

ANNUAL REPORT ON ACCESS TO JUSTICE, 2018
The road to dictatorship with the endorsement of the Supreme Court of Justice

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PRESENTATION

Access to Justice, is an NGO dedicated to monitor the administration of justice and the Rule of Law in Venezuela. In that regard, in its annual report, 2018 offers a vision of the context of the Rule of Law and the justice system in Venezuela. Then in three chapters develops what happened in these areas in 2018. Finally, it offers a summary of the special published on its website: The road to dictatorship, which tells how the Government since the parliamentary elections of December 2015 was made of the absolute power, violating constitutional forms.

It is not to amaze in this respect that throughout 2018 four highly relevant international reports have been published, which show the dramatic situation of democracy, the Rule of Law, and justice in Venezuela, namely: **The Report of the General Secretariat of the Organization of American States and the Panel of Independent International Experts on the possible commission of Crimes Against Humanity in Venezuela**¹, the Report of the United Nations High Commissioner for Human Rights (OHCHR) on **Human rights violations in the Bolivarian Republic of Venezuela: a downward spiral with no end in sight**², the Report on “**Democratic Institutionalality, Rule of Law and human rights in Venezuela**” of the Inter-American Commission on Human Rights (IACHR)³ and the 2018 Annual Report of the IACHR⁴.

¹ OAS, published on 05/29/18 and accessible at <http://www.oas.org/documents/spa/press/Informe-Panel-Independiente-Venezuela-ES.pdf>

² OHCHR, published in June 2018 and accessible at https://www.ohchr.org/Documents/Countries/VE/VenezuelaReport2018_SP.pdf

³ OAS, published on 17/02/2018 and accessible at: <https://www.oas.org/es/cidh/informes/pdfs/Venezuela2018-es.pdf>

⁴ See: IACHR, Annual Report 2018, <http://www.oas.org/es/cidh/docs/anual/2018/indice.asp>

CONTEXT: Rule of Law and justice system in Venezuela

The international organization World Justice Project classifies the Venezuelan Rule of Law in the last position of 126 countries evaluated in its report on its subject, 2018-2019⁵. Criminal justice also occupies the last place and civil justice the penultimate⁶.

This dismal ranking is undoubtedly due, among other factors, to the fact that since the parliamentary election of December 2015, a true *de facto* regime has been consolidated, with the appointment, designation or election, as the case may be, of illegitimate and unconstitutional authorities with the endorsement of the Supreme Court of Justice⁷.

In addition, this has become a repressive body that has ceased to protect human rights and exercise judicial control of power. Additionally, in 2018, its contribution with the definitive destruction of the democratic vote in Venezuela⁸ and its leading role in the persecution of deputies of the National Assembly stands out⁹.

Also, the Supreme Court has endorsed a continued nationwide state of exception, decreed for the first time on January 14, 2016, without the approval of the parliament as required by the Constitution and extended until December 2018 17 times¹⁰, and until the filing date of this report (July 15, 2019), 20 times¹¹.

In 2018, the practice of the highest judicial instance, established since the 2014 protests, of pursuing political dissidence has increased. In 2017 it applied against 4 opposition deputies, 18 mayors, 1 governor, 23 judges designated by the National Assembly and the Attorney General, to name the best known. In 2018, against 2 deputies, one of them being arbitrary detained and deprived of his liberty, Juan Requesens.

Since 2016, the Supreme Court has guaranteed with its judgments or with its refusal to judicial remedy, the elections held in the country, even without having a

⁵ <https://www.accesoalajusticia.org/venezuela-sin-estado-de-derecho/>

⁶ <http://data.worldjusticeproject.org/#/groups/VEN>

⁷ <https://www.accesoalajusticia.org/en-venezuela-los-intereses-politicos-privan-sobre-la-legalidad/>

⁸ <https://www.accesoalajusticia.org/tsj-contribuyo-con-la-destruccion-del-voto-en-2018/>

⁹ <https://www.accesoalajusticia.org/tsj-tuvo-un-rol-fundamental-en-la-persecucion-contradiputados-en-2018/>

¹⁰ <https://www.accesoalajusticia.org/el-estado-de-excepcion-en-venezuela/>

¹¹ <https://www.accesoalajusticia.org/el-estado-de-excepcion-en-el-camino-a-la-dictadura/>

democratic character. In this sense, regional, municipal and presidential elections have been carry out since 2017, all against the Constitution and the laws of the matter¹². In 2018, the presidential ones stand out, made in advance in May and not in December as they corresponded according to the Constitution, after a process of annulment of parties completely violating the constitutional precepts, which began in 2016 by the Supreme Court itself, which led to that the political opposition could not participate in those elections¹³, being this one that the Government chose to have and not the freely constituted and existing one¹⁴. Together with these elections, polls were held of the legislative authorities, the legislative councils, which was also contrary to the Constitution not only because it did not have the necessary guarantees for a democratic election, but also because these elections were separated from those of governors, made in October 2017, which is contrary to the Law on the subject that does not allow to separate them.

In December 2018, municipal councilors were held, also without guarantees and separated against the law of mayors¹⁵, carry out in December 2017¹⁶. The Metropolitan Cabildo of Caracas and the Apure state district did not participate in them, since they were eliminated by a decree of the National Constituent Assembly on December 20, 2017¹⁷, changing the Constitution that establishes these figures and the political-territorial division of the country¹⁸.

In 2018, the National Constituent Assembly appointed the Ombudsman¹⁹ and the Comptroller General²⁰. By 2017, he had appointed the General Attorney²¹ and ratified the judges of the Supreme Court of Justice. In addition, in 2018 it swore oath Maduro's as President of the Republic, after his fraudulent election in May 2018, usurping functions of the National Assembly²².

¹² <https://www.accesoalajusticia.org/golpe-electoral/>

¹³ <https://www.accesoalajusticia.org/cne-le-elimino-la-competencia-al-gobierno-con-medidas-inconstitucionales/>

¹⁴ <https://www.accesoalajusticia.org/claves-sobre-la-ilegitimidad-de-las-elecciones-del-20-de-mayo/>

¹⁵ <https://www.accesoalajusticia.org/elecciones-de-concejos-municipales-o-una-farsa-electoral-mas/>

¹⁶ It is very clear the article 2.2 of the Law of Regularization of the Constitutional and Legal Periods of the State and Municipal Public Powers when it establishes that the elections of municipal councils and mayors must be joint.

¹⁷ <https://www.accesoalajusticia.org/anc-vs-democracia-supresion-de-alcaldia-metropolitana-de-caracas-y-del-distrito-del-alto-apure/>

¹⁸ <https://www.accesoalajusticia.org/las-olvidadas-alcaldia-metropolitana-de-caracas-y-del-alto-apure/>

¹⁹ According to a decree published in Official Gazette No. 41,529 of November 21, 2018.

²⁰ According to a decree published in Official Gazette No. 41,508 of October 23, 2018.

²¹ According to a decree published in Extraordinary Official Gazette No. 6,322 of 05/08/2017.

²² <https://www.accesoalajusticia.org/acto-de-juramentacion-de-maduro-ante-la-anc-es-nulo/>

This has led to all the authorities of the Public Power being illegitimate and unconstitutional, except for the Parliament, elected in December 2015 and composed of 2/3 parties of opposition parties, and despite this, all their acts through 100 judgments of the Supreme Court of Justice, issued from December 2015 until the date of submission of this report. 83 were published until December 2018²³, of which 12 were promulgated that year²⁴.

The most alarming of 2018 is that the complex humanitarian emergency denounced by NGOs since 2015 and recognized by the Secretary General of the United Nations in 2016²⁵ continued and the Government still not to recognize it, which aggravated it. But above all through the social control model, already established since 2016 mainly through the Local Supply and Production Committee (*CLAP*)²⁶ and the Productive Workers' Councils (*CPT*)²⁷, as well as by massifying and politicizing the use of the *Carnet de la Patria*, figure created in 2017²⁸.

This absence of control of power, on the one hand, and, on the other, the growing social control and the intervention of production have led in a country, where almost everything is nationalized, to a growing distortion of the public function, an increase in scarcity, to an important deterioration of public services and, above all, an institutional breakdown of such magnitude that the State no longer has the capacity to meet the basic needs of citizens, which is the true cause of the complex humanitarian emergency situation in the country.²⁹

Venezuela is the clear demonstration of the fact that, if in a country there is no judicial independence, Rule of Law and democracy, the effective exercise of human rights becomes void.

²³ <https://www.accesoalajusticia.org/el-tsj-vs-la-an/>

²⁴ <https://www.accesoalajusticia.org/wp-content/uploads/2019/05/Cuadro-TSJ-vs-AN-an%CC%83o-2018.pdf>

²⁵ <https://www.accesoalajusticia.org/ong-exigen-a-la-onu-una-actuacion-coherente-y-apegada-a-los-derechos-humanos-en-la-respuesta-a-la-emergencia-humanitaria-en-venezuela/>

²⁶ <https://www.accesoalajusticia.org/anc-pretende-institucionalizar-la-escasez-de-alimentos-en-venezuela-los-clap/>

²⁷ <https://www.accesoalajusticia.org/ley-de-consejos-productivos-de-trabajadores-o-el-vano-intento-gubernamental-de-decretar-la-produccion>

²⁸ <https://www.accesoalajusticia.org/coaccion-social-y-control-politico-a-traves-del-carnet-de-la-patria/>

²⁹ <https://www.accesoalajusticia.org/el-quebre-institucional-y-la-emergencia-humanitaria/>

I. Repression and arbitrariness

During 2018, the Judicial Power maintained its repressive function towards any person who presented opposition to the Executive's project, arriving to apply military justice in cases of civilians with accusations of treason to the country and/or rebellion³⁰, even though they exist decisions of the Supreme Court itself that point out that since these two crimes are in the Criminal Code and civilians are the defendants, the knowledge of the cause must be of the civil courts³¹.

This arbitrariness led the NGO Access to Justice, Provea and Venezuelan Prisons Observatory to request a hearing to the Inter-American Commission on Human Rights (IACHR) to denounce the irregular application of the military jurisdiction in the country, a space that was granted during the 168th session held between May 3 and 11 in Santo Domingo, Dominican Republic³².

In the aforementioned hearing, reference was made to the process of militarization suffered by the country and to the trial of civilians before the military courts, violating due process and the principle of the natural judge.

At the hearing, it was recorded that military justice in Venezuela has been applied to the detriment of the Constitution and international treaties signed by the Republic. The fundamental text in its article 261 establishes that the "competence of the military courts is limited to crimes of a military nature", but its use has gone much further.

It was stated that "the State repeatedly argues that the military courts will be aware of those crimes of a military nature, even if they commit civilians", when it clarifies that military infractions "can only be committed by the military, which are those that have obligations military".

However, any consideration falls short, and highlights what it is like to be a judge in Venezuela, when listening to the intervention of the President of the Martial Court in the hearing before the IACHR, who despite being the judge of second instance of one of the cases denounced by the petitioners, advanced opinion on the culpability

³⁰ IACHR, Annual Report, 2018, Cap. IV Venezuela, par. 5,

<http://www.oas.org/es/cidh/docs/anual/2018/indice.asp>

³¹ <https://www.accesoalajusticia.org/caso-del-video-de-primer-justicia-es-enviado-a-jurisdiccion-penal-ordinaria/>

³² <https://www.accesoalajusticia.org/la-justicia-militar-contra-civiles-en-venezuela-tomo-la-palabra-en-la-cidh/>

of the accused, in evident sample of partiality and in clear reflection of what is the reality of the justice in Venezuela³³.

A second element to which the Government has resorted - through military justice - to attack dissent is the manipulation of military crimes. Access to Justice explained that the State uses for civilians "unenforceable criminal offenses such as the assault on the sentry and the military rebellion" in order to impute to protesters and endilgarles penalties that go far beyond what is contemplated by the ordinary courts. For the NGO that presented the case before the IACHR, the manipulation of the criminal offenses has not only allowed to punish demonstrators and social leaders, but it is also used as an instrument of social control, given that "in a situation of disturbances of public order In a demonstration, the penalty goes from six months to a year and a half, but in an attack on the sentinel the minimum is fourteen years"³⁴.

During the hearing it was clear that in Venezuela "*military justice is only an instrument to besiege dissent and against social protest*"³⁵, since the Inter-American Court of Human Rights itself has established that military jurisdiction is exclusive to the military.

Among the cases presented, one of the most emblematic of the military injustice was the deputy of the National Assembly Gilber Caro, arrested on January 11, 2017 for alleged possession of war weapons and on which, the Supreme Court of Justice two Months later and without having been presented before a judge, it determined that the competent justice to analyze its cause was the military one. Even so, he was released a year and a half later under precautionary measures for having suffered inhuman prison conditions in different prisons and with periods in which his family did not know his whereabouts and health. His preliminary hearing came to be suspended more than a dozen times³⁶.

Another case of repression and arbitrariness in 2018 was that of deputy Juan Requesens³⁷. In the wake of the alleged presidential attack on August 4, a commission of officials of the Bolivarian National Intelligence Service (*Sebin*), without a judicial order and in a violent manner, entered the residence of Deputy Juan Requesens and his sister Rafaela, and the they were arbitrary detained. Rafaela

³³ <https://www.youtube.com/watch?v=gQSVL4DOhn4>

³⁴ <https://www.accesoalajusticia.org/la-justicia-militar-contra-civiles-en-venezuela-tomo-la-palabra-en-la-cidh/>

³⁵ Military Justice Forum in Venezuela. [Online] <https://www.accesoalajusticia.org/la-justicia-militar-contra-la-protesta-social>

³⁶ <https://www.accesoalajusticia.org/la-injusticia-militar-venezolana-en-el-168-periodo-de-sesiones-de-la-cidh/>

³⁷ <https://www.accesoalajusticia.org/la-injusticia-en-estado-puro-el-caso-requesens/>

was released to the hours, without further explanation of his brother's whereabouts or the reasons for her own detention.

Instead, the deputy was disappeared for four days and suddenly were published a sentence of the Full Chamber of the Supreme Court of Justice, No. 71 of August 8, 2018³⁸, which orders his trial without properly motivating his detention, assimilating alleged crimes continued to the flagrancy, and without saying anything about the violation of his right to be detained in his own residence and not be moved to another site as it occurred. Nor was it ruled on his enforced disappearance, an offense foreseen in the Constitution that also contradicts international human rights treaties³⁹. Additionally, it ordered the raid of its parliamentary immunity before the National Constituent Assembly and not before the National Assembly as it corresponds according to the Constitution. Meanwhile, the deputy remains in the Helicoide, Bolivarian Intelligence Service (*Sebin*).

Another similar case is that of Deputy Julio Borges, who, without being in Venezuela, was ordered to be tried by sentence No. 49 of August 8, 2018⁴⁰, also for the same offense and under the same conditions⁴¹. Because the deputy is out of the country, successively the Supreme Court of Justice asks for his extradition to Colombia, which it does not accept⁴².

An element that aggravates the violation of the natural judge of civilians, is the lack of independence of the military justice in Venezuela, since its Organic Code of Military Justice (*COJM*) dates from the dictatorship of Juan Vicente Gómez and subordinates the decisions to the President. In this regard, Access to Justice emphasizes that "*The COJM, as was to be expected in the regime that saw it born, makes military justice revolve around the figure of the President of the Republic. For this reason, article 28 literally states that "Military Justice officials are" both the head of State and the Minister of Defense and other soldiers with troop command. This single statement highlights the way in which military justice is conceived: as an organ of the Executive Power. In any true democracy military courts do not depend on the Executive*"⁴³.

³⁸ <https://www.accesoalajusticia.org/wp-content/uploads/2018/08/SP-48-08-08-2018.pdf>

³⁹ <https://www.accesoalajusticia.org/antejuicio-de-merito-contra-el-diputado-juan-requesens/>

⁴⁰ <https://www.accesoalajusticia.org/wp-content/uploads/2018/08/SP-49-08-08-2018.pdf>

⁴¹ <https://www.accesoalajusticia.org/antejuicio-de-merito-contra-el-diputado-julio-borges/>

⁴² <https://www.accesoalajusticia.org/tsj-no-son-delitos-politicos-porque-yo-lo-digo/>
<https://www.accesoalajusticia.org/extradicion-no-procede-cuando-hay-riesgo-de-perder-la-vida-o-de-tortura/>

⁴³ <https://www.accesoalajusticia.org/la-justicia-militar-contra-la-protesta-social>

I. Social and political control

In 2016, the President of the Republic "created"⁴⁴ by means of State of Exception decree No. 2,323 (published in Official Gazette No. 6,227 Extraordinary of May 13, 2016)⁴⁵, the Local Supply and Production Committee (*CLAP*), to guarantee the correct distribution of food (article 23) and monitoring and control of public order in conjunction with the State security forces (article 29)⁴⁶.

In January 2018, the fraudulent National Constituent Assembly dictates the "Constitutional Law of the Local Supply and Production Committee", published in Official Gazette No. 41,330 of January 29, 2018⁴⁷.

In this regard, Access to Justice warned at the time of its publication that with this "law" the National Constituent Assembly once again usurped legislative functions and, due to its supposed "constitutional" nature, also sought to change constitutional norms, competence which it does not have, to propose a new Constitution, which must be approved by referendum.

Likewise, it was pointed out that this law does institutionalize scarcity, since *CLAP*'s do not guarantee a real livelihood for vulnerable sectors, because their distribution is deficient, their quality is also poor and the most important and serious is that their leaders only distribute food to some sectors of the population, marginalizing or excluding others for political reasons. Regarding this aspect, if some of its rules are analyzed, it is very clear, as explained below:

- A. It reinforces the partisan and militant character of the members of the *CLAP*, as it is read in article 7, whose text reads: "The Local Committee of Supply and Production will be integrated by the following spokespersons: 1. A territorial leader. 2. A popular prosecutor. 3. A productive activator. 4. A communicator. 5. A spokesperson of the Bolivarian Militia. 6. A spokesperson of the *UNAMUJER* organization. 7. A spokesperson of the communes. 8. A spokesperson for the Francisco de Miranda Front. 9. A spokesperson of the Bolívar Chávez Battle Unit. 10. The other spokespersons determined by the regulations

⁴⁴ The decree only mentions them and does not refer to their legal nature, ministry of secondment or to the organs that comprise it, so that by that date they were merely administrative channels of action.

⁴⁵ <http://www.radiomundial.com.ve/sites/default/files/Gaceta%20Oficial%20Extraordinaria%20N%C2%BA%206.227.pdf>

⁴⁶ <https://www.accesoalajusticia.org/los-clap-ciudadanos-contraciudadanos/>

⁴⁷ <https://www.accesoalajusticia.org/anc-pretende-institucionalizar-la-escasez-de-alimentos-en-venezuela-los-clap/>

that regulate the functioning of the Local Supply and Production Committees".

- B. Create the figure inquisitive? of the "popular prosecutor", whose profile is defined in article 8, which reads: "1. Must be a participant, active in the organizations of the Popular Power. 2. Disseminate and promote the guidelines of the Plan of the Nation and attach their behavior to them". In addition, the article 5.4 says that said Prosecutor "is the spokesperson designated by the Local Committee for Supply and Production that will perform the monitoring and control, supervision and control to ensure transparency and efficiency in production processes, marketing and food supply, of personal hygiene items and drugs, in the public and private sector, to promote properly the commercialization of the articles at prices fixed by the organ of the State that regulates the matter". It is obvious that the exercise of such centralized control and oversight functions will not offer any guarantee of impartiality and objectivity given the political profile that must be met by the person assigned to exercise said position.

Also, in 2018 the National Constituent Assembly issued the "Constitutional Law of the Productive Councils of Workers, published in Official Gazette No. 41,336 of February 6, which regulates the constitution, organization and operation of Productive Workers' Councils (*CPT*).

According to the text of this "law" each company, public, private or mixed, must install a *CPT*, in order to establish an internal monitoring system on its production process, so that it participates or reports to the government any information relevant to production volumes, distribution, irregularities or paralysis of the production or marketing process.

The objective of the "law", unconstitutional and illegitimate, is to get the "working class to exercise a controlling role in the management of the activities of production and distribution of essential goods and services in the country".

In the same sense, the new text expressly states that the *CPT* must "denounce the speculative resale of products, the hoarding, the usury, the boycott, the fraudulent alteration of prices, contraband of extraction and other illicit, as well as any action contrary to the socioeconomic system that prevails in the country". In reality, what the law seeks is to guarantee that companies deliver more than half of their

production to the State and that is where the supervisory role of the CTP comes from.

Access to Justice warned that productivity is not decreed and even less is achieved, taking away from companies more than half of what they produce, imposing workers who act as prosecutors⁴⁸ and establishing processing and distribution quotas⁴⁹.

In fact, laws such as the aforementioned discourage production and actually are "collectivist" mechanisms to centralize and nationalize the distribution and production of food, which is divorced from the economic principles and democratic values of the Venezuelan social welfare state, enshrined in the 1999 Constitution and, in addition, generate scarcity.

This has been aggravated because at the regional level this unconstitutional policy of the central government has been imitated. Thus at least six governorates in 2018, namely those of Guárico, Barinas, Apure, Cojedes⁵⁰, Portuguesa and Yaracuy⁵¹ issued measures aimed at taking control of national production through price regulation, setting quotas for the manufacture of items basic, implementing audits or applying "purchases" that actually resemble more confiscations.

Faced with this, the central government has issued two resolutions: the first published in Official Gazette No. 41,325 of January 22, 2018 and the second in Official Gazette No. 41,526 of November 16, 2018, where the "restriction to the regional and municipal authorities of executing actions of food control and distribution, which implies the retention of food items to producers, distributors and service providers of the agri-food sector in the national territory" is established.

The foregoing shows the institutional deterioration of the country, which has become not only abuse and excess of power, but has also been giving rise to a regional authoritarianism⁵², which has negatively impacted even more on the economic and social policies of basic supply to the population.

⁴⁸ <https://www.accesoalajusticia.org/ley-de-consejos-productivos-de-trabajadores-o-el-vano-intento-gubernamental-de-decretar-la-produccion/>

⁴⁹ <http://www.bancaynegocios.com/sunagro-reestablece-uso-de-guias-para-movilizacion-de-alimentos/>

⁵⁰ <http://www.bancaynegocios.com/prohiben-a-gobernaciones-y-alcaldia-retener-alimentos/>

⁵¹ <https://talcualdigital.com/index.php/2018/11/13/gobierno-planea-obligar-a-productores-a-venderle-el-30-del-ganado/>

⁵² <https://www.accesoalajusticia.org/ausencia-de-estado-deviene-en-autoritarismo-regional/>

In addition, in 2018, specifically in the presidential election period of April-May, the Government established a mechanism of complaints against the enemy⁵³, called the Network of Articulation and Political Association (RAAS).

Access to Justice made a call at the time about the dangerousness of this figure who tries **to persecute, neutralize and annihilate the "enemies" of the Government**. It constitutes, in effect, an excessive action that would be carried out by the leaders and sympathizers of the *PSUV* in the form of vigilantes or spies within their communities to intimidate or threaten anyone who opposes the interests of the regime.

However, it is important to remember that this political practice is not new in the current government if we take into account the so-called "cooperating patriots" who are informants of the State security bodies, specifically used by the Bolivarian Intelligence Service (*Sebin*) to arrest or imprison dissident people, politicians, students, professors, businessmen, among others, considered "enemies" of the Bolivarian revolution.

This is very worrying, because this activity of persecution and surveillance from the RAAS revives the historical experiences of the informers or "defenders of the Reich" in Nazi Germany, or of the *informatori* of Benito Mussolini in Fascist Italy. Also what happened with the spies of the Stasi, secret police of the missing German Democratic Republic (RDA), or the Committees for the Defense of the Revolution (*CDR*), created by Fidel Castro in Cuba that served, precisely, to threaten and attack to the supposed enemies of the Cuban revolution⁵⁴.

To all the above, the institutionalization of the country's identity card is added through the decree of state of exception No. 3,610, published in the Official Gazette No. 41,478 of September 10, 2018, as the identity document necessary to obtain subsidies and government services. The decision is endorsed by the Supreme Court of Justice by means of sentence 638 of the 20th of that same month, which gives it a constitutional character⁵⁵.

The violation of human rights that constitutes this measure was denounced in May 2018 before the Inter-American Commission on Human Rights by the

⁵³ <https://www.accesoalajusticia.org/gobierno-idea-nueva-arma-politica-basada-en-delatar-enemigos/>

⁵⁴ IDEM.

⁵⁵ <https://www.accesoalajusticia.org/coaccion-social-y-control-politico-a-traves-del-carnet-de-la-patria/>

representatives of the NGO Public Space, Civilis, the Venezuelan Observatory of Social Conflict (*MUD* theid under an authoritarian and control policy".

This practice has been recognized by the national head of the *CLAP* and minister of the urban agriculture portfolio for 2018, Freddy Bernal, when he publicly expressed that "the *CLAP* has become a tool of conscience, an organization tool and we can say responsibly that the *CLAP* together with the *PSUV*, contributed substantially to winning the Constituent Assembly, the elections of governorships and the elections of mayors"⁵⁶.

Likewise, Maduro admitted during his presidential campaign of 2018 when he said: "The country protects you by the *Carnet de la Patria* and you protect the country with your vote. This is giving and giving"⁵⁷.

⁵⁶ http://www.el-nacional.com/noticias/gobierno/anc-aprobo-fiscalizacion-actividades-los-clap_217791

⁵⁷ <http://efectocucuyo.com/politica/maduro-ofrece-premio-a-beneficiarios-del-carnet-de-la-patria-que-voten-por-el/>

III. Management of the justice system

The Supreme Court has not submitted its annual management report for 7 years (2012-2018), it only has the information published on its website after the opening of each legal year, contrary to the constitution and laws.

This persistent restriction on access to public information is a policy not only of the Judiciary, but of the entire justice system as Access to Justice has previously denounced⁵⁸. As a matter of fact, it is a state policy.

As evidenced by the investigation carried out in 2016 on the issue of sentences of the Supreme Court of Justice that from the year 2000 until 2016 in 95% of the cases denied the requests, especially of NGOs, which bind the competent body of the State to inform about certain data, which by Law must be public according to Article 28 of the Constitution and 19 of the Universal Declaration of Human Rights⁵⁹.

The update of this investigation between 2017 and May 2018 resulted in the highest judicial instance escalated in its goal to stop any review of public information, because it denied all applications, and was also delayed more than in the previous period subject of study, in the response time of these cases: from an average of 260.5 to 409.69 days⁶⁰.

According to data collected by Access to Justice, in the period from 2000 to 2018, the NGO with the highest number of requests was Venezuelan Transparency with the presentation of 32 resources, all of which were denied. Provea also highlights with the case that it had to wait longer for an answer, that is 3,064 days⁶¹.

⁵⁸ <https://www.accesoalajusticia.org/opacidad-del-sistema-de-justicia-venezolano-2001-2017/>

⁵⁹ <https://www.accesoalajusticia.org/informe-sobre-la-negativa-del-poder-judicial-de-dar-acceso-a-la-informacion-publica/>

⁶⁰ <https://www.accesoalajusticia.org/tsj-escala-en-su-objetivo-de-negar-el-acceso-a-la-informacion-publica>

⁶¹ IDEM.

It is not surprising in this order of ideas that the opening speech of 2018 lacked important statistics to measure the performance of the Judicial Power, since the president of the Supreme Court did not spend much time on the subject, but he did emphasize that 2017 was an "atypical year" -in reference to the strong protests against the national government between April and July- which in his opinion were given by sectors of opposition to the Government, "desperate attempts" to weaken justice and attack the State of law and the stability of the country.

In the speech, and because it is the 2018 year of presidential elections, there seems to be a veiled threat that the judiciary will be "attentive" and vigilant so that the will of the people can be fulfilled⁶².

It is incredible that this has been said by the president of the highest judicial instance that, by ruling of the Constitutional Chamber No. 1865 of 12-26-2014⁶³, took away the power of the parliament to elect the rectors of the electoral body in 2014 and then again in 2016 in the judgment of that same Chamber, No. 1086 of 12-13-2016⁶⁴. The possibility of the majority party was also eliminated by establishing a process of renewal of parties contrary to the Constitution⁶⁵ and by eliminating the most representative opposition awn, the *MUD*, without valid legal justification, applying a prohibition of double militancy that is not in any norm⁶⁶.

Nor, for the year of this report, the national budget law was published. This lack of transparency and public information affected the possibility of social control that can be carried out from civil society and from Access to Justice in the area of the administration of justice in Venezuela.

However, based on data obtained by the NGO Venezuelan Transparency, it is known that in 2018 the Judicial Branch was the only one that had a budgetary growth in real terms.

⁶²<https://www.accesoalajusticia.org/tsj-dio-inicio-al-ano-judicial-2018-sin-cifras-y-con-advertencias/>

⁶³<https://www.accesoalajusticia.org/wp-content/uploads/2014/12/SC-N%C2%BA-1865-26-12-2014.pdf>

⁶⁴<https://www.accesoalajusticia.org/renovacion-de-los-partidos-politicos-de-oposicion/>

⁶⁵<https://www.accesoalajusticia.org/renovacion-de-los-partidos-politicos-de-oposicion/>

⁶⁶<https://www.accesoalajusticia.org/renovacion-de-los-partidos-politicos-de-oposicion/>

In 2017 it received Bs.F 878,610 million in total, and in 2018, between the initial budget and the additional loans, it obtained Bs.F 46,839,667 million, which, despite inflation, had a real growth of 14%.

Of these resources, most were allocated to the highest judicial instance, which was allocated Bs.F 344,213 million, which in addition, in the first six months of the year received additional credits for Bs.F 45,003,578 million, among other things, to improve its technological infrastructure, salaries and wages⁶⁷. In this sense, the NGO Venezuelan Transparency points out that "*The fact that the 2018 national budget has not been published makes it impossible to know whether the justice system, with or without this credit, has received the 2% that the Constitution orders to deliver each year to guarantee its operation. In the same way it is impossible to determine how much the budget assigned to the maximum court has changed so far this year*"⁶⁸.

By 2018, the structural problems of the administration of justice in matters of judicial career continued, since the judges are still mostly provisional and there are no public opposition competitions for admission. Nor does the Judiciary publish a list of who its judges are or their status. On its website, only the directory of each state appears in the section "TSJ regions" and in it you can see the name and occupation of the judges, including their status, although the information is not updated.

Even so the *Bloque Constitucional* organization offers the valuable information on its website that there are 2,184 judges in the country, of which 75.63% are provisional and 24.37% are incumbents⁶⁹.

For its part, *ArmandoInfo* has done research based on the data that appear in the directory of the website of the Supreme Court and has noted how its founder Joseph Poliszuk explains the following:

"40% of the active judges that are part of the Venezuelan Judicial System sympathize and / or are militants of the United Socialist Party of Venezuela; 8% are, or have been, state contractors, many in the exercise of their functions. Others have served in parallel roles such as having been a substitute for the National Electoral Council, at the same time serving as alternate in the Electoral Chamber of the Supreme Court of Justice. Before or after having exercised functions as jurists have been parliamentarians, representatives of Bolivarian unions, ministers. The concept of independence and

⁶⁷<https://transparencia.org.ve/una-ojeada-a-la-secreta-ley-de-presupuesto-nacional>

⁶⁸ IDEM.

⁶⁹ <https://bloqueconstitucional.com/jueces/>

autonomy in the Venezuelan justice system does not exist. The Blind Lady in Venezuela is mortally wounded ⁷⁰.

In the field of prosecutors of the Public Prosecutor's Office, the outlook is not encouraging either. Not only the Attorney General was appointed on August 5, 2017 by the National Constituent Assembly⁷¹ and not by the National Assembly as corresponded, but it decreed the restructuring of the Public Ministry. On this basis, the Attorney General eliminated the fiscal career⁷². In Official Gazette No. 41,482 of September 14, 2018, a resolution was published, No. 2703 of September 13, which reforms, as indicated, Article 3 of the Statute of the Public Ministry⁷³ and establishes that all career positions of officials that they serve in the Office of the Prosecutor are transformed into positions of trust, which are of free appointment and removal and, as a consequence, these officials lose their stability.

In fact, because of its content, the resolution in question not only changes Article 3 of the Statute, but also eliminates all the articles that refer to the career of Public Ministry officials, among which stand out 4 and 5, referred to the purpose and regime of the race. It also modifies, unconstitutionally because it is a sublegal norm, the Organic Law of the Public Prosecutor's Office (OLPP), especially its Title VI, which contains the regime of career and competition of MP officials.

Nor in military justice is there independence. The system of appointment of the magistrates of the Martial Court, the Military Prosecutor and the Military Public Defender by the Minister of Defense is maintained, even though these powers, in the case of the Martial Court, correspond to the Supreme Court, and in the others, to other public powers⁷⁴.

Regarding the efficiency of the Supreme Court, it must be said that only some figures of its management are published on its website, but not those of the courts, and the results can be seen in tables 1 and 2.

⁷⁰ <https://www.accesoalajusticia.org/jueces-penales-venezolanos-mantienen-lazos-politicos-y-comerciales-con-el-gobierno/>

⁷¹ According to a decree published in Official Gazette No. 6,322 Extraordinary of 05/08/2017.

⁷² <https://www.accesoalajusticia.org/eliminada-la-carrera-funcionarial-en-el-ministerio-publico/>

⁷³ Official Gazette n° 40.785 of November 10, 2015

⁷⁴ <https://www.accesoalajusticia.org/examen-a-la-justicia-militar-en-venezuela/>

Table 1. Files entered and decided and resolution rate of the TSJ, 2018

Room	Entered	Decided	Difference
SPA	771	1449	678
SE	62	116	54
SC	864	933	69
SCP	336	396	60
SCC	737	726	-11
SCS	586	1037	541
SP	98	120	22

Source: TSJ. [Online] <http://www.tsj.gob.ve/es/estadisticas-de-gestion-judicial> Consultation of 02.25.19

Table N 2. Decrease in the efficiency of the TSJ, 2018

Records	2016	2017	2018	Difference % 2016	Difference % 2017
Entered	4692	4903	3454	-26,38%	-29,55%
Decided	6358	5528	4777	-24,87%	-13,58%
Resolution rate (decided/admitted)	135,51%	112,75%	138,3%	2,05%	22,66%

Source: TSJ. [Online] <http://www.tsj.gob.ve/es/estadisticas-de-gestion-judicial> Consultation of 02.25.19

From the previous tables it can be noted that he made more decisions than the number of files entered. In fact, the number of decisions exceeds by 138% the number of files entered. This percentage seems positive, even with respect to previous years (2.05% more than in 2016 and 22.66% more than in 2017), but it indicates that it decides to back cases. It is also not clear whether these decisions actually conclude with the cases that occur in the highest judicial instance, since it mixes definitive decisions with interlocutory and even procedural ones. this means, not everything that the Court counts as decisions resolves the case and closes it.

In addition, Table 2 shows that the number of cases admitted in relation to previous years has decreased significantly (26.38% fewer cases than in 2016 and 29.55 less than in 2017), as well as the number of cases decided (24, 87% less than in 2016 and 13.58% less than in 2017), wherewith, even though 2018 has a higher resolution rate than in previous years, the Supreme Court is less efficient.

Access to justice in 2018 published his study "Analysis of the Jurisprudence of the Political Administrative Chamber (PAC) of the Supreme Court (SC) on military issues (2007-2017), which found a total of 164 sentences handed down in 10 years on the subject, where the criteria taken into account by the highest Court of the Republic when deciding in favor or against the members of the Bolivarian National Armed Forces (FANB) are evident⁷⁵.

Contrary to what one might think, given the privileges enjoyed by the olive-green uniformed in front of political power, the military does not always obtain justice equally, although it does more than civilians:

"Although the members of the Bolivarian National Armed Forces (FANB) obtain more justice than civilians by going to the highest court of the Republic against the State (who in most cases is victorious), in a proportion of 20% of judgments in favor of the military against only 10% of cases won by citizens or civil society groups, it is no less true than inequality and therefore, injustice also prevails among the uniformed olive green"⁷⁶.

What the study showed is that the State always tends to win, even against the military, although the higher the rank of the military and as long as it is active, the more it will be favored by justice, which demonstrates once again that The Supreme Court of Justice in Venezuela is not independent, because it tends to favor power.

In this regard, it is also important to note that the Inter-American Court of Human Rights (IACHR Court) published in 2018 two sentences against the Venezuelan state, on which there has been no official pronouncement and in which the absence of judicial independence is highlighted, as well as the great failures of the Venezuelan judicial power.

⁷⁵ <https://www.accesoalajusticia.org/wp-content/uploads/2018/06/boletin-de-jurisprudencia-militar.pdf>

⁷⁶ <https://www.accesoalajusticia.org/en-venezuela-la-justicia-no-es-ciega-ni-entre-militares>

The first one is about the Tascón list⁷⁷, a segregation tool that consisted in disclosing the identity of almost four million Venezuelans who had signed in 2003 the request to activate the recall referendum against the late President Hugo Chávez Frías.

Access to the names and surnames of millions of citizens who endorsed activating a popular presidential referendum led to a raid of mass dismissals against anyone who had stamped their signature on the application, which made them treated as enemies of the regime and, therefore, excluded from the enjoyment of fundamental rights. With this began the process of considering all opposition as an internal enemy, in the same style as the military dictatorships of the southern cone in the 80s.

Among the ex-public employees who were victims of the dismissals for the Tascón list are Rocío San Miguel, Magally Chang and Thais Peña. All three were removed from the positions they held in the Ministry of Foreign Affairs, specifically in the National Border Council (CNF), so they decided to exercise all legal actions in the country, but without success.

Faced with the impossibility of finding justice in the national instances, the affected ones went in 2006 to the Inter-American Court of Human Rights (Court IHR), where they demanded the responsibility of the Venezuelan State for the violation of their rights.

After twelve years, the IHR Court, through a ruling issued on May 30, 2018, condemned the Venezuelan State for the violation of the rights of persons who were discriminated against and politically persecuted only for participating in the activation of the recall referendum against President Chávez. The IHR Court declared the violation of the right to political participation, freedom of thought and expression, the right to work, and guarantees of due process.

⁷⁷ Ligia Bolívar, from the Human Rights Center of the Andrés Bello Catholic University, explains the scope and meaning of the judgment of the Inter-American Court of Human Rights (Inter-American Court of Human Rights) -the San Miguel Sosa et al case. Venezuela of February 8, 2018 filed on May 30, in which the Venezuelan State is condemned for misuse of power and political discrimination against Rocío San Miguel Sosa, Magally Chang Girón and Thais Coromoto Peña, who were dismissed from the National Council of Borders for having signed in favor of calling the recall (2004) against President Hugo Chávez and for that reason appear on the Tascón list. Recall that this list was released by the deceased deputy of the Fifth Republic Movement, Luis Tascón, and was used to identify those who stamped his signature against the mandate of Chavez and to discriminate against them. For Bolívar, this decision has a very important significance in two dimensions, for the continent and for Venezuela. In America, it constitutes the first pronouncement of the Inter-American Court on discrimination for political reasons. For Venezuela, beyond the recognition of the three victims, it is important to admit that the Tascón list constitutes an act of discrimination. See: Access to Justice, <https://www.accesoalajusticia.org/la-corte-idh-hizo-justicia-con-la-lista-tascon/>

Access to Justice highlighted in this regard: The judicial authorities did not see the strict compliance with internal regulations that best protected the victims⁷⁸. In fact, the Inter-American Court has to see that the judges "have not been informed about the motivations of the future, they have complied with the generalities without the particularized individual" and that the judicial authorities have failed to comply with the obligation to act and decide with independence (Article 8 of the Inter-American Convention on Human Rights).

The second sentence of the Inter-American Court in 2018 is the case of Linda Loaiza, which is the first word of gender violence in Venezuela⁷⁹, which lists the criminal proceedings against the attacker, especially because of the magnitude of the procedural delay and Gender stereotypes that revolved around the case.

Given this, Linda Loaiza, as a woman, must go to international bodies to demand respect for her dignity and for not finding justice in Venezuela. Then, in the Inter-American System, the I / A Court HR issued the sentence in September 2018, condemning the Venezuelan state for the freedom of human rights of Loaiza, among them personal integrity, the prohibition of torture and other ill treatments. Inhuman or degrading treatment, prohibition of slavery, personal liberty, judicial guarantees, dignity, autonomy and private life, movement and residence, equality before the law and judicial protection. The Court, in effect, determined the international responsibility of the Venezuelan State for compliance with the obligations derived from Article 7 of the Inter-American Convention to Prevent, Punish and Eradicate Violence against Women or the Convention of Belém do Pará, and Articles 1, 6 and 8 of the Inter-American Convention to Prevent and Punish Torture, as well as the violation of the right to personal integrity of the family group.

For Access to Justice, although there are few decisions issued by the Inter-American Court on violence against women, the failure of the case of Loaiza is of fundamental importance, not only because it is the first time that Venezuela has been sanctioned for violence gender, but also because the Court recognizes the responsibility that the public authorities or state agents of the country had for the torture she suffered, in accordance with the international instruments envisaged to prevent and eradicate practices that violate women's rights⁸⁰.

⁷⁸<https://www.accesoalajusticia.org/condena-a-la-lista-tascon-llega-en-tiempos-de-discriminacion/>

⁷⁹<https://www.accesoalajusticia.org/linda-loaiza-consiguio-primera-condena-por-violencia-de-genero-contra-venezuela/>

⁸⁰<https://www.accesoalajusticia.org/linda-loaiza-consiguio-primera-condena-por-violencia-de-genero-contra-venezuela/>

In that sense it is not surprising that in the case of the magistrate of the Social Cassation Chamber of the Supreme Court (SC), Edgar Gavidia Rodríguez, who was allegedly accused of threatening the life of his wife Francis Flores, the official has not been apprehended nor the Full Chamber of the High Court has initiated the preliminary investigation of merit, or even ordered an investigation or exhorted the Public Prosecutor to do so. Even less has been dismissed or suspended from office as established in articles 32 and following of the Organic Law of Citizen Power⁸¹.

IV. SPECIAL: The road to dictatorship

Since the election of the National Assembly (NA) in December 2015 with two thirds of its members of opposition parties, organized in a block called Democratic Unity Table (*MUD*), has been configured in Venezuela a real coup State⁸² by the National Executive with the support of other public powers, which has led to the establishment of a *de facto* regime with a progressive control of all areas of the country and the gradual elimination of the rights of Venezuelans. Access to Justice has prepared a special on its website that it published in 2018⁸³, where it systematized the path of the National Executive for the absolute seizure of power in three areas: constitutional, judicial and electoral.

Judicial coup⁸⁴

After the opposition won a hundred and twelve seats in the parliamentary elections of December 2015 - an historical fact, because for the first time in 17 years of the Chavez regime in Venezuela the opposition would control the National Assembly - the Government of Nicolás Maduro Moros practically, at the same time, it would initiate through the Supreme Court a harassment against the elected legislators and the parliamentary body itself as an institution, with the purpose of hindering the autonomous exercise of its functions.

In fact, before the new Legislative Power was installed and began its sessions on January 5, 2016, the Supreme Court, through its Electoral Chamber, integrated in its entirety by magistrates members of the ruling party, and that had entered in judicial

⁸¹<https://www.accesoalajusticia.org/el-tsj-calla-ante-presunta-comision-de-un-delito-contr-la-mujer-por-parte-de-un-magistrado/>

⁸² Because it is a "deliberate violation of constitutional forms by a group that stops power" (definition of the Larousse Dictionary, cited by Bobbio et al in its Policy Dictionary).

⁸³ <https://www.accesoalajusticia.org/camino-a-la-dictadura>

⁸⁴ <https://www.accesoalajusticia.org/golpe-judicial/>

vacations after the parliamentary elections, it decided a precautionary measure on December 30, 2015 by means of the sentence number 260⁸⁵ when receiving a demand of nullity against the election of four deputies of the Amazonas state, in which it ordered provisionally the suspension of the proclamation of the elected legislators by that federal entity, despite the fact that they had already been proclaimed by the electoral authorities.

Faced with this judicial decision that left the entire state of Amazonas without representation in the Assembly, the legislative body, by agreement of January 6, 2016⁸⁶, opted to swear in and incorporate the elected deputies in the aforementioned federal entity, since they had been duly proclaimed by the authorities of the National Electoral Council.

Additionally, the legislative body argued that sentence number 260 had been issued during the vacation period of the Supreme Court, *"giving clearance in days that were not contemplated as such in the judicial calendar, with the purpose of issuing a precautionary measure before that the National Assembly elected on December 6, 2015 could be installed and access to the corresponding judicial proceedings"*.

The reaction of the Electoral Chamber was not allowed to wait given that by ruling number 1 of January 11, 2016⁸⁷, failed to ratify its previous decision, in addition to establishing that the legislature had disobeyed the sentence No. 260 to swear the three deputies of opposition of the Amazonas state whose proclamation had been "suspended" and, for that reason, declared null and void *"the acts of the National Assembly that have been dictated or dictated"*, while the incorporation of these parliamentarians was maintained.

On the other hand, also the pro-government deputies had demanded before the Constitutional Chamber the "legislative omission" of the National Assembly to incorporate the deputies of the Amazonas state despite the existing precautionary measure. Faced with this, the three deputies of that entity requested their disincorporation before the Legislative Power, which meant that the Constitutional Chamber by ruling number 3 dated January 14, 2016⁸⁸ dismissed the action due to

⁸⁵<https://www.accesoalajusticia.org/wp-content/uploads/2015/12/SE-N%C2%BA-260-30-12-2015.pdf>

⁸⁶http://www.asambleanacional.gob.ve/actos/_acuerdo-sobre-la-juramentacion-e-incorporacion-de-los-diputados-del-estado-amazonas-y-del-diputado-por-la-representacion-indigena-de-la-region-sur-a-la-asamblea-nacional

⁸⁷<https://www.accesoalajusticia.org/wp-content/uploads/2016/01/SE-N%C2%BA-1-11-01-2016.pdf>

⁸⁸<https://www.accesoalajusticia.org/omision-legislativa-como-consecuencia-de-la-nulidad-absoluta-de-las-actuaciones-de-la-asamblea-nacional/>

legislative omission, considering that the National Assembly had given compliance with the precautionary measure of the Electoral Chamber.

However, on January 20 the Constitutional Chamber declared the constitutionality⁸⁹ of decree number 2.184 issued by Maduro on January 14, through which issued the exception state of economic emergency in the national territory, although the National Assembly itself had rejected the aforementioned presidential decree for not complying with the provisions established in the Constitution and the Organic Law on States of Exception.

From then on the constitutional judge would block the acts of the Legislative Power unleashing the serious conflict that today is lived in the country between the National Assembly and the Executive Power through the Supreme Court of Justice. Without a doubt, this will later translate into a chain of arbitrary rulings that will substantially transform the content and scope of the Constitution, in order to legitimize Maduro's authoritarianism and maintain control over the country.

It is in this way that the Constitutional Chamber would defend in the future the thesis of "*contempt*", supported by the Electoral Chamber, to justify that any decision taken by the national legislative body and its directive would be null and nonexistent and, consequently, gestate the obstruction of the work of the Assembly. In this sense we must emphasize that there is no constitutional or legal provision that enables the Supreme Court to assume powers of the legislature or annul acts due to contempt.

It should be noted, in this regard, that from that questionable thesis, in particular the Constitutional Chamber of the Supreme Court of Justice began to disrupt the organization and functioning of the Legislative Power in Venezuela and, in general, the entire structure of the Public Power to the detriment of the principle of supremacy constitutional, legality and separation of powers. As of the date of submission of this report, all acts of the parliament have been annulled through 100 judgments of the Supreme Court of Justice, issued from December 2015 until the date of the presentation of this report and 83 until December 2018⁹⁰, of which 12 were from the year 2018⁹¹.

⁸⁹ <https://www.accesoalajusticia.org/constitucionalidad-del-estado-de-emergencia-economica/>

⁹⁰ <https://www.accesoalajusticia.org/el-tsj-vs-la-an/>

⁹¹ <https://www.accesoalajusticia.org/wp-content/uploads/2019/05/Cuadro-TSJ-vs-AN-an%CC%83o-2018.pdf>

Coup to constitutional guarantees⁹²

Since January 2016, the National Executive decided to declare that the country was subject to an exceptional regime of economic emergency without any legal justification for it and, worst of all, without the approval of the National Assembly, and without notifying the Secretary General of United Nations and the Organization of American States, although it has this obligation as provided by the Constitution itself by recognizing human rights treaties as part of its text (Articles 23 and 31).

This situation has led Nicolás Maduro Moros for more than three years to govern by decree-laws and have an increasingly broad control of the budget and public resources without presenting accounts to the population, and above all to the National Assembly, a legitimate instance that he has not recognized since the opposition won parliamentary elections in December 2015.

In 2018, unlike in 2017⁹³, he presented his annual report before the National Constituent Assembly⁹⁴ and not before the competent body, the parliament. The public budget of 2018 was neither presented nor published in the Official Gazette (official instrument of publication of national legal norms).

In that order of ideas, in 2018 in the decree of state of exception No. 3,610, published in Official Gazette No. 41,478 of September 11, 2018, paragraph 19 states that during the term of the state of emergency President Maduro is empowered to dictate the rules regarding public credit operations or public indebtedness "without submission to another Public Power".

Also, the regime of state of exception has led to the alteration in the functioning of public powers, specifically to usurp the National Executive powers of the National Assembly to, among others, approve credits and resources not provided for in the budget law, celebrate contracts of public interest, to decide when it is that the motions of censorship would have effects, and to legislate on certain matters of national events.

Thus, in paragraph 19 of the aforementioned state of emergency decree, it also establishes that during the validity of the state of emergency Maduro is empowered to dictate the norms in matters of public credit operations or public indebtedness "without the submission to any other Public Power". In section 20, it is also

⁹² <https://www.accesoalajusticia.org/golpe-constitucional/>

⁹³ <https://www.accesoalajusticia.org/mensaje-anual-del-presidente-es-ante-el-tsj/>

⁹⁴ <https://www.accesoalajusticia.org/maduro-presento-memoria-y-cuenta-bajo-el-manto-de-la-ilegalidad/>

empowered to dictate the rules that authorize the maximum limits of the resources and expenditures of the country, as well as of the autonomous institutes, foundations, even of the states and municipalities "without submission to another Public Power"⁹⁵.

The most alarming is that the declaration of the state of emergency has the endorsement of the Supreme Court of Justice in its Constitutional Chamber, although not with the approval of the Legislative Power, which is a constitutional requirement so that it can be considered validly decreed.

Precisely, the explanatory statement of the Constitution and the Organic Law of States of Exception prohibit the Supreme Court of Justice from ruling on this, if Parliament disapproves of the measure. However, the constitutional judge, without attending to this demand, and above all violating the rights of Venezuelans and putting them in a situation of helplessness, has declared them constitutional and has accepted their extensions without any objection.

Faced with these serious attacks against the Constitution through the indefinitely prolonged states of exception in the country, the inconvenience of the illegitimate National Constituent Assembly, installed since August 2017 by virtue of the call made by Maduro outside the Constitution in May of that same year after usurping the people their exclusive right to call it by referendum.

The National Constituent Assembly, which is a *de facto* organ from its origin since it was not convened by the people as mandated by the Constitution and is the election of its members contrary to the most basic rules of a democracy, has been naming or recognizing authorities of power public, which has also become illegitimate and unconstitutional. This is also because it is the National Assembly that is competent for its appointment and not the National Constituent Assembly, which has also led to the usurpation of powers and consolidation of a *de facto* regime in Venezuela.

In this regard, in 2017, he appointed the Attorney General on August 5, 2018⁹⁶ after dismissing the Prosecutor Luisa Ortega Díaz, for being critical of the Government. Also in August of that year he ratified the magistrates of the Supreme Court of Justice, in an act of submission of these to his "plenipotentiary power".

⁹⁵<https://www.accesoalajusticia.org/el-poder-absoluto-presupuestario-en-el-nuevo-decreto-de-estado-de-excepcion/>

⁹⁶<http://efectocuyo.com/politica/tarek-william-saab-designado-como-fiscal-general-de-la-republica-provisional/>

But it is in 2018 that the *de facto* regime that begins to take shape from the end of December 2015 is completed, by appointing the Ombudsman, the Comptroller General and swearing in the newly elected Nicolás Maduro as president of the Republic for a new term of 6 years since 2019 in early elections and without guarantees that the National Constituent Assembly itself convened, usurping functions of the electoral body, as will be explained in the following section.

Electoral coup⁹⁷

Once the *Chavismo* realized that, from the parliamentary elections of 2015, in which the opposition won the majority of seats (112 vs. 55), it could start an electoral debacle - which could even lead to losing the Presidency of the Republic- began to use strategies, the vast majority illicit, to remain in power. One of its various maneuvers was the elimination of the political opposition at the beginning, through the SC and the CNE, and then the NCA, which led to that of 67 existing awnings by December 2015, only 17 (12 pro) government and 5 opposition) for April 2018⁹⁸.

The "purge" began with a sentence, number 1, of the Constitutional Chamber of the Supreme Court of January 5, 2016⁹⁹, which established that political parties that had obtained less than 1% of the votes in parliamentary elections of 2015 in less than twelve federal entities, they had to renew the payroll of their enrollees. This, because the organizations with partisan aims resigned to the use of their own cards to adopt the one of the Democratic Table of the Unit (*MUD*), alliance that was successful for the opposition against the adversaries of the denominated Great Patriotic Pole, the coalition of the government party. Only five of the 67 registered parties were excluded from this renewal process, among which was the *MUD*, the largest opposition party; and on the side of the government, also the most important, the *PSUV*. The ruling of the high court also led the CNE to dictate the "Rules for the Renewal of Registered Nominees of Organizations with National Political Purposes" (published in Electoral Gazette n ° 801 of March 4, 2016), which were applied to the parties with a view to participating in any election from that moment.

Later there was a discriminatory sentence (No. 223¹⁰⁰), also from the CC, on April 28, 2017, which made this renewal process more flexible, but above all for the official avenues: Organized Revolutionary Action (*Tupamaro*) and the Venezuelan

⁹⁷ <https://www.accesoalajusticia.org/golpe-electoral/>

⁹⁸ <https://www.accesoalajusticia.org/multimedia/infografias/venezuela-sin-partidos-politicos-opositores/>

⁹⁹ <https://www.accesoalajusticia.org/cne-le-elimino-la-competencia-al-gobierno-con-medidas-inconstitucionales/>

¹⁰⁰ <http://historico.tsj.gob.ve/decisiones/scon/abril/197909-223-28417-2017-15-0638.HTML>

Communist Party (*PCV*), as well as for a small opposition party: New Vision For My Country (*Nuvipa*). To all the other parties, practically in their great majority opponents, they had to draw a string of obstacles¹⁰¹ translated in a few days (only 2) to collect the signatures, few points authorized by the Electoral Power and the imposition of fingerprint readers under the pretext of preventing the double militancy, which, it is worth mentioning, is not prohibited by law or the Constitution in Venezuela. The consequence: **only 14 parties were renewed, added to the 8 declared valid without having to undergo the renewal process, among them the MUD.** That is to say, of 67 parties registered in the *CNE*, there were 22.

The fraudulent National Constituent Assembly also collaborated with the "political cleansing" in favor of the power in Miraflores. On December 27, 2017 issued a decree that ordered a new validation of the organizations, in retaliation against those who did not participate in the municipal contests of December 10. Thus, after another unfair and illegal validation process, the opposition parties: Primero Justicia, Voluntad Popular and Puente, were eliminated. The first because he did not collect the signatures in the stipulated time and then surprisingly was not allowed to review that decision, and the second because they did not agree to participate in the process as a "sham".

To the above it is added that on December 20, 2017, the National Constituent Assembly approved a "constituent decree" for the suppression of the Metropolitan Area of Caracas and the District of Alto Apure, the first administered by the opposition and the second by the dissident Chavism, which was another measure of harassment against any person or institution that opposed the interests of the national Government. In this way when the regional and municipal elections were held, there were no candidates for these territories.

At the beginning of 2018 (January 25), an unusual interpretive sentence from the Constitutional Chamber (number 53)¹⁰² eliminated the *MUD* card from the race. "It is made (the exclusion) because its conformation is due to the grouping of various political organizations already renewed and others pending renewal, and this grouping character openly contradicts the prohibition of double militancy," the ruling reads.

¹⁰¹ <https://www.accesoalajusticia.org/noticias/la-nueva-carrera-de-obstaculos-de-los-partidos-politicos/>

¹⁰²¹⁰² <https://www.panorama.com.ve/politicaeconomia/TSJ-ordeno-al-CNE-excluir-tarjeta-de-la-MUD-en-elecciones-presidenciales-20180125-0079.html>

The result was favorable for the Government, since between the Supreme Court and the National Electoral Council they cleared the path to Nicolás Maduro for the presidential elections, which were due to be held at the end of 2018, but which were illegally anticipated on May 20, eliminating him the weighty competition of the country's main opposition political parties. This turned out to be a perfect formula to end the opposition, taking into account also the political disqualifications imposed by the Comptroller General in 2017¹⁰³ on figures like Henrique Capriles or with the persecutions of the Judicial Power to the opposition mayors and deputies of the Assembly National.

The irregularities registered before, during and after the process can be summarized in the following: illegal call by the National Constituent Assembly, being competence of the Electoral Power, according to constitutional article 293.5; the aforementioned elimination of weighty opposition political parties (*Mesa de la Unidad Democrática, Primero Justicia y Voluntad Popular*) to prevent candidates from being presented who could defeat Maduro; the official advantageism, expressed among other factors, in the use of the *Carnet de la Patria* as an instrument of extortion with social benefits; the installation of red dots near the polling stations so that the voters could be checked with the so-called *Carnet de la Patria*, as well as the use of assisted voting in favor of the candidate-president of the United Socialist Party of Venezuela (*PSUV*).

Obviously the irregular composition of the National Electoral Council with rectors appointed by the Supreme Court of Justice instead of the National Assembly, was a key factor in these elections and in those that were carried out in 2017. Also the social control exerted through the *Carnet de la Patria* of the fatherland as Bernal himself acknowledged regarding the regional, municipal and National Constituent Assembly elections¹⁰⁴.

In view of this new electoral fraud, the NGO Electoral Observatory of Venezuela (OEV), the Venezuelan Program of Education, Human Rights Action (Provea) and Access to Justice, went to the Supreme Court of Justice on June 12 to contest through a judicial appeal, the electoral results of the presidential elections held on May 20¹⁰⁵.

¹⁰³ Disqualifications contrary to Article 42 of the Constitution and Article 23 of the American Convention on Human Rights, which are only permitted by judicial order and prior procedure.

¹⁰⁴ http://www.el-nacional.com/noticias/gobierno/anc-aprobo-fiscalizacion-actividades-los-clap_217791

¹⁰⁵ <https://www.accesoalajusticia.org/ong-impugnaron-elecciones-presidenciales-ante-el-tsj/>

It is worth remembering that the team of Henri Falcón, one of the candidates faced by Maduro, had previously gone before the Electoral Chamber to introduce a recourse against the electoral event before its celebration, based mainly on the arbitrary use of the *Carnet de la Patria* as strategy used by the national government to manipulate the will of the voters¹⁰⁶.

Said action was declared inadmissible by the Electoral Chamber under the pretext that the plaintiff did not narrate the facts on which he based his request or provide any evidence demonstrating the alleged fraud¹⁰⁷, although the letter did contain what was required as is evident from the judgment itself which transcribes part of that resource. On the other hand, asking for evidence when considering the appeal for admissibility is a violation of due process, since this is something specific to the trial that has not yet been developed at that stage.

Also the demand of the NGO was not admitted by the Electoral Chamber by sentence n° 66 of July 4, 2018¹⁰⁸.

As an advocacy within the Inter-American Commission on Human Rights (IACHR), Access to Justice participated together with other NGO in the May 2018 hearing on “Electoral process and its impact on the general human rights situation in Venezuela”. In this regard, the IACHR said that: “... *the petitionary organizations denounced the existence of systematic actions aimed at weakening political pluralism and the freedom to choose in Venezuela. They denounced a policy of persecution of dissent, in particular they referred to persecution patterns consisting of the political disqualification that has affected the main opposition parties and leaders. They indicated that the electoral event scheduled for May 20 took place in a context of media affected by a restrictive regulatory framework and official propaganda media at the service of the government. They indicated that the invited observers do not enjoy the agreement of the different candidates in contention. ... Omissis... The IACHR inquired about the independence of the electoral power, access to electoral information and young voters who would not have registered in the registry, among other*”¹⁰⁹.

Concurrent with the presidential elections were those of legislative councilors. With this proceeding the Law of Regularization of the Constitutional and Legal Periods

¹⁰⁶<https://www.accesoalajusticia.org/impugnacion-electoral-de-falcon-deja-constancia-de-atropellos-del-poder-en-venezuela/>

¹⁰⁷ <https://www.accesoalajusticia.org/fraude-electoral/>

¹⁰⁸ <https://www.accesoalajusticia.org/inadmisibilidad-de-recurso-contencioso-electoral/>

¹⁰⁹ 168th session of the IACHR, Dominican Republic, from May 3 to 11, 2018,

<http://www.oas.org/es/cidh/prensa/comunicados/2018/104A.asp>

of the State and Municipal Public Powers was contravened, which establishes (Article 2.2) that the elections of governors and legislative councils must be held jointly to guarantee uniformity in the beginning and end of its mandates and avoid altering or modifying the periodicity of the positions -executives and legislators- that occupy the authorities belonging to the state public power.

In December 2018 the elections of municipal councilors were held and the arbitrariness committed by the National Electoral Council did not vary substantially with respect to those observed in the processes corresponding to the presidential early elections and legislative councils of May 20, 2018, as well as in the regional (governors) and municipal elections (of mayors) celebrated in 2017, especially when creating an absolutely unequal electoral framework in order to avoid the opposition's triumph.