

Fact Sheet Salvadoran Elections 2009

El Salvador is holding legislative and municipal elections on January 18, 2009 and presidential elections on March 15, 2009. The presidential race is one of the closest in recent Salvadoran history. Society is polarized between two parties: the Republican National Alliance (ARENA) whose candidate is Rodrigo Avila and the Farabundo Marti Front for National Liberation (FMLN) whose candidate is Mauricio Funes.

ARENA has been in power since 1989, but for the first time all the polls favor the FMLN candidate, Mauricio Funes, as the potential winner. As the elections approach, the race has become more heated, and the campaigns have become more aggressive. According to a survey by the Central American University “José Simeón Cañas” (UCA), 55.5% of the population concerned about the possibility of fraud.¹ Unfortunately, those concerns are based on a series of electoral irregularities that threaten free and fair elections in El Salvador.

ISSUES THAT THREATEN FREE AND FAIR ELECTIONS IN EL SALVADOR

1. A discredited Supreme Electoral Tribunal

The Supreme Electoral Tribunal (TSE) is the highest authority that regulates the electoral process. The tribunal was created as part of the constitutional reforms agreed upon prior to the signing of the Peace Accords in 1992. However today, the TSE is one of the most discredited public institutions in El Salvador. According to another survey conducted by the UCA, 33% of those surveyed did not have any trust in the TSE while 45.2% had very little trust.² The TSE is composed of five judges, which are elected every five years by the Legislative Assembly. The three political parties that received a majority of votes in the last presidential elections select three of the judges, while the Supreme Court of Justice (CSJ) appoints the other two judges. The following judges constitute the TSE for the period 2004 – 2009:

- Walter René Araujo (ARENA)
- Eugenio Chicas Martínez (FMLN)
- Julio Eduardo Moreno Niños (PCN)
- Mario Alberto Salamanca (CSJ)
- Eduardo Antonio Urquilla (CSJ)

The selection of the third judge by the National Conciliation Party (PCN), Julio Moreno Niños, provoked much controversy. The PCN, which used to be the military dictatorship party, did not gain the 3% of necessary valid votes to continue to exist as a political party; neither did any of the other small parties. The votes were concentrated between ARENA and the FMLN. However the PCN and the Christian Democratic Party (PDC) were reinstated by a Decree of the Legislative Assembly with the votes of ARENA. By reinstating these political parties, ARENA has gained a greater control of the Legislative Assembly. Often, ARENA counts on votes from the PCN and the PDC to win the majority it needs in the Legislative Assembly to pass laws. The fact that TSE judges are party members has sparked speculation that they use their positions to respond to party interests rather than to the mandate of the Constitution and the Electoral Code.

¹ Universidad Centroamericana José Simeón Cañas. Instituto Universitario de Opinión Pública (IUDOP). “Los Salvadoreños y Salvadoreñas Opinan sobre el Proceso Electoral.” September 2008.

² Universidad Centroamericana José Simeón Cañas. Instituto Universitario de Opinión Pública (IUDOP). “Los Salvadoreños Evalúan el Cuarto Año de Saca.” May 2008.

How are decisions made by the TSE?

Decisions in the TSE were previously made by “consensus,” meaning 4 out of 5 votes were needed to make a decision. However, a reform passed after the 2004 Presidential elections established that a simple majority could make decisions; only 3 out of 5 votes are needed to make a decision. This reform has allowed conservative judges to have greater control of the TSE, because ARENA, PCN and one of the CSJ judges consistently vote together.

2. Reforms to the Electoral Code that remove safeguards

One of the most worrisome reforms to the Electoral Code was passed on December 6, 2007 in Legislative Decree No. 502. The reform eliminates the need for the signature of an election official and a stamp in order to validate each and every ballot. In El Salvador, each polling place has about 10 voting booths, each staffed with a “Vote Receiving Board” or *Junta Receptora de Votos* (JRV). Each JRV manages approximately 400 ballots. Prior to the reform, both the president and the secretary of the JRV signed and stamped each ballot in front of the voter before it was handed to him or her. In other words, the voter witnessed the validation of his or her ballot. Therefore, the ballots that were not used by the end of the day were unsigned, counted, and returned. Under this method, a vote cast on a ballot that lacked the signature and stamp was considered null. The December reform revoked the stamp and signature validation process, making any ballot, regardless of stamp or signature, valid.

In accordance with the reform, the TSE eliminated the procedure of signing and stamping the ballots from its regulatory instructions. However, the change in regulatory instructions generated great controversy among many sectors of the population and international organizations, including the OAS, because the stamp and signature safeguard process to prevent fraud in the voting place had been eliminated. Due to the controversy, on September 19, 2008, the TSE revoked its decision, and the original procedure of signing and stamping each of the ballots was reinstated. However, it is important to understand that the TSE regulations do not have the legal weight to overrule the Legislative Decree, which makes the JRV signatures unnecessary for the validation of votes. Therefore even if the TSE has reinstated the original regulatory instructions, all ballots will be considered valid whether or not they have been signed and stamped under Decree No. 502.

On November 5, 2008, the Legislative Assembly passed additional reforms to the Electoral Code. The reforms require the Secretary of each JRV to sign and stamp the ballot, then show it to the other members of the JRV, to the electoral observers and finally to the person that will be casting his or her vote on the ballot.³ This reform may restore voter confidence, but does not revert Legislative Decree No. 502; ballots found without stamps and signatures may still be counted as valid. Prior to a ballot lacking signature and stamp being counted, an investigation of ballot characteristics will take place, including consideration of: the type of election; the seal of the Republic printed on the reverse; the correlation between the ballot number and the registry of the ballots collected; and the correlation between the ballot number and its corresponding JRV. Moreover, any Secretary of a JRV that fails to fulfill his obligation to stamp and sign the ballot will be fined \$114.29. These reforms have passed through the Legislative Assembly, but to date, have yet to be signed by the president and consequently made effective as law.

Reforms to the Electoral Code and process are a source of confusion for voters. The process of reinstating the regulatory instructions regarding signature and stamp, as well as the electoral reforms imposing fines for Secretaries that fail to stamp and sign ballots are steps toward securing free and fair elections, although they fall short of safeguarding against fraud. The most recent reforms do not revert Decree No. 502; ballots cast without the signature and stamp of the Secretary of the JRV may still be considered valid.

³ FUSADES. “Observatorio Legislativo.” Boletín No. 24, November 7, 2008.
(<http://www.observatoriolegislativo.org.sv/boletin.php>) Consulted on November 10, 2008.

3. Inconsistency between the 2007 Salvadoran Census and the Electoral Registry

The results of the most recent Salvadoran Census highlight the vast discrepancies between the current population eligible to vote and those recorded in the Electoral Registry. According to the 2007 Salvadoran Census, there are 3.2 million Salvadorans of voting age (older than 18 years) with a Unique Identification Document (DUI). However, according to recent statements from Xiomara de Avilés, Director of the Electoral Registry, there are 4.2 million people of voting age in the Electoral Registry. Juan José Guerrero, president of the National Registry of Natural Persons (RNPN)⁴, in declarations given to the press during May 2008, estimates that about 100,000 of those records correspond to deceased people and about 500,000, to Salvadorans with DUIs who live abroad.⁵ Ms. de Avilés also stated that they have been able to clean up only 6,600 records belonging to deceased persons and incarcerated persons who have lost their right to vote.⁶ It is of great concern that the TSE has been unable to purge the 148,254 deceased voters from the registry that were identified by the OAS audit in December 2007. However there are still more than 200,000 people listed as eligible to vote that are unaccounted for in the 2007 census.

4. Failure to Update the Electoral Districts According to the Census

According to the 2007 Census, there are approximately 1.5 million less Salvadorans than was estimated. This stark change in population requires a re-districting of new electoral districts that correspond to the actual population. The TSE has failed to address the discrepancy in numbers of eligible voters between the census and the electoral registry, but also the need to re-district the electoral districts and update the electoral registry accordingly. Some analysts have stated that if electoral districts corresponded to the census, urban areas would have more electoral weight than rural areas. According to both the Constitution and the Electoral Code, the basis for the electoral system is the population; rather, the number of representatives by popular vote will depend on the number of inhabitants in their respective districts. The Organization of American States (OAS) has also expressed concern because failure to redistribute the electoral districts violates the principle of equality among voters.

5. Political Violence

Political violence has been on the rise in El Salvador in recent years. Human rights organizations have documented 28 political murders from 2006 throughout 2008; most of those murdered have been social activists and party opposition leaders. One of the most illustrative cases is the murder of Hector Ventura, a 19-year old activist who had been detained with thirteen other leaders and accused of terrorism for participating in a peaceful protest against water privatization in Suchitoto on July 2007. Ventura was murdered only a few weeks after all charges against the 14 prosecuted were dropped. Most of these politically motivated crimes remain unsolved. Police and legal authorities tend to attribute the murders to gang violence. However, according to human rights organizations, these murders qualify as politically motivated because they fit the parameters established in the report written by the Joint Group to Investigate Politically Motivated Illegal Armed Groups (1994). These parameters are: "a victim with a profile as a political opponent; the *modus operandi* directed toward elimination, denoting planning and operating capacity; and posterior impunity that is facilitated by the State."⁷ The increasing violence generates a climate of terror and instability that does not encourage free and fair elections.

⁴ The National Registry of National Persons (RRNP) provides information to the Supreme Electoral Tribunal (TSE) to create and maintain the Voter's Registry.

⁵ Salvadorans living abroad cannot vote unless they go back to the country.

⁶ La Prensa Grafica "Registro Electoral Cerraría con 4.2 millones." September 2008.

⁷ United Nations. "Informe del Grupo Conjunto para la Investigación de Grupos Armados Ilegales con Motivación Política en El Salvador." San Salvador, El Salvador. 1994.

6. Foreign Intervention

In past elections, the ruling party ran misinformation campaigns linking US immigration, foreign investment and other policies to the outcomes of the elections. For example throughout the 2004 presidential elections, there were constantly messages broadcast in the media stating that if the FMLN were to win, the US was going to deport Salvadorans and make it harder for them to send remittances back to El Salvador. This message was transmitted persistently by the media, and greatly impacted voters' decisions because remittances account for approximately 18% of the country's GDP.⁸

In addition, during the 2004 presidential elections, the Assistant Secretary of the U.S. Bureau of Western Hemisphere Affairs, Roger Noriega, made public statements against the FMLN: "We know the history of this political movement, and for this reason, it is fair that the Salvadoran people consider what type of relations a new government could have with us." His declarations prompted the reaction of 28 Congresspersons who wrote a letter to Secretary of State Colin Powell asking him to correct the perceived interference of the US in the Salvadoran elections. However, days later, on March 13 2004, Special White House Assistant, Otto Reich, in a phone interview at the ARENA headquarters expressed among other comments: "We are concerned about the impact that an FMLN victory would have on the commercial, economic and migration-related relations that the United States has with El Salvador." The above-mentioned statements by two public officials made headlines in the Salvadoran newspapers in order to influence voters.

For the 2009 elections US ambassador to El Salvador, Charles Glazer has already stated that the United States will not intervene in the Salvadoran Elections and that he is willing to work with the representatives that the Salvadoran people freely choose. Nevertheless, Salvadoran government officials have already started lobbying for US intervention. In a speech given by Marisol Argueta, Salvadoran Minister of Foreign Affairs, at the American Enterprise Institute on September 18, 2008, after expressing that these are the closest elections in Salvadoran history, Minister Argueta stated that "Losing El Salvador (referring to a possible victory by the opposition) will be a lose-lose situation for the national security of both El Salvador and the United States." She added "The US must take seriously the risks and threats of a rising wave of non-democratic leaders whose sole interest is to damage the US's image in the region, and in the world." The Minister's remarks generated backlash in El Salvador; opposition parties, social organizations and many citizens interpreted her remarks as a move to openly lobby for US Intervention in the Salvadoran elections while serving in an official capacity. Some political analysts have remarked that the Minister's remarks are Constitutional violations of Salvadoran national sovereignty and the prohibition that public officials make use of their positions to participate in party politics.

On the other hand, the Annual Threat Assessment of the US Office of the Director of National Intelligence included a sentence on El Salvador declaring, "We expect Chavez to provide generous campaign funding to the Farabundo Martí National Liberation Front (FMLN) in El Salvador in its bid to secure the presidency in the 2009 election."⁹ This statement once again made headlines in the Salvadoran newspapers. The U.S. Ambassador to El Salvador, Charles Glazer, has given declarations reiterating concern about Venezuelan interference in the upcoming elections, however the FMLN has denied receiving any financing from the Venezuelan government.

⁸ Central Reserve Bank of El Salvador. (<http://www.bcr.gob.sv/>) Consulted on September 2008.

⁹ J. Michael McConnell. "Annual Threat Assessment of the Director of National Intelligence for the Senate Select Committee on Intelligence." February 2008.

Steps that would help to ensure free and fair elections in El Salvador

The following are some steps that are necessary to ensure free and fair elections in El Salvador:

- Reinstate article 253-D in the Electoral Code. This would bring back the validation of each and every ballot through the signature and stamps by the president and secretary of the JRV. This method would help to prevent fraud at the polling place.
- Follow the recommendations of the OAS regarding the clean up of the electoral registry by purging all records that are not consistent with the 2007 Census.
- Redistrict the electoral districts according to the population results from the Census.
- Investigate and bring to justice the politically motivated crimes against opposition leaders in order to reduce impunity and promote a climate of peace.
- Promote national and international monitoring of the elections.
- Approve a law to depoliticize the TSE; the judges should not be active party members or hold party positions.
- Approve a law to regulate the private financing and accounting of the political parties.
- Approve a law that allows Salvadorans abroad to cast their votes in elections (absentee ballot).