



# VENEZUELA

350 Fifth Ave 34<sup>th</sup> Floor  
New York, N.Y. 10118-3299  
<http://www.hrw.org>  
(212) 290-4700

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The government's conciliatory gestures mean little if accompanied by other legal measures that, if implemented, would significantly erode press freedom and violate international standards of free expression that Venezuela is obliged to uphold.

Two Chávez supporters armed with stones pursue fleeing press photographer Gabriel Osorio in a Caracas street, May 1, 2003. Courtesy of Gregorio Marrero.

## CAUGHT IN THE CROSSFIRE Freedom of Expression in Venezuela

1630 Connecticut Ave, N.W., Suite 500  
Washington, DC 20009  
TEL (202) 612-4321  
FAX (202) 612-4333  
E-mail: [hrwdc@hrw.org](mailto:hrwdc@hrw.org)

2nd Floor, 2-12 Pentonville Road  
London N1 9HF, UK  
TEL: (44 20) 7713 1995  
FAX: (44 20) 7713 1800  
E-mail: [hrwuk@hrw.org](mailto:hrwuk@hrw.org)

15 Rue Van Campenhout  
1000 Brussels, Belgium  
TEL (32 2) 732-2009  
FAX (32 2) 732-0471  
E-mail: [hrwbe@hrw.org](mailto:hrwbe@hrw.org)

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## CAUGHT IN THE CROSSFIRE

### Freedom of Expression in Venezuela

I. SUMMARY AND RECOMMENDATIONS.....	2
II. JOURNALISTS IN THE CROSSFIRE.....	6
The Question of Government Responsibility.....	7
Attacks on Public and Community Broadcasters .....	8
III. PRIVATE TELEVISION FACING THE LOSS OF BROADCASTING LICENSES .....	9
Restrictions on Freedom of Expression under International Law .....	9
Investigation Procedures.....	10
Statements “Inciting Rebellion or Lack of Respect” .....	11
Opposition Campaign Spots as Prohibited “Propaganda” .....	13
A Video as “False, Deceitful, or Tendentious News” .....	14
Subliminal Insertions and Other Content as “False, Deceitful, or Tendentious News” .....	15
Other Alleged Infractions .....	16
IV. PROBLEMS WITH THE NEW MEDIA BILL.....	16
Protecting Children.....	16
“Lack of Respect” Toward Authorities .....	17
Inciting Disturbances of Public Order.....	18
Revocation of Licenses .....	18
The National Institute of Radio and Television .....	18

*The media are a serious hurdle for the Castro-Communist inspired totalitarian policies that characterize the government of Lt.-Colonel Chávez, in its efforts to dismantle and dominate all the country's democratic institutions.*

-- David Natera Febres, President of the Bloque de Prensa Venezolano, a press association grouping Venezuela's major newspapers, January 2003.

*Most of the members of the Bloque de Prensa are a part of these coup plotters, especially the TV networks and the radio stations.*

-- President Hugo Chávez, January 2003 (as quoted in *Newsweek*).

## **I. SUMMARY AND RECOMMENDATIONS**

In 2002 and the early months of 2003 the government of President Hugo Chávez and most of the Venezuelan media were virtually at war. Leading journalists repeatedly denounced the president in harsh, at times blatantly partisan terms. President Chávez, for his part, frequently lambasted the media in his weekly television and radio broadcasts, often singling out media owners by name as traitors and coup-mongers. As the situation grew more polarized, attacks on opposition journalists by supporters of the president increased sharply. Some opposition supporters, in turn, targeted public and community media that tended to support the president. Although tensions have relaxed somewhat in recent months, government-media relations continue to reflect the country's polarized political situation.

The Venezuelan government has not done nearly enough to stop acts of violence against journalists or to prosecute those responsible. Indeed, its actions have often increased public agitation against the media. Moreover, the government is currently investigating four leading private television stations for violating licensing regulations. Some of these regulations violate established international free expression norms; others are vaguely worded and invite arbitrary application and abuse. While there are legitimate reasons to be concerned about the independence and objectivity of the Venezuelan press, the ongoing investigations and threatened suspension of broadcasting licenses at the four stations are only making a bad situation worse. Finally, the government has recently proposed a new media law that would impose far-reaching restrictions on the press. It is critical that this downward spiral be stopped now, before more lasting damage is done to the institution of the press and to the basic right to free expression in Venezuela.

In early February 2003, an unlimited national strike against the government of President Chávez was called off without achieving its objective of forcing him to resign before completing his term. The shutdown, which lasted for sixty-two days, had been organized by the opposition umbrella group Coordinadora Democrática, the business organization Fedecámaras, and the Confederación de Trabajadores de Venezuela (CTV), the country's largest trade union federation. It crippled Venezuela's oil industry and caused serious fuel shortages and other hardships inside the country.

The strike also exacerbated political tensions in an already polarized country. Throughout the protest, during which tens of thousands took to the streets in largely peaceful marches, the media, with few exceptions, backed the strikers and echoed their calls for the government to resign. Venezuela's private television networks bombarded viewers with coverage of the marches and carried opposition political messages free of charge in place of commercial advertising. This intense exposure of the protests contrasted sharply with the media's failure to report eight months earlier, when, on April 13, 2002, the armed forces reinstated Chávez after an unsuccessful civil-military attempt to oust him from power.

Since the strike has ended, negotiations facilitated by the Secretary General of the Organization of American States for a peaceful resolution of the crisis have continued. The tensions between the government and the media have relaxed somewhat in comparison with earlier months, and the number of physical attacks on journalists has declined. Nevertheless, in today's volatile political atmosphere, the risk of violent confrontation remains high. Tensions could easily re-ignite if the current stand-off between the government, its supporters, and the opposition, gives way once more to protests and counter-protests in the streets.

There are few obvious limits on free expression in Venezuela. The country's print and audiovisual media operate without restrictions. Most are strongly opposed to President Chávez and express their criticism in unequivocal and often strident terms. No journalists are in prison for exercising their profession, and there have been few criminal prosecutions or successful civil suits against journalists in recent years.

Nevertheless, journalists in Venezuela today face constant physical risks. Human Rights Watch estimates that there were at least 130 assaults and threats of physical harm to journalists and press property between the beginning of 2002 and February 2003, and the assaults continue. It is not the government, the police or the armed forces that commit these acts of aggression, however, but civilians who strongly identify with the president and his proclaimed revolutionary program.

It is evident, even from street graffiti in Venezuela's capital, Caracas, that a significant segment of the population is angered by the press. Many feel that the media have failed to do their essential job of providing the public with accurate and unbiased information. Both members of the government, and their civilian supporters who mount angry vigils outside the television studios, share this view. Many journalists interviewed by Human Rights Watch themselves had deep misgivings about the political role the press is currently playing in Venezuela.<sup>1</sup>

International standards on freedom of expression recognize that the media may be subject to certain legitimate restrictions. It is generally accepted, however, that standards of reporting, accuracy, and impartiality are best protected by voluntary controls and the market, while those unfairly treated by the press may protect their rights through civil proceedings in the courts. In short, it is widely accepted that fewer rather than more controls benefit democracy by stimulating a diverse and vigorous public debate. Unfortunately, the lapse of journalistic standards in Venezuela has given added resonance to calls from the government and its supporters for increased state control and regulation, particularly of the audiovisual media. Were such controls to be imposed, it would be a real setback for Venezuelan democracy.

The issue of government controls on the media was addressed recently by the Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights. Referring to concerns expressed by governments and politicians in the region about alleged lapses of journalistic ethics, the rapporteur noted:

[T]he media are primarily responsible to the public, and not to the government. The principal function of the media is to inform the public about, among other things, measures taken by the government. This is a basic function in a democracy, so that any threat of imposing legal sanctions for journalistic decisions that are based essentially on subjective insights or professional judgment would also have the effect of inhibiting the media and preventing the dissemination of information of legitimate interest to the public.<sup>2</sup>

He also urged the media to uphold objective reporting standards, "to initiate a process of reflection about their role in times of political crisis, when society expects to receive the most comprehensive and ample information."<sup>3</sup>

This report outlines Human Rights Watch's concerns about freedom of expression in Venezuela. It follows a mission to Caracas in February 2003 in which we collected first-hand information on the current political crisis and its impact on freedom of expression. As summarized immediately below, separate chapters of this report address Human Rights Watch's three main concerns: violence against journalists; the ongoing investigation of the four leading television stations; and the proposed media law.

During Human Rights Watch's February visit to Venezuela we interviewed many journalists working for opposition media who had been victims of violent attacks. Journalists working for state-financed media and community radio and television stations that support the Chávez government have also been attacked. Virtually all attacks on journalists, from whichever side, have gone unpunished.

Most of the victims of attacks on the press have been reporters, photographers, television cameramen, and assistants working for private media on assignment in Caracas and the provinces. When TV crews try to cover an official event, displaying their company logo on their camera or microphone, irate Chávez supporters frequently

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<sup>1</sup> Both Venezuelan nongovernmental human rights organizations and international nongovernmental press freedom advocacy groups have noted the political bias of the Venezuelan media. The former include the respected organization Programa Venezolano de Educación Acción en Derechos Humanos (PROVEA). See PROVEA, *Situación de los Derechos Humanos en Venezuela, Informe Anual 2001/2002*, p. 449, available on the Internet at <http://www.derechos.org.ve>. The latter groups include the Committee to Protect Journalists, Reporters without Borders, and the Instituto de Prensa y Sociedad (IPYS).

<sup>2</sup> Report of the Special Rapporteur for Freedom of Expression, 2002, Chapter 2, para. 16. <http://www.cidh.org/Relatoria/English/AnnualReports/AR02/ChapterII2002-1.htm#2> (retrieved on April 30, 2003).

<sup>3</sup> *Ibid.*, Chapter 2, para. 225. <http://www.cidh.org/Relatoria/English/AnnualReports/AR02/ChapterII2002-2.htm>.

descend on them. Men and women brandishing sticks remonstrate with them, accuse them of being liars and coup-mongers, order them to leave, insult them, smash the windows of their vehicles, damage their equipment, and sometimes shove them or throw punches. On a smaller scale, journalists from state-controlled media have been jostled, insulted and harassed by opposition demonstrators.

President Chávez himself has delivered stinging attacks on the press, and particularly the private television networks, as enemies of Venezuela's "Bolivarian Revolution." To our knowledge, however, neither Chávez nor any government official has ordered or directly encouraged government supporters to physically attack journalists. Indeed, on at least one occasion, Chávez has publicly called on his supporters to respect journalists, stating: "it's not the fault of the journalist taking notes in the street, or the photographers or cameramen ... they are workers. The blame lies with the owners of those media."<sup>4</sup> Yet security forces have done far too little to stop such attacks as they occur and, as noted above, the government has done almost nothing to bring perpetrators to justice.

In a meeting with President Chávez in June 2002, Human Rights Watch strongly urged him to make clear that his criticisms of the press in no circumstance justify attacks by his supporters on opposition journalists. In February 2003, Human Rights Watch reiterated its concerns in a meeting with Venezuela's minister of information, Nora Uribe, who frequently accompanies the president during his television broadcasts. Notably, during his April 27 *Hello President* program, Chávez did indeed call on his supporters to cease such attacks. "I call on you to respect journalists and to treat them with the dignity they deserve," Chávez said. "I ask the people not to be carried away by the political position taken by a television channel or by the fact that it's campaigning against Chávez. We are not going to pin that on the journalists, who are only workers doing their jobs."<sup>5</sup>

Human Rights Watch welcomes such conciliatory statements, but believes that they must be backed by a determination to ensure that physical attacks on journalists do not go unpunished. Unfortunately, the efforts made to date by the Attorney General's office to investigate these attacks and prosecute those responsible have been woefully insufficient. The criminal prosecution of those responsible would send a much stronger message to the public than presidential exhortations alone.

Moreover, the government's conciliatory gestures mean little if accompanied by other legal measures that, if implemented, would significantly erode press freedom and violate international standards of free expression that Venezuela is obliged to uphold. The Chávez government has insisted that the state's control of broadcasting frequencies gives his government legal powers to punish radio and television stations that overstep the boundaries of permissible criticism. In early February 2003, his minister of infrastructure, Diosdado Cabello, launched an investigation into the country's four largest private television networks—RCTV, Globovisión, Televen and Venevisión—for serious breaches of broadcasting regulations during their coverage of the strike. Under current telecommunications law, the minister may suspend or revoke their broadcasting licenses. In theory, the government can, at a stroke, silence or muzzle Venezuela's most powerful media, although the stations may appeal for review of the decision to the Supreme Court.

During our February visit we discussed the investigation with Cabello, the minister of infrastructure; Jesse Chacón, the executive director of CONATEL, the administrative body that is responsible for conducting the investigation; and Nora Uribe, the minister for communication and information. We also met with senior executives of the four private networks facing the loss of their licenses. Finally, in order to reach an independent judgment regarding the broadcasts at issue, we viewed many hours of videotapes, some provided us by CONATEL, some by the networks.

We conclude that the administrative proceedings now underway raise serious freedom of expression issues. In particular, we note:

- Some of the regulations the government seeks to enforce violate freedom of expression standards protected in human rights treaties that Venezuela has ratified.

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<sup>4</sup> "Aló Presidente," weekly television broadcast by President Chávez, January 20, 2003. Copies of the programs are available on the Venezuelan government's website. See <http://www.venezuela.gov.ve>.

<sup>5</sup> "Aló Presidente," April 27, 2003.

- Other regulations cited in the investigations are consistent with grounds under which freedom of expression may legitimately be restricted, such as the protection of public order. We are concerned, however, that the term “incitement to rebellion” may be broadly interpreted to cover strongly-worded criticism of government authorities or calls to engage in non-violent protest activities.
- The body set up to investigate broadcasting infractions and apply penalties under existing laws is wholly dependent on the executive branch, and does not offer the necessary guarantees of independence and impartiality.

The broadcasting investigation is not the only recent development that threatens freedom of expression. For several years, a draft law to regulate television and radio broadcasting has been under discussion. In January, at the same time as the investigation of the television was begun, President Chávez presented a revised version of the bill to the National Assembly (Venezuela’s legislature). The version Chávez presented included new, more restrictive provisions, different from those included in the draft of the law that CONATEL discussed with representatives of the broadcasting industry in 2002. Concerned about the potentially abusive use of these provisions, much of the media has criticized the bill as a “gag law” designed to impose extensive government controls over television output.

The new bill has several troubling aspects, and imposes a bewildering array of new requirements and restrictions on broadcasters. In particular:

- In an attempt to protect children from exposure to violence, excessive (and possibly unworkable) restrictions are imposed on broadcasting during “protected hours” (between 6:00 a.m. until 8:00 p.m.).
- A prohibition on the broadcasting of “contents that promote, defend or incite lack of respect toward legitimate institutions and authorities,” is a recipe for self-censorship, to the detriment of a diverse and vibrant public debate.
- Stations found to have promoted, advocated or incited disturbances of public order may be suspended for up to forty-eight hours on the first offense. If broadly applied this provision could lead to suspension of the licenses of stations that defend protest activity or express opinions critical of the government. A second offense within three years of the first could lead to a revocation of the station’s broadcasting license. This provision could also lead to extensive self-censorship.
- The “National Institute of Radio and Television,” which would be established under the bill, does not offer sufficient guarantees of independence to ensure that it will act to protect the public interest rather than the political interests of the governing party.

### **Recommendations**

The present climate of political polarization in Venezuela fosters violence and jeopardizes respect for human rights. The media can contribute to a constructive public debate by providing fair and accurate reporting. In turn, the government must preserve Venezuela’s traditional respect for press freedom. In particular:

- President Chávez should state, in unequivocal terms, that his criticism of the press is not meant to justify physical attacks by his supporters against the press or the opposition. He should make a public commitment to ensure that those responsible for these abuses will be held accountable.
- The attorney general should set up a special panel to investigate attacks against the press, with sufficient staff and resources, and announce its establishment publicly.
- Existing laws and regulations that conflict with Venezuela’s international obligations on freedom of expression should be eliminated or amended. Pending repeal of the offending provisions, the Ministry of Infrastructure should not pursue investigations of the television networks for infractions of such laws and regulations. In any investigations of alleged infractions, decisions on culpability and punishment should

be made by an impartial and independent body. Any sanctions applied should be strictly proportionate to the seriousness of the infraction.

- The government should eliminate the provision on “insulting authorities” from the new media law. It should also define more precisely the meaning of “incite, advocate, and promote disturbances of public order” to ensure that these terms are not used to penalize legitimate political criticism and debate.
- The body set up to implement the new media law and to investigate and sanction infractions of content regulations should be composed of persons with relevant expertise and/or experience, selected to be reasonably representative of society as a whole. Government officials or those holding office in political parties should not be eligible. Members of the body should be appointed for a fixed term and be protected from dismissal except in clearly specified circumstances.

## II. JOURNALISTS IN THE CROSSFIRE

Over the past year, there has been a continuous string of assaults on journalists and press property in Venezuela. Human Rights Watch estimates that there were at least 130 assaults and threats of physical harm to journalists and press property between the beginning of 2002 and February 2003. This estimate is based in part on a list of cases compiled by independent Venezuelan media analyst Sergio Dahbar from press reports, eyewitness testimony, and video recordings.<sup>6</sup> In addition to physical assaults, the total includes injuries sustained in demonstrations and incidents involving threats of physical violence. In its annual report covering the period from October 2001 through September 2002, the respected nongovernmental human rights group PROVEA recorded a comparable number of incidents: 106 cases of physical attack on journalists or press property or threats against members of the press.<sup>7</sup>

The extent of popular animosity toward the media was particularly evident in early December 2002. On the night of December 6, 2002, three protesters were killed and more than twenty injured when a civilian gunman opened fire on a peaceful opposition crowd gathered in the Plaza Altamira in Caracas. Some private television networks linked the alleged killer with a well-known pro-Chávez mayor, thereby attempting to implicate the Chávez government in the killings. The print media picked up the story on the following day. In his regular Sunday broadcast on December 8, President Chávez accused the stations of concocting evidence to discredit his government.

On December 9, pro-Chávez protesters surrounded private television outlets in the cities of Maracay, Barquisimeto, San Cristóbal, and Maracaibo. A mob ransacked Globovisión’s Zulia studios, destroying cameras, monitors, computers, recording equipment, and office furniture. Similar damage was done to the studios of TRT and Televen in Táchira, TVS in Maracay, and Promar in Barquisimeto. Menacing Chávez supporters, banging pots and blowing whistles, surrounded the Caracas headquarters of Globovisión, RCTV, Televen, and Venevisión. Secretary General of the Organization of American States Cesar Gaviria, who had been in Venezuela for months brokering political negotiations between the government and the opposition, immediately condemned the attacks.

Even before the events of December 9, pro-Chávez mobs had surrounded newspaper and television stations on several occasions, blowing whistles, taunting journalists, spraying graffiti on walls, smashing windows, and burning vehicles.

Journalists are not attacked for simply doing journalism, rather they are attacked for being foot-soldiers in the media war supposedly being waged by their bosses against President Chávez. The same is true of reporters for state media and community radio and television stations, who are seen as pro-Chávez political activists first,

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<sup>6</sup> Sergio Dahbar, “Agresiones a Periodistas en Venezuela,” unpublished document, Caracas, February 2003 (copy on file at Human Rights Watch).

<sup>7</sup> *Situación de los Derechos Humanos en Venezuela 2001/2002*, available at: <http://www.derechos.org.ve/situacio/informes/annual/14/libertadExpresion.html> (retrieved on April 30, 2003).

reporters second. Respect for journalists as purveyors of accurate information to the public has been one of the first casualties of the current political polarization.

### **The Question of Government Responsibility**

Venezuelan and international press freedom organizations have repeatedly expressed concern at the aggressive tone of President Chávez's speeches, which they say has contributed to violence against the press. Human Rights Watch has viewed hours of video of Chávez's weekly television program, "Hello President," and presidential speeches in which he has severely criticized the press, though we have not been able to see or read all that Chávez has said on the topic. In the material that we have viewed, his comments include personal attacks on prominent media owners and personalities, as well as harsh, controversial, and often aggressive commentary on the partisanship of the media in today's Venezuela. But his statements cannot, from a legal standpoint, be considered an incitement to violence.

Chávez has a right to respond to his critics, even using vulgar and aggressive language. What he must never do is encourage his supporters to physically attack, intimidate, or harass journalists, or imply that such behavior is acceptable and would be tolerated. Given the current polarized atmosphere in Venezuela, to make matters absolutely clear to his supporters, he should accompany any critical comments about the media with a vigorous condemnation of physical aggression against them.

The insecurity and risks faced by journalists are exacerbated by the fact that press workers cannot necessarily rely on the police to protect them from assault. Increasingly, the Caracas police forces have themselves taken sides in the political conflict. Journalists from the private media can expect some protection from Caracas's Metropolitan Police, who are under the control of the pro-opposition mayor of Greater Caracas, Alfredo Peña. But the police responsible to the pro-Chávez mayor of Libertador, Freddy Bernal, as well as the militarized National Guard, are often said to look the other way when journalists working for opposition media are harassed and attacked.

On February 5, 2003, for example, twenty young males wearing Chávez tee-shirts and wielding clubs surrounded Charmiant Corado, a reporter for the television network Televen, while she was interviewing an opposition congresswoman at the Yagua gasoline distribution plant in Carabobo. The men refused her access to the plant; insulted her, her cameraman, and assistant; and threatened to kill them if they didn't leave immediately. When Corado pointed to some National Guard soldiers standing a few feet away, the men told her that they, not the guardsmen, gave the orders, and the guardsmen did nothing to protect her. The thugs later drove up to where Corado was parked (she was in her car telephoning her station), stole her video tapes, hit her driver on the face and neck, and threw a stone through the back window of her car.<sup>8</sup>

A day earlier, on February 4, a Chavista crowd beat Angel Véliz, a photographer for the local Anzoátegui newspaper *Impacto*, who was covering a clash between striking oil workers and strike opponents in Anaco. Véliz's attackers snatched his camera and punched and kicked him in the presence of national guardsmen. He had reportedly identified himself and turned to the guardsmen for help, but they gave him no assistance. Véliz was cut and bruised on various parts of his body and had to have stitches in his right arm.<sup>9</sup>

Not only are members of the press often denied effective police protection, those who suffer physical attacks, or have their working tools damaged or stolen, rarely obtain redress from the Venezuelan criminal justice system. There is virtually no chance of a successful investigation of relatively minor incidents, such as the punches, kicks, and acts of intimidation that journalists face as part of their everyday work, especially when these incidents take place in crowded streets. So far, courts have failed to punish any of those responsible for the scores of attacks which victims have reported to the police and the public prosecutors. Immediately after the attack she suffered at the Yagua gasoline distribution plant, for example, Charmiant Corado filed a complaint with the Carabobo state police and the public prosecutor. A month later, she had not been contacted either by the police or the prosecutor's office. Nor, she said, had the police carried out inquiries at the Yagua site, even though the youths who attacked her had been camped there and would presumably not have been difficult to locate.<sup>10</sup>

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<sup>8</sup> Human Rights Watch interview with Charmiant Corado, Carabobo correspondent of Televen, February 8, 2003; Nair Castillo, "Turba de Chavistas arremeten contra equipo de Televen," *Así es la Noticia*, February 6, 2003.

<sup>9</sup> Evarista Marín, "Chavistas apalearon a fotógrafo en Anaco," *El Nacional*, February 5, 2003.

<sup>10</sup> Human Rights Watch telephone interview with Charmiant Corado, March 4, 2003.



Cumulatively, the failure to investigate cases like Corado's contributes to an atmosphere of lawlessness that inhibits journalism and ultimately affects the public's right to be informed.

The opposition press accuses the government of organizing anti-media protests. It also alleges that members of the Bolivarian Circles, neighborhood groups set up with government support, are responsible for many of the attacks on journalists. In Caracas, opposition suspicions center on a former organizer of the Circles, the pro-Chávez mayor of Libertador, Freddy Bernal.

In an interview with Human Rights Watch, Bernal said that he had lectured government supporters about the importance of not attacking journalists, noting that they were not to blame for press distortions. Bernal admitted that the municipality had transported Chavistas to demonstrate outside the headquarters of Venevisión on February 5, 2003, when officials arrived to notify the station about the Ministry of Infrastructure investigation. "When the other stations were notified, the media got their people together to beat pans when the attorneys arrived and broke the windows of their cars. So we went to give the officials some support," he told Human Rights Watch. According to the press, of four hundred demonstrators who turned up at the Venevisión headquarters, more than half arrived in a bus and three trucks provided by the municipality.<sup>11</sup> There were no reports of violence or vandalism during this demonstration in contrast to similar ones that occurred in previous months.

While some incidents against the press may be spontaneous, others do seem to have been orchestrated. The clearest example was the violence of December 9, 2002, when attacks against media outlets occurred simultaneously across the country.

Bernal told Human Rights Watch that the Chavistas who congregate day and night outside the mayoral offices in the central Plaza Bolívar (a spot now known as the "Hot Corner" (*esquina caliente*)) are mostly unemployed people in search of money and work. "They are not on our payroll, in fact they threatened to occupy the town hall if I didn't give them work. The methods they use to defend the Revolution do us harm. I put one of them in jail for burning a vehicle of Globovisión. The next day a hundred of them turned up at the town hall on motorbikes to protest because I had betrayed the Revolution."<sup>12</sup>

### **Attacks on Public and Community Broadcasters**

Journalists working for publicly-owned media (in particular VTV-Channel 8 television and Radio Nacional) have also suffered physical attacks and harassment, in their case by opposition activists. Journalists identified as working for these media, which are seen to be aligned with the government, are often badmouthed and sometimes physically attacked. Young reporters and camera operators working for alternative community radio and television have also been victims of such attacks.

These incidents, apparently fewer in number than attacks on employees of private companies, also get much less publicity. But they too are intimidating. "When you are in an opposition march, they follow you, they film you and try to hear what you are saying into the mike," a Radio Nacional reporter told Human Rights Watch. "If you ask them questions they insult you. Once a guy threw a hot cup of coffee over me: that'll teach you to tell the truth, he said."<sup>13</sup> Independent documentary filmmaker Liliane Blaser told Human Rights Watch that she had been harassed on several occasions because of her work challenging the opposition version of the April 2002 coup attempt.<sup>14</sup>

On the morning of February 2, 2003, Narka Moreno, a reporter for Catia TVE, a community radio station in Caracas, was in the Parque Oeste district as signatures for a referendum were being collected by opposition activists. When she began to interview bystanders a man hustled her away: "Get out ! Out! Catia TVE's no good," the man shouted. She left the scene. Later, from a vantage point across the road she heard an explosion and saw a flame shoot up inside the tent where the signing tables were. A group of people ran directly toward her and a man

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<sup>11</sup> "Minfra puso el oficio, Bernal los autobuses," *Tal Cual*, February 6, 2003.

<sup>12</sup> Human Rights Watch interview with the mayor of Libertador, Freddy Bernal, Caracas, February 12, 2003.

<sup>13</sup> Human Rights Watch interview with Radio Nacional journalist Thais Gómez, Caracas, February 10, 2002.

<sup>14</sup> Testimony of Liliane Blaser, in a meeting of community television and radio workers attended by Human Rights Watch, Caracas, February 6, 2003.

grabbed her by the hair, pulled her to the ground and started kicking her in the ribs. “You must know who threw it,” he cried. He grabbed her video camera.

“I think it’s an ideological question,” Moreno said later. “It’s clear that in Venezuela the private media distort reality. The community media like us have come to represent the other side. I think they knew that I had recorded things they didn’t want the public to know. That’s why they beat me and stole my camera.”<sup>15</sup>

Many opposition leaders portray grassroots media like Catia TVe as ultra-left political outlets, and deem their workers to be among President Chávez’s most radical supporters.<sup>16</sup> Since January 2002, every organized community in Venezuela has had the right to obtain a license for a local broadcasting service. The Venezuelan Broadcasting Guild (Cámara Venezolana de la Industria de la Radiodifusión, CVIR), the leading professional association for radio journalists, has opposed the new community stations. It complains that CONATEL, the government body charged with enforcing broadcasting regulations, has not taken action to enforce licensing laws.<sup>17</sup> The regulations prohibit community services from engaging in political advocacy.<sup>18</sup> Yet a major grievance of the CVIR, as well as of the political opposition (with which the CVIR is closely allied), is what they perceive to be the radical political profile of the stations. Indeed, in press articles and editorials the community stations are frequently portrayed as ideological mouthpieces of the state. This perception probably lay behind the raids conducted against community radio and television stations on April 12, 2002, after Chávez had been temporarily deposed in the coup.

### III. PRIVATE TELEVISION FACING THE LOSS OF BROADCASTING LICENSES

The country’s four largest private television networks—RCTV, Globovisión, Televen and Venevisión—are currently under investigation for serious breaches of broadcasting regulations for their coverage of the recent general strike. President Chávez and his cabinet have insisted that if administrative penalties are imposed against the private television networks, Venezuela would be doing no more than protecting the public from the networks’ abuse of broadcasting concessions. If the alleged infractions are confirmed, the stations could face fines of 4,000 Bolívares (approximately \$2.50), temporary suspension, or the revocation of their broadcasting licenses.<sup>19</sup> The insignificant amount of the fines contemplated in the law makes it likely that, unless the ministry is content merely to warn the stations, it could take them off the air, at least temporarily.<sup>20</sup>

#### **Restrictions on Freedom of Expression under International Law**

Article 19 of the International Covenant on Civil and Political Rights (ICCPR) guarantees the right to freedom of expression, specifying that this right includes the “freedom to seek, receive and impart information and ideas of all kinds.” Freedom of expression “carries with it special duties and obligations,” and therefore may

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<sup>15</sup> Video testimony produced by the National Association of Free and Alternative Media (Asociación Nacional de Medios Comunitarios, Libres y Alternativos), 2003.

<sup>16</sup> A hostile article about community television published in *El Nacional* included a debate about Catia TV by three academic media experts, all of them scathing critics of the station. “Cuatro horas frente a la pantalla de Catia TV,” *El Nacional*, September 22, 2002. The opposition press has accused community radio stations of whipping up support for anti-media protests. *El Nacional* reported that the violent demonstration outside Globovisión’s Zulia station on December 10 was advertised beforehand by a community radio station, 94.1 Bolivariana FM. “Círculos Chavistas atacaron medios en todo el país,” *El Nacional*, December, 11, 2002.

<sup>17</sup> “Un tomista de la UNCV inicia su pasantía en la radio comunitaria,” *El Nacional*, September 22, 2002.

<sup>18</sup> “Como montar un radio o una televisora comunitaria,” Asociación de Medios Comunitarios, Libres y Alternativos, <http://www.medioscomunitarios.org/noticiero/tele.html> (retrieved on March 11, 2003).

<sup>19</sup> Article 199 of the Broadcasting Regulations.

<sup>20</sup> The transmissions under investigation were monitored and recorded by CONATEL between October 9, 2002 and January 5, 2003.

be subject to restrictions “for respect of the rights or reputations of others; for the protection of national security or of public order, or of public health and morals.”<sup>21</sup>

Restrictions on freedom of expression may not be imposed for any purposes other than the above. Moreover, they must be “provided by law” and be “necessary” to attain the purpose in question.<sup>22</sup> In practice, this means that restrictions must never exceed the specific purpose served or be so loosely formulated as to “put in jeopardy the right itself.”<sup>23</sup> In his commentary on the ICCPR, Manfred Nowak notes that “[i]nterference [with free expression] based solely on an administrative provision or a vague statutory authorization violates Art. 19.”<sup>24</sup>

The “special duties and responsibilities” to which Article 19(2) refers may justify intervention by the state to ensure diversity of opinion and information and to prevent the formation of media monopolies. They may not, however, be invoked by the state as an excuse for imposing top-down controls over the media.<sup>25</sup>

The American Convention on Human Rights also protects freedom of expression, listing the same criteria for restrictions as in the ICCPR.<sup>26</sup> Such restrictions must likewise be expressly established by law and be necessary to attain the purpose at hand. Unlike the ICCPR, however, the American Convention prohibits prior censorship, with the exception that access to “public entertainments” may be regulated “for the moral protection of childhood and adolescence.”

Broadcasting regulations are specifically covered by Article 13(3) of the American Convention, which provides:

The right of expression may not be restricted by indirect methods or means, such as the abuse of government or private controls over newsprint, radio broadcasting frequencies, or equipment used in the dissemination of information, or by any other means tending to impede the communication and circulation of ideas and opinions.

Some regulation of television and radio content is permissible under Article 13, such as where regulation serves the public interest of protecting children, safeguarding public health and public order, or preserving standards of decency. The question in the Venezuelan case, therefore, is whether penalizing the private television stations would be an abusive exercise of the legitimate government power to regulate the broadcast media.

### **Investigation Procedures**

The technical part of the current investigations is being conducted by CONATEL, a body under the administrative jurisdiction of the Ministry of Infrastructure, which is responsible for oversight of the telecommunications industry. CONATEL’s powers include enforcing norms that regulate the content of radio and television broadcasting, including the Broadcasting Regulations (1984) and the Partial Regulations on Television Transmissions (1992). It is the minister of infrastructure, however, who makes the decision to revoke a broadcasting license. The ministry has 120 working days from the date of the opening of the investigation to reach its conclusions, sanction or exonerate the channels, a deadline that will expire in June 2003.<sup>27</sup>

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<sup>21</sup> ICCPR, art. 19(3).

<sup>22</sup> Ibid.

<sup>23</sup> *General Comment 10, Freedom of Expression (Article 19)*, para. 4, Human Rights Committee, 19th sess., 1983, in *Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies*, U.N. Doc. HRI/GEN/1/Rev.1, p. 11 (1994).

<sup>24</sup> Manfred Nowak, *U.N. Covenant on Civil and Political Rights: CCPR Commentary* (Kehl am Rhein, Germany: N.P. Engel, 1993), p. 351.

<sup>25</sup> See *ibid.*, p. 350.

<sup>26</sup> American Convention on Human Rights, art. 13.

<sup>27</sup> Ley Orgánica de Telecomunicaciones, Art. 186. In June 2000, the government enacted an Organic Telecommunications Law (Ley Orgánica de Telecomunicaciones, LOT), which now governs the telecommunications industry. When the law was under debate, lack of a political consensus on norms regulating television and radio output obliged the government to defer consideration of these issues. Article 208 of the LOT provides that until the approval of a new law on broadcasting content,

Although CONATEL is described formally as autonomous, in practice there are no checks and balances to ensure its independence from the current government. The director general of CONATEL and the four members of CONATEL's executive council are all presidential appointees without fixed tenure. Indeed, all five CONATEL directors may be fired at will by the president.<sup>28</sup> This greatly increases the risk that penalties contained in the broadcasting law could be abused to silence opposition criticism.

Any penalties imposed can, however, be appealed to the Supreme Court, which would ultimately have to assess the application of the law according to the free expression standards in the Venezuelan Constitution and the human rights treaties ratified by Venezuela. The affected parties may also apply to the court for a stay of any penalty imposed until a court hearing has been held.

### **Statements “Inciting Rebellion or Lack of Respect”**

The investigations of the four stations have focused on statements by opposition leaders, including dissident military officers, blaming Chávez for the current bitter divisions in Venezuelan society, the alleged collapse of the economy, growing poverty, and deaths in opposition demonstrations. Other statements under investigation include calls to action, for instance, calls to citizens to protest in the streets, or soldiers to disobey orders to fire on civilians. The Ministry of Infrastructure claims that such statements violate a provision of the broadcasting regulations that prohibits the transmission of “messages, speeches, sermons or lectures that incite rebellion or lack of respect for the legitimate institutions and authorities.”<sup>29</sup>

This provision combines two elements that are quite dissimilar. While “rebellion” necessarily implies actions in breach of public order, “lack of respect for government authorities” may imply no more than strongly-worded statements critical of government authorities, which is protected speech under international freedom of expression norms. While the former could be a legitimate ground for restricting free expression, the latter is not. The prohibition of speech that encourages lack of respect for government authorities is an example of an “insult law” (or *ley de desacato* as such laws are known in Spanish), which penalizes criticism of government authorities considered to be insulting.

The Inter-American Commission on Human Rights issued a special report on insult laws in 1994, concluding that they were incompatible with Article 13 of the American Convention on Human Rights. As the commission explained, in a democracy the honor or reputation of public officials is adequately protected by the same libel laws that protect other citizens. In fact, international jurisprudence recognizes that instead of enjoying special protection, public officials must be prepared to accept a greater amount of criticism, since this is inherent to the exercise of office. By penalizing criticism of government authorities, even when it is unreasonable, unjust, exaggerated, or expressed in biting terms, insult laws have a chilling effect on public debate, and make it more difficult for citizens to hold their governments accountable.

The political opinions expressed in the excerpts cited in the ministry investigation are undoubtedly incendiary in tone and content. Some were angry reactions to the killing of opposition demonstrators. The following examples cited by the ministry are illustrative of the kinds of comment it deems objectionable:

“Mr Chávez, all those ghosts do not exist, the only saboteur, coup-maker and conspirator, confessed and convicted is you!”;

“above all, profound indignation and pain that all Venezuelans feel for the massacre that occurred today in this plaza, and for which the only person responsible is the murderer of Miraflores, Hugo Chávez”;

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the existing regulations will remain in force. It refers expressly to the Broadcasting Regulations and the Partial Regulations on Television Transmissions. Human Rights Watch interview with Jesse Chacón, General Director of CONATEL, Caracas, February 11, 2003.

<sup>28</sup> Article 40 of the Organic Telecommunications Law, enacted by the Chávez government in July 2000.

<sup>29</sup> Article 53(c).

“The people cannot obey a government that has committed crimes against humanity like the monstrous case of Puente Llaguno, still unresolved and which has unleashed the most brutal corruption.”<sup>30</sup>

“In this terrible moment I call on the Venezuelan army (...) not to act in the interests of a tyrant, a henchman, a murderer with the name of Hugo Chávez Frías.”

“National Guard, you are still in time to put yourselves on the side of the people, do not obey under any circumstances or for whatever reason any order from your superior to fire on the people, remember about crimes against humanity (...) human rights violations (...)”

The use of angry epithets like “murderer” to describe the head of state may be offensive and unfair, but it would be a dangerous limitation on free speech to ban such language because of its “lack of respect.” Even acerbic, unreasonable, and hostile political criticism should be protected from censorship, in order to encourage the free exchange of views necessary to a democracy. Libel laws are sufficient to protect the interests of those who claim to be wronged by speech, and fines or civil damages should be a sufficient deterrent against its abuse.

There are few international decisions which provide guidance as to when expression may be deemed to constitute a threat to public order. According to a leading nongovernmental authority on freedom of expression standards, “what the decisions of the Human Rights Committee and European Court make clear is that a government must support any restriction with concrete allegations of how the accused’s exercise of his freedom of expression threatens public order, and that any restriction must be necessary to protect public order.”<sup>31</sup>

It is generally recognized that incitement to violence is an unacceptable abuse of free speech, and may be legitimately restricted on public order grounds.<sup>32</sup> But the power to prohibit such speech is not unlimited. Because of the importance of allowing a full and free public debate, the government must only impose restrictions on grounds of incitement where there is a clear relation between the speech in question and a specific criminal act.

While there are no cases in international law which provide an exact parallel to the situation in Venezuela, international courts have stressed that, to talk of incitement, the connection between speech and criminal act must be direct and specific. The International Criminal Tribunal for Rwanda, for example, held that “the ‘direct’ element of incitement implies that the incitement assume a direct form and specifically provoke another to engage in a criminal act, and that more than mere vague or indirect suggestion goes to constitute direct incitement .... The prosecution must prove a definite causation between the act characterized as incitement ... and a specific offense.”<sup>33</sup> However, the tribunal went on to point out that “a particular speech may be perceived as ‘direct’ in one country, and not so in another, depending on the audience,” adding that this question must be resolved according to the circumstances of the individual case.

In *Incal v. Turkey*, the European Court of Human Rights ruled that Turkey had violated Article 10 of the European Convention on Human Rights (which protects freedom of expression) by convicting a Turkish national for writing a propaganda leaflet considered by the government to incite hatred and hostility through racist words and to advocate illegal forms of protest. The court agreed that the leaflet included a number of “virulent” criticisms of the government’s policies towards the Kurdish minority, and called on Kurdish citizens to “oppose” these policies by forming “neighborhood committees.” The court concluded, however, that these appeals could

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<sup>30</sup> Auto de Apertura de Procedimiento Administrativo (Accusation) against RCTV, dated January 17, 2003.

<sup>31</sup> Article 19, *Freedom of Expression Manual*, Chapter 6, ‘Restrictions Based on Threats to National Security or Public Order,’ <http://www.article19.org> (retrieved on March 26, 2003).

<sup>32</sup> In the Oslo Accords, for example, Israel and the Palestine Authority agreed to abstain from incitement or hostile propaganda against each other, and to enforce this prohibition on parties under their control. Nevertheless, they also recognized that such enforcement must not infringe guarantees of free expression. A line had to be drawn between protected speech and incitement. Interim Agreement (Oslo 2) of September 28, 1995 (Article XXII).

<sup>33</sup> The International Criminal Tribunal for Rwanda, Decision of September 2, 1998, *Prosecutor v. Jean Paul Akayesu*, Case No. ICTR-96-4-T, 6.6.3: 557. The tribunal was applying article 2(3)(c) of the Convention on the Prevention and Punishment of the Crime of Genocide, which prohibits “direct and public incitement to commit genocide.”

not be taken as incitement to the use of violence, hostility, or hatred between citizens. It also considered that the prison sentence was “disproportionate to the aim pursued and therefore unnecessary in a democratic society.”<sup>34</sup>

As these judgments illustrate, governments are required to tread with care to avoid trampling on freedom of expression in their zeal to prevent violence or the disruption of public order. The U.S. courts have traditionally imposed demanding obligations in this regard.<sup>35</sup> Moreover, because the crucial link between speech and action must be demonstrated by interpretation and argument, it is essential that the procedures under which these cases are examined are transparent and impartial. “Incitement” is a term that lends itself easily to abuse.

### **Opposition Campaign Spots as Prohibited “Propaganda”**

During the stoppage in December 2002 and January 2003, the four private television channels under investigation replaced commercial advertising with hours of opposition messages in support of the strike, transmitted free of charge. In December, for example, the four stations transmitted Democratic Coordinator messages urging Venezuelans to fill the streets in protest against the Chávez government. The government alleges that these broadcasts violated a regulation prohibiting the transmission of “propaganda tending to subvert public or social order,” and, furthermore, undermined the right to “free transit” protected in the Venezuelan Constitution.<sup>36</sup> By closing down businesses and occupying the streets, the government contended, the strikers were preventing other Venezuelans from going to work and moving freely about the city.

The provision of the broadcasting regulations relied on by the government is so broad and imprecise that it is unclear exactly what kind of contents it prohibits. While broadcasting calls for violence or clearly illegal activities may be legitimately prohibited on public order grounds where requisite causation can be established, restrictions must in all cases be proportionate to the threats posed by the targeted expression. Such grounds may not be cited as a pretext for prohibiting the advocacy of peaceful protest.

Human Rights Watch has viewed one of the messages under investigation, which shows images of huge crowds marching and demonstrating, apparently peacefully, in the streets of Caracas. There were no images of violence or of clearly illegal practices such as the use of vehicles or barricades to block streets. The people shown in the images appeared to be exercising their right to “demonstrate peacefully without arms,” protected in Article 68 of the Venezuelan Constitution. They were advocating the exercise of a constitutional right that is also protected by human rights treaties to which Venezuela is a party.<sup>37</sup>

The government also alleges that a thirty-second tax protest produced by the political party Alianza Bravo Pueblo and broadcast by all four stations was unlawful because it incited viewers not to pay their taxes. The message, including images and voices of different protesters speaking in turn, used the following text:

they [the government] took millions from the central bank / and from the SENIAT / and from PDVSA / and now they want to put their hands in our pockets to charge us more taxes / the economy is on the floor

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<sup>34</sup> European Court of Human Rights, *Incal v. Turkey*, No. 41/1997/825/1031, June 6, 1998, paras 50 and 59.

<sup>35</sup> In the United States, for example, the courts have set a high threshold for holding publishers liable for incitement. “The courts are very hesitant to impose liability upon the publisher because it could result in a ‘chilling effect’ on the freedom of speech. Therefore, the courts have not held publishers or other media companies liable unless the incitement was explicit, warnings were not included, or there was clear and present danger of immediate injury.” Lloyd Rich, “Publisher Liability: Incitement & Negligent Publication,” The Publishing Law Center, 1997, <http://www.publaw.com/negligent.html> (retrieved on March 12, 2003). The key legal test for incitement was established in the 1969 case of *Brandenburg v. Ohio*, in which the U.S. Supreme Court reversed the conviction of a Ku Klux Klan leader who had threatened violence. The court concluded that “the constitutional guarantees of free speech and free press do not permit a State to forbid or proscribe advocacy of the use of force or of law violation except where such advocacy is directed to inciting or producing imminent lawless action and is likely to incite or produce such action.” *Brandenburg v. Ohio*, 395 U.S. 444, June 9, 1969.

<sup>36</sup> Reglamento de Radiocomunicaciones, article 53(d); article 50 of the Constitution.

<sup>37</sup> Article 21 of the International Covenant on Civil and Political Rights affirms the “right of peaceful assembly,” Article 15 of the American Convention on Human Rights recognizes the “right of peaceful assembly, without arms.”

/ unemployment is racing out of control / and our money de-valued! / NO to the new taxes! / not one Bolívar more for corruption! / It's an abuse!!!<sup>38</sup>

While it is a strong protest against new government taxation, the message contains no language that could be interpreted as an incitement not to pay taxes.

### **A Video as “False, Deceitful, or Tendentious News”**

Globovisión and Venevisión are also accused of transmitting a faked video purportedly showing a civilian currently detained in connection with the killing of three demonstrators in the Plaza Altamira on December 6. The video, made by an amateur, apparently shows this man standing close to mayor Freddy Bernal in a pro-Chávez demonstration on the day before the killings. The stations broadcast the video soon after the shootings in the Plaza Altamira to suggest that the government was responsible. Chávez immediately denounced Globovisión publicly for manipulating the news.

In a meeting with Human Rights Watch, Minister of Infrastructure Diosdado Cabello said that the video was clearly a crude fake. CONATEL therefore believed that Globovisión and Venevisión had transmitted “false, deceitful, or tendentious news,” which is prohibited by the broadcasting regulations.<sup>39</sup>

Television regulations in many parts of the world prohibit the transmission of inaccurate or distorted information.<sup>40</sup> However, the Special Rapporteur on Freedom of Expression of the Organization of American States has criticized prohibitions of the transmission of “false, deceitful, or tendentious news,” finding that they are incompatible with Article 13 of the American Convention on Human Rights. As the rapporteur has explained:

The right to information embraces all information, including that which, as opposed to truthful, may be “erroneous,” “untimely,” or “incomplete.” The doctrine of “truthful” information represents a backward step for freedom of expression in the hemisphere, since the free flow of information would be limited to previous conditioning, which is contrary to the broad conception accorded this right within the Inter-American system.<sup>41</sup>

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<sup>38</sup> The SENIAT (Servicio Integrado de Administración Aduanera y Tributaria) is the Venezuelan taxation authority. PDVSA (Petroleos de Venezuela, S.A.) is the state oil company.

<sup>39</sup> Article 53(j).

<sup>40</sup> In the United States, the Federal Communications Commission (FCC) has stated publicly that “rigging or slanting the news is a most heinous act against the public interest.” Nevertheless, in practice, the FCC requires documented evidence of intentional falsification before taking action against a station, such as testimony from “insiders” or persons with direct personal knowledge of intentional falsification of the news. See the discussion on the FCC website: <http://www.fcc.gov/cgb/consumerfacts/journalism.html> (retrieved on March 13, 2003). In the United Kingdom, the Broadcasting Act (1990) prohibits the broadcasting of news that is not impartial or accurate, but the Independent Television Commission (ITC) relies on a system of voluntary controls and rarely takes enforcement action. An exception was the Kurdish satellite television station Med TV which was fined 90,000 pounds (approximately \$140,000) for lack of impartiality in its news broadcasts. The ITC suspended Med TV’s license in March 1999, as a result of four broadcasts which it found had included inflammatory statements encouraging acts of violence in Turkey and elsewhere. After hearing representations from the station, the ITC finally revoked its license in April 1999. See Article 19, *Media Regulation in the U.K.*, 2000 (3) <http://www.article19.org> (retrieved on March 13, 2003). The Canadian Broadcasting Distribution Regulations (1997) prohibit the distribution of “any false or misleading news.”

<sup>41</sup> “The Special Rapporteur for Freedom of Expression declares concern over prosecution of a television channel in Venezuela,” Press release, Pren/45/01, Washington D.C., October 29, 2001. The case involved an earlier investigation of the Globovisión channel for inaccurate reporting of the murder of some Caracas taxi-drivers. It was dropped after the channel apologized for the error.

The rapporteur concluded that this and other regulations on which the infrastructure ministry's investigation was based were "inconsistent with international standards of freedom of expression."<sup>42</sup>

The only acceptable standard under which a prohibition of false news might be justified is where there has been *a deliberate and malicious* misrepresentation of the facts, or a failure to take reasonable steps to establish their accuracy. Under no circumstances should the objective inaccuracy of the facts be considered a basis for punishment. In its defense, Globovisión has argued that it acted in good faith, believing that the contents of the video were genuine and that its dissemination was in the public interest. In order to establish that an offense was committed in this case, the government would have to show that neither of these assertions were true.

Moreover, since it is the government's reputation, rather than that of any third party, that was directly affected by the video, it is essential that a body that is impartial and independent of the government conduct the investigation and determine whether the stations were at fault. As noted above, those responsible for the decision to penalize the stations do not enjoy genuine independence from the government.

### **Subliminal Insertions and Other Content as "False, Deceitful, or Tendentious News"**

In another supposed infraction of the prohibition against transmitting "false, deceitful and tendentious news," RCTV is accused of including subliminal political messages in two children's films. Tapes provided to Human Rights Watch by Jesse Chacón, the director general of CONATEL, show that single frames from opposition propaganda spots appear in two children's films, *Casper* and *The Parent Trap*.<sup>43</sup>

In its defense submitted to the ministry, RCTV has explained the occurrence as a quite common technical error.<sup>44</sup>

While the purposeful insertion of the extraneous images, if true, would be another indicator of the extent to which political partisanship has entered Venezuela's media, it does not appear to provide the basis for government action against RCTV. Venezuela has no regulations referring specifically to subliminal content. Instead, the transmissions were questioned for being "false, deceitful or tendentious." It is scarcely credible that the extraneous images, which appeared once in *Casper* and twice in *The Parent Trap*, had any significant effect on the public, particularly as broadcasts were saturated with opposition propaganda, including the spots from which the frames were taken, on the day the films were shown. The charge should be dropped unless the investigators have evidence to prove a malicious intent on the part of the channels.

Also held by CONATEL to offend the norm on tendentious content is a political advertisement sequence showing Chávez embracing high government officials shortly after returning to the government palace after the aborted coup. In the background can be heard music by a popular Venezuelan dance band and a voice-over saying

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<sup>42</sup> "Special rapporteur for freedom of expression expresses serious concern over initiation of administrative proceedings regarding television channels in Venezuela," press release, February 6, 2003. <http://www.cidh.org/Relatoria/English/PressRel03/PRelease6803.htm> (Retrieved on April 30, 2003).

<sup>43</sup> In the United States, the FCC has defined subliminal advertising as "any technique whereby an attempt is made to convey information to the viewer by transmitting messages below the threshold level of normal awareness." There is no formal prohibition of subliminal advertising in the United States. According to a policy statement issued by the FCC in 1974: "the use of subliminal perception [technique] is inconsistent with the obligations of a licensee, and we take this occasion to make clear that broadcasts employing such techniques are contrary to the public interest. Whether effective or not, such broadcasts clearly are intended to be deceptive." However, a member of the FCC stated in September 2000 that "policy statements are not enforceable rules. Nor would it be appropriate for the Commission to fine a person for failure to comply with a policy statement." He further noted that "the FCC has no rules on what is, or is not, a 'subliminal message.'"

The FCC was involved in a controversy over the alleged use of subliminal advertising by the Republican National Committee during the 2000 presidential campaign. Two senators alleged that a Republican Party advertisement displayed the word RATS for a fraction of a second during a critique of Vice-President Gore's prescription drug proposal. See "The FCC's Investigation of 'Subliminal Techniques: From the Sublime to the Absurd,'" press statement by FCC Commissioner Harold Furchtgott-Roth, September 19, 2000 [http://www.fcc.gov/Speeches/Furchtgott\\_Roth/2000/sphfr011.html](http://www.fcc.gov/Speeches/Furchtgott_Roth/2000/sphfr011.html) (retrieved on March 14, 2003). See also Press Statement of Commissioner Gloria Tristani, March 9, 2001, criticizing the FCC for improperly dismissing the senators' request to investigate the complaint. <http://ftp.fcc.gov/Speeches/Tristani/Statements/2001/stgt123.html> (retrieved on March 14, 2003).

<sup>44</sup> Human Rights Watch telephone conversation with Osvaldo Quintana, legal adviser to RCTV, March 27, 2003.



“while a few are laughing this December, millions of Venezuelans are suffering.” This is clearly protected political comment.

### **Other Alleged Infractions**

The remaining infractions under investigation by CONATEL should be dropped immediately because the regulations used as the basis for the prosecutions prohibit speech that is clearly protected under international norms. These include Article 53 (i) of the Broadcasting Regulations, which prohibits concepts that “affect in some way the reputation or good standing of persons or institutions;” Article 53(m), which prohibits the transmission of “somber and pathetic scenes, sensationalistic narrations or the description of un-edifying events;” and Article 4(d) of the Partial Regulations on Television Transmissions, which prohibits the transmission of “scenes or messages that arouse terror.” Much of the content objected to is graphic coverage of street violence during opposition demonstrations replayed over and over. That this material was of public interest and its importance is unquestionable. An example of a spot considered “somber and pathetic” was *Venezuela wants life and freedom*, showing images of stern-faced children tearing up photographs of violence and suffering in different parts of the world.

## **IV. PROBLEMS WITH THE NEW MEDIA BILL**

On January 23, 2003, the Chávez government tabled in the National Assembly a new bill regulating television and radio output, intended to replace the regulations cited in the ministry’s investigation. The bill, known as the “Law on Social Responsibility in Radio and Television” enlarges the state’s role in the control of broadcast content, and contains several provisions that infringe international freedom of expression standards.

The bill, originally drafted by CONATEL, was submitted to a nine-month nation-wide consultation in 2002. Subsequently, legislators belonging to the governing party made substantial changes to the draft that had emerged from the consultation, resulting in a document still more restrictive than the original.

The National Assembly approved the bill in its first reading on February 13. As of late March, the bill was under discussion in the Assembly’s Committee of Science, Technology and Media. The constitution requires that consultations with the public and members of civil society organizations be held before a vote in the Assembly on the final version of the bill.<sup>45</sup>

### **Protecting Children**

The primary justification advanced by the government for the new legislation was that current television output exposes children to an unacceptable amount of violence and fails to respect their special needs. Government officials objected strongly to scenes of violence in opposition demonstrations that were replayed repeatedly during peak viewing hours. The preamble to the bill cites Article 17 of the Convention on the Rights of the Child, which urges states party to “encourage the mass media to disseminate information and material of social and cultural benefit to the child,” and to “encourage the development of appropriate guidelines for the protection of the child from information and material injurious to his or her well-being.” Accordingly, the bill purports to establish measures to protect children from exposure to harmful materials, and to improve the quantity and quality of material specifically designed for children.

Article 13 of the Convention on the Rights of the Child guarantees the right of children to free expression in terms almost identical to article 19 of the ICCPR, and subject to exactly the same restrictions. Article 17(e) requires the state to “encourage the development of appropriate guidelines” to protect children from exposure to harmful materials, but does not require it to sanction media that fail to comply. In fact, it obligates states implementing article 17(e) to “bear in mind” the Convention’s provisions on freedom of expression (art. 13) as well as article 18, which states that parents or legal guardians have the “primary responsibility” for the upbringing and development of the child. This language appears to be aimed at avoiding excessive governmental controls introduced ostensibly to protect children.<sup>46</sup>

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<sup>45</sup> Article 211 of the Constitution.

<sup>46</sup> In a general discussion on “The Child and the Media,” organized by the Committee on the Rights of the Child in October 1966, a workshop studying “protection of the child against harmful influences through the media” recommended

In the proposed regulatory bill, children are to be shielded during what are defined as “protected” viewing hours (from 6:00 a.m. until 8:00 pm) when they are likely to watch television unaccompanied. Banned entirely during these hours, for example, are “moderate” sexual elements (defined as “manifestations or approximations of an erotic nature without explicit sexual acts”) and “implicit sexual messages without an educational purpose.” Crude or obscene language, and “physical, psychological, sexual or verbal violence” would also be forbidden. Stations that infringe these norms would face a first-time fine not exceeding 15,000 Tax Units (UTs - approximately \$182,000). For a third offense during a three-year period, the station would have its license suspended for forty-eight hours.

If these norms were interpreted literally, stations could be penalized for showing news coverage of wars and internal conflicts before 8:00 p.m., making it necessary for them to present a sanitized version of the news during the day. Many films and soap operas, which contain erotic scenes, fights, family arguments, swearing, and the like, also could not be shown during the day. Children’s cartoons could even be questioned for their violent content.

Some of the other norms regulating protected hours are ill-defined and very broad, such as a prohibition on the transmission of “contents that could harm the integral education of children and adolescents,” or of “conduct that if imitated by children and adolescents could harm their personal integrity as well as that of any other person.” If these norms become law, they could have a strong chilling effect on freedom of expression.

### **“Lack of Respect” Toward Authorities**

Under the draft law, television companies, advertisers, and broadcasters could be punished for transmitting:

contents that promote, defend or incite lack of respect toward legitimate institutions and authorities, like the deputies of the National Assembly, the president of the Republic, the vice-president of the republic, ministers, magistrates of the Supreme Tribunal of Justice, the attorney general, the public advocate, the comptroller general of the republic, the senior authorities of the National Electoral Council and the armed forces, without prejudice to the legitimate exercise of freedom of expression and opinion, within the limits established in the Constitution, in the international treaties ratified by the Republic, and in the law.<sup>47</sup>

The draft law provides that any violation of this provision is considered a “very serious” infraction, which would incur a fine not exceeding 30,000 UTs (approximately \$364,000). On the third offense within a five-year period, the station would be suspended for forty-eight hours.

This provision broadens the scope of Article 53c of the Broadcasting Regulations, currently in force, described above as an “insult law.” It was not included in the original draft of the law prepared by CONATEL in 2002, but was added following public consultations, reportedly at the recommendation of a viewers’ group.<sup>48</sup> The disclaimer at the end of the proposed article would exclude from sanction speech that was protected by international treaties ratified by Venezuela. Since the Inter-American Commission on Human Rights has declared insult laws, as such, to be inconsistent with article 13 of the American Convention on Human Rights, all expressions that fall under the terms of the proposed article would be protected speech, making its provisions contradictory.

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strengthening voluntary controls, such as the implementation of guidelines by the media industry “in a spirit of self-discipline.” CRC/C/50, Annex IX, 13<sup>th</sup> Session, October 7, 1996.

<sup>47</sup> The prohibition is contained in article 115, which applies to television licensees, article 121, which applies to advertisers, and article 125, which applies to broadcasters.

<sup>48</sup> Human Rights Watch interview with Jesse Chacón, Caracas, February 11, 2003.

## **Inciting Disturbances of Public Order**

Seven infractions contained in the draft law are considered so serious that a culpable station can be immediately suspended for up to forty-eight hours.<sup>49</sup> The proscribed contents include any that “incite, advocate or promote war” or disturbances of public order; affect national security; “incite, justify, or promote crime”; disseminate pornography; are anonymous; or advertise firearms or explosives.

Restrictions on free expression imposed in order to safeguard public order are inherently liable to abuse because of the imprecise meaning of the term itself:

“since *ordre public* may otherwise lead to a complete undermining of freedom of expression and information—or to a reversal of rule and exception—particularly strict requirements must be placed on the necessity (proportionality) of a given statutory restriction.”<sup>50</sup>

As already noted above, the “incite, advocate, or promote” language is extremely broad and could include speech that is protected under international standards. Under the new law, stations could easily be taken off the air temporarily for broadcasting political messages like those advocating mass protests in December 2002 and January 2003. The norms on advocacy of war might, for example, inhibit discussion of the Iraq invasion, or the war against terrorism. Again, the authorities responsible for enforcing the law might use these overbroad categories to restrict the public debate. Given the ambiguity about their scope, managers and editors are likely to exercise self-censorship to avoid sanctions.

## **Revocation of Licenses**

The draft law stipulates that a station that has been temporarily suspended twice during the last three years will have its broadcasting license revoked. The law in its present form does not allow any discretion in the matter, such as a responsibility to ensure that the public interest is uppermost in the decision to close a station or that the punishment is proportionate to the harm caused to the public. This omission suggests that the law’s central function is punitive, rather than a tool to improve the quality and diversity of broadcasting.

## **The National Institute of Radio and Television**

It is essential that the body responsible for investigating infractions of broadcasting laws and imposing penalties on media be protected against interference, particularly of a political or commercial nature.<sup>51</sup>

Under the new media law a National Institute of Radio and Television would be created. The institute’s executive council would be responsible for enforcing the new content regulations, and imposing sanctions. (The minister of infrastructure would still retain the powers he currently enjoys to suspend or revoke broadcasting licenses). The composition of the proposed eleven-person executive council is heavily weighted toward the executive and legislative branches. It has no representatives from the broadcasting industry, and there are insufficient safeguards to preserve its independence from the government of the day.

The institute is described in the law as an autonomous institute, with its own funding independent of the state budget, and with “technical, financial, organizational and administrative autonomy.” Its wide powers include enforcing broadcasting laws, safeguarding the rights and interests of the audience, stimulating national production (including the production of children’s programs), monitoring output, opening investigations of infractions, and applying sanctions.

The president of the institute’s eleven-person executive council would be appointed by the president of the Republic for a three-year period. Four members of the council are to be “representatives” of the ministries of education, health, communication and information, and of CONATEL. Three members will be legislators from the National Assembly. Two of the remaining three members will be representatives of viewers’ committees, and one will be a representative of independent national production companies.

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<sup>49</sup> Article 129.

<sup>50</sup> Manfred Nowak, *U.N. Covenant*, p. 357.

<sup>51</sup> See Article 19, “Access to the Airwaves: Principles on Freedom of Expression and Broadcast Regulation,” (Principle 10), London, March 2002, <http://www.article19.org/docimages/1289.htm> (retrieved on March 17, 2003).

Thus, five out of the council's eleven members will be officials from the executive branch and three will be politicians from the legislature. No expertise or experience in the media industry is required for appointment. Media organizations, universities, and religious organizations will have no representation on the council.

There are no safeguards in the proposed legislation to minimize the risk of political interference. The mandate of the council does not refer explicitly to the requirement that it act always in the public interest. The law does not disqualify government officials or leaders or employees of political parties from being council members. Indeed, as noted already, four members of the council are to be "representatives" of government ministries, which implies that they could be held accountable to the ministries that appointed them, instead of to the public they serve. The law does not specify how long the term of office of council members will be, nor does it give them fixed tenure during that period.

The lack of safeguards against political interference in the governing body is especially troubling given the complexity of the legislation it is supposed to enforce, and the imprecision of the numerous regulations with which companies, broadcasters and advertisers are required to comply.

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*Human Rights Watch  
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Human Rights Watch  
350 Fifth Avenue 34<sup>th</sup> Floor  
New York, N.Y. 10118-3299  
<http://www.hrw.org>