

# Policy Briefing

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## Venezuela: A House Divided

### I. Overview

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The death from cancer on 5 March of President Hugo Chávez triggered a snap presidential election just 40 days later that his anointed successor, Nicolás Maduro, won by a margin of less than 1.5 per cent over Henrique Capriles of the Democratic Unity (MUD) alliance. But the tight result and legal challenges to the validity of the vote cast a shadow over the sustainability of the new administration. A country already deeply polarised is now clearly divided into two almost equal halves that appear irreconcilable. The validity of the election result remains to be clarified and the full independence of the electoral authorities, judiciary, and other key institutions restored. But to address the governance crisis and allow Venezuela to tackle its serious economic and social problems, national dialogue must prevail over confrontation and consensus over partisan violence.

With institutions weakened by the Chávez government's long-term policy of presidential co-optation, the MUD may ultimately have little practical recourse at the domestic legal level, leaving – it believes – few options but a policy of peaceful street demonstrations and other forms of political pressure, including appeal to international public opinion. When political discourse takes the form of large-scale street protest, there is always a risk of violence. There have already been several deaths and numerous injuries, often in confused circumstances, that the government seems keen to exploit so as to discredit the opposition.

The power vacuum produced by Chávez's death is a fundamental source of potential instability. His personal authority over his movement, the armed forces and the state bureaucracy is irreplaceable for the regime, certainly in the short term. This vacuum is particularly grave because the country is on the brink of a recession, has a large public-sector deficit and suffers from a growing scarcity of basic goods and one of the world's highest inflation rates.

An extremely personalised political regime has been replaced by an unpredictable collection of group and even individual interests. The costs of having dismantled important elements of democracy and the rule of law over the past fourteen years are being paid by both the regime and the political opposition. Venezuela is ill-prepared for the post-Chávez transition and urgently needs to reconstruct its social and political fabric. The immediate efforts need to focus on avoiding escalation of extreme polarisation into political violence, complemented by a strong push for a basic understanding on how to coexist without Chávez.

Short-sighted behaviour by either side could propel the country into a political and economic crisis from which it would be difficult to recover. It is encouraging that the opposition leadership has emphasised non-violent forms of dissent. There have also been indications from the government that some of its members understand the need for dialogue and consensus, though this has not yet been followed by corresponding actions. Ideally Maduro would appoint some opposition figures to his government, but at the very least those in position to do so on both sides need to initiate dialogue and consensus building now.

Most of the international community, particularly regional partners and neighbours, have tended to look the other way when assessing democracy and human rights in Venezuela. This must change. Instability would at the least further undermine the regional consensus on democratic norms. Multilateral organisations, such as the Union of South American Nations (UNASUR) and the Organisation of American States (OAS), and regional powers, such as Brazil, need to make clear that they will not tolerate further destruction of the rule of law and democratic values.

To avoid unpredictable escalation of the polarisation and political violence:

- ❑ Government and opposition must express commitment publicly to peaceful means of resolving the political crisis, instructing followers that violence – and confrontational rhetoric that could incite violence – is not permissible, and those who engage in it will be treated in full accordance with the law.
- ❑ The government should recognise that the sharp division of the electorate necessitates consensus building, not a partisan agenda. It should build bridges to the opposition, the private sector and civil society, conducting a dialogue to reduce tensions and find common ground. The Catholic Church, regional partners and the international community in general should support this approach and be ready, if asked, to provide mediation at an appropriate point.
- ❑ To clear the way for dialogue, doubts surrounding the election must be clarified. The Supreme Court's electoral chamber should deal fully and transparently with all complaints of violence, intimidation and irregularities, if necessary ordering a re-vote in centres where such incidents cast substantial doubt on the original. The government should make clear that it supports such measures, and, if they are taken, all sides should immediately recognise the election's validity.
- ❑ The government should provide guarantees for lawful exercise of the right to protest and freedom of expression, abstaining from threats and legal proceedings against the independent media and reprisals against public employees suspected of opposition sympathies; and the armed forces must act fully within the constitution, which prohibits their participation in partisan politics.
- ❑ The international community, in particular neighbours such as Brazil, the OAS and UNASUR, should encourage a non-violent solution of the political crisis and offer themselves as facilitators and mediators.

None of this will be easy, not least because there is a potentially dangerous gulf between the regime's insistence that the election result be recognised as a condition for accepting the opposition as a force with which to do business and the opposition's understandable insistence that it can accept the election result only after a full and transparent review shows that any irregularities that occurred did not alter the final outcome. If the worst is to be avoided, the moderates (or pragmatists) on both sides need to find a way to bridge that chasm.

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## II. The Election

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### A. Death of a President

Hugo Chávez had been Venezuela's president for fourteen often turbulent years. A charismatic former army officer first elected in 1998, he came to power promising an end to corruption and social exclusion. Approaching the end of his second six-year term, he faced a presidential election in October 2012, but he was gravely ill, having been diagnosed in June 2011 with a cancer whose precise nature was never publicly disclosed but for which he had undergone three operations in Cuba. Claiming to be cured, he embarked on a campaign that culminated in yet another victory, with 55.4 per cent of the vote against the opposition candidate, Henrique Capriles, a popular state governor.<sup>1</sup> The new term began on 10 January 2013, but Chávez was to die before he could take a new oath of office.<sup>2</sup>

If he became unable to continue as president, Chávez said, Venezuela should elect Nicolás Maduro, the Vice President (and former foreign minister), as his successor. With that, the president left for further treatment in Cuba and was never seen in public again. Although the government insisted he was running the country from his hospital bed, the transition to a post-Chávez era had begun.

Constitutional requirements were ignored, and Maduro took over as acting president.<sup>3</sup> The Supreme Court, which is in practice controlled by the executive, ruled that as a sitting president Chávez did not have to be sworn in on 10 January and that the ceremony could be held whenever convenient.<sup>4</sup> After Chávez's death was announced on 5 March, the National Electoral Council (CNE) set a fresh election for 14 April. With Easter week intervening, there were fewer than ten days for formal campaigning.

By Chávez's own account, the country was in transition to an "irreversible" socialist revolution. He had extended state control over strategic elements of the economy, expropriated millions of hectares of farmland and installed a rigid system of price and exchange controls. In parallel, he had created dozens of social "missions" – welfare programs covering everything from literacy and primary health care to housing, pensions and indigenous rights that earned him the fervent support of millions, especially among the poor. Channelling revenues from the state oil corporation into discretionary funds he personally controlled, the president traded government hand-outs for votes.<sup>5</sup> But the cost to the economy was more than 20 per cent annual inflation, combined with a GDP growth threatening to turn negative. While avoiding large-

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<sup>1</sup> "Divulgación Presidenciales 2012", Consejo Nacional Electoral (CNE), 9 November 2012.

<sup>2</sup> For background analysis on Venezuela's election and political situation, see Crisis Group Latin America Reports N°42, *Dangerous Uncertainty Ahead of Venezuela's Elections*, 26 June 2012, and N°38, *Violence and Politics in Venezuela*, 17 August 2011.

<sup>3</sup> Crisis Group interview, legal expert, Caracas, 30 April 2013. Chávez's successors faced a dilemma. Vice President Maduro was constitutionally required to stand in for the president during "temporary" absences, but the official argument was that Chávez was merely on medical leave, granted by the National Assembly, and no stand-in was needed. As president-elect, however, once his 2007-2013 term ended, Chávez would have to be replaced by the National Assembly president, Diosdado Cabello, the next most senior elected official (the vice presidency is an appointed post). Article 233, 1999 constitution, as amended and published in 2009.

<sup>4</sup> It also invoked "administrative continuity" to argue that the existing government – including the vice president and the cabinet – should remain in office. "Sala Constitucional considera que no es necesaria una nueva juramentación de Chávez", Globovisión, 9 January 2013.

<sup>5</sup> "Chávez derrocha recursos del Estado en año electoral", *El Nuevo Herald*, 30 March 2012.

scale repression, Chávez also eroded civil rights and treated opposition as unpatriotic and foreign-inspired.<sup>6</sup>

### B. *An Uneven Playing Field*

The election took place in an atmosphere of deep mutual suspicion. The electoral authority, the CNE, failed to compel the campaign of the government candidate (Maduro) to respect rules regarding bias in the state media or the partisan use of public resources. The perception that the CNE is not neutral was reinforced by the close ties between four of its five board members and the government and by the chair's pro-government stance.<sup>7</sup>

The campaign was launched at a time when the country was still absorbing the impact of the president's death. Emotions were high among his millions of supporters, many of whom regarded him as a secular saint.<sup>8</sup> The image and voice of Chávez were extensively employed in the Maduro campaign, which laid heavy emphasis on the fact that the late president had handpicked him. Early polling suggested Maduro would repeat Chávez's margin of victory over Capriles in the October election.<sup>9</sup>

The government party confronted the opposition united around the MUD (Mesa de la Unidad Democrática), which had been formed five years earlier.<sup>10</sup> The choice voters faced was between a further deepening of the revolution, under a new, untried leadership, or a sharp change of course toward a more pluralistic model, with a promise to preserve the regime's social gains.<sup>11</sup>

The electoral field was anything but level. The government broadcasting organization, which includes six state television outlets and an extensive network of radio stations, as well as official print media, gave blanket coverage to Maduro, while ignoring or denigrating Capriles.<sup>12</sup> In addition to the executive's ability to take over all radio and television channels for simultaneous official broadcasts (*cadena*s), the law also requires private media to transmit ten minutes daily of government propaganda.<sup>13</sup>

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<sup>6</sup> Since 2004, Crisis Group has reported about the continuing deterioration of human rights and rule of law in Venezuela, and how this has increased the likelihood of civil confrontation and violence. See, for example, Crisis Group Latin America Briefing N°5, *Venezuela: Headed Toward Civil War?*, 10 May 2004; interview, human rights expert, Caracas, 3 May 2013. Particular cases of civil rights restrictions can be found in the restraints on the independent media, criminal prosecutions of members of the opposition, threats and intimidation against human rights defenders and the announced withdrawal from the Inter-American System on Human Rights. See also: "Venezuela: el legado autoritario de Chávez", Human Rights Watch, 5 March 2013.

<sup>7</sup> "Tibisay Lucena rechaza injerencia estadounidense en proceso electoral", *Ciudad Caracas*, 18 March 2013, "Tibisay Lucena se quitó la careta", *El Universal*, 6 April 2013.

<sup>8</sup> See James Anderson, "Hugo Chavez mourned, celebrated at 'People's Shrine' in Caracas' 23 de Enero slum", *The Huffington Post*, 3 April 2013.

<sup>9</sup> Tamara Pearson, "Poll shows most Venezuelans feel revolution isn't over without Chavez", *Venezuelanalysis.com*, 24 April 2013.

<sup>10</sup> Originally called the Fifth Republic Movement (MVR), the dominant government party became the United Socialist Party of Venezuela (PSUV) in 2007 and is allied with a number of much smaller parties, including the communists (PCV), under the umbrella of the GPP (Gran Polo Patriótico). The MUD is ideologically diverse, but its largest parties are the centrist Justice First (Primero Justicia, PJ) and the social democratic A New Time (Un Nuevo Tiempo, UNT).

<sup>11</sup> Crisis Group interview, political analyst, Caracas, 4 May 2013.

<sup>12</sup> Crisis Group interview, media analyst, Caracas, 3 May 2013.

<sup>13</sup> Law on Social Responsibility in Radio, Television, and Electronic Media N°39.610 (2011), Article 10. According to the website [www.monitoreociudadano.org](http://www.monitoreociudadano.org), "cadena" during the campaign totalled nine hours, 42 minutes and four seconds.

Government offices and state corporations such as *Petróleos de Venezuela (PDVSA)* and *Corpoelec*, the electricity utility, turned staff, vehicles and other resources over to the campaign and displayed campaign posters in their buildings. The chairman of PDVSA, Energy Minister Rafael Ramírez, was the mobilisation director of the Maduro campaign.<sup>14</sup>

### C. *A Closer than Expected Result*

However, contrary to almost all poll predictions, the election proved extremely close. The CNE's first bulletin, issued at 11.30pm with over 99 per cent of the votes counted, gave Maduro a lead of just 236,000, less than 1.6 per cent. The results were announced as "irreversible", but serious concerns emerged over what the opposition saw as a precipitous move.<sup>15</sup>

Capriles had telephoned Maduro before the announcement and proposed a meeting of campaign chiefs to determine how to handle a tricky political situation,<sup>16</sup> but no agreement was reached. The MUD campaign said it had indications, including data from quick counts, that it might have won. After the CNE's announcement, the only opposition-leaning member of its board, Vicente Díaz, remained behind to call for 100 per cent of ballot boxes to be opened and the paper "ballots" compared with the electronic result.<sup>17</sup> He said he was not questioning the validity of the count, but that due to the narrowness of Maduro's victory, it was important to ensure full transparency. This was echoed by Capriles shortly afterwards and initially accepted by Maduro in his victory speech. It appeared at that moment that an audit would quickly resolve all questions.<sup>18</sup>

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<sup>14</sup> For more information on the role of PDVSA in the past two presidential elections, see "Maquinaria electoral busca los votos en favor de Maduro", *El Comercio.com*, 9 April 2013.

<sup>15</sup> The President of the CNE, Tibisay Lucena, announced on 14 April 2013 that Maduro had 7,505,338 votes (50.66 per cent), Capriles 7,270,403 (49.07 per cent). See José Luis Méndez la Fuente, "El último empujón de Chávez", *El Universal*, 16 April 2013. As of 25 April 2013, the CNE said Maduro's lead had increased to 273,056: 7,575,704 to 7,302,648. See "Divulgación Presidenciales 2013", CNE, 25 April 2013.

<sup>16</sup> See, for example, "Nicolás Maduro apoya propuesta de la oposición de auditar resultados electorales", *MiamiDiario.com*, 15 April 2013.

<sup>17</sup> The Venezuelan electoral system is now fully automated. Each voting machine, in addition to storing the individual votes electronically, produces a paper slip confirming the voter's choice that is deposited in a box corresponding to that machine. More than half of these boxes are, according to the CNE's regulations, subjected to a "hot" audit after the polls close, in the course of which the paper slips are compared with the machine's print-out of the votes for each candidate. On 14 April, 52.98 per cent of the boxes should have been audited in this way, according to the CNE regulations, but there are indications that the actual number was less. Vicente Díaz was essentially calling for all remaining ballot boxes to be audited. See "Manual de Funcionamiento de la Mesa Electoral", CNE, no date available.

<sup>18</sup> Maduro stated in his 14 April speech that he welcomed an audit. "Nicolás Maduro: 'Hugo Chávez sigue bendiciendo a su pueblo'", *El País Internacional*, 15 April 2013.

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### III. The Crisis

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#### A. *The Government's Position*

Addressing supporters at the presidential palace shortly after his victory was announced, Maduro said of Vicente Díaz's call for all ballot boxes to be opened. "Let's do it! We're not afraid. Let the boxes speak! Maybe [my majority] will get bigger".<sup>19</sup> This position, however, looked much less clear by the following morning. Maduro's campaign coordinator, Jorge Rodríguez, in a television interview, said, "if 100 per cent of the boxes are opened, it is to do an audit, not a manual count".<sup>20</sup> Tibisay Lucena, CNE president, went further that afternoon at the ceremony proclaiming Maduro the victor. Saying the electoral system had "worked perfectly", she ruled out a manual recount or opening all the boxes, though the CNE board had not met to consider the opposition demand. Lucena said the paper ballot (known as the *comprobante* or *papeleta*), "merely serves as a receipt", whereas the votes themselves "are registered in the electronic memory of the machine".<sup>21</sup>

Luisa Estella Morales, the president of the Supreme Court (Tribunal Supremo de Justicia, TSJ), the ultimate arbiter at the national level, was emphatic: the electoral system was completely automatic, and, "manual counting does not exist". Those "asking the impossible" were provoking "an endless battle in the streets".<sup>22</sup>

Nonetheless, late on 18 April, as Maduro met in Lima with presidents from the South American regional body UNASUR, who were increasingly worried by the appearance of growing instability, the CNE reversed itself and announced that a sample of up to 12,000 ballot boxes from the roughly 18,000 not previously chosen for auditing would be opened in the presence of MUD representatives.<sup>23</sup>

#### B. *The MUD's Position*

In response to the CNE's first bulletin, Capriles, accompanied by his campaign team, gave a televised statement that picked up the Díaz proposal to extend the audit to 100 per cent of the paper ballots. "We are not going to recognise the results until every vote is counted, one by one", he said. "Our figures are different from those that were announced". His campaign coordinator, Ramon Guillermo Aveledo, cited "quick counts, exit polls, *actas* gathered by [opposition] witnesses [and] the different prediction methods of private institutions and parties" as among the elements the MUD had used to conclude Capriles had won.<sup>24</sup>

The candidate himself gave more details at a press conference two days later. Most of the evidence he alluded to concerned alleged irregularities at polling stations, including violence and coercion, not numerical inconsistencies. According to Capriles, violence had affected 860 voting centres, at which more than 2.7 million people were registered to vote; over 1,000 polling centres, representing almost the

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<sup>19</sup> "Maduro está dispuesto a efectuar auditoría del 100% de los votos emitidos el 14-A", Radio Nacional de Venezuela, 15 April 2013.

<sup>20</sup> "Jorge Rodríguez indica que abrir 100% de cajas no implica recuento manual", *El Universal*, 15 April 2013.

<sup>21</sup> See Lucena's speech at "Este es el discurso completo de Tibisay Lucena durante la proclamación de Maduro", *Noticias24*, 15 April 2013.

<sup>22</sup> "Venezuelan Supreme Court bars any chance of a manual recount of votes", *MercoPress*, 17 April 2013; Article 297, constitution.

<sup>23</sup> "Que sea Venezuela la gran vencedora", *El Nuevo Día*, 20 April 2013.

<sup>24</sup> "Venezuela on edge as vote count continues", *Al Jazeera*, 15 April 2013.

same number of voters, saw “assisted” voting;<sup>25</sup> at 286 polling centres, with over 720,000 voters, opposition witnesses were excluded by force; and 189,000 voters were affected by damaged voting machines.<sup>26</sup> He cited just one polling station, in Trujillo state, however, where, he said, more votes had been tallied than there were voters – though this appeared to be based on a misunderstanding.<sup>27</sup> Capriles said the MUD also found it suspicious that Maduro had obtained 100 per cent of the vote at 39 *mesas de votación* (voting tables, each corresponding to a voting machine) and had received more votes than Chávez had in October 2012 at almost 1,200 – in some cases several times as many.<sup>28</sup>

In order to determine the impact of these alleged irregularities on the result, the MUD demanded that the audit should cover all relevant material, including data from the automated voter-identification system (the SAI), and full access to the manual voter log (*cuaderno de votación*) corresponding to each voting machine.<sup>29</sup> When the CNE rejected this, the MUD said it would not take part in the audit. It would instead challenge the result through the courts and also take its case to international organisations.<sup>30</sup>

In early May the MUD filed two formal complaints with the electoral branch of the TSJ. In the first, it called for the entire election to be annulled on the basis of widespread, documented irregularities. In the second, it specified 5,729 *mesas de votación* at which it believed irregularities required a re-run. The MUD said more than 2.3 million votes were affected.

### C. *Violence on the Streets*

The day after the election, opposition demonstrators took to the streets in various cities to demand a recount. In Caracas, they blocked a main avenue and a motorway and set fire to rubbish. The government deployed national guard riot troops with armoured vehicles, who fired tear gas, but it later withdrew them. Capriles called on his supporters to avoid violence and announced a “route” to be followed: pot-banging protests (*cacerolazos*) each evening at 8pm; and a protest march on the CNE in Caracas on 17 April, preceded by demonstrations the day before outside the CNE’s regional offices across the country.

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<sup>25</sup> Polling staff are permitted to assist voters with disabilities in the polling stations. Capriles referred to abuse of this procedure, alleging polling staff accompanied able-bodied voters, encouraging them to vote for the official candidate.

<sup>26</sup> Capriles’s summary of the irregularities the MUD was complaining of is contained in this series of slides: “En fotos: Los datos que presentó Capriles sobre presuntas irregularidades del 14-A”, Noticias24, 16 April 2013.

<sup>27</sup> Capriles seems to have been comparing all votes cast with the number of voters corresponding to just one of the two voting machines at the polling station. “Elecciones Venezuela: La oposición presenta escandalosas cifras de las presuntas irregularidades del 14-A”, Lainformación.com, 22 April 2013.

<sup>28</sup> See, for example, “Maduro no sacó los votos que el CNE anunció, por eso queremos una auditoría: CaprilesRandoski (+video)”, Noticias24, 25 April 2013.

<sup>29</sup> Voters must identify themselves by presenting their ID card and scanning their fingerprints. The fingerprint evidence should show how many individuals voted more than once and where, although revealing that data would take some time. Access to the “cuadernos”, provided they have been correctly filled out by polling staff, could reveal whether, for example, one person signed and/or provided a fingerprint for several “phantom” voters.

<sup>30</sup> “Equipo de Capriles rechaza supervisar la auditoría de las presidenciales por los métodos empleados por CNE”, Europa Press, 30 April 2013.

The government insisted that the MUD was seeking violence in order to justify a coup d'état and foreign intervention. Citing April 2002, when an opposition march on the presidential palace to demand Chávez's resignation ended with a score of deaths and a short-lived coup, Maduro announced a ban on the march to the CNE, which Capriles then called off to avoid violence. The government claimed that dozens of government health clinics (CDIs) had been vandalised around the country and medical personnel attacked.<sup>31</sup> The human rights group Provea concluded that none of these incidents was authentic.<sup>32</sup> According to government sources, eight Maduro supporters were killed in clashes with the opposition. (The attorney general, Luisa Ortega Díaz, said that the number was nine.) Senior members of the government said Capriles and other MUD leaders were responsible, and the attorney general threatened them with prosecution.<sup>33</sup>

The government was unable to corroborate these claims. Press reports cast doubt on their authenticity.<sup>34</sup> Some who died appeared to have been killed in incidents unrelated to election protests, or to have been opposition rather than government sympathisers. The human rights organisation Foro Penal Venezolano said almost 200 people, including minors, had been detained by the national guard and subjected to physical and mental abuse.<sup>35</sup>

## IV. The Road Ahead

### A. Institutional Fragility

Venezuela's lack of strong, independent institutions is a major obstacle to a resolution of the crisis.<sup>36</sup> Chávez inherited institutions weakened by corruption and political interference, but his fourteen years in power exacerbated the problem.<sup>37</sup> His 1999 constitutional reform expanded the number of nominally autonomous branches of government from the traditional three to five,<sup>38</sup> but he purged them all over time of independent figures and packed them with his own supporters.<sup>39</sup> He was aided by the opposition's decision to boycott the 2005 legislative elections, leaving the government free to appoint its allies to key positions.

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<sup>31</sup> Vivian Sequera and Michael Weissenstein, "Venezuela wrestles over truth of bombing claims", Associated Press, 24 April 2013.

<sup>32</sup> "Provea corrobora falsedad en la denuncia de CDIs quemados en el país", Provea, 18 April 2013.

<sup>33</sup> See, for example, Milagros L. de Guereño, "El Gobierno venezolano llama 'asesino' a Capriles", Lavozdigital.es, 25 April 2013; and "Fiscal Luisa Ortega: Hechos violentos han dejado 9 personas fallecidas y 78 lesionadas", Agencia Venezolana de Noticias, 25 April 2013.

<sup>34</sup> Silverio Gonzalez Tellez, "La Limonera: Cuando los hechos no importan", Analítica.com, 1 May 2013.

<sup>35</sup> See, for example, Orcarina Espinoza, "Foro Penal denuncia agresiones 'graves' a detenidos por razones políticas", *El Universal*, 22 April 2013.

<sup>36</sup> Crisis Group interview, political analyst, Caracas, 4 May 2013.

<sup>37</sup> "A Decade Under Chávez", Human Rights Watch, September 2008; "Report on the State of the Independence of the Judiciary in Venezuela", Human Rights Foundation, September 2012.

<sup>38</sup> To the traditional executive, legislative and judicial branches, the 1999 constitution added an electoral branch (the CNE) and a citizens' branch (the ombudsman, Defensoría del Pueblo; the public prosecutor, Ministerio Público; and the state auditor, Contraloría General de la República). See section V, chapters IV and V of the constitution.

<sup>39</sup> "A Decade Under Chávez", op. cit.



The TSJ president (and head of the judicial branch), Luisa Estella Morales, had previously stated that separation of powers “weakens the state”.<sup>40</sup> In practice, the principle has been seriously undermined, despite a formal commitment to respect and promote Inter-American democracy and rule of law standards.<sup>41</sup>

A majority of judges do not have tenure. In 2010, according to Judge Morales’s account, at least 1,379 of the 1,914 fell into this category.<sup>42</sup> Even those who do have tenure can be removed at the president’s discretion, which adds to the pressures on judges in sensitive cases.<sup>43</sup> In 2009, Judge María Lourdes Afiuni, who released from custody a man many regarded as a political prisoner, was jailed after Chávez called her a “bandit” and said she should be imprisoned for 30 years.<sup>44</sup> She remains under house arrest, though without final disposition of corruption charges.<sup>45</sup> The former head of the TSJ criminal chamber, Eladio Aponte, who fled Venezuela in 2012 after being accused of links to drug trafficking, described a legal system run from the vice president’s office and in which judges and prosecutors took orders from the government.<sup>46</sup>

A number of senior posts in the nominally autonomous branches of government are held by stand-ins or functionaries whose terms have expired. Seven members of the TSJ, whose twelve-year terms ended on 27 December, have not been replaced. Their posts are held by stand-ins (*suplentes*). The state auditor (Contralor General de la República), Clodosbaldo Russián, died in June 2011, but the government has left the job to his deputy, Adelina González. Three of the five CNE board members (*rectores*), including the chair, Tibisay Lucena, should have been replaced in April, but the process of seeking their successors, which generally takes months, has not begun. The reason in all these cases appears to be the same: to impose candidates of its choice, the government requires a two-thirds majority in the National Assembly (110 of 165 seats). Since it has only 98, reaching a consensus with the opposition is essential.

## B. *The Role of the Armed Forces*

Chávez, himself an army officer, described his regime as “*cívico-militar*” (civilian-military).<sup>47</sup> He began by giving members of the armed forces the right to vote, hitherto denied them, and charging them with “national development” in the 1999 con-

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<sup>40</sup> “La división de poderes debilita al estado”, *El Universal*, 5 December 2009.

<sup>41</sup> Article 3 of the Inter-American Democratic Charter states that essential elements of representative democracy include, inter alia, respect for human rights and fundamental freedoms; access to and exercise of power in accordance with the rule of law; periodic, free, and fair elections based on secret balloting and universal suffrage; a pluralistic system of political parties and organisations; and the separation of powers and independence of the branches of government. Venezuela signed the Charter, with other OAS members, in Lima, 11 September 2001.

<sup>42</sup> See “La desconfianza en la justicia: el caso Afiuni y la independencia de la judicatura”, International Bar Association Instituto de Derechos Humanos, April 2011.

<sup>43</sup> “Report on the State of the Independence of the Judiciary in Venezuela”, Human Rights Foundation, September 2012.

<sup>44</sup> Alicia de la Rosa, “UN once again calls upon Venezuela to release Judge María Afiuni”, *El Universal*, 5 April 2013. “Venezuela’s Chávez criticized over hasty arrest of Judge”, *The Wall Street Journal*, 17 December 2009.

<sup>45</sup> Francisco Olivares, “Afiuni la presa del comandante”, *La Hoja del Norte*, Caracas, editorial, 2012.

<sup>46</sup> “Historias secretas de un juez de Venezuela”, SOiTV, [www.youtube.com/watch?v=uYIbEEGZZ6s](http://www.youtube.com/watch?v=uYIbEEGZZ6s).

<sup>47</sup> “Chávez: solo la unión cívico-militar garantizará la victoria de la revolución bolivariana”, Agencia Venezolana de Noticias, 4 August 2011.

stitution.<sup>48</sup> A series of reforms and new laws followed that both gave the president more direct control over the military (eg, extending his control over promotions to all officer ranks) and the latter more control over ordinary citizens. By mid-2008, at least 40 members, or former members, of the armed forces reportedly held senior positions in key civilian agencies.<sup>49</sup> Today, the military plays a significant role in crime prevention and “security zones”, in which certain civil rights are suspended, and guard all public buildings considered sensitive. Even the electricity industry is militarised, supposedly to prevent sabotage.

The armed forces (FANB) have five branches, of which one – the militia – does not appear in the constitution. Militia members swear allegiance to the revolution, not the state.<sup>50</sup> The other branches have also been obliged to adopt revolutionary slogans, in breach of their constitutional obligation to serve the whole nation.<sup>51</sup> Following the death of Chávez, his recently-appointed defence minister, Admiral Diego Molero, said the “mission of the armed forces” was to “put Nicolás Maduro in the presidency” and “give all those fascist people a good thrashing”.<sup>52</sup>

Chávez’s successors have activated the “civilian-military command”, a body he created but rarely mentioned.<sup>53</sup> This institution, which has no constitutional status, is ostensibly a form of collective leadership that blurs the distinction between party, government and state.<sup>54</sup> It made its first public appearance on the day Chávez’s death was announced<sup>55</sup> and appears to comprise the senior FANB officers, the executive branch (including most or all the cabinet) and the United Socialist Party of Venezuela (PSUV) state governors (half of whom are former military officers). But its precise role and structure have not been divulged, and it has no public budget.

Military analysts say the FANB is much more representative of society than this suggests, despite dominance in its upper ranks of officers loyal to the Bolivarian ideology.<sup>56</sup> Shortly before the election, Admiral Molero said there were groups in the armed forces intent on intervening in favour of the opposition.<sup>57</sup> As many as a dozen officers and a similar number of lower ranks were placed under arrest on election day, in circumstances that remain unclear.<sup>58</sup>

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<sup>48</sup> Articles 330, 328, 1999 Constitution.

<sup>49</sup> “Lista completa de militares que ocupan puestos en el gobierno del Presidente Chávez”, Reporte Confidencial, 17 July 2008.

<sup>50</sup> The high command and 125,000-strong militia swear public allegiance to the “revolution”, in defiance of the constitution. Phil Gunson, “Venezuela’s New Era”, *Foreign Policy* (online), 19 February 2013.

<sup>51</sup> Article 328 of the constitution states that the armed forces are an institution with no political affiliation, organised by the state to guarantee the nation’s independence and sovereignty.

<sup>52</sup> “Ministro Molero llamó a votar por Maduro ‘para dar en la madre a fascistas’”, *El Universal*, 6 March 2013.

<sup>53</sup> “Presidente Chávez anuncia creación de comando cívico-militar antigolpe”, PSUV, www.psuv.org.ve, 13 April 2012.

<sup>54</sup> Crisis Group interview, political analyst, Caracas, 4 May 2013.

<sup>55</sup> Hernan Lugo-Galicia, “Maduro sustenta gobierno en estructura colectiva de mando”, *El Nacional*, 29 April 2013.

<sup>56</sup> Crisis Group interview, military analyst, Caracas, 6 May 2013.

<sup>57</sup> “Molero: ‘Sí existen elementos, grupos, que quieren actuar en el interior de la Fuerza Armada’”, *Globovisión*, 3 April 2013.

<sup>58</sup> Javier Ignacio Mayorca, “Evalúan pase a retiro de militares retenidos el domingo”, *El Nacional*, 17 April 2013.

### C. *The Threat of Political Violence*

Despite years of highly polarised politics and one of the world's highest murder rates, political violence has remained relatively rare.<sup>59</sup> The number of political prisoners is small, and even in the face of constant threats, the opposition has for the most part been able to organise freely. In large measure, this reflects the personal control exerted by Chávez, through his charisma, authority and political skill.<sup>60</sup> Even during the years of greatest tension (2001-2004), when the opposition retained considerable influence in the armed forces, rebellions in the ranks were handled mostly without bloodshed.<sup>61</sup> The sudden departure from the scene of what may have been the one man capable of holding the regime together without resorting to outright dictatorship is thus a significant destabilising factor.<sup>62</sup>

The roots of the political movement that came to power with Chávez lie in a military alliance with leftist guerrillas of the Party of the Venezuelan Revolution (Partido de la Revolución Venezolana, PRV), to which Chávez's brother, Adán, belonged.<sup>63</sup> Its leaders have never renounced the use of force as a last resort.<sup>64</sup> It maintains armed civilian groups that play a mainly intimidatory role and emerge in numbers only at moments of tension, including during elections.<sup>65</sup>

The 14 April election has produced a significant shift in the balance of political forces. For the first time in many years, the government has been put on the defensive by an emboldened opposition with reason to hope that, if not already a majority in the country, it soon will be.<sup>66</sup> Moreover, the regime is far from monolithic. It is an uneasy alliance between civilian and military factions, spanning a range of ideological positions from the radical, pro-Cuban left to business-oriented pragmatists. Some state governors have their own political agendas. Chávez was able to hold this coalition together by force of personality. Maduro, who belongs to the radical civilian left and depends on a collective leadership, could see his position undermined by rivals, including National Assembly President Diosdado Cabello, a former army officer reputed to have major business interests.

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<sup>59</sup> For detailed consideration of this topic, see Crisis Group Report, *Violence and Politics in Venezuela*, op. cit.

<sup>60</sup> Crisis Group interview, political analyst, Caracas, 4 May 2013.

<sup>61</sup> The armed forces deposed and then reinstated President Chávez in the course of three days in April 2002, without firing a shot, although a number of civilians died, some at the hands of soldiers loyal to the president. In October that year, dissident officers, led by generals and admirals, began a takeover of the Plaza Francia in Altamira (east Caracas) that lasted several months. Their protest remained peaceful, and the government did not attempt to take the square by force. A civilian gunman shot dead several people in the square, and two soldiers who took part in the protest were murdered, along with a civilian, but in neither case was a firm link established to either the government or the opposition.

<sup>62</sup> Cabello stated on 23 March 2013: "En la revolución, Chávez es el cuerdo que nos ha enseñado. Era el muro de contención de muchas ideas locas que se nos ocurrían a nosotros .... El Presidente Chávez imponía su liderazgo, su prudencia y su consciencia". "Cabello: Chávez era el muro de contención de muchas ideas locas de nosotros", *El Universal*, 23 March 2013.

<sup>63</sup> Alberto Garrido, *Guerrilla y Conspiración Militar en Venezuela* (Caracas, 1999).

<sup>64</sup> "Adán Chávez llama al PSUV a no olvidar la lucha armada", *El Universal*, 27 June 2011.

<sup>65</sup> For a detailed description of the government's links to armed civilian groups, see Crisis Group Report, *Violence and Politics in Venezuela*, op. cit., pp. 17-19. On 15 April, former information minister – and Maduro campaign propaganda chief – Andrés Izarra urged via Twitter the use of Chavista mobs on motorcycles to intimidate the opposition, <https://twitter.com/IzarraDeVerdad/status/323997664456876033>.

<sup>66</sup> Crisis Group interview, political analyst, Caracas, 4 May 2013.

The events of 2002, when a coup briefly ousted Chávez, left his supporters convinced their opponents were fundamentally undemocratic. This has become an integral part of the government's political discourse. It asserts that the opposition is essentially conspiratorial and backed by a military superpower (the U.S.);<sup>67</sup> the MUD's apparent commitment to the electoral path is merely a front; and the true aim of its leadership is to overturn the revolution by force.

This discounts the evolution of the opposition since 2002, in particular the renunciation by its dominant, more moderate wing of extra-constitutional paths to regime change.<sup>68</sup> The disintegration of the old two-party system prior to Chávez's 1998 election victory had left the anti-Chávez forces in the hands of a variety of non-party actors, including the labour unions, the business confederation Fedecamaras, the media and elements of the military. It was only after failing to unseat the president through mass demonstrations, a coup attempt by extremist elements, a business-led strike and paralysis of the oil industry, a recall referendum and an election boycott that the opposition finally embarked on the arduous task of reconstructing its political leadership and challenging him exclusively through the ballot box.

The government's prediction of violence risks becoming a self-fulfilling prophecy, however, if it deliberately closes political space. The MUD leadership's decision to confront the government over the disputed election result has, temporarily at least, united the opposition. But there remains a small minority that has consistently questioned competing with the regime on its own terms and would be strengthened were the remaining democratic spaces to be closed.<sup>69</sup>

The trend since the election has been negative. The government's initial refusal to open all the ballot boxes led to several days of tension and sporadic violence. Maduro's decision to ban a MUD protest march to the CNE in central Caracas was an unconstitutional restriction of civil liberties. It was followed by his demand, in reference to their decision to carry live a press conference at which Capriles called for his supporters to make the march, that television channels such as Televen and Venevisión, along with other independent media, "define who they are with ... the people, or fascism".<sup>70</sup>

In the days following the election, reports from across the country and from all levels of the public administration – some accompanied by videos or sound recordings – spoke of a systematic policy of removing or demoting staff thought to have voted for Capriles.<sup>71</sup> The government responded to opposition complaints that the election had been stolen with a crack-down on the streets, detaining scores of young demonstrators and – according to human rights groups – subjecting them to abuse.<sup>72</sup>

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<sup>67</sup> See, for example, "Maduro denunció planes de magnicidio y golpismo", InfoRegión.com.ar, 3 May 2013.

<sup>68</sup> Crisis Group interview, political analyst, Caracas, 4 May 2013.

<sup>69</sup> Ibid.

<sup>70</sup> "Maduro a Venevisión y Televen: 'Definanse con quien están'", Noticias24 Carabobo, 16 April 2013. The only TV channel openly associated with the opposition, Globovisión, was recently sold to a businessman previously close to the government. "La Globovisión de Guillermo Zuloaga se acaba con su venta", *El Universal*, 6 May 2013.

<sup>71</sup> Crisis Group interview, Caracas, 29 April 2013; "Provea y la discriminación laboral por razones políticas", Provea, 26 April 2013.

<sup>72</sup> Ocarina Espinoza "Foro Penal denuncia agresiones graves a detenidos por razones políticas", *El Universal*, 22 April 2013.

It also accused Capriles and other MUD leaders of a violent plan to destabilise the country in collusion with a foreign power.<sup>73</sup>

Events in the National Assembly followed a similar pattern. Its president, Diosdado Cabello, refused to allow opposition legislators to address parliament unless they first recognised Maduro's victory. He followed this by informing opposition legislators who chaired commissions that they had been removed from their posts.<sup>74</sup> During a heated exchange in the chamber, William Dávila of the opposition Democratic Action (AD) party suffered a severe head wound when hit by a microphone thrown from the government benches.<sup>75</sup> Two weeks later, half a dozen opposition members were physically attacked in the chamber by members of the government benches. Julio Borges received facial injuries; María Corina Machado required a three-hour operation for a broken nose. The government blamed opposition "provocation".<sup>76</sup>

Nevertheless, there are some indications that a more pragmatic and inclusive line could prevail and that dialogue may be possible. On 7 May, government and opposition legislators approved a "gentlemen's agreement" on the need to eschew violence on the floor of the Assembly, a first step to possible normalisation of parliamentary activities. On the economic front, where unpopular measures are urgently required, the replacement as finance minister of the hard-liner Jorge Giordani by the more flexible Nelson Merentes, and an unexpected approach by the new agriculture minister, Yván Gil, to the private sector, are grounds for some optimism.<sup>77</sup> The appointment of a moderate, Calixto Ortega, as chargé d'affaires of the embassy in Washington, and a call for dialogue with the opposition by influential former Vice President José Vicente Rangel are also positive signs. If the immediate passion resulting on both sides over the disputed election can be calmed, there will be opportunities for their moderates to pursue such a dialogue and begin the healing process.

## V. Conclusion

The nature of the regime constructed by Hugo Chávez during his fourteen years in power has left Venezuelans with a series of difficult and delicate tasks as they cope with his sudden departure from the scene. None of his followers, including his chosen successor Nicolás Maduro, recently sworn in as president, has the authority to run Venezuela as he did. But the institutions of government that ought to ensure a relatively smooth transition were hollowed out to such an extent under Chávez that they now appear incapable of acting autonomously to fulfil their constitutional roles. Maduro's narrow and controversial electoral victory has left him weakened, in the country at large but also within the Chavista movement, precisely when strong lead-

<sup>73</sup> Alicia de la Rosa, "Maduro: en Venezuela lo que hay es una conspiración", *El Universal*, 19 April 2013. On 25 April, Interior Minister General Miguel Rodríguez Torres announced the arrest of a documentary film-maker from the U.S., Timothy Tracy, who he said was a spy involved in fomenting unrest in Venezuela as part of a destabilisation plan.

<sup>74</sup> "Diosdado Cabello destituyó a diputados que no reconocen como Presidente a Maduro", *Caracol Noticias*, 17 April 2013.

<sup>75</sup> "William Dávila y Julio Borges fueron agredidos en la AN: sin mediar palabras nos golpearon", *Noticias24*, 16 April 2013.

<sup>76</sup> "La violencia irrumpe en la Asamblea Nacional de Venezuela", *El País Internacional*, 1 May 2013.

<sup>77</sup> Shortly after his appointment, Gil attended the annual meeting of Fedeaagro, the main private-sector farmers' organisation, a first for a minister since Chávez took power. He has said he wants to work with private producers; Fedeaagro leaders have welcomed the approach.

ership is required to keep that movement together and address pressing economic, social and political issues.

With the country politically split into two almost equal parts, there is no future for a policy based on the permanent exclusion of one or the other. Chávez avoided large-scale repression and was careful to maintain democratic spaces – in the media, parliament and the streets – where the opposition could express dissent. If the Maduro government is intent on closing these and blocking a full and transparent audit of the election results, its rule will increasingly come to be seen by many as an imposition, with unpredictable, possibly violent consequences that could include implosion of the government due to insurmountable internal contradictions.

There are sporadic indications the government is open to a more flexible approach in certain areas. However, any overtures need to be accompanied by concrete measures to restore confidence in the country's institutions. By making it clear that it governs for all Venezuelans, not just its supporters, the government would go a long way toward restoring the social peace the country requires to come to terms with the end of the Chávez era.

Most of the international community has been indifferent or at least silent when assessing the deterioration of democracy and rule of law in Venezuela. Concern to protect economic interests and a perhaps excessive respect for internal affairs have meant that the deepening polarisation that now poses a clear and present danger of political violence and further instability has produced only episodic and mild reactions. It is time for stronger messages, particularly from neighbours and partners, such as Brazil. International organisations, including UNASUR and the OAS, must clearly signal concerns regarding regional instability. This should include a call to all parties for peaceful resolution of the political impasse, with respect for promotion of democracy, rule of law and human rights.

**Caracas/Bogotá/Brussels, 16 May 2013**



Appendix A: Map of Venezuela



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