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Thor Halvorssen
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February 26, 2009

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

Re: The Inter-American Democratic Charter and Mr. Insulza (Letter No. 4)

Dear Secretary General Insulza,

Still awaiting your response, the Human Rights Foundation (HRF) directs your attention to this new letter, the fourth in the project “The Inter-American Democratic Charter and Mr. Insulza,” through which HRF seeks to denounce your inaction in the face of grave breaches of the democratic order and the resulting human rights violations in Latin America. According to the order outlined in our second letter, which refers to the elimination of the independence of the judicial branch in Bolivia, Ecuador, and Venezuela, the present letter aims to highlight the unlawful submission of the legislative power to the executive branch in these three countries, where national legislatures have been blocked, shut down, and their powers concentrated in the hands of the president. These actions violate the separation of powers and independence of the branches of government, and threaten the pluralistic system of political parties, features which are considered essential elements of democracy according to the Inter-American Democratic Charter.

“Shutting-down Congress”: Unlawful submission of Legislative Power to the Executive in Bolivia, Ecuador, and Venezuela.

a. Bolivia

In Bolivia, the legislative power has become subservient to the rule of the mob, through violent actions exerted by so-called “social movements” (*movimientos sociales*), which are controlled by the executive.

In November 2006, President Morales and his supporters commanded the senate, which had an opposition majority, to approve a series of laws that he had proposed. On November 27, government followers amassed in

these social movements marched to the city of La Paz and gathered in front of the congressional building to pressure the senate to pass such laws. The next day, the leaders of these social movements called for the formation of a barricade around congress so as to block the entrance of opposition senators. While access to congress was hampered for opposition legislators, President Morales's party appointed—and the social movements let in—two substitute senators without the approval of the elected senators, and passed, amid serious accusations of corruption, an agrarian reform law, 44 oil contracts, and a military cooperation agreement with Venezuela.

Similarly, on November 26, 2007, President Morales joined and led a marching crowd of the social movements aimed at curbing the will of congress one more time. Angry at the senate for being allegedly against the "laws of change," leaders of the social movements threatened to continue exerting pressure until the laws proposed by the executive were approved. Since, according to the Bolivian Constitution, a two-thirds majority was needed to approve these laws, President Morales's party called a session of congress, while mobs outside the building formed another barricade which controlled every available entrance to congress and prevented once again members of parliament from opposition parties to enter the building. During that time and by two-thirds of the votes of legislators present, a single-party congress passed two new laws: a law that reshapes the financing of an existing pension, while cutting a high percentage of economic resources from state and local governments; and a law that amends the original congress-backed law regulating the Constitutional Assembly.

On February 26, 2008, the social movements traveled to the legislative seat of government once again with the intention of fencing congress and forcing it to pass a law calling for a referendum to approve the president's proposed constitution. The draft text of that constitution had been approved through similar siege tactics by the president's supporters who had fenced and surrounded the military headquarters of La Glorietta. Since February 19, congress had been occupied debating and discussing solutions to the country's political crisis and congress had formed a Consensus Commission chaired by Vice President Álvaro García Linera that consisted of representatives of the main political parties represented in congress. On February 28, while the office of the Vice President met with the Consensus Commission, Vice President García Linera withdrew from the meeting. He then suddenly appeared at the parliamentary floor and called for an unscheduled session of congress. While this occurred, the social movements blocked the perimeter of congress, prevented the entrance of opposition parliamentarians, and assaulted three opposition representatives who attempted to enter the building. The session lasted less than 30 minutes and, with the building surrounded, the president's party members approved a series of laws by a voting majority of two-thirds of the members present, including a law that calls for the implementation of two referendums; and a law that eliminates the authority of regional governments to call for referendums within their respective jurisdictions.

Recently, President Morales and his party's majority leader in the senate have publicly expressed their intention to continue to subject the legislative power to the orders of the executive. On January 12, 2009, days before the referendum to approve the text of the

new Bolivian Constitution was to take place, President Morales publicly stated: "This is a warning. If a parliamentarian opposes and does not approve laws in Congress, I will implement the new constitution by decree, based on the popular vote." Felix Rojas, the government's party majority leader in the senate, stated: "Why continue being a senator if neither the senate nor the congress are honoring what the country decides through votes in 144,000 polling stations? It is better to close parliament and save the treasury that large sum of money."

b. Ecuador

In Ecuador, the Constituent Assembly shut down congress and, currently, a committee of 76 former members of the assembly is the only body in the country with the power to legislate.

On March 6, 2007, congress voted to replace the president of the Supreme Electoral Tribunal (TSE) after the Tribunal did not make any observations regarding the changes that President Correa made unilaterally to the terms of an upcoming referendum on the creation of a constituent assembly (terms that had already been agreed to by congress on January 13, 2007). The TSE responded to the replacement vote by issuing an order suspending 57 of the 100 members of congress for one year. The next day, 350 police officers cordoned off congress to prevent the suspended members from entering. On April 23, 2007, the Constitutional Tribunal (TC) declared the TSE's decision unconstitutional and restored 50 of the 57 dismissed representatives. Congress, under the control of members of President Correa's party, disregarded the ruling and decided, through a controversial interpretation of the law, to dismiss the nine judges of the Constitutional Tribunal. Simultaneously, Prosecutor Elisa Moreno issued an arrest warrant on suspicion of "sedition" against 24 of the 50 restored representatives. Speaking from Colombia, Congressman Luis Torres said: "we have no legal guarantees to remain in our country's territory." Congress appointed new judges to the TC one week later.

On September 30, 2007, after being informed of the favorable results for his party in the election for the Constituent Assembly seats, President Correa said he would defer to the assembly the decision to keep him in office or not. He also requested the shutting down of congress, stating: "It is very difficult to deal with congress, and I believe the Ecuadorean people's statement was a resounding: congress must go home." Congress was officially closed on November 29, 2007, against the protests of opposition parliamentarians. The new members of the TC, whose independence was already severely compromised, upheld the Constituent Assembly's decision to dissolve congress and to assume constitutional and legislative powers in Ecuador.

Since the implementation of the new constitution on October 20, 2008, legislative power in Ecuador has been exercised by the National Legislative Commission. This body is composed of 76 of the 130 members of the Constituent Assembly, 60% of whom are from the president's political coalition. The commission exercises broad legislative powers until the National Assembly takes office after its members are elected in April 2009.

C. Venezuela

In Venezuela, congress was dissolved in 1999. The following year, the National Assembly (AN) was created and has since adopted two separate “enabling laws” that have granted President Chávez broad legislative powers.

With the mandate to draft a new constitution, the National Constituent Assembly (ANC) began its sessions on August 3, 1999. On the same day, the ANC declared that it had absolute powers. On December 22, 1999, the ANC adopted the decree of the Transitional Regime of Public Power, which, in Article 4, provides for the dissolution of congress and, in Article 5, establishes an interim legislature called the National Legislative Commission, which consists of 21 citizens. This commission issued 32 laws from February to July 20, 2000, when the new legislature, the AN, took power. Subsequently, on November 14, 2000, the AN passed its first enabling law, which gave President Chávez legislative powers that he used to issue 49 decrees with the force of law.

On January 31, 2007, the AN unanimously passed another enabling law. This unanimity was achieved after the 2005 legislative elections, when the opposition asked its supporters not to participate because of the elections’ dubious democratic guarantees. As a result, the opposition lacked parliamentary representation. This second enabling legislation authorized President Chávez to issue decrees with force of law over 18 months. During that period, he decreed 41 laws. When asked to comment on the enabling law, then-Vice President Jorge Rodriguez said, “[what] we want is to impose the dictatorship of true democracy.”

Mr. Insulza, according to the Inter-American Democratic Charter: “Democracy is indispensable for the effective exercise of fundamental freedoms and human rights [...]” (art. 7). The charter also states that the separation and independence of powers, along with the pluralism of political parties are “essential elements” of democracy (art. 3) and that the “peoples of the Americas have a right to democracy and their governments have an obligation to promote and defend it” (art. 1). Moreover, the unconstitutional interruption or alteration that seriously impair the democratic order in a member state “constitutes, while it persists, an insurmountable obstacle to its government’s participation” in the various bodies of the OAS (art. 19). Finally, in the understanding that anti-democratic governments will never initiate a process to sanction themselves, the democratic clause (art. 20) gives the Secretary General the power to call on the Permanent Council to initiate a consultation process that may conclude in the suspension of the government, which, although having been elected democratically, may have incurred in an unconstitutional interruption or alteration that seriously impairs the democratic order in its state.

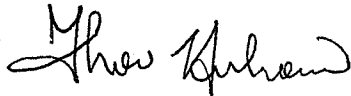
Mr. Insulza, the systematic attacks on the separation of powers and independence of the branches of government, and on the pluralistic system of political parties (as embodied by the legislative branch) in the three states discussed herein, clearly amount to unconstitutional interruptions or alterations that seriously impair the democratic order, and, which, should have led you to activate the democratic clause. These antidemocratic actions are representative of the systematic violations of the fundamental freedoms and human rights of people in Bolivia, Ecuador, and

Venezuela, and your inaction—and public support of such governments—makes you indirectly responsible for those violations.

As we expressed in our first letter, “The Inter-American Democratic Charter and Mr. Insulza” project seeks to raise global awareness about the human rights violations occurring in the Americas, as well as your failure to fulfill your duty to activate the democratic clause against governments that openly attack the essential elements of democracy and systematically violate human rights and fundamental freedoms. It is our sincere hope that our appeal will persuade you to reconsider your actions. What is at stake is not your political career, but the freedom and livelihood of millions of Americans.

On January 5, 2009, you withdrew from the presidential race in Chile “after a deep and difficult reflection.” A month earlier, on December 12, you had stated, while promoting your candidacy, that the “parties will make their decisions, they have a month to do this and I am very calm, because I have promised myself that I will remain calm and not get ahead of myself [...] There are many anxieties, many uncertainties. The best thing is to take things slowly.” HRF hopes that now that your political “anxieties” and “uncertainties” are over, you will dedicate yourself completely to fulfilling your duty of protecting and strengthening democracy and human rights, not just in one, but in all 34 OAS member states.

Sincerely,



Thor Halvorssen
President

cc:

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Permanent Mission of Argentina to the OAS, Washington DC (Rodolfo Hugo Gil)
Permanent Mission of Bahamas to the OAS, Washington DC (Cornelius A. Smith)
Permanent Mission of Barbados to the OAS, Washington DC (Michael I. King)
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Venezuelan Embassy, Washington DC (Bernardo Alvarez Herrera)
Inter-American Commission on Human Rights (Santiago Cantón)
Inter-American Court of Human Rights (Sergio García Ramirez)
Office of the United Nations High Commissioner for Human Rights (Louise Arbor)
European Counsel Commissioner for Human Rights (Thomas Hammarberg)
Nicaragua's Permanent Commission for Human Rights (Nicolás Bolaños Geyer)
International Society for Human Rights (Martin Lessenthin)
European Parliament – Human Rights Unit (Geoffrey Harris)
European Parliament – Subcommittee on Human Rights (Hélène Flautre)
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