

# REFLECTIONS ON THE POLITICAL SITUATION IN VENEZUELA (April 2014)\*

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It is from an institutional point of view - from my own academic deformation - that I want to refer to the current political situation of Venezuela, in order to try to understand what has happened in the country and why it has reached the sort of decline it has suffered notwithstanding its democratic tradition and its wealth.

It is in this respect, that I want to begin by quoting what the Venezuelan People's Defender – whose key role in the Constitution, in the sense of an Ombudsman, is the promotion, protection and monitoring of human rights – said in March 2014, when trying to justify an unconstitutional decision of the Supreme Tribunal of Justice, condemning and imprisoning two of the Mayors of the opposition, from San Diego and San Cristóbal Municipalities, Mr. Scarano and Ceballos, without due process, usurping the criminal jurisdiction, for the supposed crime of contempt of a preliminary injunction (*mandamiento de amparo*), and consequently, revoking their electoral mandate.<sup>1</sup> The People's Defender tried to justify such unconstitutional decision by saying:

“It is impossible that with the presence of all the public powers an unlawful act can be committed.”<sup>2</sup>

As simple as that!! That is, if the totalitarian State - who controls all of the power and the life of its citizens - violates human rights, if it does it with the participation of all the branches of government, and in a way contrary to the Constitution, then it is “legal.”

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<sup>1</sup> See decision No. 138 of the Constitutional Chamber of the Supreme Tribunal of March 17, 2014, available at <http://www.tsj.gov.ve/decisiones/scon/marzo/162025-138-17314-2014-14-0205.HTML>

<sup>2</sup> See the expressions of Gabriela Ramírez, People's defender in Juan Francisco Alonso, “Con caso Scarano TSJ echó a la basura 12 años de jurisprudencia. Juristas alertan que Sala Constitucional no puede condenar a nadie”, en *El Universal* viernes 21 de marzo de 2014 12:00 AM, in <http://www.eluniversal.com/nacional-y-politica/140321/con-caso-scarano-tsj-echo-a-la-basura-12-anos-de-jurisprudencia>.

What was said by the People's Defender reminded me of the terrible conclusion to which the Spanish senator from Vizcaya, Iñaki Ianasagasti who was born in Venezuela due to the Basque exile of his parents, arrived at after reading Professor Carlos Armando Figueredo's translation of the book by Ingo Müller, *Furchtbare Juristen* (Horror Jurists) on the conduct of judges under the Nazi Regime,<sup>3</sup> that "the abuses, prisons, torture and even mass extermination were legally made and adhered to the norm," because - I add - they were supported by all the public powers that were commanded by the Führer.

And that is the terrible conclusion that can be drawn when one approaches what happens in Venezuela, as in any totalitarian regime that controls all branches of government, including the so-called "fourth power", the media; everything the government does is "legal", and also as an export commodity of the regime, it is also supposedly "democratic" because officials were elected, even if the elections were tainted and fraudulent, and even if the elected President last year has not even been able to verify to date, that he was eligible, that is, that he is Venezuelan by birth, not having another nationality, as required by the Constitution.

The terrible conclusion in Venezuela, in the current situation, as is evident from the statement made by the People's Defender then, is that all violence or institutional abuse developed by the State, is "legal" and "democratic" because it is supported by the public powers of the State, even if, there is abuse of power; public funds are squandered; mass media are closed; there is political discrimination against half the country; people are murdered indiscriminately with impunity; electoral fraud is committed; the economy and the productive apparatus is destroyed; private initiative is choked and confiscated; opponents are deprived of their liberty, all without control; students are repressed; students and demonstrators are indiscriminately brutalized and tortured; all unchecked; but it is legal because all public powers of the State respond in unison to the same order, as if it were in military quarters.

And by the way, I am not referring only to the three traditional branches of government we learned about in school, but five, because in addition to the legislative, executive and judicial, we have in Venezuela - the only case in comparative constitutional law - other two powers: the electoral power and the

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<sup>3</sup> See Ingo Müller, *Hitler's justice : The Courts of the Third Reich*, (English Translation), Cambridge University Press, 1991. The Spanish translation by Carlos Armando Figueredo: Ingo Müller, *Los Juristas del Horror*, Caracas 2006.

citizen power, but still, all duly submitted to a single power which is controlling the state apparatus.

What this evidences is that the Venezuelan State, even with five branches of government and elections, is not a rule of law State nor has a political system that supports democracy. Democracy is much more than elections, and if we recall the Interamerican Democratic Charter of 2001, which Latin American countries adopted and now refuse to read and even less to implement or demand for its compliance, there are five essential elements required of democracy: respect for human rights and civil liberties; access to power and its practice subject to the rule of law; a pluralistic system of political parties and organizations; the separation and independence of the powers of the State, and the holding of periodic, free and fair elections by universal suffrage. Election is only one of the five elements; the separation of powers is the key element because the effectiveness of all other four depends on it, in the sense that without separation of powers there can be no guarantee of rights, free elections, pluralism or rule of law.

Several centuries ago the Baron de Montesquieu, - who all of us have heard of – taught us that:

“every man invested with power is apt to abuse it, and to carry his authority as far as it will go [adding that] To prevent this abuse, it is necessary from the very nature of things that power should be a check to power.”<sup>4</sup>

Now, the key question is, How did we Venezuelans arrive at this unfortunate situation summed up by the People’s Defender? And you may ask: How did Venezuela get to this situation, especially when throughout the second half of the previous century it had the most envied democracy in Latin America, due to its continuity and stability; having even been a safe haven for those persecuted by so many dictatorships? A country that enjoyed a political system that, with all its flaws was characterized by the alternation in the exercise of power, the separation of powers, free elections, strong political parties, civil liberties, freedom of speech, open discussion of ideologies and strong civil society, business and union organizations. What happened? How did we get here?

Nothing comes from nothing, and in our case, authoritarianism - as in many other cases in history - was a product of the crisis of the democratic party system, derived from the deterioration of political parties which in their evolution simply forgot about the country, and forgot about the demands that

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<sup>4</sup> See *De l’Esprit des Lois* (ed. G. Tunc), Paris, 1949, vol. I, libro XI, cap. IV, pp. 162-163.

democracy itself – which they constructed – had created; its final or terminal weakness allowed and facilitated the assault perpetrated to power in 1998 by Hugo Chávez and his followers, through a constitutional coup, six years after having failed in a first attempt to assault power by a bloody military coup.

Those who assaulted power were the same, but the only thing that changed was the method and procedure. In 1992 it was through a classic coup d'État attempting to establish a Communist totalitarian military state –evidenced through ideas written in known documents that they intended to implement -;<sup>5</sup> in 1998, however, the assault was through elections without proposing any specific political project, just the idea of “change” – so appealing in times of crisis – attacking the political establishment, by convening a National Constituent Assembly. The Communist State project would appear later, in 2007, when it was proposed by Chávez to be embedded in the Constitution, and was expressly rejected by popular vote through referendum.<sup>6</sup>

In any case, in 1998, change was really the only proposal of Hugo Chavez in an election where his main opponent candidates were an elder member of the party apparatus of the largest political party – the Social Democrat – and a former beauty queen and former mayor, for the second most important political party – Christian Democrat –.<sup>7</sup> And the one who won was who first went through the people offering change – as Melquíades in Garcia Marquez's country of Macondo –, as a sort of magician and juggler who fascinated the audience, capturing discontent.

But the proposal to perform magic - the Constituent Assembly that would fix everything - had a downside: it was simply unconstitutional. To convene and regulate it, it was necessary to reform the Constitution, which Chavez adamantly opposed. He wanted a Constituent Assembly for him, not for the country.

In the emptiness left by the confused parties, it turned out that it was individuals who faced Chavez's proposal, for which purpose I asked for such a reform to be carried out by presenting to Congress a constitutional reform project to regulate the Constituent Assembly as a previous path to elect its

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<sup>5</sup> See Alberto Garrido, *La historia secreta de la Revolución Bolivariana*, Caracas, 2000.

<sup>6</sup> See Allan R. Brewer-Carías, *La Reforma Constitucional de 2007 (Comentarios al proyecto inconstitucionalmente sancionado por la Asamblea Nacional el 2 De Noviembre de 2007)*, Colección Textos Legislativos, No.43, Editorial Jurídica Venezolana, Caracas 2007; “La reforma constitucional en Venezuela de 2007 y su rechazo por el poder constituyente originario,” en José Ma. Serna de la Garza (Coordinador), *Procesos Constituyentes contemporáneos en América latina. Tendencias y perspectivas*, Universidad Nacional Autónoma de México, México 2009, pp. 407-449.

<sup>7</sup> See Allan R. Brewer-Carías (Coord.), *Los Candidatos Presidenciales ante la Academia. Ciclo de Exposiciones 10-18 Agosto 1998*, Serie Eventos N° 12, Biblioteca de la Academia de Ciencias Políticas y Sociales, Caracas 1998

members.<sup>8</sup> But no one, neither the parties nor the political leadership understood the approach; they simply did not assume the process when they could, nor did they confront Chavez's fast track. I assumed the confrontation in a personal capacity as an academic, being as I was at that time, President of the National Academy of Political and Social Sciences.

And it was in that capacity that during the presidential campaign of 1998 I invited all presidential candidates to present their proposals on the reform of the State to the Academy; all came and made their presentations, often political commonplaces for the moment, only Chavez went straight to what he wanted: the convening of a Constituent Assembly to “relaunch the Republic”, his way. When I presented him to the Academy as the “*golpista*” candidate with less democratic tradition, since he came from an attempted military and militaristic coup,<sup>9</sup> our personal relationship was established. There, again, I was the only one who expressed arguments rejecting his proposal, which generated my submission to Congress of the draft constitutional reform to regulate the Constituent Assembly.

Congress, of course, ignored the project as well as the leadership of the political parties I met with. They heard me, and my conclusion was that the leadership had simply lost their way and never knew what was happening in the country.

That left candidate Chavez free rein, especially when the new Congress, elected one month earlier than him, in November 1998, never understood the terminal crisis in which we were. In January 1999, the Supreme Court, which had been subjected to openly political pressure lead by Chávez himself, as President Elect, decided in a very unambiguous way on the subject, without resolving the main issue on whether it was or not necessary to reform the Constitution in order to convene a Constituent Assembly, which allowed the press to rule that a constituent assembly could be elected without amending the Constitution,<sup>10</sup> something that the Court never expressly said. At the time, January 1999, it seems that both branches of government (legislative and judicial), believed that they would be able to control or train the Lieutenant Colonel and his henchmen. Wishful thinking!

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<sup>8</sup> See the draft reform proposal in Allan R. Brewer-Carías, “Reflexiones sobre la crisis del sistema político, sus salidas democráticas y la convocatoria a una Constituyente”, en Allan R. Brewer-Carías (Coord.), *Los Candidatos Presidenciales ante la Academia. Ciclo de Exposiciones 10-18 Agosto 1998*, Serie Eventos N° 12, Biblioteca de la Academia de Ciencias Políticas y Sociales, Caracas 1998, pp. 9-66.

<sup>9</sup> *Idem.*

<sup>10</sup> See Allan R. Brewer-Carías, “El desequilibrio entre soberanía popular y supremacía constitucional y la salida constituyente en Venezuela en 1999”, en la *Revista Anuario Iberoamericano de Justicia Constitucional*, N° 3, 1999, Centro de Estudios Políticos y Constitucionales, Madrid 2000, pp. 31-56

In fact, what they did was to facilitate Chavez's task, being his first political act, the day he took office as President, to fulfill his electoral promise, calling for a referendum for a Constitutional Assembly. Again, I challenged the decree as unconstitutional<sup>11</sup> as did other lawyers in a personal capacity, because nothing was known of the political parties. After the legal battles in which at least we forced Chavez to modify his decree,<sup>12</sup> the referendum was held and the members of the Assembly were elected. Personally I felt I had an obligation to participate in it and presented myself as an independent candidate, having been elected with one million two hundred thousand votes - which was not bad -. However, what was really bad was that only four constituents were elected as independents in an Assembly of 141 members in which all the others were controlled by Chavez. That was the meager opposition that Chavez found for his project.

The first action taken by the Constituent Assembly after declaring itself an original power was to perpetrate the assault on the constituted power through the intervention of all branches of government, so that in six short months, the Congress, the Supreme Court, regional and local authorities were mercilessly swept.<sup>13</sup> The first victims - as always happens in these cases - were the ones who facilitated the assault: the magistrates of the former Supreme Court and the members of Congress, which were all dismissed.

The drafting of the new constitution started with discussions in which I, as you may understand, participated in all sessions and debates, saving my vote in countless rules.<sup>14</sup> In the end, even though many of my proposals were incorporated, I opposed the adoption of the draft text, leading the campaign to vote NO. In the manifesto I made public in November 1999, as a platform to explain the reasons for my rejection of the Constitution, I emphasized that it responded to the following:

“An institutional framework designed for authoritarianism, which derives from the combination of state centralism, exacerbated presidential power,

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<sup>11</sup> See Allan R. Brewer-Carías, *Asamblea Constituyente y Ordenamiento Constitucional*, Serie Estudios N° 53, Biblioteca de la Academia de Ciencias Políticas y Sociales, Caracas 1999.

<sup>12</sup> See Allan R. Brewer-Carías, *Poder Constituyente Originario y Asamblea Nacional Constituyente* (Comentarios sobre la interpretación jurisprudencial relativa a la naturaleza, la misión y los límites de la Asamblea Nacional Constituyente), Colección Estudios Jurídicos N° 72, Editorial Jurídica Venezolana, Caracas 1999.

<sup>13</sup> See, Allan R. Brewer-Carías, *Debate Constituyente (Aportes a la Asamblea Nacional Constituyente)*, Tomo I (8 agosto-8 septiembre 1999), Fundación de Derecho Público-Editorial Jurídica Venezolana, Caracas 1999.

<sup>14</sup> See Allan R. Brewer-Carías, *Debate Constituyente (Aportes a la Asamblea Nacional Constituyente)*, Tomo II (9 septiembre-17 octubre 1999), Fundación de Derecho Público-Editorial Jurídica Venezolana, Caracas 1999.

party power and militarism as central elements for the organization of state power.”<sup>15</sup>

Certainly re-reading this text, it would seem that it was written today; but no, it was written fifteen years ago, even though there are still many who are only now beginning to discover that reality.

In any case, with the new Constitution, while half of its normative was suspended at the beginning of its applicability through unconstitutional transitional provisions,<sup>16</sup> from 2000 on, a frantic race began to consolidate power on the assaulted state, dismantling the separation of powers, and demolishing, from within, democratic institutions, using the very mechanisms of democracy,<sup>17</sup> managing to achieve that all branches of government were at the service of authoritarianism,<sup>18</sup> starting with the Supreme Court and its Constitutional Chamber, which became the most diabolical instrument of the totalitarian State, particularly because as guardian of the Constitution no one else can control it.<sup>19</sup>

The result has been that in fifteen years the entire judiciary system is composed of temporary or provisional judges, and therefore dependent on the central power,<sup>20</sup> and all other powers of control are all subjected and neutralized, so we have a Comptroller who does not control; an People’s Defender who does not protect or defend; a public prosecutor who only persecutes opponents leaving hundreds of street murders in impunity; an

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<sup>15</sup> See Allan R. Brewer-Carías, *Debate Constituyente (Aportes a la Asamblea Nacional Constituyente), Tomo III (18 octubre-30 noviembre 1999)*, Fundación de Derecho Público-Editorial Jurídica Venezolana, Caracas 1999

<sup>16</sup> See the comment on the Constitutional Transitional Decree, in Allan R. Brewer-Carías, *Golpe de Estado y proceso constituyente en Venezuela*, Universidad Nacional Autónoma de México, México 2002.

<sup>17</sup> See Allan R. Brewer-Carías, *Dismantling Democracy. The Chávez Authoritarian Experiment*, Cambridge University Press, New York 2010; “La demolición del Estado de derecho y la destrucción de la democracia en Venezuela,” en *Revista Trimestral de Derecho Público (RTDP)*, No. 54, Instituto Paulista de Direito Administrativo (IDAP), Malheiros Editores, Sao Paulo, 2011, pp.5-34

<sup>18</sup> See Allan R. Brewer-Carías, *Authoritarian Government v. The Rule of Law. Lectures and Essays (1999-2014) on the Venezuelan Authoritarian Regime Established in Contempt of the Constitution*, Fundación de Derecho Público, Editorial Jurídica Venezolana, Caracas 2014.

<sup>19</sup> See Allan R. Brewer-Carías, “El juez constitucional al servicio del autoritarismo y la ilegítima mutación de la Constitución: el caso de la Sala Constitucional del Tribunal Supremo de Justicia de Venezuela (1999-2009)”, en *Revista de Administración Pública*, No. 180, Madrid 2009, pp. 383-418; *Reforma Constitucional y Fraude a la Constitución (1999-2009)*, Academia de Ciencias Políticas y Sociales, Caracas 2009.

<sup>20</sup> Véase Allan R. Brewer-Carías, “Sobre la ausencia de independencia y autonomía judicial en Venezuela, a los doce años de vigencia de la constitución de 1999 (O sobre la interminable transitoriedad que en fraude continuado a la voluntad popular y a las normas de la Constitución, ha impedido la vigencia de la garantía de la estabilidad de los jueces y el funcionamiento efectivo de una “jurisdicción disciplinaria judicial”), en *Independencia Judicial*, Colección Estado de Derecho, Tomo I, Academia de Ciencias Políticas y Sociales, Acceso a la Justicia org., Fundación de Estudios de Derecho Administrativo (Funeda), Universidad Metropolitana (Unimet), Caracas 2012, pp. 9-103

Electoral Power that appears to be the political agent of the candidates of the State.

Only this explains, for example, that in 2003, when the Administrative High Court issued an injunction protecting Venezuelan doctors before an indiscriminate recruitment of Cuban unlicensed doctors for popular medical programs, the President himself screamed that he would not recognize the sentence, described the judges as “bandits”, ordered a police raid of the Court and closed it for 10 months.<sup>21</sup> The case ended up in the Inter-American Court of Human Rights which condemned Venezuela;<sup>22</sup> the Supreme Court declared this sentence as “inapplicable” in the country.<sup>23</sup> As simple as that!! All done very “legally”.

This also explains that in 2009 a criminal judge was jailed at the public direct request of the President,<sup>24</sup> because the judge imposed a measure for the release of a detainee, with substitute restrictive measures, accepting a recommendation of the Working Group on Arbitrary Detention of the UN.<sup>25</sup> Judge Afiuni, as she is named, was imprisoned until 2013 and now remains subject to restrictions on her freedom as prohibition to leave the country, a presentation regime and prohibition to talk to the media. It's that simple.

This also explains that in February 2014 the political leader and former mayor Leopoldo López, one of the leaders of the street movement that has been encompassing the country, was jailed and accused of the most serious crimes imaginable only for convening protest manifestations and rejecting the regime.<sup>26</sup> He was charged with intentional homicide; terrorism; serious injury; burning of public buildings; instigation to commit crimes, and conspiracy,

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<sup>21</sup> See Claudia Nikken, “El caso “Barrio Adentro”: La Corte Primera de lo Contencioso Administrativo ante la Sala Constitucional del Tribunal Supremo de Justicia o el avocamiento como medio de amparo de derechos e intereses colectivos y difusos,” in *Revista de Derecho Público*, No 93-96, Editorial Jurídica Venezolana, Caracas 2003, pp. 5 y ss.

<sup>22</sup> See decision of the Inter American Court of Human Rights, of May 8, 2008 Case *Apitz Barbera y otros (“Corte Primera de lo Contencioso Administrativo”) vs. Venezuela*, in [www.corteidh.or.cr](http://www.corteidh.or.cr) . Excepción Preliminar, Fondo, Reparaciones y Costas, Serie C No. 182

<sup>23</sup> See decision of the Constitutional Chamber of the Supreme Tribunal of Justice, No 1.939 de 18-12-2008 (Caso *Abogados Gustavo Álvarez Arias y otros*), en *Revista de Derecho Público*, No. 116, Editorial Jurídica Venezolana, Caracas, 2008, pp. 89-106. Available <http://www.tsj.gov.ve/decisiones/scon/Diciembre/1939-181208-2008-08-1572.html>

<sup>24</sup> See Alicia de la Rosa, “El día que la justicia fue herida de muerte. Caso de la jueza María Lourdes Afiuni,” *Analítica.com.*, October 19, 2012, available at <http://www.analitica.com/bitbliblioteca/libros/4674757.asp>

<sup>25</sup> Available at [http://www.unog.ch/unog/website/news\\_media.nsf/%28httpNewsByYear\\_en%29/93687E8429BD53A1C125768E00529DB6?OpenDocument&cntxt=B35C3&cookielang=fr](http://www.unog.ch/unog/website/news_media.nsf/%28httpNewsByYear_en%29/93687E8429BD53A1C125768E00529DB6?OpenDocument&cntxt=B35C3&cookielang=fr)

<sup>26</sup> See “Fiscalía presentó acusación contra Leopoldo López,” *El Nacional*, Caracas April 14, 2014, available at [http://www.el-nacional.com/politica/Fiscalia-General-acusacion-Leopoldo-Lopez\\_0\\_385161540.html](http://www.el-nacional.com/politica/Fiscalia-General-acusacion-Leopoldo-Lopez_0_385161540.html)



without any evidence. It does not matter that such crimes were actually committed by military or paramilitary extermination groups, as is evidenced in hundreds of videos circulating in social media as there is no regular mass media that conveys this information. And the Attorney General's Office, rather than accepting this evidence, describes social media as “perverse”, precisely because they are the only means of information on the massacres.<sup>27</sup>

And this assault and absolute control of the powers of the state, also explains that Maria Corina Machado, an opposition National Assembly elected representative, after being threatened to be stripped of her parliamentary immunity and to be prosecuted and arrested for the same crimes attributed to Lopez, to which the President of the National Assembly, who seems to be the prosecutor, added the crime of high treason,<sup>28</sup> was in fact deprived of her popular mandate by an unconstitutional decision of the Supreme Tribunal.<sup>29</sup> The motive for such attack to the democratic principle was that she accepted the invitation of the Ambassador of Panama to speak as a Venezuelan member of the National Assembly, on the situation in Venezuela at the session of the Organization of American States held on March 21, 2014. That caused the President of the National Assembly, Mr. Cabello, a military man by trade, without parliamentary procedure or any legal process, proceed to announce to the country, at his sole discretion, that Deputy Machado was no longer a deputy, that is, he revoked her term, alleging that she accepted a “position” from a foreign government because she was accredited by Panama to speak at the OAS, which of course does not give you any position or diplomatic status or otherwise.<sup>30</sup> But this is the way it is: It's just enough what the military president of the National Assembly says, without any control, to make it “legal” and “democratic”, and for the Supreme Tribunal to follow the orders.

And again, this whole situation of centralized power control explains the recent process of criminal prosecution of freedom of expression, as the members of the board of directors of a daily opposition newspaper (*Tal Cual*)

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<sup>27</sup> See Luisa Ortega Díaz: Las redes sociales se han convertido en un mecanismo perverso,” Noticiero Digital.com, March 23, 2014, available at <http://www.noticierodigital.com/2014/03/luisa-ortega-diaz-las-redes-sociales-se-han-convertido-en-un-mecanismo-perverso/>

<sup>28</sup> See in “Cabello: Por el artículo 191 de la Constitución, María Corina machado “dejó de ser diputada”, *Globovisión*, 24 de marzo de 2014, available at <http://globovision.com/articulo/junta-directiva-de-la-an-anuncia-rueda-de-prensa>

<sup>29</sup> See decision of the Constitutional Chamber of the Supreme Tribunal, No. 207 of March 31, 2014, available at <http://www.tsj.gov.ve/decisiones/scon/marzo/162546-207-31314-2014-14-0286.HTML>. See also in *Gaceta Oficial* No. 40385 of April 2, 2014.

<sup>30</sup> See “Insulza: Machado habló en la OEA en su condición de diputada venezolana,” en *El Universal*, 28 de marzo de 2014, en <http://www.eluniversal.com/nacional-y-politica/protestas-en-venezuela/140328/insulza-machado-hablo-en-la-oea-en-su-condicion-de-diputada-venezolana>

and a columnist. Mr. Genatios, by the way a former Minister of the Chavez government, have been criminally accused, because he wrote that the same military President of the National Assembly was attributed to saying the phrase, “If you do not like insecurity, leave the country”. This he found offensive and managed to get a judge to issue against the accused, a restriction of having to appear weekly before a court and a prohibition to travel outside the country.<sup>31</sup>

And finally this explains my own case. After all my opposition to Chávez in the Constituent Assembly, I continued my opposition to his policies, particularly in 2001 for issuing unconstitutional executive orders, and writing about the violations of democratic principles.<sup>32</sup> The same prosecutor, today chief prosecutor, was responsible for persecuting me, and the reason for accusing me was the criminalization of the exercise of the legal profession, so for giving a legal opinion requested of me at a time of a political crisis, after the announcement of the resignation of the President of the Republic in 2002, without any proof, and only based on opinions of journalists who did not witness anything.<sup>33</sup> I was accused, three years after those events, of “conspiracy to violently change the Constitution”, that is, rebellion, for which, of course, I was only able use the only weapon I had: my word and my pen to write. And so, being abroad in an academic trip in 2006, I was accused, and several months later, while teaching at Columbia University, I was forced to remain abroad, resisting the government political persecution seeking for my detention, for which the State even sought to unlawfully use Interpol channels, which as we know, cannot intervene in political matters.<sup>34</sup> But who cares, as the entire State is interested, that illegality is “legal”.

And finally, to end the examples, totalitarianism is what explains the unconstitutional above mentioned imprisonment by the Supreme Tribunal, in March 2014 of the Mayors of San Diego and San Cristóbal, that are from the ranks of the opposition, without any of the guaranties of due process. The

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<sup>31</sup> See Fernando M. Fernández, “Leyes de desacato vs. Tal Cual y Genatios,” Caracas March, 31, 2014, available at <http://amnistia.me/profiles/blogs/leyes-de-desacato-tal-cual-y-genatios>

<sup>32</sup> See Allan R. Brewer-Carías, “La democracia venezolana a la luz de la Carta Democrática Interamericana, Aide Memoire,” Caracas, febrero 2002, available at [http://www.allanbrewercarias.com/Content/449725d9-f1cb-474b-8ab2-41efb849fea3/Content/I.%202.%2021.%20La%20democracia%20venezolana%20a%20la%20luz%20de%20la%20Carta%20Democratica%20Interamericana%20\\_02-02-\\_SIN%20PIE%20DE%20PAGINA.pdf](http://www.allanbrewercarias.com/Content/449725d9-f1cb-474b-8ab2-41efb849fea3/Content/I.%202.%2021.%20La%20democracia%20venezolana%20a%20la%20luz%20de%20la%20Carta%20Democratica%20Interamericana%20_02-02-_SIN%20PIE%20DE%20PAGINA.pdf)

<sup>33</sup> See Allan R. Brewer-Carías, *En mi propia Defensa. Respuesta preparada con la asistencia de mis defensores Rafael Odreman y León Enrique Cottin contra la infundada acusación fiscal por el supuesto delito de conspiración*, Colección Opiniones y Alegatos Jurídicos No. 13, Editorial Jurídica venezolana, Caracas 2006.

<sup>34</sup> See Allan R. Brewer-Carías, “Global Administrative Law on International Police Cooperation: A Case of Global Administrative Law Procedure,” in Javier Robalino-Orellana and Jaime Rodríguez-Arana Muñoz (Editors), *Global Administrative Law Towards a Lex Administrativa*, Cameron May International Law & Policy, London 2010, pp. 343-395.

justification of the unconstitutional revocation of the popular mandate of Mr. Scarano and Mr. Ceballos, was what originated the People's Defender's phrase that "all is legal because it involved all public powers".

Faced with all of this, is that now since February 2014, the whole country has begun to rebel, and it begins to find solidarity in the democratic world.

But what have Venezuelans found in the international community? An immoral silence, because with the argument that the country had elections, the totalitarian regime, the military dictatorship that we suffer, appears to have free rein to persecute, because being elected officials, all they do is "legal".

In this scenario, however the most serious and sad thing is that sometimes silence has a price, which is typical of the "horse trading" that characterizes international relations, which is based in many cases on the relationship: "I supported you, you support me; you helped me, I help you, even if you are a criminal". We saw it in the OAS meeting of March 2014, where a vote was approved to address the issue of Venezuela only behind closed doors, to later decide not to even address it. And who voted in favor of not airing the wounds of the dictatorship? Well, countries that depend on oil subsidy from Venezuela which are all of those in the Caribbean basin, and those "grateful for the many favors received" like having participated in the looting that has gone on in the country for fifteen years, from campaign financing, easy trade of military weapons, to buying government bonds; all without any repayment or payment obligation.

The result is that today we have a lonely country, left to be managed by members of the military of the worst kind, themselves managed from a foreign country, who have participated in the looting of a State run by the most incompetent and corrupt bureaucracy of our history, but who collectively have caused a real economic and social miracle. Yes, a miracle, to transform the richest country in Latin America, in the most miserable of all, with a widespread increase in poverty and deteriorating social services including health and education; stripping of its greatness what used to be the largest oil company in Latin America, which now produces less oil, and is indebted for decades; making the country with the largest oil reserves in the world, the most indebted Latin American country, which imports everything, including gasoline, precisely from the hated "Empire", with the highest rate of inflation in the world and greatest shortage of goods in history. The miracle has gone further, managing to ruin the country with the highest inflow of foreign exchange, which has been subjected to criminal wastefulness - in 15 years over 800,000 million dollars have disappeared -; looting with impunity, as the country has literally been sold and pillaged by corrupt officials. Finally the

result of the miracle is that a city like Caracas we used to call the “capital of heaven” has become the most dangerous and violent city in the world, an a kingdom of impunity.

The miracle has also been of the institutional order: the country with the most recognized Latin American democracy until the nineties has become the country with the lowest rate of freedom of the continent, with the greatest violations of human rights; a country in which even the pairing Chavez / Maduro managed to denounce the American Convention on Human Rights, so there would not even be any possibility of supranational control over the multiple violations.<sup>35</sup> The last case presented to the Inter-American Court of Human Rights last year, was precisely my case *Allan Brewer-Carías vs. Venezuela*, for violation of all my judicial guarantees.<sup>36</sup>

All this explains, moreover, why this country is now rebelling, in the streets, with the student movement at the forefront, as all student movements horizontal by nature, fighting against the degrading effects, and as mentioned, against the economic and social “miracle” produced, refusing to recognize the regime, the existing legislation or the illegitimate authorities, who oppose everyday values, principles and democratic guarantees and undermines human rights.

And the important thing of the widespread protests across the country is that they are not only opposition protests against the government, it is civil society that is reacting against the totalitarian state. Therefore, if you ask me, I think the time of the relationship of the national confrontation between *government / opposition* which allowed us to think this rogue State could be defeated electorally is ending, and now a new and different confrontational relationship between civil *society / totalitarian* state is emerging.

And at this stage, despite all the false signs, the truth is that there can be no peace at the power of a stick; nor can there be dialogue with a pointed a rifle. The attempt has been so clumsy that recently in March 2014, Mr. Maduro, who holds the presidency, had no better idea than to publicly state that they would have to “force the opposition to sit down and talk, to hold a dialogue, to abandon their violent position. We are going to have to force them, in the best

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<sup>35</sup> See letter of Nicolás Maduro, Minister of Foreign Affairs , denouncing the American Convention of Human Rights, dated September 10, 2012, available at <http://www.noticiaslic.com/carta-de-denuncia-de-convencion-de-ddhh>

<sup>36</sup> See the video of the Hearing before the Inter American Court on Human Rights, of September 3, 2013, at <http://vimeo.com/album/2518064>

sense of the word”<sup>37</sup>; Yes, in the best sense, chasing, threatening, intimidating, attacking, imprisoning or killing.

At this stage of the confrontation, it has been the State who is the one monopolizing the weapons and developing a policy of institutional violence, who began to realize that it is running out of time. As Father Luis Ugalde, the former president of Universidad Católica Andrés Bello in Caracas expressed in March 2014: what is left is for the State to democratically change, “being life or death at stake for the government and the Country”.<sup>38</sup>

This tragic is the situation, which has compelled the Government, with the help or pressure from other Latin American Countries (UNASUR) and of the Pope’s Representative, to initiate a Dialogue in April 2014 with opposition leaders.<sup>39</sup> It was an important sign; particularly because, having been televised and aired through all the media, the whole country witnessed something different to the endless television government’s Monologue, and heard for the first time a concentration of all the criticism on the Government’s destructive policies. On the other hand, perhaps the most outstanding result of the first Dialogue session of April 10, 2014, was the clear perception that the Government’s speakers seemed not to realize that they have been governing the country for fifteen continuous years – the longest lasting government in the whole political history of the country – , which means that in the current Venezuelan political situation, they definitively represent the past, and the Opposition’ speakers clearly were the sign of the future. No doubt, History repeats itself, particularly in the political evolution of the countries.

But of course, such initial sign of a Dialogue (we will have to see its development and outcome), is not enough. In order to continue and produce some results above all it the duty of the Government to change democratically, that is to say, to change and concede, to accept democratic rules and pluralism; to accept the participation of the opposition’s representatives in the process of renewal of members and heads of the public powers; to allow them to act independently and with autonomy; to disarm the paramilitary groups that are supported by the government; to guarantee freedom of expression; to stop the brutal repression of dissidents; to liberate the political prisoners; to re-establish in their elected positions the representative and mayors

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<sup>37</sup> See “Maduro dice que hay que obligar a la oposición a dialogar,” in *La Prensa.com.ve*, March 20, 2014, available at <http://www.laprensa.com.ve/2014/03/20/planeta/187661>

<sup>38</sup> Luis Ugalde, “Zanahoria y Garrote”, in *El Nacional*, Caracas, March 20, 2014; available at [http://173.246.50.18/opinion/dialogo-dignidad-fracaso-gobierno-libertad-luis\\_ugalde-radicales-represion-vida\\_0\\_375562488.html](http://173.246.50.18/opinion/dialogo-dignidad-fracaso-gobierno-libertad-luis_ugalde-radicales-represion-vida_0_375562488.html)

<sup>39</sup> See the videos of the debate in <http://prodavinci.com/2014/04/11/actualidad/videos-10a-todas-las-intervenciones-del-debate-en-miraflores-transmitido-en-cadena-nacional-de-radio-y-tv/>

unconstitutionally striped of their popular mandate; to stop the use of the judicial system to persecute dissidents; to change the inefficient economic policies contrary to economic freedom and private property; to allow free private initiatives in order to reconstruct the economic productive framework of the country; to end violation of human rights and torture. That is, eventually, to accept the Government's own democratization.

That is the only way not to consider the "Dialogue," to which the Government was forced to concede and initiate (not the Opposition), as a tactical "pause" to get strength in order to continue its crushing policies, based on the implementation of what has been called the "*Plan de la Patria*" (Motherland Plan) justly qualified by the Catholic Episcopal Conference of Venezuela in March 2014, as hiding "a system of government of totalitarian shape."<sup>40</sup>

Otherwise, without doubt, we will continue to witness higher popular rebellion, because civil society, including the student movement and political opposition, which is a lot more than half of the country, will not accept to be ruled by a Government that has reduced its action to attempt to crush by force, persecution, intimidation, threats and criminalization, all those who think and act differently to what has been called "XX century Socialism" that is nothing else than the old and abandoned communist doctrine, which, it has to be remembered, was already rejected by the people in the 2007 referendum.

The country has already spoken on the matter. The will of the people cannot forever be ignored, and eventually a government that turns its back to the people, sooner or later, inevitably disappears.

New York, April 15, 2014.

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<sup>40</sup> See "Comunicado de la CEV: Responsables de la paz y el destino democrático de Venezuela," Caracas April 2, 2014, available at <http://www.cev.org.ve/index.php/noticias-3/76-02-abr-2014>