

## Institutional breakdown<sup>1</sup> and the humanitarian emergency

Since the election of the National Assembly (AN) in December 2015 with two-thirds of its deputies from opposition parties, organized in a block called the *Mesa de la Unidad Democrática* (MUD), a coup<sup>2</sup> has been taking place in Venezuela<sup>2</sup> by the National Executive with the support of other public powers, which has led to the establishment of a de facto State with progressive control of all areas of the country and the progressive elimination of the rights of Venezuelans.

In 2019, this situation worsens as a result of the inauguration and swearing-in of Nicolás Maduro on January 10, as President of the Republic in his second term, before the Supreme Court of Justice (TSJ) and not before the National Assembly (AN) as established in the Constitution in its article 231, based on elections held in advance of the constitutional period (May 2018 instead of December) in conditions that are completely alien to legality and democracy.

Faced with this, the AN, by agreement of January 15 of this year, in a formal session held on that date at its headquarters, appointed, according to the constitutional mandate, as President of the Republic the deputy elected as president of that body in session of January 5, 2019.

The truth is that the assumption of Maduro as president-elect, even without having been, transformed him into a de facto president, thus his government, from that point on, also in fact. But in addition to fact, they are also the other organs of the State, for having been their illegitimate and unconstitutional origin.

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<sup>2</sup> Because it is a “deliberate violation of constitutional forms by a group that holds power” (Larousse definition, cited by Bobbio et al in their Dictionary of Politics).

Thus, the National Constituent Assembly (ANC) was not convened by the people, as required by the Constitution, but by the President of the Republic. The magistrates of the Supreme Court, as explained by the NGO Acceso a la Justicia, were mostly not appointed by the competent body (the current AN), following the appropriate procedure, or those selected as such did not meet the requirements to be so. The Ombudsman and the Attorney General were appointed by the ANC, not the AN, although the Constitution requires it. For their part, the members of the National Electoral Council (CNE) were appointed by the TSJ and not by the AN as corresponds according to the Constitution.

In such a way that the only legitimate and constitutional state body in Venezuela is the AN (the Venezuelan parliament), although its decisions are not enforceable since its election, because, as Access to Justice has explained, the TSJ has made it impossible with 90 rulings against him from December 2015 to March 2019, through which he has granted his functions to the Executive, the electoral body, the ANC or even himself, or has simply eliminated his powers.

To this panorama of progressive deinstitutionalization of the Venezuelan State, it is added that the national Government, which is the one who actually exercises power in the country, concentrates it, having self-attributed or granted it the Supreme Court (according to Access to Justice, with at least 160 sentences in his favor, to the detriment of the Constitution and human rights, including 90 against the AN), the most serious thing is that he does not act at the service of the citizen or provide him services. The ministries and other agencies of the National Executive function by inertia. There is no investment, maintenance, or response for several years. Therefore, everything public is on the verge of collapse or does not work. The recent national blackout is a clear demonstration of this.

The country's problem is further aggravated because most of the utilities and services have been nationalized for several years, or private companies have been progressively expropriated, and more recently, the few that remain when they are about to close, given the Disincentives to production that exist and the impossibility of repatriating their capital are taken up by the Government. Basic

public services (electricity, water, telecommunications, and solid waste collection) have been in the hands of the Government for years and their provision has enormous failures due to lack of maintenance and investment, as well as qualified personnel. The crisis of public services has also had an impact on communication networks, causing episodes of disconnection and misinformation due to the precariousness of internet access, which, together with intimidation, blocking and closing of media, affects freedom of information and expression in the country.

Thus, in Venezuela, the State has stopped exercising its fundamental functions, even the most essential ones such as security and justice, and this has given rise, together with a public policy of impunity, to criminals having gradually transformed into gangs, and later, in mega-gangs with the occupation of territory in exchange for "security" for the inhabitants of the area.

The Venezuelan Observatory of Violence estimates that the homicide rate in 2018 was approximately 81.4 per 100,000 inhabitants (there are no official figures). Among the homicides, those that are due to "resistance to authority" are counted, that is, deaths at the hands of State security organs, which constitute 33% of the total (23,047 homicides and 7,523 due to resistance to authority).

Added to all this is the collapse of the oil industry which, due to its mismanagement and the immense corruption that has characterized it during Chavismo, especially in the period 2004-2014, is no longer profitable as it was, so The government has continued with its rentism, but now based on gold and other minerals ("Arco Minero"), with the presence of armed groups that "control" to a large extent the extractivist areas, where there is no Law, but theirs. The

The opacity of government contracts for mineral extraction and resource management is enormous. The Colombian ELN is already present in these areas, acting with the complicity of the Government, and even with its approval to bring "order" to the criminal groups in the area. The abuses in these stateless areas, where these groups are transformed into micro-states, are atrocious, they have even established in them, among others, forms of modern slave labor.

Violence within schools due to organized crime, micro drug trafficking, hate violence, and attacks on students and teachers has increased by 75%, due to the lack of prevention programs and effective actions. An alarming number of students, in at least five Border States, are victims of kidnapping and forced recruitment by irregular forces. Managers and teachers are threatened to distribute material proselytizing students. The Attorney General of Colombia and the UNICEF representative in that country have reported that FARC dissidents continue to kidnap minors in Venezuela.

Also, it is happening that some regional governors impose their norms in their territory, contrary to the Constitution, even against the National Power in light of its lack of response and legitimacy.

To this discouraging panorama, it is added that when the Government acts, it is only to repress whoever claims for a service or who opposes it or to control the activity of the private sector, not in a regulatory sense, but plundering (controls of percentages of profits and prices with regulations, many times below costs, and even control of production with workers who report to the Government with the obligation for companies to deliver up to 50% of their production).

The *Cedice Libertad Property Rights Observatory* between 2005 and 2017 has recorded 125,248 property rights violations, including the plundering of 6 million agricultural hectares (60,000 km<sup>2</sup>), which is equivalent to almost three times the territorial extension of Wales or Latin America, slightly larger than the area of Costa Rica, which measures 5,100,000 hectares or 51,100 km<sup>2</sup>. The consequence of this policy has been the dismantling of the country's productive apparatus, leaving millions without jobs and the vast majority of Venezuelans without the possibility of accessing food, goods, and services.

The Government today gives some subsidies to citizens, but under pressure, forcing them to obtain the "*Carnet de la Patria*", through which it monitors whether the person participates and whether or not they elect them in electoral elections, under the argument of that if you don't, it can take away the benefit.

The management of the economy by the government has also been very irresponsible, based on constant indebtedness without control and printing of currency without assets to support it; the Central Bank has not had any autonomy for years. This has led, among many other factors, to hyperinflation that is now one year old; The loss of the value of the currency has been enormous, which has generated that, despite the constant increase in salaries, it is difficult for a job paid in local currency to allow a person to survive. It is not surprising in this sense the figure of the National Survey of Living Conditions (Encovi as its acronym in Spanish) according to which 94% of Venezuelans declare not having sufficient resources to live and there is 48% of multidimensional poverty in the country (takes into account standard of living, employment, social protection, education, services and housing).

To all this is added that the opposition political parties have been persecuted and annulled, as well as their representatives. Additionally, the Government has launched an important communication campaign to discredit it, in which it has been very efficient and has managed to fracture an opposition that acted together. In that sense, there was no clear electoral solution, nor institutional until the arrival of the new president of the AN, Juan Guaidó, who has managed to bring together the opposition together with other deputies.

The government's pattern is to imprison or persecute any opposition leader as soon as he appears (the case of Deputy Olivares is a good example of this), but in this case, in a strategy well thought out and coordinated with the international community through its representatives in Venezuela, the AN has acted with its presence in every session it has held since it declared the usurpation of the office of President of the Republic by Nicolás Maduro on January 15. In addition, every time that the Government has tried to apprehend Guaidó or has acted against him or his family, the international community and in particular, the United States Government has communicated that it will take action if something happens to Guaidó or any of the deputies of the AN, a military intervention is not excluded. Even so, the Supreme Court on January 29 decreed against Guaidó a ban on leaving the country without authorization until the investigation (which had

already been initiated by the Prosecutor's Office) is completed; prohibition of alienating and encumbering their property and blocking and immobilization of bank accounts and / or any other financial instrument in Venezuelan territory. The other thing that surprises in this case is that the correct legal procedure was minimally followed, the common thing is to first arbitrarily detain it and disappear it, and finally the judgment of the Supreme Court comes justifying everything; the case of Requesens is quite illustrative in this regard.

The lack of institutions is compounded by a critical legal uncertainty: the President of the Republic is the one who legislates through decree-laws, because he has decided so without the endorsement of Parliament on the basis of an economic emergency, decreed by himself since January 2016 across the country. Until January 2019, there have been 19 extensions, although the state of exception (which is what the Constitution calls this figure), cannot last more than 60 days, extendable only once. In addition, as the AN has not approved these states of exception, the Supreme Court has done so in their place, even though national regulations prohibit it.

There are also countless unconstitutional laws and contrary to international human rights treaties, which deny the existence of rights, and even their exercise turns them into crimes, such as the "Law against hatred, intolerance and for peaceful coexistence", issued by the ANC, which provides for up to 20 years in prison for expressing opinions or demonstrating in a peaceful way against the Government, closure of media and stations, blocking of portals, provided that their content or the opinions expressed are considered by the Government as criticisms of their position.

Likewise, in the area of freedom of expression, the media have been controlled, silenced, or persecuted. According to the NGO Instituto Prensa y Sociedad Venezuela, between 2013 and 2018, at least 44 newspapers stopped circulating permanently, while another 14 temporarily ceased their work. Of this number, only in 2018, 30 newspapers went out of circulation (largely due to a lack of paper that the Government monopolizes), of which 10 announced the total cessation of

their operations. In addition to this, radio and television stations have closed their doors and there are limitations to see communication channels such as CNN or NTN24, to name a few. There are also important blocks on the internet, in addition to its malfunction (service interruption and slowness).

The Supreme Court, according to *Acceso a la Justicia*, has issued countless judgments denying the right of access to public information, including those related to policies in the sectors of

food and health; In the last three years, the ministries have not published their annual management report, the national budget, the execution of spending, hiring, gross domestic product, inflation rates, among other aspects of special relevance.

To this is added that the norms dictated by the National Executive sometimes are not published in the Official Gazette (official instrument of publication of legal norms) on the date they are announced (on television), and when they are published they are usually published with an earlier date to the day they actually appear. The Supreme Court also issues sentences without publishing its full text, sometimes it does so until months later and in other cases, and neither the text nor the sentence appears, but rather a press release.

It is important to note that the institutional breakdown described above has catastrophic social and economic consequences for Venezuelans, which experts have described as a complex humanitarian emergency, which did not happen in a day, but is the product of a progressive deterioration, which began to take shape in the country since the Chávez government, especially since 2007, due to its policies aimed at dismantling the rule of law and democratic order, the destruction of the country's economic and institutional capacities, and the use of coercion and violence by state media against those who question or oppose government policies. During the Maduro government, the aforementioned public policies of Chávez were transformed into a true intentional, and systematic State policy.

Both about the authoritarian policies and the dismantling of the institutional framework of the Chávez government, as well as those of Maduro, already with a

totalitarian vocation, organized civil society organizations have been warning the international community on several occasions, the Office of the High Commissioner for the United Nations for Human Rights, the Committees of the International Treaty Bodies and Special Rapporteurs of the Universal Human Rights Protection System, the Inter-American Commission on Human Rights, the Inter-American Court of Human Rights and the International Criminal Court.

In this sense, the 2011 and 2016 UN reports, product of the Universal Periodic Review (UPR) regarding Venezuela, stand out, in which it is clear what was happening in Venezuela, especially in matters of deterioration of the rule of law, democracy and repression.

Mention should also be made of the June 2016 letter from 82 Venezuelan civil society organizations, addressed to the then UN Secretary General, Ban Ki-Moon, in which it is denounced that most of the agencies of the United Nations System in the country remain silent, hide information and accept the restrictions and conditions imposed by the national government on the implementation of cooperation programs, underestimating or without taking into account the complaints, reports and the evident economic and social deterioration of the country, claiming limitations for not counting with official data and be subject to the ongoing United Nations cooperation framework, agreed with the government. In response to this letter, in August 2016, the UN Secretary General finally publicly denounced the Venezuelan humanitarian crisis, caused by political instability.

More recently, already in 2019, a significant number of NGOs issued another statement, warning once again about the complex humanitarian emergency in the country and denouncing that the Venezuelan Government continues to deny its existence), even in a meeting held on January 12, 2019 with representatives of the UN, who were present in unconstitutional acts of the Government related to the political situation of the country, more specifically in the swearing in of Maduro as president before the Supreme Court and not before the AN as established in the Constitution in its article 231.

From all of the above, it is clear that the complex Venezuelan humanitarian emergency has nothing to do, as the Government has argued, with international sanctions, since these have generally been directed at specific officials and their assets, and not at the country. and that even those that may have eventually directly affected the country's citizens have been subsequent to the existence of the humanitarian crisis, in fact, they are relatively recent (February 2019).

Finally, on February 23, 2019, the Venezuelan opposition together with other governments in the region in the framework of a concert that took place the day before, which attracted the eyes of the world and a fundraising initiative called Venezuela Aid Live, the humanitarian aid sent by the United States to the border with Colombia tries to enter the country, although without success. Moreover, the Venezuelan Government in a significant display of violence and repression with the presence of paramilitaries (armed groups of citizens attached to the Government, also known as "collectives") does not allow it to enter, despite the desperation shown by Venezuelan citizens who at that moment, they are at the border to receive medicine and food. Guaidó manages to leave the country, despite the TSJ's exit ban, and a few weeks later she manages to return to the country, entering through the international airport and passing immigration as if there was no arrest warrant against her. Ambassadors from various countries await her at the airport and escort her to her home in Caracas.

The truth is that, as of February 23, it is even clearer that the Venezuelan government not only does not intend to recognize the complex humanitarian emergency but also that it will do whatever is necessary to stay in power. It is illustrative in this sense that, in the face of a relative breakdown in the framework of the State's security forces due to pressure from the international community and the accelerated socioeconomic deterioration coupled with the national blackout that lasted more than 100 hours, Maduro urges the groups to participate in the activities called by the ruling party and the "active resistance." It is even more serious that the regime does not mind getting to pit citizens against citizens, in fact, it is a notorious fact that it has been "enlisting" citizens to repress those who protest -especially in popular areas in Caracas- without receiving training and under a

discourse based only on hatred and violence in exchange for economic and social benefits, which in a context as deteriorated as that of Venezuela, can be attractive to despite being miserable.

The consequence of everything described is that two months after the president of the AN, Juan Guaidó, was appointed President of the Republic by the AN according to the provisions of the Constitution, elections have not yet been held for the election of a new president, as required by the constitutional text, not only because the CNE is not a true electoral referee and the voter registry is not reliable, but also because the Government has not accepted to go to elections, despite the efforts of the European Union in this regard and its Contact Group, and this has led to Guaidó having issued within the NA certain legal acts in his capacity as President of the Republic without having a Council of Ministers<sup>3</sup>. It is important to note that these acts are not enforceable in Venezuela because the Maduro government does not allow them, but they have been necessary to send certain messages to the population, such as the decree declaring an emergency due to the national blackout or for the international community such as that of the appointment of the board of directors of Citgo, the state oil company in the United States, in light of the freezing of its accounts by that country and the need for reliable representatives from Venezuela who can serve as a liaison with the US government.

Finally, it should be noted that the AN has issued a law, called the Statute that governs the transition to democracy, which marks a route on how to get to elections for the resident of the Republic and other State authorities, although due to the same deinstitutionalization existing in the country, this would be done after a year of a transitional government that would last until early 2021, a period during which Guaidó's mandate as president of the Republic is extended.

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<sup>3</sup> As his mandate is temporary while there are elections according to the Constitution and this is limited to 30 days and since he does not have real power to govern, it is a good indication that he has not appointed ministers, because it shows that he tries to adhere to the Constitution, despite the *sui generis* situation in which Venezuela finds itself.



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