

VENEZUELA DESK



VENEZUELA'S TRANSITION TO DEMOCRACY, STILL IN REACH

BY TAMARA TARACIUK BRONER

LATIN AMERICA PROGRAM | AUGUST 2024



Latin America
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A political transition in Venezuela can take place even after an unclear election followed by repression, where results are disputed and those in power refuse to relinquish control. Historically, the regime has not made concessions voluntarily, and this is unlikely to change. The key question is how to provide incentives, within the boundaries of the rule of law, to individuals who could facilitate a shift from the repressive political system towards the challenging path to democracy.

Venezuela's presidential elections on Sunday have drawn global attention to the country after a prolonged period of normalizing a situation that was anything but normal. While the initial focus on the election is essential, it is insufficient. Although these elections represent a unique political moment, a transition to democracy and a solution to the simultaneous crises faced by Venezuelans for years—a crackdown on dissent, a humanitarian emergency, and a massive exodus—will not be possible without negotiations about the future of President Nicolás Maduro and others in his government.

After midnight on Sunday, the National Electoral Council's president verbally reported that Maduro had won the presidential election with 51% of the vote, based on results from 80% of precincts, after an alleged "terrorist attack" delayed the announcement. Opposition candidate Edmundo González supposedly finished second, with 44%. There is no credible evidence to back up these results. In fact, all available evidence—including exit polls and electoral ballot results in voting centers to which opposition monitors had access—indicate an overwhelming victory for the opposition, even in areas traditionally supportive of the government. The Carter Center, which conducted an election observation mission in the country, concluded that the elections did not meet international standards of electoral integrity and that the center could not verify or corroborate the announced results.

Yet the story does not end here. The regime needs international legitimacy, in part to access key markets, and these electoral results certainly did not provide it. The opposition's democratic commitment, on the other hand, has

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contributed to its international legitimacy. For that reason, Sunday's electoral fraud should be seen as a starting point for an inevitable political negotiation that will take place between now and January, when the next government is scheduled to take office.

That is why, even amid intensifying protests over the election and repression, it is important to refocus on the conditions that could bring about a lasting political settlement, including potential guarantees for individuals vulnerable to criminal prosecution who could play a role in a transition to democracy.

Broadly speaking, Venezuelan officials, judges, prosecutors, members of the police and military are implicated in two categories of crimes committed over the past 25 years: human rights violations—which in some cases may constitute international crimes, including crimes against humanity—and corruption, drug trafficking, and money laundering.

The abuses committed in Venezuela, including during brutal crackdowns on protests in 2014 and 2017, led the International Criminal Court prosecutor to initiate the first-ever investigation into crimes against humanity in Latin America. These allegations include unlawful detention, torture, rape and other forms of sexual violence, and political persecution. A UN Fact-Finding Mission has documented the complicity of Venezuela's judiciary and denounced ongoing repression. Given the lack of judicial independence in the country, international accountability mechanisms are the primary avenue for victims to seek justice. The post-election crackdown

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on Venezuelans exercising their fundamental rights is simply adding more evidence to the regime's criminal record.

Additionally, anti-corruption activists report that over 200 investigations across 29 countries target high-level Venezuelan officials accused of embezzling millions of dollars, among other acts of corruption. These cases involve various sectors, including the oil industry, healthcare system, security forces, and judiciary. While most investigations are concentrated in the United States, there are also cases in Argentina, Brazil, Colombia, and Spain.

The threat of imprisonment outside Venezuela is real for those implicated in these cases, but it is not inevitable for everyone involved. While both categories of crimes—human rights abuses and corruption—have been pervasive, corruption-related offenses are more common. This provides an opportunity.

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International law mandates the investigation and prosecution of corruption, money laundering, and drug trafficking, but it also grants states broad discretion in how to do so. Prosecutors, even when dealing with serious offenses, have the option to offer reduced sentences in exchange for cooperation. This cooperation might include acknowledging individual responsibility, assisting in identifying others involved, or help recovering stolen assets. Such benefits have already been granted in the United States in many cases, and prosecutors could do the same in other jurisdictions to support a political transition in Venezuela.

In the United States, for example, the president has the discretion to grant clemency measures, at his or her discretion, which can exonerate individuals convicted of or under investigation for crimes related to corruption, drug trafficking, and money laundering. Such clemency measures could exempt them from criminal responsibility or commute their sentences

in exchange for their cooperation with judicial investigations and a political commitment by an individual to contribute to the reestablishment of democracy in Venezuela. To this end, anyone who aspires to such benefits should commit to taking concrete steps between the election and the inauguration of a new government. This includes actions to persuade the government to end the repression, accept the election results, and facilitate a peaceful transition of power.

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These legal benefits could be complemented by the lifting of individual sanctions by the United States, Canada, and the European Union, as well as a strategy to provide reassurances of the political viability of a democratic Chavismo movement as an

opposition force following a transition of power.

Addressing individuals accused of human rights abuses is more complicated. International law prohibits exempting individuals from criminal responsibility for the most serious international human rights crimes, including crimes against humanity. This is especially clear, though not exclusively, in the case of individuals at the highest level of authority. That said, while many people have committed human rights abuses in Venezuela, including top officials, members of security forces, and the judiciary, the legal threshold for an international crime—such as crimes against humanity—is high.

High-level individuals implicated in international crimes will never receive reassurances of lasting impunity. They could face criminal prosecution by the International Criminal Court or domestic tribunals of foreign countries under universal jurisdiction. Their best option for avoiding prosecution may be sanctuary offered by governments that do not adhere to democratic principles and human rights norms.

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By contrast, for individuals responsible for human rights violations that do not constitute international crimes, it is legally possible to offer amnesty, pardons, reduced prison sentences, or alternatives to imprisonment in return for substantial participation in a process to establish a historical record of abuses, recognition of individual responsibility, and support for a democratic transition. In that case, it would be important to establish reparation measures for victims, secure non-repetition guarantees, and assure constant consultation with victims in the process.

These decisions, involving both international and domestic actors, would require complex negotiations with members of the regime. Even amid top authorities' knee-jerk reaction to cling to power through force, a political negotiation is possible if it is grounded in a solid legal framework that provides legally viable incentives sustainable over time. It must also be supported by a unified political opposition and its international allies, including the United States, Brazil, Canada, Chile, Colombia, Mexico, and Uruguay, as well as Norway, Germany, Spain, Switzerland, and the United Kingdom.

A wide range of individuals—from high-level officials to those in middle and lower ranks, are not blacklisted today—and they do not have to be. With proper incentives, many members of the security forces, the judiciary, and the electoral authorities could see a better future for themselves in a transition to democracy in Venezuela if they cease repression, respect the will of Venezuelan voters, and avoid blindly following orders that violate human rights and constitutional guarantees. Given that power within the Maduro regime is not monolithic, this fragmentation provides an opportunity to expand support for Venezuela's transition to democracy.

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