

I. Executive Summary

It has been 10 years since Hugo Chávez was elected president of Venezuela and set out to overhaul the country's largely discredited political system. His first major achievement, the enactment of a new constitution in 1999, offered an extraordinary opportunity for the country to shore up the rule of law and strengthen the protection of human rights. The 1999 Constitution significantly expanded human rights guarantees by, among other things, granting Venezuela's international rights obligations precedence over domestic law. It also created a new Supreme Court and sought to provide this court with the institutional independence it would need to serve as the ultimate guarantor of these fundamental rights.

But this historic opportunity has since been largely squandered. The most dramatic setback came in April 2002 when a coup d'état temporarily removed Chávez from office and replaced him with an unelected president who, in his first official act, dissolved the country's democratic institutions, suspending the legislature and disbanding the Supreme Court. Within 40 hours, the coup unraveled, Chávez returned to office, and the constitutional order was restored. But while this derailment of Venezuelan democracy lasted less than two days, it has haunted Venezuelan politics ever since, providing a pretext for a wide range of government policies that have undercut the human rights protections established in the 1999 Constitution.

Discrimination on political grounds has been a defining feature of the Chávez presidency. At times, the president himself has openly endorsed acts of discrimination. More generally, he has encouraged his subordinates to engage in discrimination by routinely denouncing his critics as anti-democratic conspirators and coup-mongers—regardless of whether or not they had any connection to the 2002 coup.

Another defining feature of the Chávez presidency has been an open disregard for the principle of separation of powers enshrined in the 1999 Constitution—and, specifically, the notion that an independent judiciary is indispensable for protecting

fundamental rights. After the 2002 coup, the most damaging blow to the rule of law in Venezuela was the political takeover of the Supreme Court by Chávez and his supporters in 2004.

In the absence of credible judicial oversight, the Chávez government has engaged in often discriminatory policies that have undercut journalists' freedom of expression, workers' freedom of association, and civil society's ability to promote human rights in Venezuela.

This book examines the current state of Venezuelan democracy from a human rights perspective. It does not address all the pressing human rights issues facing the country today, many of which pre-date the Chávez presidency. Rather, it focuses on the impact that the Chávez government's policies have had on institutions that play key roles in ensuring that human rights are respected: the courts, the media, organized labor, and civil society.

The book's findings are based primarily on research that Human Rights Watch conducted during multiple visits to Venezuela between December 2006 and July 2008. It also draws on research carried out during previous visits dating back to 2002. While in Venezuela, Human Rights Watch conducted extensive interviews with government officials, judicial authorities, jurists, academics, human rights advocates, trade unionists, and journalists.

Political Discrimination

The Venezuelan government under President Chávez has tolerated, encouraged, and engaged in wide-ranging acts of discrimination against political opponents and critics. Chapter 2 documents how the government has:

- Fired and blacklisted political opponents from some state agencies and from the national oil company;
- Denied some citizens access to social programs based on their political opinions; and
- Discriminated against media outlets, labor unions, and civil society in response to legitimate criticism or political activity.

Chávez assumed the presidency in part on the promise to free Venezuela from its entrenched patterns of political exclusion. However, while his government has uprooted established networks of political patronage, it has replaced them with new forms of discrimination against its own critics and opponents.

While Chávez himself has at times recognized that discrimination is a problem and spoken out against it, his routine expressions of political intolerance have served to undergird the discriminatory actions of his supporters. On occasion, Chávez has openly advocated political discrimination against opponents, as when he publicly supported declarations by his energy minister that the state oil company would remove employees who did not support the president.

Human Rights Watch recommends that the Venezuelan government take concrete steps to end political discrimination. In particular, the president and other top officials should refrain from public statements that appear to endorse discrimination. The government should give clear instructions to all government officials explicitly prohibiting political discrimination in the hiring and firing of employees and in the access to government programs. It should also carry out prompt and thorough investigations into all credible allegations of politically motivated discrimination and sanction officials found to be responsible.

The Courts

The government under President Chávez has effectively neutralized the judiciary as an independent branch of government. Chapter 3 documents how the president and his supporters carried out a political takeover of the Supreme Court in 2004, and how the court has since largely abdicated its role as a check on arbitrary state action and a guarantor of fundamental rights.

When Chávez first assumed the presidency, there was broad public support for his calls to clean up a judiciary that was dysfunctional and profoundly discredited. The 1999 Constitution created a new Supreme Court and sought to guarantee its integrity and independence. But in 2004 Chávez signed legislation that made it possible for his supporters in the National Assembly to both pack and purge the Supreme Court. The governing coalition implemented this court-packing legislation by filling the 12

new seats (in what had been a 20-member court) with political allies. This packed Supreme Court subsequently fired hundreds of lower court judges and appointed hundreds more.

Since this takeover occurred, the court's response to government measures that threaten fundamental rights has typically been one of passivity and acquiescence. It has failed, in particular, to counter assaults on the separation of powers, such as the 2004 court-packing law and, more recently, a 2007 constitutional reform package. It has also failed to safeguard fundamental rights in prominent cases involving the media and organized labor.

Human Rights Watch recommends that steps be taken to reverse the damage done by the 2004 court-packing law. After the next legislative elections in 2010, the new National Assembly should implement a one-time ratification process to legitimize the composition of the Court by, for example, requiring a two-thirds majority affirmation vote for each Supreme Court justice who has been appointed since the passage of the 2004 Supreme Court law. Measures should then be taken to permit the lawful removal of any justice who does not receive a two-thirds majority vote during this process. Any resulting vacancies should be filled through a selection process that is open, transparent, and ensures broadest possible political consensus. The legislature should also immediately repeal the 2004 provisions that allow justices to be removed by a simple majority vote.

The Media

The Venezuelan government under President Chávez has undermined freedom of expression through a variety of measures aimed at reshaping media content and control. Chapter 4 documents how the government has:

- Expanded the scope of insult laws, which punish disrespectful expression toward government officials, and toughened penalties for criminal defamation and libel;
- Expanded and toughened the penalties of vaguely defined “incitement” provisions that allow for the arbitrary suspension of TV and radio channels;
- Restricted public access to official information; and

- Abused the state's control of broadcasting frequencies to threaten and discriminate against stations with overtly critical programming.

Venezuela still enjoys a vibrant public debate, in which anti-government and pro-government media are equally vocal in their criticism and defense of Chávez. However, whereas Chávez faced an almost entirely hostile private media at the time of the 2002 coup, he has since significantly shifted the balance of the mass media in the government's favor. This shift has been accomplished, not by promoting more plural media, but by stacking the deck against critical opposition outlets while advancing state-funded media that represent the views only of Chávez's supporters.

By expanding and toughening the penalties for speech and broadcasting offenses, Chávez and his legislative supporters have strengthened the state's capacity to limit free speech and created powerful incentives for critics to engage in self-censorship. Journalists working for opposition media have borne the brunt of prosecutions under these laws in recent years, generating pressure on these media to tone down criticism. Should the government choose to utilize the expanded speech and broadcasting offenses more aggressively, the space for political debate in Venezuela could be severely curtailed.

One area where the government's media policy has produced positive results is broadcasting at the community level. The government has actively supported the creation of community radio and TV stations, whose broadcasting contribute to media pluralism and diversity in Venezuela.

Human Rights Watch recommends that the National Assembly repeal all existing legislation that contravenes international norms on freedom of expression, including insult laws, laws criminalizing defamation of public officials and institutions, and the overly broad incitement provisions of its broadcasting law. It should also pass legislation to implement the constitutional right of access to information held by public entities in an effective and non-discriminatory manner. In addition, after the next legislative elections in 2010, the National Assembly should establish a new state agency to administer broadcasting frequencies and enforce broadcasting laws.

Steps should be taken to ensure that this new agency possesses the institutional autonomy that CONATEL is formally granted by law but lacks in practice.

Organized Labor

The Venezuelan government under President Chávez has sought to remake the country's labor movement in ways that violate basic principles of freedom of association. Chapter 5 documents how the government has:

- Undermined workers' right to elect their representatives by requiring state oversight and certification of union elections;
- Denied the right to bargain collectively to unions which do not receive state approval of election results;
- Undermined workers' right to freely join the labor organization of their choosing by engaging in favoritism toward pro-government unions; and
- Undermined workers' right to strike by banning legitimate strike activity and engaging in mass reprisals against striking oil workers.

President Chávez and his allies have tried to justify these actions as part of a broader effort to “democratize” the labor movement by safeguarding workers' rights against allegedly corrupt and co-opted union leaders. However, firing workers who exercise their right to strike, denying workers their right to bargain collectively, and discriminating against workers because of their political beliefs does not promote union democracy.

Moreover, it is a central principle of the international law protecting workers' rights that states should not interfere in the internal affairs of unions, including their leadership elections. This prohibition—enshrined in the conventions of the International Labour Organization (ILO) to which Venezuela is a party—exists to prevent the political manipulation and state control that can often result from state interference in union affairs.

Through its systematic violation of workers' right to organize, the Chávez government has undercut established unions and favored new, parallel unions that support its political agenda. For example, it has denied established unions the right to bargain collectively until they hold state-certified elections—which have been delayed and

even blocked by electoral authorities—while negotiating with new pro-Chávez unions exempt from electoral requirements. It has fired and blacklisted thousands of workers in the state oil company who engaged in legitimate strike activity, and later threatened to remove all remaining workers who did not support Chávez. And it has promoted the formation of alternative workers' organizations that could be used to suppress legitimate worker organizing, undermine existing unions, and circumvent the country's labor laws.

Human Rights Watch recommends that the government cease intervening in union affairs and engaging in political discrimination against workers. Specifically, the government should promote legislation to make state oversight and certification of union elections strictly optional (in the absence of a court order) and to eliminate political discretion in the choice of collective bargaining partners. It should also refrain from reprisals against workers engaged in legitimate strike activity and permit strikes grounded in economic and social policy demands, as required by international law. And it should amend existing and proposed legislation on alternative workers' associations to ensure that they are not used to subject organized labor to state control, block legitimate worker organizing, or evade national labor legislation.

Civil Society

The Venezuelan government under President Chávez has undermined its own ability to address the country's long-standing human rights problems through its aggressively adversarial approach to local rights advocates and civil society organizations. Chapter 6 documents how the government has:

- Subjected rights advocates to criminal investigations on groundless or grossly exaggerated charges;
- Sought to discredit and undermine rights organizations through unfounded allegations of complicity in subversion;
- Sought to exclude organizations receiving foreign funding from participation in international forums; and
- Promoted legislation that would allow arbitrary state interference in rights organizations' fundraising and operations.

President Chávez and his supporters have tried to justify these measures by arguing that rights advocates and civil society organizations were pursuing a partisan political agenda aimed at destabilizing the country and toppling President Chávez. Yet, while it is reasonable for a government to investigate and prosecute credible allegations of criminal activity, as well as to regulate foreign funding of civil society groups to promote greater transparency, these measures have gone beyond these legitimate forms of accountability and regulation.

Given the gravity of the human rights problems facing Venezuela, the government could greatly benefit from the expertise and input of the country's human rights advocates and organizations in developing and implementing needed reforms. Instead authorities have harassed and intimidated leading human rights advocates, marginalizing them from policy discussions. In one notable exception, the government incorporated civil society experts in a commission set up to analyze and make proposals to reform Venezuela's police forces. Unfortunately, however, the commission on police reform is merely the exception that proves the rule regarding the cost of the government's adversarial approach to Venezuelan civil society.

The Chávez government should abandon its aggressively adversarial posture toward local human rights defenders and civil society organizations. As the experience with police reform demonstrates, even in the midst of a polarized political situation, constructive engagement is possible and can contribute to finding solutions to the country's chronic human rights problems.

The Future of Venezuelan Democracy

The recommendations outlined in this book are fully consistent with the broader goal enshrined in the 1999 Constitution—and publicly espoused by the Chávez government—of promoting a more inclusive democracy in Venezuela. Indeed, Human Rights Watch believes that the recommended steps are prerequisites for any serious effort to pursue this vital and ambitious aim.

A country's citizens cannot participate fully and equally in its politics when their rights to freedom of expression and association are at risk. Ensuring these essential rights requires more than constitutional guarantees and political rhetoric. It requires

institutions that are capable of countering and curbing abusive state practices. Above all, it requires a judiciary that is independent, competent, and credible. It is also critical that non-state institutions—such as the media, organized labor, and civil society—are free from government reprisals and political discrimination.

President Chávez has actively sought to project himself as a champion of democracy, not only in Venezuela, but throughout Latin America. Yet his professed commitment to this cause is belied by his government's willful disregard for the institutional guarantees and fundamental rights that make democratic participation possible. Venezuela will not achieve real and sustained progress toward strengthening its democracy—nor will it serve as a useful model for other countries in the region—so long as its government continues to flout the human rights principles enshrined in its own constitution.

The full report is available online at: <http://hrw.org/reports/2008/venezuela0908/>