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A new constitution was approved by plebiscite at the end of the year. A radical restructuring of the judiciary, following serious denunciations of corruption and inefficiency, provided the backdrop for attacks on its independence and the suspension or dismissal of at least 229 judges in the country.

In December 1998, Mr. Hugo Chavez won the presidential election, taking office as President of the Republic at the beginning of 1999. In his campaign Chavez had severely criticised the existing parliament and the judiciary for their corruption and ineffectiveness in facing the acute national problems. He promised a new constitution. In March 1999, President Chavez called for a referendum to have his plan for the election of a Constituent Assembly to draft a new constitution approved by the people. At the same time he publicly announced the legal powers that the new body would eventually have. The most controversial amongst them was the "full and original power" the Constituent Assembly would enjoy with regard to the existing political institutions and the judiciary. The proposal raised strong concern as it would place the new body above all other institutions and, at the same time, it would not be bound by the Constitution. In mid-March the Supreme Court ruled that the referendum on whether a Constituent Assembly would be elected or not was lawful but its powers should be limited only to the reform of the Constitution.

On 25 April 1999, the referendum was carried out and a wide majority of 85% of voters, with a turnout of only 39.1% of all those legally entitled to vote, backed the plan of electing a Constituent Assembly. People were called to the polls to elect the members of the Assembly on 25 July, and President Chavez's Patriotic Front obtained 121 of the 128 seats (three others were reserved for representatives of indigenous peoples). The Constituent Assembly, which was to draft a new constitution within six months, convened in August and immediately declared itself as enjoying "original and full powers", meaning the assumption of legislative and disciplinary powers together with the power to redraft the 1961 Constitution.

Two resolutions adopted by the Assembly, one declaring a "legislative emergency" and another declaring a "judicial emergency" (see below) provoked a constitutional crisis that was partially solved through an agreement brokered by the Catholic Church on 6 September 1999. By virtue of this agreement the resolution declaring the "legislative emergency", which would have practically dissolved the parliament, was repealed and parliament was to resume its work, although with limited powers, until the new Constitution was approved and entered into force. The other resolution declaring the "judicial emergency" and appointing a special commission was maintained.

Under the insistence of President Chavez, the Constituent Assembly rushed to draft a new constitution that was put to the vote in a national referendum on 15 December 1999. Again, a sweeping majority approved the constitutional text.

The Judiciary and the Decrees of Judicial Emergency

The National Constituent Assembly started its work in August 1999 in the midst of high expectations, and repeatedly denounced corruption and attacks on other institutions. A draft resolution to intervene directly in the judiciary and declare an emergency was presented immediately and debated during two weeks. The Supreme Court reacted to the proposal by convening a plenary session where, by 8 votes to 6, it decided, under pressure, to support the
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Constituent Assembly's initiative. Chief Justice Cecilia Sosa Gómez resigned on the same day (23 August 1999).

Once all opposition from the Supreme Court was overcome, the Constituent Assembly passed a decree re-organising the judiciary (25 August 1999) whereby it declared that:* The judiciary was in a state of emergency and a special Commission on the Judicial Emergency (CJE) was to be appointed to carry out a programme of reform (Articles 1 and 2).

* Among the powers of this commission are the following: To elaborate the budget for the emergency reform, to give instructions to the Council of the Judiciary and to prepare a plan for the evaluation and selection of judges (Article 3).

* Article 4 provided that the CJE would immediately, within 20 days, evaluate the work of the Supreme Court, the Council of the Judiciary and other judicial institutions.

* The Council of the Judiciary and the Inspector-General of the Judiciary were placed under the direct jurisdiction and orders of the CJE. It was also provided that the CJE would propose to the Constituent Assembly the dismissal of those members of the Council or the Inspector-General who did not follow its instructions (Article 5).

* Article 6 provides that: "The Commission on Judicial Emergency will decide the immediate suspension, without salary benefits, of all judges, attorneys, and other officers of the Council of the Judiciary, the judicial districts and tribunals, who are facing judicial proceedings for corruption. The decision will be immediately enforced by the Council of the Judiciary in accordance with the instructions given by the Commission on Judicial Emergency".

* Article 7 grants the CJE the power to order the Council of the Judiciary to immediately dismiss a judge involved in serious procedural delays or when the judge's judgements have been often overturned.

* By Article 9 the Constituent Assembly declared itself as the only instance for appeals regarding suspensions or dismissals of judges. The appeal should be made within five days.

* Under Article 10 the Constituent Assembly assumed the power of governing body in the judiciary with the responsibility to organise the selection of judges and to fill the posts left vacant by the process of "re-organisation".

This decree, which is inconsistent with the international obligations assumed by Venezuela, deprives the legitimate institutions of their powers, concentrates all powers in one single institution that has placed itself over all others and even above the Constitution, and violates the individual rights of judges and prosecutors to due process, a number of whom have been suspended or dismissed. The decree subjects the appointment, security of tenure and judicial career of judges and prosecutors to a political body that should normally limit itself to the drafting of a constitution, depriving the legitimate body, the Council of the Judiciary, of these powers. According to some observers the declared objectives of the measure, the need for urgent reforms to combat corruption and inefficiency, are unlikely to be achieved by these means which imply the breach of the Rule of Law and the practical elimination of safeguards for the independence of the judiciary.
The conduct of the CJE during the rest of the year confirms this assertion. Reports say that the CJE made decisions to suspend or dismiss judges without due respect for the right of defence or other guarantees of the due process of law. On 13 September 1999, Ms. Normarina Tuozzo, Chairperson of the Council of the Judiciary, resigned from her post in protest against the curtailing of the Council’s powers and decisions being taken by the CJE without hearing the Council’s opinion.

Many judges - around 230 by the end of the year - were dismissed or suspended from their posts as a result of the application of the emergency decree, or after a summary and flawed procedure was carried out before the CJE. Human rights organisations expressed concern over the fact that decisions were taken on the basis of the judges' political allegiance. Frequent and direct interventions by members of the Constituent Assembly in decisions on whether or not a judge should be dismissed were also reported. Further interference was also reported, even on juridical matters. For instance, two judges in an appeal court were dismissed for having adopted a decision that the President of the Constituent Assembly disliked.

Shortly after the resignation of the Chairperson of the Council of the Judiciary, the Chairperson of the CJE itself (Mr. Alirio Abreu) also decided to resign.

As to the procedure and criteria followed by the CJE to fill the vacant posts resulting from the dismissals and suspensions, Mr. Manuel Quijana, the new Chairman of the CJE, declared in October that consultations with academics and jurists were under way to choose the most competent candidates. The judges filling the vacant posts would serve on a temporary basis and be appointed without public competition as the law of the judicial career mandates (see Attacks on Justice 1998).

By the end of August 1999, a petition was filed before the Supreme Court to have the decree on the re-organisation of the judiciary declared unconstitutional and abrogated. The petition was supported by the political opposition and some human rights organisations. In October the Supreme Court dismissed the petition.

The New Constitution

The new Constitution, drafted by the Constituent Assembly and ratified by the people in a referendum held on 15 December 1999, contains provisions concerning rights and guarantees of due process of law, as well as provisions relating to access to courts that did not exist in the former Constitution. The text of the new Constitution guarantees free, accessible, impartial, competent, transparent, autonomous and independent justice (Article 26), and provides that human rights violations and crimes against humanity shall be investigated and tried in ordinary courts and cannot be the subject of pardon or amnesty (Article 29). Further, the guarantees of due process of law, such as presumption of innocence, rights of the defence and the right to be tried by an ordinary tribunal, are all spelt out in detail (Article 49). The same provision prohibits the institution of faceless judges. Controversially, it includes as a part of the due process the right to reparation for miscarriages of justice, opening even the possibility of holding judges personally and criminally responsible for miscarriages of justice (Article 49.8 and Article 255).

With regard to the division of powers the new Constitution extends even further the already large powers of the President of the Republic, giving him the power to appoint and dismiss
his Vice-President and ministers at will, as well as to decide on the promotion of military officers over the rank of colonel (Article 236).

The Constitution provides for a broad definition of the justice system. This is composed of the Supreme Tribunal of Justice (Tribunal Supremo de Justicia) and other tribunals to be determined by law, the Public Prosecutor's Office, the Defender-General (Defensoría Pública), criminal investigation bodies, assistants, the prison system, the alternative means of justice, citizens participating in imparting justice and practising lawyers (Article 253).

Article 255 establishes that the appointment or promotion of judges shall be made through public competitions in which circuit juries will make the selection. Formerly, the selection and appointment of judges was the responsibility of an independent Council of the Judiciary, an institution that does not exist under the new Constitution. The actual appointment of judges is to be carried out by the Supreme Tribunal but this function is symbolic and limited to rubber-stamping decisions that have already been made. Article 258 provides for the popular election of Justices of the Peace in the communities.

By Article 256 judges, prosecutors and public attorneys are prohibited from carrying out any other activity, except teaching, with the aim of preserving their impartiality and independence. Further, judges are forbidden from forming associations.

The Supreme Tribunal

The Supreme Tribunal is to replace the Supreme Court. Apart from the change of name the new Constitution contains far-reaching and controversial provisions with regard to the powers and organisation of this highest tribunal. A new Chamber of Constitutional matters was created with the power of, inter alia, declaring invalid federal or state laws on the grounds of unconstitutionality, and deciding over conflicts of competence between the constitutional branches (Article 336).

Article 264 establishes a general procedure for the selection and appointment of justices of the Supreme Tribunal leaving the details to be developed by law. It sets out a three-stage process whereby candidates apply first to a Committee of Applications that makes a preliminary selection and passes it on to a newly-created body called the Citizen Power (the National Ombudsman, the Prosecutor-General and the Comptroller-General acting together as a Republican Moral Council, Article 273) which makes a second preliminary selection. Finally, the National Assembly (the legislative power) makes a third and definitive selection. The same provision allows citizens to challenge or object to the candidates at any stage of the process.

Justices of the Supreme Tribunal are appointed to serve for a non-renewable period of 12 years and can be removed or dismissed by the National Assembly with the vote of two thirds of its membership, and only in cases of serious misconduct previously qualified as such by the Citizen Power. The new Constitution also contains some transitory provisions, among which there are some that directly concern the future organisation and independence of the judiciary. The fourth transitory provision mandates that the new national assembly, to be elected following the provisions of the new Constitution, shall discuss and pass all legislation related to the judicial system during the first year of its work. The ninth transitory provision grants the Constituent Assembly the power to appoint the National Ombudsman.
The constitutional provisions on selection and appointment of judges for the Supreme Tribunal may leave room for political considerations and interests in the process and do not seem to comply with the international standards guaranteeing independence and impartiality of the judiciary. Later developments in the appointment of judges and other magistrates have confirmed this fear. In effect, after the Constitution was approved in referendum in December 1999, and during the holidays at the end of the year the Constitutional Assembly appointed, allegedly on a temporary basis, the members of the new Supreme Tribunal, the Prosecutor-General, the Comptroller-General and the Ombudsman. It also appointed a "temporary congress" to perform the legislative tasks in the transition period to the full implementation of the provisions of the new Constitution. The appointments were made without following the process set out in the new Constitution itself.

The Process of Judicial and Legal Reform

The process of legal and judicial reforms, initiated some years ago, continued with the entry into force of important laws such as the new Code of Criminal Procedure (Código Orgánico de Procedimiento Penal - COPP) in July 1999. This law followed two other important laws which had already entered into force at the beginning of the year: the Law of the Judicial Career and the Law of the Council of the Judiciary. However, the future of the process looks uncertain since new legislation needs to be passed to implement the provisions of the new Constitution and many of the positive and innovative institutions in these laws, such as the Council of the Judiciary, were eliminated by it. A new stage in the reform process is starting in the midst of uncertainty.

The implementation of the COPP was preceded by a preparation stage in terms of training and dissemination of the new code among judges, prosecutors and auxiliaries (see Attacks on Justice 1998). However, the implementation faced strong resistance, especially from the Prosecutor's Office and some auxiliary bodies. The pre-implementation stage has also meant an increase in the number of judges and tribunals, although many of the posts are still vacant and the appointment procedure is yet to be developed by a new law in accordance with the new Constitution.

The Law of the Council of the Judiciary, which entered into force in January, increased the number of counsellors in this body from five to eight: four to be appointed by the former Supreme Court, two by the executive branch and two by parliament. However, only the Supreme Court complied with the established deadline. The delay incurred by the other two institutions to appoint the other four counsellors has caused further delays in the work of the justice system. Later, when the Chairperson of the Council resigned (see above) she was replaced by a person appointed by the Supreme Court. As a whole the role and even the existence of this body is under question since the new Constitution assigns the powers that formerly belonged to it to other bodies. It seems that the Council will continue to function until a new law laying down the rules for selection, appointment and training of judges and prosecutors is enacted. The position of the Public Prosecutor has also been the target of undue intervention by the executive and the Constituent Assembly. Following the existing legal provisions parliament appointed a new Prosecutor-General in April 1999. The person elected by parliament did not please President Chavez who harshly criticised the appointment. By the end of the year, the Constituent Assembly appointed a new temporary Prosecutor-General.

Reform of the Military Justice System
The system of military justice constituted the only court system that remained untouched by the criticisms of corruption, inefficiency and slowness launched against the rest of the ordinary judicial system. It was also left outside the radical reorganisation programme implemented during the year by the Constituent Assembly. However, the military justice system continues to be the focus of criticism from human rights organisations and institutions for its continuing extended jurisdiction over civilians, in certain cases, and over all cases involving an active military officer.

The new Military Code of Justice contains several provisions that are inconsistent with international norms on due process and enhance impunity for military officers who commit human rights abuses. In this regard, some controversial provisions of the old code have not been abrogated but, instead, were reproduced or even widened. For instance, Article 54 of the old code grants wide powers to the President of the Republic to intervene in criminal proceedings before the military tribunals. The President can order criminal proceedings to start or can stop them in the "interest of the Nation". The new code has further extended this power to stop proceedings at any stage.

The powers traditionally enjoyed by the military justice system, which are enshrined in the law amending the Military Code of Justice that entered into force in July 1999, are now in question since they collide with explicit prohibitions in the new Constitution. Article 29 of the constitutional text provides that human rights violations and crimes against humanity shall be investigated and tried in ordinary tribunals.

The critics of the amended Military Code of Justice underlined the fact that no part of this law develops the guarantees and principles of a due process of law, amongst them the independence of judges and prosecutors and the rights of the accused, leaving the impression that the system of military justice should not abide by these principles. Likewise, the provision of a military Prosecutor-General (Article 70) has been questioned as it collides with the principle of unity of the Prosecutor's function.

The Inter-American System and Legal Developments

President Hugo Chavez visited the headquarters of the Inter-American Commission on Human Rights, in Washington, on 22 September 1999. This was the first time ever that a President of any country had visited the Commission at its own headquarters. During the meeting, President Chavez invited the Commission to carry out an in situ visit to Venezuela with the aim of becoming more closely acquainted with the events there. The invitation was accepted and the visit will probably take place during the year 2000.

Cases:

**Cecilia Sosa Gómez** (Chief Justice of the Supreme Court): She resigned her post on 23 August 1999 after the plenary of the Supreme Court decided to back the Constituent Assembly's initiative to declare an emergency and re-organise the judiciary.

**Normarina Tuozzo** (Chairperson of the Council of the Judiciary): Ms. Tuozzo resigned her post on 13 September 1999 as a protest against the curtailing of the Council's powers by the action of the Constituent Assembly and the Commission on Judicial Emergency.
A first group of judges were suspended by the Inspector-General of Tribunals following instructions from the Commission on Judicial Emergency established pursuant to the Decree on Judicial Emergency of 25 August 1999. The judges, against whom there were serious complaints of corruption, were not afforded due process since they were suspended by a body established on an exceptional legal basis and through procedures which were established ad hoc.

97 judges were suspended from their posts, allegedly for the accumulation of 7 or more complaints against them, in October 1999. They are the following:

Aida Alvarez Alvarez
Gisela Aranda
Amanda Arriaz
Hernandez
Pedro Bello
Castillo
Alfredo Bolivar
Perez
Zuly Julieta Boscan
Roncon
Pedro Botero
Baselice
Joel Braschi
Santos
Saul Bravo
Romero
Carmen Teresa Brea
Escobar
Francisco Cabrera
Bastardo
Alexis Cabrera
Espinoza
Felix Cardenas Omaña
Pedro Cardenas Zamudio
Haydee Carrizales
Miguel Angel Caseres
Gonzales
Lilia Castillo
Rodriguez
Manuel Castro Rausseo
Hugo Contreras
Suarez
Grecia Coronado de Tovar
Militza Curiel
Hernandez
Nemesio Diaz Montaner
Cesar Dominguez
Agostini
Arnoldo Echegaray
Maritza Espinoza
Baptista
Maria Estaba
Gonzales
Manuel Estrada Toro
Alexis Febres Chacoco
Olga Teresa Fortoul de Grau
Nelson Francia
Victor Galindez
Yarza
Elsa Gomez
Walder
Virginia Gonzales
Cisneros
Horacio Gonzales
Hernandez
Gloria Gonzales
Montero
Maria Gonzales
Rodriguez
Luis Angel Gramcko
Insaida Gravina
Alvarado
Carlos Rafael Guia
Parras
mael Gutierrez
Ruiz
Enrique Hernandez
Ibarra
Vilma Hulet Story
Rafael Inciarte Bracho
Maritza Lopez
Conde
Loida Marcano
de Díaz
Juan Carlos Marin
Fernandez
Tomas A. Mariño
Chacon
Luís Rafael Matute
Romero
Adela Medina de Gonzales
Simon Mejias
Morachini
Amilcar Merono
Garcia
Fanni Millan
Boada
Luis Moncada
Izquierdo
Ana Morales
Langer
Iris Morante
Hernandez
Hugo Moreno
Perez
Zoraida Mouledos
Morffe
Mary Moya
de Padilla
Rafael Jesus Mujica
Luis Antonio Nahim
Pachamari
Oporto
de Manrique
Luis Oronoz
Bordonez
Maria Otaiza
Ana Paredes
Marquina
Carmen Penachio
Francisco Peña
Barrios
Jose Antonio Peñaranda
Pedro Perez
Alzurat
Nancy Perez
Bistochette
Radegungis Perez
Zambrano
Carmen Poletti
Aguirre
Tito Abel Ramirez
Cristobal Ramirez
Sinsun
León Ramirez
Jaime Reis
D’Abrue
Gonzalo Rincon
Perez
Gonzalo Risquez
Amengual
Maria Celeste Rivas
Diaz
Thays Rivera
Colombania
Jose Rodriguez
Avilan
Mary Rodriguez
Herrera
Ligia Rodriguez de Peña
Oscar Romero
Azevedo
Francisco Russo
Elizabeth Salas
Duarte
Ana Yajaira Salazar
Alberto Serrano
Pirela
Rafael Solorzano
Escalante
Olimpia Suarez
de Algarra
Aura Suarez
de Contreras
Raquel Subero
de Quiñones
Nadeska Torrealba
Flor Maria Tortolero
de Salazar
Raul Valbuena
Quevedo
Carmen Teresa
Vargas
Cedeño
Angel Albino Vasquez
Madera
Luis Alberto Villasmil
Soraima Vivas Macero

A second group of 63 judges was suspended by the Inspector-General under the same circumstances, without respect for the due process of law and on the instructions of the Commission on Judicial Emergency, in November 1999.

Seventeen were suspended due to the gravity of complaints against them:

Lubin Aguirre
Antonio Andreani
Pieretti
Marjorie Bello
Luis Beltran
Sanchez
Gimmi Bittar
Mardelli
Ivan
Escalona
Roberto Gonzales
Luque
Edison Lozano Pedro Marciano
Urriola
Clodulfo
Marquez
Carmen Perez
Edoardo Petricone
Mercedes Ponce
Delgado
Antonio Reyes
Sanchez
Deyanira
Russian Maria Simonovis
Jorge Villamizar
The following forty-seven judges were also suspended for serious procedural delays, in November 1999:

Nelida Acosta de Rincon
Hector Brady Aranbulo Torres
Laudelino Aranguren
Auxiliadora Arias
Juan Floriano Balzasmael Barreda
Eglee Barrios
Omar Belandria Vera
Haydee Borges
Luis Jose Camaripano
Elzy Canizales
Vilma Chaparro
Ana Colmenares
Jose Ramon D'Alessandro
Belkis Alda Garcia
Leopoldo Gonzales
Francisco Gutierrez
Miguel Guzman
Morelia Torres
Laudelino Aranguren
Auxiliadora Arias
Juan Floriano Balza
Ismael Barreda
Eglee Barrios
Omar Belandria Vera
Haydee Borges
Luis Jose Camaripano
Elzy Canizales
Vilma Chaparro
Ana

A third group of 67 jurists, including some lawyers who work at the legal aid office, was suspended by the Commission of Judicial Emergency itself, allegedly due to the gravity of the complaints against them, on 13 December 1999:

Rafael Albahaca
Angel Altuve
María Arias
Juan Balza
Amalia Blanco
Nancy Blanco
Jose Briceno
Monzon
Jose Cabrices
Nancy Campos
Silva
Tomas Castillo
Nelson Chacon
Q.Luis
Contreras
Salvio Contreras
Francisca Daboin
Argenis Delgado
Tania Delgado
Leonardo D'Onofrio
Beatriz Frigeredo
Carmen Garcia
Felix Gomez
Fermin
Elena Guanchez
Angel Jurado
Hernan Landinez
Raiza Lares
Illany de Lima
Aida Leon de Obadia
Josefa Mago
Osman
Maldonado
Jose Gregorio Marrero
Humberto Mendoza de Paola
Danilo Mojica
Molina
Victor Mora
Contreras
Eliseo Moreno
Maria Rosario Paolini de Pal
Indira Paris
Maria Parra
Elis Pereira
Genaro Pereira
Carlos Andres
Perez
Aristides
Perez Ovallos
lawyer
Frann Petit
Mercedes Ponce
Delgado
Rolando Quintana
Ballester
Idencio Ramirez
Hilarion Riera
Pedro Rivas
Tirsa Rivero
Carmen Elena
Rodriguez
Aura Rojas
Juana Romero
Venezuela
Rondon
Benito Salas
Freddy Sanchez
Maria Silveira
Luis Teneud
Miriam Torres
Pachecollse
Tosta
Pedro Troconis
Wenceslao Uzcategui
Dionis Velasquez
Carlos Velez
Jose Venero
Ligia Venero
Carlos Vizcarrondo
Salvio
Yanez
Vicente Zevola