

Elections in Venezuela: Changes in the Rules of the Game

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Following the results of the legislative elections of last Sunday in Venezuela there were no celebrations in the Miraflores palace. The electorate's majority denied Hugo Chávez the consent, thus clearly limiting his power yearnings.

According to the last balance, of 165 seats, President Hugo Chávez did not reach his goal of two thirds (110 seats) which is essential to progress in his project of socialism for the 21st Century and to be strengthened for the presidential poll of 2012. The opposition, congregated in the Democratic Unity coalition (MUD) attained 65 representatives in the National Assembly, putting an end to the officialist supremacy.

It is meaningful that, while Chávez obtained a tie in popular voting, the manipulated Venezuelan election system gave him a large victory in the number of seats.

What do we understand by democracy?

After eleven years of Chávez's presidency, Venezuela found itself immersed in a series of electoral consultations which started with the call for a Constituent Assembly, that was not stipulated in the current Constitution, and which culminated with his presidential reelection on December 3rd 2006, thus continuing his mandate until December 2012 and being able to reelect himself indefinitely thanks to an amendment in January 2009.

Chávez has permanently defended the legitimacy of his government, invoking its democratic origins and forgetting his putsch rash attempt. He has managed to bypass many criticisms by correctly affirming that Venezuela has conducted more elections since 1998, when he took the presidential chair, than other nation of the region. He won all the elections, except the referendum of December 2007.

The former is known as electoral democracy, that is, when elections are inclusive, clean and competitive: the essential minimum of democracy. As Munck (2010) pointed out in his paper, it is necessary to emphasize three additional requirements for an electoral democracy to become a full democracy: a democratic way of governing, a democratic way of changing the Constitution and a State with the authority to protect civil and social rights.ⁱ

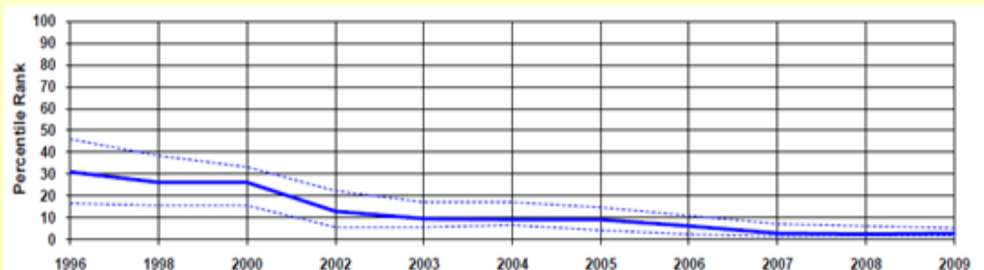
According to these criteria, at present the Venezuelan system is not fully democratic. This is evidenced by the Democracy Index of *Freedom House*, where Venezuela has lost its qualification of free country since 1999.

The democratic systems are those that have been elected but, moreover, which behave as such, respect the constitutions and the rule of law, the independence of powers, human rights, freedom of expression, republican rotation, transparency and political game.

As *Human Rights Watch* has denounced, President Chávez and his partisans have adopted measures to gain control of the Judiciary, eroding the separation of powers and the independence of the Judiciary, through means that infringe the fundamental principles of the Venezuelan Constitution and imposing a system where the will of the governing authority displaces the rule of law (see Table 1), and the rights of the citizens are undermined.

Table Nº 1

RULE OF LAW IN VENEZUELA DURING THE CHÁVEZ ADMINISTRATION



Source: Worldwide Governance Indicator (WGI), World Bank

During the Chavist administration, Venezuela has moved away from the principles that inspire the democratic states with the consent and support of the remaining public authorities. The relative power of the different authorities has lost its balance in favor of the Executive. The excessive presidentialism has become a problematic element and an important factor in the institutional immobilism. This has allowed them to change the electoral rules and to abuse of the constitutional powers.

The electoral conditions: change of rules

As the international observers have stated, these elections have developed freely in terms of the vote ceremony.ⁱⁱ Nevertheless, as Chávez's results in the elections have got worse, the rules have changed. After the regional elections of 2008, Chávez faced the triumph of the opposition with measures aimed at reducing the authority and resources of the opposition's governors and mayors in the urban and most populated areas of Venezuela.

In past electoral processes, the opposition sectors insisted on a series of faults which, in their opinion, generated mistrust, reduced the credibility of the elections and allowed committing frauds. Specifically, they were critical regarding the behavior of the National Electoral Council (CNE) and the automation of the voting system; this was one of the arguments put forward so as not to participate in the legislative elections of 2005.

Since the elections of 2006, certain agreements and measures paved the way for the opposition's participation. Fears dissipated and a technical inspection of the automated voting platform gave them the certainty that the ballot was secret.

All this has not prevented the existence of controversies and shows that we are facing a problem which goes beyond the technical aspect, and turns into another of political trust. The opposition, very sensitized with other intimidating and discriminatory practices from the government, has denounced the massive migration increase of the electoral register; the unconstitutional selection of new directors of the CNE linked to the government party; limitations imposed by the Regulation for National Election Observation and international monitoringⁱⁱⁱ; and the use of goods and resources from the State for the electoral campaign in favor of the United Socialist Party of Venezuela (PSUV).^{iv}

Nevertheless, it is the new Organic Law on Electoral Processes (LOPRE), approved in 2009, which has incited the strongest criticism. Certain articles of this regulation infringe the Constitution. For example, article 8 of the LOPRE distorts the proportional representation system set forth in articles 63 and 293. This law allows the party obtaining more votes to be overrepresented.

Analysts and opponents accuse the President of making this law at his convenience, since the PSUV, which groups his followers, maintains a 30% support approximately against a fragmented opposition with profound contradictions.

The law also opened the door to a change in the electoral districts, which is known as *guerrymandering*^v; 33% of the districts were modified for this poll. With the new distribution, although these states concentrate 52% of the voters, they shall be able to elect only 64 seats (39% of the Assembly), while the rest of the country, with 48% of the voters, elects 101 representatives (61% of the seats).

Vicente Díaz, one of the five directors of the Electoral Commission and the only one who opposed to the changes, stated that “merely technical criteria were not applied in these modifications”. He underlined that in 80% of the affected districts, the regional governments are commanded by opposition leaders.^{vi}

Elections of September 26th

Although Chávez turned these parliamentary elections into a referendum and multiplied his appearances in front of the governing PSUV, he did not obtain the intended two thirds.

With 110 deputies, that is, two thirds of the National Assembly, the PSUV could have easily passed organic legislation on his own and launch a Constituent National Assembly, and to name, with no previous debate, the persons responsible for the other public authorities, such as the district attorney’s general office, the president of the Supreme Court or the Electoral Commission.

In these elections, which had a high participation of 66.45%, the governing party was confirmed as the first electoral force. Hugo Chávez attained the majority at the National Assembly (98 deputies), while the MUD’s opposition obtained 65 seats and former governing party *Fatherland for All* (PPT), another two seats.

Even if there was a technical tie between both sectors (47% the opposition and 48% the officialism), it did not express itself in parliamentary numbers, due to the seat distribution by state districts. The modification of the electoral laws demonstrated that it is designed to benefit the government.

An example of the abovementioned happened in Mérida and Caracas. In Mérida, the PSUV obtained four of the six deputies at stake, in spite of the fact that the MUD’s list attained 50.04% of the ballots and Chávez’s list, 48.7%. In Caracas, the officialism obtained 47.7% of this district’s votes.

The MUD's opposition obtained one tenth more, but Chávez's party gets six of the seven seats.^{vii}

This unbalance is unacceptable, because it distorts the equity guarantee which is necessary for the legitimacy of the electoral process, and it is based on an unacceptable injustice, whose advantage is financed with the use of public resources belonging to all citizens.

Conclusion

The lack of an important instrument for controlling public performance, together with the vanishing of other restraints and counterbalances of power, have the unavoidable result of eroding the democratic system which should be based on pluralism.

The recent changes to the electoral law, which are aimed to weaken the proportionality, and the change in the districts, are a clear example of how the government applies a tailor-made electoral design and control. The abusive use of the public apparatus demonstrates the ever increasing distance of Chávez with the democracy model he pretends to lead.

Now, after September 26th, the scenario is different. The extent of Chávez's victory is currently conditioned with regard to the application of radical changes in the following years, since now it has a counterweight in the Assembly. Nevertheless, the country's complex economical and political situation foretells difficult times for Venezuela. If there is no open, democratic and free society, it is hard to believe that this country will be able to progress towards true development.

ⁱ Munck, Gerardo (2010): "Repensando la cuestión democrática: La región Andina en el Nuevo Siglo", *Revista de Ciencia Política*, Vol. 30 (1), p. 149.

ⁱⁱ In several occasions, the civil organization Súmate has denounced irregularities in the electoral process. However, the last elections (since 2006), barring exceptions, have been conducted in a clean way.

ⁱⁱⁱ On July 16th, the CNE disqualified the Chilean senators as observers in the parliamentary elections, after the Congress decided to send senators to verify that there is no fraud in the election of September 26th, which was considered by Venezuela as an intervention by the Chilean Legislative.

^{iv} Electoral Monitor, Súmate, July 2010 Nr 43, year 6.

^v It refers to the modification of the electoral jurisdictions with political party criteria.

^{vi} "Venezuela: the Electoral Commission modifies the electoral districts", Infolatam, January 20th 2010.

^{vii} Ordaz, Pablo (2010): "A tailor-made electoral system saves the Bolivarian leader", *El País* (Spain), September 28th 2010.