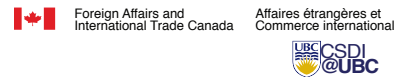


Flash Report:

The Venezuelan Referendum on Term Limits

Centre for the Study of Democratic Institutions
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The Constitutional Referendum in Venezuela: Analysis and Implications of an Election Result by Michael Penfold, IESA

By winning a constitutional amendment to eliminate the restriction on re-election to all elective offices, President Chávez of Venezuela has succeeded in consolidating the most hyper-presidential system in the region. The Bolivarian Constitution already guaranteed the longest terms in office of any Latin American president (12 years in the event of re-election), and the modification of this could make this period indefinite (something that does not exist in other Latin American or Asian presidential constitutions). The only restrictions are the possibility of recall at mid-term – which requires a popular initiative – or the elections at the end of term. This change substantially increases the powers of the president in a context in which the separation of powers is practically non-existent.

The results of the referendum demonstrated a strong surge in the popularity of President Chávez, who won 54.4 percent of the “Yes” vote. The opposition, without political

leadership, obtained 45.6 percent for the “No.” This difference of nearly 10 points allows Chávez to re-legitimate his mandate, avoid the possible activation of a recall vote, consolidate his control over and the cohesion within his own party movement for the elections of 2010, and halt the electoral advances of the opposition which had defeated the constitutional reform of 2007 and won governorships in some of the more urban states in 2008. From a partisan standpoint, the victory of the “Yes” puts a brake on the political deterioration that had begun to appear within chavismo, and obliges the opposition to re-think its electoral strategy. In this sense, the triumph of the “Yes” has fundamental implications for President Chávez because it guarantees his political stability in the midst of a complex economic situation and the notable electoral gains of the opposition.

The decision of Chávez to seek a constitutional amendment to allow indefinite re-election, despite more than 4 years remaining in his presidential term, obeys a political logic. The defeat of the constitutional reform, by a

narrow margin, in 2007 (official results are still not available), implied the first major defeat of a political project whose goal was to redefine private property, redesign the national territorial structure, and continue to reinforce presidential powers through indefinite re-election. This defeat showed the limits in terms of what the Venezuelan voter would accept ideologically, and the lack of regional and local leadership by chavistas to mobilize their base around these proposals.

The elections for governors and mayors in 2008 also showed important cracks within chavismo and substantive gains of the opposition. The consolidation of the United Socialist Party of Venezuela (Partido Socialista Unido de Venezuela, PSUV) implied the abandonment of a coalition with various small parties (PODEMOS, PPT, the Partido Comunista de Venezuela), which had guaranteed strong chavista victories since 2004. Chávez’s decision to radicalize his project through constitutional reform, and to abandon the coalition of parties, came at the cost of important electoral losses in 2007. Indeed, the internal divisions of the PSUV were evidence in the process of primary elections to select candidates for mayors and governors and obliged the president to intervene in specific cases to impose certain leaders.

In quantitative terms, President Chávez obtained 52 percent of the vote in the regional and local elections in 2008. This translated into 18 of 23 governorships and over 80 percent of the municipalities. Nevertheless, the loss of the five most important governorships (Miranda, Carabobo, Zulia, Nueva Esparta and Táchira) and urban popular centres (Alcaldía Sucre and Alcaldía Mayor) obliged him to seek a constitutional amendment to guarantee the stability of his leadership. This was aggravated by the political fact that his best alternative leaders (Diosdado Cabello and Aristóbulo Istariz) were defeated in these elections. To overcome this situation, Chávez proposed an amendment that would only eliminate the restriction of the re-election of the executive branch. This same proposal had been defeated in 2007 and did not have the support of public opinion. Almost 66 percent of the population rejected the idea of indefinite re-elections for the president and nearly one third of the chavistas were opposed to the initiative. This obliged Chávez to modify the proposal to include all offices that are popularly elected, like governors and mayors. This change realigned the base with the leadership to move forward with a campaign that enjoyed practically unlimited access to public resources.

The National Election Council (CNE) also contributed politically to the convening of the process. The President of the CNE, Tibisay Lucena, acceded at the outset to the organization of the referendum process even before it was formally approved by the legislature with the goal of shortening the period necessary for preparing the plebiscite.

This decision to shorten the period avoided unfavorable consequences for the popularity of President Chávez that could arise from the deceleration of the economy as a result of the fall of oil prices. The extemporaneous decision also obliged the CNE to reprint the electoral materials once the legislature decided, at the behest of Chávez, to include all public offices in the amendment.

Moreover, the CNE took a series of decisions that significantly increased the political asymmetries between the government and opposition. First, to speed things up, the CNE decided not to open the electoral lists and register new voters. This was inconsistent with Venezuelan jurisprudence and the practices of the same CNE in previous elections. Second, the CNE decided not to provide public financing for either the “Yes” or the “No.” To be sure, the Bolivarian Constitution explicitly prohibits the use of public financing for electoral campaigns. Nevertheless, a referendum is not an election but a popular consultation. The very same CNE took the decision, the right one from a democratic point of view, to finance the campaigns of both the “Yes” and the “No” in 2007. This time, the CNE decided to appease the government and limit access to this time of financing. The effects were devastating for the opposition since it depended entirely on private financing. Moreover, it had just come out of regional and local elections that were extremely expensive. Finally, the CNE decided not to enforce limits on the use of state resources by the government, which produced a campaign that was overwhelmingly dominated by the “Yes.” This difference had

a decisive impact on the vote.

The media, both national and quasi-national, especially *Venezolana de Televisión*, *Tves*, and *Globovisión*, made this situation worse by displaying a lack of ethics in their highly partisan coverage. These television channels were used for partisan purposes throughout the campaign. In contrast, channels like *Telegen* and *Venevisión* were more balanced and informative. The lack of balance in the coverage of news continues to be one of the hardest problems to resolve since it is part of the larger dynamic of political polarization in Venezuela. The lack of public finance for parties also makes this problem worse, as parties depend on access to highly biased media. What is more, the financial and regulatory strength of the government, due to its access to state resources, imposes a chill on media that attempt to be balanced—especially given the refusal to renew the license of RCTV for strictly political reasons.

Given all this, the results of the election can hardly be a surprise. President Chávez achieved an increment in his percent of support for the amendment, in comparison with the vote for governors and mayors, of about 2 points. In general terms, the states that voted with the government in 2008 intensified their preferences in the referendum (for example, in Monagas, Portuguesa, Guárico, Barinas, Trujillo, Cojedes, Aragua, and Boliva). In contrast, the states that voted for the opposition forces maintained their position without increase relative to the referendum (for example, Miranda and Zulia). In some states the opposition increased

the anti-chavista vote (Táchira), while in others dominated by the opposition (Nueva Esparta and Carabobo) chavismo increased its relative share of the vote. The intensification of the chavista vote in its consolidated areas, and the lack of opposition growth in relative terms, was what determined the success of the “Yes.”

Venezuela is entering a fragile institutional process. While not erasing electoral democracy, continues to experience the erosion of the constitutional separation of powers that underpins democracy. The referendum marks the consolidation of hyper-presidentialism and the rise of regional caudillos (strong men), both in government and opposition, who will convert indefinite re-election into an instrument of power to unify diverse social and political movements. The consequence is a weakening of almost all intermediary representative institutions (the legislative branch, especially) and the agencies responsible for the resolution of conflicts (the judiciary and electoral bodies). The importance of this change will be evident in the legislative elections to be held in 2010. At that time, President Chávez will face a series of decisions involving economic adjustment, due to the fall of the price of oil and the global financial crisis that will affect his level of popularity. Nevertheless, the triumph of the “Yes” campaign is a partial antidote that will enable chavismo to resist these costs, and Chávez will have four more years before facing a new presidential election.

Implications of the Referendum for the Opposition by **Carlos Aponte Blank**

On the 15th of February, 2009, Venezuela held a referendum on an amendment to the constitution that would allow the incumbents of all popularly elected offices to be continuously re-elected without term limits. The proposal was initiated by President Chávez and formally adopted by the members of the National Assembly, 90 percent of whom are his followers.

Under the 1999 constitution, the presidential term was 6 years subject to one immediate re-election. The terms of governors and mayors were 4 years, also with one re-election. National legislators had 5-year terms, and regional legislators had 4-year terms, both subject to two re-elections. But the core of the proposal was, without doubt, presidential election. The current president is in his second term and, until the amendment was approved, unable to run again in 2012. With a turnout of 11,725,000 voters—approximately 70 percent of all registered voters—the Yes side won by 55 percent (or 6,350,000 voters) to 45 percent for the No (5,200,000 voters).

The arguments made by the government for eliminating term limits were threefold: They stressed the necessity of Chávez being able to remain in power in order to complete the revolutionary project of “21st century socialism”.

They also insisted that a revolutionary project requires a long time frame.

Finally, they argued that continuous re-election expanded the rights of the population, because it meant voters can elect

whomever they want, and for how long they want, without formal limitations. Indeed, the way the referendum question was framed emphasized the idea of political rights – though, ironically, the fact that this wording was accepted by the electoral council evidences this bias.

The argument of the opposition was also threefold:

They emphasized the importance of renovation in office, especially given that Venezuela already has one of the longest presidential terms in Latin America (12 years, if re-elected)

They warned of the risk of the abuse of power, the discretionary use of public resources, and the incumbency advantages associated with indefinite re-election (which exists in no other Latin American democracy).

And they questioned the unconstitutionality of the proposal given that it had already been defeated in a prior referendum in December 2007. The 55 percent of the vote that was obtained by the Yes was the result of one of the shortest campaigns in recent memory. Three months separated the announcement of the referendum and election day. The referendum decision was made by the president, adopted by the National Assembly, and approved by the National Election Council (CNE).

The speed of the campaign is due to various factors. In the first place, the government anticipates that pressures will arise from the adoption of unpopular economic measures that could be required in the short term due to falling oil income. Moreover, the element of surprise caught the

opposition off guard, just as it was wrapping up its campaigns for regional and local elections (November 2008). While the opposition had depleted its resources, the Yes campaign was able to activate its electoral machinery, which had been ramped up for the November election, and channel to it substantial resources.

The speed of the campaign was risky given that in November 2008 the polls were unfavorable to the Yes. A slim majority appeared to reject the idea of indefinite re-election. But the President led an audacious campaign. On the one hand, he reestablished a new understanding with groups that had allied with him in the past – the PPT (Patria Para Todos) and PCV (the Communist Party of Venezuela) – but which had distanced themselves from the government in the regional and municipal elections (carrying a small percent of the vote with them). Chávez thus secured votes that would now be decisive for winning a tight referendum. Moreover, the President agreed to alter the proposal to permit reelection of governors, mayor and national and regional legislators, something he had rejected in December 2007. This generated more support from regime allies in key states and municipalities. In addition, the campaign unleashed a flood of propaganda and channeled substantial state resources in favor of the Yes campaign.

Yet it is still puzzling that the president manage to win, and did so quickly after the losses sustained in the elections in November 2008. In part, this is due to the high personal popularity of the president since his recall victory in 2004. There is evidence from focus groups

that some pro-Chávez voters feared that indefinite re-election meant voting once to give Chávez the presidency for life. The election campaign by the Yes addressed this issue, thereby reducing resistance to the idea. It is hard to know what would have happened had the campaign been longer. The opposition believes that it has begun a process of recovery. This started in 2006 with the candidacy of Manuel Rosales (who won 37 percent of the vote), and continued with the victory of the No in December 2007. It was also reflected in important electoral wins in November 2008. In the February referendum, for the first time, the opposition has won over 5 million votes, while the government registered its second lowest level of support in an election since 1998. This suggests there is about 40 percent of the electorate that is available to opponents of the government.

After the recall referendum in 2004 it looked like the opposition was in danger of dissolving. It did not contest the 2005 parliamentary elections, leaving the chamber in the hands of the government. The electoral accord among opposition candidates in 2006 was the prelude to a slow recovery. The prospects for growth in the future are further enhanced by the likely weakening of the petroleum bonanza that has, until recently, favored the government.

The Referendum in the Broader Latin American Context*
by **Maxwell A. Cameron**

By scrapping presidential term limits, Venezuela's Hugo Chávez

has eliminated one of the last hard constraints on his power. The tendency of Latin American presidents to ride roughshod over congresses, courts, and their political opponents is so commonplace that a term was coined (by Argentine political scientist Guillermo O'Donnell) to describe these regimes: delegative democracies. In delegative democracies, presidential power is limited only by rules that define the president's terms in office -- how many years until the next election, and how many times he or she can run -- and by their ability to win elections.

Of course, leaders have often attempted to get around even these rules. Alberto Fujimori discarded Peru's constitution to allow his own re-election in 1995. He even violated his own tailor-made constitution by running for a third term in 2000. Other leaders have achieved the same result by legal means. A new constitution in Bolivia, approved in a referendum on 25 January 2009, will enable President Evo Morales to run for another term. A similar referendum in Ecuador last year will enable President Rafael Correa to run for two more terms.

Presidential re-election is controversial for reasons of both history and institutional design. Historically, Latin American political leaders have tended to concentrate great power in the hands of the executive branch of government. Repeated military interventions in politics throughout the 20th century reinforced the tendency toward overweening executives. A habit of continuity (or, *continuismo*) developed, in which leaders sought to monopolize all powers while in office. In response, a

taboo on re-election emerged. Early in the 20th century, Mexican revolutionaries demanded “effective suffrage and no re-election.”

Term limits also reflect imperatives of institutional design. Presidential systems were designed to create checks and balances that would ensure no one branch of government would become all-powerful, yet they have proven woefully incapable of restraining executive power. Presidential systems create rigidities and conflicts that are often resolved ignoring the constitution altogether.

When the leaders are not constrained by constitutional limits and checks and balances, elections become the last effective source of accountability. Perhaps they are sufficient. Chávez’s supporters insist that if the Venezuelan people don’t like him, they can vote him out of office in 2012. And if they want him, why should voters be denied the opportunity to keep a popular leader in office?

Many voters take Chávez at his word when he says he wants re-election not to give himself more power but to give more power to the people. “With Chávez, the people rule” goes the mantra.

Chávez has established a relationship of trust and faith with the masses. Many of the other democratic governments in the region -- which includes some of the most unequal societies in the world -- have done more to guarantee the interests of political, economic and military elites than to improve the lives of the majority. The referendum result shows broad support for Chávez’s political project, but it also reveals that much of the public sees his continuity in power as the essential guarantor of that project.

Again and again, his supporters express the view that they need Chávez in power to continue to receive the benefits of the Bolivarian revolution. Unawares, they make a covert criticism: Chávez has not institutionalized his

revolution. He has created a highly personalistic regime that depends on his leadership.

What does all this mean for Canadians? In the club of democratic nations, Venezuela remains a member in (more or less) good standing. Indeed, Chávez has done many things to improve both the living standards of the poor and their satisfaction with democracy. It would be inconsistent for Canada to treat Venezuela any differently from, say, Colombia, which has been lauded by policymakers in Ottawa as a model of democratic progress even though its human rights record is one of the worst in the region. Still, with oil prices falling and financial turmoil spreading, Chávez may see his popularity erode. The next test will be legislative elections in 2010. Chávez has an opportunity to use the time until then to consolidate a less personality-driven political regime.

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