2005, Comptroller General Clodosbaldo Russian, another Chávez functionary, submitted requests for disqualification against 272 public officials of the opposition based on corruption allegations, in an attempt to bar them from participating

58 Diego Scharifker relates the story of having his calls tapped and broadcasted during an interview taped by the Robert Amsterdam blog on Feb. 14, 2009. <http://www.youtube.com/watch?v=lpCWoOfbFh0>.

in future elections.⁵⁹ Mayor Leopoldo López, one of the most prominent victims of this form of harassment, is presently pursuing his remedies via international judicial measures.

The third government mechanism of harassment involves physical harm, which is especially poignant in Venezuela's highly violent and insecure environment. In recent years, the rate of violence, murder and general crime has soared in Venezuela. The homicide rate per 100,000 citizens rose from 12.6 in 1990 to 33 in 2000.⁶⁰ The Chávez regime uses the cover of this general insecurity to encourage violence against members of the opposition. As discussed below, Chávez's *Plan Bolívar*, which he implemented shortly after rising to power, dramatically expanded the presence of the military within social spheres by dispatching troops into poor neighborhoods to administer social aid programs. At first, the regime used the heightened presence of military and police to intimidate and disrupt opposition activities directly. According to Freedom House, "Chávez government action against police and security officers guilty of abusing both political opponents and suspects of common crimes is virtually nonexistent. In addition, 90% of all investigations into human rights violations do not make it past the preliminary stages of the process."⁶¹

With the passage of time, civilian militia groups, largely unaccountable to the public, assumed the role formerly played by the military and police. Armed civilian groups defending the cause of the Bolivarian revolution (*Tupamaros, Carapaica, La Piedrita, Coordinadora Simón Bolívar*) receive favorable government media exposure. They distribute pamphlets that incite violence against the so-called "enemies of the revolution." The government does nothing to curtail these practices; indeed, decree legislation in 2008 included a measure that formalized executive control over civilian militias.⁶²

La Piedrita, the most recognized violent pro-Chávez group, is an armed organization of 50-60 young men and women who reside in the *23 de enero* neighborhood of Caracas. They maintain an impenetrable compound and training ground there, allegedly inaccessible by police or other authority. *La Piedrita* has claimed responsibility for numerous violent attacks against perceived members of the opposition, including journalists and students. Government officials often praise and implicitly encourage *La Piedrita* in public statements. Valentín Santana, the

59 According to the 2006 Freedom House report, Chávez violated constitutional requirements in order to appoint a pliant Comptroller General. <http://www.freedomhouse.org/template.cfm?page=140&edition=7&ccrcountry=141§ion=78&ccrpage=31>.

60 These data are from the Pan American Health Organization (PAHO) Statistics on Homicides, Suicides, Accidents, Injuries, and Attitudes towards Violence. See www.paho.org/English/HCP/HCN/VIO/violence-graphs.htm.

61 Freedom House, 2006: <http://www.freedomhouse.org/template.cfm?page=140&edition=7&ccrcountry=141§ion=74&ccrpage=31>.

62 Freedom House, Venezuela Country Report 2009, (Washington DC: Freedom House, 2009) <http://www.freedomhouse.org/uploads/fiw09/countryreports/Venezuela2009.pdf>.

group's leader, has said: "We are a collective that does social work, but also, as our Comandante Hugo Chávez has said, we are armed and willing to defend this revolution by way of arms."⁶³

La Piedrita's intentions are clear: It maintains a hit list of high-profile targets, including journalist Marta Colomina, officials of COPEI and AD parties, and leaders of the Catholic Church. The group has threatened publicly to behead Marcel Granier, former director of the shuttered television station RCTV. *La Piedrita* cooperates with another group, *Unidad Popular Venezolana*, known for its signature motorcycle gunmen.

Moreover, Chávez has implied publicly that the armed forces are authorized to shoot civilians in defense of the Bolivarian Revolution. For example, during a speech on August 30, 2003, he stated:

*We cannot allow these privileged groups of the historical Venezuelan oligarchy to once again own the country ... this involves not just preventing this fascist oligarchy from once again owning the country through any de-stabilizing movement. ... [The Army is] going to defend their republic and you would have to choose what to do with the rifles in hand, where you are going to point the rifles, if at the breast of the oligarchic traitor or at the breast of the noble people of Venezuela. I wouldn't want to be in your shoes, I was once and I decided.*⁶⁴

1.2.8 The International Community: The Last Check on Chávez

In light of the lack of domestic recourse available to the citizens of Venezuela in response to the Chávez government, many have sought relief for alleged human rights violations in international legal forums, particularly the Inter-American Commission on Human Rights ("IACHR") of the Organization of American States, of which Venezuela has been a member since its foundation in 1948. Between the years 1977 and 2000, the IACHR admitted only six human rights complaints against Venezuela. However, between 1999 and 2009, 152 complaints were filed against the Venezuelan government, 52 of which the IACHR admitted. The IACHR admitted 28 new cases against Venezuela in 2008 alone. In an attempt to discredit the OAS Commission, Germán Saltrón, Venezuela's representative before the IACHR, cited the dramatic increase to the IACHR's purported lack of impartiality.⁶⁵

63 "Venezuela: To Kill and Die for Hugo Chavez," by Maye Rivera, *Miami Herald*, Feb. 9, 2009. <http://www.miamiherald.com/news/more-info/story/895308.html>.

64 See www.venezuela.gov.ve/ns/aloc/grupo20ayacucho20902029ago03.doc.

65 According to Mr. Saltrón, "Venezuela has sufficient reasons to affirm that the Commission has abandoned its condition as an impartial international organism charged with watching over respect for human rights in the region to become a political instrument of national and international sectors interested in discrediting and destabilizing."

Given the IACHR findings, the government has resisted attempts by the international community to rein in the regime's excesses. In the process, Chávez has demonstrated a marked disregard for international law, the country's long-standing international obligations, and the general opinion of the international community.

The Venezuelan government began to challenge international charges of human rights violations in July 2003, when the TSJ ruled that no international court or organism has jurisdiction over Venezuela unless the organism's decision is validated by the TSJ:

"...This Chamber considers that, above the [TSJ] there is no jurisdictional organism whatsoever, unless the Constitution or the law provided the contrary and, even in that case, any decision that contradicts the Venezuelan Constitutional provisions lacks applicability in the country."⁶⁶

This pronouncement violates obligations set forth in various international treaties to which Venezuela is a party, including the United Nations International Covenant on Civil and Political Rights and the First Protocol thereto (ratified by Venezuela on August 10, 1978) and the American Convention on Human Rights (ratified by Venezuela on August 9, 1977). Moreover, it seems to ignore at least two Articles of the Constitution of Venezuela. According to Article 23,

The treaties, pacts and conventions relating to human rights which have been executed and ratified by Venezuela have a constitutional rank, and prevail over internal legislation, insofar as they contain provisions concerning the enjoyment and exercise of such rights that are more favorable than those established by this Constitution and the laws of the Republic, and shall be immediately and directly applied by the courts and other organs of the Public Power.⁶⁷

Article 31 declares,

Everyone has the right, on the terms established by the human rights treaties, pacts and conventions ratified by the Republic, to address petitions and complaints to the intentional organs created for such purpose, in order to ask for protection of his or her human rights.⁶⁸

In April 2007, Venezuela was brought before the Inter-American Court of Human Rights (the "Inter-American Court") – the enforcement body for decisions of the IACHR – for violating

66 TSJ Decision No. 1942; <http://www.tsj.gov.ve/decisiones/scon/Julio/1942-150703-01-0415.htm>.

67 Constitution of the Bolivarian Republic of Venezuela, Article 23.

68 Constitution of the Bolivarian Republic of Venezuela, Article 31.

freedom of expression, personal integrity, legal guarantees and other protections owed to the staff of Radio Caracas Television (RCTV), a station that has been critical of Chávez.⁶⁹ In order to silence the opposition voices, the government refused to renew the station's license. Although the Inter-American Court ruled in March 2009 that the government was "internationally responsible" for failing to fulfill its obligations to guarantee free speech rights,⁷⁰ Venezuela authorities have claimed vindication because the Inter-American Court's sentence does not require payment of moral damages to the victims.⁷¹ Similarly, in February 2009, the Inter-American Court found Venezuela liable for human rights violations against employees and reporters of the independent television news station *Globovisión*. The government has shown no interest in honoring the decision.

The case of the three judges dismissed from the First Court of Administrative Disputes (*Corte Primera en lo Contencioso Administrativo*) in 2003 reveals an even more alarming trend. After their dismissal, Judges Ana María Ruggeri, Perkins Rocha and Juan Carlos Apitz filed actions with the IACHR, which ruled in their favor in August 2008, and ordered their reinstatement with back pay. When Venezuela refused to comply voluntarily, the matter was referred to the Inter-American Court, which affirmed the IACHR's decision. However, in January 2009, the TSJ rejected the Inter-American Court's ruling, accusing the Court of usurping the TSJ's functions. The TSJ's ruling in effect rejects the American Convention on Human Rights by stating that Venezuela should respect the decisions of the Inter-American Court of Human Rights only so long as they are endorsed by the TSJ.⁷² This ruling also appears to violate Articles 23 and 31 of the Venezuela Constitution.

Similarly, in February 2009, the Inter-American Court found Venezuela liable for human rights violations against employees and reporters of television news station *Globovisión*. The government has shown no interest in honoring the decision.

During the International Bar Association's visit to Venezuela in March 2007, it found that Venezuela's relationship with international human rights bodies, in particular those that comprise the Inter-American system, had deteriorated significantly. It noted that Venezuela's policies appear to signal contempt for the measures, recommendations and decisions issued by the Inter-American system of human rights protection, resulting in a setback in Venezuela's

69 "IACHR Sues Venezuela for Violating RCTV Reporter's Rights," *El Universal*, April 26, 2007. http://english.eluniversal.com/2009/03/06/en_ing_esp_iachr-issues-ruling_06A2245253.shtml.

70 Statement from RCTV: <http://elobservador.rctv.net/Noticias/VerNoticia.aspx?NoticiaId=255247&Tipo=14>.

71 Government press release: http://www.minci.gob.ve/noticias/1/188087/cidhgobierno_bolivariano_no.html.

72 Decision of the Constitutional Chamber of the Supreme Court of Venezuela, Case No. 08-1572; December 9, 2008; <http://www.tsj.gov.ve/decisiones/scon/Diciembre/1939-181208-2008-08-1572.html>.

ability to comply with international obligations to promote and protect human rights.⁷³ The situation appears to have worsened since then.

In April 2009, Chávez hosted Sudanese President Omar Al Bashir – the first sitting president subject to an international arrest order issued by the International Criminal Court (“ICC”) – in Venezuela. During the visit, Chávez characterized the ICC decision as “... an abuse not only against Sudan, but also against all the countries in the world.”⁷⁴

Chávez’s hostility toward international enforcement of human rights violations demonstrates a trend of unaccountability. Chávez himself has publicly pronounced the IACHR to be “morally incompetent” to administer justice over the constitutional affairs of Venezuela.⁷⁵ Some observers have speculated that the Chávez government is considering a withdrawal from its membership in and commitments to the Organization of American States,⁷⁶ which would deprive Venezuela’s citizens of the most accessible forum for legal recourse that is beyond Chávez’s control.

73 Venezuela: Justice under threat, Report of a mission to Venezuela by the International Bar Association Human Rights Institute, June 2007.

74 “Chávez invita al presidente de Sudán a Venezuela,” *El Mundo*, March 2, 2009. <http://www.offnews.info/verArticulo.php?contenidoID=13783>.

75 “Presidente Chávez: CIDH está imposibilitada moralmente para emitir juicio sobre Venezuela,” *Agencia Bolivariana de Noticias (ABN)*, March 27, 2007 <http://www.aporrea.org/imprime/n93967.html>.

76 At the 2007 ALBA Summit, President Chavez himself threatened to pull out of the OAS if the IACHR issued a negative decision with regard to Venezuela’s decision to strip the government critic television station RCTV of its broadcasting license. http://www.elpais.com/articulo/economia/Chavez/anuncia/salida/Venezuela/FMI/Banco/Mundial/elpepueco/20070501elpepueco_1/Tes.

Part Two:

Chavista Justice — The Attack on Eligio Cedeño

2.1 Cedeño's Personal Background

Cedeño was born on December 1, 1964, in a poor neighborhood in the State of Miranda, Venezuela. His parents separated when he was two months old, and he was raised by his mother, together with an older brother, in a small shack with no electricity or running water and very few personal possessions. At school, Eligio was forced to share a single shirt with his brother, and they met between classes to take turns wearing it. At home, they shared one schoolbook. Despite these hurdles, both Eligio and his brother excelled academically. At age 11, for example, Eligio received one of only four medals for academic excellence handed out to a group of over 400 students, while his brother received another.

Cedeño's first significant work opportunity came at the age of 16. While playing basketball at a local community recreation center, he learned about an opening in an internship training program at Citibank. He applied for the position and, because his family had no telephone, he presented himself in person to the Citibank recruiter on several occasions to inquire about the status of his job application. His prospective employer seemed to appreciate Cedeño's initiative and persistence, and he was eventually admitted to the program. He worked as a trainee at Citibank for five years while he obtained a marketing degree from the *Colegio Universitario de Caracas*. Cedeño was subsequently employed by *Banco Internacional*, *Banco Caracas* and, finally, *Banco Noroco*, a brokerage company, where, at the age of 28, he was promoted to the position of Vice President. During the Venezuelan financial crisis in 1994, Cedeño founded his own brokerage firm, specializing in institutional bond trading. The company grew rapidly, and eventually Cedeño branched out with a broader business strategy that involved acquiring and selling financial institutions. Over time, Cedeño's holdings included interests in *Banco Canarias*, *Banco Caracas*, *Bolivar Banco*, and *BanPro*.

Despite his successes, Cedeño never forgot his roots. In 1997, he created *Fundación Cedel*, a non-profit charity group established to address poverty and socioeconomic inequality in Venezuela. The foundation combines financial assistance with human aid, to foster a sense of

enfranchisement, emphasizing the value of hard work and personal effort.⁷⁷ *Fundación Cedel* has provided financial assistance to more than 27 schools, supplied urgent medical care for more than 40 terminal disease patients, and established monthly economic aid arrangements for over 1,000 families in some of the poorest neighborhoods in Venezuela. Over the years, it has contributed more than \$6 million to *TeleCorazón*, Venezuela’s primary annual fundraising television event for charities.

Until his arrest, Cedeño was an active participant in the *Fundación Cedel* projects. For example, during the Christmas holidays, he and his family personally distributed gifts in some of the poorest neighborhoods in Caracas. In 2006, he arranged and helped design the lighting of the River Guaire promenade, which was enjoyed by the Caracas community for weeks during the holiday season.

2.2 Criminal Proceedings Against Cedeño

2.2.1 The Microstar Transaction

In February 2003, the Chávez government imposed a highly regulated foreign currency exchange regime in Venezuela. It fixed the exchange rate at 1,600 bolivars per 1 U.S. dollar, and created a government agency – CADIVI – to administer the system. Among other things, the exchange regime gave CADIVI control over the Venezuelan import sector by requiring businesses to obtain CADIVI’s approval to acquire foreign currency to purchase foreign goods. The government imposed a strict certification process for any foreign currency exchange, calling for extensive documentation, including licenses, permits, invoices and receipts. The regime authorized Venezuela’s commercial banks to act as agents to process the currency applications and execute the exchange transactions. It limited the banks’ role to confirming the form of the documentation, exempting them from verifying the truth of the underlying representations in the applications and supporting documents, an investigative obligation the government reserved to CADIVI as part of its regulatory function.

Almost immediately after the February 2003 establishment of a new currency regime, an active parallel exchange market developed as investment banks, brokerage houses, companies and individuals began to trade foreign currency at free market rates. The bolivar quickly devaluated, and the parallel exchange market skyrocketed. These conditions gave rise to

77 See www.youtube.com/watch?v=BXhTM5MfWwc for a *Fundación Cedel* advertisement that captures the foundation’s promotion of personal effort.

pervasive fraud, as individuals looked for ways to profit from the disparity between the official exchange rate and the parallel market rate. This financial environment – together with Cedeño’s position as Vice President of Finance at Banco Canarias, an authorized currency exchange agent – became the backdrop for the criminal charges against Cedeño.

In June 2003, Caracas businessman Gustavo Arráiz, acting for Consorcio Microstar (Microstar), applied to CADIVI through Banco Canarias for almost \$27 million in U.S. currency to acquire computers that Microstar claimed had been shipped to Venezuela and were awaiting payment in Venezuela customs. To the bank, the transaction appeared regular, coming as it did from one of the largest computer importers and retailers in Venezuela. After verifying that the application and supporting documents were in order, Banco Canarias submitted the paperwork to CADIVI, and CADIVI approved the exchange transaction. Banco Canarias accepted the corresponding sum of Venezuelan currency from Microstar’s lenders, transferred those bolivars to the Central Bank of Venezuela and received the U.S. currency in exchange, which it delivered to the computer supplier in the U.S.

In fact, however, the transaction was a fraud. Microstar falsely claimed in its application that it had purchased computers in the U.S., which had been shipped to Venezuela. The computers never existed, and the invoices from the U.S. supplier were fake. Further, officials at CADIVI appear to have participated in the scheme by forging documents of the Venezuela Customs and Tax Service (SENIAT) declaring that the fictitious computers were present in Venezuelan customs.

The truth came to light in November 2003 when the director of SENIAT, José Gregorio Vielma, filed a formal complaint with the Attorney General’s Office describing the fraud. In addition to citing Microstar and CADIVI, Vielma’s complaint asserted that Banco Canarias was complicit because it purportedly supplied the Venezuelan currency that funded the exchange transaction. This allegation was eventually shown to be false, as testimony from the government’s own experts at Cedeño’s trial demonstrated that independent lenders to Microstar had been the source of the Venezuela currency. Prosecuting attorneys had held documentary evidence provided by the Venezuela Finance Ministry establishing this fact for almost a year before trial, but had withheld that important exculpatory evidence from Cedeño’s attorneys.⁷⁸

2.2.2 The Initial Indictment

On the basis of Vielma’s complaint, the Attorney General’s Office initiated an investigation and, in November 2005, indicted several principals of Banco Canarias, including Cedeño, on allegations of: (1) conspiracy to smuggle by simulating the importation of goods; and (2) import

78 Letter from Any Osorio, Director of Public Debt Administration of the Venezuela Ministry of Finance, to prosecutor Nelson Orlando Mejía Durán, dated April 18, 2007.

tax evasion. The smuggling charge was odd under the circumstances in that it required proof that false documents had been submitted to SENIAT, and it was clear that no documents of any kind had been delivered to SENIAT. The import tax evasion charge seemed equally out of place, as no goods had been imported.

Cedeño requested a dismissal of the charges on legal grounds because neither Banco Canarias nor its officers was responsible for verifying whether the imported goods had actually been delivered to Venezuela customs; this duty belonged exclusively to CADIVI. Further, Cedeño asserted that charges of import tax evasion could not legally apply to the foreign exchange agent. Cedeño's motion to dismiss the charges, however, was ignored and no ruling was entered.

In March 2006, with the investigation underway, Cedeño petitioned the Venezuela Supreme Court to rectify various irregularities in the proceedings. In addition to citing the lower court's failure to rule on his motion to dismiss, Cedeño cited the fact that the Attorney General's Office had not investigated CADIVI and its officials. Although it would come to light only later, one of the prosecutors assigned to the Cedeño case – José Benigno Rojas – was preparing criminal charges against four members of CADIVI's board of directors: Edgar Hernández Behrens, Adina Bastidas, Mary Espinoza de Robles and Maigualida Angulo. However, when he sought the approval of Attorney General Julián Isaías Rodríguez to indict them, his request was denied, and he was summarily dismissed. He subsequently spoke out in the press, noting that CADIVI was necessarily an active participant in the fraud.⁷⁹

Although the Supreme Court technically granted Cedeño's petition, the ruling had virtually no impact. The Attorney General's Office continued to ignore CADIVI, while Cedeño's motion to dismiss was transferred to another judge – control judge Veneci Blanco – who promptly denied it without citing any rationale.⁸⁰ Control judge Veneci Blanco was a provisional judge who was subject to removal from the bench, without disciplinary proceedings or any finding of inappropriate conduct, at the discretion of the Judicial Commission.

2.2.3 Removal of Judge Yuri López

A definitive sign that the outcome of Cedeño's case was predetermined came in early February 2007, when Judge Yuri López was removed from the bench for issuing a ruling that favored Cedeño. The Attorney General's Office had assigned judicial officers Gabriel Stagno and José

79 "Eligio Rojas," *Ultimas Noticias*, Nov. 22, 2006; <http://venezuelareal.zoomblog.com/archivo/2006/11/22/rojas-Cadivi-fue-complice-en-el-caso-d.html>.

80 Venezuelan criminal proceedings occur in stages, with a control judge presiding over the investigative and preliminary phases. If the case is still pending when those phases have been completed, the file is transferred to a trial judge, who presides over the trial proceedings.

Gregorio Arreaza to the investigation, and Cedeño believed that they had acted improperly in the performance of their duties. According to Cedeño, Stagno and Arreaza had invited third parties to review his case file in violation of confidentiality regulations, and had subsequently lied under oath when questioned on the subject. Accordingly, Cedeño filed a criminal complaint (*querrela*) against Stagno and Arreaza in the Caracas Criminal Circuit.

Although a procedure exists for random assignment of cases to judges, that process is typically ignored in political cases. In the case of Cedeño's *querrela*, however, the matter was properly assigned at random to Judge Yuri López because the Vice-President of the Criminal Circuit, María Elena García Pru, had been away when the *querrela* was filed. When this assignment oversight was discovered, Judge López received a threatening message from Judge García Pru instructing her not to admit the *querrela*. Judge García Pru said that Judge López would be removed from the bench and her life would be "destroyed" if she did not comply. In another telephone call, Judge García Pru left a message stating that both Attorney General Julian Isaías Rodríguez and the President of the Venezuela Supreme Court, Luisa Estela Morales Lamaño, were pressuring her to have Cedeño's *querrela* dismissed. Judge López ignored both of those telephone messages and, during the afternoon of February 1, 2007, issued a ruling admitting the *querrela* and ordering a criminal investigation into the conduct of Stagno and Arreaza.

Later that day, after the ruling had become public, an enraged Arreaza appeared in Judge López's courtroom, raised his voice, kicked the furniture, and attempted to recuse her from the case. Soon, an official government inspector also arrived in the courtroom, stating that the President of the Venezuela Supreme Court and the Attorney General had given orders to investigate the ruling.

Judge López's ruling admitting Cedeño's *querrela* was her last official act as a Venezuelan judge. The following day, the court's administrative office placed her on mandatory vacation, and before she could return to the bench, an attempt was made to kidnap one of her children. She departed Venezuela and was granted political asylum, together with her family, in the United States.⁸¹

No investigation into the conduct of judicial officers Stagno and Arreaza was performed, and their involvement in the Cedeño investigation was not limited or restricted. Judge López's removal sent a strong signal to control judge Veneci Blanco and every other judge that might face a decision relating to Cedeño.

81 Declaration of Yuri López Pérez to authors, dated April 22, 2009.

2.2.4 Incarceration

On February 6, 2007, within days of Judge López’s ruling, the prosecution filed an application for Cedeño’s pretrial detention (however, this document was not shown to Cedeño’s lawyers until February 8, so they argue that the date was falsified). The application was deficient for at least three reasons: (1) It did not demonstrate that Cedeño was likely either to obstruct the investigative process or flee the jurisdiction, which are the only two legal bases upon which a criminal defendant may be deprived of their constitutional right to be tried in freedom.⁸² The only evidence offered by the prosecution was a statement Cedeño made during the investigative stage, that if he had wanted to flee, he would have done so in his private airplane when he was indicted in November 2005. The prosecution used Cedeño’s statement to suggest that he was a flight risk, although it actually implied the opposite ; (2) The use of Cedeño’s statement violated his constitutional right against self-incrimination;⁸³ and (3) The request for pretrial detention was improperly based upon allegations for which Cedeño had never been indicted, the allegation that he had embezzled Venezuelan currency from Banco Canarias to fund the Microstar transaction.⁸⁴

Despite those deficiencies, control judge Veneci Blanco granted the request and issued a warrant for Cedeño’s arrest. Cedeño learned about the warrant and voluntarily presented himself to the intelligence service (*Dirección de los Servicios de Inteligencia y Prevención*) (DISIP), which incarcerated him on February 8, 2007. The following day, Cedeño was brought before control judge Veneci Blanco for a hearing, during which he argued that he did not present a risk of flight: (1) he was already officially banned from travel outside Venezuela; (2) his residence and family were located in Venezuela; (3) he had numerous business ties to Venezuela, including chief executive positions with various corporations and a directorship of a foundation; and (4) he had voluntarily presented himself to the authorities upon learning that a warrant for his arrest had been issued. Although control judge Veneci Blanco was required by law to base her decision upon these criteria,⁸⁵ the only reason she gave for ordering Cedeño’s pretrial detention was that he owned an aircraft.⁸⁶

Further, because Cedeño had never been indicted for embezzlement, he was not informed of the specific charges, and he was prevented from challenging effectively the underlying criminal charges during his detention hearing. Additionally, although prosecutors informed Cedeño during the detention hearing that he was being investigated for embezzlement, they did not detail the facts, which impeded Cedeño’s subsequent ability to assist his lawyers in his defense.

82 Venezuela Code of Criminal Procedure, Article 243.

83 Venezuela Constitution, Article 49(5).

84 Venezuela Code of Criminal Procedure, Articles 243, 250(2).

85 Venezuela Code of Criminal Procedure, Article 251.

86 Decisión de la Detención Preventiva.

2.2.5 Dismissal of Prosecutor Yoneiba Parra

On February 13, 2007, the Attorney General's Office purged another uncooperative judicial officer from the Cedeño proceedings. Roughly one week after Cedeño was placed in pretrial detention, Yoneiba Parra, one of the prosecutors who had signed the application for his pretrial detention, was removed from the case. Her reaction to the removal was emotional and confrontational, and it was witnessed by Iris Rojas, the prosecutor subsequently designated to replace Parra as prosecutor in the Cedeño case. Rojas, however, refused the assignment, citing the way in which Parra had been removed. In a letter to the administrative director of the Attorney General's Office, Rojas stated that she could not carry out the role of prosecutor in the Cedeño case while remaining true to her own personal and professional ethics.⁸⁷ Like all of the other prosecutors assigned to the Cedeño case, Yoneiba Parra held a provisional position, and she was summarily dismissed from the Attorney General's Office without disciplinary proceedings, recourse, or any other independent review of her concerns regarding the Cedeño file.

2.2.6 Pretrial Phase

Shortly after Cedeño was incarcerated, he requested permission to review his case file. The request was important to his defense because Cedeño was better suited than any of his attorneys – in light of his background and experience – to examine the evidence and explain the meaning and implications of the documentary record. Control judge Veneci Blanco, however, denied his request.

In March 2007, the Attorney General's Office filed its formal accusation against Cedeño. In that document, the prosecution dropped the import tax evasion charge, but added another charge (without having issued an indictment), that of conspiracy to obtain currency fraudulently. The theory behind the charge was that Cedeño rather than independent lenders to Microstar had supplied the Venezuelan currency that funded the exchange transaction. This allegation was subject to a three-year statute of limitations, while the alleged acts purportedly occurred in 2003.⁸⁸ However, control judge Veneci Blanco denied Cedeño's motion to dismiss on statute of limitations grounds.

Also in March 2007, control judge Veneci Blanco froze all of Cedeño's assets in Venezuela. The freezing order violated at least three separate guarantees enshrined in the Venezuela

87 Letter from Iris Maru Rojas Rabol to Director Livia Estela Romero Sánchez, dated February 15, 2007.

88 Venezuela Criminal Code, Article 108(5).

Constitution: (1) the right to property;⁸⁹ (2) the right to earn a salary and support a family;⁹⁰ and (3) the right to a pension (*prestaciones sociales*) based on length of time employed.⁹¹

Cedeño's preliminary hearing began on May 16, 2007, and continued for a period of roughly two weeks, in six separate sessions. During the process, control judge Veneci Blanco was required to evaluate all of the evidence offered by both Cedeño and the prosecution – on a charge-by-charge basis – and to strike any portions of the accusation lacking adequate evidentiary support. She was also required to rule upon what evidence would be admitted at trial.⁹²

Amongst the documents that Cedeño offered during the preliminary hearing were copies of the bolivar-denominated negotiable instruments supplied by Microstar's lenders to Banco Canarias to fund the currency exchange transaction, which contradicted the prosecution's allegations that the transaction had been funded with bolivars either misappropriated by Cedeño from Banco Canarias (i.e., the embezzlement charge) or otherwise supplied by Cedeño (i.e., the currency fraud charge). Control judge Veneci Blanco disallowed that evidence, along with all other documentary evidence offered by Cedeño during the preliminary hearing. Control judge Veneci Blanco admitted the prosecution's accusation in its entirety (embezzlement, currency fraud and smuggling charges), along with virtually all of the evidence offered by the prosecution.⁹³ Notably, almost a full month prior to the preliminary hearing, the prosecution had received a letter from the Ministry of Finance listing the independent third-party lenders who had supplied bolivars to Banco Canarias on behalf of Microstar in the transaction.⁹⁴ The prosecution, however, withheld that exculpatory evidence from the court and from the Cedeño defense, while arguing at the preliminary hearing that both the embezzlement charge and the currency fraud charge should proceed to trial.

2.2.7 Trial Phase

After the conclusion of the preliminary hearing, the intermediate stage of the Cedeño proceedings concluded and the case moved into the trial phase. Trial judge Jesús Ramón Flores received the file initially, but, in an apparent attempt to delay the proceedings, prosecution

89 Venezuela Constitution, Article 115. Venezuela exchange laws cap penalties against a defendant at twice the amount of the judgment. To the extent Cedeño's assets exceeded that sum, the freezing order violated Cedeño's constitutional right to property.

90 Venezuela Constitution, Article 91. The freezing order also attached to a trust established for the benefit of Cedeño's children.

91 Venezuela Constitution, Article 92.

92 Venezuela Code of Criminal Procedure, Article 330.

93 *Acta de Audiencia Preliminar*.

94 Letter from Any Osorio, Director of Public Debt Administration of the Venezuela Ministry of Finance, to prosecutor Nelson Orlando Mejía Durán, dated April 18, 2007.

used the first of its two allowable recusal motions against him. Before a decision could be made on that motion, Flores recused himself. Judge Dayhanara González Seijo was next to receive the case, but the prosecution filed its second and final recusal motion against her. Although that motion was denied, trial judge González was threatened with dismissal by Supreme Court President Luisa Estella Morales; González then decided that she was not suited to hear the case, and she recused herself. The matter ultimately landed before trial judge Gabriela Salazar.

On November 19, 2007, Cedeño filed a special appeal (*avocamiento*) to the Venezuela Supreme Court, challenging his pretrial detention on the grounds that he had never been indicted for the only alleged crime on which the prosecution had based its detention request (i.e., embezzlement). As discussed in more detail below, the Supreme Court took no action on the *avocamiento* for almost seven months until, on the eve of closing arguments in the Cedeño trial, when an acquittal appeared imminent, it suspended the proceedings by admitting the *avocamiento*.

Although Cedeño's trial was initially set to begin in November 2007, the prosecution did not appear in court on five separately scheduled start dates. During the intervening period, the two Venezuelan civilians (*escabinos*) – charged with deciding the case in conjunction with the trial judge – were selected, but the trial itself did not commence until March 31, 2008. Owing to the fact that control judge Veneci Blanco had disallowed all of Cedeño's documentary evidence, he was forced to defend himself at trial by cross-examining various prosecution expert witnesses who had examined the case file. Even with that disadvantage, Cedeño's attorneys were able to elicit the following testimony:

- An expert witness designated by Venezuela's banking regulator testified that Banco Canarias had not engaged in any illegal activity;
- The same expert witness testified that the source of the Venezuelan currency was not Banco Canarias or Cedeño, but negotiable financial instruments provided by six independent companies acting for Microstar;
- The same expert witness testified that he could not establish that any funds had been embezzled from Banco Canarias, and that, conversely, the bank had earned a reasonable commission;
- An expert witness from the Venezuela Central Bank testified that the Venezuelan state suffered no loss, a required element of the embezzlement charge; and
- The government's customs experts stated that no false documents were submitted to the Customs Administration, a required element of the smuggling charge.

On June 10, 2008, the day of closing arguments in Cedeño's trial, the prosecution submitted a motion to recuse the trial judge, arguing that she was having an affair with Cedeño during his incarceration, citing a newspaper article that quoted no source. The appellate court promptly threw out the recusal and rescheduled closing arguments, but before those could commence, the TSJ suddenly admitted the *avocamiento* Cedeño had filed some seven months earlier on the issue of his improper incarceration. The act of admitting the *avocamiento* had the effect of suspending the trial proceedings until the *avocamiento* could be decided, which should have occurred within 30 days after June 17, 2007, the date on which the *avocamiento* was admitted.

The TSJ, however, did not decide the *avocamiento* in a timely fashion, and as Cedeño remained in pretrial detention, the date on which he would complete the two-year maximum period of detention – February 8, 2009 – loomed.⁹⁵ On December 17, 2008, the Attorney General's Office requested an extension of the two-year period, but provided no substantive reasons, and the court had not granted an extension when the February 8 deadline arrived. Cedeño promptly began to request his immediate release, eventually submitting more than 35 such requests on a periodic basis without any response from the court.

On May 7, 2009 – roughly 18 months after the TSJ had admitted the *avocamiento* – it finally ruled on its substance. Ironically, the TSJ agreed with Cedeño that he had never properly been indicted for the alleged crime of embezzlement; however, it did not order his release. Instead, the TSJ voided that portion of the accusation relating to embezzlement, together with all of the trial proceedings that had already taken place, and it granted the Attorney General's Office 30 days to issue a proper embezzlement indictment.

2.2.8 Return to Pretrial Phase

Despite the testimony of the government's expert witnesses at trial in 2008 concerning the absence of proof that Cedeño had embezzled funds and that Banco Canarias had instead earned a profit in the exchange transaction, the prosecution went through the formal process of indicting Cedeño for embezzlement on May 28, 2009. It alleged no new facts.

As the Cedeño proceedings returned to the pretrial phase, provisional judge Norbis Díaz became the new control judge. On June 4, 2009, she granted the prosecution's pending motion for an extension of the two-year maximum pretrial detention period by adding an additional two years to the allowable term.

95 Venezuela Code of Criminal Procedure, Article 244, establishes that pretrial detention cannot exceed a period of two years. Extensions may only be granted upon a showing of exceptional circumstances.

Although the prosecution's request for the extension had cited no specific reason, in violation of Venezuela law,⁹⁶ Attorney General Luisa Ortega Díaz shed some light on the prosecution's rationale. Speaking to the press during a meeting of Ibero-American Public Prosecutors on June 10, 2009, the Attorney General stated that Cedeño was in pretrial detention because a co-defendant in the same proceedings, Gustavo Arraiz – the Microstar representative who had submitted the currency exchange application to Banco Canarias – had tried to evade justice by fleeing to Panama.⁹⁷ Therefore, even if control judge Norbis Díaz required the prosecution to make some showing of legal cause for an extension of the two-year limit (which she did not), the Attorney General's Office presumably would have pointed to the fact that somebody other than Cedeño presented a flight risk. Of course, unlike Arraiz, Cedeño voluntarily presented himself to the authorities as soon as his detention order was issued in February 2007, and he has been detained ever since.

As a consequence of the extension, Cedeño could potentially serve almost 4 ½ years in pretrial detention (assuming no additional extensions are granted), which is roughly half the length of the maximum allowable sentence for the alleged crimes.

Meanwhile, as Cedeño waits for the proceedings to move back through the pretrial phase toward an eventual opportunity to demonstrate his innocence for a second time at trial, the cooperative judicial officials have received and accepted promotions:

- Provisional judge Veneci Blanco was elevated from the position of Control Court Judge to the post of President of the Circuit Criminal Court of Caracas.
- Alejandro Castillo, formerly a provisional National Prosecutor, was promoted to the post of Director of Procedural Performance (Actuación Procesal) of the Attorney General's Office.
- Gerardo Briseño was promoted from provisional National Prosecutor to Criminal Court Judge.
- Nelson Mejía was promoted from provisional National Prosecutor to the position of Director of Safeguards of the Attorney General's Office.
- Daniel Medina was elevated from the position of Assistant National Prosecutor to National Banking Prosecutor, Insurance Specialist.
- Lisette Rodríguez was promoted from Caracas Metropolitan Area Prosecutor to the position of National Prosecutor.

96 Venezuela Code of Criminal Procedure, Article 244, places the burden on the Attorney General's Office to demonstrate serious reasons that would justify an extension of the two-year limit on pretrial detention.

97 A report aired on Globovisión on June 10, 2009, featured these comments from Luisa Ortega Díaz. The news clip can be viewed here: <http://www.globovision.com/news.php?nid=119001>.

The three less-cooperative officials – control judge Yuri López, prosecutor Yoneiba Parra, and prosecutor José Benigno Rojas – were removed summarily from their positions without any disciplinary proceedings or other review.

2.3 Violation of Cedeño’s Human Rights

In addition to the due process and other legal violations discussed above, the government has violated Cedeño’s human rights as guaranteed in at least two treaties ratified by Venezuela – the United Nations International Covenant on Civil and Political Rights (U.N. Covenant) and the American Convention on Human Rights (American Convention). Additionally, the government has violated corresponding provisions of the European Convention on Human Rights (European Convention).

2.3.1 Violation of Right to be Informed About Nature of Charges

The U.N. Covenant, the American Convention and the European Convention all guarantee detainees the right to be informed promptly of the charges against them and the reason for their arrest.⁹⁸ Notification is particularly important when the personal liberty of the individual is restricted.⁹⁹

The government violated Cedeño’s right to be informed in at least the following ways: First, the government’s request for pretrial detention in February 2007 was based solely on the allegation that Cedeño had embezzled currency of Banco Canarias to fund the exchange transaction. However, the government had not indicted Cedeño for embezzlement or otherwise specified which facts it believed constituted that crime, preventing Cedeño from challenging the underlying criminal allegations at the hearing on his detention.

Second, during his May 2007 preliminary hearing, the court admitted the prosecution’s formal accusation against Cedeño, despite the fact that the accusation did not detail clearly and precisely – as required by Venezuelan law – Cedeño’s purportedly illegal acts.¹⁰⁰ As a result, Cedeño was forced to defend himself at trial without understanding the charges against him.

98 U.N. Covenant, Article 9(2); American Convention, Articles 7(4) and 8(2)(b); European Convention, Articles 5(2) and 6(3)(a).

99 Application to I/A Court in the case of *Oscar Barreto Leira v Venezuela*, Case 11.663, 31 October 2008/A, para 79 citing I/A Court H.R., Case López Álvarez. Judgment issued February 1, 2006. Series C No. 141, paragraph 149; I/A Court H.R., Case Palamara Iribarne. Judgment issued November 22, 2005. Series C No. 135, par. 225; I/A Court H.R., Case Acosta Calderón. Judgment issued June 24, 2005. Series C No. 129, par. 118; and I/A Court H.R., Case Tibi. Judgment issued September 7, 2004. Series C No. 114, par. 187.

100 See Article, Venezuela Code of Criminal Procedure.

Third, when the prosecution formally indicted Cedeño for embezzlement in May 2007, it again failed to explain how the alleged facts satisfied the elements of the crime, as required by Venezuelan law.¹⁰¹

2.3.2 Violation of Right to Freedom from Arbitrary Detention

The U.N. Covenant, the American Convention and the European Convention guarantee freedom from arbitrary detention such that no person may be imprisoned except pursuant to established legal procedures.¹⁰² The government has violated Cedeño's human rights in this regard as follows: First, every criminal defendant in Venezuela has the right to be tried in liberty, except where the government is able to demonstrate that the defendant is likely either to flee the jurisdiction or to interfere with the investigation if he/she remains in liberty.¹⁰³ The prosecution did not demonstrate either of these circumstances in the Cedeño case.

Second, Venezuelan law imposes a strict two-year limit on all preventive detention unless an extension is granted based on proof of exceptional circumstances.¹⁰⁴ During the period between February 8, 2009, and June 4, 2009, Cedeño had served the maximum two-year term in pretrial detention without any extension, despite more than 35 formal requests for immediately release. Further, the prosecution's request for an extension did not demonstrate exceptional circumstances to justify the extension.

Third, on May 7, 2009, the TSJ agreed with Cedeño that he had not been properly indicted for embezzlement. However, although alleged embezzlement was the only charge upon which the prosecution had based its request for pretrial detention in February 2007, the TSJ did not order his release.

2.3.3 Violation of the Right to Prompt Judicial Review of Detention

The U.N. Covenant, the American Convention and the European Convention guarantee the right to prompt judicial review of any detention.¹⁰⁵ Cedeño filed his *avocamiento* with the TSJ on November 19, 2007, challenging his pretrial detention. The government violated Cedeño's human rights because the TSJ did not take up the substantive issue until May 7, 2009, after all the evidence at trial had been presented, and after Cedeño had served roughly three months beyond the maximum permissible period of pretrial detention.

101 See Article, Venezuela Code of Criminal Procedure.

102 U.N. Covenant, Article 9(1); American Convention, Article 7.3; European Convention, Article 5(1).

103 Article 250, Venezuela Code of Criminal Procedure.

104 Article 244, Venezuela Code of Criminal Procedure.

105 U.N. Covenant, Article 9(4); American Convention, Article 7(6); European Convention, Article 5(4).

2.3.4 Violation of the Right to a Trial Within a Reasonable Time Frame

The U.N. Covenant, the American Convention and the European Convention all guarantee the right to a trial within a reasonable time.¹⁰⁶ The European Court of Human Rights has emphasized that “an accused person in detention is entitled to have his case given priority and conducted with particular expedition.”¹⁰⁷ The government has violated Cedeño’s rights in this area as follows: First, although the trial phase of the proceedings began in June 2007, the prosecution filed motions to recuse the first two judges randomly assigned to the trial. Both recusal motions were denied, but the motions had the effect of prompting the first two judges to excuse themselves. Further, when trial was finally scheduled to begin, the prosecution failed to appear in court on five separate occasions. These tactics delayed the commencement of trial for more than six months.

Second, the TSJ admitted Cedeño’s *avocamiento* on the eve of closing arguments in his trial, which had the effect of suspending the proceedings pending a decision by the TSJ on the merits of the *avocamiento*. The TSJ did not rule until May 7, 2009, precisely 27 months after Cedeño was first detained.

Third, when the TSJ ruled on the *avocamiento*, it returned Cedeño’s case to the indictment phase and invalidated all of the trial proceedings conducted earlier, while the new control judge, Norbis Díaz, extended the permissible period of pretrial detention for an additional two years. Even if she grants no further extensions, Cedeño could potentially serve up to 4 ½ years in pretrial detention.

2.3.5 Violation of the Right to an Independent and Impartial Tribunal

The U.N. Covenant, the American Convention and the European Convention guarantee the right to a fair trial, which includes the right to an independent and impartial tribunal.¹⁰⁸ The requirement of independence relates to: (1) the procedures and qualifications for the appointment of judges; (2) the assurances related to their job security through tenure protection; (3) the circumstances governing promotions, transfers, suspension and removal of judges; and (4) the independence of the judiciary from the legislative and executive branches of government.¹⁰⁹ The Inter-American Court has ruled – in the context of Venezuela – that a tribunal comprised of provisional judges who can be removed on a discretionary basis is not consistent with the guarantee of judicial independence.¹¹⁰

106 U.N. Covenant, Article 9(3); American Convention, Article 8(1); European Convention, Article 6(1).

107 ECHR, *Wemhoff v Germany*, Judgment 27 June 1968, pp. 17.

108 U.N. Covenant, Article 14(1); American Convention, Article 8(1); European Convention, Article 6(1).

109 Leandro Despouy, *Independencia de la Justicia – Estándares Internacionales*, pp. 56-57 (1st Ed., Buenos Aires: El Mono Armado, 2009).

110 Juan Carlos Apitz Barbera, et al. (“*First Court of Administrative Disputes*”) v. *Venezuela*, Inter-American Court of Human Rights, Judgment of August 5, 2008, at pp. 139, 142, 147.

Provisional judges Veneci Blanco and Norbis Díaz are not independent in that they both hold strictly *provisional* status and are subject to removal from the bench at any time at the absolute discretion of the Judicial Commission, which has hired and fired hundreds of Venezuelan judges since 2005 on the basis of their political affiliation.

Similarly, the requirement of impartiality includes two elements. First, judges must not permit their decisions to be influenced by personal inclinations or prejudices, nor should they have preconceived notions regarding the matters before them or act in a manner that unduly promotes the interests of one party in prejudice of another. Second, the court must also appear to the reasonable observer to be impartial. The European Court of Human Rights has stated that “there are two aspects to the requirement of impartiality. In the first place, the tribunal must be subjectively impartial, that is, none of its members must show bias or personal prejudice ...] In the second place, the tribunal must be objectively impartial, that is to say, it must offer guarantees sufficient to exclude any legitimate doubt in this respect.”¹¹¹

Provisional judges Veneci Blanco and Norbis Díaz did not act impartially during the Cedeño proceedings. First, control judge Veneci Blanco denied Cedeño’s motion to dismiss the original charges against him (i.e., conspiracy to smuggle through simulated importation; import tax evasion), despite the fact that Banco Canarias was exempted from any requirement to investigate whether Microstar’s fictional computers actually existed, and notwithstanding the fact that no goods were actually imported.

Second, she granted the prosecution’s motion for pretrial detention, which was illegal for two reasons: (1) It was based upon a crime for which Cedeño had not been indicted; and (2) the prosecution had failed to demonstrate that Cedeño was likely either to interfere with the investigation or flee the jurisdiction. She ordered his detention solely on the basis that he had access to a private aircraft.

Third, she denied Cedeño access to his criminal file.

Fourth, control judge Veneci Blanco presided over a preliminary hearing in which she disallowed all documentary evidence offered by Cedeño, including documents that directly contradicted the prosecution’s claims. Further, she admitted the entirety of the government’s accusation against Cedeño, even though: (1) it included an embezzlement charge for which Cedeño had not been indicted; (2) it lacked evidentiary support; and (3) it did not describe the allegations with adequate specificity.

Fifth, control judge Norbis Díaz added two years to the permissible period of pretrial detention, despite the fact that the prosecution failed to provide a reason.

111 European Court of Justice, *Gorostiaga Atxalandabaso v European Parliament*, Case no. C-308/07 P, 19 February 2009, pp. 46.

2.3.6 Violation of the Right to Adequate Time and Means to Prepare a Defense

The U.N. Covenant, the American Convention and the European Convention guarantee the right of every criminal defendant to prepare adequately for a defense.¹¹² The Inter-American Court has held that anything short of effective access by the defendant to the case file and to the evidence to enable the defendant to adequately prepare to defend the case contravenes the American Convention.¹¹³ Control court judge Veneci Blanco violated Cedeño's human rights by denying his request to review his case file and preventing him from contributing his unique understanding of the subject matter to his attorneys in the aid of his own defense.

2.3.7 Violation of the Presumption of Innocence

The U.N. Covenant, the American Convention and the European Convention guarantee the right of every criminal defendant to be presumed innocent of the charges.¹¹⁴ Control judge Veneci Blanco violated Cedeño's human rights in this area by ordering his pretrial detention without requiring the prosecution to demonstrate either of the circumstances required by Article 250 of the Code of Criminal Procedure, that he was likely either to interfere with the investigation or flee the jurisdiction. Further, control judge Norbis Díaz extended the maximum period of pretrial detention by two years without requiring the prosecution to demonstrate the requisite circumstances.

2.4 Improper Government Motives for Prosecuting Cedeño

The unlawful criminal prosecution of Cedeño and violation of his human rights inevitably lead to curiosity about the reasons behind the decision to target him. As discussed in detail above, President Chávez controls every aspect of the criminal justice system in Venezuela, and an unfounded criminal prosecution can proceed against virtually any member of Venezuelan society. In Cedeño's case, however, there are several reasons why the government would falsely prosecute him for financial crimes as of November 2005 and eventually detain him indefinitely in February 2007. The reasons appear to be motivated by political considerations, whether indirectly – as a distraction from CADIVI's wrongful conduct – or directly, in retaliation for his support of political opponents or to target his assets.

112 U.N. Covenant, Article 14(3)(2); American Convention, Article 8(2)(c); European Convention, Article 6(3)(b).

113 Application to I/A Court in the case of *The Las Dos Erres Massacre v Venezuela*, Case 11.681, 25 July 2008, para 86, quoting I/A Court H.R., Case of Palamara Iribarne. Judgment of November 22, 2005. Series C No. 135, pp. 170.

114 U.N. Covenant, Article 14(2); American Convention, Article 8(2); European Convention, Article 6(2).

2.4.1 Punishing Chávez's Detractors

Cedeño is a target at least in part because of his support of members of the opposition. Although he has never been a vocal opponent of the Bolivarian Revolution, the government perceives him as such.¹¹⁵ This perception is based partly on his friendship with and support of Patricia Poleo and Carlos Ortega, which Chávez has taken as a personal affront.

Patricia Poleo was the editor of *El Nuevo País*, a periodical known for its fierce opposition to Chávez. Such was Chávez's rancor for Poleo that he had her charged in 2004 with complicity (i.e., intellectual authorship) in the murder of an avowed *Chavista* prosecutor, Danilo Anderson, who had been responsible for the investigation into the events of April 11, 2002. Convicting Poleo for the Anderson murder seemed calculated to punish her for opposing the Chávez regime, while linking her to the April 11 events in order to encourage public support for her prosecution. Although there was no evidence of wrongdoing by Poleo, she had ample reason for concern. Three police officers – two brothers and one cousin, all named Guevara – were convicted of carrying out Anderson's murder, solely on the basis of the testimony of a single witness, Geovanny Vásquez, who was later exposed as having been paid by the Attorney General's Office to testify falsely in the case.¹¹⁶ Significantly, Vásquez's testimony also implicated Poleo, who concluded that she was the next political target. Therefore, rather than present herself to the authorities to be subjected to a fraudulent prosecution, she left Venezuela in January 2006, and was granted political asylum in the United States. While Cedeño denies any involvement in Poleo's departure, there were rumors that Cedeño helped her leave the country.

Cedeño also had a close friendship with Carlos Ortega, the leader of the largest labor union in Venezuela, the Venezuelan Workers Union (*Confederación de Trabajadores de Venezuela* (CTV)). In that role, Ortega led a national strike to protest the "increasingly dictatorial" policies of Chávez, which culminated in the events of April 11, 2002. Ortega also rallied the management at PDVSA, the national oil company, behind a major labor strike designed to deprive Chávez of oil revenues in hopes of toppling his government. Chávez's animosity toward Ortega cannot be overstated, and he reacted by firing all of PDVSA's upper management and roughly 18,000 PDVSA employees, while Ortega himself was arrested, tried and convicted for his labor activities. Ortega subsequently escaped captivity and fled Venezuela.¹¹⁷ Rumors that Cedeño helped Ortega exit the country likely stem from the fact that Cedeño provided financial assistance to the Ortega family during Ortega's incarceration. An investigation by military prosecutors into Cedeño's role revealed no connection.

115 Cedeño was told by Diosdado Cabello, who at the time was Governor of Miranda and understood to be the #2 in the regime, that the government was "convinced" that Cedeño helped Carlos Ortega to flee the country.

116 Interview with former prosecutor Hernando Contreras, Globovisión, November 13, 2008. A portion of the interview can be viewed here: <http://tu.tv/videos/graves-declaraciones-de-ex-fiscal-contre>.

117 "Venezuela strike leader wins asylum," BBC News, March 14, 2003. <http://news.bbc.co.uk/2/low/americas/2852085.stm>.

An additional factor in Cedeño's detention appears to have been the admission of his criminal *querrela* against judicial officers Stagno and Arreaza, in which Cedeño alleged that they lied under oath concerning their professional conduct during his criminal proceedings. The order to arrest Cedeño was issued only a few days after Judge Yuri López rendered her decision admitting Cedeño's *querrela*. Additionally, Gabriel Stagno is related by marriage to Attorney General Julian Isaías Rodríguez, and Isaías Rodríguez is quoted as saying that the case against Cedeño was "a matter of honor" for him.¹¹⁸

2.4.2 Covering Up CADIVI's Complicity

The government used the Cedeño prosecution to distract attention from CADIVI's role in the Microstar currency exchange transaction. The Attorney General's Office shaped its charges against Cedeño in a way that would focus attention upon Cedeño and away from CADIVI. It refused to investigate CADIVI, and it fired the only prosecutor who was prepared to bring criminal charges against members of CADIVI's board.

The original indictment against Cedeño was based on an alleged conspiracy to smuggle by faking the import of a large shipment of computer equipment, which in fact was never shipped. This charge was irrational because a smuggling charge requires evidence that, among other things, Cedeño helped deliver fraudulent forms to SENIAT. However, while forged customs forms indeed existed, they were never delivered to SENIAT. Rather, they were delivered by CADIVI to Banco Canarias (Cedeño's employer) when CADIVI approved the currency exchange transaction. This was done in order to satisfy Banco Canarias that the necessary documentation was in order, which was Banco Canarias' only duty in the transaction. Moreover, CADIVI was the entity responsible for verifying the accuracy of the customs forms (i.e., confirming that the computers were physically held in Venezuela customs) before approving the transaction, yet it clearly failed to fulfill that obligation. These circumstances explain why the Attorney General's Office did not indict Cedeño in 2005 on charges of conspiracy to obtain foreign currency fraudulently, but opted instead for the more illogical smuggling charge. A currency charge against Cedeño would have immediately focused public attention on CADIVI and raised questions about the role of the government in the transaction.

The motivation to use Cedeño as a distraction was confirmed during the investigative phase, when the prosecution focused no attention on CADIVI's role in the transaction, despite CADIVI's duty to vet the content of the currency exchange application, and notwithstanding the fact that internal minutes from the CADIVI board meetings that approved the Microstar transaction inexplicably turned up missing. After Cedeño filed a petition (*avocamiento*) to the Criminal

118 Hernando Contreras interview with Globovisión, November 13, 2008.

Chamber of the TSJ challenging (among other things) the prosecution's failure to investigate CADIVI, the TSJ issued an order requiring the Attorney General's Office to perform a complete investigation, including an examination of public entities. However, the prosecution ignored that order, and neither CADIVI nor any of its officials was ever indicted.

Further, as described above, a prosecutor on the Cedeño case was fired for suggesting that CADIVI officials should be prosecuted. José Benigno Rojas prepared criminal charges against four members of CADIVI's board of directors, but when he sought the approval of the Attorney General to indict them, he was summarily dismissed.

While it ignored the role of CADIVI, the Attorney General's Office took the unusual step of publishing a paid "informational" advertisement in a local newspaper, linking Cedeño to the Microstar transaction and complaining about "unjustified procedural actions" by Cedeño's legal defense team. Additionally, Chávez himself publicly stated that he was holding a banker in jail and was watching him closely to ensure that he (i.e., Cedeño) did not bribe any judges to gain his freedom.

2.4.3 Purchasing Political Loyalty

Cedeño's incarceration was used as a tool to coerce Cedeño to sell his interest in two financial institutions to allies of Chávez, at an enormous discount. At the time of his incarceration in 2007, Cedeño held a substantial interest in two Venezuelan banks, Banco Bolivar and Banpro. Government officials implemented a coordinated attack against these two banks. First, Cedeño's detention forced him, under applicable banking regulations, to resign his management position in the banks. Other adverse actions included the removal of Banco Bolivar from the list of authorized purchasers of PDVSA bonds, and a systematic withdrawal of funds by various government entities who were customers of the banks. The message to Cedeño was clear, that he must sell the banks to political allies of Chávez or face dire consequences.

The first Chávez ally that appeared interested in acquiring Banpro and Banco Bolivar was Pedro Carreño, who was then Minister of Interior and Justice. While Cedeño was under indictment and shortly before his detention in 2007, Carreño sent an emissary to discuss a potential acquisition. The conversation was videotaped by security personnel who delivered a copy of the recording to Carreño to verify that the purported emissary was authorized to speak for him. That act was apparently misinterpreted by Carreño as an attempt to trap him, and his involvement ended abruptly. The pressure to sell at bargain basement prices, however, did not. Within weeks of Cedeño's incarceration, individuals closely allied to Chávez approached Cedeño and offered to purchase both banks at slightly more than half of their estimated value. These individuals admitted that the offer was well below market prices, but they noted that

Cedeño needed to consider his “situation.” Significantly, they promised Cedeño that if he agreed to sell, his legal issues would be largely resolved. Cedeño ultimately acquiesced to the pressure and sold the banks at substantial personal loss.

2.5 A Political Prisoner

Given these improper motives for prosecuting and incarcerating Cedeño – and in light of the legal, due process and human rights violations to which he has been subject – Cedeño qualifies as a political prisoner under international legal standards. While the Inter-American system has not officially adopted specific criteria for determining whether a person qualifies as a “political prisoner,” the Council of Europe (CE) did so on May 3, 2001. A person deprived of his or her personal liberty is to be regarded as a political prisoner:

1. if the detention has been imposed in violation of one of the fundamental guarantees set out in the European Convention on Human Rights and its Protocols (ECHR), in particular freedom of thought, conscience and religion, freedom of expression and information, freedom of assembly and association;
2. if the detention has been imposed for purely political reasons without connection to any offense;
3. if, for political motives, the length of the detention or its conditions are clearly out of proportion to the offense the person has been found guilty of or is suspected of;
4. if, for political motives, he or she is detained in a discriminatory manner as compared to other persons; or
5. if the detention is the result of proceedings which were clearly unfair and this appears to be connected with political motives of the authorities.¹¹⁹

2.5.1 Cedeño’s Detention is Politically Motivated

The CE Panel has two meanings for the “political” motive: a narrow meaning and a broad meaning. In the narrow sense, it uses the term “political” to refer to the singular motive to

¹¹⁹ The CE criteria are set out in numerous documents published by the Council of Europe, including SG/Inf(2001)34 and Addendum thereto, of 24th October 2001, on the Council of Europe’s website www.coe.int/sg. Following their inquiry into this matter, the CE Panel issued a report. See SG/Inf(2001)34 and Addendum thereto, of 24th October 2001, on the Council of Europe’s website <http://www.coe.int/sg>.

detain a political opponent of the ruling power for political reasons. The person concerned must be a political opponent of the ruling forces, and there must be a connection between this fact and the imprisonment.¹²⁰ The government’s motivation against Cedeño is “political” in the narrow sense because he was prosecuted in retaliation for: (1) providing financial support to political opponents of Chávez; and (2) assisting Patricia Poleo and Carlos Ortega.

In the broad sense, the CE Panel uses the term “political” to refer to any type of illegal motive or reason that is not specified under the applicable law as a strictly legal and acceptable motive. The government’s motivation is also “political” in this sense. No applicable law sanctions the allocation of any part of Cedeño’s bank assets to allies of Chávez, or the diversion of attention away from CADIVI’s role in the fraud.

2.5.2 Cedeño’s Incarceration is Out of Proportion to the Offense Charged

Article 244 of the Venezuela Code of Criminal Procedure prohibits pretrial detention in excess of two years. Article 244 permits an extension of the two-year limit only under serious circumstances, which must be demonstrated by the prosecution. In Cedeño’s case, control judge Norbis Díaz granted a two-year extension without showing any exceptional circumstances. Cedeño could potentially serve 4 ½ years in pretrial detention for alleged crimes that carry a maximum possible sentence of 9 years.

2.5.3 Cedeño Has Been Detained in a Discriminatory Manner

Cedeño has been detained in a discriminatory manner. When he was first indicted in 2005, most other members of the board of directors of Banco Canarias were indicted along with him. In the end, Cedeño was the only board member subjected to pretrial detention. Further, executives of other banks have been treated differently. Luís Quiaro, former president of Banco Industrial de Venezuela, was indicted for the identical crime as Cedeño, and Gonzalo Tirado, president of Stanford Bank in Caracas, was indicted for a similar crime. As is appropriate, neither has been incarcerated pending trial.

¹²⁰ Stefan Trechsel, *The Notion of “Political Prisoner” as Defined for Purposes of Identifying Political Prisoners in Armenia and Azerbaijan*, 23 HUM. RTS. L.J. 293, 295 (2002). (Emphasis added).

2.5.4 Cedeño's Detention Is a Result of Proceedings That Were and Are Clearly Unfair

As discussed above, the original order to detain Cedeño pending trial was unfair in that it was made without the requisite evidence that Cedeño was a flight risk or would likely interfere with the investigation. Further, he remains detained as a consequence of proceedings that have been unfair: (1) He was denied access to his case file; (2) all of his documentary evidence was disallowed; (3) the prosecution withheld exculpatory evidence; (4) commencement of the trial was unnecessarily delayed; (5) the trial was improperly suspended when it appeared that an acquittal was imminent; (6) the TSJ unnecessarily delayed ruling on Cedeño's challenge to his pretrial detention; (7) the trial proceedings were invalidated and the case was returned to the pretrial phase over the issue of Cedeño's challenge to his pretrial detention; (8) Cedeño was not released when he had served the maximum allowable term for pretrial detention; and (9) the court extended the potential duration of pretrial detention without any showing of exceptional need.

2.6 Other Victims

Cedeño is not the only victim. The Chávez administration has employed similar strategies of dubious constitutionality and legality in several other sensitive cases. The following is a non-exhaustive list of individuals who have been subjected to illegal government persecution in retaliation for their exercise of free expression and/or political activity:

- **Francisco Usón Ramírez:** Resigned as Minister of Finance following events of April 11, 2002. Incarcerated for simple statements made during television interview in 2004.
- **Ivan Simonovis, Lázaro Forero, Henry Vivas, Erasmo Bolívar, Luis Molina Cerrada, Ramón Zapata Alonso, Arube Pérez Salazar, Rafael Neazoa López, Marco Hurtado, Héctor Rovain and Julio Rodríguez:** Police officers on duty during events of April 11, 2002, under command of former government opposition leader, charged with responsibility for two deaths. Most have been tried and sentenced to 30 years incarceration, despite absence of any incriminating evidence.
- **Otto Gebauer:** Air Force Captain, sentenced to 12 years incarceration for "rebellion" after refusing to state that the events of April 11, 2002, included a plan to assassinate President Chávez.

- **Ovidio Poggioli, Jesús Farías and Rafael Farías:** Military officers incarcerated for “rebellion” and alleged armed conspiracy against President Chávez, despite absence of incriminating evidence.
- **Otoniel Guevara, Rolando Guevara and Juan Guevara:** Former police officers convicted for the murder of political prosecutor Danilo Anderson on the strength of perjury suborned with payments from the Attorney General’s Office.
- **Mónica Fernández Sánchez:** Former judge subjected to criminal investigation after refusing to dismiss charges against former Minister of Justice and Internal Affairs.
- **Mohamad Merhi, María Concepción Capote, Catalina Palencia, José Palencia, Mary Arellano, Ana Isabel Arellano, Flor De M. Ramírez De Querales, Maria Isaura Rojas, Andrés Trujillo and Fernando Joel Sánchez Colmenares:** Venezuelan citizens subjected to criminal investigation for filing petitions against the Venezuela government at the Inter-American Commission on Human Rights.
- **Alfredo Romero Mendoza, Gonzalo Himiob Santomé, Antonio Rosich Saccani:** Attorneys for various petitioners to the Inter-American Commission on Human Rights, subjected to criminal investigation.
- **Nixon Moreno:** Prominent student leader subject to criminal charges in retaliation for his opposition to the government, granted asylum by the Vatican.
- **Jose Francisco Grosso Cabrera, William Ramon Rivero, Antero Rafael Marin Gil, Reynaldo Jose Yegres Gomez, Ernesto Pereira, Jonatan Quintero, Ricardo Antonio Linero, Fernando Jesús Fermin, Eloy Jose Jiménez Fernández, Jose Alfredo Navarro Daza, Omar Alexis Guerrero Mendez, Francisco Araujo, Robert Alexander Hernández Izarra, Valdemar Jose Villareal Leon, Eloy Jose Jiménez Fernández, Jose Alfredo Navarro Daza, Jose Miguel Larrañaga Elorriaga, Emir José Moreno Colina; Jonathan Figueredo, José Ramos, Juan Carlos Ramírez, Daniel Alfaro and Héctor Marcano; and (Oil Workers, Los Semerucos) José David Velazco Acosta, José David Jiménez Aular, Esteban Segundo Velazco Moreno, Roberto Raúl Acosta Jean Carlos Sánchez Gauna, José Gregorio Romero, Rafael Gutiérrez, Jeisy Noroño Ventura, Daysi Maria Noroño V., Magali Cárdenas De Rincón, José Leonardo Reyes, Reyes Prada Nelson, Apolonio Peraza, Juan José De Freitas Serrano, Johnny Antonio Blanco, Ricardo Javier Noguera, Carlos Eduardo Segura, Karl Ernesto Arcaya W., Enrique Castro Camacho, Baldemiro Landino, Adrián R. Jatem, Pedro Osteicochea, Ciro Alfredo Cardozo Moreno, Luis Alfredo Salazar Y Roberto Antonio Acosta Alcalá:** Merchant marines and PDVSA employees arrested for participating in national labor strikes in 2002 and 2003.
- **Ibeyse Pacheco:** Prominent journalist investigated and prosecuted for reporting on alleged official corruption and fraud.

- **José Humberto Quintero:** Lieutenant Colonel in the National Guard, arrested, tortured and incarcerated for his role in capturing leader of the Colombian FARC terrorist group.
- **Felipe Rodríguez:** National Guard General prosecuted criminally in retaliation for opposing President Chávez during the events of April 11, 2002.
- **María Corina Machado, Alejandro Plaz, Ricardo Estevez and Luis E. Palacios:** Leaders of electoral monitoring NGO Súmate, charged criminally in retaliation for revealing electoral irregularities unfavorable to the government.
- **Carlos Alberto Millán Millán:** Admiral charged with “rebellion” and weapons possession in retaliation for opposing the government.
- **Carlos Alberto Millán Alvarado:** Charged with weapons possession in retaliation for opposing the government.
- **Raúl Baduel:** Former Army General charged with alleged corruption in retaliation for his efforts to defeat constitutional amendments proposed by President Chávez, and for urging military forces to respect the outcome of the referendum.
- **Yon Goicoechea:** Prominent member of opposition party and former student leader, subject to criminal investigation in retaliation for political activism.
- **Patricia Poleo:** Journalist and vocal critic of Chávez, charged with murder based on false testimony purchased by the Attorney General’s Office.
- **Carlos Ortega:** Head of labor union and leader of national strike in 2002-03 against Chávez’s policies. Tried and convicted for his labor activities. Subsequently granted political asylum in Peru.
- **Leopoldo López:** Prominent leader of political opposition, subject to criminal investigation and wrongfully barred by Supreme Court from participating in elections.
- **Henrique Capriles:** Prominent leader of political opposition, subject to criminal investigation and incarceration.
- **Manuel Rosales:** Presidential candidate in opposition to Chávez in 2006, subject to criminal investigation. Granted political asylum in Peru.
- **Antonio Ledezma:** Prominent leader of political opposition, elected Mayor of the Metropolitan District (Caracas) in 2008. His position was effectively usurped by 2009 law permitting Chávez to designate unelected “regional executive authorities” to rule over mayors and governors. All resources stripped from budget of Metropolitan District and assigned to budget of new Caracas “Regional Authority” Jackeline Farías.

- **Gabriel Gallo, Miguel Ponte, Héctor Castro, Elías Capogian, Dereck Blanco, Andrés Senior, Alejandro Mejía and Alejandro Aguirre:** Students subject to criminal investigation in retaliation for their participation in protests in February 2008 against proposed amendments to the Constitution.
- **José Dacre (a/k/a “Maraco”):** Venezuelan citizen subject to criminal charges in retaliation for attending student protests in January 2009.
- **Federico Black, Carlos Velar, Rafael Del Rosario and Alejandro Pulido:** Subject to criminal charges for participating in student protests in January 2009.
- **Delfín Gómez:** Army general, incarcerated in retaliation for exposing official fraud.
- **José Sánchez:** Police officer, incarcerated in retaliation for political activities.
- **Luis Rodríguez:** Attorney, incarcerated in retaliation for political activities.
- **Diana Mora:** Attorney, incarcerated in retaliation for political activities.
- **Silvio Mérida:** Engineer, incarcerated in retaliation for political activities.
- **Raúl Díaz Peña:** Engineer, incarcerated in retaliation for political activities.
- **Wilfredo Barroso:** General (National Guard), incarcerated in retaliation for political activities.
- **Marianela Salazar:** Journalist, facing criminal charges in retaliation for critical stance toward government.
- **Nelson Bocaranda:** Journalist, facing criminal charges in retaliation for critical stance toward government.
- **Gustavo Azócar:** Journalist, facing criminal charges in retaliation for critical stance toward government.
- **250+ Students:** Arrested and subject to criminal charges in retaliation for protesting Chávez’s decision to deny TV station RCTV a license renewal.

Conclusion

The rule of law in Venezuela is in a state of decay, as Chávez continues to value power and influence over human rights. He has subverted the institutions of government, including the criminal justice system, which he uses as a personal weapon against his political opponents. Patterns of judicial attack include: (1) official condemnation in the media; (2) false criminal charges; (3) controlled assignment of sensitive cases to pliable judges; (4) persistent and flagrant due process violations; (5) prosecutorial misconduct; (6) manifestly erroneous court rulings; and (7) executive interference with undesirable decisions by the judiciary.

Given these practices, decisions of the Venezuela's judiciary should be viewed with great skepticism where political currency is implicated. The first step toward remedying these conditions necessarily involves the immediate release of all individuals who are incarcerated in Venezuela in violation of local and international law, including Eligio Cedeño.

In the past, diplomatic pressure on the Chávez regime has been relatively light, owing in part to misunderstandings about the legitimacy of the government and its methods. The truth about conditions in Venezuela, however, is emerging, and outside observers can no longer simply point to the elections process in Venezuela as an indicator that intervention is not required or appropriate. The international community should apply political pressure, for the sake of human rights and the people of Venezuela.

For more information on the this case and human rights in Venezuela,
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