

## HUMAN RIGHTS WATCH

1630 Connecticut Avenue, N.W.  
Suite 500  
Washington, DC 20009  
Tel: 202-612-4321  
Fax: 202-612-4333  
Email: hrwdc@hrw.org

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Daniel Wilkinson, *Deputy Director*  
Tamara Taraciuk, *Researcher*  
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Washington, DC, August 3, 2012

Her Excellency Cristina Fernández de Kirchner  
President of Argentina  
Buenos Aires, ARGENTINA

HUMAN  
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WATCH

[www.hrw.org](http://www.hrw.org)

Dear President Fernández,

I am writing you regarding the recent inclusion of Venezuela into the membership of MERCOSUR and the opportunity—and responsibility—it creates for your government and other MERCOSUR members to address the very serious human rights problems that exist in Venezuela today.

As you know, article 1 of the Asunción Protocol on Commitment with the Promotion and Protection of Human Rights of MERCOSUR states: "The full respect of democratic institutions and the respect of human rights and fundamental liberties are essential conditions for the existence and evolution of the process of integration among parties."<sup>1</sup> And article 2 establishes that: "The parties will cooperate for the effective promotion and protection of human rights and fundamental liberties through the institutional mechanisms established by MERCOSUR."

With respect to article 1, the government of President Hugo Chávez has concentrated power in the executive branch, deliberately undermining the independence of other democratic institutions and eliminating essential checks on the arbitrary and abusive use of state power.<sup>2</sup>

President Chávez and his supporters in Venezuela's National Assembly carried out a political takeover of the judiciary in 2004 by increasing the number of seats on the Supreme Court from 20 to 32 and filling the 12 new seats with political allies. After legislative elections in 2010 reduced the Chávez majority in Congress, they rushed to change the law governing the process for appointing justices and then re-packed the Supreme Court before the newly elected opposition legislators took their seats.

The packed Supreme Court has ceased to function as a check on abusive state power or guarantee of fundamental rights. Its magistrates have openly rejected the principle of separation of powers and publicly pledged their commitment to advancing the political agenda of President Chávez. This

<sup>1</sup> Asunción Protocol on Commitment with the Promotion and Protection of Human Rights of MERCOSUR, Mercosur/CMC/DEC. N, 17/05, [http://www.mercosur.int/msweb/Normas/normas\\_web/Decisiones/ES/CMC\\_2005-06-19\\_NOR-DEC\\_17\\_ES\\_Prot-DD-HH-MCS.PDF](http://www.mercosur.int/msweb/Normas/normas_web/Decisiones/ES/CMC_2005-06-19_NOR-DEC_17_ES_Prot-DD-HH-MCS.PDF) (accessed August 2, 2012).

<sup>2</sup> The information included in this letter is based on research conducted by Human Rights Watch, which led to the publication of its report "Tightening the Grip: Concentration and Abuse of Power in Chávez's Venezuela" on July 17, 2012. The report is available at: <http://www.hrw.org/reports/2012/07/17/tightening-grip-o>.

political commitment has been reflected in the court's rulings, which explicitly reject the principle that the judiciary should serve as a check on presidential power and have repeatedly validated the government's disregard for international human rights norms.

One of the most disturbing examples of the lack of judicial independence in Venezuela has been the jailing of Judge María Lourdes Afiuni. Afiuni was imprisoned after she granted conditional freedom in December 2009 to a government critic who had spent nearly three years in prison awaiting trial on corruption charges. Although her decision complied with Venezuelan and international law, a day later President Chávez denounced her as a "bandit" and called for her to be given a 30-year prison sentence. She spent over a year in a violent women's prison in pretrial detention, and remains in arbitrary house arrest awaiting trial at this writing.

In addition, President Chávez and his supporters in the National Assembly have undermined freedom of expression through a variety of laws and policies aimed at reshaping the content of and control over the media. They have passed legislation extending the scope of *desacato* provisions that criminalize "disrespect" of government officials, prohibiting the transmission of messages that "foment anxiety in the public," and allowing the government to suspend or shut down TV channels and radio stations whenever it deems this to be "convenient for the interests of the nation." The government has also abused its regulatory authority to target media outlets for sanction, including through prior censorship, for their critical reporting on the government's response to issues of public interest.

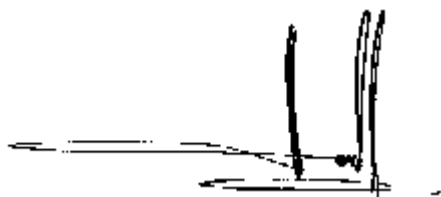
Moreover, President Chávez and his supporters have aggressively sought to marginalize the country's human rights defenders by making unfounded claims that they received support of the US government to undermine Venezuelan democracy. In July 2010, the Supreme Court ruled that individuals or organizations receiving foreign funding could be prosecuted for "treason" under a provision of the criminal code that establishes a prison sentence of up to 15 years. And in December 2010, the National Assembly enacted legislation that blocks organizations that "defend political rights" or "monitor the performance of public bodies" from receiving international funding and imposes stiff fines on organizations that invite foreigners who express opinions that "offend" government institutions. Several leading NGOs are currently facing criminal complaints filed by government supporters for having received foreign funding.

The accumulation of power in the executive and erosion of human rights protections have given the Chávez government free rein to intimidate, censor, and prosecute Venezuelans who criticize the president or thwart his political agenda. President Chávez and his supporters have used these powers in a wide range of cases involving the judiciary, the media, and human rights defenders.

These high-profile cases have had an impact not only on the individuals and groups directly involved, but also on many other Venezuelans who themselves have not been targeted. For judges, journalists, broadcasters, and human rights defenders in particular, the government's actions have sent a clear message: the president and his followers are willing and able to punish people who challenge or obstruct their political aims. While many Venezuelans continue to criticize the government, the prospect of facing similar reprisals—in the form of arbitrary or abusive state

action—has undercut the ability of judges to adjudicate politically-sensitive cases, and forced journalists and rights defenders to weigh the consequences of publicizing information and opinions that are critical of the government.

Article 2 of the Asunción Protocol provides your government and the other MERCOSUR member states with both an important opportunity and a duty to seriously address with the government of Venezuela these serious human rights problems. If MERCOSUR member states ignore their commitment to protect and promote basic rights and respect democratic institutions, you will be sending an unfortunate message that international commitments provided for in the Asunción Protocol are merely empty promises.

A handwritten signature in black ink, appearing to read 'JM Vivanco', with a horizontal line extending to the left.

Sincerely yours,

Jose Miguel Vivanco  
Human Rights Watch

Cc: Héctor Timerman, Minister of Foreign Affairs