

IDEA-UCAB STUDY MISSION

ON CONDITIONS FOR THE 2020 PARLIAMENTARY ELECTION PROCESS IN VENEZUELA

WORKING GROUP

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CONTENTS

	Page
LIST OF ABBREVIATIONS	3
EXECUTIVE SUMMARY	4
PROLOGUE	6
A. INTRODUCTION	7
B. CONDITIONS NEEDED TO GUARANTEE THE INTEGRITY OF THE ELECTORAL PROCESS	11
C. ELECTORAL CONTEXT DURING A PANDEMIC	13
D. CURRENT STATUS OF THE 2020 PARLIAMENTARY-ELECTION PROCESS	17
1. Electoral Justice	
1.1. Judicialization of political parties as a perversion of electoral justice	
1.2. Uncertainty concerning the National Electoral Council's authority to make rules	
2. Status of the Electoral Roll	23
3. Electoral integrity and secrecy of the vote	24
3.1. How secrecy of the vote is perceived	
3.2. Assisted voting, social control and <i>carnet de la patria</i>	
3.3. Misleading ballots	
4. Technological questions concerning recent acquisitions	28
5. Fairness of the elections	32
5.1. Use and abuse of state-owned resources	
5.2. Freedom of the press and access to the media	
5.3. Campaign and party financing	
6. Proportionality of the electoral system	34
7. Gender parity in nominations	37
8. The case of the election of representatives of the indigenous peoples and possible consequences. The new system for electing representatives of the indigenous peoples to the National Assembly	38
9. Electoral Observation	40
E. CONCLUSIONS AND RECOMENDATIONS	43
F. REFERENCES	47
G. WORKING GROUP	48

LIST OF ABBREVIATIONS

- 06D-2015: National Assembly election on December 6, 2015
- 06D-2020: National Assembly election on December 6, 2020
- AD: Acción Democrática
- CNE: National Electoral Council
- CRBV: Constitution of the Bolivarian Republic of Venezuela
- Covid-19: Coronavirus Disease
- EBA: Electoral Branch Act
- EPA: Electoral Processes Act
- ER: Electoral Roll
- EU: European Union
- G4: Group of opposition parties that won a parliamentary majority in 2015, comprising: Acción Democrática, Primero Justicia, Voluntad Popular and Un Nuevo Tiempo.
- GPP: Gran Polo Patriótico. Pro-administration coalition
- IDEA: International Institute for Democracy and Electoral Assistance
- MUD: Mesa de la Unidad Democrática. Opposition coalition
- NA: National Assembly
- NEEAN: Special Rules for the Election of the National Assembly
- OAS: Organization of American States
- PCR: Polymerase chain reaction
- PJ: Primero Justicia
- PPT: Patria para Todos
- TSJ: Supreme Tribunal of Justice
- Tupamaro: Unified Trends for Achievement of Movement for Organized Revolutionary Action
- UCAB: Universidad Católica Andrés Bello
- UCV: Universidad Central de Venezuela
- UN: United Nations
- WHO: World Health Organization

EXECUTIVE SUMMARY

This report covering the current status of the 2020 parliamentary election process has been drawn up by a Study Mission organized by International IDEA and the Center for Political and Government Studies, with the cooperation of the Democracy and Elections Department at Universidad Central de Venezuela, the Venezuelan Electoral Observatory, Súmate and the journalist Eugenio Martínez. The purpose is to provide a diagnosis, present conclusions concerning the parliamentary elections scheduled to take place on December 6th this year and offer recommendations concerning key elements necessary to guarantee clean elections.

One of the first aspects covered in this report concerns the interference by the Supreme Tribunal of Justice (STJ) in the internal dynamics of the political organizations and the election process: replacement of leadership without any due process whatsoever, not even a hearing attended by those affected, clear evidence of the lack of any separation of powers and the use of this body as a political tool. This provides an advantage for the government headed by Nicolás Maduro and could mean the end of any political opposition.

The second issue involves the uncertainty generated by the rule-making power wielded by the National Electoral Council (CNE) given that it engaged in a number of violations involving political rights by restricting the basic right of any election process, i.e. the right to elected and to be elected without any restrictions other than those provided for in the Constitution.

A third issue analyzed concerns the Electoral Roll, given that new voters have been prevented from registering owing to failures and bias in the process for voter registration or updating of information. No provision was made for registration by Venezuelans living abroad, whose number has been growing due to emigration, meaning that the information is seriously outdated.

Fourthly, the report analyzes the distrust concerning the honesty of elections and secrecy of the vote fostered by the government itself, including the use of punishment and penalties in the case of voters who are in any way economically dependent on the government, even more so now with the impact of the Covid-19

In fifth place, the analysis covers the technological uncertainties raised by recent acquisitions involving the automated system, in view of the replacement of the company in charge of managing these processes with another one that uses different software and hardware. It also studies the large-scale loss of hardware and biometric devices in a fire at CNE warehouses in Filas de Mariches, State of Miranda in March 2020.

A sixth subject of investigation concerned the conditions of proportionality in election races in view of the necessary guarantees of both private and state-owned media where it was found that the former are the subject of coercion whereas the latter have become propaganda tools for the governing party.

The issue of gender parity in nominations is also covers the issue of gender parity and alternance providing a set of recommendations that include suggested amendments to the Suffrage and Political Participation Act that would be needed for the purpose.

The respective regulations follow most of the criteria of the legal instruments mentioned above in the case of gender parity and alternance. Nevertheless, they do provide

that this rule does not apply to “the nominations of men and women candidates representing the indigenous populations at the National Assembly” a far cry from an unquestioned and longstanding electoral tradition that does not allow for restrictions to the application of the gender-related quota requirements.

As a matter of fact they include a separate section for the case of the representatives of the indigenous populations and the possible consequences, a new system for the election of these representatives to the National Assembly.

Another aspect covered involves domestic and international observers. Up to the date on which this report was completed, the CNE had not made progress in outlining the formal procedures. In the case of international observers, the national government has announced that it intended to invite missions from Russia or Turkey, missions whose weak point is that they are not considered to be truly independent and unbiased by many domestic or international actors. At present, there are few options for any reliable or trustworthy international observation. Through a spokesperson, on September 11th the European Union (EU) announced that “there is no longer enough time” to be able to send an Electoral Observation Mission unless the Venezuelan government postpones elections until after December 6th.

In addition, this report offers recommendations for protection of voters’ health during the pandemic, such as assessment of election infrastructure to determine which sites meet the requirements set by the World Health Organization (WHO), selection and remote training of personnel, registration and verification without direct contact, and definition of disinfection protocols.

The report also includes conclusions and recommendations concerning the need to put an end to the judicialization of parties and change CNE rules, as well as proposals for a number of actions to update the electoral roll, together with suggestions based on universal practices aimed at guaranteeing participation and the secrecy of the vote, regulating government propaganda and ensuring a fair electoral process.

The report proposes implementation of a new automated voting system, defining the protocols for action in a number of key areas, while, at the same time, presenting proposals for redefining how technical audits should be carried out.

PROLOGUE

Venezuela has scheduled parliamentary elections to be held on December 6th to elect an entirely new National Assembly for a 5-year term. If a lack of trust already prevailed during earlier elections in Venezuela, these will be held under particularly adverse circumstances. In addition to the political and humanitarian crisis facing the country we have the risks inherent to the Covid-19 pandemic, which has already had an impact on the organization of election processes all over the world.

Different actors in the international community, such as the Lima Group and the International Contact Group on Venezuela, as well as specialized multilateral organizations and institutions, have voiced concerns regarding the call for elections while serious problems found in previous races have not been remedied. With a view to making it easier to understand the conditions under which Venezuela will be holding elections, International IDEA and the Center for Political and Government Studies of Universidad Católica Andrés Bello (UCAB) gathered a group of renowned local experts to assess the core issues that are important for guaranteeing fair elections. This group of experts has drawn up a detailed report outlining the main problems affecting these elections and providing recommendations to help put them on the right path.

Among other items, this report begins with an assessment of the autonomy enjoyed by the political organizations when it comes to appointment of their authorities and their decision-making, as well as the role played by the electoral justice system in the internal party dynamics and guaranteeing legal certainty for elections.

Another important aspect in any election is the electoral roll. It must be accurate, credible, updated and meet legal requirements. If, by design or because of decisions adopted by the election authorities, a significant number of voters are not included, then the electoral integrity is seriously compromised. An analysis of this issue is especially important when, as in the case of Venezuela, we are in the presence of a major migration of citizens living abroad.

The report also covers an analysis of the conditions surrounding the exercise of the right to vote. Guaranteed secrecy of the vote is essential for elections that are free, not subject to pressure by any authority, where the voter is free to express his will. For voters to feel free to do so it is essential that they believe this basic guarantee.

Lastly, mention must also be made of the assessment made concerning the conditions of fairness in the elections. When it comes to the issue of integrity in modern day elections, it is common practice to point to the importance of preventing the use of government funds to help or harm any of those running for office, access to the media, both government- and privately-owned, and the key role played by proper regulation of campaign financing.

A. INTRODUCTION

From 1998, when Chávez was elected, up to October 2012, when he won his last presidential election –while suffering from the illness that would lead to his death shortly afterwards—the current system underwent a number of changes. It went from being a democracy –unquestionably one with many flaws, but noted for a stability that was an example for the continent (proving, once again, that democracy is not an irreversible ideal state of affairs in any country)—to a hybrid regime that was gradually able to permeate the entire election system. This outcome was achieved thanks to the popularity of the country’s charismatic leadership, together with a solid patronage network that began with the Bolívar 2000 Plan and spread like wildfire, thanks to the missions that were set up under the tutelage of the Cuban government and that also helped prevent the recall of the Chávez mandate in the referendum held in 2004, and continued to grow thanks to the oil-boom years.

Following the death of Chávez and the controversial election of Nicolás Maduro on April 14, 2013, from a competitive authoritarianism the regime has been rapidly mutating to become one that is much more hegemonic, where competitiveness of processes for electoral legitimacy now take a back seat, as acknowledged even by respected international indices such as those put out by *Freedom House*, the *V-Dem Project*, *The Global State of Democracy by International Idea*, or *The Economist Intelligence Unit’s Democracy Index (The Economist. 2020)*, among others.

The autocratization did not begin with Maduro. It is part of a gradual process that began with Chávez. The rhythm, dynamics and evolution are the result of the challenges, circumstances, advantages, disadvantages or conditions that Chávez and Maduro have been forced to deal with in order to remain in power for over 20 years. Over time the situation has shifted from their enjoying the backing of the majority to being hated by most of the country.

When a competitive authoritarianism ceases to be competitive in elections it faces the dilemma of whether to continue risking strength in electoral competitions or discarding the vote as a mechanism for legitimacy and choosing more hegemonic models for holding on to power. In the case of Venezuela, although the autocratization process is clear, the regime has not yet decided to renounce electoral legitimacy nor is it expected to do so in the medium term for a number of reasons, ranging from the political culture of the Venezuelan people –who strongly favor electoral participation—to the need to do away with the pressure and threats, both horizontal and vertical as well as external and domestic, to governance and their hold on power.

As a result of the clear disadvantage the government has faced since 2013, when the official results showed that Maduro won by a small margin, and the defeat suffered by the government in the parliamentary elections in 2015, there has been a significant and gradual undermining of electoral conditions and guarantees.

This is not a recent process; it had begun much earlier, as can be seen, for example, in the European mission’s electoral observation report following the presidential elections in 2006 (European Union 2006). It then became more pronounced, to such an extent that, in 2017, in order to preserve its credibility Smartmatic –a company that provided

technological services for the CNE for many years—was forced to report obvious discrepancies in the official figures for the elections of the National Constituent Assembly, thus putting an end to a long commercial relationship (Smartmatic, 2017).

Since then, we could say that the Venezuelan government has become less evenhanded when it comes to elections; charges and questions concerning unacceptable practices such as vote buying, “assisted voting,” fostering voter abstention by kindling doubts as to whether votes really count, the disqualification of opposition parties and candidates, court-ordered takeovers of the main opposition parties, the co-opting of minority opposition parties, and patronage in elections, are all on the rise. Several of these practices are in place today, leading to an *a priori* rejection of the upcoming parliamentary elections not only by the opposition political parties that have decided not to take part, but also by most voters and a significant portion of the democratic international community.

Vote buying --mainly by making voting a condition for inclusion in social welfare programs (the missions)-- together with “assisted voting” as a means of coercing voters, are also practices left over from earlier times that are still being used.

Voter abstention is due mainly to the fact that, for the past several years, the CNE’s credibility has been declining in the case of issues such as trust in the members of the Council—all put in place by the government since 2006—as well as the counting and secrecy of the vote, especially since the implementation of electronic-voting technologies. Despite the fact that audits carried out following several electoral processes have produced no evidence of discrepancies—with the exception of those reported by Smartmatic in 2017 and inconsistencies in the vote-count records for the election of the Governor of Bolívar that same year (Prodavinci, 2017)—distrust has been on the rise, and the election authorities have not shown any interest in remedying this loss of confidence in the vote. Furthermore, the implementation of this technology has fostered any number of myths concerning the secrecy of the vote --fed by both the government and the opposition-- that are even used to put pressure on government employees and people who rely on social-welfare plans, myths that, again, the electoral authorities do not seem at all interested in disproving, as can be seen by their failure to take action and, even, their actions to put a stop to an institutional campaign organized by Universidad Católica Andrés Bello (UCAB) in 2015 encouraging people to vote and assuring them that the secrecy of their votes is guaranteed.

Voter abstention is prompted mainly by lack of trust in the election authorities¹. In addition to this, in the case of the parliamentary elections scheduled for December 6th this year, there is also the fear of going to vote in the midst of the pandemic, found mainly among the groups that are better informed --given that they have internet service, smart phones and access to media other than state-owned media-- most of whom oppose the government.

The disqualification of candidates and parties and court-ordered takeovers, although used occasionally during the Chávez era, have become more prevalent over the past year. They have affected three out of the four main opposition parties (Acción Democrática, Primero Justicia and Voluntad Popular), whose main candidates have been disqualified and are prevented from running in elections. In addition, there are the court-

¹ <https://politikaucab.files.wordpress.com/2020/08/escenarios-2020-ii-semester-opinion-en-formato.pdf>

ordered takeovers and imposition of boards made up of members co-opted by the government, who have been granted the right to use the party name and symbols to back their candidates to the upcoming parliamentary elections, a situation that is unprecedented in Venezuela.

The new and unusual situation in the case of Venezuela involves the co-opting of opposition parties and the use of competitive electoral patronage in an effort to further split the vote of the opposition majority in order to regain a majority in the National Assembly.

With a view to fostering more competition among the minority parties, the National Electoral Council, in what is a clear violation of the Constitution and current law, has increased the number of seats in the National Assembly from 167 to 277. In absolute terms this means more seats for the “opposition” even after the government wins a relative majority in the Assembly.

Thanks to the government strategy being implemented, the 107 parties and over 13,000 candidates will be competing for the 277 seats in the National Assembly. There can be no question that this will lead to a splintering of opposition votes among the parties striving to hold on to an opposition majority, paving the way for the government party to win, even if those in the opposition were to add up to a significantly larger proportion of the total votes.

The effect of the pandemic on the parliamentary elections

Further complicating the already very complex political-electoral picture expected this year, on March 12 the government declared a State of Alarm for the entire country in response to the coronavirus (Covid-19). On that same day the World Health Organization had announced a pandemic affecting all continents.

The declaration of the State of Alarm was formalized the next day in Decree 4,160, published in Official Gazette special issue No. 6,519 dated March 13, 2020. Among the reasons given in the preamble, was the detection of the first cases in the national territory. On that same day the government officially reported the first two cases (BBC News Mundo, 2020).

By the time the arrival of the pandemic in Venezuela was announced, the country was already in the midst of what has been called a complex humanitarian crisis –one that most experts felt had begun in 2015—and a situation in which protests had continued to escalate since February 12th but came to a sudden end with the announcement of the State of Alarm and the militarization of the country.

On that same day opposition leader Juan Guaidó had called for a march aimed at trying to regain control of the Legislative Palace. The opposition majority had been denied access to the premises of the legislative branch since January 5th when, in a closed-door session without a quorum, a new, government-controlled leadership board was sworn in, a board that was not recognized within the country or by the international community. That same leadership wields control over the Legislative Palace to this day.

Prospects for the political scenarios and the impact of the pandemic

Under the Constitution and current laws in Venezuela, parliamentary elections must be held this year. A suspension or postponement of elections, which has occurred on other occasions, has been ruled out completely despite the State of Alarm decreed on March 13 in response to the pandemic. According to most experts, the pandemic will be spreading exponentially during the last quarter of the year. For the regime the top priority continues to be regaining control of the legislature, by replacing the majority opposition that is currently headed by Guaidó who, once sworn in as president of the Assembly, has been recognized as interim president of the country by 58 democratic governments. This recognition of Guaidó has created one of the worst existential crises that the regime has faced since it took power in 1999.

By increasing voter abstention based on fear of contagion, the pandemic does, to a certain degree, work in favor of that strategy for regaining control of the National Assembly. For all the reasons outlined above, probabilities are that voter abstention will total some 70% (Noticias Caracas, 2020). In the specific case of those who vote against the government, a majority at present, it could end up being higher than 80% (UCAB, Centro de Estudios Políticos y de Gobierno, 2020)². This gives the government a great advantage given that it is the only party that is able to coercively mobilize voters using the human and material resources of the state by, for instance and as already announced, using the Armed Force to seek out voters at their homes and take them to the polling stations (ABC Internacional, 2020).

Despite all these difficulties, as well as pressure both from the domestic and international communities, the truth is that there is no reason to believe that the government is willing to suspend or postpone the parliamentary elections. Whatever the cost for the Maduro regime, these elections are a means for it to achieve its primary goal: seizing control of the National Assembly from Guaidó and the G4, who have become the most complicated adversaries that the regime has faced over the years.

Contrary to what many hoped, 2020 and, possibly, 2021, could end up being years of even greater autocratization and consolidation of the regime headed by Maduro. Contributing factors would be the inertia in the current dynamics of political control and declining social mobilization, exacerbated by the pandemic, making a possible democratic transition even more unlikely in the short or medium term (Alarcón, 2020).

The aim of this report is to present a diagnosis while, at the same time, offering some conclusions regarding the parliamentary elections to be held on December 6th, as well as providing specific recommendations concerning what needs to be done. To this end, it has been divided into three specific sections.

In the first section, we provide a review of the basic notions of what is currently known as electoral integrity and the necessary conditions considered to be universally accepted standards. We then move on to study the context in which these elections will be held, where the Covid-19 pandemic has added even further and very serious difficulties that the Venezuelan authorities inexplicably seem to be ignoring completely.

² <https://politikaucab.files.wordpress.com/2020/08/escenarios-2020-ii-semester-opinion-en-formato.pdf>

In the next section, we cover the conditions under which this process will be taking place. We discuss the situation involving the election authorities, the status of the Electoral Roll, integrity of the election and secrecy of the vote, the serious problem of the so-called “assisted vote” as a tool for monitoring society, as well as electoral use being made of social-welfare plans and the *carnet de la patria* (fatherland card). We also describe the confusion arising from the design of the current ballot, the increasing lack of fairness in the election process, the use of government resources, as well as the restrictions to freedom of the press, access to the media, and the financing of parties and campaigns.

We also examine the situation of proportionality under our electoral system, gender parity and the unprecedented exception to the rules in the case of the election of representatives of the indigenous peoples and their possible consequences.

Another subject that must necessarily be mentioned in this specific case, following the destruction of all the voting equipment in the –still unexplained– fire that broke out at the National Electoral Council’s warehouse, has to do with questions concerning the new, recently acquired, voting equipment and all this entails.

Lastly, in view of the government’s refusal to put off the elections, despite the many efforts made by domestic and international actors, such as the European Union, we consider the issue of electoral observation, both local and international, and the capabilities of the system when it comes to settling possible disputes that could arise in connection with the process itself or the results.

B. CONDITIONS NEEDED TO GUARANTEE THE INTEGRITY OF THE ELECTORAL PROCESS

The Electoral Integrity Project, headed by Pippa Norris and based at the University of Sidney and Harvard (in which the UCAB Center for Political Studies has been taking part since 2014), among other organizations and projects, have endeavored to put together a set of what are currently considered to be internationally recognized standards for guaranteeing the integrity of election processes. Moreover, the Carter Center in Atlanta is home to a large data base³ on electoral standards and obligations that contains more than 200 international instruments.

This study, as was the case of the report we published in 2015, will be based on the *Report of the Global Commission on Elections, Democracy and Security*, put out by International IDEA and the Kofi Annan Foundation⁴

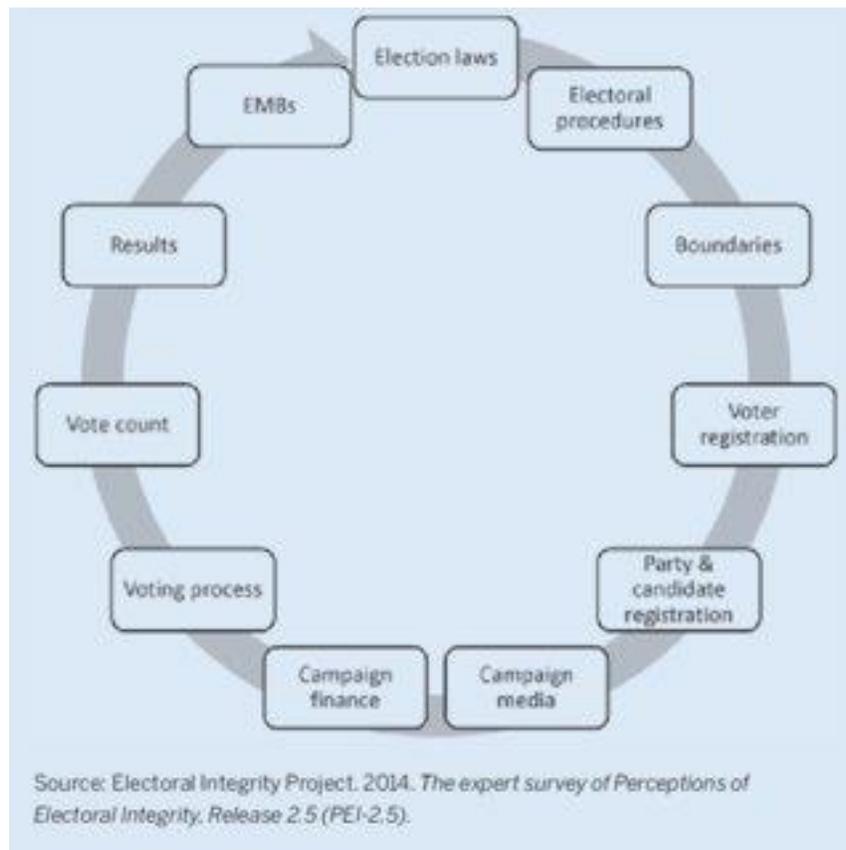
Elections with integrity are based on the democratic principles of universal suffrage and political equality, as reflected in international standards and agreements, and are noted for professional, impartial, and transparent preparation and administration throughout the electoral cycle.⁵ When speaking of an electoral cycle (see Diagram 1), we are not referring only to the activities that take place on election day, but also of all the processes that take place before, during and after each election.

³ “Election Standards at The Carter Center”, at <http://electionstandards.cartercenter.org/eos/>.

⁴ “Profundizando la democracia: una estrategia para mejorar la integridad electoral en el mundo”, Fundación Kofi Annan and IDEA Internacional, Estocolmo, 2012.

⁵ http://www.idea.int/es/publications/15_years_supporting_democracy/a_continuous_cycle.cfm.

Diagram 1. Electoral Cycle



Electoral integrity also takes ethical considerations into account. Issues such as transparency, accountability, trust in the process and actors, accuracy in management of an election, are taken as a whole, as part of the ethical electoral behavior that is considered to be one of the fundamental values of electoral systems. Integrity is a guarantee thanks to which it can be said that electoral processes do not have predetermined winners other than those chosen by the voters.

According to the report by the Global Commission on Elections, Democracy and Security, in order to have a process that is deemed to meet the requirements of what we now call electoral integrity, five major issues must be tackled:

- Ensuring the rule of law that guarantees human rights and electoral justice;
- Creating professional and competent electoral bodies, able to act fully independently and impartially in managing transparent electoral processes that are trusted by the people;
- Creating institutions and rules for multiparty competition, as well as a system of separation of powers that strengthens democracy and provides reciprocal security for all the political adversaries;
- Eliminating legal, administrative, political, economic and social barriers that hinder universal and egalitarian political participation; and
- Regulating uncontrolled, hidden or improper political funding.

FRAMEWORK FOR ANALYSIS

In general terms, electoral systems are complex in that they require an institutional platform designed on the basis of the legal framework found in each country. As they are subject to tension when elections are being held, they require constant adjustment.

Any analysis of an electoral system requires a comprehensive examination of all the parts it encompasses. In this regard, we use a model for electoral integrity that involves a methodology of analysis and assessment of the quality of electoral processes, one that is based in internationally accepted standards, from a standpoint that encompasses all the dimensions and stages of the electoral cycle, beginning with the design and development of the legal framework and the institutions, the selection of electoral authorities, the electoral roll, the nomination of candidates and the political parties, campaigning and campaign financing, up to the voting *per se*, vote counting, announcement of results and audits.

This model is widely used in academic circles and by all multilateral organizations, both governmental and non-governmental, that work in the field of strengthening democracy and electoral processes. Work on this has been carried out since 2012 with the strong support of the Electoral Integrity Project⁶, headed by Professor Pippa Norris⁷ and an outstanding group of international advisors, based at the University of Sydney and the John F. Kennedy School of Government at Harvard University.

C. ELECTORAL CONTEXT DURING A PANDEMIC

On March 12, the same day that the World Health Organization announced the coronavirus (Covid-19) pandemic affecting every continent, the government headed by Nicolás Maduro in Venezuela declared a State of Alarm throughout the country. The State of Alarm was formalized the next day in Decree 4,160, published in Official Gazette special issue No. 6,519 dated March 13, 2020. Among the reasons given in the preamble to the Decree for declaring the State of Alarm, was the discovery of the first cases in the national territory. That same day the government officially announced the first two cases (BBC News Mundo, 2020).

By the time it was reported that the pandemic had arrived in Venezuela, the country was already mired in what has been called a complex humanitarian crisis—one that most experts feel had begun in 2015—and facing widespread protests, the outward sign of a political conflict that had persisted for years but had begun to escalate since February 12th. This situation of social unrest ended suddenly with the announcement of the State of Alarm and the militarization of the country. On that same day, opposition leader Juan Guaidó had called for a march aimed at trying to regain control of the Legislative Palace, to which the opposition majority had been denied access since January 5th when, in a closed-door session without a quorum, a new, government-controlled, leadership was sworn in, a leadership that has not been recognized within the country or by the international community but that continues to control the Legislative Palace.

⁶ <https://www.electoralintegrityproject.com/>

⁷ <https://www.electoralintegrityproject.com/projects/>

Between that day and April 30th, the government announced a total of 298 cases and 10 deaths due to the disease. These figures were the result of RT-PCR (real-time reverse transcription polymerase chain reaction) testing, used to detect the presence of RNA of the Sars-Cov-2 virus, the only test that has been approved by the World Health Organization for determining the presence of the virus responsible for the infection.

Watching the evolution of the government figures, atypical when compared with the figures from neighboring countries, questions have been raised concerning the information being made public by the government. Reacting to the misinformation, the National Academy of Physical, Mathematical and Natural Sciences launched its own project for a comparative analysis of the data and projections (Academia Nacional de Ciencias Físicas, Matemáticas y Naturales, 2020). These results raise serious doubts concerning the official figures, especially when one compares the official average of cases per day—fewer than 1,000 by September—by which point, according to Academy estimates, the daily average could total 7,000, and could be as high as 14,000 cases per day unless drastic steps are taken to reverse the trend. The study also considers that there is major underreporting in the official number of deaths (10 per day), whereas, if the number of new cases per day were to be 7,000, based on the death rate for the disease in neighboring countries the actual number of deaths would range between 140 and 210 deaths per day by September.

Furthermore, beyond the government's erratic management of the lockdown and increased, although still insufficient, use of RT-PCR testing—due to the government's lack of testing capacity (some 150 tests per day until May and approximately 1,300 per day by September) as well as its refusal to decentralize testing, as part of its effort to wield control over information concerning the number of confirmed cases, which has left Venezuela ranking as the country that has administered the fewest tests per million inhabitants in the region—there have been no general policies aimed at prevention and nothing has been done to remedy the very precarious conditions of the hospitals. This has left the country in a very vulnerable position when it comes to a possible exponential spread of infections.

Parliamentary elections that violate political and health-related rights.

The traditional system for organizing voting can turn any election into a potential source of community contagion of Covid-19. Given the lack of institutional leadership in Venezuela, the parliamentary elections to be held on December 6, 2020 will provide material for a manual on what not to do when organizing elections in the midst of a pandemic.

From a strictly epidemiological⁸ point of view, an election is a complex process that involves interaction among a large number of people, not only on election day itself, but also at a number of events prior to the election. The electoral timetable for the December 6 elections in Venezuela includes 98 stages⁹. Of these, 49 pose the risk of community contagion for election workers, political party representatives, national observers, journalists and, most especially, voters.

⁸ CASTRO, Julio. *Elecciones y pandemia*. Prodavinci. <https://prodavinci.com/elecciones-y-pandemia-b/>

⁹ Consejo Nacional Electoral 2020. Cronograma elecciones parlamentarias. <http://www.cne.gov.ve/documentos>

It is obvious that the health measures required to stem the spread of Covid-19 represent a challenge for the organization of elections, adding new requirements to the political and technical ones that have already been in place in Venezuela for over a decade. One type of event that involves the largest concentration of people and the most direct contact, aside from election day, is campaigning. During this period, which varies depending on the timetables and laws of each country, the level of exposure for both candidates and voters is extremely high. From rallies, to house-to-house campaigning, small strategy meetings, all involve direct contact among people and, therefore, a high risk of contagion.

Lastly, election day itself involves mobilization of people all over the country and large gatherings of people throughout the day. Up to the date of this report, the election authorities have not made clear if elections will be held on a single day or will be spread out over several days.

No election entails long-distance mobilization because it is assumed that people vote close to where they live. Nevertheless, mobilizations do occur, although to a much lesser degree, for logistical reasons when people must travel to different states for delivery and safeguarding electoral material: voting machines, ballots, forms, etc. The same is true when the time comes for collection and safeguarding of the results¹⁰.

All in all, an election means large concentrations of people and considerable mobilization within a very short framework of time. Very few events, if any, around the world create these conditions in terms of mobilization and concentrations of many people at the same time.

The new electoral authorities in the country, imposed by the Maduro regime¹¹, have not drawn up any specific rules or procedures for voter registration. Although the Organization of American States (OAS)¹² has recommended extending the term for registration in order to avoid crowding, the CNE cut back on the registration period, left in place all the procedures for the physical delivery of material and interaction between officials and voters, while, at the same time, scheduling the voter registration dates during the weeks of the official lockdowns ordered by the federal government.

¹⁰ Ídem 2

¹¹ The appointment of the new members of the CNE has been the subject of considerable controversy. A review of the procedures followed over the past 20 years can help shine a light on the mistakes and missteps of the different procedures. Over the past 20 years there have been eight (partial or total) replacements of the board of directors of the CNE. The Constitution provides that the members of the CNE (one of the four branches of government in Venezuela, together with the Executive, Legislative and Judicial) must be appointed by the National Assembly. The five principal directors of this branch must have no party affiliation and must be nominated by civil-society organizations (three of the five), the Attorney General's office and the Comptroller General's office (one of the five), and by the faculties of law of the national universities (one of the five). Of the eight boards appointed over these 20 years, one appointment was carried out by the National Constituent Assembly (1999); on five occasions the Supreme Tribunal of Justice (TSJ) has had to intervene, with a wide variety of results (2003, 2005, 2014, 2016 and 2020); and the National Assembly has made the appointments twice (2006 and 2009). In the case of the parliamentary appointment in 2009, we must point out that the appointment of two directors, Socorro Hernández y Tania D'Amelio, although handled by the National Assembly, was a procedure that violated the Electoral Procedures Act in that they allowed the nomination and selection of members of political parties, who resigned from their parties during the period when the directors were being chosen. All in all, over a period of 20 years, only one board of directors has been appointed as provided for by law.

¹² OEA. 2020. Recomendaciones para organizar elecciones en medio de la pandemia.

<http://www.oas.org/documents/spa/press/OEA-guia-para-organizar-elecciones-en-tiempos-de-pandemia.pdf>

In the case of the election stage itself –beginning with training the individuals who will be part of the electoral structure on election day, up to accreditation of the parties’ and candidates’ witnesses, the personnel working at the electoral-agency centers that will be in charge of the logistics for distribution of election material to the polling centers— there are already situations for potential contagion and spread of the disease. This risk inherent in these stages in Venezuela has to do with the fact that there has been no reconsideration of these processes and the authorities have refused to authorize the use of digital processing or applications when possible.

Furthermore and although, as explained above, a change in the work dynamics by the electoral authorities for the manual stage for registration of parties and candidates, choosing positions on the ballots and production of electoral material on the part of electoral authorities, is called for, this did not happen in Venezuela where the authorities made no significant changes to the logistics.

Changes were also needed for the technical stage of the process –which can range from storage and distribution of the election material, electoral or voter-education fairs, training operating personnel at polling centers and the work at electoral-training centers— that would, at the very least, take into account the social-distancing recommendations of the WHO. In this case, although the electoral authorities did announce measures for social distancing, official images published by the CNE show that these health measures were ignored.

The audits of the automated systems, distribution of the election material from the regional centers to the polling stations, the installation of the polling centers, opening up the polling centers on election day, the resetting of systems at zero when using automated voting, are other stages that pose a risk for electors, electoral personnel and voters given the lack of any specific health protocols.

None of these stages of the process has been redefined. Essentially, the only concrete measure taken in Venezuela to avoid the spread of Covid-19 during the organization of the parliamentary elections has been the use of face masks and the suggestion of social distancing in the case of officials and voters.

On October 9th, just 58 days before the elections, the CNE updated its rules for election day. While failing to settle doubts as to whether the elections will be held on a single day or spread out over several days, the agency did announce that they will be enforcing social-distancing measures to avoid any exchange of material (ID cards) between voters and officials. They also announced that disinfection stations would be set up at polling centers.

The measures announced are in addition to the mandatory use of face masks and social distancing. Up to the date of this report, no other measures aimed at preventing the spread of Covid-19 while setting up and opening the voting centers, during voting and the audits performed at the end of election day have been announced.

Risks under the Venezuelan system

Projections¹³ for the increase in the number of Covid-19 cases in the community point to a large number of cases that will be caused by human interaction during the elections, and most likely an even higher rate of illness and deaths than at the time this report is being written. According to Johns Hopkins University¹⁴, Venezuela ranks 176th out of 295 countries in the world and last on this continent in the General Health Security Index.

A review of the National Hospital Survey focusing on Covid-19 shows a deficit in intensive-care unit capacity to provide specialized care, little capacity to perform PCR testing, and shortages of personal protection equipment for health-care staff¹⁵.

This situation is not new nor can it be attributed to the pandemic alone; it is, however, most definitely a negative factor in the event of a sudden increase in the number of cases, on top of the inertia caused by the pandemic itself.

D. CURRENT STATUS OF THE 2020 PARLIAMENTARY-ELECTION PROCESS

1. Electoral Justice

Electoral Justice in Venezuela is a fairly broad concept that is not limited to the settlement of disputes via litigation before the Supreme Tribunal of Justice (TSJ) or administrative appeals to the CNE. It also includes a number of reviews to determine legality or constitutionality in the case of actions, resolutions or procedures involving electors, candidates, political parties, indigenous communities, national and international observers, litigation of cases having to do with alleged crimes involving campaigns or funding, penalties for administrative violations and, even, the legality or constitutionality of rules issued by the electoral agency for the purpose of regulating electoral processes.

From an institutional standpoint, these reviews are carried out at two levels. One is administrative, via the CNE as the Electoral-Branch institution, and the other via the TSJ, through either the Electoral Chamber or the Constitutional Chamber as separate bodies that are not part of the electoral administration. Both the Electoral Branch and the Judicial Branch are part of the National Government.

Electoral justice in Venezuela is an example of a fracture between what the law says and what is actually done. On the one hand, the 1999 Constitution considered the need to protect the jurisdictional nature of judgments regarding election disputes by creating a single national forum, namely the Electoral Chamber of the TSJ, to rapidly consider election-related disputes, even before the full administrative procedure has been exhausted, which could be considered effective judicial protection for electoral matters.

Nevertheless, the decisions handed down by the Electoral Chamber of the TSJ beginning with the parliamentary elections held on December 6, 2015, actually did away with the constitutional authority of the National Assembly by –most unusually– suspending the proclamation of four members of the lower house for the State of Amazonas, thus affecting the special majority won by the opposition, represented by the Mesa de Unidad

¹³ Academia de Ciencias Naturales, Físicas y Matemáticas. 2do informe COVID19. <https://acfiman.org/2do-informe-covid-19-en-venezuela-09-09-2020/>

¹⁴ Johns Hopkins Center for Health Security. <https://www.ghsindex.org/#!-section--map>

¹⁵ CASTRO, Julio. *Elecciones y pandemia*. Prodavinci. <https://prodavinci.com/elecciones-y-pandemia-b/>

Democrática (MUD). The case ended up with the Constitutional Chamber of the TSJ declaring that “parliament was in contempt of court.”

These decisions, handed down in December 2015 and January 2016 by the Electoral and Constitutional Chambers of the TSJ, have allowed the Maduro administration to continue to hold political power despite losing the election.

We can therefore see how –despite organic and function differences between this and monitoring of electoral actions or omissions in the form of administrative appeals before the CNE and via electoral litigation before the Electoral Chamber of the TSJ—the lack of independence and separation of powers has affected true judicial protection. Legal instruments are turned into political instruments for remaining in power and preventing any transfer of power.

Below we will be examining the judicialization of the political parties by the TSJ which, together with disqualification, are processes that have a strong bearing on political activity and are a perversion of electoral justice.

1.1. Judicialization of political parties as a perversion of electoral justice

The process of judicialization of the political parties, in the form of TSJ intervention in the leadership of the political organizations, occurred simultaneously –in 2012— with two other occurrences. In the first place, the government’s loss of support and growing support for the opposition, as can be seen in the different reports published between 2012 and 2019 of public opinion polls carried out by the Center for Political and Government Studies at UCAB and the Delphos polling company, among many other public opinion polls carried out in the country. Secondly, the decline in Venezuela’s ranking in international democracy indices, where it even ranks below Nicaragua and is barely ahead of Cuba, as found –during the same period—in the indices prepared by *The Economist Intelligence Unit* by applying an arithmetic mean of five variables: a) electoral processes and pluralism; b) functioning of government and administration; c) democratic culture; d) citizen participation in politics and e) personal and civil liberties.

The judicialization processes mentioned in this first report occurred after the elections were announced and prior to the nominations, for the purpose of giving the appearance of a plurality for participation in the electoral race, and regardless of whether they were constitutional or met electoral requirements.

The alleged plurality was to be achieved by the country’s highest court –not the electoral authority—by removing party authorities or leaders and imposing others, without any internal elections, with most of the new appointees –in general- being the individuals who had filed the appeal. That way the TSJ takes the place of the party members and grants itself the power to appoint given individuals, thus ensuring the participation of political parties that, under democratic circumstances, would raise questions concerning the terms of the election

First judicialization wave

As part of the first wave, during the presidential elections in 2013, the TSJ took over Patria Para Todos (PPT)¹⁶ and Podemos¹⁷, parties that were backing opposition candidate Henrique Capriles Radonski, who was running against Nicolás Maduro. Following the takeover by the TSJ, these parties, through the new leaders forced on them, publicly announced their support for the government candidates and withdrew their support for the opposition candidate.

Second judicialization wave

As part of the second wave, during the 2015 parliamentary elections, the TSJ took over several parties, Movimiento de Integridad Nacional Unidad (Min Unidad), Movimiento Electoral del Pueblo (MEP), Bandera Roja¹⁸ and the Social Christian Party COPEI¹⁹ that had been backing the candidates of the MUD opposition coalition. Following the TSJ take over, these political parties withdrew their support for the opposition.

Third judicialization wave

The third judicialization wave is now underway, affecting the parliamentary elections scheduled for December 6, 2020. The TSJ has taken over the following opposition parties: Acción Democrática (AD)²⁰, Primero Justicia (PJ)²¹ and Voluntad Popular (VP)²² as well as several political organizations, Patria Para Todos (PPT)²³ and Tendencias Unificadas para Alcanzar Movimiento de Acción Revolucionaria Organizada (Unified Trends for Achievement of Movement for Organized Revolutionary Action) (Tupamaro)²⁴, which have formed an alliance with the PSUV as part of the pro-government coalition called Gran Polo Patriótico, or Great Patriotic Pole.

This third wave has affected AD, PJ and VP, parties that, together with Un Nuevo Tiempo (UNT), managed to account for at least 90 out of the 112 opposition deputies elected in the parliamentary elections on December 6, 2015, thus making them the majority parties forming the so-called G4 group, which has been the dominant force in the National Assembly. Mention must be made of the historical significance of the votes obtained in these parliamentary elections for the Venezuelan political system.

Most of the judicialization cases involve requests for injunctions filed before the Constitutional Chamber of the TSJ or, in some cases, the Electoral Chamber, where they

¹⁶ PPT. <http://historico.tsj.gob.ve/decisiones/selec/junio/87-6612-2012-AA70-E-2011-89-95.HTML>

¹⁷ Podemos. Decision No. 53 dated March 28, 2012; the effects of this decision were suspended 3 years later, in 2015, by means of a decision that changed the Podemos's leadership board.

<http://historico.tsj.gob.ve/decisiones/scon/junio/178381-710-10615-2015-12-0402.html>

¹⁸ Bandera Roja. <http://historico.tsj.gob.ve/decisiones/scon/julio/180057-1011-28715-2015-13-0977.html>

¹⁹ COPEI. <http://historico.tsj.gob.ve/decisiones/scon/julio/180187-1023-30715-2015-15-0860.HTML>. Later ratified in Decision No. 684 issued in 2016. Later on, in 2019, another decision handed down by the Constitutional Chamber of the TSJ, No. 0323, overturned the 2015 and 2016 decisions and ordered an end to the 4-year-old dispute as to whom the authorities heading the political organization are, ratifying the authorities elected on March 27, 2019.

²⁰ Acción Democrática. <http://historico.tsj.gob.ve/decisiones/scon/junio/309873-0071-15620-2020-18-0458.HTML>

²¹ Primero Justicia. <http://historico.tsj.gob.ve/decisiones/scon/junio/309874-0072-16620-2020-20-0026.HTML>

²² Voluntad Popular. <http://historico.tsj.gob.ve/decisiones/scon/julio/309922-0077-7720-2020-20-0053.HTML>

²³ PPT sentencia 119. Record 20-0127. Only available at <http://www.tsj.gob.ve/decisiones>

²⁴ Tupamaro decision 122. Record 20-0278. Only available at <http://www.tsj.gob.ve/es/web/tsj/decisiones#1>

agree to precautionary measures that suspend the party boards. The Tribunal then appoints *ad hoc* boards for each of the organizations in question, using the excuse of a reorganization of the respective party, allowing these boards to use the party ballot sheets, logo, symbols, emblems and colors, and expressly authorizing them to appoint regional, municipal and local authorities. The TSJ even orders the CNE not to accept any nominations other than those of the authorities appointed via court decisions, in what is a clear violation of the powers vested in the electoral agency by Article 293.8 of the Constitution.

One of the most questionable judicialization processes is that of the current takeover of the board of AD, the political party founded by Rómulo Betancourt. In the words of historian Pedro Benítez: “Ever since the 1940s, Acción Democrática has been the party responsible for establishing a democratic system, moving from limited suffrage to inclusive suffrage that expanded rights to political participation. For decades the country’s political life has revolved around being in favor or against this political organization’s accomplishment. There is a reason why it has provided the largest number of presidents of the republic. And 4 out of 5 of the current opposition governors elected in 2017 are members of the white party.”²⁵

Despite the fact that AD is no longer as influential as it once was, it continues to be the political organization with the deepest sociological roots and most widespread presence deep in the heart of Venezuela, and is the strongest competitor that the Chavista/pro-government faces among the C, D and E socio-economic groups in the country. The judicialization of this party presents the voters with a deceitful choice as the white party will be included on the ballot with no mention whatsoever of the new authorities imposed by the Supreme Tribunal.

From the other side of the fence the judicial takeover of the parties that have allied themselves with the *Chavismo* is most telling given that it is a sign of divisions that run so deep that the ousted authorities of these parties have announced that their organizations have been expropriated in order to hand them over to people who are not even members of the party, as happened in the case of Movimiento Electoral del Pueblo (MEP). Afterwards, it is not unusual to find on the social networks that, once the TSJ decisions have been published on the TSJ portal, the authorities that replaced the natural leaders begin announcing their support for Nicolás Maduro and stressing the importance of unity in order to consolidate the Bolivarian revolution. Such was recently the case of the newly appointed leaders of Tendencias Unificadas para alcanzar Movimiento de Acción Revolucionaria Organizada (Tupamaros) on Twitter.

Another complaint that merits attention was that of Óscar Figuera, former general secretary of the Communist Party of Venezuela (PCV). Figuera stated that, if Nicolás Maduro’s government “is not willing to change” its policies, they would not back them in the parliamentary elections on December 6, and he warned: “We issue a warning to the Communist parties and workers of the world, the revolutionary and anti-imperialist organizations, regarding this dangerous tendency of authoritarian wielding of power being

²⁵ Historiador Pedro Benítez, declaración ofrecida para este trabajo. Octubre 2020.

followed by sectors in the national government that, basically, affect the political rights of the Venezuelan working class and forces of the Venezuelan people²⁶”.

The replacement of leadership boards without due process, without even a hearing for those being ousted, is a clear sign of the lack of any separation of powers, with the TSJ using what are strictly litigation procedures as political tools. This worrisome situation works to the advantage of the Maduro regime and allows it to do away with the political opposition represented by AD, PJ and VP, the so-called institutional or parliamentary opposition.

The judicialization of the political parties is a perversion of electoral justice. The end result of this process will mean the end of the vote as an indispensable tool of democracy – elections as the means for peaceful settlement of disputes—and as an expression of the will of the people to bring about change by the transfer of power.

The takeovers of the parties affect the freedom of assembly provided for in Article 67 of the Constitution and perverts the competition and plurality of elections. It leads to an obviously unfair electoral process that ends up discouraging citizens from participating in politics when seeking to achieve a result in which the only ones who lose are the opposition. Even in those cases where a measure such as the one appointing the *ad hoc* leadership of PJ in August 2020 is overturned, the damage caused is virtually irreparable as regards participation in the elections on December 6, 2020 given that the party was deprived of its main vehicle for action, the membership was split and many were prevented from using the names, symbols and emblems when campaigning for votes in a process that will be untraditional with all the problems for access to media and in the midst of the Covid-19 pandemic. The voter is the target of deceitful messages that feed the lack of trust in the CNE that has plagued the agency from the moment its members were not appointed as provided for in the Constitution and based on agreements reached by opposing political forces.

1.2. **Uncertainty concerning the National Electoral Council’s authority to make rules**

When announcing that parliamentary elections would be held on December 6, 2020, the CNE approved the *Special Rules governing the National Assembly elections (for the 2021-2026 term)*, published in a resolution dated June 30. The document ignores Article 298 of the Constitution that expressly prohibits any changes to the electoral laws during a six-month period prior to the elections. On that same date, the rules governing the election of the indigenous people’s representatives to the National Assembly were also published.

The publication of these Special Rules prompted a national uproar in view of the obvious violation of Constitutional provisions and the body of laws in general. They entailed a change to the electoral system by creating a separate national list of candidates that had no connection with the candidates running by name and the regional list. This change made it possible to elect 48 deputies by voting on the regional party-list, creating a double vote

²⁶ Comunicado del 23 de agosto de 2020, citado por El Universal, disponible en: <https://www.eluniversal.com/politica/78667/el-partido-comunista-de-venezuela-alerta-sobre-tendencia-del-gobierno-al-ejercicio-autoritario-del>

or indirect vote, to elect Assembly members without state representation or percentage of the population.

The Special rules also changed the proportions within the system by increasing the number of those elected by name to 52% and reducing the proportional representation by party list to 48%. Furthermore, they changed the percentage of the population from the 1.1% provided for in Article 186 of the Constitution, increasing the number of deputies in the National Assembly from 167 to 277 without following the proper procedure whereby participation by both the National Statistics Institute and the National Assembly are required.

In addition to this, in the case of the rules governing the election of the three representatives of the indigenous peoples, the CNE did away with universal, direct and secret voting, downgrading those peoples' vote, creating restrictions to their status as electors in notorious violation of Article 64 of the constitution whereby all Venezuelans citizens 18-year old or older, who have not been deprived of their civil rights or are the subject of a political disqualification, are considered to be electors.

The CNE trampled on the political rights of the people by limiting the most basic condition for any electoral process, i.e. the right to elect and to be elected free of any restrictions other than those provided for in the Constitution. This constitutes a violation of Articles 63, 67, 186, 292, 293, and 298 of the Constitution of the Bolivarian Republic of Venezuela, Articles 8.1, 10 and 11 of the Electoral Processes Act (EPA), and Article 33.29 of the Electoral Branch Act (EBA).

A perusal of the rules for the election of the deputies for the National Assembly, including those representing the indigenous peoples, shows that the CNE deems its rule-making power to be based on the guidelines issued by the Constitutional Chamber of the Supreme Tribunal of Justice in its decision No. 068, dated June 5, 2020, ruling in favor on an appeal claiming legislative omission by the National Assembly for its failure to appoint the Directors of the senior electoral authority. In this decision, the TSJ failed to apply Articles 14, 15, 174, 175, 176, 177, 179, 180, 181, 182 and 186 of the EPA (dealing with the nomination of candidates based on the principles of proportional representation and the principle of elections by name, as well as those dealing with the nomination of the indigenous people's candidates), and orders the CNE to draw up the special rules to adjust the rules that it had failed to apply.

Legal resolutions and violation of constitutional mandates

What has occurred in this case would be a "regulatory empowerment" by the TSJ" through the Constitutional Chamber –in the form of decision No. 068 dated June 5, 2020— when it fails to apply articles of the Electoral Processes Act and entrusts the electoral agency with issuing the same while lacking the authority for this empowerment, without even setting any limits to the authority granted, and within a decision issued in response to an appeal claiming legislative omission on the part of the National Assembly.

The Supreme Tribunal of Justice, usurping powers it does not have, lacks control over the limits to the powers it is granting and is unable to weigh or assess the proper exercise of the powers being delegated, which does occur when the National Assembly empowers the President of the Republic to enact laws.

In the above-mentioned Decision 068, the TSJ assumed discretionary powers, failed to apply parts of the EPA and –lacking the authority to do so—empowered the CNE to replace articles of the law. What would seem to have occurred here is a political action taken by the Executive Branch, following empowerment by parliament, which, under Articles 203 and 236.8 of the Constitution can only be done once a “state of need” has been declared in the event of serious danger or threats to public order, natural disasters or for economic or financial reasons, none of which is the case here.

The Special Rules issued to regulate the elections to be held on December 6, 2020 are a set of autonomous rules that are illegal and outside the law, issued in violation of constitutional principles. It is for this reason that a group of citizens filed an appeal for an injunction claiming unconstitutional action given that, by issuing these rules, the CNE acted in direct violation of the Constitution when replacing the electoral law.²⁷

2. Status of the Electoral Roll

Based on population projections by the National Statistics Institute, based on the results of the 2011 Census, and additions to the Electoral Roll (ER), estimates are that there are more than 2 million young people have reached the age of 18 and have been unable to register to vote. The reason is the failure to abide by the principles of administrative continuity and effectiveness, as well as the CNE’s refusal move ahead in updating the roll and registering those living abroad, as well as time and capacity restrictions in the case of updating stations during special registration periods.

The time allotted for registration and updating information on the ER for this electoral process was 14 days, with a 3-day extension, at 551 updating stations. This was not enough time to register more than 2 million voters and update the information of at least 1.6 million more. This situation was a far cry from what happened in the parliamentary elections in December 2015 when registration lasted from February 2, 2015 until July 8 that same year, six months before the ER cut-off date, when 1,565 stations were set up (according to a press release the CNE published on its web page).

Flawed and biased registration and updating process

- 551 stations for the entire country. There were no stations in 4.5% of the municipalities or in 58.1% of the parishes; 25% of the population had no access to stations located in their parish.
- A total of 37% of the stations were assigned to cities that accounted for 55% of the population. Meanwhile, 45% of the stations were assigned to small towns that account for 20% of the population where the PSUV has historically received 60% of the votes.
- At least 25% of the stations were placed in locations the affected the impartiality and transparency of the registration and updating process.

²⁷ Ver <https://bit.ly/Amparo-Inconstitucionalidad-Parlamentarias>. On August 3, 2020 the Constitutional Chamber of the TSJ received an appeal for an injunction filed jointly with a claim of unconstitutionality, filed by a group of citizens – former directors of the CNE—regarding the Special Rules issued by this high court to regulate the elections to be held on December 6, 2020 that also includes the aforementioned rules concerning election of the indigenous peoples.

- Also 5% of the stations were set up at places where there was a high risk of Covid-19 contagion.
- There is documented proof of more than 200 reports of discretionary changes of location for registration and updating stations that prevented people from knowing where they were located.
- There was documented proof of reports concerning coercion and intimidation of voters at 38% of the registration and updating stations.
Furthermore, the CNE has made changes to the Electoral Roll that were not requested by voters. This has prompted further doubts concerning the transparency of the Electoral Roll. Mention should be made of the following findings:
 - There were 1,574,831 cases of relocation of voters between August 1, 2019 and March 31, 2020; 73% of these relocations occurred over a period of just 29 calendar days.
 - The Roll is permanent, and information can be updated at the regional CNE offices, but it is logistically and mathematically impossible to do so with only 24 stations set up over a period of so few days in the midst of the lockdown decreed by the National Government
 - Detailed studies carried out by Súmate show that half of the relocations involved moves to polling centers located in areas that are more pro-government than the voter's original centers.

No provision was made for registration of Venezuelans living abroad and there is a serious backlog in the case of up-to-date information concerning these voters. At present only 107,284 Venezuelans are registered at Venezuelan consulates abroad while, according to international agencies, some 5 million Venezuelans have migrated in recent years due to the serious crisis in the country. Estimates are that, out of the total number of migrants, some 2.7 million are registered voters yet their addresses and, therefore their polling centers, are located in Venezuela. It is a fact that in this electoral process Venezuelans abroad have been deprived of their right to vote. A weeding out and updating of the information on voters who no longer live in the country is, therefore, very necessary as their changes of address not only affect the Electoral Roll figures for those who live in the country, they could also affect population-related quotas in some districts.

Information concerning the roster of polling centers is lacking. There is no information concerning the technical reasons for the elimination of more than 60 polling centers. Furthermore, in the case of electoral infrastructure, a thorough review is called for in the case of the polling centers set up by the CNE since 2015 in order to make sure that decisions were not prompted by political criteria or bias and that they meet all the requirements of the Electoral Processes Act and electoral tradition when deciding where to place polling centers, in order to earn the trust of the people.

According to the preliminary report put out by the CNE for the upcoming elections, 20,710,421 Venezuelans have the right to vote at 29,622 polling stations set up at 14,221 polling centers.

According to an estimate prepared by Súmate, in December 2019, there are some 3,659,731 potential voters who are not living in Venezuela; of these, approximately 2,744,798 are listed in the ER with Venezuelan addresses and 914,993 are over 18 and have never registered to vote.

3. Electoral integrity and secrecy of the vote

The right to secret, direct and universal vote is an inalienable human right. Votes should be freely cast, with no outside coercion.

- Assisted voting cannot be allowed except in the cases provided for in the Electoral Act.
- Political proselytizing and so-called “red points” near polling centers on election day must be banned.
- The use of identification documents and means for voting other than those provided for by law must be banned.

It is important to explain that the contact centers or locations called “red points” are more than just spots used for political propaganda and proselytizing, they are also points set up by the Partido Socialista Unido de Venezuela (United Socialist Party of Venezuela) (PSUV) to monitor and check assistance at polling centers in order to make sure that voters go to the polling centers and for their intimidation effect on voters.

Indira Alfonzo, president of the CNE, has stated that for the time being the “party points” will continue to be present during these elections²⁸. In turn, in his letter to the European Union, Foreign Minister Jorge Arreaza stated: “We have agreed that the party points set up on streets will only be there until the close of the election campaign.”

President Nicolás Maduro has mentioned the possibility of having soldiers from the military force in charge of electoral custody under the so-called Plan República take voters from their homes to the polling stations as a means of protecting voters, an action that can also have an intimidating effect.

The use of the state-owned media’s platform is a violation the Constitution and of the laws that provide that government officials are there to serve the State, not any political party or group. These also make use of intimidating language and foster persecution, in violation of laws and regulations²⁹.

Witnesses at all events

Articles 158 of the EPA and Article 446 of its Regulations provide for the political organizations’ and/or candidates’ right to appoint witnesses to be present at all the different ceremonies and events that take place as part of an election process. Thus, political organizations and candidates are allowed to have witnesses at the polling stations, municipal and regional councils and the National Electoral Council, counting rooms and situation rooms at the CNE and the Plan República. The laws also ban any efforts to coerce a witness engaged in performing his duties.

- The procedures for appointing witnesses have not yet formally begun. We are unaware if the regional boards are working with witnesses of the participating political organizations present.
- There were no witnesses while the ER registration and updating campaign was underway, in violation of provisions of the EPA.

²⁸ Ver <https://t.co/uPvvJJOKEY>

²⁹ Articles 21.1, 67 and 145 of the Constitution of the Bolivarian Republic of Venezuela; Articles 13 and 18 of the Anti-Corruption Act; article 75 of the Electoral Processes Act; Article 91, section 5 of the Law Governing the Office of the Comptroller General of the Republic and the National Financial Oversight System; Regulations to the Electoral Processes Act Pertaining to Oversight of Election Campaign Financing and Election Propaganda.

- Nothing is said about the duties and power of the witnesses in Jorge Arreaza’s letter to the European Union.

Guaranteeing the principle of “one voter, one vote”

Article 313, section 11 of the EPA provides that indelible ink is to be used during voting processes. That is why, although the CNE stopped using it during the election for the National Constituent Assembly, it must be used as a means of guaranteeing the principle of “one voter, one vote.” At the same time, all other actions necessary to ensure this principle must be taken, inter alia an audit of the ER and fingerprints before and after the election. If there are other methods for guaranteeing this principle, then the ink may be dispensed with and the Regulations to the Act must be amended.

Audits involving the biometric system and the fingerprint database have been omitted from the election timetable. Nevertheless, this system has historically proven to be ineffective and insufficient as a guarantee of the “one voter, one vote” principle given that the protocols for the system are unable to determine if a person voted more than once, using the identity of another voter at another voting station given that the system is not interconnected on-line and allows the person to vote even if the voter’s fingerprint does not match the one stored on the machine. During post-election audits, representatives of the opposition have never been allowed to audit the database of non-matching fingerprints or look into any multiple votes that could be found afterwards. Even if this were to be remedied, there is nothing in the law that would make these audits binding on the results. That is why amendments to the law are needed.

3.1. How secrecy of the vote is perceived

One of the basic tools used to coerce Venezuela voters is their lack of trust in the secrecy of the vote, fostered by the government itself and the idea of possible punishment or penalization of voters who are somehow dependent on the government, either because of their jobs, through contracts, or social welfare programs etc. All this based on the use of fingerprint scanners or biometric identification systems currently being used, not only when checking for access to voting but also for monitoring the allocation of subsidies, benefits, quotas for purchasing medicines and food when there are shortages of goods and services, as well as currency.

The biometric or fingerprint-scanner system does not accomplish the purpose being claimed in the case of voting, i.e. preventing a person from voting more than once during an election. Indexation of the database for the EC is based on use of the ID card number. Nevertheless, the fact that the fingerprint scanner is connected to the voting machine and is used to activate the latter gives rise to serious doubts among large sectors of the population regarding the secrecy of their vote and the possibility of “psychological blackmail” by the government.

The lack of independence between the branches of government and their media campaigns promising secrecy of the vote, the way the system is set up with the fingerprint scanner connected to the voting machine, and the government’s media campaigns threatening voters, all without prompting any oversight or penalization by the CNE, lead people to doubt that their votes are secret.

In this regard it is important to mention an article published by Eugenio Martínez, a journalist and noted expert on elections, in *Diario de las Américas* on May 16, 2018, four days before the presidential election that led to Nicolás Maduro's re-election:

According to the latest data from Datanalysis monthly polls, 48.7% of the people are convinced that, via their Carnet de la Patria (Fatherland Card), the Maduro government knows whom they voted for.

*Furthermore, according to a survey of How People View the Pre-election Environment, coordinated by the **Center for Political Studies at Universidad Católica Andrés Bello**, at least **one half the individuals polled said they have doubts concerning the consequences of their vote.***

*In reply to the question "Is it worthwhile to take your chances and vote against the Government, or to make sure of the benefits by voting for it?" **26% said that it is preferable to make sure of the benefits and 22% said that they don't know.** In other words, almost half the population fear or at least have doubts concerning the consequences of their votes.*

*The poll also showed that **34% believe that with the Carnet de la Patria the government can find out who they voted for and are convinced that, if they were to vote for the opposition, they could lose the benefits they receive from the Government***³⁰

3.2. Assisted voting, social control and carnet de la patria

At this time more than 50% of the population say that they depend entirely or partly on government subsidies to complete their basic supply of food³¹. There is nothing to guarantee that the PSUV will not take advantage of this fact to set up mechanisms for control, intimidation, coercion or direct proselytizing when organizing elections or use the Carnet de la Patria database for electoral purposes.

The number of people who depend on the assistance programs –especially the Sistema Patria (Fatherland System) and the “grants” in bolivars that they receive periodically under this system using the Carnet de la Patria and the Bio Payment system to make payments—must have grown even higher during this Covid-19 lockdown period given the large scale curtailment of economic activity.

The Executive Branch has been making unfettered use of government assets and resources to force voters to vote for the administration, threatening people with the loss of the socioeconomic benefits provided through the different social missions, now centralized in one social-control tool, the Carnet de la Patria. By January 15, 2018, the Carnet de la Patria system boasted of having enrolled 16,595,140 Venezuelans, in other words more than two thirds of those currently registered to vote.

Two days before the mayoral elections on December 10, 2017, during the ceremony for handing over titles to housing in the Los Cedros neighborhood in Araure Municipality, State of Portuguesa, President Nicolás Maduro said: “I call upon all Venezuelans to vote,

³⁰ See <https://www.diariolasamericas.com/americas-latina/el-temor-un-actor-principal-las-elecciones-venezolanas-n4150741>

³¹ ENCOVI (Encuesta Nacional de Condiciones de Vida) (National Survey on Living Conditions) <https://www.proyectoencovi.com>

vote, vote; to go out and vote early with the Carnet de la Patria because the Carnet de la Patria, with its QR code, allows us to register to vote right at the door to the polling center, we can register and go in to vote.” This poses a threat to free and secret exercise of the right to vote, two of the four principal conditions for the exercise of this right provided for in Article 63 of the Constitution.

3.3. Misleading ballots

Another one of the situations that poses a threat to the right to elect and be elected can be attributed directly to the takeovers of political parties by the TSJ and its having turned over control and management of the same to leaders other than their natural leaders.

The ballots or screens of the voting machines will show the images and symbols of a number of political organizations or parties taken over by the TSJ, that act in coordination with or in favor of the government and that have presented candidates, ignoring the political decisions of the natural leaders of these organizations. This situation, within a framework of obstacles preventing general access to the press, of censorship, and where the media, radio, television and written press face serious restrictions in providing the people with full and detailed information concerning these events and their consequences, is used to manipulate the true voting intentions of many voters or groups who are unaware of the details and implications of the TSJ takeovers. When voting for the lists of candidates of the parties they prefer, these people do so unaware of whom they are actually voting for and the political leanings of the group that is ultimately receiving their votes.

In this context, where election-related coalitions, such as the MUD, are not allowed or have been rendered illegal, the symbols of best-known political parties are used on the ballots, thus manipulating the voters’ intentions and hindering the opposition’s efforts for coordination by keeping voters in the dark regarding the electoral options available to them.

4. Technological questions concerning recent acquisitions

The report by Genaro Arriagada and José Woldenberg³² --written as part of the study mission of International IDEA and Woodrow Wilson Center in 2012 and cited in the study mission’s 2015 report—stresses transparency of the fundamental elements for control and oversight of electoral processes by parties, citizens and observers as a major strength of an electoral system, thanks in part to the advantages of the automated voting system being used in the country.

Voting in Venezuela is completely automated and all stages could be audited up until 2017. In 2004 Venezuela became one of the first countries in the world to hold a national election with machines that printed a voucher for the vote and, in 2012, the country began using biometric identification of the voter with the subsequent activation of the voting machine.

³² G. ARRIAGADA y J. WOLDENBERG, “Informe sobre las elecciones del 7 de octubre en Venezuela”, Wilson Center and Internationa IDEA, September 2012.

Up until 2017, experts appointed by the political parties and technicians from local observer groups took part in the pre-election audits of the entire automated system, including audits of the hardware and software and of the biometric databases.

Up until 2018, Venezuelans voted using touchscreen voting machines that printed out a voucher confirming the electronic vote. The voter then placed the voucher in a ballot-box that was left in place for the “citizen verification” or “hot audit” carried out at a little over half the voting stations once all voting has ended.

During this audit, carried out by voters and witnesses of the political parties, the paper vouchers were counted, and the results compared with the electronic-count report. The purpose of this audit is to reinforce trust in the voting process and is the end result of several agreements reached between the CNE and the political parties beginning in 2006. Nevertheless, we must remember that the votes legally counted by the CNE for purposes of the official results are those sent electronically to CNE headquarters (not the paper vouchers printed by the machines).

Opposition experts who have taken part in the audits have repeatedly stated that they trust the security mechanisms and the secrecy of the vote. One of the key aspects of the control and security systems involves an encrypted password (a set of numbers and letters) created with input from the opposition, the government and the CNE, that was placed in all the voting machines once the software source code had been checked by the party experts.

Therefore, the machines’ software could not be altered unless the machines were “opened” jointly by the three parties and the software was changed. Furthermore, each voting machine had its own digital signature that would detect any changes made. If, despite all these security measures, the vote count was to be altered somehow, that alteration would have been detected, according to all the experts who have taken part in the process thanks to the verification mechanisms.

Lastly, the CNE would publish the results of each polling station on the webpage or in the Electoral Gazette, which allowed for a three-way comparison: of the results put out by the machine; the “citizen verification” record; and of these two with the result for the polling station published in the Electoral Gazette.

Manipulation of the results in 2017

It is worth remembering that ending the use of paper ballots was a gradual process in Venezuela. It began in 1995 and lasted until 2004. Over that 9-year period, two different technologies were used:

- 1) Optical recognition scanner for ballots marked by the voters, designed by Indra, a Spanish company.
- 2) Electoral solution designed by Smartmatic, a Venezuelan company.

In 2003, the Smartmatic solution won the international bidding process organized to decide which voting system would be used for the recall referendum held in an effort to revoke the mandate of then President Hugo Chávez. From then on Venezuela used the software and hardware designed by Smartmatic, a company that left the country and broke off its commercial ties with the Venezuelan government after reporting that the president

of the CNE at that time, Tibisay Lucena, had manipulated the participation bulletin for the election of delegates to the National Constituent Assembly (ANC) held on July 30, 2017³³.

According to company spokesmen, when reading the bulletin, the CNE president added at least half a million votes to the total number of participants recorded by the system the evening of Sunday, July 30th. Lucena said that 8,089,320 Venezuelans had voted. The void left by Smartmatic was filled in 2018 by the Venezuelan subsidiary of an Argentine company, Ex-Clé.

The fire in March 2020

The fire that broke out on Saturday, March 7, 2020 at the CNE warehouse led to a new debate concerning the electoral future of the country. At the time this report is being written nothing is known concerning the cause of the fire.

The CNE's 6,000-square-meter warehouse located in Filas de Mariche (Sucre Municipality, State of Miranda) has been used since 2004 to store voting equipment. It was also used to carry out more complex tasks, such as production (programming) of the machines to be used in each election and some of the main audits of the voting system.

The fire affected the physical infrastructure, the technological infrastructure installed there (production lines and audits) and the store of technological equipment (machinery and other components). The losses were as follows:

- 49,508 voting machines (98.5% of the equipment);
- 49,323 biometric authentication systems (98.5% of the equipment). This is the equipment used for biometric identification of voters at each polling station/machine;
- 22,434 power inverters. The older SAES 2500 machines need power inverters to be able to use the backup power (12V batteries) in the event of power failures. In newer models the inverters are built in.

Also lost:

- 582 laptop computers used for the updating of the vital-statistics and electoral records;
- 400 electronic ballots;
- 127,000 sheets (sheets from elections to deliberative bodies held over the past 10 years).

This major loss of the entire stockpile of machines and biometric devices, together with the Smartmatic departure and denunciations, have prompted even further doubts concerning the steps that the CNE and Nicolás Maduro's government will take to ensure the smooth running of these elections.

The new system

At the time this report is being written the December 6th elections are only 30 days away and nothing is known concerning vital technical aspects of the automated voting system to be used, especially the characteristics of the software and hardware and the supplier of the equipment.

³³ MARTÍNEZ, Eugenio. *Análisis de la denuncia de Smartmatic*. Prodavinci. 2017. <https://historico.prodavinci.com/blogs/un-analisis-de-la-declaracion-de-smartmatic-sobre-los-resultados-de-la-constituyente-por-eugenio-martinez-1/>

The CNE directors claim that the December 6 elections will be fully automated and will provide all the technical guarantees that the opposition is demanding. According to the CNE it will be the same automated voting system they have been using since 2004.

Nevertheless, according to Smartmatic's representatives, to use the company's software the CNE would need a user code that expired in 2017. Furthermore, they pointed out that even if the CNE had managed to copy an old version of the original software, it can only be run on hardware (machines) authorized by Smartmatic.

As the company explained in a press release put out on July 24th this year, Smartmatic "has had no dealings whatsoever with the CNE or its suppliers, or with Ex-Clé, the Argentine-Venezuelan integrator company that has been providing support services for the Venezuelan electoral agency since 2017.... The Smartmatic software cannot be used by the CNE, therefore the software that will be used in the 2020 elections with the new machines bought from another supplier is not ours."

In spite of earlier statements made by the CNE directors, on October 9th this year they announced a new version of the automated voting system to the media, emphasizing that not only does it involve new hardware, but also new software designed in Venezuela.

The following information can be gathered from the CNE announcement:

- The new machine is called EC21. Nothing was said about where it is from or who supplied the equipment³⁴;
- As for the EC21 machine, the CNE highlighted the following characteristics:
 - Robust;
 - Modular layout;
 - Open architecture;
 - Components available on domestic and international markets;
 - It has an operating system, but nothing was said about what system this is;
 - High-resolution screen;
 - Hard disk;
 - Built-in printer;
 - Lithium battery;
 - Built-in sound.
- Director Carlos Quintero emphasized these facts about the hardware and software:
 - Certification tests have been performed;
 - They were designed in Venezuela, by Venezuelan technicians. Nevertheless, the logo of Ex-Clé, an Argentine company, showed up on the back screen during the presentation;
 - Two prototypes before the final solution;
 - Designing began in March 2020;
 - Transmission by several different means. The director did not specify which ones.

³⁴ The hardware used by the CNE can be found on the AliBaba on-line shopping site: "RFID card reader POE capacitive touch screen panel pc fingerprint school attendance". Nevertheless there is no proof that this is the supplier used by the electoral agency. The equipment in questions can be found at: https://www.alibaba.com/product-detail/13-3-15-6-21-5_62017939283.html?spm=a2700.7724857.normalList.243.102b1f19efclKQ

- They also announced that they would continue using the same audits that used to be performed on the Smartmatic system. As regards this issue, Mario Torre, head of the opposition audit group up until 2017, argues that what is required is a 6-month process, especially in view of the fact that this is a new design, new architecture. New protocols must necessarily be defined, and the audit teams trained. Torre recommends a prior process of no less than 30 days of meetings between the auditing technicians and the suppliers of the equipment in order to define what audits are needed.

5. Fairness of the elections

The Electoral Processes Act and its General Regulations govern the campaign and regulate the election campaign itself, as well as advertising, regulations to be followed by government agencies and officials during the campaign, and use of the media; they even determine the penalties. Historically, the CNE has neither ensured compliance with nor fully enforced the law and regulations.

Even-handed access to the media, both private and government-owned, must be guaranteed. Nevertheless, the former are subject to coercion and latter have become propaganda machines for the government party.

In Venezuela the government is using an obvious strategy of flooding the country with propaganda. Furthermore, government resources (written press, electronic and audiovisual electronic media) are used for electoral purposes and to spread information concerning “government management”, in what is obviously a case unfair advantage of its position. In addition, they have flooded the country, the roads, streets and street corners with billboards and posters.

5.1 Use and abuse of state-owned resources

Government media as well as material, human, logistics, communications and financial resources are constantly and unabashedly used for proselytizing and election campaigning purposes throughout the whole process. Pictures of government officials using official vehicles, handing out food and other products such as cooking gas are commonly seen during the campaign. There is no way of calculating the inappropriate use of these resources given the large scale and open use being made of them. In addition to providing an unfair advantage, all these actions are in clear violation of current laws and regulations³⁵.

There are serious limitations to land and air travel –in view of the bans being imposed by the government as part of the lockdown, requiring passes issued by government officials—as well as the shortage of gasoline and the fact that the government has closed down the airspace. Thus, the presence of government candidates, part of the inner circles with the most power within the PSUV, campaigning in different areas of the country is all the more striking.

³⁵ Articles 67 and 145 of the Constitution of the Bolivarian Republic of Venezuela; Articles 13 and 18 of the Anti-Corruption Act; Articles 75, 126 and 215 of the Electoral Processes Act; Articles 126 and 215 of the Electoral Processes Act; Article 222, 223 and 289 of the General Regulations to the latter Act; Article 91, section 5 of the Law Governing the Office of the Comptroller General of the Republic and the National and Financial Oversight System.

Despite this, in his above-mentioned letter, Foreign Minister Arreaza said: “state-owned resources will not be used for proselytizing during the election campaign.” Yet, even before the campaign began, government resources and media were used to promote government candidates, meaning that the directors of state-owned channels could be charged with embezzlement. The law in this case does not clearly define the penalties applicable in the case of violations of campaign rules and regulations.

5.2. Freedom of the press and access to the media

The roots of the government’s dominance over communications lie in the first administration of Hugo Chávez Frías, when a free press, critical of his government, was treated as an enemy and a great deal of money was invested in setting up a system of state-owned and private media that would serve the interests of the government. The strategy has included a whole array of actions, ranging from shutting down media and revoking broadcasting licenses; legal, police and “parapolice” persecution of journalists, equipment and owners of media; buying out media using “allies”; smothering them financially, both directly and indirectly; cutting off access to supplies and equipment, such as newsprint; economic favors via advertising; allocation of foreign currency quotas of funding by state-owned banks, just to mention some of the methods used against the media.

This strategy followed by the government has weakened and severely restricted the entire media system, limiting the free dissemination of information, whether involving denunciations or just plain news. This situation, on top of the economic and social crisis and the restrictions in place with the lockdown ordered by the government beginning Monday, March 16th, have further weakened an already fragile media system and have made it harder for the political opposition to gain access to the media to present debates, report complaints. or present their proposals.

In all prior elections, the excessive, abusive and illegal use of the media by the government has been obvious, involving not only censorship of members of the opposition, but also the mandatory broadcasts called “cadenas” where all radio and TV stations in the country are obliged to broadcast whatever speech or other event the government orders.

Even before the election campaign began, the government has used mandatory radio and TV broadcasts to present their campaign leaders, announce their candidates and otherwise engage in campaigning.

5.3. Campaign and party financing

The CNE announced a campaign period lasting only 15 days. The agency has traditionally refused to regulate pre-campaign activities. This year the PSUV has already held campaign events, widely announced on state-owned media and even using mandatory broadcasts.

Oversight of party and campaign financing has also been very limited. The fact is that the CNE lacks the organizational ability to monitor these processes. Furthermore, the current dynamics of the country’s economy makes it very hard to follow and monitor the flow of cash in foreign currencies in the country.

Insofar as monitoring the funding of the government party is concerned, the government representatives go through the motions of formally turning over their books, but the campaign is not examined or audited.

One of the most misguided political decisions made by those who drafted the 1999 constitution was to eliminate public funding of political parties. In an effort to free the electoral agency of party influence, they included a constitutional ban on the use of public funding for campaigns. Thus article 67 of the 1999 Constitution provides:

Financing of associations formed for political purposes with funds from the State is forbidden. The laws shall regulate matters pertaining to financing and private contributions to organizations formed for political purposes as well as the oversight mechanisms to ensure the probity of the origin and management thereof....

Twenty years later, the results have proven to be very negative in that there is now an extremely obvious and well-known lack of fairness in the funding of candidates' campaigns given the advantage that candidates backed by local or regional government parties competing in the race have. This political situation has even caused a problem for the electoral agency itself in that it has hindered the monitoring of income received that should be reported by the parties, especially as regards the sources and legality of the funds.

So much so that in 2008 the Constitutional Chamber of TSJ handed down a decision that cracked open the door leading to later provision –in Article 78 of the 2009 Electoral Processes Act— whereby “the National Electoral Council may finance part or all of the electoral advertising on radio, television and print media as provided for in the rules issued for the purpose.”

Although still a far cry from actually reducing the inequalities stemming from the abusive use made of public resources during campaigns, official spokesmen for the CNE recently stated that they might draw up rules whereby all the parties taking part in the parliamentary elections on December 6, 2020 might have access to public funding that would allow them to have access to state and private media. Up to the date of this report no such rules have been issued and we face the usual situation of repeated complaints by parties that are not part of the pro-government coalition concerning abusive use of public resources.

6. Proportionality of the electoral system

The principle of proportional representation and pluralism in the upcoming parliamentary elections

The Constitution of the Bolivarian Republic of Venezuela is very clear when it states that the allocation of seats in deliberative bodies whose members are elected by the people must be based on an electoral system that guarantees proportional representation. Namely a system that assigns seats based on the percentage of votes received by each party or political alliance in a given geographical region and aims at having each of these be represented in the deliberative body by a percentage of seats that reflects the votes received. Article 63 of the Constitution, to mention one of several that deal with the same principle, clearly and unequivocally states:

*Suffrage is a right. It shall be upheld by means of free, universal, direct and secret voting. The law shall guarantee the personal nature of the vote and **proportional representation**.*

This principle is mentioned again in Article 186, which states how the members of the National Assembly are to be elected.

*The National assembly is to be made up of deputies elected in each federal entity means of universal, direct, personal and secret votes with **proportional representation**....*

In violation of the provisions quoted above, the more recent parliamentary elections held in the country in 2010 and 2015 –both under the current EPA enacted in August 2009— provide unquestionable proof of an intentional violation of the principle of proportional representation. Although the law itself reaffirms the principles set forth in the Constitution, actual implementation has achieved the exact opposite. Article 3 of the law reads as follows:

*The electoral process is governed by the principles of democracy, sovereignty, social responsibility, collaboration, cooperation, trustworthiness, transparency, impartiality, fairness, equality, participation of the people, celerity and efficiency, personalization of the vote, and **proportional representation**.*

Therefore, in both 2010 and in 2015, this constitutional requirement was ignored. In the 2010 parliamentary election, the pro-government alliance received 48.6% of the votes, in comparison with the 47.6% that went to the main opposition alliance. Yet that small 1% difference in votes became a difference of 33 deputies, 98 to 65. A third party, PPT, ended up with 2 deputies. If proportional representation at the national level had been honored in 2010, the result would be 85 deputies for the PSUV, 74 for the MUD, and 3 for PPT. In 2015 there was a political reversal of the final results of an election that the opposition alliance ended up winning, with 56.2% of the votes against 40.9% for its pro-government adversary. This was a 15.3% difference that turned into a 34.1% difference in the percentage of deputies, or 112 against 55. With nationwide proportional representation, the result would have been 94 seats for the opposition MUD, 68 for the PSUV and 5 for other groups.

In political theory, in the case of the procedure followed in assigning the seats, we can speak of two different systems for electing deliberative bodies: the majority system, where seats are assigned based on who receives a majority of the votes in a given jurisdiction (whoever wins, even if only by one vote, takes all), or the proportional representation system, whereby seats are allocated based on the percentage of votes received by each political party in a given geographical area.

Given that, pursuant to Article 186 quoted above, under our electoral system for electing members of the National Assembly they should be elected separately in each federal entity, the results will necessarily unequal. In states with large populations that will, therefore, elect a large number of deputies, the electoral system might guarantee a reasonable degree of proportional representation. But in states with smaller populations, with few seats being contested, proportionality will always fall short. Once again in violation of the Constitution, the Special Rules Governing the 2021-2016 National Assembly Elections (Special NAER), approved on June 30 by the CNE --usurping the authority that the

Constitution grants exclusively to the National Assembly-- set the number of deputies to be elected to the next National Assembly. These rules preserve the difference provided for in the EPA between the deputies elected by name and those elected by party list. Both in absolute and relative terms, the number of deputies to be elected by list is notoriously higher for this new NA, opening the door for greater proportionality.

In 2015, the number was 51 deputies, out of a total of 167, whereas now 96 members will be elected using state lists. The Special NAER, with no constitutional or legal basis whatsoever, add a new list of national candidates for the election of an additional 48 deputies, for a total of 144 deputies, out of 277, to be elected by party list. This ends up being a design for allocation of seats that may represent a reasonable improvement of proportional representation on the list for national allocation and in states that elect a relatively large number of deputies by lists; in states with smaller populations, however, with few deputies running on lists, proportionality will continue to fall short.

Proper proportional allocation of three or four deputies is impossible, leaving the door open for the possibility that relatively large minorities are left with no representation. This will undoubtedly be the case in the 15 states that only elect three deputies by lists. In the case of elections where the D'Hondt method of proportional allocation of seats is followed, as has traditionally be done in Venezuela, the political scientist Arend Lijphart defined what he calls the "threshold of exclusion" as the highest percentage of votes that, under the most unfavorable conditions, may not be enough for party to win a seat. He also designed a simple formula for calculating that threshold based on n number of seats being contested: $100\%/(n+1)$. Thus, in the states of Amazonas, Apure, Nueva Esparta or Portuguesa --to mention 4 of the 15 states electing only 3 deputies by party list-- a party may win 25% of the votes yet end up with no representation.

As mentioned above, the situation is different for states with the largest populations and the largest number of deputies to be elected by list. In Zulia or Miranda, states that will choose 10 and 8 deputies, respectively, by lists, the thresholds of exclusion drop to 9% and 11%. Even more noteworthy is the new situation involving the allocation by nationwide list. Given that 48 deputies are to be elected, the threshold for exclusion is only 2%. Any party winning 2% of the valid national votes is assured of at least one seat.

By design, the deputies elected by name contribute nothing to the overall proportionality of the system. In the case of the 2010 parliamentary elections, the ratio of those elected by name and those elected by list was 68% by name to 32% by list; in 2015 it was 69% to 31%. With the new system designed, the percentage of deputies to be elected by name drops to 48%, whereas those elected by list now account for 52%. Given that this is a mixed system, the large number of deputies to be elected by name, even though slightly less than half, will still distort the proportionality of the system as a whole.

The system for determining the number of members of the NA since the approval of the 1999 Constitution, creates some imbalances that have been criticized by many. The design under the 1999 constitution eliminated the bicameral congress, where the Senate was made up of an equal number of members for each federal entity, two per state, and where each state was represented by a number of deputies determined on the basis of the size of their populations in the Chamber of Deputies, where the more populous states had more representatives.

The current system, as seen in Article 186 of the Constitution quoted above, was designed to merge in a single chamber both the federal criterion (three fixed deputies per state), and the population-based criterion by assigning each state an additional deputy for every 1.1% of the population living there. Although the Special NAER have, in violation of the constitution, altered this design, it is still a fact that the most populous states are represented by more deputies in the NA than the less populated states, causing an imbalance. The state of Amazonas will be represented by 6 deputies, whereas Zulia will have 25. But each deputy from Amazonas will represent 29,072 residents in the state, while each deputy from Zulia will be representing 175,118, yet another imbalance. With this new and unconstitutional design, these imbalances will be somewhat smaller. In the case of the NA elected in 2015, the Zulia deputies represented 274,122 residents of that state, and each one from Amazonas represented 53,516 people from that state. These are imbalances that also weigh on the election of the deputies themselves. In the less populated states the deputies are, in terms of the number of votes required for election, less costly than deputies from the more populous states.

With proportional representation it is possible to elect deliberative bodies that better reflect the political plurality found in the population. Whereas the majority system can end up creating deliberative bodies where one force, the one that receives the most votes, may end up being overrepresented, leaving minorities out even though they may be relatively large. Many believe that proportional representation would seem to lead to better democracies given that it makes possible the election of deliberative bodies elected by the people that better reflect the plurality found in society, whereas majority systems tend to sacrifice plurality in order to guarantee greater stability and governance.

A second argument in favor of an electoral system based on proportional representation in Venezuela is based on history. Ever since the 1946 elections held to choose the deputies for that year's National Constituent Assembly, the electoral system under democracy in Venezuela has been based on proportional representation. This historical continuity was interrupted --rather surreptitiously as it was never mentioned as one of the purposes-- with the enactment of the EPA in August 2009, even though the undermining of proportional representation had already dated back to the 2020 parliamentary elections with the subterfuge known as "twin nominations." As will undoubtedly be seen in the results of the upcoming parliamentary elections, the degree of proportionality and, above all, plurality, will be larger than in 2010 and 2015 without, however, achieving a strong system of proportional representation and, moreover, at the cost of violating the Constitution and failing to comply with current laws and regulations.

7. Gender parity in nominations

In Venezuela the 1947 Constitution granted women the right to vote; 41 years³⁶ later, a quota of 30% of nominations for women was set, a provision that was revoked in 2000. Between 2005 and now the CNE has set quotas for general parity and gender alternance by means of regulations.

³⁶ Suffrage and Political Participation Act,. Official Gazette Special Issue 5,233 dated May 29, 1998

On July 30, 2020³⁷, the National Electoral Council issued Resolution No. 200730-0029 containing the Special Regulations to Guarantee Gender Parity in Elections for Members of the National Assembly. This regulation follows most of the criteria of earlier regulatory instruments regarding gender parity and alternance. Nevertheless, it provides that these regulations will not be applicable in the case of “nominations of candidates for representation of the indigenous peoples at the National Assembly,” a provision that is contrary to the unquestioned and repeated tradition for management of elections that there be no restrictions to enforcement of the gender quota.

As has been the case on other occasions, the special Regulations on this subject were published after the notice of the elections has been issued. Some media reported that this legal instrument was published after the term for filing nominations had already begun, even though the Regulations are dated July 30, 2020 and the term for nominations began on August 10, 2020.

In this case they have made public the instructions concerning the sequence to be followed for the nominations whether for those to be elected by name, several names for two or more offices up for election in each jurisdiction, regional lists and the newly created and controversial national list.

As for the timing, we must point out that the regulations were published 5 months and 24 days before the elections, despite the fact that the Constitution states in Article 298: *The law regulating electoral processes may not be changed in any way whatsoever during the period of time between the date of the election and six months immediately prior thereto.*

At the time this report is being written³⁸, the CNE had not published the official list of candidates to the National Assembly elections that would make it possible to fully examine compliance with the rule requiring gender parity and gender alternance. That evaluation will be the subject of another article.

8. The case of the election of representatives of the indigenous peoples and possible consequences. The new system for electing representatives of the indigenous peoples to the National Assembly

In the chapter covering the rights of the indigenous peoples (Chapter VIII), Article 125 of the Constitution of the Bolivarian Republic of Venezuela states:

The indigenous peoples have the right to political participation. The State shall guarantee indigenous representation in the National Assembly and in the deliberative bodies of the federal and local entities with indigenous population, as provided for in the law.

In turn the electoral laws currently in force provide for this right in Title XV of the Electoral Processes Act that deals with issue of the election of indigenous representatives to the National Assembly, state legislative councils and municipal councils. The section of the law defines three jurisdictions for electing indigenous representatives to the National

³⁷ Consejo Nacional Electoral. Viewed on 27/09/2020 at 18:34 pm
http://www.cne.gob.ve/web/normativa_electoral/elecciones/2020/asamblea_nacional/documentos/paridad_de_genero/proyecto_de_paridad_de_genero.pdf Viewed on 27/09/2020 at 13:58 pm

³⁸ September 29, 2020

Assembly, namely the western (Mérida, Trujillo and Zulia), the southern (Amazonas and Apure) and the eastern (Anzoátegui, Bolívar, Delta Amacuro, Monagas and Sucre). Furthermore, Article 178 of the law reads as follows:

All those registered in the Final Electoral Roll for the election of indigenous representatives to the different deliberative bodies are considered electors in the indigenous electoral jurisdiction.

Based on the wording that is underlined, it would seem that a separate and specific electoral roll must be created for each of the indigenous electoral jurisdictions.

In actual practice what has happened up until now is that all voters registered in any of these three jurisdictions could vote for the indigenous representation, a practice that has apparently been revoked with approval on June 30th of the Special Regulations Governing the 2020 National Assembly Elections by the CNE. The regulations begin by defining the scope of this instrument.

...the purpose being to regulate the election of members of the National Assembly by the indigenous peoples and communities exercising their right to political participation in keeping with their ancestral customs and practices and as provided for in the Constitution of the Bolivarian Republic of Venezuela and the law”

These regulations, although they directly affect the indigenous peoples alone and their election of three members of the NA, indirectly they affect us all as they have a bearing on the quality of this electoral process. It could also be said, in an effort to question the importance of this debate, that the election of these three deputies is almost insignificant given that they will be accounting for a mere 1.1% of the AN, in comparison with the current 1.8%. To judge the importance of this representation in those terms would, moreover, be tantamount to disparaging a right of these peoples that was recognized for the first time in the 1999 Constitution. It is not a matter of numbers, it is a matter of undermining the overall quality of the upcoming elections, both by showing a lack of respect for the indigenous peoples and because of the many irregularities committed.

Once again the CNE legislates and violates the Constitution by usurping functions that belong to the NA alone and by completely ignoring Article 298 which clearly prohibits any changes “during the period of time between the date of the election and six months immediately prior thereto.” This is a mandate that seeks to ensure that the rules of the game for every election have been most clearly established far enough in advance and cannot be changed during that period.

The Constitution also provides that the right to vote shall be exercised by means of free, universal, direct and secret voting (Art. 63). The system designed in the special regulations is neither direct, nor secret and may end up being one that is not free either. It is not direct because the voters vote for spokespersons who will then vote for the nominees. It is not secret, given that the rules expressly state that they may be elected at public gatherings by a show of hands. There is also a risk that they may not be free because, as they take place in public, the voter could be subject to pressure. Despite the fact that on August 14 the CNE, legislating once again, decided to change its regulations dated June 30 to guarantee a secret vote at the spokespersons’ assemblies, there was no change in the case of the communities.

There are many very different indigenous communities in Venezuela. To state, therefore, that community assemblies are actually part of the ancestral customs and practices of all of them is, at the very least, foolhardy. Moreover, should these ancestral practices stand in the way of the exercise of new rights? The right to a secret vote is one they have already been granted and violation of this right is unacceptable.

In addition, these regulations repeat ambiguities that undermine the transparency of a process that is already underway. They say that community assemblies will be held in all the communities in the country, but nothing is said regarding any electoral roll that can be audited or questioned. They also state that each of these assemblies will elect its spokespeople, but say nothing about the number of those to be elected, only that this will depend on the size of the community. Neither is it clear who will be able to participate with full rights in these assemblies, nor what the requirements are to become a spokesperson, nor any commitment made by these spokespersons regarding the wishes of those attending the assemblies.

Towards the end of July, the CNE published a “Timetable for the Election of Deputies for Indigenous Representation at the 2020 National Assembly.” According to this timetable the so-called indigenous-community assemblies were to be held between August 15th and September 15th; as the end of this period was approaching the president of the CNE announced a 3-day extension. At about the same time, two indigenous parties, Evolución and Parlinve, warned of very low attendance at the community assemblies that were to pick their respective spokespeople, that the measures aimed at reducing the risk of contracting Covid-19 have not been fully complied with, and that the choice of spokespersons had been under the control of pro-government political activists. These parties also complained that, in all, more than 4,300 assemblies should be held but that, by the end of period stipulated in the timetable, not even half that many had actually taken place. It would seem that the democratic political participation of the indigenous peoples is not guaranteed.

9. Electoral Observation

In many countries independent electoral observation has become a primary element for guaranteeing an evaluation of the trustworthiness, integrity and transparency of electoral processes, contributing to the decision as to whether or not to certify the legitimacy of the results. Given the current electoral context in Venezuela, systematic electoral-observation activities, both national and international, are essential.

Independent national observation involves a set of activities carried out by domestic organizations from the country where the election is being held, made up of people who are trained to observe, record and report on the progress of the elections while the process is underway. It is an activity that must be carried out on a technical basis and free of political bias. Furthermore, proper observation is not limited to activities taking place on election day alone, it must also span the pre- and post-election periods. It is an observation that, in the best of cases, has been formally accredited by the electoral authorities. Observation must also defend electoral rights, investigate, report on, train, connect and consider all the different aspects throughout the entire electoral process, beginning even before elections are announced. Reporting the results, freely and without bias, is essential for contributing to a more informed and responsible participation with a great degree of trust in the process

and the outcome on the part of the various political actors and the voters in general. It is an activity that, over time, has become a necessary part of the electoral protocol, not only in Venezuela but virtually the world over.

International observation, in turn, is carried out by missions deployed to a country on behalf of international organizations (UN, EU, OAS or UNASUR) or private foundations (such as the Carter Center that carried out observation work in Venezuela during the last decade). These international observation missions are usually sent in response to a formal invitation sent by the electoral authorities in the host country.

In Venezuela the General Regulations to the Electoral Processes Act differentiates between what they call national electoral observation and what they consider to be international electoral accompaniment. The Regulations state that the purpose of both is to witness, impartially and independently, the transparency of electoral processes. In practice, however, as experience has shown in the case in the elections held after the 2006 presidential election, accompaniment is not the same as observation. In the case of the presidential election in 2006, the European Union was invited to send an observation mission, which was actually able to be present in the country far enough in advance to observe the different technical and organizational preparations for the process, the audits of the technological platform, and later, on election day, send a considerable number of observers to centers, freely chosen by them, in the different regions of the country. Following this observation, a report was issued: *European Union Election Observation Mission –Final Report Presidential Elections Venezuela 2006*. In addition to presenting the numerical results of the election, the report describes the different stages of the process and includes a set of comments and recommendations for the improvement of future elections. The so-called international accompaniments that followed have proven to be significantly more restrictive; these accompaniment missions tend to arrive only a few days before the election, they are prevented from performing any thorough and systematic observation of the rest of the process and must attend activities already scheduled by the electoral authorities.

During these earlier electoral processes, the Venezuelan electoral authorities have also chosen to also invite certain individuals from other countries who, in many cases, are well known for their know-how, experience and work involving elections, to accompany the elections. Nevertheless, regardless of their individual merits, these people are unlikely to be given enough leeway to engage in independent and broad electoral observation procedures and techniques.

In an evenly balanced scenario, national and international observation complement each other. The national observers have the advantage of knowing more about the national scene and can more easily deploy equipment to all the states in the country. This has been proven by experience in Venezuela. Meanwhile, the organizations that do international electoral observation have permanent professional teams of people who are well versed in electoral techniques and procedures and, also, are in a better position to spread the message reporting on the results of their observation. The final results of the international electoral observation missions tend to make more of an impression around the world concerning the quality and integrity of the elections they observe. The synergy between

these two types of electoral observation, national and international, can be very beneficial for the election systems observed and for the democratic health of any country.

However, given the timeframes and the processes, it seems unlikely that the international organizations invited to do so will be able to observe the upcoming elections if they are held on December 6 as scheduled. Moreover, under the current circumstances, the biosecurity measures needed in view of the pandemic must also be taken into account, as that adds an additional hurdle, and not a minor one, for electoral observation, both national and international, of the entire process

At the time this is being written, the CNE has not made much progress on formalizing any electoral observation for the upcoming process. Although they have stated, both in public and in private, that any national observation mission that so requests will be accredited, to date nothing has come of this commitment. In the case of international observation, the government has announced that it intends to invite missions from Russia or Turkey, missions that have the disadvantage that many national and international actors do not consider them to be truly independent and unbiased, thus diminishing their ability to properly perform their role as independent observers. The same is true in the case of a possible mission sent by the OAS, which the government views with a great deal of skepticism.

At this time the options for credible and trustworthy international observation are shrinking. On September 11, a spokesperson for European Union announced that “there is no longer enough time” to deploy an electoral observation mission unless the Venezuelan authorities were to postpone the elections until after December 6th. Nicolás Maduro, however, has said that “come hell or high water these elections must be held, all of them”, proving that the government seems to have no intention of changing the date. Unless the date set in the timetable is changed, it would seem that there will be no EU observation mission. In general, and as seen in other elections around the world, and as expressly stated this time, the EU needs approximately six months to organize a mission, and we are now less than two months away from December 6th.

Furthermore, United Nations spokespersons have said that a UN electoral observation mission must be authorized by the Security Council or the General Assembly. In the case of the former, Article 27 of the Charter of the United Nations provides that the vote in favor of nine of the 15 members with no veto by a permanent member would be required. In the case of the latter, pursuant to Article 8 of the same Charter, the votes of a majority of members present and voting would be needed. Neither of these procedures is quick. Therefore, looking at the time factor alone, without even considering any possible debates or political arrangement, a UN electoral observation mission would also seem out of the question.

In order to achieve the presence of good quality electoral observation in the upcoming parliamentary elections, what would be needed would be agreements reached with potential international observers that include the possibility of rescheduling the elections so as to make possible the presence of international observation missions recognized by all the parties. It would also be necessary to insist on the formal accreditation of electoral observation organizations that have already delivered their formal requests to the CNE.

E. CONCLUSIONS AND RECOMMENDATIONS

Measures to protect the health of voters in the midst of the pandemic

There is no exact formula for rethinking the organization of the election processes. Nevertheless, all options must aim at protecting the health of the election workers, voters, electoral observers, journalists, etc., adapting the processes to the reality of the Covid-19, without affecting the political rights of the citizens.

In this regard, based on the practices followed in the 20 countries that held elections during the first half of 2020, the conclusion to be reached is that there are at least four general actions³⁹ that must be taken before setting election timetables.

- **Evaluation of the electoral infrastructure:** Information must be gathered concerning the traditional polling centers to assess which ones meet the requirements needed to adopt the health measures recommended by the World Health Organization, especially in order to avoid closed areas without ventilation or centers where it is not possible to comply with the minimum physical distance between voters and those manning the stations. Specific protocols are also needed to protect those working at the stations who will be exposed throughout election day and face a greater risk of contagion. Another item to be taken into account when gathering this information is the size of each area in order to design a flow of voters to each station that is safe in order to keep the points of contact to a minimum and maintain proper distancing at the polling centers.
- **Remote selection and training of personnel:** The electoral authorities and observers will have to make much more active use of the technological tools that will allow for remote evaluation when selecting the personnel and training electoral officials.
- **Registration and verification without contact:** In the case of the activities involved in voter registration and checking IDs that do require interaction and the physical handling of material, it would be advisable to use technological platforms that keep contact to a minimum or set up specific health protocols aimed at keeping contact to a minimum.
- **Defining disinfection protocols:** Protocols that include automated disinfection units, real-time monitoring to ensure that the protocols are being followed, using acrylic dividers separating those manning the polling stations or election officials from the voters, etc. must be drawn up. In addition the assessment of a number of processes that will require constant disinfection: warehouses where printed ballots are stored or where machines are audited, distribution and receipt of election kits, polling centers, etc. will be needed.

Judicialization of the parties

The judicialization of the parties by the TSJ is a sign of the undoing of the Venezuelan legal system and a move towards increasingly less competitive authoritarianism. To remove the political organizations' officials and leaders without internal elections is actually to take the place of the membership in an effort to do away with any uncertainty concerning election results while trying to give the impression of participation by a meaningful number

³⁹ Smartmatic. 2020. Análisis de los procesos electorales. <https://www.smartmatic.com/us/>

of different parties that have opposed the government in earlier elections, and even refused to recognize the outcome and legitimacy of the presidential elections held on May 20, 2018.

What we have described as the three waves of judicialization –the last being the one that had the greatest impact—has perverted electoral justice given that it constitutes a direct attack against the Venezuelan party system. The use of this procedure, without any due process, by the most senior body of the judiciary is a violation of the right to defend oneself, of freedom of association and the authority expressly granted to the CNE under the Venezuelan constitution, specifically Articles 49, 67 and 293.8.

Electoral justice must be in the hands of bodies that are autonomous and fully independent not only of the electoral-administration agencies, but also of any party ties that threaten the separation of powers and transfer of power as the essential principles of a democratic system.

CNE rules and regulations

The rules and regulations governing the upcoming elections on December 6, 2020 have been issued in violation of a number of articles of both the Constitution and the laws. For the first time, the CNE has gone so far as to undo, with the stroke of a pen, a victory achieved 74 years ago, i.e. the direct, universal and secret vote for the indigenous peoples.

Furthermore, the creation of a nationwide jurisdiction for the election of 48 deputies by means of a new double or indirect vote is an abuse of power given that the CNE lacks the authority to issue resolutions that have the force of law.

In the case of the elections to be held on December 6th, there has been a twofold irregularity. On the one hand, the Constitutional Chamber of the TSJ's failure to abide by articles in electoral laws and empowerment of the CNE to issue rules replacing them and, on the other hand, the CNE issuing rules that allegedly have the force of law. In both cases, this is an abuse of powers that can be granted by the Constitution alone and, therefore, one that renders the special rules governing the parliamentary process –ones that also affect the rules governing the election of deputies representing the indigenous peoples—null and void.

It is essential that everything be done in compliance with the legal system, the provisions of the Constitution, and rule of law that is based on the premise that legislation is the result of agreements reached by those who directly represent the will of the people, not by agencies in the electoral system that may not act in their stead.

The elimination of the universal, direct and secret vote for the indigenous peoples is a violation of the Constitution on the part of an electoral administration that has notoriously and disgracefully abused its authority. Their vote must be restored and the 74 years of the achievement of granting the indigenous peoples the right to vote must be honored.

The electoral roll

It is vitally important that a reasonable period of time be set to organize special campaigns for voter registration and updating of information, both inside the country and abroad, lasting as long as necessary and including weekends, for the purpose of:

- Setting up more than 2,500 stations for registration and updating in Venezuela; in addition the CNE must make arrangements for ongoing updating of information, setting up at least one center in every parish;
- Strictly following the criteria for placement of the registration and updating centers.
- Setting up *ad hoc* consular offices in cities abroad with the highest concentration of émigrés to increase the registration and updating capacity of the country's regular consulates.
- Organizing special campaigns for issuing or renewing ID cards abroad (at embassies and consular offices);
- Reviewing and revising rules, via a resolution issued by a new CNE, to determine what document will be necessary to prove legal residence abroad, based on the principles of participation of the people, celerity, efficiency, fairness and equality;
- Performing an internationally trustworthy audit that must include checking addresses and comparing them with vital statistics records, removing the names of the deceased, updating the information on people who have moved within the country and abroad, and registering new voters.

Participation and secrecy of the vote

- The CNE must organize an institutional campaign to explain in detail how secrecy of the vote works, the roles played by those working at the polling stations, how freedom and justice at the polling centers is guaranteed;
- Any intimidation of voters, before, during and following election day must also be strictly forbidden; guarantees for the secrecy of the vote at the voting machine and that voters are free to vote as they wish must be put in place.

Propaganda and fairness in the electoral process

Recommendations must include a return to public financing of political parties participating in the election campaign. A law should be passed, following a debate concerning the importance of setting ceilings and effective monitoring of the sources of the political parties' income. Effective controls are also needed for accountability at the CNE as breach of the rules does not necessarily lead to any consequences. Monitoring is also needed of actions taken by local, regional or national authorities to determine whether any of them favor pro-government candidates. Otherwise unfairness and inappropriate use of public resources will continue to exist;

- Advertising space must be free and fair for all participants on a daily and continuous basis, throughout the electoral process, on public and private broadcast media in Venezuela, for a reasonable amount of time per day per channel;
- Radio and TV stations must be monitored throughout the campaign and the electoral agency must enforce the rules. Strict monitoring of the terms and characteristics of funding is needed, with timely penalties, banning the unfair use of state assets and resources.

New automated voting system

The implementation of a new automated voting system requires definition of protocols for action in at least six key areas:

- Voting-machine hardware and software;
- Hardware and software for the vote-counting system;
- Checking the voter-authentication system;
- System for programming the voting machines;
- Communications infrastructure;
- Review of the candidate-nomination system.

All the audits must be carried out in person, not be virtual, which poses a challenge in view of the health measures required due to Covid-19.

The list of audits carried out to date was designed on the basis of the knowledge gained from and the workings of the system used from 2004 to 2017. These audits must necessarily be redefined.

Recommendation in the case of gender parity and alternance

The approach traditionally adopted in Venezuela has been aimed at establishing affirmative actions (quotas) for representation. They have also aimed at making alternance mandatory, alternance being understood to mean alternating names of men and women, in the case of nominating candidates or positioning, a system that has not been fully applied to date. For this alternance to cease to be merely symbolic, our laws must provide for the obligation of assigning predetermined quotas for different offices⁴⁰, and remedy the current wrongs whereby women are placed in positions where they are unlikely to win.

In this same vein, it is necessary to move beyond what is required under the Suffrage and Political Participation Act and expressly provide that the by-laws of political organizations must include mechanisms to guarantee and promote the participation of women in their internal elections and in leadership positions; it seems unlikely that the gender gap can be closed if women are not given a role in decision making and the designing of public policy.

Another component, that is not strictly legal, but educational and cultural in nature, has to do with the barriers put up by society itself that stand in the way of changes in this area. We do not necessarily find a correlation between a woman's access to a decision-making position and her commitment to an agenda involving political rights for women. Another cultural reality is the fact there are times when the new decision-making women actually represent the quotas of other men within the political organizations (wives, daughters, nieces). Therefore, any change in current conditions to conditions that are more favorable as regards allowing women to fully exercise their political rights necessarily involves an analysis of the factors preventing this, factors that are not only legal in nature.

⁴⁰ One example of this would be article 81 of Decree 34-2000 dated May 22, 2000, passed by the Congress of the Republic of Honduras and called Equal Opportunities for Women in Honduras Act.

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G. WORKING GROUP

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