



EUROPEAN UNION ELECTION OBSERVATION MISSION EL SALVADOR

Presidential Elections – 2009

PRELIMINARY STATEMENT

The Salvadorian people mark turning-point on a peaceful and well-organised election day following a campaign characterised by the absence of a level playing-field

San Salvador, 17 March 2009

*Following an invitation from the Tribunal Supremo Electoral and the Government of the Republic of El Salvador to observe the Presidential Elections on 15 March 2009, as well as the Legislative, Municipal and PARLACEN Elections on 18 January 2009, the European Union Election Observation Mission (EU EOM) was established in El Salvador on 6 December 2008. The Mission is headed by **Dr Luis Yañez-Barnuevo**, Chief of Mission and member of the European Parliament. The Mission deployed a total of 81 observers from 22 member states of the European Union in the 14 Departments of the country. They observed the opening, voting, closing and counting processes in 365 polling stations. The Mission's mandate is to assess the entire electoral process against international standards for elections and the laws of El Salvador, in accordance with EU methodology and "The Declaration of Principles for International Observers," adopted under the auspices of the United Nations in October 2005.*

*The EU EOM was joined by a six-member delegation from the European Parliament, led by **Mr. José Ignacio Salafranca**, which endorses this statement of preliminary findings. The EU EOM will remain in the country to observe the remainder of the process, including consolidation and announcement of final results and the management of any electoral appeals. Some two months after conclusion of the process, a Final Report will be made public, offering the Mission's detailed evaluation of the elections. The Final Report will include recommendations towards improvements for future elections. The EU EOM is independent in its findings and conclusions.*

Preliminary Conclusions

- The fourth Presidential elections since the end of the civil war in El Salvador have marked a turning-point in the country's history. While the campaign was characterised by significant inequalities between the two contenders in terms of resources and access to the media, the electoral process was transparent and there were no relevant irregularities, enabling an outcome which reflects the will of the Salvadorian people.
- Election day unfolded in a peaceful, orderly manner and distinct improvements in the process confirmed the TSE's motivation to apply the lessons learnt in the past. Particularly given the closeness of the contest and the intensity of the campaign, as well as the challenges faced by the electoral administration, the transparent and peaceful nature of election day was testimony to the commitment of all involved to the processes of democratic choice, not least that of the Salvadorian people.

- The legal framework in El Salvador allows for the conduct of democratic elections but remains incomplete. Despite a number of amendments, it still lacks regulations on political parties, campaign financing and access to the media. The incoming National Assembly should consider the drafting of a new Electoral Code.
- The political composition of electoral bodies impinges on the technical processes of electoral administration, as well as on the principle of an independent, neutral electoral management body. In addition, the TSE's twofold function as election management body and electoral court limits its accountability and ability to fulfil both essential functions. Until the dissolution of the current National Assembly, there remains a window of opportunity to initiate the Constitutional reform necessary for de-politicisation of the TSE.
- In-between the Legislative and Presidential elections, the TSE introduced a number of measures aimed at improving the election process. These included providing additional training to polling station members and political party agents, better arrangements to ensure secrecy of votes and reorganising polling stations for a smoother voting process, as well as improvements in the transmission and processing of results forms. All of these initiatives had a positive impact on the process and demonstrated the TSE's openness to recommendations for improvements and its commitment to ensuring a transparent and efficient election process.
- The National Assembly enabled nearly 40,000 of the Salvadorian citizens residing in the United States of America to vote in the Presidential Election. Although the initiative was limited to a small proportion of emigrant citizens and required these to travel back to El Salvador in order to vote, it was a positive measure which could be built upon to create a full out-of-country voting option for all migrant Salvadorians.
- The *voto residencial* decentralisation pilot was repeated for the Presidential elections, with the same benefits for voters in the Department of Cuscatlán of shorter travel distances, less crowded polling stations and greater independence from transport provided by political parties. The EU EOM again supports this initiative and recommends its extension to the whole country.
- The Electoral Register has proved to be highly inclusive but not as accurate as it might be, mainly due to insufficient checking to eliminate out-dated entries. Mechanisms to improve the accuracy of the Electoral Register should be developed for future elections, in order to increase confidence in the reliability of this key tool in the electoral process.
- Campaigning took place in a generally peaceful environment, although there were some isolated violent incidents. There was a significant disparity between the

contending parties' resources, primarily due to the lack of regulation on campaign donations or expenses, the lengthy campaign period and the continued participation of associations not officially registered as political entities. Another significant factor was the participation in campaigning by prominent holders of public office, in contravention of the Constitution. The prohibition of campaigning during the three days prior to election day was systematically ignored by both parties and the media.

- Salvadorian media provided coverage of the campaign for the Presidential Election in an atmosphere that respected freedom of expression. However, election news coverage was generally biased and did not meet international democratic standards, exacerbating the uneven playing-field in favour of ARENA.
- The absence of any woman among the four Presidential and Vice-Presidential candidates in this election process reflects the under-representation of women in the political system. Nonetheless, there was a positive trend in the lower levels of electoral bodies, with women constituting more than half of polling station presidents.
- The Presidential Elections were the most observed in the country's history, with civil society organisations enabling active participation of thousands of young Salvadorians in national election observation missions.
- The EUEOM congratulates President-elect Mauricio Funes for his success in the polls and appreciate his refraining from prematurely declaring his victory, as well as candidate Rodrigo Avila's swift recognition of the results. The mission recalls the commitment repeatedly made by both candidates to introduce reforms to improve future electoral processes.

Preliminary Assessment

Background

The 15th March 2009 Presidential Elections in El Salvador are the fourth since the signing of the 1992 Peace Accords. Following the withdrawal of two parties (*Partido Demócrata Cristiano*, PDC, and *Partido de Conciliación Nacional*, PCN), only ARENA (*Alianza Republicana Nacionalista*) and FMLN (*Frente Farabundo Martí para la Liberación Nacional*) contested the Presidential Elections. This resulted in a politically-polarised election which, according to polls, was also the most closely-contested in the country's post-conflict history. Salvadorian citizens turned out in high numbers, demonstrating their commitment to democracy.

The results of the Legislative Elections led to no single party controlling an absolute majority of the National Assembly, required to pass new laws and budgets, much less the two-thirds required to process international agreements and loans. It is clear that the President-elect and the National Assembly will need to take an approach based on negotiation and consensus to ensure the smooth running of government.

Legal Framework

The main legal acts governing elections are the Constitution of the Republic of El Salvador and the Electoral Code.¹ The Constitution sets out basic political and civil rights in accordance with international election standards. However, the legal framework for elections in El Salvador remains incomplete. To date, there is still no law or regulation on political parties, no provisions on access to the media by political parties and no regulation concerning the financing and auditing of campaign costs.

Following the withdrawal of all but two Presidential candidates, further gaps emerged: the Electoral Code does not stipulate any procedures to register the withdrawal of candidates after the close of registration and does not provide clear guidance on the composition of temporary election bodies in the case of only two presidential contenders. In response to this last gap, the TSE sought agreement on an *ad hoc* arrangement whereby all election bodies were composed of four members from the two contesting parties. This political arrangement proved not to be a serious impediment to the election process as in general political party representatives did succeed in reaching consensus when needed, which was also reflected in the relatively low number of challenged ballots.

After January's elections, the National Assembly introduced two changes to the Electoral Code. The first amendment allows 39,463 Salvadorian citizens residing in the United States of America to vote, so long as they have been issued a national ID card confirming their residence in the USA. Despite theoretically allowing for wider participation, this measure only applied to a small proportion of the estimated minimum of two million Salvadorians living abroad, and its effectiveness was limited by the requirement for emigrants to return to the country in order to exercise their right to vote. On election only a small number of eligible voters took advantage of this possibility. Building on this first exercise, a more ambitious programme could be implemented for future elections to enable out-of-country voting for all migrant Salvadorians, who constitute approximately one third of the country's citizens.

The second amendment, introduced just 17 days before election day, states that results certificates from polling stations are legally valid even if signed by only two polling station staff members. The TSE proposed the amendment in order to ensure that should anyone refuse to sign the results certificate, this would not obstruct the election process,

¹ Other election-related laws include the Special Rules for the Residential Vote (last amended 2005); the law on the media (last amended 2007) and the Rules on Election Observation (2008).

particularly at the stage of announcing preliminary results. On election day a very high number of results protocols were signed by all polling station members and their validity was not challenged.

According to international best practice, the legal framework for elections should not be changed shortly before elections.² The persistent shortcomings of the legal framework for elections have clearly resulted in ongoing difficulties in the administration of the electoral process, which have in turn damaged the public's perception of the TSE's credibility. Since even after some 47 amendments the current Electoral Code is so incomplete, the most constructive approach would be to draft a new Electoral Code. The National Assembly now has a window of opportunity to approve necessary changes to the Constitution so that these may take effect before the next electoral cycle.

Electoral Administration

The Supreme Electoral Court (*Tribunal Supremo Electoral, TSE*) was established after the 1992 Peace Accords and its design confirmed the pre-existing institutionalisation of political party representatives at all levels of the election administration. The current TSE is composed of five members and their respective deputies, reflecting the results of the last Presidential election and comprising representatives for ARENA (President), FMLN, PCN (with a PDC-representing deputy), as well as two Magistrates appointed by the High Court (*Corte Suprema de Justicia, CSJ*). The political composition of electoral bodies is applied in all departmental and municipal temporary election bodies.

The political composition of electoral bodies impinges on the technical processes of electoral administration, as well as on the principle of an independent, neutral election management body. The TSE's decision-making processes are regularly hampered by party political considerations as resolutions taken by majority can reflect party interests and consequently lead to criticism and lack of confidence in the election management body.³

Partly as a result of its problematic decision-making processes, the TSE did not apply any penalties for the violation of the rules on campaign launches⁴ and on the prohibition of campaigning directly prior to election day or on election day itself,⁵ nor following

² Election legislation enacted at the last minute tends to undermine the legitimacy and credibility of the law and prevents political participants and voters from becoming informed in a timely manner about the rules of the election process (IDEA – International Electoral Standards).

³ Important decisions such as the separation of elections and the delayed access to information in the electoral register were decided by ARENA, PCN and one of the Magistrates indicated by the High Court. The TSE also dealt with the PCN party's decision to expel their Presidential candidate as a means of withdrawing from the elections as an ordinary administrative matter requiring only a majority 3 to 2 vote, rather than a matter of sufficient importance to require a majority vote of 4 to 1.

⁴ Art.81 of the Constitution of the Republic of El Salvador.

⁵ Article 230 of the Electoral Code stipulates that there should be no campaigning during the three days prior to election day, neither by political parties, individuals nor the media.

infractions of the rules restricting painting and posting of propaganda,⁶ nor indeed following the participation of prominent holders of public office in party political campaigning.⁷

Three days before election day, the TSE relied for the first time in this process on its power to sanction campaign infractions and ordered the suspension of publication of polls and political propaganda in the media. The use of the TSE's sanctioning powers should be reinforced in future electoral processes.

The TSE's efficiency and credibility are also diminished by the institution's twofold function as election management body and electoral court. This lack of separation between the two functions means that in some cases the TSE must determine appeals of its own decisions.

Future Constitutional and legislative changes should consider changing the composition requirements of the TSE to create a neutral and independent body, in line with international election standards. Constitutional amendments should also ensure a clear separation of administrative and jurisdictional functions. As with the Electoral Code, the Legislative Assembly has an opportunity now to approve necessary amendments in time to ensure their implementation before the next elections.

The *voto residencial* decentralisation pilot implemented in January was repeated for the Presidential elections.⁸ As a result, voters in pilot areas did not have to travel significant distances and polling stations were less crowded and prone to tension. The pilot decentralisation programme also limited rural voters' dependence on transport provided by political parties, contributing to their right to choose without undue influence on election day. Decentralised voting benefited 196,733 voters, some 4.65% of the electorate. The TSE has the technical capacity to extend decentralisation of polling centres throughout the country for future elections.

As it did in the Legislative Elections, the TSE arranged for free transport for urban voters on election day and this system was useful. However, in rural areas, most voters still depended on political parties for transport. The TSE also introduced a system enabling blind people to vote independently and made arrangements for disabled people to access polling stations. These were not always adequate but constituted a clearly positive development.

⁶ Art. 230 of the Electoral Code forbids painting and posting propaganda on public buildings, public art, on trees, traffic signs and private buildings. The Code stipulates that the TSE can demand the removal of propaganda and order the suspension of the political party in question.

⁷ Article 80 and 218 of Constitution; articles 237 and 271 of Electoral Code prohibit holders of public office from participating in campaign activities.

⁸ The *voto residencial* decentralisation programme initiated in 2006 was extended in 2009 to a total of 23 municipalities, including the entire district of Cuscatlán. The initiative increased the number of polling centres and established these closer to voters' homes, rather than only in municipal capitals. In Cuscatlán, the number of polling centres increased more than four-fold, from 18 in the whole department in 2006, to 73 in Presidential Elections 2009.

In the aftermath of the January elections, the TSE implemented a number of new measures aimed at improving the election process for the presidential elections. These measures included providing additional training to polling station members and political party agents; better arrangements to ensure secrecy of votes; reorganising polling stations to allow a smoother voting process; improving the application of indelible ink and making a concerted effort to improve the system for the transmission of results. All of these initiatives had a positive impact on the process and demonstrated the TSE's openness to recommendations for improvements and its commitment to ensuring a transparent and efficient election process.

The announcement of preliminary results improved when compared with January elections as the TSE was able to start giving results within two and a half hours of the close of polling. Results were announced on a regular basis and 90% of the preliminary results were made available within five hours. Partial results were posted on the TSE web page and were made available electronically to the contesting political parties and the press, contributing to the transparency of the process.

Voter and Candidate Registration

The Electoral Code does not establish onerous or discriminatory requirements for the registration of Presidential candidates and the deadline for registration on 15 January 2009 passed without incident or complaint.

The Presidential Elections relied on the same Electoral Register as the Legislative, Municipal and PARLACEN Elections. Some 4,226,479 voters were registered, a 27% increase on the number of citizens registered for the 2006 elections.⁹ This increase is consistent with all interlocutors' view that the Register is highly inclusive but not as accurate as it might be, mainly due to insufficient checking to eliminate out-dated entries.

Among the factors leading to inaccuracies in the Register are: the lack of any requirement to produce any proof of changes in residence for the purposes of changing voting location and inefficient communication of deceased persons by municipalities to the National Civil Registry. Mechanisms to improve the accuracy of the Electoral Register should be developed for future elections, in order to increase confidence in the reliability of this key tool in the electoral process.

Where an electoral register is not perfectly accurate, the prevention of fraud depends on adequate safeguards in its implementation and El Salvador's identity card system goes some way to providing these. The *Documento Unico de Identidad (DUI)* is issued to each citizen by the National Civil Registry, based on information provided by local authorities. The identity card displays a range of information, including the holder's photograph and residence, and has a number of technological safeguards which make it impossible to

⁹ The Voter's Register in 2006 listed 3,081,040 citizens.

amend and difficult to falsify. It is the DUI identity card which citizens must produce at polling stations in order to vote.

The system for issuing DUI identity cards is adequate, save for the need for some further safeguards on local authorities' issuing of documents towards applications for new or re-issued cards. Another useful measure would be to make the process of acquiring or renewing a DUI identity card more accessible. Currently, citizens must travel to municipal capitals and pay a fee of \$11 for the process. This cost is prohibitive for a significant proportion of El Salvador's population and it is often political parties which provide individuals with both transport and the required fee. The phenomenon of bus-loads of citizens being taken to municipal administrations to process identity documents has at times caused suspicion. For this and wider democratic accessibility reasons, it would be useful to consider reducing or removing the fee for DUI identity cards.

The Voters' List used in polling stations is based on the data in the Electoral Register¹⁰ and includes a photograph of each citizen. This measure acts as a safeguard against impersonation.

On 15 February the TSE provided access to all the information contained in the Electoral Register to all TSE Magistrates, thus allowing for more effective supervision of the Register's management and implementation.

Campaign Environment

Campaigning took place in a generally peaceful environment, with both citizens and party activists enjoying free access to meetings and other events. Some isolated violent incidents did take place however. The EU EOM re-iterates its condemnation of any form of violence in an electoral process and recommends more stringent implementation of campaign regulations.

The factors which exacerbated disparities between parties' resources in the Legislative Elections continued to do so in the lead-up to the Presidential Elections. These factors included the lack of regulation on campaign donations or expenses; the lengthy campaign period and the continued participation, in contravention of the Electoral Code,¹¹ of associations not officially registered as political entities in election campaigning.

A legal requirement for disclosure of private donations received by any party or candidate would be a minimum measure to help ensure transparency and contribute to a level playing-field for all political parties and candidates, in accordance with international electoral standards.

¹⁰ The Electoral Register is known as the Registro Electoral, and the Voters' List is called the Padrón Electoral.

¹¹ Article 284

The already long campaign period was made even lengthier due to parties beginning activities long before the legally-prescribed start, 120 days before elections.¹² This not only disadvantaged parties with fewer resources but also led to political fatigue among the electorate.

Despite the practice being prohibited by the Constitution and the Electoral code,¹³ prominent holders of public office participated in campaigning on behalf of the ruling party. These included the President, the Minister of Security and, of greatest concern, the Attorney General, who linked the FMLN to gangs of organised crime (*maras*) and unlawfully leaked the opposition candidate's bank details to the press.¹⁴ The caustic nature of some frequently-expressed calumnies was regrettable.

The FMLN party relied less consistently on negative campaigning, but its Presidential candidate Mauricio Funes did repeatedly state that ARENA might commit fraud, without adequately substantiating these allegations, and also relied on a fabricated interview to link ARENA's Presidential candidate to the controversy surrounding the notorious murder of three Salvadorian members of the PARLACEN in Guatemala.

The TSE did not respond to any of the parties' infractions and nor did the Public Electoral Prosecutor, who had an even clearer mandate to pursue infractions, even in the absence of any official complaint.

Just before election day, in five departments of El Salvador,¹⁵ EUEOM observers reported the delivery of roof materials to citizens, under the auspices of a government programme, by individuals clearly working on behalf of ARENA.

Media Environment

Just as was the case in the lead-up to the Legislative Elections, Salvadorian media were able to provide coverage of the campaign for the presidential elections in an atmosphere that generally respected freedom of expression. This positive state of affairs was marred by two regrettable incidents on 4 March, when ARENA supporters assaulted journalists from the *Canal 2*, *Canal 33* and *YSKL* and journalists from *Canal 4* also suffered attacks, apparently by FMLN supporters.

¹² Campaigning effectively started at the end of 2007, in contravention of articles 230 and 290 of the Electoral Code.

¹³ Article 218 of the Constitution and Art 237 of the Electoral Code prohibit holders of public office from exploiting their position to carry out party political activities. On 12th March the *Cambio Democrático* political party made a complaint to the Public Ethics Commission, citing the President's and the Attorney General's ethical responsibilities in relation to the electoral process.

¹⁴ President Saca appeared on stage during ARENA's closing campaign event. Shortly before, he publicly called the FMLN "enemies of democracy and liberty" and its presidential candidate and the party "a perverse society who try to deceive a whole country." The Minister of Security accused the FMLN of being involved with *maras*, or gangs and prison riots, without providing evidence.

¹⁵ Santa Ana, Chalatenango, San Vicente, La Paz and Cuscatlán

National media once again offered a platform for candidates to put their proposed programmes to voters, by publishing and broadcasting many interviews and special programmes. However, news coverage of the electoral campaign was generally biased and did not meet international democratic standards.

Between 31 December and 11 March 2009, the EU EOM monitored 15 print and broadcast media outlets in order to assess whether they offered equitable access to contending parties and candidates and provided impartial coverage.¹⁶ The results revealed that 13 of the 15 monitored media organs did not provide equitable time or space to parties and that the tone of news coverage was rarely neutral. A greater proportion of the media was biased in favour of ARENA (television channels 2, 4, 6 y 33; the newspapers *La Prensa Gráfica*, *El Diario de Hoy*, *Mas!*, *El Mundo*, and *Radio El Salvador*, *Radio Cadena Cuscatlán*, *Radio Cadena YSU*), while a smaller number favoured FMLN (the newspaper *Diario Co Latino*, and *Radio Maya Visión*).

Throughout the period of media monitoring, there was a large number of advertisements for institutions of the ARENA government: 9 hours 54 minutes on the radio, 2 hours 54 minutes on television and 112.607 cm² -142.4 pages- in the printed press. This poor practice further contributed to FMLN's unequal access to the media. In addition, the political propaganda broadcast on radio and television, both by political parties and by organisations such as the ARENA-linked "*Cruzada por paz y trabajo*," took on an excessively negative tone which did not respect the spirit of the Peace Accords and in fact contributed to political tensions.

Despite the prohibition of broadcasting electoral propaganda in the three days prior to election day, established in article 230 of the Electoral Code, some media organs (*TCS and television channels 12, 21 and 33*) broadcast interviews with clear campaign messages, while others (*TVO San Miguel, YSU, El Salvador and Maya Visión radio stations and Diario Co Latino*) aired programmes, spots or songs and published adverts in favour or against both parties. The TSE did not respond to these infractions.

As was the case during the campaign period leading to the 18 January elections, the TSE did not implement the provisions of Article 229 of the Electoral Code, according to which the electoral commission is responsible for allocating free airtime to political parties on State media. As a result, no free airtime was given to any political party.

Participation of Women

The absence of any woman among the four Presidential and Vice-Presidential candidates in this election process reflects the under-representation of women in the political system. This reinforces what was observed during the Legislative and Municipal Elections, when

¹⁶ TV: Channels 2, 4, 6, 12, 21 and 33. Newspapers: *La Prensa Gráfica*, *El Diario de Hoy*, *Mas!*, *El Mundo* y *Diario Co Latino*. Radios: *Radio El Salvador*, *Radio Cadena Cuscatlán*, *Radio Cadena YSU* y *Radio Maya Visión*.

women made up only 18 % of the new members of the National Assembly and just 10% of the country's new mayors.

Women were poorly-represented at the national and departmental levels of the electoral administration, while at municipal level, they made up between 10 and 25% of the temporary electoral boards.

Civil Society

Salvadorian civil society contributed to the electoral process through a number of election observation groups and also sought to increase voters' awareness and information about the elections. The Presidential elections were the most observed in the country's history, with over 4000 national observers deployed on election day. remove: some 1,200 more even than in the Legislative Elections.¹⁷ An especially positive phenomenon was the strong participation of young Salvadorians in a constructive and evaluative approach to politics, in what remains a polarised environment.

Complaints and Appeals

The EU EOM continues to observe the aggregation of final results at central level and will follow the final tabulation as well as any complaints and appeals related to this election.

Polling and Counting

Election day unfolded in a peaceful and orderly manner. Particularly given the closeness of the contest and the intensity of the campaign, this was testimony to the commitment of all involved to the processes of democratic choice, especially the Salvadorian people.

The EUEOM observed opening, voting and closing processes in a total of 242 polling centres, over half of the 460 in the country. A number of observations showed a marked improvement on the voting process in January, confirming the TSE's motivation to apply the lessons learnt in January.

Polling stations opened on time in 97% of those observed and procedures for opening, voting and closing were followed in the great majority of cases. Over half of the polling station staff members were presided by a woman.

¹⁷ The largest domestic observation mission was organised by the Central American University's IUDOP (*Instituto Universitario de Opinión Pública*), deploying 2,500 students, while the Human Rights Commission (*Procuraduría para la Defensa de los Derechos Humanos*) deployed 1,500 observers.

In 90% of cases, EUEOM observers found there was no intimidation in or around polling centres and no incidents of electoral violence were reported. Nonetheless, there remained an excessive presence of political party activists in the vicinity of polling centres.

Decentralised voting in Cuscatlán was once again proved to be a success, contributing to a departmental turn-out that was 9% higher than the national average.

Political party agents for both ARENA and FMLN were present in all of the polling stations observed, and there were no significant altercations. Despite concerns that polling station staff members may refuse to sign results certificates, all did so in all of the polling stations observed, demonstrating an important degree of mutual respect.

EUEOM observers assessed proceedings as 'good' or acceptable in virtually all polling stations observed and the transmission and announcements of results were conducted in a clear and timely manner.

The EOM would like to express its appreciation to the Tribunal Supremo Electoral and all national authorities as well as political parties, national and international observation missions, and Salvadorian civil society organisations for their cooperation and warm welcome during the observation period. The EU EOM is grateful to the Delegation of the European Commission in El Salvador, the diplomatic missions of Member States and the United Nations Development Programme, for their assistance throughout the mission.

An electronic version of this report is available in on the EU EOM website.

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