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Secretary General  
Organization of American States (OAS)  
1889 F Street NW  
Washington, DC 20006

**Re: The Inter – American Democratic Charter and Mr. Insulza (Letter No. 2)**

Dear Secretary General Insulza,

Just one month after the seventh anniversary of the adoption of the Inter-American Democratic Charter, the Human Rights Foundation (HRF) addresses you with its second letter of the project “The Inter-American Democratic Charter and Mr. Insulza.” In an effort to demonstrate your inaction in the face of the growing threat to democracy and human rights in certain countries of the Americas, we will enumerate some of the most flagrant violations of the five essential principles of democracy and the subsequent systematic violations of human rights that have been, and continue to be, committed in various countries across the continent, notably: Bolivia, Ecuador, Nicaragua, Paraguay and Venezuela.

The five essential elements of democracy according to the Inter-American Democratic Charter (Article 3) are: 1.) respect for human rights and fundamental freedoms; 2.) access to and the exercise of power in accordance with the rule of law; 3.) the holding of periodic, free, and fair elections based on a secret ballot and universal suffrage as an expression of the sovereignty of the people; 4.) a pluralistic system of political parties and organizations; and 5.) the separation of powers and independence of the branches of government. In most cases, the denial of one of these essential elements of representative democracy implies the denial of another and results, nearly always, in the systematic violation of human rights. Since the overwhelming number of violations of democracy currently taking place in the Americas cannot be summed up in one letter, the letters that we are sending you over the course of the next year will cover the following:

1. “The Dismissal of Supreme and Constitutional Courts”: Elimination of the independence of the judicial branch in Bolivia, Ecuador and Venezuela.
2. “Attacking the press and closing television channels”: Attacks on freedom of speech in Bolivia, Colombia, Ecuador, Paraguay and Venezuela.
3. “Closing Congresses”: Elimination of the legislative branch in Bolivia and Ecuador.

4. "Ruling by decree": Violation of the obligation to exercise power in accordance with the rule of law in Bolivia, Ecuador and Venezuela.
5. "Toward a single-party regime": Violation of the obligation to respect and promote a pluralistic system of political parties and organizations in Bolivia, Ecuador, Nicaragua and Venezuela.
6. "Electoral fraud in Latin America": Violation of the obligation to hold democratic elections in Bolivia and Venezuela.
7. "Sending opponents to jail": Increase of political prisoners in Bolivia, Ecuador, Nicaragua and Venezuela.
8. "Workers' rights and freedoms": Violation of trade union freedoms in Bolivia, Ecuador and Venezuela.

This letter addresses: "The Dismissal of Supreme and Constitutional Courts": Elimination of the independence of the judicial branch in Bolivia, Ecuador and Venezuela.

**a. Bolivia**

In Bolivia, the process of disbanding the Constitutional Court was gradual. On June 20, 2006, President Morales declared: "When I want to do something, advisers come and tell me: you cannot do it, the law prohibits it. Then I want to do something else for the people and I cannot. These laws made by the neoliberals don't let me do anything; they turn me into a bureaucrat, because if I use a presidential decree [to do something], the Constitutional Court says it is illegal. The Constitutional Court is in the hands of the traditional political parties and it is time for a 'quick slap' to end these lies and neoliberal laws." The month before making that statement, President Morales reduced his salary on austerity grounds and issued a decree stating that no public official could have a higher salary than his. This reduced the salaries of the judges in the Constitutional Court by at least 40%; this fact, coupled with a series of attacks on their character, led five judges (out of ten in the Court) to resign their posts by the end of 2006, three years before their terms were up.

On December 30, 2006, President Morales took on the Supreme Court, appointing four new interim justices by decree; the regular approval process requires a two-thirds vote by Congress. On May 9, 2007, when the constitutionality of this decree was called into question, the Constitutional Court declared the president's actions constitutional, but ordered the interim justices to step down because they had exceeded the 90-day term limit on temporary appointments. President Morales responded by putting four of the Constitutional Court judges on trial, claiming that they had acted beyond their authority. Although the Senate eventually acquitted them, four judges had already resigned their positions, leaving a single judge in the Constitutional Court. To date, this judge remains, however, the president's party recently filed a lawsuit against him for breach of power. When asked about the resignations of two of the judges, Congressman Gustavo Torrico, of President Morales' party, stated that these judges had fewer morals than a "prostitute."

The lack of a Constitutional Court is one of the main forces behind the current political polarization and grave human rights situation in Bolivia. On May 17, 2007, the judges of

the Constitutional Court denounced the persecution and said it was motivated by “the will of the ruling party to eliminate the independence of the judiciary so that the Court cannot challenge the constitutionality of any of the government’s actions,” especially with regards to “violations of the Constitution and the Law of the Constituent Assembly in the process of constitutional reform.” Currently the Bolivian people are helpless in the absence of a body that can enforce their constitutional guarantees. This is best reflected in the growing number of dead and injured resulting from political violence in the country. President Morales’s government has yet to appoint new judges, probably due to its lack of a two-thirds majority in Congress.

**b. Ecuador**

In Ecuador, the elimination of the independence of the Constitutional Court was even faster than in Bolivia. On February 13, 2007, Congress approved a law calling for a referendum in order to establish a Constituent Assembly. President Correa then modified the law without Congress’s approval and sent it to the Supreme Electoral Tribunal, the entity in charge of overseeing the referendum. The Tribunal accepted the president’s modifications without challenging their validity and scheduled the referendum for April 15, 2007. Outraged, the Congress, with an opposition majority, decided to replace the Tribunal’s president. The Tribunal’s response was a resolution that suspended 57 out of 100 congressmen—52 of them had voted to replace the Tribunal’s president, while the remaining five had filed a suit questioning the constitutionality of the law the president sent to the Tribunal. On April 23, 2007, the Constitutional Court revoked the Tribunal’s decision and ordered the immediate reinstatement of 50 of the 57 congressmen. The very next day, in a controversial interpretation of the constitution, Congress, now controlled by President Correa’s political party, decided to dismiss the nine members of the Constitutional Court, disregarding their decision to restore the suspended congressmen. One week later, Congress appointed new members to that court.

The new Constitutional Court has since supported all the polemic decisions adopted by President Correa’s political party, notably its response to the Dayuma demonstrations—which included: declaring a state of emergency, repression and political imprisonment—and the final shutdown of Congress at the command of the Constituent Assembly on November 29, 2007. On June 23, 2007, following the denial of Congress to approve certain laws he had just proposed, President Correa expressed: “With congressmen selling themselves to the best buyer (...) I think the Constituent Assembly will have to dissolve Congress. With this kind of Congress we are not going to be able to do anything.”

**c. Venezuela**

In 2004, the Venezuelan president’s party, constituting a simple majority in Congress (National Assembly), dictated The Law of the Supreme Court, which increased the number of Court justices from 20 to 32 and established that both their appointment and dismissal would be determined by a simple majority vote in Congress. This law violated Article 265 of the country’s 1999 Constitution that states that the justices can only be

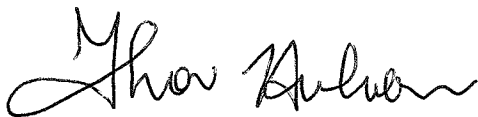
removed by a two-thirds majority vote by Congress. In the subsequent weeks, President Chavez's party dismissed all the independent justices in the Court and appointed new ones who were aligned with his political party. As a result, since 2004, the Venezuelan Supreme Court has supported all of President Chavez's arbitrary decisions, among them: the shutdown of RCTV, Venezuela's largest and oldest television network; legislative prerogatives for the president (through a law); 26 executive orders that implement the constitutional reforms rejected by Venezuelans in a 2007 referendum; and the dismissal of more than 200 opposition candidates from the next general elections.

According to Article 3 of the Inter-American Democratic Charter, "democracy is indispensable for the effective exercise of fundamental freedoms and human rights." Upon the understanding that no antidemocratic government will ever initiate any proceeding against itself for violating the Charter's mandate, the democratic clause (Article 20) empowers the OAS Secretary General to summon the Permanent Council in order for it to initiate a proceeding that could end in the suspension of governments that, although elected democratically, incur in a serious alteration or rupture of any of the essential elements of democracy.

Mr. Insulza, the systematic assaults against judicial independence denounced in this letter clearly constitute a serious attack on democracy; thus, it is your duty to activate the mechanisms needed to implement the democratic clause—failing to do so constitutes your indirect support for the continued violations of human rights and democracy in Bolivia, Ecuador, and Venezuela.

As we stated in our first letter, our objective is to bring global attention to the violations of human rights occurring in the Americas and to highlight the disappointing role you have played in the defense of these rights in the continent. It is our sincere hope that you will rectify your inactions since what is at stake is not your political career, but the freedom and livelihood of millions of Americans.

Sincerely,



Thor Halvorssen  
President

cc.

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OAS (José Miguel Insulza)  
OAS Ecuador (Hugo Saguier)  
United Nations Coordination Office at Ecuador (René Mauricio Valdés)  
Inter-American Court of Human Rights (Sergio García Ramirez)  
Office of the United Nations High Commissioner for Human Rights (Louise Arbor)  
European Counsel Commissioner for Human Rights (Thomas Hammarberg)  
Nicaragua's Permanent Commission for Human Rights (Nicolás Bolaños Geyer)  
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