

# Policy Briefing

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Latin America Briefing N°31

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## Venezuela: Dangerous Inertia

### I. Overview

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The streets of Venezuela's major cities are now largely calm, following several months of violent clashes between opposition demonstrators, security forces and civilian gunmen that left more than 40 dead. The crisis, however, is not over. The opposition is demanding freedom for several dozen activists jailed during the unrest and an end to the threat of prosecution against more than 2,000. The underlying causes have not been addressed, and calls to restore autonomy and independence to the justice system and other key institutions have not been heeded. Living standards continue to decline due to economic recession; violent crime remains at record levels, and labour unrest and protests over poor-quality public services are often dealt with harshly. Greater international efforts are required to bring the sides back to the negotiating table, since the alternative to dialogue is likely to be further violence sooner or later.

Talks between the government and leaders of the opposition Democratic Unity (MUD) alliance, facilitated by the Union of South American Nations (UNASUR) and the Vatican broke down in May 2014, when the MUD announced a "freeze" on its participation, citing repression of student protesters. The internal dissent faced by the MUD – whose executive secretary and deputy executive secretary recently resigned – and the ruling United Socialist Party of Venezuela (PSUV) has further complicated returning the parties to negotiations. The UNASUR foreign ministers charged with accompanying the process (from Brazil, Colombia and Ecuador) have not formally met with them since shortly after the talks broke down.

It remains important for the international community to play a role in facilitating the political dialogue and to suggest avenues for agreement on pending tasks. The recent appointment of a new UNASUR Secretary General should provide a renewed impetus. Furthermore, this regional organisation would greatly benefit from technical and political support from the UN system, which has much greater experience of advising on public policies and legal reforms, as it did in Venezuela in 2002. This assistance might initially focus, for example, on reinforcing the capacity of UNASUR to produce analysis and policy recommendations and, at a later stage, on helping to design a credible framework for talks. Both sides, as well as Venezuelan society at large, would benefit. The opposition clearly requires an impartial observer, able to offer reassurances, while the government would benefit by bringing in credible external actors, such as UNASUR, to bolster it in some of the difficult decisions it faces.

The most urgent of the pending tasks is to complete the appointment of respected, independent figures to the Supreme Court (TSJ), the electoral authority (CNE)

and other constitutionally autonomous state bodies – a process that received a boost from the initial round of talks but now threatens to become bogged down. With the government’s popularity suffering in the crisis, the need for autonomous institutions capable of fulfilling their constitutional roles is becoming ever more critical.

As Crisis Group has argued since May, the international community – particularly UNASUR but including also the UN system – needs to:

- ❑ press both sides to agree on a concise, viable timeframe and a trustworthy mechanism for appointing new members of the key rule-of-law institutions;
- ❑ urge the government to release those detained for non-violent political protest;
- ❑ call on the opposition to reassert and act on its commitment to resort exclusively to constitutional channels; and
- ❑ redouble, through UNASUR and with the assistance of the UN system, efforts to help Venezuela move beyond its current polarisation in order to promote democracy, human rights and stability in a country still very much in crisis.

## II. Barricades Come Down

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Between February and May 2014, the main cities were the scenes of daily – or, more often, nightly – clashes between mainly young, opposition demonstrators, many of them students, and riot squads from the national guard (GNB) and the national police (PNB).<sup>1</sup> The demonstrators erected barricades – some substantial, semi-permanent structures – particularly in the south-western city of San Cristóbal in Táchira state, and threw stones, bottles and petrol bombs.<sup>2</sup> The security forces used tear gas, water cannons and plastic bullets, even against unarmed protesters, and fired live rounds on occasion.<sup>3</sup> Groups of armed, pro-government civilians, usually on motorcycles and known as the *colectivos*, were frequently involved.<sup>4</sup> According to official sources, 43 people died during the clashes, most from gunshots.<sup>5</sup> Considerable damage was done to public property.

Most of the killings remain unsolved. One officer from the Bolivarian Intelligence Service (Sebin) and one pro-government activist have been detained, pending trial, in relation to the first two killings – those of Bassil Dacosta and Juan (“Juancho”)

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<sup>1</sup> For analysis of the underlying causes of the violence and a recommended course of action aimed at defusing immediate tensions and providing a framework for negotiations between the sides, see Crisis Group Latin America Briefing N°30, *Venezuela: Tipping Point*, 21 May 2014.

<sup>2</sup> The demonstrations’ origins lay in the decision of a MUD faction, frustrated by the coalition’s apparent inactivity, to promote what it called “La Salida” (the “exit” or “solution”) – a protest campaign that openly sought to force the resignation of President Nicolás Maduro, while, perhaps paradoxically, stressing that any change of government must be by “constitutional means”.

<sup>3</sup> “Punished for Protesting”, Human Rights Watch, 15 May 2014 found that “the most common abuses” by security forces included “firing live ammunition, rubber bullets, and teargas canisters indiscriminately into crowds”.

<sup>4</sup> *Colectivos* (collectives) covers pro-government community organisations of various kinds, most non-violent, but it has come to be used for armed groups of the revolutionary left that have proliferated under *chavista* governments. Their nature and origins are described in Crisis Group Latin America Report N°38, *Violence and Politics in Venezuela*, 17 August 2011.

<sup>5</sup> The first deaths occurred on 12 February, when demonstrators came under fire from uniformed members of state intelligence (Sebin) and civilian *colectivos*. The events are described in Crisis Group Briefing, *Venezuela: Tipping Point*, op. cit.

Montoya in Caracas – and two GNB soldiers have been charged with the murder of Geraldine Moreno, shot in the face at close range in Valencia on 19 February.<sup>6</sup> A student from the University of Carabobo has been charged as an accomplice in the murder of Génesis Carmona, shot in the head in Valencia on 18 February.<sup>7</sup> The government blames demonstrators for shooting dead eight security force members, though no one has been charged.<sup>8</sup>

Of the 3,269 people arrested, over 2,000 have been charged with public order offences, and around 70 remain in jail.<sup>9</sup> National and international human rights organisations have criticised what they call excessive use of force by police and national guard, as well as the alleged ill-treatment and even torture of those arrested and denial of due process.<sup>10</sup> The role of pro-government civilian gunmen, though denied by the authorities, has also come under scrutiny.<sup>11</sup>

The intensity of the demonstrations began to decline after the PNB and GNB dismantled four protest camps in Caracas early on 8 May and made several hundred arrests.<sup>12</sup> A number of other factors seem to have contributed to restoration of calm, including sheer exhaustion of the activists and effectiveness of the repression in neutralising leaders and instilling fear. Though protests continued into June, university vacations and the distraction of the football World Cup also played a part, as did the lack of a united opposition front.<sup>13</sup> Leaders of the MUD's moderate wing call the tactics of the alliance's "La Salida" group mistaken.<sup>14</sup>

### III. Economic Crisis

Despite widespread discontent, protests mostly did not spread to poorer parts of cities or rural areas, where the government retains considerable support, but that could change as a result of the deterioration of the economy, for which the government has found no solution. On 2 September, in what he had promised would be a "big shake-up" (*sacudón*), President Nicolás Maduro unveiled cabinet changes, including replacement of the vice president for economic affairs, Rafael Ramírez, who had been advocating substantial policy changes in his area of responsibility. But apart from announcing the consolidation of hard-currency holdings (many hitherto controlled by

<sup>6</sup> "Imputan a dos sargentos de la GNB por muerte de Geraldine Moreno", *El Universal*, 7 May 2014. The two accused were subsequently released pending trial.

<sup>7</sup> "Enjuiciarán a estudiante de Economía por el asesinato de Génesis Carmona", *NTN24*, 21 August 2014.

<sup>8</sup> Luigino Bracci, "Conozca los 41 fallecidos por las protestas violentas opositores en Venezuela: la mayoría son víctimas de barricadas", *Alba ciudad*, 14 April 2014, lists six members of the GNB and one of the PNB. Subsequently, another PNB member died of a gunshot wound.

<sup>9</sup> In mid-August, the courts began dismissing charges against those not in jail. In a week, they granted unconditional liberty to over 300 whose movements had been restricted, the majority of whom were arrested in the raids on the Caracas encampments. By 1 September, according to Foro Penal Venezolano, 74 remained in jail, and 1,798 had been conditionally released.

<sup>10</sup> See, for example, Human Rights Watch, *op. cit.*

<sup>11</sup> "Conflictividad Social en Venezuela en el primer semestre del 2014", Observatorio Venezolano de Conflictividad Social, 17 July 2014.

<sup>12</sup> Alicia de la Rosa, "Desalojan 'campamentos de la libertad' en Chacao y Baruta", *El Universal*, 8 May 2014.

<sup>13</sup> Crisis Group interview, political analyst, 12 September 2014.

<sup>14</sup> Boris Muñoz, "Entrevista exclusiva a Henrique Capriles: 'Este país necesita unirse'", *Prodavinci.com*, 18 May 2014.

the executive in separate funds) into a single, central bank account, the president made no economic policy statements. Bond prices fell substantially, as holders of the country's debt had been counting on Ramírez to address a range of serious challenges.<sup>15</sup>

Foreign reserves dropped by over 28 per cent in 2013, to \$21.48 billion, and in mid-August 2014 stood at \$20.14 billion.<sup>16</sup> This reflects the fact that the oil revenues on which the country is almost wholly dependent are insufficient to cover commitments, at least under the current exchange regime. Independent economists say inflation will top 70 per cent in 2014 and possibly 100 per cent in 2015.<sup>17</sup> Leaks from within the central bank suggest the economy may have shrunk by 4 or 5 per cent in the first half of 2014.<sup>18</sup> Shortages of basic goods, including food, medicines and spare parts for vehicles and machinery are at critical levels, owing to the decline of national production and a lack of hard currency for imports. Many private clinics have suspended elective surgeries due to shortages.<sup>19</sup> The National Academy of Medicine has demanded that the government declare a health emergency due to an "acute humanitarian crisis".<sup>20</sup>

The impact of the recession can be seen in rising poverty. According to official statistics, the percentage of households living in poverty rose by over 6 per cent in 2013, to 27.3 per cent, while those in extreme poverty increased from 7.1 to 9.8 per cent.<sup>21</sup> The government has been forced to cut back social spending, while wages have failed to match inflation. Though poverty is low by regional standards<sup>22</sup>, and social unrest is not yet regime-threatening, there are indications that it is increasing; the government has several times used riot squads to contain it.<sup>23</sup> Workers at the state-owned iron and steel company Sidor in Ciudad Guayana were met with tear gas and plastic bullets when they went on strike in August to protest the government's failure to sign a collective agreement.<sup>24</sup>

<sup>15</sup> "Caen los bonos de la República y aumenta el riesgo país", *El Universal*, 4 September 2014.

<sup>16</sup> "Reservas Internacionales y Tipos de Cambio", Banco Central de Venezuela, Información Estadística.

<sup>17</sup> See, for instance, "José Guerra estima que el año 2014 cerrará con inflación en 70%", *El Mundo Economía y Negocios*, 8 June 2014.

<sup>18</sup> Blanca Vera Azaf, "La economía cayó 4,5% en primer trimestre de 2014", *El Nacional*, 5 August 2014. This contrasts with a March projection by central bank chairman Nelson Merentes of 4 per cent positive growth for the year, and a -0.5 per cent decline for the year foreseen by the UN Economic Commission for Latin America. "Merentes: el PIB de Venezuela crecerá 4% en 2014", *Agencia Venezolana de Noticias*, 16 March 2014; "Desafíos para la sostenibilidad del crecimiento en un nuevo contexto externo", Comisión Económica para América Latina y el Caribe, CEPAL, August 2014.

<sup>19</sup> María Emilia Jorge, "Médicos reportan falta de 90% de los anastésicos inhalados", *El Nacional*, 21 August 2014.

<sup>20</sup> "Ante la catastrófica crisis humanitaria en salud, la Academia Nacional de Medicina se pronuncia", 20 August 2014.

<sup>21</sup> "Pobreza por línea de ingreso, 1er trimestre 1997-2do semestre 2013", Instituto Nacional de Estadística.

<sup>22</sup> The overall poverty rate in Latin America was 27.9 per cent in 2013. In comparison, neighbouring Colombia has a rate of 32.9 per cent, Ecuador 32.2 per cent and Peru 25.8 per cent. However, poverty has decreased sharply in most countries, with the exception of Mexico and Venezuela. "Panorama Social de América Latina 2013", Comisión Económica para América Latina y el Caribe, CEPAL, January 2014.

<sup>23</sup> For example, tear gas was used in August against inhabitants of the coastal village of Choroni, Aragua, who blocked the road in protest over poor public services: "Envían grupos policiales antimotines para aplacar protesta en Choroni", *El Universal*, 5 August 2014.

<sup>24</sup> "Reportan varios sidoristas heridos durante protestas en Bolívar", *Globovisión.com*, 12 August 2014.

Almost from the beginning of his term in 2013, President Maduro had indicated he intended to adjust economic policy. The departure from the cabinet of Planning Minister Jorge Giordani (see below) and the consolidation of Ramírez's position as vice president for the economy suggested to many that "pragmatists" arguing for unification of the exchange rate and more flexible price controls, among other things, were in the ascendant. Maduro's insistence at the 2014 party congress on a national debate over raising petrol prices also seemed to indicate likely change.<sup>25</sup> Ramírez's transfer to the foreign ministry and his replacement as economic vice president by an army general, Rodolfo Marco Torres, consolidated the military's power within the regime, while the cabinet reshuffle also reinforced the influence of the radical civilian left.<sup>26</sup> Repeated postponement of a petrol price increase may reflect a government decision to back away from any substantial policy change, fearing that it would lead to severe unrest.<sup>27</sup>

#### IV. Dissent on Both Sides

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In the aftermath of the protests, both the government and the opposition leadership have found themselves challenged from within by dissenting factions. In neither case has this led to an outright split, in part because the dissidents fear weakening their own side and handing victory to their opponents.<sup>28</sup> However, in the short term at least, pressure from those who regard negotiations as a potential betrayal of their cause, who simply distrust them or who feel they have too much to lose has made it more difficult to bring the sides back to the table.

##### 1. The government

In the government's case, the spark was provided by the 18 June dismissal of long-serving Planning Minister Giordani, a close associate of the late President Hugo Chávez and a symbol for many on the radical, civilian left.<sup>29</sup> He immediately published a lengthy response that criticised government economic policy and accused Maduro of lacking leadership.<sup>30</sup> Many analysts considered his departure essential if the government was to take the steps – frequently announced, never implemented – needed to solve the economic crisis. However, some government supporters saw these steps as a "neo-liberal adjustment package" portending a sharp turn to the right. Timing of the dismissal was sensitive, since it came as the ruling PSUV was preparing for its third party congress, 26-31 July.

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<sup>25</sup> See below. A litre of petrol costs the same today in local currency as in 1998, meaning it sells for the equivalent of \$0.01. The government estimates this subsidy costs some \$13 billion annually, a situation former Vice President Ramírez had called unsustainable. "Ramírez: Discusión sobre aumento del precio de la gasolina se hará en su momento", *El Mundo Economía y Negocios*, 22 May 2014.

<sup>26</sup> Luis Vicente León, "El sacudón que nunca fue: consecuencias de los no-anuncios de Maduro", *Prodavinci.com*, 3 September 2014.

<sup>27</sup> Asdrúbal Oliveros, "¿Dónde quedó el apoyo del chavismo al ajuste económico de Rafael Ramírez?", *Prodavinci.com*, 19 August 2014.

<sup>28</sup> Crisis Group interview, political analyst, Caracas, 12 September 2014.

<sup>29</sup> Giordani had accompanied Chávez since his time in jail, following the 1992 coup attempt. As his economic guru, he was planning minister for almost the entire Chávez presidency. Regarded by friend and foe as motivated purely by ideological commitment, he was, and remains, an arch-enemy of the "pragmatists".

<sup>30</sup> Jorge Giordani, "Testimonio y responsabilidad ante la historia", *aporrea.org*, 18 June 2014.

Some leading party members came out in support of Giordani, and one – Héctor Navarro, a former minister – was summarily suspended from the PSUV after publishing his own letter.<sup>31</sup> A left-wing faction, Socialist Tide,<sup>32</sup> called for Giordani's criticisms to be debated in the congress and for greater party democracy. It pointed out that the elected PSUV leadership had not met for months and had in practice been replaced by an unelected "political high command".<sup>33</sup> The congress went ahead as scheduled, and dissenting voices – dismissed by Maduro as "the outdated left"<sup>34</sup> – were not given a platform. Those on the left, however, have served notice that they will not stay with the president if he "betrays the legacy of Chávez".<sup>35</sup> Since the congress, they have challenged a number of government moves, including proposed petrol price increases, the planned sale of oil refineries in the U.S. and use of the GNB against striking steel workers in Puerto Ordaz.<sup>36</sup>

Though a Socialist Tide member has spoken of a potential "insurgency" against the current leadership,<sup>37</sup> there has been no formal split. Visible dissent has primarily been confined to rank-and-file PSUV members in public meetings and press statements. Radical-left cabinet members have closed ranks with the president, who also has the military's backing. The cabinet reshuffle, as noted, produced an apparent victory for those two groupings and a loss for the more pragmatic economic policies represented by Ramírez.

## 2. The MUD

The breakdown of talks with the government and the failure to force Maduro's resignation through street demonstrations set the scene for the opposition alliance to hold a long-postponed internal debate, on tactics and strategy but also its structure and function. The first session, on 29 July, produced little beyond mutual recriminations.<sup>38</sup> The next day, the alliance's executive secretary, Ramón Guillermo Avelado, resigned, saying he had become a source of conflict and the victim of "calculated lies" aimed at damaging the MUD.<sup>39</sup> He later said his role as a consensus-builder and spokesman had become untenable, because the group's more confrontational wing viewed him as a moderate and thus part of the problem. Within days his deputy, Ramón José Medina, also resigned.

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<sup>31</sup> Héctor Navarro, "Carta Pública: Contra la manipulación informativa en torno a la carta de Jorge Giordani", *aporrea.org*, 24 June 2014; "Héctor Navarro anuncia su suspensión del PSUV y pase al Tribunal Disciplinario, tras su apoyo a Giordani", *Aporrea.org*, 24 June 2014.

<sup>32</sup> Marea Socialista, associated with the chavista website *Aporrea.org* and with links to the Trotskyist 4<sup>th</sup> International.

<sup>33</sup> Among the dissidents was a member of the PSUV leadership and former minister, Ana Elisa Osorio: "Dirección Nacional del Psuv tiene meses que no se reúne": Osorio", *Panorama.com*, 12 August 2014.

<sup>34</sup> "Maduro: Ante la derecha incendiaria o la izquierda trasnochada, unión popular", *Prensa PSUV*, 25 June 2014.

<sup>35</sup> Nicmer Evans, "Ante el Congreso del PSUV: Propuestas", *Aporrea.org*, 1 June 2014.

<sup>36</sup> "14 trabajadores detenidos y varios heridos: Quién montó la operación represión en SIDOR?", *Prensa Marea Socialista*, 11 August 2014. See also, Carlos Carcione, "El Congreso del PSUV y la Venezuela que viene", *Rebelión.org*, 9 August 2014.

<sup>37</sup> Heiber Barreto, quoted in Franz von Bergen, "Julio Coco y Marea Socialista: Rebelión en las bases del chavismo y la oposición?", *ProDavinci.com*, 16 August 2014.

<sup>38</sup> Ewald Schafenberg and Alfredo Meza, "La encerrona, un jardín de espinas", *ArmandoInfo*, 3 August 2014.

<sup>39</sup> "Carta de Ramón Guillermo Avelado", *ProDavinci.com*, 30 July 2014.

While none of its 25 member parties<sup>40</sup> proposed dissolving the MUD, sharp disagreements over the way forward reflected a barely-concealed leadership struggle. The faction led by Leopoldo López's party, Popular Will (VP), proposed convening a constituent assembly. In a complementary move, María Corina Machado, a López ally and independent legislator,<sup>41</sup> has launched preparatory public meetings for an October "citizens' congress"; backed by VP and the Caracas metropolitan mayor, Antonio Ledezma, its stated aim is to debate the transition to a new government. Former presidential candidate Henrique Capriles rejected these proposals as divisive, calling appointment of an independent electoral council the priority.<sup>42</sup> Two weeks after this debate, the MUD chose as Avelledo's interim successor its assistant executive secretary, Cristóbal Fernández Daló.<sup>43</sup> At the same time, it unanimously ratified its decisions to stay united and seek to install a "government of national unity" by electoral means, while simultaneously pursuing a strategy of "street activism" against an "anti-democratic" government with totalitarian intentions.

Recognising that it had failed to attract the support of all those discontented with the government, the MUD announced that it would broaden its base by incorporating grassroots leaders and social activists. But it also declared that while member parties were free to develop their own ideas, these must not contradict the alliance's strategies: any that flouted agreements reached by the MUD as a whole would be considered to have left the organisation. Restoring the autonomy of the CNE and other key institutions, it declared, was a top priority.<sup>44</sup>

## V. Renewing Institutions

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One of the few agreements to emerge from the April-May 2014 talks was to proceed with appointments to the constitutionally autonomous institutions: the supreme court, the electoral authority and the comptroller general's office (all controlled by government allies and overdue for renewal), as well as the attorney general and ombudsman, whose terms expire in December.<sup>45</sup> Restoring autonomy to these institutions is critical to the resolution of the conflict.<sup>46</sup> The issue was assigned to one of several working groups set up at the outset of the talks but that barely met before the breakdown. Subsequent progress has been very slow, reflecting the government's apparent lack

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<sup>40</sup> In early September, the socialist Red Flag party (Bandera Roja) announced that it was leaving. The remaining 24 are: Acción Democrática, Primero Justicia, Un Nuevo Tiempo, Voluntad Popular, Copei, ProVe, Alianza Bravo Pueblo, Vente Venezuela, Avanzada Progresista, MPV, LCR, MIN, URD, FL, Moverse, Vanguardia Popular, UNPARVE, MR, Visión Vzla, Va Pa'lante, MovEc, DR, Gente Emergente and Cuentas Claras.

<sup>41</sup> Machado was barred from the National Assembly and stripped of her parliamentary seat in March after she sought to address the permanent council of the OAS on Venezuelan democracy.

<sup>42</sup> "Capriles: el Congreso Ciudadano no va a ningún lado", *Noticierodigital.com*, 8 August 2014; "Capriles no cree ni en la Constituyente ni en la renuncia", *El Universal*, 12 June 2014.

<sup>43</sup> Fernández Daló is an independent politician who once belonged to the Movement to Socialism (MAS), a left-wing party that broke with Chávez after initially supporting him. More recently, he belonged to Progressive Advance (AP), many of whose members are ex-Chavistas.

<sup>44</sup> "Llegan a acuerdo para mantener alianza de la MUD para elecciones de 2015", *Agencia Efe*, 15 August 2014. The agreement is not public; the details remain to be worked out, but it would apparently retain much of the alliance's framework, while opening it to non-party actors.

<sup>45</sup> Alfredo Meza, "El chavismo cede y acepta renovar los integrantes de los poderes públicos", *El País*, 28 March 2014.

<sup>46</sup> Crisis Group Briefing, *Venezuela: Tipping Point*, op. cit.

of interest. Without external pressure, it will probably have little difficulty keeping control of the institutions.<sup>47</sup>

Eleven of the 30 supreme court judges<sup>48</sup> and three of the five CNE board members (*rectores*) are overdue for replacement, mostly because their terms have expired.<sup>49</sup> The position of Comptroller General Clodosbaldo Russian, who died in June 2011, is filled on an interim basis by his deputy, Adelina González. CNE board members, with the notable exception of Vicente Díaz, are government sympathisers with a long record of acting in its interests.<sup>50</sup> Under the constitution, the task of replacing them falls primarily to the National Assembly, with the aid of the “Republican Moral Council” (attorney general, ombudsman and comptroller general).<sup>51</sup> However, the government lacks the two-thirds parliamentary majority necessary to make appointments to most of the offices without opposition agreement, so has delayed the process.<sup>52</sup>

Importantly, the constitution also affords “civil society” a role in selection of candidates for all these positions.<sup>53</sup> The intention was to avoid the custom of making appointments based on pacts between political parties. In practice, however, the politicians retain control, thanks to their domination of the process for choosing the selection committees’ non-parliamentary members. Thus, 22 of the 45 candidates “pre-selected” by members of parliament to exercise this responsibility on the judicial appointments committee belong to the PSUV, according to an analysis by a non-governmental organisation specialising in electoral issues.<sup>54</sup> Since neither the law nor the constitution prescribes what constitutes “civil society”, the politicians have ample room for manoeuvre.<sup>55</sup>

## 1. The Supreme Court (TSJ)

A judicial appointments committee of five National Assembly members and six civil society representatives is charged with making an initial selection of candidates for the vacant positions. This is sent for review by a similar committee convened by the offices of the attorney general, ombudsman and comptroller general, which prepares a short-list for consideration by a full session of parliament. The civil society representatives, however, are chosen by the Assembly, and according to the chairman of the committee, the PSUV legislator Elvis Amoroso, there is no requirement that they be political independents.<sup>56</sup> Nor are the candidates themselves required to have that status; the

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<sup>47</sup> Crisis Group interview, political analyst, Caracas, 5 September 2014.

<sup>48</sup> Some of their stand-ins (*suplentes*) may also face replacement.

<sup>49</sup> Seven supreme court judges retired in December 2012; four others retired, died or were removed by parliament before then. Their places are held by stand-ins (*suplentes*). The terms of the three CNE board members expired on 28 April 2013, but they continue in their posts. The TSJ has ruled that they can continue to do so indefinitely, pending election of replacements.

<sup>50</sup> For more on the lack of institutional autonomy, see Crisis Group Latin America Briefing N°28, *Venezuela: A House Divided*, 16 May 2013.

<sup>51</sup> See, for example, Articles 264, 279 and 296.

<sup>52</sup> Crisis Group interview political analyst, Caracas, 12 September 2014.

<sup>53</sup> See for example Articles 264, 270, 279 and 295.

<sup>54</sup> “Haz contraloría a la lista de candidatos postulados para el Comité de Postulaciones Judiciales”, Sumate.org, 13 August 2014.

<sup>55</sup> See Raúl Pinto Peña, “Comité de Postulaciones: Participación y control social en la pre-selección de candidatos a ocupar cargos de los poderes públicos nacionales”, Judicial, Ciudadano y Electoral, documento de trabajo, Instituto Latinoamericano de Investigaciones Sociales, Caracas 2003.

<sup>56</sup> Maru Morales, “48 personas aspiran a formar parte del Comité de Postulaciones Judiciales”, *El Nacional*, 5 June 2014.

law merely says they must “renounce any political militancy” prior to appointment.<sup>57</sup> It was announced in August that 45 candidates had been submitted to parliament, where, again, a two-thirds majority is initially required for each appointment.<sup>58</sup>

The National Assembly is due to resume discussions on the matter in September. The government side has said that if, as is likely, no agreement can be reached in a first round of voting, it will appoint the judges by the simple majority it already controls – a procedure the law governing the TSJ permits.<sup>59</sup>

## 2. The National Electoral Council (CNE)

The next (legislative) election is due in 2015, when the National Assembly’s term expires. Though a date has not yet been set, it is expected to be in the last quarter. The appointments committee has not yet been formed.<sup>60</sup> It is to have 21 members, eleven of them from the Assembly. The legislature must choose the ten civil society representatives. Once again, politicians control the process, with the only safeguard being the PSUV’s lack of a two-thirds Assembly majority. A deadlock over CNE appointments in 2003 was resolved by an agreement between government and opposition that allowed the TSJ to settle the matter, though legal experts say this was unconstitutional.<sup>61</sup>

## 3. The Citizens’ Power

The Citizens’ Power comprises the offices of the attorney general, ombudsman and comptroller general. The key post for resolving the political crisis is that of the attorney general, who as the chief public prosecutor has a central position in the justice system. The choice of candidates for each of the offices is supposed to be by a committee (Comité de Evaluación de Postulaciones del Poder Ciudadano) convened by the Republican Moral Council (the name given to the body made up of the three current office-holders).<sup>62</sup> It is to have up to 25 “representatives of various sectors of society” and send the National Assembly three candidates for each post. The process has not begun, though the comptroller general died three years ago and all positions become vacant in December. No date has been fixed, despite a legal requirement for the committee to be convened 60-120 days before terms expire.<sup>63</sup> The law also gives the Assembly the job if this does not happen. The constitution states that, if there is no agreement, the electorate should decide. This would almost certainly result in politically partisan selections.

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<sup>57</sup> Ley Orgánica del Tribunal Supremo de Justicia, Article 37.

<sup>58</sup> “Aprobada lista de venezolanos que conformará comité de postulaciones para el TSJ”, Agencia Venezolana de Noticias, 14 August 2014.

<sup>59</sup> PSUV legislator Elvis Amoroso, quoted in “Este lunes inician evaluación de aspirantes al Comité de Postulaciones de magistrados al TSJ”, *El Nacional*, 25 May 2014.

<sup>60</sup> “La Asamblea Nacional se va de vacaciones en mora con el Poder Electoral”, *Lapatilla.com*, 21 August 2014.

<sup>61</sup> Crisis Group interview, legal expert, Caracas, 5 September 2014. The constitution states that the National Assembly is to appoint CNE board members. In its 25 August 2003 decision, the TSJ cited a “constitutional vacuum” produced by the Assembly’s failure to agree on the appointments.

<sup>62</sup> See the constitution, Article 279. The absence of a constitutionally-appointed comptroller general complicates matters; the National Assembly could take over the selection process, but so far it has not done so.

<sup>63</sup> Ley Orgánica del Poder Ciudadano, Articles 23 and 25.

Staffing all these institutions with respected professionals willing to apply the law impartially is essential for any solution to the long political conflict.<sup>64</sup> It is particularly important that CNE and TSJ appointments be made constitutionally and well before the 2015 elections.<sup>65</sup> Lack of trust in these institutions would seriously affect the viability of any future government-opposition agreement, as they would supervise its implementation; failure to appoint independent, broadly trustworthy persons would be a continuing threat to national stability. Unless it has no other choice or there are trade-offs, the government appears unlikely to cede its decisive influence over judicial and electoral institutions.

Outside help is thus crucial, as the rival camps need objective, impartial arbiters to help resolve key differences. Specific civil society elements – for example the Catholic Church – could conceivably be useful in the appointments process, beyond what is already envisaged in the law and constitution.<sup>66</sup> Whatever the circumstances, the international community is vital, particularly to validate the integrity of the selection of personnel for key vacancies. It might present ideas based on approaches adopted by other countries for agreeing on independent members of state institutions and offer to monitor an agreed process.

## VI. The Role of the International Community

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At the height of the disturbances in early 2014, and after the Organisation of American States (OAS) declined to become involved in resolving the conflict due to the objections of most member-states, the baton passed to UNASUR.<sup>67</sup> With the agreement of both sides, the foreign ministers of Brazil, Colombia and Ecuador and the papal nuncio in Caracas formed a group to “accompany” the dialogue between the government and the MUD’s moderate wing.<sup>68</sup> When the talks broke down, the ministers returned to Caracas, trying unsuccessfully to bring the sides back together.<sup>69</sup> Neither they nor others have taken further public initiatives, though some regional governments have quietly sought to encourage resumption of the dialogue.<sup>70</sup> UN Secretary-General Ban Ki-moon urged UNASUR and the Vatican to push for resumption and said President Maduro should build bridges with his opponents.<sup>71</sup>

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<sup>64</sup> See Crisis Group Briefing, *Venezuela: Tipping Point*, op. cit.

<sup>65</sup> The 165-seat National Assembly was elected in September 2010 for five years.

<sup>66</sup> In early September, the president of the Venezuelan Bishops’ Conference, Mons. Diego Padrón, said the Church’s role was to “accompany and illuminate” the dialogue once it resumed. “Low profile” contacts had been maintained with the government in recent months in a bid to resolve issues related to political prisoners. Diego Martínez, “Iglesia hace votos por renovación de diálogo”, *Unión Radio*, 3 September 2014.

<sup>67</sup> “OEA vuelve a obviar el debate sobre la crisis venezolana y Unasur se alista”, *Agencia Efe en Lapatilla.com*, 21 March.

<sup>68</sup> “El Vaticano, Ecuador, Brasil y Colombia acompañan diálogo en Venezuela”, *Telesur*, 9 April 2014. The Vatican’s role thus far has been limited to the presence at dialogue sessions of the papal nuncio in Caracas, Aldo Giordano. Vatican spokesman Federico Lombardi has been cautious about accepting any more substantive role. “El Vaticano dice que el Nuncio en Caracas ‘sigue’ la situación en Venezuela”, *El Universal*, 10 April 2014.

<sup>69</sup> “Cancilleres de UNASUR intentan reactivar diálogo entre el Gobierno y la oposición venezolana”, press release, Colombian foreign ministry, 19 May 2014.

<sup>70</sup> Crisis Group interviews, diplomats, July-August, 2014.

<sup>71</sup> In a newspaper interview with Andrés Oppenheimer, *El Nuevo Herald*, 16 August 2014.

UNASUR remains best placed to promote a return to the talks. Both sides and the wider international community have accepted it. The task has been made more difficult by the lack of consensus within the rival camps and the government's apparent conviction that it "won" the previous street round and has no need to negotiate.<sup>72</sup> Nonetheless, the apparent calm on the streets should not be mistaken for a resolution of the conflict. A resurgence of violence or further deterioration in the democratic fabric would not only threaten Venezuela's stability but likely have an impact beyond its borders as well.<sup>73</sup>

Ernesto Samper, ex-President of Colombia (1994-1998), was confirmed as UNASUR's new secretary general on 22 August, replacing the Venezuelan Alí Rodríguez, a Chávez minister. This could give UNASUR's mediation renewed impetus. He immediately said he would use the handover process to seek meetings with the parties to urge resumed dialogue. However, member states have been reluctant to empower the organisation. Disparity of criteria about democracy and human rights among them make it hard to send clear signals, though all have signed the Inter-American Charter on Democracy (2001), and UNASUR's additional protocol, with a "democratic clause", is in force since March 2014.<sup>74</sup>

A further thrust should come from other international bodies. UNASUR could explore with the parties the option of seeking support from Ban Ki-moon for the UN Secretariat to give technical and political help on the TSJ, CNE and attorney general appointment process. This might be offered directly, as UN assistance was in 2002.<sup>75</sup> It might also, at a prior stage, include redoubling UN efforts to provide advice and cooperation to the UNASUR Secretariat in order to enhance the latter's technical capacities in the design and implementation of talks and agreements. Such a procedure could prove acceptable, since it would increase the incentive for both government and opposition to involve a credible, external actor as both impartial observer and effective supporter.<sup>76</sup>

## VII. Conclusion

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The absence of violent conflict on the streets should not be taken as a sign that all is well. A social and political crisis of unpredictable dimensions will result if the government does not promptly address urgent economic and social problems and provide a political framework within which deep divisions can be resolved peacefully. Divided as it and the opposition are, the necessary steps are unlikely to be taken unless the international community provides both timely support and assistance. Restoration of genuine autonomy to the various branches of the state, so that they can respond adequately to the circumstances, is particularly urgent. The roadmap for

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<sup>72</sup> "Maduro: 'La guarimba ha sido absolutamente derrotada'", *El Universal*, 23 March 2014.

<sup>73</sup> Crisis Group has frequently pointed out that instability in Venezuela could affect sensitive regional matters, including Colombia's peace process and Cuba's protracted reform agenda.

<sup>74</sup> "Protocolo Adicional al Tratado Constitutivo de UNASUR sobre Compromiso con la Democracia", Quito, 19 March 2014. It provides for UNASUR to use sanctions and/or good offices to resolve situations that threaten or overturn the democratic order in a member state.

<sup>75</sup> The UN helped mediate talks in 2002-3 that led to a presidential recall referendum. Crisis Group Briefing, *Venezuela: Tipping Point*, op. cit.

<sup>76</sup> The UN had already offered assistance to previous UNASUR Secretariats, consistent with its general mandate to work closely with regional partners. Crisis Group interviews, international organisation officials, September 2014.

addressing the crisis does not need to be drafted from scratch; it is available in the constitution. It will be difficult for neighbours and the broader international community to meet this challenge, but the alternative could be a conflict whose repercussions transcend Venezuela's borders. UNASUR and the Vatican have made a start that needs to be built on, and the time is now.

**Caracas/Bogotá/Brussels, 23 September 2014**

Appendix A: Map of Venezuela



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## Appendix B: About the International Crisis Group

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The International Crisis Group (Crisis Group) is an independent, non-profit, non-governmental organisation, with some 125 staff members on five continents, working through field-based analysis and high-level advocacy to prevent and resolve deadly conflict.

Crisis Group's approach is grounded in field research. Teams of political analysts are located within or close by countries at risk of outbreak, escalation or recurrence of violent conflict. Based on information and assessments from the field, it produces analytical reports containing practical recommendations targeted at key international decision-takers. Crisis Group also publishes *CrisisWatch*, a twelve-page monthly bulletin, providing a succinct regular update on the state of play in all the most significant situations of conflict or potential conflict around the world.

Crisis Group's reports and briefing papers are distributed widely by email and made available simultaneously on the website, [www.crisisgroup.org](http://www.crisisgroup.org). Crisis Group works closely with governments and those who influence them, including the media, to highlight its crisis analyses and to generate support for its policy prescriptions.

The Crisis Group Board of Trustees – which includes prominent figures from the fields of politics, diplomacy, business and the media – is directly involved in helping to bring the reports and recommendations to the attention of senior policy-makers around the world. Crisis Group is co-chaired by former UN Deputy Secretary-General and Administrator of the United Nations Development Programme (UNDP), Lord Mark Malloch-Brown, and Dean of Paris School of International Affairs (Sciences Po), Ghassan Salamé.

Crisis Group's President & CEO, Jean-Marie Guéhenno, assumed his role on 1 September 2014. Mr. Guéhenno served as the United Nations Under-Secretary-General for Peacekeeping Operations from 2000-2008, and in 2012, as Deputy Joint Special Envoy of the United Nations and the League of Arab States on Syria. He left his post as Deputy Joint Special Envoy to chair the commission that prepared the white paper on French defence and national security in 2013.

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## Appendix C: Reports and Briefings on Latin America and the Caribbean since 2011

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- Learning to Walk without a Crutch: The International Commission Against Impunity in Guatemala*, Latin America Report N°36, 31 May 2011 (also available in Spanish).
- Guatemala's Elections: Clean Polls, Dirty Politics*, Latin America Briefing N°24, 17 June 2011 (also available in Spanish).
- Post-quake Haiti: Security Depends on Resettlement and Development*, Latin America Briefing N°25, 28 June 2011.
- Cutting the Links Between Crime and Local Politics: Colombia's 2011 Elections*, Latin America Report N°37, 25 July 2011 (also available in Spanish).
- Violence and Politics in Venezuela*, Latin America Report N°38, 17 August 2011 (also available in Spanish).
- Keeping Haiti Safe: Police Reform*, Latin America/Caribbean Briefing N°26, 8 September 2011 (also available in French and Spanish).
- Guatemala: Drug Trafficking and Violence*, Latin America Report N°39, 11 October 2011 (also available in Spanish).
- Keeping Haiti Safe: Justice Reform*, Latin America/Caribbean Briefing N°27, 27 October 2011 (also available in French).
- Moving Beyond Easy Wins: Colombia's Borders*, Latin America Report N°40, 31 October 2011 (also available in Spanish).
- Dismantling Colombia's New Illegal Armed Groups: Lessons from a Surrender*, Latin America Report N°41, 8 June 2012 (also available in Spanish).
- Dangerous Uncertainty ahead of Venezuela's Elections*, Latin America Report N°42, 26 June 2012 (also available in Spanish).
- Policy Reform in Guatemala: Obstacles and Opportunities*, Latin America Report N°43, 20 July 2012 (also available in Spanish).
- Towards a Post-MINUSTAH Haiti: Making an Effective Transition*, Latin America/Caribbean Report N°44, 2 August 2012 (also available in French).
- Colombia: Peace at Last?*, Latin America Report N°45, 25 September 2012.
- Governing Haiti: Time for National Consensus*, Latin America and Caribbean Report N°46, 4 February 2013 (also available in French).
- Totonicapán: Tension in Guatemala's Indigenous Hinterland*, Latin America Report N°47, 6 February 2013 (also available in Spanish).
- Peña Nieto's Challenge: Criminal Cartels and Rule of Law in Mexico*, Latin America Report N°48, 19 March 2013 (also available in Spanish).
- Venezuela: A House Divided*, Latin America Briefing N°28, 16 May 2013 (also available in Spanish).
- Justice at the Barrel of a Gun: Vigilante Militias in Mexico*, Latin America Briefing N°29, 28 May 2013 (also available in Spanish).
- Transitional Justice and Colombia's Peace Talks*: Latin America Report N°49, 29 August 2013 (also available in Spanish).
- Justice on Trial in Guatemala: The Ríos Montt Case*: Latin America Report N°50, 23 September 2013 (also available in Spanish).
- Left in the Cold? The ELN and Colombia's Peace Talks*, Latin America Report N°51, 26 February 2014 (also available in Spanish).
- Venezuela: Tipping Point*, Latin America Briefing N°30, 21 May 2014 (also available in Spanish).
- Corridor of Violence: The Guatemala-Honduras Border*, Latin America Report N°52, 4 June 2014 (also available in Spanish).

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