DIRECT DEMOCRACY AND THE REFERENDUM TO RECALL THE PRESIDENT IN VENEZUELA

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Direct democracy and the referendum to recall the president in Venezuela

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The study consists of 2 sections: I) Direct democracy in Venezuela: Recent experiences and normative framework; and, II) Referendum to recall the president, August 15, 2004.

I) Direct democracy in Venezuela: Recent experiences and normative framework

The access to power of Hugo Chávez and his coalition after the 1998 presidential election initiated a redefining stage in the Venezuelan socio-political order. The new power occupants arrived with the purpose of “reestablishing the republic”, introducing new institutions, values and actors to the national dynamics. In this redefinition the attempt to overcome the supposed limitations of representative democracy (RD) by implementing a “participative and leading democracy” has played a fundamental role. The main electoral offer of these new power occupants was the activation of a constituent process from which to exercise direct democracy (DD) and enshrine it, among other aspects, in the new constitution.

The constituent process was developed in three election phases: The consultative referendum of April 25, 1999; the election of representatives to the ANC – National Constituent Assembly - on July 25, 1999, and the consultative referendum of December 15, 1999, to approve the draft constitution prepared by the ANC. Even though the 1961 constitution and the legal and institutional network emanated were inspired on DR, these elections took place in that legal and institutional framework, applying the Suffrage and Political Participation Organic Law (LOSPP) which enshrined the figure of national reach consultative referendum.

After the 1999 constitution (CRBV – Bolivarian Republic of Venezuela Constitution) was approved, there were other events associated to DD: The consultative referendum on the reform of union leadership on December 03, 2000; the failed attempts to activate a consultative referendum on the president’s resignation (November 2002 – February 2003) and a referendum to recall the president (RRP) between February and September 2003; and, finally the RRP of August 15, 2004. Paradoxically, these endorsing events attempted or occurred while the new constitution was in force found serious obstacles in their realization, openly contradicting the spirit of the same.

DD’s normative framework

In the CRBV democracy is conceived as “participative and leading” as opposed to representative democracy (DR). Chapter IV “Political and popular referendum rights”, enshrines participation mechanisms:

“The people’s means of participation and prominence to exercise their sovereignty in political matters are: election of public offices, referendum, popular consultation, revocation of term of office, legislative, constitutional and constituent initiatives,

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open city council, and the citizen assembly whose decisions will be of binding nature, among other; and, regarding social and economic matters: institutions of citizen assistance, worker self-management, worker participation in company management, all-type cooperatives including those of financial nature, savings institutions, community enterprise and all association ways guided by mutual cooperation and solidarity. Conditions for the participation means herein foreseen to perform effectively will be set forth by the law (Art. 70). Under the “Popular referendum” section, the consultative, recall, law approval, international treaty, and law abrogation referenda conditions are established (Articles 71 through 74). Development of the laws relating each participation means remains to be done.

The revocation of term of office acquired privileged status in the CRBV since enshrined under “Fundamental principles” is: “The Bolivarian Republic of Venezuela’s government and of the institutions it comprises is and will always be democratic, participative, elective, decentralized, alternative, responsible, pluralist, and of “revocable terms of office”. (Art. 6, emphasis added) A condition applied to all public offices of popular election (Art. 72).

CRBV’s last heading, “Constitutional reform” refers to amendment, constitutional reform, and calling a constituent national assembly (ANC). The first two figures can be promoted through popular initiative of 15% of registered voters and for definitive approval it is required to submit them to a referendum. Oddly enough, neither calling an ANC nor approval of the constitution draft requires referenda activation. This contrasts with the requirements inherent to the other figures, notwithstanding the ANC greater reach and it moves away from the experience which led to the promulgation of the Bolivarian Republic of Venezuela’s Constitution (CRBV).

In the CRBV and in the socio-political reality, institutions, actors, and procedures associated to DR and DD, have a tense coexistence. A simultaneous movement which weakens DR and makes easygoing use of DD occurs. Even though 5 powers are enshrined in the text, citizen (comprising District Attorney, Comptroller General, and Ombudsman), and electoral, apart from the classic ones: executive, legislative, and judicial, making concrete a hypertrophy of the executive with respect to the rest, and the debilitation of power separation and balance.

The electoral power is concerned with matters regarding elections, referenda, and civilian identification, encompassing non-traditional fields such as “Organizing union, guild, professional, and association elections with political purposes in the terms indicated by the law.” (Art. 293). Thus, meddling of a governmental body - the electoral power - in activities belonging to society and their organized expressions, is established, notwithstanding the promise of comprehensive activation of society associated to DD. This interference was questioned by the International Labor Organization (ILO) during the 2000 union referendum and the intimidating presence of the National Electoral Council (CNE) during the 2001 union elections.

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2CRBV’s article 70 is very similar to article 103 of the 1991 Colombian Constitution. The Colombian constituent process and the resulting text had great influence on the Venezuelan constituent process and text, especially in what concerns the inclusion of participative democracy.
In the text and in practice the space and relevance of political parties as articulating mediators between society and the government is diminished in favor of patronage and a personal connection between chief of state and population. In the CRBV the concept of political parties was eliminated and replaced by organizations with political purposes, and, in order to overcome the representation of party monopoly, the postulation of candidacies by own initiative was established. Public financing of organizations with political purposes is expressly banned (Art. 67), however, without legal and institutional controls to sanction undue and unscrupulous use of public resources by power occupants, which derives in a de facto imbalance between governmental powers and the rest. Several party and other type groups have applied to international bodies for funds for their activities and this has been penalized in the country.3

In order to favor society and to reduce political party hegemony, participation of society’s organized expressions in designating holders of judicial, citizen electoral powers was enshrined. Society may attend candidacy committees of such public offices, differentiating the functions of candidacy announcement (society) and decision (political parties). In practice, none of the cases has fulfilled either the spirit or the text itself, and both the candidacy as the designation of the holders of said powers have shown a strong partisan shade, denaturalizing the presence of society (Kornblith 2003).

Affirming values, institutions and procedures belonging to DD contains an important enrichment potential of democracy. However, its easygoing inclusion debilitating DR, under a hegemony scheme, has derived in dangerous distortions. The present socio-political order, promoted as a “participative and leading democracy”, begins to get the shape of the Ceresolean tripod: Political boss (caudillo)-army-people (Ceresole, 2000).4

An individualist scheme centered on the president’s figure takes shape, sustained by the support of the military and of weakened mediating civilian organizations and institutions, which nourishes a plebiscite and patronage relationship with the population.

II) Referendum to recall the president, August 15, 2004

According to the CRBV, once half the term of office of the public officer whose mandate is intended to be revoked has elapsed, a minimum of 20% of voters registered at the electoral registry of the corresponding district may file a petition for a recall referendum. When a number equal to or bigger than the voters who elected the public officer in

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3 The most notorious case concerns the civilian association Súmate whose directors have been accused by the District Attorney of “conspiracy against the republican way of government” for having received $35,000 from the National Endowment for Democracy (NED).

4 According to Ceresole: “The Venezuelan model does not resemble anything known, although it reminds us of a history of our own which we have generally denied due to our attachment and subordination facing the taboos of occidental-rationalist thought (including Marxism). It differs from the ‘democratic model’ (both liberal and neo-liberal) because implicit—with midday brightness- in the popular order (mandate) is the idea that power must remain concentrated, unified and centralized [the people elect one person (who is automatically projected to the meta-politics plane) and not an ‘idea’ or an ‘institution’]. It is not an ‘anti-democratic’ but a ‘post-democratic’ model. It differs from all forms of ‘real socialism’ known during the XX Century because neither ‘ideology’ nor ‘party’ have dogmatic roles, not even significant … It differs from traditional or ‘conservative’ political bosses because the popular mandate or order which transforms a military leader into a national leader with international projection was not only democratically expressed but also, with a defined sense: preserving culture (national independence), but transforming structure (social, economic and moral).” Ceresole (2000: 30-31)
question votes in favor of his/her revocation, with the attendance of at least 25% of the voters registered, he/she will be considered revoked and replacement will proceed, pursuant to the constitution and the law. (Art. 72). The norms approved by the CNE added that the winning option would be the one which obtained the greatest amount of votes (CNE, 2003b).

The middle of the presidential term of office coincided with August, 19, 2003. Should the revocation become effective before the fourth year of government, election of the new president had to proceed in 30 days; but, if the revocation occurred after the fourth year, the vacant position had to be covered by the executive vice-president. In spite of the appeals of interpretation filed with the Supreme Court (TSJ), the latter never clarified whether the president whose mandate was revoked was entitled to announce his/her candidacy for the election foreseen to complete his/her period. The amount of petitions necessary to request the RRP was 2,436,083, and for the revocation 3,757,773 were needed, and this figure also had to exceed the votes in favor of the permanence of the president.

**The RRP process (Referendum to recall the president)**

On August 20, 2004 several opposition organizations articulated in the Democratic Coordinator (CD) delivered to the CNE 3.2 million petitions to activate de RRP call, the majority of which were collected on February 02, 2003, during the so-called “huge signing process” (“firmazo”), date which the CNE had set for the realization of the failed consultative referendum on the president’s resignation.

On August 25, 2003 the new electoral authorities were designated by the Supreme Court (TSJ), after no agreement was reached at the National Assembly on these nominations. Even though the CNE had to be an impartial body, it was formed by 3 rectors from the governing party and 2 from the opposition, and by 10 substitutes with equal force correlation. As a consequence of this designation the new board of directors remained subject to the Supreme Court (TSJ) Constitutional Courtroom, with a double effect: Lack of autonomy even being an independent power, and protection of its decisions by said courtroom. The TSJ granted the comitial directors ample faculties to discretionally rule the RRP. (Peña Solís, 2004).

The authorities evaluated the RRP activation petition and, after a 3 to 2 decision, the petition was rejected for “non-fulfillment of essential formalities” such as the presumed extemporaneity of the date of signature collection and the fact that ‘CNE’ was not printed on the heading of the forms used for the purpose. (CNE 2003a).

On September 25, 2003, comitial authorities unanimously approved the norms to rule the RR (CNE 2003b), which significantly shaped the process by: legalizing CNE’s interference and discretional nature actions in all RR phases; setting up a complex verification process of the recall petition forms; imposing automation of the process; establishing an unjustifiably loose comitial schedule which expanded the whole process up to 6 months, which in practice took 11 months. All of this contrasting with the Suffrage Law in force, pursuant to which the consultative referendum call and realization process required maximum 3 months, including verification of petitions necessary to activate it by popular initiative (10% of registered voters). The previous experience of the 3 consultative referenda, and the February 2003 failed one (by popular initiative), was that
it was possible to organize and carry out referenda within the period of time foreseen in the law.

Two regulations, 46 resolutions, 2 procedure instructions, and 3 additional credit request were needed to activate the RRP. Automation and publicity expenditures amounted to: $27.1 million to purchase 20 thousand touch-screen voting machines; $22.3 million for 20 thousand firmware voting licenses; $5.8 million in electronic ballot-slips; $2.2 million in energy back-up system for 50% of voting machines; $458 thousand in totalizing hardware; $5.6 million in software with adaptations and configuration tools; $53.9 million in 12 thousand finger-print-capturing machines, 6 thousand transmission modems, 30 servers and comparing software; $3.3 million in satellite transmission; $46.6 million in automated service contracts with CANTV (telephone company); $16.6 million in the institutional campaign; $31.2 million to finance YES / NO campaigns (Martínez, 2004). In total, $215 million were invested in these items, that is, an average of $15.3 per elector registered for the RRP, without including the remaining acquisitions and administrative and functioning expenses.

The process was developed in the phases of collection, verification, petition repair, call, and realization of the RRP.

**Petition collection**

Between November 21 and 24, 2003, petitions to revoke the term of office of opposition deputies were collected, and between November 28 and December 01, 2003 it applied to governing party deputies and the republic’s president, in an operation nicknamed “el reafirmazo” (‘Reaffirming the huge signing process’) by the opposition. The CNE took over a month to organize the process, imposed conditions of doubtful legality and efficiency like limiting the amount and location of petition collection centers, restricting the amount of forms to 66% of the electorate, demanding forms to be printed on security paper, together with a complex bureaucracy which deteriorated the process, including the “Plan Repúbica” (a military operation activated during comitial processes).

On December 19, 2003, CD (Democratic Coordinator) handed to the CNE the 3,448,747 original petitions duly ordered with their respective copies. The figure exceeded by far the 2,436,083 petitions needed. Organization of collection, receipt, classification, revision, digitalization, and delivery of the forms and individual petitions was in charge of the civilian organization Súmate. (Súmate, 2004a)

**Petition verification**

According to the norms, petition verification should last 30 days, and it started after the CNE had received the forms. In practice it went over 100 days and only on March 02, 2004 the CNE announced the preliminary results.

Norms on signature verification were approved in September and November 2003. The first emphasized the congruence of voter data with the RE (Electorate Registry) as well as signature and finger print authenticity (CNE, 2003b). The second were approved few hours before collection started and focused on the difficulty to verify finger prints, on the forms, and on the signature collection acts. This added criteria difficult to verify which tended to annul petition forms for reasons beyond elector’s control (CNE, 2003c).
When petition verification was activated and initial criteria applied - even whimsically – it was evident that there were enough petitions to call the RRP. The governing party then came out with a gimmick to achieve a massive annulment of petitions: creating the criterion of “flat forms”, “signatures with similar calligraphy” or “assisted forms”.

There was an attempt to annul close to one million petitions by retroactively applying instructions approved at the end of February 2004. Allegedly, the elector’s identification data (name, ID card, date of birth) were entered by third parties, but the elector’s authentic signature and fingerprint were on the form. None of the previous initial norms forbade this modality. This decision generated the most conflictive moment of the process. There were several violent disturbances and protests against CNE’s decision, resulting in dead and wounded. Representatives of OAS’s and Carter Center’s missions voiced an objection to this criterion.

On March 02, CNE’s pro-government majority approved the resolution to apply the “flat form” criterion, together with others equally dubious, and recognized only 1.8 million petitions as valid. National and international outrage was such in view of an arbitrary act which meant ignoring almost a third of the petitions that it was agreed to submit the “flat forms” to “ratification” and not to annul them as initially intended.

Lack of professionalism and juridical security in the verification was evidenced, furthermore, by the profusion of databases containing the verification results. The first “definitive” database sustaining CNE’s resolution was delivered on March 10, and the fourth “definitive” database on April 23. Later, 2 additional databases were generated. Between the first and fourth databases 965,268 petitions changed status; an inexplicable situation if we consider that during the first announcement only 78,701 petitions were pending verification. (Súmate, 2004a)

Although numerous norms and decisions emanated from the CNE were questionable, the opposing coalition did not attempt to impugn them convinced that, irrespective of their legality, the TSJ would support the CNE. However, faced with the magnitude of the arbitrariness associated to the annulment of “flat forms”, the opposition filed at the Supreme Court Electoral Courtroom (Sala Electoral del TSJ) an appeal against CNE’s resolution which originated a serious confrontation of TSJ’s Electoral and Constitutional Courtrooms. The Electoral Courtroom ordered the CNE to revert application of the instructions on “flat forms”, to recognize the validity of the forms included in this category, and to immediately call the RRP. In an episode of coarse abuse of administrative authority, the Constitutional Courtroom ignored the Electoral Courtroom competence to examine referendum matters, seized the case, and the governing party majority of said courtoom endorsed the decisions of the CNE’s governing party majority. (Diverse authors, 2004). Following, citizen power holders activated an administrative process against the Electoral Courtroom magistrates who dissented from the decisions of the CNE and the Constitutional Courtroom.

**Petition repair**

Close to 1.1 million electors whose petitions were considered “flat” were “entitled to” ratify them and, in violation of the norms approved, the 375,241 electors whose petitions were rejected (without clear justification) were not entitled to repair. Without it being contemplated in the norms, the CNE granted the right to “repent” to those petitioners who supposedly changed their minds between November 2003 and June 2004.
Asymmetrically, the same right was not granted to those who changed their minds and in June 2004 wished to call the RRP. Once again international mission observers expressed their disagreement with this criterion.

Repairs took place between May 28 and June 01, 2004. Many electors were coerced to withdraw their signature (around 91 thousand did it) or not to ratify it. Finally, on June 09, 2004, almost 6 months after they were delivered, the CNE recognized the existence of 2,541,635 valid petitions to activate the RRP, which was called.

**RRP’s notice and realization**

The date chosen was August 15 (15A), last available Sunday before the end of the fourth presidential term of office (normally elections in Venezuela are on Sunday).

The consultation question was: “Do you agree to annul the popular mandate granted through legitimate democratic election to citizen Hugo Chávez Frías as president of the Bolivarian Republic of Venezuela for the current presidential term of office?” Mentioning the act of revocation was avoided, the illegitimacy to interrupt the presidential term of office was suggested and, going against conventional practice, the answer NO held first place.

To direct the voting automation, under slightly obscure conditions, the CNE hired the services of the consortium Smartmatic-Bizta-Cantv, which lacked previous electoral experience. The touch-screen vote was imposed with lottery machines transformed into voting machines, used in the country for the first time. Finger print capturing machines were incorporated (supposedly to detect multiple individual votes), regarding which there was neither any experience in the country and the use of which generated apprehension concerning preservation of voting secrecy, a very sensitive topic due to the preceding coercion and reprisals against those who had requested the RRP.

A few days before the 15A, members of voting tables selected by lot for having requested the RRP were dismissed and replaced by individuals designated by pro-government comitial authorities. Many electors were changed from voting centers or eliminated from the electoral registry (RE). Limitations were imposed to international observers and groups which had traditionally acted as national observers were denied accreditation.

The day of the RRP was complicated. There were huge lines at the voting centers due to multiple factors: Massive attendance of electors; inefficient “re-engineering” of voting centers and tables; inclusion of finger print capturing machines; deficient training of personnel; incorporation of electoral public officers who blocked the process; blank complementary voting logbooks for voters not appearing in the RE, etc. The official closing time of voting tables was 4:00 p.m. but, due to the inconveniences it was extended on several occasions and the official definitive closing was set for 15A midnight, although many hours after there were still electors voting. Center auditing, previously agreed upon, was defectively performed.

From an organizational point of view this was the worst process in the long Venezuelan comitial experience: The most ominous one with respect to the elector’s rights and the most inefficient one regarding expenses per elector. Strong polarization and high motivation of voters from both options, aware of the importance of their decision and/or
sufficiently encouraged to remain in long lines depict the patience with which they withstood the wretched conditions under which the voting took place.

**RRP’s results**

Official final figures were 5,800,629 (59.9% valid votes) votes in favor of NO; 3,989,008 in favor of YES (40% valid votes). Abstention reached 30.08%.

Results evidence the stability of political blocs’ preferences (governing party and opposition) with respect to previous elections and maintenance of polarization. Both blocs mobilized their resources to the maximum and achieved their best performance since 1998. The combined effects of polarization, the increase of the electoral registry and the diminishment of abstention generated the absolute and relative increase of both blocs’ electoral stream and the victory was for the governing party.

The topic of the RRP results was marked by polemics. Before the official announcement, the two opposition representatives in CNE’s board made a confusing public appearance suggesting irregularities in adding up votes. Renowned CD members affirmed there had been massive electoral fraud. However, ex-presidents Gaviria and Carter, as speakers for the OAS and Carter Center observer missions, endorsed the official results and left the possibility to evaluate fraud proofs open.

At the request of international observers, on August 18 (18A) a post-electoral audit was performed, not witnessed by the opposition, the results of which did not calm the skeptic down. The international observer missions got caught in the polemics regarding the RRP results, in the country and abroad. Both organizations declined to participate as observers in the regional elections of October 31, 2004.

Perception of fraud penetrated and deepened in the opposing community. The question: “Do you believe that in the past RRP there was fraud?” was affirmatively answered by 33.4% of those surveyed in August and by 39.9% in October 2004. Perceptions are marked by polarization: In October 96.2% of those who thought there was fraud identified themselves with the opposition, while the 96.3% who accepted the results identified themselves with the governing party. 47.2% of those surveyed considered the CNE main responsible for the fraud. (Datanalisis 2004).

**Balance: DD’s opportunities and risks**

Contrary to expectations generated in the country and abroad, the RRP was of no use to alleviate tensions, diminish polarization or to rebuild trust on institutions and elections. It was not realistic to hope for such beneficial effects when the both calling process and the realization of the RRP were shaped and characterized by the wrongs pretending to correct.

This referendum process was marked by the governing party’s effort to block it or delay it to the maximum in order to ensure their possibilities of success. During the year between August 2003 and August 2004 governmental forces strategically and abusively managed political, electoral, institutional and fiscal resources available to them which impinged on the presidential image strengthening, the improvement of government actions, the change of the electoral registry, the weakening of the opposition leadership
and demoralized the opposing voter. In the end, the efficacy of the governmental strategy and its unscrupulous use of power resources, interacting with the limitation and debility of the opposition, yielded the desired result. However, activation of the RRP under circumstances which did not guarantee the pluralist game and transparent decision-making eroded even more the country’s weakened institutions and democratic beliefs, reinforced the pre-existing polarization, devalued the exercise of vote and did not convince the losers.

Between 1998 and 2004 there have been 9 comitial events in Venezuela, 4 of them have been referenda. In theory this profusion of elections and consultations should contribute to deepening and enriching the institutional and values network of democracy in the country. Nevertheless, its occurrence without any guarantee of equity, transparency, trustworthiness, impartiality, efficiency, and accountability from electoral authorities and the rest of public powers has debilitated democracy.

From the complex Venezuelan experience with DD one can conclude that for the same to have the beneficial effects it claims it is mandatory for representative democracy to work adequately.
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