

EU Exploratory Mission to Venezuela

Regional and Municipal Elections

21 November 2021

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Bolivarian Republic of Venezuela

Regional and Municipal Elections 2021

1. Executive Summary

1.1. Mission Information

Following an invitation by the National Electoral Council (CNE) for the deployment of a European Union Electoral Mission to the Bolivarian Republic of Venezuela for the 2021 regional and municipal elections, an Exploratory Mission (EU ExM)¹ was deployed to the country from 8 July to 23 July 2021. **The mission's mandate was to assess whether the deployment of an European Union Election Observation Mission (EU EOM) would be useful, advisable and feasible** in accordance with the criteria set out in the communication on EU Election Assistance and Observation [COM(2000)191] and the Declaration of Principles for International Election Observation.

During its stay in Venezuela, the ExM met with a wide range of stakeholders, including state officials, election administration, political parties, civil society groups, international organisations, the EU Delegation, and other members of the international diplomatic community. Beyond Caracas, the Mission also visited some areas where observers would be deployed, including the states of Aragua, Vargas, and Miranda.

1.2. Background

- **Venezuela will hold its first mega-elections to elect a total of 3,082 regional and municipal representatives on 21 November.** These elections are viewed as a possible incentive for the opposition to return to the electoral track in the wake of their boycott of the 2020 National Assembly polls which were also marked by a historically low voter participation. A resumption of discussions in early 2021 between the government and opposition aimed to redress this situation and resulted in an agreement to call mega-elections. For the opposition, this may be an opportunity to gain some political space and legitimacy and for new political leaders to emerge. **For the government, elections may represent a possible way to gain international recognition following non-recognition of the 2018 presidential and 2020 National Assembly elections.** Some view these elections as a possible first building block in a long process towards re-institutionalisation in Venezuela. **These would be the first elections observed by the EU since 2006.**
- The opposition is not a united block, but is rather characterised by factions of differing opinions about the best approach to restoring democracy to Venezuela. There are leaders like Juan Guaidó who want to achieve a global negotiation on governance and respect for the rule of law before speaking about elections. Others like *Vente Venezuela* are more hard-line and believe that the current international strategy of sanctions should be strengthened along with other measures including an arms embargo. Another part of the opposition, including most of the G4 collective, who made up the bulk of opposition representation in

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the last legislature, is more pragmatic and willing to engage in elections if there are improved conditions, in particular in relation to political participation. Then there are the regional and local level opposition parties who are fully determined to participate. Those that are willing to participate in elections are aware that the current framework is not conducive to genuine and inclusive elections, but are willing to look beyond the political repression and disrespect for the rule of law and fundamental freedoms, betting on achieving changes in the medium term through participation.

- The somewhat promising atmosphere during the month of May in Venezuelan politics, such as the government agreeing to participate in political dialogue, recognising state crimes were committed by *chavista* officials, the appointment of a new CNE, the promise to remove “protectors” (an unconstitutional figure imposed by the government to function in parallel to elected state governors) endorsing an invitation to the EU to deploy an electoral mission, was soon tarnished by renewed attacks against civil society and political parties and arbitrary detentions. The recent upsurge in arbitrary arrests and harassment of prominent political and civil society figures and their families and the consequent hardening of political discourse during the month of July, is challenging the willingness of some opposition parties to participate. Also, there are some concerns in relation to the possible adoption of a Law of Communal Cities, which reignites old debates over communal powers and, according to some actors, would potentially sabotage the outcome of the elections.
- The legal framework fulfils many of the basic technical requirements for the conduct of democratic elections. However, important components are missing, with legal restrictions adversely affecting the level playing field between contestants and the transparency of the process. These include an inadequate framework for domestic (and international) observation, broadly-drafted legal provisions on hate speech and social responsibility in the media (hampering freedom of the press, and imposed through heavy prison sentences), limits imposed on the media for airing political campaign messages, and an absence of guarantees for the free internal functioning and independence of political parties. However, the main deficiency of the legal framework is the prevalent disrespect for the rule of law. Administrative procedures often prevail over constitutional political guarantees consequently affecting the rights and fundamental freedoms of citizens. The electoral dispute process suffers from a lack of public trust in the responsible institutions. The legitimacy of the Supreme Court of Justice is deeply mistrusted as it has been involved in controversies regarding the respect for the rule of law and partiality of its rulings. The Court is seen as an instrument to “legitimise” the actions of the ruling party and state institutions, especially when these do not align with constitutional principles. Interlocutors reported that the government’s guise of opening political space is in fact an attempt to garner the sympathy of the international community, and to perhaps avoid the International Criminal Court’s further investigation of Venezuelan authorities for crimes against humanity.
- Respect for freedom of association remains highly problematic. Venezuela has a long tradition of state institutions – the Supreme Court and the Comptroller General – intervening in internal affairs of political parties. This has resulted in the commandeering of prominent opposition parties by replacing their executive committees and suspending the right to stand of many potential opposition candidates through administrative sanctions. As such, some prominent opposition political parties are therefore banned from competing using their party names and symbols. Through a political negotiation process, *Mesa de la Unidad Democrática* (MUD) was authorised to compete in the upcoming elections, providing a

collective electoral vehicle for the opposition. Some in the opposition viewed this authorisation as the government dictating the rules on how the opposition should compete. Others were concerned that if they participated in MUD they would be obliged to run against their parties of origin which had been appropriated from them.

- Through political negotiation, there came about a new appointment of National Electoral Council (CNE) rectors in May 2021, with two of the five coming from the opposition. Many ExM interlocutors considered this the most inclusive CNE of the last 15 years, and viewed this as a signal from the government of its willingness to increase public confidence in the electoral process. In terms of decision-making, this CNE has taken some positive actions in its short tenure, including issuing an invitation for an EU election mission, the adoption of a timely election calendar, an extended voter registration drive, and a comprehensive audit of the electoral system. At the same time, many ExM interlocutors pointed to the commonly held belief that over several electoral cycles, the CNE has lacked autonomy in decision-making inasmuch as other state powers have intervened in electoral processes. It remains to be seen if this cautious confidence in the newly-composed CNE will be extended to lower levels of the election administration once appointed.
- The biometric voter registration took place from 1 June to 15 July. The CNE indicated this constituted an improved opportunity for citizens to register as compared to past processes, with a longer registration period and an increase in registration centres. Although many interlocutors reported that registration centres were disproportionately situated in government strongholds.
- Interlocutors almost universally expressed their confidence in the electronic voting system. The user-friendly touch-screen voting machines produce a paper receipt reflecting the voter's choice which is placed by the elector in a ballot box. At the close of polls, more than half of polling stations are randomly selected and an audit is undertaken *in situ* to assess whether the count from the paper receipts matches the tabulation produced by the voting machine. Although stakeholders raised few doubts about the technical capacity of the CNE to organise elections, there are **real concerns that the upcoming polls will suffer from the same irregularities as in previous processes, including the controversial role of polling centre coordinators and security personnel, last-minute changes to polling locations, blocked access for opposition party agents, intimidation of voters, and abuse of assisted voting.**
- **The human rights situation in Venezuela remains critical**, with a shrinking democratic space, a persisting **high number of extrajudicial killings, torture, enforced disappearances and arbitrary detentions**. During the course of the ExM, several high level political and civil society leaders and even some of their family members were arrested. Detainees have been held up to several months without any charges filed. The United Nations High Commissioner on Human Rights has noted that when detainees complain of human rights violations, judges and prosecutors often ignore due process and return victims to their alleged violators without any precautionary measures.
- Freedom of expression is not guaranteed inasmuch as any criticism of the government is silenced. Media professionals considered they did not enjoy a safe or free environment to report, and that self-censorship constituted a serious impediment. Most independent media are digital and shared through social media platforms. The government holds a monopoly in access to media, and occasionally blocks specific websites and access to the internet. Opposition parties are given no space in state media and access to independent media is limited. There is no free-airtime during the campaign provided to contestants. Arbitrary

detentions of journalists are common. The state exerts heavy censorship in all traditional and social media through legislation and monitoring by the regulatory body (CONATEL), which further hampers the ability of opposition groups to reach out to voters.

- **The General Regulation on the Electoral Law and the Plan for National and International Monitoring contain limitations to observation activities, including the requirement to follow a deployment plan provided by the CNE, sign CNE audits, make no public declarations until after the CNE has announced results, and not publish any report on the process but rather submit a confidential report to the CNE after the proclamation of results. Attempts to modify the regulation to allow for effective participation of international observers in the upcoming polls failed as consensus could not be reached amongst CNE rectors.** However, the Venezuelan authorities are eager to have an EU mission and it seems there may be a willingness to address these impediments to observation through an Administrative Arrangement.

1.3. ExM Conclusions on usefulness, feasibility and advisability of an EU EOM

The preliminary conclusions of the ExM, based on the three criteria of EU Election Observation methodology, are as follows:

- The deployment of an **EU EOM** is considered **feasible, while its usefulness is debateable and its advisability is yet to be confirmed, pending the candidate registration process.**

The usefulness of deploying an EU EOM is debateable:

- The usefulness of an EU EOM has to be balanced between the real contribution it may bring to the process and beyond and the impact on the credibility of a highly reputed instrument of EU External Policy. **The ExM is of the opinion that the deployment of an EU EOM is likely to have an adverse impact on the reputation and credibility of EU EOMs and indirectly legitimise Venezuela's electoral process.**
- The vast majority of national interlocutors welcomed the prospect of an EU EOM, agreeing that the presence of an EU EOM could contribute to the electoral process in that it would encourage participation and lend support to the voice of national election observers. An EU EOM may also build confidence among opposition parties and possibly open some limited spaces during the process. Most national interlocutors believe that the deployment of EU observers to the different regions of the country could serve as a means to record the persistent level of disrespect for fundamental freedoms, in particular during the campaign period. An eventual EU EOM would also serve to witness the traditional irregularities that occurred in past processes.
- Given the credibility and comprehensive nature of EU EOM observation methodology, several opposition interlocutors expressed their interest in the EU EOM final report and recommendations expecting they could provide an important technical contribution and would give indications as to which reforms are necessary to improve future elections. Interlocutors also mentioned that an EU EOM report could serve to guide future negotiations with the government.
- **Given the state's full monopoly of the media, in an environment of heavy state and self-censorship, it is expected that critical statements made by the EU EOM will not be broadcast by national media.** The EU EOM would have to rely on international media and social

networks. It is foreseeable that any statement would be manipulated to give a favourable interpretation of and lend legitimacy to the electoral process.

- **The current situation is characterised by serious violations of fundamental human rights, political persecution, and a lack of political space, and these are having a direct impact on the level of inclusiveness, competitiveness and participation in the electoral process.**
- There is a prospect that the government will institute obstacles to the freedom of movement of observers and the public dissemination of EU EOM findings. **It must be assumed that mission members will be subject to constant state surveillance.**
- **The decision to deploy an EU EOM, based on the provisions of the communication on EU Election Assistance and Observation [COM(2000)191] and the Declaration of Principles for International Election Observation,² may be internationally interpreted as the EU considering that the minimum conditions exist in Venezuela for the conduct of democratic elections.** This may be contrary to the political line of the EU (and like-minded countries).

The advisability of deploying an EU EOM is yet to be confirmed, pending in part the candidate registration process:

- **There is a censorship legally imposed on national observer groups affecting their ability to make declarations or issue statements pending CNE approval and limiting the number of observers they may deploy, compromising an important transparency measure of the electoral process.**
- **The minimum conditions for election observation are not met at this time,** although the Venezuelan authorities have hinted that this could change through political negotiation. **Moreover, the possibility for democratic elections are limited by the political context.** The communication on EU Election Assistance and Observation [COM(2000)191] requires the possibility of a democratic election as a precondition of observation. The limited political space and widespread social control – not only by police forces, but also organised pro-government militias (*colectivos*) – do not contribute to an environment conducive to inclusive elections.
- **There are significant deficiencies in terms of respect for the rule of law,** with administrative procedures often prevailing over constitutional political guarantees resulting in candidates being disqualified to stand for elections. Despite political negotiations resulting in the approval of one of the main opposition alliances (MUD) to compete, the respect for freedom of association of political parties remains problematic with decisions taken under questionable respect for due process, impacting on the right of individual political parties to participate. The period for the registration of candidates, scheduled from 9 to 29 August, will be key to further evaluate the level of participation by the opposition and therefore the inclusiveness of the process.
- There is a prevailing distrust in state institutions, notably in those administering elections,

² Point 11: “An organization should not send an international election observation mission to a country under conditions that make it likely that its presence will be interpreted as giving legitimacy to a clearly undemocratic electoral process.”

and many interlocutors perceive a blurred line between the interests of the ruling party and the state. On the other hand, there is some optimism over the new appointment of CNE commissioners and the fact that the CNE has taken some positive actions in its short tenure.

- The legal framework fulfils many of the basic technical requirements for the conduct of democratic elections. However, **there is a prevalent disrespect for the rule of law that affects the rights and fundamental freedoms of citizens**. The electoral dispute process suffers from a lack of public trust in the responsible institutions.
- **There is a general lack of a level playing field between contenders**. The ruling party clearly enjoys the advantages of the incumbency with **visible misuse of state resources in the pre-campaign**. The ruling party also holds a monopoly in access to media with no free airtime during the campaign provided to contestants. **The state exerts heavy censorship in all traditional and social media through legislation and monitoring from the regulatory body (CONATEL)**, which further hampers the ability of opposition groups to reach out to voters.

The deployment of an EU EOM is considered feasible:

Administrative Arrangement

- **There is no provision for international observation in the legal framework, and the framework for monitoring (*veeduría*) contains provisions that contradict EU EOM methodology, including restrictions on observer deployment, the right to make public declarations, and to publish reports without prior authorisation**. The national authorities have expressed some openness to overcome these limitations and allow a genuine observation through the signature of an Administrative Arrangement (AA), but initial consultations with the MFA and CNE on a draft AA were not conclusive. The commitment by the authorities to proceed this way is yet to be confirmed.

Logistical Aspects

- The relevant Venezuelan authorities, notably the Ministry of Foreign Affairs (MFA), the Ministry of Finance, and the CNE, all welcome an EU EOM and expressed their commitment to create the adequate conditions for the Mission, including the granting of visas if and when applicable, issuance of accreditations, the exemption of VAT on goods and services and the allowance for temporary importation of (sensitive) communications and other equipment. These aspects are included and elaborated in the Administrative Arrangement (AA) that the EU Delegation shared with the MFA and the CNE during the ExM.
- Mobile phone coverage is relatively good. Several GSM providers exist across the country and coverage is available almost in the whole territory (Digitel has a wider coverage than Movistar). **However, to ensure secured communication at all times, observer teams should be granted with Satellite phones and personal/vehicle tracking system (PTS/VTS).**
- While most of the mission equipment can be bought locally or imported, the **shortage of fuel remains the main logistical constraint** for a potential EU EOM. There are two types of fuelling stations. “*Subsidiada*” stations offer all around the country fuel at a low rate, but require a few kilometres and often days queuing to get the tank filled. The “*Precios Internacionales*” stations are located in the wealthy areas (main cities) and offer fuel at a much higher rate but are better provisioned. **Therefore, it is likely that the shortage of fuel would have an impact on observer’s mobility**. A contingency plan needs absolutely

to be elaborated to enable the mission vehicles to be refuelled, especially when going outside the state capitals and in more remote areas.

- Hyperinflation leads to the **use of USD for all operations**. Payment by credit card or debit card are available in the main cities, however it remains impossible to withdraw cash. Therefore, the mission would have to ensure sufficient cash is available for payment as well as allow accommodation of LTOs to be paid by bank transfer.
- The ExM concludes that even if the minimum conditions and infrastructure in Venezuela would allow an EU EOM, strong mitigating measures would need to be developed to limit the health and logistic risks/impact on the mission.

Health Aspects

- Hospitals and clinics are numerous throughout the country. If those located in the major cities have good standards, in the regions they lack equipment and basic medicines. Medical kits/trauma bag can be purchased locally. Travellers need to obtain vaccinations for a variety of diseases, including typhoid, yellow fever, cholera and hepatitis A, B and D. Dengue is endemic and malaria present mainly in the regions of Bolivar, Amazonia. Only bottled water should be drunk due to the prevalence of cross-contamination of drinking water with untreated sewage.
- Covid-19 represents a serious challenge that must be considered in all aspects of an EOM. Even if no quarantine is requested when entering the country, the government has introduced an alternation of “flexible” weeks (all shops are open) and “radical” weeks (only pharmacies and food shops are open; **domestic flights are prohibited**, except in emergencies). The latest information suggests that, there has been a continuous increase in the number of reported cases at a rate of about 1,109³ new cases per day. Delta variant is mainly present around the borders with Brazil and Columbia. There are limited facilities to deal with Covid-19 cases in the capital with even more scarce resources/infrastructure in the regions. Therefore, mission members are advised to be vaccinated against Covid-19.
- The ExM identified clinics that can stabilise a limited number of Covid-19 patients. It would be essential that international staff members’ insurance covers treatment of Covid-19 cases, including evacuation. Local staff insurance should also cover Covid-19 treatment costs. The mission would have to ensure that local rules are strictly respected as well as develop specific EOM SOP to mitigate the risks linked to COVID-19 such as pre-deployment COVID-19 PCR testing, access, and management rules of EOM HQ premises, training/briefings, limiting meetings to essential, preventive equipment (masks, hand sanitizers) and social distancing.
- The necessary social distancing among mission staff will induce specific requirements regarding office layout and set-up. This will evidently reduce the number of options for the mission HQ, as the facility needs to contain sufficient space. Accommodation requirements are easily met in Caracas where several options for the mission HQ are available. However, in most other areas of the country, accommodation standards remain basic. Liaison Officers (LOs) deployed in advance of LTOs’ arrival to their respective Areas of Responsibilities (AoRs) will be able to assess the security situation as well as choose the most suitable options for accommodation in the field. Drivers should be accommodated with observers.

³ Statistics as of 14/07/2021 from MoH (<https://covid19.patria.org.ve/estadisticas-venezuela/>)

Security Aspects

- As result of the serious economic crisis and generalised weakness of state institutions, the **security environment continues to deteriorate. Crime is widespread and the violent death resulting of police intervention is constantly increasing. Large parts of the territory are under the control of paramilitary groups and organised crime.** The megabands (*megabandas criminales*) compete with each other, especially for control of territory, but also have the capacity to resist the security forces (Costa 905 events of July 2021). **The pro-government militia groups (*colectivos*) have replaced the police in the "peace zones,"** where the forces of law and order enter only with their permission. **The Bolivarian Liberation Forces (FBL), the National Liberation Army (ELN) as well as the Revolutionary Armed Forces of Colombia (FARC), operate in several states bordering Columbia bringing risk of extortion and hostage taking.**
- **There is a constant risk of street crime (often armed), especially in Caracas and other major cities.** With the country's deep social and political polarization, *protestas* are **widespread and likely to increase**, especially during political campaign rallies and demonstrations. If the threat of political violence against an EU EOM is low, the threat posed by criminality is considered to be high (in the red zones). Therefore, the deployment plan of the EOM would have to be thoroughly re-assessed before the start of the mission. Government, in cooperation with CNE has developed a "*Plan República*" in order to coordinate all the security and logistics needed for the elections to be carried out.
- In conclusion the **security situation remains problematic and volatile.** Observers could be deployed in most of the country (apart from Amazonas). However, limitations are foreseen for the regions of Barinas, Sucre, Táchira, Apure and Zulia, where observers should stay in the main city and use armoured vehicles (AV). Observers would have to follow strict security rules, for example night movements/travels will have to be avoided. Ground transport in the border area as well as in the slums of Caracas and La Guaira should not be allowed. On a case by case basis, police or private escorts could be requested. The EOM should be included in the evacuation plan of the EU Delegation.

1.4. Mission structure and implementation

The following structure and deployment plan is proposed for the EU EOM:

- **A Chief Observer (CO) with a Core Team of 11 experts:** 1) Deputy Chief Observer, 2) Legal Analyst, 3) Election Analyst, 4) Political and Campaign Analyst, 5) Human Rights and Gender Analyst, 6) Media Analyst, 7) Social Media Analyst, 8) Press Officer, 9) Observer Coordinator I, 10) Observer Co-ordinator II, 11) Data Analyst. Deployment would be foreseen from **8 October to 13 December.**
- **62 Long-Term Observers (LTOs) deployed in teams of two,** to cover the 23 regions of and the capital city of Caracas in line with political, operational and security conditions. The Core Team may revise this tentative deployment plan in line with the evolution of the political, electoral and security situation in the country. Deployment would be foreseen from **18 October to 2 December.**
- **34 Short-Term Observers (STOs)⁴ deployed in teams of two,** to cover some of the

⁴ The possibility to deploy Short-Term Observers would have to be reassessed when the RfS is launched. STOs could be deployed only if the security, Covid-19 and logistical situations permit.

regions within closer proximity to the capital city of Caracas in line with political, operational and security conditions. The Core Team may revise this tentative deployment plan in line with the evolution of the political, electoral and security situation in the country. Deployment would be foreseen from **15 November to 25 November**.

- About **20 Local STOs (LSTOs)** from the EU Member States accredited in Venezuela as well as Switzerland would be expected to be integrated into the mission for Election Day.
- A European Parliament delegation might be foreseen to join the EU EOM.
- **A Service Provider (SP) composed of 5 experts** (Project Manager, Operations Expert, Security Expert, IT Expert, Contracts and Finance Expert) **and 3 Liaison Officers (LOs)** would provide support in the implementation of the EU EOM. Deployment would be foreseen from **28 September to 23 December**.

A budget estimate amounting to **€6.2 million** should be foreseen for the mission, under the European Instrument for Democracy and Human Rights.

1.5. Main Challenges and Risks

Political and Electoral

- There are unrealistic expectations from interlocutors in relation to the mandate of the mission and what the mission could achieve, in particular in relation to deterring attempt at fraud. Given the state's full monopoly of the media, in an environment of heavy state and self-censorship, it is expected that any critical statements made by the EU EOM would not be broadcast by national media, potentially limiting the value of its presence. It is foreseeable that any statement would be manipulated to give a favourable interpretation of and lend legitimacy to the electoral process frustrating public expectations.
- The current polarised context, the inflammatory political speech, the political persecution of the opposition, the already-evident misuse of state institutions by the ruling party and the distrust in the legal mechanisms to resolve election disputes all combine to create an environment not conducive to credible elections. An EU EOM may risk being seen as legitimising a non-credible election.
- Intimidation and threats to domestic observers, political party activists, polling station staff and journalists in many areas may significantly reduce their presence during the electoral process. Intimidation and threats to EU observers cannot be excluded, although there is no indication currently that EU observers would be a target.
- **The ExM believes that the mission would not be given access and freedom of movement to fulfil its mandate**, therefore limiting the contribution expected by interlocutors and increasing the reputational risks for the EU EOM instrument.
- **Besides the signing of an Administrative Arrangement, there are no guarantees that the government would respect agreed upon rights and responsibilities.**

Security

The overall security assessment is that the current situation in Venezuela would allow for the deployment of an EU EOM to those areas assessed at a residual risk level of medium and low. Risks identified during the ExM are controllable provided adequate mitigating measures are developed. At the time of the ExM, the main risks during a potential EU EOM were assessed as following:

- **Deployment** to areas assessed at high and very high-risk levels should be considered only on a Mission Critical basis and subject to a specific security risk assessment. However, deployment of observers would not be possible in mentioned Amazonas as well as limited to the main cities of the regions of Barinas, Sucre, Táchira, Apure and Zulia. It is essential to ensure the implementation of mitigation measures as provided in the latest security risk assessment and that further security risk assessments are conducted on an ongoing basis in advance of deployment of mission personnel and throughout the mission. **The size of the mission (number of LTOs and also the deployment of STOs) would depend on the final pre-deployment security and health assessment.**
- **Covid-19** represents a serious challenge that must be considered in all aspects of an EU EOM. There has been a continuous increase in the number of reported cases, especially the Delta variant. With the limited facilities to deal with Covid-19 cases in the capital with even more scarce resources/infrastructure in the regions, strong mitigating measures, insurance coverage and evacuation plans need to be ensured.
- **Travel Safety:** Road conditions are generally good, however poor in the interior of the country or in rural areas. Traffic accidents are a common cause of death and injury, Venezuela being the 3rd country with highest death on the road. **Night driving is not recommended inside or outside the cities.** Drivers should all be trained in defensive driving. There are air ambulance services, but observers should be mostly deployed in areas where health facilities are available. All the international mission members should have attended a HEAT training.
- **Crime:** Criminal acts have increased in recent years. The exposure of election observers to risk is high due to their appearance and the use of expensive equipment to carry out their tasks. Mitigating measures should reduce the risk to a moderate level.
- **Logistical challenges** include transportation, fuel shortages, cash payments, and importation of satellite equipment, medical equipment, and medicines. **However, it is essential that the AA signature allows time for proper preparations by the Service Provider.**
