

## DEMOCRACY, CORRUPTION AND TRANSPARENCY

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One of the most important topics of the functioning of the States in the contemporary world is that of corruption, which is corroding them, as a phenomenon that originates, among many other factors, from the lack of transparency in their conduct, and which is directly affecting the very operation of democratic regimes, whose foundations are affected by it. Therefore, these notes aim to analyze precisely the issue of corruption and transparency in the general framework of constitutional democracy.

And to try to manage the same ideas, we understand by “corruption” the action or effect of corrupting, that is, “causing a body or organic substance to decompose, so that it smells bad or cannot be used”. That is to say, corruption is “to deprave” or “to spoil something”; synonymous with decomposition, rottenness or putrefaction;<sup>1</sup> a process that not only occurs with organic substances but also with the institutions themselves, in particular with the institutions of the State, and with democracy itself, which can also be depraved, decomposed and corrupted.

As for “transparency”, we understand by it, the characteristic of a body when “it allows light to pass through and allows what is behind to be seen through its mass;” synonymous with the lucid, sharp, clean or diaphanous;

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<sup>1</sup> According to the *Diccionario de la Lengua Española*, of the Royal Spanish Academy, the term “corromper” (to corrupt) is related to the idea of altering, disrupting the shape of something, spoiling, depraving, damaging, bribing the judge, or any person, with gifts or otherwise, defining corruption as the action or effect of corrupting or becoming corrupted.

the opposite of the closed, mysterious or inexplicable, which is what feeds dark ends, and prevents corruption from being detected. In other words, transparency is an expression of what is open and accessible, of what can be known and rationalized, which is what allows the sensation of tranquility and serenity to develop, contrary to the feeling of anguish and disturbance caused by what is mysterious and unknown.<sup>2</sup>

For this reason, when referring to transparency in the State Administration, more than eighty years ago, Judge Louis Brandeis of the Supreme Court of the United States synthesized it in the well-known phrase that “sunlight is the best disinfectant”,<sup>3</sup> along the same lines as the representation of the Public Administration as the “glass house” (*la maison de verre*),<sup>4</sup> in the sense that it must be visible and affordable, where freedom of information and the citizen’s right of access to information public are privileged, contrary to opacity and secrecy.<sup>5</sup>

And by “democracy,” in order to be clear in a common notion and not unnecessarily complicate ourselves with incomplete definitions, we understand that it is, as specified in the Inter-American Democratic Charter, the political regime where it is guaranteed: (i) that the power of the State is organized according to a system of separation and independence of powers; (ii) that access to power and its exercise be carried out subject to the rule of law, (iii) through periodic, free, fair elections based on universal and secret suffrage, as an expression of the sovereignty of the people, (iv) carried out in a plural regime of political parties and organizations; (v) where human rights and fundamental freedoms are respected and protected, in particular, social rights, and freedom of expression and of the press (Art. 3); where it is also guaranteed: (vi) the transparency of government activities; (vii) the probity and responsibility of the government in public management; (viii) and the constitutional subordination of all State institutions to the legally constituted civil authority; that is, finally, (ix) where respect for the rule of

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<sup>2</sup> See Rodríguez-Arana, Xaime, “La transparencia en la Administración Pública”, *Revista Vasca de Administración Pública*, Oñati, No. 42, 1995, p. 452.

<sup>3</sup> See Brandeis, Louis, “What publicity can do?”, *Harper’s Weekly*, December 20th, 1913.

<sup>4</sup> In the sense of what was said by the President of Costa Rica, Luis Guillermo Solís Rivera, “I want the Government – starting with the Presidential Office itself – to function as a great showcase or “glass house,” which allows the citizen to examine and scrutinize the performance of those of us who administer the State,” in Forums, “Una casa de cristal”. Extract from the speech of the President of the Republic, Luis Guillermo Solís Rivera, *La Nación*, San José, May 9th, 2014, <https://www.nacion.com/opinion/foros/una-casa-de-cristal/6XAPU372PBDMDAGOMX26R2GWKA/story/>.

<sup>5</sup> See Rodríguez-Arana, Xaime, *op. cit.*, p. 452.

law by the government and by all entities and sectors of society is guaranteed (Art. 4).

That is democracy, and the important thing about conceiving it according to these nine elements and components, which are nothing more than expressions of old and new political rights of citizens, is that, with them, as a whole and ultimately, what is sought to ensure the possibility that the exercise of political power is subject to effective controls, both by citizens and by the organs of the State itself.

That is what democracy is about, the exercise of power on behalf of citizens through elected representatives, and the right of those both to control and to demand that said exercise be controlled, which not only imposes the need for a functioning system of separation of powers, but that citizens can participate in the exercise of control.

This democracy, thus defined, as a political regime to ensure control over the exercise of power, must be based on transparency, which only exists when the citizen's right of access to administrative information is guaranteed and, furthermore, the right of access to Justice to be able to exercise, claim and defend their rights, and in particular, to be able to demand judicial control over government management, which is only possible if it is done before autonomous and independent judges.

In this sense, transparency can be considered the most powerful antidote against corruption, so that it can be said that when there is corruption it is due to a lack of transparency, and because, ultimately, there is no real democracy. This, therefore, does not materialize only if the Constitutions of the States are formally full of principled statements and qualifications about it, and less, if they are contradicted by the political practice of the government.

The deficiencies of democracy and the absence of transparency are, therefore, the main cause of corruption, generating a vicious circle, as Patricia Moreira, Director of Transparency International, has highlighted in the latest International Report issued this month, in the sense that "when democratic institutions undermine corruption, these, weak, are less capable of controlling it"<sup>6</sup> in the two aspects in which it occurs, both as administrative corruption, as institutional or political corruption.

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<sup>6</sup> See "How Corruption Weakens Democracy", *Transparency International Survey*, January 29, 2019. In the same document, Delia Ferreira Rubio, head of Transparency International, is quoted: "Our research makes a clear link between having a healthy democracy and successfully fighting public sector corruption. Corruption is much more likely to flourish where democratic foundations are weak and, as we have seen in many countries, where undemocratic and populist politicians can use it to their advantage", [https://www.transparency.org/news/feature/cpi\\_2018\\_global\\_analysis](https://www.transparency.org/news/feature/cpi_2018_global_analysis).

The first, administrative corruption, which is undoubtedly the one that most attracts the attention of opinion, is the one that derives from the flawed management of public goods and resources and, in general, the one that derives from the flawed management of the thing, public, particularly when officials, due to lack of controls and transparency, dispose of said resources at the service of their own interests or of individuals who illicitly enrich themselves at the expense of the State.

The second, political or institutional corruption, which is more serious, since it is generally the main cause of the previous one, is the one that results from the dismantling of democracy, and from the perversion of the functioning of State institutions, putting them, not at the service of the citizens, but rather at the service of personal political biases or projects of the rulers, or of the bureaucracy itself, diverting the functions of the State, and turning citizen rights into vain illusions.

As summarized by a former rector of one of the prestigious Venezuelan private universities, José Ignacio Moreno León, today, corruption is not only a problem of the Administration, but has:

affected the structures of the States, harming their efficiency and credibility; it has affected, above all, the Judiciary with serious damage to the rule of law; it has penetrated the armed and police forces, weakening their role as guarantors of national security and peace; it has appeared in the legislative power, sowing doubts in the objectivity and efficiency of the law-making process; it has influenced the electoral power; it has seriously damaged democratic institutions; and finally, it has affected the state control entities, promoting impunity for crimes against public affairs and the loss of transparency in public management.<sup>7</sup>

Whoever profits from public affairs corrupts, but whoever disrupts the institutional functioning of the State for personal benefit or that of a group or party also corrupts; whoever allows stealing from within the Administration corrupts, but whoever perverts democracy to destroy it also corrupts. That is to say, corrupt, is the one who, in his management of public affairs, enriches himself illegitimately and allows or encourages others to enrich themselves illegitimately; but it is also corrupt who undermines the institutions of the State to put them at their service and obtain ends other than those for which they were conceived.

In both cases, those who thus act under the protection of power, when leaving the government have in common that they will never be able to say

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<sup>7</sup> See Moreno León, José Ignacio, “La corrupción en América Latina: amenaza a la gobernabilidad democrática”, *Pizarrón Latinoamericano*, Caracas, Year VII, vol. 9, p. 19.

that they left it in the same way as they entered; They will never be able to say how Sancho Panza did at the end of his governorship of the Barataria island - in the fine and figurative pen of Cervantes-, that he had been born naked, that he was naked, that he had entered the government naked of money and that he also left it, this being the best proof, he said, that he had “governed like an angel”.<sup>8</sup>

To govern like an angel, in the sight of all, that is, with transparency, and not immersed in the darkness of the secrets of the bureaucracy; enter the government without money and leave the same as entered; and render accounts of the public management carried out in such a way that its results can be verified, seem to be the essential eternal rules of a government management, “quite the other way around”, as Sancho Panza also warned at the time, “of how they usually come out the governors of other islands”, which unfortunately continues to happen today in so many parts of the world.

Contrary to ruling like angels, in these times it seems that getting rich in power is the tragic desideratum of so many, as is the abusive exercise of power by misusing it, with the consequent perversion of the institutions of the State and the control mechanisms,<sup>9</sup> and very particularly the depravity of the Judiciary, which is the greatest of all political corruptions, since it ends up guaranteeing impunity.

The subject, of course, is nothing new, and although it is true that today it affects all the States of the contemporary world, and is present in all countries, it had already led Simón Bolívar in 1824 to decree the death penalty that should be applied —he said— “irremissibly” to officials who take part in fraud against public finances, “either intervening as principal, or knowing the fraud and not revealing it”.<sup>10</sup>

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<sup>8</sup> Sancho Panza said: “I was born naked, I find myself naked; I neither lose nor win; I want to say that I entered this government without a penny, and without it I leave”, adding, regarding the rendering of accounts that was asked of him that “when more than going out naked, how do I go out, no other sign is needed to imply I have ruled like an angel. See Cervantes Saavedra, Miguel de, *Don Quijote de la Mancha*, Chapter LIII, “Del fatigado fin y remate que tuvo el gobierno de Sancho Panza”, [http://www.cervantesvirtual.com/obra-visor/el-ingenioso-hidalgo-don-quijote-de-la-mancha--0/html/fe04e52-82b1-11df-acc7-002185ce6064\\_19.html](http://www.cervantesvirtual.com/obra-visor/el-ingenioso-hidalgo-don-quijote-de-la-mancha--0/html/fe04e52-82b1-11df-acc7-002185ce6064_19.html).

<sup>9</sup> For example, José Ignacio Moreno León, former rector of the Metropolitan University of Caracas, Venezuela, defined corruption as “abusive conduct, in relation to the patterns and legal norms of behavior with respect to a public function or a resource to achieve, in irregularly an unjustified benefit”; or as “conduct that transgresses social norms, undertaken by a person or by a group of people”. See Moreno León, José Ignacio, *op. cit.*, pp. 11 et seq.

<sup>10</sup> See the text of the Decree of March 18, 1824, issued by Simón Bolívar, *Liberador Presidente*, in Lima, Peru, in Alva Castro, Luis, *Bolívar en la Libertad*, Lima, Victor Raul Haya de la Torre Institute, 2003, pp. 67 and 68, <http://www.comunidadandina.org/bda/docs/CAN-CA-0001.pdf>. Then, through the decree of January 12, 1825, Bolívar also established the death pen-

If these types of measures were applied in our times, without a doubt our countries would already be decimated, without civil servants or Administration, because we well know that today corruption is, as the president of the World Bank recognized a few years ago, a problem in “every one of the countries in the world”,<sup>11</sup> coming to qualify the phenomenon as the “number one public enemy” of the developed world,<sup>12</sup> but that in the developing world already has the characteristics and effects of a pandemic.<sup>13</sup>

Therefore, what is really new about the phenomenon is that it now has a global character,<sup>14</sup> as “an evil phenomenon that occurs in all countries, large and small, rich and poor”, even though “with especially devastating effects in the developing world”, affecting “infinitely the poorest”, as recognized by the Secretary General of the United Nations in 2003, the approval of the United Nations Convention on Corruption, “because it diverts the funds intended for development, undermines the ability of governments to offer basic services, fuels inequality and injustice and discourages investment and aid foreign”.<sup>15</sup>

Hence, even, the also “transnational” nature of corruption, in the sense that “it is no longer an isolated evil, circumscribed to certain countries or regions of the planet”, but now it is also linked to other “criminal activities

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alty both for officials who committed acts of corruption in the government and for judges who allowed impunity. See in “Documento 10062 Decreto del Libertador” issued in Lima on January 12, 1825, by means of which it establishes the measures aimed at the eradication of the squandering of national funds, practiced by some public officials, in: <http://www.archivodellibertador.gob.ve/escritos/buscador/spip.php?article8279>. Also see in <https://cawb.blogspot.com/2012/06/decretada-pena-de-muerte-para.html>.

<sup>11</sup> That said by the President of the World Bank, Jim Yong Kim. Meers, Jelter, “World Bank Will Track own Funds as “Corruption is Everywhere”, Organized Crime and Corruption Reporting Project, April 20, 2018, <https://www.occrp.org/en/27-ccwatch/cc-watch-briefs/7980-world-bank-will-track-own-funds-as-corruption-is-everywhere>.

<sup>12</sup> The President of the World Bank himself, Jim Yong Kim also said this. Press release. “Corruption is “Public Enemy Number One” in Developing Countries, says World Bank Group president”, December 19, 2013, <http://www.worldbank.org/en/news/press-release/2013/12/19/corruption-developing-countries-world-bank-group-president-kim>.

<sup>13</sup> For this reason, the president of the World Bank in 2013, when referring to the pernicious effects of corruption in developing countries, stated that “every dollar that a corrupt official or a corrupt businessperson puts in their pockets is a dollar stolen from a woman in labor who needs medical assistance; to a girl or boy who deserves an education; or to communities that need water, streets and schools ...”, *Idem*.

<sup>14</sup> Estimates from the International Monetary Fund in 2016 indicate that corruption in the public sector cost the global economy that year more than US\$1.5 trillion (that is, 1,500 millions of million dollars: US\$1,500,000,000,000). See Meers, Jelter, *op. cit.*

<sup>15</sup> See Annan, Kofi A., “Foreword”, United Nations Office on Drugs and Crime, *Convención de las Naciones Unidas contra la Corrupción*, New York, United Nations, 2004, p. 3.

such as drug trafficking, money laundering, and other perverse acts, generally related to criminal organizations with branches in several countries”.<sup>16</sup>

It is not surprising, therefore, that corruption has caused so many recent scandals, which in so many countries have come to destabilize governments and democratic institutions, to the point that in our Latin America we can say that we have a record of accused heads of state and persecuted for corruption.

Corruption, therefore, as the Secretary General of the United Nations also warned, as soon as the aforementioned United Nations Convention on Corruption was signed in 2003:

It is an insidious plague that has a wide spectrum of corrosive consequences for society. It undermines democracy and the rule of law, gives rise to human rights violations, distorts markets, undermines quality of life and allows organized crime, terrorism and other threats to human security to flourish.<sup>17</sup>

That was also what was expressed last year (2018) by the President of Peru, Martín Vizcaya (appointed as a result of the resignation of the previous president precisely for facts linked to acts of corruption), referring to “systemic corruption” as “the new threat to democratic governance in the region”, noting that “corruption and impunity are two sides of the same coin” that form “a disastrous combination that threatens governance”, to which he concluded by stating that transparency was “one of the most powerful and effective antidotes against the expansion of the corruption system, in addition to being a fundamental pillar of his government”.<sup>18</sup>

And precisely because of the global and transnational nature of the phenomenon of corruption in the contemporary world, it is impossible for us, in a forum like this, not to refer to the most notorious recent cases of global corruption on the continent, both administrative corruption and of political corruption, which have undermined the very foundations of our democracies.

In relation to administrative corruption, it is impossible not to mention the largest transnational corruption operation that has been set up politi-

<sup>16</sup> See Moreno León, José Ignacio, *op. cit.*, p. 19.

<sup>17</sup> See Annan, Kofi A., *op. cit.*, p. iii.

<sup>18</sup> See what was declared by Martín Vizcarra, former president of Peru, in the review “Cumbre de las Américas es una respuesta contra la corrupción, afirma Vizcarra”, April 13, 2018, <http://www.viicumbreperu.org/cumbre-de-las-americas-es-una-respuesta-contra-la-corrupcion-afirma-vizcarra/>.

cally in our countries, such as the one carried out by the Brazilian company Odebrecht, in the shadow of the very State of its headquarters, and of many other states.

Seen globally, the phenomenon can only be explained because it obeyed a well-defined global public policy, conducted by the government of a State, using a private company, and through it, using governments; which allows us to think that in said company, in addition to the technical management necessary for the design and execution of public works in materially all Latin American countries, it has also come to structure another kind of specific “management”, destined to plan the payment of commissions and dole out bulk money to public officials and candidates for public office in every conceivable election to secure construction contracts. Only in this way can the global scale of the phenomenon be understood.

In other words, there is no other way to explain the magnitude of this “company” of administrative corruption, if not understood as a planned policy that was developed around the activities of said construction company, even within the framework of international “cooperation” agreements, as was the one signed between Venezuela and Brazil,<sup>19</sup> that allowed in my country to formally ignore all the laws on bidding and selection of contractors, in addition to having contributed to the financing of political campaigns.

In Venezuela, and we refer to the case —with all regret— because it is our country, the institutional corruption that affects it is of such a nature, that despite the administrative corruption scandals that have materially involved all the countries of the Continent, taking the highest officials with them into the darkness of the dungeons or tombs, however, in Venezuela, a country that has the tragic record of occupying the first place in the corruption perception index in the entire American Continent,<sup>20</sup> the issue Odebrecht paradoxically is not even mentioned;<sup>21</sup> the situation of im-

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<sup>19</sup> See Manzano, Jean, “Las obras pendientes de Odebrecht en Venezuela,” *El Estímulo*, March 27th, 2018, <http://elstimulo.com/elinteres/infografia-las-obras-pendientes-de-odebrecht-en-venezuela/>.

<sup>20</sup> See information from Transparency International, [https://www.transparency.org/news/pressrelease/el\\_indice\\_de\\_percepcion\\_de\\_la\\_corrupcion\\_2017\\_muestra\\_una\\_fuerte\\_presencia](https://www.transparency.org/news/pressrelease/el_indice_de_percepcion_de_la_corrupcion_2017_muestra_una_fuerte_presencia).

<sup>21</sup> Only a group of Magistrates who had been appointed to the Supreme Court, and who, persecuted in the country, are in exile, have been the ones who have referred to the case of corruption caused by Odebrecht, coming to issue a condemnatory opinion against the president of the Republic. See the report: “TSJ en el exilio ordena 18 años y tres meses de prisión para Maduro por corrupción. La sentencia del Tribunal Supremo en el exilio indica que el gobernante Nicolás Maduro deberá cumplir su condena en la cárcel de Ramo Verde. Además, le obliga a resarcir al país por 35.000 millones de dólares”, *Diario Las Américas*, Au-

punity is such that it would seem that said company had never worked in Venezuela,<sup>22</sup> when the evidence is in sight, in the largest iron and concrete cemetery composed of monumental works, all unfinished,<sup>23</sup> but certainly paid,<sup>24</sup> that today can be seen throughout the national territory.

In any case, the globalization of the phenomenon of administrative corruption, a product of institutional corruption and the collapse of democracy, evidenced, among others, by the Odebrecht case, was what captured the attention of our continent when in 2018 it was held in Lima the *Octava Cumbre de las Américas*, whose central theme was, precisely, the “Democratic governance against corruption”,<sup>25</sup> recognizing that “prevention and combat” against it is the key piece “for the strengthening of democracy and the rule of law in our countries”.

There, the Heads of State recognized that: “Corruption weakens democratic governance, citizen trust in institutions, and has a negative impact on the effective enjoyment of human rights and the sustainable development of the populations of our hemisphere, as well as in other regions of the world”.

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gust 15, 2018, <https://www.diariolasamericas.com/americas-latina/tsj-el-exilio-ordena-18-anos-y-tres-meses-prision-maduro-corrupcion-n4160164>.

<sup>22</sup> See González, Jorge, *Odebrecht. La historia completa: los secretos de un escándalo de corrupción que desestabilizó a América Latina*, and Duran, Francisco, *Odebrecht. La empresa que capturaba gobiernos*, Kindel edition, <https://www.amazon.com.mx/Odebrecht-empresa-que-capturaba-gobiernos-book/dp/B07KF9C2BN>. It is not surprising, therefore, the decision of the Administrative Court of Cundinamarca, in Colombia, adopted in December 2018, condemning the company to a multi-million dollar fine (800,000 dollars), disqualifying the company for 10 years from contracting with public entities in Colombia. See the information in “Odebrecht es inhabilitada en Colombia y la multan con \$251 millones”, tvnNoticias, December 13, 2018, [https://www.tvn-2.com/mundo/suramerica/Odebrecht-inhabilitada-Colombia-multan-millones\\_0\\_5190231014.html](https://www.tvn-2.com/mundo/suramerica/Odebrecht-inhabilitada-Colombia-multan-millones_0_5190231014.html).

<sup>23</sup> See, for example, Suárez, Enrique, “Maduro: Obras inconclusas de Odebrecht en Venezuela serán terminadas”, *El Impulso*, March 26, 2018, <http://www.elimpulso.com/featured/maduro-obras-inconclusas-odebrecht-venezuela-seran-terminadas>.

<sup>24</sup> See Oré, Diego, “Lista de las obras inconclusas de Odebrecht en Venezuela”, *La Razón*, in <https://www.larazon.net/2017/06/lista-las-obras-inconclusas-odebrecht-venezuela/>.

<sup>25</sup> See *Redacción EC*, “Cumbre de las Américas: países suscriben Compromiso de Lima”, *El Comercio*, April 14<sup>th</sup>, 2018, <https://elcomercio.pe/politica/cumbre-america-paises-compromiso-lima-noticia-512110>. In 2018, in the same line of action, the Heads of State and Government meeting at the 30th Assembly of the African Union in Addis Ababa, Ethiopia launched a new campaign with a single and important purpose, which was to fight corruption through of the African Continent. See Kaninka, Samuel, “The African Union kicks off 2018 with an anti-corruption campaign”, Transparency Intitution, June 26, 2018, <https://voices.transparency.org/the-african-union-kicks-off-2018-with-an-anti-corruption-campaign-b4c233eab262>; and at <http://www.viiiicumbreperu.org/compromiso-de-lima-gobernabilidad-democratica-frente-a-la-corrupcion/>.

In this global scenario, therefore, it is not surprising that, during 2018, presidential candidates such as Luis Manuel López Obrador in Mexico, had focused their campaign speech on the purpose of “eradicating corruption and impunity,” to that “there be transparency” —he said—,<sup>26</sup> adding in his speech, however, an affirmation that in my opinion is totally wrong, considering that corruption was supposedly the “result of the “neoliberal” political regime”, even stating that: “the hallmark of neoliberalism is corruption”,<sup>27</sup> and that in neoliberal regimes corruption is “the main function of political power”.<sup>28</sup>

These statements, which initially appeared as referring to the heat of an electoral campaign in the specific context of the Mexican political process at the time, however, in April 2019 President López Obrador himself took it upon himself to generalize them, when he made reference to the unfortunate death of the president. Alan García from Peru, linking him to the Odebrecht case<sup>29</sup> and again linking corruption with liberalism.

With this we think that the president of Mexico took the wrong point when conceptualizing the phenomenon of corruption in the world, since in my opinion it can in no way be considered as the product of a specific government economic policy, and even less, of any “neoliberal” policy, understood as the one that advocates the development of the economy based on the free play of its market forces, product of the exercise of economic freedom, without interference or determining participation of the State.

Administrative corruption —and today the former candidate already in power, very possibly must already be realizing it—, is the result of institutional or political corruption, which corrodes the States, as a result of the malfunctioning of democracy when the control mechanisms are erased, turning what should be the “glass house” into an iron barracks, where transparency is replaced by opacity.

Attributing the phenomenon of corruption in a simplistic way to certain economic policies such as neoliberal policies could erroneously state, in

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<sup>26</sup> See the various speeches by Andrés Manuel López Obrador in 2018, [https://www.google.com/search?q=lopez+obrador+discurso+zocalo&rlz=1C1CHBD\\_enUS787US787&oq=lopez+obrados+discursos+&aqs=chrome.69i57j0l5.11798j0j8&sourceid=chrome&ie=UTF-8](https://www.google.com/search?q=lopez+obrador+discurso+zocalo&rlz=1C1CHBD_enUS787US787&oq=lopez+obrados+discursos+&aqs=chrome.69i57j0l5.11798j0j8&sourceid=chrome&ie=UTF-8).

<sup>27</sup> See “Este es el discurso íntegro de López Obrador al tomar posesión”, *Expansión*, December 1<sup>st</sup>, 2018, <https://adnpolitico.com/presidencia/2018/12/01/este-es-el-discurso-integro-de-lopez-obrador-al-tomar-posesion>. Similarly, in <https://www.lapagina.com.sv/internacionales/el-neoliberalismo-es-la-corrupcion-andres-manuel-lopez-obrador-al-asumir-como-presidente-de-mexico/>.

<sup>28</sup> *Idem*.

<sup>29</sup> See the news report “López Obrador toma el suicidio de Alan García para criticar corrupción y toma-el-suicidio-de-alan-garcia-para-criticar-corrupcion-y-neoliberalismo”.

contrast, that a statist economic policy based on State intervention in the economy as regulator and owner of the means of production, would then be the best antidote against corruption and impunity.

This would be nothing more than a deductive fallacy, and to prove it, it is enough to remember what happened after 2000, in view of the entire contemporary world, precisely in Venezuela, where the largest and most depraved scheme and public system of corruption was developed that it has flourished throughout the history of the world (ancient, modern or contemporary), due to its magnitude and the bizarre levels of wasted public resources; precisely in a country in which, far from having developed neo-liberal policies, what, on the contrary, has been developed during the last 20 years, was a statist, socialist, populist and militarist economic policy, where the State assumed total leadership of the economy, eliminated private initiative and destroyed private production, which materially does not exist today, turning the country's economic system into a totally public economy, led by a bureaucratized, amorphous, inefficient and corrupt mass, and which in twenty years squandered an oil income of more than 850,000 million dollars.<sup>30</sup>

Among those resources squandered by corruption, it is impossible not to mention, for example, what happened to the oil industry, turning the country that several decades ago was the largest oil exporter in the world, and that today continues to have the largest reserves oil companies in the world, in a country that does not even produce to supply local consumption,<sup>31</sup> there is already today a shortage of gasoline for cars. Today there is already a shortage of gasoline for cars. Nor can we fail to mention, for example, the 40,000 million dollars that were supposedly earmarked a few years ago for an electrical emergency plan, which was ignominiously squandered, plunging the country into total darkness, because of the blackout of several days that occurred in March of this year (2019),<sup>32</sup> which today has the country in a situation of electricity rationing.

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<sup>30</sup> See the information from a few years ago, in the report by Bermúdez, Ángel, “Cómo Venezuela pasó de la bonanza petrolera a la emergencia económica”, *BBC News*, February 25, 2016, [https://www.bbc.com/mundo/noticias/2016/02/160219\\_venezuela\\_bonanza\\_petroleo\\_crisis\\_economica\\_ab](https://www.bbc.com/mundo/noticias/2016/02/160219_venezuela_bonanza_petroleo_crisis_economica_ab).

<sup>31</sup> See all the information in Brewer-Carias, Allan R., *Crónica constitucional de una destrucción. Concesión, nacionalización, apertura, constitucionalización, desnacionalización, estatización, entrega y degradación de la industria petrolera*, Caracas, Jurídica Venezolana Editorial, 2018, p. 730.

<sup>32</sup> See Brewer-Carías, Allan R., *Crónica constitucional de una Venezuela en las tinieblas 2018-2019*, Caracas-Panama, Olejnik-EJV Editorial, 2019, <http://allanbreuercarias.com/wpcontent/uploads/2019/04/188.-CRONICA-CONSTITUCIONAL-VZLA-EN-TINIEBLAS-Car%C3%A1tula-e-%C3%ADndice.pdf>.

That statist regime is, on the other hand, the only thing that explains why huge amounts of money, which were disposed of at random, coming from the income derived from the oil boom,<sup>33</sup> ended up openly financing electoral campaigns of presidential candidates and of another type, in almost all the countries of the continent; how far the dirty money traveled in suitcases and briefcases, on official planes, even to these southern lands.<sup>34</sup>

In short, this authoritarian political regime with a statist and centralized economy, a product of the institutional corruption of democracy, is also the only thing that explains, as announced in April 2019), that in a month — a single month— there would have been spent in a single agency of a state bank located in France (of the Development Bank of Venezuela), more than 6 million euros for the payment of cookies, food, and office supplies. This was alerted by the same French authorities.<sup>35</sup>

With this unpunished looting – these are but a few examples – the miracle of having converted one of the countries that twenty years ago was still one of the most prosperous and economically developed on the continent took place; in the most indebted and miserable country in the world,<sup>36</sup> which, as we indicated before, tragically occupies the highest level of corruption on the Continent, and among the most corrupt in the world.<sup>37</sup> And not precisely because of any neoliberal policy.

On the contrary, because of a policy that has led to everything, or almost everything, depending on the State and the actions of its Administration and its officials, which has developed an authoritarian political regime,

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<sup>33</sup> It has been calculated in the National Assembly of Venezuela that in recent years the regime squandered between 300,000 and 400,000 million dollars. See the review “Aseguran que régimen de Maduro robó al menos \$300 mil millones”, *Diario Las Américas*, September 13, 2018, <https://www.diariolasamericas.com/americas-latina/aseguran-que-regimen-maduro-robo-al-menos-300-mil-millones-n4162288>.

<sup>34</sup> See Tablante, Carlos and Tarre, Marcos, *El gran saqueo. Quiénes y cómo se robaron el dinero de los venezolanos*, Caracas, *La Hoja del Norte*, 2015.

<sup>35</sup> See in Morales, Maru, “Bandes Francia pagaba 6 millones de euros al mes para galletas e insumos de oficina”, *CrónicaUno*, April 3, 2019, <http://cronica.uno/bandes-francia-pagaba-6-millones-de-euros-al-mes-para-galletas-e-insumos-de-oficina/>.

<sup>36</sup> See the review “Venezuela tiene el mayor índice de miseria en el mundo, según Bloomberg”, Bloomberg Agency, February 19, 2018, <https://gestion.pe/economia/venezuela-mayor-indice-miseria-mundo-bloomberg-227585>.

<sup>37</sup> See the review “Venezuela, entre los 12 países más corruptos del mundo según Transparencia Internacional. Venezuela es el latinoamericano peor situado, en el puesto 169, al mismo nivel que Irak”, *El Nuevo Diario*, February 21, 2018, at <https://www.elnuevodiario.com.ni/internacionales/456471-venezuela-corrupcion-transparencia-internacional/> and [https://www.transparency.org/news/pressrelease/el\\_indice\\_de\\_percepcion\\_de\\_la\\_corupcion\\_2017\\_muestra\\_una\\_fuerte\\_presencia](https://www.transparency.org/news/pressrelease/el_indice_de_percepcion_de_la_corupcion_2017_muestra_una_fuerte_presencia).

with a perverted and distorted democracy, where no there is control between the powers, and lack of freedoms; where transparency disappeared, turning the Public Administration, for the citizen, into a great venal and blackmail center, before which, in order to receive the most minimal and elementary services, all citizens, starting with those on foot, have to pay in advance and immediately to receive the most basic services,<sup>38</sup> and the most serious, sometimes renouncing the exercise of their freedom in exchange for receiving gifts.

More tragic could not be what happened in Venezuela where, for example, the provision of the most precarious and basic health care services has been subject to the degree of support for the government; reaching the extreme that in the illegitimate presidential reelection of May 2018, the delivery of food and other subsidies to the less favored population, only occurred in exchange for people voting for the government candidate.<sup>39</sup> On this, even, in March 2019, a group of Cuban doctors, among those hired during the last twenty years to work without a medical license in Venezuela in the regime's health care programs in popular areas, came to publicly denounce that they were ordered "only to provide medical services to those who voted for Maduro, and to deny such services to those who did not express support for the government".<sup>40</sup>

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<sup>38</sup> See Brewer-Carías, Allan R., "De la Casa de Cristal a la Barraca de Hierro: el Juez Constitucional Vs. El derecho de acceso a la información administrativa", *Revista de Derecho Público*, Caracas, No. 123, July-September, 2010, pp. 197-206.

<sup>39</sup> See the news report by Wyss, Jim and Weddle, Cody, "Maduro usa el hambre como arma política a cambio de votos", *El Nuevo Herald*, May 16, 2018. The report includes the assessments of Luis Lander who stated that: "in a country where the majority depends on subsidies to survive, the system has become a powerful and pernicious electoral tool," which "is clearly being used to threaten to voters," who fear "that if they don't vote, they could lose their government-subsidized food". Similarly, the assessments of Michael Penfold are collected, when he stated that the perverse mechanism "not only encourages government supporters to go to the polls, he says, but also intimidates opposition voters not to bite the hand that literally feeds", adding that while vote buying is as old as elections themselves, "this new form of clientelism is possibly the most developed and authoritarian in Latin America, and represents a colossal threat to the return of democracy in Venezuela", <https://www.elnuevoherald.com/noticias/mundo/america-latina/venezuela-es/article211236754.html>.

<sup>40</sup> See Casey, Nicholas, "Trading Lifesaving Treatment for Maduro Votes", *The New York Times*, New York, March 17, 2019, pp. 1 and 18. The report includes statements from 16 Cuban doctors, where they expose with all dramatism what happened, that is, "a system of deliberate political manipulation in which their services were used to strengthen the votes of the United Socialist Party of Venezuela (PSUV), often through coercion", using many tactics, "from simple reminders to vote for the government to denying treatment to opposition supporters who have life-threatening illnesses". "Cuban doctors said they were ordered to go door to door in poor neighborhoods to offer medicine and warn residents that access

The causes of corruption, therefore, are very different from what President López Obrador pointed out, and they have to do, we insist, with the malfunction of the control mechanisms established in democratic regimes, because in authoritarian regimes they simply they disappear; that is to say, they have to do, precisely, with the malfunction of the aforementioned essential elements and components of democracy, among which the usual principle stands out, that of the separation of powers, and that of the independence and effective autonomy of the same, and among them, the Judiciary, whose absence and distortion is what leads to impunity; In short, they have to do with the limitations imposed on access to public information and the malfunctioning of systems to demand accountability of public management.<sup>41</sup>

And this was precisely what happened in Venezuela —and we cite our country as an example, so as not to get lost in theories—, a country that was once envied for the stability of its democratic institutions, where there was a total depravity of State institutions,<sup>42</sup> which, once corrupted, denatured the principle of the democratic legitimacy of the representatives of the people; they distorted the electoral system; they neutralized or annihilated the principle of the separation of powers; they submitted the powers of the State to the control of the Executive; they disrupted the principle of

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to medical services would be cut off if they did not vote for Maduro or his candidates. Many said they were instructed by their superiors to make the same threats in closed-door consultations with patients seeking treatment for chronic illnesses”. See also the report in Spanish of Casey, Nicholas, “Nicolás Maduro usó a médicos cubanos y a los servicios de salud para presionar a los votantes”, *The New York Times.es*, March 17, 2019, <https://www.nytimes.com/es/2019/03/17/maduro-voto-medicinas-cuba/>. On the same topic see the news report “Votos a cambio de comida y medicinas, el método electoral de Maduro en 2018”, *El Periódico*, March 18, 2019, <https://www.elperiodico.com/es/internacional/20190318/votos-comida-medicinas-metodo-electoral-maduro-7360323>.

<sup>41</sup> For this reason, it was precisely that the Heads of State and Government of the American countries at the aforementioned *Octava Cumbre de las Américas de Lima*, in April 2018, committed to adopting institutional measures to “strengthen the democratic institutions for the prevention and combat of corruption in the Hemisphere”, among which are the strengthening of “judicial autonomy and independence in order to promote respect for the rule of law and access to justice, as well as to promote and promote policies of integrity and transparency in the judicial system,” the consolidation of “the autonomy and independence of the superior control bodies”, and the promotion of “measures that promote transparency and accountability” in all orders related to the management of public resources. See “Cumbre de las Américas: países suscriben Compromiso de Lima”, *El Comercio*, April 14, 2018, <https://elcomercio.pe/politica/cumbre-americas-paises-compromiso-lima-noticia-512110>.

<sup>42</sup> See Brewer-Carías, Allan R., *Principios del Estado de derecho. Aproximación histórica*, Miami, EJV International, 2016, <https://www.mdc.edu/catedra/img/Principios%20del%20estado%20de%20derecho%20-%20Brewer%20Carias.pdf>.

political decentralization, centralizing power, and thereby eliminated the very possibility of citizen participation; they eliminated the right of access to information and any possibility for citizens to demand transparency in public management; they eliminated the autonomy of the Judiciary; and they turned the Constitutional Judge<sup>43</sup> into the most perverse instrument of authoritarianism<sup>44</sup> to mold and distort the Constitution. The Constitutional Judge, abandoning his essential role of preserving constitutional supremacy, went on the contrary to ensure impunity for his violations, after touching the regime, globally, in a paradoxical and bizarre “judicial dictatorship<sup>45</sup> to destroy<sup>46</sup> and corrupt democracy”.

This process even led the Supreme Court, for example, to close any possibility of transparency, first, in 2010, by denying the citizen’s right of access to the most elementary administrative information such as that relating to the remuneration paid to officials, nothing less than that of the Office of the Comptroller General of the Republic, considering that in the face of such citizen right that was exercised, the right to privacy or “economic intimacy” of officials was the one that was unusually deprived;<sup>47</sup> and, shortly after, in

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<sup>43</sup> See Brewer-Carías, Allan R., *Práctica y distorsión de la justicia constitucional en Venezuela (2008-2012)*, Caracas, Academy of Political and Social Sciences, Metropolitan University-Jurídica Venezolana Editorial, 2012, Justice Collection, No. 3, Access to Justice; *La patología de la justicia constitucional*, Third Edition, Caracas, EJV Editorial, 2015.

<sup>44</sup> See Brewer-Carías, Allan R., *Crónica sobre la “In” Justicia Constitucional. La Sala Constitucional y el autoritarismo en Venezuela*, Caracas, EJV-Central University of Venezuela, 2007, Public Law Institute Collection, No. 2; “El juez constitucional al servicio del autoritarismo y la ilegítima mutación de la Constitución: el caso de la Sala Constitucional del Tribunal Supremo de Justicia de Venezuela (1999-2009)” *Revista de Administración Pública*, Madrid, No. 180, 2009, pp. 383-418 and in IUSTEL, *Revista General de Derecho Administrativo*, Madrid, No. 21, June 2009.

<sup>45</sup> See about it Brewer-Carías, Allan R., *Dictadura judicial y pervisión del Estado de derecho*, Caracas, EJV Editorial, 2016, Estudios Políticos Collection, No. 13.

<sup>46</sup> See Brewer-Carías, Allan R., *Dismantling Democracy. The Chávez Authoritarian Experiment*, New York, Cambridge University Press, 2010; *Estado totalitario y desprecio a la ley. La desconstitucionalización, desjuridificación, desjudicialización y desdemo-cratización de Venezuela*, Second Edition, Foreword by José Ignacio Hernández, Caracas, Public Law Foundation-EJV, 2015; *Authoritarian Government v. The Rule of Law, Lectures and Essays (1999-2015) on the Venezuelan Authoritarian Regime Established in Contempt of the Constitution*, Caracas, Public Law Foundation-EJV, 2014.

<sup>47</sup> The Constitutional Chamber went so far as to argue that in Venezuela “there is no general law that requires that the salaries of government officials be made public, while in other countries, such as the United States of America or Canada, most salaries of high-ranking officials of the federal government are approved and set by law, which implies mandatory advertising. On the other hand, in our legal system, the information on the remuneration of public officials is indicated globally in the budget items that are included annually in the Budget Law, where the amounts assigned to each entity or body of the public administration

2015, to deny the citizen's right to know the country's economic indicators, freeing the Supreme Court from the Central Bank of its obligation to publish them,<sup>48</sup> thus making Venezuela, since 2015, a country in which simply there are no known official economic indicators.<sup>49</sup>

In this unrestrained process that we have just pointed out, developed against the express provisions of the Constitution, it was the Constitutional Judge himself who carried out a continuous *coup d'etat*,<sup>50</sup> in Venezuela, which also occurs when the organs of the State break against the Constitu-

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for staff remuneration; or in the Manuals of Positions and Salaries, in which it is not distinguished to which official in particular the remuneration belongs to, since this is information that belongs to the intimate sphere of each individual. On the other hand, the reserved nature of the income tax declaration, or of the declaration of assets that public officials make before the Office of the Comptroller General of the Republic demonstrates that such information is not publicly disclosed data, since it is of information that is contracted to the private sphere or economic intimacy of officials". See the Judgment of the Constitutional Chamber of the Supreme Court of Justice, *Caso Asociación Civil Espacio Público*, July 15, 2010, No. 745, <http://www.tsj.gov.ve/decisiones/scon/Julio/745-15710-2010-09-1003.html>. See, on that Judgment, Brewer-Carías, Allan R., "De la casa de cristal a la barraca de hierro...", *cit.*

<sup>48</sup> See Judgment No. 935 of August 4, 2015, *Caso Asociación Civil Transparencia Venezuela*, <http://historico.tsj.gov.ve/decisiones/spa/agosto/180378-00935-5815-2015-2015-0732.HTML>. See, on that Judgment, Brewer-Carías, Allan R., "Secrecy and lies as State policy and the end of the obligation of transparency. How the Supreme Court of Justice unconstitutionally freed the Central Bank of Venezuela from fulfilling its legal obligation to inform the country about economic indicators, snatching from citizens their rights to government transparency, access to justice and access to administrative information", August 10, 2015, <http://www.allanbrewercarias.com/Content/449725d9-f1cb-474b-8ab2-41efb849fea3/Content/Brewer.%20LO%20SECRETO%20Y%20LA%20MENTIRA%20COMO%20POL%20C3%8DTICA%20DE%20ESTADO%20Y%20EL%20FIN%20DE%20LA%20OBLIGACI%C3%93N%20DE%20TRANSPARENCIA.pdf>

<sup>49</sup> It is enough to consult the prestigious magazine *The Economist*, to verify how on its last page, where the economic indicators of the countries of the world are always published, Venezuela ceased to exist for these purposes. At the end of May 2019, however, for the first time in several years, the Central Bank of Venezuela published some economic indicators, with which the catastrophe that had occurred in the country in recent years was confirmed. See the Forbes report, "Banco Central confirma hundimiento de la economía venezolana", *Msn.noticias*, May 29, 2019, <https://www.msn.com/es-mx/noticias/otras/banco-central-confirma-hundimiento-de-la-econom%C3%ADa-venezolana/ar-AAC5k7k>.

<sup>50</sup> See Brewer-Carías, Allan R., *El golpe a la democracia dado por la Sala Constitucional. De cómo la Sala Constitucional del Tribunal Supremo de Justicia de Venezuela impuso un gobierno sin legitimidad democrática, revocó mandatos populares de diputada y alcaldes, impidió el derecho a ser electo, restringió el derecho a manifestar, y eliminó el derecho a la participación política, todo en contra de la Constitución*, Second Edition, Foreword by Francisco Fernández Segado, Caracas, EJV, 2015, Estudios Políticos Collection, No. 8.

tion.<sup>51</sup> And it was in this way that, in Venezuela, the Constitutional Chamber of the Supreme Court of Venezuela, always acting under the control of the Executive Power, even came to arrogate all the power of the State, having assumed, in the midst of the most global institutional corruption, leadership in the process of depredation of the country's democratic institutions, entrenching authoritarianism.

All this increased two years ago, after the victory of the opposition in the parliamentary elections of December 6, 2015, from which the Constitutional Judge assumed the precise mission of preventing popular representation, embodied in the newly elected Assembly National, could come to exercise its constitutional functions.

Until then the authoritarian regime had been used to having total power, which is why it was obvious that its leaders could not tolerate the democratic opposition controlling the National Assembly. For this reason, as of 2016,<sup>52</sup> the regime defined as a strategy that the Supreme Court be the one to annihilate the National Assembly, which it began to execute even before it was installed in January 2016, suspending the proclamation of the elected deputies in a State of the Republic (Amazonas), and thus break the qualified majority that the opposition had achieved in parliament. The Supreme Court, months later, after said deputies were sworn in on July 28, 2016, declared, not only that said swearing-in was invalid, non-existent, and ineffective, but also that all “acts or actions that in the future I dictate the National Assembly” would also be null and void.<sup>53</sup>

This was followed by a successive series of rulings by the Constitutional Judge declaring in “contempt” not the deputies who allegedly failed to comply with a precautionary judicial measure, but the National Assembly *in toto*,<sup>54</sup> as an organization—which has no legal basis whatsoever—, and also

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<sup>51</sup> See Valadés, Diego, *Constitución y democracia*, Mexico, UNAM, 2000, p. 35; and “La Constitución y el Poder” in Valadés, Diego and Carbonell, Miguel (Coordinators), *Constitucionalismo Iberoamericano del siglo XXI*, Mexico, Chamber of Deputies-UNAM, Mexico 2000, p. 145.

<sup>52</sup> See Judgment of the Electoral Chamber No. 260 of December 30, 2015, <http://historico.tsj.gob.ve/decisiones/selec/diciembre/184227-260-301215-2015-2015-000146.HTML>. See comments in Brewer-Carías, Allan R., *Dictadura Judicial y pervisión del Estado de derecho*, Madrid, Iustel, 2017, pp. 154 et seq.

<sup>53</sup> See Judgment of the Electoral Chamber No. 108 of August 1, 2016, <http://www.tsj.gov.ve/decisiones/scon/marzo/162025-138-17314-2014-14-0205.HTML>. See comments in Brewer-Carías, Allan R., *Dictadura Judicial y pervisión...*, *cit.*, pp. 33 et seq.

<sup>54</sup> Beginning with Judgment No. 808 of September 2, 2016. See <http://historico.tsj.gob.ve/decisiones/scon/septiembre/190395-808-2916-2016-16-0831.HTML>. See comments in Brewer-Carías, Allan R., *Dictadura Judicial y pervisión...*, *cit.*, pp. 191 et seq.

nullified all his future actions, which was followed by the decision of the Executive Power to simply take the budget away from the National Assembly, denying it the resources for its operation.<sup>55</sup>

That is to say, through some one hundred judgments issued as of 2016, the Constitutional Chamber annihilated popular representation,<sup>56</sup> and produced a “serious alteration of the democratic order”, as a result of the political or institutional corruption of the regime, against which it not only reacted the National Assembly itself,<sup>57</sup> but rather the Secretary General of

<sup>55</sup> See Zavala, Yélesza, “Maduro: Si la AN está fuera de ley yo no puedo depositarle recursos”, *Noticiero Digital*, August 2th, 2016, <http://www.noticierodigital.com/forum/viewtopic.php?t=38621>.

<sup>56</sup> Thus, successively, the Constitutional Chamber proceeded (i) to declare the unconstitutionality of all - if all - the laws passed by the National Assembly since it was installed in January 2016; (ii) to subject the legislating function of the National Assembly to obtaining an Approval by the Executive Power; (iii) to eliminate all political control functions of the National Assembly over the government and the Public Administration, and therefore, any hint of parliamentary control of administrative corruption; (iv) to eliminate the possibility of approving votes of censure against ministers; (v) to eliminate the obligation of the President of the Republic to present his Annual Report to the National Assembly, with the Constitutional Chamber itself assuming such function; (vi) to eliminate the legislative function in budget matters, converting the Budget Law into an executive decree to be presented, not before the National Assembly, but before the Constitutional Chamber, with which budgetary discipline was disregarded; (vii) to eliminate even the power of the National Assembly to issue political opinions as a result of its deliberations, annulling all the Agreements that were adopted; (viii) to eliminate the power of the Assembly to review its own acts and to be able to revoke them; and finally (ix) to eliminate parliamentary control over the declaration of states of exception. See the comments on all these sentences in. Brewer-Carías, Allan R., *Dictadura judicial y perversión...*, cit.; *La consolidación de la tiranía judicial. El Juez Constitucional controlado por el Poder Ejecutivo, asumiendo el poder absoluto*, Caracas-New York, JVI, 2017, Estudios Políticos Collection, No. 15.

<sup>57</sup> Given all this, the National Assembly certainly reacted in May 2016, “Acuerdo exhortando al cumplimiento de la Constitución, y sobre la responsabilidad del Poder Ejecutivo Nacional, del Tribunal Supremo de Justicia y del Consejo Nacional Electoral para la preservación de la paz y ante el cambio democrático en Venezuela”, May 10, 2016, [http://www.asambleanacional.gob.ve/uploads/documentos/doc\\_d75ab-47932d0de48f142a739ce13b8c43a236c9b.pdf](http://www.asambleanacional.gob.ve/uploads/documentos/doc_d75ab-47932d0de48f142a739ce13b8c43a236c9b.pdf), denouncing precisely the rupture of the constitutional and democratic order in the country, at the hands of the Constitutional Judge and the Executive Power, which, corrupting the institutions of the State, disregarded popular sovereignty. (This Agreement of the National Assembly was specifically analyzed by the very important group of the 22 former Latin American presidents that make up the *Iniciativa Democrática de España y las Américas* (IDEA), in a Declaration dated May 13, 2016, in which they highlighted all the signs of corruption of the rule of law in the country, demanding to the President of Venezuela, to respect “without restrictions the mandate for democratic and constitutional change decided by the majority of the people of Venezuela on December 6, 2015”, urging him not to use “the other powers of the State to prevent or hinder actions that constitutionally advances the National Assembly to resolve the serious crisis that afflicts the country”, finally denouncing “the partisan political activism of the Supreme Court of Justice”, and in general, “the disregard by the

the Organization of American States, Dr. Luis Almagro, who proceeded to request (in May 2016) the convening of the Permanent Council of the Organization to apply to Venezuela precisely the Inter-American Democratic Charter (art. 20).<sup>58</sup>

To this end, he denounced, even though by then it was nothing new,<sup>59</sup> that in the country there was no longer “a clear separation and independence of public powers” giving rise to “one of the clearest cases of co-optation of the Judicial Power by the Executive Power”,<sup>60</sup> with a Supreme Court integrated in a manner “completely vitiated both in the appointment procedure and by the political bias of practically all its members”.<sup>61</sup> Those were his words.

In this situation, as Secretary General Almagro himself expressed in August 2016, what was seen in Venezuela was simply “the unfortunate end of democracy”, that is, “the end of the rule of law”, considering —he said— that “no regional or subregional forum could ignore the reality that *today in Venezuela there is no democracy or rule of law*”.<sup>62</sup>

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National Executive and by the Supreme Court of Justice, of the authority of the National Assembly, a representative body of the Venezuelan people, whose legitimacy derives from the majority expression of the electorate and of popular sovereignty”, See IDEA, “Declaración sobre la ruptura del orden constitucional y democrático en Venezuela”, May 13, 2016, <http://www.fundacionfaes.org/es/previo/no-ticias/45578>. The legislative Agreement adopted, in any case, was ipso facto suspended in its effects by the Constitutional Judge himself (Judgment No. 478 of May 14, 2016) when deciding a crazy action for constitutional amparo attempted by the State against the State, that is to say, by the lawyer of the Republic (Attorney General of the Republic), against the deputies of the National Assembly, <http://historico.tsj.gob.ve/decisiones/scon/junio/188339-478-146-16-2016-16-0524.HTML>.

<sup>58</sup> See the communication of the Secretary General of the OAS of May 30, 2016 with the *Informe sobre la situación en Venezuela en relación con el cumplimiento de la Carta Democrática Interamericana*, [oas.org/documents/spa/press/OSG-243.es.pdf](http://oas.org/documents/spa/press/OSG-243.es.pdf).

<sup>59</sup> This, of course, is nothing new, as we already observed in 2002: Brewer-Carías, Allan R., *La crisis de la democracia venezolana. La Carta Democrática Interamericana y los sucesos de abril de 2002*, Caracas, Los Libros de El Nacional, 2002, Ares Collection. See also a summary of the violations of the Democratic Charter until 2012 in Brewer-Carías, Allan R., and Aguiar, Asdrúbal, in *Historia Inconstitucional de Venezuela. 1999-2012*, Caracas, EJV, 2012, pp. 511-534.

<sup>60</sup> See the communication of the Secretary General of the OAS of May 30, 2016 with the *Informe sobre la situación en Venezuela en relación con el cumplimiento de la Carta Democrática Interamericana*, p. 73, [oas.org/documents/spa/press/OSG-243.es.pdf](http://oas.org/documents/spa/press/OSG-243.es.pdf).

<sup>61</sup> *Ibidem*, p. 127.

<sup>62</sup> See the text of the presentation by Secretary General Luis Almagro before the OAS Permanent Council, June 23, 2016, [http://www.elnacional.com/politica/PresentacinDelSecretarioGeneraldeLaOEAante\\_NACFIL20160623\\_0001.pdf](http://www.elnacional.com/politica/PresentacinDelSecretarioGeneraldeLaOEAante_NACFIL20160623_0001.pdf); and the text of the open letter from Secretary General Luis Almagro to Leopoldo López, *Lapatilla.com*, August 22, 2016, <http://www.lapatilla.com/site/2016/08/22/almagro-a-leopoldo-lopez-tu-injusta-sentencia-marca-un-hito-el-lamentable-final-de-la-democracia-carta/>.

And this was evident, because the global institutional corruption of the Venezuelan State had already had perverse effects in those international forums, particularly in the OAS, through the control of the votes of the States in exchange for the oil bill, particularly before the arrival of the Dr. Almagro to the General Secretariat.

In order not to speculate, it is enough to recall the explanations given in 2014 by the former Foreign Minister of Peru, Luis Gonzalo Posada,<sup>63</sup> touching on one of the most publicized secrets about the operation of the OAS, which, according to what he said then, at that time was that the body that “defended the interests of the Venezuelan regime”, referring then to the shameful decision adopted a few days earlier, with the vote of 22 of the 38 countries that expressed themselves, which blindly followed the line of the Venezuelan government, rejecting the invitation that the government of Panama had asked the Venezuelan deputy María Corina Machado to speak about the political situation in the country and about the government’s repression against students. That rejection was described by the former foreign minister of Peru as the consummation, in the OAS, of a “chavista coup d’état”; adding that —I quote—:

Today, Chavismo has demonstrated its immense power within the organization by managing the 17 Caribbean votes through cheap oil, in addition to that of its political partners [at the time] such as Argentina, Brazil, Uruguay, Ecuador and Bolivia. All of them as a whole make an absolute majority of 22 votes against 11 countries, which are not in that line.

From this, the Peruvian foreign minister added, he was “before an institution controlled through oil influence”, which had —he said— “the patronage of 3 countries that are apparently committed to democracy, but that at the moment of truth they constitute a center of protection for an authoritarian political model”.

He was referring “directly to Brazil, Argentina and Uruguay”, adding that this was very serious: “because any substantive issue for the American countries cannot be dealt with if it does not have the approval of Venezuela, who has governed this institution for many years”.

All of this was denounced by the Foreign Minister of Peru in 2014, considering that the General Secretary at the time owed “his election to Chavismo”, and affirming that the OEA had ended up being “an organiza-

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<sup>63</sup> See Cruz, Rodrigo, “Hoy se ha consumado un golpe de estado chavista en la OEA. El ex canciller Luis Gonzales Posada aseveró que el organismo interamericano defiende los intereses del régimen venezolano”, *El Comercio*, Lima, March 21, 2014, <http://elcomercio.pe/politica/internacional/hoy-se-ha-consumado-golpe-estado-chavista-oea-noticia-1717550>.

tion formed by a totalitarian regime”, constituting it —he added— a “page of darkness that is being written in Latin America” that could not be “kept silent”.<sup>64</sup>

This tragic panorama of international institutional corruption, which fortunately began to change as a result of the election of Dr. Luis Almagro as Secretary General of the Organization, at the time, however, had several consequences, among which was, for example, the election of some of the judges of the Inter-American Court of Human Rights in 2012,<sup>65</sup> who in some cases, unfortunately, did not know or did not want to become independent from the blackmail of the authoritarian regime that elected them.

This, in our opinion, occurred in at least one case that we know well, the case of *Allan R. Brewer-Carías vs. Venezuela*, decided in 2014,<sup>66</sup> with the votes of the national judges of Brazil and Uruguay, countries that at that time, in the words of former Foreign Minister Gonzalo Posada (along with Uruguay and Argentina), had become “a center for the protection of a political model authoritarian” of Venezuela; who were joined by the national judge of Colombia, a country that even though Gonzalo Posada did not include him in the protection group of the Venezuelan authoritarian model, had Hugo Chávez as “his new best friend”, in the middle of the peace process that he was advancing under his mantle;<sup>67</sup> and in addition, the national judge of Peru, who at the time the sentence was handed down was nothing less than a candidate for the general secretariat of the OAS itself, and who,

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<sup>64</sup> *Idem*

<sup>65</sup> At the XLII OEA General Assembly held in Cochabamba, in addition to the distinguished and honorable Judge Eduardo Ferrer Mac-Gregor (Mexico), Sirs. Humberto Sierra Porto (Colombia) and Roberto de Figueiredo Caldas (Brazil) were elected as judges, who were added to the four judges who were in office, who were the honorable and distinguished judges Manuel Ventura Robles (Costa Rica) and Eduardo Vio Grossi (Chile), and Sirs. Diego García Sayán (Peru); and Alberto Pérez Pérez (Uruguay).

<sup>66</sup> See the sentence in [http://www.corteidh.or.cr/docs/casos/articulos/seriec\\_278\\_esp.pdf](http://www.corteidh.or.cr/docs/casos/articulos/seriec_278_esp.pdf).

<sup>67</sup> Expression used by the then candidate Juan Manuel Santos, and later president of Colombia in relation to the President of Venezuela, See the news report “Santos dice que Chávez es “su nuevo mejor amigo. Asegura además que si bien ninguno de los dos ha sido “santo de la devoción” del otro, él decidió que de llegar a la presidencia debía mejorar las relaciones con su vecino, lo cual comenzó en agosto con el restablecimiento de los lazos diplomáticos”, *Revista Semana*, November 7, 2010, <http://www.semana.com/mundo/articulo/santos-dice-chavez-su-nuevo-mejor-amigo/124284-3>. This link continued later, after the death of Chávez. See, for example, the news report “Colombia y Venezuela, de nuevo mejores amigos. Cancilleres y ministros de ambos países evaluaron las cooperaciones en seguridad, energía y comercio”, *Revista Semana*, August 2nd, 2013, <http://www.semana.com/nacion/articulo/colombia-venezuela-nuevo-mejores-amigos/352865-3>.

while judging the States, was in campaign sought votes from the same States to support his candidacy.<sup>68</sup>

The issuance of that sentence also coincided with the exercise of the most open and undue political pressure that Venezuela exerted against the Inter-American Court of Human Rights itself, expressed by the then Foreign Minister, Nicolás Maduro in the text of the denunciation of the American Convention on Human Rights addressed in 2012<sup>69</sup> to the Secretary General of the OEA,<sup>70</sup> where he accused the Inter-American Com-

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<sup>68</sup> In other words, the judge who was supposed to judge the States was campaigning to seek their support, beginning with Venezuela and its allies, which led to the issuance of a “Certificate of Withdrawal” by the honorable Judges Eduardo Vio Grossi and Manuel Ventura, expressing “their disagreement” with the misguided decision to allow the judge candidate for the OAS Secretariat to participate in the deliberations of the sentences.

<sup>69</sup> The complaint, formulated by means of communication No. 125 of September 6, 2012, was made in execution, even of the warrants that the Constitutional Chamber had made to the Executive both in 2008 -see the judgment of the Constitutional Chamber No. 1,939 of December 18 of 2008 known as: *Abogados Gustavo Álvarez Arias y otros*, and which should rather have been called the *Estado de Venezuela vs. Corte Interamericana de Derechos Humanos*, because Mr. Álvarez and the others, in reality, but the lawyers of the State (Office of the Attorney General of the Republic in it, the Chamber declared unenforceable in the country the ruling that the First Inter-American Court of Human Rights had issued four months earlier, on August 5, 2008, in the *Apitz Barbera y otros (“Corte Primera de lo Contencioso Administrativo”) vs. Venezuela*, in which the Venezuelan State had been condemned for violating the rights to due process of some judges of the First Court of Administrative Litigation, who had been removed from their positions without any judicial guarantees. See Brewer-Carías, Allan R., “La interrelación entre los Tribunales Constitucionales de América Latina y la Corte Interamericana de Derechos Humanos, y la cuestión de la inejecutabilidad de sus decisiones en Venezuela”, in Bogdandy, Armin von; Piovesan Flavia and Moraes Antoniazzi, Mariela (Coordinators), *Direitos Humanos, Democracia e Integração Jurídica na América do Sul*, Lumen Juris, Rio de Janeiro 2010, pp. 661-670; and in Anuario Iberoamericano de Justicia Constitucional, Madrid, No. 13, 2009, pp. 99-136-; as in 2012. See Judgment of the Constitutional Chamber No. 1547 dated October 17, 2011 *Estado Venezolano vs. Corte Interamericana de Derechos Humanos*, in <http://www.tsj.gov.ve/decisiones/scon/Octubre/1547-171011-2011-11-1130.html>, dictated on the occasion of another “unnamed action of control of constitutionality” that was tried again by the lawyers of the State against another sentence of the Inter-American Court of Human Rights, this time the one of September 1, 2011 dictated in the case Leopoldo López vs. State of Venezuela, in which the Inter-American Court of Human Rights had condemned the Venezuelan State for the violation of the right to passive suffrage of former Mayor Mr. Leopoldo López committed by the Comptroller General of the Republic by administratively establishing a “penalty” of disqualification political, against the same, considering that said political right according to the Convention (art. 32.2) could only be restricted, by means of a judicial sentence that imposes a criminal sentence, ordering the revocation of unconventional decisions.

<sup>70</sup> See the text in <http://www.minci.gob.ve/wp-content/uploads/2013/09/Carta-Retiro-CIDH-Firmada-y-sello.pdf>. See, among others, Ayala Corao, Carlos, “Inconstitucionalidad de la denuncia de la Convención Americana sobre Derechos Humanos por Venezuela”, *Revista Eu-*

mission and Court of being “kidnapped by a small group of unscrupulous bureaucrats” who had turned the Inter-American System into a “political weapon designed to undermine the stability” of the country, “adopting a line of interfering action in the internal affairs” of the government, and of ignoring, to decide the cases, that it was necessary “to exhaust the internal resources of the State”.

And the most serious thing was that in order to substantiate that accusation, the then Chancellor insolently came to refer not only to several decided cases (*the Ríos, Perozo and other cases; Leopoldo López; Usón Ramírez; Raúl Díaz Peña*), but also to a case that was pending decision before the Court, as was precisely the case mentioned above, *Allan R. Brewer-Carías v. Venezuela*.

Regarding that case, in particular, the then Foreign Minister Maduro, in his communication, falsely stated that he himself had been “admitted by the Commission without the complainant —referring to Allan R. Brewer-Carías— having exhausted domestic remedies”, which was false, and that the Commission had urged the Venezuelan State to “adopt measures to ensure the independence of the judiciary” that was already degraded, accusing the Commission and the Court of having —we quote— an “irregular behavior unjustifiably favorable Brewer Carías,” which —said the then foreign minister— from “the mere admission of the case, underpinned the international smear campaign against Venezuela, accusing it of political persecution.

The message of the elector State of the newly elected judges, against the plaintiff Allan R. Brewer-Carías, against the case before the Court and against the judges themselves, could not be clearer, warning them about the “important” and “serious” which was the Brewer-Carías case, particularly in relation to the issue of the exhaustion of domestic resources.

In this situation, it is not difficult to imagine what happened two years later, when the sentence was issued (No. 277 May 26, 2014) in the aforementioned case *Allan R. Brewer-Carías vs. Venezuela*,<sup>71</sup> in which, with the joint negative vote of the honorable Judges Manuel E. Ventura Robles (Costa

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*ropea de Derechos Fundamentales*, Valencia, Institute of Public Law, No. 20/2º semester 2012; in *Estudios Constitucionales*, Center for Constitutional Studies of Chile, University of Talca, year 10, No. 2, 2012; *Revista Iberoamericana de Derecho Procesal Constitucional*, Ibero-American Institute of Constitutional Procedural Law and Porrúa, Mexico, No. 18, July-December, 2012; *Revista de Derecho Público*, Caracas, No. 131, July-September 2012; *Anuario de Derecho Constitucional Latinoamericano 2013*, Konrad Adenauer Stiftung – Universidad del Rosario, Bogotá, 2013, [www.kas.de/uruguay/es/publications/20306/](http://www.kas.de/uruguay/es/publications/20306/) and [www.juridicas.unam.mx/publica/rev/cont.htm?d=constla](http://www.juridicas.unam.mx/publica/rev/cont.htm?d=constla).

<sup>71</sup> See the sentence in [http://www.corteidh.or.cr/docs/casos/articulos/seriec\\_278\\_esp.pdf](http://www.corteidh.or.cr/docs/casos/articulos/seriec_278_esp.pdf). See about this sentence Brewer-Carías, Allan R., *El Caso Allan R. Brewer-Carías vs. Venezuela ante la Corte Interamericana de Derechos Humanos. Estudio del caso y análisis crítico de la errada sentencia de la*

Rica) and Eduardo Ferrer Mac-Gregor Poisot (Mexico), which is the only good thing about the ruling, the Inter-American Court, ignoring their most traditional jurisprudence established since 1987 in the case of *Velásquez Rodríguez v. Honduras*,<sup>72</sup> simply ordered the filing of the file, ignoring that Brewer-Carías had exhausted the only domestic remedy available, which was the request for annulment or criminal protection,<sup>73</sup> denying him his right of access to international justice; and instead protecting a corrupt State,<sup>74</sup> which

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*Corte Interamericana de Derechos Humanos No. 277 de 26 de mayo de 2014*, Caracas, EJV Editors, 2014, Opiniones y Alegatos Jurídicos Collection, No. 14.

<sup>72</sup> See Inter-American Court of Human Rights (IACHR), *Velásquez Rodríguez Vs. Honduras. Preliminary Exceptions. Judgment of June 26, 1987*, Series C, No. 1. In said case, the Court considered the following: “91. The rule of prior exhaustion of domestic remedies in the sphere of international human rights law has certain implications that are present in the Convention. Indeed, according to it, the States Parties are obliged to provide effective judicial remedies to victims of human rights violations (art. 25), remedies that must be substantiated in accordance with the rules of due process of law (art. 8.1), all within the general obligation of the States themselves, to guarantee the free and full exercise of the rights recognized by the Convention to all persons under their jurisdiction (art. 1). Therefore, when certain exceptions to the rule of non-exhaustion of domestic remedies are invoked, such as the ineffectiveness of such remedies or the inexistence of due legal process, not only is it being argued that the aggrieved party is not obliged to file such remedies, rather, the State involved is being indirectly accused of a new violation of the obligations contracted by the Convention. In such circumstances, the issue of domestic remedies is appreciably close to the merits”.

Therefore, ultimately, as Professor Héctor Faúndez observed, when I refer to the case *Allan R. Brewer-Carías v. Venezuela*, “Curiously, the judgment of the Inter-American Court, departing from its previous practice, failed to examine this preliminary objection together with the merits of the dispute, in order to determine whether, in fact, the alleged victim had been the object of the arbitrary exercise of public power, without there being effective remedies available to remedy that situation, or without the victim having access to those remedies. As the dissenting judges very well observe, this is the first time in the history of the Court that it does not enter to know the merits of the litigation to decide if a preliminary objection is admissible due to lack of exhaustion of internal remedies”. See Faundez Ledesma, Héctor, “El agotamiento de los recursos de la jurisdicción interna y la sentencia de la Corte Interamericana de Derechos Humanos en el caso: Brewer-Carías (Sentencia n° 277, May, 26 2014)”, *Revista de Derecho Público*, Caracas, No. 139, 2014, p. 216.

<sup>73</sup> Judges Ferrer Mac Gregor and Ventura Robles, in their Joint Negative Opinion, were clear and emphatic in considering that “In the present case, Mr. Brewer’s representatives used the means of challenge provided for in Venezuelan legislation – appeals for absolute annulment – in order to guarantee their fundamental rights in criminal proceedings” (Paragraph 50).

<sup>74</sup> With the favorable vote of Judges Humberto Antonio Sierra Porto (Colombia), President and Speaker; Roberto F. Caldas (Brazil), Diego García-Sayán (Peru) and Alberto Pérez Pérez (Uruguay). See the sentence in [http://www.corteidh.or.cr/docs/casos/articulos/se-riec\\_278\\_esp.pdf](http://www.corteidh.or.cr/docs/casos/articulos/se-riec_278_esp.pdf). Judge Eduardo Vio Grossi, on July 11, 2012, as soon as the case was presented before the Court, very honorably excused himself from participating in it in accordance with

had also systematically flouted the Court's own decisions. This, in its sentence, however, refrained from judging what was more than proven,<sup>75</sup> which was that in Venezuela there was no autonomous and independent Judicial Power or Public Ministry.<sup>76</sup> In this situation, ordering the victim to go to his country, to lose his freedom, in order to then "go to those resources", as the Court itself had decided countless times, was nothing more than "a formality that makes no sense".<sup>77</sup>

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articles 19.2 of the Statute and 21 of the Rules of Procedure, both of the Inter-American Court, recalling that in the 1980s he had worked as a researcher at the Public Law Institute of the Central University of Venezuela, when Brewer-Carias was its Director, specifying that although this had happened quite some time ago, "I would not want that This fact could cause, if it were to participate in this case in question, some doubt, however minimal, about the impartiality", both his "and very especially that of the Court". The excuse was accepted by the President of the Court on September 7, 2012, after consulting with the other Judges, considering it reasonable to agree to what was requested.

<sup>75</sup> Two months before the sentence was handed down, regarding the situation of the judiciary in Venezuela, completely corrupted due to lack of independence and autonomy, the International Commission of Jurists reported "the lack of independence of justice in Venezuela, beginning with the Public Ministry" that act "without guarantees of independence and impartiality from other public powers and political actors". In <http://icj.wppengine.netdna-cdn.com/wp-content/uploads/2014/06/VENEZUELA-Informe-A4-elec.pdf>.

<sup>76</sup> See, among other works, Brewer-Carias, Allan R., "La progresiva y sistemática demolición institucional de la autonomía e independencia del Poder Judicial en Venezuela 1999-2004", *XXX Jornadas J.M. Domínguez Escovar, Estado de derecho, Administración de justicia y derechos humanos*, Barquisimeto, Institute of Legal Studies of the Lara State, 2005, pp. 33-174; "La justicia sometida al poder [La ausencia de independencia y autonomía de los jueces en Venezuela por la interminable emergencia del Poder Judicial (1999-2006)]", *Cuestiones Internacionales. Anuario Jurídico Villanueva 2007*, Madrid, Villanueva University Center-Marcial Pons, 2007 pp. 25-57, and *Derecho y democracia. Cuadernos Universitarios*, Órgano de Divulgación Académica, Vicerrectorado Académico, Caracas, Year II, No. 11, September 2007, pp. 122-138. Published in *Crónica sobre la "In" Justicia Constitucional. La Sala Constitucional y el autoritarismo en Venezuela...*, *cit*, pp. 163-193; "Sobre la ausencia de independencia y autonomía judicial en Venezuela, a los doce años de vigencia de la constitución de 1999 (o sobre la interminable transitoriedad que en fraude continuado a la voluntad popular y a las normas de la Constitución, ha impedido la vigencia de la garantía de la estabilidad de los jueces y el funcionamiento efectivo de una "jurisdicción disciplinaria judicial", *Independencia Judicial*, Caracas, Academy of Political and Social Sciences, Acceso a la Justicia org., Fundación de Estudios de Derecho Administrativo (FUNDEA), Universidad Metropolitana (UNIMET), Estado de Derecho Collection, Vol. I, 2012, pp. 9-103; "The government of judges and democracy. The tragic situation of the Venezuelan judiciary", Venezuela. Some Current Legal Issues 2014, Venezuelan National Reports to the 19<sup>th</sup> International Congress of Comparative Law, International Academy of Comparative Law, Vienna, 20-26 July 2014, Caracas, Academy of Politican and Social Sciences, 2014, pp. 13-42.

<sup>77</sup> See Inter-American Court of Human Rights (IACHR), *Case Velásquez Rodríguez Vs. Honduras. Preliminary Exceptions*. Judgment of June 26, 1987. Series C, No. 1, paragraph 68. As the Inter-American Court itself interpreted it on another occasion, "those remedies that,

That decision, as expressed by the magistrates of the Constitutional Chamber of the Supreme Court of Justice of Costa Rica, host country of the Inter-American Court will weigh “like a shadow on the trajectory and jurisprudence of the Inter-American Court”,<sup>78</sup> as who writes, personally he will not stop remembering it whenever he can, especially since with it a corrupt State was protected to the core,<sup>79</sup> and justice was denied to the victim, without any legal reason.<sup>80</sup>

due to the general conditions of the country or even due to the particular circumstances of a given case, turn out to be illusory cannot be considered effective”, which occurs “when their uselessness has been demonstrated by practice, because the Judiciary lacks the necessary independence to decide impartially”. See IACHR: *Garantías judiciales en estados de emergencia* (arts. 27.2, 25 and 8 American Convention on Human Rights). Advisory Opinion OC-9/87 of October 6, 1987. Series A, No. 9; 24. Likewise, IACHR, Case of Bámaca Velásquez v. Guatemala. Merits. Judgment of November 25, 2000. Series C No. 70; 191; Inter-American Court, *Caso del Tribunal Constitucional vs. Perú*, Merits, Reparations and Costs. Judgment of January 31, 2001. Series C, No. 71, p. 90; IACHR, Case of Bayarri v. Argentina. Preliminary Objection, Merits, Reparations and Costs. Judgment of October 30, 2008. Series C, No. 187, p. 102; IACHR, *Case Reverón Trujillo Vs. Venezuela*. Preliminary Exception, Substantiation, Repairs and Costs. Judgment of June 30, 2009. Series C, No. 198, 61; IACHR, *Case Usón Ramírez Vs. Venezuela*. Preliminary Exceptions, Substantiation, Repairs and Costs. Judgment of November 20, 2009. Series C, No. 207, p. 129; IACHR. *Case Abrill Alosilla y otros Vs. Perú*. Substantiation, Repairs and Costs. Judgment of March 4, 2011. Series C, No. 223, p. 75.

<sup>78</sup> Opinion of Judges Jinesta Lobo, Castillo Viquez, Rueda Leal, Hernández López and Salazar Alvarado, expressed in a separate Note to Judgment No. 2015-11568 of July 31, 2015; sentence, issued in the *habeas corpus* trial in favor of the citizen Dan Dojc, in the extradition process that was followed in Costa Rica at the request of the Venezuelan State, [http://jurisprudencia.poderjudicial.go.cr/SCITJ\\_PJ/busqueda/jurisprudencia/jur\\_Documento.aspx:param1=Ficha\\_Sentencia&nValor1=1&nValor2=6444651&strTipM=T&strDirSel=directo&r=1](http://jurisprudencia.poderjudicial.go.cr/SCITJ_PJ/busqueda/jurisprudencia/jur_Documento.aspx:param1=Ficha_Sentencia&nValor1=1&nValor2=6444651&strTipM=T&strDirSel=directo&r=1). See the press release on said sentence in [http://www.nacion.com/sucesos/poder-judicial/Sala-IV-extradicion-cuestiona-Venezuela\\_0\\_1504049615.html](http://www.nacion.com/sucesos/poder-judicial/Sala-IV-extradicion-cuestiona-Venezuela_0_1504049615.html).

<sup>79</sup> *Idem*. In the note attached to the communication denouncing the Convention, the then Chancellor was more explicit regarding the political pressure campaign that Venezuela itself was exerting against the Court in relation to this case not yet decided, which precisely caused the withdrawal of Venezuela, where the following was indicated: “*Case Allan Brewer Carías contra Venezuela*. On September 8, 2009, the Commission admitted the petition filed on January 24, 2007 by a group of lawyers, in which it was alleged that the Venezuelan courts were responsible for the “political persecution of the constitutionalist Allan R. Brewer Carías in the context of a judicial proceeding against him for the crime of conspiracy to violently change the Constitution”, in the context of the events that occurred between April 11 and 13, 2002”. / It should be noted that the aforementioned Mr. Brewer Carías was trial continues in Venezuela for his participation in the April 2002 coup d’état, for being the drafter of the decree by which a de facto President was installed, the National Constitution was abolished, the name of the Republic was changed, all the State institutions; all members and representatives of the Public Powers were dismissed, among other elements. / Upon admitting the petition, the IACHR urged the Venezuelan State to “Adopt measures to ensure the inde-

And if there is no justice, as Quevedo wrote centuries ago: “If there is no justice, how difficult it is to be right!”.

Fortunately, new winds are blowing in the Inter-American Court, as the previous controlled majority remains in an absolute minority; being the Court now led by its honorable President, Eduardo Ferrer Mac Gregor, who together with the then Judge Manuel Ventura, honorably signed the negative Vote in our case.

All the previous situation of national and institutional political corruption, developed both at the national level and at the global and transnational level that we have wanted to exemplify with the specific case of Venezuela, occurred, not as a consequence of some neoliberal economic policy, nor because of the lack of constitutional, legislative and conventional regulations, since we have all the imaginable ones to be able to implement the necessary control mechanisms over the State Administration to fight against corruption, but also for the degradation of democratic institutions.

In our American Continent there is no country that does not have anti-corruption laws with severe sanctions; that does not have a Comptroller

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pendence of the judiciary” with which he prejudged that said independence did not exist. / On March 7, 2012, the Commission informed the Venezuelan State that the case would be taken to the Court, even though it would not. domestic remedies had been exhausted. This example is more serious, due to the fact that the criminal trial against Allan Brewer could not be carried out in Venezuela, due to the fact that our criminal procedural legislation does not allow the trial to be carried out in the absence of the accused, and it is the case that the accused Brewer Carías fled the country, as it is publicly known, finding himself a fugitive from justice to date”. Apart from the fact that I did not participate in any conspiracy, nor did I write any decree, nor did I escape in any way, and that the aforementioned process had been extinguished since December 2007 by an Amnesty Law issued by the President of the Republic through legislative delegation on the events that occurred between April 11 and 13, 2002, which the Venezuelan Foreign Minister did not realize, when he accused the Commission of having prejudged the lack of judicial independence in Venezuela, when he urged the State upon admitting the complaint to adopt the necessary measures “to ensure the independence of the judiciary;” is that the State itself, in this communication addressed to the Inter-American Court in relation to a case pending decision, prejudged the facts that gave rise to the political persecution and blamed the victim for what he was unjustly accused of, violating himself again their right to the presumption of innocence.

<sup>80</sup> The sentence was considered by the honorable Judges Ferrer Mac Gregor and Ventura Robles in their Joint Negative Opinion, as contradictory with: “the jurisprudential line of the Inter-American Court itself in its more than twenty-six years of contentious jurisdiction, since its first resolution on the subject of exhaustion of domestic remedies, as in the case of *Velásquez Rodríguez vs. Honduras*, thus creating a worrying precedent contrary to its own jurisprudence and the right of access to justice in the inter-American system” (paragraph 47). / Considering, furthermore, said judges that the decision was “a setback that affects the inter-American system as a whole”, with “negative consequences for the alleged victims in the exercise of the right of access to justice”.

General or Court of Accounts to monitor the disposition of money, assets, income and public spending; that it does not have laws on the protection of public assets; or that it does not have laws on transparency and access to information; or that it has not adhered to the international Conventions against Corruption, such as the United Nations Convention of 2003 and the Inter-American Convention of 1996. In other words, in all our countries we have specific regulations to define policies and practices for the prevention of corruption; to create the organs of prevention of the same; to establish mechanisms to ensure accountability; to ensure probity in public contracting to prevent corruption; in short, to ensure transparency, administrative procedures and public information, and the participation of society, in the fight against corruption.

In other words, we cannot ask for more rules or procedures; We must point the other way, and convince ourselves that if a political regime is not established in which the institutions of the State and its Administration really respond to the principles of a democratic regime, subject to controls,<sup>81</sup> as postulated by the Inter-American Democratic Charter, nothing it can be achieved against corruption; a political regime in which effectively “power can limit power”,<sup>82</sup> because ultimately, it is only by controlling power that all the fundamental elements and components of democracy can materialize, and among them, administrative transparency in the exercise of government; accountability by the rulers; and access to administrative information and Justice, which must be in charge of autonomous and independent judges who can ensure that there is no impunity.

And all this, in a regime led by political parties that are determined, individually and jointly, to ensure that the control mechanisms work.

If there is no democratic regime, and if there is no such commitment within it, on the contrary, all the constitutional, legal, and conventional norms that may exist will become a dead letter in the fight against corruption, and we will return, Congress after Congress, meeting after meeting, to keep dealing with this same issue repeatedly, as if it were something new, which it is not.

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<sup>81</sup> See on this what is stated in Brewer-Carías, Allan R., *Constitución, Democracia y Control del Poder*, Merida, Centro Iberoamericano de Estudios Provinciales y Locales (CIEPROL), Consejo de Publicaciones, Universidad de Los Andes, Editorial Jurídica Venezolana Editors, 2004.

<sup>82</sup> As stated by Montesquieu, Charles Louis de Secondat, *De l'Esprit des Lois* I, Paris, G. Tunc Editors, 1949, Book XI, Ch. IV, pp. 162 and 163.