

# WHEN THE VICTIM BECOMES THE CRIMINAL: THE CASE OF IVAN SIMONOVIS

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## I. INTRODUCTION

Hugo Rafael Chávez Frías rose to power in the midst of an era marked by corruption at the hands of high officials and high levels of poverty.<sup>1</sup>

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1. See generally Moises Naim, *La historia de Venezuela: Lo Que se Cree Comunmente*, [*The History of Venezuela: What is Commonly Believed*] VENECONOMÍA HEMEROTECA (shorter version of article appeared in 2000), [http://www.veneconomia.com/site/files/articulos/artEsp569\\_329.pdf](http://www.veneconomia.com/site/files/articulos/artEsp569_329.pdf).

Chávez's campaign carried an air of hope and change to those in the lower classes.<sup>2</sup> Promises of social programs and prosperity for the poor gained Chávez a large portion of the voting public, and ultimately won him the election in 1998.<sup>3</sup>

Soon after his election, Chávez's true colors began to show; mentored by Fidel Castro, Chávez brought a quasi-socialist ideology disguised as democracy.<sup>4</sup> In 1999, Chávez convened a constitutional assembly designed to draft a new constitution that would replace the 1961 constitution.<sup>5</sup> The new constitution changed the presidential term from five to six years. Further, the president could be re-elected only once,<sup>6</sup> such that he would remain in power for twelve years by way of an arguably democratic election.<sup>7</sup> Despite the 12 year limit, Chávez remained in power for over fourteen years,<sup>8</sup> beyond the duration allowed by the constitution enacted by his own administration.<sup>9</sup>

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2. See generally MINISTERIO DEL PODER POPULAR PARA LA COMUNICACIÓN E INFORMACIÓN, AGENDA ALTERNATIVA BOLIVARIANA [ALTERNATIVE BOLIVARIAN AGENDA] (2007) available at [http://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&ved=0CCIQFjAA&url=http%3A%2F%2Fwww.alopresidente.gob.ve%2Fmaterial\\_alo%2F12%2F1418%2F%3Fdesc%3Dfolleto\\_agendaboliarina.pdf&ei=FYVwUNf4FZS09gSV5YcGcW&usg=AFQjCNGcWOqlRk43a\\_Ac1Yf32NWwLdZg&sig2=81vc\\_qTbT0tw28ch8xoJJA](http://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&ved=0CCIQFjAA&url=http%3A%2F%2Fwww.alopresidente.gob.ve%2Fmaterial_alo%2F12%2F1418%2F%3Fdesc%3Dfolleto_agendaboliarina.pdf&ei=FYVwUNf4FZS09gSV5YcGcW&usg=AFQjCNGcWOqlRk43a_Ac1Yf32NWwLdZg&sig2=81vc_qTbT0tw28ch8xoJJA) (last visited Oct. 6, 2012).

3. See generally *id.*; see Luis E. Lander, *Venezuela. La victoria de Chávez, El Polo Patriótico en las elecciones de 1998* [Venezuela. Chávez's victory, The Patriotic Pole in the 1998 elections], NUEVA SOCIEDAD, Mar./Apr. 1999, at 4, 16, available at [http://www.nuso.org/upload/articulos/2749\\_1.pdf](http://www.nuso.org/upload/articulos/2749_1.pdf) (last visited Oct. 6, 2012).

4. See Reuters, *Factbox: Venezuelan President Hugo Chávez*, CHICAGO TRIBUNE NEWS, June 11, 2012, available at [http://articles.chicagotribune.com/2012-06-11/news/sns-rt-us-venezuela-chavezbre85a1fo-20120611\\_1\\_venezuelan-president-hugo-chavez-chavez-change-coup](http://articles.chicagotribune.com/2012-06-11/news/sns-rt-us-venezuela-chavezbre85a1fo-20120611_1_venezuelan-president-hugo-chavez-chavez-change-coup) (last visited Sep. 6, 2012).

5. Carlos M. Ayala Corao, *Venezuela: De La Constituyente de 1999 a la Reforma Constitucional de 2007* [Venezuela: From the 1999 constituent to the 2007 Constitutional Reform], available at <http://biblio.juridicas.unam.mx/libros/6/2728/13.pdf> (last visited Sep. 6, 2012).

6. CONSTITUCIÓN DE LA REPÚBLICA BOLIVARIANA DE VENEZUELA [CONSTITUTION OF THE BOLIVARIAN REPUBLIC OF VENEZUELA] [CN.], tit. III, ch. II, Art. 230, GACETA OFICIAL, n. 36.860, Dec. 30, 1999.

7. See Michael Penfold, *La Democracia Subyugada: El Hiperpresidencialismo Venezolano* [Venezuela's Hyperpresidentialism: Democracy Subjugated], REV. DE CIENCIA POL., 2010, at 21, 24, available at [http://www.scielo.cl/scielo.php?pid=S0718-090X2010000100003&script=sci\\_arttext](http://www.scielo.cl/scielo.php?pid=S0718-090X2010000100003&script=sci_arttext) (last visited Oct. 9, 2012).

8. See Lander, *supra* note 3, at 16.

9. CONSTITUCIÓN DE LA REPÚBLICA BOLIVARIANA DE VENEZUELA [CONSTITUTION OF THE BOLIVARIAN REPUBLIC OF VENEZUELA] [CN.], tit. III, ch. II, Art. 230, GACETA OFICIAL, n. 36.860, Dec. 30, 1999.

This is an illustration of the Kafkaesque<sup>10</sup> quality of the Chávez regime. Chávez instituted the rule of law, purported to follow it, but in reality, bypassed the rule of law, and acted beyond it in an effort to achieve his purposes. As such, the Chávez regime in Venezuela was characterized by a systematic suppression of freedom of expression and freedom of press<sup>11</sup>, paired with a heightened state of violence and death, registering approximately fifty-three homicides per day in 2011,<sup>12</sup> accented by egregious violations of human rights at the hands of his government.

All such violations were in clear opposition to the articles of the Venezuelan Constitution<sup>13</sup> and the Pact of San Jose.<sup>14</sup> These violations are epitomized by the events of April 11, 2002<sup>15</sup> and their aftermath. The repercussions of those events are still felt today by Venezuelan citizens.

Further, the regime continued to strain relations with the international and Inter-American community. Deluded in a fantasy about an imminent attack from the American Empire, the Chávez regime denounced the actions of the Inter-American Commission for Human Rights (IACHR)—viewed by him as a puppet of the United States.<sup>16</sup>

10. MERRIAM-WEBSTER'S COLLEGIATE DICTIONARY 680 (11th ed. 2006) (Kafkaesque: having a nightmarishly complex, bizarre, or illogical quality).

11. See, Human Rights Watch, *World Report 2012*, 278, 280 (2012) available at <http://www.hrw.org/sites/default/files/reports/wr2012.pdf> (last visited Sep. 6, 2012) [hereinafter *World Report 2012*] (In 2007 RCTV, a popular critical television station, was pulled from the airwaves pursuant to a government mandate. It was subsequently replaced by a government station.).

12. *ONG: Venezuela Registró 19.336 Asesinatos en 2011* [NGO: Venezuela Registered 19,336 Homicides in 2011], ULTIMAS NOTICIAS (Dec. 27, 2011), available at <http://www.ultimasnoticias.com.ve/noticias/actualidad/sucesos/ong--venezuela-registro-19-336-asesinatos-en-2011.aspx> (last visited Sept. 6, 2012) [hereinafter *Homicides in 2011*].

13. See, CONSTITUCIÓN DE LA REPÚBLICA BOLIVARIANA DE VENEZUELA [CONSTITUTION OF THE BOLIVARIAN REPUBLIC OF VENEZUELA] [CN.], tit. III, ch. I, GACETA OFICIAL, n. 36.860, Dec. 30, 1999.

14. See generally, Organization of American States, American Convention on Human Rights "Pact of San Jose, Costa Rica" (B-32), Nov. 22, 1969, O.A.S.T.S. No. 36, U.N.T.S. 123. [Hereinafter *Pact of San Jose*]

15. See generally Iralyn Valera, *11-A-2002: El día en que Caracas se tiñó de sangre* [11 April 2002: The Day that Caracas was Tinted in Blood], NOTICIAS 24 (Apr. 10, 2009) available at <http://www.noticias24.com/actualidad/noticia/33622/11-a-2002-un-dia-de-muchas-caras-y-muchas-versiones/> (last visited Sept. 6, 2012) [hereinafter *The Day that Caracas was Tinted in Blood*].

16. See Chávez quiere retirar de "inmediato" a Venezuela de la "tristemente célebre" CIDH [Chávez Wants to Immediately Retire Venezuela from the Sadly Infamous IACHR], NOTICIAS 24 (Apr. 30, 2012) available at <http://www.noticias24.com/venezuela/noticia/104985/chavez-asoma-que-venezuela-podria-retirarse-de-la-cidh/> (last visited Sept. 6, 2012) [hereinafter *Chávez wants to Retire from IACHR*].

This article will analyze the gross misapplication of the law in Venezuela during the Chávez regime—where there remains an absence of the rule of law that was responsible for curtailing the inalienable rights<sup>17</sup> of its political prisoners following the events of April 11, 2002.<sup>18</sup>

The Human Rights Watch (HRW) recently found that the state of affairs in Venezuela as it pertains to the socio-economic and political situation of recent times contributed to a precarious situation in the human rights arena.<sup>19</sup> Venezuela is a country where there is no judicial independence, freedom of speech, press, or assembly.<sup>20</sup> Further, the Chávez regime was notorious for its persecution of government dissenters and critics.<sup>21</sup> Lastly, the government actively prevented non-governmental organizations (NGO) from acting by pursuing legal action against such organizations.<sup>22</sup>

In recent years, the Chávez regime incarcerated in excess of forty political prisoners,<sup>23</sup> and several critics of the government have faced criminal prosecution.<sup>24</sup> This is further aggravated by the lack of an independent judiciary, which prevents defendants from obtaining a fair trial.<sup>25</sup>

## II. FACTUAL BACKGROUND

### A. *April 11, 2002*

April 11, 2002 began as a day filled with hope, with over one-half million opposition protesters assembled in Parque del Este. The protesters marched in order to voice their disappointment and disdain with the Venezuelan government.<sup>26</sup> They began marching along the authorized

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17. See, CONSTITUCIÓN DE LA REPÚBLICA BOLIVARIANA DE VENEZUELA [*CONSTITUTION OF THE BOLIVARIAN REPUBLIC OF VENEZUELA*] [CN.], tit. I, art. 1, GACETA OFICIAL, n. 36.860, Dec. 30, 1999.

18. See generally Valera, *supra* note 15.

19. *World Report 2012*, *supra* note 11, at 278.

20. *Id.* at 278–82.

21. *Id.* at 281.

22. See *id.* at 282.

23. Ivan Simonovis, *My Name is Ivan Simonovis*, available at [http://www.ivansimonovis.com/index.php?option=com\\_k2&view=item&id=21:my-name-is-ivan-simonovis&Itemid=53](http://www.ivansimonovis.com/index.php?option=com_k2&view=item&id=21:my-name-is-ivan-simonovis&Itemid=53) (last visited Sept. 6, 2012) [hereinafter *My Name is Ivan Simonovis*].

24. See *World Report 2012*, *supra* note 11, at 278, 281.

25. See *id.* at 281.

26. See *Cronología de un Vacío de Poder [Chronology of a Lapse in Power]*, BBC MUNDO,

route, and were advised that a detour to the presidential palace was not authorized.<sup>27</sup> The Policia Metropolitana<sup>28</sup> (PM) along with the National Guard accompanied the protesters. These protests were captured by television stations covering the event.<sup>29</sup>

Despite the warning and attempts by the PM to contain the protesters<sup>30</sup> within the bounds of the authorized route, the protesters continued toward the presidential palace at Miraflores to ask Chávez to resign.<sup>31</sup> As the opposition marched, the mayor of downtown Caracas rallied Chavistas<sup>32</sup> to Llaguno Bridge along with other Chavista leaders to “secure the [presidential] palace.”<sup>33</sup>

Hundreds of thousands of protesters marched on, peacefully as Chavistas guarded the palace.<sup>34</sup> As opposition protesters neared the palace, they were met with gunfire from snipers atop the Llaguno Bridge<sup>35</sup> and the roof of the Hotel Eden.<sup>36</sup> Protesters were also met with the National Guard, who fired tear gas and implemented force to prevent protester access to the palace grounds.<sup>37</sup> This iconic clash turned the peaceful protest into a bloodbath, which would forever stain the streets of Caracas. This clash resulted in nineteen deaths and approximately 100<sup>38</sup> injuries.<sup>39</sup> Afterwards,

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(Apr. 5, 2007 6:23 PM) at 1, available at [http://news.bbc.co.uk/hi/spanish/specials/2007/chavez/newsid\\_6523000/6523537.stm](http://news.bbc.co.uk/hi/spanish/specials/2007/chavez/newsid_6523000/6523537.stm) (last visited Sept. 6, 2012) [hereinafter *Chronology of a Lapse in Power*].

27. Simonovis, et al. v. Venezuela, Case [N/A], Inter-Am. Comm’n H.R., at 9, <http://www.cidh.org> (2010) [hereinafter *Simonovis v. Venezuela*] (Ivan Simonovis personally advised protesters of the authorized route via radio, as well as atop a stage set up at the starting point of the protest. After speaking to protesters at the starting point, he retired to his office, where he remained until 11:00 PM.).

28. Metropolitan Police.

29. *Simonovis v. Venezuela*, *supra* note 27, at 9.

30. *Id.* (The PM attempted to rope off passage to the presidential palace, however protesters overtook these barriers.).

31. *The Day that Caracas was Tinted in Blood*, *supra* note 15, at 2.

32. Government supporters

33. *Chronology of a Lapse in Power*, *supra* note 26, at 1.

34. *Id.*

35. *The Day that Caracas was Tinted in Blood*, *supra* note 15, at 2.

36. *Simonovis v. Venezuela*, *supra* note 27, at 9.

37. *Id.*

38. *Id.*

39. See *The Day that Caracas was Tinted in Blood*, *supra* note 15, at 5.

it was determined that two crowd control vehicles and the armored anti-riot vehicle of the PM were littered with 700 gunshots.<sup>40</sup>

While there were assurances to Venezuelan citizens that the situation was under control, the media transmitted the gruesome images of the Llaguno Bridge attack on a split screen; therefore, one could observe the live images of violence in the streets of downtown Caracas.<sup>41</sup> The government responded to these images by temporarily suspending private stations' signals, such that the continuing violence could not be transmitted.<sup>42</sup> Afterwards, the signal was restored.<sup>43</sup>

As the night drew to an end, news rang out that the President had resigned.<sup>44</sup> General Lucas Rincón appeared on television and indicated that the president had been asked to resign, and that he had accepted.<sup>45</sup> Soon after, the president of Fedecamaras, Pedro Carmona Estanga, was presented as the leader of the transitional government that was backed by military officials.<sup>46</sup> Chávez was taken to Fort Tiuna, a military base one-half hour from the presidential palace, where he was to sign his resignation.<sup>47</sup>

The following morning, news was presented that Chávez had never resigned from power and that he was imprisoned.<sup>48</sup> Subsequently, the Attorney General, Isaías Rodríguez, called a press conference where he indicated that a coup d'état had occurred and the so-called transitional government was unconstitutional.<sup>49</sup> Despite these statements, Carmona Estanga was sworn in as the interim president.<sup>50</sup> Later, Chavistas took to the streets in Western Caracas, demanding proof of Chávez's resignation.<sup>51</sup> Meanwhile, the military commenced "Operation Restoration of National Dignity" that allowed the Chavista government officials to return to power. Eventually, Chávez returned to power on April 14, 2002.<sup>52</sup>

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40. See *Simonovis v. Venezuela*, *supra* note 27, at 9.

41. *Chronology of a Lapse in Power*, *supra* note 26, at 1.

42. See *id.*

43. *Id.*

44. *Id.*

45. *Id.* at 2.

46. *Chronology of a Lapse in Power*, *supra* note 26, at 2.

47. *Id.*

48. *Id.*

49. *Id.*

50. *Id.*

51. *Chronology of a Lapse in Power*, *supra* note 26, at 2.

52. *Id.* at 3.

### B. Prosecution of Snipers and Police Officials

In response to the events of April 11, 2002, the government began parallel judicial proceedings against the snipers of Llaguno Bridge and the officials of the PM.<sup>53</sup>

The proceedings against the identified snipers lasted approximately four months and ended in their exoneration. Despite the mountains of evidence, photographs, and footage detailing the sniper shots against the protesters,<sup>54</sup> the proceedings against the police officials lasted approximately eight years.<sup>55</sup> This resulted in the maximum penalty allowed by the Venezuelan Constitution.<sup>56</sup> Further, a defense attorney for one of the snipers, Maikel Moreno, subsequently acted as a judge in the case of Ivan Simonovis.<sup>57</sup>

### III. THE CASE OF IVAN SIMONOVIS

Ivan Simonovis was fifty-three years old in April of 2001 and has been a political prisoner of the Chávez regime for approximately nine years.<sup>58</sup> Mr. Simonovis worked in law enforcement for approximately twenty-three years, and was acting as Security Commissioner at the time of the events of April 11, 2002.<sup>59</sup> His mission as Security Commissioner was to improve the people's trust in law enforcement, which had long been lost in Venezuela because of the corruption of previous administrations.<sup>60</sup>

On April 11, 2002, Mr. Simonovis was part of the PM.<sup>61</sup> The PM attempted to protect protesters on April 11, 2002.<sup>62</sup> However, the government, in its attempt to evade culpability, blamed the PM for the shootings of April 11, 2002, and accused Mr. Simonovis of arming and instructing the police force to use the weapons upon protesters.<sup>63</sup>

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53. *Simonovis v. Venezuela*, *supra* note 27, at 10.

54. *Id.*

55. *See id.*

56. CONSTITUCIÓN DE LA REPÚBLICA BOLIVARIANA DE VENEZUELA [CONSTITUTION OF THE BOLIVARIAN REPUBLIC OF VENEZUELA] [CN.], art. 44, Cl. 3, GACETA OFICIAL, n. 36.860, Dec. 30, 1999 (Maximum penalty allowed by the constitution is thirty years).

57. *Simonovis v. Venezuela*, *supra* note 27, at 10.

58. *See My Name is Ivan Simonovis*, *supra* note 23.

59. *See id.*

60. *See id.*

61. *Simonovis v. Venezuela*, *supra* note 27, at 10.

62. *See id.* at 9.

63. *See id.* at 10.

In reality, Ivan Simonovis took to the radio and informed protesters any route to the presidential palace was not authorized.<sup>64</sup> Mr. Simonovis retired to his office until approximately 11 P.M. after having spoken to protesters at the beginning of the protest on April 11, 2002.<sup>65</sup>

On November 22, 2004, Mr. Simonovis was planning to travel to Atlanta when he was detained.<sup>66</sup> He had already passed the immigration controls, and his passport had already been stamped.<sup>67</sup> Mr. Simonovis was detained without a warrant, detention order, or any similar document or order not to leave the country.<sup>68</sup>

Defense counsel for Mr. Simonovis was not privy to his court file until the following day.<sup>69</sup> Upon review of the court file, counsel noticed an arrest order dated November 19, 2004.<sup>70</sup> The arrest order, however, was not present in the daily logs of the court; instead it was registered "by clerical error" on November 22, 2004.<sup>71</sup>

An arrest without a warrant is a clear violation of Article 44 of the Venezuelan Constitution.<sup>72</sup> Once again, the Chávez regime demonstrated a blatant disregard for the rule of law.

Mr. Simonovis was not advised of his charges until more than twenty-four hours after his questionable detention.<sup>73</sup> At that time, he was advised that he was detained as a necessary accessory of homicide for his alleged

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64. *Id.* at 9.

65. *Id.*

66. *Simonovis v. Venezuela*, *supra* note 27, at 10. (Mr. Simonovis was taken into custody under a ruse. Officers of the police, whom he knew, as he worked for that body for about 23 years, told him that the chief needed to speak with him and took him to the police station, once they arrived, they advised him he could not leave until he spoke with the chief. Mr. Simonovis was not aware that he was detained and not free to leave at this time.)

67. *Id.*

68. *Id.*

69. *Id.* at 11.

70. *Id.*

71. *Simonovis v. Venezuela*, *supra* note 27, at 11. (Mr. Simonovis was present in Venezuela on November 19, 2004, he could have been arrested at his place of abode, had an order been in place at that time. Further, Mr. Simonovis appeared on a television interview, live, on November 20, 2004, and was not arrested on that occasion either. This further evidences that there was no detention or arrest order in place until at the day of the arrest.)

72. CONSTITUCIÓN DE LA REPÚBLICA BOLIVARIANA DE VENEZUELA [CONSTITUTION OF THE BOLIVARIAN REPUBLIC OF VENEZUELA] [CN.], art. 44, GACETA OFICIAL, n. 36.860, Dec. 30, 1999. Art. 44. (Establishing that no person may be arrested or detained without warrant, unless he is caught in flagrante delicto).

73. *See Simonovis v. Venezuela*, *supra* note 27, at 11.



participation in the crimes of April 11, 2002. Additionally, he was detained for injuries against the persons of another.<sup>74</sup>

Notably, the crimes for which Mr. Simonovis and the other police officials were accused were imputed to all three defendants. As such, it was not specified which defendant(s) were accused of which death and/or injury.<sup>75</sup> Further, the alleged actions of the PM were imputed to the police officials.<sup>76</sup> Mr. Simonovis, along with Lazaro Forero and Henry Vivas,<sup>77</sup> were accused of sending orders via radio to the PM at the scene to fire against the protesters.<sup>78</sup> Finally, Mr. Simonovis and the other officials were imputed with the alleged excessive use of the firearms, pursuant to the purported orders.<sup>79</sup>

#### A. *The Trial*

Mr. Simonovis was subjected to a tremendously lengthy sham trial,<sup>80</sup> that resulted in the maximum penalty allowable under the Venezuelan Constitution.<sup>81</sup> The trial lasted for three years and fourteen days. The Court in 231 hearings heard 1155 hours of testimony and analyzed immense amounts of evidence.<sup>82</sup>

Notably, none of the evidence presented at trial provided any connection between Mr. Simonovis and the crimes for which he was accused.<sup>83</sup> A crucial piece of evidence for the prosecution was a recording of a man alleged to be Mr. Simonovis. In the recordings the “man” was

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74. *Id.* (26 counts).

75. *Id.* at 13.

76. *Id.* at 14.

77. *See Simonovis v. Venezuela, supra* note 27, at 14. (Mr. Forero and Mr. Vivas were also police officials.).

78. *Id.*

79. *Id.*

80. José Luis Tamayo Rodríguez, *Technical Report by the Defense Team, State v. Simonovis, et al.*, C10-138 at 2 (2011) (report on file with author). (Mr. Simonovis was subjected to a trial that lasted 3 years and 4 months, and consisted of 231 hearings, where 235 expert reports, and approximately 5,700 photos were shown, and where 196 witnesses, and 45 experts testified.).

81. *See*, CONSTITUCIÓN DE LA REPÚBLICA BOLIVARIANA DE VENEZUELA [*CONSTITUTION OF THE BOLIVARIAN REPUBLIC OF VENEZUELA*] [CN.], art. 44, cl. 3, GACETA OFICIAL, n. 36.860, Dec. 30, 1999.

82. Tamayo Rodríguez, *supra* note 80, at 7. (The evidence in the case against Mr. Simonovis amounted to about a 173 piece file, 72 documents, and 265 expert reports.).

83. *See Simonovis v. Venezuela, supra* note 27, at 56.

giving orders to fire upon the crowd.<sup>84</sup> However, this recording was never authenticated.<sup>85</sup> The prosecution did not analyze the recording and never proved that the voice belonged to Mr. Simonovis.<sup>86</sup> The crux of the prosecution's case was predicated upon shaky testimony of two witnesses, Gonzalo Sanchez<sup>87</sup> and Emigdio Delgado.<sup>88</sup>

These three pieces of evidence, the voice recording and the two witnesses, were the only evidence presented to the defense team. As such, defense counsel mounted its defense based upon this evidence alone. However, once the trial started, the prosecutor presented extensive evidence, without providing the relevance to the issues at hand.<sup>89</sup>

Despite the surprise maneuvers of the prosecution, the state was unable to prove beyond a reasonable doubt that Mr. Simonovis ordered the PM to fire upon the protesters.<sup>90</sup> This, however, did not have any bearing upon the tribunal's decision to sentence Mr. Simonovis to thirty years in prison. The tribunal took the prosecutor's case at face value.<sup>91</sup>

The defense team asserted that no criminal act was proven against Mr. Simonovis; rather, he was detained, accused, dragged through a lengthy trial and ultimately sentenced based upon his relationship to the former mayor of the state of Miranda.<sup>92</sup> Mr. Simonovis' relationship to the mayor of the state of Miranda was viewed as indicia of opposition to the Chávez regime.<sup>93</sup>

Further, the prosecution presented fabricated evidence, asking witnesses to revise and change their testimony in order to incriminate Mr.

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84. *See id.* at 48.

85. *See id.*

86. *See id.*

87. *See id.* (Mr. Sanchez testified that he witnessed Ivan Simonovis speaking with opposition protesters at Plaza Meritocracia.).

88. *See Simonovis v. Venezuela, supra* note 27, at 48. (The former commissioner testified that someone told him that Mr. Simonovis had ordered the blocking of a tunnel, allegedly to prevent the passage of a tank.).

89. C.O.P.P. Art. 326, Cl. 5. (Establishing that the prosecution must provide the means of proof to be presented at trial and indicate its relevance or necessity.).

90. *Simonovis v. Venezuela, supra* note 27, at 48.

91. *Id.*

92. *See id.* at 10. (The former mayor of the state of Miranda is currently in exile as he left Venezuela in 2004 because he was being persecuted for his dissenting views against the government, and he was being accused of taking part in the events of April 2002.).

93. *See id.* at 49.

Simonovis.<sup>94</sup> Those witnesses, eight police officers who had previously given statements regarding April 11, 2002, revised their prior testimony and each officer received a commitment reduction of their sentence.<sup>95</sup>

These police officers renounced their private counsel and requested public defenders that were notably closer to the government.<sup>96</sup> Further, these officers requested a private hearing in which they testified against Mr. Simonovis, recanting their prior statements.<sup>97</sup> Counsel for Mr. Simonovis did not receive notice of the hearing, and was unable to cross-examine these witnesses.<sup>98</sup>

The prosecution asked to clarify the transcripts a mere five days before the sentencing hearing.<sup>99</sup> This measure was dilatory and unnecessary since the entire trial was recorded on video.<sup>100</sup> Subsequently, the defense counsel for Mr. Simonovis attempted several times to move the proceedings forward, seeking the release of Mr. Simonovis, pending his sentencing.<sup>101</sup>

The delay by the prosecution lasted from September of 2008 until April of 2009.<sup>102</sup> The trial concluded on April 2, 2009,<sup>103</sup> and nearly a year later, the dispositive part of the sentence was announced on April 3, 2010.<sup>104</sup>

The tribunal sentenced Mr. Simonovis (and his co-defendants) to thirty years in prison.<sup>105</sup>

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94. *Id.* at 52.

95. *Simonovis v. Venezuela*, *supra* note 27, at 52.

96. *Id.* at 53. (In addition to the change of counsel, they were transferred to a different locale, and had been visited by the prosecution before providing the new testimony.).

97. *Id.*

98. *See Simonovis*, Inter-Am. Comm'n H.R. at 53.

99. Tamayo Rodriguez, *supra* note 80, at 14.

100. *Id.* at 14.

101. *See id.* at 15.

102. *See id.* at 15–17.

103. *See id.* at 17.

104. Tamayo Rodriguez, *supra* note 80, at 17.

105. *See Tamayo Rodriguez*, *supra* note 80, at 2 (The tribunal found Mr. Simonovis “guilty and responsible” in the commission of necessary accessory to a homicide (3 counts), necessary accessory to an attempted homicide (12 counts), necessary accessory in the crime of great bodily harm to the person of another (5 counts), and necessary accessory to the crime of minor bodily harm to the person of another (7 counts).).

*B. Appeals*

Counsel for Mr. Simonovis appealed his sentence in the Court of Appeals.<sup>106</sup> Additionally, counsel moved for judges to recuse themselves.<sup>107</sup> Incidentally, the judges denied the motion for recusal.<sup>108</sup> The next day, the judges set a hearing in reference to the merits of the appeal.<sup>109</sup> Mr. Simonovis' defense team filed an appeal in the Constitutional Court of the Tribunal Supremo de Justicia<sup>110</sup> (TSJ) on March 18, 2010.<sup>111</sup> The TSJ had not yet rendered a decision as of June of 2010 in regard to this appeal.<sup>112</sup> The Court subsequently decided that the appeal was without merit, and confirmed the thirty-year sentence, referencing the crimes outlined in the lower court.<sup>113</sup>

On April 27, 2010, the defense for Mr. Simonovis filed an appeal to the Penal Cassation Court (PCC).<sup>114</sup> The entire file was remitted to the court. That file consisted of 173 pieces, ninety-eight appendices, and four boxes containing videotapes of the trial.<sup>115</sup> Notably, the PCC purportedly took seven days to review the file.<sup>116</sup> At the conclusion of the seven days, the PCC declared that the appeal was frivolous and without merit.<sup>117</sup> A review of recent decisions by the PCC revealed that the average time for review of a file and decision regarding admissibility was fifty-five days.<sup>118</sup>

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106. *Id.* at 3.

107. *See id.* (The judges pertinent to the motion held a hearing on the motion and decided not to recuse themselves, in violation of due process. Due process required them to find substitute judges to hear the motion for recusal.).

108. *Id.*

109. *Id.*

110. *See* Tamayo Rodriguez, *supra* note 80, at 5; *see Sobre el Tribunal [About the Tribunal]*, TRIBUNAL SUPREMO DE JUSTICIA, <http://www.tsj.gov.ve/eltribunal/sobretribunal/organizacion.shtml> (The Tribunal Supremo de Justicia [Supreme Justice Tribunal] is the highest court. The constitutional court is a tribunal within the TSJ. Cases from the constitutional court may appeal to the TSJ.).

111. *See* Tamayo Rodriguez, *supra* note 80, at 4 (The appeal was based upon violations of due process, right to defense, violations of the right to be judged by the appropriate tribunal.).

112. *Id.* at 5.

113. *Id.* at 6.

114. *Id.* at 7.

115. *Id.*

116. Tamayo Rodriguez, *supra* note 80, at 7 (The file consisted of approximately 8,313 pages, such that it would take an average reader 13 days and 12 hours of continuous reading to review.).

117. *See id.* at 8.

118. *See id.* at 12.

The final sentence was published on May 21, 2010. Judge Mármol de León dissented.<sup>119</sup> She stated that there was a lack of motivation for the sentence because the allegations lacked sufficient evidence that could prove the crimes were committed.<sup>120</sup> Further, Mármol de León indicated that the decision lacked analysis of the file and the defense arguments.<sup>121</sup>

Judge Mármol de León further announced that there were alleged constitutional violations, which should have prompted the court to admit the appeal for review.<sup>122</sup> Specifically, the judge highlighted the omission of the right of the accused to know why he is being sentenced in the decision rendered by the lower court.<sup>123</sup> The defense team then filed a Motion for Clarification since the appeals court did not provide an explanation regarding the defects in the petition, which, if corrected, would make it admissible.<sup>124</sup>

### C. Incarceration

At the time of writing this article, Mr. Simonovis had been incarcerated since November of 2004 when he was detained,<sup>125</sup> and he continued to face deplorable conditions in the Venezuelan prison where he was incarcerated under the Bolivarian Intelligence Service (SEBIN).<sup>126</sup> The prison cell was reminiscent of a dungeon,<sup>127</sup> and his days were spent in an improvised cell that measured approximately six foot by six foot, or four squared meters.<sup>128</sup> He was locked in his cell from 10 PM to 6 AM, and during the day he was only allowed to traverse a small hallway of approximately ninety-one feet by three feet; a hallway that was also used by

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119. *See id.* at 8–9.

120. *See id.*

121. *See* Tamayo Rodriguez, *supra* note 80, at 10.

122. *See id.* at 11.

123. *See id.*

124. *See id.* at 12–13. (As of the date of the report, defense counsel had not received a decision with regard to the motion for clarification.).

125. *Simonovis v. Venezuela*, *supra* note 27, at 20.

126. *See generally* World Report 2012, *supra* note 11, at 283.

127. *See* Valentina Lares Martiz, 'Esto es una versión actualizada de Auschwitz' ['This is a Modern Day Version of Auschwitz'], EL TIEMPO (July 1, 2012, 12:53AM), [http://www.eltiempo.com/mundo/latinoamerica/ARTICULO-WEB-NEW\\_NOTA\\_INTERIOR-11988183.html](http://www.eltiempo.com/mundo/latinoamerica/ARTICULO-WEB-NEW_NOTA_INTERIOR-11988183.html).

128. *Id.*

sixteen other prisoners during the day.<sup>129</sup> Both his cell and the hallway were devoid of any natural light or ventilation.<sup>130</sup> Mr. Simonovis received approximately thirteen hours of sun over the preceding seven years as of 2010.<sup>131</sup> His family visits<sup>132</sup> and visits from counsel<sup>133</sup> were also severely restricted as well.<sup>134</sup>

Defense counsel has requested several times a transfer to a different prison facility more apt to house a person for thirty years;<sup>135</sup> however, these requests have been denied several times—Mr. Simonovis has remained in this holding cell for over nine years.<sup>136</sup> To date, there is no hope of a transfer to a more apt facility where he would enjoy decent living conditions without a persistent threat to his health and well-being.<sup>137</sup>

#### *D. Constitutional Issues and Failure to Adhere to the Rule of Law*

The Venezuelan Constitution declares that all persons are entitled to due process.<sup>138</sup> The Constitution also guarantees fair trials by neutral judges.<sup>139</sup> The government, however, has disregarded its own laws.<sup>140</sup> As stated, the judge who heard and sentenced Mr. Simonovis at trial had served as defense counsel to a militant government supporter accused of shooting into the crowd of protesters in April, 2002.<sup>141</sup> This judge was not fair and impartial.<sup>142</sup>

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129. *Simonovis v. Venezuela*, *supra* note 27, at 20.

130. *Id.*

131. *Id.*

132. *Id.* (Family visits are restricted to three visitors, only twice per week, on Thursdays and Sundays.).

133. *Id.* (Attorney visits are restricted to Mondays and Thursdays from 9:00 AM to 11:00 AM.).

134. *Simonovis v. Venezuela*, *supra* note 27, at 20.

135. *Id.*

136. *See id.* at 21.

137. *See id.* at 65.

138. CONSTITUCIÓN DE LA REPÚBLICA BOLIVARIANA DE VENEZUELA [CONSTITUTION OF THE BOLIVARIAN REPUBLIC OF VENEZUELA] [CN.], tit. III, ch. I art. 49, n. 36.860, Dec. 30, 1999.

139. *Id.*

140. *Id.*; *See Simonovis v. Venezuela*, *supra* note 27, at 4.

141. *Simonovis v. Venezuela*, *supra* note 27, at 4.

142. *See Id.* (“Maikel Moreno had previously acted as defense counsel for Richard Peñalver, a militant government supporter, who had been accused of the same crimes imputed to Ivan Simonovis.”).

Further, the IACHR has denounced Venezuela for its lack of an independent judiciary.<sup>143</sup> Pursuant to a recent reform to the Venezuelan Judicial Code in 2004, many judges were made provisional judges and over 900 were dismissed.<sup>144</sup> The Judicial Commission, a super-constitutional body, was created to execute these dismissals.<sup>145</sup> As such, judges in Venezuela are subject to the whims of the Judicial Commission.<sup>146</sup> Many Venezuelan judges are political appointees.<sup>147</sup>

The Human Rights Watch's 2012 World Report indicated that Chávez and his allies staged a political takeover, overtaking the judiciary and filling it with government supporters.<sup>148</sup> This did not go unnoticed. The HRW further asserted that the role of the judiciary has been curtailed since 2004, and it only serves as an instrument of the government as opposed to a check on government power for the protection of the fundamental rights of citizens.<sup>149</sup> Judges have faced government censure, including imprisonment if they rule against government interests.<sup>150</sup>

Due process, according to the Constitution, requires a speedy trial;<sup>151</sup> however, Mr. Simonovis' trial lasted over three years.<sup>152</sup> Mr. Simonovis' trial was the longest in recent Venezuelan history.<sup>153</sup> Aside from its length, the prosecutor's dirty tactics made it nearly impossible for the defense team to formulate a proper defense at trial. The defense was without knowledge as to the purpose of the evidence.<sup>154</sup>

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143. Organization of American States, Inter-Am. Comm'n H.R., Democracy and Human Rights in Venezuela, at 47, OEA/Ser.L/V/II Doc. 54 (Dec. 30, 2009).

144. See *World Report 2012*, *supra* note 11, at 278; see Carmen Alguindigue & Rogelio Perez Perdomo, *The Inquisitor Strikes Back: Obstacles to the Reform of Criminal Procedure*, 15 Sw. J. L. & Trade Am 101, 119 (2008).

145. Alguindigue, *supra* note 145, at 119.

146. See *id.*

147. *Id.*

148. *World Report 2012*, *supra* note 11, at 278.

149. *Id.*

150. *Id.*

151. CONSTITUCIÓN DE LA REPÚBLICA BOLIVARIANA DE VENEZUELA [CONSTITUTION OF THE BOLIVARIAN REPUBLIC OF VENEZUELA] [CN.], tit. III, ch.I, art. 49, n. 36.860, Dec. 30, 1999.

152. See Tamayo Rodriguez, *supra* note 80, at 2.

153. See *id.* at 28.

154. See *id.*

The prosecution annexed charges after the initial accusation and then piled on a mountain of new evidence,<sup>155</sup> which was not previously disclosed. Moreover, they did not furnish the required Statement of Relevance or Necessity required by law.<sup>156</sup>

Further, Article 272 of the Constitution establishes prison standards.<sup>157</sup> As previously mentioned, Mr. Simonovis was held in a cell not fit to house a person for thirty years.<sup>158</sup> The Constitution requires prison facilities to have work, study, and recreational space.<sup>159</sup> Clearly, his cell measuring four squared meters, does not comply with the constitutional mandate of Article 272.<sup>160</sup>

### *E. Recent Developments*

Mr. Simonovis' conditions are further heightened by his precarious health status.<sup>161</sup> In 2008, after his request for medical evaluations, Mr. Simonovis was examined.<sup>162</sup> The testing revealed that his bone density is so far below normal levels that he has a very high risk for fractures in the lumbar spine and femur.<sup>163</sup> This condition is likely attributable to his deprivation of vitamin D from the sun, which is required for bone health.<sup>164</sup>

Because of Mr. Simonovis' uncertain health condition, his attorneys filed a humanitarian measure on June 5, 2012, that would allow him to

155. *Simonovis v. Venezuela*, *supra* note 27, at 48 (Prosecution presented 78 witness statements and 68 documents).

156. See C.O.P.P. Art. 326, Cl. 5.

157. See CONSTITUCIÓN DE LA REPÚBLICA BOLIVARIANA DE VENEZUELA [*CONSTITUTION OF THE BOLIVARIAN REPUBLIC OF VENEZUELA*] [CN.], tit. III, ch. II, art. 272, n. 36.860, Dec. 30, 1999.

158. See *Simonovis v. Venezuela*, *supra* note 27, at 20.

159. CONSTITUCIÓN DE LA REPÚBLICA BOLIVARIANA DE VENEZUELA [*CONSTITUTION OF THE BOLIVARIAN REPUBLIC OF VENEZUELA*] [CN.], tit. III, ch. II, art. 272, n. 36.860, Dec. 30, 1999.

160. See *id.*; See *Simonovis v. Venezuela*, *supra* note 27, at 20.

161. *Abogado de Ivan Simonovis Solicitara Medida Humanitaria por las Condiciones de Salud del Comisario* [ *Ivan Simonovis' Attorney will request Humanitarian Measures due to the commissioner's Health Condition*], NOTICIAS 24 (Jun. 5, 2012, 12:44 PM), available at <http://www.noticias24.com/venezuela/noticia/110868/abogado-de-ivan-simonovis-solicitara-medida-humanitaria-por-las-condiciones-de-salud-del-comisario/>. [hereinafter *Request for Humanitarian Measure*] (Mr. Simonovis suffers from severe osteoporosis in all bones at the hip and femoral level).

162. *Solicitan medida humanitaria para Iván Simonovis* [*Request made for humanitarian measure for Ivan Simonovis*], EL TIEMPO (Jun. 5, 2012 9:53 AM), available at <http://eltiempo.com.ve/sucesos/medida/solicitaran-medida-humanitaria-para-ivan-simonovis/54613>. [hereinafter *Humanitarian Measure for Simonovis*]

163. *Id.*

164. See *Humanitarian Measure for Simonovis*, *supra* note 163.



serve the remainder of his sentence on house arrest.<sup>165</sup> The government denied the measure in an order dated June 27, 2012. The government reasoned that the medical records presented did not provide sufficient evidence to grant the measure.<sup>166</sup>

Notably, counsel for Mr. Simonovis indicated that the doctor that examined Mr. Simonovis at his captors' request, was a gynecologist. This would allow for the inference that the gynecologist did not have the training to make an informed opinion as to the status of Mr. Simonovis' bone health.<sup>167</sup>

The Venezuelan Constitution expressly declares that the State guarantees every citizen the enjoyment and exercise of human rights.<sup>168</sup> However, the dreadful conditions of Mr. Simonovis' incarceration are neither in accordance with human rights and human dignity, nor are they in accordance with human rights treaties and accords to which Venezuela is signatory.<sup>169</sup>

In September of 2012, Dr. Ramon Eladio Aponte Aponte, the former magistrate of the Criminal Section of the TSJ, confessed that he transmitted orders to the judges involved in Mr. Simonovis' case to sentence him to thirty years "at any cost."<sup>170</sup> Dr. Aponte is currently in exile and being persecuted by the Venezuelan government.<sup>171</sup> This information can be found in a letter that Dr. Aponte wrote to Mr. Simonovis.<sup>172</sup>

In the letter, Dr. Aponte indicated that he ordered a judge in Caracas to issue a decree for a detention order despite the fact that the issuing judge

165. See *id.*; See Fundepro, *Lo que debo conocer una vez que mi sentencia está firme [What I need to know once my sentence is firm]*, (2008), available at <http://www.fundepro.com.ve/fundepro/PDF/Folleto%204.pdf>.

166. Rogsel Castillo, *Niegan medida humanitaria a Iván Simonovis [Humanitarian Measure Denied to Ivan Simonovis]*, UNION RADIO (Jun. 27, 2012), <http://www.unionradio.net/actualidadur/nota/visornota.aspx?id=114530&tpCont=1&idSec=3>. [Hereinafter *Humanitarian Measure Denied to Ivan Simonovis*]

167. See *id.*

168. CONSTITUCIÓN DE LA REPÚBLICA BOLIVARIANA DE VENEZUELA [*CONSTITUTION OF THE BOLIVARIAN REPUBLIC OF VENEZUELA*] [CN.], tit. III, ch. I, art. 19, n. 36.860, Dec. 30, 1999.

169. See *Signatories and Ratifications*, ORGANIZATION OF AMERICAN STATES, [http://www.oas.org/dil/treaties\\_B-32\\_American\\_Convention\\_on\\_Human\\_Rights\\_sign.htm#Venezuela](http://www.oas.org/dil/treaties_B-32_American_Convention_on_Human_Rights_sign.htm#Venezuela). [hereinafter *Signatories and Ratifications*].

170. Letter from Dr. Eladio Ramon Aponte Aponte, former magistrate of the Penal Court of the Supreme Justice Tribunal of the Bolivarian Republic of Venezuela, to Ivan Simonovis, et al., former police commissioner (Sept. 3, 2012) (on file with the author).

171. See *id.*

172. See *id.*

did not have jurisdiction to issue such an order.<sup>173</sup> Dr. Aponte also indicated that he told the prosecutor to do everything in his power to delay the proceedings.<sup>174</sup> Perhaps most disturbing is Dr. Aponte's assertion that he drafted the sentence that was imposed on Mr. Simonovis.<sup>175</sup> Dr. Aponte further indicated that he ordered and then drafted both the appellate judge's and the constitutional judge's affirmation to enter similar sentences.<sup>176</sup>

Finally, as a magistrate of the highest court, Dr. Aponte declared the appeal "without merit" having not read the file; he indicated that he followed orders from Chávez to "dispose of [the case] immediately without delay."<sup>177</sup> Dr. Aponte instructed the other judges that Chávez had given such orders, and the judges affixed their signatures without question, with the one notable exception of aforementioned Judge Mármol de León.<sup>178</sup>

#### IV. GOVERNMENTAL RESPONSE

In December of 2007, Mr. Simonovis' counsel requested amnesty, such that Mr. Simonovis would be freed.<sup>179</sup> Amnesty was denied for Mr. Simonovis.<sup>180</sup> However, approximately sixty-seven of the gunmen who shot upon throngs of protesters on April 11, 2002, were in fact given amnesty and freed in 2007.<sup>181</sup>

#### V. INTERNATIONAL AND INTER-AMERICAN ISSUES

##### A. *Violations of the Pact of San Jose*

International treaties and conferences of human rights, to which Venezuela is a signatory, have the force of constitutional law and shall be applied as the law of the land by the courts.<sup>182</sup>

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173. *See id.* (The case was before a court in the state of Maracay.)

174. *See id.*

175. *See Aponte, supra* note 171.

176. *See id.*

177. *Id.*

178. *Id.* (Judge Marmol de Leon, *dissenting*).

179. *See Tamayo Rodriguez, supra* note 80, at 23.

180. *See id.*

181. *See id.* at 25.

182. CONSTITUCIÓN DE LA REPÚBLICA BOLIVARIANA DE VENEZUELA [*CONSTITUTION OF THE BOLIVARIAN REPUBLIC OF VENEZUELA*] [CN.], tit. III, ch. I, art. 23, n. 36.860, Dec. 30, 1999.

The Pact of San Jose was entered into force in July of 1978.<sup>183</sup> Venezuela is a signatory to the Pact.<sup>184</sup> Venezuela, as a signatory, recognized the competence and jurisdiction of the IACHR.<sup>185</sup> Venezuela agreed to respect the rights and freedoms outlined in the Pact and ensured that all persons within its jurisdiction would enjoy these rights.<sup>186</sup> One of the rights contemplated by the Pact is the "Right to Humane Treatment."<sup>187</sup>

Humane Treatment, in accordance with the Pact, refers to a person's right to have his "physical, mental, and moral integrity respected."<sup>188</sup> Further, Article 5 of the Pact establishes that no person may be subjected to torture, cruel, inhumane, or degrading treatment; even while deprived of his liberty; the person must be treated with respect for the "inherent dignity of the human person."<sup>189</sup>

As outlined by the Petition filed by defense counsel for Mr. Simonovis, the grave human rights violations against Mr. Simonovis and his family are in clear violation of Article 5 of the Pact.<sup>190</sup> Mr. Simonovis has suffered since his incarceration and continues to suffer damage to his person by the deplorable conditions in which he lives.<sup>191</sup> Such conditions have caused damage to his health, which, if left untreated, will cause irreparable harm.<sup>192</sup>

Additionally, Mr. Simonovis' children have had to grow up without a father for over nine years, and his family has had to rely on one income.<sup>193</sup> In addition, Mr. Simonovis' family has to provide for his well being, as the food at the SEBIN is inadequate. The family brings him food every day at the prison, and provides him with medical attention for his severe osteoporosis.<sup>194</sup> Additionally, the entire process from detention to trial

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183. See *Signatories and Ratifications*, *supra* note 170.

184. See *id.* (Venezuela ratified the treaty on Aug. 9, 1977.).

185. See *id.* (Venezuela recognized the competence of the IACHR on Aug. 9, 1977, and on Jun. 24, 1981 recognized the jurisdiction of the Inter-American Court of Human Rights.).

186. See Pact of San Jose, *supra* note 14, at Art. 1.

187. Pact of San Jose, *supra* note 14, at Art. 5.

188. *Id.*

189. *Id.*

190. See *id.*

191. See *Simonovis v. Venezuela*, *supra* note 27, at 20.

192. See generally *Humanitarian Measure for Simonovis*, *supra* note 163.

193. See *Simonovis v. Venezuela*, *supra* note 27, at 22.

194. See *id.* at 32; See *Humanitarian Measure for Simonovis*, *supra* note 163.

violated Article 8.1 of the Pact.<sup>195</sup> Mr. Simonovis' counsel requested to subpoena witnesses that would testify that Mr. Simonovis attempted to dissuade protesters from marching on the unauthorized route; the prosecutor refused, without citing reasons.<sup>196</sup> Further, the investigation in connection with this case was not impartial; rather, the investigation was a ruse designed to hold someone accountable for the events of April 11, 2002.<sup>197</sup>

The trial of Mr. Simonovis was also in violation of Article 8.5 of the Pact.<sup>198</sup> In the case of Mr. Simonovis, private hearings were held without justification for the furtherance of justice in accordance with the Pact.<sup>199</sup> In these private hearings, Mr. Simonovis was prevented from cross-examining and confronting his accusers and the witnesses used against him. His counsel was not present because the prosecution failed to notify counsel of the hearings.<sup>200</sup> Further, Mr. Simonovis was not allowed to exercise his right to testify on his own behalf, which is allowed by Venezuelan law.<sup>201</sup> This was in violation of the Pact, the Constitution, and the Penal Process Code.<sup>202</sup>

Mr. Simonovis was not entitled to a presumption of innocence in violation of Article 8.2 of the Pact.<sup>203</sup> The presumption of innocence was derogated with the shifting of the burden of proof to the defendant.<sup>204</sup>

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195. Pact of San Jose, *supra* note 14, Art. 8.1 (Article 8.1 of the Pact establishes that every person has the right to a hearing within a reasonable time by an impartial court in presenting any accusation of a crime against him or when determining his rights and obligations.).

196. *Simonovis v. Venezuela*, *supra* note 27, at 36.

197. *Id.*

198. Pact of San Jose, *supra* note 14, Art. 8.5 (Article 8.5 of the Pact of San Jose states that "[c]riminal proceedings shall be public" unless necessary to protect the interest of justice.).

199. *Simonovis v. Venezuela*, *supra* note 27, at 38.

200. *Id.*

201. *See id.*; see C.O.P.P. Art. 130.

202. *See* Pact of San Jose, *supra* note 14, Art. 8.5; CONSTITUCIÓN DE LA REPÚBLICA BOLIVARIANA DE VENEZUELA [*CONSTITUTION OF THE BOLIVARIAN REPUBLIC OF VENEZUELA*] [CN.], art. 49, cl. 3, n. 36.860, Dec. 30, 1999; *See* C.O.P.P. Art. 130 (Article 130 of the Penal Process Code establishes that a defendant may testify before the prosecutor as long as it is spontaneous, the defendant requests to do so, or he is subpoenaed by the prosecutor. Additionally, this article establishes that a defendant may abstain from testifying or testify as many times as he sees fit, as long as the testimony is pertinent and not a dilatory measure.).

203. Pact of San Jose, *supra* note 14, Art. 8.2 (Article 8.2 of the Pact of San Jose establishes that all accused persons are entitled to a presumption of innocence as long as their guilt has not been proven by law.).

204. *See Simonovis v. Venezuela*, *supra* note 27, at 50.

The evidence presented by the prosecution did not meet the burden of proof beyond a reasonable doubt.<sup>205</sup> Finally, the lack of a presumption of innocence is also in violation of the Venezuelan Constitution.<sup>206</sup>

Mr. Simonovis was not advised of the actual charges against him until January of 2005.<sup>207</sup> Article 8.2(b) of the Pact requires that a defendant receive prior notification in detail of the charges against him.<sup>208</sup> Such notification would enable the defendant sufficient time to prepare his defense.<sup>209</sup> Subsequently, in March of 2006, prosecutors added additional charges that included deaths and injuries under “new circumstances.”<sup>210</sup> Defense counsel prepared to defend the initial charges; however, they did not have sufficient time to prepare a proper defense for the additional charges brought in March.<sup>211</sup> As such, this forced the defense team to prepare a new defense within an unreasonably short amount of time.<sup>212</sup>

This action by the prosecutors violated the provisions of the Pact that grant the accused a right to know the charges against him and prepare a defense.<sup>213</sup> Any violations of the Pact of San Jose are indeed unconstitutional because the Constitution of the Bolivarian Republic of Venezuela establishes that any international treaty to which the State is a signatory has the force of law and shall be implemented as the law of the land.<sup>214</sup>

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205. *See id.* at 39.

206. CONSTITUCIÓN DE LA REPÚBLICA BOLIVARIANA DE VENEZUELA [*CONSTITUTION OF THE BOLIVARIAN REPUBLIC OF VENEZUELA*] [CN.], GACETA OFICIAL [G.O.] n. 36.860, Dec. 30, 1999 Art. 49, Cl. 2 (Art. 49, Cl. 2 of the Constitution of the Bolivarian Republic of Venezuela establishes that all persons are presumed innocent until the contrary is proved.).

207. *Simonovis v. Venezuela*, *supra* note 27, at 46 (In January of 2005 the prosecutor formulated a formal accusation of Mr. Simonovis charging him with the commission of the crimes of necessary accessory to homicide and injuries to the person of others citing as reasoning the allegation that his subordinates fired upon the crowd on April 11, 2002 pursuant to orders from the accused, and such subordinates made excessive use of the firearms provided them by their superiors, including Ivan Simonovis.).

208. Pact of San Jose, *supra* note 14, Art. 8.2.

209. *Id.* (Article 8.2(c) of the Pact establishes that a defendant must have adequate time and means for the preparation of his defense.).

210. *Simonovis v. Venezuela*, *supra* note 27, at 47.

211. *Id.*

212. *Id.*

213. Pact of San Jose, *supra* note 14, Art. 8.2.

214. CONSTITUCIÓN DE LA REPÚBLICA BOLIVARIANA DE VENEZUELA [*CONSTITUTION OF THE BOLIVARIAN REPUBLIC OF VENEZUELA*] [CN.], GACETA OFICIAL [G.O.] n. 36.860, Dec. 30, 1999 Art. 23.

B. *Petition to the Inter-American Commission on Human Rights*

Counsel for Mr. Simonovis filed a petition before the IACHR on November 10, 2010.<sup>215</sup> The petition outlined the human rights violations to the person of Ivan Simonovis, and requested provisional relief from the IACHR or in the alternative, precautionary measures<sup>216</sup> against the Venezuelan government to remedy the violations.<sup>217</sup>

The defense team for Mr. Simonovis requested precautionary measures with regard to his current place of incarceration and impending transfer.<sup>218</sup> Mr. Simonovis was a police official. In that position he apprehended countless criminals who are incarcerated throughout the country.<sup>219</sup> Therefore, his transfer to any of these prisons presents an immediate threat to the health and well being of Mr. Simonovis.<sup>220</sup> Additionally, any common prison to which he may be transferred is located over two hours from his former residence, preventing his family from visiting Mr. Simonovis.<sup>221</sup>

Mr. Simonovis was transferred to Ramo Verde prison in 2013.<sup>222</sup> Such transfer was precipitated by his precarious health conditions.<sup>223</sup> In late July of 2013, Mr. Simonovis was transported to a medical facility where he underwent emergency surgery for peritonitis.<sup>224</sup> Eleven days following the surgery, he was transferred to Ramo Verde prison, a facility

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215. See *Simonovis v. Venezuela*, *supra* note 27 at 1.

216. INTER AM. COMM'N ON HUMAN RIGHTS, ORG. OF AM. STATES, ABOUT PRECAUTIONARY MEASURES, [www.oas.org/en/iachr/decisions/precautionary.asp](http://www.oas.org/en/iachr/decisions/precautionary.asp) (last visited Aug. 4, 2012) (Precautionary measures are used by the IACHR in order to prevent irreparable harm to the party alleging human rights violations while the case is pending before the court, and attempt to preserve the party's human rights.).

217. See *Simonovis v. Venezuela*, *supra* note 27, at 1.

218. *Id.* at 69.

219. *Id.* at 62.

220. See *id.*

221. *Id.* at 65.

222. *Trasladaron a Simonovis a la cárcel Ramo Verde* [*Simonovis Transferred to Ramo Verde Prison*], EL NACIONAL, Aug. 6, 2013, [http://www.el-nacional.com/sucesos/Trasladaron-Simonovis-carcel-Ramo-Verde\\_0\\_240576215.html](http://www.el-nacional.com/sucesos/Trasladaron-Simonovis-carcel-Ramo-Verde_0_240576215.html).

223. See *id.*

224. *Iván Simonovis fue operado de peritonitis* [*Ivan Simonovis underwent operation for peritonitis*], EL NACIONAL, July 27, 2013, [http://www.el-nacional.com/politica/Ivan-Simonovis-operado-peritonitis\\_0\\_234576541.html](http://www.el-nacional.com/politica/Ivan-Simonovis-operado-peritonitis_0_234576541.html).

that is not equipped to house a prisoner recuperating from emergency surgery.<sup>225</sup>

Prisons in Venezuela are among the most violent on the continent.<sup>226</sup> The Venezuelan prison system is characterized by poor infrastructure, weak security measures, and corruption.<sup>227</sup> In recent times, several prison riots have resulted in the death or injury of hundreds of prisoners.<sup>228</sup> Further, weapons are easily accessible to inmates.<sup>229</sup> To date, the IACHR has taken no measures to remedy the human rights violations to the person of Ivan Simonovis.<sup>230</sup> However, in 2005, Raul Jose Diaz Peña was granted a request for precautionary measures directing the State to carry out medical exams, and transfer Mr. Diaz to a detention center where he could enjoy decent living conditions.<sup>231</sup>

### C. Recent Developments

In April of 2012, Chávez commenced advocating Venezuela's exit from the IACHR.<sup>232</sup> He proclaimed that a study would be done to ascertain the consequences and benefits of leaving the IACHR.<sup>233</sup> Chávez

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225. *Simonovis Transfer to Ramo Verde Prison*, *supra* note 223.

226. *World Report 2012*, *supra* note 11, at 283.

227. *Id.*

228. See Abraham Zamorano, *Vuelve la violencia a las cárceles venezolanas: 25 muertos en Yare I [Violence returns to Venezuelan prisons: 25 dead at Yare I]*, BBC MUNDO, Aug. 20, 2012, [http://www.bbc.co.uk/mundo/noticias/2012/08/120820\\_venezuela\\_carceles\\_violencia\\_yare\\_az.shtml](http://www.bbc.co.uk/mundo/noticias/2012/08/120820_venezuela_carceles_violencia_yare_az.shtml).

229. *See id.*

230. E-mail from Maria Isabel Rivero, Press and Broadcasting Director, Inter-Am. Comm'n H.R., to author (Aug. 10, 2012, 10:57 EST) (on file with author) (Inquiry into the IACHR press office revealed that there is no new information available to the public in reference to this case. The press office also indicated that the preliminary decision with regard to the process is confidential and unavailable to the public. Further, the press office indicated that such a decision usually takes about 30 months. Once this decision has been reached, the IACHR decides admissibility, and that may take a year or more, depending on the case.).

231. *Diaz v. Venezuela*, Case 1133-05, Inter-Am. Comm'n H.R., Report No. 23/09, OEA/Ser.L. (2009), available at <http://www.cidh.oas.org/annualrep/2009sp/Venezuela1133-05.sp.htm> (According to the precautionary measure reported by the IACHR, Mr. Diaz was housed in the same facility as Mr. Simonovis, and the IACHR granted a precautionary measure directing the state to carry out medical exams to assess Mr. Diaz's health, and transfer him to a detention center to provide him with decent living conditions, access to natural light, fresh air, and exercise, in order to preserve his health, well being, and moral integrity.).

232. *See Chávez wants to Retire from IACHR*, *supra* note 16 at 1.

233. *Id.*

maintained that the IACHR was a puppet of the United States, and he threatened to leave the IACHR on several occasions.<sup>234</sup>

In order to leave the IACHR, Venezuela would have to denounce the Pact of San Jose, which was signed in 1969 and has the force of constitutional law at this time.<sup>235</sup> The relations between Venezuela and the IACHR are tense. Chávez had not allowed the IACHR to visit Venezuela since 2002.<sup>236</sup> Chávez asserted that the reason for not allowing the Commission to visit was that it recognized the super-constitutional government established upon the coup d'état of 2002.<sup>237</sup> Subsequently, on July 24, 2012, Chávez reiterated his intent to exit from the IACHR.<sup>238</sup> Any attempt or success at withdrawal from the IACHR by Venezuela will likely further the global concern over the precarious human rights situation in Venezuela, and will likely dispel the myth of democracy in Venezuela and unveil the pseudo-socialist regime.<sup>239</sup>

Chávez also rejected a call for a jail inquiry by the IACHR.<sup>240</sup> In light of the recent prison violence outbreaks, deaths, and injuries, the IACHR sought an inquiry as to prison conditions.<sup>241</sup> The ambassador to the United States from Venezuela rejected the call for inquiry on May 23, 2012.<sup>242</sup> Additionally, the IACHR has expressed concern about statements by high public officials with regard to the work of NGO.<sup>243</sup>

As recently as October of 2011, several governments have expressed concern at the precarious human rights situation in Venezuela.<sup>244</sup> At the

234. *Id.*

235. *See id.* (subsequent to the writing of this article, Chávez presented his denunciation of the Pact to the Organization of American States, thus removing Venezuela from the jurisdiction of the IACHR. *Ya la OEA recibió la renuncia de Venezuela a la CIDH [The OAS is in receipt of Venezuela's resignation from the IACHR]*, DIARIO REPUBLICA (Sept. 10, 2012), <http://www.diariorepublica.com/politica/ya-la-oea-recibio-la-renuncia-de-venezuela-a-la-cidh>).

236. *See id.*

237. *See Chávez wants to Retire from IACHR, supra* note 16, at 2.

238. *See Hugo Chávez reitera que su país se retirará de la CIDH [Hugo Chávez Reiterates that his Country will Leave the IACHR]*, BBC MUNDO (July 25, 2012), [http://www.bbc.co.uk/mundo/ultimas\\_noticias/2012/07/120725\\_ultnot\\_venezuela\\_cidh\\_retirada.shtml](http://www.bbc.co.uk/mundo/ultimas_noticias/2012/07/120725_ultnot_venezuela_cidh_retirada.shtml).

239. *See Venezuela Rejects Human-Rights Commission's Call for Jail Inquiry*, JANE'S COUNTRY RISK DAILY REPORT, (May 24, 2012).

240. *See id.*

241. *See id.*

242. *See id.*

243. *See id.*

244. *World Report 2012, supra* note 11, at 284.



UN Human Rights Council's Universal Periodic Review of Venezuela, the Venezuelan government accepted several recommendations; however, it also rejected several key recommendations with regard to the protection of free speech, remedying the lack of judicial independence, and compliance with the IACHR rulings.<sup>245</sup>

## VI. CONCLUSION

The Venezuelan government formerly headed by Hugo Chávez effectively eviscerated the rule of law in Venezuela. Even in the early days of the regime, Chávez sought to change the existing laws.<sup>246</sup> He succeeded and subsequently instituted a new constitution by December of 1999.<sup>247</sup> While in power, Chaves made changes to the judiciary, the Penal Code, the Penal Process Code, and enacted countless organic laws by decree.<sup>248</sup> However, despite the fact that his regime enacted the laws, there is still a blatant disregard for the Constitution and the rule of law.<sup>249</sup>

A constitutional assembly full of Chávez's supporters wrote the new Constitution.<sup>250</sup> Today, despite Chaves no longer being in control, it is clear that the government does not follow any laws, rather opting to persecute political opponents and dissenters through extra constitutional means.<sup>251</sup> The government not only has a blatant disregard for the national Constitution, but has ignored the long-standing international and inter-American treaties and accords to which Venezuela is a signatory.<sup>252</sup>

Further, the government's blatant disregard for domestic and international law has furthered a precarious human rights atmosphere, wherein a person's inalienable rights are stripped from them without regard to due process. Additionally, the freedom of speech, press, and assembly is severely restricted, so much so that television stations that speak against the government have been shut down and replaced with state-sponsored stations that transmit state-approved programming.<sup>253</sup>

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245. *Id.*

246. See Ayala Corao, *supra* note 5, at 334.

247. See *id.*

248. See generally Alguindigue, et al., *supra* note 145; See generally C.O.P.P.; *World Report 2012*, *supra* note 11, at 279.

249. See discussion *supra* Part III The Case of Ivan Simonovis.

250. Ayala Corao, *supra* note 5, at 334.

251. See discussion *supra* Part III The Case of Ivan Simonovis.

252. See *Signatories and Ratifications*, *supra* note 170.

253. See *World Report 2012*, *supra* note 11, at 280.

The disregard for the rule of law has also increased the violence in the streets and within the prison system.<sup>254</sup> Venezuela has become one of the most violent countries on the continent, reporting approximately fifty-three homicides per day in 2011.<sup>255</sup> Additionally, prison riots have claimed the lives of hundreds and injured many more.<sup>256</sup> The violence in the streets has continued so long as the government supporters have perpetuated it.

The government is a self-regulating entity. The recourse available to citizens who are affected by human rights violations at the hands of government officials is through the TSJ.<sup>257</sup> However, the TSJ is no longer a neutral body as it acts within the control of the president.<sup>258</sup>

Ultimately, the Constitution provides that no person may be subjected to inhumane or cruel treatment,<sup>259</sup> and that every incarcerated person must be treated with the respect that a human being deserves.<sup>260</sup> In its characteristic manner, the government of Venezuela has disregarded this law. The treatment that Mr. Simonovis has received in the nine years of his incarceration is nothing short of cruel and inhumane.

The ruse of a state under the rule of law in Venezuela is further eroded by the fact that innocent people are put through sham trials and stripped of their liberty. Trials riddled with incoherent, shaky, and irrelevant evidence, presented before a partial and biased tribunal, are not fair.<sup>261</sup>

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254. See *Homicides in 2011*, *supra* note 12.

255. *Id.*

256. See Zamorano, *supra* note 229.

257. CONSTITUCIÓN DE LA REPÚBLICA BOLIVARIANA DE VENEZUELA [*CONSTITUTION OF THE BOLIVARIAN REPUBLIC OF VENEZUELA*] [CN.], GACETA OFICIAL [G.O.] n. 36.860, Dec. 30, 1999 Art. 25–26 (Article 25 provides that any act by government branches which violates or diminishes the rights guaranteed by the constitution, is null and void, and the officials who execute such acts, shall incur either criminal or civil responsibility depending on the case. Further, Article 26 provides that all persons have the right to access administrative organisms to enforce the rights guaranteed by the constitution, and are entitled to prompt response from such organisms.).

258. See Alguindigue, et al., *supra* note 145.

259. CONSTITUCIÓN DE LA REPÚBLICA BOLIVARIANA DE VENEZUELA [*CONSTITUTION OF THE BOLIVARIAN REPUBLIC OF VENEZUELA*] [CN.], GACETA OFICIAL [G.O.] n. 36.860, Dec. 30, 1999 Art. 46, Cl. 1.

260. CONSTITUCIÓN DE LA REPÚBLICA BOLIVARIANA DE VENEZUELA [*CONSTITUTION OF THE BOLIVARIAN REPUBLIC OF VENEZUELA*] [CN.], GACETA OFICIAL [G.O.] n. 36.860, Dec. 30, 1999 Art. 46, Cl. 3.

261. In February of 2013, counsel for Mr. Simonovis requested a humanitarian measure, again. Said measure was again denied. The forensic doctor indicated at the hearing on the measure that Mr. Simonovis' health condition was not sufficiently severe as to warrant the grant of a humanitarian measure. Subsequently, counsel for Mr. Simonovis filed an appeal of the decision denying the measure. This appeal was denied in April of 2013, such that Mr. Simonovis continues to be imprisoned.

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Marianela Ágreda Armas, *Apelada negativa de medida humanitaria para el comisario Simonovis* [*Denial of humanitarian measure for chief Simonovis appealed*], EL CARABOBEÑO (Mar. 13, 2013), <http://www.el-carabobeno.com/portada/articulo/54030/apelada-negativa-de-medida-humanitaria-para-el-comisario-simonovis>; *Simonovis seguirá detenido: Sin lugar recurso de apelación* [*Simonovis will continue in prison: Appeal found to be without merit*], EL CARABOBEÑO (Apr. 2, 2013), <http://www.el-carabobeno.com/portada/articulo/55345/tribunal-neg-de-nuevo-medida-humanitaria-para-simonovis>.