

**Report of the  
National Lawyers Guild Delegation  
on the April 14, 2013  
Presidential Election and Expanded  
May-June Audit in Venezuela**

August 26, 2013





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## Executive Summary

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On April 14, 2013, over 79 percent of the electorate participated in the special elections to determine the next president of the Bolivarian Republic of Venezuela. Nicolás Maduro Moros won the election with 50.61% of the vote (7,587,579 votes) to Henrique Capriles Radonski's 49.12% (7,363,980 votes).<sup>1</sup> While the margin is small, it is comparable to close elections in the United States, such as the margins of victory for Kennedy in 1960 and for Bush in 2000 and 2004.<sup>2</sup>

The National Electoral Council (CNE) administers the Electoral Power, one of the five independent branches of government set forth in Venezuela's 1999 Bolivarian Constitution. The CNE oversees and guarantees the accuracy and transparency of all elections and referendums in Venezuela at the local, regional, and national levels.<sup>3</sup> Results were announced when 99.12% of the votes were in and 54 percent of the votes had been audited per standard election procedures. In her presentation of the results at 11 p.m. on election-day, CNE President Tibusay Lucena stated that the CNE waits until there is no possibility that the results will change and that the outcome was therefore "irreversible."

In the days leading up to the election, Mr. Capriles refused to sign a National Electoral Council document to guarantee that he would recognize the results of the election, although the document was signed by all other candidates.<sup>4</sup> The polls at that point were predicting a 10% lead by Maduro. Capriles contested the results immediately after they were announced and demanded an additional audit of the vote, alleging voting irregularities. The United States government - alone among nations - supported Capriles' call for an audit and refused to recognize the results.<sup>5</sup> The Organization of American States (OAS) and governments from across Latin America and the Caribbean recognized the election results.<sup>6</sup> Most of these countries had sent representatives to monitor the April 14 election.<sup>7</sup> Nicolás Maduro Moros was sworn-in as President on April 19, 2013. Representatives from 61 different countries attended the swearing in ceremony, including eight presidents from UNASUR and seventeen heads of state.<sup>8</sup> The United States was represented by a delegate from its embassy in Caracas.<sup>9</sup>

The U.S. government's non-recognition of the election results exacerbated tensions in the highly polarized environment following the election. Post-election protests with pots and pans erupted, resulting in deaths reportedly of Maduro supporters and numerous injuries.<sup>10</sup> Government health clinics, food distribution centers and other institutions were also targets of political unrest.<sup>11</sup>

The CNE responded to the opposition by stating that they were required to follow the Constitution and avenues provided in the law.<sup>12</sup> At the CNE's insistence, Capriles submitted a written request for a recount on April 17, 2013.<sup>13</sup> From our own review of the complaints, we find that the allegations of intimidation and electoral fraud were largely rhetorical and unsubstantiated, lacking sworn statements of witnesses, clear evidence of wrongdoing, or of any impact on the election.

On April 18, 2013, to assuage the threat of continued unrest and restore confidence in the electoral results, the CNE agreed to an expanded audit of the remaining 46 percent of the paper receipts ("Citizen Verification Phase II").<sup>14</sup> The CNE began conducting the audit of 350 machines per day during three ten-day periods in front of party witnesses. The additional audit was expected to be completed and the results available in early June. Once the CNE agreed to perform the additional audit, Capriles announced that his party and the Mesa de la Unidad Democrática (MUD) would refuse to participate. The extended audit reportedly eased tensions, but the legal process continued due to multiple complaints containing allegations of irregularities that were filed with the Electoral Chamber of the Supreme Court (TSJ).

A delegation of National Lawyers Guild (NLG) election monitors from the United States joined 165 other international monitors and 3000 national observers. We visited 35 polling centers in five states on election day. In addition, the NLG delegation observed the set-up of polling centers and testing of voting machines prior to election day and had the opportunity to hear representatives of the Maduro and Capriles campaigns. A second NLG delegation returned to Venezuela in mid-May to early June to observe the expanded Audit.

The NLG delegation makes the following findings, which are described more fully in this report:

- The election process observed by the NLG delegation on April 14, 2013, was fair, transparent, participatory, and well-organized;
- Private media coverage in Venezuela leading up to the elections favored opposition candidate Capriles, where privately owned and paid television stations constitute between 90 to 94 percent of viewership in Venezuela;<sup>15</sup>
- Given the security procedures embedded in the electoral process, there was no reason to expect that an expanded audit would produce a result that differed from the random, “hot” Citizens’ Audit of 54 percent of the vote that was conducted after the polls closed on election day;
- The expanded audit conducted by the CNE did, in fact, confirm that Venezuela’s electronic electoral system is accurate and allegations of fraud were without merit;
- Despite recognition by virtually all Latin American countries, including Colombia, Mexico and Chile, the United States continues to isolate itself, failing to affirmatively recognize the outcome of the election, or to send any high level representatives to the swearing in ceremony of President Nicolás Maduro;

We further note that while some aspects of the voting process would not be applicable in the U.S., many of the electoral reforms implemented in Venezuela over the last ten years provide a compelling example of elections that are transparent, streamlined and accessible to voters. Similar reform in the U.S., including the following, would help dispel the perception of unfairness and to restore the credibility of our own democratic processes:

- Elections are held on Sundays to make it easier for working people to vote;
- A major, well-financed outreach effort has resulted in dramatic levels of voter registration and political participation;
- Sophisticated technology is used to eliminate all possibilities of fraud or manipulation of data;
- Voting machines issue a paper receipt that can be viewed by the voter to confirm that his or her vote has been properly registered; and
- These paper receipts are placed by the voters in traditional ballot boxes and, after the polls close, 54 percent of those boxes are counted manually through a citizen verification process to ensure that the final tape from the voting machine is correct.

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1. The margin of victory for Mr. Maduro announced by the CNE on the night of the election increased slightly once the complete numbers were tallied, but subsequently dropped slightly when the votes from the exterior were included. See [http://www.cne.gov.ve/resultado\\_presidencial\\_2013/r/1/reg\\_000000.html?](http://www.cne.gov.ve/resultado_presidencial_2013/r/1/reg_000000.html?)

2. See Samantha Levine, *The Legacy of the Hanging Chads*, U.S. News and World Report (Jan. 17, 2008), <http://www.usnews.com/news/articles/2008/01/17/the-legacy-of-hanging-chads-and-Presidential-Elections>, <http://www.history.com/topics/presidential-elections/page4>.

3. Consejo Nacional Electoral, *Concepto*, [http://www.cne.gov.ve/web/la\\_institucion/concepto.php](http://www.cne.gov.ve/web/la_institucion/concepto.php).

4. Tamara Pearson, *Capriles Attacks Venezuelan Electoral Council, Refuses to Sign Document*, Venezuelanalysis.com (Apr. 9, 2013), <http://venezuelanalysis.com/news/8563>.

5. Paul Eckert, *US holds back recognition for Venezuela’s Maduro*, REUTERS (Apr. 17, 2013), <http://www.reuters.com/article/2013/04/17/us-venezuela-usa-kerry-idUSBRE93G0MJ20130417>; See also William Neuman, *Kerry Encourages Venezuela Recount*, NYTIMES online (Apr. 17, 2013), [http://www.nytimes.com/2013/04/18/world/americas/kerry-encourages-recount-in-venezuela.html?\\_r=1&](http://www.nytimes.com/2013/04/18/world/americas/kerry-encourages-recount-in-venezuela.html?_r=1&).

6. *Declaracion del Consejo de Jefas y Jefes de Estado y de Gobierno de la Unión de Naciones Suramericanas (Unasur)*, (Apr. 19, 2013) (*Declaration of the Heads of State and the Government of the Union of South American Nations*), <http://www.unasursg.org/inicio/centro-de-noticias/archivo-de-noticias/declaraci%C3%B3n-de-los-jefes-de-estado>; See also *Leaders from Across Latin America Congratulate President Maduro*, <http://www.venezuelasolidarity.co.uk/leaders-from-across-latin-america-congratulate-president-maduro-call-for-official-results-to-be-respected/>.

7. *Id.*

8. Shobhan Saxena, *Backed by Latin America, Maduro sworn in as Venezuelan President*, Times of India (Apr. 20, 2013), [http://articles.timesofindia.indiatimes.com/2013-04-20/rest-of-world/38692755\\_1\\_nicolas-maduro-diosdado-cabello-presidential-election](http://articles.timesofindia.indiatimes.com/2013-04-20/rest-of-world/38692755_1_nicolas-maduro-diosdado-cabello-presidential-election); see also Andrew Rosati, *Tough-talking Maduro is sworn in as President*, The Miami Herald (Apr. 19, 2013) <http://www.miamiherald.com/2013/04/19/3354325/tough-talking-nicolas-maduro-is.html>.

9. *Id.*

10. Paula Newton, Catherine E. Shoichet, *Tensions mount after tight Venezuelan vote*, CNN online (Apr. 17, 2013), <http://www.cnn.com/2013/04/16/world/americas/venezuela-elections-unrest>.

11. *Id.*

12. April 27, 2013 Statement by Tibusay Lucena (CNE) “Parameters for Citizen Verification, Phase II” available (Spanish) at [http://cne.gov.ve/web/sala\\_prensa/noticia\\_detallada.php?id=3177](http://cne.gov.ve/web/sala_prensa/noticia_detallada.php?id=3177) (hereinafter, “April 27th CNE Statement”).

13. See *Equipo de Capriles Pidió formalmente el Recuento de los votos*, LaRepublica.pe, (Apr. 17, 2013), <http://www.larepublica.pe/17-04-2013/equipo-de-capriles-pidio-formalmente-el-recuento-de-los-votos>.

14. See *supra* note 12.

15. Mark Weisbrot, Tara Ruttenberg, *Television in Venezuela: Who Dominates the Media?* Center for Economic and Policy Research (December 2010), [http://www.cepr.net/documents/publications/2010\\_12\\_venezuela\\_media.pdf](http://www.cepr.net/documents/publications/2010_12_venezuela_media.pdf) (“CEPR 2010 Media Report”).

## Background

On October 7, 2012, with voter turnout at 80%, Hugo Chávez won his fourth term as President by a margin of almost 11% against Henrique Capriles. (A copy of the NLG’s report from the October 7, 2012 Presidential election in Venezuela is available [here](#)). President Chávez died on March 5, 2013. Per Article 233 of the Bolivarian Constitution, new elections were required to be held within 30 days of the death of the President. Despite the short time frame and technological and logistical complexity of Venezuela’s electoral system, the CNE was able to distribute electronic voting equipment and supplies to more than 38,000 “mesas” or voting stations and to provide for randomly selected and trained poll staff at each one.

An initial, five-member NLG delegation formed part of a larger delegation of over 130 parliamentarians, electoral commission members, journalists, and representatives of human rights NGOs from across the world, including former Presidents of the Dominican Republic, Guatemala and Panama, and representatives from the Carter Center. The CNE arranged for international accompaniers to travel to polling places throughout the country on election day to monitor the electoral process. In addition to the electoral accompaniers invited by the CNE, the Union of South American Nations (“UNASUR”) also sent a delegation of approximately 40 international observers.

The first NLG delegation arrived several days in advance of the elections. The CNE organized a series of seminars to inform international accompaniers and observers about the electoral process and logistics, and arranged for the opportunity to hear from representatives of the Maduro and Capriles campaigns. We also met independently with labor leaders, lawyers, judges, and opposition journalists.

A second NLG delegation traveled to Venezuela after the election to observe the expanded audit that had been requested by the opposition candidate, Henrique Capriles, and approved by the CNE.



## Observations

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### 1. The election process was fair, transparent, participatory, and well-organized

The following is a description of the voting process organized by the CNE, which the delegation found to be exemplary:

- **Thorough maintenance and security of voting machines.** Prior to the election, voting machines are serviced and tested at the assembly and service plant in Caracas. The machines are then sent to the voting centers where, two days prior to the election, they are set up and tested to make sure everything functions properly. Soldiers are stationed at all polling centers to be sure that no one tampers with the machines once they are installed. The morning of the election, each machine is once again tested and, with the poll workers, party witnesses and soldiers present, it is unlocked with a code and generates a tape that indicates that no votes have yet been registered. If a machine breaks on election-day, the machine is either repaired on-site or replaced as soon as possible. The on-site technicians have 30 minutes to resolve matter before contacting the regional office for assistance. Any voting machine not repaired within 90 minutes must be replaced.
- **Efficient organization and voter assistance.** CNE workers at polling centers the delegation visited moved large amounts of voters through the process in a quick and orderly manner. Virtually all voting centers in Venezuela are in elementary schools. In most locations, there are multiple voting stations within a center, generally in separate rooms. At every center, information tables direct voters to the appropriate room and provide them with slips of paper indicating the page in the registry upon which their name appears. If voters need assistance in voting (for example if they are elderly or disabled) they are able to bring someone to assist them in voting. The volunteer is registered and the voter is provided with a card to present at the voting station. If voters do not have an assistant, they are assisted by a volunteer at the polling center. One volunteer can assist only one voter during the day to avoid any undue influence; a written record of the assistants is kept. In many centers, voters lined up outside of the school gates as early as 3 a.m. on election morning. They were allowed to enter the school in groups when the polls opened at 6 a.m. By mid-morning on election-day, we found that the lines at most of the polling centers we visited had dwindled and the wait time was generally a few minutes although occasionally as much as one hour.
- **Quick and simple electronic voting procedures that prevent fraud through multiple fingerprint and voter ID certifications.** Once voters enter the voting station, voters follow a horseshoe shaped process: showing their credentials, then placing their thumb in the fingerprint reader to generate their ID number and photo. Their identity unlocks the voting machine, permitting the voter to press the picture of the candidate and party of his or her choice on the large touch board, which is then confirmed on an adjacent electronic screen where the voter is asked to verify his or her selection by pressing the “votar” button. The machine then issues a paper receipt with the name of the candidate for whom the voter has voted, permitting the voter to double-check that his or her vote was properly recorded. The voter then folds the receipt and places it in a traditional ballot box in plain view of electoral witnesses. Finally, the voter dips his or her pinky finger in indelible purple ink – more symbolic than practical, given the electronic fingerprint verification – to sign and place a fingerprint in the registry as a final verification of identity and participation. This entire process ranged in duration from 35 seconds to 10 minutes.
- **Active participation by party witnesses and national and international observers.** Every polling station (mesa) had witnesses from each campaign, in addition to the randomly selected poll workers trained by the CNE. All witnesses and poll workers signed a certification of election validity at the end of polling and participated in the “Citizens’ Audit” at a randomly selected 54 percent of the mesas, in which the machine results were compared with the ballot receipts that had been issued by the voting machine and placed by the voter in a sealed box. Observers from the national election observation groups, as well as international accompaniers such as ourselves, were free to ask questions of all poll workers, witnesses and voters, and were invited to observe the Citizens’ Audits. We found witnesses from both sides enthusiastic about the level of turnout and the smooth operation of the process.



In all areas the delegation visited, we encountered very few problems on election day. Our five person delegation spent the day of the election in four states around the country – Lara, Carabobo, Zulia and Barinas - and in the capital city, Caracas. We were able to speak to voters, election officials and political party representatives. To further assess the impartiality of the process, our delegates made a point of engaging with witnesses of each of the represented campaigns to inquire about any irregularities.

In a few cases we were informed that there had been problems with machines, but in all but one case the machines were quickly fixed or replaced per the electoral regulations. It should be noted that all voting centers are equipped with CNE technicians and replacement machines. In the event that this is insufficient, paper ballots provide further backup. There were only 36 cases in the entire country in which paper ballots needed to be used.

The NLG's delegation to Venezuela in October 2012 had, along with other international observers, noted long lines in some voting centers. We were informed that the CNE responded to this problem by placing additional machines and personnel at the information tables and by replacing the software that searches for voters within the database. We saw some lines early in the morning as voters queued up prior to the opening of the polls. Once the voting process was under way we found that the lines moved rapidly and in an orderly fashion.

Our previous delegation had also reported to the CNE that due to the form of the ballot, it was often possible to determine the candidate a voter selected from the position of the voter's arm (there were two major candidates who had each been endorsed by multiple parties, with one group of parties on the upper and the other on the lower portion of the screen). Although there was no indication of abuse, the international monitors recommended raising the height of the privacy screen to eliminate this potential problem. We were pleased to note that higher screens were utilized in virtually all the locations we visited in April.

In addition to the advanced voting procedures, the CNE has made substantial efforts to increase voter registration and accessibility to voting centers, which have resulted in a consistently high voter turnout. As a result of these efforts, 96.5 percent of all eligible voters are registered to vote.<sup>16</sup>

In short, we observed an efficient process and were impressed both by the level of democratic participation and by the sophisticated and secure electronic system whose results were confirmed by an audit of 54 percent of the paper receipts issued by the voting machines.

16. See *Report of the National Lawyer Guild (NLG) Delegation on the October 7, 2012 Presidential Election in Venezuela* (January 2013), <http://www.nlg.org/nlg-report-presidential-election-venezuela>. ("Report of NLG Delegation from 2012").

## 2. Media coverage prior to the election favored opposition candidate Henrique Capriles

Based on an analysis of the Venezuelan media prior to the October 2012 presidential elections, opposition candidate Henrique Capriles enjoyed a media advantage in April 2013, just as he did in October 2012.<sup>17</sup> While the Venezuelan and international media largely claim that the incumbent Maduro, as with former President Chávez, enjoyed media access to state-run television networks, state television in Venezuela has only about a 6 percent audience share, versus a 94 percent share for private and opposition media television outlets.<sup>18</sup> While state media appeared to show a strong bias in favor of incumbent candidate Maduro, there was also some balanced reporting. For example, members of our delegation saw state-run channel VTV (Venezolana de Televisión) broadcast Capriles campaign ads in the campaign days ahead of the elections.

Any bias in state media likely did not have a large, if any, influence on election support for Maduro. Capriles has enjoyed lopsided media coverage in his favor on the private television channels watched by most Venezuelans. CNE analysis in the summer prior to the October 2012 elections found an overwhelming media advantage for Capriles.<sup>19</sup> During the first week of the 2012 presidential campaign, national television channels Venevisión and Televen allotted 1,680 seconds and 4,500 seconds, respectively, to Capriles but only 900 and 540, respectively, to Chávez. Globovisión, a regional channel with a broad reach and large audience, gave about nine times as much favorable coverage to Capriles, 30,480 seconds, versus 3,360 to Chávez. According to the CNE study, state-run national broadcaster VTV allotted 12,180 seconds to Capriles versus 30,360 for Chávez in 2012, but the total of the four major television channels was 48,840 to 35,150 seconds in Capriles' favor.<sup>20</sup>

Analysis of media coverage of the two candidates 23 weeks ahead of the 2012 elections by the Universidad Católica Andrés Bello also found a distinct media advantage for Capriles in newspaper (1,136 mentions versus 735 for Chávez) and television (812 mentions versus 708 for Chávez) coverage, while Chávez had an advantage on radio broadcasts (474 mentions versus 376 for Capriles).<sup>21</sup> There is little reason to think this private media advantage in Capriles' favor would have significantly declined between the October 2012 and April 2013 elections.

Criticism of Maduro's incumbent advantage in his frequent use of "cadenas" (presidential addresses that broadcast outlets are required to carry) may be more justified. Looking again at the Universidad Católica Andrés Bello's monitoring of television coverage in the 2012 campaign, however, reveals that Capriles had an advantage on television even when Chávez's cadenas were included.<sup>22</sup> It is not yet clear whether cadenas were employed less or more frequently by Maduro during the 2013 presidential campaign than by Chávez in the 2012 campaign.

## 3. The National Electoral Council (CNE) is a credible agency that is in place to ensure a fair, democratic electoral process in Venezuela

The U.S. press repeatedly refers to the Venezuelan National Electoral Council as if it were controlled by the Executive – previously Hugo Chávez and now Nicolás Maduro. However, the 1999 Bolivarian Constitution makes the electoral power one of five independent powers (Executive, Legislative, Judicial, Citizens, and Electoral). No member of the five-member National Electoral Council (CNE) can be active in a political party or organization. Three members are nominated by "civil society", one by the schools of law and political science of the national universities, and one by the Citizen's power; and all are elected for a seven year term by a 2/3 vote of the National Assembly.<sup>23</sup>

The CNE has its own Organic Electoral Law ("LOPE"), regulations, staff, budget, and there is a Supreme Court Electoral Chamber to which its decisions can be appealed. Under the Venezuelan Constitution and law,

17. Report of the NLG Delegation from 2012, *supra*, note 16.

18. CEPR 2010 Media Report, *supra*, note 15.

19. Eleazar Díaz Rangel, *Los medios y los candidatos*, Últimas Noticias (July 15, 2012), <http://www.ultimasnoticias.com.ve/opinion/firmas/los-domingos-de-diaz-rangel--eleazar-diaz-rangel/los-medios-y-los-candidatos.aspx>.

20. *Id.*

21. Universidad Católica Andrés Bello, *Monitor Electoral Presidencial 2012*, <http://www.monitorelectoral.org.ve/>

22. *Id.*

23. 1999 Bolivarian Constitution, Article 296.

the President of the Republic is the one branch of the government that has no control over the Electoral Power. Like the majority of the Venezuelan people, CNE leadership and staff may support the current trend toward 21<sup>st</sup> Century Socialism in Venezuela, but it is clear that they are expected to stay above the politics in their official capacities as part of Venezuela's well-established Constitutional electoral system and seek to do so in practice.

We have found the CNE's President, Tibisay Lucena, and the other members of the CNE and its staff to be consistently concerned with perfecting the electoral process to ensure that every Venezuelan adult has access to the polls and every single vote is counted, regardless of party affiliation or candidate.

The CNE contributes to a culture of political participation. Through the logistics that are in place for the electoral process and citizen audit, individual citizens are able to form part of the process. Thousands of randomly selected volunteers are trained to supervise and staff all polling centers, in addition to the CNE leadership and staff present at all centers on election day. Venezuelans of all political persuasions take pride in the organization and efficiency of the CNE. Such attention to detail and logistics has earned praise from Jimmy Carter, who has called the Venezuelan electoral system "the best in the world."

#### 4. The current electoral system is the product of extensive logistical and technological advances, with important safeguards including the electronic vote and the Citizens' Audit

The current Venezuelan electoral system is a product of the lack of trust in the previous electoral system and a political context where major political divisions continue to exist. The previous system was mainly manual and controlled and financed by the two most powerful political parties, AD and COPEI.

Pursuant to the LOPE, the CNE and its staff have developed a democratic and representative process both by ensuring that all eligible voters are registered and provided with the information they need in order to be able to vote and by creating a trustworthy system that can be verified at every stage.

The National Assembly provided for an automated system under the LOPE, and the CNE and its staff have worked with a team of experts to create the system that is often commended as the world's best. Over the past 14 years, the process of developing today's electronic system has been vetted by political parties that support and oppose the government. The parties were given extensive information to permit their experts to examine each element in order to detect any weaknesses that might exist and to provide suggestions for strengthening the process.

Indeed, an independent auditor who had worked on designing the system informed us that one of the suggestions from the opposition was to shuffle the data following the casting of each vote so that it would be impossible to detect the choice of any voter from the order in which the vote was cast (the name of the voter was already automatically de-linked from his or her vote). This suggestion was incorporated and has become an important guarantee of privacy.

Among other protections, each machine is equipped only with its portion of the database and operates independently. There is no connection to the CNE's



data centers until after the machine has been closed down following its local tally of the vote. Only then is a connection established in order to transmit the data from the local polling place so that it can be included in the total.

Input by political parties is not limited to the development of the process. During the period leading up to and including election day, an elaborate series of audits permits the campaigns to review and sign off at each step to protect against any impropriety. The list of the audits conducted and the signed documentation of approval appear on the CNE web site.<sup>24</sup>

Per constitutional mandate, the April 2013 presidential election took place in a much shorter framework than ever before, leaving no time to verify a new registry or train new poll workers. So the same registry, poll workers and polling places were used as in the October 2012 presidential election. The CNE also notes that several additional protections requested by the Capriles campaign were approved by the CNE.<sup>25</sup>

It should be emphasized that over time the system has become entirely electronic.<sup>26</sup> It continues to be updated, and a relatively new (October 2012) feature is the use of fingerprint recognition software to increase reliability and minimize the possibility of fraud. However, as described above, the most vital feature protecting the will of the voter is the issuance of a paper receipt that can be used by the voter to confirm his or her electronic vote and which is then placed by the voter in a ballot box. The reconciliation of these receipts with the total on the tape issued by the machine during the “Citizens’ Audit or Citizens’ Verification” following the closure of each voting center serves to confirm the high level of reliability of the machines. While a small percentage would be sufficient from a purely statistical perspective, on April 14<sup>th</sup> the total percentage of polling booths randomly audited in the Citizen Verification Phase I was 54%, in a “hot audit” immediately following the election.<sup>27</sup> The participation in and witness of this audit by all of the people involved in the election – the citizens who were randomly chosen and trained to conduct the election, the party witnesses, the military, and other observers – also serves to reconfirm the integrity of the process of the election.

## 5. The additional audit of the vote requested by Capriles was superfluous and political in nature

Following the announcement of the election results on April 14, 2013, opposition candidate Henrique Capriles refused to accept the official election result that gave a narrow victory to Nicolas Maduro.<sup>28</sup> Capriles called for a further audit of receipts through a manual “recount” as well as demonstrations to press his demands for a full recount.<sup>29</sup> Although Capriles stressed he wanted peaceful protests, his call for demonstrations raised the tension in the period of post-electoral uncertainty in Venezuela.<sup>30</sup> Capriles declared that auditing the remaining 46% of the polling machines would disclose fraud in the election tally sufficient to change the result of the election.<sup>31</sup>

In a public statement, Tibisay Lucena indicated that “[t]hreats and intimidation [were] not the path to appeal the decisions of the CNE,” and requested Capriles’ political campaign, MUD, to submit a formal complaint to the CNE, as required under Venezuela’s Election Law.<sup>32</sup>

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24. *Normativa Electoral*, CNE, [http://www.cne.gov.ve/web/normativa\\_electoral/elecciones/2013/presidenciales/index\\_principal.php](http://www.cne.gov.ve/web/normativa_electoral/elecciones/2013/presidenciales/index_principal.php).

25. April 27<sup>th</sup> CNE Statement, at 2.

26. One important feature of the system is that backup machines are available in all polling places. In the case of malfunction, the memory from the original voting machine is inserted in a back up machine and the election continues. As noted above, a manual system with paper ballots exists as a further back-up and in the April 2013 election, only 36 had to resort to the manual system.

27. The citizens’ audit is conducted based on a random draw in each center that depends on the number of machines in the center. In a center with 1-2 machines, 1 machine is audited. In a center with 3-6, 2 machines are audited. In a center with 7-9 machines, 3 machines are audited. In centers with 10-12 machines, 4 machines are audited. In centers with 13 machines or more, 5 machines are audited.

28. Brian Ellsworth and Diego Ore, *Venezuela opposition demands vote recount, protests flare*, REUTERS (Apr. 15, 2013), <http://www.reuters.com/article/2013/04/15/us-venezuela-election-idUSBRE93C0B120130415>.

29. *Id.*

30. *Id.*

31. *Id.* The official results showed Maduro winning by 265,000 votes but Capriles stated he would only concede defeat if there was a full recount.

32. *See id.* and *see also infra* Section 7 on Legal Challenges.

Demands for a hand recount and unsubstantiated claims of intimidation and machine breakdowns served to encourage violence and devalue the rule of law and the role of the CNE in the Bolivarian Constitutional scheme.

A manual recount has no place in the Venezuelan electoral system where the process is entirely electronic. Reissuing the electronic results previously transmitted on election day would be pointless.<sup>33</sup> Contrary to what some believe, the paper receipts that are emitted at the end of each vote are not considered to be legally equivalent to paper ballots; they may only be used to confirm the electronic tally. These paper receipts are already counted during the 54% Citizens' "hot" audit performed on election night. As observers of the election process, it was apparent that representatives from the opposing campaigns were present at polling place during the course of the day and during the Citizens' Audit, which further ensured the validity of the vote count. One of the members of our delegation spent election day and night in the opposition state of Lara, where, as expected due to the demographic of the state, Capriles won. In Lara and other polling places, we observed not only no irregularities, but a functioning system and even camaraderie between the party witnesses working at the polling stations from sunrise to sundown.

Capriles' call for a recount was consistent with the rhetoric he employed throughout his campaign. In the days leading up to the election, Mr. Capriles refused to sign a National Electoral Council document to guarantee that he would recognize the results of the election, although the document was signed by all other candidates.<sup>34</sup>

On April 17, Henrique Capriles Radonski filed a formal request with the CNE for an extensive audit. The request went beyond an expansion of the citizens' audit to include, among other items, a comparison of the number of receipts with the number of fingerprints and signatures appearing in the voting books at every machine. The petition also requested the protection and production of electoral material. Documents were attached that purported to support the allegations of various types of misconduct during the election ranging from campaigning during election day and the use of government resources to violence near voting centers. Additional allegations referred to acts or omissions by the CNE or government: the establishment of new voting centers with fewer than 100 voters in each, the failure to investigate and purge voters with the same names and dates of birth but different identification numbers, the closure of consulates abroad and the closure of the border five days prior to the election, the failure to purge the names of the deceased from the registry, the failure to use the electoral rolls from the December 2013 election, among other claims.

On April 18, 2013 the CNE conducted the legally mandated additional national audit of 0.5% of the machines (219 machines with a total of 75,968 votes) (referred to as "Phase II of the Citizen Verification") in the presence of witnesses from all parties. They found a consistency of 99.97%. The Phase II audit included a further sample of machines not included in the "hot" Citizens' audit the night of the election.

On April 27, 2013, the CNE announced that it would extend the Phase II audit by selecting a sample of the remaining boxes, noting that "in some regions this verification [the citizens audit] was extended to 60% of the polling machines." The further audit was to be conducted over the period of a month during three ten-day cycles, with a goal of auditing 350 machines per day over a thirty-day period, a total of 10,500, by hand counting the boxes of receipts and checking them against the total from each machine. Although initially expressing agreement, Capriles subsequently stated that the CNE's extension of the audit was insufficient.

As stated in the report issued following the first audit cycle, the purpose was to "prove that there is no significant discrepancy between the intention of the voters which is reflected in the Voting [paper] Receipts, compared with the total count that corresponds to that Voting Machine (in accordance with Article 437 of the General regulations of the Organic Law of Electoral Processes -2012 -)."

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33. See LOPE, Article 133.

34. Tamara Pearson, *Capriles Attacks Venezuelan Electoral Council, Refuses to Sign Document*, Venezuelanalysis.com (Apr. 9, 2013), <http://venezuelanalysis.com/news/8563>.

## 6. The extended audit confirmed the results of the election and reaffirmed the transparency and accuracy of the electoral system

The extended audit was conducted at the Mariches facility where all voting machines are initially assembled, inspected and serviced. Although the machines are normally brought back to Caracas for servicing between elections, the boxes containing the receipts and other materials are normally stored regionally, so that this meant that the materials had to be transported to Caracas.

The audit was designed and conducted under the purview of a technical team of thirty professors and other professionals from the Central University of Venezuela, including some who had worked closely with the CNE in developing the electoral system. The audit was performed by sixty university students, sixty CNE operators and twelve supervisors from the CNE. There were an additional eight coordinators who were responsible for the overall activities and for analyzing cases in which differences existed which were not documented as justified.

Random samples were selected by computer for each day of the ten day cycle, beginning with a proportional sample from the Capital District and Anzoategui and continuing with samples from two to four additional states per day throughout each ten day period. Although initially 700 boxes were selected, this was increased to 800 to ensure that 350 previously unaudited boxes were available each day. Boxes containing receipts from the 54% of polling stations covered by the citizens audit as well as additional boxes containing indicia that they were audited the night of the election were excluded.

A large space was cleared within the warehouse and three sections were set up with space in between them. Each of the three sections contained auditing stations for twenty teams who were responsible for opening the boxes, counting the ballots, and then typing the results into a computer that indicated whether there was a match (“no difference”) or not. In the event that there was not a match, the receipts would be re-counted. If a difference remained, it would warrant a review of the accompanying notebook and documentation. It would then be characterized as a “difference with justification” if the accompanying materials contained an explanation. For example, a few voters actually ate their receipts as a form of protest. In such cases, this would be noted by the poll workers. A second category was “tolerable difference.” If one or two receipts were missing it would be considered statistically to be tolerable. However, if more than two were absent, this would be treated as a “difference without justification.”

For security reasons, all visitors to the audit were required to leave their purses and backpacks as well as all cameras and notebooks by the entrance. Although no photographs were permitted, the CNE transmitted the audit live every day on its web site at: <http://www.movipbox.com/nuevo/embed/cne.html>. In addition, each day a report for that day’s results was posted.

On June 7, 2013, the CNE completed its extension of the Phase II audit. In addition, on June 8, 2013, it conducted a small additional audit: a random national sample of 250 of the boxes that contained indicia of having been audited at the time of the citizens’ audit on the night of the election, but which were in excess of the 54%.

The CNE reported that representatives from seven political organizations participated in the expanded audit process: United Socialist Party of Venezuela (PSUV), Communist Party of Venezuela (PCV), Homeland for All (PPT), Venezuelan Popular Unity (UPV), Labor Power (PL), the United Democratic Party for Peace and Liberty (PUDPL) and New Vision for my Country (NUVIPA). In addition, 84 observers from a variety of organizations and forty two groups composed of 250 people participated as national observers. They included computer experts, poll workers university professors, firefighters, representatives of community and women’s organizations, diplomats, cultural workers, among others, as well as international representatives from the NLG and Carter Center.<sup>35</sup>

The report by Tibisay Lucena that was broadcast to the country explained: “By the end of Citizen Verification,

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35. *100% of April 14<sup>th</sup> Polling Booths now Audited*, CNE Statement (June 11, 2013), [http://www.cne.gov.ve/web/sala\\_prensa/noticia\\_detallada.php?id=3210](http://www.cne.gov.ve/web/sala_prensa/noticia_detallada.php?id=3210) (hereinafter, June 11<sup>th</sup> CNE Statement).

100% of polling booths installed on April 14<sup>th</sup> had been audited, amounting to 39.018 polling booths and a total of 15.056.716 voting slips.

- Of the voting slips audited, 4,596,432 showed no discrepancies whatsoever in relation to the polling booth record of total votes cast, which represents 99.98% of the total.
- The total number of missing slips in cycles I, II, III and ‘extra’ comes to 0.02% of the total.

The conclusion of the extension of Citizen Verification in its second phase allows us to convey to the country that the transparency, robustness and inviolability of Venezuela’s electoral system is once more confirmed, and accurately reflects the will of the voter, as expressed through suffrage.”<sup>36</sup>

With these audits concluded, the CNE returned to its routine work, such as servicing the voting machines in preparation for the municipal elections that will be conducted on December 8.<sup>37</sup> It is also beginning preparations for another massive auditing process: the update of the national data base to ensure that there are no duplicate fingerprints and that where multiple versions of a person’s fingerprints exist the best are identified for use in future elections. This is expected to take between two and three months.<sup>38</sup>

The successful conclusion of the audit of the voting machines is important in reconfirming for the people of Venezuela the integrity of their electoral process. This will ensure that the December elections will focus on the competing programs of the candidates rather than on what we view as a misplaced attack on the CNE. The challenge that lies ahead was addressed by Lucena: “What we have witnessed recently has been the most grotesque transgression of the relationship between political parties and the Electoral Branch... We ask political organizations, what are we to expect for December? Is it unavoidable that we should witness another violent chapter? We refuse to think as much, and we shall continue to work every day, in order to safeguard our democracy and the peace of Venezuela.”<sup>39</sup>



## 7. Legal challenges to the election were without merit.

On April 27<sup>th</sup>, the CNE responded publicly to Capriles’ April 17 filing, noting that while Capriles had a legitimate right to challenge the election, challenges to acts and omissions by the CNE must be directed to the Supreme Court pursuant to the LOPE. In addition, the CNE stated that “the document is accompanied by some annexes [ie “attachments”] which would not allow the electoral branch to undertake any investigation regarding the complaints, because they do not point out with clarity or precision what are the facts supposedly undermining the norms: which polling booths; which records; who is involved; what is the possible harm done to voters.”<sup>40</sup>

The CNE statement then reviews various of the claims and concludes: “The annexes of the above mentioned request do not constitute evidence whatsoever regarding how the alleged harm to a significant number of votes, in a specific number of polling centers and booths, with names and codes, took place. Nor does it state

36. *Id.*

37. *Noticia Detallada*, CNE (DATE), [http://www.cne.gov.ve/web/sala\\_prensa/noticia\\_detallada.php?id=3211](http://www.cne.gov.ve/web/sala_prensa/noticia_detallada.php?id=3211).

38. *Se Realizará la Auditoria de Huellas Digitales Una Vez. Finalice la Verificación Ciudadana*, <http://albaciudad.org/wp/index.php/2013/06/video-completo-socorro-herandez-se-realizara-la-auditoria-de-huellas-digitales-una-vez-finalice-la-verificacion-ciudadana/>.

39. June 11<sup>th</sup> CNE Statement.

40. April 27<sup>th</sup> CNE Statement, at 2.

how any such harm could have altered a result, which each of the candidates obtained in detail from this institution, so that it could analyze it and compare it with their signed records – results which they hold in those records, and which were transmitted through the data network audited by them before and after the election, and regarding which there were no observations nor any evidence of any errors. This is supported by the fact that there is no single record of irregularities in the signed records that were endorsed by all witnesses.”<sup>41</sup>

The more formal legal resolution was approved by the CNE in its April 22 session and published in its gazette on April 29, 2013.<sup>42</sup> Among the additional points expressed in the CNE determination were the following:

- The proclamation that declares a candidate the winner of an election is presumed to be legitimate unless demonstrated through an administrative or legal process to be otherwise;
- Since 2004 the Venezuelan electoral system has been totally automated. As such, “ballots which contain the votes cast by voters do not exist, as the manifestation or intention of the vote is effectuated electronically and is duly registered in the interior systems of memory of the voting machine, based on which the respective certification of the vote count and electronic transmission of the results which it contains are generated.”<sup>43</sup>
- After reviewing the legal basis and scope of the audit process and listing the audits conducted and approved by political party representatives including MUD, CNE concludes that the purpose of the audits is not only to “guarantee the trustworthiness and transparency of the process, but also the certification of the knowledge, functioning and trustworthiness of the automated electoral system by the candidates and political organizations in the contest, such that there cannot be a pretext afterwards, in the event of an unsatisfactory result to the electoral contenders, of a deficient functioning of the electoral system.”<sup>44</sup>
- The voting rolls for presidential elections contain those Venezuelans who reside in the country and abroad who are eligible to vote, while only Venezuelans who reside in the country and foreigners with more than ten years of residency are eligible to vote in regional elections.<sup>45</sup>
- The CNE has no jurisdiction over either the country’s international relations nor national security or defense, the responsibility for which reside in the National Executive Branch.

On April 30, 2013, Capriles submitted a request for certified copies of all voting books, all official documents regarding the totaling of the vote, the constitution of polling stations, of incidents, of the vote count, of manual counts, and of citizen verification as well as extensive data and reports concerning the fingerprint machines and transmission of data.

The CNE reviewed the request, responding that the Supreme Court has held that the right to information is not without limits and the party soliciting such information must expressly state both the reasons for which it is required or purposes for which it will be used and that the information solicited must be proportional to such utilization. In addition, the Constitution protects personal privacy, and, as the provision of voting books would reveal whether a person had voted and personal information including fingerprints and signatures, the request would not be granted. The CNE went on to clarify that this would not preclude the release upon the request of a judge in the context of a future legal case that had been accepted.

The CNE also clarified that in presidential elections there is only one “Certificate of Totalization, Adjudication and Proclamation” and that it would provide a certified copy of that document. Regarding the request for the certificates of the automated totals issued by all of the voting machines or where the total was calculated manually, under the law witnesses for each candidate or alliance that has been in the top three places as well as political parties that have the six highest numbers of votes in the previous election are entitled to immediate access to such

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41. *Id.* at 4.

42. *Gaceta Electoral de la Republica Bolivariana de Venezuela*, Extraordinary No. 19.

43. *Id.* at 3.

44. *Id.* at 5.

45. *Id.* at 7.

documents and that they should already be in the possession of the MUD; however, if any have been lost or damaged, certified copies would be provided upon receipt of a specific request. The requests for certified copies of certificates of the opening of the polling places, voting, incidents and citizen verification were denied as not susceptible to legal challenge before the CNE. Additional technical requests remained under consideration in order to evaluate the technical and legal appropriateness of their release.

Seven petitions were filed with the Electoral Chamber of the Supreme Court of Justice challenging the election. One petition, consisting of three pages, was rejected early on: The only issue of law presented involved the transfer to the voting rolls in New Orleans of Miami residents upon the closure of the diplomatic headquarters for Venezuela in Miami. Several additional allegations were included, but there were no supporting annexes or evidence.

Several of the other petitions solicited the recusal of three of the Supreme Court Justices in the Electoral Chamber, a procedural matter that had to be determined prior to consideration of the substance of the remaining petitions.



While it is beyond the scope of this report to analyze the petitions in detail, a number of observations may be useful:

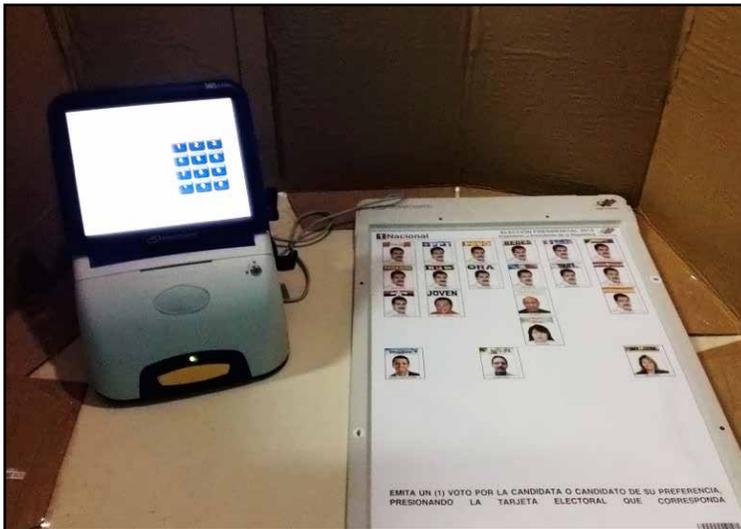
First, the petitions varied greatly in terms of length, tone and presentation. Some were a few pages, while others exceeded one hundred pages and contained extensive attachments. Some were largely political in nature, attacking the CNE and Venezuelan government, while others concentrated on the electoral process especially the validity of the electoral registry. Finally, some appeared to present arguments requiring a response and others were difficult to take very seriously (for example, one requested that the Supreme Court obtain Maduro's birth certificate as his mother and older sisters were born in Colombia and another asked that the October 2012 election be nullified).

Two used identical language in making statistical arguments regarding alleged deficiencies in the electoral registry. Similarly, a number of the petitions call into question the reliability of the electronic voting system, especially the validity of the electoral rolls and the use of fingerprint technology. Since technicians for all parties signed off on extensive audits of all facets of the system,<sup>46</sup> and since the CNE has undertaken a massive routine audit of its fingerprint data, it seems that energy might be better spent on ensuring that any deficiencies that may exist are brought to the attention of the CNE so that the registry may be as accurate as possible by the time of the municipal elections in December.

Along these lines, in response to our questions we were pleased to learn from the CNE of some of the ways in which it continues to improve the trustworthiness of the system. For example, the CNE has recently been given the responsibility for maintaining records of vital statistics. As these are integrated with the electoral system, we were told that persons who are deceased will automatically be removed, and young people who turn 18 will be incorporated into the voting rolls. In addition, as noted above, the database of fingerprints is continually improved as missing prints are included and prints of poor quality are replaced with prints taken directly from the voter.

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46. Tibisay Lucena strongly defended the integrity of the electoral polls in the CNE June 11<sup>th</sup> Statement. In addition, in response to a question we posed to the CNE regarding the regulations regarding voting in the absence of fingerprints or where the fingerprint of the voter differs from that under his or her name and identity number, we were informed that the opposition had insisted on inclusion of a provision that voters who did not have fingerprints in the system must still be allowed to vote. *See* Reglamento General de la Ley Organica de Procesos Electorales, Art. 323 Section 2.4. We were also told that where substitute prints are taken, they must match certain parameters of consistency with the earlier prints or they will not be accepted by the machine.



The weightiest Complaint — consisting of a 92 page petition accompanied by a stack of attachments more than a foot high — was filed by the MUD. It contained three challenges: 1) against 5,729 voting stations for violations alleged to have occurred there during the election; 2) against 21,562 certificates of the automated vote count and one certificate of a manual vote count; and 3) against the certificates of the totaled vote count, adjudication and proclamation.

At first blush the first set of allegations appear to be serious: including violence, propaganda, usurpation of the identity of voters, etc. The compilation of the extensive annexes undoubtedly required great effort. Yet, a cursory review of all of the annexes did not reveal a single affidavit,

declaration or even a specific description of a particular violation linking it to a specific time, place and person, let alone describing the impact on the election.

The second set of claims contain a detailed analysis and additional annexes categorizing the alleged failure to comply with electoral requirements such as writing the number of people who actually voted as reflected in the voting book on the tape from the voting machine that certifies the total vote, the failure of witnesses to sign or place fingerprints on the tape issued by the voting machine, etc. While this section creates an image of inattention to detail by election officials, the Supreme Court had previously ruled that the requirement of nullification of the certification of a vote count due to the lack of signatures of a majority of the election officials is not applicable per se where the certification of the vote count is automated.<sup>47</sup>

Despite the massive amount of paper, only one claim stands out as documented. In thirty-six polling stations, manual voting occurred, presumably due to the inability to resolve problems encountered with the voting machines and the need to resort to backup measures. This complaint challenges one of those certifications due to the allocation of 164 votes to the MUD which apparently belonged to Reina Siquera. Not alleged, but also apparent is a numerical inconsistency where the total reported is less than what appears on the citizen verification form and the certification of the contingency vote count by a difference at most of twenty votes. While these are obviously valid objections, they are most likely accidental errors that would have been obviated by the use of electronic totaling by the voting machines themselves and, in any case, would have had no impact on the outcome of this election.

The final section makes much of the fact that there are apparently three sets of election results: those announced the night of the election; those contained in the proclamation (a slightly higher percentage for Maduro); and those that presently appear on the CNE web site (a slightly lower percentage for Maduro). Yet, even in the last set of figures, presumably lower due to inclusion of the manual vote from outside the country, the difference in the result remains at approximately a quarter of a million votes or 1.49%. While perhaps lacking the force of the mandate obtained by Chávez due to his much larger margin of victory in the October election, the outcome here was far clearer than, for example, the US presidential election in 2000, with 25 electoral votes at stake and great uncertainty regarding the trustworthiness of the actual vote count due to the existence of the infamous hanging chads (see section 8 below). It is also a wider margin than in many local elections in Venezuela, including some of which were won by opposition candidates.

Our impression regarding the lack of evidence in this case appears to have been confirmed by the decision rendered by the TSJ on August 7, 2013. Citing a failure to provide “sufficient proof”, Magistrate Gladys Gutierrez announced that the court had reached a unanimous decision, rejecting the petition and fining the ion for what is effectively abuse of process.<sup>48</sup>

47. Sentencia No 36 de la Sala Eleccoral, Expediente No. 05-000094 de fecha 09/03/2006.

48. See Ryan Mallett-Outtrim, *Venezuela's Supreme Court Rules Capriles' Appeal Against 14 April Electoral Results "Inadmissible"* (August 8, 2013), <http://venezuelanalysis.com/news/9917>

## 8. The United States should recognize the Maduro administration as the result of a sovereign, transparent, and democratic process

At the time of this writing, although the U.S. State Department appears to engage in diplomatic relations with the Maduro government, the U.S. has withheld official recognition of President Maduro and the results of the election. Immediately after the election, citing the closeness of the vote, the U.S. openly supported the opposition party's calls for a manual recount and was reticent in giving its stamp of approval, despite the fact that the CNE agreed to an expanded audit of the vote. Meanwhile, 61 different countries were at the swearing-in ceremony of Nicolas Maduro, including 8 presidents from UNASUR and 17 heads of state.<sup>49</sup>

While the election in Venezuela was a close race, the over 260,000 votes Nicolas Maduro won by is a comfortable margin. Recall that John F. Kennedy beat Richard Nixon in 1960 by only 0.1 percent.<sup>50</sup> George W. Bush became president in 2000 after losing the popular vote to Al Gore but winning by only a few hundred votes in Florida — where a recount was blocked by the U.S. Supreme Court.<sup>51</sup>

In none of these U.S. elections did any other nation insist upon a recount or hesitate in recognizing the declared winner. Had a country like Venezuela done so, the U.S. would have found such a position absurd. The United States government's refusal to recognize the April 14 Venezuelan election was no less absurd, especially given the electoral commission's agreement to an expanded audit.

The U.S. government's refusal to recognize the CNE's certification of the Venezuelan election also violates our own notions of international comity, in which the U.S. should honor the validity and effect of other nations' executive, legislative and judicial acts, and not act in a way that demeans the jurisdiction, laws, or judicial decisions of another jurisdiction.<sup>52</sup> The main rationale of comity is the hope that other jurisdictions will reciprocate the courtesy shown to them — a courtesy the U.S. has relied upon numerous times even in the case of very close and contested elections.<sup>53</sup>

The U.S. position is all the more hypocritical considering that it helped engineer and quickly recognized a coup government in Paraguay last year and approved the results of a 2009 election in Honduras even though the previous president, ousted by the military, was not allowed to compete.<sup>54</sup> The U.S. government's recent election interventions pale in comparison to U.S. involvement in violent coups against democratically elected leaders in Latin America, such as those against Jacobo Arbenz in Guatemala in 1954, Salvador Allende in Chile in 1973 and Jean-Bertrand Aristide in Haiti in 2004.<sup>55</sup>

The U.S. government's refusal to recognize the April 14 Venezuelan election has had devastating consequences because it emboldened some in the opposition to use violence to destabilize the country. The opposition burned down health clinics, attacked Cuban doctors and destroyed ruling-party buildings, presumably believing itself to have the backing of the U.S. government and military.<sup>56</sup> As a result, at least seven Venezuelans are dead and numerous have been injured.<sup>57</sup>

Al Gore in 2000 stepped aside for George W. Bush in the interest of his country, but Henrique Capriles and

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49. See *17 Heads of State or government to attend Maduro's swearing-in ceremony: Venezuela FM*, (Apr. 20, 2013), [http://news.xinhuanet.com/english/world/2013-04/20/c\\_132324084.htm](http://news.xinhuanet.com/english/world/2013-04/20/c_132324084.htm).

50. Indeed, Kennedy won the presidency by a vote margin of less than 120,000 votes. See *Presidential Elections*, <http://www.history.com/topics/presidential-elections/page4>.

51. See Samantha Levine, *The Legacy of the Hanging Chads*, U.S. News and World Report (Jan. 17, 2008), <http://www.usnews.com/news/articles/2008/01/17/the-legacy-of-hanging-chads>.

52. See *Banco Nacional de Cuba v. Sabbatino*, 376 U.S. 398 (1964).

53. *Id.*

54. See Natalia Viana, *U.S. Aids Dubious Allies in Paraguay*, <http://wrongkindofgreen.org/2013/04/13/us-aids-dubious-allies-in-paraguay/>; Dana Frank, *In Honduras, A Mess Made in the U.S.*, NYTIMES online (Jan. 27, 2012), [http://www.nytimes.com/2012/01/27/opinion/in-honduras-a-mess-helped-by-the-us.html?\\_r=0](http://www.nytimes.com/2012/01/27/opinion/in-honduras-a-mess-helped-by-the-us.html?_r=0).

55. See Sakura Saunders, *CIA in South America*, Geopolitical Monitor (Oct. 24, 2007), <http://www.geopoliticalmonitor.com/us-interventions-in-latin-american-021/>; and Paul Farmer, *Who Removed Aristide?* (Apr. 15, 2004), <http://www.lrb.co.uk/v26/n08/paul-farmer/who-removed-aristide>.

56. Paula Newton, Catherine E. Shoichet, *Tensions mount after tight Venezuelan vote*, CNN online (Apr. 17, 2013), <http://www.cnn.com/2013/04/16/world/americas/venezuela-elections-unrest>.

57. *Id.*

his backers would rather foster chaos and crisis in an attempt to topple the Maduro government.<sup>58</sup> The same conservative forces that are supporting Mr. Capriles kidnapped and briefly overthrew Mr. Chávez in 2002 — with U.S. support.<sup>59</sup>

Latin America as a region is a growing concern in U.S. foreign policy. The April 14<sup>th</sup> election was a perfect storm that could have lent itself to change not only in Venezuela but also in the region.

As a New York Times article printed in March 2013 pointed out, the legacy of Mr. Chávez was not “concrete and steel, highways and houses, but something less tangible: he has changed the way Venezuelans think about themselves and their country. ‘He has made people who didn’t feel they were part of democracy before feel like they’re part of the system,’ said Joy Olson, director of the Washington Office on Latin America, an advocacy group. ‘That hasn’t happened in very many countries. If you look at the United States, poor people don’t feel like they’re very much a part of the system, and he did that.’”<sup>60</sup>

Chávez’s legacy however, extends beyond Venezuela. In the region, Chávez provided a charismatic example for other leaders to cement their own political identity. The political ideologies of Latin America have therefore shifted a great deal over the past decade – notably to the left. The fact that the April 14<sup>th</sup> election was the first where an opposition candidate would go up against a contender that was not Hugo Chávez, was the first glimmer of hope for those seeking change in Venezuela and the region. By openly supporting the opposition, the United States showed its hand.

Statements made after the elections as well by Secretary of State John Kerry, exacerbated the growing tension and will only serve to solidify the political will of Latin American countries. On April 17, 2013, during a speech before the Foreign Affairs Committee of the House of Representatives and following the Monroe Doctrine, John Kerry stated:

“The Western Hemisphere is our back yard (sic), it is of vital importance to us. Too often, many countries in the western hemisphere feel that the United States does not give them enough attention and sometimes that is probably true. We need to be closer and we plan to do it. The President will travel soon to Mexico and then to the south, I cannot remember which countries, but he will go to the region.”<sup>61</sup>

A good starting point for improving U.S.-Latin American relations would be to respect the sovereignty of other nations. By recognizing the validity of the Venezuelan electoral system and the results of the April 14<sup>th</sup>, 2013 election, the United States would take a step forward in indicating it views the countries of Latin America as more than a “backyard.” A basic principle in international law is state sovereignty, connected to a state’s ability to guarantee and act on behalf of the best interests of its own citizens.<sup>62</sup> As such, while Venezuela, like any other sovereign country, does not need the formal recognition of another,<sup>63</sup> the reality is that in the increasingly connected, globalized world, recognizing the results of a widely-recognized, democratic process is a matter of international courtesy.

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58. See AVN, *Rightwing Covering up Coup Plan with So-Called Electoral Struggle, Argues Opposition Defector*, (May 7, 2013), <http://venezuelanalysis.com/analysis/9125>.

59. See Jonathan Watts and Virginia Lopez, *Henrique Capriles, The Man Trying to Topple Chavez*, The Guardian (Oct. 3, 2012), <http://www.guardian.co.uk/world/2012/oct/03/henrique-capriles-topple-hugo-chavez>; and *Our Man in Caracas: The U.S. Media & Henrique Capriles*, (June 18, 2012), <https://nacla.org/blog/2012/6/18/our-man-caracas-us-media-and-henrique-capriles>.

60. William Neuman, *Chávez Transformed the Way Venezuelans View Themselves*, The New York Times (Mar. 6, 2013), <http://www.nytimes.com/2013/03/07/world/americas/for-good-or-ill-chavez-altered-how-venezuela-views-itself.html?pagewanted=all&r=0>.

61. Lisa Karpova, *John Kerry, Secretary of State: “Latin America is our back yard,”* Pravda.ru (Apr. 23, 2013), [http://english.pravda.ru/world/americas/23-04-2013/124377-latam\\_backyard-0/](http://english.pravda.ru/world/americas/23-04-2013/124377-latam_backyard-0/).

62. C.G. Bateman, *Nicaea and Sovereignty: Constantine’s Council of Nicaea as an Important Crossroad in the Development of European State Sovereignty*, 54-91 (University of British Columbia).

63. See Art. 3, Montevideo Convention: “Even before recognition the state has the right to defend its integrity and independence, to provide for its conservation and prosperity, and consequently to organize itself as it sees fit, to legislate upon its interests, administer its services, and to define the jurisdiction and competence of its courts.”

## Conclusions and Recommendations

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The NLG delegation makes the following findings following the April 14, 2013 election and expanded audit:

- The election process observed by the NLG delegation on April 14, 2013, was fair, transparent, participatory, and well-organized;
- Private media coverage in Venezuela leading up to the elections favored opposition candidate Capriles, where privately owned and paid television stations constitute between 90 to 94 percent of viewership in Venezuela<sup>64</sup>;
- Given the security procedures embedded in the electoral process, there was no reason to expect that an expanded audit will produce a result that differed from the random audit of 54 percent of the votes conducted immediately following the closing of the voting stations;
- Despite recognition by virtually all Latin American countries, including Colombia, Mexico and Chile, the United States continues to isolate itself by failing to affirmatively recognize the outcome of the election, by failing to send any high level representatives to the swearing in ceremony of President Nicolás Maduro, by referring to Latin America as the “back yard” of the US, and by threatening Venezuela with repercussions should it grant asylum to Edward Snowden.

Members of our delegation who returned to Venezuela in May to accompany the audit process were pleased to find that the atmosphere was far less politically charged than what we had experienced following the April 2013 election. The end of our stay in early June coincided with the announcement of municipal elections next December. We noted that the opposition quickly responded by announcing that it intended to participate in and win those elections, thus implicitly validating the electoral process.

While accompanying the last two presidential elections, our organization has found the electoral process in Venezuela to be impressive both for its efforts to ensure the enfranchisement of all eligible voters and because it continues to strive to be a trustworthy vehicle for the exercise of real democracy. This does not mean that it is a perfect system; no system could meet such a standard. But it is being perfected with the experience of each election due to the contributions by Venezuela’s political parties, the recommendations of national and international observers and the CNE and its staff.

Moreover, while some of the safeguards in place in the Venezuelan system would be difficult to implement in the United States, we would do well to incorporate a number of features of Venezuela’s electoral system:

- Elections are held on Sundays to make it easier for working people to vote;
- A major outreach effort has resulted in a dramatic increase in voter registration. Given the recent decision by the Supreme Court undercutting the Voting Rights Act<sup>65</sup> and legislation in a variety of states designed to discourage the registration of low income voters and people of color, the United States would do well to emulate Venezuela’s approach to voter registration;
- Sophisticated technology and multiple audits that involve political parties and independent national observation organizations are used to eliminate any possibility of fraud or manipulation of electronic data;
- All voting machines issue a paper receipt that can be viewed by the voter to confirm that his or her vote has been properly registered;
- After the polls close, 54% of those boxes and paper receipts are manually counted as a routine procedure in the presence of representatives of all parties. This Citizens’ Audit process ensures that the results of the final print-out from the voting machines match the votes cast as reflected by the paper receipts in the sealed ballot box;
- Increased confidence in the electoral system and efforts to involve the public in the electoral system, lead to increased political participation.

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64. CEPR 2010 Media Report.

65. *Shelby County v Holder* (2013) 570 US \_\_\_, 1313 S. Ct. 2612



Finally, as citizens of the United States, we would be highly remiss if we did not conclude this report with an unequivocal declaration that we believe that the Venezuelan electoral system is trustworthy, transparent and that the pride expressed to us by Venezuelans of all political parties in their electoral process is well deserved. We have observed the CNE and its staff closely and have found them to be highly competent and committed to furthering the development of democracy in Venezuela, avoiding the reality as well as the appearance of bias, and shying away from any conversations that might imply political bias.

In our view they have a major responsibility and have handled it very well. While thorny issues regarding transparency in election funding and the use of state resources remain to be tackled, we conclude that the April 2013 election was hard-fought but fundamentally fair. We call upon our government to recognize the results and work towards normalizing the relationship with the new government of Venezuela. Joining the rest of the world in recognizing the government of democratically elected President Maduro is important both as a gesture of respect for an exemplary electoral system, and an important step in moving our relationship with Venezuela in a more productive direction. By failing to do so, the Obama Administration is further isolating the United States from our Latin American neighbors and generating suspicion regarding our actions and intentions. NLG Delegates to 2013 Election and Audit Delegations

#### **NLG Delegates to 2013 Election and Audit Delegations**

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