

THE NEW VENEZUELAN ELECTORAL SYSTEM FOR PARLIAMENTARIANS

20 20



One more sample of the absence of independence
of the Supreme Court of Justice.

INDEX

Introduction	3
1. Details on the Venezuelan electoral system	4
The system that is in the Constitution	
What is the proportional representation?	
What is suffrage personalization?	
On the distribution of seats	
2. The new system, to the bench	7
Bad from the start	
Controlling the actors	
3. The electoral system for indigenous people:	13
second-class citizens	
Conclusions	14

Introducción

Over the past 20 years, the Venezuelan electoral system has undergone a profound process of transformation, which at some point led to national authorities¹ and international observers, such as former US President Jimmy Carter², in his capacity as founder of the namesake Carter Center³, they rate it as the “best in the world”.

However, this statement corresponds to the year 2012 and had to do specifically with the fact that citizen demands, such as voting personalization and automation, were fulfilled, which in principle should guarantee greater transparency to citizens.

Even so, it should be clarified that there were other aspects of the Venezuelan electoral system that worsened significantly during the political regime that began to govern the country since 1999, called “*Chavismo*” since in that period the rule of law was blurred, and thus controls on political power was eliminated. This had serious consequences for the guarantee of the necessary freedoms so that the elections could be truly free, competitive, and transparent⁴.

However, it is especially in recent years, especially since the December 2015 parliamentary elections, when the opposition won for the first time in 20 years of Chavismo, that the Venezuelan electoral system has changed to such an extent which today has become a mutant totally different from the provisions of the 1999 Constitution⁵.

What is most striking about this transformation process, especially in the last five years, is that it’s main responsible has been the Supreme Court of Justice (TSJ), and not the national legislature. But even more surprising has been that the intervention of the Supreme Court has not been to protect the citizen and the vote, as is its mandate, but to eliminate it and favor the maintenance in power of the party that has governed the country for more than twenty years⁶.

1 Vid. <https://hoy.com.do/sistema-electoral-de-venezuela-es-el-mejor-del-mundo-dice-tibisay-lucena-en-la-uasd/>

2 Vid. <https://www.nuevatribuna.es/articulo/america-latina/jimmycarter-sistemaelectoral-venezuela-eeuu-maduro-trump/20190124101144159521.html>

3 Vid. <https://www.cartercenter.org/>

4 Vid. <https://www.accesoalajusticia.org/historia-fraude-iii-secuestro-poder-electoral/>

5 Vid. <https://www.accesoalajusticia.org/tsj-nombra-a-cne-expres/>, <https://www.accesoalajusticia.org/10-claves-sobre-el-sistema-electoral-aprobado-por-el-irritocne/>, <https://www.accesoalajusticia.org/tsj-expropiacion-ad-pj-y-vp-con-una-oposicion-a-la-medida-de-maduro/> y <https://www.accesoalajusticia.org/pueblos-indigenas-en-venezuela-pierden-su-derecho-al-voto-secreto-y-directo/>

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

1 | Details on the Venezuelan electoral system

The system that is in the Constitution

The 1999 Venezuelan Constitution provides for a dual or mixed system⁷. In this sense, article 63 of the basic text establishes:

“Suffrage is a right. It is exercised through free, universal, direct, and secret ballots. The law will guarantee the principle of personalization of suffrage and proportional representation”.

In the case of officials such as the President of the Republic, governors, and mayors, the constitutional text establishes that the winner will be the one who obtains the majority of the votes in a single round (articles 228, 160, and 174, respectively). On the other hand, for the collegiate or deliberative bodies whose main function is to legislate, such as the National Assembly, the state legislative councils, or the municipal councils, the Magna Carta designs a “parallel” system that has two pillars: proportional representation and personalization of suffrage.

Based on the system described for the elections of legislative bodies, the Organic Law of Electoral Processes (LOPRE) of 2009, in its article 7, established:

“For the election of the members of the National Assembly, the Legislative Councils of the states, the Capital District and the Municipal Councils, a parallel electoral system will be applied, of personalization of suffrage for nominal positions, and of

proportional representation for the charges on the list. In no case, the nominal election will affect the proportional election by list. The election of the members of the Parish Boards will be made nominally”.

This system implies the existence of two types of votes:

- a) The nominal; that is to say, the possibility that voters can choose their representatives knowing their names and surnames.
- b) The so-called “vote list”, which is a closed list within which the voter cannot choose who to vote for and who not, but has to vote for the party that represents all the members of the same or not vote.

What is the proportional representation?

It is a principle of an election based on the allocation of positions of popular representation based on the percentage of votes obtained by a political party in a specific geographic region. In other words, if a party gets 40% of the votes in the election to Parliament then, according to this principle, it should get 40% of the seats.

The objective is to protect the quantitative electoral expression of political minorities and guarantee the participation of all the sensitivities and expressions of society in the integration of the legislative body, according to its representativeness.

⁷ It is a system that maintains the essence of the majority, in which the one with the most votes win, but also incorporates elements to give space to the representation of minorities. This system is intended to give space to the greatest number of voices and sensitivities in a society, guaranteeing the equality of the vote by giving all voters the same weight, regardless of the expressed preference, and determining a quota or quotient with respect to the total of the votes. Votes.

Since the 1940s, guaranteeing the plurality of deliberative bodies has been an end to be pursued in the Venezuelan legal framework. Thus, the 1947 Constitution, in its article 83, already clearly stated: “The law will regulate the principle of proportional representation of minorities and will tend to ensure that no party or political group predominates in electoral bodies”.

What is suffrage personalization?

It is the possibility of choosing by name and surname the candidates for certain positions.

The possibility that Venezuelans could elect their representatives knowing their identities was a conquest achieved at the end of the eighties, thanks to pressure from civil society organizations that were welcomed during the reform process that the State suffered. In that period, and that among other things, allowed the direct election of governors and mayors.

The so-called nominal vote was introduced in the reform that the Organic Suffrage Law underwent in 1989, with which the Venezuelan system for choosing the members of the legislative bodies ceased to be based on closed lists and changed to a mixed one, in the which a percentage of the positions were chosen by lists and the rest were chosen by name and surname. This model is inspired by the German system.

The purpose of this mechanism was to allow citizens to make a better choice, since they could know who they were voting for and, therefore, they could choose the candidate with the best curriculum and trajectory, regardless of the party that supported him. It was also argued that this

system would ensure greater freedom for elected representatives since it would not deprive partisan political militancy or the line of formation that supported them when making their decisions.

On the distribution of seats

Until the CNE board appointed by the Supreme Court approved its “Special Rules for Parliamentary Elections for the 2021-2026 period⁸” in June 2020, the seats in the National Assembly were distributed as follows: 70% were nominally elected; that is, through the so-called personalized vote; and the remaining 30% through “lists” to ensure proportionality. This in light of the provisions of articles 9, 10, and 11 of the Organic Law of Electoral Processes (LOPRE).

The seats corresponding to the nominal suffrage were awarded to the candidates who obtained the majority of the votes and those on the list, taking into account the total votes obtained by each formation or alliance.

Despite the fact that the aforementioned law in its article 7 establishes: “In no case, the nominal election will affect the proportional election by list”, the truth is that this had been happening thanks to the tactic of “*las morochas*”⁹. *Las morochas* was an electoral strategy devised before *Chavismo* by the *Convergencia* party¹⁰, through which another phantom party was created with which the list candidates were nominated, while the nominal ones were postulated by the existing formation. Since both organizations were allied, they ended up keeping everything.

8 Vid. http://www.cne.gob.ve/web/normativa_electoral/elecciones/2020/asamblea_nacional/documentos/normas_especiales_para_las_elecciones_a_la_asamblea_nacional_per%C3%ADodo_2021-2026.pdf

9 Vid. <https://talcualdigital.com/asi-es-el-truco-de-las-morochas-por-teodoro-petkoff/>

10 Vid. [https://es.wikipedia.org/wiki/Convergencia_\(Venezuela\)](https://es.wikipedia.org/wiki/Convergencia_(Venezuela))

The *Chavismo* copied the model and used it in the 2005 and 2010 parliamentary elections, thus managing to increase its representation in the hemicycle. In such a way that, for example, in 2010, despite having 48% of the votes, the official alliance took 59% of the seats, as explained by the journalist specializing in electoral issues, Eugenio Martínez¹¹.

Although this practice certainly represents a mockery of the constitutional mandate, it received the blessing of the Supreme Court of Justice, which established that practices such as “las morochas” were not prohibited by the Constitution and *“as the application of the law is not prohibited. alluded to the system, the same fits within the legal order; And even though it can be affirmed that not all permitted conduct is per se adjusted to the Constitution, in the present case, the Chamber does not find any effect on the principle of proportional representation either, given that the application mechanism adopted and under which the candidates for deputies for the December 2005 elections (including those of the inciting political party), does not proscribe, reject, or deny proportional representation^{12”} .*

11 Vid. <https://efectococuyo.com/politica/por-que-el-sistema-que-aprobo-el-cne-es-el-mismo-que-sobrerrepresento-al-psuv-y-a-la-mud/>

12 Vid. <http://historico.tsj.gob.ve/decisiones/scon/enero/74-250106-05-1786.HTM>

2 | The new system, to the bench

Bad from the start

As already indicated, the new Venezuelan electoral model did not come from reform to the Organic Law of Electoral Processes (LOPRE) of 2009 carried out by Parliament or because the Supreme Court annulled part of the law and urged the deputies to reform it, but rather it is the product of a resolution issued by the CNE. This is highly irregular, because it is contrary to the Kelsen pyramid, according to which the laws are above administrative resolutions so that they cannot be modified by means of these.

But as if the fact that a resolution seeks to modify the system designed by the Constitution and a law is not enough, it should be noted that the current electoral body was not appointed by the Legislative either, but, for the fifth time in two decades, it's The appointment was made by the Constitutional Chamber of the TSJ, under the excuse that the AN incurred in an omission of its functions¹³.

In addition, the current president of the CNE, Indira Alfonzo, previously served as president of the Electoral Chamber of the TSJ, and she was precisely the speaker of the sentence that left the Amazon state without representation in the AN. In fact, the famous ruling number 260¹⁴ has been the excuse that the highest court has used for more

than four years to strip Parliament of its functions and annul all its actions.

Although the time periods provided for in the TSJ and LOPRE Law to definitively resolve the issue of the Amazonas state have been exceeded, it has continued in the sentencing phase for more than four years without the Electoral Chamber showing the most minimal intention to resolve the matter, with the current National Assembly almost at the end of its mandate.

The action of the official against Parliament has earned her sanctions from governments such as Canada¹⁵, and more recently, the United States for her new role in the CNE¹⁶.

Another member of the CNE with a curriculum similar to that of Alfonzo is that of its current principal rector, Gladys Gutiérrez, who was president of the Supreme Court¹⁷ and the Constitutional Chamber¹⁸, and who during the decade that she was in the highest court never issued a judgment contrary to the interests of the Government. Her behavior in the governing body of the Judiciary also earned her sanctions from Canada, the European Union, and the United States¹⁹, and for her new functions in the CNE by the latter.

13 Vid. <https://www.accesoaljusticia.org/tsj-nombra-a-cne-expres/>, <https://www.accesoaljusticia.org/designacion-inconstitucional-de-los-rectores-del-cne-por-el-tsj/> and <https://supremainjusticia.org/2020/06/09/por-quinta-vez-en-20-anos-la-sala-constitucional-se-arroga-la-potestad-de-designar-al-cne/>

14 Vid. <https://www.accesoaljusticia.org/tsj-ordena-suspender-los-efectos-de-elecciones-parlamentarias-en-amazonas/>

15 Vid. <https://cronica.uno/94-magistrados-tsj-estran-sancionados-comportamiento-antidemocratico-iv/> y <https://www.accesoaljusticia.org/magistrados-bajo-la-lupa-de-la-comunidad-internacional/>

16 Vid. <https://www.dw.com/es/eeuu-sanciona-a-presidenta-del-consejo-electoral-de-venezuela/a-54823525>

17 From 2013 to 2017, when Maikel Moreno joined as its president

18 Until she was appointed rector of the CNE by the same Constitutional Chamber.

19 Vid. <https://cronica.uno/94-magistrados-tsj-estran-sancionados-comportamiento-antidemocratico-iv/> y <https://www.accesoaljusticia.org/magistrados-bajo-la-lupa-de-la-comunidad-internacional/>

In its ruling number 68 of June 2020²⁰, the Constitutional Chamber gave the green light to the CNE to legislate on electoral matters and modify the current electoral system, this after leaving without effect part of the LOPRE that years ago endorsed, now considering that it is not conformed to the provisions of the Magna Carta, in the following terms:

“This Constitutional Chamber considers that a democratic and social state of law and justice that proclaims democracy and political pluralism as one of the superior values of its legal system, must be congruent with its electoral system. Therefore, it is constitutionally incompatible that the Organic Law of Electoral Processes, in its articles 14 and 15, stipulates that the positions to be chosen by list, according to the principle of proportional representation, will be only three (3) or two (2), according to the number of deputies to be elected and that the rest will be elected in nominal constituencies by majority, since, in this way, a proportion between the two election systems equivalent to seventy percent (70%) is established for the personalized vote and thirty percent (30%) for proportional representation, which reduces the possibility that organizations with political purposes that do not have the majority of electoral preferences, have greater possibilities of occupying seats in the collegiate bodies of political representation, which that affects political pluralism as a superior value of the legal system, a situation that constitutes a violation of the provisions of articles 2, 5, 6, 62, 63 and 70 of the Constitution of the Bolivarian Republic of Venezuela. Consequently,

this Constitutional Chamber proposes that the percentage for the election of nominal candidates and that corresponding to the election by proportional representation, be modified by the National Electoral Council by means of the regulatory norms based on the guidelines established in this ruling”.

In its “Special Rules for Parliamentary Elections for the 2021-2026 period,” the CNE heeded the instruction given by the Supreme Court. This increased the number of seats in Parliament by 66%, from 167 to 277. But it also reduced the proportion of deputies to be nominally elected from 70% to 48% (133), while increasing the number of those who they will be elected proportionally up to 52% (148).

It also created an additional mechanism called the “national list”, something that does not exist in any Venezuelan legal instrument; and through which 48 deputies will be elected. And, finally, it altered the way in which indigenous communities will elect their representatives to the NA, which will be analyzed in the next section in more detail.

The aforementioned changes violate the provisions of the 1999 Constitution, in particular, the provisions of Article 186, which states:

“The National Assembly will be made up of deputies elected or elected in each federal entity by universal, direct, personalized and secret vote with proportional representation, according to a population base of one point one percent of the total population of the country. Each federal entity will also elect three deputies or deputies. The indigenous peoples of the Bolivarian Republic of

20 Vid. <https://www.accesoaljusticia.org/omision-legislativa-de-la-an-en-la-designacion-de-los-integrantes-del-cne/>

Venezuela shall elect three deputies in accordance with the provisions of the electoral law, respecting their traditions and customs. Each deputy will have a substitute or a substitute, chosen or chosen in the same process”.

If the provisions of the aforementioned provision are followed, the number of legislators should be more or less equal to that of today: 167, and if there is any variation, it should be not upwards, but downwards due to the massive exodus of Venezuelans. Even if there were more population and not less, it could not be more than two deputies, as in fact, it has been happening in recent years. Indeed, 165 legislators were elected in the 2010 parliamentary elections and 167 in 2015.

The expansion in the number of members of collegiate bodies has already been a tactic that *Chavismo* has used in the past to ensure control of certain institutions. In 2004, the number of magistrates of the Supreme Court increased from 20 to 32, thereby guaranteeing their control until now²¹. Although it is most likely that this new number of deputies has to do with the disappearance in December of the fraudulent National Constituent Assembly²², installed in August 2017, with the main purpose of replacing the AN. Indeed, part of the constituents is running as candidates for deputies.

Lastly, the new system represents a violation of the principle of separation of powers, since the

AN is the only one with the power to legislate; as well as the mandate that prohibits changing the electoral rules six months before a vote²³.

Controlling the actors

After the 2015 parliamentary elections, in which the opposition won the National Assembly for the first time in 17 years, *Chavismo* realized that it could be at the forefront of an electoral debacle - which could even lead to losing the Presidency of the Republic - and Therefore, he began to use strategies, the vast majority of them illegal, to stay in power.

One of its various maneuvers was the elimination of the political opposition²⁴, initially through the TSJ and the CNE, and then through the National Constituent Assembly, which led to the 67 existing awnings as of December 2015, only 17 remained. (12 pro-government and 5 opponents) in 2018²⁵.

The “purge” began with a ruling, number 1, of the Constitutional Chamber of January 5, 2016²⁶, in which it established that political parties that had obtained less than 1% of the votes in the 2015 parliamentary elections in of twelve federal entities, they had to renew the payroll of their enrollees. This is based on the fact that the organizations with partisan purposes renounced the use of their own cards to adopt that of the Democratic Table of Unity (MUD), an alliance that was successful for the opposition against the adversar-

21 Vid. <https://www.hrw.org/es/report/2004/06/16/manipulando-el-estado-de-derecho/independencia-del-poder-judicial-amenazada-en>

22 Vid. <https://www.accesoalajusticia.org/ocho-claves-sobre-la-fraudulenta-anc-y-el-cese-de-sus-funciones/>

23 298 Constitutional Article.

24 Vid. <https://prodavinci.com/sobre-la-ilegalizacion-de-partidos-en-venezuela/>

25 Vid. <https://www.accesoalajusticia.org/venezuela-sin-partidos-politicos-opositores/>

26 Vid. <https://www.accesoalajusticia.org/derecho-de-asociacion-con-fines-politicos/>

ies of the so-called Great Patriotic Pole. the ruling party coalition.

Five parties were excluded from this renewal process, among which was the MUD, the largest opposition party; and on the government side, also the most important, the PSUV.

The consequence: only 14 matches were renewed, added to the 8 declared valid without having to undergo the renewal process, including the MUD. This renewal process lasted one year and three months and from 67 games in December 2015, a total of 22 were reached by December 2017.

The fraudulent ANC also collaborated with the “political cleansing” in favor of power in Miraflores. On December 20, 2017, it issued a decree that ordered a new validation of the organizations, in retaliation against those that did not participate in the municipal contest on December 10²⁷. Thus, after another validation process, the opposition parties were eliminated: *Primero Justicia*, *Voluntad Popular*, and *Puente*.

To this is added that at the beginning of 2018 (January 25) through sentence number 53²⁸, the Constitutional Chamber eliminated the MUD card.

The result was favorable for the Government, because between the TSJ and the CNE they cleared the way for Nicolás Maduro for the presidential

elections, which were to be held at the end of 2018, but which were illegally anticipated until May 20, eliminating the competence of weight of the main opposition political parties in the country²⁹. This turned out to be a perfect formula to end the opposition if the political disqualifications imposed by the Comptroller General on figures like Henrique Capriles³⁰ or with the persecution of the opposition mayors³¹ and deputies of the AN³² by the Judiciary are also taken into account.

But after the questioned call for parliamentary elections on December 6, 2020, the Supreme Court resumed a strategy that it had been applying since 2012³³: the intervention of political parties. This strategy was inaugurated by the Electoral Chamber, when through its ruling number 0087 of June 6, 2012, it stripped the *Patria Para Todos (PPT)* party of its leadership, and did so again through its Constitutional Chamber, through his decision number 122 of August 21, 2020³⁴.

Also, in 2012, on July 7, the interpreter of the Magna Carta in its sentence number 793 changed Ismael García from the presidency of the *Movimiento por la Democracia Social (Podemos)* and replaced him with the former governor of Aragua state, Didalco Bolívar³⁵.

27 Vid. <https://www.accesoaljusticia.org/decreto-de-anc-contr-partidos-viola-libertad-politica-y-derecho-al-sufragio/>

28 Vid. <https://www.accesoaljusticia.org/renovacion-de-los-partidos-politicos-de-oposicion/>

29 Vid. <https://www.accesoaljusticia.org/claves-sobre-la-ilegitimidad-de-las-elecciones-del-20-de-mayo/>

30 Vid. <https://www.accesoaljusticia.org/13-anos-de-inhabilitaciones-politicas-en-una-imagen/>

31 Vid. <https://www.accesoaljusticia.org/el-gobierno-ha-venido-usando-al-tsj-como-instrumento-de-persecucion-contr-quienes-piensen-distinto/> y <https://www.accesoaljusticia.org/el-tsj-ha-querido-castigar-con-carcel-a-los-alcaldes-opositores-que-han-respetado-el-derecho-a-la-protesta-contr-el-gobierno-nacional/>

32 <https://www.accesoaljusticia.org/wp-content/uploads/2020/01/Persecuci%C3%B3n-pol%C3%A9tica-a-diputados-de-oposici%C3%B3n-o-disidentes-en-Venezuela-2.pdf>

33 Vid. <https://www.accesoaljusticia.org/intervencion-de-la-junta-directiva-del-partido-politico-patria-para-todos-ppt/>

34 Vid. <https://www.accesoaljusticia.org/intervencion-judicial-de-la-organizacion-con-fines-politicos-patria-para-todos-ppt/>

35 Vid. <https://supremainjusticia.org/2016/10/20/podemos-intervenido-para-dejarlo-en-manos-de-un-acusado-de-corrupcion-que-apoya-al-chavismo/>

In 2015, *Movimiento Electoral del Pueblo (MEP)*³⁶, *Bandera Roja*³⁷, *MIN-Unidad*³⁸, and *Copei*³⁹ suffered the same fate.

More recently, through judgments 71⁴⁰ (June 15), 72⁴¹ (June 16), and 77⁴² (July 7), it disregarded the directives of *Acción Democrática (AD)*, *Primero Justicia (PJ)*, and *Voluntad Popular (VP)*, respectively⁴³, and resolved to replace them with ad hoc boards, chaired by leaders close to the government of Nicolás Maduro.

In addition, it determined that the *ad hoc* boards are the only ones empowered to nominate the candidates of those political parties in the elections called by the illegitimate CNE; therefore, she ordered the arbitrator to refrain from accepting any candidacy not endorsed by the auditors. Likewise, it declared that the ad hoc boards of directors are those authorized to use the logo, symbols, emblems, colors of AD, PJ, and VP and ordered the suspension of the effects of any disciplinary measure (expulsions or exclusions) that the directives of the parties - now suspended- carried out against their militancy, especially towards the

applicants for the protection measures that gave rise to the three judgments of the Supreme Court.

In the case of the AD board, it is now chaired by Bernabé Gutiérrez, no longer Ramos Allup. In the case of PJ, it is chaired by José Dionisio Brito, suspended in 2019 by the AN for corruption. And the VP is chaired by José Gregorio Noriega Figueroa, also suspended in 2019 by the AN for corruption.

For its part, the Electoral Chamber in judgment number 19, published on July 20⁴⁴, resolved to hand over to Manuel Rivas the address of the Republican Movement organization. The *Tupamaro* party, traditionally related to *Chavismo*, was also intervened on August 18, 2020, this time by the Constitutional Chamber in its opinion number 119⁴⁵. Finally, the *Nuvipa* party was intervened by the CNE⁴⁶.

Another form of interference is verified in rulings numbers 124⁴⁷ and 125⁴⁸, both of August 25, and number 126 of the 26th of the same month⁴⁹, in which the Constitutional Chamber instead of changing directives of the parties, enables them

36 Vid. <https://www.accesoaljusticia.org/intervencion-judicial-del-partido-movimiento-electoral-del-pueblo-mep/>

37 Vid. <https://www.accesoaljusticia.org/intervencion-judicial-de-la-organizacion-politica-bandera-roja-br/>

38 Vid. <https://www.accesoaljusticia.org/intervencion-judicial-del-partido-movimiento-de-integridad-nacional-unidad-min-unidad/>

39 Vid. <https://efectocuyo.com/politica/intervencion-de-copei-por-el-tsj-imposibilita-postulacion-de-roberto-enriquez-para-el-6d/>

40 Vid. <https://www.accesoaljusticia.org/suspension-de-la-direccion-nacional-de-la-organizacion-con-fines-politicos-accion-democratica/>

41 Vid. <https://www.accesoaljusticia.org/suspension-de-la-direccion-nacional-de-la-organizacion-con-fines-politicos-movimiento-primero-justicia/>

42 Vid. <https://www.accesoaljusticia.org/suspension-de-la-direccion-nacional-de-la-organizacion-con-fines-politicos-voluntad-popular/>

43 These parties had left the CNE registry due to problems that arose for their renewal, or by the decision of the TSJ, the CNE, or the Constituent Assembly. However, they were enabled again once the Supreme Court's intervention sentences were issued, which allow them to participate, but not with their natural candidates, but with some imposed by the Maduro regime through the TSJ. The serious thing about this is that these parties with their colors and symbols will appear on the electoral card, but many voters will vote for them believing that they elect opposition candidates, since in Venezuela there is a lot of information opacity and terrible lighting and internet conditions, as well as very serious socioeconomic conditions, which often do not allow in certain areas of the country to really know what is happening.

44 Vid. <https://www.accesoaljusticia.org/intervencion-judicial-a-la-organizacion-con-fines-politicos-movimiento-republicano-mr/>

45 Vid. <https://www.accesoaljusticia.org/intervencion-judicial-a-la-organizacion-con-fines-politicos-partido-tendencias-unificadas-para-alcantar-movimiento-de-accion-revolucionaria-organizada-tupamaro/>

46 <https://cronica.uno/en-nuvipa-afinan-estrategia-legal-y-politica-para-enfrentar-intervencion-del-cne/>

47 Vid. <https://www.accesoaljusticia.org/habilitacion-de-la-organizacion-con-fines-politicos-bandera-roja-br-para-participar-en-las-elecciones-parlamentarias/>

48 Vid. <https://www.accesoaljusticia.org/habilitacion-de-la-organizacion-con-fines-politicos-compromiso-pais-compa-para-participar-en-las-elecciones-parlamentarias/>

49 Vid. <https://www.accesoaljusticia.org/habilitacion-de-la-organizacion-con-fines-politicos-movimiento-de-integridad-nacional-unidad-min-unidad/>

to that they can participate in the parliamentary elections, despite not appearing on a list published by the CNE for this purpose. The parties authorized by the aforementioned sentences were *Bandera Roja*, *Compromiso País*, and *MIN-UNIT*, respectively.

The action of the Supreme Court against the parties has not been limited to the opposition groups but has also included those close to *Chavismo*, especially those that in recent times have begun to show some dissidence and who even announced that they would participate in the legislative elections in an alliance without the *Partido Socialista Unido de Venezuela (PSUV)*⁵⁰.

50 Vid. <https://cronica.uno/partidos-oficialistas-minoritarios-crean-alianza-electoral-sin-el-psuv/>

3 | The electoral system for indigenous people: second-class citizens

But where violations of the constitutional framework are most exposed is in the new system for indigenous peoples⁵¹. Thus, in the “Special Regulations to Regulate the Election of the Indigenous Representation in the 2020 National Assembly”, contained in resolution No. 200630-0024 of June 30, 2020, cited above, it is established that the deputies would be elected not from Directly, but through spokespersons⁵², elected in general assemblies by show of hands, that is, without respecting the universal, secret and direct vote provided for in the Magna Carta.

Why the change? There is no explanation because since the reestablishment of democracy in January 1958, indigenous people have been voting in the same way as the rest of Venezuelans and since 2000, with the entry into force of the 1999 Constitution, a system that guarantees that they have representation in the regional Parliament and in the regional ones of those states where they have a presence.

Faced with the scandal that the aforementioned produced, the CNE backed down, but only partially. Thus, on August 14, it amended its regulations on the election of indigenous representation to establish that the vote to elect the deputies corresponding to the indigenous peoples would

be secret, as it is for the rest of the voters⁵³. Thus, its resolution number Resolution N ° 200814-032⁵⁴ reads:

“The vote in the General Assemblies will be secret and will be carried out manually by ballot, in accordance with the provisions of the Organic Law on Electoral Processes, its General Regulations and the General Assemblies Operation Manual.”

However, this was the only substantial change, because of the decision that the choice of deputies be second-degree remains. All this under the excuse of respecting the “customs and traditions” of the native peoples. This, despite the fact that article 63 of the Constitution is clear in establishing that the right to vote will be exercised “through free, universal, direct and secret voting.”

Finally, the indigenous peoples did not maintain the demand that there be an equal number of male and female candidates, which is another gesture that discriminates against them from the rest of the Venezuelans⁵⁵.

51 Vid. <https://www.accesosaljusticia.org/pueblos-indigenas-en-venezuela-pierden-su-derecho-al-voto-secreto-y-directo/>

52 This means that the spokespersons choose the deputies, the indigenous people lose this right to direct vote and can only elect the spokespersons.

53 Vid. http://www.cne.gob.ve/web/sala_prensa/noticia_detallada.php?id=3831

54 Vid. http://www.cne.gob.ve/web/normativa_electoral/elecciones/2020/asamblea_nacional/documentos/normas_especiales_aprobadas/resolucion_que_levanta_parcialmente_la_sancion_y_modifica_el_reglamento_especial_para_regular_la_eleccion_de_la_representacion_indigena_en_la_asamblea_nacional_2020.pdf

55 This consists of “requiring the nomination of candidates in a formula of 50% for each sex; and if this is not possible, a band will be applied that will have a minimum of 40% and a maximum of 60% for each sex; applicable to all the modalities established for this election: nominal, regional lists and national award lists. And through the automated system to ensure that the application is completed sequentially in order to ensure the joint and alternate form”, http://www.cne.gob.ve/web/sala_prensa/noticia_detallada.php?id=3810 and http://www.cne.gob.ve/web/normativa_electoral/elecciones/2020/asamblea_nacional/documentos/paridad_de_genero/proyecto_de_paridad_de_genero.pdf. However, as already indicated, this does not apply to the indigenous population without any explanation from the electoral body about the reason for their exclusion from this regulation.

Conclusions

The Venezuelan electoral system had been registering significant setbacks in recent years that sowed doubts about the transparency and legality of the electoral processes recently registered. However, the complaints about the advantage of Chavismo and the alignment of the CNE with the Maduro government are now joined by rules that are openly unconstitutional.

The so-called “Special Norms for Parliamentary Elections for the 2021-2026 period”, issued by the electoral arbitrator by order of the Supreme Court, are flawed from origin since the electoral body is not constitutionally empowered to legislate. The task of legislating corresponds exclusively to the AN unless it decides to empower the President of the Republic to do so.

But in addition to this irregularity, the content of the instrument that establishes the new electoral system is also contrary to the Magna Carta, as it does not respect the model it contains. One of the most obvious vices is related to the increase in the number of legislators, from the current 167 to 277, since it does not comply with the content of article 186 of the Constitution.

The decision to reduce the number of nominally elected deputies, to then increase the number of deputies who are elected from closed lists, does not conform to the basic text either. Far from the conditions imposed on indigenous peoples, who are discriminated against and treated as second-class citizens.

This new model, far from generating confidence around the institution of voting, what it does is reinforce the existing doubts about the future parliamentarians.

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