

# **FULL REPORT: Francisco Usón**

## **Political Prisoner and Prisoner of Conscience of the Venezuelan Government since May 22, 2004**

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Francisco Usón was invited to appear on a television show that aired live on the morning of April 16, 2004. The program was hosted by journalist Marta Colomina. Patricia Poleo, an investigative journalist, was also invited. (Poleo has since been accused of murder by the Venezuelan government and her case is under investigation by HRF.) On April 15, 2004, Poleo published a story about the events that took place on a military base, Fort Mara, where a fire in a punishment cell burned eight soldiers on March 30, 2004. Two of those soldiers subsequently died. (See HRF's Fort Mara case.)<sup>1</sup>

Poleo's column about Fort Mara appeared in *El Nuevo País* and stated that the fire was caused by a flamethrower. She stated that she had information from an eyewitness that the soldiers were deliberately burned by senior officers.<sup>2</sup> The Fort Mara case became a public relations crisis for the government, with front page headlines on a daily basis. The government first claimed the fire was an accident. President Chávez stated that the injuries were "almost all light" and that the soldiers would be fine.<sup>3</sup> When one soldier died, the case became the central focus of political commentators and even led the government's public spokesman to offer his resignation.<sup>4</sup>

On the April 16 television show, Usón was asked by Colomina if he had any comment about the developing Fort Mara story. Usón explained that he was a military engineer by training and answered technical questions about how a flamethrower operates. Usón indicated that the weapon was created during World War II and that it uses a mixture of napalm and gasoline for its operation. Usón stated that the preparation of the weapon, mixing gasoline and napalm, had to be done prior to its use and would indicate premeditation on the part of a user. In relation to Fort Mara, he stated, "this is very very serious, if it ends up being true."<sup>5</sup>

Usón was detained on May 22, 2004, in Puerto Ordaz, State of Bolivar, Venezuela. Usón's arrest was carried out by the 88th Attachment of the National Guard. Usón traveled to Puerto Ordaz to help in the effort to collect enough signatures to petition the Venezuelan electoral council to activate a recall referendum on President Chávez.<sup>6</sup>

### **Usón's Background as an Opponent of the Venezuelan Government**

General Usón graduated first in his class at the military academy and rose to become brigadier general in 1977. He went on to hold several positions within the executive branch, among them: director of information technology in the Ministry of Defense (2000), chief of the National Budget Office (2000-2002), and director of the Office of Management and Budget for the Ministry of Defense (2002). He was a member of the President's cabinet as Minister of Finance from March, 2002 until April 17, 2002.<sup>7</sup>

On April 10, 2002, during a time of daily civilian protests calling for the resignation of Chávez, Usón requested a meeting with the President. At this meeting, Usón expressed his concern about increasing tensions between opposition members, protestors, and the government. Usón says he was assured that there would be "tolerance." Usón says he had

spoken earlier that day to Brigadier General Jacinto Pérez Arcay—one of Chávez's military advisors—who said to Usón that when he (Arcay) told Chávez that "the Bolivarian revolution needs blood to purify itself," Chávez responded that he wanted to continue the revolution in peace.<sup>8</sup>

On April 11, a demonstration made its way toward the presidential palace in Caracas and President Chávez ordered the implementation of Plan Avila, the military contingency plan meant to restore order in Caracas during times of civil unrest. The order given to the military was to stop the demonstration (numbering hundreds of thousands of people) from approaching the palace. Many senior military personnel refused to carry out the President's orders and the Plan Avila was not implemented. President Chávez was then forcibly removed from office.<sup>9</sup> Usón resigned his position in the cabinet on April 11 at 11 p.m. President Chávez was restored to office two days later, on April 13. Usón ceased his obligations at the Ministry of Finance on April 17, and returned to his duties as an active general in the army.

In the months that followed, Usón sent two private letters to the minister of defense. One protested the promotions process in the army. Usón claimed that many junior officers were being promoted or held back for political reasons. His second letter detailed the use of excessive military force in controlling government protests. Usón made a specific reference in that letter to a situation that arose in the State of Carabobo after a troop of soldiers attacked two female civilians.<sup>10</sup> In one instance images were broadcast showing soldiers pulling a woman by the hair toward the ground.

On May 30, 2003, by resolution N° DG-21141, issued by the minister of defense, Usón was forcibly retired. This decision was based on the Regulations on Disciplinary Punishments, No. 6, Articles 115, 116, and 117, which provided sanctions for showing contempt in service, referring to a superior incorrectly, or speaking negatively of colleagues. The internal procedures for forcible retirement were not followed in Usón's case. The process usually requires an administrative disciplinary process whereby the accused is told he is under investigation. Usón was informed he was under investigation upon its conclusion. Further, the members of the investigative council were those he had criticized in his letters to the minister of defense.

After his retirement, Usón became involved in private business as a consultant. He also became a vocal critic of the Chávez government.

Currently, Francisco Usón is serving his sentence in Ramo Verde military prison. His lawyers have exhausted all appeals within the Venezuelan judicial system, and in continued defense of Usón's case, have attempted to look for support in the realm of international law.

In December of 2006, Usón sent a letter to President Hugo Chávez. In it, he rejected the pardon that had been offered and restated his position as being innocent of all charges: "... A pardon is for people who, feeling guilty, look to be forgiven of some crime they have committed, and I am innocent, and as an innocent man, I need no such pardon. With moderation, I exercised a right that is universal, and therefore, constitutional: 'the free expression of thoughts and ideas', a right to which I will not resign even if it were to cost me my life, because I've already lost my freedom.... In addition, I urge you to materialize this "benevolent" offer by proposing to the National Assembly that it draft a law of general amnesty for all political prisoners and all those being persecuted for political reasons."

Earlier this year, when Radio Caracas Television (RCTV), the most popular and longest running network channel in Venezuela was effectively shut down by the Venezuelan government, Usón sent a letter of support of RCTV and of free expression (see <http://www.rctvlibre.com/>). Because of his show of solidarity, Usón was sanctioned with a temporary loss of visiting privileges, from April 5 to April 12, 2007. This sanction was based on the alleged violation of internal rules governing the sending and receiving of correspondence in Ramo Verde. Usón's sanction compelled HRF to immediately petition the President of the Bolivarian Republic of Venezuela, Hugo Chávez Frías, to cease such punishment, since it constituted yet another human rights violation (see <http://www.lahrf.com/UsonCartaAbril07.pdf>)

Next November, HRF, in conjunction with the lawyers and family of Francisco Usón, will await the granting of his parole, in accordance with Venezuelan law.

### **Due Process I: Arrest**

On May 22, 2004, Francisco Usón traveled to Puerto Ordaz, where he was to attend a meeting with volunteers for the national run to collect signatures for the recall referendum petition of President Chávez. While at the Puerto Ordaz airport, Usón was arrested and transported by car to La Guaira, where a military judge ordered him to be held without bail, pending trial. He was immediately taken to the headquarters of the Federal police (DISIP) in Caracas. The arrest order for Usón was given directly by the minister of defense, General Jorge García-Carneiro, to the military prosecutor, Colonel Eladio Aponte.<sup>11</sup>

Violations of due process:

1. Mr. Usón is a civilian being tried by a military tribunal. The judge and prosecutor were not competent authorities. By the time of his arrest, Usón had been retired from active military duty for almost twelve months. His detainment, trial, and conviction are in clear violation of the right to due process established in Venezuelan legislation. Further, they violate several international treaties including the American Convention on Human Rights.

2. The involvement of the minister of defense in the functions of the judiciary constitutes a violation of the principle of separation of powers. The judiciary (in this case, the military prosecution) has the power to "order and direct the penal investigation" according to Article 285 of the Constitution. The prosecution has stated that the Code of Military Justice provides a foundation for this. This procedure, as established in the Code of Military Justice of 1988, was rendered ineffective by the enactment of Article 285 of the Constitution.<sup>12</sup>

3. Judge Alfredo Hernández of the La Guaira Military Control Tribunal expressed his wish to dismiss the case due to a lack of evidence. Hernández was dismissed that day (without a hearing), and the case was assigned to Judge Rubén Carcilaso of the Second Military Trial Court.<sup>13</sup>

### **Due Process II: Trial Court**

Usón was charged with violating Article 505 of the Military Justice Code, which establishes prison sentences between three and eight years for those found guilty of slandering, offending, or insulting the national armed forces in the Bolivarian Republic of Venezuela.<sup>14</sup>

Usón was held without bail pending trial. The prosecution's accusations depended on disproving the flamethrower/premeditation hypothesis. The argument of the defense was that the events of Fort Mara were actually irrelevant in the face of the accusation that Usón

had insulted and slandered the armed forces. The government repeatedly stated that Usón had said a flamethrower was used, and that this statement constituted an act of slander. Usón's defense showed that he never stated that a flamethrower was used, but instead had reflected on how very serious it would be "if" a flamethrower had been used.

Marta Colomina testified as a witness in the case. She said that the hypothesis of the soldiers being burned by a flamethrower was not proposed by Usón and that he only provided an expert opinion on how flamethrowers function.<sup>15</sup> This testimony was disregarded by the judge.

Usón used the term "premeditation" in the context of a possible flamethrower theory. The discussion in the interview was based on a testimony by a soldier who identified himself as an eyewitness. (See HRF case on Fort Mara.)

Five of the eight soldiers who were burned in the Fort Mara fire, César Cábar, Abraham Mena, Eusebio Reyes, Ángel Medina and Mauricio Pulgar, were called as witnesses for Usón's trial.<sup>16</sup> Their testimony stated that a flamethrower was not used.

Regarding the opinions expressed by Usón, the court pointed out that "even when they are inside the scope of freedom of thought, responsibility has to be assumed for all that is expressed."<sup>17</sup>

### **Sentence**

On October 8, 2004, Usón was sentenced to five and a half years in prison by Judge Máximo Bernardo González of the Martial Court of the Bolivarian Republic of Venezuela.

### **Due Process III: Court of Appeals and Supreme Tribunal**

Retired army general Francisco Usón remains imprisoned at the Ramo Verde military prison for "slandering" the armed forces, despite being retired and not subject to military jurisdiction. In January 2005, the military appellate court upheld the October 2004 decision finding Usón guilty and sentenced him to five and a half years in prison. In July, the Supreme Tribunal of Justice declared Usón's attempt to annul the decision inadmissible.<sup>18</sup> Inside Venezuela, Mr. Usón has exhausted all ordinary remedies.

### **Usón is a civilian and not an active member of the Armed Forces**

The detention of civilians in military prisons, as in this case, is in clear violation not only of Venezuelan law, but also of international principles of human rights as well as several treaties to which Venezuela is signatory.

Usón believes that his trial, a speedy process beginning weeks after the Fort Mara case, provided the government with an opportunity to establish a public record to counter negative opinions about the events that took place in Fort Mara.

### **Right to Life**

Usón was hospitalized on August 23, 2004, for a severe case of hemorrhoids. He was transferred from Ramo Verde prison to the Carlos Arvelo Military Hospital. While there, he suffered what appeared to be an allergic reaction to a foreign substance. The reaction resulted from an injection of epinephrine (adrenaline) administered by a hospital nurse.

Usón was in critical condition for four hours as a result of the injection. Usón, who suffers from cardiac arrhythmia, had been taking prescribed medication (beta blockers) that prevented the epinephrine from doing further damage. The hospital stated that an error had been made and that Usón was supposed to be given an adrenaline compress, which was wrongly interpreted by the nurse, who gave him an injection instead.<sup>19</sup>

The following day, Usón's attorneys and family requested written documentation on every substance to be given to him. He was informed he was to be given an analgesic, Profenid (2-[3-benzoylphenyl] propanoic acid). Usón had the same reaction to this medication that he had when he was injected with adrenaline the day before. Doctors consulted by his attorneys have determined this to be a reaction to another shot of epinephrine. Usón believes this was done in order to cause cardiac arrest. Once again, his prescribed medication (beta blockers) prevented the epinephrine from having its full effect. The military hospital, once more, claimed it was an accident. The medical report about the incident has disappeared. In addition, when Usón's attorneys sought a government investigation into both incidents, nothing was done. The hospital has no personnel records of the nurse involved in the incidents.

### **Violations of International Treaties: Francisco Usón Case**

**I. Violation of due process: Usón, a retired army general, was detained, tried and convicted by military judiciary. The charges were ordered by the minister of defense. In addition, the first judge was dismissed and the case was re-assigned.**

#### Universal Declaration of Human Rights

##### **Article 8.**

*Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.*

##### **Article 10.**

*Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.*

#### International Covenant on Civil and Political Rights

##### **Article 14**

*1. All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law.*

#### American Declaration of the Rights and Duties of Man

##### **Article XXVI**

*[...]Every person accused of an offense has the right to be given an impartial and public hearing, and to be tried by courts previously established in accordance with pre-existing laws, and not to receive cruel, infamous or unusual punishment.*

#### American Convention on Human Rights "Pact of San Jose, Costa Rica"

##### **Article 8. Right to a Fair Trial**

*1. Every person has the right to a hearing, with due guarantees and within a reasonable time, by a competent, independent, and impartial tribunal, previously established by law, in the substantiation of any accusation of a criminal nature made against him or for the determination of his rights and obligations of a civil, labor, fiscal, or any other nature.*

## **II. Violation of freedom of expression.**

### Universal Declaration of Human Rights

#### **Article 19.**

*Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.*

### International Covenant on Civil and Political Rights

#### **Article I**

*1. All peoples have the right of self-determination. By virtue of that right they freely determine their political status...*

#### **Article 19**

- 1. Everyone shall have the right to hold opinions without interference.*
- 2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.*
- 3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:  
(a) For respect of the rights or reputations of others;  
(b) For the protection of national security or of public order (ordre public), or of public health or morals.*

### American Declaration of the Rights and Duties of Man

#### **Article IV**

*Every person has the right to freedom of investigation, of opinion, and of the expression and dissemination of ideas, by any medium whatsoever.*

### American Convention on Human Rights "Pact of San Jose, Costa Rica"

#### **Article 13. Freedom of Thought and Expression**

*1. Everyone has the right to freedom of thought and expression. This right includes freedom to seek, receive, and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing, in print, in the form of art, or through any other medium of one's choice.*

## **III. Violation of the right of life: While in the hospital, Usón was twice injected with adrenaline – his prescribed medication prevented the adrenaline from causing cardiac arrest.**

### Universal Declaration of Human Rights

#### **Article 3.**

*Everyone has the right to life, liberty and security of person.*

### International Covenant on Civil and Political Rights

#### **Article 6**

*1. Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.*

### American Declaration of the Rights and Duties of Man

#### **Article I**

*Every human being has the right to life, liberty and the security of his person.*

American Convention on Human Rights "Pact of San Jose, Costa Rica"

**Article 4. Right to Life**

1. Every person has the right to have his life respected. This right shall be protected by law and, in general, from the moment of conception. No one shall be arbitrarily deprived of his life.

**IV. Violation of state responsibility.**

International Covenant on Civil and Political Rights

**Article 2**

1. Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

2. Where not already provided for by existing legislative or other measures, each State Party to the present Covenant undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to adopt such legislative or other measures as may be necessary to give effect to the rights recognized in the present Covenant.

3. Each State Party to the present Covenant undertakes:

(a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity;

(b) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy;

(c) To ensure that the competent authorities shall enforce such remedies when granted.

American Convention on Human Rights "Pact of San Jose, Costa Rica"

**Article 1. Obligation to Respect Rights**

1. The States Parties to this Convention undertake to respect the rights and freedoms recognized herein and to ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms, without any discrimination for reasons of race, color, sex, language, religion, political or other opinion, national or social origin, economic status, birth, or any other social condition.

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Francisco Usón Ramírez is held at Ramo Verde Prison and can receive correspondence at the following address:

The mailing address is as follows:

Francisco Usón  
Centro Nacional de Procesados Militares  
CENAPROMIL—Ramo Verde  
Los Teques, Estado Miranda  
VENEZUELA

## ORGANIZATIONS FOLLOWING/REPORTING THE CASE

### Inter-American Commission on Human Rights

- <http://www.cidh.org/annualrep/2006sp/Venezuela577.05sp.htm>

### Inter-American Press Association

- 60 IAPA Assembly, October 22 - 26 ,2004, Antigua, Guatemala  
[http://www.sipiapa.org/pulications/report\\_venezuela2004o.cfm](http://www.sipiapa.org/pulications/report_venezuela2004o.cfm)

## LEGAL REPORTS

- <http://www.tsj.gov.ve/decisiones/spa/Abril/AMP-005-200405-2003-1022.htm>
- <http://www.tsj.gov.ve/informacion/notasprensa/notasdeprensa.asp?codigo=1932>
- <http://corte-marcial.tsj.gov.ve/decisiones/2004/junio/027-8-248-04-248-04.html>

## MEDIA REPORTS

### Compilation of newspaper articles

- <http://infovenezuela.org/attachmentsspanish/T5%20ST04b%20N1%20Caso%20Francisco%20Usón.pdf#search=%22%22FRANCISCO%20US%C3%93N%20%22%22>

### Sin Mordaza

- [http://www.sinmordaza.net/martha/2006/04/03/a\\_2\\_anos\\_del\\_caso\\_de\\_los\\_quemados\\_de\\_fue/](http://www.sinmordaza.net/martha/2006/04/03/a_2_anos_del_caso_de_los_quemados_de_fue/)

### Gentiuno

- Eleonora Bruzual, Dec. 15, 2005:  
<http://www.gentiuno.com/articulo.asp?articulo=3496>

### Aporrea

- "Ultimo momento: Condenado el General Usón":  
<http://www.aporrea.org/dameverbo.php?docid=51437>

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<sup>1</sup> Dozens of newspaper citations establish the facts presented here. These facts are undisputed and can be found in the decision of the court of appeals, which can be found on HRF's website <<http://www.thehrf.org>>. The Usón legal counsel's petition to the Organization of American States' Inter-American Commission of Human Rights provides further information: Comisión Interamericana de Derechos Humanos, *Informe No. 36/06, Petition 577-05*, 15 Mar. 2006  
<<http://www.cidh.org/annualrep/2006sp/Venezuela577.05sp.htm>>.

<sup>2</sup> Patricia Poleo, "Factores de Poder," *El Nuevo País*, 15 Apr. 2004. Available in HRF's archive of the case.

<sup>3</sup> "Ensañamiento contra el General," *El Universal*, 24 Oct. 2004  
<<http://infovenezuela.org/attachmentsspanish/T5%20ST04b%20N1%20Caso%20Francisco%20Uson.pdf>>.

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<sup>4</sup> Minister of Communication and Information Jesse Chacón took responsibility when President Chávez erroneously commented that the soldiers had suffered wounds that were “almost all light.” Chacón said that he had provided President Chávez with incorrect information. This indicates the level of scrutiny and attention paid to this case. Avatares del incendio en Fuerte Mara,” *El Universal*, 5 May 2004 <<http://infovenezuela.org/attachments-spanish/T5%20ST04%20N2%20Caso%20Pedrea%F1ez.pdf>>.

<sup>5</sup> A copy of the transcript of the show is available on HRF’s website <<http://www.thehrf.org>>.

<sup>6</sup> Francisco Olivares, “Ensañamiento contra el General Francisco Usón,” *El Universal*, 24 Oct. 2004 <<http://infovenezuela.org/attachmentsspanish/T5%20ST04b%20N1%20Caso%20Francisco%20Uson.pdf>>.

<sup>7</sup> Olivares, “Ensañamiento contra el General Francisco Usón.”

<sup>8</sup> “Chávez actúa como el gangster de una banda del cimen organizado,” *La Razón*, 4 June 2006. Available in HRF’s archive of the case.

<sup>9</sup> The circumstances that surround the events of April 11 demonstrate that Usón was an active and well-regarded member of Hugo Chávez’s cabinet. Usón had no involvement in the events of April 11, 2001 or those that immediately followed. Once President Chávez returned to office, Usón was returned to the Ministry of Finance. Nevertheless, he did not rescind his resignation.

<sup>10</sup> HRF interview in Ramo Verde Prison.

<sup>11</sup> “Ensañamiento contra el General.”

<sup>12</sup> “Escrito de excepciones,” Juez Militar Segundo de Primera Instancia Permanente de Caracas, 29 Jul. 2004. Available in HRF’s archive of the case.

<sup>13</sup> “Ensañamiento contra el General.”

<sup>14</sup> See Article 505 of “Código Orgánico de Justicia Militar,” *Tecnojuris*, 17 Sept. 1998 <[http://www.tecnojuris.com/leyes/codigo\\_organico\\_de\\_justicia\\_militar.html](http://www.tecnojuris.com/leyes/codigo_organico_de_justicia_militar.html)>.

<sup>15</sup> Venezuela, Tribunal Militar Pimero de Juicio, *CAUSA No 008-2004*, 8 Nov. 2004. Available in HRF’s archive of the case.

<sup>16</sup> Martha Colmenares, “A 2 años del caso de los soldados ‘Quemados de Fuerte Mara,’ escribe el General Uson,” *Martha sin mordaza*, 3 Apr. 2006 <[http://www.sinmordaza.net/martha/2006/04/03/a\\_2\\_anos\\_del\\_caso\\_de\\_los\\_quemados\\_d\\_e\\_fue/](http://www.sinmordaza.net/martha/2006/04/03/a_2_anos_del_caso_de_los_quemados_d_e_fue/)>.

<sup>17</sup> See Article 57 of Venezuela, Asamblea Nacional Constituyente, *Constitucion de la Republica Bolivariana de Venezuela*, Dec. 1999 <<http://www.venezuelaoas.org/Constitucion%20de%20Venezuela.htm>>.

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<sup>18</sup> United States, Embassy of the U.S. in Caracas, Venezuela, *Country Reports on Human Rights Practices*, 2005, <<http://caracas.usembassy.gov/www2796.html>>.

<sup>19</sup> "Solicitan Traslado de General Usón Ramírez a Clinica Privada," *Diario 2001*, 28 Aug. 2004; "Negaron traslado del general Usón a clínica Privada," *El Nacional*, 28 Aug. 2004, A6; and "Usón Sufrió una Crisis al Recibir un a Inyeccion de Adrenalina," *El Universal*, 28 Aug. 2004. All available in HRF's archive of the case.