

ANOTHER ELECTORAL AUTHORITY IN VENEZUELA?



The appointment of members of the **National Electoral Council** (Consejo Nacional Electoral, CNE) in 2021 was the fruit of a political agreement between the Venezuelan opposition and the government of Nicolás Maduro led by distinct sectors of civil society.

Political agreements between actors should be seen as permanent. **All efforts to build consensus** that are carried out in the name of the majority of Venezuelans, in order to escape the serious and prolonged crisis that they suffer, will constructively help rebuild institutions in the benefit of the Venezuelan people.

As outlined in the report from the **Electoral Observation Mission of the European Union** about the municipal and regional elections held in 2021, "many consider its appointment as the most important measure in re-establishing trust in the CNE after opposition parties boycotted the previous three national elections."

It becomes evident that **unrecognizing the agreement that enabled the appointment of the rectors of the CNE will notably affect the organization of the electoral processes that are scheduled for 2024 and 2025.**

The Venezuelan Constitution establishes five independent public powers: legislative, executive, judicial, citizen and electoral. **The electoral power is exercised through the CNE**, a permanent institution with autonomous functioning and budgeting. The broad powers of the CNE include the organization and facilitation of all electoral processes and the regulation of electoral laws, the Civil and Electoral Registry and political parties.

The CNE is led by five rectors and 10 alternates (three of whom are incorporated into the daily activities of the institution) who are appointed for a period of seven years. According to the law, the rectors cannot have connections to any political party. However, three members of the current council can be considered closely affiliated with the governing United Socialist Party of Venezuela (Partido Socialista Unido de Venezuela, PSUV). Of the remaining rectors, one is linked to the opposition and the other was appointed by civil society organizations.

Additionally, the CNE has three subordinate bodies: the **National Electoral Board** (Junta Nacional Electoral, JNE), in charge of the majority of electoral operations; the Commission for Civil and Electoral Registration (Comisión de Registro Civil y Electoral, CRCE), responsible for the administration of the Civil and Electoral Registry; and the **Commission for Political Participation and Financing** (Comisión de Participación Política y Financiamiento, COPAFI), in charge of the registration of political parties and the control of their finances.

An Agreement that Could be Unrecognized?

The political agreement that facilitated the appointment of the CNE **contributed to institutional stability** and facilitated, among other things, the presence of the Electoral Observation Mission of the European Union and the Panel of Experts of the United Nations. However, **this process was not without opposition within the Maduro government and the democratic opposition itself.**

On January 9, 2023, PSUV politician **Jorge Rodríguez**, elected president of the Maduro-backed National Assembly in 2020, suggested that some sectors of the opposition had requested a modification of the CNE, a claim that will be analyzed carefully.

The appointment of new members of the CNE in an extemporaneous manner has no legal or constitutional justification.

Rodríguez's proposition **would contravene what is stated in constitutional Article 296**, which clearly states that "the members of the CNE will remain in their roles for seven years." That is to say, the current members of the electoral authority still have more than five years left in their tenures.

Although the **Organic Law of the Electoral Power** (Ley Orgánica del Poder Electoral, LOPE) in Article 31 provides legal authority for the National Assembly to remove a CNE rector from their post with a two-thirds majority, this should be considered exceptional and distinct from "the appointment of a new CNE," as proposed by the president of the Maduro-backed National Assembly.

In this regard, **Article 32 of the LOPE** establishes that the substitution of a rector could occur only under four scenarios, which are as follows:

1. If a rector **is subject to interdiction or political disqualification;**
2. If a rector **affiliates oneself directly or indirectly** with a political organization;
3. **If a rector receives, directly or indirectly, any kind of benefit** from a person or organization that compromises their independence; and
4. **If a rector is criminally convicted with a final sentence** from the commission of intentional crimes or is declared administratively responsible through a final decision from the Office of the Comptroller General of the Republic.

While legal or constitutional justifications for changing the current rectors of the CNE do not exist, there are political-electoral interests in this taking place. The most interested party in changing the rectors of the CNE is the Maduro government.

Why is the government interested in changing the CNE? The rectors – affiliated with the government – do not have the political or relational profile that is needed for 2024, especially after **rector Tania D'Amelio**, ratified to her post in 2021, was appointed in 2022 to be part of the **Constitutional Chamber of the Supreme Court of Justice** (Tribunal Supremo de Justicia, TSJ). D'Amelio had been a member of the CNE since 2008.

The possibility of changing the composition of the CNE has been denounced by Gerardo Blyde, chief negotiator of the Unitary Platform (Plataforma Unitaria Democrática, PUD) in the negotiations with the Maduro government in Mexico. Blyde has even signaled that the PUD supports the continuity of the current CNE. Nonetheless, given that the opposition and the Maduro government are set to discuss political-electoral conditions when they resume their talks in Mexico, Rodríguez's proposal suggests that the Maduro government will demand changing the electoral authority if the opposition proposes to balance to advance subordinate institutions and shield the CNE from the actions of the Comptroller General of the Republic.

A hypothetical change to the CNE **could serve as a strategy for opposition political parties who hope that the primary elections are carried out without technical assistance from the CNE**, arguing that the eventual modification of the Council could unjustly obstruct or delay the opposition primaries. As with the rest of the electoral guarantees for 2024, the composition of the CNE depends on the negotiations in Mexico.

Nonetheless, it cannot be ruled out that in the face of the need for having a CNE that could reactivate the opposition debate over participating in the next elections, the regime could unilaterally generate a crisis in the institution by making the principal rectors and alternates resign. **The resignation of principal rectors Pedro Calzadilla and Alexis Corredor – along with their alternates – would result in the CNE not being able to remain in session. In the face of this scenario, the intervention of the Maduro-backed National Assembly or TSJ to appoint new rectors would be justified.**

What should happen with the vacancy of D'Amelio?

Although the Constitution does not justify a broad modification of the CNE, **the National Assembly should resolve the vacancy generated by the departure of rector Tania D'Amelio to the TSJ.**

The vacancy caused by D'Amelio's appointment to the TSJ should be covered by her first alternate, Leonel Enrique Párica Hernández, just as Article 13 of the LOPE dictates, which establishes: **"Alternates will cover the temporary or absolute vacancies of their corresponding electoral rectors."**

Nonetheless, **Article 12** of the same instrument clearly signals that "when there is an absolute absence of a rector and their alternates, the National Assembly will make the appointment of the principal rector and their alternates from the list of selected candidates that was presented by the Committee of Nominations, taking into account the corresponding order."

Although the absolute vacancy of D'Amelio was generated a year ago, **the process for formalizing her substitution has still not taken place.**

What can the international community do?

The Venezuelan electoral authority will be charged with organizing fundamental electoral processes for the future of the nation, as over the next two years every electoral body of the CNE should be elected. **Potential changes to the electoral administration** before the expiration of the periods prescribed by law based solely on partisan conveniences does not represent a promising sign for the imperative recovery of electoral institutional stability.

On the other hand, **the absence of an electoral rector** (principal) that also had two other positions in subordinate bodies of the CNE, diminishes the dynamism from the entire institution and poses challenges to achieving greater guarantees and conditions for competitive elections in 2024 and 2025.

Recognizing the need to respect political agreements and especially laws is essential for the reinstatement of the country and to guarantee that the electoral results in 2024 and 2025 benefit from broad national and international recognition.

