



# Imagining a Resolution of Venezuela's Crisis

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# Principal Findings

**What's new?** Talks to resolve Venezuela's political crisis broke down in September, and January's government takeover of parliament dims prospects of their resumption. While the outlines of a possible agreement are visible, the government's unwillingness to compromise and the opposition's lack of realism have, so far, put a solution out of reach.

**Why does it matter?** The country is mired in political conflict and continues to suffer from hyperinflation, high levels of criminal violence, crumbling public services, severe poverty and malnutrition. Millions have emigrated, provoking a regional refugee crisis.

**What should be done?** Outside parties with ties to either side should put forward a possible settlement – including measures to ensure a level playing field ahead of 2020 parliamentary polls and, later, a presidential election, together with the gradual lifting of U.S. sanctions – and press both to accept it as a basis for negotiations.

## *Executive Summary*

Since January 2019, Venezuela has had two competing presidencies and two starkly different views on how its political struggle should be resolved. It has also had one principal victim, a population exposed to a catastrophic humanitarian crisis. Over a year on, neither side has achieved its goals: President Nicolás Maduro remains in power, crippling sanctions are still in place and a solution hovers well out of sight. With the government feeling more confident, as shown by its 5 January seizure of the National Assembly, and the opposition harbouring unrealistic ambitions of swift regime change, outside parties should consider stepping up their involvement, presenting a settlement that restores fair political competition, triggers an early presidential election and incrementally lifts sanctions, and press their respective allies within the country to accept it as a basis for negotiations.

At first glance, the gap between the two sides appears unbridgeable. De facto power and control of almost all the country's institutions are in the hands of Maduro, whose claim to legitimacy is based on a controversial re-election in May 2018, regarded by the opposition and its international allies as a sham perpetrated by a criminal dictator. The opposition – led by Juan Guaidó, who is recognised as acting president by 59 countries – insists that an early, credible presidential election be held under international observation and demands that Maduro step down before then. But what the opposition sees as the restoration of democracy, the government regards as a foreign-backed coup. It is adamant that the opposition wishes to erase *chavismo* from the political scene and is using outside (mainly U.S.) support to ensure that the movement created by late President Hugo Chávez, which has ruled Venezuela for 21 years, cannot stage a comeback.

Efforts to reach a peaceful resolution have so far proved fitful and largely fruitless. Several rounds of negotiations have taken place since 2014 but all were marred by mutual suspicion, with the opposition convinced that the government misled it. Over the last year, both camps have flirted with a negotiated solution but have also banked on gaining the upper hand over their rival through the passage of time and the assistance of powerful foreign allies. The opposition felt that tightening sanctions and the government's increased international isolation would trigger a rupture within *chavista* ranks, notably among the military or, alternatively, that the U.S. might forcefully step in; the government hoped that the longer it resisted sanctions with the help of Russia, China and others, the more opposition credibility and unity would erode, the more public support for the opposition would dissipate, and the more Guaidó's external allies would lose interest.

Time has been particularly unkind to the opposition. Despite earlier hints of U.S. military intervention – and an abortive military uprising on 30 April – as well as ever more draconian sanctions and a domestic economic crash that has spurred the exodus of over 4.8 million Venezuelans, Maduro has not budged. Opposition and U.S. predictions that the armed forces would defect from the government under external pressure have proven false. As *chavismo*'s position strengthened, its bid to dislodge Guaidó from his formal post as National Assembly chair, and thus his claim to the interim presidency, climaxed on 5 January when the government placed a military

and para-police cordon around the parliament and staged a highly dubious vote to change the leadership. The opposition is now embroiled in fierce internal debate over whether to take part in parliamentary elections later this year even in the absence of conditions for fair polls.

Yet if the government and *chavismo* in general now feel more sanguine after weathering the storm of 2019, they hardly have reason to be at ease. The government's room for manoeuvre, both political and economic, is severely restricted by sanctions; it is regarded as illegitimate by dozens of countries; it faces constant efforts – both open and covert – to oust it from power; and even within its own ranks there are rumblings of discontent over its increasingly authoritarian demeanour. It has achieved undeniable tactical victories, but it has left the core of the problem unaddressed. If it intends to bring back political normalcy and stability, something needs to change.

The most promising effort to date at brokering a negotiated solution has been a series of talks between the two sides, facilitated by the Norwegian government between May and August 2019. But these have broken down, a victim of these headwinds, half-hearted engagement by both sides and, in particular, government obduracy. Prospects for their resumption are now dim. As described in a previous report, after seven rounds of talks, most recently in Barbados, the government walked away in the wake of newly imposed U.S. sanctions, and the opposition pronounced the format “exhausted” on 15 September 2019. The talks had produced some movement: shortly before they were suspended, the opposition had proposed that power pass temporarily to a ruling council whose members would be appointed by mutual agreement. The Maduro government did not explicitly reject this latter proposal, and offered to improve electoral conditions, but its negotiators said the president would not quit and that early elections would be possible only one year after the U.S. and others lift sanctions. Its seizure of parliament clearly suggests that at the highest levels of power, willingness to strike a deal is negligible.

As Crisis Group's discussions with more pragmatic *chavista* and opposition figures suggest, however, the outlines of a potential compromise exist. This report spells it out in the hope that it will encourage future discussion. Neither side will find it fully satisfactory. Indeed, both will inescapably recoil at several of its elements. But its terms reflect Crisis Group's best assessment of what the two sides might eventually be able to accept as fair and realistic. The first step on the ladder involves moves toward reducing tensions between the two sides and building mutual confidence.

Should progress be made on that front, a political agreement would rest on three building blocks: 1) steps to level the playing field for parliamentary and then presidential polls; 2) incremental sanctions relief as political progress is made; and 3) legally enshrined guarantees that can mitigate the fears of the eventual losing side in new balloting. The report also offers suggestions on how to resolve key disputes. The first is over the timing of a new presidential election and whether Maduro would need to step down beforehand. Second is the timing of sanctions relief, and whether any should be provided while Maduro remains in power. A third issue – the military's future role – has been largely unaddressed by both sides but is critical given the army's ties to *chavismo* and its ability to sabotage any agreement of which it disapproves.

Foreign powers and multilateral bodies that recognise the dangers of worsening conflict in Venezuela and are pushing for a negotiated settlement – notably the EU, the UN and Latin American states such as Mexico and Argentina – should have the greatest interest in finding a negotiated way out of this crisis, coming up with or backing a similar proposal, and pushing the parties to accept it as a basis for negotiations. The UN could also play an essential role in assisting and monitoring the implementation of an eventual political settlement. In the event that Caracas proves intransigent, the EU and Latin American allies should consider stepping up measures targeted at human rights violators and strengthen efforts to clamp down on international financial crimes committed by government officials. Even those countries firmly opposed to Maduro, such as the U.S. and Colombia, or allied to his government, including Russia and Cuba, should discern the huge benefits for regional stability of supporting a route to a negotiated settlement.

The solutions proposed are not the only possibilities nor even necessarily the best options available. They are intended to spur debate within *chavista* and opposition ranks, but also among their respective foreign allies and other international stakeholders, about the costs of, and alternatives to, the current deadlock. The unfortunate truth is that those alternative scenarios – Maduro's ouster by the military; foreign intervention to topple the government; or the government's survival despite dire economic conditions while the opposition subsides or its leaders retreat into exile – are either unlikely to occur or unlikely to restore stability and improve Venezuelans' well-being. Distant as it now seems from the embittered politics and portents of violence in Caracas, an agreement remains the one sure way to prevent greater calamity from befalling both sides.

**Caracas/Bogotá/Washington/Brussels, 11 March 2020**

### **1. Short-term Reduction of Tensions**

- Government release of political prisoners and an end to judicial and para-police persecution of opposition politicians;
- Restoration of National Assembly powers;
- Agreements on humanitarian aid and emergency economic relief;
- Normalisation of Venezuelan diplomatic representation abroad, through missions composed of both opposition and government diplomats.

### **2. More Level Electoral Playing Field**

- Appointment of new, credible and balanced National Electoral Council (CNE) through a vote in the National Assembly;
- Update of electoral register, especially among diaspora;
- Independent audit of polling system and stations;
- Lifting by new CNE of prohibitions on parties and candidates;
- Acceptance of international electoral observation missions for the 2020 parliamentary elections and future polls.

### **3. Electoral Calendar**

- Parliamentary elections to be held as scheduled, in late 2020, under a new CNE and international monitoring;
- Presidential election to be held in 2021 or 2022;
- Nicolás Maduro to stay in office until 1-4 months prior to presidential polls;
- Establishment of a short interim, pre-electoral administration to be headed by a vice president nominated by both government and opposition;
- Maduro entitled to participate in elections.

### **4. Phased sanctions relief as conditions improve**

- Threat of strengthened EU targeted sanctions if government proves uncompromising;
- Release of state funds frozen in foreign bank accounts or authorisation by opposition-controlled National Assembly of acquisition of loans to buy machinery to restore infrastructure if new CNE is established;
- Incremental lifting of U.S. sanctions to begin at least one year before presidential polls;
- Begin with use of revocable waivers for companies operating in oil industry, then extend to lifting of specific sanctions as meaningful progress made toward an early, fair and internationally monitored presidential election.

### **5. Political guarantees**

- Reimposition of presidential term limits ahead of next presidential election;
- Restoration of proportional representation ahead of next parliamentary elections;
- Establishment of an impartial truth commission to investigate political violence over past two decades;
- Guarantees to the armed forces as to their future role and protection of their core institutional interests;
- A consensual national socio-economic agenda based on existing constitutional provisions.
- UN role in assisting and monitoring implementation of an accord.

# Imagining a Resolution of Venezuela's Crisis

## I. Introduction

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The political struggle that for over twenty years has pitted Venezuela's *chavista* government against an opposition spanning the political spectrum is now a ferocious battle for power, popularity and international support against a backdrop of mass socio-economic misery. After the opposition Democratic Unity (MUD) alliance won a sweeping victory in the December 2015 legislative elections, giving it broad constitutional powers to clip the wings of President Nicolás Maduro's government, Maduro used his control of the remaining branches of state – and particularly the Supreme Court – to hobble the National Assembly. The opposition hit back at the president with an attempted recall referendum in 2016, but the government-controlled electoral authority and the courts blocked the initiative, ushering in a period of alternating attempts at dialogue and mass, nationwide protests with scores of deaths.<sup>1</sup>

The economy, which had enjoyed an unprecedented, decade-long boom thanks to record prices for oil, on which Venezuela relied almost exclusively for its foreign earnings, tipped into recession almost as soon as Maduro took office following President Hugo Chávez's death in early 2013. Since then, it has shrunk by more than 60 per cent, plunging the majority of Venezuelans into severe poverty and reliance on intermittent distribution of cheap, government-supplied food and remittances from a swelling diaspora. The health service and basic infrastructure such as water, electricity and transport are in a state of near-collapse and epidemics of malaria, diphtheria and other diseases are taking an increasing toll.<sup>2</sup> According to the UN, over 4.8 million people had fled the country by February 2020, placing a severe burden on many of Venezuela's neighbours, particularly Colombia.<sup>3</sup>

In January 2019, newly elected National Assembly chair Juan Guaidó took the controversial step of declaring himself interim president, with the support of Venezuela's parliament and several dozen governments, including those of the U.S., Colombia, Brazil and many European countries. The opposition argued that Maduro's re-election in May 2018, in a poll boycotted by the mainstream opposition and marred by accusations of illegality, was a sham and that the presidency was therefore vacant. Guaidó's claim, they said, rested upon a constitutional clause that allows the legislature's head to assume the executive post pending legitimate elections. Their hope was that the Maduro government would rapidly fall apart under the pressure of increasingly severe U.S. sanctions, particularly on the oil industry, and that

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<sup>1</sup> For more on the recent political history of the Venezuela conflict, see Crisis Group Latin America Report N°59, *Venezuela: Tough Talking*, 16 December 2016; Latin America Briefing N°36, *Power Without the People: Averting Venezuela's Breakdown*, 19 June 2017; Crisis Group Latin America Report N°71, *Friendly Fire: Venezuela's Opposition Turmoil*, 23 November 2018.

<sup>2</sup> Crisis Group Latin America Report N°65, *Containing the Shock Waves from Venezuela*, 21 March 2018.

<sup>3</sup> "Refugees and Migrants from Venezuela", Coordination Platform for Refugees and Migrants from Venezuela, 5 February 2020.



the armed forces would switch sides. An abortive military uprising on 30 April, however, seemed to put paid to that idea, and in May the two sides began face-to-face negotiations facilitated by the Norwegian government.<sup>4</sup>

Despite apparent progress, however, the talks broke down in September 2019, and attempts to revive them have so far proven fruitless.<sup>5</sup> The Maduro government, adept at circumventing sanctions and outwitting the opposition, immediately announced that it had reached a settlement with a handful of minority opposition parties and set about preparing for legislative elections scheduled for late 2020. The opposition and its regional allies, led by the U.S. and Colombia, invoked a regional defence treaty that theoretically could pave the way for military action, though this option seems remote. As a result of government-backed efforts to force Guaidó from his post as Assembly chair in January, parliament has split in two.<sup>6</sup> The government seems for the moment to have gained the upper hand, and could be poised to vanquish the remaining mainstream opposition by lifting deputies' judicial immunity, pushing them into exile and taking control of their parties.<sup>7</sup> Prospects for a negotiated settlement appear more distant than ever.<sup>8</sup>

Notwithstanding its extreme political polarisation, however, Venezuela possesses several advantages over other nations that have suffered chronic conflict. Its 1999 constitution, ratified twice by referendum, commands at least verbal support from both sides. The country has no major ethnic, religious or territorial divisions and is located in a region with strong – albeit frequently interrupted – democratic traditions. For over 40 years, from 1958 to 1999, the peaceful transfer of power from government to opposition was an established practice, while *chavismo*, the movement created by the late President Chávez, won sixteen and lost two elections from 1998 to 2015 with no compelling evidence that it committed fraud.

On the basis of extensive discussions over the past year with *chavistas* and opposition members in and outside Venezuela, diplomats from Latin America, Europe, the U.S., Canada, Cuba and Russia, as well as independent analysts, Crisis Group believes that a viable, mutually acceptable settlement may still be possible. By presenting realistic ideas for talks, parties supportive of a negotiated settlement, such as the EU and various Latin American states, could help trigger debate among *chavista* and opposition supporters and spur them to end a costly, dangerous standoff.

Several caveats are in order. The compromises described in this report were broadly though not unanimously backed by the more pragmatic elements on both sides; others inevitably will oppose them. The government in particular feels that it has

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<sup>4</sup> Crisis Group Latin America Report N°75, *A Glimmer of Light in Venezuela's Gloom*, 15 July 2019.

<sup>5</sup> "Venezuela's opposition says Norway-mediated dialogue with Maduro 'is finished'", Reuters, 16 September 2019. Crisis Group Latin America Briefing N°41, *Peace in Venezuela: Is There Life after the Barbados Talks?*, 15 December 2019. When a Norwegian delegation visited Caracas in early January 2020, the opposition issued a communiqué rejecting a new round of talks and saying the Oslo-Barbados route to a solution had been "closed down" (*clausurado*). "Una delegación noruega visitará Venezuela pero Guaidó rechaza reabrir los diálogos", EFE, 10 January 2020.

<sup>6</sup> Crisis Group statement, "Seizure of Parliament Plunges Venezuela into Deeper Turmoil", 7 January, 2020.

<sup>7</sup> Crisis Group email interview, Venezuelan social scientist, 17 January 2020.

<sup>8</sup> Crisis Group interviews, government officials, opposition leaders, analysts, Caracas, 24-26 November 2019.

weathered the worst of the political and economic storm, and sees no immediate reason to show flexibility. More hardline opposition members also are in no mood to compromise. The U.S., whose cooperation in any solution would be essential, has come around to supporting a negotiated transition, but it would have fundamental objections to the ideas mooted here.<sup>9</sup> Moreover, discussions with the two sides for the most part took place prior to the government's latest move to wrest control of parliament, which sent shock waves through the opposition and seriously undermined any interest in negotiations or compromise.<sup>10</sup>

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<sup>9</sup> On 9 January, Secretary of State Mike Pompeo made a statement supportive of negotiations in Venezuela. In a fact sheet released simultaneously, the State Department referred to the need for "a broadly acceptable, negotiated transitional government". "Free and Fair Presidential and Parliamentary Elections in Venezuela", State Department, Office of the Spokesperson, 9 January 2020. U.S. officials insist that there has been no change in policy, and Pompeo says there can be no free elections with Maduro in power. But recent statements contrast markedly in tone from those of last year, such as that by Special Representative Elliott Abrams averring that "the time for dialogue with Maduro is long past". "US revokes Venezuela visas, rejects dialogue with Maduro", France 24, 7 February 2019.

<sup>10</sup> Crisis Group email interviews, opposition deputies, 5, 6 and 7 January 2020.

## II. A Thaw Between the Sides

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As shown in a recent Crisis Group briefing, the gaps between the parties – in terms of both mutual trust and substantive policies – remain dauntingly wide.<sup>11</sup> The best hope for a deal, the Norwegian-led process, has, for now, run aground. Of late, the government has gained confidence as President Maduro has retained his hold on power, despite intense domestic and foreign efforts to oust him, reached an agreement with a group of smaller opposition parties and sought to neutralise the opposition-held parliament for good. Its renewed sense of security hardly motivates it to make the sort of concessions demanded by Guaidó and the mainstream opposition. As a result, sorely needed confidence-building gestures from the government side appear increasingly unrealistic, leaving the opposition with the tough choice of whether to take part in parliamentary elections that seem bound to be rigged.

### A. A History of Mistrust

Each side profoundly distrusts the other. The opposition is convinced that the government simply will not acquiesce to genuinely competitive elections that offer a real, fair chance for a transition. The government and its allies are persuaded that the opposition and its foreign partners want to erase *chavismo* from the political map and turn back the clock to the days of “oligarchy” in Venezuela.<sup>12</sup> Both camps point to evidence to bolster their case: the opposition, to the systematic steps the government has taken to deny it its fair share of power since the MUD alliance’s surprise win in the December 2015 legislative elections; the government, to the opposition’s early efforts after that win to topple Maduro, as well as to Washington’s draconian sanctions, imposed with opposition backing.<sup>13</sup>

This history of hostility underpins the wariness between the two sides and their reluctance to believe one another’s promises at the negotiating table. The opposition has repeatedly accused the government side of reneging on commitments reached in negotiations and of using talks merely to buy time.<sup>14</sup> For its part, the government insists that the opposition seeks its violent overthrow, with the help of the U.S. and its regional allies, and has accused certain factions of sabotaging previous talks.<sup>15</sup>

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<sup>11</sup> Crisis Group Briefing, *Peace in Venezuela: Is There Life after the Barbados Talks?*, op. cit.

<sup>12</sup> Crisis Group interview, high-ranking *chavista* official, Caracas, 21 March 2019.

<sup>13</sup> The MUD won a two-thirds parliamentary “super-majority” in 2015, and at the start of 2016 the new head of the National Assembly, Henry Ramos Allup, promised that within six months it would find a way of removing Maduro from power. The government’s control of the Supreme Court and other critical state organs, and its subsequent establishment of a parallel parliament under its control, the Constituent Assembly, rendered that victory almost entirely hollow. Crisis Group Briefing, *Power without the People: Averting Venezuela’s Breakdown*, op. cit. “Presidente de la Asamblea de Venezuela promete sacar a Maduro de la Presidencia en seis meses”, *El Espectador*, 5 January 2016.

<sup>14</sup> In December 2016, a Venezuelan media outlet made public a letter to Maduro from Vatican Secretary of State Pietro Parolin. The Vatican official expressed “pain and concern” over the government’s failure to comply with commitments made during negotiations facilitated by representatives of Pope Francis. “La carta completa que el Vaticano envió al régimen de Nicolás Maduro y la oposición”, *Infobae*, 7 December 2016.

<sup>15</sup> Crisis Group interview, senior *chavista* official, Caracas, 6 February 2019.

In such a venomous atmosphere, initial, mutual confidence-building measures could help. Besides providing a measure of reassurance to the two sides, they could also build broader public support for negotiations. The government has the larger burden in this regard: it enjoys a virtual monopoly on institutional and military control inside the country and thus has greater ability to offer concessions. In contrast, the reciprocal concessions it would demand primarily would come from outside the country and include some that are largely beyond opposition control – particularly those pertaining to the relaxation of sanctions.

### B. *Confidence-building Measures*

If the government wishes to patch up relations with the opposition without imperiling its authority, it could start by releasing political prisoners, estimated in mid-February to number 351, as well as restoring parliamentary immunity for around 30 opposition legislators, many in exile.

At present, however, the government is stepping up, rather than scaling back, its resort to security forces, para-police units including the *colectivos* and judiciary to intimidate the opposition into silence.<sup>16</sup> On 16 December, the Supreme Court stripped four more opposition legislators of their parliamentary immunity, accusing them of involvement in the abortive military uprising on 30 April. On 20 December, MP Gilber Caro, who had previously been released from detention, was snatched once again and remains behind bars. And on 21 January, his colleague Ismael León was picked up and taken into detention at security police (Sebin) headquarters in Caracas, although he was later released into house arrest.<sup>17</sup>

The government's use of political detainees as tactical bargaining chips, and its erratic and piecemeal release of prisoners, has made the opposition reluctant to accept these steps as tokens of good faith.<sup>18</sup> Maduro arguably would have to take more decisive action – such as setting free all prisoners or lifting all restrictions on politicians – for the opposition to acknowledge and respond to the gesture.

The move on 5 January to strip Guaidó of his post as National Assembly chair and install as his replacement a more amenable opposition deputy, whom media

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<sup>16</sup> On the role of the *colectivos*, see Crisis Group Latin America Report N°78, *A Glut of Arms: Curb-ing the Threat to Venezuela from Violent Groups*, 20 February 2020.

<sup>17</sup> “Persecución política a diputados de oposición o disidentes en Venezuela”, *Acceso a la Justicia*, 18 December 2019. The UN High Commissioner for Human Rights has accused the Maduro government of eroding the rule of law and dismantling institutions with the aim of “neutralizing, repressing and criminalizing political opponents and people critical of the Government”. “Human Rights in the Bolivarian Republic of Venezuela”, UNHCHR, 5 July 2019.

<sup>18</sup> At the Barbados talks, the opposition rejected government proposals to include the release of prisoners in the negotiations. Crisis Group interview, opposition negotiator, Caracas, 11 October 2019. So far, the authorities have released only a few dozen under the terms of the 16 September agreement with minority opposition parties, but – according to figures provided by the legal rights organisation Foro Penal – the total number of political prisoners has fallen from 478 in mid-September 2019 to 351 in mid-February 2020. The criteria for determining who has been released are unclear, and the opposition does not regard all the agreement's supposed beneficiaries as political prisoners. The government disputes the very existence of the category, saying detainees have been convicted of serious crimes, including terrorism and treason. Crisis Group interview, senior Venezuelan government official, 4 February 2019.

reports have linked with corruption, blocked another potential route toward building trust between the sides, and led to a possibly irreversible split between two rival parliaments.<sup>19</sup> This outcome was all the more disconcerting given that legislators loyal to the government had rejoined the Assembly last year following an agreement with minority opposition parties.<sup>20</sup> After returning to parliament, these deputies made tentative progress toward appointing a new electoral authority, thus initiating what appeared to be a return to more normal democratic procedures.<sup>21</sup> In particular, they joined an opposition-dominated mixed commission to work toward establishing a nominating committee for board members of the National Electoral Council (CNE), a process that was completed in late February. This committee is now due to consider candidates for the electoral board.<sup>22</sup>

Hopes that the ruling party's return to the National Assembly might lead to the creation of a genuinely independent election authority remain tenuous, however. The mainstream opposition dismissed the agreement with minority parties as a sham and the parties themselves as a "fake opposition", while remaining sceptical of the

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<sup>19</sup> Crisis Group Statement, "Seizure of Parliament Plunges Venezuela into Deeper Turmoil", op. cit. The government deployed the National Guard on 5 January to restrict entry to the parliament building. Government legislators and a group of some eighteen members elected on opposition tickets who, according to media reports, had taken government bribes, voted by show of hands to replace Guaidó, although the session was never formally installed nor the votes counted. Among these eighteen was the new chair, Luis Parra. He has denied taking a bribe. On the issue of alleged corruption of opposition deputies, see Roberto Deniz, "¿Se necesita lavar su reputación? Se alquilan diputados para tal fin", *ArmandoInfo*, 1 December 2020. The government's decision to use force suggests that retaking the Assembly had become an urgent priority. Media reports linked the decision to statements from Moscow that closer economic relations between Russia and Venezuela depended on resolving the tussle over parliament. The reports did not substantiate this claim, however. Stepan Kravchenko and Andrei Biryukov, "Russia awaits Venezuela power shuffle before sending advisers", *Bloomberg*, 31 December 2019.

<sup>20</sup> The 16 September agreement reached between the government and minority opposition parties enabled legislators from the ruling United Socialist Party of Venezuela (PSUV) and – subsequently – those from *Patria Para Todos* and the Communist Party to rejoin the Assembly. Under the agreement with minority opposition parties, the government was to release some political prisoners, pro-government legislators were to return to the National Assembly and both sides were to agree on changes to the government-controlled National Electoral Council. Of the 55 pro-government parliamentarians elected in 2015, around 30 were regularly taking their seats by the end of the year. Phil Gunson, "Maduro Finds a 'New Opposition' to Negotiate With", *Crisis Group Commentary*, 19 September 2019. Crisis Group interviews, opposition parliamentarians, Caracas, 11 December 2019.

<sup>21</sup> Since 2017, pro-government parliamentarians had boycotted the assembly, following a Supreme Court ruling on 11 January 2016 that parliament was "in contempt". The Supreme Court declared that all acts of the National Assembly would be null and void as long as three opposition parliamentarians from Amazonas state were allowed to participate. The Court had admitted a formal petition that their election in December 2015 be invalidated on the grounds of vote buying, although the Court has never heard the case nor issued a final ruling.

<sup>22</sup> The committee's membership was completed on 26 February with the appointment of ten representatives of "civil society" nominated by the parties. Its swearing-in remained pending, however, since there was no immediate agreement on whether it should be done under Guaidó's presidency or that of Parra, or by some other formula not envisaged in the constitution. "Anuncian a los 10 representantes de la sociedad que conformarán el Comité de Postulaciones para designación del CNE", *Panorama*, 26 February 2020.

true intent behind the return to parliament.<sup>23</sup> In blocking Guaidó's re-election as National Assembly chair, the government seemingly confirmed the validity of these suspicions. Even so, pragmatic voices in the two camps, together with numerous foreign diplomats, agree that CNE renewal through cross-party negotiations remains both possible in principle and vital in practice, a core condition for a more general thaw in relations and eventual return to Norwegian-style talks (see Section III.B below on routes to CNE reform).<sup>24</sup>

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<sup>23</sup> "Frente Amplio asegura que nueva mesa de diálogo se elaboró con 'una falsa oposición para confundir'", *Panorama*, 16 September 2019. Crisis Group interviews, opposition politicians, Caracas, October-November 2019.

<sup>24</sup> Crisis Group interviews, *chavistas* and opposition representatives, 16 and 17 December 2019. Crisis Group interview, European diplomat, Bogotá, 15 January 2019. Crisis Group interview, *pro-chavista* diplomat, Bogotá, 13 February 2020. Maduro himself in December pointed to intense talks between the two sides over the nomination of a new CNE that would provide "broad guarantees for the [parliamentary] elections". "Maduro llama a consenso para designar nuevo CNE", *El Universal*, 17 December 2019.

### III. Ensuring a Level Playing Field

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Venezuela has a mixed track record regarding electoral practices. Up to and including the December 2015 legislative elections, both sides broadly agreed that – despite conditions favouring government candidates – the electoral system was generally efficient and the electronic voting system accurately tallied the votes cast. Tellingly, Chávez lost the 2007 referendum on constitutional reform by a whisker and the opposition won 112 National Assembly seats of 167 (precisely the number required for a “super-majority”) in 2015. The government points to such results as evidence of its respect for proper democratic procedure. *Chavistas* continue to resent what they perceive as the opposition’s refusal, along with Western countries, to give them credit where they believe credit is due.<sup>25</sup>

In any case, however, the opposition has raised increasingly credible concerns about the electoral system’s integrity over the past three years. Along with international observers such as the Inter-American Commission on Human Rights, it has decried partisan political control of the electoral system, use of the judiciary to persecute opposition politicians and vote rigging at the ballot-counting stage.<sup>26</sup> Any resolution of Venezuela’s crisis therefore will require significant improvements in electoral conditions, starting with the build-up to forthcoming parliamentary elections and extending to an array of reforms.<sup>27</sup>

#### A. Parliamentary Elections

The burning issue now for the opposition is how to respond to government-run parliamentary elections later this year. These elections look certain to be heavily tilted in the government’s favour and many opposition parties could be excluded from them altogether, either because their registration has been cancelled, or because the courts have handed control over them to factions linked to the government.<sup>28</sup> Sens-

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<sup>25</sup> Crisis Group interview, former Venezuelan official, 29 August 2019.

<sup>26</sup> “Annual Report 2018”, chapter IV B, Inter-American Commission on Human Rights. “Establishment and Dismantling of the Voting Guarantees System in Venezuela”, Observatorio Global de Comunicación y Democracia, December 2017. Allegations of vote rigging have focused on the 2017 National Constituent Assembly elections and the 2017 election for state governors, which were marred by vote tampering and turned an opposition victory into a narrow government win in Bolívar state. Jorge Rueda, “Venezuelan opposition claims evidence of tampered vote count”, Associated Press, 19 October 2017. As yet, there is no conclusive evidence of direct vote rigging or fraud in last’s year presidential election, although the main opposition parties and candidates were not allowed to take part in the poll and thus could not monitor voting tallies. Crisis Group interview, opposition-aligned election official, Caracas, 7 February 2019.

<sup>27</sup> The government also insists that fair elections will require the lifting of sanctions, arguing that otherwise *chavistas* would be competing from a disadvantageous position. Crisis Group interview, senior Venezuelan official, Caracas, 25 November 2019. That issue is covered below, in Section V.

<sup>28</sup> Luis Parra, expelled from Primero Justicia for alleged corruption and installed as chair of the National Assembly after the controversial 5 January session, has asked the Supreme Court to restore his party membership and facilitate the replacement of the current party leadership. Sarai Coscojuela, “José Brito, Conrado Pérez y Luis Parra empiezan la pelea por la directiva de Primero Justicia”, Runrun, 16 January 2020. Similar moves are reportedly under way regarding control of other G4 parties, possibly explaining why on 5 January Maduro declared that he had good reason to be-

ing that it has consolidated its hold on power, the government is focused on various methods to exclude or divide the opposition in order to win these polls and assure control over the National Assembly.<sup>29</sup> Given that even after obtaining a large majority in 2015 the opposition was prevented from exercising legislative power, it will be very difficult to persuade opposition voters to turn out for an election held under conditions favourable to the government side.<sup>30</sup>

Under the circumstances, the opposition faces the difficult decision of whether or not to participate. The issue is proving deeply divisive. A substantial part of the opposition is inclined to boycott polls they fear will only benefit the government and provide it with cosmetic democratic credentials. The more hardline among them hold that Guaidó's interim presidency should organise parallel elections to demonstrate the weight of public opinion against Maduro.<sup>31</sup>

In contrast, other voices in the mainstream opposition believe that even losing a non-competitive or unfair election could trigger political changes by exposing the incumbent's manipulation of public preferences – as illustrated in Mexico after 1988, Peru in 2000 and arguably Bolivia last year, as well as in other countries outside Latin America.<sup>32</sup> According to this view, the opposition's priority should be to use all available domestic and international means to improve the terms of electoral competition, and to participate so long as certain basic conditions can be guaranteed. These might include establishment of a new, consensual CNE, participation of mainstream opposition parties, freedom to campaign across the country, the physical safety and freedom from judicial prosecution of opposition candidates, and the right of opposition activists to help monitor the vote count.

Without these minimum conditions in place, it is hard to imagine how any part of the Guaidó-led opposition would participate. Indeed, the bulk of the opposition would boycott an election without these guarantees, leading to an illegitimate par-

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lieve that “all the opposition political parties” would take part in parliamentary elections. See remarks in “Nicolás Maduro llama venezolanos a votar en las legislativos 2020”, Telesur TV, 5 January 2020.

<sup>29</sup> Crisis Group interview, senior Venezuelan official, Caracas, 25 November 2019.

<sup>30</sup> Crisis Group Briefing, *Peace in Venezuela: Is There Life after the Barbados Talks?*, op. cit.

<sup>31</sup> A recent precedent is the unauthorised, opposition-organised referendum of 16 July 2017, in which voters rejected the election of the National Constituent Assembly and called for a government of national unity and free and fair elections. The vote's significance was disputed among opposition factions, however. Alfredo Meza, “La oposición venezolana asegura que logró casi 7.2 millones de votos en la consulta contra Maduro”, *El País*, 17 July 2017. One leading moderate described the idea as “pure fantasy, with little support in the G4”. Crisis Group interview, opposition member, 20 February 2020.

<sup>32</sup> On the rigged Peruvian election of 2000, see “Second Report on the Situation of Human Rights in Peru”, chapter IV, “Political Rights”, Inter-American Commission on Human Rights, June 2000. “Auge y caída de Fujimori”, BBC Mundo, 22 November 2000. The 1988 Mexican elections did not generate an immediate political rupture, but evidence of electoral fraud as well as the weakening of the ruling Institutional Revolutionary Party made it a turning point in Mexican political history, and helped pave the way for the eventual victory of an opposition presidential candidate in 2000. See Beatriz Magaloni, *Voting for Autocracy: Hegemonic Party Survival and Its Demise in Mexico* (Cambridge, 2006). On Bolivia and the effects of alleged fraud in its October 2019 elections, see Crisis Group Statement, “Keeping Violence in Check after Bolivia's Political Rupture”, 13 November 2019. On the political effects of manifest electoral fraud in countries emerging from communist rule, see Joshua Tucker, “Enough! Electoral Fraud, Collective Action Problems, and Post-Community Colored Revolutions”, *Perspectives on Politics*, vol. 5, no. 3 (September 2007).



liament, a continued political crisis with no foreseeable prospect of negotiations and, most likely, tougher sanctions. Europe and other international stakeholders supportive of a peaceful settlement should focus their immediate efforts on pushing the government to meet the above conditions for parliamentary elections. They should then insist on an international mission to monitor these polls.

As an incentive for the government to compromise regarding fair conditions for elections, the opposition could agree to match progress on these steps. It could meet moves toward an acceptable CNE by demanding the release of state funds frozen in foreign bank accounts or authorising, via a vote in the National Assembly headed by Guaidó, acquisition of loans to buy machinery to restore the country's ailing electricity generation system or other essential infrastructure.<sup>33</sup> A trusted third party, such as a UN agency, could receive these unfrozen funds, which it could use to purchase food and medicines – items exempt from U.S. sanctions.<sup>34</sup> The opposition might even agree to the return of government-appointed diplomats to posts in countries that recognise Guaidó as president, which in certain cases (such as the U.S., Argentina, Colombia and Peru) they had to leave when opposition-appointed envoys took their place.<sup>35</sup> Opposition leaders could urge these countries to consent to the establishment of embassies staffed by representatives of both sides, with the understanding that this measure would facilitate an agreement.

At the same time, foreign powers supportive of a peaceful settlement in Venezuela should consider more forceful steps to press Maduro toward talks. Although U.S. and other sanctions have not had the desired effect of splintering military and civilian backing for the government – and have had painful consequences for average Venezuelans – additional pressure may well be needed to extract concessions from an emboldened government. If the Maduro government shows little interest in a negotiated compromise, the EU should continue to bolster and, if necessary, widen its targeted sanctions against individuals accused of human rights violations. It could

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<sup>33</sup> Crisis Group interview, *chavista* activist, 29 August 2019. One such project proposed by the Boston Group, a meeting space for government and opposition figures, would have involved both sides agreeing to a multilateral credit line aimed at restoring the electricity grid in various Venezuelan states. On 8 October, Juan Guaidó told the National Assembly that the Corporación Andina de Fomento (CAF), a Caracas-based multilateral lender to Andean countries, could provide up to \$400 million for electricity generation in Zulia and other states that the government would not administer (the CAF requires parliament's approval). He later rejected the plan, however, saying there were (unspecified) better, cheaper alternatives that would avoid further indebtedness. "Hay mecanismos alternativos [...] sin endeudar al país, a menor costo", dijo Guaidó, sin dar detalles de cuales serían esas fórmulas", Reuters, 9 January 2020. Although the Finance Ministry has requested the loan, according to Boston Group coordinator Pedro Díaz Blum, the UN Development Programme would have administered the credit. For more details on the plan, see "U.N., lender CAF seek \$350 million loan deal for government of Venezuela's Maduro", Reuters, 4 December 2019. Pedro Díaz Blum, "7112019-Mecanismo de apoyo humanitario-GB-ONU-CAF", personal blog, 28 November 2019. "La ONU y banco CAF acuerdan financiar \$350 millones para paliar crisis eléctrica en Venezuela", Banca y Negocios, 5 December 2019.

<sup>34</sup> Crisis Group interview, U.S. official, Washington, 31 October 2019.

<sup>35</sup> Argentina has partially reversed this expulsion since President Alberto Fernández took power on 10 December, with a chargé d'affaires now officially representing Maduro's government in Buenos Aires. "El gobierno revisará el listado de los funcionarios de Maduro a los que Macri les había prohibido el ingreso al país", Infobae, 15 January 2020.

also strengthen its judicial efforts to clamp down on international financial crimes involving Venezuelan government officials.<sup>36</sup> In both areas, it should seek closer coordination with Latin American governments.

In parallel, and as an incentive, the EU could offer the prospect of improving diplomatic ties and pressing the case for Venezuela's return to international financial markets if progress is made toward a fair vote.<sup>37</sup>

### B. A New National Electoral Council

As seen, the CNE's fate is central to any political resolution. The five-person CNE board – whose members, the constitution mandates, are to be chosen by the National Assembly – presently splits four to one in the government's favour.<sup>38</sup> Under today's circumstances, reform presents a problem: member selection requires a two-thirds parliamentary vote, but the government has successfully manoeuvred to deprive the opposition of the necessary votes. Accordingly, some form of agreement is needed between opposition and government. For the past two decades, in the absence of either a parliamentary super-majority or any such agreement, the Supreme Court has invoked a "legislative omission" to justify making CNE board appointments itself. That, of course, is unacceptable to the opposition.

Some progress had been made last year, and has continued this year, toward an agreement in the National Assembly on the future composition of electoral authorities – arguably one of the first cases of bipartisan parliamentary cooperation in years.<sup>39</sup> A swift return to mainstream opposition leadership of the National Assembly, agreement on the composition of a mutually acceptable governing parliamentary body or some other method to restore parliament's unity to enable a vote on the CNE would appear to be essential preconditions for the appointment of a new and balanced

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<sup>36</sup> According to former *chavista* ministers Jorge Giordani and Héctor Navarro, as much as \$300 billion may have been embezzled from public funds between 2003 and 2014. Eyanir Chinaea and Corina Pons, "ENTREVISTA – Ex ministros denuncian malversación de 300.000 mln dlr en última década por corrupción en Venezuela", Reuters, 2 February 2016. Major court cases involving the laundering of the proceeds have already borne fruit in the U.S. and Europe, but even at up to \$1 billion per case, they have only scratched the surface. David Voreacos, "Former Julius Baer banker gets 10 years for Venezuelan plot", Bloomberg, 29 October 2018. José María Irujo and Joaquín Gil, "La lavadora de fondos en España de un exviceministro chavista: un laberinto de 53 millones", *El País*, 1 June 2019. "Alejandro Andrade, el guardaespaldas de Hugo Chávez y extesorero de Venezuela que confesó el cobro de \$1.000 millones en sobornos", BBC Mundo, 27 November 2018.

<sup>37</sup> An opposition member said, "if the U.S. won't reward the government for agreeing to a consensual CNE and holding fair parliamentary elections, then Europe should". Crisis Group interview, 16 December 2019.

<sup>38</sup> See Article 296 of the 1999 constitution. In addition to the five principal board members, the legislature must select substitute or stand-in members (*suplentes*), of whom three are to hold key positions with supervision over the voting process and voter registration. To effectively address the issue of CNE bias therefore requires attention to all eight appointments.

<sup>39</sup> Crisis Group interview, senior *chavista* official, Caracas, 25 November 2019. A bipartisan commission with an opposition majority but including government deputies was formed with the goal of establishing a nominating committee for the new CNE. See "El oficialismo y la oposición en Venezuela", op. cit. See fn 22 for recent developments regarding the formation of this committee.

electoral authority.<sup>40</sup> If both sides were to acquiesce to an even division of representatives on the board, with opposition and pro-government deputies each selecting two CNE board members while a chairperson would be chosen by mutual agreement, they would be taking an important step toward a more credible parliamentary election later this year.<sup>41</sup> A credible vote, in turn, would facilitate participation of most of the opposition, increase the likelihood of a representative turnout of voters and provide the Maduro government with a strong claim that Venezuela remains a functioning democracy.

Without progress in this direction, the opposition will continue to reject the election results and the government's legitimacy, and countries that support Guaidó will almost certainly maintain – and perhaps intensify – their campaign to isolate and squeeze Maduro and his allies.

### C. *Electoral Register*

The Venezuelan electoral register has not been properly updated in recent years, as a result of which as many as two million people of voting age may have been excluded. Moreover, at least four million have left the country since 2015, and their participation is hindered by the absence of consular facilities – a consequence of the country's financial crisis; the replacement of government-appointed diplomats by Guaidó's appointees; obstruction by Maduro's consular officials; and the Venezuelan government requirement that voters be legal residents of the country in which they vote.<sup>42</sup> The government, suspecting that most voters residing abroad support the opposition, will resist incorporating them into the register. A possible compromise would be to give voters abroad a specific, time-limited period to register. Ensuring that consulates are staffed by officials appointed by both government and opposition – notably in Colombia, where over 1.8 million Venezuelans now reside – would be important to enhance the resulting register's credibility.

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<sup>40</sup> In addition, the Supreme Court would have to lift its 2016 contempt (*desacato*) ruling against the Assembly, the government's principal tool to date for denying parliament its constitutional powers. Absent such a move, parliamentary decisions would lack legal force. "Tribunal Supremo de Venezuela declara 'en desacato' a la Asamblea Nacional de mayoría opositora", BBC Mundo, 11 January 2016. "El TSJ vs. la función legislativa de la Asamblea Nacional", Acceso a la Justicia, 29 August 2018. Politicians on both sides were weighing various options for lifting the contempt ruling prior to the government takeover of the Assembly on 5 January. Crisis Group interviews, opposition deputy, Caracas, 25 November 2019; National Constituent Assembly member, Caracas, 26 November 2019.

<sup>41</sup> Although, as noted in fn 38, the National Assembly appoints eight senior members of the CNE, and it is important not to lose sight of the other three's importance.

<sup>42</sup> According to the most recent figures, over 4.8 million have already fled the country. This number could rise to over 5.5 million by the end of 2020, according to Eduardo Stein, the UN's joint special representative for Venezuelan refugees and migrants. "Joint Communiqué", EU, UN High Commissioner for Refugees and International Organization for Migration (co-chairs of the Conference), 29 October 2019. "Refugees and Migrants from Venezuela", Coordination Platform for Refugees and Migrants from Venezuela, 5 February 2020.

#### D. *Polling Stations and Systems Audit*

In recent elections, the CNE has skewed the distribution of polling stations to favour pro-government districts, including by placing them in buildings controlled by government-linked organisations. Although a thorough revision would be desirable, the opposition ought not to make this measure a prerequisite for its participation. The more critical step would be a professional audit by an independent body of the electronic voting system in the presence of political party representatives.<sup>43</sup> The opposition's refusal to take part in recent elections, coupled with the 2018 withdrawal of the company that provided the technological platform for polls, means that the system has not been audited in years.<sup>44</sup>

#### E. *Lifting the Bans on Parties and Political Leaders*

Any agreement will need to include reversal of the electoral authorities' and Comptroller General's (*Contralor de la República*) decisions to ban several opposition politicians and parties in recent years. As of today, none of the largest opposition parties is allowed to take part in elections.<sup>45</sup> Key opposition leaders such as Leopoldo López of Voluntad Popular and Henrique Capriles of Primero Justicia – the latter a two-time presidential candidate who narrowly lost to Maduro in 2013 – have been barred from elected office under administrative procedures by the Comptroller General on grounds of alleged corruption.<sup>46</sup> López is also among many who have taken refuge in embassies or gone into exile because of judicial persecution.

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<sup>43</sup> The audit involves an exhaustive check of every component of the voting system, including software, hardware, telecommunications and fingerprint machines, as well as a simulated vote. "Las auditorías – una revisión profunda del sistema automatizado de votación venezolano", Consejo Nacional Electoral, 2018.

<sup>44</sup> During the vote count for the 2017 Constituent Assembly election, technical experts from Smartmatic, whose electronic voting system was employed, left the country after detecting irregularities. The company later said turnout figures had been artificially boosted by "at least a million votes". "Smartmatic Statement on the Recent Constituent Assembly Election in Venezuela", Smartmatic, 2 August 2017. On 6 March 2018, Smartmatic announced that it was withdrawing from Venezuela and could "not guarantee the integrity" of recent elections. "Smartmatic cesó operaciones en Venezuela", *El Nacional*, 6 March 2019. (In the interests of transparency, it should be noted that the chair of Crisis Group's Board of Trustees, Lord (Mark) Malloch-Brown, is also chair of the company SGO, of which Smartmatic forms part.)

<sup>45</sup> In early 2017, the CNE abruptly ordered all parties that had not taken part in the past two elections to re-register, imposing conditions that made it nearly impossible to gather the required signatures in the time available. Most opposition parties ran afoul of the order because they had participated as the MUD alliance, rather than in their own names. Carlos Crespo, "Puede el CNE inhabilitar a todos los partidos de la oposición?", *Crónica Uno*, 8 February 2017.

<sup>46</sup> "Los líderes de la oposición han sido diezmados por el chavismo", *El Colombiano*, 29 January 2019. The Supreme Court has now begun considering requests to transfer control of the main opposition parties to minority factions close to the government. Coscojuela, "José Brito, Conrado Pérez y Luis Parra empiezan la pelea por la directiva de Primero Justicia", op. cit.

## F. *Election Observers*

A Venezuelan election was last subject to scrutiny by international, professional election monitors in 2006. At the time, an EU observation team produced a report critical of aspects of the electoral process.<sup>47</sup> Since then, the government has replaced observation with “accompaniment”, under strict rules that allow the CNE to determine, for example, whether any conclusion will be published.<sup>48</sup> The government has indicated its willingness to allow more independent observation missions under the terms of any future agreement.<sup>49</sup> It almost certainly would not allow monitors from the Organization of American States (OAS), which it regards as hostile. But it might accept delegations from the EU, the UN or private organisations such as the Carter Center.<sup>50</sup> If it does, it should give observers the right to assess – through interviews with all sides and field research – whether the electoral campaign is being conducted fairly, the extent to which different political forces are free to participate and the integrity of the vote count. Electoral missions should also be entitled to publish their conclusions without Venezuelan state interference.

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<sup>47</sup> “Final Report: Presidential Elections Venezuela 2006”, EU Election Observation Mission, 2006.

<sup>48</sup> The methodology of foreign electoral “accompaniment” is laid out in an official document, which explains that any report made after the elections is to be handed to national electoral authorities. “Acompañamiento electoral internacional: Soberanía y cooperación”, CNE, s/d, p. 9. Various international organisations have sent electoral missions to Venezuela in recent years, including the Union of South American Nations and the Council of Latin American Electoral Experts. These missions have generally applauded the work of Venezuela’s electoral authorities and recognised the results presented by the CNE. On the 2018 presidential election, see “Ceela presenta informe final de su labor como acompañante internacional”, *Panorama*, 21 May 2018. “Venezuelan Presidential Elections. Canadian Delegation Observation”, *Common Frontiers*, June 2018.

<sup>49</sup> Although the government invited the UN to observe the May 2018 presidential election, the invitation was not taken up. No official reason was given, but the UN generally requires at least four months’ notice as well as General Assembly or Security Council approval. According to Francisco Ameliach, a government representative, the electoral committee (*mesa*) of the National Dialogue is considering the presence of international observers for forthcoming elections. “Mesa de Diálogo en Venezuela acuerda renovar Consejo Electoral”, *Telesur*, 21 October 2019.

<sup>50</sup> That said, senior *chavistas* have expressed reluctance to host international observation missions, since in their view these missions are politically biased and tend to “downplay levels of fraud in countries that are close to the EU or the U.S.” Crisis Group interview, senior *chavista* politician, Caracas, 26 November 2019. *Chavista* concerns rose following the Organization of American States’ report on electoral fraud in Bolivia, which led to President Evo Morales’ ouster. See also Crisis Group Statement, “Keeping Violence in Check after Bolivia’s Political Rupture”, op. cit.

#### IV. The Timing of Elections and Maduro's Fate

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A central opposition demand, echoed by countries that recognise Guaidó as acting president, is that fresh, free and fair presidential elections be held as soon as possible. The opposition contends that Maduro's May 2018 re-election was illegitimate and his "usurpation" must end.<sup>51</sup> For its part, the government side insists that the 2018 election was valid and Maduro freely and fairly elected; in its view, to agree to a new presidential election outside of the constitutional timetable would be to admit it was fraudulent. During the course of the Norway-brokered talks, government negotiators suggested that they might show some flexibility regarding the timing of elections, currently due in late 2024, but only if sanctions were lifted sufficiently far in advance.<sup>52</sup>

Caracas has also contemplated the possibility, outlined in the constitution, of allowing a recall referendum against Maduro in two to three years' time.<sup>53</sup> This option would become available as of January 2022. If Maduro were to lose such a vote before 2023, he would have to call a presidential election within 30 days.

##### A. *The Dispute over an Interim Government*

Closely associated with the issue of timing are considerations regarding Maduro's fate and the composition of an interim executive during the period preceding an eventual presidential election. The opposition leadership and its foreign allies, the U.S. in particular, have taken the position that Maduro must step down well before any election and hand over power to Guaidó. They argue that an election held while Maduro is in office would inevitably be unfair given his capacity to influence the outcome through control of state institutions.<sup>54</sup> At this point, however, it appears quite clear that the opposition lacks the power to enforce what *chavistas* would regard as a humiliating surrender by the incumbent.<sup>55</sup>

In the Barbados talks, opposition negotiators floated a possible compromise. They suggested that both Maduro and Guaidó step aside from their respective positions as soon as a deal was reached, without either renouncing his right to stand in the subsequent election.<sup>56</sup> In so doing, neither would be compelled to endorse the other's claim to be the legitimate president.

The opposition also discussed who might govern during a transition period. In Barbados, opposition representatives suggested a "council of government" made up of both military and civilian figures, evenly divided between the two sides and possi-

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<sup>51</sup> "Statement from President Donald J. Trump Recognizing Venezuelan National Assembly President Juan Guaidó as the Interim President of Venezuela", White House, 23 January 2019. "El Grupo de Lima reconoció a Juan Guaidó como presidente de Venezuela", Infobae, 23 January 2019. "EU countries recognise Juan Guaidó as interim Venezuelan leader", *The Guardian*, 4 February 2019.

<sup>52</sup> Crisis Group interview, high-level government official, Caracas, 25 November 2019.

<sup>53</sup> Crisis Group interview, *chavista* scholar, 28 August 2019.

<sup>54</sup> Crisis Group interview, senior U.S. official, Washington, 3 June 2019.

<sup>55</sup> Crisis Group interviews, current and former senior government officials, Caracas, 21 and 22 March 2019. Crisis Group interview, *chavista* scholar, 28 August 2019.

<sup>56</sup> Crisis Group interview, opposition negotiator, Caracas, 2 October 2019.

bly chaired by a senior military officer.<sup>57</sup> Several opposition members privately put forward another alternative: that, prior to resigning, Maduro and Guaidó would agree on the appointment of a vice president, who in turn would name a consensual cabinet. Should the two sides concur, the vice president could then take office as interim head of state as soon as they stepped down.<sup>58</sup>

Each of these suggestions presents challenges. The government officially rejects the idea of Maduro stepping down prior to elections and, as mentioned above, remains lukewarm at best toward the notion of calling early presidential polls. The farthest some of the more pragmatic *chavistas* have come is to contemplate a political agreement pursuant to which Maduro would resign, thereby triggering fresh elections (in which he could compete) within 30 days, as per the constitution, and only a full year after sanctions are lifted.<sup>59</sup> It is hard at this stage to see them agreeing to a significantly longer period for an interim government before new polls.

The U.S., too, would have fundamental objections. It believes that there must be a significant (albeit unspecified) time period between, on the one hand, Maduro's stepping down, restoration of National Assembly powers and lifting of restrictions on opposition politicians and, on the other, the holding of new elections.<sup>60</sup> Washington has also made clear on numerous occasions that it will not lift any sanctions as long as Maduro remains in power, although there have been no explicit references to his departure in the most recent sanctions.<sup>61</sup> Insofar as *chavistas* insist that sanctions be lifted well in advance of election day, and that Maduro would resign – if at all – only 30 days prior to Venezuelans going to the polls, their position and that of the U.S. appear irreconcilable. Furthermore, the U.S. stance is likely to be reinforced by the Venezuelan diaspora in the country, which has shown great animosity toward Maduro and has considerable influence over a potential deal given its geographical

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<sup>57</sup> The core of the opposition proposal, as explained by Guaidó, was that he and Maduro should both step aside to allow a Council of Government to prepare elections under a new CNE. Political prisoners would be released, bans on parties and individual politicians rescinded and humanitarian aid allowed into the country. "Guaidó propone un consejo de Gobierno para atajar la crisis de Venezuela", EFE, 16 September 2019.

<sup>58</sup> Several opposition figures told Crisis Group that they did not favour any such power-sharing formula, preferring instead to let *chavismo* remain in power until new elections with, perhaps, the inclusion of a few independent, technocratic officials in particularly sensitive posts, such as that of attorney general. Crisis Group interviews, opposition members, 28 May and 28 August 2019. It is important to note that under Article 233 of the constitution, Maduro's stepping down at any point during the first four years of his presidency would trigger an election within 30 days. Without some supra-constitutional arrangement, the delegation of presidential power to a vice president would only be feasible after January 2023.

<sup>59</sup> Crisis Group interview, *chavista* scholar, 28 May 2019.

<sup>60</sup> Crisis Group interview, senior U.S. official, Washington, 3 June 2019.

<sup>61</sup> The U.S. oil sanctions of 25 January 2019 spoke of the National Assembly as "the only legitimate branch of government duly elected by the Venezuelan people" as opposed to the "illegitimate Maduro regime", whereas recent sanctions against Rosneft Trading, introduced on 18 February 2020, said Washington would "consider lifting sanctions for those who take concrete, meaningful and verifiable actions to support democratic order in Venezuela" with no mention of Maduro. See "Venezuela-related Sanctions", U.S. Department of Treasury and "Venezuela-related Sanctions", U.S. State Department.

concentration in Florida, which is likely once again to be a swing state in the November 2020 U.S. presidential election.

Crisis Group suggests that instead of a recall referendum, which could well be subject to government efforts to slow or impede the process as occurred four years ago, Maduro step aside between one and four months prior to a fresh, internationally monitored presidential election under a reformed CNE, while a vice president, appointed by Maduro in the run-up to these polls with the consent of both sides, takes charge in the interim period. Both Maduro and Guaidó ought to be allowed to compete in the election, assuming that their respective parties choose them. As discussed below, the U.S. would need to agree that as progress is made toward such a political agreement, it would gradually relax sanctions (perhaps by issuing reversible waivers which could be removed if backsliding occurs), beginning sufficiently in advance of those elections.

### B. *The Timing of Early Presidential Elections*

Any preparations for an early presidential poll would take at least six months under normal circumstances. In today's extraordinary situation, in which much of the electoral apparatus will need restoration or upgrading as detailed above, most experts assess that at least nine months will be required to ensure fair elections following an agreement between the government and the opposition.<sup>62</sup> But this circumstance should not be a pretext for waiting too long before holding them, especially if major electoral reforms are undertaken before the parliamentary polls: the longer the political crisis endures, the longer it will take to rebuild the country. Holding the presidential election in 2021 or 2022 could be a compromise.

Neither side would be wholly satisfied, but all sides could claim some measure of success. If such a deal were brokered and implemented, and electoral reforms undertaken, the opposition would have achieved both internationally monitored, credible parliamentary and early presidential elections as well as the restoration of representative institutions. The government and *chavistas* would have resisted calls for Maduro's immediate and forced departure, ensured that he had the right to run, regained a measure of normalcy in Venezuela's political system and secured sanctions relief prior to a presidential election being held, granting them the basis to run a strong and (at least in theory) potentially victorious campaign.<sup>63</sup>

The U.S. almost certainly will object, given its current stance and its conviction that there can be no fair election if Maduro is in power. But if government and opposition were to reach agreement on such a plan, and if that plan enjoyed regional back-

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<sup>62</sup> Crisis Group interview, senior CNE official, Caracas, 7 February 2019. Venezuela's recent, divisive elections were organised in a hurry to suit the government's timetable and catch the opposition off guard. Since 2015, preparations have been carried out in three months or less. For an account of how much time is required, and how the CNE has fast-tracked recent elections to the detriment of the process, see "El CNE organiza unas presidenciales 'chucutas'", Observatorio Electoral Venezolano, 24 February 2018.

<sup>63</sup> Pragmatists in *chavista* ranks are willing to entertain the idea of early elections so long as the movement is not denied the chance of taking part and has a fair chance of winning, which requires the lifting of sanctions. Crisis Group email interview, senior *chavista* official, 6 November 2019.



ing, it would be hard for Washington to stand in the way.<sup>64</sup> The U.S. could claim victory in that its pressure would have contributed to Maduro's early departure and to steps to ensure credible elections, and it could readily retract its sanctions waivers (see below) if the government did not live up to its commitments.

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<sup>64</sup> This expectation is voiced by at least parts of the opposition. Crisis Group interview, opposition deputy, 16 December 2019.

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## V. Sanctions Relief

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As noted, the question of sanctions – the timing of as well as conditions for their lifting – is crucial. Tellingly, the Venezuelan government's sole demand with regard to the agenda of the Oslo/Barbados talks was to include the lifting of sanctions, invoking both humanitarian considerations and political ones.<sup>65</sup> It argued that elections held while sanctions remain in place would give the opposition an unfair advantage.<sup>66</sup> The government cited the imposition of additional U.S. sanctions last August, just prior to a new round of the Barbados talks, as proof that the opposition had no authority over the application or lifting of these measures, questioning the utility of discussions with opposition political forces that were unable to influence a matter of crucial importance to *chavistas*.<sup>67</sup> With the U.S. insisting that it will not lift sanctions while Maduro is in power and *chavistas* holding to the view that elections cannot take place under the shadow of sanctions, resolving this conundrum has become a key obstacle to a negotiated settlement.

### A. An Array of Sanctions

Sanctions can be schematically divided into three categories. First are those targeting named individuals on grounds of alleged human rights violations or involvement with organised crime and/or terrorism. The government has never publicly indicated any interest in negotiating relief from these penalties and did not raise the matter at the Norway-facilitated talks.<sup>68</sup> That said, individuals have lobbied European governments for their removal and there is little doubt that senior officials care deeply about them.<sup>69</sup> Both the U.S. and EU have made clear that relief would be forthcoming in most cases should the individuals concerned cooperate with a transition plan – although the lifting of sanctions would not affect any criminal proceedings whether under way or undertaken in the future for those accused of crimes such as human rights violations and drug trafficking.<sup>70</sup>

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<sup>65</sup> "Venezuela rechaza medidas coercitivas de EE.UU. contra gobiernos latinoamericanos", Telesur, 18 April 2019. Mark Weisbrot and Jeffrey Sachs, two economists, claimed in an April 2019 paper ("Economic Sanctions as Collective Punishment: The Case of Venezuela", Center for Economic and Policy Research) that sanctions led to "more than 40,000 deaths from 2017 to 2018". Pro-opposition commentators published several rebuttals. See, for example, Ricardo Hausmann and Frank Muci, "Don't Blame Washington for Venezuela's Oil Woes: A Rebuttal", *Americas Quarterly*, 2 May 2019.

<sup>66</sup> Crisis Group interview, high-level government official, Caracas, 30 May 2019.

<sup>67</sup> The opposition made a detailed proposal to the government on sanctions relief that remains confidential. Crisis Group interview, opposition negotiator, Caracas, 11 October 2019.

<sup>68</sup> According to a senior *chavista*, the reason is that it is frowned upon in government circles for individuals to complain about personal sanctions resulting from their participation in the political cause. Crisis Group interview, senior *chavista*, Caracas, 25 November 2019.

<sup>69</sup> Crisis Group interviews, opposition negotiator, Caracas, 11 October 2019; European diplomat, Caracas, 4 October 2017. See Javier Ignacio Mayorca, "Disputas en Luxemburgo", *Crímenes Sin Castigo* blog, 3 November 2019.

<sup>70</sup> Crisis Group interview, senior U.S. official, Washington, June 2019. According to the Congressional Research Service, the U.S. government has sanctioned "at least 144 Venezuelan or Venezuelan-connected individuals" in relation to terrorism, human rights violations, anti-democratic actions,

The costliest sanctions have been sectoral, notably those affecting oil and access to finance. Although the U.S. first imposed sanctions in 2005, it resorted to sectoral sanctions only in 2017, in an overt attempt to produce political change.<sup>71</sup> On 28 January 2019, the Trump administration took aim at the oil industry, freezing all property under U.S. jurisdiction belonging to the state oil corporation PDVSA and banning U.S. companies and individuals from doing business with it. On 5 August, it went further, threatening “secondary” sanctions against non-U.S. persons and entities assisting or supporting the Maduro government, thus making it riskier for foreign companies to deal in or transport Venezuelan oil.<sup>72</sup> How much of a role the pre-2019 sanctions played in provoking the industry’s vertiginous collapse is disputed. Oil output had already undergone a marked decline under the Chávez and Maduro governments, from 3.5 million barrels per day (bpd) when Chávez took office in 1999 to around 2.3 million 17 years later. From January 2016 to August 2017 (when financial sanctions were imposed), it fell to around two million bpd.

What is not in dispute is the centrality of oil to the country’s economy or the damage caused by shutting Venezuela out of the U.S. market: since 2007 more than 90 per cent of its foreign earnings has come from oil exports.<sup>73</sup> Sanctions at a minimum have produced a production bottleneck, as more oil was being pumped than could be sold abroad. With storage facilities nearly full by mid-September, the government had to further cut back production.<sup>74</sup> Rosneft Oil Company, which is majority owned by the Russian government, has provided some relief. It currently is responsible for over 70 per cent of Venezuela’s oil exports but reportedly charges a substantial premium for helping avoid sanctions.<sup>75</sup> In response, Washington imposed sanctions on trading in Venezuelan oil by Rosneft Trading, a Geneva-based subsidiary of the Moscow-controlled oil company, on 18 February.<sup>76</sup>

The third category of sanctions is financial: in August 2017, the Trump administration also prohibited access to U.S. financial markets by the Venezuelan government and the national oil company, except for short-term credit operations.<sup>77</sup> In March 2018, it extended these sanctions to Venezuela-issued digital currencies, and in May of that year it banned all transactions related to the purchase of Venezuelan debt. These financial sanctions have had considerable impact, not only starving the

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corruption and/or drug trafficking. “Venezuela Overview of U.S. Sanctions”, Congressional Research Service, 22 January 2020. The EU has frequently reiterated that its sanctions, which currently apply to 25 individuals, are targeted, flexible and reversible. “EU extends Venezuela sanctions for a year”, Associated Press, 11 November 2019.

<sup>71</sup> These sanctions severely restrict the government’s access to external finance and its ability to sell its oil and minerals. “Venezuela Overview of U.S. Sanctions”, Congressional Research Service, op. cit. The EU and others so far have imposed only targeted sanctions against named individuals.

<sup>72</sup> “Blocking Property of the Government of Venezuela”, Executive Order 13884, 5 August 2019.

<sup>73</sup> Sebastián Scrofina, “Los datos del petróleo venezolano”, *Debates IESA*, vol. 17, no. 2 (April-June 2012).

<sup>74</sup> Marianna Parraga and Mircely Guanipa, “Venezuela slows oil output, blending as stocks mount – sources, data”, Reuters, 18 September 2019.

<sup>75</sup> Anthony Faiola and Karen De Young, “In Trump administration embargo on Venezuelan oil, Russia is a clear winner”, *Washington Post*, 6 February 2020.

<sup>76</sup> Ben Bartenstein, Jack Faricy and Josh Wingrove, “U.S. sanctions Rosneft unit for ties to Venezuelan oil trade”, Bloomberg, 18 February, 2020.

<sup>77</sup> See Executive Order 13808 of August 2017.

government of cash but also prompting over-compliance by nervous foreign banks and financial services companies.<sup>78</sup>

The Trump administration compounded this problem with its 5 August announcement of a ban on all financial and commercial transactions involving Venezuelan government officials.<sup>79</sup> As a result, private companies and individuals have found it increasingly difficult to trade and move funds.<sup>80</sup> The government is in arrears on the greater part of a foreign debt now estimated to be in excess of \$150 billion, almost half of which is owed to bondholders.<sup>81</sup> Financial sanctions have had the effect of freezing most default actions pending debt restructuring, which Maduro has promised but cannot deliver until sanctions are lifted.<sup>82</sup>

Over time, the government has found ways to cushion its principal constituency from the effects of sanctions, raising further questions about their efficacy in producing a solution. Faced with the attempts at strangulation, the government has virtually abandoned its draconian price and exchange control system, with the result that some consumer goods that had been largely missing from the shelves have returned – albeit at prices most Venezuelans cannot afford.<sup>83</sup> Use of the U.S. dollar for everyday transactions has dramatically increased, and in major cities smart new shops offer imported goods priced in dollars. Today, Caracas, which is less affected by power cuts and fuel shortages than the rest of the country, presents a façade of apparent normality for those who do not venture outside the middle-class enclaves. For the vast majority of Venezuelans, however, daily life is a struggle for survival.

## B. *Sanctions Relief and a Political Solution*

Sanctions are a blunt instrument that – in Venezuela as elsewhere – tend to harm those they are intended to help far more than those they are meant to hurt. Their precise impact on ordinary Venezuelans is hard to assess, but by reducing the country's export revenue and – hence – import capacity, they have contributed to the hyper-inflationary spiral and the impoverishment of the population.<sup>84</sup> Their political effectiveness is also a matter of intense debate, but at a minimum their utility depends on

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<sup>78</sup> Crisis Group interview, Venezuelan economist, Caracas, 16 October 2019.

<sup>79</sup> "Venezuela: Overview of U.S. Sanctions", Congressional Research Service, op. cit.

<sup>80</sup> "Crisis en Venezuela: los problemas de pagar con tarjeta por las sanciones de Estados Unidos (y cuáles son las posibles alternativas)", BBC Mundo, 31 October 2019. Crisis Group interview, Venezuelan economist, 16 October 2019.

<sup>81</sup> Bondholders are owed \$65-70 billion. Lack of transparency makes it impossible to give a precise figure for total foreign debt, which some sources put at as much as \$180 billion. At the lower end, a debt restructuring proposal by Thomas Moatti and Frank Muci ("An Economic Framework for Venezuela's Debt Restructuring", March 2019) put it at \$134 billion.

<sup>82</sup> Inter-American Dialogue, "What Do Sanctions Mean for Holders of Venezuelan Debt", *Latin American Advisor*, 15 February 2019.

<sup>83</sup> Anatoly Kurmanav and Isayen Herrera, "Venezuela's capital is booming. Is this the end of the revolution?", *The New York Times*, 1 February 2020.

<sup>84</sup> Although food and medicine are exempt, Venezuelan NGOs point out that they are suffering delays due to the additional paperwork arising from "over-compliance" by banks, as well as to the fact that there are no longer direct air or sea links between Venezuela and the U.S. Crisis Group online interview, NGO director, 11 December 2019.

their being tied to an identifiable, realistic objective.<sup>85</sup> In this respect, the Trump administration's position that no sanctions relief will be available until Maduro steps down and that he must leave office significantly prior to new elections being held is increasingly detached from realities on the ground.<sup>86</sup>

A more useful approach would be to tie the gradual, step-by-step relaxation of sanctions to meaningful progress in carrying out a political agreement. To retain greater control over the process and be able to easily reverse its decisions in the event of backsliding, the U.S. could scale back secondary sanctions on third parties doing business with sanctioned parties. Before reversing oil and banking sanctions in their entirety, the U.S. Treasury Department might begin by issuing licenses exempting companies and individuals from certain sanctions.<sup>87</sup> Moreover, insofar as none of the sanctions so far imposed by the U.S. since the start of the current crisis has been enshrined in legislation, relief could be obtained entirely via executive action.<sup>88</sup>

Under this scenario, the U.S. would deepen, widen and accelerate sanctions relief as concrete steps are made toward an early, fair and internationally monitored presidential election with the full participation of all of Venezuela's political forces. Once the U.S. government is convinced that the Maduro government is committed to electoral reform and fair political competition with a view to an early presidential election, Washington could use licences to ease restrictions on the oil industry. As soon as government and opposition reach a full political agreement paving the way

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<sup>85</sup> A senior EU official said: "U.S. sanctions are responsible for immiserating the country. The Trump administration's view seems to be that they are willing to starve Venezuelans until their leadership surrender or their people oust them". Crisis Group interview, Brussels, February 2020.

<sup>86</sup> Washington's official position on conditions for general sanctions relief offers little flexibility in this regard. The Treasury Department has said: "The path to sanctions relief for PdVSA and its subsidiaries is through the expeditious transfer of control of the company to Interim President Juan Guaidó or a subsequent, democratically elected government that is committed to taking concrete and meaningful actions to combat corruption, restore democracy and respect human rights. A bona fide transfer of control will ensure that the assets of Venezuela are preserved for the country's people, rather than misused and diverted by former President Nicolás Maduro. Treasury will continue to use its economic tools to support Interim President Guaidó, the National Assembly and the Venezuelan people's efforts to restore their democracy". "FAQs Other Sanctions Programs: Venezuela (#660)", U.S. Department of the Treasury Resource Center, 31 January 2019. Some U.S. officials have also suggested that sanctions relief would also be conditioned on an end to Cuban influence in the country. Crisis Group interview, senior U.S. official, Washington, 3 June 2019.

<sup>87</sup> As noted above, Washington has already issued exemptions with regard to food, medicines and other transactions regarded as essential for humanitarian purposes. Some U.S. oil and oil services companies such as Chevron continue to operate in Venezuela under licenses issued by the Treasury Department's Office of Foreign Assets Control, renewed most recently (for three months) on 17 January 2020. "U.S. allows Chevron to keep drilling in Venezuela for 3 months", Associated Press, 18 January 2020.

<sup>88</sup> The Venezuela Emergency Relief, Disaster Assistance and Development Act (also known as the VERDAD Act), co-sponsored by Senators Robert Menéndez (D-NJ) and Marco Rubio (R-FL), among others, would have codified some sanctions had it been passed in full. Senator Menéndez and others were able to win inclusion of most of the text in the appropriations bill passed and signed by President Trump in December 2019, but not the specific financial sanctions the original bill contained. For a detailed summary of the provisions included in the appropriations bill, see "Menendez Secures Major Foreign Policy Priorities in Congressional Deal to Keep Government Open", Senate Committee on Foreign Relations, 16 December 2019.

for new presidential polls, Washington could begin to lift parts of its financial and oil sanctions, which remains a core *chavista* demand. It could also commence the process of dismantling other punitive measures, while retaining the power to reinstate sanctions should the government backslide on its promises. The last sanctions, as well as targeted individual sanctions from regional neighbours and the EU, should be lifted completely once a free and fair presidential election has been held and its results respected.

Lifting sanctions on a country struggling to consolidate a political settlement, or making the transition to a new government while simultaneously addressing a grave economic and humanitarian crisis, is risky: Venezuela could well be besieged by creditors seeking to recover a debt it cannot repay. Any such move would therefore optimally be preceded by a UN Security Council resolution similar to that which protected Iraq's assets from its creditors after the U.S. invasion toppling Saddam Hussein.<sup>89</sup> Moreover, lifting financial sanctions, while a necessary step, does not in and of itself guarantee economic recovery. Investors will be looking for clear signals that any agreement is sustainable and that the new government is market-friendly.

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<sup>89</sup> Luc Cohen and Mayela Armas, "Venezuela opposition eyes U.N. asset protection as option to save Citgo", Reuters, 19 September 2019. Neil MacFarquhar, "Security Council extends protection of Iraq's assets", *The New York Times*, 22 December 2008. Multilateral lenders such as the IMF and World Bank have been working on plans to help in the economic recovery and detailed studies exist of the capital injection that would be required and what sources might cover it. Crisis Group interview, Venezuelan economist, Caracas, 29 November 2019.

## VI. Longer-term Guarantees

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In a country with a system of government that grants sweeping powers to the executive branch, a presidential election is an essential part of a lasting political settlement. It is also an inadequate one – and potentially counter-productive – without an overall political agreement among the sides. Simply replacing Maduro with a president drawn from the opposition without appropriate guarantees for *chavistas* could prove highly destabilising. It could give rise to a dangerous witch hunt and/or lead *chavista* officials occupying positions in state institutions and security forces to rebel. In short, a stable transition requires a series of guarantees that would prevent the perpetuation of a winner-takes-all system and protect political rights of the losing side. Given the opposition's current prospects of victory, assurances to *chavismo* that its interests will be respected regardless of the electoral outcome will be particularly important.<sup>90</sup> Opposition representatives at the Oslo/Barbados talks seemed to recognise this reality, insofar as they included post-electoral guarantees in the six-point agenda.

A significantly enhanced UN presence in Venezuela, meanwhile, could help ensure that reforms aimed at providing guarantees to both sides are effective and draw on high levels of international support.

### A. Constitutional Amendments

There is a powerful case for reversing the hyper-presidentialism of the 1999 constitution, introduced at the beginning of Hugo Chávez's first term and consolidated through a 2009 constitutional amendment, before the next presidential polls. That change abolished term limits for the president, state governors and all other elected officials. Indefinite presidential re-election historically has been associated with the emergence of authoritarian regimes throughout Latin America, given the power of incumbency to tilt the scales. A possible alternative would be to permit a president to seek a maximum of two consecutive terms or to stand for a second term only after having first left office; the 1961 Venezuelan constitution stipulated as much. Finally, reintroducing an upper chamber to the National Assembly, with powers that include the ratification of appointments to the upper ranks of the armed forces, would also help balance presidential powers and restore regional rights.<sup>91</sup>

### B. Fair Representation

Proportional representation is guaranteed, in theory, under Article 63 of the constitution. Under the current electoral law, however, the dominant political force ends up being over-represented in collegiate bodies such as the National Assembly. Intro-

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<sup>90</sup> Senior *chavistas* stress that despite their low poll ratings and the fact that the movement is at its "worst moment", they expect to mount highly competitive campaigns in future elections and would hope to win them. Crisis Group interview, senior official, Caracas, 25 November 2019.

<sup>91</sup> Under the 1961 constitution, Venezuela had a two-chamber Congress; most senators represented the states. Former presidents were also senators for life. A restored upper chamber would offer additional checks on presidential power, ensure greater representation for underpopulated states and open up the possibility of greater scrutiny of legislative projects, among other things.

duced when *chavismo* formed a clear majority, the law worked in the opposition's favour in 2015, giving it a two-thirds parliamentary majority even though it obtained just 56.2 per cent of the vote. A ruling by the constitutional or electoral branches of the Supreme Court could restore proportional representation and ensure fairer minority representation, and could be issued early in 2020 so as to guarantee that it applies to the next parliamentary elections. The government has already proposed such a measure as part of its September agreement with minority opposition parties.<sup>92</sup> Devolution of power from Caracas to state and local government, also mandated by the 1999 constitution, has been reversed in recent years. Local control over hospitals, prisons, roads and other public services could act as a check on the concentration of powers at the national level.

### C. *Truth Commissions*

There have been various attempts to set up truth commissions to deal with political violence and human rights violations in the *chavista* era. The first effort was the 2003 agreement brokered by the OAS, the UN and the Carter Center following the 2002 coup attempt against Chávez and the subsequent strike and lockout of 2002-2003.<sup>93</sup> None has worked, however, because the two sides disagreed on specific terms. Both the Truth and Justice Commission set up by the *chavista* National Constituent Assembly and the amnesty laws approved by the opposition-controlled National Assembly were perceived as partisan instruments by those on the other side.<sup>94</sup> That dynamic likely will remain in place at least until the underlying political conflict is resolved.

As part of any agreement, a Truth and Justice Commission should be set up with bipartisan support, headed by recognised professionals acceptable to both sides and advised by international experts. Civil society participation would be equally crucial.<sup>95</sup> Its terms of reference would need to be established at the negotiating table, with the overarching goal being to reach an impartial account of crimes and human rights violations arising from the political conflict over the past two decades.

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<sup>92</sup> "Mesa de Diálogo en Venezuela acuerda renovar Consejo Electoral", op. cit.

<sup>93</sup> A truth commission designed to clarify events that occurred during the failed coup attempt of April 2002 was explicitly mentioned in the text of the agreement signed by government and opposition representatives on 29 May 2003. "El Centro Carter y el Proceso de Construcción de Paz en Venezuela, Junio 2002-Febrero 2005", The Carter Center, 2005, p. 24. Nicolás Maduro was among the signatories to this agreement.

<sup>94</sup> Regarding the amnesty law backed by Juan Guaidó in January 2019, see "Las claves de la Ley de Amnistía que ofrece Guaidó a los militares venezolanos", *El Espectador*, 27 January 2019.

<sup>95</sup> More than two dozen civil society organisations have recently come together to promote a Transitional Justice Initiative. Their involvement will be important if society as a whole is to accept the need for such a body. See "Compromisos de la Sociedad Civil organizada con los principios y la aplicación de la Justicia Transicional en Venezuela", Iniciativa Justicia Transicional, Caracas, 15 June 2017.



#### D. *The Role of the Military*

The armed forces have assumed greatly enhanced economic powers under the current government, and played an critical role in sustaining President Maduro by refusing to heed calls from the opposition and the U.S. to back Guaidó.<sup>96</sup> Although the opposition is determined to dilute the partisan orientation of the military and ensure the restoration of civilian control, senior commanders will be wary of any political settlement that does not provide them with guarantees that their future interests will be respected. The military's potential to sabotage any interim arrangements, thwart a new government or fail to address the spread of non-state armed groups across Venezuela mean that its cooperation and consent are vital for any workable accord.<sup>97</sup>

A viable agreement should therefore include detailed provisions as to the role of the armed forces in the lead-up to and aftermath of early elections; a medium-term plan to safeguard a degree of military autonomy and officers' career prospects; and the long-term objective of restoring clear civilian control over the armed forces and keeping the institution free of political bias, as stipulated by the constitution.

#### E. *Socio-economic Policies*

One of the issues at stake in the standoff is the *chavistas'* socio-economic legacy. They are concerned that an opposition-led administration would swiftly move to undo their achievements – and, in their eyes, revert to a system tilted toward Venezuela's traditional business elites and members of the upper class, leaving the poorest to fend for themselves and opening the country to exploitation by foreign corporations.<sup>98</sup> To reassure them, a political agreement between government and opposition might incorporate provisions acceptable to both sides, in line with previous constitutional articles, that future governments would be expected to honour. Examples of such provisions include a guarantee of public ownership of hydrocarbon and other natural resources in the subsoil; guaranteed access to public health, education and housing; and subsidies covering essentials such as food and medicines to shield the most vulnerable from the impact of adjustment measures.<sup>99</sup>

#### F. *An Enhanced UN Presence*

Assuring both sides that these guarantees are effective, apply equally to the government and opposition, and draw on broad international support could be helped by an enhanced UN role. Although divisions on the UN Security Council have so far impeded the approval of any resolution on Venezuela, an agreement between the sides in Caracas could in principle foster greater unity on the Council, leading to the estab-

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<sup>96</sup> Brian Ellsworth and Mayela Armas, "Special report: Why the military still stands by Venezuela's beleaguered president", Reuters, 28 June 2019.

<sup>97</sup> Crisis Group Latin America Briefing N°39, *Venezuela's Military Enigma*, 16 September 2019. See also Crisis Group Report, *A Glut of Arms: Curbing the Threat to Venezuela from Violent Groups*, op. cit.

<sup>98</sup> Crisis Group interview, former senior Venezuelan official, Caracas, 20 March 2019.

<sup>99</sup> Opposition proposals, such as the program for a post-*chavista* government called "Plan País", emphasise the need to continue humanitarian relief, improve health care and directly channel subsidies to the poorest households. The opposition states, however, that it will not rely upon existing channels for welfare provision. "Plan País: la Venezuela que viene", presentation at 2001.com.ve, s/d.

lishment of a Special Political Mission tasked with assisting and monitoring the peace process.<sup>100</sup> If Security Council consensus on Venezuela remains unattainable, the UN could consider appointing a higher-profile UN resident coordinator and special envoy charged with coordinating technical assistance to the transition, above all on constitutional and socio-economic matters, as well as issues of historical truth and justice.

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<sup>100</sup> On the dispute in the Security Council on Venezuela, see “Venezuela: Competing US, Russia resolutions fail to pass in Security Council”, UN News, 28 February 2019. See also Crisis Group Special Briefing N°1, *Council of Despair? The Fragmentation of UN Diplomacy*, 30 April 2019.

## VII. Conclusion

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Even amid Venezuela's catastrophic contest for power, a route to a compromise solution remains possible. It will require flexibility on the part of both sides, as well as on Washington's, to take it. As witnessed by Crisis Group, pragmatic *chavistas* and opposition members have repeatedly discussed elements of a negotiated outcome during private encounters. Some elements are recognised by both as essential; others are far more controversial with one group or the other. But neither side can achieve all that it desires, and at this point the price paid by Venezuela and its people – regardless of whether they are *chavistas* or opposition sympathisers – for maintaining the status quo far exceeds the price either would pay as a result of pragmatic, principled compromise.

The primary obstacles to a deal are familiar. On one side is the unwillingness of senior government figures to submit to an early, competitive presidential election when they claim to see no fault in the 2018 poll and pin all blame on a U.S.-led campaign of regime change. On the other are the opposition's doubts as to whether they could ever trust a government they regard as venal, autocratic and so bent on staying in power that it has manipulated the electoral system to its advantage. As for the U.S., it has focused primarily on exercising pressure, mainly in the form of sanctions, as a way of compelling Maduro's ouster. If no progress is made toward resolution, Venezuela runs the risk of ending this year with parliamentary elections boycotted by the bulk of the opposition, all institutions in government hands, a heightened political crisis, tougher sanctions and greater economic misery for the vast majority of the population.

This report offers one possible road to agreement. It rests on several pillars: restoration of a modicum of trust through reciprocal gestures; creation of conditions for fairer, more equitable elections first ahead of parliamentary polls later this year, and then more profound changes prior to a presidential election; changes in the way power is distributed; and a readiness by the opposition and the U.S. to scale back sanctions as *chavismo* takes these steps. Countries viewed as relatively neutral, and with ties to the two sides, could put this plan or a similar one forward – to present a clear alternative to the status quo, generate broad debate and extricate Venezuela from its ever deepening crisis.

**Caracas/Bogotá/Washington/Brussels, 11 March 2020**

Appendix A: Map of Venezuela



## 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 120 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 or regions 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, regional and national decision-takers. Crisis Group also publishes *CrisisWatch*, a monthly early-warning bulletin, providing a succinct regular update on the state of play in up to 80 situations of conflict or potential conflict around the world.

Crisis Group's reports are distributed widely by email and made available simultaneously on its 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 policymakers around the world. Crisis Group is chaired by former UN Deputy Secretary-General and Administrator of the United Nations Development Programme (UNDP), Lord (Mark) Malloch-Brown.

Crisis Group's President & CEO, Robert Malley, took up the post on 1 January 2018. Malley was formerly Crisis Group's Middle East and North Africa Program Director and most recently was a Special Assistant to former U.S. President Barack Obama as well as Senior Adviser to the President for the Counter-ISIL Campaign, and White House Coordinator for the Middle East, North Africa and the Gulf region. Previously, he served as President Bill Clinton's Special Assistant for Israeli-Palestinian Affairs.

Crisis Group's international headquarters is in Brussels, and the organisation has offices in seven other locations: Bogotá, Dakar, Istanbul, Nairobi, London, New York, and Washington, DC. It has presences in the following locations: Abuja, Algiers, Bangkok, Beirut, Caracas, Gaza City, Guatemala City, Hong Kong, Jerusalem, Johannesburg, Juba, Mexico City, New Delhi, Rabat, Tbilisi, Toronto, Tripoli, Tunis, and Yangon.

Crisis Group receives financial support from a wide range of governments, foundations, and private sources. Currently Crisis Group holds relationships with the following governmental departments and agencies: Australian Department of Foreign Affairs and Trade, Austrian Development Agency, Danish Ministry of Foreign Affairs, Dutch Ministry of Foreign Affairs, European Union Emergency Trust Fund for Africa, European Union Instrument contributing to Stability and Peace, French Development Agency, French Ministry of Europe and Foreign Affairs, German Federal Foreign Office, Global Affairs Canada, Irish Aid, Iceland Ministry for Foreign Affairs, Japan International Cooperation Agency, Principality of Liechtenstein, Luxembourg Ministry of Foreign and European Affairs, New Zealand Ministry of Foreign Affairs and Trade, Norwegian Ministry of Foreign Affairs, Qatar Ministry of Foreign Affairs, Swedish Ministry of Foreign Affairs, the Swiss Federal Department of Foreign Affairs, the UK Department for International Development, and the United Arab Emirates Ministry of Foreign Affairs and International Cooperation.

Crisis Group also holds relationships with the following foundations: Carnegie Corporation of New York, Charles Koch Foundation, Henry Luce Foundation, John D. and Catherine T. MacArthur Foundation, Korea Foundation, Open Society Foundations, Ploughshares Fund, Robert Bosch Stiftung, Rockefeller Brothers Fund, UniKorea Foundation, and Wellspring Philanthropic Fund.

**March 2020**

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## Appendix C: Reports and Briefings on Latin America since 2017

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- Counter-terrorism Pitfalls: What the U.S. Fight against ISIS and al-Qaeda Should Avoid*, Special Report N°3, 22 March 2017.
- Council of Despair? The Fragmentation of UN Diplomacy*, Special Briefing N°1, 30 April 2019.
- Seven Opportunities for the UN in 2019-2020*, Special Briefing N°2, 12 September 2019.
- Seven Priorities for the New EU High Representative*, Special Briefing N°3, 12 December 2019.
- In the Shadow of "No": Peace after Colombia's Plebiscite*, Latin America Report N°60, 31 January 2017 (also available in Spanish).
- Veracruz: Fixing Mexico's State of Terror*, Latin America Report N°61, 28 February 2017 (also available in Spanish).
- Mafia of the Poor: Gang Violence and Extortion in Central America*, Latin America Report N°62, 6 April 2017 (also available in Spanish).
- Power without the People: Averting Venezuela's Breakdown*, Latin America Briefing N°36, 19 June 2017 (also available in Spanish).
- Colombia's Armed Groups Battle for the Spoils of Peace*, Latin America Report N°63, 19 October 2017 (also available in Spanish).
- Venezuela: Hunger by Default*, Latin America Briefing N°37, 23 November 2017 (also available in Spanish).
- El Salvador's Politics of Perpetual Violence*, Latin America Report N°64, 19 December 2017 (also available in Spanish).
- Containing the Shock Waves from Venezuela*, Latin America Report N°65, 21 March 2018 (also available in Spanish).
- Mexico's Southern Border: Security, Violence and Migration in the Trump Era*, Latin America Report N°66, 9 May 2018 (also available in Spanish).
- Risky Business: The Duque Government's Approach to Peace in Colombia*, Latin America Report N°67, 21 June 2018 (also available in Spanish).
- The Missing Peace: Colombia's New Government and Last Guerrillas*, Latin America Report N°68, 12 July 2018 (also available in Spanish).
- Building Peace in Mexico: Dilemmas Facing the López Obrador Government*, Latin America Report N°69, 11 October 2018 (also available in Spanish).
- Saving Guatemala's Fight Against Crime and Impunity*, Latin America Report N°70, 24 October 2018.
- Friendly Fire: Venezuela's Opposition Turmoil*, Latin America Report N°71, 23 November 2018 (also available in Spanish).
- A Road to Dialogue After Nicaragua's Crushed Uprising*, Latin America Report N°72, 19 December 2018 (also available in Spanish).
- Gold and Grief in Venezuela's Violent South*, Latin America Report N°73, 28 February 2019 (also available in Spanish).
- A Way Out of Latin America's Impasse over Venezuela*, Latin America Briefing N°38, 14 May 2019 (also available in Spanish).
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