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“The Venezuela Recall Referendum Process”

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Mr. Chairman, thank you for the invitation to testify before this subcommittee. I have studied Venezuela as a scholar for twenty years, and have been involved in Venezuela with The Carter Center since 1998, when we observed the 1998 and 2000 elections. Since June of 2002, I have been leading the Carter Center’s efforts to facilitate dialogue between the government and opposition, and to monitor the recall referendum effort begun in November 2003.

Overview

After the short-lived ouster of President Hugo Chávez in April 2002, the government of Venezuela invited former President Jimmy Carter to facilitate a dialogue between the government and the opposition forces. We formed a Tripartite Working Group of the OAS, UNDP, and Carter Center which sponsored a national Table of Negotiations and Accords from November 2002 – May 2003. Facilitated by Secretary General of the OAS Cesar Gaviria, and assisted by The Carter Center and UNDP, the Table produced an agreement in May 2003 which, among other things, recognized that the constitutional provision for recall referenda on elected officials could be a mechanism to help solve the bitter political divisions of the country.

In May of 2003, the country lacked a functioning electoral agency (CNE) and the National Assembly proved unable to forge a supermajority to name a new directorate. The Supreme Court stepped in to do so, and a brand new CNE board was sworn in on August 27, 2003, acclaimed by all the parties. One of their first tasks was to rule on the signatures that had been presented a week earlier by the opposition Coordinadora Democratica for a recall of the president. The CNE disavowed those signatures and set to work to devise a set of regulations for this new procedure in Venezuela. The resulting regulations called for signatures to be collected in a 2-stage process during the last two weekends of November – the first weekend for the national legislators (deputies) sought to be recalled by the government, and the second weekend for the deputies and the president sought to be recalled by the opposition. The CNE invited the OAS and The Carter Center to observe the process, and those two organizations formed a joint mission with two chiefs of mission, and joint statements, throughout.

The signatures collected in those two weekends were presented to the CNE for verification (after being organized, photocopied, etc by the political parties) by December 19. The CNE took a break for Christmas and began signature verification January 13, 2004. The CNE announced preliminary results on March 2, with signatures in three categories: valid, “observed”, and invalid. The announcement indicated the opposition had not yet gathered sufficient valid signatures to trigger a presidential recall, but that there would be a correction period (reparos) in which nearly 1.2 million signers could appear again to confirm their signatures. The reparo period occurred at the end of May, and on June 3, the CNE announced that there would be a recall vote on the president’s mandate (subsequently scheduled for August 15, 2004), and nine opposition deputies.

The recall vote is scheduled four days before constitutional trigger date of August 19. If the recall occurs before August 19 and if sufficient votes in favor of recall are cast, then there should be an election to choose a person to fulfill the remainder of the President’s term in office (which ends January 2007). The number of votes to recall an official must fulfill two conditions: a) be at least one more than the absolute number of votes by which the official was elected in the first place, in this case 3.7 million; and b) be more than the No votes cast in the recall. This election, if needed, is likely to occur about October 15, 2004. If the recall referendum occurs after August 19, and the president is recalled, then the Vice President fulfills the term.

Assessment of the Recall Process To Date

The process has taken much longer than expected and has had some controversies, due to a number of factors that are important to understand:

- a) ***Unprecedented nature of the process, novice CNE, lack of a law to regulate the process.*** This is the first country of which I am aware in which a recall of an elected president has been attempted (Iceland has the provision, but may have never implemented it). The presidential recall referendum was introduced into the 1999 constitution and had not yet been used in Venezuela. The CNE directors were new and had to first devise a regulation to govern the process, since the National Assembly had not yet drafted and approved a law to implement the constitutional provision. All of these factors led to a steep learning curve, some ad hoc adaptation along the way, and creation of new rules as the process developed and new wrinkles were discovered.
- b) ***Politically-polarized nature of the process.*** The stakes are extremely high for all sides. The President, of course, would prefer to stay in office. The opposition has been trying for at least two years to remove the President from office, through massive protest marches, calls for resignation, proposed constitutional amendments, a two-month national oil strike, and the April 2002 military removal from office. The deep polarization of the country meant that the normal compromise and give and take of democratic processes was not happening. Instead, the point of contact between the opposing sides was centered within the

5-person CNE as it struggled to negotiate acceptable compromises on the procedures of the process, under intense pressure from all sides.

- c) ***Hybrid nature of the process.*** Part of the political compromise reached over the procedures was the hybrid nature of the signature collection process. It was neither a completely private affair, conducted by the political parties, nor a completely official affair, controlled by the CNE. This hybrid nature led to subsequent confusion and controversy during the verification period.
- d) ***Cumbersome mechanisms of control and verification procedures.*** The distrust between the parties and the desire to prevent fraudulent signatures (which the government suspected from previous signature collection efforts) produced a complex set of procedures designed to protect against fraud. These procedures, both in the collection process and the subsequent verification, provided for some checks which the CNE did not have the capacity, in reality, to implement – such as verification of thumbprints and signatures (neither of them digitalized in the signature collection nor in the national identity card system).
- e) ***Changes in procedures during the verification.*** One slowdown came after the CNE discovered that some signature sheets apparently showed the same handwriting for all of the signer data on that sheet, and in some cases even for the signatures themselves. This discovery produced a new criterion in the middle of the verification process to put into “observation” all of those signature lines which appeared to have similar handwriting as at least one other line on the same sheet. This required a second round of verification of the names that had already been reviewed, and resulted in some one million names being questioned under the “similar handwriting” criteria. This group became the bulk of the names that would go to the correction period in late May, for signers to confirm that in fact they had signed the petitions and it was not fraud.
- f) ***Incomplete or vague instructions; slow decision-making; insufficient training during the verification.*** The CNE board at points took a long time to make decisions and issue instructions for verification, and many of those instructions were vague or incomplete, requiring further instructions. The CNE did try to address some of the delays by enlarging the teams of verifiers, but the various levels and teams of verifiers were not always sufficiently trained on the first attempt. The end result was that the verification phase was supposed to take 30 days, and in reality took 120 days (depending on which dates one uses).
- g) ***Negotiations over the Reparo process.*** At the urging of the international observers, the CNE entered into discussions with the political parties in an attempt to devise mutually satisfactory rules for the correction (reparos) period (which had not previously been specified). These negotiations took several weeks, but were important in gaining the acceptance of the opposition

Coordinadora Democratic to participate in the reparos at all, and in generating clearer rules than had been generated for the earlier phases of the process.

Conclusions about the Signature Collection, Verification and Correction Stages: The signature collections were conducted in an atmosphere mostly free of violence, with citizens who so wished having the opportunity to sign, though with some confusion on the exact procedures. The verification process was complex, with multiple levels of review, unclear rules inconsistently applied, multiple delays, and with a concern for detecting fraud overriding a concern to recognize the good faith of the signers. The correction (reparo) period was conducted in an atmosphere mostly free of violence, with citizens who so wished having the opportunity, for the most part, to confirm their signatures or remove their names, and with mostly clear and transparent procedures.

Progress and Concerns about the Upcoming Recall Vote of August 15, 2004

Progress:

First, it is very significant and positive that all of the Venezuelan actors are participating in a democratic and constitutional process to resolve their differences. After trying a number of strategies, ranging from civil disobedience to general strikes, the opposition is now focusing on the recall referendum. The referendum will help to clear the air regarding the questions raised about the president's mandate.

Second, both sides are ready to engage in the campaign and try to win. Both have named a campaign command group; both are engaging in the effort to turn out as many of their supporters as possible.

Third, if the result is decisive and the process transparent, both sides will accept the results. If the president loses, I expect he will accept his loss and go on to the presidential election (either running himself if allowed by the Supreme Court, or supporting another candidate.) If the opposition loses, I expect the parties will focus on the upcoming governor and mayor elections (September 26) and the National Assembly elections in 2005.

Concerns:

If the results of the recall referendum are close, both sides will be tempted to argue that fraud or manipulation affected the outcome. Therefore, the greatest transparency possible is needed in order to raise confidence among Venezuelans in the results.

The measures that could help to assure transparency and raise confidence include:

- Audit of the voter's list (REP).
- Public simulations to test the new touchscreen voting machines.

- Audit of a sample of the paper receipts from the voting machines immediately after the close of the polls.
- Professional, neutral international observers with full access to the entire process – preparation, vote, tabulation, resolution of challenges.
- Election workers chosen by lottery and trained sufficiently well and early.
- Voter education on the process and the new machines.
- Clear rules on which national identity cards will be accepted (some confusion during the reparos resulted in some citizens being turned away.)
- Clear media regulations to ensure equal access by both sides for paid advertising, and equitable and balanced news coverage of both sides.
- Climate of respect and tolerance, particularly within the public and private news media and among the two campaigns.

Beyond the Recall Referendum

We should not lose sight of the fact that the *referendum itself will not solve the underlying divisions within Venezuela society*. It will help to resolve the question as to the level of confidence that the Venezuelan people have in the government of Hugo Chávez at this moment, and it will provide for the citizens to express their will in this unprecedented exercise of participatory democracy. But it will not resolve the fundamental differences with regard to the future direction of the country.

Resolving those differences will take a renewed effort of dialogue and direct communication among political and social actors to understand one another's grievance. It will take *a concerted effort at social reconciliation to heal the trauma* that divides cities, neighborhoods and even families. It will take a long time to overcome the personal hurt and fear that has arisen as a result of some government supporters being driven out of their homes and not able to enter restaurants or public places without "cacerolas" and harassment, and opposition members who fear persecution or even violence from gangs of motorcyclists or "hordes" of poor people descending from the mountains to defend their revolutions.

Resolving those differences will also *require a concerted national effort to devise a consensus plan to tackle the serious poverty problem*, which has resulted in the alarming social dislocation of a society moving from a 25% rate of poverty in the 1970s to a 75% poverty rate two decades later and the discourse of the haves vs. the have-nots in the current political debate.

Finally, resolving those differences will *require restoring checks and balances in government, and guaranteeing a political space for whoever loses an election*, so that a losing party need not fear recrimination, vengeance, or a loss of voice and rights in a winner-take-all political system, and knows it will have a chance to run again.