

This document is a translation of the original Spanish-language document.

See the original [here](#).

November 10, 2015

Ms Tibusay Lucena

Dear Ms. Lucena,

I received your kind letter, to which certain Latin American media had access and which unfortunately declined our offer of an Organization of American States (OAS) electoral observation mission for the parliamentary elections scheduled for December 6, 2015.

It is also regrettable that the denial was based on a political stance rather than on arguments rooted in justice and the necessary guarantees to undertake an electoral process.

I have no objection to you taking a political stance, but I assume it is absolutely clear that efforts for fair elections are totally beyond that kind of stance, and calls for being at the forefront of the guarantees demanded by the parties, ruling or opposition.

In your letter you reassured me that Venezuela has an extremely efficient electoral system, but it is my understanding that electoral guarantees have to do with more than efficiency alone.

I would have expected that in your letter you would have been at the forefront of the guarantees demanded and that it would have covered all the needs of the Venezuelan political parties, governing and opposition alike, in an effort to ensure that the elections will be conducted in a fair and transparent manner.

Were the OAS General Secretariat to remain indifferent to the opposition's appeals to the countries for an electoral observation mission, we would be seriously negligent in our duty, which is to support an electoral process that works properly for all political parties involved.

It would be gravely remiss of us if we did not take in account the conditions under which the electoral campaign is being conducted in Venezuela for the upcoming legislative elections. It is a matter of concern that from an analysis of the conditions we must conclude that as it stands today, the problems affect only opposition parties.

In this scenario, we must all see something, by commission or omission, but this fact definitely is at the heart of your work.

You are responsible for fair elections – you are their guarantor. Everyone must have confidence in you – all of the parties, all citizens, and the entire international community, but Venezuela has obligations to democracy beyond her own jurisdiction. For an election all stakeholders, citizens, political parties, the media, and civil society in general must be assured that they can enjoy all of their civil and political rights to the fullest.

You have seen us insist on conducting electoral observation because we have a duty to ensure fair elections in the region, because fair elections are vital to a well-functioning democracy and to ensuring utmost respect for each and every citizen's civil and political rights.

The opposition in your country has repeatedly asked us to ensure the same is done and, as I already noted, you owe them guarantees as well, as your Government has many ways of ensuring that the result is fair. And this is not an unreasonable claim but rather a legal and moral obligation that you have. It is an obligation for the CNE but it is also an obligation for the OAS.

If I were to ignore the complaints lodged by the opposition in your country and by the international community, I would be failing in my basic duties. If you do not provide mechanisms to ensure an observation with the fullest guarantees for it to function, then you would be failing in obligations that are the essence of the guarantees you are required to provide.

Your work is to ensure fair and transparent elections that are conducted with the fullest of guarantees. This means ensuring such guarantees months ahead of the elections. This is necessary, and doing what is necessary is a matter of fair elections.

Ensuring that elections are fair and transparent is our obligation, too. It is not interference. It would be interference if I were to ignore reasonable and justified claims; or if I were to look the other way in this situation – in which case it would be by omission because, by my inaction, I would be allowing measures that would affect candidates and thus affect prospects for all citizens to freely and fully exercise their vote.

In view of the foregoing, I wish to outline for you, below, the reasons for my repeated offers to observe the elections, based on an application of conditions and guarantees of fair elections. These are conditions for the electoral political process in Venezuela that lead me to reaffirm that international observation would give all Venezuelans greater peace of mind when the votes are being counted.

### **Overall conditions of the process and the election campaign, an uneven playing field**

I have been told that *the Venezuelan opposition has not been able to participate in the election campaign on equal terms.*

In an atmosphere characterized by serious political polarization and mistrust, the electoral authorities – far from ensuring the candidates are afforded entirely equal conditions – repeat the official line and make the opposition electorate more distrusting of the elections and of the country's institutions.

*To quote one of the political leaders of Uruguay at the turn of the twentieth century, José Battle y Ordoñez: "It is not that the people are never wrong, but rather that they are the only ones who have a right to be wrong." The people must have maximum guarantees of freedom of expression; and political parties and politicians must have the best safeguards to be elected. Any obstacle to that effect limits political action in its broadest sense, and restricts people's rights, the rights of the parties, and the rights of citizens practicing politics.*

**Bob Marley said it so beautifully: "What we really need is the right to be right and the right to be wrong."**

Together, we must ensure that a right as fundamental as democracy is guaranteed by the CNE of Venezuela. I have to say it.

#### **• Use of funds for campaigns**

I have also been informed that *the absence of campaign spending caps or controls* means that government candidates can, and indeed would, use funds. The government even deploys a large number of civil servants and state resources for campaign purposes.

It would be useful to recall Article 5 of the Inter-American Democratic Charter.

"The strengthening of political parties and other political organizations is a priority for democracy. Special attention will be paid to the problems associated with the high cost of election campaigns and the establishment of a balanced and transparent system for their financing."

- **Access to the media**

Apparently, this is in addition to *the absence of guarantees of access to the media for candidates that get no state funding.*

I have been informed that neither the state nor the CNE ensures that all candidates have equal conditions under which to promote their campaigns and their proposals. In the absence of state financing, the ruling party has resorted to using financial resources that it manages as the National Government.

- Confusion on ballots

Concerns have been raised with me about the *likelihood of the electorate becoming confused by where party candidates are finally placed on ballot papers, based on an announcement made by the CNE in late October.* My understanding is that placement on the ballot paper depends on the total number of votes a party obtains per list. I have been informed, however, that the card for the Movimiento de Integridad Nacional (MIN-Unidad) party, which was investigated by the Supreme Court of Justice and was expelled from the MUD, was placed beside the card for the Mesa de la Unidad (MUD). MIN-Unidad had registered candidates independently. **The placement of the card, coupled with the use of similar colors and names, could create confusion at the time of voting.**

I have been further advised that the CNE has banned the use of colors, symbols and names of other parties, citing similarity to other parties on the card. The similarities between the MUD card and the MIN-Unidad card transcend the colors and symbol – at the last minute, MIN-Unidad registered a candidate named Ismael García, a 28 year-old laborer with no prior political activist record, to run for deputy. On the ballot, that young man appears next to another Ismael García, the latter a well-known opposition leader. Even President Maduro, speaking on national television, made reference to the MIN-Unidad ticket as if it were the opposition (MUD) ticket.

- Security Plan – Operation People's Liberation

In addition, a *security plan code-named Operation People's Liberation (OLPL) was implemented.* It has been cited by various human rights defense organizations for being responsible for mass arrests and alleged extrajudicial executions.

There is also an ongoing *campaign of threats and prosecution of workers, students, and popular sectors that take to the street to express their discontent over the country's economic and social situation.*

It is troubling that this activity should also be promoted by President Nicolás Maduro, who says that he will apply an "iron fist" against anyone protesting against this election situation. It is also being promoted by the current president of the National Assembly, Diosdado Cabello, who supports and promotes illegal activities of espionage and tracking of opponents.

- Changing the rules of the game

The election campaign started in 2015 with disqualifications, but the announcement of the date was followed by adjustments in terms of:

- Gender distribution

- New disqualifications
- Another change that could affect the number of opposition deputies: 6 states that account for 52% of the voter register can only elect 64 deputies, while the remaining 18 can elect 100 deputies. The Capital District, where 13 deputies were elected in 2010, will this time around elect 11. The disqualified candidates are well-known opposition leaders.

#### • **Disqualification of opposition candidates**

To date, the following 7 individuals have been barred from holding public office and from participating in the December elections:

- Former Governor Manuel Rosales (former presidential candidate and former governor of Zulia State);
- Former Governor Pablo Pérez (former governor of Maracaibo and former governor of Zulia State)
- Opposition leader María Corina Machado (deputy elected with the most votes nationwide in 2010)
- Former mayor Daniel Ceballos (San Cristóbal, Táchira State);
- Former mayor Enzo Scarano (San Diego, Carabobo State);
- Carlos Vecchio (Voluntad Popular party leader); and
- Leopoldo López, who was previously disqualified and was ratified until 2017.

Disqualifications only apply to opposition leaders, who have often had problems trying to present discharges and mount their defense. There have been cases where they were prejudged, with no possibility of getting their defense admitted.

Disqualifications based on accusations that have not been substantiated in proceedings with basic discharge and defense guarantees limits the rights of the people in terms of being able to vote. Politics should open the door for citizens to express and citizens should be the ones to judge political activity of those who have been disqualified.

#### • **Investigation of political parties by the judiciary**

Precautionary measures were used to suspend the leadership of COPEI and a new Board of Directors was appointed by the Court.

The opposition is coming to the elections with its main leaders disqualified or in detention, with limited ability to access the media, under the scrutiny of the country's intelligence system, and under the burden of the country's legal framework interpreted against them.

*I cannot turn a blind eye to specific facts which clearly speak to rights being violated in the election campaign and in the electoral process itself:*

- *Absence of campaign spending caps or controls;*
- *Candidates from the ruling party and the opposition not given equal access to the media;*
- *New regulations on ballot placement and features that could lead to confusion in the voting booth;*
- *Application of security measures that restrict freedom of expression;*
- *Prosecution and threats against peaceful demonstrators;*
- *Disqualifications and changes in gender distribution conditions and state representation that could affect the election results; and finally*
- *Investigation of political parties by the judicial branch.*

*In light of these facts, Ms. Lucena, neither you nor I can afford to look the other way.*

### **State of emergency decrees and their impact on the electoral process:**

*In the area of guarantees for voters, the most serious situation is the denial of constitutional rights and guarantees through the declaration of a state of emergency in 23 municipalities in three of the country's states, for periods ranging from August 19 to December 7, 2015.*

The election campaign and the state of emergency periods overlap for different periods in all municipalities, *limiting the political right of assembly and the right to organize and mobilize, in effect rendering it impossible to campaign in those municipalities.*

The declaration of a state of emergency across 23 municipalities in three states of the Bolivarian Republic of Venezuela (Táchira, Zulia and Apure) does not directly affect the rights to vote, to stand for office, or to organize elections. Consequently, those decrees do not establish legal mechanisms for the executive branch, the National Electoral Council (CNE), or any other State entity to restrict or block the holding of elections.

As you yourself said, *"The states of emergency decreed by the National Assembly and the Supreme Court of Justice in no way impair the political and civil rights of voters in the elections" since "the measures are aimed at combating smuggling and crimes against the domestic currency."*

We agree with you that the effective right to vote is not being directly impaired.

*However, it is my understanding that the decrees could indirectly affect the election campaign by limiting rights.*

Under a state of emergency, the following rights, among others, may be restricted: inviolability of the home and private premises, freedom of movement in the national territory, freedom of public or private assembly without prior authority, and the right to protest peacefully. Public gatherings and peaceful demonstrations require prior authorization by the officials delegated to execute the decrees. The power to delegate authority for those decrees lies with the governors of the states where the municipalities are located.

The decrees also provide that competent state agencies may inspect and search the residences or meeting places of individuals and the domiciles of legal persons, among others, and conduct body or baggage searches in order to detect or investigate the perpetration of offenses without first obtaining a judicial order.

Bearing in mind that the Organic Law of Electoral Processes (LOPRE) defines an electoral campaign as activities of a public nature carried out by candidates with the aim of securing, encouraging, or persuading the electorate to vote for a particular contender within a specific period of time, there are at least two ways in which the declaration of the state of emergency could affect the campaign.

On one hand, *there is a risk of concentration of discretionary power in the hands of state governors, since the authority to grant or withhold permission for rallies and meetings for the purpose of securing or encouraging voting is delegated to an individual.*

The governors of the States of Táchira, Zulia and Apure were all elected by the United Socialist Party of Venezuela (PSUV) and are part of the ruling alliance, which increases the implicit risk of concentration of discretionary power.

On the other hand, the power of competent state agencies to conduct searches without a judicial order could lend itself to abuse by the security forces with political undertones, particularly when one considers that campaign headquarters are sometimes the meeting places of individuals or the domiciles of legal persons, which could generate inauspicious conditions for a fair election campaign.

It is important to analyze the correlation of political forces and the context in the areas affected in order properly to weigh the potential risks posed by the state of emergency. In the 2010 parliamentary elections, the ruling PSUV alliance secured a majority of seats in the National Assembly: 98/165. However, in the States of Táchira, Zulia and Apure, of the 27 seats up for grabs it won nine, compared to the 18 secured by the opposition *Mesa de Unidad Democrática* (MUD). In the 2012 regional elections, the PSUV won the governorships of the aforementioned states, and in the 2013-14 municipal elections the same party was victorious in 14 of the 23 municipalities currently under a state of emergency.

A state of emergency empowers the president of the Republic to enact decree-laws regulating the suspended rights. Therefore, since the right to vote has not been suspended, the president may not issue any provisions that would affect any aspect of the electoral process.

***While the declaration of a state of emergency does not directly affect the effective right to vote, it does indirectly affect the election campaign by restricting the rights of assembly, organization, and mobilization, by giving state governors discretion over whether or not to permit those activities, and by granting the power to carry out searches without a judicial order.***

### **Freedom of the Press and Expression:**

The Inter-American Commission on Human Rights (IACHR) has defended freedom of expression and freedom of the press as cornerstones of democracy the absence of which creates conditions conducive to the formation of authoritarian systems.

The IACHR believes in the need to “create a climate of respect and tolerance for all ideas and opinions” and that “diversity, pluralism, and respect for the dissemination of all ideas and opinions are essential conditions in any democratic society.” Therefore, the authorities must work resolutely to help build a climate of tolerance and respect in which everyone can express his or her thoughts and opinions without fear of being attacked, punished, or stigmatized for doing so.

Moreover, “the State’s duty to create conditions that allow for the free circulation of all ideas or opinions includes the obligation to investigate and adequately punish those who use violence to silence members of the media or media outlets.”

Freedom of expression is essential if democracy is to function properly, as is access to information. Both must be ensured to the greatest possible extent.

Journalists from *El Universal* newspaper expressed their “alarm at the increasing media restrictions being erected around a number of public figures and institutions in Venezuelan society that represent large segments of the population, which, little by little, are being blacked out of the news, to the detriment of the constitutional rights to information.”

In that regard and bearing in mind the approaching elections in Venezuela, it is troubling that articles regarding press conferences and political acts by the governor of Miranda State, Henrique Capriles, are censored, along with any information put out by the leadership of the MUD. This smacks of *inequality between representatives of the ruling party and the opposition in terms of media access.*

The ongoing profusion of reports of *intimidation, harassment, and violence toward journalists and media outlets* in Venezuela is cause for concern.

Cases that we could mention include the dismissal of the journalists Eliana Andrade from the opinion show “*Polos Encontrados*”; Ingrid Bravo from *FM Center* “due to government pressure”; Génesis Arévalo from *La Verdad* newspaper on June 10; Mariana de Barros from *Globovisión*, and José Hurtado who had trade union prerogatives. All of these cases were denounced as dismissals due to some form of political pressure by the Government. The same goes for the cases of Juan José Peralta and Vanessa Senior, the supposedly induced resignation of Victor Amaya for articles critical of the government, and the cancellation of shows such as “*Al Rojo Vivo*” broadcast by *Radio Anaco* and *104.3 FM* after more than 18 years on the air. And I could mention other cases in which exercising freedom of expression affected people’s jobs by getting them fired.

Principle 13 of the IACHR Declaration of Principles on Freedom of Expression holds: “The exercise of power and the use of public funds by the state, the granting of customs duty privileges, the arbitrary and discriminatory placement of official advertising and government loans; the concession of radio and television broadcast frequencies, among others, with the intent to put pressure on and punish or reward and provide privileges to social communicators and communications media because of the opinions they express threaten freedom of expression, and must be explicitly prohibited by law. The means of communication have the right to carry out their role in an independent manner. Direct or indirect pressures exerted upon journalists or other social communicators to stifle the dissemination of information are incompatible with freedom of expression.”

According to opposition claims, another recurring problem for the practice of journalism is the *shortage of newsprint paper*, which affects several printing presses in the country.

Then there is the *concentration of media outlets, especially of television networks, in the hands of the State* as part of the political reality of Venezuela in 2015.

Principle 12 of the IACHR Declaration of Principles on Freedom of Expression establishes that “Monopolies or oligopolies in the ownership and control of the communication media must be subject to anti-trust laws, as they conspire against democracy by limiting the plurality and diversity which ensure the full exercise of people’s right to information.”

The *failure to renew licenses* has also made independent media outlets completely vulnerable, inasmuch as they operate in a legal limbo and are exposed to direct and indirect pressure from the authorities.

On June 22, the Inter-American Court of Human Rights ruled that the closure of *RCTV* was arbitrary and that its motive was to “silence the media outlet.” For that reason, it ordered the Venezuelan State to “restore the license for the frequency” and “return the property” that had been confiscated from it, after which it should hold an “open, independent, and transparent competition” to award the frequency’s use. The Court underscored that “by treating a network differently based on its like or dislike of its editorial line, the Government produced a chilling, fear-inducing, and inhibiting effect on all those who exercise the right to freedom of expression, as it sends an intimidating message to other media outlets of what could happen should they adopt an editorial line like that of *RCTV*.” The Court found the State “responsible for violation of the right to freedom of expression recognized at Article 13 of the American Convention taken in conjunction with the duty of nondiscrimination contained in Article 1(1) thereof.”

### **The conviction of Leopoldo López:**



It has been some time in our region since a top opposition figure was imprisoned around the time of an election. The last such case was that of Wilson Ferreira Aldunate in Uruguay in 1984.

In a lower court ruling handed down on October 1, 2015, several Venezuelan citizens were given convictions for events that occurred on February 12, 2014. It was an oral proceeding and, therefore, much of the ruling includes transcriptions of what was said by the parties, witnesses, and experts.

One of those convicted, receiving the harshest sentence in the process, was Leopoldo Eduardo LOPEZ MENDOZA. He was found guilty of the offenses of instigation of arson, instigation of damage to property, public incitement, and conspiracy to commit crime.

For all of the above he was sentenced to 13 years, nine months, seven days, and 12 hours in prison without the possibility of parole; that is, to “deprivation of liberty, for which he must remain confined in the Centro Nacional de Procesados Militares,” a military prison.

The ruling, which is more than 280 pages long, began by saying that “the facts with which this trial is concerned ... originated with the events that occurred on February 12, 2014, on which day a large number of protesters ... including (the other persons sentenced in this decision)..., in response to calls from citizen Leopoldo Eduardo López Mendoza and other political leaders of the Voluntad Popular party, who, expressing himself through different media outlets, urged people to take to the streets, which caused a series of violent incidents, disobedience of the legitimate authorities, and disregard of the law, and prompted a frenzied attack by a group of individuals on the offices of the Public Prosecution Service, in addition to seven automobiles, six of which were patrol cars ..., who also caused damage including destruction of the Parque Carabobo plaza through acts of vandalism using blunt instruments and incendiary devices.”

The indictment against Leopoldo López was presented by the Public Prosecution Service on April 4, 2014, with prosecutor Franklin Nieves laying out the facts and arguments in support of the indictment on July 23, 2015. The ruling transcribes his presentation. In it, he begins by saying that he would set out the facts and that, according to him, the judge “will see how citizen Leopoldo Eduardo López Mendoza, using various media outlets and social networks, especially his Twitter account, to express himself, egged on his followers [and] issued a series of messages that unleashed a frenzied attack by that group of persons whom he himself assembled on February 12 ... all of which was done with premeditation, given that the consummation of all these acts was planned in advance, the chronicle of a death foretold...”

He then describes the facts: the protesters who sought unsuccessfully to see the Prosecutor General to present a petition; then the discussions that took place there, which culminated in acts of violence, according to him, “under the satisfied gaze of their leader, Leopoldo López, who got in his truck and left.” “Following his departure, the assault on the offices of the Public Prosecution Service began.”

Then it describes damage done and insists on hypotheticals: "what would have happened if it had been a school day with children at the nearby school," and so on.. and it concludes that "all those acts were carried out thanks to the persuasion and determination of citizen López, who exerted that influence through remarks, speeches,... messages in social media... in order to be able to engage in this criminal plan they put forward with a view to taking power in Venezuela..."

Next to speak were the defense attorneys of the various people accused. For Leopoldo López, it was attorney Juan Carlos Gutiérrez. He says, among other things, that the Prosecutor's Office "neither describes, prepares, nor explains...how (the four crimes he is accused of) were committed." He cites as one example: conspiracy to commit a crime (for which he will be sentenced to eight years in prison),

where he says "the Public Prosecution Service (Ministerio Público) presents an imaginary case in which it imagines that behind Leopoldo López's speech there are a group of people who dictate it to him, who finance him... who act jointly.. the facts relating to this criminal offense are completely and totally nonexistent, and the same goes with the other charges brought..."

He analyzes one alleged crime after another and concludes that "the only thing he is charged with is saying something and, worse still, it is not what López said but what the imagination of the Prosecutor reads into López's speech...and, as for being the instigator, as it is called (which is what López is accused of being), that offense is not conduct executed through persuasion or inducement, it is conduct executed via orders... or a direct instruction to a specifically identified and selected individual ...The defense attorney then details numerous interventions by López in which he calls for peace, democracy, justice, etc.

Then comes Leopoldo López. He lists a long series of confrontations with the government, including the judgment handed down by the Inter-American Court [FN], his denunciations to the authorities, and states: "I take responsibility for having convened a peaceful, non-violent demonstration in the context of a national protest..." He specifies the positions he takes and insists that "the path we have proposed (resignation, revocation, constituent assembly) is in accordance with the Constitution." His remarks are then followed by questions put to him by the representative of the Public Prosecution Service regarding the events of February 12, what he knew about them, his part in them, at which point he reiterates his condemnation of the violent acts that occurred.

The Prosecution (Sanabria and then Franklin Nieves) set out its conclusions, beginning with the statement that "a politician hungry for power committed criminal acts... for the sole purpose of...making political capital, even if it meant committing crimes..." and that "it began with this citizen calling upon the population and telling it that the outcome had to be violent".. although it immediately added "obviously he did not say in so many words that the outcome had to be violent but..." And Nieves concludes that "everyone... can corroborate that on that day of the damage wrought to the headquarters of the Public Prosecution Service, citizen Leopoldo López's participation did not consist of he himself throwing stones or slabs of concrete, but his instigation prompted those provoked by those messages and they reacted..."that the discourse leads to actions that can turn violent as they did that day..." Regarding the offense of public instigation through speeches and the offense of conspiracy to commit crime, he says that a raid was carried out in Altamira square, and found "large quantities of food, vinegar, and metal spikes ("miguelitos")..."

López's counsel then addresses each of the foregoing arguments. For instance, as regards the Altamira square raid, he points out that López was never mentioned, that there were procedural flaws in the proceedings, and so on... López himself once again states that he is innocent. He acknowledges having convened a peaceful march that had ended peacefully; the acts of violence occurred later and were deliberately provoked... that at no point had he instigated violence, that the paths he proposed for a change of government are those permitted under the Constitution, that there are no links between him and the damage wrought.

Attached then are statements by eye witnesses and experts.

The judge concludes that:

"it has been demonstrated that a numerous group of protesters .. followed the call issued by citizen Leopoldo López and other political leaders of the Voluntad Popular party, to which end citizen Leopoldo López, availing himself of various media outlets, issued calls to the protesters on the streets which triggered a series of violent acts, refusal to acknowledge legitimate authorities, and violations of laws that

unleashed an unconscionable attack by a group of people instigated by the speeches of the aforementioned citizens against the headquarters..."

. They, "after the speech given by citizen Leopoldo López, once he had withdrawn from the area, proceed to commit a series of violent acts"...

. based on a semiologist's opinion regarding the power of tweets, the judgment claims that "such streams of messages trigger aggressive conduct among their followers, disturbing the peace." According to another semiologist, "through his speeches he sent discrediting messages that unleashed the acts of violence..." Based on that, the judge asserts that "there was clearly a strategy devised by citizen López and his well-organized group to use both conventional and alternative media to boost his speeches full of violent content, because his sole purpose was to disturb the public peace..."

. "That citizen López used words artfully to make his followers believe that there was an allegedly constitutional solution..." and "he sent an inappropriate message to his followers, most of whom were young..."

The judge then asserts that:

. "it has Leopoldo López been proven that the accused...instigated by citizen Leopoldo López , in turn then incited others to break the law, with a view to generating violence and thereby creating chaos..."

. "that citizen ... and others, instigated by the citizen López , banged on the gate... causing damage..."

" that citizen López was the instigator of the crime of public incitement... instigating by using social media.. to propagate his speeches full of violent content, because his sole purpose was to destroy the public peace..."

...that "citizen..., instigated by citizen Leopoldo López took part and was in fact arrested as he was setting fire to seven units..."

. As regards conspiracy to commit crime, the judge says that this is an offense "that is consummated solely be forming part of the association, regardless of the crimes it may then commit"... and that "the subjective requirement for this offense is constituted by the criminal intent to commit one or more crimes." And that, in this case, "he had a well-organized group" and "it had been proved that citizen Leopoldo López forms part of a criminal association, the purpose of which was to initiate a public and aggressive campaign against the President of the Republic..."

... and she concludes that he acted "without taking into consideration that the call he issued was not that of an ordinary citizen but one issued by someone who moves masses..."

For all of which, he is sentenced, because of the aforementioned offenses, to more than 13 years in prison. That sentence is the sum of the following:

- a. instigation of the crime of arson: 6 years in prison
- b. instigation of the crime of damaging property: 1 year and 15 days
- c. inciting the public: 4 years and 6 months
- d. conspiracy to commit crime: 8 years

Based on an alleged concurrence of offenses and citing Article 88 of the Criminal Code, the judge applies the most severe punishment to the most serious offense (conspiracy to commit crime) and adds to it half the other penalties, resulting in almost 14 years in prison.

***This judgment subjects the interpretation of speeches by political opponents and the right to association implicit in the formation of political movements to highly subjective judicial criteria.***

The right to protest and the right to form associations for political purposes are expressly recognized in the American Declaration of the Rights and Duties of Man (Articles XXI and XXII), along with the right of any person to freedom of expression and the dissemination of his ideas (Article III). *It is true that these*

*rights must always be exercised peacefully but, in this case, the link between what the political leader said and later acts of violence may be doubted, because of reasonable doubts regarding both the charge of instigation and that of conspiracy to commit crime.* These doubts have been reinforced by recent statements by Nieves, the Prosecutor at that time.

***Consequently, I will insist on the importance of these two aspects: guarantees for speech by the opposition and the ability of opposition parties to operate.***

Just as I deem it essential to quote these passages from the judgment handed down against Leopoldo López, I also find it necessary to point out ***that the death of 43 people is a horrendous crime, just as it is equally criminal to remain silent about 43 deaths, 43 homicides.***

It is a tremendous crime to remain silent about the killing of a student while he was demonstrating peacefully. It is a horrific crime to remain silent when students are still incarcerated without charges having been brought for the same offense of demonstrating peacefully.

The judgment against a leader of the opposition is relevant to the way democracy works, which is why I insisted on asking to see the judgment, why I studied it, and why I analyzed the observance of procedural guarantees.

For that reason, you, too, should have examined it. The acquittal or conviction of any citizen is vital for how well or badly a judicial system functions. Convicting an opposition leader sends a major signal regarding the workings of the entire democratic system and is therefore a matter of concern to the whole of the international community and to the Hemisphere.

***It is wrong to ask me not to refer to these matters that go to the heart of a properly functioning democratic system. If I did not heed, or remained silent, regarding the facts I have mentioned in this letter, I would lose my legitimacy, especially with respect to the essence of the principles in which I believe and hope I will never abandon: the defense of democracy and resolute promotion of human rights.***

This whole chain of events is enormously important for the workings of the democratic system. Neither you nor I, Ms. Lucena, can look the other way.

**On December 6 legislative elections will be held in the Bolivarian Republic of Venezuela, for which you will bear enormous responsibility. On you will depend the legitimacy of the ultimate political weapon left to your people, which is the right to vote with guarantees for all.**

In defending democracy and the human rights to elect and be elected, I feel duty-bound to mention what it means to hold an election from which candidates are banned.

Banning a candidate is to deny him a basic civil right to be elected and, because of that ban, to limit the basic civil right of a citizen to elect. Reducing the scope of election options in a democracy is to limit the possibilities open to that democracy.

**Remember, Ms. Lucena, that only the people bans and it does so by voting.**

Because of all that I have mentioned in this letter, there are reasons to believe that the conditions in which the people will vote on December 6 will not enjoy the level of transparency and electoral justice that you, at the National Electoral Council, should guarantee.

That notwithstanding, I trust that in the days remaining before that date you will be able to find solutions to ensure at least some of these essential conditions and that the difficulties already transpiring in the electoral process and campaign are not carried over into the vote tallying process.

You can and must correct these anomalies, even though their negative effects may linger, because that is your job. Wielding the tools of electoral justice and the law, you must provide guarantees needed for the difficulties and problems to be overcome.

From the start, you must use the instruments at your disposal to enforce those guarantees before, during, and after the election, for both government and opposition and, above all, to do the voters' will.

***December 6 belongs to all of us. Freedom, democracy, and respect for human rights are values for all of us.*** Faced with the slightest doubt regarding the functioning of democracy, our duty -- yours, Ms. Lucena, and mine - is to provide guarantees for all and neither turn a blind eye nor pretend we cannot hear the reality unfolding before us.

Sincerely,

Luis Almagro  
Secretary General