



Memorandum

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SUBJECT: Venezuela's December 2, 2007 Constitutional Referendum**FROM:** Mark P. Sullivan
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The following memo provides an analysis of the recent constitutional reform referendum in Venezuela that was rejected by a slim margin. Some of the observations in this memo are based on interviews conducted by the author in Caracas from November 30 - December 6, 2007. For additional background on Venezuela, see CRS Report RL32488, *Venezuela: Political Conditions and U.S. Policy*.

Background on the Constitutional Reform Proposals

In August 2007, Venezuelan President Hugo Chávez announced his proposals for constitutional reform that would alter 33 of the 350 articles of the 1999 Venezuelan constitution, and that he claimed would move Venezuela toward a new a model of development known as “socialism in the 21st century” embracing participatory democracy and a mixed economy. According to the Venezuelan government, the purpose of the reforms was to speed the redistribution of Venezuela’s oil resources to benefit the poor; de-centralize political power to grant citizens more direct say in their affairs; and outline the legal foundation of a new, more equitable model of development and democracy.¹ Venezuela’s National Assembly debated the proposals in three rounds, and ended up adding reforms to amend 36 additional articles for a total of 69 constitutional amendments that were finalized by the Assembly on November 2, 2007.

The amendments were subject to a public referendum held on December 2, 2007, with the 69 reforms split into two parts. Block “A” consisted of amendments to 46 of the constitution’s articles, including the 33 reforms proposed by Chávez and 13 proposed by the National Assembly. Block “B” consisted of amendments to 23 articles proposed solely by the National Assembly.

¹ “Constitutional Reforms in Venezuela,” Embassy of the Bolivarian Republic of Venezuela, Washington, D.C., November 2007.

Among some of the proposals for constitutional changes included in Block A of the referendum were the following amendments:

- to lower the voting age from 18 to 16 years of age (Article 64);
- to prohibit foreign financing of associations with political goals, and provide for government financing of electoral activities (Article 67);
- to decrease the workweek from 44 to 36 hours and the workday from 8 hours to 6 hours (Article 90);
- to recognize Venezuela's multi-cultural diversity and the importance of its indigenous, European, and African cultures (Article 100);
- to provide that the government promote and develop distinct forms of businesses and economic units of social property and social production or distribution in order to create the best conditions for the collective and cooperative construction of a socialist economy (Article 112);
- in addition to private property, to add several new classifications for property – public, social, collective, and mixed (Article 115);
- to remove the presidential two-term limit, and extend the presidential term from six to seven years (Article 230);
- to state that the socioeconomic system of Venezuela is founded on socialist and anti-imperialist principles, among others (Article 299); and
- to eliminate the independence of the Central Bank, which would include putting international reserves under the administration and direction of the President (Article 318).

Among some of the proposals for constitutional changes included in Block B of the referendum were the following amendments:

- to prohibit discrimination based on health and sexual orientation (Article 21);
- to give the President power to suspend certain constitutional rights, such as the right of information and certain rights of due process (that are protected under the current constitution) during a declared “state of exception” (national emergency), but prohibit the suspension of the rights to life, defense, and personal integrity or the suspension of prohibitions against torture, being held incommunicado, or disappearance (Article 337);
- to remove the time limitation for a declared state of exception (Article 338);
- to increase the percentage of signatures required for citizens to initiate constitutional amendments from 15% to 20% of those on the electoral registry (Article 341).

One of the most controversial reforms would have extended the presidential term from six to seven years and abolished the presidential two-term limit by allowing indefinite reelection, a reform that would have allowed President Chávez, last elected in 2006, to run for reelection in 2012. Opponents viewed it as a means for President Chávez to remain in power indefinitely, while government officials pointed out that constitutional provisions would still require the president to be re-elected each term, with the possibility of facing a recall referendum midway in the presidential term.

Other proposed reforms that raised concerns included amendments that would have: given the state greater control over the economy; eliminated the independence of the Central Bank and put international reserves under the control of the President; given the President

power to suspend certain rights (right of information and certain rights of due process) during a state of emergency that are currently protected under the existing constitution; and removed the time limits that a state of emergency could be imposed.

Various provisions that would promote a “socialist economy” and “socialist democracy” were also controversial. The reforms would have declared that the socioeconomic system was based on socialist principles, and that state should promote the active participation of citizens, restoring power to the people and creating the best conditions for the construction of a socialist democracy. The proposed reforms would have allowed for changes in the administrative division of Venezuelan territory and the structure of local government, which according to President Chávez, would represent “a new geometry of power.” New federal districts with economic and political autonomy would be created and existing communal councils (thousands have been created since 2006) would be given legal status and empowered. As a result of this change, the government could channel funds and resources directly to the federal districts and communal councils, bypassing local government officials. National budget payments to the states would have increased from 20% to 25% of the budget, with 5% designated for financing the communal councils. Councils of popular power (such as communal councils, workers councils, student councils, youth councils fishermen councils etc) would have been established as a means of citizen participation. The work of the missions (the social programs begun by the Chávez government in 2003) would be set forth in the constitution as an official part of public administration created to satisfy the urgent needs of the population.

The proposed constitutional reforms also included changes to the structure of the military. The military would have been defined as a patriotic, popular, and anti-imperialist body with the objective of guaranteeing Venezuela’s independence and sovereignty. The National Reserves would be transformed into the “National Bolivarian Militia,” which would constitute the fifth official component of the armed forces.

Referendum Results

While initially it appeared that President Chávez’s overall popularity and the decision to include such popular measures in the reform as decreasing the work day would help ensure passage of the referendum, its approval no longer appeared certain in the days leading up to the vote. There was growing opposition to the constitutional reforms, including by a number of student organizations, business groups, the Catholic Church, and even some past supporters of President Chávez, such as the popular former minister of defense General Raúl Baduel. Various polls in November 2007 showed that those opposing the referendum had gained momentum and were in the majority.² Despite the polls, many observers still maintained that the government had the organization and resources to mobilize its supporters, and pointed out that Chávez, who still remains popular, had never lost an election.³

² Ian James, “Venezuelan Voters Oppose Chávez’s Proposed Constitutional Changes, Poll Shows,” *Associated Press*, November 24, 2007; Enrique Andres Pretel, “Poll Says Chávez Loses Venezuela Referendum Lead,” *Reuters News*, November 24, 2007.

³ Tyler Bridges, “Turnout of anti-Chávez Voters is Questionable,” *Miami Herald*, November 25, 2007.

Early in the morning of December 3, 2007, Venezuela's National Electoral Council (CNE) announced that both blocks had been rejected by a slim margin, with Block A defeated by 1.41% and Block B defeated by 2.11%. President Chávez immediately addressed the country on national television, and conceded the loss. The CNE subsequently issued an updated total of the vote on December 7, 2007 that changed the margin only slightly, with Block A defeated by 1.31% and Block B defeated by 2.02%. (Table 1 below shows the CNE's final vote totals.)

Table 1. CNE's December 2, 2007 Constitutional Reform Results

	Yes (votes)	Yes (%)	No (votes)	No (%)
Block A	4,404,626	49.34%	4,521,494	50.65%
Block B	4,369,014	48.99%	4,539,707	51.01%

Source: National Electoral Council, Bolivarian Republic of Venezuela, December 7, 2007.

Why the Reform Failed

A key to the failure of the reform effort appears to lie with the large abstention of Venezuelans that in the past supported President Chávez. About 56% of the electorate participated in the referendum vote compared to almost 75% in the December 2006 presidential election. About three million fewer voters supported the constitutional reform than voted for Chávez in 2006. President Chávez acknowledged these statistics in his concession speech pointing out the abstention of many of his supporters. In contrast, those rejecting the constitutional reform received almost 250,000 votes more than opposition candidate Manuel Rosales had in the 2006 presidential election, just a slight increase.

There are a number of factors that resulted in Chávez supporters staying home for the referendum. One of the most significant was former and current supporters of President Chávez concerned that the Chávez government is becoming too radicalized with power too concentrated in the presidency. In the National Assembly, the Podemos Party, a democratic socialist party that had been supportive of the Chávez government, called the reform amendments a "constitutional coup," and was the sole party to vote against the reforms. Its leader Ismael García and other party members were dubbed traitors for opposing the reform effort. The party, which actively participated in the "No" campaign, had originally supported the establishment of a Constituent Assembly to amend the Constitution. It is likely that the opposition of Podemos contributed to the No vote, and also resulted in Chavistas abstaining.

Another significant defection from the Chavista camp was the ex-wife of President Chávez, Marisabel Rodríguez, who actively opposed the reform, maintaining that it would concentrate absolute power. Rodríguez has a significant political profile in Venezuela, and was a member of the Constituent Assembly that drafted the current 1999 Constitution, which she maintains was a product of legitimate and valid public debate.⁴

⁴ Chris Kraul, "Despite Outcry, Chávez Plan Likely to Pass," *Los Angeles Times*, November 15, (continued...)

Perhaps the most significant opposition from within the Chavista movement was from retired General Raúl Baduel, former commander of the Venezuelan army and former Defense Minister, who in early November 2007 labeled the reform proposal a coup d'état intended to abolish checks on the President's expanding power.⁵ Baduel had been one of Chávez's closest advisors since he helped him return to power in April 2002, and reportedly commands respect among many Chavistas and within the Venezuelan military.⁶ Baduel asserted that the constitutional reform proposal was "nothing less than an attempt to establish a socialist state in Venezuela." He also cited the government's failure to address such severe problems as high rates of crime and violence, inflation, a housing shortage, and poor education and health care, and maintained that the current constitution gives ample room for any decent and honest government to address these challenges.⁷

Despite a booming Venezuelan economy and a fall in poverty rates over the past several years, several significant economic problems in Venezuela contributed to the rejection of the constitutional reform. Inflation, estimated at over 20% in 2007, has been the highest in the region. Price controls on basic staples like milk, eggs, and chicken have resulted in significant product shortages and long lines as domestic production has dwindled. Venezuela's currency is also significantly overvalued, with a substantial difference between the official exchange rate and the parallel market. The economic difficulties caused Venezuelans to question the government's management of the economy, asking such questions as how a booming economy could be experiencing so many problems.

As expected, the political opposition also strongly criticized the proposed constitutional changes, maintaining that the reforms would be a means for President Chávez to extend his power and remain in office indefinitely, while steering Venezuela towards Cuban-style totalitarianism. Opposition leader and former presidential candidate Manuel Rosales of the Un Nuevo Tiempo (UNT) party called the proposed changes a "constitutional coup," and warned that the reform would further exacerbate shortages for basic products as the country moves toward a socialist system.⁸ An important aspect of the opposition's "No" campaign was that it concentrated on the substance of the reforms, and was not focused on Chávez himself. Such a strategy proved less threatening for Chávez supporters who could oppose the reform or abstain from voting and still support Chávez as their President through 2012.

University students, which took the lead in the demonstrations against the government's closure of Radio Caracas Television (RCTV) in May 2007, also played a major role in defeating the constitutional reform by taking the lead in street protests. On November 7, 2007, some 80,000 thousand students marched to the Supreme Court calling on the judicial body to suspend the referendum. Students also played a major role in the final demonstration of the "No" campaign, which mobilized more than 100,000 people in Caracas on November 29, 2007. With their ability to mobilize demonstrators, students emerged as perhaps the most

⁴ (...continued)
2007.

⁵ Simon Romero, "Venezuelan General Likens Chávez's Proposals for Constitution to a Coup," *New York Times*, November 6, 2007.

⁶ John Otis, "One-time Allies Blast Chávez's Push for Power," *Houston Chronicle*, Nov. 17, 2007.

⁷ Raul Isaias Baduel, "Why I Parted Ways with Chávez," *New York Times*, December 1, 2007.

⁸ "Advierte Líder Opositor Venezolano Que Reforma Profundizará Desabasto," *Agencia Mexicana de Noticias*, November 24, 2007.

prominent and visible opponents of the constitutional reform effort, and some observers believe that the reform would not have been defeated had it not been for the students. Historically, students in Venezuela have often played an important role in political change, including most notably in the overthrow of dictator Marcos Pérez Jiménez in 1958. The student movement that emerged in 2007 was not discredited by the Chávez government despite attempts to portray them as spoiled children of the oligarchy.

The Catholic Church in Venezuela, which criticized the constitutional reform effort as concentrating power in the hands of the President and favoring authoritarianism, also likely had some influence on the vote. In October 2007, Venezuelan bishops issued a public statement on the reforms, maintaining that the proposition of a Socialist State was contrary to the fundamental principles of the existing constitution, and asserting that the reforms would restrict liberties and represent a step backward in progress on human rights.⁹

Venezuelan human rights groups also actively questioned and criticized the constitutional reforms. Forum for Life, a coalition of Venezuelan nongovernmental human rights organizations, petitioned the Supreme Court in mid-November to declare the proposed reforms unconstitutional. The coalition of human rights activists believed that the reforms represented a regression in the protection of human rights recognized in the 1999 constitution. Among the various objections of the Forum were concerns about proposed reforms to Article 337, which would eliminate the right of information and essential elements of the right of due process from the list of rights that cannot be suspended during a state of emergency. The Forum also opposed the reform to Article 338, which would have removed the time limit on a state of exception or emergency.¹⁰

Looking Ahead

The rejection of the constitutional reform will likely improve public confidence in the electoral process, and in the National Electoral Council. In the past, critics have often portrayed the CNE as dominated by the Chávez government and questioned the outcome of elections. In the aftermath of the “No” win, some opposition politicians claimed that the reform was defeated by a much larger margin. But opposition leaders, including Manuel Rosales of the UNT, agreed with the CNE’s numbers, which are listed on the electoral body’s website down to the level of each voting site and table.¹¹ Such level of transparency should increase confidence that Venezuela can conduct free and fair elections.

Nevertheless, while many observers lauded the CNE for the conduct of the vote on election day, government critics still claim that during the electoral campaign the CNE sided with the government on many decisions, and did nothing to stop the government from using its considerable resources to fund the campaign in favor of the reform. For example, Caracas was blanketed with propaganda in favor of the reform. The CNE was also widely criticized, including by the non-governmental Venezuelan domestic election observer group Electoral

⁹ Conferencia Episcopal Venezolana, “Exhortación de los obispos sobre la reforma constitucional,” Oct. 19, 2007, available at: [http://www.cev.org.ve/noticias_det.php?id=266]

¹⁰ “Foro por la Vida introduce acción de inconstitucionalidad de la propuesta de reforma ante el TSJ,” Comunicado de Prensa, Foro por la Vida, Caracas, Nov. 15, 2007, available at: [http://www.derechos.org.ve/actualidad/comunicados/comu_prensa_2007/recursoreforma.html]

¹¹ The CNE’s website is available at: [<http://www.cne.gov.ve/>].

Eye, for the several hour delay in releasing the vote results, which contributed to increased tension across the country until the vote was announced.

The win of the “No” vote could result in more independent debate with the National Assembly, with more legislators feeling safer to question the government’s projects and proposals. In particular, the role of the small Podemos party and its leader Ismael Garcia has been elevated and will likely promote legitimate debate in the legislative body. The rejection of the reform also elevated the potential future political role of former Gen. Raúl Baduel, a former close supporter of President Chávez, who reportedly is close with the Podemos party.

For opposition parties such as the center-left UNT and center-right Primero Justicia, the rejection of the reform demonstrates that they can oppose the Chávez government at the ballot box and win. Going forward, however, it is obvious that the margin was very slim, and that just a small shift of votes – less than 60,000 for Block A and about 85,000 for Block B – would have reversed the results. Observers assert that victory by such a close vote suggests that the opposition will need to be unified and work with other former Chávez supporters such as Podemos to attract more electoral support. The next electoral races will take place in October 2008 when regional and state elections will be held, and in December 2010 when national elections will be held for the National Assembly

For President Chávez, while the referendum vote was his first electoral loss, he still wields considerable power as President. While initially conciliatory in his remarks following the defeat of the referendum, the President subsequently spoke disparagingly of those Chavistas who abstained and vowed to continue efforts to get the constitutional reforms approved. Moreover, observers point out that Chávez could enact a number of the reform proposals by decree or through the regular legislative process since he still has the support of most of the National Assembly. Some of the more controversial proposals, however, including the elimination of presidential term limits, can only be changed through the constitutional reform process spelled out in the current constitution, which includes the avenue of using an elected Constituent Assembly.

A key decision for President Chávez will be how he proceeds politically in the aftermath of the defeat of the constitutional reform. In the past, the President has resorted to harsh political rhetoric and polarization to win at the ballot box, and ensure his popular support. The defeat of the referendum, however, could be a sign that such hardline tactics may no longer be as successful. Some observers think that the defeat could cause Chávez to use more pragmatic political tactics that would appeal to moderate Chavistas and those supporters that abstained in the 2007 referendum. Such an approach might enable the President to regain strong popular support, or enough support to again attempt efforts to achieve passage of constitutional reforms in the future, particularly the elimination of presidential term limits. Other observers contend that it is unlikely that Chávez will refrain from hardline tactics to enact his radical agenda, especially given now that he is term limited until early 2013. Such a strategy of continued polarization, however, could be counterproductive for the President at the ballot box if it alienates moderate Chavistas. Moreover, at this juncture, the government’s attempt to impose any unpopular policy that affects civil rights or the state of democracy risks triggering widespread street protests by an energized student movement and the political opposition.