

**A NEW FRAUD AGAINST THE VENEZUELAN CONSTITUTION
AND THE WILL OF ITS PEOPLE:
UNCONSTITUTIONAL DECREE CALLING A CONSTITUENT
ASSEMBLY TO APPROVE THE CONSTITUTIONAL REFORM
THAT WAS REJECTED BY POPULAR VOTE IN 2007**

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I

Presidential decree No. 2830 of May 1, 2017 (published on May 3, 2017)¹ calling for a National Constituent Assembly is a constitutional fraud and a fraud against the people's will.

Through this Decree, issued in direct violation of the Constitution that merely ascribes to the President to voice an initiative to call the Constituent Assembly (Art. 348 of the Constitution), and not to directly convene it, since this is the exclusive right of the people as holder of the sovereignty and depository of the originating constituent power (Art. 348), the President, in perpetrating a fraud against the Constitution, has usurped and snatched from the people its exclusive right to convene the National Constituent Assembly by means of a referendum. This assembly cannot be convened by decree in Venezuela, marginalizing the people, and it is false that the President has “the constitutional and exclusive initiative to call” a Constituent Assembly. It suffices to read Article 348 of the Constitution to confirm that also other bodies of the State and the people themselves are entitled to this initiative.

II

The Decree, in addition to being a fraud against the Constitution, is a fraud against the people's will that was expressed by majority vote in the referendum held in December 2007, rejecting the constitutional reform² that is now sought to be approved again, but this time without the people's participation. Through that rejected reform, Hugo Chávez had proposed to eliminate the democratic and social State of Law and Justice and turn it into a

¹ See *Official Gazette*, No. 6255 Extra of May 1st, 2017.

² See Allan R. Brewer-Carías, “La proyectada reforma constitucional de 2007, rechazada por el poder constituyente originario”, en *Anuario de Derecho Público 2007*, Año 1, Instituto de Estudios de Derecho Público de la Universidad Monteávila, Caracas 2008, pp. 17-65

“Communal State” or “of the People’s Power,”³ and now, without the people’s participation, Maduro purports to implement the constitutional reform that was then rejected by the people, by calling a Constituent Assembly to carry out the same reform, but refusing the people its right to directly exercise democracy.

III

Therefore, the offer made in the Decree of calling a Constituent Assembly as an alleged “participative and protagonist platform” is false and contradictory because it precisely takes away from the people its main right to political participation, that is, to directly exercise its sovereignty by expressing its will by means of referenda, especially regarding constitutional reform (Arts. 5, 72, 347 of the Constitution).

IV

Furthermore, the Decree stated the “programmatic objectives” purported to be ascribed to the National Constituent Assembly, briefly listing the following: (1) peace; (2) the economy; (3), the subsidies or “*Misiones*”; (4) the judicial competences; (5) the People’s Power; (6) the defense of sovereignty; (7) pluri-culturality; (8) youth, and (9) ecology.

To achieve these objectives -except for one-, it is logically not necessary to terminate the Constitution of 1999, nor any constitutional reform, because the only thing needed in order to enforce them is an adequate State policy that this regime refuses to adopt and implement, there being no need for any Constituent Assembly, hence the mere calling thereof being a tremendous political fraud.

In addition to being a fraud against the Constitution and to the will of the people, the Decree is totally useless and misleading, because the objectives promised therein, we insist, could not be achieved by a Constituent Assembly or by eliminating the Constitution of 1999, and consequently, approving a new Constitution. All, except one, can be achieved through proper State policies that can only be adopted by the government and public powers.

V

The only one of the “programmatic objectives” listed in the Decree, that does need a Constituent Assembly due to being a reform that modifies the structure and core principles of the Constitution of 1999, is that mentioned in

³ See Allan R. Brewer-Carías, *Hacia la consolidación de un Estado socialista, centralizado, policial y militarista. Comentarios sobre el sentido y alcance de las propuestas de reforma constitucional 2007*, Colección Textos Legislativos, No. 42, Editorial Jurídica Venezolana, Caracas 2007; *La reforma constitucional de 2007 (Comentarios al proyecto inconstitucionalmente sancionado por la Asamblea Nacional el 2 de noviembre de 2007)*, Colección Textos Legislativos, No.43, Editorial Jurídica Venezolana, Caracas 2007.

5th “programmatic objective” of the Decree, that is:

“5. The constitutionalization of the new forms of the participative and protagonistic democracy, by acknowledging the new subjects of the People’s Power, such as the Communes and Communal Councils, Workers’ Councils, among other forms of organization of the population’s territorial and social base.”

This “programmatic objective” is none other than a re-editing of the rejected constitutional reform proposed by H. Chávez in 2007 that was overwhelmingly rejected by the majority vote of the people in the December 2007 referendum, whereby the people manifested its will not to approve it.

Now, Mr. Maduro purports, in a fraud against that people’s will, breaching the Constitution and depriving the people of its right to political participation by means of a referendum in any constitutional reform, to impose upon the people by his own will, a State system that was rejected by the people, and that he falsely describes as allegedly being of a “participative and protagonist democracy.”

That is, by refusing the people its right to directly take part in the democracy through a referendum, he purports to deceive it and proposes a form and scheme of State that is anything but a “participative and protagonist democracy,” as evidenced in the 2007 proposed constitutional reform that was rejected by the majority, and that was unconstitutionally enforced through a set of unconstitutional organic laws issued in 2010 that have established a centralized system of populist instances, in which all functions are entirely controlled by a Ministry of the National Executive,⁴ and that the Supreme Tribunal refuses to control.

VI

In addition to setting the abovementioned “programmatic objectives,” the Decree defined some elements pursuant to which the President purports to put together the unconstitutionally convened National Constituent Assembly,”

⁴ See Allan R. Brewer-Carías, “Las leyes del Poder Popular dictadas en Venezuela en diciembre de 2010, para transformar el Estado Democrático y Social de Derecho en un Estado Comunal Socialista, sin reformar la Constitución,” en *Cuadernos Manuel Giménez Abad*, Fundación Manuel Giménez Abad de Estudios Parlamentarios y del Estado Autonómico, No. 1, Madrid, Junio 2011, pp. 127-131; “La Ley Orgánica del Poder Popular y la desconstitucionalización del Estado de derecho en Venezuela,” en *Revista de Derecho Público*, No. 124, (octubre-diciembre 2010), Editorial Jurídica Venezolana, Caracas 2010, pp. 81-101; “*Introducción General al Régimen del Poder Popular y del Estado Comunal (O de cómo en el siglo XXI, en Venezuela se decreta, al margen de la Constitución, un Estado de Comunas y de Consejos Comunales, y se establece una sociedad socialista y un sistema económico comunista, por los cuales nadie ha votado)*,” en Allan R. Brewer-Carías, Claudia Nikken, Luis A. Herrera Orellana, Jesús María Alvarado Andrade, José Ignacio Hernández y Adriana Vigilancia, *Leyes Orgánicas sobre el Poder Popular y el Estado Comunal (Los consejos comunales, las comunas, la sociedad socialista y el sistema económico comunal)* Colección Textos Legislativos N° 50, Editorial Jurídica Venezolana, Caracas 2011, pp. 9-182

by stating that its:

“formation will answer to the political structure of the Federal and Decentralized State, based on the primary political unity of the territorial organization sanctioned by our Constitution.”

This wording, in addition to being unintelligible, is obviously deceitful and contradicts what has been the State policy since the enactment of the 1999 Constitution.

Maduro knows that the “Federal and decentralized State” defined in the 1999 Constitution (Art. 4), was never instituted in the country, and was rather totally crushed by the government’s centralist policy that has been gradually choking and taking away the competences of States and Municipalities. It is an insolent and inadmissible irony that the government now purport to appeal to a non-existing form of Federal and decentralized State, which the government itself has dismantled and de-constitutionalized, to gather the unconstitutional Assembly.

Additionally, the “primary political unit of territorial organization” also mentioned in the Decree in order to “form” the Assembly, according to the Constitution (Art. 168) is none other than the Municipality, which has precisely been the target of the 2010 Laws on the People’s Power, which sought to gradually “de-municipalize” the country, suffocating the Municipalities and replacing them by the Communal Councils.⁵

It is therefore a contradiction, and a laughable deceit, to propose a Constituent Assembly structured according to a form of State (Federation and decentralization) that has not only been crushed by the regime, but precisely is intended to be eliminated by the proposed Constituent Assembly itself, by reason that the sole programmatic objective that could justify it is instituting the People’s Power State, which precisely implies eliminating the States and Municipalities.

VII

Finally, the Decree, when referring to the election of the members of the National Assembly (Art. 2) incurred a constitutional breach and an unsurmountable contradiction by stating that they:

“shall be elected in the sectorial and territorial domains [...] by universal, direct and secret vote.”

⁵ See Allan R. Brewer-Carías, “El inicio de la desmunicipalización en Venezuela: La organización del Poder Popular para eliminar la descentralización, la democracia representativa y la participación a nivel local”, en *AIDA, Opera Prima de Derecho Administrativo. Revista de la Asociación Internacional de Derecho Administrativo*, Universidad Nacional Autónoma de México, Facultad de Estudios Superiores de Acatlán, Coordinación de Postgrado, Instituto Internacional de Derecho Administrativo “Agustín Gordillo”, Asociación Internacional de Derecho Administrativo, México, 2007, pp. 49 a 67.

It is worth reminding the “constitutionalists” who drafted the Decree for the person who discharges the presidency, that according to the Constitution (Art. 63), a “universal election” is that in which all the citizens who are electors vote, without any kind of discrimination or exclusion. Therefore, in Venezuela, the integration of the bodies of the State can only be effected by universal election, in which all citizens are entitled to participate and vote. Consequently, an election that is carried out in “sectorial domains”, precisely by referring to “sectors”, is the exactly the opposite of universality.

A “sectorial election” may be admitted outside the scope of the State bodies, for example, for a political party, a workers’ union or a chamber of commerce, where only the members of those organizations are electors; but not for a National Constituent Assembly that must represent the universality of the people, who is the sole depository of the sovereignty and the originating constituent power.

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