

SUMMARY ON THE STATUS OF RIGHTS HUMAN

from the perspective of Transparency Venezuela



SEPTIEMBRE 2016

RULE OF LAW AND FIGHT AGAINST CORRUPTION

In the Venezuelan context, the government branches lack of independence, the weakness of the rule of law, the low accountability and the broad discretion are clear, which create perfect conditions to encourage the perverse relation among three elements: rights violations, corruption and impunity.

In the judiciary, there is data that confirms this situation. The judicial branch (T.S.J. = Supreme Tribunal of Justice) has favored the executive branch and the public administration by 93% of its decisions¹. Transparencia Venezuela systematized a total of 102 judgments, among which the judicial branch (T.S.J.) has: i. Accepted every request of state of exception -and its extensions- made by the executive branch, ii. Limited the powers of parliamentary control of the National Assembly (legislative branch in hands of opposition forces since January), circumscribing it only to the national executive -and exceptionally- to the judicial branch -only with regard to the prior scrutiny of the selection of Justices-, iii. Denied the right of access to public information, iv. Endorsed the public agencies -such as the Central Bank of Venezuela and the Health Ministry- refusal to accountability, promoting deeper opacity in public contracts.

The United Nations Human Rights Committee, in the observations originated from the 2015 Venezuela examination of the International Covenant on Civil and Political Rights, noted concern about the judiciary in the country, particularly in relation to its autonomy, independence and neutrality, especially regarding to the entitlement of Justices and discretion in their appointments².

An example: on 23 December 2015, after the political opposition won the 2/3 of the national parliament, but before taking office, the old parliament elected 13 Justices of the judicial branch (T.S.J.), including alternates, violating the “designation procedure” established in the law³. The appointees are people with clear links to the ruling party (P.S.U.V. = United Socialist Party of Venezuela), some of them even being in public office on behalf of the official party, as it was the case of the current Justice Calixto Ortega -member of parliament of the ruling party who was appointed Justice⁴ - that voted for himself through mechanisms which violated the Constitution and laws⁵.

Additionally, since the election of the 167 members of the Venezuelan parliament on December 2015, The Supreme Tribunal of Justice has issued 27 sentences against the new

1. El TSJ al servicio de la revolución. La toma, los números y los criterios del TSJ venezolano (2004-2013), Canova González A., Herrera Orellana L., Rodríguez Ortega R., Gratelol Stefanelli G., Editorial Galipan. Año 2014
2. Ver en: http://acnudh.org/wp-content/uploads/2015/07/CCPR_C_VEN_CO_4_21193_S.pdf
3. Ley Orgánica del Tribunal Supremo de Justicia Artículo 38
4. Christian Tyrone Zerpa, Sala Electoral; Calixto Ortega, Sala Constitucional.
5. Informe final de la Comisión Especial para el estudio del proceso de selección de Magistrados principales y suplentes del Tribunal Supremo de Justicia, Asamblea Nacional de Venezuela, 3 de marzo de 2016. Disponible en: <http://goo.gl/e8z11X>

legislative branch. 24 decisions have been signed by the Constitutional Chamber, while the other 3 belong to the Electoral Chamber⁶. The first judicial decision took place before the inauguration of the elected members of parliament, with the ruling 260 of the Electoral Chamber on December de 2015.

One of those judgments was the approval of a state of exception on January 2016⁷, despite having been denied by the new National Assembly and considering the fact that the Supreme Tribunal has no power over the parliament on this subject. With that judicial ruling, the President of the Republic received maximum powers without needing prior authorization from the parliament to: indebt and engage the country and approve and redistribute additional credits⁸. This situation led 125 organizations with extensive experience and recognition in the struggle for human rights, to express their opposition and demand its repeal⁹, including the Inter-American Commission on Human Rights¹⁰.

The concentration of power in the executive branch reduces access to justice (independent and autonomous) and leaves citizens defenseless without independent bodies where they can demand warrantee of their rights. The development of human rights is marked by an atmosphere of widespread and deep corruption. Therefore, it is not sur-

prising that Venezuela appears in the last ten places of the Transparency International' s Corruption Perceptions Index, with 19 points out of 100¹¹.

Regarding the social policy, the lack of rules, systems, procedures and criteria for the design, execution, allocation of benefits and of responsible officials to prevent, restrict and sanction these abuses, results in impunity for the rights violation and electoral-political use¹². In fact, in Transparencia Venezuela, between 2015 y 2016, 961 corruption complaints have been received, being the use of resources and public institutions for electoral propaganda the category where the largest number of these are concentrated (388 en total¹³).

Added to this situation is the impunity in corruption cases, which stood at 97.73% in 2015. The Venezuelan State has established numerous legal obstacles and discriminatory practices that contradict these principles.

One of the most clear elements in these systemic corruption cases is the absence of a serious inquiry state policy of obvious and severe corruption cases¹⁴. Impunity is essential as part of the opacity policy that promotes corruption and impacts on the enjoyment

6. Transparencia Venezuela. TSJ dictó 14 sentencias contra la Asamblea Nacional. Disponible en: <https://transparencia.org.ve/tsj-dejo-sin-efecto-acciones-de-la-asamblea-nacional/>

7. Publicado en Gaceta Oficial 40.828 de fecha 14 de enero de 2016

8. Transparencia Venezuela. Decreto de Emergencia económica. Disponible en: <https://transparencia.org.ve/decreto-de-emergencia-economica/>

9. PanAm Post. 125 ONGs de DD.HH. exigen revocar estado de excepción. Disponible en: <https://es.panampost.com/ysol-delgado/2016/06/07/venezuela-125-ongs-ddhh-revocar-estado-de-excepcion/>

10. Comunicado de la CIDH, disponible en: <http://www.oas.org/es/cidh/prensa/comunicados/2016/071.asp>

11. Transparencia Internacional. Índice de Percepción de corrupción 2015. Disponible en: <http://www.transparency.org/cpi2015#results-table>

12. Transparencia Venezuela. Informe al Comité de Derechos Económicos y Sociales de las Naciones Unidas, con motivo del examen del 3er informe periódico del estado venezolano en el período de sesión 55° del pacto internacional de derechos económicos, sociales y culturales. junio 2015. Disponible en: <http://www.examenonuvenezuela.com/web/wp-content/uploads/2015/06/Informe-Alternativo-Corrupci%C3%B3n-y-DESC-Transparencia-Venezuela-PIDESC.pdf>

13. Denuncias recibidas a través de la Aplicación móvil "Dilo Aquí" de Transparencia Venezuela.

14. C. Nash, et. Al. Corrupción y Derechos Humanos en la Jurisprudencia de la Corte Interamericana de Derechos Humanos. Centro de Derechos Humanos Universidad de Chile. 2014. Cap. 2.

and exercise of rights for political reasons. This situation, coupled with the lack of independence of the organs administering justice on corruption, was seen as a concern by the United Nations Economic and Social Council of 2015.

Venezuela does not count with an anticorruption program. To date, reforms that enhance transparency, judicial autonomy, the fight against impunity, control and transparency in the spending of public resources, access to public information, whistleblowers protection, even the implementation of public policies related to social programs, have not been approved.

In recent years, enormous resources were received and handled with distribution criteria, but without planning or control. The budget and debt law suffers so many variations throughout the year that, in 2014, it came to double spending via the express figure of “additional credits”¹⁵. But neither the National Treas-

ury Office, the Budget National Office, nor the related ministries, have published expenses reports since December 2010. Not even the Comptroller General of the Republic has demanded or sanctioned such opacity and discretion.

15. Para el año 2016 se está presentando el mismo comportamiento en la ejecución del presupuesto nacional.

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