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Testimony of José Miguel Vivanco Executive Director Americas Division, Human Rights Watch Senate Foreign Relations Subcommittee on Western Hemisphere, Peace Corps and Narcotics Affairs

Mr. Chairman, Members of the Committee:

Thank you for your invitation to address the committee regarding the human rights situation in Venezuela. I know the Committee is most interested in an exchange of views, so my remarks will be brief. I would like to submit, for the record, my written testimony.

Venezuela is one of the most politically polarized countries in the hemisphere. It has been in a state of almost perpetual political crisis for some time now. Opponents of President Hugo Chávez have sought to remove him from office on several occasions—through an aborted coup d'état in 2002 and through a costly general strike in 2003. Fortunately, the government and the opposition have since agreed to address Venezuela's political disagreements within the framework of the Constitution and the rule of law. In August, the country will hold a national referendum to determine whether or not President Chávez should remain in office.

This agreement has been an important achievement for Venezuela. And it underscores the point that I want to stress at the outset of my testimony: Venezuela today is a democracy. It may be an imperfect democracy, a fragile democracy—but it is, nonetheless, a democracy.

The principle concern of the international community with regards to Venezuela should be to help the country strengthen its democratic institutions and ensure that it does not suffer another rupture of its constitutional order, as occurred during the 2002 coup.

Human Rights Watch has sought to provide an objective and impartial perspective on human rights developments in Venezuela at a time when political tensions have encouraged some to exaggerate or misrepresent the country's problems.

One issue we have focused on is freedom of the press—not because it is absent in Venezuela, but because it is a central point of contention in the ongoing political crisis. Until now, the government of President Chávez has largely respected press freedom even in the face of a strident and well-resourced opposition press. Indeed, as part of the often heated and acrimonious debate between supporters of the government and its opponents, the press has been able to express strong views without restriction.

At the same time, however, many journalists working for media that support the opposition have been victims of aggression and intimidation by government supporters. And, to a lesser degree, journalists working for media sympathetic to the government have also been subject to acts of intimidation. Moreover, the government's respect for press freedoms could be threatened by draft legislation introduced last year that would impose stringent and detailed controls over radio and television broadcasts, greatly limiting what could be aired during normal viewing hours. Fortunately the National Assembly has not moved to pass the legislation, which still requires a final debate and vote.

Another issue we have addressed is abusive practices by state security forces. In March of this year, in the midst of the most serious unrest since the 2002 coup, we received credible reports that National Guard and police officers beat and tortured people who were detained during the recent protests in Caracas and other Venezuelan cities. The abuses allegedly committed appeared to enjoy official approval at some level of command in the forces responsible for them.

A third issue—and the main subject of my remarks today—entails threats to the independence of the country's judiciary. Over the past year, President Chávez and his allies have taken steps to control Venezuela's judicial branch. These steps undercut the separation of powers and the independence of judges. They violate basic principles of Venezuela's constitution and international human rights law. And they represent the most serious threat to Venezuela's fragile democracy since the 2002 coup.

The most brazen of these steps is a law passed last month that expands the Supreme Court from twenty to thirty-two members. The new law allows Chávez's governing coalition to use its slim majority in the legislature to obtain an overwhelming majority of seats on the Supreme Court. The law also allows his coalition to nullify the appointments of sitting justices based on extremely subjective criteria. In short, Chávez's supporters can now both pack and purge the country's highest court.

It is this court that may ultimately determine the outcome of the recall referendum scheduled for August 15. It will have to decide whether Chávez, should he lose the recall, can run again in the subsequent election. And it will have to resolve any legal challenges that arise from the recall vote itself, which is expected to be hotly contested. Pro-Chávez legislators have already announced their intention to name the new justices by next month, in time for the referendum.

Such a political takeover of the Supreme Court will also compound damage already being done to judicial independence by the Court itself. The Supreme Court has summarily fired several lower-court judges after they decided politically controversial cases. And it has failed to grant 80 percent of the country's judges security of tenure, which is an essential ingredient of judicial independence.

President Chávez's supporters in the legislative and judicial branches have sought to assuage concerns about the court-packing law by insisting that those wielding authority over judges and justices will show restraint and respect for the rule of law. Such assurances are beside the point, however. A rule of law that relies on the self-restraint of those with power is not, in fact, the rule of law.

Chávez supporters justify the court-packing law largely as a response to pro-opposition rulings in a deeply divided court, such as a highly questionable one that absolved military officers who participated in the 2002 coup. They also point to the failure of lower court judges to address allegedly illegal activities carried out as part of the general strike in 2003 that cost the country billions of dollars in oil revenue and did enormous harm to the economy. It may be true that some judges have let opposition members off the hook after they sought to undermine the rule of law. But Chávez and his supporters should now be taking steps to strengthen the judiciary. Instead they are rigging the system to favor their own interests.

We have seen similar efforts before elsewhere in the region. During the 1990s, President Carlos Menem severely undermined the rule of law by packing Argentina's Supreme Court with his allies. In Peru, President Alberto Fujimori went even further in controlling the courts, through mass firings and the denial of tenure to judges. Venezuela is currently pursuing both a court-packing scheme, similar to that of Menem, and an assault on judicial independence, similar in spirit (if not in scope) to that of Fujimori. As the experiences of Argentina and Peru demonstrate, these efforts do not bode well for Venezuela's democracy.

What makes the developments in Venezuela especially alarming is their potential impact on the country's already volatile political situation. Whether the current crisis is resolved peacefully and lawfully will depend in large part on the country's judiciary. It is the courts that must ultimately determine whether decisions by the country's electoral authorities are valid—as well as whether the actions of Chávez's supporters and opponents, in the streets and elsewhere, are legally permissible. It is, in other words, the courts that must ultimately ensure that the political conflict does not result in the trampling of people's freedom of expression and association, due process guarantees, and other basic human rights. To do so effectively, it is imperative that judges and justices be able to act with the independence and impartiality that are mandated by both the Venezuelan constitution and international human rights law.

It is not too late for Venezuela to reverse course. President Chávez's governing coalition in the National Assembly could still suspend implementation of the new law before any permanent damage is done. And the Supreme Court could strike down, on constitutional grounds, the provisions of the court-packing law that subject the court to political domination by the governing coalition.

The international community should do all it can to encourage Venezuela to protect and strengthen judicial independence. Unfortunately, however, the ability of the United States to advocate for democracy in Venezuela was severely hurt in 2002 when the Bush administration chose to blame Chávez for his own ouster rather than unequivocally denouncing the coup. In addition, the Abu Ghraib prison scandal has undermined the administration's moral authority when it comes to promoting the rule of law abroad.

If the United States is to have a positive influence in Venezuela today it will have to be through the sort of multilateral diplomacy that the Bush administration endorsed when it signed the Inter-American Democratic Charter in 2001. The Democratic Charter authorizes the OAS to respond actively to threats to democracy in the region, ranging from coup d'états to government policies that undermine the democratic process, and it identifies judicial independence as an essential component of a democratic system.

During Venezuela's 2002 coup, the Charter was crucial in mobilizing member states to join the chorus of condemnation that helped restore President Chávez to office. The OAS should now use its authority under Article 18 of the Charter to press the Venezuelan government to suspend implementation of the court-packing law. The OAS should also offer to mediate Venezuelan efforts to reach a consensus on how to strengthen the independence of the judiciary.

International lending agencies could also have a positive influence on the situation in Venezuela. The World Bank and the Inter-American Development Bank have supported projects aimed at improving the administration of justice in Venezuela—from training prosecutors and police to developing court infrastructure. The most urgent improvement needed now is the strengthening of judicial independence and autonomy. Without that, other improvements may only help a fundamentally flawed system function more efficiently. To encourage progress where it is most needed, all future international assistance aimed at improving the Venezuelan justice system should be made contingent upon Venezuela taking immediate and concrete steps to shore up the independence of its judges and the autonomy of its highest court.

When the United States, Venezuela, and other countries in the hemisphere signed the Democratic Charter in 2001, they committed themselves to work together to defend democracy in the region and to respond to emerging threats before serious harm is done to a country's democratic institutions. Today Venezuela faces such a threat, and the international community should engage with the Venezuelan government to address it.