

# Policy Briefing

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## Venezuela: Tipping Point

### I. Overview

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Violence has exacerbated an already tense political situation in Venezuela and made finding a solution both more urgent and more complex. Nationwide unrest, following deaths at a protest called by student leaders and a sector of the opposition on 12 February, sparked a political crisis that involved Venezuela's neighbours in efforts to find a negotiated settlement. By early May it had cost around 40 lives and led to scores of human rights violations. Failure to end the violence through negotiations has hindered the task of resolving serious social and economic problems. It has also damaged the credibility of regional institutions. To reverse the crisis and turn this tipping point into an opportunity, both parties must commit to a political dialogue based on the constitution; the government must abide by its human rights commitments and restore the rule of law and the separation of powers; the international community must provide both sides with guarantees, technical assistance and political impetus.

Long anticipated, by Crisis Group among others, the unrest is the result of two irreconcilable interpretations of recent Venezuelan history. According to the government of President Nicolás Maduro, its origins lie in a conspiracy by members of the opposition Democratic Unity (MUD) alliance and foreign powers (in particular the U.S.) to overthrow his government and restore the "oligarchic" regime that lost power to Maduro's predecessor and mentor Hugo Chávez in the 1998 elections. Their prime motivation, according to this interpretation, is control of the country's reserves of crude oil, by some estimates the biggest in the world. For the MUD, whose principal leaders were caught off-guard by the intensity and duration of the protests, the root cause is the government's insistence on radical socialist policies and its lack of respect for the constitution; consequent economic hardship, crime and political feuding exacerbate matters.

This polarisation reverberated beyond Venezuela's borders. Some allies in the region rallied to support a beleaguered, elected government and initially dismissed the opposition as a violent minority, while others deplored an excessive use of force, alleged human rights violations by government security forces and advocated a mediated settlement. International actors are increasingly concerned, and with good reason, that a failure to contain, and ultimately resolve, the crisis, could have serious, region-wide consequences. A number of important pending issues in the region, including the current peace talks aimed at ending Colombia's decades-old guerrilla war and the incipient reform process in Cuba, have a significant Venezuelan dimension.

A still fragile dialogue, which began in late March and is facilitated by the foreign ministers of the Union of South American Nations (UNASUR) and the Vatican, has brought the government and at least a part of the MUD leadership to the negotiating table. To be successful, it must address the key factors that led to the crisis. It needs to lay the basis for the political consensus that is vital if the economic crisis, as well as violent crime, are to be tackled effectively. Above all, it must restore the autonomy of key state institutions, especially the Supreme Court (TSJ), the Office of the Attorney General (Fiscalía General) and the electoral authority (CNE), and staff them with genuinely independent, respected professionals. The violence on the streets is partly a consequence of the fact that peaceful conflict resolution has been blocked by the government's direct, executive control of the channels through which it would normally be effected.

This briefing sets out to answer key questions relating to the crisis, analysing the origins of the conflict, the detonators of violence and the most relevant players. Looking ahead at the options available for Venezuela and providing an assessment of the current dialogue, it formulates ideas regarding the essential elements required to secure a lasting peace and how the region and broader international community may best contribute.

## II. What Are the Origins of the Conflict?

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Venezuela is a highly polarised country, but political violence has, with rare exceptions, been mostly verbal since the current regime came to power fifteen years ago.<sup>1</sup> Nonetheless, the violent street clashes that have cost dozens of lives since mid-February 2014 are deeply rooted in the mutual distrust of supporters and opponents of the late President Hugo Chávez (1999-2013). The *chavistas* see opposition leaders as representing an ousted "bourgeoisie", backed by Washington and anxious to restore the much-reviled pre-1999 regime, which was characterised by widespread poverty, corruption and social exclusion. The opposition is increasingly convinced that the government is engaged in installing a totalitarian, corrupt political and economic system, which must be halted urgently.<sup>2</sup>

### A. Government by Confrontation

Almost from the outset, Chávez set about channelling the earnings from the country's state-owned oil corporation, PDVSA, into social welfare projects and redistributing much existing wealth and property, especially farmland. His confrontational approach and style triggered massive street protests, strikes and lockouts, and in April 2002 he was briefly ousted from power, amid street violence in which 19 people died, only to be returned to the presidential palace just two days later when the coup failed. The turbulence, which later included an opposition-led shutdown of the vital oil industry, ended with an internationally mediated agreement to put the dispute to a mid-term recall referendum as provided for in the 1999 constitution. The

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<sup>1</sup> See Crisis Group Latin America Report N°38, *Violence and Politics in Venezuela*, 17 August 2011.

<sup>2</sup> For a first assessment of the risks of political violence in Venezuela, see Crisis Group Latin America Briefings N°5, *Venezuela: Headed Toward Civil War?*, 10 May 2004, and N°28 *Venezuela: A House Divided*, 16 May 2013.

deal was brokered by the Carter Center, the UN Development Programme (UNDP) and the Organisation of American States (OAS).<sup>3</sup>

Several aspects of this agreement were not implemented, however.<sup>4</sup> Despite acceptance by large numbers of international observers, the 2004 referendum – which the president won handsomely – was dismissed as a fraud by the opposition,<sup>5</sup> which then boycotted the 2005 parliamentary elections. This has made the opposition wary of entering into any negotiations with the government, even if outside mediators are involved. Attitudes on the government side had already been hardened by the 2002 coup attempt and its aftermath. The *chavistas* had come to believe that their opponents' ultimate aim was violent regime-change, even when the latter were ostensibly engaged in electoral politics.

To further complicate matters, the government – which had already exerted political control over the Supreme Court (TSJ) – took advantage of its domination of parliament following the opposition boycott to appoint, or reappoint, political allies to the board of the electoral authority and as attorney general (Fiscalía General), comptroller-general (Contralor General) and ombudsman (Defensor del Pueblo).<sup>6</sup> This, combined with the government's ongoing domination of the legislature, largely closed off institutional forms of conflict resolution at the national level.<sup>7</sup>

Chávez was re-elected with almost 63 per cent of the votes in 2006, after declaring himself a revolutionary socialist. But in 2007, thanks in part to a campaign by students, his bid to change the constitution along socialist lines, install a “communal state” and remove presidential term limits was narrowly rejected in a referendum.<sup>8</sup> Undaunted, he held a fresh vote on indefinite re-election, which he won, and pro-

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<sup>3</sup> See “Acuerdo entre la representación del gobierno de la República Bolivariana de Venezuela y los factores políticos y sociales que lo apoyan y la coordinadora democrática y las organizaciones políticas y de la sociedad civil que la conforman”, press release, OAS, 29 May 2003, as culmination of the broader process labelled “Mesa de negociación y acuerdos” held between November 2002 and May 2003.

<sup>4</sup> For example, an independent truth commission was never set up, the commitment to disarm the civilian population was not enshrined in law for another decade, and even after the law was passed, some of those civilian *colectivos* were never disarmed.

<sup>5</sup> Concrete proof was not presented, though a peer-reviewed statistical analysis of the results later found significant anomalies. Maria M. Febres and Bernardo Márquez, “A Statistical Approach to Assess Referendum Results: The Venezuelan Recall Referendum 2004”, *International Statistical Review*, vol. 74, no. 3 (2006), p. 379. Jennifer McCoy, Carter Center election observation head in Venezuela, found the anomalies had not affected the referendum outcome. Jennifer McCoy, “The 2004 Venezuelan Recall Referendum”, *Taiwan Journal of Democracy*, vol. 2, no. 1 (July 2006) and Jennifer McCoy, “The Referendum in Venezuela: One Act in an Unfinished Drama”, *Journal of Democracy*, vol. 16, issue 1 (January 2005).

<sup>6</sup> “A Decade Under Chávez”, Human Rights Watch, September 2008, p. 45. The government has a 4:1 advantage on the board of the electoral commission (CNE), two of whose members were militants of the ruling United Socialist Party of Venezuela (PSUV) when their names were put forward, despite a constitutional ban on politically affiliated candidates. The Ombudsman, Gabriela Ramírez, is a former PSUV legislator.

<sup>7</sup> Thanks to changes in electoral law and constituency boundaries, in 2010 the government was able to convert a minority of the popular vote into a 98:65 seat parliamentary majority, despite the constitution's provision of proportional representation. “La MUD: nuevos desafíos”, *Veneconomía*, vol. 28, no.1 (October 2010). Under the chairmanship of PSUV Vice President Diosdado Cabello, the role of the opposition in parliament has been reduced to a minimum.

<sup>8</sup> The “primary political unit” of the new state was to be the city, comprising communes designed to serve as the basis for the construction of socialism. Although the constitutional reform was rejected by a margin of 1.41 per cent of the popular vote, the government pressed ahead with the formation of communes and the diversion of public resources to them. The National Assembly approved the “Ley Orgánica de las Comunas” in December 2010, as part of a package of similar laws.

ceeded to use his control of state institutions to enshrine in law other aspects of the rejected reform package. To bolster his position further, he implemented a series of reforms of the law governing the armed forces, creating a partisan militia force and modifying the role of the military to include the defence not only of the nation but also the revolution. He maintained a confrontational style and favoured the politics of exclusion, continuously disparaging the domestic opposition and anyone else who opposed his ideas. Chávez also increasingly played the class struggle card, framing every debate in terms of a clash between the poor (by definition, represented by the revolution) and the rich, whose interests, he argued, were represented by the “counter-revolution”. This left no room for any middle ground.

### B. *Death of the Leader*

Chávez was re-elected for a third time, once again by a large margin, in October 2012. The inauguration ceremony was due to take place in January, but he was unable to attend. Having been diagnosed with cancer in June 2011, he was in intensive care in Havana, Cuba, and his death, announced on 5 March 2013, triggered a snap presidential election that his anointed successor, Foreign Minister Nicolás Maduro, won narrowly. Lacking both his mentor’s charisma and political skills, Maduro faced an immediate challenge to his legitimacy when the losing candidate, Henrique Capriles of the MUD, governor of the Miranda state, refused to accept the result.<sup>9</sup> The CNE and the TSJ, however, rejected Capriles’ claims of irregularities and Maduro was sworn in.

Unable to rule by sheer force of personality, Maduro has necessarily adopted a more collegiate form of government within his own coalition.<sup>10</sup> But the need to respect “Chávez’ legacy”<sup>11</sup> has hindered the urgent task of tackling the increasingly grave economic crisis, whose symptoms include dwindling foreign reserves, several currency devaluations, a massive fiscal deficit, inflation of over 56 per cent in 2013 and scarcity of basic goods so severe that in early 2014 the central bank decided no longer to publish the figures.<sup>12</sup> While Maduro had to manage competing factions within his Bolivarian coalition, he remained uncompromising in his dealings with the opposition, condemning agreements and consensus building as betrayals of the legacy of the “comandante”. It was against this background that political violence erupted in February 2014.

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<sup>9</sup> See Crisis Group Briefing, *Venezuela: A House Divided*, op. cit.

<sup>10</sup> This takes the form of a so-called “Political-Military Command of the Revolution”, which includes the armed forces high command, leading cabinet members and other high-level civilians. It has no constitutional status, however.

<sup>11</sup> The “legacy” is contained in the Plan for the Fatherland (Plan de la Patria), which among other things commits the government to establishing a “communal state”. According to the government, this plan, presented by Chávez as his electoral platform in 2012, is now law and must be obeyed even by officials elected on the MUD’s platform.

<sup>12</sup> In January, over a quarter of basic food items were unavailable. The February figure was not published and the central bank chairman, Nelson Merentes, said in March the index had become “political” and would henceforth be confidential. “El Gobierno no quiere que la escasez se convierta en un dato político”, *El Universal*, 27 March 2014. Despite this, the March figure (29.4 per cent) was published.

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### III. What Sparked the Violence on the Streets?

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The Maduro government has argued that the opposition turned to violence in February in frustration at its failure to win power through the ballot box.<sup>13</sup> Not only had Maduro won the presidential election in April, the government notes, but the overall vote for government candidates in the December 2013 local elections showed a much wider margin between government and opposition, suggesting that the president had gained support. The opposition not only questions the legitimacy of the April election but says the crisis stems from the government's insistence on pursuing failed policies and refusing to listen to at least half the electorate that is clamouring for change.

The frustration felt by some in the opposition over what they saw as the MUD's reluctance to confront the government, as well as increasing tension among students worried about issues as diverse as campus crime and job opportunities, also fuelled the conflict.<sup>14</sup> The spark that ignited this political tinderbox has yet to be clearly identified; it is possible that some sectors may have been interested in provoking violence. However, what is clear is that violent repression of student protests fanned the flames to the extent that none of the actors involved is now in full control of the situation.<sup>15</sup>

#### A. *A Divided Opposition*

After his challenge to the election result was blocked, Henrique Capriles, MUD presidential candidate and emerging leader, switched his attention to long-overdue local elections, scheduled for 8 December 2013. In a bid to prove that the opposition represented a majority of the electorate, he launched a national campaign to turn these elections into a plebiscite on the rule of Nicolás Maduro. The gamble was unsuccessful. The MUD increased its control at municipal level from 56 to 75 (of 337) mayoralties and won in a number of large cities, but its share of the overall vote was less than 40 per cent, compared with the 49 per cent its presidential candidate, Capriles, had obtained in April. Analysts pointed to opposition voters' disillusionment with the electoral route after the experience of April and to a popular, pre-election move by Maduro to force retailers, especially of household appliances, to implement drastic price reductions.<sup>16</sup>

With no more elections until legislative polls in late 2015, the MUD was presented with a dilemma. As an electoral alliance, it risked sinking into temporary irrelevance unless it could redefine its role. Its challenge to the presidential election results was not followed by a clear strategy or message to its constituencies. Despite the government's victory, popular discontent was on the increase. The worsening economic situation was not the only factor.

Despondency over the seemingly inexorable rise in violent crime was exacerbated when, on 7 January, an actress and former Miss Venezuela, Mónica Spear, and her

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<sup>13</sup> "A un año de gestión de calle, Maduro pide trabajar para cerrar el ciclo al golpismo", *Telesur*, 26 April 2014.

<sup>14</sup> "5 claves para entender las protestas estudiantiles en Venezuela", *Prodavinci*, 10 February 2014.

<sup>15</sup> Crisis Group interviews, political analyst, Caracas, 25 March 2014; Latin American diplomats, Bogotá, 5 May 2014, Mexico City, 29 April 2014.

<sup>16</sup> On 8 November 2013, Maduro ordered the military occupation of the Daka chain of domestic appliance stores and the forcible sale of its merchandise at "fair" prices, triggering lengthy queues and some looting. The move was repeated across large parts of the retail sector; it helped improve the government's poll ratings and avoid a protest vote in December. Luis Vicente León, "¿Quién ganó las elecciones municipales del 8-D", *Prodavinci*, 9 December 2013.

husband were shot dead, and their five-year-old daughter injured, by highway robbers near Valencia. Such was the outcry that the government for the first time invited opposition mayors and governors to contribute to a discussion on how to combat crime.<sup>17</sup> Capriles and Maduro shook hands at the first session. These talks, however, did not bring the two sides closer to political dialogue.

A group of opposition politicians then outflanked the MUD. Leopoldo López of the Popular Will (VP) party, independent legislator María Corina Machado and the mayor of metropolitan Caracas, Antonio Ledezma, announced on 23 January that they would hold open-air assemblies, beginning on 2 February, to debate how best to achieve short-term change within the framework of the constitution.<sup>18</sup> Their argument, rejected by moderate MUD leaders – including Capriles – was that a shortcut was required because the situation was too serious to await an electoral solution and that the institutions were in any case too compromised by their identification with the government.<sup>19</sup> They dubbed their movement “La Salida”, a term that could be taken as “the way out” or “the departure” (presumably of Maduro), and said they were coordinating with students and workers’ organisations among others. Their proposed routes included the resignation of the president, a constitutional amendment and a mid-term recall referendum (not possible until 2016).<sup>20</sup> The government responded by accusing them of fomenting a coup d’état.<sup>21</sup>

#### B. *Student Protests Meet Repression*

Simultaneously, university student protests at campus crime were taking place across the country. On 4 February, a demonstration in San Cristóbal, capital of the south-western border state of Táchira, against an attempted rape on campus was met with tear gas and several students arrests. Two days later, a group of unidentified, masked youths staged a violent attack on the residence of Táchira state governor José Gregorio Vielma Mora (a member of the ruling PSUV), which the governor blamed on Leopoldo López. Three student leaders were subsequently detained and sent to jail in Coro, some 500km away, in a move that angered students and led to further protests in a number of cities.

On 12 February, students staged a march on the offices of Attorney General Luisa Ortega Díaz in Caracas, demanding the release of those imprisoned and a solution to the crime problem. They were accompanied by the leaders of La Salida. Ortega refused to receive the students gathered in the street outside her office and the leaders of the march called for participants to disperse. However, a group remained behind and violence broke out, with rocks and petrol bombs hurled at the building and several police vehicles set alight.

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<sup>17</sup> Venezuela is one of the most violent countries on earth, with an official homicide rate of 39 per 100,000 inhabitants, which some academic experts regard as a significant underestimate. In neighbouring Colombia, affected by an internal armed conflict, this rate is of around 32. For an analysis of the factors underlying the violence, see “Tres Fases de la Violencia Homicida en Venezuela”, Observatorio Venezolano de la Violencia, December 2013.

<sup>18</sup> 23 January is the anniversary of the overthrow of Venezuela’s last military dictator, General Marcos Pérez Jiménez, in 1958.

<sup>19</sup> “Dirigentes invitan a discutir ‘la salida al desastre’ del Gobierno”, *El Universal*, 24 January 2014.

<sup>20</sup> Jesenia Freitez Guedez, “Hay que protestar”, *Tal Cual*, op-ed, 24 January 2014.

<sup>21</sup> “El presidente Maduro acusa un intento de golpe de estado en Venezuela”, interview with President Maduro at CNN, 7 March 2014; “Nicolás Maduro acusa a los Estados Unidos de buscar golpe en Venezuela”, Noticias Univisión, 9 April 2014.

The first deaths occurred: in separate incidents just fifteen minutes apart, Bassil Dacosta, a 23-year-old student, and Juan (“Juancho”) Montoya, a key leader of the pro-government radicals commonly referred to as the “*colectivos*”,<sup>22</sup> were both shot in the head.<sup>23</sup> A third victim, Robert Redmond, died in a similar fashion in eastern Caracas that evening.<sup>24</sup> The government immediately blamed the opposition and two days later an arrest warrant was issued for Leopoldo López, on charges that initially included murder, as well as arson and grievous bodily harm.<sup>25</sup> After a week in hiding, López called a mass demonstration to announce that, though innocent, he was turning himself in. He was sent to the military prison of Ramo Verde outside Caracas – a move that further infuriated the protesters.

An analysis of amateur and security-camera video by the newspaper *Últimas Noticias* showed that the gunmen in the streets near the attorney general’s office were uniformed members of the state intelligence service (Servicio Bolivariano de Inteligencia, SEBIN) and armed members of the “*colectivos*”.<sup>26</sup> The investigation also indicated that the removal of a police line had allowed demonstrators into the street where the SEBIN were waiting, along with pro-government gunmen. President Maduro responded that individual SEBIN members had defied his instructions to stay off the streets. He removed the head of the SEBIN and those identified in the videos were placed under arrest.<sup>27</sup> On 11 April, José Ramón Perdomo, a SEBIN officer, was formally charged with the murder of Bassil Dacosta. The murder of Juan Montoya, however, has not been clarified. Some press reports suggest that he may have been killed by his own comrades, either accidentally or deliberately.<sup>28</sup>

It was the 12 February events that multiplied the violence in the streets, deepening the political crisis. Protests subsequently took two basic forms: mass opposition rallies – sometimes dispersed with tear gas, water cannon and plastic bullets – that on occasions gathered hundreds of thousands of people; and the so-called *guarim-*

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<sup>22</sup> *Colectivos* (“collectives”) is a term that covers pro-government community organisations of various kinds, most of them non-violent. But it has come to be used in particular for armed groups of the revolutionary left that have proliferated under *chavista* governments. Their nature and origins are described in Crisis Group Briefing, *Violence and Politics in Venezuela*, op. cit.

<sup>23</sup> Montoya was at the time of his death coordinator of the General Revolutionary Secretariat, an umbrella group formed of around 100 *colectivos*. He was simultaneously an active-duty member of the Caracas municipal police and a leader of the shadowy Carapaicas urban guerrilla group. He was arrested, but never convicted, for his alleged involvement in a 2010 bomb attack on the building housing the main employers’ organisation, Fedecámaras. “La Conexión Carapaica”, *El Universal*, 20 August 2010.

<sup>24</sup> Redmond was among those who had carried the body of the dying Dacosta.

<sup>25</sup> Prosecutors eventually charged him with arson, property damage, conspiracy and instigating criminal offences. “Fiscalía General presenta acusación contra Leopoldo López”, *El Universal*, 4 April 2014.

<sup>26</sup> “Funcionarios del sebin disparando con funcionarios de policaracas contra estudiantes el 12F 2014”, video, Youtube, 19 February 2014, <http://bit.ly/1japgiS>.

<sup>27</sup> The head of the SEBIN, General Miguel Rodríguez Torres, was named interior minister by Maduro after he became president, but retained the SEBIN post until January 2014, when he was replaced by General Manuel Bernal, reportedly a close ally of his. “San Miguel: cambios en inteligencia consolidan poder de Rodríguez Torres”, *El Universal*, 10 January 2014. On 11 April, Luisa Ortega Díaz said SEBIN officer José Ramón Perdomo had been charged with the murder of Dacosta and arrest warrants had been issued for two other people believed to have been involved.

<sup>28</sup> “Asesinos de Bassil Da Costa y Juan Montoya no serían los mismos”, *Últimas Noticias*, 2 April 2014. “Johnny Montoya: ‘A Juancho lo mataron los colectivos’”, *2001*, 28 February 2014.

*bas* or street barricades, generally erected at night in opposition-held areas.<sup>29</sup> In cities such as San Cristóbal and Mérida, the barricades were huge, semi-permanent affairs, defended by masked youths seeking to stop security forces entering their neighbourhoods. Many barricades, however, especially in Caracas, were much more flimsy, though occasionally set alight. Nightly battles between demonstrators and the security forces (mainly National Police, PNB, and National Guard, GNB) took place in and around the Plaza Francia in Altamira and nearby Chacao in eastern Caracas.

Capriles and moderate MUD leaders argued against the barricades, saying the violence only played into the hands of the government. Student leaders and politicians of La Salida were more circumspect, calling for non-violent protest but stopping short of condemning the *guarimbas*.

#### IV. Who Are the Key Players?

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Both sides have a fragmented leadership, more apparent on the opposition side than the government's because the latter is less transparent. As noted above, the death of Hugo Chávez deprived the revolution of its founder and unquestioned leader, leaving its various factions to work out a more consensual form of decision-making that has at times seemed to produce paralysis, though it has thus far been successful in minimising public splits. One of these fault lines, within the pro-government camp, is between the military faction associated with the 1992 coup attempt and the civilian radicals, widely regarded as being closer to the Castro regime in Cuba.<sup>30</sup>

The MUD, which succeeded in forging a united electoral front and holding primaries, reached its apogee in the April 2013 election. Intensive, nationwide campaigning by Capriles energised the movement as never before. But the MUD is still prone to division outside the campaign season. Not only is La Salida challenging Capriles and other moderates, but the revival of the student movement has further complicated the task of speaking with a single opposition voice. Additionally, there is a regional element to the protests. In the western border states of Táchira (where the student movement began) and Mérida, where President Maduro has claimed paramilitaries from Colombia are fuelling chaos,<sup>31</sup> the situation is especially polarised. The MUD would be hard pressed to oblige protesters there to adhere to an agreement negotiated and signed in Caracas.

##### A. The Government

President Nicolás Maduro, a one-time far-left trade union activist, was scarcely an unknown factor when he won the April 2013 election.<sup>32</sup> He was foreign minister for six years under Chávez, and had served as president of the National Assembly. But he had remained a subordinate and there were conflicting views as to how he would

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<sup>29</sup> The term "*guarimba*" in contemporary Venezuelan usage refers to a theory of resistance based on the idea that people should erect barricades in their neighbourhoods and then retreat to their homes.

<sup>30</sup> "Sobrevivirá o sucumbirá el chavismo?", *El Universal*, 11 March 2013.

<sup>31</sup> "Maduro: Paramilitares quieren crear caos en Táchira", Agencia Venezolana de Noticias, 30 March 2014.

<sup>32</sup> Maduro belonged in his youth to the Marxist-Leninist Socialist League party. In 1986-1987 he underwent political training in Cuba. He later became a leader of Caracas metro workers. An ally of Chávez since shortly after the 1992 coup, he was a member of the 1999 Constituent Assembly and later of the newly-created National Assembly, which he chaired from 2005 to 2006.

behave once he took over the top job. Some saw him as by nature a man of dialogue,<sup>33</sup> but his discourse from the outset of his presidency has been radical and uncompromising. He has emphasised that he sees his role as fulfilling “the legacy of Chávez” as embodied in the “Plan for the Fatherland” (*Plan de la Patria*)<sup>34</sup> and if necessary “radicalising the revolution”. Some see him as a prisoner of ideological and military hardliners.

Economically, Maduro’s attempts at mild reform have often been reportedly blocked or delayed by Planning Minister Jorge Giordani,<sup>35</sup> a proponent of orthodox central planning. Somewhat more pragmatic is the head of the economic cabinet, Energy Minister Rafael Ramírez, who also chairs the state oil company PDVSA.

On the political and military front, Diosdado Cabello, vice president of the ruling PSUV and president of the National Assembly, is usually identified as heading the hardline faction.<sup>36</sup> As an army lieutenant, Cabello took part in Chávez’s February 1992 coup attempt, and although he did not return to active service after spending time in prison, his contemporaries are now generals and he is believed to wield significant influence within the military.<sup>37</sup> Another faction identified by some commentators is that associated with a group of ex-military state governors who took part in Chávez’s 1992 coup attempt. In late February, one of them, José Gregorio Vielma Mora of Táchira, briefly joined calls for the release of political prisoners and admitted to “excesses” in the repression, before retracting his remarks a few hours later.<sup>38</sup>

The government exercises unquestioned control over parliament, in which opposition members’ rights have been severely restricted and whose legislative faculties have been partially transferred to the presidency through an enabling law.<sup>39</sup> It has also seriously curtailed local democracy by a series of mechanisms, including slashing the budgets of state and municipal governments and transferring their resources and powers to unelected officials and grassroots organisations identified with the ruling party.<sup>40</sup>

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<sup>33</sup> “Maduro, entre los moderados (Merentes) y los radicales (Giordani)”, *Infolatam*, 29 August 2013. See also Roger Santodomingo, “De Verde a Maduro”, *Editorial Debate*, Bogotá, 2013, p. 34.

<sup>34</sup> The five “historical objectives” of the *Plan de la Patria* are to consolidate national independence; continue building 21st-century Bolivarian socialism; turn Venezuela into a social, economic and political power; help develop a “pluripolar” world and hence achieve peace on earth; and preserve life on the planet and save the human race. Nicolás Maduro Moros, “Plan de la Patria: Segundo plan socialista de desarrollo económico y social de la nación, 2013-2019”, document to the National Assembly, 28 September 2013.

<sup>35</sup> Giordani has reportedly been particularly reluctant to see the free market play any role in setting the exchange rate. “Tipo de cambio flexible regirá en el Sicad II”, *El Nacional*, 27 February 2014.

<sup>36</sup> The late Hugo Chávez continues to hold the PSUV presidency.

<sup>37</sup> On 31 January 2014, Cabello gave a public demonstration of his influence over the armed forces by dismissing 43 senior officers in the western border state of Zulia, officially as part of an anti-smuggling offensive. It is unknown whether charges were brought against any of them. “Removidos 43 oficiales de alto nivel de puestos fronterizos del Zulia”, Agencia Venezolana de Noticias, 30 January 2014.

<sup>38</sup> “Vielma Mora aboga por la liberación de Simonovis y López”, *El Nacional*, 24 February 2014.

<sup>39</sup> For example, despite holding 64 out of 165 seats, the opposition chairs none of the permanent parliamentary commissions. National Assembly Chairman Diosdado Cabello replaced the four opposition members who chaired commissions in April, 2013. “Destituidos diputados de la MUD que presidían comisiones permanentes en la AN”, *El Nacional*, 17 April 2013.

<sup>40</sup> The case of Caracas metropolitan mayor Antonio Ledezma is emblematic. After he was elected in 2008, almost all his powers and budget were transferred by the government to the unelected “head of the capital district”, Jacqueline Faria. See “Chávez nombra jefa de gobierno en Caracas”, BBC Mundo, 15 April 2009.

## B. *The Opposition*

The MUD is an alliance of political parties at both national and regional levels.<sup>41</sup> Its decisions are taken by the fourteen opposition parties with the greatest electoral support, together with a rotating representative of the others. Its core steering group (“G7”) consists of the biggest parties.<sup>42</sup> Ramon Guillermo Avelado, a former congressman for the Christian-democrat Copei party, is executive secretary, an avowedly neutral position. Since its formation in 2008, the MUD has succeeded in building a common political platform and presenting united candidacies for most elections at all levels, including in 2012 and 2013.

Capriles holds no formal position in the MUD: the post of “leader of the opposition” does not exist. His main rival, Leopoldo López, who, like him, was a co-founder of Justice First (PJ) in 2000 but subsequently split with the party, launched Popular Will (VP) in 2009. In 2008, he was barred by the government from holding public office for six years, frustrating his bid to be metropolitan mayor of Caracas.<sup>43</sup> He pulled out of the MUD primaries in 2012 and became Capriles’ campaign manager. A more confrontational figure than the cautious Capriles, López joined forces with Caracas metropolitan mayor Antonio Ledezma of the Courageous People Alliance (ABP) and independent congresswoman María Corina Machado in early 2014 in “La Salida” to demand a change of government. This move was frowned on by the moderates in the MUD. Capriles, whose ability to appeal to disaffected *chavistas* had helped broaden the opposition’s voter base, saw his leadership challenged by a faction whose message seemed intended to polarise, not unite, the electorate.

The alliance came under further strain when the moderates, in the name of the MUD, agreed to discuss with the government in April, while “La Salida” made its participation contingent on a series of conditions and the students refused to talk with a government that continued to beat and jail protesters (see Section VII). The government has accused members of the MUD of an “insurrectional conspiracy” involving outside forces, including former Colombian President Alvaro Uribe and the U.S. State Department. Interior Minister Rodríguez Torres says 58 foreigners involved in the conspiracy have been arrested. Previously, on 25 March, Maduro had announced the arrest of three air force generals on charges of conspiring against the government, and another 30 members of the armed forces were later said to have been detained. The opposition has dismissed the allegations as fantasy.<sup>44</sup>

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<sup>41</sup> “Acuerdo sobre el funcionamiento de la MUD”, MUD website, [www.unidadvenezuela.org](http://www.unidadvenezuela.org), 19 January 2011.

<sup>42</sup> Membership of the core group has varied, but usually includes representatives of Un Nuevo Tiempo (UNT), Copei, Acción Democrática (AD), Primero Justicia (PJ), Proyecto Venezuela (PV), Voluntad Popular (VP), La Causa R and Avanzada Progresista (AP). Antonio Ledezma, mayor of greater Caracas and head of Alianza Bravo Pueblo (ABP), has observer status.

<sup>43</sup> The ban was imposed by the comptroller-general for alleged corruption, though López was never prosecuted. On 1 September 2011, the Inter-American Court of Human Rights found that the government had violated his political rights, but Venezuela refused to accept the court’s ruling that they should be restored.

<sup>44</sup> The MUD’s Delsa Solórzano, one of those accused of conspiring, said the minister was accusing the opposition of “things that never happened”. “Solórzano: Rodríguez Torres le miente al país para ocultar su incapacidad”, *Ultimas Noticias*, 5 May 2014.

### C. *The Student Movement*

The main private and autonomous universities have long been a bastion of opposition support.<sup>45</sup> Only rarely, however, have students taken to the streets as a group for reasons that go beyond university issues, though they did so in 2007 over the closure of TV channel RCTV and Chávez's proposed constitutional reform.<sup>46</sup> In 2014 their calls for effective anti-crime measures fused with the political cause espoused by La Salida. A demonstration by students in the city of San Cristóbal on 4 February marked the start of the latest protests, whose main protagonists have been students.<sup>47</sup> Particularly prominent among them are Juan Requesens of the Central University (UCV) in Caracas and Gaby Arellano of the University of Los Andes (ULA) in Mérida.

Their demands have rapidly evolved and are now much more overtly political. On 4 March, in Merida, they launched the Patriotic Students' and People's Junta, which rejected talks with what they described as a totalitarian regime.<sup>48</sup> Although student leaders held a meeting with UNASUR foreign ministers on 26 March, at which they presented evidence of government repression of the protests, they said they did not recognise UNASUR as mediators because of its member governments' support for Maduro. Despite their radical stance, however, the student movement is as divided as the MUD over tactics.<sup>49</sup> Some of its leaders are independent, while others (including Gaby Arellano, who belongs to VP, and Juan Requesens, a member of AD) are party activists. As a group, the students have been keen to maintain their autonomy from the parties. As prime movers on the streets, they will need to be included if dialogue is to reduce tensions. Although they have not taken part in talks so far, they sent a letter outlining their position to Maduro, which was delivered by Avelo of the MUD at the first, televised session (see below, Section VII). However, at the time of writing, student leaders continue to insist that the conditions for dialogue do not exist. On 22 April they announced that they would continue their protests but also take their message to the neighbourhoods, in an attempt to gather support from traditional *chavista* barrios.<sup>50</sup>

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<sup>45</sup> Hundreds of thousands of students attend state-run universities that do not have autonomous status and in which student leaders are not elected. The government points to their non-participation in the protests as evidence that protesters are a tiny minority of students. There are 25 "traditional", pre-1999 universities, most of them public, in which students elect their own leaders. Only a tiny minority (roughly 2 per cent in the case of the Universidad Central de Venezuela, UCV, in Caracas) of these are *chavistas*. Crisis Group, university rector, Caracas, 25 March 2014.

<sup>46</sup> RCTV, the country's most popular and traditional TV channel, closed down on 28 May 2007 after the government refused to renew its licence. Its editorial line was strongly anti-Chávez and it was replaced by a government-run channel. Student protests failed to sway the government's decision. See "Venezuela: TV shutdown harms free expression", Human Rights Watch, 22 May 2007; "Medida contra RCTV vista en el exterior por los medios de comunicación", Globovisión Noticias, 28 May 2007.

<sup>47</sup> Luisa Ortega Díaz said in early May that of 197 people still in jail, only fourteen had been able to prove they were students. "Justicia y Valores", Unión Radio, 1 May 2014. However, Alfredo Romero of the Venezuelan Penal Forum said on the same date that over 80 per cent of those arrested and more than half of those detained pending trial were students. Crisis Group interview, Caracas, 1 May 2014.

<sup>48</sup> "Manifiesto de Mérida", press release, Junta Patriótica Estudiantil y Popular, 4 March 2014. In the manifesto the junta demanded "the withdrawal of all Cuban military forces" from Venezuela, the disbanding and disarming of the *colectivos* and an amnesty for political prisoners and exiles.

<sup>49</sup> Crisis Group interview, university rector, Caracas, 26 March 2014.

<sup>50</sup> "Estudiantes anuncian segunda etapa de protestas", *El Nacional*, 23 April 2014.

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## V. Who Is Responsible for the Violence?

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Both sides have blamed each other for the deaths and injuries that have occurred since the disturbances started. Each has focused primarily on the victims from its own side, while casting doubt on the other's accusations.

According to Attorney General Luisa Ortega Díaz, the death toll had reached 41 by 8 May, with 813 people injured.<sup>51</sup> 32 of the dead (including a member of the prosecution service) were civilians and the remainder police and military personnel. In 22 cases the cause of death was a gunshot wound, often to the head, implying either that they were targeted or that gunmen were shooting at random, at head-height. Other victims died in accidents on the barricades, while one was allegedly beaten to death by the National Guard.<sup>52</sup> The government has consistently argued that the majority of deaths were caused by the opposition.<sup>53</sup> However, human rights organisations, including Amnesty International and the UN High Commissioner for Human Rights, have expressed concern over "excessive use of force" by security forces involved in riot control.<sup>54</sup> Among the complaints have been the use of live ammunition, improper use of riot control equipment such as tear gas, water cannon and plastic bullets and the beating of detainees.<sup>55</sup>

According to the Venezuelan Observatory of Social Conflict (OVCS), the *colectivos* (which the observatory refers to as "paramilitaries") were responsible for at least 437 violent attacks on demonstrations in the first quarter of 2014, with most cases resulting in gunshot wounds.<sup>56</sup> Several deaths have been attributed to them, including that of former beauty queen Génesis Carmona, shot in the head in the city of Valencia on 19 February while taking part in a protest. Prior to her death, *colectivo* members were filmed entering the local headquarters of the GNB, known as Core 2. Eyewitnesses said Carmona was hit as she and others fled gunfire from armed civilians on

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<sup>51</sup> "Violencia derechista en Venezuela ha generado 41 muertos y 813 heridos", Agencia Venezolana de Noticias, 8 May 2014.

<sup>52</sup> Alejandro Márquez, a 43-year-old systems engineer, died on 23 February after several days in a coma, following his arrest in the Candelaria district of central Caracas, by the National Guard for attempting to film them with his cellphone. National Assembly President Diosdado Cabello accused Márquez of being a hired killer (*sicario*) sent to assassinate Maduro, and showed photographs of him in uniform with weapons. The photographs, taken from Márquez's Facebook page, related to a sport called Airsoft, in which participants use replica weapons. Lisseth Boon, "Niegan que Alejandro Márquez haya sido un paramilitar", *El Mundo Economía y Negocios*, 25 February 2014.

<sup>53</sup> On 3 April, Maduro said, "those who have promoted the 'guarimbas' and the violence are responsible for 95 per cent of the Venezuelans who have lost their lives during the protests".

<sup>54</sup> "Venezuela: Political spiral of violence a threat to the rule of law", Amnesty International, April 2014; "Venezuela: UN human rights chief urges halt to violence, inflammatory rhetoric", press release, UN News Center, 28 February 2014. See also "Punished for Protesting: Rights Violations in Venezuela's Streets, Detention Centres and Justice System", Human Rights Watch, May 2014.

<sup>55</sup> Plastic bullets have repeatedly been fired at demonstrators from close range by GNB personnel, often causing severe injuries. On 18 February, Geraldine Moreno, 23, was shot in the face with plastic bullets in Valencia and died of her injuries four days later. On 5 May, the attorney general reported that the National Guard had handed over to prosecutors two members of the GNB allegedly responsible for the killing. "Padres de Geraldine Moreno esperan conocer expediente del caso de su hija", *El Nacional*, 10 April 2014. By early May, Moreno's parents had still not been given access to the case files. Crisis Group interview, Alfredo Romero of the Venezuelan Penal Forum (FPV), 1 May 2014. "GNB entregó a responsables de homicidio de Geraldine Moreno", *El Nacional*, 5 May 2014.

<sup>56</sup> "Conflictividad social en Venezuela en Marzo de 2014", press release, Observatorio de Conflictos, 9 April 2014. See also "Punished for Protesting", op. cit., pp. 12-19.

motorcycles and on foot.<sup>57</sup> The OVCS said a public instruction from President Maduro for the *colectivos* and other pro-government groups to take action against protesters led to a “spiral of violence” beginning in early March.<sup>58</sup> Maduro and other government spokesmen have complained that the media has demonised the *colectivos*. Yet there is abundant photographic and video evidence of their violent behaviour, often in what appears to be close coordination with security forces.<sup>59</sup>

Human rights organisations have denounced the unusually large number of allegations of torture and other forms of ill-treatment. By the end of April, the Venezuelan Penal Forum (FPV), a group of lawyers who provide free legal assistance to victims of alleged human rights abuses, said it had received over 500 complaints of torture and had documented 80 of these.<sup>60</sup> The FPV said every detainee has recounted abuses, ranging from beatings and electric shocks to sodomy with a rifle barrel, as well as death threats and being doused with petrol and told they would be set alight.<sup>61</sup> On 5 May, Human Rights Watch said that abuses during the protests formed “part of a systematic practice by the Venezuelan security forces”, and that courts and prosecutors routinely denied detainees their due process rights.<sup>62</sup> On 15 May, the attorney general said her office was investigating 160 cases of alleged human rights violations, including two involving murder and two of torture, and that twelve members of the security forces had been detained, while a further twelve had been conditionally released.<sup>63</sup>

In contrast to the abundant evidence linking security forces and pro-government civilians to deaths and injuries, it is unclear whether some in the opposition used firearms. In any case, the evidence on this is weak. The only deaths that appear clearly linked to the protesters are those involving accidents caused by barricades, including the use of barbed wire or other obstacles.<sup>64</sup> The government has accused protesters of employing snipers to kill members of the security forces, and Colombian paramili-

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<sup>57</sup> “Motorizados entrando al Core 2 de Valencia”, Youtube, 19 February 2014, <http://bit.ly/STnXdq>. “Colectivos estarían involucrados en 12 homicidios”, *El Nacional*, 25 March 2014.

<sup>58</sup> On 5 March, during a speech at a military parade to mark the first anniversary of Chávez’s death, Maduro quoted the late president’s instruction to “snuff out any little flame [of opposition] that is lit”. A few days later he said the phrase had been “manipulated” by the media and that he meant them to act “with the soul, with reason, with feeling, with the truth”. “Discurso completo de Nicolás Maduro en Cuartel de la Montaña, 1er aniversario muerte de Chávez”, 25:30” onwards, YouTube, 5 March 2014, <http://bit.ly/1nF2H5a>.

<sup>59</sup> One incident, in and around the Palaima residential complex in Maracaibo, Zulia state, on 27 March, in which the *colectivos*, abetted by the GNB, raided homes, burned cars and kidnapped one woman at knife-point, was filmed from start to finish by a team from Globovisión. “Colectivos y GNB ataca residencias Palaima-Maracaibo 27-03-14”, YouTube, 28 March 2014, <http://bit.ly/RGVcQk>. However, the channel made minimal use of the material. The Zulia crew of technicians and cameramen involved were then dismissed, in what the channel said was an unrelated development. The correspondents, Madelyn Palmar and Jesus González, resigned in solidarity, alleging censorship. “Periodistas se van de Globovisión por censura de imágenes”, *El Universal*, 31 March 2014.

<sup>60</sup> “Foro Penal denuncia ante Fiscalía 80 casos de tortura durante protestas”, *Ultimas Noticias*, 1 May 2014.

<sup>61</sup> Manuel Barreto Hernaiz, “La situación en Venezuela: lo verdaderamente terrible de este asunto”, *SOS Venezuela News*, April 2014.

<sup>62</sup> “Punished for Protesting”, op. cit.

<sup>63</sup> “Fiscalía investiga 160 casos de violaciones de derechos humanos en protestas”, *Noticias24horas*, 15 May 2014.

<sup>64</sup> The government has frequently quoted the case of Elvis Rafael Durán de la Rosa, a motorcycle messenger, who died on 21 February after hitting a wire stretched across a Caracas street as part of a barricade.

taries and other foreign mercenaries of being involved in the *guarimbas*, especially in the border region.<sup>65</sup> Although arrests of alleged “foreign terrorists” have several times been announced, none of the cases has been proven to have substance. The murders of uniformed personnel remain unsolved. In some cases, press reports have suggested that the trajectory of the bullets rules out the involvement of snipers.<sup>66</sup>

The government has also pointed to large-scale destruction of public property, including university installations, political party and ministry buildings and transport infrastructure, as well as some shopping centres.<sup>67</sup> The opposition has alleged that some of the damage and looting was carried out by what appeared to be *colectivos*, while security forces stood by or absented themselves. On 5 May, in one of the most serious attacks, a large part of the Fermín Toro University in Barquisimeto was destroyed in a fire allegedly caused by a pro-government gang. Lara state governor Henri Falcón (MUD) announced the following day that state police had arrested the head of the “ultra-leftist” gang presumed to be responsible.<sup>68</sup>

## VI. How Has the Justice System Conducted Itself?

Expressions of allegiance to the government on the part of the judiciary are open and frequent. In practice the separation of powers ended when the government took advantage of the lack of parliamentary opposition after the 2005 election boycott to appoint its own loyalists to key posts. The Supreme Court, some of whose members openly reject the principle of separation of powers enshrined in the constitution and international law,<sup>69</sup> controls the judiciary, composed in large measure of judges without tenure who can be dismissed at any moment.<sup>70</sup>

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<sup>65</sup> “Asesinan en Los Ruices a un efectivo de la GNB y a un motorizado: PNB detuvo a varias personas”, *Noticias 24*, 6 March 2014. Photographs on social networks show what appear to be Russian-made Dragunov sniper rifles, but in the hands of uniformed military personnel. “Maduro reitera denuncia sobre paramilitares colombianos”, *telesUR*, 9 April 2014.

<sup>66</sup> Journalist Deivis Ramirez of *El Universal* reported that evidence in the Los Ruices case suggested the shots were fired horizontally, not by snipers in nearby buildings as the government claimed. “Periodista de El Universal desmiente versión de francotirador en Los Ruices”, *Noticiero Digital*, 7 March 2014. Maduro called his report “criminal”. Ramirez was subsequently called as a witness in the case.

<sup>67</sup> “Maduro cifra en 10.000 millones las pérdidas causadas por manifestantes”, *Notiamérica*, 22 March 2014.

<sup>68</sup> “Gobernador de Lara presenta al ‘Comandante Nevera’ presunto cabecilla de ataque a UFT”, *El Impulso*, 6 May 2014.

<sup>69</sup> Luisa Estella Morales, then head of the TSJ, argued in an interview with *Venezolana de Televisión* (December 2009) that the “separation of powers ... weakens the state”. “Morales: ‘La división de poderes debilita al Estado’”, *El Universal*, 5 December 2009.

<sup>70</sup> More than three fifths of judges are provisional. Despite a constitutional requirement that a code of ethics and disciplinary tribunal for judges be established before 2001, it took over ten years to implement this. The constitutional branch of the TSJ then suspended several articles of the code, exempting Supreme Court judges from its provisions and ensuring that provisional judges remained subject to instant dismissal. Even judges who have tenure are not secure, as the case of María Lourdes Afuni showed. Judge Afuni was arrested on the orders of President Chávez in December 2009 after she granted conditional release to banker Eligio Cedeño, who had been imprisoned without trial for three years. Her treatment was widely regarded as a warning to other judges not to defy the wishes of the executive. “Trial Observation Report: the Case of María Lourdes Afuni”, American Bar Association Center for Human Rights, December 2013. See also Inter-American Human Rights Commission Annual Report 2012, Chapter IV.

In April 2012, the former head of the criminal chamber of the Supreme Court, Eligio Aponte, claimed that sensitive judicial cases were subject to instructions given at weekly meetings held at the offices of the vice president of the republic.<sup>71</sup> The government has denied the allegation.<sup>72</sup> Attorney General Luisa Ortega Díaz is also noted for the alacrity with which she responds to public “exhortations” from the government, as compared with her apparent lack of interest in pursuing cases presented by the opposition.<sup>73</sup> An independent study found that it was virtually impossible to win a case against the government in the Supreme Court’s administrative chamber, dealing with disputes between private plaintiffs and government departments.<sup>74</sup>

#### A. *The “Judicialisation” of Politics*

The justice system has been widely used for partisan ends.<sup>75</sup> The cases of independent legislator María Corina Machado and opposition mayors Diego Ceballos and Enzo Scarano, all of whom were stripped of their elected posts by means of dubious legal proceedings, are emblematic. Machado was barred from the National Assembly on 24 March after attempting to speak at a session of the Permanent Council of the OAS.<sup>76</sup> A week later, the TSJ upheld the decision to strip her of her rights as a member of parliament. Ceballos and Scarano were imprisoned by the constitutional branch of the TSJ and stripped of their offices after being found guilty of contempt for failing to fulfil the court’s injunctions requiring them to take action against barricade-builders. Many other opposition mayors have been issued with similar injunctions.<sup>77</sup>

The Venezuelan Academy of Political and Social Sciences declared that the court’s decisions in these cases “have clearly revealed that Venezuela has ceased to be a Constitutional State”.<sup>78</sup> It added, “the branches of government act with a collusion that

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<sup>71</sup> Aponte had been dismissed as a Supreme Court justice after being accused of links with Walid Makled, alleged head of a Venezuelan drug trafficking cartel. He admitted that he had personally dealt with a number of cases at the request of the Chávez government. “Presentan carta confesión de Aponte sobre montaje del caso 11A”, *El Universal*, 13 September 2012.

<sup>72</sup> “Maduro: aquí no hay protegidos de mafias de narcotraficantes”, *El Tiempo de Venezuela*, 20 April 2014.

<sup>73</sup> For example, on 20 March, 2012, President Chávez called on the attorney general and the TSJ to “assume your responsibility” in relation to press reports regarding contaminated water, which he called “a big lie”. Just a day earlier, Monagas state governor José Gregorio Briceño had been expelled from the PSUV for rejecting claims that water in the state capital was fit to drink, following a major oil spill. On 21 March, Ortega Díaz said such claims “could generate psychosis” in the population and demanded action from the courts. Within hours, a court had issued an injunction requiring any such report to be backed up by technical data “endorsed by a competent body”. “Exigen publicar noticias sobre el agua con soporte técnico”, *El Universal*, 22 March 2012.

<sup>74</sup> Antonio Canova González, “La realidad del contencioso administrativo venezolano”, Fundación Estudios de Derecho Administrativo, 2009. This report was recently updated and their conclusions were confirmed.

<sup>75</sup> Crisis Group interview, human rights law expert, Caracas, 25 March 2014.

<sup>76</sup> Diosdado Cabello accused Machado of violating the constitution by accepting a diplomatic post from a foreign government (Panama). Machado had been granted temporary status as a member of the Panamanian delegation in order to be able to speak at the session, although in the end she was denied the opportunity. “Cabello: María Corina Machado perdió su cargo como diputada”, *El Nacional*, 24 March 2014.

<sup>77</sup> “TSJ eleva a seis los alcaldes con orden de levantar barricadas”, *El Universal*, 18 March 2014.

<sup>78</sup> “Pronunciamiento ante las recientes decisiones de la Sala Constitucional del Tribunal Supremo de Justicia”, press release, Academia de Ciencias Políticas y Sociales, 10 April 2014, <http://bit.ly/1skAaC6>. Translation into English by Crisis Group. The Venezuelan Academy of Political and Social

reveals a systematic disregard for the law as an instrument of liberty and pluralism". The World Justice Project recently ranked Venezuela 99th out of 99 countries for observance of the rule of law.<sup>79</sup>

### B. *The Criminalisation of Dissent*

Between 12 February, when the current wave of protests began, and 28 April, 2,519 people were detained for their alleged involvement in violence during the protests. Of these, 112 were held in detention, while most of the rest (1,419) were charged and conditionally released.<sup>80</sup> Charges have included criminal association, resisting arrest, disturbing the peace and causing damage to property. Although most were arrested while participating in demonstrations, in some cases security forces have raided residential buildings or even seized suspects off the streets well away from any demonstrations, sometimes using unmarked cars and plainclothes officers.<sup>81</sup> Lawyers and human rights organisations that have been assisting those detained say that when taken to court the detainees are treated according to what appears to be a pre-determined "script" and that charges often appear to bear little relation to the facts of each case.<sup>82</sup>

The constitution enshrines the right to peaceful protest, subject only to "those restrictions imposed by the law".<sup>83</sup> The law requires that the organisers of protests give the local authorities 24 hours' notice of time and place, giving them the possibility to impose changes if two rival groups seek to demonstrate simultaneously.<sup>84</sup> It does not require that demonstrations be authorised. However, on 24 April the constitutional chamber of the TSJ ruled that the police could legitimately disperse any protest not explicitly authorised by the local authorities.<sup>85</sup> Legal experts rejected the move as a violation of the constitution and international treaties. The Caracas Bar Association warned that the court had unconstitutionally restricted a fundamental right and, in doing so, created a new crime. "Citizens can (now) be sent to prison for demonstrating without authorisation", the association stated.<sup>86</sup> In practice, the PSUV mayor of

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Sciences is a non-governmental organisation founded in 1999 to conduct research into legal issues and make pronouncements on matters of public interest. There are several such academies that gather distinguished professionals in different fields, including economics and natural sciences.

<sup>79</sup> WJP Rule of Law Index 2014. The WJP, founded in 2006 as an initiative of the American Bar Association, is a non-profit organisation working to advance the rule of law around the world.

<sup>80</sup> Figures from Venezuelan Penal Forum (FPV). The usual conditions include: periodic presentation at court, a ban on taking part in demonstrations and on talking to media and/or a ban on leaving the country. Those not charged were freed unconditionally. Crisis Group interview, FPV director, Caracas, 1 May 2014.

<sup>81</sup> On 7 March, SEBIN agents in plainclothes using cars without licence plates seized two young men off the street in the Los Palos Grandes district of Caracas. A female SEBIN officer was killed in a shoot-out with the local municipal police, who took the incident for kidnapping. However, Interior Minister Rodríguez Torres defended the agents' actions as legal and the two detainees remained in custody until late April before being conditionally released. "Detective del Sebin murió en procedimiento irregular", *El Universal*, 9 March 2014.

<sup>82</sup> Crisis Group interviews, lawyer, Caracas, 26 March 2014; PROVEA (human rights organisation), Caracas, 27 March 2014; legal expert, Caracas, 27 March 2014; telephone interview, international human rights organisation, 14 April 2014.

<sup>83</sup> Article 68.

<sup>84</sup> "Ley de Partidos Políticos, Reuniones y Manifestaciones Públicas", Consejo Nacional Electoral, Article 43.

<sup>85</sup> TSJ Constitutional Chamber, file no. 14-0277, Judge Arcadio Delgado Rosales.

<sup>86</sup> "Colegio de Abogados de Caracas: Decisión del TSJ sobre protestas es inconstitucional", *Noticias Venezolanas*, 28 April 2014.

central Caracas, Jorge Rodríguez, has not extended authorisation to any opposition demonstrations since 12 February. On 18 February, he issued a decree declaring his Libertador municipality to be “a zone of peace and free of fascism”.<sup>87</sup> Pro-government marches, however, have taken place.

## VII. How Have the Talks Worked?

The dialogue began on 10 April with a meeting chaired by the vice president, Jorge Arreaza, which lasted almost six hours and was broadcast live. It took the form of a debate rather than a negotiation, with half a dozen representatives of both sides given ten minutes each to make their case. Formally it produced little beyond an agreement to keep talking, but it provided an unusual opportunity for the public to hear what the opposition had to say and to compare the positions of the two sides.

Tangible progress since then has been very slow. Political polarisation and the violence have deepened mutual distrust and hardened conflicting interpretations of the root causes of the problem. The two sides have a very different understanding of what the dialogue is intended to produce. While the opposition (in its various manifestations) may find the dialogue useful only if serious reforms are undertaken to guarantee the rule of law and the separation of powers, the government seems to believe that there is no need for any fundamental change and that the dialogue can be limited to crime prevention and the economy.

Nonetheless, those who have had access to the participants say the atmosphere at the talks has been constructive and there was some optimism.<sup>88</sup> It was decided that following the first, televised debate, there was a need for privacy so as to avoid the temptation for participants to make speeches rather than engage in genuine negotiations. The MUD proposed four agenda points: an amnesty for political prisoners, exiles and those arrested during the recent protests; a genuinely independent truth commission; the renewal of the independent branches of state, including the TSJ; and the demobilisation and disarming of the “*colectivos*”.<sup>89</sup> Each of these issues was assigned to a separate working group in a bid to speed up the discussions.

However, on 7 May the government’s lead negotiator, Vice President Jorge Arreaza, announced via Twitter that a planned full session of talks would be postponed for a week because the working groups had not produced the expected results.<sup>90</sup> Five days later, the MUD decided to withdraw temporarily from the working groups, pending a further visit by UNASUR foreign ministers, citing the lack of progress and ongoing repression of student protests.<sup>91</sup> The government has so far refused to contemplate an amnesty, though an agreement was reached for the most iconic prisoner, former police commissioner Iván Simonovis, to have a fresh team of doctors – including one chosen by his defence team – assess the need for his humanitarian release.<sup>92</sup>

<sup>87</sup> “Decretan a Caracas como territorio de paz”, *Tves*, 18 February 2014.

<sup>88</sup> Crisis Group interview, foreign observer, Caracas, 28 April 2014.

<sup>89</sup> “MUD plantea 4 condiciones para entablar diálogo con el gobierno”, *Globovisión Noticias*, 7 April 2014.

<sup>90</sup> “Mesa de diálogo entre Gobierno y la MUD fue pospuesta”, *2001*, 7 May 2014.

<sup>91</sup> Alex Vásquez, “MUD suspendió reuniones en grupos de trabajo del diálogo”, *El Nacional*, 13 May 2014.

<sup>92</sup> For the background, see “Medical Concern for Iván Simonovis”, *Amnesty International*, December 2013.

The MUD has also agreed to take part in the government's latest crime-prevention initiative, dubbed the "pacification plan" and has submitted detailed observations, which include criticism of the participation of the armed forces in policing activities and the reiteration of its demand that the *colectivos* be disarmed, along with the gangs that run most of the country's prisons.<sup>93</sup>

On 13 May the MUD's Ramón Guillermo Avelado said the talks were "in crisis". He blamed the government for their virtual suspension, complaining not only of a lack of progress but of contradictions in public statements by government leaders. "Some talk of dialogue while others speak out against it", he said.<sup>94</sup> President Maduro responded that he would not get up from the table and urged the MUD to resist what he called "pressure" from outside to abandon the talks.<sup>95</sup>

## VIII. Looking Forward: How Can the Talks Work?

Although most of the bloodshed in Venezuela has been at the hands of criminals, and serious political violence has rarely erupted, acute polarisation, warlike rhetoric and – above all – the steady erosion of independent institutions have left it vulnerable to further use of violence to settle social and political disputes.<sup>96</sup>

In the short term, both sides can and must reject violence and curb the activities of those groups most prone to engage in it. This necessarily implies a much greater responsibility on the government side, since the opposition has few means at its disposal beyond exhortation to peaceful protest.<sup>97</sup> Legal restrictions on the right to protest should be rescinded and prosecutions of peaceful protesters should cease. While the government has a duty to maintain the peace, it must do so in a way that avoids the excessive use of force. In particular, it must put a stop to the activities of armed, pro-government civilians and move to disarm and disband such groups.

For its part the opposition can, and should, drop calls for the Maduro administration to step down and reaffirm that any "regime change" must occur by constitutional means. Although these calls have not been made by the MUD leadership as such, they hinder the dialogue and serve only to harden positions on both sides.

In the medium term, the restoration of the rule of law, and in particular the autonomy of the judiciary, the attorney general's office and other constitutionally autonomous branches of the state, is essential if political differences are to be resolved without resort to force being seen by one or both sides as inevitable. The 1999 consti-

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<sup>93</sup> "Dentro del infierno de las cárceles venezolanas", BBC Mundo, 18 September 2013; Observatorio Venezolano de Prisiones, Informe 2013, 1 February 2014.

<sup>94</sup> Ocarina Espinoza, "Mesa de la Unidad: 'El diálogo está congelado'", *El Universal*, 13 May 2014.

<sup>95</sup> "Nicolás Maduro: Yo no me voy a parar de la mesa de diálogo", *El Nacional*, 13 May 2014.

<sup>96</sup> See Crisis Group Report, *Violence and Politics in Venezuela*, op. cit. See also Crisis Group Venezuela Conflict Alert, "Respect for Human Rights and Dialogue Must Replace Violence", 21 February 2014.

<sup>97</sup> Supreme Court injunctions notwithstanding, neither mayors nor state governors play any role in riot control, and the police under their command can act only preventively in this regard, having neither the equipment nor the training to do otherwise. In March 2011, the defence ministry, which in Venezuela is charged with arms control, published new rules governing the acquisition of weapons by the security forces ("Normas para la Adquisición, Registro y Control de Armamentos, Municiones, Equipos y Accesorios para los Cuerpos de Policía y Organos de Seguridad Ciudadana que Prestan el Servicio de Policía"). They include a ban on the "use of equipment and vehicles for control of public order by Municipal Police Forces". The Constitution (Article 68) bans the use of firearms in riot control.

tution, which was approved by referendum, is a shared reference-point that constitutes the “roadmap” for any dialogue. This means building on preliminary agreements, with the assistance of outside facilitators, to replace those senior officials whose time in office has expired and whose appointment requires a consensus between government and opposition in the National Assembly.<sup>98</sup>

In September 2013, Venezuela withdrew from the jurisdiction of the Inter-American Court of Human Rights (IACHR), alleging that the court was biased in favour of the opposition.<sup>99</sup> Chávez consistently rejected any oversight by international courts and human rights bodies in the name of “sovereignty”, despite the fact that the constitution (Article 23) establishes the prevalence of international pacts and treaties over domestic law. In line with this policy, the government has for many years refused to allow observers from such bodies, including UN human rights rapporteurs, to make *in situ* visits. These moves, arguably, do not gain the government much but do help strengthen a narrative that it has something to hide. As such it is at best a distraction, at worst a lightning rod that the government would do well to dismantle by allowing such visits and a return to the jurisdiction of the IACHR.

The government has publicly insisted that there can be no “pacts” and that its wish is simply to restore peace and oblige the opposition to respect the constitution. It has repeatedly rejected the idea of an amnesty, which it regards as an acceptance of impunity. However, both sides will need guarantees that no retaliation will be taken during and after the talks. A limited amnesty granted for political offences and crimes related to them, would be helpful to defuse tensions. This must include a prior and unconditional release of certain prisoners and arrested protesters (in particular the students). Without these measures it will likely prove impossible to engage the opposition as a whole in the dialogue.

A parliamentary “truth commission”, headed by Diosdado Cabello, was established to examine the violence of the past three months.<sup>100</sup> However, the opposition rejected the chairmanship of Cabello and in turn proposed the creation of what it considered a more equitable and impartial commission as one of its four points for dialogue. In any event, establishing a full-fledged truth commission seems premature, as the political transition, which normally provides the background for these mechanisms, is still far from being defined. A misunderstanding, or an overestimation of the reach and scope of such a commission may, paradoxically, increase polarisation in the short term. On 7 May, Diosdado Cabello announced that despite the opposition’s refusal to take part in the commission, it would go ahead as planned, and would question university rectors and NGO members, among others, about their alleged role in the violence. “It is a time for justice, not impunity”, Cabello said.<sup>101</sup>

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<sup>98</sup> Government and opposition had, by mid-April, both appointed their representatives to the parliamentary committees charged with overseeing the appointments of TSJ judges and CNE board members. The process was expected to take at least two months to complete. No progress had been made regarding the appointment of a new attorney general, comptroller or ombudsman.

<sup>99</sup> “Gobierno venezolano ratificó su retiro de la CIDH”, *Sistema Bolivariano de Comunicación e Información*, 10 September 2013.

<sup>100</sup> “Instalada Comisión de la Verdad con ausencia de diputados opositores”, *Venezolana de Televisión*, 7 May 2014.

<sup>101</sup> “Cabello: Comisión de la Verdad trabajará a favor de la justicia”, *Agencia Venezolana de Noticias*, 7 May 2014.

In short, the parties should agree to the following measures:

- ❑ commit to peaceful solutions to the conflict within the framework of the constitution;
- ❑ rescind legal restrictions on the right to protest, cease prosecutions and release from detention those accused of exercising those rights;
- ❑ guarantee the exclusion of any retaliatory measures during and after the talks, including the consideration of an amnesty for political offences and crimes related to them;
- ❑ end the use of violence by disarming government-supported civilian groups and assuring that protesters do not carry arms;
- ❑ reach a consensus on replacements of those senior officials in constitutionally autonomous branches of the state whose terms have ended; and
- ❑ restore the rule of law and return Venezuela to the jurisdiction of the Inter-American Court of Human Rights, permit OAS and UN human rights monitors to carry out in situ research.

## **IX. How Can the International Community Contribute?**

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Both parties need also strongly to consider external assistance in structuring and mediating the talks. Polarisation in Venezuela extends beyond its borders. It mirrors a major split within the Inter-American System between, on the one hand, the countries aligned with the Bolivarian Alliance for our America (ALBA) and other left-leaning regimes, and, on the other, those representing more market-friendly, centre- and right-leaning governments.<sup>102</sup> This split has produced paralysis in the responses of the regional institutions working toward human rights and democracy. The OAS, for example, has proven unable to address the crisis after its members failed to reach any agreement on what to do, despite the existence of the Inter-American Democratic Charter.<sup>103</sup> This left UNASUR to take the lead role, signalling the replacement of traditional hemispheric responses, heavily regulated, by narrower and more ad hoc mechanisms.

UNASUR's engagement began in late March with the arrival in Caracas of a large delegation of foreign ministers, who held meetings with the government, the MUD, student leaders and human rights organisations. One of their recommendations was that a "good-faith witness", preferably Vatican Secretary of State Pietro Parolin, should help facilitate the dialogue.<sup>104</sup> On 29 March, Vatican spokesman Federico Lombardi said the Church was "willing and anxious to do whatever possible", but emphasised that more information was required regarding the role it was expected to play.<sup>105</sup> On 10 April, the current papal nuncio in Caracas, Aldo Giordani, attended the first, pub-

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<sup>102</sup> Crisis Group interviews, Latin American diplomats, Bogotá, Caracas and Mexico City, April 2014.

<sup>103</sup> The OAS has been the key player in settling internal disputes in multiple countries and its role in promoting democracy reached its peak in 2001, when state members adopted the Inter-American Democratic Charter in Quebec City, Canada. According to this instrument, state members must respect the rights of their citizens to have proper and functioning rule of law, which becomes a human right.

<sup>104</sup> Parolin was papal nuncio in Venezuela immediately prior to his appointment as secretary of state by Pope Francis I.

<sup>105</sup> "Vaticano está dispuesto a mediar en Venezuela", *El Universal*, 28 March 2014.

lic session between the two sides and read a message from Pope Francis I in which he called on them to “have the courage and the heroism to forgive”.

The government’s ardent defence of sovereignty notwithstanding, some neighbouring countries have played, and still play, an influential role in Venezuelan politics. One of these is Cuba, which has been a staunch supporter of *chavismo* and has received generous supplies of Venezuelan oil.<sup>106</sup> The Cubans play a strategic role in providing political and technical advice to the Maduro regime and therefore potentially possess the leverage to persuade Caracas that a peaceful settlement of the dispute is in its best interests (and those of Cuba too).<sup>107</sup> A similar role reportedly has been played by Brazil. Dilma Rouseff’s government reportedly sent a presidential adviser to Caracas and her administration seems to agree with other external observers that the crisis cannot be solely addressed as a domestic issue, that UNASUR and the Vatican had to be invited to assist in finding a resolution, and that a political agenda – including the strengthening of the rule of law and separation of powers – would be required.<sup>108</sup>

UNASUR’s participation in the talks will face serious obstacles due to its lack of a clear structure and the split within its members about the Venezuelan political process. In a move that hinted at these complexities, the three foreign ministers representing the regional organisation cancelled their trip to Caracas on 15 May, citing logistical problems but apparently motivated by the increased polarisation and violence in the streets.<sup>109</sup>

These limitations could be addressed through strong political and technical support from experienced international bodies. UNASUR could explore with the parties the option of seeking support from the UN system to assist, certainly technically but perhaps also politically, the dialogue – as it did in 2002 (see Section II). This support might include designing an acceptable agenda, a clear methodology for decision-making and a reasonable timetable. Most crucially now, UN support could provide guarantees to both parties that agreements will be respected and no retaliatory measures will be accepted. Until a substantial UN participation is called and agreed, both UNASUR and other influential states need to continue calling for a dialogue in

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<sup>106</sup> In addition, a serious disruption of Venezuelan oil supplies, currently provided at a heavily subsidised rate, would have an enormous economic impact on many small nations that would struggle to survive without it. Jamaica, for example, relies on cheap oil from Venezuela to fuel the diesel generators that supply 95 per cent of its electricity. By the end of January 2014, Jamaica owed \$2.5 billion to Petrocaribe – an alliance between Venezuela and many Caribbean countries to allow them to buy Venezuelan oil at preferential prices – but had just over \$1 billion in its foreign reserves. See Alexis Caraballo, “The Petrocaribe Trap”, *Caracas Chronicles*, 31 March 2014.

<sup>107</sup> Oil imports from Venezuela cover half of Cuba’s energy needs. Venezuela’s share of the total Cuban foreign trade had reached 42 per cent by 2011. “Dependent on Venezuela’s Oil Diplomacy”, Inter Press Services, 18 March 2014. According to Rafael Ramírez, oil and mining minister, Venezuelan crude oil is processed in Cuban soil and sold in joint operations with China. “Envíos petroleros a Cuba llegan a 80 mil barriles por día”, *El Universal*, 21 February 2014.

<sup>108</sup> “Crisis en Venezuela: Brasil impulsa reunión de Unasur en Chile durante cambio de mando”, *La Tercera*, 5 March 2014; “¿Porqué Brasil ha sido cauteloso frente a la crisis en Venezuela?”, *BBC Mundo*, 11 March 2014; Crisis Group interviews, April and May 2014.

<sup>109</sup> “Unasur suspende participación en diálogo”, *BBC Mundo*, 15 May 2014. The mandate of UNASUR’s secretary general, Alí Rodríguez, expired in August 2013 and it has been impossible to reach a consensus over his successor. Rodríguez, a former minister under Hugo Chávez, was appointed Venezuelan ambassador to Cuba on 13 May, making his replacement a matter of even greater urgency. “Alí Rodríguez Araque nuevo embajador de Venezuela en Cuba”, *lapatilla.com*, 13 May 2014.

the firmest of terms, reminding all concerned of the need to respect the rule of law and human rights.

Equally, some governments may be able to play an influential role vis-à-vis the opposition. This will be needed particularly because of the serious disagreements threatening to split the MUD and its leadership. In this regard, governments such as those of the U.S. and Canada must send clear signals that only constitutional and peaceful forms of dissent will be acceptable, reinforcing the coherence of the opposition both at the negotiating table and in relation to civil society, particularly the student movement.

Any effort to produce a credible political agreement will necessarily rely heavily on international mediation or facilitation. In the difficult context already described, Venezuela's international partners – both in the region and beyond – can contribute in the following ways:

- ❑ help de-escalate the violence by sending clear messages that only peaceful methods will be tolerated;
- ❑ provide guarantees to the parties and the student movement that agreements will be respected and no retaliatory measure will be adopted;
- ❑ maintain a consistent line on the need for full restoration of the rule of law and for Venezuela fully to recommit to its international human rights commitments;
- ❑ assist parties in the design of a structure and methodology for the UNASUR-mediated talks, possibly involving the drafting of rules to promote mutual trust; consider a UN technical mission to provide such support; and
- ❑ if the talks stall or to monitor agreements, consider the appointment of an international facilitator, possibly from within the UN system, in conjunction with UNASUR members and the Vatican.

## **X. Conclusion**

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Venezuela reached a tipping point in February after years of acute political polarisation. The casualty toll is unacceptably high and has undermined the social and political peace. Serious problems, such as criminal violence and imminent economic collapse are not being adequately addressed because the political drama has taken centre-stage. The country now needs urgently to come to terms with its recent past, to reach a consensus on how to confront its future, and to reaffirm its commitment to peace and democracy. Neither the government nor the opposition will be able to resolve this crisis alone.

In order to avoid further socio-economic deterioration, the parties need to engage in a credible dialogue based on the 1999 constitution and centred on the recovery of the rule of law and the separation of powers. If they fail, and violence spreads further, there will be serious consequences for Venezuela's short-term political stability. This will cause shock-waves in the surrounding region, compromising the stability of the country's neighbours and posing a major challenge to hemispheric institutions.

The international community, in particular immediate neighbours, regional powers, other influential countries, and the UN, have a clear stake in the effective resolution of the crisis. It is in their interests to contribute substantially to the dialogue and to assist in reaching agreements capable of healing the deep rifts in society. What-

ever their ideological sympathies, it would be a serious mistake to assume that the crisis in Venezuela can be managed without external support and profound internal change.

**Caracas/Bogotá/Brussels, 21 May 2014**