

ANNUAL REPORT, 2017

JUSTICE IN FAVOR OF POWER AND REPRESSION IN DICTATORSHIP

PRESENTATION CONTEXT

Beginning in 1999, when President Hugo Chávez assumed power, Venezuela entered into a process of structural change towards "*socialism of the 21st century*". Process that has blurred the division of powers causing violations of human rights within the framework of a regime of continuous exception. The stages that have been identified in these 18 years are:

I stage up to 2008: a new constitution guarantor in human rights is adopted, but with changes in the organization of the State, the Moral and Electoral Power were added, the Judicial Power was taken and had the Legislative Power control. It was a dual stage, in which it was tried to maintain a democratic and legalistic façade, but with repression and important human rights violations.

II stage, 2009 to 2012: the Justice organic legal framework was modified to support the reforms of the socialist movement in power. In this period, the law was accommodated the convenience of the Power and the repression of the opposition is more evident.

III stage, 2013 to 2015: Nicolás Maduro assumes the presidency of the Republic and repression of the opposition and civil society intensifies, both by the action of the security forces and by means of sentences, especially by the Constitutional Chamber of the Supreme Court of Justice and the number of political prisoners increases exponentially. The opposition won in December 2015 the parliamentary elections, for the first time since the Chávez regime began.

IV stage, 2016 to 2017: a continuous state of exception is established and the social and economic crisis is aggravated, the shortage of food and medicines increases, the humanitarian crisis is internationally recognized. The regime loses the democratic veil, repression and massive violations of human rights intensify. The Supreme Court annuls the National Assembly and progressively, together with the National Electoral Council (CNE¹), the opposition parties and most of its leaders. The country enters into a constituent process without respect for the popular vote, trying to

¹ by its acronym in spanish

dissolve the National Assembly, and military justice is applied as a tool of repression even to the same State officials who are critical. The International Community manifests itself against the constituent process, the General Secretariat of the Organization of American States (OAS) and the High Commissioner of the United Nations (UN) issue clear reports about violation of the rule of law, democracy and human rights.

In addition to this, during the 18 years of the *chavismo* government, Venezuela has gradually unknown the International Human Rights Protection Systems. Within the OAS, the Government denounced the American Convention on Human Rights in 2013, has not executed the judgments of the Inter-American Court of Human Rights and has not allowed the visit of the Inter-American Commission on Human Rights (IACHR), for more than 15 years, nor of its rapporteurs. Neither has he authorized the entry of UN rapporteurs and working groups.

Since 2011, Venezuelan human rights organizations have participated in the Universal Periodic Review (UPR) process of the Human Rights Council, presenting reports on the structural patterns of violation of democracy, the progressive absence of separation of powers, the destruction of justice and the massive violation of human rights.

In March of 2017, the OAS General Secretary, Luis Almagro, demanded the application of the Inter-American Democratic Charter for the rupture of the constitutional thread by virtue of decisions of the Supreme Court, the lack of democracy, the manipulation of the negotiation system of the Democratic Charter and requested the suspension of Venezuela within the OAS.

In response, Venezuela threatened to leave the Organization. From that moment the process of negotiation between Government and opposition with the mediation of European countries intensified. In July 2017, 12 Latin American countries pronounced in the Lima Declaration, making clear the breaking of the constitutional order in Venezuela and the consequent illegitimacy of the Constituent Assembly².

From March to December 2017, political instability increased, with a greater number of repressed demonstrations, together with a growing authoritarianism of the State endorsed by the sentences of the Constitutional Chamber and the military courts, within a framework of state of exception and constituent without limits, without a clear term, or legitimacy. In August 2017, the UN High Commissioner published a

² See the Declaration of Lima, available at this link: <https://translate.google.com/?hl=es#es/en/Ver%20Declaraci%C3%B3n%20de%20Lima%2C%20di%20sponible%20en%20este%20enlace%3A>

report entitled: “Human rights violations and abuses in the context of protests in the Bolivarian Republic of Venezuela from 1 April to 31 July 2017”.

During 2017, *Access to Justice* investigated and documented³ the following patterns of violations of human rights, related to justice in Venezuela, where the most important ones stand out as: the constituent process; the state of exception; Repression and arbitrariness through Justice. Finally, some figures of the management of the Supreme Court of Justice are presented.

I. THE CONSTITUENT CONVENED IN 2017 WITHOUT LEGITIMACY AND WITHOUT DEADLINE

On May 1, 2017, the President of the Republic convened a National Constituent Assembly (ANC⁴) by decree, usurping popular sovereignty, since it is the people who must decide whether or not to enter a process of this level. In the same way, the President dictated the electoral guidelines, unaware to the democratic principles, since he established a sectorial and territorial system where not all the votes have the same value, violating in this way the basic principle of an elector, a vote.

The sectorized and communal⁵ formula (workers, peasants, fishermen, students, people with disabilities, indigenous peoples, pensioners, businessmen, communes and communal councils), prevented the participation of any voter who was not in any of those sectors; In addition, these were created discretionally by the Government, and each elector was assigned to a certain sector arbitrarily and without possibility of being changed before the elections were held, leaving approximately 5 million people out of the sectorial vote. To this it is added that the form of territorial election caused that municipalities of some thousands of inhabitants had the same representation or more than others with millions of inhabitants⁶.

The most serious is that this was endorsed by the Supreme Court of Justice itself through four sentences.

The first is from the Constitutional Chamber, No. 455 of June 23.2017. It states the "constitutionality" of the comital bases for the election of the members of the National Constituent Assembly established in Presidential Decree No. 2.878.

³ Information on the Access to Justice website: <http://www.accesoalajusticia.org>

⁴ by its acronym in spanish

⁵ <http://www.accesoalajusticia.org/el-fraude-de-la-constituyente-3/>

⁶ <http://www.accesoalajusticia.org/el-fraude-de-la-constituyente-2/>

The other sentences are from the Electoral Chamber, (No. 83, 84 and 85 of June 27) and it discards three contentious electoral appeals presented by citizens and the Deputy Attorney General, arguing, among others, that the constitutional Chamber is already had pronounced on the matter in judgment No. 455.

On these decisions of the Supreme Court, *Access to Justice* indicated at the time the following:

"It is argued, in this regard, that **the President is not obliged to follow the electoral system proposed in the Organic Law on Electoral Processes (LOPRE⁷)**. In fact, the Chamber affirms that "No electoral system is pure, it is always mixed and the proposed one, which is not obliged to follow the Organic Law of Electoral Processes, is a modality that seeks the personalization of suffrage and national representation, through the fundamental political unit: the municipality. Likewise, sectorial representation is at the base of direct democracy, contemplated in the Constitution and developed by the legislator. The Constitutional Chamber rejects the application of the principle of legality in the actions of the **Executive Power** when it affirms that **it is not obliged to submit or subordinate itself to the LOPRE⁸**". (Highlight of ours).

During the constituent election process, on July 30, 2017, practices that violated human rights were denounced, such as coercion and harassment of public employees, and irregularities as candidates of a single political tendency; absence of guarantees such as indelible ink, insufficient audits before and after the election process, lack of machines to capture fingerprints; lack of impartial international observers; use of the *carnet de la patria* (identity card of the government) in the voting centers; false media campaign about mass influx of citizens to the polls; threats to the media that show empty centers; strong repression against street demonstrations with more than 10 murders; extension of the schedule (until 7:30 p.m.) without voters in line and the omission of null votes.⁹

Also, a high representative of the Smartmatic company in London, Antonio Mugica, warned about the manipulation of "at least" 1 million votes in the elections of the National Constituent Assembly. Likewise, the international news agency Reuters reported that for the ANC only 3.7 million people would have voted until 5:30 p.m

⁷ by its acronym in spanish

⁸ <http://www.accesoalajusticia.org/wp/noticias/cuatro-nuevas-sentencias-del-tsj-vs-soberania-del-pueblo/>

⁹ <http://www.accesoalajusticia.org/multiples-irregularidades-dificultan-reconocer-resultados-de-la-anc/>

on Sunday, a figure very far from the 8.1 million, which the president of the CNE assured had obtained by the closing of the day. And it is that neither the adepts of *chavismo* endorsed the results. A group of "collectives" (paramilitary groups) protested at the doors of the CNE for the alleged "exclusion" of their candidates. Leaders of a political party related to the government, *Patria Para Todos* (PPT) also complained.

The Venezuelan Electoral Observatory (OEV) also documented that the electoral power, led by Tibisay Lucena, omitted 14 audits and 70 activities of 100 (training of members of the polling station, assembly of electoral materials, printing of invalid ballots to train the voter, accreditations to media of social communication, among many others), which have preceded the electoral days in the country, to "shield" them and generate trust in the voter.

Contrary to what happened with the request for a recall referendum of the opposition last year, the CNE organized in a record time the consultation of the ANC, without prior audits to the system (voting machines), without indelible ink after the refusal of the Central University of Venezuela (UCV¹⁰) to supply it for the unconstitutional nature of the elections and without opportunity for political actors to challenge the Electoral Registry that would be used or the publication of the electoral sub-registries for each sector.

It is worth noting that the same July 29, *Access to Justice* was added to the allegations, according to which the so-called *Carnet de la Patria*, apart from the identity card of the carrier, contained a code and a serial, and by entering them in the CNE website, it was detected that both numbers corresponded to a different voter registered in the Electoral Registry than the holder of the card. This is another indication of suspicion, since the card had to be presented before voting, and the fact that each one had information of 3 people, and not only of the voter, gives rise to more indicators of fraud.

This process imposed by force by the President, further increased the political pressure in the country, as the ANC was established above all as a tool of political persecution against the dissidence and to favor the impunity of the armed groups attached to the government and the corruption.

On the role of the ANC, *Access to Justice* through its director Laura Louza, said:

"The Constituent Assembly will seek to impose its socialist justice to give stability to the regime that is weak from the point of view of popular support

¹⁰ by its acronym in spanish

(...) it will not have a duration limit, it will have absolute power and it will be able to dissolve all the powers that exist, the Attorney General's Office, governors, mayors (...) there will be no conditions for free elections and perhaps not even the will to carry them out"¹¹.

II. THE CONTINUED STATE OF EXCEPTION

During 2017, the President of the Republic extended 6 times the state of emergency decreed for the first time nationally on January 14, 2016.

The result has been that our rights as citizens have been progressively disappearing and the Head of State has practically the possibility of do whatever he wants.

The most alarming is that the state of exception has had the backing of the Constitutional Chamber of the Supreme Court, but not with the approval of the National Assembly, which is an essential constitutional requirement to be considered decreed.

In this regard, the explanatory statement of the Constitution and the Organic Law of States of Exception prohibit the Supreme Court from ruling on the matter, if the National Assembly disapproves the measure. However, the Constitutional Chamber, without meeting 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, despite the fact that the Constitution allows a State of exception due to economic emergency, which has been decreed, lasts a maximum of 120 days, including its extension.

The National Executive Power also has not notified the competent bodies of the international community about the declaration of a state of exception and the Supreme Court has not demanded it either, despite its obligation as mandated by the Constitution itself when recognizing human rights treaties as part of its text (articles 23 and 31).

This regime of continued restriction of guarantees has had at least two important effects:

- The first has been that the Executive legislates in socio-economic matters instead of the National Assembly and thus has the power to limit constitutional rights until the situation returns to normal. However, after more than two years of extension for reasons of economic emergency, the situation has only worsened. In effect, the

¹¹ <http://www.accesoalajusticia.org/anc-buscar-imponer-persecucion-impunidad-y-paz-obligada/>

measures taken by the Executive are the same ones that led to the existing crisis in 2016, deepening and leading our country to a complex humanitarian emergency today.

- Another effect of the continued state of exception has been that the National Executive Power has done with public resources and with the national budget what it has wished, because on it there is no control of other Powers of the State, nor accountability.

The result has been that the control of the Parliament over the Executive has been eliminated since the latter is the one that legislates, and when the constitutional norm requires an authorization from the National Assembly for some operation, because the Supreme Court is responsible for or attributes that function to definitive way.

III. REPRESSION AND ARBITRARITY THROUGH JUSTICE

1. The Supreme Court of Justice and the Constitutional Chamber: bodies of authority and not of guarantee to the citizen

1.a. The Constitutional Chamber and the mayors

The Constitutional Chamber is the one that today violates the Constitution, invoking it as the basis of its decisions to say the opposite of what it guarantees. It has done so through its 34 sentences, in which it deposed and established penalties for 17 mayors and a governor (Miranda State), without having the competence to do so¹².

In each of the processes he committed multiple irregularities, such as violation of due process, by establishing a procedure by way of sentence; violation of the natural judge, since contempt is the responsibility of the criminal courts and not of the Constitutional Chamber; usurpation of the functions of the Public Prosecutor's Office, since the Chamber itself imputes it at the hearing and then condemns it; denial of the right to defense, because in the same hearing (the one set by the Supreme Court for mayors to appear) were imputed and condemned, without taking into account the arguments of the representative lawyers¹³.

¹² <http://www.accesoalajusticia.org/el-gobierno-ha-venido-usando-al-tsj-como-instrumento-de-persecucion-contr-quienes-piensen-distinto/>

¹³ <http://www.accesoalajusticia.org/noticias/la-condena-anunciada-del-alcalde-ramon-muchacho/>

The real purpose of these sentences was for the municipalities to prevent the massive demonstrations of citizens that were taking place in the country since April 2017. The problem of this order of the Supreme Court of Justice to the mayors is that the Constitution in its Article 68 guarantees the right to peaceful demonstration and prohibits impede them.

The basis of the decisions of the Constitutional Chamber is that municipalities are competent, according to the Constitution, in terms of free transit, neighborhood protection, sanitation of the environment and urban cleanliness, so they must intervene in this type of demonstration to guarantee the rights corresponding to those faculties, under penalty of arrest to the mayors who do not comply with the decision.

The problem posed by the aforementioned sentences is not only that if the municipalities prevent citizens' demonstrations they violate the Constitution, but also that they violate other regulations that give competence to the state or national police, depending on the case and rather exclude expressly to the municipal police.

In this sense, the Organic Law of Police Service and the Bolivarian National Police Corps in its article 43 establishes that the state police is competent to control meetings and demonstrations that compromise public order, social peace and coexistence.

Likewise, articles 50 to 54 of that same law establish criteria for the intervention of the different police forces in this type of citizen demonstration, and the municipal authority can not intervene. Moreover, by criteria of intensity, complexity and specialty of the demonstration, it is the national police that must do it. This is confirmed in Article 4 of a resolution of the Ministry of Interior and Justice (published in Official Gazette No. 39.658 of April 18, 2011), which establishes that the municipal police must limit their actions to the area of the perimeter outside the area in conflict. Additionally, it should be indicated that, because it is precisely the competence of other police forces, the municipal authorities do not have the special teams to handle demonstrations that are necessary for this purpose.

To this we must add that these judicial criteria only apply to mayors of the opposition, although the demonstrations and their effects were carried out in municipalities governed by the ruling party, but against these nothing was decided, which evidences the obvious bias of judicial decisions.

So, if the entire venezuelan legal system excludes municipalities from this type of citizen demonstrations, why did the Constitutional chamber insist that they act and also punished their mayors even with arrest if they did not comply with their orders? Access to Justice wants to recall in this regard that the Constitution in its

Article 25 does not exempt public officials from responsibility, such as mayors, who follow orders contrary to the Constitution. It is not surprising in this sense that the mayors had refused to comply with these rulings¹⁴.

1.b. The Constitutional Chamber and the communes.

The Constitutional Chamber does not waste time and takes advantage of any opportunity to continue issuing unconstitutional sentences with the justification that it is the maximum interpreter and sole guarantor of compliance with the Constitution in the country. This time it is the sentence No. 355 of May 16, 2017 in which by deciding five claims of nullity filed against the reform of the Organic Law of Municipal Public Power of 2010, the Chamber "constitutionalized" the Communal State and At the same time, he denied the direct nature of the right to vote.

It is significant, in this regard, to take into account that the Organic Law of the Municipal Public Power had a partial modification made by the then National Assembly dominated absolutely by *Chavismo*; and, just those substantial changes, which were included in that legal text, are the ones that served as the basis to demand their unconstitutionality in 2011 before the aforementioned Chamber, changes that can be summarized as follows:

- ✓ The creation of a new "territorial entity" called "commune" in the organization of the Municipal Public Power, which has local autonomy vis-à-vis the municipalities to the point that it is excluded from the application of municipal regulations;
- ✓ The elimination of direct suffrage to elect the members of the communal parish councils, whose "election" passes into the hands of the so-called "spokesmen of the communal councils" of the parish with the validation of the assembly of citizens (article 35); y,
- ✓ The incorporation of the so-called "Popular Power" in the Local Council of Public Planning.

Without going into the analysis of each of these points, *Access to Justice* warns about the seriousness of sentence No. 355 for two fundamental reasons:

- In the first place, to admit that the local entity of "the commune" is in accordance with the constitutional text and, therefore, to uphold the validity of the "Communal State" designed by the set of laws enacted and enacted as of 2009, called as "Laws of Popular Power", which seek to institute a new

¹⁴ <http://www.accesoalajusticia.org/noticias/el-ts-j-es-un-organo-de-autoridad-ya-no-un-garante-del-ciudadano/>

political, social, cultural and economic model (Article 6 of the Organic Law of the Communes), which is certainly incompatible with the State Public Power and the Municipal Public Power, ie the scheme traditional of the vertical division of the Public Power contemplated in the article 136 constitutional.

In this sense, the Chamber institutionalized the Communal State that was a proposal of the late President Hugo Chávez Frías expressed in the 2007 constitutional reform, which was submitted to a referendum in December of that year and rejected by the electorate; It should be remembered, in this regard, that this project sought, among other purposes, to transform the structure of the Venezuelan State with a doctrine of a socialist nature. Thus, with this ruling, the doors are opened to consolidate the validity of this "parallel State".

- Secondly, to justify the application of the indirect or second-degree election for the election of the members of the parish councils outside the provisions of article 63 of the Constitution that expressly establishes direct suffrage and, at the same time, contrary to the representative democratic principle enshrined in Article 5 of the venezuelan Constitution.

With regard to this point, Access to Justice considers it appropriate to warn with great concern that the Chamber with the ruling in question undoubtedly denatured the concept of democratic suffrage that is universal, free, direct, equal and personal, considering that it is expression of popular sovereignty the appointment of the members of the communal parish boards by the spokesmen of the communal councils.

It should be clear, in this regard, that in accordance with our constitutional system, suffrage is conceived as an individual political right that is exercised without the intermediation of other people or other instances of citizen participation. In this regard, it should be noted that speaking of indirect or second degree suffrage in the light of the venezuelan Constitution is only when the National Assembly must elect the holders of the organs of the Citizen Power (Article 279) and the Electoral Power (Article 296).), so as to definitively designate the Judges of the Supreme Court of Justice (Article 264), since the National Assembly is the representative body par excellence of the will of the people and, therefore, the second-degree elective body that has the power in those cases to be able to make an indirect popular election, but only because in these cases it is an election based on criteria of technical expertise

and where there should be political independence of the candidate for office. In any case, we must emphasize that the rule is direct election, while the indirect only occurs by express text of the Constitution.

This means, in short, that there is another mockery of the Constitution, because the Constitutional Chamber denied the Venezuelans one of the most significant achievements in the last 60 years of the country's history, and especially in the framework of political rights. Undoubtedly, sentence No. 355 again undermines the 1999 Constitution for the sole fact of undemocratically recognizing that the right to suffrage can be exercised by third parties, as happened before 1947, since it was from the constitutional text of that year that the direct character of this political right is introduced for the first time without any distinction based on sex, religion, social status or education¹⁵.

In this year 2017, President Nicolás Maduro approved the Socialist Justice Mission, through Decree 2718, which was confirmed by the Political Administrative Chamber of the Supreme Court, in a process of *amparo*. In this Justice Mission new "people" courts are created, badly called houses of justice, since they are not instances of conciliation, but they have the representation of a judge, a public defender and a prosecutor and crimes are known whose penalties do not exceed eight years old. In addition to being a parallel justice process, with all the problems of legal insecurity and human rights that implies, the Humanist Liberation Operations of the People are also executed, which have turned out to be more a program of security and repression to the citizens¹⁶.

2. Military Justice¹⁷

Military justice is obsolete and alien to the most basic democratic principles and especially to the separation of powers. Therefore, before the use of military justice to repress the protest of civilians, *Access to Justice* emphasizes that this is a violation

¹⁵ <http://www.accesoalajusticia.org/noticias/sala-constitucional-da-jaque-mate-al-sufragio-directo/>

¹⁶ <http://www.accesoalajusticia.org/noticias/tsj-da-luz-verde-a-la-justicia-socialista/>

¹⁷ <http://www.accesoalajusticia.org/noticias/la-injusticia-militar/>

of the principle of the natural judge and due process, because the rule is that civilians must be judged by civilians.

To begin, we must indicate that the current Code has its origin in the dictatorship of Juan Vicente Gómez, who in 1933 published the first Code of Military Justice, which has subsequently undergone specific reforms, the most important being the one made in 1998 to make it in harmony with the Organic Code of Criminal Procedure. However, the changes made have been fundamentally procedural and organizational, but the principles and norms that show the authoritarian origin still remain.

In this regard, the first thing we have to say is that the Judicial Power should be independent (Article 254) and in the particular case of the military expressly states (Article 261) that "The military criminal jurisdiction is an integral part of the Judiciary" and its judges "will be selected by contest". The article also points out something that is not often said, and that in the commission of crimes against human rights and crimes against humanity in which military personnel are involved, civil courts are the competent. The interpretation of the latter is very simple: military courts are not even the rule for the military itself, which forces us to conclude that a fortiori ordinary courts have to prevail over those.

Going back to the current Organic Code of Military Justice (COJM¹⁸), the best it has, without a doubt, is its transparency that everything revolves around the President of the Republic, as it was in the Regime that saw it born and that as we know was not exactly democratic. Thus, for example, article 28 literally states that "are Military Justice Officials" both the President of the Republic, the Minister of Defense and other military with troop command. This single statement highlights the way in which military justice is conceived: as an organ of Executive Power. Needless to say that in any democracy serious military courts do not depend on the Executive Power.

To show that what has been said above is not just an honorary title to the Executive Power, we can say that among other powers the President of the Republic can do nothing less than "order that no military trial be opened in certain cases" (Article 54, numeral 2) and even worse "order the dismissal of military trials, when it deems appropriate, in any state of the case" (Article 54, numeral 3). In this regard we must remember that the impunity of the crimes committed on February 4, 1992, was made

¹⁸By it's acronym in Spanish

concrete through the exercise of that last faculty. Greater evidence of military injustice is not possible.

Finally, we must note that Article 33 of the COJM states that the Supreme Court of Justice will appoint, from a list of 15 candidates drawn up by the Minister of Defense, the 5 members of the Martial Court. That is, that the first selection is made by the latter, although some margin is given to the Supreme Court.

The exposed ones are not more than remnants of militarist regimes in which the authority does not want to know anything about the principle of separation of powers, because it undermines the very basis of its authoritarianism.

Currently the situation is maintained, because the dependence of military courts of the executive power is such that although on August 18, 2004 the Supreme Court, through Resolution No. 2004-0009 created the Military Criminal Judicial Circuit, until its action arrived there the Minister of Defense of the time, and not the Supreme Court, dictated the Internal Regulation of that Judicial Circuit (Official Gazette N ° 39595 of 01-17-2011). Such regulation, despite the aforementioned constitutional norms, arrives at the audacity to establish in its Article 8 that the appointment of the members of the Martial Court will be made by the Supreme Court, not by means of the contest indicated in the Constitution, but by a list that dictates the own Minister of the Defense, with which it is obvious who is the one that really makes the designation.

The intention of this rule is so rude that not even the number of postulants in the list is indicated, so if the Minister sends only five candidates for the five positions of the Martial Court, the Supreme Court will not really have the capacity to choose any. And the same applies to the rest of the military judges (Article 9). However, despite all of the above, in 2014, the then Minister of Defense designates all the principal authorities of the military "justice", namely, the current President of the Martial Court, the current Prosecutor Military General and the Military Public Defender, regardless of the Supreme Court, which sworn the authorities named¹⁹.

3. A president of the Supreme Court of Justice not guarantor, but repressive: more than 50 years for crimes applied to dissent and censorship in social networks

¹⁹ Resolution No 5665, Official Gazette No 40.462 July 28, 2014.
<http://www.accesoalajusticia.org/noticias/la-injusticia-militar/>

The proposal to raise "at least to 50 years" the maximum prison sentence, formulated by the president of the Supreme Court of Justice Maikel Moreno, before the National Constituent Assembly implicitly carries the danger of imposing even greater penalties as perpetual, which goes against the provisions of the current Constitution.

In Venezuela, the maximum penalty of imprisonment provided for in the Constitution is 30 years, according to Article 44. "There will be no sentences for perpetual or infamous penalties. The penalties of deprivation of liberty shall not exceed thirty years," reads the text.

Among the crimes that would increase the penalty are **treason and terrorism**. Crimes for which they are persecuting and condemning the people who consider themselves "enemies" of the Regime, among them magistrates, deputies, mayors, and others. For this reason, Access to Justice considers that this proposal to increase the penalty is a mechanism of intimidation and a clear threat to anyone who thinks differently and protests against the national government.

In fact, some of the opposition persons currently prosecuted for participating in street demonstrations (even presented before military courts) have been charged with treason, which can currently have a maximum sentence of 30 years. This is the case of the new magistrate of the Supreme Court appointed by the Parliament, Ángel Zerpa, and the formation coordinator of the *Voluntad Popular* party, Jorge Machado, among others.

In this sense, *Access to Justice* defends the criteria that there is no "unlimited" power such as the one the ANC claims to arrogate, since the cap on all powers, including the so-called constituent, is imposed by human rights, which are the protection to individuals against abuses of power and that derive from the person from their essential dignity²⁰.

Within the framework of the repression of dissent, there is the Constitutional Law Against Hate, for Peaceful Coexistence and Tolerance on the part of the fraudulent National Constituent Assembly, that the Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights (IACHR), Edison Lanza, described as "alarming".

According to the expert, one of the reasons for the alarm is the prison penalties of up to twenty years for those who engage in expressions of hatred and which are

²⁰ <http://www.accesoalajusticia.org/la-constituyente-tiene-poderes-ilimitados/>

comparable to murder. He also warned that the sanctions are applicable even to journalists who publish any information contrary to the interests of *Miraflores*.

This is much more serious, because they are open criminal types; the conditions are created to persecute the internal enemy and to enter an absolutely totalitarian State.

Access to Justice joins the concern of the rapporteur of the IACHR, especially because with that law, censorship reached the only spaces until then not controlled by the Government, social networks²¹.

4. Repression of magistrates

From *Miraflores* and the Judicial Power, military justice continued to be used as a mechanism of State repression against anyone who disagreed with government policies. This time it was the turn of the new magistrates of the Supreme Court of Justice sworn in on Friday, July 21 by the National Assembly, replacing those who were illegally appointed in December 2015 by the previous parliament.

The National Assembly in 2016, in view of the serious irregularities in the designation of 13 principal magistrates and 20 substitutes, held in December 2015 by the outgoing Parliament, rendered such acts ineffective in the exercise of their power of self-protection, and in coherence with that decision, it went on to execute in 2017 the process of appointment of the new magistrates, which culminated with its designation and subsequent oath.

The day before the swearing in of the magistrates, the Constitutional Chamber, composed of 3 of the magistrates badly appointed in December 2015 by the outgoing National Assembly, issued a judgment, No. 545 of 07-20-2017, in the which annulled the new procedure of the new National Assembly, and also warned that the judges who were to be sworn in the next day, would incur usurpation of functions, offense established in Article 213 of the Criminal Code, which would entail the corresponding criminal consequences.

To ratify what was expressed in the aforementioned judgment, Judge Juan José Mendoza Jover, the day after that decision was issued, declared at a press conference that magistrates, deputies and members of the Nominations Committee of the National Assembly that participated in the swearing-in of the new magistrates, they had incurred in crimes against the defense and the security of the Nation, especially

²¹ <http://www.accesoalajusticia.org/noticias/el-gobierno-esta-obligado-a-promover-la-convivencia-y-tolerancia-con-el-ejemplo/>

in the crime of "treason to the mother country", reason why it requested to the civil and military authorities to take the corresponding actions to "maintain the peace".

Two days after this declaration and the swearing in of the new magistrates (July 21), the President of the Republic (July 23), from the Plaza Bolívar in Caracas, where the weekly program Sundays with Maduro performed, he said: "Everyone will be imprisoned one by one and they will all freeze their assets and accounts"²².

The first magistrate to be arrested was Ángel Zerpa Aponte, designated as principal in the Political and Administrative Chamber. As the representatives of the NGO *Foro Penal*, denounced, Magistrate Zerpa was presented before the military courts without being allowed to appoint his defender, since he was imposed a public one, and without being granted access to the representatives of said NGO to assist him, as is his right. The magistrate was imprisoned without communication, subsequently he went on a hunger strike. In virtue of this, the Supreme Court of Justice was requested to advocate the case, which was agreed by the Criminal Cassation Chamber in October 2017 ex officio, after having declared that the applicants lacked the active legitimacy to the request. The most ironic thing in this case is that precisely, the arguments presented to request the defense of the case were the obstacles presented by both the military court and the executing forces of the arrest in giving access to the lawyers chosen by the defendant to assume his defense²³. Finally, the Criminal Chamber of the Supreme Court granted him a measure of conditional freedom, which he has been fulfilling.

Subsequently, arrest warrants were issued for two more magistrates: Jesús Rojas Torres, chief magistrate of the Electoral Chamber and Zuleima González, substitute judge of the Constitutional Chamber. The crime that was imputed to the magistrates was not that of usurpation of functions, as the Supreme Court of Justice said in the aforementioned judgment No. 545, but that of treason. However, this crime is not only provided for in the Code of Military Justice, but also in the Criminal Code (Article 128), therefore, the lawyers should have been tried by civil courts²⁴, in accordance with the own jurisprudence of the Criminal Chamber, chaired by the now also president of the Supreme Court.

²² http://www.el-nacional.com/noticias/gobierno/maduro-los-magistrados-designados-todos-van-presos_194787

²³ <http://www.accesoalajusticia.org/avocamiento-de-oficio-del-caso-de-angel-zerpa/>

²⁴ <http://www.accesoalajusticia.org/gobierno-con-tsj-reprime-a-nuevos-magistrados-con-justicia-militar/>

Successively, Jesús Rojas Torres was arrested and appeared in a video declaring that he had not accepted the designation of Magistrate by the National Assembly and Zuleima González took refuge in the Chilean embassy and then left the country.

5. Political repression: insecurity and intimidation of political detainees

If at any moment it has been possible to be certain that Leopoldo López and Antonio Ledezma are not political prisoners, but hostages of the government²⁵ it was in 2017, when with a total shamelessness they were transferred from one prison to another as if they were simple tokens of a board. Although there is a legal regime on the custody of a detainee, it became evident that, above these norms, there is the political calculation and the arbitrariness of the government.

In the case of Antonio Ledezma, arrested on February 19, 2015, and then transferred to his residence in house arrest on April 24, 2015, he had his preliminary hearing before the Sixth Control Court of Caracas almost one year after his arrest. From there, and despite the lapse of time established in Article 325 of the Organic Code of Criminal Procedure to start the trial phase, the process was paralyzed without any public authority explaining why, while the arrest of the Mayor continued.

For his part, Leopoldo López, arrested on February 18, 2014, the date on which he voluntarily surrendered to the Bolivarian National Guard, was remanded to Ramo Verde, and after a process full of irregularities and violations of due process, revealed nationally and internationally, he was sentenced on September 10, 2015 to 13 years, 9 months, 7 days and 12 hours of imprisonment for the crimes of public incitement, damage to property, arson and association to commit a crime. Then, this decision was ratified in second instance and by the Supreme Court of Justice, by virtue of an appeal filed by the defense.

López detention, as well as his trial, have been plagued with abuse, as it has been reiterated that he is prevented from accessing his lawyers or his family without explanations of why this is done. Thus, in this context, and after 3 months of demonstrations throughout the country, surprisingly, the Criminal Cassation Chamber of the Supreme Court, by sentence No. 261 of July 7, 2017 (the same day on which it allegedly received the file), he went to hear the case, and even more surprisingly, based on the saying of the family and one of his lawyers, according to which López had "medical complications", he decreed "substitute precautionary

²⁵ <http://www.accesoalajusticia.org/lopez-y-ledezma-detenidos-o-rehenes/>

measures" of house arrest and the "prohibition to give statements regarding the present procedure".

The foregoing is sufficient to assess the degree of non-existence of the rule of law and minimum guarantees for the detainees and indicters in our country, but what happened next has already reached the level of absolute arbitrariness.

On August 1, that is, 24 days after the decision of the Supreme Court, the Bolivarian Intelligence Service (Sebin²⁶) was presented in the residences of López and Ledezma and led them back to *Ramo Verde*. According to the facebook account of the Court, regarding the former mayor of Chacao, this was decided as well, because he violated the condition of not doing political proselytizing. It is enough to read sentence No. 261 of the Criminal Cassation Chamber to see the contradiction in the information provided by the Supreme Court itself, given that in said decision it was only prohibited, as it says literally, to issue statements on its cause, what he did not do.

It was also said that the revocation of the measure was due to the fact that his public statements contravened the political non habilitation to which he had also been condemned, but this is not true, since such sanction only implies the impossibility of being a candidate for a popular election or to vote, but does not prevent, in any way express their political views, which is the only thing he did, so this argument also has no basis whatsoever.

In the case of Ledezma, however, it was reported that the revocation of the measure was due to a "flight plan" on which no evidence of any kind was provided.

And despite everything said, also suddenly, 3 days later, on August 4, and without any official means giving any explanation, because to this date, neither the supreme court of justice nor the corresponding court, or any agency of official news had given the reasons for it, the Sebin led these two detainees back to their respective residences. The lack of reasons reached such a level that the official newspaper "*Últimas noticias*" scarcely dedicated a few lines to the news reproducing the twitter of Lilian Tintori, wife of Lopez, about the return of her husband home, as if he did not have access to the official sources.

The facts described above do not resist a minimum logical analysis, much less have legal coherence, because if the detainees had allegedly "failed to comply" with the conditions of their detention, and even one of them was accused of planning his

²⁶ By it's acronym in spanish

alleged flight, how it is explained that a few days later these reasons no longer had any sustenance and they were given house arrest again.

This coming and going of detainees, without a logical or legal basis, what makes us manifest, in the first place, is the absence of an autonomous judiciary that makes its decisions based on the law, and rather it is quite obvious that behind of these comings and goings, is the one who really commands the country, acting according to their convenience.

6. Repression to mayors: the case of Chacao's mayor

After setting precedent with the sentencing to prison and dismissal of the mayors of San Diego (Carabobo), Enzo Scarano and San Cristóbal (Táchira), Daniel Ceballos in 2014, following the protests against the national government, as already commented above, the Supreme Court of Justice initiated in May 2017 a new attack against the highest local authorities and a regional (all from the opposition) of the areas where popular discontent towards the abuse of power from *Miraflores* had its maximum expression.

In 2017, as already stated, the Supreme Court of Justice condemned to prison (15 months) for "contempt" and politically disabled 17 mayors, all from the opposition to the national government. One of them was the mayor of Chacao, Ramón Muchacho.

As already mentioned, in each of the processes multiple irregularities were committed, but the case against Muchacho was perhaps the most notable in this sense²⁷, because it has some peculiarities that show, once again, how biased the Supreme Court is, because whatever was the measure or action taken by the local leader in the face of the threats of the highest court was "condemned to be condemned".

In the first place, it is worth remembering that on May 24, 2017, the Constitutional Chamber of the Supreme Court of Justice ordered the mayor of Chacao, like the other mayors in these cases, to avoid obstructing public roads to guarantee the free transit of people; the removal of debris, barricades and other similar blockades; guarantee the order of vehicular traffic, the protection of neighbors and inhabitants of the municipality, as well as the environment and urban and domiciliary cleaning service, for which it had to turn instructions to the Municipal Police.

²⁷ <http://www.accesoalajusticia.org/la-condena-anunciada-del-alcalde-ramon-muchacho/>

Despite the above, the Constitutional Chamber did not take into account that Chacao's Police had been intervened by the national government for over a year. In the Official Gazette 6.229 of May 29, 2016 a resolution was published without number of the Ministry of the Popular Power for Interior Relations, Justice and Peace (MPPRIJP²⁸), in which the intervention of the said security body is ordered. In this resolution an intervening board is appointed, which is empowered to prohibit the provision of police services and, in addition, a commissioner of the Bolivarian National Police (PNB²⁹) is appointed as the new director. These new authorities were accountable to the MPPRIJP.

This intervention was extended for the third time on March 8, 2017 for a 180 more days. Additionally, to justify the intervention, President Nicolás Maduro affirmed that the Chacao Police was related to "paramilitary gangs" and that only 40 officers out of a total of 80 were actives

In this way, if the Chacao police were directed by officials appointed and controlled by the national government, specifically the MPPRIJP, with half of the officers in functions and without competence to act in the containment of disturbances according to the rules on the matter. Why was the mayor of Chacao ordered to turn instructions to the municipal police to prevent demonstrations if he could do nothing about it?

The rigor of the control of the ministerial entity on the Chacao Police was of such magnitude that in the midst of the protests of 2017, said body ordered its quartering, which had previously occurred.

To previous is added that at the time of his conviction, the Chacao's mayor had appointed an interim mayor fifteen days earlier, alleging health reasons to temporarily leave his post.

Finally, the sentence that condemned Muchacho, like that of Alfredo Ramos (Barquisimeto), David Smolansky (El Hatillo), Carlos Garcia (Libertador, Mérida) and Gustavo Marcano (Lechería, Anzoátegui) are unknown, as the Supreme Court reported of it through press releases and did not publish the verdict or its motives on its website.

²⁸ By its acronym in spanish

²⁹ By its acronym in spanish

7. Persecution against the General Attorney, Luisa Ortega Díaz³⁰

It is worth remembering that the persecution of the General Attorney by the government of Nicolás Maduro began with his statement of March 31, 2017 about sentences No 155³¹ and No 156³² of the Constitutional Chamber of the Supreme Court, which, among other aspects, they stripped the National Assembly of its powers, declared it dissolved, usurped its functions and ignored parliamentary immunity.

In this regard, Ortega Díaz pointed out that there was a rupture of the constitutional order, following the international community that had already pronounced on the matter.

On the same day of the sentences, President Nicolás Maduro convened a Council of Defense of the Nation and exhorted the Supreme Court to reconsider the aforementioned rulings.

Following his instructions, the Supreme Court of Justice issued two clarifications the following day, on April 1. By means of sentence N° 157, it clarified ex officio the No 155 of March 28, 2017, although in reality it revoked the lifting of the parliamentary immunities of the deputies, regarding the state of internal commotion and possibility of change by the President of criminal and military laws, although it maintained the nullity of the agreement of the National Assembly. The sentence No. 156 clarified the No. 158, in which it retained the powers granted to the President regarding the creation of joint enterprises, but declared that the National Assembly could continue to exercise its functions. However, the at least 56 sentences issued up

³⁰ <http://www.accesoalajusticia.org/la-telarana-juridica-del-tsj-contra-la-fiscal-general/> and <http://www.accesoalajusticia.org/nuevos-hilos-para-la-telarana-juridica-del-tsj-contra-luisa-ortega-diaz/>

³¹ Sentence No. 155 of 03-27-2017 of the Constitutional Chamber declared the nullity of the agreement to the National Assembly, which approved the activation of the Inter-American Democratic Charter of the OAS according to a report issued by the Secretary General, Luis Almagro. In its decision, the Chamber also ignored parliamentary immunity and tried to give extraordinary powers to the President of the Republic to decree a state of internal and external commotion and change the criminal and military legislation at will.

³² Sentence No. 156 of 03-29-2017 dealt with Article 33 of the Organic Law on Hydrocarbons, by an appeal filed by the Venezuelan Petroleum Corporation. The ruling granted the Executive Branch broad powers to set up joint ventures, and also declared the Parliament dissolved, concluding that "as long as the situation of contempt and invalidity of the proceedings of the National Assembly persists, this Constitutional Chamber will guarantee that the parliamentarians are exercised by this Chamber ...".

to that point since December 2015 against the National Assembly, made it practically impossible for it to continue functioning, or at least that its decisions had some legal effect.

Notwithstanding the fact that the national government itself had taken a step backwards, after the General Attorney declared that there had been a breakdown of the constitutional order, adding to the international community, it fell into disgrace.

After a fierce judicial war promoted by the Attorney, in August 2017, the Supreme Court of Justice approved the preliminary hearing against her requested by the deputy Pedro Carreño, and the repeated threat of *chavismo* was declared according to which the National Constituent Assembly would be the instance that "would do justice against the traitor" and so it was: dismissed her and the same day designate her successor.

The National Constituent Assembly is not the competent body to remove the Attorney, but the Parliament as an administrative measure in accordance with the Constitution, after the Supreme Court of Justice approved the preliminary hearing that would lead to criminal proceedings that could conclude or not with a custodial sentence against the official. This procedure was ignored and the high Court began a criminal procedure and the constituent power replace Ortega Díaz. It is worth noting that, to date, there have been no charges against it or has been attributed to any crime, although the Supreme Court did agree precautionary measures of a criminal process, such as freezing bank accounts, prohibiting the sale of assets and leaving from the country.

Article 279 of the Constitution provides for the appointment of the holders of the organs of the Citizen Power by the National Assembly and after pre-selection of the Committee for the Evaluation of Citizen Power Nominations, but the "supra-constitutional" National Constituent Assembly designated Tarek William Saab as Provisional General Attorney. The headquarters of the Public Prosecutor's Office was taken by the Bolivarian National Guard (GNB³³), with which the unconstitutionality was executed through an act of force and Ortega Díaz had to leave her office on a motorcycle and guarded by her bodyguards, some of whom were detained by the GNB.

Previously, other threads were added to this net, related to the irregular designation of Deputy Attorney Katherine Harrington by the Supreme Court of Justice or by the General Attorney as appropriate, as well as her "strange" entry in the suitcase of a

³³ By its acronym in spanish

vehicle to the Public Ministry building. Harrington was evicted from the headquarters of the Attorney General, but this did not stop her and she dedicated herself to making constant surprise visits to the criminal courts.

Since the designation of Harrington, the Public Ministry suffered a kind of parallelism; in the criminal courts of Caracas chaos began to reign when there was a Attorney's Office under Luisa Ortega and another one obedient to the designs of the Supreme Court and directed by Harrington. There were procedures presented in the Office of Flagrancy by the prosecutors of Ortega Díaz and others, presented directly in the File Distributor Office or directly in the Court. Even anarchy reigned administratively in the Caracas tax offices and the sheriffs of the criminal courts were banned, which consequently brought procedural delay due to purely political struggles.

The attack against the dismissed Attorney resurfaced in mid-August, when Tarek William Saab petitioned the Supreme Court of Justice for an arrest warrant against the deputy of the National Assembly and husband of Ortega Díaz, Germán Ferrer. Once again the high Court and the National Constituent Assembly violated the Constitution by disrespecting the parliamentary immunity of the former member of the PSUV³⁴, which is still in force, since it is the Parliament and not the Constituent Assembly that should have lifted the prerogative enjoyed by Ferrer for its legislative functions³⁵.

The Bolivarian Intelligence Service raided the home of Ortega Díaz and loaded with objects such as computers in search of documents that evidenced the existence of an extortion network against businessmen, which she allegedly directed with her husband, according to the accusation of the ex-Ombudsman.

Despite the ban on leaving the country, the deposed Attorney and the deputy with an arrest warrant escaped to the island of Aruba, from where they moved to Colombia and then to Brazil. Internationally recognized as legitimate Attorney General participated in a meeting with counterparts at the Mercosur Summit held in the Rio de Janeiro.

Ortega Díaz assured that he left the country, because in Venezuela it is currently impossible to conduct an impartial investigation to determine responsibilities for

³⁴Official government partie

³⁵ <http://www.accesoalajusticia.org/tsj-y-anc-insisten-en-usurpar-funciones-del-parlamento/>

corruption in the Maduro government, especially in the case of bribes from the Odebrecht construction company, so he urged the international community to continue investigating from the evidence presented by her and achieve the much longed for justice.

With the foregoing, the pattern seen in other cases in which a high official decides to have a different position from the official one is repeated, and after that, from one day to the next, he is disqualified and persecuted³⁶.

8. Persecution against Teodoro Petkoff: the elimination of his rights as a citizen³⁷

The civil death was applied to Teodoro Petkoff, in addition to attacking the medium of which is director and founder, the newspaper *Tal Cual*.

For *Access to Justice* it is important to present some considerations of the judicial process against this economist and political leader of long trajectory.

The 29th Judge of the Caracas Trial Court, Aris José La Rosa, visited Petkoff at his residence on August 31, 2017 as a result of the accusations that were processed in his court at the request of the constituent Diosdado Cabello, for publications in *Tal Cual* in those that, citing international agencies, were linked him to drug trafficking. Such a visit was not requested or notified to the economist's defense lawyer.

Days after this visit, and in full judicial vacations, it was known the decision issued by La Rosa, who, acting outside his jurisdiction, civilly disabled the leader, appointed his spouse as guardian, stripped him of the right to be assisted by his lawyer, he lifted the precautionary measures issued against him (regular presentation in court and prohibition of leaving the country) and proceeded to decree the dismissal of the case.

The judge declared Petkoff incapable or interdict, without legal process. That is, his legal capacity as a human being was limited to what was approved by his tutor provisionally appointed by the court itself, which the Romans called the civil death of its citizens.

IV. THE MANAGEMENT OF THE SUPREME COURT OF JUSTICE IN FIGURES

³⁶ Examples are the cases of former Magistrates Eladio Aponte Aponte and Franklin Arrieche.

³⁷ <http://www.accesoalajusticia.org/el-derecho-penal-del-enemigo-contra-teodoro-petkoff/>

The Supreme Court of Justice since its constitutional creation in the year 2000 has presented its management of the previous year and that of the rest of the Judicial Power at the opening of the judicial year, which is a formal act carried out at the beginning of the year after the judicial holiday of December.

Until 2009 it was a public and open act, in which he invited the press and the highest authorities of the country, including the President of the Republic. Until 2011, in addition, the rendering of accounts was contained in the Annual Report, a publication of the Supreme Court with statistics on judicial management.

The website of the Supreme Court of Justice also contains data, although fundamentally from the highest court, not from the rest of the Judiciary. There are no figures on the number of judges, or courts, or on titular or provisional judges. What appears on the page of the high court is a directory of the courts of each state of the country, where you can find data on the judges in charge, although not all are updated and often appear judges who are no longer active³⁸.

The judgments of the Supreme Court are usually published on its website, although some are late. Those of the other courts not always. In fact, in an investigation that made Access to Justice on this matter from 2001 to 2015, it turned out that in matters such as the criminal one half of the sentences are published on the website at the national level³⁹.

In sum, since 2012 accountability is presented only in the speech of the president of the institution, making reference to some figures about its management, without referring to the data that had the annual report, and also the act of judicial opening is behind closed doors and you can go by invitation only. To this is added that in the last two years, the speech appears published late. For example, the speech of Gladys Gutiérrez, already former titular of the Supreme Court of Justice, was published on the management of 2016 on the website on Monday, October 30, 2017, that is, about 9 months after it was pronounced.

The management speech of 2017 does not have minimum statistics to measure the performance of the Judiciary, and also contains half-truths, omissions and

³⁸ <http://www.accesoalajusticia.org/la-opacidad-informativa-en-la-pagina-del-tribunal-supremo-de-justicia/> and <http://www.accesoalajusticia.org/el-tribunal-supremo-de-justicia-no-actualiza-informacion-clave-en-su-pagina-web/>

³⁹ <http://www.accesoalajusticia.org/informe-sobre-el-desempeno-del-poder-judicial-venezolano-2001-2015/>

submission to the National Executive⁴⁰. The speech was given by Maikel Moreno, who is the president of the Supreme Court.

In this regard he explained:

"We rescue headquarters destroyed by violent groups, we intervene in the humanization of the Venezuelan justice system. We strive to develop three areas of intervention (strengthening the human talent of the Judiciary, the intervention of physical infrastructure and the concrete management of material and financial resources) essential to optimize the quality of service offered by the 2.099 courts deployed in the country "(Highlight of ours).

If we compare Moreno's words with those of Gladys Rodríguez⁴¹, she gave figures, very few, but more than his successor in the charge.

On the other hand, in the account of the social network Twitter of the Supreme Court were posted three institutional videos of Moreno's management during 2017 that also do not provide relevant statistics to measure the performance of the institution.

Probably in the light of the international sanctions against the magistrates of the Supreme Court of Justice⁴², including its president, the latter stated:

"Those of us who make up the Supreme Court of Justice are not going to stop because of any foreign threat. The exercise of our functions has been attached to the Constitution and the Laws (...). We defend the State as a whole because that derives in the defense of citizens and their rights. "

The reference to the defense of citizens' rights is striking when the cause for which the magistrates have been sanctioned by the international community is precisely their disrespect for human rights.

In that sense, *Access to Justice* in 2017:

Detected at least 76 Supreme Court rulings that clearly violated the human rights of Venezuelans, of which 33 were against the National Assembly. In table N° 1 we show their number by type of function usurped and in table N° 2 we present the most

⁴⁰ <http://www.accesoalajusticia.org/tsj-dio-inicio-al-ano-judicial-2018-sin-cifras-y-con-advertencias/>

⁴¹ <http://www.accesoalajusticia.org/nuevo-ano-judicial-pero-la-misma-opacidad-e-ineficiencia/>

⁴² <http://www.accesoalajusticia.org/sanciones-internacionales-a-funcionarios-violadores-de-derechos-humanos/>

outstanding by their content, although some of them already we have analyzed them in previous chapters.

Table No 1

Sentences of the Supreme Court of Justice according to functions usurped from the National Assembly, 2017

Controller function	Legislative function	Organizational function	Other	Total
10	15	7	1	33
Source: Prepared by the Supreme Court. [Online]. http://www.tsj.gob.ve/es/web/tsj/ decisions Consulted 20-01-2018.				

Table No. 2

Most relevant judgments of the Supreme Court of Justice vs. National Assembly by subject, 2017

Scope of the sentence	Number	Content of outstanding sentences	Observations
State of Exception	6	Constitutionality of 6 extensions of the state of exception due to economic emergency decreed by the President of the Republic on 14.01.2016 without the approval of the National Assembly.	According to the Constitution, the state of exception including its extension cannot last more than 120 days.
National Constituent Assembly	4	Sentence of the Constitutional Chamber No. 455 of 06.23.2017 Declares the "constitutionality" of the electoral bases for the election of the members of the National Constituent Assembly established in Presidential Decree No. 2.878, because President is	The National Constituent Assembly when installed declares to replace the National Assembly in its legislative

		<p>not obliged to follow the electoral system proposed in the Organic Law of Electoral Processes.</p> <p>Sentences of the Electoral Chamber No. 83, 84 and 85 of 06.27.2017</p> <p>Declares three contentious-electoral appeals for no reason for the aforementioned sentence of the Constitutional Chamber.</p>	<p>functions, although it has also established that it can dictate any act even against the Constitution and change any official. In practice, this has been the case.</p>
Accountability, responsibility of the President, control of State companies.	6	<p>Sentence of the Constitutional Chamber No. 88 of 02.24.2017</p> <p>He orders the Comptroller General to investigate deputy Freddy Guevara for trying to notify in New York about an investigation of the National Assembly to Rafael Ramírez, ambassador to the UN for Venezuela and former president of PDVSA, for alleged corruption.</p>	
Total: 16			
<p>Source: Own elaboration from the Supreme Court of Justice. [Online]. http://www.tsj.gob.ve/es/web/tsj/ decisions Consulted 20-01-2018.</p>			

Of the 43 remaining sentences of the Supreme Court of Justice not intended to annul or directly usurp the functions of the National Assembly, highlights No. 123 of 03-23-17 of the Constitutional Chamber, in which declared inadmissible the *amparo* that sought to reactivate the referendum Revocation of President Nicolás Maduro's mandate, which in 2016 the Judicial Power with the participation of the Supreme Court through its Electoral Chamber had made it impossible to carry out.

Particularly in the scope of the violation of human rights by the Supreme Court of Justice, and in particular its Constitutional Chamber, it also highlights the sentence No. 823 of October 27, 2017, in which it declared inadmissible a resource of the NGO *Cecodap* to obtain the protection of children's health due to the scarcity of medicines

in the country at that time reached 90%. The text of the sentence was not published in 2017, it was only known that it was inadmissible by a press release from the Supreme Court of Justice, although not the reasons for that refusal.

If we organize the sentences of the Supreme Court of Justice according to the criterion of persecution of dissidence, a total of 43 appear in 2017, as can be seen in table N° 3.

Table No. 3
Sentences of the Supreme Court of Justice for the persecution of officials, 2017

Names	Mayors	Governor	General Attorney	Deputies	Magistrates	Total
	Are 17.	Henrique CAPRILES	Luisa ORTEGA DÍAZ	Gilber CARO (substitute National Assembly Deputy, <i>Voluntad Popular</i>), Germán FERRER (deputy National Assembly, PSUV) y Freddy GUEVARA ⁴³ (Deputy National Assembly, <i>Voluntad Popular</i>) y 3 deputies from Amazonas ⁴⁴ (MUD)	13 principal magistrates and 20 substitutes. The list of magistrates can be seen here: http://www.el-nacional.com/noticias/asamblea-nacional/conozca-los-nombres-los-magistrados-que-designo-asamblea-nacional_194474	58
Number of sentences	31	1	3	7	1	43
Source: Own elaboration from the Supreme Court of Justice. [Online]. http://www.tsj.gob.ve/es/web/tsj/decisiones Consulted 20-01-2018.						

⁴³<http://www.accesoalajusticia.org/las-graves-contradicciones-del-tsj-en-el-caso-de-freddy-guevara/>

⁴⁴<http://www.accesoalajusticia.org/el-viacrucis-judicial-de-los-diputados-de-amazonas/>

The case of substitute deputy Gilber Caro is perhaps one of the most alarming⁴⁵. This deputy for the *Voluntad Popular* party, was arbitrarily detained on January 11, 2017 by the country's police forces. According to the vice president of the Republic, Tareck El Aissami, the parliamentarian would have been "caught red-handed" in an act of terrorism, however, the legislator remained missing for more than a week and his parliamentary immunity was not taken into consideration.

With regard to his immunity, the President of the Republic Nicolás Maduro pointed out that he did not enjoy such privilege because he was a substitute deputy, although the Constitution does not make such a distinction. But what the Constitution does say is that if a deputy of the National Assembly is arrested committing a crime, his place of confinement must be his home until the Supreme Court of Justice considers prosecuting him and asks Parliament for permission. This was not fulfilled in the case of Caro, whose whereabouts were revealed after 11 days of his apprehension.

Tarek William Saab, at that time Ombudsman, informed through his account in the social network Twitter that Caro was deprived of liberty in the Penitentiary Center 26 of July, of *San Juan de los Morros*, Guárico state.

Later, the Full Chamber of the Supreme Court of Justice heard the case and ordered it sent to a military court. Two magistrates saved their votes. One of them, Danilo Mojica, explained via Twitter that he considered that Caro enjoyed parliamentary immunity since its proclamation. Despite the aforementioned, the ruling made no reference to the fact that by that time, the deputy Caro had not been presented before any court, despite the fact that the Constitution establishes a period of 48 hours for this. Remember that the latter is not a parliamentary privilege, but a right that every detainee has.

Additionally, it should be noted that *Runrunes'* press note refers to the sentence⁴⁶, but if the website of the Supreme Court is consulted, its text cannot be found.

Probably for 2018 be a year of presidential elections, Moreno in his speech also warned that the Judicial Power will be "attentive" and vigilant so that the will of the people is fulfilled.

The problem is that the Supreme Court itself in this area has taken decisions that have canceled that will. In this regard, not only those that it has dictated with respect

⁴⁵ <http://www.accesoalajusticia.org/cronologia-del-caso-de-gilber-caro/>

⁴⁶ <http://runrun.es/nacional/303025/tsj-enviara-a-juicio-militar-al-diputado-gilbert-caro.html>
Consulta del 20.01.2018

to the Constituent Assembly and the recall to those already mentioned, but also those related to the requirement of renewal of those registered in the political parties under the pretext of avoiding a double militancy, that is not prohibited in the Constitution, but that the high court has decided that it is⁴⁷. This has resulted in that of 67 parties registered at the end of 2015 when the process of election of the National Assembly was held, there will be 22 by the end of 2017, mostly pro-government⁴⁸.

Regarding the financial resources of the Supreme Court of Justice, it should be noted that the 2017 budget was not approved by the National Assembly as it corresponds according to the Constitution, but was presented by the Executive before the High Court and was not published in the Gazette. Official. Consequently, there was no Budget Law as required by the Constitution. NGO *Transparencia Venezuela* was responsible for making it public. It is on the page of this NGO that you can find the balances of income and expenditures of State entities⁴⁹, including information on additional credits.

According to this information, the Judicial Branch in 2017 obtained a budget of 1.2% of the national, which is an improvement over what it has been receiving since 2013, which has even reached below 1%. However, it is a notable deterioration in relation to what it received 10 years ago, which corresponded to more than 2%.

The 2017 budget increase was largely due to the contribution that the Gaceta Forense Foundation, editorial house of the Supreme Court of Justice, received at the end of 2017 (Bs. 107 billion, equivalent to \$ 33 million at the Dicom rate⁵⁰)., whose spending did not justify, according to NGO *Transparencia Venezuela*⁵¹, what according to its director, Mercedes de Freitas, shows "the discretion and lack of accountability of these and all the amounts allocated to the Supreme Court of Justice that generate

⁴⁷ Sentences of the Constitutional Chamber No. 1 of 5-01-2016, <http://www.accesoalajusticia.org/sala-constitucional-dificulta-la-representacion-politica-de-las-minorias/>, N° 878 del 21-10-2016, <http://www.accesoalajusticia.org/sala-constitucional-interpretacion-sobre-partidos-politicos/> and N° 223 del 28-04-2017, <http://www.accesoalajusticia.org/tsj-sigue-violando-el-ordenamiento-juridico-con-nuevas-reglas-para-la-renovacion-de-los-partidos/>

⁴⁸ <http://www.accesoalajusticia.org/segunda-etapa-de-la-eliminacion-de-la-oposicion-en-venezuela/>

⁴⁹ <https://transparencia.org.ve/project/ley-de-presupuesto-2017/> and <https://transparencia.org.ve/project/creditos-adicionales/>

⁵⁰ The currency auction system established by the national government within the existing exchange control scheme in the country, <https://www.dicom.gob.ve/>

⁵¹ <http://www.caraotadigital.net/nacionales/ttransparencia-venezuela-tsj-se-gasto-sin-justificar-mas-de-33-millones-de-dolares/>

risks and opportunities of corruption, diversion and inefficiencies with public funds".

Regarding the efficiency of the Supreme Court of Justice, the main figures on its management are published on its web page and when totalized, the results can be seen in table No. 4. From this information it is clear that the Supreme Court decides belated cases.

Table No. 4
Files entered and decided and resolution rate of the Supreme Court of Justice, 2017

Chamber	Admitted Files	Decided Files	Resolution rates (decided/admitted)
Political and Administrative Chamber	1089	1533	140%
Electoral Chamber	121	231	190%
Constitutional Chamber	1288	1107	85%
Penal Cassation Chamber	351	462	131%
Civil Cassation Chamber	918	894	97%
Social Cassation Chamber	980	1114	113%
Plenary Chamber	156	187	119%

Source: Own elaboration from the Supreme Court of Justice. [Online]. <http://www.tsj.gob.ve/es/estadisticas-de-gestion-judicial> Consulted del 17-02-2018..

If these figures are compared with those of 2016, it is evident that in 2017 the level of efficiency of the Supreme Court of Justice decreased, as they entered a little more files, but decided much less. In effect, the resolution rate decreased (number of files decided with respect to those admitted). You can see it on table No. 5:

Table No. 5
Decrease in the efficiency of the Supreme Court of Justice in 2017

Files	2016	2017	Percentage difference (2016-2017)
Admitted	4692	4903	+4,5%
Decided	6358	5528	-13,5%
Resolutions rates (decideds/admitted)	135,51%	112,75%	-22,76%

Regarding the duration of the cases, the seventy-six sentences mentioned above stand out that, when the petitioner is a representative of the national Government, a deputy of the government party or a citizen with interests related to the Government, the decision periods are very short; in addition to always being the decision in favor; On the other hand, if they are NGOs, opposition deputies or opposition political parties, response times tend to be higher, and in addition, the response is always against. This is shown in tables No. 6 and No. 7.

Table No. 6
Times of response and type of decision of the Supreme Court of Justice in case of pro-government petitioners

Petitioner	Number of sentences	Average response time (days)	Sentence in favor
President	9	6	Si
Official Deputies	13	14	Si
Citizens pro-government	32	34	Si
Total	54	18	Always

Table No. 7
Times of response and type of decision of the Supreme Court of Justice in case of applicants with interests contrary to the Government

Petitioner	Number of sentences	Average response time (days)	Sentence in favor
General Attorney	4	10	No
Opposition Deputies	3	818	No
NGO	2	180	No
Citizens with contrary government interests	7	29	No
Opposition political parties	6	61	No

Total	22	220	Never
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The fact that justice in Venezuela is in favor of power was made very evident in our most recent study on the jurisprudence of the Administrative Political Chamber of the Supreme Court of Justice between 2007 and 2017 in relation to the military and their position or career⁵². A total of 183 sentences were found in that period, which showed that the Administrative Political Chamber favors the active military with respect to the inactive and better deals in its sentences with the officers and non-commissioned officers than with the other lower-ranking military.

Table No. 8
Type of decision according to military status

Actives	Retired
41% decisions in favor and partially in favor	12% decisions in favor and partially in favor

Table No. 9
Type of decision according to the rank of the military

Officers	Sub career officers	Professional Troop	Enlisted Troop
20% decisions in favor and partially in favor	42% decisions in favor and partially in favor	11% decisions in favor and partially in favor	None in favor and 14% partially in favor

The partiality of Venezuelan justice and its lack of independence, and especially by the Supreme Court of Justice, have to do with the fact that the designation of Magistrates has never been done in accordance with the Constitution and also many currently do not meet the requirements for be it as we showed in a study on his profile⁵³ and it was denounced in the 161st hearing before the IACHR⁵⁴. To this is added that only 13% of the judges have completed their term and 59% opted to

⁵² <http://www.accesoalajusticia.org/analisis-de-diez-anos-de-jurisprudencia-del-tsj-sobre-temas-militares/>

⁵³ <http://www.accesoalajusticia.org/informe-sobre-el-perfil-de-los-magistrados-del-tribunal-supremo-de-justicia/>

⁵⁴ <http://www.accesoalajusticia.org/cidh-muestra-preocupacion-por-anulacion-del-parlamento-e-inestabilidad-de-jueces/>

request their retirement early, presumably due to political pressures, as we explained in another of our investigations⁵⁵.

For their part, the judges do not enter through an opposition contest as required by the Constitution since the end of 2003, when the Supreme Court of Justice stopped taking them forward, so in light of the high turnover they are subject to, it is likely that there is no titular judge according to the constitutional criteria⁵⁶.

CONCLUSIONS

If at the end of 2016, *Access to Justice* declared that the Supreme Court of Justice ended democracy in Venezuela through unconstitutional sentences such as the one that left Amazonas state without representation in the National Assembly, during 2017 the country's highest court exceeded all expectations and red carpet to the formal step of a dictatorship in Venezuela.

From *Access to Justice* we have warned that this path traveled by the Supreme Court of Justice together with the Executive Power has been configured in a real coup d'etat since the election of the National Assembly with opposition majority in December 2015, so that We have prepared a special, called "The road to dictatorship", contained on our website⁵⁷. In this special, the different steps of the Government to take control of power are explained, highlighting the leading role of the Supreme Court. Figures and data on the judgments of the high court and on the impact that the establishment of this regime has had on the lives of Venezuelans can also be seen on our website.

⁵⁵ <http://www.accesoalajusticia.org/el-ts-j-la-joya-que-pocos-han-podido-retener-2/>

⁵⁶ The Supreme Court of Justice has several times had processes of securitization of judges with credential competitions, but since 2006 it has never reached more than 40% of titular judges, and in general, there has been an average of 20%. In this regard there has been much opacity so it is difficult to give an accurate number on this particular.

⁵⁷ <http://www.accesoalajusticia.org/camino-a-la-dictadura/>