



Image: AFP

With the President of the National Assembly, Juan Gerardo Guaidó Márquez assuming the role of interim President on 11 January 2019, there has been a remarkably poor understanding of the Venezuelan Constitution which allowed for this step to be taken. Supporters of Maduro claim that Guaidó “proclaimed himself” President - without any grasp of the legal and constitutional context that allowed for such a step.

The Genesis - Maduro's Illegitimate Election

The circumstances allowing for the Constitutional conundrum that confronts Maduro goes back to his election of 2018. This election, like that of the 2017 one for a Constituent National Assembly, were deeply flawed and marred by allegations of voter intimidation, abuse of state resources to more serious allegations of outright fraud. Voter participation was also much lower than in earlier times.

Low Turnout - Disputed Figures.

Compared to a turnout of nearly 80% in the 2013 Presidential elections, which Maduro won by a narrow margin, the 2018 elections had an official turnout, according to the National Electoral Council (CNE), of 46.07% with Opposition estimates suggesting lower figures of between 17% and 26% with generous estimates putting it at under 33%. In either case, these figures represent the lowest in Venezuela's electoral history and cast serious doubt upon the mandate of President Maduro.

Opposition Boycott

In addition to the low turnout, there was a boycott by the main Opposition Democratic Unity Roundtable (MUD). This is in part due to the fact that the majority of popular leaders of the MUD and other members of the opposition could not apply for the elections because of administrative and legal procedures. The Maduro regime went so far as to disqualify his main rivals from participating in the presidential elections.

This disqualification applied to Henrique Capriles (candidate in the 2012 and 2013 elections), Leopoldo López, (sentenced to almost 14 years of prison during the 2014 protests), Antonio Ledezma (arrested in 2015 and later placed under house arrest), Freddy Guevara (whose parliamentary immunity was removed and fled to the residence of the Chilean ambassador), and David Smolansky (currently in exile), as well as María Corina Machado and Miguel Rodríguez Torres, former defense minister and former supporter of Hugo Chavez who is also incarcerated.

Furthermore, the main opposition political parties were disqualified after they were forced to re-register themselves for a second time in less than a year by the National Electoral Council (CNE). This was ostensibly due to their not participating in the 2017 municipal elections. The parties Popular Will and Puente refused to do so, while the CNE prevented Justice First from re-registering. Only Acción Democrática (Democratic Action) - part of the MUP - was revalidated - led by Henry Lisandro Ramos Allup. It was anticipated that Allup would be the main rival to President Maduro and some in the Opposition suggested that Maduro wanted Allup to be the MUP candidate believing that he was less popular than other leaders.

However, in late January 2018, the Constitutional Chamber of the Supreme Tribunal of Justice blocked the revalidation of the MUP as a single entity. Finally, Justice First was

disqualified weeks just a few from participating the presidential race in early February 2018, leaving only Democratic Action and other minor opposition parties. The boycott of the elections by the MUP led to only minor opposition parties participating and paving the way for Maduro to score an easy victory.



Constitution of Venezuela/Image: Sputnik

These electoral irregularities would appear to be in violation of Article 63 of the Constitution of the Bolivarian Republic of Venezuela which states:

Article 63: Suffrage is a right. It shall be exercised through free, universal, direct and secret elections. The law shall guarantee the principle of personalization of suffrage and proportional representation.

The Constitutional Safeguard

The National Assembly, the last freely and fairly elected body in Venezuela, has refused to accept the 2018 election of Maduro as legitimate. Once Maduro's first term (2013-2019)

ended on 10 January 2019, the National Assembly, used the provisions of Article 233 of the constitution to appoint the President of the National Assembly as interim President pending fresh elections.

Article 233 of the Bolivarian Constitution states:

Article 233: The President of the Republic* shall become permanently unavailable to serve by reason of any of the following events: death; resignation; removal from office by decision of the Supreme Tribunal of Justice; permanent physical or mental disability certified by a medical board designated by the Supreme Tribunal of Justice with the approval of the National Assembly; abandonment of his position, duly declared by the National Assembly; and recall by popular vote. When an elected President* becomes permanently unavailable to serve prior to his inauguration, a new election by universal suffrage and direct ballot shall be held within 30 consecutive days. Pending election and inauguration of the new President*, the President* of the National Assembly shall take charge of the Presidency of the Republic. When the President* of the Republic becomes permanently unavailable to serve during the first four years of this constitutional term of office, a new election by universal suffrage and direct ballot shall be held within 30 consecutive days. Pending election and inauguration of the new President*, the Executive Vice-President* shall take charge of the Presidency of the Republic. In the cases describes above, the new President* shall complete the current constitutional term of office. If the President becomes permanently unavailable to serve during the last two years of his constitutional term of office, the Executive Vice-President* shall take over the Presidency of the Republic until such term is completed.

In the current situation, the following two sentences are the ones relevant to the National Assembly's invocation of Article 233:

When an elected President* becomes permanently unavailable to serve prior to his inauguration, a new election by universal suffrage and direct ballot shall be held within 30 consecutive days. Pending election and

inauguration of the new President*, the President* of the National Assembly shall take charge of the Presidency of the Republic.

What the National Assembly has done is to state that Maduro's 2018 election was illegitimate and as such, after 10 January 2019, there is no person occupying the position. In such circumstances, the President of the National Assembly is required to take charge of the Presidency pending fresh elections.

In effect, the National Assembly's moves are predicated on the illegitimacy of the 2018 Presidential election.

An Obligation to Resist Dictatorship?

The Bolivarian Constitution contains two rather unusual articles which suggest an obligation on the part of citizens to resist dictatorship and also that even if there is a breach of the constitution by whoever is in office, the validity and of the constitution shall be upheld. This latter point is found in Article 333 which states:

Article 333: This Constitution shall not cease to be in effect if it ceases to be observed due to acts of force or because or repeal in any manner other than as provided for herein. In such eventuality, every citizen*, whether or not vested with official authority, has a duty to assist in bringing it back into actual effect.

It is equally important to note the obligation placed upon citizens of Venezuela to ensure and/ or restore the effectiveness of the Constitution. This is reinforced in Article 350 which goes further effectively calls on Venezuelans to reject any regime that violates democratic principles.

Article 350: The people of Venezuela, true to their republican tradition and their struggle for independence, peace and freedom, shall disown any regime, legislation or authority that violates democratic values, principles and guarantees or encroaches upon human rights.

Maduro's Dilemma



Venezuelan President Nicolas Maduro/Image: REUTERS

While Maduro may seek to brazen out the current confrontation, he is faced with the fact that for the first time since protests erupted against his regime, a constitutionally legitimate challenger has emerged. Given the fact that few countries recognized Maduro's 2018 election as legitimate, the National Assembly's move to invoke Article 233 amounts to a legal, constitutional and political masterstroke. Maduro may seek to rely on force, his control of the military and internal security apparatus and the media to try to secure his continued rule, but he is now facing a crisis of legitimacy and credibility the likes of which he has not faced since assuming the Presidency. His dilemma is compounded by the fact that as the economy continues to collapse and Venezuelans continue to flee, he has shown himself to be unequal to the task.

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