



Vistra LatAm Roundtable

26th October 2018



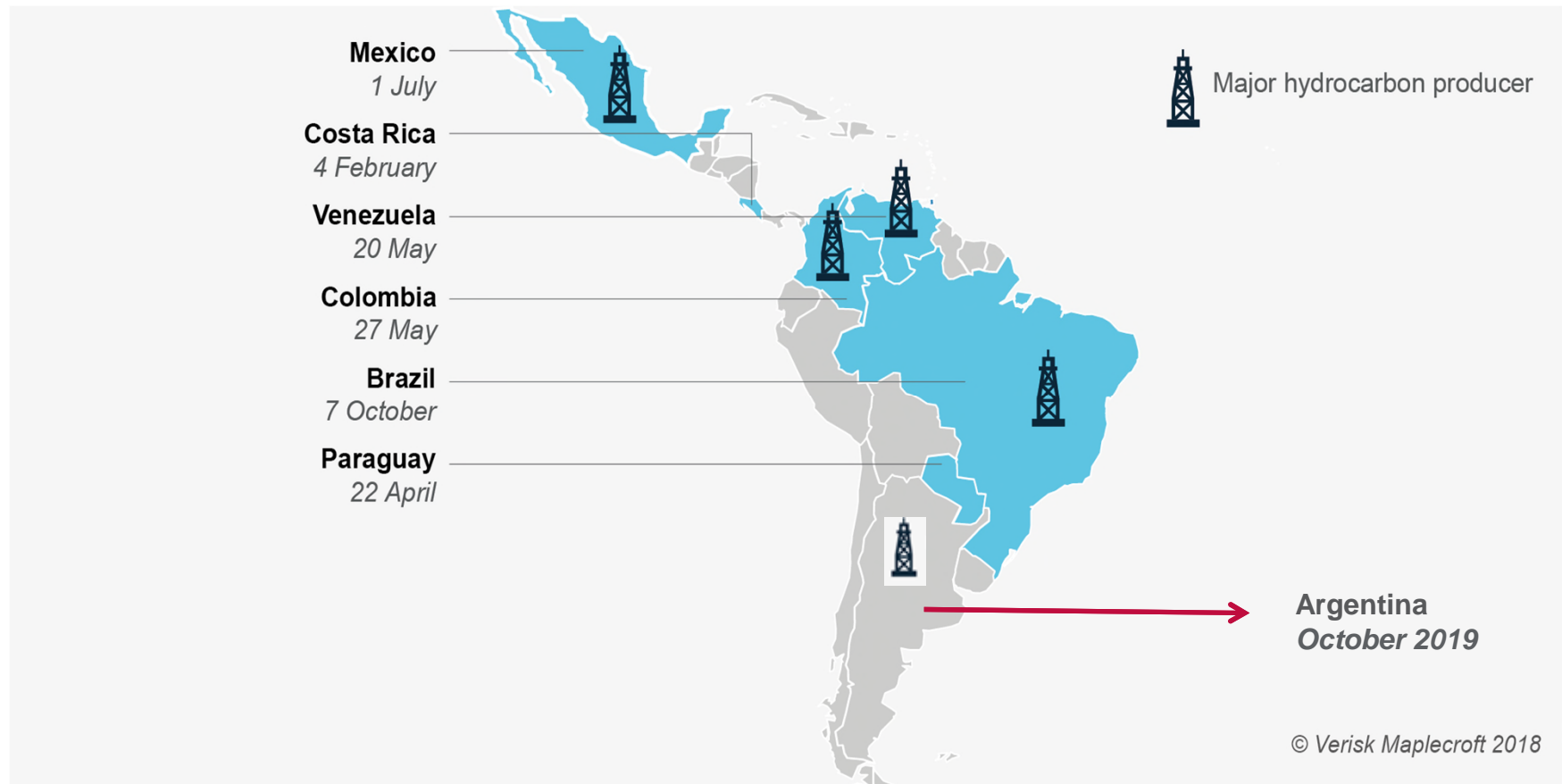
**Risks on the radar: Latin America's political and
macroeconomic outlook**

**Jimena Blanco, 26
October 2018**

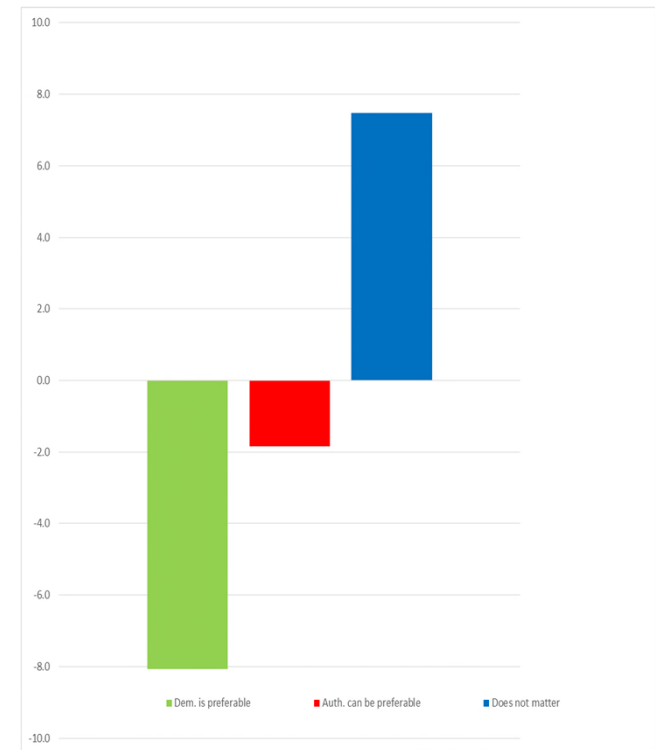
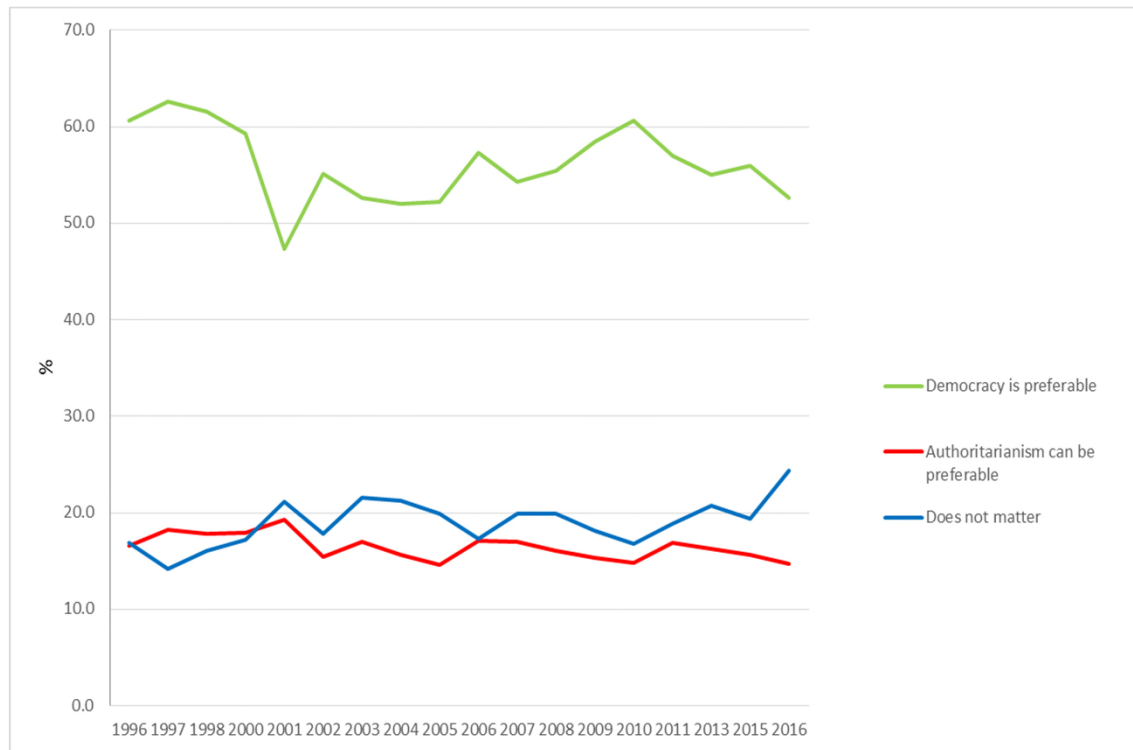
1. Overview of regional drivers of political and macroeconomic risk
2. Key areas of investor concern in main economies:
 - a. Colombia
 - b. Mexico
 - c. Brazil
 - d. Argentina

Latin America at another crossroads

‘Anti-establishment sentiment’ brewed anew in critical election year

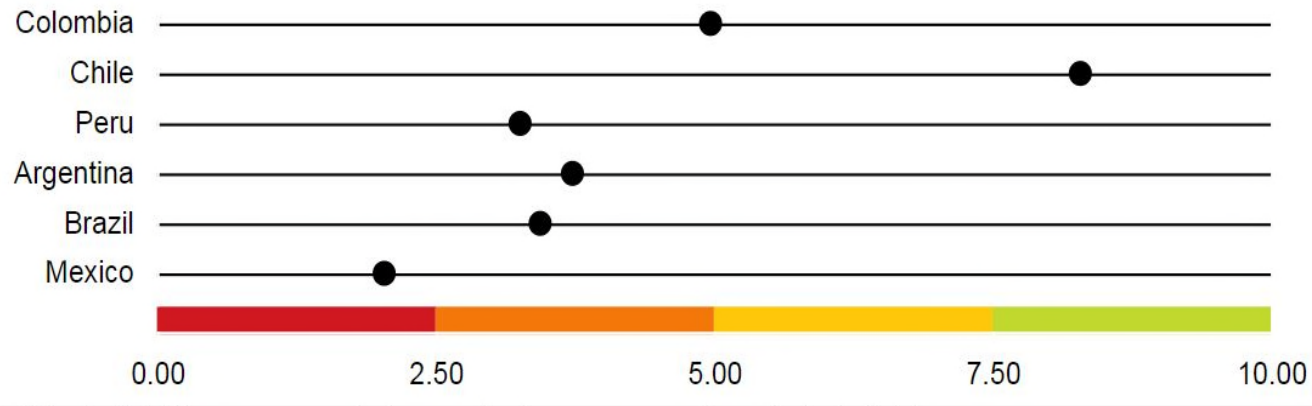


Support for democracy as preferable form of government will continue to fall, but authoritarianism will not spread

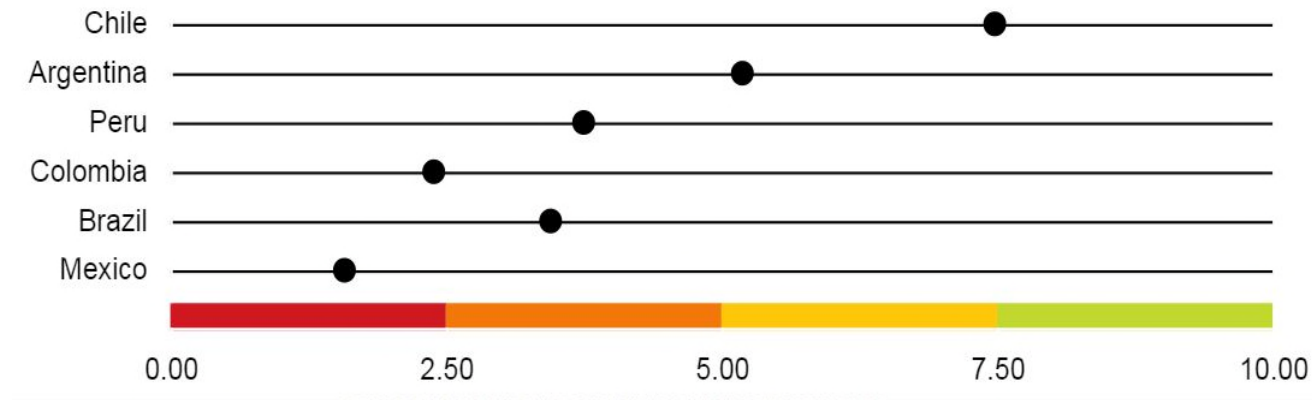


Traditional parties unable to tackle key voter concerns

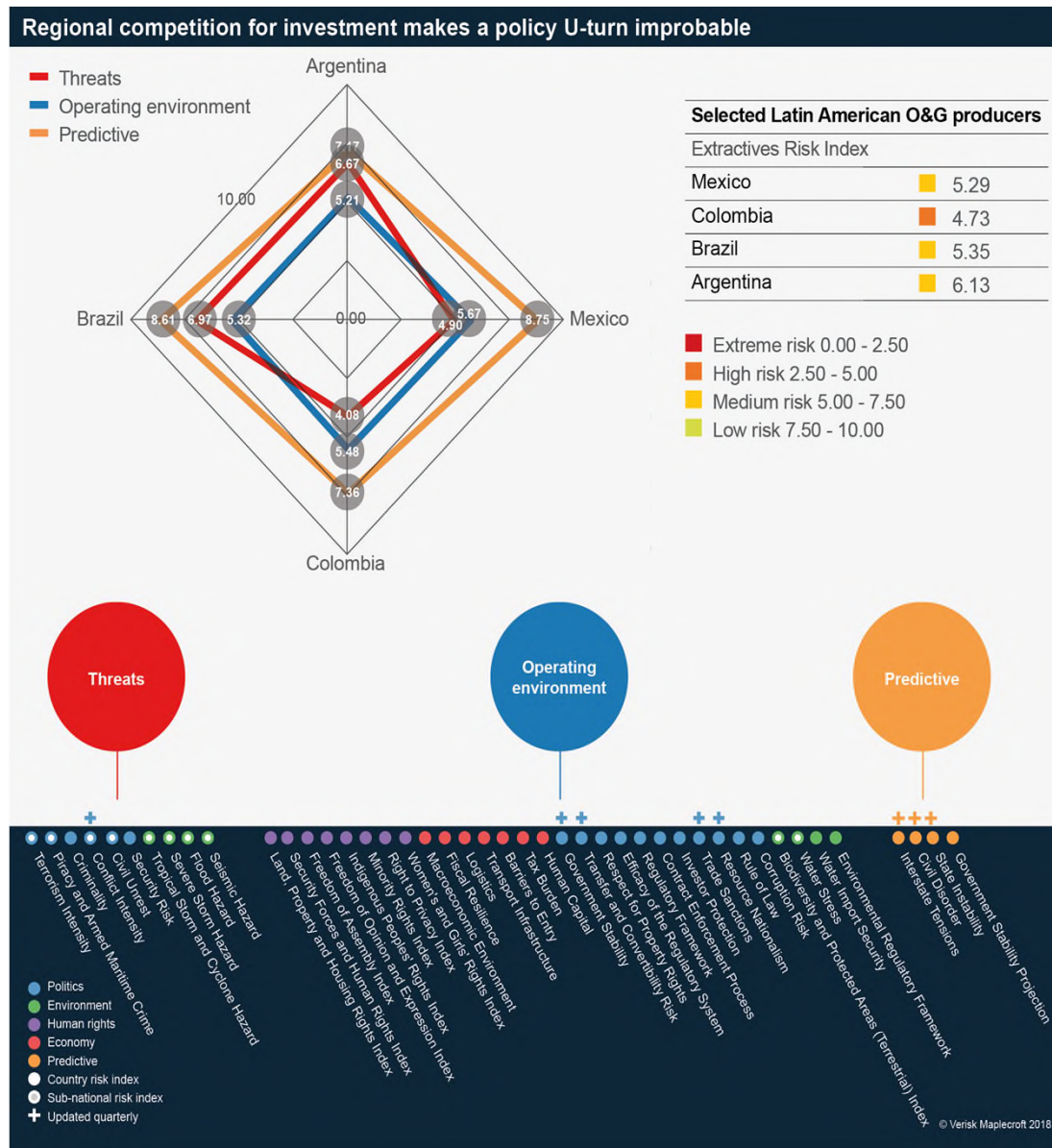
Corruption, an entrenched threat to economic development



Criminality, the daily menace to assets and personnel that drives huge security bills

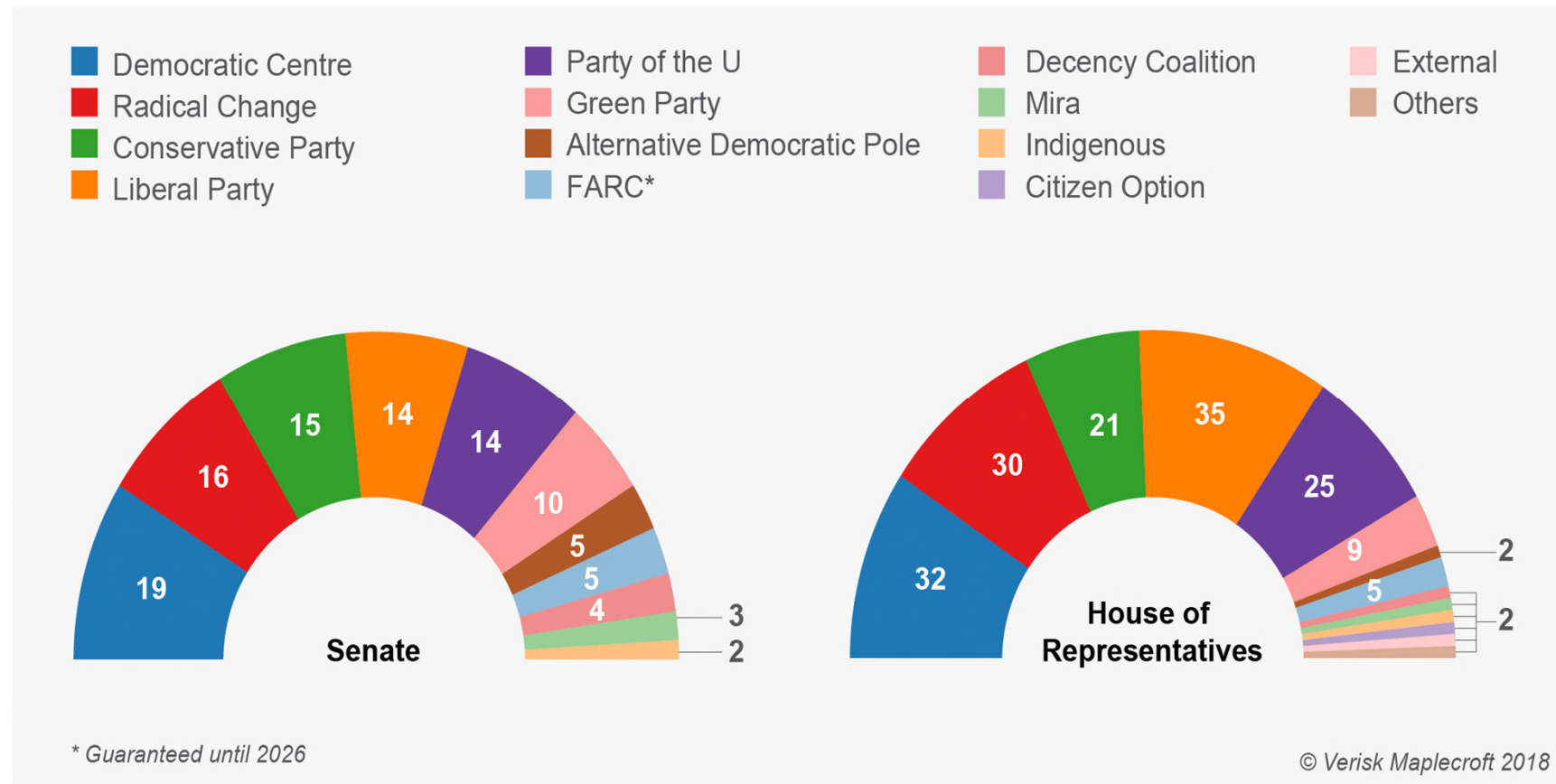


Overview - Risks on the radar: political and macro-economic outlook

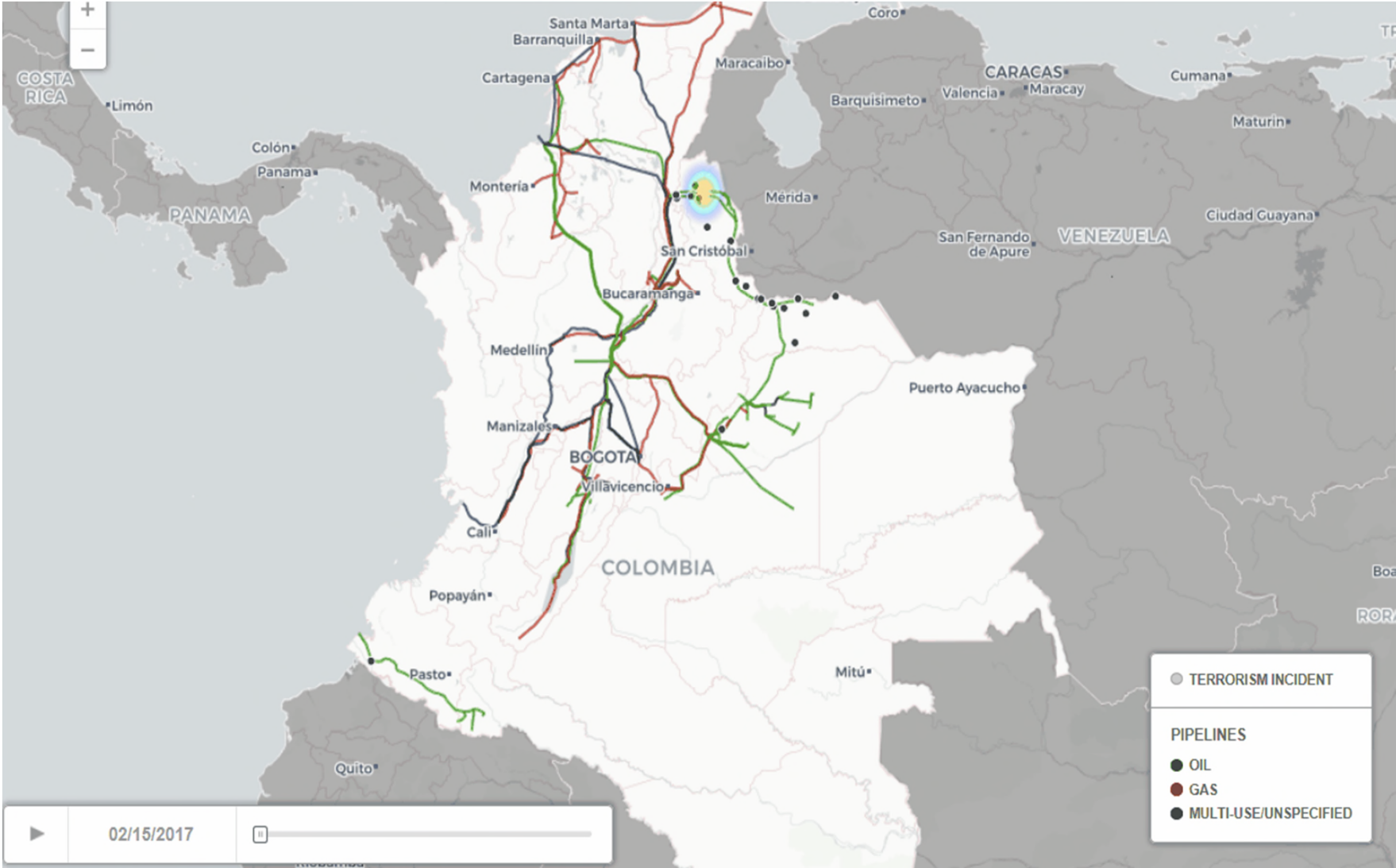


- Short shelf-life for reforms would flip investor sentiment
- A relapse towards resource nationalism in the selected South American producers is unlikely
- The rise of varying degrees of right-wing administrations and considerable fiscal restraints mean that a complete policy U-turn is improbable.

Duque - setbacks in rebuilding national-regional government relations offset by positive legislative context

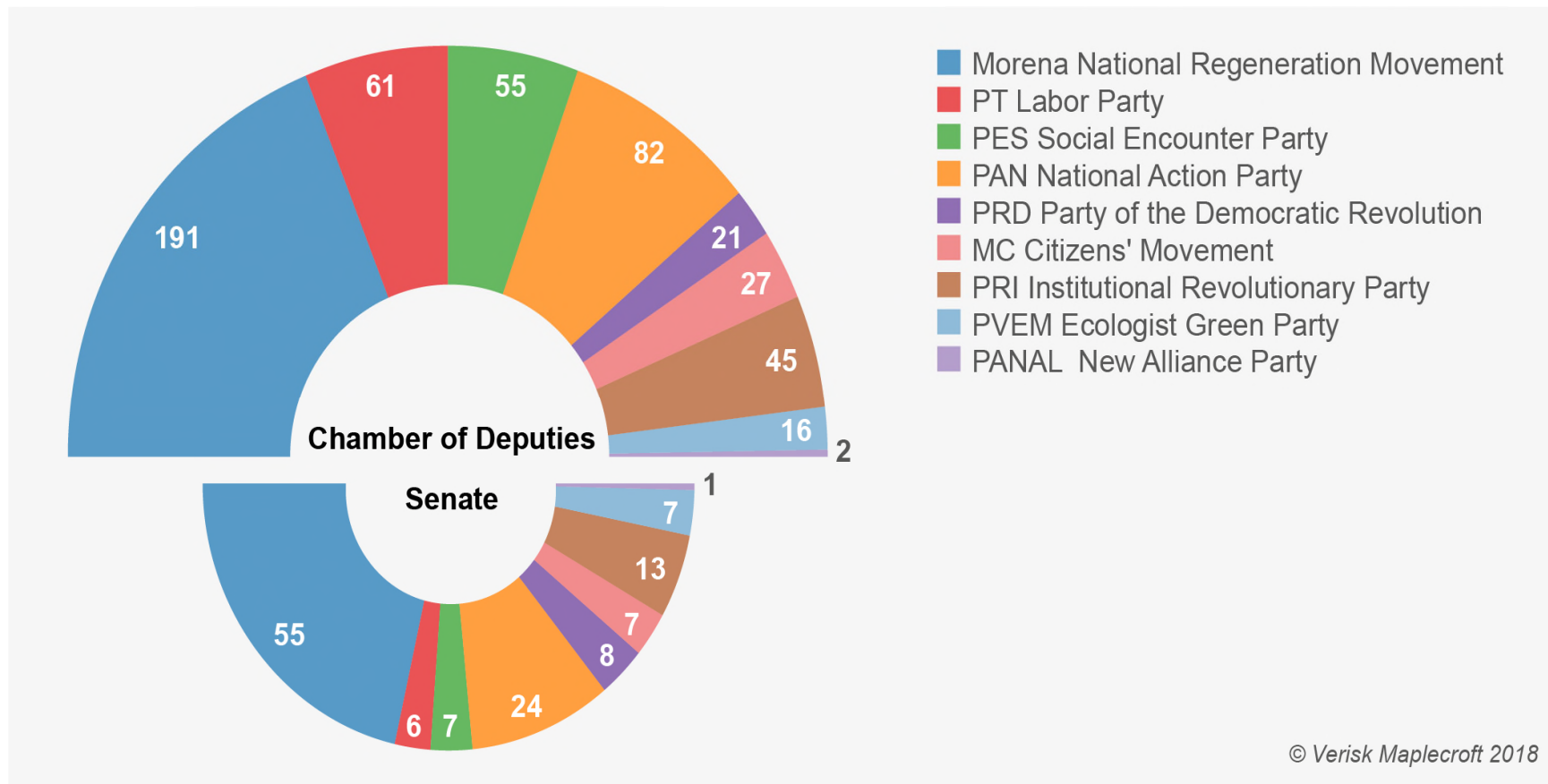


Colombia - ELN threat along Venezuelan border will intensify



Confidential

Mexico – AMLO’s majority set stage for honeymoon, but internal divisions push up investor uncertainty



Mexico – new political context threatens to change the rules of the energy reform



- Partner as operator with Pemex on existing fields
- Secure acreage for E&P in areas with high upstream potential
- Participate in the power projects boom



- New government intending to change the rules for upstream private investment
- Opening market with some regulations under development
- General uncertainty on timing of opportunities

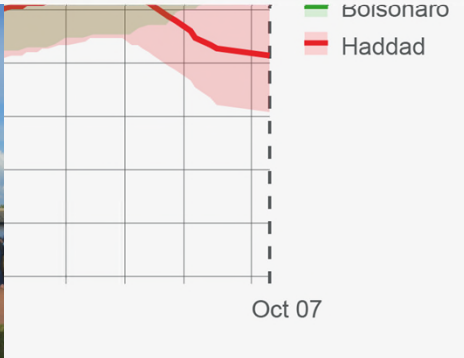
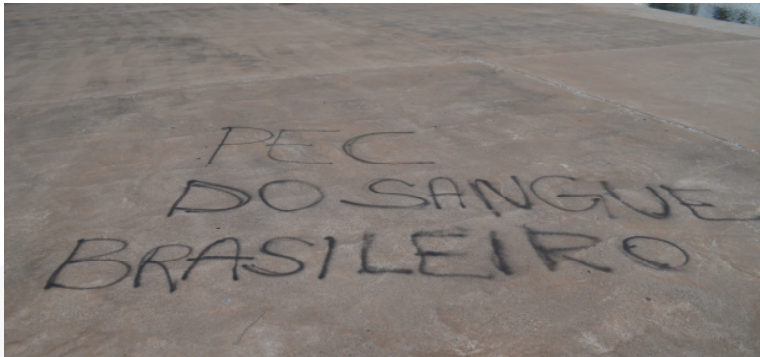
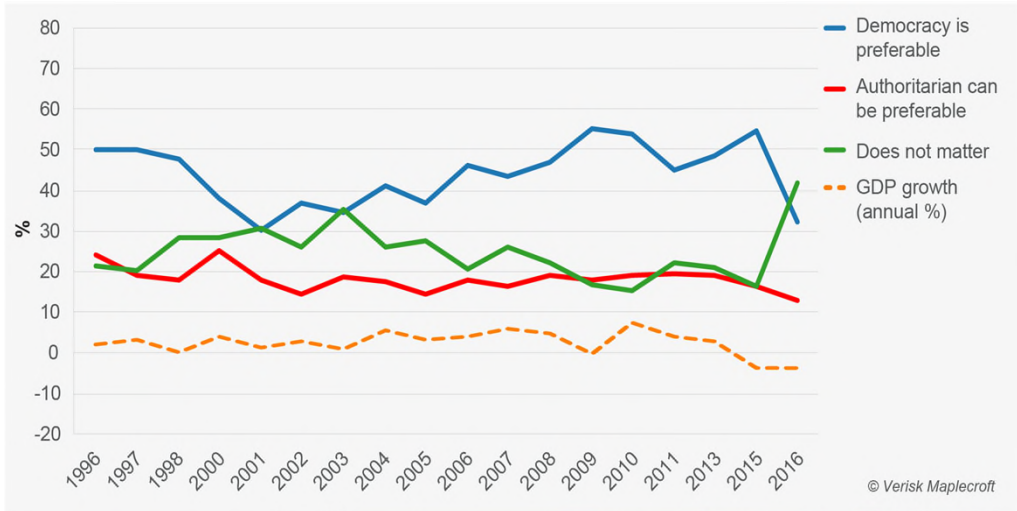
	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022	2023	2024
Guillermo Ignacio Garcia Alcocer (President)																
Guillermo Zuñiga Martinez (*)																
Jesus Serrano Landeros																
Marcelino Madrigal Martinez																
Montserrat Ramiro Jimenez																
Luis Guillermo Pineda Bernal																
Neus Peniche Sala																
Juan Carlos Zepeda Molina (President) (*)																
Hector Moreira Rodriguez																
Nestor Martinez Romero (*)																
Gaspar Franco Hernandez																
Alma America Porres Luna																
Sergio Pimentel Vargas																
Hector Alberto Acosta Felix																

AMLO-appointed majority in CRE

AMLO-appointed majority in CNH

AMLO-appointed official enters

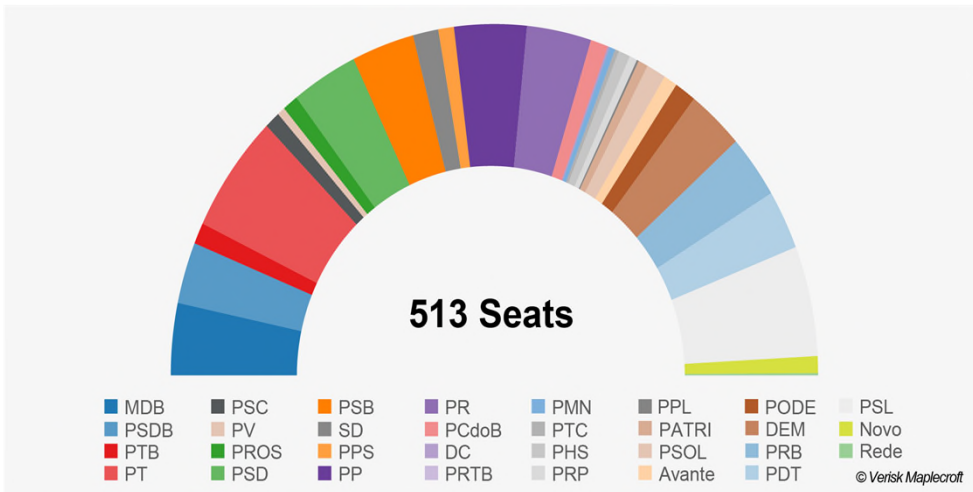
Brazil - Bolsonaro's all but certain win exemplifies failure of main political forces to develop consensus-based reforms



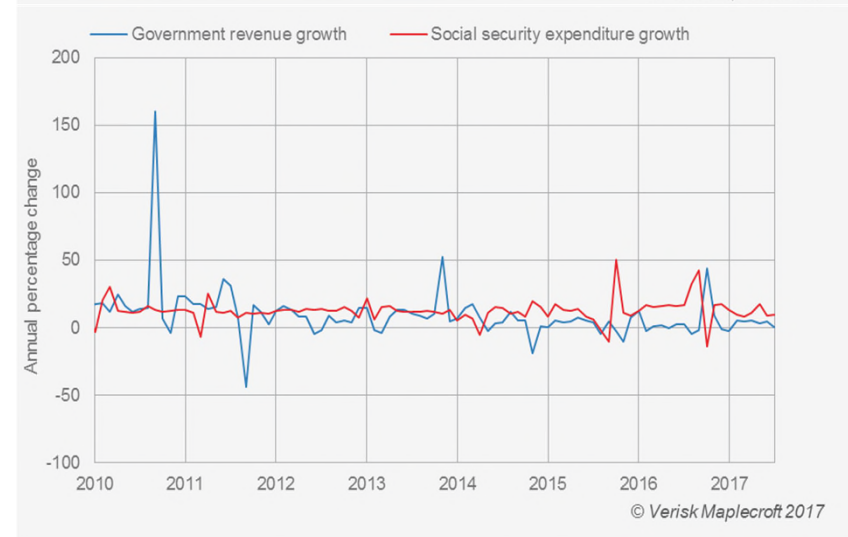
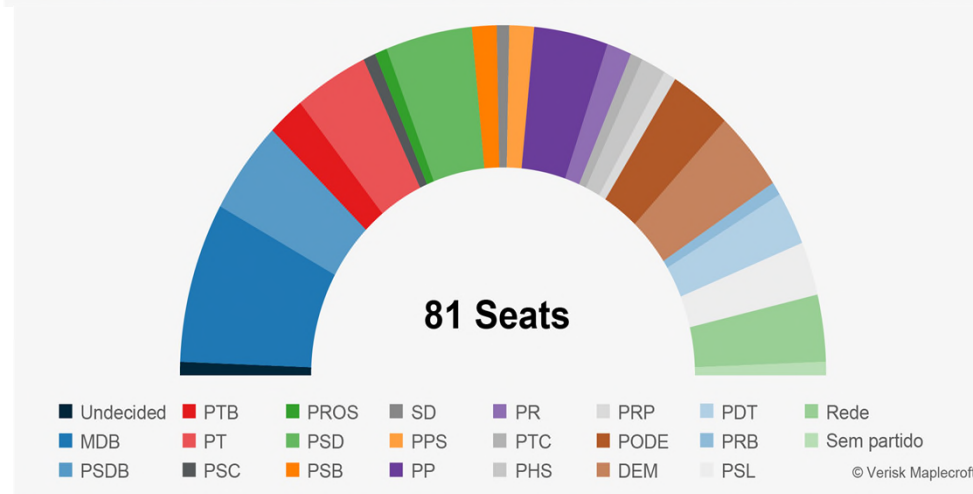
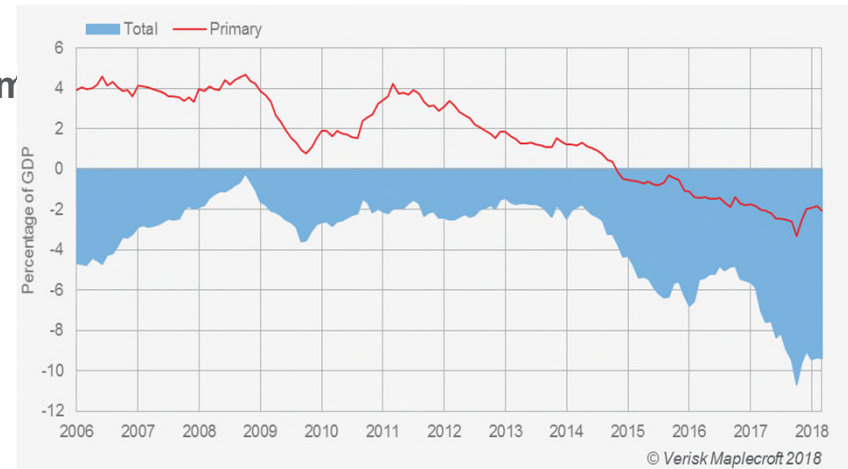
	Lower	Predicted	Upper
Bolsonaro	51.02166149	61.90264971	72.78363793
Haddad	26.17198443	36.53426422	46.89654401

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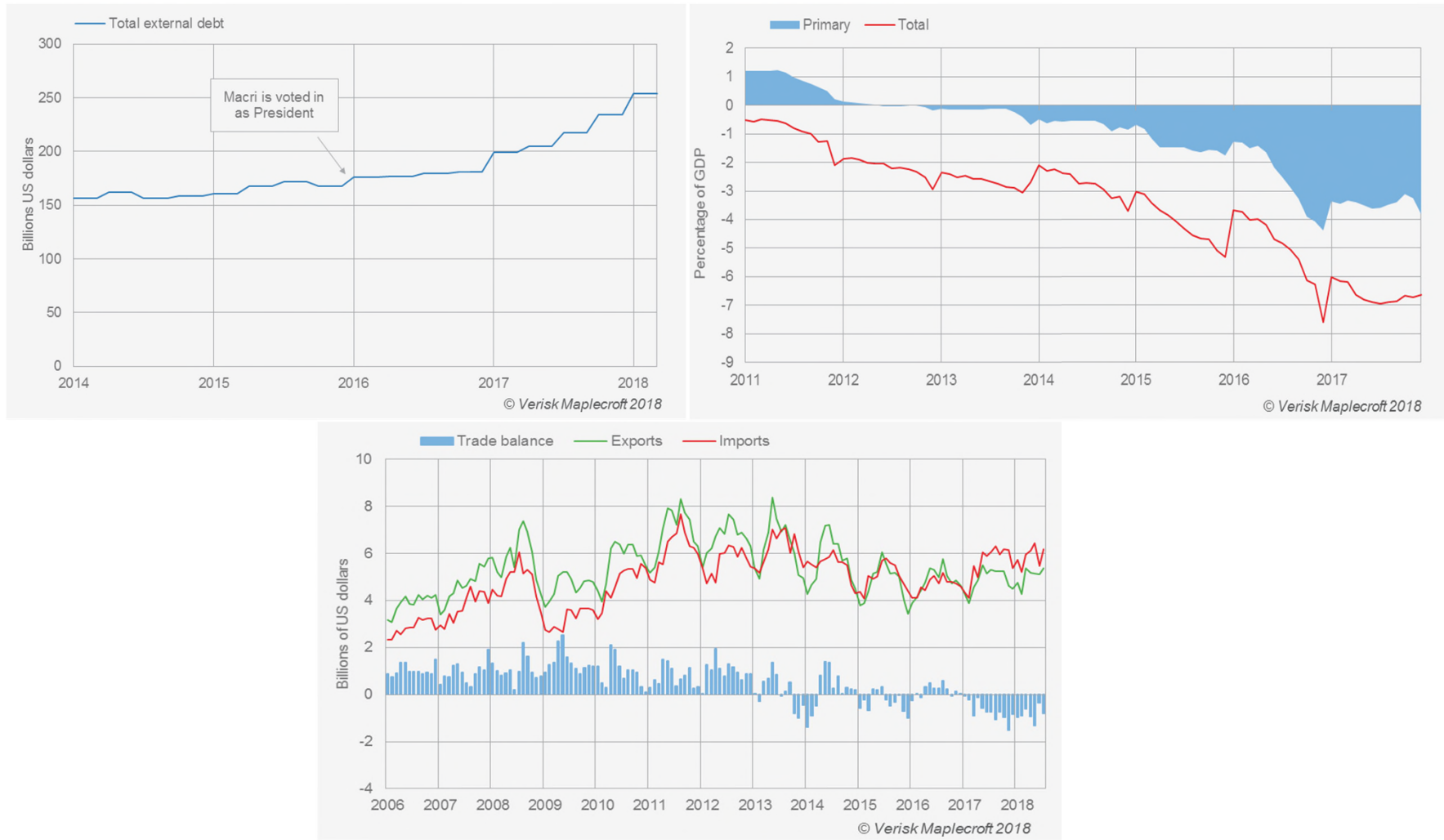
Brazil - Threat on judiciary poses downside risks to positive reform outlook – market response to prove overly optimistic



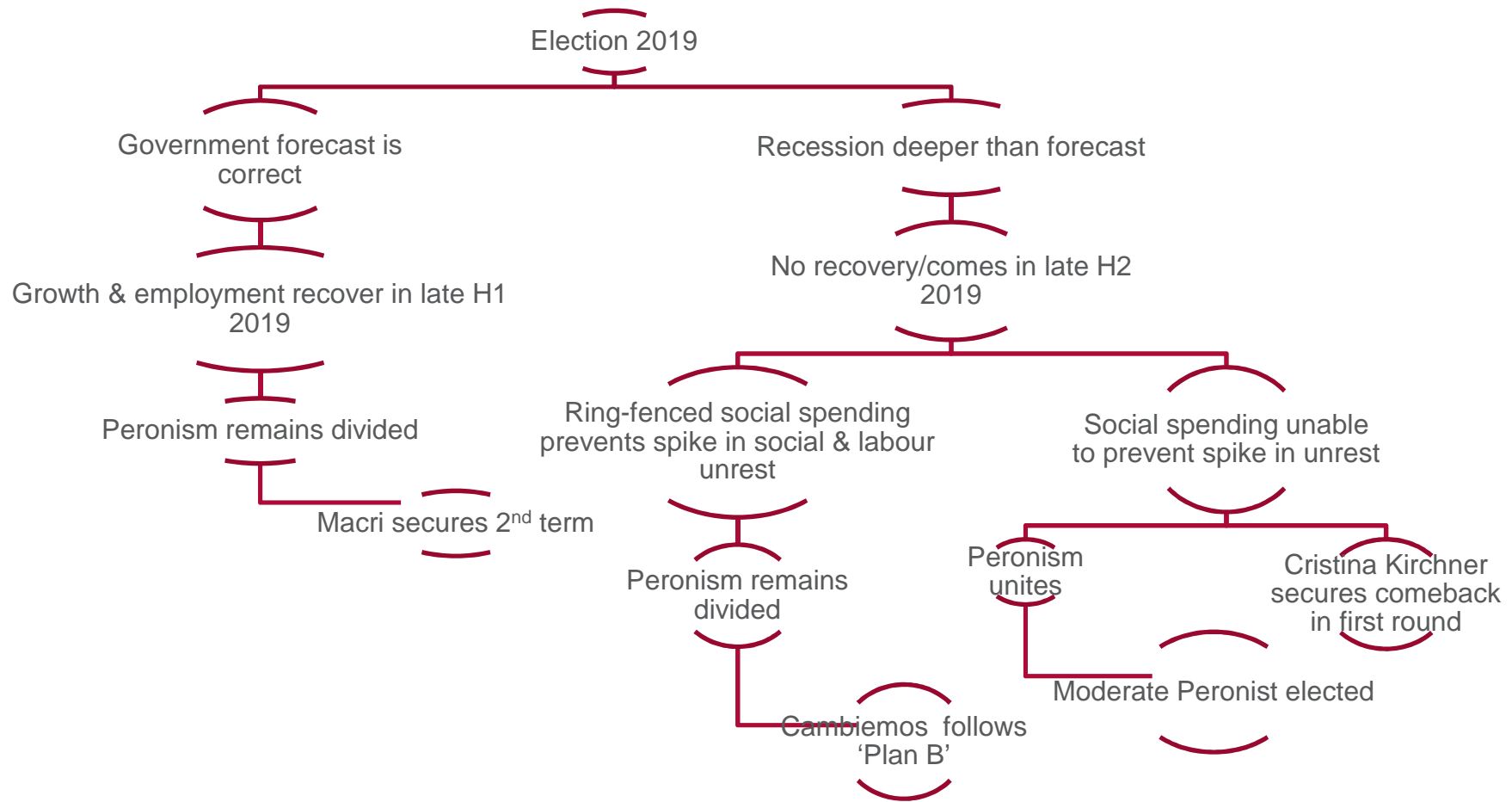
non



Argentina - shift in external conditions ends gradualism; fiscal deficit – at the core of the problem and the solution



Argentina - four scenarios ahead of 2019 election, but probabilities of CFK comeback are low





The fear of expropriation: A high
level assessment of the UK's
asset protection agreements
with Latin America

What are Bilateral Investment Treaties?

- Investment treaties are agreements regarding a State's treatment of investments made by individuals or companies from another State.
- They are negotiated on bilateral, multilateral and sectoral basis and may be a stand alone treaty or be part of a free trade agreement.

Why are they important?

States undertake obligations toward investors from the other country such as:

- Treating foreign investors' investments fairly and equitably.
- In case of nationalizing or expropriating an investment from foreign investors, the measures taken would be on non-discriminatory bases, taken in the public interest, and while observing due process, are taken against payment of prompt, adequate, and fair compensation.
- Allowing funds relating to investments to be freely transferred by foreign investors without delay.

	Extent of Protection			Procedural Rights					
	Fair and Equitable Treatment (FET)	Expropriation clause	Provide protection and security	Most favored-nation clause (MFN)	Umbrella clause	Cooling-off period	Allows jurisdiction of Domestic Courts	Arbitration	State party to the New York Convention (1958)
ARGENTINA	YES	YES	YES	YES	YES	NO	YES	YES	YES
BELIZE	YES	YES	YES	YES	YES	3 MONTHS	NO	YES	NO
BOLIVIA	YES	YES	YES	YES	YES	6 MONTHS	YES	YES	YES
BRAZIL (signed, not in force)	YES	YES	YES	YES	YES	3 MONTHS	NO	YES	YES
CHILE	YES	YES	YES	YES	YES	3 MONTHS	YES	YES	YES
COLOMBIA	YES	YES	YES	YES	NO	6 MONTHS	YES	YES	YES
COSTA RICA (signed, not in force)	YES	YES	YES	YES	YES	3 MONTHS	YES	YES	YES
CUBA	YES	YES	YES	YES	YES	3 MONTHS	NO	YES	YES
ECUADOR	YES	YES	YES	YES	YES	6 MONTHS	YES	YES	YES
EL SALVADOR	YES	YES	YES	YES	YES	3 MONTHS	YES	YES	YES
HONDURAS	YES	YES	YES	YES	YES	3 MONTHS	NO	YES	YES
MEXICO	YES	YES	YES	YES	NO	4 MONTHS	NO	YES	YES
PARAGUAY	YES	YES	YES	YES	YES	3 MONTHS	YES	YES	YES
PERU	YES	YES	YES	YES	YES	3 MONTHS	YES	YES	YES
URUGUAY	YES	YES	YES	YES	YES	REASONABLE PERIOD OF TIME	YES	YES	YES
VENEZUELA	YES	YES	YES	YES	YES	3 MONTHS	NO	YES	YES

Definition of "investor"

Standard provision: a natural person or enterprise having the nationality or being incorporated in a Contracting Party who has made an investment in the territory of the other Contracting Party

Variations:

- **Chile** BIT requires a company to have a "registered office, central administration or principal place of business" in the home state's territory.
- **Mexico** BIT requires a company to be "engaged in business operations" in the territory of the home State.
- **Colombia** BIT requires a company which have their registered office, central administration, or principal place of business, as well as substantial business activities

Definition of "investment"

Standard provision: every kind of asset and in particular, though not exclusively, includes: (i) movable and immovable property and any other property rights such as mortgages, liens or pledges; (ii) shares in and stock and debentures of a company and any other form of participation in a company; (iii) claims to money or to any performance under contract having a financial value; (iv) intellectual property rights, goodwill, technical processes and know-how; (v) business concessions conferred by law or under contract, including concessions to search for, cultivate, extract or exploit natural resources.

Variations:

- **Colombia** BIT refers to "every kind of economic asset".
- **Mexico** and **Colombia** BITs exclude certain type of assets such as debts, claims to money and credit transactions.

Obligation to provide protection and security to qualifying investments

Standard provision: enjoy full protection and security in the territory of the other Contracting Party.

Variations:

- **Colombia** BIT states that 'full protection and security' does not require additional treatment to that required in accordance with international law.
- **Mexico** BIT states that 'full protection and security' to require treatment in addition to or beyond that which is required by the customary international law.

Umbrella Clause

Standard Provision: each Contracting Party shall observe any obligation it may have entered into with regard to investments of investors of the other Contracting Party.

Variations:

- **Mexico** and **Colombia** bits do not have an umbrella clause.

Applicable law

Standard provision: if the provisions of law of either Contracting Party or obligations under international law (...)

Variations:

- The **Mexico** BIT provides that the tribunal shall decide the dispute in accordance with the treaty and the applicable rules and principles of international law.

Procedural Rights

Standard provisions: disputes between a national or company of one Contracting Party and the other Contracting Party concerning an obligation of the latter under this Agreement in relation to an investment of the former which have not been amicably settled shall, after a period of [cooling-off period] from written notification of a claim, be submitted to international arbitration if the national or company concerned so wishes.

- Variations:
 - **Argentina** and **Uruguay** BITs requires the investor to initiate proceedings before local courts. After 18 months without a final decision or if the investor challenges a final decision, the parties can submit to an international arbitration or –in the case of Uruguay BIT– if the decision has been manifestly unjust or violates the provisions of the BIT.

Arbitration Rules

- The most common dispute resolution options in the region are ICSID Rules and institutional arbitration, or UNCITRAL Rules.

Usual industries subject to investment arbitrations

- Mining, oil and gas and telecommunications.

Distinguishing elements in Expropriation clause

Definition of Expropriation:

- In all jurisdictions the definition is broad: “**measures having an equivalent effect**” to nationalization or expropriation.
- Only in Venezuela, Uruguay, Peru and Colombia, protection covers **indirect expropriation** or nationalization. Indirect expropriation is when state measures with the effect of substantially depriving investor of value of the investment or have the equivalent effect of a direct expropriation but without formal transfer of title or outright seizure.

Causes for Expropriation:

- Colombia and Peru include “**social interests**” as a legitimate cause of expropriation; must of the jurisdiction limit expropriation for “**public purposes related to internal needs**”.

Compensation:

- Argentina, Chile, Honduras, Peru, Uruguay, Venezuela refer to the **genuine value** before expropriation public knowledge.
- Belize, Ecuador and Paraguay refer to **market value** of the investment expropriated.
- Colombia refers to **adequate and effective** compensation.
- Mexico refers to **fair market value** of the expropriated investment.

Metalclad Corporation v Mexico

Year of the award: 2000

Forum: ICSID

Applicable investment treaty:
NAFTA

Metalclad claim:

- Violations of NAFTA Article 1105 ("Minimum Standard of Treatment")
- Violations of NAFTA Article 1110 ("Expropriation")
- Requested compensation.

Decision:

1. Metalclad was denied fair and equitable treatment.
2. Indirect expropriation.

Brazil businesses expanding abroad and Non-Brazilian businesses expanding in Brazil

Managing uncertain business landscapes

Rodrigo Ferreira Figueiredo

Brazilian businesses expanding abroad - recent (and not so recent) transactions



BB acquires 21% of Banco Patagonia
Argentina - 2018



Itaú Unibanco increases its stake in Itau CorpBanca
Chile - 2018



Marfrig acquires National Beef Packing Company
USA - 2018



Natura acquires The Body Shop UK - 2017



Kraft Heinz (3G Capital) offer on Unilever
UK - 2017



Raízen Energia acquires Shell subsidiaries in Argentina
Argentina - 2017



Safra

Safra Group acquires the Gherkin Tower
UK - 2014

Brazilian Businesses expanding abroad - challenges



U.S. senators seek review of Marfrig's deal to buy National Beef



Brazil's Embraer ends business jet production in China



UK PM May orders officials to examine Kraft Heinz bid for Unilever: FT

Brazil's JBS to acquire 64% stake in bankrupt Pilgrim's Pride
The Pilgrim's-JBS deal is expected to be subject to U.S. antitrust review.

CHAPARRAL

Chaparral Steel Company and Gerdau Ameristeel Corporation .
Announce Approval from the Committee on Foreign Investment in the United States



Brazil MPX could rethink, even drop Chile power project

Non-Brazilian businesses investing in Brazil - recent (and not so recent) transactions



•Non-Brazilian businesses investing in Brazil – challenges

•Brazilian businesses expanding abroad and Non-Brazilian businesses expanding in Brazil | Managing uncertain business landscapes

- Brazil has no CFIUS-like review
 - However, the Brazilian State has significant presence in the economy, and can therefore influence the outcome of potential transactions
 - It controls approx. 30 major listed corporations, corresponding to circa 25% of the securities publicly traded
 - It retains significant ownership interest in companies which have been privatized (including via golden shares)
 - Many important sectors of the economy are regulated (energy, telecoms, mining, aviation, financial institutions, among others); non-Brazilian investment is restricted in aviation, media, and rural areas; change of control is generally subject to prior approval (in the case of financial institutions a separate approval is needed when proposed buyer is not Brazilian)
 - Many companies have taken financing from the State development bank (BNDES), including change of control covenants
 - Although perceived as independent, impartial, and highly technical, the Brazilian competition authority (CADE) has been very active, having blocked four transactions in 2017 alone; its decisions tend to be definitive
-

The Speakers

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The fear of expropriation: A high level assessment of the UK's asset protection agreements with Latin America Nader Hayaux y Goebel (London)

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Brazil businesses expanding abroad and Non-Brazilian businesses expanding in Brazil

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