

FAKE DEMOCRACIES AND DISTORTION OF THE RULE OF LAW. THE VENEZUELAN CASE*

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I. THE DISTORTION OF THE RULE OF LAW AND THE RISE OF KAKISTOCRACIES

In the contemporary world, before our eyes, and using initially democratic institutions, new false and fraudulent "models" of the "rule of law" have appeared as a historical innovation; turning democracies, through the forgery,¹ depredation or degeneration, into *pseudo* democracies; or into apparent, false or deceitful democracies.

This has happened in many Latin American countries, and is the case of Venezuela, where the regime that was installed there more than twenty years ago, insists on following an ultra-outdated autocratic model, such as the Cuban one, now repeated in Nicaragua, forging and twisting every and all democratic institutions.

These are -of course- nominal "States of law" that even have a Constitution formally declaring them as "democratic and social rule of law States" and even "of justice," but with a malleable Constitution that is changed, modulated and molded freely by State bodies. Hence, the reality is that such Constitution is not respected nor complied with.

In some cases, these Constitutions are the product of a National Constituent Assembly, presented as a democratic mechanism, but not to recompose a democratic political system, on the basis of, for example, some great national political agreement, as occurred in Colombia in 1991 and as has been happening in Chile, aibcw 2020 with the plebiscites held, the Constitutional Convention and now the Constitutional Commission, all product of consensus;

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¹ See in general Allan R. Brewer-Carías, "El falseamiento del Estado de derecho (El caso de Venezuela)," in the book: Allan R. Brewer-Carías y Humberto Romero Muci (Coordinadores), *El falseamiento del Estado de Derecho*, Academia Colombiana de Jurisprudencia, Academia de Ciencias Políticas y Sociales, World Jurist Foundation, Editorial Jurídica Venezolana, 2021 pp. 31-102.

but rather, to secure perpetuation of a specific political group taking power by assault, as an expression of constitutional populism.²

As a consequence of the exercise of power in such context, rulers who have not respected the supremacy of the Constitution have emerged, because in all these countries the Constitution has been a text of "wet paper" that is freely manipulated and mutated. They have not respected the separation of powers and, on the contrary, have established a system of total concentration of power, where there is no control, balance or independence of any kind between them. The most serious thing is that in this process, those who govern, from the beginning, have specifically assaulted the Judiciary and have turned it into the main mechanism of authoritarianism, with Constitutional Judges who control nothing in matters of judicial review, but who rather endorse government unconstitutionality.³

These are governments that do not guarantee access to power in accordance with the rules of the Rule of Law: the electoral authority is used unreservedly in their favor and the electoral registry is manipulated, so that there are not -and cannot be- clean, fair or reliable elections. Systems where opposition candidates are disqualified and imprisoned, as has recently happened in Nicaragua and Venezuela; and where, as also happened in Venezuela in 2015, the proclamation of elected opposition members of the National may be suspended by judicial means, *sine die*, to take away the qualified majority from the opposition; or where the judiciary may intervene to favor the government as we saw again in Venezuela, in 2021, when without hindrance, the Constitutional Chamber of the Supreme Court kidnapped all the opposition political parties, naming new partisan authorities all linked to the government. In sum, these are systems where the elections carried out, in general, have turned out to be fraudulent; being very similar to the supposed Cuban elections, where only those chosen by the regime are *elected*.

We are talking of systems where, of course, there is no real and effective respect for human rights. It suffices to mention the recent reports (2020 -2023) of the United Nations High Commissioner for Human Rights, on the case of Venezuela, where the crimes committed against humanity have led to the formal initiation of an investigation by the International Criminal Court; investigation that has been recently renewed (2023), as announced by the Prosecutor of the same at the very headquarters of the government of Venezuela, whereas the entire chain of command: from the President of the Republic downwards, is involved.

Finally, these are systems where freedom of expression is violated and all communication media are either confiscated and/or controlled: people are disappeared and incommunicado, tortured, and human rights activists are accused of being terrorists or traitors

² See Allan R. Brewer-Carías, "El populismo constitucional y el "nuevo constitucionalismo"." O de cómo se destruye una democracia desde dentro," in the book: Juan Carlos Cassagne y Allan R. Brewer-Carías, *Estado Populista y Populismo Constitucional*, Ediciones Olejnik, Editorial Jurídica Venezolana, 2020, pp. 121 ss.

³ See Allan R. Brewer-Carías, *La demolición de la independencia y autonomía del Poder Judicial en Venezuela 1999-2021*, Colección Biblioteca Allan R. Brewer-Carías, Instituto de Investigaciones Jurídicas de la Universidad Católica Andrés Bello, No. 7, Editorial Jurídica Venezolana, Caracas 2021; "Dismantling the Rule of Law by politically controlling the Judiciary in Venezuela and its harmful projection on the Inter-American judicial system for the protection of human rights," *European Review of Public Law/Revue Européenne de Droit Public*, vol. 33, N° 3, autumn/automne 2021 pp/ 877-918.

to the country. As has been the case of Venezuela many times in recent years, those who defend human rights, are accused of inciting hatred and imprisoned, when hatred has been, precisely, the crudest form of institutional violence used by the regime.

In short, these are systems where representative democracy has been destroyed, eliminating political representativeness, on the basis of an alleged and fallacious "participatory democracy" that has nothing to do with participation, because participating in politics, apart from doing it through voting, is only possible in politically decentralized systems of government. Let us remember: There are not, nor have there been, nor can there be centralized and centralist democracies based on the concentration of power.

If the destruction of democracy by itself was not enough, this is aggravated by social inequality, achieved through the destruction of the productive apparatus, turning the population into a mass dependent on the *crumbs* they receive from increasingly impoverished subsidies from the government; which in the case of Venezuela, has resulted in the largest population migration of the entire history of the Western Hemisphere.

This is all a characterization of the "new" fraudulent "Rule of Law," a product of the so-called "new constitutionalism" that we have seen in Latin America, and that must be taken into account when analyzing the Rule of Law. It is not a mere "narrative," as was considered by a President of one of the countries of the Continent when referring to the current regime of Venezuela.⁴ No. It is not just a "narrative" or product of *fake news*, nor is it a consequence of international sanctions.

No. What is happening is real, and is the closest thing to what Piero Calamandrei wrote in a posthumous book entitled "*Il fascismo come regime de la menzogna*" published in 2014, whereas he referred to the regime of lies, false rule of law and false democracies, which is what all these new authoritarian populist regimes are.

In that book, referring to fascism, Calamandrei said that it "was something deeper and more complicated than an obscure illegality, it was - he said - the simulation of illegality, the scam to legality organized legality." Therefore, to the traditional classification of the forms of government," Calamandrei said that:

"It would now be worth adding a word that would manage to give meaning to this new and different regime: the government of authoritarian indiscipline, of adulterated legality, of legalized illegality, of constitutional fraud."⁵

⁴ See on the expression by President Lula da Silva of Brazil, the answer of the Presidents of Chile (Boric) and Uruguay (Lacalle) in: "No es una construcción narrativa, es la realidad": las críticas de los presidentes de Chile y Uruguay a Lula por sus palabras sobre Venezuela," in *BBC News*, 31 mayo 2023, available at: <https://www.bbc.com/mundo/noticias-america-latina-65762357>

⁵ Lateza, Bari, 2014. Spanish edition: *El fascismo como régimen de la mentira*, tirant, Valenia 2019. Calamandrei concluded, rightly, that what characterized fascism, that is, what was its common denominator, as also happens in Venezuela, was the use of lies, falsehood, and duplicity, which - he said - "...results from the combination of two orders, one within the other: There is an official order, which is expressed in laws, and another informal one, which is concretized in political practice systematically contrary to laws. And to this duplicity of orders corresponds another double level of organs: a state bureaucracy and a party bureaucracy, both paid for by the same taxpayers and united at the apex, around a single person who is, at the same time, Head of the Government and Duce of fascism (head of the party). So, between the bureaucracy of legality and the bureaucracy of illegality there is no antagonism, but a

This is precisely the “new” false, falsified and fraudulent “rule of law” that has appeared in Latin America since the beginning of the 21st century, in light of the entire democratic world, dismantling all the principles of the rule of law, beginning with the forging of the Constitution and reflected in the degradation of the essential minimum principles that every Rule of law State must have.⁶

For the sake of memory, those principles are the following:

In *first place*, the *principle of constitutionalism*, that is, of the very existence of a Constitution as a written political charter, emanating from popular sovereignty, of a rigid and permanent nature, containing norms of superior rank, immutable in certain aspects, that not only organizes the State subject to the law, that is, not only has an organic part establishing the basis of the separation of power and of the territorial organization of the State, but also has a dogmatic part where the fundamental values of society, the democratic principles and the rights and guarantees of citizens are declared in an entrenched way.

Second, the *principle of democratization*, based on the principle of popular sovereignty, which arose in modern constitutionalism when sovereignty was transferred from Monarch to the people or to the Nation, being the Constitutions the product of the exercise of said popular *sovereignty*. The principle of representation derives from here, assuring the access to power through democratic means. The essence of democracy, is therefore, to assure the representation of the people, indirectly, through free and fair elections of representatives by universal, direct and secret suffrage, regardless of other mechanisms for direct exercise of democracy, such as referendums of public consultation, that can be established.

In *third place*, the *principle of the separation of powers*, that is, their distribution in the organization of the State in order to limit, balance and control the exercise of political power, which must be limited by law, as a mean to guarantee the freedom of *citizens*. It implies the need for various branches of government to be in the hands of independent and autonomous bodies that must control each other, in particular, by the Judiciary. This distribution or *deconcentration* principle is, therefore, essentially linked to the principle of the separation of powers, which stands at the very essence of the rule of law, to avoid possible abuses of one branch of power in relation to the others.

This principle of the separation of power implies: (i) the organization of an *Independent Judiciary*, conducted by selected and duly protected judges that are appointed with the guaranty of enjoying a carrier based on stability, promotion and dismissal only for graves faults and following due process rules, and subject to judicial accountability. In the judicial processes, access to justice must be guaranteed, as well as the due length of the proceedings

secret alliance, a kind of reciprocal *vicariedad*: so much so that to understand what exactly this regime is, one must hardly ask an explanation from only one of these bureaucracies, but one must look for it at the point where they meet, that is, halfway between legality and illegality." Reading these reflections of Calamandrei, there can be no doubt: what exists in Venezuela is a regime characterized by lies, deceit, falsehood and fraud applied as state policy. *See references to Calamandrei in Allan R. Brewer-Carías, La mentira como política de Estado. Crónica de una crisis política permanente. Venezuela 1999-2015* (Prólogo de Manuel Rachadell), Colección Estudios Políticos, No. 10, Editorial Jurídica Venezolana, Caracas 2015.

⁶ See Allan R. Brewer-Carías, *Principios del Estado de derecho. Aproximación histórica*, Cuadernos de la Cátedra Mezerhane sobre democracia, Estado de derecho y derechos humanos, Miami Dade College, Programa Goberna Las Americas, Editorial Jurídica Venezolana International. Miami-Caracas, 2016.

and effective and efficient justice; (ii) the organization of government and of Public Administration not only to guaranty that their actions must always be according to the law but also subject to political, administrative and judicial control, in particular to assure government accountability. In the functioning of the government and Administration, systems must be established to prevent and persecute acts of corruption; (iii) the organization of the Legislative organ to allow the representative of the people to exercise sovereignty on their behalf, by means of enacting legislation. In the legislative process laws must be published, with general and prospective effects, have legal certainty and must be accessible to the people; and (iv) the organization of other independent bodies of the State in charge of organizing free and fair elections, the comptrollership of State finances, the prosecuting of crimes, and of the protecting human rights.

Fourth, the principle of juridification and legality, requiring all State bodies and, in particular, those that act on behalf of the people, the duty to abide by the Constitution, the law and other sources of the legal order. It also means that all State organs acts are subject to control by autonomous and independent judicial bodies within the organization of the State itself; having the power of judicial review of illegality and unconstitutionality of administrative actions and of unconstitutionality of legislation (powers of *judicial review*).

Fifth, the principle of humanization, with recognition and formal declaration of the existence of natural rights with constitutional rank, as well as the primacy of human dignity; which ought, therefore, to be guaranteed and respected by the State, limited in its powers by freedom and rights, establishing specific judicial means for their protections. The declaration must comprise *constitutional guaranties*, in particular, access to justice, equality and non discrimination, protection of minorities; *individual right*, in particular, right to life, right to freedom, right to personal integrity, free speech; *social rights*, like right to education, right to work, right to the protection of health, right to cultural goods; *economic rights*, like free enterprise, and right to property; *political rights*, beside the right to elect and be elected, the right to participate in political parties, the right to protest; *indigenous people rights* and *environmental rights*.

Sixth, the principle of political decentralization of the State, to ensure the political participation of citizens in the exercise of power, bringing it closer to all through creating regional and local entities, scattered throughout the territory of the State, governed by representatives elected through direct and secret universal suffrage; a principle that is the origin of federalism, of political regionalism and, in any case, of municipalism.

Seventh, as a corollary of all the previous principles, the principle of civil government, implying subordination of the military authority to the civil authority, the former being solely and exclusively in charge of the defense of the Nation, the territory and the principles and values established and guaranteed in the Constitution.

A democratic State of law is based on securing all these principles which make up the Political Constitution, all of which, due to the progressive insurgency of authoritarian regimes based on lies and regularized illegality, have been mercilessly crushed. This has been the case of Venezuela,⁷ where the social State named by the Constitution did not go beyond

⁷ See Allan R. Brewer-Carías, *Dismantling Democracy. The Chávez Authoritarian Experiment*, Cambridge University Press, New York 2010, 418 pp.; *Authoritarian Government v. The Rule of Law. Lectures and Essays (1999-2014) on the Venezuelan Authoritarian Regime Established in Contempt of the Constitution*,

being a vain propagandist illusion, having only acquired the deformed face of a populist State;⁸ the representative and participatory democratic political system was never implemented; the structuring of a democratic State of law and justice based on the principle of the separation of powers, never materialized; the consolidation of a decentralized federal State was abandoned,⁹ and public rights and liberties have been materially despised.

The tragic consequence of all this is that instead of the development of a decentralized democratic State of law and justice, based on the principles of constitutionalism, deconcentration of power, democratization, legalization, humanization, decentralization and participation and civilian government, what we have witnessed in Venezuela has been a systematic process of deconstitutionalization, dedemocratization, concentration of power, delegalization, dehumanization, centralization and absence of participation, and militarization.

And all this, with an effective replacement of democracy itself by the closest thing to a *kakistocracy*, in its literal linguistic sense of "government of the worst,"¹⁰ term coined by Michelangelo Bovero in a 1996 paper whereas, after analyzing Polybius's recipe for the "optimal republic", he expressed the following:

"Let us imagine that we could see united in a single regime, not just the eminent characters of the best constitutions, but the most contemptible of the worst, not just the virtues of the three correct forms of government, but the vices of the corresponding corrupt forms. The result would be a mixed government exactly opposite to that of Polybius's recipe: not the best republic, but the worst republic, worse, by the sum of the evils, than each of the simple corrupt regimes, because it would unite in itself the perversions of all of them. It would be the worst government in the sense of the "government of the worst" of the different species, gathered and mixed almost like ingredients, not just for a salvific recipe, but for the poisonous formula of a curse. If we wanted to give it a name, I would propose calling it *kakistocracy*: the opposite of aristocracy in the broadest and most noble sense of "rule by the best."¹¹

Public Law Foundation, Editorial Jurídica Venezolana, Caracas 2014, 986 pp.; *The Collapse of the Rule of Law and the Struggle for Democracy in Venezuela*. Lectures and Essays (2015-2020), Foreword: Asdrúbal Aguiar, Anales Collection, Mezerhane Chair on Democracy, Rule of Law, and Human Rights, Miami Dade College, 2020, 618 pp.

⁸ See Allan R. Brewer-Carías, *Estado totalitario y desprecio a la ley. La desconstitucionalización, desjuridificación, desjudicialización y desdemocratización de Venezuela*, Fundación de Derecho Público, Editorial Jurídica Venezolana, 2014.

⁹ See the study of the Constitution regarding the regulation of this model of Constitutional State in Allan R. Brewer-Carías, *La Constitución de 1999. Derecho Constitucional Venezolano*, Caracas 2004.

¹⁰ *Kakistocracy* (from the Greek: kakistos (κάκιστος : worse ; and κράτος : government), that is, government managed by the worse, less qualified either further unscrupulous citizens (See <https://www.google.com/search?q=kakistocracy>).

¹¹ See Michelangelo Bovero, "La ricetta di Polibio e il " rovescio". Ovvero: kakistocrazia, the lousy republica," in Political Theory, N° 1, 1966, p. 7-8. See the references in Ermanno Vitale, "Democracia, kakistocrazia, pleonocrazia. Michelangelo Bovero y Teoría Política," María Guadalupe Salmorán Villar (Coordinadora), Poder, democracia y derechos. Una discusión con Michelangelo Bovero, Universidad Nacional Autónoma de México, in Biblioteca Jurídica Virtual del Instituto de Investigaciones Jurídicas de la UNAM, at <https://biblio.juridicas.unam.mx/bjv/detalle-libro/5703-poder-democracia-y-rights-a-discussion-with-michelangelo-bovero>.

In Venezuela, the distortion and demolition of all the foundations of the rule of law and the degradation of democracy that has been replaced by a *kakistocracy* took place through the following processes.

II. THE DISTORTION OF THE PRINCIPLE OF POPULAR SOVEREIGNTY: DECONSTITUTIONALIZATION AND SEIZING OF POPULAR SOVEREIGNTY

The process of deconstitutionalization of the State began in Venezuela in 1999, the same year the Constitution itself was sanctioned as a result of a poorly formed and worse structured National Constituent Assembly.¹² It was convened violating the provisions of the 1961 Constitution, by the same group of officers commanded by Hugo Chávez who seven years earlier (1992) had attempted a coup against President Carlos Andrés Pérez, serving for the assault on power and the subjugation of the constituted powers.

With this Venezuelan experience, the so-called “new constitutionalism” began in Latin America,¹³ spreading later to Ecuador and Bolivia, as a product of constitutional populism pretending to justify the yielding of constitutional supremacy when the sovereign people are supposedly summoned, even if unconstitutionally.¹⁴

The result of this deformation was the approval, by said Constituent Assembly, completely controlled by Chávez and his followers, of a Political Constitution that, as I expressed it in December 1999, when advocating for its rejection in the respective referendum:

“When it is analyzed globally, [...] it reveals an *institutional scheme for authoritarianism*, which derives from the *combination of State centralism, exacerbated presidentialism, partidocracy and militarism* that constitute the central elements designed for the organization of the State Power.”¹⁵

Unfortunately, what I predicted at the time was fully fulfilled, beginning the process of blatant violation of the Constitution only a few days after it was approved (12-15-1999) and before it was published (12-30-1999), through the sanctioning by the Constituent Assembly itself of a "Transitory Regime" (12-22-1999)¹⁶ not approved, by the people. This regime was, in practice, a parallel "constitution" that contravened the approved text and confirmed that it would not be complied with.

¹² See Allan R. Brewer-Carías, *Golpe de Estado y proceso constituyente en Venezuela*, Universidad Nacional Autónoma de México, Mexico 2002.

¹³ See Allan R. Brewer-Carías, “El “nuevo constitucionalismo latinoamericano” y la destrucción del Estado democrático por el Juez Constitucional. El Caso de Venezuela, Colección Biblioteca de Derecho Constitucional, Ediciones Olejnik, Madrid, Buenos Aires, 2018, 294 pp.

¹⁴ See Juan Carlos Cassagne and Allan R. Brewer-Carías, *Estado populista y populismo constitucional. Dos estudios*, Ediciones Olejnik, Santiago, Buenos Aires, Madrid 2020, 330 pp.

¹⁵ See Allan R. Brewer-Carías, “Razones del voto NO en el referendo aprobatorio de la Constitución,” en *Debate Constituyente (Labor en la Asamblea Nacional Constituyente)*, Tomo III, Fundación de Derecho Público, Editorial Jurídica Venezolana, Caracas 2000.

¹⁶ After the Constitution was approved by the people (December 15, 1999), the Assembly issued the Transitory Constitutional Regime (December 22, 1999), having published both texts at the same time (December 30 1999) See *Official Gazette* No. 36,859 of December 29, 1999.

With this transitory constitutional regime, which I then described as a “constituent coup,”¹⁷ the Constituent Assembly replaced all the founded Public Powers (branches of government) of the State and its authorities, handpicking their substitutes without complying with the requirements established in the new Constitution; not even for the appointment of the Justices of the Supreme Tribunal, creating also a “Commission for the Reorganization and Functioning of the Judiciary” that dismissed almost all the judges without due process.¹⁸ All of this was endorsed by the irregularly named Constitutional Chamber of the Supreme Tribunal, which came to decide “in her own cause”¹⁹ that the new Constitution did not apply to herself, considering that the acts of the Constituent Assembly had “supra-constitutional” rank, and were not subject to either the new or the former Constitution.

With this, and the so-called “new constitutionalism,” the judiciary was mercilessly intervened and subject to political control, beginning the destruction of the foundations of the rule of law;²⁰ a process that was conducted, since 2000, by the Constitutional Chamber, who began to decide forgetting that sovereignty resides “non-transferably” in the people, and that therefore, no one can assume it, allowing Constituent Assemblies to usurp it in and 2017,²¹ as happened in 1999.²²

For this reason, when the 1999 Constitution regulated the Constituent Assembly, it was established that the people as “repository of the original constituent power” (art. 347) is the one who can convene even a Constituent Assembly, to affect essential provisions of the conformation of the State. This was violated in 2007, when Chávez “covered up” his proposal for the transformation of the Constitutional State into a Communal State, using the

¹⁷ See Allan R. Brewer-Carías, *Golpe de Estado y proceso constituyente en Venezuela*, Universidad Nacional Autónoma de México, México 2002. See Allan R. Brewer-Carías, “Comentarios sobre la ilegítima “Exposición de Motivos” de la Constitución de 1999 relativa al sistema de justicia constitucional”, in *Revista de Derecho Constitucional*, N° 2, Enero-Junio 2000, Caracas 2000, pp. 47-59.

¹⁸ See Allan R. Brewer-Carías, *Golpe de Estado y proceso constituyente en Venezuela*, Universidad Nacional Autónoma de México, México 2002, 405 pp.; and *Golpe de Estado Constituyente, Estado Constitucional y Democracia*, Colección Tratado de Derecho Constitucional, Tomo VIII, Fundación de Derecho Público, Editorial Jurídica Venezolana, Caracas, 1018 pp.

¹⁹ See ruling No. 6 dated January 27, 2000, in *Revista de Derecho Público*, N° 81, (enero-marzo), Editorial Jurídica Venezolana, Caracas 2000, pp. 81 ff.

²⁰ On the intervention of the Judiciary, see Allan R. Brewer-Carías, “La progresiva y sistemática demolición institucional de la autonomía e independencia del Poder Judicial en Venezuela 1999-2004”, in *XXX Jornadas J.M Domínguez Escovar, Estado de derecho, Administración de justicia y derechos humanos*, Instituto de Estudios Jurídicos del Estado Lara, Barquisimeto, 2005, pp. 33-174; “La Justicia sometida al poder y la interminable emergencia del Poder Judicial (1999-2006)”, in *Derecho y democracia. Cuadernos Universitarios*, Órgano de Divulgación Académica, Vicerrectorado Académico, Universidad Metropolitana, Año II, N° 11, Caracas, septiembre 2007, pp. 122-138; “Sobre la ausencia de carrera judicial en Venezuela: jueces provisorios y temporales y la irregular Jurisdicción Disciplinaria Judicial,” in *Revista de Derecho Funcionario*, Números 12-19, Mayo 2014 – Diciembre 2016, Edición especial, Centro para la Integración y el Derecho Público (CIDEP), Fundación de Estudios de Derecho Administrativo (FUNEDA), Caracas 2018, pp. 8-26.

²¹ See Allan R. Brewer-Carías, *Usurpación Constituyente 1999, 2017. La historia se repite: una vez como farsa y la otra como tragedia*, Colección Estudios Jurídicos, No. 121, Editorial Jurídica Venezolana International, 2018, 654 pp.

²² See critical comments on this in Allan R. Brewer-Carías, *Poder Constituyente Originario y Asamblea Nacional Constituyente*, Academia de Ciencias Políticas y Sociales, Caracas 1999, pp. 67 ff.

“constitutional reform” procedure and not the Constituent Assembly,²³ an absurdity that the people rejected it by referendum, despite the fact that the new Constitutional Chamber refused to control it.²⁴

Ten years later, in May 2017, the popular sovereignty was attacked again, this time through the unconstitutional covenant of another National Constituent Assembly, but by Executive decree,²⁵ seizing the popular initiative, seeking again to constitutionalize the Communal State that was rejected by the people in 2007.²⁶ Although the Constitutional Chamber again refused to control this unconstitutionality,²⁷ this Constituent Assembly resulted in a fraudulent body “elected” just to deprive the National Assembly, then controlled by the opposition, of the power to legislate.²⁸

In this way, since its enactment, the Constitution in Venezuela lost all value as a supreme norm, becoming a normative set or “rules” that have lost their rigidity and can be bended by absolutely all public powers, and whose validity and scope have being changed through unconstitutional ordinary laws and decree-laws, which the Constitutional Chamber has refused to control. To make matters worse, the Political Constitution has been emptied of the principle of constitutionalism and popular sovereignty with the active participation of the Constitutional Chamber, through constitutional interpretation rulings made-to-measure for

²³ See Allan R. Brewer-Carías, *Hacia la consolidación de un Estado socialista, centralizado, policial y militarista. Comentarios sobre el sentido y alcance de las propuestas de reforma constitucional 2007*, Colección Textos Legislativos, No. 42, Editorial Jurídica Venezolana, Caracas 2007; *La reforma constitucional de 2007 (Comentarios al proyecto inconstitucionalmente sancionado por la Asamblea Nacional el 2 de noviembre de 2007)*, Colección Textos Legislativos, No.43, Editorial Jurídica Venezolana, Caracas 2007.

²⁴ 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,” in Eduardo Ferrer Mac Gregor y César de Jesús Molina Suárez (Coordinadores), *El juez constitucional en el Siglo XXI*, Universidad Nacional Autónoma de México, Suprema Corte de Justicia de la Nación, Mexico 2009, Volume I, pp. 385-435.

²⁵ See Official *Gazette* No. 6295 Extraordinary of May 1, 2017.

²⁶ See Allan R. Brewer -Carías, “La proyectada reforma constitucional de 2007, rechazada por el poder constituyente originario”, in *Anuario de Derecho Público 2007*, Año 1, Instituto de Estudios de Derecho Público de la Universidad Monteávila, Caracas 2008, pp. 17-65. See also in Allan R. Brewer-Carías, *Reforma constitucional y fraude a la Constitución (1999-2009)*, Academia de Ciencias Políticas y Sociales, Caracas 2009, p. 64-66; and *La Constitución de 1999 y la Enmienda constitucional No. 1 de 2009*, Editorial Jurídica Venezolana, Caracas 2011, pp. 299-300.

²⁷ See *judgment No. 378 of May 31, 2017*. See the comments in Allan R. Brewer-Carías, “El Juez Constitucional vs. El pueblo como poder constituyente originario. De cómo la Sala Constitucional del Tribunal Supremo de Justicia avaló la inconstitucional convocatoria de una Asamblea Nacional Constituyente, arrebatándole al pueblo su derecho exclusivo a convocarla,” in Allan R. Brewer-Carías y Carlos García Soto (Coordinadores), *Estudios sobre la Asamblea Nacional Constituyente y su inconstitucional convocatoria en 2017*, Colección Estudios Jurídicos No. 119, Editorial Jurídica Venezolana, Caracas 2017, pp. 481-494.

²⁸ See Allan R. Brewer-Carías, *Usurpación Constituyente 1999, 2017. La historia se repite: una vez como farsa y la otra como tragedia*, Colección Estudios Jurídicos, No. 121, Editorial Jurídica Venezolana International, 2018.

the government, as well as through illegitimate mutations to "guarantee" that unconstitutional actions are not controlled.²⁹

III. THE EMPTYING OF THE PRINCIPLE OF DEMOCRATIZATION: DE-DEMOCRATIZATION AND THE ELIMINATION OF REPRESENTATIVE DEMOCRACY

This deconstitutionalization has been accompanied by a process of de-democratization of the State, developed as a State policy, in contempt of the principle of representative democracy, promoting its replacement by a so-called "participatory" democracy.

Representative democracy is, in fact, one of the cardinal principles recognized in the 1999 Constitution (art. 5), although the term "representative" regarding the government (art. 6) included in all previous Constitutions, was replaced by the word "elective."³⁰

Nonetheless, the Constitution refers to the indirect exercise of sovereignty by the people through elected representatives, according to the principle of representativeness,³¹ considering it as a citizen's right,³² implying that the representatives who govern must always have their origin in popular elections carried out through universal, direct and secret suffrage (art. 63, 70, 136).

²⁹ See on the constitutional mutation by the Constitutional Chamber: 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)", in *IUSTEL, Revista General de Derecho Administrativo*, No. 21, junio 2009, Madrid.

³⁰ See my critic on this matter in Allan R. Brewer-Carías, *Debate Constituyente, Aportes a la Asamblea Nacional Constituyente, Fundación de Derecho Público, Editorial Jurídica Venezolana, Caracas 1999*, Tomo I, pp. 184 ss. See on sovereignty and representative democracy: Allan R. Brewer-Carías, "El principio de la soberanía popular, el republicanismo y el gobierno democrático representativo", in Allan R. Brewer-Carías y José Araujo Juárez (Coordinadores), *Principios Fundamentales del Derecho Público. Desafíos actuales. Libro conmemorativo de los 20 años de la publicación de la Constitución de 1999*, Editorial Jurídica Venezolana Internacional 2020, pp. 15-39; Pedro L. Bracho Grand y Miriam Álvarez de Bozo, "Democracia representativa en la Constitución Nacional de 1999", in *Estudios de Derecho Público: Libro Homenaje a Humberto J. La Roche Rincón*, Volumen I, Tribunal Supremo de Justicia, Caracas 2001, pp. 235-254; and Ricardo Combellas, "Representación vs. Participación en la Constitución Bolivariana. Análisis de un falso dilema", in *Bases y principios del sistema constitucional venezolano (Ponencias del VII Congreso Venezolano de Derecho Constitucional realizado en San Cristóbal del 21 al 23 de noviembre de 2001)*, Volumen II, pp. 383-402.

³¹ Criticism of representative democracy should be aimed at perfecting it, not eliminating it and even less so replacing it with the so-called "participatory democracy." See, for example, Allan R. Brewer-Carías, "Sobre los elementos de la democracia como régimen político: representación y control del poder," in *Revista Jurídica Digital IUREced*, Edición 01, Trimestre 1, 2010-2011, in <http://www.megaupload.com/?d=ZN9Y2W1R>; "La necesaria revalorización de la democracia representativa ante los peligros del discurso autoritario sobre una supuesta "democracia participativa" sin representación," in *Derecho Electoral de Latinoamérica. Memoria del II Congreso Iberoamericano de Derecho Electoral*, Bogotá, 31 agosto-1 septiembre 2011, Consejo Superior de la Judicatura, Bogotá 2013, pp. 457-482; "Participación y representatividad democrática en el gobierno municipal," in *Revista Ita Ius Esto, Revista de Estudiantes* (<http://www.itaiusesto.com/>), In *Memoriam Adolfo Céspedes Zavaleta*, Lima 2011, pp. 11-36; at <http://www.itaiusesto.com/participacion-y-representacion-democratica-en-el-gobierno-municipal/>.

³² See Allan R. Brewer-Carías, "Algo sobre las nuevas tendencias del derecho constitucional: el reconocimiento del derecho a la constitución y del derecho a la democracia," in Sergio J. Cuarezma Terán y Rafael Luciano Pichardo (Directores), *Nuevas tendencias del derecho constitucional y el derecho procesal constitucional*, Instituto de Estudios e Investigación Jurídica (INEJ), Managua 2011, pp. 73-94.

Such is the essence of representative democracy, not to be replaced by a so called "participatory democracy" that has spread within the authoritarian discourse, eliminating representativeness through instances of the so-called Communal Power and Communal Councils controlled from the Central Power.³³ This has been made to make citizens believe they "participate," when what happens is that they are subject and controlled, improperly, but deliberately, confusing participatory democracy with elements that are more of direct democracy.³⁴ In addition, decentralization of power has been eliminated, depriving citizens of their right to politically participate, as well as universal, direct and secret suffrage has been eliminated, for example, for the election of municipal authorities (2017) and for the election of deputies representing indigenous communities (2020).³⁵

Despite the fact that all the laws related to Communal Power were challenged, the Constitutional Chamber ignored the appeals except one,³⁶ whereas it ignored the principle of

³³ These institutions were rejected by the people in the referendum on the constitutional reform of 2007, but they were established unconstitutionally through the Law on Communal Councils sanctioned in 2006 (See *Official Gazette* No. 5,806 Extra. of 10-04-2006. See Allan R. Brewer-Carías, "El inicio de la desmunicipalización en Venezuela: La organización del Poder Popular para eliminar la descentralización, la democracia representativa y la participación a nivel local", in AIDA, *Opera Prima de Derecho Administrativo. Revista de la Asociación Internacional de Derecho Administrativo*, Universidad Nacional Autónoma de México, Facultad de Estudios Superiores de Acatlán, Coordinación de Postgrado, Instituto Internacional de Derecho Administrativo "Agustín Gordillo", Asociación Internacional de Derecho Administrativo, México, 2007, pp. 49 a 67) and later, in 2010, in the Organic Law on Popular Power and Communes (See in *Official Gazette* N° 6.011 Extra. of 21 December 2010). The Constitutional Chamber by means of judgment No. 1330 of December 17, 2010 declared the constitutionality of the organic nature of this Law. See at <http://www.tsj.gov.ve/decisiones/scon/Diciembre/1330-171210-2010-10-1436.html>. See generally on these laws, Allan R. Brewer-Carías, Claudia Nikken, Luis A. Herrera Orellana, Jesús María Alvarado Andrade, José Ignacio Hernández and Adriana Vigilancia, *Leyes Orgánicas sobre el Poder Popular y el Estado Comunal (Los consejos comunales, las comunas, la sociedad socialista y el sistema económico comunal)*, Colección Textos Legislativos N° 50, Editorial Jurídica Venezolana, Caracas 2011; Allan R. Brewer-Carías, "La Ley Orgánica del Poder Popular y la desconstitucionalización del Estado de derecho en Venezuela," in *Revista de Derecho Público*, N° 124, Editorial Jurídica Venezolana, Caracas 2010, pp. 81-101), and also, on the reform of the Organic Law of Municipal Public Power (See *Official Gazette* No. 6,015 Extra. December 28, 2010)

³⁴ See Allan R. Brewer-Carías, "La democracia representativa y la falacia de la llamada "democracia participativa, sin representación," in Jorge Fernández Ruiz (Coordinador), *Estudios de Derecho Electoral. Memoria del Congreso Iberoamericano de Derecho Electoral*, Universidad Nacional Autónoma de México, Coordinación del Programa de Posgrado en Derecho, Facultad de Estudios Superiores Aragón, Facultad de Derecho y Criminología, Universidad Autónoma de Nuevo León, México 2011, pp. 25 a 36. See Allan R. Brewer-Carías, "La necesaria revalorización de la democracia representativa ante los peligros del discurso autoritario sobre una supuesta "democracia participativa" sin representación," in *Derecho Electoral de Latinoamérica. Memoria del II Congreso Iberoamericano de Derecho Electoral*, Bogotá, 31 agosto-1 septiembre 2011, Consejo Superior de la Judicatura, Bogotá 2013, pp. 457-482. See also, Allan R. Brewer-Carías, *Sobre la democracia*, (con Prólogo de Mariela Morales Antoniazzi). Editorial Jurídica Venezolana, New York / Caracas 2019, 576 pp.

³⁵ In this new scheme, the "spokespersons" of the Communal Councils, without political autonomy, have been appointed by show of hands "in the name of the people," by assemblies controlled by the official party and by the National Executive.

³⁶ Except for the one referring to the reform of the Organic Law of Municipal Power of 2010, which was decided by judgment No. 355 of May 16, 2017. See Case: *impugnación de la Ley de reforma de la Ley Orgánica del Poder Público Municipal*. Available at <http://historico.tsj.gob.ve/decisiones/scon/mayo/199013-355-16517-2017-11-0120.HTML>. See *the comments on this judgment* in Emilio J. Urbina Mendoza, "Todas las asambleas son sufragios, y muchos sufragios también son asambleas. La confusión lógica de la sentencia 355/2017 de la Sala Constitucional del Tribunal Supremo de Justicia y la incompatibilidad entre los conceptos de sufragio y voto

representative democracy and the principle that the appointment of authorities representing the people can only be done through election by universal, direct and secret suffrage, and not through voting mechanisms in "citizen" assemblies controlled by a show of hands.

Consequently, the first victim of the Constitutional Chamber in Venezuela has been the representative democratic principle,³⁷ successively injured by the same Justices, who have affected the essence of proportional representation (2006) by endorsing the unconstitutional political disqualifications that affected the right of former public officials to be elected (2008, 2011); taking away from a deputy in office the power to continue exercising her mandate, revoking it unconstitutionally (2014); illegitimately and unconstitutionally revoking the popular mandate of several Mayors, usurping the powers of the Criminal Jurisdiction (2014); demolishing the principle of elective and representative democratic government, by imposing on Venezuelans a government without democratic legitimacy in 2013, without determining with certainty at that time the state of health of President Hugo Chávez Frías, or if he was alive; and eliminating the alternative nature of the government (2009) allowing for indefinite reelection.³⁸

IV. THE EMPTYING OF THE PRINCIPLE OF SEPARATION OF POWERS: THE CONCENTRATION OF POWER

In the Venezuelan case the demolition of the principle of constitutionalism, the contempt on popular sovereignty and the abandonment of the representative democratic principle, was followed by the emptying of the first and fundamental pillar of any Rule of Law State, which is that of separation and independence of the government branches (public powers) and reciprocal control between them, that is, the deconcentration of power, without which control simply does not exist, particularly by an autonomous and independent Judiciary.³⁹

In Venezuela, in the last twenty years, this principle has been nothing but another facade to establish a Totalitarian State in disguise, with total concentration and centralization of power, and where -of course- none of the essential elements and of the fundamental components of democracy that are defined in the Inter-American Democratic Charter of

asambleario,” and José Ignacio Hernández G., “Sala Constitucional convalida la desnaturalización del Municipio. Notas sobre la sentencia N° 355/2017 de 16 de mayo,” in *Revista de Derecho Público*, N° 150-151 (enero-junio 2017), Editorial Jurídica Venezolana, Caracas 2017, pp. 107-116 y 349-352.

³⁷ At this point we follow what is stated in Allan R. Brewer-Carías, “El Juez Constitucional en Venezuela y la destrucción del principio democrático representativo,” in *Revista de Derecho Público*, No. 155-156, julio-diciembre de 2018, Editorial Jurídica Venezolana, Caracas 2018, p. 7-44.

³⁸ See Allan R. Brewer-Carías, “La democracia y su desmantelamiento usando la justicia constitucional: Peligros del autoritarismo,” O de cómo, en Venezuela, el Juez Constitucional demolió los principios de la democracia representativa, de la democracia participativa y del control del poder”, prepared for the lectura on “Democracia y Justicia Constitucional: Peligros del Autoritarismo,” in *Elecciones y democracia en América latina: El desafío autoritario – populista (Coloquio Iberoamericano, Heidelberg, septiembre 2019, homenaje a Dieter Nohlen)*, (Editor: Allan R. Brewer-Carías), Colección Biblioteca Allan R. Brewer-carías, Instituto de Investigaciones Jurídicas de la Universidad católica Andrés bello, Editorial Jurídica Venezolana Internacional, Caracas 2020, pp. 98-117.

³⁹ On the subject see Gustavo Tarre Briceño, *Solo el poder detiene al poder, La teoría de la separación de los poderes y su aplicación en Venezuela*, Colección Estudios Jurídicos N° 102, Editorial Jurídica Venezolana, Caracas 2014; and Jesús María Alvarado Andrade, “División del Poder y Principio de Subsidiariedad. El Ideal Político del Estado de Derecho como base para la Libertad y prosperidad material” in Luis Alfonso herrera Orellana (Coord.), *Enfoques Actuales sobre Derecho y Libertad en Venezuela*, Academia de Ciencias Políticas y Sociales, Caracas, 2013, pp. 131-185.

2001, have been insured.⁴⁰ Hence the description of the regime as a *kakistocracy*, which as commented by Ermmano Vitale, as stated by Michelangelo Bovero:

“feeds and is fed, in a kind of perverse circle, by the confusion of powers, which annul the distinction and separation of powers typical of constitutional democracies, both on the social level (political, economic and ideological power) and on the strictly institutional level (Legislative, Executive, Judicial).”⁴¹

In fact, for a democratic State to exist, above all it must secure the separation and independence of the government branches, because without balance and control of power, ultimately none of the aspects of democracy can be carried out, as they are defined in the aforementioned Democratic Charter; that is, there can be no true free, fair and reliable elections; there can be no political pluralism, nor access to power in accordance with the Constitution; there can be no effective participation in the management of public affairs, nor administrative transparency in the exercise of government, nor accountability on the part of the rulers. In short, there can be no effective submission of the government to the Constitution and the laws, as well as the subordination of the military to the civilian government; there can be no effective access to justice; and no real and effective guarantee of respect for human rights, including freedom of expression and social rights.⁴²

Contrary to all of this and against the promises of the Constitution, in Venezuela we have witnessed the development of a State where all power has been concentrated in the hands of the Executive Power, to whom all other branches of government (Public Powers) are subject; particularly the Supreme Tribunal of Justice and its Constitutional Chamber, as well as the electoral body, and even the National Assembly itself, even by drowning it when it was controlled by the opposition to the government (2015-2020).

In this process of concentration of power, of course, the most devastating blow has been the political control that the Executive Branch has exercised over the Judiciary and particularly over the Constitutional Chamber of the Supreme Tribunal; a process that began in 1999 when the Constituent Assembly intervened the Judiciary,⁴³ and began to integrate

⁴⁰ See Allan R. Brewer-Carías, *Estado totalitario y desprecio a la ley. La desconstitucionalización, desjuridificación, desjudicialización y desdemocratización de Venezuela*, Fundación de Derecho Público, Editorial Jurídica Venezolana, 2014.

⁴¹ See Ermmano Vitale, “Democracia, *kakistocracia*, *pleonocracia*. Michelangelo Bovero y Teoría Política,” María Guadalupe Salmorán Villar (Coordinadora), Poder, democracia y derechos. Una discusión con Michelangelo Bovero, Universidad Nacional Autónoma de México, p. 9, in Biblioteca Jurídica Virtual del Instituto de Investigaciones Jurídicas de la UNAM, at <https://biblio.juridicas.unam.mx/bjv/detalle-libro/5703-poder-democracia-y-derechos-una-discussion-con-michelangelo-bovero>.

⁴² See Allan R. Brewer-Carías, "Forword" to the book by Gustavo Tarre Briceño, *Solo el poder detiene al poder, La teoría de la separación de los poderes y su aplicación en Venezuela*, Colección Estudios Jurídicos N° 102, Editorial Jurídica Venezolana, Caracas 2014, pp. 13-49; “El principio de la separación de poderes como elemento esencial de la democracia y de la libertad, y su demolición en Venezuela mediante la sujeción política del Tribunal Supremo de Justicia,” in *Revista Iberoamericana de Derecho Administrativo, Homenaje a Luciano Parejo Alfonso*, Año 12, N° 12, Asociación e Instituto Iberoamericano de Derecho Administrativo Prof. Jesús González Pérez, San José, Costa Rica 2012, pp. 31-43.

⁴³ See our dissent vote on the intervention of the Judiciary by the National Constituent Assembly in Allan R. Brewer-Carías, *Debate Constituyente, (Aportes a la Asamblea Nacional Constituyente)*, Tomo I, (8 agosto–8 septiembre), Caracas 1999; and the criticism to this process in Allan R. Brewer-Carías, *Golpe de Estado y proceso constituyente en Venezuela*, Universidad Nacional Autónoma de México, Mexico, 2002.

the Supreme Tribunal of Justice with politically controlled justices, completely kidnapping the Judiciary, which was made up of provisional or temporary judges subject to political pressure, who began to be fired without any guarantees of due process when their actions were not aligned with the government.

The result of all this was the tragic disappearance of the Judicial Power autonomy,⁴⁴ that began to work as an instrument at the service of the authoritarian; just like those “judges of the horror” of the Nazi regime, to the extent that the rulings of the Supreme Tribunal of Venezuela have been expressly repudiated in jurisdictions of other countries.⁴⁵

The control of the Supreme Tribunal, in particular, transformed its Constitutional Chamber, from the guardian of the Constitution that it was,⁴⁶ into the instrument most used by the authoritarian regime to demolish the rule of law and its principles.⁴⁷ To this end, the Constitutional Judge even invented an endemic “autonomous proceeding of abstract interpretation of the Constitution”⁴⁸ that has allowed it to administer “a judicial review à la

⁴⁴ See Allan R. Brewer-Carías, “La progresiva y sistemática demolición de la autonomía en independencia del Poder Judicial en Venezuela (1999–2004)”, in *XXX Jornadas J.M Domínguez Escovar, Estado de derecho, Administración de justicia y derechos humanos*, Instituto de Estudios Jurídicos del Estado Lara, Barquisimeto, 2005, pp. 33–174; and “La justicia sometida al poder [La ausencia de independencia y autonomía de los jueces en Venezuela por la interminable emergencia del Poder Judicial (1999–2006)]” in *Cuestiones Internacionales. Anuario Jurídico Villanueva 2007*, Centro Universitario Villanueva, Marcial Pons, Madrid, 2007, pp. 25–57; “La demolición de las instituciones judiciales y la destrucción de la democracia: La experiencia venezolana,” in *Instituciones Judiciales y Democracia. Reflexiones con ocasión del Bicentenario de la Independencia y del Centenario del Acto Legislativo 3 de 1910*, Consejo de Estado, Sala de Consulta y Servicio Civil, Bogotá 2012, pp. 230-254.

⁴⁵ See Allan R. Brewer-Carías, “Las Cortes Supremas de Costa Rica, Brasil y Chile condenan la falta de garantías judiciales en Venezuela. De cómo, ante la ceguera de los gobiernos de la región y la abstención de la Corte Interamericana de Derechos Humanos, han sido las Cortes Supremas de estos países las que con base en la jurisdicción universal de protección de los derechos humanos, han comenzado a juzgar la falta de autonomía e independencia del Poder Judicial en Venezuela, dictando medidas de protección a favor de ciudadanos venezolanos contra el Estado venezolano,” in *Revista de Derecho Público*, No. 143-144, (julio- diciembre 2015, Editorial Jurídica Venezolana, Caracas 2015, pp. 495-500.

⁴⁶ See Allan R. Brewer-Carías, *El sistema de justicia constitucional en la Constitución de 1999 (Comentarios sobre su desarrollo jurisprudencial y su explicación, a veces errada, en la Exposición de Motivos)*, Editorial Jurídica Venezolana, Caracas 2000. See in general, Allan R. Brewer-Carías, *El sistema mixto o integral de control de la constitucionalidad en Colombia y Venezuela*, Universidad Externado de Colombia (Temas de Derecho Público N° 39) y Pontificia Universidad Javeriana (*Quaestiones Juridicae* N° 5), Bogotá 1995; Allan R. Brewer-Carías, “La justicia constitucional en la Constitución de 1999”, in *Derecho Procesal Constitucional*, Colegio de Secretarios de la Suprema Corte de Justicia de la Nación, A.C., Editorial Porrúa, Mexico 2001, pp. 931-961.

⁴⁷ We have been dealing with this subject for several years. See for example: 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)”, in *Revista de Administración Pública*, N° 180, Madrid 2009, pp. 383-418; “La ilegítima mutación de la Constitución por el juez constitucional y la demolición del Estado de derecho en Venezuela,” in *Revista de Derecho Político*, N° 75-76, Homenaje a Manuel García Pelayo, Universidad Nacional de Educación a Distancia, Madrid 2009, pp. 289-325. See also, Allan R. Brewer-Carías, “Los problemas del control del poder y el autoritarismo en Venezuela”, in Peter Häberle y Diego García Belaúnde (Coordinadores), *El control del poder. Homenaje a Diego Valadés*, Instituto de Investigaciones Jurídicas, Universidad Nacional Autónoma de México, Volume I, Mexico 2011, pp. 159-188.

⁴⁸ See Judgment No. 1077 of the Constitutional Chamber of September 22, 2000, case: *Servio Tulio León Briceño*. See *Revista de Derecho Público*, N° 83, Caracas, 2000, pp. 247 et seq. See generally about this: Allan R. Brewer-Carías, “*Quis Custodiet Ipsos Custodes*: De la interpretación constitucional a la inconstitucionalidad de la interpretación,” in *VIII Congreso Nacional de derecho Constitucional, Perú*,

carte,” at the request of the government and, in particular, of the Attorney General of the Republic, through which it has illegitimately and fraudulently modified and mutated the Constitution,⁴⁹ thus usurping even the powers of the original constituent power (the people).⁵⁰

This role of the Constitutional Judge exacerbated from January 2016 until 2020, after a new National Assembly controlled by the opposition to the government was elected in 2015, causing a perverse collusion between the Executive Branch and the Constitutional Judge, who progressively deprived popular representation of absolutely all its powers and functions through an endless series of judicial excesses that no one could control,⁵¹ many of which

Fondo Editorial 2005, Colegio de Abogados de Arequipa, Arequipa, septiembre 2005, pp. 463-489; and in *Revista de Derecho Público*, N° 105, Editorial Jurídica Venezolana, Caracas 2006, pp. 7-27.

⁴⁹ See on the illegitimate constitutional mutation by the Judge: Néstor Pedro Sagües, *La interpretación judicial de la Constitución*, Buenos Aires 2006, pp. 56-59, 80-81, 165 ff.

⁵⁰ In addition to those published in the *Revista de Derecho Público*, Editorial Jurídica Venezolana, Caracas, all my studies on the rulings handed down by the Constitutional Chamber in Venezuela, can be found in the following books: Allan R. Brewer-Carías, *Golpe de Estado y proceso constituyente en Venezuela*, Universidad Nacional Autónoma de México, México 2002, 405 pp.; *La Sala Constitucional versus el Estado democrático de derecho. El secuestro del poder electoral y de la Sala Electoral del Tribunal Supremo y la confiscación del derecho a la participación política*, Los Libros de El Nacional, Colección Ares, Caracas 2004, 172 pp.; *Crónica sobre la “In” Justicia Constitucional. La Sala Constitucional y el autoritarismo en Venezuela*, Caracas 2007; *Práctica y distorsión de la Justicia Constitucional en Venezuela (2008-2012)*, Colección Justicia N° 3, Acceso a la Justicia, Academia de Ciencias Políticas y Sociales, Universidad Metropolitana, Editorial Jurídica Venezolana, Caracas 2012, 520 pp.; *El golpe a la democracia dado por la Sala Constitucional (De cómo la Sala Constitucional del Tribunal Supremo de Justicia de Venezuela impuso un gobierno sin legitimidad democrática, revocó mandatos populares de diputada y alcaldes, impidió el derecho a ser electo, restringió el derecho a manifestar, y eliminó el derecho a la participación política, todo en contra de la Constitución)*, Colección Estudios Políticos N° 8, Editorial Jurídica venezolana, Caracas 2014, 354 pp.; segunda edición, (Con prólogo de Francisco Fernández Segado), 2015, 426 pp.; *La patología de la Justicia Constitucional*, Tercera edición ampliada, Fundación de Derecho Público, Editorial Jurídica Venezolana, 2014, 666 pp.; *Estado totalitario y desprecio a la ley. La desconstitucionalización, desjuridificación, desjudicialización y desdemocratización de Venezuela*, Fundación de Derecho Público, Editorial Jurídica Venezolana, 2014, 532 pp.; segunda edición, (Con prólogo de José Ignacio Hernández), Caracas 2015, 542 pp.; *La ruina de la democracia. Algunas consecuencias. Venezuela 2015*, (Prólogo de Asdrúbal Aguiar), Colección Estudios Políticos, N° 12, Editorial Jurídica Venezolana, Caracas 2015, 694 pp.; 172. *La dictadura judicial y la perversión del Estado de derecho. El juez constitucional y la destrucción de la democracia en Venezuela* (Prólogo de Santiago Muñoz Machado), Ediciones El Cronista, Fundación Alfonso Martín Escudero, Editorial IUSTEL, Madrid 2017, 608 pp.; *La consolidación de la tiranía judicial. El Juez Constitucional controlado por el Poder Ejecutivo, asumiendo el poder absoluto*, Colección Estudios Políticos, N° 15, Editorial Jurídica Venezolana International. Caracas / New York, 2017, 238 pp. See also: Carlos M. Ayala Corao y Rafael J. Chavero Gazdik, *El libro negro del TSJ de Venezuela: Del secuestro de la democracia y la usurpación de la soberanía popular a la ruptura del orden constitucional (2015-2017)*, Editorial Jurídica Venezolana, Caracas 2017, 394 pp.; *Memorial de agravios 2016 del Poder Judicial. Una recopilación de más de 100 sentencias del TSJ*, 155 pp., investigación preparada por las ONGs: Acceso a la Justicia, Transparencia Venezuela, Sinergia, espacio público, Provea, IPSS, Invesp, available at: <https://www.scribd.com/document/336888955/Memorial-de-Agravios-del-Poder-Judicial-una-recopi-lacion-de-mas-de-100-sentencias-del-TSJ>; and José Vicente Haro, “Las 111 decisiones inconstitucionales del TSJ ilegítimo desde el 6D-2015 contra la Asamblea Nacional, los partidos políticos, la soberanía popular y los DDHH, in *Buscando el Norte* July 10, 2017, at <http://josevicenteharogarcia.blogspot.com/2016/10/las-33-decisiones-del-tsj.html>.

⁵¹ See Allan R. Brewer-Carías, “*Quis Custodiet Ipsos Custodes: De la interpretación constitucional a la inconstitucionalidad de la interpretación*”, in *Revista de Derecho Público*, No 105, Editorial Jurídica Venezolana, Caracas 2006, pp. 7-27.

were carried out acting *ex officio*, violating the most important principles and elements of due process.⁵²

The degradation of the Constitutional Justice manifested itself in extremis from 2016,⁵³ when the Constitutional Chamber of the Supreme Tribunal issued more than a hundred rulings declaring the unconstitutionality of all the laws sanctioned by the said 2015 National Assembly until 2019;⁵⁴ proceeded to “reform” the Internal Debates Regulations of the Assembly, subjecting the legislating function of the National Assembly to obtaining prior approval from the Executive Power;⁵⁵ stripped the functions of political control of the National Assembly over the government and the Public Administration, and imposed the prior approval of the Executive Vice President so that the Assembly could question a Minister, with questions that could only be formulated in writing;⁵⁶ it eliminated the possibility for the Assembly to disapprove the states of exception that were decreed, and the possibility for approval of votes of no confidence regarding the Ministers;⁵⁷ resolved that

⁵² See Allan R. Brewer-Carías, “The Unconstitutional *Ex Officio* Judicial Review Rulings Issued by the Constitutional Chamber of the Supreme Tribunal of Venezuela Annulling all the 2019 National Assembly Decisions Sanctioned within the framework of the 2019 Transition Regime Towards Democracy and for the Restoration of the enforcement of the Constitution,” in the book of the *VII Congreso de Derecho Procesal Constitucional 2021*, Universidad Monteávil, Caracas February 2021.

⁵³ See on the process of degradation of constitutional justice during the last 20 years: Allan R. Brewer-Carías, *La ruina de la democracia. Algunas consecuencias. Venezuela 2015*, (Prólogo de Asdrúbal Aguiar), Colección Estudios Políticos, No. 12, Editorial Jurídica Venezolana, Caracas 2015; *La mentira como política de Estado. Crónica de una crisis política permanente. Venezuela 1999-2015*, Colección Estudios Políticos, No. 10, Editorial Jurídica Venezolana, Caracas 2015; *Estado totalitario y desprecio a la ley. La desconstitucionalización, desjuridificación, desjudicialización y desdemocratización de Venezuela*, Fundación de Derecho Público, Editorial Jurídica Venezolana, 2014, segunda edición, Caracas 2015; *La patología de la justicia constitucional*, Tercera edición ampliada, Fundación de Derecho Público, Editorial Jurídica Venezolana, 2014; *El golpe a la democracia dado por la Sala Constitucional (De cómo la Sala Constitucional del Tribunal Supremo de Justicia de Venezuela impuso un gobierno sin legitimidad democrática, revocó mandatos populares de diputada y alcaldes, impidió el derecho a ser electo, restringió el derecho a manifestar, y eliminó el derecho a la participación política, todo en contra de la Constitución)*, Colección Estudios Políticos No. 8, Editorial Jurídica venezolana, Caracas 2014, 354 pp.; segunda edición, (Con prólogo de Francisco Fernández Segado), 2015; *Práctica y distorsión de la justicia constitucional en Venezuela (2008-2012)*, Colección Justicia No. 3, Acceso a la Justicia, Academia de Ciencias Políticas y Sociales, Universidad Metropolitana, Editorial Jurídica Venezolana, Caracas 2012; *Crónica sobre la “in” justicia constitucional. La Sala Constitucional y el autoritarismo en Venezuela*, Colección Instituto de Derecho Público, Universidad Central de Venezuela, No. 2, Caracas 2007.

⁵⁴ See the comments in Allan R. Brewer-Carías, “La aniquilación definitiva de la potestad de legislar de la Asamblea Nacional: el caso de la declaratoria de inconstitucionalidad de la Ley de reforma de la Ley Orgánica del Tribunal Supremo de Justicia,” 16 de mayo de 2016, available at <http://www.allanbrewer-carrias.com/Content/449725d9-f1cb-474b-8ab2-41efb849fea3/Content/Brewer.%20Aniquilaci%C3%B3n%20de%20la%20Asamblea%20Nacional.%20Inconstituc.%20Ley%20TSJ%2015-5-2016.pdf>.

⁵⁵ See the comments in Allan R. Brewer-Carías, “El fin del Poder Legislativo: La regulación por el Juez Constitucional del régimen interior y de debates de la Asamblea Nacional, y la sujeción de la función legislativa de la Asamblea a la aprobación previa por parte del Poder Ejecutivo,” in *Revista de Derecho Público*, Nº 145-146, (enero-junio 2015), Editorial Jurídica Venezolana, Caracas 2016, pp. 428-443.

⁵⁶ See the comments in Allan R. Brewer-Carías, “Comentarios al decreto Nº 2.309 de 2 de mayo de 2016: La inconstitucional “restricción” impuesta por el Presidente de la República, respecto de su potestad de la Asamblea Nacional de aprobar votos de censura contra los Ministros,” in *Revista de Derecho Público*, Nº 145-146, (enero-junio 2016), Editorial Jurídica Venezolana, Caracas 2016, pp. 120-129.

⁵⁷ See the comments in Allan R. Brewer-Carías, “El ataque de la Sala Constitucional contra la Asamblea Nacional y su necesaria e ineludible reacción. De cómo la Sala Constitucional del Tribunal Supremo pretendió privar a la Asamblea Nacional de sus poderes constitucionales para controlar sus propios actos,

the President of the Republic presented his annual report, not before the National Assembly as constitutionally required, but before the Constitutional Chamber itself; and eliminated the legislative function in budget matters, converting the Budget Law that the Constitution regulates into an unconstitutional executive decree presented not before the Assembly, but in an unusual manner before the Constitutional Chamber himself.

The Constitucional Chamber, in addition, stripped the power of the National Assembly to even issue political opinions through Resolutions, annulling those it adopted; it further eliminated the power of the National Assembly to review its own acts and revoke them, as in the case of the flawed election of the Justices of the Supreme Court carried out in December 2015; and last, it also eliminated the power to legislate from the National Assembly regarding an unconstitutional and permanent state of emergency that has lasted several years, starting even before the Pandemic.⁵⁸

In other words, the Legislative Power vested in the National Assembly was totally neutralized and emptied of powers and functions, to the point that through a 2017 ruling, based on an alleged contempt of a decision of the Electoral Chamber of December 2015 to suspend the proclamation of four representatives from the State of Amazonas already proclaimed, the same Constitutional Chamber of the Supreme Court went to the extreme of ordering the definitive cessation, *de facto*, of the National Assembly in the fulfillment of its constitutional functions as a body that integrates the representatives of the people, proceeding to annul, "all past and future actions of the National Assembly and of any body or individual against what was decided as null and void and devoid of all legal validity and effectiveness,"⁵⁹ even threatening to prosecute the representatives of the Assembly for contempt, revoke their popular mandate and imprison them.

All this constitutional chaos has been no other than a continuous *coup d'état* by the Constitutional Judge, reaching a high in March 2017, with the adoption by the Constitutional Chamber of two embarrassing rulings,⁶⁰ through which it usurped as Constitutional Judge *all*

y reducir inconstitucionalmente sus potestades de control político sobre el gobierno y la administración pública; y la reacción de la Asamblea Nacional contra a la sentencia N° 9 de 1-3-2016, *available at* [http://www.allanbrewercarias.com/Content/449725d9-f1cb-474b-8ab2-41efb849fea3/Content/Brewer . %20The%20attack%20Sala%20Constitutional%20v.%20Asamblea%20Nacional.%20Sent-o.%209%201-3-2016\).pdf](http://www.allanbrewercarias.com/Content/449725d9-f1cb-474b-8ab2-41efb849fea3/Content/Brewer%20The%20attack%20Sala%20Constitutional%20v.%20Asamblea%20Nacional.%20Sent-o.%209%201-3-2016).pdf); and "Nuevo golpe contra la representación popular: la usurpación definitiva de la función de legislar por el Ejecutivo Nacional y la suspensión de los remanentes poderes de control de la Asamblea con motivo de la declaratoria del estado de excepción y emergencia económica," in *Revista de Derecho Público*, N° 145-146, (enero-junio 2016), Editorial Jurídica Venezolana, Caracas 2016, pp. 444-468.

⁵⁸ See the study regarding these rulings in Allan R. Brewer-Carías, *Dictadura judicial y perversion del Estado de Derecho*, Segunda Edición, (Presentaciones de Asdrúbal Aguiar, José Ignacio Hernández y Jesús María Alvarado), N° 13, Editorial Jurídica Venezolana International, 2016; Spanish edition: Editorial IUSTEL, Madrid 2017.

⁵⁹ Ruling No. 2 of January 11, 2017. *See at* <http://historico.tsj.gob.ve/decisiones/scon/enero/194891-02-11117-2017-17-0001.HTML> That decision was ratified by other rulings No 3 of January 11, 2017 (<http://historico.tsj.gob.ve/decisiones/scon/enero/194892-03-11117-2017-17-0002.HTML>), and No 7 of January 26, 2017. (*See* historico.tsj.gob.ve/decisiones/scon/enero/195578-07-26117-2017-17-0010.HTML).

⁶⁰ *See* judgment No. 155 of March 27, 2017, *at* <http://historico.tsj.gob.ve/decisiones/scon/marzo/197285-155-28317-2017-17-0323.HTML>. *See* the comments on that judgment in Allan. Brewer-Carías: "La consolidación de la dictadura judicial: la Sala Constitucional, en un juicio sin proceso, usurpó todos los poderes del Estado, decretó inconstitucionalmente un estado de excepción y eliminó la inmunidad parlamentaria (sentencia no. 156 de la Sala Constitucional), 29 de Marzo de 2017, *at*

the powers of the State, ordering the President to exercise certain functions in matters of international relations, unconstitutionally decreeing a state of emergency, eliminating parliamentary immunity, fully assuming all parliamentary powers of the National Assembly and delegating legislative powers -that it does not have-, without limits, to the President, further ordering him to reform laws and Codes at his discretion, and among them the Criminal Code and the Organic Code of Criminal Procedure.

The global scandal was such that the Secretary General of the Organization of American States, Mr. Luis Almagro, said that "stripping parliamentary immunities from the deputies of the National Assembly and assuming the Legislative Power in a completely unconstitutional manner are the last blows with which the regime subverts the constitutional order of the country and ends democracy,"⁶¹ all of which led to the OAS Assembly to apply the Inter-American Democratic Chart to Venezuela.⁶²

This entire process by which the Constitutional Judge neutralized the National Assembly through a continued *coup d'état* in collusion with the Executive Power, consolidated a

<http://diarioconstitucional.cl/noticias/actualidad-internacional/2017/03/31/opinion-acerca-de-la-usurpacion-de-funciones-por-el-tribunal-supremo-de-venezuela-and-the-consolidation-of-a-judicial-dictatorship/> . See ruling No. 156 of March 29, 2017 at <http://historico.tsj.gob.ve/decisiones/scon/marzo/197364-156-29317-2017-17-0325.HTML> . See the comments on that judgment in Allan R. Brewer-Carías: El reparto de despojos: la usurpación definitiva de las funciones de la Asamblea Nacional por la Sala Constitucional del Tribunal Supremo de Justicia al asumir el poder absoluto del Estado (sentencia no. 156 de la Sala Constitucional), 30 de marzo de 2017, at <http://diarioconstitucional.cl/noticias/actualidad-internacional/2017/03/31/opinion-acerca-de-la-usurpacion-de-funciones-por-el-tribunal-supremo-de-venezuela-and-the-consolidation-of-a-judicial-dictatorship/>.

⁶¹ See: "Almagro denuncia auto-golpe de Estado del gobierno contra Asamblea Nacional," *El Nacional*, 30 de marzo de 2017", at http://www.el-nacional.com/noticias/mundo/almagro-denuncia-auto-golpe-estado-del-government-against-national-assembly_88094. See the unusual statement on the subject by the former Attorney General of the Republic, who was then responsible for all political persecution in the country: "Fiscal General de Venezuela, Luisa Ortega Díaz, dice que sentencias del Tribunal Supremo sobre la Asamblea Nacional violan el orden constitucional," in RedacciónBBC Mundo, *BBC Mundo*, March 31, 2017, at <http://www.bbc.com/mundo/noticias-america-latina-39459905> See the video of the event at <https://www.youtube.com/watch?v=GohPIrveXFE>.

⁶² The most serious aspect of this chaos was that at the request of the Executive Power, the Council for the Defense of the Nation, "exhorted" the Supreme Court of Justice to openly commit the illegality of "reviewing decisions 155 and 156 (See "National Defense Council urges the TSJ to review rulings 155 and 156, MonitorProDaVinci, April 1, 2017, at <http://prodavinci.com/2017/04/01/actualidad/consejo-de-defensa-national-urges-the-tsj-to-review-sentences-155-and-156-monitorprodavinci/>). This is something a judge can never do, in any part of the world, except in Venezuela, where he did the next day, April 1, 2017, reforming and partially revoking said rulings through judgments Nos. 157 and 158, all in violation of the most basic principles of due process. See at <http://historico.tsj.gob.ve/decisiones/scon/abril/197399-157-1417-2017-17-0323.HTML> . See the comments on this rulings in Allan R. Brewer-Carías, "The new farce of the controlled Constitutional Judge : the unconstitutional and false "correction" of the usurpation of legislative functions by the Constitutional Chamber of the Supreme Court (sentences No. 157 and 158 of April 1, 2017), New York April 4, 2017, at <http://allanbrewercarias.net/site/wp-content/uploads/2017/04/151.-doc.-Brewer-Nueva-farsa-del-Juez-Constitucional.-Falsa-correcci%C3%B3n.-Sentencias-Sala-Constit.-157-y-158-.4-4-2017.pdf>: See at <http://Historico.Tsj.Gob.Ve/Decisiones/Scon/Abрил/197400-158-1417-2017-17-0325.Html> Also in Allan R. Brewer-Carías, "La nueva farsa del Juez Constitucional controlado: la inconstitucional y falsa "corrección" de la usurpación de funciones legislativas por parte de la Sala Constitucional del Tribunal Supremo (sentencias Nos. 157 y 158 de 1 de abril de 2017), New York 4 de abril, 2017, at http://allanbrewercarias.net/site/wp-content/uploads/2017/04/151.-doc.-Brewer-New-farce-of-Constitutional-Judge.-False-correction%C3%B3n.-Sentences-Sala-Constit.-157-__y-158-.4-4-2017.pdf.

“judicial dictatorship,” and as a result, since then, of the five branches of government that make up the separation of powers in Venezuela (Executive, Legislative, Judicial, Citizen and Electoral), not only the National Assembly, but also the rest of the Public Powers have all remained dependent on the Executive, abandoning their powers of control.

This has happened with the silent approval of the other authorities that should intervene to halt this kind of situations. The Comptroller General exercises no control whatsoever, resulting in the first place in the corruption index in the world for the country,⁶³ whereas he is known only because of his political disqualification of opposition candidates to prevent their participation in elections. The Ombudsman, on the other hand, has never protected human rights, which have been violated with impunity, as results from the Reports of the High Commissioners of Human Rights, and the investigation carried out by the International Criminal Court.⁶⁴ The Prosecutor General's, rather than being a good faith party in all proceedings to guarantee the Constitution, has been the main mechanism to secure impunity in the country, particularly for crimes committed by public officers, and to secure prosecution of all political dissent.⁶⁵ As for the Electoral Body, vested in the National Electoral Council, it has ended up being a kind of "electoral agency" of the government itself, made up of militants from the official party or, as denounced by the Secretary General of the Organization of American States, by "activist party politicians [who] held positions within the national government,"⁶⁶ in open violation of the Constitution, having ceased to be the independent arbitrator in any election.⁶⁷ All this aggravated by the election of its members by

⁶³ See the Report of the German NGO, *Transparency International of 2013*, in the report: "They assure that Venezuela is the most corrupt country in Latin America," in *El Universal*, Caracas December 3, 2013, at <http://www.eluniversal.com/nacional-y-politica/131203/aseguran-que-venezuela-es-el-pais-más-corrupto-de-latinoamerica>. Also see the report on BBC Mundo, "Transparency International: Venezuela and Haiti, the most corrupt in Latin America," December 3, 2013, at http://www.bbc.co.uk/mundo/ultimas_noticias/2013/12/131203_ultnot_transparencia_corrupcion_lp.shtml. See in this regard, Román José Duque Corredor, "Corrupción y democracia en América Latina. Casos emblemáticos de corrupción en Venezuela," in *Revista Electrónica de Derecho Administrativo*, Monteávila University, 2014.

⁶⁴ See Allan R. Brewer-Carías y Asdrúbal Aguiar (editores), *Venezuela. Informes sobre violaciones grave de derechos humanos*, Iniciativa Democrática España América, Editorial Jurídica Venezolana, Miami 2019, 160 pp.

⁶⁵ As highlighted in the Report of the International Commission of Jurists on *Fortalecimiento del Estado de Derecho en Venezuela*, published in Geneva in March 2014, the "Public Ministry without guarantees of independence and impartiality from other public powers and political actors," leaving the prosecutors "vulnerable to external pressures and subject to superior orders." See at <http://icj.wpengine.netdna-cdn.com/wp-content/uploads/2014/06/VENEZUELA-Informe-A4-elec.pdf>

⁶⁶ See the statement of the OAS Secretary General of May 30, 2016 with the *Report on the situation in Venezuela in relation to compliance with the Inter-American Democratic Charter*, p. 88. Available at oas.org/documents/spa/press/OSG-243.es.pdf.

⁶⁷ For example, in Allan R. Brewer-Carías and José Ignacio Hernández, *Venezuela. La ilegítima e inconstitucional convocatoria de las elecciones parlamentarias en 2020*, (Iniciativa Democrática de España y las Américas, Editorial Jurídica Venezolana International, 2020, 274 pp.

the Constitutional Judge, seizing the powers of the National Assembly,⁶⁸ as has happened since 2004 and lastly in 2020.⁶⁹

V. THE VOIDING OF THE PRINCIPLE OF THE STATE OF JUSTICE, LEGALITY AND SUBMISSION TO LAW: GENERALIZED DELEGALIZATION OR DEJUDICIALIZATION

All this submission of the Judiciary to the political control of the National Executive, and the use of the Constitutional Judge by the latter as an instrument of authoritarianism, product of the concentration of power, caused another catastrophic consequence in the distortion of the rule of law, which has been the *delegalization* or *dejudicialization* of the State and the entire country, as the citizen's right to judicially control the actions of public officials has been totally cancelled.

Since 2000 the Justices of the Supreme Tribunal and of its Constitutional Chamber have been progressively appointed among people fully committed to the official party, having publicly stated that their mission, rather than providing justice, is to contribute to the implementation of the socialist government policy.⁷⁰ Said controlled Supreme Tribunal is responsible for the appointment of the members of the Judiciary, made up by only provisional and temporary judges, totally dependent and politically controlled. Hence, in general, judges in Venezuela are not capable and cannot really deliver fair justice, particularly if they affect in some way some government policy or some public officer; knowing, as they do, that a decision of this type would mean their immediate dismissal. This has occurred many times in recent years, in some cases even with the imprisonment of judges who dared to issue a rulings that did not please the government.

It must be noted that since 1999, when judges started to be dismissed in large numbers and without guarantees of due process,⁷¹ public competitions for the election of new judges have never been held, as provided for in the new Constitution establishing that they are due to enter a judicial career that, therefore, does not exist materially.⁷² The result has been that

⁶⁸ See Allan R. Brewer-Carías, “El secuestro del Poder Electoral y la confiscación del derecho a la participación política mediante el referendo revocatorio presidencial: Venezuela 2000–2004,” in *Boletín Mexicano de Derecho Comparado*, Instituto de Investigaciones Jurídicas, Universidad Nacional Autónoma de México, N° 112. México, enero–abril 2005 pp. 11–73; *La Sala Constitucional versus el Estado Democrático de Derecho. El secuestro del poder electoral y de la Sala Electoral del Tribunal Supremo y la confiscación del derecho a la participación política*, Los Libros de El Nacional, Colección Are, Caracas, 2004, 172 pp.

⁶⁹ See Allan R. Brewer-Carías, “El secuestro del Poder Electoral y la confiscación del derecho a la participación política mediante el referendo revocatorio presidencial: Venezuela 2000-2004”, in Juan Pérez Royo, Joaquín Pablo Urías Martínez, Manuel Carrasco Durán, Editores), *Derecho Constitucional para el Siglo XXI. Actas del Congreso Iberoamericano de Derecho Constitucional*, Tomo I, Thomson-Aranzadi, Madrid 2006, pp. 1081-1126.

⁷⁰ See the Order Speech of Judge Deyanira Nieves Bastidas, Opening of the Judicial Year 2014, at <http://www.tsj.gov.ve/informacion/miscelaneas/DiscursoDeOrdenAper-tura2014DeyaniraNieves.pdf>.

⁷¹ See my dissenting vote on the intervention of the Judiciary by the National Constituent Assembly in Allan R. Brewer-Carías, *Debate Constituyente, (Aportes a la Asamblea Nacional Constituyente)*, Tomo I, (8 agosto-8 septiembre), Caracas 1999; and the criticisms formulated to that process in Allan R. Brewer-Carías, *Golpe de Estado y proceso constituyente en Venezuela*, Universidad Nacional Autónoma de México, Mexico, 2002.

⁷² As highlighted by the same International Commission of Jurists, in a *March 2014 Report*, which summarizes everything that has been denounced in the country on the matter, by giving an account of the lack of independence of justice in Venezuela, whereas it is highlighted that “the Judiciary has been

the Judiciary is filled with judges of temporary and provisional character,⁷³ with no guarantee of stability, with their dismissal at the discretion of an *ad hoc Commission* of the Supreme Tribunal of Justice; all of this with the endorsement of the Constitutional Judge.⁷⁴

The result of this process has been the tragic dependency of the Judicial Power -as a whole- to the designs and political control of the Executive Branch,⁷⁵ ending up at the service of the authoritarian State, with the principles of judicial independence, legality and justiciability inserted in the Constitution remaining a mere formal declaration not to be fulfilled.

This has ultimately led to the *unjusticiability* of the State, being unimaginable to have, for example, the Contentious-Administrative Jurisdiction in Venezuela upholding citizens rights and prosecuting the Public Administration and its officers as it should; as well as the protection of human rights violations by *amparo* proceedings is just dead letter within the totalitarian State.

The most serious set-back to legality has been the dependence of the Constitutional Chamber of the Supreme Tribunal to the Executive Branch, which through binding constitutional interpretations has mutated at large the Constitution. In fact, at the discretion of the Executive, for example, it has centralized powers that were assigned exclusively to the States of the Federation;⁷⁶ eliminated the principle of republican alterability giving way to

integrated from the Supreme Tribunal of Justice (TSJ) with predominantly political criteria in its designation. Most of the judges are “provisional” and vulnerable to external political pressure, since they are freely appointed and discretionally removed by a Judicial Commission of the Supreme Court itself, which, in turn, has a marked partisan tendency.” See at <http://icj.wpengine.netdna-cdn.com/wp-content/uploads/2014/06/VENEZUELA-Informe-A4-elec.pdf>.

⁷³ In the 2003 *Special Report* by the Commission on Venezuela, it also stated that “an aspect linked to the autonomy and independence of the Judiciary is that relating to the provisional nature of judges in the Venezuelan judicial system. Currently, the information provided by different sources indicates that more than 80% of Venezuelan judges are “provisional.” *Report on the Situation of Human Rights in Venezuela 2003*, para. 161. See Allan R. Brewer-Carías and Asdrúbal Aguiar (Editores), *Informe sobre la Situación de los Derechos Humanos en Venezuela 2003*, párr. 161. See in Allan R. Brewer-Carías y Asdrúbal Aguiar (Editores), *Venezuela. Informes sobre violaciones grave de derechos humanos*, Iniciativa Democrática España América, Editorial Jurídica Venezolana, Miami 2019, 160 pp.

⁷⁴ This was expressly resolved by the Constitutional Chamber through judgment No. 516 of May 7, 2013, on the continuation of the operation of said Commission with the “right” to remove judges without any guarantee of due process. Available at: <https://www.tsj.gov.ve/decisiones/scon/Mayo/516-7513-2013-09-1038.html>.

⁷⁵ See Allan R. Brewer -Carías, “La progresiva y sistemática demolición de la autonomía en independencia del Poder Judicial en Venezuela (1999-2004)”, in *XXX Jornadas J.M. Domínguez Escovar, Estado de derecho, Administración de justicia y derechos humanos*, Instituto de Estudios Jurídicos del Estado Lara, Barquisimeto, 2005, pp. 33-174; and “La justicia sometida al poder [La ausencia de independencia y autonomía de los jueces en Venezuela por la interminable emergencia del Poder Judicial (1999-2006)]” in *Cuestiones Internacionales. Anuario Jurídico Villanueva 2007*, Centro Universitario Villanueva, Marcial Pons, Madrid, 2007, pp. 25-57; “La demolición de las instituciones judiciales y la destrucción de la democracia: La experiencia venezolana,” in *Instituciones Judiciales y Democracia. Reflexiones con ocasión del Bicentenario de la Independencia y del Centenario del Acto Legislativo 3 de 1910*, Consejo de Estado, Sala de Consulta y Servicio Civil, Bogotá 2012, pp. 230-254.

⁷⁶ See Allan R. Brewer-Carías, “La Ilegítima mutación de la Constitución y la Legitimidad de la Jurisdicción Constitucional: La “Reforma” de la forma federal del Estado en Venezuela mediante interpretación constitucional,” in *Anuario No. 4, Diciembre 2010*, Instituto de Investigaciones Jurídicas, Facultad de Jurisprudencia y Ciencias Sociales, Universidad Dr. José Matías Delgado de El Salvador, El Salvador 2010, pp. 111-143.

indefinite re-election;⁷⁷ ensured financing of the electoral activities of the official party;⁷⁸ prevented the revocatory referendum of the President of the Republic mandate, transforming it into a ratification referendum;⁷⁹ expanded the powers of the Constitutional Jurisdiction, as for example occurred in the matter of an abstract interpretation of the Constitution;⁸⁰ and even secured the absurd and unconventional "constitutionality control" of the Inter-American Court of Human Rights judgments, declaring them "unenforceable" in Venezuela.⁸¹

Through this *à la carte* constitutional interpretation the Constitutional Chamber has also amended laws, as was the case of the amparo proceeding⁸² of the tax regulations in matters of income tax;⁸³ as well as the law on elections, that was expressed before, and all this, almost always at the initiative of the Attorney General.

With a Constitution that is malleable in this way, it is difficult to imagine a State of justice, unless it is one of justice only given to the measure of the State itself.

This, as I said before, has particularly affected the Contentious-Administrative Jurisdiction, which in the last twenty years ceased to be an effective system for judicial control of the legality and legitimacy of the actions of the Public Administration, beginning its degradation when, after of a precautionary measure issued in 2003 by the First Court of Contentious-Administrative suspending the hiring of Cuban doctors to give preference to

⁷⁷ See Allan R. Brewer-Carías, "El Juez Constitucional vs. La alternabilidad republicana (La reelección continua e indefinida), in *Revista de Derecho Público*, No. 117, (enero-marzo 2009), Caracas, pp. 205-211.

⁷⁸ See Allan R. Brewer-Carías, "El juez constitucional como constituyente: el caso del financiamiento de las campañas electorales de los partidos políticos in Venezuela," in *Revista de Derecho Público*, No. 117, (enero-marzo 2009), Editorial Jurídica Venezolana, Caracas 2009, pp. 195-203.

⁷⁹ See Allan R. Brewer-Carías, "El secuestro del Poder Electoral y la confiscación del derecho a la participación política mediante el referendo revocatorio presidencial: Venezuela 2000-2004", in Juan Pérez Royo, Joaquín Pablo Urías Martínez, Manuel Carrasco Durán, Editores), *Derecho Constitucional para el Siglo XXI. Actas del Congreso Iberoamericano de Derecho Constitucional*, Tomo I, Thomson-Aranzadi, Madrid 2006, pp. 1081-1126.

⁸⁰ See Luis A. Herrera Orellana, "El recurso de interpretación de la Constitución: reflexiones críticas desde la argumentación jurídica y la teoría del discurso," in *Revista de Derecho Público*, N° 113, Editorial Jurídica Venezolana, Caracas 2008, pp. 7-29.

⁸¹ See Allan R. Brewer-Carías, "La interrelación entre los Tribunales Constitucionales de América Latina y la Corte Interamericana de Derechos Humanos, y la cuestión de la inejecutabilidad de sus decisiones en Venezuela," in Armin von Bogdandy, Flavia Piovesan y Mariela Morales Antonorzi (Coodinadores), *Direitos Humanos, Democracia e Integracao Jurídica na América do Sul*, Lumen Juris Editora, Rio de Janeiro 2010, pp. 661-701.

⁸² See Allan R. Brewer-Carías, "El juez constitucional como legislador positivo y la inconstitucional reforma de la Ley Orgánica de Amparo mediante sentencias interpretativas," in Eduardo Ferrer Mac-Gregor y Arturo Zaldívar Lelo de Larrea (Coordinadores), *La ciencia del derecho procesal constitucional. Estudios en homenaje a Héctor Fix-Zamudio en sus cincuenta años como investigador del derecho*, Instituto de Investigaciones Jurídicas, Universidad Nacional Autónoma de México, México 2008, Tomo V, pp. 63-80. Published in *Crónica sobre la "In" Justicia Constitucional. La Sala Constitucional y el autoritarismo en Venezuela*, Colección Instituto de Derecho Público. Universidad Central de Venezuela, Caracas 2007, pp. 545-563.

⁸³ See Allan R. Brewer-Carías, "De cómo la Jurisdicción constitucional en Venezuela, no sólo legisla de oficio, sino subrepticamente modifica las reformas legales que "sanciona", a espaldas de las partes en el proceso: el caso de la aclaratoria de la sentencia de Reforma de la Ley de Impuesto sobre la Renta de 2007, *Revista de Derecho Público*, N° 114, Editorial Jurídica Venezolana, Caracas 2008, pp. 267-276.

Venezuelan doctors,⁸⁴ the Executive, using the Constitutional Chamber of the Supreme Tribunal, hijacked the jurisdiction of said First Court and dismissed its Magistrates,⁸⁵ even closing the Court for more than ten months. The consequence has been that the contentious-administrative courts stopped applying administrative law, to control the Public Administration and to protect citizens against administrative action.⁸⁶

This situation has led to the fact that instead of being a State of Justice, what actually exists in Venezuela is a State of injustice, where justice simply does not work to judge and punish those who violate the law. Impunity reigns and is absolute, for example, with respect to predators of public assets, leaving the Office of the Comptroller General of the Republic, as stated, only to investigate opposition leaders to politically disqualify them.⁸⁷

Impunity is also the sign of injustice in terms of common crimes, in a country like Venezuela that has the world record for violence, kidnappings and street crimes,⁸⁸ being considered the most insecure country in the world since 2014,⁸⁹ with Caracas, the capital, as

⁸⁴ On this case, see the comments of 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*, N° 93-96, Editorial Jurídica Venezolana, Caracas, 2003, pp. 5 ff.

⁸⁵ The Judges of the First Court, dismissed in violation of their rights and guarantees, sued the State for violation of their judicial guarantees provided for in the Inter-American Convention on Human Rights, and the Inter-American Court of Human Rights condemned the State for said violations in a judgment dated August 5, 2008, (Case of *Apitz Barbera et al.* (“*First Court of Administrative Litigation*”) vs. *Venezuela*). See at <http://www.corteidh.or.cr/> Preliminary Objection, Merits, Reparations and Costs, Series C No. 182. Faced with this, however, the Constitutional Chamber of the Supreme Court of Justice in judgment No. 1,939 of 18 December 2008 (*Gustavo Álvarez Arias et al. Case*), declared said decision of the Inter-American Court unenforceable. See at <http://www.tsj.gov.ve/decisiones/scon/Diciembre/1939-181208-2008-08-1572.html>.

⁸⁶ See Antonio Canova González, *La realidad del contencioso administrativo venezolano (Un llamado de atención frente a las desoladoras estadísticas de la Sala Político Administrativa en 2007 y primer semestre de 2008)*, Funeda, Caracas, 2009.

⁸⁷ See, for example, Allan R. Brewer-Carías, “La incompetencia de la Administración Contralora para dictar actos administrativos de inhabilitación política restrictiva del derecho a ser electo y ocupar cargos públicos (La protección del derecho a ser electo por la Corte Interamericana de Derechos Humanos en 2012, y su violación por la Sala Constitucional del Tribunal Supremo al declarar la sentencia de la Corte Interamericana como “inejecutable”), in Alejandro Canónico Sarabia (Coord.), *El Control y la responsabilidad en la Administración Pública, IV Congreso Internacional de Derecho Administrativo, Margarita 2012*, Centro de Adiestramiento Jurídico, Editorial Jurídica Venezolana, Caracas 2012, pp. 293-371.

⁸⁸ See Editorial de *Le Monde*, March 30, 2014, at <http://www.eluniversal.com/nacional-y-politica/140330/le-monde-dedico-un-editorial-a-venezuela>. Since 2013 it reached the figure of 24,773 people murdered. See César Miguel Rondón, “Cada vez menos país,” in *Confirmado*, 8-16-2014, at <http://confirmado.com.ve/opinan/cada-vez-menos-pais/>.

⁸⁹ See the *Gallup Poll report*, “Venezuela fue considerado como el país más inseguro del mundo,” in *Notitarde.com*, Caracas 21 de agosto de 2014”, at <http://www.noti-tarde.com/Pais/Venezuela-was-selected-as-the-most-insecure-country-in-the-world/2014/08/21/347656>.

the most dangerous city on the planet,⁹⁰ where such crimes are not prosecuted and go unpunished.⁹¹

For all these reasons, the Venezuelan State is not a State of justice, since the political practice of the authoritarian government that has taken over the Republic since 1999,⁹² has given rise to a totalitarian State that, in addition to having impoverished the country, is not subject to the law, whose rules are not always fair and most of the time are ignored and despised, or mutated and molded at the discretion of the rulers; and that, furthermore, is not subject to any judicial control, due to the submission of the Judicial Power to the Executive and Legislative Powers.

VI. THE VOIDING OF THE PRINCIPLE OF THE PRIMACY OF HUMAN RIGHTS AND THE DEHUMANIZATION OF THE STATE

To all of the above we must add the unusual process of dehumanization of the State, due to the fact that the very important provisions that enunciate human rights in accordance with the principle of progressivity, have been ignored in Venezuela with an unfortunate process of progressive violation and degradation of human rights aggravated during the last decade. This is why in the latest Reports of the United Nations High Commissioners for Human Rights on the situation of human rights in the country, beginning with the one signed by Michele Bachelet in 2019,⁹³ it has been highlighted what has been called: “patterns of violations that directly and *indirectly affect all human rights: civil, political, economic, social and cultural*” (§ 2). These patterns of conduct against all human rights have worsened in the last five years, to the point that in 2021 the International Criminal Court formally began an investigation for crimes against humanity against Venezuela, its officers and those who

⁹⁰ After San Pedro Sula, Caracas is considered the second most dangerous city in the world. See the information in Sala de Información, Agencia de Comunicaciones Integradas. Información, opinión y análisis., 16-1-2914, at <http://saladeinfo.wordpress.com/2014/01/16/ca-racas-es-la-segunda-ciudad-mas-peligrosa-del-planeta-2/>. See also the information in *El País Internacional*, August 20, 2014, at http://internacional.elpais.com/internacional/2014/08/20/actualidad/1408490113_417749.html.

⁹¹ On the subject of "gangster activity" and impunity, Leandro Area has observed that: "it has become our bread and plan and teacher of every day, due to the malandro's success that is barely reflected in death and desolation in the press that remains and that is on the verge of extinction or because of the countenance that is shown on the face of everyone who is still alive and who must face the hardship of being kidnapped by an imposed reality. But the matter goes further. The legitimized concubinage between political power, common underworld, judicial power, police, armed forces and others, is not a mystery or an open secret. It is a plan turned into permanent action." See Leandro Area, "El 'Estado Misional' en Venezuela," in *Analítica.com*, February 14, 2014, at <http://analitica.com/opinion/opinion-nacional/el-estado-misional-en-venezuela/>.

⁹² 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.

⁹³ See "Report of the United Nations High Commissioner for Human Rights on the situation of human rights in the Bolivarian Republic of Venezuela," July 4, 2019, at https://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session41/Documents/A_HRC_41_18_ENG.docx. The "comments of the State" ("Comments on factual errors of the Report of the United Nations High Commissioner for Human Rights on the situation of human rights in the Bolivarian Republic of Venezuela"), can be consulted at https://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session41/Documents/A_HRC_41_18_Add.1.docx.

govern,. The continuing of such investigation has been formally reiterated in 2023;⁹⁴ all of which is mentioned, for example, in the Report of the High Commissioner of United Nations of July 4, 2023 on the situation of human rights in Venezuela.⁹⁵

This situation has affected -and continues to affect- all the rights declared in the Constitution. To make reference only to the initial Report of Commissioner of 2019, whose findings have not changed but worsened in recent years, in terms of social rights, stating that "there are reasonable grounds to believe that serious violations of economic and social rights, including the rights to food and health, have been committed in Venezuela" (§ 75); adding, for example, about freedom of information, that in recent years: "the Government has tried to *impose a communicational hegemony* by imposing their own version of the facts and creating an environment that *restricts the independent media*" (§ 28).

Regarding political liberties, the Report highlighted how numerous public law enforcement institutions, which have been militarized, have "*allowed the Government to commit numerous violations of human rights* " referring in particular to the fact that: "The authorities have *especially attacked certain people and groups, including members of the political opposition* and those considered to constitute threats to the Government due to their ability to articulate critical positions and mobilize others. This *selective repression manifests itself in a multitude of human rights violations*, which may amount to *politically motivated persecution*" (§ 77). As for the right to demonstrate, the Report found that, in recent years, security forces "*deliberately made excessive use of force, with the aim of instilling fear and discouraging future demonstrations*" (§ 39); and on the right to personal freedom, the Report placed special emphasis on the arbitrary deprivation of liberty of hundreds of people, for political reasons, highlighting that: "the Government has used *arbitrary detentions* as one of *the main instruments to intimidate and repress to political opposition and any expression of dissent, real or presumed, since at least 2014*" (§ 41).

When referring to the right to life, and mentioning the activities of one law enforcement unit, the Report qualifies it as a "death squad" or an "extermination group" (§ 47), being considered by "NGO reports," as those "responsible for hundreds of violent deaths" (§ 47), stating how "*they manipulated the crime scene and the evidence. They would have planted*

⁹⁴ See the information in Florantonia Singer, La Corte Penal Internacional reanuda la investigación sobre las violaciones de derechos humanos en Venezuela. El Gobierno de Nicolás Maduro ha intentado disuadir a la CPI con varios recursos judiciales y asegura que el proceso en su contra está impulsado por Estados Unidos," in *El País*, 27 de junio de 2023, available at: <https://elpais.com/internacional/2023-06-28/the-international-criminal-court-resumes-the-investigation-on-violations-of-human-rights-in-venezuela.html>. See Ali Daniels, "Análisis de la histórica decisión de la CPI de continuar la investigación a Venezuela: una victoria de las víctimas," 27 de junio de 2023, in *Acceso a la Justicia*, available at: <https://accesoalajusticia.org/historical-analysis-decision-cpi-continue-investigation-venezuela-victoria-victims/>.

⁹⁵ See Report of the United Nations High Commissioner for Human Right. A/HRC/ 53/54: Situation of human rights in the Bolivarian Republic of Venezuela - Report of the United Nations High Commissioner for Human Rights, available at: https://view.officeapps.live.com/op/view.aspx?src=https%3A%2F%2Fwww.ohchr.org%2Fsites%2Fdefault%2Ffiles%2Fdocuments%2Fhrbodies%2Fhrcouncil%2Fsessions-regular%2Fsession53%2Fadvance-versions%2FA_HRC_53_54_AdvanceUneditedVersion.docx&wdOrigin=BRO_WSELINK

weapons and drugs and would have fired their weapons against the walls or in the air to insinuate a confrontation and show that the victims would have "resisted authority" (§ 49).

The 2019 Bachelet Report was followed in 2020 by the Report and Conclusions of the independent international fact-finding Mission on the Bolivarian Republic of Venezuela,⁹⁶ whereas the conclusions of said Mission were presented "regarding extrajudicial executions, forced disappearances, arbitrary detentions and torture and other cruel, inhuman or degrading treatment, committed in the country since 2014," showing a picture of *horror*, certainly unimaginable, not only past but present - that *is* occurring -, made up of horror officials, horror police, horror prosecutors, horror judges and horror custodians. The Report summarizes stating that the acts and conducts *described* in the same:

“amount to arbitrary killings, including extrajudicial executions, torture and other cruel, inhuman or degrading treatment or punishment -including sexual and gender-based violence-, forced disappearances (often of short duration) and arbitrary detentions, in violation of national legislation and the international obligations of Venezuela. (par. 151).

To these facts and conducts the *Report* added the crimes of:

“murder, imprisonment and other serious deprivations of physical liberty, torture, rape and other forms of sexual violence, forced disappearance of persons [...] and other inhumane acts of a similar nature that intentionally cause great suffering or serious harm to the body or to mental or physical health”

The Mission considered these to be “crimes against humanity,” and specifically some of them the crime against humanity of persecution, as defined in the Rome Statute (par 161).

In particular, many of these crimes were analyzed in the *detailed Conclusions* of the Report, including those related to *selective political repression* (Chapter III) and “violations in a *context of security or social control* (Chapter IV), that the Mission also considered "may also constitute the crime against humanity of persecution" (par. 2085). Those consisted of:

“an intentional and serious deprivation of the following rights: the right to life, liberty and security of the person, the right not to be subject to cruel, inhuman or degrading treatment or punishment, the right not to be subject to rape and other forms of sexual violence, and the right not to be subject to arbitrary arrest or detention. Taken together, these violations may constitute acts of persecution, but they may also constitute different crimes against humanity” (par. 2085).

The most dramatic aspect of the Report was that the violations and crimes reviewed and analyzed by the *Mission* were part of a *State policy* "to *silence, discourage, and suppress opposition to the Government* of President Maduro, even extending to the people who, through various means, demonstrated their disagreement with the Government or were

⁹⁶ *Report of September 15, 2020, presented to the United Nations Human Rights Council, in compliance with Council resolution 42/25, of September 27, 2019; available at: https://www.ohchr.org/Documents/HRBodies/HRCouncil/FFMV/A_HRC_45_CRP.11_SP.pdf The Report was accompanied by “Detailed Findings of the Independent International Mission to Determine the facts about the Bolivarian Republic of Venezuela (443 pp.).*

perceived as contrary to it, and their family members and friends who were targeted for being associated with them” (par. 160).

When referring to its own responsibilities, the Mission concluded that:

“has reasonable grounds to believe that both the President and the Ministers of Popular Power for Interior Relations, Justice and Peace, and Defense, ordered or contributed to the commission of the crimes documented in this report, and having the effective capacity to do so, they did not adopt preventive and repressive measures” (par. 164).

For all these reasons, two years ago the *International Criminal Court* initiated international criminal proceedings against Venezuela.

The foregoing shows, in fact, that in Venezuela human rights disappeared as an essential and primary value of the State, having produced a total dehumanization of it. To this, the work of the Constitutional Judge, who deconstitutionalized in 2003⁹⁷ the constitutional hierarchy of human rights declared in international treaties, and the guarantee of their direct and immediate application by all judges established in the text of the Constitution, can be added.⁹⁸

Furthermore, later on, in 2011,⁹⁹ the Constitutional Chamber denied the universal value of human rights, proclaiming that a supposedly "absolute and suprahistorical system of principles cannot be placed above the Constitution,"¹⁰⁰ further ignoring the rulings of the Inter-American Court of Human Rights condemning the State for violations of human rights. Specifically, in 2008 the Constitutional Chamber¹⁰¹ had already declared unenforceable in the country the judgment issued by the Inter-American Court of Human Rights that same year, whereas Venezuela had been condemned for violating the rights of due process of the

⁹⁷ Judgment No. 1492 of July 7, 2003. See *Revista de Derecho Público*, No 93-96, Editorial Jurídica Venezolana, Caracas 2003, pp. 136 et seq.

⁹⁸ See Allan R. Brewer-Carías, “La ilegítima mutación de la Constitución por el juez constitucional mediante la eliminación del rango supra constitucional de los tratados internacionales sobre derechos humanos, y el desconocimiento en Venezuela de las sentencias de la Corte Interamericana de Derechos Humanos,” in *Libro Homenaje al Capítulo Venezolano de la Asociación Mundial de Jóvenes Juristas y Estudiantes de Derecho: Recopilación de artículos que desarrollan temas de actualidad jurídica relacionados con el derecho público y el derecho privado*, Asociación Mundial de Jóvenes Juristas y Estudiantes de Derecho, Caracas 2015.

⁹⁹ Judgment No. 1547 (*Case Estado Venezolano vs. Corte Interamericana de Derechos Humanos*) of October 17, 2011. See at <http://www.tsj.gov.ve/decisiones/scon/Octubre/1547-171011-2011-11-1130.html>. See Allan R. Brewer-Carías, “El ilegítimo “control de constitucionalidad” de las sentencias de la Corte Interamericana de Derechos Humanos por parte la Sala Constitucional del Tribunal Supremo de Justicia de Venezuela: el caso de la sentencia *Leopoldo López vs. Venezuela, 2011*,” in *Constitución y democracia: ayer y hoy. Libro homenaje a Antonio Torres del Moral*. Editorial Universitas, Vol. I, Madrid, 2013, p. 1095-1124.

¹⁰⁰ *Idem*. Where reference is made to a previous ruling No. 1309/2001.

¹⁰¹ Judgment No. 1,939 of December 18, 2008 issued in the *Case Abogados Gustavo Álvarez Arias y otros*. See in *Revista de Derecho Público*, No. 116, Editorial Jurídica venezolana, Caracas 2008, pp. 88 ff.

magistrates of the First Court of Contentious Administrative Jurisdiction, who had been removed without judicial guarantees.¹⁰²

Subsequently, along the same lines, the Chamber ruled that the decisions of the Inter-American Court of Human Rights were not immediately applicable in Venezuela, but that "will only be enforced in the country, in accordance with what is established by the Constitution and the laws, as long as they do not contradict what is established in Article 7 of the current Constitution," thus assuming the power to declare unenforceable in the country the rulings of the Inter-American Court, as has happened on several occasions, contrary to the binding nature that those rulings have for the States.¹⁰³

For this purpose, the Constitutional Chamber "invented" accepting, within the framework of her roles as Constitutional Judge, a kind of "judicial review appeal" against the judgments of the Inter-American Court, whereas "the conformity of the judgment of the Inter-American Court of Human Rights with the Constitution" would be weighted; all at the request of the State's own lawyers, who sought to formalize how it failed to comply with the judgment of the Inter-American Court.

With these rulings, the Venezuelan State began the process of disassociating itself from the American Convention on Human Rights, and from the jurisdiction of the Inter-American Court of Human Rights, using its own Supreme Tribunal of Justice, which unfortunately turned out to be the main instrument, for the consolidation of authoritarianism in the country.¹⁰⁴ The conclusion of all this entire process was the formal denunciation of the American Convention on Human Rights by Venezuela on September 6, 2012.¹⁰⁵

¹⁰² The judgment of the Inter-American Court of August 5, 2008 in the case *Apitz Barbera y otros* ("Corte Primera de lo Contencioso Administrativo") vs. *Venezuela*. See Allan R. Brewer-Carías, "La interrelación entre los Tribunales Constitucionales de América Latina y la Corte Interamericana de Derechos Humanos, y la cuestión de la inejecutabilidad de sus decisiones en Venezuela," in Armin von Bogdandy, Flavia Piovesan y Mariela Morales Antonorzi (Coordinadores), *Derechos Humanos, Democracia e Integração Jurídica na América do Sul*, Lumen Juris Editora, Rio de Janeiro 2010, pp. 661-70; and in *Anuario Iberoamericano de Justicia Constitucional*, Centro de Estudios Políticos y Constitucionales, No. 13, Madrid 2009, pp. 99-136.

¹⁰³ As the IACHR itself resolved in the case of *Castillo Petruzzi et al. v. Peru* on September 4, 1998 (Preliminary Objections). See at http://www.corteidh.or.cr/docs/casos/articulos/seriec_41_esp.pdf.

¹⁰⁴ See Allan R. Brewer-Carías, *Crónica sobre la "In" Justicia Constitucional. La Sala Constitucional y el autoritarismo en Venezuela*, Colección Instituto de Derecho Público. Universidad Central de Venezuela, N° 2, Editorial Jurídica Venezolana, Caracas 2007; and "El juez constitucional al servicio del autoritarismo y la ilegítima mutación de la Constitución: el caso de la Sala Constitucional del Tribunal Supremo de Justicia de Venezuela (1999-2009)", in *Revista de Administración Pública*, N° 180, Madrid 2009, pp. 383-418.

¹⁰⁵ See Allan R. Brewer-Carías, "Los efectos de las presiones políticas de los Estados en las decisiones de la Corte Interamericana de Derechos Humanos. Un caso de denegación de justicia internacional y de desprecio al derecho," in *Revista Ars Boni Et Aequi* (año 12 n°2), Universidad Bernardo O'Higgins, Santiago de Chile 2016, pp. 51-86.

VII. THE DISTORTION OF THE PRINCIPLE OF POLITICAL DECENTRALIZATION AND CITIZEN PARTICIPATION: THE CENTRALIZATION, DECONSTITUTIONALIZATION AND DEMUNICIPALIZATION OF THE STATE

In addition to the principle of the limitation of power through its horizontal separation, so that power controls power, as another basis of the democratic rule of law State, the Venezuelan Constitution of 1999 established a system of political decentralization of power (“Federal decentralized State”); distributing it among territorial entities on two levels (States, Municipalities), to enable citizen participation in the management of public affairs, which can only be achieved by bringing power closer to the citizen. Even in the Constitution it was proclaimed that:

“decentralization, as a national policy, must deepen democracy, bringing power closer to the population and creating the best conditions, both for the exercise of democracy and for the effective and efficient provision of state tasks” (art. 158).

However, in practice all of this has turned out to be another broken promise and another big lie. Totally falsifying the purpose of the Constituent Assembly, during the last twenty years a highly centralized State has developed in the country. Political participation - despite the authoritarian discourse of the so-called "participatory democracy" - has been reduced to the exercise of increasingly innocuous suffrage, due to the control of all electoral processes by the regime.

Actually, when referring to the Decentralized Federal State, the Constitution sought to configure - even if somewhat contradictory - ¹⁰⁶ an effective system of decentralization of power, where local entities with effective political, regulatory and administrative autonomy (States, Municipalities) could truly develop their self-government. Nevertheless, when regulating the autonomy of the territorial entities, it was established that the limits to it could not only be established in the Constitution itself, but also in the subsequent national law that was actually enacted. ¹⁰⁷

Along with this, a centralistic approach was given to the constitutional system of distribution of powers among the political-territorial entities. Under the Constitution, States

¹⁰⁶ We warned about this as soon as the Constitution was sanctioned in Allan R. Brewer-Carías, *Federalismo y municipalismo en la Constitución de 1999 (Alcance de una reforma insuficiente y regresiva)*, Cuadernos de la Cátedra Allan R. Brewer-Carías de Derecho Público, N° 7, Universidad Católica del Táchira, Editorial Jurídica Venezolana, Caracas-San Cristóbal 2001; and “El Estado federal descentralizado y la centralización de la federación en Venezuela. Situación y perspectiva de una contradicción constitucional” in *Federalismo y regionalismo*, Coordinadores Diego Valadés y José María Serna de la Garza, Universidad Nacional Autónoma de México, Tribunal Superior de Justicia del Estado de Puebla, Instituto de Investigaciones Jurídicas, Serie Doctrina Jurídica N° 229, Mexico 2005, pp. 717-750.

¹⁰⁷ This led to the enactment of a national law in 2001 to regulate the operation and organization of the Legislative Councils of the States, (art. 162) (*Official Gazette* N° 37,282 of September 13, 2001), in contradiction of the constitutional norm that gives the States the competence to enact their own Constitution to organize their public powers (art. 164.1). The same happened with municipal autonomy, which is no longer only subject to the provisions of the Constitution, but also to the provisions of national law.

lack matters over which to exercise some exclusive jurisdiction (art. 164),¹⁰⁸ as most of their attributions are assigned concurrently with the National or Municipal Power. And as for a competence that had been decentralized in 1993 becoming "exclusive" of the States, -the administration and management of national airports and ports located in each State-, it was centralized or nationalized by the Constitutional Chamber of the Court Supreme Tribunal in 2008, mutating the Constitution for this purpose.¹⁰⁹

Additionally to the emptying of the sphere of attributions of the States by the policy of national centralization, the national Executive Power has developed a policy to totally neutralize their precarious role, through the unconstitutional establishment of national structures parallel to States, in order to secure the emptying of their powers and neutralize the power of State Governors; particularly if they are not members of the official party, and in general to control them indirectly.¹¹⁰

This process of drowning and neutralizing the territorial entities of the Republic, in addition, was particularly acute with respect to the existing entities in the Capital Region, where in 2008, in violation of the Constitution, authorities of the Capital District totally dependent on the Executive Power were created through the Special Law on the Organization and Regime of the Capital District.¹¹¹

On the other hand, regarding the municipalities, the Constitutional Chamber "interpreted" that the "free management of matters within its competence" guaranteed by the Constitution is nothing more than "a conditional freedom, not only because of the limitations

¹⁰⁸ See Allan R. Brewer-Carías, "La distribución territorial de competencias en la Federación venezolana" in *Revista de Estudios de Administración Local. Homenaje a Sebastián Martín Retorillo*, N° 291, enero-abril 2003, Instituto Nacional de Administración Pública, Madrid 2003, pp. 163-200.

¹⁰⁹ See ruling of the Constitutional Chamber, No. 565 of April 15, 2008 (*Procuradora General de la República, recurso de interpretación del artículo 164.10 de la Constitución de 1999*) at <http://www.tsj.gov.ve/decisions/scon/April/565-150408-07-1108.htm>. See the comments on this judgment, in 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, in *Revista de Derecho Público*, N° 114, (abril-junio 2008), Editorial Jurídica Venezolana, Caracas 2008, pp. 247-262.

¹¹⁰ This began with the creation of "Decentralized Bodies of the Strategic Regions of Integral Development (REDI)," headed by national officials called "Regional Authorities," which also have "Dependencies" in each State of the Republic, which are in charge of State Delegations, whose holders, all, are freely appointed by the Vice President of the Republic. Said officials were regulated in the reform of the Organic Law of Public Administration of 2014 with the name of "[national] heads of government" (arts. 34, 41, 44). (See Resolution No. 031 of the Vice Presidency of the Republic, establishing the Structure and Operating Rules of the Decentralized Bodies of the Strategic Regions of Integral Development (REDI), in *Official Gazette* No. 40,193 of 6-20-2013). These Delegates or heads of government, who exercise their functions "within the territory of the State that has been assigned" (art. 19), have been conceived as the supposed "channels of communication" between the State Governors and the National Power and vice-versa, also having as mission "to carry out the actions tending to promote the integration and operation of the organized communities, instances of popular power, organizations of popular power, the councils of economy and communal comptrollership under their demarcation, in terms of the applicable regulations, complying with the criteria established by the Regional Authority of Strategic Regions for Integral Development (REDI)" (art. 20). In short, these National Regional Authorities and the State Delegates are the administrative bodies of the National Power set up parallel to the State authorities. Said authorities, in any case, also found regulation in November 2014, in the Comprehensive Regionalization Law for the Socio-productive Development of the Nation (See Decree Law No. 1,425, in *Official Gazette* No. 6,151 Extra. of November 18, 2014).

¹¹¹ See in *Official Gazette* No. 39,156 of April 13, 2009.

directly imposed by the Constituent but by all those that the National Legislator and the state legislators may impose on the exercise of municipal autonomy, in accordance with the norms of the Constitution itself and within the limits indicated by it.”¹¹² Moreover, this is what has been used by National State, in a continuous process of deconstitutionalization of the federal State¹¹³ and of the municipal regime, to create by laws, in parallel to the local government regime provided for in the Constitution, the aforementioned “Popular Power” or “Communal State,” with which the process of demunicipalization of the country began.¹¹⁴

This process has increased precisely through the creation of the Communes and the Communal Councils, as entities with authorities that have not been elected through suffrage forming the so-called Communal State, outside of the Constitution and contravening the popular rejection of it in 2007. This seeks to seize the powers of the municipalities and forcing their transfer to said entities of the “People's Power” pursuant to the Organic Law for the Community Management of Powers, Services and Other Attributions (Law Decree No. 9,043).¹¹⁵ Such provisions limited the role of the Municipality as a promoter of the participation of the people “through organized communities,” thus destroying federalism,

¹¹² See judgment No. 2257 of November 13, 2001, in *Revista de Derecho Público*, No. 85-88, Editorial Jurídica Venezolana, Caracas, 2001, pp. 202 et seq.

¹¹³ See in general about this process of deconstitutionalization of the State, Allan R. Brewer-Carías, “La desconstitucionalización del Estado de derecho en Venezuela: del Estado Democrático y Social de derecho al Estado Comunal Socialista, sin reformar la Constitución,” in *Libro Homenaje al profesor Alfredo Morles Hernández, Diversas Disciplinas Jurídicas*, (Coordinación y Compilación Astrid Uzcátegui Angulo y Julio Rodríguez Berrizbeitia), Universidad Católica Andrés Bello, Universidad de Los Andes, Universidad Monteávila, Universidad Central de Venezuela, Academia de Ciencias Políticas y Sociales, Vol. V, Caracas 2012, pp. 51-82; in Carlos Tablante y Mariela Morales Antonorzzi (Coord.), *Descentralización, autonomía e inclusión social. El desafío actual de la democracia*, Anuario 2010-2012, Observatorio Internacional para la democracia y descentralización, En Cambio, Caracas 2011, pp. 37-84; and in *Estado Constitucional*, Año 1, Nº 2, Editorial Adrus, Lima, junio 2011, pp. 217-236. See also Allan R. Brewer-Carías, “Las leyes del Poder Popular dictadas en Venezuela en diciembre de 2010, para transformar el Estado Democrático y Social de Derecho en un Estado Comunal Socialista, sin reformar la Constitución,” in *Cuadernos Manuel Giménez Abad*, Fundación Manuel Giménez Abad de Estudios Parlamentarios y del Estado Autonómico, No. 1, Madrid, Junio 2011, pp. 127-131; “La Ley Orgánica del Poder Popular y la desconstitucionalización del Estado de derecho en Venezuela,” in *Revista de Derecho Público*, No. 124, (octubre-diciembre 2010), Editorial Jurídica Venezolana, Caracas 2010, pp. 81-101; y el estudio: “Introducción General al Régimen del Poder Popular y del Estado Comunal (O de cómo en el siglo XXI, en Venezuela se decreta, al margen de la Constitución, un Estado de Comunas y de Consejos Comunales, y se establece una sociedad socialista y un sistema económico comunista, por los cuales nadie ha votado),” in Allan R. Brewer-Carías, Claudia Nikken, Luis A. Herrera Orellana, Jesús María Alvarado Andrade, José Ignacio Hernández y Adriana Vigilanza, *Leyes Orgánicas sobre el Poder Popular y el Estado Comunal (Los consejos comunales, las comunas, la sociedad socialista y el sistema económico comunal)* Colección Textos Legislativos Nº 50, Editorial Jurídica Venezolana, Caracas 2011, pp. 9-182. See more recently: Rafael Badell, *Del Estado Federal al Estado Comunal*, Academia de Ciencias Políticas y Sociales, 2021.

¹¹⁴ See Allan R. Brewer-Carías, “El inicio de la desmunicipalización en Venezuela: La organización del Poder Popular para eliminar la descentralización, la democracia representativa y la participación a nivel local”, in *AIDA, Opera Prima de Derecho Administrativo. Revista de la Asociación Internacional de Derecho Administrativo*, Universidad Nacional Autónoma de México, Facultad de Estudios Superiores de Acatlán, Coordinación de Postgrado, Instituto Internacional de Derecho Administrativo “Agustín Gordillo”, Asociación Internacional de Derecho Administrativo, México, 2007, pp. 49 to 67.

¹¹⁵ See *Official Gazette* No. 6,097 Extra. June 15, 2012.

decentralization and the municipality itself, imposing a nebulous Communal State as an expression of transit towards socialism.”¹¹⁶

In this scheme establishing Popular Power and the Communal State, for the purpose of progressively strangling the Constitutional State, the first territorial institutions affected were of course the Municipalities, that have been completely disconnected from the process of community development and popular participation, and even more serious, attempting to establish a "democracy" without representation.

VIII. THE PRINCIPLE OF CIVIL GOVERNMENT AND ITS DISTORTION WITH THE OVERWHELMING MILITARIZATION OF THE COUNTRY AT THE MARGIN OF CIVIL AUTHORITY

Finally, another of the signs of distortion of the democratic State in Venezuela has been the process of decivilism, that is, the elimination of the civil government regime that is the essence of the rule of law and democracy, through an overwhelming process of militarization of the state and the country.

This process also began in 1999, with the assault on power that occurred on the occasion of the election to the National Constituent Assembly, which was made up of the bulk of the military members that had attempted, together with Hugo Chávez, two failed *coups d'état* in 1992.

As I warned in 1999, this assault of the Constituent Assembly caused the design of militaristic elements in the Constitution, ¹¹⁷ starting by eliminating from the constitutional text the express formulation of the principle of subjection or subordination of the military authority to the civil authority, and establishing, on the contrary, a great autonomy of the military authority and the Armed Forces, and providing the possibility of intervening in civil functions.

The development of militarism took place, thus, in the last decades, by the elimination of the traditional prohibition of simultaneous exercise of military and civil authority, as established in the previous Constitutions; the suppression of control by the National Assembly regarding the promotion of high-ranking officers, as had been regulated in historical constitutionalism, that is now an exclusive matter of the Armed Forces (art. 331); the removal of the duty of the Armed Forces to secure the stability of the democratic institutions provided for in article 132 of the 1961 Constitution, ceasing to be a constitutional obligation of the Armed Forces; the elimination of the duty of the Armed Forces to respect the Constitution and the laws, "whose compliance - as stated in article 132 of the 1961 Constitution - will always be above any other obligation."

All these changes were the basis for the development of militarism in Venezuela, aggravated, among other factors, by the 1999 Constitution adoption of the concept of the doctrine of national security, as globalizing, totalizing and all-encompassing. Pursuant to

¹¹⁶ See what was expressed by José Luis Villegas M., "Hacia la instauración del Estado Comunal en Venezuela: Comentario al Decreto Ley Orgánica de la Gestión Comunitaria de Competencia, Servicios y otras Atribuciones, en el contexto del Primer Plan Socialista-Proyecto Nacional Simón Bolívar 2007-2013," in *Revista de Derecho Público*, Nº 130, Editorial Jurídica Venezolana, Caracas 2012, pp. 127 ff.

¹¹⁷ See Allan R. Brewer-Carías, "Razones del voto NO en el referendo aprobatorio de la Constitución," in *Debate Constituyente (Labor en la Asamblea Nacional Constituyente)*, Tomo III, Fundación de Derecho Público, Editorial Jurídica Venezolana, Caracas 2000.

this doctrine, everything that happens in the State and the Nation concerns the security of the State, including economic and social development (art. 326). This was even worsened through the suppression of the principle of non-deliberative and apolitical nature of the military institution, as was established in article 132 of the 1961 Constitution.¹¹⁸

All of this opened the way for the Armed Forces, as a military institution, and for the military, to begin political deliberation, configuring the Armed Forces as a "Chavista" military party,¹¹⁹ after a sustained and continuous process of destruction of military professionalism.¹²⁰ The political proselytism of the military has been formally regularized by a ruling of the Constitutional Chamber of June 11, 2014, mutating the Constitution¹²¹, resulting in the military having become part of a privileged group in society, with secure access to goods and services that ordinary citizens do not have.¹²²

This militaristic scheme that was established in the 1999 Constitution, was even intended to be reinforced and reconstitutionalized in the constitutional reform presented by Chávez in 2007,¹²³ fortunately rejected by the people, but which nevertheless has been put into practice during the last twenty years, not only with the creation outside the Constitution in 2008 of the "Bolivarian" Armed Forces, through its Organic Law, but also with the appointment of military and ex-military personnel to most of the highest public positions in Public Administration, and their election, also, for regional and local governments. This has led to the almost total seizure of the civil service of the State by the military and by the Armed Forces, to whom is even confided in the Constitution "active participation in national development" (art. 328).

¹¹⁸ See what we explained about the militarist framework of the Constitution in 1999, in Allan R. Brewer-Carías, *Debate Constituyente (Aportes a la Asamblea Nacional Constituyente)*, Fundación de Derecho Público, Editorial Jurídica Venezolana, Caracas 1999; and in *Asamblea Constituyente y Poder Constituyente 1999*, Colección Tratado de Derecho Constitucional, Tomo VI, Fundación de Derecho Público, Editorial Jurídica Venezolana, Caracas 2014, pp. 1049-1050.

¹¹⁹ In the order speech that General Vladimir Padrino Lopez, Chief of the Strategic Operational Command of the Armed Forces, delivered in the National Assembly on Independence Day, on July 5, 2014, expressed: "I am going to say it with great responsibility in response to ethics and big politics: this FANB is chavista." See at <http://www.diariolasamericas.com/america-latina/jefe-militar-venezolano-asegura-que-fuerzas-armadas-chavistas.html>. Three months later, on October 23, 2014, he was appointed Minister of Popular Power for Defense was published. See Decree No. 1346 in *Official Gazette* No. 40,526, of October 25, 2014.

¹²⁰ See Fernando Ochoa Antich, "Destruir el profesionalismo militar," in *El Nacional*, Caracas, September 28, 2014, at http://www.el-nacional.com/fernando_ochoa_antich/Destruir-profesionalismo-militar_0_490151147.html

¹²¹ See the judgment of the Constitutional Chamber No. 651 of June 11, 2014 (*Caso Rafael Huizi Clavier and others*) at <http://www.tsj.gov.ve/decisiones/scon/junio/165491-651-11614-2014-14-0313.HTML>. See the comment in Allan R. Brewer-Carías, "Una nueva mutación constitucional: el fin de la prohibición de la militancia política de la Fuerza Armada Nacional, y el reconocimiento del derecho de los militares activos de participar en la actividad política, incluso en cumplimiento de las órdenes de la superioridad jerárquica," in *Revista de Derecho Público*, N° 138, Editorial Jurídica Venezolana, Caracas 2014.

¹²² See, for example, the report published in *Bloomberg News*: "New Cars for the Army as Venezuelans Line Up for Food," September 19, 2014, at <http://www.bloom-berg.com/news/2014-09-29/venezuelan-army-enjoys-meat-to-cars-denied-most-citizens.html>.

¹²³ See Allan R. Brewer-Carías, *Hacia la consolidación de un Estado socialista, centralizado, policial y militarista*, Editorial Jurídica Venezolana, Caracas 2007, 160 pp.

Along these lines, in September 2014, the person who exercises the Presidency of the Republic handed over total control of the economy to the military by appointing military personnel to direct all the organs of the Public Administration in the economic sector,¹²⁴ designating even active or recently retired military, without any knowledge of the oil business, to direct and finish the destruction of *Petróleos de Venezuela S.A* (PDVSA),¹²⁵ in the midst of a corruption scheme of immeasurable scale that forced the government itself in 2023 to make public part of the predatory catastrophe.

What is more serious about this military control of the economy and seizure of the Public Administration, is the establishing of State-owned companies of a military nature attached to the Ministry of Defense and managed exclusively by the military. Such is the case of the *Compañía Anónima Militar de Industrias Mineras, Petrolíferas y de Gas* (CAMIMPEG), created by Decree No. 2,231 of February 10, 2016,¹²⁶ parallel to PDVSA. Said company, contrary to the Constitution, has turned out to be the most predatory instrument of the environment that can be imagined, participating as an exploitative agent in the ecocide of the strategic area of the so-called Orinoco Mining Arc in the Bolívar State, created precisely two weeks after the incorporation of said military company.¹²⁷

But militarism has not only manifested itself in the organization of the Administration, but also in the extraordinary military spending that has occurred in Venezuela in recent years, unsurpassed by any country in the region;¹²⁸ as well as by the progressive militarization of formerly administrative functions, such as the police, which was seen in particular, with

¹²⁴ See the comment on the ministerial changes of September 2014 by Francisco Mayoïrga, “Gustavo Azócar Alcalá, Los militares y la economía,” in *ACN, Agencia Carabobeña de Noticias*, 10 de septiembre de 2014, available at: <http://acn.com.ve/opinion/los-militares-y-la-economia/>. However, *relinquishment of economy guidance power to the military is not new..* See for instance: Patricia Claremboux, *AFP*, “Bajo el ala de Maduro, los militares toman control del poder económico de Venezuela. En sus primeros 9 meses de gobierno, el mandatario ya nombró a 368 uniformados en puestos políticos. Ahora, con la designación de un general del Ejército al frente del Ministerio de Finanzas, la militarización se extiende a la economía,” 20 enero de 2014, in <http://www.infobae.com/2014/01/20/1538269-bajo-el-ala-maduro-los-militares-toman-control-del-poder-economico-venezuela>. See also: “Maduro dejó en manos de un militar los problemas económicos de Venezuela. El presidente venezolano puso a Hebert García Plaza al frente del Órgano Superior de la Economía, creado para enfrentar la emergencia,” 13 de septiembre de 2013, in <http://elcomer-cio.pe/mundo/actualidad/maduro-dejo-manos-militar-problemas-economicos-venezuela-noticia-1630919>; and the news report: “Militares comandan economía en Venezuela,” in *Agencia France Press*, 20 de enero de 2014, in http://www.em.com.br/app/noticia/internacional/2014/01/20/interna_internacional,489796/militares-comandam-economia-na-venezuela-afirmam-analis-tas.shtml. See also, Peter Wilson, “A Revolution in Green. The Rise of Venezuela's Military,” in *Foreign Affairs*, 2014, available at <http://www.foreignaffairs.com/articles/142133/peter-wilson/a-revolution-in-green>.

¹²⁵ See Allan R. Brewer-Carías, *Crónica de una destrucción. Concesión, Nacionalización, Apertura, Constitucionalización, Desnacionalización, Estatización, Entrega y Degradación de la Industria Petrolera*, Colección Centro de Estudios de Regulación Económica-Universidad Monteávil, N° 3, Universidad Monteávil, Editorial Jurídica Venezolana, Caracas, 2018, 730 pp.

¹²⁶ See in *Official Gazette* No. 40,845, of February 10, 2016.

¹²⁷ See Decree No. 2248 of February 24, 2016 creating the “Arco Minero del Orinoco” national strategic development zone. See *Official Gazette* No. 40855 of February 24, 2016

¹²⁸ See Carlos E. Hernández, Venezuela tuvo el mayor crecimiento en gasto militar de Latinoamérica,” in *Notitarde.com*, February 6, 2014, at <http://www.notitarde.com/Pais/Venezuela-tuvo-el-highest-growth-in-military-expenditure-in-Latinamerica/2014/02/06/303181>.

extreme gravity from 2014, in the militarization of the repression of protests and not only student, but neighborhood and union protests.¹²⁹

This fact of the militarization of the security forces and public order, has been particularly highlighted since 2019 in the Report of the United Nations High Commissioner for Human Rights Michelle Bachelet on the situation of human rights in Venezuela, containing an “overview of the human rights situation” from January 2018 to May 2019,¹³⁰ noting how the situation of state of emergency existing since 2016 and renewed every 60 days, had implied “an *increase in the militarization of State institutions* (§ 31); and how:

"The measures have been adopted with the stated purpose of preserving public order and national security against alleged internal and external threats, they have *increased the militarization of State institutions and the employment of the civilian population in intelligence and defense tasks*" (§76).

Finally, it should be noted how, in an absolutely contradictory way with the overwhelming militarism, in fact, and as a government policy, the Armed Forces, during these last decades, have nevertheless lost the monopoly of weapons and force, not only because of the creation of the so-called Militia, outside of its traditional components, but by the proliferation of weapons in the hands of all sorts of criminals and the supply of weapons to urban civilian groups (the Collectives) with criminal ties, outside the control of the military themselves and even the police.¹³¹

Regarding this, the Bachelet Report itself highlighted the “*armed collectives*,” described as “*pro-government civilian armed groups*” (§ 24), and how they have contributed to exercising “social control in local communities, supporting the security forces in the repression of demonstrations and dissent” (§ 32); and how the same, “also resorted to violence against protesters, often in coordination with the security forces. In many cases, these actions produced deaths and serious injuries” (§ 39); ultimately recommending that the State “*Disarm and dismantle pro-government civilian armed groups* (the so-called “armed collectives”) and guarantee the investigation of their crimes” (§ 82), which has not occurred.

¹²⁹ As the prominent political leader, Paulina Gamus, recently highlighted: “With Chávez, not only the militarization of the government is inaugurated, but also the politicization of the military world.” “The inspiration for this model” *she added, is* “the cult of personality, the transformation of men-at-arms into the ruler’s Praetorian Guard and the overwhelming presence of soldiers in public office, with a license to steal.” See in the article “Mom, I want a cadet. The support of left-wing parties for the militarized governments of Chávez and Maduro in Venezuela is shameful,” in *El País, Internacional*, July 14, 2014, at http://internacional.elpais.com/internacional/2014/07/14/news/1405349965_980938.html.

¹³⁰ See “Report of the United Nations High Commissioner for Human Rights on the situation of human rights in the Bolivarian Republic of Venezuela,” July 4, 2019, at https://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session41/Documents/A_HRC_41_18_ENG.docx. The “comments from the State” (“Comments on factual errors of the Report of the United Nations High Commissioner for Human Rights on the situation of human rights in the Bolivarian Republic of Venezuela”), *can be consulted at* https://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session41/Documents/A_HRC_41_18_Add.1.docx

¹³¹ See Fernando Ochoa Antich, “Violencia y más violencia,” in *El Nacional*, October 12, 2014, at http://www.el-nacional.com/fernando_ochoa_antich/Violencia-violencia_0_499150202.html.

FINAL COMMENT

All of the above shows that the case of Venezuela is an example and a case study in the Latin-American Continent. Despite everything the Constitution says about the democratic, decentralized and social rule of law and of justice State, it has turned out to be a big lie; having its content completely falsified, through the actions of an authoritarian government that has been installed in the country since 1999, when a group of failed military coup leaders, using the mechanisms of constitutional populism,¹³² assaulted power, to control it.

Violations to the Constitution, as has been said, began to occur from the very moment the Constitution entered into force, beginning the distortion of all the essential elements and principles of the rule of law, as well as all the essential elements and components of democracy as a political regime, as defined in September 2001 by the Inter-American Democratic Charter.

New York, July 2023

¹³² See my study on the subject in Juan Carlos Cassagne and Allan R. Brewer-Carías, *Estado populista y populismo constitucional. Dos estudios*, Ediciones Olejnik, Santiago, Buenos Aires, Madrid 2020, 330 pp.