














"THE FINAL THRUST TO DEMOCRACY"

RUPTURE OF DEMOCRATIC
INSTITUTIONALITY IN VENEZUELA

September, 15th, 2017

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I INTRODUCTION

The United Nations General Assembly proclaimed September 15th as the **International Day of Democracy**, and issued an invitation to Member States, the United Nations System, and other regional, intergovernmental, and non-governmental organizations to commemorate it. In this sense, for the United Nations this is a day that *"provides an opportunity to examine the state of democracy in the world"*¹.

The **Center for Justice and Peace (CEPAZ)**, on this date, wants to make the Venezuelan society and the international community aware of the current state of the democracy in Venezuela, through the report we have called: *"The Final Thrust to Democracy"*, which presents an analysis of the vertiginous and aggravated crisis of the social, economic, and political context of the country. It is worth noting that although Venezuelan history allows us to appreciate that we did not have a full democratic system, the repeated and systematic attacks of the current National Government on the constitutional order have ended up undermining the fundamental pillars of the young Venezuelan democracy.

For these motives, it seems convenient to make special reference to the deterioration in the democratic order during the last ten months, since the Executive Branch and other governmental actors have attacked the main pillars of democratic freedoms, having as final thrust the execution and installation of a National Constituent Assembly, as a parallel body to the National Assembly. Thus, this episode brings us closer to an obscure chapter of contemporary history, since the antidemocratic character of the governmental authorities is evident.

Since the middle of 2016, it has been announ-

ced the breakdown of order and democratic system in Venezuela². The exacerbation of the political crisis highlighted the obstruction and impediment of citizen participation, an example of which was that after the decision of five criminal courts, the National Electoral Council (NEC) suspended *"until further notice"* the collection of **20% of the signatures** necessary for the activation of the Recall Referendum against President Nicolás Maduro. Likewise, the electoral body did not establish the corresponding electoral timetable for the regional and municipal Elections, according to **the established in the Venezuelan Constitution**.

Thus, the Venezuelan electorate found itself immersed in a context of uncertainty, due to the absence of constitutional guarantees that would allow it to exercise its civic rights. But if the previous approaches are inconceivable, during the year 2017 there have been a series of antidemocratic milestones, human rights violations, and loss of fundamental freedoms.

The widespread corruption and abuse of power have served to alienate and manipulate a sector of the population through totalitarian measures that deny the rights established in the Constitution.

On the other hand, we are immersed in a humanitarian emergency; the population does not receive adequate responses by the State, there is a persistent refusal of the authorities to accept the necessary international assistance and cooperation that would allow to provide protection and assistance to the most vulnerable.

In addition to all of the above, we show a

¹ See: <http://www.un.org/es/events/democracyday/events.shtml>

² See: <http://cepaz.org.ve/noticias/comunicado-red-electoral-ciudadana-rec/>

point of inflection of this institutional decline, which was configured through the sentences **Nº 155³ and 156⁴ of the Constitutional Chamber of the Supreme Court of Justice**, when devoid of the minimum legal and constitutional guarantees, ignoring the attributions of the National Assembly, in order to guide the empowerment of the National Executive so as to legislate in key aspects. It is also worth noting the constant obstruction from the installation of the National Assembly to the exercise of the constitutional attributions through judgments emanating from the Judicial Power that annul their acts and laws.

These sentences are the product of the absence of all reasoning and constitutional logic. As was to be expected, civil society, together with legislators and political representatives, took to the streets in massive and exemplary demonstrations against the outrages of the National Government, in order to claim their constitutional rights and legitimate power, as well as the right to have the voice of the people heard, and the possibility of deciding their own future.

But there is still more going on; during the episodes of protests the protesters have been subjected to fierce repressions and attacks by police forces, to the point of becoming systematic, organized, and consented by the government authorities themselves. It is important to note that during these events a disproportionate use of the police and military force has been evidenced, so that tortures to detainees and political prisoners have been documented; so too, there have been cases in which the right of civilians to be tried by a natural judge has been denied. In sum, during the last few months serious violations of human rights have been observed at the same time which have been violated the due process practices recognized by the International Human Rights Protection Systems⁵.

³ See: <http://historico.tsj.gob.ve/decisiones/scon/marzo/197285-155-28317-2017-17-0323.HTML>

⁴ See: <http://historico.tsj.gob.ve/decisiones/scon/marzo/197285-155-28317-2017-17-0323.HTML>

⁵ Note of the Press Release of the Office of the High Commissioner of the UN for Human Rights, 2017

II DEMOCRACY IN VENEZUELA

The United Nations Organization denounces that:

***"Democracy and democratic governance in particular, mean that human rights and fundamental freedoms are respected, promoted, and fulfilled, allowing people to live with dignity."*⁶**

The concept of democracy also lies within the regulatory framework of the International Covenant on

Civil and Political Rights (1966), which establishes the legal basis of the principles of democracy under interna-

tional law⁷. For its part, the Inter-American Democratic Charter, an instrument that reflects the political will of 34

democratic nations, defines the essential elements of democracy in the following terms:

***"Essential elements of representative democracy include, inter alia, respect for human rights and fundamental freedoms, access to and the exercise of power in accordance with the rule of law, the holding of periodic, free, and fair elections based on secret balloting and universal suffrage as an expression of the sovereignty of the people, the pluralistic system of political parties and organizations, and the separation of powers and independence of the branches of government."*⁸**

Thus, the aforementioned norm identifies five key and essential elements for understanding the configuration of the Rule of Law and the institutions that constitute our socie-

ties. Under these premises, solid and transparent institutions are constituted, so that the governmental actions have to be consistent with criteria of ethics, good governance, and

probity. In this sense, citizenship is directly responsible for such procedures to be realized in reality, it is guardian of good public governance. For the reason of the previous ap-

proach, it is propitious to bring up what was exposed in Article 4 of the referred international instrument:

⁶ ONU - Concepto de Democracia. Véase en: <http://www.un.org/es/sections/issuesdepth/democracy/index.html>

⁷ The freedom of expression (Article 19); the freedom of peaceful assembly (Article 21); the right and freedom of association (Article 22); the right and opportunity to take part in the conduct of public affairs, directly or through freely chosen representatives (Article 25); the right to vote and to be elected at genuine periodic elections, by universal and equal suffrage, open to multiple parties, conducted by secret ballot, guaranteeing the free expression of the will of the electors (Article 25).

⁸ *Ejusdem*, article 3.

" Transparency in government activities, probity, responsible public administration on the part of governments, respect for social rights, freedom of expression and of the press, are essential components of the exercise of democracy. The constitutional subordination of all State institutions to the legally constituted civilian authority and respect for the rule of law on the part of all institutions and sectors of society are equally essential to democracy."

For their part, theorists such as Schmitter and Karl⁹ point to another image of democracy, identifying it with majority rule, that is, the one that makes decisions by combining votes, where regular, properly conducted, and honestly computed elections strengthen a democratic system.

Theorist Robert Dahl has offered the most generally accepted list of what is considered the **"minimal"** conditions that must be presented for democracy to exist in modern politics.¹⁰

Through the different definitions of de-

mocracy, it is evident that these elements have wanted to be gradually erased from the spirit and collective memory of the population, it seems that many have been the causes; for the moment, can be traced in the restrictions exercised during the government of the late President Hugo Rafael Chávez Frías, who let us appreciate his form of government with a weakened democracy that was depleted. However, at the present time we have actively witnessed the dictatorial and hegemonic form of government of the President Nicolás Maduro Moros.

The progressive failure of the economic model, corruption, systematic persecution of political dissidents, unconstitutional mechanisms to remain in power, lack of independence of powers, terrible inequalities and injustices, exclusion and lack of guarantees for the exercise of political participation and citizenship, have been some of the elements that in our way of appreciating reality have given **"the final thrust to democracy."**

It is not exaggerated to point out that we are facing a state of confusion and institutional terror, or what is equal,

a process of annulment of the fundamental rights and freedoms of the human being. From **CEPAZ**, we note with great concern that the interests of the ruling class are those that prevail, to the detriment and sacrifice of the common good, justice, and legal security.

Based on the above, we confirm that as long as we do not have independent institutions that comply with the mandate of the Constitution and the laws, there will be no democracy in Venezuela. In this sense, the risk increases that the public dynamics will be ma-

⁹ WHAT DEMOCRACY IS . . . AND IS NOT Philippe C. Schmitter and Terry Lynn Karl

¹⁰ 1) The control over governmental decisions on politics is constitutionally acquired by the elected functionaries.

2) The elected functionaries are designated in frequent elections realized with moderation, in which the constraint is comparatively unusual.

3) The citizens have the right to vote in the elections of functionaries.

4) Citizens have the right to run for elective offices in the government.

5) The citizens have the right to express themselves in regards to political matters without running the risk of being subjected to severe punishments.

6) Citizens have the right to look for alternative sources of information. Additionally, these alternative sources are protected by law.

7) Citizens also have the right to create associations or relatively independent organizations, including independent political parties, and groups of interest. Robert Dahl, Dilemmas of Pluralist Democracy (New Haven: Yale University Press, 1982), 11.

naged according to the particular interests of a single sector, there by annulling the natural participation of the citizenry, resulting in the risk that political dissidence will be silenced and persecuted.

FUNDAMENTAL CONDITIONS FOR THE EXISTENCE OF A DEMOCRACY

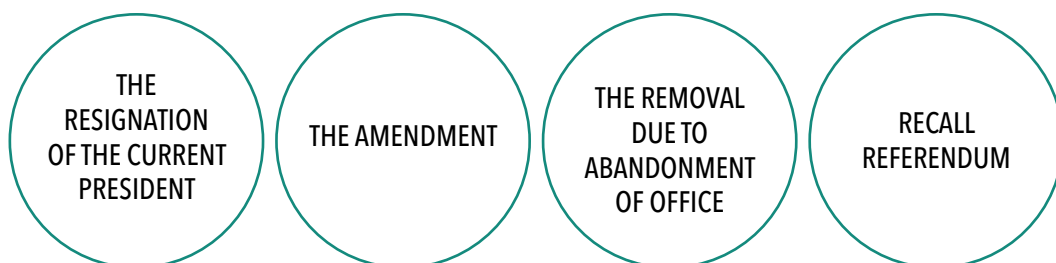
	1	2	3	4	5	6
FUNDAMENTAL ELEMENTS (ART. 3)	TRANSPARENCY IN GOVERNMENTAL ACTIVITIES	RESPONSIBILITY OF THE GOVERNMENTS IN THE GOVERNMENT ADMINISTRATION	RESPECT TOWARDS SOCIAL RIGHTS	RESPECT TOWARDS FREEDOM OF EXPRESSION AND PRESS	THE CONSTITUTIONAL SUBORDINATION OF ALL THE INSTITUTIONS OF THE STATE TO A CIVIL AUTHORITY LEGALLY CONSTITUTED	THE RESPECT TOWARDS THE RULE OF LAW OF ALL THE ENTITIES AND SECTORS OF SOCIETY
ELEMENTAL CONDITIONS (ART. 4)	ELECTED PUBLIC AUTHORITIES	UNIVERSAL SUFFRAGE AND FREE AND CLEAN ELECTIONS	THE RIGHT TO COMPETE FOR PUBLIC FUNCTIONS	FREEDOM OF ASSOCIATION, EXPRESSION, AND ACCESS TO ALTERNATIVE SOURCES OF INFORMATION	RESPECT TOWARDS THE EXTENSION OF THE TERM OF OFFICE 48	THE EXPECTATION THAT THE ELECTORAL PROCESS AND THE CONTEXTUAL FREEDOMS WILL REMAIN
PROCEDURAL GUARANTEES	CONTROL OVER GOVERNMENTAL DECISIONS ABOUT POLITICS IS CONSTITUTIONALLY INVESTED IN THE ELECTED FUNCTIONARIES	ELECTED IN FREQUENT AND WELL CONDUCTED ELECTIONS	PRACTICALLY ALL THE ADULTS HAVE THE RIGHT TO VOTE IN THE ELECTION OF FUNCTIONARIES	THE CITIZENS HAVE THE RIGHT TO EXPRESS AND TO LOOK FOR ALTERNATIVE SOURCES OF INFORMATION	THE POPULARLY ELECTED FUNCTIONARIES MUST BE CAPABLE OF EXECUTING THEIR POWER CONSTITUTIONALLY, WITHOUT BEING SUBJECT TO THE PREPONDERANT OPPOSITION	THE GOVERNMENT HAS TO BE AUTONOMOUS

III

SUSPENSION OF THE RECALL REFERENDUM



With the installation of the National Assembly (NA) on **January 5th, 2016**, the newly elected President of Parliament, Henry Ramos Allup, declared in his inaugural speech a six-month period to determine a **"democratic, constitutional, peaceful, and electoral"** mechanism to attain a change of government in the country¹¹. Thus, four proposals were made that would allow citizen participation in public affairs that are crucial for the destiny of the country, in order to approach a necessary and natural political change; this included:



At the end of February 2016, MUD formally requested the NEC the necessary instruments to activate **the Presidential Revocation Referendum (PRR)**, in accordance to the constitutional principles set forth in article 72 of the Constitution, being this a constitutional right, and responding to the principle of popular participation in public affairs, in accordance with what is contemplated in Articles 5, 7, and 62 of the

forementioned Text of Rights. In opposition to the statements raised, we consider it important to highlight the itinerary that the citizens had to face in order to try to approach the realization of their rights. In this sense, the NEC provided the format of forms for the collection of citizens' signatures equal to **1% of the electoral roll**, to which the MUD complied to initiate the PRR against President Nicolás Maduro. However, at this point

it was possible to verify a first obstacle: the NEC established a new requirement, which was that the count and validation of **the collection of signatures should be by state**, meaning that each state had to meet the percentage according to the requirements established by the electoral governing body in contravention of the constitutional norm. The MUD submitted to the request.¹²

CHRONOLOGY OF THE FAILED PRESIDENTIAL RECALL REFERENDUM (PRR)

▼ FEBRUARY 2016

29
MUD announced its intention to carry out the PRR

▼ MARCH 2016

09
MUD asked the NEC the necessary instruments to activate the PRR

▼ APRIL 2016

12
MUD consigned the collection of **2040 signatures** of militants of the parties that form the coalition

26
NEC delivered the format of the forms in order to collect the **1% of the national electorate** behind schedule

28
Began the process of collection of the **1% of the national electorate** register in a regional basis

▼ MAY 2016

2
MUD delivered to the NEC more than **two million signatures** that were collected to validate the **1%**

¹¹ Note of the Press Release "Oposición maneja propuestas para acortar mandato de Maduro" ("Opposition manages proposals to shorten Maduro's rule"), by El Nacional, 2016.

¹² Note of the Press Release "CNE entregará en tres días hábiles las planillas para el referendo" ("NEC will present in three business days the forms for the referendum"), by el Universal, 2016.

▼ JUNE 2016

09

The NEC explained that **1.352.052** signatures out of the **1.957.779** were validated, and **605.727** were excluded because they were not valid

20 al 24

Began the process of validation of the **1.352.052 signatures** using fingerprint verification machines

▼ AUGUST 2016

08

The NEC informed that the PRR could be undertaken on the **first trimester of 2017** if the MUD met all the requirements

24

The NEC approved the proceeding of the solicitude to collect the will manifestations, **409.313 signatures** validated, more than twice the 1% required

▼ OCTOBER 2016

05

The NEC publishes the timetable to the PRR, setting the dates of October 26th and 28th to the **collection of the 20%**, and November 28th and 29th as the dates when the proceeding of the process was going to be decided

20

The NEC suspends the PRR process **"until further notice"** by decisión of 5 regional criminal courts (**Apure, Aragua, Bolívar, Carabobo, and Monagas**)

Next, it was evidenced how the time factor was an element used by the maximum electoral body to delay the process, because it announced that it would take from 3 to 4 continuous days in accounting the given forms; it validated **1.352.052 signatures of the 1,957,779** presented by the MUD, alleging that **605,727** had been excluded due to non-compliance with a series of validation criteria¹³.

TOTAL 1.957.779	
1.352.052	605.727
VALIDATED	EXCLUDED

In spite of the above, the biggest obstacle that was presented for the activation of the PRR, and which also led to its definitive suspension, was the NEC's compliance with the decision of five regional criminal courts (**Apure, Aragua, Bolívar, Carabobo, and Monagas**), that admitted the allegations about supposed fraud in the collection of **1%¹⁴** of the signatures.

This incident undermined what is stipulated in the electoral regulations and revealed the absence of autonomy and independence of the Electoral Power, by complying with a decision of a judicial body without competence in electoral matters, since according to the Magna Carta this is jurisdiction of the Electoral Chamber of the Supreme Court of Justice.

In the light of the above ideas, we showed how, in a fraudulent way, all the electoral channels that allowed the execution of popular demands and aspirations were closed. In conclusion, we can appreciate that the political and civil rights of Venezuelans have been seriously infringed, to the point that the activation of these is vetoed by the authorities and competent bodies.

Stipulated by Law

New Requirement

Actions that are contrary to the law and the Constitution

¹³ Note of the Press Release "Conozca los pasos a seguir para la activación del referendo revocatorio" ("Know the steps required to activate the recall referendum"), by Efecto Cocuyo.2016.

¹⁴ Note of the Press Release "Elecciones regionales quedan para finales del primer semestre de 2017" ("Regional elections delayed to the end of the first half of 2017"), by Globovisión, 2016.

IV

SUSPENSION OF REGIONAL ELECTIONS AND NEW ADVERSE CONTEXT FOR ITS CELEBRATION



The regional elections had to be held in December 2016, however, on **October 18th, 2016**, when the electoral schedule was not available, they were postponed to the end of the first half of 2017¹⁵, by the president of the National Electoral Council, **Tibisay Lucena**. This announcement occurred in a politically convulsive scenario, due to the requirements that were being asked to the opposition group to fulfill in order to carry out the PRR. In its announce-

ment, the NEC did not present the reasons for the postponement, nor did it mention the referendum process, which was in its final stage with the collection of the necessary headings for its activation, which originated a scenario of greater political tension. In addition, a few days before the NEC pronounced, President Maduro anticipated this decision and saw the possibility of an advance of the legislative elections to regain control of the Assembly, with an opposition ma-

jority¹⁶. The described situation increased the population's rejection of the measure announced.

These events detonated the popular initiative to speak out in protests, mobilizations, and communiqués from different sectors of civil society, which made public knowledge their concern about the democratic status of the country. In Venezuela, the rupture of the democratic order became more and more evident.

The announcement by the NEC showed that the electoral administration had not provided official information on the elections, nor had it advanced in previous activities, such as the procedures established for the definition and formation of constituencies in each of the **23 states**, and the implementation of special operations for registration and updating in the Electoral Register in the **335 municipalities of the country**; nor the definition of electoral constituencies to determine the number of state legislators to choose in the regional elections of 2017. Now well, in accordance with what is stipulated in **articles 160 and 162 of the Constitution and 42 of the Organic Law of Electoral Processes**, the NEC procedures constituted another breach of Venezuelan political and civil rights.

SUSPENSION OF REGIONAL ELECTIONS AND NEW ADVERSE CONTEXT FOR ITS CELEBRATION

Scheduled for

DECEMBER 2016

1	2	3	4
5	6	7	8
9	10	11	12
13	14	15	16
17	18	19	20
21	22	23	24
25	26	27	28
29	30	31	

Suspended in

OCTOBER 2016

1	2
3	4
5	6
7	8
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11	12
13	14
15	16
17	18
19	20
21	22
23	24
25	26
27	28
29	30
31	

Its realization was assured for the first

TRIMESTER OF 2017

Scheduled "possibly" for

OCTOBER 2017

1
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31

1 YEAR
OF BREACH OF LAWS
AND THE CONSTITUTION

¹⁵ Note of the Press Release "Elecciones regionales quedan para finales del primer semestre de 2017" ("Regional elections delayed to the end of the first half of 2017"), by Globovisión, 2016.

¹⁶ Note of the Press Release "El CNE aplaza por seis meses las elecciones regionales en Venezuela" ("The NEC postpones the regional elections in Venezuela for six months"), by BBC Mundo.

Last but not least, the electoral body has shown a notable delay in everything related to the process of renewal of political parties, emphasizing that the last one to be held was in the year 2011 and, according to the regulations, this reform should have occurred in December 2015, following the parliamentary election of December 6. However, a series of appeals and rulings of the SCJ, as well as delays by the NEC, led the procedure to begin in March 2017.

V SENTENCES

OF THE SUPREME COURT OF JUSTICE



At the end of March 2017, there was a turning point in the democratic order and the Venezuelan rule of law, with regard to judgments N° 155¹⁷ and 156¹⁸ of the **Constitutional Chamber of powers and parliamentary autonomy of the National Assembly were dissolved**, marking an unprecedented event that aggravated the democratic institutionality of the country. This resulted in the rejection of both civil society and the international community.

Decision N° 155 of the Constitutional Chamber declared void the agreement of the

National Assembly on the Democratic Charter for its alleged and non-existent interference by a foreign authority, reducing to a minimum expression, and practically annulling parliamentary immunity by apparent contempt of the NA. In this last point, it is indicated that parliamentary immunity would not exist in cases of constitutional and criminal offenses, which would open another serious mechanism for the persecution of opposition parliamentarians, with the ultimate aim of nullifying the leadership of the dissidence.

The instrument also ordered and empowered President Maduro to use the **State of Exception**¹⁹, to adopt any measure that would prevent a state of commotion, and to take any international strategy with the aim of safeguarding the constitutional order. In addition, this legislation gave the possibility of the president to dictate any civil and economic measures, to the point that he could legislate and reform the Law against Organized Crime and Terrorism Financing, the Law against Corruption, Criminal Code, Organic Code of Criminal Procedure, and the Code of Military Justice²⁰. An excerpt from the judgment reveals the following:



It is ORDERED that the President of the Bolivarian Republic of Venezuela proceed to exercise such international measures as he may deem pertinent and necessary to safeguard the constitutional order, [...] take the civil, economic, military, criminal, administrative, political, judicial, and social measures that he deem appropriate and necessary to avoid a State of commotion; and in the framework of the State of Exception and in the face of contempt and continued legislative omission by the National Assembly, which allows to avoid the serious risks that threaten democratic stability”²¹.

¹⁷ See: <http://historico.tsj.gob.ve/decisiones/scon/marzo/197285-155-28317-2017-17-0323.HTML>

¹⁸ See: <http://historico.tsj.gob.ve/decisiones/scon/marzo/197285-155-28317-2017-17-0323.HTML>

¹⁹ The sentence N° 2184 was published on January 14th, 2016; it established the State of Economic Emergency. National related sentences were preceded by a series of sentences issued in 2015 that declared the State of Exception in the border municipalities with Colombia.

²⁰ Note of the Law against Corruption, Criminal Code, Organic Code of Criminal Procedure, and Code of Military Justice.

²¹ Note of the Sentence N° 155 of the Constitutional Chamber of the Supreme Court of Justice, 2017.

As can be seen, this sentence can be interpreted as the power that the Judiciary gives the President to exercise an illegitimate "habilitation or legislative activity" in criminal matters, violating the provisions of Article 203 of the Constitution of the Republic²². In the same vein, this decision also violates the guarantee of legal reserve in criminal matters, since only Parliament is competent to legislate in this area.

This ruling can also be read as the anticipation of the consolidation of two key objectives:

To achieve a constitutional reference to a practice that violates human rights, and unconstitutional military jurisdiction against opposition parliamentarians and civilians.

In relation to sentence N° 156, the Constitutional Chamber ruled on the disregard of the NA, stating that it would be the SCJ that would carry out the functions of the Legislative Power or indicate the body that would perform these functions, generating a situation of alarm before the new tort to the constitutional order, given that the Chamber, in a direct way, indicated what it indirectly had sustained in various judg-

ments: that the National Assembly would not carry out its functions and that these would be assumed by the Supreme Court of Justice, setting a clear usurpation of functions²³.

In addition, this ruling seemed to put an end to the collision between powers that began in 2016. It should be noted that in the parliamentary elections of December 6th, 2015, the Venezuelan opposition managed to suc-

ceed with a qualified majority in the NA, an organ under the control of the ruling party since 2005²⁴. Indeed, an excerpt from the ruling allows us to evaluate this: ***"Finally, it is warned that as long as the situation of contempt and invalidity of the proceedings of the National Assembly persists, this Constitutional Chamber will ensure that the parliamentary powers are exercised directly by this Chamber or by the body that it disposes, to watch over the State of Law"***²⁵.

In short, the contempt thesis was nothing more than an excuse by means of which the Judicial Power pretended to justify its ignorance of the AN and, with this, the disregard of the democratic order and the Rule of Law. In this way, we can appreciate the usurpation of a power legitimized by the popular will, compared to another power shaped for the maintenance and satisfaction of the interests of the political power in office.

CHRONOLOGY OF THE SENTENCES

CHRONOLOGY OF THE SENTENCES

ELECTORAL CHAMBER

CONSTITUTIONAL CHAMBER

	SENTENCE			
DATE N°	1	615	1190	2
	11/01/2016	19/07/2016	15/12/2016	11/01/2017
	Disincorporation of the parliamentarians of Amazonas from the NA	Prorogation of the State of Economic Emergency	Constitutionality of the Decree-Law of the Budget and Public Debt 2017	Nullity of the new NA's Management Board

²² "Are Organic Laws the ones that the Constitution denominates as such, the ones that are dictated to organize the public power or to develop constitutional rights, and the ones that can be used as legal framework to other laws (...)"

²³ Note of the Sentence N° 156 of the Constitutional Chamber of the Supreme Court of Justice, 2017.

²⁴ Note of the Press Release "Retirada en elecciones a la AN 2005: un error muy caro para el país" ("Withdrawal on the NA Elections 2005: a really costly error"), by el Tiempo, 2005.

²⁵ Note of the Sentence N° 156 of the Constitutional Chamber of the Supreme Court of Justice, 2017.

That said, three days after the Government announced that the Constitutional Chamber had **"reviewed"** the judgments **N° 155** and **156**, in order to resolve what was considered an **"im-passe between powers"**, the SCJ published judgments **N° 157** and **158**. Sentence **N° 157**, pronounced on sentence **N° 155**, reiterating the situation of disregard and unconstitutional omission in which the National Assembly was set, and recognizing that in the sentence **N° 155** some considerations were made regarding the parliamentary immunity that were the object of

various analyzes, some of which came to hermetic malpractice, and therefore the contents of the sentence referring to parliamentary immunity were revoked. Likewise, the precautionary measure was granted, which conferred extraordinary functions to the President, including changing laws²⁶.

On the other hand, sentence N° 158 revised judgment N° 156, by which, the Constitutional Chamber reiterated the **"contempt situation and constitutional omission in which the National Assembly is set"**

It clarified that the measures that the NA implement: **"(...) have a precautionary nature, in view that the contempt of the National Assembly, which prevents it from exercising its constitutional attributions is circumstantial"**, and so the Chamber decided to revoke those measures²⁷.

Nevertheless, there were decisions that were not modified, among them are: the Constitutional Chamber preserved the decision according to which the deputies of the NA incurred in the crime of treason (**the sentence N° 155**), preserved the judgment initiated by it against the Assembly, considering that the latter considers:

"(...) particularly serious against the system of values, principles, and norms provided by the Constitution of the Bolivarian Republic of Venezuela, and, finally, against the stability of the Republic, the Region, and the most basic notion of universal justice"²⁸.

Lastly, the Chamber was awarded the NA control function on the creation of joint ventures, by allowing the Government to create such companies under the control of the Chamber, sentence **N° 156**

By way of conclusion, decisions **N° 155** and **156** were not judicial decisions but political decisions, as were the decisions by which they were amended, judgments **N° 157** and **158**, which showed that the Constitutional Chamber does not act as guarantor and guardian of the Constitution but as a political operator of the interests of the Executive. Lastly, the exposed situation is presented as one of the most harmful acts for the institutional life of the Republic. Thus, the decisions of the highest judicial body are firm in their intention to ignore the functions of a legitimately constituted body such as the case of the NA.

46	155	157	158
24/02/2017	28/03/2017	01/04/2017	01/04/2017
Annual Report and Statement of the Ministries	Nullity of the Agreement on the activation of the Interamerican Democratic Chart	Explanatory note The point about the parliamentary immunity has no effect and the Executive is in order to adopt measures of State of Commotion	Explanatory note The replacement of the NA by the SCJ has no effect

²⁶ Note of the Sentence N° 157 of the Constitutional Chamber of the Supreme Court of Justice, 2017.

²⁷ Note of the Sentence N° 158 of the Constitutional Chamber of the Supreme Court of Justice, 2017.

²⁸ Ídem.

VI

PROTESTS AND THE RIGHT TO THE DEFENSE OF DEMOCRACY

The disregard to the AN in its attributions, after the alleged contempt established in the judgments issued by the Constitutional Chamber at the end of March this year, plus the call made by the President of the Republic on May 1st of this year to a realization of a National Constituent Assembly, led to the reactivation of a new phase of protests against these measures, initiated on **April 4th, 2017.**

In order to find a solution to the democratic crisis that the country was experiencing, by calling for the defense of fundamental rights and the demand for **free, fair, and transparent elections**, the National Government responded with a series of actions that undermined the dignity of the human person. Thus, appearances were left aside to give way to arbitrary and repressive procedures, which recorded **numerous arrests and acts of persecution against political dissent, to the point of cataloging**

protests and peaceful demonstrations as terrorist acts. Reporting the ravages of government abuses and violations, or the country's economic, political, and humanitarian crisis, is a guarantee of persecution and disrespect for constitutional guarantees. The intention was clear: **to infuse fear among the population**, so that they do not denounce the state of nature and governmental chaos propitiated by the authorities.

It is important to note that from the outset of the protests, the secu-

rity forces resorted to the disproportionate use of tear gas and other toxic substances against protesters, actions that are prohibited in our legislation, and did not mediate the use of other peaceful means or resources according to international standards, such as dialogue or the use of barriers to separate the people who participated in the protests, which caused that during these **four months**, having the 30th of July as the last date in which was registered street action by the Venezuelan population, a total of :

6.729
DEMONSTRATIONS
equivalent to

56
DAILY PROTESTS
were record, with

162
RECORDED DEATHS ²⁹
In this period the Public Ministry has only recognized the deaths of

129
PEOPLE ³⁰

²⁹ Note of the Third inform of the OHCHR about Venezuela, 2017.

³⁰ Note of the "Balance de Víctimas fallecidas y lesionadas durante manifestaciones en abril-julio de 2017" ("Balance of deceased and injured Victims during the protests of april-july 2017"), by Ministerio Publico, 2017.

At this time, it is important to point out that the conflict environment was sharpened with the implementation and activation of **the Zamora Plan³¹**, which was a security mechanism against demonstrators, who were cataloged as instigators of the rebellion against the National Government, which resulted in the prosecution of the detainees in the demonstrations before the military jurisdiction; this practice was contrary to due process of law established in articles 49 and 261 of the Constitution of the Bolivarian Republic of Venezuela³², as well as to the principles enshrined in articles 2.3 and 14 of the International Covenant on Civil and Political Rights³³; and in the Articles 8 and 25 of the American Convention on Human Rights³⁴, which establish that military criminal jurisdiction is not competent to decide on the rights of a civilian in criminal proceedings.

Thus, this type of restrictions on the population made manifest the impairment of the human right to peaceful protest. This fact, far from calming the tensions accelerated the conflict, for that reason, the referred Plan was activated in a second phase, almost a month later, on **May 17th, 2017³⁵**. Coinciding its activation with the increase of deaths and detentions in the context of the protests.

On April 18th, the Office of the United Nations High Commissioner for Human Rights issued a statement urging the Government of Venezuela to allow peaceful protests. The statement condemned militarization in response to the protests, and expressed concern about the excessive and indiscriminate use of force, pointing out its concern specifically by the introduction, in April 2017, of the **Zamora Plan calling for groups of armed civilians and police to help respond to the protests³⁶**.

Another actions registered during this period of time were **the lootings and attempts of the latter**, which undermined the private property, as well as the peaceful spirit of the demonstrations, with a total of 157 cases throughout the country, in which many establishments and means of transportation were affected ³⁷.

On the other hand, it was reported that during these four months there were violent actions of paramilitary groups in at least **523 protests**. In the majority of the protests where these groups were presented bullet injuries were reported, mainly in the **Capital District, Miranda, Táchira, Mérida, Lara, Carabobo, Aragua, and Anzoátegui³⁸**.

Another incident was the attack on family homes, in this regard, certain cases were documented in the states of **Bolívar, Lara, Mérida, Miranda, Trujillo, and Zulia**. One of the most outstanding is the one in the residential complex El Paraíso, commonly known as **Los Verdes**, formed by several apartment buildings where 1,200 people live, on the west side of Caracas.

In fact, there was widespread destruction of property and a total of **23 detainees³⁹**.

Finally, there were a total of **6,729 demonstrations** throughout the country, representing an increase of **157%** in comparison to the period of 2016, when only **2,617 demonstrations** were recorded ⁴⁰. With a number of civilians injured in protests ranging considerably from around **1,550** according to official data from the Public Prosecutor's Office, up to **15,000** according to the opposition, and an estimated of **3,589 people** have been arrested for demonstrations and nearly a third remain imprisoned⁴¹.

³¹ Zamora Plan refers to the partnership work of security functionaries and civilians in order to control the protests.

³² Note of the Constitution of the Bolivarian Republic of Venezuela, 1999.

³³ Note of the International Covenant on Civil and Political Rights, 1969.

³⁴ Note of the American Convention on Human Rights, 1966.

³⁵ Note of the Inform of El Observatorio Venezolano

de Conflictividad Social (OVCS), 2017.

³⁶ Note of the statement "Venezuela must allow peaceful protests and investigate killing of demonstrators, say UN experts", by the OHCHR, 2017.

³⁷ Note of the inform of El Observatorio Venezolano de Conflictividad Social (OVCS), 2017.

³⁸ idem.

³⁹ Note of the Third inform of the OHCHR about Venezuela, 2017.

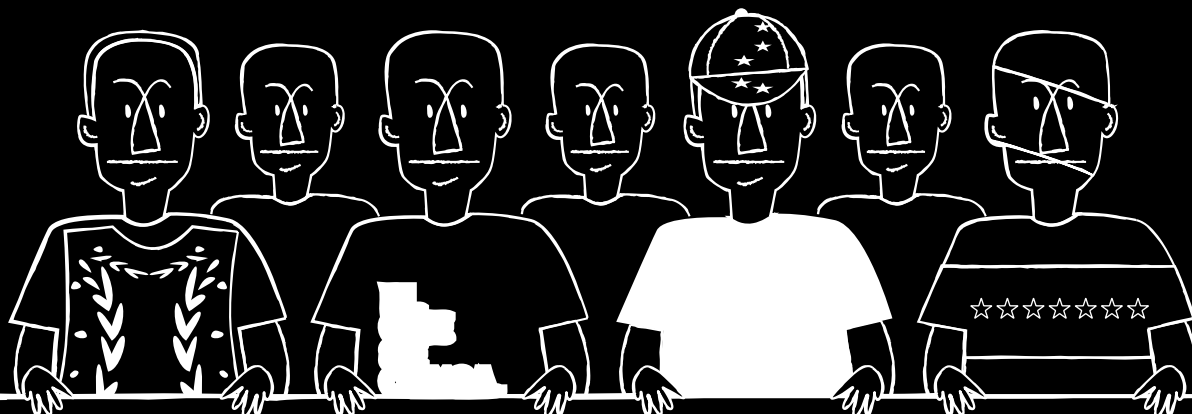
⁴⁰ Note of the Press Release "Oposición conta-

biliza 15.000 heridos tras 63 días de protestas en Venezuela" ("Opposition accounts 15.000 injured after 63 days of protests in Venezuela"), by Diario Libre, 2017.

⁴¹ Note of the "Reporte sobre la represión en Venezuela durante manifestaciones, junio de 2017" ("Report about repression in Venezuela during demonstrations, June 2017"), by Foro Penal Venezolano.

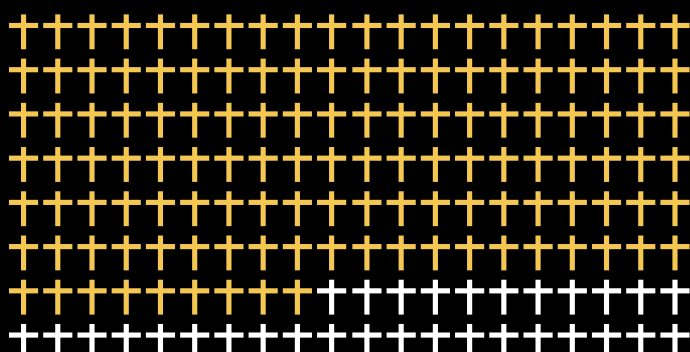
REPRESSION TO THE PROTESTS

[April, 4th to July, 31st, 2017]

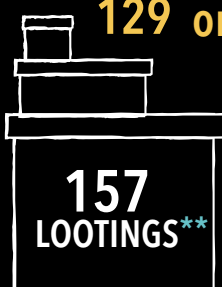


6.729 DEMONSTRATIONS

EQUIVALENT TO 56 DAILY PROTESTS *



++ 162 REGISTERED DECEASED
129 only by the Public Ministry **



157
LOOTINGS **

EXISTENCE
OF NUMEROUS
DENOUNCEMENTS
OF TORTURES, AND CRUEL,
INHUMAN OR DEGRADING
TREATMENT, SEXUAL ABUSE
ON THE PART OF PUBLIC
FUNCTIONARIES IN
THE CONTEXT OF ARBITRARY
DETENTIONS
TO DEMONSTRATORS

1.550
INJURED **



5.051 **
DETAINEES



523
PROTESTS *

PROTESTS WERE ARMED
GROUPS PARTICIPATED

609 civilians
presented
before military
courts ***

Activation of the Zamora Plan
I Phase - April, 18th, 2017
II Phase - May, 17th, 2017

"Strategic civic-military Plan
to maintain the public order"

* El Observatorio Venezolano de Conflictividad Social (OVCS).

** Third Report about Venezuela, by Luis Almagro (OAS).

*** Report of the OHCHR .

VII SHARPENING

OF THE POLITICAL PERSECUTION AND NEW PATTERNS OF PERSECUTION



In 2014 and 2015, **CEPAZ** in its continuous work of defense and promotion of human rights, published the reports: *"Persecución Política en Venezuela, Sistematización de patrones de persecución a la disidencia política venezolana"* ("Political Persecution in Venezuela, Systematization of Patterns of Persecution to Venezuelan Political Dissidents") and *"Persecución Política en Venezuela, Seguimiento e identificación de nuevos sujetos de persecución/ El disidente es el enemigo"* ("Political Persecution in Venezuela, Monitoring and Identifying of New Persecution Subjects / The Dissident is the Enemy"), respectively⁴².

During this period, it was possible to identify the main patterns of persecution repeatedly applied by government authorities, as well as the documentation of the judicial processes of the main political dissidents. The patterns of persecution identified by Cepaz are:

1. OPENING OF LEGAL PROCEEDINGS

2. PERSECUTION THROUGH THE MEDIA

3. REMOVAL FROM PUBLIC OFFICE OF DISSIDENT POLITICIANS (NOW DISMISSAL OF POSITIONS)

4. IRREGULAR SEARCHES OF PRIVATE PROPERTY

5. INFRINGEMENT OF PARLIAMENTARY IMMUNITY

6. POLITICAL DISQUALIFICATION

7. USURPATION OF PUBLIC FUNCTIONS

8. ACQUIESCENCE OF VIOLENT ACTS AGAINST POLITICAL LEADERS (NOW ACQUIESCENCE OF VIOLENT ACTS)

The situation of persecution and vexation on the part of the governmental apparatus, far from having diminished, has increased and deepened to date. The economic and social crisis, the scarcity of food, and the clear violation of the democratic principles that form the basis of the Rule of Law, have provoked an agenda of permanent protests by the opposition, with this, repression has evidenced a rise.

Below we present the new patterns observed in this process of aggravation of political persecution in Venezuela:

OPENING OF JUDICIAL PROCEEDINGS BEFORE MILITARY COURTS

As part of the political persecution of the Government led by President Nicolás Maduro, and with the evident intention of maneuvering the judgments of those who are part of the regime's dissidence, a systematic and

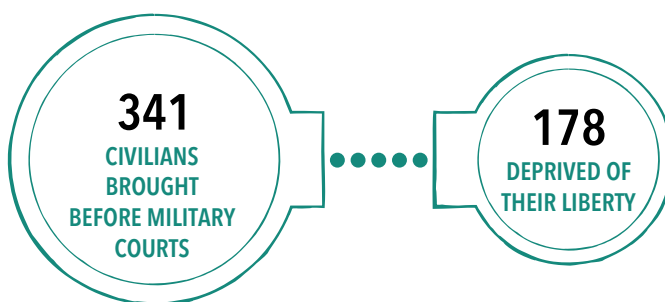
continuous pattern is evident in Venezuela, the opening of judicial proceedings before the Military Courts, which materializes a clear violation of the procedural principles contemplated in our Constitution, and in

the treaties and doctrine applicable in the matter of human rights.

During 2016 and 2017, military prosecution has been a continuing treatment of dissidents, who, under the mistaken assump-

⁴² Reports 2014 and 2015 can be found on: www.cepaz.org.ve

tion that dissent from government is a crime, have been subjected to misleading judicial processes. For that reason, human rights organizations, from April 1st to May 24th have accounted for at least 341 civilians brought before military courts and 178 are deprived of their liberty by order of military justice⁴³.



CANCELLATION OF PASSPORTS

A new pattern of persecution on the part of the National Government, which limits the constitutional rights of Venezuelan political dissidents, has been **the annulment of passports**, thus avoiding the departure of the country's political leaders and journalists, who on several occasions have sought to

travel outside the Republic to break the international silence and echo the political crisis.

The arbitrary annulment of passports to political leaders constitutes a clear violation of the human and civil rights established in our Constitution, in special laws, and in international treaties and

agreements.

During the end of 2016 and 2017, the humanitarian and institutional crisis in Venezuela has intensified. Consequently, as part of the protests, many political leaders have sought to meet with various international organizations, presidents, highly recognized per-

sons of the region, and international bodies. In this sense, as part of the systematic censorship plan of the President of the Republic, the cancellation of passports has become a usual practice.

OPENING OF PROCEEDINGS AND DISMISSAL OF MAYORS

The opening of procedures and the dismissal of mayors from office, became more acute in 2017, following the increase in protests that began in April of that year, Venezuelan judicial bodies decided under the acquiescence and the mandate of the governmental autho-

rities to initiate judicial proceedings against dissident mayors, and, as a result, the immediate dismissal of their office and deprivation of liberty, in addition to other measures such as the ban on leaving the country.

Since the year 2014,

at least **23 mayors have been dismissed**, through arbitrary and fraudulent judicial processes, for which the formalities and requirements stipulated in the Organic Law of Municipal Public Power have not been fulfilled⁴⁴.

⁴³ Vid. El Universal, Venezuela: NGO: Juicios militares a civiles violan Constitución y derechos humanos. (Military trials to civilians violate the Constitution and Human Rights) Available on: http://www.eluniversal.com/noticias/politica/ong-juicios-militares-civiles-violan-constitucion-derechos-humanos_654235 Consulted on August 19th, 2017.

⁴⁴ Vid. Runrun.esl, Venezuela: Gerardo Blyde: No tenemos miedo a la persecución, gobierno incumple ley al destituir alcaldes. (We are not afraid of persecution, the government infringes the law by dismissing mayors) Available on: <http://runrun.es/top5/321143/gerardo-blyde-no-tenemos-miedo-a-la-persecucion-gobierno-incumple-ley-al-destituir-alcaldes.html> Consulted on August 22nd, 2017.

VIII RUPTURE OF THE DEMOCRATIC INSTITUTIONALITY



The last sentences issued by the Constitutional Chamber of the SCJ, after its intended modification after being publicly ordered by the Executive, have been the clear and evidenced sample of the breach of the democratic and constitutional order in Venezuela, by those who are called to the defense and protection of institutions. So much so, that high officials related to the Government party, have publicly pronounced about the rupture of the constitutional thread, such is the case of the **Attorney General of the Republic**, who stated textually:

II

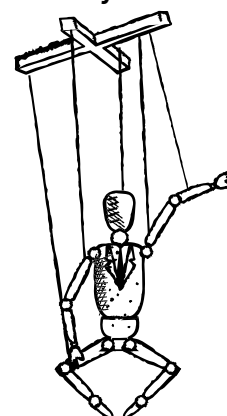
(...) the judgments of the Supreme Court of Justice constitute a rupture of the constitutional democratic order and a lack of knowledge of the model of state enshrined in our Constitution of the Bolivarian Republic of Venezuela".⁴⁵

Argument of this statement that lies in the substantive text that establishes criminal behavior as described in its article 132, referring to the destruction of the republican political form whose bases are enshrined in the National Constitution, which recognizes the different Public Powers to achieve

a balance of power and thus guarantee the individual freedoms of the country⁴⁶.

After this pronouncement, which recognized the existence of a serious crime against the Rule of Law by the magistrates that conformed the constitutional jurisdiction, an attempt

was made to initiate the merits proceedings against the authors of the recognized crime. However, given that the Venezuelan Government had the most powerful element in its favor, as it is the Constitutional Chamber itself, this request made by the head of the Public Ministry was not admitted.



Again, **the Attorney General** pronounced on the various protest mobilizations that had been carried out throughout the country, which had been marked by a seal of violence and repression by the police and military forces, stating:

II

"(...) It is a constitutional right to call for peaceful demonstrations and these should not endanger the physical integrity of the demonstrators. (...) those responsible for the State security agencies must guarantee the exercise of the right to demonstrate in a peaceful manner under a strict adherence to human rights. The mechanisms of negotiation must be drained before the use of force".⁴⁷

⁴⁵ Note of the Press Release "Fiscal denunció 'ruptura del orden constitucional' tras sentencias del TSJ" (General attorney denounced 'rupture of the constitutional order' after sentences of the SCJ), by el Universal, 2017.

⁴⁶ Note of the Constitution of the Bolivarian Republic of Venezuela, 1999.

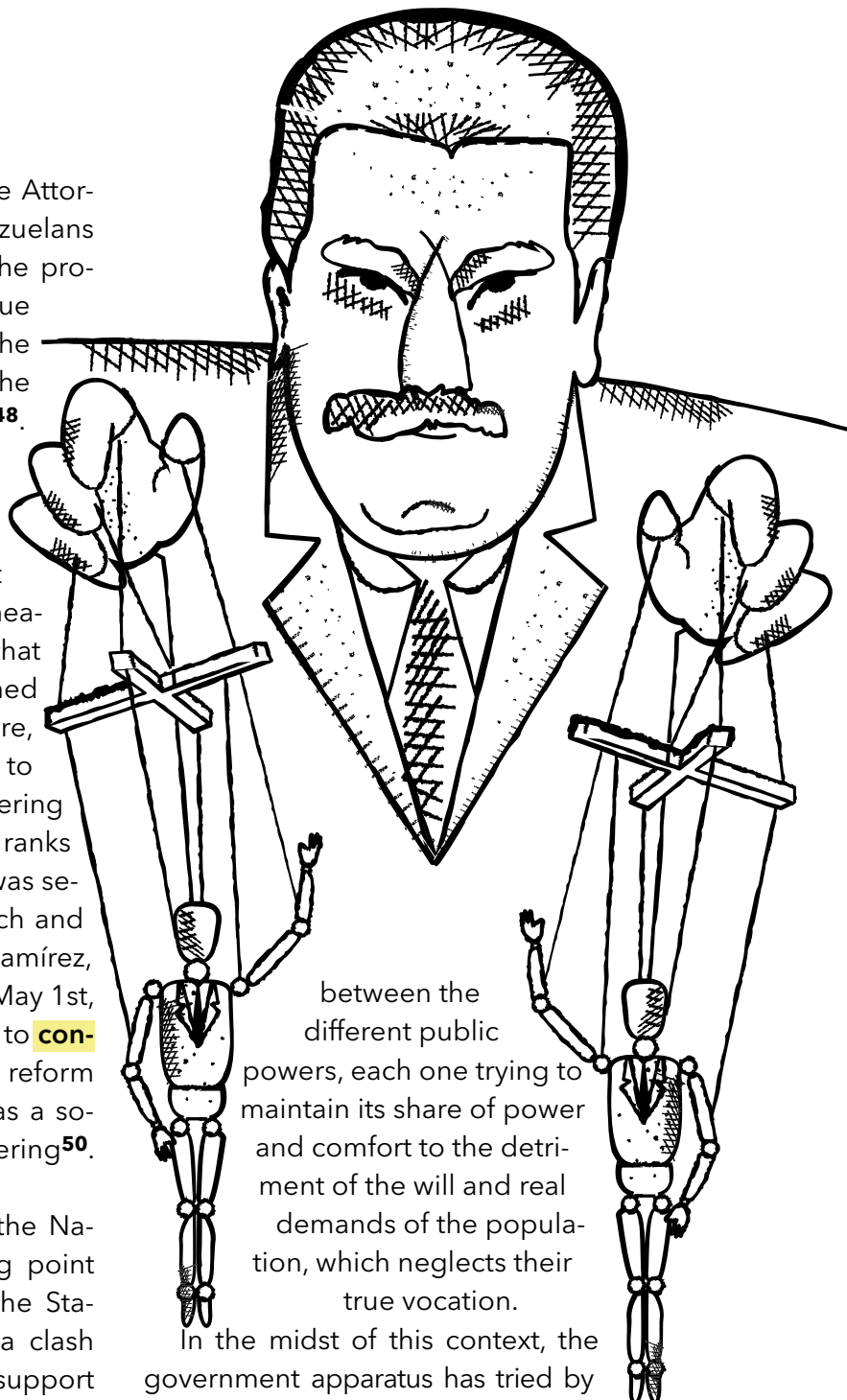
⁴⁷ Nota del artículo "Fiscal General llamo a garantizar el derecho a manifestar de manera pacífica" por el Universal, 2017.

Then, on **April 25th** of the current, the Attorney General lamented the deaths of Venezuelans and the arrests that took place during the protests. She emphasized the violation of due process, both by the security forces at the time of carrying out the arrests, and by the competent judges in endorsing the same⁴⁸.

Thus, these pronouncements represented the fissure within the internal unity of Chavismo, a unity that in the last year has been distorted by a series of measures taken by the National Executive that places in opposition the ideals enshrined during the Bolivarian process. It is here, where the Attorney General happened to be the government's greatest risk, triggering the most important implosion within the ranks of the national government party, which was seconded by deputies from the PSUV bench and former population defender Gabriela Ramírez, among others⁴⁹. Under this scenario, on May 1st, 2017, President Nicolás Maduro decided to **convene a National Constituent Assembly** to reform the State and draft a new Constitution, as a solution to the crisis that the country is suffering⁵⁰.

Nevertheless, this measure taken by the National Executive represented the turning point in the friction between the powers of the State, since from that moment there was a clash that triggered the total rupture of the support of the National Government to the Attorney General, who denounced the alleged illegitimacy of some magistrates of the Supreme Court of Justice and stated that the National Assembly is in full enjoyment of its powers.

At this point, it seemed that the democratic institutionality in Venezuela was relegated to a certain dialectic of masses rather than to the exercise of good government practices. At present, there is a climate of conflict and discredit



between the different public powers, each one trying to maintain its share of power and comfort to the detriment of the will and real demands of the population, which neglects their true vocation.

In the midst of this context, the government apparatus has tried by all means to discredit and to distort the procedures demonstrated by the Attorney General, to the point that a petition of impeachment made by the Parliamentarian linked to the government party Pedro Carreño was admitted to the highest judicial instance, under presumed serious faults in the exercise of her position. The foregoing constitutes a clear action contrary to the established in the domestic legal system of the country, since who has the power to request the impeachment process is the National Assembly, as the highest legislative body.

⁴⁸ Nota del artículo "Nueve puntos del pronunciamiento de Ortega Díaz que sorprendieron al país" por el Nacional, 2017. ⁴⁹ Nota del artículo de CEPAZ "Conozca las voces disidentes de la Asamblea Nacional Constituyente". Véase: <https://cepaz.org.ve/noticias/conozca-las-vozes-disidentes-de-la-asamblea-nacional-constituyente/>

⁴⁹ Note of the article of CEPAZ "Conozca las voces disidentes de la Asamblea Nacional Constituyente". See: <https://cepaz.org.ve/noticias/conozca-las-vozes-disidentes-de-la-asamblea-nacional-constituyente/>

⁵⁰ Nota del artículo "Qué es y qué significa la Asamblea Nacional Constituyente que convocó el presidente Nicolás Maduro en Venezuela" por la BBC Mundo, 2017.

This new form of political persecution offers a special panorama about the state of democratic institutions. The present time offers clear and precise data that rationally allow to infer that the actions of the Moral Council of the Republic are devoid of the voice and the vote of the Prosecutor. Thus, to aggravate this issue, this body of expression of the People's Power is being guided by the Executive, and, in addition, it executes its functions through the design of the Legislative Power.

In response, the Office of the United Nations High Commissioner for Human Rights noted its concern over the decision of the SCJ and recognized the Attorney General for her attempts to defend human rights, documenting the deaths, insisting on due process and the importance of separation of powers, and calling for the immediate release of people who have been arbitrarily detained. Similarly, he stated: **"The dismissal of judicial authorities should be done under strict criteria that do not**

affect independence or impartiality in the performance of their duties."⁵¹

In sum, the position taken by the Attorney General of the Republic against actions contrary to the democratic order, evidenced the desire to silence the dissenting voice by the Executive, Judicial, and Electoral Powers. The above proposals threaten the democratic principles and values enshrined in the Constitutional text and the rest of the national legal system, without leaving aside the international rules subscri-

bed by the Republic. This situation, far from offering solutions to the political conflict that the country experiences, accentuates and complicates the problem, which generates mistrust and confusion on the population in regards to its institutions.

IX PRONOUNCEMENTS OF THE INTERNATIONAL COMMUNITY



The suspension of the recall referendum process against President Maduro, the indefinite postponement of regional elections, the issuance of sentences **N° 155** and **156** by the Constitutional Chamber, led to a series of massive anti-government demonstrations, and the government's repressive

action against them generated a lamentable balance of dead, wounded, affected in their physical integrity, violations of private property, arbitrarily detained and tortured. The situation is exacerbated by the call made by President Maduro to hold a National Constituent Assembly, without the endorsement of a con-

sultative referendum.

These facts have caused the international community to speak out through its different spaces, highlighting the antidemocratic nature of the Venezuelan Government, which has tried to persuade the actors of the conflict to activate the appropriate mechanisms that

allow a frank and sincere dialogue to make possible the restoration of the constitutional thread and a peaceful exit of the political power of the national President. In this regard, it is necessary to state the criteria of the following international organizations:

⁵¹ Note of the "Press Briefing note on Iraq, Al Jazeera, Venezuela and Guatemala", Portavoz del Alto Comisionado de DD.HH, 2017.

ORGANIZATION OF AMERICAN STATES (OAS)



The **OAS** Permanent Council, pursuant to Article 20 of the Inter-American Democratic Charter, has sought to obtain the 24 minimum votes of its members for the application of the Democratic Charter against the regime of President Maduro, in connection with the evident transgression of the political, economic, and civil rights of Venezuelans, since these are violated by the actions of the Venezuelan Government. The seven meetings held in 2016 and the six held during the first semester of 2017 have served as spaces to present and denounce the situation of Venezuelans, in this regard, it should be noted that the conflict and democratic crisis in Venezuela have been gaining prominence, for that reason, it has been insisted that the subject is approached, in order to find a solution⁵².

COMMON MARKET OF THE SOUTH (MERCOSUR)



After **111 days of protests in Venezuela**, Mercosur expressed its concern about the political, social, and humanitarian crisis facing the country, which is why it has urged the Venezuelan Government to restore constitutional order; likewise, asked it to desist from his convocation to an NCA.

In view of the neglect of the national Government, Venezuela has been temporarily suspended because it is considered that the country experiences **"a rupture of the constitutional thread"**. In this sense, it was stressed that Venezuela was suspended since December due to non-compliance with the commercial obligations committed to assume in 2012, when it joined the block⁵⁴.

THE UNION OF SOUTH AMERICAN NATIONS (UNASUR)



This organization, regarding the Additional Protocol to the Constitutive Treaty on the Commitment to Democracy, expressed its concern about the situation in Venezuela, following the Supreme Court's judgments that seek to affect the jurisdiction of the National Assembly and the democratic order of the country. For these reasons, they urged to stop the NCA process in order to redirect Venezuela.

"through the path of the democracy, the freedom, its Constitution, the separation of powers, the opening of the humanitarian channel, full adherence to justice, and unrestricted respect for human rights"⁵³.

HUMAN RIGHTS COUNCIL AND THE OFFICE OF THE UNITED NATIONS HIGH COMMISSIONER FOR HUMAN RIGHTS



This UNO body has manifested itself on several occasions, urging the Government of President Maduro to accept the request of its Office to send a work mission to Venezuela, as crisis shows the **"urgent need"** for an **"impartial analysis"**, which warrants immediate assistance⁵⁵.

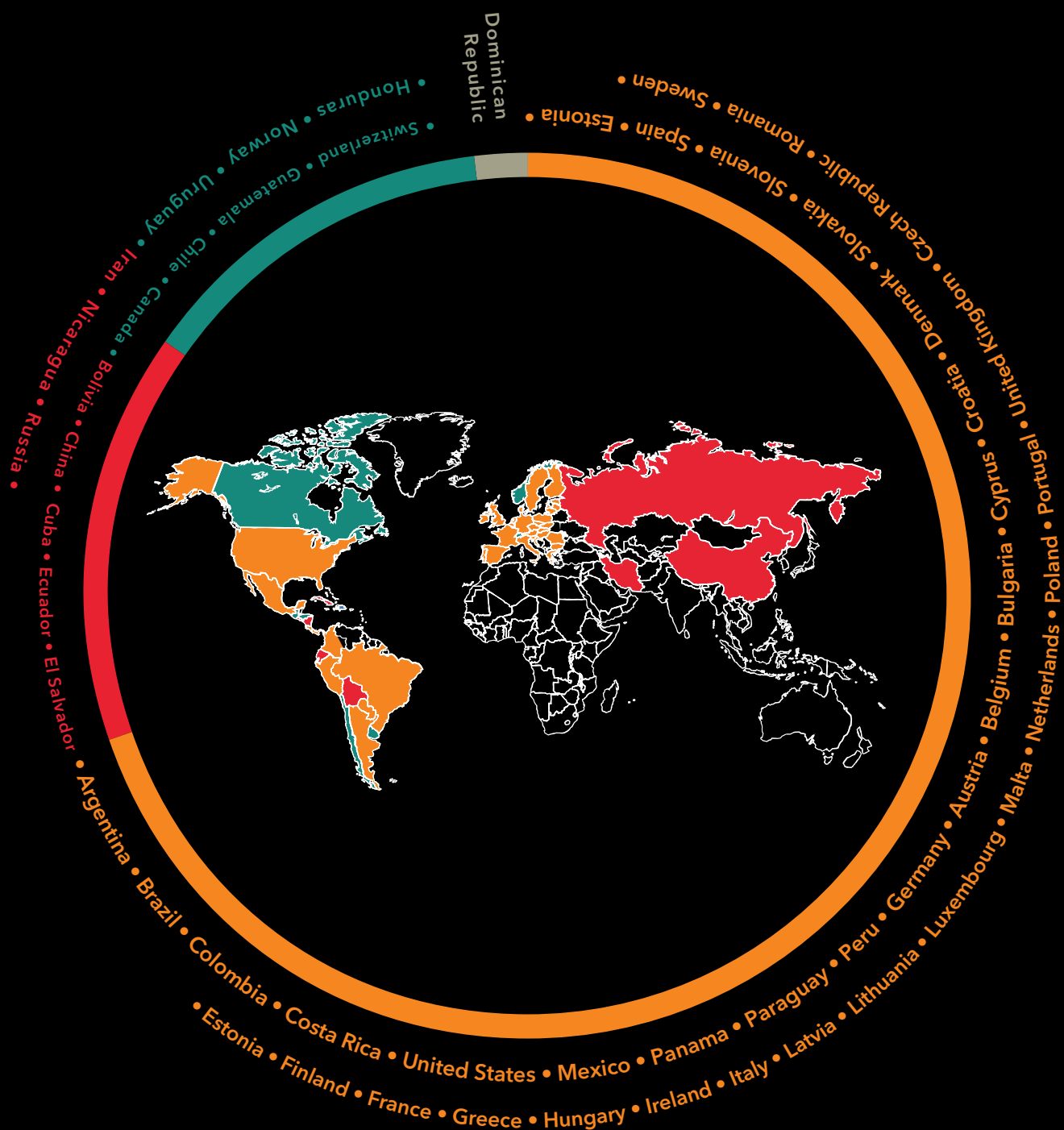
⁵² Note of the Press Release of the OAS, 2017

⁵³ Note of the Press Release of the Unasur, 2017.

⁵⁴ Note of the Press Release of the Mercosur, 2017.

⁵⁵ Note of the Press Release of the OHCHR, 2017.

ANC: PRONOUNCEMENTS OF THE INTERNATIONAL COMMUNITY



53 STATES

**HAVE DECLARED
THEIR POSITION**

37

**DO NOT
ACKNOWLEDGE
IT**

8

SUPPORT IT

7

REJECT IT

1

**DOES NOT
ESTABLISH
ITS POSITION**

X NATIONAL CONSTITUENT ASSEMBLY

Amid a context of institutional and social conflict, President Nicolás Maduro convened a **National Constituent Assembly on May 1st**, asserting this measure as:

“the only way to summon the full sovereignty of the people and lay the foundations of the regeneration of the peace of the Republic”⁵⁶.

The first purpose stated in his decree of convocation is the armor of the conquests of the Bolivarian Revolution, as he expressed it: **“the defense of the sacred rights and social achievements conquered, and that during my rule I have struggled to sustain and deepen”**⁵⁷.

This call takes place **18 years** after the one made by the late President **Hugo Rafael Chávez Frías**. It is important to note that these two processes respond to completely different realities, for example, the constitutional process of 1999 seemed to respond to the political force maintained by President Chavez, it is also important to note that the opposition regime to the National Government lacked strength and political scope; likewise, the economic situation of the country showed a certain normality, because the productive apparatus remained operative. For its part, the constituent process of 2017 does not respond to

concrete realities, on the contrary, obeys a logic that is oriented to **the maintenance of political power** in the face of failure of economic measures and lack of governance.

It is convenient to emphasize the hasty fall of popularity of the current president, who undoubtedly remained under the prevailing image of the late President Chávez. During Chávez's rule, he achieved high popularity, especially among the lower classes, who identified and connected emotionally with the president. Many others supported him by having left-wing ideology, and others more to benefit during the gover-

ment. At the present time, President **Nicolás Maduro** has not been able to maintain the leadership achieved by his predecessor, on the contrary, the measures taken by the National Executive have generated fissures among its members, leading to a proliferation of dissident pronouncements on the presidential initiative to convene, install, and hold an NCA.

In this vein, and under the strong leadership assumed by former President Chavez in 1999, reform of the constitution was carried out through NCA, however, it is important to note that the same, as this one, started from fraudu-

⁵⁶ Nota of the Press Release “6 preguntas para entender el proceso de elección de la Asamblea Constituyente en Venezuela y sus posibles consecuencias” (6 questions to understand the election process of the NCA in Venezuela. And its possible consequences), by BBC Mundo, 2017.

⁵⁷ Note of the Extraordinary Official Gazette N° 6.295, the Decree of the NCA N° 2.830, 2017.

lent assumptions, in view of the fact that the NCA did not represent a mechanism for replacing the 1961 Constitution, since pursuant to articles 245 to 248, it only allowed two formal ways for its amendment: the first based on the amendment, which only specific changes were allowed that would not alter the fundamental structure of the Constitution, and a second one under the figure of the reform, which are only modifications that imply a significant alteration of the same⁵⁸.

Consequently, from a constitutional point of view, a constitution-

nal process could not be convened under **the 1961 Constitution**, unless it was amended. However, from the ambiguity of two judgments issued by the Supreme Court of Justice⁵⁹, part of the public opinion understood that an NCA could be convened as a valid instrument for the replacement of the 1961 Constitution.

For its part, the constitutional process promoted by the current Government is also immersed in actions that are separated from the constitutional principles, since, despite the 1999 Constitution enshrines that

the convocation to the NCA corresponds to the people⁶⁰, President Maduro made an interpretation of the Constitution in which he made the call, and the NCA was established through Decree N° 2,830 on May 1st, 2017.

Likewise, this fraud was continued through **Decree N° 2.878**, Official Gazette N° 41,156 of May 23rd, 2017, by means of which the electoral basis of the NCA was established. In this instrument the foundations for the election of the members of the NCA were proposed through two aspects: **sectoral and territorial**.

This violates the principle of :

"one elector, one vote"

since the electoral basis presupposes the overrepresentation of those municipalities in which the ruling party has historically won a better vote⁶¹.

Given this scenario, we can observe the difference in performance and pronouncements by the CNE in relation to the request for the activation of the Presidential Revocation Referendum, the regio-

nal and municipal elections, and the process of legalization of political parties.

In this way, the electoral body established that organizing the recall would require more

than 300 days while executing the proposal of the National Constituent Assembly would take only 60 days, a significant difference, being a much more complex election than a referendum. This fact

evidenced the partiality of the Electoral Power, with which its credibility once again was compromised⁶².

⁵⁸ Note of the Constitution of the Bolivarian Republic of Venezuela, 1961.

⁵⁹ Note of the sentences of the Supreme Court of Justice of January 19th, 1999.

⁶⁰ Note of Article 347 of the Constitution of the Bolivarian Republic of Venezuela, 1999.

⁶¹ Note of the Decree N° 2.878, 2017.

⁶² Note of the Press Release "CNE confirmó fecha para elección de Asamblea Nacional Constituyente" (NEC confirmed a date to elect the NCA), by El Nacional, 2017.

However, this would not be the only public power that has acted in rescue of the interests of the National Government, since, before the existing debate on the referred articles 347, 348 and 349 of the Constitution, confusing *"initiative"* with *"the call of a National Constituent Assembly"*, or when conferring a sectoral and territorial nature to the electoral basis delivered to the NEC, the Constitutional Chamber pronounced in relation to the *"convocation"* made by the

National Government.

In that sense, the Constitutional Chamber did not consider it necessary to consult the population, holder of the constituent power, about the NCA's call according to established in decision **N° 378**, in this way the court closed any institutional mechanism to stop this proposal⁶³.

Likewise, the Constitutional Chamber ratified that the right to suffrage can be replaced by election mechanisms through *"participation"*, framed in the

instances of People's Power. In this way, fundamental political rights such as voting and to stand for elections through free, direct, secret, and universal voting are violated⁶⁴.

Despite this scenario, the citizens rejected the fraudulent constituent in the consultation of July 16th, and the multiple international calls to rectify and suspend this process, on **July 30th** of the current year the election was held to appoint the

members of the NCA, raising concerns about the lack of transparency of this process, given that the Government did not invite international organizations specialized in election observation, and did not allow journalists to approach the polling stations⁶⁵.

The CNE announced that more than 8,000,000 people voted to elect the 545 members,

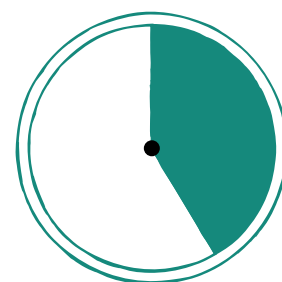
while the Public Ministry recorded a total of 10 murders in the context of anti-government demonstrations⁶⁶.

Thus, two days after the publication of the results of the election of NCA members by the highest electoral body, Smartmatic, the company in charge of the electronic voting system that was used in the NCA elections, de-

nounced that *"there was manipulation of the participation data"*⁶⁷. In this regard, it is noted that this company has been the provider of the technological platform for voting and services for the elections in Venezuela since 2004.

In response to what was previously stated, the NEC's President, **Tibisay Lucena**, dismissed the report as *"irresponsible"* and *"baseless"*, while defending the figures reported on Sunday: a **41.53%** share with **8,000,000** Vene-

zuelans at the polls⁶⁸.



⁶³ Note of the Sentence N°378 of the Constitutional Chamber of the Supreme Court of Justice, 2017.

⁶⁴ Note of the Sentence N°378 of the Constitutional Chamber of the Supreme Court of Justice, 2017.

⁶⁵ Note of the Press Release "Almagro insistió en que la ANC violará derechos de los venezolanos" (Almagro insisted that the NCA will violate the rights of Venezuelans), by El Nacional, 2017.

⁶⁶ Note of the Press Release "El día de la elección de la Constituyente: resultados, reacciones y amenazas" (The day of the constituent election: results, reactions, and threats), by Prodavinci, 2017.

⁶⁷ Note of the Press Release "Smartmatic, la empresa a cargo del sistema de votación en Venezuela, denuncia "manipulación" en la elección de la Constituyente y el CNE lo niega", by BBC Mundo, 2017.

⁶⁸ Ídem.

After the controversial elections, the opposition and the international community refused to acknowledge the results and rejected them. **On August 4th the formal establishment of the NCA takes place** with the election of the Board of Directors under the presidency of the former Foreign Minister of the Republic, **Delcy Rodríguez**, while that the former executive vice-president **Aristóbulo Istúriz** was chosen for the first vice-presidency and, for the second, former general prosecutor **Isaías Rodríguez**⁶⁹.

On the day after its installation, the Constituent Assembly began its functions from the Elliptical Hall of the Federal Legislative Palace, dictating a series of measures that throughout its convocation several members of the pro-government party had said.

First, the judgment of the Supreme Court of Justice that approved the merits preliminary ruling against Ortega Díaz was read, reason why, it was resolved to suspend her of the position and to disqualify her from exercising any public position during the process. The ruling also reiterated the ban on leaving the country, freezing all its bank accounts and disposing of all its assets⁷⁰. **This led to the dismissal of the Attorney General of the Republic, Luisa Ortega**, on the grounds of her alleged *"inactivity manifest according to the criminal indexes and conclusive acts minimal accusations as stated in the Report and Account of this institution in the last 10 years"*. **Tarek William Saab**, the Ombudsman, took the place of the Attorney General as head of the Public Ministry on a provisional basis, declaring the emergency and restructuring of the criminal body⁷¹.

Secondly, it was proposed **to change the period of operation of the NCA from six months to two years**, considering that it is not enough time for them to carry out the necessary work, which was approved unanimously⁷².

The other measure taken by the Constituent Assembly is **the approval of the law that will give life to a Commission of Truth**⁷³, in order to determine responsibilities over the events of political violence since 1999. However, this commission was created by President **Nicolás Maduro** to provide justice to victims of violence promoted by sectors of the Venezuelan opposition since April, 2017.

In the same way, the constituents approved a decree of coexistence of the Public Powers that sets the guidelines for the five constituted powers that make up the Venezuelan State. The president of the ANC indicated that according to article 349 of the Constitution of 1999, the constituted powers can in no way impede the decisions of the NCA. Therefore, all the organs of the Public Power are subordinated, therefore, obliged to comply and to enforce the legal acts and other decisions that it takes. Thus, we have: **"The constituted power is subordinated to this National Constituent Assembly. This is a decree that reflects the goodwill of this Assembly which has a very clear message of cordiality, coexistence, and understanding among Venezuelans."**⁷⁴

From the above, it is evident that the NCA is **the last thrust to Venezuelan democracy**, because its mere conception as a mechanism for the unilateral taking of decisions by a sector of society is contrary to the spirit and conception of the National Assembly and any system of citizen participation. This being so, the NCA is the representation of the constitutionalization of a socialist military dictatorship, for such reasons, this illegitimate body maintains its perspective of modifying the Constitutional Text, in order to consolidate its political hegemony and to deepen all the actions that in the last years have annihilated to the democracy.

⁶⁹ Note of the Press Release "Delcy Rodríguez fue electa como presidenta de la Asamblea Nacional Constituyente", by Globovisión, 2017.

⁷⁰ Note of the Sentence of the Constitutional Chamber of the Supreme Court of Justice, 2017.

⁷¹ Note of the Official Gazette N° 6.322 of the Constituent Decree on the restructuring of the Public Ministry, 2017.

⁷² Note of the Press Release "ANC destituye."

⁷³ Note of the Law for the Commission of Truth, Justice, and Peace, 2017.

⁷⁴ Note of the Press Release "Venezuela aprueba ley de Comisión de la Verdad, Justicia y Paz", by Telesur, 2017.

1 MONTH SINCE THE NCA: 10 KEY DECISIONS

1

DESIGNATION

of the President
of the Commission
of Truth, Justice,
and Peace (Delcy
Rodríguez)



2

REMOVAL

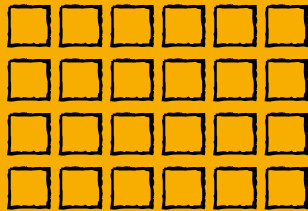
of the Attorney
General of the Republic,
Luisa Ortega Díaz



3

EXTENSION

of the functioning
term of the NCA
up to 2 years



4

PROVISIONAL

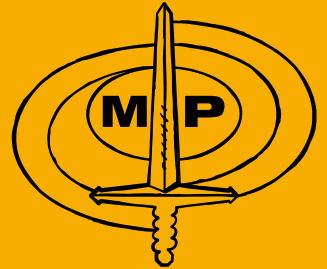
designation of Tarek
William Saab as the
Attorney General



5

APPROVAL

of the declaration
of emergency and
organization of the
Public Ministry



6

DESIGNATION

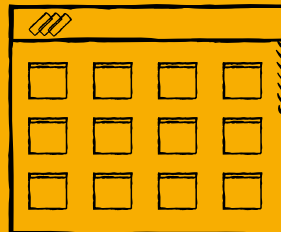
as Ombudsman
to Alfredo Ruíz



7

APPROVAL

of the electoral schedule
for governors



8

APPROVAL

of the
Constituent
Decree that takes
the power
of the
NA



ANC

>



AN

9

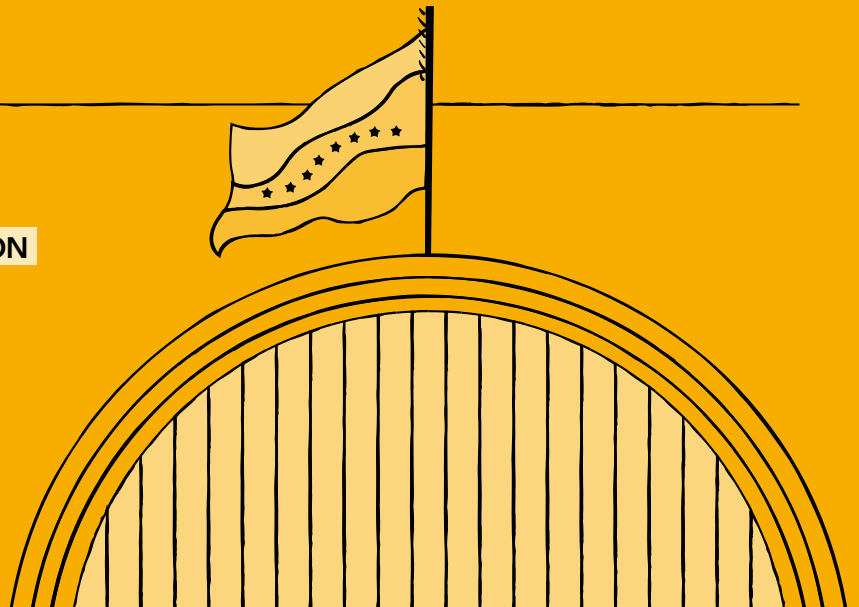
APPROVAL

of the
Constitutional
Law Against
Hate, Intolerance,
and for the
Peaceful
Coexistence

10

CONFORMATION

of the 21
Commissions
of the NCA



XI CONCLUSIONS

The alteration of the constitutional order and the violation of democratic principles has suffered a significant setback in recent years; however, the crisis has intensified during the last ten months, regarding the spiral of chaos, institutional violence, and complete helplessness to fundamental rights of the population.

The presentation of this report was aimed at presenting the most relevant events that have taken place during the presidential term of the current national leader, and how his actions have been aimed at maintaining political power above what is established in the national and international legal order, as well as popular will and expression, without neglecting the calls of attention of the international community. In this sense, a series of actions have taken place in which **the human rights of the population have been deliberately and systematically violated.**

Likewise, it has been established that the lack of autonomy and separation of public powers has been a constant logic that has eliminated any vestige of public trust, regarding the institutional order. Therefore, this fact presents a context in which subjection to the Rule of Law is derisory. Not surprisingly, Venezuela is recognized as a **Failed State.**

All these maneuvers and political stratagems radiate a bad example of the country to the rest of the members of the global village, while pushing Venezuela back to that **Hobbesian hypothetical state**, in which all are against all. Therefore, we indicate that the democratic order is in emergency, hence, it requires the accompaniment and strong positioning of other actors in the in-

ternational community to help **restore the constitutional order and reconstruct the democratic system**, in order to generate the conditions that would make possible the peaceful departure of the national President, the renewal of the bodies that make up the public powers, and the celebration of free and transparent elections.

However, due to the absence of certainty, the total absence of guarantees, and the loss of confidence of the citizens in the authorities that lead the State, it is imperative that all measures of persecution and punishment of political dissidence be stopped. Likewise, it is necessary to demand investigations, answers, and accountability in the case of reports of torture, injuries, disappearances, and deaths caused by the institutional violence of the Venezuelan State. Also, it is desirable to limit the actions of the NCA, since it is an element lacking in all democratic legitimacy and functionality.

ACRONYMS

GCR	General Comptroller of the Republic
GNB	National Bolivarian Guard
ICCPR	International Covenant on Civil and Political Rights
MERCOSUR	Common Market of the South
MUD	Mesa de la Unidad Democrática / Democratic Unity Roundtable
NA	National Assembly
NBAF	National Bolivarian Armed Forces
NCA	National Constituent Assembly
NEC	National Electoral Council
NGO	Non-Governmental Organization
OAS	Organization of American States
OHCHR	Office of the High Commissioner for Human Rights
PRR	Presidential Revocation Referendum
SCJ	Supreme Court of Justice
UNO	United Nations Organization
UNASUR	Union of South American Nations