



30 June 2017

## Maduro's "Hydrogen Bomb"

In the simplest Dantesque terms, Venezuela is entering a new circle of hell. For anyone concerned about Venezuela, what is now going on in Caracas represents the most important paradigm shift in the country since Chavez and sets in motion a coming inflection point and clash that is destined to become much more violent. While we have made allusions to Dante in these reports over the last year, Venezuela is now moving toward a new inflection point and into a new level of hell more closely associated with the late 18<sup>th</sup> century of Robespierre's France rather than the 14<sup>th</sup> century of Dante's Italy.

### Background

Last year in early March, we wrote a Report called ["Venezuela's National Assembly Uses the Nuclear Option"](#) in which we pointed out that under Article 187 of the Constitution, Venezuela's National Assembly had the responsibility to approve any contracts and treaties with foreign powers or foreign companies as well as any new indebtedness of the Republic and that any contracts or debts that were not approved by the National Assembly would likely be repudiated by a future Opposition government. Barron's ([Venezuela's National Assembly Uses the Nuclear Option](#)) and Bloomberg (English [here](#) & Espanol [here](#)) subsequently wrote articles about the concept based on our Report.

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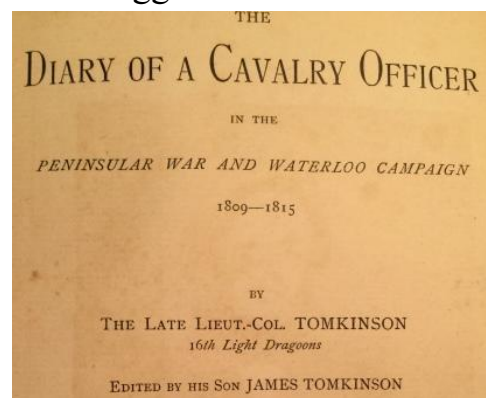
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As a result of that financial stranglehold, the Maduro regime has been unable to raise significant foreign capital – aside from the loan from Rosneft against 49.9% of Citgo ([a story which we first help break on December 21](#)) and the “[morally repugnant](#)” cash injection from Goldman Sachs last month. The Maduro regime’s refusal to co-exist and/or negotiate with an Opposition-dominated legislature (a task of functioning democracies all over the world) has led Maduro to unleash his own weapon of mass destruction – the hydrogen bomb of calling a National Constituent Assembly (ANC).

### Venezuela’s Constituent National Assembly

When I think of Constituent Assemblies, my default is Maximilien Robespierre and France’s Reign of Terror. Decades ago, my father dragged me around France and Europe -- lugging tons of biographies, French revolutionary tomes and a family ancestor’s (William Tomkinson’s) “Diary of a Cavalry Officer” -- tracing the path of the Peninsular Wars as well as the history of Napoleon Bonaparte. During France’s Reign of Terror between 1793 and 1794, when France’s Constituent National Assemblies were making a new constitution almost every year, at least 300,000 French citizens were arrested, 17,000 were officially executed, and another 10,000 died in prison or without trial.



And as if to further associate that train of thought with Venezuela, former Venezuela Vice President Elias Jaua, who Maduro named head of the Presidential Commission for the National Constituent Assembly, uses only one historical reference in his 12 page [power point presentation](#) justifying the Constituent Assembly – a reference not to the Constitutional Congress of Venezuela in 1811 (which produced the modern world’s fifth Constitution), nor to founding father

Simon Bolivar's Congress of Angostura in 1819 nor Bolivar's Congress of Cucuta in 1821 nor the Congress of Valencia in 1830 (each of which drafted Venezuela constitutions) and especially not to the world's first Constitution and Constitutional Congress of 1787 in the U.S.A, but instead to Robespierre's France of 1788:

**\*1. ¿Qué es el Poder Constituyente?\***

**El primer pensador que le da cuerpo teórico a la noción de poder constituyente, es el francés Emmanuel Sieyes, quien en 1788, en el marco de la pre revolución francesa postula que la Nación, entendida como voluntad común, es depositaria de un poder originario a partir del cual se constituyen los poderes del Estado, por eso lo llama Poder Constituyente.**

(By the way, for related purposes to our discussion, it was the Congress of Cucuta in 1821 that inscribed that Congress alone could contract loans on behalf of the Republic).

## **The Fraud**

Citing the fraudulent nature of the call for the Constituent Assembly as well as the matter in which constituents are being elected, the **Opposition is not participating** in the Constituent Assembly.

### **1. The Electoral Draw is Skewed to Guarantee Maduro a Majority**

The first fraud of the current Constituent Assembly is the way that the Maduro regime has organized the voting for seats. With only 20% support in the country, the Maduro regime was forced to come up with a way to turn that minority into a majority. To accomplish that, instead of having a universal vote, the government decided there would be two types of representation. One would be for territorial representatives. The second would be by "sector".



Where Hugo Chavez's Constituent Assembly of 1999 had 131 members, Maduro's Constituent Assembly will have 545 members, with 364 seats drawn by region, 168 seats by sector, and 8 indigenous representatives. The "sectors" are workers (79), retirees (28) students (24), communes & communal councils (24), farmers (8), fishermen (8), the disabled (5), and entrepreneurs (5).

The government's trick in the draw is that the territorial representation over-represents sparsely populated provincial states and municipalities where the population is less educated, less informed and more dependent on the government, because it draws seats by municipalities, not by population. Each of the 335 municipalities of Venezuela will get one representative. The fix is that, for example, the municipality of Rio Negro in Amazonas with a registration of 1,870 will get one seat -- the same as the opposition dominated, 104,000 registered electorate of the municipality of Palavecino in Lara state. And Amazonas with 105,000 registered voters will have 9 seats, the same as Lara with 10 times that amount of registered voters.

Likewise, rural Tachira state with 826,000 registered voters will have 31 constituents, while prosperous and educated Zulia, with 3 times that amount of voters, will have just 23.

Or Maroa municipality in Amazonas with 1,939 voters will have the same single representation as the Maracaibo municipality in Zulia state with 941,974 registered voters.

Second, the “sector” representation skews heavily toward government supporters, by giving 79 seats to the unions but just 5 to businessmen, for example, who are apparently ranked equally with the disabled by a communist regime. The same regime where 24 seats are allocated to communes. Meanwhile, none of my staff at the newspaper or bank were given registration in any sector, for example, including the newspaper’s union representative. Not one. In any sector.

Since the Opposition is not participating, this “re-profiling” of the electoral registry -- which is ridiculous and a farce, because the CNE electoral body does not know what 19,392,760 registered voters do for a living and many occupations, guilds and voters are not represented at all anyway -- does not matter so much at this point for the outcome, but the process portends badly for future elections, as it is neither democratic nor representative, but it is a model that allows the government to punch electorally far above its weight and the Maduro regime is likely to revert to a variation of it again.

## **2. Constituent Assembly without a Referendum?**

While the skewing of the electoral base is heavily biased for the government, the more important fraud is the unconstitutional nature of having a Constituent Assembly without permission from the population.



**Chapter III**  
National Constituent Assembly

**Article 347:** The original constituent power rests with the people of Venezuela. This power may be exercised by calling a National Constituent Assembly for the purpose of transforming the State, creating a new juridical order and drawing up a new Constitution.

**Article 348:** The initiative for calling a National Constituent Assembly may emanate from the President\* of the Republic sitting with the Cabinet of Ministers; from the National Assembly, by a two thirds vote of its members; from the Municipal Councils in open session, by a two-thirds vote of their members; and from 15% of the voters registered with the Civil and Electoral Registry.

**Article 349:** The President\* of the Republic shall not have the power to object to the new Constitution. The existing constituted authorities shall not be permitted to obstruct the Constituent Assembly in any way. For purposes of the promulgation of the new

This more egregious fraud is based on forcing a constituent assembly without a referendum. While Article 348 allows the President “sitting with the Cabinet of Ministers” to launch the “initiative for calling” a constituent assembly, Article 347 should be interpreted by the Supreme Court as requiring the people to approve the call, since the “original constituent power rests with the people of Venezuela. This power may be exercised by calling a National Constituent Assembly....” In other words, the President may launch the “initiative for calling” the Constituent Assembly, but the people must be the ones who actually call it. The problem is that Article 347 does not explicitly mandate a referendum.

But, when Chavez called for a Constituent Assembly in 1999, he had it empowered by a referendum on April 25, 1999 that specifically put the question to the people, specifically using the language that would form Article 347: “Convoca usted una Asamblea Nacional Constituyente con el proposito de transformar el Estado y crear un nuevo ordenamiento juridico que permita el funcionamiento efectivo de una Democracia Social y Participativa?”

**RESULTADOS ELECTORALES REFERENDO CONSULTIVO NACIONAL 25/04/1999**

PREGUNTA 1: ¿Convoca usted una Asamblea Nacional Constituyente con el propósito de transformar el Estado y crear un nuevo ordenamiento jurídico que permita el funcionamiento efectivo de una Democracia Social y Participativa?

ENTIDAD FEDERAL	VOTOS POR EL SI	%	VOTOS POR EL NO	%	VOTOS NULOS	%	PARTICIPACION	%	ABSTENCION	%
DISTRITO FEDERAL	474.116	88,39%	39.948	7,45%	22.285	4,15%	536.416	45,08%	653.566	54,92%
AMAZONAS	10.216	79,81%	1.447	11,30%	1.127	8,80%	12.801	32,57%	26.497	67,43%
ANZOATEGUI	161.153	89,12%	10.339	5,72%	8.392	4,64%	180.817	33,62%	357.079	66,38%
APURE	33.676	82,85%	4.690	11,33%	2.365	5,84%	40.526	24,96%	121.818	75,04%
ARAGUA	279.087	91,82%	10.255	3,37%	14.700	4,84%	303.947	44,04%	386.157	55,96%
BARINAS	85.106	89,26%	6.367	6,68%	4.022	4,22%	95.343	36,38%	166.712	63,62%
BOLIVAR	157.000	89,70%	8.553	4,89%	8.227	4,70%	175.030	35,03%	324.623	64,97%
CARABOBO	306.466	88,68%	22.958	6,64%	16.413	4,75%	345.590	41,10%	495.264	58,90%
COJEDES	39.291	88,23%	2.584	5,80%	2.785	6,25%	44.530	34,72%	83.719	65,28%
DELTA AMACURO	16.010	86,80%	1.364	7,39%	1.013	5,49%	18.445	31,20%	40.670	68,80%
FALCON	118.717	86,65%	9.131	6,66%	8.628	6,30%	137.005	34,67%	258.180	65,33%
GUARICO	84.096	88,42%	5.688	5,98%	4.918	5,17%	95.114	32,34%	199.022	67,66%
LARA	240.885	89,19%	14.957	5,54%	13.986	5,18%	270.077	38,13%	438.284	61,87%
MERIDA	117.882	85,14%	13.223	9,55%	6.715	4,85%	138.452	39,98%	207.844	60,02%
MIRANDA	411.364	82,51%	66.166	13,27%	20.494	4,11%	498.539	42,86%	664.759	57,14%
MONAGAS	97.295	90,95%	5.129	4,79%	3.919	3,66%	106.981	33,65%	210.965	66,35%
NUEVA ESPARTA	50.246	88,91%	3.728	6,60%	2.537	4,49%	56.511	29,27%	136.586	70,73%
PORTUGUESA	117.113	88,02%	7.072	5,32%	9.223	6,93%	133.050	39,40%	204.602	60,60%
SUCRE	97.492	90,36%	5.805	5,38%	4.188	3,88%	107.890	27,73%	281.126	72,27%
TACHIRA	168.197	83,97%	21.514	10,74%	10.332	5,16%	200.315	43,18%	263.637	56,82%
TRUJILLO	94.019	89,00%	5.793	5,48%	5.414	5,13%	105.635	33,83%	206.593	66,17%
VARGAS	62.307	88,27%	4.568	6,47%	3.679	5,21%	70.583	39,27%	109.161	60,73%
YARACUY	71.165	87,21%	4.536	5,56%	5.452	6,68%	81.603	34,68%	153.719	65,32%
ZULIA	337.867	88,38%	24.518	6,41%	17.834	4,66%	382.310	30,77%	860.164	69,23%
EXTERIOR	2.715	72,09%	940	24,96%	68	1,81%	3.766	33,24%	7.565	66,76%
<b>TOTA VENEZUELA</b>	<b>3.630.666</b>	<b>87,75%</b>	<b>300.233</b>	<b>7,26%</b>	<b>198.648</b>	<b>4,80%</b>	<b>4.137.509</b>	<b>37,65%</b>	<b>6.850.747</b>	<b>62,35%</b>

Fuente: Dirección de Estadísticas Electorales

Likewise, when the Chavez Constituent Assembly had finished drafting a new constitution, that too, was put to the population for a vote on December 15, 1999.

**RESULTADOS ELECTORALES  
REFERENDO 15/12/1999**

ENTIDAD FEDERAL	VOTOS POR EL SI	%	VOTOS POR EL NO	%	VOTOS NULOS	%	PARTICIPACION	%	ABSTENCION	%
DISTRITO FEDERAL	405.627	72,16%	156.532	27,84%	22.641	3,87%	584.800	51,01%	561.611	48,99%
AMAZONAS	11.914	68,15%	5.568	31,85%	1.834	9,49%	19.316	48,34%	20.642	51,66%
ANZOATEGUI	161.920	77,31%	47.515	22,69%	10.375	4,72%	219.810	41,31%	312.311	58,69%
APURE	40.275	63,74%	22.913	36,26%	4.719	6,95%	67.907	41,24%	96.765	58,76%
ARAGUA	269.689	82,60%	56.828	17,40%	10.574	3,14%	337.091	49,10%	349.428	50,90%
BARINAS	82.820	76,31%	25.710	23,69%	3.912	3,48%	112.442	43,00%	149.045	57,00%
BOLIVAR	156.317	79,46%	40.415	20,54%	10.356	5,00%	207.088	41,47%	292.311	58,53%
CARABOBO	282.202	70,43%	118.461	29,57%	18.606	4,44%	419.269	50,12%	417.291	49,88%
COJEDES	36.689	66,93%	18.126	33,07%	4.808	8,06%	59.623	47,43%	66.078	52,57%
DELTA AMACURO	17.575	75,67%	5.652	24,33%	1.232	5,04%	24.459	40,86%	35.405	59,14%
FALCON	93.808	70,55%	39.163	29,45%	7.832	5,56%	140.803	35,71%	253.463	64,29%
GUARICO	81.031	74,83%	27.257	25,17%	6.251	5,46%	114.539	39,11%	178.333	60,89%
LARA	214.868	74,35%	74.108	25,65%	14.849	4,89%	303.825	43,43%	395.732	56,57%
MERIDA	108.242	69,47%	47.563	30,53%	7.608	4,66%	163.413	47,59%	179.965	52,41%
MIRANDA	329.779	60,46%	215.708	39,54%	22.445	3,95%	567.932	49,80%	572.419	50,20%
MONAGAS	96.742	72,36%	36.945	27,64%	5.920	4,24%	139.607	43,67%	180.078	56,33%
NUEVA ESPARTA	46.295	69,55%	20.272	30,45%	2.809	4,05%	69.376	36,21%	122.192	63,79%
PORTUGUESA	118.342	81,37%	27.098	18,63%	8.798	5,70%	154.238	45,91%	181.685	54,09%
SUCRE	90.653	73,93%	31.967	26,07%	5.971	4,64%	128.591	33,70%	253.031	66,30%
TACHIRA	156.169	72,07%	60.527	27,93%	9.683	4,28%	226.379	49,18%	233.910	50,82%
TRUJILLO	94.259	76,50%	28.958	23,50%	7.103	5,45%	130.320	42,21%	178.412	57,79%
VARGAS	38.927	76,08%	12.242	23,92%	2.468	4,60%	53.637	33,60%	106.008	66,40%
YARACUY	64.578	70,31%	27.275	29,69%	6.079	6,21%	97.932	41,91%	135.737	58,09%
ZULIA	301.672	66,82%	149.831	33,18%	22.547	4,76%	474.050	38,31%	763.205	61,69%
EXTERIOR	1.082	42,38%	1.471	57,62%	56	2,15%	2.609	28,81%	6.447	71,19%
<b>TOTA VENEZUELA</b>	<b>3.301.475</b>	<b>71,78%</b>	<b>1.298.105</b>	<b>28,22%</b>	<b>219.476</b>	<b>4,55%</b>	<b>4.819.056</b>	<b>44,37%</b>	<b>6.041.743</b>	<b>55,63%</b>

Fuente: Dirección de Estadísticas Electorales

Given the regime's high levels of rejection from voters, it is unlikely that Maduro will put any new Constitution to a vote. In fact, Maduro initially said that he would NOT put the new Constitution to a vote but then subsequently backtracked under criticism, saying that he would put the new draft Constitution to a vote. But he then revealed the ultimate tell, saying that whether it was put to a vote is really up to the Constituent Assembly. Guess what a Maduro hand-picked Constituent Assembly with no public support is likely to decide?

### **Raison D'etat**

The government is using this wafer-thin veneer of constitutional legality for two reasons (and to call the legality of these machinations wafer-thin is really an insult to wafer-makers all over the world):

One is to bring along the military rank-and-file. While the upper echelons of the military are "all in" as they are making money with various schemes, from drug trafficking to smuggling (buying gas at a penny a gallon and selling it in Colombia and Brazil for 200 times that; selling price subsidized products at much higher real prices to neighboring countries); getting access to dollars at the preferential rate of 10 bolivars per dollar then reselling them in the free-market at 8000 bolivars to the dollar; overseeing and involvement in gold mining and gold smuggling; overseeing and involvement in the oil industry and its assorted cashflow opportunities via Camimpeg), the lower ranks are sworn to protect the constitution. This legal veneer is provided partly for carrying them along.

The second reason for the legal lipservice is an attempt to give legal surety to potential investors (namely Russia, China & others interested in investing in oil, gold and mineral mining ventures) that were put off by the lack of National Assembly approval or a legally solid workaround. Recall that the Venezuelan Supreme Court sought to achieve in its March ruling dissolving the National Assembly. While nationwide outcry forced the Supreme Court to walk back the part of the judgment ridding the government of the pesky National Assembly,



importantly, the resulting Opinion that still stands kept in the part where the Supreme Court takes over the right to approve any new oil, gold or mineral investments since the National Assembly is in “contempt.” But Russia and other investors felt that ground was too shaky to invest billions of dollars, hence the regime’s National Constituent Assembly is designed to replace the obstinate National Assembly and pave that legal path for investment more solidly.

### **Trojan Horses, Misdirection & the Kobayashi Maru**

While the Regime’s stated goal of calling the Constituent Assembly is to [draft a new constitution](#), there is a more immediate benefit for the Maduro Regime. Under Article 349, the Constituent Assembly instantly becomes the most powerful body in the land and “the existing constituted authorities shall not be permitted to obstruct the Constituent Assembly in any way.” Just as in Robespierre’s time, the Constituent Assembly is “supra-constitutional” and will have no checks and balances – including the existing constitution.

In fact, during the 1999 Chavez Constituent Assembly process, the old Supreme Court ruled on August 23, 1999, by an 8 to 6 vote, that the Constituent Assembly was not acting unconstitutionally in firing judges and assuming the powers of the judiciary even before the new Chavez Constitution had been approved.

After interfering in the judiciary, the Chavez Constituent Assembly then ruled to dissolve both chambers of the National Congress and suspend municipal elections. The National Congress, which had been in recess to allow the Constituent Assembly to function, then convened an emergency session to consider the resignation of Chief Justice Cecilia Sosa, who had stepped down in protest. The National Guard prevented the Congressmen from entering the Assembly, which was then using the parliament building. Violent protests broke out in the streets. Sound familiar to what is going on today?

## **What Lies Ahead? (Part 1)**

1. **The Constituent National Assembly has a high probability of taking place, with the caveat being the further breakdown of the state from war or violence** (in prediction 6 below). The Maduro Regime is committed to pursuing this breach of the constitutional order and leading members of the Maduro Regime, including the President's wife Deputy Cilia Flores, the President's only son Nicolas Maduro Guerra, Foreign Minister Delcy Rodriguez, PDVSA head Eulogio Del Pino, PSUV Vice President Deputy Diosdado Cabello, Chavez brother Adan Chavez, Prisons Minister Iris Varela, and others have resigned their government positions in order to be eligible and run for the ANC.
2. **The Constituent National Assembly will meet and seat themselves where the current National Assembly sits in the Federal Legislative Palace, almost guaranteeing clashes.**
3. **The ANC will likely vote to dissolve the current National Assembly, a vote that will be upheld by the Chavista-packed Supreme Court, which rules for Maduro 100% of the time. This also means that National Assembly Deputies will lose their immunity from arrest, and more Opposition leaders will be imprisoned.**
4. **The Maduro Regime will continue militarizing. More military officers have joined the Maduro cabinet as Cabinet members have resigned to sit for the Constituent Assembly. As a result, 13 members of the 32 person Maduro Cabinet are now military officials – over 40% of the Cabinet.** Likewise, the latest military promotions and leadership selections have brought more Fidelistas into power.

5. **Prosecutor General Luisa Ortega, a long-time Chavista who has defected recently to become a thorn in the side of Madurismo by repeatedly calling out and challenging the Maduro regime over its breaches of the constitutional order, unconstitutionality, fraud and abuses will be replaced by the ANC.**
6. **Importantly, as the hopelessness of this future becomes more obvious to the Opposition and a majority of Venezuelans, violence, civil strife, assassinations, and probabilities of coup attempts will exponentially increase as we approach the inflection point of the July 30 ANC elections.**
7. **The governor elections already delayed from last year and now recently scheduled to take place on December 10 will likely be delayed by the supra-constitutional ANC. When and if elections do take place, the Maduro Regime will either use a combination of the Territorial & Sectorial model that they are using for this ANC election and/or move to a Cuban style of pre-chosen candidates. And to put a point on the movement to the Cuban military governance and electoral model, in addition to the 40% military cabinet, 11 of the 20 current Chavista governors are military. Following the Cuban model, of the remaining 3 opposition state governors, the Maduro Regime blocked popular presidential candidate and Miranda state Governor Henrique Capriles Radonski in April from running for any public office for 15 years on account of dubious government administrative (not criminal) assertions of “administrative irregularities.”**

## **CONCLUSION**

Make no mistake about it: Venezuela is moving toward a Cuban Military Governance Model. This Constituent Assembly is the first of the three major steps toward that outcome. And once this Assembly is rammed through and starts ruling supra-constitutionally and destroying what is left of Venezuela’s democratic institutions (namely the National Assembly), **it becomes much more difficult for Venezuela to peacefully return to a framework of constitutional democracy.**

**The enforcement of the resulting new Constitution will make that return even more impossible without extreme violence or civil war.**

In short, Venezuela is descending into a Dantesque new level of hell. While looking at the disaster that is Venezuela today, it seems difficult to believe that the Concord once served Caracas daily from Paris. Those flights from the technological supersonic future are now being replaced with a repeat of the 200 year old blood-stained errors of French history.

Maximilien Robespierre to this day has only one statue commemorating him in the world, not in France -- where Robespierre has a down-market subway station named after him in the not so tony eastern commune of Montreuil and a small plaque in his hometown of Marseille -- but in Russia, put up in the days of the bloody October Revolution and the Red Terror. Appropriately, describing the absurd rule of France's Napoleon III, it was Karl Marx who wrote that "History repeats itself, first as tragedy, second as farce." The third time, he might have added, as Venezuela.

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