

Version: 26Apr2010<sup>i</sup>

# **The Imprisonment of Oswaldo Alvarez Paz, a Venezuelan Opposition Leader**

- *On March 08, 2010 Oswaldo Alvarez Paz was interviewed in a TV show in Caracas and discussed over (1) the connections between officers of the Venezuelan Government with the FARC, ETA and other illegal groups; (2) the increasing use of Venezuelan territory to develop activities linked to drug traffic and (3) human rights violations, according to the Inter American Commission on Human Rights and other NGOs.*
- *The prisoner, Oswaldo Alvarez Paz (67) is an honorable Venezuelan who has a 52-year political career, was a member of parliament for over 25 years, ex-governor, former presidential candidate and an expert in drug trafficking issues and terrorism.*
- *Serious violations of Alvarez Paz's right to a defense, mutilations to the judicial records, vagueness of charges, unlawful detention of Alvarez Paz, the use of the criminal system to intimidate citizens and the disregard of judicial decisions are being documented by his defense lawyers, Omar Estacio<sup>ii</sup> ([omarestacio@gmail.com](mailto:omarestacio@gmail.com)) and Juan Carlos Alvarez<sup>iii</sup> ([alvarez.legal@gmail.com](mailto:alvarez.legal@gmail.com))*

The recent prosecution and unlawful detention of the Venezuelan opposition leader, Oswaldo Alvarez Paz, for giving his opinion in a TV show about the need to investigate in Venezuela the connections between the Colombian Revolutionary Armed Forces (FARC) and Euskadi Ta Askatasuna (ETA), and between these organizations and people related to the Venezuelan administration, likewise the use of the Venezuelan territory by these terrorist groups, may be, the most eloquent sign of the growing political repression by the “revolutionary” administration of the President of Venezuela, Hugo Chavez.

### **¿Who is Oswaldo Alvarez Paz?**

Oswaldo Alvarez Paz, (67) is a lawyer and one of the most prominent Venezuelan Christian-Democrat politicians. From a very young age, he led the COPEI's Revolutionary Youth (*Juventud Revolucionaria Copeyana*, JRC). He was elected to represent Zulia State in the Venezuelan Congress, being reelected –by popular election- during five (5) constitutional periods (1969–1994). He chaired the Chamber of Deputies for four consecutive years (1975-1978) and was the leader of the parliamentary fraction of the Social Christian Party, COPEI (1979-1982). He led the Permanent Committees of the Chamber of Deputies on Foreign Policy, Defense, and several special committees, among which it worth mentioning his participation in the Special Committee in charge of drafting the Narcotic Drugs Psychotropic Substances Law (1984). During his parliamentary career, he represented Venezuela in the Inter-Parliamentary Union and was a member of its Board of Directors, being likewise a member of the Venezuelan delegations to the Organization of American States (OAS) and the United Nations (UN), and accompanying the constitutional presidents of Venezuela in official visits around the world. In 1989 he became the first Zulia State's governor to be elected by popular vote, and was reelected in 1992. In 1992, while governor of Zulia State, during the failed coup d'état, Oswaldo Alvarez Paz and his family were took prisoners by the group of military men led by Hugo Chavez. After winning internal primary elections in 1993, the Social Christian Party COPEI launched Alvarez Paz as its candidate for presidential elections, where he was defeated by his mentor, Rafael Caldera. Since 2005 he leads the political organization “*Alianza Popular*” and is considered as one of the most prominent and harsh opponents to “Chavez's Revolution.”

Alvarez Paz lives between Caracas and Maracaibo (Zulia), is married to Maria Eugenia Espinosa de Alvarez, with six (6) children (Juan Carlos, Santiago, Carolina, Oswaldo, Adriana y Eugenia) and thirteen (13) grandchildren.

Alvarez Paz has built a reputation for honesty and expertise in constitutional law, decentralization, security and defense, public finance, foreign policy, drug trafficking, terrorism, nuclear energy, non-conventional weapons, border issues, indigenous rights, Iran (nuclear issues), human rights and Cuba-Fidel Castro. Currently, Alvarez Paz is a columnist for 22 national and international newspapers.

### **¿On what issues did he give his opinion?**

On March 8<sup>th</sup>, 2010, Alvarez Paz was interviewed in the popular TV talk show “*Alo Ciudadano*” (“Hello Citizen”), aired by the private TV station “Globovision” (channel 33), in order to know his opinions on the implications of the Indictment issued by the National Court of Spain

(Summary 75/09, DP 263/08) chaired by Justice Eloy Velazco Nunez. Alvarez's opinions in such interview were focused on the following: (1) The connections that, according to such indictment, exist between Venezuelan government officials and FARC, ETA and other subversive movements around the world; (2) The growing use of the Venezuelan territory for drug trafficking-related activities, and (3) recent reports on human rights violations by the Inter-American Commission on Human Rights and several NGOs.

### ¿The Regime's Actions against Oswaldo Alvarez Paz

The day after the interview, Manuel Villalba and Pedro Lander, representatives in the National Assembly for Hugo Chavez's political party and members of its Committee on Science, Technology and Media, appeared at the Attorney General's Office in order to denounce that Alvarez Paz's statements in such interview constituted the following crimes: (a) Conspiracy (article 132 of the Penal Code<sup>iv</sup>) punished with imprisonment from 8 to 16 years; (b) Incitement to hatred (article 284 of the Penal Code<sup>v</sup>) punished with imprisonment from 3 to 6 years and (c) Dissemination of false information (also known as media terrorism) (article 296A of the Penal Code<sup>vi</sup>), punished with imprisonment from 2 to 5 years.

The Attorney General's Office immediately appointed Ginera Rodriguez, the 21<sup>st</sup> Prosecutor with full competence nationwide and allegedly a member of the party in government, who charged Alvarez Paz (Friday, 19/Mar/2010) for the commission of the same crimes previously alleged by the congressmen. The following court day (22/Mar/2010) said Prosecutor filed before the 25 Criminal Court an unconstitutional motion for preventive detention against Alvarez Paz based on an alleged imminent risk of escape. On the same date, Judge 25 of First Instance, Rafael Osio, admitted the motion for detention and at 9:30 pm approximately Alvarez Paz has detained at his residence in Caracas. Within 48 hour following Alvarez Paz's detention, he was presented before the same acting Judge 25, who confirmed such unconstitutional decision. From that date he is imprisoned at the Venezuelan intelligence-service headquarters (SEBIN) under strict visitation rules.

The appeals against these decisions will be heard by a Court of Appeals within the next few weeks. Alvarez Paz is not requesting not to be prosecuted, but to be allowed to exercise his constitutional right to be released pending trial.

### Catalog of due process and human rights violations against Alvarez Paz

**1. Mutilation of Judicial Records:** On 22/Mar/2010, the acting prosecutor, in order to support her motion for detention against Alvarez Paz, filed with the criminal judge a facsimile of the judicial record prepared and kept by such officer. However, such copy of the records omitted two briefs by Alvarez Paz's defense attorneys amounting to 70 pages and including the defense allegations. Such action violated Alvarez Paz's constitutional right to be heard by the judicial authority and where not heard in the motion, which decided and supported such decision disregarding the defendant's allegations.

**2. Alvarez Paz does not know exactly what he is being charged for:** Articles 49(1) of the Constitution and 125(1) and 131 of the Criminal Procedural Law stipulate that every person has

the right to be “clearly and specifically” informed of the charges for which he is being investigated, including all circumstances of time, place and the mode of commission of the alleged crime attributed to him. When Alvarez Paz was charged, such right was violated, because the acting prosecutor limited to charge him for the whole content of the aforementioned TV interview, without specifying which statements by Alvarez Paz constituted the crimes of “false information,” “conspiracy” and “incitement to hatred.” Such indetermination of the elements of the alleged crime violates Alvarez Paz’s right to a defense, as argued by the defense in several motions for annulment which have not been heard.

**3. Violation of the right to remain free during trial:** The Venezuelan Constitution stipulates, as a general rule, the right to remain free during trial, except for exceptional reasons provided by criminal procedural legislation. In this case such principle was violated, because Alvarez Paz was held on preventive detention merely taking into account the maximum penalty for the crime of “conspiracy”, but disregarding his and his family’s attachment to this country, his domicile, his activities, his willingness to submit to such judicial process and his pre-offense conduct, as required by article 251 of the Criminal Procedural Law.

**4. The use of criminal prosecution in order to intimidate.** The criminal prosecution is being used to intimidate a citizen. There are no elements in this case to support the commission of the alleged crimes, specially the crime of conspiracy (among other things, because it requires the participation of more than one person). However, such charge was included by the prosecutor and considered by the judge, therefore increasing the potential penalty against Alvarez Paz up to 16 years of imprisonment with the sole purpose of asserting an alleged risk of escape and keeping him in jail.

**5. The disregard of decisions by the Supreme Tribunal of Justice** At least the following Venezuelan judicial decisions have been disregarded:

**a. Inapplicability of the charge for conspiracy.** The ruling dated 2008, issued respecting a case where the Venezuelan President Hugo Chavez had been accused for conspiracy (article 132 of the Penal Code), the Supreme Tribunal of Justice held that in order for the crime of conspiracy to exist, it is necessary the *accord of two or more people*, and that such agreement must be aimed at changing the nation’s democratic, republican form of government, *i.e.*, the intention to impose a monarchy or dictatorship in Venezuela. Despite reiterated demands by the defense attorneys, such objective conditions necessary for the existence of the crime of conspiracy have not been acknowledged by the prosecution or the judge in this case. Such unequal treatment has been denounced by the defense as a violation of the constitutional principle according to which all citizens are equal before the law.

**b. Inapplicability of the charge for instigation.** Other ruling by the Supreme Tribunal of Justice dated 2009 where Hugo Chavez had been processed for incitement to hatred, the Supreme Tribunal of Justice found that when it comes to political debate, certain strong, even harsh expressions, deplorable in other contexts, are acceptable. Such ruling, in spite of the

protests by the defense counsels, was absolutely disregarded by the prosecutor and the acting judge.

### **Subordination of the Judiciary to President Hugo Chavez**

The Special Report by the Inter-American Commission on Human Rights on “Democracy and Human Rights in Venezuela,” dated December 30, 2009; the statement by the Inter-American Commission on Human Rights dated March 25, 2010 expressing concern for the use of the punitive power of the State to silence political opponents in Venezuela; the report by the UN Special Rapporteur on the Independence of Judges and Lawyers; the statements by Amnesty International, Human Rights Watch and many other NGOs, identify a series of issues that restrict the full enjoyment of human rights recognized by the American Convention on Human Rights and analyze a series of conditions that indicate the absence of an effective separation and independence of the public branches of power in Venezuela.

The Inter-American Commission also finds that in Venezuela, not all persons are ensured full enjoyment of their rights irrespective of the positions they hold vis-à-vis the government's policies. Moreover, the Commission finds that the punitive power of the State in being used to intimidate or punish people on account of their political opinion.

It is worth highlighting certain aspects of the statements by the IACHR dated March 25, 2010 on the use of the punitive power of the State to silence dissidents in Venezuela. In said press release, the Commission finds that the lack of independence and autonomy of the judiciary with respect to the political branches constitutes one of the weakest points of democracy in Venezuela, a situation that seriously hinders the free exercise of human rights in Venezuela. The Commission also notes that it is extremely troubling that those making allegations or giving opinions about the situation in the country are charged with such offenses as the instigation to commit a crime. The public statements made by many government officials supporting the detention of Alvarez Paz and calling for criminal proceedings to be brought against other individuals such as Guillermo Zuloaga, simply because they expressed their opinions in public forums, demonstrate a troubling consensus among the government authorities that it is legitimate to identify those who criticize the government with criminals.

Additionally, there are precedents, such as the case of Judge Afiuni, who is currently in prison for releasing from jail an enemy of Chavez. Another relevant case refers to General Francisco Uson, who gave his opinion on military issues and was convicted to 5 years in prison, even though such ruling was annulled by international courts.

President Chavez and other government officials have condemned Alvarez Paz in public statements. In such circumstances, is unlikely that any Venezuelan judge dares to contradict the Mr. Chavez's will.

**Letter written by Alvarez Paz from jail**

*"Helicoide, March 24, 2010*

*Dear Venezuela:*

*I am in jail and being prosecuted through arbitrary and abusive proceedings that in record time have deprived me of my personal freedom and placed me in a difficult position to defend myself.*

*On March 8 this year, I was invited to the TV opinion show Alo Ciudadano broadcast by Globovision and hosted by the lawyer and journalist Leopoldo Castillo. The main subject was the indictment issued by Judge Eloy Velazco, Justice of the National Court of Spain, related to the proven ties, according to this judicial statement, between ETA and FARC from Colombia.*

*In such records, there are enough documentary and testimonial evidence to support the process. Additionally, the judge provides full names, places and dates that allow presuming that participation and collaboration of ETA members living in Venezuela and high-level state officials. It refers, among other things, to operating ways for terrorist actions and exchange of technology for such purposes.*

*The judge requested the collaboration of the Venezuelan government, but Mr. Chavez responded by attacking the Spanish president and the Venezuelan opposition, Judge Velazco and former President Aznar, the Spanish Crown and Yankee imperialism, the Colombian government and everybody else.*

*In my statement, I merely criticized such conduct and demanded the explanations and cooperation requested by the Spanish justice and expected by the Venezuelan public opinion. Once and again, I noted that terrorism, drug trafficking and human rights violations are crimes subject to international jurisdiction and occupy the attention of the world.*

*Sadly, Venezuela is increasingly mentioned with regard to the government's positions, as evidenced in multiple reports from several countries and multilateral organizations.*

*A couple of congressmen of the party in government filed a complaint with the Attorney General's Office requesting an investigation into my conduct. I was summoned without specifying the charges. I appeared and rejected the charges. I demanded the admission and filed supporting documents within two consecutive court days. I was charged for «incitement to hatred», «dissemination of false information» and finally, for «conspiracy». In short, three crimes punished with imprisonment up to 16 years as the case may be.*

*On the same date, my detention was ordered. I am imprisoned for speaking my mind, denouncing and criticizing the government on issues that are publicly known and to which I have devoted most of my life. This is how Venezuela is today: Repression, physical and institutional violence to criminalize dissident expressions, the closure of media and the prevention of information against the regime. This is an open dictatorship. But the countdown is on.*

*OAP"*

*(Manuscript by Alvarez Paz drafted at SEBIN's headquarters)*

---

<sup>i</sup> This memorandum has been drafted in order to briefly explain to the national and international community the human rights violations against the Venezuelan politician Oswaldo Alvarez Paz. This information will be periodically updated. For updates or additional information please contact us: [alvarez.legal@gmail.com](mailto:alvarez.legal@gmail.com).

<sup>ii</sup> Omar Estacio (61) is a lawyer graduated from Universidad Central de Venezuela and holds a Master's Degree on Economic Integration Law from the same University. Ex-President of the Venezuelan Federation of Lawyers Associations and professor of Economic Integration Law and Civil Procedural Law (UCV). In the field of Information Law, he was the legal advisor of the National Journalists Association (Colegio Nacional de Periodistas) and has participated in many judicial processes as the defense counsel of editors and social communicators. Estacio leads Oswaldo Alvarez Paz's defense team in the trial pending before Venezuelan courts.

<sup>iii</sup> Juan Carlos Alvarez (40) is a lawyer graduated from Universidad Catolica Andres Bello (UCAB), Caracas (1992). He holds a Master of Laws (LLM) from Tulane University, New Orleans, Louisiana, USA (1994). He was admitted to the New York State Bar (USA). Master in Business Administration (MBA) from the TRIUM Global EMBA program, an alliance between NYU Stern School of Business, London School of Economics and Political Science (LSE), and HEC School of Management, Paris (2010). Professor of Civil Law IV (Contracts and Guaranties) at UCAB. Juan Carlos Alvarez is Oswaldo Alvarez Paz's son and a member of the defense team.

<sup>iv</sup> *TITLE I, Crimes against the independence and security of the Nation*  
*CHAPTER I, Treason and other crimes against the nation*

*...omissis...*

**CONSPIRACY**

*ART. 132.- Anyone who, within the national territory or abroad, conspire to destroy the nation's republican form of government, shall be punished with imprisonment from eight to sixteen years.*

*The same penalty shall be imposed on a Venezuelan who seeks foreign intervention in Venezuela's internal political affairs, or requests foreign collaboration to disrupt the peace in the Republic or who before its officials, or by publications issued in foreign press, incites to civil war in the Republic or defames its President or offends diplomatic representatives or consular officials from Venezuela, by reason of their duties in the country where the act is committed.*

**<sup>v</sup> CHAPTER II**

*Instigation to commit crimes*

*...ommissis...*

**PUBLIC INSTIGATION**

*ART. 285.- Anyone who incites to the disobedience of the laws or hatred among people or endorse acts defined as crimes by the law, endangering the public peace, shall be punished with imprisonment from three to six years.*

<sup>vi</sup> *CHAPTER IV, Incitement to civil war, organization of armed forces or public intimidation*

**EXPLOSIVE DEVICES; PUBLIC INTIMIDATION**

*ART. 296.- Anyone who unlawfully imports, manufactures, holds, provides or hides any explosive or incendiary substances or devices, shall be punished with imprisonment from two to five years.*

*Anyone who, with the sole purpose of producing terror, provoke riots or public disorder, shoots firearms or throws explosive or incendiary substances at people or property, shall be punished with imprisonment from three to six years, notwithstanding the penalties for criminal liability that may arise from the use of such weapons.*

**FALSE INFORMATION. PUBLIC INCERTITUDE**

*ART. 296.A.- Anyone who causes panic or uneasiness within the society, through false information spread by any newspaper, radio, TV, phone, e-mail or pamphlet, shall be punished with imprisonment from two to five years.*

---

*If the events described in the preceding paragraph were committed by a government official in anonymity or using for that purpose someone else's name, the penalty shall be increased by one third.*

*This article shall be applicable without prejudice to the provisions in special legislation on computer crimes, telecommunications, printing and transmission of data messages.*