

INTER-AMERICAN COURT OF HUMAN RIGHTS

Mercedes Chocrón Chocrón

vs.

The Bolivarian Republic of Venezuela

Case 12.556

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**BRIEF OF THE ASSOCIATION OF THE BAR OF THE CITY OF NEW YORK AS  
*AMICUS CURIAE* IN SUPPORT OF PETITIONER  
MERCEDES CHOCHRÓN CHOCHRÓN**

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Dated: New York, New York  
February 22, 2011

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MERCEDES CHOCRÓN CHOCRÓN**

The Association of the Bar of the City of New York (“ABCNY”), as *amicus curiae*, submits this brief to urge the Court to grant the application of the Inter-American Commission on Human Rights (“IACHR” or the “Commission”), to find the Bolivarian Republic of Venezuela (“Venezuela,” “state” or “government”) responsible for violations of Articles 8 and 25 of the American Convention on Human Rights (“American Convention” or “Convention”) and to order Venezuela to provide relief to Mercedes Chocrón Chocrón.

**Preliminary Statement**

ABCNY has been a leading international bar association since its founding in 1870. Its members include over 23,000 lawyers and scholars from the United States and over 50 other countries. ABCNY is based in New York City, an international hub of business and diplomacy. ABCNY has long been committed to promoting the rule of law and independent, effective judiciaries all over the world.

The ABCNY asks this Court to reinforce the rule of law and the independence of the Venezuelan judiciary by declaring in this case that Venezuela may not deprive judges, including

temporary and provisional judges, of the right to due process guarantees and judicial protection by summarily removing them from their posts without prior notice or a fair hearing, just cause, and the right to seek effective recourse from an impartial and independent tribunal previously established by law.

The pattern of conduct by which the government of Venezuela, under the leadership of President Hugo Chávez, has undermined the rule of law and the independence of the Venezuelan judiciary has been well documented by independent international organizations. This case presents a particularly egregious example of this pattern of conduct and calls for strong action by the Court.

Having served in the Venezuelan judiciary for twenty years, Mrs. Chocrón was appointed as a provisional judge in the criminal court in Caracas in October 2002. Shortly after her appointment, Judge Chocrón was called upon to decide a politically charged case involving General Carlos Rafael Alfonso Martínez, who had been imprisoned for protesting against the government. On January 25, 2003, Judge Chocrón rendered a decision enforcing certain precautionary measures ordered by the IACHR in favor of General Martínez. Nine days later, on February 3, 2003, the Judicial Commission of the Supreme Court summarily removed Judge Chocrón from her post.

Judge Chocrón was removed without due process, with no fair hearing, no prior notice, no opportunity to prepare a defense, and no meaningful explanation of the grounds for her dismissal. Moreover, the Judicial Commission was not an independent, and impartial tribunal, previously established by law within the meaning of Article 8 of the American Convention. Mrs. Chocrón's dismissal was at best illegal and arbitrary, and at worst retaliatory and politically motivated.

Mrs. Chocrón's appeals were dismissed, without consideration of the merits, on the simple grounds that the Judicial Commission of the Supreme Court had the authority to remove temporary judges without cause. In other words, by reason of her temporary appointment, Mrs. Chocrón was held to have no right to challenge her removal and thus was denied effective recourse on appeal.

This Court has decided other cases in which the Venezuelan government removed provisional judges like Mrs. Chocrón in violation of Articles 8 and 25 of the Convention.<sup>1</sup> The judges in those cases were afforded some degree of due process, which Mrs. Chocrón was simply not afforded here.<sup>2</sup> Mrs. Chocrón's case is not only more egregious than those cases, but it is also more clearly politically motivated. Given the complete lack of due process afforded to Mrs. Chocrón in her removal proceeding and appeals process and the unavoidable conclusion that Mrs. Chocrón was removed from office for political reasons, this Court must find that Mrs. Chocrón's removal violated Articles 8 and 25 of the Convention.<sup>3</sup>

### **Statement of Interest**

The ABCNY encourages efforts to promote legal regimes that effectively maintain the rule of law and thereby more strongly protect human rights. With this brief, the ABCNY hopes

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<sup>1</sup> See *Apitz Barbera et al. v. Venezuela*, Inter-Am. Ct. H.R. (ser. C) No. 24 (Aug. 5, 2008); *Reverón Trujillo v. Venezuela*, Inter-Am. Ct. H.R. (ser. C) No. 197 (June 30, 2009).

<sup>2</sup> In *Apitz*, unlike in this case, a reason was offered for the judges' removal from office, namely that "they had committed an inexcusable judicial error." *Apitz Barbera et al. v. Venezuela*, *supra* note 1, ¶ 2. In *Trujillo*, unlike in this case, the judge was removed for alleged disciplinary offenses and was eventually able to annul her dismissal on appeal. *Reverón Trujillo v. Venezuela*, *supra* note 1, ¶¶ 50, 53.

<sup>3</sup> This brief does not address broader questions of remedies for the Venezuelan Government's consistent pattern of dismissing provisional judges in violation of Articles 8 and 25 of the Convention. We urge the Court, however, to take this opportunity to address this pattern. In the event the Court determines to do so, we respectfully request an opportunity to submit further *amicus* views with respect to such broader remedies.

to assist the Court by describing how a decision favoring Mr. Chocrón would reinforce the rule of law and human rights in general.

The international promotion of the rule of law and the impartial administration of justice have long been part of the ABCNY's mission. The ABCNY was founded by lawyers who gathered to protect the independence of the judiciary and the integrity of the legal profession in New York from powerful forces trying to turn judges and lawyers into extensions of the political apparatus. The ABCNY is a purely voluntary, independent and non-partisan organization that exists solely to serve the public interest. Reports and legal analysis of the ABCNY have long had a high level of credibility with policy makers because of the independent and non-partisan nature of the organization.

## **Statement of Facts**

The following summary of the facts is based on a review of Venezuela's human rights record as documented by independent international organizations and on the record in this case.

### **I. Background: The "Reform" of the Judiciary in Venezuela**

Venezuela's actions against Mrs. Chocrón must be understood as part of the process of politization of the judiciary that began with the election of President Chávez and the adoption of a new constitution in 1999. At the time, Venezuela's judiciary was widely regarded as corrupt. However, rather than remedying obvious deficiencies, the "reform" effort was employed primarily to make the judiciary politically servile, thereby allowing the Chávez government to operate essentially unconstrained by the rule of law. That process has been documented by well-



respected international non-governmental organizations<sup>4</sup> and has been recognized in previous cases by this Court.<sup>5</sup> Accordingly, this brief only provides a short overview.

Shortly after the adoption of the 1999 Constitution, the Venezuelan government instituted a judiciary system consisting largely of temporary and provisional judges.<sup>6</sup> This was portrayed as a transitional measure to address what was perceived as widespread judicial corruption and to remain in place only until formal competitions were held to appoint permanent judges.

However, no open competitions have been held to date. Instead, temporary and provisional judges' lack of tenure has been used grounds for removal without due process or just cause, often after these judges rule against the government in high profile political cases.<sup>7</sup> Meanwhile, other temporary judges have been promoted to tenured positions without holding an open competition, for their apparent loyalty to the regime.<sup>8</sup> The end result is a judiciary that is dependent on and serves at the discretion of the executive branch, and a government that can breach the most basic human and civil rights with impunity.

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<sup>4</sup> See Human Rights Watch, *A Decade Under Chávez, Political Intolerance and Lost Opportunities for Advancing Human Rights in Venezuela* (September 2008) (hereinafter "HRW 2008 Report"); Human Rights Watch, *Rigging the Rule of Law: Judicial Independence Under Siege in Venezuela* (June 2004) (hereinafter "HRW 2004 Report"); Inter-American Commission on Human Rights, *Democracy and Human Rights in Venezuela* (December 2009) (hereinafter "IACHR 2009 Report"); Inter-American Commission on Human Rights, *Report on the Situation of Human Rights in Venezuela* (December 2003) (hereinafter "IACHR 2003 Report"); Office of the United Nations High Commissioner on Human Rights, *Preocupante la situación de la justicia en Venezuela*, Press Release (July 2009), available at <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=7567&LangID=S>.

<sup>5</sup> *Apitz Barbera et al. v. Venezuela*, *supra* note 1, ¶¶ 26-40, 54-67.

<sup>6</sup> Provisional judges hold their posts until a public competition is held to select a permanent judge and temporary judges are appointed to fill temporary openings, such as when a judge takes parental or sick leave.

<sup>7</sup> IACHR 2009 Report, *supra* note 4, at 71-75, ¶¶ 285-301.

<sup>8</sup> *Id.* at 55-56, ¶¶ 213-16.

The passive acquiescence on the part of the courts has allowed the Chávez government to shut down a TV station and several radio stations,<sup>9</sup> confiscate TV frequencies from a news network channel,<sup>10</sup> fire and blacklist political opponents,<sup>11</sup> deny access to social programs based on political affiliation,<sup>12</sup> enact censorship laws and use them to prosecute several journalists,<sup>13</sup> interfere in union elections,<sup>14</sup> subject human rights advocates, opposition leaders, and protesters to criminal investigations and harassment on groundless charges,<sup>15</sup> and improperly use the machinery of the state to favor electoral campaigns.<sup>16</sup> The courts' lack of independence has allowed the government to take such actions with impunity, leaving civil society without recourse to enforce the most basic civil and human rights.

## **II. The Dismissal of Mrs. Chocrón Without Good Cause and Without Due Process**

Mercedes Chocrón Chocrón began her career as part of the Venezuelan judiciary in 1982. Over the next twenty years, she served in numerous judicial roles, including service as a temporary and provisional judge for several criminal courts,<sup>17</sup> gathering extensive judicial experience.

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<sup>9</sup> HRW 2008 Report, *supra* note 4, at 60-61, 110-117; IACHR 2009 Report, *supra* note 4, at 129-35.

<sup>10</sup> HRW 2008 Report, *supra* note 4, at 117-19.

<sup>11</sup> *Id.* at 2, 15-27; IACHR 2009 Report, *supra* note 4, at 23-29.

<sup>12</sup> HRW 2008 Report, *supra* note 4, at 2; IACHR 2009 Report, *supra* note 4, at 23-29.

<sup>13</sup> HRW 2008 Report, *supra* note 4, at 75-102; IACHR 2009 Report, *supra* note 4, at 90-97.

<sup>14</sup> HRW 2008 Report, *supra* note 4, at 152-73; IACHR 2009 Report, *supra* note 4, at 275-86.

<sup>15</sup> HRW 2008 Report, *supra* note 4, at 204-10; IACHR 2009 Report, *supra* note 4, at 158-77.

<sup>16</sup> IACHR 2009 Report, *supra* note 4, at 11-17.

<sup>17</sup> Brief of the Inter-American Commission on Human Rights, *Chocrón v. Bolivarian Republic of Venezuela*, ¶ 49 (Inter-Am. Ct. H.R. April 12, 2007) (No. 12.556) (hereinafter "IACHR's Application").

On October 28, 2002, Mrs. Chocrón was appointed as a temporary judge for the Criminal Court of First Instance of the Metropolitan Caracas Judicial Circuit. The appointment was made by resolution of the Judicial Commission of the Supreme Tribunal of Justice, the body charged with appointing judges in Venezuela.<sup>18</sup> In the resolution appointing her, the Judicial Commission did not set forth a term or conditions for her appointment, but it provided that her appointment was done “after examining the credentials of those aspiring to the position.”<sup>19</sup> At the time, Venezuelan jurisprudence confirmed that her provisional appointment would last until an open competition was held or until she was removed from her position through a disciplinary proceeding.<sup>20</sup>

Judge Chocrón’s independence was quickly put to the test, in a high profile case involving General Carlos Rafael Alfonso Martínez, a well-known figure opposed to the Chavez government. General Martínez had been arrested on December 30, 2002, for his association with a month-long protest against the government carried out in the Altamira square in Caracas.<sup>21</sup> One court — whose judge was also removed — had already ordered that the general be freed.<sup>22</sup> On January 25, 2003, the International Human Rights Defenders requested a judicial investigation of the General Martínez’s case, because on January 13, 2003, the IACHR had issued certain precautionary measures in favor of the general and because of the order releasing

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<sup>18</sup> IACHR’s Application, *supra* note 17, ¶ 51.

<sup>19</sup> IACHR’s Application, *supra* note 17, ¶ 51.

<sup>20</sup> Political-Administrative Chamber of the Supreme Court, Judgment No. 365 (May 26, 1994); Brief of Petitioner Mercedes Chocrón, *Chocrón v. Bolivarian Republic of Venezuela*, ¶ 13 (Inter.-Am. Ct. H.R. Feb. 22, 2010) (No. 12.556) (hereinafter “Chocrón Brief”).

<sup>21</sup> Chocrón Brief, *supra* note 19, ¶ 13. See also *Two shot dead in Venezuela clashes*, BBC News (Jan. 4, 2003), available at <http://news.bbc.co.uk/2/hi/americas/2625997.stm>.

<sup>22</sup> IACHR 2003 Report, *supra* note 4, at ¶ 161.

him from prison had not been carried out.<sup>23</sup> This petition was assigned to Mrs. Chocrón, who promptly granted the request to investigate whether the Foreign Relations Ministry had received the IACHR's precautionary measures and whether General Martínez was aware of these measures.<sup>24</sup> The tribunal was unable to meet with the general, because it was denied access to him by the military.<sup>25</sup> It was able to confirm, however, that the Foreign Relations Ministry had received the IACHR's precautionary measures.<sup>26</sup>

On February 3, 2003, just over a week after Judge Chocrón granted the petition in the General Martínez's case, and a mere three months after being appointed, the Judicial Commission of the Supreme Court summarily dismissed Mrs. Chocrón from her position as a judge.<sup>27</sup> The Commission explained that its decision was made in response to unspecified "comments" that it had received.<sup>28</sup> Mrs. Chocrón received the decision by fax two days later and a new provisional judge was quickly appointed to replace her.<sup>29</sup>

On February 26, 2003, Mrs. Chocrón filed a motion with the Judicial Commission seeking reconsideration of its decision.<sup>30</sup> However, rather than affording Mrs. Chocrón a chance to respond to the anonymous remarks that lead to her removal, the Judicial Commission simply

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<sup>23</sup> *Id.* at ¶ 23.

<sup>24</sup> *Id.* at ¶ 25.

<sup>25</sup> *Id.* at ¶ 26.

<sup>26</sup> *Id.*

<sup>27</sup> *Id.* at ¶ 15; IACHR's Application, *supra* note 17, ¶ 55.

<sup>28</sup> IACHR's Application, *supra* note 17, ¶¶ 55 & 56.

<sup>29</sup> Chocrón Brief, *supra* note 20, ¶ 19.

<sup>30</sup> IACHR's Application, *supra* note 17, ¶ 60.

dismissed her petition, finding that because it had the power to appoint temporary judges, it also had the authority to freely dismiss them without due process, cause, or a hearing.<sup>31</sup>

On May 5, 2003, Mrs. Chocrón filed a further appeal with the Political-Administrative Chamber of the Supreme Tribunal. The Chamber dismissed the appeal without consideration of the merits, based on a simple finding that the Judicial Commission had the authority to remove temporary judges without prior hearing without having to explain the reasons for removal.<sup>32</sup>

### **III. The Inter-American Commission Finds that Venezuela Violated Mrs. Chocrón's Rights under Articles 8 and 25 of the American Convention**

On May 15, 2005, Mrs. Chocrón filed this case with the Inter-American Commission. On March 17, 2009, the Commission concluded that Venezuela had violated Mrs. Chocrón's rights to a fair trial and an effective judicial remedy enshrined in Articles 8(1) and 25(1) of the Convention. The Commission recommended that Venezuela reinstate Mrs. Chocrón to the office of judge, adequately compensate Mrs. Chocrón for lost wages and benefits, and adopt immediate measures for the approval of regulations establishing criteria and guarantees for the appointment, tenure, and removal of judges that are consistent with the provisions established in the Convention. Venezuela did not carry out the recommendations, and on November 13, 2009, the instant case was filed with the Court.

## **Argument**

### **I. Venezuela Breached Its Obligations under Article 8 by Removing Mrs. Chocrón from Her Post as Judge Without a Hearing and Without Due Process**

Article 8(1) of the Convention grants every person the right to a hearing, with due process guarantees, by a competent, independent, and impartial tribunal, previously established

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<sup>31</sup> IACHR's Application, *supra* note 17, ¶ 61.

<sup>32</sup> IACHR's Application, *supra* note 17, ¶¶ 62 & 63.

by law, for the determination of his or her rights and obligations. As previously recognized by this Court, such rights include the right of a temporary judge to stability in office. Mrs. Chocrón's rights in this regard were violated in the instant case.

A. The Right to Stability in Office

As a temporary judge, Mrs. Chocrón had the right to hold office until an open competition was held or until she was removed through a fair disciplinary proceeding for good reason. This right has been explicitly recognized by this Court in past decisions as an essential guarantee of judicial independence. The right was denied to Mrs. Chocrón by the Venezuelan government.

In *Apitz Barbera et al. v. Venezuela*, this Court held that “the government must ensure that provisional judges be independent, and thus, it must give them stability and permanence in office, because being a provisional judge is not equivalent to being discretionally removable from office.”<sup>33</sup> In *Reverón Trujillo v. Venezuela*, this Court recognized the right of all judges to “tenure in their position,” which guarantees “no unjustified dismissal or free removal.”<sup>34</sup> These holdings are consistent with this Court's prior jurisprudence<sup>35</sup> as well as with the *U.N. Basic Principles on the Independence of the Judiciary*, which provide that “[j]udges shall be subject to suspension or removal only for reasons of incapacity or behavior that renders them unfit to discharge their duties” and that “[a]ll disciplinary, suspension or removal proceedings shall be

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<sup>33</sup> *Apitz Barbera et al. v. Venezuela*, *supra* note 1, ¶ 43 (Aug. 5, 2008).

<sup>34</sup> *Reverón Trujillo v. Venezuela*, *supra* note 1, ¶ 70, 78-79 (June 30, 2009).

<sup>35</sup> *Constitutional Tribunal v. Perú*, Inter-Am. Ct. H.R. (ser. C) No. 71, ¶ 75 (Jan. 31, 2001); *Palarama Iribarne v. Chile*, Inter-Am. Ct. H.R. (ser. C) No. 135, ¶ 156 (Nov. 22, 2005); *Apitz Barbera et al. v. Venezuela*, *supra* note 1, ¶ 138.

determined in accordance with established standards of judicial conduct.”<sup>36</sup> As explained by the United Nations Commission on Human Rights:

[t]he requirement of competence, independence and impartiality of a tribunal... is an *absolute right* that is not subject to any exception.... Judges may be dismissed *only* on serious grounds of misconduct or incompetence, in accordance with fair procedures ensuring objectivity and impartiality set out in the constitution or the law. The dismissal of judges by the executive, e.g., before expiry of the term for which they have been appointed, without any specific reason given to them and without effective judicial protection being available to contest the dismissal is incompatible with the independence of the judiciary.<sup>37</sup>

As is evident from the Chávez government’s pattern of conduct, Venezuela seeks to deny temporary judges any right to stability in office for precisely the reasons that the Convention and the jurisprudence of this Court seeks to forestall – to make the judiciary politically pliable and to undermine the rule of law. The Court should unequivocally affirm under Article 8(1) of the Convention the right of all judges, temporary and permanent, to stability in office.

B. The Right to a Fair Hearing with Due Process Guarantees

Under Article 8(1) of the Convention, Mrs. Chocrón had the right to a fair hearing, with due process guarantees, for the determination of her rights as a judge. Due process includes the right to prior notice, an opportunity to be heard, and a well founded decision.

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<sup>36</sup> Principles 18 and 19 of the *U.N. Basic Principles on the Independence of the Judiciary* adopted by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders held at Milan from August 26th to September 6th 1985, and endorsed by the General Assembly resolutions 40/32 of November 29, 1985, and 40/146 of December 13, 1985.

<sup>37</sup> U.N. Human Rights Comm., *General Comment No. 32: Right to equality before courts and tribunals and to a fair trial*, U.N. Doc. CCPR/C/GC/32, ¶¶ 16 & 17 (July 27, 2007) (emphasis added).

In *Constitutional Tribunal v. Perú*, this Court recognized the right of judges to a fair hearing upon their removal from office.<sup>38</sup> The Court cited the *U.N. Basic Principles on the Independence of the Judiciary*, which provide that “[a] charge or complaint against a judge in his/her judicial or professional capacity shall be processed expeditiously and fairly, in accordance with the national law” and that “[t]he judge shall have the right to a fair hearing.”<sup>39</sup> This is also reflected in Article 267 of the Venezuelan Constitution, which provides that “[t]he disciplinary procedure [for judges] shall be a public, oral and summary proceeding, conducted with the guarantees of due process and under the terms and conditions that the law establishes.” More generally, this Court has interpreted Article 8 to encompass “certain the procedural requirements that should be observed...so that a person may defend himself adequately in the face of any type of act of the State that affects his rights.”<sup>40</sup>

Mrs. Chocrón was not afforded any hearing — much less a fair hearing — or other proceeding of any kind. Indeed, she was not even given prior notice that a decision was pending.<sup>41</sup> In fact, Mrs. Chocrón found out about the Judicial Commission’s decision to remove

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<sup>38</sup> *Constitutional Tribunal v. Perú*, *supra* note 35, ¶ 74.

<sup>39</sup> Principles 17 of the *U.N. Basic Principles on the Independence of the Judiciary*, *supra* note 36.

<sup>40</sup> *Constitutional Tribunal v. Perú*, *supra* note 35, ¶¶ 69 & 74. See also *Judicial Guarantees in States of Emergency*, Inter-Am. Ct. H.R. (ser. A) No. 9, ¶ 27 (Oct. 6, 1987).

<sup>41</sup> In a report on existing international norms and standards pertaining to the right to a fair trial, the U.N. Sub-Commission on Prevention of Discrimination and Protection of Minorities recognized that “[i]f a person’s rights and obligations may be adversely affected in a suit at law or by particularized actions or inactions taken or proposed by a public authority, the court or the public authority shall give the person adequate notice of the nature and purpose of the proceedings. . . .” U.N. Sub-Commission on Prevention of Discrimination and Protection of Minorities, *Report of the Sub-Commission on Prevention of Discrimination and Protections of Minorities on its 46th Session, The Administration of Justice and the Human Rights of Detainees*, ¶ 46 U.N. Doc. E/CN.4/Sub.2/1994/24 (1994).



her from her post only after the fact, two days after the decision had been made behind close doors.

C. The Right to a Well-Founded Decision

This Court has held that due process further includes the right to expect that decisions affecting that individual's rights or interests will be well-founded. Decisions that are not well-founded would be arbitrary.<sup>42</sup> With respect to the removal of judges, the *U.N. Basic Principles on the Independence of the Judiciary* explain that good reason includes only "incapacity or behavior that renders [judges] unfit to discharge their duties[.]"<sup>43</sup> In this respect, the United Nations Commission on Human Rights explains that "[j]udges may be dismissed only on serious grounds of misconduct or incompetence."<sup>44</sup>

The decision removing Mrs. Chocrón from office cited no such incapacity or incompetence, nor any form of serious misconduct. The decision did not even allege that Mrs. Chocrón had violated any established standards of judicial conduct, as contemplated by Article 267 of the Venezuelan Constitution. Instead, the decision merely states that Mrs. Chocrón was dismissed in response to unspecified "comments." No explanation whatsoever is provided with respect to their authorship, content, or their import Mrs. Chocrón's fitness as a judge. On its face, the decision by the Judicial Commission appears arbitrary. In light of the circumstances, it seems clear that the decision was crafted so as to conceal its true motivation.

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<sup>42</sup> *Yatama v. Nicaragua*, Inter-Am. Ct. H.R. (ser. C) No. 127, ¶ 152 (June 23, 2005).

<sup>43</sup> Moreover, the principles state that and that "[a]ll disciplinary, suspension or removal proceedings shall be determined in accordance with established standards of judicial conduct." Principles 18 and 19 of the *U.N. Basic Principles on the Independence of the Judiciary*, *supra* note 36.

<sup>44</sup> U.N. Human Rights Comm., *General Comment No. 32: Right to equality before courts and tribunals and to a fair trial*, *supra* note 37, ¶¶ 16 & 17 (emphasis added).

D. The Right to a Decision by an Independent and Impartial Tribunal

Article 8(1) of the Convention guarantees the right to be tried by an independent and impartial tribunal previously established by law. The Judicial Commission satisfies none of these requirements.

According to this Court, courts are independent when they do not find “themselves subjected to possible undue limitations in the exercise of their functions, by bodies alien to the Judiciary or even by those judges with review or appellate functions.”<sup>45</sup> Similarly, “impartiality demands that the judge acting in a specific dispute approach the facts of the case subjectively free of all prejudice and also offer sufficient objective guarantees to exclude any doubt the parties or the community might entertain as to his or her lack of impartiality.”<sup>46</sup>

The political motivation behind Mrs. Chocrón’s removal shortly after her decision in favor of General Martinez is inescapable. Indeed, in its 2003 and 2009 reports on democracy and human rights reports in Venezuela, the IACHR cited highlighted Mrs. Chocrón’s case as a prime example of a judge being removed from her office for political reasons.<sup>47</sup> At the same time, Mrs. Chocrón’s case is far from unusual. The IACHR reports have documented how the Judicial Commission has removed judges for political reasons in a series of other cases.<sup>48</sup> Any veneer of independence and impartiality of the Judicial Commission has long since been stripped away.

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<sup>45</sup> *Apitz Barbera et al. v. Venezuela*, *supra* note 1, ¶ 55.

<sup>46</sup> *Id.* ¶ 56.

<sup>47</sup> IACHR 2009 Report, *supra* note 4, at ¶ 286; IACHR 2003 Report, *supra* note 4, at ¶ 161.

<sup>48</sup> HRW 2004 Report, *supra* note 4, at 12-13; IACHR 2009 Report, *supra* note 4, at ¶ 285-301.

E. The Right to a Decision by a Tribunal Previously Established by Law

It is a further basic tenet of the independence of the judiciary that every person has the right to be heard by regular courts, following procedures previously established by law. States are not to create “[t]ribunals that do not use the duly established procedures of the legal process [...] to displace the jurisdiction belonging to the ordinary courts or judicial tribunals.”<sup>49</sup>

The Judicial Commission does not satisfy this test.

In the absence of the constitutionally mandated open competitions, the Judicial Commission has been the body in charge of appointing temporary judges in Venezuela. The body in charge of disciplining judges, however, is the Commission on the Functioning and Restructuring of Judicial System (CFRJS).<sup>50</sup> Article 28 of the Regulations on the Management, Governance, and Administration of the Judicial Branch, the regulations that created the Judicial Commission, provides the list of functions and authorities of the Judicial Commission.<sup>51</sup> Those functions and authorities do not include the power to remove or discipline temporary judges. In fact, Article 30 of the Regulations on the Management, Governance, and Administration of the Judicial Branch explicitly provides that “[t]he [CFRJS] shall . . . have disciplinary functions, until the legislation is passed and the corresponding disciplinary courts are created.”<sup>52</sup> To date

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<sup>49</sup> *Petruzzi v. Perú*, Inter-Am. Ct. H.R. (ser. C) No. 52, ¶ 129 (May 30, 1999) (citations and quotation marks omitted).

<sup>50</sup> National Constituent Assembly Decree on the Regime for the Transition of Public Power, December 22, 1999, published in Official Gazette No. 36.920 of March 28, 2000. Articles 30 et seq. (Annex 3 to the IACHR Petition).

<sup>51</sup> Regulations on the Management, Governance, and Administration of the Judicial Branch, Art. 28, issued by the full court of the Supreme Court, published in Official Gazette No. 37.014 of August 15, 2000 (Annex 6 to the IACHR Petition).

<sup>52</sup> Regulations on the Management, Governance, and Administration of the Judicial Branch, Art. 30, issued by the full court of the Supreme Court, published in Official Gazette No. 37.014 of August 15, 2000 (Annex 6 to the IACHR Petition).

no disciplinary courts have been created, and so CFRJS remains the sole body with the authority to discipline judges.

Given its lacks of authority to discipline or remove temporary judges, and in thinly-veiled attempt to expand its powers and at the expense of those of the CFRJS, the Judicial Commission has instead sought to style its actions as the “annulment” of temporary appointments. This expansion of the Judicial Commission’s appointing authority is at odds with Article 267 of the Venezuelan Constitution, which clearly designates the power to remove judges to disciplinary courts.<sup>53</sup>

In sum, the Judicial Commission is not a tribunal “previously established by law” for purposes of disciplining and removing temporary judges, such as Mrs. Chocrón. This constitutes yet another aspect of Mrs. Chocrón’s removal that violates the protections enshrined in Article 8(1) of the Convention.

## **II. Venezuela Breached Its Obligations under Article 25 by Denying Mrs. Chocrón Effective Recourse Against the Violation of Her Rights**

Article 25 of the Convention grants the right to effective recourse to a competent court for protection against acts that violate fundamental rights recognized by domestic laws and under the Convention. The denial of such recourse to Mrs. Chocrón after the violation of her rights under Article 8(1) of the Convention and under Articles 26 and 267 of the Venezuelan Constitution constitutes a breach of Article 25 of the Convention.

This Court has explained that the rights to effective recourse under Article 25 entail more than the mere formal right to petition a court or tribunal when such request would be futile; for example, where the judicial branch lacks independence and impartiality or for any reason, the

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<sup>53</sup> Constitution of the Bolivarian Republic of Venezuela, Art. 267.

victim is denied access to the courts.<sup>54</sup> A recourse is also futile when justice is summarily denied to the victim.<sup>55</sup> This Court has established that domestic remedies must not only be available to the victim, but they must also effectively and soundly resolve the issues raised and must potentially provide for appropriate compensation.<sup>56</sup> In summary, an effective recourse to a competent court means that an impartial and independent tribunal must be available to reach the merits of the case and present the possibility of a viable remedy for any violations.

Mrs. Chocrón was allowed formal recourse to a tribunal. She was able to request that the Judicial Commission to reconsider its decision, and to file an appeal with the Political-Administrative Chamber of the Supreme Court. However, the decisions issued by both the Judicial Commission and the Political-Administrative Chamber made clear that her appeals were futile in substance. Each held that Mrs. Chocrón as a temporary judge did not have any right to challenge her removal. The appeals thus afforded no prospect of a consideration of the merits of the case, no prospect of a resolution of the arguments raised as to violations of fundamental rights, and no prospect of an adequate remedy for Mrs. Chocrón. In short, there was no effective recourse or right of appeal as required by Article 25 of the Convention,<sup>57</sup> and there remains no such prospect in Venezuela for other temporary judges serving today who are subject to politically motivated removal.

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<sup>54</sup> *Judicial Guarantees in States of Emergency*, *supra* note 40, ¶ 24. See also *Aguado Alfaro et al. v. Perú*, Inter-Am. Ct. H.R. (ser. C) No. 158, ¶ 125 (Nov. 24, 2006); *Caso Comunidad Indígena Yakye Axa v. Paraguay*, Inter-Am. Ct. H.R. (ser. C) No. 125, ¶ 61 (Jul. 17, 2005); *Five Pensioners v. Perú*, Inter-Am. Ct. H.R. (ser. C) No. 98, ¶ 136 (Feb. 28, 2003).

<sup>55</sup> *Ivcher Bronstein v. Perú*, Inter-Am. Ct. H.R. (ser. C) No. 74, ¶ 137 (Feb. 6, 2001).

<sup>56</sup> *Aguado Alfaro et al. v. Perú*, *supra* note 54, ¶ 126.

<sup>57</sup> *Ivcher Bronstein v. Perú*, *supra* note 55, ¶ 137.

### **III. The Unjustified Removal of Mrs. Chocrón Undermines the Independence of the Venezuelan Judiciary and the Human and Legal Rights of all Venezuelans**

The Venezuelan Judiciary finds itself in a permanent state of emergency. Forty-six percent of Venezuelan judges do not enjoy tenure in their positions.<sup>58</sup> The Judicial Commission illegally removes hundreds of these judges every year without accountability. Only those provisional judges that demonstrate political reliability are awarded tenure; judges demonstrating independence face removal. Provisional judges face interference and pressure from other parts of the judiciary and external sources. This situation stands in stark contrast to the Venezuelan Constitution, which requires a formal process for the suspension and discipline of judges and open competitions for their appointment.

A recent study by Consorcio Desarrollo y Justicia (“CDJ”), a Venezuelan non-governmental organization affiliated with the Organization of American States, found after conducting anonymous interviews with seventy-six judges that only 7.76 percent of the judges interviewed believed that the judiciary was completely independent.<sup>59</sup> Seventy-seven percent felt that their autonomy was limited. Fifty-six percent felt that certain judicial decisions were unduly influenced by the legislative branch, whereas forty-three percent felt that some of the decisions were improperly influenced by the executive branch. Only twelve percent believed that judicial decisions were made solely in accordance with the law. Sixty-five percent had no

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<sup>58</sup> Juan Francisco Alonso, *El Tribunal Supremo sancionó a 16 jueces en un solo día*, El Universal (Aug. 3, 2010), available at [http://english.eluniversal.com/2010/08/03/pol\\_art\\_el-tribunal-supremo\\_1992690.shtml](http://english.eluniversal.com/2010/08/03/pol_art_el-tribunal-supremo_1992690.shtml).

<sup>59</sup> Juan Francisco Alonso, *Sólo 7% de los jueces creen que justicia es totalmente autónoma*, El Universal (Dec. 20, 2009), available at [http://opinion.eluniversal.com/2009/12/20/pol\\_art\\_solo-7-de-los-juece\\_1702345.shtml](http://opinion.eluniversal.com/2009/12/20/pol_art_solo-7-de-los-juece_1702345.shtml).

confidence in the process for appointing and giving tenure to judges, and eighty-two percent had no confidence in the process to discipline and suspend judges.<sup>60</sup>

The statistics from the CDJ's study, while alarming, are hardly surprising. These statistics confirm that the irregular process for appointing, promoting, and suspending judges in Venezuela has demoralized the Venezuelan judiciary as a whole, leaving it highly exposed to its co-branches of government and external political pressures. In these circumstances, the judiciary cannot be a check on executive and legislative branches, and the fundamental rights of all Venezuelans are put at risk.

ABCNY urges the Court to affirm the application of Articles 8 and 25 of the American Convention, to vindicate Mrs. Chocrón's fundamental rights and to reinstate her as a judge,<sup>61</sup> to protect other similarly situated temporary and provisional judges currently in Venezuela, and to come to the aid of Venezuelan civil society in its need for an independent judiciary and the rule of law.

## Conclusion

For the foregoing reasons, the ABCNY as amicus curiae respectfully supports Mrs. Chocrón's petition and requests that the Court declare that Venezuela violated Articles 8 and 25 by removing Mrs Chocrón from her position as a temporary judge:

- without due process and without a decision by an independent and impartial tribunal, previously established by law; and

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<sup>60</sup> Juan Francisco Alonso, *80% de jueces no confían en métodos para sancionarlos*, El Universal (Dec. 21, 2009), available at [http://www.eluniversal.com/2009/12/21/pol\\_art\\_80-de-jueces-no-con\\_1704275.shtml](http://www.eluniversal.com/2009/12/21/pol_art_80-de-jueces-no-con_1704275.shtml).

<sup>61</sup> *Constitutional Tribunal v. Perú*, *supra* note 35, ¶ 137 (finding that the only appropriate remedy to the arbitrary removal of judges in violation of the Convention was their reinstatement).

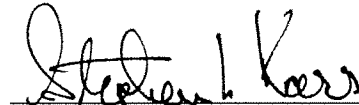
- without the opportunity for effective recourse on appeal.

Respectfully submitted,

February 22, 2011

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