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# The “Bolivarian Revolution” in Venezuela and the regime’s contempt for Constitutional Law

The Popular Power and the Communal State,  
or the Creation of a XXI Century Neo-Communist State  
by-passing the Constitution

*Allan R. Brewer-Carías\**

The 1999 Venezuelan Constitution, still currently in force, instituted the country as a Democratic and Social State of Law and Justice, “which holds as higher values of its legal system and its performance, life, liberty, justice, equality, solidarity, democracy, social responsibility and, in general, the preeminence of human rights, ethics and political plurality” (Art. 2), organizing the Republic as “a decentralized federal State” which “is governed by the principles of geographical integrity, cooperation, solidarity, concurrence and shared responsibility” (Art. 4).

Such is the formal conception of the Constitutional State in Venezuela as a decentralized Federal Democratic and Social State of Law and Justice<sup>1</sup> based on a vertical distribution of public powers in three territorial levels of government: National level, State level and Municipal level (Art. 136), according to which and based on the federal basic framework, each level must always have a government of an “elective, decentralized, alternative, responsible, plural, and of revocable mandate” character, as required by Article 6 of the Constitution.

Constitutionally speaking, therefore, the Venezuelan State is based on the principles of representative democratic governments, political decentralizing organization and political pluralism, according to which, no political institution of the State can be created without ensuring its elective character through elected representatives of the people by means of universal, direct and secret suffrage; without guaranteeing its political autonomy, which is essential to its

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<sup>1</sup> See the study of the constitution regarding the regulation of this State Constitutional Model, in *Allan R. Brewer-Carías*, *La Constitución de 1999. Derecho Constitucional venezolano*, 2 vols., Caracas 2004.

decentralized nature; and without guaranteeing its plural character in the sense that it cannot be linked to a particular ideology such as socialism.

These are the constitutional ground norms embodied in the 1999 Constitution that consequently cannot be changed by the government without changing the Constitution itself.

Nonetheless, in the name of a so-called “Bolivarian Revolution,” all these basic principles have been changed without a formal constitutional reform and, on the contrary, defrauding or in degradation of the “in force” 1999 Constitution, progressively implementing a new XXI century “Communist State.”

### A. The use or the abusive use of the “Bolivarian” label for disguising the implantation of a socialist or communist state in Venezuela

One of the most distinguished and apparently formal changes to the Venezuela Constitution adopted in 1999 was the change of the name of the “Republic of Venezuela,” which had been the name of the country since 1811, into the “Bolivarian Republic of Venezuela” (art. 1). That new 1999 Constitution and the initiation of the political change known as the “Bolivarian Revolution” was made by a National Constituent Assembly that was convened and elected in the same year of 1999 in violation of the constitutional review procedures established in the previous 1961 Constitution;<sup>2</sup> a constituent assembly that was completely controlled by the followers of the then recently elected (1989) President Hugo Chávez who, after 12 years, still remains in power (2012).

The motivation for the new name given to the country was formally to refer to the ideas and actions of Simón Bolívar, who was not only the “Liberator” of Venezuela at the beginning of the XIX century in the wars of independence against Spain, but also of other Latin American countries such as Colombia, Ecuador, Bolivia and Peru which were historically called the “Bolivarian” republics.

Although it has not been the first time in Venezuela’s political history that rulers, mainly of military and authoritarian roots, have evoked Simón Bolívar

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<sup>2</sup> See on the 1999 constitutional making process: *Allan R. Brewer-Carías*, *Golpe de estado y proceso constituyente en Venezuela*, Universidad Nacional Autónoma de México, Mexico City 2002; *id.*, *The 1999 Venezuelan Constitution-Making Process as an Instrument for Framing the development of an Authoritarian Political Regime*, in: Laura E. Miller (ed.), *Framing the State in Times of Transition. Case Studies in Constitution Making*, United States Institute of Peace Press, Washington 2010, pp. 505–531; *id.*, *Constitution Making in Defraudation of the Constitution and Authoritarian Government in Defraudation of Democracy. The Recent Venezuelan Experience*, *Lateinamerika Analysen*, 19, 1/2008, GIGA, German Institute of Global and Area Studies, Institute of Latin American Studies, Hamburg 2008, pp. 119–142.

to attract followers and to give some "doctrinal" basis to their regimes,<sup>3</sup> never before had the adherence to Bolívar led to changing the republic's name and to the invention of a "Bolivarian doctrine" to justify the government's policies, as Chávez has done regarding his "XXI century Socialism" one.<sup>4</sup>

In Venezuelan constitutional history, strictly speaking, the only "Bolivarian Republic" that has existed as a state, has been the one resulting from the "union of the peoples of Colombia" proposed by Simón Bolívar in 1819, and materialized in the 1821 Constitution of the Republic of Colombia (comprising the territories of today's Venezuela, Colombia and Ecuador). With that constitution the Republic of Venezuela just disappeared as an autonomous state,<sup>5</sup> a situation that endured up to 1830, until Bolívar's death.

Consequently, the renaming of the Republic in 1999, this time without affecting the country's sovereignty, was explained as an intent to give the republic,

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<sup>3</sup> It was the case of Antonio Guzmán Blanco in the nineteenth century and of Cipriano Castro, Juan Vicente Gómez, Eleazar López Contreras, and Marcos Pérez Jiménez in the twentieth century. John Lynch has pointed out: "The traditional cult of Bolívar has been used as a convenient ideology by military dictators, culminating with the regimes of Juan Vicente Gómez and Eleazar López Contreras; these had at least more or less respected the basic thought of the Liberator, even when they misrepresented its meaning." See *John Lynch, Simón Bolívar: A Life*, Yale University Press, New Haven, CT, 2007, p. 304. See also *Germán Carrera Damas, El culto a Bolívar, esbozo para un estudio de la historia de las ideas en Venezuela*, Universidad Central de Venezuela, Caracas 1969; *Luis Castro Leiva, De la patria boba a la teología bolivariana*, Monteávila, Caracas 1987; *Elías Pino Iturrieta, El divino Bolívar. Ensayo sobre una religión republicana*, Alfail, Caracas 2008; *Ana Teresa Torres, La herencia de la tribu. Del mito de la independencia a la Revolución bolivariana*, Editorial Alfa, Caracas 2009. See also the historiography study on these books in *Tomás Straka, La épica del desencanto*, Editorial Alfa, Caracas 2009.

<sup>4</sup> John Lynch has pointed out: "In 1999 Venezuelans were astonished to learn that their country had been renamed 'the Bolivarian Republic of Venezuela' by decree of President Hugo Chávez, who called himself a 'revolutionary Bolivarian.' Authoritarian populist, or neocaudillos, or Bolivarian militarists, whatever their designation, invoke Bolívar no less ardently than did previous rulers, though it is doubtful whether he would have responded to their calls... But the new heresy, far from maintaining continuity with the constitutional ideas of Bolívar, as was claimed, invented a new attribute, the populist Bolívar, and in the case of Cuba gave him a new identity, the socialist Bolívar. By exploiting the authoritarian tendency, which certainly existed in the thought and action of Bolívar, regimes in Cuba and Venezuela claim the Liberator as patron for their policies, distorting his ideas in the process." See *John Lynch, Simón Bolívar: A Life*, Yale University Press, New Haven, CT, 2007, p. 304. See also *A.C. Clark, The Revolutionary Has No Clothes: Hugo Chávez's Bolivarian Farce*, Encounter Books, New York 2009, pp. 5–14. The last attempt to completely appropriate Simón Bolívar for the "Bolivarian Revolution," was the televised exhumation of his remains that took place at the National Pantheon in Caracas on July 26, 2010, conducted by President Chávez himself and other high officials, including the Prosecutor General, among other things, for the purpose of determining if Bolívar died of arsenic poisoning in Santa Marta in 1830, instead of from tuberculosis. See *Simon Romero, Building a New History By Exhuming Bolívar*, *The New York Times*, August 4, 2010, p. A7.

<sup>5</sup> See the texts of all these Laws in *Allan R. Brewer-Carías, Las Constituciones de Venezuela*, Academia de Ciencias Políticas y Sociales, Caracas 2008, Vol. 1, pp. 643–46.

although ignoring the past two hundred years of history, a “definitive” national doctrine supposedly based on the thoughts of Bolívar. Nonetheless, as it can now be appreciated (2012) after twelve years, the truth was otherwise, being just a label used by the new rulers of the country in order to impose their own socialist doctrine disguised as a “Bolivarian” one.

For that purpose, the first step taken for the purpose of giving to the country the name of Bolívar was an exclusive political or partisan one based on the name initially given in 1982 to the political movement used by Chávez to gain power, the “Bolivarian Revolutionary Movement 200 (MBR-200).” Because such an organization could not continue as a formal political party in order to lead the “Bolivarian” revolution due to the legal prohibition for parties to use in their denomination symbols of the motherland,<sup>6</sup> the decision was to incorporate the name in the Constitution by labeling the country,<sup>7</sup> and the party became the Fifth Republic Movement (*Movimiento V República*, MVR) which was later transformed into the United Socialist Party of Venezuela (PSUV), which declared itself as a “Marxist” party following the “Bolivarian doctrine.”<sup>8</sup>

I was one of the few members of the 1999 Constituent Assembly who voted against the renaming proposal,<sup>9</sup> not only because I considered it as a partisan motivated one, but also because a republic organized as “a federal decentralized State” was essentially anti-“Bolivarian,” Bolívar being the one that in the first decades of Latin American independence promoted the idea of centralized governments – non federal – in the new republics.<sup>10</sup>

The consequence of the constitutional reform on this matter has been that everything related to the new political regime has been called Bolivarian, beginning, for instance, with the creation in 2001 of the “Bolivarian Circles” that were the first social or communal organizations promoted and supported by the

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<sup>6</sup> According to the Political Parties Law, *Gaceta Oficial* N° 27.725, Apr. 30, 1965, political parties cannot use the name of the founders of the country or homeland symbols. The political organization the president formed before campaigning for the 1998 election was *Movimiento Bolivariano 200*. That name could not be used to identify the political party he founded, which became *Movimiento V República*.

<sup>7</sup> *Mutatis mutandi*, in a certain way it happened with the use of the name of Augusto C. Sandino in the name of the *Frente Sandinista de Liberación* and of the Sandinista Republic of Nicaragua.

<sup>8</sup> See “Declaration of Principles” of the United Socialist Party of Venezuela (Apr. 23, 2010), available at <http://psuv.org.ve/files/tcdocumentos/Declaracion-de-principios-PSUV.pdf>.

<sup>9</sup> See *Allan R. Brewer-Carías*, *Debate constituyente (Aportes a la Asamblea Nacional Constituyente)* Fundación de Derecho Público – Editorial Jurídica Venezolana, Caracas 1999, 3 (Oct. 18 – Nov. 30), pp. 237, 251–52.

<sup>10</sup> See *Allan R. Brewer-Carías*, *Ideas centrales sobre la organización el Estado en la Obra del Libertador y sus Proyecciones Contemporáneas*, *Boletín de la Academia de Ciencias Políticas y Sociales*, N° 95–96, January–June 1984, pp. 137–151.

government in order to react against any opposition to the government and to threaten anybody with views contrary to it.<sup>11</sup>

The fact has been that the partisan character of the use of Bolívar's name applied to the republic and to the government policies has initiated a bitter polarization of the country, between "Bolivarians" and those who are not and, consequently, supposedly, between patriots and anti-patriots, good people and bad people, pure people and corrupt people, revolutionary and antirevolutionary or oligarchs; all that, by manipulating history and popular feelings regarding the image of Bolívar.

The constant promotion of the "Bolivarian Revolution" even led the President of the republic himself, in 2007, to draft and propose a constitutional reform before the National Assembly,<sup>12</sup> in order to express and formally incorporate in the text of the Constitution the socialist "Bolivarian doctrine" as the fundamental doctrine of the state. For such purpose, the "Bolivarian socialism" was proposed to be incorporated in the Constitution as the state's guiding doctrine, even for international relations. This constitutional reform, based on the then so-called "twenty-first century socialism,"<sup>13</sup> failed to be implanted, being rejected by the people through popular votes in the December 2, 2007 referendum.<sup>14</sup>

Nonetheless, and despite its rejection by the people's votes, in the following year (2008), the 2007 constitutional reform proposals began to be implemented by the authoritarian government in violation of the Constitution through a

<sup>11</sup> The general assembly of the Organization of American States, in its Report of Apr. 18, 2002, said about the Bolivarian Circles, that they "are groups of citizens or grassroots organizations which support the President's political platform. Many sectors consider them responsible for the human rights violations, acts of intimidation, and looting." See the reference in *Allan R. Brewer-Carías*, *La crisis de la democracia en Venezuela*, Libros El Nacional, Caracas 2002.

<sup>12</sup> See on the constitutional reforms proposals, *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*, Editorial Jurídica Venezolana, Caracas 2007; *id.*, *La reforma constitucional de 2007 (Comentarios al proyecto inconstitucionalmente sancionado por la Asamblea Nacional el 2 de noviembre de 2007)*, Editorial Jurídica Venezolana, Caracas 2007.

<sup>13</sup> See *Rogelio Pérez Perdomo*, *La Constitución de papel y su reforma*, *Revista de Derecho Público* 112 (Estudios sobre la reforma constitucional), Editorial Jurídica Venezolana, Caracas 2007, p. 14; *G. Fernández*, *Aspectos esenciales de la modificación constitucional propuesta por el Presidente de la República. La modificación constitucional como un fraude a la democracia*, in: *id.*, p. 22; *Alfredo Arismendi*, *Utopía Constitucional*, in: *id.*, p. 31; *Manuel Rachadell*, *El personalismo político en el Siglo XXI*, in: *id.*, p. 66; *Allan R. Brewer-Carías*, *El sello socialista que se pretendía imponer al Estado*, in: *id.*, pp. 71–75; *Alfredo Morles Hernández*, *El nuevo modelo económico para el Socialismo del Siglo XXI*, in: *id.*, pp. 233–36.

<sup>14</sup> The definitive voting figures in such referendum have never been informed to the country by the government controlled National Electoral Council. See *Allan R. Brewer-Carías*, *Estudio sobre la propuesta de Reforma Constitucional para establecer un estado socialista, centralizado y militarista (Análisis del anteproyecto presidencial, Agosto de 2007)*, *Cadernos da Escola de Direito e Relações Internacionais da UniBrasil* 7, Curitiba 2007, pp. 265–308.

massive amount of decree laws issued by the President and by means of Organic Laws sanctioned by the National Assembly, changing in this way the Constitution but without formally reforming it. The last set of unconstitutional legislation implementing the 2007 rejected reform was approved in December of 2010, by formally creating a Communal State (or Socialist or Communist state) based upon the exercise of a Popular Power that has no constitutional basis, in parallel to the existing Constitutional decentralized State based upon the Public Power (National, state, municipal) expressly established in the Constitution.<sup>15</sup>

For such purpose, after the set of unconstitutional laws approved between 2008 and 2009 related to the implantation of Socialism as the doctrine of the new Communal State, in January 2010, Chávez himself confessed that the supposedly “Bolivarian revolution,” was no more than the phantasmagoric resurrection of the historically failed “Marxist revolution,” but in this case led by a president who has never even read Marx’s writings.<sup>16</sup> This announcement provoked in April 2010, that the governmental United Socialist Party of Venezuela of which the President presides, in its First Extraordinary Congress then adopted its “Declaration of Principles” in which it officially declared itself as a “Marxist,” “Anti-imperialist” and “Anti-capitalist” party. According to the same document, the party’s actions are to be based on “scientific socialism” and on the “inputs of Marxism as a philosophy of praxis,” in order to substitute the “Capitalist Bourgeois State” with a “Socialist State” based on the Popular Power and the socialization of the means of production.<sup>17</sup> Of course, none of these ideas can be found in the works of Simón Bolívar, his name only being used as a pretext to continue to manipulate the Bolívar “cult” to justify authoritarianism, as has occurred so many times before in the history of the country.<sup>18</sup>

With these declarations it can be said, finally, that the so called “Bolivarian Revolution” has been unveiled; a revolution for which nobody in Venezuela has voted except for its rejection in the December 2, 2007 referendum, in which the President’s proposals for constitutional reforms in order to estab-

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<sup>15</sup> See *Gustavo Linares Benzo*, *Sólo un Poder Público más. El Poder Popular en la reforma del 2007*, *Revista de Derecho Público* 112 (Estudios sobre la reforma constitucional), Editorial Jurídica Venezolana, Caracas 2007, pp. 102–105; *Arturo Peraza*, *Reforma, Democracia participativa y Poder Popular*, in: id., pp. 107–13.

<sup>16</sup> In his annual speech before the National Assembly on Jan. 15, 2010, in which Chávez declared to have “assumed Marxism,” he also confessed that he had never read Marx’s works. See *María Lilibeth Da Corte*, *Por primera vez asumo el marxismo*, *El Universal*, Caracas Jan. 16, 2010, [http://www.eluniversal.com/2010/01/16/pol\\_art\\_por-primera-vez-asu\\_1726209.shtml](http://www.eluniversal.com/2010/01/16/pol_art_por-primera-vez-asu_1726209.shtml).

<sup>17</sup> See “*Declaración de Principios, I Congreso Extraordinario del Partido Socialista Unido de Venezuela*,” Apr. 23, 2010, at <http://psuv.org.ve/files/tcdocumentos/Declaracion-de-principios-PSUV.pdf>.

<sup>18</sup> See supra note 3.



lish a Socialist, Centralized, Police and Militaristic state received a negative popular response.<sup>19</sup>

### B. The 2007 Attempt to pass a constitutional reform in order to create a socialist, centralized and communal state in substitution of the democratic decentralized social state

As aforementioned, a major step taken in order to formally consolidate in the Constitution an authoritarian government by establishing a socialist, centralized and communal state in substitution of the democratic decentralized social state was the 2007 proposal made by the President of the Republic before the National Assembly, which arrived to the point of approving a constitutional reform with the objective of establishing a socialist, centralized, militaristic, and police State<sup>20</sup>, called the "Popular Power State" or "Communal State." As aforementioned, nevertheless, once it was put to popular vote, it was rejected by the people on December 2, 2007.

The constitutional reform was intended to transform the most essential and fundamental aspects of the state,<sup>21</sup> making it one of the most important reforms proposals in all of Venezuelan constitutional history. With it, the decentralized, democratic, pluralistic, and social state built and consolidated since the Second World War would have been radically changed to create a socialist, centralized, repressive, and militaristic state grounded in a so-called "Bolivarian doctrine," which at the time was identified with "twenty-first-century socialism" and a socialist economic system of state capitalism. This reform was sanctioned by the National Assembly evading the procedure established in the Constitution

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<sup>19</sup> See on the 2007 constitutional reforms proposals *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*, Editorial Jurídica Venezolana, Caracas 2007; *id.*, *La reforma constitucional de 2007 (Comentarios al proyecto inconstitucionalmente sancionado por la Asamblea Nacional el 2 de noviembre de 2007)*, Editorial Jurídica Venezolana, Caracas 2007.

<sup>20</sup> See *Allan R. Brewer-Carías*, *Hacia la Consolidación de un Estado Socialista, Centralizado, Policial y Militarista. Comentarios sobre el sentido y alcance de las propuestas de reforma constitucional 2007*, Colección Textos Legislativos, No. 42, Editorial Jurídica Venezolana, Caracas 2007.

<sup>21</sup> See *Rogelio Pérez Perdomo*, *La Constitución de papel y su reforma*, *Revista de Derecho Público* 112 (Estudios sobre la reforma constitucional), Editorial Jurídica Venezolana, Caracas 2007, p. 14; *G. Fernández*, *Aspectos esenciales de la modificación constitucional propuesta por el Presidente de la República. La modificación constitucional como un fraude a la democracia*, in: *id.*, p. 22; *Alfredo Arismendi*, *Utopía Constitucional*, in: *id.*, p. 31; *Manuel Rachadell*, *El personalismo político en el Siglo XXI*, in: *id.*, p. 66; *Allan R. Brewer-Carías*, *El sello socialista que se pretendía imponer al Estado*, in: *id.*, pp. 71–75; *Alfredo Morles Hernández*, *El nuevo modelo económico para el Socialismo del Siglo XXI*, in: *id.*, pp. 233–36.

for such fundamental change, which imposes the convening of a Constituent Assembly. The reform defrauded the Constitution<sup>22</sup> as one more step of the “permanent coup d’état” that since 1999 has occurred in Venezuela.<sup>23</sup>

The most important consequence of this draft reform from the citizens’ perspective was that, with it, an official state ideology and doctrine was to be formally established in Venezuela, which was the socialist and supposedly “Bolivarian” doctrine, implying if approved by the people, the duty for all citizens to actively contribute to its implementation, eliminating any vestige of political pluralism, and allowing for the formal criminalization of any dissidence regarding the unique and official way of thinking.

Guidelines for the proposed reforms emerged from various discussions and speeches of the president. These pointed to, on the one hand, the formation of a state of “popular power” or of “communal power,” or a “communal state” (*Estado del poder popular o del poder communal, o Estado comunal*) built on the communal councils (*consejos comunales*) as primary political units or social organizations. The communal councils, whose members are not elected by means of universal, direct, and secret suffrage, in a way contrary to the democratic principles established in the Constitution, had already been created by statute in 2006,<sup>24</sup> parallel to the municipal entities, supposedly to channel citizen participation in public affairs. However, since their creation, they have operated within a system of centralized management by the national executive power and without any political or territorial autonomy.<sup>25</sup>

On the other hand, the guidelines for reform also referred to the structuring of a socialist state and the substitution of the existing system of economic freedom and mixed economy with a state and collectivist socialist economic

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<sup>22</sup> See Rogelio Pérez Perdomo, *La Constitución de papel y su reforma*, *Revista de Derecho Público* 112 (Estudios sobre la reforma constitucional), Editorial Jurídica Venezolana, Caracas 2007, p. 14; Gerardo Fernández, *Aspectos esenciales de la modificación constitucional propuesta por el Presidente de la república. La modificación constitucional en fraude a la democracia*, in: id., pp. 21–25; Fortunato González, *Constitución histórica y poder constituyente*, in: id., pp. 33–36; Lolymar Herández Camargo, *Los límites del cambio constitucional como garantía de pervivencia del Estado de derecho*, in: id., pp. 37–45; Claudia Nikken, *La soberanía popular y el trámite de la reforma constitucional promovida por iniciativa presidencial el 15 de agosto de 2007*, in: id., pp. 51–58.

<sup>23</sup> See José Amando Mejía Betancourt, *La ruptura del hilo constitucional*, in: id., p. 47. The term was first used by Francois Mitterand, *Le coup d’État permanent*, Éditions 10/18, Paris 1993.

<sup>24</sup> *Ley de Consejos Comunales*, *Gaceta Oficial*, Extra. 5.806, Apr. 10, 2006. This statute was replaced by *Ley Orgánica de los Consejos Comunales*. See *Gaceta Oficial* N° 39.335, Dec. 28, 2009.

<sup>25</sup> See Allan R. Brewer-Carías, *El inicio de la desmunicipalización en Venezuela: La organización del poder popular para eliminar la descentralización, la democracia representativa y la participación a nivel local*, AIDA, *Revista de la Asociación Internacional de Derecho Administrativo*, Universidad Nacional Autónoma de México, Asociación Internacional de Derecho Administrativo, Mexico City 2007, pp. 49–67.

system subject to centralized planning, which minimizes the role of individuals and eliminates any vestige of economic liberties or private property as constitutional rights.

In accordance with these orientations, the 2007 rejected reform intended to radically transform the state by creating a completely new juridical order. A change of that nature, according to Article 347 of the 1999 Constitution, required the convening and election of a Constituent Assembly and could not be undertaken by means of mere constitutional reform procedures. This procedure for constitutional reform is applicable only to "a partial revision of the Constitution and a substitution of one or several of its norms without modifying the structure and fundamental principles of the Constitutional text." In such case, the limited constitutional change is achieved through debate and sanctioning in the National Assembly, followed by approval in popular referendum.

Nonetheless, despite these constitutional provisions, with the rejected reform proposals, a political tactic that has been a common denominator in the actions of the authoritarian regime since 1999 was repeated: acting fraudulently with respect to the Constitution. That is, existing institutions were used in a manner that appeared to adhere to constitutional form and procedure to proceed, as the Supreme Tribunal had warned, "towards the creation of a new political regime, a new constitutional order, without altering the established legal system."<sup>26</sup> This occurred in February 1999 in the convening of a consultative referendum on whether to convene a Constituent Assembly when that institution was not prefigured in the then-existing Constitution of 1961.<sup>27</sup> It occurred with the December 1999 Decree on the Transitory Regime of the Public Powers, with respect to the 1999 Constitution, which was never the subject of an approbatory referendum.<sup>28</sup> It has continued to occur in subsequent years with the progressive destruction of democracy through the exercise of power eliminating all effective separation of powers, and the sequestering of successive public rights and liberties, all supposedly based on legal and constitutional provisions.<sup>29</sup>

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<sup>26</sup> See the decision of the Constitutional Chamber of the Supreme Tribunal of Justice N° 74 (Jan. 25, 2006), *Revista de Derecho Público* 105, Editorial Jurídica Venezolana, Caracas 2006, pp. 76 ff.

<sup>27</sup> See *Allan R. Brewer-Carías*, *Asamblea constituyente y ordenamiento constitucional*, Academia de Ciencias Políticas y Sociales, Caracas 1999.

<sup>28</sup> See *Allan R. Brewer-Carías*, *Golpe de estado y proceso constituyente en Venezuela*, Universidad Nacional Autónoma de México, Mexico City 2002.

<sup>29</sup> See *Allan R. Brewer-Carías*, *Constitution-Making Process in Defraudation of the Constitution and Authoritarian Government in Defraudation of Democracy: The Recent Venezuelan Experience*, paper presented at the VII International Congress of Constitutional Law, Athens, June 2007. See also *Allan R. Brewer-Carías*, *El autoritarismo establecido en fraude a la Constitución y a la democracia y su formalización en Venezuela mediante la reforma constitucional. (De cómo en un país democrático se ha utilizado el sistema eleccionario para minar la democracia y establecer un régimen autoritario de supuesta 'dictadura de la democracia' que se pretende regularizar mediante la reforma constitucional)*, in: *Temas con-*

In this instance, once again, constitutional provisions were fraudulently used for ends other than those for which they were established; they were used to radically transform the state, thus disrupting the civil order of the social-democratic state to convert the state into a socialist, centralized, repressive, and militarist state in which representative democracy, republican alternation in office, and the concept of decentralized power would have disappeared, with all power instead concentrated in the decisions of the head of state.<sup>30</sup> In the case of the 2007 reforms, the various acts adopted (the presidential initiative, the sanction by the National Assembly, the convening of referendum by the National Electoral Council) were all challenged through judicial review actions of unconstitutionality and actions of *amparo* and, in all cases, the Supreme Tribunal, completely controlled by the Government, diligently declared all as inadmissible.<sup>31</sup>

Nonetheless, the fraud on the Constitution was initially evidenced in the proposals elaborated by the president's Council for Constitutional Reform that began to circulate in June 2007, despite the president's ordered "pact of confidentiality,"<sup>32</sup> and which were later given concrete form in the first draft of constitutional reforms, which the president presented to the National Assembly on August 15, 2007,<sup>33</sup> proposing a radical transformation of the state to create a new juridical order.<sup>34</sup> Finally, the defrauding of the Constitution was

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stitucionales. Planteamientos ante una reforma, Fundación de Estudios de Derecho Administrativo, Caracas 2007, pp.13–74.

<sup>30</sup> As is constitutionally proscribed, and as the Constitutional Chamber of the Supreme Tribunal of Justice summarized in Decision No. 74 (January 25, 2006), a symbolic case, it occurred "with the fraudulent use of powers conferred by martial law in Germany under the *Weimar* Constitution, forcing the Parliament to concede to the fascist leaders, on the basis of terms of doubtful legitimacy, plenary constituent powers by conferring an unlimited legislative power." See the Constitutional Chamber of the Supreme Tribunal of Justice, Decision N° 74 (Jan. 25, 2006), *Revista de Derecho Público* 105, Editorial Jurídica Venezolana, Caracas 2006, pp. 76 ff.

<sup>31</sup> On these decisions, see *Allan R. Brewer-Carías, El juez constitucional vs. la supremacía constitucional. O de cómo la jurisdicción constitucional en Venezuela renunció a controlar la constitucionalidad del procedimiento seguido para la 'reforma constitucional' sancionada por la Asamblea Nacional el 2 de noviembre de 2007, antes de que fuera rechazada por el pueblo en el referendo del 2 de diciembre de 2007, Revista de Derecho Público* 112 (Estudios sobre la reforma constitucional), Editorial Jurídica Venezolana, Caracas 2007, pp. 661–94.

<sup>32</sup> The document circulated in June 2007 under the title Consejo Presidencial para la Reforma de la Constitución de la República Bolivariana de Venezuela, "Modificaciones propuestas." The complete text was published as Proyecto de reforma constitucional. Versión atribuida al Consejo Presidencial para la reforma de la Constitución de la República Bolivariana de Venezuela, Editorial Atenea, Caracas 2007, p. 146.

<sup>33</sup> The full text was published as Proyecto de Reforma Constitucional. Elaborado por el ciudadano Presidente de la República Bolivariana de Venezuela, Hugo Chávez Frías, Editorial Atenea, Caracas 2007.

<sup>34</sup> In this sense, the director of the National Electoral Council, Vicente Díaz, stated on July 16, 2007, "The presidential proposal to reform the constitutional text modifies fundamental provisions and for that reason it would be necessary to convene a National Assembly

consummated in November 2007 with the National Assembly's sanctioning of the reform,<sup>35</sup> in which:

*First*, the state was to be converted into a centralized state of concentrated power under the illusory guise of a popular power, implying definitive elimination of the federal form of the state,<sup>36</sup> rendering political participation impossible, and degrading representative democracy. For such purpose, the reform established a new "popular power" (*poder popular*) (art. 16), composed by communities (*comunidades*), each of which "shall constitute a basic and indivisible spatial nucleus of the Venezuelan Socialist State, where ordinary citizens will have the power to construct their own geography and their own history;" which were to be grouped into communes (*comunas*).<sup>37</sup> The main aspect of these reforms was that they provided that the popular power "is expressed through the constitution of communities, communes, and the self-government of the cities, by means of the communal councils, workers' councils, peasant councils, student councils, and other entities established by law." However, although "the people" (*el pueblo*) were designated as the "depository of sovereignty," to be "exercised directly through the popular power," it was expressly stated that the popular power "does not arise from suffrage or from any election, but arises

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to approve them." This council member was consulted on this matter on Unión Radio, Aug. 16, 2007, at <http://www.unionradio.com.ve/Noticias/Noticia.aspx?noticiaid=212503>. The initiation of the reform process in the National Assembly could have been challenged before the Constitutional Chamber of the Supreme Tribunal on the basis of unconstitutionality. Nonetheless, the president of the Constitutional Chamber—who was also a member of the Presidential Council for the Reform of the Constitution—made clear that "no legal action related to modifications of the constitutional text would be heard until such modifications had been approved by citizens in referendum," adding that "any action must be presented after a referendum, when the constitutional reform has become a norm, since we cannot interpret an attempted norm. Once a draft reform has become a norm we can enter into interpretations of it and hear nullification actions." See *Juan Francisco Alonso*, *El Universal*, Caracas Aug. 18, 2007.

<sup>35</sup> On the reform proposals, 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 N° 42, Editorial Jurídica Venezolana, Caracas 2007; *id.*, *La reforma constitucional de 2007* (Comentarios al proyecto inconstitucionalmente sancionado por la Asamblea Nacional el 2 de noviembre de 2007), Colección Textos Legislativos N° 43, Editorial Jurídica Venezolana, Caracas 2007. See also all the articles published in *Revista de Derecho Público* 112 (Estudios sobre la reforma constitucional), Editorial Jurídica Venezolana, Caracas 2007.

<sup>36</sup> See *Manuel Rachadell*, *El personalismo político en el Siglo XXI*, *Revista de Derecho Público* 112 (Estudios sobre la reforma constitucional), Editorial Jurídica Venezolana, Caracas 2007, p. 67; *Ana Elvira Araujo*, *Proyecto de reforma constitucional* (agosto a noviembre 2007). *Principios fundamentales y descentralización política*, in: *id.*, pp. 77–81; *José Luis Villegas*, *Impacto de la reforma constitucional sobre las entidades locales*, in: *id.*, pp. 119–23.

<sup>37</sup> The communes were created in the statute on the Federal Council of Government. See *Ley Orgánica del Consejo Federal de Gobierno*, *Gaceta Oficial* N° 5.963 Extra. of Feb. 22, 2010.

from the condition of the organized human groups that form the base of the population.” Consequently, representative democracy at the local level and territorial political autonomy was to disappear, substituted with a supposed participatory and protagonist democracy that would, in fact, be controlled by the president and that proscribed any form of political decentralization and territorial autonomy.<sup>38</sup> Even anticipating the constitutional reform proposal, perhaps being sure of its approval, in 2006 the Law on the Councils of the Popular Power (*Consejos del Poder Popular*) was sanctioned.<sup>39</sup> In the same trend of such Law, the reforms proposals conceived “the communes and communities” (*comunas y comunidades*) as “the basic and indivisible spatial nucleus of the Venezuelan Socialist State” (art. 15); adding that the only objective of the constitutional provision for political participation, was “for the construction of socialism,” requiring that all citizens’ political associations be devoted “to develop the values of mutual cooperation and socialist solidarity” (art. 70).

*Second*, the state was to be converted into a socialist state, being obligated to “promote people’s participation as a national policy, devolving its power and creating the best conditions for the construction of a Socialist democracy” (art. 158); thus establishing a political official doctrine of socialist character – Bolivarian doctrine –. The consequence of this would be that any thoughts different from the official one were to be rejected, as the official political doctrine was incorporated into the Constitution itself, establishing a constitutional duty for all citizens to ensure its compliance, imposing the teaching in the

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<sup>38</sup> This fundamental change, as the president stated on August 15, 2007, constituted “the development of what we understand by decentralization, because the Fourth Republic concept of decentralization is very different from the concept we must work with. For this reason, we have here stated ‘the protagonist participation of the people, transferring power to them, and creating the best conditions for the construction of social democracy.’” See Discurso de orden pronunciado por el ciudadano Comandante Hugo Chávez Frías, Presidente Constitucional de la República Bolivariana de Venezuela en la conmemoración del ducentésimo segundo aniversario del juramento del Libertador Simón Bolívar en el Monte Sacro y el tercer aniversario del referendo aprobatorio de su mandato constitucional, special session, Aug. 15, 2007, Asamblea Nacional, División de Servicio y Atención legislativa, Sección de Edición, Caracas 2007, p. 50.

<sup>39</sup> See *Giancarlo Henríquez Maionica*, Los Consejos Comunales (una breve aproximación a su realidad y a su proyección ante la propuesta presidencial de reforma constitucional), *Revista de Derecho Público* 112 (Estudios sobre la reforma constitucional), Editorial Jurídica Venezolana, Caracas 2007, pp. 89–99; *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, *AIDA, Opera Prima de Derecho Administrativo*. *Revista de la Asociación Internacional de Derecho Administrativo*, Universidad Nacional Autónoma de México, Asociación Internacional de Derecho Administrativo, Mexico City 2007, pp. 49–67. The 2006 law was replaced by *Ley Orgánica de los Consejos Comunales*, *Gaceta Oficial* N° 39.335, Dec. 28, 2009. See the comments on this Law in *Allan R. Brewer-Carías*, *Ley de los Consejos Comunales*, Editorial Jurídica Venezolana, Caracas 2010.

schools of the “*ideario bolivariano*” (Bolivarian ideology), and stating that the primary investment of the state in education was to be done “according to the humanistic principles of the Bolivarian socialism.” As a consequence, the basis for criminalizing all dissidence was formally to be established.

*Third*, the economic system was to be converted into a state-owned, socialist, centralized economy by means of eliminating economic liberty and private initiative as constitutional rights, as well as the constitutional right to private property; conferring the means of production to the state, to be centrally managed; and configuring the state as an institution on which all economic activity depended and to whose bureaucracy the totality of the population is subject. In this sense, the reform established that the socialist economic model created was to achieve “the best conditions for the collective and cooperative construction of a Socialist Economy” (art. 112), through “socialist means of production” (art. 168) by constituting “mixed corporations and/or socialist units of production” (art. 113), or “economic units of social production” as to “create the best conditions for the collective and cooperative construction of a socialist economy,” or “different forms of businesses and economic units from social property, both directly or communally, as well as indirectly or through the state” (art. 112). The reforms sought simply to derogate and eliminate the right to the free exercise of economic activities as a constitutional right and economic freedom itself.<sup>40</sup> The reforms then referred to the “socialist principles of the socio-economic system” (art. 229) and to the “socialist state” and the “socialist development of the nation” (arts. 318, 320). All the reforms collided with the ideas of liberty and solidarity proclaimed in the 1999 Constitution and tended to establish a state that substitutes itself for society and private economic initiative.

*Fourth*, the state was to be converted into a repressive (police) state, given the regressive character of the regulations established in the reform regarding human rights, particularly civil rights, and the expansion of the president’s emergency powers, under which he was authorized to indefinitely suspend constitutional rights.

*Fifth*, and finally, the state was to be converted into a militarist state, on the basis of the role assigned to the “Bolivarian Armed Force” (*Fuerza Armada Bolivariana*), which was configured to function wholly under the president,

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<sup>40</sup> See Gerardo Fernández, Aspectos esenciales de la modificación constitucional propuesta por el Presidente de la República. La modificación constitucional como un fraude a la democracia, *Revista de Derecho Público* 112 (Estudios sobre la reforma constitucional), Editorial Jurídica Venezolana, Caracas 2007, p. 24; Alfredo Arismendi, Utopía Constitucional,” in: id., p. 31; José Antonio Muci Borjas, La suerte de la libertad económica en el proyecto de Reforma de la Constitución de 2007,” in: id., pp. 203–208; Tamara Adrián, Actividad económica y sistemas alternativos de producción, in: id., pp. 209–14; Víctor Hernández Mendible, Réquiem por la libertad de empresa y derecho de propiedad, in: id., pp. 215–18; Alfredo Morles Hernández, El nuevo modelo económico para el Socialismo del Siglo XXI, in: id., pp. 233–236.

and the creation of the new “Bolivarian National Militia (*Milicia Nacional Bolivariana*). All were to act “by means of the study, planning and execution of Bolivarian military doctrine” – that is, according to socialist doctrine.

All the reforms implied the radical transformation of the Venezuelan political system; sought to establish a centralized socialist, repressive, and militaristic state of popular power; and departed fundamentally from the concept of a civil social-democratic state under the rule of law and justice based on a mixed economy.

The motives for the reforms were all very explicitly expressed by the President of the Republic in 2007, beginning with his speech of presentation of the draft reforms before the National Assembly, in which he said that the reforms’ main objective was “the construction of a Bolivarian and socialist Venezuela” – that is, to sow “socialism in the political and economic realms.”<sup>41</sup> He clearly expressed that in his presidential campaign in 1999, he did not propose such thing as “projecting the road of socialism” to be incorporated in the Constitution, but conversely in 2006, as candidate for reelection, he said: “Let us go to Socialism,” deducting from that that “everyone who voted for [reelecting] candidate Chávez then, voted to go to socialism.”<sup>42</sup>

This was then the motivation for the drafting of the constitutional reforms in 2007, aiming to construct “Bolivarian Socialism, Venezuelan Socialism, our Socialism, and our socialist model,” having “the community” (*la comunidad*), a “basic and indivisible nucleus,” and considering that “real democracy is only possible in socialism.” However, the democracy referred to was not at all a representative democracy because it was “not born of suffrage or from any election, but rather is born from the condition of organized human groups as the base of the population.”<sup>43</sup>

The president in that speech summarized the aims of his reform proposals explaining that on the political ground, the purpose was to “deepen popular Bo-

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<sup>41</sup> See Discurso de orden pronunciado por el ciudadano Comandante Hugo Chávez Frías, Presidente Constitucional de la República Bolivariana de Venezuela en la conmemoración del ducentésimo segundo aniversario del juramento del Libertador Simón Bolívar en el Monte Sacro y el tercer aniversario del referendo aprobatorio de su mandato constitucional, special session, Aug. 15, 2007, Asamblea Nacional, División de Servicio y Atención legislativa, Sección de Edición, Caracas 2007, pp. 4, 33.

<sup>42</sup> *Id.*, p. 4. That is, it sought to impose the wishes of only 46 % of registered voters who voted to reelect the president on the remaining 56 % of registered voters who did not vote for presidential reelection. According to official statistics from the National Electoral Council, of 15,784,777 registered voters, only 7,309,080 voted to reelect the president.

<sup>43</sup> See Discurso de orden pronunciado por el ciudadano Comandante Hugo Chávez Frías, Presidente Constitucional de la República Bolivariana de Venezuela en la conmemoración del ducentésimo segundo aniversario del juramento del Libertador Simón Bolívar en el Monte Sacro y el tercer aniversario del referendo aprobatorio de su mandato constitucional, special session, Aug. 15, 2007, Asamblea Nacional, División de Servicio y Atención legislativa, Sección de Edición, Caracas 2007, pp. 32, 34, 35.



livarian democracy"; and on the economic ground, to "create better conditions to sow and construct a socialist productive economic model," which he considered "our model." That is, "in the political field: socialist democracy; on the economic, the productive socialist model; in the field of public administration, incorporate new forms in order to lighten the load, to leave behind bureaucracy, corruption, and administrative inefficiency, which are heavy burdens of the past still upon us like weights, in the political, economic and social areas."<sup>44</sup>

All his proposals to construct socialism were linked by the president to Simón Bolívar's 1819 Constitution of Angostura, which he considered "perfectly applicable to a socialist project" in the sense of considering that it was possible to "take the original Bolivarian ideology as a basic element of a socialist project."<sup>45</sup> Of course, this assertion has no serious foundations: it is enough to read Bolívar's 1819 Angostura discourse on presenting the draft constitution to realize that it has nothing to do with a "socialist project" of any kind.<sup>46</sup>

The rejected constitutional reform, without doubt, would have altered the basic foundations of the state.<sup>47</sup> This is true particularly with respect to the proposals on the constitutional amplification of the Bolivarian doctrine; the substitution of the democratic social state with the socialist state; the elimination of decentralization as a policy of the state designed to develop public political participation; and the elimination of economic freedom and the right to property.<sup>48</sup>

All these constitutional reforms, approved by the National Assembly defrauding the Constitution, as aforementioned, were submitted to popular vote,

<sup>44</sup> Id., p. 74.

<sup>45</sup> Id., p. 42. Only one month before the president's speech on the proposed constitutional reforms, the former minister of defense, General in Chief Raúl Baduel, who was in office until July 18, 2007, stated on leaving the Ministry of Popular Power for the Defense that the president's call to "construct socialism for the twenty-first century, implied a necessary, pressing and urgent need to formalize a model of Socialism that is theoretically its own, autochthonous, in accord with our historical, social, political and cultural context." He added, "Until this moment, this theoretical model does not exist and has not been formulated." It is hard to imagine that it could have been formulated just one month later.

<sup>46</sup> See *Simón Bolívar*, *Escritos fundamentales*, Caracas 1982. See also *Pedro Grases (ed.)*, *El Libertador y la Constitución de Angostura de 1819*, Caracas 1969; *José Rodríguez Iturbe (ed.)*, *Actas del Congreso de Angostura*, Caracas 1969. The contrary at least would have been noticed by *Karl Marx* who, on the contrary, in 1857 wrote a very critical entry regarding Bolívar, without discovering any socialist trends in his life, for the *The New American Cyclopaedia*, Vol. III, 1858, on "Bolívar y Ponte, Simón." Available at <http://www.marxists.org/archive/marx/works/1858/01/bolivar.htm>.

<sup>47</sup> See *Eugenio Hernández Bretón*, *Cuando no hay miedo (ante la Reforma Constitucional)*, *Revista de Derecho Público* 112 (Estudios sobre la reforma constitucional), Editorial Jurídica Venezolana, Caracas 2007, pp. 17–20; *Manuel Rachadell*, *El personalismo político en el Siglo XXI*, in: id., pp. 65–70.

<sup>48</sup> See on these reforms, *Allan R. Brewer-Carías*, *Dismantling Democracy. The Chávez Authoritarian Experiment*, Cambridge University Press, 2010.

and were all rejected by the people in the referendum that took place on December 2, 2007.<sup>49</sup>

### C. The irregular fraudulent implantation of the rejected constitutional reform through legislation and judicial constitutional interpretations (constitutional mutations)

Once the 2007 constitutional reforms were rejected by popular vote, the president and main officials of the National Assembly publicly announced that despite such rejection, they would implement the reforms.

The consequence of this determination was that many of the rejected constitutional reforms began to be illegitimately and fraudulently implemented, in a way contrary to the Constitution, by means of decree laws issued by the president in execution of the February 2007 enabling law.<sup>50</sup> This legislative delegation was sanctioned by the National Assembly parallel to the announcement by the president at the beginning of the 2007 constitutional reform process. As aforementioned, perhaps assuming that the presidential constitutional-reform proposal was to be approved by the people, the president began implementing it through the enabling law (delegate legislation) sanctioned in 2007 that was later also used fraudulently to implement the rejected reforms,<sup>51</sup> particularly in economic and social matters, in order to structure a socialist centralized state.<sup>52</sup> This process, on the other hand, was developed in absolute secrecy with no

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<sup>49</sup> See *Allan R. Brewer-Carías*, La proyectada reforma constitucional de 2007, rechazada por el poder constituyente originario, *Anuario de Derecho Público* 2007, Año 1, Instituto de Estudios de Derecho Público de la Universidad Monteávila, Caracas 2008, pp. 17–65. According to information from the National Electoral Council on Dec. 2, 2007, of 16,109,664 registered voters, only 9,002,439 voted (44.11 % abstention); of voters, 4,504,354 rejected the proposal (50.70 %). This means that there were only 4,379,392 votes to approve the proposal (49.29 %), so only 28 % of registered voters voted for the approval.

<sup>50</sup> *Gaceta Oficial*, 38.617, Feb. 1, 2007.

<sup>51</sup> See *Lolymar Hernández Camargo*, Límites del poder ejecutivo en el ejercicio de la habilitación legislativa: Imposibilidad de establecer el contenido de la reforma constitucional rechazada vía habilitación legislativa, *Revista de Derecho Público* 115 (Estudios sobre los Decretos Leyes), Editorial Jurídica Venezolana, Caracas 2008, pp. 51 ff.; *Jorge Kiriakidis*, Breves reflexiones en torno a los 26 Decretos-Ley de julio-agosto de 2008, y la consulta popular referendaria de diciembre de 2007, in: id., pp. 57 ff.; *José Vicente Haro García*, Los recientes intentos de reforma constitucional o de cómo se está tratando de establecer una dictadura socialista con apariencia de legalidad (A propósito del proyecto de reforma constitucional de 2007 y los 26 decretos leyes del 31 de julio de 2008 que tratan de imponerla), in: id., pp. 63 ff.

<sup>52</sup> See *Ana Cristina Nuñez Machado*, Los 26 nuevos Decretos-Leyes y los principios que regulan la intervención del Estado en la actividad económica de los particulares, in: id., pp. 215–20.

public consultation and participation in violation of Article 210 of the Constitution.<sup>53</sup>

As aforementioned, the process began even before the draft reforms were even submitted to the National Assembly, when Decree Law No. 5,841 was enacted on June 12, 2007,<sup>54</sup> containing the organic law creating the Central Planning Commission. This was the first formal state act devoted to building the socialist state.<sup>55</sup> Later, once the 2007 constitutional reform was rejected in referendum, on December 13, 2007, the National Assembly approved the 2007–2013 Economic and Social Development National Plan, established in Article 32 of the Decree Law enacting the Planning Organic Law,<sup>56</sup> in which the basis of the "planning, production and distribution system oriented towards socialism" was established, providing that "the relevant matter is the progressive development of social property of the production means." For such purpose, the proposed 2007 rejected constitutional reforms to assign the state all powers over farming, livestock, fishing, and aquaculture, and in particular the production of food, was then materialized in the Decree Law on the Organic Law on Farming and Food Security and Sovereignty.<sup>57</sup> That law assigned to the state power not only to authorize food imports but also to prioritize production and directly assume distribution and commercialization. The law also expanded expropriation powers of the executive violating the constitutional guarantee of the need for a previous declaration of a specific public interest or public utility involved, and

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<sup>53</sup> See *Aurilivi Linares Martínez*, *Notas sobre el uso del poder de legislar por decreto por parte del Presidente venezolano*, in: id., pp. 79–89; *Carlos Luis Carrillo Artilés*, *La paradójica situación de los Decretos Leyes Orgánicos frente a la Ingeniería Constitucional de 1999*, in: id., pp. 93–100; *Freddy J. Orlando S.*, *El "paquetazo," un conjunto de leyes que conculcan derechos y amparan injusticias*, in: id., pp. 101–104.

<sup>54</sup> *Gaceta Oficial* N° 5.841, Extra., June 22, 2007.

<sup>55</sup> See *Allan R. Brewer-Carías*, *Comentarios sobre la inconstitucional creación de la Comisión Central de Planificación, centralizada y obligatoria*, *Revista de Derecho Público* 110, Editorial Jurídica Venezolana, Caracas 2007, pp. 79–89; *Luis A. Herrera Orellana*, *Los Decretos-Leyes de 30 de julio de 2008 y la Comisión Central de Planificación: Instrumentos para la progresiva abolición del sistema político y del sistema económico previstos en la Constitución de 1999*, *Revista de Derecho Público* 115 (Estudios sobre los Decretos Leyes), Editorial Jurídica Venezolana, Caracas 2008, pp. 221–32.

<sup>56</sup> *Gaceta Oficial* N° 5.554 of Nov. 13, 2001.

<sup>57</sup> *Gaceta Oficial* N° 5.889, Extra., July 31, 2008. See *José Ignacio Hernández G.*, *Planificación y soberanía alimentaria*, *Revista de Derecho Público* 115, (Estudios sobre los Decretos Leyes), Editorial Jurídica Venezolana, Caracas 2008, pp. 389–94; *Juan Domingo Alfonso Paradisi*, *La constitución económica establecida en la Constitución de 1999, el sistema de economía social de mercado y el decreto 6.071 con rango, valor y fuerza de Ley Orgánica de seguridad y soberanía agroalimentaria*, in: id., pp. 395–415; *Gustavo A. Grau Fortoul*, *La participación del sector privado en la producción de alimentos, como elemento esencial para poder alcanzar la seguridad alimentaria (Aproximación al tratamiento de la cuestión, tanto en la Constitución de 1999 como en la novísima Ley Orgánica de soberanía y seguridad alimentaria)*, in: id., pp. 417–24.

allowing the State occupation of industries without compensation,<sup>58</sup> which has repeatedly occurred during the past years.<sup>59</sup>

Another Decree Law, No. 6,130 of June 3, 2008, enacted the Popular Economy Promotion and Development Law, establishing a “socio-productive communal model,” with different socio-productive organizations following the “socialist model.”<sup>60</sup> In the same openly socialist orientation, Decree Law No. 6,092 was also issued enacting the Access to Goods and Services Persons Defense Law,<sup>61</sup> which derogated the previous Consumer and Users Protection Law,<sup>62</sup> with the purpose of regulating all commercialization and different economic aspects of goods and services, extending the state powers of control to the point of establishing the possibility of confiscating goods and services by means of their takeover and occupation of private industries and services through administrative decisions,<sup>63</sup> which has also repeatedly occurred during the past years.<sup>64</sup>

Regarding the 2007 rejected constitutional reforms related to eliminating local-level representative democracy, as aforementioned, the same began to be implemented in 2006, even before its formal proposal, with the sanctioning of the Communal Councils Law, which created them as social units and organizations not directed by popularly elected officials, without any sort of territo-

<sup>58</sup> See *Carlos García Soto*, *Notas sobre la expansión del ámbito de la declaratoria de utilidad pública o interés social en la expropiación*, in: id., pp. 149–51.

<sup>59</sup> See, in general, *Antonio Canova González, Luis Alfonso Herrera Orellana, Karina Anzola Spadaro*, *¿Expropiaciones o vías de hecho?, La degradación continuada del derecho fundamental de propiedad en la Venezuela actual*, Funeda, Universidad Católica Andrés Bello, Caracas 2009.

<sup>60</sup> *Gaceta Oficial* N° 5.890, Extra., July 31, 2008. See *Jesús María Alvarado Andrade*, *La desaparición del bolívar como moneda de curso legal (Notas críticas al inconstitucional Decreto N° 6.130, con rango, valor y fuerza de la ley para el fomento y desarrollo de la economía comunal, de fecha 3 de junio de 2008, Revista de Derecho Público 115, (Estudios sobre los Decretos Leyes), Editorial Jurídica Venezolana, Caracas 2008, pp. 313–20.*

<sup>61</sup> *Gaceta Oficial* N° 5,889 Extra of July 31, 2008; *José Gregorio Silva*, *Disposiciones sobre el Decreto-Ley para la defensa de las personas en el acceso a bienes y servicios*, in: id., pp. 277–79; *Carlos Simón Bello Rengifo*, *Decreto N° 6.092 con rango, valor y fuerza de la ley para la defensa de las personas en el acceso a los bienes y servicios (Referencias a problemas de imputación)*, in: id., pp. 281–305; *Alfredo Morles Hernández*, *El nuevo modelo económico del socialismo del siglo XXI y su reflejo en el contrato de adhesión*, in: id., pp. 229–32.

<sup>62</sup> *Gaceta Oficial* N° 37.930, May 4, 2004.

<sup>63</sup> See *Juan Domingo Alfonso Paradisi*, *Comentarios en cuanto a los procedimientos administrativos establecidos en el Decreto N° 6.092 con rango, valor y fuerza de Ley para la defensa de las personas en el acceso a los bienes y servicios*, *Revista de Derecho Público 115, (Estudios sobre los Decretos Leyes), Editorial Jurídica Venezolana, Caracas 2008, pp. 245–60; Karina Anzola Spadaro*, *El carácter autónomo de las ‘medidas preventivas’ contempladas en el artículo 111 del Decreto-Ley para la defensa de las personas en el acceso a los bienes y servicios*, in: id., pp. 271–76.

<sup>64</sup> See, in general, *Antonio Canova González, Luis Alfonso Herrera Orellana, Karina Anzola Spadaro*, *¿Expropiaciones o vías de hecho?, La degradación continuada del derecho fundamental de propiedad en la Venezuela actual*, Funeda, Universidad Católica Andrés Bello, Caracas 2009.

rial autonomy, supposedly devoted to channeling citizens' participation but in a centralized conducted system from the apex of the national executive.<sup>65</sup> This Law was later reformed and elevated to organic law rank in 2009.<sup>66</sup>

A primary purpose of the 2007 constitutional reforms was to complete the dismantling of the federal form of the state by centralizing power attributions of the states, creating administrative entities to be established and directed by the national executive, attributing powers to the president to interfere in regional and local affairs, and voiding state and municipal competency by means of compulsory transfer of that competency to communal councils.<sup>67</sup> The implementation of the rejected constitutional reforms regarding the organization of the "Popular Power" based on the strengthening of the communes and communal councils was completed with the approval in 2010 of the Law on the Federal Council of Government.<sup>68</sup>

To implement these reforms, not only the last mentioned aspect was achieved, forcing the states and municipalities to transfer its attributions to local institutions controlled by the central power (communal councils), but also by means of Decree Law No. 6217 of July 15, 2008, on the Organic Law of Public Administration<sup>69</sup> that is now directly applicable to the States' and Municipalities' Public Administrations. In it, the national executive has implemented the principle of centralized planning, subjecting regional and local authorities to the Central Planning Commission. This Organic Law also assigns to the president, as proposed in the 2007 reforms, the power to appoint regional authorities with

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<sup>65</sup> Ley Orgánica de los Consejos Comunales, *Gazeta Oficial* N° 39.335, Dec. 28, 2009. See *Juan M. Raffali A.*, Límites constitucionales de la Contraloría Social Popular, *Revista de Derecho Público* 115, (Estudios sobre los Decretos Leyes), Editorial Jurídica Venezolana, Caracas 2008, pp. 133–47.

<sup>66</sup> See *Gaceta Oficial* N° 39.335 12-28-2009. See decision No. 1.676 12-03-2009 Constitutional Chamber, Supreme Tribunal of Justice about the constitutionality of the organic character of the Communal Councils Organic Law, in <http://www.tsj.gov.ve/decisiones/scon/diciembre/1676-31209-2009-09-1369.html>. See *Allan R. Brewer-Carías*, *Ley Orgánica de los Consejos Comunales*, Editorial Jurídica Venezolana, Caracas 2010.

<sup>67</sup> See *Manuel Rachadell*, *La centralización del poder en el Estado federal descentralizado*, *Revista de Derecho Público* 115, (Estudios sobre los Decretos Leyes), Editorial Jurídica Venezolana, Caracas 2008, pp. 111–131.

<sup>68</sup> See *Ley Orgánica del Consejo Federal de Gobierno*, *Gaceta Oficial* N° 5.963 Extra. of Feb. 22, 2010.

<sup>69</sup> *Gaceta Oficial* N° 5.890, Extra., July 31, 2008. See *Allan R. Brewer-Carías*, El sentido de la reforma de la Ley Orgánica de la Administración Pública, *Revista de Derecho Público* 115, (Estudios sobre los Decretos Leyes), Editorial Jurídica Venezolana, Caracas 2008, pp. 155–161; *Cosimina G. Pellegrino Pacera*, La reedición de la propuesta constitucional de 2007 en el Decreto N° 6.217, con Rango, Valor y Fuerza de Ley Orgánica de la Administración Pública, in: id., pp. 163–68; *Jesús Caballero Ortíz*, Algunos comentarios sobre la descentralización funcional en la nueva Ley Orgánica de la Administración Pública, in: id., pp. 169–74; *Alberto Blanco-Urbe Quintero*, Afrenta a la Debida Dignidad frente a la Administración Pública. Los Decretos 6.217 y 6.265, in: id., pp. 175–79.

powers to plan, execute, follow up on, and control land use and territorial development policies, thus subjecting all programs and projects to central planning approval.

Regarding the vertical distribution of state attributions between the national level and the states, one of the general purposes of the rejected 2007 constitutional reform was to change the federal form of the state and the territorial distribution of the competencies established in Articles 156 and 164 of the Constitution, thus centralizing the state even more by concentrating almost all competencies of the public power at the national level. Particularly, “nationalizing” the competency set forth in Article 164.10 of the Constitution, which attributed to the states exclusive jurisdiction on the conservation, administration, and use of national highways, roads, ports, and airports.<sup>70</sup> Despite the rejection of the constitutional reforms in the December 2007 referendum, in order to change such provision, the Constitutional Chamber of the Supreme Tribunal, in Decision No. 565 (April 15, 2008),<sup>71</sup> issuing an abstract constitutional interpretation at the request of the attorney general of the republic, modified the content of the constitutional provision, arguing that the “exclusive” attribution “was not exclusive” but “concurrent”—meaning that the national government could also exercise that competency interfering with the states’ powers. With that interpretation, the Chamber illegitimately modified the Constitution, usurping popular sovereignty, and changed the federal form of the state by misrepresenting the territorial distribution system of powers between the national power and the states.<sup>72</sup> The Chamber, consequently, urged the National Assembly to issue legislation against the provisions of the 1999 Constitution, which was effectively accomplished in May 2009 by reforming the Organic Law on Decentralization, Delimitation, and Transfer of Public Attributions,<sup>73</sup> eliminating the aforementioned exclusive attribution of the states.<sup>74</sup>

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<sup>70</sup> See Allan R. Brewer-Carías, *Hacia la consolidación de un estado socialista, centralizado, policial y militarista. Comentarios sobre el sentido y alcance de las propuestas de reforma constitucional 2007*, Editorial Jurídica Venezolana, Caracas 2007, pp. 41 ff.; *id.*, *La Reforma Constitucional de 2007 (Comentarios al proyecto inconstitucionalmente sancionado por la Asamblea Nacional el 2 de noviembre de 2007)*, Editorial Jurídica Venezolana, Caracas 2007, pp. 72 ff.

<sup>71</sup> See Decision N° 565 of the Constitutional Chamber (Apr. 15, 2008) (Case: *Procurador General de la República, Interpretación del artículo 164.10 de la Constitución*), available at <http://www.tsj.gov.ve/decisiones/scon/Abril/565-150408-07-1108.htm>.

<sup>72</sup> See Decision N° 565 of the Constitutional Chamber (Apr. 15, 2008) (Case: *Procurador General de la República, Interpretación del artículo 164.10 de la Constitución*), available at <http://www.tsj.gov.ve/decisiones/scon/Abril/565-150408-07-1108.htm>.

<sup>73</sup> Gaceta Oficial N° 39.140, Mar. 17, 2009.

<sup>74</sup> See Allan R. Brewer-Carías, *La Sala Constitucional como poder constituyente: La modificación de la forma federal del estado y del sistema constitucional de división territorial del poder público*, Revista de Derecho Público 114, Editorial Jurídica Venezolana, Caracas 2008, pp. 247–62; Manuel Rachadell, *La centralización del poder en el Estado federal descentrali-*

The rejected 2007 constitutional reforms also sought to eliminate the Capital District that the 1999 Constitution had created as a political entity in substitution of the former Federal District, which was dependent on the National level of government. Notwithstanding popular rejection of the 2007 reform proposals, in April 2009, such reform was unconstitutionally implemented by the National Assembly, defrauding once more the Constitution by sanctioning the Special Law on the Organization and Regime of the Capital District.<sup>75</sup> In it, instead of organizing a democratic political entity to govern the capital district, in Caracas, the capital of the Republic, the law established an organization completely dependent on the national level of government in the same territorial jurisdiction that "used to be one of the extinct Federal District." According to this law, the capital district, contrary to what is provided for in the Constitution, has no elected authorities of government and is governed by the national level by means of a "special regime" consisting of the exercise of the legislative function by the National Assembly itself and a chief of government as the executive branch (Article 3) appointed by the president. This means that through a national statute, in the same territory of Caracas, a new national structure has been unconstitutionally imposed.

Finally, although the 2007 constitutional proposed reforms regarding the military and the Armed Force that sought to transform them into the Bolivarian Armed Force organized for the purpose of reinforcing socialism were rejected in the December 2007 referendum, the radical changes it contained have been implemented by the president, also usurping the constituent power, by means of a Decree Law reforming the Organic Law on the Armed Force,<sup>76</sup> creating the "Bolivarian National Armed Force" subjected to a "military Bolivarian Doctrine," and creating in it the "National Bolivarian Militia"—all of this according to what was proposed and rejected by the people in the 2007 Constitutional Reform.<sup>77</sup>

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zado, *Revista de Derecho Público* 115 (Estudios sobre los Decretos Leyes), Editorial Jurídica Venezolana, Caracas 2008, p. 120.

<sup>75</sup> Gaceta Oficial N° 39.156, Apr. 13, 2009. See the comments on this Law in *Allan R. Brewer-Carías et al. (eds.), Leyes sobre el Distrito Capital y el Área Metropolitana de Caracas*, Editorial Jurídica Venezolana, Caracas 2009.

<sup>76</sup> Decree Law N° 6.239, on the Organic Law of the National Bolivarian Armed Force, Gaceta Oficial N° 5.933, Extra., Oct. 21, 2009.

<sup>77</sup> See *Alfredo Arismendi A., Fuerza Armada Nacional: Antecedentes, evolución y régimen actual*, *Revista de Derecho Público* 115 (Estudios sobre los Decretos Leyes), Editorial Jurídica Venezolana, Caracas 2008, pp. 187–206; *Jesús María Alvarado Andrade, La nueva Fuerza Armada Bolivariana (Comentarios a raíz del Decreto N° 6.239, con rango, valor y fuerza de Ley Orgánica de la Fuerza Armada Nacional Bolivariana)*, in: *id.*, pp. 207–14.

### D. The unconstitutional implementation by ordinary legislation of the rejected 2007 Constitutional Reform regarding the creation of the communal state of the popular power

In September 26, 2010 a parliamentary election was held in the country, the result of which being that the opposition to the government won the popular vote, although not the majority of seats in the National Assembly, due to distorting electoral regulations. This result meant, in fact, that the majority of popular vote expressed was against the proposals debated in the electoral campaign for the establishment of a socialist State in Venezuela, a matter that the President and the governmental majority of the National Assembly, with a massive campaign for their candidates, posed as a “plebiscite” on the President, his performance and his socialist policies.

In disdain of the popular will expressed ratifying the previously rejection by the people of the reforms in the 2007 referendum, the President and his party, having lost the absolute control they used to have since 2005 over the National Assembly, before the newly elected deputies to the Assembly could have taken possession of office in January 2011, in December 2010 forced the National Assembly to proceed to sanction a set of organic laws through which they have finished defining the legislative framework for a new State. In this way, by-passing the Constitution and in parallel to the Constitutional State, the National Assembly regulated a socialist, centralized, military and police State, called the “Communal State” of the “Popular Power” already rejected by the people in 2007.

The organic laws that were approved on December 21, 2010 are the laws on the Popular Power<sup>78</sup>; the Communes<sup>79</sup>; the Communal Economic System<sup>80</sup>; the Public and Communal Planning<sup>81</sup>; and the Social Comptrollership.<sup>82</sup> Further-

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<sup>78</sup> See *Gaceta Oficial* N° 6.011 Extra. 12-21-2010. The Constitutional chamber through decision No. 1329 12-16-2009 declared the constitutionality of the organic character of this Law.

<sup>79</sup> See *Gaceta Oficial* N° 6.011 Extra. 12-21-2010. The Constitutional chamber through decision No. 1330 12-17-2010 declared the constitutionality of the organic character of this Law. See <http://www.tsj.gov.ve/decisiones/scon/Diciembre/1330-171210-2010-10-1436.html>.

<sup>80</sup> See *Gaceta Oficial* N° 6.011 Extra. 12-21-2010. The Constitutional chamber through decision No. 1329 12-17-2010 declared the constitutionality of the organic character of this Law.

<sup>81</sup> See *Gaceta Oficial* N° 6.011 Extra. 12-21-2010. The Constitutional chamber through decision No. 1326 12-16-2009 declared the constitutionality of the organic character of this Law.

<sup>82</sup> See *Gaceta Oficial* N° 6.011 Extra. 12-21-2010. The Constitutional chamber through decision No. 1329 12-16-2009 declared the constitutionality of the organic character of this Law. See <http://www.tsj.gov.ve/decisiones/scon/Diciembre/%201328-161210-2010-10-1437.html>.



more, in the same framework of organizing the Communal State,<sup>83</sup> based on the Popular Power, the reform of the Organic Law of Municipal Public Power and the Public Policy Planning and Coordination of the State Councils,<sup>84</sup> and of the Local Council Public Planning Laws stand out. The delegitimized National Assembly also passed an enabling Law authorizing the President, through delegated legislation, to enact laws on all imaginable subjects, including laws of organic nature, emptying the new National Assembly of matters on which to legislate for a period of 18 months until 2012.

However, the general defining framework of the Socialist State imposed on Venezuelans through such unconstitutional legislation, and for which nobody has voted, is supposedly based on the exercise of the sovereignty of the people but exclusively in a “direct” manner through the exercise of the Popular Power and the establishment of a Communal State. This is contained in the Organic Law for Popular Power, which is to be applied to everyone and everything as an essential part of the new “socialist principle of legality” in the creation, implementation and control of public management.

The main purpose of these laws is the organization of the “Communal State” which has the commune as its fundamental unit, unconstitutionally supplanting the municipalities as the “primary political units of the national organization” (Art. 168 of the Constitution), through whose organization the Popular Power is exercised, and which is manifested in the exercise of popular sovereignty although not through representatives. It is therefore a political system in which representative democracy is ignored, openly violating the Constitution.

The Socialist State or Communal State sought to be established through these laws, in parallel to the Constitutional State, is supposedly based on Article 5 of the Constitution that provides that “Sovereignty resides untransferably in the people, who exercise it directly as provided in this Constitution and the Law, and indirectly, by suffrage, through the organs exercising Public Power,” but by-passing the basic rule of the Constitutional State structure grounded on the concept of representative democracy, that is, the exercise of sovereignty indirectly through the vote. The Communal State is now structured based only on the supposedly direct exercise of sovereignty<sup>85</sup> through the Communes, “with an economic model of social property and endogenous sustainable development

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<sup>83</sup> See on all these organic laws, *Allan R. Brewer-Carías et al (eds.)*, *Leyes Orgánicas sobre el Poder Popular y el Estado Comunal*, Editorial Jurídica Venezolana, Caracas 2011, pp. 361 ff.

<sup>84</sup> See *Gaceta Oficial* N° 6.015 Extra. 12-28-2010.

<sup>85</sup> This has even been “legitimized” by the Supreme Tribunal Constitutional Chamber’s decisions analyzing the organic character of the laws, such as the one issued in connection with the Organic Law of Municipalities. See decision No.1.330, Case: Organic Character of the Law of the Communes 12/17/2010, in: <http://www.tsj.gov.ve/decisiones/scon/Diciembre/1330-171210-2010-10-1436.html>.

that allows reaching the supreme social happiness of the Venezuelan people in a socialist society (art. 8.8).<sup>86</sup>

What is being sought is to establish a Socialist or Communal State alongside the Constitutional State: the first one based on the direct exercise of sovereignty by the people; and the second, based also on the indirect exercise of sovereignty by the people through elected representatives by universal suffrage; in a system in which the former will gradually strangle and empty competencies from the second. All of this is unconstitutional, particularly because in the structure of the Communal State that is established, in the end, the exercise of sovereignty is factually indirect, through supposed “representatives” that are not popularly elected through universal and direct suffrage, but “elected” in Citizens’ Assemblies. They are the ones called to exercise Popular Power in the name of the people, with the name of “spokespersons”, but that as already mentioned, are not elected by the people through universal, secret and direct suffrage.

This system that is being structured, directly controlled by a Ministry from the National Executive Branch of Government, far from being an instrument of participation and decentralization – a concept that is indissolubly linked to political autonomy – is a centralized and tightly controlled system of the communities by the central power, in which the members of the communal councils, the communes and all organizations of the Popular Power are not elected but “appointed” through a show of hands by assemblies controlled by the official party and the executive branch.

This Communal State system, parallel to the Constitutional State, is structured on a unique concept which is socialism, so that anyone who is not a socialist is automatically discriminated. It is not possible, therefore, under the framework of these laws to reconcile pluralism and the principle of non discrimination on grounds of “political opinion” guaranteed by the Constitution, with the provisions of these Law pursuing the opposite, that is, the establishment of a Communal State whose bodies can only act on the basis of socialism and in which any citizen who has another opinion is excluded. That is, through these Organic Laws, the defining framework of a new model of a State parallel and different from the Constitutional State has been established, called the Communal State based exclusively on Socialism as the political doctrine and practice.

In this regard, article 5 of the Organic Law on the Popular Power states, in addition, that “people’s organization and participation in exercising its sov-

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<sup>86</sup> The Organic Law of Municipalities, however, defines the Communal State as follows: “From of sociopolitical organization, based on the democratic and social state of law and justice established in the Constitution of the Republic, whose power is exercised directly by the people through communal self governments, with an economic model of social property and endogenous and sustainable development that achieves the supreme social happiness of the Venezuelan people in a socialist society. Forming the basic unit of the Communal State is the commune” (Art. 4.10).

ereignty is based on Simon Bolivar the Liberator's doctrine, and is based on socialist principles and values,"<sup>87</sup> – a link that, as aforementioned, is untenable-matching the organization of the Communal State (established in parallel to the Constitutional State) with the socialist political ideology, for which purpose the Law defined socialism, as:

"a mode of social relations of production, centered in coexistence with solidarity and the satisfaction of material and intangible needs of all of society, which has as fundamental basis, the recuperation of the value of work as a producer of goods and services to meet human needs and achieve supreme social happiness and integral human development. This requires the development of social ownership of the basic and strategic means of production, so that all families, Venezuelan citizens, possess, use and enjoy their patrimony, individual or family property, and exercise full enjoyment of their economic, social, political and cultural rights (Article 8.14)."<sup>88</sup>

Article 7 of the same Organic Law on the Popular Power defines as a purpose of the Popular Power, to strengthen "the organization of the people in order to consolidate the revolutionary democracy and build the bases of a socialist society, democratic, of law and justice," and to "establish the bases that allow organized communities to exercise social comptrollership to ensure that the investment of public resources is efficiently performed for the collective benefit; and monitor that the activities of the private sector with social impact develop within legal rules that protect users and consumers." This, of course, is a well known procedure established in other authoritarian regimes in order to construct a general system of social espionage to be developed among peoples in order to institutionalize the denunciation and persecution of any deviation regarding the socialist framework imposed on the citizenship.<sup>89</sup>

According to the Law of the Communes<sup>90</sup> these communes are conceived as a "local entity" or "socialist space" of the Communal State, where citizens exercise the Popular Power" (art. 1). Nonetheless, according to the Constitution, this expression of "local entity" can only be applied to local political entities of the Constitutional State with self-governments composed of elected representa-

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<sup>87</sup> The same expression was used in the Organic Law of the Communes with respect to their constitution, shaping and functioning (Art.2), in the Communal Council's Law (Art.1) and in the Organic Law of Social Comptrollership (Art. 6).

<sup>88</sup> The same definition is found in Article 4.14 of the Organic Law of the Communes. Many are the definitions of socialism, but in all, its basic elements can be identified: (i) a system of social and economic organization, (ii) based on collective or State ownership and administration of the means of production, and (iii) State regulation of economic and social activities and distribution of goods, (iv) seeking the gradual disappearance of social classes.

<sup>89</sup> See *Luis A. Herrera Orellana*, *La Ley Orgánica de Contraloría Social: Funcionalización de la participación e instauración de la desconfianza ciudadana*, in: Allan R. Brewer-Carías et al (eds.), *Leyes Orgánicas sobre el Poder Popular y el Estado Comunal*, Editorial Jurídica Venezolana, Caracas 2011, pp. 361 ff.

<sup>90</sup> See *Gaceta Oficial* N° 6.011 Extra. (12-21-2010).

tives by universal, direct and secret ballot (art. 169), so there can be no “local entities” directed by persons that are not elected by the people but appointed by other bodies. And this is precisely what happens with the so-called “governments of the communes”, which under this legislation on Popular Power and its organizations, their origin is not guaranteed through democratic representative election by universal, direct and secret suffrage, thus being an unconstitutional conception.

Within the areas of communal power, the Law has specifically regulated the Communal economy that must be developed “under communal forms of social ownership, to satisfy collective needs, social reinvestment of the surplus, and contribute to the country’s overall social development in a sustainable manner” (art. 18). This area of Public Power has been regulated by the Organic Law of the Communal Economic System,<sup>91</sup> that must be exclusively developed through “socio-productive organizations under communal social property forms” created as public enterprises, family productive units, or bartering groups, in which private initiative and private property are excluded. This system radically changes the mixed economic system of the 1999 constitutional framework, substituting it with a state controlled economic system, mixed with provisions belonging to primitive societies, and even allowing the creation of local or “communal” currencies in a society that must be ruled only “by socialist principles and values” that the Law declares to be inspired, without any historical support, on the “Simón Bolívar’s doctrine” (art. 5).

The socialist productive model established in the Law (art. 3.2), is precisely defined as a “production model based on social property, oriented towards the elimination of the social division of work that appertains to the capitalist model, directed to satisfy the increasing needs of the population through new means of generation and appropriation as well as the reinvestment of social surplus” (art. 6.12). This is nothing different than to legally impose a communist system by copying isolated paragraphs perhaps of a forgotten old manual of a failed communist revolution paraphrasing what Karl Marx and Friedrich Engels wrote 150 years ago (1845–1846) on the “communist society,”<sup>92</sup> precisely based upon those three basic concepts: the social property of production means, the elimination of social division of work, and the social reinvestment of surplus (art. 1).

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<sup>91</sup> See Gaceta Oficial N° 6.011 Extra. (12-21-2010).

<sup>92</sup> See in *Karl Marx; Friedrich Engels*, *The German Ideology, Collective Works*, Vol. 5, International Publishers, New York 1976, p. 47. See, additionally, the relevant texts at [http://www.educa.madrid.org/cms\\_tools/files/0a24636f-764c-4e03-9c1d-6722e2ee60d7/Texto%20Marx%20y%20Engels.pdf](http://www.educa.madrid.org/cms_tools/files/0a24636f-764c-4e03-9c1d-6722e2ee60d7/Texto%20Marx%20y%20Engels.pdf).

## E. Some conclusions

This Communal State, regulated on the fringes of the Constitution, has been established as a "Parallel State" to the Constitutional State, but with provisions that, if implemented, will enable the Communal State to drown the Constitutional State, for which purpose the Law has provided that all organs of the Constitutional State that exercise Public Power are subjected to the mandates of the organizations of Popular Power, establishing a new principle of government, so-called in the Law, the principle of "govern obeying," no other than obeying the wishes of the central government.<sup>93</sup>

As the Popular Power organizations have no political autonomy, since their "spokespersons" are not democratically elected by universal, direct and secret ballot, but appointed by citizen Assemblies politically controlled and operated by the governing party and the National Executive who controls and guides all the organizational process of the Communal State in the sphere of socialist ideology, there is no way there can be a spokesperson who is not a socialist.

Consequently, this "govern obeying" principle is a limitation to the political autonomy of the elected bodies of the Constitutional State such as the National Assembly, Governors and Legislative Councils of States and Mayors and Municipal Councils, upon who ultimately is imposed an obligation to obey any provision made by the National Government and the ruling party, framed exclusively in the socialist sphere as a political doctrine.

Therefore, in the unconstitutional framework of these Popular Power Laws, the popular will expressed in the election of representatives of the Constitutional State bodies has no value whatsoever, and the people have been confiscated of their sovereignty by transferring it to assemblies who do not represent them.

With this Organic Law of Popular Power framework, there is no doubt about the political decision taken in December 21, 2010 by the completely delegitimized National Assembly that was elected in 2005, and that no longer represented the majority of the popular will as it was expressed in the September 26, 2010 legislative election, against the President of the Republic, the National Assembly itself and socialist policies they have developed. These policies are aimed to impose on Venezuelans, against their popular will and defrauding the Constitution, a Socialist State model, called "the Communal State" and conceived as a Socialist State, in order to supposedly exercise Popular Power directly by the people, as an alleged form of direct exercise of sovereignty (which is not true be-

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<sup>93</sup> Article 24 of the Law establishes the following principle: "Proceedings of the bodies and entities of Public Power. All organs, entities and agencies of Public Power will govern their actions by the principle of "govern obeying", in relation to the mandates of the people and organizations of Popular Power, according to the provisions in the Constitution of the Republic and the laws."

cause it is exercised through “spokespersons” who supposedly “represent” them but without being elected in universal, direct and secret suffrage.

By regulating this Communal State of the Popular Power through ordinary legislation, in addition to defrauding the Constitution, a technique that has been consistently applied by the authoritarian regime in Venezuela since 1999 to impose its decisions outside of the Venezuelan Constitution,<sup>94</sup> it now adds fraud to the popular will by imposing on Venezuelans through organic laws a State model for which nobody has voted.

The new State framework radically and unconstitutionally changes the text of the 1999 Constitution, which has not been reformed as the regime had wished in 2007, and in open contradiction to the popular rejection that the majority expressed in the attempt the regime developed to reform the Constitution in the referendum of December 2, 2007, even in violation of the Constitution, and the popular rejection that the majority of the people expressed regarding the socialist policies of the President to the Republic and his National Assembly on the occasion of the parliamentary elections of 26 September 2010.

What is clear about all this is that there are no masks to deceive anyone, or by reason of which someone pretends to be deceived or fooled about what essentially the “Bolivarian revolution” is; nothing else but a communist Marxist revolution, carried out deliberately by misusing and defrauding constitutional institutions.

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<sup>94</sup> See Allan R. Brewer-Carías, *Reforma constitucional y fraude a la Constitución (1999–2009)*, Academia de Ciencias Políticas y Sociales, Caracas 2009; *id.*, *Dismantling Democracy. The Chávez Authoritarian Experiment*, Cambridge University Press, New York 2010.

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