

JANUARY 2019

Venezuela's Presidential Crisis and the Transition to Democracy

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The Origin of the Presidential Crisis

Venezuela's [presidential crisis](#) is caused by the absence of an elected president that can assume the presidency since January 10, 2019, the day that, according to the Venezuelan Constitution, a new presidential term began.

Articles 230 and 231 of Venezuela's constitution establish that the presidential term begins on January 10 of each term (the inauguration day). That day, according to the constitution, the elected president must assume the presidency through an oath presented at the National Assembly (the Venezuelan Congress).

Nicolás Maduro is claiming that he is the elected president because the Venezuelan electoral authority (the National Electoral Council) proclaimed him as Venezuela's president after the May 20 election.

However, that election was convened by the illegitimate national constituent assembly that does not have the authority to organize elections according to the constitution. In addition, that process was organized in violation of several political rights, basically, due to the unconstitutional ban declared on the main political parties and leaders. Also, the May 20 election violated the principle of transparency during all the electoral cycle. Finally, Maduro's regime used the complex humanitarian emergency as a political tool to exercise coercion over the voters.

This is [why](#) the National Assembly declared such elections as non-existent. Also, more than 50 countries decided not to recognize that election.

As a result, Nicolás Maduro cannot be recognized as the legitimately elected president in Venezuela, as was declared by the [Lima Group](#) in a statement dated January 4, 2019. Because of this, he is [usurping](#) the presidency of Venezuela, as a non-elected president in charge of the office.

Juan Guaidó as Interim President

Maduro cannot be recognized as an elected president. Hence, it is necessary to determine who temporary can assume the presidency as interim or acting president.

The Venezuelan Constitution does not regulate what to do when a non-elected president is exercising the presidency after the inauguration day. The most similar situation is regulated in article 233 of the constitution. Pursuant to that article, if the elected president cannot assume the presidency on inauguration day, the president of the National Assembly must assume the presidency as interim president until a new election is called.

However, there are two obstacles to the implementation of that article. First, because the rule of law was dismantled, it is not possible to enforce the decisions of the interim president. Second, the presidency is currently being exercised by a usurper, Nicolás Maduro.

To solve those problems, the National Assembly [approved](#) a statement on January 15. According to that statement, Juan Guaidó, as the National Assembly's president, is entitled to assume the presidency as interim president. In addition, due to the dismantled rule of law and the usurpation of the presidency, the National Assembly must adopt all the decisions aimed to restore the rule of law, assure the enforcement of the interim president's decisions, and restore the electoral condition in order to organize free and transparent elections.

For that purpose, the statement also announced the intention to [grant](#) amnesty and other benefits to the public officials who decide to collaborate in the Venezuelan transition, including drafting legislation to create a transitional justice system. This could create the proper incentives to breakdown the duty of obedience, particularly from the military.

This statement is based on articles 333 and 350 of the Venezuelan Constitution that regulated the transitional process that must be followed if the rule of law has been dismantled by a *de facto* government, as is happening with Nicolás Maduro.

As a result, currently Juan Guaidó, as the National Assembly's president, has the authority to assume the presidency. In order to ensure the enforcement of that decision, the National Assembly will adopt the legislation required to restore the legitimate exercise of the presidency, as the National Assembly declared in several statements approved on January 22 that [appointed](#) a new representative of Venezuela before the Organization of American States.

Precisely, on January 23, Juan Guaidó [ratified](#) his intention to comply with Article 233 of the constitution, when he swore in as interim president during a civil demonstration. Some media outlets have [claimed](#) that Guaidó proclaimed himself as president; however, that's an inaccurate statement. Article 233 of the constitution grants Guaidó the title of interim president since January 10. Without any formality, Guaidó is the interim president since that day, even though he cannot assume the post effectively because Maduro is usurping the presidency.

Because of this, Juan Guaidó isn't the self-declared president of Venezuela. He is the interim president under the authority of Article 233 of the constitution, as the National Assembly's president. It is the constitution—not himself—that declared Guaidó as interim president of Venezuela.

The International Representation of Venezuela

Another problem derived from the current crisis is the international representation of Venezuela. According to the constitution and the general principles of international law, the Venezuelan executive branch has the

authority to represent Venezuela before the international community. However, because Nicolás Maduro doesn't have the legitimacy to conduct the executive branch, this authority should be transferred to the legitimate institutions in Venezuela. Therefore, the National Assembly must enact the legislation that regulates the exercise of that representation, while Juan Guaidó, as the National Assembly's president and the designated interim president, will be in charge of the practical implementation of that legislation.

This is why some [governments](#) have already recognized the National Assembly and Guaidó as the sole democratic authorities in Venezuela. A similar declaration was made by the general secretary of the [OAS](#). Also, the judges appointed by the National Assembly have been [recognized](#), with the purpose to facilitate the restructuring of the Supreme Tribunal and the judiciary in Venezuela.

After January 23, several states recognized Juan Guaidó as interim president, including the [United States](#). This paves the way to claim [international representation](#) of Venezuela, in order to protect the Venezuelan assets abroad, as declared by the National Assembly in another [statement](#) dated January 15, 2019. In that vein, Juan Guaidó, as the National Assembly's president and interim president, can adopt decisions necessary to protect those assets against any legal claim presented against Venezuela, as a result of arbitration awards or the default of public debt. Furthermore, Guaidó's government has also the authority to represent Venezuela in order to take control over Venezuela's assets, such as Citgo.

What to Expect Next

After several months of precarious equilibrium, the political environment is changing in Venezuela. From a constitutional law perspective, Venezuela is in a transitional process based on Article 333 of Venezuela's Constitution that should be aimed to assure the effective implementation of Article 233, allowing Juan Guaidó, as the designated interim president, to seize the presidency.

Once this objective is achieved, the transitional government, together with the National Assembly, will be able to adopt the public policies oriented to recover the capability of the Venezuelan state (currently undermined by kleptocracy and organized crime), address the complex humanitarian emergency, the massive crisis of refugee and migrants, and promote the institutional reforms necessary to call free and transparent elections.

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This report is made possible by general support to CSIS. No direct sponsorship contributed to this report.

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