



Embassy of the Bolivarian Republic of Venezuela to the United States

FACT SHEET

MYTHS AND REALITIES ON THE DISQUALIFICATIONS FROM HOLDING PUBLIC OFFICE

Since 2000, the Venezuelan General Accountability Office (GAO) has issued administrative sanctions to more than 700 officials and government contract employees based on legal findings of corruption.¹ According to the **Organic Law of the General Accountability Office (LOGCR)** these charges convey a number of administrative sanctions that, depending on the severity of the offense against the public trust, can include **disqualifications from holding public office** for a limited amount of time. **This law was approved in the National Assembly in 2001**, by a majority of deputies, **including representatives from opposition parties**. It was also approved by Mayor Leopoldo López's former party, **Primero Justicia**.²

Nonetheless, as part of the 2008 Regional Elections, some members of the Venezuelan opposition are trying to distort the Government's efforts against corruption, which are based on international conventions that Venezuela has ratified (19996 OAS, 2004 UN) and the Republic's constitution and laws. **In this regard, it is necessary to clarify that:**

1. - Disqualification from holding public office is a **legal sanction, not a political one**.

2. - The Accountability Office has sanctioned more than 700 public officials since 2000 for corruption. 260 people are currently disqualified from holding public office, **the majority of which belong to political parties within the**

Government's own coalition.³ The sanctions imposed by the GAO are the result of a careful judicial and auditing process.

3. - **The Supreme Court ruled on cases relating to disqualifications in 2005 and 2008**, establishing that those disqualified are allowed to finish serving their terms before sanctions may be imposed. **On August 5th, the Supreme Court ruled that Article 105 of the LOGCR is constitutional**. **The GAO sanctions were found to respect due process and the defense rights of the sanctioned.**

Given these facts, it is necessary to debunk the myths that are driving the issue:

MYTH: Political disenfranchisement is the same as administrative disqualification.

REALITY: Public officials found guilty of corruption can either be sanctioned through penal, civil or administrative code. Political disenfranchisement refers to a legal status wherein a citizen loses certain political rights as part of a sentence following a criminal trial and is the result of a penal or civil action. This can include disqualification from holding public office. Political and civil disqualifications are fundamentally different from administrative disqualification, which is the issue before us.

Administrative disqualification from holding public office is a measure that in Venezuelan legislation accompanies a legal finding of

¹ Contraloría General de la República, "Contraloría General de la República no inhabilita políticamente," February 29, 2008.

<http://www.cgr.gov.ve/smc/articulos/noticia262.htm>

² Gaceta Oficial 37.347.

<http://www.tsj.gov.ve/gaceta/gacetaoficial.asp>

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³ Contraloría General de la República.

http://www.cgr.gov.ve/smc/pdf/Sanciones/INH_SANC.pdf



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corruption. Enacted by the Venezuelan GAO, the law is **based on Article 289 of the Venezuelan Constitution**. This Article establishes the authority of the GAO to oversee and regulate public organizations and persons, initiate investigations into irregularities against the public trust and **apply administrative sanctions in accordance with the law**. The authority to apply temporary disqualifications is established in Article 105 of LOCGR.

MYTH: Sanctions cannot be applied to elected public officials.

REALITY: According to Article 9 of Article 105 of LOCGR and Article 21 of the Law Against Corruption, the **GAO's power to supervise and sanction also applies to elected public officials**.

MYTH: The accused are not entitled to due process.

REALITY: The accused enjoy all rights under the law, including the right to due process and counsel. In this context, due process has eight steps: 1) Opening of the case, 2) Proper notice to defendants, 3) Public hearing, 4) Findings of fact and conclusions of law, 5) Allocutions, 6) Imposition of sanctions, 7) Motion to reconsider, 8) Imposition of sanctions.⁴

Additionally, the defendants enjoy the right to appeal any adverse decision. Some of them have already exercised this right.

MYTH: The majority of sanctioned officials belong to opposition political parties.

REALITY: Currently, 260 public officials are disqualified from holding public office. Through a

check of those sanctioned, it is evident that the majority of them are linked to the coalition of political groups that support the government.⁵ **The GAO imposes sanctions based on objective facts, not political affiliation.**

MYTH: The mayor of Chacao, Leopoldo López, was sanctioned to restrict him from pursuing another public office.

REALITY: Mayor Leopoldo López received an administrative sanction that consists of a disqualification from holding public office, **pursuant to Article 289 of the Constitution and Article 105 of LOCGR**. The sanction was imposed after a long legal proceeding, during which the defendant **had the opportunity to present exculpatory evidence**.

Mayor López was sanctioned for two cases: the first in regards to influence peddling, while the second for embezzlement of public funds. On December 23, 1998, PDVSA made a 60 million Bolivar donation to the Primero Justicia Civil Association (precursor to the Primero Justicia party). Antonieta Mendoza de López, mother of Mayor López and PDVSA's Manager for Public Affairs, was in charge of allocating these funds. At the same time, the current Mayor was an employee of PDVSA and belonged to the board of Primero Justicia Civil Association.

In the second case, the Accountability Office determined that in fiscal year 2002, during his tenure as Mayor of the Municipality of Chacao, funds budgeted and assigned to certain areas were transferred to cover costs of another nature, violating the procedures and laws that regulate the fiscal and budgetary process.

⁴ Ley Orgánica de la Contraloría. Capítulo IV. Sobre el procedimiento para la determinación de Responsabilidades. <http://www.mintra.gov.ve/legal/leyesorganicas/lcontraloria.html>

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⁵ Contraloría General de la República. http://www.cgr.gov.ve/smc/pdf/Sanciones/INH_SANCC.pdf



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MYTH: Leopoldo López has introduced a “right of protection” to prove his innocence.

REALITY: Leopoldo López has not denied his guilt. The “right of protection” introduced in the Supreme Court is to mitigate the sanction imposed for the crimes committed. In other words, it is an argument that tries to invalidate Article 105 of the LOCGR and not one that could exonerate him. Furthermore, other appeals introduced by opposition spokespersons were similar in this regard; their appeals attempted to use Articles 42 and 65 of the Constitution to invalidate the GAO’s sanctions.⁶ These appeals did not question the guilt of disqualified, corrupt officials.

MYTH: The sanction against Leopoldo López was timed to coincide with the elections.

REALITY: The proceedings and sanctions applied to Mayor López go back to 2004 and were published in the Federal Registry. These measures are not recent, nor are they motivated by political-electoral timing. On the contrary, **the sanctions could have been applied in 2005, but the Supreme Court set a precedent determining that sanctions can only be applied once the official has ended his tenure.** López can continue to hold office until the end of his term in 2009, but he cannot run for office until the sanctions expire. Under the law, this is known as **survival incompatibility**, since it is illogical for a person to run for office if he has been prohibited from holding that position.

In February 2008, Comptroller General Clodosbaldo Russián (head of the Venezuelan GAO) provided the Supreme Electoral Council

with the names of those officials who had been disqualified from holding public office.

Since then, Mayor López has rejected the measure, initiated a campaign to discredit the GAO, and has declared himself a politically persecuted official, arguing that he has been prohibited from running for public office without being previously sentenced.

Nonetheless, Mayor López has not been prohibited from exercising his political rights, since Articles 42 and 65 of the Constitution are not applicable to his case. His case is based on Articles 25 and 289, numeral 3 of the Constitution; article 105 of LOCGR; and Article 21 of the Law against Corruption, which outline a declaration of administrative corruption.

Furthermore, **these laws are not new.** The GAO has had the power to disqualify candidates since 1975. In a recent interview, Comptroller General Russián explained that “the 1984 law, under President Jaime Lusinchi, and the 1995 law, under Rafael Caldera, contained the same regulations.”⁷

MYTH: Venezuela’s Supreme Court is biased and hands down politically motivated decisions.

REALITY: On August 5th, the Supreme Court ruled that Article 105 of the LOGCR is constitutional. The Court has ruled against the government in the past, as it did in 2005 when it ruled that the GAO could not impose sanctions until after an official’s term had ended. This is but one example of the judicial branch’s independence.

⁶Iralis Fragiél, “Goicoechea interpone amparo en el TSJ contra inhabilitaciones” *El Universal*, June 18, 2008, http://buscador.eluniversal.com/2008/06/18/pol_ava_goicoechea-interpone_18A1694681.shtml

⁷“Contralor Russián afirma que las inhabilitaciones no son nuevas en Venezuela,” July 17, 2008, [http://www.abn.info.ve/go_news5.php?articulo=141258&lee=Array\[0\]](http://www.abn.info.ve/go_news5.php?articulo=141258&lee=Array[0])



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The GAO sanctions were found to respect due process and the defense rights of the sanctioned. The Supreme Court ruled that Article 42 of the Constitution in no way prevents legitimate limitations on political rights as established by other legal entities. Regarding Article 65 of the Constitution, **the Supreme Court ruled that the National Assembly has the right to establish laws which ratify the use of administrative sanctions.**⁸

Reacting to the decision, Comptroller General Russián said: “In 2004 there was a first sentence, and in 2005 a clarifying statement in which the right of the GAO to disqualify candidates was recognized . . . in 2006 there was a third sentence by Judge Francisco Carrasquero López, [and] in 2008 the Political Administrative Court [of the Supreme Court] has made its decision and I think this marks the end of the controversy generated by opposition sectors.”⁹

As a result of this ruling, **the sanctions issued by the GAO are upheld.** Disqualified candidates retain the right to appeal directly to the GAO in order to solicit a reversal of the sanction.¹⁰

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⁸ “TSJ avala constitucionalidad de inhabilitaciones,” *El Nacional*, August 5 2008, http://www.el-nacional.com/www/site/p_contenido.php?q=nodo/38917

⁹ “Contralor celebra decisión del TSJ sobre inhabilitaciones,” *El Nacional*, August 6 2008, http://www.el-nacional.com/www/site/p_contenido.php?q=nodo/38936

¹⁰ Ibid.