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THE MILITARIZATION OF THE CHAVISTA
REGIME IN VENEZUELA: AN OBSTACLE
FOR DEMOCRATIC TRANSITION AND THE
PROTECTION OF HUMAN RIGHTS

Supervisor: Prof. SARA PENNICINO

Candidate: BEATRIZ RUIZ DOMINGO

Matriculation No. 2005596

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Writing this thesis has been a great challenge. First of all, due to the complexity of the subject. Writing about a country where you are not from, where you have never been, but to which you feel so connected without knowing very well why, is complicated. Writing about a regime that has caused so much suffering and caused so many people to flee their home is not easy, since it involves reading things that are truly cruel, inhumane, and harsh. Writing about a government that seems impossible to overturn, even with the arguments of peace and human dignity, makes you feel powerless.

But at the same time, writing about Venezuela is hopeful. Human rights and democracy defenders never cease in their struggle, and to them we owe the fight. To those who take to the streets, to those who raise their voices, to those who stand up for what is right. Even if it sometimes means putting their lives at risk. This is what has motivated this humble work.

Secondly, carrying out this work has been complex. These words have been written in different countries, among them Italy, France, Poland, and Spain. They have been written while studying, working, and enjoying everyday life. Very important people have accompanied me in the process, friends, family, colleagues, and my supervisor. I want to thank them for their selfless help, encouragement, and trust in me. In particular, I would like to thank the women around me, who directly and indirectly inspire me to stand up for what is right.

Completing this thesis means putting an end to my university studies, for now. It means starting a career in the defense of human rights. It will not be easy, but I promise not to give up, for the sake of the people who gave their lives in the defense of social justice.

Hasta que la dignidad se haga costumbre

ABSTRACT

Venezuela has been an issue on the international agenda for more than two decades. The Chavista regime and the country's multidimensional crisis prevent Venezuelans from being able to enjoy human rights. This is due to the lack of a democratic system that guarantees the separation of powers, free, fair, and periodic elections, and the rule of law. Chavismo, established in government since 1998, has managed to stay in power thanks to the support of the Armed Forces. This has been done through the militarization of democracy, which entails the politization and deprofessionalization of the military body. The creation of a parallel institutional network has enabled the regime to act outside the constitutional legal framework and avoid any type of democratic control. Moreover, this has allowed the Chavista regime to control civil society and consolidate its power in government. The result has been a process of constitutional regression and democratic decay, with important negative consequences for the protection of human rights.

Key words: *Venezuela, Chavismo, authoritarian regime, human rights, militarization.*

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LIST OF ACRONYMS

AD: Democratic Action (*Acción Democrática*)

CEDAW: Convention on the Elimination of all forms of Discrimination Against Women

COPEI: Independent Electoral Political Organization Committee (*Comité de Organización Política Electoral Independiente*)

CNE: National Electoral Council (*Consejo Nacional Electoral*)

IACHR: Inter-American Commission on Human Rights

ICCPR: International Covenant on Civil and Political Rights

ICESCR: International Covenant on Economic, Social and Cultural Rights

ILO: International Labor Organization

LOFAB: Organic Law of the Bolivarian Armed Forces (*Ley Orgánica de las Fuerzas Armadas Bolivarianas*)

MUD: Democratic Unity Table (*Mesa de la Unidad Democrática*)

MVR: Fifth Republic Movement (*Movimiento Quinta República*)

NCA: National Constituent Assembly

OAS: Organization of American States

OHCHR: Office of the United Nations High Commissioner for Human Rights

PCV: Communist Party of Venezuela (*Partido Comunista de Venezuela*)

PDVSA: Venezuela Oil Company (*Petróleos de Venezuela S.A.*)

PP: Patriotic Pole (*Polo Patriótico*)

PSUV: United Socialist Party of Venezuela (*Partido Socialista Unido de Venezuela*)

R2P: Responsibility to Protect

UN: United Nations

UNGA: United Nations General Assembly

UNSC: United Nations Security Council

UPR: Universal Periodic Review

INTRODUCTION

Venezuela has been an issue on the international agenda for over two decades. The outflow of millions of Venezuelans to other countries in the region and even to other continents continues to alarm the world. The authoritarian traits of its government are of concern to the international community. In addition, the multidimensional crisis arising from the lack of a democratic government, a decadent economic system and increasing social repression has left a scenario where there is no respect for human rights. With the arrival of Hugo Chávez in 1998, the country changes course and goes from being one of the most stable democracies in the region to an authoritarian regime that seems to have no end. The country begins to see how the essential elements of democracy disappear and the President acquires more and more power. With the death of Chávez in 2013, Maduro becomes the leader of a regime that keeps becoming more authoritarian. From 2014 onwards, the country falls into an economic crisis of great caliber, due to the fall of oil prices. This leads to an economic recession and a serious inflation problem, which persists to this day.

In this scenario of economic crisis, food, water, and basic services became scarce. This has had a great impact on the population, which has reached very deep levels of poverty. The country faces a humanitarian crisis which worries international organizations and western countries. However, humanitarian assistance is compromised by the consequences of having an authoritarian regime. The European Union and other countries, like the United States, have imposed major sanctions against the regime. Although these are aimed at reducing the power of Chavismo and forcing them to transition to democracy, the real burden falls on the population. Ordinary citizens see their most basic rights violated when they cannot access the most basic goods, added to the deficient public policies of the Chavista regime.

Despite various national, regional, and international efforts to overthrow the regime and transition to a full democracy, Chavismo remains strong and in power. In all elections hold since the arrival of Chávez in 1999, Chavismo has obtained a majority, with the exception of the 2015 legislative elections. Do the people thus support Chavismo? Is it

being democratically elected to lead Venezuela's government? The answer is much more complex than a yes or no. Chavismo has installed itself in Venezuela's democratic institutions with great force, due to its promising revolutionary beginnings of hope for the people. Nevertheless, the manner in which it maintains itself in power is far from democratic. Chavismo has gained social support in a very undemocratic and non-transparent way. The government has made use of the Armed Forces to stay in power and expand its social support. This has meant a great repression of opposition voices, as well as a reduction in the respect for fundamental human rights. This has been the result of a process of militarization of all aspects of Venezuelan government and society.

This thesis will analyze how Chavismo maintains itself in power and disguises itself as a democracy, or hybrid regime, by having a guaranteeing Constitution and holding periodic elections. To this end, it will examine the militarization of the Chavista regime and how this poses an obstacle to democratic transition and the protection of human rights. Through a review of the literature, an examination of the 1999 Constitution and other important national legislation, and a contrast with International Human Rights Law, a detailed study of how Chavismo was installed in the country, militarized democracy, consolidated its regime, and consequently violated human rights will be carried out. The thesis is structured as follows.

Chapter I describes the Bolivarian constitutional model. First, it examines the context in which Hugo Chávez arrived in power, by analyzing the democratic scenario prior to 1998, when he won the presidential election. Second, it describes the original Bolivarian Revolutionary Project, on which Chávez based his political project. Third, it analyzes the 1999 Constitution enacted right after Chávez became president. This was the cornerstone to change the form of the State and transform Venezuela into the political project that Chavez aspired to. The second part analyzes the degradation of the Bolivarian model and the consequent process of deconstitutionalization. This includes a study of the political and legal shift of the Bolivarian model.

Chapter II focuses on the role of the military in the Chavista regime. First it analyses the process of politization of the Bolivarian National Armed Forces, describes the regulation

of this military body in the 1999 Constitution and the specific law which regulates them, and examines the political participation of the Armed Forces. This is key to understand the militarization of democracy, a process that has brought the country to where it is today. To this end, the second section examines the complex network of parallel institutions created by the Chavista regime to avoid any type of democratic control. These include the replacement of the Public Administration with the *Misiones Sociales*, territorial entities with *Consejos Comunales*, and security and defense with the Bolivarian Militia. The participation of the military in them is vital to their functioning.

Chapter III explains how the Chavista regime was consolidated in Venezuela. To this end, it analyses how the State went from democracy to what it can be denominated competitive authoritarianism. It assesses the essential elements of what is considered the standard today: constitutional liberal democracy. The second section examines the process of democratic decay undergone since the arrival of Chavismo to the government. Three essential elements of constitutional liberal democracy are reviewed: the system of checks and balances, elections, and the rule of law.

Lastly, chapter IV explains the consequences the establishment of the Chavista regime has had on the protection of human rights. A review is conducted in accordance with the provisions of the 1999 Constitution and the two international covenants on human rights. The first part reviews the status of civil and political rights, such as the right to life, physical and moral integrity, liberty, due process of law, and fundamental freedoms. The second part reviews economic, social, cultural, and environmental rights, like the right to health, education, work, adequate standard of living, and the environment. A specific study of these rights for women and indigenous communities is done too.

The concluding remarks link all the elements analyzed in the previous chapters to draw a conclusion on the militarization of the regime.

CHAPTER I. THE BOLIVARIAN CONSTITUTIONAL MODEL

This chapter describes the Bolivarian model that Venezuela follows in its constitution and, therefore, defines its form of State. The architect of this model for Venezuela was Hugo Chávez, who came to power with the objective of transforming the country into a true and full democracy. In order to understand this process of change for the country, one must analyze the historical context before Chávez arrived and what happens with his subsequent election as president. Furthermore, Chavez's ideology, based on the Bolivarian Revolution project, will be studied. This political agenda marks the beginning of his political trajectory, the constitutional project of 1999 and the transformation undergone by Venezuela in the first decade of the new century. The Bolivarian project will also mark the constitution that Chávez promulgates after being elected. The supreme norm of the state reproduces the Chavista ideas and establishes a state model that promises a full and participative democracy for Venezuelans. However, this democratic utopia soon begins to crumble. Venezuela undergoes a process of deconstitutionalization that leads it to where it is today. This chapter will analyze this process from a political and legal perspective, to understand what led the country to a system where the values of liberal democracy are not respected, and citizens do not enjoy their fundamental rights and freedoms.

1.1. The original Bolivarian idea

The aim of this section is to describe how the Bolivarian constitutional model was constructed in Venezuela. To this end, the political context prior to the arrival of Hugo Chávez to the presidency of the country will be studied. Then, the foundations of the Bolivarian Revolution will be described, in order to understand what Chávez's plan for the country was. Finally, the constitution promulgated by Hugo Chavez will be analyzed to understand the basis of his mandate.

1.1.1. Context: from oligarchy to the 1998 presidential election

Venezuela has had around 26 constitutions since the first one was adopted in 1811 (King, 2013). During the 19th and almost half of the 20th century, *caudillos* and members of

political elites monopolized Venezuelan politics, installing an oligarchic military rule, and using fundamental charters for their own purposes (Buxton, 2020). This reflects the country's long past of authoritarian governments, who reinforced and legitimized their power by promulgating new constitutions (King, 2013). This system was interrupted in 1945, when a civil-military coup d'état ousted the president and established a transitional revolutionary government *junta* (Buxton, 2020). The coup was led by members of the newly formed political party *Acción Democrática* (Democratic Action, AD), which was composed of newly emerging intellectuals, students, and other political organizations (*ibid*). Their goal was to democratize politics and nationalize the oil sector, with a multiclass perspective (*ibid*). They convened a constituent assembly in 1946 and they organized the first presidential election with universal suffrage the year after, establishing a representative democracy (*ibid*).

Nevertheless, the democratization efforts were frustrated by a military coup in 1948, which ended the so-called *Trienio* (1945-1948). The military regime lasted until 1958, when a military-civilian coalition ousted the dictator and called for elections in 1959 (King, 2013). The three main political parties at the moment achieved an agreement named the *Punto Fijo* Pact (Kornblith, 1991). Its main purpose was to form a government of national unity after the elections, including members of the three parties (*ibid*). The newly elected Congress created a bipartisan committee to draft the new constitution, which would be ratified in 1961 and be the longest-lasting fundamental document in the history of Venezuela (*ibid*). The *Punto Fijo* pact was the cornerstone of the democratic system which would last until the arrival of Hugo Chávez.

The stability of the system was achieved by incorporating a wider constituency, including the democrat COPEI party (*Comité de Organización Política Electoral Independiente*, Independent Electoral Political Organization Committee), the main workers union, the private sector, the Catholic Church, and the military (Buxton, 2020). The system avoided conflicts by incorporating the demands of all social classes. In the same way, the pact excluded the communist party (*Partido Comunista de Venezuela*, Communist Party of Venezuela, PCV) (*ibid*). Regarding the economy, the oil sector was nationalized in 1975, when oil prices were very high, which led to an increase in public expenditure,

expansionary policies, and an economic growth cycle (*ibid*). This good economic situation translated into an increase of trust in AD and COPEI, which they took advantage of to introduce the elite into political affairs. As oil export revenues increased, an illusion of wealth was generated, which led the state to become lazier and depend more and more on this resource's monopoly (Buxton, 2020). The sector became less competitive, and corruption increased, since oligopolistic companies were privileged in access to credit, public contracts, and commercial information (*ibid*). Moreover, institutions began to be politicized, as AD and COPEI negotiated the appointment of members of the judiciary, national election administration, military, public and regional administration and in state corporations (*ibid*).

Puntojismo started to fail in the 1980s, due to the economic and social crisis created by declining oil prices, economic mismanagement of the government, and partisan rent distribution (Buxton, 2020). AD and COPEI governments had maintained the high public spending by devaluating the national currency, manipulating exchange rates, controlling prices, and borrowing money from international institutions (*ibid*). This system was not sustainable anymore, hence, the government implemented neoliberal reforms reducing public spending, reducing subsidies, eliminating tariffs, and introducing a sales tax (King, 2013). Social discontent began to show with mass protests which were suppressed by the government (*ibid*). On February 27, 1989, one of the most violent protests took place, known as *el Caracazo*, which was the touchstone of social dissatisfaction with politics (*ibid*). By the start of the 1990s, 44% of Venezuelan households were poor and Venezuela was classified the 46th most corrupt country out of 52 by Transparency International (King, 2013; Buxton, 2020).

One of the consequences of this social unrest was the failed coup attempt of then Commander Hugo Chávez and a group of insurgents in 1992. They demanded reforms for salaries and taxes for a better redistribution of wealth and renegotiating the debt (King, 2013). In addition, they called for a National Constituent Assembly to write a new fundamental charter and new model of society (Cannon, 2009a). Even though many of the insurgents were imprisoned, Hugo Chávez became socially popular, he even appeared on national television, and he later founded the Revolutionary Bolivarian Movement

(*Movimiento Bolivariano Revolucionario*, later renamed *Movimiento V República*, *MVR*), connected to socialist and communist organizations (Buxton, 2020). Another consequence of both social protests and the failed coup was the proposal to reform the 1961 Constitution. A Special Bicameral Commission for the Constitutional Reform was created, which intention was to propose various amendments to ameliorate the socioeconomic and sociopolitical situation (Maingon, Sonntag, & Pérez Baralt, 2000). This process was accelerated due to a letter sent by the MVR from jail demanding a national referendum and a second failed coup later that year (*ibid*). Nevertheless, AD and COPEI suspended the Reform Commission. This was a very unfortunate move, as it would be used in the next election campaign by new political actors.

In 1993, the president at the time was impeached on corruption charges and was replaced by Rafael Caldera, member of COPEI (King, 2013). State institutions were still politicized, and political challengers were excluded from formal politics (Buxton, 2020). Caldera was reelected in the 1993 election, despite accusations of electoral fraud (*ibid*). For almost a decade, governments followed a neoliberal approach to stabilize the economy, adjusting policies and partially privatizing the public oil company (*Petróleos de Venezuela S.A.*, PDVSA) (Buxton, 2020). The state used authoritarian measures and violence to maintain *puntofijismo*, exceeding the use of presidential decrees, states of emergency and rights abuses against popular sectors (*ibid*).

The lack of social trust in traditional political parties, added to the liberal measures, the coup attempts, the low oil prices, and the economic mismanagement and corruption, made the 1998 elections different to the past ones (King, 2013). The context gave way to the entry of new political actors, which had already gained prominence during the beginning of the 1990s. The political and economic crisis was reflected by the high abstention and social protests (Buxton, 2020). The results of the elections were revolutionary: Hugo Chávez was elected president with 56% of votes and 40 years of the two-party political system came to an end (*ibid*). Chávez, who attempted a coup in 1992, ran for election as part of a coalition of parties called *Polo Patriótico* (PP), which included the *Movimiento V República* (Fifth Republic Movement), *Patria Para Todos* (Homeland For All), *Movimiento al Socialismo* (Socialist Movement), *Partido Comunista Venezolano*

(Venezuelan Communist Party) and other small regional and national parties (Maingon, Sonntag, & Pérez Baralt, 2000). They focused the campaign in creating a new constitution and calling for a constituent assembly, as a means to overcome the political crisis and the loss of legitimacy of institutions, and meet the demands made by the people (*ibid*).

Since the beginning of its mandate, Chávez based his political agenda in preparing a referendum asking citizens “whether or not they approved of the creation of a National Constituent Assembly (NCA) tasked with writing a new constitution” (King, 2013). He was convinced this new constitution would be a democratic revolution for the country, based on the will of the people (Maingon, Sonntag, & Pérez Baralt, 2000). In April 1999, 92% of the votes in the referendum were in favor of the Constitution, the first one of these characteristics in the history of the country (*ibid*). Some experts point out that this constituent process was not the result of consensus, but an imposition of the majority, since voter turnout was only 35% (Goig Martínez, 2014). Nevertheless, the idea of reforming the 1961 Constitution was not new, since in 1992 an attempt was made with the creation of a Bicameral Commission for the Constitutional Reform, which failed due to social and political turmoil (Maingon, Sonntag, & Pérez Baralt, 2000). The reform was supported by diverse collectives and actors, which brings legitimacy to the constituent process (*ibid*). In this context, the NCA began to work with the aim of creating a new fundamental charter that would reflect the transformations of the Venezuelan society in the last decades, consolidate the rule of law, and profoundly reform the corrupt system (*ibid*). The Assembly was chaired by a member of the MVR, and out of 131 seats, only 6 were designated to the opposition (Grimaldo Lorente, 2002).

The constituent process was not free of doubts about its legitimacy. The opposition and the civil society jurists questioned that in order to create a new constitution it was necessary to first modify the 1961 Constitution, to create a legitimate constituent body (Maingon, Sonntag, & Pérez Baralt, 2000). This issue was of great concern to them, as the process would set a precedent for Venezuelan democracy (*ibid*). However, the referendum and constituent process were legitimized by a Supreme Court ruling in December 1998 (*ibid*). The results of the work of the NCA and the new constitution will be studied later in this chapter.

1.1.2. *The Bolivarian Revolution Project*

The arrival of Hugo Chávez to the political arena and his election as President in 1998 are often described as revolutionary. The reason behind this is his connection to what he denominates as the "Bolivarian Revolution", which will serve as the basis of his political project to transform the country. This section will analyze the main lines of the political project as it is key to understanding the 1999 Constitution, the profound reforms the Venezuelan state will suffer in the upcoming decades and the degradation of democracy and the protection of human rights.

The Bolivarian project was made official with the election of Hugo Chávez in 1998, yet its beginnings date back to the 1992 coup, in which political and social groups that would later create the Fifth Republic Movement (MVR) in 1997 participated (Buxton, 2020). The party followed a bottom-up, horizontal, participatory, and mass-based approach, including communist, socialist, and leftist movements that were marginalized during the *Puntofijismo* decades (*ibid*). The Bolivarian Revolution, ideological base of the MVR party, wanted to break with traditional schemes and create “a new path, a new opportunity adapted to the historical, cultural, social and economic characteristics of Venezuela and Latin America” (Molina, 2003). As Chavez affirmed, the project was inspired by the idea of revolutionaries from the 19th century, like Simón Bolívar (*ibid*). The major plan of Bolívar was to create a union of Latin American states. The objectives of Chávez’s Bolivarian project were solving poverty, dependence, exclusion, repression and violation of human rights, and destruction of nature in Venezuela and Latin America during the new millennium (Lugo Dávila, 2021). This political movement was not unique to Venezuela, but the country’s case is significant since it was the first country in the region to formally use it as a national political project and break with the traditional conception of Marxist socialism (*ibid*). The MVR party wanted to offer an alternative: putting social rights above the economy (Cannon, 2009a). However, they wanted to achieve this by rejecting the failed Soviet model of socialism and communism, and proposing a new capitalist economy, more equitable to all Venezuelans, not based on “savage neoliberal policies” (*ibid*).

The central elements of the Bolivarian project included anti-imperialism, national independence, popular sovereignty, justice, and social equality (Lugo Dávila, 2021). In addition, the project wanted to establish a participatory and popular-based democracy with a civil-military union (*ibid*). Chávez translated this as a “polynomial of power”, meaning that state power would emanate from diverse social forces, including popular sectors and grassroots groups (*ibid*). He wanted to establish a participatory democracy to give power back to *el pueblo* (the people) and involve them in decision-making (McCoy & Neuman, 2001). A great example of this is the constituent process the president started right after his election. Chávez wanted the new constitution to be “a product of popular participation which would further that participation to make it protagonic” (Cannon, 2009a). Furthermore, the Bolivarian project moves away from the previous systems: oligarchy in the 19th and half of the 20th century, and elitist and corrupt governments in the second half of the 20th century. Chavez’s discourse was not centered on anti-neoliberalism, but on anti-puntofijismo, “an old model based on imposition, domination, exploitation and extermination” (Cannon, 2009a). To make this rupture more evident, he renamed the country the “Bolivarian Republic of Venezuela” (McCoy & Neuman, 2001). As for the economy, the Bolivarian project revolves around a social economy centered on principles of reciprocity, solidarity, and community-based exchange (*ibid*). The Bolivarian Revolution wants to transform the Venezuelan economic model, following a cooperative system, and based on collective property, and the subordination of private property to the social and general interest (Cannon, 2009a).

Despite the fact that the Bolivarian project was the center of Hugo Chavez’s political agenda, he did not categorize it ideologically during the first years, just referring to it as “participatory democracy” (Molina, 2003). At the beginning of his mandate, it was complicated to ideologically categorize the government, since it was composed of very diverse movements. It included members from the democratic left (such as the socialist party) to the extreme and radical left (including members who participated in the 1992 coup) (Molina, 2003). In the end, the moderate members left the government, and it remained a civilian-military radical left coalition (*ibid*). The Bolivarian project became turbid in the second year of the legislature, when the executive began to concentrate power and rely on popularity, and the Bolivarian ideology conquest democratic

institutions (McCoy & Neuman, 2001). This goes against the original Bolivarian idea and specially against Chavez's approach not to be the cause of the Bolivarian Revolution but the consequence (Cannon, 2009a). Moreover, the military started to gain visibility, as members of the armed forces were appointed for public office and the army was used for social programs or construction projects, for example (McCoy & Neuman, 2001). From this moment on, the Chavez government can be qualified as authoritarian left-wing, due to its departure from representative democracy by imposing an economic agenda which favors the public sector and policies only aligned with Bolivarian ideas (Molina, 2003). In this way, it leaves aside its original ideology in which the will of the people is the center of sovereignty and power. These ideas will be further developed in the following sections.

1.1.3. The 1999 Constitution: main features and design

The promulgation of the 1999 Constitution is one of the main achievements of the Bolivarian Revolution, and the key to its implementation. Indeed, article 1 directly expresses that the Bolivarian Republic of Venezuela is founded following the doctrine of the Liberator Simón Bolívar. The new political, social, and economic model that Chávez envisioned would be framed in this new fundamental charter. In his own words, the 1961 Constitution needed to “die and with it the disastrous model that gave birth to the last forty years” (King, 2013). The magna carta would serve as the legitimation of the new participatory democracy and transformative process (Buxton, 2020). It is important to highlight that this fundamental charter was written by a constituent assembly mainly formed by members of *Polo Patriótico* (Patriotic Pole), coalition of parties that brought Chávez to the presidency and that will be the base for the development of *chavismo*. This fact was subject of much criticism, since it seemed that it was being drafted by an elite group behind closed doors (King, 2013). Finally, the 1999 Constitution was approved by referendum in December of that same year, with 72% of affirmatives votes and 44% of voter turnout (Buxton, 2020). The referendum served as a declaratory statement for the new political era in Venezuela (*ibid*).

The 1999 Constitution breaks with the previous political and state model, being a much more aspirational and ideological document, shifting Venezuelan constitutionalism to a

new paradigm. This charter will mark a trend in the region, what King denominates the Neo-Bolivarian constitutional design. Examples of this trend can be found in Bolivia and Ecuador, during Evo Morales and Rafael Correa's presidencies respectively (King, 2013). According to King's analysis, their main features are aspirational and ideological provisions, radicalism, and internal disharmony, linked to their previous social and political experiences and predecessors (*ibid*). This section will be devoted to the study of the 1999 Constitution, describing its main characteristics and analyzing the new constitutional and state model the Bolivarian Revolution proposes. This new magna carta transforms very important elements, from the form of the state to the type of democracy and separation of powers. Special attention will be given to the codification of fundamental rights.

The 1999 Constitution establishes a whole new political and social model for the country. Article 2 determines that Venezuela is constituted as a democratic and social State of Law and Justice, which advocates life, liberty, justice, equality, solidarity, democracy, social responsibility and in general, the preeminence of human rights, ethics and political pluralism as superior values of its legal system and its actions. The model of Social State of Law and Justice moves away from the former liberal state, which primarily implies privileging collective interests over individual rights (Goig Martínez, 2014). The model embodies the Bolivarian project and aims at restructuring the whole political system of the state, from its philosophical foundations to the regulation of fundamental values (*ibid*). One of the main characteristics of the Social State is that the relations are between the state and society, and not the state and individuals, with the perspective of ensuring the democratic participation of civil society to eventually achieve social justice and common good (Lugo Dávila, 2021). Here we can observe how both the Constitution and the Bolivarian Project focus on the idea of *el pueblo* (the people). This political rationale is reflected in the definition of the goals of the State and the recognition of rights in different chapters of the fundamental text (Lugo Dávila, 2021). The Venezuelan State has a social mission, determined by article 3: The essential purposes of the State are the defense and development of the individual and respect for his dignity, the democratic exercise of the will of the people, the construction of a just and peace-loving society, the promotion of the prosperity and well-being of the people, and the guarantee of compliance

with the principles, rights and duties recognized and enshrined in this Constitution. Education and work are the fundamental processes to achieve these goals. This article confers political, economic, and cultural power to the people, with the aim of harmonizing social classes, avoiding a dominant class and preventing poverty (Goig Martínez, 2014). According to section two of article 3, to implement this social mission, the State has the competence to intervene in the labor and education areas, which could include social security, health, housing, and other economic relations (*ibid*). This provision can also be interpreted as the obligation of the State to protect the weak and prevent the freedom of the strong from burdening the majority (*ibid*). The social aspect of the State is aligned with Hugo Chávez's idea of breaking down the traditional power forces and giving a voice to the lower classes of society. He wanted to reestablish a “true” democracy and put an end to decades of corruption and abuse of power.

Regarding the State of Law and Justice, the Constitutional Chamber of the Supreme Court has stated that it translates into “the fact that power is exercised only through legal norms, so that the law regulates all State activity and in particular that of the administration” (Goig Martínez, 2014). It also implies that the Constitution is the supreme norm, which serves for the judicial control of legality and establishes a hierarchy of norms that ensures the separation of powers and the recognition of rights (*ibid*). In this way, article 7 determines that the Constitution is the supreme law and the foundation of the legal system. All persons and the organs that exercise the Public Power are subject to this Constitution. This conception of the State of Law is common to many other countries, yet the Venezuelan case offers a different vision of justice. The Constitution includes a social justice approach based on distributive justice rather than the liberal version of commutative justice (Goig Martínez, 2014). This means that social welfare and justice are prioritized over economic freedom and individual rights as a way of to achieve a real egalitarian democracy (*ibid*). In practical terms, it could also be translated into the public social obligation to regulate the economy and society to guarantee fundamental rights and adequate living conditions (*ibid*). This conception comes back to what is stated in article 3, a people-based justice to ensure the dignity of all individuals. The social and law and justice factors of the state converge in the progressive recognition of human rights, including not only political but also economic rights, and ensuring the protagonist

character of *el pueblo* (Lugo Dávila, 2021). However, this only implies putting the values of justice and law above other values, without necessarily guaranteeing the rule of law (Goig Martínez, 2014).

The 1999 Constitution transforms the idea of democracy, accommodating the Bolivarian idea of the sovereignty of the people. It establishes a participatory and protagonic democracy, codified in article 5 in the following way: sovereignty resides non-transferably in the people, who exercise it directly in the manner provided for in this Constitution and the law, and indirectly, through suffrage, by the organs that exercise the Public Power. The organs of the State emanate from popular sovereignty and are subject to it. This idea is reinforced by articles 3 and 6, which remark that the people are the sovereign power of the state. The new conception of sovereignty is defined as unlimited and non-transferable, and its main objective is to ensure the fight against social inequality (Lugo Dávila, 2021). This is achieved through the free participation of the people in public affairs, including the formation, execution, and control of public management, as regulated in article 62. This provision also determines that this is the way to achieve the individual and collective protagonism of the people. To put this in practice, article 70 sets different means of participation and protagonism, such as the election of public officials, referendum, popular consultation, recall of mandate, legislative, constitutional and constituent initiatives, open town councils and citizens' assemblies, whose decisions shall be binding, among others; and in the social and economic sphere, citizen assistance, self-management, co-management, cooperatives in all their forms including those of a financial nature, savings banks, community enterprises and other associative forms guided by the values of mutual cooperation and solidarity. The popular referendum will be a key instrument for the Bolivarian project, since it enlarges popular participation, including issues of consultation, revocation, national sovereignty, and amendment of law (King, 2013). This regulation of participation directly affects political parties, as it reduces their power, for example, by prohibiting their financing with State funds, as stipulated in article 67 (Maingon, Sonntag, & Pérez Baralt, 2000). As mentioned before, one of objectives of Hugo Chávez was to move away from the liberal constitutional paradigm. Another example of this is the conception of participatory democracy in the 1999 Constitution, central to the Bolivarian project and reactionary to the traditional and

liberal ideas of popular sovereignty. Thanks to this conception of popular sovereignty, the people are not considered an object but a subject of public management, who participate and are protagonist at all levels of public affairs (Lugo Dávila, 2021).

Neo-Bolivarian constitutions are characterized by their ideological and aspirational content, what King denominates mission statement provisions. These provisions articulate core values and principles of the state (King, 2013). In the Venezuelan constitution, they are found in the preamble, provisions enunciating state principles and in articles codifying fundamental rights (*ibid*). The preamble enunciates: the people of Venezuela, in the exercise of their creative powers and invoking the protection of God, the historical example of our Liberator Simón Bolívar (...) establish a democratic, participatory and protagonist, multiethnic and multicultural society in a State of justice, federal and decentralized, that consolidates the values of freedom, independence, peace, solidarity, the common good, territorial integrity, coexistence and the rule of law for this and future generations. This paragraph links the constituent process (exercise of their creative powers) with the Bolivarian project (our Liberator Simón Bolívar), and then sets the basis for the new Venezuelan model (democratic, participatory and protagonist). A special attention is given to the context in which the charter is drafted, a period of economic crisis and political unrest (King, 2013).

As a consequence, many provisions highlight the hardship of the Venezuelan people and promise a better future (*ibid*). This aspirational character is not only reflected in the preamble and Title I (Fundamental Principles of the State), where constitutions usually tend to be more inspirational, but also throughout the articles of different thematic chapters. For example, within Title II, “Human rights and Guarantees”, Chapter V, “Social and Family Rights”, states in article 91 that every worker has the right to a salary sufficient to allow them to live with dignity and to cover the basic material, social and intellectual needs of themselves and their family; and Chapter IX, “Environmental Rights”, determines in article 127 that every person has the individual and collective right to enjoy a safe, healthy and ecologically balanced life and environment. Ideological and aspirational provisions can also be found within Title VI “Socio-Economic System”, where article 299 provides that the socioeconomic regime of the Bolivarian Republic of

Venezuela is based on the principles of social justice, democracy, efficiency, free competition, environmental protection, productivity and solidarity, to ensure comprehensive human development and a dignified and profitable existence for the community. Mission statement provisions are more ideological and political than enforceable, in this case, at the service of the Bolivarian project (King, 2013). Brewer-Carías (2013) denominates them “teleological declarations of principles and intent”. However, the fact that the Venezuelan constitution contains many provisions of this type is not anecdotal. They will take on a lot of importance because its values and principles will be used for legal interpretation, serve as substantive validity criteria, and be the legal basis for the activity of public bodies in the exercise of their functions (Goig Martínez, 2014).

King (2013) also describes Neo-Bolivarian constitutions as radical and with internal disharmony. In the Venezuelan Constitution it can be observed in the way it regulates the separation of powers. In theory, article 4 and 6 stipulate that Venezuela is a decentralized federal state. This system is reinforced and justified in article 158, which provides that decentralization, as a national policy, must deepen democracy, bringing power closer to the population and creating the best conditions, both for the exercise of democracy and for the effective and efficient provision of state tasks. According to article 136, power is distributed among the municipal, the state, and the national power, the later divided into legislative, executive, judicial, citizen and electoral. Thus, two new powers are included, which were not part of the 1961 Constitution (Cannon, 2009a). What makes the political power arrangement atypical is the disproportional distribution of power granted to each branch.

Title V, regulating the organization of the national public power, covers the legislative power on its first chapter, determining its competences. The main difference with the previous constitution is the elimination of the Senate, leaving a unicameral system, the National Assembly (Maingon, Sonntag, & Pérez Baralt, 2000). The drafters of the Constitution justified this decision by arguing that the upper houses reduce the decision-making power of the majority by leaving it in the hands of a few (King, 2013). Moreover, the functions of the National Assembly were extended to include the appointment of the

members of the National Electoral Council, the Supreme Court of Justice, the Office of the Comptroller General of the Republic, the Office of the Ombudsman, and the Attorney General of the Republic (*ibid*). However, the government control competences were reduced, especially the ones regarding the supervision of ministers (Maingon, Sonntag, & Pérez Baralt, 2000).

Regarding the executive power, the 1999 Constitution gives the president broader competences. These include the authority over the armed forces, power to declare states of emergency, competence to dissolve the National, power to appoint and remove officials whose designation is of his discretion, and competence to formulate the National Development Plan, referred to in article 236. Moreover, article 230 extends the presidential term limit from 5 to 6 years and allows direct reelection. These and other constitutional provisions strengthen the centralization of the state, contrary to what is stated in article 158. In addition, while direct democracy mechanisms enlarge the people's power, the 1999 Constitution grants broader power to the national executive, enlarging government competences (Cannon, 2009a). This foundational ambiguity between centralization and decentralization of power can be found in many other constitutional provisions (King, 2013). For example, article 162 states that the Legislative Power shall be exercised in each State by a Legislative Council (...) who shall proportionally represent the population of the State and the Municipalities. (...) The national law will regulate the regime of the organization and the functioning of the Legislative Council. In the same provision the decentralization of the legislative power is neutralized since the power and independence of state councils are taken away and brought back to the national level (King, 2013). The 1999 Constitution also shows internal disharmony when it removes exclusive competences of the states and municipalities and recognizes them to the central government instead (*ibid*). An example of this is the right to tax, which the 1961 Constitution granted to states and municipalities, and which is recognized to the national Public Power by the new constitution in article 156, section 12.

The 1999 Constitution does not majorly shift the economic model. Venezuela's economy has been dependent on the oil sector since long ago and, under the 1961 Constitution, it followed a mixed economic model. This implied that private initiative and a free-market

approach where balanced with some state intervention with the purpose of ensuring social justice (Maingon, Sonntag, & Pérez Baralt, 2000). Economic freedom, property rights and competition were allowed while the state adjusted the neoliberal economy (*ibid*). With the arrival of Hugo Chávez, the model did not change much, since the 1999 Constitution was adopted during a bad economic period. What it did change were the principles and values it was based on. The new fundamental charter aims at ensuring a radical egalitarian economy, which promotes the necessary conditions for rural development, and which generates employment and well-being, as provided by article 306. The strength of the new constitution is its commitment with social equality and a more rural approach (King, 2013). Moreover, this constitution continues to advance in the nationalization of hydrocarbon resources. Articles 302 and 303 determine that the State reserves for itself the oil activity and other industries of public interest, and that it will retain all shares of the state-owned oil company *Petróleos de Venezuela, S.A.* (PDVSA).

Even if this Neo-Bolivarian constitution tends to be radical, the 1999 charter regulates fundamental rights and freedoms in a liberal fashion (King, 2013). Compared to the 1961 Constitution, the new one expands the recognition of individual rights, both in number and depth (*ibid*). According to Goig Martínez (2014), the 1999 text is “the boldest, most complete and updated with respect to the preceding ones in the treatment of fundamental rights, as well as the institutions and mechanisms of protection and guarantee that are created in order to ensure the effectiveness of those rights” (Goig Martínez, 2014). It is especially relevant that second and third generation rights are explicitly included, like solidarity and indigenous people’s rights, including the right to determination, peace, environment, and new communication and information technologies, among others (*ibid*). Moreover, it also adds a gender approach, although more limited due to the influence of the Catholic Church (Maingon, Sonntag, & Pérez Baralt, 2000). This direct constitutional recognition of human rights responds to the affirmation of human dignity, freedom, equality, and justice, defining principles of the Bolivarian State (Goig Martínez, 2014). In this way, the preamble directly includes as State values “the universal and indivisible guarantee of human rights” and “the right to life, work, culture, education, social justice and equality without discrimination or subordination of any kind”. These bold statements

follow the tendency of the previous years, when Venezuela ratified most of the international human rights treaties (Goig Martínez, 2014). These include the Convention on the Elimination of All Forms of Racial Discrimination (1967), the two International Covenants on Civil and Political Rights, and on Economic, Social and Cultural Rights (1969), the Convention on the Elimination of All Forms of Discrimination against Women (1980), the Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment (1985), and the Convention on the Rights of the Child (1990)¹. Moreover, the recognition of economic and social rights also contributes to the Bolivarian project's objective of eliminating inequality and poverty (Goig Martínez, 2014).

The extensive and comprehensive regulation of fundamental rights is included in Title III "Human Rights and Guarantees, and Duties", and it is organized as follows. Chapter I includes general dispositions, mainly regulating the obligations of the state towards every citizen. For example, article 19 provides that the State shall guarantee to every person, in accordance with the principle of progressivity and without any discrimination, the inalienable, indivisible, and interdependent enjoyment and exercise of human rights. Article 23 extends fundamental rights to international treaties, pacts, and conventions; and articles 25 and 29 regulate the responsibility of the state regarding the protection of these rights. Chapter II covers nationality and citizenship. The following chapters each cover one of the specific categories of rights: chapter III of civil rights (43-61), chapter IV of Political Rights and the Popular Referendum (62-74), chapter V of Social and Family Rights (75-97), chapter VI of Cultural and Educational Rights (98-111), chapter VII of Economic Rights (112-118), chapter VIII Rights of Indigenous Peoples (119-126) and chapter IX of Environmental Rights (127-129)². What is more, the 1999 Constitution establishes a "principle of progressivity" which implies that the protection of rights not directly included in the text, but which are inherent to human dignity, must also be protected by the State (Goig Martínez, 2014).

¹ Dates in parenthesis indicate signature dates as determined by the United Nations Human Rights Treaty Bodies database:

https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=191&Lang=EN

² Numbers indicate the articles in the Constitution

As it can be observed, the regulation of fundamental rights in the Venezuelan Constitution is really extensive. At first glance this may seem very positive. However, this may entail the trivialization and devaluation of human rights. They are very detailed, their wording is dense, rhetorical, and reiterative (Goig Martínez, 2014). Their heterogeneity and inadequate classification imply granting the same hierarchical level to rights with very different content and value (*ibid*). For example, rights inherent to human dignity and patrimonial rights are placed on the same level. The consequences are negative, since rights lose value and effectiveness vis-à-vis the public authorities and private individuals, which could seriously jeopardize the protection of human rights (Goig Martínez, 2014). When the rights included in the fundamental charter are too many, it is not possible to guarantee the same protection for all of them, which makes the constitution a mere enumeration that is not very effective (*ibid*). In this case, moreover, many of the rights are difficult to realize and are too paternalistic since they assign to the State the development of individuals (*ibid*). This problematic will be studied and exemplified in later chapters.

Finally, the 1999 Constitution shifts how the armed forces are regulated. The 1961 succeeded in subordinating the military power to civilian power, which was later eliminated by the new charter (Maingon, Sonntag, & Pérez Baralt, 2000). This is crucial to avoid military uprisings and coups d'état that endanger democracy, the sovereignty of the people and the separation of the State, as experienced in Venezuela in the past. The regulation of the armed forces in the 1999 Constitution and the subsequent legal modifications will be analyzed separately in chapter two due to its relevance.

1.2. The degradation of the Bolivarian model in Venezuela and the consequent deconstitutionalization process

Hugo Chávez arrived in power with the objective of drastically changing the Venezuelan state model, to “safe” democracy from the “failed” capitalist economic system and representative democracy from the previous decades. Chavez embodied the revolutionary character of Simón Bolívar to implement his political project, as described above. However, what seemed to be a new beginning for Venezuelan democracy, this time participative and protagonist, turned into a fraudulent use of the Constitution, the

democratic institutions, and the will of the people. Despite the fact that the 1999 Constitution was enacted at the beginning of President Chavez's term and was intended to serve as the basis for implementing the Bolivarian Project, Chavez himself began to act outside the constitutional framework and to transform the initial Bolivarian project into a new socialist project.

This drastic change of course entailed a process of deconstitutionalization. In the case of Venezuela, this mainly implies modifying the basic principles of the state, reforming the constitution outside the constitutional framework, and taking over state institutions, like the Supreme Court and the National Assembly, among others (Brewer-Carías, 2013). The objective of the Chavista government was to change the form of the state to a Communal or Socialist State, but not through the existing procedures. This section will study this process of deconstitutionalization from a political and legal standpoint, to understand how the initial model created by the 1999 Constitution gradually deteriorated.

1.2.1. Political shift: the Communal State and 21st century socialism

Since the first appearance of Hugo Chávez in the Venezuelan political scene, he made it clear that his goal was to implement the Bolivarian project. The use of the term “Bolivarian” was linked to the revolutionary ideas of Simón Bolívar, who influenced politics all over Latin America. However, within Chavez's political project it was used more for political purposes and not so much as a reflection of Bolivar's political ideas (Brewer-Carías, 2013). Chavez’s ideological base was closer to Marx’s socialism, but the name Bolivar gave him a political and partisan leverage (*ibid*). It is important to highlight this fact since it will be relevant later on when analyzing the political shift more in depth. Ever since Chávez became president, everything related to the government was called Bolivarian, to profit from this revolutionary character (Brewer-Carías, 2013). In theory, his political agenda would develop around his idea of a new democracy, participatory and protagonic, and the Constitutional Social State of Law and Justice. Nevertheless, the official Bolivarian project he promised to follow, started to fade soon after the promulgation of the new constitution.

This unexpected political shift started to be visible right after the proclamation of the 1999 Constitution. Some days before its entry into force, on 30 December 1999, the Constituent Assembly sanctioned a decree on the “Regime for the Transition of Public Power”. This decision derived, according to the Constituent Assembly, from its “original and supra-constitutional power” (Brewer-Carías, 2010). Nevertheless, it actually came from the political eagerness to appoint relevant officials without any democratic control (*ibid*). The purpose of this decree was to put in practice the content of the new fundamental charter, and to do so, the Assembly dissolved the Congress elected within the former constitutional regime and created a new organ to replace it, the National Legislative Commission, until the new National Assembly would be elected in the 2000 election (Brewer-Carías, 2010). The decision illegitimately granted legislative powers to this organ, whose members were appointed by the Assembly and not popularly elected (*ibid*). Moreover, the Assembly appointed by decree the members of the Supreme Court, the attorney general, the public defender (ombudsman), and the directors of the National Electoral Council, most of them Chavistas (McCoy & Neuman, 2001). These appointments are of great relevance, since they constitute the figures in charge of the checks and balances, which were now politically undermined by chavismo. Thus, the first acts of the first mandate of Chávez (1999-2000) were carried out outside the framework of the 1999 Constitution and without any political and civil control (McCoy & Neuman, 2001). This goes directly against the strong commitment of Chávez to participatory democracy and the Social State of Law and Justice.

The constitutional deterioration continued during Chavez’s second mandate (2001-2006), with the phenomenon of the enabling laws, a resource used by the president to expand his executive power and speed up the process of implementing the new constitution, according to him (García-Guadilla & Mallen, 2019). The content and legal implications of the enabling laws will be analyzed in the following section. At the political level, the president's decision caused a great social uproar. In December 2001, violent protests broke out and the opposition started a campaign against the president’s acts (García-Guadilla & Mallen, 2019). The opposition’s argument was that the enabling laws followed an interpretation of democracy different to the one included in the 1999 Constitution (*ibid*), hence, contradicting the supreme law of the state and the will of the

people. In addition, according to the opposition, these laws were not based on liberal values and were only benefiting a part of the Venezuelan society (García-Guadilla & Mallen, 2019). The opposition and Chavez's supporters mobilized using both constitutional and extraconstitutional mechanisms, as a way to defend their opposing values, identities, and socio-political projects (*ibid*). The extraconstitutional mechanisms included streets protests and barricades, which lasted until 2003, when a general strike and a coup d'état from the opposition's side failed (*ibid*).

The increasing polarization between the two sides had a great effect on the political and democratic system. With the creation of the new constitutional state, the opposition was to have an effective role of democratic control of Chávez's power (Garcia-Serra, 2001). However, the system of checks and balances was, once again, attacked by the executive power. Chavez got rid of a potentially problematic legislative opposition by loosely interpreting the 1999 Constitution, which he made his own, and enlarging his executive competence to almost unlimited power to enact laws (Garcia-Serra, 2001). These facts reflect an important paradox. Chavez's (unconstitutional) actions are far from what Chavismo itself established in the Constitution. The fraud to the constitution, which may have been diffuse in the first years of Chávez's second term, became clearer towards the end of the 2000s.

A new stage of the Bolivarian Revolutionary Process began in the mid 2000s, a stage that focused on transforming the Constitutional State into a Communal, or socialist State (Goig Martínez, 2014). This drastic political shift aimed at promoting people's participation through organized communities (*ibid*). What seemed like the implementation of the notion of participatory democracy and the Social State, resulted in an ideologized political project out of the constitutional and liberal democracy framework. The Communal State had the commune as its fundamental unit, substituting the municipalities (Brewer-Carías, 2013). These communes were meant to be the expression of popular sovereignty, represented in communal councils (*ibid*). However, this structure is not supported by the 1999 Constitution, which bases popular sovereignty in representative democracy within a decentralized state with political pluralism (*ibid*).

To understand this political shift in the form of the State, it is necessary to analyze the steps taken by Chavismo in this respect.

One of the first political actions taken was the creation of the *Misiones Sociales* (Social Missions). These were a set of social policy initiatives intended to address social inequality, poverty, and unemployment (Buxton, 2020). They include health, education, housing, nutrition, and employment programs, with the objective of promoting economic inclusion and granting social rights (Buxton, 2020; Lugo Dávila, 2021). The problem of the *misiones* is that they are ad hoc administrative structures, out of the normal institutional framework (Ramos Pismataro & Ito C., 2016). Thus, they are directly ruled by the executive branch and benefit from a great deal of discretion (*ibid*). In the same spirit, the government created the communal councils (*consejos comunales*), regulated in the 2006 Communal Councils Law, as a direct application of popular participation. These councils had the duty of deliberating, designing, and delivering public services (Buxton, 2020). They were especially common in the *barrios* (popular neighborhoods), with over 120,000 councils by 2006 (*ibid*). The objective of the government was to create a new national identity through the participation and representation of the diversity of the country in these councils (*ibid*). The problem of these bodies was their lack of normativity: they were not directed by popularly elected officials, they were receiving public resources at the expenses of the already existing municipalities and states, and they did not have any sort of territorial autonomy (Ramos Pismataro & Ito C., 2016; Brewer-Carías, 2013). To control the activities of the councils and the misiones, the government created new ministries, like the Ministry of Popular Economy, centralizing the regional participation (Buxton, 2020). The impact of these institutions, free from any democratic control, on the stability of the Chavista regime will be further analyzed in chapter 2.

The creation of these new institutions reflects the establishment of a political and institutional order different from the one included in the 1999 Constitution (Casal, 2013). Although not directly breaking with the constitution, the actions taken by the government reflect a separation from the established form of state, moving towards the so-called Communal State (*ibid*). The goal of the central government was to dismantle the federal form of the state, centralizing the competences attributed to the states and municipalities

through the councils and the *misiones* (Brewer-Carías, 2013). Thus, Chavismo could interfere in regional and local politics without formal democratic control (*ibid*). What makes this movement of Chavismo a process of deconstitutionalization is the content and form of the changes. On the one hand, what was presented as popular participation, was in reality the interference of Chavismo in regional and local organizations. The communal system of participation was controlled by a ministry from the executive branch, thus breaking the principle of separation of powers (Brewer-Carías, 2013). Moreover, the members of these communities were not popularly elected but appointed by assemblies controlled by the official party and the government (*ibid*). Hence, eliminating the power of the people to elect their representatives, in effect going in the opposite direction of popular participation. On the other hand, these changes to the form of the state were made without any democratic control, as they were carried out by means of ordinary legislation. This point will be further developed in the next section. In this way, a state is created parallel to the constitutional state, controlled by Chavismo, and eliminating the sovereignty of the Venezuelan people (Brewer-Carías, 2013).

In addition to these new structural changes in the State, Chávez also introduced a new ideological base. The parallel state created by the new institutions was linked to what Chávez referred to as “21st century socialism” (Cannon, 2009a). After being reelected for his third mandate in 2006, he announced the new “Simón Bolívar National Project”, the baseline for the socialist agenda, which moves away from the first official Bolivarian project (Casal, 2013). The same year, Chávez announced the creation of the United Socialist Party of Venezuela (*Partido Socialista Unido de Venezuela*, PSUV). The main objective of the new party was to create unity among different Chavista political forces, with the aim of advancing the construction of the 21st century socialism (Cannon, 2009a). In the same lines, the government published in 2007 the Economic and Social Development National Plan 2007-2013, which focuses on the advancement of the protagonic democracy and a socialist production model (Casal, 2013). This national plan turns around the prefigured idea of “sociopolitical dissolution of the individuality in the collective” (*ibid*). In other words, the State will have the collective as the base for policies and measures, and not individual rights. In other words, human rights are relegated to a

non-priority status and are substituted by collective values for the shake of enlarging the notion of protagonic and participatory democracy (Casal, 2013).

Lastly, the realization of the 21st century socialist agenda and the deconstitutionalization process reaches a very worrying level with the Constitutional Reform proposal presented in 2007 by President Chávez. The reform proposed the establishment of a centralized state, modifying the organization of the public authorities (Casal, 2013). In the new distribution of power, the city and the municipality were the base for territorial and popular power, integrated in communities (*ibid*). As it can be observed, this directly connects with the notion of the Communal State. In this new scheme, communal councils where the expression of popular political participation and the base for the construction of socialism (Casal, 2013). This reform proposal moves away from the traditional model of the State, which has the sovereignty of the people and the division of powers as its fundamental principles and establishes socialism as its founding base. In this way, political pluralism and decentralization are undermined, fundamental in the 1999 Constitution (Casal, 2013). Chavez wanted the new constitution to serve him as the foundational base for the new socialist revolution (Casal, 2013), as he did with the Bolivarian Revolution and the 1999 Constitution.

The promulgation of a new constitution to legitimize the actions of the executive branch of government is not a new phenomenon; there are precedents of other presidents using it to stay in power and act in an authoritarian manner, in Venezuela and in many other countries. Nevertheless, this attempt to move towards authoritarianism failed. The reform proposal was submitted to popular vote on 2 December 2007 and 55.9% of voters rejected it, with a 60% turnout, despite its approval by the National Assembly (Casal, 2013). This political loss was very significant, given that the Constitution stipulates that in this case, not only can the reform not be implemented, but also its approval cannot be attempted again during the same constitutional period (López Maya, 2018). Hence, Chavismo had two options at this point: respect the referendum result and abandon the proposed reform model because it would go against the 1999 Constitution; or go ahead with the new state model, in a surreptitious manner (*ibid*).

The reality is that, from this moment on, the process of deconstitutionalization does nothing but deepen. President Chávez declares the end of a transitional period and the start of a “new era” (Casal, 2013). The steps taken until 2007 are a clear sign of the deterioration of the Constitutional State and, in consequence, the promotion of the new socialist model, violating the fundamental principles of the 1999 Constitution (*ibid*). The next section will analyze the legal actions taken by Chavismo to advance on the new form of state, the Communal State, and the new political project, the 21st century socialism.

1.2.2. Legal shift: the reform without reforming the constitution

The deconstitutionalization process, which started to be visible with the political actions taken by Chávez in the mid-2000s, became much more evident with the legal reforms made by the executive and legislative branches of the State in the same decade. The next section will illustrate how the State model established by the 1999 Constitution was reformed without actually reforming the fundamental text. This reform strategy illustrates the fraud to the constitution, and more concretely to the legal reform process, the separation of powers and the respect for the will of the people.

The main way in which Chavismo achieved to change the legally established form of State without following a reform process was the phenomenon of the Enabling Laws (*Leyes Habilitantes*). Formally, this instrument consists in legally granting the president legislative powers, as regulated in the 1999 Constitution. This expansion of executive powers is also contemplated in the constitutions of five other Latin American states (Garcia-Serra, 2001). For this delegated legislative authority to be constitutional, the enabling law must be limited in scope and duration (*ibid*). Nevertheless, Chávez abused this instrument to blur the separation of powers and grant him almost unlimited power. The first enabling law dates from April 1, 1999, at the beginning of Chávez's first term of office, and it was based in the previous constitutional framework (Buxton, 2020). The aim of this law was to grant the president power to legislate over financial and tax matters for six months, which he used to reform the taxation system (*ibid*). Soon after, in November 2000, the National Assembly approved the second enabling law, which allowed the president to legislate on issues related to society, infrastructure, personal and

legal security, science and technology, and the civil service (Garcia-Serra, 2001). As it can be observed this wide range of areas allow the president to rule almost over everything, granting him almost unlimited power (*ibid*). The Enabling Law of 2000 does not follow the legal requirement of limited scope and duration, which serves as a safeguard of the separation of powers. This is a first sign of unconstitutionality. Right before the expiration of this law, Chávez passed 49 decree-laws on critical issues. For instance, he imposed a 51% state participation in oil companies and increased its taxes; he favored local fishers by placing restrictions on commercial fishing; and allowed for the expropriation of private land and its redistribution to local farmers, among other things (Buxton, 2020). These reforms were in line with a new “social economy” system, aligned with the 21st century socialism.

Chávez was extremely criticized by companies and the middle class for the effect these laws had on the national economy, which reduced competitiveness and market freedom (*ibid*). In the same way, people close to Chávez moved to the opposition due to the anti-democratic and anti-constitutional nature of these decree-laws (*ibid*). The 1999 and 2000 Enabling Laws show how the separation of powers and the sovereignty of the people were becoming increasingly blurred. These decisions were not following the ordinary legislative procedure, which includes legislative debate and approval by the National Assembly (Garcia-Serra, 2001). This was a way of dismantling the system of checks and balances by eliminating the power of the legislative branch (McCoy & Neuman, 2001). In real terms, these laws eliminated the opposition's ability to exercise any kind of power and democratic control over Chavismo (Garcia-Serra, 2001).

Despite the criticism, President Chávez asked the National Assembly for a new enabling law in 2007, right after the failure of the Constitutional Reform proposal. His aim was to implement the provisions included in the reform proposal, but without going through the corresponding legal reform procedure, which was not feasible. The 2007 Enabling Law approved by the National Assembly in November of the same year granted the president power to legislate over economic, social, territorial, scientific and defense matters, and control over transports, popular participation, and state institutions for 18 months (Brewer-Carías, 2013). During this time, the Executive enacted various decree-laws with the form of Organic Laws, including the 2007-2013 Economic and Social Development

National Plan, Farming and Food Security and Sovereignty Law, Popular Economy Promotion and Development Law, Access to Goods and Services Persons Defense Law, Communal Councils Law, Popular Power Law, and Public Administration Law, among others (*ibid*). All of them go in the same direction: concentrating public power competencies at the national level, dismantling the federal form of the State, and intervening in local and regional affairs (*ibid*). These fundamental changes alter the model established by the 1999 Constitution and directly implement Chávez's reform proposal, which did not have popular backing, and therefore is not legitimate. The deconstitutionalization process did not stop here. It continued in late 2010, when the National Assembly sanctioned a set of organic laws which defined the legislative framework to create a new form of State (Brewer-Carías, 2013). They included the so-called communal state laws: the Popular Power, the Communes, the Communal Economic System, the Public and Communal Planning, Local Council Public Planning laws, and the reform of the Organic Law of Municipal Public Power and the Public Policy Planning and Coordination of the State Councils (*ibid*). These laws regulate a socialist, centralized, and military State, known as Communal State (*ibid*). It was clear that these new laws by-passed the 1999 Constitution and created a new parallel state, rejected by the people in the 2007 referendum.

In a democratic state under the rule of law, as defined by the 1999 Constitution (“State of Law and Justice”), the acts of the executive and legislative branches would be controlled by the judicial branch, as determined by the system of checks and balances. Indeed, sections 1 and 3 of article 336 of the Constitution grant the Supreme Court competence to “declare the total or partial nullity of national laws and other acts with the rank of law” issued by National Assembly or the National Executive, “which collide with this Constitution”. Nevertheless, this system of democratic control ceased to be operative in Venezuela. Most of the laws enacted under the different enabling laws have been challenged before the Constitutional Chamber of the Supreme Court of Venezuela on the ground of its unconstitutionality (Brewer-Carías, 2013). However, the Supreme Court has never ruled on the matter, which makes deconstitutionalization more acute (*ibid*). The inaction of the Constitutional Chamber was worsened by the decision taken by the Court in 2008. The Decision No. 565 modified the content of a constitutional provision by making regional and local competencies not exclusive to the states, but concurrent with

the national government (Brewer-Carías, 2013). Not only is this interpretation not compatible with the constitution, but it reforms the constitution without considering the will of the people. The behavior of the Supreme Court does not correspond to the rule of law expected of a democratic state. What is more, the judicial branch does not fulfill its role of judicial review and constitutional control of the other two branches. Something that may justify this behavior is the 2004 Organic Law of the Supreme Court, which increases the number of judges and expands its budget (Casal, 2013). This law was clearly partisan and influenced by Chavismo, so it was highly unlikely that these judges would rule against laws that expanded Chávez's power.

In conclusion, the fraudulent use of the Constitution by the executive and legislative powers shows how the purpose of these laws was to establish the Communal State. Instead of following the legal procedure to change the form of the State, reforming the constitution, the government and the National Assembly passed laws bypassing the constitutional structure of the State, i.e., representative democracy, separation of powers and the rule of law. In other words, the sovereignty of the people was no longer represented in the National Assembly, since it was captured by Chavismo, and the opposition had no space for action. The legislative and executive powers could not be differentiated, the enabling laws and decree-laws gave almost all power to the president. And finally, the Supreme Court was no longer functional, it served the interests of chavismo instead of preserving the Constitution.

All the aforementioned legal changes, added to the political shift analyzed above, result in the constitutionalization of 21st century socialism. Moreover, the fashion in which these legal and political changes are carried out leads to a process of deconstitutionalization. These two facts transform Venezuela into an illiberal democracy. All decisions made by Chavismo since 1999 have led Venezuela to where it is today. The process of deconstitutionalization allowed Hugo Chavez to design a state at his will. Thus, he transforms Venezuela into a Communal State where he maintains his power thanks to the militarization of politics and social control.

CHAPTER 2. THE ROLE OF THE MILITARY IN THE CHAVISTA REGIME

First and foremost, the close relationship between Hugo Chávez and the Armed Forces was notorious from the beginning. The fact that he was a member of the army, as a lieutenant colonel, and his participation in the 1992 coup d'état made clear his connection with the armed forces from the beginning. Chávez repeatedly justified the failed coup as legal and he transformed the rebel political organization in charge of it, *Movimiento Quinta República* (Fifth Republic Movement), into what it is today the *Partido Socialista Unido de Venezuela* (United Socialist Party of Venezuela, PSUV) (Trinkunas, 2006; Buttó, 2013).

The closeness between Chávez and the Armed Forces extended to the government and became characteristic of the Chavista style of doing politics. The government formed after the 1998 election was categorized by many scholars as a personalist civilian-military government, dependent on Chavez's charisma and the support of the armed forces (Jácome, 2018). Thus, the President wanted to give a key role to the military. To do so, he changed the regulation of the armed forces in the constitution, included its members in political affairs and relied on them to control civil society. This process is denominated “militarization of politics”. This chapter will analyze it to understand how the Chavista regime was installed in Venezuela and how it has managed to stay in power avoiding any kind of democratic control.

2.1. The politicization of the Bolivarian Armed Forces

To understand how the militarization of politics took place in Venezuela, one must first analyze the reverse process: the politicization of the armed forces. From the beginning of Chavez's mandate, he made it very clear that he wanted to give the armed forces a different role, more political than before. However, this approach does not align with the principles of liberal democracy, what we understand today as the democratic standard. According to the liberal democracy theory, the armed forces should be under the control of democratically elected civilian authorities (Özbudun, 2007). The aim is for the armed forces to respect the adopted democratic principles and fundamental rights of the state, to

prevent possible revolts against democratic power, and to ensure the respect of human rights and fundamental freedoms. This can be ensured by an “objective civilian control” of the armed forces, concept introduced by Samuel Huntington in the 1950s, which entails maximizing the professionalization of the military (Özbudun, 2007). This is the opposite of “subjective civilian control”, which happens when the armed forces are civilized (*ibid*). This means that the division between the state and the armed forces is blurred, and the latter becomes a reflection of the former, ceasing to be an independent body. To achieve an objective civilian control, the armed forces must be an autonomous and politically neutral professional military body (Özbudun, 2007). From this standpoint, the following section will present how the armed forces are regulated in the 1999 Constitution and subsequent laws. In addition, the new role that Chávez wanted to give to the armed forces will be illustrated. Lastly, the process of militarization that Venezuelan democracy has undergone will be analyzed, in order to understand the current status of the State as an authoritarian regime.

2.1.1. The regulation of the Armed Forces in the 1999 Constitution and its implications

As previously mentioned, the 1999 Constitution was a turning point for Venezuela in many ways, and for the armed forces too. The fundamental text, designed by Chávez himself, provided the legal basis for a broad expansion of the role of the armed forces (Trinkunas, 2006). Title VII on "Security of the Nation", Chapter III "of the National Armed Forces" describes the role of this military body and assigns its competences. Article 328 states that “the National Armed Forces constitute an essentially professional institution, without political militancy”. In theory, this provision aligns with the previously mentioned principle of objective civilian control. However, the same article adds that the National Armed Forces will also cooperate “in the maintenance of internal order” and “have active participation in national development” (Venezuelan Constitution, 1999). This implies a new role for the Armed Forces, not necessarily included in the traditional defense role. The lack of specificity in this provision gives the National Armed Forces a wide margin of action within the State. Moreover, article 329 grants the Armed Forces the right to carry out administrative police and investigative activities. This provision also expands the jurisdiction of the Armed Forces beyond the traditional role.

Regarding political neutrality, it is particularly striking how the Constitution stresses the political independence of the National Armed Forces. Article 328 establishes that the Armed Forces, "in the performance of their duties, are at the exclusive service of the Nation and in no case of any person or political partiality". Article 330 grants "the right to vote in accordance with the law" for active members of the armed forces. However, they are "not allowed to run for elected office, nor to participate in acts of propaganda, militancy, or political proselytism". The 1999 Constitution, compared to the previous one, expands the exercise of political rights of members of the armed forces, allowing them to vote. But it makes it clear that they cannot exercise their work in favor of any person or political party. Theoretically, these provisions prevent the armed forces from being the support of a government or a president.

Moreover, article 236 grants the presidents the power "to direct the National Armed Forces in his capacity as Commander-in-Chief, to exercise the supreme hierarchical authority thereof and to fix its contingent" (section 5), and the competence to "exercise the supreme command of the National Armed Force, to promote its officers from the rank of colonel or captain, and to appoint them to the positions that are exclusive to them" (section 6). In principle, these provisions do not pose any problems. There are other countries, categorized as liberal democracies, that follow this model, such as the United States of America, where the independence of the army is not questioned. However, this formal regulation of the independence and professionalism of the National Armed Forces clashes with what happens in practice, as will be explained later.

The new regulation of the armed forces in the 1999 Constitution has major implications for Venezuelan politics and democracy. Especially due to its ambiguous, vague, and not very concrete wording. First, the National Armed Forces were defined as an institution organized by the State for active participation in national development, among other functions and objectives. This implies that the armed forces can legally participate in the efforts that lead to comply with the provisions of the constitution in areas such as the economy or the development of society (Buttó, 2013). Thus, the National Armed Forces are a body with authority and capacity to develop and/or implement public policies, hand in hand with the government (*ibid*). Along the same lines, the fact that the constitution only prohibits "political militancy" leaves much room for military officials to engage in

partisan activities (Trinkunas, 2006). With the entry into force of the 1999 Constitution, the armed forces are transformed into a political actor, leaving aside their professional and politically neutral role.

Second, the system of checks and balances is jeopardized by the regulation of the armed forces in the 1999 Constitution. On the one hand, a new Joint Chiefs of Staff is created under the command of the president as commander in chief (International Crisis Group, 2011). This entails the unification of command structures and the reinforcement of executive control over the military (*ibid*). On the other hand, article 236 reduces legislative control of the armed forces, eliminating the power of the legislative branch to approve military promotions, leaving this task entirely in the hands of the armed forces and the president (Trinkunas, 2006). Thus, control over the executive power of the president has been removed and, as a result, the military is more likely to align itself with whichever political party is in government (*ibid*). The autonomy of the armed forces is thus highly weakened.

Third, the principle of civilian control of the armed forces is not fulfilled in Venezuela. Civilian control implies that the armed forces are not political actors and that they are subordinate to civilians, as a guarantee of a true democracy (Buttó, 2013). This would include that the activities of the armed forces are supervised by the executive, legislative and judicial powers, in addition to civil society and the media (Jácome, 2018). This can be achieved with "civilian leadership in the ministries of defense and interior and in the intelligence bodies; budgetary and policy control, supervision and oversight by the legislative branch; and the establishment of clear mechanisms to exercise civilian authority over the role, mission and performance of the Armed Forces", as well exemplified by Jácome (2018). It is true that in most Latin American countries the president is the commander in chief but does not exercise operational control of the armed forces. However, in Venezuela the operational command is held by the president, and the administrative command by the ministry of defense, which since 2002 has been mainly held by military officials, in office or retired (International Crisis Group, 2011). This fact is especially relevant, since there is evidence in the Latin American region showing that authoritarian regimes can emerge within a formal democratic framework, but with personalistic and caudillo-like governments or based on the Armed Forces as a source of

abusive use of power (Jácome, 2018). This is especially worrisome in the case of Venezuela.

In addition to the constitutional regulation, the role of the Armed Forces was expanded by the Organic Law of the Bolivarian National Armed Forces (hereafter, LOFANB, its acronym in Spanish). This law was enacted in 2008, as a presidential decree with rank, value and force of law, after the failed attempt of the President to reform the constitution. As happened with the enabling laws, the Chavista government managed to implement some of its reforms without going through the corresponding constitutional reform procedure. The LOFANB responds to Chávez's strategy of transitioning to the socialism of the 21st century. In addition to structural and institutional changes, this law modified the official name of the armed forces by adding the word "Bolivarian". As previously explained, one of Chávez's strategies was to add this word to evoke feelings in the people. It also implies that the armed forces were now part of his political project (Jácome, 2018).

The LOFANB reassures the expanded role of the armed forces and defines somewhat more precisely the areas of competence of the army under the mandate to "contribute to national development". Article 4 establishes the functions of the Bolivarian National Armed Force. Section 6 defines one of its functions as "to support the different levels and branches of the Public Power in the execution of tasks related to the social, political, cultural, geographic, environmental and economic spheres". Section 7 adds that the armed forces are responsible for "contributing to the preservation or reestablishment of internal order in the event of serious social disturbances, subject to the decision of the President of the Bolivarian Republic of Venezuela and Commander-in-Chief of the Bolivarian National Armed Forces". As it can be observed, this provision grants the armed forces a very political role in the execution of government policies and measures. Furthermore, the powers to preserve internal order may give the armed forces a great power to repress the opposition and control civil society.

The LOFANB also reforms the internal organization chart, ranks and promotions. All of these are left in the hands of the joint command and the president as commander-in-chief, who has the supreme command of the Bolivarian National Armed Forces, directs the overall development of the operations, and activates the operation scenarios for territorial

defense (Buttó, 2013). Moreover, the LOFANB introduces an educational function within the armed forces. Military education is oriented to deepen and accelerate the conformation of the “New Venezuelan Military Thought” (LOFANB, 2008). The preamble of the law determines that “it must take as inspiration the philosophical bases and the Venezuelan educational and social thought of Simón Bolívar”. This clearly shows the alignment of the armed forces with the socialist project that Chávez wants to implement.

All the above is in line with the content of the Constitution and defines more precisely the new role of the armed forces. However, this law is especially relevant because it introduces a new body: the Bolivarian National Militia. This is the fifth component of the National Bolivarian Armed Forces, in addition to the Army, Navy, Air Force and National Guard, included in the Constitution. Article 43 of the LOFANB defines it as “a special body organized by the Venezuelan State, made up of the Military Reserve and the Territorial Militia destined to complement the Bolivarian National Armed Force in the Integral Defense of the Nation, to contribute to guarantee its independence and sovereignty”. The preamble of the LOFANB specifies that this body arises from the principle of co-responsibility derived from the model of social, participative and protagonist democracy outlined by the Constitution (LOFANB, 2008). This implies that the mission of defending the integrity of the territory is not only the role of the National Bolivarian Armed Forces, but also of society as a whole, as part of the Bolivarian National Militia (*ibid*).

As for its mission, the militia will train, prepare, and organize the Integral Defense to complement the Bolivarian National Armed Forces in terms of operational readiness, and will contribute to maintain internal order, security, defense, and the integral development of the nation, as determined by article 44 of the LOFANB. The preamble adds that the militia will act in any hypothesis of conflict to ensure the independence, sovereignty, and integrity of the geographic space of the Nation (LOFANB, 2008). Article 45 specifies that “the Territorial Militia is constituted by the citizens who voluntarily organize themselves to fulfill the functions of Integral Defense”. This civil-military body directly responds to the President as commander-in-chief of the armed forces for all operational matters, and to the Minister of Defense for administrative matters, as determined by article 43 of the LOFANB. Regarding its internal organization, it follows the same

structure as the armed forces, but all its members are volunteers (Buttó, 2013). Moreover, in many cases civil servants must be part of the Bolivarian Militia, which for many scholars it implies to believe in the ideology of Chávez's political project (*ibid*).

It is worth analyzing the organization of the Bolivarian Militia. On the one hand, the Territorial Militias are created at the community level, linked to the communal councils, which report directly to the president (International Crisis Group, 2011). On the other hand, the Combatant Corps are created with employees from public and private institutions (*ibid*). There are various of these. For instance, the Ministry of Women and Gender Issues formed a combat corps with around 1,200 women in July 2010 (International Crisis Group, 2011). Moreover, President Chávez created economic sector bodies, like the peasants or workers militia (*ibid*). These bodies are made up of state-owned workers who, in theory, enroll voluntarily. However, there are known cases of coercion to enlist or not to hire people who are not part of the Bolivarian Militia (International Crisis Group, 2011). It is shown here how chavismo invades different spaces, such as the social and economic spheres, to impose the Bolivarian project.

The creation of the militia is one of the factors that have caused the armed forces to move away from the principle of civilian control, professionalism, and political neutrality. This is not a professional corps, as its members are civilian volunteers and they are poorly trained (International Crisis Group, 2011). While the potential danger posed by civilians having access to professional weapons should not be underestimated, it appears that the militia serves primarily to indoctrinate the people, secure electoral support, and intimidate the opposition (*ibid*). To make matters worse, there is no transparency about the militia, as official and unofficial information differs, especially in terms of the number of members that compose it. According to governmental data, “the militia is formed by hundreds of thousands of people in capacity to serve as reservists (Gobierno Bolivariano de Venezuela, 2018). In 2020, President Maduro stated that the Bolivarian Militia was composed by more than 4,000,000 people (Europapress, 2020). However, International Crisis Group (2011) has determined that the current membership estimate is 300,000 to 800,000. What is clear is that the Bolivarian Militia may have more members than the professional Armed Forces themselves; government data indicate 150,000 members,

while unofficial data indicate 137,000 (Gobierno Bolivariano de Venezuela, 2018; Global Fire Power, 2022).

All this ambiguity and lack of transparency surrounding the Bolivarian Militia has meant great discontent for the professional military. They complain that there is a military group that is not under the official command of the armed forces, because it generates mistrust in the institution and casts doubt on the professionalism of the military elite (International Crisis Group, 2011). Moreover, they do not approve of ordinary citizens being officially part of the armed forces (*ibid*). The fact that there is no control over recruitment further deprofessionalizes the corps and puts at risk the possibility of a coup d'état due to lack of control (*ibid*). Nonetheless, for President Chávez, the militia, together with the rest of the Bolivarian National Armed Forces, is the military arm of the Bolivarian Revolution (Buttó, 2013). This fact has been denounced as it appears that the armed forces are the president's private army (International Crisis Group, 2011).

The above also implies an imposition of the socialist ideology on the military institution and on society as a whole. Hugo Chávez affirmed that the military who do not believe in the socialist ideology should be removed from the Armed Forces (Buttó, 2013). In this sense, he made them repeat the slogan “Homeland, Socialism or Death” (*Patria, Socialismo o Muerte*) (*ibid*). In the same way, Chávez defined the Armed Forces as Bolivarian, revolutionary, anti-imperialist, socialist and Chavistas; which shows how the military institution directly identifies with the President (*ibid*). This is what Jácome (2018) defines as “military socialism”, the use of the Armed Forces for political purposes which moves away from the principle of civilian control. Moreover, this use of the armed forces violates article 328 of the 1999 Constitution, which states that “the National Armed Forces constitute an essentially professional institution, without political militancy”.

2.1.2. Political participation of the Armed Forces

As the previous section has shown, the Bolivarian National Armed Forces had a new political role thanks to the new constitutional regulation given by Hugo Chávez. This legislative change had major consequences for democracy in Venezuela. The political participation of the Armed Forces brought with it a process of militarization of politics,

and of democracy in general as well. The aim of this section is to exemplify the political participation of the Armed Forces to understand its consequences on the quality of democracy, and to show how Venezuela was transformed into a military regimen based on its new constitutional system.

The previous constitution, the one from 1961, explicitly prohibited being civil and military authority at the same time, as stated on its article 131 (Buttó, 2013). However, this prohibition was eliminated by the 1999 Constitution, so that members of the Bolivarian National Armed Forces could occupy positions in the public administration without restrictions. (*ibid*). Moreover, the most recent constitution and subsequent laws reinforced the notion of a civic-military alliance, especially in the defense, security, and development areas (International Crisis Group, 2011). In practical terms, President Chávez wanted to leverage his close relationship with the Armed Forces to gain power by giving the military key positions, which could help him sustain his power and gain more control. Therefore, the military has a central role in carrying out what Chávez determined as the Bolivarian Project, giving the Armed Forces a role in national politics.

This was executed mainly through the assignment of civil service positions to members of the armed forces and the active participation of military officials in social and economic projects (International Crisis Group, 2011). For instance, between 1999 and 2010, 720 important government posts were occupied by military officers (Buttó, 2013). When a military officer is appointed to such a position, they normally hire more military members for their team, which leads to a significant growth in the number of military personnel in the civil service. Thus, according to Buttó (2013), the number 720 must be multiplied by four. Chávez's administration was characterized for its reliance on military officers, both on active duty and retired, for high level governmental positions (Trinkunas, 2006). Middle-ranking administrative positions traditionally held by civilians were also transferred to the military, such as tax collection and customs posts (*ibid*). What is more serious is that in 2000, Chávez encouraged active members of the Armed Forces to run for elections on his party's ticket (*ibid*). From this moment on, the inclusion of members of the Armed Forces in politics became commonplace. This clearly violates article 330 of the Constitution, which determines that members of the military cannot run

for elected office. The military have held positions as important as the presidency of the National Assembly, the presidency of the national oil company, PDVSA, or as judges of the Supreme Court (Buttó, 2013).

This implies that members of the armed forces make the main decisions on issues such as security, the economy and development, thus moving them away from their traditional defense role. This is especially visible in the choice of ministers. Important portfolios such as homeland, defense, justice, land, housing, energy, water, or mining have been occupied by high-ranking military officials in the last legislatures. In 2016, 30 per cent of the ministers were military members (Gran Galvís, 2022). This is what Finer defines as “military colonization”, a procedure by which “the military have spilled over from the strict armed-service hierarchy into political parties or trade unions, government corporations, or civil bureaucracy” (Buttó, 2013). In addition to the fact that this goes against fundamental principles such as the separation of powers or civilian control of the armed forces, it implies greater control of civil society, as will be explained below.

Chávez created a strategy to reach the people that proved to be very efficient. To alleviate the situation of the most disadvantaged people, he created social programs aimed at offering basic goods and services to the population. The crucial point was that these were carried out by active members of the Bolivarian National Armed Forces. The best example is Plan Bolívar 2000, in which the military was tasked with infrastructure refurbishment and construction of schools and houses, distributing food, combating illiteracy, and managing health programs for thousands of people (Buttó, 2013; Trinkunas, 2006). Examples of this Plan Bolívar 2000 are the use of soldiers to sell basic products at very low prices to the lower classes; the use of the air force to provide low-cost air transportation between rural areas, known as *Rutas Sociales* (Social Routes); or the use of the navy to help the fishing industry (Trinkunas, 2006). The use of the military in these types of civilian activities has several consequences. First, the expansion of military jurisdiction and the reduction of civilian capacity to design and execute public policies (Trinkunas, 2006). Second, the replacement of the regional and municipal governments (*ibid*), with the loss of democratic power that this entails. And thirdly,

corruption derived from irregularities in the execution of social programs, such as the diversion of funds or influence peddling within the Armed Forces. (Trinkunas, 2006).

This is due to the lack of civilian control over the Armed Forces, which added to the expansion of their functions, led to an increase in the political and economic ambition of its members. This resulted in the involvement of the military in criminal acts, drug trafficking and organized crime. Judicial and extrajudicial investigations have proven the involvement of high-ranking Venezuelan officials in drug trafficking cases. Venezuelan military and politicians have been accused of collaborating with Colombia's FARC guerrillas in cross-border drug sales (International Crisis Group, 2011). Corruption and impunity in the middle and lower ranks is facilitating organized crime operations throughout the country (*ibid*). These actions are often seen as acts of loyalty to Chavismo, which are causing young military personnel to become involved in these criminal activities in order to gain better positions through bribes and rents from oil and illicit businesses (*ibid*). This in turn has led to the deprofessionalization of the military bodies, thus having an absence of ethics, values, and principles within the sector (Jácome, 2018). Nevertheless, not all members of the Armed Forces act and believe this way. A considerable number of high-ranking officers have retired in recent years as a sign of discontent, due to the great deprofessionalization and loss of formality of the Armed Forces (International Crisis Group, 2011). Some of these were former allies of the President and have ended up in prison as a way to silence or punish them (*ibid*). To try to calm the situation, in 2010 the military's salary was increased by 40% (*ibid*).

What scholars conclude from this is that President Chávez's relationship with the Armed Forces is very complex, since his belonging to them has generated a relationship of loyalty towards him, which he then returns to them with a context of impunity to commit those crimes and thus benefit themselves as well. Besides this lucrative bilateral relationship, Chávez utilizes the Armed Forces to guarantee his power and to have a direct control of the people. The Armed Forces have served Chavismo and the President as internal police to maintain internal security. The military has silenced the opposition, carried out intelligence tasks against it, and repressed social protests (Jácome, 2018). All with the objective of controlling society and maintaining power. This was achieved thanks to the

bilateral relationship created between the Armed Forces and the Chavista Government, based on loyalty, which translated into the participation of the military in Venezuelan politics. In the words of Army General Henry Rangel Silva in June 2011, the Bolivarian National Armed Forces were completely loyal to the President and would not accept the triumph of any political party opposed to Chávez in the 2012 elections (Buttó, 2013). This meant in practice that the Armed Forces had the power to control politics in Venezuela, from electoral decisions to the daily practice of public administrations (*ibid*). Consequently, the military began to have much more power than civilians. Political parties no longer compete democratically for power and citizens no longer have any control over Venezuelan democratic structures. This directly contradicts the basic tenets of Bolivarianism: participatory and popular-based democracy.

The political participation of the Armed Forces takes different forms, but all of them aim at the same thing: the construction of a military government. What makes Venezuela different from other military regimes in the region is that it has not been done by force, with a coup d'état, for example, but through elections and the introduction of the military in civilian institutions (Buttó, 2013). This implies that the Venezuelan government does not govern democratically despite having been elected by the people (*ibid*). To get to this, it resorted to the politicization of the Armed Forces, as explained above, and consequently, to the militarization of democracy, as it will be explained below. This was not done overnight, but in a subtle and strategic manner. These two processes make it possible to say that Venezuela has a military government.

2.2. Militarization of democracy: parallel institutions

In order to maintain control of civil society, avoid losing power and create a lasting regime, Hugo Chávez resorted to the Armed Forces. As it has already been explained, based on the 1999 Constitution, he conferred the Armed Forces a new political role: maintenance of internal order and active participation in national development. Accordingly, the new Bolivarian National Armed Forces became the perfect ally for Hugo Chávez to remain in power. This led to the militarization of political institutions and the fraudulent use of democratic tools with the aim of destroying the preexistent constitutional democratic system.

From the start of the Bolivarian Revolution in 1999, Venezuela has suffered a gradual and incremental de-democratization, from a participatory and popular-based democracy to an authoritarian and militarized government today (Tremaria, 2022). This de-democratization process is closely linked to the militarization of the government and society, which resulted in the fraudulent use of the Constitution and the violation of fundamental rights. This was achieved through the debilitation or elimination of democratic institutions and the deterioration of the principles of democratic governance (Tremaria, 2022). This section will attempt to explain the way in which President Chávez used the military to create a set of institutions parallel to the constitutional and democratic order, with the objective of having direct control civil society and acting out of any kind of democratic control.

The creation of parallel institutions involves creating new institutions that already exist in the administrative organization of the State, which carry out functions associated with the original administrations. They are characterized by employing active military officers and acting outside the existing legal framework. In this way, a complex institutional structure is created which cohabits with the traditional structure and gives rise to a duplication of administrations (Ramos Pismataro & Ito C., 2016). These new parallel institutions are given the task of executing policies considered fundamental for the advancement and durability of the Bolivarian Revolution (*ibid*). Given that these parallel institutions made use of the military, it is called a process of militarization of government, society, and democracy. It took place on three levels or areas: public administration, territorial entities, and security and defense.

Before beginning the analysis of the militarization process on the three levels, it is important to highlight the relationship that these parallel institutions have with the creation of the Communal or Socialist State. The original idea of Chávez was to create a "State of People's Power", based on the democratic participation of the people through organized communities and connected to a set of economic, social, and political reforms oriented towards a socialist form of State. The problem with the Communal State is not the idea itself, but the way it was implemented. Venezuela at that time was a Constitutional, Democratic and Rule of Law State according to the 1999 Constitution.

This meant that the form of State reform processes had to be done under this legal framework. However, since President Chavez did not receive the required political and social support, he carried out this important change in parallel to the constitutional order. This, once again, was done with the use of the Armed Forces in the new parallel institutions.

Below, the process of militarization of democracy in Venezuela is analyzed in three levels or areas. It is important to understand that this is a very controversial topic, and the information is quite polarized on the subject. Any research on parallel institutions is conditioned by a permanent political, ideological, and even academic controversy (López Maya, 2018). This means that information is sometimes scattered and biased (*ibid*). With this in mind, the structure of parallel institutions created by Chavismo will be analyzed from the standards of liberal and constitutional democracy, based on the rule of law, separation of powers and democratic control.

2.2.1. Public Administration – Social Missions

The first level or area that will be examined is the closest one to the people. The Public Administration, as traditionally understood, offers basic goods and services to citizens, such as health, education, food, or infrastructure. In 2007, the constitutional reform proposed by Chávez wanted to transform the traditional administrative structure of the State to avoid inefficient social spending and lack of articulation between economic policy and social policy (Gómez Sánchez, 2006). To do so, the reform proposed the creation of a new category within the public administration called *Misiones Sociales* (Social Missions) (Ramos Pismataro & Ito C., 2016). This new institution would have an exceptional character, as opposed to the traditional bureaucratic structures (*ibid*). Since the reform did not prosper, the Chavista government decided to implement its ideas out of the constitutional framework. Hence, the Public Administration was gradually and intentionally substituted by *Misiones Sociales*. These were ad hoc administrative structures which bypassed the legal and institutional structure of the State (Ramos Pismataro & Ito C., 2016). The Missions were institutions in charge of executing social programs providing essential social services to the lower classes in Venezuela (Roberts, 2020). Chávez ordered the military to execute these programs, which, as explained before,

de-professionalizes and politicizes the Armed Forces. Although these policies appeared to be effective in reducing poverty, there was a great concern about their link to oil rents and lack of accountability (Roberts, 2020; Ramos Pismataro & Ico C., 2016). Three issues can be identified from this.

First, the funding of these social programs was coming mainly from the profits obtained from the oil sector. Thus, the *Misiones* were dependent on oil rents, which rise and fall depending on the international market, making its funding very unstable (Ramos Pismataro & Ito C., 2016). Moreover, it must be remembered that the state-owned oil company (PDVSA) was controlled by Chavismo, which surrounds it with great opacity. As it is well known, although Venezuela had very high oil revenues during the first government of Chávez, from 2007 the country experiences a major inflation problem (Roberts, 2020). Government expenditures started to rise above revenue, causing the economy to collapse (*ibid*). This led to inflation, as the government began to print more money to cover the extensive expenditures (*ibid*). The main consequence of this economic contraction was the loss of purchasing power of the people, affecting the most disadvantaged classes; the government's lack of commitment to maintain the country's infrastructure; and the constant blackouts that led to a great loss of quality of life for Venezuelans (*ibid*).

Before the financial system collapsed, the perception of society was that Venezuela was a rich country thanks to oil profits and that the Missions were a great tool to redistribute these rents through the distribution of goods and services (Ramos Pismataro & Ito C., 2016). A characteristic feature of the Venezuelan rentier model is the role of the State as the central actor in the distribution of oil rents (Gómez Sánchez, 2006). In this sense, neither the economic model nor the country's political system offers an answer to the country's main problems (*ibid*). The dependence on the oil market led to the association of the presidential approval rate with the liquidity of the State services (Ramos Pismataro & Ito C., 2016). In this context, the focus was more on the search for legitimacy of the Chavista model than on the efficiency of social programs (Gómez Sánchez, 2006). Consequently, public policies served to hide the contradictions that surfaced during the moments of crisis of the economic model (*ibid*).

Second, as mentioned above, the Missions were ad hoc institutions created to implement social programs. They operate outside constitutional and legal normativity, as they are not included within the structure of the Public Administration (Ramos Pismataro & Ito C., 2016). The objective of extra-institutionality is, theoretically, to de-bureaucratize the government to expand and improve its response capabilities (D'Elia, 2006). The Missions were intended to bring the State structure and public action closer to the most deprived and excluded, as well as a tool to fight corruption and inefficiency in government management (*ibid*). Due to this structure, their operation lacks accountability and democratic control (Ramos Pismataro & Ito C., 2016). The Missions depend on the executive branch, acting directly under the orders of the president (Ramos Pismataro, 2018). This fact entails that they cannot be controlled by the system of checks and balances, such as legislative or judicial control. Moreover, since the Missions are outside the official system of public administrations, it is complicated to access detailed and truthful information on their actual functioning, composition, functions, and financing. The financing of the Missions is also extra-budgetary, which leaves room for corruption and clientelism (D'Elia, 2006). The opacity surrounding Missions is not in line with the basic principles of transparency and social control in a democracy.

Third, the main executors of the Missions are the Armed Forces. Members of the Armed Forces have participated in the design and development of these public policies since the beginning (Ramos Pismataro, 2018). For instance, *Plan Bolívar 2000*, one of the first social programs of the Chávez administration, deployed 40.000 military officers over national territory (*ibid*). The plan included three areas: attention to the social urgencies of the population; attention to the unemployed and the organization of communities; and the development of long-term industrial plans (D'Elia, 2006). It was coordinated by the Single Command of the Armed Forces and directed by President Chávez (*ibid*). With this social program the participation of the military sector in politics was made explicit, recognizing the civil-military alliance and the participation of the Armed Forces in national development determined in the 1999 Constitution. The objective of this social program was to "activate and guide the recovery of the country and attend to social needs in health, employment, education, infrastructure, security and food" (D'Elia, 2006). For its implementation, active and retired military personnel were appointed to public offices

of civilian character, mainly in areas such as infrastructure, communications, and social development (*ibid*).

The active participation of the military in the Missions allowed for a rapid expansion of their activity. To this end, the members of the Armed Forces had to leave their bases and carry out activities of support, protection, and coordination of the Missions (D'Elia, 2006). The Missions even used the Armed Forces' own facilities to carry out social policies (*ibid*). For example, within the *Misión Robinson I*, aimed at literacy and completion of the first stage of basic education, military officers worked as teachers (Gómez Sánchez, 2006; D'Elia, 2006). For the *Misión Barrio Adentro*, whose objective was to provide primary health care to the whole Venezuelan population, they worked in the construction of the health modules, as well as in the coordination of the distribution of the payments made to the doctors and the distribution of medicines (Gómez Sánchez, 2006; Ramos Pismataro, 2018). Similarly, they were in charge of commercializing and distributing food within their headquarters for the *Misión Mercal*, which seeks to guarantee the country's supply in the event of any contingency (Ramos Pismataro, 2018)

When Chávez died and Nicolás Maduro assumed power, the participation of the Armed Forces in social programs increased. At that time, the economic crisis had worsened and there were shortages of basic products (Ramos Pismataro, 2018). This led to the assignment of the military in the area of economic management, particularly in the provision and distribution of food (*ibid*). Maduro gives them even greater participation in public administration, which goes hand in hand with the militarization of society. This issue will be discussed in more detail below. All this brings consequently the deprofessionalization of the Armed Forces. They do not fulfill anymore the function of being an autonomous, politically neutral, professional, and independent body, as established in the Constitution. On the contrary, they are relegated to the execution of social policies and administrative tasks. This led the Armed Forces to become a politicized body used in the service of Chavismo. The populist use they were put to was intended to be close to the people to facilitate the government's control of civil society. The use of the Armed Forces for the execution of Missions can be described as populist in that they provide essential public services to the underprivileged classes with the aim

of gaining their trust and securing their vote. The final objective of this militarization of public policies is to maintain Hugo Chávez in power.

These social policies were aimed at securing the support of the Venezuelan lower-middle classes to ensure that Chávez remained in power and avoid a recall referendum (Roberts, 2020). For this purpose, the creation of parallel institutions was adopted, since they could act within the margins of the law. This was achieved through the use of the Armed Forces, thus, contributing to the militarization of democracy. For Hugo Chávez, having civil society under control was very important, as several strikes and popular protests had taken place since 2002, thus shaking the government (Ramos Pismataro & Ito C., 2016). He also wanted to attract sectors less interested in politics to increase his popular support. The Social Missions were a quick response to the social instability of that time. They managed to increase electoral support for Chavismo (Ramos Pismataro & Ito C., 2016). All this was concealed with the argument that the Social Missions responded to the principles of the Bolivarian Project: social inclusion and equality, popular and participatory democracy, and the new model of community development based on solidarity (D'Elia, 2006).

The Social Missions not only pose a problem by including the Armed Forces and, therefore, moving them away from their traditional role. It has also meant the weakening of social policies as a tool for social integration. During their implementation, poverty rates and social exclusion were on the rise, as social demands were tackled in a populist way to win votes and not in the general interest of the State (Gómez Sánchez, 2006). The public sphere became partisan and polarized, giving rise to a State-society relationship in which citizens had to be loyal to Chavismo as a condition for access to public institutions (*ibid*). This promoted a society actively dependent on State welfare, especially among the lower classes, and big levels of corruption and clientelism, to the detriment of the original Bolivarian idea of a participatory and egalitarian society (Ramos Pismataro & Ito C., 2016). Chávez's social programs served to seek legitimacy over and above their objective of guaranteeing basic rights (Gómez Sánchez, 2006).

2.2.2. Territorial entities – Communal Councils

The second level at which parallel institutions were introduced is the regional level, with territorial entities being the ones affected. As it has been mentioned, the 1999 Constitution introduced a new understanding of democracy: participatory, protagonic and popular based. This concept of popular participation is connected to the idea behind the creation of the *Consejos Comunales* (Communal Councils), the new institution introduced by Hugo Chávez to carry out the Bolivarian Project. The following is a detailed analysis of how they were created, for what purpose and what their drawbacks are. But first, it is important to remember that the network of parallel institutions, hand in hand with the collaboration of the Armed Forces, is intended to circumvent the limits of constitutional democracy and maintain Chavismo in power.

The Communal Councils are based on *la comuna* (the commune), a new system of participation created to strengthen the Popular Power (López Maya, 2018). It is a concept used by the government to refer to the idea of socialism, similar to the Cuban style (*ibid*). This concept is not included in the 1999 Constitution, which refers to “popular sovereignty” instead (*ibid*). The latter is what modern liberal democracies usually use to refer to the power of the people as constituent and constituted power. On the contrary, popular power is defined as a constituent power, different from the constituted power and the power of the State (López Maya, 2018). It arises in society in spaces of collective assembly, being a collective political subject, not an individual one (*ibid*). This new participation system was introduced by the 2006 Law of the Communal Councils, in which they are defined as “a power generated in the assemblies of citizens of the communities, which would be the primary instance for the exercise of power, participation and popular protagonism” (López Maya, 2018).

As has happened with other matters, the failed constitutional reform of 2007 included this idea, which Chávez had to carry out outside the official legal framework. The reform proposed the creation of a new power structure conformed by "communities", connected to the idea of the Socialist or Communal State. These communities do not arise from popular vote, but “from the condition of organized human groups as the basis of the

population” (López Maya, 2018). Although the reform did not prosper, Chávez still retained the power of some public authorities. Thus, he managed to get the National Assembly to approve the Organic Law of the Communal Councils in 2009 (Ramos Pismataro & Ito C., 2016). This law granted the Councils the management of resources and some governmental competencies that were assigned to the municipalities (*ibid*). The mayors did not support this administrative change (*ibid*).

This new form of community organization, inserted in the idea of a Communal State, aimed to grant direct participation of the people, eliminating bureaucratic barriers, and including groups usually marginalized and excluded (Boni, 2012). To achieve this, local dialogue procedures were established which, in some cases, achieved effective participation (*ibid*). The members of the Councils were elected by direct suffrage, which gave them a certain legitimacy (*ibid*). Among their functions are to contribute to public order, to build a "social economy" as a transition towards socialism and, to guarantee the direct participation of the people in matters related to the community (López Maya, 2018). The Councils are responsible for the formulation, execution and control of plans and projects linked to territorial, political, economic, social, cultural, ecological and security and defense aspects (*ibid*). In practice, they became key spaces for discussion on water resources, health services, land management and similar issues (Ramos Pismataro & Ito C., 2016). Their focus is micro-local, being very connected to rural communities and urban slums (*ibid*).

The idea of local participation in communities is very good, but the way in which it was implemented and its ultimate motivation was not. The creation of the Communal Councils led to a duplication of administrations, since the municipalities and the states already existed, representing the local and regional levels. It is, therefore, a new form of parallel institutionality, moving from structured public administration to a new public participation structured in councils (Ramos Pismataro & Ito C., 2016). This can also be understood as a form of decentralization and control of the government at the territorial level. Under the new Communal State, the communities were a "socialist space" for the self-government of the territories, articulated in Councils, with the ultimate goal of advancing in the construction of socialism (López Maya, 2018). Their functioning was

not governed by the constitutional order, they had their own regulation, which prioritized them over municipalities and states (*ibid*). This goes directly against what is determined by the Constitution, which in its article 16 establishes that Venezuela is organized into States, Capital District, federal dependencies, and municipalities. This territorial division must be regulated by an organic law that guarantees municipal autonomy and political-administrative decentralization (Venezuelan Constitution, 1999). However, in practice, the Communal Councils were outside this normativity, leading to major problems of accountability.

The duplicity of territorial administrations led to administrative confusion about the roles of each institution. Competences were not well defined and many times this ended up in the reduction of power of opposition-controlled municipal bodies (Ramos Pismataro & Ito C., 2016). The diffuse organization and confusing regulation often caused that council members were not sufficiently educated, trained, or experienced (*ibid*). In a way, the territorial organization was deprofessionalized. All these concerns mark a trend towards greater central government control. First, Councils were financed directly by the central government, receiving public funding at the expense of municipalities and states (Ramos Pismataro & Ito C., 2016; López Maya, 2018). In addition to financial control, the central government also controlled indirectly the activity of the Councils. Their composition ended up being partisan, since people linked to the opposition were left out (Boni, 2012). This resulted in a cover for the government to take decisions at a local and regional level (*ibid*).

In this way, Communal Councils got detached from the official administrative structure of the State and acted parallel to municipal and regional governments. Councils were directly controlled by the executive power, depending politically and economically from Chavismo (Boni, 2012; López Maya, 2018). A very close relation was created between the government party (PSUV) and the *voceros* (spokesperson) of the Councils, which favored political sectarianism and cooptation of members of the communities (López Maya, 2018). As a consequence, Communal Councils were reduced to organizations formed only by Chavista activists. Hence, if benefiting someone, they were just working on behalf of some part of the population's benefit. Councils did not have any political

autonomy, they were just serving as political support for Hugo Chávez at the territorial level (Boni, 2012).

In addition to these insurmountable obstacles, Councils lacked any type of accountability. They were out of the official normativity and did not work based on democratic values and culture (Ramos Pismataro & Ito C., 2016). Their internal structure was very complex, making them quite inefficient. For a commune, set of Councils, to be recognized as a territorial entity with actual competences, it had to comply with a complexity of requirements (López Maya, 2018). This caused many of them to be left out of the system and turn futile. Nevertheless, what makes these territorial entities undemocratic is their use of the Armed Forces. As previously mentioned, members of the Armed Forces were in charge of designing, coordinating, and executing social programs. These programs were aimed at the less favored people, usually living in small urban communities or rural areas. It is in these areas where Communal Councils were developed the most and they were receiving resources from the Misiones led by the Armed Forces (López Maya, 2018). This resulted in a new network of clientelism, in which resources were distributed based on political loyalty (*ibid*). The Councils' spokespersons did not respect popular participation, instead they worked directly with the military and the government to get money and influence (*ibid*).

Lastly, what was framed as a socialist utopia of popular participation, did not only not work but created an asymmetric territorial organization and prompted a decentralization process. The government focused on deploying these parallel institutions in the rural areas of the country, leaving aside the urban ones (López Maya, 2018). The latter were more complicated to control and less interesting for Chavismo's electoral support strategy (*ibid*). In the end, Communal Councils did not work as a tool for people to get closer to their community, take decisions at the local level and get closer to a participatory and protagonic democracy. Instead, Chávez, later followed in the same way by Maduro, benefited from the creation of the Councils to distribute goods and rentier oils as a form of social control and political support, always linked to the Bolivarian Project (López Maya, 2018). In sum, Communal Councils, added to Social Missions, formed a network of parallel institutions with the aim of consolidating the power of the central government

at the expense of the Constitution and the original Bolivarian idea of participatory democracy. These institutions allowed Chavismo to distribute oil rents among vulnerable social groups to control them and ensure their political support.

2.2.3. *Security and defense – Bolivarian Militia*

As it has been mentioned before, Hugo Chávez declared his government a civil-military alliance. This led members of the Armed Forces to participate in different civilian institutions and structures, like the Communal Councils or the Social Missions. Nonetheless, the militarization process did not stop at the execution of social programs or the popular participation in the communes. It expanded beyond the political sphere, going as far as the militarization of society. This was carried out with the creation of a fifth body within the Armed Forces: The Bolivarian Militia. It was originally conceived as a group of volunteer civilians in charge of defending the Bolivarian project if it was threatened (Ramos Pismataro & Ito C., 2016). It was articulated in parallel to the Armed Forces, until it became part of the National Security Council in 2009 (*ibid*). This armed group reported directly to the President, although administratively they were under the Ministry of Defense (*ibid*).

Making use of the concept of security and defense, essential in any State, the government of Hugo Chávez began to militarize society. The first step was the securitization of different aspects of politics, turning regular political issues into security matters. In this way, using the rhetoric of the internal enemy, different areas of politics began to be securitized or militarized. This process has been exemplified in different ways in the previous sections, through the political participation of the Armed Forces, but it is even more unequivocal with the creation of the Bolivarian Militia. Within this, several bodies with different functions were created. For instance, Combatant Corps, formed by groups of civilians enrolled and trained by the Armed Forces, were created to "ensure the integrity and operability of the institutions" (Ramos Pismataro & Ito C., 2016). These could be summoned when the activity of state institutions was endangered by "violent events" (*ibid*). In practice, they have been used to contain strikes, protests, and social mobilizations (*ibid*). At the regional and local levels, the Territorial Militias had the duty of orienting the Communal Councils in the fulfillment of their competencies (*ibid*). This

implies that the Councils formed by the communities to guarantee popular participation are guided by a military body acting under the orders of President Chavez. Here it is clearly seen how the Communal Councils cease to have a direct relationship with the people and are subordinated to the orders of Chavismo.

The militarization process has expanded to Chavismo itself. Militants of the United Socialist Party of Venezuela (*Partido Socialista Unido de Venezuela*, PSUV) are automatically integrated into the Bolivarian Militia when they join the party (Ramos Pismataro, 2018). Party militants are thus integrated into the Bolivarian Project and act as guarantors of security on different occasions, such as in electoral processes or in public facilities, for example (*ibid*). In this way, PSUV affiliates included in the Militia act as government patrols in everyday life. This implies the militarization of civil society through the creation of groups with access to weapons and military training that act under the orders of Chávez and assume security functions (Gan Galavís, 2020). In this way, the government and the military institution become indivisible, blurring the separation between civilian and military affairs. This constitutes a process of militarization of democracy. When the military is incorporated into all areas of politics, the latter is securitized and de-civilized. Thus, the Armed Forces, under the orders of Chavismo, end up taking control of all aspects of democracy.

In addition to the creation of a specific body, militarization in the area of security and defense also occurred in the police. The Venezuelan Police has been militarized over the years and serves the government as a tool for repression (Tremaria, 2022). In a democratic state it is important that the Armed Forces and the Police have different functions and are not under the same authority, to ensure that both are effective and do a differentiated job. In this regard, the police would have to be in charge of internal security and carry out preventive actions; while the Armed Forces should be in charge of national security, understood as the defense of the State (Gan Galavís, 2020). Research has shown how autocratization processes occur in contexts where the police are politicized, militarized, co-opted and used by governments as a tool of repression (Tremaria, 2022). In these contexts the police usually act against "internal enemies", exercising control over citizens and repressing the opposition, thus achieving regime stability (*ibid*). When government

bodies in charge of public security, such as the police, adopt the weapons, organizational structure and training typical of the armed forces, a process of militarization is taking place (Gan Galavís, 2020).

In Venezuela this occurred when the new police system was adopted under the government of Hugo Chávez. The power of local authorities to define policies regarding internal security was eliminated and came under the functions of the central government (Gan Galavís, 2020). Consequently, the ministers involved in regulating police activity became mostly members of the military, which has further fostered this militarization process (*ibid*). In addition, active military officers were put in charge of police departments and performed police duties on a permanent basis and throughout the national territory (*ibid*). This is related to the loss of civilian control of the Armed Forces caused by the partisan use given by Chavismo. How the police are organized, staffed, equipped, and deployed has important implications for the consolidation, durability, and survival of a regime (Tremaria, 2022). This is why Hugo Chávez made sure that the Armed Forces and the Police responded to his Bolivarian project.

Militarization and increased securitization were justified as a strategy to reduce violence in the country. However, data show that since militarized and repressive security operations have been promoted, not only have homicides in Venezuela not been reduced, but more violence has been generated (Gan Galavís, 2020). What is more, homicides and crime increased especially among the poorest people. In 2009, 83 percent of the victims belonged to the lowest socioeconomic classes (Gan Galavís, 2020). The increase in violence may be related to the fact that, in addition to State security forces, several non-state actors have emerged which have also been informally part of the broader system of surveillance and control (Tremaria, 2022). This includes paramilitary and para-police groups, and even communal committees and ordinary citizens' groups (*ibid*).

The militarization process has been facilitated by the crisis of the rule of law in Venezuela. The lack of accountability resulting from the deep institutional crisis has led to a lack of control over the use of the Armed Forces and the police for political purposes (Gan Galavís, 2020). The fact that the system of checks and balances has been eliminated

by Hugo Chávez's use of the institutions has meant that there is no social or democratic control of the security forces. This has led to the perpetration of serious human rights violations by security forces. NGOs, such as Amnesty International and Human Rights Watch, have long denounced torture, degrading treatment, illegal searches, and extrajudicial executions by Venezuelan security forces (Gan Galavís, 2020). The human rights situation since the arrival of Hugo Chávez to power will be analyzed in detail in the last chapter.

In conclusion, militarization spread to society through the creation of a body of civilian volunteers who were given security functions, and through the militarization of the police. Both had the same objective: the control of civil society, the reduction of civil mobilizations, the imposition of the Bolivarian Project and the repression of the opposition. This objective was reinforced with the use of Social Missions and Communal Councils. In this way, the network of parallel institutions ensured that Chavismo controlled all aspects of society, politics, and democracy. The ultimate goal was for Hugo Chavez, and later Nicolas Maduro, to remain in power.

The civil-military alliance created by the Bolivarian Project and the 1999 Constitution resulted in the militarization of the Chavista regime. This means that the presidency of Hugo Chavez was maintained thanks to the support of the Armed Forces and the control of society they exercised under his mandate. The objective of Chavismo was always to maintain control of civil society and create a lasting regime. This implies a direct breach with the standard of liberal democracy, which is based on free elections, separation of powers and the rule of law. The following chapter will analyze how the Chavista regime was consolidated analyzing these three basic elements of liberal democracy.

CHAPTER 3. CONSOLIDATION OF THE CHAVISTA REGIME

It is evident that Venezuela has suffered a democratic regression since the arrival of Hugo Chávez to power and the enactment of the 1999 Constitution. As analyzed above, Chavismo came to control power and society through the misuse of the constitution and the support of the Armed Forces. The militarization process happened in all areas of democracy: government organization, policies and programs, and civil society. As a consequence, the model of democracy established in the constitution was eroded, and consequently, so were the lives of Venezuelans. The lack of democratic guarantees in the country led to the lack of protection of the fundamental rights of citizens. The political crisis, added to the economic crisis, has led Venezuela to a situation of multidimensional crisis that prevents a transition to democracy. In this context, the promotion and protection of human rights is impossible.

This chapter aims to demonstrate that Venezuela is no longer a democracy, but rather a competitive authoritarian regime. To this end, it will analyze what constitutes a full democracy using the principles of liberal constitutional democracy. It will then examine how the essential elements of a democracy are not present in Venezuela and illustrate that the country has become an authoritarian regime disguised as a democracy. In this way it will be possible to understand how the Chavista regime led by Chávez and later by Maduro was consolidated in Venezuela.

3.1. From democracy to competitive authoritarianism

Scholars consider that the multidimensional crisis suffered in the country has its origin in the deterioration of governance mechanisms (Bull & Rosales, 2020). This has led to the erosion of the system of checks and balances, the independence of institutions, the lack of legitimacy of elections, and the collapse of the rule of law. Ultimately, this implies that Venezuela cannot be considered a democracy today. Defining or categorizing the regime that currently rules the country is not an easy task, since there are many political implications in this decision. In order to preserve as much objectivity as possible, a definition of what is understood by democracy according to international standards will be provided. It is from this perspective that the Chavista regime will be analyzed later.

Democracy, in its procedural conception, is a system in which parties gain and lose power through elections (Bull & Rosales, 2020). It is a representative system in which the majority rules, but the norms and institutions oblige the elected government to guarantee and protect the rights of minorities (*ibid*). A thicker conception of democracy includes “the regular holding of full, free, and fair elections, protection of core democratic rights (e.g. free speech, freedom of association, the right to protest), and adherence to constitutional and ordinary law as a meaningful constraint on political power” (Daly, 2017). This is what is considered *liberal democracy*. This concept can be further narrowed. *Constitutional liberal democracy* includes that the democratic process be framed in terms of the civil and political rights, and the availability of a neutral electoral machinery, as well as the stability, predictability, and publicity of the legal regime, known as the “rule of law.” (Daly, 2017). According to Coker (2014) liberal democracy is based on the rule of law, civil liberties, horizontal accountability (effective checks on rulers), and minority rights. Therefore, the following will be taken as the yardsticks of constitutional liberal democracy: free, fair, and periodic elections, the rule of law, the system of checks and balances and the separation of powers, and human rights.

In this sense, the Venezuelan 1999 Constitution largely supported the principles of constitutional liberal democracy. For instance, it established a system of checks and balances and guaranteed the autonomy of the different government branches. Moreover, the Constitution obliged the State to comply with multilateral human rights commitments. Nonetheless, the Chavista government has taken these principles to the limit with its interpretation of protagonist, popular and participatory democracy (Bull & Rosales, 2020). For example, the notion of a clear separation between the branches of government has been compromised in Venezuela due to the politicization of institutions and public policies (Coker, 2014). What is supposedly framed as Popular Power actually responds to a clear exclusion of those who do not support the Chavista project (*ibid*). In this way, Venezuelan democracy embodies the concept of majority rule, but dismisses the institutional mechanisms designed to protect the rights of minorities in liberal democracy (Coker, 2014). In a democratic system, equality of participation, representation, protection of rights and resources is presumed to be a key feature of political and social

empowerment (*ibid*). Thus, when resources are not equally distributed, as in the case of Venezuela where opponents are punished, it is difficult to say that it is a constitutional liberal democracy.

When analyzing the state of a democracy it is important not to fall into a purely Western and Eurocentric view, in order to avoid being paternalistic and neocolonialist. There are scholars who categorize Venezuela as a democracy, as they depart from a much broader definition, such as participatory or direct democracy (Coker, 2014). In this sense, Venezuela meets the requirement of holding elections, for example. Sometimes democracy is also associated with capitalism, and it is understood that when a government proposes a different economic system, then it cannot be considered a true democracy. Thus, in Latin America, it is common to differentiate between a good and a bad left. The latter corresponds to governments that interfere with the free market through policies such as price controls, nationalizations, and strong regulation of the economy (Coker, 2014). In the region there is a tendency to move away from this capitalist notion of politics. That is why many times the West labels them as less democratic governments (*ibid*). To avoid falling into these misconceptions, it is important to evaluate democracy on the basis of the internationally recognized standards.

Based on constitutional liberal democracy, it can be stated that Venezuela is undergoing a “constitutional regression”. It refers to a process of progressive and ultimately substantial deterioration of the three basic principles of democracy: competitive elections, rule of law and human rights (Daly, 2017). Constitutional regression implies that there have been changes in the State that affect the quality of democracy. These are usually incremental in nature, sometimes apparently innocuous, occurring at about the same time, and involving the deterioration of the three essential elements (Daly, 2017). Notable examples include constitutional amendment, the elimination of institutional checks and balances, the centralization and politicization of the executive, the contraction of the shared public sphere, and the elimination of political competition (*ibid*). In this sense, a typical strategy of governments is *abusive constitutionalism*, understood as the use of legal mechanisms of constitutional reform to erode the democratic order (*ibid*). Examples include the elimination of presidential term limits, interference with electoral

commissions, increased government control over the media, or even the adoption of a new constitution (*ibid*). It can also occur extra-constitutionally, e.g., through ordinary legislation, abuse of police power, and manipulation of administrative processes (*ibid*). Just going through this list, one can see similarities with Venezuela's constitutional reform process, the politicization of the Armed Forces and the process of militarization of democracy in general. This will be thoroughly analyzed in the next section.

Illiberal rulers have moved away from abrupt regime changes through coups d'état, for example, to this authoritarian reversion that is much more subtle and harder to spot (Daly, 2017). From 2006, the government of Hugo Chávez started to move away from democratic standards in a clear way. The media was silenced, the opposition was punished through judicial processes, institutions saw their autonomy eroded in favor of the personalistic figure of the president, and electoral irregularities were reported (Bull & Rosales, 2020). In this way, these types of regimes are not classified as authoritarian, but rather as hybrid regimes (Daly, 2017). They are categorized as hybrids since they enjoy electoral support, which is one of the essential elements of liberal democracy, but do not comply with the other elements (*ibid*). Scholars often label them in different ways, such as electoral authoritarianism, autocratic democracy, or competitive authoritarianism (Daly, 2017; Cannon, 2009b). These governments have elements that can only be identified as democratic: presidents are elected by large majorities; they enact constitutions which are apparently comprehensive and guaranteeing; and hold referendums and other type of direct participation processes (Cannon, 2009b). They cannot be categorized as fully-fledge totalitarian or authoritarian states, since these are characterized by an absence of checks and balances, executive domination of the president and the military and widespread use of force (Daly, 2017).

Instead hybrid regimes, or competitive authoritarian states, maintain some democratic elements to disguise the more authoritarian factors. This is what has happened in Venezuela. Since the arrival of Hugo Chávez to power a democratic constitution granting everyone a broad range of rights has been enacted, elections have been held periodically and major social support has been achieved. However, this has only served as a façade for the consolidation of the Chavista regime.

In spite of the fact that the Constitution established a democratic and social State of Law and Justice whose essential purposes were to preserve the dignity of the people, the democratic exercise of the popular will, the construction of a just society and the broad promotion of social, economic, cultural and environmental rights; all this remained a dead letter when Chávez decided to unilaterally turn his conception of the democratic State upside down (Jiménez, 2022). This change can be associated to the constitutional retrogression. As explained above, as of 2006 Chávez left behind the idea of the State associated to constitutional liberal democracy to move on to the construction of the socialist or communal State. This change was not made in the way the constitution required, by means of a formal reform; which already marks the departure from the full legality necessary in a democracy. From this moment on, power was exercised in a personalistic and vertical manner, which has pushed the country towards a competitive authoritarianism under the Chávez regime, which has deepened under Maduro (Jiménez, 2022).

Venezuela enjoyed a favorable scenario for developing a quality democracy, including broad popular support, high oil revenues, a guaranteeing constitution, and a regional climate positive to a leftist government (Jiménez, 2022). However, Chavismo did not focus on creating a strong state with capacities to provide services to the population. On the contrary, the mismanagement of public administration, basic services and territorial control weakened the State (Jiménez, 2022). Chavismo took advantage of its control to reform state institutions at will, preserving their democratic aspect, but implementing authoritarian practices (Cannon, 2009b). The colonization, substitution and dismantling of institutions carried out by Chavismo left the political parties with very little power and the Armed Forces with *de facto* control of the country (*ibid*). This calls into question the independence of the institutions and the quality of democracy. To make matters worse, the democratic dismantling was carried out violating and distorting the Constitution, always acting on the margin of the law (Brewer-Carías, 2018).

In this way, it can be affirmed that Chavismo used democratic tools to destroy democracy itself. The new model of authoritarian government resulting from the fraudulent

application of the Constitution and the creation of a new model of State was the result of the manipulation of elections, the degradation of the judicial system and the destruction of the system of separation of powers (Brewer-Carías, 2018). Thus, the transformation of Venezuela into an authoritarian regime sustained by the Armed Forces was conveniently camouflaged with elections and a façade constitution. This resulted in the State becoming incapable, fragile, and illegitimate in the eyes of the people, in addition to creating a model of rentier and unsustainable dependence between the State and society (Jiménez, 2022). It should be noted that all this dismantling is done in violation of the fundamental provisions of the 1999 Constitution: political pluralism, protection of human rights and economic and social development, necessary to guarantee a prosperous and democratic society (*ibid*).

The international community has echoed this critical and dangerously prolonged situation. Numerous indexes qualify Venezuela as a non-democratic state. The Democracy Index 2021 classified Venezuela as an authoritarian regime and gave it 2.11 points out of 10 (The Economist Intelligence Unit, 2022). The functioning of government was rated 1.79, political participation 3.8, political culture 2.5 and civil liberties 2.35 (all out of 10 points) (*ibid*). The State Fragility Index ranks Venezuela 26th out of 179 countries, giving it a score of 91.6 out of 120 on fragility indicators (The Fund for Peace, 2022). In 2006 it was ranked 63rd and received 81.6 points, but as of 2017 it has not stopped dropping in positions (*ibid*). This shows a clear democratic degradation. Freedom House, ranking freedom according to electoral processes, political pluralism, and participation, functioning of the government, and various civil liberties, categorizes Venezuela as “not free” and gives it 14 out of 100 points (Freedom House, 2021). Venezuela had 16 points in 2020, 19 the previous year and 30 in 2017 (*ibid*). Once again, the democratic deterioration is evident. Finally, Latinobarómetro, which analyzes Latin American public opinion, classifies Venezuela as a dictatorship. The 2021 report determines that the country's elite puts democracy in check and leaves out the citizens, who "are mere spectators of the arbitrariness of the government" (Latinobarómetro, 2022).

As explained, Venezuela is going through a process of democratic decay, leaving behind the standards of constitutional liberal democracy, and moving towards competitive

authoritarianism. This turns the country into a personalistic authoritarian regime that remains in power thanks to the support of the Armed Forces and the control of civil society. The following section will analyze democratic decay as defined by Daly (2017): “the incremental degradation of the structures and substance of liberal constitutional democracy”. To this end, three essential aspects will be studied: the system of checks and balances and the separation of powers, the electoral process, and the rule of law.

3.2. Democratic decay in Venezuela

3.2.1. *Undermined checks and balances*

One of the basic elements necessary in a liberal constitutional democracy is the separation of powers, understood as the distribution of power between different branches of government, generally the executive, legislative and judicial branches. The purpose of this distribution of power is to prevent a single person from holding all the power and thus turning democracy into a dictatorship. It can be affirmed that Venezuela enjoys a formal separation of powers, since there is an executive power, a parliament, and a judicial system with differentiated competencies. However, a separation of powers without an effective system of checks and balances is of little use. The system of checks and balances consists of the three branches of government checking each other to ensure that they act within the established constitutional and democratic framework. For example, the legislative branch controlling the actions of the executive, while the judicial branch exercises judicial review of the laws issued by the legislative branch.

The Venezuelan Constitution establishes a system of checks and balances, but it has been dismantled by Chavismo over the years. Chávez assaulted the institutions of the State in different ways until he took over all the powers of the State, thus eliminating the principle of separation of powers and the system of democratic control (Brewer-Carías, 2018). Through the use and abuse of electoral tools, he began a process of establishing a centralized and military authoritarian government (*ibid*). At the beginning, the restructuring of all state institutions was justified with the argument that during the previous governments the elites had corrupted all areas of Venezuelan politics and the

institutions they led (International Crisis Group, 2011). Although it is true that during the years prior to the arrival of Chávez the country suffered a great problem of corruption and institutional deterioration, Chavismo's motivation was rather to centralize all power in order to make all decisions for themselves and those loyal to them (*ibid*). It is important to emphasize that the 1999 Constitution itself states that Venezuela is a decentralized country. However, the inclusion of the innovatory direct democracy mechanisms, officially created to promote the people's participation, ended up enlarging the power of the national executive at the expense of the other branches and the political parties (Cannon, 2009b). Therefore, this departure from the system of checks and balances not only goes against the standard of liberal democracy, but against Venezuela's fundamental charter as well.

One of the first institutional changes was the shift from two legislative chambers to a unicameral system. This change in the National Assembly entailed a major weakening, as many of the powers of the legislative branch passed to the executive after the reform (Roberts, 2020). This change, together with the new ability of the executive branch to dissolve the National Assembly under certain conditions, gave even more power to the figure of Chávez and contributed to reduce potential internal threats to the Chavista government (*ibid*). After the 2015 elections, won by the opposition, the government began to obstruct the opposition's work in the National Assembly so that they could not develop their legislative agenda (Brewer-Carías, 2018). At this point the government could not afford to lose the *de facto* absolute power it held. To this end, it was dispossessing the National Assembly of its powers and functions with the collaboration of the Supreme Court (Brewer-Carías, 2018).

The control of the National Assembly implied the monopoly of the executive power over the appointment of members of key organs of the State. In recent years, Chavismo has managed to appoint members of the Supreme Court and the National Electoral Council (CNE, *Consejo Nacional Electoral*), who have not been challenged by any actor due to the *de facto* control of the checks and balances system by Chavismo (International Crisis Group, 2011). This is part of a broader strategy to undermine judicial independence. Chavismo aimed to take a direct part in the national courts and the CNE in order to apply

its political agenda in the electoral process and to have judges sympathetic to the Chavista ideology (Vázquez, 2019). Since 2001, the CNE members nominated by the government outnumber those of the opposition; and since 2004, twelve new judges have been appointed by the government to the Supreme Court (*ibid*). This entails, among other things, that in case of electoral fraud, no formal democratic control can be exercised; or that judges do not act as guarantors of the Constitution but of the Bolivarian project. According to Daly (2017), taking control of counter-majoritarian institutions is one of the key signs of the democratic decay.

This modification of the competences of the National Assembly also meant that the oversight of the Armed Forces was no longer in the hands of the legislative branch, but in the hands of the President (Trinkunas, 2006). Consequently, Chávez had total control over military promotions and the Armed Forces budget (*ibid*). In this way, various branches of government lost the substantial autonomy necessary to preserve an effective system of checks and balances. This has resulted in major problems of corruption, impunity, and ineffectiveness of institutions (International Crisis Group, 2011). This was mainly due to Chavez's ability to position people loyal to him within the government and the military (Roberts, 2020).

Another aspect that undermined the system of checks and balances was the change in presidential term limits. The 1999 Constitution established in its article 230 that "the presidential term is six years. The President of the Republic may be reelected, immediately and only once, for a new term". However, this was not the case in the 1961 Constitution, which determined in its article 185 that the limit was one presidential term, with no possibility of reelection and a prohibition to run for the following 10 years. Although this important modification was made in a legal way, according to Daly (2017), the modifications of presidential term limits are a sign of democratic decay. This implied, indirectly, a great increase of power for President Chávez. But in addition, Chávez increased the competencies of the executive power in a direct manner. Thanks to the "enabling laws", the president received in up to four occasions the authority to dictate decree laws in very broad areas, as explained in the first chapter. This implied that the competence to draft norms was not under the legislative power, but in the hands of people

very close to Chávez within the executive branch (International Crisis Group, 2011). As of 2010, Chávez enacted several decree laws in strategic areas, such as the Organic Law on Agriculture and Food Security and Sovereignty, which granted the executive branch expropriation powers; or the Law for the Defense of People's Access to Goods and Services, which authorized the State to take over the decisions of private industries (Vázquez, 2019).

Democratic decay has been particularly serious and visible with respect to the justice system and security forces. The latter ranges from militarized police forces to the organization of armed citizens in the so-called Bolivarian Militias (International Crisis Group, 2011). Both point in the same direction: the control of internal issues outside the democratic and institutional framework (*ibid*). As shown in previous chapters the militarization of democratic institutions is a major threat to democracy and the protection of human rights. Of particular concern is how Chavismo and the President himself have captured institutions responsible for fighting crime, such as the prosecutor's office, and how they have pressured judges in high courts to rule in their favor (International Crisis Group, 2011; Jiménez, 2022). What they justify as a guarantee of internal order is actually counterproductive to preserving the security of the people.

For instance, it is increasingly common that some crimes do not follow the formal investigation procedure, due to the involvement of police forces in them. For instance, between 1998 and 2011, seven members of the same family were assassinated in the state of Aragua, allegedly by members of the state police (International Crisis Group, 2011). The Inter-American Commission Human Rights issued a declaration on this serious case stating that the murders were never seriously investigated (*ibid*). Similarly, the Venezuelan Violence Observatory published a report in 2009 according to which 91 per cent of murder investigations in the country did not result in the arrest of the suspect (*ibid*). This not only shows the involvement of security forces in serious crimes, but also the violation of the right to due process. Even more serious is the territorial control and violence generated by the emergence of paramilitary groups, also called "*colectivos*", which are somehow consented by the government to operate in exchange for political support (Jiménez, 2022). Moreover, international reports indicate that armed groups have

come to supplant the functions of the State in different territories of Venezuela (*ibid*). In this way, corrupt public servants and paramilitary groups collaborate to share the illicit profits they make (*ibid*). This mode of action of Chavismo, added to the fragility of the State's institutions, is aimed at intimidating and controlling the population, especially those who oppose the Chavez government.

In addition to the militarization of the regime, what makes Venezuelan democratic decay different to other is the network of parallel institutions established in addition to the formal institutions of the State. This "collateral institutionalism", added to the populist discourse of Hugo Chávez, has gradually deteriorated institution building, the system of checks and balance, and liberal democracy (Bull & Rosales, 2020). With the excuse that the State structures inherited from previous governments were uncooperative with the Bolivarian project, Chávez created alternative mechanisms to carry it out (Coker, 2014). The parallel institutions created by Chavismo have broken the formal relationship between the State and the public powers and have circumvented all norms of public funding and control to government programs (*ibid*). Although these parallel institutions were aimed at the direct participation of communities, they turned out to be a strategy of centralization of all areas of the State and a justification to aggressively control the people, taking advantage of the scarcity of basic goods and services (*ibid*).

The sum of the factors discussed above show that Hugo Chávez's charismatic leadership was key to facilitate the dismantling of the system of checks and balances. The public support he achieved with the implementation of the Bolivarian project and the militarization of democracy gave him space to act freely, with liberal democratic standards being irrelevant for presidential public approval (Vázquez, 2019). This freedom to act was also given by the lack of limitations that opposition parties exercise on the government, due to the lack of unity among the different parties and the great repression they suffer (*ibid*). On top of this, institutions are subject to the pressures of a highly polarized society, in which few can remain independent and autonomous (Cannon, 2009b). Scholars conclude that this is due to "the presence of authoritarian and anti-party leaders who impose constitutions strongly marked by participatory and modernizing mechanisms, which ultimately proves counterproductive to democracy" (*ibid*).

This serious institutional situation has been worsened by the gradual process of autocratization in the political transition from Chávez to Maduro. The literature agrees that since 2013 there has been a transition from a competitive authoritarianism to a closed autocracy (Tremaria, 2022). This leads to the conclusion that the transition to democracy will require the repair of the system of checks and balances and the creation of legitimate institutions in Venezuela, which will necessarily be a long and arduous process.

3.2.2. *Façade elections: use and abuse of the electoral system*

As it has been mentioned several times, elections are a minimal element of democracy, even though they are not the only necessary element. Hence, it is essential to examine electoral practices in Venezuela to fully understand the de-democratization process. During Hugo Chávez's terms, electoral conditions gradually worsened, including an unfair voting structure, irregularities during elections and polarization during campaigns (Vázquez, 2019). This led to the political contestation of elections since 2000 and the questionable legality of the electoral system all in all (*ibid*). This section will analyze how electoral democracy was understood by the Bolivarian constitutional model, present examples of electoral irregularities, examine the role of the CNE, explain the effects of populism and polarization in Venezuela, and finally, show how Chavismo used and abused the electoral system.

First, electoral democracy is achieved through the competition of political leaders who must get electoral approval during periodic elections before a broad electorate to represent them at democratic institutions holding executive and legislative power, like the government or parliament (Coker, 2014). Thus, political parties and elections are crucial indicator of procedural democracy (*ibid*). To guarantee the quality of electoral democracy, States regulate the electoral system in the Constitution, being one of the most institutionalized aspects of democracy (*ibid*). In the 1999 Constitution, democracy is understood in two ways: representative and participatory. The former is the type of procedural democracy included in the liberal democracy standard. The latter differs in that it gives more importance to community councils, referenda, public hearing, and other forums of citizen engagement than just voting in periodical elections (Coker, 2014). The new Constitution was responsible for establishing the normative framework for electoral

democracy, in this case participative as well as representative. In this sense, it provides the exclusive power to hold referendums to the Executive power, leaving out the National Assembly (Roberts, 2020). In this way, Chávez could easily approve many of the referenda since he had achieved the broad support of the citizenry through social programs (*ibid*). Nevertheless, Chavismo eventually resorted to corrupt and repressive techniques to ensure that the referendums were approved by the people (*ibid*).

Electoral irregularities involve practices and regulations which violate international standards for elections, especially presidential and legislative, to be conducted under stable, free and fair rules (Corrales, 2020). Scholars agree that meeting these conditions is the minimum requirement for a country to qualify as a democracy (*ibid*). Electoral irregularities became so common in Venezuela that, although some democratic electoral practices were maintained, it was complicated to counteract their effects in a context of fragile institutions and rule of law (Bull & Rosales, 2020). Electoral irregularities served to secure the Chavista party in government and foster the division of the opposition (Corrales, 2020). According to a 2006 Gallup poll, Hugo Chávez reached a 61 percent approval rating for his government (Vázquez, 2019). This support was reflected in the elections. Since the start of the millennium, there have been 32 elections and referenda in Venezuela³; 5 presidential, 5 legislative, 6 referenda, 7 regional and 9 municipal elections (CNE, 2022). Of all these elections, the opposition has won only two: the 2014 municipal elections and the 2015 parliamentary elections (*ibid*). All the others have been won by the different coalitions formed by Chavismo (MVR, PSUV, and *Polo Patriótico*) (*ibid*).

These impressive data could demonstrate the democratic credentials of the Chavista governments and of the president himself. Nevertheless, it seems to point more to the conclusion that, despite the apparently free and fair periodic elections, the system does not represent the political plurality of the country, since the opposition parties have no real options to reach the institutions of government in a democratic way. Political groups representing the elite associated with the pre-1999 status quo have been deliberately and broadly marginalized from effective political participation, except for the right to vote

³ Not including the repetition of the regional elections in the state of Barinas in 2022, and the municipal elections of Miranda (state of Trujillo) and the mayoral elections of Nirgua and Carrizal in 2006.

(Coker, 2014). Moreover, democratic decadence is evident when closely observing electoral irregularities, which do not respect minimal democracy. Corrales (2020) differentiates between two types: legacy irregularities, which have effects that carry over to subsequent election cycles and make the system difficult to reform; and election specific irregularities, which are more concrete actions to hinder voting on election day. The combination of both makes it impossible to hold free and fair elections. In the following lines, several examples are given to illustrate this.

According to Corrales (2020), who has researched this topic in depth, Venezuela has experienced electoral irregularities in almost every electoral contest since the arrival of Chavismo to the government. In some processes, electoral irregularities were few and in others numerous; sometimes, they were minor; and others, profound (Corrales, 2020). Before analyzing some cases, it is important to distinguish between electoral irregularities and electoral fraud. The latter consists of "deliberate attempts to miscount or suppress the vote on voting day, usually through illegal acts" (Corrales, 2020). Electoral irregularities are a broader concept, including electoral fraud, but also the manipulation of the entire set of rules and standards regulating elections (*ibid*). It includes problems on voting day, such as infrastructure failures or voter coercion, and practices, norms and rules affecting the pre-campaign, campaign, and post-election period (*ibid*).

Already since the 2000 elections, the first major elections for Chávez under the new constitution, there were allegations of electoral fraud and electoral irregularities (Cannon, 2009b). The elections were held in an environment of significant distrust, due to the judicial, institutional, and organizational advantage in favor of the incumbent candidates, and insecurity for the rest of the participants (*ibid*). Many of the counter-majoritarian institutions designed to guarantee impartiality and fairness in electoral processes, such as the Supreme Court, the Ombudsman and the CNE, were not elected as established by the new Constitution, creating an atmosphere of insecurity with few legal guarantees (*ibid*). Moreover, serious technical and voter registration problems were also reported during these elections (*ibid*). However, accusations of electoral fraud were not a new phenomenon, as they were also common during the *Punto Fijo* era due to the lack of an automated vote counting system (*ibid*).

In the 2004 recall referendum called by the opposition, 59.25% voted No to the removal of Chávez, with a 70% turnout (Cannon, 2009b). As the exit polls gave the victory to the affirmative vote, the opposition immediately challenged the result of the referendum (*ibid*). Their justification was that the electronic voting machines were manipulated, as there was a disparity between the number of people who signed the petition in favor of the referendum and the number of people who had voted in favor in some areas (*ibid*). Moreover, on the day of the referendum, polls were kept open longer than expected, which gave the incumbent party the ability to get more people to the polls (Corrales, 2020). After the results were released, the few CNE authorities who were not pro-government claimed that they were denied access to the electoral data and excluded from deliberations. In the same way, international observers were not permitted to monitor the internal process (Corrales, 2020).

After the 2005 legislative elections, the opposition changed its response to electoral irregularities. Its new strategy was based on continuing to denounce the irregularities and pressuring the State to correct the system; to combat abstentionism among politicians and voters to demonstrate the electoral strength of the opposition against the Chavista regime; and to seek unity among the different opposition parties, in order to form an electoral coalition (Corrales, 2020). Thus, for the 2006 presidential elections, the opposition ran with a unified candidate, Governor Manuel Rosales of the state of Zulia (Cannon, 2009b). All opposition members campaigned together for Rosales as the next president (*ibid*). However, Chavez won this election with 62.84% of the votes and, in this case, Rosales accepted defeat (*ibid*).

As a last example, the 2015 legislative elections definitely show how the regime became fully authoritarian, as they were up to that moment the elections with the highest number of irregularities. The whole electoral process was designed to favor Chavismo to win. First, the CNE was late in announcing the official date of the elections, giving little time to the opposition to organize (Corrales, 2020). The day after the opposition presented its list of candidates, and before the ruling party did so, the CNE established a new electoral rule requiring that 40% of the candidates on each list be women (*ibid*). This shows bad faith on the part of the CNE, which is supposed to be an independent and professional

counter-majoritarian institution, and a use of political parity for purely partisan purposes, leaving aside any objective of equality. Second, multiple opposition candidates were arrested and/or prevented from running (Corrales, 2020). Third, the media barely covered the opposition's campaign activities, while Chavista candidate Nicolás Maduro made 25 public appearances during the campaign (*ibid*). Despite all these electoral irregularities, the opposition achieved a majority in the National Assembly for the first time since Chavismo came to power. This shows that electoral irregularities, and autocratization in general, can be counterproductive for the regime itself. In the case of the 2015 elections, it was an incentive for the opposition parties to coordinate strategies, diminish their differences and present a unified candidacy (Corrales, 2020).

These examples show how electoral irregularities have occurred throughout the entire Chavista regime. Table 1 shows in detail all the electoral irregularities suffered during the period 1999-2018 and the following conclusions can be drawn. Almost all electoral processes have presented at least one irregularity; as time goes by, irregularities multiply; irregularities in the electoral system rarely revert; and irregularities intensified especially during 2003-2004 with Chávez and during 2013-2018 with Maduro (Corrales, 2020). The fact that the democratic backlash is gradual and not an abrupt rupture of electoral democracy shows how it was a deliberate strategy of Chavismo from the beginning. Although no threshold has been defined to declare the transformation of a regime into an authoritarian one, international organizations, such as OSCE, United Nations, or OAS, and the literature understand as major signs of transformation the violation of constitutional law; the manipulation of the electoral calendar for self-interested purposes; irregularities on voting day (broken voting machines, lack of ballots, power cuts, etc.); and the violation of international standards for clean elections (freedom of coercion, impartial access to public resources, impartiality of the election authorities, recognition of results, normal voter registration, etc.) (Corrales, 2020).

Date (Month.Day.Year) and electoral event	Total	Freedom from coercion (IS1)	Impartiality of Elect. authorities (IS7)	Voting registration normalcy (IS12)	Impartiality of electoral laws (IS8)	Impartial access to public resources (IS2)	Equal access to state media (IS3)	Freedom to compete (IS10)	Timing or scheduling regularity (T)	Respect for elected post (IS13)	Compliance with Constitutional law (L)	Voting day normalcy (VD)	Secrecy of vote (IS5)	Transparency of voting process (IS6)	Recognition of results (IS9)	Reliable fraud investigation (IS11)	Boycotted by major parties
Chávez Era																	
4.25.99 Referendum to create a Constituent	1										1						
6.25.99 Constituent Assembly	1			1													
12.15.99 Referendum on new constitution	3	1			1						2						
6.30.00 Mega-elections for all public posts	2	1	1						1								
12.2.00 Municipal councils, civil parishes	0																
9.12.03 1st recall referendum request	7	1	2	1	1				1			1					
8.15.04 Presidential recall referendum	7		1	1	1								1	2		1	
10.30.04 Governors, state legislature, mayors	1								1								
8.7.05 Municipal councils, civil parishes	2		1		1												
12.4.05 National Assembly, Andean & L. Parl.	2		1													1	Yes
12.3.06 Presidential	3	2		1													
12.2.07 Constitutional referendum	5						1				2			1			1
11.23.08 Governors, mayors	6	1			1	1		1		1					1		
2.15.09 Referendum to abolish term limits	3					2					1						
9.26.10 National Assembly	4		1		2		1										
10.7.12 Presidential	8			1	1	1	2		1				1	1			
12.16.12 Governors and mayors	1															1	
Total	56	5	6	4	8	5	4	1	4	1	6	0	3	4	1	4	
Maduro Era																	
17.4.13 Presidential	7	1		1							2	1	1			1	
8.12.13 Municipal	1							1									
6.12.15 Legislative	12	1			2		1	4	1		2			1			
2016 Presidential recall referendum (Disallowed)	11	1			2			3			1			2		2	
7.30.17 Constituent Assembly	7	1			2			1			1			1		1	Yes
10.15.17 State governors	14				1			1	1	2	2	1	1	3	1	1	Partial
12.10.17 Municipal	4				1			1						1			Yes
5.20.18 Presidential	5				3						1						Partial
Total	61	4	0	2	11	0	1	6	8	2	9	2	2	8	1	5	
Total chavista era, 1999-2018	117	9	6	6	19	5	5	7	12	3	15	2	5	12	2	9	

Notes:
Blue = Legacy irregularity: a change that compromised the electoral system into the future.
Yellow = Election-specific irregularity: a violation of electoral principles that affected that particular election.
Red = Opposition boycott.
Source: Author.

Table 1. Rain of electoral irregularities, Venezuela 1999-2019. Source: Corrales (2020)⁴

Despite all the irregularities that have occurred over the last two decades, illustrated by the examples above, international observation missions from the U.S. (Carter Center), America (OAS) and Europe (European Union) have accepted the generally free and fair

⁴ The table, extracted from “*Democratic backsliding through electoral irregularities: The case of Venezuela*” by Javier Corrales, shows electoral irregularities in Venezuela. They are broken down by timing, type of violation, and whether the violation has long-lasting effects (in blue) or are election-specific (in yellow). The table also shows when the opposition boycotted an election (in orange). Numbers indicate the introduction of an electoral irregularity. For more information, consult the detailed research by Corrales (2020).

nature of the elections in Venezuela, despite misgivings about some procedures (Cannon, 2009b). This is due to Chavismo's well thought out strategy of creating "façade elections". This means that the elections are democratic on paper to create the appearance of a liberal democracy so that the international community cannot contest the Chavista regime. Even though elections meet some formal requirements, the façade could not be maintained without the collaboration of the National Electoral Council (*Consejo Nacional Electoral*, CNE), populism and the context of polarization.

The CNE was created as an independent institution responsible for overseeing electoral processes. As established in Article 296 of the 1999 Constitution, the CNE is a counter-majoritarian institution aimed at guaranteeing the impartiality and transparency of elections and referendums; establishing and controlling campaign spending limits; and enforcing electoral laws and the rules established by the Constitution and the National Assembly (Vázquez, 2019). In this sense, the CNE was the government's strategic ally to build an electoral system systematically biased in favor of the Chavistas and against the opposition. Various facts show the co-optation of the CNE by Chavismo.

First, the appointment of its members should be carried out by the different branches of government to ensure that it is a pluralistic institution. However, since 2002 this was truncated by forcing some members to resign in order to put people loyal to Chavismo in their place (Vázquez, 2019). Second, the CNE distributed funds for electoral campaigns in a clientelist manner, for example, assisting the government with the Social Missions, to reinforce community support for chavismo (*ibid*). The CNE went as far as to grant incentives for voter registration and blocked access to the missions to people who voted for opposition candidates (*ibid*). This serious lack of privacy was also crossed with the creation of the Maisanta Program, which allowed the CNE to collect additional information on voters, and the Tascón List, which included people who had signed the 2006 recall referendum petition (*ibid*). Political dissidents were censored due to these actions. Finally, the CNE also interfered in the distribution of seats. For example, in the 2008 elections, the institution validated independent candidates as Chavistas in order to add more seats to the PSUV and guarantee the Chavista majority and confuse voters (Vázquez, 2019).

The second element that helped Chavismo create a democratic façade was the use of populism. Chavez's populist policies contributed positively to bringing the working and lower classes into politics, broadening the concept of democracy and the social base in Venezuela (Cannon, 2009c). In the first instance this is positive, however populist leaders often resort to undemocratic methods to achieve this. In the case of Venezuela this has implied dismantling the system of checks and balances, political pluralism, and the rule of law (Cannon, 2009c). In this populist scenario, democratic institutions are merely ornamental since power is exercised from the Executive (*ibid*). Moreover, plebiscitary tactics are used to reinforce social power and leaders rely on the military to sustain the regime (*ibid*). For Cannon (2009c), populism and democracy are opposites, and the former puts the latter at risk. In the case of Venezuela, this has led to an extremely polarized political context where democratic cohabitation is impossible.

Thirdly, the context of polarization has helped the opposition to have no chance of winning a "fair and free" election, although this is not currently the case in Venezuela. Polarization in Venezuela materialized with the incorporation of participatory democracy, which excluded previously dominant groups, the middle and upper classes, who became the political opposition (García-Guadilla & Mallen, 2019). The great political and social division between Chavismo and the opposition has reached such a high level that all narratives are antagonistic and have become social identities (Cannon, 2009c). Thus, both groups attempt to make their narrative dominant by violently excluding the other group and identifying it as the enemy (*ibid*). In this sense, the opposition has lost out due to the existing correlation of forces that gives greater social and political control to Chavismo, due to all the elements that have been previously examined.

3.2.3. *Collapse of the rule of law*

The rule of law is a basic element of constitutional liberal democracy and serves as a limit to the power of the State to prevent arbitrary actions (Gan Galavís, 2020). The separation of powers and the correlation between the law, government institutions and the protection of human rights are necessary conditions to control the behavior of state officials (*ibid*). In practice, the rule of law makes the state abide by the laws and contains people under the jurisdiction of the state (*ibid*). This principle creates a basic and fundamental legal

framework within which fundamental rights and norms previously established by the Constitution as the supreme rule are guaranteed. Thus, both the powers of the State and individuals have legal certainty as to which norms they must comply with and enforce. For this to become a reality, the rules must be enforceable, guaranteeing the principles of equality and equity, accountability, and the absence of arbitrariness (Gan Galavís, 2020). This presupposes the existence of a transparent and coherent system of law capable of guiding social behavior effectively and ensuring a binding peaceful order (*ibid*).

In the case of Venezuela, the Constitution establishes that it is a democratic and social State of Law and Justice. This determines that Venezuela considers the rule of law, understood as defined above, as a fundamental principle. Nonetheless, the reality is different. Since the arrival of Hugo Chávez, informal norms have been created that clash with the formal system established in the fundamental charter and have put the rule of law at risk. Successive constitutional reforms and legal changes aimed at consolidating Chavismo in power and dismantling the system of checks and balances have led to the collapse of the rule of law and the justice system (Engstrom, 2018). Especially since 2014, there has been a continuous degradation of judicial independence and the separation of powers, aggravated in recent years (*ibid*). Indeed, the Rule of Law Index 2021, ranked Venezuela last on the ranking of different categories, including the world rank, within the Latin America and Caribbean region, and among upper-middle income countries, meaning the weakest adherence to the rule of law (World Justice Project, 2021). The index considers various indicators: constraints on government powers, absence of corruption, open government, fundamental rights, order and security, regulatory enforcement, civil justice, and criminal justice. Venezuela's average score in all of them is 0.27 (from 0 to 1 points), with criminal justice being its lowest score, with 0.12 points (World Justice Project, 2021).

Since this cannot be done overnight, illiberal leaders progressively dismantle the rule of law, so that the erosion becomes irreversible at a certain point. In this sense, although the State and the formal rules exist, their content lacks effectiveness, and a counter-order is created which competes with the rule of law, causing the collapse of the legal system

(Gan Galavís, 2020). This usually means that the state violates the constitution on a permanent basis, enforces laws arbitrarily and the courts are not accessible to the people (*ibid*). Consequently, the State loses legitimacy for transgressing the laws and abusively using force, although they are not sanctioned for it because they have taken control of the sanctioning institutions, such as a courts and police forces (*ibid*). This will be exemplified with an analysis of the judicial system and the security forces in Venezuela.

The judicial system was captured by Chavismo from the very first moment. They were aware that by controlling this institution they could circumvent the law and act outside the legal framework to sustain themselves in power without being part of the electoral competition of democracy. To this end, the Supreme Court was gradually appointed with judges sympathetic to the regime, in order for Chavismo to control it completely. Once this was achieved, the Court began to prevent the National Assembly from exercising its formal functions, thus preventing the legislative branch from acting against the Bolivarian government (Brewer-Carías, 2018). The modus operandi has been to issue rulings that blocked the exercise of the Assembly and that, in the end, transformed the political system completely (*ibid*). This has several implications: the interference of the Executive in the other branches of the State, the disregard of the basic norms of the Constitution, and the autocratization of the State. Brewer-Carías (2018) denominates it a “judicial dictatorship or judicial tyranny”, since the executive uses the Supreme Court as an instrument to neutralize the National Assembly and eliminate any remaining power of the opposition to control the government. As it can be seen, at this point, the three basic elements of constitutional liberal democracy are eliminated: separation of powers, electoral competition, and the rule of law. The combination of these three has consolidated authoritarianism in the country.

The progressive erosion of the rule of law was aggravated by the 2004 institutional reform of the Supreme Court. The procedures for removal and appointment of judges were modified to bypass previously established legal procedures (Cannon, 2009b). A committee appointed the Supreme Court judges, as well as the Attorney General, the Chief Comptroller and the Ombudsman, without following the public participation process established by the 1999 Constitution (*ibid*). The appointment of judges was

carried out in a clientelist manner, which favored the implementation of the government's political agenda (Engstrom, 2018; Cannon, 2009b). Moreover, government interference in the judiciary has been facilitated by the fact that most judges in Venezuela are appointed on a temporary basis, which implies that the government can replace them if they do not act in line with chavismo (Engstrom, 2018). Thus, judges who issue rulings against government actions are systematically dismissed or attacked (*ibid*). Despite repeated warnings from different international organizations alerting of the erosion of judicial independence in the country, the government has not backed down in this process. In order to avoid international scrutiny, Venezuela has withdrawn from various international organizations, such as the Inter-American Court of Human Rights in 2012 (Engstrom, 2018).

The kidnapping of the Supreme Court by Chavismo has a great consequence: the elimination of the function of this institution as guarantor of the Constitution and its competence of judicial review. The Constitutional Chamber of the Supreme Court, whose function is to enforce the Constitution by reviewing that the actions of the government and the laws of the National Assembly comply with the fundamental norm, has ceased to have any real effect. This chamber has been the main tool of the authoritarian government for the illegal reform of the Constitution, for the abolishment of the rule of law, and even for the unlawful persecution and prosecution of the members of the National Assembly (Brewer-Carías, 2018). Lawsuits for judicial review against bills that are considered anti-constitutional have been ignored or blocked by the Court, which does not even process the requests seeking to avoid blocking the actions of the government (*ibid*). Thus, for example, decree laws issued by the executive are not subject to any kind of judicial control or review and go unpunished (*ibid*). This has generated a situation of great legal insecurity for both democratic institutions and individuals.

This leads to believe that the written constitution is simply a convenient disguise for the installation of a concentration of power in the hands of a single person. This fraudulent use does not only imply simple modifications or constitutional infringements, but also has as a clear objective the dismantling of the institutions of democracy and the rule of law (Casal, 2013). It is important to understand that in Venezuela Chavismo has used

democratic instruments, such as the constituent assembly, the National Assembly, or elections, to put an end to the democratic order and impose an authoritarian state, disguised as "democracy". Thus, the 1999 Constitution has become a mere political weapon to keep Chavismo in power (Casal, 2013). It should be remembered that the constitution is not only a text that establishes the fundamental norms of a state, but it is also the legal instrument that guarantees human rights and the foundations of democracy (*ibid*). The breach and fraudulent use of the constitution makes it lose the character of supreme norm and threatens the protection of the fundamental rights of individuals (*ibid*).

The aforementioned occurred while Chavismo controlled the three branches of government, yet the situation worsened even more when the opposition managed to take control of the legislative branch. Following the 2015 legislative elections, in which the opposition coalition Democratic Unity Table (*Mesa de la Unidad Democrática*, MUD) won 112 of the 167 seats in the National Assembly, the government sought to neutralize its powers (Engstrom, 2018). Prior to the swearing in of the new legislators in 2016, the outgoing Assembly appointed judges loyal to Chavismo to the vacant positions in the Supreme Court, thus ensuring to keep that area secured for the government (*ibid*). From that moment on, the Constitutional Chamber of the Supreme Court, acting as legislative reviewer, declared unconstitutional practically all laws and bills sanctioned by the National Assembly (Brewer-Carías, 2018). In addition, the internal regulations of the Assembly were reformed so that legislative functions would require the prior approval of the Executive (*ibid*). Moreover, its political power of control over the government was eliminated (*ibid*). All this is directly incompatible with democratic standards, the rule of law and the separation of powers. More recently, in 2017 the Executive called for the election of a Constituent Assembly intended to take over the legislative functions of the National Assembly (Engstrom, 2018). This election was boycotted by the opposition and, although it resulted in a new entity formed exclusively by supporters of Chavismo, it has not been recognized by most governments in the region or the European Union (*ibid*).

The collapse of the rule of law has occurred in parallel to the process of militarization of democracy, which has led to the securitization of policies and a public security crisis (Bull & Rosales, 2020). The arbitrariness with which judges and security forces act has created

a sense of fear and insecurity in society, especially in those who do not support Chavismo (Gan Galavís, 2020). This way of acting, outside the proper functioning of the rule of law, is due to the privileges granted by the government in exchange for loyalty and collaboration with the regime (*ibid*). This has led to the abuse of force, corruption, and the misuse of criminal law by police and judicial officials (*ibid*). This is a serious violation of human rights and a total break with democracy and the rule of law. In this scenario, public security has become a tool to eliminate the enemies of the government, making use of the militarization of society and the paramilitarization of the State (Bull & Rosales, 2020). The government uses criminal law to persecute any political dissidence, excusing it in a policy to combat the internal enemy (Gan Galavís, 2020). Likewise, continuous states of exception are declared to reduce controls on the government and apply force in an unrestrained manner (*ibid*). The population has been the victim of extrajudicial executions and serious human rights violations (Bull & Rosales, 2020). In this sense, marginalized groups are the main victims of the arbitrariness and brutality of the State security forces, especially the Bolivarian Militias (*ibid*).

Thus, the Socialist State that Hugo Chávez intended to build in order to put the rights of the people at the center has achieved the opposite: the constant violation of rights embodied in the 1999 Constitution and the total lack of protection of human rights. The militarization of the Chavista regime is perhaps the key aspect preventing a transition to a true democracy where human rights can be enjoyed. This is due to the total dismantling of the basic elements of liberal democracy, and especially the breakdown of the rule of law. The coercive use of the Armed Forces has kept Chávez and Maduro in power, even facing coup attempts and the scrutiny of the international community (Roberts, 2020). Before Hugo Chávez died, he named Nicolás Maduro his successor, leaving him a context of economic and social crisis. With this scenario, Maduro promoted the autocratization and militarization of the State to guarantee the survival of the Chavista regime (Roberts, 2020). The new government increased the military budget by 163%, the number of troops doubled and the influence of the military in politics and the economy did not stop growing (Gan Galavís, 2020). All this proves that the militarization of the Chavista regime was expressly aimed at breaking the rule of law, being able to act at will and hence remaining in power.

As it has been shown after the analysis of the role of the Armed Forces in the State and the consolidation of the Chavista regime in the last two decades, the original Bolivarian project has not been carried out as promised in 1998. Participatory democracy has not resulted in a better participation of the whole Venezuelan society; poverty, inequality and social exclusion have not been eradicated; and the economy has not been diversified away from dependence on oil revenues (Jimenez, 2022). On the contrary, Venezuela has ended up becoming a regime that can be qualified as competitive authoritarianism, associated with a significant institutional decline, the systematic violation of human rights and the dismantling of democratic principles (*ibid*). This has generated a multidimensional crisis that, together with the diplomatic isolation and economic sanctions imposed by the International Community, has left the Venezuelan population in a situation of total abandonment by the State. The following chapter will analyze the effect that the Chavista regime has had on the protection of human rights in the last two decades.

CHAPTER 4. CONSEQUENCES OF THE CHAVISTA REGIME ON THE PROTECTION OF HUMAN RIGHTS

The previous chapters have explained how the Bolivarian model was conceived in Venezuela, how Chavismo designed a constitution accordingly, and how what formally appeared to be an alternative democratic model was transformed into an authoritarian regime due to the great process of militarization of politics and democratic decay, including the collapse of the system of checks and balances, electoral democracy, and the rule of law. All this has had terrible consequences for the protection and enjoyment of human rights for Venezuelans. Since the establishment of Chavismo, there have been gross violations of human rights, which added to the severe multidimensional crisis, have resulted in many people in need of humanitarian assistance. This last chapter aims at showing how the authoritarian regime installed by Chávez is incompatible with the respect for human rights. To this end, it will briefly analyze the legal framework of human rights in Venezuela and how the process of democratization and militarization set alarm bells ringing in the international community. It will then proceed to examine the state of civil and political rights on the one hand, and economic, social, cultural, and environmental rights on the other.

As a consequence of the great democratic degradation, anti-government demonstrations began to take place on a regular basis. The result is usually a very violent repression by the military and police forces under the power of the government. Opposition members and government critics are killed, injured, detained, and disappeared by the government and its supporters (Duddy, 2015). Under the Chávez and Maduro administrations, protesters have been killed and met with force, although the opposition has not undertaken armed force to overthrow the government (O'Connell, 2019). This is not a new issue, as attacks and persecution of the opposition began after the 2015 elections, when the opposition won a majority in the National Assembly (IACHR, 2017). This, coupled with the lack of an independent judiciary, leads to a failure to protect fundamental rights. In the absence of credible judicial oversight, the Chavista government has pursued discriminatory policies which have undermined freedom of expression for journalists,

freedom of association for workers, and civil society's ability to promote human rights (Human Rights Watch, 2008).

In this sense, the Inter-American Commission on Human Rights (IACHR) considers that Venezuela is falling within "a serious violation of the fundamental requirements and institutions of representative democracy mentioned in the Inter-American Democratic Charter, which are essential means for the realization of human rights" (IACHR, 2017). This institution determines that in Venezuela there is an abusive exercise of power that undermines the rule of law and involves a systematic violation of the independence of the judiciary and the lack of subordination of State institutions (*ibid*). This implies that the rights guaranteed in the American Declaration or in the American Convention cannot be enjoyed because of the political, economic, and social context resulting from the collapse of the rule of law, the serious institutional crisis, and the serious omissions in the adoption of provisions necessary to make fundamental rights effective (*ibid*). For several years, the IACHR has been observing a gradual deterioration of the democratic and human rights situation, which has significantly escalated and generalized since 2015. The IACHR has determined that Venezuela does not meet the essential elements of representative democracy. Democratic institutions are not governed by the principles of separation of powers and checks and balances (IACHR, 2021). The executive branch has *de facto* absolute power, as it has taken over institutions such as the Supreme Court, the National Assembly and the Public Prosecutor's Office (*ibid*). This implies that there is no scenario in which human rights can be protected.

The situation was further aggravated in 2020, when the legislative term of the National Assembly, elected in 2015 and with an opposition majority, closed. This institution was considered the last vestige of democratic legitimacy in Venezuela (IACHR, 2021). From this moment on, Chavismo regained the legislative branch, which paved the way for committing serious human rights violations, especially against people who dissent from the government (*ibid*). The IACHR highlights in its latest report that living conditions continue to deteriorate in the country, disproportionately harming women, human rights defenders, persons with disabilities, the elderly, children and adolescents, indigenous peoples, Afro-descendants, persons deprived of liberty, and the LGBTI community (*ibid*).

Given the authoritarian context and the pattern of systematic human rights violations, Venezuela is being monitored by other important international institutions too. The Office of the United Nations High Commissioner for Human Rights (OHCHR) has declared the grave violations of economic, social, cultural, and environmental human rights and the humanitarian crisis facing Venezuela. At the 8506th meeting of the United Nations Security Council, held on April 10, 2019, it was concluded that Venezuela faces "a very real humanitarian problem" (UNSC, 2019). Experts determined that the situation has worsened in the last years due to recurrent power outages that especially affect hospitals, the interruption of water sanitation systems, the decrease in purchasing power, the continuous economic inflation, the decrease in access to food that generates malnutrition, and the shortage of medical supplies and equipment, among others (*ibid*). In September 2021, an International Fact-Finding Mission concluded that there are reasonable grounds to believe that crimes against humanity were committed in Venezuela (Jiménez, 2022). On November 5, 2021, the Office of the Prosecutor of the International Criminal Court opened a formal investigation about the alleged commission of crimes against humanity in the country.

All this is taking place outside of Human Rights Law to which Venezuela is a party. Venezuela is a signatory to a wide range of international human rights treaties, including the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the International Covenant on Economic Social and Cultural Rights, the Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment, the International Convention for the Protection of All Persons from Enforced Disappearance, the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Elimination of All Forms of Discrimination against Women, the Convention on the Rights of the Child, the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, and the Convention on the Rights of Persons with Disabilities. Moreover, as part of the Organization of American States (OAS), the American Convention of Human Rights, also called Pact of San José, and the American Declaration on the Rights and Duties of Man are part of Venezuela's Human Rights Law. Nevertheless, on September 6, 2012,

Venezuela announced its intention to withdraw from the American Convention on Human Rights and, therefore, to withdraw from the jurisdiction of the Inter-American Court (International Commission of Jurists, 2014). The withdrawal became effective on September 10, 2013, even though it is still subject to the obligations set forth in the Convention and to the jurisdiction of the Inter-American Court "with respect to any act that may constitute a violation of those obligations and that was carried out by that State prior to the effective date of the complaint" (*ibid*).

In this regard, the 1999 Constitution specifies that Human Rights treaties to which Venezuela is party have constitutional rank and prevail over domestic legislation, when they are more favorable to human rights than those recognized in the Constitution and national laws (International Commission of Jurists, 2014). Moreover, the Constitution grants broad fundamental rights, which impose corresponding obligations on the State. However, Venezuela is not complying with its obligations under its Constitution and international human rights law, as it will be examined later. States cannot avoid "hard core" rights included in legally binding International Law. They are *erga omnes* obligations under International Human Rights Law and include civil and political rights, such as the right to life; and social, economic, cultural, and environmental rights, such as the right to food, health, or housing (Abrisketa Uriarte, 2004). The fulfillment of these basic rights cannot be denied to citizens since they have no derogation clauses and are not subject to any exceptions (Rey Marcos, 2008). In other words, States cannot invoke domestic legislation or the principle of non-intervention to avoid them (Abrisketa Uriarte, 2004). In addition to the law, the State, as sovereign authority over its territory, has the responsibility to protect its population from human rights violations, to react to the violation of basic rights such as life, food, or health, and to guarantee the fulfillment of fundamental rights under the internationally recognized principle of the Responsibility to Protect (R2P) (UNGA, 2009). Ultimately, the Venezuelan government has the obligation to protect and promote human rights under its constitution, international law, and internationally recognized principles.

On the basis of the system established by the two Covenants, the following sections will analyze the situation of the most relevant human rights in Venezuela. The rights to be

analyzed have been selected according to two factors: their fundamental nature, and their inclusion in numerous reports by leading international organizations and civil society organizations. They have also been included they rights included in the last Universal Periodic Review (UPR) reports submitted by civil society organizations. Although the situation of serious breaches of human rights has been going on since the beginning of Chavismo, the analysis will focus more on the events of the last five years, for reasons of time and space. The analysis also aims to prove the interdependence and indivisibility that exists between the violations of civil, political, economic, social, cultural, and environmental rights. These rights constitute an indissoluble whole, which is essential for the effective exercise of democracy and the enjoyment of fundamental rights and freedoms (IACHR, 2017).

4.1. Civil and political rights

4.1.1. Right to life

Article 43 of the 1999 Constitution determines that the right to life is inviolable and that the State shall protect the life of the people deprived of their liberty, under military or civil service and subject to an authority in any other way. Similarly, article 6 of the International Covenant on Civil and Political Rights (ICCPR) established that every human being has the inherent right to life, that this right shall be protected by law, and that no one shall be arbitrarily deprived of his life. However, this right is being violated due to deaths among members of the opposition carried out by the armed forces. In addition, it is also being neglected due to deaths caused by poor living standards, including aspects such as health, food, housing, or electricity.

Available data show a very high number of killings in the context of security operations or protests over the past years, which are consistent with patterns of extrajudicial executions (Human Rights Council, 2021a). Between 2016 and June 2019 there were 20,452 deaths attributable to security forces (Amnesty International, 2021). In 2021 alone, OHCHR documented 17 cases of alleged killings in the context of security operations or protests (Human Rights Council, 2021a). In 12 of these cases, the

perpetrators broke into the victims' homes, using violence, including gender-based violence, to control witnesses and separate the victims from their families (*ibid*). Very often, the wives and children of the victims were present at the scene, affecting their health and integrity (*ibid*). Witnesses to these deaths have reported insults, beatings, and death threats if they did not cooperate (*ibid*).

Between 2014 and 2020, at least 8,292 cases were reported as extrajudicial executions (IACHR, 2021). In the first semester of 2021, 825 alleged extrajudicial executions were reported (*ibid*). The victims are mainly young men living in low-income neighborhoods who are arbitrarily detained, although security forces count them as clashes with police (Amnesty International, 2021). Investigations reveal that security forces manipulate evidence at crime scenes and remove the bodies of victims (Human Rights Council, 2021a). This has had a major impact on the communities as fear is spread among the people, generate distrust in law enforcement, further marginalize poor communities and cause displacement (*ibid*). These figures not only show the severity of the situation, but also show the steady increase in the number of extrajudicial executions, as in 2015 there were 37% more cases than in 2014; and in 2016 70% more cases than the previous year (IACHR, 2017).

The majority of the killings have been attributed to members of the Special Action Forces, the Directorate of Scientific, Criminal and Forensic Investigations and the Directorate of Criminal Investigations of the Bolivarian National Police (Human Rights Council, 2021a). Most of these cases have occurred during joint security operations (*ibid*). The IACHR has remarked that the militarization of citizen security, the excessive use of force and the politicization of the Armed Forces have contributed to the existence of this pattern of extrajudicial executions (IACHR, 2021). Deaths have also occurred due to clashes between the Bolivarian National Armed Forces and alleged dissident factions of the Revolutionary Armed Forces of Colombia (Human Rights Council, 2021a). This shows once again how the professional and autonomous military body that should serve to protect the people ends up being used in a political manner for partisan purposes that have nothing to do with its democratic and constitutional function.

These patterns highlight the need for an integral reform of State security policies and institutions to prevent further violations of the right to life (Human Rights Council, 2021a). The IACHR recommends that the participation of the Bolivarian National Armed Forces in citizen security activities be eliminated and that this be left to the police (IACHR, 2017). Likewise, the use of lethal force must be guaranteed to be conducted in strict compliance with the principles of exceptionality, legality, necessity, proportionality, non-discrimination, and accountability (*ibid*). To ensure respect for human rights and democratic principles, the actions of the Armed Forces must be complementary to the activities of civilian forces and be subject to regulation and oversight by competent and autonomous civilian authorities (IACHR, 2021). When this does not occur, the basic elements of liberal democracy are not fulfilled. For instance, the above cases demonstrate how State security forces in Venezuela do not operate under the rule of law and are not subject to the system of checks and balances established in the Constitution.

4.1.2. *Right to physical and moral integrity*

The 1999 Constitution comprehensively grants the right to physical and moral integrity. Article 46 establishes that every person has the right to have their physical, mental, and moral integrity respected; and article 55 states that everyone has the right to protection by the State from situations constituting a threat, vulnerability, or risk to the physical integrity of persons. In the same way, the ICCPR establishes on its article 7 that no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. However, this right is not being respected in Venezuela, especially in cases of torture and ill-treatment.

OHCHR has received serious allegations of torture and cruel, inhuman or degrading treatment or punishment, including accounts of beatings, electric shocks, sexual violence and threats of rape (Human Rights Council, 2021a). This clearly violates the right to physical and moral integrity of all persons. Torture and ill-treatment are especially prevalent with political prisoners. The OAS has collected more than 633 cases between 2014 and 2016 alone (IACHR, 2021). The Independent International Fact-Finding Mission on Venezuela collected evidence of 12 cases of torture in facilities of the

Bolivarian National Intelligence Service and 77 cases at the headquarters of the General Directorate of Military Counterintelligence from 2014 to 2018 (Human Rights Council, 2022). In 2021, the organization *Foro Penal* had documented 2 cases of torture on persons deprived of liberty (IACHR, 2021). These are only the cases that could be documented, but it is estimated that there may be many more.

The IACHR has proven that torture and cruel treatment against civilians, military and prisoners is a systematic practice of the State (IACHR, 2021). The testimonies gathered show particular brutality and cruelty against military personnel accused of being deserters or traitors (*ibid*). Most cases of torture and ill-treatment occur in the first days of detention, taking advantage of the fact that the victims are held incommunicado before being brought before the courts (*ibid*). This is not only a serious violation of the right to physical and moral integrity but also shows an abuse of power and excessive use of force by government officials. Torture practices identified by IACHR include holding prisoners in a crucifixion position for long hours; asphyxiation with bags, chemicals, or buckets of water; beatings with hard objects; electric shocks; threats of death and sexual violence against prisoners or their relatives; psychological torture; and forced nudity (IACHR, 2021). Reports have come to show that the detention centers of the Bolivarian National Intelligence Service and the General Directorate of Military Counterintelligence do not have water service, which seriously damages the health of the prisoners and is a direct threat to their integrity (Human Rights Council, 2022). On many occasions prisoners are not allowed to have visits, and if they do have them, they are in exchange for payment to the respective prison official (*ibid*).

In some cases, victims of torture and ill-treatment have denounced the facts before the courts, but in the absence of judicial guarantees in the country, they have been returned to prison under the custody of their aggressors (Human Rights Council, 2021a). OHCHR continually receives complaints, but judges and prosecutors still fail to take precautionary measures to protect the physical and moral integrity of those imprisoned (*ibid*). The International Fact-Finding Mission has received information about alleged documents that they make people they release from the Bolivarian National Intelligence Service and the General Directorate of Military Counterintelligence sign stating that their rights have

been respected while in custody (Human Rights Council, 2022). These documents included the obligation not to disclose information about the entire detention and trial process (*ibid*). Applying a gender perspective, the situation of torture and ill-treatment is aggravated against women detainees, who are particularly affected by sexual violence (Human Rights Council, 2021a). In addition to direct violence against them, women suffer more because prisons do not have gender-specific rules and, furthermore, they are often under the custody and surveillance of men (*ibid*).

Although Venezuela has a Special Law to Prevent and Punish Torture and Other Inhuman or Degrading Treatment, the collapse of the rule of law renders any legal guarantees for individuals null and void. Article 33 of this law includes criminal and administrative sanctions for officials who engage in torture or ill-treatment, but there is no record that it has ever been enforced (Human Rights Council, 2021a). All of this is a flagrant violation of the right to due process, in addition to other fundamental rights. Especially because the State plays the role of guarantor of the persons under its custody, which implies the duty to protect and guarantee all their rights, but especially the right to life and physical and moral integrity (IACHR, 2021). As it can be seen, the guarantor role of the Venezuelan State has been reduced to nothing as it is the State itself who provokes the violation of basic human rights.

4.1.3. Right to liberty and right to due process of law

The right to liberty is granted in article 44 of the 1999 Constitution, which determines that personal liberty is inviolable. Moreover, article 45 prohibits public authorities to practice, permit or tolerate the forced disappearance of persons, even in a state of emergency, exception, or restriction of guarantees. The ICCPR also includes this right on article 9, establishing that everyone has the right to liberty and security of person, no one shall be subjected to arbitrary arrest or detention, and no one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law. In addition, article 10 determines that all persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person. These provisions show how the right to physical and moral integrity, the right to liberty

and the right to due process are connected and they are interdependent. This means that if they are not guaranteed together, it is very difficult to ensure any of them individually.

As it has been previously mentioned, due to the lack of an efficient and guarantor judicial system, it is complicated to grant certain rights in Venezuela. The right to liberty finds a great obstacle in the dual penitentiary system that exists in the country. The official prison system functions under the Ministry of Popular Power for Penitentiary Services, which in 2019 published that there were 40 million people in 45 penitentiary centers (IACHR, 2021). On the other hand, there is a parallel system formed by about 500 preventive detention spaces outside any legal and formal framework (*ibid*). Although access to data is complicated due to this “parallelism”, the IACHR concluded that in 2019 it included more than 60 thousand people (*ibid*). Data on incarcerated persons has ceased to be published by the government, with no official figures for 2020 and 2021.

The situation of the prison system is exacerbated by enforced disappearances and incommunicado detentions. The OHCHR has been able to prove persistent patterns of these practices, where people are held incommunicado and the authorities do not disclose their location to family members or lawyers, constituting enforced disappearances (Human Rights Council, 2021a). The duration can last from a few hours to several months (*ibid*). This opacity poses great risks of torture and ill-treatment, as no one can control what happens during this period. It is common for these forced disappearances to occur after the legal 48-hour period following the arrest of a person, when they are not brought before a judge to comply with the corresponding judicial guarantees (IACHR, 2021). The organizations *Foro Penal* and Robert F. Kennedy Human Rights documented 200 disappearances forced disappearances in 2018, 524 in 2019, 33 in 2020 and 5 in 2021 (*ibid*). For the IACHR this is due to the lack of independence of the administration of justice (*ibid*). Enforced disappearances are one of the most serious human rights violations, because they violate several rights at the same time, and they constitute a crime against humanity (IACHR, 2021). According to OAS standards, States must keep an updated registry of detained persons and bring them before the courts with the corresponding legal defense according to the applicable legal framework (IACHR, 2017).

The right to liberty is also violated when detention conditions are not sufficiently adequate in accordance with international standards. For instance, overcrowding, inadequate sanitary and hygienic facilities, and lack of access to adequate food, drinking water, treatment of diseases, outdoor activities, and exercise (Human Rights Council, 2021a). These factors are present in Venezuelan prisons, directly affecting the right to liberty and the right to physical and moral integrity of persons deprived of liberty. The situation has been further aggravated by the decrease in financial resources, international sanctions, lack of maintenance and measures taken in the context of the coronavirus pandemic (Human Rights Council, 2021a). OHCHR is very concerned about deaths in custody. Between 2016 and 2020 Window to Freedom reported 699 deaths (Amnesty International, 2021). The main causes are the high rate of tuberculosis, malnutrition, and other diseases among prisoners (Human Rights Council, 2021a). Deaths in custody continue to persist and are not being properly investigated. Structural changes would have to take place in the prison system to ensure the necessary health and legal conditions to protect the fundamental rights of prisoners.

The IACHR has also warned that in Venezuela there is a systematic practice of arbitrary detentions against those who demonstrate or publicly protest against the government. These detentions are carried out without warrants, with excessive use of force and, on occasion, by misidentified security agents or with false documentation (IACHR, 2021). According to data documented by the organization *Foro Penal*, from 2014 to 2021 there have been 15,756 arbitrary detentions, 600 of these took place during the 2017 protests (*ibid*). At least 872 of the cases were brought before military courts, despite being civilian cases (*ibid*). This directly threatens the right to liberty, but also the right to due process and other judicial guarantees. The lack of judicial independence and the collapse of the rule of law has led State authorities to use and manipulate criminal law as a political tool against the opposition. This situation leads to the violation of judicial rights and guarantees, included in Article 14 of the ICCPR and Article 49 of the Venezuelan Constitution. Some of the elements of the due process include defense and legal assistance, the presumption of innocence, an objective and timely trial, or not being forced to confess.

All persons have the right to have access to a lawyer of their choice, but in Venezuela this right is obstructed by State authorities, despite being included in the Constitution and in Article 127 of the Organic Code of Criminal Procedure. In many cases the courts deny the appointment of private lawyers, alleging procedural errors and bureaucratic hurdles (Human Rights Council, 2021a). Cases have even been reported in which judges, prosecutors, and other officials pressure defendants to dismiss their private lawyers and replace them with public defenders, who turn out to be more favorable to the Public Prosecutor's Office (*ibid*). The Independent International Fact-Finding Mission documented more than 54 cases in 2021 in which the accused was denied the right to counsel of their choice (Human Rights Council, 2022). Another tactic of the judicial system has been to hinder the work of defense lawyers by obstructing access to files and documentation, failing to notify hearings, and blocking their physical access to the courts (Human Rights Council, 2021a).

Similarly, the right to an independent court and to a fair trial is commonly violated for a variety of reasons. On the one hand, everyone has the right to be heard by a competent, independent, and impartial tribunal established by law, but in Venezuela this is not the case because judicial proceedings are conducted with secrecy and lack of independence (Human Rights Council, 2021a). This is why the OHCHR continues to request access to observe trials, especially before the terrorism and military jurisdictions, which are held in private (*ibid*). On the other hand, there have been cases where defendants have been forced to testify against themselves or to confess guilt, due to pressure, preventive detention, ill-treatment or torture, and negligent legal assistance (*ibid*).

Given this complicated scenario, the Venezuelan judicial system must be reformed and strengthened to guarantee the human rights of detainees and to hold state authorities accountable for the grave violations committed. Of all the cases that the OHCHR has documented, and which have been cited above, only one has ended in a conviction for the state (Human Rights Council, 2021a). Despite the Public Prosecutor's Office announcing the prosecution of 804 officials of State security forces for human rights violations committed since August 2017, none of the investigations convicted the chain of command (Amnesty International, 2021). Structural changes such as better funding, an end to

reprisals against those who dare to denounce State practices, and better access to judicial processes, must take place to guarantee the minimum elements of the right to due process (Human Rights Council, 2021a). Impunity for human rights violations remains the norm for the Chavista regime.

4.1.4. *Democratic and civic space*

Article 62 of the Constitution provides that all citizens have the right to freely participate in political affairs. This participation is necessary to achieve the individual and collective protagonism on which participatory democracy is based, thus the State has the duty to facilitate the conditions for society to participate in the formation, execution, and control of public administration (Venezuelan Constitution, 1999). Along the same lines, Article 25 of the ICCPR determines that every citizen must have the right and opportunity to participate in the management of public affairs, directly or through chosen representatives; to vote and be elected in periodic elections; and to have access, under conditions of equality, to the public functions of their country.

These minimum guarantees of democratic participation are systematically violated in Venezuela. Although covered by façade elections, there is evidence of inducement to vote during electoral processes. For instance, at both the national and local levels, there have been cases in which public authorities have provided social benefits, such as food baskets or cash subsidies, in exchange for votes in their favor (Human Rights Council, 2021a). This meddling has even led authorities to threaten to withdraw access to social assistance programs or public companies to fire employees if they do not vote for Chavismo (*ibid*). Due to these facts and many other electoral irregularities, there have been electoral processes in which opposition parties have not participated alleging the lack of minimum guarantees to ensure a free and fair process (*ibid*). All this constitutes a direct violation of the fundamental rights enshrined in the Venezuelan Constitution and the ICCPR, both binding and enforceable.

Considering that elections are an essential element of democracy and that these are not respected by the Chavista regime, it is understandable that the rest of the civic space of society is also corrupted and violated by Chavismo, to avoid any social movement that

would hinder its absolute power. This is carried out through the stigmatization and criminalization of civil society actors. Public statements by authorities against people perceived as critical of the government are a common practice. This is especially recurrent against human rights defenders, civil society representatives, and journalists, who are labeled as criminals or terrorists (Human Rights Council, 2021a). In some cases, lawsuits are brought against them to initiate legal proceedings to criminalize them and discredit their work (*ibid*). This is a violation of several rights at once, such as the aforementioned right to democratic participation, freedom of expression, the presumption of innocence and the right to honor, as civil society actors are defamed and personally attacked. In this sense, Article 60 of the Constitution guarantees the right to the protection of the honor, private life, intimacy, self-image, confidentiality, and reputation of every citizen.

The Chavista regime has managed to criminalize civilian actors through the fraudulent use of criminal law and the enactment of laws favorable to them in order to control the opposing civil society. For instance, the 2012 Law against Organized Crime and Financing of Terrorism includes a very vague definition of the concept of terrorism, which has led to its broad interpretation to punish activities, organizations and individuals that do not constitute a crime (Amnesty International, 2021). Similarly, under the Constitutional Law against Hate, for Peaceful Coexistence and Tolerance of 2017, legitimate acts of protest have been punished as promoting or inciting hatred, punishable by up to 20 years' imprisonment (*ibid*). These laws allow a wide interpretative margin that is fraudulently used by Chavismo to punish dissident voices, human rights organizations, and humanitarian workers (*ibid*). This constitutes a multidimensional offense, as it violates several rights at the same time, such as the right to due process and the right to express an opinion, contained in Article 19 of the ICCPR.

This especially affects civil society organizations, such as NGOs, and their members. In 2021, the government adopted an administrative regulation that grants the government access to organizations' confidential internal information, thus violating their right to privacy (Amnesty International, 2021). In case organizations do not collaborate with the government, they are threatened with criminalization, for example, on charges of terrorism or money laundering, or deprived of their legal status (*ibid*). In recent years, there have been illegal raids against NGOs, arbitrary arrests of human rights defenders

and increased legal and administrative requirements to be legally recognized as an organization (*ibid*). All with the aim of obstructing the work of oversight of the government and defense of human rights and democracy standards. In 2020, more than 303 aggressions against human rights defenders were reported (Amnesty International, 2021). In 2020, OHCHR recorded 97 incidents including journalists, trade union leaders, human rights activists, and civil society organizations (Human Rights Council, 2021a).

4.1.5. *Fundamental freedoms*

There are several freedoms that are fundamental to the full exercise of democracy by citizens. Freedom of expression and opinion, freedom of association and freedom of assembly are analyzed below, since it is considered that these are the great freedoms that Venezuelan citizens lack due to the actions and restrictions of the Chavista regime.

First, freedom of expression and opinion are fundamental in a democratic system, as it is based on the plurality of political ideas and the possibility of coexistence among diverse thoughts. Following this notion, Article 57 of the Venezuelan Constitution ensures the right of all persons to freely express their thoughts, ideas, or opinions orally, in writing or through any other form of expression, and to make use of any means of communication and dissemination, without being censored. Article 61 grants everyone the right to freedom of conscience and to manifest it. Similarly, Article 19 of the ICCPR guarantees the right to hold opinions without interference and establishes the right to freedom of expression, including the freedom to seek, receive and impart information and ideas of all kinds.

Attacks on freedom of expression and opinion, while widespread against all opposing voices, are particularly severe against journalists and the media, human rights defenders, and members of civil society organizations, who are usually intimidated and censored (Human Rights Council, 2021a). There have been very serious cases in which journalists have been harassed by the Bolivarian National Guard, the Special Action Forces and the Bolivarian National Intelligence Service (*ibid*). Journalists critical of the government suffer illegal detentions, threats, and harassment on media headquarters on a systematic basis (IACHR, 2021). The authorities illegally destroy or confiscate images and other

materials for going against Chavismo (Human Rights Council, 2021a). In 2021, at least 5 radio stations and television channels were closed, and their material confiscated (*ibid*). These actions are justified by alleging violations of the Constitutional Law against Hate (IACHR, 2021).

The Special Rapporteur for freedom of expression has observed a special violation of these rights against women journalists, despite the fact that the State does not provide data disaggregated by vulnerable groups (IACHR, 2021). According to data from the Institute of Press and Society Venezuela in 2019 113 female reporters were deprived of this right; the figure increased to 127 in 2020 (*ibid*). These attacks usually occur when female journalists cover topic traditionally considered masculine, such as economics, politics, or sports (*ibid*). Moreover, violence is also aggravated when the journalists or the topics covered belong to the LGTBI community (*ibid*). During the last Universal Periodic Review in 2016, Venezuela rejected the recommendations expressed by other States regarding freedom of expression, especially criminalization strategies (Amnesty International, 2021). Venezuela is under review again this year and has not carried out any reforms or actions in this regard.

These rights are closely related to freedom of the press, which was highly attacked in Venezuela since 2007, with the cutting of funding in public media and the elimination of their licenses, such as Radio Caracas TV (Coker, 2014). As for the private media, a large part of them belong to the opposition and this has led to the authorities closing many of them alleging non-compliance with administrative requirements (Amnesty International, 2021). A society without access to truthful, objective, and complete information cannot be considered democratic. When the media are fully controlled by the government, only a privileged few can have a true picture of reality, while the rest receive information biased in favor of one party. This means that there can be no democratic oversight of the government's actions, which is an essential element of liberal democracy. In Venezuela, major obstacles to the exercise of the right of access to information have been denounced for years (IACHR, 2021). Despite the fact that the 1999 Constitution determines in article 58 that communication is free and plural and that everyone has the right to timely, truthful,

and impartial information, without censorship, in accordance with the principles of the Constitution, the reality is that public information is increasingly scarce.

The lack of public information means that there is no transparency on issues such as budget and public spending, government procurement and contracting, or mechanisms for citizen participation and accountability (Human Rights Council, 2021b). The lack of access to public information has directly affected the capacity of citizens to participate in the development, implementation, and oversight of public policies (*ibid*). For instance, the national budget has not been published since 2018, and the reports of the different ministries have not been made public since 2017 (*ibid*). In the health field, no epidemiological bulletins or mortality data have been published since 2016 (*ibid*). This means that citizens do not know what is really happening in their country and cannot act accordingly. The regime is hiding the real functioning of the government to avoid protests and social movements against it.

As has happened before with other rights, laws have been used to limit access to information, thus disguising the limitation of rights as a legitimate action. The Constitutional Anti-Blockade Law for National Development and Safeguarding of Human Rights of 2020 grants the Executive the power to exclude files, documents, information, and facts from being published on grounds of "national interest and convenience" (Human Rights Council, 2021a). The terms of this law are very vague, so the government could apply it without limits for its own benefit. There are also material limitations to this right, such as the scarcity of paper for printing newspapers or the precarious infrastructure of internet connection, which prevents fluid access to online media (Human Rights Council, 2021a). The latter particularly affects areas outside the capital, such as rural and indigenous communities (*ibid*). In 2021, 63.3% of households did not have internet access (IACHR, 2021). In addition, websites of journalists, news portals, print media and NGOs that aim to report in an objective and democratic manner have been blocked (*ibid*).

Second, freedom of association is regulated in article 52 of the Constitution, which determines that everyone has the right to associate for lawful purposes, and the State must

facilitate the exercise of this right. The ICCPR also includes it in its article 22, establishing that everyone has the right to associate freely with others, including the right to form and join trade unions for the defense of his or her interests. This right has been undermined by regulations and norms that hinder the ability to associate and create organizations to defend human rights and other essential aspects of democracy. In 2020, the government enacted a regulation that expanded the administrative requirements to be able to register as an association and operate legally (Human Rights Council, 2021a). Through this regulation, a registration could be invalidated to protect "public order and sovereignty" (*ibid*). In practice it has resulted in reduced access to funding and other resources necessary to be able to work. In 2021, several humanitarian organizations have seen their activity blocked due to registration procedures, freezing of assets and judicial proceedings (Human Rights Council, 2021a). In addition to the fact that this affects the direct exercise of freedom of association, it also has a dissuasive effect so that others do not associate for fear of the consequences.

Third, article 53 of the Constitution recognizes freedom of assembly as the right to assemble, publicly or privately, without prior permission, for lawful purposes and without arms. Similarly, article 21 of the ICCPR recognizes the right to peaceful assembly, the exercise of which may be subject only to such restrictions as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, public order, the protection of public health or morals or the rights and freedoms of others. Due to the political, economic, and social crisis in the country in a particularly aggravated manner since 2017, thousands of people have taken to the streets to protest against the government, the hijacking of democratic institutions, the impossibility to enjoy human rights and the shortage of basic goods and services. In this context, there have been significant restrictions on the exercise of the right to social protest and freedom of expression by the Chavista regime, and more specifically, by State security forces. (IACHR, 2017).

The IACHR has observed that there is a legal framework incompatible with the Inter-American standards of this right, since in Venezuela prior authorization is required for demonstrations and strict prohibitions are established for their exercise (IACHR, 2017).

It has also been observed that these restrictions disproportionately affect children and adolescents, women, and older adults (*ibid*). The restrictions and hard repression are notably due to the Chavista regime's use of state security forces, including a highly politicized Armed Forces and a highly militarized police force. Demonstrations that took place in 2019 were violently repressed by the authorities, including killings, arbitrary detentions, torture and other ill-treatment, and extrajudicial executions (Amnesty International, 2021). More than 9,500 protests took place in 2020, of which 412 were attacked by the police, military, or paramilitary groups called *colectivos* (*ibid*). As of September 2021, 5,198 protests were registered by the Venezuelan Observatory of Social Conflict, in which the disproportionate use of force by the Bolivarian National Guard, state police and *colectivos* was reported (IACHR, 2021; Human Rights Council, 2021a). Most of these demonstrations focus their protests on demands related to economic, social, and environmental rights, and more specifically on access to fuel and basic services, and labor rights and the fixing of wages to the dollar (*ibid*).

The IACHR includes in its reports on Venezuela that the State must stop obstructing the right to protest and reduce violent repression against demonstrators, ceasing to involve the Armed Forces in the maintenance of citizen security, as this should be the role of the police (IACHR, 2017). To comply with this, the State should simply comply with its own Constitution, which includes the right to protest in Article 68, which establishes the right of all citizens to demonstrate, peacefully and unarmed.

4.2. Economic, cultural social and environmental rights

As the Covenant on Economic, Social and Cultural Rights provides in article 2, the State must take measures "to the maximum of its available resources" to fulfill all the rights included in the Covenant. This means that States must deploy all available resources to guarantee basic rights because of their fundamental nature. In this sense, the UN Committee on Economic, Social and Cultural Rights clarified that it constitutes a minimum obligation to ensure the essential levels of satisfaction of each right, although the State's obligation remains to progressively achieve the maximum level of enjoyment of these rights (Committee On Economic, Social And Cultural Rights, 1990). This

translates into the legal obligation of the Venezuelan State to ensure the basic rights included in the Covenant, which are also included in its Constitution.

This obligation has not been carried out by the Venezuelan State, as evidenced by the long multidimensional crisis that the country has been experiencing for a decade. The Venezuelan population continues to face significant challenges in accessing its economic, social, cultural, and environmental rights. Although the Government has implemented economic and social policies aimed at combating poverty, the full enjoyment of the most basic rights has not been achieved (Human Rights Council, 2021b). One of the reasons behind this situation is that social programs are not equally accessible to all citizens due to their politicization and militarization. Another reason is the lack of resources to implement economic and social policies. Due to Venezuela's tense relations with other countries, the international community has imposed several sanctions caused by the lack of a democratic system in the country, which has finally resulted in the lack of basic goods and services for the citizens. The situation of scarcity is also caused by the mismanagement of the country's natural and financial resources by the Chavista regime.

The following is an analysis of the status of fundamental economic, social, cultural, and environmental rights in Venezuela in recent years in order to understand the effects of the Chavista regime on the simplest aspects of life, such as eating, having access to water, and housing. It will be observed how all rights are interrelated and interdependent, not only among themselves, but also with the rest of the civil and political rights.

4.2.1. Right to health

Article 83 of the Venezuelan Constitution guarantees the right to health as part of the right to life and determines that the State must promote and develop policies aimed at increasing the quality of life, collective well-being, and access to services. Likewise, article 12 of the ICESCR recognizes the right to the enjoyment of the highest attainable standard of physical and mental health, including the reduction of the mortality rate, especially of children, the improvement of environmental and industrial hygiene, the prevention and control of epidemics and ensuring medical attention to all citizens.

This obligation is not being fulfilled since the Venezuelan healthcare system is not being able to provide basic services and care to all citizens. The collapse of the healthcare system and shortages in pharmacies have led to an alarming mortality rate in Venezuela (Van Roekel & De Theije, 2020). Power outages, lack of personnel and the outbreak of diseases such as malaria, measles or tuberculosis are factors that worsen the situation. The coronavirus pandemic has deepened pre-existing structural problems, such as international sanctions, lack of equipment, material and medicines, poor infrastructure, loss of qualified health personnel, and reduced capacity to invest in health services (Human Rights Council, 2021b). This was publicly denounced in April 2021 by workers and citizens, but these protests were repressed by the Bolivarian National Guard and *colectivos (ibid)*.

Of particular concern is the state of women's health, which has worsened, especially due to gender-based violence and reduced access to sexual and reproductive health. The reports of the Human Rights Council and the IACHR highlight the increase in maternal mortality, the limited access to contraception and family planning, the lack of maternity care, the lack of services and products required only by women and expectant mothers, and the shortage of medicines and treatments for sexually transmitted infections and HIV (Human Rights Council, 2021b; IACHR, 2021). To this must be added the differentiated and disproportionate impact of the pandemic on women, girls, and adolescents (IACHR, 2021). This has led to a significant reduction in the level of women's health and an increase in the maternal mortality rate. The 2021 United Nations Population Fund report states that the maternal mortality rate has increased to 98.87 deaths per 100,000 live births (IACHR, 2021). In addition, the shortage of contraceptives in pharmacies in the country's major cities is over 80%, which has led some young women of reproductive age to resort to sterilization as a contraceptive method (*ibid*). This is a flagrant violation of the right to physical integrity, equality and non-discrimination, health, privacy and respect for the autonomy of women and persons with gestational capacity (*ibid*).

Another group that has also been particularly vulnerable to reduced access to the right to health are indigenous peoples. In 2019, diseases such as malaria, tuberculosis, pneumonia, measles, and HIV were reported to be increasing among indigenous peoples

(Human Rights Council, 2021b). Furthermore, during the covid pandemic, there has been no official disaggregated information on the effect of this disease on indigenous peoples (*ibid*). The pandemic, the lack of fuel to use transportation, and the inability to access medical care close to their communities has led to an increase in preventable diseases among indigenous peoples (*ibid*). Venezuela must include a differential approach in its public policies to guarantee the rights of indigenous peoples, including their personal development according to their way of life.

The structural flaws of the system, aggravated by the economic and social crisis, have caused outbreaks of diseases that, in the absence of shortages of medicines, equipment and health workers, would not have had such a serious health impact. Diseases such as malaria, tuberculosis, measles and diphtheria have specifically affected pregnant women, children and adolescents, the elderly and people living with serious illnesses, chronic conditions or human immunodeficiency virus (HIV) and/or acquired immunodeficiency syndrome (AIDS) (IACHR, 2017). Added to this are power outages, lack of hygiene in health centers and poor infrastructure to treat these illnesses (Lowcock, 2019). This is a flagrant violation of the right to health attributable to the state, which is responsible for providing access to medical care (IACHR, 2017). To make matters worse, there is a lack of updated data to know the real impact of these diseases and the state of the right to health in Venezuela. This is due to the fact that statistics and bulletins on public health have not been published since 2016 (IACHR, 2021). This also implies reducing the people's right to information.

One of the major problems in implementing the right to health is the deficient medical equipment available in Venezuela. Because there is a severe lack of qualified personnel in the country, the available personnel are overworked. The causes of this problem are that many people have been forced to leave their jobs due to poor conditions, and others have left the country to seek better work and life opportunities (IACHR, 2021). This has resulted in not being able to attend to everyone in need and the quality of care is not optimal and of sufficient quality. Of particular concern is the fact that health personnel have to denounce the conditions in which they work: without hygienic-sanitary protections, without drinking water and soap, and without basic personal protective

equipment such as gloves, masks, or goggles (IACHR, 2021). This is in addition to the very low salaries received by health personnel. In 2020, the Venezuelan Medical Federation estimated that the monthly salary of nurses ranged between two and five US dollars, which would have led to around 50% of workers leaving the country (IACHR, 2021). This has had a serious impact during the coronavirus pandemic, cutting the capacity for response and care (Human Rights Council, 2021b).

During the pandemic, medical personnel have not had the necessary protective measures against coronavirus. Those who protested against this faced arrests and criminalization, as a measure of repression (Amnesty International, 2021). Again, the lack of transparency of data on testing, infection rates and mortality cause doubts about the true effects of the coronavirus pandemic in the country, which are likely to be worse than what has been published (*ibid*). During the pandemic, politicization of social and health measures has also taken place. For instance, access to the vaccination system required the "carnet de la patria" (Human Rights Council, 2021b), which, as previously explained, was directly related to the ideological identification of individuals. This implies that access to vaccines has not been equal and that it has been used as a political tool to gain more support for Chavismo. In addition, the fact that the platform to register and be eligible for vaccination were online and by text message excludes a large majority of the population, as many citizens do not have access to internet or mobile phones (Human Rights Council, 2021b). This has excluded vulnerable groups that were already marginalized and excluded from many social policies, especially in rural and remote areas (*ibid*). Again, it is stressed the need for measures that aim to ensure rights to have a differential approach, including factors such as age, gender, or the digital divide, among other things. The effects of the pandemic have not only been limited to the consequences of covid but have also affected the care of other pathologies and diseases, which have been displaced to attend to the urgent effects of covid-19 (IACHR, 2021). This has had very negative consequences for the chronically ill, such as kidney and cancer patients, diabetics, HIV/AIDS patients, or those with hypertension, who have been forgotten and have seen their right to health greatly diminished (*ibid*).

4.2.2. *Right to an adequate standard of living*

Article 11 of the ICESCR establishes that States Parties recognize the right of everyone to an adequate standard of living for themselves and their families, including adequate food, clothing, and housing, and to the continuous improvement of living conditions. The article adds the obligation for States Parties to take appropriate measures to ensure the realization of this right. Although the 1999 Constitution does not contain a unique article that includes all these aspects, it does have different provisions from which the same rights can be deduced. The right to food and different essential services necessary to achieve an adequate standard of living are examined below.

The scarcity and shortages of some basic food items in Venezuela pose a major obstacle to the right to food, which has led to serious consequences for the population, such as excessive weight loss, malnutrition problems and even death (IACHR, 2017). The causes of this are low levels of domestic food production, lack of investment, fuel shortages and reduced availability of imported seeds, fertilizers, and agrochemicals (Human Rights Council, 2021b). This has meant that domestic agricultural production has become unprofitable, especially for small farmers and rural communities, which in turn has led to a reduction in their incomes (*ibid*). This situation clashes with what is regulated in article 305 of the Constitution, which provides that the State shall promote sustainable agriculture as a strategic basis for integral rural development, in order to guarantee the food security of the population, understood as the sufficient and stable availability of food at the national level and the timely and permanent access to such food by the consuming public. It also adds that food production is of national interest and fundamental for the economic and social development of the Nation, for which the State will dictate the financial, commercial, technological transfer, land tenure, infrastructure, labor training and other measures necessary to reach strategic levels of self-sufficiency.

Shortages of food and inflation cause that a large part of the population does not have enough to eat. This is aggravated by the loss of purchasing power that the population has suffered in the last decade (IACHR, 2021). This has meant that the basic monthly family basket cost US\$513.77 in 2020, which implied 184 times the minimum wage (Amnesty

International, 2021). That same year, the National Survey of Living Conditions published that 96% of households suffered from income poverty and 79% from extreme income poverty, leaving these families in an acute situation of food insecurity (*ibid*). In 2021, more than 9 million Venezuelans will live in a situation of food insecurity (IACHR, 2021).

Through the successive states of emergency declared by the Chavista government, the executive has been expanding its powers, also with regard to the right to food. In practice it has entailed the militarization of activities such as food distribution (IACHR, 2017), through the use of the Armed Forces in social missions with this objective. In addition, there are irrefutable facts about the constant politicization of social policies and their use for social control. Thus, the regime only directs assistance to people who politically support Chavismo (IACHR, 2021). This clearly goes against the principle of equality and seriously violates the fundamental right to food of a large part of the population.

The right to an adequate standard of living, understood in a broad sense, has been affected by the difficulties Venezuelans experience in accessing basic services such as electricity, gas, water, and sanitation. These services are essential and necessary to maintain a minimum quality of life, including personal hygiene, food, or health, among other things. However, this is not the case in Venezuela; despite the fact that the Constitution establishes in its article 156 paragraph 29 that electricity, drinking water and gas services are competence of the National Public Power and, therefore, it is understood that it is its obligation to provide them. For instance, the supply of electricity is inconsistent and there are supply problems. One of the causes is the antiquity of the systems and the lack of technical capabilities of the personnel to improve the national electricity system, in addition to the lack of investment and interest in research and technological development (Aula Abierta, 2021) This mismanagement by the State led to a multi-day national blackout in March 2019 (*ibid*). From that year until today, there are electricity rations, lasting several hours and even several days, in addition to frequent blackouts (*ibid*). In 2021, almost 75% of the population, some 21.3 million people, reported electricity interruptions (Jiménez, 2022).

The State has implemented national policies that have prevented service providers from offering alternatives to the services provided by the State (Aula Abierta, 2021). This mismanagement and lack of governance has created an electricity service provider and operator State, but with a negative impact on the quality and consistency of the service (*ibid*). The State, instead of creating a strong economic and industrial system to provide quality electricity services, decided to focus its efforts on monopolizing all services as another form of social control. This has resulted in the lack of protection for consumers and the violation of human rights. The constant breakdowns in the electricity service hinder the right to water and sanitation, the preservation of food, the right to work, the use of electronic equipment and the use of internet, among others (Aula Abierta, 2021). It is estimated that at least 25 million Venezuelans are affected due to bad policies and national electrical chaos (*ibid*). This shows how human rights are interconnected and interdependent, since if one is reduced, the others are impacted, as in the case of electricity.

Something similar has happened with the supply of natural gas, whose reduction in production and problems in its distribution has meant a 10% reduction in the use of gas for cooking, to 83% between June 2019 and January 2021 (Human Rights Council, 2021b). This has led to households increasingly using wood fires for cooking. This has serious negative health consequences, such as explosions, smoke inhalation and food contamination, turning something as basic as cooking into a life-threatening hazard. In 2021, almost 60% of the population, around 16.8 million Venezuelans, did not have access to gas in their homes (Jiménez, 2022). Gas shortages have also led to the closure of school canteens, leaving many children at risk of malnutrition (Aula Abierta, 2021). In addition, a deterioration in infrastructure has been observed, as at least 81 explosions of cooking gas cylinders have been reported between 2017 and 2021 (Human Rights Council, 2021b).

The Venezuelan State has not guaranteed equitable access to drinking water and sanitation. There are water quality and supply problems. On the one hand, access to drinking water and sanitation remains very limited, with only one in four households able to access running water each day (Amnesty International, 2021). There is a major

distribution problem that has caused water rationing, leading to some cities that can go up to 15 or more days without service (Aula Abierta, 2021). There is no place in the country where water supply can be assured 24 hours a day (*ibid*). In 2021, at least 62.2% of the population suffered repeated interruptions in water supply, while 35.1% did not have stable access to drinking water, and 23% of households had no connection to the aqueduct system (Jimenez, 2022). To this must be added the tariff system on which water distribution is based, which, being subsidized by the State, does not generate profitability and, thus, the infrastructure cannot be maintained (Aula Abierta, 2021). As a result, people resort to other ways to get water, such as tanker trucks and the purchase of contraband water (Amnesty International, 2021). Prices for the service increase so much that people have to stop purchasing other equally necessary goods and services (*ibid*).

On the other hand, the quality and safety of water and sanitation is deficient. Citizens report that the water coming out of the pipes is not clean, being sometimes brown, yellow, or turbid in general (Aula Abierta, 2021). This implies that the water is not suitable for consumption and that using it for personal hygiene could lead to a negative impact on health. Moreover, the lack of water has led to the deterioration of sanitation and solid waste management systems, which has directly affected people's health and has produced an irreparable environmental impact (Jiménez, 2022). Evidently, this implies the direct violation of specific rights, such as the right to food, health and housing, and others indirectly, like work or education (Aula Abierta, 2021). For instance, the lack of basic services directly violates article 82 of the Venezuelan Constitution, stating that every person has the right to adequate, safe, comfortable, hygienic housing, with essential basic services that include a habitat that humanizes family, neighborhood, and community relations. The effects on the right to health have been especially notable during the pandemic. The strategy of washing hands to prevent the spread of covid-19 was impossible in the country, since many people did not have constant water or water of adequate quality to maintain a minimum level of hygiene (Aula Abierta, 2021).

4.2.3. *Right to education and right to work*

Article 102 of the 1999 Constitution provides that education is a human right and a fundamental social duty; it is democratic, free, and compulsory. This provision adds that it is an inalienable function of the State and of great interest at all levels and modalities, and as an instrument of scientific, humanistic, and technological knowledge at the service of society. In the same way, article 13 of the ICESCR guarantees the right of everyone to education, which should be directed to the full development of the human personality and the sense of its dignity and should strengthen respect for human rights and fundamental freedoms. The ICESCR also states that education shall enable all persons to participate effectively in a free society, promote understanding, tolerance, and friendship among all nations and all racial, ethnic, or religious groups, and further the activities of the United Nations for the maintenance of peace. Nevertheless, the exercise of this right has been hindered by the crisis that the country is suffering, especially for children and adolescents. Difficulties in access to food, transportation, and citizen security have led to increased school dropout rates (IACHR, 2017). In addition, the fact that there is no stable supply of water and electricity does not allow guaranteeing quality education and infrastructure, adapted to the needs of students, accessible and free (*ibid*).

The crisis that the country is going through, added to the mismanagement of the Chavista government, has led to a decrease in educational coverage, especially in primary and higher education (IACHR, 2021). During the 2021 school year, the dropout rate reached 50%, the main cause being the need for families to obtain more income to cope with the crisis, aggravated by the pandemic (Human Rights Council, 2021b). Added to this, school infrastructure is very poor, lacking adequate maintenance and access to basic services such as electricity and water (Human Rights Council, 2021b). Furthermore, universities have suffered a 20% cut in their budget, which, added to poor facilities and equipment theft, does not facilitate the provision of quality and accessible education (*ibid*). The precarious working conditions of educators also hinder the exercise of the right to education. At the beginning of 2021, more than 50% of teachers had abandoned their jobs or were absent, many of them being threatened with disciplinary proceedings if they did not return (Human Rights Council, 2021b). The reason behind these alarming figures are

things as simple as the inability to pay for transportation to get to school or the lack of money to be able to buy food and continue with their work (*ibid*).

As for academic freedom, the political context does not allow this right to be exercised properly. A high number of professors and students have denounced persecutions and arbitrary detentions for political reasons (IACHR, 2021). In addition, they have experienced regressive measures of university autonomy and a worsening of working conditions (*ibid*). This limitation of academic freedom also constitutes a violation of freedom of expression. In this sense, the Venezuelan State would be in breach of article 109 of the Constitution, which recognizes the right to freedom of expression. university autonomy as a principle and hierarchy that allows teachers, professors, students, graduates of their community to devote themselves to the pursuit of knowledge through scientific, humanistic, and technological research, for the spiritual and material benefit of the Nation.

As for the right to work, it is essential for the maintenance of life, and therefore, for the enjoyment of other fundamental human rights. Article 87 of the Constitution recognizes grants everyone the right to work and the duty to work, for which the State shall guarantee the adoption of the necessary measures to ensure that everyone can obtain a productive occupation that provides a dignified and decent existence and guarantees the full exercise of this right. Similarly, article 6 of the ICESCR recognizes the right to work, which includes the right of everyone to the opportunity to gain their living with a job they freely choose or accept, and the State shall take appropriate steps to safeguard this right. As it has been observed, this is not currently the case. For instance, essential sectors such as education and health suffer from poor working conditions that violate the right to decent work. Moreover, the long economic crisis has caused the progressive decline of economic activity, leading to an increase in the rate of inactive population (IACHR, 2021). Employment in the private and public sector has declined considerably, falling by 21.8% between 2014 and 2021, and with a particular impact on women (*ibid*).

For people who do have a job and earn an income, it is not enough to meet the basic needs necessary for an adequate standard of living. Most people who have a job, despite earning

a salary, live in poverty (IACHR, 2021). It is estimated that around 8 million employed or retired people do not have the capacity to acquire the basic food basket (*ibid*). Although the data on the minimum wage is not clear, the sources range between 2 and 16 dollars per month, what is clear is that it is not enough to buy basic products, which can reach up to 300 dollars per month (IACHR, 2021; Statista, 2022). This clearly violates the right to work, in addition to other fundamental rights that cannot be accessed without economic resources or public services that guarantee them. Neither of these two options are available in Venezuela, as explained above.

4.2.4. *Environmental rights*

Environmental rights are a third-generation human right that is not normally recognized in a firm and written manner in legal texts. However, in the case of Venezuela, its Constitution, very comprehensive and progressive for its time, explicitly includes this right. Article 127 recognizes that it is the right and duty of each generation to protect and maintain the environment for the benefit of itself and the future world. It adds that everyone has the individual and collective right to enjoy a safe, healthy, and ecologically balanced life and environment, for which the State shall protect the environment, biological diversity, genetic resources, ecological processes, national parks and natural monuments and other areas of special ecological importance. At the international level, this collective right was considered a third generation right in the process of development until recently. On July 28, 2022, the United Nations General Assembly recognized the right to a clean, healthy, and sustainable environment in a historic resolution (UN Environment Programme, 2022). Although this resolution is not legally binding like the ICCPR or the ICESCR, it could potentially encourage states to codify this right or to implement measures and policies that respect and promote it at the national level (*ibid*).

Despite the fact that Venezuela incorporates this right in its Constitution, elevating it to a very high level of protection, evidence and data show that the environment is not truly protected and preserved in the country. Reports identify a lack of implementation of environmental regulations, a lack of public accountability and a lack of reparations for environmental damages, especially those caused by the oil and mining industries (Human

Rights Council, 2021b). In this regard, it is of great concern situation of human rights in the region of the Orinoco Mining Arc, where illegal mining and non-state armed groups operate outside the law violating fundamental rights and with no care for the environment (*ibid*). This has left the local people in this region in a position of great vulnerability, with a disproportionate and differentiated impact on women, people, and displaced persons (IACHR, 2021). The most common outcomes are severe environmental impacts, lack of food, essential goods and services, and health risk for people working or living near certain chemicals (*ibid*). The high profitability of mineral extraction leads armed groups to illegally extract these goods, generating a context of violence to take control of the land and extorting and threatening the population so that they do not act against their activity (IACHR, 2021). This has multiple human rights implications. On the one hand, national natural resources, which the State should control and preserve, are being illegally extracted. On the other hand, in addition to the great impact on the environment, the people living in these regions are seeing their rights drastically reduced, from civil rights to economic and cultural human rights. Lastly, this situation places the security of the communities at risk, and especially puts the lives of human rights defenders, who work to denounce these types of situations, at risk.

Since 2014, there are records showing how the amount of oil spilled into the environment has alarmingly increased (Human Rights Council, 2021b). OHCHR has received several reports of oil spills in rivers, lakes, and coastal areas, many of them legally protected, such as Morrocoy National Park (*ibid*). According to the Constitution, the State is in violation of a constitutional right and failing to comply with its protection obligations, of legal character. To truly comply with article 127, the State must create an effective regulatory framework and implement public policies to protect and promote individual and collective environmental rights. One of the most effective strategies would be to sign and ratify the Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean, better known as the Escazú Agreement, which has already been signed by the vast majority of Latin American states. The objective of this Agreement is not only to protect the environment, but also to include the will of the people and the communities that live in and enjoy it, so that the implementation of this right is effective and in accordance with the needs of the

population and nature. This is closely related and connected to the protection and respect for the rights of indigenous peoples.

4.2.5. *Affected groups of people*

This last section seeks to acknowledge the special impact of the human rights discussed above on women and indigenous peoples. If not analyzed with a differential approach, the consequences of the Chavista regime on the protection of human rights of these specific social groups would not be consistent with reality. As it has been widely proven by academia and experts in the field, that negative events and issues do not have an equal effect on everyone. They have disproportionate and aggravated effects on specific groups, such as women, indigenous peoples, as well as other social groups and factors.

First, the right to life of women is specially aggravated due to femicides. Although they are included in the penal code since 2016, the State does to publish information on femicide rates since 2013 (Amnesty International, 2021; IACHR, 2021). Moreover, there is no national plan for the prevention of them, which has led to the increase in violence against women (Amnesty International, 2021). The data is worrying: in the first 9 months of 2021 at least 237 femicides were documented, in addition to 41 attempts (IACHR, 2021). Since 2020 no shelters for women survivor of gender-based violence were available in the country (Amnesty International, 2021). Civil society organizations have warned about the fact that the VEN911 assistance line has very restricted hours and other help lines have been taken down, reducing the capacity to respond to cases of violence against women (IACHR, 2021). On its last annual report, IACHR recommends Venezuela creating and effectively implementing mechanisms to gather disaggregated and periodic data on violence and crimes, in addition to prevention and protection mechanism against gender-based-violence (*ibid*). Moreover, the UN Fact Finding Mission has documented gender-based crimes against humanity, such as sexual violence as a form of torture for detained women and in the context of protests, who disproportionately violated the right to physical and moral integrity of women (Human Rights Council, 2022).

Second, judicial guarantees and the quality of justice are diminished for women due to problems of access to justice, the lack of differentiated attention to victims of gender-based violence, legislation and legal interpretations without a gender perspective, and the lack of training of officials throughout the judicial system in this regard (Coalición Mujeres, Justicia y Desapariciones, 2021). This has serious consequences for women, such as a pre-established stereotypical view of the social or sexual behavior of victims of gender violence (IACHR, 2021). This implies unequal, degrading and very unfair treatment for women, particularly when they have been victims of different rights violations. The State is compelled by its own Constitution and by the ICCPR to guarantee equal justice for all, ensuring due diligence in all cases, and especially in cases of violence against women, where a differential approach must be applied in terms of gender, women's rights, and sex discrimination (IACHR, 2021). It is important to note that Venezuela is a party to the CEDAW, so it is obliged to work for the eradication of all types of violence against women, including violence by the State.

Third, as mentioned in the analysis of the right to health, this is being seriously violated in the case of women. Abortion is still criminalized, access to sexual and reproductive health supplies is very limited for women and girls, and the maternal mortality rate has grown exponentially in the last decade (IACHR, 2021). This leads to several conclusions: the principle of equality and non-discrimination is not being applied in health, multiple fundamental rights are being violated at the same time and women and girls are being affected more seriously than men, due to the absence of security and guarantees.

With regard to indigenous peoples, according to data published by the Inter-American Commission, they account for around 2.8% of the country's total population, more than 32 million people (IACHR, 2021). According to the 2021 census, there are 51 different indigenous people in Venezuela (*ibid*). In this sense, the 1999 Constitution, in order to recognize their identity, guarantees them specific rights, such as the following. Article 119 obliges the State to recognize the existence of indigenous peoples and communities, their social, political, and economic organization, their cultures, uses and customs, languages and religions, as well as their habitat and original rights over the lands that ancestrally and traditionally they occupy and that are necessary to develop and guarantee

their way of life. Article 120 establishes that the use of natural resources in indigenous habitats by the State will be done without harming their cultural, social and economic integrity and, likewise, is subject to prior information and consultation with the respective indigenous communities. In addition, their right to self-determination is guaranteed in a certain way, since the Constitution establishes a period of two years for the demarcation of all indigenous lands (Human Rights Council, 2021b). However, to date, only 15% of all indigenous lands have been demarcated and the Government has only recognized land ownership to 3.22% of the national territory (*ibid*). Without these conditions being met, the enjoyment of the rest of the human rights cannot be guaranteed for indigenous peoples.

The lack of protection of the human rights of indigenous peoples is especially notable in the Orinoco Mining Arc region, due to the effects caused by illegal mining, as previously mentioned. This practice is incompatible with the self-determination of indigenous peoples, with their rights to their lands, territories, and resources, their environmental rights, their right to life, and their economic, social, and cultural rights. (Human Rights Council, 2021b). It must be remembered that Venezuela adopted International Labor Organization (ILO) Convention 169 and voted in favor of the United Nations Declaration on the Rights of Indigenous Peoples, for which it acquired the obligation to respect, promote and protect their rights. To comply with this and respect the fundamental rights of indigenous peoples, it is essential to act in good faith and comply with the obligation of prior consultation, to obtain the free and informed consent of indigenous peoples, when acting in their territories or dealing with their traditions and customs (Human Rights Council, 2021b).

Predictably, this has not been the case in Venezuela. Some of the serious violations include: the murder of indigenous people and threats against indigenous leaders in mining areas by armed groups, labor exploitation, the creation of a context of violence and insecurity in their territories due to the interference of the Armed Forces, and the illegal trafficking of natural resources, among many others (Amnesty International, 2021; Human Rights Council, 2021b). One of the most serious consequences that this has caused is the forced displacement of communities, both internally and across borders

(IACHR, 2021). This puts their lives, access to basic goods and services, the inability to speak their languages and carry out their traditional education and health at risk (*ibid*). Furthermore, during displacements they are exposed to very dangerous routes where they can suffer violence from armed groups and criminal gangs that operate on the borders (*ibid*). As stated, if there is no clear effort on the part of the State to protect and respect the rights of indigenous peoples, they cannot develop their way of life, granted by the Constitution and International Human Rights Law. Moreover, the violent actions of armed groups and the State in specific regions go against the human rights of indigenous people, in addition to environmental rights, which are closely related, due to their ancestral role in protecting nature.

CONCLUSIONS

Everything changed in Venezuela with the arrival of Hugo Chávez to power. He transformed the political system in place since the 1960s with a revolutionary Bolivarian model promising a transformative change that would create a true and full democracy in the country. The *Punto Fijo* system, a traditional two-party status quo system, had in its last years created a great social discontent, bringing people to the streets to demand a change of the system. In this context, Hugo Chávez and his allies carried out a failed coup d'état in 1992, calling for a system change, structural reforms, and a new constitution. This is when the Bolivarian Revolutionary Movement began, which would lead to the major transformation of democracy in Venezuela. In spite of the failed coup, Chávez won the 1998 elections, breaking with the old-standing bipartisanship that had kept the country stable for so many years. Chávez made the call for a National Constituent Assembly the axis of his electoral campaign, and it was one of his first steps upon reaching the presidency.

The new constitution was the key piece to carry out the Bolivarian Revolutionary Project, a project originally based on the ideas of Simón Bolívar. Chávez's idea was to end poverty, dependency, exclusion, repression, and human rights violations. To do so, he wanted to create an anti-imperialist system based on national independence, popular sovereignty, justice, and social equality. One of his main objectives was to put social rights above economic interests. To this end, power had to be returned to the people, especially with regards to decision making. This is how popular, protagonic and participatory democracy was born. This project materialized in the 1999 Constitution, when Bolivarianism was included in the fundamental norm of the State. In this way, the new participatory democracy was legitimized and a whole political, economic, and social system was built around it. The new constitution established that Venezuela is a Democratic and Social State of Law and Justice, based on popular participation, the rule of law, social justice, and social welfare.

This entailed the reform of the traditional system of separation of powers, breaking the independence of the three branches and neutralizing one with the other. However, the Constitution remarked that the individual was at the center of the political system. To this

end, it extensively and comprehensively regulates human rights, including third and fourth generation rights, such as the rights of solidarity, indigenous peoples, peace, the environment, and new technologies. Although this seems apparently positive, it actually leads to putting all rights on the same level, such as the right to life with the right to property, and making the most basic and fundamental rights lose value.

The 1999 Constitution formally created a democratic system based on the rule of law and guarantor of fundamental rights. Nevertheless, this alternative and revolutionary model suffered a degradation process that led to the deconstitutionalization of the State. Starting in the early 2000s, Venezuela underwent a structural political and legal shift, which would lead the country to the Chavista regime we know today. Chávez's revolutionary and participative political project had in principle the support of the people. However, Chávez, without counting on the people, decided to change the system for a Communal or Socialist State. What he called 21st century socialism and disguised as a system guaranteeing popular participation, in reality entailed the centralization of power in the Executive and the control of society. Thus, he changed the form of the State without following any democratic procedure and imposed "what was best for the people". The aim of this abrupt change was always to stay in power and create a system where he could act without any type of control. He tried to carry out this change through a constitutional reform that was rejected in a referendum in 2007. Faced with this failure, he decided to fraudulently use the Constitution and make use of enabling laws to, with the collaboration of the National Assembly, expand the powers of the Executive. This meant the rupture of the system of separation of powers, the rule of law and democracy.

All of the above could not have been achieved without the collaboration between the Chavismo and the Armed Forces. The relationship between the two is clear: Hugo Chávez was part of them as a lieutenant colonel before entering government and he carried out a coup d'état with their collaboration in 1992. Since the beginning, the Venezuelan government has been denominated a civil-military government. To this end, Chávez changed the regulation of the Armed Forces in the 1999 Constitution, he included the military in the government, and relied on them to control civil society. This process is

called the "militarization of politics" and is key to understand how the Chavista regime was installed in the country and how it has managed to stay in power.

According to the principles of liberal democracy, the Armed Forces must be under the control of civilian power, and be an autonomous, politically neutral, professional, and military body. However, the 1999 Constitution and the Organic Law of the Bolivarian National Armed Forces expanded the role of this body and granted them new competencies, moving away from the traditional notion of the armed forces. In the Constitution there is a contrast between the provisions that demand the political neutrality of the Armed Forces and the provisions that grant them new competences, such as maintaining internal order and participating in national development. Added to this, the new legislation grants Chávez full control of the Armed Forces, without the option of legislative or judicial control. This implies a rupture with the system of separation of powers. From this moment on, the Armed Forces act with loyalty to the President, while the Ministry of Defense only holds the administrative management. In addition, a new component is created within the Armed Forces: Bolivarian Militias. This is a body of civilian volunteers created for the defense of the country against possible threats and insurgencies. This has led to the de-professionalization of the corps and the ideologization of its members since they are given armament without much military training and are framed within the Bolivarian project.

The militarization of democracy has also occurred due to the political participation of the Armed Forces. Active and retired military have taken over civil service positions, ministries, and government posts. This is referred to as "military colonization" and involves the participation of military officials in activities that should be reserved for politicians and civilians. In this way, military officers develop, manage, and execute social programs such as the so-called Social Missions. Added to this is the creation of parallel institutions; administrative institutions that act outside the legal and political framework of the State to counteract the activities of legitimate institutions and act without any type of democratic control. These have occurred at three different levels: administrative, such as the Social Missions; territorial organization, including the Communal Councils; and in the area of security and defense, mainly with the Bolivarian

Militias. All of them are intended to camouflage the social control exercised towards the Venezuelan population as popular participation. These parallel institutions employ active military officers due to their loyalty to the regime.

In this way the Armed Forces enabled Chavismo to exercise social control and thus remain in power for more than two decades. However, this resulted in the loss of autonomy of the Armed Forces as a professional and military body, in addition to becoming partisan. The militarization of democracy has reached the control of social policies, the organization of the State and the participation of the people. This and the fraudulent use of the Constitution have been the base for the consolidation of the Chavista regime. Thus, it seems clear that Venezuela is no longer a democracy but a competitive authoritarianism. A constitutional liberal democracy is characterized for ensuring a system of checks and balances, independent democratic institutions, free, fair, and periodic elections, the rule of law and respect for human rights. Although the 1999 Constitution includes all these elements, they have been compromised due to the politicization and militarization of the institutions by Chavismo. Venezuela has gone through a process of constitutional regression, which includes constitutional amendments, the elimination of the system of check and balances, the centralization of power in the Executive, and the elimination of political competition. This is referred to as abusive constitutionalism which implies the use of democratic tools, such as the Constitution, to erode democracy. This has not occurred in a radical way, but it has rather been an incremental degradation, also known as democratic decay.

In the first place, the system of checks and balances was damaged. Chávez attacked all institutions until he took over the de facto power of all of them, thus eliminating the separation of powers and democratic control. This has been done, among other things, through the use and abuse of the electoral system, and the centralization and militarization of power. This goes against liberal democracy, the Venezuelan Constitution itself and the original Bolivarian idea. Chávez took control of the National Assembly and also of the Supreme Court, through the appointment of judges loyal to Chavismo. In this way, the institutions that should control the Executive were now in the hands of Chavismo. They also corroded other counter-majoritarian institutions, such as the very important National

Electoral Council. The existence of a parallel institutionalism worsens this situation even more. All this has created a very polarized society, where the opposition has no power whatsoever.

One of the ways Chavismo shows its regime as democratic is the supposed free and fair elections. However, this is not the case since there is no real competition for power, what makes them façade elections. The electoral system is compromised by the interference of Chavismo in the holding of elections, their regulation, and the institution that controls them (CNE). Since the 2000s, numerous electoral irregularities have been reported, preventing the opposition from participating in these elections in a fair and equitable basis. This is reflected in the fact that they have only won one major election in more than two decades (the legislative elections of 2015). On top of all this is the collapse of the rule of law. It is a basic element of constitutional liberal democracy since it serves as a limit to the power of the State, ensuring abidance by the law.

Despite the 1999 Constitution clearly establishing the rule of law in Venezuela the Chavista regime has dismantled it through the creation of informal norms, successive indirect constitutional amendments, jeopardizing the system of checks and balances, and creating a parallel institutional system. In this sense, Venezuela has a façade Constitution since in reality it lacks effectiveness and enforcement mechanisms, due to the aforementioned factors and because a counter-order led by Chavismo was created. Controlling the justice system was the Chavista strategy from the beginning. In this way, they could circumvent the law and act outside the constitutional framework while maintaining a “constitutional democracy” image. It was mainly achieved with the collaboration of the Supreme Court, which is made up of people loyal to the regime. As a result, there is no judicial oversight in the country, so it lacks any constitutional guarantee. Added to this was the process of militarization that was occurring in parallel. In the absence of a judicial and legislative system that could act as a control, the state security forces were able to act as they pleased, abusing the use of force and without being accountable to anyone. This resulted in excessive cruelty and ruthlessness on the part of the armed forces and the police towards the opposition and dissidents.

The sum of a personalist Bolivarian project, the militarization of democracy, the creation of a parallel institutionalism, and the democratic decay suffered by Venezuela in the last two decades has had very serious consequences in the protection and enjoyment of human rights. Civil and political rights have been seriously undermined due to the cruelty of the regime towards the opposition and dissenting voices. This is intended to maintain power and achieve a regime that civil society cannot unseat. Public policies aimed at improving the lives of the people have been deficient, as the regime's efforts were more focused on suppressing the opposition and strengthening its power. Poor governance has resulted in the violation of economic, social, cultural, and environmental rights. These have had a disproportionate impact on some social groups, such as the previously vulnerable and marginalized, women and indigenous peoples, among others. It is important to understand that, since human rights are interdependent and indivisible, the harm caused to one of them has consequences for the others. The protection of human rights must include all of them, leaving no one behind.

As has been explained, in Venezuela there are institutional mechanisms that hinder the transition to democracy. The abuse of the Constitution and the construction of a parallel communal State have been instrumental to the regime. Thanks to this, the one-party rule has been consolidated. With the support of the Armed Forces the regime has been able to control civil society. In this scenario civil rights are not effective to fight against Chavismo. This system is clearly incompatible with the protection of human rights.

All this leads to the conclusion that there can be no protection and promotion of human rights without a fully-fledged and strong democracy. The same is true in the opposite way, without the guarantee and enjoyment of all human rights there cannot be a constitutional liberal democracy. Therefore, in Venezuela there will be no democratic transition until truly free, fair, and periodic elections, the balance of the three branches of government, and the rule of law that enforces the Constitution and guarantees human rights are ensured. To this end, the Armed Forces must cease to support the regime and must be controlled by a civilian authority, so that they can fulfill their true mandate, which is to guarantee the security of the State. This will not be achieved without a negotiated transition between the Chavista powers and the opposition forces. This will be a

complicated task due to their great differences and polarization. Moreover, democracy will not be achieved without tackling the multidimensional crisis that the country has been suffering for a decade. The State must provide assistance to the people and guarantee the most basic rights, such as life, health and food.

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