

El Salvador Election Observation Report
Presidential Elections
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Introduction

Members of the Committee in Solidarity with the People of El Salvador (CISPES) took part in the Misión de Observación Internacional (MOI) to monitor the presidential elections in El Salvador on March 15th, 2009. These elections were between the Farabundo Martí National Liberation Front (FMLN) candidate Mauricio Funes and the Nationalist Republican Alliance party (ARENA) candidate Rodrigo Ávila. The MOI was accredited by the Supreme Electoral Tribunal (TSE) and observed the entire Election Day process, from the installation of the voting tables to the final vote count. CISPES members observed in the departments of San Salvador, La Unión, Cabañas and San Miguel. Observers monitored the electoral campaign and studied electoral laws and regulations in the weeks and months leading up to Election Day. During the week before the vote, CISPES members met with civil society organizations, international organizations such as the European Union (EU) and the Organization of American States (OAS), and government agencies such as the Human Rights Procurator's Office (PDDH).

This report provides the results of CISPES' direct observation of the electoral process on the day of the vote and an analysis of the multiple factors that we believe still prevent the country from achieving a fully free and transparent democratic process. This report is divided into the following sections:

Section I: Pre-Electoral Obstacles

- A. U.S. Election Intervention
- B. Threats and Employer Pressure
- C. Supreme Electoral Tribunal Fraud
- D. Public Funds Used Con Propósitos Partidarios
- E. The Use of Media

Section II: Our Observations

- A. Institutional Problems
- B. Polling Place Problems
- C. Successes

Section III: Recommendations

The current electoral process in El Salvador was designed to ensure equal representation and participation from all of the political parties in the country. While intended to provide a high level of transparency, the electoral process has deteriorated significantly due to the failure of state institutions to fulfill their role in a nonpartisan manner. Although some progress has been achieved, most of the development has been made by popular mobilization and not by a reform of the failed electoral institutions; therefore we still witnessed several obstacles for a just electoral process. In the absence of a fair, nonpartisan institution to enforce the Salvadoran electoral code, the political parties with the most power and resources tend to dominate the electoral process.

The biggest difference witnessed in the last electoral process that allowed a different outcome was, without a doubt, the massive participation of civil society by both voting and monitoring the attempts to break the electoral law by the political party in power. There was a highly-

organized effort by Salvadoran citizens to defend their vote, and the warning that such vigilance would be necessary was a key component of the FMLN's campaign. Salvadorans assumed authority over their own elections to protect the true voice of the people.

Numerous citizen accounts of fraudulent tactics for the March 15, 2009 vote were widely reported to the CISPES observer delegation. Despite ARENA's attempts, the popular mobilization was strong enough to overcome them and to ensure that for the first time in almost 20 years a change in power occurred in the country, thanks to the will of the people.

The report concludes with a set of recommendations intended to address the concerns outlined in the preceding sections. The goal of these recommendations is to further the implementation of strong electoral institutions and fairness while diminishing the influence of political parties and partisan state institutions over the results of future elections. Taking in consideration that despite Mauricio Funes' win ARENA still holds the military and economic power, the results of the last elections were only the first step toward change in a country which is in serious economic and social crisis.

Section I: Pre-electoral Obstacles

A. U.S. Election Intervention

An important part of our observation of the 2009 presidential elections was an examination of attempts by representatives of the United States government to influence the outcome of the election.

Past U.S. Intervention

During the presidential elections of 2004, U.S. government intervention was a significant factor in persuading Salvadorans to vote for ARENA presidential candidate Antonio Saca. This intervention occurred in the form of threatening statements by U.S. officials, including former Ambassador Douglas Barclay, then-Undersecretary of State for Western Hemisphere Affairs Roger Noriega, and Representative Thomas Tancredo. Specifically, threats alleged that in the event of an FMLN presidential victory the U.S. would cut off remittances sent to El Salvador by immigrants living in the U.S., deport Salvadoran immigrants living in the U.S., and would not renew Temporary Protective Status (TPS), which provides legal residency to 200,000 Salvadorans in the U.S.

Given the nature of the migration pattern that links the two nations, these statements carried a great deal of importance to Salvadorans residing in both countries. At the time, the number of Salvadorans living in the U.S. was estimated to be 2 million, and the remittances they sent back to their families amounted to almost \$2 billion — thus representing the largest single component of El Salvador's GDP. Furthermore, statements made by Barclay, Noriega, Tancredo, and others garnered substantial coverage in the Salvadoran press. This widespread media attention guaranteed that the majority of Salvadorans were aware of the stated consequences of voting for the FMLN, as declared by official representatives of the U.S. government.

Despite the false nature of these assertions, their validity remained unchallenged by the executive branch of the U.S. government throughout the course of El Salvador's 2004 electoral campaign. This institutional silence signified tacit support for the threatened changes in U.S. diplomatic relations and immigration policy tied to the outcome of the elections. While the Bush Administration in Washington, along with its representatives at the Embassy in San Salvador, did nothing to counter the threats, some Members of Congress spoke out. U.S. Representatives Xavier Becerra and Raúl Grijalva held a press conference on March 16, 2004, to directly counter and debunk the threat that remittances to El Salvador could be cut off. However, Salvadoran media coverage overwhelmingly privileged the original threat to remittances made by Representative Tancredo, while barely covering the counter-statement.

2009 Elections

Early in the 2008-2009 campaign period, U.S. officials publicized statements that seemed intended to defame the FMLN. In June 2008, Deputy Secretary of State John Negroponte and Ambassador Charles Glazer made public statements that tie the FMLN political party to the Colombian guerrilla force, Revolutionary Armed Forces of Colombia (FARC). To date, no

evidence has been put forward to support this allegation. Therefore, it can only be concluded that these statements were attempts to damage the reputation of the FMLN and provide yet another pretext for threatening that U.S.-Salvadoran relations would deteriorate under an FMLN government.

In addition, a Venezuela-based organization called Fuerza Solidaria carried out an extensive advertising campaign in El Salvador. Many of Fuerza Solidaria's advertisements reiterate the threatening statements made by U.S. officials in 2004, even though those threats were later refuted by former Ambassador Barclay after the election. Specifically, Fuerza Solidaria's ads allege that a FMLN victory would endanger both immigration status and ability to send remittances home for Salvadorans living the U.S.

Also in the lead up to the January municipal and legislative elections the ARENA party itself expressed a strong desire for the U.S. to take more action to prevent an FMLN victory in 2009. In a speech made at the American Enterprise Institute in Washington, D.C., in September 2008, the ARENA-appointed Minister of Foreign Affairs, Marisol Argueta, asserted that the FMLN's bid for Presidency poses a concrete security risk for the U.S. and appealed to the U.S. to coordinate forces with the current Salvadoran government to stop the rise of another "populist government" in Latin America. Argueta's comments represent an open plea for the U.S. to involve itself in El Salvador's electoral politics, and thereby infringe on the political sovereignty of the Salvadoran people. This represents a clear violation of the Salvadoran Constitution, which explicitly states that "sovereignty resides within the Salvadoran people."

Until three days before the January 18 municipal and legislative elections, the State Department failed to issue public statements to dispel fears about remittances and immigration status and assure continued amicable relations between the two countries. However, on January 16th, in his final press conference before being recalled as Ambassador, Charles Glazer declared that the relationship between the United States and El Salvador would not change based on the outcome of the 2009 elections. He reaffirmed that the U.S. would assume a position of neutrality, irrespective of which party wins the presidency.

Leading up to the March election, thirty-three Democrats in the US House of Representatives sent a letter to President Obama calling for an official US declaration of neutrality that would strengthen the position established in January. However, less than a week after the letter was released, US House Republicans reverted to the interventionist scare tactics that succeeded in maintaining ARENA party rule in the 2004 presidential elections.

In both a letter released to the press on March 10 and speeches from the House floor on March 11—just four days before elections—Republicans defamed the FMLN and repeated the threats of the Bush administration: to cut off remittance monies to El Salvador and to end the Temporary Protected Status of Salvadoran immigrants if the FMLN won on March 15.

From the House floor, Representative Dana Rohrabacher (CA) warned, "El Salvador's election is on Sunday. If an ally of Al-Qaeda and Iran comes to power in El Salvador, the national security interests of the United States will require certain immigration restrictions and controls over the flow of the \$4 billion in annual remittances sent from the U.S. back home to El Salvador."

Rep. Trent Franks (R-AZ) said, “Should the pro-terrorist FMLN party replace the current government in El Salvador, the United States, in the interests of national security, would be required to reevaluate our policy toward El Salvador, including cash remittance and immigration policies to compensate for the fact there will no longer be a reliable counterpart in the Salvadoran government.”

Rep. Dan Burton (R-IN) stated, “Those monies that are coming from here to there I am confident will be cut, and I hope the people of El Salvador are aware of that because it will have a tremendous impact on individuals and their economy.”

Indeed, these threats carry considerable weight for Salvadoran voters, as 25% of the Salvadoran population lives in the U.S., and 20% of the nation's economy consists of remittances from those family members.

The letter and statements were immediately top stories in all the major daily newspapers in El Salvador. The threats were reported as credible intentions of the US government, without analysis of the ability of a small group of Republican Representatives to actually influence US policy. In addition, because the statements were made only days before the vote and after the formal close of the campaign in El Salvador, the FMLN was legally unable to respond and officials in El Salvador and the US had little time to put forward a neutralizing response.

Solidarity organizations in the US and Democratic members of Congress, however, responded quickly. Calls from thousands of concerned US citizens flooded the State Department and US Embassy, demanding a public statement of US neutrality from the Obama administration. Representative Raúl Grijalva (D-AZ) and Representative Howard Berman (D-CA) made public declarations to the press both rejecting the Republicans' threats and reaffirming US neutrality. Rep. Berman declared, “Sunday's election belongs to the people of El Salvador. As Chairman of the House Committee on Foreign Affairs, I am confident that neither TPS nor the right to receive remittances from family in the United States will be affected by the outcome of the election, despite what some of my colleagues in Congress have said.”

By Friday March 13, only forty-eight hours after the Republicans' statements hit the press, the US State Department and US Embassy in San Salvador both made a formal declaration of neutrality, further promising to respect the results of the elections and to work with whoever won the presidency. In his press briefing on March 13, Assistant Secretary of State for Western Hemisphere Affairs Thomas Shannon stated: “We've also made it very clear that we will work with whomever the Salvadoran people elect... We have made it very clear that this is a choice of the Salvadoran people that we will respect and that we look forward to continuing our very positive relationship with El Salvador, and working with the next elected government.”

These public declarations of neutrality and respect for El Salvador's independent democratic process made before the elections on Sunday helped prevent a repeat of 2004, when threats of U.S. retaliation secured a victory for the right-wing.

B. Threats and Employer Pressure

Our delegation also encountered numerous reports of employers pressuring employees to vote for ARENA. Representatives of SETA, the union of worker workers, reported that ANDA, the national water company, made workers go to a meeting at the administration building during their paid hours. There they were pressured to vote ARENA. Additionally, ANDA hired personnel specifically to pressure workers to vote ARENA.

There were also multiple reports of employers showing videos produced by the group “No lo Entrego” to workers during work hours. These videos, though produced by a non-party entity, featured attempts to link the FMLN with Venezuelan President Hugo Chávez and Cuba, and to argue that these ties will seriously jeopardize diplomatic relations between the U.S. and El Salvador if the FMLN wins the presidency.

In addition to these attempts to influence employee’s votes, Fundación de Estudios para la Aplicación del Derecho (FESPAD) received reports of employers directly ordering employees to vote ARENA and requiring them to provide proof by taking a cell phone photo of their vote on election day.

C. Supreme Electoral Tribunal Fraud

The Supreme Electoral Tribunal (TSE), the governmental institution responsible for all aspects that make elections possible, is one of the institutions born from the 1992 Peace Accords that marked an end to twelve years of armed struggle. Therefore, its functioning should be as a warrantor of peace through the protection of people’s choice when electing a government, based upon their stated objective that elections are the “only and real way to access power,” as mentioned in the Electoral Code.

Although International Observers Missions from the EU and OAS had given the TSE recommendations to be implemented before the elections based on detection of abnormalities in the electoral system, the TSE didn’t respond efficiently. Instead, they approved other measures that would make the electoral process more vulnerable to fraud.

One of these measures was a change in the procedure of the TSE. The TSE is composed of five members: a representative from the three major political parties and two representatives from the Supreme Court of Justice (CSJ). In years past, decisions were made based upon a margin of four out of five votes. Last year, a change was implemented in this voting process so that only three out of five votes were needed to approve decisions. Another notable measure occurred after the 2006 elections. After the elections, there were parties which, based upon electoral law, had not received enough votes to remain political parties. However, the legislative assembly passed a reform that allowed these parties to remain parties despite their lack of votes, allowing them representation in the TSE and Legislative Assembly. All of these parties were right-wing and thus able to lend support to ARENA. This maneuver could be interpreted as a unification of efforts so that those small parties and ARENA would have more weight when making decisions and proposals in the TSE and the Legislative Assembly. As a result, these political bodies were able to institute changes that opened up the electoral process to increase fraud in ways which benefited right-wing parties.

Fraudulent Decisions and Proposals

In past electoral events, the ballots had to be signed and stamped by the Secretary of the Voting Table (Junta Receptora de Votos, or JRV). Last year, the TSE approved a reform that signatures and stamps were no longer required to make a ballot valid. This decision would facilitate the use of falsified ballots to stuff ballot boxes and make it more difficult to track that kind of fraud.

The electoral registry was a significant source of concern during the elections. Parties' representatives as well as civil society organizations denounced that the electoral registry was not made available to the public or to the representatives of the parties. Only a few weeks before the elections was the registry "partially" opened to parties, but addresses were not opened to the process until after January elections.

In past elections, at the closing of the voting day at each table, the actas (signed pieces of paper that show how many votes each party received at a particular table) required the signature of a representative from each party present at that table. The TSE decided that for the 2009 March elections the actas would be valid with two signatures of the same party, despite the fact that there were only two parties participating in the election.

The TSE also failed to control the electoral campaign. This campaign was characterized by the aggressiveness and intervention of parties that were not in contention. The group "Cruzada Pro Paz y Trabajo" that has been around since the 1980s launched a campaign called "Yo no entrego el Salvador" (I don't give out El Salvador) in which they focused on attacking the FMLN and its presidential candidate as dangerous for the country because of their "ties" with international leaders that were stated as capable of jeopardizing El Salvador/US relations. This party continued with its electoral campaign even after it was officially closed for violating electoral law. Article 228 of the Electoral Code states that "it is prohibited through the electoral campaign to injure the morality, honor or privacy of candidates or leaders, alive or dead (Queda prohibido a través de la propaganda electoral lesionar la moral, el honor o la vida privada de los candidatos o lideres vivos o muertos)."

D: Public Funds Used with Partisan Purposes

The government of El Salvador was directly involved in the electoral campaign by using of funds and resources from public institutions and ministries. Public employees denounced they were being pressured, against their will, to attend propaganda events for the ARENA party. Other common denouncements included the use of public buildings for meetings and orientations for the people who were going to represent ARENA on the JRVs. I would write the highlighted sentence like: "ARENA used vehicles from ministries to mobilize people to its propaganda events, as well as to transport resources such as food, specifically Pollo Campero chicken, to representatives of the party at the voting centers.

Also, last year, the person who was running for mayor from ARENA began to work on the "betterment of the street" campaign in the municipality of Soyapango in the name of the ARENA party. However, this campaign was using funds, materials, and personnel from the Ministry of Public Works (Ministerio de Obras Públicas, MOP).

E: The Use of Media

Media was a key component in the development of the electoral campaign. Television and radio stations of mass transmission often reported news from a party/political perspective that usually favored ARENA. One of the principal ethics of media is impartiality, making this non-paid propaganda an abuse of the control of media by the party in the government.

Throughout March, Salvadorans were subject to a ceaseless stream of TV and radio spots that cast Funes as a puppet of Venezuelan president Hugo Chavez. The underlying message was one that ARENA and rightwing allied groups like Venezuela-based Fuerza Solidaria had drilled into the Salvadoran mainstream media for the past year - don't deliver El Salvador to Venezuela, and don't vote for the FMLN. FMLN vice presidential candidate Salvador Sanchez Cerén was also targeted by the right for his role as an FMLN comandante during the 12-year civil war. Fuerza Solidaria flyers calling Cerén a murderer rained from the sky and appeared on doorsteps. "Don't vote for a bloodthirsty terrorist" was the bottom line, the same smear tactic used by ARENA and allies against the 2004 FMLN presidential candidate, also a former comandante, Schafik Handal.

Section II: Our Election Day Observations

On Election Day, approximately 70 CISPES activists participated in the Misión de Observación Internacional, which was composed of 1,561 international observers from 27 countries across the Americas, the Caribbean and Europe. CISPES observers were present in ten municipalities in the departments of San Salvador, La Unión, and Cabañas. All observers arrived at their assigned voting centers prior to their opening and before poll workers arrived for installation. They stayed until after the final count had taken place at each center. In addition to its observation efforts, the mission received denunciations from Salvadoran citizens about anomalies observed during Election Day.

Leading up to the presidential elections, the ARENA party waged as strong a fear campaign as ever. They used all of the same intimidation tactics as in previous elections in an attempt to defeat the FMLN. However, on and prior to Election Day, Salvadoran citizens worked tirelessly to defuse the impact of these tactics. The result was a largely smooth process on Election Day and an FMLN victory. Massive voter turnout and citizen defense of the vote assured that the strategies used by the ARENA party to commit fraud did not have the impact that they had in previous years.

In the presidential elections of March 2009, there were two main types of irregularities that served as obstacles to free and fair elections- institutional problems and polling place problems.

A. Institutional Problems

- The night before the elections CISPES observers received reports of truckloads of foreigners coming into San Salvador and being housed in the ARENA headquarters. Observers arrived at the scene and saw dozens of mattresses trucked in and rapidly unloaded. ARENA officials were present and unable to explain what observers witnessed. These types of reports emerged from all areas of the country leading up to Election Day, and observers later learned that up to 20,000 foreigners were mobilized with the intention of having them vote in the Salvadoran elections.

-100,000 extraneous names continue to exist on the voter registry. These are names of people who are either dead or have migrated to other countries and are not returning to El Salvador to vote. These extraneous names facilitate problems such as foreigners coming into the country to vote or people voting more than once using false names and false identification cards.

-In at least one municipality in La Union, ARENA party officials were found giving out food from the mayor's house in exchange for votes.

-The entity that emits Unique Identity Documents (DUIs)—national identification cards used as voter ID cards—continues to be a private enterprise that is owned by allies of the ARENA party. The lack of transparency in the emission of DUIs allows for the distribution of false DUIs to foreigners and also to citizens for the purpose of voting multiple times. Multiple instances of two DUIs with the exact same photograph but different names and numbers were

found on the TSE's voter consultation website. In addition, reports were received of people voting with DUIs that had pictures of other people and large groups of people arriving to vote at the same time, all with brand new DUIs. There were also multiple citizen accusations of ARENA officials distributing false DUIs to foreigners.

The effect of these problems were ameliorated by the citizens' ability to overcome fear and to denounce irregularities. Salvadorans confronted the trucks and buses bringing in foreigners and were able to prevent many who did not have the right to from voting on Election Day.

B. Polling Place Problems

-In Anamoros, a municipality of La Union where a number of CISPES observers were present, a local ARENA Deputy illegally paraded through the voting center, in an act of proselytism despite the electoral law forbidding campaigning on Election Day.

-In San Martín, CISPES observers witnessed an ARENA Voting Center Chief attempting to steal an envelop full of actas. The Center Chief was caught stuffing the actas into his pants, when the FMLN Center Chief stopped him and police officers surrounded him.

-Often, JRV presidents did not inspect the hands of voters to verify that they were not marked with ink, which would have assured that they had already voted. CISPES observers at five different Voting Centers also reported that the ink used to mark the hands of people after voting was often extremely faint and hardly visible. Other observers that were part of the observation mission witnessed the ink being easily removed with a small amount of alcohol.

-CISPES observers were present at the "Mágico Gonzalez" Voting Center in the municipality of San Salvador, where Salvadorans living in the United States were able to vote if they had funds to travel to El Salvador. The observers witnessed that in the room where excess ballots were being stored, an apparently intentional flooding of the room that damaged several boxes of ballots. The attempt had no effect in the end, as there was a very low turnout at the Center and not all of the ballots were needed.

C. Successes

- In all of the Voting Centers where CISPES observers were present, polling places opened and closed on time.

-There was an overall sense of respect for procedure, which was generally followed closely by both parties throughout the day, with some exceptions as noted above.

-Less foreign voters were observed coming into polling centers than in previous elections, apparently due to prevention tactics and denunciations made prior to Election Day.

-Aside from a few noted exceptions, electoral propaganda and campaign rallies were not witnessed in voting centers.

-In the case of the ARENA party Deputy who campaigned in the voting center in Anamoros, elections officials together with CISPES observers were able to make him leave, pointing out the illegality of his actions.

-In the case of the ARENA center chief who attempted to steal the voting actas, as in many similar situations during the week of the elections, officials were able to stop the center chief and he was arrested before leaving the voting center.

While some problems did exist in polling places, citizen denouncements and intervention prior to Election Day provided for a relatively calm day in the polling centers.

Section III: Recommendations

1. The TSE should grant all political parties and the general public full access to the Electoral Registry for inspection and audit, specifically with respect to the official population data of the National Registry of Naturalized Persons (RNPN).
2. The Electoral Registry should be purged and updated in accordance with the most recent 2007 Population Census, as recommended by the Organization of American States.
3. As the foremost regulatory body of the elections, the TSE should increase its efforts to prevent, investigate, and penalize violations of the Electoral Code. Violations during the campaign and on Election Day should be punished in accordance with Salvadoran law, and violations of the Code on Election Day should be stopped. Many serious denunciations made to the TSE were dismissed without sufficient investigation, which led to major breakdowns of the electoral process. This was most notably in the case of San Isidro, Cabañas during the January 2009 election when ignored complaints to the TSE that the incumbent ARENA mayoral candidate was distributing voter cards to Honduran citizens found in the voter registry led to the vote being shutdown mid-day.
4. The TSE should denounce and investigate all charges of campaign-related violence, and take active steps to prevent further electoral violence. It is the duty of this body to demand that the campaign progress in a peaceful manner and to penalize the political parties that do not cooperate.
5. Recognizing the significant role played by the media throughout the campaign:
 - A) The TSE should call for well-researched and informative electoral coverage, instead of sensationalized coverage that serves to polarize, generate fear among the population, and favor one political party.
 - B) The TSE should ensure that all political parties have equal access to media outlets, and should regulate the amount of money invested in media propaganda.
 - C) All recognized presidential candidates should have equal time given to the candidates on national television and radio during the official course of the campaign. All candidates should have equal and free access to newspapers to promote the details of their platform.
 - D) All recognized candidates for municipal mayors or legislative seats will be given an equal amount of space and time in local newspapers and radio stations.
6. Residential Voting should be expanded to the national level and implemented in such a manner that provides the entire population convenient access to community voting centers, thus encouraging voter turnout among legitimate residents and discouraging non-residents from voting illegally. A goal should be that residential voting, especially in urban locations, should be within walking distance for voters. Free public transportation should be provided for all voters by the state on Election Day.
7. Adult Salvadorans who are residing in other countries should be allowed to vote as is

true in other democracies that use best international election process. For example, Salvadorans who reside in the United States should have the opportunity to vote on the same day as the national election in El Salvador in locations such as Los Angeles, CA, San Francisco, CA, Houston, TX, Miami, FL and other locations as the TSE determines are necessary in the USA and other nations.

8. As in other democracies that use best international standards, the role of each citizen of El Salvador should be encouraged and those who are not citizens should be welcome as observers and interested parties but they should not be allowed to materially interfere in the national elections:

A) Salvadoran citizens should be allowed to actively participate in campaigns and to contribute to the candidates of their choice. Contributions over \$10 should be complied and reported to the TSE in a timely manner, unless the citizen believes that there is a potential danger to them if their name is publicly known. The maximum donation that any El Salvadoran citizen can contribute to any candidates should be limited to the per capita income of Salvadorans in the year prior to the election. The TSE should have specific laws and regulations that will enforce this.

B) Foreign nationals (not Salvadoran citizens) should not be permitted to contribute direct or indirect material aid to the campaign of any candidate or political party. Any such aid accepted by a candidate or party should be forfeited at twice the amount to the state. All records of fundraising and spending of the campaigns should be transparent.

9. All JRV members and party vigilantes should receive a thorough, standardized training in all of the procedures, regulations and laws governing their positions and the electoral process.