

## VENEZUELA: 17 YEARS DISREGARDING THE CONSTITUTION. WHAT TO EXPECT?

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Since its enactment in 1999, the Venezuelan Constitution has been openly violated in all of its three components, the Political, the Social and the Economic one, which have not been really enforced.

I have been asked to talk about these 17 years of disregard for the Constitution, but of course I won't be able to refer this evening to all its three components. Rather I will refer only to the breaches against the Political Constitution; the one that purported to create the "Democratic and social Federal Rule of Law and justice State," (*Estado democrático y social de derecho y de justicia, Federal y descentralizado*) – as the Constitution says - which contrary to this wording has not been structured in the country

Nonetheless, regarding the breach of the Social and Economic Constitutions, I think it is for now enough in order to realize the situation, only to remember the headlines of one story published last year by *The Washington Post* under the suggestive title "There has never been a country that should have been so rich but ended up this poor."<sup>1</sup>

The article reported on the terrible situation of the country after more than fifteen years of the allegedly "pretty revolution" that intended to implant in Venezuela the so-called "21<sup>st</sup> Century Socialism," which eventually turned the country into the current "failed-State", "narco-State" or "gangster-State," that ended under the hands of a group of military and civilians blindly following orders from a foreign government, namely Cuban.

From the economic and social standpoint, the truth is that nowadays it is no longer possible to continue hiding the terrible situation of the country behind the official propaganda and its supporting Lobbies, being the country globally ranked – as it is - "with the world's worst economic growth and worst inflation rates,"<sup>2</sup> the highest currency devaluation, and holding the world record of first place in misery.<sup>3</sup>

This has been the "miracle" that the Venezuelan authoritarian regime has achieved<sup>4</sup> converting in just a few years the wealthiest country in Latin America into a "factory of poor people,"<sup>5</sup> led – as stated in the article - by an

“inept State, kidnapped by a governing elite of corrupt bureaucracy that denies all constitutional social and economic rights, and manipulates the ignorance and poverty of the less favored social classes.”<sup>6</sup> The article of *The Washington Post* ended by noting how the country with “the world’s largest oil reserves” is now in “total economic and social collapse,” noting that in order to understand it, there is no need to seek for any mysterious explanation or to blame any Empire for that. It has been a “man-made disaster,” the consequence of “a destructive government policy,” expressly designed and deployed for this purpose by the late President Hugo Chavez, and by who currently is in charge of the presidency, Nicolas Maduro.<sup>7</sup>

That situation has been summarized last week, by Luis Almagro Secretary General of the Organization of the American States, in the Oslo Freedom Forum, where he expressed with regrets, that today – I quote -:

“[Venezuela] suffers under the worst government in its history. It has destroyed the country’s institutions, destroyed the economy and taken away the rights of the people.

A humanitarian tragedy is taking place before our very eyes. There is no food in the stores and the government watches as its citizens starve.

The country’s public health care system has collapsed. There are no medicines and patients have to bring whatever supplies they might need with them for treatment – if they can even find or afford them on the black market.

The GDP is in a free fall. Inflation is predicted to reach 1600% next year. The currency is worthless and more than three quarters of Venezuelans are living in poverty.

Violent crime has sky-rocketed, as Venezuela now has one of the highest homicide rates in the world. Its leaders are engaged in International drug trafficking and steal billions of dollars from state accounts instead of buying food to feed the starving population.”

Finally he added:

“As we are talking in comfort and safety [like now], people are dying. Venezuelans -men, women, children, even infants- are starving, they are dying without medical care – they are being killed in the streets by security forces.”<sup>8</sup>

But as I mentioned, my purpose this evening is to refer to the systematic disregarding of the Political Constitution since its approval 17 years ago, the consequence of which has been the total collapse of all the institutions, due to the destruction of the foundations of the rule of law and justice State, in

particular, the demolition of the system of separation of powers and of mutual control among them that was to be the main support of the rule of law State.

These principles were expressly included in the 1999 Constitution,<sup>9</sup> which I must remember, was enacted by an ill-formed and worse structured National Constituent Assembly,<sup>10</sup> being this the remote origin of all the subsequent collapse of the State and of the disregarding of the Constitution.

I was part of such Constituent Assembly as an independent elected member, forming with other three members the very meagre opposition in an Assembly of 131 members that was entirely controlled by the followers of then President Hugo Chavez. So I know, first hand, what was included in the Constitution, and I also know what are the promises it contained that have been ignored disregarding the Constitution.

The fact is that the general balance today, in my opinion, is that the 1999 Constitution can be considered as one of the most vivid example in contemporary constitutionalism, of a Constitution that has been violated and infringed since even before it was published. This is the only explanation in order to understand why the Federal State has been transformed into a centralized system of power; the separation between five - not three – five branches of government has been erased and substituted by a political system of total concentration of power; the principle of representativeness has been neglected; the political participation has been denied and ignored; and the economic liberty has been engulfed by an extreme statization of all activities and a State capitalism.<sup>11</sup>

In fact, the only aspects of the Constitution that have been enforced have been the authoritarian ones, which were inserted within the flowery text of its articles. Those authoritarian elements were precisely the ones that led me in December 1999 to promote the “NO Vote” in the referendum for the approval of the Constitution, expressing at that time – 17 years ago - , that “the *political Constitution* inserted in the draft of the proposed Constitution”:

“reveals an institutional scheme for authoritarianism that results from a combination of State centralism, exacerbated presidentialism, participacy and militarism, which are the central elements designed in order to organize the Power of the State.”<sup>12</sup>

Those authoritarian grafts began to be applied even before the Constitution was officially published, one week after its popular approval,<sup>13</sup> when it began to be outrageously disregarded by the Chávez regime, the same Constituent Assembly being the instrument for such purposes, even though its mandate was already over. That Assembly, in effect, enacted a decree containing a “Transitory Constitutional Regime” that was not approved by the people,

through which it gave rise to another “parallel” constitution that was in force for more than fifteen years. Contrary to what was promised in the text approved by the people, this parallel transitory constitution assured that the one approved would never be completely enforced. That is why I then – in 2000 - characterized such acts as ones configuring a “constituent coup d’État.”<sup>14</sup>

In any case, that was the origin of a constitutional regime that ultimately was established in order to not be observed, institutionally configured as a great lie, particularly regarding the establishment of a representative and participative democratic political system, which never occurred; the establishment of a democratic rule of law and justice State, which never took place; and the consolidation of a federal decentralized State, which, to the contrary, was abandoned. The same occurred with the establishment of a social State, which did not go beyond a vain illusion for propaganda purposes, eventually acquiring the distorted image of a populist State, to finally impoverish and make all the people dependent upon a giant and inefficient bureaucracy conducted by a corrupt oligarchy that has only ensured that the entire population, not only those with fewer resources, bear the same scarcity and dearth.<sup>15</sup>

Therefore, from a political standpoint, the wording of the Constitution was only a mask for establishing a Totalitarian State of total concentration and centralization of power, disguised behind the slogan of being a “participatory protagonist democracy,” ensuring that none of the essential components and core elements of democracy would be enforced.<sup>16</sup>

The first and foremost pillar expressed in the Constitution that was disdained from the outset, was the basic principle of the separation and independence of public branches of government, without which there is no rule of law or democracy possible, nor any possible control upon the exercise of power, in particular the one that only can be in the hands of an autonomous and independent Justice.<sup>17</sup>

In Venezuela, contrary to the promises contained in the Constitution, the State that was established is one in which all power has been concentrated in the hands of the Executive branch of government and to which all other branches are subjected, particularly, the Supreme Tribunal of Justice and the Electoral Authority, and until January 2016, also the National Assembly.

The regime became so used to exercising absolute control of power, that after a new National Assembly was elected in December 2015, in which the opposition controlled the vast majority of votes, the authoritarian government began to gradually strip the people’s representatives of all their competencies

and functions, thanks to an all evil collusion between the Executive Branch and the Supreme Tribunal of Justice.

This process began a few days after the parliamentary election in December 2015, when the former National Assembly, that was ending its mandate, enacted in only two days more than 30 statutes directed to taking away competencies from the new Assembly that a few days later was to begin its functions. The same old Assembly, against the provisions of the Constitution, also proceeded to appoint new Supreme Tribunal justices packing it entirely with members of the governing party.

With such new integration, that Supreme Tribunal, almost always at the request of the same Executive Branch or of the governing party, began to take away all the powers and functions of the National Assembly, issuing for such purpose since January 2016, more that forty decisions.<sup>18</sup>

The result has been that the Constitutional Chamber of the Supreme Tribunal, acting as constitutional judge, has dismantled the Legislative branch of government, for which purpose it successively has declared the unconstitutionality of practically all – yes, all – the statutes that have been enacted by the National Assembly. The Tribunal has even reformed, although not being the Legislator, the internal Rules of Procedure and Debates of the Assembly in order to subject the exercise of its legislative functions to the prior approval by the Executive Branch. The Supreme Tribunal has also eliminated the Assembly's political power of controlling the government and the Public Administration, and has imposed for instance, the prior approval by the Executive Vice-President for a Minister to be questioned by the Assembly, only being allowed to pose questions in writing. Additionally, the Tribunal has eliminated the possibility for the Assembly to disapprove the states of emergency that may be decreed, an extraordinary situation in which the country has been for the past year and a half, within which the President has authorized himself to restrict constitutional guaranties without parliamentary control.

The Tribunal has also eliminated the possibility for the National Assembly to approve votes of non-confidence against Ministers, and has even resolved that the President should submit its Annual State of the Nation, not before the National Assembly as provided in the Constitution, but before the Constitutional Chamber of the Supreme Tribunal itself. That Chamber has even eliminated the legislative participation in the approval of the national budget, thus turning the Budget Law into a mere and unconstitutional executive decree to be submitted by the President of the Republic not before

the National Assembly, but before the same Constitutional Chamber of the Supreme Tribunal.

The same Chamber of the Tribunal has further eliminated the National Assembly's power as a decision-making body to express any sort of political opinion as a result of its debates, having annulled all the major political Resolutions and Declarations that it has adopted. The Chamber has also eliminated the Assembly's power to review its own decisions and repeal them, as was the case regarding the unconstitutional appointment of the justices of the Supreme Tribunal made in December 2015. Finally, the Constitutional Chamber has completely eliminated the Assembly's power to legislate within the frame of the already mentioned unconstitutional and permanent state of emergency that has been renewed every three months with no parliamentary control, and only by the approval of the Constitutional Chamber.<sup>19</sup>

That is, the Legislative Branch represented by the National Assembly that gained autonomy after the December 2015 parliamentary elections, has been totally neutralized and stripped of its powers and functions, to the extent that a recent decision of January this year, based on an alleged defiance of a decision of the Electoral Chamber of the same Tribunal (issued a few days before for the precautionary suspension of the proclamation of four representatives who had been already proclaimed), it decreed the definitive *de facto* suspension of the National Assembly in the exercising of its constitutional functions as the body of representatives elected by the people. For this purpose, the same Constitutional Chamber (through Decision No. 2 of January 11, 2017),<sup>20</sup> annulled the act of installation of the Assembly for its second annual term, resolving that:

“Any action by the National Assembly and any other body or individual against this decision will be null and void, without impairment to the liabilities that may arise therefrom.”

This decision was confirmed through other decisions of the Constitutional Chamber also of January 2017 (No. 3 of January 11, 2017,<sup>21</sup> and No. 7 of January 26, 2017), in one of which it definitively deprived the people of its most essential right in a Rule of Law State, which is the right to exercise its sovereignty through its representatives. For such purpose, the Chamber simply declared all past and future actions of the National Assembly as absolutely null and void, leaving even open the possibility for the eventual prosecution of the representatives for contempt, adding to it, the threat to revoke their popular mandate and to imprison them.<sup>22</sup>

If we analyze retrospectively all these decisions against the National Assembly, there is no doubt to conclude that what the country has witnessed

has been a continued coup d'État, which had its last expression in March 2017, when the Constitutional Chamber issued two shameful and very publicized decisions No. 155 of March 27, 2017,<sup>23</sup> and No. 156 of March 29, 2017<sup>24</sup> through which it simply usurped all the powers of the State. In them, the Chamber ordered the President to exercise certain functions related to international relations that are of its exclusive power; decreed in an unconstitutional way a state of emergency; eliminated the parliamentary immunity of the representatives; assumed in an arbitrary way all the parliamentary competencies of the National Assembly; and delegated legislative powers that it does not have, without limitation, upon the President of the Republic, even ordering him to reform laws and Codes at his discretion, among which none other than the Criminal Code and the Organic Code of Criminal Procedure.

These infamous decisions that were praised by Mr. Maduro as “historical,”<sup>25</sup> were precisely the ones that began to generate a global condemnation of the Venezuelan regime, not only within the country but internationally.

For instance, the Secretary General of the Organization of American States, Dr. Luis Almagro, stated about these decisions that “stripping the representatives of the National Assembly of their parliamentary immunities and assuming the Legislative Powers in a totally unconstitutional manner are the last blows with which the regime subverts the country’s constitutional order and terminates democracy.”<sup>26</sup>

In the national sphere, in addition to many other open rejections, I must highlight the important declaration made public the following day (on March 31, 2017), by the Prosecutor General of the Republic. In spite of having been during the past ten years the main instrument of the regime for persecuting and criminalizing political dissent, she spoke out and stated that those Constitutional Chamber decisions evidenced “several breaches against the constitutional order and the disavowing of the form of State sanctioned in our Constitution,” considering that they constituted a “breaking off with constitutional order.”<sup>27</sup>

The astonishing outcome of the Supreme Tribunal decisions particularly after the surprising statement of dissent within the regime made by the Prosecutor General, was that the President of the Republic “interpreted” it just as a “impasse” between the Prosecutor General and the Supreme Tribunal that supposedly needed to be “settled,” calling for such purpose for a meeting of the Nation’s Defense Council. This body, of a mere consultative nature fully controlled by the Executive, immediately decided to “urge” the Supreme

Tribunal of Justice to “revise Decisions 155 and 156,”<sup>28</sup> that is, to openly commit an illegal act, contrary to the most elementary principles of due process, that is, that no judge in any part of the world can ever reform or repeal its own decisions.

But the Constitutional Chamber of the Supreme Tribunal in Venezuela being a court that does not respect the law and has no one to control it, on the next day, April 1, 2017, submissively heeding to the Executive Branch’s request, reformed and partially revoked its decisions No. 155 and 156 (by means of decisions No. 157<sup>29</sup> and 158,<sup>30</sup>) breaching as I said, the most elementary principles of due process.

The current result of all this process is none other than the consolidation of a “judicial dictatorship,” - I as have called it in a recent book<sup>31</sup> - in which of the five branches of government that make up the separation of powers in Venezuela (Executive, Legislative, Judicial, Citizen and Electoral), the only one that since January 2016 had some political autonomy vis-à-vis the Executive Branch, the National Assembly, has been completely neutralized.

That is, pursuant to the continued coup d’État staged by the Executive Branch in collusion with the Judicial Branch, the Legislative Branch has been materially paralyzed and its member deprived of their parliamentary immunity, and their mandate being on the verge of being revoked due to alleged judicial contempt. For the other Public Branches, whose heads were appointed by the preceding National Assembly in breach of the Constitution, they are now all subordinated to the Executive Branch, having abandoned their controlling powers.<sup>32</sup>

Within this frame of breaches and disregard for the Constitution, it is evident that the worst for Venezuela has been the tragic dependency of the Judicial Branch on the wishes and policies of the Executive Branch,<sup>33</sup> operating as an instrument at the service of the government and its authoritarian policy.<sup>34</sup> This has provoked devastating effects due to the factual absence of control regarding all institutions of the State.

Therefore, it is no a surprise that, in all shame for our country, for instance, recent decisions have been issued by three Supreme Courts, of Costa Rica, Brazil and Chile, reacting against the lack of independence of the Judiciary of Venezuela by denying the State’s requests for extradition of persons accused of common crimes, considering that the potentially extradited persons would not have assurance for a fair trial and due process guaranties in Venezuela.<sup>35</sup>

Due to this absence of a Judiciary capable of controlling the actions of the branches of government, one of the most absolute disregards that this regime has shown for the Constitution, has been the process of de-



constitutionalization of the State that has taken place during the past seven years<sup>36</sup> for the purpose of creating in parallel to the Constitutional State, a so-called “State of People’s Power” or a “Communal State,” for which nobody has voted, and on the contrary, has been rejected by the people.

That was the proposal that the late President Hugo Chavez purported to impose through a constitutional reform in 2007 that was overwhelmingly rejected by the people through a referendum. But notwithstanding such rejection, in a very unconstitutional way the State of People’s Power was implemented by ordinary legislation in 2010,<sup>37</sup> with the purpose of supplanting representative democracy and the social and democratic rule of law State provided for in the Constitution,<sup>38</sup> seeking to definitively eliminate universal suffrage and the federal form of State, and imposing the process of de-municipalization of the nation.<sup>39</sup>

Although it is elementary in Modern Constitutionalism that a Constitution cannot be reformed by ordinary status, but only through the procedures set forth in the Constitution, the Constitutional Chamber in Venezuela has refused to judge this massive fraud against the Constitution and against the people’s will expressed in 2007.

In this context, there is no doubt that in Venezuela the Constitution has become a ductile set of laws, whose norms, after having abandoned their rigidity, have had in practice the force and scope decided by the Executive Branch and, up to 2015, by the former National Assembly through unconstitutional ordinary laws or decree-laws that the Constitutional Judge refuses to control. This Judge, in addition, to greater dismay, has actively participated in the disregard for the Constitution, covering-up the violations by tailoring specific constitutional interpretations in order to justify them or by illegitimately mutating the Constitution in order to “guarantee” that said unconstitutional actions will not be controlled.<sup>40</sup>

The most recent example the country has seen of this disregard for the Constitution has been the unconstitutional call made on May 1<sup>st</sup> 2017 by the President of the Republic for none other than a new Constituent Assembly for the purpose of transforming the State and issuing a new Constitution, in order, precisely, to insert in the Constitution, but without the people’s participation, the already rejected State of Popular Power or Communal State..

The procedure is absolutely unconstitutional, to the point that it has been rejected by the same Prosecutor General of the Republic<sup>41</sup> and even in public statements by two of the Justices of the Supreme Tribunal.<sup>42</sup>

The text of the Constitution, according to the principle of participatory democracy, requires the people’s vote through a referendum in all three

mechanisms for constitutional reform, which are the constitutional amendment, the constitutional reform and the calling to a constituent assembly.

In the first two cases, the Constitution demands the approval of the amendment or reform by the people by means of a referendum (Arts. 341.3, 344), providing in the third case, that only the people may call a Constituent Assembly, of course, also by means of a referendum (Art. 347).<sup>43</sup> Once the convening of such Assembly has been approved by the people, the election of its members must compulsively be done in order to represent the people as a whole, following the democratic values, principles and guarantees established in the Constitution (Art. 350), among which, the right to representative democracy, in the sense of electing all representatives only by means of universal, direct and secret vote (Art. 63), banning in public bodies all other kinds of group, sectorial, class or just territorial elections or representation.

Therefore, whoever may take the initiative to begin a constituent process, which according to the Constitution are the President in Council of Ministers, the National Assembly with qualified vote, the two-thirds of the Municipal Councils, or fifteen percent of the voting citizens (Art. 348); that initiative is only for the calling of a referendum for the people to vote and to decide whether or not to convene a Constitutional Assembly, and does not imply that those with standing to initiate the process could directly convene such Assembly without the people's participation.

Notwithstanding, and contrary to these provisions, the President of the Republic directly convened a Constitutional Assembly by Decree No. 2830 issued on May 1<sup>st</sup> 2017,<sup>44</sup> not only in violation of the Constitution, but also usurping the exclusive power of the people, as holder of sovereignty, to exercise the original constituent power. In addition, by means of such Decree, the President has also committed a fraud against the will of the people as was expressed in the referendum of 2007, rejecting the same constitutional reform proposed by Hugo Chavez,<sup>45</sup> but now trying to approve it, 10 years later, without the people's participation.

It is evident from the text of the Decree, that its main purpose is to "make constitutional" or to constitutionalize the same "Communal State" or the "Popular People's State"<sup>46</sup> already rejected by the people, but this time depriving the people from its right to political participation and to be properly represented.

That is, in order to avoid the people, that is, the entire population of electors to be represented, the President has decided himself, violating the principle of universal suffrage system established in the Constitution, that the

members of the Assembly he has unconstitutionally convened, are going to be elected through sectorial and territorial votes, allowing discrimination or exclusions forbidden in the Constitution.

In it, sectorial elections of representatives are only exceptionally admissible for the election of the representatives of the indigenous peoples to the National Assembly, and to no other public body. That is, they are only allowed outside of the scope of the State bodies, for example, for a political party, a social club, a workers' union or a chamber of commerce, where only the members of those organizations are allowed to vote, this being completely inadmissible for the election of a National Constituent Assembly that must represent the universality of the people.

On the other hand, according to the Constitution, the right of the people to vote in the territorial entities is to assure the representation of all its inhabitants, that is, the whole population that lives in the territory; but not the territories themselves, as it has been designed in the Presidential unconstitutional decree.<sup>47</sup>

Nonetheless, in spite of all the warnings and critics,<sup>48</sup> last week the President published what he called the “*bases comiciales*,” that is the electoral bases for the election of the members of the National Assembly, but in a contradictory way, without submitting them to any sort of election or voting or “*comicios*,” which in this case was to be a referendum.<sup>49</sup> That is, the President decreed some “electoral bases” but without submitting them to any sort of popular vote

In such *bases comiciales*, in addition to the establishment of an indirect election by sectors for the members of the Assembly, which is forbidden in the Constitution; regarding the proposed territorial election, they also contravene the Constitution, in which the principle is that the people can convene a Constituent Assembly in order for all the people to be represented as a whole.

On the contrary, what was established in the decree is a territorial representation, consequently giving, for example, fewer representatives to the very populated Capital District of Caracas that has almost two millions inhabitants, compared with other small Municipalities with only some hundred inhabitants. This territorial representation violates the right of the people in the sense that the population must be represented according to the number of inhabitants who live in the territories.

In brief, from the electoral point of view, said *bases comiciales* can be considered as the most insulting disdain to the political configuration of the country; only designed for the purpose of trying to allow the government with less than 20 % of the votes to control the Assembly.<sup>50</sup>

In any case in this continued process of disregarding the Constitution, for the oligarchy that is governing the country, it has no importance at all what the Constitution could establish. Accordingly, today – a few hours ago -, the Constitutional Chamber of the Supreme Tribunal has issued a new decision (No. 378 of May 31, 2017)<sup>51</sup> simply stating that in order to convene a Constituent Assembly there is no need at all for the people to be heard participate through a referendum. That is, according to this decision, in order to change a coma or a phrase in an article of the Constitution a referendum must take place, but in order to change completely the Constitution, to reform the whole State and to create a wholly new legal order, it is not necessary to request the people’s approval. As simple as that: eight individuals (the President and seven justices of the Tribunal) can impose their will to the people without limits. That is the very definition of an Oligarchy.

In face of so many years of dismantling democracy and democratic institutions,<sup>52</sup> it is then not surprising to see how in December 2015, a popular rebellion against the authoritarian government occurred in defense of the Constitution and democracy. On that occasion, the rebellion materialized through voting in the parliamentary elections, whereby the people demanded a change of the political system, giving the opposition a qualified majority of votes and the control of the National Assembly.

This democratic triumph unfortunately was ignored by the authoritarian regime that not only stripped the newly elected National Assembly, as I have explained, of absolutely all its powers, but prevented the people from expressing its will through other electoral or voting processes. This occurred through the unjustified and unconstitutional postponement of the regional and municipal elections that, as provided in the Constitution, should have been held last year<sup>53</sup>; and also through the placing of uncountable obstacles that eventually led to the final elimination of the recall presidential referendum that is a right of the people. And now, as I have mentioned, we are witnessing the Executive Branch calling a National Constituent Assembly without allowing the participation of the people through a referendum, with the “benediction” of the Constitutional Judge.

All these successive anti-democratic events have provoked a new sort of rebellion by the people, who have again started to express its will, even if not through voting that the regime insist to deny, in fact, through the massive general protests and demonstrations that we have been witnessing during the past weeks. These protests have been brutally repressed. The military forces have acted against peaceful and unarmed protesters, many of which have been murdered in a way never seen in our country. They have acted with rage, as if

they were an occupation army, which in fact it appears to be, even applying torture to detainees. Venezuelans do not act in such an insensitive way, and much less accompanied by paramilitary criminal gangs protected and armed by the State.

That is why we are compelled to think that perhaps not all those who are participating in such repressive military gangs are Venezuelan.

In any case, of course, after more than 50 assassinations in the long month that has passed, by these repressive forces, we are witnessing, in addition and again, a general rebellion against such practices.

Even if it is shocking to say it, these tragic situation are giving us hope that we may again see democracy flourishing in our soil, and that eventually, the representatives that uphold the will of the people shall be able to rescue their constitutional role.

In addition, in today's globalized world - even though somehow late -, Venezuelans are also beginning to find some support of the international community in favor of the country's democratic process.<sup>54</sup> This is of utmost importance, particularly if we bear in mind the disastrous influence that a foreign country, as is the case of Cuba, exercises upon the current Venezuelan government, having even penetrated key bodies of the State and its military force. Within this international support that the Venezuelan people has been receiving, we have to acknowledge in particular the essential role played by the Secretary General of the Organization of American States, Dr. Luis Almagro,<sup>55</sup> who persistently has moved the friendly nations to speak, advocating in various ways for the restoration of democracy in Venezuela.

The today's Meeting of Consultations of Ministers of Foreign Affairs of the Organization of American States, whichever could be its results, is one more sign of his efforts.

Let us then not to lose hope. I think maybe we are beginning to see more clearly that the vital signs of the authoritarian regime are now progressively going out, and perhaps entering into a terminal state,<sup>56</sup> as we all want.

In this situation, I just want to conclude quoting what my friend Professor Pedro Nikken,<sup>57</sup> pointed out two weeks ago, when he said:

“The Government has to rectify because it faces a generalized popular rebellion. It cannot continue to kick the institutions.” [...]

“If they don't rectify, the power will be taken away from them violently. The Venezuelan people are upraised and with reasons.”<sup>58</sup>

New York, May 31, 2017.

## NOTES

- <sup>1</sup> See Matt.O'Brein, "There has never been a country that should have been so rich but ended up this poor," in *The Washington Post*, Washington, May 19, 2016, in <https://www.washingtonpost.com/news/wonk/wp/2016/05/19/there-has-never-been-a-country-that-should-have-been-so-rich-but-ended-up-this-poor/>
- <sup>2</sup> See the information in <http://www.infobae.com/2014/04/24/1559615-en-un-ano-la-inflacion-oficial-venezuela-llego-al-60-ciento>
- <sup>3</sup> Venezuela has the "ignominious" first place in the World's Misery Index. See the Report of Steve H. Hanke, "Measury Misery around the World," published in May 2104, in *Global Asia*, en <http://www.cato.org/publications/commentary/measuring-misery-around-world> See also *Índice Mundial de Miseria*, 2014, in <http://www.razon.com.mx/spip.php?ar-ticle215150>; y in <http://vallartaopina.net/2014/05/23/en-indice-mundial-de-miseria-venezuela-ocupa-primer-lugar/>
- <sup>4</sup> Pedro Carmona Estanga summarized the regime's economic feat by explaining that: "To the country's misfortune, during these 16 years there have been squandered more than US\$ 1.5 billion that will not return, and there is only left the destruction of the production infrastructure, the deterioration of the standard of living and of the institutions, and macro-economic and attitudinal distortions in the people, to such a depth that it will cost the future generations sweat and blood to overcome. That was the historical feat achieved and so much bragged about by the regime." See Pedro Carmona Estanga, "La destrucción de Venezuela: hazaña histórica," 19 de octubre de 2014, en <http://pcarmonae.blogspot.com/2014/10/la-destruccion-de-venezuela-hazana.html>
- <sup>5</sup> In this regard, Brian Fincheltub noted that "The missions became factories of dependent people, with no stability, who entrusted their subsistence solely to the State. There was never interest in taking people out of poverty because, as minister Héctor Rodríguez himself admitted, "they would become our opponents (*esqualidos*)." That is, they would become independent, and that is extremely dangerous for a system whose main strategy is to control." See Brian Fincheltub, "Fabrica de pobres," in *El Nacional*, Caracas, June 5, 2014, in [http://www.el-nacional.com/opinion/Fabrica-pobres\\_0\\_421757946.html](http://www.el-nacional.com/opinion/Fabrica-pobres_0_421757946.html)
- <sup>6</sup> For this reason, it has been rightly said, that "If Venezuela were a Social State, there would be no dead newborns due to the infectious conditions in public hospitals. If Venezuela were a Social State, all persons would have a sure job or would be fully exercising freedom of enterprise and trade. If Venezuela were a Social State, we would not display in shame the world's highest murder rate. If Venezuela were a Social State, steel bars and cement would not have disappeared and the cement factories that were intervened by the State would be producing at their maximum installed capacity. If Venezuela were a Social State, all the shelves in grocery and staples stores would be full of products. If Venezuela were a Social State, schools would not have roofs full of leaks, but supplied with sufficient materials for teaching, and teachers and professors would be the best paid employees in the country. If Venezuela were a Social State, there would be no discrimination due to political and ideological reasons in order to have access to any public service, benefits or aid, or first necessity items. If Venezuela were a Social State, the permanent garbage problem in the large cities would be already solved by the most modern and up-to-date methods for environmental protection. See Isaac Villamizar, "Cuál Estado Social?," in *La Nación*, San Cristóbal, October 7, 2014, in <http://www.lanacion.com.ve/columnas/opinion/cual-estado-social/>
- <sup>7</sup> See Matt.O'Brein, "There has never been a country that should have been so rich but ended up this poor," *The Washington Post*, Washington, May 19, 2016, in

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<https://www.washingtonpost.com/news/wonk/wp/2016/05/19/there-has-never-been-a-country-that-should-have-been-so-rich-but-ended-up-this-poor/>

- 8 Oslo, Norway, May 24, 2017, in <https://www.youtube.com/watch?v=PiZ5744FEco>
- 9 See Allan R. Brewer-Carías, *La Constitución de 1999. Derecho Constitucional venezolano*, 2 volumes, Caracas 2004.
- 10 See Allan R. Brewer-Carías, *Golpe de Estado y proceso constituyente en Venezuela*, Universidad Nacional Autónoma de México, México 2002.
- 11 See Allan R. Brewer-Carías, “La Constitución como promesa incumplida: el caso de Venezuela,” Conferencia, *Real Academia de Jurisprudencia y Legislación*, Madrid, 23 de mayo 2016.
- 12 See Allan R. Brewer-Carías, “Razones del voto NO en el referendo aprobatorio de la Constitución,” in *Debate Constituyente (Labor en la Asamblea Nacional Constituyente)*, Tomo III, Fundación de Derecho Público, Editorial Jurídica Venezolana, Caracas 2000.
- 13
- 14 See Allan R. Brewer-Carías, *Golpe de Estado y proceso constituyente en Venezuela*, Universidad nacional Autónoma de México, México 2002. There were also added various “modifications” or “reforms” to the text, which were made on the occasion of the “style corrections” prior to its publication on November 30, 1999. See Allan R. Brewer-Carías, “Comentarios sobre la ilegítima “Exposición de Motivos” de la Constitución de 1999 relativa al sistema de justicia constitucional”, in *Revista de Derecho Constitucional*, N° 2, Enero-Junio 2000, Caracas 2000, pp. 47-59
- 15 See Allan R. Brewer-Carías, *La mentira como política de Estado. Crónica de una crisis política permanente. Venezuela 1999-2015* (Prólogo de Manuel Rachadell), Colección Estudios Políticos, No. 10, Editorial Jurídica Venezolana, Caracas 2015.
- 16 See Allan R. Brewer-Carías, *Estado totalitario y desprecio a la ley. La desconstitucionalización, desjuridificación, desjudicialización y desdemocratización de Venezuela*, Fundación de Derecho Público, Editorial Jurídica Venezolana, 2014.
- 17 See Gustavo Tarre Briceño, *Solo el poder detiene al poder, La teoría de la separación de los poderes y su aplicación en Venezuela*, Colección Estudios Jurídicos N° 102, Editorial Jurídica Venezolana, Caracas 2014; and Jesús María Alvarado Andrade, “División del Poder y Principio de Subsidiariedad. El Ideal Político del Estado de Derecho como base para la Libertad y prosperidad material” in Luis Alfonso Herrera Orellana (Coord.), *Enfoques Actuales sobre Derecho y Libertad en Venezuela*, Academia de Ciencias Políticas y Sociales, Caracas, 2013, pp. 131-185.
- 18 It all began some days before the inauguration of the newly elected National Assembly, by means of a judicial decision issued on the last day of December 2015 by the Electoral Chamber of the Supreme Tribunal, granting a temporal precautionary measure of suspension of the proclamation of four representatives elected in the Amazonas State, so as to curtail the qualified majority that had been obtained by the opposition. See Allan R. Brewer-Carías, “El desconocimiento judicial de la elección popular de diputados,” in *Revista de Derecho Público*, No. 145-146, (enero-junio 2016), Editorial Jurídica Venezolana, Caracas 2016, pp. 285- 318.
- 19 See on these decisions Allan R. Brewer-Carías, *Dictadura judicial y perversión del Estado de Derecho*, Segunda Edición, (Presentaciones de Asdrúbal Aguiar, José Ignacio Hernández y Jesús María Alvarado), N° 13, Editorial Jurídica Venezolana International, 2016; edición española: Editorial IUSTEL, Madrid 2017.
- 20 See in <http://historico.tsj.gob.ve/decisiones/scon/enero/194891-02-11117-2017-17-0001.HTML>
- 21 See in <http://historico.tsj.gob.ve/decisiones/scon/enero/194892-03-11117-2017-17-0002.HTML>
- 22 See in [historico.tsj.gob.ve/decisiones/scon/enero/195578-07-26117-2017-17-0010.HTML](http://historico.tsj.gob.ve/decisiones/scon/enero/195578-07-26117-2017-17-0010.HTML).

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- <sup>23</sup> See decision No. 155 of March 27, 2017, in <http://historico.tsj.gob.ve/decisiones/scon/marzo/197285-155-28317-2017-17-0323.HTML>. See the comments on such decision in Allan Brewer-Carías: “La consolidación de la dictadura judicial: la Sala Constitucional, en un juicio sin proceso, usurpó todos los poderes del Estado, decretó inconstitucionalmente un estado de excepción y eliminó la inmunidad parlamentaria (sentencia no. 156 de la Sala Constitucional), March 29, 2017, in <http://diarioconstitucional.cl/noticias/actualidad-internacional/2017/03/31/opinion-acerca-de-la-usurpacion-de-funciones-por-el-tribunal-supremo-de-venezuela-y-la-consolidacion-de-una-dictadura-judicial/>
- <sup>24</sup> See decision No. 156 of March 29, 2017 in <http://historico.tsj.gob.ve/decisiones/scon/marzo/197364-156-29317-2017-17-0325.HTML>. See the comments on such decision Allan. Brewer-Carías: “El reparto de despojos: la usurpación definitiva de las funciones de la Asamblea Nacional por la Sala Constitucional del Tribunal Supremo de Justicia al asumir el poder absoluto del Estado (sentencia no. 156 de la Sala Constitucional), 30 de marzo de 2017, in <http://diarioconstitucional.cl/noticias/actualidad-internacional/2017/03/31/opinion-acerca-de-la-usurpacion-de-funciones-por-el-tribunal-supremo-de-venezuela-y-la-consolidacion-de-una-dictadura-judicial/>
- <sup>25</sup> See: “Nicolás Maduro: El TSJ ha dictado una sentencia histórica. Durante el Consejo de Ministros, el jefe de Estado señaló que además pedirá sugerencias a la Procuraduría General de la República para cumplir con las órdenes dictadas por el máximo órgano judicial,” in *El Nacional*, March 28, 2017, in [http://www.el-nacional.com/noticias/gobierno/nicolas-maduro-tsj-dictado-una-sentencia-historica\\_87784](http://www.el-nacional.com/noticias/gobierno/nicolas-maduro-tsj-dictado-una-sentencia-historica_87784)
- <sup>26</sup> See: “Almagro denuncia auto-golpe de Estado del gobierno contra Asamblea Nacional,” *El Nacional*, March 30, 2017, en [http://www.el-nacional.com/noticias/mundo/almagro-denuncia-auto-golpe-estado-del-gobierno-contra-asamblea-nacional\\_88094](http://www.el-nacional.com/noticias/mundo/almagro-denuncia-auto-golpe-estado-del-gobierno-contra-asamblea-nacional_88094)
- <sup>27</sup> See the text in “Fiscal General de Venezuela, Luisa Ortega Díaz, dice que sentencias del Tribunal Supremo sobre la Asamblea Nacional violan el orden constitucional,” in *RedacciónBBC Mundo*, *BBC Mundo*, 31 de marzo de 2017, en <http://www.bbc.com/mundo/noticias-america-latina-39459905>. See video in <https://www.youtube.com/watch?v=GohPIrveXFE> .
- <sup>28</sup> See the text in “Consejo de Defensa Nacional exhorta al TSJ a revisar sentencias 155 y 156 // #MonitorProDaVinci, April 1, 2017, in <http://prodavinci.com/2017/04/01/actualidad/consejo-de-defensa-nacional-exhorta-al-tsj-a-revisar-sentencias-155-y-156-monitorprodavinci/>
- <sup>29</sup> See in <http://historico.tsj.gob.ve/decisiones/scon/abril/197399-157-1417-2017-17-0323.HTML>. See the comments on that decision in Allan R. Brewer-Carías, “La nueva farsa del Juez Constitucional controlado: la inconstitucional y falsa “corrección” de la usurpación de funciones legislativas por parte de la Sala Constitucional del Tribunal Supremo (sentencias Nos. 157 y 158 de 1 de abril de 2017), New York, April 4, 2017, in <http://allanbrewercarias.net/site/wp-content/uploads/2017/04/151.-doc.-Brewer-Nueva-farsa-del-Juez-Constitucional.-Falsa-correcci%C3%B3n.-Sentencias-Sala-Constit.-157-y-158-.4-4-2017.pdf>:
- <sup>30</sup> See in <http://Historico.Tsj.Gob.Ve/Decisiones/Scon/Abril/197400-158-1417-2017-17-0325.Html> See the comments on that decision in Allan R. Brewer-Carías, “La nueva farsa del Juez Constitucional controlado: la inconstitucional y falsa “corrección” de la usurpación de funciones legislativas por parte de la Sala Constitucional del Tribunal Supremo (sentencias Nos. 157 y 158 de 1 de abril de 2017), New York, April 4, , 2017, in [16](http://allanbrewercarias.net/site/wp-content/uploads/2017/04/151.-doc.-Brewer-Nueva-farsa-</a></p></div><div data-bbox=)



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del-Juez-Constitucional.-Falsa-correcci%C3%B3n.-Sentencias-Sala-Constit.-157-y-158-.-4-4-2017.pdf:

<sup>31</sup> See the Spanish edition: Allan R. Brewer-Carías, *Dictadura Judicial y perversión del Estado de derecho*, IUSTEL, Madrid 2017:

<sup>32</sup> This implies that for the past 17 years in Venezuela, in fact, there has been no General Comptroller of the Republic exercising fiscal control, wherefore the country is ranked today as first in the world's corruption index (See the Report of the German ONG, *Transparencia Internacional* of 2013, in: "Aseguran que Venezuela es el país más corrupto de Latinoamérica," in *El Universal*, Caracas 3 de diciembre de 2013, in <http://www.eluniversal.com/nacional-y-politica/131203/aseguran-que-venezuela-es-el-pais-mas-corrupto-de-latinoamerica>. Also see article in BBC Mundo, "Transparencia Internacional: Venezuela y Haití, los que se ven más corruptos de A. Latina," December 3, 2013, in [http://www.bbc.co.uk/mundo/ultimas\\_noticias/2013/12/131203\\_ultnot\\_transparencia\\_corrupcion\\_lp.shtml](http://www.bbc.co.uk/mundo/ultimas_noticias/2013/12/131203_ultnot_transparencia_corrupcion_lp.shtml). See also, Román José Duque Corredor, "Corrupción y democracia en América Latina. Casos emblemáticos de corrupción en Venezuela," en *Revista Electrónica de Derecho Administrativo*, Universidad Monteávila, 2014).

The People's Defender has never protected human rights and has in truth become the official agency for endorsing the violation of such rights by the State's authorities, evidenced by the brutal repression of the right to protest, which the whole world has been witnessing for some time now (For example, in view of the health crisis denounced by the Venezuelan National Academy of Medicine in August, 2014, claiming that an emergency be declared for the health sector, the People's Defender's reply was simply that there was no such crisis in Venezuela). See press article: "Defensora del Pueblo Gabriela Ramírez afirma que en Venezuela no existe ninguna crisis en el sector salud," en *Noticias Venezuela*, August 20, 2014, in <http://noticiasvenezuela.info/2014/08/defensora-del-pueblo-gabriela-ramirez-afirma-que-en-venezuela-no-existe-ninguna-crisis-en-el-sector-salud/>; and the press report: "Gabriela Ramírez, Defensora del Pueblo: Es desproporcionada petición de emergencia humanitaria en el sector salud," in *El Universal*, Caracas 20 de agosto de 2014, en <http://m.eluniversal.com/nacional-y-politica/140820/es-desproporcionada-peticion-de-emergencia-humanitaria-en-el-sector-sa>. Por ello, con razón, el Editorial del diario *El Nacional* del 22 de agosto de 2014, se tituló: "A quien defiende la defensora?" Véase en [http://www.elnacional.com/opinion/editorial/defiende-defensora\\_19\\_46874-3123.html](http://www.elnacional.com/opinion/editorial/defiende-defensora_19_46874-3123.html)).

The Office of the Prosecutor General of the Republic, as I mentioned, instead of having been a bona fide part to the criminal procedures and upholding the Constitution, has been the main instrument for ensuring impunity and political persecution (As noted in the report of the International Commission of Jurists entitled *Strengthening the Rule of Law in Venezuela*, released in Geneva, in March 2014, the Office of the Public Prosecutor "has resulted in an institution without independence from other branches of the government and other political actors," so the public prosecutors are "vulnerable to improper interferences from superior authorities and other external pressures...") (See the text in <http://icj.wpengine.netdna-cdn.com/wp-content/uploads/2014/06/VENEZUELA-Informe-A4-elec.pdf>). This, notwithstanding, does not prevent me from saluting the fact that she has begun to discover in the last weeks that the decisions of the Constitutional Division implied breaking off with the democratic order, and after years of silence has further discovered that "the due process must be respected even in a state of emergency," (See in: "Ortega Díaz: Hasta en un estado de excepción debe respetarse el debido proceso" donde además "pidió respeto para quienes piensen distinto," in *El Nacional*, Caracas 26 de abril de 2017), that civilians cannot be processed before military tribunals, and has acknowledged that in general no one can "demand

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lawful and peaceful behaviors from the citizens if the State makes decisions that are contrary to law.” (See in Anatoly Kurmanaev y Kejal Vyas, “Venezuela Minister Chides Regime She Serves,” in *The Wall Street Journal*, New York, May 4, 2017, p. A9.) More recently, the Prosecutor General has expressed her opposition to the unconstitutional convening of a Constituent Assembly by the President of the Republic.

In addition, regarding the Electoral Branch of government, that is, the National Electoral Council, unfortunately it has been none other than a sort of electoral agency for the government, made up by members of the official party in overt breach of the Constitution, ceasing to be an independent arbiter in the elections. For such purpose, since 2004, this branch of the government has been entirely seized by the Executive Branch, when its heads were appointed by the Supreme Tribunal of Justice pursuant to the Executive Branch’s instructions, usurping the functions that pertain to the National Assembly. (See Allan R. Brewer-Carías, “El secuestro del Poder Electoral y la confiscación del derecho a la participación política mediante el referendo revocatorio presidencial: Venezuela 2000–2004,” in *Boletín Mexicano de Derecho Comparado*, Instituto de Investigaciones Jurídicas, Universidad Nacional Autónoma de México, N° 112. México, enero–abril 2005 pp. 11–73; *La Sala Constitucional versus el Estado Democrático de Derecho. El secuestro del poder electoral y de la Sala Electoral del Tribunal Supremo y la confiscación del derecho a la participación política*, Los Libros de El Nacional, Colección Ares, Caracas, 2004, 172 pp.).

<sup>33</sup> See Allan R. Brewer-Carías, “La progresiva y sistemática demolición de la autonomía en independencia del Poder Judicial en Venezuela (1999–2004)”, in *XXX Jornadas J.M Domínguez Escovar, Estado de derecho, Administración de justicia y derechos humanos*, Instituto de Estudios Jurídicos del Estado Lara, Barquisimeto, 2005, pp. 33–174; y “La justicia sometida al poder [La ausencia de independencia y autonomía de los jueces en Venezuela por la interminable emergencia del Poder Judicial (1999–2006)]” in *Cuestiones Internacionales. Anuario Jurídico Villanueva 2007*, Centro Universitario Villanueva, Marcial Pons, Madrid, 2007, pp. 25–57; “La demolición de las instituciones judiciales y la destrucción de la democracia: La experiencia venezolana,” in *Instituciones Judiciales y Democracia. Reflexiones con ocasión del Bicentenario de la Independencia y del Centenario del Acto Legislativo 3 de 1910*, Consejo de Estado, Sala de Consulta y Servicio Civil, Bogotá 2012, pp. 230-254..

<sup>34</sup> For this reason, the International Commission of Jurists forum in Geneva, in 2014, concluded that: “A judicial system that lacks independence, such as that of Venezuela, is proven to be inefficient to fulfill its duties. In this regard, in Venezuela, [...] the administration of justice is prevented by external pressures from fulfilling its duty to protect people from abuses of government power... to the contrary, in many cases it is made to serve as a mechanism for the persecution of political opponents and dissidents and other critics of the political system in the country, including political, peasant and union leaders, human rights defenders and students. See in <http://icj.wputengine.netdna-cdn.com/wp-content/uploads/2014/06/VENEZUELA-Informe-A4-elec.pdf> (Executive summary in English: <https://www.icj.org/wp-content/uploads/2014/06/VENEZUELA-Summary-A5-elec.pdf>)

<sup>35</sup> See Allan R. Brewer-Carías, “Las Cortes Supremas de Costa Rica, Brasil y Chile condenan la falta de garantías judiciales en Venezuela. De cómo, ante la ceguera de los gobiernos de la región y la abstención de la Corte Interamericana de Derechos Humanos, han sido las Cortes Supremas de estos países las que con base en la jurisdicción universal de protección de los derechos humanos, han comenzado a juzgar la falta de autonomía e independencia del Poder Judicial en Venezuela, dictando medidas de protección a favor de ciudadanos venezolanos contra el Estado venezolano,” in *Revista de Derecho Público*, No. 143-144, (julio- diciembre 2015, Editorial Jurídica Venezolana, Caracas 2015, pp. 495-500.

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- <sup>36</sup> See Allan R. Brewer-Carías, *Estado totalitario y desprecio a la Ley. La desconstitucionalización, desjuridificación, desjudicialización y desdemocratización de Venezuela*, Fundación de Derecho Público, Editorial Jurídica Venezolana, 2014, 532 pp.; segunda edición, (Con prólogo de José Ignacio Hernández), Caracas 2015, 542 pp
- <sup>37</sup> See Allan R. Brewer-Carías, “Las leyes del Poder Popular dictadas en Venezuela en diciembre de 2010, para transformar el Estado Democrático y Social de Derecho en un Estado Comunal Socialista, sin reformar la Constitución,” in *Cuadernos Manuel Giménez Abad*, Fundación Manuel Giménez Abad de Estudios Parlamentarios y del Estado Autonómico, No. 1, Madrid, Junio 2011, pp. 127-131; “La Ley Orgánica del Poder Popular y la desconstitucionalización del Estado de derecho en Venezuela,” in *Revista de Derecho Público*, No. 124, (octubre-diciembre 2010), Editorial Jurídica Venezolana, Caracas 2010, pp. 81-101; “*Introducción General al Régimen del Poder Popular y del Estado Comunal (O de cómo en el siglo XXI, en Venezuela se decreta, al margen de la Constitución, un Estado de Comunas y de Consejos Comunales, y se establece una sociedad socialista y un sistema económico comunista, por los cuales nadie ha votado)*,” in Allan R. Brewer-Carías, Claudia Nikken, Luis A. Herrera Orellana, Jesús María Alvarado Andrade, José Ignacio Hernández y Adriana Vigilanza, *Leyes Orgánicas sobre el Poder Popular y el Estado Comunal (Los consejos comunales, las comunas, la sociedad socialista y el sistema económico comunal)* Colección Textos Legislativos N° 50, Editorial Jurídica Venezolana, Caracas 2011, pp. 9-182
- <sup>38</sup> See. Allan R. Brewer-Carías, *La ruina de la democracia. Algunas consecuencias. Venezuela 2015*, Editorial Jurídica Venezolana, Caracas 2015.
- <sup>39</sup> See Allan R. Brewer-Carías, “El inicio de la desmunicipalización en Venezuela: La organización del Poder Popular para eliminar la descentralización, la democracia representativa y la participación a nivel local”, in *AIDA, Opera Prima de Derecho Administrativo. Revista de la Asociación Internacional de Derecho Administrativo*, Universidad Nacional Autónoma de México, Facultad de Estudios Superiores de Acatlán, Coordinación de Postgrado, Instituto Internacional de Derecho Administrativo “Agustín Gordillo”, Asociación Internacional de Derecho Administrativo, México, 2007, pp. 49 a 67
- <sup>40</sup> See Allan R. Brewer-Carías, “¿Reforma constitucional o mutación constitucional?: La experiencia venezolana.” en *Revista de Derecho Público*, No 137 (Primer Trimestre 2014, Editorial Jurídica Venezolana, Caracas 2014, pp.19-65; y “El juez constitucional al servicio del autoritarismo y la ilegítima mutación de la Constitución: el caso de la Sala Constitucional del Tribunal Supremo de Justicia de Venezuela (1999-2009)”, in *Revista de Administración Pública*, No. 180, Madrid 2009, pp. 383-418.
- <sup>41</sup> See Luisa Ortega Díaz, en “Fiscal Ortega Díaz envió carta a Jaua para rechazar la Constituyente,” in *El Nacional*, 19 de mayo de 2017.
- <sup>42</sup> See declaraciones del Magistrado Danilo Mujica, de la Sala de Casación Social, Caracas 23 de mayo de 2017, in <https://www.youtube.com/watch?v=axFISExNcRE>
- <sup>43</sup> See Allan R. Brewer-Carías, *Reforma constitucional y fraude a la Constitución (1999-2009)*, Academia de Ciencias Políticas y Sociales, Caracas 2009, p. 64-66; and in *La Constitución de 1999 y la Enmienda constitucional No. 1 de 2009*, Editorial Jurídica Venezolana, Caracas 2011, pp. 299-300
- <sup>44</sup> See *Gaceta Oficial* No. 6295 Extraordinario de 1 de mayo de 2017
- <sup>45</sup> See Allan R. Brewer-Carías, “La proyectada reforma constitucional de 2007, rechazada por el poder constituyente originario”, in *Anuario de Derecho Público 2007*, Año 1, Instituto de Estudios de Derecho Público de la Universidad Monteávila, Caracas 2008, pp. 17-65

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- <sup>46</sup> See Allan R. Brewer-Carías, *Hacia la consolidación de un Estado socialista, centralizado, policial y militarista. Comentarios sobre el sentido y alcance de las propuestas de reforma constitucional 2007*, Colección Textos Legislativos, No. 42, Editorial Jurídica Venezolana, Caracas 2007; *La reforma constitucional de 2007 (Comentarios al proyecto inconstitucionalmente sancionado por la Asamblea Nacional el 2 de noviembre de 2007)*, Colección Textos Legislativos, No.43, Editorial Jurídica Venezolana, Caracas 2007.
- <sup>47</sup> After the Decree convening the Constituent Assembly and in face of the unconstitutional call to elect its members on sectorial bases, the Constitutional Chamber of the Supreme Tribunal in lieu of controlling it, in a prompt manner, gave the government the needed assistance, proceeding through a new decision No. 355 of May 16, 2017, to illegitimately mutate the Constitution in order to allow elections in the country, by-passing the need for universal vote. In such decision, the Constitutional Chamber without motivation, except for general references to the means for citizens' participation, in a contradictory way ignored the right of the people to participate by means of the election of its representatives through universal, direct and secret suffrage, as guaranteed in the Constitution (arts. 5,63), and has admitted that it can be eliminated through statutes; in the case at issue, the Organic Law of the Municipal Power. See the reference in "¡La Estocada Final! TSJ eliminó el voto universal," en *NotiCensura*, mayo 23, 2017, en <http://www.noticensura.com/2017/05/la-estocada-final-tsj-elimino-el-voto.html>
- <sup>48</sup> For instance, the Venezuelan Academy of Political and Social Sciences, opposed the proposal. For all see: "La Convocatoria presidencial a una Asamblea Nacional Constituyente es un fraude a la democracia," May 6, 2017, in <http://www.acienpol.org.ve/cmacionpol/Resources/Pronunciamientos/2017-05-05%20Pronunciamiento%20conjunto%20sobre%20ANC%20-%20final.pdf> See also Allan R. Brewer-Carías: "A new fraud against the Venezuelan Constitution and the will of its people: Unconstitutional Decree calling a Constituent Assembly to approve the constitutional reform that was rejected by popular vote in 2007, May 5, 2017. See in <http://allanbrewercarias.net/site/wp-content/uploads/2017/05/156.-doc-New-Fraud-against-the-Venezuelan-Constitution-and-the-will-of-its-people.-May-4-2017.pdf>
- <sup>49</sup> See "Maduro entregó bases comiciales de la Constituyente al CNE, *El Nacional* 23 de mayo de 2017, en [http://www.el-nacional.com/noticias/gobierno/maduro-entrego-bases-comiciales-constituyente-cne\\_183853](http://www.el-nacional.com/noticias/gobierno/maduro-entrego-bases-comiciales-constituyente-cne_183853)
- <sup>50</sup> See for instance Héctor Briceño, "Constituyente: reglas manipuladas para ganar con el 20% de los votos," *Prodavinci*, May 27 2017, in In <http://prodavinci.com/2017/05/27/actualidad/constituyente-reglas-manipuladas-para-ganar-con-el-20-de-los-votos-por-hector-briceno/>
- <sup>51</sup> See in <http://historico.tsj.gob.ve/decisiones/scon/mayo/199490-378-31517-2017-17-0519.HTML>.
- <sup>52</sup> See Allan R. Brewer-Carías, *Dismantling Democracy. The Chávez Authoritarian Experiment*, Cambridge University Press, New York 2010.
- <sup>53</sup> The announcement made by the Chairman of the National Electoral Council on May 24, 2017, to call regional elections at the end of 2017, was received with total rejection and scepticism. See in "CNE anuncia elecciones regionales para el próximo 10 de diciembre," in *El Nacional*, 23 de mayo de 2017, en [http://www.el-nacional.com/noticias/politica/cne-anuncia-elecciones-regionales-para-proximo-diciembre\\_183919](http://www.el-nacional.com/noticias/politica/cne-anuncia-elecciones-regionales-para-proximo-diciembre_183919)
- <sup>54</sup> See Michael Pentfold, "La constituyente en el contexto internacional," in *Prodavinci*, May 30, 2017, in <http://prodavinci.com/blogs/la-constituyente-en-el-contexto-internacional-por-michael-pentfold/>

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- <sup>55</sup> See *La Crisis de la democracia en Venezuela, la OEA y la Carta Democrática Interamericana. Documentos de Luis Almagro*, Iniciativa Democrática de España y las Américas (IDEA), Editorial Jurídica Venezolana International, 2016.
- <sup>56</sup> See Allan R. Brewer-Carías, “Venezuela: Historia y Crisis Política,” in *Derecho y Sociedad. Revista de Estudiantes de Derecho de la Universidad Monteávila*, N° 3, Caracas, Abril 2002, pp. 217-244.
- <sup>57</sup> Former Dean of the Law Faculty of the Central University of Venezuela, and former President of the International Commission of Jurist and of the Inter American Court of Human Rights.
- <sup>58</sup> Véase Pedro Nikken, “Es suicida para el gobierno seguir el camino de la constituyente,” en *El Nacional*, Caracas 22 de mayo 2017, en [http://www.el-nacional.com/noticias/politica/suicida-para-gobierno-seguir-camino-constituyente\\_183517](http://www.el-nacional.com/noticias/politica/suicida-para-gobierno-seguir-camino-constituyente_183517)