

THE
CARTER CENTER



PRELIMINARY REPORT

STUDY MISSION OF THE CARTER CENTER

PRESIDENTIAL ELECTIONS IN VENEZUELA

APRIL 14, 2013

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FOREWORD

This preliminary report addresses the presidential elections held in Venezuela on April 14, 2013. It includes an analysis of the antecedents to the special elections, the conditions of the vote, and the disputed outcome based on extensive interviews with Venezuela party officials, election experts and election authorities in Venezuela; the reports of Venezuela national observer organizations; and the observations of the Carter Center electoral accompaniment delegation and field office staff.

The first chapter, The Special Elections of April 14, 2013, analyzes the outcome and reactions to the vote. Chapter 2, The Extraordinary Interlude, discusses the antecedents of the election – the extraordinary interlude between the October 7, 2012 presidential elections and the April 14, 2013 special elections, building on the Carter Center’s report on the October 2012 elections. Chapter 3, The Election Campaign, analyzes campaign conditions. Chapter 4, The Voting Day Conditions, analyzes the quality of voting conditions on election day. Chapter 5, Challenging Elections in Venezuela, analyzes the official complaint presented by the opposition to nullify the election results. The report concludes with recommendations for electoral reform.

The Center will release a final report at the conclusion of the electoral process. The final report will include the response from the Supreme Court to the opposition’s legal challenges and the upcoming audit of the fingerprint machines.

The Carter Center mission was conducted in accordance with the Declaration of Principles for International Election Observation and Code of Conduct for International Observers that were adopted at the United Nations in 2005 and have been endorsed by more than 40 intergovernmental and nongovernmental organizations.



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TERMS AND ABBREVIATIONS

CNE	Consejo Nacional Electoral
PSUV	Partido Socialista Unido de Venezuela
MUD	Mesa de la Unidad Democrática
GPP	Gran Polo Patriótico
PCV	Partido Comunista de Venezuela
PPT	Patria para Todos
UNT	Un Nuevo Tiempo
VP	Voluntad Popular
GMVV	Gran Misión Vivienda Venezuela
PDVSA	Petróleos de Venezuela
GMAM	Gran Misión en Amor Mayor
PROVEA	Programa Venezolano de Educación-Acción
UCAB	Universidad Católica Andrés Bello
Comando Hugo Chávez	Comando de Campaña de Nicolas Maduro
Comando Simón Bolívar	Comando de Campaña de Henrique Capriles
OAS	Organización de Estados Americanos
EU	Unión Europea
UNASUR	Unión de Naciones Suramericanas
OSCE	Organización para la Seguridad y la Cooperación Europa
LOPRE	Ley Orgánica de Procesos Electorales
Ley Resorte	Ley de Responsabilidad Social en Radio y Televisión
CONATEL	Comisión Nacional de Telecomunicaciones
SIE	Sistema de Información al Elector
RSA	Activador Remoto de Sesión
CNS	Centro Nacional de Soporte
SAI	Sistema de Autenticación Integrado

EXECUTIVE SUMMARY

This report is based on information and perspectives gathered from a variety of Venezuelan actors as well as the personal observations made by the Center's field office staff and election experts based in Caracas throughout the series of electoral events (February 2012-June 2013), and the small accompaniment delegation that travelled to the country at the invitation of the National Election Council (CNE) between April 12 and 17, 2013. It builds on and adds to the Center's *Report on the Study Mission to the October 7, 2012 Presidential Elections in Venezuela*. The Carter Center did not deploy a comprehensive observer mission; it is therefore unable to give a comprehensive evaluation of the presidential elections of April 2013 as a whole.

ELECTION OUTCOME

On April 14, 2013, after an extraordinary interlude with the illness and passing of President Hugo Chávez, Venezuelans turned out massively to vote in special elections for a new president to fulfill Chávez's six-year term. The results announced by the CNE that evening declared interim President Nicolas Maduro as the victor, defeating Governor Henrique Capriles by only 224,268 votes (7,587,532 to 7,363,264), a difference of only 1.49 percentage points. The results threw the country into turmoil as the Capriles campaign demanded an audit before accepting the results, and then submitted an official petition to the Supreme Court on May 2 to annul the elections completely.

ELECTRONIC VOTING IN VENEZUELA

In Venezuela, citizens vote on touch-screen voting machines and receive a paper receipt to confirm their electronic vote. They deposit the slip in a ballot box to be available for a "citizen verification" or "hot audit" of the electronic vote in slightly more than half of the voting tables after the poll closing on election night. This audit, with the participation of voters and party poll-watchers, counts the papers receipts and compares their results to the electronic tally of votes for each candidate. It is meant to provide confidence in the vote and stems from agreements between the CNE and the political parties in 2006. The legal votes that the CNE counts for the official electoral results are the ones transmitted electronically to the CNE headquarters, rather than the paper receipts printed out by the machine.

DISPUTED RESULTS

Candidate Henrique Capriles initially demanded a full "recount" of the paper receipts before accepting the results. A controversy about the meaning of "audit" and "recount" in Venezuela's automated voting system, the intricacies of the electoral law, and imprecise communication from political actors contributed to a protracted debate over the nature of the audit demanded by the

opposition. On April 18, the CNE announced they would expand the citizen verification from the 53 percent already audited on election night to 100 percent of the voter tables, and Capriles accepted. Nevertheless, after the CNE announced the protocols for the Citizen Verification Phase 2 on April 26, Capriles rejected it, saying it did not include the manual voter logs to check the identity of voters, nor the additional electoral materials requested in writing by his campaign on April 17 and April 22.

AUDIT AND LEGAL CHALLENGES

From May 6 – June 10, 2013, the CNE conducted the Citizen Verification Phase 2, comparing the paper receipts with the electronic tally sheets from all of the voting machines, and found a 99.98 per cent match. Meanwhile the Capriles campaign entered two legal challenges to the Supreme Court, the first on May 2 requesting to annul the entire election, and the second more detailed challenge on May 7, requesting to partially annul the results. The May 7 challenge had three requests: to nullify 5,279 tables affecting some 2.3 million voters; to nullify some 21,000 tally sheets; and to nullify the *actas de totalización, adjudicación y proclamación* (acts of totalization, adjudication and proclamation). For the first component, the MUD focused on serious shortcomings in the quality of voting (some of which may have affected the results or that could be considered offenses that legally nullify those voting tables). The MUD also noted the unequal campaign conditions prior to Election Day in their challenge.

According to Venezuelan law, the Supreme Court should have announced if it admitted or not a petition within five days after the petition is presented. After this deadline had passed without a decision from the court, the opposition submitted a recusal against the Supreme Court about this delay on May 14, 2013.

LEGAL CONTROVERSIES

Two months after Chávez's victory in the October 7, 2012 presidential elections, the announcement of the reappearance of the president's illness plunged Venezuela back into political uncertainty. On December 8, 2012 President Chávez named then-Vice President Nicolás Maduro his desired successor as the head of the *chavista* political coalition and presidential candidate should Chávez himself be unable to continue in office. Then on January 9, 2013, one day before the constitutionally established date for the start of the 2013-2019 presidential term of office and while the president was still in a hospital in Cuba, the Supreme Court made a controversial ruling allowing Chávez's new term to continue from the previous one without a formal inauguration. The decision permitted the vice-president to be named interim president when the 58-year old Chávez passed away March 5, 2013. Following the state funeral on March 8, 2013, Maduro was formally sworn in as interim President and the National Election Council called a special election for April 14, 2013 to fulfill the remainder of Chávez's six year term.

Although legal scholars and opposition political leaders challenged these constitutional interpretations, the Supreme Court confirmed that upon becoming interim President, Maduro would cease as Vice President and not be obligated to separate himself from the presidency to run in the special elections. The MUD decided to move forward to present Henrique Capriles Radonski as their candidate for the special elections.

CAMPAIGN CONDITIONS

Although conditions for electoral competition are never perfectly equal, it is particularly important the electoral authority of a country regulate those conditions to assure a competitive environment. The reach and strength of the regulatory mechanisms and the determination of the authorities in charge of enforcing them determine, to a great degree, the ability to counter the natural advantages of incumbency and to ensure a sufficiently level playing field to guarantee an equitable competition, particularly in contexts of re-election.

In the case of the 2013 Presidential elections in Venezuela, the campaign itself lasted only ten days, though pre-election campaigning began immediately following Chávez's funeral. The Venezuelan constitution requires governors who run as presidential candidates to step down from that position before inscribing as candidates, although presidents running for re-election need not do so. Thus, Capriles as a sitting governor stepped down from that position during the campaign, while Maduro, confirmed as interim President, did not.

The theme of *ventajismo* – use of government resources for electoral advantage – became a campaign theme on the same scope as the Carter Center noted in its report on the October 2012 elections. While campaign events were generally held without problems, Venezuelan NGOs documented the use of public vehicles and public buildings for campaign activities and the participation of public officials in campaign activities, contrary to Venezuelan laws.

Venezuelan electoral law defines paid electoral propaganda narrowly, as “express calls to vote for a determined candidate or for a partisan group.” The CNE thus interpreted government ads promoting official government policy and social programs to fall outside the category of campaign publicity and did not limit them. At the same time, the CNE proscribed media spots paid for by opposition-affiliated NGOs that did not specifically express calls to vote for a candidate, thus reinforcing the view of inconsistent enforcement of the rules in favor of one candidate.

One advantage of the incumbent in Venezuela is the use of obligatory presidential radio and television broadcasts for national messages (*cadena*s). In contrast to the extensive use of *cadena*s by President Chávez in the 2012 campaign, interim President Maduro did not use

cadenas during the 10-day April campaign. Immediately following the election, however, a marked increase in *cadenas* occurred to respond to the opposition's questioning of the election results.

Both campaigns complained of media bias. A Carter Center television monitoring exercise from March 28-April 16 showed that state television station VTV broadcast more electoral coverage (excluding paid campaign ads) than the three largest private television stations combined. In the total coverage monitored, the Maduro campaign received 57 percent of the coverage of all outlets monitored, the Capriles campaign 34 percent, and the National Election Council (CNE) 9 percent.

The polarization of Venezuelan media is reflected in the breakdowns of coverage and the tone of coverage. In the private television stations, Capriles received nearly three-quarters of the coverage, though two of those stations provided an equilibrium between the two candidates while news channel Globovisión, which provided by far the most electoral coverage, devoted most of it to Capriles. On the contrary, on state station VTV, Maduro received 90 percent of the coverage time. The difference in tone of coverage was also striking: Maduro received 91 percent positive coverage in state media, but only 28 percent positive coverage in private media; Capriles received zero percent positive coverage in state media, and 60% positive coverage in the private media.

QUALITY OF ELECTION DAY VOTING

Five Venezuelan national observer organizations monitored the election, although only two of them (Asamblea de Educación and Observatorio Electoral de Venezuela) produced public reports. Both characterized the efficiency of the vote as improved over the October elections, with shorter lines and efficient use of the biometric identification system and the voting machines. Party witnesses of each campaign were present in 90 percent of the voting tables observed by the two organizations, with a small number (0.8 or 1.7 percent, respectively) of party witnesses reportedly excluded from the vote count and verification process. Both organizations also expressed concern about the environment of voting, observing an intimidating climate surrounding six percent of observed tables, mostly created by groups of motorcyclists associated with the governing party circling polling centers around the close of voting day, when citizens are normally allowed to enter to view the vote count and citizen verification.

CONCLUSIONS

No system of voting in and of itself can guarantee the confidence of the population in the process and outcomes. Whether manual or automated, confidence in elections is built by clear rules, transparency in all aspects of the process, impartial institutions to administer elections and

adjudicate disputes, and monitoring by citizens and political parties. Elections are by their nature divisive, but in a democracy possessing all of the characteristics just indicated, the loser accepts based on the knowledge s/he will have another chance to compete in regularly scheduled elections, the winner governs in the name of all citizens and counting on a constructive opposition, and the society moves forward with the knowledge that elections are but a means to make periodic decisions on programs and leadership for a specified period of time. When one or more of these characteristics are weakened or missing, however, elections can become contentious affairs and can disrupt national harmony and governability.

In the case of Venezuela, a fourteen-year effort to carry out fundamental change led by the Bolivarian revolution has been accompanied by deep divisions and polarization. In this context, the extremely close election results on April 14 presented an electoral and political conflict not seen since the 2004 recall referendum. Accompanied by divisive public discourse on all sides, the electoral dispute interrupted not only an incipient national consensus on the reliability of the electoral outcome, but also the ability to move forward with constructive debate and dialogue on other issues of import to the country.

RECOMMENDATIONS

As the high turn-out and many opinion polls demonstrate, the Venezuelan population, and the political parties and candidates in general, have confidence in the performance and integrity of the automated touch-screen voting machines in accurately counting the votes cast on April 14.

There is not agreement, however, about the quality of the voting conditions and whether every registered voter is able to vote one time, and only one time. In addition, inequities in campaign conditions in terms of both access to financial resources and access to the media diminish the competitiveness of elections, particularly in a legal framework that permits indefinite reelection of public officials.

In this context, the Carter Center respectfully offers the following observations and suggestions for consideration by the authorities, National Assembly, and people of Venezuela.

1. Clarify the regulations governing the participation of public officials and civil servants in campaign activities. Election law and regulations prohibit Venezuelan public officials and civil servants from conducting campaign activities in the exercise of their public duties. However, the Carter Center noted an extensive participation of public officials and civil servants in campaign activities. In order to limit and eradicate these practices, the regulations governing these matters should be clarified to determine whether such activity is allowed off-duty (and define “off-duty”) or not at all. The electoral authority, in turn, should determine ways to strictly enforce the agreed regulations.

2. Ensure greater campaign equity. Although the constitution requires elected officials below the rank of president to step down from their positions in order to declare their candidacy for president, it does not require a president running for re-election to do so. This gives an unequal incumbency advantage to a person running for re-election to the highest office in the land. In addition, Venezuela (alone in the region), provides no direct or indirect public financing for electoral campaigns or political organizations. Drawing on comparative experiences within the region, Venezuelan legislators and election authorities could consider several options:

a) Provide free and equitable access to public and private media for campaign messages. Given the regulations allowing unlimited government obligatory broadcast (*cadena*) and limited institutional advertisements (public service announcements), while simultaneously imposing strict limits on candidate and civic organization political advertising, Venezuelan campaigns have demonstrated a marked inequity in the ability of candidates to conduct a fundamental element of the electoral process -- to inform the voters of their political platforms. Assuring free and equitable access to public and private media to all competing parties could greatly help to level the present inequalities and enhance the competitiveness of elections, particularly in a legal framework that permits indefinite reelection of public officials;

b) Regulate and enforce equally campaign messages in the “pre-election” period. Presently, there are no clear norms to regulate campaign messages during the so called “pre-election” period (from the convocation of elections to the official start of the campaign). A clear regulation on that subject would help reduce the numerous conflicts that commonly arise during this period due to the absence of norms;

c) Limit or prohibit the use of *cadena* and inauguration of public works in a specified period prior to the elections. Mexico, Colombia and Brazil are some examples of countries with such regulations;

d) Limit the right of public officials to campaign for members of their own party or coalition. Mexico provides an example of strict limits on the president to speak on behalf of candidates from his/her own party.

3. Better enforce the regulation of the use of state resources for political purposes.

Venezuela law prohibits the use of public resources for political campaigns; yet national observer organizations and other NGOs have documented the use of public resources for political purposes, including public vehicles to transport voters to rallies and to vote, and use of public buildings for campaign propaganda. In addition, local organizations and parties have complained that public officials have improperly used government offices and personnel to encourage or to threaten public employees to participate in political activities and voting. As

noted in The Carter Center's October report, safeguards to prevent the abuses of *ventajismo* or to make violations of the law costly not just financially but politically, in terms of imposing sanctions against the perpetrating campaign, are crucially missing. A more active role in investigating and enforcing the norms on the part of the electoral authorities would contribute to eliminating this type of practice.

4. Clarify the role of the paper receipts. Extensive pre- and post-audits have demonstrated the accuracy of the automated voting machines. Nevertheless, election regulations that provide for verification of the electronic results through a count of the paper receipts emitted by the machines for purposes of "transparency and confidence in the system", do not specify contingencies should there be a significant discrepancy in this verification (see Carter Center report on the 2006 Venezuelan Elections).

5. Provide more information about the performance of the biometric identification system and include audits of the duplicity of fingerprints and incidences of the SAI in the published chronogram of audits. The System of Integrated Authentication (SAI) was introduced in the October 2012 elections at least in part to authenticate that the voter casting the ballot is the voter properly registered at that voting table, and to prevent multiple voting or usurpation of identity. Providing additional information about the performance of the machines in their first uses (October and December 2012 and April 2013) will help inform all Venezuelans about the extent to which the new system serves its intended purpose.

6. Improve the quality of the voting experience on Election Day. A number of observations by national observer organizations indicated serious issues of influence or pressure on voters. Provisions to improve the quality of the voting experience and ensure that each citizen is able to vote freely and voluntarily could include:

a) Instruct the security and election officials tasked with ensuring the security and conduct of the elections to ensure that all accredited party witnesses, and national observers properly accredited by the CNE, are guaranteed access to the voting centers the entire Election Day, according to the norms;

b) Instruct voting table volunteer workers on the proper procedures for assisted voting, including the specified limits for each assistant to help only one person;

c) Examine ways to better enforce the electoral regulations regarding limits on campaign propaganda and the guarantees of free access, without intimidation, of voters to the voting centers to vote and to participate in the citizen verification afterwards;

d) Define the criteria for receiving CNE credentials as a party witness and consider providing them with pins or apparel that identify them as such. The Carter Center delegation observed cases where persons unaffiliated with a registered political party identified themselves as working as party witnesses. Clarifying the roles of the various persons performing service at the voting table can help improve the climate of the voting conditions.

7. Audit and update the Electoral Registry. The CNE has achieved a very inclusive voters list, with 97 percent of the population inscribed. Questions about the list in Venezuela have tended to focus more on the possibilities of over-inclusion (unremoved deceased persons, homonyms, foreigners not eligible to vote) than on exclusion of citizens from the list. Although the campaigns received a copy and participated in and signed off on a review of the electoral registry used for both the October and April presidential elections, continuous updating of electoral registries poses a persistent challenge, particularly when removal of deceased persons requires action by a family to provide a death certificate to the civil registry and in turn to update the electoral registry. A study by the Andres Bello Catholic University produced an estimate of 49,000 deceased on the registry prior to the October elections, while the Capriles campaign variously estimated between 191,000 and 300,000 deceased still on the rolls, in addition to some 20,000 cases of homonyms. Clearing up these issues, perhaps with a regular schedule of updates and audits, will help to increase confidence and transparency of the electoral registry.

8. Legal framework. In January – March, 2013, the Venezuelan Supreme Court made several interpretations of the constitution that were subsequently questioned by the opposition, including some individual suits presented to the Supreme Court. The disputed interpretations arose in part because the constitution does not clearly specify every contingency for the temporary or permanent absence of a re-elected president. Given the constitutional modification in 2009 to permit indefinite re-election of president, governors and mayors, examination of the implementing laws to clarify these issues may be warranted.

9. Appointment of Election Authorities. Article 296 of the Venezuelan constitution provides for the appointment of the rectors of the National Election Council for seven-year terms by a two-thirds vote in the National Assembly, from nominations made by civil society, law faculties of national universities, and the Citizen Branch of government. It further specifies that these rectors should be persons without ties to political organizations. The terms of three of the current five rectors expired at the end of April 2013. Yet given the current stand-off in the National Assembly it is highly unlikely the necessary two-thirds vote will occur. Agreements between the parties to ensure the election of an independent and impartial electoral authority would help strengthen confidence in the electoral system.

I. THE SPECIAL ELECTIONS OF APRIL 14, 2013

In a surprising outcome, the special presidential elections following the death of President Hugo Chávez Frías, produced a very close election with interim President Nicolas Maduro defeating Governor Henrique Capriles by only 224,268 votes (7,587,532-7,363,264), a difference of 1.49%.¹ Chávez had previously defeated Capriles in the October 7, 2012 presidential elections by 11 points, and most polls had predicted that Maduro would defeat Capriles by seven to eleven points. In both October and April, record high turn-out rates of 80 percent of eligible voters demonstrated intense interest of Venezuelans in the elections.² The unexpected results set the stage for a contentious electoral outcome when Capriles rejected the results and refused to recognize the victor without a complete audit of the elections.

ANALYZING THE ELECTORAL OUTCOMES OF APRIL 14, 2013

The narrowing of the margin of victory for the government's candidate reflected both a reduction in absolute votes from October for the governing coalition, and an increase in the opposition's votes. Nationally, Maduro received 603,600 fewer votes than Chávez had in October — 8,191,132 to 7,587,532—while Capriles increased his vote share by 771,960, bumping up from 6,591,304 to 7,363,264. In terms of rural versus urban geographic-demographic cleavages, Maduro dropped, on average, 4.44% in rural states and 4.47 votes in urban states, though maintained chavismo's historic advantage over the opposition in rural states.³

Maduro won a majority of votes in fifteen out of twenty three states and received a majority of the vote share in the populous Capital District. Capriles won in eight states, a significant increase from last October's contest against Chávez when he won a majority in only two Andean region states, Tachira and Merida.

As a result, the electoral map for April 14, 2013 looked a lot different than the one for October 7, 2012. In October, Capriles's vote total against Chávez was a record for the opposition, but it projected a weak image of opposition support, with only two small 'blue' blotches in Táchira and

¹ The CNE announced the first results at 11:15 pm on April 14, with a difference of 1.6%. Between April 16 and 29, Capriles received a final surge from votes cast abroad in embassies and consulates that narrowed the margin by a little more than 0.1%. The CNE website's last update at the time of this writing (June 25, 2013) was May 24, 2013, with 99.94% of the voting tables counted. (There were 21 of 39,376 voting tables not included in that tabulation.) (CNE, "Divulgación Presidenciales 2013," 14 April 2013 <http://www.cne.gob.ve/resultado_presidencial_2013/r/1/reg_000000.html>).

² Participation was 80.49 percent in October 2012 and 79.68 percent in April 2013.

³ Typically, pollsters and analysts use the following rural-urban breakdown as a 'rule of thumb' for depicting tendencies of the electorate on a Venezuelan electoral map. Rural states: Amazonas, Apure, Barinas, Bolívar, Cojedes, Delta Amacuro, Guárico, Monagas, Portuguesa, Yaracuy; Urban states: Anzoátegui, Aragua, Carabobo, Distrito Capital, Falcón, Lara, Miranda, N. Esparta, Sucre, Vargas, Zulia; Urban sub-division in the Andes: Mérida, Táchira, and Trujillo. (Dorothy Kronick and Javier Rodríguez Rivas, "Nicolás Maduro Elected President with 50.78% of the Vote," <<http://stanford.edu/~dkronick/vz-elections2013/#>>).

Mérida on the electoral map. Against Maduro, Capriles won the popular vote in states he hoped to win in October but did not, such as important economic states Zulia and Bolívar, and important political states Miranda and Lara, his home state and that of one of his campaign chief's, respectively. Capriles also won in smaller states Anzoátegui and Nueva Esparta. Thus, in comparison to October 7, 2012 when the map appeared almost all red, Capriles's 'blue' broke up Maduro's blocks of red.⁴

In the Andean region—the three state of Mérida, Táchira and Trujillo—Maduro dropped an average of 5.3%. He actually dropped the largest percent in Chávez's home state of Barinas, 7%, despite winning a majority there. Maduro's losses of 5.8% and 5.7% of the votes in Bolívar and Zulia stand out as important examples where he lost significant ground and ceded a majority in the state to Capriles.⁵

Interpreting the potential voter realignment is not easy, however, Maduro himself gave a clue when he announced on May 16, 2013 that nearly 900,000 voters who had supported Chávez in October did not vote for Maduro in April.⁶ He implied that these voters stayed home, rather than that they switched their votes, and complained that it could have made the difference. The most radical sectors of the governing coalition, however, tended to point accusing fingers at Maduro himself.

The divergences between these sectors and Chávez's successor were made explicit for the first time during the campaign. Referring to the growing use of artists and musicians in Maduro's campaign acts, a political analyst from a chavista think tank (Miranda International Center) urged the presidential candidate to leave aside the "show" and focus the campaign on themes central to the movement.⁷ For a successful campaign, he wrote, it is not necessary for the candidate to be surrounded by "Bolivarian sifrinos."⁸ The campaign, in his judgment, should be focused on the legacy of Chávez, i.e. Bolivarian socialism.⁹

⁴ "Elecciones Presidenciales 2013," *El Universal* <<http://www.eluniversal.com/nacional-y-politica/mapa-de-resultados-electorales/>>. Dorothy Kronick and Javier Rodríguez Rivas, "Nicolás Maduro Elected President with 50.78% of the Vote," *Stanford University* <<http://stanford.edu/~dkronick/vz-elections2013/#>>.

⁵ Dorothy Kronick and Javier Rodríguez Rivas, "Nicolás Maduro Elected President with 50.78% of the Vote," *Stanford University* <<http://stanford.edu/~dkronick/vz-elections2013/#>>.

⁶ <http://www.eluniversal.com/nacional-y-politica/130517/maduro-senalo-que-tiene-identificados-a-900-mil-que-no-votaron-por-el>.

⁷ Nicmer N. Evans, "Nicmer N. Evans (Oficial): Reflexiones y Propuestas," <<http://evansnicmer.blogspot.com/2013/03/carta-publica-nicolas-maduro-dejemos.html?spref=tw>>.

⁸ "Sifrino" is a term popularly used in Venezuela to describe people who belong to, or aspire or pretend to belong, in an ostentatious manner, to a wealthy social class. In some cases, the term is used contemptuously to describe opposition sectors.

⁹ Foreign minister Elías Jaua responded forcefully by twitter: "We're facing an enemy. I invite you to dedicate your pen to confront it." This will be "the only time that I dedicate time to this issue," he added warningly.

Interviews conducted by the Carter Center corroborated the thesis that a large portion of the drop in the government's vote was due to abstention, while Capriles's gain in votes reflected better mobilization of opposition voters as well as attracting new voters. In addition, the sizeable decrease of voters for the smaller parties in the government coalition affected the outcome.¹⁰

THE CANDIDATES' REACTIONS TO THE VOTE

At 11:15 pm on April 14, the CNE declared interim President Nicolas Maduro elected with 7,505,338 (50.66%) votes to Capriles's 7,270,403 (49.07%) after the electoral authority tabulated 99.12% of the votes and determined the outcome was irreversible. The announcement of the razor thin by CNE President Tibisay Lucena came four hours after Vice-Rector Sandra Oblitas announced that voting centers should be closed, unless there are voters in line.¹¹ After Lucena announced the results, while also noting the "intensity" of election-day activities and calling on each campaign to orient their supporters toward peaceful recognition of the outcome, she and the other three rectors affiliated with the government left the dais while Vice-Rector Vicente Diaz stayed seated and made unexpected remarks.¹² Diaz called on the CNE to amplify the citizen verification process, regularly conducted for 53% of polling tables, to 100% in the name of creating "tranquility for the Venezuelan family."¹³

Maduro made his victory speech immediately after the CNE-announced results, speaking to a subdued crowd of supporters from a platform mounted adjacent to Miraflores palace instead of from the palace's 'balcony of the people' Chávez often used. Surrounded by family and supporters, Maduro gave a mixed-message victory speech, sprinkling in conciliatory language

¹⁰ In the October 2012 elections, the PSUV received 6.4 million votes and the small parties grouped under umbrella coalition 'La Gran Polo Patriótico' (GPP) received 1.8m (12.13% of the total votes), while during the elections of April, the PSUV received 6.193 million and the small parties 1.39m (9.6% of the total votes). In six months time, then, the PSUV lost about 200,000 votes (3%) while, as a combined force, the small parties 400,000 votes, more than 20% of their power (23%). For instance, the second biggest party of the coalition and historical party of the left, the Communist party, reduced its forces by 43% (lost almost 200,000 votes) and only four of fourteen parties passed the 100,000 votes (while seven of twelve coalition parties did in October).

Meanwhile, the decision by the MUD to run their candidate under a single party ticket – with only one symbol appearing on the ballot (*la tarjeta unica*), reflected well on the message of 'Unidad' projected by the Democratic Unity Table (MUD). In contrast, in October, the ballot contained the symbols (with Capriles's picture) of 21 different opposition parties, including Capriles's own party, First Justice (*Primero Justicia*) as well as a MUD symbol (which included Accfom Democrática and Copei parties) —a decision that some felt hurt the candidacy's message of unity and change. This decision also means that we cannot compare the performance of various parties in the MUD in the October and April elections.

¹¹ The vote is officially open from 6am – 6pm but the law allows all voters in line as of 6 pm to vote. As it did in the October 7 elections, the CNE announced the close of the voting day well past the 6 pm deadline (The Carter Center, "Final Report of the Carter Center Study Mission to the October 7, 2012, Presidential Election in Venezuela," October 2012, page 13 <http://www.cartercenter.org/resources/pdfs/news/peace_publications/election_reports/venezuela-2012-election-study-mission-final-rpt.pdf>). During the announcement of the first bulletin, Lucena estimated turnout to be 78.1%.

¹² "Tibisay Lucena Anunció a Nicolás Maduro como Presidente," *Ultimas Noticias* 14 April 2013 <<http://www.youtube.com/watch?v=dDsFrZelV0g>>.

¹³ *Ibid.*

with a confrontational tone. He said that the opposition's request for an audit would be welcome, but, referring to a phone call with Capriles beforehand, rejected waiting for such an audit before confirming the results. He did not want to leave the country in uncertainty, and while he recognized and respected the opposition voters, he also asked for their respect for his supporters.¹⁴ He closed inviting opposition supporters to work together for "true democracy" and noted that political dialogue could take place in the National Assembly or directly. But he promised to advance socialism.

Accompanied by MUD leaders, Capriles spoke just after midnight, and he too started on a tough line, telling the audience he would speak "firmly."¹⁵ In his first few lines, Capriles said the campaign had compiled reports of 3200 "incidents" regarding irregular activities on election-day, and that he would not recognize the results until every vote was counted and each ballot box opened.¹⁶ Capriles called on Maduro to liberate "political prisoners," arguing the country had changed, and this meant his supporters deserved respect. In his third and final cluster of messages he went a step deeper in their critical tone. Capriles claimed his campaign staff held a vote count different from the one offered by the CNE, so that the results did not reflect the reality of the country. He said that his results suggested that Maduro and his government were the "defeated" ones, that Maduro "enjoys more *illegitimacy*" than before, and also that if he had to, he would exhaust all the constitutional mechanisms available to help change the country.¹⁷ He concluded saying that the peace of the country was in the hands of the CNE.

The CNE's formal act of proclaiming Maduro the winner took place the day following the election in the late afternoon (4:00 PM). Although the Organic Law on Electoral Processes (LOPRE), in article 153, gives the CNE discretion to schedule this act of accreditation, holding the ceremony less than twenty four hours after the results contrasted with the October 7 elections when the CNE proclaimed Chávez the winner three days later on October 10.¹⁸

In a speech made prior to the act of proclamation, Capriles protested the holding of the proclamation so soon and termed Maduro's presidency "spurious."¹⁹ He asked Venezuelans to

¹⁴ "Maduro: I Recognize and Respect the Votes of the Opposition," *Ultimas Noticias* 14 April 2013 <<http://www.ultimasnoticias.com.ve/noticias/tuvoto/noticiaselectorales/maduro-reconozco-y-respeto-los-votos-de-la-oposici.aspx>>.

¹⁵ "Capriles R.: No Vamos a Reconocer Resultados hasta que Se Abran Todas las Cajas," *Ultimas Noticias* 14 April 2013 <<http://www.ultimasnoticias.com.ve/noticias/tuvoto/noticiaselectorales/capriles-r-no-vamos-a-reconocer-resultados-hasta-q.aspx>>.

¹⁶ *Ibid.*

¹⁷ *Ibid.*, CC emphasis.

¹⁸ The fact that this was a special election to fill a presidential void may have entered into the CNE's decision on the timing. The opposition, on the other hand, argued that Maduro could have continued as interim president until the audit was conducted.

¹⁹ *Ibid.*

permit him to manage the crisis and to avoid violence, saying the fight is not people to people but people against an illegitimate government. If the CNE did not agree to delay the proclamation, he called on Venezuelans to express their “indignation and rage” with a ‘*cacerolazo*’ (the banging of pots and pans), and to go to the next day to offices of the CNE around the country to demand the audit. He convoked a march in Caracas for Wednesday, May 17 that he would lead to the CNE to formally ask for the vote recount.²⁰ In the evening, after the proclamation act, Capriles made a second, more emotional speech. He reiterated the call for a “*cacerolazo*,” imploring Venezuelans to let out their furor (*arrechera*) through the banging of pots and pans.²¹

Monday after the elections the country awoke to a tense calm. At first, the disruptions in the streets of Caracas involved forceful civil disobedience that security forces seemed to have under control.²² By the afternoon tensions in Caracas deteriorated into violent skirmishes between protesting Capriles supporters and public security forces.²³ Reportedly, security forces wanted to contain the protest to sectors of the city far from government buildings in the center of the city.²⁴ Government spokespersons denounced attacks on government health clinics. The opposition denied accusations that it coordinated these protests or had orchestrated the violence that broke out. According to official government news reports, skirmishes throughout the country left nine dead and 78 injured.²⁵

By night’s fall, the protests in Caracas, and in other urban centers, dissipated but some elements took their actions in a more violent direction.²⁶ The opposition denied accusations that it coordinated the protests or had orchestrated the violence that broke out.²⁷

²⁰ “Henrique Capriles Llama a Cacerolazo si Nicolás Maduro Se Proclama Presidente,” *Caracol News* 15 April 2013 <<http://www.noticiascaracol.com/mundo/articulo-291690-henrique-capriles-llama-a-cacerolazo-si-nicolas-maduro-se-proclama-presidente>>.

²¹ 6 Poder Noticias, April 15, 2013, <<http://www.youtube.com/watch?v=Eie7hwXVAP4>>.

²² El Nuevo Herald, Ibid.

²³ Ciudad CCS, 21 de abril de 2013, <http://www.ciudadccs.info/?p=413472>. Telesur, 18 de abril de 2013, <<http://www.youtube.com/watch?v=zDMwSfjounM>>.

²⁴ Ciudad CCS, 21 de abril de 2013, <http://www.ciudadccs.info/?p=413472>. <<https://twitter.com/VicenteDz>>, To view a copy of the specific tweet, please see: <<http://www.twitlonger.com/show/livgjk>>. Vandalism against government officials’ homes, including the residence of CNE President Lucena, was reported in the public media and Rector Diaz criticized such behavior by pointing out there is a clear line between “anti-democratic harassment,” and legitimate “protest” action., <http://www.youtube.com/watch?v=zDMwSfjounM>.

²⁵ “Hechos Violentos en el País Dejaron 9 Fallecidos y 78 Lesionados,” *AVN* 24 April 2013 <<http://www.avn.info.ve/contenido/hechos-violentos-del-15a-dejaron-9-fallecidos-y-78-lesionados>>.

²⁶ “Opositores Atacan Sedes Oficiales y Residencias de Funcionarios,” *Ciudad Caracas* 15 April 2013 <<http://www.ciudadccs.info/?p=411423>>. “Twitter Page of Vicente Diaz,” <<https://twitter.com/VicenteDz>>. Vicente Díaz, “Saved Copy of the Specific Tweet,” *Twit Longer* 16 April 2013 <<http://www.twitlonger.com/show/livgjk>>.

On Tuesday, April 16, Maduro and Capriles held back-to-back afternoon press conferences. Maduro spoke at 3:30 pm, beginning by saying he would “radicalize the revolution” if the violence continued and then rejecting Capriles’s proposal for a Wednesday march, saying that he had denied the opposition permission to march in Caracas in order to prevent another ‘April 11’—a reference to the opposition march that prompted the 48-hour removal from power of Chávez in 2002.²⁸

Maduro’s remarks generated much anticipation about Capriles’s press conference. Capriles first announced that campaign staff had in fact delivered complaints to the CNE offices but that he was calling off the march for Wednesday. There existed, he said, real risks that high levels of political violence would break out during the march and that he feared the government would infiltrate the march to provoke violence. In the interests of maintaining the peace, Capriles said it would be better to hold another *cacelorazo* in the evening. He underscored: “He who leaves the peaceful line is not with this project.”²⁹ Capriles’s remarks seemed to pull Venezuela back from the brink, and fortunately Wednesday, April 17 unfolded almost as if it were a regular work day.

INTERNATIONAL ACTORS’ REACTIONS

International organizations and foreign governments began to offer reactions the day after the election. The electoral accompaniment mission of the Union of South American Nations (UNASUR), led by former Argentine Vice President Carlos ‘Chacho’ Alvarez, saluted the civic and democratic spirit demonstrated by Venezuelans at the polls, called on actors to respect the results emitted by the CNE, and pointed out the importance of following constitutionally established processes for submitting complaints about the electoral process.³⁰

²⁷ A respected Venezuelan human rights organization PROVEA investigated the allegations and did not find evidence of such attacks on the health centers (Hugo Pérez Hernaíz, “Information Minister Villegas and PROVEA Lock Horns over Claims of Violence,” *Venezuelan Politics and Human Rights Blog* 20 April 2013 <<http://venezuelablog.tumblr.com/post/48437643014/information-minister-villegas-and-provea-lock-horns>>).

“Interview of PROVEA’s Research Director Rafael Uzcátegui,” by Marco Antonio Ponce, 14 May 2013 <<http://www.derechos.org/ve/2013/05/14/del-timbo-al-tambo-entrevista-a-rafael-uzcategui-de-provea-sobre-la-protesta/>>.

²⁸ “Maduro Amenaza con ‘Radicalizar’ la Revolución en Venezuela,” *CNN en Español* 16 April 2013 <<http://cnnespanol.cnn.com/2013/04/16/maduro-amenaza-con-radicalizar-la-revolucion-en-venezuela/>>.

²⁹ “Henrique Capriles: ‘El que Se Salga del Tema Pacífico No Está con este Proyecto,’” *CNN en Español* 16 April 2013 <<http://cnnespanol.cnn.com/2013/04/16/henrique-capriles-el-que-se-salga-del-tema-pacifico-no-esta-con-este-proyecto/>>.

³⁰ “Declaración de la Misión Electoral de la UNASUR,” *UNASUR* 15 April 2013 <<http://www.unasursg.org/inicio/centro-de-noticias/archivo-de-noticias/declaraci%C3%B3n-de-la-misi%C3%B3n-electoral-de-la-unasur>>.

The Union of Inter-American Electoral Organizations (UNIORE), an organization with a lower profile than UNASUR, also sent a CNE-accredited ‘electoral accompaniment’ mission. On April 15 UNIORE’s mission in Caracas issued a press release and final report on the elections. The press release’s central message was to salute the Venezuelan people for demonstrating their commitment to democracy through their massive voting. The final report document noted improvement in civic education and applauded assisted voting to help those who otherwise would not be able to vote. It suggested improving the infrastructure for handicapped voters to access polling sites, removing the indelible ink for being

The Organization of American States (OAS), which organized a small accompaniment delegation at the last minute, issued a press release in a different tone. OAS Secretary General Jose Miguel Insulza noted the official results but also underscored “the announcement by the representatives of the government and the opposition on the need to conduct an audit and a full recount of the vote.”³¹ In this vein, Secretary General Insulza “expressed his support for this initiative and made available to Venezuela the OAS team of electoral experts, of recognized prestige and long experience in the field” to be of assistance in this effort.³²

From the United States, the White House spokesperson, rather than the State Department, offered his support for proposals for a 100% audit, observing “this seemed a prudent and necessary step to ensure that all Venezuelans have confidence in the results.”³³ Spain opted for essentially the same position as the U.S. although later it formally recognized the Maduro victory.³⁴ Governments throughout Latin America and the Caribbean recognized the Maduro victory after his proclamation on Monday, April 15, though they were more cautious than in October.³⁵

On April 18, the Carter Center emitted a press release calling for mutual recognition and dialogue while exhorting “all Venezuelans to express their differences peacefully, respecting the legal order and the constitutional rights of all citizens.” The Center recognized the changes in the country and the need for new agreements to “guarantee conditions of fair play during electoral campaigns”, saying “The narrow difference in electoral results, coupled with strong societal polarization, call for the initiation of a new political dynamic characterized by a frank and sustained national dialogue to facilitate democratic coexistence.” This dialogue should

redundant with the automated system, and called on the CNE to better regulate campaign propaganda. The mission also participated in many of the technical audits of the system. (“Informes Elecciones Venezuela,” UNIORE 2013 <<http://www.uniore.org/Documentos/EleccionesVenezuela.aspx>>).

³¹ “Insulza Salutes Civic Spirit of Venezuelans and Supports Recount Proposals,” *Organization of American States* 15 April 2013 <http://www.oas.org/en/media_center/press_release.asp?sCodigo=E-138/13>.

³² Ibid.

³³ “Press Briefing by Press Secretary Jay Carney, 4/15/2013,” *The White House* 15 April 2013 <http://www.whitehouse.gov/the-press-office/2013/04/15/press-briefing-press-secretary-jay-carney-4152013>.

The U.S. government reiterated this position throughout the week, with Assistant Secretary of State Roberta Jacobson and then Secretary of State Kerry calling for a “recount” and abstaining from congratulating or recognizing the victory of the Maduro government (William Neuman, “Kerry Encourages Venezuela Recount,” *New York Times* 17 April 2013 <<http://www.nytimes.com/2013/04/18/world/americas/kerry-encourages-recount-in-venezuela.html>>).

³⁴ “España Reconoce a Maduro como Presidente Electo de Venezuela,” *El Universal* 17 April 2013 <<http://www.eluniversal.com/nacional-y-politica/elecciones-2013/130417/espana-reconoce-a-maduro-como-presidente-electo-de-venezuela>>.

³⁵ The Canadian government of Stephen Harper issued a statement praising the high levels of participation in the elections, called for a peaceful resolution to the tensions, and noted the importance of Venezuela following an appropriate process to build citizen confidence in the results (“Canadá Solicita ‘Resolución Pacífica y Debido Proceso’ tras las Elecciones,” *El Universal* 18 April 2013 <<http://www.eluniversal.com/nacional-y-politica/elecciones-2013/130418/canada-solicita-resolucion-pacifica-y-debido-proceso-tras-las-eleccion>>).

include “the mutual recognition of the political actors (...) the discussion about the minimum agreements needed to find solutions to the major challenges Venezuela faces” as well as “how to define the rules and institutions that guarantee conditions of fair play during electoral campaigns.”³⁶

In the wake of the electoral conflict, UNASUR took further action. The government of Ollanta Humala in Peru, the country exercising the President Pro-tempore role, called an emergency UNASUR meeting to discuss the Venezuelan election on Thursday evening, April 18. Along with heads of states from other member nations, except Ecuador’s Rafael Correa who was in Europe, Maduro attended the session in Lima, which, according to Foreign Minister of Colombia María Ángela Holguín, would provide a forum for a “good discussion” about the election.³⁷ Peru’s foreign Minister at the time, Rafael Roncagliolo, pointed out that UNASUR governments had recognized Maduro’s victory but also felt it necessary to “analyze the situation” as a regional bloc.³⁸

THE POST-APRIL 14 CONTROVERSY: DEBATING THE MEANING OF “AUDIT” AND “RECOUNT”

Semantics surrounding Venezuela’s automated voting system, the intricacies of Venezuelan electoral law, and imprecise communication from Capriles and international actors made for a very fuzzy discussion about the post-election audit.

In Venezuela, citizens vote on touch-screen voting machines and receive a paper receipt to confirm their electronic vote. They deposit the slip in a ballot box to be available for a “citizen verification” or “hot audit” of the electronic vote in slightly more than half of the voting tables after the poll closing on election night.³⁹ This audit, with the participation of voters and party pollwatchers, counts the papers receipts and compares their results to the electronic tally of votes for each candidate. It is meant to provide confidence in the vote and stems from agreements between the CNE and the political parties in 2006.⁴⁰ In addition, as part of the regular series of

³⁶ “The Carter Center Calls for Mutual Recognition and Dialogue in Venezuela,” Carter Center 18 April 2013
<<http://cartercenter.org/news/pr/venezuela-041813.html>>.

³⁷ “Is the UNASUR Meeting Necessary?” La Republica 18 April 2013.

³⁸ “The UNASUR meeting about Elections in Venezuela to take place in Lima,” Noticias Caracol 18 April 2013
<<http://www.noticiascaracol.com/mundo/articulo-292045-avanza-lima-reunion-de-unasur-sobre-elecciones-venezuela>>.

³⁹ CNE, “The Organic Law of Electoral Processes (LOPRE),” Articles 160 and 161
<http://www.cne.gov.ve/web/normativa_electoral/ley_organica_procesos_electorales/titulo11.php>

CNE, “Regulations of the Electoral Processes,” 1 August 2012, Articles 437-442
<http://www.cne.gov.ve/web/normativa_electoral/reglamentos/Reglamento_General_LOPRE.pdf>.

⁴⁰ According to the Venezuelan electoral law an audit verifies the inputs used in the realization of the electoral process in order to promote the confidence and transparency of the elections (CNE, “Ley Orgánica de Procesos Electorales (LOPRE),” 1 August 2012, Articles 152 and 162
<http://www.cne.gov.ve/web/normativa_electoral/reglamentos/Reglamento_General_LOPRE.pdf>).

pre- and post-elections audits of the voting system, the CNE, with the participation of party technical experts, audit a statistical sample of 0.5% of the voting tables few days later.⁴¹

The legal votes that the CNE counts for the official electoral results are the ones that are transmitted electronically to the CNE headquarters, not the paper receipts printed out by the machine.⁴² One copy of the electronic votes registered in the voting machine (the *acta de escrutinio*) is printed out at the end of the electoral day in order for the president of the voting table to give the order for the results to be transmitted to the CNE. More printed copies are sent to the central election headquarters, and, following that, election workers at that voting table, along with the party witnesses, present the votes to the CNE.⁴³ In addition, the number of voters who signed the manual voter logs should be recorded by hand on the same electronic tally print-out (*acta de escrutinio*) and the official workers and party pollwatchers sign these *actas*.⁴⁴

For the elections in April, the citizen verification was planned to take place in 52.98% of the voting tables (or 20,672 tables). Article 437 of the Regulations of Electoral Processes states that under no circumstances can the citizen verification be considered a vote count, nor does it form a part of said procedure. That is to say, the process itself cannot declare null and void the electoral process even when irregularities come up through this audit. Nonetheless, the interested parties can use the audit's results as evidence in case that they want to challenge the elections through the judicial system. During the October elections, the postelection audit of the machines found only 22 cases with a vote discrepancy between the electronic tally and the paper receipts, and it was only a one-vote difference.⁴⁵

⁴¹ See the Carter Center report on the October 2012 elections for a full discussion of these audits (The Carter Center, "Final Report of the Carter Center Study Mission to the October 7, 2012, Presidential Election in Venezuela," October 2012 <http://www.cartercenter.org/resources/pdfs/news/peace_publications/election_reports/venezuela-2012-election-study-mission-final-rpt.pdf>).

For the elections of April 14th, the technical post-election audit was scheduled for April 19 (AVN "Auditoría del 54% de los Votos Se Efectuó con Aval de Testigos," SIBCI 15 April 2013 <<http://www.avn.info.ve/contenido/auditor%C3%ADa-del-54-votos-se-efectu%C3%B3-aval-testigos>>).

⁴² Article 336 of the Reglamento General, LOPRE.

⁴³ In exceptional circumstances, when the electronic voting machines are out of order in the day of the elections, and the CNE technicians cannot repair or substitute them, the electoral process in this electoral booth (table) passes to manual vote procedure; these tables cannot take part in the citizen verification audit.

⁴⁴ Unfortunately pollworkers did not always record the number of voters on the *acta* as noted in the MUD official complaint to the Supreme Court discussed below (see chapter 5). Otherwise, the verification of this recording of the number of voters could have been included in the phase 2 of the citizen verification audit (see below).

⁴⁵ This is considered normal, as some voters always fail to deposit their paper receipt. See Carter Report for October's elections 2012.

CAPRILES'S DEMANDS AND THE CNE'S RESPONSE

Capriles's public statements following the election alternated between the terms "audit" and "recount," while the international press and the U.S. government used the term "recount", and they all referred to counting the votes one by one. The National Electoral Council (CNE) and Supreme Court head rejected the calls for a "recount," explaining how such a process would mean a return to the previous manual voting method discarded amid suspicions of fraud fifteen years ago. In turn, many outsiders interpreted that position as rejecting Capriles' demands, when actually they were explaining the legal basis of Venezuela's automated voting system. Thus, semantics contributed to the confusion that overlay a serious dispute about how to address election complaints of the opposition.

Though initially Capriles's public comments had called for a "recount vote by vote" that would open all of the ballot boxes of paper receipts to count each one, he then added a request to examine the manual voter logs, comparing voter signatures and thumbprints to ensure there was no impersonation of voters, dead or alive. On April 17 the campaign formally requested in writing an "audit" of the larger system, including a comparison of the paper receipts and electronic tally sheets along with the number of voters recorded in the manual voters' log, as well as an audit of all of the remaining "voting instruments," including the fingerprint registration machines.⁴⁶ These technical requests, including the audit of the fingerprint registries, were not explained publicly until a press conference by MUD officials on April 24.⁴⁷

On the evening of April 18, after Capriles submitted this request formally, the CNE agreed to amplify its audit of the citizen verification process to 100% of the ballot boxes without mentioning the additional requests⁴⁸ This decision, announced by CNE President Lucena while the UNASUR meeting in Lima was ongoing, appeared to move the electoral tribunal in line with the position Rector Diaz indicated on April 14, 2013.⁴⁹ Dr. Lucena emphasized that this was not a vote recount, but a technical audit that would be done to preserve the state of harmony among Venezuelans and to isolate violent sectors. She noted that a request for a new automated vote count must be made through the court system.

⁴⁶ See the Carter Center report on the October 2012 elections for a full discussion of the automated system and the biometric identification system (fingerprint registry machines) (The Carter Center, "Final Report of the Carter Center Study Mission to the October 7, 2012, Presidential Election in Venezuela," October 2012 <http://www.cartercenter.org/resources/pdfs/news/peace_publications/election_reports/venezuela-2012-election-study-mission-final-rpt.pdf>).

⁴⁷ "Comando Simon Bolívar Clears up the Nature of Its Requests for a CNE Audit," *Globovision* 24 April 2013 <<http://globovision.com/articulo/comando-simon-bolivar-ofrecera-rueda-de-prensa-a-las-530pm>>.

⁴⁸ The CNE had indicated to the Carter Center that it could not respond to a political request made during speeches, but that complaints should be submitted through the formal channels.⁴⁹ AVN, "CNE amplifies the citizen verification audit to 100%," *SIBCI* 18 April 2013 <<http://www.avn.info.ve/contenido/cne-ampliar%C3%A1-auditoria-verificaci%C3%B3n-ciudadana-para-aislar-sectores-violentos>>.

⁴⁹ AVN, "CNE amplifies the citizen verification audit to 100%," *SIBCI* 18 April 2013 <<http://www.avn.info.ve/contenido/cne-ampliar%C3%A1-auditoria-verificaci%C3%B3n-ciudadana-para-aislar-sectores-violentos>>.

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In spite of his previous request about a more comprehensive audit, Capriles immediately accepted the CNE proposal to amplify the recount, saying that the “the problems” with the voting process could be found in the new 12,000 voting boxes to be opened as a result of the audit’s amplification, and that through this process the campaign could “show the truth” about what happened on April 14.⁵⁰

Early morning April 19, the UNASUR Summit meeting concluded and issued an eagerly awaited statement. The statement, dated April 18 but disseminated in the press on the 19, reiterated the message of congratulations offered in the UNASUR electoral mission’s April 15 press release, called on political actors to accept the official results offered by the CNE on April 14, and applauded the electoral board’s decision to amplify the audit while also calling for dialogue and tolerance.⁵¹

BREAKDOWN: FROM APPARENT AGREEMENT TO PROTRACTED DISPUTE

Over the next week, however, the apparent accord unraveled as the CNE and MUD attempted to discuss the procedures for the amplified citizen verification.

The CNE responded in a resolution dated April 22 and published in the *Gaceta Oficial* on April 29 to the written request dated April 17 from Henrique Capriles and the MUD soliciting an audit broader than the Citizen Verification for the purposes of assuring the “principle of transparency that should guide every electoral process” and to “resolve in a climate of confidence and peace the currently existing differences with regard to the electoral results.” The CNE explained in their response that according to Article 196 of the LOPRE, they are required to respond within 15 working days to requests or complaints that do not intend to impugn or nullify election acts. Petitions with the intent to impugn or nullify any act emanating from the CNE, in contrast, must be made to the Supreme Court of Justice and based on the reasons for nullification provided in the LOPRE.⁵²

The CNE letter responds to the specific points made by Capriles with these arguments:

- a) The request for a “recount” does not make sense in a completely automated election, in which a new count would simply rerun the computerized count and produce the same results.

⁵⁰ “Capriles Acepta Auditoria del 100% de los Votos,” *Tuteve Actualidad* 18 April 2013 <<http://www.youtube.com/watch?v=9MTEKLn9qSs>>.

⁵¹ “Declaración del Consejo de Jefes y Jefes de Estado y de Gobierno de la Unión de Naciones Suramericanas (UNASUR),” *UNASUR* 19 April 2013 <<http://www.unasursg.org/inicio/centro-de-noticias/archivo-de-noticias/declaraci%C3%B3n-de-los-jefes-de-estado>>.

⁵² The letter cites Article 202 of the LOPRE and Article 179 of the Organic Law of the Supreme Tribunal of Justice.

- b) With regard to the request to audit the totality of election materials because the results were narrow, it is not the competence of the CNE to determine whether results are “narrow” or “wide”, nor is there a juridical base that requires some action based on the results. In a democracy, the results are the results. The CNE lists 17 audits of software and hardware that took place prior to and on election day and one post-election audit, all with the participation of the party representatives and their signature on each audit act, as well as the citizen verification (audit) the night of the election.
- c) With the respect to the accompanying photos and denunciations provided by the candidate, the CNE responded that it could only investigate specific complaints referring to violations of the law and with specified voting tables where such violations occurred.
- d) The CNE noted that they added an audit and the presence of party witnesses in two additional centers of the CNE on election day, at the request of Capriles.
- e) The CNE noted that the request to “clean” the electoral registry of deceased and homonyms came after the close of the period and the audit of the same.
- f) THE CNE noted that the request for the audit of duplicity of fingerprints had been planned after the October and December 2012 elections, but that, with the knowledge of the MUD experts, there had not been enough time to conduct the lengthy tests given the rapidity of the subsequent elections. In the meantime, the CNE had agreed to provide the parties with the Status of Biometric Authentication of the Voters for the April 14 election.
- g) With regard to new requests not included in audits previously agreed to for election processes, such as the provision of the list of voting machines that failed to transmit, the use of the unblocking keys in the SAI, and the registers of transmission, the CNE would evaluate the juridical and technical bases of these requests.

The same day, April 22, the Capriles campaign submitted to the CNE another, more detailed written request, reiterating their requests for a review of the registers of the voter identification fingerprint machines and the manual voters logs to check their concerns about impersonation and multiple voting.⁵³ Carter Center interviews with election authorities revealed that election regulations do not provide for review of the manual voters logs, and other experts noted that it would be technically highly challenging to review the physical signatures and thumbprints of nearly fifteen million voters.

The CNE decided on April 26 instead to reaffirm the protocol for expanding the audit to follow the citizen verification procedures begun the night of the election, as Rector Diaz had requested

⁵³ “Administrative Request of an Audit to the CNE,” CSB 22 April 2013 <<http://venezuelasomostodos.com/descargas/solicitud-administrativa-de-auditoria-ante-el-cne/>>.

the night of the election; that is, comparing the paper receipts with the electronic tallies, neglecting the rest of the MUD's petitions.

On April 26, Capriles tweeted to reject the terms of the auditing process announced by the CNE, using a local vernacular term (*chimba*) to describe it as a false audit. He announced he would take his case to the world and that, sooner rather than later, Venezuela would have new elections.⁵⁴

Two days before on April 24, ugly events on the floor of the National Assembly brought into relief the gravity and the reach of the electoral dispute. Exercising arbitrary powers as National Assembly President, Diosdado Cabello denied opposition lawmakers their 'derecho a la palabra' (right to speak). Cabello argued they had no legitimate rights to address the Congress until they recognized the legitimately elected head of state, President Maduro. A fracas followed the sharp exchange of words elicited by Cabello's controversial move. The fracas left a handful of opposition lawmakers visibly injured.⁵⁵ Later in the evening, President Maduro announced he had phoned Cabello and instructed him to take measures so that violence would not break out in the National Assembly again.⁵⁶

THE CITIZEN VERIFICATION AUDIT BEGINS

The audit, officially called the Phase II of the Citizen Verification process, thus began on May 6 without the participation of the Capriles campaign. Based on experiences with previous elections when the CNE conducted the citizen verification's audit for more than 50 percent of the voting tables on a random basis,⁵⁷ few actors expected the Citizen Verification to show a significant number of errors.⁵⁸

The conflicting visions about the scope for an audit of the election results defined the public debate over the legitimacy of the outcome. With Capriles announcing his campaign would not participate in the CNE-organized Citizen Verification Phase II audit, the opposition articulated the view that for an audit to validate the outcome it needed to be broader than a technical review

⁵⁴ "Capriles Teme Auditoría 'Chimba' en Venezuela," *El Espectador* 26 April 2013 <<http://www.elespectador.com/noticias/elmundo/articulo-418653-capriles-teme-auditoria-chimba-venezuela>>.

⁵⁵ PROVEA, *Boletín Internacional Sobre Derechos Humanos*, Edition No. 2 (May 2013): PROVEA, <http://www.derechos.org/ve/wp-content/uploads/boletin_provea-FINAL-ESPA%C3%91OL.pdf>.

⁵⁶ Alejandra M. Hernández, "Maduro Exhorta a Cabello a Tomar Medidas para Evitar Violencia en la AN," *El Universal* 30 April 2013 <<http://www.eluniversal.com/nacional-y-politica/130430/maduro-exhorta-a-cabello-a-tomar-medidas-para-evitar-violencia-en-la-a>>.

⁵⁷ The Carter Center, "Final Report of the Carter Center Study Mission to the October 7, 2012, Presidential Election in Venezuela," October 2012 <http://www.cartercenter.org/resources/pdfs/news/peace_publications/election_reports/venezuela-2012-election-study-mission-final-rpt.pdf>.

⁵⁸ Indeed, as discussed below, the final results announced June 9 showed only a 0.02% error rate.

of whether the electoral machines functioned correctly. The PSUV and aligned pro-government parties articulated the view that the opposition, by not participating in the electoral authority's Citizen Verification audit that they had originally requested, was acting like a "sore loser" and behaving irresponsibly.

The continuing dispute centered on the nature of the suspicions of the Capriles campaign, and the various interpretations of the commitments made by the CNE before the elections for sharing of information. In the days and weeks following the election, the Capriles campaign's analysis narrowed to the processes of voter identification rather than the performance of the voting machines as potential problems. They identified concerns about possible impersonation of voters through the usurpation of voter identity or voting for deceased persons still on the voters list, in addition to other issues affecting the quality of voting, such as the intimidation of voters outside or inside the polling place. These concerns were explained publicly on April 24 and detailed in the formal complaint to the Supreme Court on May 7, discussed below.⁵⁹ The CNE, on the other hand, argued that they were responding to the requests made by both Rector Diaz and Capriles himself the night of the election, and agreed to again on April 18 by Capriles, to expand the citizen's verification to the near totality of the voting tables.

One means to examine the identity issue is to conduct the so called "fingerprint duplicity audit" an audit of the fingerprints registered by the SAI machines attached to the voting machines. Images of the voters' fingerprints, along with the identification card numbers, were captured in the removable memories of the voting machines. While each SAI fingerprint machine only contained the prints of the voters registered at that table (and thus checked for duplicity only within that subset), by downloading all of the fingerprints registered in all of the memory cards, it would be possible to conduct a universal test of all those who voted on April 14 in the country to determine if the same fingerprints appeared more than once.⁶⁰

There was some debate about whether and when the fingerprint duplicity audit should and could take place.⁶¹ According to CNE rectors and Capriles campaign technical representatives to the

⁵⁹ On April 24, the Capriles campaign explained publicly that they viewed the audit differently than the CNE and had different expectations. They wanted an inclusive audit and not a '*chacuta*' (lame or a fake) one. A proper audit, they said, would include review of the electoral acts (electronic record of all the votes submitted to the CNE from each polling station), paper voting receipts, the electronic System of Voters Recognition (SAI) and the manual voters' logs. They insisted that the review of the manual voters' log would help them to identify whether any deceased persons are presented as voters in these elections and also if usurpation of identity took place ("Comando Simon Bolívar Clears up the Nature of Its Requests for a CNE Audit," *Globovision* 24 April 2013 <<http://globovision.com/articulo/comando-simon-bolivar-ofrecera-rueda-de-prensa-a-las-530pm>>).

⁶⁰ These points were confirmed by Carter Center interviews with CNE officials, Capriles campaign technical experts, and voting machine experts. The estimated amount of time needed to conduct the duplicity test varied from 4-8 weeks in the interviews.

⁶¹ The opposition argued that the CNE does not need to wait for the citizen verification to end—that is, it had, as of the week after the election, all the necessary information in hand in order to proceed with the examination of the votes' duplicity issue. The CNE rectors explained privately and publicly that it could not happen until after the amplified citizen's verification was completed and the breakdown of the voting machines could occur, allowing them to extract the memory cards for the fingerprint test. Rector Socorro Hernandez confirmed publicly that in order to have the

CNE, this audit had been planned to take place following both the October and December 2012 elections, but given the upcoming elections in quick succession, it had not been possible to do it.⁶² It was not listed in the chronogram of activities published by the CNE.

Another means to examine the identity issue is through the “incidences” recorded by the fingerprint machine about the quality of fingerprint “matches” and “no matches.”⁶³ In interviews with PSUV and MUD experts, the Carter Center received different information about how and when this information was transferred from the machines to the CNE.⁶⁴ The list of such “incidences” by voting table was then included by the Capriles campaign in its formal request to the CNE for electoral materials.

In the midst of these disputes and the initiation of the Citizen Verification Phase II, the Capriles campaign prepared to pursue legal avenues and began to claim more openly their conclusion that fraud had occurred. Whereas Capriles’ initial statements simply demanded 100% audit of the voting machines before accepting the results, by April 25 the message shifted to a clearer rejection of the results, with Capriles quoted as saying “they robbed me” of “the elections,” and later, they “robbed me “of victory.”⁶⁵ These comments, along with the lack of early public explanation from the CNE as to their written responses to the Capriles campaign requests for information and widened audits, amplified discussion of fraud within the opposition, made a protracted dispute much more likely, and created difficult conditions for dialogue. Bearing in mind the political context of this dispute, public opinion surveys from respected pollsters Datanalisis and IVAD provided a favorable climate for Capriles to pursue this critical line.⁶⁶

The CNE responded again in a letter dated May 17 to a request from Capriles dated April 30 asking for certified copies of all of the “physical and technological data and instruments” of the

first results of this audit two more months are needed as the CNE needs to collect all the fingerprints from the Voting Machines (“Hernaández: En 2 Meses la MUD Tendrá Comprobantes de No Duplicidad de Huellas,” *Últimas Noticias* 3 June 2013 <<http://www.ultimasnoticias.com.ve/noticias/actualidad/politica/hernandez-en-2-meses-la-mud-tendra-comprobantes-de.aspx>>).

⁶² In addition, some MUD political representatives argued that the reason for not doing the fingerprint audit was due to a lack of political will, and the Capriles campaign argued that these are parts of the electoral guarantees that the CNE agreed to fulfill on March 20, 2013. (CSB, “Dossier para las Elecciones 2013,” page 16).

⁶³ As described more fully in the chapter on Voting Day Conditions below, the CNE decided to err on the side of inclusivity rather than mistakenly disenfranchise any legitimate voter. Thus, the only instances in which a voter with a “no match” would be prevented from voting would be those where the machine detected that either that fingerprint or that ID number had already voted at that voting table on the day of the election.

⁶⁴ The Carter Center was unable to confirm this information with the CNE technical director. He did not respond to the Center’s request as of the time of this writing.

⁶⁵ *El País*, April 25, 2013; *El País*, May 9, 2013.

⁶⁶ David Smilde, “Recent Poll Numbers Favor the Opposition,” *Venezuelan Politics and Human Rights* 8 May 2013 <<http://venezuelablog.tumblr.com/post/49950200081/recent-poll-numbers-favor-venezuelan-opposition>>.

electoral process of April 14. With the regard to the request for the voter logs, with signatures and fingerprints, the CNE responded that the right to information in this case conflicts with the right to privacy of citizens (about whether they voted or did not), and that such a request would need a judicial order. The CNE agreed to provide the certified copy of the Totalization Act, and also any acts of vote tallies (actas de escrutinio) from the voting machines that the MUD might be missing, since the party witnesses already received signed copies of these acts at each voting table. For other requests, such as the audit of the fingerprint registries, the letter repeated the responses already provided in the April 22 resolution. Finally, the letter said the CNE is evaluating the request for the certified copy of the electronic signature of the archive of the fingerprint status and the fingerprint database.

CNE'S CITIZEN VERIFICATION FINAL REPORT; NO MAJOR DISCREPANCIES

The final results of the second phase of the citizen verification audit were announced by the president of CNE, Tibisay Lucena, during a televised nation-wide address on the afternoon of June 11, 2013.⁶⁷ Lucena stated that the extended audit was the only legal option that the CNE had in order to respond to candidate Capriles's uneasiness with the electoral result, but that the opposition forces (MUD) who supported Capriles did not participate in the audit even though they had agreed to the nature and scope of it at the beginning. She restated that this audit is not a recounting of the votes and that if the CNE had altered the nature of the audit from that stipulated for the citizen verification in the regulations, it would have been an illegal act.

According to Lucena, the audit found 99.98% correspondence between the electronic tallies and the paper receipts. The other 0.02% that had some form of irregularities were fully justified in the minutes of observations (actas de observacion).⁶⁸ "The extended verification allows us to say once again how transparent, strong and inviolable the system is, and it reflects the voters' will through the ballot," said Lucena. Nonetheless, Capriles called the audit a "farse", saying that "*[y]ou don't really have to be an IT expert to know that when they compare the vote totals with the electronic tallies, the result is going to be the same.*"⁶⁹

⁶⁷ CNE, "Auditadas 100% de las Mesas Electorales del 14 de Abril," 11 June 2013 <http://www.cne.gob.ve/web/sala_prensa/noticia_detallada.php?id=3210>.

⁶⁸ During the first phase of audit on the voting itself citizens audited 71% of the ballot boxes (much higher than the 54% defined by law), and the remaining 28.44% was audited during the extended citizen verification II (a small sample of 0.56% of the voting tables was scheduled for verification few days after the Election Day).

⁶⁹ AFP, "Audit Finds No Flaws in Venezuela Vote: Official," *Channel NewsAsia* 12 June 2013 <<http://www.channelnewsasia.com/news/world/audit-finds-no-flaws-in/707044.html>>.

During her announcement, Rector Lucena also took the opportunity to reply to some of the other concerns raised by the opposition.⁷⁰ With regard to the concern about the Electoral Registry, she said that opposition representatives and experts actively participated in the audit of the Electoral Registry prior to the October 2012 elections and they approved it with no objections (the registry remained the same for April's elections). Furthermore, an additional audit that compared the fingerprints databank with the electoral registry in order to show how many voters did not have their fingerprints registered in the biometric identification system (SAI) took place in September 2012, also approved by opposition representatives.

The CNE President further explained to the public that no major incidents occurred with the SAI that could have affected the electoral process. Lucena restated that the voter logs (*cuadernos de votacion*) are not part of the audit according to the law and to include these logs in the audits would violate voters' privacy by making public those who vote and those who do not vote. She cited a Supreme Court ruling from 2009 that the CNE should protect the data kept in the voting logs, except when the TSJ rules otherwise. Finally she announced that the CNE would extract the information stored in the voting machines memories and eventually would start an audit about the fingerprints duplicity without specifying a date.

⁷⁰ For Lucena, the opposition's criticism to the CNE "is not about people, this is an attack to a political model established in the Constitution, whose tool for expression is election" (AVN, "CNE Reiterates April 14 Election Results Transparency," SIBCI 11 June 2013 <<http://www.avn.info.ve/contenido/cne-reiterates-april-14-election-results-transparency>>.

II. AN EXTRAORDINARY INTERLUDE: CHAVEZ'S HEALTH CRISIS, REGIONAL ELECTIONS AND A CONTROVERSIAL SUCCESSION OF POWER

Two months after Chávez's victory in the October 7 Presidential elections, the announcement of the reappearance of the president's illness plunged Venezuela back into political uncertainty. During what would turn out to be the final chapter of Chávez's health crisis, December 8, 2012 - March 5, 2013, four campaign-shaping events took place.

On December 8, 2012 President Chávez announced the reappearance of his illness and named then-Vice President Nicolás Maduro his desired successor as the head of the chavista political coalition and presidential candidate should Chávez himself be unable to continue in office.

Shortly after, in the December 16 gubernatorial elections, Chávez's handpicked candidates from the United Socialist Party of Venezuela (PSUV) won twenty out of twenty-three state governorships, with Henrique Capriles's reelection victory in Miranda representing an important bright spot for the opposition.

Then, on January 9, 2013, one day before the constitutionally established date for the start of the 2013-2019 presidential term of office, while the president was still in a hospital in Cuba, the Supreme Court made a controversial ruling (discussed below) allowing Chávez's new term to continue from the previous one without a formal inauguration. The decision permitted the vice-president to be named interim president when the 58-year old Chávez passed away March 5, 2013.⁷¹

Finally, after a state funeral and a mourning period that lasted ten days, Maduro was instated as interim President on March 9, 2013, and the National Electoral Council called a special election for April 14, 2013 to fulfill the remainder of Chávez's six year term.

These events created an extraordinary interlude of political fluidity and uncertainty between presidential elections. This chapter discusses the reactions of political and society actors to each event as it shaped the special election on April 14.

MOVING FORWARD: RESPONSES TO THE OCTOBER 7 RESULTS

The eleven point margin of victory in the October 7, 2012 elections, in which Chávez received

⁷¹ CBR, Articles 231 and 233, 1999.

8.191.132 (55.07%) votes and Capriles received 6.591.304 (44.31%)⁷², contrasted with the opposition's anticipation that Capriles' last minute surge in the polls would create a photo finish. Chávez headed a joyous victory rally from the Balcony of the People at Miraflores Presidential Palace and included some gestures toward the opposition, after an aggressive campaign. Earlier in the night, Capriles had accepted the results in a short, subdued address half an hour after official announcement of the outcome. The candidates' reactions to the results, coupled with news reports of a polite exchange of words two days later during a phone call between the contenders, seemed to bring a form of closure to the heated electoral contest, which registered a record turnout of 80.49 percent.⁷³

Most of the opposition accepted the results with a mixture of resignation and depression. Yet, this quick end to the political battle over the election disappointed some who felt their candidate let them down by swiftly accepting the results and not publicly complaining about the problems of *ventajismo*, including state-financed voter mobilization drives on election day.⁷⁴

In a second speech delivered two days after the election, on October 9, 2012, a much more animated Capriles emphatically dismissed fraud rumors, called for an end to "anti-political" behavior within the opposition, and offered a rallying cry by calling for the opposition to "stand up" and prepare for the upcoming gubernatorial elections in which he would stand for reelection in the state of Miranda. According to political analysts, by focusing the opposition on the next electoral task at hand, Capriles, demonstrated real political leadership.

CHÁVEZ'S ILLNESS AND SYMPATHY: DECEMBER 16, 2012 GUBERNATORIAL ELECTIONS

When Chávez announced the severity of his health crisis to the public on December 8, 2012, he also announced that if "unexpected circumstances" developed, then his Vice-President, Nicolás Maduro, should be the PSUV candidate to succeed him in special elections. The very next day, Chávez departed for Cuba to receive a fourth round of chemotherapy treatment.

On December 16, 2012, while the president was being treated in Cuba, the country held elections for governors. Given that the election closely followed the presidential ballot and came one week before Christmas, the low turnout of 54% did not catch analysts by surprise.⁷⁵

⁷² CNE, "Divulgación Presidenciales 2012," 19 November 2012 <http://www.cne.gob.ve/resultado_presidencial_2012/r/1/reg_000000.html>.

⁷³ Ibid.

⁷⁴ David Smilde and Hugo Perez Hernaiz, "Mobilizing Supporters on October 7," *Venezuelan Politics and Human Rights* 7 November 2012, Caracas Chronicles, pp. 15-16 <<http://venezuelablog.tumblr.com/post/35156902716/mobilizing-supporters-on-october-7>>.

⁷⁵ According to the Red de Observación Electoral of the NGO Asamblea de Educacion (AEV), which participated as a nationally accredited observer group, participation of volunteer election workers and party witnesses was also much lower than in the Presidential elections. In 28 percent of the 264 voting tables AEV observed, the polling station had to be set up without the citizens randomly selected by the CNE to serve as volunteer poll station workers. In 11 percent of the tables AEV observed, the polling stations did not have adequate staffing from party witnesses

The results, in which candidates affiliated with the PSUV-led Gran Polo Patriótico Coalition (GPP) won twenty out of the twenty-three states, constituted a major triumph for *chavismo*. The PSUV emerged with a net gain of three governors—compared to the 2008 elections in which the opposition won six states.⁷⁶ The total results did not reveal a change in overall patterns of support, though. The state-by-state popular vote, when aggregated into a national total, revealed the same proportion of support registered October 7 -- 55 percent for *chavismo* and 44 percent for the opposition.

Of the twenty PSUV party member governors, all of whom Chávez had chosen as his candidates, ten were retired military.⁷⁷ The most significant victory for the governing party was Francisco Arias Cardenas's narrow defeat of Pablo Perez, 52.22 percent against 47.68 percent, in populous and oil-rich Zulia state.⁷⁸

Most importantly for the opposition, Henrique Capriles Radonski won reelection as governor of Miranda, 51.83 percent against 47.82 percent, over former Vice-President Elias Jaua.⁷⁹ Opposition candidates were also victorious in Lara and Amazonas states, and in the latter case opposition parties won a majority in the local state legislature, their only such triumph.

Analysis of the reasons for the widespread victory of GPP-PSUV candidates boiled down to three factors.⁸⁰ The positive coattail effect of candidates' affiliation with the ill Chávez, for whom the vice president asked voters' to demonstrate their affection by going to the polls on December 16; the national-level vote mobilizing infrastructure assembled by the PSUV since 2006; and state-level characteristics associated with evaluations of governors' performance -- for example, the opposition governor of Tachira state, Cesar Pérez Vivas, lost by nine points to Jose Vielma Mora (45,49 to 54 percent) , despite Capriles carrying the state by thirteen points in the presidential elections (56,24 to 43,29 percent).⁸¹

representing both political parties (AEV, "Informe sobre la observación de las Elecciones Regionales del 16 de diciembre de 2012," 21 December 2012, page 4).

⁷⁶ CNE, "Divulgación Elecciones Regionales 2008," 23 November 2008 <http://www.cne.gob.ve/divulgacion_regionales_2008/>.

⁷⁷ El País, December 17, 2012

⁷⁸ CNE, "Divulgación Regionales 2012," 16 December 2012 <http://www.cne.gob.ve/resultado_regional_2012/r/1/reg_000000.html?>.

⁷⁹ CNE, "Divulgación Regionales 2012," 16 December 2012 <http://www.cne.gob.ve/resultado_regional_2012/r/0/reg_130000.html>.

⁸⁰ Jennifer McCoy and Michael McCarthy, "Despite Uncertainty, Venezuela's Political Scenario Not All Bleak," *World Politics Review* 20 December 2013 <<http://www.worldpoliticsreview.com/articles/12587/despite-uncertainty-venezuelas-political-scenarios-not-all-bleak>>.

⁸¹ We also note that unlike in October, the MUD did not have a unified ballot symbol for the coalition, but rather many individual party symbols, varying by state. Some voters appeared to have trouble identifying the opposition candidates on the ballot (personal communication from journalist observers).

Opposition and pro-government technicians participated in pre- and post-audits of the electronic voting system and verified its smooth function. National observer groups Observatorio Electoral Venezolano (OEV) and the Red de Observación Electoral from Asamblea de Educación (AE) participated as observers formally accredited by the CNE. Each ratified that the technological-organizational platform for the administration of the electronic vote functioned adequately.⁸²

OEV's final report on these regional elections indicated three general weaknesses of the voting process that affected the election's quality.⁸³ First, OEV describes the CNE as not adequately promoting the election's importance with a communications strategy equal to the task of encouraging participation. Second, it criticized the CNE's decision to give voters the choice of voting by party bloc or coalition instead of individual candidate, which OEV claimed is at cross-purposes with the principle of "personalizing the vote" established in Article 63 of the Constitution. Third, OEV voiced concern regarding the decision by the CNE to grant six PSUV candidates for governors, and their family members, the special privilege of changing the addresses of their voting centers to states where they were running for office, long after the April 15, 2012 the cut-off date for modifying the country's electoral registry.

OEV and AE concentrated the bulk of their criticism on the issue of *ventajismo*, noting the problematic nature of then-Vice-President Maduro's national 'cadena' broadcast during voting day to urge voters to support pro-government candidates, as well as media access imbalances that favored government candidates, governors inaugurating public works projects, and candidates campaigning on voting date .

OEV and AE monitors reported quantitative and qualitative findings regarding voting conditions on election day.⁸⁴ AE noted irregularities regarding the practice of "assisted voting" in seven percent of its observed stations, candidates not respecting the prohibition of using of public resources to stimulate voting in six percent of the cases, and the placement of partisan propaganda within the 200 meter boundary surrounding the voting center.⁸⁵ AE also reported that

⁸² OEV, "Informe Final: Observación Elecciones Regionales," December 2012
<<http://oevenezolano.org/images/OEV%20Informe%20Final%20Observacion%2016%20Dic%20Preliminar%20para%20el%20CNE.pdf>>.

AEV, December 23, 2012.

⁸³ OEV, "Informe Final: Observación Elecciones Regionales," December 2012
<<http://oevenezolano.org/images/OEV%20Informe%20Final%20Observacion%2016%20Dic%20Preliminar%20para%20el%20CNE.pdf>>.

⁸⁴ OEV constructed a sample based on monitoring 276 voting tables; AEV monitored 264.

⁸⁵ AE, *Ibid.*, 4.

CNE's Notification of this norm (CNE, "Lo que Debe Recordar durante la Jornada Electoral," 13 April 2013
<http://www.cne.gov.ve/web/sala_prensa/noticia_detallada.php?id=3156>.

their observers encountered problems carrying out their work at the poll station, with some of them being forcefully removed without cause or explanation.⁸⁶

OEV's data on the total number of irregularities found at the voting tables also broke down infractions by party.⁸⁷ For example, OEV found that in twenty percent of the voting tables it observed, monitors noted the mobilization of voters with public resources.⁸⁸ Broken down by party, in 38 percent of the tables, personnel affiliated with MUD mayors or governors utilized public resources; in 89 percent of the mesas, personnel affiliated with PSUV mayors or governors utilized public resources; and in 38 percent official personnel used national government resources to mobilize voters.⁸⁹ In three percent of the tables observed, OEV found evidence of voters receiving pressures from both parties to vote for a particular candidate, though the PSUV did it more often.⁹⁰

THE TSJ'S CONTROVERSIAL RULING FOR 'ADMINISTRATIVE CONTINUITY'

On January 9, a day before the constitutionally mandated date for the start of the new term, the Supreme Court (TSJ) ruled that "administrative continuity" allowed the sitting government to remain in place.⁹¹ This decision, coupled with an announcement from the Vice-Presidency that President Chávez would remain in Havana and not travel to Caracas to be sworn in on January 10, 2013,⁹² suggested the absolute severity of Chávez's health situation. Yet, while Chávez remained largely out of public sight in a highly secure Cuban Hospital, the government continued to insist the president was in full control of his faculties and exercising the power of office in consultation with his ministers.⁹³

⁸⁶ AE, *Ibid*, 6-7.

⁸⁷ OEV calculated the frequency with which infractions occurred by party by taking the number of infractions by party as a fraction of the total number of centers observed. Thus, if observers noted opposition personnel mobilizing voters with public resources in eight places, then the percentage is based on $8/276=2.8\%$.

⁸⁸ At a single polling place it is possible for pro-government and pro-opposition personnel to both utilize public resources, such as vehicles, to mobilize voters —when one party controls the mayor's office and the other the governor's office.

⁸⁹ OEV, "Informe Final: Observación Elecciones Regionales," December 2012, page 22 <<http://oevenzolano.org/images/OEV%20Informe%20Final%20Observacion%2016%20Dic%20Preliminar%20para%20el%20CNE.pdf>>.

⁹⁰ *Ibid*, 21.

⁹¹ El Universal, January 9, 2013

⁹² CNN en español, "Chávez will not Attend the Inauguration," CNN 8 January 2013 <<http://cnnespanol.cnn.com/2013/01/08/chavez-no-acudira-a-la-toma-de-posesion/>>.

⁹³ AVN, "Flores Reiterates the President is Fully Exercising his Functions," 6 January 2013 <<http://www.avn.info.ve/contenido/flores-reitera-que-presidente-ch%C3%A1vez-est%C3%A1-pleno-ejercicio-sus-funciones>>.

The Supreme Court decision would in effect determine whether Vice-President Maduro or President of the National Assembly Diosdado Cabello would head the government while Chávez remained physically unable to participate in this act.⁹⁴

The constitution declares that if a *president-elect* becomes incapacitated before his inauguration, the president of the National Assembly becomes interim president and a new election is called within 30 days. If a *president* becomes permanently incapacitated in the first four years of the six-year term, the vice-president (which is an appointed position in Venezuela) becomes interim-president and a new election is called within 30 days to fulfill the remainder of the presidential term.⁹⁵

The Supreme Court thus had two issues to decide: a) was the president incapacitated (determined by a Court-appointed medical team); and b) must he be physically present for his inauguration. They did not appoint a medical team or rule on the first issue. On the second, the Court decided that in the case of a re-elected president, the succeeding term was simply an “administrative continuity” rather than a separate mandate, and thus the same appointed officers (vice-president and ministers) would continue in their roles and the president need not be physically present for a formal swearing-in. The opposition disputed the ruling, arguing that the language of “administrative continuity” is not in the Constitution.

To understand the controversy over the TSJ’s ruling, two points of context need to be taken into consideration. The Constitution is not completely clear on what should be done if the elected President is not inaugurated on January 10 and it does not specify the scenario of a *re*-elected president (as opposed to a newly-elected candidate) becoming incapacitated in the time period between the election and the inauguration.⁹⁶

In its January 9 decision, the TSJ makes a distinction between the importance of the new constitutional period beginning on January 10, 2013 and the ceremonial act of the National Assembly formally swearing in the President of the Republic.⁹⁷ Since Chávez was a reelected President of the Republic, argued the TSJ sentence, “administrative continuity” of the government without the swearing in ceremony did not present a problem given that the President

⁹⁴ Jennifer McCoy, “Constitutional Debates Amidst An Absent President,” *Venezuelan Politics and Human Rights Blog* 10 January 2013 <<http://venezuelablog.tumblr.com/post/40177039917/constitutional-debates-amidst-an-absent-president>>.

⁹⁵ Article 233.

⁹⁶ Hernández, “And What Will Happen on January 10, 2013?” *Prodavinci* <<http://prodavinci.com/2012/12/28/actualidad/y-que-va-a-pasar-el-10-de-enero-por-jose-ignacio-herandez-g/?output=pdf>>.

⁹⁷ Sala Constitucional Ponencia Conjunta, “Expediente N° 13-0196,” *El Tribunal Supremo de Justicia* 6 March 2013 <<http://www.tsj.gov.ve/decisiones/scon/marzo/141-8313-2013-13-0196.html>>.

was exercising the powers of office from his sickbed and thus such continuity did not presuppose the interruption of the popular mandate.⁹⁸

Based on this crucial distinction between the substantive importance of “administrative continuity” as a way to effectively recognize the popular mandate, and the ceremonial formalism of inaugurating a reelected President, the decision laid the groundwork for article 233’s provision for replacing an incapacitated president, rather than president-elect. Thus, Vice-President Maduro was named interim-President rather than Diosdado Cabello. When Foreign Minister Elías Jaua declared Chávez’s “absolute absence” immediately following his death on March 5, 2013,⁹⁹ Maduro was continuing in the office of Vice-President for a presidency that had begun a new constitutional term of office.¹⁰⁰ He could thus step in as the interim-President while new elections were organized.¹⁰¹

If the January 9, 2013, TSJ sentence had not nullified the importance of the inauguration for making the actual start of a new constitutional period, then declaring Chávez’s “absolute absence” would have yielded a different procedure established in Article 233: appointing the President of the National Assembly, Diosdado Cabello, interim President, since the absolute absence would have occurred prior to the inauguration.

After the installation of Maduro as interim-president, the opposition made an additional legal argument: accepting the Supreme Court’s logic that Maduro was still vice president under “administrative continuity,” the constitution stipulated that the vice president would be “in charge” of the presidency. Thus, they argued, Maduro was still the vice president and just fulfilling the duties of the presidency. Under these circumstances, he would have to step down from the vice presidency in order to run for president in the special elections,¹⁰² and thus would avoid all of the advantages that the trappings of the presidency provided in the context of *ventajismo* in Venezuela. This argument was not heeded by the government or the Supreme Court.

Chávez’s Funeral

⁹⁸ Ibid.

⁹⁹ “Maduro Asume la Presidencia y Llamará a Elección,” *El Diario* 6 March 2013 <<http://www.eldiario.ec/noticias-manabi-ecuador/255650-maduro-asume-la-presidencia-y-llamara-a-eleccion/>>.

¹⁰⁰ “Flores: Por Falta Absoluta Será Maduro Quien Se Encargue del País,” *El Norte* 6 March 2013 <<http://www.elnorte.com.ve/index.php/component/k2/item/6499-flores-por-falta-absoluta-ser%C3%A1-maduro-quien-se-encargue-del-pa%C3%As>>.

¹⁰¹ For further discussion of this truly interesting debate over the Constitution’s bearing on the succession of power, review the December 28, 2012 and January 5, 2013 essays of Jose Ignacio Hernández on *prodavinci.com*. <http://prodavinci.com/2012/12/28/actualidad/y-que-va-a-pasar-el-10-de-enero-por-jose-ignacio-herandez-g/?output=pdf>; and <http://prodavinci.com/2013/01/05/actualidad/es-constitucional-la-tesis-de-la-continuidad-por-jose-ignacio-herandez-g/?output=pdf>.

¹⁰² Article 299.

After Maduro officially announced Chávez's death at 4:50 PM on March 5, 2013, officials immediately scheduled two events for March 8: a state funeral attended by foreign dignitaries and a swearing in ceremony for Vice-President Maduro to assume the position of Interim President. The government announced seven days of national mourning.

The official state funeral on Friday 8th was well attended by foreign dignitaries from all over the globe as well as local officials, artists and civil society's leaders. It also included a small delegation from the United States consisting of two Congressmen, one current and one former, who had experience as members of dialogue processes between the U.S. and the Chávez governments. Maduro gave the eulogy at the state funeral, praising Chávez's contributions to the country and highlighting the path to socialism. He concluded with the slogan, "Chávez lives; the battle continues," that became one of the main slogans in the campaign¹⁰³

Hours after the state funeral, Maduro was sworn in as Interim President by National Assembly President Diosdado Cabello who placed the Presidential sash on the newly minted head of state. The symbolism of Cabello swearing in Maduro helped *chavismo* communicate an important lesson of unity. Of all the types of divisions within the party identified by various analysts, the personal tensions between Maduro and Cabello were thought to be the most intense and significant. Throughout the period for mourning Chávez, the two took special care to show signs of friendship and fraternity.

If the opposition mostly kept quiet during the events surrounding Chávez's passing, then it drew a line about holding back during Maduro's swearing in the afternoon of March 8.¹⁰⁴ With the exception of deputies from Christian Democratic COPEI party, opposition congresspersons boycotted the swearing in session and Capriles called Maduro's ceremony "spurious."¹⁰⁵ In the same vein, Capriles pointed out that Maduro, as a vice-president and former foreign minister, had not been elected to the presidency. The vice-presidency is an unelected position and Capriles, in a sign of the aggressive campaign to come, observed that the people did not vote for him.¹⁰⁶

¹⁰³ William Neuman, "Dignitaries Pay Chávez Tribute, as Venezuelans Express Grief and Misgivings" *New York Times* 8 March 2013 <http://www.nytimes.com/2013/03/09/world/americas/chavez-funeral.html?_r=0>.

¹⁰⁴ Capriles did however publicly question whether Chávez died on March 5, 2013. This prompted a swift response from Chávez's daughter, María Gabriela, who released a public statement condemning Capriles's declarations ("Capriles: Maduro Seeks Chavez Death Gain," *UPI* 11 March 2013 <http://www.upi.com/Top_News/World-News/2013/03/11/Capriles-Maduro-seeks-Chavez-death-gain/UPI-30361362985200/> and "María Gabriela Chávez le Pide a Capriles No Ser tan Sucio," *Noticiero Digital.com* 12 March 2013 <<http://www.noticierodigital.com/2013/03/maria-gabriela-chavez-le-pide-a-capriles-no-ser-tan-sucio/>>).

¹⁰⁵ William Neuman, "Dignitaries Pay Chávez Tribute, as Venezuelans Express Grief and Misgivings" *New York Times* 8 March 2013 <http://www.nytimes.com/2013/03/09/world/americas/chavez-funeral.html?_r=0>.

¹⁰⁶ A review of the debate over Maduro's swearing in (Tom Watkins, "Venezuela's Vice-President Sworn in as Interim President," *CNN* 9 March 2013 <<http://edition.cnn.com/2013/03/08/world/americas/venezuela-maduro-capriles/>>).

When the funeral and swearing-in ceremony finished, on March 9, 2013, Venezuela's National Election Council (CNE) announced it would organize a special Presidential election to be held on April 14.¹⁰⁷ Under the shadow of Hugo Chávez's political legacy, interim President Nicolás Maduro, 50, and opposition Governor Capriles, 42, would compete in a special election to fulfill the 2013-2019 term of office Chávez never began fulfill.

In between the official pomp and circumstance for remembering the President and the start of preparations for new elections, thousands of ordinary citizens made their way to see Chávez's body as he 'lay in state' in the Fort Tiuna military compound¹⁰⁸. On March 15, thousands accompanied the transfer of Chávez's coffin from Fort Tiuna, walking with the motorcade as it progressed through Caracas streets to a military academy museum renamed to commemorate Chávez's February 4, 1992 failed coup in the 23 of January neighborhood -the final resting place for the coffin. People continued to pay their respects at the military museum.

The outpouring of grief for the deceased President, which one analysis described as tantamount to a popular expression of "civil religion",¹⁰⁹ came mostly from supporters of Chávez. Opponents of the government offered varied reactions but also felt muzzled by the circumstances. They mostly withheld making public judgments that could have been viewed as incendiary given the moment.

A CAMPAIGN WITHOUT CONTENT

After the CNE convoked the elections, the MUD announced that they had nominated Capriles to be their candidate. Capriles took a day to decide whether to accept the nomination, but when he did he began a new discourse to separate Maduro from Chávez's legacy.¹¹⁰ Meanwhile Maduro launched his campaign on March 11 invoking the image and endorsement of Chávez as a spiritual father.¹¹¹

Thus began a short, intense campaign in which Capriles aimed to separate the terrestrial man Maduro from the 'heavenly figure' of Chávez, while Maduro aimed to invoke the image and

¹⁰⁷ CNE, "Elección Presidencial 2013-14 de Abril de 2013," 14 April 2013 <http://cne.gov.ve/web/normativa_electoral/elecciones/2013/presidenciales/index_principal.php>.

¹⁰⁸ William Neuman, "Dignitaries Pay Chávez Tribute, as Venezuelans Express Grief and Misgivings" *New York Times* 8 March 2013 <http://www.nytimes.com/2013/03/09/world/americas/chavez-funeral.html?_r=0>.

¹⁰⁹ Hugo Pérez Hernaíz and David Smilde, "Civil Religion and the Transfer of Charismatic Authority in Venezuela," *Venezuelan Politics and Human Rights Blog* 8 March 2013 <<http://venezuelablog.tumblr.com/post/44855774508/civil-religion-and-the-transfer-of-charismatic>>.

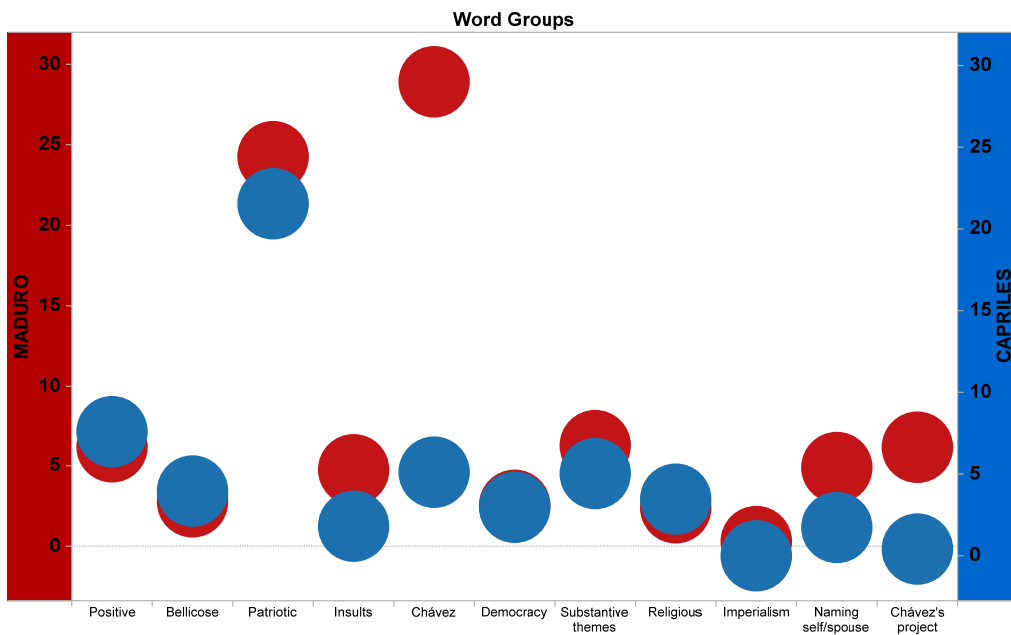
¹¹⁰ Capriles words: "Nicolas, I'm not going to give you an open path. You will have to defeat me with votes. ...Nicolas no es Chávez."

¹¹¹ Maduro Said: "I ask our father redeemer of this land, Bolivarian commander Hugo Chávez, to give me strength...to complete his instructions....I am not Chávez but I am his son and all of us together, the people are Chávez."

endorsement of Chávez as often as possible.¹¹²

The substance of the campaign was much lighter even than the October campaign. A content of analysis of speeches by each candidate at the launch of their campaigns, during the official campaign period, and at their closing rallies showed both the lack of substantive discussion and surprising similarities between them. As the figure below shows, the most frequent themes by far were references to Chávez by Maduro, comprising nearly 30% of themes mentioned in his speeches, and patriotism, comprising nearly a quarter of Capriles' speech theme mentions, and over 20% of Maduro's. Substantive discussions constituted a mere 5-7% of each candidates' speech themes.¹¹³

Word Groups of Content Analysis of Candidate Speeches



Source: Carter Center Content Analysis of Candidate Speeches

Both candidates chose public officials for their campaign managers: Maduro repeated Chávez's campaign manager from October, Libertador Mayor Jorge Rodríguez; Capriles chose Lara

¹¹² Luis Vicente León, "Qué Esperar del 14 de Abril?", por Luis Vicente León," *Pro Davinci* 10 March 2013 <<http://prodavinci.com/blogs/que-esperar-del-14-de-abril-por-luis-vicente-leon/>>.

¹¹³ Content analysis conducted by The Carter Center, with weighted averages of the substantive themes.

Governor Henry Falcon. Along with the debate over the constitutionality of Maduro running while interim president, a less-commented on aspect of Venezuelan campaigns concerns public officials working on campaigns while simultaneously continuing in their official capacities.

Venezuelan electoral law does not permit public officials to campaign while they are exercising their public duties (though various interpretations exist as to whether that applies only during working hours, and what working hours are for each public official). Falcon stepped down temporarily from his position as governor to serve as Capriles' campaign manager. Co-campaign manager Mayor Carlos Ocariz did not, however. Nor did Maduro's campaign manager Mayor Jorge Rodriguez. Many ministers and other public officials accompanied Maduro on the campaign trail, as well.

In addition, the Venezuelan Constitution stipulates that no person can be elected president who was in the office of vice president, minister, governor or mayor at the initiation of their candidacy. Capriles complied by turning over his governorship to his second in command during the campaign. As noted above, Maduro considered himself to be now a president running to be (re)elected, rather than a vice president who would have been forced to step down to run.¹¹⁴

As the short campaign evolved, public opinion polls shifted from a wide gap in favor of Maduro to a narrower one closer to election date. In mid-March, all polling firms gave Maduro the lead, though the gap ranged from 9 points (Datincorp) to 23 points (Ivad). By the week before election, the gap had closed to 7 – 11 points, with one firm predicting a statistical tie (Datincorp).

¹¹⁴ Article 229.

III. THE ELECTION CAMPAIGN

The general parameters of the campaign for the April 2013 presidential election were not substantially different from those of the October 2012 election. As the Observatorio Electoral Venezolano (Venezuelan Electoral Observatory, OEV) noted in a statement,¹¹⁵ it was the third time in a row that the incumbent president was also a presidential candidate. Because of that, and because of what the OEV called the “weak regulation” of that situation by the CNE, as on prior occasions, the campaign was characterized by complaints related to “*ventajismo*” (the use of government resources for gaining an electoral advantage) and the unequal use of media space and airtime.¹¹⁶

CAMPAIGN LEGISLATION

Although Venezuelan electoral legislation defines an official campaign period, in practice campaigning begins long before the dates officially established by the electoral management body. This unofficial campaign period is known as the “pre-campaign,” although that concept does not exist in the Organic Law of Electoral Processes (*Ley Orgánica de Procesos Electorales*, LOPRE) or its implementing regulations.

The official campaign period for the April 2013 presidential election was just 10 days long, from April 2 to 11, 2013.¹¹⁷ It was the shortest electoral campaign in the country’s political history. The pre-campaign, however, began immediately after the CNE called elections on March 9.¹¹⁸ Some commentators said the campaign actually began just after the funeral of President Hugo Chávez on March 5, which provided the government with a timely opportunity to position interim President Nicolás Maduro as the candidate chosen by his predecessor.

Although the OEV’s final report on the 2013 presidential election acknowledged the CNE’s ability to respond in complying with the law and calling elections within the stipulated time frame after the president’s absolute absence, it also notes that the process by which that election date was chosen contributed to the perception that the choice was motivated by “the electoral

¹¹⁵ To see the communication: Observatorio Electoral Venezolano, “El OEV ante la “pre-campaña,” 18 March 2013 <<http://www.oevenezolano.org/noticias/comunicados-recientes/44-comunicado-18-03-2013-el-oev-ante-la-pre-campana>>.

¹¹⁶ Because elections involving an incumbent presidential candidate are poorly regulated in electoral legislation, the OEV believes it crucial that the electoral management body exercise strict oversight “so that this circumstance does not lead to *ventajismos* and asymmetries in the electoral competition (caused, in particular, by the use of public resources) that are inappropriate for a democratic electoral process.”

¹¹⁷ Consejo Nacional Electoral, “Reglamento Especial sobre la Campaña Electoral para la Elección Presidencial 2013,” 9 March 2013 <http://www.cne.gov.ve/web/normativa_electoral/elecciones/2013/presidenciales/resoluciones/reglamento_especial.pdf>.

¹¹⁸ Both the Comando Simón Bolívar, in its monitoring of campaign conditions, and the OEV took this date as the starting point for documenting the electoral process.

convenience of the official candidate.”¹¹⁹

Because the LOPRE general regulations¹²⁰ govern the publication of advertising only during the official campaign period, there is no regulation for the pre-campaign period. The LOPRE regulations only prohibit the publication of electoral propaganda outside the time frame established by the electoral management body. Because of that loophole, the fact that the electoral campaign actually began before that period, despite the provisions of the law, some analysts, including CNE Rector Vicente Díaz, argue there is a need to establish clear norms for that period.¹²¹ As the OEV indicated in one of its statements, the candidates and their campaigns routinely violate the CNE prohibition, calling on their followers to vote for them long before the campaign officially begins.¹²²

Participation by government functionaries in campaign activities. Venezuelan law regulates the participation of government functionaries in party activities; Article 145 of the Constitution states that those functionaries “are at the service of the State and not of any partisan interest.” This principle is repeated in Article 221 of the general regulations for LOPRE, which outlines prohibitions for functionaries. Section 5 of that article specifically prohibits government functionaries from acting “electorally for the benefit or to the detriment of a candidate, political organization or group of voters.

Government functionaries are therefore prohibited from using government facilities for political campaigning and from “using or allowing another person to use public property for the benefit of any organization with political goals, group of voters, communities or indigenous organizations, or candidate, or using his or her position for the electoral benefit or to the electoral detriment of a candidate.” Article 222 of those regulations also establishes that national public agencies and offices cannot engage in electoral advertising and propaganda or “disseminate messages aimed at promoting, sponsoring or favoring a candidacy or organization with political goals” or use public property. Article 223 establishes that information about government works and official speeches and messages “cannot contain propagandistic or publicity content and symbols of an electoral nature.”

Despite those provisions, the participation of government functionaries in campaigns for candidates of their parties, without stepping down from their posts is very common in Venezuela.

¹¹⁹ Observatorio Electoral Venezolano, “Informe Final: Observación Elecciones Presidenciales 14 de Abril de 2013,” May 2013, page 8 <<http://www.oeventolano.org/noticias/informes-finales/66-informe-final-elecciones-presidenciales-de-2013>>.

¹²⁰ Consejo Nacional Electoral, “Reglamento General de la Ley Orgánica de Procesos Electorales,” 1 August 2012 <http://www.cne.gov.ve/web/normativa_electoral/reglamentos/Reglamento_General_LOPRE.pdf>.

¹²¹ Although Díaz presented a proposal to this effect in 2006, it was not approved by the CNE board of directors.

¹²² OEV statement, March 30, 2013.

Several such cases occurred during the April 2013 presidential election. Mayor Jorge Rodríguez of Libertador, for example, served as chief the Comando Hugo Chávez campaign, as he did in October 2012, while still acting as mayor. One notable exception was the governor of the state of Lara, Henri Falcón, who temporarily stepped down from his post before becoming a coordinator of candidate Henrique Capriles' campaign.

CHANGES IN ELECTION REGULATIONS

Because of the tight time frame and the special conditions under which the April 14 presidential elections were held, the CNE authorized an increase in paid electoral advertising with respect to that established for the October 2012 campaign. Airtime for paid electoral advertising increased from three to four minutes per candidate daily for each over-the-air and cable television.¹²³ On the radio, the increase was from four to five additional minutes daily per station. In print media, candidates and parties were allowed to present a page a day for standard-size editions and one and a half pages in tabloid-size publications.

According to Article 202 of LOPRE,¹²⁴ electoral propaganda is defined as “the set of advertising elements and pieces disseminated and presented in all available media by organizations with political purposes, voter groups, communities or indigenous organizations, and their candidates, which expressly call to vote for a particular candidate or partisan political interest.” The law also requires “authorized” persons or organizations to register formally with the CNE. According to that norm, those actors' names must be made public on the official CNE Web site.¹²⁵

Another modification to the regulations was that, in comparison to the October presidential campaign, election advertising via fixed or mobile telephone was eliminated, except for text messages. The latter were limited to a maximum of three messages per week, which could not be carried over from week to week.¹²⁶

NOTABLE EVENTS DURING THE PRE-ELECTION PERIOD

Leading up to the presidential election, both in the pre-campaign period and during the campaign

¹²³ Consejo Nacional Electoral, “Reglamento Especial sobre la Campaña Electoral para la Elección Presidencial 2013,” 9 March 2013, Articles 2 to 4 <http://www.cne.gov.ve/web/normativa_electoral/elecciones/2013/presidenciales/resoluciones/reglamento_especial.pdf>.

¹²⁴ To see LOPRE: Consejo Nacional Electoral, “Reglamento General de la Ley Orgánica de Procesos Electorales,” 1 August 2012 <http://www.cne.gov.ve/web/normativa_electoral/reglamentos/Reglamento_General_LOPRE.pdf>.

¹²⁵ Ibid, Article 203.

¹²⁶ As part of their strategy for the October election, the main candidates used voice messages via fixed and mobile telephones. Beginning with the December 2012 elections, only text messages were permitted.

a series of significant events marked the period.

Suspension of advertising by NGOs. On March 25, seven days before the campaign formally began, four of the five CNE officials announced the immediate suspension of a series of ads published in the daily newspapers *El Nacional*, 2001 and *Tal Cual* by the non-profit organization Mujeres por la Libertad (Women for Freedom), which questioned the government's handling of information about President Chávez's illness.¹²⁷ CNE President Tibisay Lucena argued that non-profit organizations were not authorized to place electoral advertising, and that only political organizations participating in the election could publish such notices.¹²⁸ The electoral management body's decision sparked a heated debate, with critics saying that although no one questioned that regulation, the ad under discussion was not published during the campaign period.

More importantly, critics said that because the ads did not explicitly call for voting for any candidate,¹²⁹ categorizing them as "electoral advertising" was complicated and hazardous.¹³⁰ They argued that because the ads expressed the opinion of members of civil society about certain government policies, the prohibition in fact amounted to undue restriction of freedom of expression.¹³¹ The electoral authority's decision, therefore, had a direct impact on the possibility of "pluralistic and independent discussion of ideas and thoughts" during election campaigns.¹³²

CNE Rector Vicente Díaz called the CNE's ruling a "political decision," indicating that it had not been made by consensus among the five CNE officials, but by majority. Díaz said it was unfortunate that the electoral management body did not take the same strong stand on complaints about the use of the presidential media *cadena*s (obligatory broadcasts).¹³³ Díaz had made a

¹²⁷ "CNE Realizará Averiguación Administrativa a Asociación Civil Mujeres por la Libertad por Hacer Propaganda Electoral," *Globovisión* 25 March 2013 <<http://globovision.com/articulo/declara-presidenta-del-cne-tibisay-lucena>>.

¹²⁸ "CNE Prohíbe Propaganda Electoral de ONG," *El Carabobeño* 25 March 2013 <<http://el-carabobeno.com/portada/articulo/54842/cne-prohbe-propaganda-electoral-de-ong>>.

¹²⁹ This was the argument used before the CNE by Carlos Vecchio, representative of the Comando Simón Bolívar, who said, "If the notice said, 'On 14 April, vote for Henrique Capriles Radonski,' then the suspension would have been justified" ("Carlos Vecchio: El CNE Censura la Libertad de Expresión," *Dossier 33* 27 March 2013 <<http://dossier33.com/2013/03/carlos-vecchio-el-cne-censura-la-libertad-de-expresion/>>).

¹³⁰ Article 202 of the LOPRE implementing regulations defines electoral advertising in limited, rather than broad, terms (The Carter Center, "Final Report of the Carter Center Study Mission to the October 7, 2012, Presidential Election in Venezuela," October 2012, 40 and 41 <http://www.cartercenter.org/resources/pdfs/news/peace_publications/election_reports/venezuela-2012-election-study-mission-final-rpt.pdf>).

¹³¹ The CNE subsequently opened administrative proceedings against the dailies 2001 and *Tal Cual* for publishing the ads again, violating the suspension that had been ordered days earlier (Consejo Nacional Electoral, "CNE Retira Avisos que Contravienen Medida Cautelar Impuesta," 31 March 2013 <http://www.cne.gov.ve/web/sala_prensa/noticia_detallada.php?id=3139>).

¹³² Instituto Prensa y Sociedad (IPYS), "Poder Electoral Prohíbe Difusión de Propagandas de Organizaciones Civiles en Medios de Comunicación," 1 April 2013 <<http://www.ipys.org.ve/alerta?id=3359>>.

¹³³ "I wonder why my colleagues don't act this quickly in the cases of other serious scandals that jeopardize electoral equilibrium, which is the basic principle of a democracy; for example, political chains, electoral chains," June 9, 2013

similar comment earlier, when he criticized the CNE's passive stance on a paid advertisement published in the pro-government daily, *Vea*, which linked opposition sectors, including the opposition presidential candidate, to an alleged criminal plot behind the death of President Chávez on March 5.¹³⁴

Later, on April 5, during the formal campaign period, the CNE began an administrative inquiry into Globovisión for broadcasting two spots prepared by the NGO Ciudadanía Activa (Active Citizenship), which called for people to vote without pressures.¹³⁵ On that occasion, the CNE reiterated that the broadcast of those media spots constituted electoral advertising, which was prohibited by law for non-governmental organizations. Critics of the measure insisted that the purpose of such media spots was to promote the free exercise of voting rights, and that the sanctions amounted to "direct censorship," with the risk of creating an "inhibition" in civil society about the "free debate of ideas," out of fear of punishment.¹³⁶

In the period leading up to the elections, the CNE also sanctioned pro-government NGOs, such as, the Fundación Cultural 23 de Enero Simón Bolívar (Barrio Alerta), for taking out space or airtime in the pro-government media *Ciudad Caracas*, *Diario Vea* and *Venezolana de Televisión*, in which they called directly for voters not to trust the opposition candidate.¹³⁷

Statements by the Defense Minister. On 6 March, the day after President Chávez's death was announced, Defense Minister Diego Molero Bellavia called publicly for the armed forces to back the governing party's candidate, saying that the armed forces must "be united to elect Maduro to be the next president of all Venezuelans."¹³⁸

The defense minister's statements were criticized by various sectors of society for violating Article 330 of the Constitution, which states that members of the country's armed forces are not allowed to "participate in advertising, active party membership or political proselytizing." According to the OEV, the statements were doubly serious because, by law, the military is charged with safeguarding voting materials under the so-called Republic Plan (*Plan República*).

¹³⁴ Antonio Aponte, "Un grano de maíz," *Diario Vea* 25 March 2013.

¹³⁵ The administrative inquiry also involved the NGO itself.

¹³⁶ "Espacio Público Rechaza Suspensión de Mensajes por el CNE," *Espacio Público* 15 April 2013 <http://www.espaciopublico.org/index.php/noticias/1-libertad-de-expresi/2589-espacio-publico-rechaza-suspension-de-mensajes-por-el-cne#_ftn2>.

¹³⁷ "Por qué desconfiar del burguesito."

¹³⁸ Defense Minister Diego Molero Bellavia, "Statement to state-run channel VTV," 6 March 2013.

Use of party symbols by election officials. CNE president Tibisay Lucena wore an armband identified with chavismo, during the funeral of Hugo Chávez on March 6 at the Caracas Military Academy, raising questions from many representatives of civil society. Critics considered the use of that symbol by the head of the Venezuela election management body to be a violation of Articles 293 and 294 of the Constitution, which emphasize the independence, impartiality and “de-partisanizing” of electoral bodies.

Voter registry address changes after the deadline. On 12 March, CNE President Lucena revealed that, for security reasons, the CNE had approved then-interim President Nicolás Maduro’s request to vote in the capital district instead of in the state of Carabobo, where he was registered.¹³⁹ The OEV considered that an “absolutely illegal” act that sends “a message that could be interpreted as favoritism that undermined the rights of other voters.”

Aggression against journalists. According to IPYS, during coverage of the April 2013 campaign and election, 48 “attacks on freedom of expression” were registered, targeting journalists from private, state-run and community media, as well as non-governmental organizations and state institutions. According to IPYS, those attacks revealed the degree of polarization in the country. “Political polarization has led to physical aggression against reporters who are considered to favor one side or the other,” the organization said.¹⁴⁰

USE OF GOVERNMENT RESOURCES

Besides the issue of access to the media, the use of government resources for electoral purposes was a defining characteristic of the election campaign.

The Electoral Observation Network (*Red de Observación Electoral*) of the Education Assembly (*Asamblea de Educación, AE*) specifically monitored the use of public resources for campaign activities. The organization’s observers documented a series of cases in which public buildings and official vehicles were used for campaign purposes, as well as the participation of government functionaries in campaign activities [1]. Based on the provisions of LOPRE, the AE observation network classified the cases observed into four categories: a) existence of billboards and holding of campaign activities in public institutions; b) use of public vehicles to distribute election material or transport party members to campaign activities; c) participation by public

¹³⁹ According to media accounts, the change was apparently made in October, after the presidential elections (Eugenio G. Martínez, “Cambio de Nicolás Maduro Contradice Argumento del CNE,” *El Universal* 27 October 2012 <<http://www.eluniversal.com/nacional-y-politica/121027/cambio-de-nicolas-maduro-contradice-argumento-del-cne>>).

¹⁴⁰ According to the Press and Society Institute (*Instituto Prensa y Sociedad, IPYS*) in Venezuela, coverage of the campaign and election was marked by an increase in the number and aggressiveness of attacks on journalists registered in recent years. The organization’s monitoring showed an increase of more than 400 percent in the number of cases reported between 2004, the year of the presidential recall referendum (44 attacks on journalists) and the 2012 presidential elections (200 incidents).

officials, identified as such, in campaign activities; and d) participation by members of the armed forces and security forces in political campaign activities.

Four days before the election, Transparencia Venezuela filed a complaint with the CNE's Political Participation and Financing Commission in which it presented 16 videos showing PSUV tents at the main entrances to some government buildings, where campaign materials referring to Nicolás Maduro were distributed.¹⁴¹ The organization's director, Mercedes de Freitas, pointed out that such acts not only violate election law, but could also constitute the crime of misuse of property as described in Article 54 of the Anti-Corruption Law.

As the OEV report noted, the irregularities observed in this area were even more serious because one of the candidates was serving as interim president of the country at the time. Because Venezuelan law does not establish clear parameters for differentiating between times when the president acts as such and when he or she acts as candidate, the "taking advantage of this lack of precision" was obvious during the campaign, both in the use of the media and the use of government resources. Referring to the latter, the OEV highlighted the use of public resources to transport demonstrators to campaign rallies, and hang banners and posters in public offices, among other things.¹⁴²

ACCESS TO THE MEDIA

General Context. Because of the media's influence in shaping public opinion, they play an important role during election campaigns, not only by providing information about the electoral process, but also in publicizing the candidates' platforms.

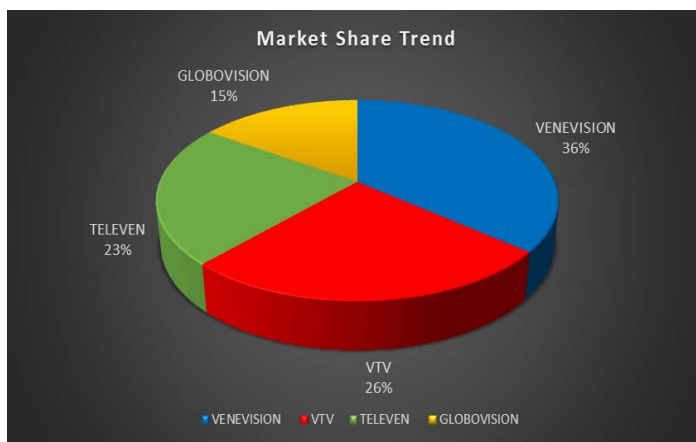
In Venezuela, media coverage has been the subject of heated public debate, both during and outside of election periods. The government has traditionally accused the private media of inadequate coverage of government actions and governing-party candidates' campaigns. Leaders of the opposition coalition, meanwhile, repeatedly noted the almost exclusive use of media in the Bolivarian System of Communication and Information (*Sistema Bolivariano de Comunicación e Información*, SIBCI) to promote governing-party candidates, with little or no space or airtime devoted to coverage of opposition candidates' activities.

¹⁴¹ Executive Director of Transparencia Venezuela María de las Mercedes de Freitas Sánchez, "Letter to President of the Political Participation and Financing Commission of the CNE," *Transparencia Venezuela* 9 April 2013 <<http://transparencia.org.ve/wp-content/uploads/2013/05/Ratificaci%C3%B3n-CNE-09-05-13-sellada-.pdf>>.

¹⁴² Observatorio Electoral Venezolano, "Informe Final: Observación Elecciones Presidenciales 14 de Abril de 2013," May 2013, page 12 <<http://www.oeventolano.org/noticias/informes-finales/66-informe-final-elecciones-presidenciales-de-2013>>.

Characteristics of audiovisual media. Television is the medium with the greatest penetration in Venezuelan households, with 92.2 percent of the market.¹⁴³ Although official figures for TV audience behavior are unknown, ratings during recent key newsworthy events¹⁴⁴ (during the October 2012 presidential election, the December 2012 regional elections and the funeral of President Hugo Chávez in March 2013) show Venevisión as the undisputed national leader for news, with an average of 35 percent of the market. It is followed by the public channel Venezolana de Televisión, with 25 percent, and Televen and Globovisión, in third and fourth place, with 22 and 15 percent, respectively.

Market Share Trend



Source: AGB Nielsen

A ranking by AGB Nielsen between January and June 2013, at all hours from Monday through Sunday, generally confirmed the trends observed during the periods previous mentioned. The private Venevisión channel led nationwide at all hours, with 22.9 percent, followed by Televen, with 16.2 percent and VTV, in third place with 8.4 percent. Globovisión remained in fourth place with 6.7 percent.¹⁴⁵

¹⁴³ Source: Estudio Pulso Consumidor 2012. Datos Company.

¹⁴⁴ Ratings measurements by AGB Nielsen, courtesy of Venevisión, during the October 2012 presidential election, the December 2012 regional elections and the funeral of President Hugo Chávez in March 2013.

¹⁴⁵ Ranking of channels for January-June 2013 by AGB Nielsen for Venevisión

Another important factor in media impact is the coverage or reach of each medium. Although all of the channels mentioned are over-the-air channels, not all of them broadcast nationwide. The channels with nationwide coverage are the public channel Venezolana de Televisión (VTV), which, thanks to the SIBCI scheme, reaches a wider audience via joint broadcast on six system channels,¹⁴⁶ and the private channels Venevisión and Televisión. The privately-owned news channel Globovisión broadcasts only in Caracas and Valencia; it expands its signal through cable transmission.

Given this scenario, it is noteworthy that Venezuela's two main informative media are VTV and Globovisión. The programming on Venevisión and Televisión, in contrast, is oriented more toward "entertainment" formats.

Access to the media during the electoral process. Access to the media by the various political forces during the period prior to the elections was relatively equal to that observed during the October 2012 presidential elections, when there was a strong imbalance in coverage of the main candidates, especially in public media, where coverage of the president was overwhelmingly positive.

According to media monitoring by several organizations during the pre-campaign and campaign periods, the imbalance in news coverage was mainly observed in the two main Venezuelan audiovisual media: the state-run Venezolana de Televisión (VTV) channel and the private TV channel Globovisión. According to the OEV report, time on VTV was "almost completely" devoted to promoting the governing party's candidate, barely mentioning the others in the race, while Globovisión showed a marked bias in favor of the opposition candidate. According to this report, Globovisión justified the imbalance in its news coverage as a response to the predominance of the governing party's candidate in the National Public Media System (*Sistema Nacional de Medios Públicos*).¹⁴⁷ Neither channel responded to "what an election campaign should be, according to the rules governing the democratic system", the report concluded.¹⁴⁸ Discretionary use of the so-called "presidential *cadena*" and institutional messages (which private media are required to broadcast or publish at no charge)¹⁴⁹ to disseminate partisan

¹⁴⁶ TV channels ANTV, Vive TV, Telesur (whose signal is broadcast in several countries in the region), Avila TV, Tves and Colombia TV are part of SIBCI.

¹⁴⁷ Observatorio Electoral Venezolano, "Informe Final: Observación Elecciones Presidenciales 14 de Abril de 2013," May 2013, pages 12 and 13 <<http://www.oeventolano.org/noticias/informes-finales/66-informe-final-elecciones-presidenciales-de-2013>>.

¹⁴⁸ Ibid, 13.

¹⁴⁹ Article 10 of the Law of Social Responsibility in Radio, Television and Electronic Media establishes that the broadcasting of official messages or speeches is "mandatory and at no charge," upon "with valid notification" by the national Executive Branch. The broadcast and duration of those messages is at the discretion of the Executive Branch. Article 10 of the law also establishes that the government can require the broadcast of "public service" messages, also at no charge, on radio and television, for up to 10 minutes a day per station. The time cannot be carried over to another day.

messages during campaigns raised a series of questions from both opposition parties and various national civil society organizations. Analysis of these elements is included below.

MONITORING OF CAMPAIGN REGULATIONS BY THE CNE

During the October 2012 presidential elections, in compliance with regulations for television, radio and print media,¹⁵⁰ the CNE's Political Participation and Financing Commission implemented a pilot media monitoring study to perform "systematic and continuous monitoring of the behavior of the media in coverage of the electoral campaign." The CNE's monitoring included news coverage and electoral propaganda contracted by "candidates, political organizations, voter groups, communities or indigenous organizations." The main goal was "to corroborate compliance with the Organic Law of Electoral Processes, the General Implementing Regulations of the Organic Law of Electoral Processes, and the Special Regulations on the Electoral Campaign for the 2012 Presidential Election."¹⁵¹ The results of the monitoring were announced weekly by the CNE president.

The electoral management body repeated this exercise for the April presidential elections. Unlike October, this time the results were continuously announced on three screens installed in the main CNE office. They included, in real time, the results of monitoring of electoral propaganda on television, campaign advertising in the print media, and violations of regulations by organizations not authorized to engage in election campaigns.¹⁵²

According to information sheets provided by the CNE,¹⁵³ the main findings of the monitoring of electoral advertising on television included the fact that the total time for the opposition candidate exceeded the time for the governing party candidate in the overall sum of the six over-the-air channels chosen for this study (Globovisión, Venevisión, Televén, TVES, VTV and MeridianoTV).

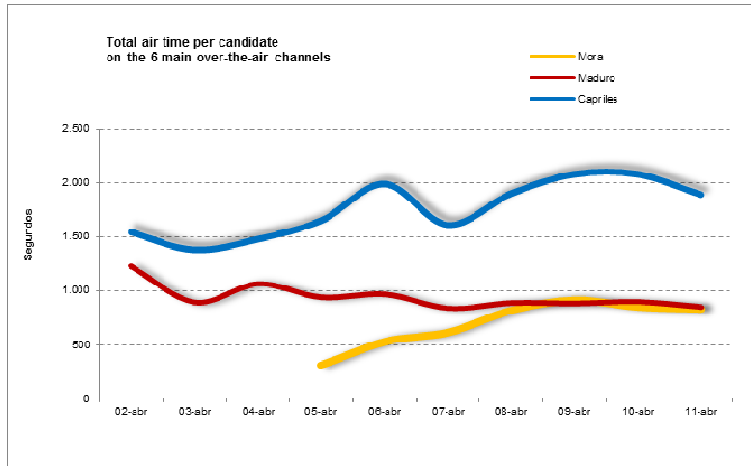
¹⁵⁰ Established in Article 66, numbers 2, 5 and 6 of the Organic Law of Electoral Power.

¹⁵¹ 2012 annual report, CNE.

¹⁵² Results of the monitoring of news coverage were not included in this system.

¹⁵³ The information sheets were provided to the Carter Center by the people who carried out the study. They have not yet been published by the electoral management body.

Total Publicity Air Time per Candidate on the 6 Main Over-the-Air Channels



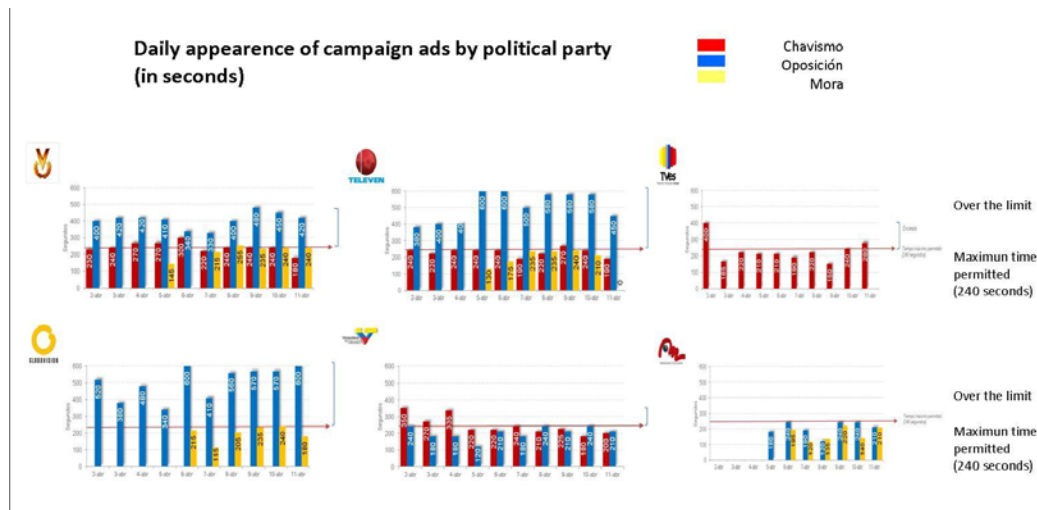
Source: Media Management System (*Sistema de Gestión de Medios, SIGEM*). Courtesy CNE.

The CNE’s monitoring was based on the “appearance of spots for each political camp,” in cumulative seconds for each media outlet. The main actors were identified as “*chavismo*,” “opposition” and “candidate Mora.”¹⁵⁴ According to the results provided by the CNE, the “*chavismo*” parties only contracted advertising on TVES, VTV, Televén and Venevisión, excluding Globovisión and Meridiano TV (a channel specializing in sports). Parties in the “opposition” category contracted on both private over-the-air channels (Venevisión, Televén and Meridiano TV) and the public station VTV, excluding TVES, the second-largest public channel in the sample.

According to the CNE’s monitoring, both “*chavismo*” and the “opposition” exceeded the maximum time allowed per candidate, which is set at four minutes daily in the special regulations for the campaign. Nevertheless, there are no published reports of sanction or administrative investigation by the CNE regarding cases of non-compliance.

¹⁵⁴ The category “candidate Mora” corresponds to advertising placed by the candidate of the Unidad Democrática party, Julio Mora.

Daily Appearance of Campaign Ads by Political Party



Source: Media Management System (*Sistema de Gestión de Medios*, SIGEM). Courtesy CNE.

Although the CNE's decision to monitor compliance with electoral norms related to electoral advertising and news coverage is laudable, various observers criticized the fact that the initiative did not take into account government advertising contracted by the state agencies, which in most cases had an obvious electoral slant.¹⁵⁵ The CNE's monitoring also did not include institutional messages that private media are required to broadcast or publish at no charge, which were also propagandistic. The fact that the CNE has not yet announced the overall results of either the 2012 or 2013 study has also been criticized.¹⁵⁶

ADMINISTRATIVE INQUIRIES BY THE CNE

At the close of the electoral campaign, the CNE began a series of administrative investigations into violations of electoral regulations related to campaign advertising. They included the

¹⁵⁵ Observatorio Electoral Venezolano, "Informe Final: Observación Elecciones Presidenciales 14 de Abril de 2013," May 2013, page 12 <<http://www.oeventolano.org/noticias/informes-finales/66-informe-final-elecciones-presidenciales-de-2013>>.

¹⁵⁶ The results of the monitoring carried out during the campaign period leading up to the October 7, 2012 election are in the electoral branch's annual report to the National Assembly. That report records 1,732 "oversight reports accepted," including 394 murals, 276 signs, 594 posters, 354 billboards and 97 print ads allegedly in violation of electoral advertising regulations. Of those reports, 25 cases were substantiated for alleged violation of electoral campaign regulations, and 21 draft resolutions referring to violation of campaign regulations were processed for submission to the CNE. In addition, although the report refers to a series of news reports and editorials in print and electronic media, it provided no detailed information about their balance.

mentioned cases of ads published by a group of NGOs, as well as other cases involving the use of children in political advertising (Primero Justicia party); unauthorized use of the image of another candidate (Unidad Democrática party); political proselytizing while in office (registrar of the Municipality of San Francisco in the state of Zulia); publication of electoral advertising without a Fiscal Information Register (*Registro de Información Fiscal*, RIF) number (*Diario Vea* and *Ciudad Caracas*); and other violations.

On April 8, the CNE announced that, as part of its monitoring, it would open administrative inquiries into both campaigns “for excesses,” as well as into the daily *Últimas Noticias* for publishing an advertisement without a tax identification number. The electoral management body also reported on the approval of administrative inquiries with an injunction of suspension against NGOs not authorized to contract electoral advertising. Among them it mentioned the Fundación Hannah Arendt (Hannah Arendt Foundation), Voto Joven (Youth Vote), Fundación Comunidades Ciudadanas (Civic Communities Foundation), Frente García Ponce (García Ponce Front), Barrio Alerta (Alert Neighborhood) and Fashion.¹⁵⁷

CANDIDATE MONITORING OF CAMPAIGN CONDITIONS

Henrique Capriles campaign (Comando Simón Bolívar). For this election, the campaign of candidate Henrique Capriles Radonski, known as the Comando Simón Bolívar (CSB), established a formal group to monitor equality of conditions during the campaign, assigning a group of active party members to the task. The CSB monitored radio, television and print media during both the pre-campaign period¹⁵⁸ and the campaign. The sample of radio stations included YVKE Mundial, Radio Mundial, RNV and Alba Ciudad Caracas, while the print media sample consisted of the national dailies *Últimas Noticias*, *Ciudad Caracas*, *Correo del Orinoco* and *Diario Vea*, and the regional dailies *El Norte* (Anzoátegui), *Nuevo Diario* (Falcón) and *La Voz* (Guarenas).¹⁵⁹ The television sample was limited to the state-run channel, Venezolana de Televisión, including joint broadcast of signals belonging to the Bolivarian System of Communication and Information (*Sistema Bolivariano de Comunicación e Información*, SIBCI).

At the close of the electoral campaign, the opposition campaign headquarters filed a total of 222 complaints about violations of electoral regulations. They were divided into nine categories:¹⁶⁰ a) suspension of NGO advertising (while other groups, in similar cases, were not sanctioned); b)

¹⁵⁷ Consejo Nacional Electoral, “Candidatos Podrían Firmar Acuerdo de Reconocimiento de Resultados,” 8 April 2013 <http://www.cne.gov.ve/web/sala_prensa/noticia_detallada.php?id=3144>.

¹⁵⁸ As of 9 March 2013, when elections were called (*Crónica de denuncias*, Comando Simón Bolívar, April 2013, page 1).

¹⁵⁹ The regional dailies were only followed for two days during the campaign period.

¹⁶⁰ Dossier Comando Simón Bolívar, “Abusos Electorales,” 14 April 2013 <<http://venezuelasomostodos.com/wp-content/uploads/2013/04/Incidencias-del-proceso-electoral-14A.pdf>>.

advertising without RIF (tax identification); c) presence of children in electoral propaganda; d) unauthorized use of citizens' images; f) propaganda in public building and on public property; g) destruction of electoral propaganda; h) unbalanced news coverage (chains, coverage of government activities and coverage in the print media);¹⁶¹ and i) cases of "dirty war."¹⁶²

The time frame for monitoring was March 9 to April 12. Of the total complaints filed, 36 were from the pre-campaign period and 186 from the campaign. The report was submitted to the CNE's Political Participation and Financing Commission.¹⁶³ In the view of the opposition campaign, the "*ventajismo*" in favor of the governing party's candidate affected the right of candidates to participate in the electoral process on equal terms.

On April 12, the day after the end of the official campaign period, opposition campaign staff members appeared before the CNE to demand an end to what they called "illegal broadcasts" on the state-run channel. According to the organization's monitoring, the channel had so far broadcast propaganda for four hours and 18 minutes more than the time allowed by the electoral management body.

Nicolás Maduro campaign (Comando Hugo Chávez). Although the governing party's campaign, the Comando Hugo Chávez, filed no formal complaints with the CNE's Political Participation and Financing Commission, some leaders and spokespersons spoke during public appearances or campaign events about a "preference" of private media outlets for the opposition candidate. Venezuela's ambassador to the Organization of American States, Roy Chaderton, referred to the "media dictatorship of the big transnational corporations."¹⁶⁴ Campaign chief Jorge Rodríguez denounced the difference in the coverage given to candidate Capriles, in comparison to candidate Maduro, on the Globovisión television channel, as well as the difference in propaganda on Televen and Venevisión.¹⁶⁵ Candidate Maduro spoke about this during some of his public appearances, saying that 80 percent of the news and programs on private media were dedicated to promoting candidate Capriles.¹⁶⁶

¹⁶¹ According to the Comando Simón Bolívar, between April 2 and 9, the joint SIBCI broadcast covering candidate Maduro's campaign events totaled 47 hours and 35 minutes. It also denounced unbalanced news coverage on the state-run channel, Venezolana de Televisión, between April 2 and 10, in favor of Nicolás Maduro, who, according to its sources, received news coverage totaling 65 hours, 10 minutes and 29 seconds, compared to five hours, 44 minutes and 56 seconds for candidate Capriles.

¹⁶² Comando Simón Bolívar, "Final Presentation of Complaints Filed with the CNE, 2013 Presidential Campaign," 12 April 2013.

¹⁶³ During the October 2012 election, candidate Capriles' Comando Venezuela filed 106 similar complaints with the CNE, only two of which received a response (Comando Simón Bolívar, "Crónica de Denuncias," April 2013, page 1).

¹⁶⁴ *Noticias 24*, 3 April 2013.

¹⁶⁵ Lagranciudad.net, 13 April 2013.

¹⁶⁶ Daily *La Verdad*, 10 April 2013.

MEDIA MONITORING BY THE CARTER CENTER

Because of the critical role played by the media in electoral processes, the Carter Center, as part of its Media Program,¹⁶⁷ monitored news coverage by some of the country's largest media outlets during the October 2012 presidential election. Preliminary results of this monitoring were included in the report by the Carter Center Study Mission.¹⁶⁸ That report confirmed a pronounced imbalance in news coverage by public and private media, especially on television and radio (there was less imbalance in the print media). That lack of balance was evident not only in the time dedicated to a particular candidate, but also in the assessment of those candidates.¹⁶⁹ Although private media tended to favor the candidate of the opposition coalition (the study registered more than 50 percent positive articles for Henrique Capriles Radonski and less than 45 percent positive for Hugo Chávez Frías), public media not only showed the opposite tendency in a more pronounced manner (more than 90 percent of articles in favor of the incumbent candidate), but the little coverage received by the opposing candidate had a markedly negative tone in more than 80 percent of the public media monitored.

For the April 2013 presidential election, the Carter Center repeated the monitoring, focusing only on audiovisual media from March 28 – April 16. It emphasized coverage of campaign activities attended by the presidential candidates, members of their campaign committees, CNE officials or international observers and broadcast by the main national television stations -- three private (Venevisión, Televén and Globovisión) and one public (Venezolana de Televisión). The presidential 'cadena' addresses broadcast between 28 March and 16 April were also monitored, as was the content of the institutional messages whose broadcast is mandatory under Article 10 of Venezuela's Media Law.

A total of 174 hours, 31 minutes and 20 seconds of electoral information broadcast outside regular newscast times were analyzed. Of that total time, 54 percent was coverage by VTV, while the remaining 46 percent was the result of the sum of information broadcast by the three private stations, which illustrates the emphasis placed by the state-run channel on electoral matters.¹⁷⁰

¹⁶⁷ The Carter Center has been sponsoring a Program to Strengthen Journalism in Venezuela since 2008.

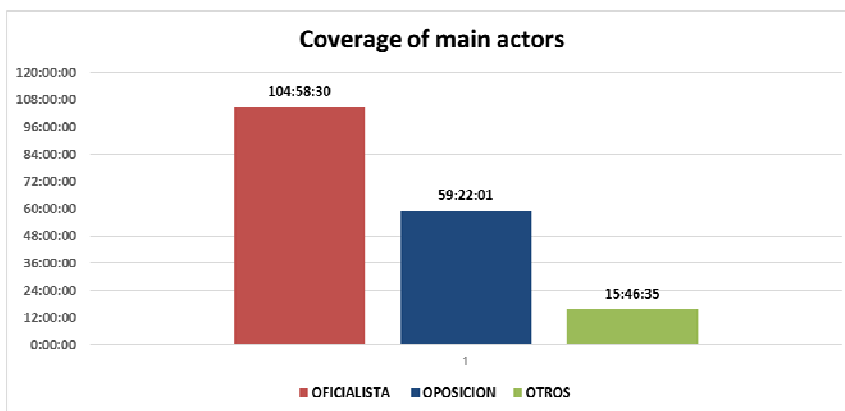
¹⁶⁸ The Carter Center, "Final Report of the Carter Center Study Mission to the October 7, 2012, Presidential Election in Venezuela," October 2012 <http://www.cartercenter.org/resources/pdfs/news/peace_publications/election_reports/venezuela-2012-election-study-mission-final-rpt.pdf>.

¹⁶⁹ Ibid, 38.

¹⁷⁰ Although the Carter Center monitoring included only the public station VTV, the programs analyzed were broadcast jointly by all television stations in the Bolivarian System of Communication Media (*Sistema Bolivarianos de Medios de Comunicación*).

Candidate Nicolás Maduro, his campaign and his followers received the most coverage in all media monitored. Overall, the coverage amounted to 99 hours, 22 minutes and 44 seconds (57 percent).¹⁷¹ Coverage of candidate Henrique Capriles, his campaign and his followers totaled 59 hours, 22 minutes and 1 second (34 percent). The CNE and international observers received the least coverage, totaling 15 hours, 46 minutes and 35 seconds (9 percent).

Coverage of Main Actors



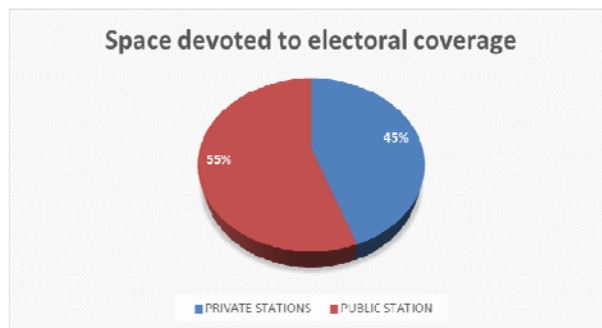
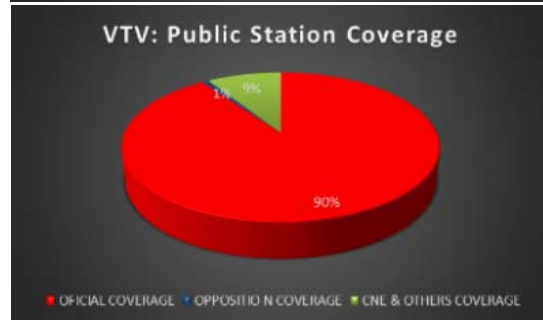
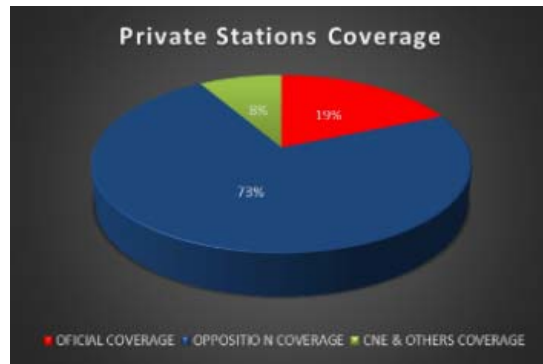
Source: Carter Center Media Monitoring March-April 2013.

A breakdown by channels shows that private stations devoted a greater proportion of coverage to candidate Henrique Capriles Radonski, his campaign events and his followers (73 percent), with a much smaller percentage (19 percent) devoted to the governing party’s candidate, Nicolás Maduro, his campaign events and his followers. The imbalance in coverage on the state-run channel, however, was even more pronounced. Ninety percent of that station’s coverage focused on the government candidate, while his opponent’s campaign activities received barely 1 percent.¹⁷² Coverage of CNE activities or statements by CNE officials was more balanced, in both private media (8 percent) and public media (9 percent).

¹⁷¹ Eighty-five percent of this time corresponds to VTV’s coverage.

¹⁷² In the analysis of electoral content, criteria were defined to distinguish between coverage of “government activities” and the “candidate in campaign activities.” Of the 64 electoral units registered on VTV, only 11 corresponded to the category of coverage of the interim president. In three of those 11 units, however, there were elements of the electoral campaign, so they were considered both government activities and candidate activities.

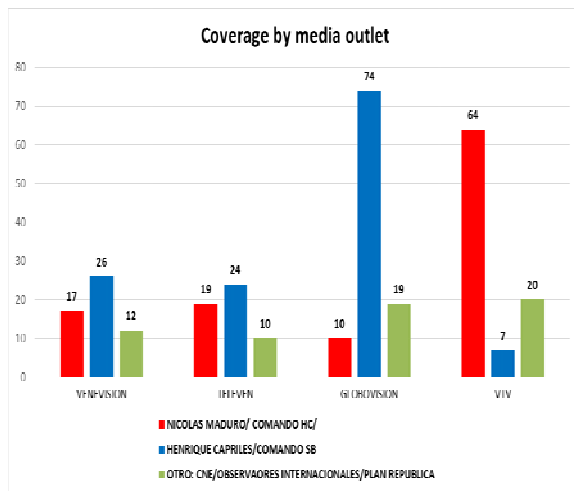
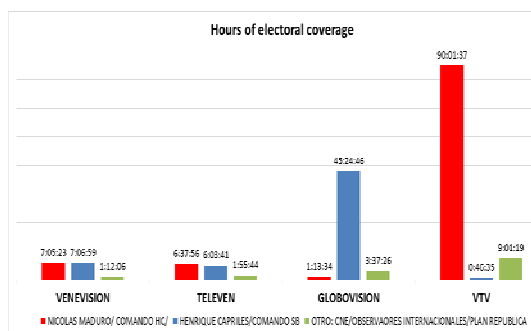
Space Devoted to Electoral Coverage on Public and Private Stations



Source: Carter Center Media Monitoring March-April 2013.

Analysis of each channel's coverage found the greatest imbalance on VTV and Globovisión. Coverage of the main candidates on Venevisión and Televisión was more balanced. Although both stations covered more of the opposition candidate's activities, a comparison of the time devoted to each candidate by Venevisión and Televisión shows a nearly exact balance, as seen in the following figure.

Time Devoted to Electoral Coverage by Media Outlet

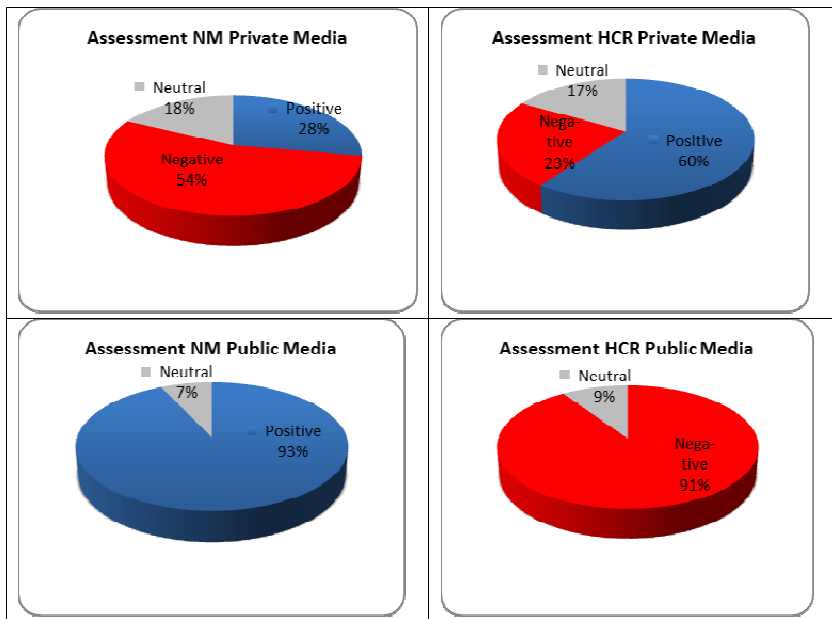


Source: Carter Center Media Monitoring March-April 2013.

Regarding the tone of the coverage in public media, the monitoring found 91 percent positive coverage of candidate Nicolás Maduro. Candidate Capriles had no positive coverage in those

media (91 percent of the items registered were negative, while the remaining 9 percent were neutral).¹⁷³ In private media, candidate Henrique Capriles received 60 percent positive coverage (with 23 percent negative and 17 percent neutral), while candidate Maduro had 28 percent positive (with 54 percent negative and 18 percent neutral).

Public and Private Media Assessments of the Candidates



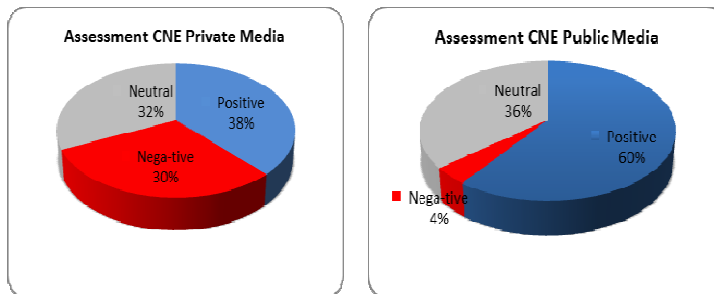
Source: Carter Center Media Monitoring, March-April 2013

One variation between the monitoring in October and April was the assessment of the CNE. While in October 2012, private media registered 50 percent positive coverage of the CNE and only 14 percent negative, in April 2013, positive coverage on private TV stations decreased to 38 percent and the negative increased to 30 percent. The opposite was true for public media. During the October 2012 electoral process, 50 percent of their coverage was positive (with 14 percent

¹⁷³ In order to assess the actors, we identified the use or presence of adjectives, sentences or expressions, on the part of journalists or news anchors, that labeled the main candidates and the CNE. Those expressions were included in positive, negative or neutral categories.

negative and 36 percent neutral), while in the April 2013 process, the percentage of positive coverage rose to 60 percent (with only 4 percent negative and 36 percent neutral).

Public and Private Media Assessment of the CNE, April 2013



Source: Carter Center
MediaMonitoring, March-April 2013

CADENAS AND MANDATORY OFFICIAL MESSAGES

The special regulations issued by the CNE for the April 2013 election campaign established a series of norms aimed at balancing the candidates' access to media space and airtime.¹⁷⁴ Those regulations, however, did not take into account the media access enjoyed by an incumbent president who is also a candidate, such as nationally televised presidential 'cadena' addresses and institutional messages, which all electronic media are required to broadcast.

As noted above, the Carter Center's monitoring in April included the *cadenas* Presidential broadcast between March 28 and April 16. The results of that monitoring showed that, although presidential *cadenas* were not broadcast during the official campaign period (2 to 11 April), a total of six – five presidential and one official message from the electoral branch – were registered during the monitoring period. The former totaled four hours, 19 minutes and 25 seconds. One was before the formal launch of the campaign, while the other four were just after the election, on April 15 and 16.

Although the decision not to broadcast *cadenas* during the election campaign was seen as a positive response by the government to the opposition's requests and complaints about the

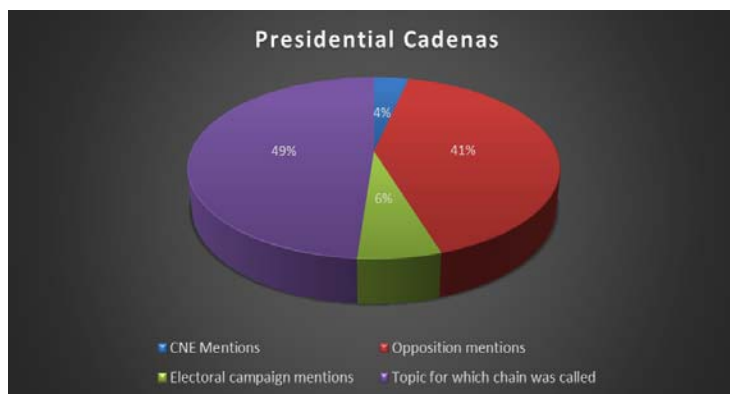
¹⁷⁴ The regulations set limits on paid airtime on television and radio and paid space in print media for each candidate.

advantage-granting “*ventajista*” use of that tool, the content of the presidential broadcasts in the days just after the election targeted Henrique Capriles and other opposition figures.

Of the four hours, 19 minutes and 25 seconds occupied by the presidential *cadena*s, only 9 minutes and 20 seconds (4 percent) referred to the CNE and the electoral process. The rest was devoted to opposition protests over the election results and the acts of violence that occurred on April 15 (one hour, 47 minutes and three seconds, or 41 percent), financing of the opposition campaign and its leaders (15 minutes and 52 seconds, or 4 percent),¹⁷⁵ and the specific topics for which the cadena was called (two hours, six minutes and 34 seconds, or 49 percent).

It is worth noting that the policy of broadcasting presidential *cadena*s increased substantially after the presidential elections, making them an important part of the government’s communications strategy. Although the law allows this use of official messages, the content was used to respond to accusations from the opposition, sometimes impeding live coverage of press conferences by candidate Henrique Capriles.

Presidential Cadenas



Source: Carter Center Media Monitoring March-April 2013.

¹⁷⁵ In the monitored messages, the following phrases were identified as part of the subjects of “opposition protests,” “acts of violence” and “campaign financing”: Demons of intolerance/Plan for a coup, Strikes by the right failed/Groups prepared to engage in violence/Attacks on the headquarters of CDI, PSUV, Urbanismos de Misión Vivienda/Fascist hordes/Capriles responsible for the yellow bourgeoisie/Orchestrated plan/We defeated the coup/What would have happened if I had called the people to come down/ Yellow leader responsible for deaths/We cannot be blackmailed/In the face of violence, peace and love/ I condemn attacks on the homes of Tibisay Lucena and William Izarra, We have proof/He resembles Hitler/He is worse than Pinochet/There is a chavista, Christian democracy here and violence and death there/ Bourgeois, Little bourgeois/ Televen and Venevisión call them??? To sensibility, to take a stand, either they stand with peace or with fascism and violence/ The bourgeoisie’s hatred of the poor people/ End the violence, the hatred, the intolerance/I am surrounded by the opposition rabble/The people came out in defense of the CDI/Small groups of hatred/Pure fascism/Worse than the hunting of Pinochet/The fascist will pay/Xenophobic campaign against the Cuban people, just like the campaign of hatred against the Jewish people/ Structure of class contempt is the same here to justify attacks on Cubans/ The assassinations that did not happen/ They vaccinated with hatred/Worse than Pinochet/That person (HC) attacked the Cuban Embassy/ Hatred against Cuba.

Institutional messages. The Law of Social Responsibility in Radio, Television and Electronic Media gives the Executive Branch the power to disseminate official messages or “spots” via private media. The broadcast is mandatory and free, and the law allows for a duration of up to 10 minutes a day.¹⁷⁶ In all, 117 messages were analyzed. Televisión was the channel with the highest broadcast of institutional messages (44 percent), followed by Venevisión (32 percent), Globovisión (20 percent) and VTV, with just three institutional messages in the 10 days of monitoring (2 percent).

During the monitoring, four types of messages were identified, based on the content of the broadcast. The first extolled the legacy of President Hugo Chávez, the second praised President Nicolás Maduro’s work during the interim administration, the third promoted the work of national government agencies or missions, and the last, sponsored by the CNE, encouraged people to vote. The largest proportion of messages consisted of those promoting the government’s work (46 percent), followed by those sponsored by the CNE (23 percent). Messages extolling President Chávez were in third place (20 percent), followed by those praising President Nicolás Maduro’s interim government administration (11 percent).

Another outcome of the analysis of the institutional messages monitored was that the issues and programs most promoted by those messages were aligned with the key issues and programs of the incumbent candidate’s campaign platform.¹⁷⁷ The messages broadcast most often addressed issues such as the number of pensioners in the social security system, the delivery of computers to children in the Venezuelan school system, measures to strengthen the country’s electricity system and training for the new Bolivarian National Police to address problems of violence in the country.

POST-ELECTION DIALOGUE BETWEEN THE GOVERNMENT AND PRIVATE MEDIA

During a national cadena broadcast on 16 April, two days after the election, the newly proclaimed president questioned the live coverage of Henrique Capriles’ press conference the previous day by Televisión and Venevisión, the country’s two largest private television stations. President Maduro said statements made during the broadcast set off the violent acts that occurred after the election results were announced.¹⁷⁸ “Televisión and Venevisión, I call you to your senses, to decide if you stand with peace or with fascism and violence,”¹⁷⁹ Maduro said.

¹⁷⁶ The Carter Center monitored institutional messages on March 28 and 29 and between April 9 and 16, from 6 p.m. to 10 p.m.

¹⁷⁷ During the campaign, President Maduro referred to government programs, both to ensure their continuity and to warn about their elimination if there was a change of government.

¹⁷⁸ See analysis of topics addressed in the chains.

¹⁷⁹ “Comments by Nicolás Maduro during the Presidential Campaign,” 16 April 2013.

The president's words were among a series of similar statements directed at private media, a fact which was criticized by NGOs connected with the defense of freedom of expression.¹⁸⁰

The government's criticism of those media led to a series of private meetings between high-ranking government officials (the president and vice president) and owners of the largest private television stations (Venevisión, Televen and Globovisión) between 20 and 23 May, at the government's initiative. "I am going to have a very serious talk with the owners of those television stations," the president said before the meetings, emphasizing that the goal was to promote "A new model of TV and disinfect the country of fascism."¹⁸¹ After the meetings, Vice President Jorge Arreaza said they had been a forum for analyzing the implementation of "a new communications model," which would lead to "peace and stability," so children "can watch these channels without fear and we parents won't have to worry."¹⁸² Against this backdrop came the news of the sale of Globovisión and the Cadena Capriles chain, the largest media conglomerate in Venezuela which publishes the country's largest-circulation daily paper (*Ultimas Noticias*). Although it is too early to speculate about the impact the sales could have on those media's editorial lines and news coverage, the new situation has raised red flags for both opposition sectors and media experts, who fear that the changes could tilt the current "news balance" toward the political interests of the governing party.

¹⁸⁰ IPYS warned in a statement that repetition of this type of message by top government officials only helped solidify "messages of hate and criminalization of the work of the free, pluralistic and independent press." Assessment of the state of freedom of expression and information in Venezuela (IPYS, "Balance sobre la Situación de la Libertad de Expresión e Información en Venezuela," 25 April 2013 <http://www.ipys.org.ve/news_deinteres?id=3432&tipoPub=Nacionales>).

¹⁸¹ "Presidente Maduro Se Reunió con los Dueños de Venevisión y Televen," *Venezuela al Día* 20 May 2013 <<http://www.venezuelaaldia.com/2013/05/presidente-maduro-se-reune-con-los-duenos-de-venevision-y-televen/>>.

¹⁸² "Gobierno de Venezuela Analizó 'Nuevo Modelo' de TV con Dueños de Medios," *La Nación* 21 May 2013 <<http://www.lanacion.com.ve/nacional/gobierno-de-venezuela-analizo-nuevo-modelo-de-tv-con-duenos-de-medios/>>.

IV. VOTING DAY CONDITIONS

A number of conditions must be in place for the voting process to unfold orderly and efficiently. Polling stations must be accessible to the public, and they must be secure places, so that suffrage can take place in a civic fashion. Just as important, the polling place must be fully staffed, and the machines must be administered competently so that voters can exercise franchise throughout the day, 6 a.m.-6p.m., or as Venezuelan electoral norms dictate, until all those in line as of 6 p.m. have voted.

The Carter Center's Accompaniment Delegation consisted of six CNE-accredited members and four private study mission members.¹⁸³ The teams visited a handful of voting centers in both eastern and western neighborhoods of the Caracas Metropolitan area. To give the delegation a broad view of voting day dynamics, teams visited the polls during the morning, afternoon, and evening when the voting centers begin to close.

The two most experienced CNE-accredited national observer groups, Observatorio Electoral Venezolano (OEV), and the Red de Observación Electoral de la Asamblea de Educación (Network of Electoral Observation of the NGO Assembly of Education-AE), stationed volunteers according to a nationally representative sample of voting centers throughout the entire voting day, and observed the voting process from the center's opening to the closing activities. They assembled observer missions with much greater breadth and depth than the Carter Center's accompaniment delegation or any other international organization's accompaniment mission. As a result, OEV and AE produced rigorous reports on voting day conditions.¹⁸⁴ Each group submitted their final report to the public and to the CNE.¹⁸⁵

AE, which has participated as an accredited national observer in ten elections, beginning with the 2006 Presidential elections, had observer presence in 439 voting tables. OEV, which is the successor organization to the electoral observation group Ojo Electoral (Electoral Eye) and participated as a CNE-accredited observer in the October 2012 election, had observer presence in 391 voting tables. The OEV teams covered twenty-two out of the country's twenty-four states.¹⁸⁶ Three other organizations participated as CNE-accredited observers: Proyecto Social

¹⁸³ For the press release announcing the 'Accompaniment Delegation,' headed by Former President of Panama, Martín Torrijos, former Governor of Colombia, Horacio Serpa, and former Ombudsman of Costa, Rica Rodrigo Carazo, see the Carter Center webpage: <http://www.cartercenter.org/news/pr/venezuela-040813.html>.

¹⁸⁴ For a detailed review of Venezuela's electoral system, its scope of governance and how its voting system works, consult the Carter Center, Final Report, Study Mission to the October 7, 2012, Presidential Election in Venezuela, November 28, 2012, pp. 24-31, 41-49, http://www.cartercenter.org/resources/pdfs/news/peace_publications/election_reports/venezuela-2012-election-study-mission-final-rpt.pdf.

¹⁸⁵ Each is available on their websites.

¹⁸⁶ Counted as political units, Venezuela has twenty-four states, including the Capital District. For logistical reasons, OEV could not manage to assemble observer missions in Delta Amacuro or Amazonas, two border states with low population densities.

(Social Project), Asamblea Fundación por un Pueblo Digno (Foundation for a Dignified People) and Red de Observadores Electorales (Network of Electoral Observers).¹⁸⁷ The Carter Center is unaware of any published reports by these three observer groups.

THE EFFICIENT VISIT TO THE POLLS

AE and OEV reported positive developments regarding the overall efficiency of the vote. By and large, polling places opened on time and voters encountered few examples where the poll workers and CNE officials had difficulties getting the voting machines ready. With few exceptions, the citizens selected by the CNE to work as voting center officials performed their jobs in a way that permitted an efficient voting experience.

According to CNE rector Vicente Diaz, interviewed by The Carter Center, the technical issues did not present significant problems for voters. 500 machines were substituted nationwide with new ones due to malfunctioning, and only 36 voting machines had to be switched to manual voting systems. These numbers are within the normal range of error for the voting machinery.¹⁸⁸

Moreover, in this election, the System of Electoral Information (SIE), in which voters stop at CNE-manned laptops to check their designated voting table and place on the voter list logs, generated far fewer bottlenecks at the voting center entrance than in the October elections. As a result, the OEV report indicated that the length of lines outside the voting centers decreased while the number of *smaller lines* – a positive sign since these are instances where fifteen persons or less stood in line outside the voting center – increased significantly, from 30 per cent to 71.1 per cent.¹⁸⁹

All these efficiency factors can be seen as having a salutary effect on Venezuelans' willingness to turnout to the polls and contributing positively to the overall civic spirit on election-day in Venezuela. For all these reasons, and considering the short time window, the effective organizational work undertaken by the CNE deserves underscoring.

FINGERPRINT IDENTIFICATION, CONTINGENCIES, AND CONSISTENCY

Venezuela started creating a database of fingerprints of voters nine years ago to be able to prevent multiple voting by one person or impersonation of voters. Prior to the 2012 elections, the

¹⁸⁷ CNE, "3.435 Observadores Nacionales y 240 Acompañantes Internacionales Presentes en Elección Presidencial," 13 April 2013 <http://www.cne.gov.ve/web/sala_prensa/noticia_detallada.php?id=3155>.

¹⁸⁸ The CNE maintains approximately 8000 voting machines on a 'standby reserve' so these can be sent to voting centers if there are problems (Vicente Diaz, "Carter Center Interview," 5 May 2013).

¹⁸⁹ OEV, "Final Report," May 2013, page 44.

database was nearly complete, except for 7 percent of registered voters not entered or with poor quality prints. In a June 2013 press conference, CNE President Tibisay Lucena referred to the electoral authority's oversight of the database of fingerprints, saying "The Electoral Registry was audited and meticulously certified for the October elections and then this same Registry was certified again for the April election."¹⁹⁰

To initiate the voting process, the poll worker enters the ID number into the Remote Sensor Activator,¹⁹¹ known as the captahuella or finger print ID machine, and the voter places his thumb on the machine to determine if there is a match: that is, the voter should have been registered in that particular precinct, and the ID number and fingerprint should match. If the ID number or the thumbprint has already been detected that day, the person is blocked from voting. If the system simply cannot detect a good match, the person is still allowed to vote as long as the ID card matches.

If the fingerprint does not match (or voters without fingers or both hands in cast appeared), the president of the table can initiate the voting machine with a code up to seven (or five for voters without fingers) times in a row. If a table president exceeds this limit, the machine is automatically blocked, and the president of the mesa must call CNS (the National Support Center, Centro Nacional Soporte) to get a new code and unblock the voting machine. Rector Lucena reported the CNS as receiving zero calls from voting table presidents on election day.¹⁹²

The quality of the fingerprints in the CNE database is not perfect.¹⁹³ Thus both parties anticipated the fact that a significant portion of voters' prints would not match with the recorded copy and they also knew the CNE would permit voters whose fingerprints did not match to vote if their photo identification matched with records inside the SAI, as long as the SAI did not indicate that fingerprint or that ID number had already voted. A MUD technician to the CNE indicated in a postelection interview with the Carter Center that 82.2 percent of voters registered a match, 10.97 percent registered a no match (which would amount to 1.6 million voters) and 6.8 percent did not register (which would amount to 1.2 million voters).

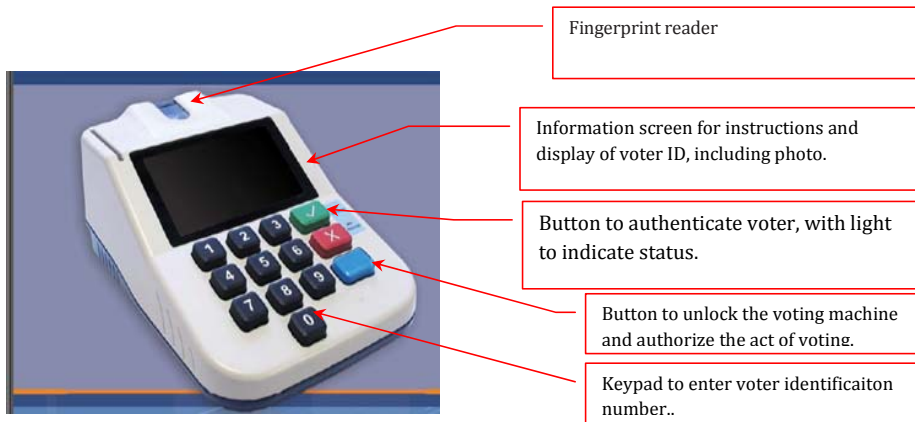
¹⁹⁰ Tibisay Lucena, "Cadena Nacional de Radio y Televisión de la Presidenta del Poder Electoral," *El Universal* June 11, 2013.

¹⁹¹ In the October elections, the machines were modified to add remote session activators (RSA) to each voting machine. The activator is the tool for biometrically authenticating or 'reading' the identity of the voter. Each RSA reader contains the ID number, name and fingerprints of the voters assigned to the voting table. In practice, the RSA reader, which is connected to the voting machine, is referred to as the Sistema Auto-Identificación Integrado (Integral System for Auto Identification), known by shorthand as the 'SAI.'

¹⁹² Ibid.

¹⁹³ The fingerprints vary in quality depending on their origin – higher quality prints gathered in the SAI machines in previous elections or through the passport system; lower quality prints from the ID card system.

Biometric identification machine (or “fingerprint capturer”)



Source: Smartmatic

Like it did in October, the CNE erred on the side of inclusive voting (not disenfranchising legal voters) rather than implementing a strict fingerprint-match setting in the machines that would have prolonged the time necessary to verify, with high accuracy, the fingerprints of voters.

TRANSPARENT VOTE TABULATION

The CNE maintains and operates four important centers for monitoring different developments at the polls on voting day. Those are the Sala de Totalización (the national center for vote tallying), the Sala de Sistema Información Electoral, (national center for tracking turnout, SIE,), the Sala de Centro Nacional Soporte (national center for technical support to voting centers), and the Sala de Contingencia de Miembro de Mesa (the center that receives information about whether volunteer poll workers fulfill their duties).

According to Carter Center interviews, opposition and government representatives both had presence in the four salas.¹⁹⁴ However, some MUD sources said they were not permitted access to the SIE and the Sala de Contingencia de Miembros de Mesa for the whole day.

¹⁹⁴ In the last election, the Capriles campaign complained it did not receive credentials to have access to the SIE and Sala de Contingencia de Miembros de Mesa. This election, those requests were granted ahead of time, according to CNE President Lucena (CNE, “Cadena Nacional,” 18 April 2013).

DATA ON POLL STATION CONDITIONS

OEV and AE produced a series of data regarding conditions at the polls, based on the absolute number of reported cases and then converted into an estimated percentage with each particular incident.¹⁹⁵

According to OEV, the presence of *testigos* (party witnesses) during April 14, 2013 elections reached 92.percent. Maduro's candidacy had coverage in 90.5 percent of the tables, OEV observed, and Capriles 90.8 percent (alternative party candidates had testigos, too).¹⁹⁶ OEV reported very few cases where coercion against testigos became an issue (.8 percent) while AE found the problem of coercion to be a bit bigger, with 1.7percent of the voting tables they observed being closed at 6 PM without the presence of *testigos*. AE reported that in these cases, testigos were forcibly removed from voting centers.¹⁹⁷

AE also found irregular situations—violent climates—developing in 6 percent of its observed centers.¹⁹⁸ In most of the reported cases, groups of motorizados (people on motorbikes) affiliated with government parties were involved. Typically, they circle around the voting center or on the perimeter, potentially impeding citizens from participating in the public viewing of the vote tally and citizen verification.¹⁹⁹ In 9.3percent of the tables AE observed, the legally public 'acta de escrutinio,' the act of scrutinizing the ballot's accuracy, did not in fact take place publicly.²⁰⁰

In 3.5 percent of the cases, voting centers were not closed after the CNE announced they should be closed down.²⁰¹ CNE Rector Sandra Oblitas announced the polls should close, unless voters were still in line to vote, at approximately 6:30 PM, thirty minutes after the official close of the electoral day.²⁰²

¹⁹⁵ This method produces a general estimate of how often the incident might have occurred on a national level. As a result, the percentages reported below contain a margin of error, which varies based on the number of observed cases, pero que en el caso de unos resultados tan estrechos podrían causar que algunos cambios no fueran estadísticamente significativos.

¹⁹⁶ OEV report

¹⁹⁷ OEV, page 41; AE, page 8.

¹⁹⁸ One of the Carter Center's mission teams observed an incidence where a violent climate developed outside the voting center and impeded the public 'acta de escrutinio' from taking place under optimal conditions.

¹⁹⁹ Carter Center teams personally witnessed such motorized groups at the close of voting.

²⁰⁰ AE, Ibid.

²⁰¹ AE, Ibid, 8.

²⁰² This EFE news wire story reported on the website of El Comercio, a daily in Peru, at 6:15 PM local time. Lima is 30 minutes behind Caracas ("CNE Anuncia Cierre de Colegios en Venezuela. Salvo los que Tengan Filas," *El Comercio* 14 April 2013 <<http://elcomercio.pe/actualidad/1563802/noticia-venezuela-mesas-votacion-comienzan-cerrar-se-esperan-primeros-resultados>>).

AE reported that electoral propaganda was placed either inside the voting center, or within the limit of 200 meters outside the voting center in 17.8 percent of its cases. In 7.3percent of its cases, the norm of prohibiting the use of public resources by candidates voting or to mobilize voters was not respected. They also reported that in 4.7 percent of the cases, the norms for voto asistido (assisted voting) were not respected, meaning that the assistant did more than help the elderly or physically disabled person get behind the voting station shield. To illustrate, AE noted qualitative examples where the *parabanes* (cardboard shields that protect the secrecy of the ballot) were taken down completely while electors used the *voto asistido*.²⁰³ AE, however, did not break down its data regarding these problems by party.

OEV reported that in 15.1percent percent of the centers it observed, public resources mobilized voters to the polls. In the cases where OEV observed this phenomenon, personnel from the national government (or affiliated agencies) were involved in 6.4percent, personnel from mayoral or gubernatorial administrations affiliated with the PSUV or allied parties were involved in 11.8percent, and personnel from mayoral or gubernatorial administrations affiliated with the MUD were involved in 3.1percent of the centers.

According to OEV observation data, illegally placed electoral propaganda was noticed in 5.1 percent of the centers. In 4.9 percent of the centers they found pro-Maduro electoral propaganda and in .8percent percent they found pro-Capriles propaganda. CNE Rector Vicente Diaz denounced the presence of the so called ‘puntos rojos’ near voting centers (red tents of mobile PSUV offices) on April 14. Carter Center delegation members also observed ‘puntos rojos’ within the boundary of a 200 meter limit from the voting center. Public announcements calling for voters to support Maduro dotted the radio airwaves in Bolívar state where the Governor, Francisco Rangel Gómez, took over the broadcasting of 60 radio stations to transmit electoral propaganda for Maduro.²⁰⁴

A small percent but overall significant number of complaints about voters experiencing ‘pressure’ or being induced to vote for one candidate or another by verbal or physical action from other persons inside the voting centers have been made in past elections. OEV observed fewer cases of voters being pressured to vote for one candidate or the other, from 3.0percent to 1.3percent, with the partisan breakdown showing that in 1.0percent of the cases electors were induced to support Capriles and in .5percent of the cases electors were induced to support Maduro.²⁰⁵ Voter pressure, according to OEV’s methodology, does not include a citizen calling

²⁰³ AE, *Ibid.*, 7.

²⁰⁴ Joseph Poliszuk, “Las Dudas del 14-A,” *El Universal* 21 April 2013 <<http://redobservacionelectoral.info/nota/802>>.

out the slogan of one candidate or another in the voting place. For example, a citizen saying “viva Chávez” or “Hay un camino” (a Capriles slogan) did not count as pressuring or inducing voters but stronger exhortations or physical intimidation did.

ADDITIONAL IRREGULARITIES REPORTED

At about 6:00 PM on election day press accounts of reported cyber-attacks and interruptions of internet service from the national communications company CANTV were published. In the reports, just as voting centers began to close and the system began processing voting data, the government suddenly interrupted the CANTV broadband internet service for more than twenty minutes. Hours earlier, the Campaign Chief of the Hugo Chávez Command, Jorge Rodríguez, reported that official twitter accounts of President Nicolás Maduro and the United Socialist Party of Venezuela (PSUV) were “hacked by subversive groups.” After the reestablishment of the broadband service, Vice President Jorge Arreaza wrote on his twitter account that the government had taken the measure to “impede more conspiratorial hacking from abroad.”

The incident should not have affected the transmission of the electoral data given that, according to the CNE, vote machines encrypt the transmission of the votes via a secure network operated by CANTV, which, in turn, functions in total isolation from the Internet. Nonetheless, the interruption of the service raised suspicions among some sectors of the population.

On another issue, the press reported an incident in which two members of the UNASUR electoral accompaniment mission observed an incident of erroneous voter authentication in Santa Rosa de Lima, a large voting center in Miranda state. There, a person accidentally placed her finger on the voting machine and the machine positively authenticated her identity even though a different person—her mother, a senior citizen—had been the one identified at the entrance station and cleared to vote by the poll worker. Given the assumptions on which the system is based, this person should have not been positively identified because the fingerprint did not belong to the person whose identity number was previously entered. Poll workers at the voting center wrote up a formal act about the incident. In it they expressed that the voting system was not totally protected from the problem of usurpation of identity, given that there were not sufficient guarantees to prevent one person voting for another.²⁰⁶

Separately, a coalition of Venezuelan NGOs, the Citizen’s Election Network, reported an incident involving transportation of voters with public vehicles and suspected manipulation of identity documents in voting center el Liceo Aplicación (located in the Montalban sector of

²⁰⁶ El Nacional, April 19, 2013. http://www.el-nacional.com/politica/Unasur-presencio-irregularidades-maquinas-captahuellas_0_175182486.html.

Caracas) that has since garnered significant attention.²⁰⁷ A group of voters who also are members of the Social Program ‘Misión Negra Hipolita’ arrived at the voting center in a bus accompanied by a group of motorcyclists supportive of chavismo, including PSUV party lawmaker Robert Serra. Misión Negra Hipolita is a government program for helping the homeless and the disabled. One of the pro-government persons was visibly holding a bundle of ID cards that supposedly belonged to the voters on the bus.

This situation raised suspicions among some voters waiting in line outside the polling place to vote and they complained to the CNE voting center coordinator about the irregular nature of what seemed to be unfolding. The CNE coordinator did not respond to the complaints of the voters and the ensuing commotion around the center prompted officials to temporarily close the voting center. Later in the day, CNE Rector Sandra Oblitas spoke about the incident, indicating the CNE sent a group of technicians to the center to look for a solution in a situation in which “people were impeding the voting of persons that wanted assistance to exercise their right to vote.

Through an interview with a member of the CNE team dispensed to address this irregularity, The Carter Center learned that the motorcyclist group did try to frighten those citizens who had asked for the CNE to interview. But, the Center also learned from the interview that the cedulas in the hands of the motorcyclists in fact belonged to a group of voters identified with the Social Mission Negra Hipolita, that these disabled persons did request help exercising the vote, that the number of cedulas in the hands of the pro-government person matched the number of voters, that the CNE verified these persons were voting in the correct voting center, and that the disabled persons exercised their right to an assisted vote without violating the norms created specifically for that specially defined process.

Wilmer Barrientos, the head of Venezuela’s Bolivarian Armed Forces, and the person who supervised Plan Republica, announced that public security forces detained forty three persons on charges of committing electoral crimes on election day. Two of the cases involved identity usurpation attempts, and inappropriate use of the vote.²⁰⁸

THE QUALITY OF VOTING

Regarding the quality of voting conditions observed by the two main national observers, the AE report noted that, “for the first time”, they have detected “a number of very significant irregular situations.” Those irregularities included campaign conditions issues as well as voting day

²⁰⁷Transparency International, June 28, 2013.

“http://www.transparency.org/news/pressrelease/citizen_election_network_reports_on_irregularities_during_venezuelas_elections.”

²⁰⁸ Wilmer Barrientos, “43 Personas Detenidas por Presuntos Delitos Electorales en Venezuela,” *El Correo del Orinoco* 14 April 2013 <<http://www.correodelorinoco.gob.ve/nacionales/43-personas-detenidas-por-presuntos-delitos-electorales-venezuela/>>.

irregularities, such as “elimination of the shields that protect the secrecy of the ballot in voting centers” and problems with Plan Republica officials’ behavior, both in “protecting observers and party witnesses” and in overstepping the bounds of their roles, which, for example, could have involved representatives of the Plan Republica entering the voting center.²⁰⁹

In the extreme cases, military personnel engaged in excesses, such as Military Intelligence detaining Diego Scharifker and other youth members of Un Nuevo Tiempo political party for having made calls to vote in the Chacao municipality of Caracas. In Barinas state, Plan Republica officials detained citizen Carlos Enrique Azuaje for demanding that the size of the ‘*parabán*’ vote machine guard be increased to effectively guard ballot secrecy in the voting center of Las Veguitas.²¹⁰

AE could not complete as comprehensive of an observation mission as it did for the October 7 elections. On the afternoon of April 14, 2013, around 16:00 PM, an armed group headed by Universidad Central de Venezuela student leader Kevin Avila disrupted the activities of the coordinating team working at their Caracas headquarters.²¹¹ The group, identified with chavismo, not only demanded to see the credentials of the observers but also hit some members of the observer teams, robbed one of the computers and a personal cell phone. Because the group threatened to come back in the evening, and some of the group remained in the vicinity, the coordinators of AE decided to suspend their observation activities on election day at their central headquarters.²¹²

The AE report on the presidential elections concluded that “the quantity and nature of the occurred incidents” was such that, in the judgment of the organization, “they could compromise the integrity of the electoral process and potentially lead toward an alteration of the election results announced to the country by the CNE.”²¹³

²⁰⁹ Ibid.

²¹⁰ “Diego Scharifker Ejerció su Derecho al Voto luego de Ser Detenido,” *Noticias 24 / Venezuela* 14 April 2013 <<http://www.noticias24.com/venezuela/noticia/162517/diego-scharifker-informa-que-la-dim-lo-tiene-detenido-estabamos-invitando-a-votar-fotos/>>.

“Lluvia no Impidió que los Ciudadanos Votaran en Barinas,” *El Universal* 15 April 2013 <<http://www.eluniversal.com/nacional-y-politica/elecciones-2013/130415/lluvia-no-impidio-que-los-ciudadanos-votaran-en-barinas-imp>>.

²¹¹ See the press release published by AEV on its website (“La Evidencia del Asalto,” *El Universal* 29 April 2013 <<http://redobservacionelectoral.info/nota/824/>>).

²¹² Watch the video (“Ataque a Observadores Electorales Venezuela 14/4,” *RED* 14 April 2013 <<http://www.redobservacion.org/redobservacion/>>).

²¹³ AEV, “Final Report,” 14 April 2013, pages 10-11.

In its final report, OEV also increased the critical tone of its analysis, as compared with its analysis of the October elections.²¹⁴ Regarding conditions on April 14, 2013, OEV stated that, once again, the organization had identified “various irregularities during the course of the voting day”. Those irregularities, they added, “show that the Venezuelan electoral system still has some pending tasks, which are necessary to complete in order to improve the system.”²¹⁵ Placed in the comparative context of the October 7, 2012 Presidential elections, the OEV reported that in the April 14 elections “both the unequal conditions that characterized the campaign, and the faults detected during the voting day process, became notably stronger, both in terms of their importance, and their repercussions considering the narrow margin that separated candidates Nicolás Maduro and Henrique Capriles in the results announced by the CNE”.²¹⁶

²¹⁴ OEV’s final reports for the October 7, 2012 Presidential elections and for the December 16, 2012 Gubernatorial elections are available on their website (OEV, “Informe Final: Observación Elecciones Regionales,” December 2012 <<http://oevenzolano.org/images/OEV%20Informe%20Final%20Observacion%2016%20Dic%20Preliminar%20para%20el%20CNE.pdf>>). OEV makes its final reports public and submits them to the CNE.

²¹⁵ OEV, “Final Report,” May 2013, page 48.

²¹⁶ *Ibid.*, 49.

V. CHALLENGING ELECTIONS IN VENEZUELA

In Venezuela, the Supreme Court of Justice (TSJ) is the only institution authorized to impugn, either fully or partially, election results. Article 297 of the constitution states: “the contentious electoral jurisdiction shall be exercised by the Electoral Section of the Supreme Tribunal of Justice and any other Courts established by law.”²¹⁷ To have standing, the request must be accompanied by documents that prove any fraud. According to Venezuela’s Organic Law on Electoral Processes (*LOPRE*) contestants have 15 working days after the electoral event took place in order to file their motion to annul the election.²¹⁸

Elections have been legally challenged in Venezuela previously. For example, in the decade of the 1990s, when Venezuela was governed by a different constitution, and had a differently structured electoral authority that oversaw manually tabulated elections, challengers successfully annulled partially or entirely some electoral processes in the country. The Supreme Court of Justice (SCJ, predecessor of the TSJ) annulled the 1992 Barinas and Sucre gubernatorial (regional) election and called for new elections in May of 1993.²¹⁹ New elections were held but the result did not change.²²⁰ In 1996 the SCJ ordered the repetition of the elections in 32 voting tables of Zulia’s state gubernatorial elections (1995) affecting 10,000 voters. Again, the same candidate won. However, the result changed in the governors’ elections of Amazonas state in 2000 when the TSJ decided to repeat the election in 7 electoral tables.

Since the electoral process became automated with direct recording devices (the touch-screen voting machines) in 2004, challengers have attempted to annul electoral processes without success.²²¹ Two recent cases provide some instruction. In Táchira state (2008) the candidate of PSUV challenged the electoral result that declared as winner the opposition candidate; nonetheless the TSJ dismissed the petition.²²² The latest case was in the regional elections of

²¹⁷ CBR, 1999, Article 297.

²¹⁸ Article 213. According to sentence 196/2005 of the Electoral Chamber of the Supreme Court, the electoral event concludes with the proclamation; thus challenges to the results can be filed only after the proclamation.

²¹⁹ “Nuevas Elecciones en Barinas y Sucre,” *Vida Nacional* May 1993 <http://gumilla.org/biblioteca/bases/biblo/texto/SIC1993554_184-186.pdf>.

²²⁰ “Cartay: Si Existe un Verdadero Liderazgo, las Denuncias de Fraude No Desmoralizan a los Electores,” *Barinas 2012* 31 October 2012 <<http://www.barinas2012.net/2012/10/31/cartay-si-existe-un-verdadero-liderazgo-las-denuncias-de-fraude-no-desmoralizan-a-los-electores/>>.

CNE, “Cuadro Comparativo Gobernadores Electos por Entidad Elecciones 1989-1992-1995-1998-2000,” <<http://www.cne.gov.ve/web/documentos/estadisticas/e004.pdf>>.

²²¹ During the MUD primary’s in 2012 elections repeated in 2 electoral voting tables but that was related to MUD’s internal norms and not to CNE’s regulations (Carlos Subero, “CNE Tiene Regla de Oro para una Repetición de las Elecciones,” *Últimas Noticias* 17 April 2013 <<http://www.ultimasnoticias.com.ve/noticias/tuvoto/noticiaselectorales/cne-tiene-regla-de-oro-para-una-repeticion-de-las-asp>>).

²²² Magistrado Ponente Fernando Vegas Torrealba, “Expediente N° AA70-E-2008-000089,” *El Tribunal Supremo de Justicia* 10 December 2008 <<http://www.tsj.gov.ve/decisiones/selec/Abril/46-2409-2009-08-000089.html>>.

December 2012 in the state of Bolívar. The opposition's candidate, Andrés Velázquez, announced that fraud took place in the state's election and that he would challenge the elections through legal mechanisms. As far as we are aware his petition to the CNE to impugn the election was declared inadmissible²²³ and he did not present a petition to the TSJ.

THE CAPRILES LEGAL CHALLENGE OF THE ELECTION

In spite of the fact that Capriles said that he was not optimistic about the Supreme Court accepting his challenge of the electoral result—the opposition argues the TSJ is staffed by magistrates overtly sympathetic to the government—the opposition formalized its claim by submitting two petitions to the Supreme Court.²²⁴ The first, submitted on May 2 by the candidate Henrique Capriles Radonski, called for annulling the entire election. The second, submitted on May 7, was presented by the MUD, with more specific evidence requesting to partially annul the election.²²⁵ Furthermore two civil society organizations submitted their formal request to annul the entire election on the 7th of May.²²⁶ As of this writing (June 18, 2013) the TSJ has responded to only one of these challenges, declaring inadmissible on May 21, 2013 one of the petitions of the civil society.²²⁷

CHALLENGE I

The document presented by Capriles describes the irregularities that took place before, during and after the voting day.²²⁸ President Maduro denied these allegations and argued that Capriles tried to challenge the electoral process with false allegations.²²⁹ In the legal document, Capriles

²²³ CNE, "Resolución N° 130315-0036," 26 March 2013
<http://www.cne.gov.ve/web/gaceta_electoral/gaceta_electoral_detallado.php?tg=1&num_gac=667>.

²²⁴ Associated Press, "Venezuela Opposition to Boycott Vote Audit," *USA Today* 25 April 2013
<<http://www.usatoday.com/story/news/world/2013/04/25/venezuela-opposition-protest-election/2113113/>>.

²²⁵ La Mesa de Unidad Democrática, "Letter to Presidente y Demás Magistrados de la Sala Electoral del Tribunal Supremo de Justicia," 7 May 2013 <<http://www.unidadvenezuela.org/wp-content/uploads/2013/05/Recurso-Contencioso-Electoral-de-Impugnacion%20C3%B3n-Parcial-MUD.pdf>>.

²²⁶ Alex Vásquez S. Yamis Urbano Valencia, "Sala Electoral de TSJ Recibió Cuatro Impugnaciones Contra Comicios," *Última Hora* 8 May 2013
<http://www.el-nacional.com/politica/tu_decides/adriana-aveledo-bolivar-civil-comando-electoral-guillermo-impugnacion-oposicion-ramon-recurso-simon-sociedad-tsj-vigilancia_0_185981693.html>.

²²⁷ "TSJ Rechaza Primera Acción para Impugnar Elecciones Presidenciales," *Últimas Noticias* 25 June 2013
<<http://www.ultimasnoticias.com.ve/noticias/actualidad/politica/tsj-rechaza-primera-accion-para-impugnar-elecciones.aspx>>. Sala Electoral del Tribunal Supremo de Justicia: Juzgado de Sustanciación, "203" y 154", 7 May 2013 <<http://www.tsj.gov.ve/decisiones/jsselec/Mayo/359-21513-2013-2013-000027.html>>.

²²⁸ Henrique Capriles Radonski, "Recurso Contencioso ante la Sala Electoral del Tribunal Supremo de Justicia," 2 May 2013
<<http://untinternacional.org/wp-content/uploads/RecursoTSJ.pdf>>.

²²⁹ AFP, "Maduro Crítica a Capriles por Impugnar Elección Presidencial," *El Diario de Caracas* 3 May 2013
<<http://diariodecaracas.com/politica/maduro-critica-capriles-impugnar-eleccion-presidencial>>.

argued that his case would have been fortified had he been given access to all the electoral material he requested from the CNE and to which he was denied²³⁰. Nonetheless, the challenge asserts the partiality of state institutions that benefit Maduro through questionable decisions and acts during the period beginning with President Chávez's departure for Cuba for medical treatment on December 9, 2012. For instance, the challenge argues that the CNE permitted the political party Podemos to postulate Maduro as its candidate while Podemos' leadership was legally disputed following internal splits during the previous year. Capriles argued that the decision of the CNE to allow Podemos to postulate Maduro as its candidate could have affected the voting results, since Maduro's votes on the Podemos ticket totalled 210.452 votes.²³¹

The challenge further notes that on voting day, Capriles's campaign (Comando Simón Bolívar) received more than 5,000 complaints from citizens regarding abuses and irregularities committed by Maduro sympathizers, such as intimidation of voters or electoral propaganda close to the electoral centers. The challenge claims that the Capriles campaign did not present those complaints to the CNE as their prior experience with the CNE showed that their requests normally remained unattended (before the Election Day they presented 200 complaints to the CNE and none got a formal reply,²³²). Nonetheless, according to the opposition data, these complaints could have affected up to 3,389 voting centres that sum more than 8 million voters.²³³

In general, the document's aim was to present the conditions under which the Venezuelans exercised their right to vote, arguing that these conditions were not favorable to the opposition candidate²³⁴. Legal experts were divided as to whether the document could serve its cause, with some questioning the extent to which the content and evidence provided supported the allegations made in it (confidential interviews with lawyers, May 10, 2012, Caracas).

CHALLENGE 2

The second challenge, presented formally by the MUD, had three parts: a request to nullify 5,279 tables under Article 217 of the LOPRE; to nullify some 21,000 tally sheets under Article 219 of the LOPRE; and a request to nullify the *actas de totalización, adjudicación y proclamación* (totalization, adjudication and proclamation). For the first component, the MUD focused on serious shortcomings in the quality of voting (some of which may have affected the results or

²³⁰ Henrique Capriles Radonski, "Recurso Contencioso ante la Sala Electoral del Tribunal Sumpremo de Justicia," 2 May 2013, page 4 <<http://untinternacional.org/wp-content/uploads/RecursoTSJ.pdf>>.

²³¹ Ibid,17.

²³² Ibid,25.

²³³ Ibid, 34.

²³⁴ Ibid, page 47.

that could be considered offenses that legally nullify those tables). The MUD also noted the unequal campaign conditions prior to election day in their challenge.

Under Article 219, the complaint reported that 21,563 of 39,018 voting tables presented some kind of problem with the tally sheets (*actas*). The vast majority of these (20,277) were missing the hand-written transcription of the number of voters from the manual voter list to the *actas*, thus preventing the MUD from knowing whether an offense legally meriting nullification had occurred under Article 219 of the electoral law – a discrepancy between the number of voters and the number of votes. The MUD additionally reported that 720 tally sheets showed a different result from the count of paper receipts in the citizens verification the night of the election, but they did not indicate the extent of that inconsistency.²³⁵

Perhaps more relevant to the MUD's complaint was the request to nullify 5,279 voting tables (affecting 2.3 million voters) based on Article 217, which includes as nullifiable offenses the use of violence against voting table officials which could affect the vote, intimidation or coercion of voters that force them to vote or not vote against their will, or actions by voting officials that would infringe on voting guarantees.²³⁶

Complaints about the quality of voting on election day listed in the official challenge included the ousting of opposition party witnesses from two per cent of voting centres, government campaigning near voting centres, and intimidation of voters by government-affiliated motorcycle groups. These are serious charges, though it is difficult to access their impact on the vote count. Finally, complaints filed before the election pertaining to the competitiveness of the election, such as unequal campaign financial resources or media access, were also included in the formal complaints to the Supreme Court.

As of June 18, 2013, the TSJ had not yet decided whether it would accept or not the MUD's complaints. If the Supreme Court accepts those complaints it is expected to take up to three months to decide their merits.

CHALLENGING THE TSJ'S MAGISTRATES

The opposition asked for three judges to be recused from their case for various reasons. Both challenge documents asked the court to recuse the president of the Electoral Chamber at the time,

²³⁵ The post-election CNE audit, with the participation of MUD and Gran Polo Patriotic technicians, of a small statistical sample, as well as the phase 2 audit conducted by the CNE, reported, in effect, zero errors (i.e. no more than 1 vote discrepancy per table and in exceptional cases 2 to 3 votes, but with justification).

²³⁶ Unfortunately, the electoral law does not specify how to certify those types of offenses.

Magistrate Jhannett Madriz Sotillo, and Vice-President Malaquías Gil Rodríguez. The opposition accused them of having close affiliation with the PSUV, and in the case of Madriz of being a subordinate of President Maduro when she was ambassador in Canada and he held the post of Foreign Minister.

A reshuffle took place in the Supreme Court's leadership just a day after the MUD's petition (May 8, 2013). Gladys Maria Gutierrez Alvarado replaced Luisa Estella Morales as president of the TSJ, while in the electoral chamber Fernando Vegas Torrealba replaced Jhannett Madriz as the head.²³⁷ Capriles did not welcome this decision, arguing the TSJ is not impartial,²³⁸ and pointing out that Magistrate Vegas is a relative of the Minister of Justice and Internal Affairs, Miguel Rodriguez, and with close links to the government. Capriles asked for Vegas to recuse himself from the case.²³⁹

The opposition then presented a formal objection to magistrate Vegas' competence for the case (14th of May)²⁴⁰. The TSJ decided on May 28, 2013 to reject the initial objection for the two magistrates²⁴¹ but had not ruled about the objection against Magistrate Vegas (as of June 18).

CONTROVERSY ON THE ELECTORAL REGISTRY

The Carter Centre reported in its October 2012 Study Mission Final Report that "Some are concerned that the voter registration list is inflated and has not been sufficiently purged of dead people and noncitizens."²⁴² Indeed, these concerns became part of the official document that Capriles presented in the TSJ on the 2nd of May in order to annul the April 14 election.²⁴³ Rector Socorro Hernandez expressed in a televised interview that dead people were likely to have

²³⁷ "Sala Electoral del TSJ Queda a Cargo de Fernando Vegas Torrealba," *AVN* 8 May 2013 <<http://www.avn.info.ve/contenido/sala-electoral-del-tsj-queda-cargo-fernando-vegas-torrealba>>.

²³⁸ In the document presented by Capriles in order to challenge the electoral result, a lengthy section is dedicated to the partiality of the TSJ in favor of the government and how decisions of the constitutional chamber have assisted Maduro's candidacy (Henrique Capriles Radonski, "Recurso Contencioso ante la Sala Electoral del Tribunal Sumpremo de Justicia," 2 May 2013, page 19 <<http://untinternacional.org/wp-content/uploads/RecursoTSJ.pdf>>).

²³⁹ The Simon Bolivar Command on the 14th of May asked the TSJ to exclude also Magistrate Vegas from the case ("Capriles: Esperamos que Magistrado Vegas se Inhiba," *El Universal* 17 May 2013 <<http://www.eluniversal.com/nacional-y-politica/130514/interponen-ante-tsj-tres-nuevos-escritos-a-expediente-de-impugnacion>>).

²⁴⁰ Ibid.

²⁴¹ RNV "Sin Lugar Recusaciones contra Magistrados de la Sala Electoral," *SIBICI* 27 May 2013 <http://www.rnv.gov.ve/index.php?option=com_content&view=article&id=13660:sin-lugar-recusaciones-contra-magistrados-de-la-sala-electoral&catid=55:judiciales&Itemid=79>.

²⁴² The Carter Center, "Final Report of the Carter Center Study Mission to the October 7, 2012, Presidential Election in Venezuela," October 2012, page 33 <http://www.cartercenter.org/resources/pdfs/news/peace_publications/election_reports/venezuela-2012-election-study-mission-final-rpt.pdf>.

existed in the registry during the April elections as the voters list used for this election is the same one used for October's elections (voter registration closed on May 15th 2012).²⁴⁴ She reiterated that the CNE does not have any knowledge that dead people vote in Venezuela; nonetheless, she did not discard the possibility that some could intend to usurp the identities of deceased people in order to affect the electoral result.²⁴⁵

In order for deceased people to be removed from the electoral registry, a relative must submit a death certificate in the CNE (within maximum 2 days after the death took place),²⁴⁶ a requirement that is not always met. According to a study conducted by the Andres Bello Catholic University (UCAB) before the October 2012 election, only 0.3 per cent of the total of registered voters, about 49,000 voters, were included in the category of 'deceased, but not removed' from the registry.²⁴⁷ As the Carter Center's Venezuelan Elections October 2012 report states, no voter registry is perfect and a certain level of inaccuracies is accepted by international organizations as long as these inaccuracies are not prejudicial to the electoral result. Carter Center and other international electoral observers have repeatedly recommended a comprehensive audit of the voters' list.

TSJ'S PENDING RESULTS

According to the law, the TSJ must announce if it admitted or not a petition within five days after the petition is presented.²⁴⁸ The opposition submitted a recusal against the Supreme Court about this delay on May 14, 2013.

²⁴³ Henrique Capriles Radonski, "Recurso Contencioso ante la Sala Electoral del Tribunal Supremo de Justicia," 2 May 2013, page 67 <<http://untinternacional.org/wp-content/uploads/RecursoTSJ.pdf>>.

²⁴⁴ "Socorro Hernández Reitera que Hay Muertos en el RE, pero 'No Hay Pruebas de que Votaron,'" *Noticias 24 / Venezuela* 5 June 2013 <<http://www.noticias24.com/venezuela/noticia/172285/hernandez-informo-que-en-la-auditoria-solo-669-comprobantes-han-arrojado-diferencias/>>.

²⁴⁵ "Socorro Hernández: No Haya que Voten No Tiene que Ser Motivo de Escándalo," *Globovision* 3 June 2013 <<http://globovision.com/articulo/socorro-herandez-reporte-de-duplicidad-de-huellas-podria-tardar-entre-dos-y-tres-meses>>.

²⁴⁶ CNE, "Registros de las Defunciones," <http://www.cne.gob.ve/registrocivil/index.php/informacion_defunciones>.

²⁴⁷ The Carter Center, "Final Report of the Carter Center Study Mission to the October 7, 2012, Presidential Election in Venezuela," October 2012, page 29 <http://www.cartercenter.org/resources/pdfs/news/peace_publications/election_reports/venezuela-2012-election-study-mission-final-rpt.pdf>.

²⁴⁸ Organic Law of TSJ, art. 185.

VI. CONCLUSIONS

This report is based on information and perceptions gathered from a variety of Venezuelan actors as well as on the personal observations made by the Center's field office staff and election experts based in Caracas during the entire electoral series of events (February 2012-June 2013), and the small accompaniment delegation that travelled to the country at the invitation of the CNE between April 12 and 17, 2013. The Carter Center did not deploy a comprehensive observer mission; it is therefore unable to give a comprehensive evaluation of the presidential election process as a whole.

As the high turn-out and many opinion polls demonstrate, the Venezuelan population, and the political parties and candidates in general, have confidence in the performance and integrity of the automated touch-screen voting machines. As the post-election "citizen verification" audits of 100 percent of the voting machines demonstrated, the automated system functioned as expected in recording the votes cast, transmitting and counting them on April 14.

There was not agreement, however, about the quality of the voting conditions and guarantees that every registered voter is able to vote one time, and only one time. In stark comparison to the October election, when the Capriles campaign and the MUD opposition coalition questioned the conditions of competition, after the April election they also questioned the conditions of voting, a heightened criticism that went to the heart of the system's legitimacy.

Widespread complaints about inequities in campaign conditions in terms of both access to financial resources and access to the media were similar to those from the October election. Consequently, the theme of "*ventajismo*" (use of government resources for electoral advantage) became a theme in the April elections as in the October and December elections.

Finally, there was a heated controversy over the legal context of the extraordinary period from December 2012 to April 2013, requiring a number of decisions by the Supreme Court to interpret the constitution in the wake of President Chávez's illness and passing. While the decision to permit Nicolas Maduro to serve simultaneously as interim President and candidate for the presidential elections was challenged by legal scholars, Henrique Capriles Radonski, supported by the MUD, nevertheless decided to participate in the April 14, 2013 presidential elections.

No system of voting in and of itself can guarantee the confidence of the population in the process and outcomes. Whether manual or automated, confidence in elections is built by clear rules, transparency in all aspects of the process, impartial institutions to administer elections and adjudicate disputes, and monitoring by citizens and political parties. Elections are by their nature divisive, but in a democracy possessing all of the characteristics just indicated, the loser accepts based on the knowledge s/he will have another chance to compete in regularly scheduled

elections, the winner governs in the name of all citizens and counting on a constructive opposition, and the society moves forward with the knowledge that elections are but a means to make periodic decisions on programs and leadership for a specified period of time. When one or more of these characteristics are weakened or missing, however, elections can become contentious affairs and can disrupt national harmony and governability.

In the case of Venezuela, a fourteen-year effort to carry out fundamental change led by the so called Bolivarian revolution has been accompanied by deep divisions and polarization. In this context, the extremely close election results presented an electoral and political conflict not seen since the 2004 recall referendum. Accompanied by divisive public discourse on all sides, the electoral dispute interrupted not only an incipient national consensus on the reliability of electoral outcome, but also the ability to move forward with constructive debate and dialogue on other issues of import to the country.

In this context, the Carter Center respectfully offers the following observations and suggestions for consideration by the authorities, National Assembly, and people of Venezuela.

OBSERVATIONS AND RECOMMENDATIONS

1. Clarify the regulations governing the participation of public officials and civil servants in campaign activities. Election law and regulations prohibit Venezuelan public officials and civil servants from conducting campaign activities in the exercise of their public duties. However, the Carter Center noted an extensive participation of public officials and civil servants in campaign activities. In order to limit and eradicate these practices, the regulations governing these matters could be clarified to determine whether such activity is allowed off-duty (and define “off-duty”) or not at all. The electoral authority, in turn, should determine ways to strictly enforce the agreed regulations.

2. Ensure greater campaign equity. Although the constitution requires elected officials below the rank of president to step down from their positions in order to declare their candidacy for president, it does not require a president running for re-election to do so. This gives an unequal incumbency advantage to a person running for re-election to the highest office in the land. In addition, Venezuela (alone in the region), provides no direct or indirect public financing for electoral campaigns or political organizations. Drawing on comparative experiences within the region, Venezuelan legislators and election authorities could consider several options:

a) Provide free and equitable access to public and private media for campaign messages. Given the regulations allowing unlimited government obligatory broadcast (*cadenas*) and free and mandatory institutional advertisements (public service announcements), while simultaneously imposing strict limits on candidate and civic organization political advertising,

Venezuelan campaigns have shown a tendency to a marked inequity in the ability of candidates to conduct a fundamental element of the electoral process -- to inform the voters of their political platforms. Assuring free and equitable access to public and private media to all competing parties could greatly help to level the present inequalities and enhance the competitiveness of elections, particularly in a legal framework that permits indefinite reelection of public officials.

b) Regulate and enforce equally campaign messages in the “pre-election” period.

Presently, there are no clear norms to regulate campaign messages during the so called “pre-election” period (from the convocation of elections to the official start of the campaign). A clear regulation on that subject would help reduce the numerous conflicts that commonly arise during this period due to the absence of norms.

c) Limit or prohibit the use of *cadenas* and inauguration of public works in a specified period prior to the elections. Mexico, Colombia and Brazil provide some examples in this area that Venezuela could take advantage of.

d) Limit the right of public officials to campaign for members of their own party or coalition. Mexico also provides an example of strict limits on the president to speak on behalf of candidates from his/her own party.

3. Better enforce the regulation of the use of state resources for political purposes.

Venezuela law prohibits the use of public resources for political campaigns; yet national observer organizations and other NGOs have documented the use of public resources for political purposes, including use of public vehicles to transport voters to rallies and to vote, and use of public buildings for campaign propaganda. In addition, local organizations and parties have complained that public officials have improperly used government offices and personnel to encourage public employees to participate in political activities and voting or to threaten them in case they refuse to comply. As noted in The Carter Center’s October report, safeguards to prevent the abuses of *ventajismo* or to make violations of the law costly not just financially but politically, in terms of imposing sanctions against the perpetrating campaign, are crucially missing. A more active role in investigating and enforcing the norms on the part of the electoral authorities would contribute to eliminating this type of practice.

4. Clarify the role of the paper receipts. Extensive pre- and post-audits have demonstrated the accuracy of the automated voting machines. Nevertheless, election regulations that provide for verification of the electronic results through a count of the paper receipts emitted by the machines for purposes of “transparency and confidence in the system”, do not specify contingencies should there be a significant discrepancy in this verification (see Carter Center report on the 2006 Venezuelan Elections).

5. Provide more information about the performance of the biometric identification system and include audits of the duplicity of huellas and incidences of the SAI in the published chronogram of audits.

The System of Integrated Authentication (SAI) was introduced in the October 2012 elections at least in part to authenticate that the voter casting the ballot is the voter properly registered at that voting table, and to prevent multiple voting or usurpation of identity. Providing additional information about the performance of the machines in their first uses (October and December 2012 and April 2013) will help inform all Venezuelans about the extent to which the new system serves its intended purpose.

6. Improve the quality of the voting experience on election day. A number of observations by national observer organizations and political campaigns indicated serious issues of influence or pressure on voters. Provisions to improve the quality of the voting experience and ensure that each citizen is able to vote freely and voluntarily could include:

a) Instruct the security and election officials tasked with ensuring the security and conduct of the elections to ensure that all accredited party witnesses, and national observers properly accredited by the CNE, are guaranteed access to the voting centers the entire election day, according to the norms.

b) Instruct voting table volunteer workers on the proper procedures for assisted voting, including the specified limits for each assistant to help only one person.

c) Examine ways to better enforce the electoral regulations regarding limits on campaign propaganda around the voting places and the guarantees of free access, without intimidation, of voters to the voting centers to vote and to participate in the citizen verification afterwards.

d) Define the criteria for receiving CNE credentials as a party witness and consider providing them with pins or apparel that identify them as such. The Carter Center delegation observed cases where persons unaffiliated with a registered political party identified themselves as working as party witnesses. Clarifying the roles of the various persons performing service at the voting table can help improve the climate of the voting conditions.

7. Audit and update the Electoral Registry (Auditoría y depuración del Registro Electoral).

The CNE has achieved a very inclusive voters list, with 97 percent of the population inscribed. Questions about the list in Venezuela have tended to focus more on the possibilities of over-inclusion (unremoved deceased persons, homonyms, appropriateness of naturalized citizens) than on exclusion of citizens from the list. Although the campaigns received a copy and participated in and signed off on a review of the electoral registry used for both the October and April presidential elections, continuous updating of electoral registries poses a persistent challenge, particularly when removal of deceased persons requires action by a family to provide

a death certificate to the civil registry and in turn to update the electoral registry. A study by the Andres Bello Catholic University produced an estimate of 49,000 deceased on the registry prior to the October elections, while the Capriles campaign variously estimated between 191,000 and 300,000 deceased still on the rolls, in addition to some 20,000 cases of homonyms. Clearing up these issues, perhaps with a regular schedule of updates and audits, will help to increase confidence and transparency of the electoral registry.

8. Legal framework. In January – March, 2013, the Venezuelan Supreme Court made several interpretations of the constitution that were subsequently questioned by the opposition, including some individual suits presented to the Supreme Court. The disputed interpretations arose in part because the constitution does not clearly specify every contingency for the temporary or permanent absence of a re-elected president. Given the constitutional modification in 2009 to permit indefinite re-election of president, governors and mayors, examination of the implementing laws to clarify these issues may be warranted.

9. Appointment of Election Authorities. Article 296 of the Venezuelan constitution provides for the appointment of the rectors of the National Election Council for seven-year terms by a two-thirds vote in the National Assembly, from nominations made by civil society, law faculties of national universities, and the Citizen Branch of government. It further specifies that these rectors should be persons without ties to political organizations. The terms of three of the current five rectors expired at the end of April 2013. Yet given the current stand-off in the National Assembly, it is highly unlikely the necessary two-thirds vote will occur. It is urgent that this situation be normalized by reaching inter-party agreements to guarantee an independent, impartial election authority.

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