

# Venezuela: Edge of the Precipice

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## I. Overview

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In December 2015, President Nicolás Maduro immediately recognised the opposition Democratic Unity (MUD) coalition's resounding legislative election victory. For the first time in over sixteen years, the prospect arose of political cohabitation between the alliance led by the ruling United Socialist Party of Venezuela (PSUV) and its opponents, and with it a unique opportunity to resolve the protracted political crisis by peaceful and democratic means. The government, however, has chosen confrontation, using control of the judiciary and other nominally autonomous branches of state to neutralise the opposition's control of the National Assembly. The MUD seeks a recall referendum, which the constitution allows after the mid-point of any elected term of office. With battle-lines drawn, both sides treat many of the other's decisions as legally and practically null and void. The government should cease efforts to block the referendum, and the international community should insist on a timely and effective dialogue with facilitators acceptable to both sides.

The conflict of powers is all the more damaging because the economic and social crisis has worsened significantly. The World Bank estimates that 2016 GDP will decline by over 10 per cent, and the International Monetary Fund (IMF) that inflation will approach 500 per cent in 2016 and more than 1,500 per cent in 2017. With no wage indexation, the population below the poverty line is growing fast. Food and other basic goods are scarce, and most Venezuelans cannot afford to buy enough if they can find them. The health service is close to collapse, with most vital medicines unavailable and hospitals experiencing a sharp increase in patient deaths. Most citizens spend hours every day queueing for price-controlled goods, with no guarantee of success. The government has refused to allow donors, private or public, to send food or medical aid, arguing that pressure to do so is a cover for foreign intervention so as to damage its reputation and ultimately remove it.

It has been apparent for some time that without some form of international engagement the crisis is unlikely to end peacefully and constitutionally. The government is doing all it can to hinder the MUD's efforts to cut short the Maduro presidency by legal means. If a recall referendum is not held this year, it would lose much of its effectiveness, since the constitution provides for the vice president to take over if the president leaves office in the last two years of his term, which ends in January 2019. If, however, Maduro was removed by referendum in 2016, a presidential elec-

tion would be required in 30 days. If it produced a MUD successor, the response of Chavista loyalists might pose serious governability problems.

The secretary general of the Organization of American States (OAS) has called for application of the Inter-American Democratic Charter, which provides for diplomatic initiatives, including good offices, in the event of an interruption of the democratic order in a member state. Simultaneously, two former Latin American presidents and a former Spanish premier, at the request of the Union of South American Nations (UNASUR) and endorsed by the June 2016 OAS General Assembly are seeking to promote a government-opposition dialogue. The former Spanish premier, José Luis Rodríguez Zapatero, briefed the OAS Permanent Council on 21 June on the exploratory stage of those efforts. No agreement has been reached on when that dialogue might actually start, and the MUD has described it as “thus far non-existent” and “convened by only one side”. The Council is scheduled to meet on 23 June to discuss the secretary general’s report.

To prevent an undemocratic, possibly violent outcome and facilitate an immediate solution to the rapidly worsening humanitarian crisis:

*The government should*

- ❑ declare a humanitarian emergency and permit delivery of external food and medical aid and its distribution by non-governmental agencies;
- ❑ refrain from using the Supreme Court to neutralise the elected legislature and permit a peaceful electoral solution to the political crisis by allowing the National Electoral Council (CNE) to exercise its constitutional role; and
- ❑ free all political prisoners, allow political exiles to return without reprisals and engage in direct, effective, and timely dialogue with the opposition.

*The MUD and National Assembly leadership should*

- ❑ prioritise national interest over partisan objectives;
- ❑ maintain their declared commitment to peaceful, constitutional resolution of the crisis; and
- ❑ make every effort to pursue an effective dialogue with the government.

*The regional community should*

- ❑ insist that the government permit emergency food and medical aid and prepare a thorough assessment of principal humanitarian needs and how to meet them;
- ❑ examine the crisis in the framework of the Inter-American Democratic Charter and urgently assist in restoration of constitutional norms and rule of law; and
- ❑ support efforts to pursue a structured, timely dialogue between the two sides and press the CNE to follow the constitutional timetable for a 2016 recall referendum.

## II. Social and Economic Crisis

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It has been evident since the beginning of the Maduro government, in April 2013, that urgent reforms are required to prevent economic and social chaos.<sup>1</sup> Despite a few abortive attempts, however, the government continues to insist it must respect the policy legacy of the late President Hugo Chávez (1999-2013).<sup>2</sup> Economic and financial mismanagement, combined with a collapse in the oil price, has left Venezuela facing a possible foreign debt default that, some analysts say, could come as soon as the fourth quarter of 2016. Meanwhile, social pressure is building as most of the population faces increasing hardship, combined with uncontrolled violent crime. Looting and lynching of alleged criminals have increased sharply in 2016, as have street protests, particularly over power cuts, lack of food and curtailment of political rights.<sup>3</sup>

### A. Medical Emergency

Illness can often be a death sentence, even for those with normally treatable diseases. Over 90 per cent of essential medicines are unobtainable in hospitals, the Doctors Federation says.<sup>4</sup> In pharmacies the situation is just as bad. In some cases, including treatments for neurological conditions such as Parkinson's disease, the deficit is close to 100 per cent. Only 42,000 of 110,000 HIV/AIDS patients receive anti-retroviral treatment. Overseas suppliers of drugs and raw materials for their manufacture are owed some \$6 billion. In early April public health specialists and the Catholic charity Caritas submitted a plan to the government to import donated medicines so as to meet part of the demand, but authorisation was refused. Senior government figures have called talk of a humanitarian crisis a pretext for foreign intervention. When parliament approved a resolution declaring a humanitarian emergency in January, government legislators voted against. The courts denied Cecodap, an NGO, an injunction to force the government to provide medicines.<sup>5</sup>

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<sup>1</sup> For analysis of the origins and consequences of the emergency, see Crisis Group Latin America Briefing N°33, *Venezuela: Unnatural Disaster*, 30 July 2015.

<sup>2</sup> "Somos instrumentos de un legado que inició el Comandante Chávez y perdurará por más de 100 años", *Venezolana de Televisión*, 12 April 2016.

<sup>3</sup> Venezuela is some 96 per cent dependent on oil for foreign earnings, which the government says fell from \$34.4 billion in 2011 to \$12.6 billion in 2015. Debt service payments due in October and November total more than \$5 billion in capital and interest. In May, gold and foreign currency reserves were \$12.17 billion, the lowest since 1996. There were 254 looting or attempted looting incidents in the first five months of 2016, according to the Observatorio Venezolano del Conflicto Social; 88 were in May, as well as 167 food protests, a 320 per cent increase over May 2015.

<sup>4</sup> Nicholas Casey, "Dying Infants and No Medicine: Inside Venezuela's Failing Hospitals", *The New York Times*, 15 May 2016. "Federación Médica de Venezuela: hay mas de 90% de escasez de medicinas en hospitales", *El Nacional*, 11 April 2016. Crisis Group interview, public health specialist, 12 May 2016.

<sup>5</sup> Luana Cabrera, "Fevarven: gobierno debe 6 millardos de dólares al gremio farmacéutico", *El Universal*, 1 February 2016. Crisis Group interviews, church representative, 23 April 2016; public health specialist, 12 May 2016. In an official communique, 28 October 2015, the defence minister, General-in-Chief Vladimir Padrino López, accused General John Kelly, head of U.S. Southern Command, of "creating the necessary conditions for intervening in our country, using as a pretext a possible humanitarian crisis". Laura Weffer, "Demanda por escasez de medicamentos para niños es negada por falta de pruebas", *elcucuyo.com*, 12 February 2016.

The advocacy group Transparency Venezuela says half of hospital operating theatres are out of service, and in ten of the 24 states there is no radiology treatment. The waiting list for operations nationwide is 100,000, and the hospital-bed deficit is put at 40,000. Neonatal deaths, a key indicator of health service quality, have risen dramatically. In a hospital in the eastern state of Sucre, 93 new-born babies are reported to have died in 2016's first quarter, compared with 247 in all 2015. In the Caracas University Hospital, 52 babies under four weeks old (about 10 per cent of those requiring intensive care) died in the first four months of 2016, a 33:1,000 rate. In the previous twelve months, the figure was 45 and the rate 19:1,000. A priest spoke of a visit to a neonatal unit in the interior during which he was asked to baptise fifteen babies, "because they are going to die". Within an hour, three did die.<sup>6</sup>

According to the annual health ministry report, neonatal deaths rose from 0.5 per cent to 2.01 per cent between 2014 and 2015 – an unprecedented increase. According to Julio Castro of the NGO Doctors for Health, the situation resembles that of the 1950s. Hospital doctors say they are in effect practising wartime medicine. Of every 100 patients treated in public hospitals in 2015, more than 30 died.<sup>7</sup>

## B. *Poverty and Hunger*

Government propaganda insists poverty and hunger are a thing of the past, and all Venezuelans eat three times a day. According to President Maduro, "there's no hunger .... We're going through difficult times, but the people have access to their goods". Foreign Minister Delcy Rodríguez told the OAS Permanent Council scarcity was invented as part of a campaign to discredit the government: "Venezuela has imported [enough] food to feed three countries the size of ours". The government says it distributed over 250,000 tons of food in nine weeks to 9 May, via new Local Supply and Production Committees (CLAPs). Polls, however, suggest hunger is spreading, and the CLAPs have been accused of political favouritism.<sup>8</sup>

A nationwide poll in April found over 86 per cent of respondents were buying less food, and nearly three fifths "much less", than normal. Those reporting they ate only twice a day rose from 24 per cent in February to 30.3 per cent, and those eating just once from 4.8 per cent to 13.4 per cent. Over 96 per cent of respondents in another survey that month described the supply of basic goods as "bad" or "very bad", and over 70 per cent blamed the government. The survey also found that scarcity of basic goods in Caracas (where the situation is generally best) was over 80 per cent.<sup>9</sup>

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<sup>6</sup> Red de Sociedades Científicas (RSCMV) report, 2013. Hospital Central Antonio Patricio de Alcalá, 5 April 2006 report. Crisis Group interview, 23 April 2016.

<sup>7</sup> Memoria y Cuenta 2015, Ministerio del Poder Popular para la Salud. Isayén Herrero, "En tres hospitales del país se cuentan 222 bebés muertos", *Tal Cual*, 8 May 2016. Health minister's annual report to parliament, 2016. The exact figure is 31.12 per cent. Anything above 2.5 per cent is considered excessive.

<sup>8</sup> Speeches, Maduro, Congreso de la Patria, 9 April 2016; Rodríguez, 5 May 2016. "254,533 toneladas métricas de alimentos y productos han distribuido los CLAP en 9 semanas", Agencia Venezolana de Noticias, 9 May 2016. Franz von Bergen, "La discriminación política opera en los CLAP al reparar comida", *El Nacional*, 29 May 2016.

<sup>9</sup> Croes, Gutiérrez y Asociados, Venebarómetro poll, April 2016. Encuesta Omnibus, Datanálisis, nationwide survey of 2,500 people, published 12 May, 2016. The exact figure from Datanálisis was 82.2 per cent, a weighted average of scarcity in retail channels referring to the number of basic products missing from the shelves in the average store.

Though President Maduro has raised the minimum wage more than sevenfold since taking office in 2013, it still lags behind increases in the price of food, which is the biggest expense for most people.<sup>10</sup> A nationwide survey of living conditions carried out by three major universities found in 2015 that 34.4 per cent of the population was “recently impoverished”, and nine of ten households could not afford to eat enough. It also determined that even those eating regularly mainly survived on carbohydrates, with little protein.<sup>11</sup> That kind of diet leaves people much more prone to chronic diseases such as diabetes and cardiovascular problems. There is also increasing evidence of stunted growth among children. “There is a critical situation which needs to be addressed”, a nutritionist said, but the government rejected as another effort to promote foreign intervention the National Food Emergency the National Assembly declared in February.<sup>12</sup>

### C. Collapsing Infrastructure

Adding to the misery is a severe electricity crisis, caused, the government says, by disruption in weather patterns brought about by the El Niño climate phenomenon. As the dry season neared its end, in late April/early May, the water level in the Guri dam, which supplies over 60 per cent of all electricity, threatened to fall to a point at which some turbines would have to be shut down. The government took drastic measures, including daily four-hour power-cuts, a reduction in working hours for public employees and Friday school closures. By late April, all but essential government services were restricted to two mornings a week. Power was cut off to the National Assembly after members insisted on working normal hours. Critics argue that the main reason for the power cuts is not the drought but failure to maintain enough thermal generating capacity to reduce dependence on hydro-electricity, despite \$14 billion in expenditures on thermal plants in 2011-2014, following the 2010 electricity crisis. Experts say only 6,700 MW of the 19,500 MW installed thermal generating capacity is actually available.<sup>13</sup>

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<sup>10</sup> The most recent wage rise was on 1 May 2016, taking the minimum wage to Bs 15,051. When Maduro came to office, it was Bs 2,047. Inflation in food and non-alcoholic beverage prices was 315 per cent in 2015 alone, according to the Central Bank (BCV). It has not published 2016 figures, but the economic consultancy Ecoanalítica puts accumulated price increases in the first four months at 169 per cent. The IMF projection for 2016 inflation is 481.5 per cent.

<sup>11</sup> “Encuesta sobre Condiciones de Vida en Venezuela” (Encovi), Universidad Simón Bolívar, Universidad Católica Andrés Bello & Universidad Central de Venezuela, November 2015. Armando Altuve, “A 87% de los venezolanos no les alcanza el sueldo para comer”, *elpitazo.com*, 31 March 2016. An economist called the decline in real incomes one of the most abrupt in Venezuelan history. Crisis Group interview, 16 May 2016.

<sup>12</sup> Crisis Group interview, Caracas, 9 May 2016. Janet Yucra, “AN decreto emergencia alimentaria”, *Notitarde*, 12 February 2016.

<sup>13</sup> “Presidente Maduro pide extremar ahorro energético para evitar un racionamiento eléctrico más fuerte en Venezuela”, *Venezolana de Televisión*, 11 April 2016. In mid-May, power was limited to three hours daily. Caracas was spared the scheduled blackouts, causing resentment elsewhere. “La reacción de Ramos Allup tras el corte de luz de la Asamblea Nacional”, *El Nacional Web*, 29 April 2016. “Qué está pasando con el sistema eléctrico? Por qué hay una crisis eléctrica?”, *prodavinci.com*, 25 February 2016. “Las causas de la crisis eléctrica son la corrupción, centralismo, politización e indolencia”, *La Patilla*, 3 May 2016. In May, the NGOs Transparency Venezuela and Provea demanded an investigation into corruption allegedly associated with government electricity expenditure under Chávez and Maduro, which they said was enough to have tripled the size of the system in place when Chávez came to power.

#### D. *Crime and Disorder*

According to Attorney General Luisa Ortega Díaz, there were 4,696 murders in the first quarter of 2016. The official total for 2015 was over 17,000, though NGO estimates were considerably higher.<sup>14</sup> But even the official January-March figure amounts to an annual rate of over 60 per 100,000, among the highest in the world, and exceeds murders in all 1998, the year before the present regime came to power.<sup>15</sup> According to a crime expert, murders were up 8 per cent in the first three months of 2016 and kidnappings 170 per cent. One reason, according to the source, is a 70 per cent deficit in police patrolling the streets. This has worsened in recent years, partly as a result of the growing number of officers murdered, on- and off-duty. Another reason is the impunity violent criminals enjoy. The Attorney General's annual report shows that 95 per cent of murders go unpunished; and 70 per cent of prisons, from which many crimes are organised, are reportedly run by the criminals themselves.<sup>16</sup>

The "mega-gang" is a growing phenomenon. Around ten, numbering as many as 200 members each and generally known by the leader's name, operate around the country. The most notorious is that of José Antonio Tovar, aka "El Picure" (the agouti), who terrorised Guárico state and the south of neighbouring Aragua until his death on 3 May in a 33-hour gun battle with police and National Guard troops. The gangs' strength grew after the government negotiated "peace zones" in which police were forbidden to pursue them. Their possession of assault rifles, hand grenades and other military weapons indicates complicity (or at least corruption) on the part of some members of the armed forces. At least one high-ranking civilian official is accused of tipping off El Picure to police raids.<sup>17</sup>

The government's response since June 2015 has been to attack the gangs with military-style Operations to Liberate and Protect the People (OLPs). These involve the National Police (PNB) the National Guard (GNB) and often the detective agency CICPC and the intelligence agency SEBIN. The government says it is combatting not only organised crime, but also Colombian-style paramilitaries with links to the opposition.<sup>18</sup> Human rights groups say the operations have led to many abuses, in-

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<sup>14</sup> "Fiscal general: Han perdido la vida 4,696 personas producto de la violencia", *El Correo del Orinoco*, 3 May 2016. 2015 Annual Report, Observatorio Venezolano de la Violencia (OVV); the group of academics puts the 2015 figure at almost 28,000, 90 per 100,000 inhabitants. The government stopped producing systematic official homicide statistics more than a decade ago.

<sup>15</sup> According to a ranking produced by a Mexican NGO, the Consejo Ciudadano para la Seguridad Pública y la Justicia Penal, Caracas was the world's most dangerous city in 2015, with over 119 murders per 100,000 inhabitants, and eight Venezuelan cities were in the top 50. In 1998, 4,550 people were murdered, according to what was then known as the Judicial Police (PTJ).

<sup>16</sup> Fermín Marmol García, *Globovisión (Análisis Situacional)*, 8 May 2016. Carlos D'Hoy, "Deficit de funcionarios golpea a la policía del estado Miranda", *El Universal*, 10 April 2016; Natalia Matamoros, "Solo recuperan el 3% de las armas robadas a funcionarios", *El Nacional*, 3 June 2016. Natalia Matamoros, "El pranato no encuentra freno en las políticas del gobierno", *El Tiempo* Puerto la Cruz, 23 March 2016. In Greater Caracas alone, 132 police officers were murdered in 2015.

<sup>17</sup> Carlos Nieto Palma, "Megabandas en Venezuela", Observatorio Venezolano del Crimen Organizado, 13 May 2016; "Al menos 10 mega-bandas criminales operan en Venezuela", EFE, 4 May 2016. Marco Negrón, "Que son las zonas de paz?", *Tal Cual*, 13 July 2015. "Destituyen a secretario de seguridad de Guárico por vínculos con El Picure", *El Universal*, 5 November 2015.

<sup>18</sup> On 30 May, the national police (PNB) and the intelligence service (SEBIN) took over the police force of Chacao municipality in Caracas, an opposition-run district. This followed the murder two days earlier of a senior retired general in which two Chacao police were allegedly implicated. One

cluding extrajudicial executions. The result is generally announced in terms of a body count, as well as the number and variety of weapons and amount of drugs or stolen goods recovered.<sup>19</sup>

The inability of the authorities to bring crime under control has contributed to growing anarchy on the streets, reflected in an increase in lynching and episodes of looting. It is hard to obtain accurate statistics on lynching, but the Attorney General said in early April that 26 cases were being investigated, two of which had resulted in the victim's death. Protests over food shortages, often accompanied by looting, were a daily occurrence by June. Particularly badly affected by looting was the eastern city of Cumaná, where unrest in June led to attacks on a score of commercial premises. The press reported over 400 arrests and at least three deaths. The vast majority of looting incidents involve the theft of food or beverages, often while they are being transported. There were 254 incidents of looting or attempted looting between January and May, according to the Venezuelan Observatory of Social Conflict.

### III. Political Standoff

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The opposition-controlled parliament, installed on 5 January, has faced a blanket refusal by the government to approve any of its laws. President Maduro has signed none, and the constitutional branch of the Supreme Court (TSJ) has declared them all either unconstitutional or inapplicable. The court has also deprived the parliament of its other key function, oversight of the executive, by strictly limiting its ability to hold officials to account and, ultimately, to censure them, and eliminating its power to veto emergency decrees. Maduro and other top officials have openly declared defiance of parliament, and the president has come close to explicitly threatening to shut it down. Pro-government crowds outside its building hurl insults at members, occasionally subjecting them to physical attack. All this is a *prima facie* breach of Article 3 of the Inter-American Democratic Charter.<sup>20</sup>

#### A. "Super-Majority" Quashed

Ahead of the installation of the new National Assembly, the TSJ admitted complaints from PSUV members concerning the December elections in various parts of the country. It issued a temporary injunction suspending proclamation of the four deputies

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had earlier reported the theft of his pistol. The government has presented the murder as evidence of opposition links to paramilitary operations.

<sup>19</sup> "Unchecked Power: Police and Military Raids in Low-income and Immigrant Communities in Venezuela", Human Rights Watch, 4 April 2016. In 2015, 245 people were killed by security forces during OLPs, according to the attorney general. Another 14,000 were temporarily detained, though fewer than 100 were charged. Mass evictions and deportations are also reported.

<sup>20</sup> "Nicolás Maduro: 'La Asamblea de Venezuela perdió vigencia'", runrun.es, 17 May 2016. "Agredieron a diputados en la Plaza Bolívar de Caracas", *El Nacional*, 3 March 2016. Article 3 reads: "Essential elements of representative democracy include, *inter alia*, respect for human rights and fundamental freedoms, access to and the exercise of power in accordance with the rule of law, the holding of periodic, free and fair elections based on secret balloting and universal suffrage as an expression of the sovereignty of the people, the pluralistic system of political parties and organisations and independence of the branches of government".

from Amazonas on grounds there was evidence of vote-buying.<sup>21</sup> Three of the four belong to the MUD. After an intense debate within the opposition, they requested their suspension pending the investigation. National Assembly Chairman Henry Ramos Allup has argued that the MUD had little choice, since the government intended to declare all parliamentary proceedings null and void if the TSJ ruling was not obeyed. However, there is still no sign of an investigation, and the legislators remain suspended. The CNE has offered no evidence that the vote in Amazonas was rigged, and the Union of South American Nations (UNASUR), whose electoral commission issued a report on the elections on 11 February, pronounced them to be clean.<sup>22</sup> The suspension of the three has had a major impact on the powers of the parliamentary majority.<sup>23</sup>

### B. *Laws Ruled Unconstitutional*

The TSJ quickly ruled all but one of the five laws passed by the National Assembly in the first four months of 2016 unconstitutional. The exception was a law to improve pension provisions, which was held to be constitutional but inapplicable without executive approval regarding financial viability. Struck down were an amnesty for political prisoners, a grant of property rights to beneficiaries of government housing schemes, and reforms to legislation governing the central bank and the TSJ itself.<sup>24</sup> The court also in effect repealed a major element of parliament's oversight powers, by ruling that "the political control exercised by the National Assembly over decrees establishing states of emergency does not affect their legitimacy, validity ... [or] juridical efficacy".<sup>25</sup> This came after the Assembly rejected an economic emergency decree issued by Maduro and opened the door for him to declare, in May, a more wide-ranging "state of exception" that granted him virtually unlimited powers, with no parliamentary oversight (see Section V below).

### C. *Restrictions Imposed on Parliament*

On 1 March, the constitutional branch of the TSJ placed severe limitations on the parliament's power to sanction government officials and intervened in the internal regulations governing parliamentary debates. It abolished, for example, the limit on the length of time a member can speak and imposed a 48-hour notice period for debates. More importantly, it in effect gave the government a veto over laws by requir-

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<sup>21</sup> On the ruling's legal and constitutional validity, see José Ignacio Hernández, "Luego de los 4 diputados suspendidos por el TSJ, Qué va a pasar?", *prodavinci.com*, 30 December 2015.

<sup>22</sup> Mariángel Castellanos, "TSJ tiene en el 'congelador' caso de los diputados de Amazonas", *caroatadigital.net*, 1 June 2016. In early June, Chairman Ramos Allup said the three Amazonas members would be reincorporated into the National Assembly, but this has yet to happen. "La Unasur no constató fraude en las pasadas legislativas venezolanas", *EFE*, 11 February 2016.

<sup>23</sup> The constitution stipulates that certain Assembly decisions require either a three-fifths or two-thirds majority. With the latter, the legislature can, for example, dismiss Supreme Court justices or convene an assembly to rewrite the constitution. With the three from Amazonas, the MUD would have 112 seats, exactly a two-thirds majority.

<sup>24</sup> See the OAS secretary general's Venezuela report (discussed below), 31 May 2016, pp. 36-40. Article 187 (paragraph 5) of the constitution assigns the right to "decree amnesties" to the National Assembly.

<sup>25</sup> According to Article 339 of the constitution, an emergency decree must be "presented, within 8 days of being issued, to the National Assembly for consideration and approval".



ing their financial viability to be approved by the executive and allowing the “people’s power” (an extra-constitutional power consisting of grass-roots organisations loyal to the government) to extend “consultation” on legislation for an indefinite period. The National Assembly leadership said it would ignore the ruling. On 3 March, parliament passed a resolution declaring it “non-existent” on grounds that it violated the law governing the TSJ.<sup>26</sup>

#### D. *Mutual De-recognition*

By May, the National Assembly and the TSJ were repeatedly challenging the constitutionality of each other’s actions, placing two key powers in direct confrontation. On 10 May, parliament adopted a resolution declaring that constitutional rule had broken down. Chairman Ramos Allup said it would disregard any unconstitutional TSJ rulings. The PSUV then asked the court to declare null and void any parliamentary sessions in which its rulings were not applied. On 17 May, President Maduro told the foreign press the National Assembly had “lost political relevance”, and it was “a matter of time before it disappears”. A week later, Vice President Aristóbulo Istúriz commented that for the government, “the National Assembly does not exist”, and Maduro said in a speech, “let’s see how long that National Assembly lasts you, Ramos Allup”.<sup>27</sup>

## IV. MUD vs. CNE

Four of five members of the CNE board are government loyalists.<sup>28</sup> Though the electronic system guarantees an accurate count, the playing field, when it comes to electoral rules and campaigning, is heavily tilted in the government’s favour, and the electoral authority acts at its behest. In response to the MUD’s decision to pursue a presidential recall referendum, Maduro has repeatedly stated, without offering a legal rationale, that this cannot be held until after 10 January 2017, when an opposition victory would not lead to an immediate new presidential election.<sup>29</sup>

The constitution (Article 72) states that 20 per cent of the electorate can request a recall referendum after the mid-point of the term (January 2016 in this case), a pro-

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<sup>26</sup> José Ignacio Hernández, “Estas son las 7 nuevas limitaciones que el TSJ impuso a la AN”, *prodavinci.com*, 23 April 2016. Among the legislature’s attributes, according to Article 187 of the constitution, is to “establish its regulations and apply the sanctions laid down therein”. Margioni Bermúdez, “Ramos Allup sobre sentencia del TSJ: no acataremos un recurso de hace 5 años que sacaron de ‘la nevera’”, *Panorama*, 28 April 2016. “Acuerdo con motivo de rechazar la Sentencia No. 9 del Tribunal Supremo de Justicia por medio de la cual limita las atribuciones constitucionales de la Asamblea Nacional”.

<sup>27</sup> “Maduro: Es cuestión de tiempo para que la Asamblea Nacional desaparezca”, *Panorama*, 17 May 2016. “Istúriz: si la AN no nos reconoce, nosotros no la reconocemos a ella”, *2001*, 24 May 2016. “Maduro a oposición: ‘Vamos a ver hasta cuando les dura esa Asamblea Nacional’”, *elestimulo.com*, 24 May 2016.

<sup>28</sup> For a description of how government branches’ lack of autonomy has contributed to the crisis, see Crisis Group Latin America Briefing N°28, *Venezuela: A House Divided*, 16 May 2013.

<sup>29</sup> For a more complete account of the tilted playing field, see Crisis Group Latin America Briefing N°34, *The End of Hegemony: What Next for Venezuela?*, 21 December 2015. Article 233 of the constitution states that if the president leaves office for whatever reason in the last two years of the term, the appointed vice president serves out its remainder.

cess the CNE is obliged to facilitate. For a recall to succeed, more than 25 per cent of registered voters must turn out, and cast more ballots against the president than he was elected with. In seeking to prevent a 2016 referendum, however, the CNE has applied conditions that are not in the constitution or its own prior resolutions. The consequence of this obstruction is that a potentially peaceful, electoral solution to the crisis, provided for in the constitution that Hugo Chávez introduced, has been jeopardised and the likelihood of a violent, unconstitutional outcome much increased.

#### A. *The Art of Foot-dragging*

Having decided to activate a presidential recall referendum on 9 March, the MUD asked the CNE to provide the forms on which to collect the signatures required to overcome the first hurdle the electoral authority has established. Under a 2006 CNE resolution, 1 per cent of the electorate (a little over 190,000 voters) must indicate approval before the signature drive for the referendum itself can take place. The CNE issued the forms after almost seven weeks, when the MUD threatened to march on its headquarters, and after several legislators had chained themselves to a staircase inside its building.<sup>30</sup> However, it added a condition to the requirement that the signatures be collected within 30 days: that these must include at least 1 per cent of the electoral rolls of each of the 23 states, plus the capital district.

The MUD announced it had reached its target within hours, in under three days said it had more than 2.5 million signatures and on 2 May delivered nearly two million of these. By regulations, the CNE then had five days to determine if the 1 per cent threshold had been reached. Board member Socorro Hernández announced, however, that it would take a month to check the signatures. The delay was due in part to a government demand that it allow a special commission, headed by leading PSUV politician and former CNE board member Jorge Rodríguez, to “verify” the signatures and challenge any it considered false. The CNE agreed to the demand, though there was no legal basis for it. Rodríguez concluded that the MUD had committed a “gigantic fraud” and sought the intervention of the TSJ.<sup>31</sup>

The CNE improvised a number of verification steps, including digitalising the petition forms and subjecting the fingerprints that regulations required of signatories to dactyloscopic examination. It also invalidated signatures and pages of the petition on various other grounds. For example, signatures of those who signed in a different state from the one in which they were registered to vote were rejected, though that had not been originally stipulated. If the form misspelled the president’s name, all ten signatures on it were rejected. The signature of Henrique Capriles, the opposition governor of Miranda state, former MUD presidential candidate and main referendum promoter, was invalidated this way. In all, over 600,000 signatures were eliminated.<sup>32</sup>

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<sup>30</sup> They were forcibly removed by National Guard troops; several journalists covering the incident were subsequently injured by pro-government activists.

<sup>31</sup> The MUD said it held some forms in reserve, in case the CNE invalidated many. Jorgenis Hernández, “Conozca el calendario del CNE para la revisión de las firmas para iniciar el referéndum revocatorio”, *El Nacional*, 12 May 2016. “Jorge Rodríguez: con las firmas entregadas al CNE, la oposición demuestra nuevamente fraude a la ley”, *Venezolana de Televisión*, 9 May 2016. “Jorge Rodríguez introdujo demanda ante el TSJ contra firmas falsas para el Revocatorio”, *runrun.es*, 13 June 2016.

<sup>32</sup> Alex Vásquez, “800,000 firmas en riesgo por cinco nuevas etapas de validación”, *El Nacional*, 20 May 2016. Eugenio Martínez, “CNE invalidará 6 % de las rúbricas porque ciudadanos firmaron en

## B. *Protests Curbed*

The opposition organised nationwide protests against the delays, but National Police (PNB) and National Guard (GNB) riot squads prevented them from reaching CNE offices in most cities. On 18 May, MUD leaders handed a letter demanding that the electoral authority observe the timetable in its own regulations to board member Luis Emilio Rondón, who received it within a police cordon several kilometres from the national CNE headquarters. Demonstrators who tried to get through police lines became involved in scuffles, and tear gas and plastic bullets were fired. At least six persons were still detained for that protest a week later, along with five employees of the state electricity company, Corpoelec, in Zulia state, arrested for alleged sabotage.<sup>33</sup> Human rights groups said there were credible reports that detainees had been tortured. On 9 June, legislators who went to the CNE to demand a date for conclusion of the validation process were attacked by government supporters, with apparent GNB collusion. MUD parliamentary leader Julio Borges, hit with a metal pipe, required surgery for nose and cheekbone fractures.<sup>34</sup>

On 18 May, an administrative court required the PNB, GNB and municipal authorities to protect CNE offices from “unauthorised or violent demonstrations” and urged the executive to consider declaring them “security zones”, off-limits to demonstrators.<sup>35</sup> A week later, Capriles called a demonstration in front of the court building that was poorly attended, suggesting government tactics were working.

## V. **State of Emergency**

President Maduro suspended constitutional guarantees on 13 May and concentrated additional power in his hands by decreeing a “state of exception and economic emergency”. He said the measure, to be in force for at least two months, was necessary to “denounce, neutralise and defeat foreign, external aggression”. The decree’s preamble alleged a conspiracy by the U.S., in collusion with the opposition, to overthrow the government, and also cited the “economic war” the government blames for inflation, scarcity and other ills, and the “El Niño” it argues is behind the persistent blackouts. Parliament rejected the decree on 17 May, but the Supreme Court ruled it constitutional and said the National Assembly had failed to act in a timely fashion. The

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estados donde no votan”, Análisis Político-Electoral, 24 May 2016. Almost 5 per cent of signatures were rejected for this reason. 1,352,052 signatures were admitted for fingerprint validation scheduled for 20-25 June; the CNE said it would take until 26 July to finalise the process after fingerprinting. “Lucena: Cualquier generación de violencia conllevará a la suspensión del proceso”, *elestimulo.com*, 10 June 2016.

<sup>33</sup> “Oposición fue cercada por GNB y PNB: no concretó marcha hasta el CNE”, *lapatilla.com*, 11 May 2016. Figures from the NGO Foro Penal Venezolano, whose director, Alfredo Romero, said via Twitter that these arrests brought the number of political prisoners to 96.

<sup>34</sup> Vanessa Moreno Lossana, “La historia de cómo detuvieron a cada uno de los ocho detenidos por agredir a 3 PNB”, *elcocuyo.com*, 27 May 2016; “Foro Penal registro 41 detenciones durante manifestación opositora del 18M”, Foro Penal Venezolano, 19 May 2016; Maria Alejandra Morales, “La brutal tortura a Jheremy Lugo, uno de los detenidos el 18M”, *El Nacional*, 26 May 2016. Melanie Delgado, “Colectivos le partieron la nariz a Julio Borges frente al CNE”, *caraotadigital.net*, 9 June 2016.

<sup>35</sup> Sentence 2016-0120, Corte Segunda de lo Contencioso Administrativo.

decree does not state explicitly which constitutional guarantees are suspended but in effect grants the president unlimited power to “take the measures he considers necessary” to counteract the alleged threat.<sup>36</sup>

These measures could cover issues ranging from food distribution to foreign policy and electricity supply. The decree, which aroused immediate concern among constitutionalists and human rights advocates, grants ill-defined special powers also to the armed forces and civilian bodies loyal to the “revolution” and refers, among other things, to “special ... plans to guarantee public order”. It also strips more powers from the National Assembly, allowing the president to spend money and sign contracts without its supervision and freeing ministers from the risk of censure motions. Five days after issuance, Maduro threatened to declare a state of “internal commotion” but left unclear what that might involve.<sup>37</sup> Nevertheless, in the face of a grave economic and social crisis and a major push by the opposition to unseat him by constitutional means, he appears to be moving to eliminate remaining democratic space and rule, in effect, by executive decree alone.

## VI. Charter, Dialogue or Both?

On 31 May, Luis Almagro, OAS secretary general, published a 132-page report on the deteriorating situation.<sup>38</sup> Its key conclusion was that Venezuela is experiencing an “alteration of the constitutional order” requiring invocation of the Inter-American Democratic Charter, pursuant to its Article 20. The Charter, in force since 2001, holds that representative democracy, including rule of law, separation of powers and respect for human rights, is the sine qua non of OAS membership, and any interruption is an “insurmountable obstacle” to continued participation in its constituent bodies. The secretary general or any member state may convene a meeting of the Permanent Council – ambassadors to the OAS – to discuss and take appropriate steps. If the matter cannot be resolved diplomatically, the Charter provides for suspension of the country concerned if two thirds of member states agree.

The Venezuelan government strongly objects to invocation of the Charter, arguing Almagro is exceeding his powers and acting as an agent of the opposition and the U.S. Its ambassador to the OAS, Bernardo Álvarez, published a letter in April calling any such attempt “a *prima facie* case for requesting [his] removal from office”, asserting

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<sup>36</sup> Decreto Estado de Excepción y Emergencia Económica, Gaceta Extraordinaria no. 6,227, 13 May 2016. Article 27 of the Ley Orgánica sobre los Estados de Excepción (2001) gives parliament eight days to approve or reject (as does the constitution) once an emergency decree is received and requires the TSJ to refrain from issuing an opinion if it rejects. The president signed the decree on Friday, 13 May; official publication was on Monday, 16 May. The National Assembly does not hold ordinary sessions on Saturdays, Sundays or Mondays but debated and rejected it on Tuesday, 17 May. On 1 June, the Inter-American Human Rights Commission expressed “concern” over a number of the decree’s aspects, including vague terminology, assignment of public order duties to the army and suspension of parliament’s constitutional prerogatives.

<sup>37</sup> José Ignacio Hernández, “Qué es lo que más debe preocuparnos del nuevo estado de excepción?”, *prodavinci.com*, 17 May 2016. “Maduro amenaza con aplicar ‘Estado de Conmoción Interna’”, *Tal Cual*, 18 May 2016.

<sup>38</sup> The report is in the form of a letter to the chairman of the OAS Permanent Council requesting an “urgent session” be held between 10 and 20 June to debate the Venezuela situation under the terms of the Inter-American Democratic Charter.

that only the executive branch of a member state can invoke the Charter and insisting there was no “breakdown or alteration of the constitutional order” in Venezuela.<sup>39</sup>

A day after Almagro’s report was released, and without debating its content (which had yet to be translated from Spanish), the Permanent Council adopted a more conciliatory proposal, initially sponsored by Argentina, referring to the need for “effective” dialogue. It specifically offered support for the initiative undertaken by former Spanish premier José Luis Rodríguez Zapatero and two former Latin American presidents (Leonel Fernández of the Dominican Republic and Martín Torrijos of Panama) at UNASUR’s behest (see below). It also cited the need for respect for human rights and consolidation of representative democracy.<sup>40</sup> When Zapatero briefed the Permanent Council on 21 June, he said he hoped dialogue might begin within a month and listed five key proposed dialogue themes, although he acknowledged there was no agreement from either side as to agenda or timing.<sup>41</sup>

Application of the Charter and the dialogue initiative are frequently presented as alternatives.<sup>42</sup> The Charter is perceived, even by many who are not Caracas allies, as overly confrontational, though it specifically authorises good offices, including diplomatic missions; the UNASUR dialogue process, though backed by Washington, the Vatican, the European Union and others, is regarded by the Venezuelan opposition as a futile exercise promoted by the government as a delaying tactic. Consequently, neither initiative has prospered. There are signs, however, that the two approaches may not be incompatible.

Venezuela was not on the agenda of the mid-June OAS General Assembly in the Dominican Republic, but it was the dominant political issue. Unexpectedly, U.S. Secretary of State John Kerry and Venezuelan Foreign Minister Delcy Rodríguez held a bilateral meeting described as “cordial” and focused on the “process” for a renewed channel of communication, but without progress on underlying dimensions of the crisis. Prior to the General Assembly but not made known, the Venezuelan government lifted its hold on some 80 visas for U.S. embassy staff.<sup>43</sup>

At the conclusion of the General Assembly, fifteen states, including the U.S., Brazil and all members of UNASUR except Venezuela, Ecuador and Bolivia, issued a joint statement “on the Situation” in Venezuela. It urged a “timely” and “effective” dialogue and respect for the principles of representative democracy and called specifically on the Maduro government “to guarantee due process and human rights”. Though it did not mention the presidential recall referendum, it urged “fair and timely constitutional mechanisms”, which is universally understood as a reference to that proce-

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<sup>39</sup> “Embajador Álvarez: Actuación de Almagro vía Carta Democrática usurparía la soberanía del Estado”, *Noticia al Día*, 19 April 2016. Almagro reacted angrily to the suggestion he is an agent of imperialism, warning Maduro in an 18 May letter that if he did not allow the recall referendum to proceed before the end of the year, he would become a “petty dictator”.

<sup>40</sup> “Declaration of the Permanent Council about the situation in the Bolivarian Republic of Venezuela”, Permanent Council Declaration 63 (2076/16).

<sup>41</sup> The proposed themes were: separation of powers and reinforcement of democratic institutions, including pluralism; reconciliation and pacification, including amnesties, pardons, truth and reparations; regular elections and constitutional provisions related to elections; fundamental rights; and disarmament. Video of the Special Meeting of the Permanent Council of the OAS, 21 June 2016, available on OAS website.

<sup>42</sup> Federico Rivas Molina, “Para Argentina, la Carta Democrática de la OEA no resolverá la crisis en Venezuela”, *El País Internacional*, 2 June 2016.

<sup>43</sup> Crisis Group interviews, various delegations to the OAS.

ture.<sup>44</sup> The signatories also expressed support for the Permanent Council's consideration of the secretary general's report, due to occur on 23 June, two days after the Zapatero mission reported directly to it.

## VII. Conclusion

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Venezuela is immersed in a full-fledged political, economic, social and humanitarian crisis that worsens daily. There is no war, but thousands are dying needlessly due to violent crime and the health system's collapse. Hunger and malnutrition are spreading, and vital services are breaking down. Having refused to come to terms with the opposition's 2015 legislative election victory, the government is systematically blocking all peaceful, democratic routes forward. Manipulation of the nominally autonomous Supreme Court and National Electoral Council allows it to frustrate the electorate's will by reducing the National Assembly to little more than a talking shop. In response, the opposition has concluded that, in the absence of a reversal in the Maduro government's actions, its only course is to change the government. Constitutional mechanisms exist, on paper at least, to allow citizens to vote on these questions. Government and ruling party officials, however, assert that the opposition is planning a coup. President Maduro has suspended constitutional guarantees in order to retain power.

Somewhat belatedly, the international community now appears aware of the situation's gravity. The Vatican in particular, which under Pope Francis I has paid close attention and has long been applying discreet pressure on the government to promote dialogue, has stepped up efforts. As noted, the OAS secretary general has formally requested activation of the Inter-American Democratic Charter. Though the initiative promoted by Ernesto Samper, UNASUR's secretary general and former president of Colombia, and led by José Luis Rodríguez Zapatero, former Spanish premier, has so far not borne fruit, the sides have held talks with its facilitators. The statement of a majority of the UNASUR countries pressing the government for a "timely, national, inclusive, and effective political dialogue" constitutes a new international reality.

Crisis Group has consistently urged structured dialogue and international mediation to resolve Venezuela's crisis. Its February 2016 Crisis Alert called for the Inter-American Democratic Charter to be invoked as the most expeditious means of involving neighbours in concerted diplomacy. The OAS Permanent Council should give its secretary general a mandate to seek institutional arrangements for overcoming the crisis. Member states should note in particular that the principal obstacle at present is the government's refusal to allow the electorate to exercise its constitutional right to vote on possible recall of the president. There is no inherent contradiction between the Charter, which allows a range of diplomatic options, and facilitation of dialogue. Any dialogue initiative should start by insisting that humanitarian aid be allowed in and political prisoners be released, and continue to urge the government to respect the demand for an electoral solution to the crisis.

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<sup>44</sup> "Statement by Foreign Ministers and Heads of Delegation on the Situation in the Bolivarian Republic of Venezuela", Santo Domingo, Dominican Republic, 15 June 2016. Signed by Argentina, Belize, Brazil, Canada, Chile, Colombia, Costa Rica, Guatemala, Honduras, Mexico, Panama, Paraguay, Peru, U.S., Uruguay.

The crisis can be addressed effectively and rapidly if there is political will to do so, though medium- and long-term support will be needed to ensure that complex, structural issues affecting the economy and the state are ultimately resolved without jeopardising governability. The means to embark on the process exist in the constitution and treaties to which Venezuela is party. The longer the delay, the more needless suffering will be inflicted on its citizens, and repercussions will be felt beyond its borders.

**Caracas/Brussels, 23 June 2016**

Appendix A: Map of Venezuela

