

# WHO PROCLAIMED HIMSELF PRESIDENT OF VENEZUELA: JUAN GAIDÓ OR NICOLÁS MADURO?

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**The situation in Venezuela is as complex as it is confusing. Chavismo –and its international lobby– try to impose the matrix of «self-proclamation» to discredit Juan Guaidó, while the National Assembly responds that his swearing in as interim president of Venezuela is based on the Constitution (the latest Venezuelan Constitution that was drafted and proclaimed by the Chavismo in 1999, a year after Chavez came into power.) Parallel to the legal debate, the political reality defines the course of a crisis that no longer leaves anyone indifferent on the entire planet.**

## **– Can Nicolás Maduro be considered the legitimate and constitutional President of Venezuela?**

– The Venezuelan Parliament and more than 50 countries, led by the United States, Canada, the members of the European Union and the majority of Latin America, qualify as illegitimate and unconstitutional the permanence of Maduro in the Presidency of the Republic. Last January 10th Maduro began a second six-year term with the backing of the Armed Forces and countries such as Cuba, Russia, China, Iran and Turkey.

## **– Why do the Venezuelan Parliament and part of the international community disavow Maduro's legitimacy?**

– This second mandate of Maduro arises from the elections of May 20, 2018, classified as fraudulent by the Venezuelan Parliament (the Legislative Power) and Western democracies. In protest against the absence of guarantees, the main opposition forces did not participate in those elections, which ended up registering the highest rate of nonparticipation (48%) in the history of the presidential elections in Venezuela, according to the chavismo-controlled National Electoral Council. The opposition candidate who competed in the race, Henri Falcón, did not recognize the results due to the irregularities during the process.

## **– Why was the election of May 20th considered unconstitutional?**

– The election of May 20, 2018 was convened by the so-called National Constituent

Assembly, an organ entirely composed of militants of chavismo, that is considered illegitimate and fraudulent by the Venezuelan Parliament and Western democracies. In addition to fixing the date of the vote passing over the National Electoral Council (which, as mentioned above, is completely controlled by Maduro) and violating the lapses and procedures established in the electoral regulations, the Constituent Assembly made the main opposition parties illegal, blocking their participation. These deviations ended up undermining a system already damaged by the abuse of advantages of the Chavez government, the disenfranchisement of opposition leaders, censorship in the media and the use of mechanisms such as the «Fatherland ID» to pressure citizens.

### **– What has Parliament done to face Maduro's claim to remain in the Presidency of the Republic?**

– The Parliament declared Maduro as «usurper» of the position of President and based its actions on three articles of the Constitution: Number 233, referring to the absolute absence of the President of the Republic; number 333, on the obligation of all citizens to defend the Constitution; and number 350, on civil disobedience.

### **– What does article 233 of the Venezuelan Constitution say?**

– Article 233 states: «When there is an absolute absence of a President-elect before taking office, a new election, with universal, direct and secret voting, shall be held within the following thirty consecutive days. While the new President is elected and takes office, the President of the National Assembly shall be responsible for the Presidency of the Republic.» Invoking this provision of the fundamental text, Juan Guaidó assumed the powers of the National Executive Power on an interim basis on January 23.

### **– Is it correct to say that Guaidó «self-proclaimed» as President of Venezuela?**

– «Guaidó did not 'self-proclaim' as President. On the contrary, in his declaration of January 23, he ratified the fulfillment of the duty imposed on him by Article 233 of the Constitution, namely, to be in charge of the Presidency of the Republic, since there is no elected President in Venezuela. To guarantee the effective exercise of the Presidency, the National Assembly –as the only legally elected authority in Venezuela– must dictate all measures to ensure the cessation of the usurpation of the Presidency,» lawyer Jose Ignacio Hernández argued in an article published on ProDavinci's portal (<https://prodavinci.com/de-juramentos-y-proclamas-una-explicacion/>)

### **– Can the Guaidó swearing be valid even if it was carried out in a public gathering and not in the Federal Legislative Palace?**

– Professor Hernández responds that, according to the Venezuelan Constitution, the authority of the head of Parliament «applies in full right, that is, it is not necessary to comply with any formality, because only this guarantees that, at least in the legal plane, there is administrative

continuity». For that reason, the academic stresses that Guaidó «did not proclaim or swore himself in. In fact, the president of the Venezuelan parliament expressly ratified his willingness to comply with what the Constitution of Venezuela imposes on him, namely that he assumes the title of President in charge, always in accordance with the decisions that the National Assembly dictates to ensure the cessation of the usurpation.»

**- What is Guaidó looking for with his oath?**

– Guaidó has emphasized that the Parliament has a road map with three steps: cessation of the usurpation, transitional government and free elections.

**- Did Maduro comply with the formality of the oath?**

– Not really. As already said, he is not considered an «elected» President, since his mandate emanates from a fraudulent process. Additionally, the Constitution establishes that the President-elect must take his oath before the Parliament and adds: «If, for whatever reason, the President of the Republic could not take office before the National Assembly, he will do so before the Supreme Court of Justice.» Maduro chose to go to the Supreme Court, which is entirely managed by the chavismo. Since 2016, this illegally appointed Supreme Court has issued more than 70 sentences to nullify all the powers and attributions of the Legislative Power.

**- Does the entire Venezuelan crisis find an explanation in its Constitution?**

– No. To understand this unprecedented situation, we must analyze the political context of Venezuela. After the overwhelming triumph of the opposition in the parliamentary elections of December 6, 2015, which allowed them to reach the qualified majority (2/3) of the Chamber, Maduro took a series of measures to circumvent the popular will and undermine the authority of the Legislative Power. First, he illegally modified the composition of the Supreme Court to guarantee its control. Then, the magistrates he appointed (called «express» by the people due to irregularities of the process of their appointment) suspended the proclamation of three opposition deputies, thus blocking the 2/3 majority conquered by the opposition. In the Constitution, this 2/3 majority is established as the most powerful majority and given extensive powers. The legal coup to eliminate it came in mid-2016, when the Supreme Court declared the Parliament «in contempt,» and said that all its actions were «manifestly unconstitutional and, therefore, absolutely null and void.»

**- Has Maduro liquidated the Parliament?**

– In practice, yes. The Supreme Court has been used to this end, as well as the National Constituent Assembly since August 2017, an organ that is considered illegitimate

and fraudulent by the Parliament and Western democracies. In addition to governing by force of decrees, the regime has de facto eliminated parliamentary immunity, which has resulted in legislators being detained, physically attacked and forced to go into exile. Deputy Juan Requesens has been imprisoned in the political police prison since August 2018, accused of participating in an alleged attempt to assassinate Maduro. Despite these attacks, the Venezuelan Parliament continues to work with international recognition.

### **- Have political and electoral solutions to the crisis being tried?**

- The opposition promoted in 2016 a referendum to revoke the President that was blocked by Maduro's regime. The closing of this electoral route and the offensive against the Parliament, provoked a wave of protests in 2017 that ended with at least 140 deaths and hundreds of detainees. Maduro fulfilled his threat to radicalize the revolution and imposed the Constituent Assembly. This illegally set-up Assembly immediately removed the attorney general, Luisa Ortega Díaz, who had separated herself from chavismo when the Supreme Court made the decision to appropriate the powers of the Parliament. By using the Judicial Power, the National Electoral Council, the General Comptroller's Office and the «plenipotentiary» Constituent Assembly, the chavista-Maduro regime has banned the main opposition leaders and parties, disqualifying them from participating in elections.

### **- Why government and opposition do not try to agree?**

- The parties advanced a negotiation process in the Dominican Republic that culminated in January 2018 with a thunderous failure. The failure was attributed to Maduro for his «refusal to allow guarantees necessary for fair presidential elections.» After the collapse of the talks, which had had the support of several countries in Latin America, the chavista regime unleashed a persecution against the head of the opposition delegation, Deputy Julio Borges, who had to take refuge in Colombia, and the Constituent Assembly called for the elections of May.

### **- So, now Venezuela has two presidents?**

- Apart from the constitutional debate, the fact is that Maduro is kept in the Miraflores palace by the support of the Armed Forces, the institutions dominated by the chavismo and countries such as Cuba, Russia, China, Iran and Turkey. For his part, Guaidó was sworn in as Acting President of Venezuela and has the support of the Venezuelan Parliament, the United States, Canada and a majority of the governments of Latin America and Europe. Each player moves his chips on a political board that has reached global dimensions in the struggle for power in Venezuela.