

Democratization



Year 2, Issue 5

Authoritarian resilience and
the venezuelan democratic cause:
resources and asymmetries

Elsa Cardozo

The blockade of the legislative
and comptroller functions of the National
Assembly by the Supreme Tribunal of Justice:
an introduction

Carlos García Soto

The Chavista regime sits comfortably
on the bayonets of its Armed Forces

Pedro Pablo Peñaloza

Democratization

January 2020

Year 2, Issue 5

Authoritarian resilience and
the venezuelan democratic cause:
resources and asymmetries

Elsa Cardozo

The blockade of the legislative
and comptroller functions of the National -
Assembly by the Supreme Tribunal of Justice:
an introduction

Carlos García Soto

The Chavista regime sits comfortably
on the bayonets of its Armed Forces

Pedro Pablo Peñaloza

Caracas.

Edited by Instituto FORMA

Introduction

Perhaps one of the most complex challenges of any periodic publishing initiative is perseverance: thinking forward, debating ideas, writing article after article, researching, writing and finally publishing. It becomes a greater challenge when the task is carried out in the midst of an authoritarian and hostile environment. That is our case. We present our fifth issue while suffering the consequences of Covid-19 and the onslaught of a regime that prefers to silence reality rather than face it.

This new issue includes articles by Elsa Cardozo, Carlos García Soto and Pedro Pablo Peñaloza. “Authoritarian resilience and the Venezuelan democratic cause: resources and asymmetries” is an extension of the previous article by Elsa Cardozo. On this occasion, the author describes the current state of international advocacy, identifies critical issues that caught her attention, and indicates measures in different modalities and aspects. Cardozo finally offers a set of thoughts as well as proposals for action.

The author’s analysis includes –with rigor and prudence– partial considerations on the impact of Covid-19 in the democratic struggle of our country. Cardozo warns about the possibility “that the regime achieves a large margin of international permissiveness and the democratic cause, with little effective external support, remains in an extremely vulnerable situation”. It is perhaps one of the first investigations published regarding this issue.

“The blockade of the legislative function and the comptroller function of the National Assembly by the Supreme Tribunal of Justice: an introduction” is a valuable and necessary article.

García Soto's investigation details the different mechanisms of institutional repression that the dictatorship applied in order to block the Legislative Power. It is presented as "an introduction to a case study for comparative constitutionalism: how a systematic judicial policy to block Parliament was established from the highest court". After an exhaustive and precise description, the author concludes that the constitutional design of the Constitutional Chamber of Venezuela is "inconvenient and dangerous".

"The Chavista regime sits comfortably on the bayonets of its Armed Forces" by Pedro Pablo Peñaloza analyzes the factors that allow the dictatorship to take over the Armed Forces and earn their "loyalty". The author specifies four elements that make the FANB "one of its main props to maintain hold of power": 1. The partisanship of the FANB, 2. The presence of officers in the Executive, 3. The creation of a military business network and 4. Excessive corruption.

The three articles included in this volume contribute to the central objective of *Democratización* magazine: to identify the features and dynamics of the Chavista revolution with the purpose of creating efficient paths for political action. The contributions of Cardozo, García and Peñaloza allow us to move forward and to expand horizons.

Authoritarian resilience and the venezuelan democratic cause: resources and asymmetries

Elsa Cardozo

These pages approach authoritarian resilience from an international perspective as a continuation of a prior article¹, now deliberately emphasizing the current state of both influences and resources or mechanisms² that encourage authoritarian resilience as well as those that promote the democratic cause. Henceforth, the expression “democratic cause” designates the demand for the restitution of the rule of law, the full validity of the Constitution and, necessarily, of the guarantees of human rights, and the effective democratic institutionality (which requires but is not limited to holding free and competitive elections), while immediately

1 Elsa Cardozo, “Democratización y resiliencia autoritaria: oportunidades del desafío y riesgos de la permisividad”, *Democratización* 1, N° 3, (Caracas, 2019), 87-115. Text that serves as a conceptual and empirical framework regarding the characterization of the international pro-authoritarian incidence. Some bibliographic references necessary for precisions will be used again in this paper.

2 The analysis of measures will be linked, in its international dimension, to the mechanisms identified by Juan Miguel Matheus in “La resiliencia de la Revolución Chavista”, *Democratización* 1, N° 4, (Caracas, 2019), 66-91.

tending to the humanitarian emergency now aggravated by the immediate impacts of a pandemic of unforeseeable consequences.

This study does not intend to present an exhaustive balance, but rather to outline an analysis that could be useful to understand the two facets of international incidence and the density of their conjunction in Venezuela. Firstly, the current state of international incidence is described, while particularly critical issues that received external attention are identified. Then, the international influence as well as measures taken upon these issues in their different modalities and aspects are examined, in order to contrast and evaluate them. Final thoughts and proposals for action are lastly outlined.

Facets of international advocacy: critical moments and issues

Once the well-known incidence of the international field in the multidimensional Venezuelan crisis, both in its development and in its prospect for continuity or solution³, is acknowledged, it is worth dwelling on some considerations that have made it increasingly complex, in at least two ways. On the one hand, the effect of international actors (international but also transnational, governmental, intergovernmental and non-governmental), whose commitment is –to varying degrees– vague or predominantly pragmatic and potentially changing, must be considered when distinguishing and evaluating influences and measures that favor the prolongation or change of status. On the other hand, the incidence of relations between international actors must also be considered in the distinction of those who support authoritarian

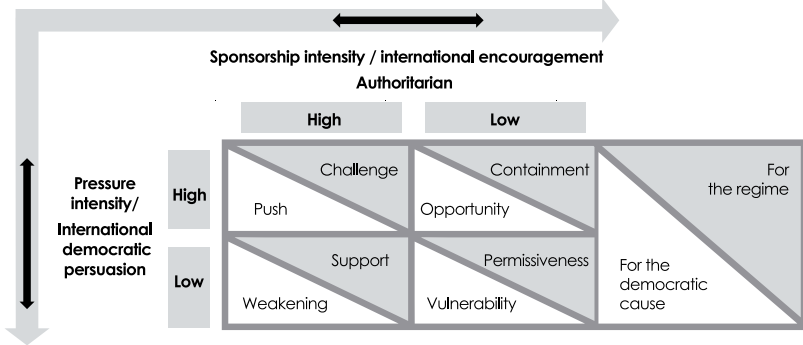
3 Elsa Cardozo & Félix Gerardo Arellano, “El desafío internacional: comprender y cooperar”, *Revista de Occidente*, N° 458-459 (July-August, 2019), 13-34.

continuity or democratic reconstruction with different degrees of commitment and pragmatism, manifested by their positions, interests and initiatives when facing national actors, whether it can be attributed to a desire of cooperating or competing among each other –due to their interests in Venezuela and for the their particular geopolitical balances of influence–, thus facilitating or complicating democratization. The latter adds a new layer ties, tensions and negotiations to the balance. Both considerations have become more visibly important and largely critical between the end of 2019 and the first quarter of 2020.

This brings forth Oisín Tansey's⁴ proposed matrix mentioned in the previous article, now emphasizing the intensity of democratizing pressure and persuasion, and including the study of the incidence of pressure and persuasion among international actors interested in Venezuela's evolution. The density added by the quantity and variety of internal and external obstacles to the democratic cause is not denied, and, therefore, resource asymmetry between the regime and the democratic actors is considered. The expanded table introduces these confluences very simply, regarding what high or low intensity of democratic or authoritarian incidence means for both the regime and the democratic cause.

4 Oisín Tansey, *The international politics of authoritarian rule* (Great Britain: Oxford University Press, 2016), 13.

Table 1. Modified Tansey matrix



The relations between the actors whose interests surpass Venezuela incorporate the characteristics of a multi-level game into the national situation⁵: among and within the national democratic actors and those linked to the regime, as well as with international actors that support the democratic cause or encourage authoritarian continuity in a more or less active way and answering to their own interests. Among the latter, as represented by the arrows in the table, there are also interactions in regard to the Venezuelan crisis, with more or less competition or cooperation, within (in black) and between (in gray) the two sets of actors (authoritarian and democrats).

Using as reference this table of links and incidents, the environment during the first quarter of 2020 oscillated between, on the one hand, the quadrant of a challenged, but persistent regime –even amid significant pressure and loss of international

5 Diplomacy development in Robert Putnam's classical essay "Diplomacy and Domestic Politics. The Logic of Two-Level Games", in *International Bargaining and Domestic Politics. Double-Edged Diplomacy*, Peter Evans, eds. Harold K. Jacobson & Robert D. Putnam (Berkeley-Los Angeles-London: University of California Press, 1993), 431-470.

margin of economic and political maneuver– and that of an opposition group encouraged by the renewed international support for its leadership, but limited by the persistent repression and institutional manipulations of the regime. The second set of actors, although seriously harassed, re-launched a renewed roadmap with the challenge of recovering democratic national capacities for mobilization and pressure. This has happened amid crises and uncertainties for democracy in regional and global settings⁶, from political changes in the priorities of neighboring governments, economic slowdown and regional social and political protests, to challenges to foreign policies from Europe and the United States and between them.

It is, of course, pertinent to note the urgencies and changes in priorities that those who have supported the regime –through diverse measures and with different motivations– have been confronting, such as the cases of Cuba –specifically because of its almost existential economic and political ties with the Bolivarian revolution– and Russia, China, Turkey or Iran.

Furthermore, the enormous global impact of the COVID-19 pandemic, its effects and consequences, are just beginning to be manifested in all areas, including that of the multidimensional Venezuelan crisis.

6 The *Journal of Democracy* (vol. 31, N°1, January 2020), 30 years after the celebration of the third democratic wave, gathers the characteristics of the challenges faced by democracy in several articles, including an authoritarianisms which are less well disguised and which are more willing to penetrate democratic societies. Among them, the texts of Francis Fukuyama (“30 Years of World Politics: What has Changed”, 11-21) and Yascha Mounk (“The End of History Revisited”, 22-35) stand out. Available in: <https://www.journalofdemocracy.org/>

During the beginning of 2020, national and international events and actions revealed changes in an environment in which the balance between the democratic and authoritarian incidences, given the setbacks of the national democratizing agenda during 2019, placed the regime between containment and permissiveness. In this context, democratic influences displayed, on the one hand, the continuity of international expressions of support and the willingness to evaluate very significant aspects of the crisis, not only with statements of concern but with reports and initiatives of political and humanitarian support; while, on the other, manifested a very unequal disposition to apply sanctions as well as general difficulties in coordinating actions to become more efficient to and articulated with the national democratic strategy. Meanwhile, the regime did not stop seeking support from related governments and nationally taking decisions to avoid the fracture of its coalition –particularly in the military sector, between surveillance, punishments and perks– under the pressure of sanctions and making arrangements to evade some of them and to procure economic resources through formulas that did not jeopardize their political control. The latter translated into decisions and omissions to lower economic pressure, already very visibly in early 2020, allowing and encouraging a disorderly open market, dollarization (without investments, national production, generation of decent jobs or productivity), the delivery of operations in strategic sectors to companies from allied countries, with the persistence and aggravation of opacity and the great shadow of illegality⁷. The challenges of unstoppable inflation, the unconstrained deterioration of public services and, since March,

7 Asdrúbal Oliveros & Guillermo Arcay , “Impactos de los incentivos de la corrupción. Análisis cuantitativo de las principales actividades económicas ilícitas en Venezuela”, *Transparencia Venezuela* (Informe Corrupción 2018), available in: https://www.coalicionanticorrupcion.com/images/informes/Impactos_de_los_incentivos_de_la_corrupcion.pdf

the fall in oil prices to levels reminiscent of the early 1990s with a collapse in production reminiscent to the 1940s aggravated the already complicated governance scene, managed by the regime with measures of repression and intimidation and with the use of increasingly limited socio-economic resources for political control.

In order to identify changes in the environment and their significance for authoritarian or democratic international advocacy, facts and events will be categorized in five dimensions that are especially significant for the international responses they elicited, as well as for their usefulness to, later on, organize the analysis of international reactions and interactions.

In the **humanitarian dimension**, the continuation and aggravation of the emergency from all angles continued to be the focus of international attention, due to its human significance (including the use of government programs as an instrument of social control), but especially and undoubtedly due to how accumulated and foreseen migratory movement impacts other countries. Faced with this matter, authoritarianisms of various kinds limit to keeping silence or defining it as a matter caused and aggravated by those who nationally and internationally support the democratic cause. The emergency caused by the COVID-19 pandemic emphasized the urgency and complexity of the humanitarian issue amid a global crisis that, as such, has led to the prioritization of resources and attention to the containment of the epidemic, yet without displacing the extreme vulnerability of countries like Venezuela, which is still pondered in different ways by international democratic actors, human rights defenders and those linked to humanitarian assistance, as well as –although

with less initiative– by authoritarian actors and –somewhat more visibly– by critics of the sanctions regime.

The **regional and hemispheric security** issues which are aggravated by the Venezuelan government have continued to be an object of international concern, from those linked to military mobilizations, crime and illegal activities, to those related to environmental degradation⁸. Meanwhile, the authoritarian perspective, both national and international, especially among sanctioned regimes, continues to define the regime as a victim of threats, measures and sanctions that endanger national sovereignty and international law⁹.

The critical **economic situation** –a result of policies, decisions and omissions of the regime– is another very relevant dimension in the configuration of the current environment, both for the theses and measures of the regime in response to sanctions, as well as for the relationships that have been resorted to in order to evade them, particularly those linked to opaque arrangements in which corruption and illegal businesses thrive¹⁰.

The **human rights situation** is a matter of particular relevance that has placed and kept the Venezuelan crisis on the international agenda, which has evidenced the sharp contrast between the

8 Reporte, estudio oro de sangre ICC, Transparencia, Control ciudadano, Ruth Diamint in Agenda Pública

9 Such as the Venezuelan government, which has been presenting the case before the International Criminal Court, the World Trade Organization and the United Nations Human Rights Council of which it has been a part since February 2020.

10 Oliveros & Arcay, “*Impactos de los incentivos de la corrupción. Análisis cuantitativo de las principales actividades económicas ilícitas en Venezuela*”; International Crisis Group, “El peso del oro: violencia en el sur de Venezuela” (February 28, 2019), available in: <https://www.crisisgroup.org>.

positions of democratic and authoritarian governments. In accordance with the latter, the Venezuelan government continues to excuse itself –as autocratic regimes usually do– with allegations of sovereignty and criticism of international interference, disregarding the supranational principles and international treaties that the current Constitution incorporates¹¹. In the midst of the restrictions of rights that the pandemic enforces, this issue becomes critically important, on its own and due to the political, social and economic implications of its early visible overflow, which finds fertile ground in the imbalance between the search for security and the limitation of freedoms that the situation itself encourages, even in contravention of international principles and norms¹².

Finally, but of critical importance, still the **political dimension** –although with renewed momentum– highlights the contrast between international democratic and authoritarian intentions and positions. This part of the agenda includes the recognition of the National Assembly and its President as such and as President-in-Charge, the call for parliamentary and presidential elections and the necessary conditions for them to be free, aside from other critical issues on the political agenda (releasing political prisoners,

org/es/latin-america-caribbean/andes/venezuela/073-gold-and-grief-venezuelas-violent-south

11 This is evidenced, once again, by the criticism and disqualifications of the evaluations presented as updates to previous reports (July, September and December 2019) by High Commissioner Bachelet before the United Nations Human Rights Council between February and March 2020.

12 A recent report by the NGO Human Rights Watch has summarized the norms of international law that govern emergency situations regarding the State's obligations and limitations on the restriction of rights: *Dimensions of COVID-19 Response* (March 19, 2020), available in: https://www.hrw.org/news/2020/03/19/human-rights-dimensions-covid-19-response#_Toc35446577

empowering parties and leaders, respecting the constitutional powers of the National Assembly).

All these issues have become particularly visible in recent events, and have enticed positions and measures that favor continuity or that support democratic recovery to be expressed. For the time being, it is sufficient to anticipate the importance of addressing the asymmetries between one and the other, manifested internationally in the unequal effort of democratic and authoritarian advocacy, as will be analyzed beginning with the following considerations on recent critical events in each of the five dimensions and the international responses they have received.

Critical events, responses and international interactions

The worsening of the humanitarian emergency has not been disguised by the supposed economic normalization based on an informal and unregulated dollarization as well as an openness to imports amid the prevailing opacity and lower but sustained and always high levels of inflation¹³. Between the end of 2019 and the beginning of 2020, important international institutions and global organizations released data that reveals the severity of the situation regarding food, health, access to fundamental services and working conditions¹⁴. It is thus not by chance that in the

13 Venezuela has accumulated 28 months of hyperinflation, since its inception in November 2017, occupying the fourth place among the longest lasting hyperinflation processes registered. Ecoanalítica, “Casi en el podio hiperinflacionario” (February 12, 2020), available in: <https://ecoanalitica.com/graficodelasemana-casi-en-el-podio-hiperinflacionario/>

14 Programa Mundial de Alimentos, Venezuela-Evaluación de seguridad alimentaria: primeros hallazgos (February 23, 2020), available in: <https://reliefweb.int/report/venezuela-bolivarian-republic/wfp-venezuela-evaluaci-n-de-seguridad-alimentaria-principales>; Cáritas Venezuela, *Ma-*

midst of the COVID-19 pandemic, beginning in 2020, Venezuela occupies one of the three places among the American countries least prepared to deal with the emergency¹⁵, with national and international effects and consequences that various analyses have anticipated¹⁶.

The persistence of the crisis is also manifested in the largest flow of forced emigration in regional history, a displacement crisis that continues to be among the most serious in the world¹⁷. The

pas y Boletines de Nuestra Acción (2016-2019), available in: <http://caritasvenezuela.org/mapas-y-boletines-de-nuestra-accion/>; Oficina de Coordinación de la Asistencia Humanitaria de las Naciones Unidas (OCHA), Venezuela. *Informe de situación* (February 17, 2020), available in: <https://reports.unocha.org/es/country/venezuela-bolivarian-republic-of>; Human Rights Watch, Venezuela. *Eventos de 2019* (2020), available in: <https://www.hrw.org/es/world-report/2020/country-chapters/337313>; Amnistía Internacional, *Informe Anual 2019 de Amnistía Internacional: Capítulo Venezuela* (February 26, 2020), available in: <https://www.amnistia.org/ve/noticias/2020/02/13725/informe-anual-2019-de-amnistia-internacional-capitulo-venezuela>; Organización Internacional del Trabajo, *Informe de la Comisión de Encuesta* (September 30, 2019), available in: https://www.derechos.org.ve/web/wp-content/uploads/wcms_722037.pdf

15 Global Health Security Index 2019 (October 2019), available in: <https://www.ghsindex.org/wp-content/uploads/2019/10/2019-Global-Health-Security-Index.pdf>, p. 307

16 Kathleen Page & Tamara Taraciuk Broner, "Venezuela's Health Care Crisis Now Poses a Global Threat", *Foreign Policy* (March 12, 2020), available in: <https://foreignpolicy.com/2020/03/12/venezuela-health-care-crisis-poses-global-threat-coronavirus-maduro-sanctions/>; Latin American Risk Report, "Venezuela and Coronavirus - March 2020. Venezuela already had a crisis. Coronavirus will make it worse" (March 18, 2020), available in: <https://boz.substack.com/p/venezuela-and-coronavirus-march-2020>

17 UNOffice for the High Commissioner for Refugees, on the flow and situation of Venezuelans abroad -*Situación en Venezuela*, available in: https://www.acnur.org/situacion-en-venezuela.html?gclid=CjwKCAjwmKLzBRBeEiwACCVihkamUAcrRtRm9o7rQDWHFjk0CCR6KEbNZ4Y8rawROG7FZfgvFQxYSUxoCq9cQAvD_BwE-y sobre el apoyo a

complexity of this challenge is magnified, continually politicized by a regime that, having hindered the free entry of international humanitarian assistance offered, has endeavored to control its distribution –partly including the opacity of business or barter with allied countries or willing partners– to administer it directly within their economic, political and social control schemes. A good illustration of the official distortion of the sense of assistance are the deals denounced in March 2020 that, far from being an institutionalized oil-for-food program, have been a way to evade sanctions and to control the national administration of basic supplies¹⁸. Not meeting the conditions of an institutionalized, independent and transparent program not only summarizes the authoritarian will to politicize assistance and the obstacles that it therefore imposes on many initiatives, but it evidences the level of concern of the regime towards the humanitarian emergency. Since the end of 2019 and throughout the first months of 2020, the allegation that sanctions are the cause behind the humanitarian emergency has become more persistent in the discourse of senior spokesmen of the regime: on international tours, at the UN and with its demands to the ICC and the WTO. The issue of humanitarian assistance, both for emigrants and for Venezuelans in national territory, has not stopped receiving international attention in meetings and forums that promote it, but it has not been sufficient nor does it stop encountering obstacles in its processing, which

actividades en Venezuela, Venezuela (enero 2020), disponible en: https://www.acnur.org/es-es/op/op_fs/5e5ecadb4/acnur-venezuela-hoja-informativa-enero-de-2020.html. La Organización Internacional de Migraciones

18 Mariana Párraga & Ana Isabel Martínez, “Empresa mexicana toma millones barriles crudo venezolano en intercambio petróleo por alimentos”, Reuters (March 5, 2020), available in: <https://lta.reuters.com/articulo/politica-mexico-venezuela-idLTAKBN20T046-OUHLT>

is only partially attributable to the overcompliance of regime sanctions, a regime that expressly does not restrict these flows¹⁹.

Recent reports reiterate the problems of national and international insecurity²⁰ that are multiplied with the loss of the State –even in its military institutionality– and the land gained by illicit and criminal activities²¹ in which transnational links are present, businesses that provide resources to the regime and include opaque transactions of strategic resources with allied governments²², but which also generate international concern

19 It has been explicitly and repeatedly communicated as such in each sanction issued by the European Union and the United states. The United Nations High Commissioner for Human Rights referenced this issue when she expressed that humanitarian exemptions unrelated to sanctions must be applied widely and effectively, quickly and flexibly authorizing the provision of equipments and medical supplies. Bachelet pide que se atenúen las sanciones para facilitar la lucha contra el COVID-19 (24 de marzo 2020), available in: <https://www.ohchr.org/SP/NewsEvents/Pages/DisplayNews.aspx?NewsID=25744&LangID=S>

20 Junta Internacional de Fiscalización de Estupefacientes, *Informe 2019* (February 27, 2020), 92 , available in: https://www.incb.org/documents/Publications/AnnualReports/AR2019/Annual_Report/Spanish_ebook_AR2019.pdf; Insight Crime, Venezuela Profile and News (sf), available in: <https://www.insightcrime.org/>; Insight Crime, Venezuela: A Mafia State? (2019), available in: <https://www.insightcrime.org/investigations/venezuela-mafia-state/>

21 See Paola Bautista de Alemán's articles in previous issues of the magazine: "Revolución Bolivariana y el desarrollo del Estado gangsteril", *Democratización* 1, N°1 (Caracas, 2019), 65-66; "Tres rasgos del Estado gangsteril en Venezuela", *Democratización* 1, N°2, (Caracas, 2019), 70-102; "Venezuela: perspectivas político electorales para un Estado gansteril, fallido y parcialmente colapsado", *Democratización* 1, N°3 (Caracas, 2019), 61-86.

22 Oliveros & Arcay, "Impactos de los incentivos de la corrupción. Análisis cuantitativo de las principales actividades económicas ilícitas en Venezuela"; International Crisis Group, "El peso del oro: violencia en el sur de Venezuela"; Observatorio Venezolano de violencia, *Informe*

regarding both the spaces and resources that non-demobilized Colombian and guerrilla groups find. This threatens a still very fragile peace process, as well as the conflict, violence between groups (criminals, guerrillas, military) that could possibly escalate as they struggle for the riches of the so-called Mining Arc, a struggle that already has incalculable costs in terms of the environment, health, human life and the uncontrolled flow of resources. These are aspects that concern democracies, due to their institutionality, stability and security, but which seem to matter little to authoritarian partners interested in economic benefits and gains in geopolitical presence or influence.

The economic issue has also been very visible on the international agenda in connection with Venezuela, partly due to the already mentioned opaque and illegal aspects, but also due to the contrast between, on the one hand, the officially intended impression of normality and the disorderly conjunction of measures with which the regime has responded to the accelerated material deterioration –from the chaotic de facto dollarization to the influx of imported goods– and, on the other hand, the high cost of these products, sustained inflation, scarcity of water, continuous power cuts, sustained stagnation of national productive sectors, and the increase in preventable diseases, malnutrition and mortality rates²³. While the argument of the regime and some of its partners is that sanctions are the cause of the Venezuelan ruin and crisis, the sequence of government decisions and policies places the

Anual de Violencia 2019 (December 27, 2019), available in: <https://observatoriodeviolencia.org.ve/news/informe-anual-de-violencia-2019/>

23 Venezuela is no longer shown in the World Bank or the IMF's data, due to lack of information, although the former states that economic and social conditions in Venezuela continue to be terrible. *Global Economic Prospects. Slow Growth, Policy Challenges* (January, 2020), 96, available in: <https://www.worldbank.org/en/publication/global-economic-prospects>.

origin of the disaster precisely in the imposition at all costs of its own orientation and management controlling resources, without checks and balances, as illustrated by reports on corruption²⁴ and on the sale of gold reserves by the Central Bank²⁵. Meanwhile, democratic governments and international organizations have made proposals for reconstruction and financing plans that justly and necessarily imply a change in the prevailing political orientation.

Between 2019 and 2020, the international human rights claim was especially present, based on the 2019 report and the updates presented by the United Nations High Commissioner for Human Rights. Its concise references to the situation in Venezuela in February and March 2020, during the 43rd Session of the Human Rights Council²⁶, were, like those of 2019, criticized and disqualified by the regime. It briefly reported –as these updates usually do– the lack of guarantees and behavior that violates the entire human rights spectrum, now as a result of the permanence

24 Transparencia Venezuela, *Venezuela es el país más corrupto en América y el Caribe según el Índice de Percepción de la Corrupción 2019* (January 23, 2020), available in: <https://transparencia.org.ve/venezuela-es-el-pais-mas-corrupto-en-america-y-el-caribe-segun-el-indice-de-percepcion-de-la-corrupcion-2019/>

25 Corina Pons & Mayela Armas, “Gobierno de Venezuela retira otras seis toneladas de oro del banco central: fuentes” (March 12, 2020), available in: <https://lta.reuters.com/articulo/venezuela-oro-idLTAKBN20Z3JH>

26 Michelle Bachelet, United Nations High Commissioner for Human Rights, *Oral updates and introduction to country reports of the Secretary-General and the High Commissioner (Colombia, Cyprus, Eritrea, Guatemala, Honduras, Iran, Nicaragua, Sri Lanka, Venezuela, Yemen)* (February 27, 2020), available in: <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25624&LangID=E>; Actualización oral sobre la situación de los derechos humanos en la República Bolivariana de Venezuela (March 10, 2020), available in: <https://www.ohchr.org/SP/NewsEvents/Pages/DisplayNews.aspx?NewsID=25699&LangID=S>.

in Venezuela, since June 2019, of a team designated by the Office of the High Commissioner that Bachelet chairs²⁷. It is also worth noting that the Venezuelan regime achieved its election to the Human Rights Council in late 2019 with 105 votes in the General Assembly, despite the very visible and fresh background of the report of the High Commissioner on July 4²⁸, its update on September 9²⁹ and the Resolution of the Human Rights Council that on September 27³⁰ approved establishing an independent international fact-finding mission. In this area of high international visibility, authoritarianism does not usually have substantive arguments to oppose and, as the Venezuelan regime does, they limit themselves to claiming respect for sovereignty –turning their backs on the supranational nature of the human rights protection regime consecrated in the Venezuelan Constitution– and accusing others, as has been done repeatedly regarding sanctions.

27 It includes attacks and arrests of leaders, protesters and journalists in political acts by security forces, government supporters and alleged members of armed groups; impediment of entry of the deputies to the National Assembly headquarters; raid of a political party headquarters and media offices; threat of legislation to sanction human rights organizations for receiving international financing; harassment of university authorities and restrictions on freedom of association; cruel, inhuman or degrading treatment at the headquarters of the General Directorate of Military Counterintelligence; the cases of need for transplants, treatments and resources for the care of children, the high levels of food insecurity revealed by WFP studies, the volume of migrants and the discourses that can justify or incite xenophobia; the problem of over-compliance with regime sanctions and its effect on the procedures for the arrival of medicines, food and supplies for humanitarian action.

28 Available in: <https://www.ohchr.org/SP/NewsEvents/Pages/DisplayNews.aspx?NewsID=24788&LangID=S>

29 Available in: <https://www.ohchr.org/SP/NewsEvents/Pages/DisplayNews.aspx?NewsID=24958&LangID=S>

30 Available in: <https://undocs.org/A/HRC/RES/42/25>

In the political aspect, since the beginning of 2020, acts of violence and aggressions when entering the Federal Capitol were also committed, such as on January 5, when it was attempted to prevent the swearing-in of the Board of Directors of the National Assembly. Its effective realization had to take place in another venue, where members showed their unanimous support for the reelection of Juan Guaidó as its president and as President in Charge with 58 international recognitions, and his international tour between January 19 and February 11 that took him to Colombia, four European countries, including his presence at the Davos Forum, Canada and the United States. Meanwhile, between January 15 and 22, Foreign Minister Arreaza visited China and Iran, and between January 21 and 23, Vice President Delcy Rodríguez landed at Madrid's Barajas airport in violation of European Union sanctions, later traveling to Turkey.

Everything described so far contributed to reigniting international interest in the continuation and exacerbation of the crisis in all its dimensions, as well as the significance of the international impact on the Venezuelan situation and the interaction between the most relevant international actors around it. It is worth pausing briefly on the latter, represented by the arrows on Table 1, because as the international significance and spillover of the Venezuelan crisis increases, the importance of the geopolitical dynamics that surrounds it has become more remarkable. This translates, on the one hand, into influences that support the continuity of the regime or that support the democratic cause; on the other, in the placement of the Venezuelan crisis on a larger context in which competition is greater than consensus within and between actors on either side.

Balance, asymmetries and proposals

The whole of what has been characterized up to now, trying to present both what favors the authoritarian permanence and what encourages the democratic cause, can be briefly summarized in a kind of balance of resources or mechanisms that mobilize or play in favor of either party³¹.

The following table summarizes the international resources mobilized by the regime as well as those mobilized for the democratic cause. It is an adaptation, perhaps rather a reinterpretation, of six of the seven mechanisms defined by Juan Miguel Matheus³² as means that favor the regime's resilience, now for a more international-focused analysis and to compare with democratic efforts. Resilience was defined by the author as the ability to recover an initial state once a disturbance has been overcome. In this case, it is meant as a concept closer to that of

31 This analysis outline is based on the literature on "sharp power" resources: Larry Diamond, Mark F. Plattner & Christopher Walker (eds.), *Authoritarianism Goes Global* (Baltimore: Johns Hopkins University Press, 2016); Larry Diamond, *Ill Winds. Saving Democracy from Russian Rage, Chinese Ambition and American Complacency* (Nueva York: Penguin Press, 2019); Francis Fukuyama, "30 Years of World Politics: What has Changed"; Yascha Mounk, "The End of History Revisited"; as well as in the mechanisms identified specifically for the Venezuelan case by Juan Miguel Matheus, "La resiliencia de la Revolución Chavista", *Democratización* 1, N° 4, (2019), 66-91.

32 Sources and appearance of legitimacy, ideological reconfiguration, gangster state, autocratic solidarity, errors of democratic resistance, regional political instability and inculturation of the autocratic forms of the Chavista revolution. The latter, which was not included in this adaptation –the international and the comparison of the pro-authoritarian and the pro-democratic– would be contained partly in the change and diffusion of the supporting ideas and partly in the way of taking advantage of the changes in the international context.

resistance, that is, it does not imply the restoration of an initial state, but rather it refers to the adaptation of resources (we prefer this term as opposed to “mechanisms”, as it includes capacities, strategies and means).

Table 2. Resources of the authoritarian regime
and the democratic cause

RESOURCES	
Supporting ideas	
Authoritarian regime	Democratic cause
Democratic re-founding in Bolivarian revolution, 21st century socialism and civil-military regime, in an increasingly pragmatic adaptation to its needs for external support and legitimation.	Recovery of the rule of law and democracy based on the full guarantee of human rights and the human, material and institutional recovery of the country.
Sources of legitimation	
Electoral processes of decreasing integrity, without international observation –rather accompanied–, cultivation of support from related regimes and an absolute conception of sovereignty that inspires the distancing and rejection of international principles, practices, procedures and organizations regarding human rights, elections, commercial exchanges, security.	Participation, defense and demand of integrity of electoral processes, with international observation; respect and demand for respect for the institutional framework (since January 2016, of the National Assembly as a legitimately constituted power); cultivation of links with democratic actors and international institutions and forums whose support, scrutiny and processing strengthens the possibilities of democratic recovery.

Statehood	
Authoritarian regime	Democratic cause
<p>Contrast between centralization and control of power, increasingly by force, on the one hand, and, on the other, the willingness to yield or inability to maintain control over spaces where activities are carried out that threaten the security and integrity of people and national and international goods.</p>	<p>In the midst of a situation of great vulnerability in the face of pressure, threat and repression: defense of the recovery of statehood –institutional and material capacity– as a necessity for Venezuelans and to cultivate trustworthy and mutually beneficial relationships with the world.</p>
Basis for solidarity	
<p>The regime: initially ideological and fed with abundant economic facilities, but increasingly pragmatic and linked to burdensome guarantees and strategic business delivery.</p> <p>Their allies: fundamentally pragmatic (quasi-existent for Cuba) but also of geopolitical support in the competition between powers and for strategic resources (as with its significant variations in the cases of Russia and China, Turkey and Iran).</p>	<p>The democrats: of legal-political principles, in the face of the humanitarian emergency with the conviction and promise of democratic stability, willingness and ability to govern and to fulfill legitimately concluded international commitments.</p> <p>Their allies: also of principles, of humanitarian sensitivity, as well as reasons of security and regional and hemispheric stability, especially and notoriously for the US, as well as for the neighbors closest to the overflowing Venezuelan crisis.</p>

External mistakes	
Authoritarian regime	Democratic cause
Opposition errors have weighed in favor of the regime in its international projection, be it in specific situations (e.g. 2019 by the call for military support on April 30 against La Carlota air base in Caracas), or of conditions of organizational and strategic inconsistency that the regime itself encourages.	The mistakes of the regime also weigh in favor of the opposition, yet differently, precisely because of the ideas and the nature of the legitimacy that the democratic cause cultivates. E.g., the aforementioned violence against deputies, especially since January 5, 2020, disadvantages the regime, while strengthening the operation of the National Assembly.
Movement efficiency in the international context	
Regionally: faced with the loss of allies and the weakening of forums, taking (at least discursive) advantage of situations of instability. Hemispheric and globally: cultivation and diffusion of ties with Russia, China, Turkey, Iran, and support in the United Nations as a whole (e.g. its election in the Human Rights Council) in a moment of worldwide authoritarian advances.	Regionally: cultivation and diffusion of ties with governments of the Lima Group, due to the expansion of support in the OAS and the non-polarization with Argentina and Mexico. Hemispheric and globally: care for links with the US, Canada (which is part of the Lima Group) and Europe (including the International Contact Group).

This schematic balance could be enriched with a more precise development of what the last row indicates about the incidence of international actors in both causes, but also of the tensions and difficulties regarding initiatives among those who favor the democratic cause. However, this general approach shows

important asymmetries at the different levels of international incidence, now within an epidemic that places the Venezuelan emergency on a scale of greater social, economic and political, as well as geopolitical severity and complexity. Even if it's hard to anticipate how this context will accentuate asymmetries, the initial imbalance seems to favor authoritarian resilience.

Based on Table 2, the balance of support and the sources of legitimation continue to favor the democratic cause internationally, in the sense that conceptually it is difficult to oppose them; but politically they have been assumed, by related actors or pragmatically related to the regime, as matters that only concern internal politics. Something similar occurs with statehood: although conceptually –and practically– it is convenient to recover all those who want to maintain stable relations with Venezuela, it is part of political calculations –as well as economic given illicit opportunities– in which a certain level of certainty is sufficient³³. Moreover, the weight of an exacerbating emergency now hangs over said uncertainty, on a statehood that has failed, nationally and internationally, in which the government seeks to strengthen itself through management of the epidemiological crisis with

33 Like the one that would have been attempted on January 5, with the obstacles to the swearing-in of the directive of the National Assembly and the fraudulent swearing-in of a directive parallel to that which followed the increase in pressure and blockades of the legitimate National Assembly. That convenience was credibly associated, in various analyzes, with the message from the Russian Finance Minister, Sergey Storchak, who declared that **his country was betting on the political stabilization Nicolás Maduro's government, without Juan Guaidó as an annoying counterpart, to proceed to send more advisers and help Venezuela.** Stepan Kravchenko & Andrey Biryukov, *Russia Awaits Venezuela Power Shuffle Before Sending Advisers* (December 31, 2019), available in: <https://www.bloomberg.com/news/articles/2019-12-31/russia-awaits-venezuela-power-shuffle-before-sending-advisers>

the imposition of emergency and control initiatives mounted on a dilapidated health system, to the point that indispensable international cooperation is hampered.

The bases of solidarity also bear the global impact of growth loss, stagnation or economic decline as well as now that of the pandemic with fearsome effects and incalculable consequences. In this context, the Venezuelan crisis is relocated in the world: in the complex equation of competition between powers for their spaces and areas of influence³⁴ in the midst of an extreme global emergency, and in the national emergency that compromises policies and resources. This does not imply international abandonment of the Venezuelan crisis, but contributes to its international stagnation in terms that, unless they favored a substantive political agreement that would facilitate the democratic transition, tend to favor the regime, which *de facto*, even if limitedly –due to its lack of legitimacy, resources and efficiency–, maintains decision and repression capacities. The claim against sanctions, even though the crisis in the Venezuelan health system and the destruction of the oil industry are clearly prior, is repeatedly presented by the regime searching for solidarity as well as accusing supporters of those measures of treason and inhumanity. Meanwhile, those who have imposed sanctions insist that there are no restrictions on the flow of food, medicine or humanitarian assistance. However, the pressure to lessen these sanctions, even before the epidemic, has not stopped.

As for the margins of error, on the other hand, it is the regime that is most exposed, particularly due to the way of exercising power in the pandemic emergency, in which the violent imposition

34 Graham Allison, "The New Spheres of Influence. Sharing the Globe With Other Great Powers", *Foreign Affairs* (March-April, 2020), 30-40.

of restrictions, the absence and even penalization of specialized spokespersons, as well as the militarization and politicization of initiatives and responses, not only violates human rights³⁵ but also hinders the effectiveness in the containment of infections in a collapsed health system. The biggest mistake of democrats may be inaction or continuing to act as if the pandemic had not noticeably changed the situation: not just in the humanitarian and social sense, but in the political and geopolitical sense.

In relation to the latter, and regarding the efficiency of movements in the international context, at least in its first months, the pandemic has not modified the prevailing environment of competition between powers: not between the US and Europe, nor between them and China and Russia; nor among authoritarian powers, on which there are plenty of examples. Regardless, each one in their field and space tries to ensure their influence, but that can change direction at a time when the imperative to contain contagion encourages isolation and prioritization of national issues. It remains to be seen if the border proximity between Latin American countries compels some frank forms of cooperation –so underdeveloped in the last decade to say the least–, and if the political agenda on the Venezuelan crisis in which the G-3 had been so active in its declarations, proposals and initiatives, finds new encouragement in the OAS in the second term of Secretary General Luis Almagro, won after a campaign that seems to have called for greater prudence and efficiency, with a qualified majority of 23 supports.

Finally, in the midst of the current situation, there is a risk that the asymmetries between the legitimacy of the democratic cause and the illegitimacy of the authoritarian regime, as well as

35 Human Rights Watch, *Venezuela. Eventos de 2019* (2020).

between the limited resources of the former and those arbitrarily arranged by the latter, The Venezuelan crisis approaches the lower right quadrant of Table 1, that is: that the regime achieves a large margin of international permissiveness, while the democratic cause, with little effective external support, remains in a situation of extreme vulnerability. Both reflection on the management of resources and asymmetries on both sides and national and international democratic initiatives should be directed to prevent this.

It is worth concluding with just a few general thoughts on the issues that seem relevant for the analysis and proposals on how to maintain and improve international democratic advocacy, as has been discussed:

1. Internationally strengthen, sustain and defend supporting ideas, sources of legitimacy and bases of solidarity of the democratic cause: in reflection and orientation, declarations and initiatives in the face of the emergency and for the long term.
 - Regarding the pandemic: encourage and facilitate all proposals for international cooperation that, in a transparent and effective way, with supervision and guarantees of compliance, contribute to reducing the weaknesses of the health system and provisions and to protecting its personnel as soon as possible.
 - Regarding the claims on the cost of sanctions: insist on demanding conditions that protect the entry of food, medicine and humanitarian assistance, and the ceasement of overcompliance of practices that hinder the distribution of these basic products.

- Regarding human rights: encourage the scrutiny of non-governmental and international organizations on restrictions of rights during and after the emergency.
2. Keep denouncing regime actions and omissions as well as corrective and alternative proposals that show concern, willingness and building capacities to act nationally and cultivate efficient international articulations.
 3. Continue working, reflecting and advising on the difficulties and resources required in the transition to democracy in the Venezuelan case, in a context of loss of statehood.
 4. Keep encouraging and supporting initiatives in international forums and with democratic allies to work nationally on a renewed roadmap that leads to free elections, contemplating the pressures, supports and mediations necessary for each step to be taken amid national material and institutional destruction.
 5. Cultivate, with clarity of principles and realism, international ties that do not make part of the competences between democratic actors, forums and organizations to the democratic cause.

The blockade of the legislative and comptroller functions of the National Assembly by the Supreme Tribunal of Justice: an introduction

Carlos García Soto

I. Introduction

Within the long-lasting Venezuelan political crisis, the National Assembly has become an exceptional protagonist since its opposition-backed election in 2015 to the present day. During these five years, the National Assembly has tried to be an institutional barrier against the abuse of Executive, Judicial and Citizen Power.

The National Assembly has become the place from where the Venezuelan opposition has politically confronted Nicolás Maduro's regime, even establishing a new President of the Republic under Article 233 of the National Constitution, as well as passing a statute that regulated the democratization process in order to reestablish the validity of the Constitution of the

Bolivarian Republic of Venezuela¹. These actions constitute the political-constitutional route devised by the National Assembly for the political transition towards democracy.

However, the Supreme Tribunal of Justice has systematically issued decisions to impede the National Assembly from exercising its constitutional functions, such as annulling almost all laws dictated by the Assembly and persecuting dozens of its members. The institutional siege of the National Assembly began a few weeks after the election of its members in December 2015, and has continued ever since. Furthermore, the National Assembly has been subjected to institutional violence by an instance called the National Constituent Assembly, unconstitutionally convened and elected in 2017.

The purpose of this essay is to summarize how the blockade of the National Assembly by the Supreme Tribunal of Justice occurred, through different decisions that interpellated each of the typical constitutional functions of Parliament. Since the core of this unconstitutional blockade can be found in the decisions issued during 2016, the emphasis will be placed on that period.

This study is presented as an introduction to a case study for comparative constitutionalism: how a systematic judicial policy to block Parliament was established from the highest court. The focus of this introductory study will be the blocking of the legislative and the comptroller function of the National Assembly by the Supreme Tribunal of Justice.

1 *Estatuto que rige la transición a la democracia para restablecer la vigencia de la Constitución de la República Bolivariana de Venezuela*

II. The National Assembly in the Venezuelan constitutional system²

The National Assembly is one of the five organs of the National Public Power. Specifically, it constitutes the National Legislative Power (Article 136 of the Constitution). Its functions and *modus operandi* are provided for in the Constitution and in the Interior and Debate Rules of the National Assembly (*Reglamento de Interior y Debates de la Asamblea Nacional*)³.

In accordance with what has been a constitutional tradition in Venezuela, the organization regime of the National Public Power in the Constitution starts with the regulation of Parliament, as one of the organs of the National Public Power. However, opposed to what had been tradition since the Constitution of 1811 –bicameral parliaments–, the structure of the Parliament established in the Constitution of 1999 is unicameral⁴, which contradicts the

2 The following arguments derive from Carlos García Soto in *La Asamblea Nacional: lugar en el sistema constitucional y funciones* (Caracas: Universidad Monteávila-Editorial Jurídica Venezolana-Instituto de Estudios Parlamentarios Fermín Toro, 2016), 22-27.

3 “*Reglamento de Interior y Debates de la Asamblea Nacional*”, Official Gazette N° 6014. extraordinary of December 23, 2010.

4 Cfr. Ramón Guillermo Aveledo, *Curso de Derecho Parlamentario* (Caracas: Universidad Católica Andrés Bello-Instituto de Estudios Parlamentarios Fermín Toro), 127. See also Allan R. Brewer-Carías, *La Constitución de 1999 y la enmienda constitucional N° 1 de 2009*, (Caracas: Editorial Jurídica Venezolana, 2011), 136; Manuel Rachadell, *Evolución del Estado venezolano 1958-2015: de la conciliación de intereses al populismo autoritario*, (Caracas: Editorial Jurídica Venezolana-FUNEDA, 2015), 136; and Gustavo Tarre Briceño, *Sólo el poder detiene al poder. La teoría de la separación de los poderes y su aplicación en Venezuela* (Caracas: Editorial Jurídica Venezolana, 2014), 235. Furthermore, the National Assembly provided for in the Constitution of 1999 cancelled the figures of “Senator for life” as well as additional deputies by quotient. See Ramón Guillermo Aveledo, *Curso de Derecho Parlamentario*, 127; María Amparo Grau, “La organización de los Poderes

federal form of the Venezuelan State (Articles 4 and 159 of the Constitution), as already indicated in the previous section.

The decision to have a unicameral National Assembly was justified in an explanatory statement of the Constitution of 1999 as follows: The National Legislative Power is exercised by a National Assembly with a unicameral structure that responds to the purpose of simplifying the procedure for the formation of laws, reducing the cost of operating the Parliament, eradicating the duplication of administration and control bodies, and the duplication of permanent commissions, among other things⁵.

According to Article 186 of the Constitution, the National Assembly will be composed of deputies elected in each federal entity through a universal, direct, personalized and secret voting process with proportional representation according to a population base of 1,1% percent of the country's total population.

Additionally, each federal entity will also elect three deputies.

In the case of indigenous peoples, these will elect three deputies in accordance with the provisions of the Electoral Law, respecting their traditions and customs.

Públicos en la Constitución del 99: desarrollo y situación actual", in *El Derecho Público a los 100 números de la Revista de Derecho Público (1980-2005)*, (Caracas: Editorial Jurídica Venezolana, Caracas, 2006), 329; and Gustavo José Linares Benzo, "Las innovaciones de la Constitución de 1999", *Revista de Derecho Público*, N° 81 (enero-marzo, 2000).

5 "El Poder Legislativo Nacional es ejercido por una Asamblea Nacional cuya estructura unicameral responde al propósito de simplificar el procedimiento de formación de las leyes, reducir el costo de funcionamiento del parlamento, erradicar la duplicación de órganos de administración y control y la duplicación de comisiones permanentes, entre otras cosas".

The calculation of the population base implies that the exact number of members to be elected must be determined for each election process for National Assembly deputies.

To exercise some of its functions, the National Assembly may appoint permanent, temporary, ordinary and special Commissions. When it is in recess, it works through the Executive Committee.

The constitutional period of the Assembly, and therefore of its members, is five (5) years (Article 192 of the Constitution).

Deputies, as members of the National Assembly, are representatives of the people and of States as a whole, not subject to mandates or instructions, but only to their conscience. Their vote in the National Assembly is personal (Article 201 of the Constitution). They are not responsible for votes and opinions cast in the exercise of their functions. They will only answer to the electors and the legislative body in accordance with the Constitution and the Regulations (Article 199 of the Constitution).

Each deputy will have a substitute or an alternate, who will be chosen in the same process (Article 186 of the Constitution).

As will be seen further on, the National Assembly of the Constitution of 1999 wields a series of powers, derived from its own functions, which can be classified into (i) the representative function, (ii) the legislative function, (iii) the political function, (iv) the comptroller function, (v) the administrative function, and (vi) the jurisdictional function. In exercise of these functions, the activity of the National Assembly is judicially controlled by the Constitutional Chamber of the Supreme Tribunal of Justice.

In fact, under the Constitution of 1999, the National Assembly can exercise unusual control over the other Public Powers in comparison to contemporary Constitutional Law. This has even been described as a contradiction with the principle of the autonomy of the Judicial, Citizen and Electoral Power⁶. Therefore, despite what is commonly thought, the Constitution of 1999 established the primacy of the National Assembly over the other Public Powers⁷.

This primacy of the National Assembly over the other Public Powers in the constitutional system of 1999 is manifested up to the point that the National Assembly has the power to remove members of the Public Powers who have not been elected. As will be seen when analyzing the content of the political functions of the National Assembly, the Constitution allows it to remove

6 Allan R. Brewer-Carías, *La Constitución de 1999 y la enmienda constitucional N°1 de 2009* (Caracas: Editorial Jurídica Venezolana, 2011), 137. See his initial critique in “Reflexiones críticas sobre la Constitución de 1999”, *Revista de Derecho Público*, N°81(enero-marzo, 2000): 13.

7 When referring to the Congress described in the 1961 Constitution, Ambrosio Oropeza stated: the Legislative Power, Parliament or Congress is the first of the superior organs that the Constitution discusses. According to the hierarchical order of the public powers, it is not characterized by its pre-eminence over the others, since the three classic powers that fulfill State functions are independent and autonomous, each endowed with specific powers. But although it is not hierarchically superior, the legislative power is the most important of the State organs, since it has the exclusive faculty to dictate the law. Naturally, its fundamental mission is to establish the rules that preside over the social organization, the legal regime under which citizens must live, the orientation of politics in its broadest sense in order for the State to achieve the high ends of collective life. On the other hand, the executive and judicial powers have a role that is certainly fundamental, but more modest: executing, enforcing the laws, ensuring the effectiveness of the legal regime and the directives that determine legislative power. *La nueva Constitución venezolana de 1961* (Caracas, 1981), 405.

members of the Citizen Power, after a sentence by the Supreme Tribunal of Justice (Article 279); to remove the members of the National Electoral Council, after a sentence by the Supreme Tribunal of Justice (Article 296); and to remove the magistrates of the Supreme Tribunal of Justice –after a hearing granted to the interested party– in case of serious offenses already sanctioned by the Citizen Power (Article 265)⁸.

III. The National Assembly and its role in the Venezuelan political crisis (2015-2020)

According to its role within the Venezuelan constitutional system hereby described, the National Assembly has been at the core of the fight for the restoration of democracy and the protection of citizens' rights.

This role undertaken by the National Assembly has been manifested through the exercise of its constitutional functions.

8 The primacy of the National Assembly over other Public Power organs has been criticized by Allan R. Brewer-Carías: It is contrary to the system of checks and balances, which, based on effective autonomy and independence among the powers, should fundamentally imply that the permanence of those who wield Public Powers should not be subject to the decision of other State powers, except with regard to the competences of the Supreme Court to prosecute high officials of the State: that is, except for these cases of prosecution, public officials designated as holders of Public Power organs should only cease their functions when their mandate is revoked by referendum; therefore, the holders of the unelected Public Powers should have the right to remain in their positions during their mandate. This had been the tradition of Venezuelan constitutionalism. "Prólogo. Sobre la Asamblea Nacional y la deformación de la institución parlamentaria", en Juan Miguel Matheus, *La Asamblea Nacional: cuatro perfiles para su reconstrucción institucional* (Caracas: Universidad Monteávila-Editorial Jurídica Venezolana-Instituto de Estudios Parlamentarios Fermín Toro, 2016), 28-29.

The National Assembly attempted to implement a legislative program, which was boycotted by the Constitutional Chamber. On the other hand, it attempted to exercise the typical functions of parliamentary control, a task that was besieged by the Constitutional Chamber. The exercise of the Parliament's characteristic political function was also blocked.

Since 2019, through the political transition route promoted since the interim presidency of the President of the National Assembly, Juan Guaidó, and the *Estatuto que rige la transición a la democracia para restablecer la vigencia de la Constitución de la República Bolivariana de Venezuela*, and the recognition of Guaidó as President by more than 50 countries.

IV. The National Assembly and the barriers imposed by the Supreme Tribunal of Justice

Introduction

The barriers around the National Assembly have manifested themselves through different rulings of the Supreme Tribunal of Justice that have blocked the exercise of the former's typical constitutional functions, as well as through dozens of decisions that have sought to "prosecute" opposition deputies, on quite a few occasions, with the alleged endorsement to remove parliamentary immunity by the so-called "National Constituent Assembly"⁹.

The barriers around the National Assembly have been built and developed in a short period of time: in the first half of 2016, the Constitutional Chamber issued a set of decisions that limited all

9 See, e.g., Jorge Kiriakidis, "Notas sobre el asedio judicial a la inmunidad parlamentaria en Venezuela", *Revista de Derecho Público*, N°155-156 (July-December, 2018).

constitutional powers of the National Assembly. Although other decisions have been made during 2017-2020, from an institutional point of view that sentence basically closed these barriers as of the first half of 2016¹⁰.

These barriers began to be imposed days after the election of the members of the National Assembly on December 6, 2015, since when some members have sought to constitute a board of directors and an operating quorum outside of the Constitution and the Internal Regulations and Debates.

1. Sentences on the proclamation of the Amazonas deputies: the argument of "contempt"

The election of National Assembly members was boycotted a few days after it occurred through a set of decisions issued by the Electoral Chamber and the Constitutional Chamber that questioned the proclamation of three elected deputies in indigenous areas.

As members of the United Socialist Party of Venezuela (PSUV) alleged vote buying in the 6D elections, various electoral contentious appeals were made to the Electoral Chamber of the Supreme Tribunal of Justice to challenge some of the parliament member elections. One of those appeals was accompanied by a request of a precautionary writ of protection, and thus it was declared in place. Consequently, through sentence N° 260 of December 30, 2015, the Electoral Chamber ordered, provisionally and immediately, the suspension of effects of the acts of totalization, adjudication and proclamation regarding the candidates elected

10 See the critiques to the decisions issued by the Constitutional Chamber in that first half of 2016 in *Revista de Derecho Público*, N° 145-146, (January-June, 2016), 267-469.

by uninominal vote, vote list, and indigenous representation in the state of Amazonas.

Given this decision, in its regular session on January 6, the National Assembly decided to proceed to the swearing-in and incorporation of three of the deputies under the writ of protection: Nirma Guarulla, Julio Ygarza and Rommel Guzamana, an indigenous deputy.

On January 7, faced with this decision of the National Assembly, the appellant who had filed the contentious electoral appeal and a group of PSUV members presented, among other resources, a request for a declaration of contempt before the Electoral Chamber, on the occasion of the swearing-in that was held in the National Assembly on January 6.

The Electoral Chamber issued judgment N°1 of January 11, which decided (i) that the members of the Board of Directors of the National Assembly as well as the three sworn deputies had incurred in “contempt” of sentence N°260 of the Electoral Chamber of December 30, 2015; (ii) to ratify what was decided in sentence N°260; (iii) to declare the decisions dictated by the National Assembly as of the incorporation of the three deputies null and void, and therefore non-existent; (iv) to declare all future acts of the National Assembly as null while the incorporation of the three deputies was maintained; (v) to rescind the swearing-in of the three deputies; and (vi) to order their immediate removal.

Months later, through sentence N°108 of August 1, 2016, the Electoral Chamber again declared “contempt” of the judgments of Electoral Chamber N°260 dated December 30, 2015, and N°1 of the January 11, 2016, and reiterated the provisions of those previous decisions.

The argument of “contempt” has since been used by the ruling party to consider any decision issued by the National Assembly as null. Thus, it was a political argument to impede any action of the Assembly, as will be evidenced.

2. Blocking the legislative function

One of the key functions of the National Assembly is the exercise of the legislative function, by which it dictates, modifies or repeals laws.

As a manifestation of that function, as soon as the National Assembly was elected, the new majority devised a legislative agenda to be fulfilled during the first months of its first session. This legislative agenda addressed economic, social and political aspects.

However, the Supreme Tribunal of Justice blocked the scope of that legislative function in various ways. On one hand, the Constitutional Chamber declared various laws sanctioned by the Assembly as unconstitutional. On the other hand, it established criteria to be fulfilled by the National Assembly to exercise that function, which contradicted the Constitution, minimizing the scope of the legislative activity of the National Assembly.

A. The limitation of the legislative function in favor of the Executive Power

Sentence N°269 of the Constitutional Chamber of April 21, 2016, justified the blockade of the legislative function of the Assembly by the Supreme Tribunal of Justice, substantially limiting the legislative function of the National Assembly.

The sentence dictated a precautionary measure on the occasion of a nullity claim filed on March 9, 2011, five years prior, against some articles of the Internal Regulations and Debates of the National Assembly.

In regard to the exercise of the legislative function, with this precautionary measure the Constitutional Chamber ordered, among other aspects, the following: (i) the Assembly is required to consult each bill with the People's Power in order to "arrange" the Draft Law with said "Power"; (ii) the period for public consultations will be a minimum of twenty days, which can be extended for a similar period, at the request of the organizations that make up the People's Power; (ii) the report on the impact and budgetary and economic incidence, or in any case, the report of the Directorate for Economic and Financial Advice of the National Assembly that must accompany any bill, must be consulted on a mandatory basis by the National Assembly –represented by Directive– to the National Executive –through the Executive Vice President– in order to determine its economic viability, even those sanctioned by the date of publication of the sentence; (iii) for the President of the Republic to "comply" with any Law, verification of the viability of the Law is required, through the Ministers of the branch and the Vice President of the Republic.

Therefore, this decision limited the legislative power of the National Assembly by deferring it to the Executive Power, which was a form of usurpation of functions of the Executive Power over the National Assembly.

Based on the provisions of this decision, the Chamber declared the nullity of virtually all the laws the National Assembly has enacted.

B. Some examples of laws issued by the National Assembly declared unconstitutional by the Supreme Tribunal of Justice

The harassment of the Constitutional Chamber over the National Assembly was evidenced by decisions that declared the nullity of almost all Laws the Assembly has dictated¹¹. This blockage of the legislative function was particularly important in 2016, when the National Assembly attempted to implement some of the most important laws in its legislative program. Some examples of these decisions are the following:

a. The sentence that declared the reform of the Law of the Central Bank of Venezuela unconstitutional

The first Law sanctioned by the National Assembly –*Ley de reforma de la Ley del Banco Central de Venezuela* (Law to reform the Law of the Central Bank of Venezuela)– was declared unconstitutional by the Constitutional Chamber of the Supreme Tribunal of Justice through sentence N° 259 of March 31, issued by request of the President of the Republic¹².

The sentence is based on the assumption that the National Assembly had acted with “misuse of power”, to the extent that the alleged purpose of the reform had been to ensure political

11 One exception was the case of the *Ley que Regula el Uso de la Telefonía Celular y la Internet en el Interior de los Establecimientos Penitenciarios* (Law that regulates the use of cellular telephony and Internet within penitentiary establishments), published in the Official Gazette N° 6,240 extraordinary of July 15, 2016.

12 See the critiques to this decision in José Ignacio Hernández G., “Comentarios a la reforma de 2015 de la Ley del Banco Central de Venezuela y su defensa por la Sala Constitucional”, *Revista de Derecho Público*, N° 145-146, (January-June, 2016).

control of the Central Bank of Venezuela (BCV) by the current majority of the National Assembly. Thus, among other aspects, (i) the power established in the sanctioned law that allowed the National Assembly to ratify the appointment of the President of the BCV was declared unconstitutional; (ii) the ability of the National Assembly to call upon the President of the BCV was declared unconstitutional, and (iii) the power of the National Assembly to appoint two members of the Board of Directors of the BCV was also declared unconstitutional.

Certainly, this position assumed by the sentence implies the restriction of the comptroller function of the National Assembly over other Public Powers, as will be specified further on.

b. The sentence that declared the Amnesty and National Reconciliation Law unconstitutional

Another of the laws included in the legislative agenda of the National Assembly was the *Ley de Amnistía y Reconciliación Nacional* (Amnesty and National Reconciliation Law).

On April 11, the Constitutional Chamber issued sentence N° 264, which declared the formerly mentioned law unconstitutional, namely for some of these reasons: (i) there were be no political budgets to grant amnesties; (ii) the Law allegedly included common crimes other than political crimes specific to amnesties; (iii) some articles of the Law supposedly violated the guarantees of legality and typicality provided for in article 49 of the Constitution; (iv) some articles allegedly violated the principles of justice and responsibility; (v) the amnesty on administrative infractions was supposedly unconstitutional; allegedly, (vi) it violated the principle of sovereignty; (vii) it violated the rights to

the protection of honor, privacy, own image, confidentiality and reputation, and (viii) it was unconstitutional due to its effects on society and the legal system.

The sentence thus declared amnesties unconstitutional on each and every one of the cases contemplated in the Law.

- c. The sentence that declared the Food and Medicine Bonus Law for Pensioners and Retirees as constitutional, yet subjected it to verification of economic viability

Sentence N° 327 of April 28, 2016 declared that the *Ley de Bono para Alimentación y Medicinas a Pensionados y Jubilados* (Food and Medicine Bonus Law for Pensioners and Retirees) was adjusted to the Constitution, which was a socially-oriented proposal on the legislative agenda of the National Assembly.

However, the sentence subjected its enforcement to the economic viability that guarantees the fulfillment of the social purpose that the Law involves, in application of the criteria established by the Constitutional Chamber in sentence N° 269 of 21 of April 2016. Consequently, the sentence annulled the Single Final Provision of the Law, which ordered its enforcement as of its publication in the Official Gazette.

- d. The sentence that declared the reform of the Organic Law of the Supreme Tribunal of Justice as unconstitutional

By means of sentence N° 341 of May 5, the Constitutional Chamber declared the unconstitutionality of the reform of the *Ley Orgánica del Tribunal Supremo de Justicia* (Organic Law of the

Supreme Tribunal of Justice) that had been sanctioned by the National Assembly on April 7.

The purpose of the Law reform was fundamentally (i) to increase the number of magistrates of the Constitutional Chamber from seven to fifteen magistrates, and (ii) to specify in greater detail the process to be followed before the Constitutional Chamber in the event that the President of the Republic poses to the Constitutional Chamber the unconstitutionality of one or more articles of a Law sanctioned by the National Assembly.

The reform was declared unconstitutional, basically for the following reasons: supposedly (i) the legislative initiative regarding organization and judicial procedures corresponded exclusively to the Supreme Tribunal of Justice; (ii) for the modification of any bill, the approval of two thirds of the members of the National Assembly present at the session had to be required; (iii) the increase in magistrates was not “reasonable” and lacked “logical justification”, and (iv) the National Assembly was incurring in “misuse of power” when sanctioning the reform.

e. The sentence that declared the *Law to Grant Property Titles to Beneficiaries of the Gran Misión Vivienda Venezuela and Other Housing Programs of the Public Sector unconstitutional*

By means of sentence N° 343 of May 6, the Constitutional Chamber declared the unconstitutionality of the *Ley de Otorgamiento de Títulos de Propiedad a Beneficiarios de la Gran Misión Vivienda Venezuela and Other Housing Programs of the Public Sector* (Law to Grant Property Titles to Beneficiaries of the housing project Gran Misión Vivienda Venezuela y Otros Programas

Habitacionales del Sector Público), which had been sanctioned by the National Assembly on April 13.

The sentence, in summary, concluded that the Law was unconstitutional because (i) it was supposedly contrary to the aims of the Democratic and Social State of Law by not guaranteeing that the progressive exercise of the right of families to decent housing does not yield to the right of property; (ii) it promoted the insertion of housing units into the speculative market, to favor those who exercise dominance over them, to the detriment of those who deserve reinforced protection by the State; (iii) for its sanction, the essential formalities of the procedure for the formation of laws provided for in the Constitution and in the Internal Regulations and Debates of the National Assembly had not been fulfilled, and (iv) the National Assembly would be usurping the President's functions by forgoing on the debts contracted by the beneficiaries.

- f. The sentence that declared the Special Law to Address the National Health Crisis unconstitutional

Through sentence N° 460 of June 9, 2016, the Constitutional Chamber also declared the unconstitutionality of the *Ley Especial Para Atender la Crisis Nacional de Salud* (Special Law to Address the National Health Crisis). The sentence declared the Law null and void because: (i) it allegedly usurped powers attributed to the President of the Republic in the matter of directing government action in the sphere of states of emergency, as well as in matters of international relations; (ii) it established parliamentary control mechanisms for the management of the National Executive other than those provided for in the Constitution; (iii) it failed to comply with the procedure for the formation of Laws provided for in the Interior and Debate Rules of the National Assembly, and (iv) it

obviated the binding criteria established by the Constitutional Chamber in sentence N° 269/2016, by failing to consult with the National Executive in order to determine the economic viability of law.

3. Blocking comptrollership

One of the key functions of the National Assembly is to exercise comptrollership over the other organs of the Public Power.

The Assembly's comptrollership is based on the Parliament's democratic and plural character. In contemporary societies, Parliament -in this case the National Assembly- is the body of popular representation in which political organizations represent the citizens' different political options.

Therefore, it is natural and necessary for this political forum of citizen representation to exercise comptroller functions over the actions of Public Power organs: the Executive, Judicial, Electoral and Citizen Power.

This function of the National Assembly, however, was questioned and restricted by the Supreme Tribunal of Justice from the very beginning of the legislature of the Assembly. As happened with the legislative function, the Constitutional Chamber issued a sentence that generally imposed boundaries on this function, a blockade that was later manifested through sentences on specific matters.

A. The bases of the limits to the exercise of the comptroller function

The justification to limit the comptroller function was established in sentence N°9 of the Constitutional Chamber of the Supreme Tribunal of Justice of March 2, 2016.

The central argument of the sentence is that the comptroller power of the National Assembly can only be exercised over the Government and the National Public Administration, exercised by the National Executive Power, and cannot be applied to the actions of other Public Power organs (i.e. Judicial, Electoral and Citizen Power), nor to the organs of the Executive, State and Municipal Power. The sentence concludes: as is clear from the cited jurisprudence and doctrine, the political-parliamentary control provided for in Articles 187.3, 222, 223 and 224 of the Fundamental Text is fundamentally extended over the National Executive Power, and not over the rest of the Public Powers (Judicial, Citizen and Electoral), neither over the State nor the Municipal Public Power (with the exception of the provisions of Article 187.9 *eiusdem*), since the political control of those dimensions of Power will be exercised by the organs that the Constitution provides for this purpose, such as is interpreted in Articles 159 and following of the Constitution.

In practice, this has not been the intention of the Constitution. The second paragraph of Article 223 is particularly clear, which explicitly states, when referring to the comptroller power of the Commissions of the National Assembly, and without making distinctions, that all public officials are obligated, under the sanctions that the laws establish, to appear before said

Commissions and to provide the information and documents that they require for the fulfillment of their functions.

After this general restrictive position on the comptroller function of the National Assembly, the sentence specifies the scope of how it will be exercised over the National Executive Power, establishing the following criteria meant to prevent that control from affecting the National Executive's proper functioning, and, consequently, to avoid violating fundamental rights:

- (i) The National Assembly must coordinate with the Executive Vice President the exercise of the comptroller function over any government official and the National Public Administration. Therefore, it is the responsibility of the Executive Vice President to centralize and coordinate everything related to communications issued by the National Assembly in the exercise of its comptroller function;
- (ii) It is the responsibility of the Vice President of the Republic to consider the general political, economic and social circumstances that prevailed in the Republic at the time when said control is coordinated and exercised;
- (iii) The National Legislative Power must consider that, especially in these circumstances, the insistence of petitions directed towards the National Executive Power, and even towards the rest of the public powers, could seriously hinder State operations, to the detriment of the full guarantee of citizens' rights, as well as the inalienable rights of the Nation;

- (iv) The calls made by the National Assembly to officials must be addressed precisely to the officials and other persons subject to that control, must indicate the qualification and legal basis that supports it, the reason and the precise and rational scope of it (to ensure a process with all constitutional guarantees), and, finally, must be guided by the principles of utility, necessity, reasonableness, proportionality and collaboration between Public Powers (without intending to subrogate in the design and implementation of public policies inherent to the scope of power of the National Executive);
- (v) Officials who appear, request and respond, if possible, in writing to the concerns raised by the National Assembly or its commissions, and even if they so request, should be heard in the plenary session of the National Assembly, in the opportunity that it provides (part of which is recognized, for example, in the aforementioned Article 245 of the Constitution); and
- (vi) The exercise of the faculty of inquiry must be compatible with the autonomy of each organ and with the due understanding of the cardinal reserve of information that could affect the stability and security of the Republic, and, finally, compatible with the purposes of the State.

Finally, regarding the scope of the comptroller function of the National Assembly, the sentence is to be pronounced regarding the way of exercising parliamentary control over the National Bolivarian Armed Forces to warn that the control that can be exercised over it is carried out through its Commander-in-Chief and parliamentary control through the political control exercised over his Commander-in-Chief and supreme hierarchical authority,

limiting that control to what the President of the Republic considers in the annual message presented to the National Assembly within the days after the installation of the National Assembly, message provided for in Article 237 of the Constitution.

- B. The blocking of the comptroller function exercised by the appearance of officials at the National Assembly

As a way of restricting the scope of control of the National Assembly over the organs of other Public Powers, sentence N°9 of the Constitutional Chamber of March 1, 2016, interpreted and applied various provisions of the (i) *Ley sobre el Régimen para la Comparecencia de Funcionarios y Funcionarias Públicos o los y las particulares ante la Asamblea Nacional o sus Comisiones* (Law On the Regime for the Appearance of Public Officials or Individuals before the National Assembly or its Commissions), and the (ii) *Reglamento de Interior y de Debates de la Asamblea Nacional* (Interior and Debate Rules of the National Assembly).

In reality, the Constitutional Chamber was incompetent to interpret that Law and the Regulations, since the appeal for interpretation on which the sentence was being heard could only rule on the interpretation of constitutional norms. In other words, it should not rule on norms of a lower rank than the Constitution, such as that Law and the Internal Regulations and Debates.

The first thing that the sentence recognizes is that, when this Law refers to officials, only those within the government and the National Public Administration are included, thereby unconstitutionally excluding the officials of other Public Powers, as already indicated.

On the contrary, as expressly stated in Article 12 of the Law On the Regime for the Appearance of Public Officials or Individuals before the National Assembly or its Commissions: The summons for the appearance of the members of the Citizen Power: Ombudsman, Attorney General of the Republic and Comptroller General of the Republic; of the Electoral Power: Directors of the National Electoral Council; of the the Judiciary: magistrates of the Supreme Tribunal of Justice; as well as of the Executive Power: Executive Vice President of the Republic; and of the Ministers, will be made prior knowledge of the Board of Directors of the National Assembly, for the purposes of their coordination.

Thus, according to Article 12 of the Law, officials of other Public Powers can be summoned to appear at the National Assembly.

The sentence, however, decided to expressly disregard that rule as it was considered unconstitutional. Thus, despite what is referred to in the law, for the Constitutional Chamber it was unconstitutional to apply the comptroller function to officials other than the Government and the National Public Administration.

The sentence also decided not to apply the rules of that Law on the sanctioning regime in cases of non-appearance before the invitations issued by the National Assembly and its Commissions (Articles 21 to 26), considering them unconstitutional.

In a similar sense, despite the fact that Article 113 of the Internal Regulations and Debates of the National Assembly expressly states that officials of the National, State and Municipal Power may be questioned and invited to appear by the National Assembly or its Commissions, without restricting the scope of that power to the officials of the Government and the National

Public Administration, the sentence also decided to not apply that norm, considering it unconstitutional.

Besides, the Chamber decided to initiate, *ex officio*, a process of control of the constitutionality of all those norms, in order to decide if they should be considered null and, therefore, as not in force. Likewise, and without this being the subject of the matter raised, it was pointed out that the President of the Republic was competent to issue Regulations on that Law.

Therefore, the Constitutional Chamber specifically restricted the scope of action in matters of control of the National Assembly, by not implementing the norms of the Law On the Regime for the Appearance of Public Officials or Individuals before the National Assembly or its Commissions and of the Interior and Debate Rules of the National Assembly¹³.

C. The case of the Commission of inquiry
of the National Assembly on the appointment
of magistrates

Another example of how the Constitutional Chamber has prevented the exercise of comptrollership by the National Assembly was the case of the Commission of inquiry of the National Assembly on the appointment of magistrates.

One of the fundamental initiatives undertaken by the new majority in the National Assembly was the appointment

¹³ See the critiques to this decision in Allan R. Brewer-Carías, “Comentarios al decreto N° 2.309 de 2 de mayo de 2016: La inconstitucional “restricción” impuesta por el Presidente de la República, respecto de su potestad de la Asamblea Nacional de aprobar votos de censura contra los Ministros”, *Revista de Derecho Público*, N° 147-148, (July-December, 2016).

of a Special Commission to study the selection procedure for magistrates of the Supreme Tribunal of Justice, some of whom were appointed on December 23, 2015, that is, a few days before the previous National Assembly ceased to function. The power to appoint Special Commissions is a power of the National Assembly expressly recognized in Articles 193 and 223 of the Constitution.

As a consequence of what in the field of Public Law is called “power of self-protection”, the power of the bodies of the Public Power to review their own decisions is recognized when it is considered that the decision taken has incurred in some material or procedural vice, which invalidates that decision. In other words, if an organ of the Public Power confirms that it incurred in a certain vice when making the decision, it can declare the decision null and void, and then make amends. Within the scope of the National Assembly, self-protection is recognized in Article 90 of the Interior and Debate Rules of the National Assembly in force at this time, according to which wholly or partly revoking decisions of a National Assembly required the vote of the absolute majority of those present. Likewise, in the cases in which, by mistake or due to lack of some non-essential formality, a decision had been taken by the National Assembly, once the error or lack has been confirmed, the decision may be declared invalid with the vote of the present majority.

In exercise self-protection, by which the National Assembly can review the acts that it has previously dictated, on March 1, 2016, the Assembly approved the report of the Commission, which questioned the way in which some magistrates had been appointed on December 23, 2015.

So, one of the aspects addressed in sentence N°9 of the Constitutional Chamber of March 1, 2016, was precisely the National Assembly's power to carry out inquiries into the procedure for appointing Supreme Court magistrates¹⁴.

Supported on the general considerations established in sentence N°9 of the Constitutional Chamber, the Chamber specifically analyzed the assumption of the Commission appointed by the National Assembly to study the selection procedure of Supreme Court magistrates. It strictly indicated that, although the creation of a special commission for inquiries and study does not have, in principle, material limitations (except those derived, among others, from the principles of autonomy of the Public Powers and subjection of power to the Fundamental Text), when its objective is clearly unconstitutional and/or illegal, by seeking to review appointments of senior officials of another Power, outside of the CONTROL assigned by the Constitution to the National Assembly and the regime envisaged for their removal or destitution, it and any decision or the recommendation made by that or any commission is absolutely null and, consequently, non-existent, as well as any decision on the matter by the National Assembly, all based on Articles 7, 137, 138 and 139 of the Magna Carta.

14 See Allan R. Brewer-Carías, "La ratificación por la Sala Constitucional del Tribunal Supremo de su decisión de desconocimiento de la potestad de la Asamblea Nacional para revisar y revocar sus propios actos", in *Revista de Derecho Público*, N° 147-148, (July-December, 2016) and José Ignacio Hernández G., "Comentarios a la sentencia de la Sala Constitucional N° 614/2016 (19-7-2016). A propósito de la inconstitucional designación de magistrados del Tribunal Supremo de Justicia", in *Revista de Derecho Público*, N° 147-148, (July-December, 2016).

Furthermore, the sentence insisted on such an argument, noting that the National Assembly participates in the complex and inter-institutional processes for the appointment and removal of Supreme Court magistrates, in accordance with Articles 264 and 265 of the Constitution. In this regard, its role in the balance between Public Powers culminates there to make the function of the State viable. Creating a different attribution, such as the *ad infinitum* review and a new “decision” on “decisions” assumed in the previous selection and appointment processes for magistrates, including the creation of a commission or any other device for this purpose, is obviously unconstitutional, as it undermines the autonomy of the Judiciary and constitutional supremacy, constituting a fraud towards the fundamental order that, following the most elementary moral guidelines, does not subordinate the composition of the Supreme Court of the Republic to the change in the correlation of political-partisan forces within the National Legislative.

Finally, it concluded that it is imperative for the Chamber to declare, as indeed it does through this sentence, the absolute and irrevocable nullity of the acts by which the National Assembly intends to promote the review of constitutionally excluded processes for the selection of magistrates and, therefore, of the actions by which the special commission designated to evaluate such appointments was created, as well as of all the actions derived from them, which are legally and constitutionally non-existent.

Thus, in accordance with the aforementioned sentence, the Constitutional Chamber concluded that the National Assembly could not exercise its natural power of self-protection when

reviewing the procedure by which it previously took the decision to appoint the magistrates appointed on December 23, 2015.

* * *

This is then a summary of a serious case of institutional dismantling: the National Assembly elected in Venezuela in 2015 was stripped of its constitutional powers, mainly its legislative function and its comptroller function, by the body that is called, precisely, to protect the Constitution and to ensure that there was an institutional context that would allow the National Assembly to exercise its functions.

The case of Venezuela offers many political, institutional and constitutional lessons. Among them, the need for a correct constitutional design regarding the functions that the highest court should exercise in constitutional matters. For instance, not only is the constitutional design of the Constitutional Chamber of Venezuela inconvenient and dangerous, but due to its institutional practice, the Constitutional Chamber itself has expanded the already wide constitutional margin that delimited its powers.

The Chavista regime sits comfortably on the bayonets of its Armed Forces

Pedro Pablo Peñaloza

The Chavista revolution was born in the Venezuelan barracks, and the National Bolivarian Armed Forces (FANB) are today one of its main props to maintain hold of power. The civic-military alliance promoted by Hugo Chávez and continued by Nicolás Maduro is a four-legged table upheld by the partisanship of the FANB, the presence of officers in the executive, the creation of a military business network and excessive corruption.

Constitutional and legal modifications have allowed the ruling party to tailor the Armed Forces to its political interests. The Magna Carta of 1999, promoted by Chávez, recognizes the right of active militaries to vote and includes “active participation in national development” among the objectives of the institution.

This fundamental text lays the foundations of the civic-military alliance by establishing in article 326 that the security of the nation is based on the co-responsibility between the State and civil society, adding that this principle is exercised upon the economic, social, political, cultural, geographic, environmental and military spheres.

The failed project to reform the Constitution, rejected by the majority of Venezuelans in 2007, intensified the partisanship of barracks. It proposed changing the name of the National Armed Forces to the National Bolivarian Armed Forces, described as an “essentially patriotic, popular and anti-imperialist body”, and it claimed “its active participation in plans designed for the economic, social, scientific and technological development of the nation”.

The proposal drafted by the ruling party not only altered its name, but also shook the structure of the Armed Forces by incorporating the National Bolivarian Militia as a fifth force, together with the Army, the Navy, the Air Force and the National Guard, turning it into a force basically constituted by militants of Chavismo.

Despite the fact that Venezuelans rejected the initiative submitted to a referendum, Chávez and Maduro still made these additions by changing several laws. The president of the NGO Control Ciudadano para la Seguridad, la Defensa y las Fuerzas Armadas¹, Rocío San Miguel, has adverted that the Organic Law of the FANB has undergone six reforms in 15 years, definitively divorcing it from the Constitution.

The last modification was approved on January 28, 2020, by the National Constituent Assembly, an organ declared illegal by the Venezuelan Parliament, the United States, the European Union and the Organization of American States. The text in question adds the National Bolivarian Militia as the fifth component of the FANB, defines it as “special” and stipulates that it depends on the President of the Republic and Commander in Chief of the

1 Citizen Control for Security, Defense and the National Armed Forces.

FANB. Furthermore, it specifies that the institution is based on anti-imperialist and anti-oligarchic values.

Green and red

More than military, militants. The military leaders do not hide their sympathy for the Chavista project. On the contrary, they exhibit it loudly and clearly. “Bolivarian soldier, determined and convinced to continue building the socialist homeland!” is the biography of the Minister of Defense, general-in-chief, Vladimir Padrino López on Twitter, while the head of the FANB’s Strategic Operational Command, Admiral Remigio Ceballos Ichaso, proclaims: “Chávez lives, the nation carries on². Bolivarian, Zamoran and socialist”.

That loyalty and identification with the ruling party are reflected in the composition of the Executive Cabinet. Control Ciudadano indicates that, currently, almost a third of the ministries (29.41%) is in the hands of the military. In November 2017, that figure increased to 43.75% while since 2014 the average has been 32.68%.

It is not only a matter of quantity. Senior FANB officers control key positions in the Public Administration. Bolivarian National Guard General Manuel Quevedo occupies the Ministry of Oil and Petroleum of Venezuela (PDVSA), the core of the battered Venezuelan economy. At the moment, ministries such as Food, Agriculture and Land, Interior and Justice, Ecological Mining Development, Habitat and Housing, and Public Works are under the baton of uniformed personnel.

2 Popular phrase, frequently chanted by the FANB. In Spanish, “Chávez vive, la patria sigue”.

In July 2016, Maduro appointed the head of Defense as chief of the Great Mission for Safe Supply to combat food shortages and stated: “All ministers and all State institutions are under the orders and absolute subordination of the National Command of the Great Mission for Safe Supply, under the command of the President of the Republic and under the command of the general-in-chief Vladimir Padrino López” (own translation).

Between 2012 and 2016, 52% of governors came from barracks, according to Control Ciudadano. The figure dropped to 30% during the 2017-2021 period with three former Defense incumbents: Chief Generals Jorge Luis García Carneiro and Henry Rangel Silva, and Admiral Carmen Meléndez Rivas.

On December 11 2015, Maduro declared: “I have given an order to implement a well-thought-out, detailed plan, so that the comrades who have provided their services to the nation from the Public Administration return to their command posts and to active ranks in each component. It is time to return to the force to inspire more union” (own translation). Nonetheless, the olive green presence today is not limited to ministries and governments, but is visible in all kinds of organizations and missions completely unrelated to their training and experience.

Uniformed S.A.

As the structure of the Venezuelan State is figured out, a business network that responds directly to the FANB has been built.

Article 25 of the FANB Law, approved by the Constituent Assembly preceded by Captain Diosdado Cabello, addresses the concept of “special military-economic zone” in these terms:

“The President of the Bolivarian Republic of Venezuela and Commander-in-chief of the National Bolivarian Armed Forces may decree the creation of special military-economic zones, defined as the geographical space where potentialities, general and special conditions are identified and located to carry out endogenous, sustainable and productive activities led by the National Bolivarian Armed Forces in a civic-military union, in order to meet their basic needs, contribute to the strengthening of the military industry and national development, within the sphere of influence of the Axes of Strategic Economic Development established by the National Executive” (own translation).

When installing a military-economic zone in the Aragua state in May 2019, Maduro said that “the FANB will become an economic power that will benefit not only the military but the people, encouraging national production in perfect civic-military union, at the service of true national development by generating jobs and food” (own translation).

Before Chávez assumed the Presidency of the Republic in 1999, there were only six military companies. Once the Chavista revolution was at full steam, another 13 were created between 2005 and 2017, according to Control Ciudadano. Additionally, the number of foundations, autonomous services, coordinating offices, institutes and funds related to the FANB reaches 20.

Currently, the military has a bank (Banfanb), a construction company (Construfanb), an agricultural company (Agrofanb), a television channel (TVFanb), industrial complexes, transport corporations, vehicles and technology, a tire company, a printing company (Imprefanb), an investment fund called Negro Primero,

and what may be the cherry on top: the Compañía Anónima Militar para las Industrias Mineras, Petrolíferas y de Gas³ (Camimpeg).

Camimpeg aims to work with everything related to the lawful activities of oil, gas and mining services in general, as stated in the Official Gazette of February 10, 2016. The website of the Ministry of Defense says that it intends “to be a national and international leading company in oil, gas and mining services, functioning with the highest standards in order to develop the industrial and economic potential, through its optimal use, offered by exhaustible and non-renewable strategic natural resources, autonomously, efficiently and responsible” (own translation).

This allows Maduro to fully engage the military in the most lucrative business that Venezuela offers, whose fate is increasingly tied to the wealth hidden underground.

Corruption pattern

The NGO Transparencia Venezuela affirms that the Bolivarian Republic has become the prototype of “great corruption”, since throughout these 21 years of the Chavista regime, decisions taken and public policies applied have led to the constitution of a “criminal state”.

The investigation has identified twelve elements that map out the pattern of “great corruption”. One of them is civic-military control: “In Venezuela, there is a strong military presence in the State and in all spheres of public action. Militaries run State-owned companies, governorates, embassies, and ministries. The United Nations High Commissioner for Human Rights even affirmed,

3 Anonymous Military Company for the Mining, Oil and Gas Industries

in July 2019, that the country had increased the militarization of State institutions. This group has expanded its participation in businesses where there is a greater risk of corruption” (own translation), warns Transparencia Venezuela.

The first major case of corruption that the Chavista regime faced had high-ranking military leaders as protagonists: Plan Bolívar 2000, a social program launched to combat poverty. Since then, practically all scandals caused by the looting of the public treasury have mixed two factors: dollars and epaulettes.

The National Foreign Currency Administration Commission (Cadivi), perhaps the greatest symbol of embezzlement to the nation, was chaired by General Manuel Barroso. Despite all the accusations against him, he was continuously promoted within the FANB until he became a military attaché of the Venezuelan Embassy in Brazil.

The Food ministry, in the eye of the hurricane due to allegations of overpricing, payment of commissions, contraband and other irregularities that would have cost the country billions of dollars, has had 11 military ministers since 2004. General Rodolfo Marco Torres, Carlos Osorio Zambrano and Félix Osorio Guzmán stand out on the list.

Marco Torres, former head of the Economy and current governor of the Aragua state, and Osorio Zambrano, president of the Venezuelan Mining Corporation (CVM), received a political sanction from Parliament for the alleged deviations during their administration periods. Osorio Guzmán is the rector of the Bolivarian Military University of Venezuela and declares himself in his social media as a “patriot, socialist, humanist, anti-imperialist and radically Chavista”.

“Of the six presidents that the State-owned National Electric Corporation (Corpoelec) has had, three have been military personnel with no experience in the area: Major General Hipólito Izquierdo, Lieutenant Jesse Chacón and Major General Luis Motta Domínguez. The power plants have been militarized and even so the government assures that the installations have been victims of sabotage” (own translation), states Transparencia Venezuela. Corruption and inefficiency have left all Venezuelans in the dark, who have suffered the rigors of the electricity crisis for ten years.

However, perhaps the most serious complaint against the FANB has just been ratified by the International Narcotics Control Board, an entity linked to the United Nations, which in its latest annual report reveals: “There are indications that, in the Bolivarian Republic of Venezuela, criminal groups have succeeded in infiltrating government security forces, forming an informal network known as the ‘Cartel of the Suns’ to facilitate the passage of illegal drugs into and out the country”. The name “Soles” refers to the insignia worn by Venezuelan generals on their shoulders.

“Let no one be wrong about the FANB (...) we are the children of Chávez”, exclaimed Padrino López, also sector vice-president of Political Sovereignty, Security and Peace, in his year-end greeting on December 31st, 2019. With their new motto “always loyal, never traitors”, military leaders strengthen their ties with the civilians of Chavismo and keep afloat a regime with which they share principles, power, interests and businesses.

Conclusions

To conclude the fifth issue of *Democratización* magazine, we offer three general considerations.

Firstly, the appearance of COVID-19 among the national and international political scene will affect Venezuela's path to freedom. In the academic and intellectual field, mechanisms that allow to know its real repercussions and to assess its political impact must be created. Overcoming the propaganda of the regime and recognizing the presence of the virus in the country are pressing challenges. In the political field, we consider it urgent to find actions that respond to Professor Cardozo's warning: "that the regime achieves a large margin of international permissiveness and the democratic cause, with little effective external support, remains in an extremely vulnerable situation". It greatly concerns us that the Chavista autocracy may be leveraged in the "good spirit" of a sector of the international community to settle deeper into power and to increase political repression with impunity.

Secondly, the National Assembly elected on December 6, 2015, emerged as the only independent power that had survived the autocratic expansion of the Chavista revolution. Thus, its outbursts were mainly focused towards it. Since its installation, it has been attacked, harassed and dismembered. Still, it remains an oasis in the middle of the desert we live in. Perhaps, the immediate judgment on its performance may be marked by political frustration. Many of us placed the hope of a peaceful and constitutional political change upon it, but that expectation was not met. Carlos García Soto's article offers a set of reasons that explain this. The author identifies and describes the institutional,

moral, and physical attacks against democracy. His analysis is a starting point, as it is an issue that demands in-depth studying. We trust that time will help to evaluate and let us see, with the peace that freedom offers, all the contributions of the members of the National Assembly for the democratic cause.

Thirdly, the regime of Nicolás Maduro relies on force. It is a fierce dictatorship that, although not military, leverages itself in the Armed Forces to cling to power. Pedro Pablo Peñaloza's article identifies the reasons behind the loyalty of the National Bolivarian Armed Forces: the partisanship of the Armed Forces, the presence of officers on the Executive, the creation of a military business network and excessive corruption. In future investigations, it would perhaps be convenient to delve into the first point and the importance of the ideological component. Regarding the reasons that encourage loyalty, we ask ourselves what is more influential: ideological stubbornness or personal enrichment?

Autors

Carlos García Soto

Lawyer, *magna cum laude* (Monteávila University), and Doctor of Law, *cum laude* by unanimity (Complutense University of Madrid). Professor of Administrative Law at the Central University of Venezuela and Regulatory Environment at IESA (Instituto de Estudios Superiores de Administración). Treasurer of the Venezuelan Association of Administrative Law. He has been Director of the Monteávila University School of Law.

Elsa Cardozo

Graduate in International Studies and PhD in Political Science from the Central University of Venezuela. Retired Professor of said University. She has been Director of the School of Liberal Studies of the Metropolitan University and its Department of International Studies, member of the table of analysis of the Center for Political and Government Studies of the Andrés Bello Catholic University, lecturer and consultant, author of written, academic and dissemination work on international relations, Latin American affairs and Venezuelan foreign policy.

Pedro Pablo Peñaloza

Bachelor in Mass Communication Studies from the Andrés Bello Catholic University, Caracas, Venezuela, 2002. Master in Investigative Journalism, Data and Visualization, King Juan Carlos University and Editorial Unit, Madrid, Spain, 2013. Political source journalist with experience in the newspapers *Tal Cual* and *El Universal*.

Index

Introduction	2
Authoritarian resilience and the venezuelan democratic cause: resources and asymmetries <i>Elsa Cardozo</i>	4
The blockade of the legislative and comptroller functions of the National Assembly by the Supreme Tribunal of Justice: an introduction <i>Carlos García Soto</i>	30
The Chavista regime sits comfortably on the bayonets of its Armed Forces <i>Pedro Pablo Peñaloza</i>	58
Conclusions	66
Autors	68