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January 12, 2016

His Excellency
Nicolás Maduro
President of the Bolivarian Republic of Venezuela
Caracas, Venezuela

Excellency:

I have the honor of writing in order better to assess and analyze the current institutional situation in your country, by virtue of the powers conferred on me by the Inter-American Democratic Charter, in whose drafting the Venezuelan Government played an important part and which it undertook to fulfill.

That instrument and the Charter of the Organization of American States require me, as Secretary General, to act when a situation arises in a member state that could impair the normal workings of the democratic political and institutional process.

In particular, I am required to ensure that the provisions contained in Articles 2 to 7 of the Inter-American Democratic Charter are properly observed, which obligations are also recognized in other inter-American legal instruments, including the OAS Charter, the American Declaration of the Rights and Duties of Man, and numerous declarations and resolutions adopted by the Organization’s General Assembly.

I am keenly aware, as is international public opinion that you, Excellency, publicly undertook to respect the results of the parliamentary elections of December 6, 2015.

Anything that prevents a single parliamentary deputy from taking his or her seat is a direct assault on the will of the people. It is a core tenet of democracy that the people are the only legitimate sovereign and, therefore, interpreting and/or distorting what they have expressed at the ballot box directly undermines the popular will.

There is only one path for democracy: commitment to the rights guaranteed to all the citizens of a country. Its essential purpose is to protect the rights and decisions of the people vis à vis a government that could abuse its power by ignoring or refusing to accept the results of elections. That is extremely serious as it would constitute a violation of fundamental principles.
Respect for human rights is not simply a rule, but a way of behaving that is essential to the workings of democracy: collective construction that strives always for a life of dignity for all is the core principle of democracy.

**Independence of the Branches of Government**

Judges and the judiciary must be free and act without interference from the executive or legislative branches.

When members of the judiciary are elected who have not only been political activists but also held public office, then the core principle of the separation of powers is violated works and one is led to the presumption that decisions are taken not only for legal reasons, but also for political ones.

Among other things, democracy is an exercise in the transfer of power from certain political leaders to others; therefore, accepting and respecting the results of free, transparent, and fair elections is essential.

The act of altering a country’s political representation after such a clear pronouncement from the electoral authority amounts to an attack, especially when the guarantees of justice appear to vanish into thin air.

The ruling party ensured guarantees for itself in the whole electoral process with an absolute majority on the National Electoral Council, which gave it full control over the electoral process and the vote count, as well as the capacity to take decisions with respect to how the elections should be monitored and by whom.

Added to all that were the activities that gave the ruling party a clear advantage in the campaign. In spite of that, it is well known that, as a rule, such activities, far from intimidating the citizenry, strengthen its calls for change.

However, the changes that the ruling party is now engineering, by lodging a challenge with the Supreme Court of Justice, are even more worrying than the ones I mentioned in my letter to Ms. Tibisay Lucena, since on that occasion the citizenry had the possibility of making its opposition felt at the ballot box; in the case of a precautionary measure, as in the instance referred to below, that is not possible.

This action has the effect of violating the basic principle of equality before the law and the social compact that, anchored as it is in the legal system, underpins peaceful coexistence.
As José Bernardo Toro, the Colombian philosopher and educator once said: “Democracy is society’s decision. The main characteristic of democracy is that, in it, the laws and rules are created or changed by the very persons who will live under, abide by, and protect them.”

And he emphasizes: “That means that democracy is by far the best setting for freedom, since the latter is only possible when it results from mutual consent to conform to and respect that which was the product of a free decision; that is, a collectively supported accord.”

Challenges, precautionary measures, and the rule of law

Venezuela’s challenge is to turn its differences into collective goods. Chavismo cannot be interpreted as signifying divisiveness or schism in the social fabric when a society decides to forge institutions rooted in human dignity. Only by meeting that challenge can there be union between society’s institutions and its conscience.

The results of the parliamentary elections in the State of Amazonas were disputed by means of an electoral challenge appeal lodged by the PSUV with the Electoral Division of the Supreme Court of Justice, which suspended the effects of the tallies, adjudications, and proclamations issued by the subsidiary bodies of the CNE.

That decision runs counter to the will of the citizenry expressed in the December 6 election and voids the proclamation already made by the CNE.

The day after its installation the National Assembly decided to swear in the three deputies from the State of Amazonas.

In response, yesterday, January 11, the Supreme Court of Justice declared the officers of the National Assembly in contempt and ordered the immediate separation of the three deputies.

Overreaching its functions, it declared that all the decisions of the National Assembly were void as long as the three deputies from Amazonas were in office.

Unfortunately, your government decided to allow party politics to shape the composition of institutions, including the CNE, the Supreme Court, and every oversight body. One must, therefore, assume that the decisions they make will be influenced but only by legal factors, but also political ones. An official’s political background is incompatible with the impartiality and objectiveness needed to
dispense justice. The rule of law loses credibility when the judicial system is perceived to be biased.

When one branch of government creates the conditions to allow it to control, influence, decide, invalidate, or manipulate the authority or powers of the State, the situation is not only worrying, but also imperils the balance of powers of the State.

The Electoral Division’s application of the law has had the dramatic effect of pushing it back to the 19th century.

For example, I can confirm that the constitutions approved in Uruguay in the 20th century also recognized jurisdictional authority from the moment of its proclamation by the Electoral Court as a way of preventing government abuses that sometimes occurred between an official’s election and their taking of office.

Such abuses must be avoided while fully recognizing the constitutional rights to legitimately challenge the outcome of an election or denounce electoral fraud.

A proceeding the uncovers the material truth in this case must be based on the presentation of evidence, the corroboration of proof, and the adversarial submission of factual and legal arguments in the framework of a completely independent court system.

We would always support any decision thus reached. Unfortunately, that is not the case in this instance.

The Division disregarded the overriding object of electoral law: to preserve the will of the voters. By seeking to disavow the already-consummated legal effects of the proclamation, the Electoral Division, therefore, sought to violate that will.

By the same token, the decision of the Electoral Division ignores the generally accepted purpose of precautionary measures:

“They are traditionally termed precautionary measures, although they have also been called actions for provisional remedy or for remedy pendente lite, in allusion to the trial of the matter and the means to ensure that the judgment is complied with.”
“Given that their purpose is instrumental, precautionary measures are not an end in themselves, but depend upon a principal claim and are subject to any eventualities and vicissitudes that may befall it. All precautionary measures have that accessory nature, even those that have been termed autonomous. They are an accessory or instrument of another proceeding, whether present or future. They are exclusively granted by virtue of a principal claim with the aim of safeguarding it.”

Therefore, we must insist that the use of a precautionary measure to invalidate an electoral act and the legal effects of the CNE’s proclamation is wholly inadmissible.

The rights that must be protected are those of the voters, which in this case have been overridden by an anonymous recording, despite the fact that the CNE had already issued its proclamation and approval. To consider that an anonymous recording carries more weight than the conclusions of what was referred to before December 6 as “the world’s most perfect electoral system” is intolerable and legally untenable.

However, in addition to properly investigating the possibility that the recording might be evidence of electoral spying on the opposition, a key element for reaching a determination on the material truth of the matter and assurances about the accusations made, one thing that should obviously be the focus of everyone’s efforts is to get at the truth.

The truth requires more than a proceeding of the kind conducted; the precautionary measure adopted was based on exceptionally flimsy evidence that was not corroborated.

And so, in the space of a couple of days the results of the CNE’s proclamation were voided.

Indeed the only thing satisfied was the urgency of the political need that the precautionary measure sought to meet.

The confrontation between branches of the State and the doubts about the legality and legitimacy of the manner in which it exercised its functions create greater polarization and an institutional logjam, further exacerbating the political, institutional, and economic crisis in which the country finds itself.
During these elections and at the beginning of this parliamentary session we have seen the power of the State used to silence and harass the opposition, violations of the checks and balances designed to ensure the separation and independence of powers, the opportunistic appointment of judges, and interference in different branches of government, all amounting to what is known in the doctrine as *erosion of democracy*, which runs contrary to the fundamental pillars of the Organization and the principles clearly established in its founding instrument and the Inter-American Democratic Charter.

It is with the Inter-American Democratic Charter, the OAS Charter and your commitment thereto in mind, as well as your proclaimed respect for the will of the people expressed on December 6, 2015, that I am writing to you with the certainty that you will keep your word and allow the necessary steps to be taken for the balance of powers to be restored, the will of the electorate respected, the necessary procedures carried out in accordance with the fundamental principles and guarantees afforded by the rule of law, and a way to dialogue paved.

It is essential to respect the sovereign will of the people. The people expressed their will at the ballot box and it was confirmed by Venezuela’s electoral courts. Now that will must be obeyed by respecting the results of the elections; or else it must be reliably demonstrated that those results were not the will of the people by means of a proceeding in which all guarantees of due process are observed. That is the principle duty of loyalty that rulers owe the ruled. At the Tres Cruces Congress Artigas told “the deputies of each of the peoples of the East Bank of the Uruguay” that “[m]y authority comes from you and ceases by your sovereign presence. You are in the full enjoyment of your rights: see there the fruits of my longings and efforts, and see there too all the rewards.” We cannot go back that far at the history of our Americas region and deny principles that we hold sacred: utmost respect for the institutions and authority that embody the will of the people.

Accept, Excellency, renewed assurances of my highest consideration.

Luis Almagro,
Secretary General