Report on the State of the Independence of the Judiciary in Venezuela

Legal Report

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I. Introduction

The purpose of this report is to present the most relevant and recent events in relation to the state of the independence of the judiciary in Venezuela for the consideration of the United Nations Special Rapporteur on the Independence of Judges and Lawyers (UN Special Rapporteur), to allow the agency to take actions pursuant to its mandate.

This report documents: (1) the implementation of a mechanism for the arbitrary appointment and removal of judges, in violation of the principles of stability and tenure of judges; (2) the passing of the 2004 Organic Law of the Supreme Court and the subsequent stacking of the judiciary with judges loyal to the ruling party; (3) the statements by President Hugo Chávez and several justices of the Supreme Court, indicating that the judiciary must be subservient to the executive branch; and (4) recent statements by former Supreme Court Justice Eladio Aponte, in which he describes specific actions carried out by members of the executive and the judiciary that corroborate the situation of subordination of the judiciary to the executive power and reveal the critical state of the justice system in Venezuela.

II. The implementation of a mechanism for the arbitrary appointment and removal of judges, in violation of the principles of stability and tenure of judges, as part of the guarantee of access to impartial judges and courts

The erosion of the independence of the judiciary in Venezuela started in 1999—years prior to the stacking of the Supreme Court in 2004—with the implementation of a mechanism for the arbitrary appointment and removal of judges with provisional status. This mechanism was first implemented in 1999 by the Venezuelan Constituent Assembly, with the creation of a "transitory regime" for the "reorganization of all government bodies" due to an alleged "national emergency" in response to a "serious political, economic, social, moral and institutional crisis, which has led to the collapse of the public powers…"[1]

[1] See decree on the reorganization of all government bodies issued by the National Constituent Assembly on August 12, 1999, published in the Official Gazette No. 36,764 of August 13, 1999. (Spanish original: "*La Asamblea Nacional Constituyente, en nombre y representación del pueblo de Venezuela en ejercicio del Poder Constituyente otorgado por éste mediante referéndum realizado democráticamente el 25 de abril de 1999, para transformar al Estado y crear un nuevo ordenamiento jurídico que permita el funcionamiento efectivo de una democracia social y participativa, y de conformidad con lo dispuesto en el art. 1 del estatuto de esta Asamblea. Considerando: Que la República vive una grave crisis política, económica, social, moral e institucional, que ha llevado al colapso a los órganos del Poder Público y mantiene a la mayoría de la población en un inaceptable estado de empobrecimiento, con el cual se vulnera los más elementales derechos humanos. Considerando: Que la crisis institucional de los poderes públicos tiene carácter estructural e influye en forma determinante en la imposibilidad de que dichas instituciones puedan por sí mismas superar la crisis. Decreta. Único: En razón de la emergencia nacional existente en el país con anterioridad a la instalación de esta Asamblea, se declara la reorganización de todos los órganos del Poder Público. La Asamblea Nacional Constituyente decretará las medidas necesarias para enfrentar situaciones específicas de la reorganización y dispondrá la intervención, modificación o suspensión de los órganos del Poder Público que así considere, con el fin de recuperar el Estado de Derecho, la estabilidad y el orden necesarios para reconstruir la República en el marco de los valores democráticos*.")

This mechanism resulted in the prevalence of provisional judges, who can be freely appointed and removed, in violation of the principles of stability and tenure of judges as part of the guarantee of access to impartial judges and courts.

a. Principles of stability and tenure of judges as part of the guarantee of access to impartial judges and courts

Article 14.1 of the International Covenant on Civil and Political Rights establishes that States have the international obligation to guarantee access to independent and impartial judges and courts. Regarding the judge's right to tenure, the Basic Principles on the Independence of the Judiciary, adopted by the Seventh UN Congress on the Prevention of Crime and the Treatment of Offenders, set forth that:[2]

> 11. The term of office of judges, their independence, security, adequate remuneration, conditions of service, pensions and the age of retirement shall be adequately secured by law.
>
> 12. Judges, whether appointed or elected, shall have guaranteed tenure until a mandatory retirement age or the expiry of their term of office, where such exists.

However, the guarantee of stability and tenure of judges is not absolute. According to the UN Human Rights Committee, "[j]udges may be dismissed only on serious grounds of misconduct or incompetence, in accordance with fair procedures ensuring objectivity and impartiality set out in

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See Decree on the Reorganization of the Judiciary and the Penitentiary System issued by the National Constituent Assembly on August 19, 1999, published in the Official Gazette No. 36,805 of October 11, 1999. (Spanish original: "*Se declara el Poder Judicial en emergencia y reorganización, para garantizar la idoneidad de los jueces, prestar defensa pública social y asegurar la celeridad, transparencia e imparcialidad de los procesos judiciales, a los fines de adecentar al sistema judicial. Dicha declaratoria también recae sobre el Sistema Penitenciario, para convertir los establecimientos penitenciarios en verdaderos centros de rehabilitación de reclusos bajo la dirección de penitenciarista profesionales con credenciales académicas universitarias*.")

See Decision No. 2009-0008 issued by the Supreme Court on March 18, 2009 that establishes the continued restructuring of the entire Venezuelan judiciary. (Spanish original: "Article 1: *La reestructuración integral de todo el Poder Judicial Venezolano. art.2: A los fines de garantizar la eficiencia y eficacia del proceso de reestructuración, los jueces y juezas y el personal administrativo del Poder Judicial serán sometidos a un proceso obligatorio de evaluación institucional. art. 3: Se autoriza a la Comisión Judicial del Tribunal Supremo de Justicia suspender con o sin goce de sueldo, a los jueces y personal administrativo que no aprueben la evaluación institucional. art.4: Los cargos vacantes como consecuencia del proceso de reestructuración, serán cubiertos por la Comisión Judicial, los cuales serán ratificados posteriormente por la Sala Plena del Tribunal Supremo de Justicia. art.5: Queda encargada la Comisión Judicial del Tribunal Supremo de Justicia de la ejecución de la presente Resolución y la Dirección Ejecutiva de la Magistratura actuará conforme las instrucciones de la Comisión Judicial. art.6: La presente Resolución tendrá una vigencia de un (1) año contado a partir de su aprobación por la Sala Plena, pudiendo ser prorrogada su vigencia por un lapso igual por acuerdo de la Sala Plena*.")

[2] See the Basic Principles on the Independence of the Judiciary adopted by the Seventh UN Congress on the Prevention of Crime and the Treatment of Offenders, held in Milan from August 26 to September 6, 1985, and endorsed by General Assembly resolutions 40/32 of November 29, 1985 and 40/146 of December 13, 1985. Available at: http://www2.ohchr.org/english/law/indjudiciary.htm

the constitution or the law."[3] In relation to the discipline, suspension, and removal of judges, the Basic Principles on the Independence of the Judiciary provide that:

> 17. A charge or complaint made against a judge in his/her judicial and professional capacity shall be processed expeditiously and fairly under an appropriate procedure. The judge shall have the right to a fair hearing. The examination of the matter at its initial stage shall be kept confidential, unless otherwise requested by the judge.
>
> 18. Judges shall be subject to suspension or removal only for reasons of incapacity or behaviour that renders them unfit to discharge their duties.

Within the inter-American context, article 8 of the American Convention on Human Rights (ACHR) establishes that "[e]very person has the right to a hearing, with due guarantees and within a reasonable time, by a competent, independent, and impartial tribunal…"

In its report on the Carranza v. Argentina case, the Inter-American Commission on Human Rights (IACHR) restated the principles of stability and tenure of judges, expressing that:[4]

> This system creates stability on the bench; if a judge is to be removed, then such removal must be done in strict accordance with the procedure established in the Constitution, as a safeguard of the democratic system of government and the rule of law. The principle is based on the very special nature of the function of the courts and to guarantee the independence of the [j]udiciary vis-à-vis the other branches of government and political-electoral changes.

Ultimately, the Inter-American Democratic Charter, adopted by the General Assembly of the Organization of American States (OAS) on September 11, 2001, reaffirmed that the promotion and protection of human rights is a basic prerequisite for the existence of a democratic society, that the separation of powers and independence of the branches of government is an essential element of representative democracy, and that democracy itself is indispensable for the effective exercise of human rights and fundamental freedoms.[5]

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[3] See Human Right Committee's General Comment No. 32, Article 14: Right to equality before courts and tribunals and to a fair trial, CCPR/C/GC/32, Para. 20. Available at: http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G07/437/71/PDF/G0743771.pdf?OpenElement

[4] Inter-American Commission on Human Rights. Report No. 30/97. Carranza v. Argentina, Para. 41. Available at: http://www.cidh.oas.org/annualrep/97eng/Argentina10087.htm

[5] See article 3 of the Inter-American Democratic Charter. According to general international law, unlike the Charter of the OAS (which is a treaty, thus, a binding document), the Inter-American Democratic Charter being a general assembly resolution would be considered a recommendation. However, there are at least three solid arguments that support the binding character of the Democratic Charter's democracy clause. First, pursuant to the preamble of the Democratic Charter ("[b]earing in mind the progressive development of international law and the advisability of *clarifying the provisions set forth in the OAS Charter* and related basic instruments on the preservation and defense of democratic institutions, according to established practice) (emphasis added), signatory OAS States in 2001 seem to have approved it as an interpretation of the OAS Charter's democracy clause. Following the Vienna Convention on the Law of Treaties (Art. 31), this general assembly resolution would then have the same binding status as the

b. Elimination of the guarantee of stability and tenure of judges, as a result of the constitutional reform and the laws of "emergency" and "reorganization" of the judiciary

b.1 The constitutional reform, the laws of emergency and reorganization of the judiciary and the high percentage of judges with a provisional status

On August 19, 1999, the Constituent Assembly—by the Decree on the Reorganization of the Judiciary and the Penitentiary System—declared the emergency and reorganization of the judiciary and established a Judicial Emergency Commission whose authority included: the preparation of a national plan for the evaluation and selection of judges, organization of the selection process for judges through competitive examinations for posts for all the courts and judicial circuits, and designation of the corresponding selection panels, among others.

This decree eliminated the law-mandated stability of judges in office, providing that all judges would be subject to challenge and competition in order to fill their posts. Furthermore, the decree established that the Constituent Assembly's declaration of a judicial emergency would be in force until the new Constitution of Venezuela was adopted.[6]

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treaty it interprets. *See* Hubert, Jean-Paul (ed.), *Follow-up on the Application of the Inter-American Democratic Charter*, CJI/doc.317/09 corr.1 (Inter-American Juridical Committee), at 16-19 (quoting drafters of the Democratic Charter supporting this thesis at the time of its approval); EL-HAGE, Javier, LÍMITES DE DERECHO INTERNACIONAL PARA LA ASAMBLEA CONSTITUYENTE: DEMOCRACIA, DERECHOS HUMANOS, INVERSIONES EXTRANJERAS Y CONTROL DE DROGAS, 2006, 181ff (putting forth further arguments in favor of this thesis). *See also* Vio Grossi, Eduardo, in Inter-American Juridical Committee, *Follow-up on the Application of the Inter-American Democratic Charter*, 2007 ANNUAL REPORT, at 94, 95. [hereinafter CJI 2007] Second, even if its binding status was debatable, the Democratic Charter would still be binding on the organs of the OAS, called upon to apply the democracy clause. *See* Vio Grossi, *id.*, at 94. Third, the democracy clause may also be considered regional customary international law on democracy (*opinio iuris* and *consuetudo*). *See* EL-HAGE, *id.*, at 154 (citing Lagos & Rudy); Hubert, *id.*, at 12, 17 (citing Graham, the Inter-American Juridical Committee and Rodríguez Cuadros); and Vio Grossi, *id.*

[6] See Decree on the Reorganization of the Judiciary and the Penitentiary System issued by the National Constituent Assembly on August 19, 1999, published in the Official Gazette No. 36,805 of October 11, 1999. (Spanish original: "Article 1. *Declaratoria de reorganización del [p]oder [j]udicial. Se declara el [p]oder [j]udicial en emergencia y reorganización, para garantizar la idoneidad de los jueces, prestar defensa pública social y asegurar la celeridad, transparencia e imparcialidad de los procesos judiciales, a los fines de adecentar al sistema judicial. Dicha declaratoria también recae sobre el [s]istema [p]enitenciario, para convertir los establecimientos penitenciarios en verdaderos centros de rehabilitación de los reclusos bajo la dirección de penitenciarista [sic] profesionales con credenciales académicas universitarias. Art. 3.- Competencias de la Comisión de Emergencia Judicial. 5. a). Elaborar el Plan Nacional de Evaluación y selección de jueces, organizar el proceso de selección de los jueces mediante concursos públicos de oposición para todos los tribunales y circuitos judiciales y seleccionar los jurados correspondientes. Art. 12.- Supresión de la estabilidad de los jueces en funciones. A los fines de la realización de los concursos públicos de oposición para cubrir la totalidad de los cargos de jueces, queda sin efecto la estabilidad establecida por ley a los actuales jueces en función quienes podrán competir en los concursos públicos de oposición que se abrirán para cubrir sus cargos. Igualmente, queda suprimida la estabilidad de los funcionarios del Consejo de la Judicatura, los Tribunales y Circuitos Judiciales. Art. 32.- Vigencia de la Emergencia Judicial. La*

After the new Venezuelan Constitution was approved on December 20, 1999, and in order to allow it to take effect immediately,[7] on December 22, 1999, the Constituent Assembly dictated the Decree on the Public Authorities Transition Regime. This decree created the Commission for the Restructuring and Operation of the Judicial System (CROJS), which took over the powers granted to the Judiciary Council, the Judicial Emergency Commission and the Judiciary's Executive Directorate (JED), pending the organization and operation of the latter were fully implemented, as provided for in the new Constitution.[8]

The CROJS was a transitory body[9] created to exercise disciplinary jurisdiction that could lead to the discharge or removal of judges,[10] pending the passing of legislation and the

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Declaratoria de Emergencia Judicial por parte de la Asamblea Nacional Constituyente tendrá vigencia hasta que sea sancionada la nueva Constitución de Venezuela.")

[7] See Decree on the Public Authorities Transition Regime published in Official Gazette No. 36,920 on March 28, 2000. (Spanish original: "*Art. 1. El presente régimen de transición regulará la reestructuración del [p]oder [p]úblico con el propósito de permitir la vigencia inmediata de la Constitución aprobada por el pueblo de Venezuela y proclamada por la Asamblea Nacional Constituyente*.")

[8] Ibid. (Spanish original: "*Art. 21. El Consejo de la Judicatura, sus salas y dependencias administrativas pasarán a conformar la Dirección Ejecutiva de la Magistratura, adscrita al Tribunal Supremo de Justicia, de conformidad con el artículo 267 de la Constitución aprobada por el pueblo de Venezuela. Mientras el Tribunal Supremo de Justicia no organice la Dirección Ejecutiva de la Magistratura, las competencias de gobierno y administración, de inspección y vigilancia de los tribunales y de las defensorías públicas, así como las competencias que la actual legislación le otorga al Consejo de la Judicatura en sus salas Plena y Administrativa, serán ejercidas por la Comisión de Funcionamiento y Reestructuración del Sistema Judicial. Art. 22. Los derechos y obligaciones asumidos por la República, por órgano del Consejo de la Judicatura, quedan a cargo de la Comisión de Funcionamiento y Reestructuración del Sistema Judicial y de la Dirección Ejecutiva de la Magistratura del Tribunal Supremo de Justicia... Art. 25. Las atribuciones otorgadas a la Comisión de Emergencia Judicial, por medio de los Decretos de Reorganización del Poder Judicial, particularmente el publicado en la Gaceta Oficial de la República de Venezuela No 36.782, de fecha ocho de septiembre de mil novecientos noventa y nueve, serán ejercidas por la Comisión de Funcionamiento y Reestructuración del Sistema Judicial.*")

See information available in the Venezuelan Supreme Court official website, Información General de Comisión de Funcionamiento y Reestructuración. Available in Spanish at: http://cfr.tsj.gov.ve/informacion_general.asp?id=029

See Rules of Procedure of the Commission for the Restructuring and Operation of the Judiciary System, published in the Official Gazette No. 37,080 of November 17, 2000. Article 1. (Spanish original: "*El objeto del presente Reglamento es regular la organización, funcionamiento y procedimiento de la Comisión de Funcionamiento y Reestructuración del Sistema Judicial, órgano creado por la Asamblea Nacional Constituyente mediante Decreto sobre el Régimen Transitorio del Poder Público, publicado en la Gaceta Oficial de la República de Venezuela N° 36.857 de 27 de diciembre de 1999, reimpreso en Gaceta Oficial N° 36.859 de 29 de diciembre de 1999, la cual tiene a su cargo funciones disciplinarias contra los jueces y juezas del país, mientras se dicte la legislación y se materialice la jurisdicción disciplinaria, de conformidad con lo establecido en los artículos 22 y 28 del Decreto sobre el Régimen Transitorio del Poder Público así como por la Disposición Derogatoria Única, letra e) de la Ley Orgánica del Tribunal Supremo de Justicia*.")

[9] See Decision No. 001-2011 issued by the Commission for the Restructuring and Operation of the Judicial System on June 29, 2011. Para. 4. (Spanish original: "*Que la competencia de la Comisión de Funcionamiento y Reestructuración del Sistema Judicial, era de carácter transitorio conforme se desprende de lo dispuesto en el Decreto del Régimen de Transición del Poder Público de fecha 22 de diciembre de 1999, publicado en la Gaceta Oficial N° 36.859, en fecha 29 de ese mismo mes y año; en la Normativa sobre Dirección, Gobierno y Administración del Poder Judicial dictada por el Tribunal Supremo de Justicia en el año 2000; así como en las sentencias dictadas por la Sala Constitucional, específicamente las números 1057 del 1° de junio de 2005, 1793 del 9 de julio de 2005 y 1048 del 18 de mayo de 2008; y la Disposición Transitoria Primera del Código de Ética del Juez Venezolano y Jueza Venezolana, por lo que a partir de la entrada en vigencia del citado Código y una vez constituido el Tribunal Disciplinario Judicial y la Corte Disciplinaria, cesará en el ejercicio de sus competencias*.")

establishment of permanent disciplinary tribunals, in accordance to the new Constitution and the Code of Ethics for the Venezuelan Judge.[11] However, this code was passed only in 2009, over a decade after. So the CROJS exercised powers for twelve years, until the establishment of the disciplinary tribunals in 2011, pursuant to the code.[12]

On August 2, 2000, the Supreme Court issued the Regulations for the Direction, Regulation, and Administration of the Judiciary, under which both the JED[13] and the Judicial Commission (JC) were created.[14] According to these regulations, the JC was created for the purpose of exercising, by delegation, the functions of control and supervision of the JED[15] and other functions established in article 28 of the same regulations.[16]

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[10] See Decree on the Public Authorities Transition Regime, supra note 6, Article 23. (Spanish original: "*La competencia disciplinaria judicial que corresponde a los tribunales disciplinarios, de conformidad con el art. 267 de la Constitución aprobada, será ejercida por la Comisión de Funcionamiento y Reestructuración del Sistema Judicial de acuerdo con el presente régimen de transición y hasta que la Asamblea Nacional apruebe la legislación que determine los procesos y tribunales disciplinarios.*")

[11] See the Constitution of the Bolivarian Republic of Venezuela, Article 267. (Spanish original: "*Corresponde al Tribunal Supremo de Justicia la dirección, el gobierno y la administración del poder judicial, la inspección y vigilancia de los tribunales de la República y de las Defensorías Públicas. Igualmente, le corresponde la elaboración y ejecución de su propio presupuesto y del presupuesto del poder judicial. La jurisdicción disciplinaria judicial estará a cargo de los tribunales disciplinarios que determine la ley. El régimen disciplinario de los magistrados o magistradas y jueces o juezas estará fundamentado en el Código de Ética del Juez Venezolano o Jueza Venezolana, que dictará la Asamblea Nacional. El procedimiento disciplinario será público, oral y breve, conforme al debido proceso, en los términos y condiciones que establezca la ley. Para el ejercicio de estas atribuciones, el Tribunal Supremo en pleno creará una Dirección Ejecutiva de la Magistratura, con sus oficinas regionales.*")

[12] See Decision No. 001-2011, supra note 8, operative paragraph. (Spanish original: "*Dar cumplimiento a lo establecido en la Disposición Transitoria Primera del Código de Ética del Juez Venezolano y Jueza Venezolana, que textualmente preceptúa: …A partir de la entrada en vigencia del presente Código, y una vez constituido el Tribunal Disciplinario Judicial y la Corte Disciplinaria Judicial, la Comisión de Funcionamiento y Reestructuración del Sistema Judicial cesará en el ejercicio de sus competencias y, en consecuencia, las causas que se encuentren en curso se paralizarán y serán remitidas al Tribunal Disciplinario Judicial…*")

[13] See the Regulations for the Direction, Regulation, and Administration of the Judiciary, Article 1. (Spanish original: "*Se crea la Dirección Ejecutiva de la Magistratura, como órgano auxiliar del Tribunal Supremo de Justicia, con la finalidad de que ejerza por delegación las funciones de dirección, gobierno y administración del [p]oder [j]udicial.*")

[14] Ibid, Article 30. (Spanish original: "*Conforme a las previsiones contenidas en los artículos 22 y 28 del Decreto sobre el Régimen de Transición del Poder Público, dictado por la Asamblea Nacional Constituyente, en la indicada fecha de iniciación del funcionamiento efectivo de la dirección Ejecutiva de la Magistratura, la Comisión de Funcionamiento y Reestructuración del Sistema Judicial cesará en las funciones que correspondían al extinto Consejo de la Judicatura en su Sala Plena y en su Sala Administrativa, las cuales ha venido desempeñando de acuerdo a lo establecido en dicho Decreto. La Comisión de Funcionamiento y Reestructuración, reorganizada en la forma que lo determine el Tribunal Supremo de Justicia, sólo tendrá a su cargo funciones disciplinarias, mientras se dicta la legislación y se crean los correspondientes Tribunales Disciplinarios.*")

[15] Ibid, Article 2. (Spanish original: "*Se crea la Comisión Judicial, como órgano del Tribunal Supremo de Justicia, con la finalidad de que ejerza por delegación las funciones de control y supervisión de la Dirección Ejecutiva de la Magistratura y las demás previstas en esta [n]ormativa.*")

[16] Ibid, Article 28. (Spanish original: "*La Comisión Judicial tendrá, entre otras, las siguientes atribuciones:*
a. Aprobar la normativa que corresponde dictar a la Dirección Ejecutiva de la Magistratura.
b. Proponer a la Sala Plena el nombramiento y remoción de los tres Directores que integran el Comité Directivo de la Dirección Ejecutiva de la Magistratura.
c. Designar y sustituir al Coordinador del Comité Directivo de la Dirección Ejecutiva de la Magistratura.

In addition to these functions and according to the Supreme Court, "…the Judicial Commission is [also] delegated by the Supreme Court to appoint judges of a provisional or temporary nature and to remove them when there are no disciplinary grounds…"[17]

In *the case of Chocrón Chocrón v. Venezuela*, the Venezuelan State acknowledged that "the process of restructuring the Venezuelan [j]udiciary required the temporary appointment of judges to cover the existing vacancies and to guarantee the continuity of the system for the administration of justice" and that "[t]hese non-permanent judges have been appointed exceptionally by a decision of the Judicial Emergency Commission, the Judicial Commission of the Supreme Court of Justice, or the plenary chamber of the highest court, without taking a competitive examination to obtain the post."

Under this legal regime, provisional judges that could be freely appointed and removed proliferated. Between 2002 and 2004, provisional judges constituted 80 percent of the Venezuelan judiciary.[18] This number dropped to 44 percent by the end of 2008[19] but went up again in 2010, to 56 percent.[20]

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d. Proponer a la Sala Plena las políticas que debe seguir la Dirección Ejecutiva de la Magistratura y velar por su cumplimiento.
e. Presentar a la Sala Plena, para su discusión y aprobación, los proyectos de presupuesto del poder judicial, tanto ordinarios como extraordinarios.
f. Mantener informada a la Sala Plena, en forma periódica, sobre sus actuaciones y las de la Dirección Ejecutiva de la Magistratura.
g. Evaluar, cuando menos trimestralmente, los informes que sobre los resultados de su gestión le presente el Comité Directivo de la Dirección Ejecutiva de la Magistratura.
h. Proponer a la Sala Plena la normativa sobre la organización y el funcionamiento de la Inspectoría General de Tribunales, del Servicio de la Defensa Pública y de la Escuela Judicial.
i. Ejercer el control sobre la Inspectoría General de Tribunales, el Servicio de la Defensa Pública y la Escuela Judicial.
j. Proponer a la Sala Plena los candidatos para la designación del Inspector General de Tribunales y de su suplente. Igualmente podrá proponer su remoción.
k. Proponer a la Sala Plena los candidatos para la designación del Director del Servicio de la Defensa Pública y para la designación de su Suplente. Igualmente podrá proponer su remoción.
l. Proponer a la Sala Plena los candidatos para la designación del Director de la Escuela Judicial. Igualmente podrá proponer su remoción.")

[17] See Inter-American Court of Human Rights, Case of Chocrón Chocrón v. Venezuela. Preliminary Objection, Merits, Reparations and Costs. Judgment of July 1, 2011. Series C No. 227. Para. 62. Available at: http://www.corteidh.or.cr/docs/casos/articulos/seriec_227_ing.pdf
See judgment No. 2414 of the Constitutional Chamber of the Supreme Court of Justice of December 20, 2007. (Spanish original: "…*que la Comisión Judicial es un órgano de la Sala Plena del Tribunal Supremo de Justicia, al que ésta le ha asignado la función de designar y remover jueces, pero siempre sujeta a la determinación de dicha Plena [sic]. En efecto, esta Sala (vid. sentencia N° 01798 del 19 de octubre de 2004) señaló que la Comisión Judicial es '(…) la representación abreviada de la totalidad de los miembros que componen el Tribunal Supremo de Justicia, al punto que se encuentra integrada por un magistrado de cada una de las Salas', legitimada 'para actuar por delegación en las tareas que le sean asignadas por la Sala Plena del Tribunal Supremo de Justicia, dentro del amplio espectro que conlleva la dirección, gobierno y administración del poder judicial', lo cual implica el ingreso y permanencia de los jueces*.") Available in Spanish at: http://www.tsj.gov.ve/decisiones/scon/Diciembre/2414-201207-07-1417.htm

[18] See the 2004 Annual Report of the Inter-American Court of Human Rights. Available at: http://www.cidh.oas.org/annualrep/2004eng/chap.5b.htm

b.2 Elimination of the guarantee of stability and tenure of judges in Venezuela

In its August 5, 2008 judgment on the *case of Apitz Barbera et al ("First Court of Administrative Disputes") v. Venezuela*, the Inter-American Court on Human Rights (IACourtHR) stated that "…the States are bound to ensure that provisional judges be independent and therefore must grant them some sort of stability and permanence in office, for to be provisional is not equivalent to being discretionally removable from office".[21]

In *the case of Chocrón Chocrón v. Venezuela*, the State acknowledged that "these judges, known as provisional judges, are not on a judicial career and, therefore, are excluded from the benefits of stability and permanence."[22] Both the political-administrative chamber and the constitutional chamber of the Supreme Court maintained the same line of reasoning.[23]

In 2009, the IACHR stated that:[24]

> … the regime of judicial tenure enshrined in the Constitution and required by the principles of international law is not upheld when the institutional mechanism regulating it is provisional and temporary, as is the case with the Commission for the Functioning and Restructuring of the Judicial System.

See Case of Chocrón Chocrón v. Venezuela, supra note 17, Para 69.

[19] See Case of Chocrón Chocrón v. Venezuela, supra note 17, Para 69.

[20] Ibid, Para. 71. (According to the information mentioned in this speech by the chief justice of the Supreme Court of Venezuela, the Court observes the following: (i) in 2010, the Judicial Commission appointed 1,064 provisional and temporary judges, which represents 56% of all the judges in Venezuela, based on a total of 1,900 judges throughout the country, and (ii) the Judicial Commission annulled 67 appointments and the CROJS filed 40 disciplinary procedures that ended in removal. For his part, expert witness Canova indicated that "a review […] of the decisions of the Judicial Commission published on the [SCJ] website in 2010 […] revealed that at least 58 provisional and temporary judges from different judicial circuits in Venezuela and of different categories or levels were removed [by the said Commission] in this free, discretionary manner […] without a prior proceeding or justification).
See complete speech, available in Spanish only:
http://www.tsj.gov.ve/informacion/miscelaneas/discursoapertura2011.pdf. In this speech, the chief justice of the Supreme Court stated that as of 2010, out of a total of 1,900 judges, the JC designated 206 provisional judges, 858 temporary judges and 315 judges pro tem. She also indicated that during 2010, the JC had annulled 67 appointments of provisional or temporary judges and ordered the precautionary suspension of 40 permanent judges. With regard to the CROJS, the chief justice of the Supreme Court mentioned that in 2010, 106 final rulings were delivered, 97 of them were punitive (23 reprimands, 13 suspensions, 40 removals, 21 declarations of responsibility) and 9 acquittals.

[21] Inter-American Court of Human Rights. Case of Apitz Barbera et al ("First Court of Administrative Disputes") v. Venezuela. Preliminary Objection, Merits, Reparations, and Costs. Judgment of August 5, 2008. Series C No. 182. Para. 43. Available at:
http://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&cad=rja&ved=0CCkQFjAA&url=http%3A%2F%2Fwww.corteidh.or.cr%2Fdocs%2Fcasos%2Farticulos%2Fseriec_182_ing.doc&ei=Ld9gUPSbJanX0QHazYC4AQ&usg=AFQjCNGi9gBJ0lb5kNX6hEFZhy-RZFi0Cg&sig2=g2FykrFlhFXDDFQZX1SK1Q

[22] See case of Chocrón Chocrón v. Venezuela, supra note 17, Para. 50.

[23] Ibídem, Para. 67.

[24] Inter-American Commission on Human Rights. Democracy and Human Rights in Venezuela. OEA/Ser.L/V/II, December 30, 2009. Para. 252 and 301. Available at:
http://www.cidh.oas.org/countryrep/Venezuela2009eng/VE09.TOC.eng.htm

> [T]he fact that [the dismissal of judges] occurred almost immediately after the judges in question handed down judicial decisions in cases with a major political impact, combined with the fact that the resolutions establishing the destitution do not state with clarity the causes that motivate the decision, nor do they refer to the procedure through which the decision was adopted, sends a strong signal —to society and to other judges— that the judiciary does not enjoy the freedom to adopt rulings that go against government interests and [that], if they do so, they face the risk of being removed from office.

Both the *case of Chocrón Chocron v. Venezuela* and the *case of Reverón Trujillo v. Venezuela*, brought before the IACourtHR, are clear examples of the consequences of the proliferation of provisional judges in Venezuela.

b.2.1 The case of *Chocrón Chocrón v. Venezuela*

Provisional Judge Mercedes Chocrón Chocrón was removed from office by the JC through a resolution that did not provide any kind of justification.[25] In the application filed against the State of Venezuela, the IACHR argued that the State was responsible for the

> …arbitrary removal of the victim from her post as Judge of First Instance for Criminal Matters of the Metropolitan Caracas Judicial Circuit, without affording her any minimum guarantees of due process and without adequate justification, without giving her the possibility to be heard and to exercise her right of defense, and without allowing her any effective judicial remedy against violations, all as a consequence of the absence of guarantees in the transition process of the [j]udiciary.[26]

The IACHR indicated that "the facts of this case provide another example of the problems resulting from the provisional status of judges in the process of transition of the [j]udiciary in Venezuela," that "the transitional regulations applied to the victim (which centered on the authority granted to the Judicial Commission […]) do not meet international standards on judicial independence and guarantees of due process," and that "this case reflects the harmful effects that the lack of guarantees in the transition process of the [j]udiciary in Venezuela has had in relation to the exercise of due process of law and the access to effective remedies."[27]

In deciding this case, the IACourtHR ruled that the concept of the provisional judge as an official that could be freely appointed and removed was an obstacle to the independence of the judiciary in Venezuela. Regarding the percentage of provisional judges, the IACourtHR added that "[i]n addition to creating impediments to judicial independence […], this is particularly

[25] See case of Chocrón Chocrón v. Venezuela, supra note 16, Para. 89 and 123.
[26] Ibid, Para. 2.
[27] Ibid, Para. 48.

relevant because Venezuela does not offer such judges the guarantee of tenure required by the principle of judicial independence."[28]

Furthermore, the IACourtHR pointed out that "…the free removal of judges raises the objective doubt of the observer regarding the real possibility of judges deciding specific disputes without fear of reprisals."[29] In conclusion, the IACourtHR stated that although "…the transition regime in Venezuela seeks a legitimate purpose […], in practice, the application of the regime has not been effective for achieving the proposed objective. [Primarily], this is because the regime has lasted nearly 12 years."[30]

In its judgment of August 5, 2008, the IACourtHR decided that the State: (1) failed to comply with its obligation to provide grounds for the decision to annul the appointment of Mrs. Chocrón Chocrón as a temporary judge and, consequently, its obligation to permit an adequate defense that would give her the possibility to rebut the observations made against her;[31] (2) violated her right to judicial protection, as the JC could annul the appointment of provisional or temporary judges in a discretionary manner;[32] and (3) failed to fulfill its obligation to adopt appropriate and effective measures to guarantee judicial independence.[33]

b.2.2 The case of *Reverón Trujillo v. Venezuela*

In the *case of Reverón Trujillo v. Venezuela*, the IACHR filed an application against the Bolivarian Republic of Venezuela alleging the "arbitrary dismissal of [Judge] María Cristina Reverón Trujillo […] from the judicial position occupied by her […]." In this case, "…the political-administrative chamber of the Supreme Court of Justice [had] ordered the nullity of the act of dismissal considering that it was not adjusted to the law, but it did not order the reinstatement of the alleged victim to her position, or the payment of the salaries and social benefits she did not receive."[34]

The CROJS dismissed Judge Reverón Trujillo because it determined that she had incurred in disciplinary offenses that included "abuse or excessive use of authority" and the failure to comply with her obligation to "exercise due attention and diligence" in the processing of the case.[35] In its ruling, the political-administrative chamber of the Supreme Court of Venezuela justified its decision for not ordering the reinstatement of the judge exclusively on the provisional nature of her post:

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[28] Ibid, Para. 110
[29] Ibid, Para. 99.
[30] Ibid, Para. 108.
[31] Ibid. Thus, the State violated article 8(1), in relation to article 1(1) of the ACHR.
[32] Ibid. Thus, the State violated article 25(1), in relation to article 1(1) of the ACHR.
[33] Ibid. Thus, the State violated article 2, in relation to articles 8(1) and 25(1) of the ACHR.
[34] See Inter-American Court of Human Rights. *Case of Reverón Trujillo v. Venezuela*. Preliminary Objection, Merits, Reparations, and Costs. Judgment of June 30, 2009. Series C No. 197. Para. 2. Available at: http://www.corteidh.or.cr/docs/casos/articulos/seriec_197_ing.pdf
[35] Ibid, Para. 50.

> In other circumstances this [c]hamber could, with the elements present in the records in the case file, order the reinstatement of the judge affected with the punishments to the position she occupied; however, it is necessary to point out that there is currently a judicial restructuring process in operation, for which we have agreed to submit to Public Competitive Tenders all judicial positions, including those occupied by judges who had a provisional nature.
>
> Therefore, since the appellant is included in the previously expressed situation and due to the impossibility to order the reinstatement to her position or another of the same hierarchy and remuneration, for the reasons previously mentioned, this Chamber, aware of the possible remuneration the present case deserves, ORDERS the Administration:
>
> 1) To eliminate from the dossier found in the files of the [CROJS] the punishment of dismissal imposed on the citizen María Cristina Reverón Trujillo, through the administrative act of February 6, 2002, issued by that Commission. In this sense, all information that mentions that the previously mentioned citizen was punished in the previously stated terms shall be deleted from her judicial file, in order to avoid the formation of possible negative effects in future competitive tenders in which the appellant could eventually participate, and we order that a certified copy of the present decision be annexed to the appellant's administrative case file. […]
>
> 2) Given the condition of provisional judge maintained by the appellant up to when the present appeal was filed and in order to preserve her right to participate in the public competitive tenders to which she may aspire, as long, naturally, as she fulfills the requirements demanded in each case, we order her evaluation during the complete period during which she exercised her judgeship, as well as her inclusion, if requested by her, in the mentioned competitive tenders.
>
> 3) Since the present decision does not order the reinstatement of the judge to the position she had been occupying, this Chamber abstains from ordering the payment of the salaries she stopped receiving as of the date of her dismissal. So ordered.[36]

The IACourtHR ruled that "the transition regimen and the provisional [character] of Mrs. Reverón Trujillo, conditions put forward by the [political-administrative chamber of the Supreme Court] when it did not order her reinstatement, cannot be considered acceptable reasons."[37] The IACourtHR also found that:

> …provisional judges in Venezuela exercise exactly the same duties as titular judges specifically administrate justice.148 Thus, the parties have the right, derived from the Venezuelan Constitution itself and the American Convention, to have judges who upon

[36] Ibid, Para. 54.
[37] Ibid, Para. 123.

solving their controversies are and appear to be independent. For this, the State shall offer the guarantees that derive from the principle of judicial independence, of both titular and provisional judges.[38]

In the same line, the IACourtHR ruled that "…Venezuela did not adequately guarantee judicial independence, since its domestic regulations and practices (especially its jurisprudential line) consider that provisional judges do not enjoy the guarantee of tenure." Furthermore, it found that "[t]his difference in the treatment of between titular judges that enjoy a full guarantee of tenure and provisional ones who do not have any protection by that guarantee within the context of continuance that corresponds to them, does not respond to a reasonable criterion," and that "Mrs. Reverón Trujillo suffered an arbitrary unequal treatment regarding the right to remain, under equal conditions, in the exercise of public service."[39]

In its judgment of June 30, 2009, the IACourtHR decided, among other things, that the State: (1) violated the judge's right to judicial protection, since there was no justified reason to not reinstate Mrs. Reverón Trujillo to the judicial position she occupied;[40] and (2) violated her right to remain, under equal conditions, in the exercise of public service, given the arbitrary unequal treatment she was subjected to.[41]

The IACourtHR stressed, as it was first stated in its judgment on the *case of Apitz Barbera et al ("First Court of Administrative Disputes") v. Venezuela*, that it was imperative that the Code of Ethics be enacted, considering that the transitional regime had extended for over nine years at the moment of the judgment, and in view of the declared violations of article 2 of the ACHR.[42]

Consequently, the IACourtHR's judgment also ordered the State to adopt, as soon as possible, the necessary measures for the approval of the Code of Ethics and to adjust, within a reasonable period of time, its domestic legislation to the ACHR through the modification of the rules and practices that consider provisional judges as freely removable.[43]

c. International reaction to Venezuela's transitory regime

A number of international organizations expressed their concern on the Venezuelan judiciary's transitory regime, stating that it could result in the lack of independence of the justice system of this country.

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[38] Ibid, Para. 114.
[39] Ibid, Para. 141 and 192.
[40] Ibid, Para. 127. Thus, the State violated article 25(1) in relation to articles 1(1) and 2 of the ACHR.
[41] Ibid, Para. 141. Thus, the State violated article 23(1)(c) in connection to article 1(1) of the ACHR.
[42] Ibid, Para. 190.
[43] Ibid, chapter XI.

For example, in 2003, the IACHR stated that "the Commission has received allegations that the appointments of some judges whose sentences have not favored the Government position have been declared null and void," in reference to the case of Mercedes Chocrón Chocrón, among others.[44] The IACHR also stated that "another aspect of great concern, in connection with the judiciary's autonomy and independence, is the provisional status of judges in Venezuela's judicial system."[45]

Reports from following years contain similar statements. In its 2006 annual report, the IACHR stated that "…the Commission considers it highly problematic that courts that must [exercise judicial review over] acts of the executive branch and, in particular, of the government have for several years lacked tenured judges with full guarantees of job stability."[46]

In his 2009 annual report, the UN Special Rapporteur on the independence of judges and lawyers "…expressed his concern [that] the Judicial Commission of the Supreme Court of Venezuela [has the power to] remove judges at its discretion without either a justified cause or disciplinary proceedings guaranteeing the fairness of the dismissal."[47] The Special Rapporteur also stated his concern over the "removal of some provisional judges and prosecutors, without cause, without procedure and without effective judicial recourse."[48]

III. Other emblematic arbitrary dismissals in the Judiciary

a. The case of María Lourdes Afiuni Mora

On December 10, 2009, Judge María Lourdes Afiuni Mora[49] granted bail to Eligio Cedeño, a Venezuelan banker accused of currency fraud, who was imprisoned on February 8, 2007.[50] The

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[44] See the "Annual Report of the Inter-American Commission on Human Rights 2003." OEA/Ser.L/V/II.118. December 29, 2003. Available at: http://www.cidh.org/annualrep/2003eng/chap.4b.htm#VENEZUELA

[45] Ibid.

[46] See the "Annual Report of the Inter-American Commission on Human Rights 2006." OEA/Ser.L/V/II.127. March 3, 2007. Available at: http://www.cidh.org/annualrep/2006eng/Chap.4e.htm

[47] See the 2009 Annual Report of the Special Rapporteur on the independence of judges and lawyers of the United Nations. Available at: http://daccess-ods.un.org/access.nsf/Get?Open&DS=A/HRC/11/41&Lang=E

[48] See statements made in 2009 by Special Rapporteur on the independence of judges and lawyers of the United Nations. Available at: http://www.un.org/apps/news/story.asp?NewsID=31633&Cr=despouy&Cr1= Available in Spanish only at: http://www.eldia.es/2009-07-31/venezuela/3-ONU-denuncia-falta-independencia-cuerpo-judicial-pais.htm, http://www.eluniversal.com/2009/07/30/pol_ava_experto-de-la-onu-de_30A2562643.shtml

[49] See HRF's May 4, 2012 report "The Case of María Lourdes Afiuni, a Legal Report." Available in Spanish only at: http://lahrf.com/reports/Informe-Legal-Caso-Maria-Lourdes-Afiuni.pdf See also 2010 Annual Report of the Special Rapporteur on the independence of judges and lawyers of the United Nations. Available at: http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G10/126/22/PDF/G1012622.pdf?OpenElement In this report, the Special Rapporteur refers Afiuni's case: "[o]n 16 December 2009, the Special Rapporteur and the Chair-Rapporteur of the Working Group on Arbitrary Detention and the Special Rapporteur on the situation of human rights defenders expressed their deep concern about the arrest of a judge in Venezuela. The judge was immediately arrested after having ordered the conditional release pending trial of a detainee whose detention had been declared arbitrary by the United Nations

decision of Judge Afiuni was based on the fact that Cedeño had been in jail for almost three years without trial, exceeding the two-year pre-trial detention limit under Venezuelan criminal law. Afiuni was also implementing a decision by the United Nations Working Group on Arbitrary Detention, who months earlier had concluded that the detention of Cedeño was arbitrary.

In addition to granting bail, Judge Afiuni mandated precautionary measures for Cedeño, including the obligation to appear in court every two weeks, the prohibition to leave the country, and the retention of his passport. Nearly twenty minutes after Cedeño left the courthouse, around ten DISIP agents (currently, *Servicio Bolivariano de Inteligencia Nacional* "SEBIN," Bolivarian National Intelligence Service in English) arrested Judge Afiuni and the bailiffs. According to the "minutes of the arrest" and the "warrantless search minutes," the agents failed to present search and arrest warrants, and to inform Afiuni the reasons for her detention, despite a statement on the subject issued that same day by the Attorney General's office.

Working Group on Arbitrary Detention on 1 September 2009, on the basis of serious violations of the right to fair trial. In spite of the appeal of the special procedures mandate holders, the Venezuelan judge continues to be held in an ordinary prison, alongside inmates convicted by her."

[50] In February 2007, two years prior to Afiuni's case, then Judge Yuri López, whom has been granted political asylum in the United States of America for "political reasons," was removed from office for issuing a ruling that favored Emilio Cedeño. López admitted a complaint for perjury filed by Cedeño against two Attorney General Office's officials, José Gregorio Arriaza and Miguel Estaño. The matter was properly assigned at random to Judge López. However, when the Vice-President of the Criminal Circuit, María Elena García Pru, found out that the case was assigned to Judge López, she allegedly called the judge and instructed her to get sick and inhibit herself from the case. Later on, Judge lópez allegedly received a threatening message from García Pru, instructing her not to admit the complaint. As well, García Pru told the judge that she would be removed from the bench and her life would be "destroyed" if she did not comply with her orders. Judge López ignored these threatening messages and, during the afternoon of February 1, 2007, issued a ruling admitting the complaint and ordering a criminal investigation into the conduct of Estaño and Arriaza. Later that day, after the ruling had become public, José Gregorio Arriaza appeared in Judge López's courtroom, and in front of Cedeño, his attorney and the court's secretary, warned her: "you don't know that you got yourself in to, this is the last decision you'll make as a judge, because tomorrow you'll be dismissed." 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. According to López, after these incidents, she wasn't admitted inside her own courtroom anymore, not even to collect her belongings. In the following months, she allegedly received threatening and obscene phone calls and messages. That same year, in December, her older son was the victim of a kidnapping attempt, when two unidentified individuals tried to remove him from school, presenting a note supposedly sing and sealed by López in her capacity as judge. One of the individuals stated he was López's brother, even though she has none. Judge López's interviews available in Spanish at: http://www.youtube.com/watch?v=d2qcL77I-iA and http://www.youtube.com/watch?v=7pxPSGn25Vw&feature=related See also news report by "El Nacional." December 20, 2009. Available only in Spanish at: http://www.el-nacional.com/www/site/p_contenido.php?q=nodo/113858/4to.%20Bate/Mar%C3%ADa-Lourdes-Afiuni:-una-jueza-presa-del-poder-extrajudicial

Under international human rights law, no person shall be deprived of his liberty or be subjected to arbitrary arrest or detention, except for reasons, cases or circumstances expressly defined in the law, with strict adherence to the procedures objectively set for the same. However, both the arrest and search of the Judge's office were conducted without a warrant and without disclosing the charges, and as a result of her decision to grant bail to a person who had been imprisoned for a period of time that exceeded the maximum of two years provided by Venezuelan law. Therefore, the arrest of Judge Afiuni was an arbitrary and illegal act that violated her right to personal freedom.

The day after her arrest, during a public event that was simultaneously broadcasted on national television for all TV channels in Venezuela, President Hugo Chávez called Afiuni a "bandit," requested the "maximum penalty—30 years in prison" for her, and instructed Attorney General Luisa Ortega and Supreme Court Chief Justice Luisa Estella Morales to keep her "in jail."

Under international human rights law, the guarantee of due process is the right of everyone to be heard, with due guarantees and within a reasonable time, by a competent, independent and impartial court established by law, and includes the right of everyone charged with a criminal offense to be presumed innocent until proven guilty. This includes the obligation for all public authorities to refrain from prejudging the outcome of a trial, and to refrain from making public statements about the guilt of the accused.

Public statements by President Chávez declaring Judge Afiuni's culpability and asking for the maximum penalty for her constituted a prejudgment of the outcome of the criminal proceedings against her and a violation of the right to presumption of innocence of Judge Afiuni.

On December 11, 2009, the Judicial Commission of the Supreme Court suspended Afiuni from her position as judge "until the Inspectorate General of Courts completes its investigation." The suspension occurred without any notice, hearing or disciplinary proceeding or litigation against her. According to the media, only on April 12, 2010, four months after her suspension was determined, did the Inspectorate General of Courts begin an "administrative inquiry."

While held at the *Instituto Nacional de Orientación Femenina* (INOF, or National Institute of Feminine Orientation) for more than 13 months, Judge Afiuni suffered death threats, assassination attempts and harassment by other inmates. These circumstances were aggravated by the lack of an internal separation between the convicted and unconvicted. Also during her detention, Judge Afiuni suffered various health complications that were not treated with due diligence by the Venezuelan authorities. As of February 2, 2011, and in response to her poor health, the judge was placed under house arrest.

María Lourdes Afiuni is currently suspended indefinitely from her position as judge, by an arbitrary decision of the Judicial Commission of the Supreme Court, which has not issued a notification, held a hearing, or initiated administrative or disciplinary proceedings against her.

On May 4, 2012, HRF declared Afiuni a prisoner of conscience of the government of President Chávez, issued a report of international law on her case, and requested her immediate release by the Venezuelan government.[51] HRF's legal report states that with these actions, the State of Venezuela (1) violated the right to personal liberty of Afiuni, (2) her right to due process of law, (3) the right of all persons deprived of liberty to receive dignified treatment, including the right to separation of convicted and prosecuted inmates, and (4) the guarantee of stability and tenure of judges and magistrates.[52]

b. The case of Apitz Barbera et al ("First Court of Administrative Disputes") v. Venezuela

On June 11, 2002, the First Court of Administrative Disputes (First Court)—constituted by the former justices Ana María Ruggeri Cova, Evelyn Margarita Marrero Ortiz, Luisa Estella Morales Lamuño, Juan Carlos Apitz Barbera and Perkins Rocha Contreras—heard over a constitutional protection motion (in Spanish, *amparo*) and an appeal challenging a decision by the *Registrador Subalterno del Primer Circuito de Registro Público del Municipio Baruta del Estado Miranda* [First Circuit Recording Office Junior Registrar in the Baruta Township of Miranda State], who had refused to record a piece of real estate. Unanimously, the First Court granted the motion and admitted the appeal.[53]

On October 8, 2002, the aforementioned Junior Registrar's Office requested the Supreme Court's political-administrative chamber to remove the case related to the precautionary motion from the jurisdiction of the First Court[54] and to determine it directly, among other matters. On

[51] See HRF's May 4, 2012 release. Available in Spanish only at: http://lahrf.com/media/HRF-pide-la-liberaci%C3%B3n%20de-Afiuni-04-05-2012.php

[52] See HRF's legal report, supra note 49, page 58: These international standards are binding to the State of Venezuela since June 23, 1977, when it ratified the American Convention on Human Rights. On August 9, 1977, the Venezuelan State recognized the jurisdiction of the Commission on Human Rights, and on June 24, 1981, it also recognized the jurisdiction of the Inter-American Court of Human Rights. On May 10th, 1978, Venezuela ratified the International Covenant on Civil and Political Rights, and the Optional Protocol to the International Covenant on Civil and Political Rights. Therefore, we conclude that the State of Venezuela has violated ss. 5, 7, 8, 11 and 25 of the American Convention on Human Rights, interpreted according to the jurisprudence of the Inter-American Court of Human Rights, and the Arts. 9, 10, 12, 14, and 17 of the International Covenant on Civil and Political Rights. The case of María Lourdes Afiuni is the eighth documented through HRF's Caracas Nine campaign. Available at: http://www.caracasnine.com/cgi-local/blog.cgi?l=eng

[53] Case of Apitz Barbera et al ("First Court of Administrative Disputes") v. Venezuela, supra note 21, Parr. 2, 31 and 32.

[54] Ibid, Parr. 32:"…the removal of proceedings is an exceptional legal remedy which allows a case to be taken away from a judicial body that would be naturally competent to hear and decide it. This happens when the proceedings in

June 3, 2003, the Supreme Court's political-administrative chamber declared the judgment by the First Court to be null and void, and established that the latter, by not denying the precautionary motion, incurred in a "serious legal error of an inexcusable character."[55] The Supreme Court's political-administrative chamber judgment ordered for a copy thereof to be forwarded to the Inspectorate General of Courts, and for it to proceed to investigate the First Court. As a result of the investigation, on October 7, 2003, the inspectorate "filed an accusation with the CROJS against the five members of the First Court," merely repeating the chamber's analysis. Soon, the CROJS dismissed Justices Ruggeri, Apitz, and Rocha, whereas Justices Marrero and Morales, who in two previous instances had jointly dissented with the other judges, were able to obtain the benefit of retirement.[56] Upon allegations of discrimination in this regard, the IACourtHR concluded that although "…the five judges should be considered as identically situated as regards the commission of the disciplinary infringement […] the Court is not able to determine whether [Justices] Marrero and Morales should have been sanctioned in the exact same fashion as the alleged victims in the instant case."[57]

On the case of Apitz Barbera et al ("First Court of Administrative Disputes") v. Venezuela, brought before the IACourtHR, the Venezuelan State was accused for "the removal from office of former judges [justices] of the […] First Court of Administrative Disputes […] Ana María Ruggeri Cova, Perkins Rocha Contreras and Juan Carlos Apitz Barbera on October 30, 2003, on the grounds that they had committed an inexcusable judicial error when they granted an amparo [protection of constitutional guarantees and rights] against an administrative act that had denied a request for protocolization of a land sale." The IACHR also argued that:

> [T]he removal based on this error "is contrary to the principle of judicial independence and undermines the right of judges to decide freely in accordance with the law" and that they were removed "on the grounds that they had committed an alleged inexcusable judicial error when what existed was a reasonable and reasoned difference of possible legal interpretations concerning a particular procedural feature. This was a serious violation of their right to due process because of the lack of justification of the decision to remove them and their lack of

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question "go beyond private interest to affect directly public interest", or when there is "a need to avoid flagrant injustices."

[55] Ibid, Parr. 33 and 34: "Judicial error has been held to be inexcusable by the [Supreme Court] when 'it cannot be justified through reasonable legal criteria, something which turns it into a serious offense, deserving the maximum disciplinary sanction, that is, removal from office.'"

[56] In spite of having "retired" in 2003, in 2004, both judges were appointed Supreme Court Justices the next year. See Section IV infra.

[57] Justice Evelyn Margarita Marrero Ortiz was not removed from office; instead, the CROJS declared the sanction to be impossible to implement, because she was eligible for retirement. Justice Luisa Estella Morales Lamuño, who had initially been removed from office together with the other three judges, filed an appeal for the reconsideration of the decision, and this was resolved when the CROJS decided "to set aside the disciplinary sanction of removal from office" against her. The CROJS arrived at this conclusion because it considered that the judge had complied with the requirements for special retirement before the start of the disciplinary procedure. See the case of Apitz Barbera et al ("First Court of Administrative Disputes") v. Venezuela, supra note 21, Parr. 38 and 200.

access to any simple, swift, and effective recourse for obtaining a determination on the disciplinary measure to which they had been subjected."[58]

The IACHR also stated that:

> [T]he First Court had adopted decisions "that had generated adverse reactions among senior officials of the executive branch" and that "the indicia as a whole" supported the inference that the body that ordered the removal was not independent and impartial and that such removal resulted from a "misuse of power" originating in the "cause-and-effect relationship between the statements of the President of the Republic and senior government officials concerning the decisions that went against government interests and the disciplinary investigation that was initiated and that culminated in the victims' removal.[59]

In its judgment of August 5, 2008, the IACourtHR ruled that the State of Venezuela, among other things, had: (1) failed to guarantee the justices' right to be heard by an impartial court, given that both the Venezuelan legislation and case law prevented them from requesting the review of the impartiality of the CROJS;[60] (2) failed to comply with the duty to state grounds for its decision, since the CROJS didn't analyze the case, but merely repeated the judgment of the political-administrative chamber of the Supreme Court;[61] and (3) violated the right of the justices to a fair trial by an independent court, given that the CROJS was a special organ with no defined stability—created to exercise disciplinary jurisdiction pending the issuing of the Code of Ethics for the Venezuelan Judge—whose members could be appointed or removed without a pre-defined procedure and at the Supreme Court's sole discretion.[62]

IV. Organic Law of the Supreme Court and the subsequent stacking of the judiciary with judges loyal to the ruling party

On May 18, 2004, the National Assembly of Venezuela, composed mainly of members of the ruling party and holding a simple voting majority, enacted the new Organic Law of the Supreme Court of Justice, which increased the number of justices of the Supreme Court from 20 to 32. The law also established that both the appointment and dismissal of Supreme Court justices could proceed with a simple majority vote in the National Assembly, thus violating article 265 of the current Constitution, according to which Supreme Court justices can only be removed from office with "two thirds" of the votes of the members of the National Assembly.

After this new law was enacted, and with the votes of the members of the ruling party, the National Assembly appointed 17 new justices—12 to comply with the increased number of

[58] See the case of Apitz Barbera et al ("First Court of Administrative Disputes") v. Venezuela, supra note 21, Parr. 2.
[59] Ibid.
[60] Ibid, Parr. 267. Thus, the State violated article 8.1 in connection to articles 1.1 and 2 of the ACHR.
[61] Ibid. Thus, the State violated article 8.1 in connection to article 1.1 of the ACHR.
[62] Ibid. Thus, the State violated article 8.1 in connection to articles 1.1 and 2 of the ACHR.

justices in accordance with the new law and 5 to fill vacancies—and 32 alternates.[63] Under these circumstances, Representative Pedro Carreño, who was also chairman of the National Assembly's Nomination Committee in charge of the selection of the new justices, affirmed that President Chávez's government would not allow members of opposition parties to get to the Supreme Court, stating that "we are not going to score on our own goal" and that the newly designated "are justices whose revolutionary credentials are more than guaranteed."[64]

In its 2005 annual report, the former UN Special Rapporteur first expressed his concern for these actions:

> The Special Rapporteur on the independence of judges expressed its concern in relation to the adoption of the new Organic Law of the Supreme Court of the Republic of Venezuela on May 2004, which expanded the number of magistrates [justices] in the Supreme Court from 20 to 32 and allowed the ruling coalition of the National Assembly to designate 12 magistrates [justices], thus obtaining a majority of magistrates [justices] in the Supreme Court. […] The Special Rapporteur regrets that the adoption and application of this law, contrary to the Constitution of Venezuela and the principles of international law, has created a highly politicized judiciary. Therefore, it urges the government to take urgent measures to reestablish the independence of the judiciary in Venezuela.[65]

Thus, progressively since 1999, and most decisively since the stacking of the Supreme Court in the year 2004, the judiciary of Venezuela has been transformed into an entity mainly made up of supporters of President Chávez. This judiciary endorses all the arbitrary decisions of the executive branch, such as the arbitrary closure of television stations,[66] the constant assumption of

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[63] Information available, in Spanish only, in the National Assembly's website at: http://www.asambleanacional.gob.ve/index.php?option=com_content&view=article&id=7383&lang=es, http://www.asambleanacional.gob.ve/index.php?option=com_content&view=article&id=7398&lang=es
See other government's releases, available in Spanish only at: http://www.rnv.gov.ve/noticias/?act=ST&f=2&t=11482, http://www.tsj.gov.ve/informacion/notasdeprensa/notasdeprensa.asp?codigo=1711
More information available in Spanish only at: http://www.sumate.org/democracia-retroceso/cap1_es_2.htm, http://www.sumate.org/democracia-retroceso/attachments-spanish/T1%20ST02%20P8%20V1Magistrados.htm.

[64] See speech of Representative Alfonso Marquina in a National Assembly session, in which the said representative reads a press release in which Mr. Carreño's declarations are quoted. Available in Spanish only at: http://www.noticias24.com/venezuela/noticia/104011/marquina-aponte-aponte-si-es-un-delincuente-pero-un-delincuente-revolucionario/ and http://www.youtube.com/watch?v=8-cGQzrwJOE&feature=player_embedded.
Also, see information available in Spanish at: http://www.el-nacional.com/noticia/31764/16/Arria-Testimonio-del-General-y-Magistrado-Aponte-reconfirma-narco-estado-y-denuncias-ante-La-Haya.html, http://www.el-nacional.com/noticia/32409/16/Marquina-Aponte-Aponte-es-un-delincuente-revolucionario.html.

[65] See the 2005 Annual Report of the Special Rapporteur on the independence of judges and lawyers of the United Nations, Parr. 167. Available in Spanish only at: http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G05/129/86/PDF/G0512986.pdf?OpenElement

[66] On May 27, 2007, the Venezuelan government closed down the most popular television station in Venezuela by not renewing RCTV's license. On July 16, 2007, RCTV started broadcasting through subscription only services (cable and satellite), under the name of RCTV International (RCTV-I). On January 23 2010, RCTV-I did not broadcast a speech made by President Chávez, and that same day, the government publicly announced the decision

legislative powers by the president through so-called enabling laws, the 26 law decrees that in 2010 incorporated the constitutional reform rejected by referendum in 2007, and a series of administrative disqualifications of candidates of the opposition for elections without a court decision.[67]

V. Statements made by President Hugo Chávez and justices of the Supreme Court indicating that the judiciary must subordinate to the executive branch of government

On August 24, 2003, during the broadcasting of his television show "Aló Presidente," President Hugo Chávez made reference to a judgment issued by the First Court, adopted with the vote of Justices Apitz, Ruggeri, and Rocha, and with a dissenting opinion delivered by Justices Marrero and Morales:

> Do you believe that the Venezuelan people are going to follow an unconstitutional decision? Well, they are not. Which kind of court may rule the death of the poor, […] the court of injustice, […] and, even so, I repeat, there is a lot of excess fabric to be trimmed in the judicial branch, from the Supreme [Tribunal] of Justice on down, up to the parish courts, municipal courts, there was not much work done to transform the State, and that is so because we are still waiting the passing of the Supreme Tribunal of Justice's Act […] And until today the Adecos rule in that First Court […] Because this Court has lodged an aberrant decision, no, of course, it is the opposition, the Adecos mainly and the copeianos and this "jinetera" oligarchy, inside that Court, manipulating the judges to try to stop, but it is not going to stop this, forget it! […] Suppose there is a tragedy such as the one in Vargas […] we would have to follow all that this crazy court has ruled. No, that every doctor who comes to help would have to be recertified […] Look, I am not telling you what feelings this Court arouse in me, the three of them, because there are two dissenting votes, I am not telling you about those feelings because we are talking to a nation […] But the people are telling the Court so: you know where you can go with your decision […] You can comply

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to close down RCTV-I and five other pay-per-view channels. All the targeted TV stations complied with the orders at midnight, on January 24, fearing legal actions would be taken against them in reprisal if they didn't. For a detailed analysis see the RCTVLibre website. Available at: http://www.rctvlibre.com/case_info.php

[67] In 2008, the Venezuelan government disqualified opposition leader Leopoldo Lopez Mendoza from holding public office for a period of six years, without a judicial sentence, and under alleged corruption charges. That year, surveys placed Lopez Mendoza as the favorite to win the office of mayor of Caracas. Thus, on December 14, 2009, the IACHR filed a complaint against the State of Venezuela, opening case No. 12668 of Leopoldo López Mendoza against the Bolivarian Republic of Venezuela. On February 28, 2011, HRF filed an *amicus curiae* on this case and requested the IACourtHR to ratify the standard established in art. 23 of the American Convention on Human Rights, by which the State can deprive a person of their political rights only after it has been sentenced as a result of a trial set for the guarantee of criminal due process. In its judgment of September 1, 2011, the IACourtHR ruled that the disqualification of Lopez was a violation of his political rights and instructed Venezuela to rehabilitate him. *Amicus curiae* available in Spanish only at: http://www.lahrf.com/documents/Amicus%20Curiae%20Caso%2012.668_%20HRF.pdf. Judgment of the case available at: http://www.corteidh.or.cr/docs/casos/articulos/seriec_233_ing.pdf
On the other hand, on October 15, 2008, HRF sent a letter to Jose Miguel Insulza, Secretary General of the OAS. In the letter, HRF denounced the violations to art. 3 of the Inter-American Democratic Charter made by the Venezuelan government. Available at: http://www.thehrf.org/InsulzaLetterOct17.pdf

> with it in your homes, if you wish […] Yesterday 140 additional doctors arrived, they are going to Sucre […][68]

On March 24, 2007, during a public event held by the incumbent United Socialist Party of Venezuela (PSUV), President Hugo Chávez suggested that some of the governors and mayors of Venezuela were manipulating the judicial system. He said:

> The national revolutionary government wants to make a decision against something, for example, that has to do with or that has to go through judicial decisions, and [governors and mayors] begin mobilizing in opposition to it, in the shadows. And many times they manage to neutralize the decisions of the revolution through a judge, or a court or even the Supreme [Court] of Justice itself. Behind the back of the leader of the revolution, acting from the inside against the revolution. That is, and I repeat, treason to the people, treason to the revolution. And that is one of our biggest internal threats.[69]

A day after the speech—on March 25, 2007—President Chávez stated during a different public event that "neither the Supreme Court, nor any judge can be or act behind the back of the revolution and its leader." [70]

Several years later, on December 11, 2009, during another public event that was simultaneously broadcasted on national television for all TV channels in Venezuela, President Chávez called Judge María Lourdes Afiuni Mora a "bandit." At that same public event, the President requested the "maximum penalty: 30 years in prison," and instructed Attorney General Luisa Ortega and Supreme Court Chief Justice Luisa Estella Morales to keep her "in jail."[71]

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[68] The First Court's judgment contradicted a government health plan called "*Plan Barrio Adentro*," that allowed the participation of foreign doctors without requiring recertification in Venezuela. The First Court ordered "that the [f]oreign [d]octors be substituted with [V]enezuelan or [f]oreign doctors who meet the requirements laid down in the Medical Practice Law." See the case of Apitz Barbera et al ("First Court of Administrative Disputes") v. Venezuela, supra note 21, Parr. 115.

[69] International Bar Association. Distrust in Justice: the Afiuni case and the independence of the judiciary in Venezuela. A report of the visit by the International Bar Association Human Rights Institute to the Bolivarian Republic of Venezuela between 8 to 11 February 2011. April 2011. 2.39. Available in Spanish only at: http://www.ibanet.org/Document/Default.aspx?DocumentUid=0E0DC15A-4F39-4EE6-81F5-F36A60D90231.
Executive summary in English available at:
http://www.ibanet.org/Document/Default.aspx?DocumentUid=CE82F018-221F-465B-81CD-2C4E1669A2EE
Read the full speech of President Chávez at (in Spanish only):
http://www.minci.gob.ve/alocuciones/4/13788/primer_encuentro_con.html

[70] Ibid, Para. 5.2.

[71] "I demand firmness against that judge; I even told the chief justice of the Supreme Court, counsel [Luisa Estella Morales], and I'm telling it now to the National Assembly; a law is needed because it is much, much, much more serious when a judge releases a bandit, than the bandit himself. It is infinitely too serious for a republic, for a country, that a murderer, because he pays, is set free by a judge. It is more serious than murder itself. This judge and those who do the same should get the maximum penalty. 30 years in prison is what I ask for her in the name of the country's dignity."

Also in 2009, the Chief Justice of the Supreme Court, Luisa Estella Morales, stated: "we cannot continue thinking about a division of powers, because that is a principle that weakens the State." Afterward, the chief justice suggested that the 1999 Constitution of Venezuela be revised since there were "some aspects in it that contradict what the regime is" and, at the same time, indicated that the current constitutional norm which calls for the different branches of government to "collaborate and cooperate between one another" should be emphasized, pointing out that "the existence of a State council or the principle of collaboration between the branches is very healthy and allows the State, which is one, and the power, which is one as well but divided into functions, to coordinate." Then, in a somewhat confused and contradictory way, the justice affirmed that "one thing is separation of powers, and another thing is division" and that each branch of the government, while exercising its powers, must act "independently and without any form of interference," expressing that ultimately "the power of the judiciary is judging" and "there can be no intervention, and there is none," at the moment of exercising that task.

Subsequently, in 2011, during the inauguration of the judicial year ceremony, Fernando Ramón Vegas Torrealba, a justice of the Supreme Court of Justice, stated that the Venezuelan judiciary had "the duty to contribute to the efficient execution, within its powers, of the national government's State policies," aimed at carrying out a "deliberate and planned action towards a democratic and Bolivarian socialism."[72] In the same event, justice Torrealba stated, "this Supreme Court and the rest of the courts of the Republic must be severe in applying the laws that punish actions or redirect causes that hinder the construction of the Bolivarian and democratic socialism."[73]

The statements made by President Chávez in 2007 and 2009, and those made by justices Morales and Vegas in 2009 and 2011, respectively, imply that to these authorities, all the actions and decisions of the judiciary in Venezuela must be, and currently are, deliberately aligned and subjected to the policies of the executive branch under the direction of President Hugo Chávez. The statements corroborate the submission of the judiciary to the executive branch.

On this subject, the IACHR stated:

> In recent years, the Commission has learned of cases in which members of the judiciary have expressly stated their support for the executive [branch], indicating the absence of

[72] See press releases on the statements of Chief Justice of the Supreme Court, Luisa Estella Morales. Available in Spanish only at:
http://www.eluniversal.com/2009/12/05/pol_art_morales:-la-divisio_1683109.shtml,
http://informe21.com/venezuela/montesquieu-estaba-equivocado-presidenta-del-tsj-afirma-division-poderes-debilita-al-estad
See also press release on the statements by Justice Fernando Ramón Vegas Torrealba. February 5, 2011. Available in Spanish only at:
http://www.tsj.gov.ve/informacion/notasdeprensa/notasdeprensa.asp?codigo=8239.

[73] Read the Speech of the Justice Fernando Ramón Vegas Torrealba. Solemn Opening Act of Judicial Activities for the year 2011. February 5, 2011. Available in Spanish only at:
http://www.tsj.gov.ve/informacion/miscelaneas/DicursoMagVegasApertura2011.pdf

independence within their branch of government. Similarly, the Commission has seen how certain shortcomings caused by the lack of judicial independence are heightened in politically-charged cases and how society's confidence in the justice system is affected as a result.[74]

VI. Statements made by former Supreme Court Justice Eladio Aponte and the government's response

The loss of independence of the judiciary in Venezuela and the serious state of subordination of the current Venezuelan justice system to the executive power outlined above, are also corroborated by statements made recently by Eladio Ramón Aponte Aponte, a former justice of the Supreme Court of Venezuela, after his sudden departure from that country.[75]

According to information available at the official website of the Supreme Court,[76] Aponte is an attorney and retired army general, who served as a justice of the criminal chamber of Venezuela's Supreme Court. Aponte was appointed by the National Assembly on December 15, 2004. He took up his position in January 2005, and served as a Supreme Court justice until his dismissal on March 20, 2012. There are several statements and opinion articles circulating online (which have been made since the broadcast of the interview cited here)[77] that claim that Aponte was one of the "favorites" of the Venezuelan government, as well as a part of the wave of "renewal" that the Supreme Court experienced after its new Organic Law was enacted. As explained previously in this report, through this law the National Assembly—controlled by President Hugo Chávez's party—dismissed all the independent justices of the Supreme Court and appointed new justices loyal to Chávez's party.[78]

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[74] See 2009 report "Democracy and Human Rights in Venezuela." December 30, 2009. Para. 302. Available at: http://www.cidh.oas.org/pdf%20files/VENEZUELA%202009%20ENG.pdf

[75] See interview by SoiTV, available at: http://www.youtube.com/watch?feature=player_embedded&v=uYIbEEGZZ6s.
Complete transcript of the interview available in Spanish only at: http://www.eluniversal.com/nacional-y-politica/120418/historias-secretas-de-un-juez-en-venezuela The interview was recorded in Costa Rica and broadcasted on April 18, 2012, when Aponte was already in the United States. In this interview, former Justice Aponte—removed from office by the National Assembly, due to alleged links to drug trafficking, which he denies—justifies leaving Venezuela for fear of being judge by the Venezuelan justice system.

[76] Information available in Spanish only at: http://www.tsj.gov.ve/eltribunal/magistrados/eladioaponte.shtml

[77] See statements made the Mayor of the Metropolitan District of Caracas. Available in Spanish only at: http://globovision.com/news.php?nid=227725.
See also statements made by the president of the Lawyers' Guild of Caracas. Available in Spanish only at: http://www.eluniversal.com/nacional-y-politica/120423/colegio-de-abogados-de-caracas-exige-renovacion-total-del-tsj.
See also statements made by the Governor of the State of Zulia. Available in Spanish only at: http://www.noticias24.com/venezuela/noticia/103170/pablo-perez-aponte-aponte-era-el-magistrado-estrella-el-juez-todopoderoso-del-gobierno/comment-page-1/.

[78] Available in Spanish only at the official website of the Supreme Court of Justice: http://www.tsj.gov.ve/informacion/notasdeprensa/notasdeprensa.asp?codigo=1711

Aponte went from working as a military prosecutor, to a position as justice in the highest court in the country. After being asked what his qualifications for achieving such promotion were, he said, "I believe that my performance was very immaculate and in line with the required standards, apart from my curriculum," adding that by the term "immaculate" he meant "loyal to the government."[79]

In a 40-minute interview and an affidavit that was recently made public by his attorney,[80] Aponte confessed to having manipulated the administration of justice in Venezuela and at the same time made serious accusations against government officials of the country in relation to the lack of independence of the judiciary. The former justice also stated that in Venezuela there is "no" independence between the branches of government.

Before listing the most serious statements made by Aponte, HRF wishes to make clear that both the credibility and the professional integrity of Aponte are questionable due to his background and the details of his appointment as justice of the Supreme Court of Venezuela—a process that, according to Aponte himself, was motivated by an alleged affinity or "loyalty" toward the government of President Chávez. In addition, HRF considers former justice Aponte's credibility and professional integrity undermined by the accusations that link him to Venezuelan drug lords and, more recently, by his own statements regarding his judgeship.

However, HRF also considers that, given the context of severe subordination of the Venezuelan judiciary to the executive power, outlined above, and due to the detailed and precise nature of the statements recently made by Aponte, they must be investigated and taken very seriously by international bodies and organizations that watch over the independence of the judiciary, democracy and human rights; and that it is the duty of the Venezuelan government to give a clear answer to each of these accusations.

a. Statements by a former justice of the Supreme Court

Below, we outline the main confessions and most serious accusations made by Aponte, which corroborate the loss of independence of the judiciary in Venezuela and its subordination to the executive branch of government:

1. Periodic meetings between the heads of all branches of government in order to set the "guidelines of the justice system"

Aponte said that periodic meetings take place, "every weekend, mainly on Friday mornings," between "the vice president, who is the one in charge of the justice system in Venezuela, with

[79] Seconds 18:23 to 18:45 of the interview to former magistrate Aponte by SoiTV. Available at: http://www.youtube.com/watch?feature=player_embedded&v=uYIbEEGZZ6s

[80] Affidavit available in Spanish only at: http://globovision.com/articulo/presidente-hugo-chavez-ordeno-condena-de-30-anos-a-comisarios-del-11-a-segun-aponte

the chief justice of the Supreme Court, the office of Legal Counsel, the president of the National Assembly, the attorney general, the comptroller general and, every now and then, one of the chiefs of police." According to Aponte, "it is from these meetings that the guidelines of what justice will be emerge. In other words, that's where the direction of justice in Venezuela is determined." Also, Aponte stated that he had participated in "several" of these meetings.[81]

2. Personal calls by President Chávez to members of the Supreme Court ordering the outcome of cases

Aponte said that President Hugo Chávez calls members of the Supreme Court ordering the outcome of cases. Aponte mentioned the case of the paramilitaries of "El Hatillo," in which Chávez contacted Aponte to ask him to "conduct the investigations in a way that was convenient for the government" and told him to "carry on with the investigations, demonstrating that this was something against the government, "and that it should be portrayed that way."[82]

3. Personal calls by the attorney general and the chief justice of the Supreme Court to judges and justices ordering the outcome of cases

Aponte said that Attorney General Luisa Ortega and Chief Justice of the Supreme Court Luisa Estella Morales periodically call judges and justices to decide the outcome of cases. Aponte said that he received calls "whenever a person was going to be charged with an offense, be deprived of their liberty, or when searches were going to take place, so that I could organize the situation and look for the perfect judge to carry out the actions." He underlined the case of a representative of the National Assembly, known as "Mazuco" (José Sánchez Montiel), who was accused of ordering a murder. After being asked about the details, Aponte said that "the case was more or less a case where they looked for an inmate [sic], placed a hood over his head, and had him pose as a witness so that he could claim that this man (Sánchez Montiel) was the one who gave the order to kill another man." He said that the Chief Justice of the Supreme Court, Luisa Estella Morales, had asked him to "affirm this situation" and that "that man was paid by releasing him from jail."[83]

4. Dismissal of judges for not carrying out favors asked by high-ranking government officials, including Chief Justice Luisa Estella Morales

Aponte said that judges are dismissed for not carrying out favors asked by high-ranking government officials, which include Chief Justice Luisa Estella Morales and several prosecutors. Among the prosecutors, Aponte named two who were part of a "group of favorites," namely Mejía and Castillo (according to one news report, the second was Alejandro Castillo, a federal prosecutor). Aponte said that "there was a group of favorites. And those were the ones that called

[81] Ibid, seconds 16:22 to17:40.
[82] Ibid, seconds 06:34 to 08:39.
[83] Ibid, seconds 08:40 to 10:04.

the judges. I believe Castillo and Mejía called the judges, and [were threatened] that if they did not do what the prosecutors asked they would be fired, expelled." Aponte stated that the interference in the judiciary was part of the "shady deal that existed at the level of the chief justice of the Supreme Court and the attorney general." [84]

5. The existence of an influence-peddling group called "the dwarves," made of prosecutors and judges

Aponte said that there is an influence-peddling group called "the dwarves," made up of prosecutors and judges. These statements corroborate claims made publicly six years ago by another former Venezuelan justice, Luis Velasquez Alvaray, who accused this group of bribing and manipulating judgments according to the interests of their clients.[85] On this topic, Aponte claimed that "…yes, even now, the so-called dwarves—everyone knows who they are —work in the attorney general's office, and are connected to it.[86]

6. The existence of "political prisoners;" namely, people that did not go to jail because they committed a crime, but because the executive wanted them in jail

After being asked about this, Aponte stated, "Yes, there are people for whom the orders are to keep them in jail, especially the police chiefs," and that "the orders come from the presidency, there can be no doubt; in Venezuela we don't kick-start anything without the approval of the president." The case of the "police chiefs" (in Spanish, "los comisarios") mentioned by the former justice is one of the first and most emblematic cases of "political prisoners" in Venezuela. The commissars are former chiefs of the metropolitan police that, after declaring themselves members of the opposition, were accused of murder and sentenced without evidence to 30 years in prison, in relation to the deaths that occurred during the uprising of April 11, 2002; deaths that were never proven to be connected to them.[87]

Recently, in a press conference held in Miami, Aponte's attorney revealed an affidavit, notarized in Costa Rica in April 2012, in which the former justice confesses: "It is my peremptory duty to confess to you, and everyone, that I have committed the sin of having issued to the judges who prosecuted you [the 'police chiefs'] the order to sentence you to 30 years of

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[84] Ibid, seconds 12:03 to 14:28. See news report at (in Spanish only): http://www.elcolombiano.com/BancoConocimiento/E/eladio_aponte_exjuez_de_la_corte_suprema_de_venezuela_se_entrego_a_la_dea/eladio_aponte_exjuez_de_la_corte_suprema_de_venezuela_se_entrego_a_la_dea.asp

[85] See news reports at (in Spanish only): http://www.globovision.com/news.php?nid=152229 and http://www.correodelcaroni.com/archivo/archivo.php?view=wrapper&id_articulo=31994.
See article at (in Spanish only): http://impactocna.com/2010/10/26/los-secretos-de-la-banda-de-los-enanos-1/

[86] Supra note 55, seconds 14:55 to 15:35.

[87] Ibid, seconds 30:13 to 31:17. Information available at (in Spanish only): http://www.eluniversal.com/nacional-y-politica/120409/las-victimas-aun-esperan-por-justicia.
More information available at: http://www.tellchavez.com/en/.

imprisonment at whatever cost. I was following direct orders from President Hugo Chávez Frías, who instructed me to do it."[88]

Aponte also spoke about the case of Judge María Lourdes Afiuni. According to Aponte, the case of Judge Afiuni is a "very political case." Aponte said that "she is a very brave woman" and that she is one of "those judges that represent the judicial system well."[89]

Aponte later spoke about the case of Francisco Usón Ramirez, a former general of the Venezuelan army who was detained, imprisoned, tried and convicted before a military court for slander against the Venezuelan Armed Forces. During the first years of the government of President Hugo Chávez, Usón was appointed to several public offices, among them the ministry of finance. He resigned his position after the events of April 11, 2002, after disagreements with the president and members of the military high command. In 2006, HRF declared Usón a prisoner of conscience. A few years later, in 2009, the IACourtHR ruled the Venezuelan government was internationally responsible for violating Usón's right to freedom of expression, as well as for serious violations of due process.[90] When asked about this case, former justice Aponte said that "it was manipulated" and that the presidential order was "to accuse him or indict him."[91] As of now, Usón is free after the completion of his sentence.

b. Reaction by the government

The first reaction of President Chávez to the statements made by Aponte was to call him a "criminal," stating that Aponte "is a criminal and the Venezuelan State acted with different pieces of evidence that I do not have with me because it is not my role as a head of State, as the head of government."[92]

The National Assembly, the government body in charge of the appointment and subsequent dismissal of Aponte, responded by issuing a written statement in which it "rejected" his statements "categorically," without making any specific statements with regard to the serious allegations made.[93]

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[88] Information available at: http://www.eluniversal.com/nacional-y-politica/120913/a-confession-letter-by-former-justice-aponte-aponte-is-revealed, http://www.eluniversal.com/nacional-y-politica/120914/confession-letter-forwarded-by-venezuelan-ex-magistrate-aponte-aponte and http://www.eluniversal.com/nacional-y-politica/120917/the-attorney-general-should-investigate-ex-officio-what-aponte-said See also the scanned document available in Spanish only at: http://globovision.com/articulo/presidente-hugo-chavez-ordeno-condena-de-30-anos-a-comisarios-del-11-a-segun-aponte

[89] Supra note 55, seconds 39:50 to 40:34.

[90] Information available at (in Spanish only): http://www.semana.com/opinion/cinco-anos-defendiendo-derechos-humanos/169089-3.aspx.
Usón's note to President Chávez available in Spanish only at: http://www.recivex.org/USON.pdf

[91] Supra note 55, seconds 27:38 to 28:09.

[92] Information available in Spanish only at: http://www.elnuevoherald.com/2012/04/25/1187196/parlamento-venezolano-aprueba.html#storylink=cpy

[93] Ibid.

VII. Conclusion and Petition

a. Conclusion

Since 1999, the Venezuelan judiciary has been systematically stacked with judges loyal to the executive branch. This encroachment comes as the result of the implementation of a mechanism for the arbitrary appointment and removal of judges, which violates the guarantees of stability and tenure of judges, and through the 2004 Organic Law of the Supreme Court, which allowed the encroachment of the Supreme Court with justices loyal to the ruling party. The submission of the judiciary to the executive branch has been strengthened through the punishment of dismissal (in the cases of Chocrón Chocrón and Reverón Trujillo) and arbitrary detention (the case of Afiuni) imposed on Venezuelan judges who dare to act independently from the will of the executive branch.

Today, the Venezuelan judiciary not only lacks independence, but the chief justice and another justice of the Supreme Court have expressly stated that all the actions and decisions of the judiciary in Venezuela must be and are deliberately aligned and in submission to the policies of the executive power under the direction of President Hugo Chávez.

In this serious context, HRF believes that, in spite of his lack of credibility and professional integrity, the recent statements made by former Supreme Court Justice Aponte must be investigated and taken very seriously by international bodies and organizations that watch over the independence of the judiciary, democracy and human rights. Also, HRF believes the Venezuelan government must be exhorted to answer in a clear manner to each of these accusations.

Particularly, we consider that an investigation should be carried out and the Venezuelan government should be asked to give explanations with regard to each of the six issues outlined above, which summarize the main allegations by Aponte.

These allegations are very serious. They suggest a situation in which the Venezuelan State, taking advantage of the submission of the judiciary to the executive branch, has adopted the state policy of harassing, prosecuting and imprisoning those considered “dissidents or opponents of the regime.” This would show an absolute lack of protection of the fundamental rights and freedoms of citizens in Venezuela, and a situation of defenselessness of these citizens facing the abuses committed by the State.

b. Petition

HRF presents this report to the UN Special Rapporteur on the Independence of Judges and Lawyers and respectfully asks her, pursuant to her powers under resolution No. 17/2 of June 16, 2011,

(1) To inquire into the serious confessions and accusations made by former Venezuelan Supreme Court Justice Eladio Aponte Aponte;

(2) To send an allegation letter to the State of Venezuela, requesting an official and comprehensive answer to each one of these allegations; and

(3) To make concrete recommendations on measures that the State of Venezuela should undertake, in order to reverse the subordination of the judiciary to the executive branch. In particular,

a. To cease the acts that are causing this situation,

b. To offer appropriate assurances and guarantees of non-repetition, and

c. To make full reparation for the injury caused by this internationally wrongful act.